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PRIVATE LANDS CONSERVATION IN BELIZE

**A Country Report by the Natural Resources Law Center,
University of Colorado School of Law**

September 2004

Sponsored by The Nature Conservancy

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Private Lands Conservation in Belize

A Report by the Natural Resources Law Center
University of Colorado School of Law

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BRIEF QUESTIONS

1. What legal tools are in place for the purpose of achieving private lands conservation in Belize?

Reciprocal appurtenant easements were used to establish the Community Baboon Sanctuary, which secured the participation of more than 100 landowners along a swath of the Belize River in a conservation effort managed by the Belize Audoban Society. The Rio Bravo Conservation & Management Area, managed by Programme for Belize, was established in partnership with the Belizean government by means of a civil contract for conservation. Additionally, a Debt-for-Nature swap occurred under the auspices of the U.S. Treasury Department's Tropical Forest Conservation Act.

2. What legal tools are recognized by the legal system and capable of being used for private lands conservation in Belize?

In Belize, trusts may be established to benefit the environment as a charitable purpose; trusts have been used elsewhere (e.g., England, the British Virgin Islands) to great effect for the establishment of national conservation programs—these successes could serve as useful guides for private conservation programs in Belize. Covenants, profits and usufructs are common law tools that could be employed in service of conservation programs. Statutes authorize the Ministry of Natural Resources to issue ad hoc exemptions from land taxes; thus, tax exemptions, if secured from the ministry, could serve as an aid to private conservationists. Furthermore, Belize authorizes the creation of condominiums, and the condominium structure has been used successfully in Costa Rica and Panama to establish private conservation programs.

3. Given the legal authorities governing land tenure, what novel legal tools could be introduced to achieve the goal of private lands conservation efforts in Belize?

Belizean law already recognizes appurtenant easements; however, the introduction of a national statute explicitly authorizing conservation easements—both in gross and appurtenant—would lend a degree of security, flexibility and simplicity to conservation efforts that does not exist under the current property law regime. In addition, providing a formal mechanism whereby landowners dedicating their property to conservation were automatically exempted from property taxes—or granted other tax incentives—would further private conservation efforts in Belize by reducing the financial load on conservationists and eliminating the risk that a private reserve could be lost to the government for non-payment of taxes. Purchased development rights and leaseback agreements might present means by which conservationists could work with those owners who possess large-scale holdings of undeveloped land to establish private reserves.

4. What challenges confront private conservationists in Belize?

Obtaining clear title to land may be one of the biggest frustrations for conservationists in Belize. Because of its fractured nature, Belize's land registration system leads to considerable uncertainty with respect to clear title. These problems are being addressed by a Land Management Program, launched in 2000 and funded by the Inter-American Development Bank (IDB). The program should bring registration of title of all lands in Belize under a single system, and all parcels registered within the system will be fully adjudicated, thus establishing more secure land tenure. Land Registry officials estimate, perhaps optimistically, that the project should be completed by the end of 2005.

In addition, those pursuing conservation goals, particularly the introduction of legislation authorizing conservation easements, will undoubtedly be impacted by the fact that the government of Belize faces conflicting demands: that of development, and that of conservation. Much legislation is geared toward encouraging, even mandating, development. However, Belizeans appreciate the value of conservation, in part as a means toward developing the economy through eco-tourism; and so, while not yet explicitly recognized as such, it is feasible that conservation could be portrayed as a legitimate “development” of the land.

INTRODUCTION

This report seeks to provide a basic description of the legal instruments, processes and institutions relevant to private lands conservation currently in place in Belize. The report also assesses the feasibility of introducing a number of legal tools into the Belizean legal system for the purpose of achieving private lands conservation, with particular emphasis being given to the potential use of conservation easements. Section I of the report provides relevant background information on historical and contemporary trends in the Belizean system of land tenure. Section II is a brief overview of the governmental structure of Belize, the legal authorities, and the overarching constitutional provisions relevant to property rights; and Section III describes use rights, requirements and restrictions that pertain to privately owned lands in Belize. Section IV provides a general survey of legislation, processes and institutions within the country that are relevant to both the administration of land and the goal of furthering private lands conservation. Section V of the report evaluates the feasibility of introducing a number of novel legal tools into the Belizean legal system that have the potential to facilitate private lands conservation. This section also offers recommendations for facilitating the introduction and acceptance of conservation easements into the Belizean legal system, along with recommendations for improving the conservation of private lands in general.

I. RELEVANT BACKGROUND

A. History of Land Use and Tenure

The history of Belizean land distribution, use and land tenure legislation has been strongly influenced by the country's export industries. Belize's primary export in the 1600s-1700s was logwood; in the 1800s, mahogany; and from the mid-1900s until the 1980s when prices collapsed,

sugar.¹ The earliest legislation affecting land tenure in Belize was Burnaby's Code, a series of laws introduced by Admiral Burnaby in 1765.² Under Burnaby's code, the building of a hut in a logwood area gave the right of ownership within 1000 yards of each side of the hut.³ Prior to 1817 there were no laws requiring the registration of interests in land; however, a proclamation issued in 1817 established the principle of registration by requiring all landowners to register their properties within six months.⁴ The same proclamation established the principle that the Crown had sole rights to unclaimed land.⁵ The sale of Crown Lands was introduced in 1838.

In Belize's early colonial years, plantation agriculture was banned. Nevertheless, plantations flourished, establishing land ownership patterns whereby a few landholders owned the majority of private land in Belize.⁶ Even in the post-colonial era, a major feature of land tenure in Belize has remained the concentration of land ownership in a small percentage of the population—and, in particular, in the hands of non-nationals.⁷ In recent years, these non-resident owners have frequently engaged in land speculation rather than agricultural development. This practice is a source of frustration for the government, given that reports indicate Belizean households spend on average 29 percent of their food budget on imports, while only 5 percent of the land suitable for agriculture has been put to agricultural use.⁸

¹ Tim Merrill, *Guyana and Belize: Country Studies*, Federal Research Division, p. 223 (Library of Congress, 1993) (hereinafter Merrill).

² S. T. Shreeve, *Belize: Land Adjudication: Registration/Assignment Final Report*, Overseas Development Administration: East Kilbride, U.K., 15 Nov. 1992 (hereinafter Shreeve).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See Merrill.

⁷ Of freehold land of 100 acres or less, in 1927, 6 percent of landowners owned 97 percent, while 85 percent of landowners owned 1 percent. By 1971, 3 percent of landowners owned 84 percent, and 91 percent of owners held 2 percent. See Shreeve.

Also in 1971, all landowners but one with more than 10,000 acres were non-nationals. Non-nationals owned 93.4 percent of estates of more than 100 acres and 90 percent of all freehold land. *Id.*

⁸ See Shreeve.

The concentration of land holdings among just a few, oftentimes absentee, landowners exacerbates a pattern whereby squatters occupy lands and perform slash-and-burn, or *milpa*, agricultural practices.⁹ After a period of years, these squatters may claim that they have adversely possessed the portion of the land they have put to use, leading to confusion and uncertainties about clear title to lands in Belize.¹⁰ This problem has only increased as large numbers of immigrants from Central America have come to Belize, often occupying rural farmlands.¹¹ Even with the ensuing population increase, however, Belize, with about 191,000 residents, is one of the least densely populated countries in the Americas—averaging 8.5 persons per square kilometer in 1991.

The relatively low amount of revenue received from land taxation is another dominant feature of land tenure in Belize.¹² To address taxation and land distribution problems, the government has periodically introduced legislation aimed at facilitating suitable land use and increasing land-based tax revenues. The 1947 Land Acquisition Ordinance allowed the government to acquire land for public purposes; and also allowed private owners to transfer land to the Crown in lieu of paying taxes. The Land Tax (Rural Land Utilization) Ordinance of 1966 was intended to encourage the use or disposal of land by requiring that taxes be paid on lots of more than 100 acres. However, exemptions granted to agricultural companies and absentee landlords rendered the act ineffective. This 1966 Ordinance was preempted by the 1982 Land Tax Act, which did not allow exemptions and provided for the taxation of unimproved land according to its market value. The 1982 Act was intended to both increase land-based revenues and promote the development of land. Indeed, by 1986 the Government owned more than a million acres of land

⁹ *Milpa* agriculture is the slash-and-burn establishment of croplands. Oftentimes *milpa* farmers, rather than reuse a parcel in subsequent years, move from plot to plot, slashing and burning a new parcel each year.

¹⁰ Under the Land Adjudication Act of 2000, § 16 (a) and (b), the term for adverse possession is an uninterrupted term of 12 years for private lands and 30 years for National Lands.

¹¹ While in 1980, Belize residents were more than 50 percent urban dwellers, by 1990, 52 percent of Belize's population resided in rural areas. *See* Merrill.

suitable for agriculture, with much of this land obtained from landowners in lieu of taxes. However, the 1982 Act has had perhaps unintended consequences for environmentalists.¹³ The tax rate for all lands is now 1 percent of the unimproved value of the land. Like all others, owners of private reserves have no exemptions from these tax laws. The heavy financial burden they impose is difficult for many conservationists to bear, potentially forcing them to abdicate possession to the government. The Belize Association of Private Protected Areas (BAPPA) is working to create a legal mechanism affording greater protection to private reserves, but for now the impact of these efforts is far from clear.

B. Relations With Guatemala

Guatemala has long asserted claims to Belize, originating in eighteenth-century treaties in which Britain acceded to Spain's assertion of sovereignty over the territory even while British settlers continued to occupy it.¹⁴ After Guatemala won its independence from Spain, it signed an 1859 treaty with Britain, which the British viewed as confirming areas under its dominion. Guatemala later insisted that the agreement was a treaty of cession over Belize, dependent upon the construction of a road from Guatemala to the Caribbean coast—a road which never materialized. In its Constitution of 1945, Guatemala stated Belize (then known as British Honduras) was the twenty-third department of Guatemala. Subsequent military and right-wing governments used the claim to foment nationalist sentiment and divert attention from domestic problems. Because Guatemala based its assertions largely on the notion that no European colonizer could rightfully occupy Central America, it was not until Belize achieved independence from Britain in 1981—with the blessings of the Caribbean Community (CARICOM), the Organization of American

¹² Land tax revenue as a percentage of total Government revenue was 8.3 percent in 1868, 3.5 percent in 1951, 2.4 percent in 1971, and .6 percent in 1991. *See* Shreeve.

¹³ E-mail from Jan Meerman, Director of Belize Environmental Consultancies, Ltd. (on file with author). For information on the status of biodiversity in Belize, visit <http://biological-diversity.info>.

States (OAS) and the United Nations—that fruitful progress toward establishing relations with Guatemala were achieved.

Revisions to the Constitution of Guatemala in 1985 dropped the claims to Belize. On August 14, 1991, Guatemala recognized the right of Belizeans to self-determination. In September of 1991, Guatemala acknowledged Belize’s independence and established diplomatic relations with the nation. However, bowing to internal political pressure Guatemala reasserted its claims to Belize in 1994 and again in 1998. Such assertions have frequently been paired with a massing of troops in border zones.¹⁵ Incursions by Guatemalan armed forces deep into Belize in early 2000 spurred the OAS to take action, facilitating settlement talks between the two nations. In 2003, Guatemala and Belize agreed to an OAS-approved Transition Process designed to strengthen relations between the two countries, settle territorial disputes, and assuage Guatemalan demands for unhindered maritime access.¹⁶ While the Transition Process is intended to resolve any lingering territorial disputes, the certainty of land tenure, particularly in border zones, currently remains less than absolute.

II. OVERVIEW OF LEGAL CONTEXT

A. Government

The Belizean Constitution provides for a constitutional monarchy with a parliamentary form of government closely modeled on that of the United Kingdom.¹⁷ The Constitution divides the government into three branches: executive, legislative and judicial. Additionally, an independent Public Service Commission oversees the civil, or public, service.¹⁸

¹⁴ See Merrill.

¹⁵ Belize secures its territory with a small armed force largely supplied by Great Britain. Additional information on relations between Belize and Guatemala is located at <http://www.belize-guatemala.gov.bz/> (last visited July 12, 2004).

¹⁶ See Agreement to Establish a Transition Process and Confidence Building Measures Between Belize and Guatemala at http://www.belize-guatemala.gov.bz/press_releases/oas_agreement.pdf (last visited July 12, 2004).

¹⁷ See Merrill.

¹⁸ Belize Const. art. VII, § 105.

Executive authority is vested in the British monarch, who is represented in Belize by a governor-general.¹⁹ The governor-general maintains a ceremonial role and is expected to remain politically neutral.²⁰ The governor-general is appointed on the recommendation of the prime minister, and possesses an authority sharply limited by the Constitution, which stipulates that the governor-general “shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet” except in cases in which the constitution or law states otherwise.²¹ The executive’s cabinet is composed of the prime minister and all other ministers of government, who may come from either the elected House or the Senate.²² In addition, the Belize Advisory Council is an independent body that advises the governor-general, and its seven members are appointed by the governor-general in accordance with the advice of the prime minister, who must consult with the leader of the opposition for all appointments.²³ Real political power thus lies not with the executive branch’s governor-general, but with its appointed members who are responsible to the democratically elected House of Representatives.²⁴

The House of Representatives and the Senate comprise the National Assembly, the bicameral legislature of Belize.²⁵ The 28 members of the House of Representatives are elected officials, while the eight members of the Senate are appointed by the governor-general on the recommendation of House members and cabinet officials. The prime minister is appointed by the governor-general from the House of Representatives, and is the leader of the political party commanding the support of the majority of the members of the House.²⁶ Both the House of Representatives and the Senate may introduce bills; passage requires a simple majority among

¹⁹ *Id.* at art. V, § 36.

²⁰ *See* Merrill.

²¹ Belize Const. art. IV, § 34(1).

²² *Id.* at art. V, § 44.

²³ *Id.* at art. V, § 54.

²⁴ *See* Merrill.

²⁵ Belize Const. art. VI, § 55.

members who are present and voting.²⁷ Should the Senate reject a measure or amend it in a manner unacceptable to the House, the House can still enact the bill by passing it again at least six months later.²⁸ Bills that have been passed are presented to the governor-general, who assents to the bill and publishes the measure as law.²⁹ The governor-general's assent is pro forma, since he or she acts in accordance with the advice of the cabinet.³⁰

The independent judicial system of Belize consists of magistrates' courts in the country's six judicial districts, a Supreme Court, and a Court of Appeal.³¹ In addition, decisions may be appealed from the Court of Appeal to the Judicial Committee of the Privy Council in London.³² The magistrates' courts handle most legal matters.³³ But any cases not involving issues of fact (i.e., purely legal questions), as well as appeals, must be referred to the Supreme Court which has unlimited original jurisdiction in civil and criminal cases.³⁴ The Court of Appeal hears appeals from the Supreme Court.³⁵ In cases involving constitutional interpretation, both criminal and civil cases have an appeal of right to the Privy Council.³⁶ The Court of Appeal may also grant permission for appeals to the Privy Council in cases having general or public importance.³⁷ The Crown may grant permission for an appeal of any decision of the Court of Appeal.³⁸

²⁶ *Id.* at art. V, § 37.

²⁷ *Id.* at art. VI, § 77.

²⁸ *Id.* at art. VI, § 79.

²⁹ *Id.* at art. VI, § 81.

³⁰ *See* Merrill.

³¹ Thomas Reynolds and Arturo Flores, *Foreign Law: Current Sources of Codes and Legislation in Jurisdictions of the World*, Vol. 1 (2003) (hereinafter Reynolds & Flores).

³² Belize Const. art. VII, § 104.

³³ *See* Reynolds & Flores.

³⁴ Belize Const. art. VII, § 96.

³⁵ *Id.* at art. VII, § 100.

³⁶ *Id.* at art. VII, § 104.

³⁷ *Id.*

³⁸ *Id.*

Although the country is divided into six districts, there are no corresponding district governments.³⁹ In eight towns—Belize City, Benque Viejo del Carmen, Corozal, Dangriga, Orange Walk, Punta Gorda, San Ignacio, and San Pedro—elected municipal councils have limited authority, granted by the National Assembly, to enact local laws concerning sanitation, streets, sewers, parks, building codes and land use.⁴⁰ Village councils likewise have the authority to regulate similar matters in their designated territories.⁴¹

B. Legal Authority

The legal authorities for Belize consist of (1) the Constitution; (2) the Laws of Belize, Revised 2000—which consist of the acts and statutes passed by the Belize legislature and published in the Government Gazette as law; and (3) and judicial opinions or the common law.⁴²

The legislation of Belize, like its legal system, is modeled on that of the United Kingdom. The common law of England and all British statutes in force on January 1, 1899, constitute the “basic law” of Belize. Additionally, due to its colonial relation with the U.K. until its independence in 1981, subsequent U.K. legislation has occasionally been extended directly to Belize.⁴³ Even after the attainment of independence, a major part of this legislation has remained in force.

No customary law exists in Belize, although a codification of settlers’ laws, granted by the governor in 1765 and known as the “Burnaby code,” remained in force until 1840.⁴⁴

³⁹ See Merrill.

⁴⁰ Town Councils Act, 2000, ch. 87.

⁴¹ Village Councils Act, 2000, Cap. 88, §§ 20-23.

⁴² Reynolds & Flores.

⁴³ *Id.*

⁴⁴ *Id.*

C. Constitutional Provisions Concerning Property and the Environment

The Preamble of the Constitution of Belize requires that government policies protect the environment.⁴⁵ However, no provisions within the Constitution specifically address environmental concerns.

The Belizean Constitution does contain a takings clause. Under the Constitution, no property right or interest may be compulsorily taken or acquired by the government except through due process and with just compensation, under laws designed to address the following circumstances:

- to serve the public good;
- to satisfy any tax, rate or due;
- to compensate a breach of law;
- to allow the taking of samples for any purpose under the law;
- to cure property that is in a state harmful to the health of human beings, animals, or plants;
- to conserve soil or other natural resources; or
- to develop or improve land which the owner or occupier unlawfully failed to develop.⁴⁶

Land may be temporarily acquired to prevent soil erosion. In these instances, no compensation is due.

⁴⁵ Belize Const., Preamble at (e).

⁴⁶ *Id.* at art. 1, § 7. Landowners may be required to file development plans under provisions of acts such as the Land Utilization Act and the National Lands act, and the failure to adhere to these plans may result in expropriation of the land.

III. ADMINISTRATION OF LAND

A. Institutional Framework

The Ministry of Natural Resources and the Environment, Commerce and Industry is a principal agency in the public administration structure of Belize, and is responsible for the management of the country's natural resources. The Ministry is responsible for the execution of such controlling legislation as the Land Utilization Act, the National Lands Act, the Law of Property, the Registered Lands Act, the General Registry Act, the Land Adjudication Act and the Land Tax Act.⁴⁷ As a department within the Ministry, the Lands and Surveys Department has primary responsibility for the administration of all land tenure in Belize. The Lands and Surveys Department is divided into six units. The units responsible for land use planning are (1) the Surveys & Mapping Section, (2) the Physical Planning Section, and (3) the Land Information Center. The units responsible for service delivery are (4) the National Estates Section, (5) the Valuation Section, and (6) the Land Registry. The Land Titles Unit, formerly a part of the General Registry, became part of the Land Registry in 1999, turning the Land Registry into the one-stop shop for all land-related transactions.

B. Government and Private Land

Approximately 75 percent of the land in Belize is owned by the government. Of the government-owned land, forest reserves, agricultural reserves, and "Indian Reserves" make up 30 percent; leased National Land, 11 percent,⁴⁸ and un-leased National Land, 34 percent. National Land, formerly known as Crown Land, is defined as "all lands and sea bed, other than reserved forest within the meaning of the Forest Act, including cayes and parts thereof not already located or granted and . . . any land which has been, or may hereafter become escheated to or otherwise

⁴⁷ The Ministry's website is located at <http://www.mnrei.gov.bz/> (last visited July 12, 2004).

acquired by the Government of Belize.”⁴⁹ The 25 percent of the country’s land that is not government-owned is privately owned or freehold land.

C. Alien Ownership of Land

All foreign investors in Belize, whether attempting to lease or purchase national lands, must apply for an *Alien Landholding License*.⁵⁰ For the application the purchaser must submit: (1) a formal letter giving the name, address and other contact information of the purchaser along with a brief account of intentions and information on the size and other particulars relating to the land being purchased; (2) a development proposal describing the site including acreage, type and scope of the proposed development; (3) time period required for the completion of the development; and (4) a deposit. Once the minister approves an *Alien Landholding License*, the purchaser is issued a landholding license under condition of compliance with the provisions of the development proposal as accepted by the Minister.⁵¹ Under the Aliens Landholding Act, similar requirements applied to the purchase of private lands; however, the Aliens Landholding Act was repealed in 2001, and current versions of the Registered Lands Act and the General Registry Act do not impose licensing requirements on aliens seeking to purchase private Belizean lands. Land Registry officials conjecture that this current gap in the legislation may be re-filled, but presently no licensing requirement exists for the purchase of private lands by aliens.⁵²

D. Legal Estates in Government and Private Land

The main types of legal estates in land in Belize, whether of private or of National Land, and whether held by Belizean citizens or aliens, are absolute and provisional freehold title (fee

⁴⁸ Of the leased land, 63 percent consists of parcels of less-than-two-acre parcels designated for residential or commercial use, and 33 percent consists of 5 to 100 acre-parcels devoted to agricultural or industrial use.

⁴⁹ National Lands Act, § 2. Under the Forests Act, 2000, National Forests are administered separately from National Lands.

⁵⁰ *Id.* at §§ 50-55.

⁵¹ For further information, visit the Ministry of Natural Resources web site at www.mnrei.gov.bz.

⁵² Information obtained from a phone interview with Ms. Price of the National Lands Registry Office, June 2004.

simple estate) and leasehold title (term of years). Titles generally conform to one of two co-existing sets of legislation—a set for private lands and a set for National Lands. Private land is covered by the Registered Land Act, which provides for land registration in compulsory registration zones;⁵³ or by the General Registry Act, which provides for all lands not yet adjudicated under the Registered Lands Act. National Lands are administered under the National Lands Act.

Under the Registered Lands Act rights in land may be recorded as:

- *absolute or provisional freehold title.* This includes absolute title resulting from grants of National Land or prescriptive rights. A Land Certificate provides for either absolute or provisional title.
- *leasehold title.* A Certificate of Lease is granted for leases of two years or more of freehold land registered under the Registered Lands Act.
- *easements, covenants, profits and privileges.* Any easements, rights, or privileges attached to lands registered under the Registered Lands Act are noted on the record of the affected parcel(s).

Under the General Registry Act rights in land may be recorded as:

- *freehold title* resulting from a First Certificate of Title.
- *freehold title* resulting from a Transfer Certificate of a title established under a First Certificate of Title.
- *leasehold title* applicable to leases of ten years or more, represented by a Certificate of Title for Term of Years.
- *easements, covenants, profits and privileges.* Any easements, rights, or privileges attached to lands registered under the General Registry Act are registered separately from the affected parcel(s), with their own Certificates of Title.

⁵³ Belize is engaged in a nation-wide effort to survey and register all lands under the Registered Land Act. By 2001, 3,697 parcels in the Orange Walk, Cayo and Stann Creek Districts had been registered under the Registered Land Act. Parcels registered under the 1977 Land Registration Act numbered at 43,000 in 2001, and parcels contained in the General Registry included 20,000 urban parcels and 30,000 rural parcels. All of these remained to be adjudicated under the Registered Lands Act. By May 2004, more than 9,000 parcels had been registered under the Act, including almost the entire Corozal District. Figures from the Ministry of Natural Resources and the Environment, Commerce and Industry website at www.mnrei.gov.bz.

In addition to the above interests in land, forms of land tenure arising from previous legislation will continue to exist until parcels registered under prior systems are transferred or adjudicated under the Registered Lands Act. These lingering forms of tenure include:

- any other form of freehold title where *common law conveyancing* has occurred. Common law conveyancing was in force until passage of the General Registry Act of 1954, and the resulting deeds remain a significant form of tenure.
- *location tickets* issued from 1915-1978 in former Crown Lands. These are essentially at-will leases of land by the Crown.
- *conditional freehold title* in former Crown Lands.
- *annual tenancy permits* for agricultural and Indian reservations.
- *Crown leases*, designated by Minister's letter of approval.
- *Crown land grants*. These conveyances in fee simple of Crown Lands were the first form of title issued in the former British Honduras, and have been granted since 1917.

Under the National Lands Act, 2000, National Lands, which are classified as town lands, suburban lands, rural lands (including pastoral), mineral lands, and beach lands, may be leased, granted, or sold. The Minister determines conditions of sale, and prospective purchasers must file an application.⁵⁴ No conveyances to alien landholders⁵⁵ are valid unless the Minister grants the alien a license. All records concerning such licenses, as well as the sale or lease of any National Land, are kept by the registrar in the National Lands Book.⁵⁶

E. Land Registration

While a number of methods for recording land transactions coexist in Belize, the initiation of an aggressive Land Management Program in 2000 promises to unify the land registration system

⁵⁴ National Lands Act, § 13.

⁵⁵ *Id.* at § 47. Aliens are those who are neither citizens of Belize or the commonwealth, or companies under alien control.

⁵⁶ Under the Registered Lands Act, 2000, National Lands will also be entered in the National Registry once, under compulsory registration, they have been adjudicated.

through development of a single, national, parcel-based registration system by the end of 2005, according to estimates by government officials.⁵⁷

Currently, however, four titling systems are in operation: *land registration*, *fiats*, *common law conveyance*, and *Certificate of Title*. The Registered Land Act governs *land registration*. Parcels registered under the Registered Land Act are uniquely identified and possess titles guaranteed by the state. The Land Registry keeps the records for lands registered under this act. Because the Registered Land Act regime is the most reliable in Belize, it is steadily replacing the older *fiats*, *common law conveyances* and *Certificates of Title*.

For a parcel to be registered pursuant to the Registered Land Act, the Minister of Natural Resources must first declare it part of a compulsory registration zone. Upon this declaration, the Registrar of Lands prepares a register showing whether land within the zone is private or national land; and in the case of private land, whether the title is absolute or provisional.⁵⁸ Also included in the register is a section containing a description of each parcel of land or lease, together with particulars of its appurtenances; a proprietorship section containing, in the case of private lands, the name and address of the proprietor and a note of any inhibition, caution or restriction affecting the proprietor's right of disposition; and a section containing a record of any encumbrances or rights adversely affecting the land or lease. Under the Registered Lands Act, licenses⁵⁹ are not capable of registration.⁶⁰ Any license relating to the use or enjoyment of the land is ineffective against purchasers, unless the licensee protected his or her interest by lodging a caution against that section.

⁵⁷ Joseph Iyo, *Overview of Land Administration and Management in Belize*. March 2003. Available from the Terra Institute Ltd., Mt. Horeb, Washington, at http://www.mhtc.net/~terra/carib_workshop/pdf/belizecfs.pdf (last accessed on July 12, 2004).

⁵⁸ For registration procedures, see Registered Land Act, §§ 10-14.

⁵⁹ Under the Registered Land Act, § 2, a license means a permission given by the proprietor of land allowing the licensee to do some act in relation to the land that might otherwise constitute a trespass. A license does not include an easement or a profit.

If a compulsory registration zone includes lands previously registered under the General Registry Act, the Registrar notifies those with any interest in such a parcel of land that their registration has been transferred to the Land Register compiled under the Registered Lands Act and that the General Registry Act no longer applies to their parcel. On receipt of this notice, the owner or lessee must surrender his or her certificate of title within thirty days in exchange for a land certificate or certificate of lease prepared free of charge pursuant to the Registered Lands Act.

Until execution of the Land Management Program has resulted in the registration of all National Lands pursuant to the Registered Land Act, *fiats* are administered under the National Lands Act, and records of such are kept in the National Lands Books. Upon the grant or lease of National Lands, the Registrar enters the transaction in the National Lands Books.⁶¹ After entering the grant or lease, the Registrar then files the Minister's *fiat* in the Fiat book, and files the accompanying plan in the Plan Book.⁶² Both the *fiat* and plan are given a number that corresponds with the grant or lease to which they refer. Additionally, the Registrar maintains a separate index containing an alphabetical arrangement of all grantees, proprietors or lessees whose names have been entered in the National Lands Books.⁶³ This index gives the volume and page number where entries in the National Lands Books were made, and also provides the volume and page numbers of any entries in the Fiat Books or Plan Books. In the event that a grant or lease is cancelled, the Registrar writes "cancelled by authority" across any entries concerning the grant or lease and signs them, thereby nullifying any force or effect of the grant or lease.⁶⁴

The General Registry Act and the Law of Property Act govern common law conveyances and Certificates of Title. These records are kept by the Land Registry in the Land Titles Register,

⁶⁰ Registered Land Act, § 101.

⁶¹ National Lands Act, § 16(1).

⁶² *Id.* at § 19.

⁶³ *Id.* at § 20.

which is divided into separate parts relating respectively to freeholds, leaseholds, and easements, rights and privileges.⁶⁵ The Registrar issues *Certificates of Title* for land held in fee simple absolute; for land held for terms of ten years or more; and for easements, rights and privileges in or over land for an interest equivalent to an estate in fee simple absolute or terms of ten years or more. A *Certificate of Title* may be either a First Certificate of Title or a Transfer Certificate of Title.

Before the issue of any *Certificate of Title*, the Registrar notes, in the order of their respective dates, any and all *Certificates of Title* for terms of ten years or upwards; easements, rights and privileges; and registered legal charges or encumbrances affecting the land.⁶⁶ The Registrar then numbers the *Certificate of Title* pursuant to its folio in the current register, and places the same number on a duplicate certificate for issuance to the registered proprietor. The Registrar issues a First Certificate of Title to any person who appears to be the original owner entitled to the fee simple in that land.⁶⁷ A Transfer Certificate of Title is issued upon subsequent conveyances only after the Registrar writes “cancelled” across previous certificates of title—both in the registry, and on duplicate copies.

Under the General Registry Act, the Registrar issues *Certificates of Title* for easements, rights or privileges on or over land only after the proprietor of the servient land executes a deed defining the easement, right or privilege in favor of the proprietor of the dominant tenement.⁶⁸ The deed must contain a description of the easement, right or privilege, and all agreements, terms and conditions affecting it and intended to bind the parties and their respective tenements. Upon the presentation of that deed to the Registrar, a *Certificate of Title* may be issued in favor of the

⁶⁴ *Id.* at § 22.

⁶⁵ It seems worth emphasizing that the Certificate of Title to any easement affecting land registered under the provisions of the General Registry is filed separately from the pertinent Certificate of Title to the affected land itself.

⁶⁶ General Registry Act, § 16.

⁶⁷ *Id.* at § 21.

⁶⁸ *Id.* at § 42.

proprietor of the dominant tenement. Reference to the deed must also be endorsed on the *Certificate of Title* to the land subject to the easement, right, or privilege.

F. Establishing Clear Title

Under the Law of Property Act, legal title to land is established against all the world by registration of a *Certificate of Title* or *Title Deed* under the processes outlined in the General Registry Act.⁶⁹ Clear title may also be established through the Land Adjudication process and by registration under the Registered Lands Act.⁷⁰ For a title claim to be secure, it must be in writing.⁷¹ However, the requirement that instruments be in writing does not apply to the creation or operation of resulting, implied or constructive trusts.⁷² Records pertaining to land ownership are housed and administered at the Land Registry in Belmopan.

The current state of the land recording systems in Belize complicates the examination of these land records. Only lands registered under the Registered Land Act note encumbrances, easements, rights, and privileges by parcel. Clear title of lands registered under the Registered Lands Act is thus the easiest to establish, as the register is always current and accurately reflects ownership and encumbrances. In addition, because these lands are uniquely identified by parcel, rather than by owner or transaction date, searches are easier and quicker. Unfortunately, however, the majority of Belizean lands are not yet covered by this system. Land Registry officials estimate all lands will be adjudicated under the Registered Lands Act by the end of 2005.⁷³

Establishing clear title of national lands, lands administered under other prior legislation, and *Certificates of Title* necessitates a search of the Land Registry in Belmopan. Belize has a long history of recording ownership deeds, but prior to the Registered Lands Act, land was registered by

⁶⁹ Law of Property Act, § 40.

⁷⁰ Land Adjudication Act, Registered Lands Act.

⁷¹ Law of Property Act, § 43(1).

⁷² *Id.* at § 43(2).

owner name rather than parcel, so records can be found only by performing a manual search based on previous owners' names. Therefore, establishing title of common law (Torrens-type) conveyances, which requires a search into the root of the title tracing back at least 30 years, necessitates substantial research into records of past owners.

Squatting has been a major problem for the government of Belize and some private landowners. Land claims based on squatting—claims of adverse possession—result in rightful ownership if the squatter has been in continuous possession for 30 years in the case of national lands, or 12 years in the case of private lands.⁷⁴

Efforts to adjudicate ownership issues and bring the country under a single title registration system,⁷⁵ should resolve many of the difficulties that presently exist with respect to establishing clear title in Belize. Meanwhile, title insurance is available in Belize, and considering the possibility of conflicting claims to land, is perhaps a wise investment.

G. Land Transfer⁷⁶

For a land transfer to occur in Belize, a *Transfer of Lands* form needs to be filled out in duplicate with original signatures of the transferor and transferee on both. Land transaction forms can be obtained at any of the District Land offices or at the Lands & Surveys department headquarters in Belmopan. All land transaction forms need to be certified. This certification can be done by a judge, magistrate, justice of the peace, registrar of the Supreme Court, Superintendent of Prison, a Lands Officer, or an advocate or a bank official.⁷⁷ After certification, purchasers must

⁷³ Information obtained from a phone interview with Ms. Price of the National Lands Registry Office, June 2004.

⁷⁴ Land Adjudication Act of 2000, § 16 (a) & (b).

⁷⁵ The Land Adjudication Act and the Registered Lands Act regulate these processes, respectively.

⁷⁶ Additional assistance with land transfers may be obtained by contacting the Ministry of Natural Resources (www.mnrei.gov.bz) at (501) 8-22232, -22231 or -22711.

⁷⁷ If in a foreign country, a British consular officer, pro-consul, notary public can perform certification; or such person or class of persons as the Minister may by order determine.

bring the completed forms to the Land Registry office for processing along with the original title, deed or certificate if one has already been issued.⁷⁸

Now that the Land Titles Unit has been subsumed by the Land Registry, the Land Registry processes transactions concerning all land, regardless of whether the land falls within declared compulsory registration areas. When transfer forms have been submitted to the Land Registry office, the registrar will check the land in question in the register to verify information and to ensure there is no encumbrance or caution. Once cleared, fees and a stamp duty are calculated for payment at the cashier.⁷⁹ The receipt must be brought back to the Land Registry office for the recording of the receipt number.⁸⁰ At this point, the transfer application is considered accepted, and a new *Land Certificate* will be ready for pick-up in approximately two weeks.

Under the Law of Property Act, a person may transfer freehold land or a thing in action to him or herself jointly with another person by the same means by which it would be transferred to another person—thus obviating the need for a “straw man.”⁸¹

Under ideal circumstances, the Ministry estimates that the process for purchasing a parcel of land takes about four weeks. This includes completion of the application form, inspection, recommendations and approvals at the Ministry level, production of title documents, registration and delivery.

⁷⁸ If original titles are missing, they must be replaced before the land can be transferred. A certified declaration of how the document was lost, signed by the owner, must be submitted to the Land Registry office. Notification of the loss of the document must be published in the Gazette (the nation’s legal publication) and in one of the local newspapers. To cover these costs, a \$100 publication fee, along with a \$15 certificate replacement fee must be paid to the Ministry. If no objections arise pursuant to the publication of the notice of loss of documents within twenty-one days, processing of the replacement title will begin. This process generally takes about one week, after which the title can be retrieved from the Land Registry office.

⁷⁹ For aliens, the Stamp Duty cost for transferring title to real property is 10 percent of value. For Belizeans, the Stamp Duty fee is 5 percent of value. Attorneys’ fees are additional. Stamp Duty Act, § 72.

⁸⁰ Purchasers are warned to ensure that original receipts are returned.

⁸¹ Law of Property Act, § 49(2).

H. General Restrictions on Land Use

Under the Constitution's takings clause, no landowner can be deprived of property without due process and compensation.⁸² However, this gives no absolute right to unfettered use of the land. In addition to the restrictions landowners may place upon themselves through easements, licenses, and other legal devices, national legislation authorizes the government to restrict property rights. The Land Utilization Act of 2000 grants to the Ministry of Natural Resources and Development the authority to determine land use patterns.⁸³ The act empowers the Minister to make regulations demarcating water catchments or watersheds and to prohibit the clearing of these areas; demarcating special development areas and stipulating the type of development permitted there; and permitting the felling of trees or clearing of forest. All development plans created pursuant to the act are available at the respective district Lands and Surveys offices, or at the Lands and Surveys Center in Belmopan.

Furthermore, the Land Utilization Act of 2000 posits that no land may be subdivided without the prior approval of the Land Subdivision and Utilization Authority (L.U.A.), a branch of the Ministry of Natural Resources.⁸⁴ The L.U.A. has the power under the act to demand an Environmental Impact Assessment before allowing subdivision of land.⁸⁵ The act directs the Registrar of Lands to refuse to register any land unless assured that the subdivision has ministerial approval.

A 66-foot easement around all bodies of water is reserved to the state, as a means of decreasing erosion. The Protection of Mangroves Regulations, introduced in 1989, prohibit any alteration of mangroves on any land except by permit. The Forests (Protection of Trees)

⁸² Belize Const. art. 1, § 7.

⁸³ Land Utilization Act, 2000, Part II, § 19.

⁸⁴ *Id.* at Part I.

⁸⁵ *Id.* at § 10(1)-(3).

Regulations of 1992 prohibit the conversion of certain species of trees without a permit, while the Private Forests (Conservation) Act prohibits the felling of mahogany or cedar on private lands without a permit. As per sections (2)-(5) of the Mines and Minerals Act, any extraction or mining of minerals in Belize can only be carried out under a Quarry Permit or Mining License. All mineral rights, even on private land, remain the property of Belize.

Certain additional restrictions apply to all lands granted⁸⁶ or leased under the National Lands Act. A 66-foot reserve around all water bodies outside of towns and cities, including inland lakes and streams, must remain undeveloped.⁸⁷ The government holds all mineral and oil rights; while they may be rented, they are never granted to private owners.⁸⁸ The digging of sand on National Lands is allowed only by permit from the Commissioner of Lands.⁸⁹ Upon the sale of National Lands to private owners, however, National Lands-specific restrictions no longer apply.

I. Resolution of Disputes Involving Land

The Land Adjudication Act⁹⁰ provides detailed accounts of the processes to be followed in order to bring lands under the purview of the Registered Lands Act. When the government designates land for compulsory registration, any persons claiming land or an interest in land within that adjudication section must submit their claims to the recording officer. If persons hold conflicting claims, or dispute any finding within an adjudication section, they may petition an adjudication tribunal, established under the Land Adjudication Act. The Adjudication Tribunal follows, as far as practicable, procedures observed in civil suits, but it has broader discretion and

⁸⁶ Under the National Lands Act, “grant” means a land certificate or a conveyance effectual to pass an estate in fee simple to the grantee, subject to the terms and provisions of the Act. See National Lands Act, § 2.

⁸⁷ National Lands Act, § 12.

⁸⁸ *Id.* at § 12.

⁸⁹ Digging of Sand Rules, cap. 147, Laws of Belize, Revised 1991.

⁹⁰ Land Adjudication Act, cap. 185.

authority as to the admission of evidence. Findings of the Adjudication Tribunal are deemed final, unless appealed within thirty days to the Supreme Court.⁹¹

The Land Adjudication Act only applies to the compulsory registration zones of the Registered Land Act. For those General Registry lands and National Lands not yet covered by the Registered Land Act, disputes concerning the land would be brought before the Supreme Court. In the case of National Lands, there is a strong presumption toward settling ownership disputes in favor of the government's claims. The National Lands Act specifies that, "When it appears uncertain whether National Lands are vested in an individual or the government, the land in question shall be presumed to be vested in the government," and the burden of proof lies upon the defendants.⁹² When private parties engage in disputes regarding the sale, encumbrances, disposal or inheritance of National Lands, the Minister of Natural Resources determines who has the best claim.⁹³

The Land Reform (Security of Tenure) Act provides for Land Tribunals to decide landlord tenant disputes, whether written or unwritten.

IV. LEGAL TOOLS IN PLACE FOR PRIVATE LANDS CONSERVATION

Within the framework of Belize's current legislation, there exist many legal tools that conservationists could use to establish protected private reserves. For instance, easements, long recognized under the common law, could be used to restrict development on a parcel of land. Covenants could be established between owners devoted to conservation goals. Private landholders could use existing laws recognizing profits to grant an NGO the right to enter and manage lands. What follows is a survey of existing legal mechanisms in Belize that could be used in service of conservation goals.

⁹¹ *Id.* at § 23.

⁹² National Lands Act, § 30.

A. Easements

Easements have been recognized as legitimate interests in land for centuries. An easement is a limited right voluntarily granted by a landowner, either through donation or sale, to a person or organization, allowing for the use of all or part of his or her property for specific purposes.⁹⁴ The grant is legally recorded, and the ensuing deed restrictions “run with the land;” subsequent owners cannot disregard them. In Belize, the right to grant an easement, either in perpetuity or for a term of years, is recognized under the Law of Property, the General Registry Act, and the Registered Lands Act.

Easements generally fall into one of two categories: appurtenant easements and easements in gross. An appurtenant easement is an easement created to benefit a particular parcel of land; the rights effected by the easement are thus *appurtenant* or *incidental* to the benefited land. Put differently, if an easement is held incidental to ownership of some land, it is an appurtenant easement. The land subject to the appurtenant easement is called the *servient estate*, while the land benefited is called the *dominant estate*. Unless the grant of an appurtenant easement provides otherwise, the benefit of the easement is automatically transferred with the dominant estate—meaning that it “runs with the land.”⁹⁵ Unlike an appurtenant easement, an easement in gross is not created for the benefit of any land owned by the owner of the easement, but instead attaches personally to the easement owner (whether a person, an NGO, or the state)—regardless of whether the owner of the easement owns any land.⁹⁶ Only appurtenant easements are recognized in Belize;

⁹³ *Id.* at § 14.

⁹⁴ Black’s Law Dictionary, Seventh Edition (Bryan A. Garner ed. 1999).

⁹⁵ Roger Bernhardt and Ann Burkhart, Real Property in a Nutshell 191, 214 (4th ed. 2000). An interest “runs with the land” when a subsequent owner of the land has the burden or benefit of that interest. An appurtenant easement runs with the land since the servient estate remains subject to it after being transferred, and the dominant estate retains the benefit after being transferred. With an easement in gross, the benefit cannot run with the land as there is no dominant estate—however, provided certain requirements are met, the burden can run with the land.

⁹⁶ Examples of typical easements in gross include the right of a non-owner to harvest timber, mine minerals, extract water or other items from the owner’s land.

there is presently no provision in the Belizean code explicitly authorizing easements in gross. Furthermore, under Belizean law, the dominant tenement and the servient tenement must belong to separate owners, and the easement must provide a benefit to the dominant tenement. However, legislation in Belize does not indicate that appurtenant properties must be contiguous. So long as a practical relationship exists between non-adjacent properties, it is possible that an appurtenant easement between the two could be stand in Belize, as has been the case in many U.S. jurisdictions and in Costa Rica, where the Center for Environmental Law and Natural Resources (CEDARENA) successfully created an appurtenant easement between a parcel of private land and a nearby state reserve that serve as habitat to the same species of birds.⁹⁷

Under both traditional common law and Belizean law, recognized easements, in addition to being appurtenant, are usually “affirmative,” allowing the holder to engage in specific, affirmative actions. For example, one landowner might hold an easement in the land of a neighbor (an appurtenant easement), allowing him or her to cross the neighbor’s property or draw water from the neighbor’s well (an affirmative easement). While a conventional easement involves the conveyance of certain affirmative rights to the easement holder, an easement for conservation purposes generally involves the relinquishment of rights and a conferral of power in the new holder of the rights to enforce the restrictions on the use of the property. Thus, conservation easements are generally “negative” rather than affirmative, prohibiting the owner of the servient estate from

⁹⁷ Verzeano v. Carpenter, 108 Or.App. 258, 815 P.2d 1275 (1991) (“[W]e agree with the majority view that an easement may be appurtenant to noncontiguous property if both tenements are clearly defined and it was the parties’ intent that it be appurtenant.”) (citing 7 Thompson on Real Property § 60.02(f)(4)); see also Day v. McEwen, 385 A.2d 790, 791 (Me.1978) (enforcing reserved “right of an unobstructed view” over servient tenement where dominant tenement was on the other side of a public road); Private Road’s Case, 1 Ashm. 417 (Pa.1826) (holding that a circumstance in which a navigable river intervenes between a meadow and an island is no legal reason why a way across the former should not be appurtenant to the latter); Saunders Point Assn., Inc. v. Cannon, 177 Conn. 413, 415, 418 A.2d 70 (1979) (holding that while an easement appurtenant must be of benefit to the dominant estate, the servient estate need not be adjacent to the dominant estate); Woodlawn Trustees, Inc. v. Michel, 211 A.2d 454, 456 (1965) (holding that in cases of noncontiguous parcels, the easement over the land of the servient tenement is valid and enforceable if, by means of a right of way of some sort which traverses land of another, the servient tenement benefits the dominant tenement).

doing something, such as developing the land in any way that would alter its existing natural, open, scenic, or ecological condition. This is a critical distinction—the landowner relinquishes the right to develop the land, but that right is not conveyed to the easement holder. That particular right (to develop the land) is extinguished.⁹⁸ What the easement holder does acquire is the right to enforce the land-use restrictions. The common law has generally recognized and enforced only certain limited types of negative easements.⁹⁹ Belizean law has no provision explicitly recognizing negative easements; thus, only those types historically recognized at common law are assured recognition in the current legal environment.

Under the existing legislative framework, appurtenant easements can be employed in service of conservation in Belize in a number of ways:

Reciprocal Easements. Reciprocal easements can enable adjacent landowners to limit their respective land uses through easements granted to each other—a method that provides protection for both properties.¹⁰⁰ Working with private landowners, conservation groups in Latin America have used reciprocal easements that grant a third-party NGO the right to enforce the easement—with express authority to enter the property, monitor compliance, and seek judicial enforcement of the rights and obligations derived from the easement. Thus, the use of reciprocal easements can potentially provide a conservation NGO with enforceable rights over land, without the need for the NGO to own adjacent land.

⁹⁸ Conservation easements generally extinguish development rights. However, with certain types of agreements—such as those involving *purchased development rights* (PDRs)—the development rights are not necessarily extinguished, but instead become the property of the easement holder. PDRs are generally classified as easements in gross.

⁹⁹ Those negative easements that have been recognized historically at common law are: blocking windows, interfering with air flow, removing structural supports, interfering with water flow in artificial streams.

¹⁰⁰ In order to take advantage of federal and state tax incentives, U.S. landowners must grant the conservation easement to either a governmental entity or an authorized NGO. Thus, while the use of reciprocal easements between private landowners is potentially an effective method for achieving private lands conservation, conservation incentives provided under U.S. federal and state law would not be available for this type of arrangement.

In Belize, more than 100 private landowners scattered along thirty-three kilometers of the Belize River signed a voluntarily management agreement, committing themselves to land management practices designed to accommodate the local black howler monkey (known as the “baboon” in local parlance) population. The management practices benefit landowners by reducing erosion, preventing river siltation and allowing for more rapid replacement of forests after slash and burn clearings. These reciprocal easements enabled the creation of a Community Baboon Sanctuary. Ongoing financial support for the sanctuary comes from the International Primate Protection League, the Lincoln Park Zoological Society, the Zoological Society of Greater Milwaukee, and The World Wildlife Fund, and the Belize Audubon Society administers its finances. But its management is controlled by a committee representing the villages and private landowners who submitted to the voluntarily restrictions, in consultation with a zoologist, Dr. Robert Horwich, of Community Conservation Consultants.¹⁰¹

The purchase by NGOs of land that can serve as appurtenant estates. One method for meeting an adjacent lands requirement is for an NGO to acquire—by purchase or donation—land adjacent to the property to be subject to the easement. This allows the NGO’s property to be the dominant estate, and the NGO to hold the easement over adjoining lands. Under Belizean law, however, the dominant estate and the servient estate must have separate owners when deed restrictions are initiated.

Use of public lands as the dominant estate to hold an easement. In several Latin American countries, easements over private land have been created using adjacent or nearby public lands as the dominant estate. In some instances, the easements have also provided a third-party NGO with the right to enforce its terms.

¹⁰¹ More information is available from the Belize Audubon Society at P.O. Box 1001, 12 Fort Street, Belize City, Belize. A website, <http://www.belizeaudubon.org>, is under development.

Legal Limitations and Uncertainties to Third-Party Enforcement. The common law—or civil code—of some jurisdictions only recognizes the right of an easement’s holder to enforce its terms. Under the common law adhered to in the U.S., third party enforcement of a conservation easement would be invalidated in court due to a basic principle of contract law which mandates only the parties to the contract may enforce its terms. However, many U.S. states have laws authorizing the assignment of this specific power to non-profit organizations—provided the assignment is written into the conservation easement. Belizean law does not make this requirement explicit. Thus, the practice of granting a third-party NGO the right to enforce the easement may or may not survive legal scrutiny in Belize. Additionally, the relevant legal authority is unclear as to whether the grant to an NGO of the right to monitor and enforce an easement is a real property right that runs with the land, or a personal right enforceable only against the original maker of the easement.

B. Covenants

Covenants are conceptually similar to easements, in that through them owners may voluntarily restrict the use of their property for the benefit of another property. However, for a covenant to be binding upon a subsequent owner, it must be restrictive, imposing no positive obligation upon the owner of the servient tenement. If a covenant is violated, the owner can sue for damages. In Belize, the right to enter into a covenant is granted by the Law of Property, and the provisions contained therein would allow private landowners to voluntarily restrict development, logging, and other destructive activities on their lands for the benefit of other parcels.¹⁰² Under the Law of Property Act as revised in 2000, both the benefit and burden of covenants running with the land vest in successors to the title of the land without the use of any technical expression.¹⁰³

¹⁰² Law of Property Act, §§ 61-63.

¹⁰³ *Id.* at § 63.

C. Profits à Prendre

A profit à prendre, or, simply put, a profit, is a common law interest in land that gives a right to enter and take part of the land or something from the land.¹⁰⁴ Under the Registered Lands Act, proprietors of land in Belize may grant profits, both appurtenant and in gross.¹⁰⁵ Although not commonly used for conservation purposes, profits have the potential to facilitate the conservation of private lands. For instance, a landowner who wishes to protect the timber on his or her property could grant a profit à prendre to a conservation group with respect to that timber.¹⁰⁶ The conservation organization would have the exclusive right to decide whether and what trees to cut. By granting such a right to a conservation group, the landowner would prevent future owners of the land from harvesting the trees, since that right has been given away. Under the common law, a landowner can grant a profit to anyone—there is no requirement that the holder of a profit own adjacent property.¹⁰⁷

A landowner creates a profit à prendre by granting it in writing to the profit holder. Under Belizean law, profits must be registered by an instrument detailing whether the profit is appurtenant to other land, or a lease or in gross, and whether it is to be enjoyed exclusively by the grantee or by the grantee in association with the grantor.¹⁰⁸ The landowner specifies precisely what

¹⁰⁴ See 28A C.J.S. Easements § 9 (noting that a “right to profits à prendre is a right to take a part of the soil or product of the land of another. It is distinguishable from a pure easement.” Historically, there were five types of profits à prendre depending on the subject matter of the profit: (1) rights of pasture—where the taking is done by the mouths of the grazing animals; (2) rights of piscary—to harvest the fish; (3) rights of turbary—to cut turf or peat as fuel; (4) rights of estover—to take wood necessary for furniture for a house; and (5) a miscellaneous group referring to the taking and using of sand, gravel, stone, etc. A profit à prendre cannot generally be used to take minerals.

¹⁰⁵ Under the Registered Land Act, a profit is defined specifically as the right to go on the land of another and take a particular substance from that land, whether the soil or products of the soil.

¹⁰⁶ To help ensure its legal validity, a profit à prendre designed to facilitate conservation should be used only where the protected interest is something that can be taken from the land—e.g., timber, fish, pasture, or something similar. Otherwise, it is possible a court would construe the document as an easement and thus apply the far much more restrictive rules governing easements. However, despite this limitation it may nonetheless be possible to use a profit à prendre to protect things that are not included in these categories of removable items. For instance, a landowner could protect spotted owls by granting a profit à prendre to a conservation organization for the harvest of timber.

¹⁰⁷ Profits à prendre of this kind are called *profits en gross*.

¹⁰⁸ Registered Land Act, § 97.

the holder is allowed to enter the land to take. Once the landowner has granted a profit he or she must respect its terms. The profit holder can sue if the owner deals with the land in a way that detracts from the rights of the profit holder. Indeed, the holder of a profit à prendre can sue anyone who interferes with the profit.¹⁰⁹

A profit à prendre document is designed to outlive the landowner—and perhaps even the profit holder. In creating a profit à prendre, it is thus essential to consider potential conflicts between a landowner and a holder and to describe exactly what the parties intend in the document itself. To protect the profit holder if the land is subsequently sold, the profit must be registered with the Land Registry. If the proper procedures have been followed, the profit holder can lease, sell, give away or bequeath the profit to someone else. A profit holder can also terminate a profit à prendre by giving a written release to the landowner, which would then be registered with the Lands Registry.

D. Trusts

The Trusts Act authorizes a trustee to administer property belonging to another for the benefit of a beneficiary or a charitable purpose.¹¹⁰ Under the Trusts Act, the protection of the environment qualifies as a charitable purpose.¹¹¹ If the trust is established to serve a beneficiary rather than a charitable purpose, it may have any objective, so long as the objective is specific and attainable, respects the law, and functions under the auspices of a designated guardian. The guardian may be the creator of the trust, the trustee, or the beneficiary. In Belize, then, a land trust could be established for the purpose of protecting the environment; or, a trust established to serve a

¹⁰⁹ Conversely, the profit à prendre holder must respect the rights of the landowner. The landowner can sue the profit à prendre holder if the holder interferes with the landowner's rights.

¹¹⁰ Trusts Act, § 7.

¹¹¹ Trusts Act, § 14.

beneficiary could be designed to meet specific, attainable conservation goals—such as limiting development or prohibiting the felling of trees—managed by a designated NGO.

E. Civil Contracts for Conservation

No Belizean legislation explicitly authorizes civil conservation contracts, however, conservation contracts can be developed between private landholders and the government on an *ad hoc* basis. Such contracts can provide for the types of private conservation incentives lacking in present legislation, such as tax exemptions and government support, and allow the imposition of obligations on the beneficiary, as well as on the landholder. Furthermore, they bypass the requirement of easements and covenants that two tenements be impacted. A potential complication with civil contracts is that they are enforceable only against participating parties; however, legal provisions could be drafted as part of the contract directing that it be enforceable against successors in interest. The NGO Programme for Belize, employed a civil conservation contract in partnership with the government, that enabled the establishment of the Rio Bravo Conservation and Management Area, its flagship project in northwestern Belize. The project combines strict reserves with development areas that provide funds for the project's execution.

F. Taxation

Under the Land Tax Act, which imposes a 1 percent tax on the undeveloped value of all lands, the Minister of Natural Resources may exempt any landowner from the land tax for a term of years if he sees fit.¹¹² The provision authorizing the Minister to grant exemptions details no criteria for decision-making; it is plausible that environmental groups could petition the Minister, who has great discretion in land-related matters, for exemptions from the tax. Land Registry officials suggest it is likely that the Minister would grant a tax exemption to private landholders dedicating their lands to conservation purposes.

Under the Income Tax Act, a deduction is allowed for any sum expended on the reforestation of timberland.¹¹³ The act also allows deductions for any sum expended on the repair or replacement of plant or machinery employed in acquiring income.¹¹⁴ While intended as a boon to timber companies, conservation groups engaging in reforestation and eco-tourism projects could conceivably use the provisions to offset taxes as they pursue land restoration projects.

G. Usufruct

A legally possible but obsolete concept in Belize, the usufruct allows a landowner to voluntarily transfer the right of use and enjoyment of produce of his property to another. In exchange, the beneficiary, or usufructuary, has the obligation to care for the property and return it upon termination of the contract.¹¹⁵

H. Condominiums

In Costa Rica and Panama, legal reforms have allowed the creation of condominiums on properties consisting of separate units, usually houses, and large, natural common areas. Under a condominium regime, each separate unit is under private ownership, while public areas are under co-ownership. Once property owners have entered into a condominium relationship, the condominium management—usually a board composed of several of the member property owners—is able to impose environmental restrictions on the private areas as well as on community areas.

¹¹² Land Tax Act (cap. 58), § 19.

¹¹³ Income and Business Tax Act, § 11 (1)(d).

¹¹⁴ *Id.* at § 11 (1)(e) & (f)

¹¹⁵ David Aguilar's report: Modern practices for the establishment of private protected areas in Belize.

I. Debt-For-Nature Swaps

The United States Tropical Forest Conservation Act of 1998 enables developing nations to reduce national debt obligations in exchange for the protection of vulnerable tropical forests.¹¹⁶ The Act allows qualifying countries to pay their U.S. debt obligations to NGOs, rather than to the U.S. Treasury Department. The NGOs, under the supervision of administrative bodies in the beneficiary country and in the United States, then use the funds to purchase and manage threatened tropical forest in the country—offsetting the beneficiary country’s national debt by funding conservation projects. The Nature Conservancy, in partnership with Belizean conservation group Toledo Institute of Development, enabled the reduction of approximately half of Belize’s debt to the United States in exchange for the conservation of 23,000 acres of Belize’s Maya Mountain Marine Corridor. It is possible, though by no means certain, that the U.S. Treasury Department would engage in another Debt-For-Nature swap with private lands conservationists in Belize.

J. Equitable Servitudes

The primary modern tool for enforcing private land use restrictions is the equitable servitude.¹¹⁷ An equitable servitude is a promise concerning the use of land that (1) benefits and burdens the original parties to the promise and their successors and (2) is enforceable by injunction. The usual remedy for violation of an equitable servitude is an injunction, which often provides more effective relief for conservation purposes than compensatory damages.

¹¹⁶ Tropical Forest Conservation Act, 1998. H.R. 2807/S. 1758, § 1-801 to 1-809 (particularly § 1-808).

¹¹⁷ There is some doctrinal confusion regarding the difference—if any—between an equitable servitude and a conservation easement. However, under the approach adopted by the Restatement (Third) of Property, easements, profits, covenants—including equitable servitudes, are governed by a single body of law. See Susan F. French, *Highlights of the new Restatement (Third) of Property: Servitudes*, Real Property, Probate and Trust Journal 226, 227 (2000).

Under traditional common law rules,¹¹⁸ for the *burden* of an equitable servitude to bind the original promisor's successors four elements must be met: (1) the promise must be in a writing that satisfies the Statute of Frauds or implied from a common plan;¹¹⁹ (2) the original parties must intend to burden successors; (3) the promise must "touch and concern" land; and (4) the successor must have notice of the promise. In contrast, the traditional common law only required three elements to be met for the *benefit* to run to successors: (1) the promise must be in writing or implied from a common plan; (2) the original parties must intend to benefit successors; and (3) the promise must "touch and concern" land.

While the Belizean code does not explicitly discuss equitable servitudes, and Land Registry officials are unfamiliar with the concept, they are a widely accepted common law instrument, and could possibly prove to be a useful tool for conservationists in Belize.

V. FEASIBILITY OF INTRODUCING NEW TOOLS

The government of Belize faces competing demands: the need for economic development and the need for conservation of natural resources. Legislation often prioritizes the development of land for agricultural and other development purposes. However, with the recognition that conservation enhances opportunities for eco-tourism (tourism is the fastest-growing, and number one, contributor to the Belizean economy), conserving land could be framed as a legitimate "development" goal. To achieve conservation goals, legal tools used in other countries, detailed below, could be introduced and employed in Belize.

¹¹⁸ Traditional common law rules are being distinguished here from the modernized law of servitudes set forth by the Restatement (Third) of Property.

¹¹⁹ If a developer manifests a common plan or common scheme to impose uniform restrictions on a subdivision, the majority of U.S. courts conclude that an equitable servitude will be implied in equity, even though the Statute of Frauds is not satisfied. The common plan is seen as an implied promise by the developer to impose the same restrictions on all of his or her retained lots.

A. The Uniform Conservation Easement Act

As noted in the preceding discussion on easements, Belizean law, like the common law, has generally recognized certain limited types of negative easements; however, it does not recognize easements in gross. Due to doubts over the validity and transferability of negative easements in gross at common law in the United States, many states enacted statutes authorizing conservation easements—both appurtenant and in gross.¹²⁰ Conservation groups such as BAPPA are endeavoring to introduce similar statutory provisions to the Belize legislature, and adoption of a carefully crafted provision could foster conservation efforts while avoiding creating loopholes that would allow abuse of the provision by developers or speculators. One possible model for a Belizean conservation easement would be the Uniform Conservation Easement Act.

In order to facilitate the development of state statutes authorizing landowners to create and convey conservation easements and government agencies and nonprofits to hold such easements, in 1981 the National Conference of Commissioners on Uniform State Laws drafted the Uniform Conservation Easement Act (UCEA). The Act's primary objective is to enable "private parties to enter into consensual arrangements with charitable organizations or governmental bodies to protect land and buildings without the encumbrance of certain potential common law impediments."¹²¹

The UCEA defines "conservation easement" as "[a] nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include: (1) retaining or protecting natural, scenic, or open-space values of real property; (2) assuring its availability for agricultural, forest, recreational, or open space use; (3) protecting natural resources;

¹²⁰ Jesse Dukeminier and James E. Krier, *Property* 856 (4th ed. 1998). Traditionally, courts have disfavored interests conveyed "in gross" and negative easements because they can cloud title and may raise recordation problems—the difficulty being notice to future landholders. However, in the U.S. legislation with proper recordation requirements and limitations upon those who may hold these kinds of interests have largely overcome these objections.

¹²¹ UCEA, Prefatory Note, 12 U.L.A. 166 (1996). An online copy of the UCEA is available at the following address: <http://www.law.upenn.edu/bll/ulc/fnact99/1980s/ucea81.htm>.

(4) maintaining or enhancing air or water quality; or (5) preserving the historical, architectural, archeological, or cultural aspects of real property.¹²²

The UCEA has made conservation easements more certain devices by eliminating several common law impediments. Specifically, the UCEA provides that a conservation easement is valid even though: (1) it is not appurtenant to an interest in real property; (2) it can be or has been assigned to another holder; (3) it is not of a character that has been recognized traditionally at common law; (4) it imposes a negative burden; (5) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder; (6) the benefit does not touch or concern real property; or (7) there is no privity of estate or of contract.¹²³

A unique feature of the Act is the “third-party enforcement right.” Under the Act, an easement may empower an entity other than an immediate holder to enforce its terms. The third-party must be a charitable organization or governmental body eligible to be a holder. Additionally, one organization may own the easement, but delegate enforcement to another, provided the terms of the easement allow it.

B. Tax Incentives for Conservation Easements

What incentive does a private landowner have to convey valuable development rights to either a public or private trustee? In the United States, along with the desire of landowners to preserve undeveloped land, the answer is often money—received in the form of tax benefits (e.g., income, property, gift and estate taxes) or cash payments. For instance, U.S. landowners who donate conservation easements that satisfy requirements of the Internal Revenue (IRS) Code can take advantage of federal income and estate tax benefits. To satisfy the relevant section of the Internal Revenue Code, a conservation easement must be granted—

¹²² UCEA, §1(1)—Definitions.

¹²³ § 4, 12 U.L.A. 179.

- a. to a governmental entity or charitable organization that meets certain public support tests; and
- b. exclusively, for conservation purposes, which include (1) the preservation of open space for scenic enjoyment pursuant to a clearly delineated governmental conservation policy; (2) the preservation of land for outdoor recreation; (3) the protection of the natural habitat of wildlife or plants; and (4) the preservation of historically important land or a certified historic structure.¹²⁴

If a conservation easement satisfies these requirements, the grantor may then receive a charitable deduction for the difference in property's value before the easement was granted compared to the property's value after the granting of the conservation easement. This is often referred to as the "before and after" test.¹²⁵ In addition to federal tax incentives, U.S. landowners can frequently take advantage of a variety of state tax incentives.

Because the current Belizean land tax scheme has created an onerous burden for conservationists to bear, adoption by the legislature and tax authorities of tax incentives for conservationists would be a great boon to private lands conservation programs. Introducing and promoting such legislation would be a great support to those private programs already in place.

C. Purchased Development Rights

In the United States, purchased development rights (PDR) are voluntary legal agreements that allow owners of land meeting certain criteria to sell the right to develop their property to local governmental agencies, a state government, or to a nonprofit organization. A conservation easement is then placed on the land. This agreement is recorded on the title to permanently limit the future use of the land. A PDR is thus an interest in real property that is nonpossessory and

¹²⁴ IRS Code, § 170(h).

¹²⁵ For federal income tax purposes, this difference in value is a charitable deduction which can be used for a period of up to 5 years to reduce the income tax of the grantor of the easement. The maximum deduction in any year is 30 percent of the grantor's adjusted gross income. For federal estate tax purposes, the grant of the easement results in a lower valuation of the property—and thus, a lower valuation of the estate to which the federal estate tax will be applied. Under the Farm and Ranch Protection Act (1997), IRS Code § 2031.c, landowners can receive an exclusion from federal estate taxes for up to 40 percent of the value of their land under a conservation easement. Only easements granted in perpetuity are eligible for federal tax benefits.

entitles its holder to enforce certain land use restrictions or to enforce certain rights to public use or access upon the holder of the possessory interest.¹²⁶

Under a PDR agreement, the landowner retains all other ownership rights attached to the land. The buyer essentially purchases the right to develop the land and retires that right permanently, thereby assuring that development will not occur on that particular property. Used strategically, a PDR program can be an effective tool to help maximize a community's conservation efforts. Financial support for PDR programs can be raised through a variety of mechanisms—including bond initiatives, private grants and various taxation options. Purchased development rights could provide a means for conservation groups to work with those landowners in Belize who currently have large, undeveloped holdings.

D. Leases, “Leaseback” Agreements, and Reserved Life Interests

Long-term lease agreements between a private landowner and a conservation NGO or governmental agency are another potential method for achieving the goal of private lands conservation. A lease agreement can enable a conservation NGO to temporarily possess the property in exchange for rent payments. Conservation objectives can be met by including land use limitations in the lease agreement.¹²⁷

A “leaseback” agreement allows a landowner to donate or sell land in fee simple and immediately lease it back for an agreed use and period. In this case a landowner transfers title to

¹²⁶ At common law PDRs closely resemble negative easements in gross. With the exception of commercial easements in gross, easements in gross were not transferable and expired with the holder. These common law and statutory impediments to the use of PDRs have been addressed in those states that have enacted the UCEA. In addition to providing protection against being extinguishment, for PDRs drafted as conservation easements under its provisions, the UCEA provides the basis for claiming both federal and state income and estate tax benefits. See Maureen Rudolph and Adrian M. Gosch, Comment, A Practitioner's Guide to Drafting Conservation Easements and the Tax Implications, 4 Great Plains Nat. Resources J. 143, 146 (2000).

¹²⁷ Environmental Law Institute, Legal Tools and Incentives for Private Lands Conservation in Latin America: Building Models for Success 30 (2003). In addition to stipulating detailed use-limitations, the lease could include a base-line ecological inventory of the land, using written descriptions, data, photographs, graphs, maps, etc. Breach of the use-conditions would normally entitle the landowner (or his or her heirs) to terminate the lease. This

the land to a conservation NGO or governmental agency. As part of the agreement, the conservation NGO leases the land back to the owner using a long-term lease, subject to conditions designed to ensure conservation of the land. Breach of the lease could enable the conservation NGO to terminate the lease and take possession of the land.

A landowner could also transfer fee simple title to the land to a conservation NGO (by donation or sale), but reserve a life interest in the land. This method would enable the landowner to remain undisturbed on the land for life. The landowner also has the assurance that without further legal action the conservation NGO will assume control of the land upon the his or her death.

VI. RECOMMENDATIONS

Because Belize already has legislation in place authorizing easements appurtenant, covenants and trusts, these would be the tools best used by those presently working to establish private conservation reserves. Debt-for-Nature swaps are a viable alternative. In addition, working with the Ministry to secure land tax exemptions for private reserves may hold some promise.

Because the official position of the government recognizes the importance of protecting the environment, those working to augment the nation's legislative support of conservation initiatives would perhaps best focus their efforts on the introduction of a statutory conservation easement. Legislation providing for the recognition of transferable negative easements in gross would be of paramount importance. Additionally, the promulgation of tax incentives—or at the very least exemptions—for conservation initiatives could enhance the ability of private landowners to devote their resources to conservation goals.

Those working with the government to introduce legislation supportive of conservation efforts must recognize the competing demands of economic importance of agricultural and

arrangement would provide the landowner with ongoing control over land use while providing some security of tenure to the conservation NGO.

industrial development, and emphasize the crucial role of conservation to the country's economic development. Only through conservation can Belize assure the future availability of plentiful resources to agriculture, industry and tourism.

VII. ADDITIONAL QUESTIONS

1. *How long will it be before all lands have been adjudicated and registered under the Registered Lands Act?*

Ministry officials estimate this will take another year and half.¹²⁸ On a related note: Can lands only be registered under the Registered Land Act if they are part of compulsory registration zone declared by the Minister of Natural Resources, or is it possible to register lands under the provisions of the Act upon transfer of title? According to one official in the National Lands Registry Office, in order to register a parcel of land under the RLA, that parcel must be within a compulsory registration zone.¹²⁹

2. *Do National Lands become subject to the provisions of the General Registry/Registered Lands Act lands upon sale to private owners, or do the provisions of the National Lands Act still apply?*

According to an official in the National Lands Registry Office, upon sale National Lands become private lands. When this occurs, private land regulations apply, rather than provisions of National Lands Act.¹³⁰

4. *Is the Ministry likely to grant tax exemptions to private landholders dedicating their land to conservation purposes?*

An official in the National Lands Registry Office believe it is quite likely that such an exemption would be given.¹³¹

¹²⁸ Information obtained from a phone interview with Ms. Price of the National Lands Registry Office, June 2004.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

5. *Is the United States Treasury Department likely to authorize another debt-for-nature swap under the Tropical Forest Conservation Act?*

Unknown.

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- * Income and Business Tax Act, Chapter 55
- * Land Tax Act, Chapter 58, Revised 2003
- * Stamp Duties Act, Chapter 64
- * Town Councils Act, Chapter 87
- * Village Councils Act, Chapter 88, Revised 2003
- Digging of Sand Rules, Chapter 147, Revised 1991
- * Land Adjudication Act, Chapter 185
- * Land Reform (Security of Tenure) Act, Chapter 186
- * Land Utilization Act, Chapter 188
- * Aliens Landholding (Repeal) Act, Chapter 179, Revised 2003
- * Law of Property, Chapter 190
- * National Lands Act, Chapter 191, Revised 2003
- * Registered Land Act, Chapter 194
- * Trusts Act, Chapter 202
- * Forests Act, Chapter 213
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- * *Tropical Forest Conservation Act*, 1998. H.R. 2807/S. 1758, sec. 1-801 to 1-809, particularly 1-808.

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- * All materials listed are available for review in the Appendix to this report.

Appendix 1 - Protected areas of Belize (excluding forest reserves)

National Parks

Aguas Turbias
Bacalar Chico
Blue Hole
Chiquibul
Five Blues Lake
Guanacaste
Laughingbird
Monkey Bay
Payne's Creek
Rio Blanco Falls
Sarstoon/Temash

Nature Reserves

Bladen Branch
Burdon Canal
Laughing Bird Caye
Tapir Mountain

Private Reserves

Community Baboon Sanctuary
Monkey Bay Wildlife Sanctuary
Rio Bravo Conservation Area
Shipstern Nature Reserve
Society Hall Nature Reserve

Natural Monuments

Half Moon Caye
Thousand Foot Falls
Victoria Peak

Wildlife Sanctuaries

Cockscomb Basin
Crooked Tree
Gales Point
Aguas Cailente

Marine Reserves

Bacalar Chico
Glover's Reef Atoll
Hol Chan
Mexico Rocks
Shark Ray Alley
Turneffe Atoll

Archaeological Reserves

Altun Ha
Cahal Pech
Caracol
Cerro Maya
El Pilar
Lamana
Lubaantuun
Marco Gonzales
Nimli Punit
Santa Rita
Serpon Sugar Mill
Xuantunich

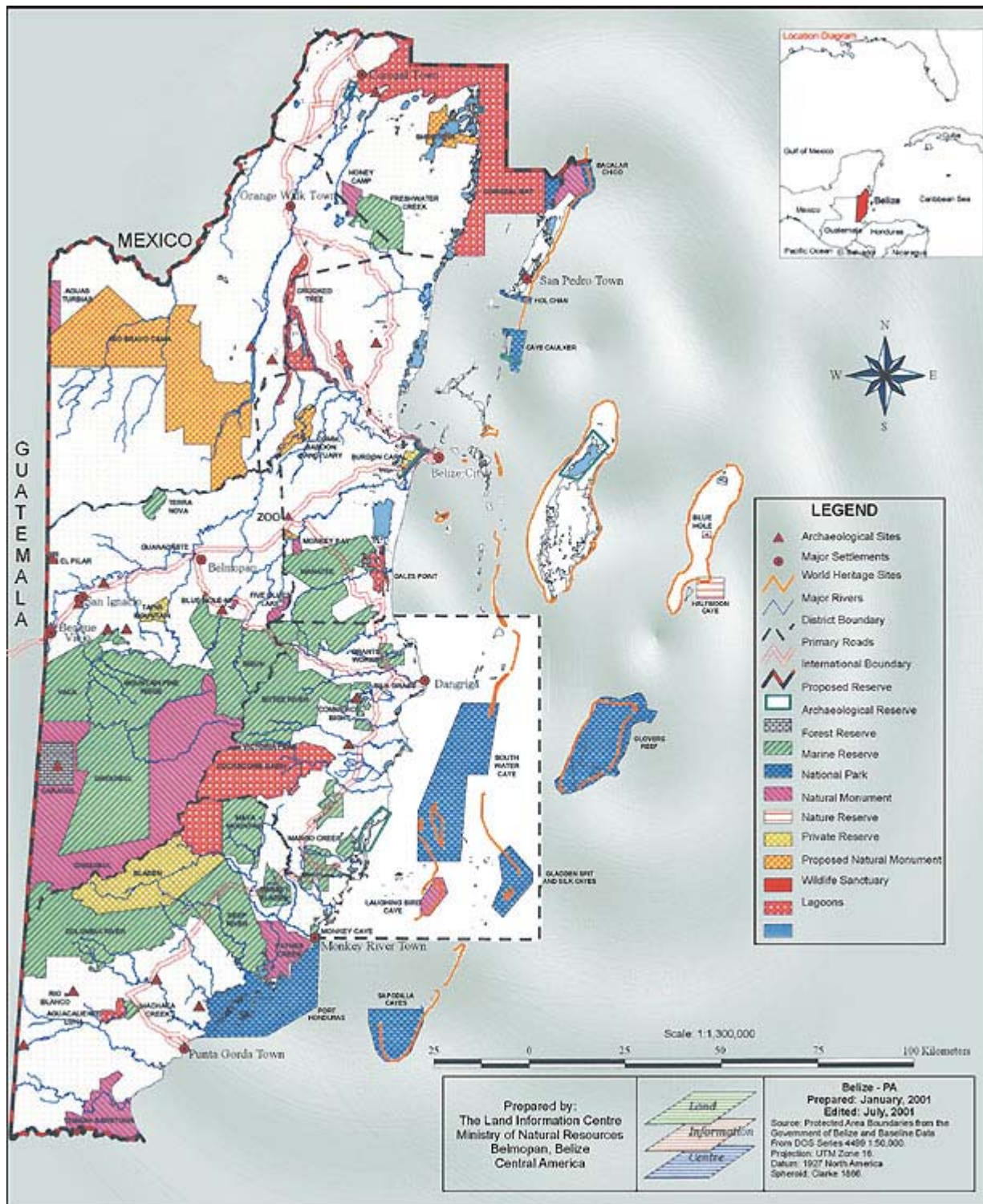
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Appendix 2 – Current Types of Legally Protected Areas

Reserve Type	Administered By	Legislation	Purpose
National Park National Monument Wildlife Sanctuary	Ministry of Natural Resources, Forest Department	National Parks Systems Act	Nature conservation, recreation, research, nature reserve
Forest Reserves	Ministry of Natural Resources, Forest Department	Forest Act	Forest management and protection of forest
Marine Reserves	Ministry of Agriculture, Fisheries Department	Fisheries Act	Nature conservation
Archaeological Reserves	Ministry of Tourism and the Environment, Department of Archaeology	Ancient Monuments and Antiquities Act	Protection of archaeological and cultural heritage
No Hunting areas	Ministry of Natural Resources, Forest Department, Conservation Division	Wildlife Protection Act	Wildlife conservation

Source: Winston McCalla. Compendium of Environmental Protection and Natural Resource Management Legislation. Government of Belize: 1995.

Appendix 3 – Map of Belize



Source: Land Information Center, Belmopan, Belize. Available at http://www.pactbelize.org/map_lg.html