



# Introduction to Land Regimes

December 2016

# Types of Landholdings

- There are 2 types of FN interests on reserve lands:
  - **Collective Interest:** the FN as a whole has a collective legal right to occupy, use & benefit from reserve land
  - **Individual Interest:** an individual FN member who received an allotment has the individual legal right to occupy, use & benefit from the reserve land allotted to him/her (“lawful possession”)





# Reserve Land Holdings

**Primary Land Holder:** Her Majesty holds title to the reserve as a whole. It is held for the use & benefit of a Band, as defined in the *Indian Act*.

## **Land Holdings of Individual Band**

**Members:** Band members may hold land for their own personal use or to be leased to third parties for their own benefit. This is a CP holding.



## **Holdings at the Pleasure of the FN C & C:**

These are not considered to be lawful possession:

- they are not approved or recognized by the Minister
- they don't offer security to the Band members; &
- They cannot be enforced

## **Land Holdings by Non-Aboriginals:**

Non- aboriginals can obtain a form of land tenure on reserves by way of leases, permits, easements, etc.



# Enhance FN LM Responsibility

- Land management regimes under the *Indian Act* have been modernized to prepare FNs to meet emerging needs.
- Land Management programs, or regimes, are a Transfer of Management responsibility over land management from INAC to the FNs.
- INAC's role is to support FNS in their efforts to:
  - Improve social well-being & economic prosperity
  - Develop healthier, more sustainable communities;  
&
  - Participate more fully in Canada's political, social & economic development



# Land Regimes Defined

There are three land regimes for FNs to achieve these goals:

- 1. The Reserve Lands & Environment Management Program (RLEMP).**

Working groups were established to design a new comprehensive land management regime to better meet both INAC & FN land management & environmental objectives.



## 2. The Framework Agreement on FNs Land Management (FA):

- Is sectoral self-government;
- It is a FN driven initiative that covers only land, resources & environmental management;
- New signatories to the FA are selected based on their stated readiness to proceed as well as completion of an assessment questionnaire; &
- The limited nature of Operational & Developmental funding has necessitated this selection process.



### 3. **Comprehensive Self-Government**

addresses a wide variety of activities, such as but not limited to:

- Law-making powers, provision of programs & services, land management.
- Self-government agreements set out arrangements for Aboriginal groups to govern their internal affairs & assume greater responsibility & control over the decision-making that affects their communities.






# Differences in the Three Land Regimes

There are some major & very important differences with the three land regimes.

- 1. RLEMP:** FN & INAC works in a partnership with approvals resting with INAC.



**2. FNLM & CS-G:** FNs work with INAC in a government-to-government relationship & have complete approval authority for all land-related activities & environmental issues. The difference in these two types of relationship leads to a more critical difference.


*“This most important difference is the fiduciary obligation & liability.”*



## **Fiduciary Obligation under:**

- 1. RLEMP:** INAC retains that fiduciary obligation over reserve lands.
- 2. FNLM:** FN retains the fiduciary obligation & liability once the Land Code is enacted.

**Canada retains the fiduciary obligation & liability for transaction that were registered prior to the enactment of the Land Code.**



**3. CS-G:** FN retains the fiduciary obligation & liability once the S-G Agreement has been enacted.

**Transactions registered prior to the enactment of the S-G Agreement are negotiated with Canada before the Agreement comes into effect.**

A misty mountain landscape with evergreen trees in the foreground and a range of peaks in the distance. The scene is hazy, with soft light filtering through the air, creating a serene and atmospheric setting. The mountains in the background are layered, with the closest peaks appearing more defined than the distant ones. The foreground shows a dense forest of evergreen trees, their details softened by the mist. The overall color palette is muted, dominated by greys, blues, and greens, with a warm, golden light suggesting a sunrise or sunset.

# **Reserve Land & Environment Program**

# Overview

- The **RLEMP** is a comprehensive land management program that funds FNs to manage all aspects of land, natural resources & the environment on reserve on behalf of INAC.
- RLEMP is designed to build land management capacity & to provide FN Land Managers/Officers with the tools, skills & knowledge required to perform advanced land management functions on FNs reserves.



# Objectives

The six **objectives** of RLEMP are to:

- 1) Strengthen the FN's governance & to improve its accountability.
- 2) Deliver integrated training that includes skills development & provides institutional support.
- 3) Increase the FN's involvement in the full scope of land & environmental management activities on reserve.

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- 4) Provide RLEMP FNs with opportunities to align themselves with more advanced initiatives such as the FNs Land Management initiative, treaty processes, & s-g negotiations.
  - 5) Link funding to the scope of activities & their results, in a financially sustainable manner.
  - 6) Increase the involvement of FNs in the core functions of community land-use planning & of environmental & compliance management.



# RLEMP Benefits

FNs will:

- build new competencies that will enable them to assume new responsibilities with respect to land resources & the environment.
- increased involvement in the full scope of land & environmental management activities on reserve, including community land-use planning, environmental management, & compliance.
- receive an increase to their current land management funding levels under the RLEMP funding formula.
- be able to take advantage of & foster land-based economic development opportunities & facilitate a FN community's transition beyond the *Indian Act* into more sophisticated land management regimes.

# RLEMP Structure

FNs can function at the:


- **Training & Development Level**, or
- **Operational Level.**

These levels of responsibility are based on:

- The activities to be performed by the FN land manager & or regional staff at each level.
- Land management competency assets, such as knowledge skills & abilities for the FN land manager.
- The amount & complexity of land management activity for the FN.
- The experience requirements for the FN land manager at each level.

## NOTE

- Initially there was a third level the "*Delegated Authority Level*"
- Once a FN reach this level of responsibility, INAC region was no longer involved in the day-to-day operations of the FN Lands Department.
- C & C had the authority to negotiate & sign documents on behalf of INAC & deal directly with the Indian Land Register for registration of all transactions.
- Unfortunately, INAC has suspended this option.
- FNs who already had achieved the Delegated Authority Level will continue to function at that level (often referred to as the 53/60 Level).



The RLEMP is focused on enabling FNs to become involved in a broader spectrum of activities. These key functions include:

- **Community land-use planning.** Integrating the goals of sustainable development, sound governance, economic viability, & promotion of safe, healthy, & secure environments.
- **Management of reserve land & natural resources.** Involves activities associated with transactions, approval process & registration




- **Environmental management.** Identifying & assessing the environmental implications of land-use policies, addressing potential issues, & adopting sound environmental practices.
- **Compliance with policy & legislative frameworks.** Includes conforming to the regulations & enforceable provisions of the Indian Act, other federal legislation, FN laws/bylaws, & FN & INAC policies.


# Fiduciary Obligation under RLEMP

The Crown & the FN agree that:

- 1) The fiduciary relationship between her Majesty the Crown & right of Canada & the First Nation continues, in accordance with the law of Canada.
- 2) The fiduciary obligations owed by the Minister, on behalf of her Majesty to the FN will not be prejudiced or lessened

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- 3) There will not be a transfer or assumption of fiduciary obligations owed by the Minister on behalf of her Majesty to the FN.
  - 4) The FN has the same fiduciary responsibility to its membership as stated in item (1) above.

**The Crown will continue to bear fiduciary obligation for land management activities under RLEMP (as long as the joint agreement is followed).**



Substantial compliance distinguishes between technical breaches of the contract & substantial breaches of the contract.

- A technical breach occurs when one party to the contract does not fulfil its obligation completely perhaps by missing a deadline where the breach has little if any consequence for the other party.
- A substantial breach is one that goes to the heart of the agreement.
  - Negotiations without following environmental assessment or screening requirements
  - Land manager estimated the value of lands to be released without any objective information about the value of the lands



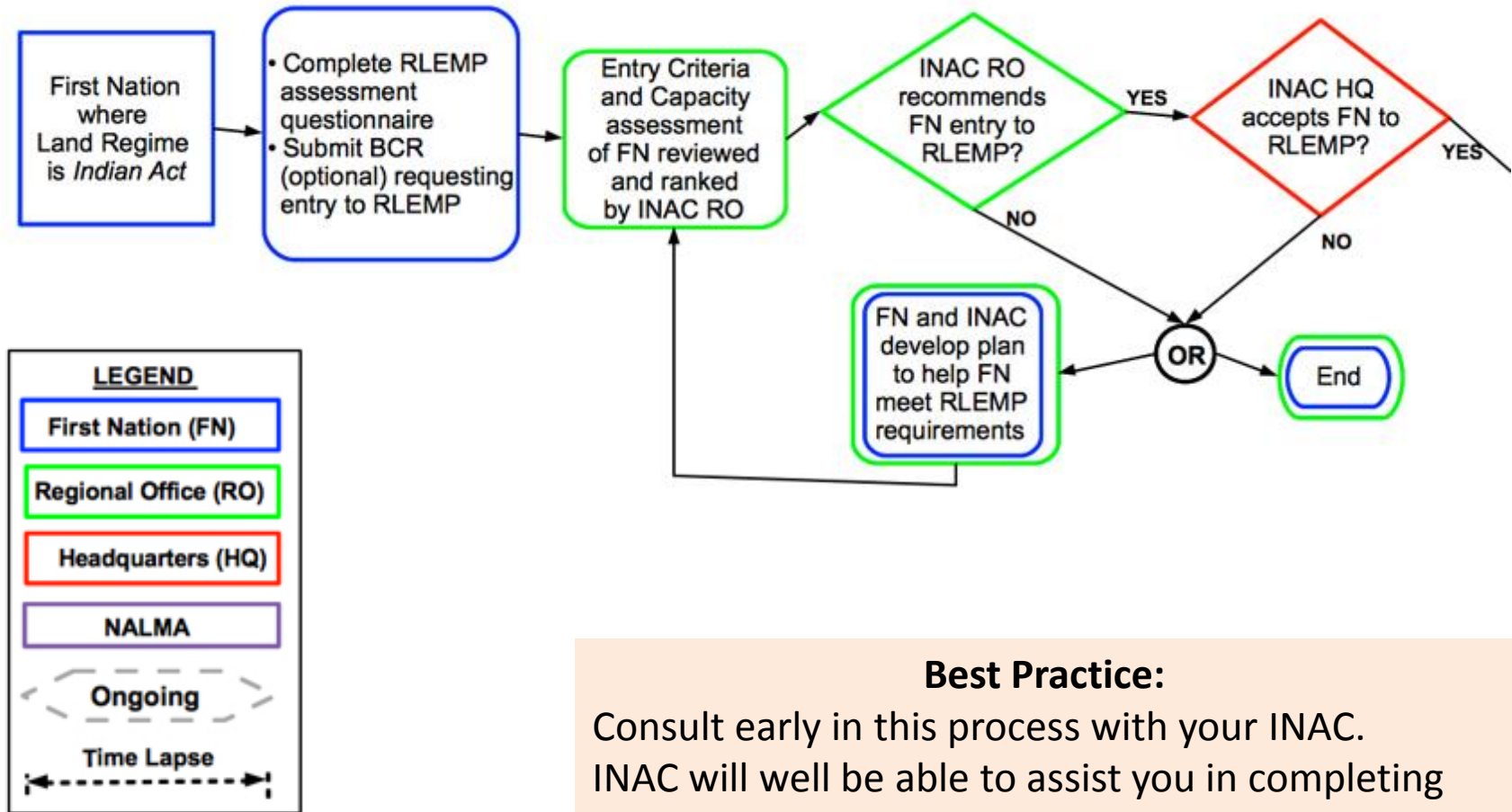
# Preliminary Requirements

- Considerations:
  - The quantity & level of registered land transactions successfully completed by the FN
  - FN experience dealing with land transactions i.e. permits, leases, etc.
  - Good financial management
  - Demonstrate a sound financial position for 3 consecutive years
  - Adequate financial systems or an approve Remedial Management Plan or its financial status has been approved by INAC

# Eligibility

- Determine Readiness:
  - Complete the Assessment Questionnaire
  - INAC will assess the questionnaire
  - Determine eligibility to enter RLEMP
  - Determine capacity needs
  - Review consolidated audited financial statements

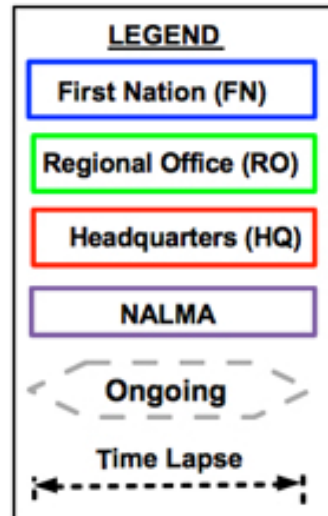
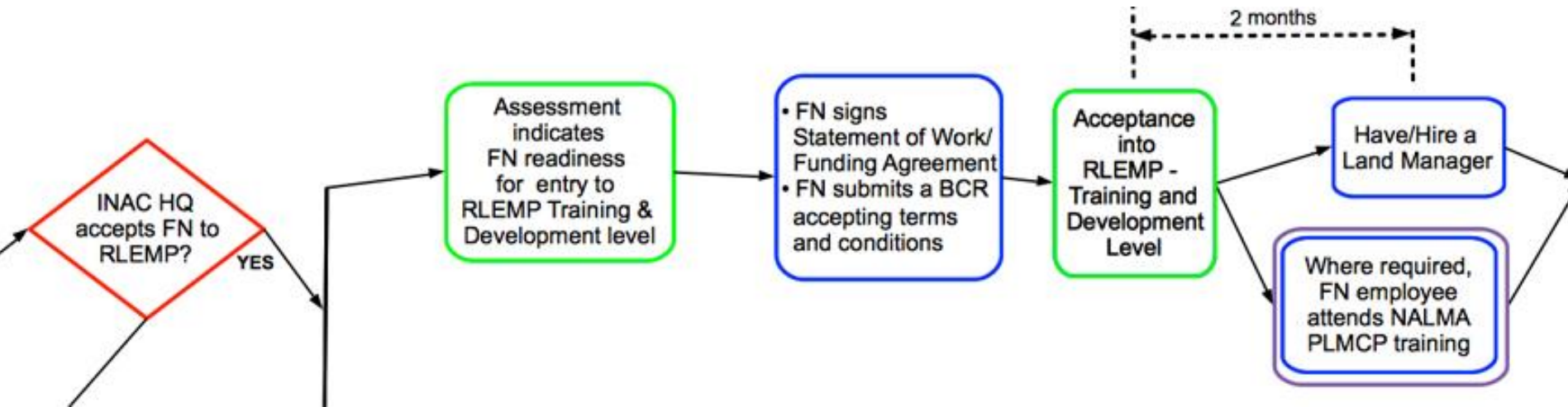
# Entry Request & Assessment Stage



## Best Practice:

Consult early in this process with your INAC. INAC will well be able to assist you in completing the questionnaire

# Entry to RLEMP Training & Development Level






# NALMA's Role

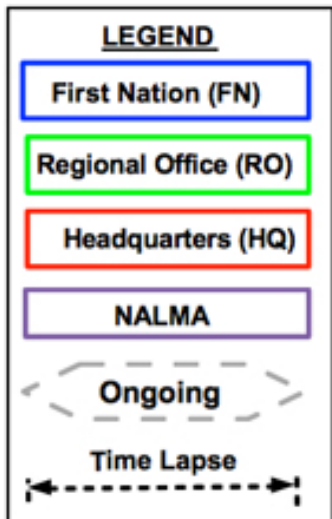
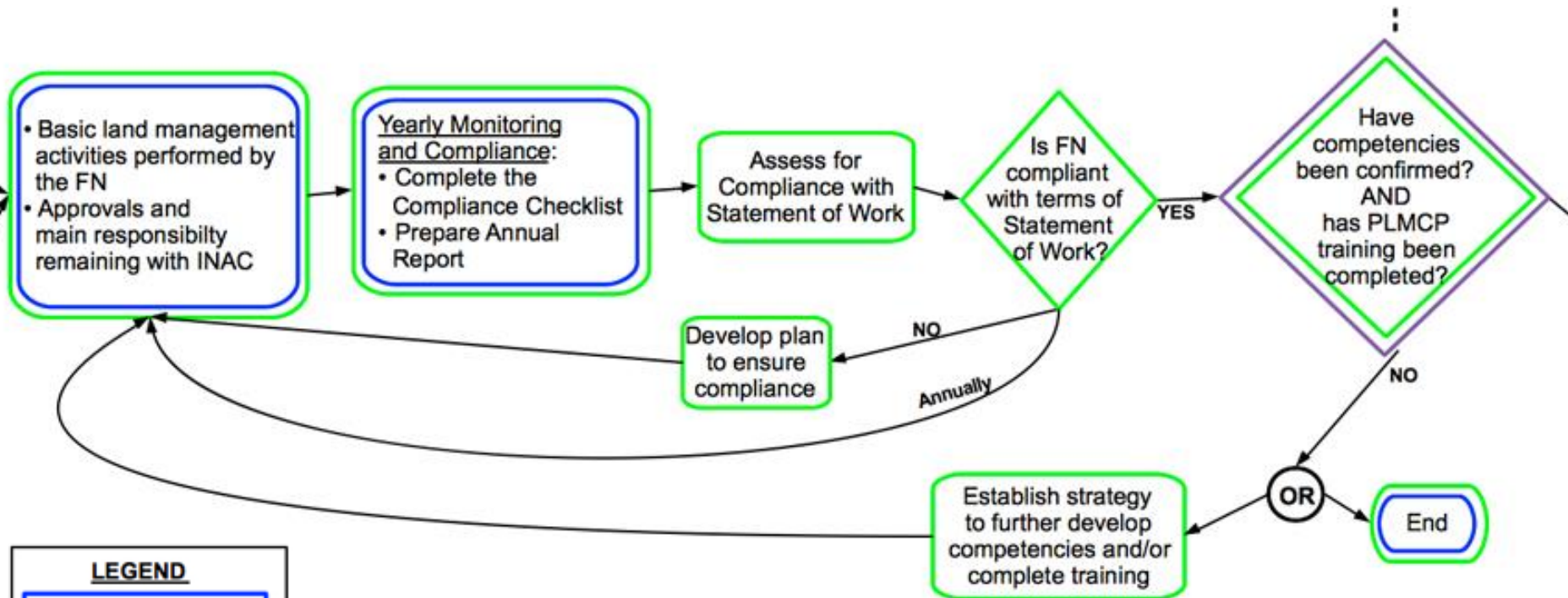
- NALMA's main role is one of support & training to land managers who must acquire new competencies & knowledge to effectively manage the roles & responsibilities assigned to them under RLEMP.
- NALMA partnered with INAC & the University of Saskatchewan (Usask) to design & deliver the Professional Land Management Certification Program (PLMCP) training.



- The PLMCP training program will better prepare FNs for their new roles & responsibilities under a broader scope of land resources & environmental management.
- The program includes an innovative training component designed to build relevant skills & expertise.
- INAC plays an advisory role in supporting FNs participating in the PLMCP training.

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- Upon successful completion of the PLMCP training FN land managers will receive:
    - a certificate from the Usask to confirm their successful completion of degree credit courses in land & environmental management;
    - a certificate from NALMA to confirm their successful completion of technical courses in land, resources & environmental management; &
    - NALMA will provide a certification as a practitioner in FN land management

# Working at the Training & Development Level



**Best Practice:**  
Begin a preliminary search for the right person well before the signing of the Statement of Work, as advertising, interviewing, & selecting this key person may well take more than two months.






# FN's Role & Responsibilities

- Accepts all the Terms & Conditions of the Training & Development Level work plan.
- Agrees to hire a land manager within 2 months of the date of the letter of acceptance into the program (if they don't already have one).
- Identifies the appropriate human resources required, & further commits to training a land manager, unless their land manager has already obtained PLMCP certification in land, resource & environmental management.

## NOTE

FN land managers requiring training must attend the PLMCP, in order to obtain their certification.

- Agrees to establish & provide adequate land management records as required in the INAC funding arrangement
- Those FNs that are accepted for entry into RLEMP on the condition that they upgrade their financial systems must do so within 12 months of entering the program.


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- Agrees that the funds received from RLEMP will be expended for land, resources & environmental management services only.
  - Remains compliant with terms & conditions for RLEMP eligibility.
  - Agrees to progress to the operational level within 2 years, accepting the roles & responsibilities associated with that level.




# FN & INAC Shared Responsibilities

The FN Land Manager with INAC guidance & support will:

- Draft simple straightforward land instruments such as BCR allotments & transfers.
- Participate negotiating leases & permits for approval & submission to INAC.
- Confirm that survey requirements are met.
- Ensure that appraisals are conducted as necessary.

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- Enter transaction particulars in NetLands (provided by INAC to the FN).
  - Prepare the following reports for any transaction type & forward them to region:
    - Land Transaction Information Report
    - Land inspection report
  - Transaction checklist
  - Locatee consent if applicable


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- Ensure that environmental management processes relevant to the transaction noted above are conducted & that reports are provided for review & approval by INAC.
  - Monitor leases & permits for rental arrears, outstanding fees & any other breaches of lease/permit terms & conditions.
  - Conduct compliance related activities associated with land & natural resources transactions (e.g., terms & conditions of leases & permits being met).




# INAC's Role & Responsibilities


Ensure FN is aware of roles & responsibilities based on their level of responsibility.

- Ensure that the FN has access to the appropriate tools, documents, standard templates etc. related to land, resource & environmental management (e.g., Indian Lands Registry System, NetLands).

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- Land & environment activities:
    - Provide advice & guidance to FN.
    - Review & approve all land & environmental activities.
  - Instruments & transactions:
    - Enter land instruments into the ILRS pending file for submission & approval by INAC.
    - Register approved land & natural resources transactions in the ILRS.
    - Ensure that copies of land, resource & environment transactions are retained & kept on file for reference.



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- Environmental:
    - Review & make decision to approve or reject a project based on the Environmental Assessment Report/ Environmental Screening Report
    - Ensure that the appropriate environmental information is documented in the departmental environmental system (Integrated Environment Management System)
  - Assess & rate FNs under RLEMP using the Compliance Framework Checklist.

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- Use the assessment from the Compliance Framework as a basis for assessing risk & developing scores for the General Assessment Tool
  - Confirm that the certified FN has remained compliant with the requirements under the Training & Development Level of the program & is able to progress to the Operational Level of RLEMP.



# Compliance to the Statement of Work

- Annually, INAC will assess the level of compliance to the items of the Training & Development Level Statement of Work by using a RLEMP Training & Development Compliance Checklist

**NOTE:** The best approach is for the INAC & the FN to go through this checklist together.

- This helps both groups to understand what is working well, & what areas need further training or support.

# Funding

Upon entry into RLEMP the FN will receive **Training & Development Level** funding for the following fiscal year of 80% of base funding calculated annually as per the RLEMP funding formula.

## Example:

Operational Level Funding	50,000.00/annum
Variable	X 80%
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<b>T &amp; D Funding</b>	<b>40,000.00/annum</b>

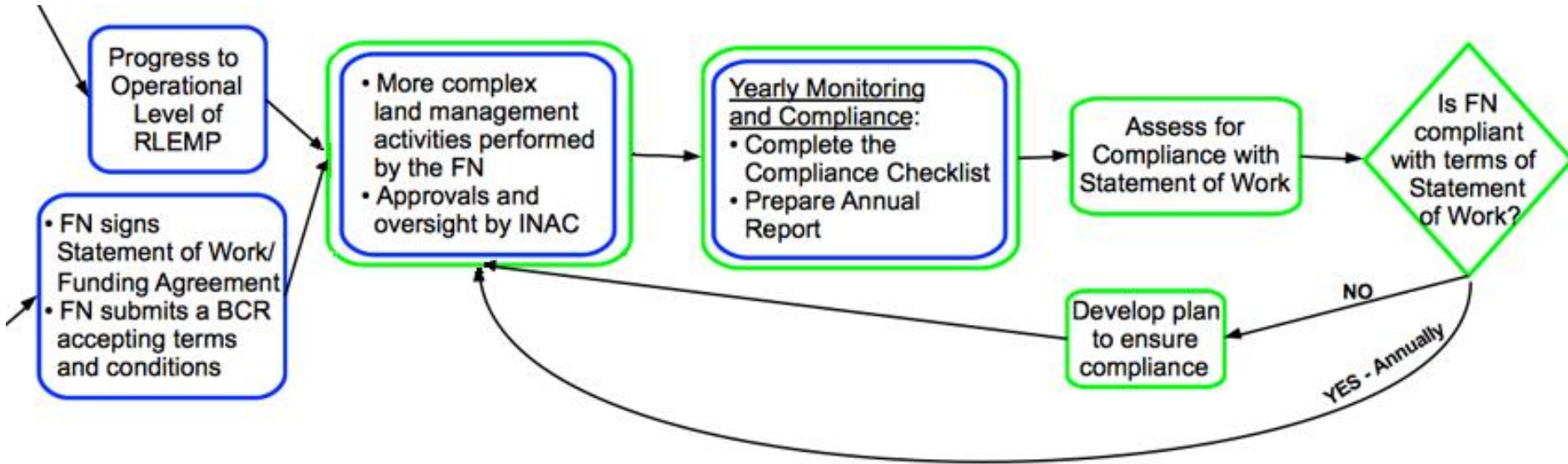
# Challenges

## Example:

The Land Manager may leave or might be promoted.

- RLEMP requires a Land Manager who is trained (or is being trained) on staff.
- RLEMP provides funding for the PLMCP training of **one person only**.
- So in this case, the FN would be required to train a replacement at its own expense.
- Plan ahead or have a contingency plan in place.

# Progression to RLEMP Operational Level




**LEGEND**

- First Nation (FN)
- Regional Office (RO)
- Headquarters (HQ)
- NALMA
- Ongoing
- Time Lapse




# New Responsibilities

- FNs will perform all of the land management activities without the continued assistance of INAC:
  - will have primary responsibility for the RLEMP key functions of land & natural resources transactions, environmental management, compliance management & community land use planning.
  - will follow applicable legislation, departmental policies, systems & operational guidelines to manage on-reserve activities.
- INAC staff will continue to review & consent to all transactions on behalf of the Minister.

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- New Responsibilities include but are not limited to:
    - Providing information to FN members, interest holders & third parties about the status of lands & natural resource issues related to the granting, transfer or alienation of interest in those lands.
    - Represent the FN & INAC in negotiations with third parties & other federal agencies and provide INAC with input & advice about the views of FNs regarding the management of their lands under the *IA*.
    - Inspect reserve boundaries & lease & permit sites to identify encroachments or violation of the terms of the lease or permit & advise INAC promptly of any violations.



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- Conduct other site-specific functions such as supporting or assisting survey work, maintaining NetLands, reporting requirements, researching the ILRS, resource inventories, environmental audits or supporting INAC in relation to land designations.
  - FN land managers will act as the liaison for land surveys & will monitor compliance with onsite related terms such as insurance and payment of rent.
  - Carry out specific Crown obligations under the leases & permits by conducting rent reviews & appraisals.

# Compliance to the Statement of Work

- Annually, INAC will assess the level of compliance to the items of the Operational Level Statement of Work by using a RLEMP Operational Compliance Checklist


**NOTE:** The best approach is for the INAC & the FN to go through this checklist together.


- This helps both groups to understand what is working well, & what areas need further training or support.



# First Nation R & R

1. Retaining a PLMCP Certified Land Manager.
2. Maintaining an established Lands Office (with phone, filing cabinet, computer with internet access etc.) with complete land data records.
3. Negotiating & drafting simple straight-forward land instruments (e.g., leases, permits, BCR allotments, individual land holdings etc.) using INAC standard templates.
4. Confirming that survey requirements are met.
5. Ensuring that appraisals are conducted as necessary.

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6. Entering the transaction particulars in NetLands.
  7. Preparing reports & having them approved.
  8. Preparing Land Transaction Information Report (land status report, encumbrance check).
  9. Preparing Land Transaction Checklist to confirm registration requirements have been met.
  10. Preparing Locatee Consents.
  11. Managing environmental management processes associated with each of the RLEMP key functions & providing reports for review & approval by INAC.



12. Completing registration packages & forwarding transaction to INAC for approval.

13. Receiving registration particulars from INAC & sending executed documents to proponents, retaining a copy on file.

14. Monitoring and compliance:

- Conducting compliance related activities associated with land & natural resources transactions (i.e. terms & conditions of leases & permits being met).
- Monitoring & notifying INAC of rental arrears, outstanding fees & any other breaches of lease/permit terms & conditions.

12. Providing report(s) as per requirements in the INAC funding arrangement.

13. Remaining compliant with terms & conditions for RLEMP eligibility



# **FN & INAC Shared Responsibility**

1. Ensuring that environmental management processes (environmental assessments etc.) are conducted by a qualified assessor.
2. Conducting compliance related activities associated with each of the RLEMP key functions.
3. Where a FN has been non-compliant with terms & conditions of the Operational Level, developing a mitigation strategy identifying areas of improvement &/or potential capacity requirements

# INAC R & R

1. Ensure the FN is aware of their roles & responsibilities based on their level of responsibility.
2. Ensure the FN has access to the appropriate tools, documents, standard templates etc. related to land & environmental management (e.g., ILRS, NetLands)
3. Provide advice & guidance on:
  - o land and natural resources transactions;
  - o land and environmental management when necessary to ensure that the FN is efficiently & effectively managing land & environment activities in accordance with the IA, RLEMP Manual, Land Management Manual etc.



## 4. Environmental


- Review & make decisions to approve or reject a project based on the Environmental Assessment Report /Environmental Screening Report
- Ensure the appropriate environmental information is documented in the departmental environmental system (Integrated Environment Management System)

## 5. Review & approve all land & natural resources activities.

## 6. Instruments & transactions:

- Enter land instruments into the ILRS pending file for submission & approval by INAC.
- Register approved land & natural resources transactions in the ILRS.
- Ensure copies of land and environment transactions are retained and kept on file for reference



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  - 7. Confirm the certified FN has remained compliant with the terms & conditions of RLEMP.
  - 8. Assess & rate FNs under RLEMP using the Compliance Framework Checklist.
    - Where the recipient has been rated less than 3 on the compliance rating scale, a mitigation strategy identifying areas for improvement & potential capacity requirements will be developed.
  - 9. Use the assessment from the Compliance Framework as a basis for assessing risk & develop scores for the General Assessment Tool.

# Funding

- Operational Level funding is provided for the assumption of greater responsibility for the key functions as well as for the Operational Level activities.
- Additional funding (5% per annum for each) will be provided to the FN for having one or more of the following:
  - Land Use Plan
  - Environmental Management System, &/or
  - Compliance Framework





**Example:**

Operational Level Funding Variable	50,000.00/annum X 0%
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<b>Operational Level Funding</b>	<b>50,000.00/annum</b>
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Land Use Plan	X 5%	2,500.00/annum
Envir Mgmt System	X 5%	2,500.00/annum
Compliance Frmwrk	X 5%	2,500.00/annum

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<b>Total Operational Level Funding</b>	<b>57,500.00/annum</b>
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# Compliance Framework

- Compliance is important as the extent & complexity of compliance requirements are increasing.
- Failures in these areas may result in costs through litigation &/or penalties, damage to land & resources, to the organization's reputation, or death or injury of an employee or third-party.



A well-designed RLEMP compliance framework will:

- Aim to prevent & to respond to breaches of specific laws, regulations, codes or organizational standards
- Contribute to a culture of compliance within INAC & the FNs
- Support the sustainable use of FN lands & management of resources
- Form part of a compliance management framework for INAC & FNs
- Facilitate transition to increasing levels of responsibility to FN

# Delegated Authority

At the Delegated Authority Level, FNs are expected to perform all of the Operational Level activities as well as to have sections 53 & 60 delegated land management authority:

- Section 53 of the IA is the vehicle through which the Minister can delegate authority to FNs for the administration of designated lands.
- Section 60 of the IA is the means by which the Governor in Council may authorize bands to manage reserve land activities which may include approval of band allotments, approval of transfers, time extensions for disposition of reserve lands, permits, approval of transfers of land by personal representative, &/or transactions affecting designated lands such as permits leases or licenses.



- INAC has no intervention with FN on land & environment management activities.
- The FN shall at all times be bound by the terms of the delegations of authority made under sections 53 & 60 of the *IA*.
- INAC is no longer involved in the day-to-day operations of the FN Lands Department.
- C & C had the authority to negotiate & sign documents on behalf of INAC & deal directly with the Indian Land Register for registration of all transactions.
- Unfortunately, INAC has suspended this option.

# Transition to FNLM

- FNs who have functioned successfully at the Operational Level or the Delegated Authority Level may want to consider the FNLM land regime.
- The experience gained through the RLEMP can be a major asset during the eligibility assessment of the FN to be a signatory to FNLM.
- Entry begins with an Assessment Questionnaire.







## Other considerations such as:

- Does the FN have a trained and knowledgeable Land Manager?
- Does the FN have an adequate Lands Office?
- Does the FN have a strong basis of experience in dealing with land transactions & negotiations?