

Revocation of Surrender and Its Implications for a Canadian Indian Band's Development

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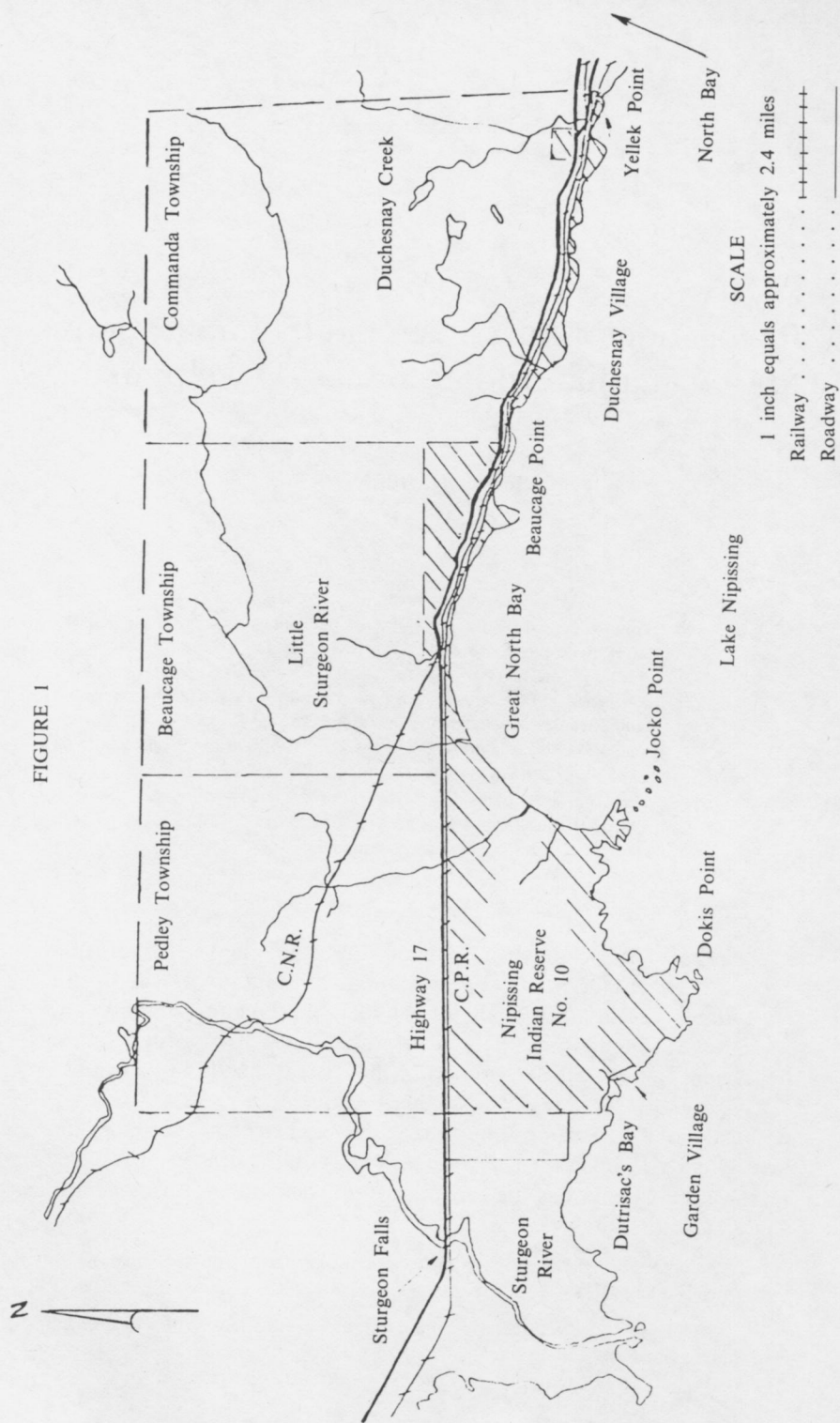
RÉSUMÉ

On considère ici les revendications territoriales des aborigènes comme des stratégies pour obtenir l'autonomie économique et politique. Une de ces revendications est celle de la Bande du Nipissing qui vise à faire révoquer une cession en vue de la vente et à faire retourner 33,000 acres de terres non vendues au statut de réserve, de telle sorte que ces territoires puissent être développés et administrés par la Bande. L'histoire des transactions territoriales de la bande de Nipissing est revue depuis le temps du Traité, de même que les usages actuels et leurs plans d'expansion future. L'autonomie économique et politique devient possible pour la Bande de Nipissing au moyen du développement de sa base territoriale.

Native land claims in Canada are emerging as significant processes for native political and economic autonomy. Based on the land rights of the aboriginal inhabitants, these claims embody the processes through which the goals of direct participation in resource development and self-determination may be attained. For example, Native peoples residing in Northern Canada are exercising their political power, insisting that their claims to extensive tracts of land be recognized and dealt with by the Federal Government. The Dene Declaration exemplifies the general attitude of these northern groups. They state:

We the Dene of the Northwest Territories insist on the right to be regarded by ourselves and the world as a nation.

Our struggle is for the recognition of the Dene Nation by the Government and peoples of Canada...



Our plea to the world is to help us in our struggle to find a place in the world community where we can exercise our right to self-determination as a distinct people and as a nation.

What we seek then is independence and self-determination within the country of Canada. This is what we mean when we call for a just land settlement for the Dene Nation (Watkins 1977: 3-4).

Industrial concerns are pressing on the Government the need to develop the North and extract its resources for use in the South. Recognizing the implications of such actions, the various Indian and Inuit organizations are striving to negotiate their land claims as quickly as possible for they are faced with the appearance or threat of appearance of southern industrial development and its accompanying disruption of a way of life. The Dene are using their land claim as a process to secure their goals of self-determination and direct participation in resource development to ensure that they will continue as distinct and viable communities (c.f. Berger, 1977; Barber, 1977).

According to Lloyd Barber, former Indian Claims Commissioner for Canada, there are two basic types of claims: treaty claims and band claims. Treaty claims, like those of Northern native groups, pertain to the issues surrounding the treaties between the Government and the Indian people, focusing on problems such as reserve land entitlement, hunting and fishing provisions, and education, health and economic development (1977: 15). Band claims include claims resulting from a loss of land and other natural resources from established reserves, and often include issues pertaining to the Government's stewardship of the financial assets derived from the sale of the land and/or resources. Land losses account for the majority of band claims. Pressure for reserve land acquisition by settlers and speculators appears to have been a common factor in such losses (1977: 24).

In Northeastern Ontario, a band claim for land loss is currently under negotiation. An Ojibway band on the north shore of Lake Nipissing is pressing for the revocation of a 1907 surrender for sale of reserve lands. Both the Federal Government and the Provincial Government of Ontario are involved in these negotiations. The former, by virtue of the fact that it retains final say in all dealings with Indians and lands reserved for Indians; the latter, because the surrendered lands were placed under Provincial jurisdiction. Nipis-

sing Band is negotiating with these two levels of government to revoke the 1907 surrender for sale and return to reserve status all the unsold surrendered lands.

The proceedings are being conducted with what can only be considered as extreme caution on the part of the Provincial Government. Every angle of the agreement to transfer the Province's interests in the lands in question to the Federal Crown, which will in turn re-establish the reserve status of these lands, has been methodically and carefully examined. The Province intends to leave no stone unturned before it relinquishes its interests in some 33,000 acres. The Band has been equally relentless, securing some hard fought concessions from the Province.

The Nipissing band claim, not unlike the treaty claims of Northern native groups, will entrench the resource base of the Band and provide them with an opportunity for further development. Nipissing Band has not entered into these negotiations solely to regain lost lands for the sake of the land itself. The Band has definite and productive plans for this land, plans that, in all likelihood, will enable this group to achieve a greater measure of autonomy and self-direction than has been feasible in the past.

Towards this goal, the Band has profitably utilized its existing land resources to produce a sizable revenue through leasing parts of the Reserve not used by Band members. The completion of their negotiations with the Federal and Provincial governments will permit greater expansion of this important resource base. Presently, there are numerous existing (and several planned) residential lots along the shoreline of Great North Bay, which are leased to non-band members, as well as recreational facilities at Beaucage Point Park, which is frequented by Band and non-band persons alike during the summer. The Reserve's scenic lake frontage – its major natural resource – has been utilized to its best advantage.

In addition, the Band has leased land to three small commercial enterprises. Although the revenue from these leases is less than that from the residential lots, the planned expansion of this form of land use will produce a more significant revenue source for the Band in the years to come.

During the last decade, the gradual transfer of community and social services, such as housing, welfare, roads, policing and health,

to the Band administration from provincial agencies has given the Band an opportunity to administer the programs which directly affect the residents and to develop the skills which are required for self-directed development of reserve resources. The incumbent Chief is in favor of the continued transfer of services from provincial to local control. Recognizing that this process takes time and preparation, he is of the opinion that it would be to the Band's disadvantage to assume the responsibility for a particular program before the necessary trained and experienced personnel are available.

One such program is the leasing of lands. Indian Affairs currently administers the leases, with the approval of Band Council. When the leasing program was initiated in the early 1960's, the Band did not have any administrative staff other than a relief officer. Since that time, however, a Band office has been constructed and nine employees, including a full-time chief and special police constable, handle the administration of various programs. Band Council is now considering taking over the administration of the leases from Indian Affairs. This move will create another administrative position and a full-time job for a Band member. A local lease administrator may eliminate many of the problems encountered under the existing arrangement. Indian Affairs' District office is located in Sudbury, approximately 70 miles west of the Reserve. The distance from the lease area and the time consumed by mail correspondence have proven to be detrimental to giving the leases the prompt attention they require for effective management.

HISTORY OF LAND DEALINGS

In 1849, commissioners Vidal and Anderson undertook a journey by canoe from Fort William to Penetanguishene, with the intention of visiting those Indians living on the north shores of Lakes Superior and Huron, and investigating their claims to territory bordering on these lakes. The area had recently been discovered to be rich in minerals, thus providing the impetus for the Government of the Province of Canada to secure the surrender of Indian interests in these lands. The commissioners' report contains several interesting ethnographic references, as well as a list of the bands and their respective "chiefs," and a description of the lands "desired" by the bands for their reserves. However, there is no specific reference to the Nipissing Band, although the Lake itself is mentioned as part of the

reserve desired by two French River bands (Vidal and Anderson 1849: n.p.).

Accordingly, the following year William B. Robinson negotiated for the surrender of these lands on September 7th and 9th. Nipissing Band was included on the list of bands signing the Robinson-Huron Treaty. Shabokishick signed as chief for the Band and Nipissing Reserve No. 10 was thus established (Canada 1964: n.p.).

It covered 80,640 acres, extending from a planting grounds on the lakeshore, west to the Hudson's Bay Company post at the mouth of the Sturgeon River, and six miles inland from the shore between these two points (D.I.A. 1879, S.P. 127). The major Reserve resource at the time was prime stands of timber that could very well have provided a livelihood for Band members in years to come, as was the case for the Dokis Band across the Lake (c.f. Mortimore, 1974). However, for one reason and another, Band members were to benefit little from this resource, as several events during the next 57 years altered boundaries and diminished the Reserve's size.

When the 1850 Treaty was signed, the Reserve's lake frontage was determined to lie between the Sturgeon River and a farming area to the east, somewhere between Beaucage Point and Yelluk Point. In 1852, the Crown surveyor, J. S. Dennis arrived to officially mark the boundaries. The following extract from his diary clearly depicts the chain of events that led to a major alteration in the location of the Reserve's east and west boundaries.

October 6, 1852... arriving at Hudson Bay Station on Sturgeon River... Here we found Shobokishick, Chief of the Band and taking him on board proceeded down Lake Easterly, to establish South East limit of this Reserve, it being understood that on West, Reserve is to be bounded by Sturgeon River. Got down 10 miles when camped.

October 7, 1852 Examined Little Sturgeon River in passing a mile up and camped in the evening at Indian village.

October 8, 1852 Accompanied by Chief, went down this morning and marked a Birch tree at the mouth of a small Brook about 3 miles below the fillage at the South East angle of Reserve.

October 11, 1852... had intended leaving... for French River, but at insistence of Chief remained to hear some objections, which he stated some of his Band wished to make to the manner in which the Reserve had been bounded.

October 12, 1852... were waited on by Chief and part of the Band when a Council was held, when it appeared that there were some cornfields and improvements still farther East than where we had fixed the South East angle of the Reserve and they now wished to take off about 4 miles of frontage from end next Sturgeon River and add that distance on to the East end so as to include the said cornfields and improvements, which we agreed to do tomorrow.

October 13, 1852 Left Hudson Bay Company's Station this morning to go down Lake to mark South West and South East angles of Reserve according to the arrangement desired by the Band. For the former marked a white Pine tree in a sandy cove, about 2 miles West of Dokis Point and 3 or 4 miles East of Hudson Bay Station, and then continued down lake. At about five o'clock arrived at a small River about 5 miles East of the tree marked the other day for the South East angle of the Reserve, the River is called "Nashkamicktanshick." Here on the East bank and about 5 rods from the Lake marked a red Pine tree as the Boundary... (Dennis 1852: n.p.).

Had the western boundary remained as outlined in the terms of the Treaty, the town site of Sturgeon Falls would be on Reserve land.

During the latter part of the 1800's, the reports of the Indian Superintendents for Nipissing Reserve reflected the Department's policy of encouraging settlement and agriculture on reserves throughout Canada. For example, visiting Superintendent C. Skene reported the following in 1879.

About the Indian village of the Lake Nipissing Band I saw good crops of corn, potatoes, oats and hay; and those of the band who reside upon other clearings on the reserve said their crops were good. Upon the whole the crops were good... (D.I.A. 1880, S.P. 127).

And again, in 1885, Superintendent Walton reported that,

The Nipissing band is in a very prosperous condition, and when it is remembered that only a few years since their reserve was in a wilderness, and that, save with lumbermen, they seldom came in contact with white men, their advance in civilization seems remarkable... At a meeting of the full band, he whom I consider their best man was elected 2nd chief... The first school house is in course of erection... The land of the reserve, which is very good, is rapidly advancing in value (D.I.A. 1886, S.P. 4).

This last statement, "The land... is rapidly advancing in value," takes on a much greater significance in light of the surrender that was to follow twenty-two years later and the varied pressures exerted on the Band to agree to this surrender. The negotiations which ensued, and are summarized here, indicate that the value of the Reserve's land and its resources were obviously appreciated by the Indians

living on the land as well as by the White settlers living in the immediate vicinity of the Reserve. As Barber aptly points out, "...the problem of pressure for reserve land acquisition by speculators and settlers..." (1977: 24) was an operating factor in the reduction of reserve size, both here and in most parts of the country.

In 1891, a timber license for pine on the Reserve was issued to lumber baron John R. Booth, who was seeking new forest reserves to replace the depleted stands of timber in the Ottawa Valley area (Leatherdale 1975: 167-68). This permit covered an area of 108 square miles and was renewed yearly until 1909 (D.I.A. 1914: n.p.), two years after the surrender for sale was signed by the adult male members of the Band. The implications of this event will be examined further on.

In 1893, an employee of the Canadian Pacific Railway, concerned with colonization work, suggested that Nipissing Reserve be opened for settlement. When the local superintendent was introduced to this idea, he felt that it would be in "the best interests" of the Band to surrender all the land to the south of the C.P.R. track and a strip a half mile wide to the north of the track, if a sufficient price could be obtained for the land. However, when the superintendent brought up the subject of surrender with the Band members while distributing their Fall interest money, they refused to consider the proposal (D.I.A. 1903: n.p.).

But the settlers on either side of the Reserve were not willing to drop the matter, and the following year, 1894, again brought the question of surrender to the attention of the Department of Indian Affairs. The superintendent, when asked to provide a sketch of the area he felt should be surrendered, informed the Department that he considered it unlikely that the Band would agree to a surrender unless they were "educated into seeing the advantage of such an action" (D.I.A. 1903: n.p.).

Still not dissuaded, the North Bay Board of Trade then sought the assistance of the Bishop of Peterboro (sic), who sent a letter to the Department in February of 1895, stating that he would advise the Band to surrender the Reserve on the condition that land be given to them on Lake Temiscaminque in exchange. Two weeks later, he sent a second letter, reversing his former position. The Bishop stated that he now objected to the surrender of the land south of the C.P.R. line

as this would cut off the Band members' access to the Lake and prevent them from fishing. As an alternative, he suggested that sufficient land be retained to provide each family with 100 acres, and the rest, north and south of the track, could then be sold. The Department's reaction to this suggestion was favorable (D.I.A. 1903: n.p.), but no action was taken just then.

The North Bay Board of Trade and the Corporation of the Town of Sturgeon Falls continued to lobby for the surrender of Reserve land over the next three years. In August of 1898, a delegation of concerned citizens went to the Reserve and was met with an absolute refusal from Band members to sell any of their land. In frustration, the Board of Trade recommended to the Department that Parliament be asked to have the Reserve opened for settlement and road construction (D.I.A. 1903: n.p.).

In May, 1899, petitions from the settlers of North Bay and Sturgeon Falls were sent to the Department, again requesting that the Reserve be opened for sale. The following June, another petition was sent. In response, the Department sent an inspector to secure a surrender of the Reserve. He returned to report that such an action was inadvisable at the time and negotiations were consequently stopped in January of 1900 (D.I.A. 1903: n.p.).

The pressure to open up the Reserve continued, despite the Department's decision, and in 1904, 6,400 acres or 10 square miles in the vicinity of Sandy Falls on the Sturgeon River were surrendered, and then sold for \$10,000 to the Occidental Syndicate (D.I.A. 1905, S.P. 27). Prior to this, applications had been made by several different parties in 1895, 1896, 1897 and again in 1899 for use of the Falls and the surrounding land to generate water power, but these requests were refused by the Department on the grounds that since the land had not been surrendered by the Band for either sale or lease, and since they had refused to surrender parts of the Reserve for settlement purposes, the Department felt that a request for a surrender for generating water power would also be refused. In addition, the area requested was covered by a timber license issued to John Booth, and the granting of water power rights was thought to interfere with the rights and privileges of the timber licensee (D.I.A. 1899: n.p.). However, as is evident by the surrender of the 10 square miles, the Department had altered its previous position; perhaps Booth himself had a hand in this. Mr. Booth had obtained a license

to cut pine on the Reserve in 1890, and in order to gain control of the pine timber limit, he had purchased those rights from other lumber companies. In 1904, he apparently bargained with the purchasers of the surrendered 6,400 acres. The sale was to have been made to Imperial Paper Mills of Canada Ltd., but instead, the land and timber were sold to the Occidental Syndicate of London, England, who controlled Imperial Paper Mills. The Order-in-Council for the surrender contained a clause that the Minister was authorized to sell the land without reference to the Departmental land regulations (McLean 1978: 1).

The last major land transaction took place on 24 January, 1907. The Nipissing Band surrendered for sale 50,000 acres of Reserve land, located north of the C.P.R. right of way (D.I.A. 1908, S.P. 27). The surrendered lands were to be held in trust by the Crown until they were sold, and all proceeds from the sales were to be credited to the Band, interest being calculated and paid in the usual manner. Further conditions of the surrender stipulated that: 1) a road allowance be provided from the eastern to the western boundary of the Reserve, paralleling the C.P.R. line (possibly satisfying the earlier demands of North Bay and Sturgeon Falls residents for roads through the Reserve, as well as providing a means of land travel for residents of the Reserve); 2) each Band member was to receive \$100 in cash upon completion of the surrender; 3) the land was not to be sold for less than \$2 an acre; and 4) the first and second chiefs were to receive \$1,000 each (Canada 1907: n.p.). As with the 1904 surrender, "...the Order-in-Council allowed the Superintendent General to sell the land in the best interests of the Band without reference to departmental land regulations established September 14, 1888" (McLean 1978: 2).

The Band had succumbed to the pressures to surrender that had been exerted for possibly fifteen or more years. In point of fact, as early as 1892, the local agent's report contained a reference to the rapidly increasing value of the Reserve. The report also stated that Band members had been approached with a view to surrendering a considerable part of the Reserve for \$2.50 an acre, but had refused to consider the offer (D.I.A. 1893, S.P. 27). Perhaps they regarded a surrender for sale of merchantable timber in 1868 and the sale of 227 acres to the Canadian Pacific Railway in 1884 for a right of way (McLean 1978: 1) as sufficient contribution to the settlement of the

area. The persistence of the Department and the settlers eventually undermined the Band's determination to retain their Reserve in tact.

The surrendered lands were surveyed and divided into three townships: Beaucage, Commanda and Pedley. Then the lots were advertised for sale by public auction in North Bay on 16 June, 1909. However, this first sale was postponed for eight years as a result of a protest made by Mr. Booth (D.I.A. 1914: n.p.). The Department had refused to renew his timber license after April, 1909, presumably because the lands were to be sold to private buyers. Booth took the matter to court and a decision was finally reached in 1916 when the Supreme Court judged in favor of the Crown. Booth settled for \$50,000 and his license was cancelled (McLean 1978: 2). A second public auction was then organized in 1917, and the first parcels of surrendered lands were sold (D.I.A. 1919, S.P. 27).

A total of 12,372.42 acres were sold for \$57,018.88 or about \$4.60 an acre. The remaining lots were placed in the hands of the agent at Sturgeon Falls in November, 1917, for sale at "upset prices" (D.I.A. 1919, S.P. 27). Land sales after this date appear to have been slow, as two-thirds of the surrendered lands remain unsold, an unexpected situation in view of the pressures exerted on the Department by white settlers to secure a surrender and open up the Reserve. Perhaps the reason for this apparent lack of interest lies in the location of the surrendered lands. The City and Town residents desired the land to the south of the C.P.R. tracks, a very scenic and, as the Band itself has proven, lucrative strip of lakeshore frontage. Instead, land to the north of the tracks was surrendered and it would seem that the settlers were not as enthusiastic about purchasing land in this area as they were about the land fronting the Lake.

If this is the case, why then was the surrender of 50,000 acres secured from Nipissing Band? Booth Lumber Company had a timber license for pine on the Reserve, and was granted yearly renewals for this license up to and beyond the time of the surrender. The settlers were evidently interested in lake frontage purchases, as is evidenced by the relatively few land purchases in Beaucage and Commanda Townships. It is possible that the surrender was occasioned by the attitude of the Department of Indian Affairs, which reasoned that the Band would be in a better position with the proceeds from the sale of their land than with the land itself. But if the intent was to create an economic base with these funds, then the intent failed

miserably, for fifty years later, the Band was encouraged to develop a camp site at Beaucage Point and to surrender land for lease at Jocko Point to replenish the Band's depleted funds.

The answer to this question is likely a combination of several factors, including the intentions of the Department, the vested interests of North Bay and Sturgeon Falls residents, and the continued operation of the lumber companies which felled virgin growth for several decades on the surrendered lands. The exact reason(s) for the surrender may be uncertain but the Band's intention in revoking the surrender for sale is quite clear. The terms of the surrender stipulated that the lands would be sold for the benefit of the Band. However, only one third of the total surrendered area was sold before all sales were halted in the late 1940's or early 1950's. Band members can now hunt and cut timber on the unsold surrendered lands but are able to do little else with the land because of its surrendered status. Therefore, Nipissing Band is seeking to revoke the surrender for sale and return the unsold lands to reserve status so these lands may be managed by, and for the benefit of, the Band under the terms of the Indian Act.

CURRENT LAND USE AND DEVELOPMENT

Nipissing Band, under the direction of its Economic Development Committee, has become directly involved in the development of its major resource – land. Three hundred residential lots were surveyed and surrendered for lease by the Band along the west side of Great North Bay, from Jocko Point to the Little Sturgeon River. The impetus for this plan originated with the Department of Indian Affairs in the 1950's as a means of increasing the Band's revenue. The initial reaction of Band members to this surrender for lease was unfavorable. Many, remembering the 1907 surrender, felt they were losing more of their land even though the area was considered to be a swamp and was used infrequently, mainly for duck and moose hunting. They did not fully comprehend the benefits that would accrue from a surrender for lease but the referendum decided in favor of the plan. Now, the majority are in agreement with this form of land use, and when a second surrender for lease was proposed by the Band Council in the early 1970's, it was accepted with few objections.

This second residential subdivision is located on the east side of the Bay above Beaucage Point. Twenty of the proposed sixty lots were surveyed following the surrender for lease and the remaining forty will be laid out in late 1980 or early 1981. The subdivision road was constructed during the summer of 1980 by a local contractor through L.E.A.P. funding in preparation for lot leasing in the spring of 1981.

The yearly rental costs to the residents, who themselves build and consequently own the houses on these lots, are nominal, much less than they could expect to pay in taxes if they owned similar lots elsewhere. But these leases provide an important source of revenue for the Band, amounting to approximately \$100,000 a year. This figure represents an increase of about \$30,000 over the now-expiring leases, as the current ones more accurately reflect the appraised market value of the lots, yet are still less than the taxes for comparable lakeshore lots elsewhere on the Lake.

In addition to these residential lots, several light industries have leased land in the east end, near North Bay. A concrete plant, a major transport company, and a building materials industry requiring land for lumber storage provide approximately \$4,500 a year in revenue. The Band plans to develop an industrial subdivision in and around this area in the near future, and has already received a few inquiries from other light industrial concerns interested in locating on the Reserve. A consulting firm was hired in 1979 by the Band to design the industrial subdivision. A response from Indian Affairs on possible funding sources is now needed before work can begin. The intent of Band management in leasing land to small industries is not simply to create revenue, but also to provide employment, an intent that is pointed out to potential leaseholders. Consequently, industries that agree to hire Band members have been and will continue to be favored over those who do not.

The Band developed a 65-acre camp grounds on the east side of Beaucage Point, with facilities for both tents and trailers, a picnic area, and a well-maintained sandy beach for swimming. Initially, the Ontario Government was interested in developing a provincial park in this area. The Ministry of Natural Resources was willing to hire and train Band members in park management and would then turn its operation over to the Band if so desired. The Council turned down the offer, however, and a few years later, in 1958, Beaucage

Park was started as a co-operative Band project that took fifteen years to complete. A major development obstacle appeared with the loss of the plans for the Park when a local D.I.A. official, the central planning figure, was transferred. Consequently, it was not until 1965 that work actually began on the Park.

Financing for its development came from Band funds and grants from the Department of Indian Affairs. The road from the main highway into the Park was completed in 1970 with a grant from the Indian Community Branch of the Ontario Government, after the Band overcame the problems encountered in securing highway access and a crossing over the C.P.R. tracks. Then, in 1971, a grant from the Ministry of Agriculture and Food (ARDA branch) enabled further development, leading to the official opening on 7 July, 1973.

Band Council and the local Economic Development Committee have put a great deal of effort into the development of Reserve land, attempting to stimulate local employment and income whenever possible, and to utilize the Reserve's resources to their fullest. The same sort of long-range planning has gone into the creation of a residential subdivision for Band members in the east end of the Reserve. House lots have been surveyed with the intent of making them large enough to retain a degree of rural privacy, but not so large as to make the costs of providing services prohibitive. While Council may be criticized by some for attempting to adopt "White ways" and discouraging members from building wherever they please on Reserve land, their reasoning is sound. By concentrating settlement in Garden Village (the main settlement) and Duchesnay Village (a smaller east end settlement and the location of the subdivision), services such as water, hydro and fire protection can be provided at minimum cost to Band members. In addition, this form of settlement may very well foster a greater feeling of community and facilitate further development of lines of communication among members, Band Council and external agencies.

REVOCATION OF SURRENDER FOR SALE

Land is the major resource available to the members of Nipissing Band; not simply land for the sake of land itself, but land for development, leasing and revenue production. It is evident that

the Band is successfully managing this resource, but it is also evident that there will soon be a premium on available land. The Band government is well aware of this problem and for this reason, is engaged in negotiations with the Provincial and Federal governments. The intent of the Band is to revoke the 1907 surrender for sale and return those lands which remain unsold, about 33,000 acres, to reserve status. The terms of the surrender stated that the land was to be held in trust by the Crown and sold for the benefit of the Band. In seventy-three years, the Government has sold approximately one-third of the land. The Band believes that the Government has been unsuccessful in handling these lands for its benefit and would now like an opportunity to manage it.

From the time of the surrender until the late 1940's or early 1950's, Band members were led to believe that the surrendered lands were completely lost to them. They did not hunt in the area or cut any of the timber. Consequently, the benefits of the timber resources went to the large lumber companies. Once land sales were terminated, however, the agent informed Band members that they could use the unsold lands; small-scale logging operations were started up, and hunting and trapping activities were resumed.

When members resumed their use of the unsold surrendered lands circa 1955, they began to speculate about the possibilities of having the lands returned to reserve status. Initially, this desire was based on a wish to regain possession of the land for the sake of the land itself, as a part of their heritage. But as the Band moved through the 1960's and the 1970's, this desire became more firmly grounded. The developmental and financial benefits that could result from an expansion of the Reserve's land base began to formulate and take root. However, the surrendered for sale status precluded the development or leasing of these lands.

Band Council made numerous formal and informal requests of Indian Affairs, asking for a return of the unsold surrendered lands. Band Council resolutions (BCRs) were drawn up and sent in, and countless discussions between Council and the agent took place. For example, in February of 1968, Council asked Indian Affairs for clarification of the status of lands in Beaucage and Commanda Townships. In April of that same year, a BCR was drawn up, requesting Lands and Forest to transfer 4 lots in Beaucage Township to the Federal Crown to give the Band control of the land in a more

uniform unit. A second BCR was sent to D.I.A., requesting the Department to start unsurrendering procedures. In August of 1973, Council submitted another BCR, asking Indian Affairs either to organize a referendum on the question of unsurrendering or to proceed directly with the unsurrendering. Very little or no response seems to have been forthcoming from Indian Affairs.

A major stumbling block appears to have been the 1924 Lands Agreement between the Federal Government and the Province of Ontario. When reserve lands were surrendered prior to 1924, they were administered by the Provincial Crown. The status of these lands was in doubt at this time as some of these surrenders were being examined in appeals to the Judicial Committee of the Privy Council. These appeals were obstructing the sales of surrendered lands for the benefit of the the bands involved. Consequently, the Federal and Provincial Governments attempted to solve this problem by drawing up the Indian Lands Act, 1924, whereby,

All Indian reserves in the province of Ontario heretofore or hereafter set aside, shall be administered by the Dominion of Canada for the benefit of the band or bands of Indians to which each may have been or may be allotted... (D.I.A. 1925, S.P. 14: 10).

It seems that the Province agreed with the Federal Crown's administration of the "hereafter" surrendered lands but not the "heretofore" surrendered lands. This issue has not been satisfactorily resolved, hence the need for the Province to agree to transfer its interests in the unsold surrendered land to the Federal Crown before it can be returned to reserve status.

The superintendent of Sudbury District's Indian Lands Department began to act in concert with the Band and in January, 1976, wrote to Indian Affairs Regional Office concerning the Band's wish to have the unsold lands returned to Reserve status. He stressed the opportunities available for land leasing and employment of Band members, and also indicated that the Band was concerned with the Province's inability to set a date for the amendment of the 1924 Agreement. The Regional office conveyed the request to Headquarters in Ottawa who in turn wrote to the Province. The Ontario Ministry of Natural Resources' response was that the Province was prepared to proceed with the transfer of the land if D.I.A. could provide an adequate description of the area involved. The necessary information was supplied in February of 1977 and in December the

Director of Lands for Indian Affairs advised the Regional office to proceed with the revocation of the unsold lands. In January of 1978, the Band was instructed by the Sudbury District office to draw up a BCR requesting a referendum of revocation and a revocation meeting was authorized by Headquarters two months later. The Band then retained the legal advisor for the Union of Ontario Indians and asked that he prepare the necessary documents for the revocation.

The Province's position of the transfer of unsold surrendered lands to the Federal Crown was outlined for the District office in June, 1978. The Province stated that the Bed of Navigable Waters Act would apply and consequently, any lands to be set aside as Reserve lands would not include the beds of navigable waters. The 1924 Lands Agreement had stipulated that any sale, lease, or disposition of surrendered Indian land in the Province "...shall be subject to the provisions of the statute of the Province of Ontario entitled "The Bed of Navigable Waters Act"..." (D.I.A. 1925, S.P. 14: 10). In addition, egress and ingress were to be guaranteed by the Band to owners of patent parcels of land surrounded by unsold surrendered lands. The Province agreed to sell to the Federal Crown, at market value, some parcels of land forfeited for taxes. The Band responded in January, 1979, stating that they wished to have the lake and river beds excluded from the discussion of lands to be returned to Reserve status. They believed that since the terms of the Surrender made no mention of the waterways, they had not been included in the surrender and hence were still part of the Reserve. The referendum was scheduled for April 4.

A meeting was held in March of 1979 between the Band, District and Regional representatives from Indian Affairs, and an official from Energy, Mines and Resources. The intent was to work out the differences between the Province's position and that of the Band. It was determined that the Province should clarify its position with regard to the applicability of the Beds of Navigable Waters Act in reference to the Little Sturgeon River, Laronde Creek and Duchesnay Creek. The Union's legal advisor desired assurance from the Federal Government that the lands would revert to original status (i.e., status held prior to the 1907 surrender) rather than to reserve status. A follow-up meeting was held in May, 1979 with all parties except the Province. The legal department for Indian Affairs informed the Band that a revocation meeting was not required and that the Band should

approach the Province to start Federal-Provincial negotiations for the return of the land. A time frame work for negotiations was then drawn up, to culminate with a Band vote in September, 1979.

The first negotiating meeting was held in June. Each side outlined its tentative positions, but the major focus was again on the waterways. The Province was to identify for the next meeting what it considered to be navigable streams and the Band was to identify its concerns as to the control of activity on these streams. The Band was also asked to consider the question of access by owners to parcels of land surrounded by surrendered lands.

At the second negotiating meeting in July, the representative for the Ministry of Natural Resources indicated that the Province did not want to transfer to Canada those sections of river bed that passed through patent lands but would agree to compensate the Band for these sections. Examination of a map revealed that these sections of river bed were fronted by tourist camp operators; the Province was striving to protect the interests of these businessmen. The Band agreed to provide reciprocal access to land-locked patent lands but deferred comment on the status of the river beds as they maintained that the 1907 surrender dealt with lands alone.

Prior to the third scheduled meeting, the Band determined that the lands in question should be returned to reserve status and not to original status as suggested by the Union's legal advisor. A return to anything other than reserve status would delay the development of the lands for they could not be dealt with under the terms of the Indian Act if they did not have full reserve status. At the meeting in August, the Band and Federal Government jointly agreed to guarantee access to land-locked parcels as requested by the Province. The Band maintained its position on waterbeds and no further decision could be made at that time as the Province's representative was uncertain as to the exact provincial position. This matter was a major concern of the Province, especially the area of river bed on the Little Sturgeon River which fronted the two tourist businesses there.

At the fourth meeting, in September, the Province indicated that it would retain interest in river beds which have patent lands on both sides only. This meant that all other lake and river beds would return to the Band, who in turn once again agreed to provide access through Reserve land to patent lands. However, the Band still insisted that it

retain title to the river beds adjoining patent lands and was asked to re-examine their position, possibly considering an exchange of land for the river beds, for the next meeting.

In January of 1980, a fifth negotiating meeting was held. The Band remained firm and would not consider an exchange of lands but did agree to consider the suggestion that the disputed areas be transferred to Federal control with the condition that they did not acquire reserve status unless the Band purchased the patent lands or the land owners no longer required the use of the river beds.

At a sixth meeting in March, the Band agreed to the conditional transfer of the river beds in question to the Federal Crown. Then the question of forfeited lands was introduced; the Province wished to dispense with these lands at the same time as it transferred the unsold lands and indicated that they could be returned for market value in cash or land. The Band was interested in acquiring these lands and requested extra time to determine the method of payment. The Province agreed to another meeting, stating that it was not yet certain as to the exact procedures required for returning the unsold lands and needed additional time to ascertain the correct means of doing so.

In April, 1980, the Province was still not certain that an Order-in-Council was the proper method. Indian Affairs, however, informed the Province's representative that it felt a Band Council Resolution or Band referendum was sufficient.

At the eighth meeting in May, the question of the appropriateness of an Order-in-Council was settled in favor of this procedure and the Province indicated it would begin preparing a draft. The forfeited lands were again considered and the Band indicated that it would request funding from Regional Office for their purchase at the market value of \$45,000. After lengthy discussion, it was determined that the land transactions in Pedley Township should be reviewed for the next meeting. All parties concerned had assumed that the Band no longer retained any interests in Pedley and a thorough check had not been done to determine the validity of this assumption.

At a meeting with Indian Affairs District personnel in June, 1980, it was revealed that the Band was not compensated for eight acres of river bed on the Sturgeon River in Pedley Township. The

Band decided that it would like to retain interest in the eight acres but, if this stand were to hold up the return of the other lands, then it would be forfeited for the sake of the larger interest. The District Lands Superintendent told the Band that he felt the Province would take the same stance on these eight acres as it had on other river beds fronting on patent lands.

In September, 1980, the Province, Indian Affairs and Band Council again met to discuss the draft Order-in-Council and the decision to be made on the outstanding eight acres of river bed. As a matter of routine questioning, the negotiator for Natural Resources inquired as to the amount of compensation given the Band for the rest of the river bed. No one was certain whether compensation had ever been received for the approximately 92 acres in question and the matter is to be investigated further. Should it be proven that the Band has not received any compensation, it will be up to the Province to determine the status of the river bed. The 1924 Lands Agreement complicates the issue for it states that unless specified in the terms of a surrender, all unmentioned lands retain reserve status. Since the 1907 surrender mentions only lands, the Band may very well retain an interest in approximately 100 acres of the Sturgeon River despite the fact that the Agreement clearly stipulates that the Beds of Navigable Waters Act applies to waterways within surrendered areas. The Province will not sign the Order-in-Council transferring the unsold lands in Beaucage and Commanda Townships to the Federal Government for the benefit of Nipissing Band until this issue is resolved.

Band negotiators are optimistic about the eventual outcome of the revocation, despite the most recent delay in discussions. Hopefully, the status of the Sturgeon River bed will not retard the progress that has been made up to this point or alter the established terms of the draft Order-in-Council. The major points of the agreement are: Ontario agrees to transfer its interests in all the unsold, surrendered lands in Beaucage and Commanda Townships to Crown Canada for the benefit of Nipissing Indian Band; Band Council and the Government of Canada agree to guarantee access to surrounded patent lands within the two townships; Ontario agrees to return to Crown Canada for the benefit of the Band, its interests in three lake beds and in the beds of all navigable watercourses with unsold surrendered lands on both sides on the condition that the Navigable

Waters Protection Act will apply and the public right of navigation on them is guaranteed by the Band and the Federal Government; and Ontario agrees to return to Canada for the benefit of the Band, its interests in the beds of navigable watercourses with patent land on one or both sides on the condition that the lands not be set apart as reserve land and the watercourses are available for free public use and passage (Ontario 1980: n.p.). When completed, this revocation of surrender for sale will double the existing land base of Nipissing Reserve.

CONCLUSION

In many areas of Canada, the major natural reserve resource available to resident band members is the land itself. Nipissing Band has effectively utilized just such a resource by leasing it to outsiders for residential and commercial use, thus creating a sizable revenue source for the Band and employment opportunities for a number of Band members. The market for recreational and residential land on Lake Nipissing is good and approximately twenty miles of as yet undeveloped shoreline put the Band in an excellent position to capitalize on this market. The City of North Bay, from all indications, is growing, as is the need for industrial lots for use by the support industries of mining and forestry which are the primary industries in the area. The appeal of tax free lots has not been ignored by the Band's Economic Development Committee. Recognizing the advantages that would result from more available land, Nipissing Band Council has divested a great deal of time and energy in negotiations for the return of 33,000 acres of land.

The band claim is a process whereby the goals of economic and political autonomy may be achieved. When the negotiations are completed and the land returns to reserve status, a continuation of the current development strategy will increase opportunities for employment on the Reserve itself and produce greater revenue funds. Land leasing will require an expansion of the present administrative staff and will locate industries and businesses on the Reserve that will provide job opportunities for residents. Local employment opportunities may even attract some members who have left to find employment elsewhere. The increased revenue monies could be channeled into further Reserve development and Band projects. A

source of revenue such as this, created by local initiative and self-directed development, could reduce the Band's present dependence upon Indian Affairs and other government agencies for a major portion of their funding and would lead to greater local autonomy.

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