

A scenic mountain landscape with a semi-transparent text overlay. The background shows a range of mountains under a hazy, golden sky, with dense evergreen forests covering the slopes. The text is centered in the lower half of the image.

Introduction to Land Regimes

February 2016

FN Land Regimes

- 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.

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 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

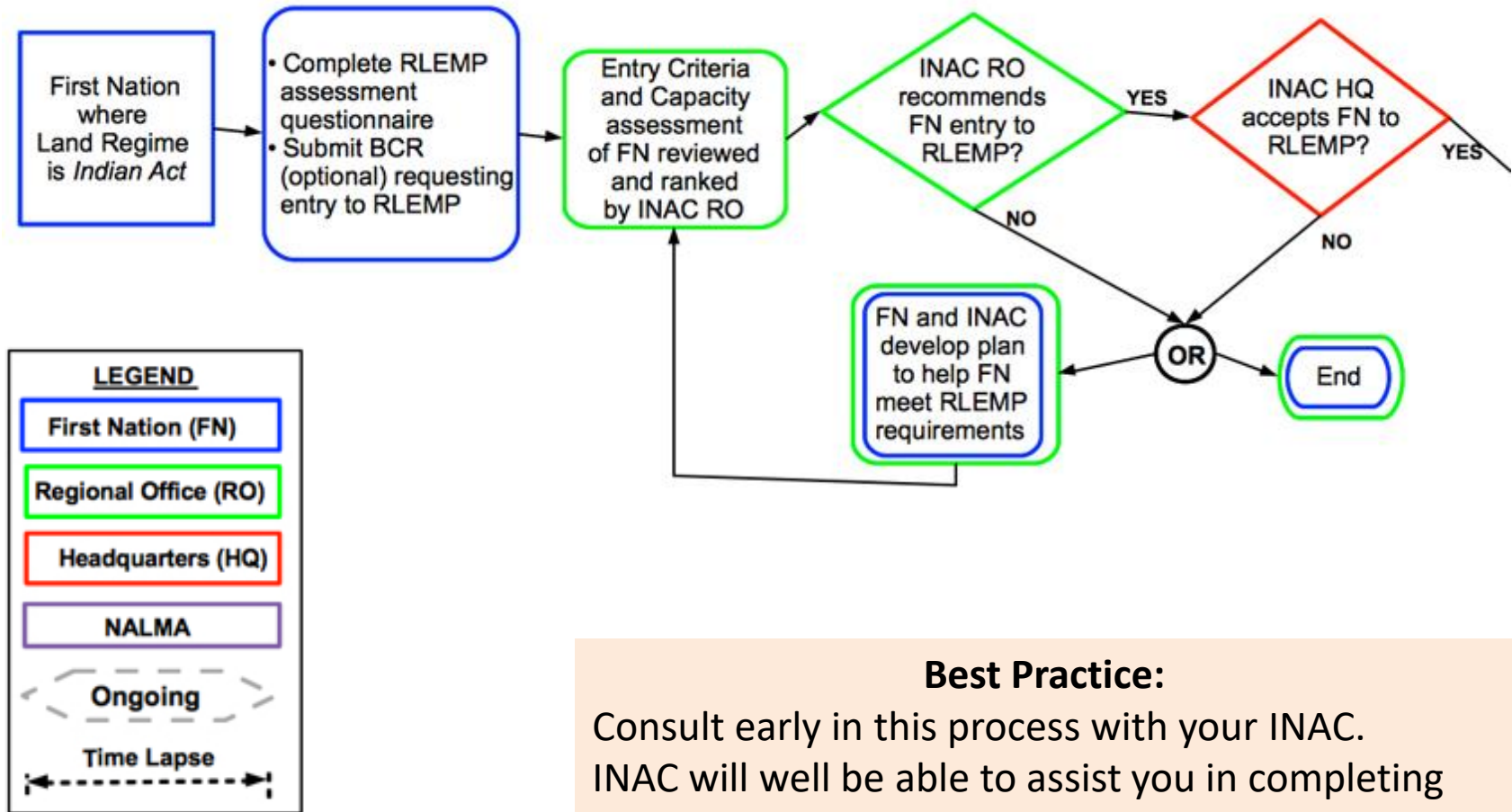


- **Environmental management.** Identifying & assessing the environmental implications of land-use policies, addressing potential issues, & adopting sound environmental practices.
- **Compliance with policy & legislative frameworks.** Includes conforming to the regulations & enforceable provisions of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

IMPORTANT NOTE

**Regardless of the responsibility taken on by the FN,
liability for land transactions remains with INAC.**

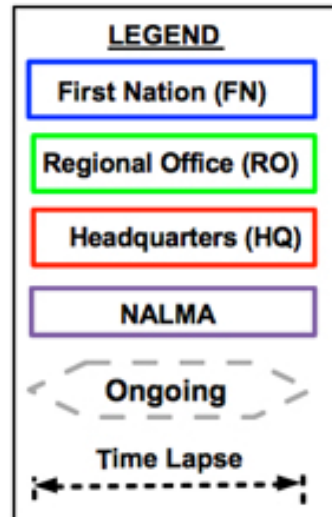
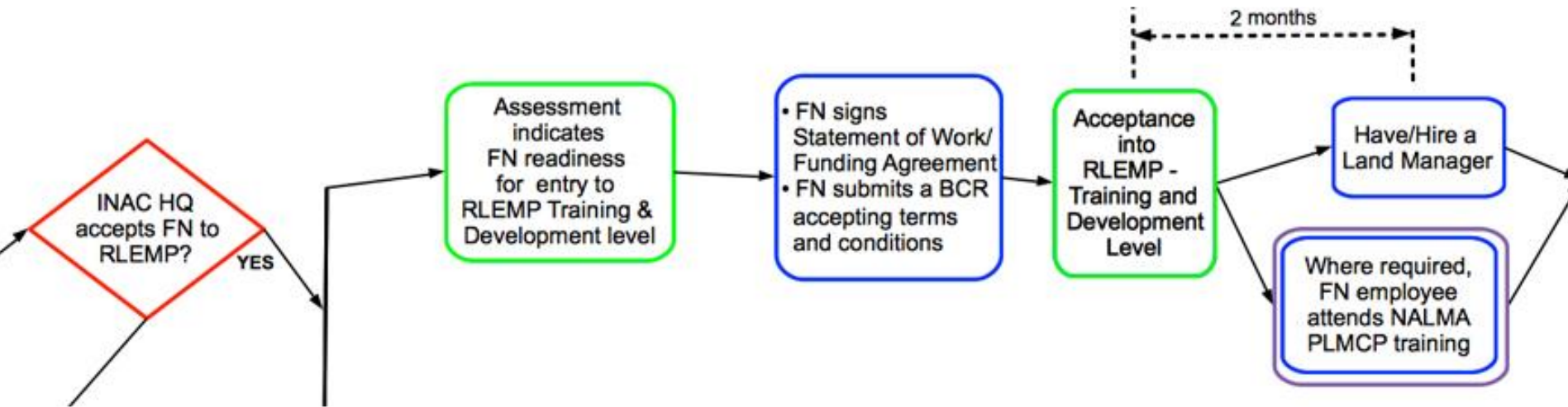
Entry Request & Assessment Stage



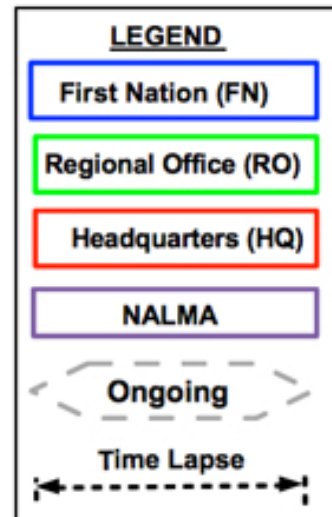
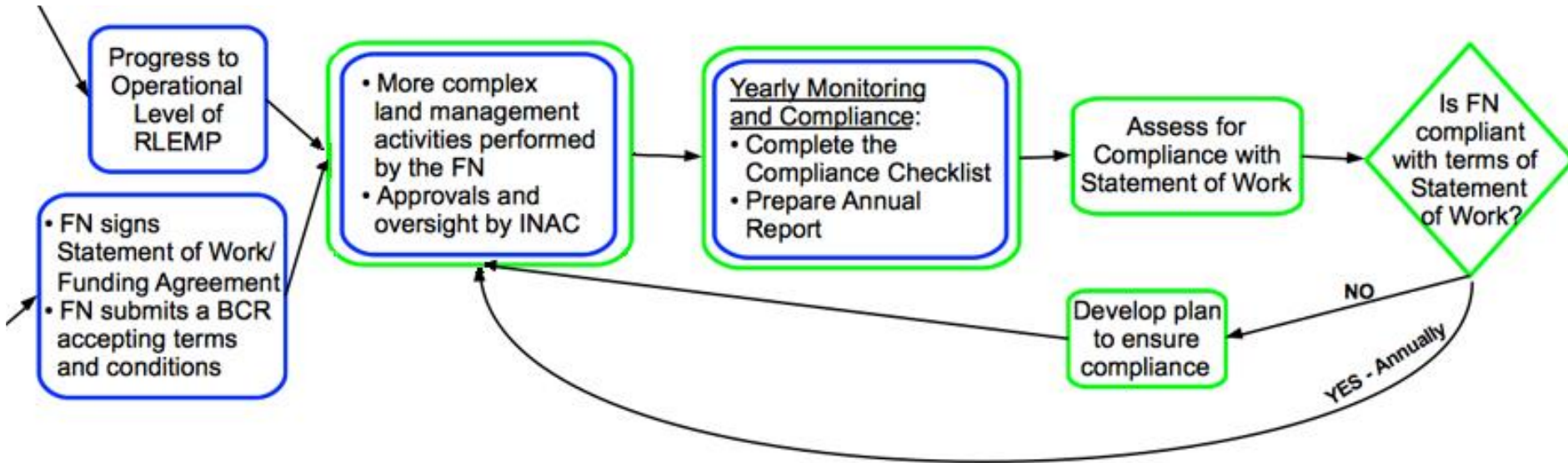
Best Practice:

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



Progression to RLEMP Operational Level



Best Practice:

Have the person who is taking the PLMCP training sign an employment contract where it is a condition of employment that the trainee remain on the job for at least two years after completion of the training (or whatever timeframe is reasonable).

You may want to have your lawyer draft this contract for you.

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 & 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?

Overview

- FNLM is a sectoral self-government initiative to replace 32 sections of the IA.
- It was created as a system for FNs to manage reserve lands & resources under a locally developed law, a "Land Code".
- After a FN & Canada sign the FA, the FN must develop its own Land Code.
- The FN must then enter into an Individual Transfer Agreement with Canada

Structure

- The Individual Agreement deals with the details of transferring administration as well as dealing with developmental & operational funding issues
- The Land Code, Individual Transfer Agreement & FA are put before the FN membership for a ratification vote.
- Canada must also ratify the FA

Process

1. Drafting a Land Code
2. Environmental Assessment
3. Individual Agreement
4. Community Ratification
5. Verification
6. Transfer of Land Management



IMPORTANT NOTE

**FNs under FNLM are liable for
their land transactions.**

**The FN is replacing the Crown
therefore assuming the
Crown's liability**



Comprehensive Self-Government

- Comprehensive S-G entails a restructuring of how FN people & the federal & provincial or territorial governments relate to one another
- S-G agreements are intended to provide the foundation for ongoing & stable intergovernmental relations
- The fiscal relationship between FN government, Canada & the respective provincial or territorial government is set out in each separate S-G agreement fiscal chapter, which acts as an ongoing framework to guide the relationship



- S-G agreements establish FN governments that are primarily responsible to their citizens, as well as establish a framework intergovernmental relationship with accountability commitments
- S-G agreements must address the need to strengthen key elements of governance, including fiscal & management regimes, promote governance systems with the capacity, size, resources & legitimacy to provide effective governance



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