



WELCOME

LINKS TO LEARNING 2017





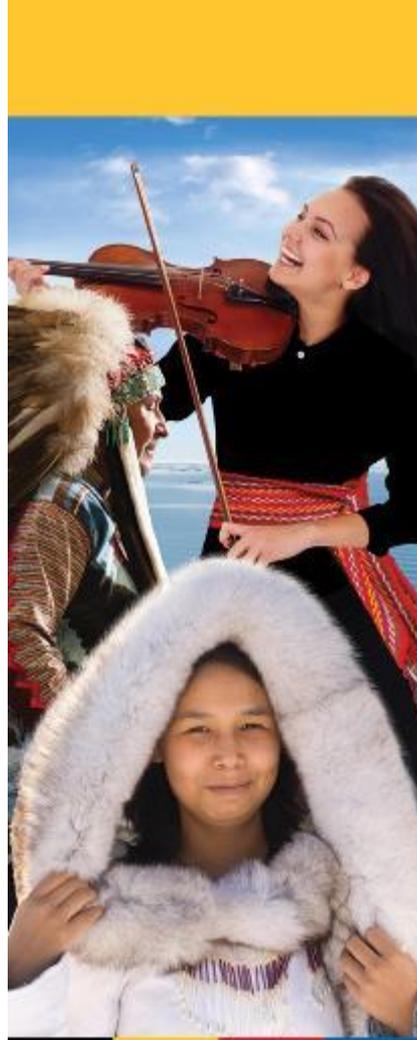
Unlocking the Economic Value of Reserve Lands Through Land Management

Reserve Land Environmental Management Program (RLEMP) and First Nation Land Management Act

December 2017

Patrick.Crowther@canada.ca

(604) 364-3879



INAC·AANC





Unlocking the Economic Value of Reserve Lands Through Land Management

- **Restriction on mortgage, seizure, etc., of property on reserve**
- **89** (1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.
- **Exception**
- (1.1) Notwithstanding subsection (1), a leasehold interest in designated lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution.



Unlocking the Economic Value of Reserve Lands Through Land Management

Management of Reserve Land

Indian Act → RLEMP → FNLM → Sectoral Self-Government

“The journey of a thousand miles begins with one step.” -Lao Tzu





Unlocking the Economic Value of Reserve Lands Through Land Management Reserve Land and Environment Management Program (RLEMP)

Objectives

RLEMP provides financial support to First Nation communities, First Nation institutions and professional development organizations for the land and environmental management services associated with *Indian Act* land.

The program is designed to encourage First Nation communities to exercise a progressively increased responsibility over their reserve lands, resources and environment.

27 First Nations received funding under the program in BC Region for the fiscal year 2017-2018.





Unlocking the Economic Value of Reserve Lands Through Land Management

Entry to the Reserve Land and Environmental Management Program is currently based on:

- Land management activity of the FN (leases, permits, ILHs);
- Current or future economic development activities;
- Capacity to undertake land management activities (lands office, lands manager, access to resources);





Unlocking the Economic Value of Reserve Lands Through Land Management

- First Nation submits capacity self-assessment and entry request to AANDC;
- AANDC assessment:
 - GA score / financial stability / overall capacity
 - Need for program – i.e. level of activity; economic development potential
 - Ability to succeed in the program
- FN must submit BCR
- FNs in FNLM land code process are eligible for RLEMP funding: funding ends upon becoming Operational under FNLM.



Unlocking the Economic Value of Reserve Lands Through Land Management

Acceptance to RLEMP

First Nation agrees to:

- Accept RLEMP roles and responsibilities
- Maintain lands office
- Maintain a certified lands manager (or maintain capacity to fulfill roles and responsibilities)
 - Program will provide funding for 2 year Professional Land Management Certification training program (one officer per First Nation)
- Provide annual reporting



Unlocking the Economic Value of Reserve Lands Through Land Management

RLEMP levels

1. Training and Development (two years)
 - Build land management capacity and provide land managers with tools, skills and knowledge to perform land management functions.
 - FN lands manager in training works with AANDC region to undertake land management activities.
2. Operational Level
 - First Nation assumes primary responsibility for reserve land, resource and environment management, with support from AANDC Regions
3. Delegated Authority
 - Each Delegation is unique, allows the FN to sign instruments on behalf of the Minister (as long as it complies with the Delegated Authority)





Unlocking the Economic Value of Reserve Lands Through Land Management

Training and Development Level

Professional Land Management Certification Program

Year 1:

- Post-secondary academic courses at University of Saskatchewan
- 3 two-week modules at University followed by 10-12 weeks home study
- Environmental, legal, and economic aspects of land and resource management

Year 2:

- Technical training courses by NALMA
- Prepares students to perform Indian Act land management functions
- 6 one-week technical modules followed by home study



Unlocking the Economic Value of Reserve Lands Through Land Management

- The PLMCP program prepares land managers to be able to:
 - Draft simple, straightforward land instruments such as Band Council Resolution (BCR) allotments and transfers;
 - Negotiate and draft leases and permits under the *Indian Act*;
 - Confirm that survey requirements are met;
 - Ensure appraisals are conducted as necessary;
 - Enter transaction particulars in NetLands;
 - Prepare reports;
 - Manage environmental processes and compliance-related activities; and
 - Establish and maintain land data records in preparation for the Operational Level.



Unlocking the Economic Value of Reserve Lands Through Land Management

Operational Level

First Nation responsibilities:

- Retain a certified land manager (or capacity to fulfill roles and responsibilities)
- Maintain a lands office
- Negotiate and prepare most land management instruments using departmental templates
- Confirm survey requirements are met
- Ensure appraisals are conducted



Unlocking the Economic Value of Reserve Lands Through Land Management

Operational Level

First Nation responsibilities:

- Prepare land transaction information report
- Prepare land transaction checklist
- Prepare locatee consents
- Monitor and ensure compliance related activities are met
- Monitor and notify AANDC of rental arrears, outstanding fees, etc.



RLEMP- AANDC's Responsibilities

Operational Level

AANDC responsibilities

- Provide guidance on land and natural resources transaction
- Ensure FN has access to appropriate tools, documents, templates
- Review and approve all land and natural resources activities
- Register approved land and natural resources transactions in the Indian Lands Registry System
- Review and make decision to approve or reject a project based on the Environmental Assessment Report / Environmental Screening Report
- Assess First Nations under RLEMP using the Compliance Framework Checklist; where necessary, develop a mitigation strategy identifying areas for improvement.

INAC-AANDC





Unlocking the Economic Value of Reserve Lands Through Land Management

RLEMP TRAINING OBJECTIVES

RLEMP training focuses on providing First Nations with the skills and knowledge needed to perform basic land management activities by:

- Funding the training of a designated land manager for a First Nation;
- Putting every land manager through the Professional Land Management Certification Program (PLMCP) to accredit the skills they acquired; and
- Providing the land manager with support services (INAC, LAB/RC, and NALMA).





Unlocking the Economic Value of Reserve Lands Through Land Management

RLEMP is intended to enhance decision-making in regard to land use at the community level;

The community is better positioned to take advantage of land-based economic development opportunities on reserve and to facilitate a First Nation community's transition beyond the *Indian Act* into more sophisticated land management regimes such as the First Nations Land Management (FNLM) regime or comprehensive self-government.

- *My perspective is one of having directly experienced the Indian Act, of trying to improve the Indian Act through the First Nations Land Management Act or other sectoral initiatives, and of moving to self-government, which is based on the inherent right policy. – Kim Baird, Former Chief, Tsawwassen First Nation*





Unlocking the Economic Value of Reserve Lands Through Land Management

Summary of RLEMP

- RLEMP supports First Nations in developing capacity to undertake increased responsibility over their reserve land, resources and environment.
- Helps in the transition to First Nations Land Management (FNLM) Regime to allow First Nations to opt out of the land-related sections of the *Indian Act* and enact their own laws.
- Increased control over lands and resources leads to greater economic development opportunities.





Unlocking the Economic Value of Reserve Lands Through Land Management

First Nation Land Management

- What is First Nation Land Management
- Opting into and Entry into the FNLM Regime
- The FNLM Process





What is First Nation Land Management?

The First Nations Land Management regime is a First Nations-led initiative that represents a shift in land management responsibility and accountability from AANDC to participant First Nations.

The regime provides signatory First Nations:

- With the authority to establish their own land, resource and environment management regimes, and opt out of the 34 sections of the *Indian Act* that relate to land management.
- To generate and manage revenues, royalties and fees from land transactions and operate at the speed of business.





How Did FNLM Start?

1991

-A group of First Nation Chiefs approached INAC with a proposal for an optional legislative regime that would enable First Nations to manage reserve lands, resources and environment outside the limitations imposed by the *Indian Act*.

1996

These discussions resulted in the Framework Agreement on First Nation Land Management which was signed by Canada and 14 of the original First Nations





Historic Signing of Framework Agreement – February 12, 1996



INAC·AANC



FNLM is Growing

1999

- *The First Nations Land Management Act* received Royal Assent on June 17, 1999, which ratified and gave effect to the Framework Agreement.
- Establishment of the Lands Advisory Board and Resource Centre (LABRC)
- More than 100 First Nations have joined the Regime since its inception. The Regime opens periodically to new entrants as funds become available through internal reallocations or new federal investments (e.g., Budget 2015).





Key Benefits of the First Nations Land Management Regime

- Signatory First Nations have all the rights and power to manage their lands, resources and environment and the authority to grant interests or land rights and licenses.
- The FNLM Regime is a form of sectoral self-government and a step toward comprehensive self-government type agreements. Three former FNLM communities (Tsawwassen, Westbank and Sliammon) have advanced beyond the Regime to full self government/treaty agreements.
- Others are in negotiations and have advanced to the Agreement-in-Principle stage (e.g., Whitecap Dakota, Kitselas, T'souke, Songhees).





Key Benefits of the First Nations Land Management Regime

- Third-party studies on the Regime have found that:
 - operational First Nations can approve economic development projects at a pace comparable to non-Indigenous communities;
 - FNLM First Nations are expanding their business development to new and larger industry opportunities and projects;
 - FNLM contributes to more jobs, higher incomes, and a larger degree of investment on reserve; and
 - FNLM contributes to community-based governance and cultural land management.
- KPMG study in 2009 – Followed up in 2013 looked at 17 Framework Agreement communities and found that through FNLM, they had received over \$100 million in investment from third party businesses.





Key FNLM Partners

- **INAC Regional Offices** are co-facilitators with the LAB/RC and are INAC's first point of contact for many First Nations, providing services such as:
 - promoting the Regime, assisting interested First Nations with the entry process and assessing readiness for entry;
 - strengthening the capacity of interested First Nations (pre-readiness); and
 - coordinating the Federal role in the FNLM developmental process (e.g., ESA, IA, LDR).
- **INAC Headquarters** is responsible for national policy coordination, financial management, and operational support for Regional offices and external partners (LAB/RC, NRCan).





Key FNLM Partners

- **Lands Advisory Board (LAB)** is a political level body comprised of representatives from the Chief and Council of operational FNLM First Nations.
- **First Nations Land Management Resource Centre (LAB/RC)** is the technical body that provides support to developmental and operational First Nations.
- **Natural Resources Canada** provides technical expertise in the areas of surveys/survey instructions, research reports, and Land Description Reports





LAB and the LAB/RC

- The Framework Agreement provided for the establishment of the Lands Advisory Board and its Resource Centre (Clause 38 of FA).
- The Board is a political/decision-making body of representatives elected by operational First Nations to:
 - set the overall direction for implementing the Framework Agreement;
 - propose amendments to the Framework Agreement; and
 - provide operational mandate to LAB/RC, including negotiating the operational funding formula.





LAB and the LAB/RC

- The LAB/RC is a technical body that coordinates the First Nation role in the developmental process and provides operational support. The LAB/RC:
 - promotes the Regime to First Nations and develops model land codes, laws, and other land management tools;
 - coordinates the ratification and voting process; and
 - develops and delivers training and performs other operational functions and services at the request of LAB and member First Nations (e.g., negotiating operational funding formula).



LAB and the LAB/RC

Levels of Interaction

LAB/RC		INAC
Chair of the Board	→	Minister
Executive Director	→	Director
Assistant Executive Director	→	Managers, Ops & Policy
Technicians	→	Regional Staff





Progression Through the FNLM Regime

Pre-Entry Process

Recruitment efforts and pre-readiness projects employed at this stage by regional office staff are essential for setting communities up for success as they progress through the Regime.

Entry Process

First Nations and the Minister sign the Adhesion, adding them to the Framework Agreement.

First Nation signatories are formally added to the Schedule of the FNLM (OIC).





Progression Through the FNLM Regime

Developmental Phase / Community Approval Phase

Participating communities complete a developmental process that typically takes 24 months

Community Approval Process Plan (CAPP), which includes, among other activities, the development of their land code and the negotiation of their Individual Agreement with Canada. Both documents must be approved by the First Nation through a community ratification vote, as outlined in the Framework Agreement.

Operational Phase

First Nations then operate under their own Land Code outside of the restrictions of the *Indian Act*.





Funding Available to First Nations under FNLN

Developmental Funding

- Managed by the LAB/RC through a contribution agreement.
- \$150,000 is provided over two years to each entrant for a variety of activities (e.g., Land Codes, Individual Agreements, Community Approval Process).





Funding Available to First Nations under FNLN

Operational Funding

- Represents Canada's contribution toward overall land management costs.
- Managed by INAC in accordance with a joint MOU negotiated between Canada and the LAB. The current MOU is for five years (plus two year extension) and was voted and approved by LAB membership.
- Operational funding is determined at the 'pre-entry' stage. It is a transaction-based formula resulting in three funding tiers:

Tier 1: \$204,536 annually Tier 2: \$251,636 annually Tier 3: \$317,386 annually

- \$150,000 is provided over the first two years for **transitional** funding – It is provided to support environmental management, training and residual law-making activities (e.g., matrimonial real property).



Notable Differences between FNLM and the *Indian Act*

MRP Laws

- FNLM - Must be developed within 12 months in accordance with the FA
- IA - No applicable section – FHRMIRA came into force in 2013.

Land Management Powers

- FNLM - First Nations have power to manage their own lands in accordance with the FA

IA - Minister has final authority over land management powers.

Revenue Moneys

- FNLM - All Indian revenue moneys must be transferred to the First Nation in accordance with the FA.
- IA - INAC administers Indian revenue moneys.





Notable Differences between FNLM and the *Indian Act*

Protection of First Nation Land

- FNLM - Generally, First Nation Lands are not to be sold, exchanged, conveyed or transferred unless it is exchanged or expropriated as outlined in FA.
- IA - No equivalent protection in Indian Act.

Voluntary Exchange of Land

- FNLM - First Nation can negotiate land exchanges, provided compensation includes equivalent parcel of land that will come under land code. Canada's consent only required to confirm exchange conducted pursuant to provisions of FA and to set aside land as reserve.
- IA - INAC negotiates land exchanges pursuant to Additions to Reserve policy.





Notable Differences between FNLM and the *Indian Act*

Law Making Powers

FNLM - First Nations with land codes have the power to make laws respecting use of land including environmental assessment and protection.

IA - Sec. 81 by-law making powers continue to apply to FNLM First Nations.

Enforcement of Laws

FNLM - First Nations have the power to establish and punish offences, as well as establish enforcement procedures and appoint a Justice of the Peace.

IA -Provides for some by-law enforcement powers for Band Council or Police.





Notable Differences between FNLM and the *Indian Act* Environmental Management

- FNLM - First Nations have the powers to enact environmental laws.
- IA - No specific provisions for environmental protection.

Environmental Assessment

- FNLM - First Nations will make an effort to develop an environmental assessment process within one year of effective date subject to 'adequate' funding and expertise. CEAA applies as an interim measure (choice of 1992 or 2012 standard).
- IA - No provisions for assessment. Environmental reviews are conducted under CEAA 2012.



Notable Differences between FNLM and the *Indian Act*

Expropriation

- FNLM - Land can only be expropriated by the federal Crown with consent of Governor in Council and only in very limited circumstances.
- IA - Reserve lands can be expropriated broadly, with the consent of the Governor in Council.

Compensation (Expropriation)

- FNLM - Compensation must include an alternate land of equal or greater size or of comparable value.
- IA - Monetary compensation or land is contemplated.



Notable Differences between FNLM and the *Indian Act* Liability

- FNLM - Canada is liable for acts or omissions before the Land Code comes into effect. First Nation is liable after.
- IA - Canada is liable.

First Nations Land Register

- FNLM - The First Nation Land Register is established in the FA and FNLMA and is maintained by INAC.
- IA - INAC maintains ILRS.



What are the Challenges associated with FNLM?

- FN will take full responsibility for all future decision making and if wrong decisions are made, could be liable
- Cannot blame anyone else if make future mistakes.
- Training – will be a priority, thus staff and financial resources will have to be made available.
- There is no turning back to the Indian Act to get INAC to take over land decision making.
- Community readiness – Is the community ready for its own FN decision making?
- Council/Staff experience – Does Council and staff feel up to the task to be full decision makers?



What are the challenges of FNLM?

- Typical growing pains of any government
 - Sufficient resources
 - Staff
 - Space
 - Policy and procedural development
 - Law making
- Lots of hard work will be required.





Credit for Special Effects- Kaylie Crowther (age – 12)

QUESTIONS?

Thank You

