



Subdivision & Development Considerations for Leasing on First Nation Lands

Considerations for Commercial & Residential Leasing under Land Codes

March 9, 2022



Adam Wright, RPP, MCIP
Planner, Land Code Governance

Development related Law-making powers of a First Nation with a Land Code in place:



- laws on the regulation, control and prohibition of zoning, land use, subdivision control, and land development
- laws on environmental assessment and protection
- laws on the provision of local services in relation to First Nation Land and the imposition of equitable user charges

WHAT IS LAND DEVELOPMENT?

Land Development refers to anyone making alterations to the landscape for a certain kind of land-use (e.g., residential, commercial, industrial, community use, cultural), often to pursue economic or community planning objectives.

Changing, converting or restoring landforms



- Landscaping
- Clearing vegetation
- Tree removal
- Grading & filling
- Gravel quarries
- Mining & resources
- Habitat restoration

Installing and maintaining infrastructure or other public works



- Water supply
- Sewer
- Treatment plants
- Transfer station
- Stormwater
- Irrigation canals
- Pipelines

Construction, alteration, renovation, demolition of physical structures.



- Homes, offices and industrial facilities,
- Hospitals, schools
- Fences, swimming pools
- Decks, sheds, garages, etc.

WHAT ARE LAND DEVELOPMENT PROCEDURES?

Land Development Procedures are the guidelines of an individual community on how to implement their development-related Laws. Land Development Procedures clarify the processes that all proponents (including the First Nation itself) must follow for any proposed development on First Nation Lands.

Interests in lands or structures



- Lease
- Sub-lease
- Strata
- Licences
- Permit
- Easements
- Rights-of-Way

Connecting to Utilities and other Services



- Electricity
- Renewable energy
- Internet
- Telephone
- Natural gas
- Drinking water
- Wastewater

Transportation infrastructure



- Roads
- Intersections
- Bridges
- Parking lots
- Sidewalks
- Public trails
- Airports

Laws that Regulate Land Development

*(not an exhaustive list)

Zoning Laws
Development Laws
Environmental Laws
Community Quality Laws
Design Laws / Guidelines

Policies and Plans that Guide Land Development

Community Plans
Land Use Plans
Environmental Management Plans
Cultural Heritage Policy
Consultation Protocol
Comprehensive Community Plans
Land Registry Policy

Procedures and Tools to Guide Development

Land Development Procedures (manual)
Site Application Form
Checklists & Guides
Environmental Laws (checklist)
Zoning Laws (checklist)
Invoicing / Contracts / Fee Schedules
Leases

LAND DEVELOPMENT PROCEDURES

Land Development Procedures help to ensure due diligence is performed by a First Nation, and that land development proposals undergo ***consistent*** assessment that support a fair review and approval process *before* proceeding.

Projects need to be understood for their potential impacts, risks, liabilities and benefits for a community:

- Environment & Climate Change
- Legal Risks & Liabilities
- Cultural Heritage
- Process, Planning & Engagement
- Community Health & Well-being
- Financial & Economic
- Public Works & Infrastructure



For each of these areas, there may be specific Laws, plans, processes, procedures, decisions and expertise to consider, depending on the development.

LAND DEVELOPMENT PROCEDURES



Land Development Projects can permanently change a community, its landscape and built environment

Sustainable Development means identifying risks, liabilities and benefits of a project, from various perspectives

Environment & Climate Change

Legal Risks & Liabilities

Cultural Heritage

Financial & Economic

Public Works & Infrastructure

Process, Planning & Engagement

Community Health & Wellbeing

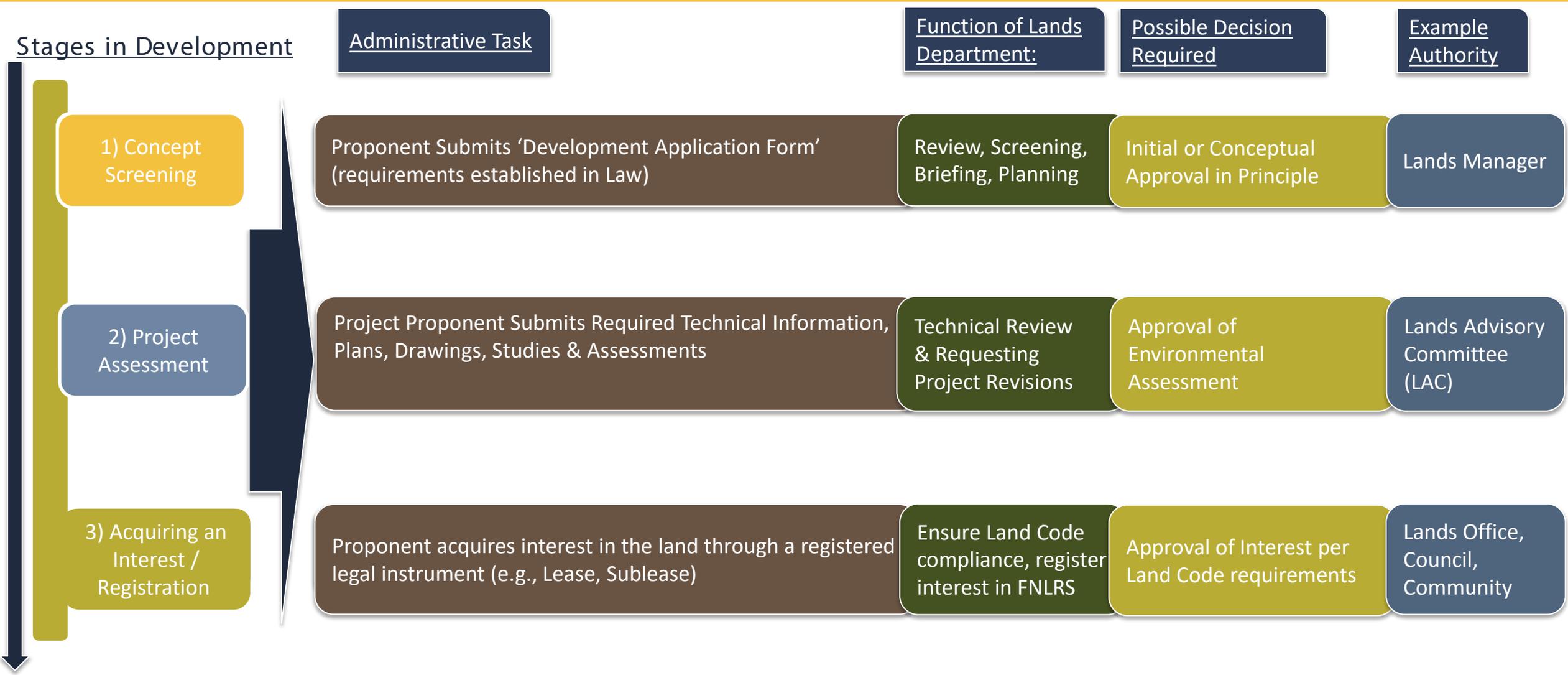
LAND DEVELOPMENT PROCEDURES

...making informed, sustainable development related decisions based on technical data, traditional knowledge and community consent

LAND DEVELOPMENT PROCEDURES: STEPS 1 to 3

- 1. Concept Screening** - Generally, development starts with an initial application to the Lands Department, indicating details about the applicant, project details, location, duration, and other information.
 - The Lands Department reviews the application against the First Nation Land Use Plan to determine if the type of use is eligible in the proposed location, and if necessary, proposes alternative locations or recommends the applicant seek a Land Use Plan Amendment or Rezoning (which would trigger additional community engagement).
- 2. Project Assessment** - Land development projects should undergo various assessments to determine the potential risks and impacts to a community.
 - Often include environmental, geotechnical, & cultural heritage impact assessment studies as well as economic feasibility studies.
 - The project may require revisions and additional mitigation measures to address issues identified in the assessment phase.
- 3. Interests and Registration** - Before any significant land alteration can occur, a legally valid interest in a surveyed parcel of land is typically granted by the First Nation. This may be a lease, sublease, license or other kind of interest, and may require a subdivision or land survey to confirm parcel boundaries.

LAND DEVELOPMENT PROCEDURES – FLOWCHART

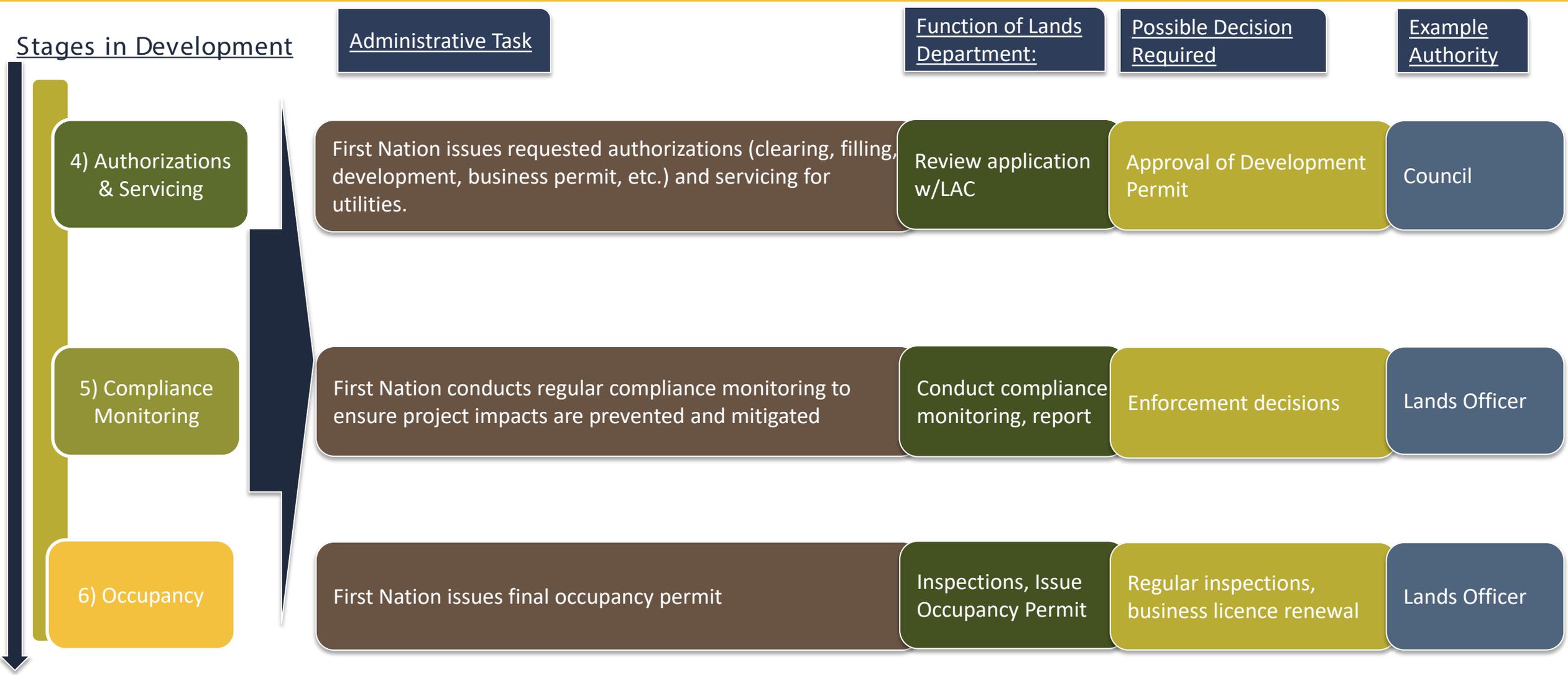


LAND DEVELOPMENT PROCEDURES: STEPS 4 to 6

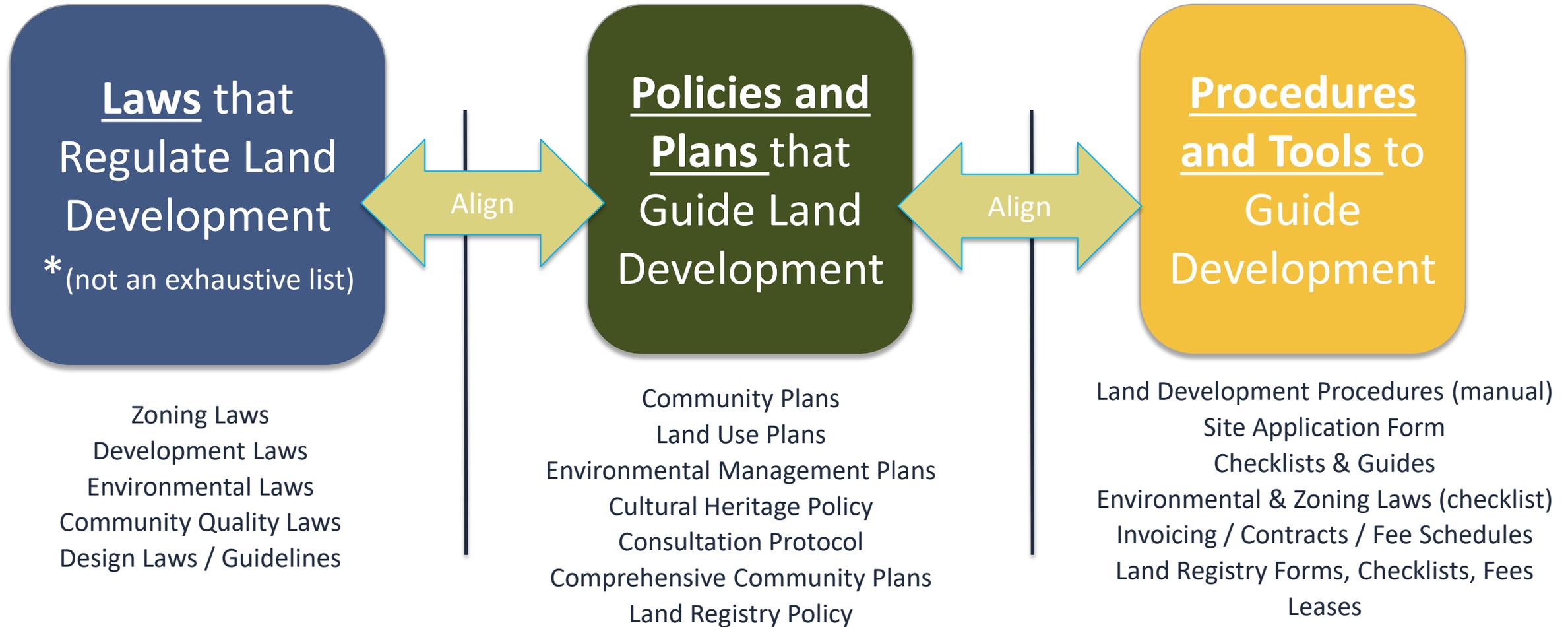
4. **Authorizations* and Servicing** - Proponents must indicate and work together with the First Nation to determine how and where servicing connections will occur, to what standards they are built, and who pays to install and maintain them over time.
5. **Compliance Monitoring** - Once construction begins, the Lands Department will conduct regular compliance monitoring to ensure project impacts are mitigated and the terms and conditions of any permits are being adhered to.
6. **Occupancy** - Upon substantial completion and the issuance of a Final Occupancy Permit, the interest holder can now occupy and use the site as per their registered interest in the Land.

***Projects may require multiple authorizations throughout their lifecycle, such as development permits, soil & fill permits, and business licences. Ongoing process, requires effective records management.**

LAND DEVELOPMENT PROCESS - FLOWCHART



LAND DEVELOPMENT PROCEDURES SHOULD ALIGN



ADDITIONAL DEVELOPMENT CONSIDERATIONS



Land Interest



Public Works & Infrastructure



Land Valuation



Survey(s)



Legal & Liabilities



Lease/Rent rates



FNLRS



Culture & Heritage



Fees/Taxation
(if applicable)



Insurance



Standards



Opportunity Cost



Indemnification



Staff time



Highest & Best Use



Project Feasibility

Acquiring an Interest in First Nation Land

- In accordance with First Nation's Land Code
- Has proper approvals required under Land Code
- Submitted to the First Nation for registration in the First Nation Land Registry System (FNLRS)

Land Governance Office Considerations

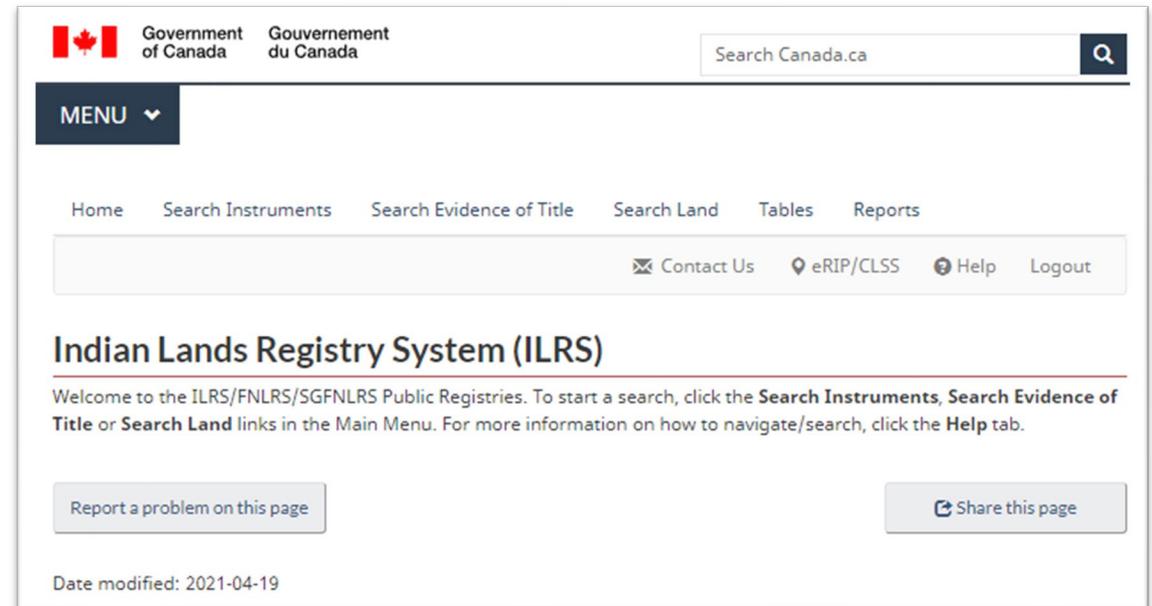
- First Nation Land Registry Law, Policy and Procedures (Forms, Checklists, Fees, etc.)
- Interdepartmental communication for proposed developments and registration of interests

ILRS/FNLRS/SGFNLRS Public Registries

- maintained by Canada and accessed online
https://services.aadnc-aandc.gc.ca/ILRS_Public/home/home.aspx



The screenshot shows the top section of the First Nation Land Register website. At the top left, it features the Canadian flag and the text 'Aboriginal Affairs and Northern Development Canada' and 'Affaires autochtones et Développement du Nord Canada'. To the right is the 'Canada' logo. Below this is a banner with a red maple leaf and the text 'First Nation Land Register' and 'www.aadnc-aandc.gc.ca'. A navigation bar includes links for 'Français', 'eRIP/CLSS', 'Help', 'Contact Us', and 'aadnc-aandc.gc.ca'. Below the navigation bar is a search bar with the text 'Search Instruments' and a 'SEARCH CRITERIA' dropdown menu. There are also links for 'HOME', 'INSTRUMENTS', 'EOT', 'LAND', 'REPORTS', 'PATRICIA WIGHT', 'SYSTEM MAINTENANCE', and 'Add Instrument'.



The screenshot shows the top section of the Indian Lands Registry System (ILRS) website. At the top left, it features the Canadian flag and the text 'Government of Canada' and 'Gouvernement du Canada'. To the right is a search bar with the text 'Search Canada.ca' and a magnifying glass icon. Below this is a 'MENU' dropdown menu. The main menu includes links for 'Home', 'Search Instruments', 'Search Evidence of Title', 'Search Land', 'Tables', and 'Reports'. There are also links for 'Contact Us', 'eRIP/CLSS', 'Help', and 'Logout'. Below the menu is a section titled 'Indian Lands Registry System (ILRS)' with a welcome message: 'Welcome to the ILRS/FNLRS/SGFNLRS Public Registries. To start a search, click the Search Instruments, Search Evidence of Title or Search Land links in the Main Menu. For more information on how to navigate/search, click the Help tab.' There are two buttons: 'Report a problem on this page' and 'Share this page'. At the bottom, it says 'Date modified: 2021-04-19'.

FOUNDATIONAL EXERCISE

Land Use Planning

Knowledge
Sharing



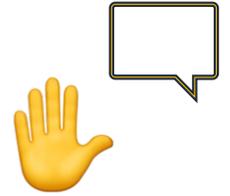
Networking
Activities



FOUNDATIONAL EXERCISE: OVERVIEW

Land Use Planning Project Scenarios

- Interactive Discussion (*Participants can participate by raising hand or using the chat*)
- Poll questions in Scenario 2
- End with Knowledge Sharing Experiences



SCENARIO 1: Residential and Subdivision Development

Project Overview

- 75 units proposed
 - 50 condo units, 25 single detached houses
- 50% of units would be available to non-members
- Walking trails connecting to Community Centre and Gardens
- Need to upgrade water and waste-water servicing capacity to support 75 units.
- Currently have draft land laws in place for Subdivision Development Servicing Laws but these need to be ratified.
 - Draft SDS Laws identify that any planned development must tie into existing utilities infrastructure.
- Proposed 99-year lease with 5-year review periods.

Development Considerations

- Potential costs to the community associated with transition from septic system to sewers
- Traffic Management Plan required at condo site
- Unclear on financial benefits to community, no commitment to costs for development and upkeep of parklands and trails.
- Community concerns relating to changed nature of community lands with 75 units “bombarding the community”



SCENARIO 1: Residential and Subdivision Development - QUESTIONS

Q1: Community concerns about the project design, when is this information considered? Can a lease be signed with ongoing community concerns regarding the project?

Q2: When are the potential costs of the improvements to the water and waste-water systems weighed against the financial benefits of the proposed development?

Q3: When will you need to finalize servicing agreements with neighbouring governments, before or after the lease is signed?

Q4: Who is responsible to complete the Traffic Management Plan (required at condo site) and upkeep of community parklands and trails within development?

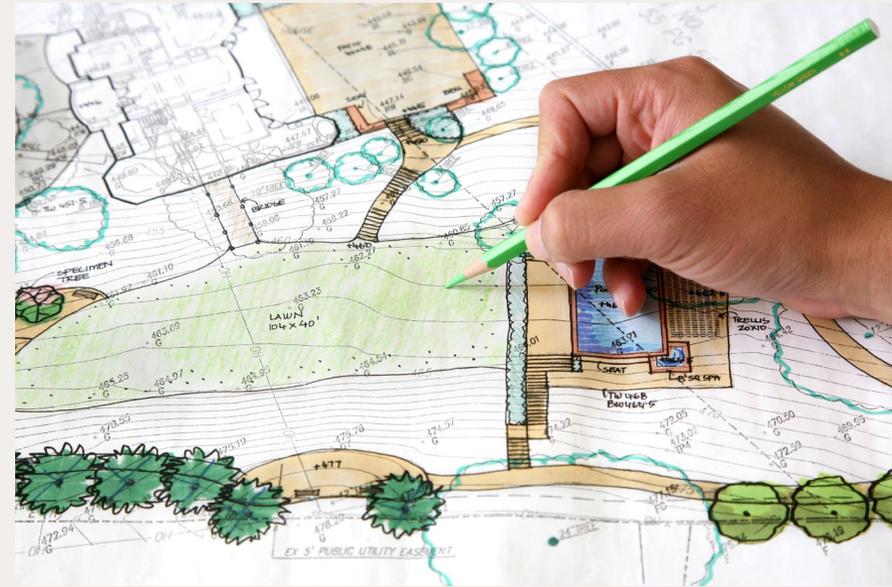
SCENARIO 2: Proposed Residence in 'Light Industrial' Zone

Project Overview

- In a portion of the Community identified for 'Light Industrial' the Proponent (CP land-owner) is proposing to build a primary residence and greenhouse.
- Recent air quality monitoring has identified fluctuations in air quality due to increased idling of delivery vehicles in winter months.
- Walking Trails exist on the plot of land, community members use these informally.
- Proponent is a retired community member and active in the Community.

Development Considerations

- Some elders have expressed concerns respecting traditional use on these lands (and lack of access),
 - Other members point to the community cultural lands that have been identified in the zoning.
- No plan in place to protect or enhance walking trails.
- In the past the CP lands holder has been quite vocal in their opposition of zoning laws. Potential for proponent to ignore direction provided by the Lands office.



SCENARIO 2: Residential and Subdivision Development - QUESTIONS

Q1: Can a lease be signed without the zoning laws being amended?

Q2: What are the best next steps with respect to zoning?

Q3: What is a critical legal step that needs to occur before development can proceed?

Q4: When is project information provided to community members?

Q5: What happens if proponent builds without getting approval?



Knowledge Sharing Experiences

Please feel free to share your stories and lessons learned.

Are there any development scenarios you would like us to provide insights on?

Tips, tricks and tools for lands managers and staff when reviewing development applications and lease interests?



- For more information or to talk about how the RC can support your community please contact your local Resource Centre First Nation Support Services Team member.
 - [Link: https://labrc.com/resource-centre/staff/](https://labrc.com/resource-centre/staff/)

You can also contact:

Adam Wright, MCIP, RPP
Planner, Land Code Governance
First Nations Land Management Resource Centre Inc.
E-Mail: adam.wright@labrc.com

THANK YOU!

 labrc.com

 facebook/FNLMRC

 resourcecentre_tmpd

 vimeo.com/labrc

For more information please visit:

www.labrc.com