



Southwind v. Canada: Implications for Land Managers

NALMA land managers

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| Our focus

Supreme Court Decision: Southwind v. Canada

- Why it matters for:
- Land valuation
- Expropriation
- Application
- Mitigation

The background of the slide is a photograph of a lush green field with tall grass. In the distance, a wooden windmill is visible against a cloudy sky. The entire image is dimmed to provide a clear background for the text.

The Southwind Case

Supreme Court's Findings:

Fiduciary duty requires more than “market value.”

Compensation principles:

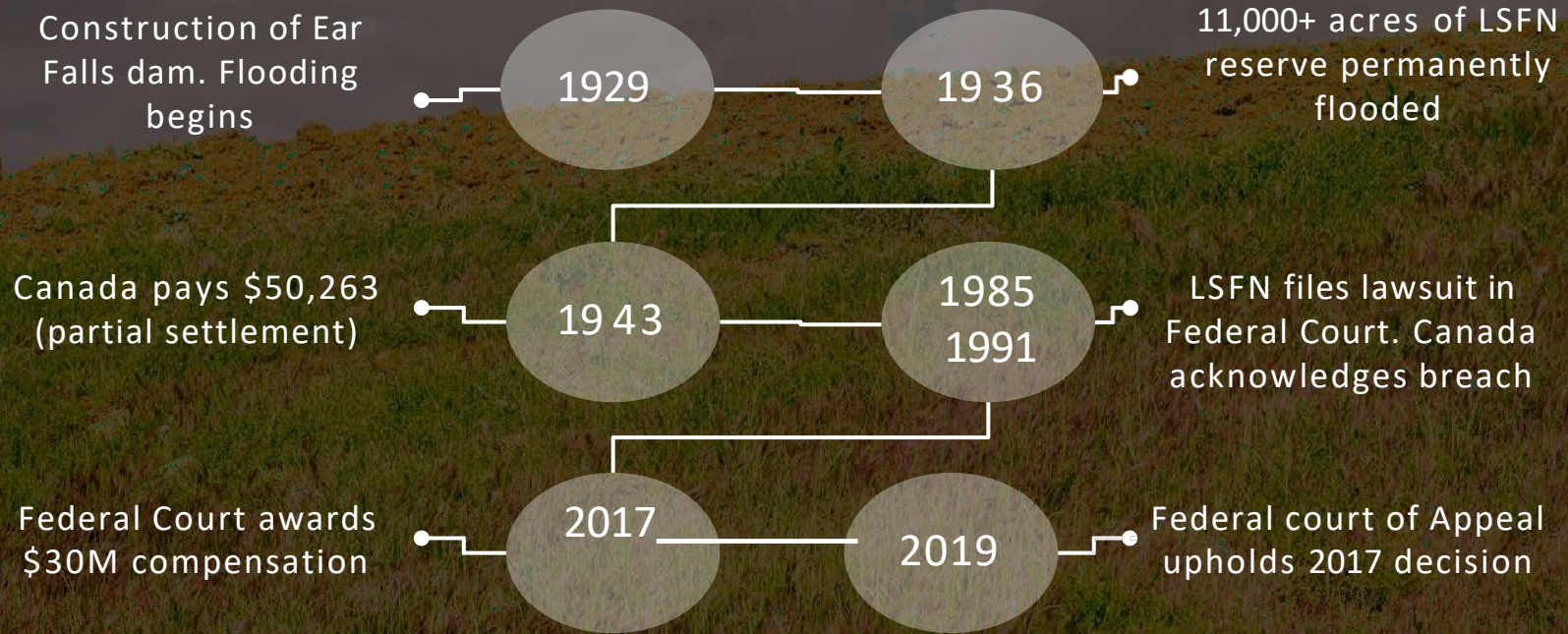
Unique nature of reserve lands

Highest and best use

Opportunity cost



Timeline of Lac Seul First Nation Flooding claim



Timeline of Lac Seul First Nation Flooding claim

Supreme Court
(Southwind v. Canada)
breach of fiduciary
duty

2021

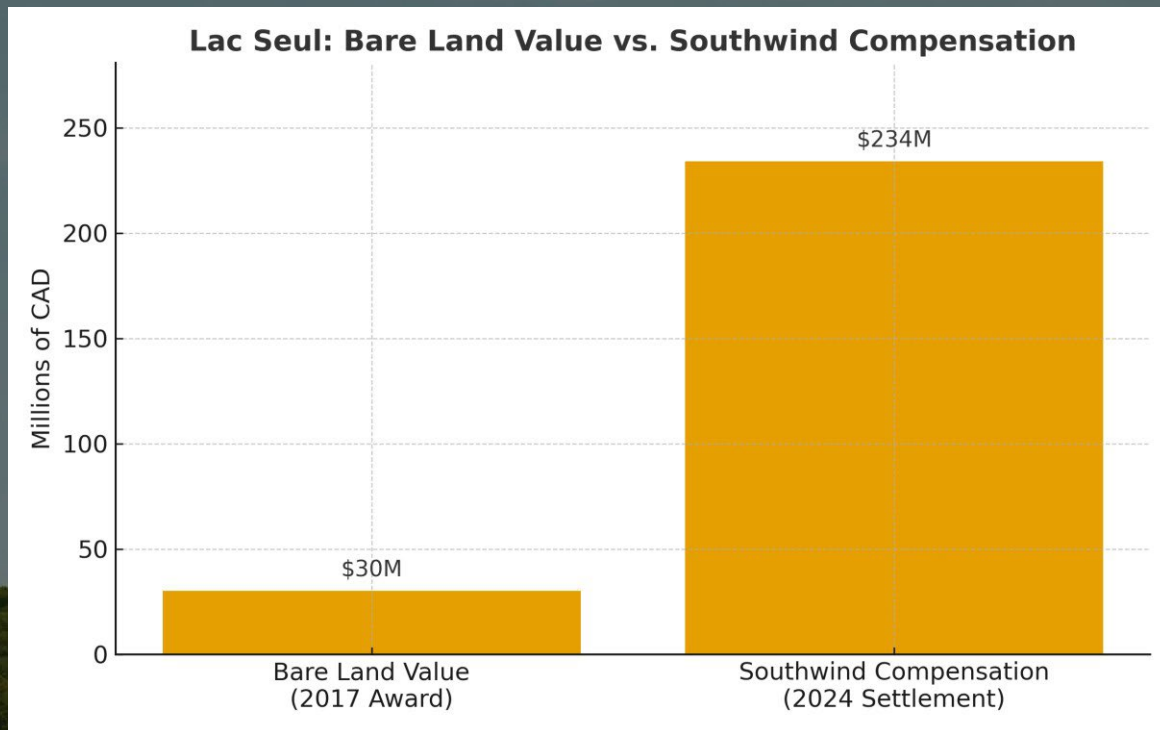
2024

March 3rd LSFN
members ratify
settlement agreement

2024

Final Settlement
\$234Million

Case Outcome:



\$30M + interest.



Impacts on Valuation & Expropriation

Before vs. After Southwind

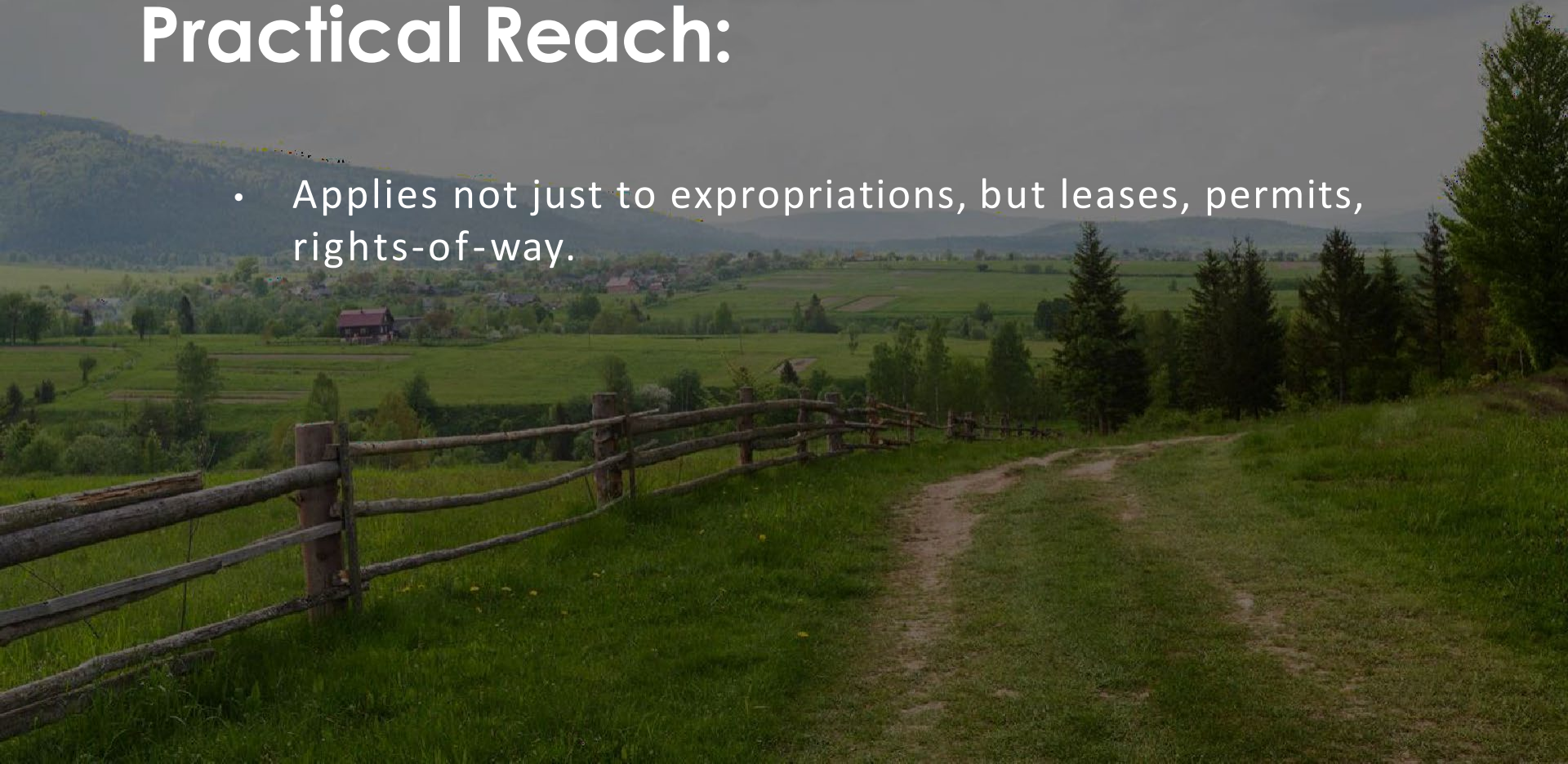
Before: backward-looking,
sale value only.

After: forward-looking,
includes highest/best
use, opportunity cost &
communal value.



Practical Reach:

- Applies not just to expropriations, but leases, permits, rights-of-way.



How Courts Are Applying Southwind

Case Examples

- Huu-ay-aht 2022 (forestry licences, \$14M).
- Mosquito 2023 (utility ROW, valuation based on best use).
- Beaver Lake 2022 (oil & gas permits).
- Cowessess 2023 (“as long as required” permit treated as expropriation).

The background of the slide is a photograph of a misty landscape. In the foreground, there is a field of tall, green grass. In the background, a wooden cross is visible, partially obscured by the mist. The overall atmosphere is serene and contemplative.

Going Forward Liability

| Indian Act vs. Land Code

Authority

- Indian Act: Canada approves
- Land Code: Nation approves

Liability

- Indian Act: Canada responsible
- Land Code: Nation responsible

Risk

- Indian Act: Limited control, Canada at fault
- Land Code: Full control, Nation bears risk

Process

- Indian Act: Centralized
- Land Code: Self-governed, must safeguard

| High-Risk Arrangements:

- “As long as required” permits.
- Leases with no rent review

Risk Mitigation Tools:

1

Independent
valuations.

2

Transparent
community approval.

3

Strong agreements
with review clauses.

4

Documented benefit
agreements &
Record keeping

Practical Process for Land Managers

Intake → Valuation → Compliance → Community → Agreement → Monitoring.



Closing Messages

Lands ordinary
property.

Must be valued
for full potential
+ communal
significance.

Land managers
protectors of
Nation's future

Decisions made today
shape the legacy for
the next seven
generations.

Wela'lioq!

Do you have any questions?

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References

Full citations:

- *Southwind v. Canada*, 2021 SCC 28.
- *Huu-ay-aht First Nations v. Canada*, SCT, 2022.
- *Mosquito Grizzly Bear's Head Lean Man First Nation v. Canada*, SCT, 2023.
- *Beaver Lake Cree Nation v. Canada*, FC, 2022.
- *Cowessess First Nation v. Canada*, FCA, 2023.