

INDIAN CLAIMS COMMISSION

**REPORT ON THE
PILOT PROJCT
OF THE
MICHIPICOTEN FIRST NATION**

October 2008

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SUMMARY

MICHIPICOTEN FIRST NATION PILOT PROJECT MEDIATION Ontario

The report may be cited as Indian Claims Commission, *Michipicoten First Nation: Pilot Project Mediation* (Ottawa, October 2008).

*This summary is intended for research purposes only.
For greater detail, the reader should refer to the published report.*

Treaties – Robinson-Superior Treaty (1850); **Indian Act** – Surrender – Expropriation, **Band** – Trust Fund; **Rights of Way** – Hydro Line – Railway; **Mandate of Indian Claims Commission** – Mediation; **Ontario**

THE PILOT PROJECT AND THE SPECIFIC CLAIMS

On October 29, 1996, the Chief of the Michipicoten First Nation wrote to the Minister of Indian Affairs to propose that Canada and the First Nation work together to develop a common research and review process to resolve the First Nation's specific claims. Two claims, both relating to transmission rights of way, had been submitted to the Specific Claims Branch (SCB) of the Department of Indian Affairs and Northern Development (DIAND), and were under review. The First Nation had identified 11 other possible claims which it wanted to research and develop jointly with SCB and Department of Justice personnel to test whether this proposed collaboration could make the claims process less cumbersome. Both Canada and the First Nation requested that the Indian Claims Commission (ICC) facilitate the process.

BACKGROUND

The ICC's involvement in this claim related only to its mediation mandate. As mediator, the ICC did not receive historical records or legal submissions from the parties.

On September 7, 1850, Chief Totomenai signed the Robinson-Superior Treaty on behalf of his followers living on the shores of Lake Superior near the Michipicoten and Doré Rivers. The treaty specified that the First Nation would receive a reserve "four miles square" at Gros Cap, where they were located. Because of interference by the local Hudson's Bay Company officials, the reserve was not surveyed in July 1853 when the surveyor and Indian Affairs official met with the Chief. Instead, the surveyor produced a "coast sketch" of a reserve that was smaller than stipulated in the treaty and in a location other than that requested by the Chief. When the reserve was finally surveyed in about 1899, it was identical to this sketch. This formed the basis for the boundary claim.

There were three major surrenders of land from the Michipicoten Reserve. In the first, on April 10, 1855, one square mile was surrendered for sale to a mining developer. Only Chief Totomenai signed the surrender, and there is no evidence that a meeting was held or a vote taken. On July 19, 1899, 1,000 acres were surrendered to be sold to the Algoma Central Railway Company to provide a transportation corridor from the harbour to Wawa, a new townsite which had been established as a result of a short-lived gold rush in the area. Shortly after construction of the railway began, it became apparent that the line trespassed onto non-surrendered reserve land. To correct this, an additional 481.5 acres was surrendered for sale. The Chief and several band members signed these two surrenders, but there was no voters list and no evidence of a meeting as required by the *Indian Act*. These three surrenders were referred to during the pilot project as the Algoma surrenders.

When the surveyors for the railway company were defining the surrendered property, it became apparent that the reserve had never been surveyed. The Department of Indian Affairs authorized the

surveyors to define the boundaries of the reserve in two separate surveys in 1898 and 1899 and paid for the work with money held in trust for the band, without authorization from the Chief and Council. These are the survey claims.

In subsequent years, there were additional losses of land and assets. In 1925, the merchantable timber on the reserve was surrendered. In 1927, 13.9 acres of land was expropriated to provide the Algoma Central Railway additional land for its right of way. In 1939, the Great Lakes Power Company built a transmission line through the reserve without the approval of the Chief and Council. In 1965, Ontario Hydro built a transmission line across the reserve without the approval of the First Nation.

On account of these various land transactions, the Michipicoten people had to move their houses, schools, and churches several times. Some of these moves found them located on land that was unsuitable for a settlement, and their health and welfare suffered. Many band members chose to leave the reserve and settle in communities as far away as Sault Ste Marie and Sudbury. Some of the descendants of those people came to the Michipicoten reserve for the first time when the pilot project held a community session to gather evidence from the band members.

MATTERS FACILITATED

The Commission's role was to chair the pilot project sessions, provide an accurate record of the discussions, follow up on undertakings and consult with the parties to establish acceptable agendas, venues, and times for meetings.

OUTCOME

In January 2008, 11 years after the pilot project began, 13 potential grievances had been researched, reviewed, and settled. Six claims were submitted and settled for a total monetary compensation of \$64 million plus the addition of 3,000 acres of Ontario Crown land to the reserve and the authorization to acquire an additional 5,400 acres which could be given reserve status. The breakdown is as follows:

- two survey claims, 1898 and 1899 – settled May 2000 (\$120,000)
- three Algoma surrender claims, 1855, 1898, and 1899 – settled April 2004 (\$11.7 million)
- one boundary claim – settled January 2008 (\$52.3 million plus 3,000 acres from Ontario Crown land)

Three other claims were resolved, to the satisfaction of the First Nation, through administrative referral (the two claims relating to Chapleau Indian Reserve (IR) 61 and Missinabie IR 62, and the 1927 railway right of way claim).

There were four additional claims where the parties agreed that there was no breach of lawful obligation and the files were closed (the timber claim, the two transmission rights of way, and the relocation claim).

REFERENCES

The ICC does no independent research during mediation and draws on background information and documents submitted by the parties. The mediation discussions are subject to confidentiality agreements.

PART I
INTRODUCTION

The Anishinabe people of Michipicoten have occupied the territory near the mouth of the Michipicoten River on the northeast shore of Lake Superior for over 700 years. Their reserve at this location, Gros Cap Indian Reserve (IR) 49, about 24 kilometres south of Wawa, Ontario, was identified in the schedule attached to the Robinson-Superior Treaty of 1850. As originally surveyed, it was a mountainous 4,458 hectares of rock, bush, forest, lakes, and rivers on Lake Superior; subsequent surrenders and expropriations took away almost all the frontage on the lake and left the First Nation with only about 3,500 hectares of the original reserve. The Michipicoten First Nation also has approximately 182 hectares of reserve land at three other locations: Missinabie IR 62 and Chapleau IR 61 (both of which were purchased by band members and set aside as reserves in 1905), and Gros Cap IR 49A, part of the original reserve which was surrendered in 1900 but returned and set aside as reserve land in 1955. As of December 2007, the First Nation had a registered population of 751, of whom only 56 reside on the reserves.¹ Other band members live in communities in the region and in the cities of Sault Ste Marie and Thunder Bay.

On October 29, 1996, Sam Stone, Chief of the Michipicoten First Nation, wrote to the Minister of Indian Affairs to suggest that they work together to develop a common research and review process to resolve the First Nation's 13 specific claims in a "coherent, cooperative and timely fashion."² The Minister agreed. Canada and the First Nation, with the assistance of the Indian Claims Commission, entered into a pilot project whereby the resolution of claims would be based on "joint historical research, joint identification of issues, coordinated legal research and joint presentations to Department of Justice lawyers, if necessary."³ In January 2008, 11 years and two months after sending that letter, the process was complete. All the land issues of the Michipicoten First Nation were researched. Six claims were submitted, accepted for negotiations, and settled, with the First

¹ Canada, Indian and Northern Affairs Canada (INAC), First Nation Profiles, 225 Michipicoten, <http://pse2-esd2.ainc-inac.gc.ca/fnprofiles> (consulted January 21, 2008).

² Chief Sam Stone, Michipicoten First Nation, to Ron Irwin, Minister of Indian Affairs, October 29, 1996, ICC file 2105-30-1-1, vol. 1.

³ Chief Sam Stone, Michipicoten First Nation, to Ron Irwin, Minister of Indian Affairs, October 29, 1996, ICC file 2105-30-1-1, vol. 1.

Nation receiving compensation packages totalling over \$64 million plus the addition of 3,000 acres to its reserve; three other issues were resolved, to the complete satisfaction of the First Nation, through administrative referral; and four files were closed after the grievances were found not to be in breach of a lawful obligation by Canada.

This report outlines the process and success of the Michipicoten Pilot Project. It will not provide a full history of the Michipicoten First Nation or its various land claims, but will summarize material produced during the pilot project to provide the historical background to the claims. Although the Commission is not at liberty, based on an agreement made with the negotiating parties and addressing in part the confidentiality of negotiations, to disclose the discussions during the negotiations, this report will summarize the events leading up to the resolution of the claims and illustrate the Commission's role in the process.

THE COMMISSION'S MANDATE AND MEDIATION PROCESS

The Indian Claims Commission was created as a joint initiative after years of discussion between First Nations and the Government of Canada on how the process for dealing with Indian claims in Canada might be improved. Following the Commission's establishment by Order in Council⁴ on July 15, 1991, Harry S. LaForme, a former commissioner of the Indian Commission of Ontario, was appointed as Chief Commissioner. With the appointment of six Commissioners in July 1992, the ICC became fully operative. The ICC is currently being led by Chief Commissioner Renée Dupuis (QC), along with Commissioners Daniel J. Bellegarde (SK), Jane Dickson-Gilmore (ON), Alan C. Holman (PEI), and Sheila G. Purdy (ON).

The Commission has a double mandate: to inquire, at the request of a First Nation, into its specific claim; and to provide mediation services, with the consent of both parties, for specific claims at any stage of the process. An inquiry may take place when a claim has been rejected or when the Minister has accepted the claim for negotiation but a dispute has arisen over the compensation criteria being applied to settle the claim.

⁴ The original Commission has been substantively amended in the years since 1991, most recently on November 22, 2007, whereby the Commissioners are, among other things, directed to complete all inquiries by December 31, 2008, including all inquiry reports, and to cease, by March 31, 2009, all their activities and all activities of the Commission, including those related to mediation.

As part of its mandate to find more effective ways to resolve specific claims, the Commission has established a process to inquire into and review government decisions regarding the merits of a claim and the applicable compensation principles when negotiations have reached an impasse. Since the Commission is not a court, it is not bound by strict rules of evidence, limitation periods, and other technical defences that might present obstacles in litigation of grievances against the Crown. This flexibility removes those barriers and gives the Commission the freedom to conduct fair and objective inquiries in as expeditious a way as possible. In turn, these inquiries offer the parties innovative solutions in their efforts to resolve a host of complex and contentious issues of policy and law. Moreover, the process emphasizes principles of fairness, equity, and justice to promote reconciliation and healing between Aboriginal and non-Aboriginal Canadians.

The Commission provides broad mediation, facilitation, and other administrative services at the request of both the First Nation and the Government of Canada. These services are available at any stage of the specific claims process, including research, submission, review, acceptance, and negotiation. Together with the mediator, the parties decide how the mediation process will be conducted. This method ensures that the process fits the unique circumstances of each particular negotiation. The mediation process used by the Commission for handling claims is aimed at increasing efficiency and effectiveness in resolving specific claims.

PART II
THE PILOT PROJECT

MICHIPICOTEN PILOT PROJECT

On October 29, 1996, Michipicoten Chief Sam Stone wrote to the then Minister of Indian Affairs, Ron Irwin, suggesting an alternative method to resolve land claim issues. In his letter, he summarized the history of the land transactions involving his reserve which they had been unable to bring to the government's attention:

For many years now Michipicoten has attempted to have these historic grievances addressed through the Specific Claims process, without success. Requests for information and help regarding claims issues, made to both the Union of Ontario Indians and to INAC [Indian and Northern Affairs Canada], date back to the early 1970's. Our requests for assistance fell on deaf ears.⁵

INAC provided funding to the Union of Ontario Indians to research land claims for the First Nations under its umbrella, including Michipicoten. In the 1990s, the Union did not have a central research office, opting instead to divide the funding among its member bands. Michipicoten's share was approximately \$9,000 for the entire year.⁶ This was not an adequate amount to cover the costs for historical research and legal advice for even one of its claims.

In 1993, the Michipicoten First Nation discovered the benefits of joint research as part of Ontario Hydro's Past Grievance Process. When Hydro approached First Nations in Northern Ontario in the late 1980s and early 1990s to seek permission to run transmission lines over reserve land, the bands indicated that they wanted to discuss outstanding grievances relating to previous Hydro land deals before agreeing to any new ones. Hydro listened and developed a non-adversarial, joint problem-solving process based loosely on the Harvard model. Lawyers were excluded from the process – instead representatives from Hydro sat down with representatives from the First Nations to try to come to a reasonable settlement of the issues. To get a good clear statement of facts, the

⁵ Chief Sam Stone, Michipicoten First Nation, to Ron Irwin, Minister of Indian Affairs, October 29, 1996, ICC file 2105-30-1-1, vol. 1.

⁶ Kim A. Fullerton, counsel for Michipicoten First Nation, to Co-Chair P.E. James Prentice, Indian Claims Commission, December 11, 1996, ICC file 2105-30-1-1, vol. 1.

parties hired one researcher, paid for by Hydro, to work for both sides to collect the documents needed in the negotiations. This was a very successful process for the Michipicoten First Nation, but it was not enough to satisfy all its needs:

Through that process adequate funds were made available to research the full history regarding Ontario Hydro's acquisition of a right-of-way across the reserve in the 1960's. A fair and honourable Agreement was reached with Ontario Hydro and this was celebrated with a feast in our community earlier this summer.

As a result of the process with Ontario Hydro, we were able to research enough of our history to submit two specific claims, one regarding the right-of-way for Ontario Hydro and another regarding a right-of-way granted to Great Lakes Power. However, we have no funds available to us to research and submit any further specific claims.⁷

Settling land claims was an urgent matter for this Band. Some of the reserve land previously surrendered and taken up for railway purposes was for sale on the open market, but the Band could not afford to buy it. Several economic initiatives were also in progress, and the First Nation needed funds to continue. Chief Stone proposed joint Indian Affairs / First Nation research and legal review of claims, with a Department of Justice lawyer and Specific Claims Branch negotiator involved early in the process and with the First Nation and its legal counsel involved in decisions at every stage:

We want to build on our strengths and develop the real potential of these lands and of our people, but in order to do so we need to clear up our historic grievances with Canada and regain control of as much of our land as possible.

To that end we make the following proposal: we would like to meet with you to discuss a work plan and budget for a special project designed to identify, research and resolve all of Michipicoten's specific claims in a coherent, cooperative and timely fashion. We would be prepared to consider joint historical research, joint identification of issues, coordinated legal research and joint presentations to Department of Justice lawyers, if necessary. We would be pleased to involve Ontario at any stage of these proceedings.

The large number of claims issues that are serious, yet relatively untouched, represents a unique opportunity for Canada and Michipicoten to design and implement a special process. These claims are of the utmost importance to my First Nation and we are prepared to devote the necessary time and energy to make this

⁷ Chief Sam Stone, Michipicoten First Nation, to Ron Irwin, Minister of Indian Affairs, October 29, 1996, ICC file 2105-30-1-1, vol. 1.

special project work. All that we lack is adequate resources to make it happen.⁸

This letter to Minister Irwin arrived at the Department of Indian Affairs and Northern Development (DIAND) at a time when the department was open to new ideas in the resolution of specific land claims. Several other joint research initiatives with First Nations in Quebec and New Brunswick were just beginning, and the staff at Specific Claims saw merit in the Michipicoten proposal.

The original proposal did not mention participation by the Indian Claims Commission (ICC). However, in November 1996, just after Chief Stone wrote to the Minister, Concorde Inc. completed a “Review of the Indian Specific Claims Commission” for the Assembly of First Nations. Among its many recommendations, one in particular was that the mandate of the ICC be expanded to allow it to be involved with claims from the beginning of the process:

2. a) that expansion of the Commission’s mandate include provisions for the Commission to receive a “statement of grievance” from a Band at the beginning of the claim settlement process and have authority to convene Canada and the Band in a joint “Claim Process Review Session” where cost-effective options for determining the nature of the grievance and the dispute resolution process to follow will be determined. Either party may choose after the session to proceed with the claim process as it currently exists, including appeal of the Commission when, through the existing process, a claim is not accepted by Canada.⁹

The parties thought this recommendation might be tested in the proposed Michipicoten Pilot Project and so asked the ICC to facilitate the process.¹⁰ The ICC agreed and became involved with the pilot project from its inception.

Protocol Agreement

The first order of business for the pilot project participants was to develop the protocol to be

⁸ Chief Sam Stone, Michipicoten First Nation, to Ron Irwin, Minister of Indian Affairs, October 29, 1996, ICC file 2105-30-1-1, vol. 1.

⁹ Concorde Inc., “Review of the Indian Specific Claims Commission,” submitted to Assembly of First Nations (AFN) Land Rights Unit, November 1996, p. 82, ICC file 2305-6-1.

¹⁰ Kim Fullerton to Co-Chair Prentice, December 11, 1996, ICC file 2105-30-1-1, vol. 1.

followed and to define the role of the Indian Claims Commission in the project. In the Protocol Agreement, signed on March 25, 1997, the parties agreed to participate in a good faith, interest-based process, and Canada agreed to provide the level of funding necessary to allow the First Nation to fully participate in all aspects of the pilot project. The process was divided into two phases: (1) claim identification and assessment, and (2) negotiations. It was agreed that, whenever possible, the same people would be involved in both phases. In Phase 1, the parties would work together to choose a researcher and to develop terms of reference. When initial findings were presented to the table, the parties would jointly assess the information, identify issues or allegations of any potential claim, and direct further research if needed, always on a “without prejudice” basis. The table would then prepare the claim to submit to the Department of Justice for a legal opinion.

For the most part, the role of the Indian Claims Commission as impartial facilitator focused on matters relating to process throughout the various stages of the pilot project. With the agreement of the parties, the Commission chaired meetings, provided an accurate record of the discussions, followed up on undertakings, and consulted with the parties to establish mutually acceptable agendas, venues, and times for meetings. The Commission acted as research coordinator for the various studies required during the negotiations and was also available to mediate disputes when requested to do so by the parties or to assist them in arranging for further mediation.

The Pilot Project Process

By the time the Protocol Agreement was signed in March 1997, most of the members of the pilot project team were in place. The Michipicoten First Nation was represented by its Chief, as well as its legal counsel and negotiation advisor. For Canada, the Specific Claims Branch assigned an analyst with over 20 years’ experience in research and analysis, with particular expertise in claims from the Robinson-Superior area. The Department of Justice assigned a lawyer to join the team from the outset to ensure familiarity with the factual and legal issues as they were developed. A federal negotiator joined the table after the first claims were accepted. Together, these parties agreed to hire one researcher, a person who had experience both with specific claims and as the joint researcher on the Michipicoten / Ontario Hydro Past Grievance Process.

The participants decided that, in the beginning at least, full table meetings would be

convened monthly, with various sub-groups meeting as required. Budgets were prepared to apply for funding through DIAND to cover the expenses of the joint researcher, the First Nation's legal counsel, its negotiator, and the participation of the Chief at meetings. Most importantly, the parties chose the focus of the initial research and established the terms of reference for that work.

THE COMMUNITY SESSION

In the existing specific claims process, there is no formal method of incorporating Elders' oral testimony into a claim submission. On the other hand, the Indian Claims Commission's inquiry process includes a community session at which First Nation Elders tell the Commissioners what they know, either from eyewitness account or from the community's oral tradition (information passed from generation to generation). The pilot project team decided to use the ICC model, altering it slightly to adapt to its needs.

ICC Commissioner Roger Augustine chaired the meeting, held on the Michipicoten Reserve on September 9 and 10, 1997, and Olive Dickason moderated the proceedings. Dr Dickason, a member of the Order of Canada and an Elder for the Women of the Metis Nation of Canada, is a leading Canadian historian known for her research and documentation of Aboriginal history. She agreed to pose the questions to the Elders. Although the parties worked together to develop a list of pre-approved questions relating to various land transactions, they also allowed Dr Dickason to change their order and wording, and to ask any other questions that she thought appropriate.

At the request of the First Nation's negotiating team, Elders were asked to swear an oath, using either a Bible or a sacred Eagle Feather, before giving their oral testimony. The ICC made all the necessary arrangements to preserve the evidence for the record, including arranging for court reporters as well as audio and video taping of the proceedings. Every effort was made to avoid the appearance of formality – the technical people were as unobtrusive as possible, the distance between Dr Dickason and the Elder was minimized, and the lawyers were seated to the side of the room.

Sixteen Elders came forward at the community session to share their oral history and to make that history part of the historical record. For the Chief, a particular benefit of the community session was that it served to bring the community together. About 90 per cent of the Michipicoten First Nation live off reserve, as far away as Chapleau, Sault Ste Marie, and Thunder Bay, and many who

came to the community session were on the reserve for the first time. “The community session was a success from our point of view,” said Michipicoten Chief Sam Stone, after the session. “Some people told me this was the first time they’d actually been to the reserve. Now, as a result of just holding the session, people are thinking about themselves as a community.”¹¹ Ms. Dickason also commented on this benefit:

Getting the people together at Michipicoten to talk about their personal memories as well as their history provided an opportunity to strengthen community ties. Because the people are scattered over a large area, such an event was unprecedented. They lost no time renewing old ties and making new acquaintances. They also profited from the occasion to expand their perceptions of their history as they compared versions with each other.¹²

This newly fostered community spirit remained to such a degree that, when decisions were later made on how to use settlement money, the First Nation advocated setting funds aside for an annual community feast to bring together the on- and off-reserve members.

COMMUNICATIONS – NEWSLETTERS

The pilot project also went beyond the usual specific claims research and assessment process in that the parties worked on a communication strategy from the beginning. In the process that was in place in the mid 1990s, the band membership and surrounding communities were often unaware that claims had been submitted until a settlement offer was made. The Michipicoten table wanted to make sure that, throughout all stages of the research, analysis, and negotiations, all band members were aware of the progress being made. They also wanted to keep any third-party interests informed to avoid future confusion. Finally, they wanted anyone interested in specific claims generally to be aware of the pilot project and its goals. All participants worked together to produce a “Special Newsletter on the Michipicoten Pilot Project,” published by the Indian Claims Commission in the summer of 1997. With historical pictures of the reserve, recent photographs of some of the team members, and a map showing the reserve and claim areas, this newsletter explained the rationale for

¹¹ Indian Claim Commission, Special Newsletter on the Michipicoten Pilot Project, fall 1998, p. 2.

¹² Indian Claim Commission, Special Newsletter on the Michipicoten Pilot Project, fall 1998, p. 5.

the pilot project, summarized the history and potential claims and provided answers to questions which readers might have.¹³

Because the Chief and his advisors wanted this newsletter to go to all band members, staff on the reserve began to update the band list and determine the current addresses for off-reserve members. This work continued while the claims were researched and assessed, so that by the time a ratification vote was needed, an up-to-date mailing list was immediately available. The newsletter was also sent to various umbrella native organizations, native media, federal and provincial elected officials, the towns of Michipicoten and Wawa, Algoma Mines, and officials in the Ontario government's Native Affairs Secretariat. Local land owners were assured that title to any land under discussion would not be affected by the claims, and band members were told how they could be involved.¹⁴

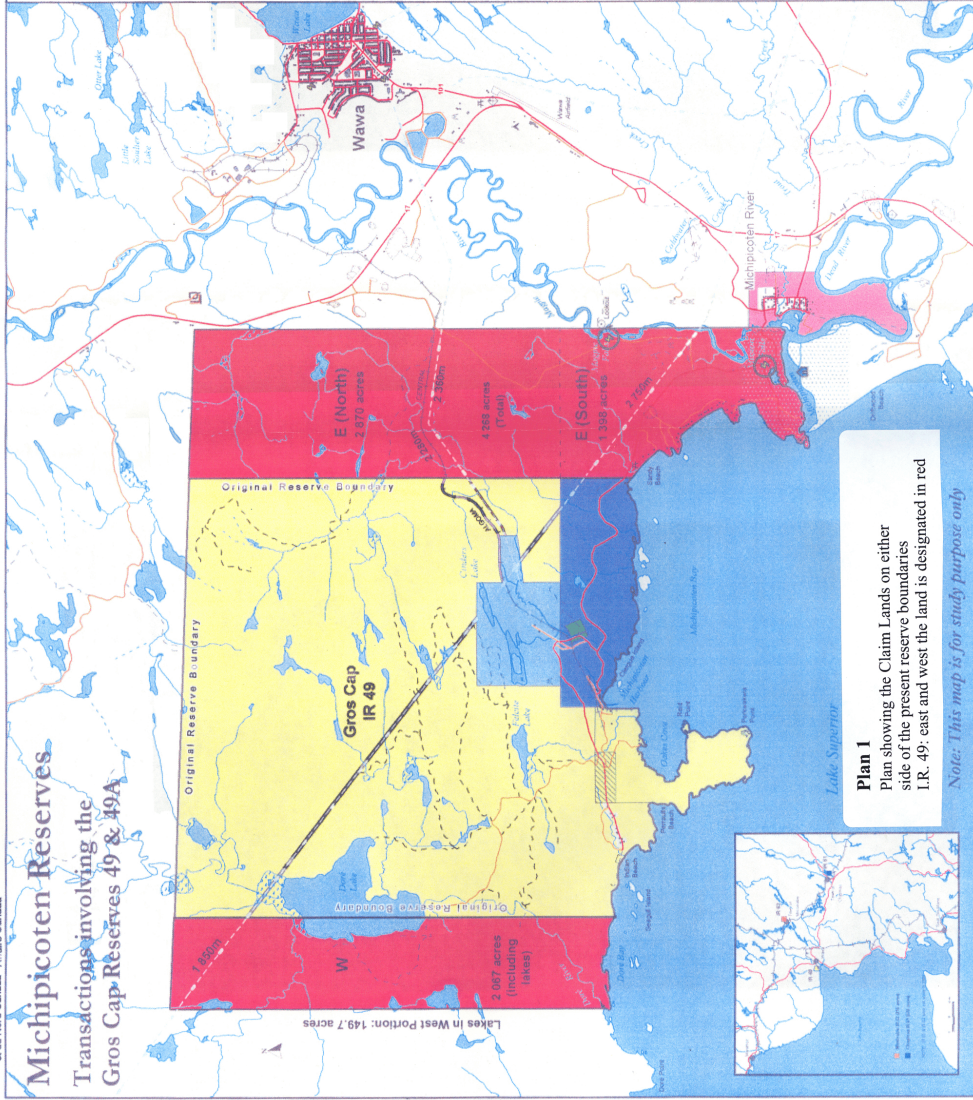
Subsequent newsletters were written and distributed by the Chief and his advisors, and their primary function was to keep the band membership informed and involved. These newsletters outlined the progress of the pilot project, gave explanations of the allegations in the claims and the rationale for acceptance and settlement. They also provided explanations of policy and procedure and addressed the concerns of the band membership. In addition, the Chief and his advisors held several information meetings on the reserve and in communities where off-reserve band members lived (Sault Ste Marie, Sudbury, Hawk Junction, and Chapleau). All this work served to raise awareness of the claims with the band membership and to build trust with the team working on the claims. The result was that all the settled claims were ratified by nearly all the eligible voters.

¹³ Indian Claims Commission, Special Newsletter on the Michipicoten Pilot Project, summer 1997.

¹⁴ Indian Claims Commission, Special Newsletter on the Michipicoten Pilot Project, summer 1997.

Michipicoten Reserves

Transactions involving the Gros Cap Reserves 49 & 49A



Plan 1
 Plan showing the Claim Lands on either side of the present reserve boundaries I.R. 49: east and west the land is designated in red

Note: This map is for study purpose only

Historical

- Hudson Bay Co. (HBC) Post - Established circa 1800
- Notional Reserve - circa 1850
- Mining Location - Surrender 75 - 1855
- Lands Patented to HBC - 1882
- Michipicoten River & Michipicoten Reserve 48* - 1885
- Algoma Central Railway (ACR) - Surrender 423 - 1899
- ACR - Surrender 438 - 1900
- ACR - Expropriation - 1927
- Halfway - Indian Settlement - 1935 to 1955
- Great Lakes Power Co. - Expropriation - 1943
- Green Acres - Gros Cap Reserve 49A - Set aside in 1955
- Ontario Hydro Right of Way - Expropriation - 1968
- Gros Cap Reserve 49 Boundary - 1999
- Indian Residences
- * Surveyed but never set aside as reserve

- Building
- Campground
- Historic Site
- Lookout
- Picnic Site
- Ski Centre
- Tower

Approximate location of Hydro Generation Sites

- Main Road
- Secondary Road
- Trail
- Railway
- Transmission Line
- Water Body
- Marsh
- Serial Cableway
- Watercourse
- Intermittent Stream
- Fall
- Pile
- Pit

Scale: 1:55,000

Universal Transverse Mercator (NAD 83 for Canada) Zone 18 Projection

Without Prejudice

Note: This map is a visual representation of boundaries involving the Gros Cap Indian Reserve. Boundaries are approximations and are shown for illustrative purposes only.

Sources: GBM 1: 200,000, Title 20-16-6500-53000, 20-16-6600-53000, 20-16-6500-53100, 20-16-6600-53100, 20-16-6500-53200, 20-16-6600-53200, Digimap, 1980.
 NIDB 1: 50,000, Title 41N14, 41N15, 42C02, 42C03, DMTH Spatial, January 2003.

Real Property: Conestoga Terracon, PE CSC, for I.N.A.C., April 06, 2004.

PART III

HISTORICAL BACKGROUND¹⁵

The Michipicoten area was an excellent location to support a hunter/gatherer economy and has been inhabited by native peoples for hundreds of years. The maple trees, migratory birds, and fish of the coastal area provided summer sustenance, while Lake Superior and the various rivers provided transportation to winter hunting grounds in the interior. It was a natural location for fur traders because of the geographic link from Lake Superior to James Bay via the Michipicoten, Missinabie, and Moose River systems, and from the early 1700s through to the early 1900s, there was a trading post at the confluence of the Michipicoten and Magpie Rivers, variously operated by the French, the Free Traders, and the Hudson's Bay Company (HBC).

At some point between 1780 and 1821, there were two competing trading posts on the Michipicoten River: the North West Company post on the southwest side and the HBC post on the northeast. After the merger of the two companies in 1821, the principal post of the HBC was established on the southwest side. Other industries were established at the post – commercial fishing, tinware manufacturing, York boat construction, and some agriculture – to supply inland posts and other markets.¹⁶ This location was part of the seasonal round for the Michipicoten Ojibway, a place to fish and make maple sugar in the spring and summer and to trade their furs. For the rest of the year, they were engaged in hunting and trapping throughout a larger area in the inland forests.

“In consequence of the discovery of minerals, on the shores of Lakes Huron and Superior, the Government of the late Province of Canada, deemed it desirable, to extinguish the Indian title”¹⁷ and, in 1849, Deputy Provincial Land Surveyor Alexander Vidal and Indian Superintendent T.G.

¹⁵ The Commission acted as facilitator in the pilot project. It did no research and made no findings. The following summaries of the histories of the claims is drawn from reports and documents produced by the pilot project. The information in the General Historical Overview is summarized from two reports produced by the pilot project team: Christine Deroi, “Report on the Surrender of 1,481.5 acres on Gros Cap IR #49 & the Expropriation of a Railway RoW (The Algoma Central Railway Surrenders),” December 1997, ICC file 2105-30-8-2, and Christine Deroi, “A Specific Claim Report on the First Nation’s Relocation from Michipicoten River Village to Little Gros Cap, Halfway and Green Acres,” December 1998, ICC file 2105-30-10-2.

¹⁶ Francis J. Lapointe, “The Post Contact History of the Michipicoten Ojibway People,” MA dissertation, Technical University of Nova Scotia, Halifax, 1994, p. 75.

¹⁷ Alexander Morris, *The Treaties of Canada with the Indians* (Toronto, 1880; facsim. ed. reprint, Toronto: Coles Publishing, 1979), 16.

Anderson were sent to investigate the possibility of negotiating treaties with the Indians at those two locations. At that time, they met with Chiefs Totomenai and Chick-a-nass at Michipicoten and noted that there was a settlement at Michipicoten River of 160 people. The Chiefs told these government emissaries that the Michipicoten Band wished to reserve a specific tract around the bay on Lake Superior, from the Michipicoten River to the Doré River.¹⁸

A year later, on September 7, 1850, the Michipicoten First Nation entered into a treaty (commonly referred to as the Robinson-Superior Treaty) with the Crown at Sault Ste Marie, Chief Totomenai signing the document on behalf of his people. In the schedule of reserves included in that treaty is a general description of the land to be set aside for the Michipicoten First Nation:

Four miles square at Gros Cap, being a valley near the Honourable Hudson's Bay Company's post of Michipicoten, for Totominai and Tribe."¹⁹

Surveyor James Bridgland and J.W. Keating, acting for the Department of Indian Affairs as interpreter and arbiter, were appointed to survey the reserves mentioned in the Robinson-Superior Treaty. In July 1853, both men met with Chief Totomenai, who pointed out the limits of his reserve. At the same time, the HBC factor at the Michipicoten post told Keating and Bridgland that the company wished to occupy one and a half miles on either side of the Michipicoten River, part of which overlapped with Chief Totomenai's request. Keating mistakenly thought that the treaty specified that reserves were not to interfere with HBC lands (this was, in fact, a provision included only in the description of the reserve to be surveyed at Fort William). Surveyor Bridgland produced a "Coast Sketch" map which showed the eastern boundary of the reserve one and a half miles west of the mouth of the Michipicoten River and the western boundary some distance east of the Doré River, the two natural boundaries the Chiefs had identified in 1849. Although subsequent correspondence indicated that there was a survey post at the southwest corner of the reserve, it is

¹⁸ Report, A. Vidal and T.G. Alexander, Commissioners, to Governor General in Council, December 5, 1849, Appendix B and Appendix D, transcribed copies in DIAND, Treaties and Historical Research Centre.

¹⁹ *Copy of the Robinson Treaty made in the year 1850 with the Ojibwa Indians of Lake Superior* [Ottawa: Queen's Printer, no date], 4 (see also, Canada, *Indian Treaties and Surrenders* (Ottawa, Queen's Printer, 1912; facsim. ed., Toronto: Coles Publishing, 1971), 1: 148).

apparent that Bridgland did not continue to define the boundaries of the reserve.²⁰ No lines were drawn, no technical descriptions were recorded, and no field notes were produced.

Several weeks later, in September 1853, Keating returned to Michipicoten, without Bridgland, and, “at the urgent request of the Chief,” persuaded the HBC “to give up the right bank [of the Michipicoten River] as far as the tributary which rushes down a broken fall some hundred feet high immediately opposite to the [HBC] establishment and affords a most valuable water-power.”²¹ In effect, the east boundary of the reserve was to be located on the right bank of the Michipicoten River, commencing at its mouth, and extending as far inland as the Magpie River. Although Keating included a statement of this agreement in his report, the reserve was not surveyed and Bridgland’s “coast sketch” was not altered to reflect the change. As a result, the coast sketch made in July 1853, was submitted to the department, and was the only demarcation of the reserve on file for the next half century.

In fact, it was not until a survey of surrendered land was conducted in 1899 that it became apparent that the Gros Cap Indian Reserve had never been surveyed. On July 26, 1899, Surveyor Thomas Byrne wrote to the department regarding the lack of survey lines:

Although the part at the south west angle of the Indian reserve is still standing in a fairly good state of preservation the Indians say that the boundaries of the reserve were never run and there is certainly no traces of lines to be found. I think it would be desirable to have it surveyed this season as there are a large number of prospectors working in this vicinity and they cannot tell whether they are on the reserve or not.²²

On August 12, 1889, the Department of Indian Affairs (DIA) authorized Byrne to survey the reserve boundaries, and it was completed by the beginning of October 1899. The survey plan, recorded as Canada Lands Surveys Records (CLSR) 1114, is based on Bridgland’s coast sketch and not on the

²⁰ Thomas O. Byrne, Ontario Land Surveyor (OLS), Report of Survey in Field Notes, September 29, 1899, DIAND, Indian Lands Registry, Book no. 281.

²¹ Report, J.W. Keating to Commissioner of Crown Lands, October 24, 1853, Archives of Ontario, RG 1, Crown Lands, Series A-I-1, vol. 66.

²² Thomas O. Byrne, OLS, to J.D. McLean, Secretary, Department of Indian Affairs (DIA), July 26, 1899, DIAND file 493/30-5-49, vol. 1.

area as reported by Keating in 1853.

SURRENDER 75, APRIL 10, 1855

As stated above, it was mineral exploration that led to the government's interest in negotiating the Robinson-Superior Treaty, and prospectors were soon in the Michipicoten area. In July 1851, 10 months after the Gros Cap reserve was identified in the treaty, George K. Smith, a geologist, applied to Indian Affairs to purchase one square mile of that land for mining purposes, a proposal which he said the Chief of the Band favoured.

Having discovered veins of metal at Gros Cap & learning that it is an Indian reservation, which Mr. Swanston, Ag^t the agent for the Hon^{ble} Hudson Bay Co. at this place [Michipicoten], informs me the Chief Tetomonee (in whose favor the reservation was made) has no objection to my purchasing, I humbly beg leave to request that you will grant your consent (that being necessary by the treaty) to the said Chief Tetomonee to sell me one square mile of the said reservation on the same terms on which land could be purchased from the Government of the Province.²³

There is no reply to this request on the record, and it was not until May 1853 that Smith again wrote to the Superintendent General of Indian Affairs asking the department to expedite the survey of the reserve, as well as the portion that he wanted to buy. In May 1854, after Bridgland had submitted his report and sketch plan of the Gros Cap reserve and Indian Affairs had made inquiries at the Crown Lands Office about terms and conditions for the sale of mining locations, Superintendent General of Indian Affairs Robert Bruce informed Smith that, if the Band was willing to give a written surrender, the department would sell the land requested, excepting an area on the shore required for harbour purposes, for seven shillings and six pence per acre.²⁴

The department authorized Smith himself to take the surrender. His first attempt produced a document dated August 10, 1854, that was for more land for less money, and stated that the land was surrendered to the Department of Indian Affairs rather than to the Queen. In September, the

²³ George K. Smith, Lake Superior, Michipicoten, to Col. Bruce, Superintendent General of Indian Affairs, July 26, 1851, Library and Archives Canada (LAC), RG 10, vol. 190, p. 111089, reel C-11513.

²⁴ R. Bruce, Superintendent General of Indian Affairs, to G.K. Smith, Windsor, May 8, 1854, LAC, RG 10, vol. 516, pp. 215-216, reel C-13346.

Superintendent General sent Smith a “formal draft of Surrender to the Crown prepared for Chief Totumanaie’s signature.”²⁵ Surrender 75 dated April 10, 1855, ceded the whole of the Gros Cap peninsula, with the northern boundary extended inland to produce one square mile. Only Chief Totomenai signed the surrender and there is no evidence that a meeting was held or a vote taken.²⁶

This surrender was accepted by Order in Council dated September 10, 1855. After payment in full was received, the patent was issued to Smith in 1856.

SURRENDER 423, JULY 19, 1899

In 1897, gold was discovered on the south shore of Wawa Lake, a short distance northeast of Gros Cap IR 49. Although the “rush” that brought hundreds of prospectors to the area was short-lived (essentially over by 1906), it caused a great deal of economic activity in the area. One by-product of the gold rush was the construction of a railroad from Michipicoten Harbour to the new townsite of Wawa.

In the summer of 1899, the Lake Superior Power Company applied to purchase 1,000 acres of land on Gros Cap IR 49, between Smith’s mining site and the eastern boundary of the reserve. Subsequent correspondence showed that Lake Superior Power was making the application on behalf of the Algoma Central Railway (ACR) Company which was at the time applying for its charter. Even though Indian Agent William Van Abbott indicated that he did not think the surrender of this land would be desirable because it took in most of the reserve’s frontage on Lake Superior, officials at headquarters authorized the taking of the surrender without further investigation. Van Abbott was instructed to take the surrender when he made his annual visit to pay annuities in August.

Indian Agent Van Abbott alerted headquarters to a problem in taking this surrender from the Indians “resident on our reserve at Gros Cap” as indicated on the forms sent to him.²⁷ From the time

²⁵ L. Oliphant, Superintendent General of Indian Affairs, to G.K. Smith, Sault Ste Marie, September 23, 1854, LAC, RG 10, vol. 516, pp. 275–76.

²⁶ Christine Deroi & Associates, “Michipicoten First Nation Land Claims, Report on the Surrender of 640 Acres in 1855 on Gros Cap I.R. Reserve #49,” November 1997, Executive Summary and pp. 26–27 (ICC file 2105-30-2-2.)

²⁷ William Van Abbott, Indian Agent, Sault Ste Marie, to J.D. McLean, Secretary, DIA, July 11, 1899, LAC, RG 10, vol. 7539, file 29013-4, pt. 1, reel C-14809.

of treaty at least, the membership of the Michipicoten First Nation had been divided, with some living near Lake Superior and others living at various inland locations. Research conducted for the pilot project demonstrated that in 1899, 153 Michipicoten people (including 41 men) were paid their annuity at Michipicoten in mid August 1899, while 181 (42 were men) were paid in early July at Chapleau, Missanabie, Biscotasing, and Brunswick House.²⁸ According to Van Abbott, no one actually lived on the reserve and only “about 14” of the eligible male voters lived nearby, so the instructions “would exclude the Chapleau, Missanabie and other branches of the Michipicoten Indians from having a voice in the surrender.”²⁹ To this headquarters replied with telegrams instructing Van Abbott to change the wording in the surrender forms and to “summon Indians residing near and interested in Reserve.”³⁰ The Indian Agent was also told that he should go to Michipicoten immediately to take the surrender and not wait until treaty payments which were scheduled to take place approximately four weeks later.³¹

The surrender for sale of 1,000 acres of the Gros Cap reserve was taken on July 19, 1899, signed by Chief Sanson Legarde and 12 others – “the Chief and principal men of the Michipicoten Band of Indians resident in the neighbourhood of our Reserve at Gros Cap,” in the presence of William Van Abbott and W.J. Pine, interpreter.³² The Governor General in Council accepted the surrender by Order in Council PC 1862 dated August 16, 1899. The details of the surrender meeting were not reported and no voters list was produced.

Immediately after the surrender – before the Order in Council, before payment was made, before letters patent were issued, indeed before the Algoma Central Railway (ACR) company was

²⁸ Christine Deroi & Associates, “Report on the Surrender of 1,481.5 acres on Gros Cap IR Reserve #49 & the Expropriation of a Railway RoW (The Algoma Central Railways Surrenders), 1888–1928,” December 1997, para. 64.

²⁹ William Van Abbott, Indian Agent, Sault Ste Marie, to J.D. McLean, Secretary, DIA, July 11, 1899, LAC, RG 10, vol. 7539, file 29013-4, pt. 1, reel C-14809.

³⁰ Telegram, DIA to William Van Abbott, Indian Agent, Sault Ste Marie, July 13, 1899, LAC, RG 10, vol. 7539, f. 29013-4, pt. 1, reel C-14809.

³¹ Telegram, DIA to William Van Abbott, Indian Agent, Sault Ste Marie, July 16, 1899, LAC, RG 10, vol. 7539, f. 29013-4, pt. 1, reel C-14809.

³² Surrender No. 423, July 19, 1899, Canada, *Indian Treaties and Surrenders* (Ottawa, Queen’s Printer, 1912; facsim. ed., Toronto: Coles Publishing, 1971), 3: 281–83.

incorporated – ACR began work to build a rail line on the land. Surveyor Byrne wrote on July 26, 1899, that he was “at present engaged in surveying 1000 acres recently surrendered by the Indians here to the Algoma Central Railway Co,”³³ and this work continued despite notice from the Department of Indian Affairs that “no survey can be made of the piece of land unless under the instructions from the Department.”³⁴ By September 6, 1899, ACR’s work was well under way:

The company, acting on the assumption that there was no question that the land required for the railway would be granted to the company, has proceeded to construct, besides letting in contract for the building of twelve miles of its line of railway from the dock property on this land. Some 600 men are now employed on this railway construction.³⁵

In August 1899, the Indian Agent had valued the surrendered land at \$5.00 per acre and in November, after ACR protested that the price was too high, he justified his appraisal on the grounds that the adjoining 640 acres (that is, the Smith land discussed above) had recently sold for \$10,000 and “there is very good reason to suppose that the lode or vein of iron contained in that location may extend to the other land which adjoins it” and also that the 1000 acres “contains the entire lake frontage and would in a great measure reduce the value of the remainder of the reserve.”³⁶ In fact, Chief Sanson Legarde had already commented on how the inability to access the shore would adversely affect his people:

I write you to complain of the manner in which the government is taking the thousand acres of our Gros Cap reserve. I see that by the way it is being surveyed that they are taking all the shore line and we will have no entrance to Lake Superior left. If the government takes the 1000 acres there where it is being surveyed, they might

³³ Thomas O. Byrne, OLS, to J.D. McLean, Secretary, DIA, July 26, 1899, DIAND file 493/30-5-49, vol. 1.

³⁴ J.D. McLean, Secretary, DIA, to Henry C. Hamilton, Barrister, Lake Superior Power Corp., August 3, 1899, LAC, RG 10, vol. 7539, file 29013-4, pt. 1, reel C-14809.

³⁵ Henry C. Hamilton, Barrister, Algoma Central Railway and Lake Superior Power Company, to J.D. McLean, Secretary, DIA, September 6, 1899, LAC, RG 10, vol. 7539, file 29013-4, pt. 1, reel C-14809.

³⁶ William Van Abbot, Indian Agent, Sault Ste Marie, to J.D. McLean, Secretary, DIA, November 11, 1899, LAC, RG 10, vol. 7539, file 29013-4, pt. 1, reel C-14809

as well take all of the balance of the reserve too, as no Indian is going to carry provisions up onto those rocks to eat it there, there will not be a spot left where he can plant a few potatoes or build a wigwam, and what use we getting for it. Maybe we will only get 25¢ each year. I ask you to see that we get what is right for what the government asks as they are spoiling our reserve so it will no longer be any use to us.³⁷

DIA headquarters agreed with Van Abbott's assessment and on May 22, 1900, asked ACR for payment of the 1,000 acres at \$5.00 per acre. Before this matter could be settled, however, it was discovered that ACR was laying part of its track outside the area of the 1,000 acres surrendered and, therefore, trespassing on the reserve.

SURRENDER 438, SEPTEMBER 10, 1900

Indian Agent Van Abbott heard about the trespass from band members at the annual annuity payments in August 1900. ACR officials explained that the rail bed corridor was impeded by a mountain and it was necessary to go around it. On August 16, 1900, ACR made a formal request for the additional lands, and on September 10, 1900, Chief James Cass and 11 men, "the Chief and Principal men of The Michipicoten And of Indians resident in the neighbourhood of our Reserve at Gros Cap." signed a surrender for the sale of 481.5 acres north of the 1,000 acres previously surrendered.³⁸ No voters list was supplied but Van Abbott's covering letter stated that only the 12 who signed the surrender were present.³⁹ The surrender was accepted by Order in Council PC 2345 dated October 9, 1900.

Van Abbott also appraised this land at \$5.00 per acre, the same as the 1,000 acres for which no money had yet been paid. DIA asked ACR to remit \$7,407.50 (1481.5 × \$5.00) but again the railway company protested the valuation. The matter was sent to arbitration with ACR and DIA each

³⁷ Sansom [sic] Legarde. Chief, Micipicoten First Nation, to William Van Abbott, Indian Agent, September 1, 1899, LAC, RG 10, vol. 7539, file 29013-4, pt. 1, reel C-14809.

³⁸ Surrender No. 438, September 10, 1900, Canada, *Indian Treaties and Surrenders* (Ottawa, Queen's Printer, 1912; facsim. ed., Toronto: Coles Publishing, 1971), 3: 317-19.

³⁹ William Van Abbott, Indian Agent, Sault Ste Marie, to J.D. McLean, Secretary, DIA, September 13, 1900, LAC, RG 10, vol. 7539, file 29013-4, pt. 1, reel C-14809.

appointing one person to meet and agree on a fair price for the land. On October 26, 1901, the committee reported back that the 80 acres fronting on the harbour were worth \$10.00 per acre but the rest of the land was only worth \$2.00 per acre. The total value of the land, therefore, was \$3,603.00.⁴⁰ The money was paid shortly after, and, after a delay of some years while DIA waited for the appropriate survey plans, patents were issued in 1909 and 1911.

EXPROPRIATION OF RAILWAY RIGHT OF WAY, 1927

Reference to the map of the Gros Cap IR indicates that even with these two surrenders, a railway line could not run from the harbour to Wawa without crossing unsurrendered reserve land. In a telegram sent on September 6, 1900, Indian Agent Van Abbott informed DIA headquarters that a right of way was not included in the description of the surrender he was about to take, and asked for instructions. Without any explanation, DIA telegraphed the message: “No surrender for right of way”⁴¹ In 1926, ACR applied to purchase the right of way containing 13.9 acres and which two internal DIA memorandums concluded had been used by ACR since 1900. ACR agreed to pay for the land at the rate of \$10.00 per acre and the land was expropriated by Order in Council dated June 15, 1927.

THE MICHIPICOTEN PEOPLE SEEK A PLACE TO SETTLE

At the time of treaty and for many years after, the Band did not live on IR 49. Some of its members lived at inland posts (primarily Chapleau and Missanabie) while a portion continued to maintain a summer settlement in and around the HBC post at the confluence of the Michipicoten and Magpie Rivers. The Chief’s request during the treaty negotiations that this settlement area be included in the reserve was ignored, and it was not until 1885 that surveyors were sent to set aside a reserve at the settlement site. The HBC, recognizing the value of the falls on the Magpie River, persuaded the Indians to move their settlement to the high bank on the east side of the Michipicoten River, and it was at this location that Department of Indian Affairs surveyors laid out a 197-acre block in 1885,

⁴⁰ Department of Indian Affairs, Agreement with Lake Superior Power & Algoma Central Railway, October 26, 1901, LAC, RG 10, vol. 7539, file 29013-4, pt. 1, reel C-14809.

⁴¹ Telegram, J.D. McLean, Secretary, DIA, to William Van Abbott, Indian Agent, Sault Ste Marie, September 6, 1900, LAC, RG 10, vol. 7539, file 29013-4, pt. 1, reel C-14809.

which the department identified as IR 48. The Province of Ontario, however, did not respond to requests to have the area set aside as a reserve. When gold was discovered near Wawa in 1897, followed quickly by an influx of prospectors and tradespeople, this land was sold by Crown Ontario to speculators who proposed to build a town at the location. Ontario officials defended this action because of the presence of IR 49 nearby, but did agree to protect the rights of any band members living on the property:

[I]t has been found that the land thus laid out by your Department [IR 48] was valuable for a Town site, and considering the fact that your Department has an Indian Reserve of four square miles close by laid out for your Department by P.L.S. James W Bridgland and granted under treaty for said Indians, it would appear not to be in the interest of the public weal to shut up from settlement a valuable Town Site on the banks of the Michipicoten River. A portion of it has been laid out and granted to the Lands Corporation of Michipicoten (Limited), but the Director of Mines has stated “that the rights of the Indians will be protected.”

On the sub-division into the Town site, a number of houses were shown on the plan and there will be no difficulty, as the Company is re-transferring back to the Crown certain lots in the Town site, to make grants of certain lots to the half breeds or Indians occupying said lots, but as said before, it is not in the interest of the public to set apart this land wholly as an Indian Reservation.⁴²

The 1897 gold rush in the area was short-lived because there were insufficient gold deposits to sustain it, but the discovery of a major iron ore deposit at about the same time was of more importance. Helen Mine was opened near present-day Wawa in about 1898, and soon the U.S.-funded conglomerate that owned the mine applied to purchase land on IR 49 to develop the rail and shipping links required to bring supplies in and transport ore out. As discussed above, 1,481.5 acres were surrendered in 1899 and 1900 to the Algoma Central Railway or its subsidiary companies (who by this time had also acquired the land at the harbour surrendered in 1855). An additional 13.9 acres was expropriated for this purpose in 1927.

After their village site near the HBC was surveyed into town plots in 1898, Michipicoten band members gradually moved to a new settlement (variously called “Little Gros Cap” or

⁴² Assistant Commissioner, Crown Lands Ontario, to J.D. McLean, Secretary, Department of Indian Affairs, May 3, 1898, Document #140 in Christine Deroi., “Report on the Surrender of 1,481.5 acres on Gros Cap IR #49 & the Expropriation of a Railway RoW,” ICC file 2105-30-8-2.

“Halfway”), which they established at a site they thought was on unsurrendered land in IR 49. A survey in 1931, however, determined that a large part of this settlement was actually located on the northwest corner of the land surrendered in 1855, which by this time was owned by the Algoma Central Railway. In 1935, after negotiations with the company, the Band authorized payment from its trust fund to purchase the 55.6-acre parcel at \$1.00 per acre. DIA, however, made no effort to reconstitute the parcel as reserve land.

From the beginning, the Halfway village was difficult to access. For many years there was just a trail through non-reserve lands for the two miles from the settlement to Michipicoten Harbour, and even in 1925 the trail needed work just to make it “passable for foot travel.”⁴³ Band money was spent over the years to maintain and improve the road, but by 1954 development in the area made access so difficult and dangerous that government officials recommended that the village be moved to a more advantageous location:

The reserve is split by the Algoma Central Railway right of way and loading docks at Michipicoten Harbour.

In the past the Indians have been able to cross these lines and under trestles, etc. At times a truck or wagon could get through. Due to extension of the Company’s activities changes have been made that render it unsafe for any other than foot passage. As all supplies now have to be carried for distances of up to a mile, this makes it almost impossible for the Indians to continue living at the present location.

...

It will be necessary to move the Indians from their present location. Here they are isolated from work and supplies. Another location should be chosen by Superintendent Laurence in consultation with the Chief, where they will be able to move in safety.⁴⁴

By 1956, the department and the Algoma Central Railway company negotiated an agreement to relocate the Michipicoten Indians. Algoma agreed to purchase the Halfway site for \$1.00 per acre

⁴³ Indian Agent to DIA, July 27, 1925, as quoted in Christine Derno, “A Specific Claim Report on the First Nation’s Relocation from Michipicoten River Village to Little Gros Cap, Halfway and Green Acres,” December 1998, p. 100, ICC file 2105-30-10-2.

⁴⁴ F. Matters, DIA Regional Supervisor, North Bay, to DIA, October 25, 1954, as quoted in Christine Derno, “A Specific Claim Report on the First Nation’s Relocation from Michipicoten River Village to Little Gros Cap, Halfway and Green Acres,” December 1998, p. 143, ICC file 2105-30-10-2.

in exchange for a new 13.6 acre site at Brient, in the area covered by the 1,000-acre surrender, to build houses, roads, and sewers and to help defer moving expenses. This new site became known locally as “Green Acres” and was set aside as IR 49A by Order in Council dated September 25, 1958.

Unfortunately, the Green Acres site turned out to be completely inappropriate for a village site. The houses and septic systems were built on clay which shifted with winter freezing and spring thawing, causing foundations to crack and septic tanks to break. After complaints by band members about conditions on the reserve, the Algoma Health Unit visited Green Acres in 1970 and 1971. The Health Unit report is full of references to substandard housing conditions and contaminated water (“all nine of the existing [septic] tank systems were causing raw sewage to pond or to find its way to the creek to the east of the village.”⁴⁵) The entire village site was condemned, and the Department of Indian Affairs began to look for a more suitable location for a village. In 1973, a new subdivision on IR 49 was started at the present site of the Michipicoten village – a beach site to the west of the Gros Cap Mining location along the shores of Lake Superior.

⁴⁵ Christine Deroi, “A Specific Claim Report on the First Nation’s Relocation from Michipicoten River Village to Little Gros Cap, Halfway and Green Acres,” December 1998, p. 218.

PART IV
THE CLAIMS – RESEARCH, NEGOTIATIONS, AND RESOLUTION

A total of 13 potential claims were researched and reviewed in the Michipicoten Pilot Project. For four of the 13, the First Nation decided, after the research was complete, that there was no breach of lawful obligation and the files were closed:

- timber claim
- Great Lakes Power transmission right of way
- Ontario Hydro transmission right of way
- relocation claim

Three issues were resolved through administrative referral:

- Chapleau IR 61
- Missinabie IR 62
- 1927 railway right of way

Six claims were submitted and settled for a total monetary compensation of approximately \$64 million, the addition of 3,000 acres of Ontario Crown land to the reserve, and the authorization to acquire an additional 5,400 acres which can be given reserve status:

- two survey claims, 1898 and 1899 – settled May 2000 (\$120,000)
- three Algoma surrender claims, 1855, 1898, and 1899 – settled April 2004 (\$11.7 million)
- boundary claim – settled January 2008 (\$52.3 million plus 3,000 acres from Crown Ontario)

GRIEVANCES RESEARCHED – NO CLAIM

Timber Claim

In June 1925, the Michipicoten First Nation surrendered the merchantable timber on Gros Cap IR 49. At the beginning of the pilot project, the First Nation thought there might be a specific claim based on inadequate compensation. Research conducted in the course of the pilot project found no evidence of a breach of Canada's fiduciary obligation, and in April 2001, the First Nation reported that it

would not proceed with a claim.⁴⁶ The file was closed.

Great Lakes Power Transmission Right of Way

The history of this claim was summarized in a paper presented by the First Nation's legal counsel to the Canadian Bar Association in January 2004:

In 1939, Great Lakes Power Company built a transmission line through the reserve to provide electricity to the harbour area. This was done without any consultation with the people of Michipicoten First Nation, nor was there any prior discussion with DIAND.

The local Indian Agent found out about the line in 1940, and DIAND subsequently granted a right of way *in perpetuity* upon payment of \$100.00. Even though the federal Department of Justice stated at the time that the transaction required approval by the Chief and Council, no such approval was ever sought or obtained.⁴⁷

This claim was submitted to Specific Claims Branch early in 1996 and by the time the pilot project started, it was being reviewed by the Department of Justice. In August 1998, however, the First Nation asked that Justice set it aside while other claims were under review. In April 2001, the First Nation indicated that it would not proceed with the claim. The file was closed.⁴⁸

Ontario Hydro Transmission Right of Way

In a sense, this was the claim that started the whole pilot project process, for this was the right of way that was the subject of the Michipicoten First Nation's negotiations through the Ontario Hydro past-grievance process. According to the First Nation's legal counsel:

⁴⁶ Michipicoten Pilot Project full table meeting summaries, February 20, 2001, and April 24, 2001, in ICC file 2105-30-1-2, vol. 3.

⁴⁷ Kim Fullerton, Barrister & Solicitor, "Innovative Ways of Resolving Specific Claims: The Michipicoten Pilot Project for Specific Claims," paper presented the Canadian Bar Association of Ontario, January 29, 2004, pp. 10–11.

⁴⁸ Kim Fullerton, Barrister & Solicitor, "Innovative Ways of Resolving Specific Claims: The Michipicoten Pilot Project for Specific Claims," paper presented the Canadian Bar Association of Ontario, January 29, 2004, p. 11.

In 1965, Ontario Hydro wrote to DIAND to request a right of way across the reserve. Hydro's letter pointed out that crossing the reserve would result in significant cost savings. DIAND proceeded on the basis of providing the right of way (totalling about 70 acres) for \$300.00 per year.

This amount and other conditions of the potential agreement between Hydro and DIAND were unsatisfactory to MFN. After negotiations broke down, DIAND sanctioned the construction and operation of the line without the required approval of the Chief & Council. There was no legal authority for the transmission line to cross the reserve for many years.⁴⁹

Like the Great Lakes Power claim, the Ontario Hydro claim was submitted to Specific Claims Branch early in 1996 and was being reviewed by the Department of Justice when the pilot project started. It, too, was put in abeyance in August 1998 while other claims were under review and was not mentioned again until April 2001, when the First Nation indicated that it would not proceed with the claim. In the eyes of the First Nation's legal counsel, "although once again the Department's behaviour was less than exemplary, the grievance has been resolved directly with Ontario Hydro."⁵⁰

Relocation Claim

This claim has its roots in the many moves the Michipicoten people had to make to secure a location for their houses, schools, and community, as summarized above in the brief history of the claims. Research was concentrated on IR 48, which was surveyed but not confirmed as a reserve, and the various exchanges of land within the area surrendered to the Algoma Central Railway between 1935 and 1957. When the research was complete, however, the First Nation was unable to identify a breach of lawful obligation by Canada, and no claim was submitted.⁵¹

The First Nation proposed that there was a way to address the "grievance" which the

⁴⁹ Kim Fullerton, Barrister & Solicitor, "Innovative Ways of Resolving Specific Claims: The Michipicoten Pilot Project for Specific Claims," paper presented the Canadian Bar Association of Ontario, January 29, 2004, p. 11.

⁵⁰ Kim Fullerton, Barrister & Solicitor, "Innovative Ways of Resolving Specific Claims: The Michipicoten Pilot Project for Specific Claims," paper presented the Canadian Bar Association of Ontario, January 29, 2004, p. 11.

⁵¹ Kim Fullerton, Barrister & Solicitor, "Innovative Ways of Resolving Specific Claims: The Michipicoten Pilot Project for Specific Claims," paper presented the Canadian Bar Association of Ontario, January 29, 2004, p. 13.

community felt because of the devastating effects of the various village relocations. Roman Catholic churches were built in each settlement, and, until the last move, whenever the community was relocated, the steeple bell was removed and established in a new church. The Whitesands Bell was donated to the First Nation by the owner of the Algoma Railway in 1901, and in the early 1900s was located in the basement of a church in Wawa. The pilot project team helped the First Nation in its efforts to have the bell returned to the community. In the summer of 2003, a bell tower was constructed in front of the cemetery on the reserve where the Whitesands Church once stood.⁵²

RESOLVED THROUGH ADMINISTRATIVE REFERRAL

Chapleau IR 61 and Missinabie IR 62⁵³

When the Robinson-Superior Treaty was signed, the treaty commissioners identified two groups of Indians trading at Michipicoten, a coastal group under Chief Totomenai and an inland group for whom no separate chief was named at the time of treaty. The reserve at Gros Cap was established in 1853 for the coastal group but no land was set aside for the Michipicoten band members who lived at Chapleau, Missinabie, and other inland sites. Various requests for land for these people was ignored until 1905 when two reserves were established – IR 61 at Chapleau and IR 62 (Dog Lake) at Missinabie. These lands were purchased by the members of the Michipicoten First Nation for whom the reserves were set aside, the costs paid out of their annuity money.

In 1906, Treaty 9 was negotiated with the Indians living in “90,000 square miles of provincial lands drained by the Albany and Moose river systems.”⁵⁴ Among those signing that treaty were the Missinabie Cree First Nations and the Chapleau Ojibway First Nation. The Missinabie Cree were mistakenly denied a reserve on the grounds that they already owned IR 62 at Dog Lake, an error that

⁵² Kim Fullerton, Barrister & Solicitor, “Innovative Ways of Resolving Specific Claims: The Michipicoten Pilot Project for Specific Claims,” paper presented the Canadian Bar Association of Ontario, January 29, 2004, p. 17.

⁵³ The history is summarized from Christine Dernoï, “History of Indian Reserve No. 61 and 62 at Chapleau and Missinabie and Members of the Michipicoten First Nation,” executive summary, November 2000. Please note that two spellings, Missanabie and Missinabie, are found in the documentation. In this paper, only the latter spelling will be used.

⁵⁴ *The James Bay Treaty, Treaty No. 9 (Made in 1905 and 1906), and Adhesions made in 1929 and 1930* (Ottawa: Queen’s Printer, 1964), 3.

was entered into DIAND's Indian Lands Register. The reserve for the Chapleau Ojibway, IR 74, was surveyed immediately adjacent to IR 61, and the Indian Lands Register entered both reserves as belonging to the Chapleau Ojibway. In 1965, an employee in Indian Affairs' Lands and Trusts section discovered these errors, but his recommendation to update the Lands Registry records to reflect the true ownership of the reserves was not acted on.

In his October 29, 1996, letter to the Minister, Chief Stone listed IR 61 and IR 62 among the grievances to be researched. Beginning in October 1998, the joint researcher, the Justice lawyer, and the Specific Claims Branch analyst worked together to prepare a package of material from documents already collected. This was submitted to the Indian Lands Registry on December 8, 1998, with a request that the records be amended. On December 10, 1998, a registrar's order was issued amending the record to show that Chapleau IR 61 and Missinabic IR 62 were established for the use and benefit of the Michipicoten Band of Indians.

1927 Right of Way

This claim involves the 1927 expropriation of 13.9 acres of land for a right of way across the Gros Cap Reserve, for which the Algoma Central Railway received letters patent. The First Nation alleged that it had not been consulted about this transaction, that the compensation was inadequate, that the transfer was excessive (the railway needed only a right of way, not outright ownership), and that the agreement should have included a reversionary clause. There was also an allegation of trespass since preliminary research indicated that the company had been using this land for some 25 years before the expropriation. Research on this claim was conducted through the pilot project and was nearing completion in July 2000, when the Algoma Central Railway informed the Michipicoten First Nation of its intention to abandon this line. At the request of the negotiating table, Canada declared an interest in the lands so that the First Nation could use the rail bed as a road from the village site to Highway 17. The railway company agreed to return the land for a nominal fee, and the Band decided that it would not submit a claim for compensation but would instead concentrate on having the land

returned to reserve status through administrative referral.⁵⁵ On January 31, 2007, the land was deeded to the Michipicoten First Nation.

CLAIMS SETTLED

Two Survey Claims (1898 and 1899) – Settled May 2000 (\$120,000)

These two claims, which concern the use of Michipicoten trust money to pay for surveys in 1898 and 1899, were not included in the list of possible claims at the outset of the pilot project but were identified early in the research of the other claims.

The 1898 survey claim had its origin with the 1855 surrender, which was conditional upon the land being surveyed at the buyer's expense. The land was sold to the mining interest in 1855, but Canada did not enforce the condition, and no survey was conducted at that time. It was not until 1898, when a dispute arose about whether a wharf was located on the surrendered lands or on the Gros Cap reserve, that the area was finally marked out. On the basis that the Band was the complainant in the dispute, the Department of Indian Affairs paid \$133.00 for the survey out of band funds. In its specific claim, the Michipicoten First Nation alleged that Canada had breached its fiduciary obligation by failing to enforce the terms of the 1855 sale agreement; had Canada done so, the 1898 survey would have been unnecessary and so the costs of that survey should not have been paid by the Band.

The 1899 survey claim relates to both the 1899 surrender and the boundary claim. When the First Nation surrendered the 1,000 acres from the Gros Cap Reserve in 1899, the surveyor at the time noted that he could not locate the initial survey of the reserve boundaries. An Order in Council was passed authorizing the use of band funds to pay for the boundary survey, and the \$601.59 bill was paid from the band's capital account. In the specific claim, the Michipicoten First Nation took the position that Canada would have paid all survey costs if the boundaries had been delineated in 1853 when the reserve was established, and the passage of time did not remove this obligation.

These two claims were submitted together to the Department of Justice on August 13, 1997,

⁵⁵ Kim Fullerton, Barrister & Solicitor, "Innovative Ways of Resolving Specific Claims: The Michipicoten Pilot Project for Specific Claims," paper presented the Canadian Bar Association of Ontario, January 29, 2004, p. 10

and Canada accepted the claim for negotiations on October 7, 1998.⁵⁶ In the spirit of the pilot project, the negotiations of the settlement proceeded very quickly:

Considering that the *Michipicoten Pilot Project* is intended to expedite the normal Specific Claims process, the Michipicoten Negotiating Team pressed Canada's representative to make an offer to settle the two Survey Claims as soon as reasonably possible after they were accepted for negotiation.

There were two reasons for this. First, unlike most of Michipicoten's other Specific Claims, the Survey Claims are relatively small and straightforward because there is no uncertainty about the amounts of money illegally taken from the Michipicoten's account, and there is no dispute about when the funds were taken.

Second, the Negotiating Team believed that it would be in Michipicoten's best interest to move quickly and decisively in a way that demonstrates the business-like approach being taken by the Chief and Council to resolve our Specific Claims in a "reasonable" period of time through the *Michipicoten Pilot Project*.⁵⁷

On December 11, 1998, Canada offered \$120,000 to settle (\$70,000 as compensation for the improper use of band funds and \$50,000 for negotiation costs), which was accepted by the Chief and council on January 28, 1999, and again on March 27, 1999, following a band council election. The parties immediately began the process of drafting a settlement agreement which was initialled by the Chief and Canada's negotiator. On May 13, 2000, the First Nation held a ratification vote, at which time a majority of the voters accepted the settlement.

Three Algoma Surrenders (1855, 1899, and 1900) – Settled April 2004 (\$11.7 million)

These three separate claims relate to land transactions involving the Algoma Central Railway. Because they had elements in common and, in keeping with the goals of the pilot project, they were bundled together whenever possible to save time and money in the research, review, and negotiations stages.

⁵⁶ Paul Cuillerier, Director General, Specific Claims Branch, to Chief Sam Stone, September 3, 1998; and Jane Stewart, Minister of Indian Affairs, to Chief Sam Stone, October 7, 1998, in ICC file 2105-30-7-1.

⁵⁷ John Peterson, Chief, Michipicoten First Nation, Report to the Members of Michipicoten First Nation Regarding the Proposed Settlement of Two Survey Claims, March 27, 2000, in ICC file 2105-30-1-1, vol. 2.

1899 and 1900 Algoma Surrenders

In its statement of claim, submitted to Canada on January 14, 1998, the First Nation alleged that both of these surrenders were invalid because a quorum of voting members was not present in either instance; thus, the surrenders did not conform with the voting requirements of the *Indian Act*. On December 7, 1998, the Acting Deputy Minister of Indian Affairs informed Chief Stone that Canada was accepting the 1899 and 1900 claims for negotiation.⁵⁸ The parties elected to begin the preliminary work on these claims (establish a negotiations protocol agreement, identify heads of damages, and identify and begin the studies needed) but to delay negotiations until the legal opinion on the 1855 surrender was complete so that, if it was accepted, the three claims could be negotiated together.

1855 Surrender Claim

This claim relates to the alleged surrender and sale of 640 acres on Gros Cap IR 49 to the mining entrepreneur, George K. Smith, in 1855 (land that later eventually became part of the holdings of the Algoma group of companies). In its specific claim, the First Nation alleged that, because there was no public meeting or assembly of the Michipicoten people and no representative of the Crown present when Smith met with Chief Totomenai, the surrender was taken contrary to the provisions of the *Royal Proclamation of 1763* and therefore was invalid. This claim was submitted to Canada on June 26, 1998. The legal review of the 1855 claim, because it was a pre-Confederation claim and there were few precedents to rely on, took longer than usual, but it was finally accepted for negotiation on October 3, 2000.⁵⁹

Negotiations of the Algoma Surrender Claims

The parties agreed that four studies would be conducted to determine the economic loss suffered by the First Nation as a result of these improper land transactions: two land appraisals, a forestry loss-

⁵⁸ Warren Johnson, Acting Assistant Deputy Minister, Indian and Northern Affairs Canada, to Chief Sam Stone, December 7, 1998.

⁵⁹ Robert D. Nault, Minister of Indian Affairs, to Chief John Peterson, Michipicoten first Nation, October 3, 2000.

of-use study and a loss-of-rent study. The methodology agreed upon for this last study came about through cooperative problem solving by the team:

In keeping with the spirit of the *Pilot Project*, Canada and Michipicoten utilized an innovative “loss of rent” approach to value the loss of use. This was done by creating a hypothetical lease to Algoma for the time period that the illegally surrendered lands were occupied.⁶⁰

Work began on these reports in December 2000 with the assistance of the ICC study coordinator, and all were completed by July 2002.

In March 2003, Canada made a settlement offer which included \$11.7 million in cash and a recommendation to return 2,111 acres to reserve status. An agreement in principle was in place by August 2003, and a ratification vote was held on November 1, 2003, with an overwhelming majority of First Nations members voted to accept the offer. The settlement agreement was signed by the Minister of Indian Affairs on March 16, 2004. Settlement money was transferred to the First Nation in April 2004, and a signing ceremony took place in the community on May 26, 2004.

Boundary Claim⁶¹ – *Settled January 2008 (\$52.3 million plus 3,000 acres of Ontario Crown land)*

The research and legal review of the historical report and document collection was completed in February 2000, and the First Nation submitted its specific claim to both the governments of Canada and Ontario in March 2000, alleging that the eastern and western boundaries of Gros Cap IR 49 as surveyed in 1899 did not reflect the First Nation’s understanding of the location and size of the reserve to be set aside pursuant to the Robinson-Superior Treaty of 1850 and the 1853 agreement with J.W. Keating regarding the boundary of the reserve. Canada accepted the claim for negotiations

⁶⁰ Kim Fullerton, Barrister & Solicitor, “Innovative Ways of Resolving Specific Claims: The Michipicoten Pilot Project for Specific Claims,” paper presented the Canadian Bar Association of Ontario, January 29, 2004, p. 10.

⁶¹ The historical background is summarized from Christine Deroi & Associates, “Michipicoten First Nation Claim Concerning the Boundaries of the Indian Reserve Under the Provision of the Robinson Superior Treaty,” Draft, February 2000, and Christine Deroi & Associates, “Report on the Surrender of 1,481.5 acres on Gros Cap I.R. Reserve #49 & the Expropriation of a Railway RoW (The Algoma Central Railways Surrenders) 1888– 1928,” December 1997.

on January 30, 2003.⁶² Ontario did not enter into the discussions until the beginning of 2006.

Canada and the Michipicoten First Nation began negotiations on the boundary claim in May 2003 and the Indian Claims Commission continued to facilitate these bilateral meetings as it had done since the beginning of the pilot project. Elements of the negotiation included a negotiation protocol, participation of Ontario, land quantum and location, replacement lands, additions to reserve, alternative to standard study approach, communication strategy, per capita distribution of settlement money.

As a first step, the parties agreed to rely on the protocol agreement already in place for the pilot project and signed on June 9, 1999. For the purpose of any land appraisals or loss-of-use studies that would be required during the negotiations, both parties agreed that the larger reserve to which the First Nation was entitled would have included approximately 6,300 acres of land in two areas adjacent to the east and west boundaries of the Gros Cap IR 49 as originally surveyed.

In keeping with the pilot project's overall objective of considering innovative processes to save both time and money, Canada suggested that the table consider an alternative study approach. Rather than engaging in fresh land appraisals and loss-of-use studies for the boundary claim lands, the table could investigate whether it could extrapolate the data available through the recent studies carried out for the Algoma surrender claims and bring those values forward from 2001 to the current date. This approach could be considered in this case because (a) the Algoma studies were recent, (b) they covered land that adjoined the boundary claim lands, and (c) the time periods covered by the Algoma claims and the boundary claim were comparable. In June 2004, an expert hired by the parties confirmed that the extrapolation of the previous data was a reasonable approach and, on that basis, the parties worked together to update the figures for the land appraisals as well as the loss-of-rent and loss-of-timber studies from the Algoma surrender negotiations.

At the same time, the parties agreed to conduct joint research on a number of issues that were not addressed in the Algoma studies. This included an overview of the historical use of claim lands to identify any economic uses not considered in the previous studies; a spot marking of theoretical

⁶² Letters, Robert D. Nault, Minister of Indian Affairs, and Michel Roy, Assistant Deputy Minister, Claims and Indian Government, Indian and Northern Affairs Canada, to Chief John Peterson, January 30, 2003, INAC file B8260-680.

eastern boundary; an evaluation of historical hydraulic generation development, and a current unimproved fair market value of two hydro sites on the Magpie River in the southeast corner of the additional lands. The ICC acted as study coordinator for all of this work. All of these studies were completed by January 2007.

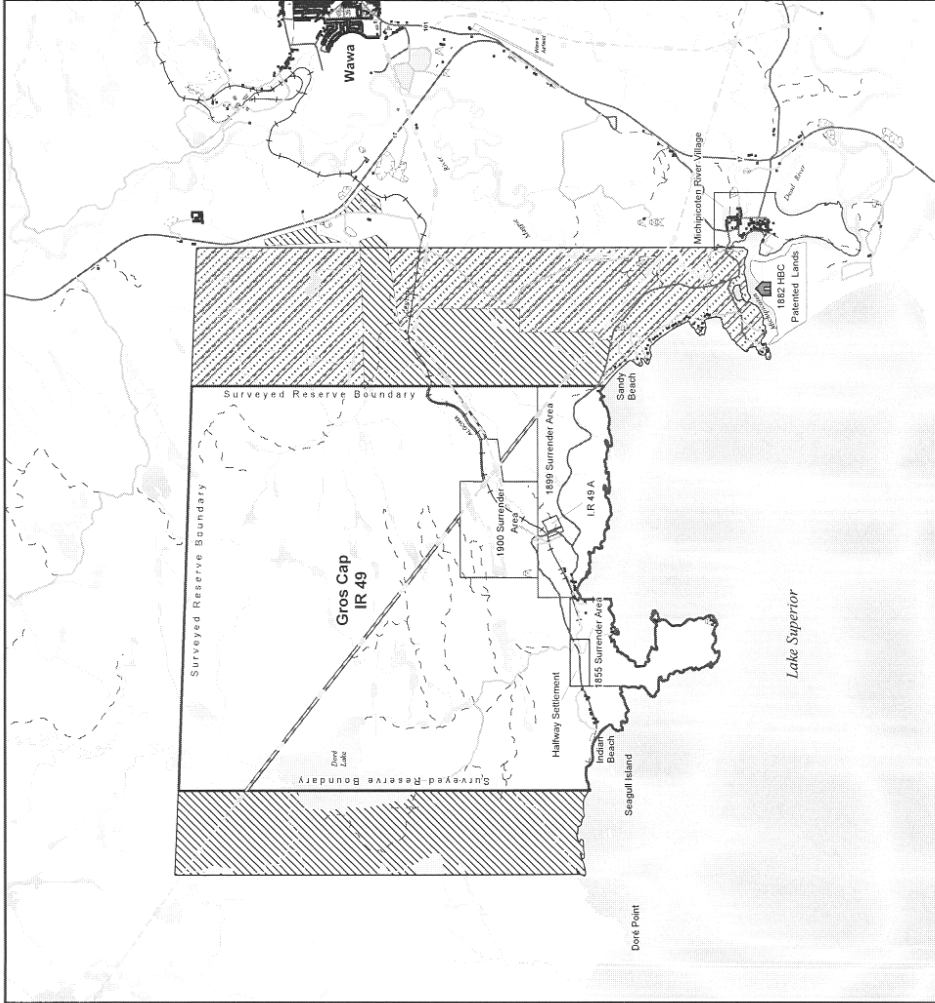
Michipicoten First Nation Boundary Claim

Legend

- Hudson Bay Co. (HBC) Post - Established circa 1800
- Western claim block and Lands and Larger Land Base (LLLB) Candidate Lands (Settlement lands to be recommended for reserve)
- Remainder of Eastern claim block to be surrendered
- Building
- Water Body
- Main Road
- Secondary Road
- Railway

Note: This sketch is for illustration purposes only and should not be relied on for any other purposes. Boundaries are approximations and are shown for illustrative purposes only and are subject to survey.

Source: OBM 1 : 200,000, Title 20-16-6500-53000, 20-16-6600-53100, 20-16-6500-53100, 20-16-6600-53100, 20-16-6500-53200, 20-16-6600-53200, Digmap, 1980.
 NTDB 1 : 50,000, Title 41N14, 41N15, 42O2, 42O3, DMU, Spatial, January 2003.



Province of Ontario

According to the federal specific claims policy for pre-Confederation claims involving land issues, the involvement of the Province of Ontario in the negotiation process is required. At the beginning of 2006, the Ontario Secretariat for Aboriginal Affairs completed its research and legal review of the Michipicoten boundary claim and agreed to negotiate a settlement. Under its current policy, the Province of Ontario will not agree to ICC-facilitated negotiations.⁶³ Canada and the First Nation, however, were very pleased with the role the ICC had played in the pilot project and wished to continue that relationship on all matters that did not involve Ontario. As a result, the negotiations split into two tables: Michipicoten meeting with Ontario, without the ICC, to discuss the provincial Crown land component, and Michipicoten meeting with Canada, facilitated by the ICC, regarding the financial compensation.

In August 1991, the Michipicoten First Nation had signed a Land and Larger Land Base (LLLB) Framework Agreement with Canada and Ontario.

That agreement committed the parties to use their best efforts to negotiate and conclude agreements to provide either a reserve land base for landless signatory First Nations, or to expand the size of existing reserves of signature First Nations whose existing reserves were too small to accommodate their communities' housing, economic development and other needs.⁶⁴

The negotiations for the lands to be added to reserve under the LLLB process were suspended when Ontario agreed to negotiate the boundary claim, but the LLLB lands already identified would be included in the boundary claim settlement. A sketch produced by DIAND in September 2006⁶⁵ shows the 3,000 acres of provincial Crown lands both to the east and west of IR 49 to be added to

⁶³ See Kim Fullerton, "Proceedings of the Standing Senate Committee on Aboriginal Peoples," Issue 7, Evidence, Meeting Ottawa, October 4, 2006, p. 17, see http://www.parl.gc.ca/39/1/parlbus/commbus/senate/Com-e/abor-e/07evb-e.htm?Language=E&Parl=39&Ses=1&comm_id=1 (consulted March 20, 2007).

⁶⁴ Fact Sheet, Winter 2005, Pays Plat First Nation: Land and Larger Land Base Negotiations, <http://www.aboriginalaffairs.osaa.gov.on.ca/english/negotiate/paysplat/paysplat.pdf> (consulted April 2007).

⁶⁵ From Ontario Secretariat for Aboriginal Affairs, Michipicoten First Nation Boundary Claim Negotiations Newsletter, October 2006 (modified November 27, 2006), available at http://www.aboriginalaffairs.osaa.gov.on.ca/english/negotiate/michipicoten/newsletter_06.html (consulted March 2007)

the Michipicoten First Nation's reserve as part of the boundary claim settlement.

Canada's Settlement Offer

Canada made an offer to settle on June 14, 2007, which the First Nation accepted by Band Council Resolution dated June 28, 2007. The negotiated settlement included cash compensation of \$52.3 million and the authorization to acquire a maximum of 3,335 acres to be added to the First Nation's reserve lands.

Ratification

The settlement agreement was presented to the Michipicoten First Nation for ratification on January 12, 2008. As a direct result of the regular and thorough communication with band members on all matters relating to the negotiations, the voter turnout was exceptionally high. Over 80 per cent of the electorate voted and 97 per cent of them accepted the compensation package.

PART V
CONCLUSION

The Michipicoten Pilot Project was an extraordinary success. It met or exceeded its goals to save time and money, and it had a positive affect on the community, bringing together a far-flung membership to learn more about the history and traditions of their ancestors. The Indian Claims Commission congratulates all members of the Michipicoten Pilot Project team, whose members came to the table and stayed to form a cooperative unit, dedicated to bringing final resolution to these long-standing grievances.

Three Michipicoten Chiefs were involved in the negotiations over the course of the 11 years of the pilot project – Sam Stone, John Peterson, and Joe Buckell – and whether they were at the table or meeting community members, they demonstrated a commitment to resolving the grievances and moving forward. The First Nation’s legal counsel, Kim Alexander Fullerton, and its negotiations advisor, Trevor Falk, were present throughout the process. Christine Deroi conducted all of the historical research jointly for the First Nation and Canada. Linda Rychel acted as Canada’s legal counsel and Liane Luton was the claims analyst throughout the entire research phase. Wayne Wallace and Douglas Patterson negotiated on behalf of Canada. The Michipicoten Pilot Project succeeded, in large degree, because these people committed themselves to stay involved in the pilot project until a fair and just settlement of the claims and grievances was reached.

Meetings were chaired by the Indian Claims Commission. The administrative functions performed by ICC staff, such as organizing meetings and preparing meeting summaries, allowed the parties to focus all their time and resources on the resolution of the claims.

The specific claims process has changed a great deal since the pilot project was initiated, and some of the changes were as a direct result of the success at Michipicoten. There are still many constructive elements of this pilot project that could be adapted and incorporated into the claims submission and review process and settlement negotiations to make procedures more efficient and more relevant to the First Nation communities:

- Ensure that funding for claim development is sufficient to ensure that all First Nations have access to qualified researchers and lawyers.

- Circulate up-to-date guidelines and criteria required to establish the various types of specific claims and develop a mechanism to allow First Nation researchers and lawyers to ask for clarification and assistance as they develop a claim. This should also include some mechanism to share public-domain documents in the government's possession as a result of research on similar claims.
- Consider "bundling" claims that have historical elements in common. By considering the three Algoma surrender claims at the same time, the Michipicoten Pilot Project was able to save considerable time and money in both the research and negotiation phases.
- Provide neutral, third-party facilitation, such as provided by the ICC, for all meetings. The administrative functions that the ICC performs allow the parties to concentrate on the substantive work on the claims and in the negotiations. The mediation background and continuing attendance of the chairperson ensures a well-run meeting and the opportunity to deal with small problems as they arise, so that they do not grow to require formal mediation or a breakdown in talks.

FOR THE INDIAN CLAIMS COMMISSION



Renée Dupuis, C.M., *Ad.E.*
Chief Commissioner

Dated this 20th day of October, 2008.

APPENDIX A

Chief Sam Stone, Michipicoten First Nation, to
Ron Irwin, Minister of Indian Affairs and Northern Development, October 29, 1996



MICHIPICOTEN FIRST NATION

Box 1, Site 8, R.R. #1

Wawa, Ontario

POS 1K0

Telephone : (705) 856-1993

Fax: (705) 856-1642

October 29, 1996

The Honourable Ron Irwin
Minister of Indian Affairs and
Northern Development
House of Commons
Rm. 583, Confederation Building
OTTAWA, ON K1A 0H4

Dear Minister Irwin:

RE: PROPOSAL FOR SPECIAL PROJECT WITH MICHIPICOTEN FIRST NATION

Michipicoten First Nation, located near Wawa, Ontario, is a signatory to the 1850 Robinson-Superior Treaty. Our reserve should have been laid out using the French unit of measurement, the League. Instead, the British mile was used and we were cheated out of most of our land before we even got our reserve. The first surrender of our land took place only five years later in 1855, when one square mile was taken away from us on the basis of only the Chief's signature. Then, in 1899, one thousand acres was surrendered, followed the year later by another surrender of 481.5 acres. Again, both surrenders were taken under very questionable circumstances. These surrenders were made to benefit the Algoma Central Railway and the subsequent development of iron ore mines in the area.

In 1927, the Algoma Central Railway requested a right-of-way across our reserve, but instead Canada sold our land outright to the railway. Our First Nation was left with no decent land to live on and most of our people ended up living off what was left of the reserve. In 1935, we were forced to purchase 55.6 acres of land from the railway in order to have a place to live. This land was never added on to our reserve. Even it was eventually taken away in 1956, through a highly unusual "Agreement for Exchange", and we were moved once again.

In the early 1900's the people of Michipicoten paid for two reserves north of Michipicoten. They are Chapleau Reserve #61 and Missinabic Reserve #62. In a truly bizarre set of transactions Canada transferred Chapleau Reserve #61 to the Chapleau Ojibway First Nation in 1950, and treated Missinabic Reserve #62 as though it belonged to the Missinabic Cree First Nation. All of this was done without consent or

The Honourable Ron Irwin
October 29, 1996
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compensation . For many years now Michipicoten has attempted to have these historic grievances addressed through the Specific Claims process, without success. Requests for information and help regarding claims issues, made to both the Union of Ontario Indians and to INAC, date back to the early 1970's. Our requests for assistance fell on deaf ears.

Nothing of any substance was accomplished until Michipicoten entered into the Ontario Hydro Past Grievance Process in 1993. Through that process adequate funds were made available to research the full history regarding Ontario Hydro's acquisition of a right-of-way across the reserve in the 1960's. A fair and honourable Agreement was reached with Ontario Hydro and this was celebrated with a feast at our community earlier this summer.

As a result of the process with Ontario Hydro, we were able to research enough of our history to submit two specific claims, one regarding the right-of-way for Ontario Hydro and another regarding a right-of-way granted to Great lakes Power. However, we have no funds available to us to research and submit any further specific claims.

Michipicoten is participating in the Land and Larger Land Base Negotiations, through the Indian Commission of Ontario. In that process we have been told that we cannot get our land back because we have not submitted specific claims! Much of our land that was taken by the railway is now up for sale. We cannot afford to buy it, and we are afraid that the chance to regain some of our historic reserve land will be lost.

Attached is a "Preliminary Plan", dated December 4, 1995, prepared by Waters Edge Consulting Inc., which outlines some of the questionable land dealings and surrenders with respect to Michipicoten and sets out a proposed work plan. Also attached is a letter from F.J. Singleton, Director Lands Directorate Reserves and Trusts, to E.G. Morton, Director Reserves and Trust Ontario Region, dated October 25, 1983, setting out the numerous surrenders of land from Gros Cap Indian Reserve No. 49 (Michipicoten).

Our First Nation is involved in a number of economic development initiatives, including a small hydro site on our current reserve. We want to build on our strengths and develop the real potential of these lands and of our people, but in order to do so we need to clear up our historic grievances with Canada and regain control of as much of our land as possible.

To that end we make the following proposal: we would like to meet with you to discuss a work plan and budget for a special project designed to identify, research and resolve all of Michipicoten's specific claims in a coherent, cooperative and timely fashion. We would be prepared to consider joint historical research, joint identification of issues, coordinated legal research and joint presentations to Department of Justice lawyers, if necessary. We would be pleased to involve Ontario at any stage of these proceedings.

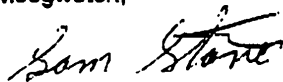
The Honourable Ron Irwin
October 29, 1996
Page 3

The large number of claims issues that are serious, yet relatively untouched, represents a unique opportunity for Canada and Michipicoten to design and implement a special process. These claims are of the utmost importance to my First Nation and we are prepared to devote the necessary time and energy to make this special project work. All that we lack is adequate resources to make it happen.

These matters are now extremely urgent and we cannot afford to wait, as some of our lands currently in the possession of Algoma Ore Company may be sold to third parties and lost forever. Even if the current fast track claims could be accepted and settled quickly, we could then re-invest any financial compensation received into our other outstanding claims. We have requested assistance from the Union of Ontario Indians, but they tell us that they have no additional funds to apply to claims research and development. Our share of the funding that DIAND provides to the Union of Ontario Indians for Treaty research is totally inadequate to fund this type of ambitious project. The 1850 Ojibway Treaty Council has no resources available to assist us in these matters.

Please indicate at your earliest convenience when you will be able to meet with us. If possible we would like for you to be able to see our land and to hold these discussions in our community. If this is not possible, we would be prepared to meet with you in Ottawa. I have asked our legal counsel, Kim Fullerton, to follow up with your staff on these matters.

Meegwetch,



Chief Sam Stone

Attachments

**MICHIPICOTEN FIRST NATION**

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MICHIPICOTEN FIRST NATION**PRELIMINARY PLAN****HISTORIC RESEARCH AND
PREPARATION OF SPECIFIC CLAIMS
FOR GROS CAP RESERVE**

DECEMBER 4, 1995

Introduction

Michipicoten First Nation has prepared the following plan to systematically research the various surrenders and expropriations of our Reserve lands. Using the documentation obtained through this research, it is intended that specific Claim Reports be developed for submission to Canada and eventual negotiation and resolution.

Standards for Document Research

The document researcher(s) will be required to do her/his work in a manner that meets or exceeds standards and criteria established by Indian Affairs (Specific Claims Directorate).

In order to ensure that "startup" costs are as low as possible, the initial document research will be focussed and may not be absolutely comprehensive. Providing that the research indicates sufficient evidence to warrant the preparation of a Specific Claim Report, and providing that legal counsel agrees, some possible sources of information may not be checked at this stage.

As more document research is done into Specific Claims relating to the lands of Michipicoten First Nation, a Master Index will be created (on paper and in electronic format), consistent with the needs of self-government. Particular care will be taken to ensure that all documents are properly catalogued and stored for future reference.

MICHIPICOTEN FIRST NATION **Preliminary Plan for Specific Claims**

Specific Claim Reports

For each surrender or expropriation, a Specific Claim Report will be prepared which summarizes the historic facts as revealed by document research, but within the context indicated by Elders interviews and other such sources of information. Each draft Specific Claim Report will indicate clearly the basis of any Specific Claim, and will be reviewed by legal counsel to ensure that the Claim is properly described in legal terms. However, the Specific Claim Reports will not be overly "legalistic" in tone or content.

The priority of work on Specific Claim Reports will be established by the Chief and Council of Michipicoten First Nation. Each Specific Claim Report will come to Chief and Council for final approval before being submitted to Canada.

Priorities (General)

The Specific Claims that seem to be most straight forward or smallest will be given high priority, in order to get them "into the pipe" in the near future (in recognition of relatively long time delays between the date of submission and the decision by Canada about whether or not to negotiate a resolution). Preparatory work on these claims is not likely to be very costly, and will contribute to broader knowledge about some of the other larger surrenders and expropriations. The possibility of a Boundary Claim (leagues vs. Miles) will be left until most other Specific Claims have been researched and submitted.

Work Plan (Preliminary)

The following Specific Claims are listed in priority order, but this is based on minimal information at this time. The actual priority of work on a Specific Claim will be subject to approval by Chief and Council. There is a relatively low degree of certainty for the others.

With regard to estimated costs, the figures provided below are based on a limited amount of information for bringing each Specific Claim to the point of initial submission to Canada. Where provided, the estimates for the document research are though to be quite good, but better estimates of subsequent work cannot be made until the document research is completed.

This list is not comprehensive. It is expected that, as more information becomes available other Specific Claims will become apparent.

MICHIPICOTEN FIRST NATION Preliminary Plan for Specific Claims

1. **Great Lakes Power Line** The research for this Specific Claim has already been done in relation to the Hydro negotiations, and a draft report prepared. There was trespass involved (the line was built before any discussions with Indian Affairs or the Chief and Council), there was never any permission from Chief and Council, and the compensation was inadequate.

This Specific Claim could be submitted early in January, 1996. The total cost would be less than \$3,000.00 (this figure is so low because it does not include the cost of the research which was paid out of the Hydro budget and because the claim is so straight forward). This would be a "Fast Track" claim (for compensation less than half a million dollars).

2. **Ontario Hydro Power Line** The compensation obtained from Hydro in 1984 and additional compensation from Hydro from the present negotiations do not address any of Canada's failures to protect the interests of Michipicoten. Again, the research for this Specific Claim has already been done, and it would also likely be the "Fast Track" claim.

Using the research and the work that has already been done, it would be possible to bring this Specific Claim to the point of submission for around \$7,000.00. Since all the documents are available, it could be ready for submission in February, 1996.

3. **Railway Right-of-Way (1927)** Section 46 of the Indian Act permits expropriation for public purposes, but no more or no less than is actually needed may be expropriated. In this case, the railway needed a right-of-way, not ownership, so that is all Canada should have granted. The reasons for the relatively high priority of this Specific Claim is that it is thought to be very strong and quite straight-forward. The recent (February, 1995) Sumas Report of the Indian Specific Claims Commission is relevant.

The cost should be less than \$12,000.00, of which document research would be about \$3,000.00. Depending on the availability of records, it is likely that this Specific Claim could be ready for submission by Spring, 1996.

4. **1000 Acre Surrender (1899) and 481.5 Acre Surrender (1900)** These are understood to have been surrendered to facilitate mining and development of Michipicoten Harbour. Some research work as apparently done by the Union regarding this situation in the mid-1980's, but the set of documents does not appear to be complete and there does not appear to be a document Index or record of files searched.

MICHIPICOTEN FIRST NATION **Preliminary Plan for Specific Claims**

The necessary document research could be completed by mid-1996, at a cost of about \$5,000.00, after which an assessment can be made about the amount of work required to bring the Specific Claim to the point of submission.

It is not clear at this time whether it would be in the best interest of Michipicoten First Nation for these two surrenders to be treated separately, or whether they should be combined.

5. Chapleau Reserve #61 and Missinabie Reserve #62 in the early 1900's, the people of Michipicoten First Nation paid for these reserves. In 1950, Canada transferred the Chapleau Reserve #61 to the Chapleau Ojibway First Nation, who were Adherents to Treaty #9. For many years, Canada considered the Missinabie Reserve #62 as belonging to the Missinabie Cree (also Adherents to Treaty #9).

A detailed estimate for the necessary document research has been made (\$10,000.00), but, no estimates can be made for other costs at this time. The research could be done by the middle of 1996.

6. Timber (1925) This Specific Claim might revolve around whether the amount of money received bore any resemblance to the value of the timber removed. Initial research costs would probably be quite modest, perhaps as low as \$2,500.00. If this work leads to the conclusion that a valid claim could be made, additional research will be required around issues relating to the sale of the timber such as ensuring that there was a proper cruise, tendering, following of regulations, scaling returns and the like.
7. Exchange of Lands (1956-58) There is no provision in the Indian Act for "exchanges" of land, which might be the basis of a Specific Claim in the instance. In addition, there are several aspects of this transaction which seem odd. First, the rationale that appears to have been provided for the exchange (safety) somehow doesn't ring true. Second, it seems strange that the survey of the 55.6 acre parcel (subject of an Agreement between Canada and Algoma Steel in 1935) was described in a "clockwise" direction in 1935 but was described from a different starting point and in a "counter-clockwise" direction in this transaction. [Although the two descriptions are very different, it may be that the same piece of land is being described, in which case questions arise about whether this might have been an attempt to conceal the nature and content of the 1956 transaction or legitimize something that was thought to be improper in respect of the 1935 Agreement.] Third, this may be the same parcel of 55.6 acres that has recently been returned, which also raises questions.

The document research for this Specific Claim might cost about \$5,000.00.

MICHIPICOTEN FIRST NATION Preliminary Plan for Specific Claims

8. **First Surrender of One Square Mile (1855)** The records seem to indicate that this surrender was made by the Chief alone, which may be the basis of a Specific Claim. The state of the records going this far back is not known at this time, so no estimates can be made for research or other costs at this time. The facts that this surrender pre-dated the Indian Act and also pre-dated Confederation is likely to introduce complications.
9. **Leagues vs. Miles** The Gros Cap Reserve was one of the three Reserves mentioned in the Robinson-Superior Treaty. At that time, the First Nations around Lake Superior were more familiar with the French measure of distance (league) than the British (mile). One league is about four miles. In the discussion leading to the signing of the 1850 Treaty, the Chiefs and Principal men thought about distance being measured in leagues rather than miles. Therefore, they had in mind that the Gros Cap Reserve would be about sixteen miles by sixteen miles, instead of four miles by four miles.

Canada and Ontario have accepted that the Reserve of Fort William First Nation should have been much bigger on account of the leagues vs. miles "misunderstanding". The same rationale that applied to Fort William out to apply to Michipicoten. However, it is not possible at this time to estimate the costs for filing a Specific Claim in this regard. The cost should not be too large if the research by Fort William First Nation can be made available. It is suggested that work on this Specific Claim await most of the preceding Claims.

Funding

Michipicoten First Nation will apply the "usual" funding from the Union of Ontario Indians to this work, but this amounts to only about \$4,000.00 per year. Therefore, funds will need to be obtained from other sources. However, it has been demonstrated that a great deal of progress can be made with relatively small amounts of money, and careful management will permit this situation to continue.

For Michipicoten First Nation, funding is especially critical for the initial document research and preparatory work, to get some Specific Claims "into the pipe".

After a Specific Claim is accepted by Canada, an advance against the eventual settlement is provided to meet negotiation costs. This will relieve the pressure somewhat, although careful management will still be required in order to keep costs as low as possible and preserve as much as possible of the eventual settlement amounts for the benefit of the present and future members of Michipicoten First Nation.

MICHIPICOTEN FIRST NATION Preliminary Plan for Specific Claims

Efficiencies

To the greatest extent possible, the document research will be conducted in a manner so as to avoid duplication of effort. Some research will cover several claims -- for example, pay list collection and genealogy for the Missinable and Chapleau work will also cover the 1899-1900 last surrenders. Similarly, Trust Fund research will cover the surrenders, the possible timber claim and expropriations.

Consideration will be given to combining claims if that is thought to be in the overall best interest of Michipicoten. For example, the 1899 and 1900 surrenders may be covered by the same research, report and legal work.

Outside Technical and Negotiation Support

Michipicoten First Nation has engaged Water's Edge Consulting Inc. (Trevor Falk) to provide necessary technical and negotiation support. Christine Dornol and Associates have already done some document research for Michipicoten, and it is expected that this will continue.

Summary

Approaching the surrenders and expropriations of Gros Cap Reserve lands in this systematic manner should result in most of the necessary document research being completed by mid-1997. Specific Claims based on the document research will be prepared and submitted as indicated by the document research and as funds permit.

Although there will be delays by Canada in processing some or all of these Specific Claims, it is hoped that the first one (Great Lakes Power) can be will into the negotiation process by the end of 1996. Others will require more time, and some may involve prolonged negotiations. However, there is no reason that the research, preparation, submission and negotiation of Specific Claims cannot proceed in an orderly manner such as outlined in this Preliminary Plan.



Indian and Northern Affairs Canada
 Affaires Canada

Aboriginal Affairs
 et du Nord Canada

October 25, 1983

Your file / Votre référence

Our file / Votre référence

5640-123

E.G. Morton
 Director
 Reserves and Trust
Ontario Region

Surrenders on Gros Cap
 Indian Reserve No. 49

I refer to your memorandum of September 12, 1983.

Surrender 75 - April 10, 1855 A search of our records revealed no information regarding a referendum, or the number of eligible voters for this surrender.

Surrender 423 - July 19, 1899 William Van Abbott, Indian Lands Agent, Sault Ste. Marie, in a July 19, 1899 letter to James A. Smart, Deputy Superintendent General of Indian Affairs (enclosed) states that there are about 86 male voters in the Band "only about 14 of which reside near the Reserve Gros Cap" Section 39 of the 1886 Indian Act R.S.C. 1886 C.43 (enclosed) prescribes that

no Indian shall be entitled to vote or be present at such council unless he habitually resides on or near and is interested in the reserve in question.

Van Abbott's July 24, 1899 letter to Smart (enclosed) states

I have the honor to forward you herewith surrender of 1000 acres of the Gros Cap Michipicotan Indian Reserve signed by the Chief and 12 members of the Band residing in the neighbourhood of the Gros Cap Reserve, that is to say Michipicoten River.

Canada

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We were unable to locate a copy of any referendum for Surrender 423.

Surrender 438 - September 10, 1900 A search of departmental records failed to uncover a copy of the referendum, or the number of eligible voters for this surrender.

William Van Abbott wrote to J.D. McLean, Secretary, Department of Indian Affairs, Ottawa, on September 13, 1900 (enclosed) stating

there were only twelve present and they all agreed, and signed the document.

Surrender 950 - June 29, 1925 A.D. McNabb, Indian Agent, Sault Ste. Marie, in a July 14, 1925 letter to A.F. MacKenzie, Acting Assistant, Deputy and Secretary, Department of Indian Affairs (enclosed) reports on the surrender of Gros Cap Indian Reserve Timber.

McNabb's letter indicates that a meeting called to consider the surrender took place on, or about, June 29, 1925. He states that there are a total of 37 Indians over the age of 21 living at Michipicoten and that 26 were present to vote. The voting list is enclosed for your information.

OCEC 1149 - June 15, 1927 A.F. MacKenzie, Acting Assistant, Deputy and Secretary, Department of Indian Affairs in a January 11, 1928 letter to Chief James Katassan (enclosed) states that the sale of a Right-of-Way across the Gros Cap Reserve to the Algoma Central Railway "was made under the provisions of Section No. 46 of the Indian Act and authorized by Order in Council No. 1149 dated June 15th 1927". Section 46 of R.S.C. 1911, C.14, is enclosed for your information.

No referendum by the Band is required in this instance as S.46. Compensation for lands taken for public purposes, necessitates only the consent of the Governor in Council.

Agreement for Exchange - November 10, 1956 A Band Council Resolution dated September 6, 1956 (enclosed) authorizes the exchange of 55.6 acres for a new site. The resolution is signed by Councillors Moses Stone and Thomas Andre. J.T. O'Neill, Superintendent, Sault Ste. Marie Agency, in a September 7, 1956 letter to F. Matters, Regional Supervisor of Indian Agencies, Indian Affairs Branch, North Bay (enclosed) explains that Chief Randolph Andre would not sign the Band Council Resolution. O'Neill states

The attached Resolution has the signatures of Councillors Moses Stone and Thomas Andre only, and as this represents a majority of the Council, I would recommend that action be taken without the necessity of having the Chief's signature.

H.M. Jones, Director, Indian Affairs, in an August 21, 1956 memorandum to the Deputy Minister (enclosed) stated

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The 55.6 acres were purchased from the Railway Company in 1935 at \$1.00 an acre and have never been officially added to the Reserve. It is, therefore, possible to make this land available without a formal surrender.

I trust the foregoing will be of assistance.



F.J. Singleton
Director
Lands Directorate
Reserves and Trusts

Encl.

APPENDIX B

**Chief John S. Peterson, Michipicoten First Nation, to
W. Austin, Assistant Deputy Minister, Indian and Northern Affairs, May 7, 2001**

Michipicoten First Nation

P.O. Box 1, Site 8, RR#1, Wawa, ON P0S 1K0
Phone: 705-856-1993 · Fax: 705-856-1642

May 7, 2001

Mr. W. Austin, Assistant Deputy Minister
Indian and Northern Affairs
Claims And Indian Government
10 Wellington Street, North Tower
16th Floor
Hull, Quebec
K1A 0H4

Via Fax: (819) 953-3246

Dear Mr Austin:

Re: Michipicoten Specific Claims Pilot Project; First Phase Completed

I am writing to you on behalf of Michipicoten First Nation to express our thanks and gratitude to Canada on the occasion of the successful completion of the research and submission phase of our joint Specific Claims Pilot Project. At a meeting on our reserve on April 24, 2001, we informed Canada that in our opinion there are no more claims to be submitted to Canada and that completes the first phase of the Pilot Project. The second phase, negotiation of accepted claims, is already well underway; we have already settled two claims and are in negotiations with three others.

Just over four years ago then Chief Sam Stone wrote to then Minister Irwin and suggested a novel way to approach specific claims, one based on cooperation, joint research, non-positional bargaining and working together as allies, not adversaries. Minister Irwin, to his credit, took up the challenge and in March 1997 the Pilot Project began with the full support of the then Research Manager at SCB, Ms. Pamela Keating. We are writing to you because you have been there since the beginning and have been very supportive of this Pilot Project.

The concept was simple, yet effective: a mediated team-based approach to settling claims. The Indian Claims Commission provides the mediation and also chairs all of our meetings. Michipicoten and Canada both retained one researcher who researched all our historic grievances. Michipicoten's lawyer and Canada's lawyer met as part of the team to define and narrow the legal issues. Additional research was performed as required to fully flesh out the allegations. Tight, focussed legal submissions were then given to the Department of Justice for a legal opinion, which took on average about six months to complete, compared to the two years plus in the normal claims process.

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Mr. W. Austin, Assistant Deputy Minister

May 7, 2001

In the four years since the start of the Pilot Project thirteen claims were identified by the parties. Six Specific Claims have been submitted to date, five of which have been accepted for negotiation (Canada has told us we will have an answer on the last one this summer). This co-operative process has resulted in the conclusion that four of the transactions identified at the outset of the Pilot Project as claims, are in fact not claims and will not be submitted. Three other claims have been resolved to our complete satisfaction by way of administrative referrals. Each and every claim submitted through the Pilot Project has been accepted for negotiations. We were able to "separate the wheat from the chaff" through our mediated team-based approach resulting in large time, and cost, savings. Robert F. Reid, Q.C., from the Indian Claims Commission, has been extraordinarily effective in this regard; his contribution to the success of this Pilot Project should not be underestimated.

The seven claims that were not submitted eliminated the need for a legal review by Canada. Through the normal process, without this cooperation most, or all, of those claims would have been submitted to Canada. With respect to costs, on average, we have dealt with over three claims per year (or one claim every four months) with an average cost of less than \$50,000 per claim for joint research, First Nation participation (including a 2 day community session in 1997) and First Nation legal submissions. With these modest costs Canada and Michipicoten First Nation have achieved both a sense of closure and satisfaction regarding our historic past grievances. Negotiations on our accepted claims are already benefitting from this established trust relationship.

What I want to convey to you most of all is the sense of well being that this Pilot Project has brought to our community. First, we were treated like equals and given the necessary funding and resources to come to the table as equals. The funding also allowed us to meet with our members, both on and off the reserve, and explain our history and our claims to them. This in turn made our members feel much more involved. We see that attaining positive results on claim settlement votes has also been greatly enhanced. This Pilot Project has done more to bring together all the members of this First Nation, both on and off reserve, than you could imagine.

The Pilot Project has also allowed us to reach out to our non-native neighbours and forge new relationships and partnerships. The town of Wawa is now a big supporter of what we are doing and our Council and their Council meet regularly to ensure open and effective communication. There will be no surprises.

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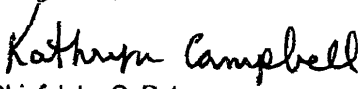
Mr. W. Austin, Assistant Deputy Minister

May 7, 2001

For some time now the team members have discussed the idea of a presentation about the Pilot Project to senior officials in DIAND, DOJ and the Indian Claims Commission. Michipicoten First Nation would be delighted to participate in such a presentation where we could discuss our lessons learned, what worked, what did not, and to have an open dialogue and exchange of ideas. It is my understanding that Jeffrey Ross, Ontario Senior Claims Analyst SCB, is organizing the presentation. We would very much like to help.

We now have a sense that our historic grievances will be rectified and that our First Nation will be able to successfully move into the future. This would not have been possible without the frank and above-board support that we have received from Specific Claims Branch, Research Funding Division and the Department of Justice. Thank you for your support.

Meegwetch,


for Chief John S. Peterson

cc The Honourable R. D. Nault P.C., M.P. Via FAX: (819) 953-4941
Audrey Stewart. Via Fax: (819) 994-4123
Veda Weselake, Via Fax: (819) 953-4224
Robert F. Reid, Q.C. Via Fax (813) 943-0157