

Approaches to Working and Partnering with Indigenous Communities in Project Monitoring: The Port Lands Flood Protection and Enabling Infrastructure Project

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At: OAIA 2018 Conference, Planning and Protecting Water
Resources

October 17, 2018



Presentation Outline

- Overview of project
- Overview of Indigenous interests in the area
- Indigenous Engagement during the DMNP EA
- Indigenous Engagement Post-DMNP EA for the PLFPEI

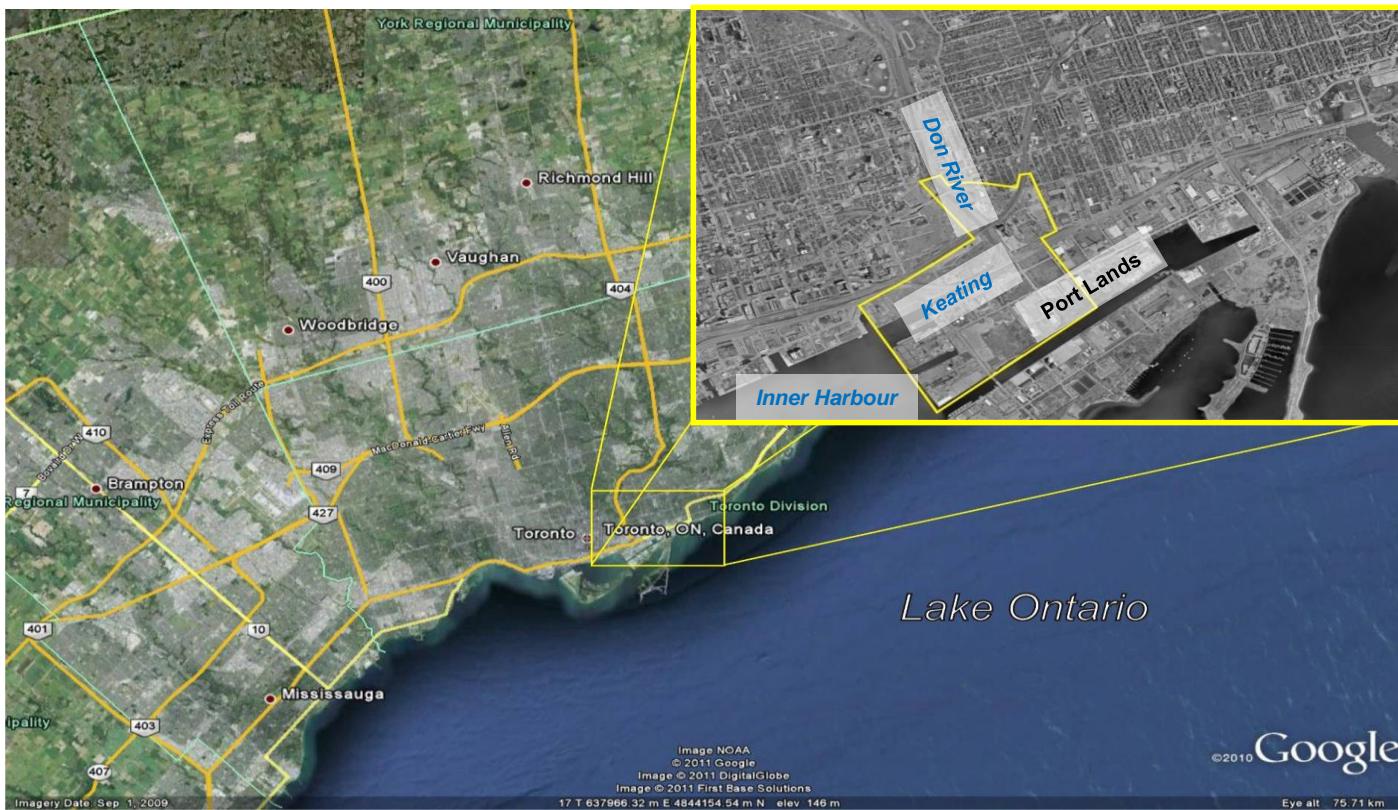


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Overview of project

Where is the Port Lands Flood Protection and Enabling Infrastructure Project (PLFPEI Project) located?

The PLFPEI Project is located at the mouth of the Don River and surrounded by the Port Lands of the Inner Harbour, in Downtown Toronto.

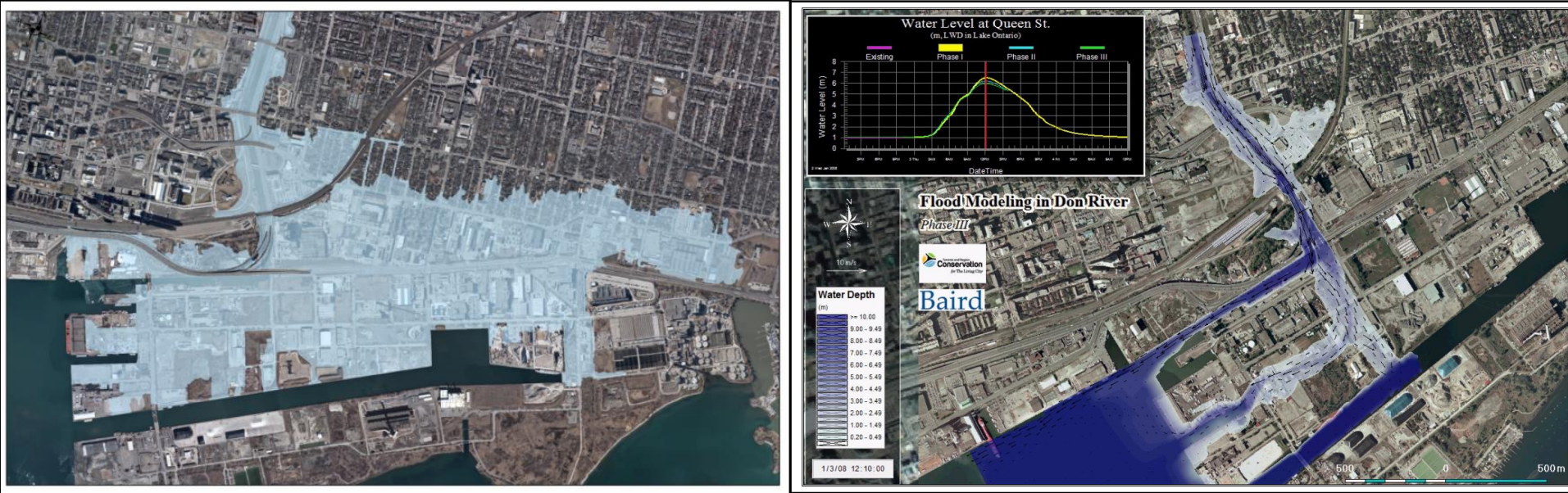


Overview of project

What is the Port Lands Flood Protection and Enabling Infrastructure Project (PLFPEI)?

The PLFPEI is the amalgamation of 2 approved Environmental Assessments:

- Don Mouth Naturalization and Port Lands Flood Protection Project EA (DMNP EA); and
- Lower Don Lands Transportation and Servicing Master Plan Class EA (LDL Class EA).



Overview of project

DMNP EA undertaken as an Individual EA by Toronto and Region Conservation Authority (TRCA) with Waterfront Toronto and the City of Toronto as co-proponents.

Using an Objectives Based EA approach, the DMNP EA sought to *“establish and sustain the form, features, and functions of a natural river mouth within the context of a revitalized City environment while providing flood protection up to the Regulatory Flood”*.

The DMNP EA commenced in 2005 and took 10 years to receive approvals.



Overview of project

The LDL Class EA undertaken under the Municipal Class Environmental Assessment process by Waterfront Toronto with the City of Toronto and Toronto Transit Corporation (TTC) as co-proponents.

Used the DMNP EA as a baseline to determine the footprint for naturalization and developable lands, the LDL Class EA identified the location and type of roads, bridges, servicing and transit infrastructure required for the Lower Don Lands area.

The LDL Class EA commenced in 2008 and took just under 7 years to receive approvals.



Overview of project

Following the EAs (2014-15), Levels of Government directed Waterfront Toronto to lead a Due Diligence Study which merged the results of the EAs into a single Project (the PLFPEI) .

Needed to confirm costs, schedule, and constructability considerations for flood protection works and associated municipal infrastructure elements.

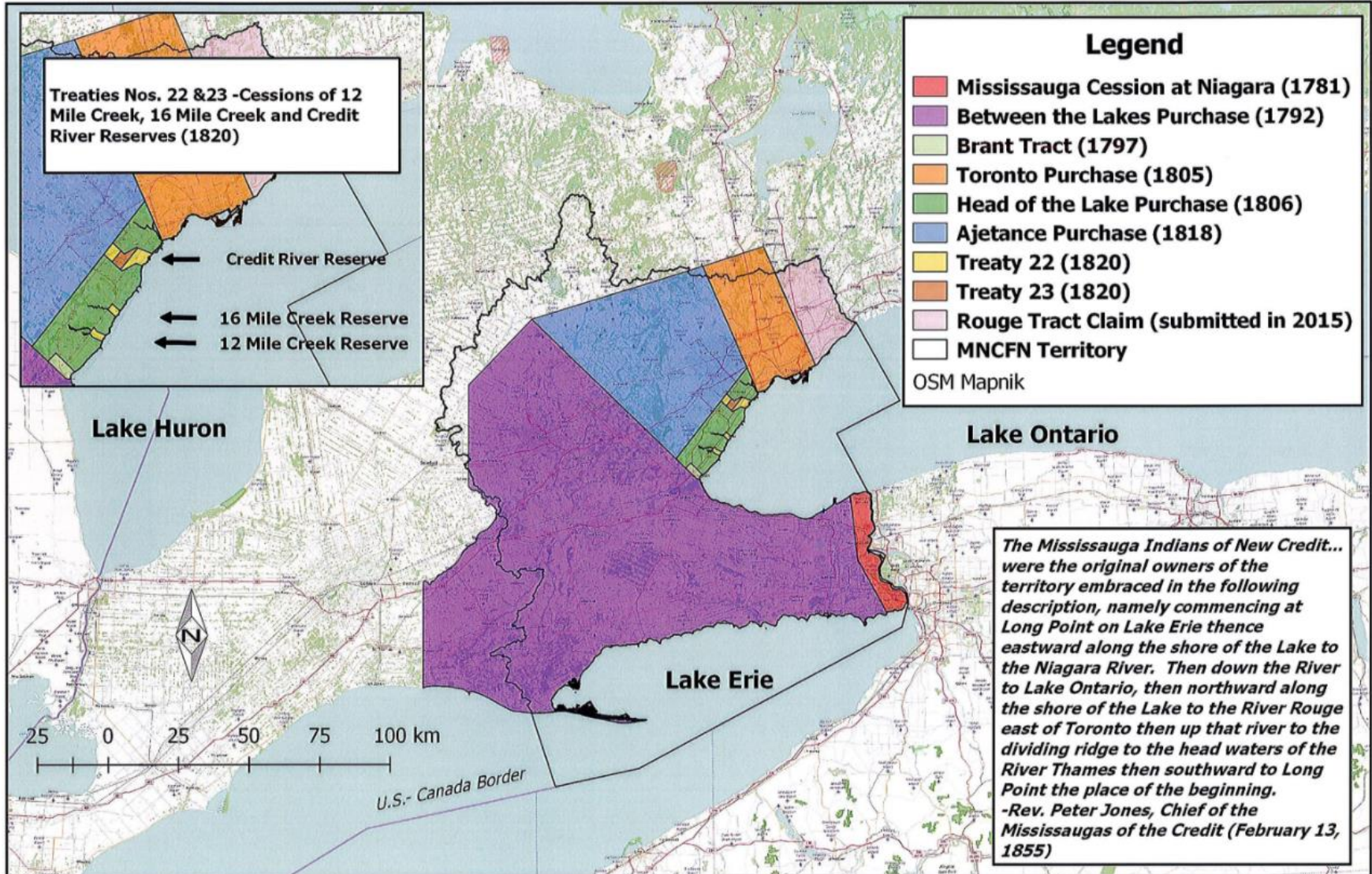
Due Diligence findings received by Levels of Government in Oct. 2016.

Waterfront Toronto received direction to proceed with Phase 1, Design and Implementation of the Cherry Street Lakefill Project in October 2016.

Funding and direction to proceed with the remainder of the Project was announced in June 2017.



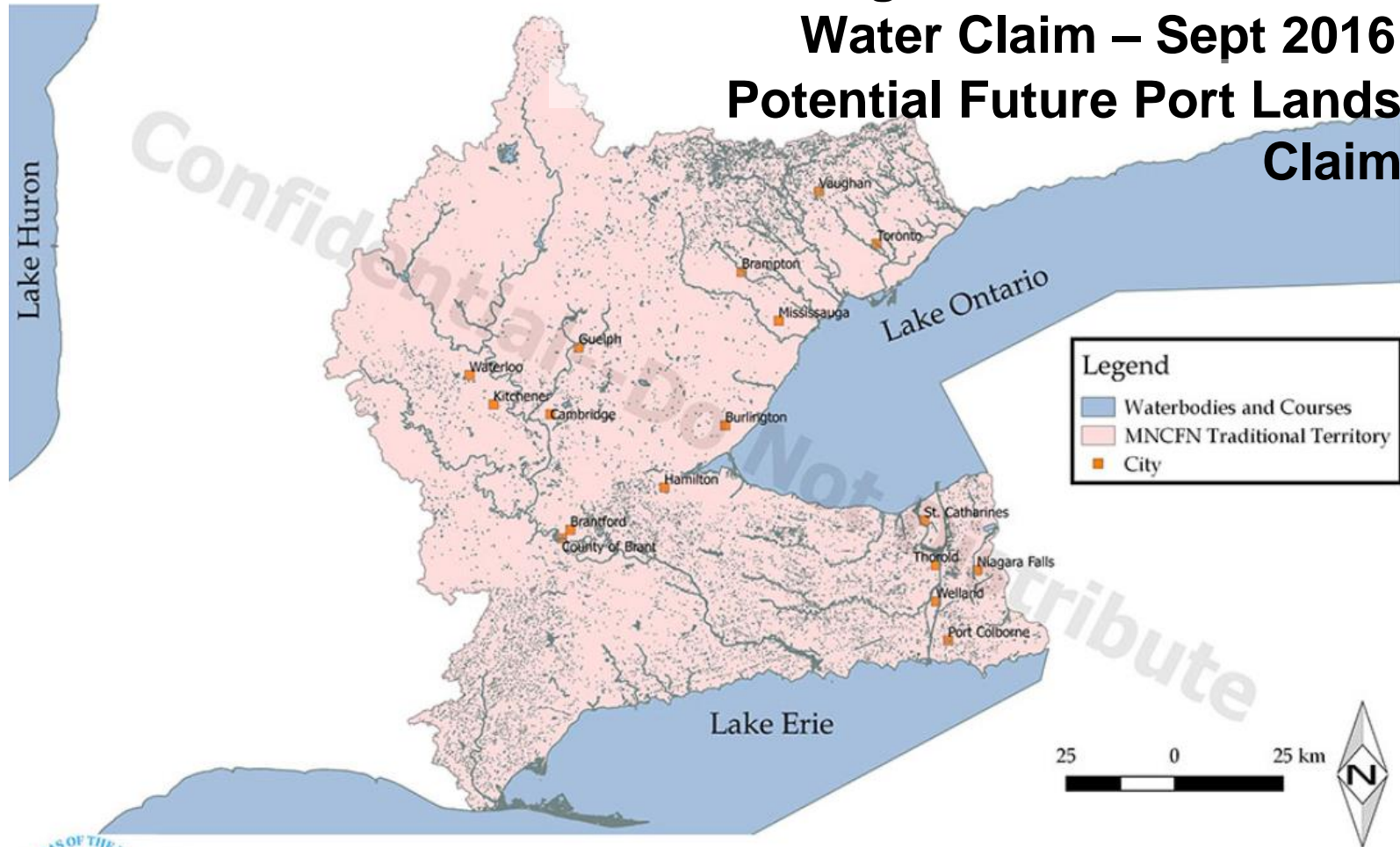
Overview - Indigenous Interests Within the GTA - MNCFN



Overview - Indigenous Interests Within the GTA

Mississaugas of the New Credit Water Claim – Sept 2016

Potential Future Port Lands Claim



Department
Of
Consultation &
Accommodation

Map showing major waterbodies and watercourses within
the Traditional territory of the Mississaugas of the New
Credit First Nation

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Overview - Indigenous Interests in Southern & Central Ontario

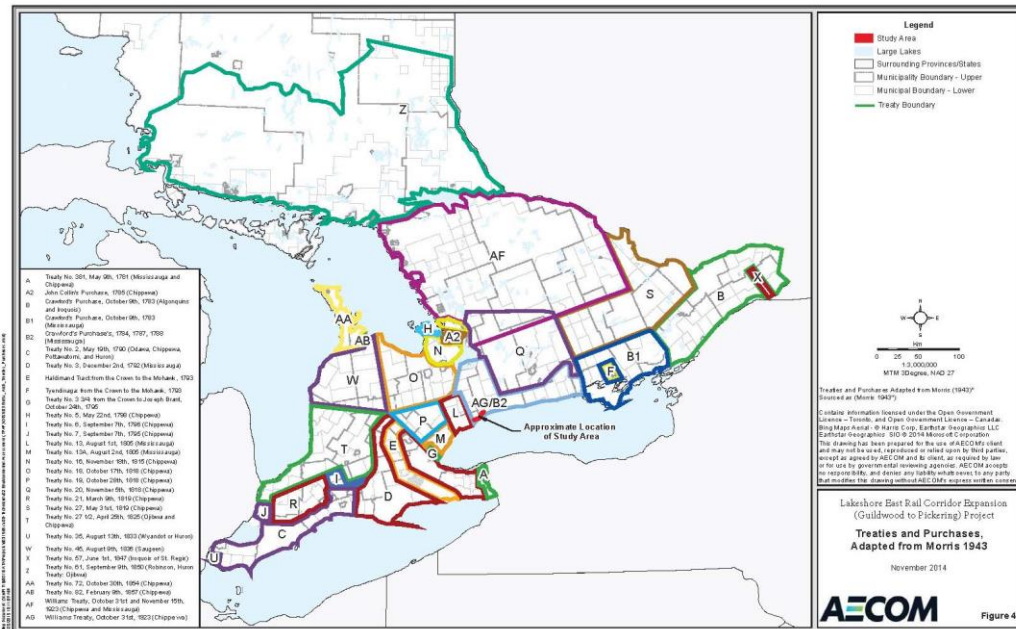
Key Treaty's For Consideration in the Port Lands Area, as directed by the Crown:

Williams Treaty, 1923

- Includes 7 FNs involving a large tract of land in central and southern Ontario
- Claim submitted attests that *"they never intended to surrender their rights to hunt, harvest, and fish on their lands"*

Anglo-Huron Treaty of 1760

- Recognized by the Supreme Court of Canada (SCC) in 1990
- Rights to carry out customs and religion
- No mention of territorial boundaries
- In 2008 HWN declared intention to submit a comprehensive claim on their traditional territory



Overview - Indigenous Interests Within the GTA

For DMNP EA, TRCA and WT also sought to engage with other Indigenous communities in the area, including:

- Metis Nation Office #8 and York/Toronto Metis Council; and
- Indigenous peoples living in the City of Toronto (~23,000 to 75,000 people) through the Miziwe Biik Employment and Training office and the broader Indigenous Support Services network in Toronto.



Image: Created by Michael Van Valkenburg Associates for Waterfront Toronto, 2018

Indigenous Engagement Early Stage of DMNP EA (2005)

In early days, TRCA followed typical Duty to Consult procedures:

- Who should be engaged?: Inquiries sent to Crown Agencies for advice
- Advice received was often contradictory in nature
- Advice from TRCA archaeology often sought to resolve contradictions
- Archaeology erred on side of caution and recommended that all Indigenous communities that may have occupied the lands at one time, be engaged
- Administratively: courier info at project milestones to all listed Communities, and follow-up via email and phone to confirm receipt of documents
- Sought input whether any questions or comments or interests to meet
- Documented all correspondence to and from Communities; often the only correspondence received was a form letter stating that they wish to receive project information
- This was essentially a “notification” process, with limited two-way communication between Communities and TRCA - largely due to a lack of resources for First Nations to effectively engage in meaningful consultation.

Indigenous Engagement Remainder of DMNP EA

Throughout mid-2000s, Supreme Court rulings routinely ruled in favour of First Nations, indicating that the Crown was not meeting their obligations for meaningful consultation and accommodation in Project Planning.

Ultimately, the Courts emphasized the need of the Crown to delegate administrative aspects of their Duty to Consult to Proponents, AND that Proponents must assess the level of accommodation for each First Nation, based on the strength of a Community's Claim (asserted or accepted) in an area, and the level of impact a project may impose on a Claim.

In parallel, the Huron-Wendat FN (in 2008/09) were sending notifications to Project Proponents (including TRCA) throughout the GTA that they did not have sufficient resources to effectively engage in Consultation, and that all Project planning activities are to halt until such time that resources could be made available.

Ultimately, the Province of Ontario addressed these concerns by establishing a “capacity-building” funding program for Elected Councils across the Province in order to enable First Nation communities to more effectively participate in planning and consultation processes.

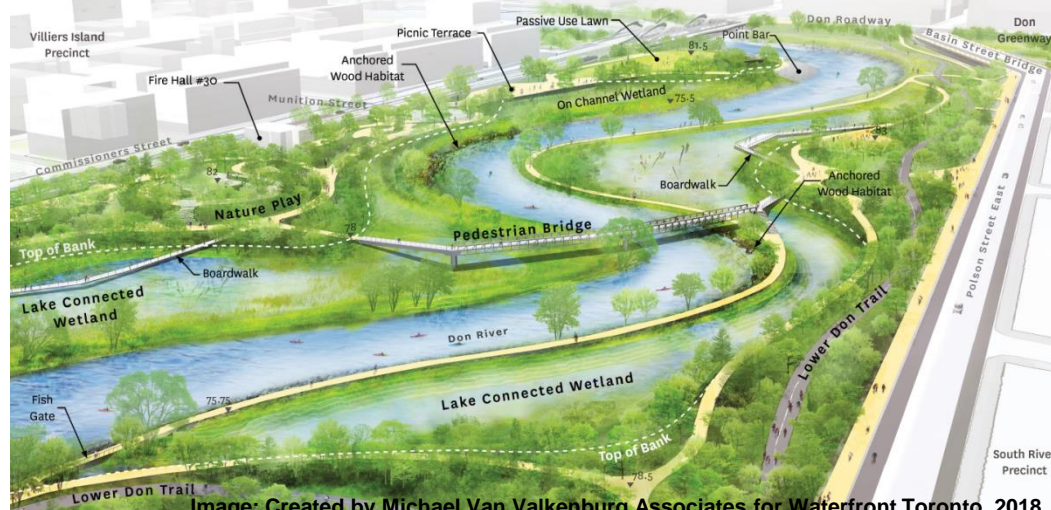


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Indigenous Engagement Remainder of DMNP EA

Impacts - TRCA's administrative practices remained the same as the start of the DMNP EA.

However, more effort was undertaken to improve relationships with various communities throughout and following the EA process.

In particular, TRCA:

- Formalized their corporate Indigenous Engagement guidelines.
- Established a single point of contact at TRCA for initial communications for Project Coordination to avoid confusion.
- Project staff developed relationships with Community staff and Council – often formal meeting agendas playing a secondary role to discussions.
- Led guided tours (bus, boat and shuttle) for staff and Council at Project site, and increased number of visits to their communities to discuss Project directly with staff, Council and their Community (including community BBQs and town Council meetings).
- Staff led presentations when meeting in person: greatly curtailed consultant numbers and involvement at meetings.
- Reiterated our understanding of their Claim(s) and issues in our Presentations, and explored opportunities of how elements of their interests might be accommodated by the Project.
- Continued to engage with the Communities about the Project, after the Duty to Consult was met at the end of the EA and permit approvals.
- Recognized that relationship building and engagement efforts are subject to “redos” following the election cycle and changes in staff with each of the communities.
- Recognized that in the “spirit of reconciliation” and the results of Supreme Court decisions, consultation practices of the recent past may be insufficient going forward

Indigenous Engagement: The Reconciliation (2015 – onwards)

The period following DMNP EA Approvals, coincided with Liberals majority win in the 2015 Federal election.

The Liberals won, in part, on a promise to do business differently, including a new nation-to-nation “*relationship between Canada and Indigenous Peoples based on recognition, rights, respect, co-operation, and partnership*”, including a “*full review of laws, policies and operational practices.*”

In parallel, recommendations arising through the Truth and Reconciliation Commission (TRC) and the UN Declaration of the Right of Indigenous Peoples (UNDRIP) continue to influence changes in what is deemed reasonable accommodation for Project Proponents.



Indigenous Engagement: Port Lands Flood Protection and Enabling Infrastructure (2015 – onwards)

Following receipt of EA approvals, WT and TRCA continue to engage with the various Indigenous communities for the PLFPEI Project.

Triggers for the Duty to Consult remain for the following elements:

- EA conditions of approval for continued notification of Project progress
- Crown permit authorizations (DFO, Transport Canada, Port Authority and MECP)
- Possible Crown transfer of small parcels of land to the Project.
- Crown funding contributions to implement the Project
 - Province formally delegated administrative elements of their Duty to Consult in writing to WT as part of their funding contribution to the project.

Coming out of the Crown's formal delegation to Waterfront Toronto includes:

- The finalization of a Field Liaison Representative Agreement (FLR Agreement) between Waterfront Toronto and the Mississaugas of the New Credit First Nation:
 - The agreement formalizes the terms and conditions whereby representatives from the Mississaugas of the New Credit are able to participate with the Port Lands Project Team for key Project monitoring activities in the Port Lands related to:
 - Fisheries monitoring
 - Archaeological monitoring
 - The FLR agreement also specifies that the results of ongoing water quality surveys will be made available to the community.



Thank you

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