

LAND USE AND DEVELOPMENT PLAN



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LAND USE AND DEVELOPMENT PROCEDURES

PLAN STRUCTURE

Because of the unique status of the Pine Nut Allotments, they are not subject to the jurisdiction of any city, county, or state government; and therefore, there is no comprehensive plan, public policies, or development process in place to control or direct land use. Allotment owners are only subject to federal laws and regulations and, to some extent, have the right to develop their lands for any use they so desire. As a result, developing a traditional land use plan, along with appropriate zoning, is not a workable option.

Any development proposal requiring a Master Lease will be dependent on the willingness of the allotment owners to agree to have their allotment developed and a responsible, private sector developer (lessee) as well as local market conditions at any point in time. Therefore, it is impossible to predict where or when development might occur or exactly what types of development will occur, if at all.

In the instance of the Pine Nut Allotments, the Plan is a *procedural plan* that consists of a development process with accompanying development standards. This will ensure that developments meet appropriate standards for public health, safety, and general welfare, which in turn protects the value of the land for the allotment owners over the long term. In addition, neighboring allotment owners will be afforded a degree of protection against nuisance uses and any negative impacts from developments. As a result, development proposals will be evaluated through a uniform process and on their own merits.

The process and standards spelled out by this Procedural Plan are similar to normal land development requirements at a city or county level, and as such, should be fairly familiar to land developers, although there are some post-development requirements that are related to the BIA trust responsibility and are important to the allotment owners and to the sub-lessees. Again, the components of the Plan are focused on a process that allows land to remain in Indian ownership and the potential to realize better economic return to the allotment owners over the long term.

The Procedural Plan involves a three stage process: pre-development, development, and post-development. The pre-development stage includes site planning, environmental analysis, establishing agreements for utilities and public services, project approval, and if approved will end with the execution of a Master Lease. The second stage involves construction and ongoing inspections and will end with the issuance of a Certificate of Occupancy. The last stage includes ongoing monitoring, reporting, and enforcement to ensure that the terms and conditions of the Master Lease and the provisions of the development standards are maintained in order to protect the value of the land for the allotment owners.

DEVELOPMENT PROCESS

Pre-Development Process and Requirements

The Pre-Development Process is shown in Figure 4-1. Both BIA and developer responsibilities are shown in the flow chart.

Pre-development Conference

A Pre-development Conference will be held at the BIA Western Nevada Agency between the allotment owner(s), the developer (proposed Master Lessee), and BIA staff. The developer and allotment owner(s) shall brief the BIA as to the type of development being proposed. The BIA will in turn provide the developer with a fee schedule and checklist of requirements (as listed below) that must be met for the BIA to execute a lease. Based on the type, scale, and complexity of the proposed development, the BIA will also determine if the development will be a Type I Permit process or a Type II Permit process. The BIA will provide the developer with flow charts showing the basic steps and responsibilities in the pre-development phase, development phase, and post-development phase. The BIA will review the process with the developer and will supply the developer with a set of development standards for the Pine Nut Allotments (see Appendix G).

The checklist of pre-development requirements (Appendix I) will include but is not limited to the following:

- Proof that the applicant has or can obtain legal access, in perpetuity, from the allotment to a public road.
- The applicant must provide test results that show there is adequate groundwater to serve the proposed development and to maintain fire flows as specified by the International Fire Code when community systems are involved. In addition, groundwater quality must be tested to ensure that EPA and state standards for potable water are met. If treatment is required, the type of treatment must be identified.
- A boundary survey of the allotment will be provided by the applicant, and the surveyor will set all corner irons. In addition, topographic data must be provided for all areas anticipated to be disturbed during construction. A final plat delineating the area to be leased will be required. For housing subdivisions, the final plat will include all lots and street rights-of-way. The boundary survey and final plat will be filed with the BIA Land Titles and Records Office. At the discretion of the applicant, these documents can also be files with the Douglas County Recorder's Office. Survey work must be conducted by a licensed surveyor in the state of Nevada.
- Existing Conditions Site Plan
- Preliminary Development Site Plan
- Mitigation/Remediation Site Plan
- Construction Management Site Plan
- Agency agreements for provision of utilities and public services
- Environmental Assessment or Environmental Impact Statement (if required), including a Cultural Resources Survey
- Engineer's Report (prepared by a licensed engineer in the state of Nevada) describing proposed systems for water supply, treatment (if necessary), storage, and distribution; sewage collection, treatment, and disposal; stormwater management; roads and streets; and provision of power and communications
- Traffic Impact Study

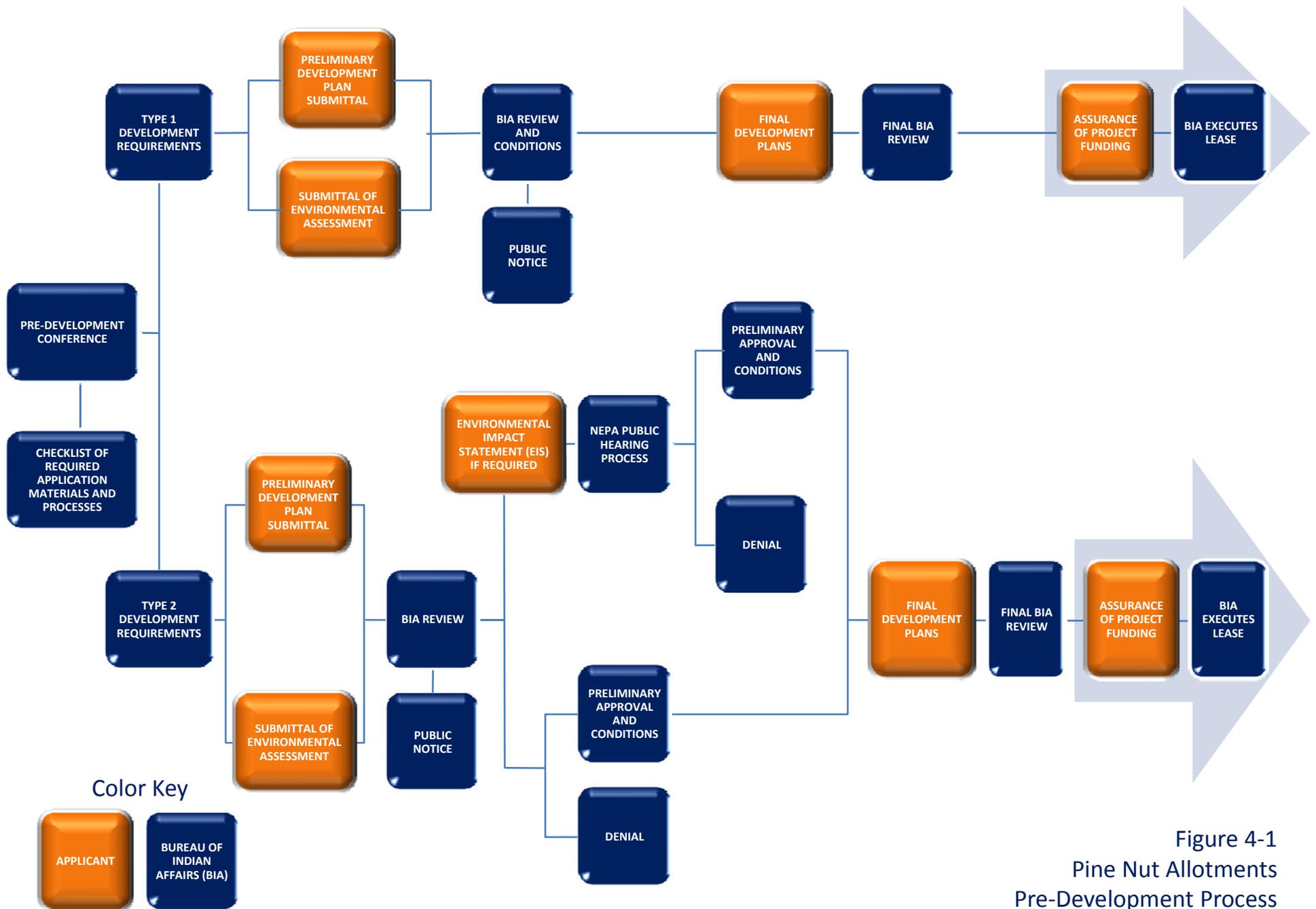


Figure 4-1
Pine Nut Allotments
Pre-Development Process

Preliminary Development Plan

Two site plans will be provided at a scale of no greater than 1 inch = 100 feet. The Existing Conditions Site Plan will show:

- Location of any existing structures and fences
- Setbacks from property boundaries of all existing structures
- Location of any existing utility lines, underground tanks, drainfields, roads, and easements
- Existing contour lines at 2-foot vertical intervals in areas of slopes < 10% and 5-foot intervals for slopes of > 10%
- 100 year floodplain and floodway boundaries if applicable
- Critical areas such but not limited to wetlands, areas prone to flash flooding, areas intermittently inundated, ponds, seeps and springs
- Drainage patterns shown by arrows indicating direction of flow
- Location of trees of greater than 6-inch in diameter at breast height
- Adjacent land uses

The Preliminary Site Plan will show:

- Location of all proposed development (including but not limited to roads and streets, buildings, pathways, driveways, decks, retaining walls, and any other structures)
- Rights-of-ways, lot lines (including lot size), and easements
- Location of proposed utility lines and connections, wells and water storage facilities, stormwater systems (water quality, detention and discharge), and septic or sewerage facilities
- Proposed final contour lines at 2-foot vertical intervals in areas of slopes < 10% and 5-foot intervals for slopes of > 10%
- Delineation of limits of temporary and permanent disturbance areas
- Location of existing trees over 6 inches in diameter that will be retained
- 100-foot buffer area around the perimeter of the allotment
- Project phasing (if proposed)

Determination of Lease Amount

A property appraisal will be conducted in order to determine the appropriate lease amount. The appraisal will be undertaken by a member of the Appraisal Institute who is agreeable to both the applicant and to the BIA or who is prequalified by the BIA.

Environmental Assessment/Environmental Impact Statement

A Type I Permit will only require the submission of a NEPA Environmental Assessment (EA). A Type II Permit will also require an EA and may also require an Environmental Impact Statement (EIS) if the EA identifies that there are significant impacts. In some instances, the BIA may identify at the outset (during the Pre-development Conference) that an EIS will be required.

The Environmental Assessment/Environmental Impact Statement must follow the NEPA process and guidelines and will be prepared by the developer. All anticipated impacts and any appropriate mitigation will be identified. As part of this environmental process, a Cultural Resource Survey will need to be conducted and documented.

If a Type II Permit requires an EIS, a public hearing also will be required. If only an EA is required, no public hearing is required.

Public Notice

On submittal of the Preliminary Development Plan and an EA/EIS to the BIA, the BIA will notify appropriate agencies and will also notify all allotment owners and fee land owners within one mile of the allotment boundaries in which the development is proposed. All notifications will be in writing. The BIA will maintain copies of the EA/EIS at the BIA Western Nevada Agency and at the BIA Western Regional Office for public review. The BIA will also post the EA/EIS on their web site, and may at its discretion provide copies in other locations in the project vicinity, such as public libraries, etc.

Public Hearing

If an EIS is required, the BIA will hold a public hearing on the Draft EIS at an appropriate location in the vicinity of the project. The BIA will present an overview of the project and will take public testimony. The BIA shall be responsible for documenting the public comments. Following the public hearing, a 30-day period will be available for the public to submit written comments.

Final Environmental Impact Statement

Following the 30-day comment period, the developer will prepare and submit to the BIA the Final NEPA EIS.

BIA Review and Conditions

The BIA will review the Preliminary Plan, and based on the findings in the EA or EIS and on public and agency review, the BIA will establish any appropriate development conditions and mitigation actions or the development application will be denied.

BIA Letter of Intent

The BIA will issue a Letter of Intent stating that the BIA intends to issue a lease if all conditions are met by the applicant. The letter will include the lease price, economic terms, time frame, and renewal options.

Final Development Plan

Based on the review of the preliminary plan and conditions set by the BIA, the developer will prepare the Final Development Plan and submit it to the BIA for final review. The Final Development Plan will consist of the Final EA (or EIS), Final Engineer's Report, Final Plat, and the following site plans at a scale of no greater than 1 inch= 100 feet.

The Existing Conditions Site Plan will show:

- Location of any existing structures and fences
- Setbacks from property boundaries of all existing structures
- Location of any existing utility lines, underground tanks, drainfields, roads, and easements
- Existing contour lines at 2-foot vertical intervals in areas of slopes < 10% and 5-foot intervals for slopes of > 10%
- 100 year floodplain and floodway boundaries if applicable

- Critical areas such but not limited to wetlands, areas prone to flash flooding, areas intermittently inundated, ponds, seeps and springs
- Drainage patterns shown by arrows indicating direction of flow
- Location of trees greater than 6-inch in diameter at breast height

The Final Site Plan will show:

- Location of all proposed development (including but not limited to roads and streets, buildings, pathways, driveways, decks, retaining walls, and any other structures)
- Rights-of-ways, lot lines (including lot size), and easements
- Location of proposed utility lines and connections, wells and water storage facilities stormwater systems (water quality, detention and discharge), and septic or sewerage facilities
- Proposed final contour lines at 2-foot vertical intervals in areas of slopes < 10% and 5-foot intervals for slopes of > 10%
- Delineation of limits of temporary and permanent disturbance areas
- Location of existing trees over 6 inches in diameter that will be retained
- 100-foot buffer area around the perimeter of the allotment
- Project phasing (if proposed)

The Construction Management Site Plan will include:

- Location of construction ingress and egress
- Location of equipment staging and stockpile areas
- Location and type of erosion control measure to be installed
- Identification of devices to be used to protect trees
- Location of temporary construction fencing

The Mitigation/Remediation Site Plan will include:

- Location and type of trees and other landscaping to be planted, including areas to be re-seeded with native grasses (identify seed mixture)
- Location and size of stormwater management facilities

Final BIA Review

The Final Plan will be reviewed by the BIA to ensure that all applicable regulations, development standards, and BIA set conditions have been met. If it is found that the aforementioned have been met, a Type I or Type II Permit will be issued. This permit will be valid for a period of two years. If after two years, substantial construction has not been initiated, the permit will expire. The BIA, at its discretion, can extend the permit for an additional year, if the developer can show just cause.

Assurance of Project Financing

Prior to issuing the Master Lease, the applicant must provide the BIA with a record of past performance and documentation of adequate financial stability. The applicant shall also provide proof of financial commitment for project funding from a reputable source(s).

Master Lease Executed

After issuance of the Development Permit and assurance of adequate financial backing, the BIA will prepare and execute a Master Lease with the developer in behalf of the allotment owner(s). The Master Lease will reference the Final Development Plan and Permit, the Pine Nut Development Standards, and other federal standards and local codes that are to be met. Memorandum of Lease can be filed with the County Records Office at the option of the applicant.

Development Process and Requirements

Figure 4-2 shows the development process as well as BIA and developer responsibilities. A checklist of development process requirements is provided in Appendix I.

Submission of Plans, Specifications, and Architect's/Engineer's Cost Estimate

After the Master Lease is in place, the developer will submit construction plans, specifications, and the architect's/engineer's cost estimate to the BIA Western Nevada Agency for review and approval. Plans and specifications must be in conformance with the Final Development Plan, the Pine Nut Development Standards, applicable federal regulations, the International Building Code, and any other codes or regulations deemed appropriate by the BIA.

Plans and specifications shall be stamped by a licensed architect and/or engineer licensed in the state of Nevada (or, in the case of the architect, prequalified by the National Council of Architectural Registration Boards).

Wastewater treatment and disposal plans and specifications shall be submitted to EPA for review and approval.

BIA Review

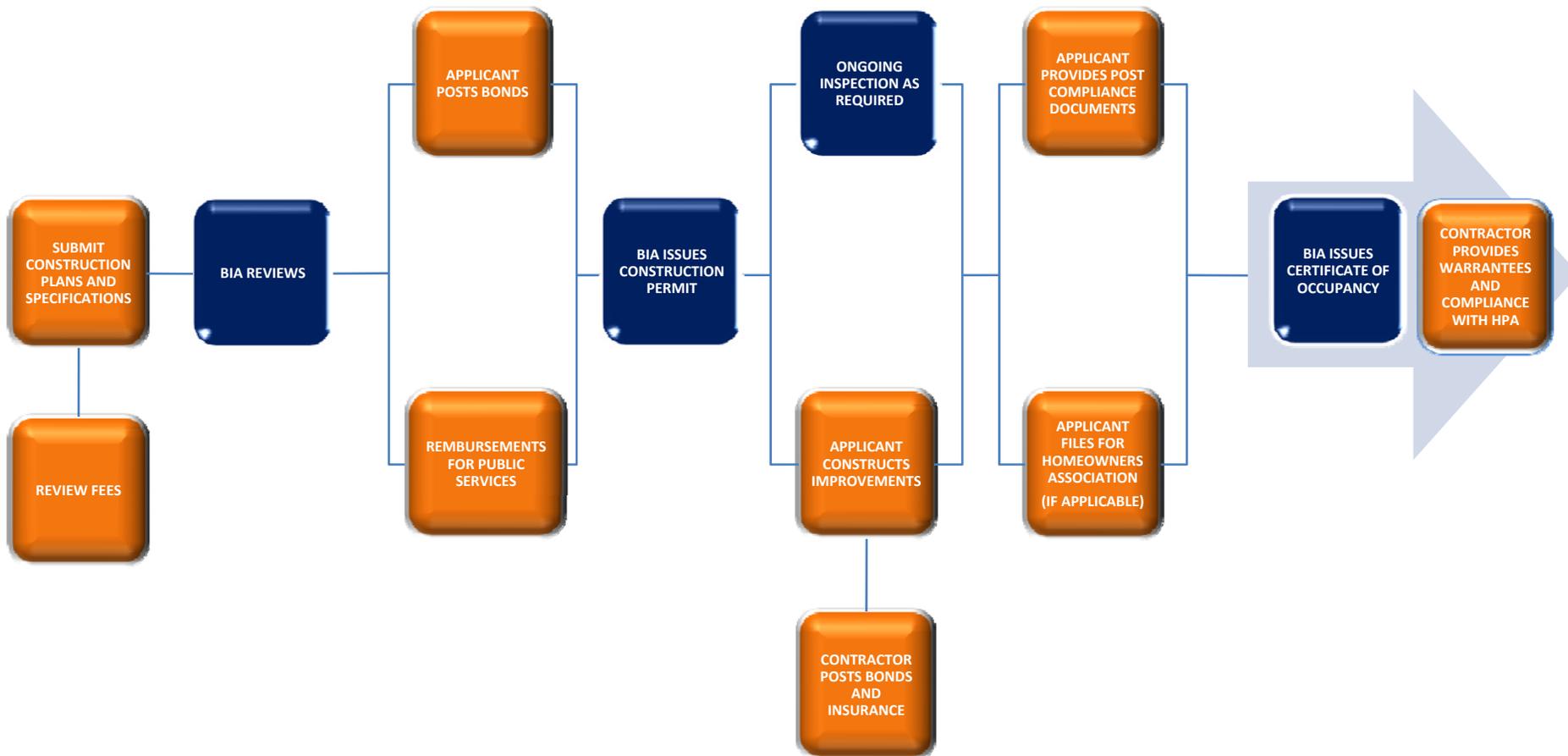
The BIA will review the construction plans and specifications for conformance to the above referenced standards, regulations, and codes.

Reimbursements for Public Services

Fees may be assessed to reimburse the cost of public services and may include but is not limited to:

- School Districts
- Police
- Fire
- Emergency Medical Response

Fees may be assessed on a one-time basis or on an ongoing basis. Fees assessed on a one-time basis will be paid by the developer. Fees assessed on an ongoing basis may be transferred to the homeowners association if applicable.



Color Key



Figure 4-2
Pine Nut Allotments
Development Process

Construction Permit Issued

If construction plans and specifications are approved, as well as approval by EPA, the BIA will issue a Construction Permit. This permit will be valid for a period of two years. If substantial construction has not been initiated during this period, the developer will be required to resubmit plans and specifications in order to renew the permit.

A Notice to Proceed will be issued by the BIA when evidence of the required bonding and insurance (see below) has been provided to the BIA.

Bonding

Security to be furnished by the Master Lease Holder

Prior to issuing a Construction Permit the Master Lease holder will post a performance bond (or adequate insurance coverage) in the amount of the construction price plus 10 percent with the BIA.

Security to be furnished by the Contractor

The successful construction bidder will be required to furnish and maintain in effect at all times during the contract period a performance bond in the sum equal to the construction price, and a payment bond also in the sum of the construction price. Copies of these bonds shall be provided to the BIA.

Bidders must be competent contractors who are licensed in the state of Nevada and bonded.

Insurance

The successful construction bidder will be required to carry Workers' Compensation Insurance, Builder's Risk Insurance, General Liability Insurance, Automobile Liability Insurance, and any additional insurance as appropriate (hazardous materials insurance, pollution liability insurance, etc.). Evidence of the insurance coverage will be provided to the BIA and the Master Lease Holder.

Construction and Ongoing Inspection

Construction inspection will be required to ensure that buildings and site work conform to the plans and specifications and appropriate codes in order to protect the health, welfare, and safety of the general public as well as protecting the value of the property for the allotment owners. Depending on the type, scale, and complexity of the proposed development, the BIA will require either periodic construction inspection at critical points during construction, or the BIA may require full-time, on-site construction inspection by a certified and independent third party.

Inspection reports will be required and will be submitted to the BIA in a timely manner. If full-time inspection is required, daily inspection reports will be submitted to the BIA.

Post Construction Compliance

The Master Lease Holder will submit to the BIA a set of As-build Drawings on mylar, a set of construction drawings on mylar, and certification by the architect and engineer that the project has been completed and was built in conformance with the plans and specifications.

Certificate of Occupancy

On completion of construction, including the functioning of all utilities, and a final inspection of all facilities, any items not satisfactorily completed or omitted or in noncompliance will be identified for correction. When these items are adequately rectified, the BIA will issue a Certificate of Occupancy.

Certificates of Occupancy can be issued by phase for those developments with more than one phase of construction.

Homeowners' Association

The Master Lease Holder will be responsible for filing for a Homeowner's Association for all residential developments involving home ownership in accordance with the general provisions from Chapter 116 – Common-Interest Ownership (Uniform Act) - Nevada State Revised Statutes. A copy of the charter and bylaws will be provided to the BIA.

Warranties

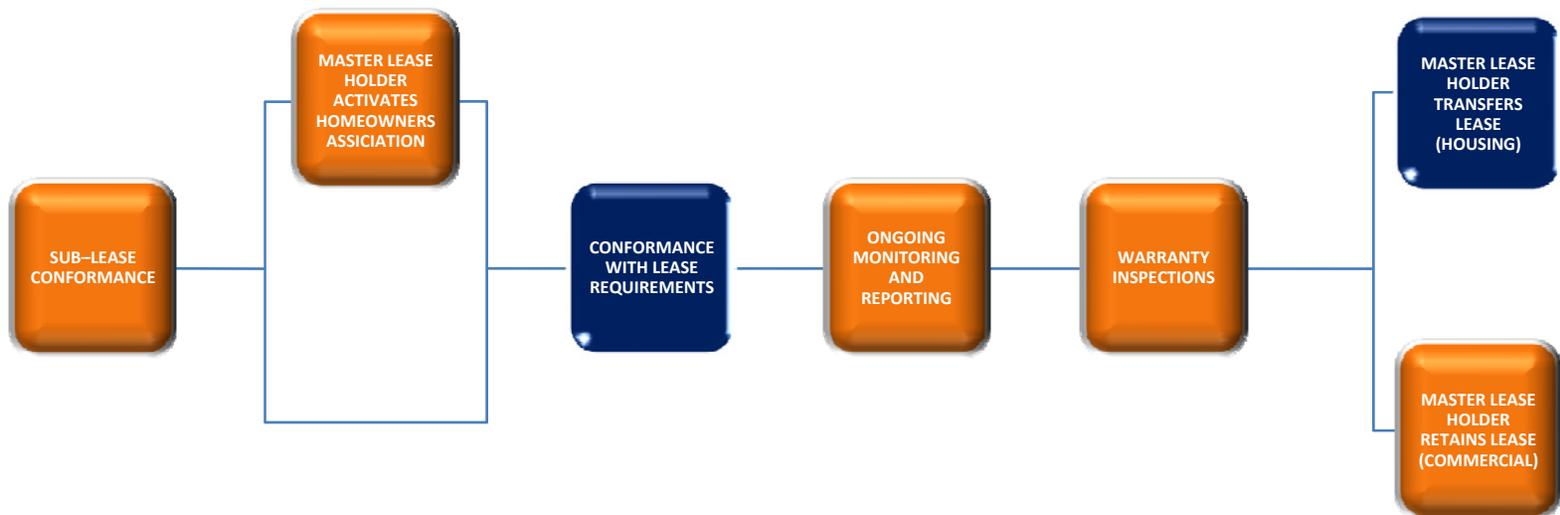
The contractor will provide the first sub-lease holder a warranty against defects and faulty workmanship for residential and commercial developments. Residential warranties will be for a period of one year, and commercial warranties will be for a period of two years. The contractor will also provide a maintenance schedule to each homeowner.

Notice of Compliance with Homebuyer Protection Act (HPA)

This notice will be required and the sale of new residences or remodel or improvement of residential property costing at least \$50,000 that is completed within three months of the sale of the remodeled or improved property. This is to protect the buyer against liens that may be filed on the improvements.

Post-Development Requirements

Figure 4-3 shows the post-development process. A checklist of post-development requirements is provided in Appendix I.



Color Key



Figure 4-3
Pine Nut Allotments
Post-Development Process

Sub-lease Conformance

The BIA will provide the Master Lease Holder with a model Sub-lease Agreement that will include all provisions and disclosures required by the BIA to be in the sub-lease. The Master Lease Holder shall provide copies of the sub-leases to the BIA.

Monitoring and Enforcement

The Master Lease holder will be responsible for specific reporting and maintenance of facilities. These will include but are not limited to the following.

Annual water quality testing: Water quality test results will be submitted to the BIA. If standards are exceeded, the Master Lease holder will submit a Corrective Action Plan to the BIA.

Water supply monitoring: Every 3 years, or more frequently if necessary, the Master Lease holder will test wells for yield and for static level. Results will be submitted to the BIA. If yields are not adequate to meet demand or if the static level falls, the Master Lease holder will submit a Corrective Action Plan to the BIA.

Community Sewage Treatment and Disposal Facilities: The Master Lease Holder will supply copies of all EPA required reporting to the BIA. If standards are exceeded, the Master Lease holder will submit a Corrective Action Plan to the BIA.

Conformance with Lease Requirements

The BIA will be responsible for ongoing monitoring to ensure that the Master Lease holder conforms to the conditions of the lease.

Warranty Inspections

Warranty Inspections will be conducted annually for the period of the warranty. Representatives of the Master Lease Holder (including architect and/or engineer) and contractor will conduct the warranty inspections. Any materials defects and problems resulting from faulty workmanship will be documented, and the contractor will be responsible for corrective actions. An inspection report will be provided to the BIA by the Master Lease Holder.

Transfer of Master Lease

In the case of residential development with home ownership, the Master Lease Holder can, at project completion, request that the Master Lease be transferred to the Homeowner's Association, or some other entity, as approved by the BIA. Project completion is defined as occurring when all public infrastructure and facilities are completed and operational, as well as any improvements to common areas, and 100% of the dwellings have been constructed and sold.

The Homeowner's Association may voluntarily request that the Master Lease be transferred to the Homeowner's Association prior to completion and/or sale of 100% of the homes. However, all public infrastructure and facilities are to be constructed and operational as well as any improvements to common areas. If approved by the BIA, the original Master Lease holder will then become a sub-lessee for all remaining undeveloped lots and/or unsold homes.