

**Kananaskis Mountain
Refresher - May 2018**

***Getting Engaged –
Regional Collaboration
and Public Participation***



BROWNLEE LLP
Barristers & Solicitors

- Introduction - Collaboration & Intermunicipal Dialogue
- Public Participation
- Intermunicipal Collaborative Frameworks
- Intermunicipal Development Plans



Introduction

Collaboration & Intermunicipal Dialogue

- **Philosophical Change in Alberta**
 - Thinking Beyond Municipal Borders
 - Finding Efficiencies & Building Strength
 - Creating a Vibrant Region
 - Avoiding the Alternative



Introduction

Collaboration & Intermunicipal Dialogue

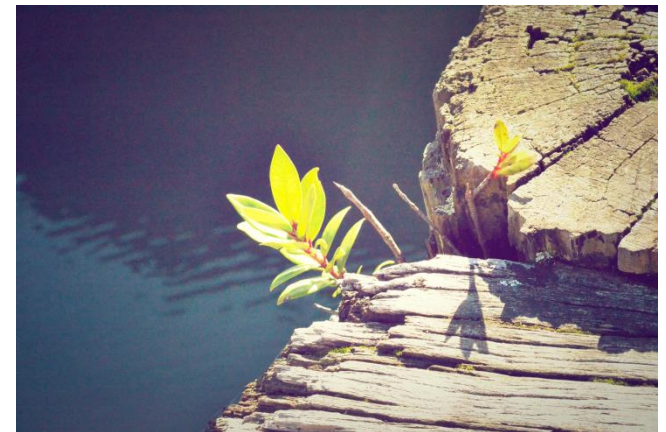
- **New Legal Duty to Think Regionally**
 - New Municipal Purpose
 - Work collaboratively with neighbouring municipalities to plan, deliver and fund intermunicipal services
 - New Councillor Duty
 - Promote an integrated and strategic approach to intermunicipal land use planning and service delivery with neighbouring municipalities



Public Participation

New Legislative Requirements

- S. 216.1 of the MGA
- Public Participation Policy Regulation
- Must have a policy by July 23, 2018



Public Participation

New Legislative Requirements

- MGA says:
 - Must establish policy by Council resolution
 - Nothing in the policy affects any right or obligation of municipality or person under MGA
 - No resolution or bylaw may be challenged on the ground that it was made without complying with the policy

Public Participation

New Legislative Requirements

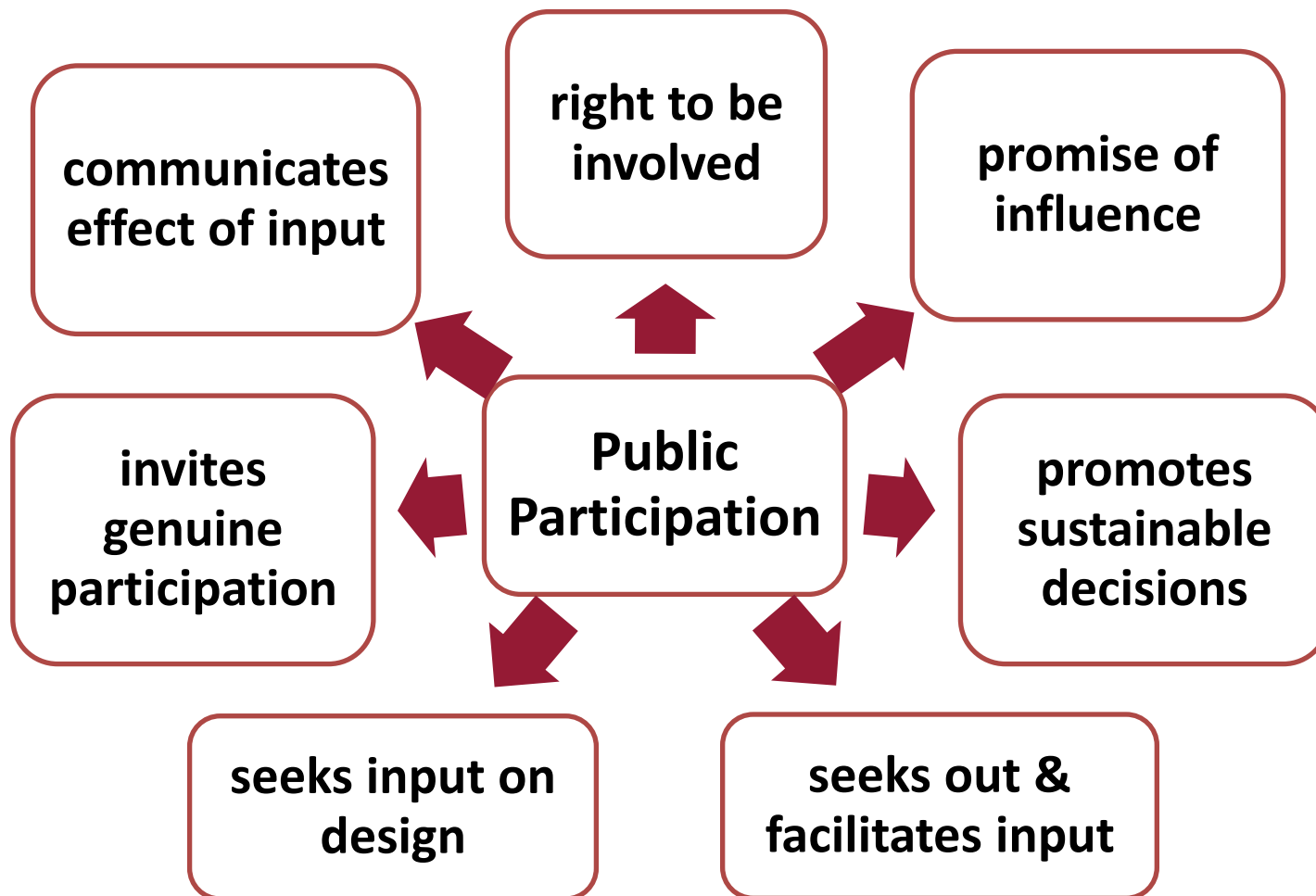
- Regulation says:
 - Policy must identify types/categories of approaches [HOW]
 - Policy must identify types/categories of circumstances [WHEN]
 - Available to public inspection (ie post on website)
 - Must review at least every 4 years

Public Participation

New Legislative Requirements

- Why mandate public participation?
 - Helps council understand risk and risk tolerance of community
 - Help community understand trade-offs between cost and service
 - Better decisions that community can support
 - Establishes trust

Public Participation



Public Participation

- Participation versus communication
- Getting it right
 - Make a Plan
 - Implement
 - Assess

*Consider public participation in light of
MGA amendments requiring
collaboration & intermunicipal dialogue*

Intermunicipal Collaboration Framework

Legislative Requirements

- Part 17.2 of MGA
- Came into force April 1, 2018
- Requires an ICF with each neighbour by April 1, 2020
- Some exceptions
 - ie Growth Management Board members to the extent not covered in Growth Management Plan



Intermunicipal Collaboration Framework

Legislative Requirements

Purpose:

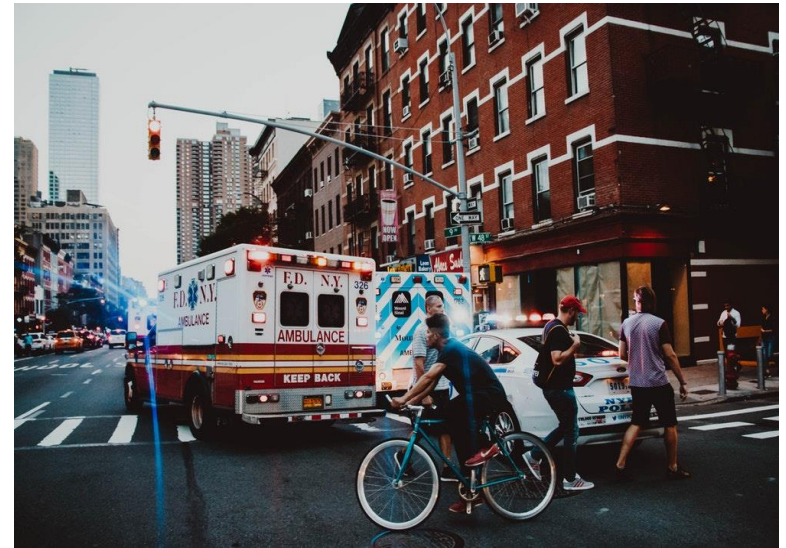
- (a) to provide for the integrated and strategic planning, delivery and funding of intermunicipal services;
- (b) to steward scarce resources efficiently in providing local services; and
- (c) to ensure municipalities contribute funding to services that benefit their residents.

Intermunicipal Collaboration Framework

Legislative Requirements

ICF Must Address:

- (a) transportation;
- (b) water and wastewater;
- (c) solid waste;
- (d) emergency services;
- (e) recreation; and
- (f) any other services of regional benefit.



Intermunicipal Collaboration Framework

Setting the Groundwork

How to engage? How to begin?

- What are your desired outcomes?
- What resources do you have? What do you need?
- Who should be on your negotiating committee?
- Who are your neighbours and how should you engage them?

Intermunicipal Collaboration Framework

Step 1: Inventory

- List services provided by each municipality

- List inter-municipal Services

- List services provided by a third party

Intermunicipal Collaboration Framework

Step 2: Assessment- Which services are best...

- provided on a municipal basis

- provided on an inter-municipal basis

- provided by third parties agreement

Intermunicipal Collaboration Framework

Step 3: Planning for Each Intermunicipal Services

- describe delivery, lead muni, timeline & term of review

- inter-municipal funding

- de-commission when replaced by an inter-municipal service

- binding dispute resolution (optional)

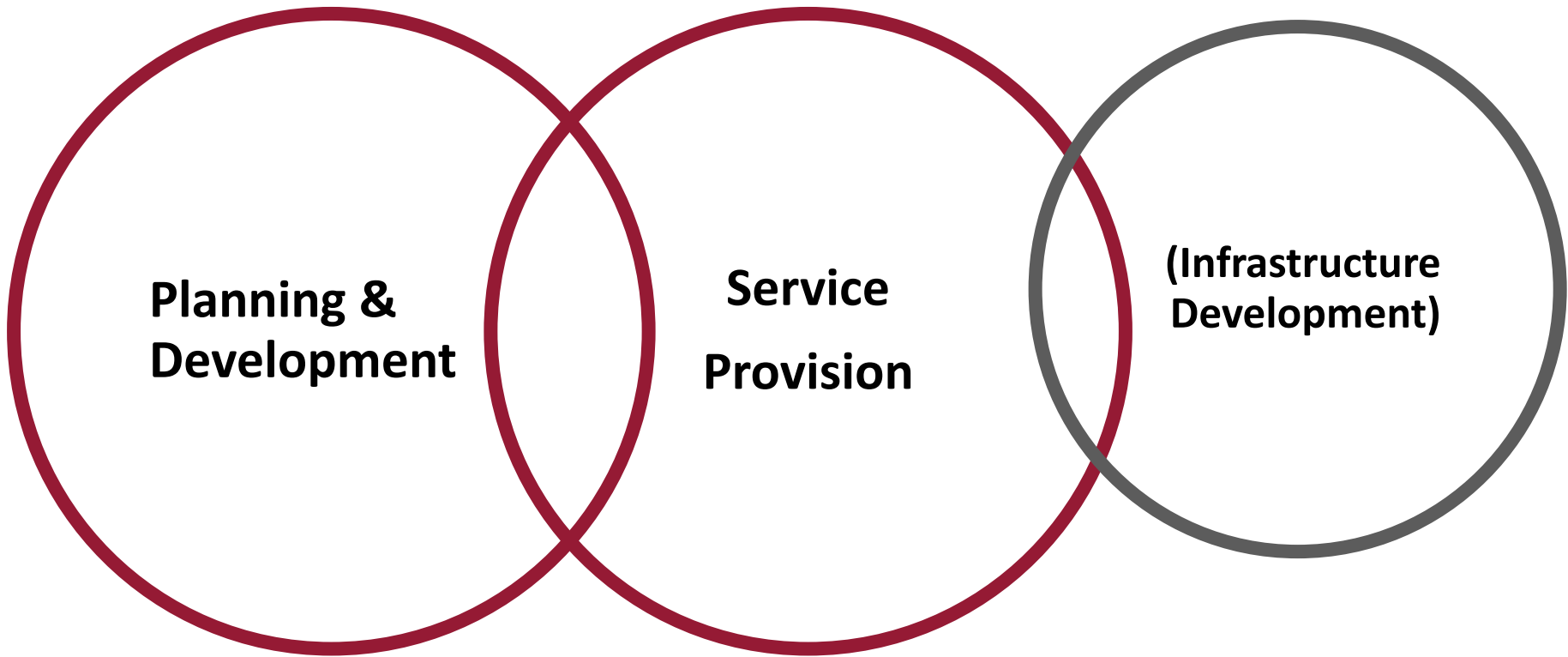
Intermunicipal Collaboration Framework

Models for Collaboration/Service Delivery

- **By Agreement**
 - Funding agreement, service/supply agreement, etc
- **By Joint Ownership/Governance Structure**
 - Co-ownership, commission, municipal corporation, joint venture, etc
- Get early and ongoing legal advice

Intermunicipal Collaboration Framework

Relationship between ICF and IDP



Intermunicipal Collaboration Framework

Relationship between ICF and IDP

ICF	IDP
A framework for service provision b/t neighbouring municipalities	A statutory plan for future planning & development in an area
ICF includes IDP	IDP is independent
Due: April 1, 2020	Due: April 1, 2020
Arbitration if incomplete	Arbitration if incomplete
Public input not mandated	Stat req for public input

Intermunicipal Collaboration Framework

Common Misconceptions about ICFs

An ICF means...

- discussing regional service provision
- collaborating on how services will be provided
- agreeing on how to maintain intermunicipal services

An ICF does not mean...

- intermunicipal services must be provided if its agreed separate service provision is better [discretion retained]
- existing agreements have to be changed

Intermunicipal Collaboration Framework

Things to Consider

- **Collaboration**

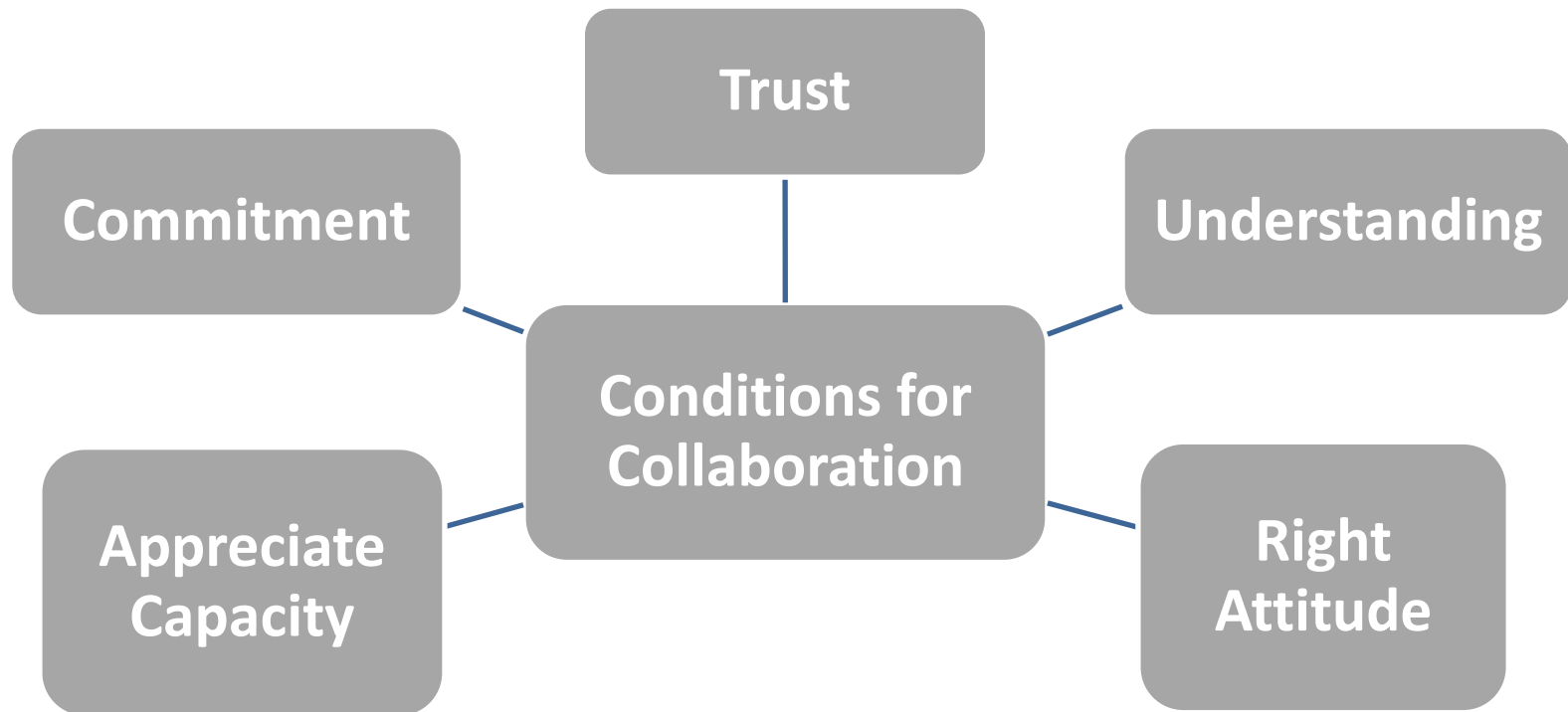
- The impediments...

• Hidden agendas	• Resistance to change
• Personality clashes	• Sense of obligation to electors
• Concerns about risks	• Loss of transparency
• Fear of loss of control	• Poor communication

- We are doing fine, so why should we collaborate?

Intermunicipal Collaboration Framework

Things to Consider



Intermunicipal Collaboration Framework

Things to Consider

- **Notice and Public Participation**
 - Do we have to give notice to the public?
 - Do we need public participation?

Intermunicipal Collaboration Framework

Things to Consider

- **First Nations and Metis Settlements**
 - Are First Nations/Metis Settlements treated like municipalities for purposes of ICF?
 - Do First Nations/Metis Settlements need to be notified and/or consulted?

Intermunicipal Collaboration Framework

Things to Consider

- **Creating an ICF versus Implementing an ICF**
 - MGA requires creation of ICF by April 1, 2020
 - Implementation not under strict deadline
 - Delivery
 - Governance mechanisms
 - Agreements

Intermunicipal Collaboration Framework

Things to Consider

- **Negotiating in Good Faith**
 - What does it mean to negotiate in good faith?
 - It's not about the content of negotiations but the attitude of the parties
 - Honesty, respect, communication, joint benefit, sharing information, having representatives that have authority to engage, willingness to negotiate

Intermunicipal Collaboration Framework

Things to Consider

- **Negotiating in Good Faith**
 - How does that fit with negotiating in best interest of your municipality?
 - Akin to councillor obligation to “consider the welfare and interest of the municipality as a whole”

Intermunicipal Collaboration Framework

Things to Consider

- **Arbitration**
 - MGA provides for mandatory arbitration if ICF incomplete or municipalities cannot agree
 - Why not use arbitration to avoid tough decision or to opt out of entire ICF process?
 - Why not use arbitration to create entire ICF?
 - Mediation or arbitration?
 - Public participation?

Intermunicipal Collaboration Framework

Things to Consider

- **Dispute Resolution**
 - MGA provides every ICF must have binding dispute resolution to address interpretation, implementation, application and contravention.
 - Failure to include?
 - Why use dispute resolution?
 - Funding?

Intermunicipal Collaboration Framework

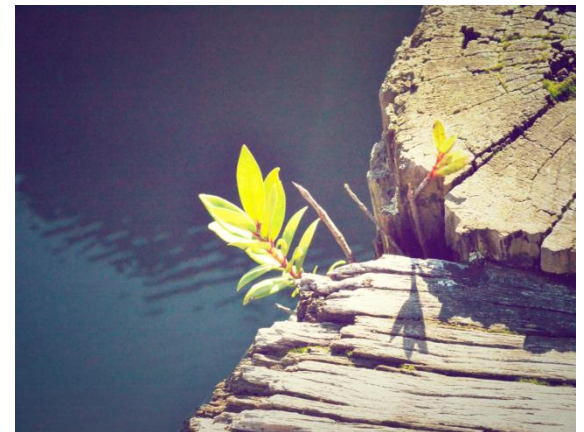
Things to Consider

- **Effective Use of Legal Counsel**
 - Involve legal counsel early and on an ongoing basis
 - Ensure compliance and provide solutions
 - Avoid having reached agreements only to have to renegotiate
 - Less costly
 - Joint Retainers – are they possible?

Intermunicipal Development Plan

Legislative Requirements

- S. 631 of MGA
- Came into force April 1, 2018
- IDPs mandatory by April 1, 2020
- Some exceptions
 - ie Growth Management Board members to the extent not covered in Growth Management Plan or by Ministerial exemption



Intermunicipal Development Plan

Legislative Requirements

IDP Must Address:

- (a) future land use;
- (b) future development;
- (c) transportation systems;
- (d) intermunicipal programs relating to physical, social & eco development;
- (e) environmental matters; and
- (f) any other matter councils consider necessary

Intermunicipal Development Plan

Legislative Requirements

IDP Must Include:

- a procedure to resolve disputes between the municipalities;
- a procedure to amend the plan; and,
- procedures for the administration of the plan.

Intermunicipal Development Plan

Legislative Requirements

Additional Elements of IDP:

- If municipalities are not able to agree on IDP, ICF arbitration provisions apply.
- Must negotiate IDP in good faith.

*You do not want to go to arbitration on a policy issue –
find a way.*

Intermunicipal Development Plan

Public Engagement Requirements

- **In preparation of IDP, municipality must:**
 - Provide a means for any person who may be affected by IDP to make suggestions and representations
 - Notify the public of prep process and means to provide input
 - Notify school boards
 - Adopt by bylaw with required advertising and public hearing
- **Consider impact of your Public Participation Policy**

Intermunicipal Development Plan

Setting the Groundwork

How to engage? How to begin?

- Who should be on your joint planning committee?
- What do you know? What do you need to know?
 - growth management study, master transportation plan, master utility plan, joint economic impact analysis, environmental studies
- When should you meet?
- What do your current planning documents say?

Intermunicipal Development Plan

IDPs - A Joint Initiative

- Collaboration
- Joint planning
- Good faith?



Intermunicipal Development Plan

IDP Area

- Often a point of conflict:
 - competing interests
 - rural vs urban
 - consistency with ICF
- Reciprocity?
- Clarity?
- Discretion



Intermunicipal Development Plan

IDP and Annexation

- If there is an annexation agreement in place regarding certain lands, IDP should address future development of possible annexation
- IDPs should also address areas the municipality wants to protect from annexation

Intermunicipal Development Plan

IDPs and Environmental Issues



- Not part of ICF but new municipal purpose
- Consider:
 - Environmental reserves
 - Watersheds
 - Water bodies
 - Environmentally defective lands
 - Irrigation ditches

Intermunicipal Development Plan

Legal Advice

- When preparing an IDP, legal advice should be sought early in the process
- Less re-drafting required if counsel is involved from the outset, as opposed to reviewing an already complete document

Closing Comments

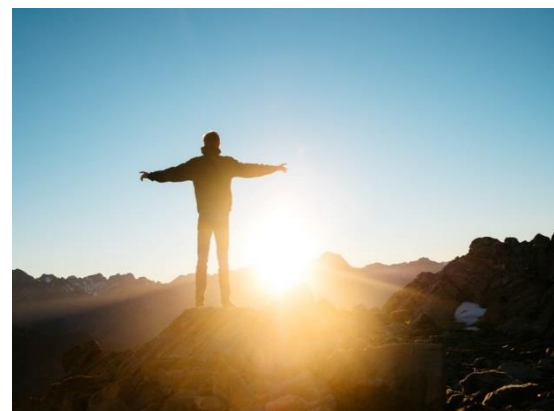
A New Direction

- ICFs and IDPs will require good relationships and good communication
- There needs to be room for evolution over time
- There needs to be a mechanism for dealing with change
- These are not static documents
- Consider the best interests of the region

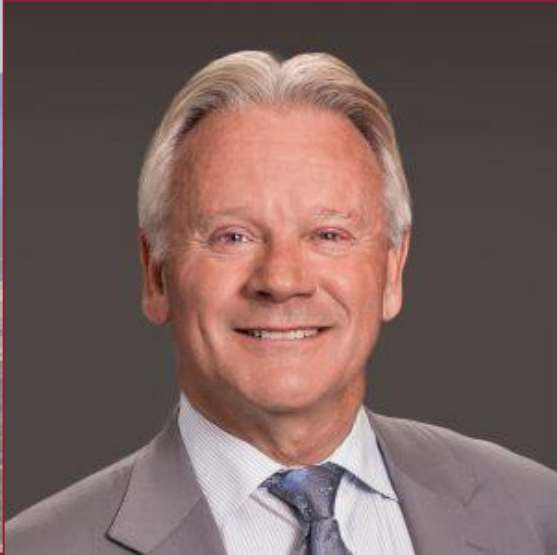
Closing Comments

New Opportunities

- Create and maintain regional dialogue
- Establish and sustain partnerships
 - Municipal
 - First Nations/Metis Settlements
 - Third party service providers
- Creative Collaboration



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