Private Lands Conservation in St. Vincent and the Grenadines

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PRIVATE LANDS CONSERVATION IN THE REPUBLIC OF ST. VINCENT AND THE GRENADINES

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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**BRIEF QUESTIONS**

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

Parliament has enabled private landowners to donate or use their land for conservation purposes through the Forests Act and the Forest Resources Conservation Act, as well as through a provision of the Town and Country Planning Act known as a Tree Preservation Order. Provisions of the Land Tax Act and language expressed in the Duties and Taxes (Exemption in the Public Interest) Act appear to make it possible to introduce tax incentives and exemptions encouraging private landowners to devote their property to conservation purposes. Both of these statutes seem to allow some forgiveness in the payment of taxes by a private citizen who is carrying out a public good.

This report recommends that conservationists use these instruments to engage in private lands conservation. However, these devices are currently seldom employed due to both a lack of education among private landowners concerning their availability and the inability of many private landowners to afford the registration of their land in order to obtain secure title (unregistered land is prevalent in St. Vincent).

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

While easements are recognized under St. Vincent law, conservation easements are not explicitly recognized by the existing legal system—Parliament has yet to provide legislative authority for conservation easements; and English common law presents serious difficulties to the goal of using negative easements appurtenant, negative easements in gross, or restrictive covenants for conservation purposes. However, equitable servituded could be used for this purpose. Equitable
servitudes are generally not recognized at law, and are enforceable only if equitable considerations demand their enforcement.

Although certain legal duties and processes affecting private citizens could be restructured and used as incentives for private landowners (such as property taxes), the use of such incentives would require Parliament to pass an enabling statute. Other possible tools for private lands conservation include leases, leasebacks, and profits à prendre.

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

This report recommends that conservationists encourage St. Vincent’s Parliament to pass a conservation easement statute similar to those employed in the United States—and which are modeled after the Uniform Conservation Easement Act (UCEA). By adopting legislation based on the UCEA, numerous U.S. states have eliminated the common law impediments to conservation easements—impediments that are present in the existing St. Vincent legal system. 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. 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 so long as the third party is a charitable organization or governmental body eligible to be a holder.
4. **What unique challenges does St. Vincent present to the goal of private lands conservation?**

It may prove difficult to convince small landholders in St. Vincent to engage in private lands conservation, as the economic survival of many agricultural landholders appears to depend upon the continued use of all of their land. The potential incentives discussed in this report may prove inadequate to countering this economic concern.

Additionally, while St. Vincent has public forest reserves in place, illegal occupants engage in slash-and-burn agriculture within the reserves and hamper conservation efforts. Another problem relates to the fact that land tenure can be very insecure in St. Vincent—many people in possession of land either do not have it registered properly or have an incorrect survey that does not correspond to the title in question. Thus, even if conservation easements or other legal mechanisms for private lands conservation were authorized by statute, conservationists and NGOs may nonetheless encounter problems establishing clear title.

Many private landowners are unaware of the private lands conservation tools that are available to them.\(^1\) Additionally, private landholders without title frequently cannot afford the cost of registering their land.\(^2\) To address these issues, conservation NGOs could devote resources to educating private landowners and funding those with unregistered land who cannot afford the registration process. It is possible that conservation NGOs could broker agreements in which they agree to pay the cost of land registration in exchange for the lease or ownership of part of the titleholder’s land.

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1. Email from Kim Thurlow, Conservation Planning Associate for The Nature Conservancy, Virgin Islands and Eastern Caribbean Program (received 6/28/04).
2. *Id.*
INTRODUCTION

This report seeks to provide the reader with a basic understanding of the legal instruments, processes and institutions within the Republic of St. Vincent and the Grenadines (St. Vincent) that are relevant to private lands conservation; and to evaluate the feasibility of introducing into the legal system of St. Vincent conservation easements and other legal tools for the purpose of achieving private lands conservation. Sections I and II of the report provide relevant background information on the history, culture, economy and governmental structure of St. Vincent, as well as historical and contemporary trends in its system of land tenure. Section III of the report describes institutions, laws, and procedures in St. Vincent relevant to the administration of land. Section IV introduces the concept of a conservation easement and evaluates the possibility of using this and other legal tools within the legal system of St. Vincent; this section also offers general policy recommendations for private lands conservation in St. Vincent. Section V discusses legislation in St. Vincent relevant to the goal of private lands conservation, as well the use of tax incentives to achieve this goal.

I. RELEVANT BACKGROUND

A. Relevant History

In 1498 Spanish explorers first discovered the island of St. Vincent and several smaller islands known as the Northern Grenadines, which together comprise the present day Republic of St. Vincent and the Grenadines. The Spanish first settled the islands, but France and England fought to control them during the next few centuries. The English won permanent control in 1783, establishing St. Vincent as one of its numerous Caribbean colonies, and the islands have
continuously followed English common law and principles of equity from this date.³ Autonomy was first granted to St. Vincent in 1969 when England accorded the country “Associated State” status. Following the passage of a new constitution in 1979, St. Vincent became an independent state in the British Commonwealth.⁴

St. Vincent consists of 32 islands and cays, eight of which are inhabited. The total land area is approximately 389 square kilometers, most of which contains volcanic ranges and small peaks.⁵ Some 116,000 people live in St. Vincent, with 44 percent of this population residing in rural areas. The mainstay of the economy is agriculture, with bananas as the dominant crop. However, the economy of St. Vincent is suffering, as evidenced by the steady decline in gross domestic product over the past several years—the result of severe drought and reduced tourism. Additionally, the level of unemployment is estimated at around 20 percent and the poverty level is estimated to include one-third of the population. The current government has focused on tourism and public investment in physical and social infrastructure as the means for revitalizing the economy of St. Vincent.

B. Government

St. Vincent is a parliamentary democracy that is part of the British Commonwealth of Nations. Queen Elizabeth II is the nominal head of state, and is officially represented in St. Vincent by the Governor-General. The prime minister and the cabinet have primary control of the government, thus fulfilling the executive function. The legislature consists of a unicameral parliament with fifteen members elected to the house of assembly and six members appointed to the senate by the Governor-General—four on the recommendation of the prime minister and two

⁴ Id.
on the advice of the opposition leader. The parliamentary term of office is five years; however, the prime minister is allowed to call for elections at any time.\textsuperscript{6} There is no formal local government. Thus, the central government handles the administration of the six parishes that make up St. Vincent: Charlotte, Grenadines, Saint Andrew, Saint David, Saint George, and Saint Patrick.

C. Legal Authority

The legal authority in St. Vincent derives from British common law, the Constitution of Saint Vincent and the Grenadines, legislation officially codified in 1990 with stipulation for loose-leaf supplementation (Acts of Parliament), and judicial holdings.\textsuperscript{7} The Constitution of Saint Vincent and the Grenadines is “the supreme law of Saint Vincent and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.”\textsuperscript{8} The Parliament of St. Vincent, through its reorganization and codification of Parliamentary Acts in 1990, clarified the extent to which English common law applies to the legal system of St. Vincent. The Application of English Law Act of 1991 states that:

the common law and the rules of equity from time to time in force in England shall be in force in Saint Vincent and the Grenadines in so far as they may be applicable to the circumstances thereof and subject to such modifications thereto as the circumstances may require, save to the extent to which such common law or any such rule of equity may be excluded by any Act of the Parliament of Saint Vincent and the Grenadines.\textsuperscript{9}

In other words, the Parliament of St. Vincent decides which aspects of British law are still in force and specifies in Parliamentary Acts which English laws and rules of equity are applicable to St.

\textsuperscript{7} Politics of Saint Vincent and the Grenadines; Reynolds & Flores.
Vincent. When the statutes are silent on the matter before the courts English common law is consulted.

The judicial structure of St. Vincent is very similar to several other countries that make up the Windward Islands, excluding St. Lucia. On the islands of St. Vincent, there are eleven local courts in three magisterial districts, known as the Magistrates Courts. Appeals from the Magistrates Courts are heard by the Eastern Caribbean Supreme Court, based in St. Lucia, which operates as the Supreme Court of St. Vincent and is divided into a Court of Appeals and a High Court of Justice. The Judicial Committee of the Privy Council in London, England, hears final appeals from the Eastern Caribbean Supreme Court.10

II. RIGHTS AND RESTRICTIONS PERTAINING TO LAND TENURE IN ST. VINCENT

A. History and Current Overview of Land Tenure

Historically, St. Vincent’s agricultural system was based on the plantation/slave relationship. Following emancipation of the Black Carib slaves in the nineteenth century, the property of St. Vincent continued to consist of mostly large landholdings, with few owners actually living on the island. In fact, 88 percent of landholders were nonresidents in 1848, and 80 percent were absent from the island.11

During the nineteenth century, virtually all arable land was “held by estates and remained undivided.”12 According to one author,

[the steep slopes of much estate land and the mountainousness of all uncultivated areas left almost no usable land outside estate boundaries. One estate was sold soon after 1838 to a group of free blacks that divided it into small farms. It appears that no other estate was divided into small plots throughout the century.13

10 Reynolds & Flores.
11 Virginia Heyer Young, Becoming West Indian: Culture, Self, and Nation in St. Vincent 53 (Smithsonian Institution Press 1993) (hereinafter Young).
12 Id. at 60.
13 Id.
Finding wages too low, numerous laborers rejected plantation employment at this time and many left the islands. Some began working on rented land, and small farm production increased. Land values also decreased during this period and many heirs were unable to pay debts on their estates—as a result almost one-fourth of arable land in St. Vincent lay fallow.

To correct this problem, in the middle of the nineteenth century the Incumbered Estates Court Law was enacted, which allowed claims to be brought against West Indian estates, including those situated on St. Vincent, in order for the estates to be sold to ensure cultivation. Thirty estates in St. Vincent were sold under this law by 1888, with most of the sales occurring in London and most of the buyers being merchant companies. Thus, a shift occurred in which absenteeism moved to merchant agglomeration of estates. The majority of locals did not own freeholds, and many were forced to farm rented land.

Land reform gained momentum at the turn of the century, and the Colonial Office’s Peasant Land Settlement Scheme was created for abandoned estate lands. By 1915, almost 8,000 acres were divided into small landholdings, which were assigned to lessees who had the option of buying the land and obtaining title after certain restrictions had been met. However, estates continue to be concentrated among large landholdings. It was reported in 1972 that “.4 percent of all farms that exceeded one hundred acres each held 59 percent of the cultivated land, whereas 85 percent of the farms held under five acres each, and close to half of these farms held under one acre each.”

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14 Id. at 54.
15 Id.
16 Id. at 60-61.
17 Id. at 61.
18 Id. at 62.
19 Id. at 62-63.
The first land resettlement program since 1932 was started in 1986 on the Orange Hill estate. Under this program 229 farms were settled by 1991. The government has also purchased other former estates for similar partitioning and settlement.\(^\text{20}\)

Today, the 96,000 acres of land resources in St. Vincent are used for agriculture, forestry, industry, and other buildings. Forestry comprises 47 percent of the total land area.\(^\text{21}\) While 32 percent of the land could be used for agriculture, only 19 percent of the total land is currently being farmed. Over 42 percent of this arable land is used for permanent crops, with bananas comprising 63 percent of this area.\(^\text{22}\) Additionally, in 1986 about 64 percent of the population of St. Vincent depended on agriculture in some way for employment purposes. This dependence on agriculture signals a dependence on small farms, as the majority of St. Vincent’s agricultural production takes place on small holdings.\(^\text{23}\) In the past, almost two-thirds of all agricultural holdings were less than three acres and 80 percent were less than five acres.\(^\text{24}\) Moreover, only 42 percent of farmers own their land.\(^\text{25}\)

**B. Predominant Types of Land Tenure in St. Vincent**

Several types of land tenure exist in St. Vincent. Private ownership of land is the most prevalent—a category that includes family lands. According to one local source, almost 73 percent of the agricultural land is held under “owner or owner-like” possession. “Owner-like” possession in St. Vincent consists of family lands without clear title vested in one single person.\(^\text{26}\) In other words, this term is used to “describe land occupied by persons with a beneficial interest that is not

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\(^\text{20}\) Id. at 64.
\(^\text{21}\) Williams, at 4.
\(^\text{22}\) Id. at 4.
\(^\text{24}\) Id. at 83.
\(^\text{25}\) Id. at 96.
\(^\text{26}\) Williams, at 4.
expressed as a legal interest.” 27 Because St. Vincent does not differentiate between owner and owner-like possession, it is uncertain exactly how many land titles in St. Vincent remain unclear. 28

Rentals for cash, sharecropping, sharecropping and cash, squatting on private and government land, and rent-free and/or peppercorn tenancy are also in place in St. Vincent as forms of land tenure other than private land ownership. 29 Rental arrangements range from Government land leases to more informal agreements, such as oral leases with private landowners. Rental land encompasses 23 percent of agricultural land under current use. 30

Squatting, although more pervasive on public land than on private land, demonstrates the prevalence of illegal land use in St. Vincent for private means. As many as 16,000 squatters use government land in St. Vincent, leading to problems with deforestation and hindering ongoing efforts in St. Vincent to promote reforestation on land ill-suited for agriculture. 31 Squatters pose a threat to the national Forest Reserve, 32 likely due to the fact that St. Vincent has a relatively high population density and a mountainous terrain that restricts the accessibility and availability of land. 33 Other problems associated with squatting in St. Vincent include the fact that demand for land is greater than the supply and land tenure is generally insecure. Furthermore, watersheds are generally mismanaged, and the State designation of all lands above 1000 feet as protected has not kept these lands from being farmed. Natural vegetation is destroyed when short-lived crops are planted, leading to an increase in soil erosion, soil infertility, and sedimentation of dams and catchment areas. 34

C. General Rights and Restrictions on Land Use

27 Id. at 7.
28 Id. at 4.
29 Id. at 96.
30 Id. at 4. The Lands & Survey Department of the Ministry of Agriculture is responsible for rental of State/Crown lands.
31 Id. at 7.
32 Id. at v.
33 Land Use and Land Tenure Patterns, at 82.
34 Id.
Several pieces of legislation address the suitability of land for different purposes in St. Vincent, and thus limit the rights of private property owners. Two Parliamentary Acts allow the government to direct that certain private lands be used for purposes the government deems as adequate use. Other acts allow the government to restrict the use of Crown (or public) lands, even after they have been sold into private ownership.

1. **Government Control and Acquisition of Private Lands**

The Land Settlement and Development Act (LSDA) deals with the regulation and control of land settlement in St. Vincent.\(^{35}\) In all proceedings under the LSDA, the individual in possession of land is regarded as the owner of the land.\(^{36}\) The LSDA authorizes the Development Corporation (Corporation) to select land to be “deemed necessary for the establishment and location of small holders.” Every selection is to be published in the Gazette (the official Gazette of St. Vincent), and notice must be given to the owner and parties having interest in the land in question. The notice must:

- state the particulars of the land selected
- express that the Corporation is willing to treat for the purchase of such land, and
- list the amount of compensation to be made to all parties for the loss or damage that may be sustained by them by reason of such land being acquired under the provisions of this Act.\(^{37}\)

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\(^{35}\) Land Settlement and Development Act, Laws of Saint Vincent and the Grenadines Revised Edition, Chapter 242 (1990) (hereinafter Land Settlement and Development Act). Important definitions in this Act include “agricultural land” as “land at present used, or in the future to be used, for agricultural purposes and includes buildings and erections thereon,” “Court” as the High Court, “Corporation” as “the Development Corporation established in accordance with the Development Corporation Act,” and “magistrate” as “the magistrate of the district in which the land which forms the subject of any enquiry is situate.” Land Settlement and Development Act, at § 2.

\(^{36}\) Land Settlement and Development Act, at § 3. Section 3 states that “[i]n all proceedings under this Act, the person in possession, or in receipt of the rents or profits, of the land shall be deemed to be the owner of the land for purposes of this Act, but without prejudice to the right of any other person who may establish his title to the land to recover from such first mentioned person any purchase or compensation money which may have been paid to him in respect of such land.”

\(^{37}\) Id. at § 5.
The LSDA’s notice requirement also requires parties to lodge with the Corporation the particulars of their estate and interest in the land in question, as well as claims made by them for purchase money or compensation in respect thereof.

The Corporation may contract with the owner and all other parties with interests in the land for the purchase of the land.\(^{38}\) Purchase money, interest, and compensation are payable under the Act for the land taken.\(^{39}\) Upon possession of any land taken by the Corporation, this land becomes vested in the Corporation, freed from all estates, rights, interests, claims, liens, incumbrances, or demands. Land that is vested in the Corporation is deemed appropriated for the use of locating small holders on the land.\(^{40}\) In terms of judicial review of this process, an appeal to the appellate court is possible from the finding of a judge. The appellate court decision is final and conclusive as to all parties.\(^{41}\)

Another Parliamentary Act that deals with restrictions on private land is the Land Acquisition Act. This act authorizes the Governor-General to acquire privately held land for public purposes.\(^{42}\) The Governor-General may declare land to be acquired for a public purpose if he publishes this declaration in the Gazette with a description of the land, the location of the land, and reason for the acquisition. After a second publication of the declaration in the Gazette the land vests absolutely in the Crown.\(^{43}\) Compensation must be provided for acquired land; and, in certain cases, a magistrate may settle the claim.\(^{44}\)

\(^{38}\) *Id.* at § 6. Additionally, the “acquisition of any land whatsoever by the Corporation, whether it be acquired by private treaty or otherwise, shall be subject in all cases to the prior approval of the House of Assembly.” *Id.* at § 7.

\(^{39}\) *Id.* at § 9.

\(^{40}\) *Id.* at § 23.

\(^{41}\) *Id.* at § 22.


\(^{43}\) *Id.* at § 3.

\(^{44}\) *Id.* at § 18. The language of the provision reads that “in any case in which the compensation claimed does not exceed two hundred and forty dollars, and in any case in which the compensation claimed does not exceed four hundred and eighty dollars and, in the latter case, the parties agree in writing to the settlement of the claim by a magistrate, the amount of the compensation to be paid in any such case shall be determined by a magistrate.”
The government’s ability to usurp private owners’ property rarely comes without a cost. The Constitution of St. Vincent contains a takings clause that protects the privacy of individuals’ homes and other property and demands compensation for the deprivation of property.\textsuperscript{45} Moreover, the Constitution provides that anyone affected by the compulsory acquisition of an interest in private property has a right of direct access to the High Court for the determination of the nature and extent of that interest or right, whether it was taken in accordance with law, and what type of compensation may be due.\textsuperscript{46} For the purposes of this provision, the Constitution defines property as “any land or other thing capable of being owned or held in possession and includes any right relating thereto, whether under a contract, trust or law or otherwise and whether present or future, absolute or conditional.” The Constitution defines acquisition as “transferring that interest or right to another person or extinguishing or curtailing that interest or right.”\textsuperscript{47}

2. Provisions Concerning Public Lands that Affect Private Owners

Occasionally, the distinction between Crown, or public lands, and private lands blurs in St. Vincent—as when regulations concerning public lands directly affect private landowners, either through conveyance or administration. Thus, regulations concerning public lands that could directly impact private landowners are discussed here.

The Crown Lands Act vests the administration and disposal of Crown lands in the Governor-General.\textsuperscript{48} Under this Act, the Governor-General may make regulations regarding the management, sale and letting of Crown lands, the occupation, allotment and survey of these lands, and the issue of grants and fees payable.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{45} Constitution, at § 1.
\item \textsuperscript{46} Constitution, at § 6.
\item \textsuperscript{47} Constitution, at § 6.
\end{itemize}
\end{footnotesize}
The Governor-General may initiate a survey of any Crown land or Crown boundary. Any person aggrieved by a survey of Crown boundaries—for instance the private owner of an adjacent property—may apply by petition to a judge in chambers for review of the survey.\textsuperscript{49} For access to Crown lands, the Governor-General may order any of his surveyors to enter upon intervening lands, even if privately held, in order to mark out a road.\textsuperscript{50} If a private owner is dissatisfied with the locality of the road, he can appeal to the Governor-General, who makes the final determination of the matter.\textsuperscript{51} No compensation is available for just one road, but compensation may be available if the Governor-General believes it necessary to make more than one road through an individual’s land; this situation is treated as though it were a case involving land acquired under the Land Acquisition Act.\textsuperscript{52}

Another provision under the Crown Lands Act provides that the government retains all rights to minerals contained in Crown lands, even when such land is granted or sold to a private owner.\textsuperscript{53}

The Public Lands and Buildings Act deals with public lands that are neither Crown reserves nor estates. The purpose of this Act is “to vest certain lands and buildings in the Governor-General for the public uses of Saint Vincent and the Grenadines.”\textsuperscript{54} Without prejudice to

\begin{itemize}
\item \textsuperscript{49} Id. at § 6-9.
\item \textsuperscript{50} Id. at § 13. Section 13 states “[w]henever it shall become necessary, in the opinion of the Governor-General, to provide a means of access from any public highway or byway through intervening lands to any Crown lands, the Chief Surveyor, or other surveyor employed by the Governor-General and his agents, servants, and assistants may enter upon any such intervening lands, and survey and mark out, in such manner as he may think fit, a road thereon:”
\item \textsuperscript{51} Id. at § 15.
\item \textsuperscript{52} Id. at § 17.
\item \textsuperscript{53} Id. at § 5. The language of the provision reads “[n]o grant or sale of Crown land made under this Act shall be deemed to confer any right to any mineral therein, and all minerals, notwithstanding the grant or sale, shall be deemed to remain and shall remain the absolute property of the Crown.”
\item \textsuperscript{54} Public Lands and Buildings, Laws of Saint Vincent and the Grenadines Revised Edition, Chapter 207 (1990) (hereinafter Public Lands and Buildings). Under this Act, the definition of “public lands and buildings” includes “all lands, tenements, estates and other hereditaments, formerly at any time set apart from the Crown reserves and estates, and placed under the charge of the Ordnance Department, or of the Governor or Lieutenant Governor for the time being for military defence, or taken by or in the name of any person or persons in trust for Her Majesty or Her royal predecessors and Her and their Heirs and Successors for the use or service of the said Ordnance Department or for military defence, or which had been used or occupied for those services, by whatever mode of conveyance the same should have been so purchased or taken, either in fee or for any life or lives, or any term or term of years, or
leases, tenancies or other privates, the Governor-General is allowed to appropriate any of the
defined public lands and buildings to such uses as the public service requires.\(^{55}\) The Governor-
General may also direct the sale or exchange of these lands with private owners.\(^{56}\) Additionally, he
may let these public lands, provided that the rent be payable to the Accountant General.\(^{57}\)

III. LAND ADMINISTRATION IN ST. VINCENT

A. Institutional Framework

Three governmental institutions have primary responsibility for land management in St.
Vincent: (1) the Registrar of Deeds; (2) the Department of Lands & Surveys; and (3) the Physical
Planning and Development Board.\(^{58}\) The Registrar of Deeds is the main institution for land
administration in St. Vincent.\(^{59}\) It is the institution with which most private landowners interact, as
the Registrar is involved in the transfer and registration of land titles.

The Department of Lands and Surveys governs the operations of surveyors. The
Department checks and registers the survey plans and computations of the Government and
licensed private surveyors.\(^ {60}\) In 1982 the Department of Land and Surveys took photos of settled
areas and made large-scale topographical maps at 1:2500. The area photographed was
approximately 90 percent of the country not including the Forest Reserve.

In addition, the Department of Lands and Surveys manages all Crown lands. Because the
Registry does not have the records of compulsory land acquisition, it is difficult to establish how

\(^{55}\) Id. at § 2.
\(^{56}\) Id. at § 4.
\(^{57}\) Id. at § 5. The language of this provision reads ‘[t]he Governor-General may let for any term of years, or by the year, or for
such other tenancy, and on such terms as he may deem expedient, to any person or persons all or any of the said public lands and
buildings, and may execute and perfect all instruments necessary for any such letting, with a provision that the rent shall be paid to
the Accountant General.’
\(^{58}\) Williams, at v.
\(^{59}\) Id. at v.
many acres of land the State owns. The Land Acquisition Act does not mandate that these records be kept; it only requires the acquisition be reported in the Gazette to become official.61

The Town and Country Planning Act authorizes the Physical Planning and Development Board to regulate land use planning and control development.62 The definition of “development” under this Act encompasses all building, demolition and mining work, as well as the subdivision of land, the display of an advertisement, and any change of use. “Subdivision of land” includes the division of any building or portion of land into two or more pieces for the “purpose of sale, transfer, lease, the creation of a trust or any other transaction whether or not similar to the foregoing.” “Change of use” is defined as any use of a building or piece of land that is different from the purpose that it was used previously.63 Clearly, this definition of “change of use” includes any private land that is converted to conservation purposes, such as a shift from farming to conservation.

In terms of conservation land management, the Board considers the “foreseeable need and availability of land for natural, agricultural and forestry reserves, public open spaces, and other areas which it appears to the Board to be in the national interest to retain or provide” and the “availability of resources likely to be required for the purpose of carrying into effect the proposals of the national plan.” Relating to regional, and not national, plans, the Board considers the most advantageous development and use of land, and other items similar to its national considerations. For the purposes of local planning, the Board considers, among other things, “the precise location

60 Id. at 5.
61 Id. at 5.
63 Id. at § 2.
of all proposed roads, buildings and open spaces and of any land to be set aside as a residential, industrial or agricultural area, and the relationship between each. . . .”\textsuperscript{64}

The Town and Country Planning Act also authorizes the Board to issue a Preservation Order to “the owner or occupier of any land and on any other person who, in the opinion of the Board, may be affected by the order.”\textsuperscript{65} Under the Act the Board may issue a Preservation Order—following consultation with the Chief Forestry Officer—if it is satisfied that such an order is necessary to accomplish any of the following:

- provide any amenity to the public
- for the purpose of soil conservation or tree preservation or water conservation
- to prohibit the destruction of any trees, forest, or woodland
- or for any other public purpose\textsuperscript{66}

Any person aggrieved by a decision of the Board can appeal to the Minister.\textsuperscript{67} Although it appears, from the specific language of the statute, that the conservation must be deemed for a public purpose, this section of the Act undoubtedly allows private land to be converted into a conservation area upon the issuance of a Preservation Order, as the Board has the express authority to compulsorily take private land.

B. Land Transfer

During Parliament’s efforts in the early 1990s to reorganize its existing statutes, it distilled the Real Property Act down to a short, seven-page Act in order to “simplify the transfer of

\textsuperscript{64} Town and Country Planning Act, at § 8. In the preparation of these national, regional, and local plans, the Board has regard to “the allocation of lands for agricultural, residential, industrial, commercial or other purposes as may be indicated in the plan…” The Board also has regard to “designation and demarcation of any land that may be compulsorily acquired,” the “designation and demarcation of any land that may be allocated for the purposes of the Board or for any other public purpose,” the “designation and demarcation of any land required for comprehensive development of an area and this may include areas adjacent to the area,” and the “designation and demarcation of any other land that, in the opinion of the Board, should be reserved for compulsory acquisition for public purpose.”

\textsuperscript{65} Id. at § 22.

\textsuperscript{66} Id.

\textsuperscript{67} Id. at § 27.
property.” This Act lists the definitions of common terms associated with property law, as well as the basic rules associated with these terms concerning the transfer of land.

The Real Property Act authorizes freehold land to be conveyed by deed and eliminates the requirement of livery of seisin, an ancient English common law tradition that dates back centuries and is generally not recognized as necessary in other countries with English common law traditions. Additionally, no partition, exchange or assignment of any freehold or leasehold land is valid at law unless it is made by deed. Leases and surrenders are to be in writing by deed, and contingent interests may also be conveyed by deed. Thus, it can be concluded that most, if not all, land transfers must be performed through the execution of a deed.

Another parliamentary act dealing with land transfer issues is the Partition Act, which amended the law dealing with partitions in 1990. Under this Act an action for partition includes “an action for sale and distribution of the proceeds, and in an action for partition it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.” In very general terms, the High Court has the power to order the sale of land instead of its division in a suit for partition. The High Court can divide the proceeds of such a sale in

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69 For example, under the definitions of the Act, “land” includes messuages, lands, tenements, and hereditaments, corporeal or incorporeal, any undivided share, any estate or interest therein, and money to be invested in the purchase of land. The term conveyances encompasses feoffments, grants, releases, surrenders or “other freehold assurance of freehold land.” Id. at § 2.
70 See id. at § 3.
71 Id. at § 4.
72 Id. at §§ 5-6. Contingent remainders are also protected from the untimely failure of a preceding estate. Id. at § 9. Also among the rules listed is the provision that expresses that there is to be no implied warranty created from the use of the words “grant” or “exchange” in any deed. Additionally the Act specifies that no conveyances are “to operate by wrong to have greater effect than a release.” Concerning the procedures surrounding the mortgage holders, the executor or administrator of a mortgagee is allowed to convey the legal mortgage vested in the heir or devisee upon the discharge of the mortgage. The Act finishes with the conclusion that its provisions “shall not extend to any deed, act or thing executed or done, or to any estate, right or interest created before the 1st March, 1851.” Id. at §§ 7-16.
74 Id. at § 15.
75 Id. at § 3. Section three states that “[i]n a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, if it appears to the Court that by reason of the nature of the property to which the suit relates, or of the number of the parties interested, or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and
proportion to the degree of interest each party holds in the land. Moreover, a party not requesting the sale may purchase the share of the party requesting the sale in the High Court’s discretion. This provision addresses instances in which one person does not desire to sell the land to a third party, and so may be allowed by the High Court to buy the other shares to which he or she does not have a claim. Finally, the Act provides that in any case in which the High Court directs a sale instead of a division of land, the Registrar of the High Court is to convey the property to the purchaser of the land. 

C. Land Registration

In order to transfer titles to, interests in, or encumbrances over land in St. Vincent, the transferor must execute a deed. The registration of such documents relating to title, transfer or incumbrances on any real estate is compulsory under the Registration of Documents Act, as is the registration of powers of attorney, deeds of substitution, certified copies of the probate of wills, and the grant of letters of administration by the Court. In addition, allotment plans bearing a certificate in writing signed by the Chief Surveyor, evidencing that a copy was lodged in the Surveys Office, may also be registered. However, documents relating to a tenancy of real estate from year to year, or any lesser interest in real estate or tenancy at will, and documents concerning

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76 Id. at § 4. Section four states that “[i]n a suit for partition where, if this Act had not been passed, a decree for partition might have been made, if the party or parties interested individually or collectively to the extent of one moiety or upwards in the property to which the suit relates request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.”

77 Id. at § 5. Section five states that “[i]n a suit for partition where, if this Act had not been passed, a decree for partition might have been made, if any party interested in the property to which the suit relates requests the Court to direct a sale of the property and a distribution of the proceedings instead of a division of the property between or among the parties interested, the Court may, if it thinks fit, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions, and in case of such undertaking being given, the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit, and may give all necessary or proper consequential directions.”

78 Id. at § 18.

79 Study of Land Tenure System, at I.
the use or occupation of real estate or the disposal of produce, crops, or rents need not be registered.\textsuperscript{82}

Every registered real estate document has priority of time of registration—thus protecting the right, title and interest of the person conveying, incumbering or otherwise dealing with such real estate over every other document subsequently registered with respect to such real estate. Every document that is not registered is void under the law.\textsuperscript{83} Furthermore, to be valid, a registered deed must be signed and sealed, and its execution requires at least one witness.\textsuperscript{84}

All deeds and documents relating to real estate are to be registered at the Office of the Registrar of the Supreme Court,\textsuperscript{85} which keeps records of private land transfers through the Registration of Deeds.\textsuperscript{86} The Registrar is in charge of all documents stored in and registered at the office of the Registrar.\textsuperscript{87} The Registrar assigns a distinguishing number to every document concerning real estate, power of attorney, and certified copies of will provided or administration granted by the Court; the Registrar also notes the time and date of registration.\textsuperscript{88} The documents are then bound in a volume for each year.\textsuperscript{89} Any individual aggrieved by an act or omission of the Registrar under this Act can apply to the High Court through a summons for relief.\textsuperscript{90}

To ensure security of land tenure, all registered land must correlate to an accurate survey.\textsuperscript{91}

The Land Surveyors Act established a Land Surveyors’ Board, consisting of the Chief Surveyor,
who is the chairman of the Board, and two other members, one of which is a licensed surveyor for St. Vincent. The duties of the Board include granting licenses to qualified people to practice land surveying, providing exams for applicants for licenses, keeping a register of all licensed surveyors, taking disciplinary actions against licensed surveyors, hearing and determining disputes between licensed surveyors and their clients as to fees charged by surveyors, and performing other functions that are prescribed by the Act or regulations made for the Act. The Department of Lands and Surveys identifies the location of land parcels and determines the relationship between the indexing system of the Registry and that of survey plans. Any person aggrieved by a decision of the Board under certain provisions of the Act dealing with revocations or suspensions of licenses may appeal to the High Court, but no appeal lies from an order of the High Court.

Although laws require the registration of deeds and transfers of title, cultural practices prevalent in St. Vincent often interfere with this process, as some individuals are satisfied with transferring land rights without the assistance of attorneys or surveyors and without registering the transfer with the Registry. Rentals are most subject to this customary practice. However, when lawyers are involved, deeds usually refer to a lodged plan in order to identify the land in question.

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92 Id. at § 4.
93 Id. at § 5.
94 Williams, at 6.
95 Land Surveyors Act at § 10. The Act also specifies that no person, other than a surveyor, is to “survey any holding or land for the purpose of preparing any plan which is attached to, or is referred to in, any document or instrument purporting to confer, declare, transfer, limit extinguish or otherwise deal with or affect any right, title or interest, whether vested or contingent, in or over any holding or land, being a document or instrument which is required to be registered, or is ineffectual until registered, under any law for the time being in force; or...perform any survey which affects, or may affect, the definition of the boundaries, or the location of survey marks, of any holding or land registered, or to be registered, under any law for the time being in force relating to the registration of land or of title to land.” Id. at § 15. Finally, the Governor-General may make regulations setting forth “the manner in which surveys are to be made, the records to be kept by licensed surveyors the manner of keeping the same,” among other things. Id. at § 28.
96 Id.
The rules and regulations for aliens, both individuals and companies, that wish to own private land in St. Vincent are enumerated in the Aliens (Land-Holding Regulation) Act.\textsuperscript{98} Under this Act, a person belongs to St. Vincent if he or she is a (1) citizen; (2) a Commonwealth citizen who is domiciled in Saint Vincent and has been a resident for more than seven years; (3) a person who is, or has been, married to a citizen or Commonwealth resident; or (4) a person under eighteen years of age who is the child, step-child or child adopted by law by a citizen, Commonwealth resident, or spouse of citizen or Commonwealth resident.\textsuperscript{99} All others are considered aliens. A company that is under alien control—alien control includes instances where one-half or more directors are unlicensed aliens; and one-half or more of issued shares are held by unlicensed aliens—is treated as an alien for the purposes of this statute.\textsuperscript{100}

Neither land nor a mortgage on land is to be held by an unlicensed alien in St. Vincent.\textsuperscript{101} However, there are exceptions to this rule. No license is required for less than five acres of land acquired and held for an annual tenancy or any lesser interest, and there is no licensing requirement for land acquired by an alien under a will or on an intestacy if the Governor-General deems the sale or license to the land is appropriate for the alien.\textsuperscript{102}

The Governor-General grants alien land-holding licenses at his discretion. The Governor-General may:

grant to any alien a license to hold land as owner, tenant or mortgagee for any estate or interest, either subject to any conditions or not: Provided that a license shall be operative only as to the land described and as to the estate or interest specified therein, and shall be of no force or effect until registered in the office of the Registrar of Deeds.\textsuperscript{103}

\textsuperscript{99} \textit{Id.} at § 2.
\textsuperscript{100} \textit{Id.} at § 8.
\textsuperscript{101} \textit{Id.} at § 4. However, funds may be loaned upon the security of mortgages to aliens for the purchase of land as long as the money is loaned to residents of St. Vincent. \textit{Id.} at § 6.
\textsuperscript{102} \textit{Id.} at § 4.
\textsuperscript{103} \textit{Id.} at § 5.
The Governor-General may also grant an annual general license to an alien to hold as mortgagee land that is held as security for funds; the alien may from time to time invest this security on loan in St. Vincent. Under this specific provision, the land must be sold, or disposed of absolutely, within five years, or within a time period the appropriate authority thinks is reasonable.\footnote{104} Any breach of the conditions of an alien land-holding license results in the forfeiture of the estate and interest to the Crown.\footnote{105}

The Aliens (Land-Holding) Act also prohibits any person, without the license of the Governor-General, from holding any property in trust for an alien. Any property held in a trust in this manner is to be forfeited to the Crown. The meaning of a trust encompasses “any arrangement, whether written or oral, express or implied, and whether legally enforceable or not, whereby any property to which this section applies, or any interest therein or any rights attached thereto, is, or are, held for the benefit of, or the order or at the disposal of, an alien.”\footnote{106} Thus, it appears that in order for an alien to acquire land in St. Vincent, he must obtain permission and a license from the Governor-General.

\section*{D. Establishing Clear Title}

In order for title of land to be clear, boundaries for all land parcels must be known and marked accurately. The Act that provides for the process of surveying the boundaries of land is the Boundaries Settlement Act.\footnote{107} Under this Act, a surveyor and his assistants are allowed to enter adjoining lands in order to make traverses for the planning of surveys and the collection of data—

\begin{footnotesize}
\footnote{104} Id. at § 6. However, funds may be loaned upon the security of mortgages to aliens for the purchase of land as long as the money is loaned to residents of St. Vincent.
\footnote{105} Id. The language of the provision reads that a “breach of any condition in a licence to hold land as owner, tenant or mortgagee, the estate and interest of the alien in the land or mortgage held under the authority thereof shall thereupon be forfeited to the Crown.”
\footnote{106} Id. at § 16.
\footnote{107} Boundaries Settlement Act, Laws of Saint Vincent and the Grenadines, Chapter 236 (1990) (hereinafter Boundaries Settlement Act). Under this Act, the “Chief Engineer, the Chief Surveyor, or any surveyor appointed by the Governor-General, the High Court
assuming proper notice is given. Assuming sixty days of the completion of a survey, a copy of every plan, traverse sheet, and report—certified by the surveyor to be a true copy—is to be lodged by the surveyor in the Surveys Office.

If boundaries are disputed, any of these documents are admissible as evidence so long as it is “proved to the satisfaction of the court that a copy thereof has been duly lodged in the Surveys Office, or in any other office appointed by law, in accordance with the requirements of the law.”

If a boundary dispute involves land that has never been surveyed, or on which boundary markers have disappeared, a judge may appoint a surveyor to perform surveys. If one affected party refuses to agree upon the appointment of a surveyor, another affected party may bring an action against him to compel him to do so.

Any person unhappy with a survey may apply to a judge in chambers to review the survey by petition. In all cases, the judge “shall have power to award possession, or to order another survey, and shall have all the other powers conferred upon a judge by law in actions of ejectment.”

Unfortunately, the Boundaries Settlement Act is most likely consulted frequently in St. Vincent. Much of the land in St. Vincent remains unregistered, and land that is registered is often registered under a title that does not refer to any certified plan. Thus, title generally “has to be

or by any person or corporation to survey or re-survey any land, shall give at least seven days’ notice of his intention in writing to the owner or the person in possession or occupation of the adjacent lands. . . .” Id. at § 2.

Id. at § 3. Every plan by a surveyor “shall be of materials approved by the Chief Surveyor and shall be signed by the surveyor, and shall show the dates of the commencement, and conclusion of the survey, the true bearings and horizontal distances of the several lines, the corner trees, if any, the boundary marks, the name or names, if any, situation, area and contents of the land, and the name, address and occupation of the person at whose instance the survey was made. . . .” Id. at § 7.

Id. at § 8.

Id. at § 12.

Id. at § 11.

Id. at § 18.

Id. at § 19.

Williams, at v.
proven afresh each time a disposition of land is made."¹¹⁶ To do this, evidence of ownership for each parcel involved in a conveyance must be gathered. The title search process begins with an investigation of the deed of the current owner. This search must indicate that since the owner registered his deed, he has not disposed of or encumbered the land. A further search must be performed for each predecessor in title to the owner in question for the thirty years preceding his acquisition of title. One exception to this rule concerns the Crown. If the Crown was the predecessor to title, the title is considered unimpeachable; there is no need to inspect predecessors to the Crown.¹¹⁷ In all instances, “[t]ransactions properly recorded in the Registry of the Supreme Court, and carried out according to legal requirements documented in the deeds of transfer are legally superior to transactions not so recorded.”¹¹⁸

E. Dispute Resolution

The Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act extensively enumerates the procedures and the extent of the jurisdiction of the High Court and the Court of Appeals—the two judicial bodies that make up the Eastern Caribbean Supreme Court.¹¹⁹ The High Court’s jurisdiction:

in civil proceedings and in probate, divorce and matrimonial causes shall be exercised in accordance with the provisions of this Act and any other law in operation in Saint Vincent and the Grenadines and rules of court, and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice administered in the High Court of Justice in England on the 27th December, 1989.¹²⁰

¹¹⁶ Id. at 5.
¹¹⁸ Study of the Land Tenure System, at 3-4.
¹¹⁹ Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines), Laws of Saint Vincent and the Grenadines Revised Edition, Chapter 18 (1990) (hereinafter Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines)). The purpose of this Act is “to repeal and replace the Supreme Court Act, 1941, and to make provision for the exercise of jurisdiction in Saint Vincent and the Grenadines by the Eastern Caribbean Supreme Court and for other matters connected therewith.” Generally, the High Court has the same vested powers and authorities and jurisdiction as the High Court in England had on the 1st of January, 1968. Id. at § 7.
¹²⁰ Id. at § 11.
Any judge of the High court may exercise all or any part of the jurisdiction vested in the High Court.\textsuperscript{121}

Every civil matter initiated in the High Court law and equity is to be administered by the High Court and the Court of Appeal, subject to the express provisions of other laws.\textsuperscript{122} Relating to property rights, when plaintiffs or petitioners:

claim to be entitled to any equitable estate or rights, or to relief on any equitable ground against any deed, instrument or contract or against any right, title or claim whatsoever asserted by any defendant or respondent in the cause or matter, or to any relief founded upon a legal right which before the 1st day of November, 1875 could in England only have been given by a court of equity, the court or judge shall give to the plaintiff or petitioner the same relief as would be given by the High Court of Justice in England in a suit or proceeding for the same or a like purpose.\textsuperscript{123}

The above statement also applies to equitable defenses.\textsuperscript{124}

The court or judge is required to take notice of all equitable estates, titles and rights and all equitable duties and liabilities appearing incidentally in the course of any cause or matter in the same manner in which the High Court of Justice in England would recognize and take notice of the same in any suit or proceeding.\textsuperscript{125} Thus, the common law of equity of England is recognized by the High Court and the Court of Appeals.

The High Court and the Court of Appeal, and each judge residing on these courts are to recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations and liabilities existing by the common law or by any custom, or created by any statute, in the same manner as these matters have been recognized and dealt with in the past, before the execution of this Act.\textsuperscript{126} In all matters in which there was, or is currently, any conflict between the

\textsuperscript{121} \textit{Id.} at § 12.
\textsuperscript{122} \textit{Id.} at § 13.
\textsuperscript{123} \textit{Id.} at § 14.
\textsuperscript{124} \textit{Id.} at § 15.
\textsuperscript{125} \textit{Id.} at § 17.
\textsuperscript{126} \textit{Id.} at § 19.
rules of equity and the rules of common law relating to the same matter, the rules of equity prevail.  

Generally, an appeal to the Court of Appeal is available “from judgments or orders originating by summons in chambers and interlocutory judgments or orders of judges of the High Court, whether adjudicated upon in chambers or in open court, and whether at first instance or on appeal. . . .” Additionally, appeals are granted to the Court of Appeal from any judgment, decree, sentence or order of magistrates in all matters.

Another provision that may affect the procedures surrounding land transfer is outlined in an addendum to the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, entitled Sales and Fees of Court Rules. Contained in this supplement is the rule that:

- **[a]ll sales in execution of writs of seizure and sale and of orders for the sale of any interest in any messuages, lands, tenements and hereditaments issued under the provisions of the Civil Procedure Code shall, unless otherwise specially directed, take place at the Court House in Kingston between the hours of 12 midday and 3 p.m. and shall be conducted in the case of orders for the sale of interest in any messuages, lands, tenements, and hereditaments by the Registrar or his clerk, and in the case of writs of seizure and sale by the senior bailiff of the Court.**

This provision appears to specify the procedure for the transfer of land when the judiciary is involved in the land matter; thus, it appears that once a land dispute has been settled by the High Court, the Court retains the ability to control the sale of the land in question. However, it is unclear whether this provision means that all land disputes come within the High Court’s jurisdiction.

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127 *Id.* at § 21.
128 *Id.* at § 29. The Court of Appeal is vested with “the jurisdiction and powers which at the 24th April, 1967, were vested in the former Court of Appeal,” “the jurisdiction and powers which at the 24th April, 1967, were vested in the British Caribbean Court of Appeal,” and “such other jurisdiction and powers as may be conferred upon it by this Act or any other law.” *Id.* at § 28.
129 *Id.* at § 31.
131 *Id.* at § 2. Additionally, no sale of any interest in messuages, lands, tenements, and hereditaments are to be made until twenty-one days have passed “from the date when the same was levied upon unless otherwise specially directed.” *Id.* at § 3. Notice of all sales are to be inserted into the Gazette by the Registrar. *Id.* at § 4.
Also contained in the Sales and Fees of Court Rules is the provision that in orders for sale of real estate, or before or after making these orders, the Court may order:

- the preparation of abstracts of title, together with counsels’ opinion and conditions of sale
- a valuation of property to be made
- the mode of payment
- the mode and time of delivery of possession
- that a survey of the property be made by a competent surveyor
- that a receiver be appointed, and
- that any moveable held with any real estate be sold.¹³²

IV. LEGAL TOOLS FOR PRIVATE LANDS CONSERVATION

In order to understand what legal tools might prove useful to the goal of private lands conservation in St. Vincent, it may be helpful to briefly examine some common law tools—as well as statutory codifications of these tools—recognized in the United States. Both St. Vincent and the American legal tradition have their roots in the English common law. In some key respects, however, the American common law has deviated significantly from the English common law. As discussed below, the deviations identified in this report mark instances where impediments to the use of common law instruments for conservation purposes were removed—either by progressions in the common law understanding of these instruments or by statutory enactments. Thus, an examination of the American common law tradition can help to identify impediments to the use of legal tools for conservation purposes in St. Vincent, as well provide instructive examples of how to remove these impediments.
The American common law recognizes a number of interests in land that have the potential to facilitate the goal of private lands conservation. Among these interests are real covenants, equitable servitudes, easements and profits. It is important to note, however, that while the common law recognizes these interests, it has traditionally imposed requirements that—in many instances—render their use problematic for conservation purposes. The Restatement (Third) of Property, part of the legal authority of the United States, has simplified the law governing real covenants, equitable servitudes, easements and profits by combining the rules governing these interests into a single doctrine—that of the Servitude. This modernized law of servitudes has also largely eliminated the common law impediments to the use of these interests for conservation purposes.

While the United States has modified the law of servitudes, it is unlikely that St. Vincent laws closely track the following explanations of these legal instruments. The High Court of Justice noted in another case that—

the land law of St. Vincent and the Grenadines is archaic to an extreme. It is best described among lawyers as being pre-1925 British land law. . . . The only edition of Halsbury’s Laws of England that can throw any light on the land law of St. Vincent and the Grenadines is the 1911 first edition.\(^{133}\)

However, the changes accomplished in the United States could also be implemented in St. Vincent through new legislation by the Parliament.

A. Conservation Easements

Easements have been recognized as legitimate interests in land for centuries. An easement is a limited right, granted by an owner of real property, to use all or part of his or her property for

\(^{132}\) Id. at § 6.

specific purposes.\textsuperscript{134} Where this purpose is to achieve the goal of conservation, the easement is frequently referred to as a conservation easement.\textsuperscript{135} A conservation easement is thus a voluntary, legally enforceable agreement in which a landowner agrees (usually with a governmental entity or NGO) to limit the type and amount of development that may occur on his or her property in order to achieve the goal of conservation. They are legally recorded deed restrictions that “run with the land” and can be obtained voluntarily through donation or purchase from the landowner.

Traditionally, an easement was “affirmative” (carrying rights to specified actions) and “appurtenant” (attached to a neighboring parcel of land). For example, one landowner might hold an easement in the land of a neighbor, allowing him or her to cross the neighbor’s property or draw water from the neighbor’s well. In contrast to conventional easements, conservation easements are generally “negative” (prohibiting specified actions) and “in gross” (that is, they may be held by someone other than the owner of a neighboring property). While a conventional easement involves the conveyance of certain affirmative rights to the easement holder, an easement for conservation purposes involves the relinquishment of some of these rights and a conferral of power in the new holder of the rights to enforce the restrictions on the use of the property. 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.\textsuperscript{136} What the easement holder does acquire is the right to enforce the land-use restrictions.

To understand the concept of an easement, it is helpful to think of owning land as holding a bundle of rights—a bundle that includes the right to occupy, lease, sell, develop, construct

\textsuperscript{135} Depending on the type of resource they protect, easements are frequently referred to by different names—e.g., historic preservation easements, agricultural preservation easements, scenic easements, and so on.
\textsuperscript{136} 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. For a more extensive discussion of PDRs, please refer to Part I § A.6.
buildings, farm, restrict access or harvest timber, and so forth. A landowner may give away or sell the entire bundle, or just one or two of those rights. For instance, a landowner may give up the right to construct additional buildings while retaining the right to grow crops. In ceding a right, the landowner “eases” it to another entity, such as a land trust. However, in granting an easement over the land, a landowner does not give away the entire bundle of ownership rights—but rather forgoes only those rights that are specified in the easement document.137

1. **Appurtenant Conservation Easements**

In legal terms, conservation easements generally fall into one of two categories: (1) **appurtenant easements**; and (2) **easements in gross**. An appurtenant easement is an easement created to benefit a particular parcel of land; the rights affected by the easement are thus appurtenant or incidental to the benefited land. Put differently, if an easement is held incident 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.”138 Under the majority U.S. common law authorities, an appurtenant easement does not require the dominant and servient estates to be adjacent to one another—an easement may be appurtenant to noncontiguous property if both estates are clearly defined and if it was the parties’ intent that the

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137 The grantor of a conservation easement remains the titleholder, the nominal owner of the land. The landowner conveys only a part of his or her total interest in the land—specifically, the right to develop the land. However, the landowner retains the right to possess, the right to use (in ways consistent with the easement), and the right to exclude others. Daniel Cole, Pollution and Property 17 (2002).

138 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.
easement be appurtenant.\textsuperscript{139} There are some jurisdictions, however, that require the estates affected by an appurtenant easement to be adjacent.\textsuperscript{140} In such jurisdictions, there are a number of ways to meet—or potentially relax—the adjacency requirement while furthering the goal of private lands conservation.

At this point in the discussion of easements and the manipulation of existing laws in other countries to promote new methods of constructing easements for conservation purposes, it is important to emphasize that St. Vincent departs significantly in its interpretation of the structure of easements from the majority U.S. common law authorities. Easements, under the English common law tradition, must be appurtenant and adjacent. In fact, easements in gross, negative or affirmative, are not recognized at all by the English common law.\textsuperscript{141} St. Vincent, by virtue of being “stuck” within the confines of pre-1925 English property law, has not advanced to the degree that other countries have in their approach to using creative techniques for conservation in conjunction with easements. Therefore, the following methods employed by other countries for private lands conservation would not be applicable to St. Vincent. However, because it is conceivable that the Parliament of St. Vincent could authorize these methods through the enactment of enabling

\textsuperscript{139} 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).


\textsuperscript{141} According to THE LAWS OF ENGLAND:

A person possesses an easement in respect of his enjoyment of some estate or interest in a particular piece of land, and the easement is said to be appurtenant to that land (d). No one can possess an easement irrespective of his enjoyment of some estate or interest in a particular piece of land, for there is no such thing as an easement in gross (e).

a. **Purchase by NGOs of land that can serve as adjacent 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.

b. **Creative “nexus” arguments for non-adjacent lands**

Another potential method for creating a valid appurtenant easement between non-adjacent properties is to establish (e.g., by successfully arguing its existence in a court of law) an adequate nexus between the properties in question. In Costa Rica, the Center for Environmental Law and Natural Resources (CEDARENA) created an appurtenant easement between a parcel of private land and a nearby state reserve that shared the same birds.

c. **Reciprocal easements**

Reciprocal easements enable adjacent landowners to limit their respective land uses through easements granted to each other—a method that provides protection for both properties. 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 judicially 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.

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142 The information in Part I § A.2 (a) – (e) is taken primarily from ELI at 23–24.
143 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.
d. 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.

e. 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. Thus, depending on the jurisdiction in question, the practice of granting a third-party NGO the right to enforce the easement may or may not survive legal scrutiny. Additionally, the relevant legal authority is often 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.

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.

Unfortunately, St. Vincent does not recognize third-party enforcement. The easement is created on the servient estate solely for the benefit of the dominant estate. It must be stressed that the “right constituting the easement must be in some way connected with the enjoyment of the dominant tenement.”144 The only individual who can enforce the easement is the owner in possession of the dominant estate.145

144 LAWS OF ENGLAND, at 242.
145 See id. at 332.
2. **Conservation Easements in Gross**

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—regardless of whether the owner of the easement owns any land. At common law an easement in gross could not be transferred. Today, however, there are many jurisdictions where legislation and more modern trends in the relevant common law have authorized the transferability of easements in gross. Nonetheless, because English common law has not evolved to the point of recognizing easements in gross (as countries following American common law have), these types of easements are also not valid in St. Vincent.

As noted above, both an appurtenant conservation easement and a conservation easement in gross meet the legal criteria for what is known as a negative easement—an easement that prohibits the owner of the servient-estate from doing something. Conservation easements are negative in character because they prevent the owner of the burdened estate from developing the land, typically in any way that would alter its existing natural, open, scenic, or ecological condition. However, while the common law has generally recognized and enforced certain limited types of negative easements, it has generally refused to enforce negative easements in gross. Due to doubts over the validity and transferability of negative easements in gross at common law, statutes have been enacted in most U.S. states authorizing conservation easements—both in gross and appurtenant.

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146 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.

147 Restatement (Third) of Property, Servitudes, §4.6 (T.D. No. 4, 1994), provides that all easements in gross are assignable unless contrary to the intent of the parties. It eliminates the restriction of the first Restatement that only commercial easements in gross are assignable.

148 See LAWS OF ENGLAND, at 235-236.

149 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.
3. 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.”\(^{150}\)

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; (4) maintaining or enhancing air or water quality; or (5) preserving the historical, architectural, archeological, or cultural aspects of real property.”\(^{151}\)

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.\(^{152}\)


\(^{151}\) UCEA, §1(1)—Definitions.

\(^{152}\) § 4, 12 U.L.A. 179.
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.

Just as the UCEA eliminated common law impediments to the functioning of conservation easements in several of the United States, passage of a statute authorizing something akin to the UCEA by the Parliament of St. Vincent would lend a security and efficiency to the creation of conservation easements on the islands that presently does not exist.

B. Easements in St. Vincent

In a case brought before the High Court of Justice the court described a private right of way, or affirmative easement, using a definition from *Halsbury’s Law of England*, 4th Edition, Vol. 14, page 68, which stated that it is “a right to utilize the servient tenement as a means of access to or egress from the dominant tenement for some purpose connected with the enjoyment of the dominant tenement, according to the nature of that tenement.”

Under the laws of St. Vincent, a private right of way easement is a right that belongs to the land, and not to the people. Thus, easements must be appurtenant—there must be a dominant tenement and subservient tenement. Conservation easements in St. Vincent, then, would be subject to many of the same limitations that affected private conservationists in the United States before state legislatures passed statutes authorizing conservation easements.

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153 *Barbour v. Kydd*, Civil Suit No. 606 of 1997, 1, 8-9, (High Court of Justice 2001), available at http://www.ecsupremecourt.org/le/Judgments/2001Judgments/July_01_Judgments/31.07%20%20Richard%20Barbour%20et%20al%20v%20Louise%20Kydd%20et%20al.pdf (hereinafter *Barbour*). (This case involved a land dispute between neighbors over the existence of a private right of way through the plaintiff’s land. The court awarded damages to the plaintiffs and enjoined the defendants from entering the plaintiff’s land, holding that the defendants had no claim of right to use the footpath on the plaintiff’s land) *id.* at 1, 9.

154 *Id.* at 9
Easements exist solely for the benefit of the dominant tenement. Any benefit conferred on the servient tenement must be incidental to the main benefit for the dominant tenement. Upon abandonment of the easement by the dominant owner, the servient owner has no right and cannot attain a right to continue the life of the easement. As in the U.S., the burdens and benefits of the easement “run” with the land when the dominant and servient tenements change ownership.

In general, easements can be positive (affirmative) or negative, continuous or non-continuous, apparent or non-apparent, and of necessity or not of necessity. An easement is non-apparent if “no external sign points to its existence.” The owners of the dominant and the servient estate must be different persons. An easement can only be created by statute or grant, and transfers by disposition inter vivos or by will.

Traditionally, the common law of both the U.S. and England recognized only four categories of negative easements: those in place to protect the flow of light, the flow of streams, the flow of air, and the support of structures on the dominant tenements. According to Halsbury, a negative easement is defined as one that “involves merely a right to prohibit the commission of certain acts upon the servient tenement which the owner of that tenement would have been otherwise entitled to commit.” Another example includes the specific definition of one of the four types of negatives easements; English law defines the easement of light as “a

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155 LAWS OF ENGLAND, at 236.
156 Id. at 236-237.
157 Id. at 237.
158 Id. at 240.
159 Id. at 241.
160 Id. at 243.
161 Id. The only exception concerns easements that exist by custom. However, in these cases, the servitude is not really an easement. The grant can be express, implied, or presumed. Id. at 244 The implied grant of easement is found only in situations in which the dominant and servient tenements were at one time held by the "common ownership of one man." Id. at 252. If the easement is by express grant, it can be created for interests to an estate in fee simple, for life, for years, or for other smaller interests. Id. at 245
162 Id. at 274. It may be distinguished by "release, express or implied, by unity of seisin, by destruction of either tenement, or by statute. Id. at 276.
right which a person may acquire, as the owner or occupier of a building with windows or apertures, to prevent the owner or occupier of an adjoining piece of land from building or placing upon the latter’s land anything which has the effect of illegally obstructing or obscuring the light coming to the building of the owner of the easement. . . .”165 This obstruction must amount to an actual nuisance in order to become actionable.166 Because conservation easements do not fit into the strictly defined traditional categories of negative appurtenant easements, conservation easements would not survive judicial scrutiny in St. Vincent without new statutory law authorizing their existence. An easement is usually created by grant (express, implied, or presumed) or by prescription (comes into effect by common law or by statute). Prescriptions by common law are difficult to prove. The statute that governs prescriptions by statute is the Prescription Act, Chapter 246, which was first enacted in 1869.167 According to the High Court, this statute provides “for the acquiring of an easement by the enjoyment of it for a period of 20 years, or of 40 years.”168

Any interference of the enjoyment of the easement must be substantial in order for an “actionable wrong” to exist.169 Two remedies are available for this wrong.170 Through abatement, the dominant owner may enter the land of the servient tenement in order to remove the obstacle of

164 LAWS OF ENGLAND, at 240.
165 Id. at 298.
166 Id. at 299. The right to light can be created by express grant, either in the form of a covenant or into a quasi-easement that can later become valid. Id. at 303. It can also be created through a parol agreement, or by implication of law, or by prescription. Id. at 303-305. The easement of a watercourse is not the same thing as the grant of the water. It may be “a grant of the easement or the right to the running water, or a grant of the channel-pipe or drain which contains the water, or a grant of the land over which the water flows. . . .” Id. at 310. In terms of negative support easements, every land owner has “the right to prevent such use of the neighboring land as will withdraw the support which the neighboring land naturally affords to his land. . . .” Id. at 219 The easement of air is one in which “the owner of land upon which there are buildings can insist upon the continuance of the free passage of air to apertures in those building . . . and can prevent his neighbor who owns the servient tenement from interfering with the supply of air by building upon that tenement or otherwise. . . .” Id. at 326-327.
167 Id. at 9.
168 Id. at 9.
169 LAWS OF ENGLAND, at 330.
170 Id. at 331.
interference in a reasonable manner.\textsuperscript{171} The remedy through action is allowed for easements created by grant, implication of law, or prescription; any individual in legal possession of the dominant estate may sue for an interference with an easement appurtenant to his estate.\textsuperscript{172} Any relief granted takes the form of damages and/or injunction.\textsuperscript{173} Proof of an illegal action is enough to warrant damages, and the complainant need not prove actual damages.\textsuperscript{174} Injunctions are only granted where the harm is continuous and irreparable.\textsuperscript{175}

C. Real Covenants

A real covenant, under both American and English common law traditions, is generally defined as a promise concerning the use of land that (1) benefits and burdens both the original parties to the promise and their successors and (2) is enforceable in an action for damages.\textsuperscript{176} A real covenant gives rise to personal liability only. It is also enforceable only by an award of money damages, which is collectible out of the general assets of the defendant.\textsuperscript{177} If the promisee sues the promisor for breach of the covenant, the law of contracts is applicable. If, however, a person who buys the promisee’s land is suing, or a person who buys the promisor’s land is being sued, then the law of property is applicable.\textsuperscript{178} The rules of property law thus determine when a successor owner can sue or be sued on an agreement to which he or she was not a party. Two points are essential to understanding the function of these rules. First, property law distinguishes between the original parties to the covenant and their successors. Second, each real covenant has two “sides”—the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{171} Id.
\item \textsuperscript{172} Id. at 332.
\item \textsuperscript{173} Id. at 333.
\item \textsuperscript{174} Id. at 334.
\item \textsuperscript{175} Id.
\item \textsuperscript{176} Promises that restrict permissible uses of land are referred to as negative or restrictive covenants.
\item \textsuperscript{177} This historic remedy for breach of a real covenant is damages, measured by the difference between the fair market value of the benefited property before and after the defendant’s breach.
\item \textsuperscript{178} English courts never extended the concept of real covenants outside the landlord-tenant context. American courts, however, extended it to promises between fee simple owners or neighbors.
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burden (the promisor’s duty to perform the promise) and the benefit (the promissee’s right to enforce the promise).

In order for the successor to the original promissor to be obligated to perform the promise—that is, for the burden to run—the common law traditionally required that six elements must be met: (1) the promise must be in a writing that satisfies the Statute of Frauds; (2) the original parties must intend to bind their successors; (3) the burden of the covenant must “touch and concern” land; \(^{179}\) (4) horizontal privity must exist; \(^{180}\) (5) vertical privity must exist; \(^{181}\) and (6) the successor must have notice of the covenant. In contrast, the common law traditionally required only four elements for the benefit of a real covenant to run to successors: (1) the covenant must be in a writing that satisfies the Statute of Frauds; (2) the original parties must intend to benefit their successors; (3) the benefit of the covenant must touch and concern land; and (4) vertical privity must exist.

The Restatement (Third) of Property (Servitudes) has eliminated a number of these traditional common law requirements. The horizontal privity requirement and the prohibition on third party beneficiaries have been entirely eliminated. Also, the prohibition on covenant benefits in gross, the touch and concern requirement, and the vertical privity doctrine have been replaced with doctrines designed to more effectively accomplish their respective purposes. Pursuant to the Restatement’s approach, a covenant is a servitude if either the benefit or the burden runs with the land. The \textit{benefit or burden} of a real covenant runs with the land where (1) the parties so intend;

\(^{179}\) For the covenant to “touch and concern land,” it must relate to the direct use or enjoyment of the land. A covenant that restricts the development on a parcel meets this requirement.

\(^{180}\) The common law traditionally requires that the original parties have a special relationship in order for the burden to run, called horizontal privity. In some U.S. states, horizontal privity exists between the promisor and the promissee who have mutual, simultaneous interests in the same land (e.g., landlord and tenant). Other U.S. states also extend horizontal privity to the grantor-grantee relationship.

\(^{181}\) Vertical privity concerns the relationship between an original party and his or her successors. Vertical privity exists only if the successor succeeds to the entire estate in land held by the original party.
(2) the covenant complies with the Statute of Frauds; and (3) the covenant is not otherwise illegal or violative of public policy.\footnote{Restatement (Third) of Property (Servitudes) §§ 1.3, 1.4 (2000). Under the Restatement, a covenant burden or benefit that does not run with land is held “in gross.” A covenant burden held in gross is simply a contractual obligation that is a servitude because the benefit passes automatically to successors to the benefited property. A covenant benefit held in gross is a servitude if the burden passes automatically to successors to the land burdened by the covenant obligation. 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, \textit{Highlights of the new Restatement (Third) of Property: Servitudes}, Real Property, Probate and Trust Journal 226, 227 (2000).}{182}

St. Vincent would most likely recognize those iterations of real covenants honored under the English common law, particularly as described in \textit{Halsbury’s Laws of England, 1911}. Thus, St. Vincent most assuredly would recognize those real covenants that meet all of the common law requirements described above; there is little to suggest that the Restatement approach would be honored in St. Vincent.

\textbf{D. Equitable Servitudes}

The primary modern tool for enforcing private land use restrictions is the equitable servitude.\footnote{Traditional common law rules are being distinguished here from the modernized law of servitudes set forth by the Restatement (Third) of Property.}{183} 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.

Under traditional common law rules,\footnote{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.}{184} for the \textit{burden} of an equitable servitude to bind the original promissor’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;\footnote{Restatement (Third) of Property (Servitudes) §§ 1.3, 1.4 (2000). Under the Restatement, a covenant burden or benefit that does not run with land is held “in gross.” A covenant burden held in gross is simply a contractual obligation that is a servitude because the benefit passes automatically to successors to the benefited property. A covenant benefit held in gross is a servitude if the burden passes automatically to successors to the land burdened by the covenant obligation.}{185} (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.

Under the law of servitudes set forth by the Restatement (Third) of Property (Servitudes), there are eight basic rules that govern expressly created servitudes:\(^\text{186}\) (1) a servitude is created by a contract or conveyance intended to create rights or obligations that run with the land if the servitude complies with the Statute of Frauds; (2) the beneficiaries of a servitude are those intended by the parties; (3) servitude benefits held in gross are assignable unless contrary to the intent of the parties;\(^\text{187}\) (4) a servitude is valid if it is not otherwise illegal or against public policy; (5) a servitude is interpreted to carry out the intent or legitimate expectations of the parties, without any presumption in favor of free use of land; (6) servitude benefits and burdens run to all subsequent possessors of the burdened or benefited property;\(^\text{188}\) (7) servitudes may be enforced by any servitude beneficiary who has a legitimate interest in enforcement, whether or not the beneficiary owns land that would benefit from enforcement; and (8) servitudes that have not been terminated may be enforced by any appropriate legal and equitable remedies.

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\(^\text{186}\) As noted above, under the “integrated approach” adopted by the Restatement (Third), easements, real covenants, profits and equitable servitudes are all categorized as servitudes.

\(^\text{187}\) Restatement (Third) of Property (Servitudes) § 2.6 (1)–(2) (2000). Early law prohibited the creation of servitude benefits in gross and the creation of servitude benefits in persons who were not immediate parties to the transaction. However, under the Restatement (Third) of Property (Servitudes), the benefit of a servitude may be created to be held in gross, or as an appurtenance to another interest in property. Also, the benefit of a servitude may be granted to a person who is not a party to the transaction that creates the servitude.


Courts have also held that developers are entitled to enforce covenants after selling all their lots if intended to have the power to do so. See, e.g., Riverbank Improvement Co. v. Bancroft, 209 Mass. 217, 95 N.E. 216 (1911); Christiansen v. Casey, 613 S.W.2d 906 (Mo.Ct.App.1981).

Even where a conservation easement is not authorized by statute, courts have recognized the benefit in gross as a valid and enforceable interest. See e.g., Bennett v. Commissioner of Food and Agriculture, 576 N.E.2d 1365 (Mass.1991) (where beneficiary of a restriction is the public and restriction reinforces a legislatively stated public purpose, old common law rules barring creation and enforcement of easements in gross have no continuing force; question is whether bargain contravened public policy when made and whether enforcement is consistent with public policy and reasonable).

\(^\text{188}\) Special rules govern servitude benefits and burdens that run to life tenants, lessees, and persons in adverse possession who have not yet acquired title.
St. Vincent follows traditional English common law, which recognizes equitable servitudes only when equitable principles would so require. Thus, equitable servitudes are a possible, albeit tenuous, tool for private conservation in St. Vincent.

E. Profits à Prendre

A profit à prendre (or 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.\textsuperscript{189} Although it is not commonly used for conservation purposes, profits à prendre have the potential to facilitate the conservation of private lands. For instance, a landowner that 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.\textsuperscript{190} 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 à prendre to anyone—there is no requirement that the holder of a profit à prendre own adjacent property.\textsuperscript{191}

A landowner creates a profit à prendre by granting it in writing to the profit à prendre holder. The landowner specifies precisely what the holder is allowed to enter the land to take. Once the landowner has granted a profit à prendre, he or she must respect its terms. The profit à prendre holder can sue if the owner deals with the land in a way that detracts from the rights of the profit à prendre holder. The landowner specifies precisely what the holder is allowed to enter the land to take. Once the landowner has granted a profit à prendre, he or she must respect its terms. The profit à prendre holder can sue if the owner deals with the land in a way that detracts from the rights of the profit à prendre holder.

\textsuperscript{189} 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.

\textsuperscript{190} 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.

\textsuperscript{191} Profits à prendre of this kind are called {	extit{profits en gross}}.
prendre holder. The holder of a profit à prendre can also sue anyone interferes with the profit à
prendre.\textsuperscript{192}

A profit à prendre document is designed to outlive the landowner—and perhaps even the
profit à prendre holder. In creating a profit à prendre, it is thus essential to consider potential
conflicts between a landowner and a profit à prendre holder and describe exactly what the parties
intend in the document itself. To protect the profit à prendre holder if the land is subsequently sold,
the profit à prendre should be registered in the appropriate land title office. The profit holder can
lease, sell, give away or bequeath the profit à prendre to someone else. The holder can also
terminate a profit à prendre by giving a written release to the landowner, which would then be
registered in the land title office.

English common law recognizes the previously delineated characteristics and treatments of profits.
Because these servitudes have long been recognized under the common law of England, they most
likely could be serviceably employed for conservation purposes in St. Vincent.

F. Purchased Development Rights

In the U.S., 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
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.\textsuperscript{193}

\textsuperscript{192} 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.

\textsuperscript{193} 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
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.

It is not clear to what extent the laws of St. Vincent would accommodate PDR programs. For a definitive take on this, more research is needed. However, since conservations easements are employed in this practice, it is unlikely that PDR programs would be successful under the property laws of St. Vincent as they currently exist.

G. 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.¹⁹⁴

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 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 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).

¹⁹⁴ See ELI, at 30. 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 arrangement would provide the landowner with ongoing control over land use while providing some security of tenure to the conservation NGO.
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.

It is likely that the laws of St. Vincent would accommodate leaseback programs and reserved life interests, which are a type of interest long recognized under the British common law. However, more research would be required to definitively make this assertion.

V.   CONSERVATION LEGISLATION AND INCENTIVES

A.   The Forest Act

One the Parliamentary Acts that specifically relates to land conservation and is currently in force in Saint Vincent is the Forest Act. 195 Under this Act the Governor-General may “provisionally declare any Crown land to be a forest reserve, and thereafter no land shall be granted, devised or sold within such forest reserve.” 196 Following the required survey for a provisional forest reserve, the Governor-General may then issue an order overriding the provisional declaration and making the surveyed area a forest reserve. The Act calls for the publication of these orders, as well as the survey maps, in the Gazette. 197 The Chief Forest Officer, manager of all Crown lands, is charged with the task of marking out the boundaries of the forest reserve to ensure that no land within it is granted, devised or sold. 198

196 Id. at § 6. Crown lands are defined as the waste or vacant land of the Crown and “all lands vested in Her Majesty, whether by forfeiture, escheat, purchase or exchange but shall not include any land vested in any statutory authority…” Id. at § 2.
197 Id. at § 7.
198 Id. at § 8.
Additionally, the Act provides that a private land owner may notify the Chief Forest Officer of his desire that his land be managed by the Chief Forest Officer in a manner agreed upon, and that any part or all of the Forest Act be applied to his land in order to promote the formation or conservation of forest or the conservation of natural resources.\textsuperscript{199} Thus private landowners may use the Act to further their own conservation endeavors.

The following areas have been declared provisional forest reserves under the Act: King’s Hill Forest Reserve, Central Forest Reserve, Soufriere Forest Reserve, Mesopotamia Forest Reserve, and Colonarie Forest Reserve. Both Mesopotamia Forest Reserve and Colonarie Forest Reserve were also declared prohibited areas.\textsuperscript{200}

\textbf{B. The Forest Resource Conservation Act}

The Forest Resource Conservation Act provides for the conservation, management and proper use of St. Vincent’s forests and watersheds; the declaration of forest reserves, cooperative forests and conservation areas; the prevention and control of forest fires; and for matters connected with those purposes.\textsuperscript{201} The Act establishes the Forestry Department and a Director of Forestry who is in charge of the administration of the Department and the enforcement of the provisions of the Act.\textsuperscript{202}

The Act requires the Director of Forestry to prepare a National Forest Resource Conservation Plan for the Minister at intervals of ten years. The purpose of this conservation plan

\textsuperscript{199} \textit{Id.} at § 9. It should be noted that persons guilty of forest offenses may be fined by a magistrate and forced to forfeit the property being used improperly. \textit{Id.} at § 12.


\textsuperscript{201} Forest Resource Conservation Act, 1992 (hereinafter Forest Resource Conservation Act).

\textsuperscript{202} \textit{Id.} at § 4. His functions include “the conservation, management and development of forests,” “the preparation and implementation of the national forest resource conservation plan, individual forest management plans and conservation plans,” “the protection and preservation of water resources in forest reserves, co-operative forests, conservation areas and along streams and rivers in co-operation with the Central Water and Sewerage Authority and St. Vincent Electricity Services,” “the promotion of the practice of forestry and agro-forestry in agricultural, pastoral and other areas in conjunction with the relevant divisions of the Ministry of Agriculture and the encouragement of proper forestry practices and management on private land through advice and assistance,” “the survey, establishment, management, development and administration of forest reserves,” and “the protection of the natural landscape to maintain the visual quality of the environment on Crown land,” among other things. \textit{Id.} at § 5.
is “to co-ordinate activities on all forest reserves, conservation areas and co-operative forests.”

Prior to submitting the plan to the Minister, the Director of Forestry must submit it to the following groups for comment: the Department of Agriculture, the Central Planning Unit, the Central Water and Sewerage Authority, St. Vincent Electricity Services, the National Trust, and other private conservation organizations and government agencies as the Director deems fit. After the plan is returned to the Minister for further comment and revision, the Minister submits it to the Cabinet, which may amend the plan, approve it, or return it to the Minister for additional more revision.

Under the Act the Minister may declare any area of Crown land to be a forest reserve, by order in the Gazette, for the following reasons: the sustained production of timber and water, the conservation of soils, public recreation, and the preservation of flora and fauna. Moreover, the Minister may declare any area within a forest reserve to be a protected area where the harvesting of timber or other forest produce is prohibited (or other development and exploitation), except for the maintenance of trails.

The Act also discusses the establishment of and rules governing Conservation Areas. The Minister may declare any area of land, whether private, Crown or both, to be a conservation area after consulting with the Planning Board and by Order in the Gazette for the following reasons:

- the area requires the implementation of conservation practice and management controls to prevent or limit sedimentation, pollution or erosion in order to maintain a clean and reliable supply of water for domestic, industrial and commercial use;

- the area requires the implementation of conservation practices and management controls in order to maintain the soil or water resources in a productive state for agricultural development and the productivity or stability of surrounding areas;

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203 Id. at § 6.
204 Id. at § 7.
205 Id. at § 8.
206 Id. at § 10.
207 Id. at § 12.
• the area is in a dangerous or unstable state above roadsides, along river and stream banks, or near residential or industrial area;

• the water resources of the area are in a polluted condition which may be injurious to the health of human beings, animals or plants. 208

No forest reserve land can be granted, devised, or sold, but land may be leased under certain conditions. 209 These conditions include the Minister finding the lease to be in the public interest and not in conflict with the original purpose of the reserve. The term of lease cannot exceed five years. It must be in writing and enumerate the purpose for the use of the land. 210

Private landowners interested in devoting their property to conservation purposes may also benefit from provisions of the Forest Resource Conservation Act. The Minister may enter into agreements with private landowners declaring private land a cooperative forest for a term of years in order to manage, maintain and use a forest plantation or natural forest for the production of timber and other forest produce, soil and water conservation, plant and wildlife conservation, and public recreation. 211 The agreement for the co-operative forest must: (1) describe the area; (2) be in writing by the owner or by an authorized agent on behalf of the owner and by the Director of Forestry on behalf of the Government; (3) contain a plan, if appropriate, indicating agricultural activity; (4) contain a plan, if appropriate, for soil, water and wildlife conservation; (5) contain a plan, if appropriate, for the reimbursement of the Government for reasonable costs of administration, planning and management costs; and (6) specify the responsibilities of the Government and the owner. 212 The Director of Forestry “may make reasonable charges to owners

208 Id. at § 19.
209 Id. at § 10-11.
210 Id. at § 11.
211 Id. at § 15.
212 Id. at § 16.
of private lands for services rendered having regard to the cost of such services and the forest policy of the Government.\textsuperscript{213}

C. Tax Incentives Under the UCEA

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—

\begin{itemize}
\item[a.] to a governmental entity or charitable organization that meets certain public support tests; and
\item[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.\textsuperscript{214}
\end{itemize}

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.\textsuperscript{215} In addition to federal tax incentives, U.S. landowners can frequently take advantage of a variety of state tax incentives.

\textsuperscript{213} Id. at § 18.
\textsuperscript{214} IRS Code, § 170(h).
\textsuperscript{215} 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.
Because St. Vincent’s legislation currently allows certain tax exemptions for private landowners engaging in conservation practices, it is quite conceivable that the legislature would authorize tax incentives geared specifically toward the creation and preservation of conservation easements if a conservation easement is passed.

D. Tax Incentives in St. Vincent

Several tax acts could potentially be used as incentives for private lands conservation in St. Vincent. Under the Land Tax Act, which consolidated the law of management assessment and collection of land taxes, the Governor-General “may exempt from taxes, for such period and subject to such conditions as may be deemed expedient, any area of land the forest growth on which it is deemed necessary to protect or foster.” However, the Land Tax Act also provides an exemption for agricultural parcels less than five acres, so long as the owner does not own other parcels of land and the primary use of the land during the tax year is for agriculture. Thus, a potential difficulty with using this Act for tax incentive purposes for private lands conservation would be that small agricultural landholders may already be taking advantage of the tax exemption for farming.

Another tax act that may prove helpful as a basis for tax incentives is the Duties and Taxes (Exemption in the Public Interest) Act. Under this Act, the Cabinet may grant exemptions from any duties and taxes to any individuals or groups if it believes that doing so would be in public’s

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216 Land Tax Act, Laws of Saint Vincent and the Grenadines, Chapter 316 (1990) (hereinafter Land Tax Act). The definition of “land” encompasses “any plantation, estate or other land whatsoever, whether cultivated or uncultivated, and all other land not included in the definition of “property” in the Valuation and Rating Act,” and “owner” is defined to include “owner, lessee, occupier, trustee, receiver, attorney, manager or any other person in charge of, or having the control of, any land on the 1st January in each year.” Id. at § 2.

217 Id. at § 6.

best interest.\textsuperscript{219} Therefore, it appears that the forgiveness of other taxes, such as income taxes, could be used as a tax incentive for private lands conservation through this Act.

E. Additional Relevant Statutes

1. **Roads, Chapter 356**

The purpose of this Act is to provide for roads. The Chief Engineer is allowed to take possession of the land of any private owner for public purposes with the approval of the Governor-General and with compensation for the private landowner.

2. **Saint Vincent and the Grenadines Trust Authority Act, Chapter 114**

This Act serves to establish the Saint Vincent and the Grenadines Trust Authority. It provides for the registration of certain trusts on payment of specified fees in lieu of income tax.

3. **Saint Vincent and the Grenadines Agricultural Development Corporation (Dissolution and Transfer of Assets and Liabilities) Act, Chapter 73**

This Act, as of December 1, 1989, dissolved the Saint Vincent and the Grenadines Agricultural Development Corporation and transferred all of its assets and liabilities to the Ministry of Trade, Industry and Agriculture.

4. **Labourer’s Occupancy of Land Regulation Act, Chapter 240**

The purpose of this Act is “to provide for the termination of the occupancy of land held incidental to service and for the appraisement and payment of the value of growing crops on such land.”

5. **Licences Act, Chapter 267**

Under this Act, no individual is entitled to sell, or offer for sale, by auction any land unless licensed in that behalf by the Director of Finance and Planning. However, any person selling, under instructions from the Crown, either Crown property or property seized by the Crown, or any officer

\textsuperscript{219} Id. at § 2.
selling any property under the order of any court, is exempt from the auctioneer licensing requirement.

6. **Administration of Estates Act, Chapter 377**

This Act replaces certain legislation relating to the administration of estates and consolidates certain domestic legislation. Under the act, applications for “grant of probate or administration and for revocation of grants may be made to the Registry of the Court, Kingston.”

7. **Administration of Estates by Consular Officers Act, Chapter 378**

Under this Act, when citizens of states other than Saint Vincent die leaving property within Saint Vincent and the Grenadines, and no person is present in Saint Vincent and the Grenadines at the time of his death who is rightfully entitled to administer the estate of such deceased person, a consular agent of such state within Saint Vincent and the Grenadines may take custody of the property and apply it in payment of his debts and funeral expenses. The agent may retain the surplus, if any, for the benefit of the persons entitled to it.

8. **Estate and Succession Duties Act, Chapter 380**

In addition to imposing an estate duty on the principal value of all property, settled or not, that passes upon the death of a person, St. Vincent levies a further duty called succession duty.
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*These materials are available in hard copy form in an Appendix to this report.*

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* These materials are available in hard copy form in an Appendix to this report.