Background Information – Part C +

Wiikwemkoong Islands Specific Claim – December 2015

Introduction

This report has been compiled to aid Council in their discussions of the Wiikwemkoong Islands Specific Claim. Members of the public have been questioning the manner in which the Province is dealing with the Claim, based on court documents associated with the lawsuit that triggered the current land claim negotiation process. There are also continued questions about vacant surveyed lots that may be available on George Island. It may be useful for Council to know the following information.

Types of Aboriginal claims

In Canada, there are three types of Aboriginal claim processes:

Comprehensive land claims involve Aboriginal rights and title that have not been dealt with by treaty or through other legal measures (i.e., it is the negotiation process for a modern treaty). Comprehensive claim agreements can resolve:

- Ownership of lands
- Fisheries and wildlife harvesting rights
- Land and resource management
- Financial compensation
- Resource revenue-sharing
- Economic development projects

Specific claims involve the assertion that treaties or other legal obligations have not been fulfilled, or that lands or other assets have been improperly managed under the *Indian Act* or other formal agreements. This process was put into place to provide First Nations with a means of negotiating a settlement with the government rather than having the matter handled through the court system. Specific claims can resolve:

- Non-fulfillment of a treaty or other agreement
- Breach of an *Indian Act* or other statute
- Breach of an obligation arising out of the administration of First Nation funds or assets
- An illegal sale or other disposition of First Nations lands by government

If the federal government decides not to negotiate a specific claim, the First Nation may i) resubmit the claim with new evidence and/or legal arguments; ii) file a lawsuit against the federal government, or iii) petition the Indian Specific Claims Commission (ISCC) for an inquiry.

Other claims are those that do not meet the federal government's criteria for either a comprehensive or specific claim, but which still have merit, and should be resolved. There are two types: i) cases in which Aboriginal title was dealt with, but not to the standards for the time period in which they were handled, and ii) cases in which the claim has moral grounds to be accepted and resolved through an alternative legal process.

Timeline of the Islands Specific Claim

1984 – Wiikwemkoong's claim to 41 islands is submitted to Canada.

1995 – Canada provides Wiikwemkoong with its preliminary position on the claim.

1996 – Wiikwemkoong provides Canada with more historical/legal data. Canada again rejects the 41 Islands Claim.

1997-98 – Wiikwemkoong files a lawsuit against Canada and Ontario for 41 Islands, then expands it to include about 23,000 islands.

Mar 1998 – Judge Poupore orders that the Province must notify and consult with Wiikwemkoong for any transactions dealing with Crown lands on the relevant islands.

Oct 1998 – Canada and Ontario each file a Statement of Defence with the Court.

Dec 1998 – Canada offers to re-assess its position and resolve matters through negotiation rather than the courts.

2001 – Canada says it cannot finance costs of negotiation outside the Claims process.

2004 – Canada offers to negotiate under its Specific Claims process, but sets out pre-conditions that Wiikwemkoong does not accept.

2006 – Canada withdraws its preconditions. Negotiations on the 41 Islands Claim can begin without prejudice to the remainder of Wiikwemkoong's claim and interests.

From 41 islands claim to 23,000 islands lawsuit to 41 islands claim

As the timeline at left demonstrates, the current proposed settlement agreement is the result of over thirty years of events that began and appear to be ending with a specific claims process. In between, after having their claim rejected by Canada on several occasions, Wiikwemkoong filed a lawsuit with the Ontario Superior Court in 1996, against Canada and the Province of Ontario.

The Statement of Defence that was provided to the Court by Ontario has been of particular interest to some members of the public, who have written letters to the Municipality and to the Province, quoting those parts of the Statement that they believe "prove" that Wiikwemkoong's Claim is invalid.

In an adversarial legal system, a Statement of Defence will challenge the plaintiff's version of some if not all of the events that are described in the plaintiff's Statement of Claim. The merit of these opposing positions is decided by an impartial third party who weighs all of the available evidence.

No-one can fairly conclude that a plaintiff's lawsuit is valid or invalid by considering only a defendant's declarations. For example, Ontario's Statement of Defence contains the

following assertion about the timing of Wiikwemkoong's lawsuit, arguing that the court case should not be allowed to go forward:

> *The effects of the plaintiff's delay*
>
> *91. The events, acts and alleged omissions in respect of which the plaintiff chiefly seeks relief and which are foundational to and determinative of any and all other breaches alleged by the plaintiff occurred in 1862.*
>
> *92. Notice of the action was given in 1997 and the action was commenced in December, 1997. Throughout the period between the events, acts and alleged omissions on which the plaintiff now bases its claim and the date of commencement of the action the plaintiff had full knowledge of those events, acts and alleged omissions and of the claim that it now asserts. The delay of more than a century and a third in bringing the action gives rise to a reasonable inference of acquiescence by the plaintiff. The action is therefore barred by the equitable doctrine of laches.*

In response, Wiikwemkoong might have (for example) submitted evidence showing that the Band complained repeatedly of the "events, acts and alleged omissions" that it was suing for; that governments did not respond to their complaints; that beginning in 1923 and up until 1951 it was a criminal offence for a First Nation to raise money or to hire a lawyer to pursue land claim matters; that the federal government did not have a land claims process until 1973…and so on. Without knowing the law, as well as Wiikwemkoong's or Canada's responses to this issue, it is impossible to gauge whether or not Ontario's argument has any validity.

There are also instances where Ontario's Statement of Defence takes one position on a topic and Canada's Statement of Defence takes another:

> *36. The islands other than Manitoulin described in any of Schedules A, B and E to the amended statement of claim were uninhabited and unoccupied at all times prior to a date subsequent to 1882. No predecessor of any member of the plaintiff occupied any of those islands other than Manitoulin or any part of them at any time.*
>
> *(Ontario's Statement of Defence, 1998)*

> *19. This Defendant admits that the Chippewas and the Ottawa First Nations, as well as other First Nations, intermittently used and occupied the Islands of the Manitoulin Island group and the surrounding waters at some period of time prior to 1836. This Defendant has no knowledge of the specifics of the time and use made of the land and surrounding waters by the ancestors of the Plaintiff First Nation from time immemorial.*
>
> *(Canada's Statement of Defence, 1998)*

It is important to consider not only the context of the court documents, but their timing relative to the current public consultation period. Wiikwemkoong's Statement of Claim was filed with the Court in 1996 and amended in 1998. The Statements of Defence for Canada and Ontario are each dated October 1998. Two months later, Canada offered to re-assess its position and negotiate a settlement of the matter outside the court system. Ontario's position obviously has changed since its 1998 Statement of Defence, otherwise the proposed settlement lands would not be on the table today for public comment.

Since Canada's 1998 offer to discuss a settlement of Wiikwemkoong's claim rather than continue with the lawsuit, seventeen years of additional historical and legal research has been conducted and evaluated during the negotiations, which now include only Wiikwemkoong and Ontario (but still under the federal specific claims process). If for some reason Wiikwemkoong's lawsuit was revived today, it is likely that none of the original parties would be willing to rely solely on the court documents that they filed in 1998.

The identification of additional vacant lots on George Island

Some confusion remains over the existence of vacant lots on George Island that could be developed by the Municipality. This belief may stem from an old assessment map of the Island. It shows what appear to be property boundaries along the west side of the Island and in a section of land that lies between two cottage properties facing Killarney village (highlighted in yellow on the attached map). However, the map of George Island that was generated through the Crown Land Use Atlas shows only Crown land in those same areas of the Island (shown in beige on the attached map).

The Municipal Property Assessment Corporation (MPAC) was provided with both of the maps. Their Manager of Valuation and Customer Relations for the District has confirmed that there are no additional vacant lots on George Island. The map obtained from the Crown Land Use Atlas is the correct one.

[*NOTE: Years ago, MPAC periodically created maps of properties, which were available for purchase by municipalities. MPAC no longer produces those maps for sale, but municipalities often continue to consult the old ones for various purposes, because the roll number is shown on each lot, and they are useful for understanding the relative locations of properties.*]

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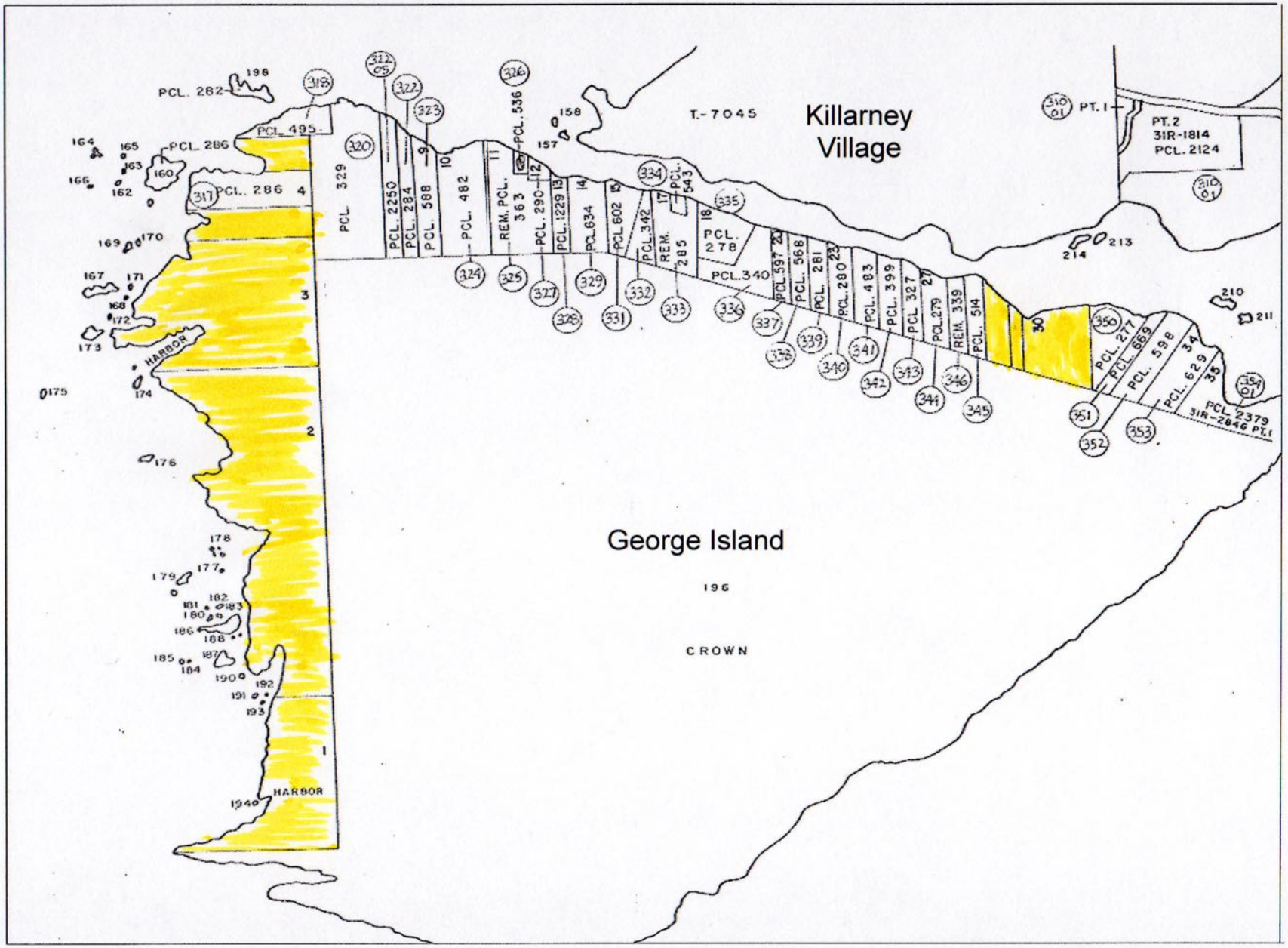
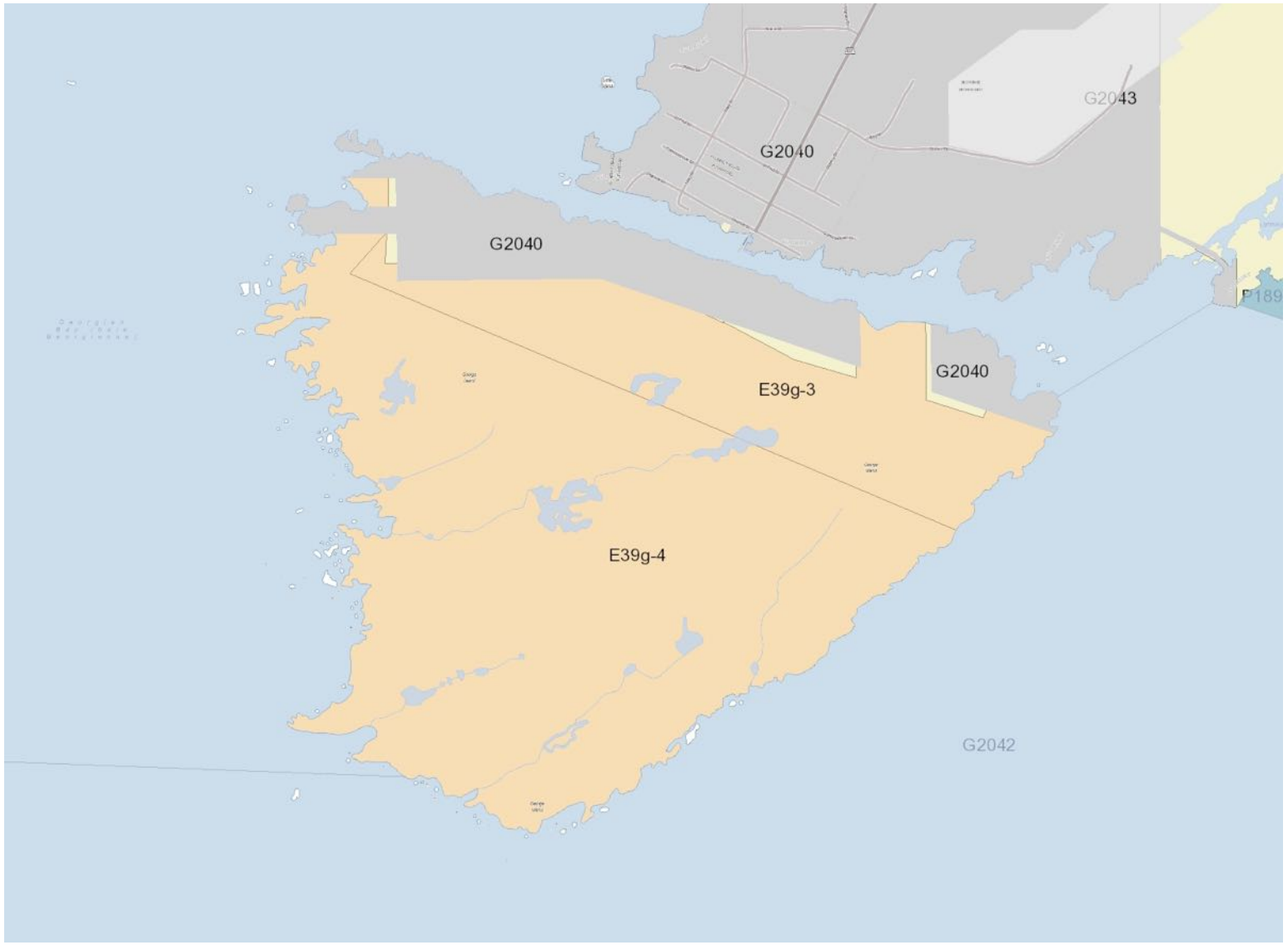
Adele Loosemore

Adele Loosemore
Project Manager
December 3rd, 2015


Killarney Village
George Island
T.-7045
PCL. 282
PCL. 286
PCL. 495
PCL. 329
PCL. 2250
PCL. 284
PCL. 588
PCL. 482
REM. PCL. 363
PCL. 536
PCL. 290
PCL. 1229
PCL. 634
PCL. 602
PCL. 342
REM. PCL. 285
PCL. 543
PCL. 278
PCL. 340
PCL. 597
PCL. 568
PCL. 281
PCL. 280
PCL. 483
PCL. 399
PCL. 327
PCL. 279
REM. 339
PCL. 514
PCL. 277
PCL. 669
PCL. 598
PCL. 629
PCL. 2379
31R-2846 PT.1
PT. 1
PT. 2
31R-1814
PCL. 2124
HARBOR
HARBOR
196
CROWN

George Island



Legend

Primary Land Use Area
- Conservation Reserve
- Enhanced Management Area
- Forest Reserve
- General Use Area
- Protected Area - Far North
- Provincial Park
- Provincial Wildlife Area
- Recommended Conservation Reserve
- Recommended Provincial Park
- Wilderness Area

- Overlay Area
- Amendments in Progress

Thematic Data
- Private Land
- National Park
- Indian Reserve
- Other Federal Land
- MNR EcoDistrict
- MNR District
- MNR Region
- Forest Management Unit
- Geographic Township
- Niagara Escarpment Plan Boundary
- Provincial Park Admin Zone
- Tertiary Watershed
- Caribou Range Boundary
- Renewable Energy on Crown Land Policy
- Far North Boundary

N

1.8 0 1.8 Kilometers

Scale: 1: 35,077

Ontario

Map created: September 14, 2015

This map should not be relied on as a precise indicator of routes or locations, nor as a guide to navigation. The Ontario Ministry of Natural Resources (OMNR) shall not be liable in any way for the use or any information on this map. of, or reliance upon, this map