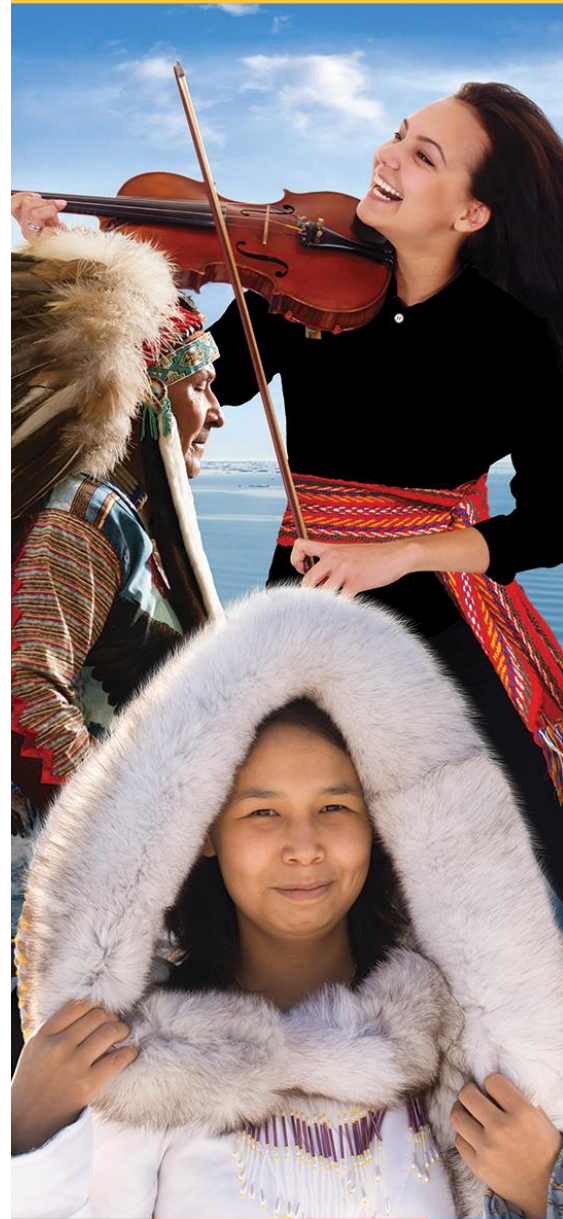




# Overview of Land Management Programs on Reserve

[SALT/CANDO - Saskatoon]  
[September 26, 2017]



INAC·AANC





# Land Management Programs

Under the *Indian Act*, INAC is responsible for managing on-reserve lands. The following Land Management Programs start with the *Indian Act* but eventually transition to greater First Nation control:

1. Reserve Land and Environment Management Program (RLEMP)
2. Framework Agreement and *First Nations Land Management Act*
3. Comprehensive Self-Government

INAC and First Nations are working together to develop, maintain and modernize these programs to keep pace with land and environmental management innovations.





# What is RLEMP?

RLEMP is an INAC land management program created in 2005. It funds First Nations to manage all aspects of land, natural resources and the environment on reserve under the *Indian Act*.

Through RLEMP, First Nations complete an eligibility and preparatory process before they assume *Indian Act* management of land transactions on reserve lands.

## Five Key Functions of RLEMP:

- Community-based land use planning
- Lands management
- Natural resources management
- Environmental management
- Compliance management (promotion, monitoring & enforcement)





# RLEMP: Basic Structure

RLEMP is structured so that First Nations can function at any one of three levels of increasing responsibility, complexity and independence. These levels are the:

- Training and Development level
- Operational level and
- Delegated Authority level (this level is now closed)

As a First Nation's Land Management Office takes on greater responsibilities, they can progress from one level to the next. Each level includes increased funding and more independence from INAC.

Regardless of the responsibility taken on by the First Nation, liability for land transactions remains with the Minister of INAC.





# RLEMP: Training and Development

Eligible First Nations enter RLEMP at the Training and Development level. They receive funding to pay for the required training along with a reduced amount of operational funding to start managing their own transactions.

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

- Funding the training of one designated land manager per First Nation;
- Putting every land manager through the Professional Land Management Certification Program (PLMCP) to accredit the skills they acquire; and
- Providing the land manager with support services (INAC and National Aboriginal Lands Managers Association (NALMA)).

While certification is not required to work for a First Nation, RLEMP currently requires the completion of the two years of training in order to move to the Operational level. Completion of the training earns a certification under PLMCP.





# RLEMP: Operational Level and Funding

After completing the training level, First Nations move into the operational level of RLEMP and receive funding based on a formula.

The RLEMP funding formula links land, natural resources and environmental management activities together and supports First Nations to take on land management responsibilities. Funding is calculated using the following:

- The population and land base of the First Nation;
- The number and complexity of active instruments registered in the Indian Lands Registry System (e.g. permits and leases); and
- The level of authority that the First Nation has taken on:
  - Training and Development – 80% base funding
  - Operational – 100% base funding





# RLEMP: Delegated Authority

First Nations at the Operational Level were moved into the Delegated Authority Level (otherwise known as 53/60). In 2011 this level was closed for new entrants – 13 First Nations have been grandfathered into 53/60.

Section 53 authorizes the Minister to delegate his/her *Indian Act* authority to administer reserve lands and Section 60 allows the Cabinet (i.e. Governor in Council) to authorize First Nations to manage transactions while under the *Indian Act*.

- Manage allotments, approve transfers, and approve permits;
- Approve transactions affecting designated lands;
- Approve leases, and
- Administer permits, leases and licenses under the *Indian Act* regulations relating to mining, waste disposal and timber



# RLEMP: Current Eligibility Criteria

To join RLEMP, a First Nation must:

- Pass a Band Council Resolution agreeing to the terms of the Program; and
- Fill out an Entry Request and Capacity Self-Assessment.

Based on these documents, INAC regional offices assess a community's possible readiness to join the program and assign the First Nation to one of the two levels of responsibility.

Generally, RLEMP eligibility includes:

- A low General Assessment score;
- Providing INAC with audited financial statements in accordance with Canadian Accounting Standards;
- Having, or pursuing, economic development projects/activities; and
- Having land management activity registered in the Indian Lands Registry System.

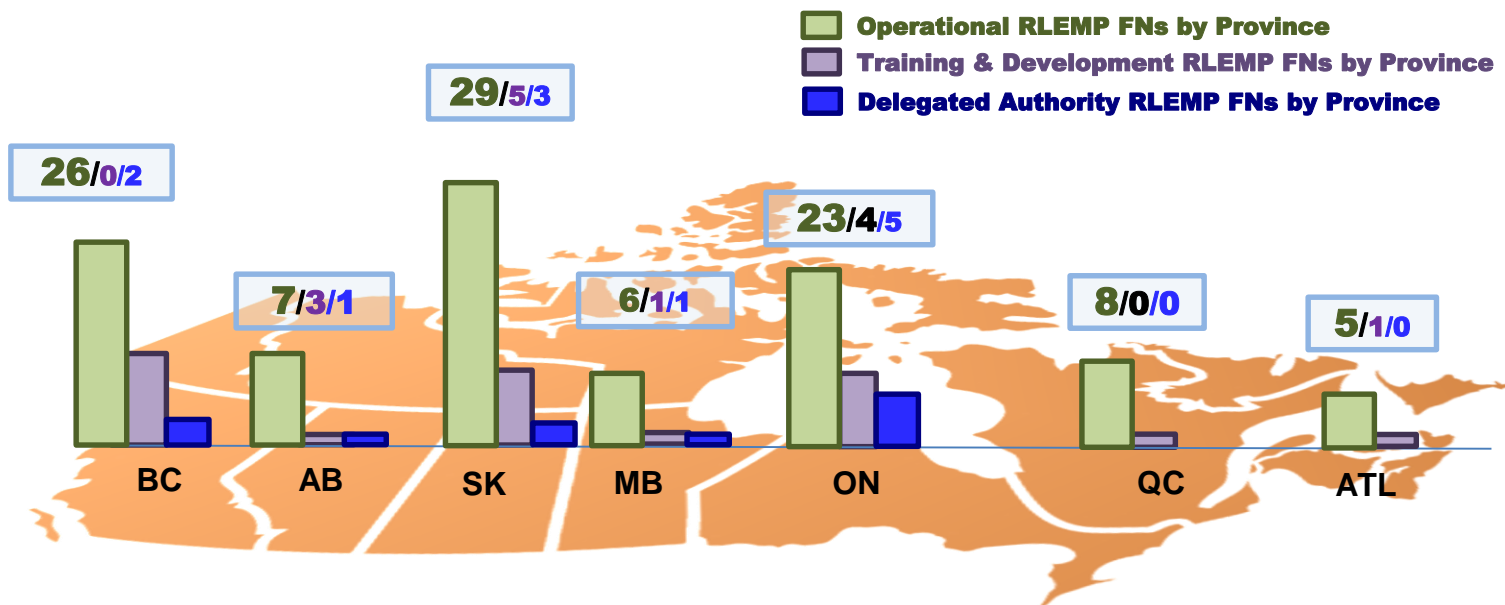






# First Nations in RLEMP

- Communities who are operational or working towards becoming operational are considered “active” in the Regime. There are currently 130 active participants:
  - 15 Training & Development communities
  - 102 Operational communities
  - 13 Delegated Authority (53/60) communities





# RLEMP cross-country engagement

- INAC engaged with First Nations land managers to seek input on how the [Reserve Lands and Environment Management Program](#) (RLEMP) can better meet the needs of First Nations wanting to manage their own lands.
- INAC met with regional Indigenous lands managers associations in the fall of 2016 to identify key themes to guide the engagement.
- INAC then partnered with the National Aboriginal Lands Managers Association (NALMA) to conduct 7 engagement meetings across the country at the following locations and dates:

Date	Location
May 2-4, 2017	Wendake, QC
May 9-11, 2017	Toronto, ON
May 16-18, 2017	Winnipeg, MB
May 30- June 1, 2017	Saskatoon, SK
June 6-8, 2017	Edmonton, AB
June 13-15, 2017	Kelowna, BC
June 27-29	Moncton, NB

INAC-AANIC





# Participation

- Every First Nation managing their lands under the *Indian Act* received an invitation to participate at one of the face-to-face meetings, or online.
- Overall, 330 participants from 224 First Nations attended the engagement sessions in Quebec, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia and New Brunswick.
- Regional summaries and the final report can be found online.
- Reports reflect the views of those participants present at the face-to face meetings or who participated online, and not the views of all First Nations.





# Engagement Session Themes



## Capacity development

- What kinds of changes to training curriculum and delivery – such as providing regionally specific content or training an additional land manager – would First Nation land managers want to see happen?

## Funding

- What kinds of changes to the current funding formula – such as focusing less on transactions or providing multi-year funding – would First Nation land managers want to see happen?

## Transitions into and out of the program

- How can INAC better position RLEMP within other land programs and regimes available to First Nations to foster easier transitions into and out of the program?





# First Nations Land Management (FNLM)

- In 1991, a group of First Nations Chiefs approached INAC with a proposal to enable First Nations to opt out of all land-related sections of the *Indian Act*.
- The First Nation led initiative provided a mechanism for First Nations to manage their reserve land, resources, and environment according to their own cultural values and objectives; many also realized increased economic development benefits.
- Canada became a signatory to the Framework Agreement on First Nation Land Management in 1996 with 14 First Nations.
- In 1999, the *First Nations Land Management Act* (FNLMA) received Royal Assent, which ratified the Framework Agreement and made it a statutory instrument.
- There are 123 communities currently active in the Regime (developmental and operational). New entrants are added as funds become available through new federal investments (e.g., Budget 2015) and internal reallocations.



# Key Features of the FNLM Regime

- Signatory First Nations have all the rights and power to manage lands, resources and environment and the authority to grant interests and licenses.
- Law-making and enforcement powers are a key feature of the Regime.
  - The Land Code sets out basic provisions regarding the exercise of a First Nation's rights and powers over its land. Land Codes are the umbrella for other FNLM First Nation land laws.
  - FNLM communities may develop Matrimonial Real Property laws as a component of their Land Codes. Currently 34 FNLM First Nations have done so.
  - FNLM communities may develop environmental management and enforcement laws (must meet provincial/territorial standards).
- The FNLM Regime is a form of sectoral self-government. Though not a primary objective, it can be 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 ).





# 33 Sections of *Indian Act* First Nations can opt out of

<i>Indian Act Sections</i>	Description
Section 18	Reserves
Section 20	Possession of land in reserves
Section 22	Improvements on lands
Section 28	Grants, etc. of reserve lands void
Section 30	Penalty for trespass
Section 35	Lands taken for public purposes
Section 41	Effect of surrenders and designations
Section 49	Divisee's entitlement
Section 50(4)	Approval required – right to possession
Sections 53-60	Management of reserves

<i>Indian Act Sections</i>	Description
Section 66	Expenditures of reserve moneys with consent of land
Section 69	Management of revenue moneys by band
Section 71	Farms
Section 93	Removal of materials from Reserves
Section 57	Any regulations made under section 57 of that Act
Section 42 and 73	Any regulations under these sections
Section 29	Reserve lands are not subject to seizure under legal process
Section 87	Taxation of real or personal property
Section 89(1), (1.1), (2)	Leasehold interests or leases

INAC: AANIC





## 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).
- **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.
- 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).

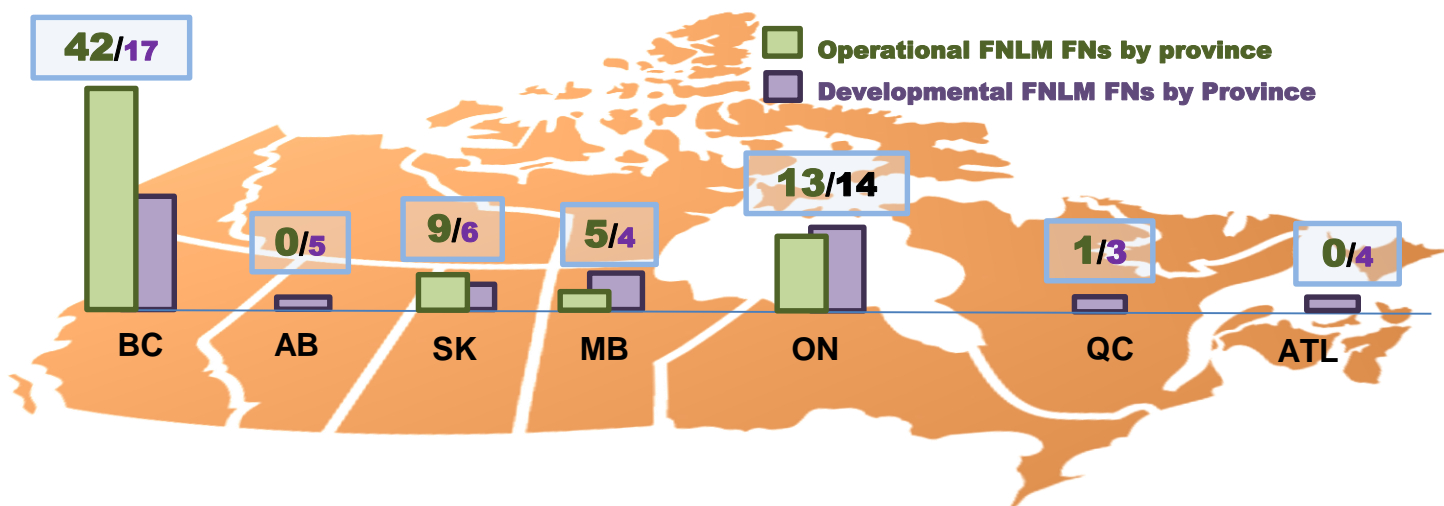
Levels of Interaction	
LAB/RC	INAC
Chair of the Board	Minister
Executive Director	Director
Assistant Executive Director	Managers, Ops & Policy
Technicians	Regional Staff





# First Nations in the FNLM

- There are currently 123 “active” participants in the Regime:
  - 53 Developmental communities
  - 70 Operational communities
  - Three communities have transitioned from FNLM to Self-Government/Treaty.

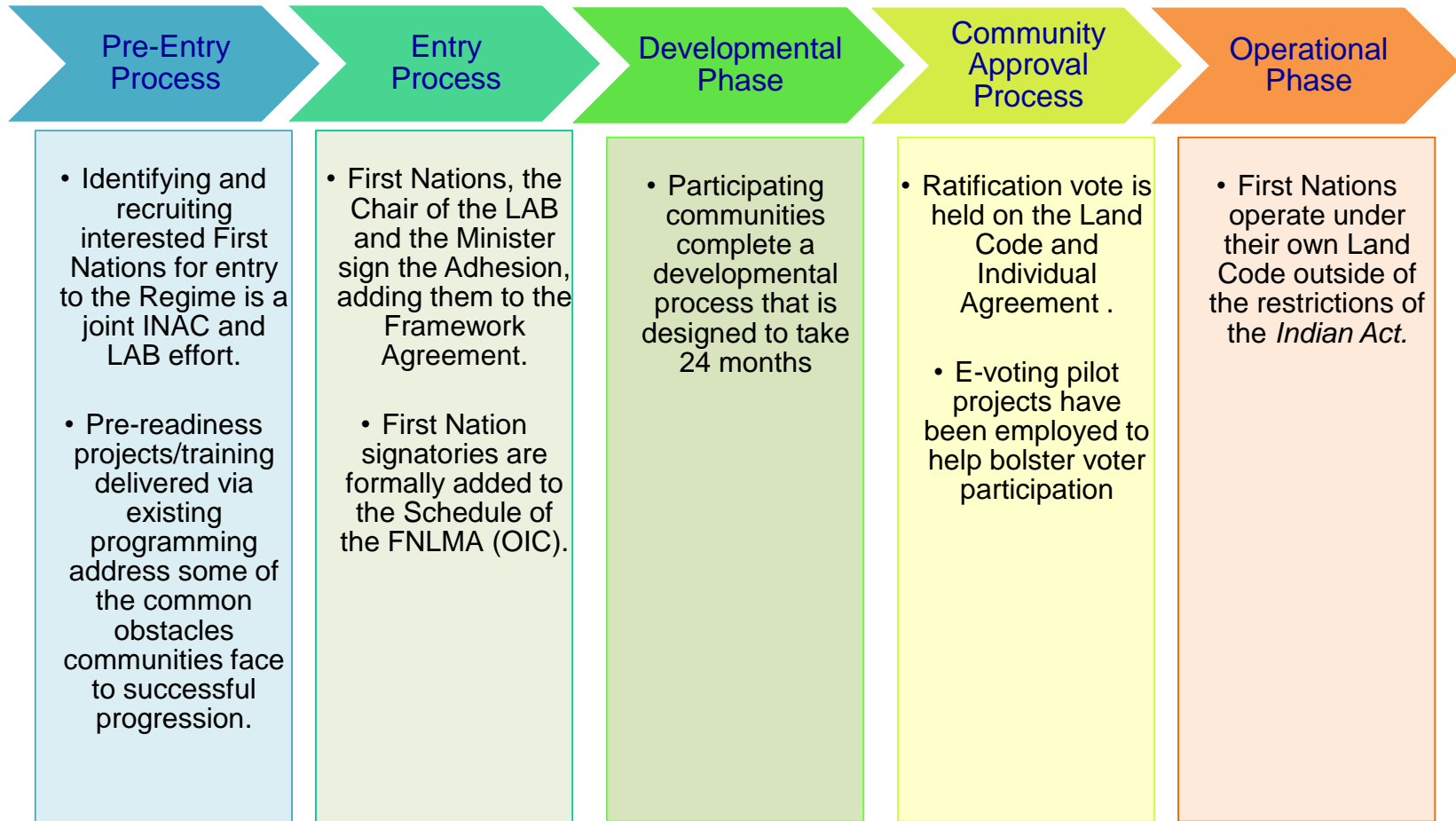


INAC·AANC





# Progression through the FNLM Regime

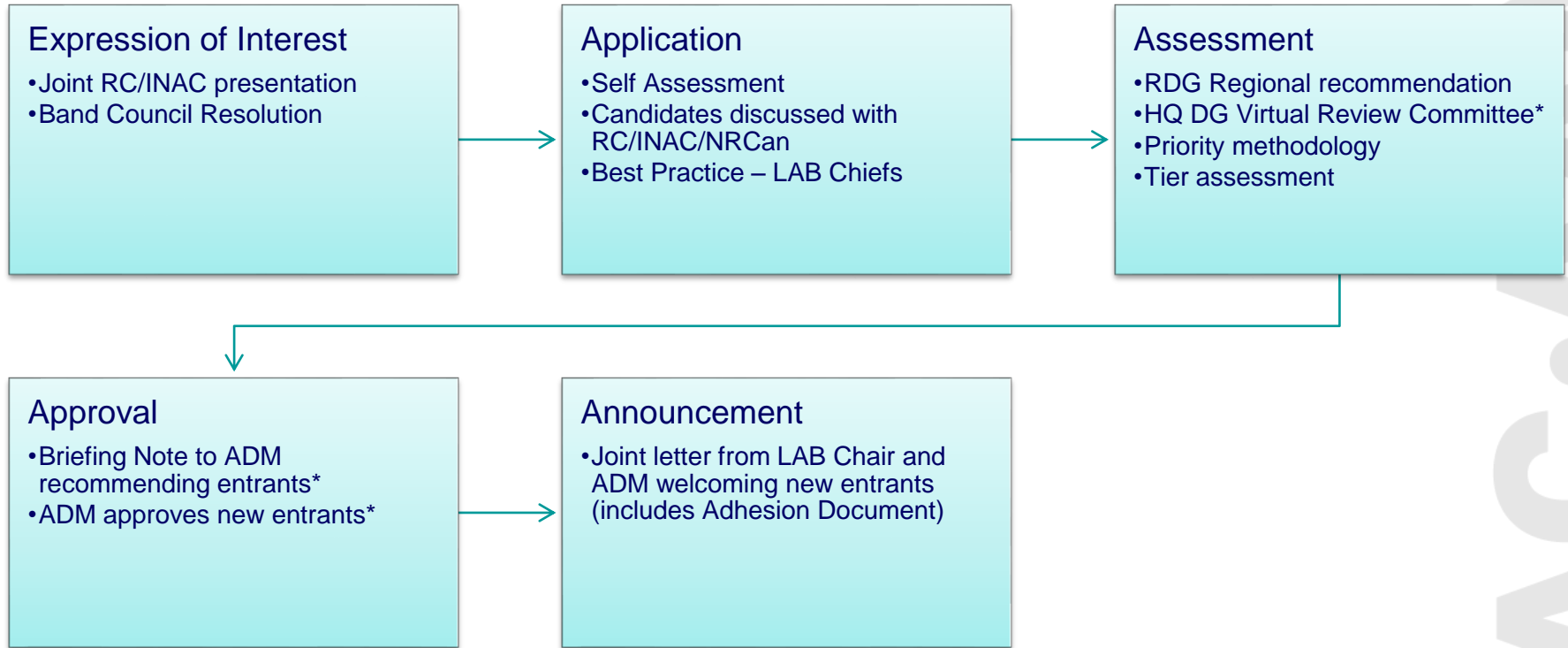


INAC·AANC





# Expression of Interest and Pre-Entry Stage



\*delegated authority

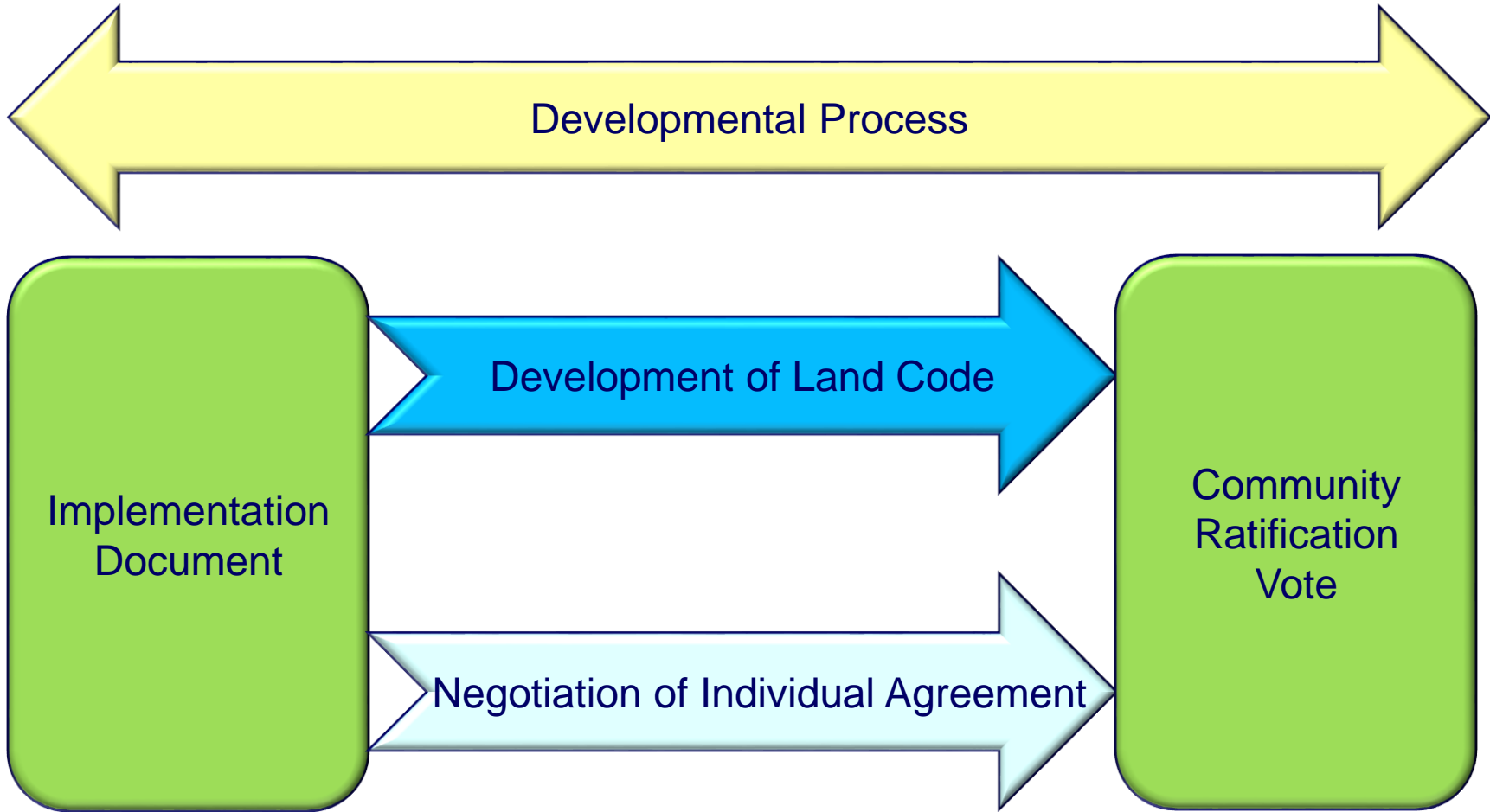
**Note:** Sequencing not absolute. Major milestones only. For detailed tasks, consult Implementation Document (current process) or Community Approval Process Plan (former process).



INAC



# FNLM Process – Developmental

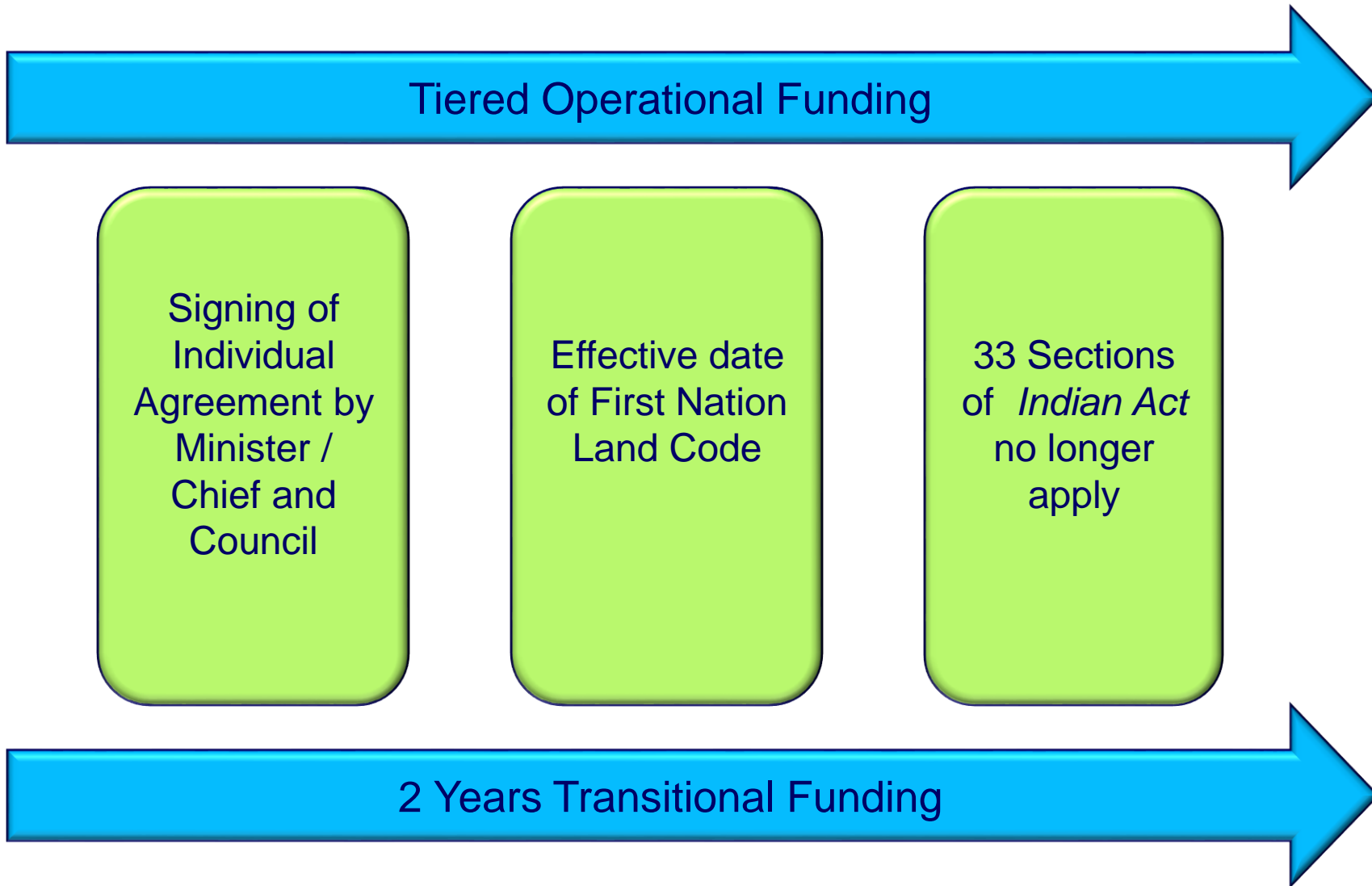


INAC·AANC





# FNLM Process – Operational



INAC·AANC





# FNLM Operational Funding Formula

- The Framework Agreement requires that a method for assigning operational funding be jointly developed by Canada and the Lands Advisory Board (on behalf of First Nations in the Regime). Following the expiry of the current formula in 2016, an Agreement-in-Principle on a new formula was reached and endorsed by operational First Nations in Spring 2017.
- The new operational funding formula builds on the strengths of the existing formula by improving the tiered approach to land governance funding and providing dedicated funding for environmental management. Additional pre-readiness and capacity development supports are also being sought to help support new and existing entrants to the Regime.
- The Agreement-in-Principle is targeted for an April 1, 2018 start date, subject to internal approvals and appropriations by Parliament.

INAC·AANC





# Comprehensive Self-Government

Self-government provides First Nations with greater control and law-making authority not only for land management but over a comprehensive range of jurisdictions, including governance, social and economic development, education, health, lands and more.

- Self-government agreements address:
  - The structure & accountability of Aboriginal governments
  - Their law-making powers,
  - Their financial arrangements, and
  - Their responsibilities for providing programs & services to their members
- Self-government agreements have many forms based on the diverse historical, cultural, political & economic circumstances of the Aboriginal groups, regions & communities involved
- Agreements are generally limited to a FN's internal matters & their lands







## Annex: Differences between FNLM and the *Indian Act*

Heading	Framework Agreement (FA)	FNLM	<i>Indian Act</i>
<b>MRP Laws</b>	Must be developed within 12 months in accordance with the FA		No applicable section – FHRMIRA came into force in 2013.
<b>Land Management Powers</b>	First Nations have power to manage their own lands in accordance with the FA		Minister has final authority over land management powers.
<b>Revenue Moneys</b>	All Indian revenue moneys must be transferred to the First Nation in accordance with the FA.		INAC administers Indian revenue moneys.
<b>Protection of First Nation Land</b>	Generally, First Nation Lands are not to be sold, exchanged, conveyed or transferred unless it is exchanged or expropriated as outlined in FA.		No equivalent protection in Indian Act.
<b>Voluntary Exchange of Land</b>	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.		INAC negotiates land exchanges pursuant to Additions to Reserve policy.
<b>Law Making Powers</b>	First Nations with land codes have the power to make laws respecting use of land including environmental assessment and protection.		Sec. 81 by-law making powers continue to apply to FNLM First Nations.

INAC.AANC





## Annex: Differences between FNLMA and the *Indian Act*

Heading	Framework Agreement (FA)	FNLMA	<i>Indian Act</i>
<b>Enforcement of Laws</b>	First Nations have the power to establish and punish offences, as well as establish enforcement procedures and appoint a Justice of the Peace.		Provides for some by-law enforcement powers for Band Council or Police.
<b>Environmental Management</b>	First Nations have the powers to enact environmental laws.		No specific provisions for environmental protection.
<b>Environmental Assessment</b>	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).		No provisions for assessment. Environmental reviews are conducted under CEAA 2012.
<b>Expropriation</b>	Land can only be expropriated by the federal Crown with consent of Governor in Council and only in very limited circumstances.		Reserve lands can be expropriated broadly, with the consent of the GiC.
<b>Compensation (Expropriation)</b>	Compensation must include an alternate land of equal or greater size or of comparable value.		Monetary compensation or land is contemplated.
<b>Liability</b>	Canada is liable for acts or omissions before the Land Code comes into effect. First Nation is liable after.		Canada is liable.
<b>First Nations Land Register</b>	The First Nation Land Register is established in the FA and FNLMA and is maintained by INAC.		INAC maintains ILRS.

INAC: AANC

