

ALLOTMENT LAW

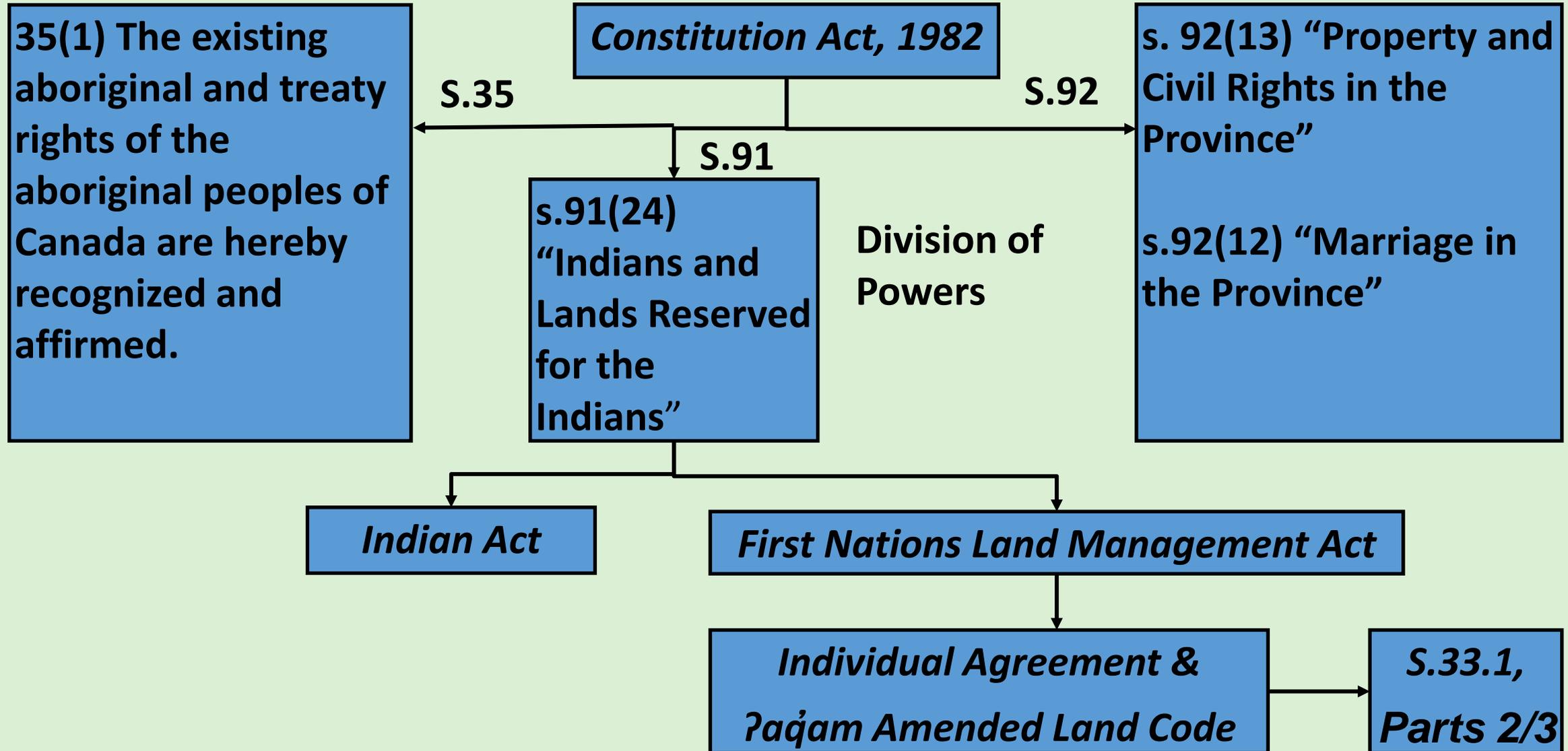
Community Consultation Meeting
/ Second Reading

Presented by: Sonya Pighin
Cedar Law Corporation

Agenda

- Authority to enact an Allotment Law
- Allotments and Certificates of Possession – Generally
- Rights and obligations of allotment holders
- Role of Ṛaḡam (as represented by Council) in relation to allotments
- Procedures
 - *New Allotments; Allotment pursuant to an agreement; Allotments in exchange for community land*
 - *Cancellation of an Allotment*
 - *Transfer of Allotment or Interests/Licence in an Allotment*
 - *Dispute resolution*
- Amending the Allotment Law

Authority to Enact an Allotment Law



Authority to Enact an Allotment Law

The ʔaḡam Amended Land Code states:

33.1 Council may enact laws providing for Council to grant a Member an allotment in ʔaḡam Lands that entitles that Member to:

- a) permanent possession of the land;
- b) benefit from the resources in and of the land;
- c) grant subsidiary interests, Licenses and permits in the land;
- d) transfer, devise or otherwise dispose of the land to another Member; and
- e) any other rights, consistent with this Land Code, that are attached to Certificates of Possession under the *Indian Act*.

Allotments and Certificates of Possession

- “allot” means the act of Council granting to a member the lawful possession of ʔaǰam Lands;
- “allotment” means those ʔaǰam Lands that have been lawfully granted to a member and in which that member has lawful possession;

Reserve Land Status Remains

10. ʔaǰam Lands in which a member holds an allotment continue to be lands reserved for the Indians within the meaning of subsection 91(24) of the *Constitution Act*.

Allotments and Certificates of Possession

Creation of Allotments

8. An allotment:

- a) must be created, granted, disposed of, assigned or transferred by a land instrument and in accordance with this Law;
- b) may only be granted, disposed of, assigned or transferred to ʔaʔam or to one or more members; and
- c) may be subject to any condition deemed necessary or advisable by Council.

Allotments and Certificates of Possession

- “certificate of possession” means a certificate of possession issued by:
 - a) the Minister, pursuant to subsection 20(2) of the Indian Act, to a member who is lawfully in possession of ʔaḡam Lands as evidence of that members right to possession of the land described in the certificate of possession; or
 - b) Council, pursuant to section 12 of this Law, to a member who is lawfully in possession of ʔaḡam Lands as evidence of that members right to possession of the lands described in the certificate of possession;

Allotments and Certificates of Possession

12. At the request of an allotment holder, and every time a new allotment is granted, Council must issue the allotment holder a certificate of possession as evidence of the allotment holder's lawful possession of the ʔaḡam Lands therein.

13. Any person who at the time this Law is enacted holds a valid and subsisting certificate of possession, or has a right to acquire a certificate of possession, pursuant to the *Indian Act* must be deemed to be:

- a) lawfully in possession of the land to which the certificate of possession relates; and
- b) an allotment holder with respect to those lands.

Rights of Allotment Holders

9.(1) Subject to section 33, ?a?am laws, by-laws and policies, an allotment holder is entitled to:

- a) permanent possession of their allotment;
- b) benefit from the resources in and of their allotment;
- c) grant subsidiary interests, licences and permits in their allotment;
- d) transfer, devise or otherwise dispose of their allotment to another member; and
- e) any other rights consistent with the *?a?am Amended Land Code* that are attached to certificates of possession under the *Indian Act*.

Reversion to Ḥaqām

33. On the death of an allotment holder, whose allotment has no improvements on it that are part of a residential home, that allotment reverts to Ḥaqām and all the rights and obligations related to interests and licences in or to that allotment are transferred to Ḥaqām.

Current Ḥaqām Laws, By-laws and Policies

- Ḥaqām Amended Land Code
- Matrimonial Real Property Law
- Currently working on first draft of Fire Protection Law, Trespass Law
- Lands Management Manual

Obligations of Allotment Holders

- 11.** An allotment holder is responsible for:
- a) insurance and maintenance of their allotment;
 - b) insurance, maintenance and repairs for structures and residential homes on their allotment;
 - c) managing and monitoring any interests, licences or permits granted over their allotment;
 - d) where there are changes to ownership of their allotment, providing all relevant fees and information to the ʔaąam Lands Department so such changes may be registered with the First Nation Land Register; and
 - e) ensuring all uses of their allotment comply with ʔaąam laws and policies, and all applicable laws or regulations of Canada or the Province.

Role of ᑭaᓃam in Relation to Allotments

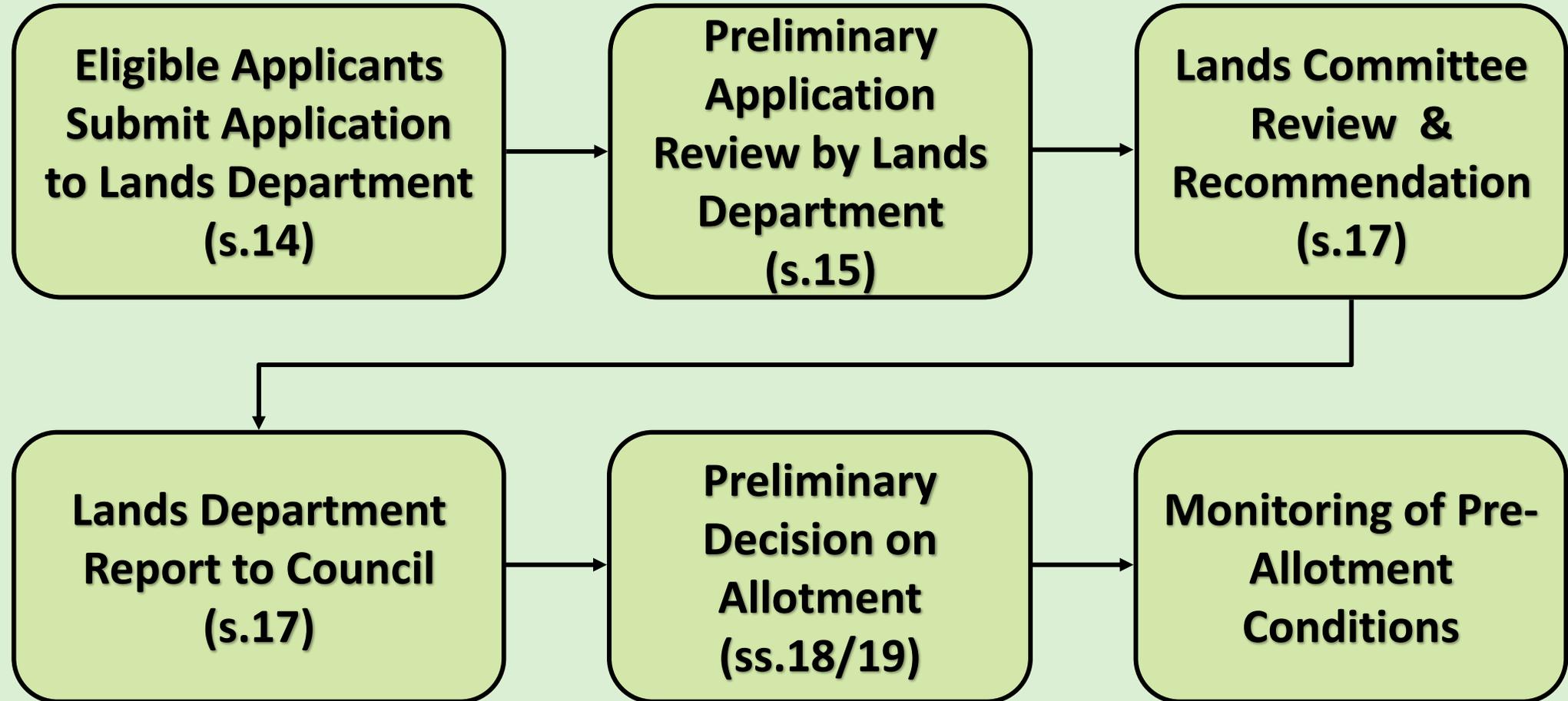
- Review and approve/deny requests from Members for an allotment
- Issue Certificates of Possession to Allotment Holders
- Respect all Allotment Holder's rights
- Approve original grants of an interest or licence in or to their allotment (subject to ᑭaᓃam policies)
- Review and respond to requests Re: cancelling or correcting an allotment where granted the allotment in error, by mistake, or by fraud
- Develop & enact Laws and By-laws for all ᑭaᓃam Lands
- Council consent must be obtained by an allotment holder for the original grant of an interest or licence in or to their allotment (s.36)

Processes for Obtaining Allotments

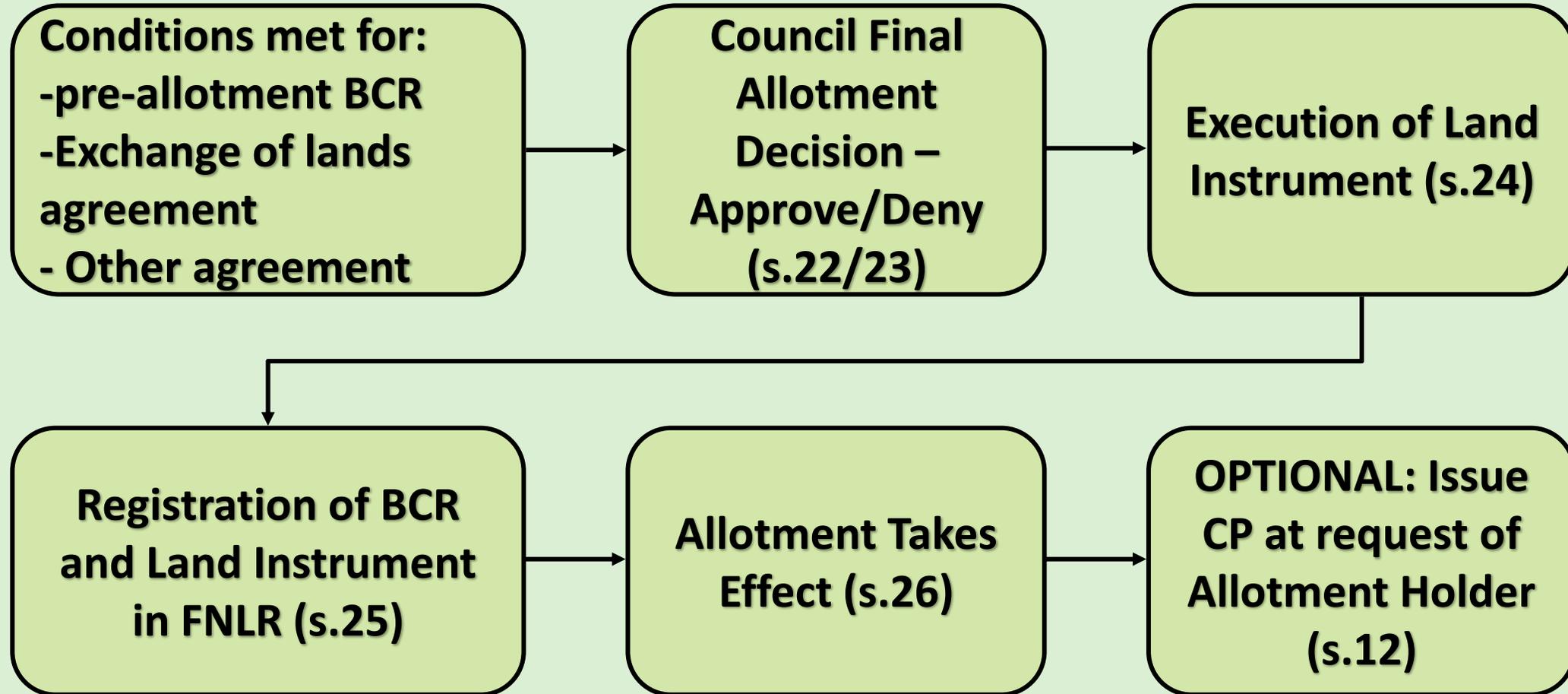
There are **three processes** which may be used for obtaining an allotment:

1. New Allotments
 - *Ss. 8, 14 to 19, and 22 to 25*
2. Allotments Pursuant to an Agreement
 - *Ss. 21 to 25*
3. Allotments in Exchange for Community Lands
 - *Ss. 20, and 22 to 25*

Overview of Pre-Allotment Process for New Allotments



Overview of Allotment Process (for all Allotments)



Application to Lands Department for New Allotment (s.14)

- Must be a Member (s.33.2)
- Must be “in good standing”, meaning must not owe \$ to ᑭᓱᓂᓂ for
 - unpaid rent
 - unpaid mortgage payments
 - unpaid payments for services in relation to an ᑭᓱᓂᓂ –owned rental property
 - Money borrowed from ᑭᓱᓂᓂ that is one (1) or more days overdue to be repaid to ᑭᓱᓂᓂ
 - Money owed to ᑭᓱᓂᓂ that is one (1) or more days overdue to be paid to ᑭᓱᓂᓂ
- Must use Form approved by Council and submit to Lands Dep’t

Application Requirements

- Full Legal Name, membership number, mailing address
- Description and sketch of requested allotment
- Info. on any known interests or rights held by 3rd Parties
- Description of all proposed structures/residential homes and cost estimate for construction
- Either:
 - Evidence in Form approved by Council showing applicant has sufficient funds to construct proposed structures / residential home (i.e. Bank statement, private lending agreement, FNMHF Lending Agreement; OR
 - Evidence of a privately obtained construction mortgage pre-approval that covers cost estimate, is in applicants name, \geq 3 months, permission to confirm
- Statement Re: existing allotments and whether occupied residential home is on the existing allotment

Within 30 Days of Application Lands Dep't Preliminary Application Review (s.15)

- Verify applicant's identity and determine whether applicant is eligible for an allotment (i.e. a Member in good standing)

- If applicant is eligible, verify all information in the application form and assess status of the requested allotment lands
 - ʔaḡam Community Lands?
 - Existing Survey?
 - Cultural heritage site identified in the Land Use Plan?
 - Approved development plans?
 - ʔaḡam Laws, By-Laws, Policies that apply (Ex – Zoning Law, Land Use Plan, Environmental Management Plan, Environmental Assessment Requirements)
 - Parcel Abstract Report / Site Assessment

Within 30 Days of Application Lands Dep't Obtains Recommendation from Lands Committee

Lands Committee Review and Recommendation

16. Within thirty (30) days of receiving an application from an eligible applicant, the Lands Department must:

- a) provide the Lands Committee with:
 - i. all information obtained under section 15, and
 - ii. the application; and
- b) obtain from the Lands Committee a recommendation on whether Council should grant the requested allotment.

Lands Dep't Report to Council (s.17) & Council Preliminary Decision (s.19)

Within 45 days of receiving the application, Lands Department must provide Council:

- Copy of application
- All information collected during the preliminary review
- Lands Committee Recommendation

At the next regular meeting of Council, Council makes a preliminary decision by BCR on whether to grant the allotment, subject to conditions (and once these conditions are completed, final allotment procedures are followed)...and as soon as possible provide BCR to the applicant

Restrictions on Council's Authority to Preliminary Grant an Allotment (s.18)

- Applicant must be a member
- Allotment must be consistent with best interests of ᑭᓱᓂᓄᓐ
- Allotment must be ᑭᓱᓂᓄᓐ Community Lands
- All information required for the application must be provided by applicant
- Must be legal access to requested allotment (Council has discretion to make exceptions here)
- Any 3rd Party Interest holders must consent to the allotment
- Must not adversely impact on approved development plans

Restrictions on Council's Authority to Preliminary Grant an Allotment (s.18) Cont'd

- If applicant owns existing allotment, there must be an occupied residential home on that allotment
- Granting of the allotment must be in compliance with Inupiat laws and policies that apply to the application, including zoning laws, land use plans, environmental management plans, environmental assessment requirements
- If Inupiat has provided a guarantee for a mortgage relating to a residential home on the requested allotment, the final approval must be conditional on that mortgage being discharged

Conditions on Preliminary Allotment Decision (s.18(2)(d))

Preliminary decision must be conditional on the applicant:

■ Within one (1) year:

- Providing Council legal description that shows no overlapping or inconsistent encumbrances
- Provide Council plans for construction of residential home and info re: person who will be responsible for such construction
- Obtaining all relevant building and other construction permits
- Obtaining Council approval of plans for construction
- Complying with environmental assessment policy or laws
- Constructing the residential home
- Maintaining “in good standing” status

Conditions on Preliminary Allotment Decision (s.18(2)(e) and (f))

- If Ṣaḳam has provided a guarantee for a mortgage relating to a residential home on the requested allotment, the final approval must be conditional on that mortgage being discharged
- Until 1 year has passed, Ṣaḳam will not grant any interest or licence in or to the Ṣaḳam Community Lands to another person without applicant's consent

What if Conditions on Preliminary Allotment Decision Are Not Met (s.18(2)(g))

If any one (1) or more of the conditions set out in the band council resolution are not met within the required timeframes, or if the applicant is not in good standing at the expiry of the timeframes for the conditions set out in the band council resolution:

- the preliminary decision to grant the allotment will expire,
- the applicant will be required to make a new application to pursue an allotment,
- ʔaǰam will not be responsible to the applicant or any third party for losses, damages, liabilities or costs in relation to the applicant's failure to comply with the conditions in the band council resolution, and
- ʔaǰam will be free to grant interests or licences in or to the ʔaǰam Community Lands to which the application relates without the consent of, and without providing notice to, the applicant.

Exchanging an Allotment for ᑭaᓃam Community Lands

Exchange of Allotted Lands

20 (1) ᑭaᓃam may, by written agreement with an allotment holder, exchange a parcel of ᑭaᓃam Community Lands for an allotment provided that:

- a) the lands being exchanged are of approximate equal appraised value; or
- b) Council has determined that although the lands being exchanged are not of approximate equal appraised value, the land exchange is in the best interests of ᑭaᓃam and serves a community purpose.

Cont'd...

- (2) Where Council and an allotment holder agree under subsection (1) to exchange a parcel of Ṛaḳam Community Lands for an allotment:
- a) the allotment must be cancelled and all rights and interests in the allotment must revert to Ṛaḳam; and
 - b) the processes under sections 22 to 25 of this Law must be followed to allot the parcel of Ṛaḳam Community Lands to the member.

Final Allotment Decision, Execution and Registration of Land Instrument (ss.22/24-26)

- Pass a BCR
 - Name, Membership number, Legal Description, List of encumbrances, Council Signatures
- Prepare, or cause to be prepared:
 - Land Instrument granting the allotment; Certificate of Possession; Letter to applicant, inviting the applicant to come in and sign the land instrument
- Land instrument that grants an allotment is not valid unless signed by the applicant and a person authorized by Council to sign on behalf of ʔaąam
- Council must ensure BCR and signed Land Instrument are registered in the First Nation Land Register (at which time the final allotment takes effect)

Cancellation of an Allotment (ss.28-31)

Power to Cancel an Allotment

28. Council may cancel an allotment:

- a) if Council granted the allotment in error, by mistake, or by fraud; or
- b) by agreement with the allotment holder.

Regulations and Policies

29. Council may make a regulation or policy that:

- a) sets out the procedures that apply to the implementation of this Law;
- b) sets out the procedures that apply to the cancellation of an allotment; and
- c) prescribes forms for use in the cancellation of an allotment.

Cancellation of an Allotment (ss.28-31)

Cont'd

When Cancellation Takes Effect

30. An allotment is deemed cancelled at the time the cancellation is registered in the First Nation Land Register.

Effect of Cancellation

31. At the time of cancellation, the lawful possession of an allotment reverts to ʔaąam and all the rights and obligations related to interests and licences in or to that allotment are transferred to ʔaąam.

Transfer of an Allotment (ss.32-37)

- On death
 - *Indian Act Requirements + Register in FNLR (s.32)*
 - *No improvements at death = Reversion to ᑭᓱᓱᓱ (s.33)*
- All transfers of allotment, interest or licence must comply with ᑭᓱᓱᓱ Laws, By-laws and policies + Register in FNLR (s.34)
- Council consent NOT required to transfer allotment (s.35)
- Council consent IS required to grant original interest or licence in an allotment (s.36)
- ᑭᓱᓱᓱ NOT LIABLE for ensuring any transfer of an allotment, interest or licence is validly made, enforceable or in a form that will be accepted by the FNLR (these are the responsibility of the allotment holder (s.37)

Dispute Resolution (s.43)

Dispute Resolution

43 (1) The following disputes must be addressed following the dispute resolution process set out in Part 8 of the *ᑭᐱᑭᐱᐱ ᐱᐱᐱᐱᐱ ᐱᐱᐱᐱᐱ* Code:

- a) disputes regarding the boundaries of an allotment;
- b) disputes between two persons, or between a person and ᑭᐱᑭᐱᐱ, in relation to the possession, use or occupation of an allotment, unless such dispute relates to the transfer of an allotment following the death of an allotment holder;
- c) disputes regarding the existence of an allotment; and
- d) disputes regarding the cancellation of an allotment.

(2) For greater certainty, a person cannot dispute a decision by Council in relation to the granting of an allotment.

General (ss.38-33)

- If registered in FNLR = deemed to be with authorization of Council (s.38)
- CP signed by Council Member = Authentic Legal Document (s.39)
- Council authorized to approve forms for: applications for allotments, land instruments granting allotments, Certificates of Possession, transfer forms, exchange forms (s.40)
- ʔaḡam not responsible for liabilities arising out of the use of the forms
- Conflict of Interest in administration of Allotment Law = SMIB FAL Schedule Applies (ss.41/42)

QUESTIONS?