



LEASING

   **SASKATCHEWAN
LINKS TO LEARNING**

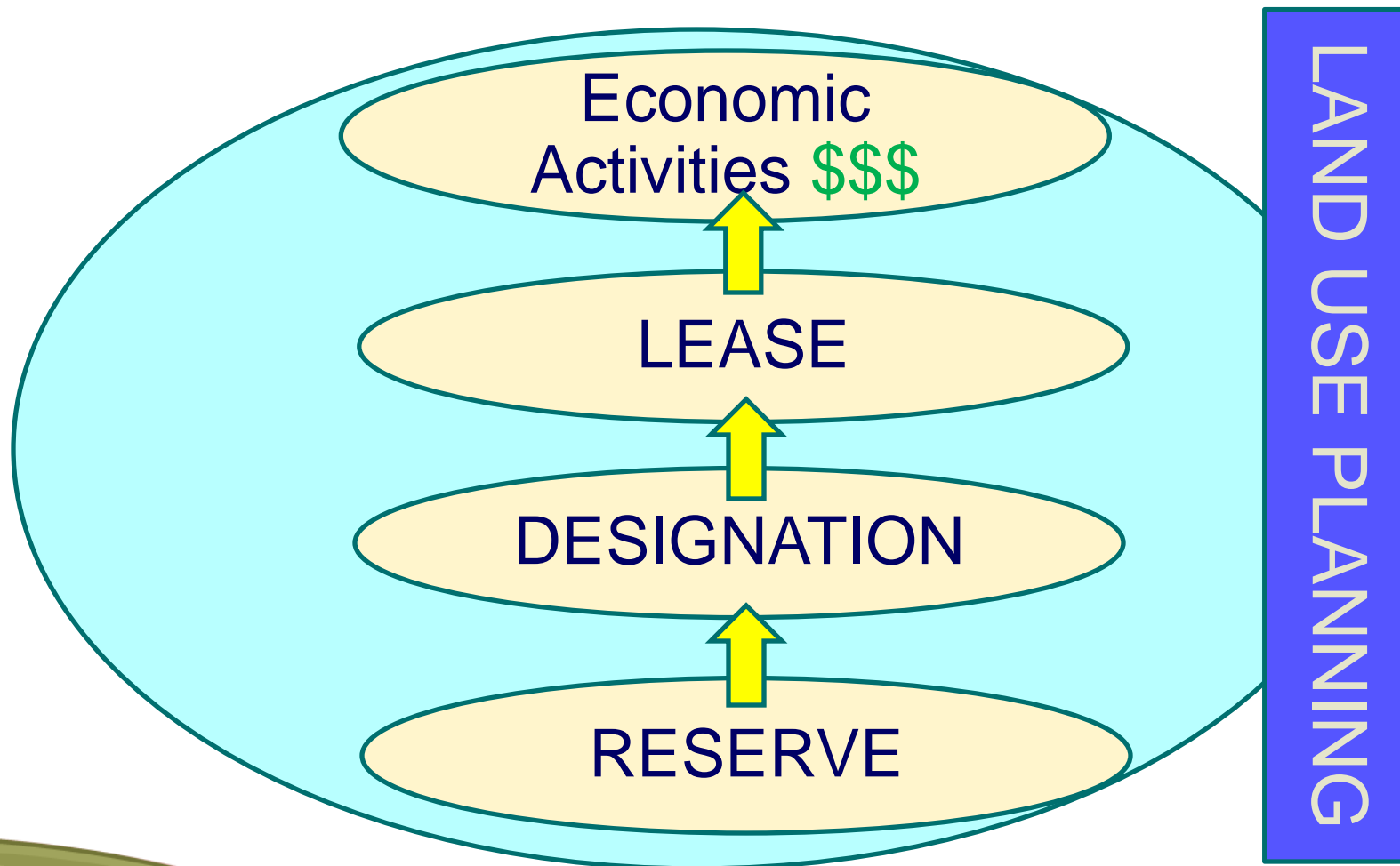
Presented by: **Emilie Garnier**
Indigenous Services Canada (ISC)

September 25, 2018





Overview





Economic Activities = \$\$\$

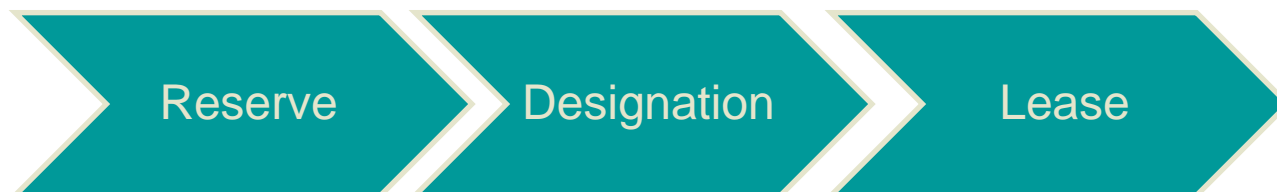
Types of Leases:

- Agriculture/Grazing
- Commercial (an office building, shopping centre, gas bar...)
- Recreational (a cottage)
- Residential
- Industrial (light, medium and heavy)
- Oil and gas exploration subject to *Indian Oil and Gas Act*

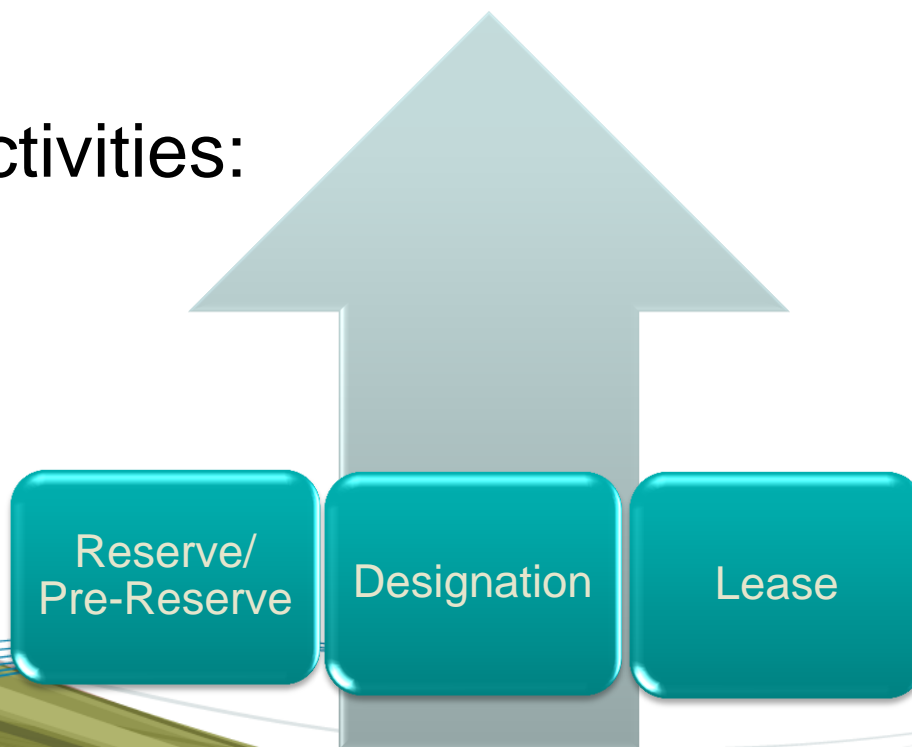


Process to Reserve Leasing

- Sequential activities:



- Concurrent activities:





Reserve Land

- Pursuant to Section 2 of the *Indian Act*, reserves are set apart by the Crown in Right of Canada **for the use and benefit of a First Nation and all their members;**
- Generally, only First Nations and their members occupy and use reserve land.
- However, pursuant to the *Indian Act*, a First Nation may ask the Crown to grant interests, such as **leases** or other rights, to non-members.



What is a Lease?

- A lease is a legal agreement between the **Federal Crown** and the **lessee** (the person or company who has use of the land).
- The lease grants **exclusive use** of the land to the lessee.
- The lease is **assignable**.
- **NOT subject to cancellation at will.**



Why is a Lease important?

Lease = Legal Document = Enforceable

- Financing Available (loans against leasehold)
- Maintains the Environmental Integrity of the Reserve land base
- Provides for land tenure certainty for non First Nation businesses = More activities = + \$\$\$
- Possible Tax incentives



Leasing Structure

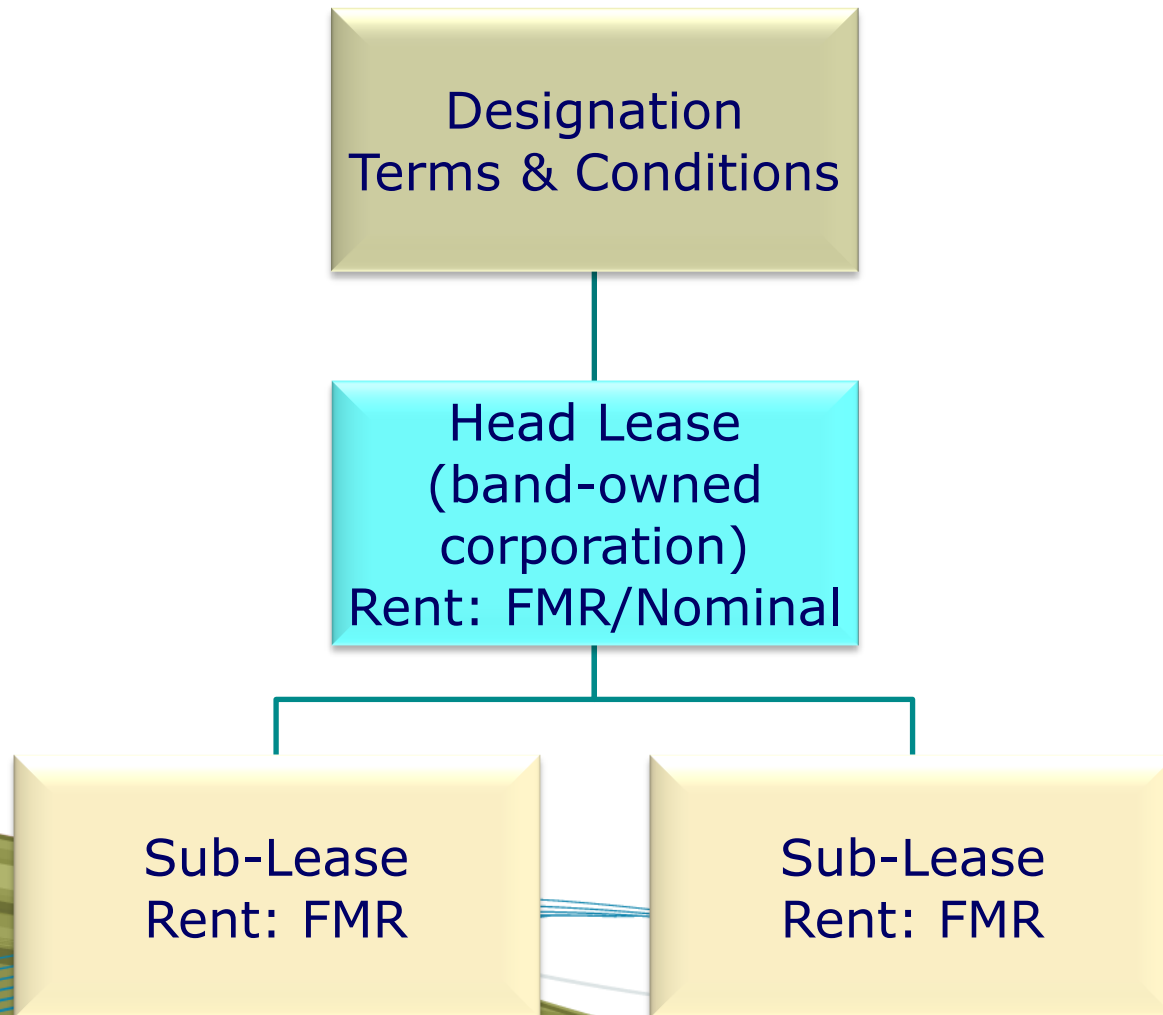
Direct Lease

Designation
Terms & Conditions

Lease
Between Federal
Crown and Lessee
Rent: FMR

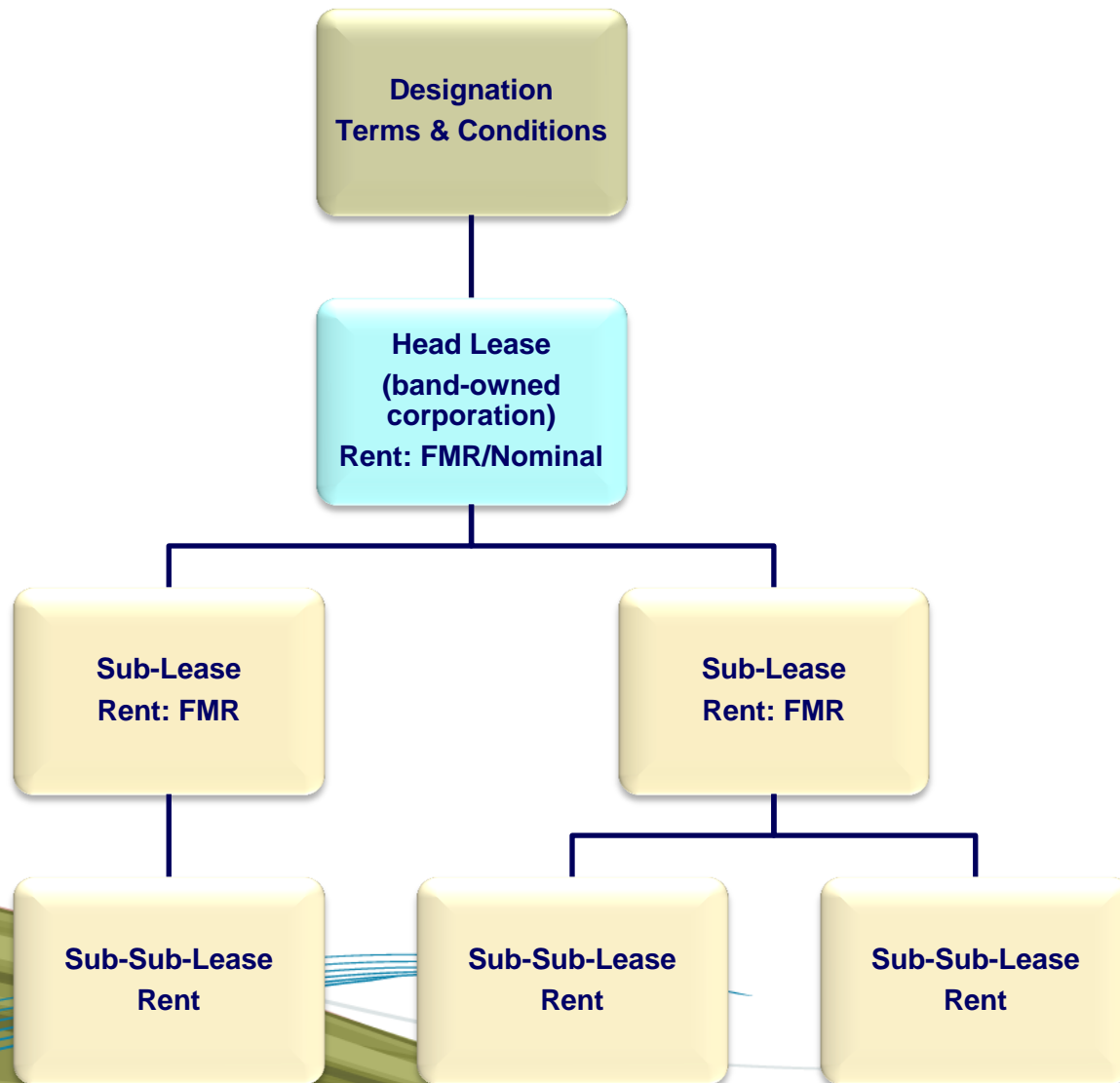


Head Lease with Sub-lease



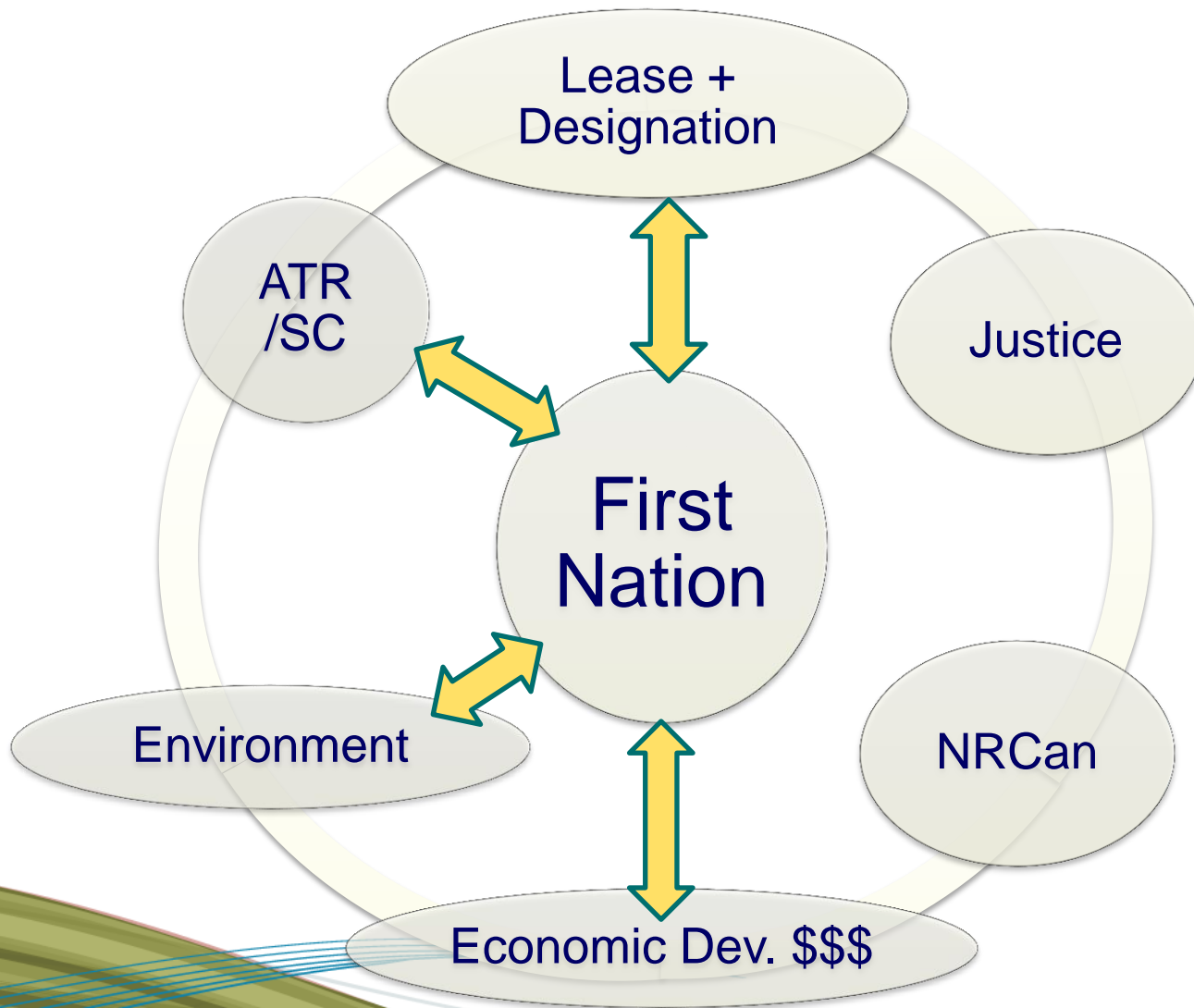


Head lease with Sub-lease & sub-sublease





Federal Set up





Timing

- **Process driven by First Nation**
- ISC will support process & assist First Nation
- Minimum : 18 months
- Maximum : Highly Variable...
- Considerations:
 - Is there a designation in place?
 - Reserve creation process
 - Encumbrances to the Land
 - Consultant availability (ie: CLSR surveyors in SK)
 - Time of year (ie: ESA only conducted when there is no ground cover)



Parties involved

- First Nation & Dev. Corporation
- Federal: ISC, DOJ, NRCan...
- Province of Saskatchewan & Municipalities
- Other First Nations
- Consultants
- Partners
- Third Parties: SaskTel, SaskPower, Companies, Railway, Oil & Gas companies, individuals, ...



Important Elements

- Land Use Plan & Vision
- Communication
- Chief and Council & First Nation Champion
- Information Management
- Lawyer
- Consultants: Appraisal, EA, ESA, Surveyor, Land use planner...
- Funding sources
- Municipal Services Agreement



Barriers to consider

- Economic climate
- Geographic and Market
- Business opportunity change
- Neighbours & Regional municipality zoning by-laws
- First Nation priority
 - First Nation Election
- Capacity Issues:
 - Lack \$\$\$
 - Lack of staff
 - Consultant availability
- Communication
- Timing
- Third Party Interests that encumber the land



Project Costs to consider

- Variable depending scope and scale of project

- **Examples:**

- ESA / EA: \$2,000 to \$100,000 +
- Appraisal: \$2,000 +
- Land Survey: \$40,000 +
- Legal Fees: \$15,000 +
- Designation Voting: +/- \$22,000
- Purchase of Land: \$\$\$...
- Third Party Interest: Buy Out
- Land Remediation ?



\$\$\$ Source for Project

- First Nation
- Business Partners
- Other Government Departments
 - Western Economic Diversification (WD)
 - Business Development Bank of Canada (BDC)
 - Saskatchewan Indian Equity Foundation (SIEF)
- Indigenous Services Canada
 - Environmental Unit
 - Addition to Reserve (ATR) Unit
 - Economic Development Unit Programs:
 - CORP
 - LEDSP



ISC Funding available

- Proposal based funding
- Project Costs
 - Land Use Plan
 - Strategic Business Plan
 - Environmental Site Assessment (ESA)
 - Environmental Assessment (EA)
 - Land Survey
 - Designation process
 - Legal Fees for Lease development



Contact Information

- Reserve Land - Jacquelyn Conrod, A/Manager of Lands
(306) 501-3586 or Jacquelyn.Conrod@canada.ca
- Pre-Reserve Land - Robbin Lloyd, Manager of Additions to Reserve
(306) 501-3561 or Robbin.Lloyd@canada.ca
- Designation – Natalie Dueck, A/Senior Project Officer
(306) 501- 2367 or Natalie.Dueck@canada.ca
- Leasing – Emilie Garnier, Major Project Officer
(306) 501-7932 or Emilie.Garnier2@canada.ca
- Environmental Unit – Evan Shaw, Manager of Environment
(306) 501-4267 or Evan.Shaw@canada.ca



Questions?



LEASE process



Lease Process

1. Planning a Lease
 2. Designation by Ministerial Order & Initiation
 3. Negotiation and Drafting
 - Justice Approval
 - First Nation Approval
 4. Finalization and Execution
- *** Registration to Indian Lands Registry
- *** Administration and Monitoring



1. Planning a Lease

- Geographic & Market Analysis (know your Neighbours)
- Review Designation and Land Use Plan
 - By-Laws, development plans, & zoning
- Identify Land (legal land description)
 - Survey (NRCan/CLSR)
- Encumbrance Check
 - Land Status Report
- Lease Structure/Interest Form
 - Direct Lease vs Head Lease/Sub-Lease
- ISC Environmental Review Process
 - Environment Site Assessment (ESA)
 - Environment Assessment (EA)



2. Designation by Ministerial Order & Initiation

- Designation Information
- Lessee Name and Contact Information
- Term (cannot be longer than the term of the designation)
- Purpose/Use (what the land can be used for)
- Land description (must be within the designation area)
- Rent (amount of money paid for using the land)
- Rent review (time specific)
 - The lessee should pay enough rent to ensure a fair price for use of the land.
 - Determination of **Fair Market Rent** is based on an appraisal.



3. Negotiation and Drafting

- Mandatory

- Reserve Name and Number
- Designation Particulars
- Rent/Compensation
- Compliance with Law
- Payment of Taxes
- Cancellation
- Indemnification
- Inspection
 - General
 - Environmental
- ESA & EA

- Considerations

- Construction Requirements
- Building Standards
- Maintenance
- Removal or Retention of Improvements
- Insurance Requirements
- Dispute Resolution
 - Rent clause
 - For everything else



3. Environmental Review Process

- Environmental Site Assessment (ESA):
 - For **all** land covered by lease
 - Must be a **Phase I** to Canadian Standards Association (CSA)
 - If contamination is found then the limits of that contamination must delineated or remediated
- Environmental Assessment (EA):
 - Completion of project description form by proponent
 - For a head lease the EA must cover any activities that happen at this level. Some head leases have no activities.
 - For a Sublease the EA must cover any activities that happen at this level.
 - Project description form is submitted to the Environment unit to determine the level of EA required



4. Finalization & Execution

- For completion of Lease
 - Corporate Profile
 - From Information Services Corporation (ISC)
 - Determined by designation:
 - Nominal Rent
 - Fair Market Rent (FMR)
 - Area Development Plan
 - Construction Plan
 - Fire Inspections
- At the head lease or sublease level when **FMR** is required then an **appraisal** is required to determine rent.
- Upon execution of Lease:
 - Insurance Requirements
 - Construction
 - Liability and Property
 - Security
 - Performance bond



*** Consent Agreements***

- Assignment(s)
 - Required by Section 54 of the Indian Act
- Sublease(s)
 - Required by policy
- Mortgage(s)
 - Required by policy



Resources

- *Indian Act*
- Indian Referendum Regulations
- Chapter 5 - Lands Management Manual: Designation
- Chapter 7 - Lands Management Manual: Leasing
- **NALMA Toolkit and Workshops**
- Indigenous Services Canada employees