

Monitoring for Compliance & Enforcement

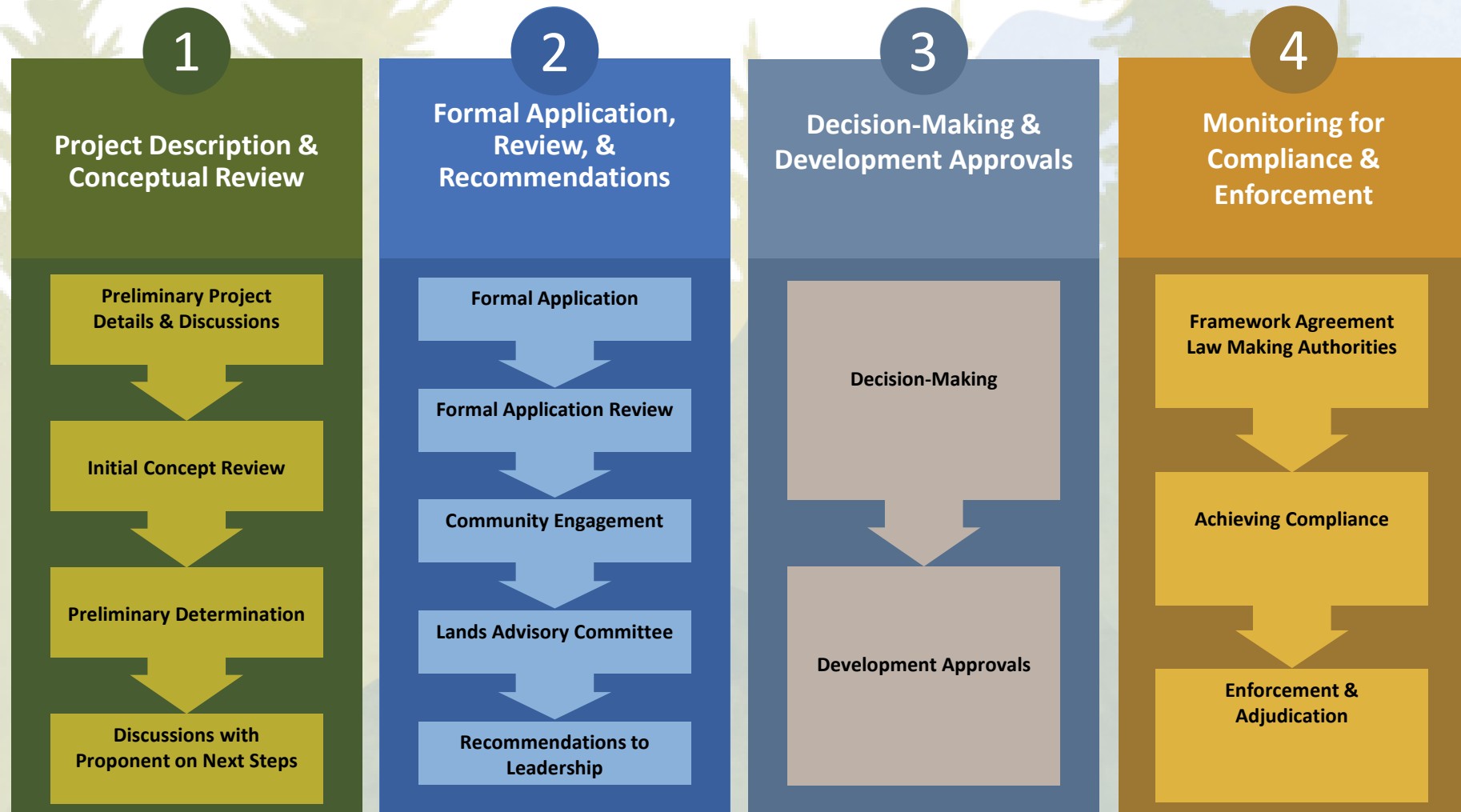
Land Development Review Procedures: Stage 4

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The Four Stages of Land Development Review Procedures



Monitoring for Compliance & Enforcement

Framework Agreement Law Making Authorities

- Overview
- Enforcement Considerations for Land Development
- Enforcement Powers

Achieving Compliance

- Reducing the Need for Enforcement
- Enforcement Staff

Enforcement and Adjudication

- Administrative Process
- Administrative Remedies
- Ticketing Option
- Enforcing First Nation Laws
- Prosecution

- The Framework Agreement is a **First Nation-led exercise in self-government**
- First Nations under a **Land Code have the authority to develop laws** “*respecting the development, conservation, protection, management, use and possession of First Nation land*”
- First Nations under the Framework Agreement **exercise law making authority independently** of any other government
- **Enforcement of First Nation Laws is essential** to First Nation self-government, the Rule of Law, and for social and economic well-being

What is the primary issue or concern, what is the most appropriate law to address that issue, and what is the most appropriate enforcement mechanism?

(e.g., unauthorized trailer park without appropriate sewage collection systems)



Trespass, Enforcement and Ticketing



Residential Tenancy



Business Permitting and Licensing



Emergency Laws



Recycling, Solid Waste Management and Garbage Disposal



Land Use, Zoning, and Development



Allotments, Interests and Licences



Environmental Assessment and Protection



Natural Resource Management



Environmental Emergencies and Natural Disasters

Framework Agreement Law Making Authorities

Enforcement Powers

Establish comprehensive enforcement procedures

Appoint Justices of the Peace

Establish Offences

Provide for fines, imprisonment, restitution, community services and alternative means to achieve compliance

Carry out inspections, searches, seizures, sampling, testing, production of information

Provide for collection of non-tax debts, fees/charges owed to the First Nation

First Nation laws can provide for clear enforcement authorities and limits to liability, establish offences, and identify adjudication processes. First Nations can decide to establish adjudication processes consistent with traditional laws, procedures and penalties

Achieving Compliance

Reducing the Need for Enforcement

Reducing the Risk of a Violation

Engage and educate the community

Incorporate culture, values, traditions

Develop programs to make compliance easy

Resolving Violations/ Diversion of Charges

Work towards voluntary compliance

Build corrective measures into your laws

Create incentives and disincentives

Using Elders, Mediation, Alternative Approaches

Promotes healing

Can be more effective than typical court punishments

Strong Governance Systems

Lands records and information, monitoring systems, coordination of laws, permit and lease systems, etc., policies and procedures

Restorative Justice

Recognizing that wrongs done to a person are also wrongs done to a community

Aim to restore relationships

Holds offenders responsible for making amends to the community

Achieving Compliance

Enforcement Staff

Cost Effectiveness

Cooperative Agreements

The Right Enforcement Staff

Must Develop and Maintain Community Support and Confidence

Inspectors/Community Safety Officers

Enforcement and Adjudication

Administrative Process

Prior to Charges:

- Administrative Remedies (e.g., warnings, stop work orders, etc.)

Prior to charges or at any point when an offence is committed:

- Restorative Justice, Traditional Healing, & Diversion Programs

When an offence is committed:

- Ticketing processes – (created under a Land Code Law or under an agreement with a province)
- Prosecution using a “long form information”

Enforcement and Adjudication

Administrative Remedies

Permits

- Appropriate, robust & clear conditions
- Consider performance bond/deposit, and compliance monitoring fee
- Review & Issue in timely fashion
- Will be cancelled if conditions violated

Inspection & Monitoring

- Presence promotes compliance
- Guardians on site
- Early detection of non-compliance
- Quality control – checking the work is done right
- Opportunity for education before enforcement

Stop Work Orders

- Who issues? – Lands, First Nation Enforcement, Council?
- May be registered in court if necessary
- Can have significant financial impact on developer/project

Compliance Notices

- Suitable for minor, easily remedied infractions
- Some corrective measures required
- Allows work to continue
- No monetary fine if complied with
- Ticket or prosecution may result if not complied with

Enforcement and Adjudication

Ticketing Option

Tickets

- When a fine is required and appropriate to achieve compliance
- Minor/short term issues that need to be addressed efficiently
- Fine must be high enough to promote compliance



Examples of land development offences that could be addressed through ticketing:

- Unlawful temporary structures
- Commencing small developments without permits
- Failure to comply with permit conditions
- Failure to comply with compliance notices

An enforcement & ticketing law may be beneficial in establishing consistent enforcement processes.

How Some Framework Agreement First Nations are Enforcing their Laws:

- **Private prosecutions** in Provincial Courts: Criminal Code Proceedings (see Case Law Summary handout)
- **Driving changes to provincial offence legislation** to expressly refer to First Nation laws in provincial laws dealing with enforcement procedures (Saskatchewan, Manitoba, BC – for Treaty First Nations)
- **Appointment of First Nation Justice of the Peace** and retention of private prosecutors (K'omoks)
- **Traditional and Restorative Justice options** in addition to courts

Enforcement and Adjudication

Prosecution

Private Prosecution

- Proven success
- Can be costly

Agreement for Provincial/Territorial Prosecutor

- Has not been done yet

Ch'íyáqtel First Nation



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Achieving Compliance

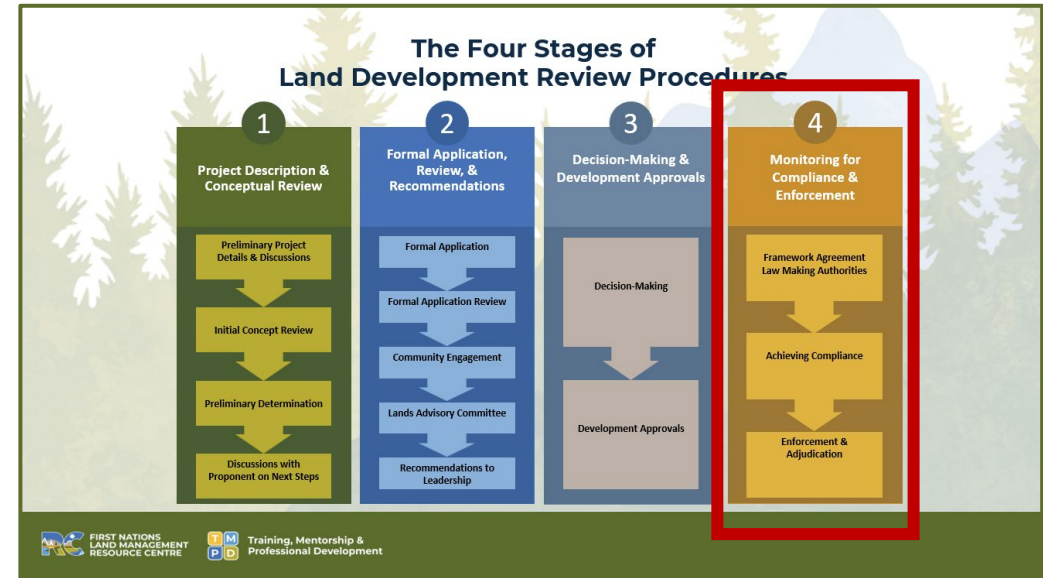
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Enforcement and Adjudication

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Checklist Activity

1. You will now continue to take part in the activity to help build a Development Review Checklist.
2. Discuss the Stage 4 presentation topics at your table, guided by the prompt(s).
3. Identify key considerations based on your experience/knowledge, as well as what might be helpful to others.
4. Have one person at your table use the Slido QR code to share your table's input.



Checklist Activity

Stage 4 Prompts

What are some unauthorized developments you have encountered and how did they come to your attention?

What are some of the enforcement tools that can be used to deal with unauthorized developments?

What are some best practices that promote voluntary compliance?

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Q & A



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