

Dehcho First Nations Trust



Investment Management Board Edmonton, December 2011

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Duncan & Craig LLP

Investment Management Board

- Mavis Cli-Michaud
- Eric Menicoche
- Karen Felker
- Richard Lafferty

Legal Team: Duncan & Craig

- Phil Renaud
 - Trust Law
- John Kosolowski
 - Corporate Structures and Governance

Trustee

- CIBC Trust
- The role of the trustee
 - Makes sure the money is spent only according to the Trust
 - the gatekeeper
 - the monitor
 - the protector

Investment Team

- Investment Advisor Qualifications:
 - Certified Investment Management Analyst (CIMA)

or

 - Chartered Financial Analyst (CFA)

- CIBC Wood Gundy
 - Tom Wooding (CIMA)

Authorized Investments

Prudent Investor Rule

- Adopts modern portfolio theory

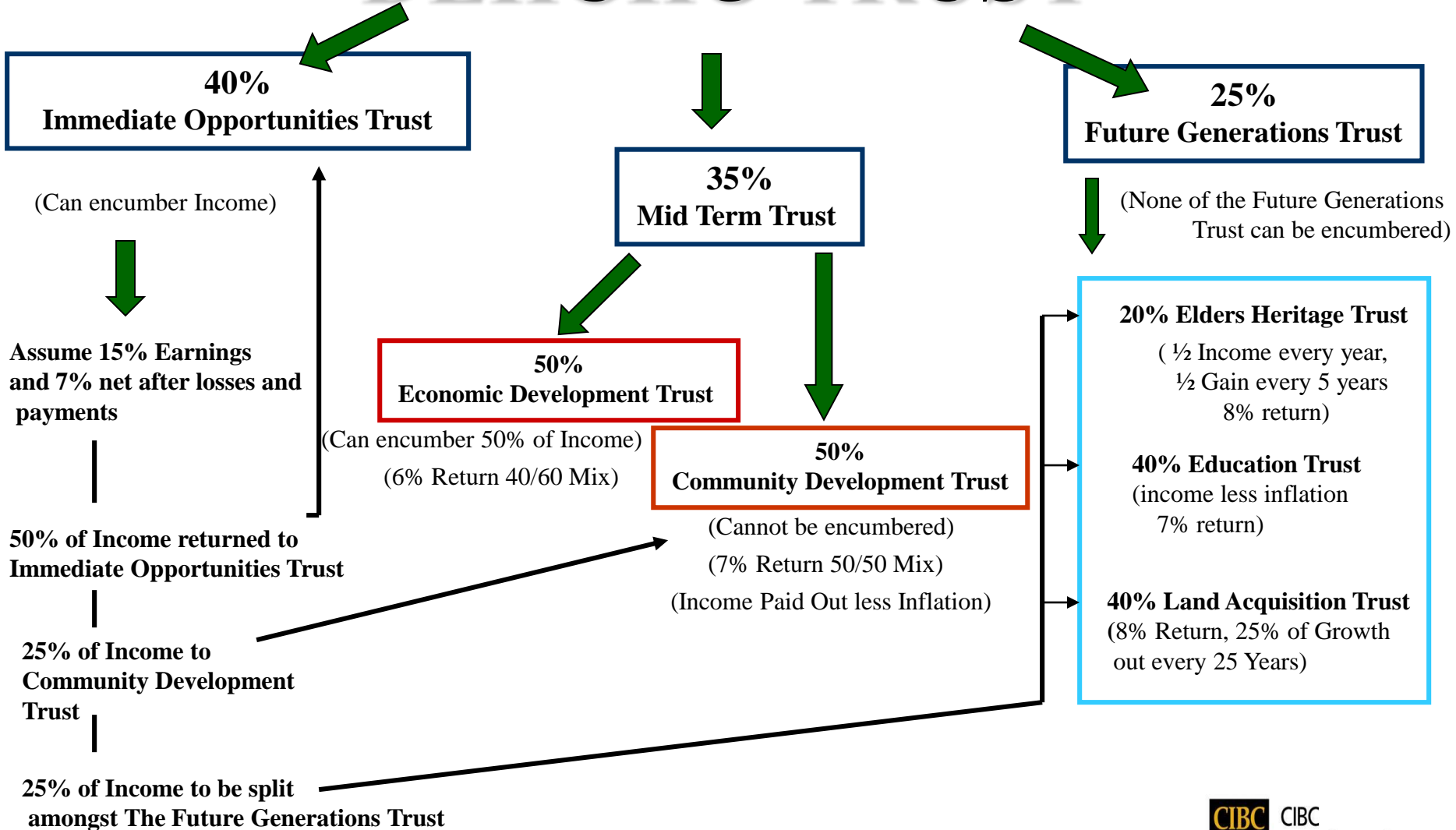
- the method used by the best investment advisors

- Tom Wooding

Diversification

- Don't put all your eggs in one basket

DEHCHO TRUST



Process

- Dehcho First Nations Master Trust
 - Approved March 2006
 - Received \$10 million settlement funds
 - \$5 million received 2007
- Develop the Replacement Trust
 - Substantially the same as the Master Trust
 - Designed for \$150,000,000
 - Develop the details of how each Fund operates
- Obtain Advance Tax Ruling from Canada Revenue Agency
- Signing Ceremony

Advance Tax Ruling

- Pat Kirby, Q.C., Felesky Flynn, tax lawyer
- Advance Tax Ruling from Canada Revenue Agency
 - Prospective rulings only
- Trust income is not subject to income tax, if the settlor of the trust is a “**public body performing the function of a government in Canada**”
 - Dehcho First Nations must qualify

Advance Tax Ruling

- Reply from Canada Revenue Agency:
 - Require further details on whether each of the Dehcho First Nations is a “public body performing a function of government in Canada”
- We will contact each First Nation to obtain more information

Settlement of Additional Property

- The philosophy of the people of the Dehcho First Nations is that **the land is sacred** and that any payments received by the Dehcho First Nations for use of their lands or for the sale of any resource from the lands should be retained as capital because it is really in substitution for something that has been taken from the land.
- Therefore, the Dehcho First Nations intend to settle any such payment upon this Trust so that such payments will be a **symbolic recognition of the importance of preserving the land.**
- Elders: **“One House”**

Capital

- Capital is:
 - The original contribution of money to the trust
 - All other contribution of money to the trust
- Capital is like the “land”
 - Always preserve the capital

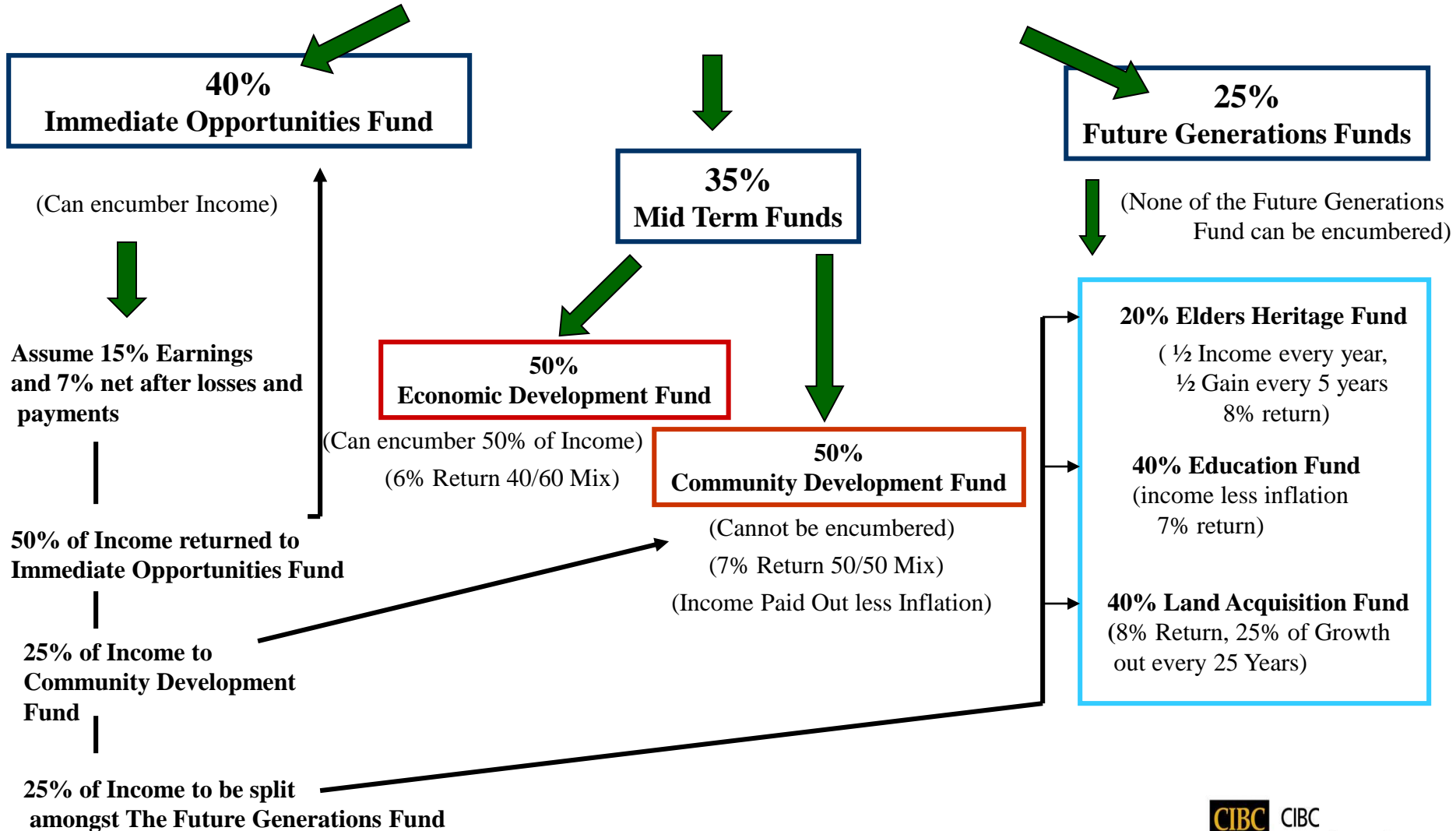
Capital

- Do not encumber the capital
 - Invest in Authorized Investments only
- Invest for the capital to grow
 - Invest for the future generations
- Income used for immediate opportunities
- Capital grows for future generations
 - In perpetuity

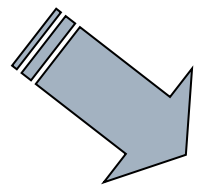
Capital

- Trust law:
 - Income: interest, dividends, rent, etc.
 - Does not include capital gains
 - Capital:
 - All contributions by DFN
 - Capital gains
- Some capital gains can be used in some of the funds, but not if it falls below the value of the contributions

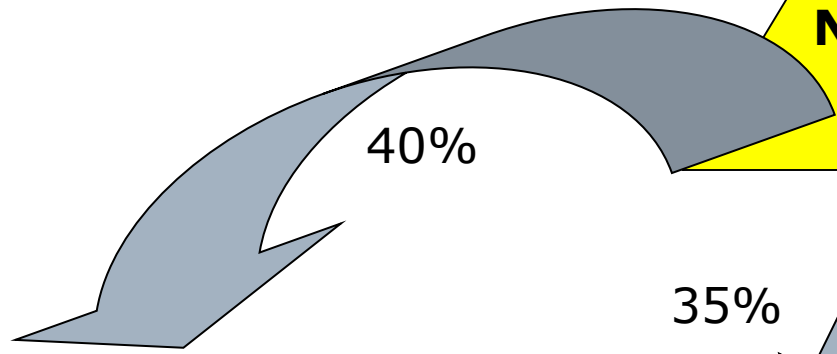
DEHCHO TRUST



Dehcho First Nations Contribution to the Trust



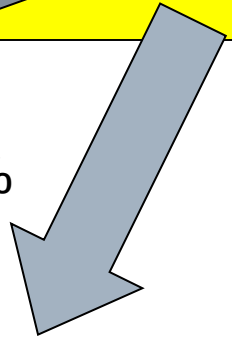
Dehcho First Nations Trust



40%

Immediate Opportunities Fund

35%

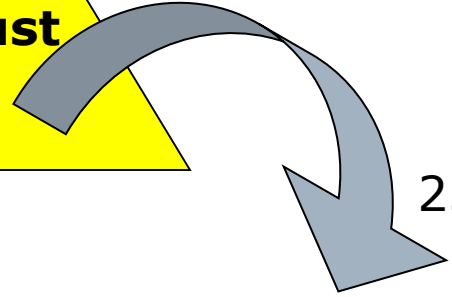


Mid Term Funds

Economic Development Fund

Community Development Fund

25%



Future Generations Funds

Elders Heritage Fund

Education Fund

Land Acquisition Fund

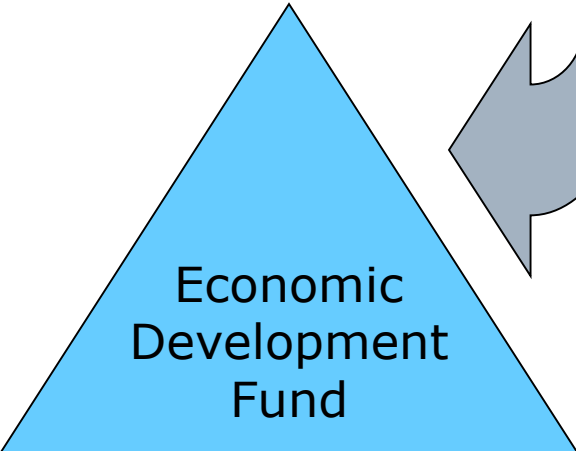


35% ↓

Mid Term Funds

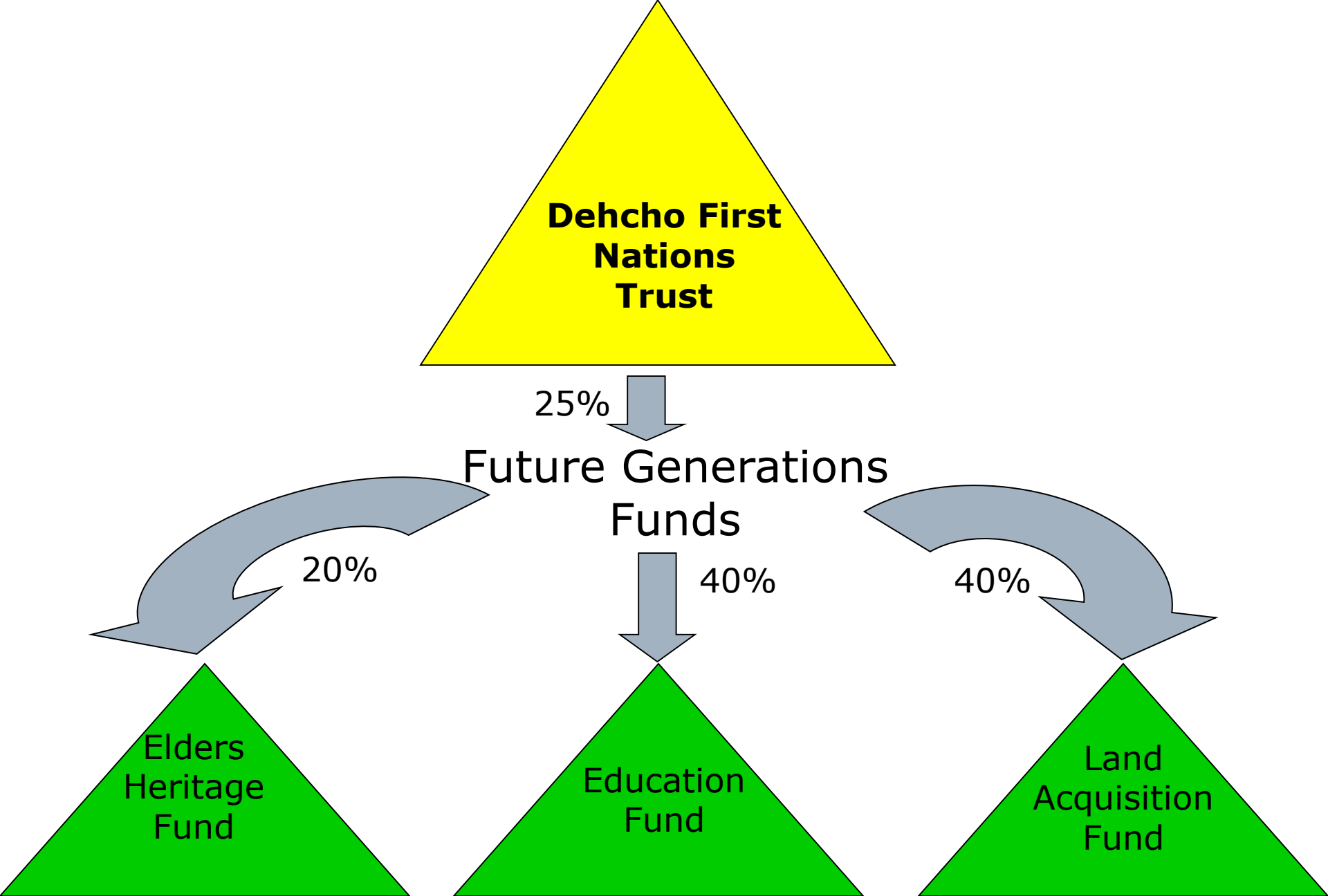
40% to 60%

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Mid-Term Funds Allocation

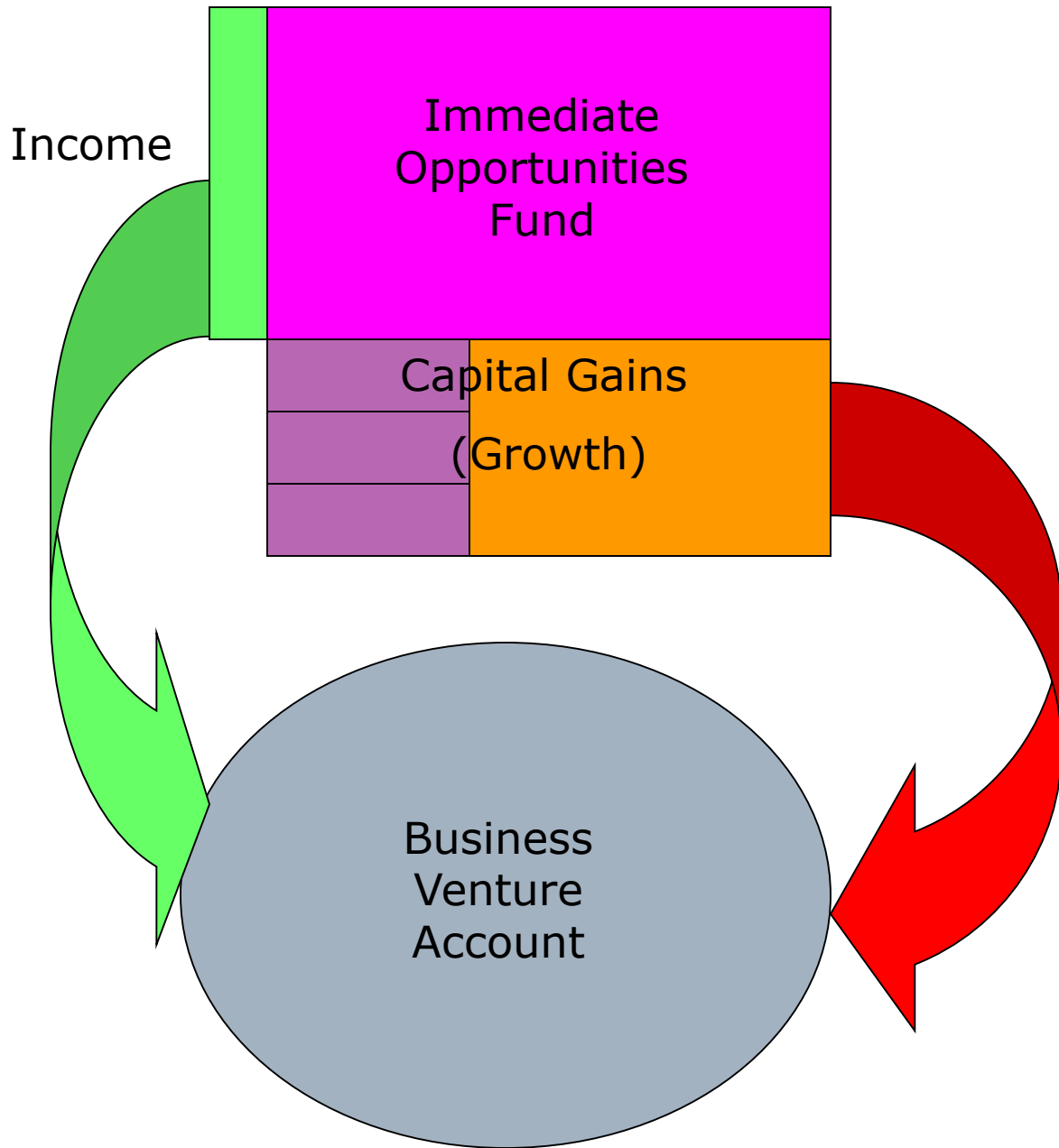
- 40% to 60%
 - Economic Development Fund
 - Community Development Fund
- Determined by the **Leadership** on an annual basis
 - upon advice from the Investment Management Board and the Investment Advisor

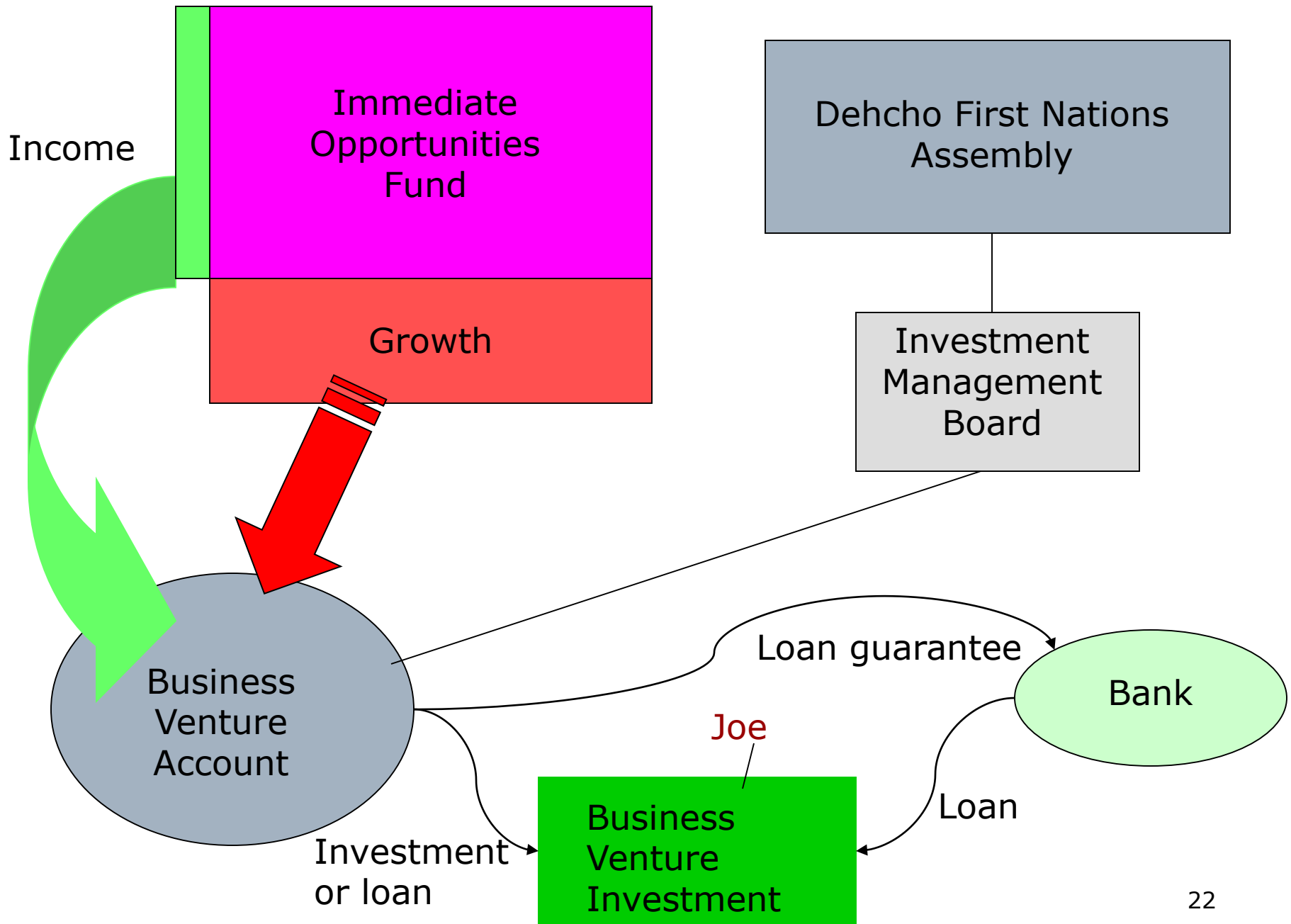


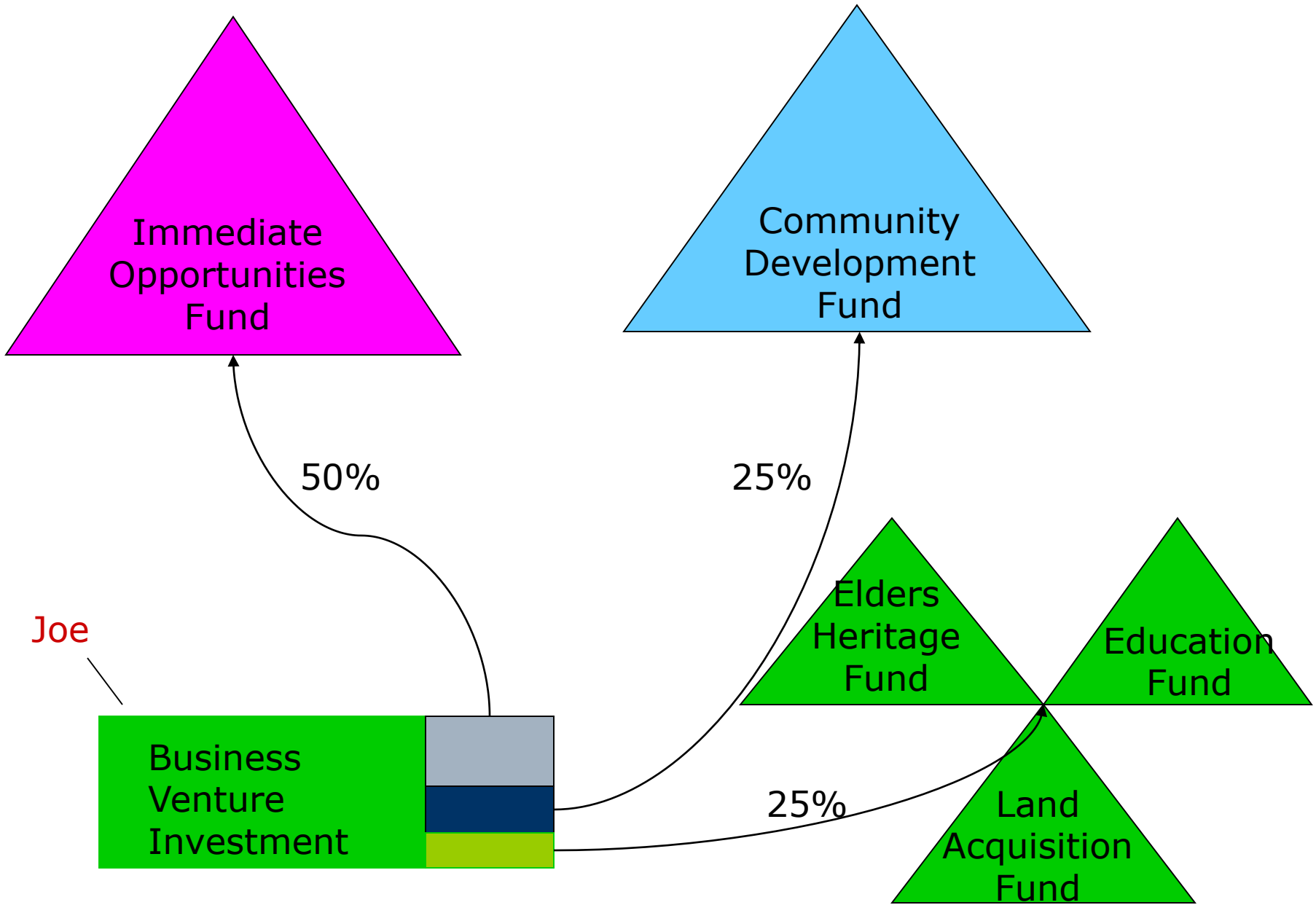
Sources of funds for the Trust

- DFN Settlement Agreement
 - \$15 million
- Eventual settlement
 - \$150 million

- The Dehcho First Nations Trust was designed for \$150 million







Income from Business Venture Investments

Investment Management Board

- Board members appointed by the Assembly
- At least three but not greater than nine persons
 - First few years: 3 members?
 - Later years: 5 or 7 or 9?
 - add outside expertise?

Investment Management Board

- The Trust splits the function of the Trustee
 - Trustee holds legal title to all assets of the trust
 - Acts as the gatekeeper
 - Ensures the Trust is properly managed
 - Investment Management Board is where the detailed work of the trust is done
 - Investment decisions of the Fund
 - Makes decisions on the use of the money from the funds
- Fiduciary duties

Investment Management Board

- allowed to make decisions that are removed from political pressure
- board of directors for a major corporation:
 - **Independent**
 - **Expert**
 - **Accountable**
- no member of the board may be an elected member of the Leadership or the governing body of any of the Dehcho First Nations

Investment Management Board

□ Key Principles:

■ Transparency

- the process which the Investment Management Board will follow in making Business Venture Investment decisions

■ Accountability

- process for reporting to Members
- ensure Members will have confidence in the integrity of the decision making process and responsible use of Trust Income

Investment Management Board

□ Key Principles:

■ Advisory

- requirements to provide feedback to applicants seeking financial assistance
 - assist Members in learning and understanding modern financing criteria

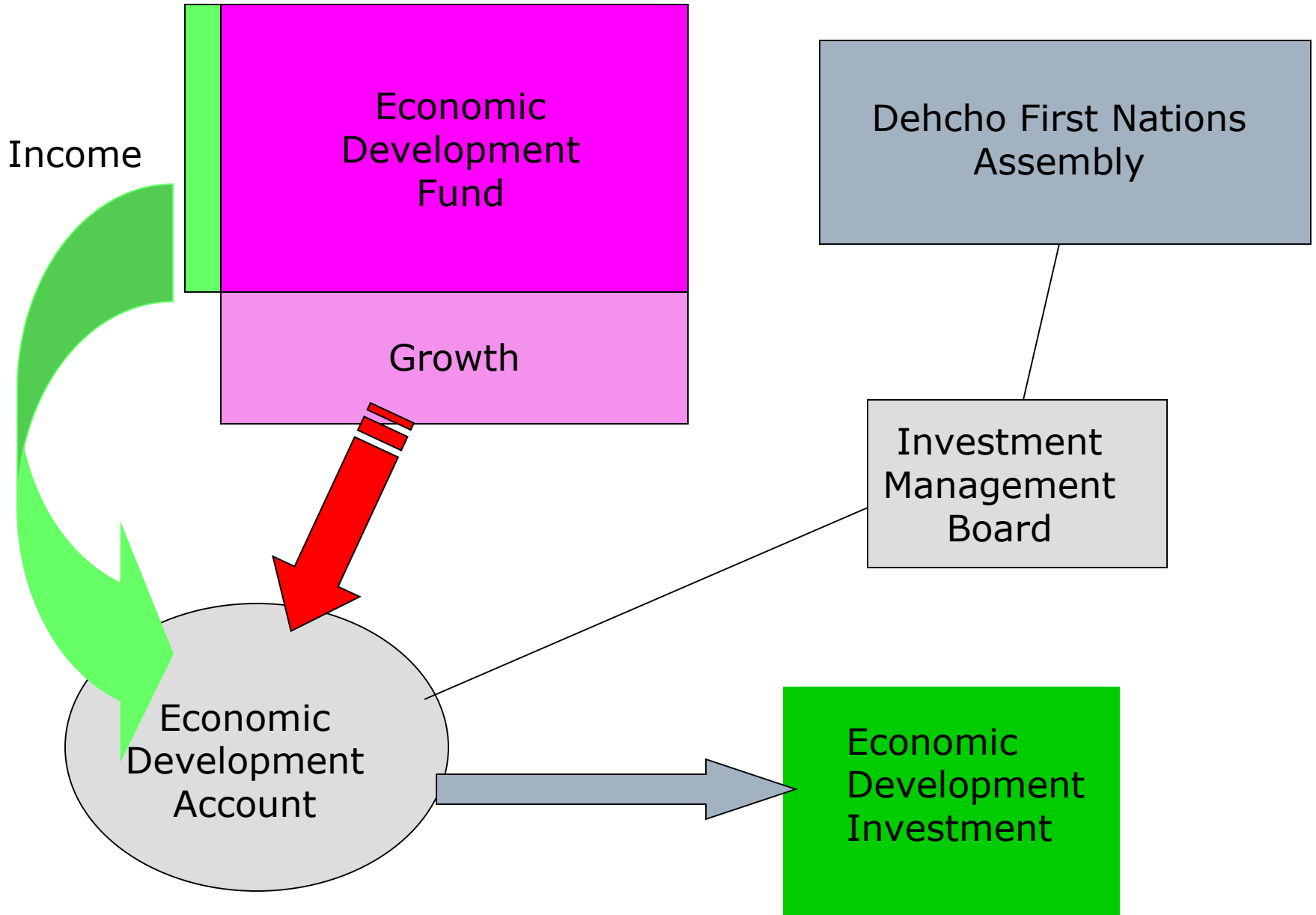
Investment Management Board

- Two major functions:
 - To work with the Trustee and Investment Advisor
 - developing and approving investment strategies of the Trust Fund
 - to ensure compliance with the trust and funds
 - liaison between the Leadership, Investment Advisor and Trustee.
 - To approve projects for the investment of the income from the trusts, in accordance with the established criteria for each fund

Investment Management Board

□ Conflict of Interest Guidelines

- The Member has a duty to disclose a conflict of interest
- The Member must disclose immediately
- The Member is excluded from the discussion about that project



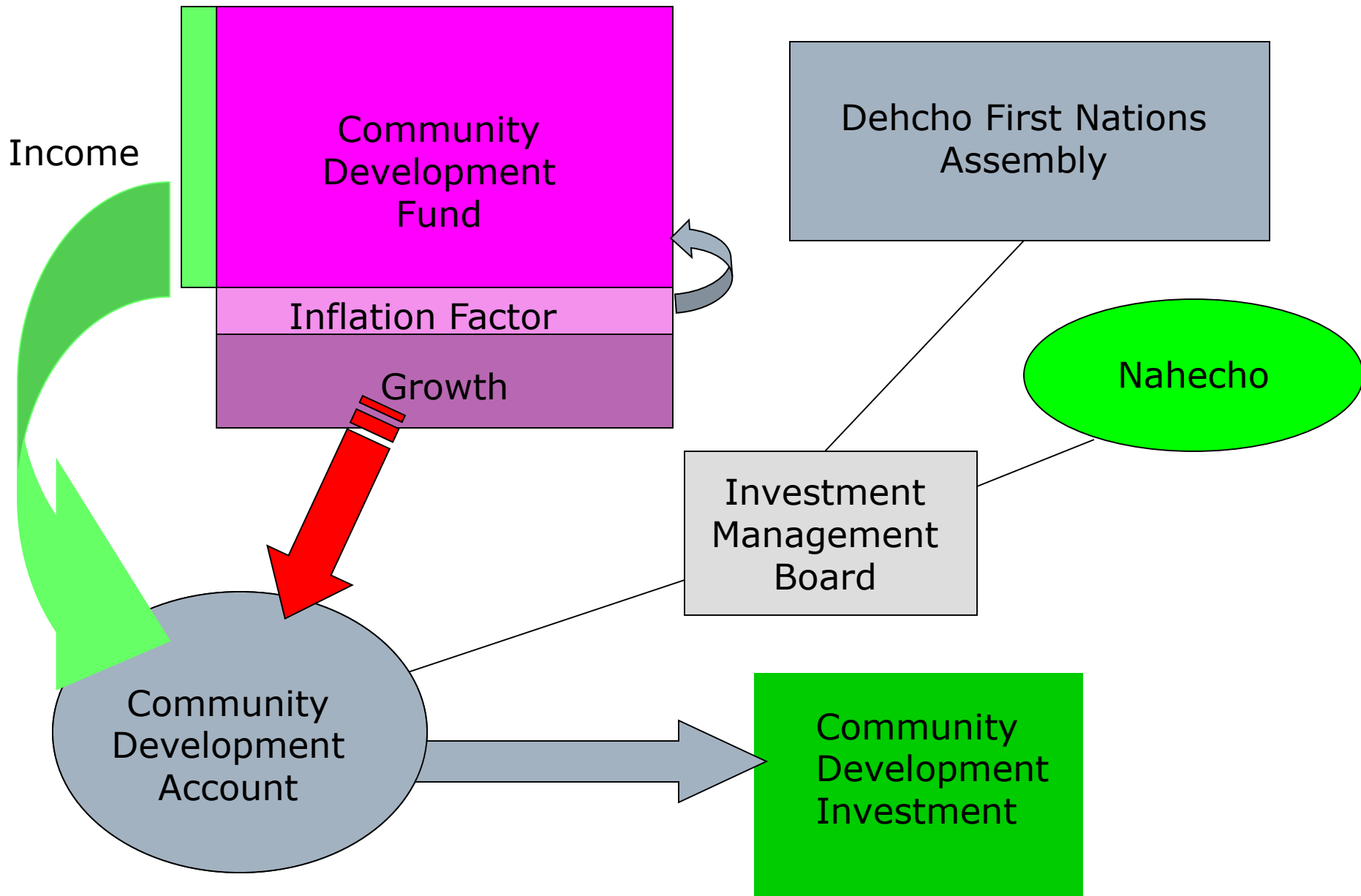
Economic Development Fund

- Foster development of economic capabilities for the community
 - community owned enterprises
 - **profit** as its primary goal
 - employment, training, and business experience to Members
 - develop permanent facilities for the benefit of the community
 - create an income for the Dehcho First Nations on a medium to long-term basis

Economic Development Fund

Examples

- Utility companies
- Transportation facilities such as airports
- Airlines
- Tourism facilities
- Toll roads
- Toll bridges
- Commercial real estate



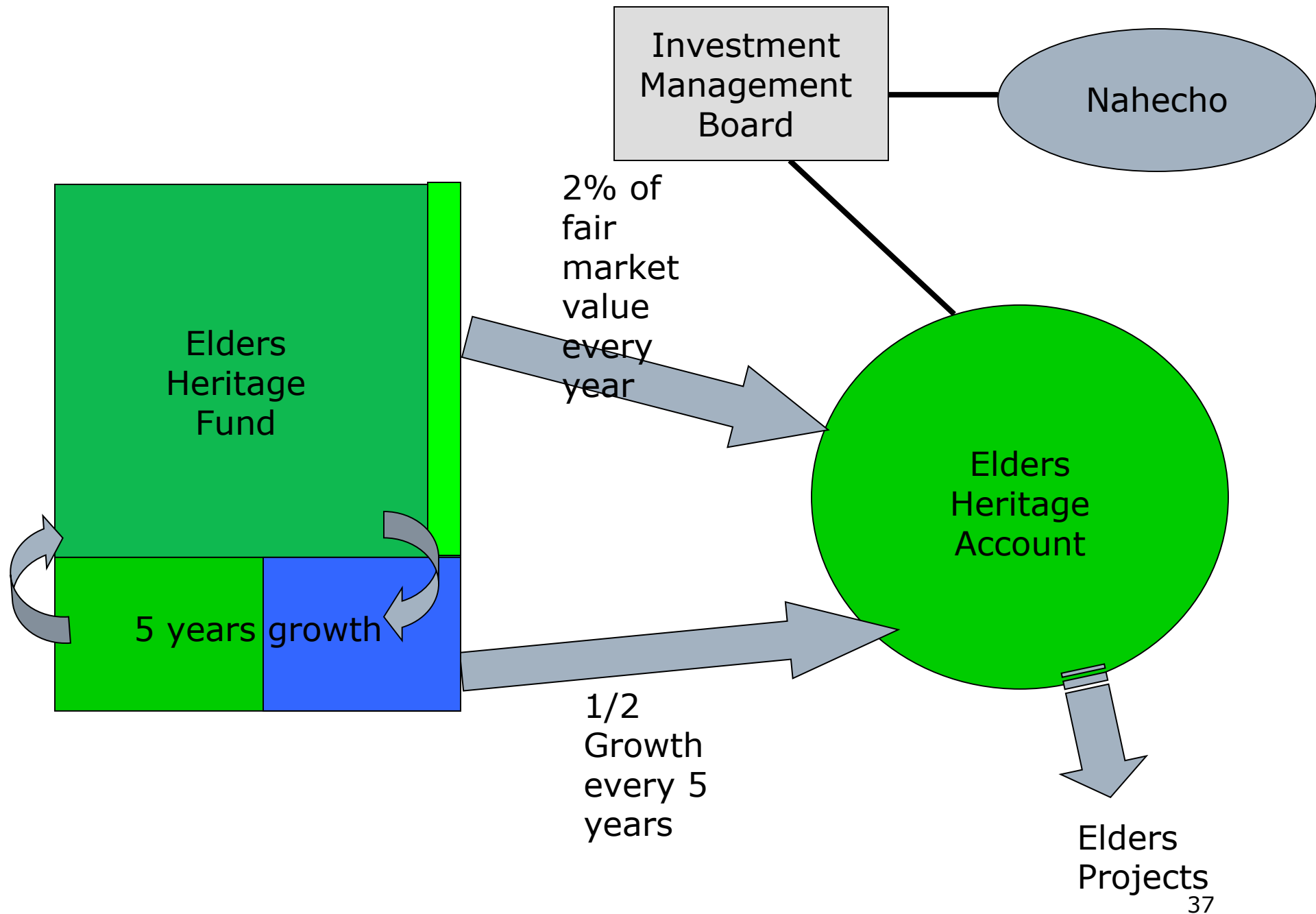
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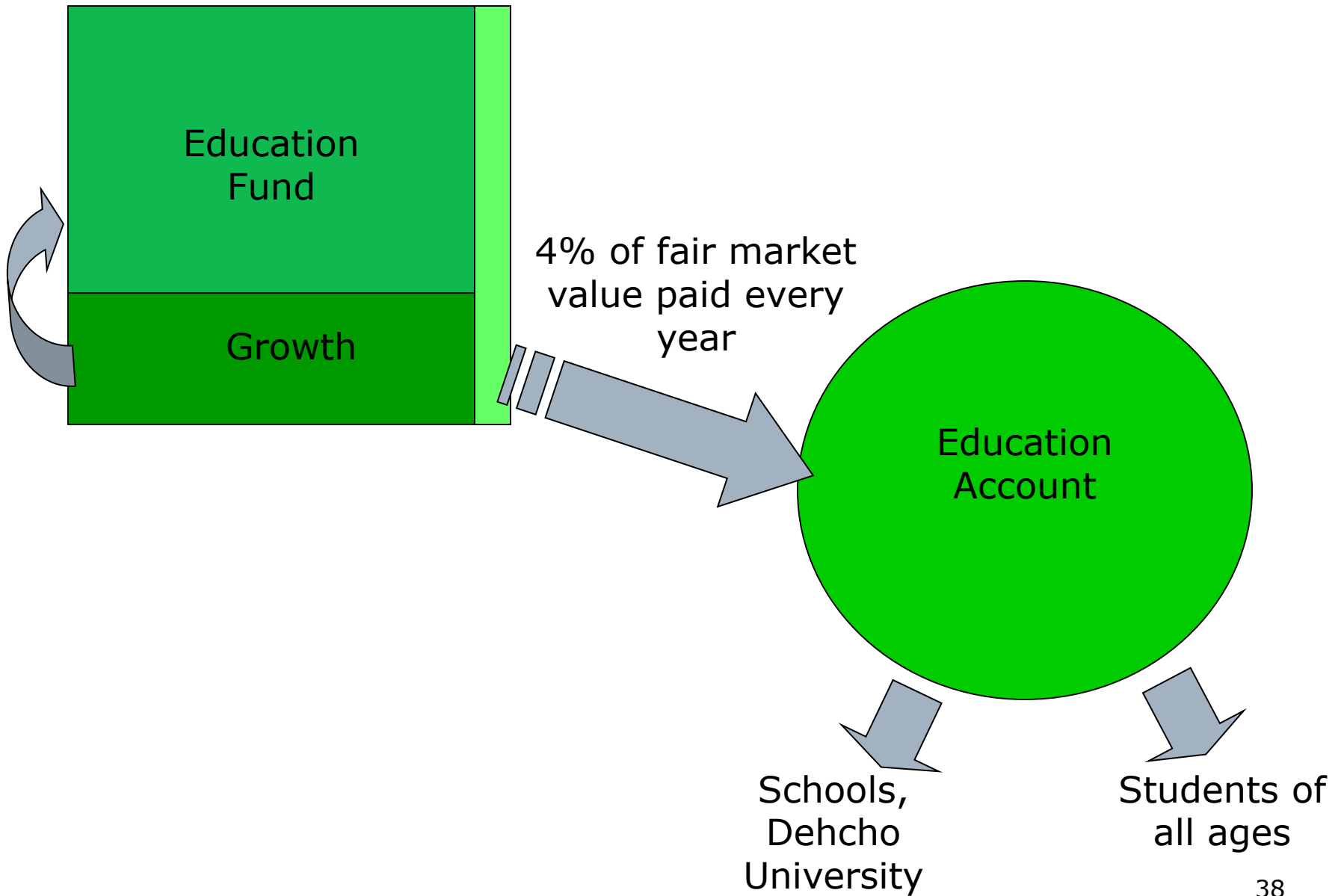
Community Development Fund

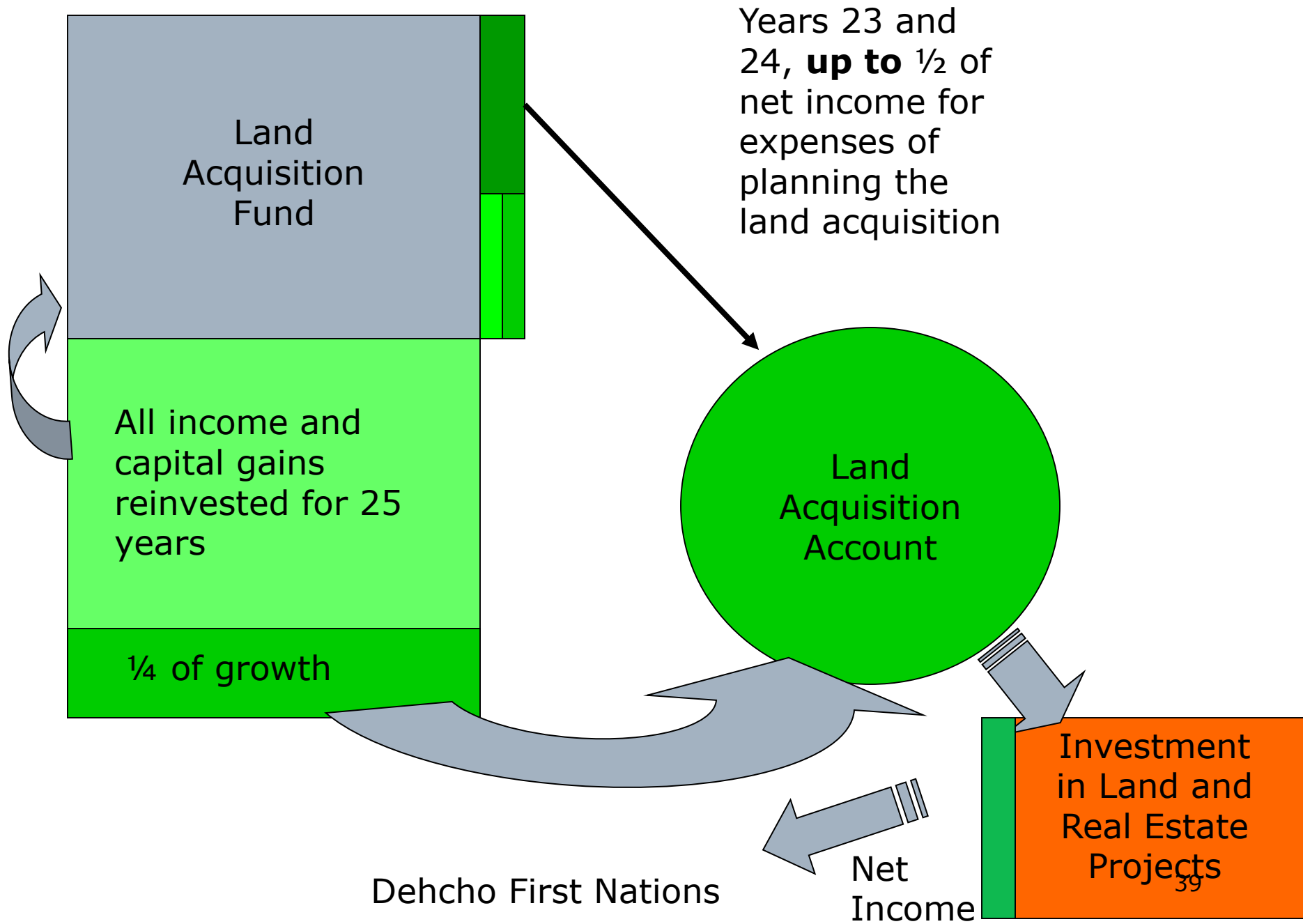
Examples

- Homes for senior citizens
- Schools
- Dehcho First Nations office buildings
- Women's shelters
- Hospitals
- Recreational facilities
- Health clinics
- Healing centres
- Day care facilities



An investment in the Dehcho First Nations cultural future.





Amending Formula

- New concept
 - Make the trust more flexible
 - But it is still like a constitution, so it should be difficult to change
- 4 levels of amendment
 - Level 1: Administrative
 - Level 2: Changes in the law
 - Level 3: Amending Tribunal
 - Level 4: Referendum

Level One Amendment

- ❑ Changes which are administrative or procedural
- ❑ Obtain a legal opinion that the change will not alter the purposes of the Trust
- ❑ If so, Trust may be amended at any time by a Dehcho First Nations Motion passed by the Leadership based upon the recommendation of the Investment Management Board

Level Two Amendment

- ❑ Amendments required as a result of changes in law, including changes in taxation law, and to create new Funds when needed
- ❑ Initiated by the Leadership, Trustee or Investment Management Board
- ❑ Written opinion from legal counsel for the Trustees explaining the tax consequences for the Trust or from changes in the law and the potential benefit of the proposed amendments

Level Three Amendment

- Creation of an amendment tribunal (a Dehcho Court)
- Four members:
 - Two Elders
 - Cannot be on Leadership or Elected Governing Body of a Dehcho First Nation
 - Recommended by a Council of Elders and appointed by the Assembly
 - A retired Justice (Court of Queen's Bench, Court of Appeal, Federal Court, or Supreme Court)
 - Appointed by the Investment Management Board and confirmed by the Assembly
 - A lawyer specializing in trust law
 - Appointed by the Investment Management Board and confirmed by the Assembly
 - Must be independent

Level Three Amendment

- The Assembly and the Investment Management Board must pass a resolution recommending the proposed amendment
- A legal opinion must be obtained, stating that the proposed amendment is a Level Three Amendment, and will achieve its intended purpose

Level Three Amendment

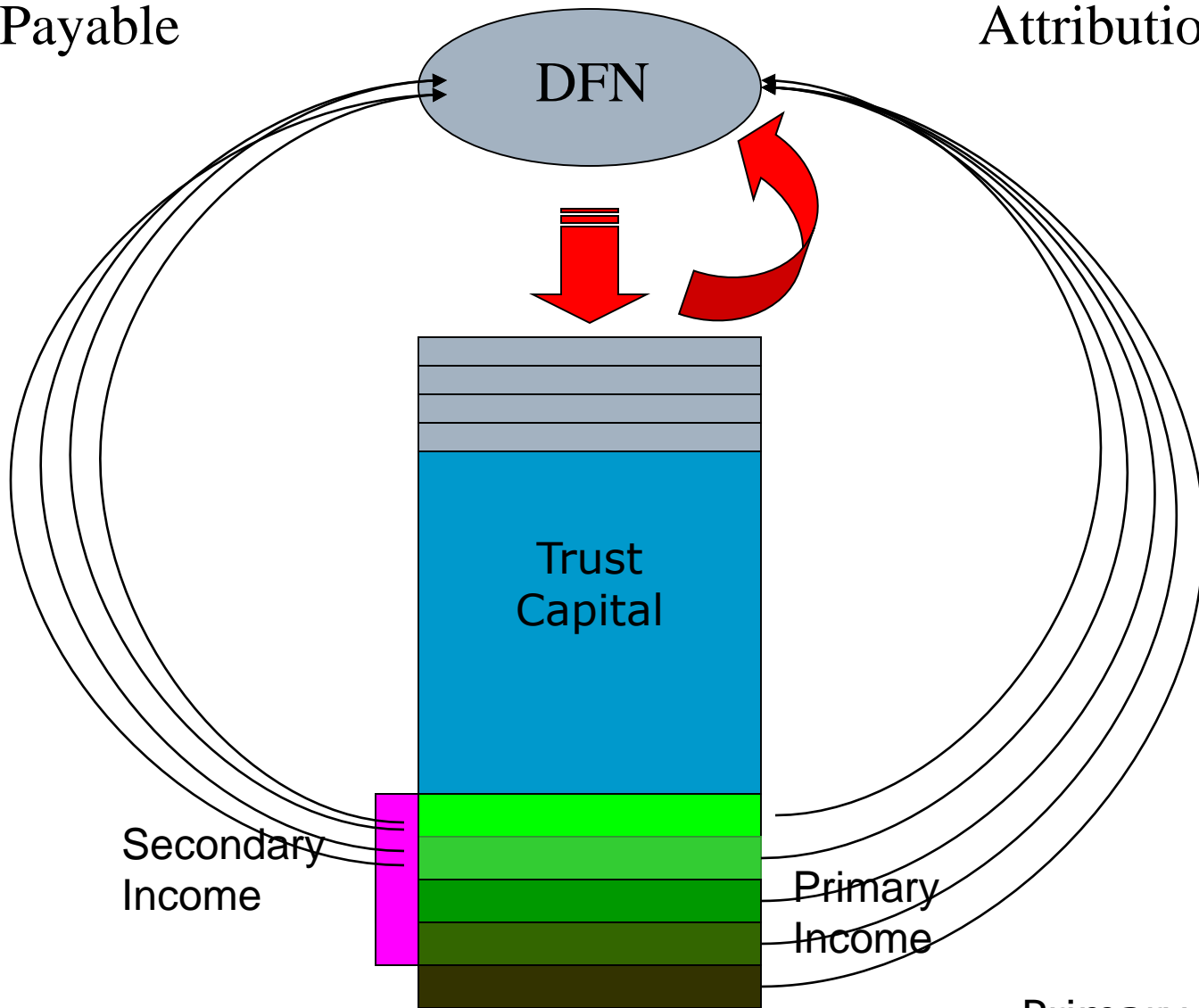
- Decisions by majority vote
- At least one of the Elders must be part of the majority
- Decision must be made in the best interests of the Trust and Beneficiaries
 - Be practical

Level 4 Amendment

- ❑ Termination of the Trust
- ❑ Trust is like a constitution
 - Hard to collapse
- ❑ Not less than 75% of the Members 18 years of age or older who vote in a referendum held for such purpose
- ❑ No less than 60% of the eligible voters of the Dehcho First Nations must vote in the referendum for it to be valid

Paid or Payable

Attribution (75(2))



Secondary
Income

Primary
Income

Primary income is attributed to DFN but is used for trust purposes.

Rule Against Perpetuities

- Rule against perpetuities
 - Life in being plus 21 years
 - Limits the length of a trust
- Royal Lives
 - the expiration of twenty years from the date of the death of the last survivor of all the lineal descendants of Her Majesty Queen Elizabeth II who are alive at the effective date of this Trust.

Rule Against Perpetuities

- Archaic
- DFN Goal: A Perpetual Trust
- Propose amendment to Perpetuities Act
 - NWT
 - Submission to Legislature
 - Purpose trust
 - Abolish the Rule Against Perpetuities

Conclusions

Questions?

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