



# Indigenous Rights

## Keynote Address

Prepared for the OAIA– 2023 Conference:  
Next Generation Impact and Environmental Assessment in Ontario

By 4 Directions of Conservation Consulting Services

*Wednesday, October 25<sup>th</sup>, 2023*

# Opening in a Good Way

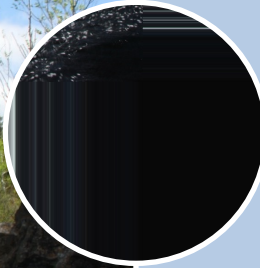


*Nii Jii*

A Poem by  
Gimaa R. Stacey  
Laforme



# Opening in a Good Way



## Land Acknowledgements

- It is customary amongst First Nations to acknowledge the host community/peoples or the territory they are on.

## Opening Prayer and Smudge

- This ceremony is a cleansing ceremony and is meant to help both parties see clearly throughout the exchange.

# How Do We Walk Together?

## *The Ethical Space*

Ethical space focuses on creating a place for knowledge systems to interact with mutual respect, kindness, generosity and other basic values and principles.

- *All knowledge systems are equal; no single system has more weight or legitimacy than another.*

One system does not need the other to “corroborate” it to achieve internal validity.

- *For example, the written system does not always need archaeological evidence to provide sound “proof” of an Indigenous practice or story.*

While agreeing to enter ethical space formally may be straightforward for most parties, actually being within that space together requires flexibility.

- *Parties may frequently need to adjust to change, surprise, and other factors that cannot be envisioned initially.*



# Stop and Reflect

*When you talk about environmental and impact assessments, how do you envision the role of Indigenous Peoples?*



## Inherent Rights

- Sovereignty
- Self Determination

## Treaty Rights

- Land & Resources



## The Constitution Act (1982)

- Section 35

# How Do We Walk Together?



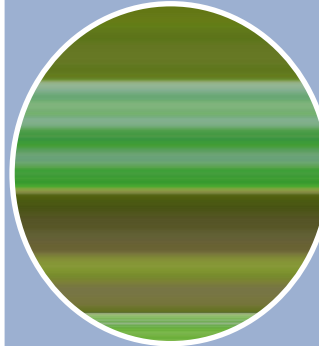
Indigenous Rights, ways of knowing, and being must be prioritized when conducting Environmental and Impact Assessments.



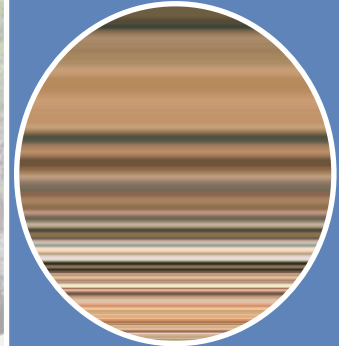
Indigenous Knowledge Holders must be engaged from the onset of your project.



Indigenous peoples and Nations must be remunerated for gifting their time and knowledge, and their rights must be accommodated.



Indigenous Knowledge is valid without the affirmation of Western Science.



Indigenous Rights are separate from and supersede settler perspectives, regulations, and legislation.

*The Ethical Space with Environmental and Impact Assessments*



# Continue to Ask Yourself

*As environmental practitioners, how can you ensure that your practices reflect First Nations' Inherent and Treaty Rights?*



# Let us finally begin to walk together

Miigwetch  
&  
Thank You

Please reach out:  
Gary Pritchard



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# Up Next: Session I

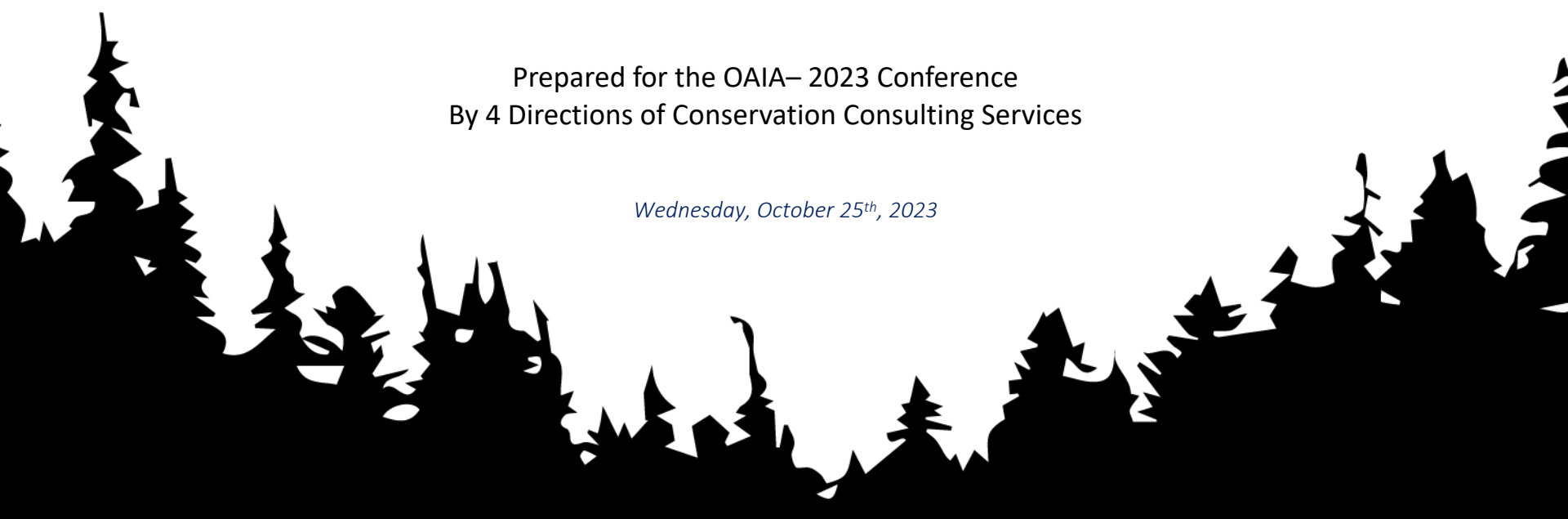
**Are Impact & Environmental Assessments Still Harming  
Indigenous Peoples?**



# Are Impact & Environmental Assessments Still Harming Indigenous Peoples?

Prepared for the OAIA– 2023 Conference  
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*Wednesday, October 25<sup>th</sup>, 2023*





# Aanii (Hello And Welcome)



**GARY PRITCHARD**  
GINIW (GOLDEN EAGLE)

**FOUNDER/CEO**

Gary is a Conservation Ecologist & Indigenous Engagement / Placemaking Specialist from Curve Lake First Nation



**4 DIRECTIONS**

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## SETTING OUR INTENTIONS

# Beginning a Learning Journey

- This presentation aims to start you on a learning journey of self-discovery.
- Both Indigenous and non-Indigenous Peoples are going through a transition of learning about the culture of Indigenous Peoples (some rediscovering their heritage) and the true history of Canada.
- The next step is to connect with the Indigenous community.

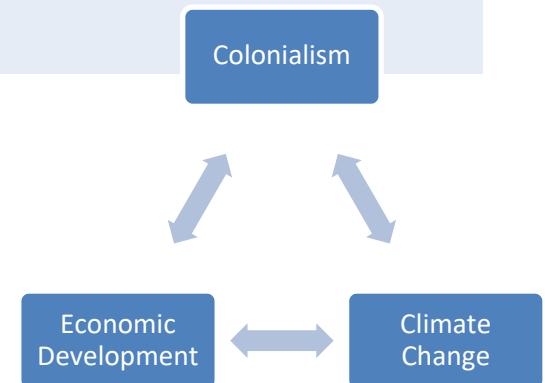


Photo by [Mario Dobelmann](#) on [Unsplash](#)



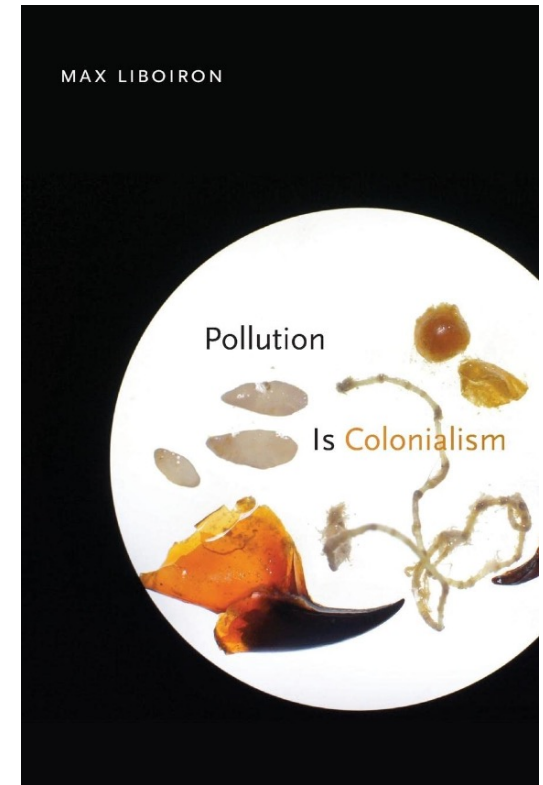
# Why We're Here

Economic development, climate change, and colonialism have undoubtedly impacted many ecosystems within Canada and the world. As such, practitioners across the conservation field are applying methods to assess and restore nature. Although well-intentioned, scrutiny is warranted regarding Western environmental and impact assessment methods. Forests, wetlands, rivers, and lakes all play a critical role in the spiritual and cultural life of the Michi Saagiig Nishnaabeg. Through generations, the Michi Saagiig have developed relationships with the land and waters that reflect intimate local knowledge of place. Despite this history, Indigenous peoples have largely been excluded from conservation management activities, particularly when it comes to impact and environmental assessments. This presentation will introduce participants to the nexus between Indigenous Rights and environmental and impact assessments and examine how current Western approaches to environmental and impact assessments uphold or infringe upon Indigenous Rights.



# Colonialism & Conservation

- The Intergovernmental Panel on Climate Change (IPCC) has "acknowledged that colonialism is a historic and ongoing driver of the climate crisis" ([Varanasi, 2022](#)).
- Indigenous Peoples disproportionately suffer from loss of biological diversity and environmental degradation.
- Indigenous Peoples' concern for and interest in the environment lies beyond just simply love for the lands and waters:
  - *There is a spiritual connection to the land passed down from generation to generation.*
  - *Indigenous Peoples have Inherent and Treaty rights to the lands and the waters.*
- **To remove these governing Rights is an act of colonialism and violence against Indigenous Peoples in Canada.**
  - And as such, an example of Environmental Racism.



## INTRODUCTION: WHY WE'RE HERE

# Colonialism & Indigenous Economies

*The history of colonialism in Canada has meant both the partition of Indigenous peoples from participating (physically, politically, legally) in the economy and a relentless demand to become assimilated as liberal capitalist citizens (Pasternak, 2020).*

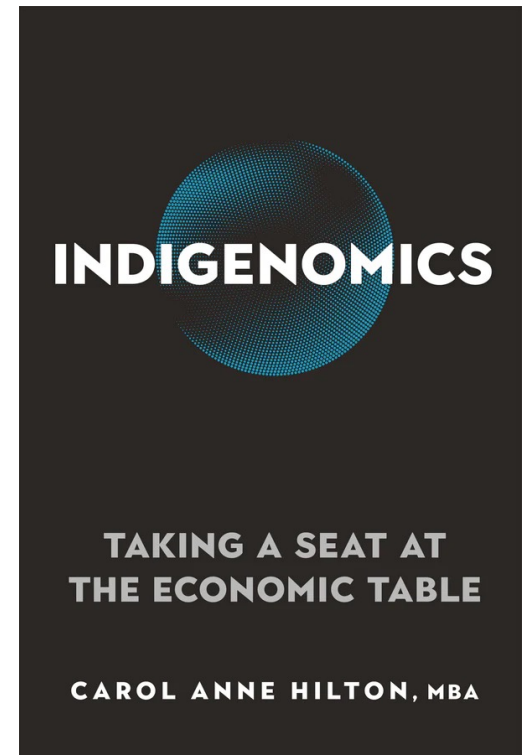
## WATCH

Colonialism: Then and Now | The Renewing Indigenous Economies Project



Available on YouTube: <https://www.youtube.com/watch?v=wxTvcuKlqAc>

## READ





# Rethinking Terms

## No Terms About us Without us!

*“The term ABORIGINAL obscures the distinctiveness of the First Peoples of Canada—Inuit, Métis and First Nations. With linguistic differences, for example, there are more than 50 distinct groupings among First Nations alone. Among Inuit, there are several dialects within Inuktitut, and the Métis people speak a variety of First Nations languages such as Cree, Ojibwa or Chipewyan, as well as Michif, which evolved out of their mixed ancestry.” (Royal Commission on Aboriginal People, 1999)”*

### Instead:

- **Michi Saagiig Nishnaabeg**
  - **Anishinaabe**
  - **Mushkego**
- **Haudenosaunee**

**What about BIPOC?** While Indigenous Peoples face racism, discrimination and marginalization, these impacts are distinct from other groups experience. For instance, the *Indian Act*, in Canada remains an active racialized piece of legislation. Additionally, Indigenous Peoples have Inherent and Treaty rights which are affirmed and set apart by the Constitution of Canada.

**Why the Term Settler?** The term settler refers to non-Indigenous peoples living in Canada who form the European-descended sociopolitical majority. It includes those who belong to the socio-political majority and benefit from colonialism.

## TERMINOLOGY

# Settler Fragility

“The term settler fragility signals a settler positioning of innocence in colonization, which simultaneously recenters colonial power to secure settler futures.”

*(Watson, 2020)*

Why are Indigenous Peoples blamed and/or villainized for settler wrong doings?

*“We’re still learning”*

# Colonization & Colonialism

## Colonization

- The action or process of settling among and establishing control over the Indigenous people of an area.

## Colonialism

- The policy or practice of acquiring full or partial political control over another person's territory, occupying it with settlers, and exploiting it economically\*

*\*This is what Canadians are doing today*



# Parentalism

- The notion of parentalism, stemming from paternalism, is highly connected to settler colonialism:
  - E.g., the *Indian Act*
- Parentalism/ Paternalism actively work against Indigenous Sovereignty and the right to self-determination
  - E.g., funding



\$1/week Sale



## The heavy hand of Canadian paternalism is still disrupting Indigenous communities

A rapid move toward Indigenous autonomy is the solution to the complex challenges they face. Ottawa needs to stand back — way back.

By **Ken Coates** Contributor  
Sun., Nov. 20, 2022 | 3 min. read



Despite numerous multimillion-dollar commitments to First Nations, Métis and Inuit communities, the federal government knows the allocations are typically little more than stopgap measures, with anticipated targets rarely met. While there have been significant Indigenous achievements, community conditions are not improving quickly enough.

*"an attitude or the assumption of an attitude of superior authority."*

# Rights Denial

- Many Ministries and regulators have little, or incorrect, understanding as it pertains to Indigenous Inherent and/or Treaty rights.
- Indeed, many protocols and permitting processes actively regulate Indigenous rights away.
- Proponents and their consultants participate in this rights-denial through lack of proper and meaningful engagement and consultation with First Nations.

## ASK YOURSELF:

Do your engagement and consultation practices contribute to the denial of rights?  
Do you rely solely on First Nations to tell you about possible infringement of rights?



# Indigenous Rights

*.... are separate from rights afforded to non-Indigenous Canadian citizens under Canadian common law*

## Inherent Rights

- Collective rights which flow from Indigenous Peoples' continued use and occupation of certain areas.
- Generally include rights to the land, rights to subsistence resources and activities, the right to self-determination and self-government, and the right to practice one's own culture and customs including language and religion.
- Are not granted from external sources but are a result of Inherent peoples' own occupation of their home territories as well as their ongoing social structures and political and legal systems.

## Aboriginal Rights

- practices, traditions, and customs that are unique to each First Nation community.
- based on **cultural activities** that were practised before the arrival/control of Settlers.
- have continued to present day (although they can be in modern form — for example, you can hunt with a gun instead of a bow and arrow).

## Treaty Rights

- Protected under s. 35 of the Constitution (1982), these are rights that a First Nation has as a result of having entered into a treaty agreement with the Crown.
- Rights are specific to the Treaty and the Signatories, often including protections for lands & waters that are of cultural and spiritual significance to the First Nations.
- Modern day treaty rights include rights to lands in simple fee (privately owned), resource rights, wildlife management rights, harvesting rights & self- government.

# Treaties: Two Perspectives

Indigenous Nations	Crown & Settlers
<ul style="list-style-type: none"><li>understood the treaty agreements as being the foundation of a relationship with the Crown.</li></ul>	<ul style="list-style-type: none"><li>understood the historic treaties as the complete surrender of land with only a small reserve retained.</li></ul>
<ul style="list-style-type: none"><li>based on co-existence and sharing of the land and its resources.</li></ul>	<ul style="list-style-type: none"><li>based on Crown control of lands with limited rights for First Nations to hunt, fish, and trap in the surrendered territories.</li></ul>
<ul style="list-style-type: none"><li>all people living in Canada are treaty people with their own set of rights and responsibilities.</li></ul>	<ul style="list-style-type: none"><li>Indigenous peoples and Nations are responsible for informing Crown &amp; Settlers of treaty rights.</li></ul>

- First Nations often speak of “renewing the treaty relationship” or that they want the government to “fulfill the treaties.”
- In order to understand this, we need to recognize how First Nations understood the historic treaties at the time they were signed.



For a Missisaagiig perspective on treaties, read Michi Saagiig Nishnaabeg: This is Our Territory, by Gidigaa Migizi (Doug Williams).

Specifically, **Chapter 15: Our Understanding of Treaties.**



# Indigenous Water Rights

*“First Nations seek the recognition of our inherent jurisdictional authorities over water and require resources to build capacity to advocate for our water rights and to protect the health of the water that Mother Earth bestows” (Assembly of First Nations)*

- The Michi Saagiig Nishnaabeg and First Nations have rights to the waters as part of their spiritual and cultural systems.
- The use and care of waters is a right maintained by First Nations and was not negotiated during the treaty-making process.
- Projects or activities potentially impacting the waters require consultation and FPIC from Indigenous Rights holders.

These principles are upheld and affirmed by:

The Chiefs of Ontario

The Assembly of First Nations

The *Constitution Act* (1982)

*UNDRIP* (2007)

Resolution 08/87 - *Water Declaration of the First Nations in Ontario* (2008)

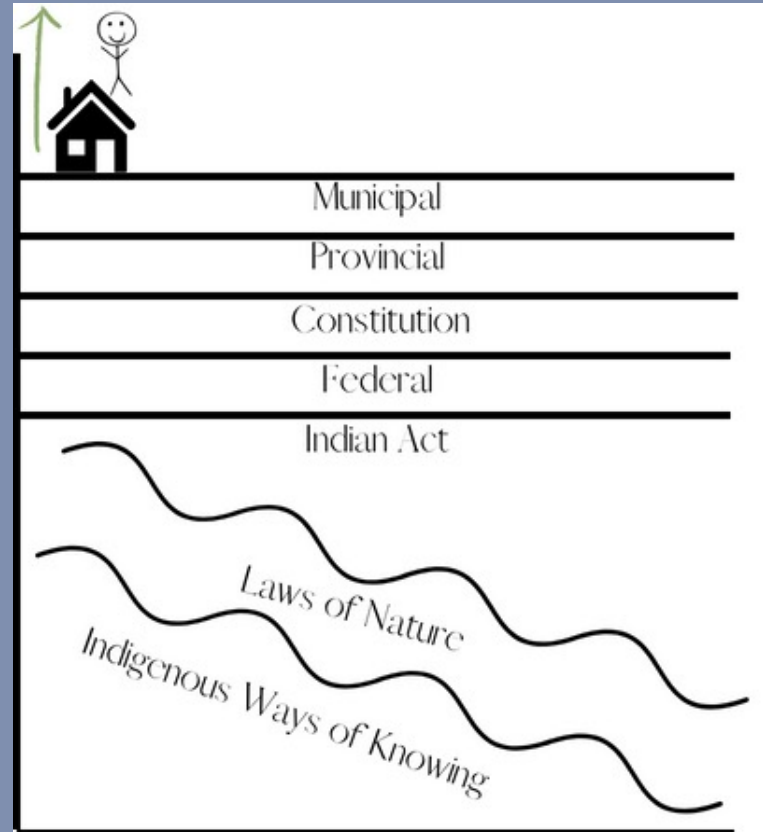
Resolution 01/2019 – *First Nations Treaty and Inherent Rights to Water* (2019)

S. 35

*UNDRIP Act, 2021*

# Hierarchy of Rights

- Typically, settlers rely on and refer to settler authorities and policies relevant to a chosen project or project activity.
  - These approaches are systemically colonial and risk harming Indigenous Rights and Knowledge Systems.
- As such, settler must acknowledge the order of magnitude of Inherent Rights, Treaty, and First Nation laws, prior to conforming to settler policies and interests.



# Environmental Assessment vs. Duty to Consult

- The failure of the Crown and many proponents is to attempt to shoe-horn the Duty to Consult into the Environmental Assessment Process.
- Meeting regulatory processes is not a replacement for proper Consultation.

Environmental Assessment	Duty to Consult
Informative/procedural Approach	Dialogical/participatory Approach
Single monolithic conception of public interest	Public interest is pluralistic and political
Instrumental	Values participation
Legitimacy stems from expertise of decision makers	Legitimacy stems from participatory decision-making
Good faith is assumed	Good faith is demonstrated
Quantity of interactions	Quality of interactions
Recognition	Respect
Fixed	Flexible
Singular decision/justification of outcomes by Crown	Reciprocal justification for decisions/determinations

- Regulatory processes are also inadequate in assessing if a legal duty is owed to First Nations.
- This was highlighted in the BC Supreme Court ruling in *Fort Nelson First Nation V. British Columbia* in 2015.



# The Sparrow Test: Court Case Example

*"Under certain circumstances, the Crown may limit or infringe Aboriginal or Treaty Rights"*

## The Two-Step Sparrow Test:

1. Complainant must establish that the law "has the effect of interfering with an existing [A]boriginal right"
2. The crown must justify the infringement by proving:
  - a) The law has a valid objective.
    - *Note: "Public interest" is insufficient justification for limiting a constitutional right.*
  - b) The limit is justified in light of the principle of the honour of the Crown and the Crown's fiduciary duty to Aboriginal Peoples.

*IMPORTANTLY, This court case omits policies in Ontario.*



## INTRODUCTION

# The Michi Saagiig Nishnaabeg

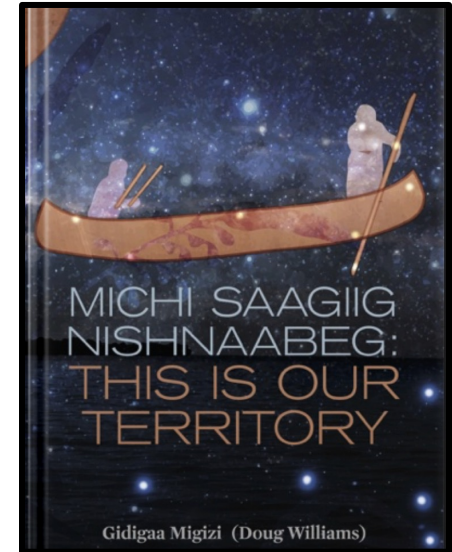
## INTRODUCTION

# The Michi Saagiig Nishnaabeg

*Michi Saagiig Nishnaabeg: This is Our Territory*

*“Our territory of the Michi Saagiig Nishnaabeg is the north shore of Lake Ontario stretching from where the St. Lawrence River at the eastern end of Lake Ontario and the territory stretches to the west to approximately Niagara Falls. We are river mouth people that lived at nearly every river that flowed into Lake Ontario. [...]. The reason that we are here is because **we love this territory.**”*

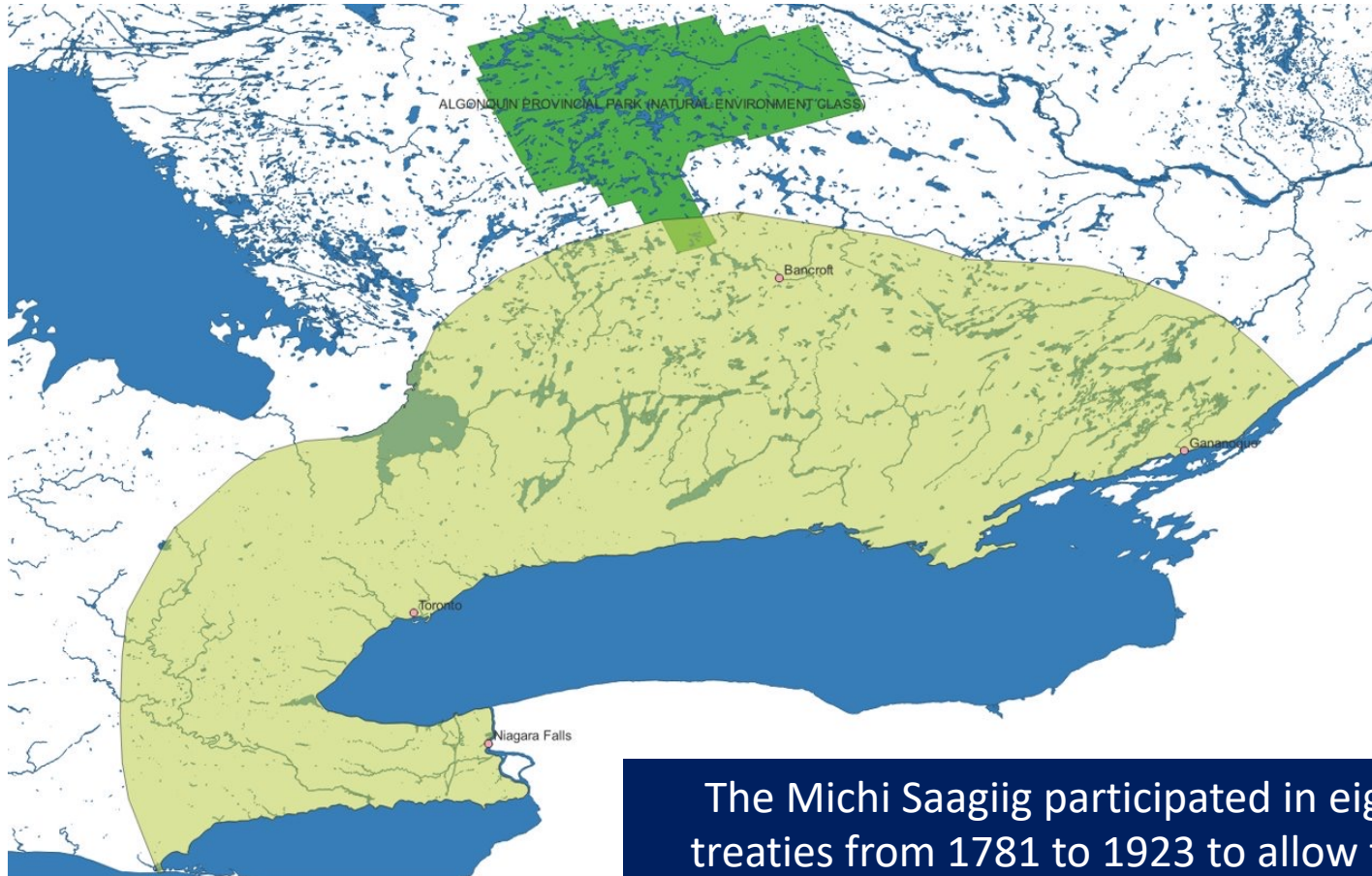
Excerpt From Michi Saagiig Nishnaabeg by Gidigaa Migizi.



-  Alderville First Nation
-  Curve Lake First Nation
-  Hiawatha First Nation
-  Mississaugas of the New Credit First Nation
-  Mississauga First Nation
-  Mississaugas of Scugog Island First Nation



# Michi Saagiig Nishnaabeg: This is Our Territory



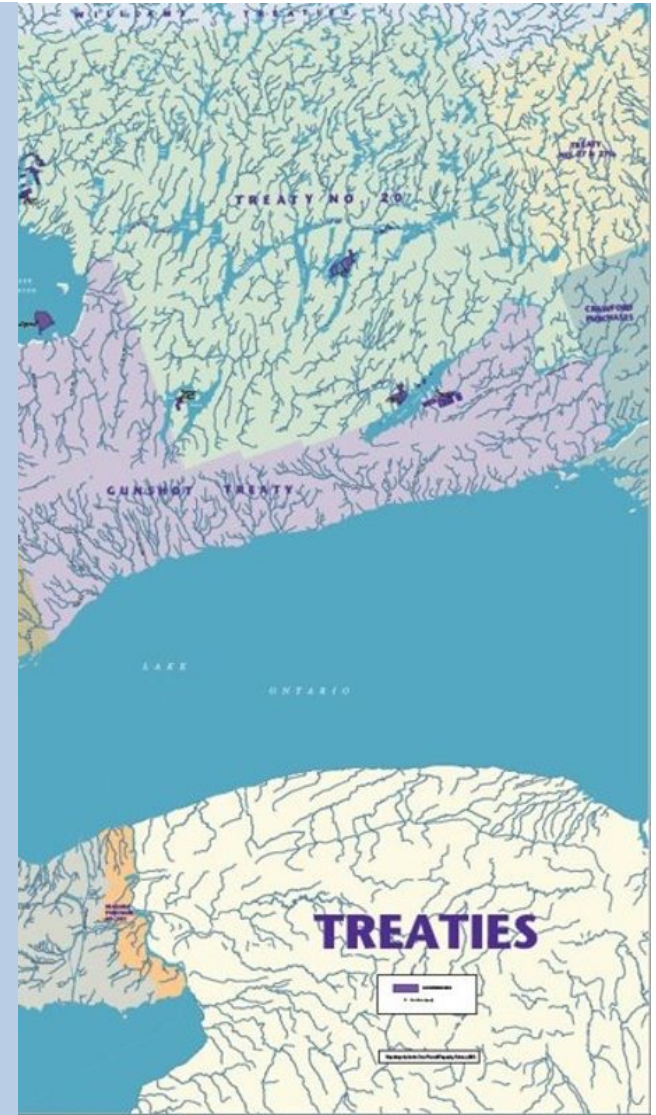
The Michi Saagiig participated in eighteen (18) treaties from 1781 to 1923 to allow the growing number of European settlers to establish in Ontario.

# The Michi Saagiig Nishnaabeg

## Treaties

### The Johnson-Butler Purchase (Gunshot Treaty), 1788

- The treaty was negotiated to accommodate settlers within Michi Saagiig Nishnaabeg territory and was not understood to impact the ability of the Michi Saagiig to hunt, gather, live and occupy the shores of Lake Ontario, its tributaries and the islands.
- It was understood that the treaty would allow settlers to farm the fields while maintaining Michi Saagiig right to camp 66 feet from the shore or banks of any water source.
- Sir John Johnston, Superintendent General of the Indian Department, met in 1787 with several Mississaugas at the Bay of Quinte, **where the Mississaugas of the Credit purportedly sold the lands of the Toronto Purchase Treaty (MCFN, 2020).**
  - A supposed deed documenting the sale of the lands was found years later and **raised serious questions about the legitimacy of the deal between the Crown and the Mississaugas (MCFN, 2020).**
  - Problematically, **the deed was found blank and had no description of the land** “purchased” by the Crown (MCFN, 2020).
  - Also of concern was that the marks of the chiefs who had agreed to the sale **were written on separate pieces of paper and then affixed to the blank deed (MCFN, 2020).**



# The Michi Saagiig Nishnaabeg

## The Williams Treaties First Nations (WTFN)

- The Michi Saagiig participated in eighteen (18) treaties from 1781 to 1923 to allow the growing number of European settlers to establish in Ontario. Pressures from increased settlement forced the Michi Saagiig to slowly move into small family groups around the present-day First Nations of the Williams Treaties.
- The **Williams Treaties First Nations** are:
  - Alderville First Nation
  - Beausoleil First Nation
  - Chippewas of Rama First Nation
  - Chippewas of Georgina Island First Nation
  - Curve Lake First Nation
  - Hiawatha First Nation
  - Mississaugas of Scugog Island First Nation





## INTRODUCTION

# The Michi Saagiig Nishnaabeg

*2018 Statement of Apology for the Impacts of the 1923 Williams Treaties*

On November 17, 2018, in Rama, Ontario, the Honourable Carolyn Bennett, Minister of Crown-Indigenous relations, apologized on behalf of the Government of Canada for the negative impacts of the 1923 Williams Treaties on the Williams Treaties First Nations.

**In 1923, the Crown could have, and should have, done better. In 2018, I pledge that we can, and will, do better.**

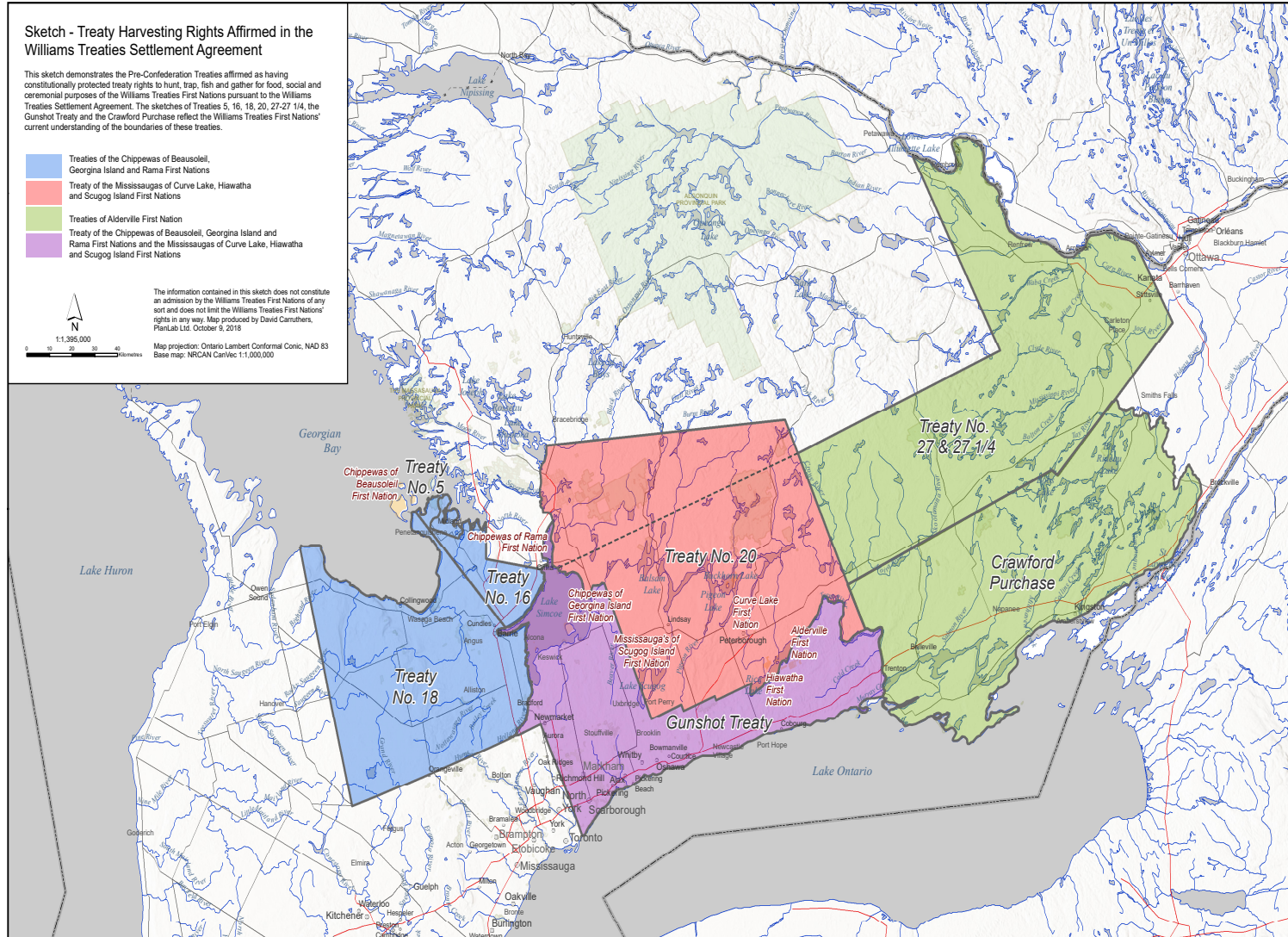
- Today, the Government of Canada recognizes that the Crown did not adequately compensate or provide you with additional reserve lands under the Williams Treaties.
- The Crown's actions in negotiating and implementing these treaties did not respect your ancient and profound relationship with your traditional lands, and
- the Crown's interpretation of these treaties unfairly restricted your ability to harvest in your pre-Confederation treaty areas.

(Hon. Carolyn Bennett, 2018).

## INTRODUCTION

# The Michi Saagiig Nishnaabeg

## Williams Treaties Settlement Agreement (2018)



Michi Saagiig Nishnaabeg 2018 Williams Treaties Settlement Agreement Map



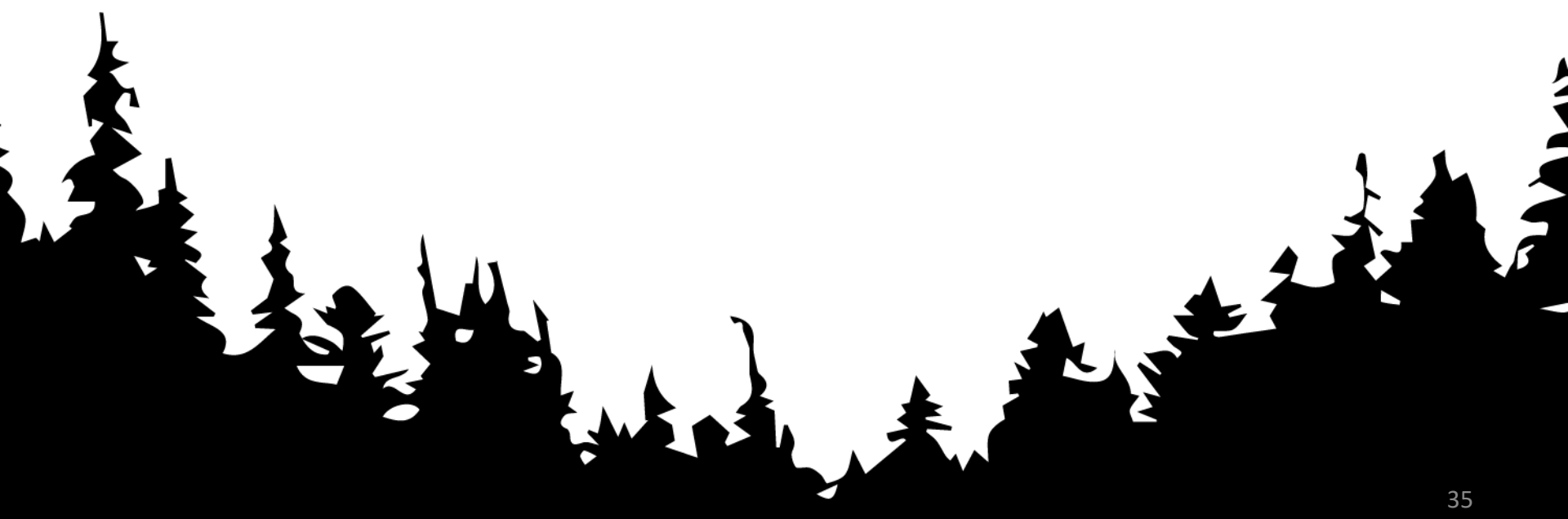
# Relationship with Salmon







# Environmental & Impact Assessments



# Shifting Baselines Syndrome (SDS)

- To estimate what an ecosystem looked like prior to impacts of colonialism, western scientists often construct baselines.
- Conservation practitioners aim to perpetuate these supposed reference points into the future.
  - In the absence of diverse ways of knowing, these reference points shift and are accepted as new norms

## FOR EXAMPLE

Can anybody tell me what Europeans used Buckthorn for?



# Settler Understandings of Nature

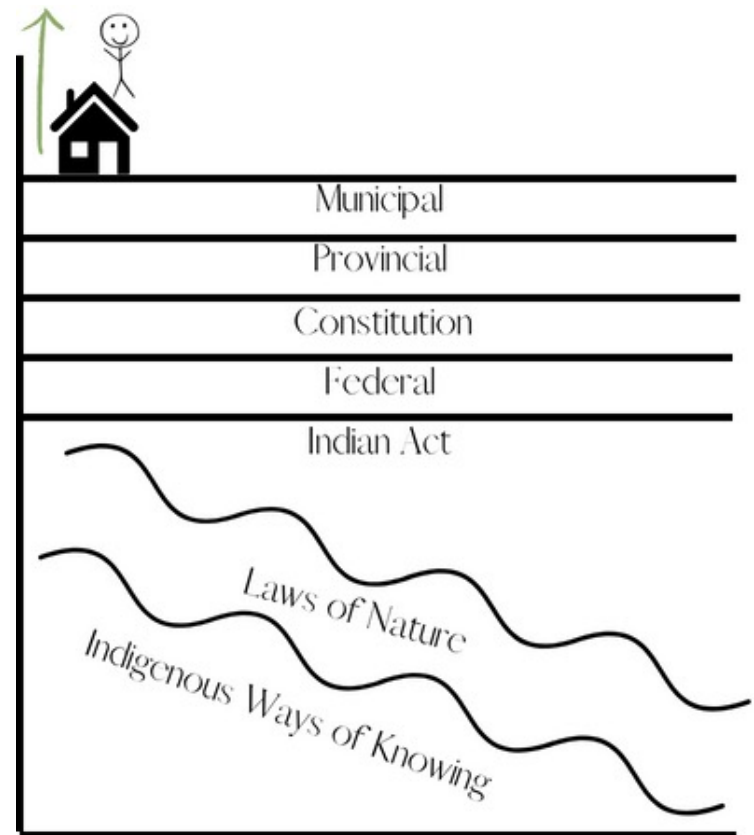
- Ecological Restoration & Rewilding
  - Wilderness encapsulates a beings **naturalness** and **freedom from human control**.
- The separation of humans and nature is a Colonial construct.
  - **The wilderness areas prized by settlers for their 'pristineness' would not exist without Indigenous peoples.**



Photo by [Annie Spratt](#) on [Unsplash](#)

# Western Mitigations

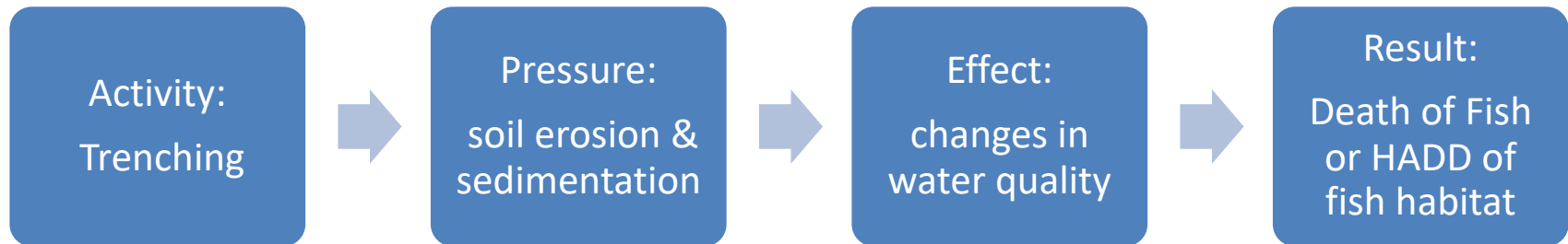
- Environmental and Impact Assessments often seek mitigations for potential project risks.
- In this line of work, it's important to recognize that sometimes you cannot mitigate impacts to Treaty Rights.
- **Remember: The Hierarchy of Rights**
  - Indigenous rights are distinct from and supersede settler policies, regulations, and guidelines.





# Example: Pathway of Effects

Which industry standard mitigations would apply to this case?



Under a Western Framework, mitigations are implemented based on regulatory requirements.

- *E.g., MNRF Regulations*
- *DFO Regulations*
- *MOECC Regulations*

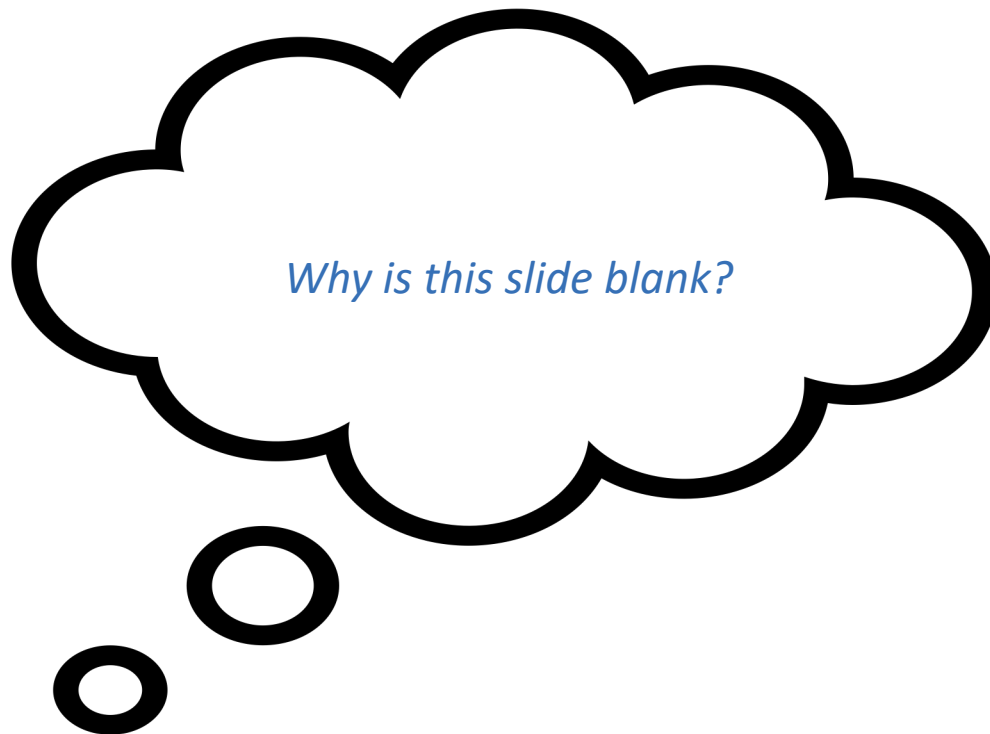
Often, these frameworks do not prioritize Treaties or Inherent Rights.

- However, the above-mentioned policies cannot be made without Treaty.

## For Example:

If this project were in the Gunshot Treaty, industry-standard wetland buffers would not be sufficient.

# Accommodations





## Fireside Chat

**This brings us to the end of our formal presentation.**

**At this time, we welcome any questions, comments, or discussion from the audience.**



# Let us finally begin to walk together

Miigwetch  
&  
Thank You

Please reach out:  
Gary Pritchard



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