

Land Does Matter

Mi'kmaq of Epekwitk

Presentation to Land Matters Committee

March 30, 2021



Why land matters to the Mi'kmaq

- Thank you for the opportunity to present to the Land Matters Committee
- The Mi'kmaq of PEI understand that land generates a level of emotion unequaled in other aspects of Island life. Concerns include:
 - historic grievances relating to land
 - deep personal connections to pieces of land
 - sales of large tracts of land to industrial interests
 - off-Island ownership of coastal properties
 - industrial use and misuse
 - concerns linked to farming practices (ground water contamination, loss of hedgerows, soil erosion, irrigation), and
 - climate change, accelerating coastal erosion, sea level rise, storms, and draught
- While the Mi'kmaq share a number of these concerns with other Islanders, Mi'kmaq interests require a special level of attention due to our constitutionally-protected Aboriginal rights to the Island

Mi'kmaq concerns

While the Mi'kmaq have a broad range of interests and concerns relating to land, land ownership and use on the Island, today's presentation will focus on three main areas:

- Mi'kmaq rights to the land
- Resource sustainability relating to land and land use practices, and
- The need for inclusion in land management

Mi'kmaq Aboriginal and Treaty Rights

Mi'kmaq hold Aboriginal and Treaty Rights on PEI

- Aboriginal Rights refers to practices, traditions and customs that distinguish the unique culture of a Nation/First Nation and were practiced prior to European contact.
- These provide the Mi'kmaq with the right to benefit from the land and how the land is used
- Mi'kmaq Aboriginal and Treaty Rights were acknowledged by the federal and provincial government with the signing of the Framework Agreement to address Mi'kmaq rights and title in 2019

Text from Section 35, Constitution Act, 1982

“The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. (2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada”

Peace and Friendship Treaties

- Peace and Friendship Treaties were diplomatic treaties entered into between the Crown and the Mi'kmaq in the 1700's with the goal of ending hostilities and encouraging cooperation
 - These treaties did NOT surrender any Mi'kmaq interests to lands and resources
- The Supreme Court of Canada recognized in *R.v.Marshall* that the Peace and Friendship Treaties are still applicable and are a source of rights for the Mi'kmaq
- As a result of existing Aboriginal and Treaty rights, the Mi'kmaq are not just stakeholders, they have an interest in the land which is constitutional in nature and therefore must be given a say in land use in their traditional territory

Implication for Crown Land on PEI

- The Mi'kmaq have among the smallest reserves of any Indigenous group in Canada
- The province of PEI has the smallest percentage of Crown land of any provincial government in Canada
- As part of ongoing rights negotiations, the Mi'kmaq will be looking to increase their land holding to support current and future needs, including the ability to develop an economy to support the people and their continuing way of life
- This increase will be through acquisition of Crown land or on a willing seller-willing buyer basis
- It is critical that the Province of PEI maintains Crown land inventory toward Mi'kmaq land acquisition as part of future agreements
- The recent announcement of almost a million dollars to acquire additional Crown land is a positive first step

Netukulimk – Resource Sustainability

- The Mi'kmaq are deeply concerned about resource sustainability, including the protection of land and water on PEI
- Climate change is an increasing threat to land on the Island:
 - Extreme weather events
 - High winds including hurricanes, flooding and draught
 - Loss of land mass
 - Coastal erosion from more violent storms and rising sea levels
- Degradation of waterways
 - Overuse of causeways (rather than bridges) reducing natural water flow
 - Run-off from agriculture and construction

Netukulimk – Resource Sustainability cont.



- Land use and agricultural practices lack sufficient safeguards to protect soil
 - Loss of hedgerows as windbreaks against wind erosion and for habitat
 - Limited use of cover crops
 - Excessive tillage and soil compaction
 - Dramatic reduction in soil organic matter (SOM) over last 20 years
 - Overuse of chemicals
 - Inadequate protections for environmentally-sensitive land

... resulting in loss of topsoil, poor moisture retention and related negative soil impacts
- Corporate ownership and industrial farming are moving the land-value proposition out of the hands of Islanders and contributing to the use of legal maneuvers to avoid in the current land protection framework.
 - Contributing to increasing demands for groundwater for irrigation, a dramatic reduction in SOM and an overreliance on fertilizers and other chemical-based additives, all put the land and water at risk.

Netukulimk - Resource Sustainability

- Current protections under the *Land Protection Act* and the *Planning Act* are inadequate to safeguard the soil and soil health for the future.
 - Almost 950 exemptions from 3-year crop rotation in 2020
 - Current efforts to replace lost hedgerows is in its infancy (~2000 participants, 800,000 trees planted)
- A major component of revisions to the *Land Protection Act* must include increased protection of the land including the quality of the soil
 - Options could include an incentive approach to protecting land and water health
 - Current system appear to allow for no apparent penalties for mistreatment of the soil or after-the-fact fines eg for stream contamination from run-off
- Mi'kmaq have an interest in a stewardship role relating to land, protecting land for future generations so they help ensure that the land remains a key sustainable resource

Transparency and Inclusion

- Engagement and transparency are watchwords for effective, modern governments
- Greater openness on land and planning policies and on how regulations are managed to address the perception – rightly or wrongly – that there is a lack of transparency relating to government decisions on land
- The Mi'kmaq as holders of Aboriginal and Treaty rights require special consideration in recognition of their rights and to ensure their rights are protected and implemented
- The Mi'kmaq are seeking an enhanced level of inclusion to ensure policies and laws do not negatively affect these rights

Transparency and Inclusion

The Mi'kmaq are:

- Seeking a role in land policy development and management
- Proposing exploring a model, currently used by some federal departments, for joint mandate development
 - Provides an opportunity for Indigenous organization to play a substantive role in the development of government policies and legislation on issues that affect them

This proposal could help ensure an appropriate level of Mi'kmaq inclusion in decision-making in acknowledgement of their rights and interests in the land

Conclusion

- Mi'kmaq are rights-holders to lands and resources on the Island recognized by Constitutionally-protected Aboriginal and Treaty rights, due to their historic use and occupation of the land and continued interest in the land
- As outlined in this presentation, the Mi'kmaq have articulated the need to maintain an inventory of Crown land toward a future increased land base, greater protection of the land and water through strengthened *Land Protection Act* and *Planning Act* and a real and substantive role for the Mi'kmaq in land policies and management of land
- **Recommendation: Based on Mi'kmaq constitutionally-protected rights and their deep interest in land sustainability, it is recommended that the Mi'kmaq be given a substantive role with government in the development and shaping of land polices and land management on PEI**

Wela'lioq/Thank you