

# VIRTUAL WEBINAR

## Additions to Reserve and Treaty Land Entitlement under Framework Agreement

THURSDAY, November 19, 2020

9:30 AM (PT)

+ 90 min Session

+ 15 min Mix & Mingle



slido.com

#TMPD-NOV-19

# TMPD Virtual Webinar Welcome



# 2020 Virtual Webinar Schedule



Training, Mentorship & Professional Development

## TMPD Virtual Webinar & Workshop

### 2020 Schedule

16.	Additions to Reserve & Treaty Land Entitlement	<a href="#">Nov 19</a>
17.	Individual Agreement – Roles, Responsibilities & Expectations	Dec 3
18.	Treaties and the Framework Agreement	Dec 17
<b>VIRTUAL WORKSHOPS &amp; WEBINARS 2021</b>		<b>Save the Date</b>
19.	Different meanings of Consultation & Engagement across Canada	Jan 21



#### TMPD WANTS YOUR FEEDBACK

We are currently working on the 2021 TMPD Workshop & Webinar schedule. I encourage you to forward any suggestions or topics that would benefit your community directly and support virtual networking opportunities.

**KNOWLEDGE PATHS**  
Lands Governance Under Framework Agreement



### Dec 2020

THU, DEC 3, 2020 / 9:30 AM PDT / 12:30 AM PST

**VIRTUAL WEBINAR**

**Individual Agreement Roles, Responsibilities & Expectations**

Training, Mentorship & Professional Development

**WEBINAR – Individual Agreement – Roles, Responsibilities & Expectations – SAVE THE DATE**

Dec 3, 2020 @ 9:30 am PST

TMPD VIRTUAL WEBINAR Topic: Individual Agreement Roles, Responsibilities & Expectations (PDT) SAVE THE DATE Notice & Registration will be available once details [...]

[Find out more >](#)

THU, DEC 17, 2020 / 9:30 AM PDT / 12:30 AM PST

**VIRTUAL WEBINAR**

**Treaties and the Framework Agreement**

Training, Mentorship & Professional Development

**WEBINAR – Treaties and the Framework Agreement – SAVE THE DATE**

Dec 17, 2020 @ 9:30 am PST

TMPD VIRTUAL WEBINAR Topic: Treaties and the Framework Agreement Date: Dec 17, 2020. SAVE THE DATE Notice & Registration will be available.

[Find out more >](#)



# TMPD Virtual Webinar Guidelines & Tools



# Agenda & Objectives

9:30

Welcome & Introduction

9:40

ATR & TLE under Framework Agreement

10:00

Land Use Planning, Municipal Service Agreements & Environment

10:20

Community Perspectives Panel

11:00

Future Discussions & Closing

11:00-11:15

Virtual Mix & Mingle



# TMPD Virtual Webinar Presenters



**Andrew Beynon**  
Director Land Code Governance



**Stephen McGlenn**  
Specialist, Land Use Planning



**Ed Vystrcil**  
Support Services Prairies



**Stefanie Recollet**  
Waste Management Specialist



**Nipissing First Nation**  
Cathy McLeod



**Wei Wai Kum First Nation**  
Tabitha Donkers



**Swan Lake First Nation**  
Eric Cameron



**Mississauga First Nation**  
Keith Sayers



- The Framework Agreement on First Nation Land Management (FA) provides an option for ending the colonial Indian Act lands system
- The Lands Advisory Board is exploring the potential for the FA to extend to traditional territories but for now the FA only applies on reserve lands
- First Nation Lands under the FA can include future additions to existing reserves (ATRs)
- The Lands Advisory Board is exploring ways to improve the ATR process which is frustratingly slow and expensive



- Until 2018, the FA was silent on the ATR ***process***
- The FA has always included ***substantive*** ATR provisions (as opposed to process), specifically:
  1. the provision dictating that replacement reserve lands must be provided where a First Nation agrees to a land exchange (FA 14.1.3)
  2. Canada's obligation to provide replacement reserve land in the exceptional case of a federal expropriation of the full interest in a reserve (34.2 FA)





The ***process*** for ATRs even under land code is mostly governed by the federal ATR process. The FA provides that:

1. Additions to First Nation Lands require only a Ministerial Order (no longer a decision of the federal Cabinet as Governor in Council)
2. If requested by a land code First Nation, ATRs can automatically become First Nation Lands
3. Land code First Nations can provide in advance for replacement of third-party interests and laws to govern lands ... to take effect at the moment lands become First Nation Lands



# Canada's ATR Policy & Process

- Canada's ATR policy is published online as chapter 10 of a federal Land Management Manual
- The ATR policy also provides detailed process guidance, particularly in the annexes which include forms, sample letters, and the sequencing of the ATR process
- There are three categories of ATRs which are discussed on the following pages



- Examples include specific claim settlement agreements, Treaty land entitlement agreements, land exchanges, and agreements for relocation of a community (full list is in the Policy)
- This category applies when Canada's legal obligations are clear (e.g. settlement agreement reached), not enough for a First Nation to have an unresolved claim to land
- The legal obligation or commitment must “contemplate reserve creation” – a specific claim settlement which only provides for financial compensation would not qualify
- Sometimes legal obligations or commitments identify specific parcels of land to be added to reserve but many leave land acquisition to a later date



- The ATR policy refers to community additions for purposes such as residential use, community growth, culturally sensitive sites, and economic development (full list is in the Policy)
- This category triggered where a First Nation “needs” additional land – but there is no definition of “need”
- Community additions ATRs are proposal based and proposals to Canada are more likely to succeed if there is a strong case demonstrating need, benefits, and purposes of the ATR (e.g. economic development)



# ATRs – Specific Claims Tribunal Decisions which include lands as compensation

- This is the narrowest of the three categories in the ATR policy, focused only on the Specific Claims Tribunal
- This would not include decisions by courts if they ever were to order that lands be added to reserve (would be a legal obligation under Category One of the ATR Policy)



# Treaty Land Entitlement (TLE) Historical Perspective

- In general terms "TLE" refers to land Canada owes to specific Bands under the terms of the originals Treaties. Not all Bands received their full amount of land – **Shortfall** of what was promised
- Canada entered into various treaties with Indian Bands in Manitoba between 1871 and 1910. These treaties (1,3,4,5,6,10) provided that Canada would set aside a certain amount of land as reserve land based on Band populations at the time of the original reserve surveys
- **Per Capita provisions** of Treaty 6 640 acres per family of 5 (most# Treaties), 160 acres per family of 5 (Treaty 5)
- Provincial participation in TLE results from provincial obligations to Canada under the 1929/30 Manitoba Natural Resources Transfer Agreement (MNRTA)
- Through the MNRTA, Canada transferred the control and administration of all unallocated Crown lands to Manitoba. The MNRTA also requires that Manitoba set aside sufficient Crown land so Canada can satisfy its outstanding treaty obligations. **This is a constitutional obligation – also one of the only Treaty Implementation agreements in Canada**



# TLE Background

- Currently in Manitoba there are 31 First Nations (Bands) with outstanding TLE claims, or approximately 50% of Manitoba's 64 First Nations. Canada has validated (confirmed) the outstanding TLE of 27 of these First Nations. Eight (8) of the First Nations with validated claims have signed individual TLE settlement agreements outside of the TLE Framework Agreement.
- The Treaty Land Entitlement Committee of Manitoba Inc. (TLEC) signed the TLE Framework on behalf of 19, now 20, Entitlement First Nations on May 29, 1997 (see Map A).
- To date 15 of the TLEC First Nations have executed Treaty Entitlement Agreements & Trust Agreements as required to proceed within the Framework Agreement



# Overview of TLE Agreements in Manitoba & Saskatchewan



**Saskatchewan TLEFA**

**Independent FNTLE**

**Manitoba TLEFA**



**1994**

**1997**

**2020**



## Manitoba TLE

- 1994-97
- #of FNs:32
- Land Entitlement:1.1 Million Acres (Crown land and private land)
- Money:\$76 Million
- Purchase lands – fair market value, “willing buyer, willing seller”
- Estimate 500+ ATRs

## Saskatchewan TLE

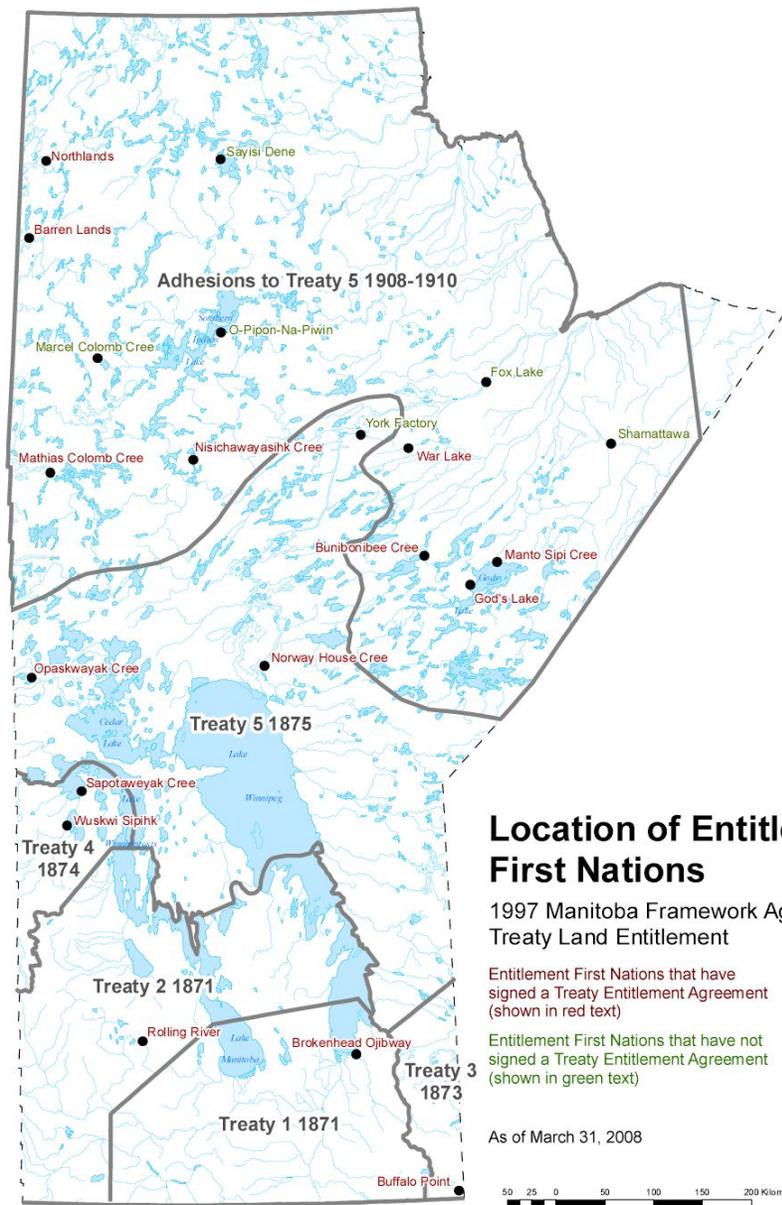
- 1992
- # of FNs:30
- Land Entitlement: 1.576 Million Acres (Crown land and private land)
- Money:\$446 million
- Purchase lands – fair market value, “willing buyer, willing seller”
- Estimate 500+ ATRs



# Types of TLE Claims

- Initial (or Late Entitlement) are when a First Nation asserts that it has never received the reserve land promised under Treaty.
- Shortfall arise when a First Nation asserts that the full amount of reserve land promised under Treaty was not set aside.





## Location of Entitlement First Nations

1997 Manitoba Framework Agreement on Treaty Land Entitlement

Entitlement First Nations that have signed a Treaty Entitlement Agreement (shown in red text)

Entitlement First Nations that have not signed a Treaty Entitlement Agreement (shown in green text)

As of March 31, 2008

0 25 50 100 150 200 Kilometers



## **NISICAWAYASIIHK CREE NATION (Nelson House - Manitoba)**

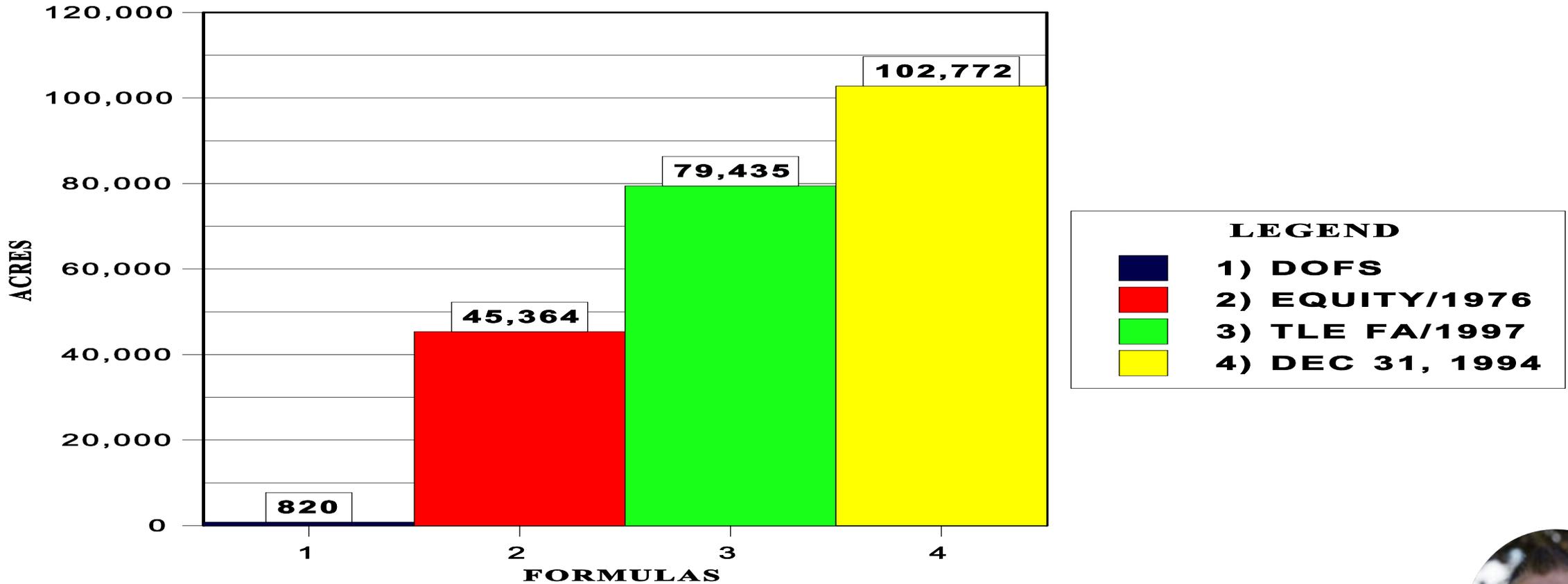
- Total Entitlement Acres = 79,435 (124.12 square miles)
- Federal Payment = \$1,933,017
- Signed Treaty Entitlement Agreement – July 30, 1998
- 40 Crown land selections – 15 Reserve Status to date
- Land Selection Objectives/Strategy:
  1. Economic Development – closest city, mine & minerals, potential parks, cottaging, etc
  2. Protection/Governance – historical sites, cultural/sacred areas, ceremonial, gathering
  3. Special Management – control waterways, leverage natural resources, protected areas etc





The following chart is a graphic illustration of the various land figures and methods of calculations of those figures that were bearing upon the TLE negotiations.

## COMPARISON OF LAND AMOUNTS



- NCN main reserve 15,000 acres promised under Land provisions of Treaty 5
  - Received 14,200 acres
- "Shortfall" of 800 acres (1908 to mid 1990s)
- TLE settlement amount – 79,435 acres
- To date gained reserve status to 15 reserves, 25 still in process (primarily complex Third-Party Interests to resolve) - Land Code will expedite granting land interests required



# ATRs – process challenges

- To its credit, Canada has set aside millions of acres of lands as ATRs in recent years (see <https://www.aadnc-aandc.gc.ca/eng/1466532960405/1466533062058>)
- However, Canada has been criticized by the Auditor General for focusing too much on process, and has been criticized for delays in the ATR process
- The Standing Committee Indigenous and Northern Affairs of the House of Commons has echoed concerns over ATR delays
- Canada's approval of ATRs depends on political considerations (federal Minister's final authority on an ATR), as well as complex legal and technical issues (Indigenous Services Canada, Justice Canada, and even other department's involved)



## ATRs – process challenges, cont.

- Canada's approval of ATRs also depends on resolving technical issues with departmental officials
- Many ATRs are delayed because of complex existing interests, existing environmental damage, relationships with neighbouring governments, and future development objectives
- It is important to remain focused on your First Nations ATR objectives and deadlines while engaging at the political and technical level with Canada and other governments



# ATR process - land use planning

- Land use planning can assist your First Nation in meeting some of the requirements set out in the ATR process, e.g. integrating existing planning objectives, identifying intended uses of future ATR lands, clarifying the anticipated impacts and benefits from the proposed reserve creation
- A formal plan is not required as part of the ATR policy, however current and intended uses of the proposed Reserve Land must be identified
- First Nations can use community planning processes to seek direction from membership regarding land acquisition and reserve creation:
  - is growing the land base a priority?
  - What kind of criteria can inform what lands should be purchased/acquired and why?
  - How is the community involved in land acquisition decisions?
  - Given the time, costs and capacity needs to go through an ATR application, which lands should be added to reserve? E.g. those with significant cultural features? Should they come under the jurisdiction of the Land Code once they are converted to Reserve status? Should some lands be held in fee-simple, e.g. for collateral?



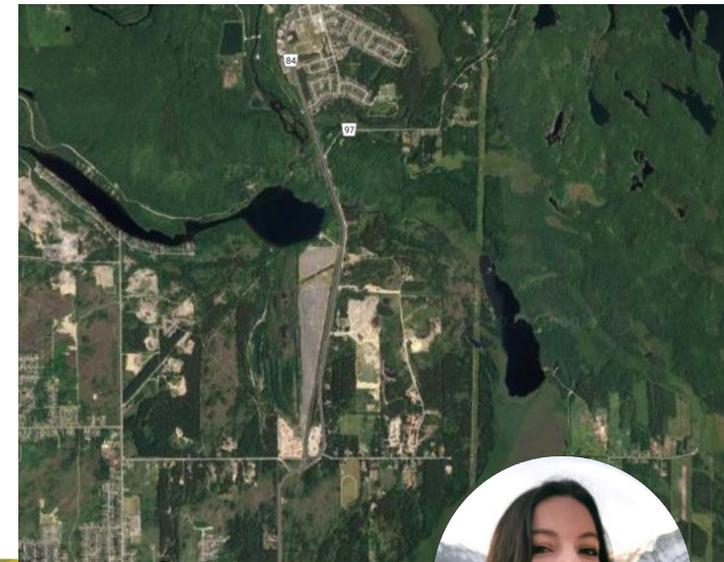
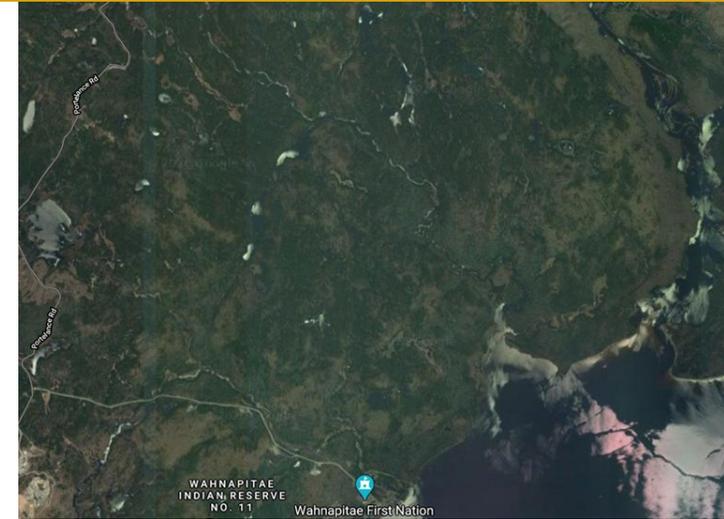
# ATR process - land use planning

- Neighboring governments do not have a veto on an ATR proposal. However, Canada must be satisfied that concerns raised by affected provincial, territorial and local/regional governments are “addressed” (not necessarily resolved) before an ATR proposal can proceed. It can be difficult to complete an ATR if there are significant concerns from your neighbors that remain unaddressed.
- Proactively building a positive relationship with neighboring governments can assist in resolving issues of mutual interest and concern. Collaborative land-use planning can be helpful in identifying and implementing shared planning objectives (e.g. shared infrastructure projects, transportation, housing, etc.)
- Canada will factor in existing provincial, territorial, regional and local Land Use Planning objectives regarding the land identified as proposed Reserve Land – be familiar with this planning context as it relates to the lands in question
- There is a tension between sharing land use planning and sharing too much information which can raise the price for land acquisitions



# ATR process – municipal service agreements

- Canada will consider infrastructure implications of a proposed ATR – to reduce future cost risks to Canada
- The ATR policy recognizes the potential for ATR lands to trigger no need for service agreements with any neighbouring government
- Will service be required from a municipality? If not, how will the FN provide services themselves (ex. Fire protection)
- In many cases, a frustratingly difficult process of negotiating a municipal service agreement with neighbouring governments can help advance an ATR



# ATR process – environmental issues

- Canada's ATR policy now provides for the potential to acquire lands on which there is some existing contamination – if the future use can accommodate that contamination – or there is a plan for later cleanup
- ESA's are therefore important in refining an ATR proposal and ESAs can provide valuable information for your FN with respect to proposed new lands
- Reminder that the FA makes it possible to provide for existing interests on future ATR lands and to make laws, including zoning laws in advance





# ATR/TLE Conclusion



# Community Approaches



**Nipissing First Nation**  
Cathy McLeod



Background on Land Selection



**Wei Wai Kum First Nation**  
Tabitha Donkers



Successes & Challenges



**Swan Lake First Nation**  
Eric Cameron



Land Code Governance Structure



**Mississauga First Nation**  
Keith Sayers



Advice for ATR Strategy & Best Practice



## Virtual Networking

1. [RC ATR/TLE – Challenges Poll](#)
2. [RC-TULO ATR/TLE - Case Study Interest Poll](#)



# What we covered

**ATR/TLE under  
Framework Agreement**

**Land Use Planning  
considerations for ATRs**

**SLIDO Polls**

1. Case Study Interest Poll
2. Challenges Poll

**Community  
Networking**

**Future ATR/TLE  
Workshops & Case  
Studies**



**FIRST NATIONS  
LAND MANAGEMENT  
RESOURCE CENTRE**



**Training, Mentorship &  
Professional Development**

# THANK YOU

**Angie Derrickson**  
TMPD Manager

c. 250-469-1675

e. [aderrickson@labrc.com](mailto:aderrickson@labrc.com)



**Virtual Mix  
& Mingle**

 LABRC.com

 ResourceCentre\_TMPD

 @FNLMRC

# TMPD Virtual Webinar

Notes & Feedback