

# **TURKS AND CAICOS ISLANDS**



## **FINAL REPORT CONSULTANCY FOR THE IMPLEMENTATION OF THE TURKS AND CAICOS CROWN LAND POLICY**

**— FEBRUARY 2008 —**

**Prepared for:**

**THE MINISTRY OF NATURAL RESOURCES  
OF THE  
TURKS AND CAICOS ISLANDS GOVERNMENT**

**Prepared by:**



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## CHAPTER ONE

### FINAL REPORT OF THE CONSULTANCY

#### A. Background to the Consultancy

- 1.1 The Crown is the largest landholder in the Turks and Caicos Islands (TCI). This makes Crown Lands the Government's most valuable tangible asset, and places an obligation on government agencies responsible for Crown Land Management to address both immediate and medium to long term planning needs. The potential value of Crown Land has risen dramatically over the years and this increase is likely to continue. It is therefore important that the administrative rules and standard practice concerning Crown Land allocation, pricing and management, which have been evolving over the years, be consistent with addressing the needs of economic and social development while at the same time preserving the environmental, TCI's greatest natural resource. Crown Land policy should also provide long term benefit to Belongers, both in terms of increasing their role in commercial land development and helping them gain access to land for residential purposes.
- 1.2 In 2005, the Turks and Caicos Islands Government (TCIG) completed a comprehensive study on Crown Land Management which examined the then current Crown Land policy and produce recommendations for a future comprehensive approach which maximizes sustainable revenues from Crown Land, takes account of competing economic, social and environmental factors, benefits the long term economic and social interests of the Belonger Community and ensures transparency and openness in the administration of Crown Land. In part as a result of the recommendations from this study, the TCIG approved a new Crown Land Policy which states 21 key principles and actions in respect to Crown Land and began discussions with Terra Institute, Ltd. to support them in taking the technical, institutional and legislative steps to begin the implementation of this Policy through the Ministry of Natural Resources.
- 1.4 On July 18<sup>th</sup>, 2007 the Ministry of Natural Resources and the Terra Institute. Ltd. entered into a Contractual Agreement for the completion of a Consultancy in Crown Land Policy Implementation. During the time period of August to November 2007 Terra Institute, Ltd. deployed a team of land and property right specialists to assist the Ministry of Natural Resources in completing the design, development and initiation of urgent aspects of the Turks and Caicos Crown Land Policy.
- 1.5 Discussions with the Minister and Permanent Secretary of the Ministry of Natural Resources, key technical staff of the Ministry and the Governor's Office determined that the key/urgent aspects of the Crown Land Policy were:
  - (i) the establishment, staffing and technical and managerial training of a Crown Land Management Unit within the Ministry;
  - (ii) the preparation of a Crown Land Policy Procedures Manual; and
  - (iii) completion of the technical legal analysis requires to support the drafting and presentation to Government of a Crown Land Ordinance.

- 1.6 A fourth key/urgent aspect of the Crown Land Policy Implementation; the design, development and installation of an integrated information management system for land administration, specifically the development of a TCI Parcel Information Management System or PIMS which would link the information of the Land Registry, the Lands and Surveys Department, the Valuation Unit and the newly formed Crown Land Unit and strengthen the information management links between these offices and the Physical Planning Department, was not included in the Consultancy as the TCIG took the decision to execute this information systems design and development work through a different service provider.
- 1.7 To address the scope of work required, the Terra Institute, Ltd. assembled the following team of land and real property specialists to complete the analysis, training and deliver the documents requested by the Ministry:

**Mr. Kevin Barthel:** American Geographer living in the United States – responsible for overall technical management and the preparation and presentation of the final results of the Consultancy.

**Dr. Thackwray Driver:** British Geographer living in Trinidad and Tobago – responsible for the analysis of all institutional aspects of the Consultancy, including determining the organizational structure and technical and human resource needs of the Crown Land Unit, preparation of Position Descriptions and performance evaluation criteria for managerial and technical staff, prepare recommendations on staff training needs and salary levels and preparation of Calls for Consultants to fill Crown Land Unit positions;

**Mr. Sean Johnson:** British Surveyor, a member of the Royal Institute of Chartered Surveyors and expert in the field of cadastral surveying, land administration including land title and deeds registration systems, adjudication of real property rights and regularization of land tenure, allocation of state/public land, global positioning systems and geographic information systems. Mr. Johnson will serve as the Crown Land Specialist and is responsible for the Crown Land allocation and procedures manual

**Prof. Tom Johnson:** New Zealand Property Rights Attorney and University Professor living in Canada – responsible for the legal aspects of the Consultancy, including the technical/legal analysis of the overarching legislation and legal norms and regulations related to the management, allocation, pricing, granting and leasing of Crown Land, and the preparation of recommendations, supporting documentation and legal materials for the eventual



drafting of a Crown Land Ordinance by the TCIG Attorney General's Office; and

**Prof. Grenville Barnes:** South African Survey Engineer and University Professor living in Florida – responsible for the presentation of a one-day technical Seminar on cadastral theory and practice as related to the surveying of Crown Land.

**Mr. Walter Volkmann:** Namibian Land Surveyor and Geodesist living in Florida – responsible for making a presentation on GPS geodetic infrastructure and the use of innovative tools for cadastral systems during the one-day technical seminar on cadastral theory and practice.

1.8 The specific deliverables of the Consultancy which have been completed and included in this Final Report are:

- (i) organization description, organizational structure and individual Position Descriptions (Terms of Reference) for the managerial and technical staff required at the Crown Land Unit – **COMPLETED, CHAPTER TWO OF THIS REPORT;**
- (ii) one-day technical Seminar on the principles of cadastral surveying including the use of Global Positioning Systems (GPS) for national geodetic infrastructure and the collection and processing of survey data related to Crown Land parcel surveys – **COMPLETED, PRESENTATIONS INCLUDED IN ANNEX OF THIS REPORT;**
- (iii) Technical and Administrative Manual for the Allocation and Management of Crown Land – **COMPLETED, CHAPTER THREE OF THIS REPORT;**
- (iv) a technical and legal analysis of existing land legislation and Crown land Policy and the preparation of drafting instructions and legal notes to support the drafting, by the TCIG Attorney General's Office, of a Crown Land Ordinance – **COMPLETED, CHAPTERS FOUR AND FIVE OF THIS REPORT;**
- (v) one day Seminar on the Technical and Administrative Manual and proposed draft legislative notes for the proposed Crown Land Ordinance – **COMPLETED PRESENTATIONS INCLUDED IN ANNEX OF THIS REPORT;**
- (vi) an Interim Report presenting the activities of the Consulting Team including initial recommendations of the Project Manager, Institutional Specialist and the Legal Specialist – **COMPLETED, PRESENTED IN OCTOBER 2007;** and
- (vii) a Final Report for the Consultancy (this Report) that presents the activities of the Consulting Team, final recommendations from the Team and the technical

documents required under the Contract – ***COMPLETED, CHAPTER ONE OF THIS REPORT.***

B. Description of the activities completed

1.9 The following Table presents the completed Consultant visits to the Turks and Caicos.

CONSULTANT AND ACTIVITY	Days	JULY 2007		AUGUST 2007				SEPTEMBER 2007				OCTOBER 2007		
		22-28	29-4	5-11	12-18	19-25	26-1	2-8	9-15	16-22	23-29	30-6	7-12	14-20
<b>BARTHEL:</b> Project Management	13													
<b>T. JOHNSON:</b> Legal Specialist	16													
<b>DRIVER:</b> Institutional Specialist	20													
<b>S. JOHNSON:</b> Crown Land Specialist	26													
<b>BARNES:</b> Cadastral Surveyor/Training	4													
<b>VOLKMANN:</b> Geodetic Surveyor/Training	4													

1.10 Throughout the Consultancy the Honourable Minister and Permanent Secretary, as well as the technical staff of the Ministry of Natural Resources and other TCIG agencies, have been extremely helpful in accommodating the multiple visits of the Terra Institute Team, namely Dr. Johnson in July, Mr. Barthel and Dr. Driver in August, Mr. Sean Johnson at the end of September and Mr. Barthel, Dr. Tom Johnson, Dr. Grenville Barnes and Mr. Walter Volkmann in October.

1.11 Among the most instructive and useful aspects of the Consultancy were the Seminars held in the Premier's Conference Room on the 16<sup>th</sup> and 17<sup>th</sup> of October. The Final Agendas of these Seminars are presented below and it should be noted that the attendance and participation at each of these Seminars by both government representatives and the public sector was truly impressive. In fact, the Cadastral Surveying Seminar attracted an 'overflow crowd' of private sector surveyors from throughout the Islands to share experiences and discuss issues of introducing Global Positioning Systems (GPS) technology into the Crown Land survey practice with surveyors and administrators and legal specialists from the Government. The interchange between specialists from different backgrounds related to Crown Land

proved to be quite informative to the Consulting Team and the participants themselves. The Legal and Crown Land policy Seminar featured a very good debate between Government representatives and the Consultants in respect to various aspects of the authority of the Ministry as related to the allocation of Crown Land. Both of these Seminars reiterated the interest of the government staff in understanding the fine points of the policy that they will be responsible for implementing on a daily basis, as well as the need for additional discussion and dissemination of information regarding the details of and plans for implementation of the Crown Land Policy. The Seminars point to the need for:

- 1) continued internal (TCIG) and external (public) dissemination of information on the Crown Land Policy;
- 2) additional preparation of Crown Land management staff in policy, legal, administrative and technical aspects of land information management and administration; and
- 3) additional preparation and awareness of government and private sector surveyors in use of modern land surveying and land information management.

**CROWN LAND LEGAL AND ADMINISTRATIVE PROCEDURES SEMINAR**  
**Grand Turk, TCI**  
**Tuesday, October 16<sup>th</sup> 2007**

**(MODERATOR: Kevin Barthel, Project Manager – Terra Institute Ltd.)**

TIME	ITEM	DISCUSSANT
10:00 – 10:15a.m.	<i>INTRODUCTION TO SEMINAR</i>	Ms. Judith Campbell Permanent Secretary Ministry of Natural Resources
	Describe format and scope of Seminar	Ms. Alice Williams Commissioner of Land Ministry of Natural Resources
10:15 – 11:15a.m.	<i>LEGAL ASPECTS OF IMPLEMENTING THE CROWN LAND POLICY</i>	Prof. G. Thomas Johnson Legal Specialist Terra Institute, Ltd. and Professor of Law York University, Toronto Canada
11:15 – 11:30 a.m.	<i>Tea Break</i>	
11:30 – 12:30 p.m.	<i>DRAFTING INSTRUCTIONS FOR A TURKS AND CAICOS CROWN LAND ORDINANCE</i>	Prof. G. Thomas Johnson
12:30 – 2:00 p.m.	<i>Lunch</i>	
2:00 – 3:00 p.m.	<i>PROPOSED CROWN LAND PROCEDURES AND MANUAL</i>	Sean Johnson MRICS Crown Land Consultant

3:00 – 4:00 p.m.	<i>DISCUSSION OF CROWN LAND PROCEDURES AND MANUAL</i>	Terra Institute Ltd.
4:00 – 4:15 p.m.	Wrap-up	Kevin Barthel Project Manager Crown Land Consultancy Terra Institute Ltd.

## CADASTRAL SURVEYING SEMINAR

Grand Turk, TCI

Wednesday, October 17<sup>th</sup> 2007

**(MODERATOR: Kevin Barthel, Project Manager – Terra Institute Ltd.)**

TIME	ITEM	DISCUSSANT
8:30 – 9:00 a.m.	<i>INTRODUCTION TO SEMINAR</i>	Ms. Judith Campbell Permanent Secretary Ministry of Natural Resources
	Describe format and scope of Seminar	Leroy Charles Chief Surveyor Lands and Survey Department Ministry of Natural Resources
9:00 – 9:40 a.m.	<i>CADASTRAL PRINCIPLES</i> - fundamentals - survey data as evidence - legal boundary principles	Grenville Barnes Survey Consultant Terra Institute Ltd. and Associate Professor of Geomatics University of Florida
9:40 – 10:30 a.m.	<i>GLOBAL NAVIGATION SATELLITE SYSTEMS- GPS (GNSS-GPS) TECHNOLOGY</i> - evolution of GPS/GNSS technology - positioning techniques - accuracy versus costs	David George, Ian Mergatroyde Trimble Navigation Westminster, Colorado, USA
10:30 – 10:45 a.m.	Tea Break	
10:45 – 11:30 a.m.	<i>GEODETIC INFRASTRUCTURE</i> - what's required to get GNSS infrastructure up and running - what are the options and emerging solutions	Walter Volkmann Manager of Technical Operations L D Bradley Land Surveyors Gainesville, Florida USA
11:30 – 12:30 p.m.	Discussion	

TIME	ITEM	DISCUSSANT
12:30 – 2:00 p.m.	<i>Lunch</i>	
2:00 – 2:30pm	<i>PROPOSED CROWN LAND PROCEDURES</i>	Sean Johnson MRICS Crown Land Consultant Terra Institute Ltd.
2:30 – 3:00 p.m.	<i>GPS-BASED CADASTRAL SURVEYING</i> - design and testing - methodology - implementation issues	Grenville Barnes
3:00 – 3:30 p.m.	INNOVATIVE TOOLS FOR CADASTRAL SYSTEMS - Geo-Exploration Tools - Field/office Convergence	Walter Volkmann
3:30 – 3:45 p.m.	Tea Break	
3:45 – 4:15 p.m.	Question and Answers/Discussion	Kevin Barthel Project Manager Crown Land Consultancy Terra Institute Ltd.
4:15 – 4:30 p.m.	Wrap-up	

C. Recommendations for follow-up by the Ministry of Natural Resources

- 2.2 While the Crown Land Policy has been adopted by TCIG since November of 2006 and the Consultancy was intended to address the key/urgent aspects of its implementation, another important part of the Consultancy was to provide the Ministry of Natural Resources with recommendations to expedite the implementation of the policy and to improve the management of Crown Land as well as land administration in general. The following Table presents some specific recommendations for follow-up work that the Terra Team believes are important to the overall objective of implementing the Crown Land Policy.
- 2.3 A number of the ‘Suggested Ways Forward’ presented in the following Table propose an extension to the Terra Institute Contract to provide additional consultant input, technical assistance and specialized services and specific products. As originally discussed with the Governor, the Minister and the Permanent Secretary during the initial visit of Mr. Barthel to Providenciales in October 2006, Terra Institute would like the opportunity to be a close partner with the TCIG and the Ministry of Natural Resources to assist in the full implementation of the Crown Land Policy. As mentioned many times previously, the Crown Land resources of the Turks and Caicos Islands represent not only the main financial resource of the Islands, but also the people’s National Heritage. Sustainable development and protection of this resource,

while using it to empower individuals and build the Turks and Caicos Islands, is an important responsibility for the current Government. Government should seek expert advice in this endeavour and Terra Institute has the experience and ability to help in the TCIG the medium and long-term with progressive and thoughtful recommendations and most importantly direct assistance in the execution of these recommendations. As all parties realize, the full work of implementing the Crown Land Policy has not been completed with the submission of this report, the establishment of the Crown Land Department or the approval of a Crown Land Ordinance. Given the background and knowledge base Terra has gained, the good working relationship that has been developed with the Ministry and the strong multidisciplinary support Terra can bring to the continued steps of implementation – the Terra Institute stands ready to assist the Ministry in the next steps in implementing the Crown Land policy and improving overall land administration in the Turks and Caicos Islands.

## KEY FINAL RECOMMENDATIONS AND SUGGESTED ‘WAY FORWARD’

TOPIC AREA	RECOMMENDATION	SUGGESTED WAY FORWARD
<b>INSTITUTIONAL</b>	<b>INTERNATIONAL ADVISOR [CHANGE-MANAGER] TO COMMISSIONER OF LAND:</b> As part of its establishment and staffing of the Crown Land Department, the Ministry of Natural Resources should consider creating and filling the position of International Advisor [Change Manager] to advise and assist the new Commissioner of Crown Lands in the establishment of the new Crown Lands Department, to provide coaching to the new Commissioner and to the professional and technical staff of the Department, to advise on the refinement and further development of the new Crown Land Policy, to assist the Permanent Secretary on a technical basis to guide the preparation and presentation of the Crown Land Bill and complete the modification of the Crown Land Procedures Manual once the Crown Land Ordinance is approved.	Terms of Reference for this Advisor position have been drafted and are included in Chapter Two of this Report. Terra Institute has provided similar International Advisors to governments throughout the World and could be retained to work with the Ministry to identify and vet suitable candidates and provide the services of a highly qualified “Change Manager” with demonstrated and successful directly similar experience.

TOPIC AREA	RECOMMENDATION	SUGGESTED WAY FORWARD
	<p><b>PUBLICIZE AND PROMOTE THE CROWN LAND POLICY:</b> The Crown Land Policy has been approved and in-effect since November 2006, however, the Consultancy in general and the Seminars in particular demonstrate that there is very little general or specific knowledge of the Policy in either the public or private sector. The Crown Land Policy is an achievement of the TCIG and should be publicized as such. A series of Town Hall Meetings should be completed to raise the level of awareness and acceptance of the Crown Land Policy and the administrative procedures.</p>	<p>The Terra Institute could organize and provide these Town Hall Meeting on the Crown Land Policy in several of the Turks and Caicos Islands to promote and explain the details of the Crown Land Policy and to obtain stakeholder feedback that would inform the Ministry to improve implementation of the Policy (Terra has recently completed ten similar land policy outreach events in The Bahamas, including organizing and holding a National Policy Dialogue in November, 2007).</p>
	<p><b>DESIGN AND INITIATE A TRAINING PROGRAM FOR THE PERSONNEL OF THE CROWN LAND DEPARTMENT:</b> The institutional analysis portion of the Consultancy and the Seminars have shown that the technical capacity of the to be formed Crown Land Department, and related agencies will have to be strengthened in order to implement the Policy as envisioned by the Ministry of Natural Resources. Unfortunately no multidisciplinary and relevant training course or program exists in the TCI. While TCIG sponsors one of the Caribbean’s best educational programmes, sending staff abroad for training and certification at the degree level means that the staff members are unavailable for work in TCI for multiple years. It is, therefore, recommended that the Government design and implement a targeted training program, based around practical courses, to be delivered in a series of intensive short (one week) components over a one year period. A specific course list has been developed and is included as Attachment IV in Annex C</p>	<p>The Terra Institute could work with the Ministry to design, develop and execute a specialized training program short practical courses in Providenciales and Grand Turk. Given Terra’s unique relationship with the University of Wisconsin-Madison and University of Florida, as well as collaborative ties with Professors from other universities in the USA, Canada and the Caribbean, Terra could take the measures required to have these courses certified under degree programs at these Universities. It is clear that Terra is a unique position to help TCIG with their training needs now and into the future.</p>

TOPIC AREA	RECOMMENDATION	SUGGESTED WAY FORWARD
	of Chapter Two of this Report.	
<b>LEGAL</b>	<p><b>COMPLETE THE DRAFTING OF A CROWN LAND BILL:</b> The need to draft and pass a Crown Land Ordinance was the main recommendation of the Crown Land Policy Consultancy completed in 2005. The current Consultancy has now produced a thorough legal analysis, completed a Legal Seminar to discuss the issues in respect of the preparation of a Crown Land Ordinance and has completed the drafting instructions for the Attorney General Department to use in preparing the Ordinance. However, given the urgency of this Ordinance, the Ministry of Natural Resources should directly support the Attorney General's Department with technical assistance to draft the Ordinance.</p>	<p>Terra Institute has provided direct legal assistance to the Attorney General's Department legal drafting sections in Trinidad and Tobago and Terra Associates have provided this specialized legal assistance in The Bahamas, Trinidad and Tobago, Guyana, Barbados and Malawi. Terra could be retained to build upon the legal analysis and drafting instructions to actually work hand-in-hand with the Attorney General's Department to ensure a timely and comprehensive drafting of the Crown Land Bill, as well as to support the preparation of Orders, Forms and Regulations and prepare modifications to all affected subsidiary legislation.</p>
	<p><b>PROHIBITION AND PUNITIVE ACTIONS TO ELIMINATE 'FRONTING' SHOULD BE INCLUDED IN THE CROWN LAND ORDINANCE:</b> The Crown Land Administrative Procedures and drafting instructions for the Crown Land Ordinance include mechanisms for Identifying 'Fronting' these should include punitive actions (fine, revocation of professional license or loss of Belonger status - if not natural Belonger).</p>	<p>As mentioned various times during the Legal and Administrative Seminar, the approval of the Crown Land Policy and the drafting of a Crown Land Ordinance provide the TCIG with the opportunity to take on the act of 'Fronting' directly so as to preserve land for future generations, protect the natural environment and to set the base for empowering Belongers. During final legal drafting, the Attorney General must take all necessary legal actions to include mechanisms and punitive actions to prohibit 'Fronting'. An independent Legal Advisor retained through Terra Institute could provide the Ministry with the 'non-biased' perceptive needed on this issue, as well as to bring to bear international best-practices to address this controversial and oftentimes contentious issue.</p>



TOPIC AREA	RECOMMENDATION	SUGGESTED WAY FORWARD
	<p><b>MONTHLY PUBLICATION OF CROWN LAND ALLOCATIONS:</b> Publication of allocations of Crown Land was a key recommendation of the previous Crown Land consultancy and has been fully included in the Crown Land Policy. Yet, as demonstrated in the Seminars, to-date there has been no publication of allocations. The Procedures Manual and the drafting instructions include the specific articles and procedures for this publication, as well as the mechanisms for ensuring that this monthly publication indeed takes place.</p>	<p>This was a key policy agreement between the TCIG, the Governor's Office and the Belonger Panel and is one of the fundamental principles of fairness and transparency in the allocation of Crown Land. Therefore, at the risk of affecting the credibility of the Policy, the Manual and the overall effort in reform spearheaded by the Ministry, the publishing of these allocations should not be ignored.</p>
<p><b>INFORMATION MANAGEMENT</b></p>	<p><b>CONDUCT INVENTORY OF CROWN LAND:</b> Clause 21(a) of the Crown Land Policy speaks of the compilation of a comprehensive inventory of all Crown Lands and inclusion of this essential information in a geographic information system (GIS) database. This is an essential part of the Crown Land Policy and the management of Crown Land as the National Heritage. The Department of Lands and Surveys has made various attempts at compiling this inventory but has been unable to complete it due to lack of dedicated resources being put to the task.</p> <p><b>CROWN LAND INFORMATION MANAGEMENT:</b> The general and institutional analysis completed under the Consultancy has shown that the Crown Land Department will need some specific information management systems in order to effectively implement the Crown Land Policy. Given that the design and development of the Parcel Information Management System (PIMS) was not included in the Consultancy, this leaves a gap in the</p>	<p>Terra Institute could assemble a team of local technical consultants under the technical leadership and supervision of dedicated Project Manager to work with the Crown Land Department, the 'Surveys' Department and the Land Registry to complete this inventory. Terms of Reference for this consultancy are included as Attachment III of Annex C of Chapter Two of this Report.</p> <p>Terra has worked extensively with other information system technology firms to implement parcel-based information management systems throughout the World. Terra would be pleased to work with the Ministry to provide the services of software and systems designers and developers that have experience in developing and installing similar Crown Land Management systems in The Bahamas, Jamaica and other regions, and most</p>

TOPIC AREA	RECOMMENDATION	SUGGESTED WAY FORWARD
	<p>overall analysis and represents a significant risk for the TCIG in its effort to effectively implement the Crown Land Policy. It was confirmed during the October, 2007 Seminars that the Cayman Islands Land Information Management System to be exported to the TCI does not include a subsystem devoted to meeting the information management needs of the Crown Land Department. The existing Crown Land database and spreadsheet applications functioning at the 'Survey' Department lack the robustness required for effective management of current Crown Land information in a database and georeferenced (spatial) system and these need to be replaced. The Crown Land Policy cannot be effectively implemented not Crown Land management efficiently without designing, developing and putting in-place specialized information management systems in the Crown Land Department.</p>	<p>importantly work with the Cayman Islands Contractors to ensure a seamless fit between the information systems employed at the Crown Land Department and those being developed for the Survey Department and the Land Registry.</p>

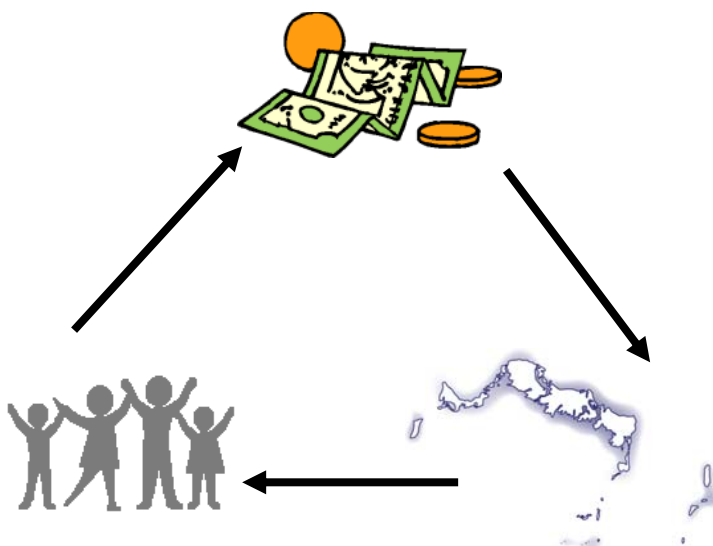
D. Turks and Caicos Crown Land Policy

- 2.6 All analysis, discussions and recommendations of the Consultant Team are based on the following version of the Turks and Caicos Crown Land Policy as prepared by the Ministry of Natural Resources and approved The Government in November of 2006.



## *THE TURKS & CAICOS ISLANDS*

### *CROWN LAND POLICY*



*“Empowering our people, building our nation”*

*The Ministry of Natural Resources*

**Government Compound  
Grand Turk Tel: 946-2801**

## **PREAMBLE**

The Crown is the largest landholder in the Turks and Caicos Islands. This makes Crown lands the Government's most valuable tangible asset, and places an obligation on government agencies responsible for Crown Land Management to address both immediate and medium to long-term planning prerequisites. The potential value of Crown Land has risen dramatically over recent years and this increase is likely to continue over the next five to ten years or longer. It is therefore important that administrative rules and standard practice concerning Crown Land allocation, pricing and management which have been evolving over the years, be consistent with addressing the needs of economics and social development while at the same time preserving the environment, TCI's greatest asset. This Crown Land Policy is formulated to provide long-term benefits to Belongers; both in terms of increasing their role in commercial land development and helping them gain access to land for residential use.

**1. REVENUE GENERATION THROUGH SALE OF CROWN LAND FOR COMMERCIAL PURPOSES.**

Turks and Caicos Islands Government will not actively seek to sell off large areas of Crown Land, but it reserves the right to do so, if deemed necessary. The proceeds of any such sales will be paid into the Government Reserves Fund or used directly for a major specific development project.

**2. TRANSFER OF BELONGER DISCOUNT TO NON- BELONGERS**

Discount given to Belongers on Conditional Purchase Leases must not be transferred to Non-Belongers, and no discount is available to non-Belongers on Crown Land purchases for residential or commercial developments.

The decision of the Crown Land Unit regarding discounted sales will be subject to regular audit by the Chief Auditor. The Chief Auditor will have unrestricted access to all papers and files.

**3. BELONGER PURCHASES COMMERCIAL (up to 10 acres)**

- a) No individual Belonger will be granted a discount on more than 10 acres.
- b) Each Belonger will be eligible for one discount up to 50% on the purchase price of up to 10 acres of Crown Land except on Providenciales where the discount will be limited to 25%. No discounts will be available on any subsequent purchase for commercial development.
- c) If the land/property is sold within 5 years, the full discount is repayable; if the Land/property is sold between 5 and 10 years, half the discount is repayable.
- d) For large development (e.g. major tourism projects) two or more Belongers may combine their 10-acre entitlements to enable Belonger participation in the project. The early resale penalty is applicable.

**4. SUBDIVISIONS**

A developer (local) who wants to create a new subdivision will be required to pay to Government not only the open market value of the land, less any applicable Belonger discount but also 10% of the gross value of any subsequent land sales by the Developer, and a grant to Government of 20% of the plots.

**5. BELONGER PURCHASES –RESIDENTIAL**

There will be a maximum discount of 50% on the purchase price of Crown Land for residential development. Each Belonger is entitled to one discount per Island; but may not be the beneficiary of more than one discount at any given time.

If the land /property is sold within 5years, the full discount is repayable .If the land/property is sold between 5 and 10 years, half the discount is repayable.

## **6. CONDITIONAL PURCHASE LEASE (CPL)**

All discounted Crown Land sales both residential and commercial, will take place on Conditional Purchase Lease (CPL) terms. The CPL will specify aspects of the required development (timing, size, grounds, etc). If the CPL terms are met by the specified deadline, the freehold will be granted to the purchaser. If the terms of the CPL are not met, the purchaser would need to refund the discount to TCIG to obtain the freehold, or the land would revert back to the TCIG for resale.

All land sales, both for residential and commercial purposes, will be on freehold basis, subject to CPL terms being met.

## **7. JOINT VENTURES/PARTNERSHIPS**

Belongers must have at least a 51% stake in a Joint Venture/Partnership entity to qualify for a discount. Only the portion of the land to be purchased by Belongers will qualify for a discount.

## **8. OPEN TENDERING**

The Turks and Caicos Government will identify potential development site(s) on every island, consistent with its development strategy. These sites will be actively marketed to prospective developers, by TC Invest, with the final award subject to transparent/competitive process. TCIG/TC Invest will be willing to consider approaches from developers for other site(s) except on Providenciales, where developments will be limited only to those sites being marketed.

## **9. LAND VALUATION**

The chief valuation Officer's decision will be subject to the appeals process, it is important that the underpinning valuations on which discounts are based are accurate. This is an area that will be strengthened under the new Crown Land Unit.

## **10. CONCESSIONS**

Turks and Caicos Government will retain the necessary flexibility (the giving of concessions to developers) to attract investments judged best for the interest of TCI. This policy will also be reviewed in the context of the 10-year Development Plan.

## **11. INFORMATION ON CROWN LAND ALLOCATIONS TO BE PUBLISHED**

To make the Crown Land process open, transparent and accountable, all allocations of commercial and Residential lands will be published in the gazette. The published notice will

include information on who (individual or company) received the land, the amount of land allocated, where the land is located geographically (island and subdivision/community) the instrument of allocation (Conditional Purchase Lease, Long-Term Lease,) the valuation of the parcel, and the amount of any discount given. The Minister responsible for Crown Land will make such information on Crown Land allocations available on a Quarterly or bi-annual basis

## **12. CROWN LAND MANAGEMENT TO ENSURE ENFORCEMENT OF PLANNING REGULATIONS**

- a) To help achieve the future sustainable development of the Turks and Caicos Islands, Crown Land Legislation and management will include as its guiding principle, an integrated land use planning and development focus to ensure that the planning process determines the land development as opposed to the property developers determining the land use.
- b) The Planning Department will now be playing a major role in the enforcement of Crown Land Management policies through the enactment of demolition orders against illegally constructed properties on Crown Land. Their effective policing of Crown Land and the timely ejection of squatters (before construction takes place) and non-complying tenants will improve the use of Crown Land and increase revenues generated from this resource.
- c) The Development Control (DEVCON) database will be upgraded and integrated into the land agency-wide parcel Information Management System (PIMS) that will be developed. The Planning Department's GIS will be upgraded to assist in forward planning and decision-making.
- d) New large scale development projects will include as standard procedure, early review and comment by the Planning Department and the DECR, and these comments will be incorporated into any development agreement signed between the Government and a developer.
- e) A public rights of way ordinance will be enacted, which will include specific rights for beach access and public consultations on rights of way.

## **13. SIGNIFICANT ECOLOGICAL OR HISTORIC AREAS TO BE PROTECTED FROM FUTURE DEVELOPERS**

Areas of significant ecological or historic importance will not be allocated for development. These areas will be legally and physically defined, so that they are not subject to unintended (or intended) development. Government will invoke Section 132 of the Registered Land Ordinance to restrict transfer or dealings on these areas for a long period of time (e.g. 200 years). Any further lifting of the restrictions will be subject to presentations to The House of Assembly.

## **14. CROWN LAND LEGISLATION AND REGULATIONS**

Government will take the necessary actions to draft and pass legislation to regulate, the inventory, allocation, pricing and management of Crown Land. This will ensure that the current policy of equitable allocation and sustainable use of Crown Land is effective in the long-term, and not easily modified by future Cabinet decisions or future political mandates. Therefore, the establishment of a Crown Land Ordinance will go a long way to empower, sustain and protect the rights of the Belonger community well into the future.

#### **15. CROWN LAND APPLICATIONS, ALLOCATION AND MANAGEMENT PROCEDURES MANUAL**

In order to avoid ad hoc administrative decisions and ensure a more consistent implementation of the Crown Land Policy, the Government will prepare, approve and disseminate a Crown Land Application, Allocations and Management Procedures Manual. This manual will clearly document the specific procedures to be used in the five key government departments with responsibilities for Crown Land; Lands & Survey, Valuation, Planning, Land Registry and the new Crown Land Unit.

The Manual will describe the full-integrated process, flows of information with and between departments, standard data entry, validation and security procedures and will include standardized forms and correspondence format to be used in the process.

#### **16. ESTABLISHMENT OF A CROWN LAND DEPARTMENT**

The Government will establishment a separate Crown Land Unit within the Ministry of Natural Resources. It will be staffed by experienced, technical and administrative staff.

The specific purpose of this new unit will be to ensure a more effective, efficient and integrated implementation of the Crown Land Policy, consolidate a land use planning approach to land development in the islands and improve the provisions of land administration services to the public and private sector.

#### **17. CROWN LAND REGISTER**

A comprehensive register and inventory of all Crown Lands will be compiled including valuations. All futures sales will be recorded in the register so that an accurate record of remaining Crown Land and previous beneficiaries is maintained.

#### **18. APPOINTMENT OF AN APPEALS/COMPLAINTS TRIBUNAL**

- a) In order to make the Crown Land process as fair, transparent and accountable as possible, the Government will appoint an appeals/complaints tribunal with recourse to the Supreme Court as a final court of appeal. The tribunal will be comprised of (3) three people, nominated by the Governor, Chief Minister, and the Leader of the Opposition, to ensure balance.



- b) The tribunal will be responsible for hearing cases brought to it by aggrieved parties who see themselves negatively impacted by a decision dealing with their application for Crown Land.

The details of the Tribunal will be worked out in the process of drafting legislation.

## **19. CROWN LAND LEASE APPLICATION AND APPROVAL PROCESS**

The Government will rationalize the lease application and approval process to make it more consistent and to be able to defend the process and the results of the process against any public criticism, as being based on uniform, rational and objective criteria.

## **20. THE NATIONAL PHYSICAL DEVELOPMENT PLAN**

The Current National Physical Development Plan (1987-1997) is seriously out of date as a tool to guide and control development. Work to produce a new Ten-year Development Plan is well advanced.

## **21. PROVISION OF MODERN LAND INFORMATION SERVICES**

Given the land-based nature of the economy and the importance of foreign investment in the real estate market, the land information services provided by Government will be improved and upgraded to make it a state-of-the-art operation. The Government will make the required institutional and technical investments required to change the Land Registry and the Lands and Survey Cadastre from archives of data into useful and accessible land information systems. While each land agency has some land information management capabilities, these systems are not integrated causing duplication of effort in data collection and limiting the broader usefulness of the data itself. Government will provide the financial resources required to:

- a) Complete an inventory of Crown Land based on the existing Block Maps and the most recent aerial photography and digital orthography/cartography of the islands. This inventory will enable a reliable determination of the current liability of Crown Land and will be an important layer in the development of an integrated Parcel Information Management System (PIMS).
- b) Ensure that all land agencies convert all existing land records into digital format.
- c) Develop a compatible, interoperable and integrated Parcel Information Management System (PIMS) linking the (4) four main land management department-Lands and Survey, Planning, Land Registry and Valuation.
- d) Provide formal education in land administrative fields, technical training and career advancement opportunities to Belongers, so that the key land agencies

can be managed by Turks and Caicos Islanders and that these departments become desirable places for rewarding work and advancement.

The new Crown Land Policy took effect from 2<sup>nd</sup> November 2006.

**CHAPTER TWO**  
**INSTITUTIONAL REPORT: ESTABLISHMENT OF A CROWN LANDS**  
**DEPARTMENT**

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## 1. INTRODUCTION

The Government of the Turks & Caicos Islands approved a new Crown Land Policy in November 2005. The basic objective of the policy is “to provide long-term benefits to Belongers; both in terms of increasing the role in commercial land development and helping them gain access to land for residential use”.

Clause 16) of the Crown Land Policy calls for the establishment of a Crown Lands Unit or Department<sup>1</sup> within the Ministry of Natural Resources, to be staffed by experienced technical and administrative staff.

The purpose of this Department, as laid out in the policy, is to:

- ensure a more effective, efficient and integrated implementation of the Crown Land Policy;
- consolidate a land use planning approach to land development in the islands; and
- improve the provision of land administration services to the public and private sectors.

The Turks & Caicos Islands Government (TCIG) has contracted Terra Institute to assist in the establishment of this Department as part of the overall implementation of the Crown Land Policy. This report outlines the institutional aspects of creating the new Department and specifically presents:

- An organisational description of the proposed Crown Lands Department;
- Organisational structure of the proposed Crown Lands Department;
- Recommendations for where in the Government structure the Crown Lands Department should be housed;
- Recommendations for inter-agency linkages between the Crown Lands Department and other TCIG agencies;
- Preparation of series of indicators to monitor and measure the effectiveness and efficiency of the Crown Land Department and the implementation of Crown Land Policy; and
- Position Descriptions for the Managerial and Technical staff, including technical, educational and professional requirements for managerial and technical staff in the Crown Land Department.

In addition to these requirements outlined in the Terms of Reference the consultant has also provided:

- A report of transitional issues that need to be addressed in the establishment of the Department.
- Terms of Reference for a consultancy to develop a comprehensive register and inventory of Crown lands, which will be required before the Department is able to fully discharge its functions in accordance with the policy;
- Outline of a Training Programme for staff of the Crown Lands Department;

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<sup>1</sup> The heading of the section is titled Crown Land Department, while the text talks of a Crown Land Unit. This issue is addressed in section 4 below.

It should be noted that a Crown Lands Unit has already been established on an interim basis. At the time of conducting this consultancy the Unit comprised of two members of staff, a Commissioner of State Lands and a Deputy Commissioner of State Lands. Both posts report to the Permanent Secretary of the Ministry of Natural Resources. In addition there are three other posts that have been created and advertised, namely:

- Assistant Lands Commissioner (Providenciales)
- Assistant Lands Commissioner (Providenciales, South & North Caicos)
- Data Manager (Land Administration)

Interviews for these posts are due to be held in August and September 2007.

The Lands & Surveys Department, Ministry of Natural Resources, has traditionally carried out many of the Crown Land functions that will be assigned to the Crown Lands Department. Some of the existing staff and posts within the Lands & Surveys Department, and many of their files and archives, will need to be transferred to the new Crown Lands Department. This issue is addressed in the section of the report dealing with transitional issues. It is also recommended that the Lands and Surveys Department be re-named the “Survey Department”, in order to avoid confusion about the respective roles of the Departments. This revised name is used in this report.

## **2. DESCRIPTION OF THE CROWN LANDS DEPARTMENT**

### **2.1 Mission statement:**

The Crown Lands Department will ensure that Crown Land holdings in the Turks and Caicos Islands are managed so as to provide sustainable long-term benefits to Belongers, through the efficient, transparent and equitable allocation of Crown Lands for residential and commercial purposes, in accordance with the Crown Land policy, and by the management of unallocated lands and lands held under Conditional Purchase Leases to ensure that lands are utilised in accordance with the Crown Land Ordinance and Policy.

### **2.2 Principle functions of the Crown Lands Department:**

- 1) Monitor existing and potential demand for Crown Land, taking into particular account the Ten-Year Development Plan and any national and local physical development plans.
- 2) Monitor implementation of the Crown Land Policy and determine if Crown Land Policy is meeting stated objectives; advise and recommend any amendments to the Policy, as necessary.
- 3) Liaise with the Department of Physical Planning and the Department of Surveying to ensure that areas designated for potential commercial and residential developments are surveyed in accordance with approved outline sub-division plans and that final sub-division plans receive full planning permission.
- 4) Liaise with the Ministry of Works to ensure that infrastructure will be available in areas targeted for Crown Land allocations; monitor progress in the development of infrastructure in targeted areas.

- 5) Maintain a detailed inventory of all Crown Lands, including information on all parcels available for allocation, parcels in which someone has a successful application, parcels under the valid CPL, parcels with expired CPL, and protected areas. Liaise with the Surveys Department to ensure that all new parcels registered on block plans are immediately included in the Crown Land Information System and relevant information is recorded. Liaise with Survey Department to ensure that they produce and update maps showing status of Crown Lands on a regular basis and ensure that such maps are made available to members of the public and other TCIG departments on a periodic basis.
- 6) Monitor the use of Crown Land resources, including parcels under CPL, through regular field visits, liaising with other TCIG departments and available aerial photography and satellite imagery, with assistance and advice from Survey Department, and take immediate action to rectify any breaches of the Crown Lands Ordinance or CPL conditions. Report any other possible illegal activity to the relevant TCIG agency, for example Department of Environment and Coastal Resources or Department of Planning.
- 7) Advertise and provide information to members of the public about residential and commercial parcels of land that are available for allocation.
- 8) Advise TC Invest about large parcels of Crown Land that are available for large scale commercial developments and provide information needed to market the parcels in accordance with clause 8) of the Crown Land policy.
- 9) Distribute application forms to eligible members of the public and companies and provide guidance on completing the forms. Collect and acknowledge receipt of application forms from members of the public and eligible companies.
- 10) Request and receive valuation for parcels from the Department of Valuations.
- 11) Request and receive confirmation of Planning Approval from the Department of Planning.
- 12) Liaise with TC Invest to ensure that all necessary supporting documents are available for applications for large commercial developments to be submitted to Cabinet.
- 13) Request and receive any necessary survey plans from the Survey Department for proposed parcels excised from larger blocks of Crown Land, for inclusion in Notes for Cabinet.
- 14) Process forms in accordance with established criteria, ensuring that necessary supporting document (valuation, survey plan, planning approval) are attached and either:
  - a. make recommendations to the Permanent Secretary, Ministry of Natural Resources, for consideration of approval by the Honourable Minister of Natural Resources; or
  - b. prepare draft Cabinet Note and submit to the Honourable Minister of Natural Resources, via the Permanent Secretary Ministry of Resources.

- c. inform applicant that their application could not be entertained at this time and inform them of the appeal process contained in the Crown Land Policy [ and Ordinance].
- 15) Draft and deliver letters of offer to the successful applicant, outlining the time period in which they must accept the offer and the rent and fees that need to be paid under the Conditional Purchase Lease, details of the terms and conditions of the CPL and information about the process of up-grading to freehold title, with details of purchase price, discounts and conditions attached to the discount.
- 16) Respond to any queries from successful applicants about the letter of offer and inform applicants of the appeals process if they wish to challenge any of the terms and conditions of the CPL.
- 17) Receive letters of acceptance and ensure that all fees are paid. Prepare CPL for execution by lessee and the Governor of TCI and register CPL in the Land Registry.
- 18) Send reminder letters to people who received letters of offer and have not responded by end of period and send letter withdrawing offer if an acceptance is not received with designated extension period.
- 19) Process applications for up-grade to freehold tenure, in accordance with the Crown Land Ordinance and ensure that all terms and conditions of CPL have been met. Draft and ensure execution of transfer documents for grants and charge representing discount and ensure that they are registered in the Land Registry.
- 20) Ensure that lessees under CPL who do not complied with terms and conditions of the lease within the stipulated timeframes either relinquish the lease and return possession to the TCIG or extend the lease in accordance with the Crown Lands Ordinance.
- 21) Ensure that annual lease rents are collected, rent demands sent, reminder letters etc. and record rent receipts in Crown Land database.

In order to discharge these functions the Crown Land Department will require a experienced and trained professional staff from a mix of backgrounds. It will need to maintain both a central office, preferably located in close proximity to the Surveys Department and the Land Registry, and a series of sub-offices on the different islands. The recommended organisation structure is outlined in the following section.

### **3. ORGANISATIONAL STRUCTURE OF THE PROPOSED CROWN LANDS DEPARTMENT**

The proposed organisation structure of the Crown Lands Department comprises of three units, each headed by a manager, who will report to the Commissioner of Crown Lands. The Commissioner of Crown Lands will report directly to the Permanent Secretary, Ministry of Natural Resources. The overall proposed organisational structure is outlined in figure I, with a full list of positions, grades and salaries outlined in table I.

The Crown Lands Department will comprise three sub-units each headed by a Manager. The functions of the three sub-units are outlined in table II, below.



The Commissioner of Crown Lands will be directly responsible for the strategic and policy related functions of the Crown Lands Department. It is also proposed that the structure includes a Deputy Commissioner of Crown Lands, who will have day-to-day responsibility for overseeing the processing of applications for large-scale commercial developments and mineral and reclamation licenses.

Full position descriptions for all of the senior and professional grades are attached in Annex I.

In order to assist the Commissioner of State Lands establish all of the necessary policies, procedures and cultural transformations required for the new Department it is proposed to hire an experience and qualified land management expert to act as Advisor to the Commissioner of State Lands, on a consultancy basis for a period of three years after the establishment of the Department. The terms of reference for this advisor are attached in Annex II.

Table I: Listing of positions and grades in the proposed Crown Land Department

Position	Grade Level	Sub-unit	Location	Salary
Commissioner of Crown Lands	T44-T48	Commissioner's Office	Grand Turk	49,800
Advisor to the Commissioner (Change Manager)	ungraded	Commissioner's Office	Grand Turk	150,000
Deputy Commissioner of Crown Lands	T32-36	Commissioner's Office	Grand Turk	35,040
Secretary	T10-T15	Commissioner's Office	Grand Turk	21,000
<b>Land Allocation</b>				
Manager, Land Allocation	T26-T31	<b>Land Allocation</b>	<b>Grand Turk</b>	29,100
LIS Administrator	T22-T27	Land Allocation	Grand Turk	26,940
Data Entry Clerk	T8-T13	Land Allocation	Providenciales	18,240
Data Entry Clerk	T8-T13	Land Allocation	Grand Turk	18,240
Administrative Officer	T22-T27	Land Allocation	Providenciales	26,940
Filing Clerk	T1-T9	Land Allocation	Grand Turk	15,720
Clerical Officer	T1-T9	Land Allocation	Grand Turk	15,720
<b>Land Management</b>				
Manager, Land Management	T26-T31	<b>Land Management</b>	<b>Providenciales</b>	29,100
District Land Officer (Provo & West Caicos)	T22-T27	Land Management	Providenciales	26,940

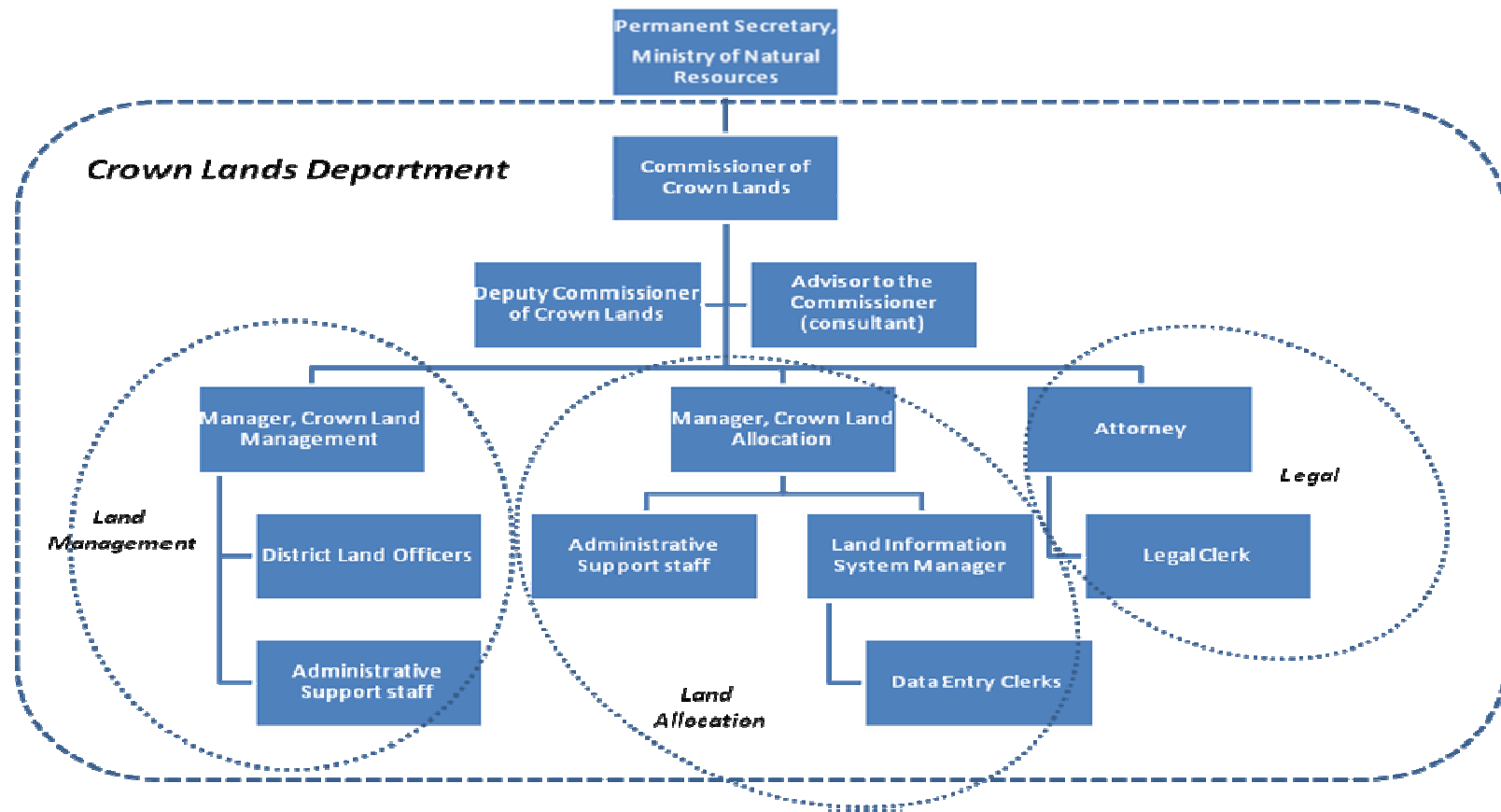
Position	Grade Level	Sub-unit	Location	Salary
District Land Officer (North & Middle Caicos)	T22-T27	Land Management	North Caicos	26,940
District Land Officer (East, South Caicos)	T22-T27	Land Management	South Caicos	26,940
District Land Officer (Grand Turk & Salt Cay)	T22-T27	Land Management	Grand Turk	26,940
Clerical Officer	T1-T9	Land Management	Providenciales	15,720
<b>Legal</b>				
Attorney	T34-38	<b>Legal</b>	<b>Grand Turk</b>	38,880
Clerical Officer	T1-T9	Legal	Grand Turk	15,720

**Table II: Major functions of the sub-units within the Crown Land Department**

Commissioner of Crown Lands		
<p>Strategic &amp; Business Planning</p> <p>Policy Recommendations</p> <p>Monitoring Performance</p> <p>Networking with TCIG and external stakeholders</p> <p>Representing the Crown Land Dept.</p> <p>Co-ordinating applications for large commercial developments</p> <p>Overseeing applications for reclamation and mineral licenses</p>		
Land Management	Land Allocation	Legal
<ul style="list-style-type: none"> <li>Monitors use of Crown Lands and takes action to rectify</li> </ul>	<ul style="list-style-type: none"> <li>Receives and processes applications for Crown Land.</li> </ul>	<ul style="list-style-type: none"> <li>Drafts Conditional Purchase Leases and ensures execution and</li> </ul>

<p>any breaches of CPL and/or the Crown Land Ordinance.</p> <ul style="list-style-type: none"> <li>• Provides information and advice to members of the public, through District Offices.</li> <li>• Ensures dispatch of rent demands etc.</li> <li>• Reports on performance indicators to the Commissioner of Crown Lands.</li> </ul>	<ul style="list-style-type: none"> <li>• Ensures valuations, survey plans and planning permission are obtained.</li> <li>• Liaises with Ministry of Works to ensure provision of roads and water to planned subdivisions.</li> <li>• Drafts approvals and Cabinet Notes.</li> <li>• Drafts and sends letters of offer, follows up with applicants to determine acceptance.</li> <li>• Maintains the Crown Land database and liaises with Survey Dept. to produce and disseminate maps of available Crown Land.</li> <li>• Provides information to the public and status of application.</li> <li>• Reports on performance indicators to the Commissioner of Crown Lands.</li> </ul>	<p>registration.</p> <ul style="list-style-type: none"> <li>• Drafts certificates of transfers and charges, ensures execution and registration.</li> <li>• Liaises with Attorney General's Chamber with respect to the drafting of leases and other agreements for large commercial developments.</li> <li>• Provides Legal Advice as needed to the Commissioner of Crown Lands.</li> </ul>
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Figure I: Organisational Structure of Crown Lands Department



### **3.1 The Crown Land Information System**

Having an effective land information system is crucial for the proper functioning of the Crown Land Department. At present there is no single database that can provide all of the information on parcels of Crown land or on the status of applications for leases or grants, or of rentals owing on leases. It is crucial that single land information system for Crown lands be established as a matter of urgency. The first stage of this process will be conduct an inventory of all Crown Lands. It is recommended that this inventory be contracted out to a competent firm to be concluded efficiently and in a short-time period. Terms of Reference for this activity have been included in Annex III.

The Crown Land Information System (CLIS) function has been placed under the Land Allocation sub-unit because this is the function where the greatest amounts of processing of documents currently takes place (currently 100 – 200 new applications per month) and the sub-unit has the greatest need to ensure that the CLIS is kept accurate and current so that members of the public can obtain the current status of their application. Staff in the Land Management sub-unit will be based in district offices and spend much of their time in the field, making it more difficult for them to maintain the CLIS. The CLIS should however be deployed through an extra-net system that will allow District Lands Officers to access the CLIS from the field, through lap-top computers and a wide-area data connection.

## **4. CROWN LANDS DEPARTMENT IN THE TCIG STRUCTURE**

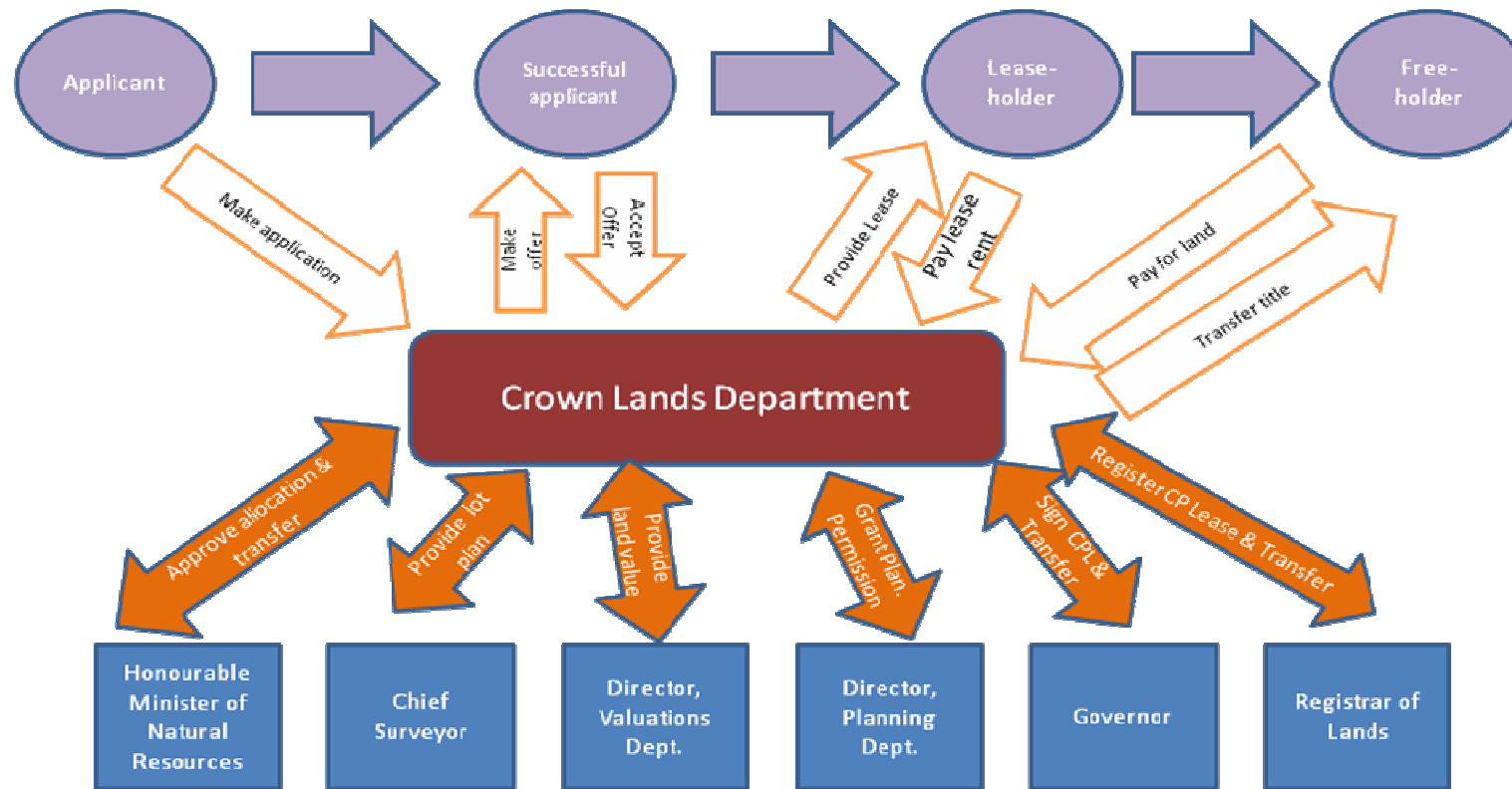
This section of the report makes recommendations for the position of the Crown Lands Department in TCIG structure and inter-agency linkages between the Crown Lands Department and other TCIG agencies.

It is recommended that the Crown Lands Department should be a line division within the Ministry of Natural Resources, with the Commissioner of Crown Lands reporting directly to the Permanent Secretary of the Ministry of Natural Resources. The Crown Lands function of the Ministry of Natural Resources is currently being conducted by a Unit within the Permanent Secretary's Office and by the Lands and Surveys Department. Within most public service structures, units within the office of the Permanent Secretary are usually reserved for "staff" or support functions, such as accounting, planning or human resource management. These are the services that the Ministry needs to provide to all its functions to support their core activities. Crown Land management is clearly a core function of the Ministry of Natural Resources and it should therefore be established as a line division or Department of the Ministry, with a Director (Commissioner of Crown Lands) taking day to day responsibility for the functioning of the Department. Clear performance targets for the Department need to be developed and implemented (see section 5 below), which can then be used by the Permanent Secretary to manage the performance of the Department.

The other important line divisions who have a major role in Crown Land management all fall under this Ministry, with the exception of the Department of Physical Planning, so inter-

agency co-ordination will be easier and the Permanent Secretary, Ministry of Natural Resources will be able to effectively manage the relationships between the relevant line Departments. It is strongly recommended that the core land related Departments be maintained within a single Ministry and that consideration should be given the re-assignment of the Planning portfolio to the Ministry of Natural Resources. Any future re-assignment of Ministerial portfolios should bear in mind that co-ordinated action between the land-related Department of the TCIG is crucial to the overall social and economic development of TCI.

Figure II below provides an example of the key interrelationships and information flows that will need to be maintained by the Crown Land Department for one of its key functions, namely the allocation of residential or small commercial parcels in existing sub-divisions.

**Figure II: Schematic of Relationships****CROWN LANDS DEPARTMENT IS THE PUBLIC INTERFACE FOR THE ENTIRE PROCESS****(Crown Land allocations – residential and commercial (<10 acres) in approved sub-division)**



#### **4.1 Centralisation & Decentralisation**

The Crown Land Department needs to maintain very close relationships with other land administration agencies. It is therefore recommended that the following Departments should be housed within the same building or at least in very close proximity:

- Crown Lands Department
- Surveys Department
- Valuations Department
- Land Registry

The consultants understand that a building is currently being constructed that will house the Land Registry and the cadastral surveying functions of the current Lands & Surveys Department, which broadly correspond to what we have called the “Surveys Department” in this report. The re-location of the Survey Department to the same building as the Land Registry is, in part, to assist in the computerisation of the registry currently being undertaken through a consultancy with Cayman Islands Land Registry.

It is strongly recommended that the TCIG find adequate office accommodation for the head office of the Crown Lands Department and the Valuations Division in very close proximity to the new building being constructed for the Land Registry/Survey Department. Being in close proximity will assist in the flow of documents and data between the Departments and will enable any queries to be dealt with on a face-to-face basis quickly and effectively.

The Crown Lands Department must, however, also maintain a number of decentralised district offices through out the Turks and Caicos Islands. The task of Crown Land management, and especially taking quick and effective enforcement actions, will be aided by having District Land Officers located in all the islands. These District Land Officers will be expected to spend three to four days a week in the field, visiting Crown Land parcels checking on activity and occupation, providing information and advice to members of the public, and delivering notices, rent demands etc. to leaseholders. They will need to maintain an office where members of the public can visit one day a week and where application forms etc, can be delivered and any necessary files stored. District Lands Officers should, however, be provided with laptop computers with wide-area data connections to allow them to log-in to the CLIS to check and up-date parcel records while they are in the field.

Given the fact that the majority of Crown Land activity takes place on the island of Providenciales, it is recommended that the Crown Land Management Department be centred in Providenciales, with all District Lands Officers reporting to a Manager, Land Management in Providenciales. There will also be need for Land Allocation Unit staff in Providenciales to receive applications at that office and enter them directly into the CLIS.

The Commissioner of Crown Lands and the Deputy Commissioner of Crown Lands should maintain offices in both Grand Turk and Providenciales. The effective deployment of a CLIS will greatly assist in the decentralisation of the Crown Land functions as staff will have access to the same information sources no matter where they are physically located at any one time.

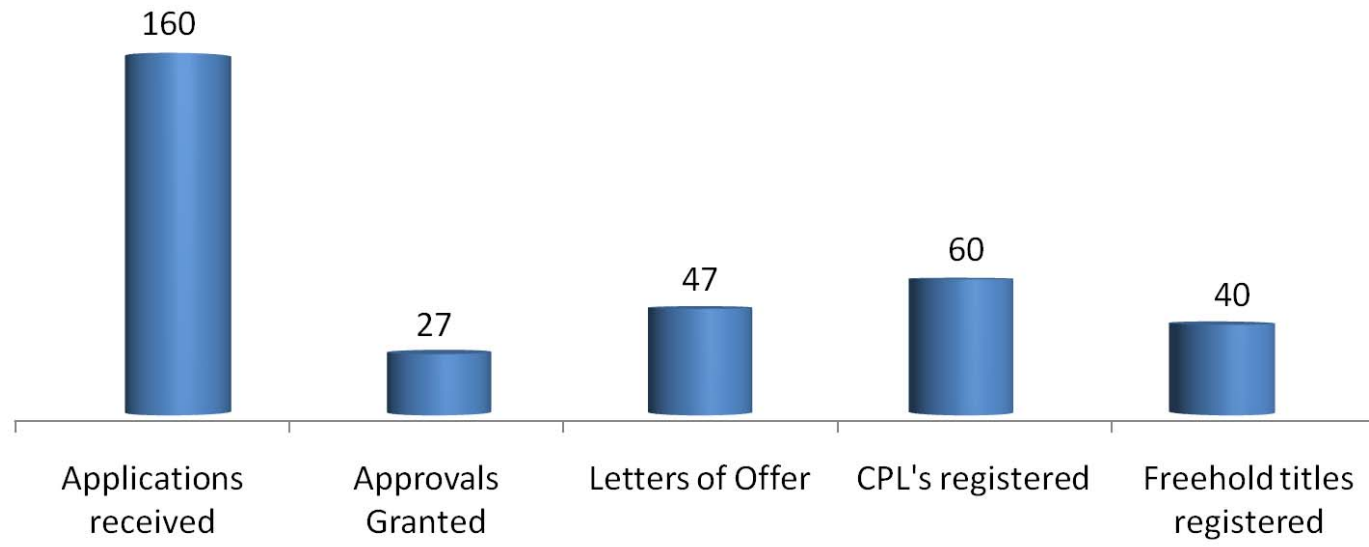
## 5. PERFORMANCE INDICATORS

The overall objective of the Crown Land Policy is to “to provide long-term benefits to Belongers; both in terms of increasing the role in commercial land development and helping them gain access to land for residential use”. One of the functions given to the Crown Land Department under the policy is to “ensure a more effective, efficient and integrated implementation of the Crown Land Policy”. The Crown Land Department must therefore develop and collect data that will indicate whether the Crown Land Policy is meeting its objectives.

The Crown Land Department must also collect internal records that indicate the efficiency of the Department. It is recommended that the Crown Lands Department publish an annual report including an analysis of the effectiveness of the policy in meeting objectives and the efficiency with which the Department has carried out its mandate.

Currently the record keeping within the Lands and Surveys Department and the Crown Land Unit only allow for some rudimentary performance indicators, such as the number of applications received, number of letters of offer given. Figure III below outlines the number of applications, approvals, letters of offer, leases and grants of freehold tenure in the monthly of July 2007.

**Figure III: Number of applications processed at key stages, July 2007**



Once a properly functioning land information system is implemented, efficiency indicators are fairly easy to establish from internal records of the proposed Crown Land Department. Table III outlines recommended indicators that should be utilised to ensure the efficiency with which the Department discharges its functions.

**Table III: Efficiency indicators and benchmarks for Crown Land Department**

Indicator	Benchmark
Average time to process an application for Crown Land	95% of applications either formally rejected or approved and leases executed in under three months.
Percentage of leases in rental arrears	Less than 10% of leases in arrears
Percentage of CPLs converted to freehold on schedule	90% of CPLs converted to freehold grants on schedule

Meeting these benchmarks may take some time, but the Crown Land Dept. should set itself high benchmarks for performance and then measure progress to meeting the benchmark on a monthly basis, with internal reports sent to the Permanent Secretary and Minister of Natural Resources, and on an annual basis in a published report.

It is recommended that the Department should aim to meet these benchmarks within five years of establishment. The Terms of Reference for the Advisor to the Commissioner (Annex II) include setting the current base-line (which will only be possible after the implementation of the CLIS) and developing an annual migration plan to get the Department's performance up to the benchmark.

Effectiveness indicators are more difficult to establish and measure and usually require surveys of beneficiaries. Effectiveness indicators are, however, necessary to determine whether the Crown Land Policy is meeting its stated objectives and, if not, what alternative policy measures should be introduced. The Statistical Department does not currently conduct any annual survey which could be utilised to measure the effectiveness of the Policy in meeting the overall objectives of belonging empowerment. The national census does provide the necessary data on housing, employment and social indicators, but the ten-year time frame between censuses is too long for effective policy making. The Statistics Dept. does conduct an annual survey of businesses that could be used to determine whether the Crown Land Policy is meeting its objectives of belonging business empowerment. However, the consultants

were advised by the Statistic Dept. that the response rate to the annual survey of businesses was so low that it could not be used as a reliable data-set.

Given the lack of reliable external data sources, it is recommended that the Crown Land Dept. conduct an annual survey to determine effectiveness of the Policy. It is recommended that an annual sample of parcels of Crown land allocated under CPLs or freehold grants in the previous ten years be conducted to determine the current status of the parcel. It is important that this is not conducted by the Crown Lands Dept. itself, to ensure that accurate data is collected separate and apart from the compliance or policing role of the Crown Land Dept. In order to ensure independent data collection and compilation it is recommended that an independent panel be appointed, with representatives appointed by both the ruling party and the opposition (along the lines of the “Belonger Panel” established in 2005 to oversee the development of a new Crown Land Policy), which will ensure the collection and compilation of data on Crown Lands Policy. The Panel should be provided with a budget to hire the services of a market research firm to collect and compile data from a survey of parcels allocated to belongers.

**Table IV: Effectiveness indicators for Crown Land Policy**

Objective	Indicators	Discussion
Belonger empowerment	% of residential parcels currently occupied by believer headed households for various periods since allocation.	This indicator could be used to determine the sustainability of the policy: are belongers holding on to Crown Lands allocated to them or are they subsequently selling or leasing parcels to non-belongers?
Improved standard of living	% of households on alienated parcels of Crown land where dwelling unit meets minimum criteria (e.g. inside flushable toilet, electricity, telephone connection, fridge)	This indicator could be used to determine if the Crown Land Policy is meeting its objective of improving the overall standard of living in TCI.
Belonger business development	% of commercial parcels currently occupied by believer-owned and operated businesses for various periods since allocation.	This indicator could be used to determine the sustainability of the policy: are belongers establishing sustainable businesses on alienated parcels of Crown land or is the land and business being subsequently transferred to non-belongers?
Satisfaction with Crown Land	Current occupiers of Crown land (beneficiaries) indicating	This indicator could be used to determine if the Dept. is

Objective	Indicators	Discussion
allocation and policy	satisfaction –levels for the services received from Crown Land Dept.	meeting the policy objective of improving service delivery.

Results of this survey of Crown leasehold and recently alienated Crown Land parcels should be the basis of an annual policy review conducted between the Commissioner of Crown Lands and the Panel. Results and recommendations arising from the policy review should be submitted to the Minister and Cabinet and published in an annual report of the Department.

## 6. POSITION DESCRIPTIONS FOR THE MANAGERIAL AND TECHNICAL STAFF

Positions descriptions for the following positions are attached in Annex I.

- Commissioner of Crown Lands
- Deputy Commissioner of Crown Lands
- Attorney
- Manager, Crown Land Allocation Unit
- LIS Manager
- Manager, Crown Land Management Unit
- District Lands Officers

In addition, Terms of Reference for an individual consultant to fill the position of Advisor to the Commissioner are also attached in Annex II.

## 7. TRANSITIONAL ISSUES IN THE ESTABLISHMENT OF THE DEPARTMENT

### 7.1 Staffing:

There are a number of positions in the current public service establishment that will become redundant once the new Crown Lands Dept. is established. The incumbents in these posts may be qualified and eligible to be transferred to new posts established in the Crown Lands Department. For the administrative posts, staff in redundant posts can be transferred directly into the new Department. However, it is recommended that for the more senior positions any incumbent staff should be required to apply and be interviewed for the new positions, in a similar manner to other internal or external candidates. It should be noted that not all of the redundant posts are currently occupied. It is recommended that any current recruitment activities for these vacant posts should be suspended, but potential candidates considered for appropriate positions in the new structure.

The redundant posts identified by the consultant are outlined in Table V:

**Table V: Redundant Posts in current establishment**

<b>Department/ Unit</b>	<b>Redundant Post</b>	<b>Incumbent</b>	<b>Current salary</b>	<b>Possible Comparable Positions in new Crown Land Dept.</b>
Lands and Surveys Dept.	Assistant Director (Land Administration)	Vacant	29,100	Deputy Commissioner of Crown Lands  Manager, Land Allocation  Manager, Land Management
Lands and Surveys Dept.	Executive Officer (Providenciales)	Clotilda Barbara Taylor	18,419	Administrative Officer, Land Allocation Unit.
Lands and Surveys Dept.	Executive Officer/EPD Operator	Lakeathia Estella Selver	18,419	Data Entry Clerk Clerical Officer
Lands and Surveys Dept.	Clerical Officer – Filing	Sarah Julianna Jennings	13,860	Data Entry Clerk Clerical Officer Filing Clerk Office Assistant
Lands and Surveys Dept.	Clerical Officer (Grand Turk)	Arrianna Clare	13,860	Data Entry Clerk Clerical Officer Filing Clerk Office Assistant
Crown Lands Unit	Commissioner of Lands	Alice Williams	46,200	Commissioner of Crown Lands  Assistant Commissioner of Crown Lands  Manager, Land Allocation  Manager, Land

Department/ Unit	Redundant Post	Incumbent	Current salary	Possible Comparable Positions in new Crown Land Dept.
				Management
Crown Lands Unit	Deputy Commissioner of Lands	Tatum Clerveaux	35,040	Deputy Commissioner of Crown Lands  Manager, Land Allocation  Manager, Land Management
Crown Lands Unit	Assistant Lands Commissioner (Providenciales)	Vacant	38,800	Manager, Land Allocation  Manager, Land Management  District Land Officer
Crown Lands Unit	Assistant Lands Commissioner (Providenciales, South & North Caicos)	Vacant	29,100	District Land Officer
Crown Lands Unit	Data Manager (Land Administration)	Vacant	23,182	LIS Manager
			265,980	

The consultant has conducted no assessment of the skills, experience or qualifications of any of the incumbent staff in any of the positions, as this is outside the scope of the assignment. The possible comparator positions in the new establishment are offered as general guidance of the type of position that may be comparable with the current post.

## 7.2 Training programme

Given the lack of skilled professional staff in the TCI the Crown Land Department may encounter problems with recruitment of suitably qualified and experienced staff. It is



therefore recommended that the Crown Land Department institute a tailored one-year training programme to ensure that staff hired into the Dept. receive the necessary basic training. It is recommended that the Crown Land Dept. develop series of one-week training courses to be delivered in conjunction with the Turks and Caicos Islands Community College. Further details of the proposed training programme is included in Annex IV.

### **7.3 Priority Actions for the establishment of the new Crown Lands Department:**

In order to establish the new Crown Land Dept. there are a number of priority actions that will have to be taken, including the passage of new a Crown Lands Ordinance and the establishment of the Department within the public service of TCI.

**Table VI: Priority Actions for establishment of the Crown Lands Dept.**

Action	Responsibility
Draft and pass legislation establishing the Department and outlining the statutory powers and responsibilities of the Commissioner of Crown Lands.	Attorney General Chambers Cabinet Legislative Council
Publicise new Crown Land Policy	Ministry of Natural Resources
Establish the new Department and posts in the TCI Government structure.	Establishment Secretary Cabinet
Ensure allocation for new Crown Lands Dept. included in national budget.	Ministry of Finance
Advertise and recruit Commissioner of Crown Lands	Establishment Secretary Public Service Commission
Hire firm to conduct inventory of Crown Lands	Ministry of Natural Resources
Advertise and recruit other positions in Crown Lands Department and transfer any administrative staff in redundant posts in Lands and Surveys Department, assessed as being competent in the new positions.	Establishment Secretary Public Service Commission Commissioner of Crown Lands
Make posts identified above redundant, transferring any remaining staff to appropriate positions elsewhere in TCIG.	Establishment Secretary Public Service Commission

Action	Responsibility
Identify computers and equipment surplus to requirements in Lands and Surveys Dept. and disbanded Crown Land Unit, and transfer to the new Crown Lands Dept	Lands and Surveys Dept. LIS Manager Treasury Dept.
Procure additional IT resources as necessary, including lap-top computers with wide-area internet access for District Lands Officers.	LIS Manager Ministry of Natural Resources
Identify and resource appropriate office accommodation in Grand Turk, in close proximity to the new Land Registry/Survey Building currently under construction.	Ministry of Natural Resources Ministry of Public Works
Procure additional desks etc. for new staff in Providenciales office, utilising available space in the Lands and Survey Dept. offices (PalmCo Building)	Crown Land Dept. Ministry of Natural Resources
Identify office space for District Lands Officers in North Caicos and South Caicos.	Crown Land Dept. Ministry of Public Works
Transfer all hard and electronic files concerning Crown Land Management to the new Crown Land Department offices in Grand Turk	Lands & Surveys Dept. Crown Lands Department Permanent Secretary and Minister's offices, Ministry of Natural Resources.
Implement tailored training programme for new staff in the Crown Lands Dept.	Crown Lands Dept. TCI Community College
Procure new Land/Estate Management Software and services of firm to customise, install and deploy software in Crown Land Department	LIS Manager, Crown Lands Dept. Ministry of Natural Resources
Advertise creation of new Department, office hours, telephone numbers etc. and re-naming of the Lands and Surveys Dept. to the Survey Dept.	Ministry of Natural Resources.

## **ANNEX I: Positions Descriptions**

This Annex includes Job Descriptions for the following posts:

- Commissioner of Crown Lands
- Deputy Commissioner of Crown Lands
- Attorney
- Manager, Crown Land Management Unit
- District Lands Officers
- Manager, Crown Land Allocation Unit
- LIS Manager

Other support and administrative posts within the Crown Land Department are standard TCIG establishment posts and the standard Job Descriptions for these posts would apply.

<b>Department</b>	<b>Crown Lands Department, Ministry of Natural Resources</b>
<b>Job Title</b>	<b>Commissioner of Crown Lands</b>
<b>Main Purpose</b>	The Commissioner of Crown Lands is responsible for the management of all Crown Lands in the Turks and Caicos Islands, other than protected areas, in accordance with the Crown Land Ordinance and Policy.
<b>Main Duties</b>	<ul style="list-style-type: none"> <li>• Ensures all statutory and other approved functions of the Crown Land Department are fulfilled, in accordance with the Crown Land Ordinance and the Crown Land Policy, including but not limited to: <ul style="list-style-type: none"> <li>➤ Ensuring all parcels of land being allocated meet the legal and policy requirements;</li> <li>➤ Ensuring all applications for approval submitted to the Minister with responsibility for Crown Lands and/or the Cabinet are in accordance with policy and that the correct procedures have been followed;</li> <li>➤ Ensuring that any discounts on land purchases are applied in accordance with the Crown Land Policy;</li> <li>➤ Ensuring that all responsibilities of leaseholders have been discharged prior to recommending upgrade to freehold title;</li> <li>➤ Ensuring that quick and effective action is taken against illegal occupiers of Crown Land, including leaseholders who are in rent arrears; and</li> <li>➤ Monitoring applications for Crown Land and investigating and taking actions against potential cases of fraudulent applications, contrary to the Ordinance and Policy.</li> <li>➤ Ensuring that there is an accurate and up-to-date inventory of all Crown Lands and an effective process in place to track applications and to report to applicants on progress (Crown Land Information System).</li> </ul> </li> <li>• Manages the staff and resources of the Crown Lands Department to ensure effective and efficient implementation of the Crown Land Policy.</li> <li>• Plans annual operations of the Crown Lands Department, drafts annual budget for revenue and expenditure and implements approved annual budget.</li> <li>• Accounts for all expenditure of the Department, in accordance with Government accounting policies and procedures.</li> <li>• In consultation with the Permanent Secretary and the Minister with responsibility for Crown Lands, set annual performance targets for lease allocation, rent collection and freehold transfers.</li> <li>• Monitors and reports on performance of Crown Land Department to the Permanent Secretary and Minister with responsibility for Crown</li> </ul>

	<p>Lands.</p> <ul style="list-style-type: none"> <li>• Monitors and reports on the implementation of the Crown Lands Policy and makes assessments, based on available and collected data, on whether the Policy is meeting its objectives and makes recommendations to the Permanent Secretary and Minister with responsibility for Crown Lands on any amendments to the Policy or procedures that are needed in order to fulfil overall Policy objectives.</li> <li>• Monitors performance of staff of the Crown Lands Department, in accordance with established TCI Government performance management system.</li> <li>• Liaises with other TCI Government departments and agencies to ensure that Crown Land Policy is being implemented and that Crown land allocations take place on a planned basis in accordance with policy.</li> <li>• Represents the Crown Land Department at meetings with external stakeholders, such as meetings with major developers or community consultations, and in internal TCI Government meetings and committees.</li> </ul>
<b>Working and reporting relationships</b>	<p><b>Reports to:</b></p> <ul style="list-style-type: none"> <li>• Permanent Secretary</li> </ul> <p><b>Direct line manager of:</b></p> <ul style="list-style-type: none"> <li>• Manager, Land Management Unit</li> <li>• Manager, Land Allocation Unit</li> <li>• Attorney</li> <li>• Secretary</li> </ul> <p><b>Other important relationships:</b></p> <ul style="list-style-type: none"> <li>• Director, Survey Dept.</li> <li>• Director, Valuations Dept.</li> <li>• Director, Planning Dept.</li> <li>• Registrar of Lands</li> <li>• Director, Dept. of Environment and Coastal Resources</li> <li>• Director, Budgets</li> <li>• Director, Public Works Dept.</li> <li>• Attorney General</li> </ul>
<b>Job specifications</b>	<p><b>Qualifications:</b></p> <p>At least a Bachelors degree or equivalent, from an internationally recognised University, in surveying, estate management, land economics, geography, law, economics, environmental management, business, finance or a similar degree; candidates without a bachelors degree but with membership of an internationally recognised professional</p>

	<p>association such as the Royal Institute of Chartered Surveyors will also be considered.</p> <p>Preference will be given to candidates with post-graduate qualification (Masters or higher).</p> <p><b>Experience and knowledge:</b></p> <p>At least ten (10) years professional experience, working on land or natural resource management issues, with at least five (5) years experience in a managerial role. The candidate must be able to demonstrate strong managerial and administrative abilities and show leadership potential. The candidate should have good knowledge of land policy issues in the Turks and Caicos Islands (or similar jurisdictions) and must understand the basic concepts of land law, surveying, mapping and environmental management. Additionally the candidate must be able to demonstrate knowledge of the public policy process, including the analysis of the implementation of policy and how to make policy recommendations.</p> <p><b>Personal Characteristics:</b></p> <p>The candidate must show potential to take a leadership role in Crown Land management in the Turks and Caicos Islands. They must display confidence and an ability to negotiate satisfactory outcomes in accordance with Policy and to work in conjunction with other Government Depts. and external stakeholders. The candidate will require excellent written and verbal presentation skills and be able to play the role of the public face of Crown Land management in the TCI. They must be able to motivate staff of the Crown Lands Dept. and to manage a Dept. with geographically dispersed personnel, including field workers.</p>
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<b>Department</b>	<b>Crown Lands Department, Ministry of Natural Resources</b>
<b>Job Title</b>	<b>Deputy Commissioner of Crown Lands</b>
<b>Main Purpose</b>	The Deputy Commissioner of Crown Lands is responsible for overseeing the applications for large commercial developments on Crown Lands, for applications and management of mineral and reclamation licenses, for the provision of policy advice and assistance to the Commissioner of Crown Lands and for the acting in the place of the Commissioner of Crown Lands, when the Commission is on leave.
<b>Main Duties</b>	<ul style="list-style-type: none"> <li>• Ensures all statutory and other approved functions of the Crown Land Department are fulfilled, in accordance with the Crown Land Ordinance and the Crown Land Policy, for large commercial developments (over 10 acres) on Crown Lands: <ul style="list-style-type: none"> <li>➤ Ensuring all allocations meet the legal and policy requirements;</li> <li>➤ Ensuring all applications for approval submitted to Cabinet are in accordance with policy and that the correct procedures have been followed;</li> <li>➤ Ensuring that any discounts on land purchases are applied in accordance with the Crown Land Policy;</li> <li>➤ Ensuring that all responsibilities of leaseholders have been discharged prior to recommending upgrade to freehold title;</li> <li>➤ Monitoring major commercial applications for Crown Land and investigating and taking actions against potential cases of fraudulent applications, contrary to the Ordinance and Policy.</li> </ul> </li> <li>• Assist the Commissioner of Crown Lands in planning the annual operations of the Crown Lands Department and setting and monitoring performance indicators.</li> <li>• Monitors and reports on the implementation of the Crown Lands Policy, with particular reference to large commercial developments, and makes assessments, based on available and collected data, on whether the Policy is meeting its objectives and makes recommendations to the Commissioner of Crown Lands on any amendments to the Policy or procedures that are needed in order to fulfill overall Policy objectives.</li> <li>• Liaises with TC Invest to ensure that areas of Crown Land suitable for potential large-scale development are identified and actively marketed to potential developers, including providing maps and information about environmental considerations, physical features etc. that may be of interest to potential developers.</li> <li>• Assist TC Invest in the evaluation of competing bids for areas of Crown Land set aside for major commercial developments and makes recommendations, in accordance with Crown Land Policy.</li> <li>• Receives and ensures the processing of applications for mineral</li> </ul>

	<p>licenses and reclamation licenses, ensures that all statutory and policy requirements are observed and makes recommendations to Cabinet for approval or rejection of applications.</p> <ul style="list-style-type: none"> <li>• Co-ordinates the drafting and execution of reclamation or mineral licenses and ensures that they are executed and registered in accordance with procedures.</li> <li>• Ensures that the Crown Land Management Unit monitors licenses to determine that terms and conditions and all statutory requirements are observed.</li> <li>• Liaises with DECR to ensure that they have information necessary to monitor adherence to licenses issued inside protected areas.</li> <li>• Liaises with other TCI Government departments and agencies to ensure that Crown Land Policy is being implemented and that Crown land allocations take place on a planned basis in accordance with policy.</li> <li>• Acts for the Commissioner of Crown Lands during periods of leave.</li> </ul>
<b>Working and reporting relationships</b>	<p><b>Reports to:</b></p> <ul style="list-style-type: none"> <li>• Commissioner of Crown Lands</li> </ul> <p><b>Direct line manager of:</b></p> <p><b>Other important relationships:</b></p> <p><b>Internal:</b></p> <ul style="list-style-type: none"> <li>• Manager, Crown Lands Unit</li> <li>• Manager, Crown Lands Allocation Unit</li> <li>• Attorney</li> </ul> <p><b>External:</b></p> <ul style="list-style-type: none"> <li>• Director, Survey Dept.</li> <li>• Director, Valuations Dept.</li> <li>• Director, Planning Dept.</li> <li>• Registrar of Lands</li> <li>• Director, Dept. of Environment and Coastal Resources</li> <li>• Director, Budgets</li> <li>• Director, Public Works Dept.</li> <li>• Attorney General</li> </ul>
<b>Job specifications</b>	<p><b>Qualifications:</b></p> <p>At least a Bachelors degree or equivalent, from an internationally recognised University, in surveying, estate management, land economics, geography, law, economics, environmental management, business,</p>



	<p>finance or a similar degree; candidates without a bachelors degree but with membership of an internationally recognised professional association such as the Royal Institute of Chartered Surveyors will also be considered.</p> <p>Preference will be given to candidates with post-graduate qualification (Masters or higher).</p> <p><b>Experience and knowledge:</b></p> <p>At least ten (5) years professional experience, preferably working in property or tourism development. The candidate must be able to demonstrate strong managerial and administrative abilities and show future leadership potential. The candidate should have knowledge of land policy issues in the Turks and Caicos Islands (or similar jurisdictions) and must understand the basic concepts of land law, surveying, mapping and environmental management.</p> <p><b>Personal Characteristics:</b></p> <p>The candidate must show potential to take a future leadership role in Crown Land management in the Turks and Caicos Islands. They must display confidence and an ability to negotiate satisfactory outcomes in accordance with Policy and to work in conjunction with other Government Depts. and external stakeholders. The candidate will require excellent written and verbal presentation skills and be able to perform the role of Commissioner of Crown Lands, during the Commissioners absence.</p>
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<b>Department</b>	<b>Crown Lands Department, Ministry of Natural Resources</b>
<b>Job Title</b>	<b>Attorney, Crown Lands Department</b>
<b>Main Purpose</b>	The Attorney in the Crown Lands Dept. ensures that all statutory notices, leases, transfer documents and licenses are drafted and executed in accordance with the law, and provides legal advice to the Commissioner of Crown Lands.
<b>Main Responsibilities</b>	<ul style="list-style-type: none"> <li>• Drafts all standard Conditional Purchase Leases, long-leases, reclamation, mining and any other licenses, transfer documents, charges and any other statutory notices or documents as required by law.</li> <li>• Ensures execution of all leases, notices etc. in accordance with the law and Policy and ensures that documents are registered in the Land Registry.</li> <li>• Liaises with Attorney General's Chamber with respect to the drafting of long- leases and other agreements for large commercial developments that may deviate from the standard documents, provides technical advice and recommendations to the AG Chambers and ensures subsequent execution of agreements in accordance with Policy and the law.</li> <li>• In consultation with the Attorney General's Chambers provides legal advice to the Commissioner of Crown Lands on issues such as breaches of terms and conditions, interpretations of leases, interpretation of statute and common law.</li> <li>• In consultation with the Attorney General's Chamber, represents the Commissioner of Crown Lands in any Court matters, as required.</li> <li>• Makes recommendations to the Commissioner of Crown Lands on any amendments to the law, regulations or standard leases and other documents which would assist in meeting the overall objectives of the Crown Land Policy.</li> </ul>
<b>Working and reporting relationships</b>	<p><b>Reports to:</b></p> <ul style="list-style-type: none"> <li>• Commissioner of Crown Lands</li> </ul> <p><b>Direct line manager of:</b></p> <ul style="list-style-type: none"> <li>• Clerical Officer</li> </ul> <p><b>Indirect reporting:</b></p> <p><b>Internal:</b> Deputy Commissioner of Crown Lands</p>

	<p>Manager, Crown Land Management Manager, Crown Land Allocations</p> <p><b>External:</b> Attorney General Registrar of Lands</p>
<b>Job specifications</b>	<p><b>Qualifications:</b> Registered solicitor in TCI.</p> <p><b>Experience and knowledge:</b> At least three (3) years experience in conveyance, property and land law, gained in either the public or private sectors. Knowledge of public policy issues, especially as they related to land and property, would be a distinct advantage. Candidate must be computer literate and able to retrieve data and generate reports from the Crown Land Information System.</p> <p><b>Personal Characteristics:</b> Candidate should possess strong mediation and diplomacy skills and be able to negotiate successful agreements. They must possess excellent written and verbal communication skills and be able to explain legal concepts to a non-legal audience. The candidate must display high-levels of professional and personal integrity.</p>

<b>Department</b>	<b>Crown Lands Department, Ministry of Natural Resources</b>
<b>Job Title</b>	<b>Manager, Crown Land Management Unit</b>
<b>Main Purpose</b>	The Manager of the Crown Land Management Unit is responsible for monitoring use of all Crown Land in the Turks and Caicos Islands, other than protected areas, and for ensuring that quick action is taken against any breaches of the Crown Land Ordinance or the terms and conditions of Crown Land leases or licenses.
<b>Main Duties</b>	<ul style="list-style-type: none"> <li>• Manages the work of District Land Officers to ensure that field inspections are made of all Crown Land to monitor use and occupation.</li> <li>• Ensures that District Land Officers have access to up-to-date records, equipment and other necessary resources to be able to discharge their functions.</li> <li>• Ensures that all sub-offices of the Crown Land Dept. have maps, application forms and other up-to-date sources of information to provide to members of the public.</li> <li>• Ensures that draft leases and transfer of title certificates are executed by potential lessees/freeholders, in accordance with policy.</li> <li>• Develops an annual budget for the Unit, for submission to the Commissioner of Crown Lands.</li> <li>• Develops an annual and monthly workplan for the Unit, including a field visit schedule for each District Land Officer, taking into account the different potential for breaches of the Ordinance in different geographical locations.</li> <li>• Reports on all breaches of Crown Land Ordinance and terms and conditions of leases or licenses to the Commissioner of Crown Lands.</li> <li>• Liaises with law enforcement and other TCI Government Agencies, including Attorney General's Chamber, Planning Dept., Public Works Dept., Treasury and Immigration Dept., to ensure that effective action is taken in cases of a breach of the Crown Land Ordinance or terms and conditions of a Crown land lease or license.</li> <li>• Conducts field visits with District Lands Officers, as required, to mediate or resolve any potential conflicts or queries and reports on outcome of attempted mediation to the Commissioner of Crown Lands.</li> <li>• Organises stakeholder meetings in different areas to hear suggestions or complaints from members of the public and to provide information on potential areas for Crown Land allocations.</li> </ul>

	<ul style="list-style-type: none"> <li>Ensures that District Land Officers deliver rent arrears demands or any other statutory notice</li> </ul>
<b>Working and reporting relationships</b>	<p><b>Reports to:</b></p> <ul style="list-style-type: none"> <li>Commissioner of Crown Lands</li> </ul> <p><b>Direct line manager of:</b></p> <ul style="list-style-type: none"> <li>District Land Officers</li> <li>Administrative Assistant (Provo office)</li> </ul> <p><b>Indirect reporting relationships:</b></p> <p><i>Internal:</i>  Manager, Land Allocations  Attorney  Database Manager</p> <p><i>External:</i>  District Commissioners  Police  Director of Planning</p>
<b>Job specifications</b>	<p><b>Qualifications:</b>  At least a Bachelors degree or equivalent, from an internationally recognised University, in surveying, estate management, land economics, geography, law, economics, development economics, environmental management, business, finance or a similar degree; candidates without a bachelors degree but with membership of an internationally recognised professional association such as the Royal Institute of Chartered Surveyors will also be considered.</p> <p><b>Experience and knowledge:</b>  The candidate should have at least five (5) years professional experience in a land management related role or in a social/community development role that involved significant interaction with members of the public. The candidate should possess considerable experience with dealing with members of the public and at conducting field work. Basic knowledge of land law, mapping &amp; GIS and housing policy would be a considerable advantage.</p> <p><b>Personal Characteristics:</b>  The candidate should display excellent mediation and diplomacy skills and must be able to resolve conflicts and disputes. The candidate must be willing and able to talk with a wide range of different stakeholders, ranging from major property developers to squatter households, and to facilitate stakeholder and community meetings.</p>

<b>Department</b>	<b>Crown Lands Department, Ministry of Natural Resources</b>
<b>Job Title</b>	<b>District Land Officers</b>
<b>Main Purpose</b>	District Land Officers are responsible for monitoring use of all Crown Land in the area to which they are assigned other than protected areas, and for ensuring that quick action is taken against any breaches of the Crown Land Ordinance or the terms and conditions of Crown Land leases or licenses, under the guidance of the Manager, Crown Land Management Unit. The District Land Officers are field staff and are expected to spend at least three or four days per week visiting Crown Land parcels.
<b>Main Duties</b>	<ul style="list-style-type: none"> <li>• Conducts field inspections of all Crown Land within district to monitor use and occupation.</li> <li>• Accesses Crown Land records to ensure that occupation or usage is in accordance with lease conditions and the Crown Land Ordinance.</li> <li>• Advises Manager, Crown Land Management Unit of any potential breaches of ordinance or lease terms and conditions and recommends actions. Liaises with local law enforcement officers and other Government Dept. to ensure that any approved action is taken.</li> <li>• Advises members of the public on Crown Land allocation process and on Crown Land Management issues, including providing information, based on data in the Crown Land Information System, about parcels of Crown Land available for allocation.</li> <li>• Ensures that leases or transfer documents are executed by applicants, in accordance with procedures.</li> <li>• Advises leaseholders about terms and conditions and on the process of up-grading title to freehold.</li> <li>• Delivers statutory notices, including rent demands etc. to leaseholders and other occupiers of Crown Lands.</li> <li>• Under guidance of Manager, Crown Land Management Unit, organises stakeholder meetings in different areas to hear suggestions or complaints from members of the public and to provide information on potential areas for Crown Land allocations.</li> </ul>
<b>Working and reporting relationships</b>	<b>Reports to:</b> <ul style="list-style-type: none"> <li>• Manager, Crown Land Management Unit</li> </ul> <b>Direct line manager of:</b>

	<p><b>Indirect reporting relationships:</b></p> <p><i><b>Internal:</b></i>  Manager, Land Allocations  Attorney  Database Manager</p> <p><i><b>External:</b></i>  District Commissioners  Police  Director of Planning</p>
<b>Job specifications</b>	<p><b>Qualifications:</b>  At least two (2) A-level passes, or equivalent school-leaving certification or an associate degree, in any discipline. GCE/CXC or equivalent passes in English Language and Mathematics. Qualifications in French and/or Spanish would be a distinct advantage.</p> <p><b>Experience and knowledge:</b>  The candidate should have at least three (3) years experience in working in a setting where they have frequent interactions with members of the public. The candidate must have good diplomacy and mediation skills and be able to communicate effectively with a wide range of people. The candidate must be computer literate and able to retrieve and input data into a database and to generate and print documents from the system. Experience in conducting fieldwork, for example conducting social surveys, would be a distinct advantage. Knowledge of basic land law and basic map reading ability would also be a distinct advantage.</p> <p><b>Personal Characteristics:</b>  The candidate should display excellent mediation and diplomacy skills and must be able to resolve conflicts and disputes. The candidate must be willing and able to talk with a wide range of different stakeholders, ranging from major property developers to squatter households, and to facilitate stakeholder and community meetings. The candidate must be self-motivated and be willing to spend long periods in the field – walking to parcels or other sites when necessary.</p>

<b>Department</b>	<b>Crown Lands Dept., Ministry of Natural Resources</b>
<b>Job Title</b>	<b>Manager, Crown Land Allocation Unit</b>
<b>Job description</b>	The Manager, Crown Land Allocations, is responsible for the administrative process involved in processing all applications for Crown Land in the Turks and Caicos Islands, and for ensuring that the Crown Land Information system is properly maintained.
<b>Main Responsibilities</b>	<ul style="list-style-type: none"> <li>• Manages the Crown Land Allocation Unit, which has the responsibility for processing all applications for Conditional Purchase Leases, other leases and transfers to freehold title.</li> <li>• Manages the work of the administrative and technical staff who have responsibility for processing applications and for maintaining the Crown Land Information System.</li> <li>• Ensures that the statutory and other documented procedures for processing Crown land applications are followed, including but not limited to: <ul style="list-style-type: none"> <li>➤ Ensuring that applications are for valid, existing and available parcels of Crown Land, which have received planning permission and are zoned for the correct use.</li> <li>➤ Ensuring that all supporting documentation, such as citizenship status, are received and are valid.</li> <li>➤ Ensuring that evaluation criteria for applicants are fairly implemented and recorded.</li> <li>➤ Ensuring that all applications are processed in accordance with agreed indicators and that all relevant information is recorded into the Crown land Information System.</li> <li>➤ Ensuring that letters of acknowledgement, letters of offer or letters of rejection are sent out on a timely basis, in accordance with established performance indicators.</li> <li>➤ Ensuring that valuations are received and that any discounts are valid and correctly calculated</li> <li>➤ Ensuring that requests for Approval from either the Minister with responsibility for Crown lands or the Cabinet are completed in accordance with Crown Land Ordinance and Policy.</li> <li>➤ Ensuring that all fees are received prior to executing lease.</li> <li>➤ Ensuring that all terms and conditions of Conditional Purchase Leases are fulfilled, prior to processing applications for grants of freehold.</li> <li>➤ Ensuring that all relevant fees are paid prior to executing</li> </ul> </li> </ul>



	<p>transfer of freehold.</p> <ul style="list-style-type: none"> <li>• Liaises with the Dept. of Planning and the Ministry of Works to ensure that roads, water distribution systems or other infrastructural works required by the Dept. of Planning are constructed in accordance with plans, to ensure that once a lease is granted the parcel will have sufficient infrastructure in place to allow development to commence.</li> <li>• Manages the Crown Land Information System to ensure that all applicants are correctly entered and process using the workflow/document tracking system.</li> <li>• Liaises with the Survey Dept. to ensure that maps showing available Crown Lands are produced on a regular basis and that these maps are made available to other TCIG Depts. and to members of the public, including through CLD sub-offices.</li> <li>• Ensures that the Unit responds to all queries about the status of applications and deals with any complaints or comments from members of the public.</li> <li>• Reports on performance indicators relating to the land allocation process to the Commissioner of Crown Lands.</li> </ul>
<b>Working and reporting relationships</b>	<p><b>Reports to:</b></p> <ul style="list-style-type: none"> <li>• Commissioner of Crown Lands</li> </ul> <p><b>Direct line manager of:</b></p> <ul style="list-style-type: none"> <li>• Manager, Database</li> <li>• Filing Clerk</li> <li>• Office Assistant</li> </ul>
<b>Job specifications</b>	<p><b>Qualifications:</b> At least a Bachelors degree or equivalent, from an internationally recognised University, in a discipline such as business management, finance or a similar degree.</p> <p><b>Experience and knowledge:</b> At least five (5) years experience in a professional role associated with either land management or the processing of large volumes of applications in a computerised environment; at least two (2) years experience in a managerial role. Knowledge of basics land law, mapping and GIS and database management would be an advantage. Experience with dealing with members of the public.</p> <p><b>Personal Characteristics:</b> The candidate must be able to display excellent administrative and general management skills. They must be process and systems oriented, but also to be able to communicate effectively with members of the public.</p>

<b>Department</b>	<b>Crown Lands Department, Ministry of Natural Resources</b>
<b>Job Title</b>	<b>Land Information System (LIS) Manager</b>
<b>Main Purpose</b>	The Database Manager is responsible for maintaining the Crown Land Information System (CLIS), ensuring that all data is current and accurate and that the CLIS is utilised in accordance with the approved procedures of the CLD.
<b>Main Duties</b>	<ul style="list-style-type: none"> <li>• Maintains the Crown Land Information System, insuring that information is current and accurate and that data from the system is made available through a wide-area network to all staff of the Crown Lands Department, including field staff.</li> <li>• Generates management reports at the request of the Manager, Crown Land Allocation, containing key indicators of CLD performance.</li> <li>• Ensures that all new applications for Crown Land and any other correspondence, such as letters of acceptance, requests for transfers etc. are entered into the CLIS before the end of the working day that they are received in the office.</li> <li>• Manages the work of the Data Entry Clerks, monitoring their output and conducting regular checks and audits of their work to ensure accuracy and adherence to data inputting protocols.</li> <li>• Ensures that all new parcels of Crown Land, created through mutations of sub-divisions carried out by the Survey Dept., are entered into the Crown Land Information System, within 24 hours of being entered into the Survey Dept. GIS.</li> <li>• Ensures that the Crown Land Information System functions according to specifications and trouble shoots any technical problems with the system, including corresponding with software vendors.</li> <li>• Recommends any up-grades or modifications to the CLIS software, based on industry trends or increased functionality of new releases.</li> <li>• Plans and implements data security access measures for the Crown Land Information System, ensuring that log-in names and passwords are used in accordance with procedures and audits use of the system.</li> <li>• Plans and implements data security and disaster mitigation measures to ensure that data is correctly backed-up and stored off site on a daily basis.</li> </ul>

	<ul style="list-style-type: none"> <li>• Ensures that all computers in the CLD are adequately protected with up to date anti-virus, spy-ware and other security measures and that the correct procedures are followed to ensure that protection is current. Monitors all software in the Dept. to ensure that licenses are valid.</li> <li>• Ensures that all hardware within the CLD is functioning according to specifications, trouble-shoots any problems and recommends hardware up-grades or replacements to the Commissioner of Crown Lands.</li> <li>• Liaises with the Survey Dept., Valuations Dept., Land Registry, Dept. of Planning and other Government agencies to develop and implement recommendations for the integration and synchronisation of information systems.</li> </ul>
<b>Working and reporting relationships</b>	<p><b>Reports to:</b></p> <ul style="list-style-type: none"> <li>• Manager, Crown Lands Allocation.</li> </ul> <p><b>Direct line manager of:</b></p> <ul style="list-style-type: none"> <li>• Data Entry Clerks</li> </ul>
<b>Job specifications</b>	<p><b>Qualifications:</b> At least a Bachelors degree in Computer Science or similar. Preference will be given to candidates with qualifications that included significant database management and GIS components, or comparable industry certification.</p> <p><b>Experience and knowledge:</b> At least three (3) years professional experience with database management, preferably in a GIS environment. The ideal candidate will have good knowledge and experience at working with ORACLE databases and with ARC GIS (ESRI) software packages. Knowledge of document tracking or workflow systems would be a distinct advantage.</p> <p><b>Personal Characteristics:</b> Keen eye for detail and commitment to ensure total accuracy and adherence to details. Task and deadline oriented, with ability to manage and monitor the work of data entry clerks undertaking routine and repetitive work.</p>

## **ANNEX II: Terms of Reference for Advisor to Commissioner of Crown Lands**

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### **Crown Lands Unit, Ministry of Natural Resources Turks and Caicos Islands Government**

### **Advisor to Commissioner of Crown Lands**

### **Terms of Reference**

#### **Background:**

The Crown is the largest landholder in the Turks and Caicos Islands (TCI). This makes Crown Lands the Government's most valuable tangible asset, and places an obligation on Government agencies responsible for Crown Land Management to address both immediate and medium to long term planning needs. The potential value of Crown Land has risen dramatically over the years and this increase is likely to continue.

In 2005, the Turks and Caicos Islands Government (TCIG) completed a comprehensive study on Crown Land Management which examined the current Crown land policy and produced recommendations for a future comprehensive approach which maximizes sustainable revenues from Crown Land, takes account of competing economic, social and environmental factors, benefits the long term economic and social interests of the Belonger Community and ensures transparency and openness in the administration of Crown land.

As a result of the recommendations from this study, in November 2006 the TCIG approved a new Crown Land Policy which states twenty-one key principles and actions related to Crown land. The TCIG is currently taking the required technical, institutional and legal steps to fully implement this Policy through the Ministry of Natural Resource.

Clause 16) of the Crown Land Policy calls for the establishment of a Crown Lands Unit or Department within the Ministry of Natural Resources, to be staffed by experienced technical and administrative staff.

The purpose of this Department, as laid out in the policy, is to:

- ensure a more effective, efficient and integrated implementation of the Crown Land Policy;
- consolidate a land use planning approach to land development in the islands; and
- improve the provision of land administration services to the public and private sectors.

The Ministry of Natural Resources is in the process of establishing this new Department under the direction of a new Commissioner of State Lands. In order to support the new

Commissioner and ensure the successful establishment of the Department and implementation of the Crown Lands Policy the Ministry of Natural Resources would like to hire the services of an Advisor to the Commissioner.

**Objective:**

To advise and assist the new Commissioner of Crown Lands in the establishment of the new Crown Lands Department, to provide coaching to the new Commissioner and to the professional and technical staff of the Department and to advise on the refinement and further development of the new Crown Land Policy.

**Characteristics of Assignment:**

Type of consultant: Individual long-term advisor

Duration: Three years.

Experience and qualifications: The Advisor must have at least fifteen years experience in senior land administration roles, gained either through consultancy work on a wide variety of land administration projects or through direct senior management roles in a variety of different land administration related positions. The Advisor must be able to demonstrate his/her ability to implement institutional transformation assignments and to achieve positive results in reforming land management practices in comparable jurisdictions. The Advisor must have experience in Crown/State land management, preferably in a Commonwealth country. Experience of working in the Caribbean would be a considerable advantage. The Advisor should possess at least a Masters-level qualification in a land related discipline or be admitted at a senior level in a relevant professional association, e.g. Fellow of the Royal Institute of Chartered Surveyors.

**Activities:**

- 1) Advise Commissioner of Crown Lands on the establishment, staffing and management of the Crown Lands Department.
- 2) Coach the Commissioner of Crown Lands in managing the Dept. and in analysing Crown Land Policy and recommending amendments to regulations, policy and legislation.

- 3) Assist and coach the Commissioner of Crown Lands in achieving the organisational culture required for the effective implementation of Crown land Policy.
- 4) Review and advise on income generating activities relating to Crown Land including but not limited to fees for services, including provision of information to commercial developers, licenses for land reclamation, licenses for the use of unallocated Crown Lands, including beaches, and infrastructure development fees.
- 5) Liaise with the Department of Planning and the Department of Environment and Coastal Resources on the development and implementation of a policy on licensing activities within National Parks and Nature Reserves and on the charging and collection of appropriate license fees, including for activities on the boundaries of National Parks and Nature Reserves.
- 6) Oversee the implementation of the new Crown Land Information System and ensure that all resources, policies and procedures are in place to ensure that it is consistently maintained and that all design functions are fully utilised.
- 7) Provide on the job training to all staff in the Crown Lands Dept., with particular emphasis on training for District Lands Officers, in order to improve levels of compliance with Crown Land Policy and Ordinance.
- 8) Ensure the timely publication of detailed Annual Reports on the Crown Land Dept. and provide training and advise in the preparation of reports to ensure sustainability after the end of the assignment.
- 9) Develop monthly performance reports against agreed Departmental indicators, determine base-line level of performance and design and implement a migration plan to achieve agreed benchmarks over a five year period.
- 10) Develop and advise on the implementation of a system for external monitoring of effectiveness of the Crown Land Policy in meeting objectives, in consultation with external panel of experts.

**Deliverables:**

- 1) Report on increasing revenue from Crown Land activities, including fees, licenses etc. (delivered within three months of start of assignment).
- 2) Report outlining suggested policy on licensing activities within protected areas (delivered within six months of start of assignment)
- 3) On-going advise, training and coaching to the Commissioner of Crown Lands and other staff in the Department.
- 4) Monthly reports on success of Department in meeting agreed performance indicators.
- 5) Three annual reports on the work of the Department and progress towards meeting the objectives of the Crown Land Policy.

- 6) Final detailed assignment report outlining overall progress in the implementation of the Policy and making recommendations for future management of the department, amendments to the

## **ANNEX III: Terms of Reference for Crown Land Inventory**

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### **Crown Lands Unit, Ministry of Natural Resources Turks and Caicos Islands Government**

### **Crown Lands Inventory**

### **Terms of Reference**

#### **Background:**

The Crown is the largest landholder in the Turks and Caicos Islands (TCI). This makes Crown Lands the Government's most valuable tangible asset, and places an obligation on Government agencies responsible for Crown Land Management to address both immediate and medium to long term planning needs. The potential value of Crown Land has risen dramatically over the years and this increase is likely to continue.

In 2005, the Turks and Caicos Islands Government (TCIG) completed a comprehensive study on Crown Land Management which examined the current Crown land policy and produced recommendations for a future comprehensive approach which maximizes sustainable revenues from Crown Land, takes account of competing economic, social and environmental factors, benefits the long term economic and social interests of the Belonger Community and ensures transparency and openness in the administration of Crown land.

As a result of the recommendations from this study, in November 2006 the TCIG approved a new Crown Land Policy which states twenty-one key principles and actions related to Crown land. The TCIG is currently taking the required technical, institutional and legal steps to fully implement this Policy through the Ministry of Natural Resource.

Clause 17) of the Crown Land Policy calls for the establishment of a “comprehensive register and inventory of all Crown Lands”. This inventory is crucial for the effective management of Crown Lands, as it will allow the Ministry of Natural Resources to take a more planned approach to allocation, to manage leases and rent collections more effectively and to ensure that land is utilized in accordance with the Crown Land Ordinance and Policy. This inventory will eventually be integrated into the land information system being designed and implemented by the Cayman Islands Registry, but in the meantime will be utilized as a basic information tool by the Crown Land Unit.



The Ministry of Natural Resources would like to hire the services of a consultancy in order to undertake this assignment.

### **Objective:**

To compile a comprehensive register and inventory of all Crown Lands in a geographic information system (GIS) database.

### **Characteristics of Consultancy:**

Type of consultant: Firm

Duration: Three months

Experience and qualifications: The Consulting Firm will be a well established entity with significant experience in land information systems, land management, surveying, GIS, database design and management and data capture. The project leader must have at least five years relevant experience and be qualified to at least bachelors degree level, or an appropriate professional certification to a comparable level. Other staff should possess sufficient knowledge, gained either through formal education or work experience, to correctly interpret and record data from the available records and transcribe onto data capture forms.

### **Activities:**

- 1) Review all paper block plans to ensure that the GIS of the block plans is up to date and that all surveyed parcels have been ascribed a parcel number.
- 2) Extract a comprehensive list of parcel numbers in the TCI. It is estimated that there are approximately 22,000 parcels.
- 3) Design and populate a database that will be compatible with the Oracle-based system being used by the Cayman Islands Electronic Registry project and the existing Lands and Survey Department GIS database using either Microsoft Access or comparable software, to record all data captured.
- 4) Design and implement a methodology, using appropriate techniques, standard forms, a suitable computer user-interface and quality control mechanisms, to capture and enter into the database relevant data on each parcel from the Land Registry and the files of the Lands and Surveys Department (LS&D) and Crown Land Unit (CLU).

5) Examine the title of each parcel in the Land Registry to ascertain whether it is:

- a) Private freehold,
- b) Protected Area,
- c) National Trust,
- d) Crown Land under a valid Conditional Purchase Lease (CPL),
- e) Unallocated Crown Land, or
- f) Crown land with an expired CP,

and record the relevant data into the database against the parcel number.

- 6) For land in category e) and f) above, conduct a search of available records in the LS&D and CLU to determine whether a letter of offer has been issued for the parcel and whether the offer is still valid, and if a valid offer has been made, check if the offer has been accepted and the applicant is in the process of obtaining a CPL, or in cases where there is an expired CPL, check to determine if any letter requesting renewal has been received, and record pertinent details of these cases into the database.
- 7) In conjunction with the Lands & Survey Department, merge the captured data with a subset of the existing Lands and Surveys GIS database to create a spatial GIS dataset of Crown lands, compatible with ESRI's ArcGIS environment, that includes and depicts all Crown land parcels and the data captured during actives 4,5, and 6 above.
- 8) For all Crown Lands that are unallocated or have an expired lease, conduct an assessment using all available aerial photographic data to determine if any visible structures exist on a parcel. If structures do exist, record this in the database as a possible case of illegal occupation.
- 9) In conjunction with the LS&D produce a thematic map where each parcel of land in the country is classified according to the following categories.
  - a. Private freehold,
  - b. Protected Area,
  - c. National Trust,
  - d. Crown Land under a valid Conditional Purchase Lease (CPL),
  - e. Crown land with a valid offer/acceptance/processing for first or renewed CPL
  - f. Crown Land that appears to have been illegally occupied.
  - g. Crown Land available for distribution (includes land where offer is no longer valid and land where the Conditional Purchase Lease has expired and the leaseholder has not applied for a renewal).

- 10) In conjunction with the L&SD, print and distribute three sets of thematic maps showing parcels by each category level, by major island.

### **Deliverables:**

- 1) A database file or files compatible with Microsoft Access mdb format on CD Rom and in hardcopy providing a categorisation of each parcel and the following information on Crown Lands that are under leases or offers, or in the process of being allocated:
  - Name of leaseholder or applicant
  - Whether for commercial, residential or other use
  - Date of original lease or letter of offer
  - Date of any extensions to lease or letter of offer
  - Date of letter of acceptance
  - Date of expiration of lease or letter of offer
  - Existence of any structure that could indicate illegal occupation.
- 2) Three (3) copies of thematic maps of each major island categorising land as outlined under activity 8) above.

### **Counterpart Resources**

The TCIG will provide the consultants with full and uninterrupted access to all relevant land and related documents, files, registers and electronic databases in the Land Registry, Crown Land Unit and Lands & Surveys Department. A senior member of staff in the Lands & Surveys Department will be assigned to facilitate the work of the consultants. The consultants will be provided with desk space, with appropriate seating, lighting and electrical outlets, inside the Land Registry and the Lands and Survey Department. The consultants will be expected to provide their own computing requirements for the data capture stage of the assignment but will be assigned one Lands and Surveys workstation for the initial cross checking of parcel numbers and production of the thematic maps. The consultants will be expected to provide the consumables for the production of the required deliverables.

### **ANNEX IV: Proposed training programme for Crown Land Dept.**

Given the skills shortages that exist in the Turks and Caicos Islands it is unlikely that the Government will be able to source candidates with all of the skills, qualifications and experience necessary to effectively implement the Crown Lands Policy. No relevant training course currently exists in the TCI. Sending staff abroad for training and certification at degree level is expensive and means that staff are unavailable for work in TCI for many years.

It is, therefore, recommended that the Government design and implement a targeted training programme, based around practical courses, to be delivered in a series of intensive short (one week) components over a year. Each week of study would comprise 30 hours of contact time. It is recommended that the course be delivered by a combination of qualified international instructors and local experts in land issues. It is recommended that the course should be delivered in conjunction with the Turks & Caicos Islands Community College. The Government should explore the possibility of having the short-courses accredited by the TCI Community College, in order to provide certification to participants at the end of the programme of study. This will allow the continuation of the courses beyond the initial training needs for the Dept. and could assist in the development of a cadre of land professionals for both the public and private sectors.

Not all staff of the Crown Land Dept. would need to attend all of the courses, for example a qualified surveyor would not need to attend the introduction to mapping course. The courses should be made available not just to staff of the Crown Lands Dept. but also to members of the public and other students at the Community College. Some of the courses may be relevant as electives for students following the Associated Degrees in Building & Design technology and the Associate Degree in Business.

#### **Course components:**

Course name	Topics covered
Introduction to Land Policy	Basic terminology What is public policy? Land and society in the Caribbean Rights and responsibilities Land tenure concepts – estates, transfers, eminent domain, Crown/State land, private property, family land, common property, community rights.
Basic Land Law	Constitution Land Registration Transfers

Course name	Topics covered
	<p>Contracts, leases, licenses</p> <p>Charges</p> <p>Common law rights</p> <p>Companies and trusts</p> <p>Crown Land Ordinance</p> <p>Rights of Way</p> <p>Planning Law</p> <p>Protected Areas and environmental law</p> <p>Mining and minerals</p>
Introduction to surveying and mapping	<p>Introduction to geodesy</p> <p>Basic map reading</p> <p>Different types of maps</p> <p>Geographical Information Systems</p> <p>Remote sensing</p> <p>Global Positioning Systems</p> <p>GPS and land management</p>
Introduction to land economics and property development	<p>Land markets</p> <p>Valuation methodologies</p> <p>Planning law and property development</p> <p>Housing market, rental markets, and financing</p> <p>Property development – investments and returns</p> <p>Accounting for externalities</p> <p>Land taxation (stamp duty, land value taxation)</p> <p>Property insurance and risk</p> <p>Property development and the economy</p>
Introduction to environmental management	<p>Basic concepts (eco-systems, population dynamics, carry capacity)</p>

Course name	Topics covered
	<p>Water cycle, carbon cycle etc.</p> <p>Environmental economics</p> <p>Tourism and the environment</p> <p>Pollution and occupational health and safety</p> <p>Land – sea interactions</p> <p>Coral reef protection</p> <p>Water management</p> <p>Risk and Climate change</p> <p>Planning and disaster mitigation</p>
Management, mediation and conflict resolution	<p>Effective communication</p> <p>Having difficult conversations</p> <p>How to conduct a performance review</p> <p>Conducting interviews</p> <p>Collecting field data</p> <p>Mediating disputes and resolving conflict</p> <p>Professional conduct and responsibilities of a public officer</p>



TURKS AND CAICOS ISLANDS GOVERNMENT

MINISTRY OF NATURAL RESOURCES

**CROWN LANDS DEPARTMENT**



**MANUAL OF CROWN LAND ADMINISTRATION AND  
MANAGEMENT PROCEDURE**

Version 1  
February 2008

### Version History

Prepared on behalf of the Crown Land Department by Terra Institute Ltd under contract to the Ministry of Natural Resources for a consultancy in Crown land policy implementation:

1.0 First edition February 2008

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## PREFACE

*This Manual of Crown Land Administration and Management Procedure was prepared during September and October 2007 prior to the writing of drafting instructions, the drafting of a Bill and the promulgation of a Crown Land Ordinance and Crown Land Regulations. Ideally, the preparation of a procedural manual should come after the preparation of legislation, regulations and rules, to ensure consistency between law and administrative procedure and this correct and proper interpretation and implementation. However, exigency meant that the manual was prepared before the law.*

*The consultancy contract undertaken by Terra Institute Ltd included the deliverable of drafting instructions. These were available in draft form to assist the drafting of this manual. However, the drafting instructions outlined broad provisions and lack much of the administrative detail they may be found in similar laws elsewhere and upon which a procedural manual draws most of its substance. Moreover, the drafting instructions highlighted and raised further policy issues that must still be resolved.*

*Thereafter, a number of assumption regarding policy and legal questions had to be made in order for the drafting of this manual to proceed. These assumptions are:*

- 1. That Crown Land (CL) is vested in the Governor on behalf of Her Majesty and the Governor has the power to dispose or grant CL in accordance with the laws of the Turks and Caicos Islands (TCI).*
- 2. The development of CL, like any land, requires development permission. This permission is granted by the Physical Planning Board in accordance with the Physical Planning Ordinance (PPO).*
- 3. The branch of the Ministry of Natural Resources that will administer and manage CL will be a department – the Crown Lands Department (CLD) – and not a unit of the Ministry. This is a key recommendation found in the Institutional Report of the consultancy.*
- 4. The current duties and responsibilities of the Lands and Surveys Department with respect to Crown Land will be relinquished and handed over to the CLD. The Lands and Surveys Department will become the Surveys and Mapping Department.*
- 5. The Turks and Caicos Islands Government (TCIG), through the CLD, may decide and allocate CL for distribution by sale or lease; however, the legal grant of land is made by the Governor at the request of the TCIG.*
- 6. That the TCIG and the agencies of the TCIG do not require the consent of the Governor for the marketing for sale or lease of CL.*
- 7. The authority of the Physical Planning Board is not required for the grant, sale, or lease of CL; permission is only required for development, which includes subdivision.*

*Some clarification of the Crown land policy is needed. Assumptions have been made about the precise meaning and intent of some policy issues (see section 1.5).*

## **DEFINITIONS**

*[Insert list of definitions here, based on the interpretations clause in the (future) Crown Lands Ordinance, the Interpretation Ordinance and suitable common law reference sources]*

## ACRONYMS

CL	Crown Land
CLD	Crown Lands Department
CLMIS	Crown Lands Management Information System
CLO	Crown Lands Ordinance
DOV	Department of Valuations
LR	Land Registry
PPO	Physical Planning Ordinance
RLO	Registered Land Ordinance
TCI	Turks and Caicos Islands
TCIG	Turks and Caicos Islands Government

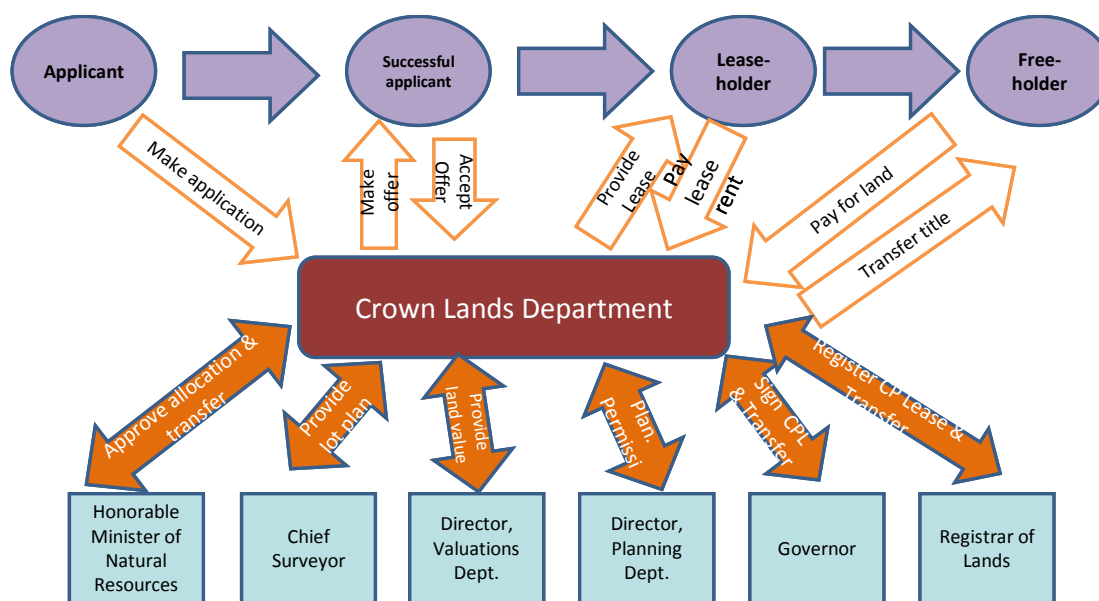
# 1 INTRODUCTION

## 1.1 Scope of the Manual

This manual explains the law, policy and procedures for the administration and management of Crown land in the Turks and Caicos Islands.

Administration of land means in a general way the keeping of good records and information about the allocation, use and value of Crown land. Management means the making of decisions and taking action with respect to the use and development of land including the processes by which Crown land is made available for individuals and organizations. Definitions of terms used throughout the manual were covered in the previous section.

The law relating to Crown land derives mainly from the Crown Land Ordinance.<sup>1</sup> Other laws that impact upon the administration and management of Crown land include the Registered Land Ordinance and the Physical Planning Ordinance, amongst others. The background and key provisions of the legislative framework for Crown land is described in section 1.4 of the manual.



**Figure 1 Crown Land Administration and Management**

<sup>1</sup> Not yet in force



## 1.2 Purpose of the Manual

The primary purpose of this procedural manual is to guide the day-to-day work of the staff of the Crown Lands Department (CLD) who are responsible for the administration and management of Crown Land.

The manual should also be a point of reference for the citizens and Government of the Turks and Caicos Islands. Because the manual is based upon, and is in strict compliance with the Crown Lands Ordinance and Crown Land Regulations<sup>2</sup>, the procedures contained herein should be available for unrestricted public scrutiny. By making the manual more widely available, the procedures for allocation and development of Crown land will become more transparent and understandable<sup>3</sup>. This will build trust in the process and confidence in the minds of the public that Government is undertaking its responsibilities in accordance with law and policy.

The good administration and effective management of land requires strict adherence to law, policy and procedures. Oftentimes law can be difficult to interpret and policy may be ambiguous; and difficulties often arise because of this lack of clarity especially where law and policy seems to conflict. The purpose of the manual is, therefore, to provide this clarity and explain how the law is to be interpreted and put into practice in accordance with policy.

Copies of the manual must be made freely available to all officers of the Crown Lands Department. Copies should also be held by many officers in the Ministry of Natural Resources.

At some future date an electronic version of the manual should be made available for public access and download via the Internet.

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<sup>2</sup> When the Ordinance and Regulations come into force

<sup>3</sup> The manual should be made available as PDF document for the public to download from the CLD's website

### 1.3 Maintaining the Manual

The Commissioner of Lands is responsible for ensuring the proper administration and management not just of Crown Land but also the Crown Lands Department.<sup>4</sup> This responsibility must be exercised in the form of issuing written instructions, and this manual constitutes instructions in writing, which all officers of the CLD must adhere to.

The Commissioner of Crown Lands may delegate to another officer of the CLD the responsibility of maintaining the manual. This responsibility must include, but limited to: (a) updating sections of the manual when the Ordinance, Regulations or land policy changes in any way; (b) upon receipt by the Commissioner of Lands of instructions made in writing by the Minister of Natural Resources; and, (c) all changes to internal process and procedural approved by the Commissioner of Lands.

The officer responsible for maintaining the manual shall keep a record of all versions of the manual. This shall include all changes made, on what date, to what section, and a brief descriptive summary of the change. A record shall also be kept of all electronic and hardcopy versions of the manual. When a change is made, the section is printed out and substituted for the old section in each and every hardcopy version of the manual. The hardcopy record must include version histories of each hardcopy and electronic copy that was updated. Old electronic copies of the manual on every computer in the department must be deleted and replaced in entirety by the complete new version. The old copy must be deleted on the computer to prevent its continued use.

When a section is updated, the master copy is backed up and the changes are made on a new copy. The old version is archived. The new version to given a new version number. For example, if the old version was 1.4 the new version will be 1.5 or, in the case of major revision, 2.0.

When the changes are made to the relevant section, the section number version and date is updated. A page footnote shall be added at the end of the new text or in a convenient point in the section. The footnote will provide a brief description of the change that was made.

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<sup>4</sup> CLO s.xx

## 1.4 Legislative Framework

The administration and management of Crown lands is subject to statutory law. These laws – as listed and explained below – provide the framework for this manual. Whenever there is any doubt as to practice and procedure, the law is the first point of reference, followed by the regulations (if any), and then this manual. However, in most day-to-day administrative and procedural matters, this manual may provide the sole point of reference.

The manual has been prepared with the purpose that it is fully compliant with the laws of Turks and Caicos Islands.<sup>5</sup> The important provisions of statutory law that affect Crown land are summarized in this section.

### *Constitution of the Turks and Caicos Islands 2006*

Crown land is vested in the Governor (s. 94) and may be disposed of by grant by the Governor on behalf of Her Majesty. The Governor may authorize, in writing, any other person to make grants of land on behalf of Her Majesty. The authority may extend to all Crown land or to specific parcel of Crown land and to the granting of specific rights and interests.

Currently there is no delegation of the Governor's powers to grant land; therefore, all grants and dealing of CL must be executed by the Governor.

### *Crown Lands Ordinance 2008*

All Crown land is administered and managed on behalf of Her Majesty and the Governor by the Turks and Caicos Islands Government, and a Minister will be appointed as responsible for this purpose by the Crown Lands Ordinance. The Ordinance will, amongst other things: make provisions for the CLD, the Commissioner of Crown Lands and officers of the CLD; the keeping of Crown land records; the allocation and distribution of Crown land etc. All of these provisions are described and explained in this manual.

### *Crown Lands Regulations 2008*

The Crown Land Ordinance gives the Minister the power to make executive regulations<sup>6</sup> that provide for the better administration of the Ordinance. The reasons regulations are used for administrative matters is that they are easier to change than the Ordinance itself. To change the Ordinance a majority of the members of the House of Assembly must vote in favour; i.e. there must be a positive affirmation of the change. Changing regulations, however, only needs a negative affirmation; i.e. as long as a majority of the House does

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<sup>5</sup> When the CLO comes into force

<sup>6</sup> CLO s.xx

not object, the regulations become part of the law and a vote is not needed. Regulations are “tabled” and become law without the need for members of the House to debate them.

### *Registered Land Ordinance Cap.72*

The administration of land is greatly improved by having a central register where ownership and other interests in land are documented and easily ascertained.

All land, privately-owned and Crown land is registered, and all grants of Crown land, either by freehold, lease or conditional purchase lease must be submitted to the Land Registry for registration. The Registered Land Ordinance (RLO) binds both the Crown and the Government.<sup>7</sup>

All land and rights and interests in land and the proprietors (owners) became registered by a process known as systematic adjudication. This was undertaken between 1967 and 1970 using the Land Adjudication Ordinance, which has since been repealed as it has served its purpose and no longer needed. All land controlled by the Government and unclaimed land became registered as Crown land. Unclaimed land could be claimed by the rightful owners at any time after first registration. However, it is highly unlikely that any claims for unclaimed land will be received now, and can therefore be treated as Crown land.

Systematic adjudication involved the determination of all rights and interests that existed at the time. If the Adjudication Officer found rights to be legitimate they were registered. There are instances where a parcel was registered as Crown land but the register noted that a person was in possession and occupying the land. This person may have acquired rights in parcel of Crown land and the advice of the Attorney General must be sought prior to allocating the parcel to anyone else.

### *Physical Planning Ordinance Cap.73*

This is a law to regulate the orderly planning, use and development of land. Development includes the making of any material change in the use of any land or the subdivision of any land. This means that any development on Crown land, including the subdivision of Crown land, is subject to this law.

### *Land Acquisition Ordinance Cap.78*

Where the Government or the Crown wishes to acquire privately owned land for public purposes, the procedures for doing so are contained in this law. The Ordinance specifies the procedures that must be followed where land is to be acquired, and how compensation is calculated.

On the expectation that the CLD will have a central role in any compulsory acquisition of private lands, the procedures that must be followed should be included in this manual. However, this will be added at a future date.

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<sup>7</sup> RLO s.160

*Land Survey Ordinance Cap.74*

All surveys of registered land for the purposes of registering a parcel mutation or subdivision or resolution of boundary disputes must be undertaken by a land surveyor authorized by the law and the survey conducted according to the regulations to this law. A land surveyor employed on the survey of Crown land need not be a Government-employed land surveyor<sup>8</sup>; however, all Government-employed land surveyors are authorized and are therefore qualified to undertake the work. However, if a private land surveyor is contracted to survey Crown land for the purpose of subdivision and/or registration, this land surveyor must be authorized. Proof of this should be requested from the land surveyor or requested from the Director of the Surveys and Mapping Department prior to signing a contractual agreement. However, if the survey is a topographic survey showing contours and not (definite) parcel boundaries, any land surveyor can be contracted.

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<sup>8</sup> s.6 Land Survey Ordinance

## 1.5 Policy Framework

The current land policy took effect on the 2nd November 2005. There are 21 policy statements:

	Policy	Remarks
1	<p><b>REVENUE GENERATION THROUGH SALE OF CROWN LAND FOR COMMERCIAL PURPOSES.</b></p> <p>Turks and Caicos Islands Government will not actively seek to sell off large areas of Crown Land, but it reserves the right to do so, if deemed necessary. The proceeds of any such sales will be paid into the Government Reserves Fund or used directly for a major specific development project.</p>	<p><i>This is self-explanatory, and the prerogative of the elected Government, subject to a grant being made by the Governor.</i></p>
2	<p><b>TRANSFER OF BELONGER DISCOUNT TO NON- BELONGERS</b></p> <p>Discount given to Belongers on Conditional Purchase Leases must not be transferred to Non-Belongers, and no discount is available to non-Belongers on Crown Land purchases for residential or commercial developments.</p> <p>The decision of the Crown Land Department regarding discounted sales will be subject to regular audit by the Chief Auditor. The Chief Auditor will have unrestricted access to all papers and files.</p>	<p><i>This is also self-explanatory. Refer to section 5 of the manual for guidance on Belonger discounts and section 0 for maintaining records of discount decisions.</i></p>
3	<p><b>BELONGER PURCHASES COMMERCIAL (up to 10 acres)</b></p> <p>a) No individual Belonger will be granted a discount on more than 10 acres.</p> <p>b) Each Belonger will be eligible for one discount up to 50% on the purchase price of up to 10 acres of Crown Land except on Providenciales where the discount will be limited to 25%. No discounts will be available on any subsequent purchase for commercial development.</p> <p>c) If the land/property is sold within 5 years, the full discount is repayable; if the Land/property is sold between 5 and 10 years, half the discount is repayable.</p> <p>d) For large development (e.g. major tourism projects) two or more Belongers may combine their 10-acre entitlements to enable Belonger</p>	<p><i>Although most of this is self-explanatory, questions have been asked about the 10 acre rule. The intent of the policy is clear – one discount of up to 10 acres of land. This does not mean that two discounts can be made on two parcels adding up to 10 acres. One discount, be it for 1, 5 or 10 acres.</i></p> <p><i>Where Belongers combine their entitlements to secure a discount on more than 10</i></p>

	Policy	Remarks
	participation in the project. The early resale penalty is applicable.	<i>acres, and the parcel is more than 10 acres, an agreement should be in place between that records and governs the percentage share that each of them holds in the whole parcel (see section 5.3.2).</i>
4	<b>SUBDIVISIONS</b>  A developer (local) who wants to create a new subdivision will be required to pay to Government not only the open market value of the land, less any applicable Belonger discount but also 10% of the gross value of any subsequent land sales by the Developer, and a grant to Government of 20% of the plots.	<i>This is self explanatory, but can be problematical in practice when parcels are sold subject to discount unless strict adherence to procedure is followed for maintaining records in the CLMIS (see section0).</i>
5	<b>BELONGER PURCHASES –RESIDENTIAL</b>  There will be a maximum discount of 50% on the purchase price of Crown Land for residential development. Each Belonger is entitled to one discount per Island; but may not be the beneficiary of more than one discount at any given time. If the land /property is sold within 5years, the full discount is repayable .If the land/property is sold between 5 and 10 years, half the discount is repayable.	<i>Again, there have been some problems interpreting this policy. A Belonger cannot have more than one discount at a time; to qualify for a discount on another island, the earlier discount must have (a) been repaid, or (b) 10 years has elapsed (se section 5).</i>
6	<b>CONDITIONAL PURCHASE LEASE (CPL)</b>  All discounted Crown Land sales both residential and commercial, will take place on Conditional Purchase Lease (CPL) terms. The CPL will specify aspects of the required development (timing, size, grounds, etc). If the CPL terms are met by the specified deadline, the freehold will be granted to the purchaser. If the terms of the CPL are not met, the purchaser would need to refund the discount to TCIG to obtain the freehold, or the land would revert back to the TCIG for resale. All land sales, both for residential and commercial purposes, will be on freehold basis, subject to CPL terms being met.	<i>Self explanatory. Refer to section 4 for the procedures to be followed in allocating and grant a CPL.</i>
7	<b>JOINT VENTURES/PARTNERSHIPS</b>	

	Policy	Remarks
	Belongers must have at least a 51% stake in a Joint Venture/Partnership entity to qualify for a discount. Only the portion of the land to be purchased by Belongers will qualify for a discount.	<i>Basically self explanatory; if the company is 55% Belonger-owned the discount will be reduced by 45% (being the share of the company, and the land, owned by non-Belongers).</i>
8	<b>OPEN TENDERING</b>  The Turks and Caicos Government will identify potential development site(s) on every island, consistent with its development strategy. These sites will be actively marketed to prospective developers, by TCInvest, with the final award subject to transparent/competitive process. TCIG/TCInvest will be willing to consider approaches from developers for other site(s) except on Providenciales, where developments will be limited only to those sites being marketed.	<i>Again largely self-explanatory; however, the implied intent of the policy is that development shall be properly managed and compliant with land use planning law. Therefore, approaches made with respect to land that is not being marketed must only be considered if the land is zoned appropriately (see section 3).</i>
9	<b>LAND VALUATION</b>  The chief valuation Officer's decision will be subject to the appeals process, it is important that the underpinning valuations on which discounts are based are accurate. This is an area that will be strengthened under the new Crown Land Unit.	<i>There are compelling reasons why this policy should be revisited. The TCIG have a pecuniary responsibility to the citizens of TCI to obtain the best possible price for Crown land. The TCIG also has a fiduciary responsibility to act on the advice of its own experts. The Land Valuation Officer's valuation should also be the offer price for Crown land. The Land Valuation Officers assessment should only be open to appeal where both parties are already bound by a contract (e.g. a revaluation for an extension of a lease).</i>
10	<b>CONCESSIONS</b>  Turks and Caicos Government will retain the	



Policy	Remarks
<p>necessary flexibility (the giving of concessions to developers) to attract investments judged best for the interest of TCI. This policy will also be reviewed in the context of the 10-year Development Plan.</p>	
<p><b>11 INFORMATION ON CROWN LAND ALLOCATIONS TO BE PUBLISHED</b></p> <p>To make the Crown Land process open, transparent and accountable, all allocations of commercial and Residential lands will be published in the gazette. The published notice will include information on who (individual or company) received the land, the amount of land allocated, where the land is located geographically (island and subdivision/community) the instrument of allocation (Conditional Purchase Lease, Long-Term Lease,) the valuation of the parcel, and the amount of any discount given. The Minister responsible for Crown Land will make such information on Crown Land allocations available on a Quarterly or bi-annual basis</p>	<p><i>Self explanatory and (will be) incorporated into the Ordinance and manual.</i></p>
<p><b>12 CROWN LAND MANAGEMENT TO ENSURE ENFORCEMENT OF PLANNING REGULATIONS</b></p> <p>a) To help achieve the future sustainable development of the Turks and Caicos Islands, Crown Land Legislation and management will include as its guiding principle, an integrated land use planning and development focus to ensure that the planning process determines the land development as opposed to the property developers determining the land use.</p> <p>b) The Planning Department will now be playing a major role in the enforcement of Crown Land Management policies through the enactment of demolition orders against illegally constructed properties on Crown Land. Their effective policing of Crown Land and the timely ejection of squatters (before construction takes place) and non-complying tenants will improve the use of Crown Land and increase revenues generated from this resource.</p>	<p><i>All CL allocations should take place in accordance with the national physical development plan. Land that is not zoned for residential or commercial development will not be granted unless the zoning restrictions are removed by the</i></p> <p><i>The CLD and Department of Planning must work closely together in the forward planning process when the development plan is being prepared to ensure that sufficient CL for residential and commercial uses is zoned for distribution to match</i></p>

	Policy	Remarks
	<p>c) The Development Control (DEVCON) database will be upgraded and integrated into the land agency-wide parcel Information Management System (PIMS) that will be developed. The Planning Department's GIS will be upgraded to assist in forward planning and decision-making.</p> <p>d) New large scale development projects will include as standard procedure, early review and comment by the Planning Department and the DECR, and these comments will be incorporated into any development agreement signed between the Government and a developer.</p> <p>e) A public rights of way ordinance will be enacted, which will include specific rights for beach access and public consultations on rights of way.</p>	<p><i>demand during the next development planning cycle.</i></p> <p><i>Physical Planning Board. The development of CL will take place according to the Physical Planning Ordinance.</i></p> <p><i>The CLD must have its own information system tailored for the specific requirements of CL administration and management.</i></p>
13	<p><b>SIGNIFICANT ECOLOGICAL OR HISTORIC AREAS TO BE PROTECTED FROM FUTURE DEVELOPERS</b></p> <p>Areas of significant ecological or historic importance will not be allocated for development. These areas will be legally and physically defined, so that they are not subject to unintended (or intended) development. Government will invoke Section 132 of the Registered Land Ordinance to restrict transfer or dealings on these areas for a long period of time (e.g. 200 years). Any further lifting of the restrictions will be subject to presentations to The House of Assembly.</p>	<p><i>To ensure that restrictions are not removed as easily as they are placed, they should be put in place by an order (ordinance) passed by the House of Assembly.</i></p>
14	<p><b>CROWN LAND LEGISLATION AND REGULATIONS</b></p> <p>Government will take the necessary actions to draft and pass legislation to regulate, the inventory, allocation, pricing and management of Crown Land. This will ensure that the current policy of equitable allocation and sustainable use of Crown Land is effective in the long-term, and not easily modified by future Cabinet decisions or future political mandates. Therefore, the establishment of a Crown Land Ordinance will go a long way to empower, sustain and protect the rights of the Belonger</p>	

	Policy	Remarks
	community well into the future.	
15	<p><b>CROWN LAND APPLICATIONS, ALLOCATION AND MANAGEMENT PROCEDURES MANUAL</b></p> <p>In order to avoid ad hoc administrative decisions and ensure a more consistent implementation of the Crown Land Policy, the Government will prepare, approve and disseminate a Crown Land Application, Allocations and Management Procedures Manual. This manual will clearly document the specific procedures to be used in the five key government departments with responsibilities for Crown Land; Lands &amp; Survey, Valuation, Planning, Land Registry and the new Crown Land Unit.</p> <p>The Manual will describe the full-integrated process, flows of information with and between departments, standard data entry, validation and security procedures and will include standardized forms and correspondence format to be used in the process.</p>	<p><i>The manual documents the procedure for the allocation and delivery of CL operated by the new CLD. The manual does not specify how CL is surveyed or valued, nor how the Department of Planning assesses development applications. Regulations and procedures are already in place for these supporting services to the delivery of CL.</i></p>
16	<p><b>ESTABLISHMENT OF A CROWN LAND DEPARTMENT</b></p> <p>The Government will establish a separate Crown Land Unit within the Ministry of Natural Resources. It will be staffed by experienced, technical and administrative staff.</p> <p>The specific purpose of this new unit will be to ensure a more effective, efficient and integrated implementation of the Crown Land Policy, consolidate a land use planning approach to land development in the islands and improve the provisions of land administration services to the public and private sector.</p>	
17	<p><b>CROWN LAND REGISTER</b></p> <p>A comprehensive register and inventory of all Crown Lands will be compiled including valuations. All futures sales will be recorded in the register so that an accurate record of remaining Crown Land and previous beneficiaries is maintained</p>	<p><i>To avoid confusion with the Land Registry and to make it clear that CL is not registered in a separate legal register, the terminology of Crown Land Management</i></p>

	Policy	Remarks
		<i>Information System is used.</i>
18	<p><b>APPOINTMENT OF AN APPEALS/COMPLAINTS TRIBUNAL</b></p> <p>a) In order to make the Crown Land process as fair, transparent and accountable as possible, the Government will appoint an appeals/complaints tribunal with recourse to the Supreme Court as a final court of appeal. The tribunal will be comprised of (3) three people, nominated by the Governor, Chief Minister, and the Leader of the Opposition, to ensure balance.</p> <p>b) The tribunal will be responsible for hearing cases brought to it by aggrieved parties who see themselves negatively impacted by a decision dealing with their application for Crown Land.</p> <p>The details of the Tribunal will be worked out in the process of drafting legislation.</p>	
19	<p><b>CROWN LAND LEASE APPLICATION AND APPROVAL PROCESS</b></p> <p>The Government will rationalize the lease application and approval process to make it more consistent and to be able to defend the process and the results of the process against any public criticism, as being based on uniform, rational and objective criteria.</p>	<p><i>There are three methods for delivering CL transparently: public notice for applications; tenders and auction. Unsolicited applications are not part of the revised process.</i></p>
20	<p><b>THE NATIONAL PHYSICAL DEVELOPMENT PLAN</b></p> <p>The Current National Physical Development Plan (1987-1997) is seriously out of date as a tool to guide and control development. Work to produce a new Ten-year Development Plan is well advanced.</p>	
21	<p><b>PROVISION OF MODERN LAND INFORMATION SERVICES</b></p> <p>Given the land-based nature of the economy and the importance of foreign investment in the real estate market, the land information services provided by Government will be improved and upgraded to make it a state-of-the-art operation. The</p>	

Policy	Remarks
<p>Government will make the required institutional and technical investments required to change the Land Registry and the Lands and Survey Cadastre from archives of data into useful and accessible land information systems. While each land agency has some land information management capabilities, these systems are not integrated causing duplication of effort in data collection and limiting the broader usefulness of the data itself. Government will provide the financial resources required to:</p> <p>a) Complete an inventory of Crown Land based on the existing Block Maps and the most recent aerial photography and digital orthography/cartography of the islands. This inventory will enable a reliable determination of the current liability of Crown Land and will be an important layer in the development of an integrated Parcel Information Management System (PIMS).</p> <p>b) Ensure that all land agencies convert all existing land records into digital format.</p> <p>c) Develop a compatible, interoperable and integrated Parcel Information Management System (PIMS) linking the (4) four main land management department-Lands and Survey, Planning, Land Registry and Valuation.</p> <p>d) Provide formal education in land administrative fields, technical training and career advancement opportunities to Belongers, so that the key land agencies can be managed by Turks and Caicos Islanders and that these departments become desirable places for rewarding work and advancement.</p>	

**Table 1: Current Crown Land Policies**

This version of the land policy does not include any statements that limit the right of Belongers to apply for, and receive, more than one parcel of residential land and more than one parcel of commercial land. The limits stated in the policy refer to discounts (policies 2 and 3 respectively). Furthermore, the policy does not explicitly state that a Belonger who has not yet succeeded in acquiring a parcel of residential or commercial land at a discount shall have any sort of preference over a Belonger who has already received Crown land. Although a more explicit policy statement may be forthcoming, an assumption is made

that preference should be given to persons who have not yet received residential Crown land. This assumption is implied from the current and held over from earlier policies and is entirely justifiable from an equity standpoint. A similar provision is made for Belongers applying for commercial land although the mechanism for preferential treatment of first time applicants is different from that for residential land (see sections 4.1 and 4.2).

## **1.6 Institutional Framework**

The Crown Land Policy of 2nd November 2005 states the Government's intention of establishing a Crown Land Department (CLD) within the Ministry of Natural Resources. This objective was achieved in 2006. The consequential effect of the Crown land policy is to transfer all of the Crown land administration and management functions from the former Lands and Surveys Department to the CLD.

The Crown Land Policy also states, in policy 12, that the Department of Planning will have a major role in the enforcement of Crown land policies. This section of the manual provides an overview and description of the roles and responsibilities of all actors in the arena of Crown land management.

### **1.6.1 Crown Lands Department**

The principle functions of the CLD are embedded throughout this report, and listed in summary form in Annex A. The CLD is a line department of the Ministry of Natural Resources and the Commissioner of Crown Land, who heads the CLD, reports directly to the Permanent Secretary in the Ministry of Natural Resources.

The mission statement of the CLD is "The Crown Lands Department will ensure that Crown Land holdings in the Turks and Caicos Islands are managed so as to provide sustainable long-term benefits to Belongers, through the efficient, transparent and equitable allocation of Crown Lands for residential and commercial purposes, in accordance with the Crown Land policy, and by the management of unallocated lands and lands held under Conditional Purchase Leases to ensure that lands are utilized in accordance with the Crown Land Ordinance and Policy."

### **1.6.2 Governor's Office**

Part II of the Turks and Caicos Islands Constitution specifies that there shall be a Governor who is appointed by and represents Her Majesty. There is also provision for a Deputy Governor.

The Governor is part of, and chairs, the TCIG Cabinet. The Constitution also states that the Governor has special responsibilities, including for defence, external affairs and regulation of financial industries, for instance. And, at section 94, the Constitution states: "the Governor, or any person authorised by the Governor in writing under his or her hand, may, in Her Majesty's name and on Her behalf, make and execute under the public seal, grants and dispositions of any land or other immovable property within the Islands that may be lawfully granted or disposed of by Her Majesty."

The Governor therefore has an Office of staff to assist in the execution of these duties and responsibilities.

### 1.6.3 Land Registry

The Registered Land Ordinance (RLO) creates a Land Registry in Grand Turk and specifies that the Governor shall appoint a Land Registrar to administer the Land Registry in accordance with the Ordinance.

The RLO does not expressly create other posts within the Land Registry; however, it is implied that the Land Registrar in the execution of his/her duties and responsibilities may delegate certain tasks to a deputy, assistants and other officers.

These duties and responsibilities mainly concern the maintenance of a land register in which are recorded, on separate folios (pages) for each parcel of land, details of the land (property), the ownership (proprietary), and any limits and restrictions on exercise rights of ownership (encumbrances). Changes to the register are made on the basis of applications (instruments) submitted to the registry, checked by registry staff, and executed by the signature of the Registrar in the register folio.

All CL is registered in the LR and all grants and dealings of CL are registered transactions.

### 1.6.4 Department of Planning

A Director of Planning is appointed by the responsible Minister to plan and regulate the use and development of land throughout the Islands. The Director appoints staff to assist him/her and together they are the Department of Planning. There is also a Physical Planning Board, appointed by the Governor, whose principle role is to assess applications submitted to the Department of Planning and, acting on the advice of the Director, either accept or reject such applicants according to the land use development plan and/or regulations, rules and codes framed according to the Physical Planning Ordinance.

More specifically, the role of the Department of Planning is to prepare development plans that specify within a 10 year period where certain types of land use and development would be permitted; land use zones, in other words. All applications for development are then first assessed according to this zoning plan. Applications are also assessed and approved at various stages thereafter for matters such as building standards etc. which are set, monitored and enforced by the staff of the department.

The Crown is also subject to planning law and, therefore, Crown land can only be developed with the permission of the Minister of Planning and the Physical Planning Board. The subdivision of land is included in the definition of 'development'.

### 1.6.5 Land Valuation Department

The role of the Land Valuation Department is to assess and adjudicate the monetary value of land and buildings for stamp duty purposes. Stamp duty is a tax paid on most land transfers.



The Land Valuation Officer is Government's expert and values all Crown land for grant or lease and private lands that are being acquired for public purposes.

## 1.7 Legal Framework

This section deals with land law in the general (non statutory) sense and specifically with land tenure, which is the relationship of persons to land. This relationship involved rights and interests, legal and equitable, real and personal, over specific parcels of land or land more generally. The majority of these rights and interests, and the ones that most concern Crown land, are defined by the Registered Land Ordinance (RLO):

### *Absolute Title*

Often called ‘freehold’ or ‘fee simple absolute in possession’, the entitlement to exclusive use and possession for an indefinite period is called absolute title in the RLO.

### *Crown Land*

The reason why private land is called absolute title in the RLO is that the freehold means holding land free of all rights and obligations to the Crown.

Crown land is defined in the Crown Lands Ordinance as land that has not been the subject of a freehold grant by the Crown, or expressly identified as private land in RLO, or any land for which a land register folio does not exist.<sup>9</sup>

### *Conditional Purchase Lease*

This is a form of leasehold tenure, and more specifically dealt with in section 4.6. The lease also forms an agreement or contract between the lessor (the Crown) and the lessee that subject to complete compliance with the terms and conditions stipulated in the lease, the lessee is entitled to purchase the freehold title.

### *Encumbrances on Title*

The word ‘encumbrance’ means a burden on title. It is the collective term used for many of the rights and interest that are noted on the back of a parcel or leasehold register folio in the encumbrances section. These burdens on title may include leases or subleases, charges (called mortgages elsewhere), etc. The charge that is registered to protect a discount provided to a grantee is an encumbrance on the proprietor’s title.

### *Leasehold*

In its simplest form a lease is like an absolute title but for a definite and not indefinite period.

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<sup>9</sup> CLO s.yy

### *Licenses*

If the registered owner gives permission to another person to undertake some form of activity on the land, but not to use the land exclusively, this is called a 'license' and this agreement can be protected by registration. The right is a personal right and not a right in the land.

### *Provisional Title*

If, during adjudication, the owner or occupier of land could not show a good title, or had not been in open and peaceful possession of the land for the requisite number of years, the Adjudication Officer would declare the person's title as being 'provisional'.

### *Restrictive Agreements*

These are also called 'covenants' and all CL leases and freehold grants contain covenants that bind the proprietor (e.g. not to change the use of the land, etc).

## **2 CROWN LAND ADMINISTRATION**

By administration we mean the keeping of good land records – the collection, organizing, maintaining, protection and making-available of data and information about land tenure, land use and land value.

Part III of the Crown Land Ordinance (CLO) deals with the responsibilities of the CLD for compiling and maintaining records concerning Crown lands and providing public access to this information. These Crown Land (CL) records, separate from the folios kept by the Land Registry, hold data and information for, amongst other things, the administration and management of leases and conditions attached to grants of absolute title and leases. This information will be based upon the information contained in the land registers, and will not duplicate as far as is practicable and possible the information held in the Register. To do this, CL information must be organised in the same way, indexed and kept according to title number (land parcel). The CL data will be additional to the LR data.

The CLO also makes in clear that all CL grants, including leases, legal agreements, covenants and restriction, must be registered under the RLO, and to facilitate this the Ordinance makes provision for the surveying of CL in accordance with the Land Survey Ordinance.

## **2.1 Crown Land Inventory**

There is a CL register or database that is separate from the LR register. This requires undertaking an inventory that assembles existing records, collects new information and compiles this into one CL database. The starting point for the inventory is the current records of CL in the LR. Records also exist in a database known as 'CLUDA', which lists all applications, grants and leases of CL.

Recognising that existing records and databases of CL may not be entirely correct, some form verification of the actual status and use of the land is necessary. Aerial photography taken in 2007 can be used for identifying the occupation and most uses of CL when used in conjunction with a map of all CL parcels derived from the LR map. In some cases it will still be necessary to undertake site inspections to verify occupation of land and the names of occupiers.

## 2.2 Crown Land Information System

To avoid confusion with the LR, the records of CL are kept in a database or information system and not in a register; but for all intent and purpose, they are the same things. However, the CL register (with a small 'r') is different from the land register (with a big 'R') because the records in the CL system are not conclusive, legally correct and guaranteed. The CL register is designed for internal use and the management of CL by the CLD.

### 2.2.1 Information Records

The Crown land database contains the following related tables, records and fields:

a) Tables:

- 1) Proprietors
- 2) Properties
- 3) Applications
- 4) Discounts
- 5) Rents

b) Records:

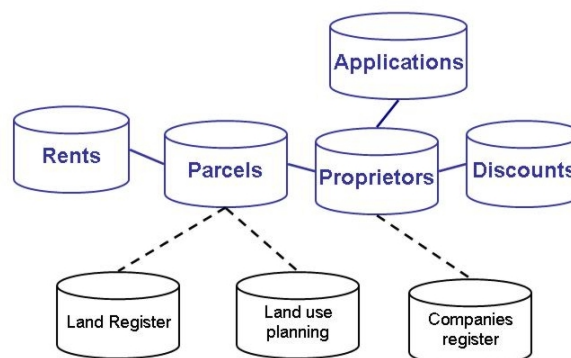
- 1) Proprietors: All owners of granted CL; lessees of CL; licensees and permit holders of CL; indexed by proprietor identification number.
- 2) Properties: All parcels of CL, indexed by parcel number.
- 3) Applications: All applications for CL, indexed by application number.
- 4) Discounts: All discounts offered, indexed by unique number based on commercial-residential (including island), year, and sequential number.
- 5) Rents: all properties subject to annual rental, indexed by parcel number.

c) Fields:

- 1) Proprietors: Proprietor identification number that uniquely identifies people, bodies corporate and organizations; full name (first, middle, last); date of birth (or incorporation); citizen status (Belonger etc.); postal address (for service).

- 2) Properties: Parcel identification number compatible with LR; location or settlement; island; street address; area; land use; proprietor; LR application number; date of grant.
- 3) Applications: Application number (year and sequential number); applicant's full name; applicant's date of birth; applicant's citizen status; property identification number; application date; application status.
- 4) Discounts: Discount number (as above); parcel number; name of beneficiary; date of discount; market value of land at discount date; discount percentage.
- 5) Rents: Parcel number; proprietor; rent amount.

All five tables are linked by common fields and thus related, enabling information from each to be combined as required in the Crown Land Management Information System.



**Figure 2 Crown Land Information Relationships**

## 2.3 Registration of Crown Land

For the avoidance of doubt, the CLO makes it abundantly clear that all grants of absolute title, leases of all sorts, restrictive and other registrable agreements, easements, licenses, and whatsoever may affect the legal title or rights to CL will be registered in accordance with the RLO.<sup>10</sup>

The RLO binds the Crown<sup>11</sup> just as it does private citizens and bodies. Each folio of the register shows whether the land is Crown land or private land<sup>12</sup>. All instruments (applications) submitted to the LR to effect a disposition (dealing or transactions) must be signed by the parties or their duly authorised representatives. With respect to CL the authorised representative is the Governor<sup>13</sup> notwithstanding the fact that the proprietorship section for a parcel of CL is left blank.

### 2.3.1 Requirements for Registration of all Instruments or Forms

Particular attention must be paid to how the LR prescribed forms are completed. A checklist for helping to ensure proper completion of all forms is provided at Annex C.

#### *Identification of the Land*

The title number is the registration section, block number, and parcel number separated by a forward slash (for example 10308/7). The full reference to any parcel is the name of the registration section (103), the block map reference (08) and the number of the parcel (7). In practice, the block map number and parcel number is sufficient. Each section also has a name; in the example given this is Grand Turk Central. And, to leave nothing in doubt, all instruments must also state the name of the island. Refer to Annex C for the section and island names.

If the transaction is a lease, it will have a different title number based on the title number of the parcel; for example a lease of title 10308/7 might be numbered as 10308/7/L1 (i.e. lease 1 of parcel 7 in section/block 10308). However, quite often a leasehold parcel does not have a separate parcel number indicated on the registry map (or block plan). If this is the case, the parcel will (must) be shown on a filed plan. Enter the parcel number of the parent parcel and the lease lot number and filed plan number in the space provided.

#### *Identification of the Person(s)*

Next to HEREBY LEASE TO (or whatever transaction the form related to) must be the full name (first, middle and last) of the person or all persons to who the lease is being

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<sup>10</sup> CLO s.yy

<sup>11</sup> RLO s.160

<sup>12</sup> RLO s.9(2)

<sup>13</sup> Constitution of TCI s.94



granted. This must be typed or written in black ink, in block capitals and **spelt correctly**. On every later transaction, all the names must be listed, exactly as they appear in the register.

If the grant is to a body corporate or other organization, enter the full company or organization name, again in block capitals, including the registration number.

If there is more than one person, all the full names must be listed (and create more space on the form if necessary). If the form is a grant of title, multiple names must be followed by words indicating how they will hold the property, either jointly or in common (see section 0 for an explanation of these two forms of multiple ownerships). If the title is held jointly, write AS JOINT PROPRIETORS. If in common, write AS PROPRIETORS IN COMMON IN EQUAL SHARES. For CL grants the shares of each proprietor will almost always be in equal shares unless the applicant/proprietors specifically request otherwise and the Commissioner agrees (in writing and clearly stated in the grant or lease agreement). It is not necessary to repeat the method of holding on forms for later transactions; however, all persons name must always be listed.

The identity of persons must be verified. This requires completion of a certificate of identification, which is usually printed on the reverse side of the application form. It must be signed by a Justice of the Peace, Notary Public or other persons specifically designated by the LR. However, it is not necessary to complete this certificate of identification for the Governor.

### 2.3.2 Application for Mutation (Subdivision)

The Commissioner of Crown Lands may apply to the Land Registrar for the subdivision of CL into separate parcels. This would be done, for instance, prior to allocation of CL. Even though the allocation process results in a lease, which requires only a survey and not the mutation of a parcel, the intent is to grant freehold after compliance with the intermediate conditional purchase lease, and therefore the subdivision can be done early in the process.

A cadastral survey is required for mutation and amendment of the registry map. The survey must be conducted by an authorised surveyor who will follow the procedures and specifications laid down by the Land Survey Ordinance and Regulations.

The surveyor will demarcate all the parcel corners and prepare a subdivision survey plan, which together with the surveyor's notes, is submitted to the Director of Surveys for checking and approval.

When the approved plan bearing the stamp of the Director of Surveys is returned, a copy can be attached to an application to the Land Registrar to mutate the parcel and open new folios for each of the new parcels created. Standard form C.L.5 must be used when applying to the Land Registrar for mutation of CL.

### 2.3.3 Registration of Conditional Purchase Lease

There are two type of conditional purchase lease – residential and commercial. These leases are prepared in standard form; examples can be found at Annex B.

These standard leases have been prepared in prescribed form by the Land Registrar<sup>14</sup> and the Attorney General.

#### *Standard Residential Conditional Purchase Lease*

For registration of a standard residential conditional purchase lease use prescribed form R.L.8a (Annex B).

For completing the title number and proprietor information refer to section 2.3.1.

The specific requirements for completing the residential conditional purchase lease include [*insert these requirements after revision of current lease*]

If there are any non-standard conditions, these are added in Part X of the lease. A lease containing any non-standard conditions **must** be referred to the Attorney General's Office for comments prior to execution.

#### *Standard Commercial Conditional Purchase Lease*

For registration of a standard commercial conditional purchase lease use prescribed form R.L.8b (Annex B).

For completing the title number and proprietor information refer to section 2.3.1.

The specific requirements for completing the commercial conditional purchase lease include [*insert these requirements after revision of current lease*]

If there are any non-standard conditions, these are added in Part X of the lease. A lease containing any non-standard conditions **must** be referred to the Attorney General's Office for comments prior to execution.

### 2.3.4 Registration of Grants

Grants can be made directly from Crown land into absolute freehold title, or indirectly by conversion of a Conditional Purchase Lease into freehold title. The indirect method – conditional purchase lease followed by freehold is the usual way; direct grants are possible in law but used only in exceptional circumstances. The current Land Policy specifies that all grants of freehold title must be made using a conditional purchase lease procedure.

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<sup>14</sup> RLO s.106

*Conversion of Conditional Purchase Lease to Freehold*

Although only one form is needed this is a two stage process: surrender of the lease followed by the transfer of the land (which would usually require forms R.L.11 and R.L.1). However, prescribed form R.L.1a does both procedures together.

On transfer form R.L.1a the consideration is the purchase price, less any applicable discount (i.e. the price actually paid, not the full market valuation). If the conditional purchase lease specified more than one proprietor, enter the same names in full. If they were joint proprietors or proprietors in common, enter this information exactly as it appears in the lease; otherwise delete the words (by striking them through with a horizontal line). Under no circumstances can a different name or spelling of name be substituted; the name of the lessee(s) must be transferred unaltered from the lease register folio to form R.L.1a. For example, if the conditional purchase lease were in the name of an individual, on transfer that individual requested the grant to be in the name of a company, this **must** be refused.

Form R.L.1a contains the standard conditions. If, however, there are any non-standard conditions, these must be stated in the THIRD SCHEDULE, and the form **must** be referred to the Attorney General's Office for comments prior to execution.

*Grant of Freehold*

In exceptional cases a grant may be made without there first being a conditional purchase lease. In these rare cases use LR form R.L.1, the prescribed LR form for a transfer of land.

2.3.5 Registration of Other Transactions

Refer to the Commissioner for guidance on completing applicants for the registration of other types of instrument or transaction.

## 2.4 Surveying and Mapping Crown Land

Because all grants and leases of CL must be registered, and registration requires that the subject land is identified either on the registry map (block plan) or a filed plan (survey plan), it follows that all CL must be surveyed to enable proper administration and good management.

The CLO provides that the Commissioner of CL must make sure that all CL is surveyed, where a survey is required, and that all grants of freehold and leasehold title are with respect to parcels that have been surveyed.<sup>15</sup>

All CL surveys must be conducted in accordance with the Land Survey Ordinance. The Commissioner of CL will liaise with the Surveys and Mapping Department for surveys to be conducted, either directly or by contract with private authorised surveyors.

The CLD will also maintain maps showing the location of all CL in the TCI. These maps, or map, will be the same as the LR registry map that shows parcels, roads, rights of way, and parcel numbers. The CLD will not maintain the CL map independently but use a copy of the LR registry map to identify all CL.

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<sup>15</sup> CLO s.yy

## **2.5 Maintaining Crown Land Information**

By necessity there will be a certain amount of duplication of data and data entry into the LR and the Crown Land Management Information System (CLMIS). This is to ensure that accurate records are kept in both systems and that all applications, conditional grants and final grants have a transaction history.

The CLMIS application will capture data according to each specific application form and type of transaction. The data fields will enforce a level of quality control in user input by restricting data types and ranges, and offering only standard values where appropriate.

### **2.5.1 Applications for Crown Land**

Applications for CL are entered in the CLMIS as they are received; there is no interaction or transaction at this stage with the LR except where it may be necessary to check and verify information provided.

Each application for CL is given an application number. This number is based on an island identifier and sequential number separated by a forward slash (/), and is not the same as the old system based on applicant's name. The island number corresponds to the section identification system used in the LR (e.g. Grand Turk is island number 1, etc...). The applicant's name is unnecessary in the application number because a database will check for previous and other applications by the same person.

### **2.5.2 Leases of Crown Land**

All leases of CL, conditional or otherwise, must be registered in the LR. Details of the lease are first entered in the CLMIS. The application will then track the status of the lease at each stage of the process as the necessary checks on compliance with conditions etc are programmed and completed.

The appropriate LR instrument (application form) is filled out and completed, signed and executed by the parties and then delivered to the LR (see section 4.6); the date of form delivery must be noted in the CLMIS. The LR will provide a receipt when the form is submitted. The receipt will state an instrument number; this must also be entered in the CLMIS.

### **2.5.3 Leases Extensions**

If a lease is extended, for whatever reason, it must be recorded in both the CLMIS and LR. Prescribed form R.L. xx (variation of lease) is used (see Annex B).

#### 2.5.4 Grants and Conversions to Absolute Freehold

All grants of absolute freehold title to CL, directly or via a conditional purchase lease, must be captured and recorded in the CLMIS and LR.

#### 2.5.5 Other Transactions

*[Insert other transactions]*

#### 2.5.6 Monitoring of Conditions

All leases and grants of CL are made subject to conditions. These conditions are stated in the lease or freehold agreement that forms part of the transaction. A note is usually made in the register folio, referring to the condition, but not repeating them in full.

##### *Lease Conditions*

Standard conditional residential and commercial purchases lease will contain conditions with respect to applications for development permission, construction of a dwelling house or commercial property, not to transfer or charge the lease without permission, etc. These conditions will be monitored by the Management Section of the CLD, and compliance data entered in the CLMIS as appropriate (see section 7).

Data may also be received from the Department of Planning in the form of monthly or quarterly reports of development applications received, approved and building permits issued with respect to CL parcels. These report data will be entered or transferred into the CLMIS and a report generated that highlights the current status of conditions compliance.

##### *Freehold Grant Conditions*

Conditions attached to freehold grants are not so onerous; however, they must still be monitored and enforced. The LR will inform the CLD whenever an application is made to transfer or lease a parcel of former CL. Depending on the circumstances and agreements, the transaction may be prevented or allowed subject to the conditions contained in the grant. In both cases, a note of the event and outcome must be recorded in the CLMIS.

Some freehold grant conditions must be monitored directly by the CLD (see section 7).

##### *Monitoring of Discounts*

The award of a discount on the purchase price of CL is a key piece of information that must be captured CLD and monitored using the CLMIS.

Discounts can be awarded to local developers who acquire a larger parcel (up to 10 acres, or more than 10 acres if combined with the discount entitlements of other Belongers) and then subdivide it into smaller parcels for subsequent sale. The policy with respect to such

developments is that the portion of the discount applicable to any one particular parcel cannot be transferred to a non-Belonger.

When the developer contracts with a buyer to purchase the parcel, the transfer is registered in the LR. The Land Registrar will notify the CLD of all such transfers before they are registered because of the registered charge protecting the discount. This information must then be used to check whether or not the discount in whole or part is repayable.

If the registered proprietor is a company, beneficial ownership may change, and thus the control and benefit of any land held by the company, without the knowledge of the LR. However, there is a requirement in TCI law that changes in share ownership of registered companies must be reported at least annual to the Registrar of Companies. This information will be forwarded to the CLD by the Companies Register; however, to ensure that transactions are not overlooked, the CLD should request information about the status of CL held by companies on an annual basis. There will be a reporting function built in to the CLMIS to prompt for this report.

## **2.6 Crown Land Information Management Reports**

The CLMIS generates various standard management reports on a monthly and annual basis, including:

- a) Applications for:
  - i. Subdivided residential land
  - ii. Un-subdivided residential land (to assess demand)
  - iii. Subdivided commercial land
  - iv. Un-subdivided commercial land
  - v. Other commercial land uses
  - vi. Extensions of lease
  - vii. Conversion to freehold
- b) Leases:
  - i. Residential land
  - ii. Commercial land
  - iii. Other licenses and permits (e.g. docks, quarrying, etc.)
  - iv. Extensions of:
  - v. Conversions
  - vi. Surrenders and determinations
  - vii. Rents paid
  - viii. Non compliance of conditions
- c) Grants:
  - i. Residential land
  - ii. Commercial land
  - iii. Payments
  - iv. Revocations



The information that makes the generation of these reports possible comes from the monitoring activities of the Management Section and data received from the LR, the Planning Department and the Registrar of Companies.

The CLD will produce an annual report and account of CL using the reporting functionality of the CLMIS. A report summarizing all of the standard management reports listed above together with the balance of CL in various land use classifications will be provided to the Governor and to Cabinet.

#### *Access to Crown Land Information*

The CLD will produce an annual report on CL allocations and land use. This report will also highlight the activities and achievements of the CLD over the past year and the performance of the department. The report should include a section on the operation of the National Land Policy, assessing performance against certain indicators (see section 7).

The CLD annual report will be published and made widely available.

All records relating to grants and use of CL will be open to public inspection during normal CLD office hours.<sup>16</sup> A small charge is asked for this service (see Annex D).

#### *Crown Land Information on the Internet*

As part of the TCIG information portal, the CLD should maintain a page or pages for the public dissemination of information relating to the work of the department and to applications made for CL and for leases and titles granted.

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<sup>16</sup> CLO s.yy

### 3 CROWN LAND MANAGEMENT

By management we mean making decisions about the distribution, use, income, and development of land, as distinct from land administration which is management of land *information*. These decision-making processes involve all stakeholders – Government, private sector business and individual land-owners. Controlling and *managing* this process is the responsibility of the Government.

For Crown land management there are two main actors – the Crown Lands Department and the Department of Planning. Other Government departments and agencies are involved but play a peripheral or complimentary role; for example: the Surveys and Mapping Department providing plans and maps; Land Valuation Department appraising the open market value of CL; and, TCInvest helping to market Crown land.

### **3.1 Principles of Crown Land Management**

The following principles will be applied by the CLD in managing the Crown estate in TCI on behalf of the Crown and the citizens of TCI:

- 1) Crown land will be managed according to the Crown Lands Ordinance, the laws of TCI, and the Crown Land Policy.
- 2) The development of Crown land will follow a land use planning approach. The CLD will identify and develop Crown land according to principles of sustainable development.
- 3) The CLD will develop Crown land according to uses permitted by the current land use zoning plan published by the Department of Planning.
- 4) Land will be developed in compliance with the Physical Planning Ordinance.
- 5) The CLD will, insofar as available resources allow, subdivide and separately register all Crown land before it is allocated or granted in freehold or conditional purchase leasehold tenures.
- 6) In making allocations of Crown land, the CLD will assess applications based on criteria that are fair and transparent.
- 7) In assessing applications and proposals for the use and development of land, the principles of sustainable development will be used.
- 8) The supply of CL for residential and commercial use will be actively managed; the CLD will try to match demand with supply and not merely respond to ad hoc development pressures.

These rules must be supplemented by overarching principles, duties and responsibilities that apply to management generally and to management of natural resources by Government more specifically. In particular, the Government, through its agent the CLD, has moral, legal and pecuniary responsibilities to the citizens of TCI. That is, the CLD must act fairly and equally and within the law and must protect the interests of all citizens, present and future, to assets that belong to the country. As land is perhaps the most tangible valuable asset of the country, it is the duty of the Government, through the CLD, to ensure that maximum benefit is achieved from it, subject, of course, to the principle of sustainable development. This means, by illustration, the Government has the duty to ensure that CL when it is granted to a user is used efficiently and when it is alienated the best possible price is secured. These are fundamental principles that must be followed; thereafter, however, policies may be enacted that bring additional and complimentary social and economic benefits, such as Belonger discounts on (the best possible) purchase price.

### 3.2 Development of Crown Land

The Minister of Natural Resources is directed by the CLO to develop CL intended for disposition (grant, sale or use), either in freehold or leasehold, and to develop CL for the use of the Crown or Government.<sup>17</sup>

To effectively meet the country's needs for shelter, housing, commercial activities, and economic development, the CLD will continually assess the demand for residential and commercial land and plan for the managed development and delivery of sufficient land to meet this demand. This evaluation task – forward planning – must be conducted in close cooperation with the Department of Planning, who have the overall responsibility for directing and controlling land use development.

Forward planning for delivery of CL will make use of all available information from:

- 1) The CLMIS database and reports
- 2) Reports of the LR on all land market activity
- 3) Ad hoc applications submitted to the CLD
- 4) Reports of the Department of Planning on squatting
- 5) Meetings with land professionals, such planners, surveyors and realtors
- 6) Sample surveys

Together with the Department of Planning, the CLD will make projections on the future demand for land over 5, 10 and 25 year horizons. These projections must be done during the preparation of each national or local physical development plan so that sufficient CL is zoned for residential or commercial use for supply to match demand.

CL in excess of this projected demand will remain zoned as agricultural or open space and held in reserve for future supply and the needs of future generations of Belongers.

From land use information provided by the Department of Planning, such as land capability surveys, the CLD will actively seek to identify suitable land for residential and commercial development.

In addition to the Crown land policies listed and explained in Table 1 other policies relating to land concessions also apply to the allocation and delivery of CL. These are summarised in Table 2 below.

<i>Status</i>	<i>Providenciales</i>	<i>All other islands</i>
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<sup>17</sup> CLO s.yy

	<i>Status</i>	<i>Providenciales</i>	<i>All other islands</i>
1.	Non-Belongers	Lease up to 99 years (250 years in exceptional circumstances) No beachfront access, except for hotel/resort complex where parcel configuration shall be 3 feet of back-land for every 1 foot of beachfront up to a maximum of 30 acres with 15 units (rooms) per acre.	Lease up to 99 years or conditional purchase lease Restricted beachfront access except for hotel/resort complex or ecological/agricultural project, with a land configuration of no less than 1.5 feet of back-land for 1 foot of beachfront. For hotel/resort complex, the land size will be based on 5 units (rooms) per acre up to a maximum of 30 acres.
2.	Belonger	Conditional purchase lease	Conditional purchase lease

**Table 2: Crown Land Allocation Concessions Policy**

Development of Crown land by a purchaser or leaseholder typically requires a minimum investment, depending on land use and parcel size. During the development planning stage, Crown land should be designated not just for residential or commercial uses but also into classifications based on the anticipated area of parcels and the expected investment of purchasers. The table at Annex E gives the current guidelines for minimum and maximum parcel sizes for different socio-economic classes and the minimum required investment for building construction.

### 3.2.1 Permission to Develop Crown Land

The Physical Planning Ordinance binds the Crown<sup>18</sup> and therefore any development of Crown land requires planning permission<sup>19</sup>.

Applications for development permission must be made to the Physical Planning Board, submitted through the Director of Planning. All applications for the development of CL must have a certificate of approval granted by the Minister of Planning.<sup>20</sup>

A standard form letter (C.L.2) for the application of the certificate of approval is attached at Annex B. A plan showing the location and highlighting the approximate extent of the site must be attached to the application. A plan showing a layout of plots is not required at this stage (this will come later at the outline planning stage).

The application for a certificate of approval is the second stage in the development of Crown land; the first stage is securing the zoning of CL for residential or commercial development in the physical planning cycle. The planning zone status of the land must be stated on the application for the certificate of approval.

<sup>18</sup> PPO s.90

<sup>19</sup> PPO s.28

<sup>20</sup> PPO s.31

After the application is submitted to the Director of Planning a certificate of approval may be returned; if so, it will be as prescribed form DOP 33. The certificate will list conditions, if any, that must be complied with when the application for outline development permission is later prepared and submitted.

If the Director of Planning proposes to prepare the outline subdivision development application on behalf of the CLD the certificate of approval will be held by the Department of Planning and attached to the application when it is made to the Physical Planning Board.

If, on the other hand, the Director of Planning indicates that the Department of Planning cannot in this instance prepare the outline development application, one must be prepared by the CLD (or by a private sector planner on behalf of the CLD), and in this case either (a) the certificate of approval must be obtained from the Director of Planning; or (b) the Director of Planning indicates that s/he will attach the certificate when the application is received and forwarded to the Physical Planning Board.

### 3.2.2 Outline Permission to Develop Crown Land

An application to subdivide CL is submitted to the Director of Planning using form DOP 6. An application is not required if the Director of Planning is preparing the application on behalf of the CLD.

The application for outline approval is considered by the Physical Development Board, and they will look at it only if the certificate of approval is attached.<sup>21</sup>

The application must take into account any conditions stipulated by the Minister of Planning in the certificate of approval.<sup>22</sup> For example, the conditions may specify a particular maximum or minimum parcel or building size.

Attached to the application for outline development permission must be a plan of the land. This plan will be based on a suitable scale of topographic survey. The plan must also show the external boundaries of the larger parcel or block of Crown land.

Applications for final development permission are usually the responsibility of the lessee or grantee.

The general procedure for identifying and developing CL is outlined in the following section.

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<sup>21</sup> PPO s.31(1)

<sup>22</sup> PPO s.31(5)

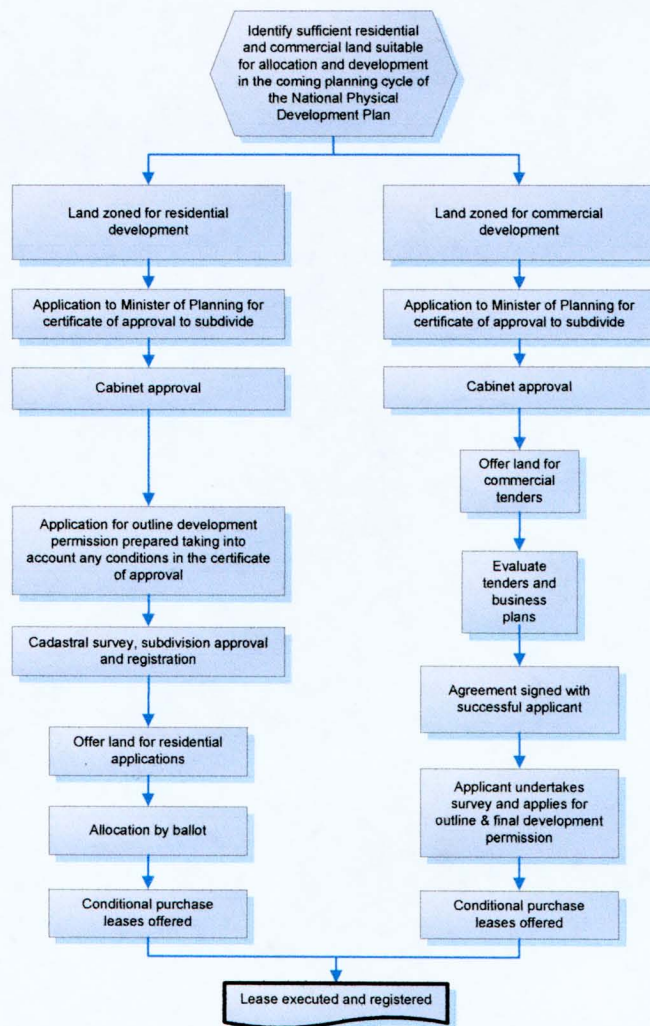


Figure 3: Steps for acquiring outline planning permission for development of CL

### 3.2.3 Subdivision of Crown Land

After a grant of outline planning permission is received, an application for permission to subdivide CL can be submitted using the Department of Planning form DOP 6.

A cadastral survey is required, and this must be done by an authorised (licensed) land surveyor in accordance with the Land Survey Ordinance and Regulations.

The land surveyor will demarcate all the parcel boundary corners using the plot layout approved by the Physical Planning Board. It is important that the surveyor is instructed to demarcate the parcels following as closely as possible the designed layout. Significant deviations from the designed and approved layout may result in the rejection of the application by the Physical Planning Board. This is why it is important to follow closely

the approved layout and why the approved layout must be based on a good and accurate topographic survey that also shows the original parcel boundary lines.

When the surveyor completes the cadastral survey and all the parcels are demarcated on the ground, the subdivision plan and survey notes are submitted by the surveyor to the Director of Surveys for checking and approval.

The approved cadastral survey plan, when received from the surveyor or Director of Surveys, can then be attached to the application form (DOP 6) and sent to the Director of Planning for Physical Planning Board Approval.

When development permission is received, a copy of the cadastral plan bearing the stamp of approval of the Physical Planning Board, and the signature of approval of the Director of Surveys, is attached to an application to the LR for mutation (subdivision) of the CL parcel.<sup>23</sup>

The procedure for subdividing CL was outlined earlier in section 2.3.2. A standard letter (form C.L.5) is prepared asking the Land Registrar to effect a mutation of CL according to the subdivision survey. Because this is not a disposition of Crown land, the Governor does not need to sign this letter.

The mutation process in the LR should take no more than 28 days to undertake, following which the Land Registrar will write to the Commissioner stating that the registry map has been updated, new parcel numbers issued, and new folios opened for each parcel of CL. The new parcels are thus registered and ready for disposition.

#### 3.2.4 Development of Land for Residential Use

Unless instructed otherwise by the Minister of Natural Resources, the CLD will not allocate, deliver or authorize the occupation of any CL to any person or persons for residential use unless that land has been developed.

Developed means, as a minimum, that the land has been surveyed, divided into parcels, the subdivision approved by the Physical Planning Board, and new parcels registered in the Land Registry (as described above).

The CLD will, as far as is possible and within the budget provided by TCIG for this purpose, contract with private companies to construct the infrastructure necessary for occupation of the parcels. This infrastructure should include passable roads, preferably metalled, potable water, sewerage and storm water drainage, and electricity lines.

Development permission for the construction of buildings on each residential parcel is the responsibility of the person(s) allocated Crown land.

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<sup>23</sup> RLO s.16(1)



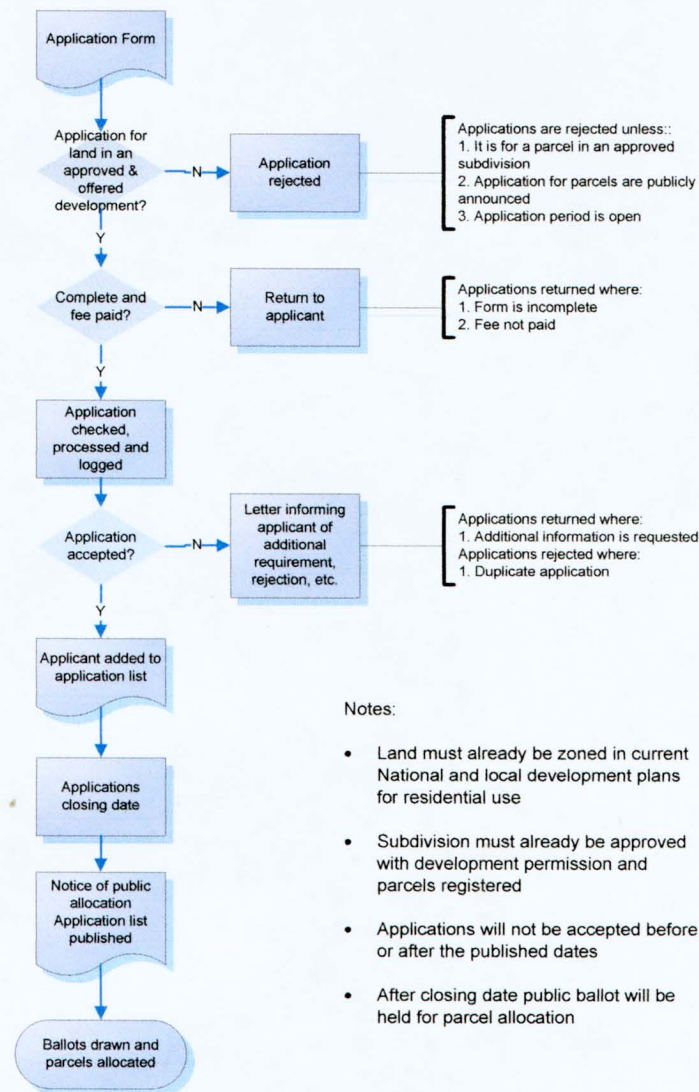


Figure 4 Residential Lease Processing

### 3.2.5 Development for Commercial Use

The procedure for development of CL for medium- and large-scale commercial use is slightly different because the CLD will not, as a general rule, subdivide and prepare the land prior to allocation. However, parcels for small-scale commercial use can be subdivided to create small commercial estates.

#### *Freehold and Conditional Purchase Lease*

When an application is submitted for acquiring CL for commercial use, the application is assessed (see section 4.2.1) and if approved it is approved only in principle and subject to outline development permission being granted by the Physical Planning Board.

When an application is approved in principle, the applicant is informed in writing (using form C.L.7) and given permission to enter the land for the purposes of conducting any necessary topographic and geotechnical surveys.

The CLD will then prepare an application to the Minister of Planning for a certificate of approval, providing details of the applicant's development proposal.

The application to the Physical Planning Board for outline development permission is completed and submitted by the applicant (and not the CLD) using PPO form DOP 1. Because the applicant is not the owner or lessee of the land, the CLD must give written consent, and this letter must be attached to the application. Form C.L.8 is the standard letter used.

The cost of application fees, topographic and cadastral surveys etc. will also be borne by the applicant and not by the CLD.

If outline development permission is approved, the applicant must inform CLD, in writing and attaching a copy of the permission granted by the Physical Planning Board.

The applicant is informed in writing using form C.L.9 that the application for a conditional purchase lease is approved subject to cadastral survey, and authority is given for a surveyor employed by the applicant to conduct the cadastral survey needed for subdivision purposes.

The authorised surveyor will undertake the survey according to the Land Survey Ordinance and Regulations, demarcate the boundaries, and prepare a plan for the approval of the Director of Surveys.

The application to the Director of Surveys for checking and approving the cadastral survey plan must include a copy of the Physical Planning Board's outline development consent and a copy of letter from CLD authorising the surveyor to conduct the survey.

Upon receipt of the checked and approved cadastral survey plan, the CLD will attach the plan together with a copy of Physical Planning Board's outline development consent to a letter written to the Land Registrar, using standard form C.L.5, requesting the subdivision (mutation) of Crown land.

It should take no more than 28 days for the LR to process the application, after which the Registrar will write to the CLD saying the process is complete and a new parcel folio(s) is created and the registry map updated.

Registration of the conditional purchase lease can now take place after the subdivision process or at the same time as writing to the Registrar to effect the mutation in accordance with the approved plan of subdivision to create the new parcel(s).

### Ordinary Leasehold

If, on the other hand, the development is to result in leasehold parcels, the registry index map may not be updated. However, the approved cadastral survey plan must be sent to the LR together with an application to lease (LR form R.L. 8) and the LR will file the plan and open new leasehold folios.

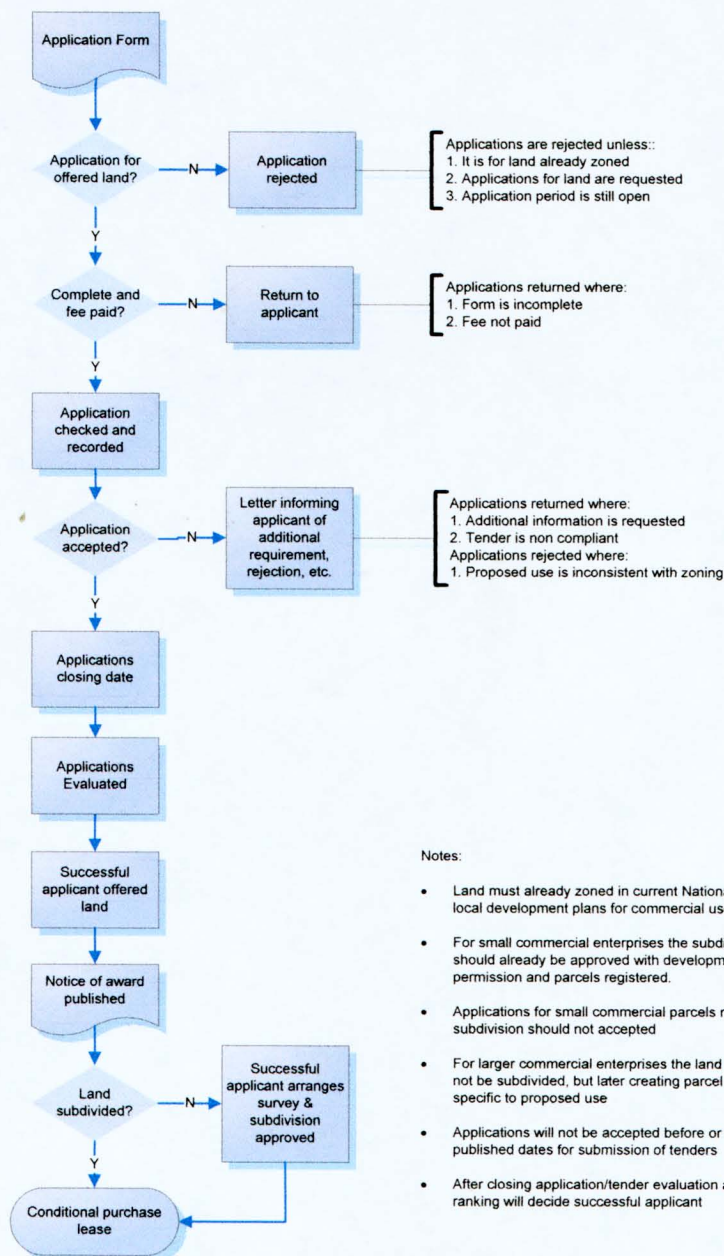


Figure 3: Steps for permission to subdivide CL for commercial use

### 3.2.6 Development for Other Uses

*[Future section on development for other uses]*

### 3.3 Dispositions of Crown Land

Disposition means any act by a proprietor “whereby his rights in or over his land, lease or charge are affected, but does not include an agreement to transfer, lease or charge”.<sup>24</sup> With respect to CL this means any one of the following acts:

- (1) Alienation (grant of freehold title)
- (2) Grant of leasehold title including conditional purchase lease
- (3) Grant of a minor right or interest such as a license or permit

In accordance with the policy that all CL dealing will be registered, all dispositions are registered, and agreements are not. Therefore, any agreement made between the Crown and a prospective purchaser of CL does not take effect as a disposition and does not bind third parties until it is registered; however, the agreement may still bind the parties as a contract enforceable at law.

#### 3.3.1 Alienation of Crown Land

According to the Crown Land Policy, the TCIG will not sell off (alienate) large areas of CL but it reserves the right to do so (Crown land policy #1).

The Crown land policy also envisages a process of sustainable and managed grants of freehold title. Therefore, as a general rule, the TCIG will not grant freehold title without conditions attached that stipulate the nature and timeframe of use and development of the land.

The preferred vehicle for granting freehold title subject to conditions is the conditional purchase lease.

Where allocations of CL are open to non-Belongers, the title granted will be either leasehold or a conditional purchase lease, on terms depending on the use and location of the land (see Table 2 on page 37).

#### 3.3.2 Conditional Purchase Leases of Crown Land

All grants of CL to Belongers, either residential or commercial, will be on standard conditional purchase lease terms and conditions. The terms will usually be for 3 years, extendable for a further 18 months if required. The conditions will mainly relate to approved development.

Satisfaction of conditional purchase lease terms and conditions will qualify the lessee to apply for conversion of the lease into freehold title.

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<sup>24</sup> RLO s.2

There are two standard types of conditional purchase lease: residential and commercial. Both types are applicable to Belongers and non-Belongers, individuals, corporations and organisations. However, the current policy is that conditional purchase leases will not be offered or made available to non-Belongers.

Some variation of lease terms and conditions may be required or negotiated, and the advice of the Attorney General must be sought in all cases where the standard conditional purchase lease – residential or commercial – is not being used.

The principle behind the CPL is that a subdivided parcel is provided to a lessee who after fulfilling all the development conditions in the lease will be eligible to apply for the freehold title to the parcel. The conversion of leasehold to freehold is not a right, and may be refused by the CLD, subject to appeal, but only for reasons associated with a failure of the lessee to comply with lease terms and conditions. If the lessee has complied, then the lessee is entitled to purchase the freehold as agreed in the lease contract. The freehold title is not granted automatically; the lessee must make an application.

A further principle is that the development of the parcel is the responsibility of the lessee and not the TCIG. That is, the lessee, in order to fulfil the conditions of the lease, must make an application to the Planning Department to develop the parcel for either residential or commercial use.

### 3.3.3 Standard Residential Conditional Purchase Leases of Crown Land

The conditional purchase lease is a lease as defined in the Registered Land Ordinance.<sup>25</sup> A conditional purchase lease that is registered invokes the provisions and implied covenants as stipulated and listed in Division 2 the Registered Land Ordinance.

A copy of the Standard Conditional Purchase Lease of Crown Land is attached at annex F.

A cadastral survey undertaken in accordance with the Land Survey Ordinance and Regulations is always a requirement when issuing a conditional purchase lease. The survey is needed to define the parcel, demarcate the boundaries and to register the title in the LR. The cadastral survey plan will be filed in the LR and the Director of Surveys will update the registry map using the plan.

Because the intention is to alienate the parcel to freehold on expiry of the lease, a separate parcel folio is created in the LR and the whole of this freehold parcel owned by the Crown is then leased.

Refer to section 3.2.4 for further information on standard residential conditional purchase lease.

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<sup>25</sup> RLO s.2

### 3.3.4 Other Dispositions of Crown Land

*[Insert when available]*

### 3.3.5 Land Adjoining the Foreshore

The foreshore is defined in the CLO as land below the ordinary mean high water mark.

The foreshore is CL and is not usually included in any grant of adjoining land; except where specifically provided in a separate lease, license or permit agreement.

Dispositions of land that adjoin the foreshore will usually identify the line of the foreshore as a curvilinear boundary determined by the ordinary mean high water mark. This boundary line may change position over time through natural processes of erosion (loss of land) and accretion (gaining of land). The time periods over which these changes take place due to erosion or accretion affect title on either side of the boundary line.

Changes that are imperceptible, taking place over a long period of time by gradual washing away or deposit of material, will result in corresponding change in the location of the boundary line. Land on either side of the shifting boundary line will be lost or gained to the two adjoining titles. If the sea is slowly and gradually eroding the land and the foreshore is encroaching into a parcel, the boundary is moving, and the parcel is losing land and the owner of the parcel has no rights over the foreshore to where the title extended to in the past. Conversely, if the sea is depositing material and the foreshore is moving gradually seawards, the owner of the title to the parcel is gaining land.

Changes to the foreshore that are perceptible have different rules affecting the boundary line. When changes occur much more quickly due, for example, to a storm that deposits new material on the foreshore, the boundary line does not move. The result is that new Crown land is created between the former parcel and the new foreshore. The converse is not the case, however. This common law rule of foreshore boundaries, unless changed by specific legislation, is contrary to the Crown land policy principles of fairness. Therefore a rule is provided in the manual for dealing with cases where private property owners have lost land or lost access to the foreshore.

Where, as a result of an appreciable loss of land due to a storm or series of storms, an owner's application to recover the loss by building up the land and construction of sea defences should be considered sympathetically. However, the application must be made subject to development permission, including approval of the Department of Environment and Coastal Resources, and not in isolation. The application should be considered in the light of coastal processes and changes taking place in the wider area.

If a storm or series of storms results in an appreciable movement of the foreshore seawards resulting in new Crown land, this land should not be allocated or alienated without first giving the adjoining owner the first option to lease or purchase the additional land. To do otherwise would be contrary to the principles of fairness underpinning the Crown land policy.

### 3.3.6 Eligibility to Receive Dispositions of Crown Land

Any person who is over the age of eighteen years and not under any disability (as defined by the CLO<sup>26</sup>) may apply for and receive a disposition of CL. An applicant may not less than 18 years of age on the date the applicant was made.

By ‘any person’ means a citizen, corporation or organization of TCI or any other country for the time being permitted to own or hold land in TCI according to TCI law. The CLO does not prevent or limit foreign ownership of land, including CL in TCI.

However, the Crown land policy, by implication, directs that in most cases:

(a) CL shall be granted in leasehold prior to any consideration of freehold ownership

(b) CL for residential use shall only be granted to Belongers

Therefore, as a matter of policy, foreigners are not supposed to receive a parcel of CL in any form of title – leasehold or freehold. There are exceptions, however, as follows:

- (i) Where the parcel is acquired from a Belonger (subject to any repayment of discount) after the parcel is converted and registered as freehold.
- (ii) Where the parcel is for commercial use
- (iii) Where small amounts of CL are being mutated and amalgamated to adjoining parcels.

In the case of (iii) above, this exception accommodates cases where: (a) land that was once foreshore is offered to the adjoining title; (b) an abandoned CL reserve that cannot be subdivided into parcels is amalgamated into adjoining parcels; or, (c) CL is offered in a whole parcel or part of a parcel as a result of private treaty negotiations with respect to compensation for loss of land.

There is no limit on the amount of land any person, company or organization may own. There is also no limit on the number of CL dispositions that a person, company or organization may receive; however, there is a limit with respect to discounts applied to the purchase price (see section 5).

However, the Crown land policy, by implication, directs that preference is given in the allocation and disposition of CL on any one island to Belongers who: (a) own no land or real property on that island; and (b) have not received or benefited from any prior CL disposition on that island.

CL may be granted to individuals for their own use or for development and subsequent sale (subject to terms and conditions that may be applicable).

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<sup>26</sup> CLO s.yy



All persons, companies or organisations that hold conditional purchase leases and have satisfied all the terms and conditions of the leasehold agreement are entitled to purchase the freehold.

## **4 ALLOCATION OF CROWN LAND**

If land is to be used for exclusive residential or commercial purposes, it should be sold or leased rather than licensed or permitted.

There are four methods for disposing of CL in freehold or leasehold that are consistent with the Crown land policy and compliant with its principles of transparency, fairness and sustainable development. These methods are:

- (1) Inviting applications
- (2) By offer for sale by public tender
- (3) Public Auction
- (4) Private treaty

These methods are listed in the order of preference, where public invitation is preferable to public tender, which is preferable to public auction or private treaty. Although this is the general rule, particularly for discounted residential land, there are variations and exceptions; for instance, the preferred method of distributing commercial land is by public tender. Each land use class, eligibility and preferred allocation method are summarized in Table 3 on the next page.

	<i>Land use</i>	<i>Sector</i>	<i>Open to:</i>	<i>Allocation</i>
1.	Residential	Social housing	Belongers, individuals	Invitation to apply
2.	Residential	Housing	Belongers, individuals or companies	Invitation to apply
3.	Residential	Investment, tourism	Belongers, non-Belongers, individuals or companies	Public tender
4.	Commercial	Small-scale	Belongers, individuals or companies	Invitation to apply
5.	Commercial	Large-scale	Belongers, non-Belongers, individuals or companies	Public tender or auction
6.	Ecological-agricultural	Tourism, agriculture	Belongers, individuals or companies	Invitation to apply

**Table 3: Crown Land Eligibility Criteria**

## 4.1 Inviting applications

Public invitations to purchase CL will be used only for the sale of developed land. That is, the land must be subdivided and registered and, preferably, infrastructure such as roads, water and electricity put in place, ready for further development and occupation.

Inviting applications for subdivided parcels of CL is most appropriate where the land is intended for residential use or small commercial enterprises. Applications for residential use will only be accepted and considered by this method of inviting applications.

The notice published by the CLD inviting Belongers to submit applications for CL for residential or small commercial purposes must state what type of title is being offered (e.g. conditional purchase lease, or leasehold). The notice must also state the eligibility requirements of applicants (whether just Belongers or everybody including foreigners or just individuals or also including companies and organisations) and a brief statement of the expected scope of development required by the successful purchaser (for example, residential dwelling of not less than X square feet costing not less than Y dollars).

Deciding who is eligible to apply is dependent on the land use and allocation criteria given in Table 3. Eligibility criteria are also given in section 3.3.6.

Applications will be invited by public notice when the parcels are ready to be distributed and not before. Notice shall comprise, as a minimum:

- (1) Quarter page advertisements in two widely read national daily or weekly newspapers on at least three separate occasions.
- (2) Notice in the Official Gazette
- (3) Announcements on local television and radio
- (4) Notice displayed at all offices of CLD, on or near the land, and in a well frequented public place near where the land is located.
- (5) Notice posted on the CLD website

Applications will be accepted between the dates stated in the advertised notice. These dates should not be less than 28 days and no more that 56 days in the future and not less than 14 days and no more than 28 days apart.

The notice will also state that the allocation of parcels will be done on a certain date, no more that 21 days after the closing date for receipt of applications, at a specified time and place, by public ballot. All applicants must be urged to attending the drawing of ballots.

Applications will not be accepted before or after the opening and closing dates of the invitation.

The notice will also state that:

- (a) Whether or not any preference will be given to applicants who do not own any land, have been unsuccessful on a previous ballot for CL, or have never received or benefited from a CL allocation at any time in the past
- (b) Applicants cannot submit more than one application in this ballot
- (c) Applications are for any one parcel being offered in the subdivision (i.e. applicants cannot apply for a specific parcel)
- (d) If there are more parcels than applications, the ballot will determine the order by which applicants may choose a parcel in the subdivision.
- (e) The requirements for supporting documents to be attached to the application

All applications must be made on form C.L.1, dated and signed by the applicant(s) and accompanied by the processing fee (see schedule of fees at Annex E).

Applications will be accepted at any CLD office. When an application is submitted it will be checked for completeness by a CLD officer, using the checklist at Annex C, and logged as received either directly into the CLMIS or on paper for later input.

The conditional purchase lease that will be offered to successful applicants requires that the parcel is developed to a certain standard. To help ensure compliance with this requirement, the applicant must demonstrate some of the necessary financial ability and commitment, especially where the development comprises larger properties at greater costs to develop. However, for smaller parcels this requirement may be relaxed. Therefore, there are two types of supporting document requirements:

#### *Large and Medium Sized Residential Parcels*

Anything not defined as a small development can be classed as large and medium size. These developments invariably require the lessee and prospective purchaser to invest a minimum of \$50,000 to construct a dwelling. Inevitably this requires either existing funds or the qualification for access to funds from a bank. In either case, the applicant should demonstrate a commitment (and agreement) to develop by attaching a statement from a bank or financial agency to the application stating that the applicant has sufficient funds to undertake required building construction or has in-principle approval for a loan sufficient to undertake the required development.

#### *Small Residential Parcels*

Where the parcel is small and the commensurate level of required development is less than \$50,000, the applicant should not be required to produce supporting financial documentation. However, the notice and the application process should make it clear to

the applicant that there is a requirement to develop the land, and any failure to do so, may result in forfeiture of the lease and land.

### *Small Commercial Parcels*

For commercial parcels, a statement from a bank or financial agency, using standard form C.L.7 that the applicant has access to sufficient funds to undertake required building construction, together with a business plan of sufficient detail commensurate with the size of the venture that demonstrates commercial viability.

In all cases, these financial assurances relate to the development of the parcel, that is, the construction of a dwelling house or building of minimum size and cost. The purchase price of the land is not a factor at this stage and the applicant does not need to demonstrate a commitment to purchase outright; what is required at the application stage is a declaration of commitment to develop.

### *Submission of Applications*

The applicant will be given a receipt acknowledging the submission and acceptance of the application. The receipt will be prepared using form C.L.11. The receipt states clearly that although the application was accepted, the application has not been approved and there is no guarantee that the application will be successful.

When the closing date for applications has passed, no more applications will be accepted.

A list of all applications received, stating application number, date application submitted and the full name of the applicant(s) will be prepared. This list will be posted for public display at all CLD offices and on the CLD website. It does not need to be published in the newspapers or Official Gazette but notice of its display should be announced on radio and television and in the newspapers.

#### 4.1.1 Selecting Successful Applicants

Within 21 days of the closing date of the applications, on the date stipulated in the notice, in a suitable place open to the public, applicants will be selected and parcels allocated.

The CL policy requirements for fairness and transparency dictate that the allocation of parcels to applicants must be done by a ballot. There is no other way of selecting applicants when there are more applications than available parcels, and selection criteria, such as a means test, are not being employed. However, weighting can be introduced into a ballot process to give preference to persons who have never received Crown land and who have been unsuccessful on past ballots. Therefore, we have two types of ballot – weighted and un-weighted – the former giving preference, the latter giving every applicant irrespective of status an equal chance.

#### 4.1.2 Weighted Ballots

Although the Crown land policy does not stipulate the use of weighted ballots, the principles underlying the policy – for fairness – suggest that preference should always be given to persons who have never received or benefited from a CL allocation.

##### *Three box system*

A weighted ballot with three ballot boxes ensures that persons who have never received or benefited from an allocation of CL are given first preference, and persons who have never received or benefited from an allocation of CL on this island, but have received CL on another island, are given second preference. The third box is for persons who have already received CL on this island.

All applications in the first box will be drawn before drawing applications from the second box, and all these will be drawn before drawing applications from the third box. This may mean that if the first box contains more applications than there are parcels of land available, no applications will be drawn from the second box, and so on. This must be publicly announced and explained to persons present before the draw commences.

##### *One box system*

A one box system can increase the chances for persons who have never received or benefited from a CL allocation of getting land but does not guarantee an allocation or an allocation ahead of someone who has already received CL.

The weighting and giving preference in a one box system is achieved by adding additional applications for persons who have (a) never received CL, or (b) have been unsuccessful on a previous ballot. Higher weights can be given by adding greater number of applications; for example, for persons who have never received CL, two applications are entered thereby increasing the odds of being successful.

If a clear preference is to be given to persons who have never received any CL on any island then the one box system should not be used.

##### *Hybrid system*

A hybrid system using three boxes – one for applications from persons who have never received or benefited from an allocation of CL, one for persons who have received CL on another island, and a third for people who have received or benefited on this island – combined with weighting by adding extra applications for persons who have previously applied and not been successful, is the preferred ballot system.

For persons who have been previously unsuccessful on one occasion, their chances are doubled by adding an extra application into the ballot box. If they are unsuccessful again, their chances should be doubled again on the next occasion they apply by adding three additional applications (four in total).

Persons who are unsuccessful in a ballot do not automatically go forward to the next CL allocation; they must apply again for land in another subdivision at the appropriate time when requested by public notice. The application form (C.L.1) asks for details of previous unsuccessful applications. This information is also held and tracked in the CLMIS.

#### 4.1.3 Un-weighted Ballots

Where no preference of any sort is given, each application is placed in a ballot box and ballots drawn in turn.

#### 4.1.4 Selecting when there are more applications than parcels

Where there are more applicants than there are parcels available, a ballot will be held and lots drawn. The ballot can be either a one-box, three-box or hybrid system; the latter is preferred because it is fairer.

In the hybrid ballot system 3 lists of applications will be publicly displayed and each application in each list will be given a sequential number from A1 to  $A_n$  in the list for persons who have never received or benefited from a CL allocation on any island, and from B1 to  $B_n$  in the second list for persons who have received or benefited from a CL allocation on another island, and C1 to  $C_n$  for persons who already have received CL on this island.

Each list must also indicate whether or not the applicant has applied previously and not been successful. If the applicant had been unsuccessful on the previous occasion when s/he applied, this must be indicated by “X2” next to the name on the list; this indicates that the applicant’s odds will be doubled in this draw. If the applicant had been unsuccessful on two previous and successive applications when s/he applied, this must be indicated by “X4”, which means the odds will be doubled again.

A table tennis ball with each of these numbers written on it will be placed in suitable receptacles – A, B and C – a box for applicants who have never received CL, and a box for applicants who have received CL on another island, and a box for applicants who have received CL on this island. This will be done in a way that leaves everyone witnessing the ballot in no doubt that balls have been placed into the draw and into the correct boxes. Additional duplicate balls will then be added for applications qualifying for increased chances due to previously unsuccessful applications (e.g. three additional balls bearing the same number for someone who has been unsuccessful on the last two occasions they applied).

A map or plan of the subdivision will also be publicly displayed and each parcel will be given a sequential lot number from 1 to  $n$  based roughly on the desirability of parcels available (i.e. the best located parcels will have the lowest numbers).

The first ballot or ball to be drawn from box A will be for lot number 1. As each ball is drawn from box A the number is announced followed by the name of the successful



applicant who will be allocated the parcel that corresponds to the number on the ball. This allocation (the lot number and parcel number) will be written down next to the applicant's name on the list that is posted in the ballot place.

If a ball is drawn for an applicant who has already been successful in the same draw (because of duplicate balls in the box to increase their odds), this allocation is set aside; that is, the applicant cannot be successful twice and be allocated two parcels.

The draw continues from box A until (a) all the balls are drawn, or (b) all the parcels are allocated. If balls remain in Box A, then the draw moves over to the second box B, and then to Box C in turn. If all the parcels are allocated before the end of the draw from Box C, the draw continues for the purposes of compiling a reserve list. Any remaining balls from boxes A, B and C are drawn in turn and added to the reserve list.

Care should be taken throughout the draw to ensure that duplicate or double allocations are not made; that is, if ball A26 is drawn and added to the list of successful applicants, if ball A26 is drawn again it must be set aside and not added to the list again.

At the same time as the posted and displayed list of applicants and parcels is updated as the draw proceeds, a second list is updated using a laptop computer, so that this duplicate list can be printed out immediately, compared with the master list, and posted and left at the ballot place, when the master list is removed and carried to CLD.

A digital photograph of the master list and reserve list should be made before it is taken down. All of this must be done in full view of applicants and members of the public in attendance. Each step in the process should be announced.

#### 4.1.5 Selecting when there are more parcels than applications

In this case the ballot will be held to decide the order of choice of available parcels. As before, every application is assigned a number from A1-  $A_n$ , B1- $B_n$  and C1- $C_n$ , written on a table-tennis ball and placed in 3 receptacles – boxes A, B and C. Additional balls are added for weighting previously unsuccessful applicants (as above).

The first number drawn will be from box A and the corresponding applicant is given first choice of parcel. This choice is announced and written down before drawing the second ball from box A. If the applicant, or their authorized representative, is not in attendance when the draw is made, and therefore cannot make a choice of parcel, this is announced, noted, and the next ball is drawn from box A (i.e. a specific parcel is not allocated and no one else other than an authorised representative may choose a parcel on that persons behalf). The draw continues until box A is empty before moving onto box B until it is also empty before moving on to box C.

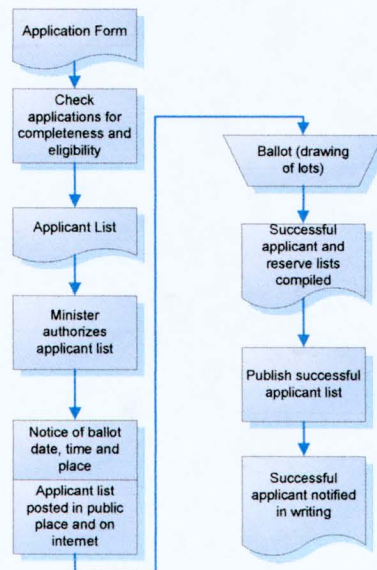
Again, care must be taken to identify balls that have already been drawn to prevent someone being allocated two parcels of land.

An applicant's representative must have authorization in writing and suitable identification must be shown and copied.

Applicants, who did or could not make a choice of parcel at the time of the draw, may choose their parcel at the nearest CLD office where the subdivision plan and list will be displayed, at any time up until the close off date set for this purpose and the payment of deposits.

#### 4.1.6 Publication of names of successful applicants

The list of names of the successful applicants is prepared and published on the CLD's website and posted at all CLD offices, on or near the land, and at a public place in the settlement or district. An announcement must also be made in newspapers and broadcast media that the list has been published and where it can be inspected.



**Figure 5: Flowchart of Procedures for Allocation Residential Parcels by Application**

## **4.2 By Offer For Sale By Public Tender**

Crown land may be offered for sale or lease by public tender at the current market price. This method of distribution applies to both residential and commercial land, although it is more suitable for the latter or for developers to provide the former through subdivisions and construction.

The current law of TCI makes no distinction between Belongers and non-Belongers with respect to CL allocations; however, the CL policy implies that CL will only be granted directly to Belongers.

Although some CL for commercial uses may be offered by invitation, (e.g. small parcels for small enterprises), most CL for allocation to commercial users will be offered by tender. The land will be developed (subdivided) or undeveloped (undivided), preferably the former.

Sale by public tender is also applicable for larger residential developments at the higher end of the market, and for large scale commercial developments. In particular, a public tender must always be used where the purchaser intends to subdivide the parcel and offer to lots for sale to Belongers and non-Belongers.

Where applicable a Belonger's discount may apply (see section 5.1). If the preferred bid and successful applicant is a Belonger, the disposition shall employ a conditional purchase lease. If the preferred bid and successful applicant is a non-Belonger, either a long-term lease is issued or a conditional purchase lease depending on the location of the land (see Table 2 at section 1.1).

CL that is offered for sale by public tender should ideally be developed. That is, as a minimum the parcel is offered as a separate parcel, divided from a larger block of Crown land, and separately registered in the LR. However, in recognition that commercial users require various parcel sizes specific to the enterprise proposed, applications will be considered for undeveloped (undivided) land in area zoned for the appropriate commercial use.

### **4.2.1 Public Offers**

Offers for sale by tender will be invited by public announcement and advertisement. The CLD will work closely and cooperate with TCInvest to market commercial and residential land that will be offered for sale by tender. The CLD may also contract with one or more real estate agencies to market the land for sale.

A closing date for receipt of tenders is specified in the announcement. This date may be extended if a bidder requests an extension of time to prepare a proposal. The CLD will usually consider these requests favourably and inform all other applicants in writing of a tender extension.

Some CL may be marketed more aggressively than other land. A call for tenders when made must be made as follows:

- (1) Quarter page advertisements in two widely read national daily or weekly newspapers on at least three separate occasions.
- (2) Notice in the Official Gazette
- (3) Notice displayed at all offices of CLD, on or near the land, and in a well frequented public place near where the land is located.
- (4) Notice posted on the CLD website

All CL that is zoned for commercial use is, to an extent, available for purchase and persons or companies may submit applications or expressions of interest to purchase and develop any CL zoned for commercial or large-scale residential use, at any time. However, the opportunity to lease, purchase and develop must be made available to all potential bidders.

Therefore, if expressions of interest are received for CL that is not being actively marketed, they must be considered. If it thought that the application has merit, the parcel can be brought forward in the programme of managed CL delivery and advertised for submission of tenders. Persons or companies who submitted earlier applications must be informed, in writing, that the land is being advertised and they must resubmit applications in accordance with instructions stated in the advertisement.

The notice must state, as a minimum, the following information:

- 1) The closing date for submission of tenders
- 2) How and where tenders are to be submitted
- 3) A requirement of the tender such as a technical proposal including a business plan and in some cases a financial proposal.

Bidders should be given a reasonable time to prepare their proposal bids. The length of time depends on many things, such as the potential land use, the size and scope of possible development. For small parcels between 28 and 56 days is sufficient; for larger parcels allow 56 days or more.

For larger developments and sales, TCInvest have a key role in the tender process. They may manage the whole process on behalf of the CLD; or it may be managed jointly. The evaluation of tenders is one area where TCInvest expertise should be used.

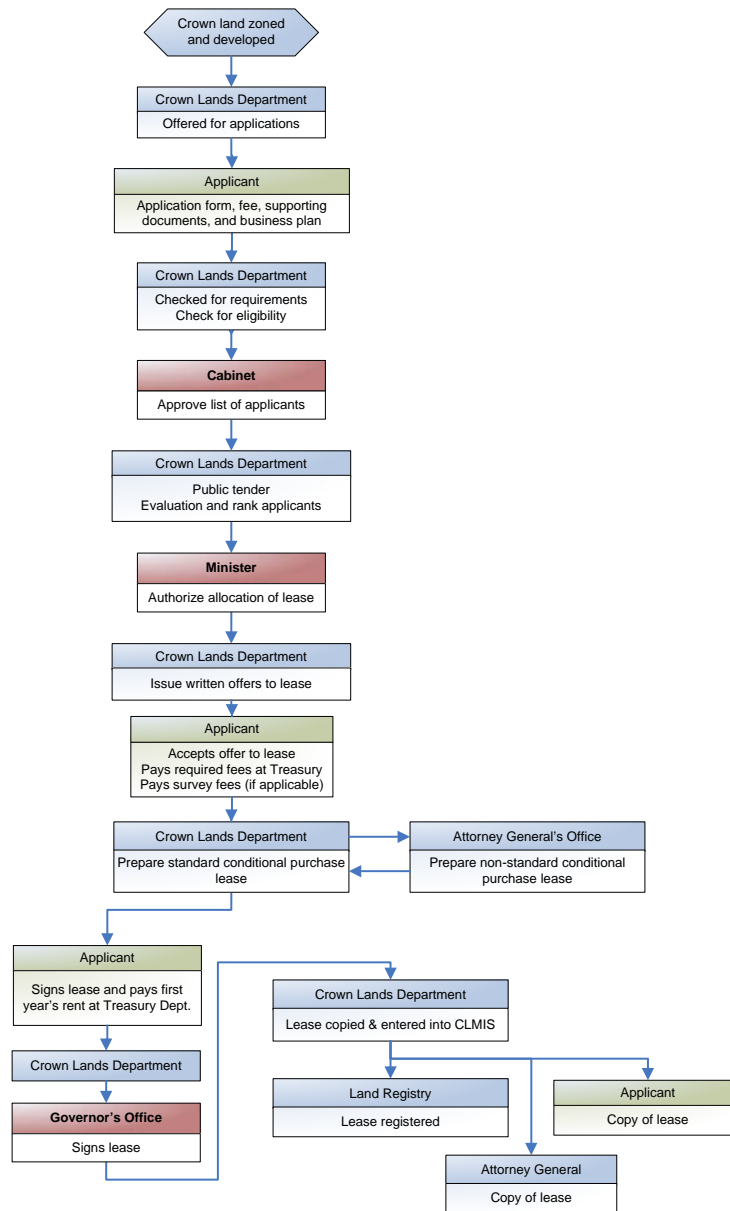
#### 4.2.2 Evaluation of Bids

All tenders must be submitted with a standard application form (C.L.2) in a sealed envelope containing a development proposal. The development proposal will be assessed and ranked by the CLD and/or TCInvest based on suitable criteria, such as the following:

- (1) Economic feasibility
- (2) Benefit to the TCI economy in terms of number of people employed, tax revenues, etc.
- (3) Sensitivity to environmental impacts
- (4) Visual impact
- (5) Domicile of the applicant (giving preference to Belongers)

Marks will be awarded for compliance with these requirements and the bidder with the highest mark will be ranked highest and invited to negotiate and conclude the conditional purchase lease or lease agreement. If these negotiations are unsuccessful, the second ranked bidder will be invited to negotiate etc.

The CLD may also contract with private companies or individuals to assist with the evaluation of tenders.



**Figure 6: Flowchart of Procedures for Allocating Commercial and Residential Parcels by Public Tender**

### **4.3 By Public Auction**

Although sale by public auction is not a method of land distribution currently used and neither is it contemplated in the near future, the TCIG reserve the right to sell or lease CL to the highest price offered at auction. This price shall be in excess of a reserve price that is the open market price as determined by the Land Valuation Officer.

The location and development potential of a parcel of CL may generate considerable interest from prospective purchasers, and to maximize the revenue to TCIG and the development of the parcel, public auction is a suitable and acknowledge method of sale (and one that is the first choice for State or Crown land distribution in many other countries).

The procedures for conducting a public auction are similar in many respects to the procedures laid out for applications and for tenders.

Land is offered on the basis of a conditional purchase lease that specifies precisely what development the lessee/purchaser is required to undertake.

Sufficient notice is given for the date, time and place the auction will be conducted (as per section 4.2.1.

The auction must be open to members of the public; however, potential purchasers must pay a fee to be able to bid. This ensures that bids are only made by bona fide purchasers.

At the end of the auction, the successful bidder should be expected to sign an agreement to enter into a conditional purchase lease contract.

#### **4.4 By Private Treaty**

The sale or lease of CL by private treaty is an appropriate mechanism in the following circumstances:

- (1) Where parcels have not sold through sale by invitation, public tender or auction and the number of remaining parcels does not warrant a repeat of the original process.
- (2) Expressions of interest have been received for undeveloped land that may result in exceptional and substantial benefits for the TCIG.
- (3) Small portions of land comprising less than a separate parcel.

The CL policy dictates that the grant or lease of CL must be conducted in a transparent process, such as public tender (policy #8) and therefore private sale shall not be used except in the aforementioned exceptions.

Where parcels have not sold by public invitation, tender or auction, negotiations with potential purchasers for sale by private treaty shall only take place within one year of the original offering. If more than one year has elapsed since the public offering, the land must be re-offered publicly for sale by application, tender or auction.

The CLD shall publish a notice on three separate occasions in two national newspapers of wide circulation that due to the land failing to sell at public invitation, tender or auction, a sale by private treaty will be offered.

The second exception where private treaty may be used without first offering the land by public invitation, tender or auction is the extraordinary case such as a prestigious and major tourist resort development. Because the land is undeveloped an application for development permission would be required. This application must be made by the prospective developer supported by the consent of the TCIG and Governor. Also, the unusual and exceptional nature of the development will necessitate a commensurate degree of publicity and public input that is usually required by the Department of Planning for applications of this nature. Another example of an exceptional case is a purchase of land by a foreign government for a diplomatic mission.

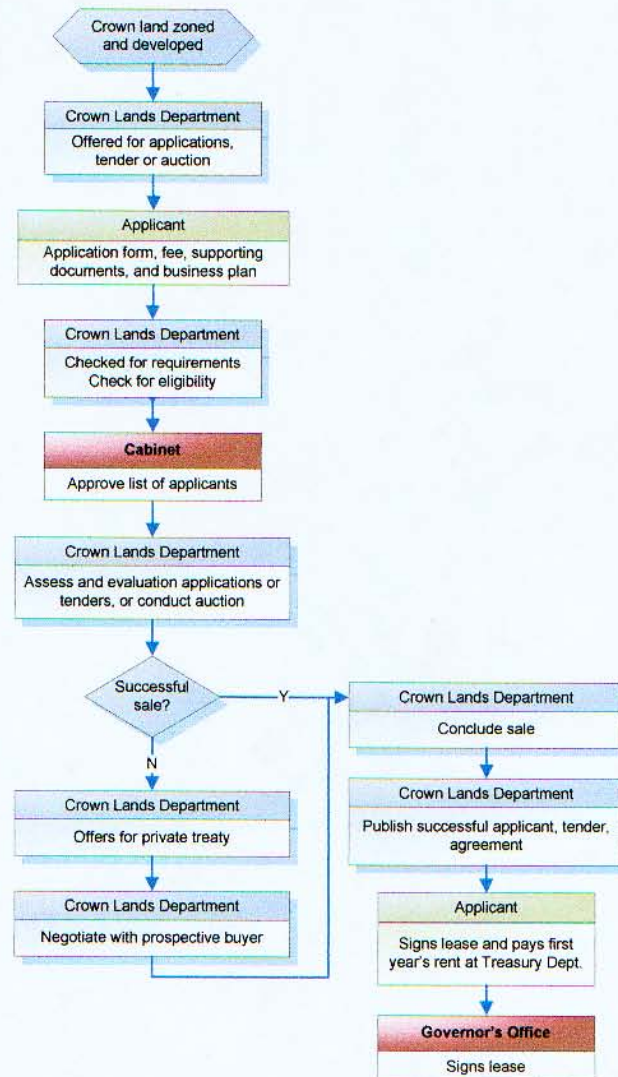
The third exception involves applications or private offers for the purchase or lease of small areas of land adjacent to land already in private ownership. Instance where private treaty is applicable in this case is where:

- a. The land is too small to be a separate parcel
- b. The land is no longer required by the Crown or Government (e.g. it is an abandoned reserve or road).
- c. The land is necessary for the better enjoyment of the adjoining parcel (e.g. to provide for access)



d. The land is as a result of foreshore accretion (see section 3.3.5)

In all these cases the purchaser's land must comply with all land use and planning requirements, the land conveyed is consolidated into the adjoining parcel, and the purchaser covenants that the larger parcel thus created will not be subdivided.



**Figure 7: Flowchart of Procedures for Allocating CL by Private Treaty**

#### **4.5 Offer and Acceptance**

In almost all cases where the land has been offered to an application or prospective purchaser, the offer is made in writing, and must be accepted in writing. A standard offer letter must be used (C.L.12).

The successful applicant has 14 days to respond in writing to take up the offer. An extension of time up to a further 14 days may be offered if requested by applicant.

#### **4.6 Issuance of Conditional Purchase Lease**

Following acceptance of the offer a standard conditional purchase lease must be prepared (see section 3.3.2).

There are two standard types of conditional purchase lease: residential and commercial. Some variation of lease terms and conditions may be required or negotiated, and the advice of the Attorney General's Office must be sought if a standard lease is not being used.

The successful applicant must sign and date the lease in the presence of a notary public or justice of the peace. The applicant must take the lease away for this purpose, but instructions must be given that the lease should be returned signed and notarised on the same day. The lease must be signed, notarised and returned within 7 calendar days otherwise the offer of award may be withdrawn. The offer letter will say this.

Once the 3 copies of the signed, dated and notarised leases are returned, and this event is logged into the CLMIS, the leases are checked and then dispatched with a covering letter to the Governor's Office for execution.

When the Governor has signed and dated the 3 copies they will be returned to the CLD, and one original immediately dispatched by the CLD to the LR for registration. This event must be logged into the CLMIS.

The lessee is then informed that an original copy of the lease can be uplifted at the CLD. The lessee must sign a receipt documenting that s/he has received the lease.

The remaining original copy is sent to the Attorney General, after a photocopy has been made for CLD records.

#### *Other Requirements*

A performance bond or security deposit may be required to be posted by the developer of large commercial land use activities where any improvements on, or changes to, the land are proposed. The bond is to ensure compliance and completion by the developer of all the obligations and requirements specified in the agreement.

One example where a bond is needed is for land that will require clean up or reclamation if the developer fails to abide by the terms and conditions of the grant, lease, and license or permit agreement.

#### 4.7 Conditional Purchase Lease Extensions

The responsibility for securing the necessary detailed development permissions and permits with respect to construction rests with the lessee, and not the TCIG. However, the CLD has a duty to monitor compliance with the lease conditions. This will be done at the expiry of the lease in 3 years; however, monitoring inspection should be carried out during the lease period to identify and pre-empt any possible problems with development (see section 7).

The CLMIS generates a standard report highlighting leases that are coming to an end. It is, however, incumbent on the lessee at this point to apply for (a) conversion of the lease to freehold, or (b) an extension of the lease. Good land management requires that the landlord (CLD) writes to the tenant (the lessee) informing him/her that the lease is about to expire and with advice about the next steps to be taken.

##### *Where the lessee requests an extension of the lease*

When an extension of the lease is requested, the following action must be taken:

- 1) The lessee is informed in writing that the consequences of a lease extension are (a) that it is only for 18 months and cannot be extended further on the same conditions, (b) that the land will be re-valued and a new rent and purchase price will be included in the lease contract extension, and (c) that the costs incurred by the CLD for the site inspection and for land re-valuation will be added to the revised land rental.
- 2) An inspection must be carried out by the CLD to inspect the land and the status of the development. This information is recorded in the CLMIS.
- 3a) A letter is written to the Land Valuation Officer asking for a revaluation.
- 3b) At this point the lessee, being informed of the revaluation, may wish to secure a bank loan to finance the development (which is why the lessee should be informed at least 56 days prior to lease expiry).
- 4a) If the lessee has not fulfilled the lease conditions with respect to development, but has undertaken the minimum required development work also specified in the lease, and all rents have been paid, a lease extension of up to 18 months shall be offered at revised terms and the same conditions. A longer lease term must not be offered.
- 4b) If the lessee has not fulfilled the lease conditions with respect to the minimum required development work specified in the lease contract, irrespective of whether or not rents have been paid, the lease shall be forfeit (i.e. cancelled) and CLD shall recover possession of the land. Compensation may be payable for any development works undertaken by the lessee.
- 4c) If the lessee has fulfilled all the conditions for development specified in the lease contract, entitling the lessee to apply for conversion to freehold title, but instead the lessee

requests an extension of the lease, this should be offered on revised terms and conditions for a mutually agreed period. That is, the maximum 18 months extension in this instance need not apply, and a longer lease period can be offered, up to 99 years. However, in such cases it is more likely that a shorter lease period will be agreed, thus giving the lessee some additional time to secure financing for the freehold purchase.

Under no circumstances where the lessee is in breach of terms and conditions of the lease, is a lease extension to be offered. On expiry of the lease, the CLD will recover possession of the land. Compensation may be payable for any development works undertaken by the lessee.

Under no circumstances where the lessee has failed to fully comply with all the lease terms and conditions will an extension of more than 18 months be offered.

A lease must not be extended more than once (i.e. an 18 month extension followed by another 18 month extension); except where the lessee has fully complied with all the terms and conditions of the lease and has not requested a conversion to freehold title.

Where the lessee does not request an extension of the lease

If the lessee has not requested an extension, s/he must be advised to submit an application for conversion to freehold title.

If the lessee neither requests an extension nor applies for conversion to freehold, the lease expires on termination, is surrendered by the lessee, and the CLD will recover possession of the land.

If the former lessee remains in possession, and no has been taken action for recovery of possession and ejectment, a periodic tenancy is in effect.

## **4.8 Lease Management**

Leasehold title, unlike freehold title, requires active management by the landlord throughout the duration of a lease. This management role, performed by the CLD, includes: issuing the lease; periodic monitoring of lease conditions; enforcement; negotiation of lease variations and extensions; and, lease termination and conversion to freehold.

The availability of the Crown Land Management Information System (CLMIS) within the CLD greatly reduces the burden associated with undertaking these duties and responsibilities. The CLMIS will, of example, alert CLD staff when lease must be periodically reviewed and when they are coming to an end.

### **4.8.1 Monitoring Compliance with Lease Conditions**

Refer to section 7

### **4.8.2 Variation and Extension of Lease**

There are few, if any, instances where it will be necessary to vary or change a conditional purchase lease. Long leases, however, may be varied at the request and agreement of either party.

Refer to section 4.7 for extensions of CPLs.

### **4.8.3 Forfeiture, Surrender and Determination of Leases**

A lease is forfeited by a lessee when, following action taken by the lessor, the terms and conditions of the lease have been breached. Forfeiture usually occurs before the expiry of the lease. Because most leases management by CLD are relatively short conditional purchase lease, the need or instance of lease forfeiture should be rare.

A lease can be given up or surrendered by the agreement of both parties. If the holder of a CPL, before the lease has expired, wishes to end the lease agreement, this should usually be accepted and negotiations conducted to surrender and terminate the lease by agreement.

A lease is determined when it has run its course and its term has ended. If an extension is not agreed, or a conversion to freehold is not granted, and the lessee remains in possession, then a periodic tenancy begins. This should always be avoided.

#### 4.8.4 Assignments

Terms and conditions attached to leases of CL will limit to varying extents the right to assign or transfer the holder's interest to another party by sale, agreement or otherwise.

In most cases the lease will limit the rights of the lessee to assign, transfer, sublease, charge etc. to any other person. However, in all cases, any assignment, lease, sub-lease, etc., if permitted, will require the prior written consent of the Governor.

The Governor may refuse the request for assignment where the transfer will result in any breach of the terms, conditions and eligibility requirements of the lease, including change of use or any matter not acceptable to the Government.

#### **4.9 Conversion of CPL to Freehold Title**

The principle behind the CPL is that a parcel of CL is provided to a lessee who after fulfilling all the development conditions in the lease will be eligible to apply for the freehold title to the parcel.

Conversion of a CPL to freehold title is not automatic; the lessee must apply to the CLD using form C.L.3. The CLD will write to the lessee prior to the expiration of the lease informing the lessee of what action must be taken to (a) convert the lease to freehold, or (b) to extend the lease.

The conversion of leasehold to freehold is a right, and may not be refused by the CLD if the lessee has fully complied with all the terms and conditions stated in the lease.

The holder (lessee) of a conditional purchase lease may at any time after registration of the lease apply to the Commissioner for conversion of the lease to freehold title. The lessee does not have to wait for the expiry of the 3-year lease term. If the terms and conditions of the lease have been fulfilled, the lease may be converted to freehold as per the agreement.

When application form C.L.3 is received, compliance with lease terms and conditions must be verified. There are a number of requirements:

##### *Development Requirements*

An inspection of the land must be carried out together with representatives of the Survey and Mapping Department and the Department of Planning; this must be done at the same time (to avoid problems arising from misidentification of land).

The scope and extent of development must be assessed against the conditions stated in the CPL. For example, if the CPL gives permission for the construction of a single unit dwelling, and upon inspection it is found that the lessee has constructed a multi unit dwelling, then there has been a breach in CPL conditions and the conversion to freehold must be refused. In this instance the lessee may be given time to take remedial action or apply to the Department of Planning for a change of use.

The minimum development or construction requirement may vary according to land use and the leasehold agreements. When inspecting and assessing development, the requirement must be assessed against conditions stated in the lease.

In most instances, however, the minimum standard for development will be as follows:

- 1) Construction of the main building up to ring beam level; that is, the exterior and interior load-bearing walls, including soffit beams, which support the roof.



The roof itself does not need to be in place; however, construction must be up to roof level.<sup>27</sup>

- 2) Walls or fences are constructed along the perimeter where the parcel abuts a public road or right of way or adjoining parcels.

#### *Cadastral Survey Requirements*

As a minimum, the development must be assessed to ensure that boundary lines have been marked, cleared and constructed in the correct location. This may require a re-survey of the parcel prior to conversion to freehold is required. This is required for:

- a. Re-establishment, if necessary, of original boundary corner marks.
- b. Re-calculation of the area of the parcel
- c. Confirmation that there are no mutations of the parcel or encroachments onto or from adjacent parcels or reserves, roads, etc.

A survey report prepared by a authorised surveyor, noting the boundaries and marks inspected and any action taken to replace lost marks, recalculate area, or discover encroachments, must be completed.

#### *Other Requirements*

All rents must be paid.

#### *Procedure where development permission is refused*

The situation may arise where the lessee has applied for development permission for construction, but this has been refused by the Physical Planning Board for some reason. Enquiries must be made with the Department of Planning to ascertain the reason(s) and whether or not the application submitted by the lessee conformed to the conditions of the lease.

If the development application did not conform to the agreed use and scope of development for the CL as stated in the lease, then the lessee is in breach of the lease and the lease must be forfeited.

If the development application matches the lease requirements, it will be necessary to renegotiate the terms and conditions of the lease with the lessee.

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<sup>27</sup> [Note: for compliance with the Physical Planning Ordinance, the development should be complete, i.e. ready for occupation, otherwise development permission has expired and the conditions of the CPL have been breached. Consistency with the PPO is suggested, and therefore it is recommended that construction must be complete (i.e. the building is ready for occupation) prior to grant of freehold.]

#### **4.10 Issuing the Freehold Title**

Where all the lease terms and conditions are found to be met, the freehold title will be prepared. A draft copy should be sent to the applicant prior to requesting signature and execution. The reason for this is that the purchaser will be required to accept covenants (restrictions) on the title.

##### *Covenants on Title*

The standard grant of freehold title (form R.L.1a) contains a covenant restricting the use of the land to a particular class of use. This will usually be the same as the use and development specified in the CPL.

If the Crown grant has been made on discounted terms, there must be a covenant stating something to the effect that the discount must be repaid, in whole or in part, if the land is transferred to a non-Belonger.

Where a parcel is located in area susceptible to flooding, erosion or other known natural hazard, the purchaser may be required to accept a covenant on title that indemnifies the Crown and the Government.

##### *Land Registration Requirements*

In almost all cases the CPL has been registered a lease of a separate whole parcel of CL in the LR (because the intention is to alienate the parcel to freehold on expiry of the lease). Therefore, the transaction to issue the freehold grant is a transfer of registered land. Standard form R.L.1a must be completed.

The transfer form R.L.1a is prepared in the CLD, and not the LR.

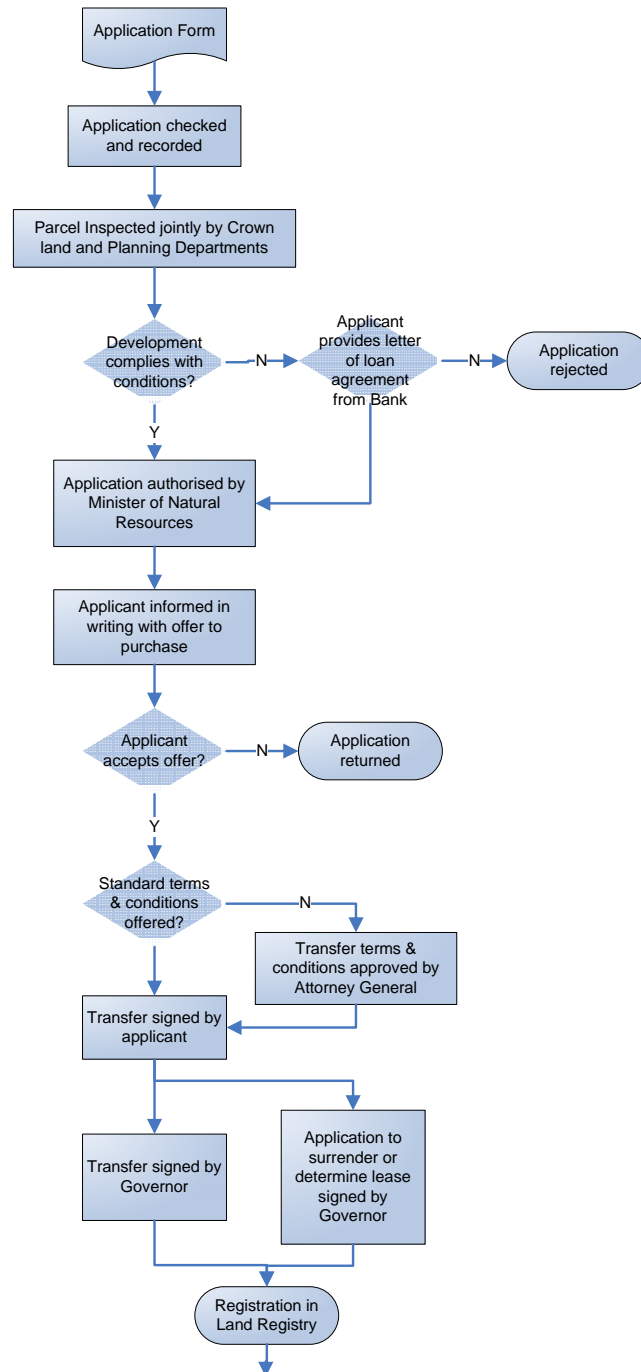
The transferee (the person who is receiving the grant) must be the same person who held the CPL. Under no circumstances can the name be a different name, nor can names be added or removed from those that appear in the CPL.

The applicant is informed and asked to come to the CLD offices to uplift the form and to sign it (in triplicate) in the presence of a notary public or justice of the peace. The applicant should be asked to return with the signed form on the same, and no later than 7 calendar days, otherwise the offer may be withdrawn.

After it has been signed by the applicant, the grant (form R.L.1a) is sent to the Governor's Office for signature. The form is then returned to the CLD; not the LR.

A copy of the grant is made for CLD records; one of the original (triplicate) copies is for the applicant/grantee (who must be asked to come to uplift it at CLD), and another is for the Attorney General. The third original is sent by CLD to the LR for registration.

All of these procedural actions must be recorded in the CLMIS, together with the notification from the LR that registration has taken place.



**Figure 8: Conversion to Freehold**

#### 4.11 Crown Land Reserves

Crown Land may be reserved by the Governor or the Minister for particular uses, and a restriction entered in the register for a CL parcel preventing dealing. A restriction may limit all dealing and entries in the register or only some. For example, a restriction may be registered preventing the granting of all permits and licenses by any government authority or agency.

CL that is under the jurisdiction of another government ministry, department or agency, must be administered by that agency; therefore, a reservation or restriction required for such land must be dealt with by the respective responsible Minister.

A Minister whose jurisdiction has an interest in CL but does not directly control the management of the land, may register a caution,<sup>28</sup> to the effect that notice must be given to the Minister that an application has been made that is inconsistent with the caution (the interest of the Minister's jurisdiction).

Some types of CL may not be sold in freehold and shall remain in the ownership of the Crown.<sup>29</sup> The Crown will not, for example, ordinarily grant freehold title to land that is below the mean high water mark. Further, and in compliance with the Crown land policy, land will not be granted where the intended use of the land is inconsistent with the national physical development plan.

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<sup>28</sup> RLO s.127

<sup>29</sup> CLO s.xx

## **5 DISCOUNTS ON PURCHASES OF CROWN LAND**

A discount on the purchase price of land is available under the current Crown land policy for all eligible Belongers.

The purpose of the discount is to assist Belongers to purchase freehold land, recognising that the law of TCI does not prevent foreign ownership of land and that many non-Belongers may have an advantage over Belongers with respect to access to capital for land purchases. In the absence of statute, the policy levels the playing field, so to speak, and makes access to land more realistically achievable for Belongers. Moreover, the policy seeks to empower Belongers through their ownership of land and the capital that it inherent in ownership of a tangible asset.

The CL discount policy is explained further in section 1.5 of the manual.

## 5.1 Eligibility for Discounts

Discounts on the purchase price of CL are only available to Belongers. Belonger status is defined in the Immigration Ordinance as:

[...]

With respect to a company or organisation, to be classed as Belonger-owned, -controlled or -domiciled the company or organisation must be:

- 1) Legally constituted, incorporated and registered under the laws of TCI
- 2) 100% of the company's capital is owned by Belongers or Belonger-owned companies or organisations.
- 3) At least 51% of the income or the activities of the company or organisation are earned from operations and activities conducted in the TCI.

Where a company or organisation is less than 100% Belonger owned, the discount shall apply to that portion that is Belonger-owned, provided that the company or organisation is at least 51% Belonger-owned and controlled (i.e. if a company is 60% Belonger-owned the discount will be reduced by 40%; if the company is 40% Belonger-owned, no discount will be given).

A Belonger or Belonger-owned company or organisation must be capable of owning and holding land in TCI to receive a discount; that is, the person must be of 18 years of age or older and not under any disability as defined by the Registered Land Ordinance, and the company or organisation must not be prevented by its constitution from holding land.

Discounts on the purchase price of CL are applied at the conversion of a conditional purchase lease to freehold title. Therefore, one component of the eligibility requirement is that a prospective purchaser must fulfil all the terms and condition agreed and stated in a conditional purchase lease.

## **5.2 Amount of Discounts**

The amount of discount is the percentage reduction of the full open market purchase price. Refer to section 6.1.1 for calculation of the full open market purchase price of land.

### **5.2.1 Residential land**

On all islands the Belonger discount is 50%.

### **5.2.2 Commercial land**

On all islands, except Providenciales where the discount is 25%, the Belonger discount is 50%.

### 5.3 Limits on Discounts

Each Belonger is entitled to:

- 1) One discount of residential land per island at any one time

And

- 2) One discount of commercial land up to a maximum parcel size of 10 acres

#### 5.3.1 Residential land

The Crown land policy places no limit on the physical size of each parcel of residential land. However, the implied intent is to provide sufficient land at a discount for the construction of a one dwelling for one family. Therefore, the size of the parcel shall be proportionate to the type of land use envisaged by a subdivision development; i.e. for high and middle income properties the parcels sizes will be larger than developments targeted at lower income groups. The actual parcel sizes will conform to the current guidelines for subdivision as set by the Department of Planning.

A Belonger cannot hold more than one residential discount at one time. This means that if a discount is held on Grand Turk, a discount cannot be held on Providenciales at the same point in time. Refer to section 5.4 for the duration and currency of discounts.

#### 5.3.2 Commercial land

Each Belonger is entitled one discounted parcel. The size of the parcel can be no more than 10 acres. If a discount is received on a parcel of 5 acres, a further discount of 5 acres cannot be given.

Belongers may combine their discounts and purchase a parcel that is greater than 10 acres, up to a maximum of size 10 acres per Belonger. The lease and eventually the grant of freehold must be held by them as one parcel and as proprietors in common in proportion to their share (e.g. if the first Belonger uses his/her full allocation of 10 acres and a second Belonger uses 5 acres, the share of the first is stated as  $66\frac{2}{3}\%$  and the second as  $33\frac{1}{3}\%$

A Belonger may hold a commercial discount at the same time as holding a residential discount.



## 5.4 Duration and Currency of Discounts

The policy on the duration and currency of discounts is the same for both residential and commercial land.

A discount is applied to the purchase of a freehold title. This purchase takes place at the surrender or determination of a conditional purchase lease and the date of execution (not registration<sup>30</sup>) of a grant of freehold title. The discount period does not begin at the start of the lease – there is no discount applied to the lease.

The right to a discount on a particular parcel of land is contingent on the lessee fulfilling the terms and conditions of the conditional purchase lease. When these terms and conditions are met, and the lessee has applied and been granted a freehold title, the discount period comes into effect.

A discount remains in effect, and a charge registered in the encumbrances section of the parcel folio, until:

(1) The discount period of 10 years has elapsed;

Or

(2) The purchaser has repaid the appropriate share of the discount.

On either event, the charge is discharged and the discount period ends and a Belonger may then receive a discount on residential land on another island.

A Belonger may apply for residential land at a discounted price and received a conditional purchase lease 3 years prior to the expiry of a currently held discount. This is because a discount is not held under a CPL. However, the CPL cannot be converted into a grant of freehold until the prior discount has expired; hence the 3 year period which is the duration of the CPL.

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<sup>30</sup> The agreement and contract between the parties comes into effect on execution of the lease and not registration.

## 5.5 Discount Rules

Certain rules relating to discounts are expressly stated in the policy; some are implied. The rules are substantially the same for both residential and commercial land.

A discount on the purchase price of CL will not be provided to non-Belongers.

A discount cannot be transferred to a non-Belonger; however, land that was granted with a discount can be transferred to a non-Belonger provided that:

(1) The discount period of 10 years has elapsed

Or

(2) The appropriate portion of the discount is repaid.

If the land on which a discount still subsists is sold:

- 1) Within 5 years from the grant of freehold, the whole discount shall be repaid;  
or
- 2) Between 5 and 10 years from the grant of freehold, half of the discount shall be repaid; or
- 3) After 10 years from the grant of freehold, none of the discount needs to be repaid.

Where a Belonger, acting as a developer, acquires a 10 acre parcel that is being developed for residential use and for resale, either as freehold, leasehold or condominium lots or units, any subsequent sale of one lot or unit shall be subject to the requirement to repay the discount in proportion to the size of that lot. For instance, if one parcel of 1 acre is sold 6 years after the discount came into effect, the repayment shall be 1/10th of  $\frac{1}{2}$  of the discount (e.g. if the discount on the 10 acres was \$100,000, the repayment must be \$5,000).

## 6 PRICES, FEES AND COSTS

### 6.1.1 Purchase and Rental Prices of CL

The TCIG and the CLD have a pecuniary responsibility to the citizens of TCI to obtain the best possible price for the alienation of CL. A discount, if applicable, may be made on the basis of this “best price”.

#### *Valuation*

The “best price” is based on the open market purchase price as appraised by the Land Valuation Officer using accepted and established land valuation principles and procedures.

All valuations for the lease or grant of CL are carried out by the Department of Valuations (DOV) at the written request of the CLD.

Land values for calculating lease rents and prices for the purchase of CL shall be assessed by the DOV on the basis of open market value. Information and advice about how open market prices are calculated should be referred to the Land Valuation Officer.

All CL offered for residential or commercial purposes shall be offered with a purchase price set by the DOV. The purchase price will be published and the land offered with this price on conditional purchase lease terms. Land must not be offered for lease or sale without a fixed known price.

The CLD shall not alter or vary any of these valuations or prices. The offer price is not negotiable.

#### *Conditional Purchase Leases*

CL offered for purchase under CPL terms and conditions shall be valued at the date of offer and the purchase price fixed at this figure, and this shall be the purchase price at the end of the 3 year lease term; provided that the all lease terms and conditions are complied with, and the lease is not extended at the request of the lessee.

CPL rents are paid monthly and the annual rent is calculated as 1/40th or 0.25% of the open market purchase price of the freehold.

The offer price set by the DOV and published with the notice for applications or tenders is fixed for the 3 year CPL term and is not negotiable and must not be varied.

Where a lessee requests an extension of the CPL for a further 18 months, the DOV is requested to reassess the unimproved value of the land, and the annual rental and purchase price shall be revised to this figure; except that, if the assessment results in a reduced value, the lease extension and offer price shall remain as previously agreed.

*Leases*

Leases are offered on annual rental terms; lease are not currently offered on the basis of payment of a premium or fine (lump sum).

Leases for exclusive use must be offered on the basis of a percentage of the full open market purchase prices as assessed by the DOV.

The annual rent for leases of CL is 1/40th or 0.25% of the open market value.

*Freehold sales and conversions*

The purchase price of CL is based on the full open market price, based on the unimproved value assessed by the DOV. This price may then be subject to applicable discounting.

*Licenses*

Rents for licenses granted for the non-exclusive use of CL must be assessed and set by the DOV.

*Valuation and Rental Appeals*

Appeals against an assessed open market value of CL may be made only when lease terms and conditions are being varied; that is, if a lessee applies for an extension to a conditional purchase lease and a revaluation results in an increased rent and purchase price, this value may be appealed (see section 9).

**6.1.2 Administrative and Technical Fees**

Regulations to the CLO set prescribed fees for various products and services provided by the CLD. A schedule of these fees is attached at Annex D.

A small fee is now in effect to cover the processing of all applications and tenders for the purchase of CL. This small fee (\$10) also acts to discourage multiple and speculative applications.

Fees are also levied by other TCIG departments who are involved in the process of CL allocation; for example, survey fees are payable to the Surveys and Mapping Department.

**6.1.3 Others Costs**

In all instances the Government will never grant CL at less than the costs incurred in developing, marketing and administering the disposition of the parcel.

The TCIG reserves the right to grant CL at cost to religious and charitable organisations.

#### 6.1.4 Stamp duty

Stamp duty is not applicable on the grant of conditional purchase leases and freehold lands made by the Crown.

All subsequent assignments and transactions of conditional purchase leases and freehold grants may attract stamp duty at the appropriate rate.

## **7 MONITORING AND ENFORCEMENT OF CROWN LAND GRANTS AND LEASES**

Terms and conditions of all grants and leases will be monitored by the CLD throughout the stipulated duration of the agreement. This will include compliance with land use planning and development control requirements.

Monitoring will be conducted by a combination of:

- (1) Periodic site inspections, and
- (2) Dealings and transactions reported by the LR and the Registrar of Companies

The Crown and the Government reserves the right to cancel conditional grants, leases, licenses and permits for failure of the grant-holder to comply with terms and conditions of the grant.

The Government shall not pay any compensation for the unexpired interest where such cancellations occur. However, compensation may be payable for any improvements made to the land, where provided in the original agreement.

### **7.1.1 Periodic Site Inspections**

At least one, preferably two, site inspections must be carried out during each CPL term, at 1 year or 1 ½ years from the date of execution of the lease. By this time, development and construction should have commenced on the parcel.

If development has not commenced, a second site inspection must be scheduled for 9 months time. If development or construction has not commenced by this time, or in the opinion of the person carrying out the inspection, that development has ceased or likely not to be completed by the end of the lease period (3 years), a letter must be written to the lessee. This letter must highlight the agreement in the lease to complete development and the consequences should development not be completed.

Information from these site inspections must be entered into the CLMIS.

### **7.1.2 Monitoring of Transactions**

Lease and freehold conditions limit the rights of the lessee or proprietor to deal with the land; there is a charge registered in the encumbrances section of the lease or parcel folio that protects a discount, for example. There may also be covenants on title noted in the encumbrances section.

*Land Registry*

The existence of a registered charge means that the LR will not process a transaction that is inconsistent with the charge; i.e. the registry will not allow a transfer unless the chargee (the Crown) gives consent. This notice from the Registrar will highlight the transaction, so that if there is a liability to repayment of a discount this is collected prior to the giving of consent.

*Companies Registry*

A similar arrangement exists with the Registrar of Companies. Whenever a share transaction is reported to the Registrar that affects a company holding land that was formerly CL, the Registrar will notify the CLD. The Registrar of Companies cannot block or delay the share transaction.

When a grant of CL is made to a company, the Registrar of Companies must be notified, so that notification of share dealings can be reported back to the CLD. However, there is always the likelihood that some transaction may be overlooked, so therefore a request must be made annually to the Registrar of Companies to report any share transactions on all CL with a liability to repay discounts when there is a transfer.

The CLMIS will have a standard report listing all companies liable for the repayment of discounts.

**7.1.3 Land Policy**

Sample surveys for monitoring and evaluation of the Crown land policy should be conducted every 3 years.

Analysis of the data collected from a random sample of proprietors who have received CL will reveal whether or not the policy is having its intended effect of encouraging Belonger land ownership, economic empowerment and entrepreneurial achievements.

## **8 ACQUISITION OF LAND**

Acquisition of private land by the Crown for a public purpose...

*[Insert procedures for a future section of the manual].*



## 9 APPEALS

### 9.1.1 Complaints and Appeals

The public and persons applying for and receiving CL must be encouraged to submitted formal complaints and appeals if they feel an injustice has been done or they have been discriminated against in any way by the process or by a CLD member of staff.

Discouraging formal complaints and appeals will only result in greater ill feeling and distrust.

Appeals may be made by any aggrieved person directly affected by any decision or action of the CLD in the course of allocating, disposing, monitoring or enforcing the terms and conditions associated with the leasing and granting of CL.

Appeals are made, and submitted using form C.L.13, in the first instance to the Commissioner of Crown Lands.

The Commissioner of Crown Lands will acknowledge in writing receipt of the appeal and inform the appellant the estimated time it will take to consider the matter.

The Commissioner of Crown Lands will review the case and check for any departure or variation by staff of the CLD from the law and required procedure as laid out in the regulations and this manual.

The findings and decision of the Commissioner of Crown Lands must be communicated to the appellant in writing. A copy of the decision and the original appeal must be forwarded to the Minister. The letter must inform the appellant what steps are needed if the appeal is to be taken further.

### 9.1.2 Appeals Tribunal

The next stage of the appeal process involves the Appeals Tribunal.

The Appeals Tribunal is constituted by the CLO and membership is decided by the Governor, the Premier and the Leader of the Opposition.

The Appeal Tribunal has its own rules and procedures, and these are not covered here.

## **ANNEXES**

## **ANNEX A**

### **Principal Functions of the CLD**

- 1) Monitor existing and potential demand for Crown Land, taking into particular account the Ten-Year Development Plan and any national and local physical development plans.
- 2) Monitor implementation of the Crown Land Policy and determine if Crown Land Policy is meeting stated objectives; advise and recommend any amendments to the Policy, as necessary.
- 3) Liaise with the Department of Physical Planning and the Department of Surveying to ensure that areas designated for potential commercial and residential developments are surveyed in accordance with approved outline sub-division plans and that final sub-division plans receive full planning permission.
- 4) Liaise with the Ministry of Works to ensure that infrastructure will be available in areas targeted for Crown Land allocations; monitor progress in the development of infrastructure in targeted areas.
- 5) Maintain a detailed inventory of all Crown Lands, including information on all parcels available for allocation, parcels in which someone has a successful application, parcels under the valid CPL, parcels with expired CPL, and protected areas. Liaise with the Surveys Department to ensure that all new parcels registered on block plans are immediately included in the Crown Land Information System and relevant information is recorded. Liaise with Survey Department to ensure that they produce and update maps showing status of Crown Lands on a regular basis and ensure that such maps are made available to members of the public and other TCIG departments on a periodic basis.
- 6) Monitor the use of Crown Land resources, including parcels under CPL, through regular field visits, liaising with other TCIG departments and available aerial photography and satellite imagery, with assistance and advice from Survey Department, and take immediate action to rectify any breaches of the Crown Lands Ordinance or CPL conditions. Report any other possible illegal activity to the relevant TCIG agency, for example Department of Environment and Coastal Resources or Department of Planning.
- 7) Advertise and provide information to members of the public about residential and commercial parcels of land that are available for allocation.
- 8) Advise TCInvest about large parcels of Crown Land that are available for large scale commercial developments and provide information needed to market the parcels in accordance with clause 8) of the Crown Land policy.

- 9) Distribute application forms to eligible members of the public and companies and provide guidance on completing the forms. Collect and acknowledge receipt of application forms from members of the public and eligible companies.
- 10) Request and receive valuation for parcels from the Department of Valuations.
- 11) Request and receive confirmation of Planning Approval from the Department of Planning.
- 12) Liaise with TCInvest to ensure that all necessary supporting documents are available for applications for large commercial developments to be submitted to Cabinet.
- 13) Request and receive any necessary survey plans from the Survey Department for proposed parcels excised from larger blocks of Crown Land, for inclusion in Notes for Cabinet.
- 14) Process forms in accordance with established criteria, ensuring that necessary supporting document (valuation, survey plan, planning approval) are attached and either:
  - a. make recommendations to the Permanent Secretary, Ministry of Natural Resources, for consideration of approval by the Honourable Minister of Natural Resources; or
  - b. prepare draft Cabinet Note and submit to the Honourable Minister of Natural Resources, via the Permanent Secretary Ministry of Resources.
  - c. inform applicant that their application could not be entertained at this time and inform them of the appeal process contained in the Crown Land Policy [ and Ordinance].
- 15) Draft and deliver letters of offer to the successful applicant, outlining the time period in which they must accept the offer and the rent and fees that need to be paid under the Conditional Purchase Lease, details of the terms and conditions of the CPL and information about the process of up-grading to freehold title, with details of purchase price, discounts and conditions attached to the discount.
- 16) Respond to any queries from successful applicants about the letter of offer and inform applicants of the appeals process if they wish to challenge any of the terms and conditions of the CPL.
- 17) Receive letters of acceptance and ensure that all fees are paid. Prepare CPL for execution by lessee and the Governor of TCI and register CPL in the Land Registry.
- 18) Send reminder letters to people who received letters of offer and have not responded by end of period and send letter withdrawing offer if an acceptance is not received with designated extension period.
- 19) Process applications for up-grade to freehold tenure, in accordance with the Crown Land Ordinance and ensure that all terms and conditions of CPL have been met. Draft and

ensure execution of transfer documents for grants and charge representing discount and ensure that they are registered in the Land Registry.

20) Receive and process applications for mineral quarrying licenses, ensuring that the necessary Planning and Environmental, Ministerial and Cabinet approval is obtained and liaise with the Attorney General Chamber to ensure that licenses are executed and recorded.

21) Monitor mineral quarrying licenses outside of protected areas to ensure that terms and conditions of the license are adhered to and take action in cases of non-compliance. Liaise with the Department of Environment and Coastal Resources (DECR) concerning mineral licenses within protected areas, to ensure that the DECR has the information and resources available to monitor licenses within protected areas.

22) Receive and process applications for land reclamation licenses, ensuring that the necessary Planning and Environmental, Ministerial and Cabinet approval is obtained and liaise with the Attorney General Chamber to ensure that licenses are executed and recorded.

23) Monitor land reclamation licenses outside of protected areas to ensure that terms and conditions of the license are adhered to and take action in cases of non-compliance. Liaise with the DECR concerning mineral licenses within protected areas, to ensure that the DECR has the information and resources available to monitor licenses within protected areas.

24) Ensure that lessees under CPL who do not complied with terms and conditions of the lease within the stipulated timeframes either relinquish the lease and return possession to the TCIG or extend the lease in accordance with the Crown Lands Ordinance.

25) Ensure that annual lease rents are collected, rent demands sent, reminder letters etc. and record rent receipts in Crown Land database.

## ANNEX B

### Standard Forms

C.L.1	Application for Crown Land (Residential Conditional Purchase Lease)
C.L.2a	Application for Crown Land (Commercial Conditional Purchase Lease) by an individual
C.L.2b	Application for Crown Land (Commercial Conditional Purchase Lease) by more than one individual
C.L.2c	Application for Crown Land (Commercial Conditional Purchase Lease) by a company or organisation
C.L.3	Application for Crown Grant (Freehold)
C.L.4	Application for Minister of Planning's Certificate of Approval
C.L.5	Letter to Land Registrar Requesting Subdivision of Crown Land
C.L.6	Letter to Successful Applicant for Residential Land
C.L.7	Letter to Applicant who has received in principle approval for commercial land
C.L.8	Letter to Director of Planning authorising an application for development permission for Crown Land
C.L.9	Letter to applicant who has received outline development permission of Crown Land granted by the Physical Planning Board
C.L.10	Application to Convert Conditional Purchase Lease to Freehold Title
C.L.11	Receipt and Acknowledgement of Application for Crown Land
C.L.12	Offer to Purchase Crown Land

C.L.13	Appeals
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## **ANNEX C**

### **Checklist for Applications**

Applications to the LR

Applications to the CLD



## **ANNEX D**

### **Schedule of Fees**

## CHAPTER FOUR

### LEGAL ISSUES ARISING FROM THE CROWN LAND POLICY

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## **The Crown Land Policy:**

### ***1. Revenue Generation Through Sale Of Crown Land For Commercial Purposes.***

*Turks and Caicos Islands Government will not actively seek to sell off large areas of Crown Land, but it reserves the right to do so, if deemed necessary. The proceeds of any such sales will be paid into the Government Reserves Fund or used directly for a major specific development project.*

## **Issues in Respect of Clause 1:**

- This clause of the Crown land policy raises a significant constitutional issue, which should be clarified prior to the commencement of drafting. The issue concerns the power of Turks and Caicos Islands Government (the “TCIG” or the “Government”) in respect of Crown land, and in particular, its right to sell off large areas of Crown land. This power might be *ultra vires* the Government.

Current practice is for the Minister to allocate residential parcels, and commercial parcels that are less than 10 acres. Cabinet allocates commercial parcels greater than 10 acres.

However, a reading of the relevant provisions of the Constitution and other legislation would suggest that Crown land should be allocated by the Governor, acting on the advice and recommendations of the Physical Planning Board, the Minister, and the Director of Physical Planning. This conclusion follows from an analysis of section 43 of the Physical Planning Ordinance together with a reading of sections 25(1)(b) and 94 of the Constitution of 2006 (the “Constitution”).

Section 43 of the Physical Planning Ordinance clearly provides that, in respect of development on Crown land, applications for development (which include applications for subdivision) are to be submitted to the Physical Planning Board. The Board does not make a decision on the matter. Instead, it submits its recommendation to the Minister, who adds his or her observations, and these recommendations, together with a report from the Director of Planning are submitted to the Governor, who makes a decision on the matter.

The Constitution expressly provides that the Governor shall act on behalf of the Crown rather than the Government when acting in accordance with the recommendation or advice of any person or authority other than the Cabinet.

The starting point in this analysis is section 26 of the Constitution, which provides:

*26.—(1) The executive authority of the Turks and Caicos Islands is vested in Her Majesty.  
(2) Subject to this Constitution, the executive authority of the Turks and Caicos Islands shall be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him or her.*

Section 25(1) of the Constitution provides:

*Subject to this section, the Governor shall consult the Cabinet on the formulation of policy and in the exercise of all functions conferred upon him or her by this Constitution or any other law, except—*

...

*(b) when exercising any function conferred upon the Governor by this Constitution or any other law which is expressed to be exercisable by the Governor in his or her discretion or in his or her judgement or in accordance with the recommendation or advice of, or after consultation with, any person or authority other than the Cabinet;...*  
[emphasis added]

Therefore, it would appear that, in respect of Crown land, the Governor does not have the ability to exercise his discretion. But neither does Cabinet. Rather, the intention of the legislation would appear to be that the Governor would make a disposition of Crown land after considering the advice and recommendations of the Physical Planning Board, the Minister and the Director of Physical Planning.

This interpretation would appear to be in accordance with the purpose of the Physical Planning Ordinance, which is to provide for orderly development on the Islands. As well, this interpretation is consistent with the principle that the Governor should receive independent advice in respect of development permission for Crown land.

An independent board is established under the Physical Planning Ordinance, and all applications for development of Crown land must be submitted to that board. The Minister and Governor's power to intervene in the decisions of the board is limited, although an aggrieved applicant has the right to appeal to the Minister or the Governor, depending upon the nature of the matter. Where a right of appeal is to the Governor, his decision is final on the matter. Where a decision is to the Minister, he has limited discretion as to procedure for hearing the appeal, and then his decision may be the subject of judicial review by the Supreme Court.

The language of the Physical Planning Ordinance and the legislative scheme established by its provisions suggest that ultimate authority to dispose of Crown land rests with the Governor, acting on the advice and recommendations of an independent body, together with the advice of the Minister and a report from the Director of Planning. This is expressly stated in section 43, which provides for development by the Government, and as such it would appear to fall within the exception under section 25(1)(b) of the Constitution.

Furthermore, section 18 of the Ordinance expressly provides that the Director of Planning acts as “...*the principal adviser to the Governor, the Minister and the Board on matters relating to the physical planning and development of land.*” As such, he would appear to be contemplated by section 25(1)(b) of the Constitution.

This interpretation would also find accord with two other propositions, each of which act as bookends to the allocation of Crown land. First, Crown land is vested in the Governor, who holds it in trust for Her Majesty in right of Her Government of the

Turks and Caicos Islands. That is made very clear in the Land Acquisition Ordinance, section 16. Secondly, section 94 of the Constitution of 2006 provides that the Governor grants Crown land.

This interpretation would also be consistent with section 90 of the Physical Planning Ordinance, which provides that the Ordinance “...binds the Crown and the Government”, which suggests that the Crown and the Government are separate entities under the Ordinance. The Crown’s representative is the Governor.

The overall legal position, therefore, for Crown land would appear to be as follows:

- Crown land is vested in the Governor, who holds it in trust for Her Majesty in right of Her Government of the Turks and Caicos Islands, under section 16 of the Land Acquisition Ordinance;
- Development permission for Crown land is granted by the Governor, acting on the advice and recommendations of the Physical Planning Board, the Minister, the Director of Physical Planning under section 43 of the Physical Planning Ordinance;
- Once an application for development permission is approved, the Governor grants an interest in Crown land, under section 94 of the Constitution.

The proposition stated above – that is, that Crown land is allocated in accordance with the provisions applicable for development permission on such land – assumes that there would be no allocation of land that is not intended for development.

Some might question this assumption on the grounds that allocation of land, and planning decision, are two different matters. However, an understanding that Crown land is allocated for the purposes of development would appear to be implicit throughout the legislation of TCI, especially in the Physical Planning Ordinance.

For example, the Ordinance provides in a number of sections that the Board has full discretion on whether to grant development permission or not, and provisions of this nature are inconsistent with a grant of undeveloped Crown land. Furthermore, section 35 of the Ordinance provides that it is the Board, with the consent of the Director and the Governor, rather than Cabinet, which enters into development agreements with developers. This would be consistent with an understanding that Crown land is to be allocated subsequent to a decision concerning development permission.

Moreover, the understanding that development permission is a prerequisite for allocation of Crown land in TCI would find accord in the Town and Country Planning Acts of England and Scotland respectively, each of which contains a part entitled “Provisions relating to anticipated disposal of Crown land” – see The Town and Country Planning Act 1990, c.8, sections 299 – 301(UK), and the Town and Country Planning (Scotland) Act 1997, c.8, sections 248 – 250 (UK) respectively.

The assumption that Crown land is vested in the Governor in trust and is not under the jurisdiction of the Cabinet or the House of Assembly would have significant impact on the provisions of the draft bill.

The difficulty with leaving this matter unresolved is that powers granted in the bill to one or more of the branches of Government might be subject to challenge on a constitutional basis. In such instance, if the powers allocated by a draftsman are or would be *ultra vires* a particular branch of Government the relevant provisions, or the whole bill, might be struck down by a court.

Therefore, it would be advisable to obtain a constitutional opinion on this issue prior to commencement of drafting, because the provisions of the draft bill must comply throughout the draft bill with the delegation of powers granted in the Constitution and other laws.

## **2. *Transfer Of Belonger Discount To Non- Belongers***

*Discount given to Belongers on Conditional Purchase Leases must not be transferred to Non-Belongers, and no discount is available to non-Belongers on Crown Land purchases for residential or commercial developments.*

*The decision of the Crown Land Unit regarding discounted sales will be subject to regular audit by the Chief Auditor. The Chief Auditor will have unrestricted access to all papers and files.*

### **Issues in Respect of Clause 2:**

- This clause is self-explanatory and could be incorporated as is, using appropriate statutory language. The only comment is that the second paragraph might be given more strength, and a power of investigation granted to the Chief Auditor in the Offences and Remedies section of the proposed bill.

## **3. *Belonger Purchases Commercial (Up To 10 Acres)***

- a) *No individual Belonger will be granted a discount on more than 10 acres.*
- b) *Each Belonger will be eligible for one discount up to 50% on the purchase price of up to 10 acres of Crown Land except on Providenciales where the discount will be limited to 25%. No discounts will be available on any subsequent purchase for commercial development.*
- c) *If the land/property is sold within 5 years, the full discount is repayable; if the Land/property is sold between 5 and 10 years, half the discount is repayable.*

- d) For large development (e.g. major tourism projects) two or more Belongers may combine their 10-acre entitlements to enable Belonger participation in the project. The early resale penalty is applicable.*

### **Issues in Respect of Clause 3:**

- There was some dispute among various parties as to the effect of Part (a) of this clause. Some believed that the clause entitled a Belonger to 10 acres, and that grants could cumulate up to this amount. So, for example, a Belonger who received a Crown grant of 2 acres could immediately apply for 8 acres elsewhere.

Others were of the opinion that the clause should be interpreted to mean that a Belonger would be entitled to receive up to 10 acres, but could only receive one grant. In other words, in the example in the paragraph immediately preceding this one, the grantee would have exhausted their discount allowance when they received the first grant of 2 acres.

This issue should be clarified before drafting commences.

- Some have also questioned whether paragraph (d) of this clause has the potential to encourage land speculation, and recommended that this aspect of the policy may need to be reconsidered, in that it could be used to advantage a small group to the detriment of other applicants. Those who held to this view believe that ultimately, the discount is a cost on society. Therefore, it is society that subsidizes the cost of a Belonger obtaining Crown land.

Those who hold to this view are of the opinion that the discount might be justifiable for residential properties and small businesses. But if a Belonger is able to pool together resources with other Belongers, and thereby gain large grants of Crown land it would seem that at that level, society is essentially subsidizing property developers. Such subsidies would appear to benefit a few, at the expense of many, and not only financially. Large grants of Crown land to a few Belongers deplete the Crown inventory at a rapid rate, which means that there would be less land available for distribution to others. There is an exponential cost to large land grants, in that these grants have the potential to cost far more than the sum of the individual 10 acre allotments. For example, when 10 Belongers pool their allotments for one grant, they tend to establish one commercial industry; whereas when 10 individual Belongers each receive 10 acres, they establish 10 industries.

Although this policy has received approval, given the potential towards using it for land speculation the Government may wish to review its usefulness prior to commencing the drafting process.

## **4. Subdivisions**



*A developer (local) who wants to create a new subdivision will be required to pay to Government not only the open market value of the land, less any applicable Belonger discount but also 10% of the gross value of any subsequent land sales by the Developer, and a grant to Government of 20% of the plots.*

#### **Issues in Respect of Clause 4:**

- As with any statutory scheme in which payment is to be made to the Government based on the value of an asset, the draftsman will need to give careful consideration as to how that value is to be assessed, and how to avoid false statements of value.
- In addition, the draftsman might need to provide for careful review of the assessed value by Government officers. The Chief Auditor would be one obvious officer who has the power to review such valuations. In addition, there are provisions and procedures for comparable assessments in the Physical Planning Ordinance, and the draftsman may wish to review these before drafting commences.
- There has been some suggestion that the assessed value of the Chief Valuation Officer should be subject to review by a tribunal, and in some instances his valuation has been subject to review by Cabinet. At the same time, a strong argument could be made for the proposition that it is the Government's duty to obtain the best market price possible for Crown land, and therefore an assessment made by the Chief Valuation Officer should not be subject to challenge. The land either sells / leases for that price or it does not.
- If a review process is to be incorporated into the legislation, in a situation where the market is rising rapidly, such as in the Islands, the draftsman might need to give careful thought as to the timing of the assessment under the proposed Ordinance.
- In respect of all these matters, it might be appropriate to expand and incorporate the powers of the Chief Auditor, and provide for him or her with the power to review valuations in any instance, on the instructions of the Governor.

#### ***5. Belonger Purchases –Residential***

*There will be a maximum discount of 50% on the purchase price of Crown Land for residential development. Each Belonger is entitled to one discount per Island; but may not be the beneficiary of more than one discount at any given time.*

*If the land /property is sold within 5years, the full discount is repayable. If the land/property is sold between 5 and 10 years, half the discount is repayable.*

#### **Issues in Respect of Clause 5:**

There are several issues arising from this clause.

- The clause does not state the maximum residential area that a Belonger may obtain. Some sources suggested there was a practice of allocating up to one acre, others stated that as much as 5 acres had been allocated to some. Omission of a maximum is in contrast with the policy's clause on commercial discounts to Belongers, which has a stated maximum of 10 acres.

Given that the value of property on a per acre basis might vary throughout the Islands, it might be fairer to apply the discount on the value of the property, up to a maximum amount, and thereafter the discount would not apply. If value became the measurement, acreage would then be a matter to be determined by the Planning Board.

- The statement that "Each Belonger is entitled to one discount per Island; but may not be the beneficiary of more than one discount at any given time" is ambiguous, and should be clarified.

Some sources thought it meant that a Belonger could be granted and receive a discount on more than one residence at any one time, provided each grant was on a different island.

Others were of the view that it meant that a Belonger could only receive one grant within a ten-year period, but then that Belonger would be entitled to receive another grant, provided it was on another island.

Yet another source thought that it meant that a Belonger could receive one grant, and as soon as that Belonger developed the property such that they obtained freehold, even if they did so within 6 months of the grant, they were entitled to another grant at discount.

These issues should be clarified before drafting begins.

## **6. Conditional Purchase Lease (CPL)**

*All discounted Crown Land sales both residential and commercial, will take place on Conditional Purchase Lease (CPL) terms. The CPL will specify aspects of the required development (timing, size, grounds, etc). If the CPL terms are met by the specified deadline, the freehold will be granted to the purchaser. If the terms of the CPL are not met, the purchaser would need to refund the discount to TCIG to obtain the freehold, or the land would revert back to the TCIG for resale.*

*All land sales, both for residential and commercial purposes, will be on freehold basis, subject to CPL terms being met.*

### **Issues in Respect of Clause 6:**

- Constitutionally, the power to set terms and conditions under which grants of Crown land occur would appear to be vested in the Governor. This would seem to be implied in Section 94 of the Constitution, which provides:

*“Subject to the provisions of any law, the Governor, or any person authorized by the Governor in writing under his or her hand, may, in Her Majesty’s name and on Her behalf, make and execute under the public seal grants and dispositions of any land or other immovable property within the Islands that may be lawfully granted or disposed of by Her Majesty.”*

Therefore, it would be useful to seek an opinion on this matter from appropriate legal counsel before proceeding to draft this section or sections.

## **7. Joint Ventures/Partnerships**

*Belongers must have at least a 51% stake in a Joint Venture/Partnership entity to qualify for a discount. Only the portion of the land to be purchased by Belongers will qualify for a discount.*

- This clause does not appear to raise any legal issues.

## **8. Open Tendering**

*The Turks and Caicos Government will identify potential development site(s) on every island, consistent with its development strategy. These sites will be actively marketed to prospective developers, by TC Invest, with the final award subject to transparent / competitive process. TCIG/TC Invest will be willing to consider approaches from developers for other site(s) except on Providenciales, where developments will be limited only to those sites being marketed.*

### **Issues in Respect of Clause 8:**

- For the reasons that we have outlined above on constitutional authority, we are not sure that this power is *intra vires* the Government. Depending upon the outcome of the constitutional issue raised above, the Government or TCI Invest may need the clear, written authority of the Governor in order to actively market land to prospective developers. Furthermore, section 37 of the Physical Planning Ordinance authorizes the Physical Planning Board rather than the Government to enter into development agreements with developers. These issues should be clarified by seeking appropriate legal counsel.
- Even if TCI Invest is delegated the power to market Crown land, it would appear that, pursuant to the provisions of the Physical Planning Ordinance, all applications for

purchase of Crown land would still have to be dealt with by the Physical Planning Board. This matter should be addressed.

- In the event that the Government does have jurisdiction to grant Crown land at its discretion, it is unclear whether this clause contradicts two other clauses: Clause 3(d), which allows pooling; and Clause 7, which allows for joint ventures. It is unclear whether the pooling and / or entering into a joint venture is still subject to the open tendering policy.
  - One possible interpretation is that the open tendering clause only applies when TCI Invest is involved in the process.
  - Another possible interpretation is that the open tendering process should be involved in all instances of large scale development, and, for the purposes of tendering, Belongers may pool their interests and / or form a joint venture with others.

The meaning of this clause should be clarified before drafting commences.

## **9. Land Valuation**

*The Chief Valuation Officer's decision will be subject to the appeals process, it is important that the underpinning valuations on which discounts are based are accurate. This is an area that will be strengthened under the new Crown Land Unit.*

### **Issues in Respect of Clause 9:**

- Apparently, the issue referred to in Clause 9 of the Crown Land Policy, concerning land valuation, has arisen on a several occasions. According to sources, it most often arises in connection with large land grants to developers. Typically, the issue comes to the fore when a developer retains a private valuer, who then assesses a property at a lower value.

The motive for challenging the Chief Valuation Officer's assessment is obvious. If the developer's lower valuation figure is accepted the developer obtains the property at a lower price, less stamp duty is paid, and the discount figure is smaller relative to the sale price. As an aside, if the discount figure is smaller relative to the sale price, it might in fact be larger relative to the actual market value, if the Chief Valuation Officer's figure is correct. In this latter sense, the sum of potential revenues lost might be larger than it appears.

What is not obvious in these instances is the procedure that is followed when such challenge occurs. It would appear that, when a challenge to the Government valuation occurs, the Chief Valuation Officer's assessment and the challenger's assessment are forwarded to the Cabinet, which decides the value. Most sources agreed that the value assessed by Cabinet is often an average of the two values or, if the developer presents several private valuations, an average of all three, or sometimes the middle value.

This is an unusual procedure, not least because it would probably be an easy case for judicial review, especially since Cabinet apparently does not provide the Chief Valuation Officer with the evidence presented by the challenging party, and does not provide him with an opportunity to be heard in respect of the challenge.

This process also has the potential to attract personal liability, especially if there are undeclared conflicts of interest. Moreover, in these instances the Government is essentially bargaining against itself, on behalf of a private party. That alone is unusual and probably inefficient.

In addition, Cabinet could be seen as exercising a quasi-judicial function, and I am not sure that it has the authority to do so in this instance. The Physical Planning Ordinance provides relevant procedures for situations like this, and it is not clear that appeal to Cabinet is one of them.

The Crown Land Policy contains a clause requiring that a tribunal be established to hear appeals from aggrieved parties, as stipulated in Clause 18 below, and the draftsman might include a provision that allows challenges to Government valuations in that appeals process.

## **10. Concessions**

*Turks and Caicos Government will retain the necessary flexibility (the giving of concessions to developers) to attract investments judged best for the interest of TCI. This policy will also be reviewed in the context of the 10-year Development Plan.*

### **Issues in Respect of Clause 10:**

- There are no issues in respect of Crown land in Clause 10, because it does not deal with Crown land *per se*. Presumably, these concessions refer to tax exemptions, such as import duties and so on, and these would apply to the holder of the land, rather than to the land itself.

## **11. Information On Crown Land Allocations To Be Published**

*To make the Crown Land process open, transparent and accountable, all allocations of commercial and residential lands will be published in the gazette. The published notice will include information on who (individual or company) received the land, the amount of land allocated, where the land is located geographically (island and subdivision/community) the instrument of allocation (Conditional Purchase Lease, Long-Term Lease,) the valuation of the parcel, and the amount of any discount given. The Minister responsible for Crown Land will make such information on Crown Land allocations available on a Quarterly or bi-annual basis*

**Issues in Respect of Clause 11:**

- Publication of information concerning grants is provided for in the Physical Planning Ordinance, section 14, in the form of a report that must be submitted by the Minister to the Governor on an annual basis, detailing the matters provided for in Section 14(3). The draftsman might begin with this subsection, and adapt the required information to provide for publication of names of grantees and so on.

Also, the Development Permission Regulations appear to give the Director of Physical Planning the power to require publication of applications. These regulations are made by the Governor, they are issued pursuant to Section 89 of the Ordinance, and they constitute *Legal Notice 47 of 1990*. The commencement date for these regulations was 15<sup>th</sup> October 1990. Assuming these regulations are in effect, and that there are no subsequent regulations that modify or repeal them, a draftsman might usefully review these provisions for guidance. They differ from the report required by Section 14 of the Ordinance, in that these sections of the regulations provide for publication of the applications themselves, and not the grant.

It might be useful to combine these two aspects in the proposed Ordinance: that is, publication of the names of applicants, and publication of the names of grantees. It might also be useful to provide in such publication the date on which the Board intends to deal with an application, so that parties who object to the application would have an opportunity to submit objections to the Board.

***12. Crown Land Management To Ensure Enforcement Of Planning Regulations a)***

••• *a) To help achieve the future sustainable development of the Turks and Caicos Islands, Crown Land Legislation and management will include as its guiding principle, an integrated land use planning and development focus to ensure that the planning process determines the land development as opposed to the property developers determining the land use.*

- This policy statement would also appear to support the proposition that the process outlined in the Physical Planning Ordinance for issuing development permission should precede grants of Crown land. The corollary is that the Director of Planning, the Planning Board, the Minister and the Governor, rather than Cabinet, are the appropriate authorities and persons for considering grants of Crown land. Assuming this is an accurate assessment of the Policy and the Physical Planning Ordinance, the draftsman should take this into consideration during the drafting process.

***12. Crown Land Management To Ensure Enforcement Of Planning Regulations b)***

••• *b) The Planning Department will now be playing a major role in the enforcement of Crown Land Management policies through the enactment of demolition orders against illegally constructed properties on Crown Land. Their effective policing of Crown Land and the timely ejection of squatters (before construction takes place) and non-complying tenants will improve the use of Crown Land and increase revenues generated from this resource.*•••

**Issues in Respect of Clause 12 b):**

- This sub-clause only deals with squatters and non-complying tenants. The Government and / or the Governor might need to consider other offences. For example:
  - Failure to conform to the procedures outlined in the bill: The Physical Planning Ordinance and the National Parks Ordinance impose penalties on parties who contravene the provisions of the respective Ordinance. Similar provision might be made here.
  - Conflict of interest: The Physical Planning Ordinance has strong measures for board members who fail to disclose a material conflict of interest, as well as penalties for public officers who assist an applicant in a manner that is outside his scope of duty. Similar provisions might be useful here.
  - Misrepresentations: It might be useful to include a definition of material misrepresentation, and then make it an offence to fail to disclose a material fact, or to misrepresent a material fact, when dealing with the procedures provided for in the bill.
  - Civil remedies: it might be useful to include a provision reminding all public officers that they are dealing with land that is vested in trust, and therefore have fiduciary obligations. Remedies already exist at common law for breach of fiduciary obligation, and therefore it may not be necessary to detail the remedies, other than to stipulate that the common law remedies are available to a party who suffers damage as a result of a breach of fiduciary obligation by a party.
  - Civil remedies: it might also be useful to grant to the Commissioner of Crown Lands the power to deal with matters in civil courts. Examples of such powers might include:
    - To prevent unlawful trespassing or intrusion upon or occupation of Crown land;
    - To remove or cause to be removed, etc., trespassers and intruders or persons unlawfully occupying Crown land etc;
    - To ascertain the limits and define the boundaries of Crown land held under lease;
    - To enter onto any Crown land to take possession on behalf of Her Majesty etc;
    - To distrain, sue for, and recover money due to the Crown for rent, use and occupation;
    - To enforce contracts respecting sales, leases, licences, concessions, or other dispositions of Crown land etc;
    - To determine any determinable contracts respecting Crown land;
    - To resume possession of Crown land on non-performance of contracts;
    - To recover rents, purchase-money, and other money due to the Crown in respect of any sales, leases, licences, concessions, etc; and

- Such other duties as may be assigned from time to time to him by the Governor.
- Immunity for public officials might be defined here, but it would not be customary to provide immunity for other than negligence, and even then, failure to exercise due diligence or reasonable care might not be excused.
- This might be an opportune moment to codify the decision of the House of Lords in *Attorney General v. Blake*, ([2001] A.C. 268) in which they effectively permitted a disgorgement of profits secured through breach of contract. Disgorgement of profits is the typical remedy for breach of trust, and in this instance the House of Lords in effect broadened the scope of that remedy to permit it in exceptional circumstances where a breach of contract has occurred. It is an effective remedy, currently available at common law, and it might be useful to codify its elements and consequences in this Part of the draft bill.

## ***12. Crown Land Management To Ensure Enforcement Of Planning Regulations c)***

••• c) *The Development Control (DEVCON) database will be upgraded and integrated into the land agency-wide parcel Information Management System (PIMS) that will be developed. The Planning Department's GIS will be upgraded to assist in forward planning and decision-making. •••*

### **Issues in Respect of Clause 12 c):**

- The heading of this clause in the Crown Land Policy does not really describe the purpose of the sub-clause, but nonetheless, the policy is quite clear. Provision would need to be made concerning the creation of the system, and the migration or integration of data on all systems. This is essentially an implementation step and while it may raise administrative matters that need to be resolved, it does not appear to raise legal issues at this stage.

## ***12. Crown Land Management To Ensure Enforcement Of Planning Regulations d)***

•••d) *New large scale development projects will include as standard procedure, early review and comment by the Planning Department and the DECR, and these comments will be incorporated into any development agreement signed between the Government and a developer. •••*

### **Issues in Respect of Clause 12 d):**

- This procedure already exists in the Physical Planning Ordinance, although it might be useful to incorporate it into the proposed Ordinance, with suitable modification, to emphasize that these procedures should be followed whenever there are dealings with Crown land, no matter the size of the dealing.



## ***12. Crown Land Management To Ensure Enforcement Of Planning Regulations e)***

...

*e) A public rights of way ordinance will be enacted, which will include specific rights for beach access and public consultations on rights of way.*

### **Issues in Respect of Clause 12 e):**

- Currently there are a number of public rights of way that may be used, for example, for access to the beaches. However, many private sub-divisions tend to be registered in the Land Registry in the name of the property developer, apparently with no cautions or easements listed in the registry. There is a concern that these public rights of way will be lost or overlooked, especially the further the transfer is, chronologically, from the original Crown grant. The objective in these provisions would be to preserve and protect these public rights of way, by ensuring that they are included in the Land Registry.
- The phrasing of this sub-clause of the Crown Land Policy suggests that this right would be contained in a separate ordinance. The general view of most sources with whom this matter was discussed was that it should be included in this draft bill, and that is the assumption made in the drafting instructions.

## ***13. Significant Ecological Or Historic Areas To Be Protected From Future Developers***

*Areas of significant ecological or historic importance will not be allocated for development. These areas will be legally and physically defined, so that they are not subject to unintended (or intended) development. Government will invoke Section 132 of the Registered Land Ordinance to restrict transfer or dealings on these areas for a long period of time (e.g. 200 years). Any further lifting of the restrictions will be subject to presentations to The House of Assembly.*

### **Issues in Respect of Clause 13:**

- Provisions dealing with this aspect of the Crown Land Policy could be included in the draft bill, but it might be more efficient to exclude the areas that fall within the scope of the National Park Ordinance and the National Trust Ordinance from the scope of the bill.
- Assuming these areas are excluded from the scope of this draft bill, amendments might be made to both the National Park Ordinance and the National Trust Ordinance to provide for the recordation in the Crown Lands Registry of the areas that fall within the scope of those Ordinances.

## ***14. Crown Land Legislation And Regulations***

*Government will take the necessary actions to draft and pass legislation to regulate, the inventory, allocation, pricing and management of Crown Land. This will ensure that the current policy of equitable allocation and sustainable use of Crown Land is effective in the long-term, and not easily modified by future Cabinet decisions or future political mandates. Therefore, the establishment of a Crown Land Ordinance will go a long way to empower, sustain and protect the rights of the Belonger community well into the future.*

**Issues in Respect of the Preamble and Clause 14:**

- This clause is self-explanatory, and does not appear to raise any legal issues.

***15. Crown Land Applications, Allocation And Management Procedures Manual***

*In order to avoid ad hoc administrative decisions and ensure a more consistent implementation of the Crown Land Policy, the Government will prepare, approve and disseminate a Crown Land Application, Allocations and Management Procedures Manual. This manual will clearly document the specific procedures to be used in the five key government departments with responsibilities for Crown Land; Lands & Survey, Valuation, Planning, Land Registry and the new Crown Land Unit.*

*The Manual will describe the full-integrated process, flows of information with and between departments, standard data entry, validation and security procedures and will include standardized forms and correspondence format to be used in the process.*

**Issues in Respect of Clause 15:**

- When creating the Procedures Manual referred to in this clause, the draftsman might find that the procedures in the Physical Planning Ordinance and the National Parks Ordinance, and their respective regulations, provide useful guidance.
- There will need to be the power for the Minister to prescribe rules and regulations for the effective implementation and operation of the proposed Ordinance. These powers should be included in the outline of provisions for the penultimate Part of the bill.

***16. Establishment Of A Crown Land Department***

*The Government will establish a separate Crown Land Unit within the Ministry of Natural Resources. It will be staffed by experienced, technical and administrative staff.*

*The specific purpose of this new unit will be to ensure a more effective, efficient and integrated implementation of the Crown Land Policy, consolidate a land use planning approach to land development in the islands and improve the provisions of land administration services to the public and private sector.*

**Issues in Respect of Clause 16:**

This clause does not raise any legal issues *per se*, but it does give rise to several administrative issues.

- The first is whether the Crown Land Commissioner will head a unit or a department. This matter was discussed at a workshop held in TCI in October 2007, and most participants were in agreement that it be a department, rather than a unit.
- The Crown Land Policy states that this department should be located in the Ministry of Natural Resources, and should be under the direction of the Minister responsible for that portfolio. If so, there is the potential for conflicts of interest:
  - For example, the Crown Land Department would require environmental impact assessments, and those assessments and the Department, assuming the new Department would be located in the Ministry of Natural Resources, would be overseen by the same Permanent Secretary and Minister;
  - Similarly, the Lands and Survey Department would be in the same department, as would the Registrar General's Office;
- Qualifications of Commissioner and staff:
  - This item is mentioned in clause 16, and policy decisions will need to be made in this respect during the drafting process.
- Reporting lines:
  - It would be useful to have a discussion on the reporting lines for the Commissioner, and the decision on that issue might resolve the matter of location of the department's office. If Crown land is vested in the Governor in trust, then locating the Crown Land Department as a department of a Ministry with the appropriate oversight of the Governor might be appropriate.
- Functions of the Commissioner:
  - Will the Commissioner of Crown Land be strictly an administrative officer, or will they have the power to enter into a contract or agreement with other persons for the purposes of the draft bill? A decision will need to be made in this regard, and the appropriate delegation of authority made under section 94 of the Constitution. There is no apparent need to include this power in the draft legislation.

### ***17. Crown Land Register***

*A comprehensive register and inventory of all Crown Lands will be compiled including valuations. All futures sales will be recorded in the register so that an accurate record of remaining Crown Land and previous beneficiaries is maintained.*

### **Issues in Respect of Clause 17:**

- Creation of a Crown Lands Registry: the Part of the bill implementing this aspect of the Crown Land Policy should establish the Crown Lands Registry, and provide for its management – presumably by the Commissioner.
- In addition, this Part should provide for methods of recording, indexing and retrieving Crown land records, and prescribe – probably in the regulations – the categories of information / fields / digital records that would be stored or maintained on the registry.
- Legal consequences of registration in the Crown Lands Registry: should any legal consequences flow from entering a land record in the Crown Land Register? The assumption is that there will be no legal consequences from this action, and this should be stated in the draft bill. If there are legal consequences, then consideration should be given to a compensation scheme in the event of erroneous entries by administrative staff.
- Rectification of records by officers: from time to time there will be errors in the records. Should the Commissioner have the power to rectify a record on the register without court intervention?
- For each of the issues outlined above, and for the relevant provisions, the draftsman might seek guidance in the Registered Land Ordinance, which provides for record keeping and the orderly transmission of registered land titles.

#### ***18. Appointment Of An Appeals/Complaints Tribunal***

- a) *In order to make the Crown Land process as fair, transparent and accountable as possible, the Government will appoint an appeals/complaints tribunal with recourse to the Supreme Court as a final court of appeal. The tribunal will be comprised of (3) three people, nominated by the Governor, Chief Minister, and the Leader of the Opposition, to ensure balance.*
- b) *The tribunal will be responsible for hearing cases brought to it by aggrieved parties who see themselves negatively impacted by a decision dealing with their application for Crown Land.*

*The details of the Tribunal will be worked out in the process of drafting legislation.*

#### **Issues in Respect of Clause 18:**

- Jurisdiction: The current system, established under the Physical Planning Ordinance, provides for an aggrieved party to appeal to either the Minister, or the Governor. Establishing a tribunal would interfere with this jurisdiction, and it would be useful to know in advance if the Governor, as trustee, can cede jurisdiction to a tribunal.
- Even if he can, there is the issue of the number of members of the proposed tribunal. It is unclear how many appeals occur under the current system, but it is unlikely that

the number will increase greatly under the new system. Therefore it might be useful to anticipate the numbers, and assess whether establishing a layer of bureaucracy, consisting of three members of the tribunal and their staff, over and above the Crown Land Department is merited. Many jurisdictions with a far greater number of appeals than the entire population of the Islands empower a party in a comparable position to the proposed Commissioner to hear appeals, at first instance, and provide the counterpart Commissioner the power to refer matters directly to a court, for guidance. That system might work just as efficiently as establishing a new tribunal. It may be more efficient to incorporate a provision similar to section 146 of the Registered Land Ordinance, in which the Registrar has the power to state a case to the Supreme Court.

- In any event, assuming the Governor can cede jurisdiction over Crown lands to a Tribunal, and assuming the Government chooses to establish a tribunal, careful consideration will need to be given to the appointment process for the members of the tribunal. It may be that the Governor can cede jurisdiction, but as the party with executive authority under the Constitution, and as the trustee of Crown lands, he may have to be the appointing party. This matter should be determined before proceeding with drafting these provisions.
- Once a decision is made to proceed with a tribunal, the procedures and forms in the Physical Planning Ordinance and the National Parks Ordinance and their regulations might act as a useful guide for the draftsman when drafting the procedures for this Part.
- As stated in the Crown land policy, the details of the tribunal will be worked out in the drafting process.

### ***19. Crown Land Lease Application and Approval Process***

The Government will rationalize the lease application and approval process to make it more consistent and to be able to defend the process and the results of the process against any public criticism, as being based on uniform, rational and objective criteria.

- Currently, the approval process for all applications commences with an application to the Ministry of Natural Resources, which funnels the application to the Land and Surveys Department. This department checks application contents, the subdivision plan, the CLUDA database, and inspects and recommends a lease. In the case of an application for a residential lease of a lot that is not in an approved subdivision, the Land and Surveys Department inspects the parcel and makes a recommendation for a mutation. Sources were not consistent about the process from then on. Applications for commercial lots of all sizes apparently go to Cabinet for decision, as do applications for residential lots not in an existing subdivision. Applications for residential lots within an existing subdivision are forwarded to the Minister of Natural Resources for decision.
- This process does not appear to conform to the requirements of the existing legislation. Assuming development permission is required for a grant of Crown land:

- Firstly, the Physical Planning Ordinance expressly provides that all applications should be submitted to the Director of Planning, not the Director of Land and Surveys. In fact the Director of Land and Surveys, and any other public officer who assists in this process, might attract liability under section 53 of the Physical Planning Ordinance, which prohibits public officers from the drawing of plans or preparing any document or particulars in connection with an application for development permission.
- Secondly, the Director of Planning is supposed to review all applications, and submit them to the Physical Planning Board.
- Thirdly, section 43 of the Physical Planning Ordinance expressly provides a process where the application is for development of Crown land, and “development” is defined so as to include subdivision. Therefore, it does not appear that the Department of Land and Surveys is empowered to make recommendations to Cabinet as to whether a lease should be granted.
- Fourthly, as stated at the outset of this document, there is a significant constitutional issue concerning the power of Cabinet to issue leases on Crown land.
- Given all of the above, the draft bill should provide for the proper process for allocation of Crown land, as provided for in the Physical Planning Ordinance. In order to do so, a National Physical Development Plan or at a minimum a local development plan is required.
- Accordingly the first step would be to finalize the National Physical Development Plan, and to resolve the constitutional issue.
- Once that occurs, the process outlined in Part V of the Physical Planning Ordinance should be incorporated into the allocation process.
- There should be no allocations unless Cabinet, given the need to finance the development, approves an application to subdivide a block of Crown land.
- Once such approval is granted, the Department of Land and Surveys would assist the Commissioner to prepare an application for development permission.
- Thereafter, the Commissioner for Crown Land should make application for such permission to the Physical Planning Board, which should follow the process stipulated in section 43 of the Physical Planning Ordinance.
- Following approval of an outline plan, and valuation and final survey, the Government should invite applications for individual lots – commercial and residential - within a subdivision.

- Where there are two or more applications for the same lot, the allotment should be decided by public ballot for residential lots, and public tender for commercial lots.
- Development agreements should be negotiated by the Physical Planning Board, on the advice of the Director and with the consent of the Governor, as stipulated in section 35 of the Physical Planning Ordinance.
- In order to ensure transparency in the process, all applications for and grants of an interest in Crown land should be published.

## **20. The National Physical Development Plan**

*The Current National Physical Development Plan (1987-1997) is seriously out of date as a tool to guide and control development. Work to produce a new Ten-year Development Plan is well advanced.*

### **Issues in Respect of Clause 20:**

- This clause is implicitly precatory, and is in the form of a statement. Therefore, it does not fall within this remit, and is not dealt with. The Governor has the power under the Physical Planning Ordinance to require a National Physical Development Plan, and presumably reference in this clause is to a plan he has ordered the Director of Physical Planning to produce. Plans of this nature take a long time to develop, and presumably when it is completed the draftsman will incorporate it by reference into most of the Parts of the draft bill.

## **21. Provision Of Modern Land Information Services**

*Given the land-based nature of the economy and the importance of foreign investment in the real estate market, the land information services provided by Government will be improved and upgraded to make it a state-of-the-art operation. The Government will make the required institutional and technical investments required to change the Land Registry and the Lands and Survey Cadastre from archives of data into useful and accessible land information systems. While each land agency has some land information management capabilities, these systems are not integrated, causing duplication of effort in data collection and limiting the broader usefulness of the data itself. Government will provide the financial resources required to:*

- a) *Complete an inventory of Crown Land based on the existing Block Maps and the most recent aerial photography and digital orthography/cartography of the islands. This inventory will enable a reliable determination of the current liability of Crown land*

*and will be an important layer in the development of an integrated Parcel Information Management System (PIMS).*

- b) Ensure that all land agencies convert all existing land records into digital format.*
- c) Develop a compatible, interoperable and integrated Parcel Information Management System (PIMS) linking the (4) four main land management departments - Lands and Survey, Planning, Land Registry and Valuation.*
- d) Provide formal education in land administrative fields, technical training and career advancement opportunities to Belongers, so that the key land agencies can be managed by Turks and Caicos Islanders and that these departments become desirable places for rewarding work and advancement.*

**Issues in Respect of Clause 21:**

- Apparently, the Development Control (DEVCON) database used by the Department of Physical Planning and Development is not compatible with the land records management system that will be purchased from the Cayman Islands. Some consideration will need to be given to the transfer and preservation of data, if this is indeed the case;
- Most sources, public and private, appear to have lost confidence in the operation of the Land Registry Office. If this is the case it is a very serious issue, and significant resources will have to be allocated immediately to regain public trust in this Office.



## **CHAPTER FIVE**

# **DRAFTING INSTRUCTIONS FOR THE PROPOSED CROWN LAND ORDINANCE**

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## **Introduction**

Effective November 2, 2005, the new Crown Land Policy (the “Policy”) for the Turks and Caicos Islands (“TCI”) has the principal objective of empowering, sustaining and protecting the rights of the Belonger community well into the future by providing long-term benefits to Belongers both in terms of increasing their role in commercial land development and helping them gain access to land for residential use.

Clause 14 of the Policy provides a draftsperson with a central guiding principle for the proposed legislation, namely, “[To] ensure that the current policy of equitable allocation and sustainable use of Crown Land is effective in the long-term, and not easily modified by future Cabinet decisions or future political mandates.”

In order to achieve the principal objective whilst adhering to the central guiding principle outlined above, the Policy mandates that the proposed Ordinance should establish a Crown land department and, to the extent possible, incorporate the policies contained in that document. These policies provide for the orderly and efficient administration and management of Crown lands, including their inventory and allocation, in a manner that conforms to the principles of due process and natural justice and provides sufficient enforcement mechanisms and sanctions to ensure that the purposes of the Ordinance are not defeated.

In drafting these instructions, we have made the following assumptions:

- All Crown land is vested in the Governor, who holds it in trust for Her Majesty in right of Her Government of the Islands (section 16, Land Acquisition Ordinance, Chapter 78 of the Laws of the Turks and Caicos Islands);
- Undeveloped Crown land will usually be allocated subsequent to, and not before, the obtention of development permission under the Physical Planning Ordinance, (Chapter 73 of the Laws of the Turks and Caicos Islands);
- Pursuant to sections 25(1)(b) and 94 of the Constitution (S.I. 2006/1913), and sections 19, 36 and 43 of the Physical Planning Ordinance the Governor, acting on the advice of the Director of Physical Planning and the recommendations of the Physical Planning Board, and taking into consideration the observations of the Minister responsible for Physical Planning, should be responsible for issuing development permission for Crown land and for granting interests in Crown land;
- All procedures for the control, administration and management of Crown lands should comply with the principles of due process, fairness, transparency and natural justice, including avoidance of conflicts of interest.

Some of these assumptions are undoubtedly open to debate, and the arguments for and against the positions outlined above are developed in the memorandum on legal issues submitted with

these instructions, to be read in conjunction with them.

In reading these instructions the draftsman should note that the outline of provisions for each Part is not exhaustive, and he or she may need to add other provisions in order to ensure an orderly progression through the draft bill.

In addition, the draftsman should bear in mind that the clauses in the Policy do not have legislative force, and in some instances he or she may need to assure him or herself that the policy articulated in a clause does not contravene the Constitution or administrative law principles, or the current legislation of the Islands.

Occasionally we have included sample language in some of the Parts below, but this is intended for guidance only and the draftsman should not feel constrained by it.

## **Drafting Instructions**

### **PART I: PRELIMINARY COMMENTARY**

#### **Purpose:**

Part I is standard, and should contain short title, interpretation provisions, and scope of the Ordinance. The scope should provide that Crown land is to be dealt with subject to this Ordinance.

It should also provide for an affirmation that Crown land is vested in the Governor in trust.

In addition, it might be useful to provide at this point that all land that has not been the subject of a grant by the Crown, and for which no folio exists in the Land Register established under the Registered Land Ordinance, shall be deemed to be Crown land. This definition of Crown land could be inserted in the interpretation provisions of this Part but it might be better to include it here as a separate “default” provision.

This Part should also provide for the relationship between this ordinance and other ordinances that provide for dealings with Crown land, such as The Registered Land Ordinance, Chapter 72; The Physical Planning Ordinance, Chapter 73; The Land Survey Ordinance, Chapter 74; Land Acquisition Ordinance, Chapter 78; The Minerals (Exploration And Exploitation) Ordinance, Chapter 79; The National Parks Ordinance, Chapter 80; and The National Trust Ordinance, Chapter 81.

Depending upon drafting style in TCI, the draftsman may wish to include the object of the Ordinance and principles guiding Crown land management and administration, both of which are articulated above, based on phrases used in the Preamble and Clause 14 of the Policy.

#### **Outline of Provisions For Part I:**

The numbering that appears in this Part, and in each of the other Parts of these Instructions, is for outline purposes only, and is not intended to correspond with section numbers in the draft bill.

1. Short title.
2. Interpretation:
  - (a) the draftsperson should review the Crown Land Policy at the outset for terms that need to be defined. “Belonger” and “Crown Land” are two that come to mind. Terms like “discount”, if they are to be used in the legislation, might also need to be defined, as should terms such as “Minister”, “Commissioner” and the “Crown Land Department” or whatever designation is given to that department.
3. Application of the Ordinance:
  - (a) *“This Ordinance applies to all Crown land in the Turks and Caicos Islands”*, or words to that effect. It might be useful to provide at this point that all land that has not been the subject of a grant by the Crown, and for which no folio exists in the Land Register established under the Registered Land Ordinance, shall be deemed to be Crown land.
4. Vesting of Crown land:
  - (a) As stated above, it might be useful to provide an affirmation that Crown land is vested in the Governor in trust.
5. Crown land to be dealt with subject to this Ordinance:
  - (a) For example, *“Crown land shall not be occupied, used, sold, leased, licensed, dedicated or reserved or otherwise dealt with unless the occupation, use, sale, lease, licence, reservation or dedication or other dealing is authorised by this Ordinance [or other ordinances dealing with Crown land].”*
  - (b) Use of the term “occupied” in this clause should resolve the issue concerning “occupation” versus “development”, thereby permitting enforcement officers to enter and evict unlawful squatters and non-complying tenants. If necessary, and for greater clarification, the draftsperson may choose to define the term “occupy”, but it should not be necessary.
6. Relationship with other Ordinances. This section should define the relationship between the bill and other legislation governing or affecting Crown land. Which should govern where there is a conflict, if any? For example:
  - (a) *This Ordinance shall not be construed so as to affect the operation of a provision of any other Ordinance which:*
    - (a) *makes special provision for any particular kind of Crown land, or*
    - (b) *authorises Crown land to be disposed of or dealt with in any manner inconsistent with this Ordinance.”*
7. Suggested objects of the bill are:
  - (a) *“The objects of this Ordinance are to ensure that Crown land is managed for the benefit of the people of the Turks and Caicos Islands and in particular to provide for:*
    - *the management of Crown land having regard to the principles of Crown land management contained in this Ordinance,*
    - *the proper development and conservation of Crown land having regard to those principles,*
    - *the regulation of the conditions under which Crown land is permitted to be occupied, used, sold, leased, licensed or otherwise dealt with,*

- *the reservation or dedication of Crown land for public purposes and the management and use of the reserved or dedicated land, and*
  - *the collection, recording and dissemination of information in relation to Crown land.”*
8. Suggested principles for the bill are:
- (a) *“For the purposes of this Ordinance, the principles of Crown land management are:*
- *that environmental protection principles be observed in relation to the management and administration of Crown land,*
  - *that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible,*
  - *that public use and enjoyment of appropriate Crown land be encouraged,*
  - *that, where appropriate, multiple use of Crown land be encouraged,*
  - *that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and*
  - *that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the Government and people of the Turks and Caicos Islands consistent with the above principles.”*
9. It may also be useful to include at this stage a provision stipulating the general duties of the Governor, the Cabinet, other members of the House of Assembly, the Commissioner of Crown Lands and members of the public service. There is such a provision in the Physical Planning Ordinance, and it might be helpful to use the same clause here, with suitable modifications, especially in light of the fact that Crown land is held in trust. The provision for the general duties of the parties mentioned above is contained in Section 14 of the Physical Planning Ordinance, and suitable modifications could be inserted here based on the Preamble and Clause 14 of the Crown Land Policy.
10. It might be useful to insert a provision here about the power of the Chief Auditor. There are various provisions in the Parts of the proposed bill that involve valuation of property, and the monitoring of administrative processes. In some of the current legislation, the Governor is responsible for monitoring the administrative process. It might be helpful here to include a provision affirming the power of the Chief Auditor to monitor and investigate not only financial matters, but also the administrative processes dealing with the acquisition, administration and disposal of Crown land. Alternatively, a provision of this nature could be included in the final Part, which is entitled “Miscellaneous”.

## **PART II: ORGANIZATION AND ADMINISTRATION COMMENTARY**

Part II should establish the Crown land unit, provides for the appointment of the Commissioner of Crown lands, and provides the powers and duties of the Commissioner and his or her staff.

### **Outline of Provisions for Part II:**

- 1) Crown Land Unit:

- a) Establish the Crown Land Department and, depending upon drafting style, identify its Ministerial location.
- 2) Commissioner of Crown Lands:
  - a) Provide for the appointment of a Commissioner of Crown Lands by the Governor [For example, *“The Governor may / shall appoint a person to hold office as the Commissioner of Crown Land”*]
- 3) Qualifications of the Commissioner, if any.
- 4) Oath of office.
- 5) Reporting duties:
  - a) To whom shall the Commissioner report directly on the exercise and performance of their statutory powers and functions?
- 6) Seal of Office:
  - a) Provide for a seal of office, if necessary or appropriate. Consider whether it would be necessary for the purpose of instituting or defending legal proceedings in respect of Crown land, if nothing else.
- 7) Powers and Duties of the Commissioner:
  - a) General responsibility. For example, *“Subject to the provisions of this Ordinance, the Commissioner shall be responsible to [whom?] for the system of administration of Crown land for which this Ordinance provides, and shall be granted all powers necessary.... etc”*, or similar such language]
  - b) As an alternative, the draftsman may wish to specify specific duties: *“The powers and duties of the Commissioner of Crown Lands, [be sure to insert that these powers and duties are exercised for and on behalf of Her Majesty in right of Her Government of the Islands ] in respect of Crown land shall be...etc.”*
- 8) Delegation of Commissioner’s functions, duties, and powers:
  - a) Consider the circumstances, if any, in which the Commissioner may delegate their powers, to whom, and by what means (for example, writing etc);
  - b) Will there be a Deputy / Assistant Commissioner etc, and if so, what should be their title, and how should they be appointed?;
  - c) Are there other agencies responsible for dealing with Crown land, such as the Trust Council established under the National Trust Ordinance, to which the Commissioner may delegate functions, duties and powers? If so, should such delegation be by rules and regulations, by written delegation from the Commissioner, or should the functions, powers and duties of these statutory authorities and bodies be outside the scope of the Commissioner of Crown Lands?
- 9) Liability:
  - a) Although the Commissioner should be insulated from liability, he or she should be liable for failing to comply with the conflict of interest provisions (see below); and for matters other than negligence. The Planning Ordinance, Section 13, contains suitable language. In addition, consider whether the Commissioner and delegates should be relieved of liability for tortious acts. If not, then the draftsman could consider using language such as *“Despite sections • of the [Proceedings Against the Crown or Crown Liability Ordinance?] nothing in this Ordinance shall relieve the Crown of liability in respect of a tort committed by a person mentioned in section [the section referring to the Commissioner of Crown Lands and their delegates] to which it would otherwise be subject.”*

10) Conflict of interest provision:

- a) The language used in Sections 9 and 10 of the Planning Ordinance might be a useful guide at this point, with stronger sanctions. Section 53 of the Physical Planning Ordinance specifically provides for conflict of interest of public officers dealing with planning applications, and this provision could be also be modified and included for this purpose.

### **PART III: ACQUISITION OF CROWN LAND COMMENTARY**

This Part may not be necessary, because it basically affirms that the powers, duties and procedures provided for in the Land Acquisition Ordinance are to be used by the Commissioner when acquiring land for public purposes.

Assuming the draftsman decides to include a reference to the Land Acquisition Ordinance in this bill, they might decide to insert this Part at a later stage in the bill, after all the regular aspects of managing and administering Crown land have been dealt with. That will depend to a certain extent on drafting style.

Even if this Part is not included in the bill, the provisions of the Land Acquisition Ordinance will need to be reviewed, and possibly amended, to take account of the Crown Land Department, especially if the Commissioner of Crown Land is charged with managing the administrative process for the acquisition of Crown land under that Ordinance.

### **PART IV. MANAGEMENT OF CROWN LAND COMMENTARY**

**Purpose:**

Part IV should establish the Crown Land Register referred to in Clause 17 of the Crown Land Policy, and the integration of the Crown Land Management system with the information held by Lands and Surveys and the Department of Planning and Development.

In addition, this Part should provide for the drafting of a Crown Land Application, Allocations and Management Procedures Manual referred to in Clause 15 of the Crown Land Policy. This manual will document the specific procedures to be used in the five key government departments with responsibilities for Crown Land: Lands & Survey, Valuation, Planning, Land Registry and the new Crown Land Unit.

**Outline of Provisions for Part IV:**

The outline of provisions for Part IV cannot be described in full here, given that it will depend to a large extent on the database system chosen by the Government for data management purposes. These provisions should be developed once that system is known.

- 1) Crown land inventory and assessment:

- a) The Minister, shall cause a programme for a comprehensive assessment, register and inventory of all Crown Lands to be instituted.
- 2) The assessment of Crown land shall consist of:
  - a) the preparation of an inventory of Crown land,
  - b) an assessment / analysis of the capabilities of the land, and
  - c) the identification of suitable uses for the land and, where practicable, the preferred use or uses.
- 3) Inventory:
  - a) The inventory of Crown land shall contain particulars of such physical characteristics of the land and such other matters affecting the land as the Minister considers necessary to assess the capabilities of the land.
  - b) The inventory shall be maintained to reflect changes in the particulars contained in it.
  - c) Information contained in the inventory may be made available to members of the public.
- 4) Assessment / analysis of the capabilities of land:
  - a) The particulars relating to land as contained in the inventory shall be assessed by the Department to determine the land's capabilities, having regard to prescribed land evaluation criteria.
- 5) Description of assessment criteria:
  - a) For the purposes of this section, assessment of the capabilities of land includes assessment of the land's use for community or public purposes, environmental protection, nature conservation, water conservation, forestry, recreation, tourism, agriculture, residential purposes, commerce, industry or mining.
- 6) Identification of uses - criteria:
  - a) In identifying suitable uses for land and, where practicable, the preferred use or uses, regard shall be had to the National Development Plan OR
  - b) the particulars relating to the land as contained in the inventory,
  - c) the assessment of the land's capabilities,
  - d) the principles of Crown land management and any current policies relating to the land approved by the Governor or the Minister, and
  - e) the views of any government department, administrative office or public authority which has expressed an interest in the land.
- 7) The Governor or the Minister may from time to time cause an identified preferred use to be reviewed and either confirmed or varied having regard to any changes in the particulars contained in the inventory or the capabilities of or policies relating to the land.
- 8) Crown Land Application, Allocation and Management Procedures Manual:
  - a) The Minister shall cause a Crown Land Application, Allocations and Management Procedures Manual to be prepared and disseminated.
  - b) The manual will document the prescribed procedures to be used in the five key government departments with responsibilities for Crown Land, namely Lands & Survey, Valuation, Planning, Land Registry and the new Crown Land Department.
  - c) The Manual will also describe the full-integrated process, flows of information with and between departments, standard data entry, validation and security procedures and will include standardized forms and correspondence format to be used in the process.



## **PART V: DISPOSAL OF CROWN LAND COMMENTARY**

### **Purpose:**

Part V should provide for the orderly and transparent disposal of undeveloped Crown land, in accordance with the Constitution and administrative law principles.

The principles for disposal of all undeveloped Crown lands appear to be embodied in the Physical Planning Ordinance. Therefore, the draftsman might begin by reviewing the provisions of that Ordinance, and its regulations. Under the Physical Planning Ordinance, disposal of Crown lands is approved through obtaining development permission from the Physical Planning Board, an independent body whose members are appointed by the Governor.

The bill should incorporate the provisions of Part V of the Physical Planning Ordinance and the regulations and forms for that Part, with modifications where necessary.

Part V of the Physical Planning Ordinance provides that all applications for development permission by the Crown must be submitted to the Physical Planning Board, through the Director of Planning. The Physical Planning Board is an independent body appointed by the Governor, and the procedures outlined in Part V of the Physical Planning Ordinance are sound. In incorporating these procedures the legislative draftsman should explicitly follow the procedure for development of Crown land provided for in section 43 of the Physical Planning Ordinance.

Under section 43, all applications for development by the Crown must go to the Board first. After considering the matter the Board forwards their recommendations on to the Minister. The Minister submits the report, if any, of the Director of Physical Planning and his own observations to the Governor, who makes a decision in the same manner as the Board would on any other matter. It is unclear whether the Governor has the authority to refer the matter to Cabinet. This is doubtful, but it should be clarified before drafting commences.

We are not aware of any other method for disposal of undeveloped Crown land that is permitted by law, other than the procedures outlined in that Ordinance. It may be that the Secretary of State has authorized the Governor to dispose of Crown land by other means. It may also be that the Governor has granted authority in writing to some Government body to dispose of Crown land. If so, we are not aware of such instructions. Therefore, this Part proceeds on the assumptions stated at the outset of these Instructions.

Before beginning this Part, it would be helpful to have a legal opinion from appropriate legal counsel on the debatable legal issues concerning the disposal of Crown land, and in particular, the submission made in the legal memorandum accompanying these Instructions, to the effect that the Governor is responsible for the planning and allocation of Crown land. It would also be helpful to ascertain whether the Governor's power to dispose of Crown land has been delegated in writing to another branch of the Government.

### **Outline of Provisions for Part V:**

- 1) Disposal of Crown land:
  - a) Sample language: *“Subject to the provisions of this Part of the Ordinance, and section 43 of the Physical Planning Ordinance, the Governor may sell, exchange, grant or otherwise dispose of any unoccupied Crown land on behalf of Her Majesty etc..., upon such terms and subject to such conditions as the Governor sees fit.”*
- 2) Legal consequences of a sale by a party that is not authorized to dispose of Crown land:
  - a) Sample language: *“Every sale, exchange, grant, lease, licence, concession or other disposition of unoccupied Crown land made or purported to be made without the prior approval in writing of the Governor shall for all purposes be deemed to be void and of no effect”*
  - b) Exception : Insert Clause 1 of the Crown Land Policy, if applicable.
  - c) Further Exception: *“The Commissioner may, subject to any general conditions prescribed by Governor, etc, grant leases of Crown land to any person resident in the Turks and Caicos Islands for any term not exceeding twelve months.”*

There is a policy point in respect of paragraph 2(c) above: Given that Crown land is vested in the Governor in trust for Her Majesty in right of the Government of the Turks and Caicos Islands it may be *ultra vires* the power of the Governor to delegate the power to dispose of Crown land to the Commissioner, in which instance the Commissioner’s role should be limited to managing the administrative process when the Crown disposes of its land.

As for management of Crown lands, the phrasing used in the paragraphs above would allow for Part V of the Physical Planning Ordinance to be incorporated by reference, and in particular, the process stipulated in section 43 of that Ordinance. Depending upon drafting style, the draftsperson could incorporate by reference, or use the relevant provisions from the Physical Planning Ordinance and incorporate them under the next heading, along with the appropriate regulations and forms, amended to take into account the process under the proposed Ordinance.

In the process described below, there are several key changes to current practice:

- The Crown should not typically grant an interest in Crown land unless development permission had been received, at least at the level of approval of an outline plan;
- Applications for individual lots should be advertised, as should the results of the allocation process. This should allow the community to act as informal monitors of the process, to ensure that individuals or families were not obtaining more land than their entitlement; and
- The allocation process, where there was more than one application for a particular lot, should be by public ballot for residential lots, and tender process for commercial lots.

Assuming that Crown land will not typically be disposed of by the Crown prior to receiving development permission from the Governor, under section 43 of the Physical Planning Ordinance, the basic sequence of steps for disposal of Crown land should be along the following lines:

- 3) Sequence:
  - a) The Commissioner of Crown Land and the Director of Planning should determine demand;
  - b) The Commissioner should instruct the Department of Land and Survey to conduct a first survey;
  - c) The Commissioner, on the advice of the Director of Planning, should make a recommendation to the Minister to subdivide;
  - d) Cabinet, on reviewing the recommendation of the Minister, should decide to subdivide, and make the appropriate budgetary allocation;
  - e) The Commissioner and the Director of Land and Survey should prepare an application for a grant of outline development permission and submit the applications to the Director of Planning, who should submit the application to the Physical Planning Board;
  - f) The application for subdivision should contain an outline plan for each lot within the subdivision;
  - g) The Board should make a recommendation, which it should submit to the Minister;
  - h) The Minister should add his or her observations, and the report, if any, or the Director of Planning, and submit these documents to the Governor;
  - i) The Governor should approve the outline development permission for subdivision of that block, and the outline plans for the lots within that subdivision;
  - j) Once outline permission is granted, Land and Survey should complete a final survey of the subdivision and lots;
  - k) The Commissioner should call for applications for individual lots within that subdivision;
  - l) Consideration should be given to prescribed criteria for applications, such as age, and financial ability;
  - m) The Commissioner should publish the list of applications, and the lots for which the applicants have applied;
  - n) Where there are two or more applications for a particular lot within a given subdivision, that lot should be allocated by public ballot where the lot is residential, or by public tender where the lot is commercial;
  - o) The Commissioner should oversee the ballot process, and the results of the ballot published;
  - p) Offers should be made to successful applicants;
  - q) A lease should be prepared for successful applicants;
  - r) The Governor should approve the lease;
  - s) Subsequent to the grant of a lease, lessees should have the one year time period stipulated under section 37 of the Physical Planning Ordinance to obtain approval of a detailed plan of development from the Physical Planning Board, and should then have the three year time period stipulated under the same section to complete construction;
  - t) Lessees who are unable to obtain detailed planning permission, or complete the construction within the relevant time periods would be non-complying tenants, and should be dealt with under the provisions contained in Part VII below.
- 4) Particulars of this disposal process for Crown land could be included in the draft bill, or prescribed in the regulations.
- 5) Provision should also be made in this Part for the assignment of a lease, in a situation

where the lessee is unable to develop the property as planned. There are at least two options in such circumstances, in addition to the lessee's option of applying to the Physical Planning Board and the Commissioner for an extension of the development permission and of the lease, respectively:

- a) Termination of the lease and forfeiture of improvements to the land, which should probably require compensation of some sort. In the best of all circumstances the Crown should recover the cost of improvements through reissue of the lease to another tenant;
  - b) Termination of the lease, with cost of returning the land to its original condition to be charged to the tenant. The problem with this second option is that the lessee has already demonstrated that they do not have the financial means to complete construction, so therefore it might be a fruitless exercise to pursue them further.
- 6) Restrictions on transfer or assignment of a lease:
- a) The Registrar-General should, at the request of the Commissioner, make a recording in the Register to signify that a lease specified in the request is held subject to the restriction that the lease may not be transferred or sub-leased, or dealt with in any other specified manner without the consent of the Governor, or that such a recording has ceased to have effect.
  - b) If a recording under the previous section has been made in respect of a lease, the Registrar-General should not register under the Registered Land Ordinance any dealing referred to in the recording if the recording still has effect in respect of the lease, and the Governor has not given his consent to the dealing.
- 7) Sales of Crown Land: provisions should be included dealing with conditions that the Governor or others may include on a contract for sale of Crown land, and the recording of such sales and conditions under the Registered Land Ordinance. This may require amendments to the Registered Land Ordinance, in addition to these provisions. Care should be taken that the bill does not interfere with the Crown prerogative.
- 8) Development Agreements:
- a) Section 35 of the Physical Planning Ordinance provides that the Physical Planning Board "...may, on the advice of the Director, and with the consent of the Governor, enter into an agreement with any person as to the nature, scope, timing or any other aspect of any proposed or contemplated development."
  - b) Currently, Cabinet negotiates development agreements with developers. Some consideration should be given to determining whether this power is *ultra vires* the Cabinet, and if not, under what circumstances the Planning Board should negotiate development agreements, and when the matter should be dealt with by Cabinet.
- 9) Licences:
- a) Provision should be included for licences on Crown land. These provisions should include the power of the Governor to issue a licence for the occupation or use of Crown land, for purposes to be designated by the Governor, and a provision to the effect that, even if the licensee has exclusive occupation of the land, it does not constitute an interest in the land.
  - b) Provision should also be made for the registration of licences, restrictions on their transfer, and their revocation by the Governor.
- 10) Easements:
- a) Provision could be made in this part for the creation of an easement to be called an

- easement for public access, to be created in anticipation of sale or lease of Crown land.
- b) The draftsman should consider whether this same easement could be created over private land for the purpose of public access, and if so, what the respective rights of the public and the private owner should be. The Land Acquisition Ordinance may provide some guidance in this regard.

## **PART VI: BELONGER'S DISCOUNT COMMENTARY**

### **Purpose:**

Part VI should incorporate the Belonger's discount right, as stated in the Crown Land Policy. It is suggested that this Part be separated out from the previous Part because the previous Part should apply to all applications for undeveloped Crown land, regardless of civil status of the applicant. This Part should only deal with the discount for Belongers. A draftsman might choose to include it in the previous Part.

Two aspects of the policy that should be reconsidered are the Parts pertaining to joint ventures, and also to cumulating discounts. These Parts could lead to increased land speculation and therefore, although well intentioned, they may not achieve the desired goals, and it might be useful to revisit them.

In this Part, consideration will have to be given to some of the ambiguous areas of the policy. The various issues arising from each clause of the policy have been identified, and should be considered by the draftsman when drafting the bill.

### **Outline of Provisions for Part VI:**

- 1) Interpretation:
  - a) If "Belonger" is not defined in the Interpretation section of Part I, the term could be defined for the purposes of this section, as could "discount", residential, commercial, and the nature of the charge on the property.
- 2) Discounts for Belongers only (Clause 2 of the Policy):
  - a) No discount is available to non-Belongers on Crown Land purchases for residential or commercial developments.
- 3) Belonger Purchases –Residential (Clause 5 of the Policy):
  - a) There shall be a maximum discount of 50% on the purchase price of Crown Land for residential development.
  - b) Each Belonger is entitled to one discount per Island, but may not be the beneficiary of more than one discount at any given time.
- 4) Belonger Purchases Commercial (Up To 10 Acres) (Clause 3 of the Policy):
  - a) No individual Belonger will be granted a discount on more than 10 acres.
  - b) Each Belonger will be eligible for one discount up to 50% on the purchase price of up to 10 acres of Crown Land except on Providenciales where the discount will be limited to 25%. No discounts will be available on any subsequent purchase for commercial development.

- c) For large development (e.g. major tourism projects) two or more Belongers may combine their 10-acre entitlements to enable Belonger participation in the project. The early resale penalty is applicable.
- 5) Repayment of discount (Clauses 3 and 5 of the Policy):
  - a) Where a Belonger has had the benefit of a discount on the purchase of Crown land and the land / property is sold within 5years, the full discount is repayable;
  - b) Where a Belonger has had the benefit of a discount on the purchase of Crown land and the land/property is sold between 5 and 10 years, half the discount is repayable.
- 6) Conditional Purchase Lease (CPL) (Clause 7 of the Policy):
  - a) All discounted Crown Land sales both residential and commercial, shall be on Conditional Purchase Lease (CPL) terms.
  - b) The CPL will specify aspects of the required development (timing, size, grounds, etc).
  - c) If the CPL terms are met by the specified deadline, the freehold will be granted to the purchaser.
  - d) If the terms of the CPL are not met, the purchaser should refund the discount to TCIG [the Crown] to obtain the freehold, or the land should revert back to the TCIG [the Crown] for resale.
  - e) Comment in respect of the CPL and freehold grants:
    - i) if a lessee is unable to meet the specified terms by the deadline, then it would seem unusual that they should be permitted to refund the discount and obtain the freehold. The TGIC may wish to reconsider this aspect of the Policy
    - ii) If Crown land is vested in the Crown, then it should revert to the Crown, and not to the TGIC;
    - iii) It is unusual to provide for the specific terms on which Crown land may be granted, in legislation of this type, because of the Crown prerogative. Usually the legislation would provide that Crown land may be sold or leased on such terms as the Governor chooses to include in the lease or grant. This should be especially so if it is decided that the process outlined in section 43 of the Physical Planning Ordinance should prevail. Then the conditions recommended by the Board and the Director of Planning should be the typical conditions that one would expect to see in the lease or grant, and the draftsman may wish to consider this matter and seek a legal opinion before including this aspect of the Policy in the draft bill].
- 7) Sale of land to be freehold:
  - a) All land sales, both for residential and commercial purposes, will be on freehold basis, subject to CPL terms being met.
  - b) As noted in the previous paragraphs, the draftsman might consider whether this clause interferes with the Crown prerogative in respect of Crown land.
- 8) Transfer Of Belonger Discount To Non- Belongers (Clause 2 of the Policy):
  - a) Discount given to Belongers on Conditional Purchase Leases shall not be transferred to Non-Belongers
- 9) Audit of discounted sales:
  - a) The decision of the Crown Land Department regarding discounted sales will be subject to regular audit by the Chief Auditor. The Chief Auditor should have unrestricted access to all papers and files.

## **PART VII: SQUATTERS AND NON-COMPLYING TENANTS**

## **COMMENTARY**

### **Purpose:**

Squatters and non-complying tenants are a major issue in the Islands. The purpose of Part VII is to provide the power, duty and the enforcement mechanisms, for the removal of squatters and non-complying tenants from Crown land, as outlined in Clause 12(b) of the Crown Land Policy.

### **Outline of Provisions for Part VII:**

Provision should be made for appropriate enforcement powers. This should include:

- Definitions of unauthorized possession or use of Crown land;
- Definition of other offences on or Crown land;
- Definition of those who are charged with policing unauthorized possession or use of Crown land;
- The power to enter and inspect land;
- The power to obtain information;
- The power to coordinate and enter into arrangements with other Government agencies and departments, if necessary;
- Appropriate powers for authorized persons to remove squatters and non-complying tenants, as well as unauthorized structures, animals, vehicles, and waste from Crown land;
- The procedure by which such removal shall take place, including
  - Protection from unlawful or unreasonable eviction;
  - Appropriate notification periods;
  - Rights of appeal prior to demolition of structures and / or eviction;
- The right of the Crown to claim compensation from unauthorized possessors and trespassers; and
- The department or court to which such compensation should be paid.

Without having a strong sense of the staffing and police powers on the Island, it is difficult to outline these provisions more precisely. The draftsperson may find the enforcement and prosecution provisions of the Physical Planning Ordinance, and the National Parks Ordinance, and the accompanying regulations, useful for guidance.

## **PART VIII. CROWN LAND TRIBUNAL COMMENTARY**

### **Purpose:**

A number of matters might arise during the administration of the proposed ordinance, and the Crown Land Policy stipulates that a Tribunal should be established to deal with such matters. In all likelihood there will be appeals from parties aggrieved by a decision of a Minister or public officer in the process of applying for a grant of undeveloped Crown land. In addition to these parties, applicants may challenge the Chief Valuation Officer's assessment of the

value of the land, and the Crown Land Policy stipulates that there should be an appeal process available for such challenges. The purpose of this Part is to establish a tribunal to hear such matters, with a right of appeal from that tribunal to the Supreme Court. As mentioned in the memorandum of legal issues accompanying these instructions, it might be useful to empower the Commissioner of Crown Land to state the case, in much the same way as the Registrar is able to do under section 146 of the Registered Land Ordinance.

### **Outline of Provisions for Part VIII:**

The provisions for this part should be worked out in the drafting process, using the procedures from the Physical Planning Act and the National Parks Ordinance as a guide.

## **PART IX: OFFENCES, PENALTIES AND REMEDIES COMMENTARY**

### **Purpose:**

Part IX is not expressly mentioned in the Crown Land Policy, but implicit in legislation of this nature is the notion that there should be offences and penalties for those who contravene the provisions of the legislation, or who fail to conform to the system contained in the bill. The Physical Planning Ordinance and the National Park Ordinance contain such provisions.

Given that the offences might involve penal sanctions, they should be expressly stated in this Part, or they may be included in other Parts, depending on drafting style. Further, the Government and / or the Governor may wish to consider whether civil remedies are available to aggrieved parties. The purpose of this Part is to articulate actions which would constitute an offence, provide penalties for such actions, and stipulate whether civil remedies are available, and if so, to what extent.

The Physical Planning Ordinance contains provisions of this nature, as does the National Parks Ordinance, and they should be a good starting point, although the penalties contained therein should be reconsidered, in order to make them meaningful given the value of land in Turks and Caicos today.

### **Outline of Provisions for Part IX:**

This Part should be developed in the process of drafting the bill, using the offences and sanctions in the Physical Planning Ordinance and the National Parks Ordinance and their regulations as guidelines. Alternatively, depending on drafting style, specific offences may be included in other parts.



## **PART X. LEGAL AND EVIDENTIARY PROVISIONS COMMENTARY**

### **Purpose:**

Part IX is not expressly mentioned in the Crown Land Policy, but it might be useful to include a Part that provides for legal and evidentiary matters.

### **Outline of Provisions for Part X:**

- Provisions that may be usefully incorporated into this part might include:
  - Limitation on acquisition of title by possession against the Crown – that is, no acquisition of title by prescription against the Crown. This is stipulated in section 135 of the Registered Land Ordinance, and it might be useful to refer to that provision in this Part;
  - Exclusion of minerals and other reservations in any grant of an interest in Crown land;
  - Definition of boundaries of oceanfront property;
  - Evidence of land being measured and surveyed;
  - Ownership of improvements on forfeiture;
  - Offences by corporations (this might also be included in the Part on Offences);
  - Certificate as to status of land, and who should issue such certificate;
  - Implied covenants in a grant of an interest or title to land;
  - Removal of recordings of conditions and so on from a folio on the Register of Land, the party or parties authorized to do such, and the process.

## **PART XI. MISCELLANEOUS COMMENTARY**

### **Purpose:**

Part X should provide for miscellaneous aspects of the draft bill. These provisions should include within their scope: matters for the Court, such as appeals from decisions of a Minister, the Commissioner of Lands, Director of Public Planning, and Chief Valuation Officer; preservation of public rights of way to beaches; transition provisions; and the power to prescribe rules and regulations for the implementation of the system in the proposed ordinance.

### **- Public Rights of Way:**

### **Purpose:**

Provisions should be made under Part X for preservation of public rights of way to beaches on the Islands.

### **Outline of Provisions for Public Rights of Way:**

- Under current law the Governor has the power to make regulations defining and declaring public rights of way under the Physical Planning Ordinance. This would appear to be the most effective method for dealing with public rights of way.
- Alternatively, the regulations made under the National Parks Ordinance deal with “access lanes”, which are declared by the Director of Environment, Heritage and Parks. Similar provisions could be made here, with appropriate modification. It might be useful to designate the Planning Board as the statutory body responsible for declaring public rights of way, on the advice of the Director of Planning.

#### **- Concessions:**

##### **Purpose:**

Under Part X provision should be made for the granting of concessions, such as tax exemptions, by the Government to a developer or commercial grantee.

##### **Outline of Provisions for Concessions:**

- Presumably, these provisions exist in the Tax Ordinance, or similar legislation. The draftsman may choose to incorporate reference to such provisions in this Part.

#### **- Transitional Provisions:**

##### **Purpose:**

These provisions are standard in any legislation of this nature, where a new unit or department is created, and information transferred from other departments to the new entity. These provisions will require careful thought, once the legal framework for the new entity is settled, and the implementation steps identified.

##### **Outline of Provisions for Transitional Aspects:**

- As suggested above, these provisions should be left to last, and drafted once the implementation steps are fully outlined.

#### **- Power to Make Regulations:**

- Another standard clause, these provisions should allocate the power to make regulations for the effective implementation of the system outlined in the draft bill. In the interests of consistency with the Physical Planning Ordinance and the National Park Ordinance, it would appear that the power to make rules and regulations in connection with land matters lies with the Governor, perhaps because Crown land is vested in that Office.

**PART XI. SAVINGS, AMENDMENT OR REPEAL OF EXISTING  
LEGISLATION, AND EFFECTIVE DATE  
COMMENTARY**

**Purpose:**

Provisions of this nature are standard, and should be worked out by the draftsperson as they proceed. The draftsperson should pay close attention to the need for changes in the following ordinances, within the powers and limits provided for by the Constitution, S.I. 2006/1913:

The Registered Land Ordinance, Chapter 72;  
The Physical Planning Ordinance, Chapter 73;  
The Land Survey Ordinance, Chapter 74;  
Land Acquisition Ordinance, Chapter 78;  
The Minerals (Exploration And Exploitation) Ordinance, Chapter 79;  
The National Parks Ordinance, Chapter 80; and  
The National Trust Ordinance, Chapter 81,

and the subsidiary legislation for each Ordinance.

# Legal Aspects of Implementing the Crown Land Policy

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Presentation to the Ministry of Natural Resources, Government of  
the Turks and Caicos Islands

By Professor Tom Johnson  
York University and  
Terra Institute Ltd.  
October 16, 2007

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# Crown Land Policy

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- Government Objectives - Clause 14 of Crown Land Policy
  - “Government will take the necessary actions to draft and pass legislation to regulate, the inventory, allocation, pricing and management of Crown Land. This will ensure that the current policy of equitable allocation and sustainable use of Crown Land is effective in the long-term, and not easily modified by future Cabinet decisions or future political mandates. Therefore, the establishment of a Crown Land Ordinance will go a long way to empower, sustain and protect the rights of the Belonger community well into the future.”

# Drafting Objectives:

---

- ❑ In keeping with best international practice:
  - Establish the Crown Land Department in accordance with the Crown Land Policy, and to the extent possible, incorporate the policies contained in that document;
  - Clarify and provide for the rights, duties and obligations of all parties involved in management and administration of Crown land;
  - Provide for the orderly and efficient allocation of Crown lands, in a manner that conforms to the principles of due process and natural justice; and
  - Provide sufficient resources, training, enforcement mechanisms and sanctions to ensure that the purposes of the proposed ordinance are not defeated

# Overview:

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- ☐ Focus this session
  - Legal aspects - allocation of Crown Land
    - ☐ Basic Assumptions
    - ☐ Legal aspects in light of current legislation and best international practice
- ☐ Proposed Ordinance
  - Deal with in the second session, after the break

# Grant of Interest in Crown Land

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## ☐ Allocation

- By what process?
  - ☐ Government grant
    - Freehold, CPL etc

## ☐ When does a grant take effect?

- Execution of grant by Governor – section 94 of the Constitution, 2006
  - ☐ Binding on parties
- Registration:
  - ☐ Binding on third parties
- But what is the process prior to that?



# Orderly delivery of Crown land to match demand

---

## ☐ Assumption 1:

- Demand is for development purposes
  - ☐ In order to meet the objective of “...*sustainable use of Crown Land* ..” Crown should be granting land for development purposes only
- Process:
  - ☐ Development, including subdivision, requires development permission
  - ☐ Therefore, development permission should precede grant

## ☐ Assumption 2:

- ☐ National Development Plan essential to Dev. Permission

## Proposed process for orderly delivery:

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- ☐ Subdivision of block in accordance with planning requirements
- ☐ Allocation of parcels within that block
  - Residential and Commercial
- ☐ Requires development permission
- ☐ Development permission in accordance with the National Development Plan / Local Plan

# Current legislative provisions for development permission

---

## ☐ Physical Planning Ordinance

### ■ Section 2(1) - "Development":

- ☐ *"...means the carrying out of building, engineering, mining or other operations in, on, over or under any land, the making of any material change in the use of any building or land or the subdivision of any land:..."*  
[emphasis added]

### ■ Section 2(1) – "Development Permission":

- ☐ *"...means permission for development given under the provisions of Part V;..."*

### ■ Section 90:

- ☐ *"This Ordinance shall bind the Crown and the Government."*

# Development Permission – Part V

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## □ Section 28(1):

- *“No person shall carry out any development unless, prior to the commencement of such development, approval therefor has been obtained under the provisions of this Ordinance...”*

# Development Permission - Process

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- ❑ Issued by the Physical Planning Board
- ❑ Board appointed by Governor
- ❑ Independence of the Board ensured through appointment process and conflict of interest provisions (sections 4, 9 and 10)

# Development Permission – Process: Policy

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- General policy directions – section 16
  - *“The Governor acting in his discretion or the Minister may give directions in writing to the Board as to the general policy to be pursued as to the grant of development permission.”*
  - Suggests, by negative inference, Governor and Minister would not be involved in the first stage of the process at the decision-making level
    - this understanding is reflected in the appeal provisions as well

# Development Permission - Process

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- ☐ Expert advice
  - Director acts as “...principal advisor to the Governor, the Minister and the Board..” on planning matters
  - What is the legal effect of this advisory role?
    - ☐ Reliance on expert advice insulates decision-makers and public officers from liability
- ☐ Compare to best international practices:
  - Independent decision-making authority; and
  - Provision of expert advice

# Development Permission – Process

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- ☐ Applications submitted to Director
- ☐ Board makes a decision, taking into consideration the matters listed in s.34
  - Includes comparing application to National Development Plan
- ☐ Note section 35:
  - Board, with advice of Director and consent of Governor, may enter into discussions with any person regarding development agreement



# Development Permission - Process

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- ❑ Board has full discretion in reaching a decision - s. 36
- ❑ Section 37: Development permission lapses:
  - one year after grant of outline DP
  - 3 years after grant of detailed development permission if construction not completed [emphasis added]
  - Provision for returning to Board to request an extension
  - Time period tied in with 3 year Conditional Purchase Lease

# Appeal from Bd's decision

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- ☐ If application for development is rejected by the Board:
  - Right of appeal to Minister – section 82
  - Ordinance (ss. 82 ff) provides for the process to be followed by the Minister in such instances
    - ☐ Appointment of inspector etc to investigate and report to Minister
    - ☐ Minister makes a decision
- ☐ If development permission still denied, right of appeal to Governor by way of petition – s. 87
- ☐ Governor's decision on the matter final

# Development and Grants

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- ❑ Currently, the Physical Planning Ordinance provides for a careful, elaborate, procedurally precise, and transparent mechanism for the issuance of development permission
- ❑ To what extent should this process be replicated or modified in the proposed Ordinance?
- ❑ Assuming development permission would be a condition precedent for allocation of Crown land, the current system under the Physical Planning Ordinance would provide for orderly delivery of Crown land onto the private market.

# Proposed Process:

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- ❑ Demand from applicants would be assessed by Director of Planning and Commissioner of Crown Lands
- ❑ Commissioner would act as administrative agent
- ❑ Government would make the policy decision
  - This step is necessary for allocation of Government funds to support the proposed development
- ❑ Independent body – Planning Board – would consider the application(s) from planning perspective, and essentially that decision would be the allocation mechanism, subject to right of appeal
- ❑ National Development Plan essential
- ❑ Decision would proceed through the appropriate administrative channels to grant of an interest in Crown land, and registration

# Crown Land Policy - Clarification of outstanding issues

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## ☐ Belonger discounts

### ☐ Clarification

## ☐ Appeal process

### ☒ By whom, to whom?

# Drafting Instructions

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# Crown Land Policy

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- Government Objectives clause 14 of Crown Land Policy
  - *“Government will take the necessary actions to draft and pass legislation to regulate, the inventory, allocation, pricing and management of Crown Land. This will ensure that the current policy of equitable allocation and sustainable use of Crown Land is effective in the long-term, and not easily modified by future Cabinet decisions or future political mandates. Therefore, the establishment of a Crown Land Ordinance will go a long way to empower, sustain and protect the rights of the Belonger community well into the future.”*

# Crown Land Policy

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## □ Objectives:

- *"It is ... important that administrative rules and standard practice concerning Crown Land allocation, pricing and management which have been evolving over the years, be consistent with addressing the needs of economics and social development while at the same time preserving the environment, TCI's greatest asset.*
- *This Crown Land Policy is formulated to provide long-term benefits to Belongers; both in terms of increasing their role in commercial land development and helping them gain access to land for residential use."*



# Overview:

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- Drafting instructions
  - Process – Crown Land Policy

# Principles

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- ❑ In order to safeguard the obligations imposed on the Governor, the Minister, public authorities and public officers involved in grants of Crown lands, all conflicts of interest should be declared; and
- ❑ All procedures for the control, management and allocation of Crown lands should comply with the principles of due process, fairness, transparency and natural justice.

# Draft:

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- ☐ Division of the Proposed Legislation:
  - 11 Parts
- ☐ Crown Land Policy

# Part I. Preliminary:

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## ☐ Standard :

- short title and interpretation provisions
  - Affirmation as to party in whom Crown land is vested
  - Default provision:
    - ☐ all land that has not been the subject of a grant by the Crown, and for which no folio exists in the Land Register established under the Registered Land Ordinance, shall be deemed to be Crown land.
-

## Part II. Organization and Administration:

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- ☐ Establishes the Crown land department
  - ☐ Provides for the appointment of the Commissioner of Crown Lands
  - ☐ Provides for the powers and duties of the Commissioner and his or her staff
  - ☐ Register of Crown Land
-

## Part III. Acquisition of Crown Land

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- ❑ Basically, affirms that the powers, duties and procedures provided for in the Land Acquisition Ordinance are to be used by the Commissioner when acquiring land for public purposes
  - ❑ Need to review the provisions of the Land Acquisition Ordinance and amend to take account of the Crown land unit
-

## Part IV. Management of Crown Land

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- ☐ Provides for the establishment of the Crown Land Register referred to in Clause 17 of the Crown Land Policy

## Part V. Disposal of Crown Land

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- ❑ Provides orderly and transparent process for the disposal of Crown land
  - ❑ Key features:
    - Incorporates the provisions of Part V of the Physical Planning Ordinance,
    - Incorporates regulations and forms for that Part, with modification where appropriate.
    - All applications would go to the Board for development permission first before grant
    - Board considers application in light of National Development Plan and other matters listed in PPO, etc
    - Board makes recommendation to Minister etc
-



# Part VI: Belongers' Discount

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- ❑ Part VI provides for the various discounts available to Belongers, as outlined in Clauses 2, 3, 4, 5 and 7 of the Crown Land Policy
  - ❑ Separate Part from “Disposal” provisions
    - Disposal provisions would apply to disposal of any Crown land to any grantee
    - whereas the discount provision for Belongers is unique to that class of citizens
    - Probably necessary because of Constitutional issues
-

## Part VII: Squatters and Non-Complying Tenants

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- ☐ Provides the power and duty, and the enforcement mechanisms, for removal of squatters and non-complying tenants from Crown land, as outlined in Clause 12(b) of the Crown Land Policy
  - ☐ Empowers Commissioner to remove those in illegal possession
  - ☐ Magistrate's Court
  - ☐ Appropriate appeal provisions
-

## Part VIII: Crown Land Tribunal

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- ☐ Provides for establishment of Crown Land Tribunal to deal with matters arising during the administration of the proposed Ordinance.
  - ☐ A right of appeal from this Tribunal to the Supreme Court would also be provided
  - ☐ First line of appeal to the Commissioner
-

# Part IX: Offences, Penalties and Remedies

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- ☐ Provides a general provision regarding offences
- ☐ Lists specific offences
- ☐ Provides for criminal sanctions and civil remedies for contravening the provisions of the proposed Ordinance.
- ☐ Model after Physical Planning Ordinance and National Parks Ordinance
- ☐ Recommendation:
  - penalties contained in these Ordinances should be reconsidered, in order to make them meaningful given the value of land in Turks and Caicos today

# Part X: Miscellaneous

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- Miscellaneous provisions including:
    - public rights of way
    - Concessions
    - appropriate court to be used for issues arising from the administration of Crown land
    - procedures for notice
    - transitional procedures if any
    - power to prescribe regulations, and so on
-

# Part XI: Amendment or Repeal Provisions

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- ☐ Standard
  - Provide for consequential amendments and repeal of legislation
    - ☐ The Constitution, S.I. 2006/1913;
    - ☐ The Immigration Ordinance, Chapter
    - ☐ The Registered Land Ordinance, Chapter 72;
    - ☐ The Physical Planning Ordinance, Chapter 73;
    - ☐ The Land Survey Ordinance, Chapter 74;
    - ☐ Land Acquisition Ordinance, Chapter 78;
    - ☐ The Minerals (Exploration And Exploitation) Ordinance, Chapter 79;
    - ☐ The National Parks Ordinance, Chapter 80; and
    - ☐ The National Trust Ordinance, Chapter 81,
  - Effective date, etc

# Not included from Crown Land Policy

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- Clause 20: National Physical Development Plan
    - This clause is implicitly precatory, and is in the form of a statement.
    - Presumably it will be completed before the draft Ordinance is ready for the House of Assembly, and at that time can be incorporated by reference into most of the Parts of the draft bill
-

# Questions?

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□ [tjohnson@yorku.ca](mailto:tjohnson@yorku.ca)





Turks and Caicos Islands  
Ministry of Natural Resources

*Implementing the 2005  
Crown Land Policy*



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Crown Land Legal and Administrative Procedures Seminar

***PROPOSED CROWN LAND PROCEDURES  
AND MANUAL***

*Sean Johnson MRICS  
Land Administration Consultant  
Terra Institute Ltd*

October 16th, 2007

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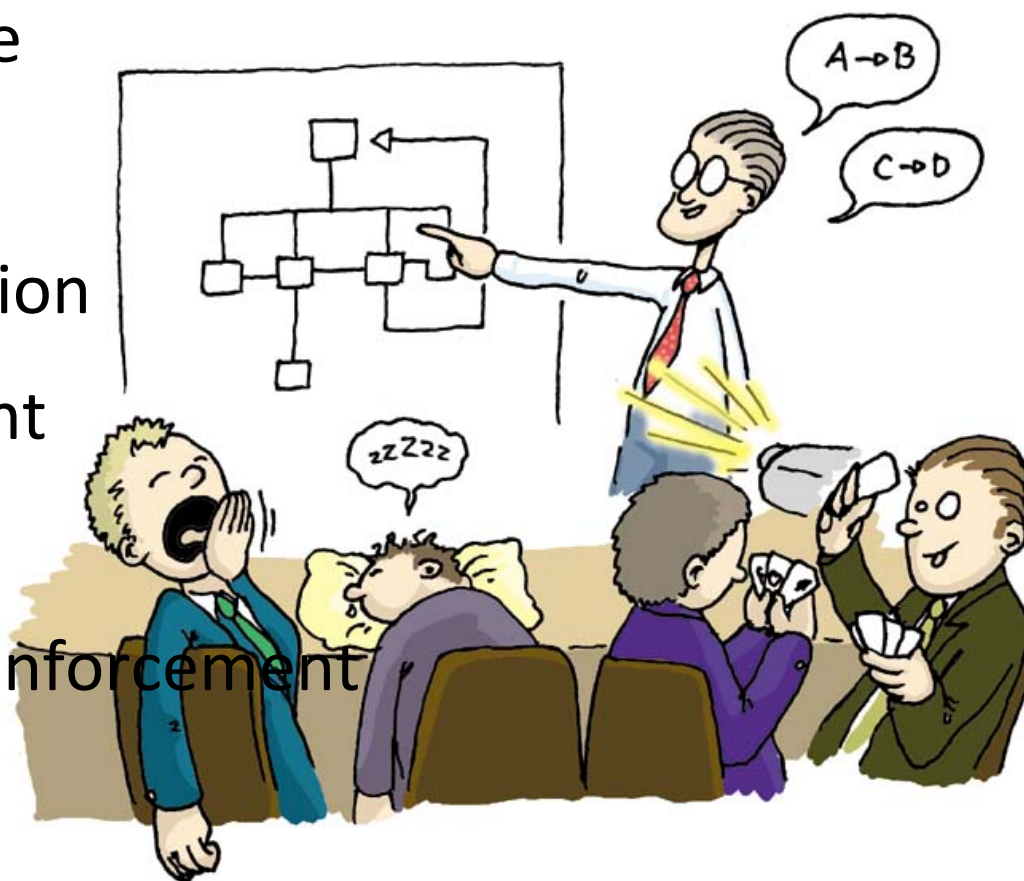
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- Presentation Outline

- Background
- Land Administration
- Land Management
- Discounts
- Monitoring and enforcement
- Appeals etc.



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*Implementing the 2005  
Crown Land Policy*



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- Crown Land Policy #15
  - CROWN LAND APPLICATIONS, ALLOCATION AND MANAGEMENT PROCEDURES MANUAL

“This manual will clearly document the specific procedures to be used in the five key government departments with responsibilities for Crown Land; Lands & Survey, Valuation, Planning, Land Registry and the new Crown Land Unit.”



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“The Manual will describe the full-integrated process, flows of information with and between departments, standard data entry, validation and security procedures and will include standardized forms and correspondence format to be used in the process.”



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*Implementing the 2005  
Crown Land Policy*



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- Purpose of the Manual

“To avoid ad hoc administrative decisions and ensure a more consistent implementation of the Crown Land Policy, the Government will prepare, approve and disseminate a Crown Land Application, Allocations and Management Procedures Manual”

(Crown Land Policy #15)



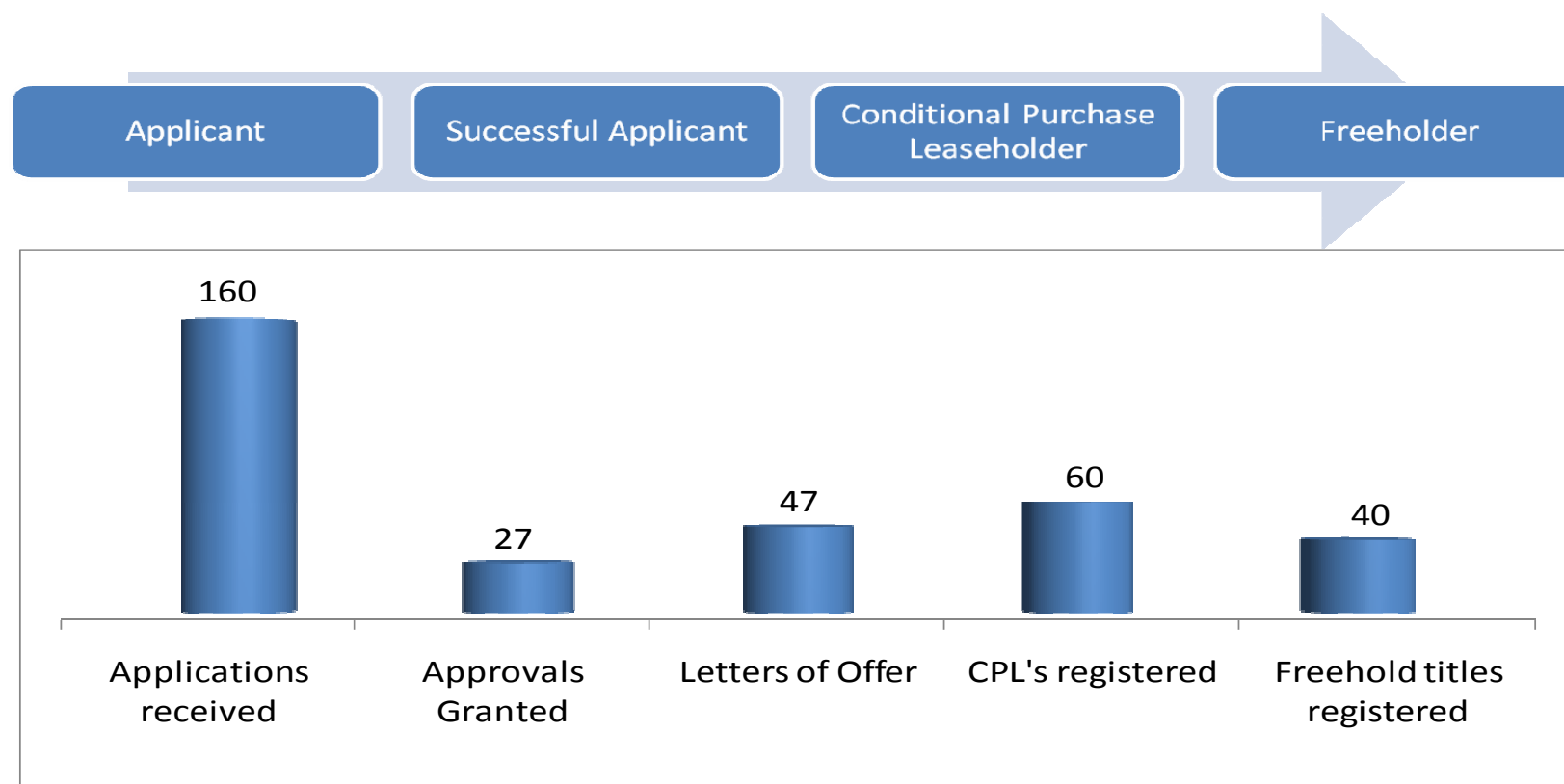
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## *Implementing the 2005 Crown Land Policy*



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- Reasons



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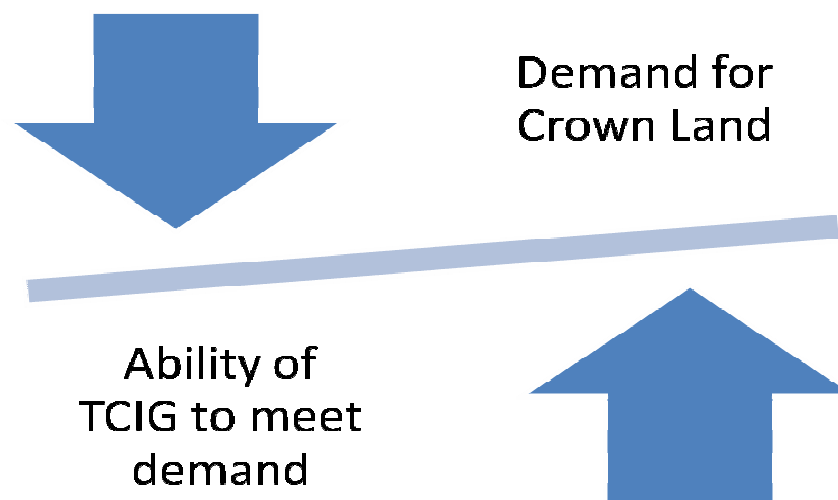
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Crown Land Policy*



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- Need to improve efficiency of the TCIG agencies who play a role in Crown Land allocations; and
- Pro-actively manage the demand for Crown Land



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Ministry of Natural Resources

*Implementing the 2005  
Crown Land Policy*



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- Purpose of the Manual
  - Procedures for applications
  - Procedures for allocation
  - Procedures for management
  - Procedures for administration
  - Procedures for information



October 16th, 2007



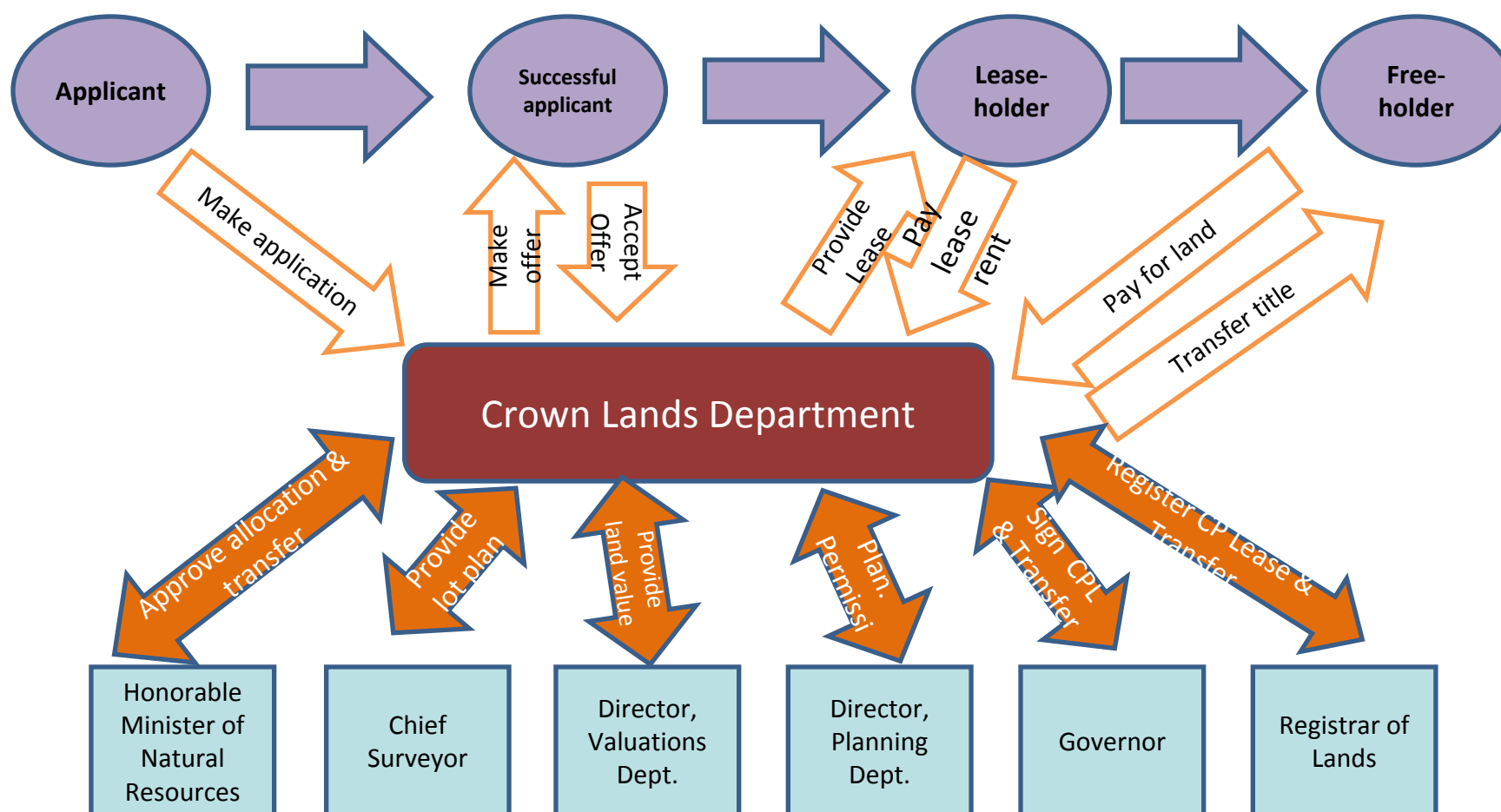


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## Implementing the 2005 Crown Land Policy



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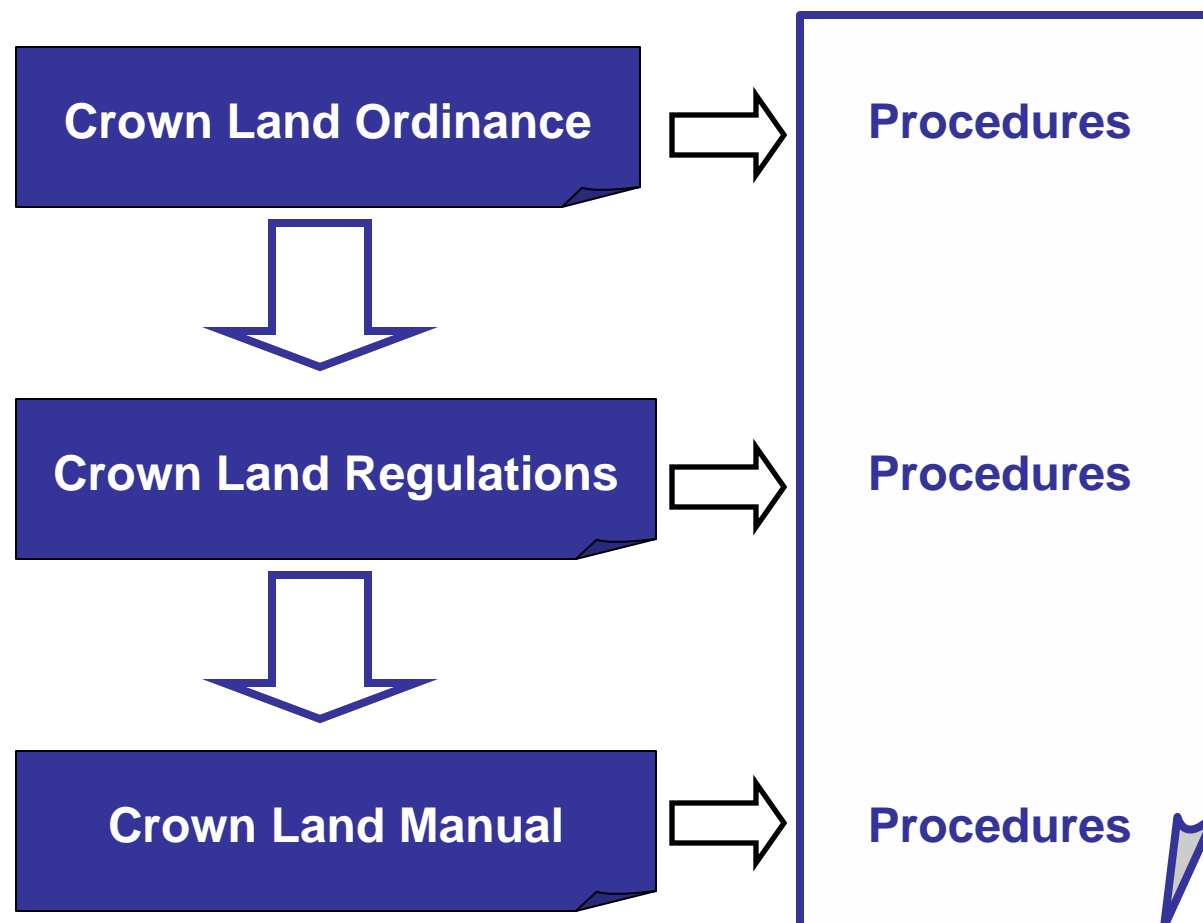
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- Procedures



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**TERRA INSTITUTE LTD.**

- All the “Ps”
  - Principles under-Pinning the Procedures Provided by the Policy
    - Subsidiarity (policy 14)
    - Transparency (policies 8, 11 & 15)
    - Fairness (policies 9, 18 & 19)
    - Sustainable development (policies 12, 13, 14 & 20)
    - Efficiency (policies 16 & 21)



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**TERRA INSTITUTE LTD.**

- More “P”
  - Principles based on best Practice
    - Development will be planned and managed
    - Activities will be coordinated
    - Information, education and communication
    - Data will be integrated and shared



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**TERRA INSTITUTE LTD.**

- Crown Land Administration
  - Information management
    - keeping of good land records
      - the collection, organizing, maintaining, protection and making-available of data and information about land tenure, land use and land value
  - Data integration
    - Crown land will be registered
    - Crown land management information system (CLMIS)



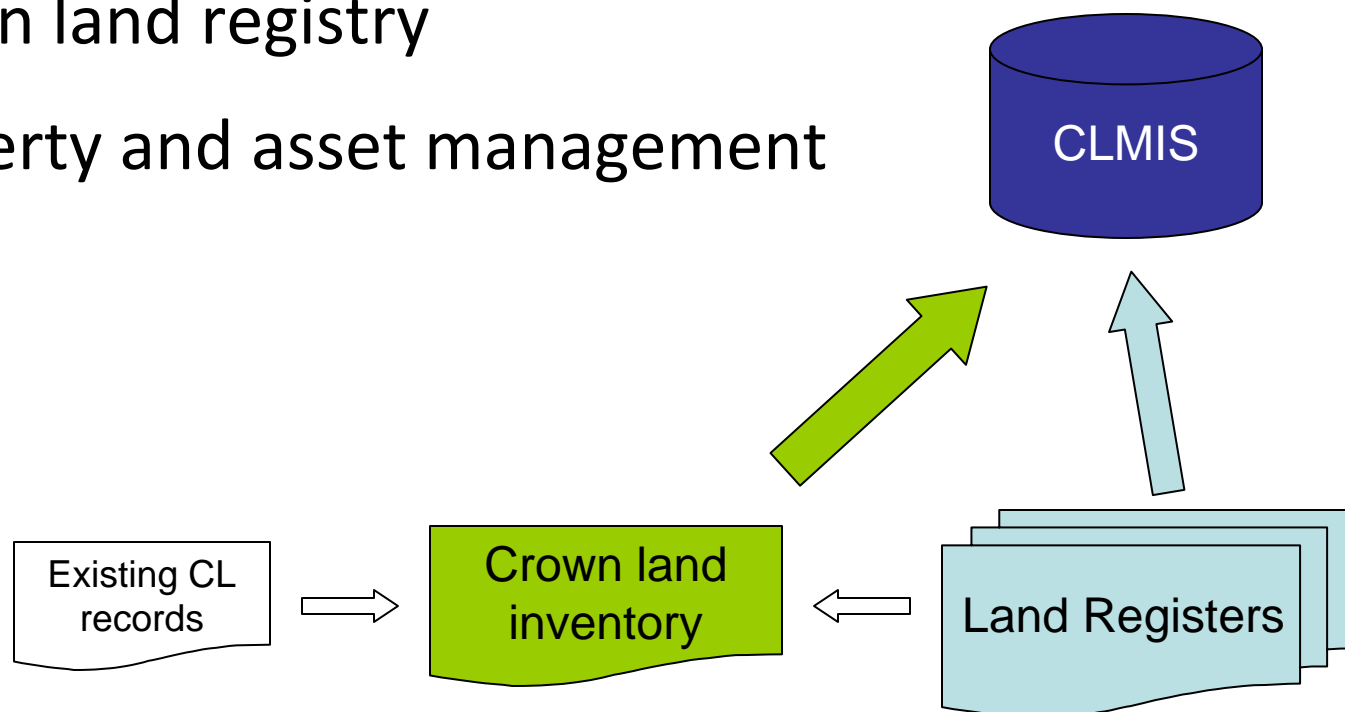
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**TERRA INSTITUTE LTD.**

- Crown Land Management Information System
  - Crown land registry
  - Property and asset management



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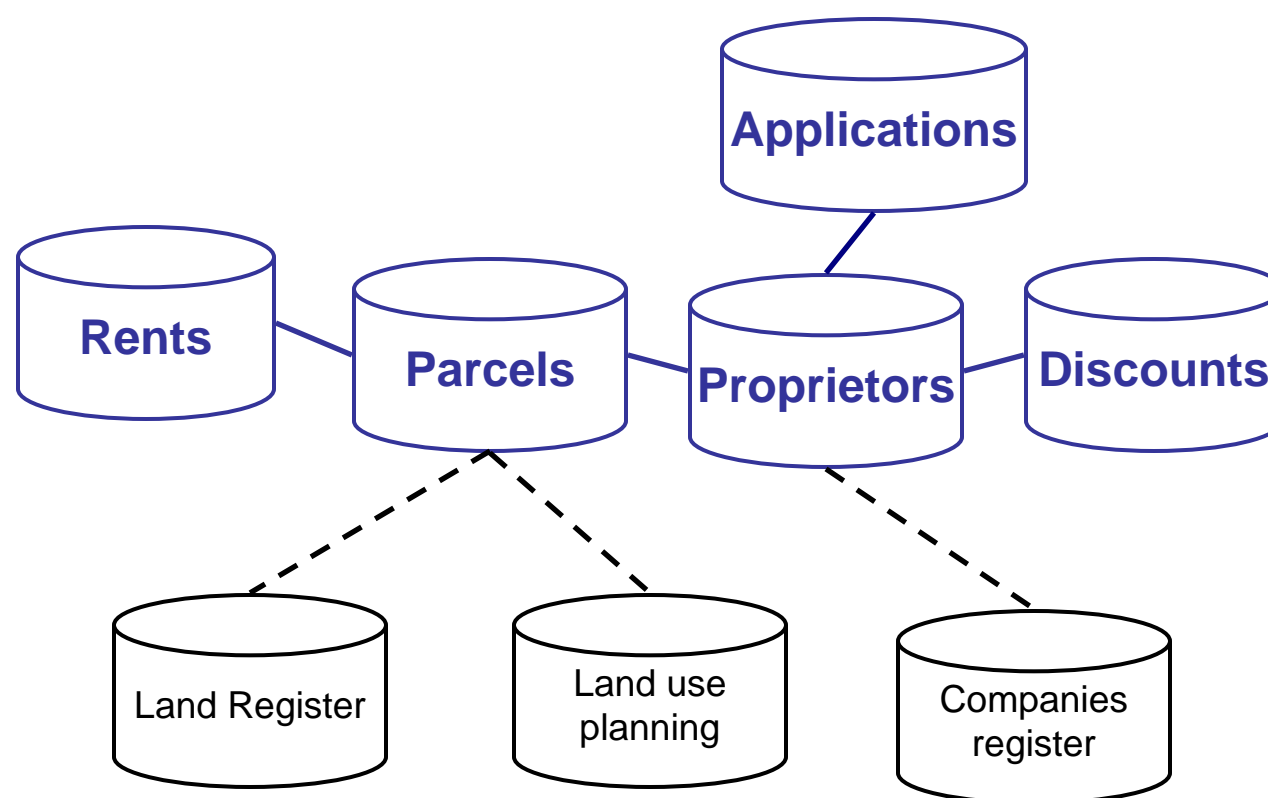
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**TERRA INSTITUTE LTD.**

- Crown Land Management Information System



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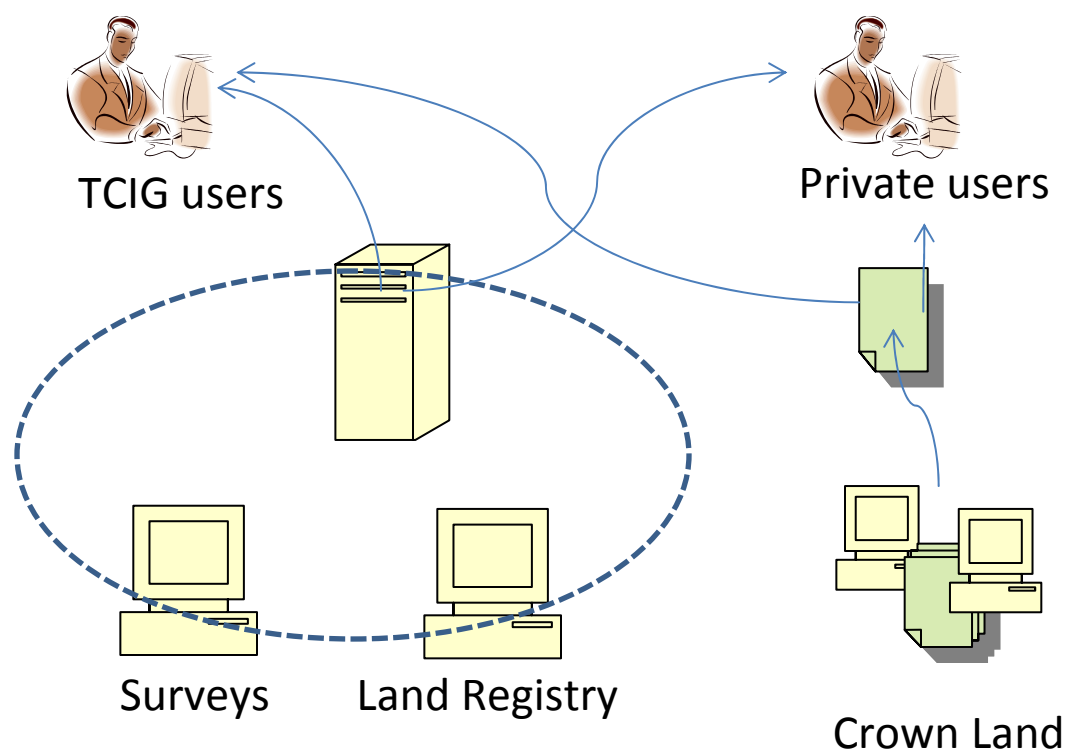
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**TERRA INSTITUTE LTD.**

- Computerization of the Land Registers
  - “Cayman project”



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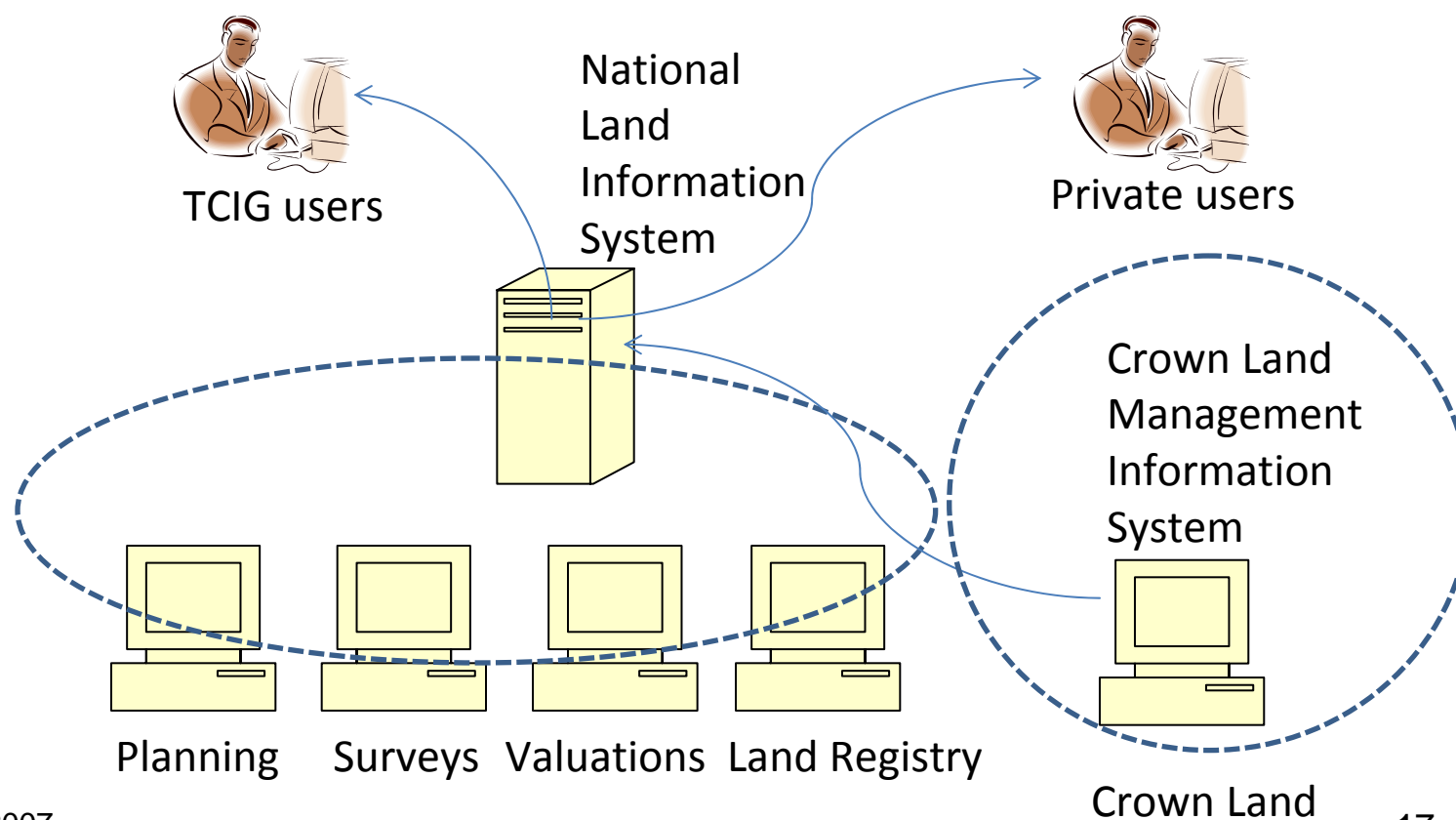
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**TERRA INSTITUTE LTD.**

### • Future configuration?



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**TERRA INSTITUTE LTD.**

- Maintaining good land records
  - registration

**Title Registration** (Torrens)

Jamaica (1890 - )

Dominica

St Kitts & Nevis (1886 - )

Trinidad & Tobago (1892 - )

**Land Registration** (Dowson Sheppard)

Guyana (1960 - )

Turks & Caicos Islands (1967 - 1970)

British Virgin Islands (1970 - 1973)

Anguilla (1972-1975)

Cayman Islands (1973 - 1977)

Antigua (1977 - 1980)

St Lucia (1984 - 1987)

Barbados (1991 - )

Belize (2003 - )

Trinidad & Tobago (2008 - ?)



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**TERRA INSTITUTE LTD.**

- Registration of Crown land

R.L. 1a	Transfer of Crown Land
R.L. 1b	Transfer of Crown Land and Surrender of Conditional Purchase Lease
R.L. 2	Transfer of Lease
R.L. 3	Transfer of Charge
R.L. 8	Lease
R.L. 8a	Standard Residential Conditional Purchase Lease
R.L. 8b	Standard Commercial Conditional Purchase Lease
R.L. 10	Discharge of Charge
R.L....	...



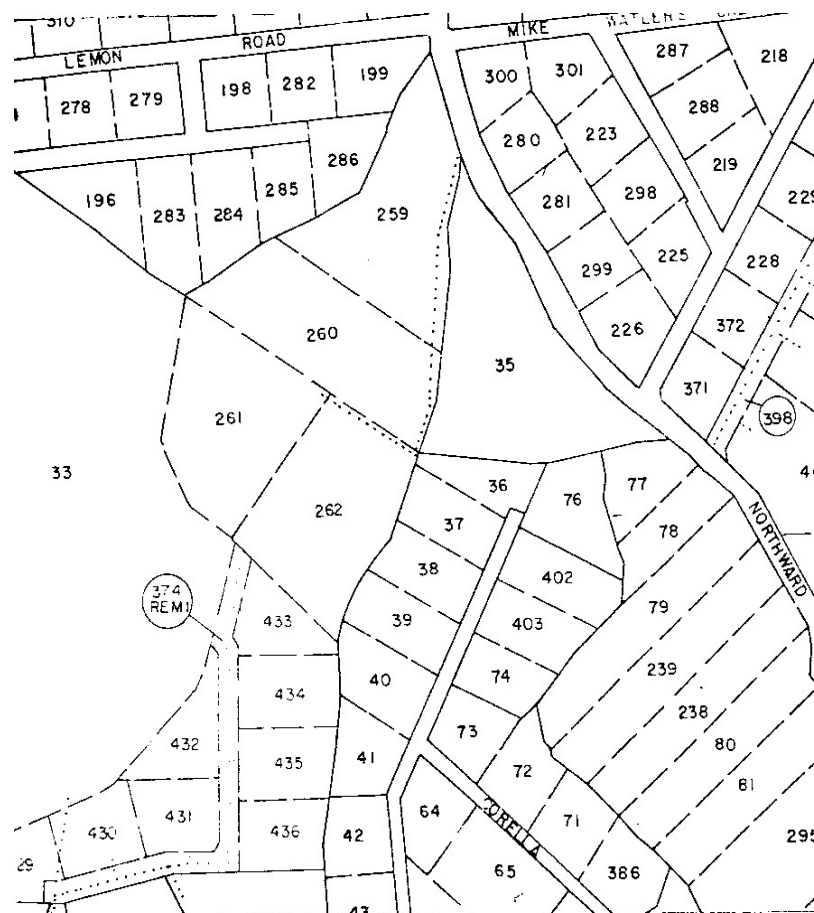
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## *Implementing the 2005 Crown Land Policy*



**TERRA INSTITUTE LTD.**

- Surveying and Mapping of Crown Land
  - Land Survey Ordinance
  - Registry Map



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**TERRA INSTITUTE LTD.**

- Crown Land Management

- Development
- Allocation
- Dispositions
- Acquisition
- Monitoring
- Enforcement



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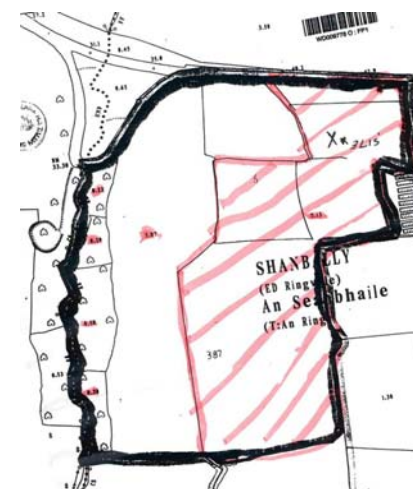
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**TERRA INSTITUTE LTD.**

- Crown Land Management
  - Planned and managed development for delivery of Crown land by the Crown Lands Department
  - Forward Planning
  - National Physical Development Plan
  - Planning permission
  - Subdivision



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## *Implementing the 2005 Crown Land Policy*



**TERRA INSTITUTE LTD.**

- Crown Land Management
  - Managed delivery of Crown land by the Crown Lands Department
    - Land identified, subdivided and developed
    - Public offering of land
    - Allocation



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**TERRA INSTITUTE LTD.**

- Crown Land Management

- Allocation

- Public invitation to apply
    - Offer by public tender
    - Public auction
    - Private treaty



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**TERRA INSTITUTE LTD.**

- Crown Land Management
  - By public invitation
    - Residential
    - Applications received between published dates
    - Allocation by public ballot
      - More applications than parcels – ballot to choose applicant
      - More parcels than applications – ballot to choose parcel
    - Offers made – agreement within 14 days



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**TERRA INSTITUTE LTD.**

- Crown Land Management
  - By public tender
    - Commercial land or undivided block
    - Public notice or marketing
    - Closing date for submission of sealed tenders
    - Evaluation and ranking
      - On development (technical) proposal; or
      - On development proposal plus price proposal



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**TERRA INSTITUTE LTD.**

- Crown Land Management
  - By public auction
    - Commercial use
    - Large or undivided parcels
    - High demand for high potential location
    - Public or sealed bids



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**TERRA INSTITUTE LTD.**

- Crown Land Management
  - By private treaty
    - Land must be publicly offered first
    - Within a reasonable period of time



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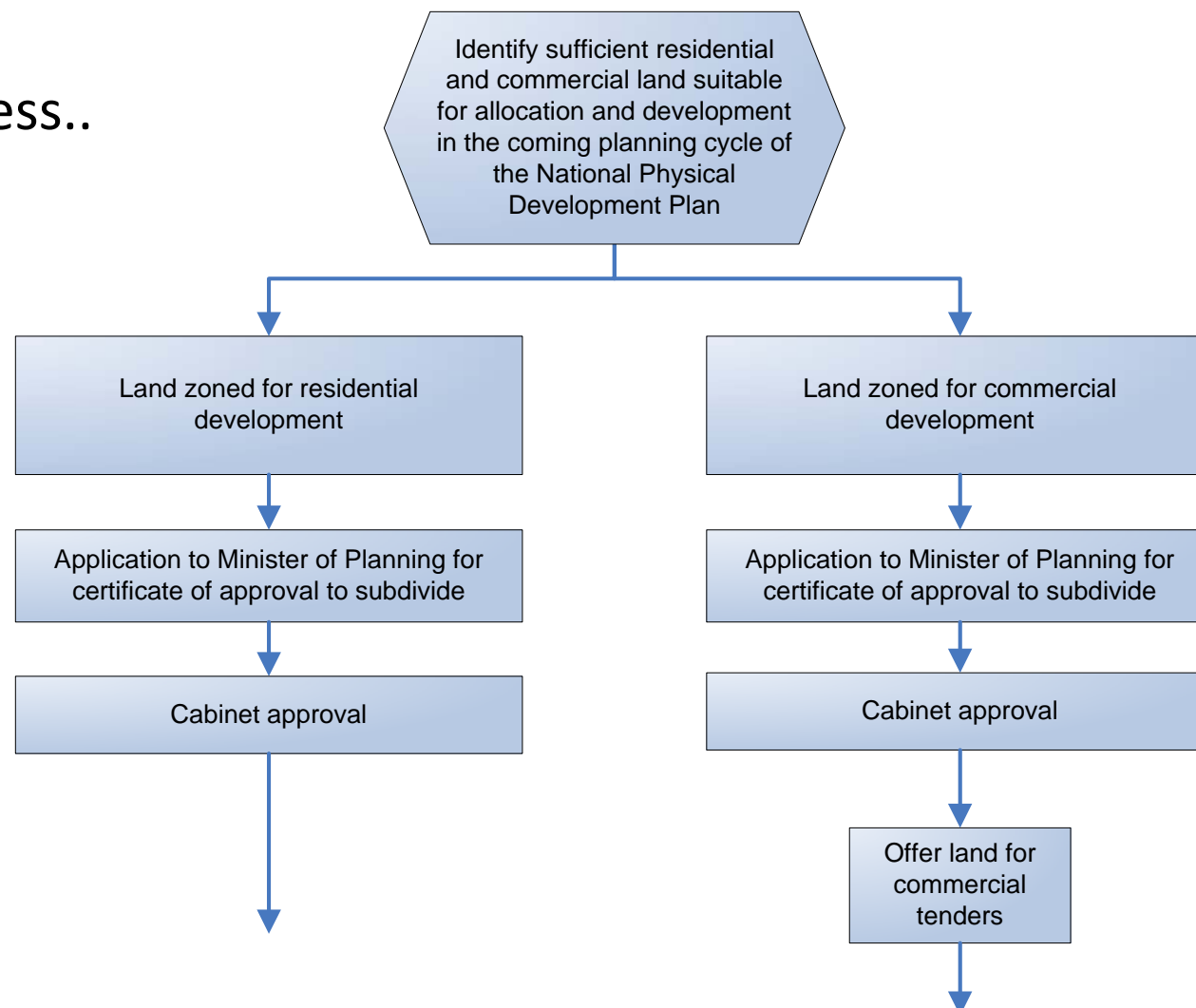
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### The process..



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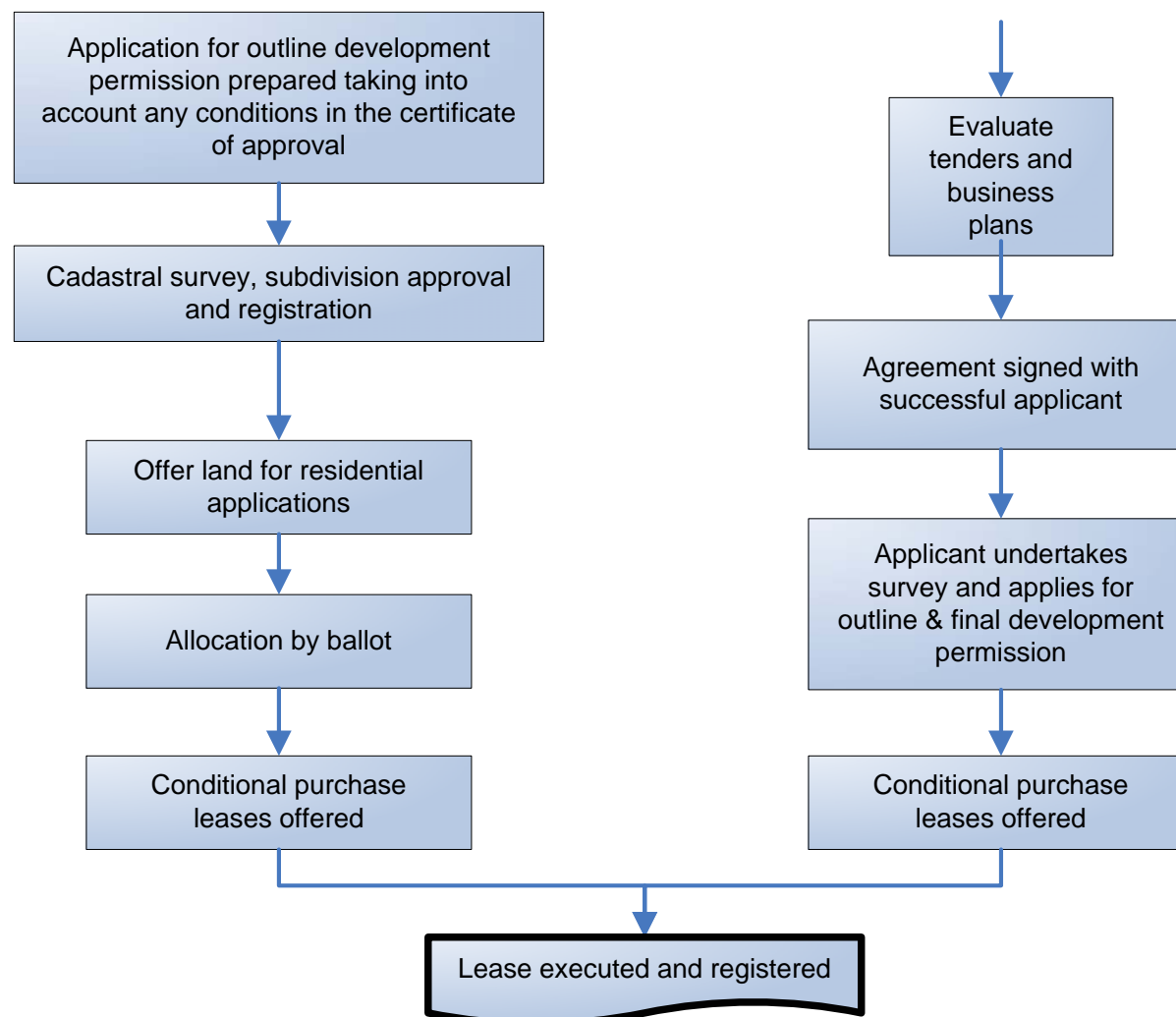


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**TERRA INSTITUTE LTD.**

- The proposed reforms
  - Identification and planned development
    - Land must be zoned for appropriate use
  - Residential – application by invitation
    - Applications before or after rejected
    - Evidence required of intention to develop
  - Commercial – public tender or auction
    - Business plan
    - Evaluation by established criteria (inc. environment)

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**TERRA INSTITUTE LTD.**

- Dispositions
  - Crown Land Policy
    - Standard conditional purchase lease
    - Conversion to freehold
    - Long leases for some developments
  - All leases and grants will contain development conditions and covenants





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**TERRA INSTITUTE LTD.**

- Standard conditional purchase lease
  - Residential
    - Subdivided and registered parcels
    - One extension for 18 months permitted
    - Revaluation on extension
    - Monitoring of compliance
  - Commercial
    - (as per residential)



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**TERRA INSTITUTE LTD.**

- Grant of freehold
  - Surrender of lease and compliance with conditions
    - Checked by Planning Dept. & Crown Lands Dept.
    - Check for boundary encroachment
  - Exception for a bank guarantee of development completed within 3 years
  - Covenants on title
    - Restricting land use
    - Indemnify Government



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**TERRA INSTITUTE LTD.**

- Much the same
  - Performance bonds
    - Required for some commercial developments
  - Assignments of leases
    - Permission required
  - Forfeiture and determination of leases
    - Compensation paid for development completed



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## *Implementing the 2005 Crown Land Policy*



**TERRA INSTITUTE LTD.**

- We reach?

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"You're not allowed to use  
the sprinkler system to keep  
your audience awake."

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**TERRA INSTITUTE LTD.**

- Much the same
  - Crown land reserves
    - Legislation to protect (nature reserves) and to restrict development (national parks)
    - Management of reserves and parks by appropriate agencies
  - TCInvest
    - Working closely with Crown Lands Department



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**TERRA INSTITUTE LTD.**

- Belonger Discounts
  - Crown Land Policy 2005
    - Only available for Belongers
    - Applied on conversion of CPL to freehold
    - One residential per island; only one at a time; one commercial of up to 10 acres
    - Repayable on sale – proportionally on time and quantity



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**TERRA INSTITUTE LTD.**

- Belonger Discounts
  - Administration
    - Recorded in Crown Land Management Information System
    - Protected by registered charge
    - Changes in company share ownership reported by Registrar of Companies



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**TERRA INSTITUTE LTD.**

- Land Valuation
  - Land Valuation Office
    - All Crown land to be valued by LVO
      - Manual does not set guidelines for Crown land valuation
    - Grants of freehold or leasehold
      - Valuation should not be negotiable
      - Appeals should only be possible on revaluation (e.g. lease extension, and not on conversion of CPL to freehold)
    - Land market data
      - Land registry





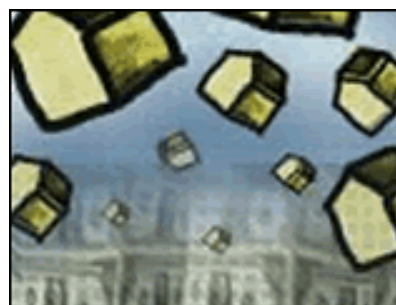
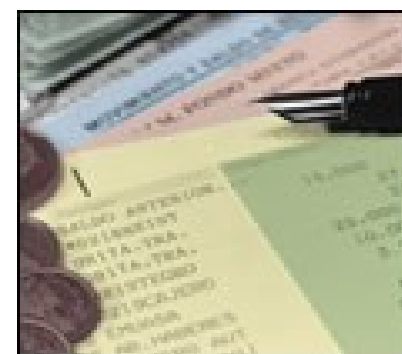
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**TERRA INSTITUTE LTD.**

- Rents and fees
  - Unchanged
  - Explained and listed in manual



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**TERRA INSTITUTE LTD.**

- Monitoring and Enforcement
  - Conditions
    - Periodic inspections and key events
    - Protected and enforced by registration
  - Discounts
    - Protected and monitored by registration
  - Illegal Occupation
    - Crown Land Department to take action to recover possession



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- Acquisition of land
  - For a public purpose
    - Land Acquisition Ordinance Cap.78
  - Procedures and guidance should be included in the manual at some future date



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**TERRA INSTITUTE LTD.**

- Appeals
  - Tribunal
    - appointed by the Governor, Chief Minister and Leader of the Opposition
  - Appeals or complaints can be made for:
    - Just about anything!
      - Ensures CLD compliance with procedures
      - Supports decisions of CLD
    - Complaints and appeals procedure explained in all written correspondence and displayed in CLD offices



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## Implementing the 2005 Crown Land Policy



**TERRA INSTITUTE LTD.**

- The final words ... international best practice

**The Land Administration Act 1997**

The Land Administration Act 1997 (LAA) is the State's legislation dealing with the disposition of State land. Part 6 of the LAA provides for the sale of State land. In addition, Part 9 of the Act provides for the acquisition and disposition of land for public work purposes. Section 187 of Part 9 allows for the sale of such land where it is no longer required for the public work for which it was acquired.

The LAA is administered by the Minister for Planning and Infrastructure in her statutory capacity as the Minister for Lands, and the Department for Planning and Infrastructure.

**Development and sale of town lots**

As a result of the June 2001 Machinery of Government Taskforce report, the former Department of Land Administration:

- transferred the funding for active and planned capital works (land development) projects to LandCorp and
- transferred the majority of its developed land stock to LandCorp.

Consequently, the State Land Services Branch (SLS) of the Department for Planning and Infrastructure is, in the main, no longer responsible for the development and sale of government land for residential, commercial and industrial purposes. However, SLS still plays a significant role in the administration, assembly and allocation of State land and provides State land allocation solutions in accordance with the provisions of the LAA.

SLS continues to be responsible for:

- Conveyancing of land on behalf of other agencies
- The creation and sale of superfots of State land, within set parameters.
- State land assembly, for purposes such as industrial estates, infrastructure corridors and other State uses.
- State land solutions to assist local government and State departments and agencies.

SLS is also responsible for a broad range of other

existing State land activities, including:

- The sale of closed roads, pedestrian access ways, right of ways and small parcels of State land for amalgamation into adjoining landholdings.
- The leasing of State land.
- General State land administration, such as reserve creation, management and disposal, control over the use of State land and general application of the provisions of the LAA.
- Sale of existing individual lots (not for subdivision), where servicing is not required and LandCorp does not want to purchase the lot from the Department and on-sell it.

The following information needs to be understood in the above context. The provisions for sale are in the LAA, and relevant policies and procedures exist. However, there is now a very low incidence of auctions and public counter sales.

**Methods of sales**

**Public auction**

Section 74 of the LAA provides the means for the disposal of land by various methods, including public auction, under such conditions and restrictions as may be determined by the Minister for Lands. The reserve price set for such land is determined in consultation with the Valuer General and may be undisclosed in certain circumstances. Any successful bidder is required to pay a 10 per cent deposit and sign a contract of sale "on the fall of the hammer" with the balance paid on such terms as set out in the contract of sale.

**Public counter sales, tenders and expressions of interest**

Lots not sold at auction become available for sale over the counter at the reserve price. The same conditions of sale, including payment of the 10 per cent deposit and balance of purchase money, apply as set out in the contract of sale.

The Minister may also dispose of land by advertising in local newspapers and by calling tenders or expressions of interest. Offers may be made at SLS or sent through the post. In all cases, a 10 per cent deposit is required

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with a signed contract of sale and the balance within a specified time.

### *Private treaty*

The Minister may sell land direct to persons without the need to advertise. This includes sales direct to Commonwealth authorities, Aboriginal people, State instrumentalities and local government. In each case the purchase price determined is based on current unimproved market value, unless special circumstances determine otherwise.

### *Ballots*

The Minister may determine between competing applicants by ballot. This approach is generally used where offers are received on the same day, or by a specified closing date, for straightforward land sales.

### *Advisory panels*

The LAA provides for the Minister to appoint an advisory panel to advise on any matter, including selection between competing applicants. Panels would be limited to special sales (eg., high capital developments in remote localities) where applicants' abilities to successfully develop and operate need to be carefully assessed.

### *Sale of small land parcels to adjoining owners*

Section 87 of the LAA provides that the Minister may sell "remnant" or small parcels of land not considered appropriate for disposal as individual lots. Such parcels may be sold to adjoining landowners only, for inclusion into their existing title.

Portions of closed roads, pedestrian access ways and private streets, and "scraps" of State land, are sold under this provision.

### *Conditional purchase leases*

Section 80 of the LAA provides for the Minister to grant a conditional purchase lease over any State land on such terms and conditions as the Minister thinks fit. Any rent, instalments and interest paid during the term of the lease may be deducted from the full purchase price. Alternatively, the purchase price may be paid in regular instalments over the life of the lease, in lieu of rent.

Conversion to freehold is guaranteed when the lessee has made the improvements specified in the lease, has complied with all conditions, covenants, reservations and exemptions applying to the lease and has paid the purchase price and any other costs in full.

This form of lease has commonly been used for sale of townsite lots for residential, light industrial, or commercial purposes, where there are development conditions. Purchase price is generally payable within 30, 60 or 90 days.

### *Conversion of other leases to freehold*

Section 89 of the LAA allows a lessee (other than a pastoral lessee) to apply to the Minister to purchase the fee simple of the land under lease. The Minister has full discretion in deciding whether to approve a request, and can determine the purchase price and conditions under which the land may be sold.

On conversion of a lease to freehold, any mortgages, caveats or other interests registered against the lease are transferred to and apply to the freehold title. See the "State leases" brochure in this series for more details on leasing State land.

### *Sales of land acquired for public works*

Land no longer required for public works may be sold under sections 161 and 187 of the LAA by auction, tender or private treaty, but only after any former owner entitled to exercise an option to purchase has been given the opportunity to apply for an option and has declined to do so. Generally speaking, the former owner is entitled to reacquire the land where it was compulsorily taken and has not been used for any public purpose for a period of at least ten years.

### *Conditional tenure lands*

Under section 75 of the LAA, the Minister may sell land in fee simple subject to conditions concerning the use of the land. A nominal or discounted price may be charged where the use is for a community benefit (eg., church or aged persons' hostel). The land cannot be used for any other purpose, nor can it be transferred or mortgaged without the Minister's written permission.

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- Any Questions



Thank you  
Thank you

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# Cadastral Principles

Grenville Barnes

TCI Workshop  
17 October 2007



# Content

- Purpose
- Cadastral vs Geodetic points
- Cadastral System
- Boundary Types
- Cadastral Surveying Process
- Cadastral Evidence
- Heterogeneity Example
- Professional Trends

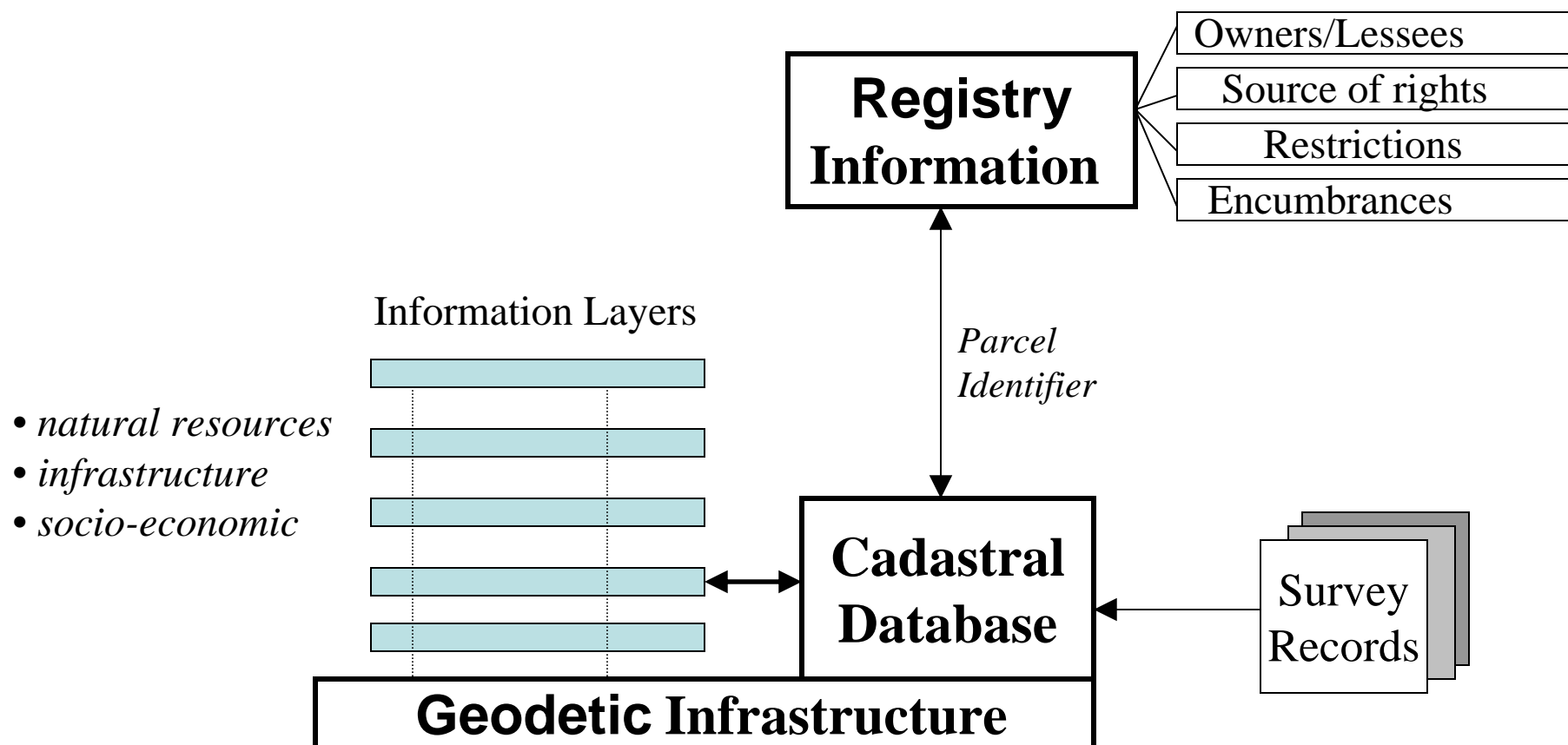
# PURPOSE OF CADASTRAL SURVEYING

- Demarcate and Identify Boundaries
- Collect Evidence to Perpetuate Boundary Location to Promote Security of Tenure
- Obtain Data to Represent Boundaries in an Abstract Form (graphical and mathematic evidence)

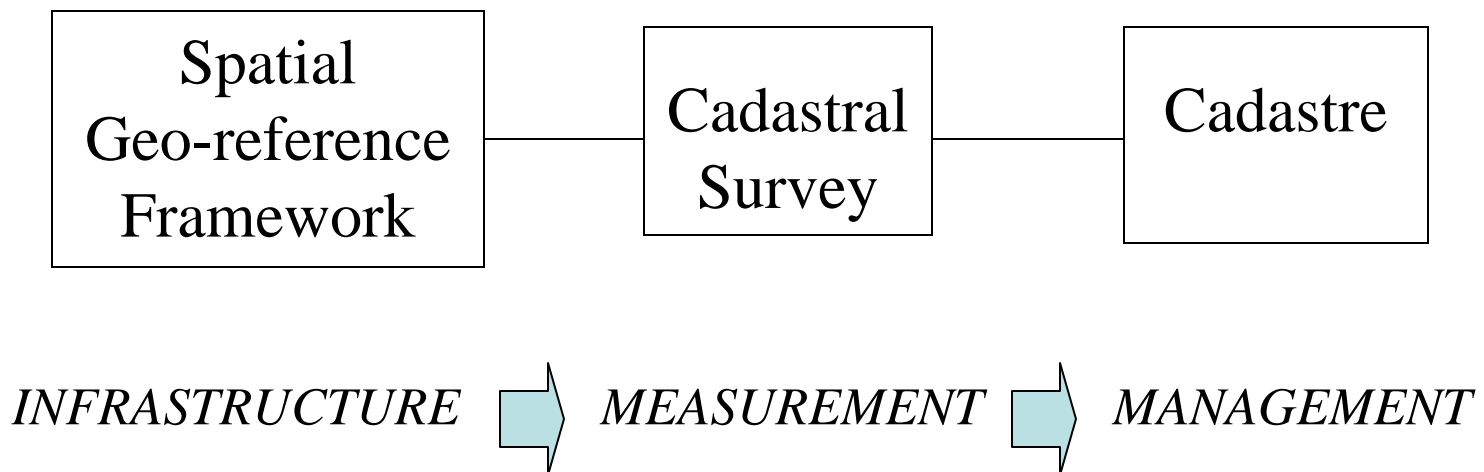
## **Specific Purpose of a Cadastral System**

- ☐ Where is the parcel?
- ☐ What size (area) is the parcel?
- ☐ What are the dimensions of the parcel boundaries?
- ☐ What constitutes the parcel boundaries?
- ☐ What is the unique identifier of the parcel

# Multipurpose Land Information System



# Components of a Cadastral System



The spatial geo-reference framework provides a common reference system for the integration of tenure and other land information.

# Cadastral vs Geodetic Points

Location of **geodetic points** is a question of **mathematics** (coords may vary if **datum changes** or through **readjustment**)

Location of **cadastral points** (parcel corners) is defined by **law** and **evidence** (location depends on interpretation of **cadastral evidence**, especially physical evidence)

Cadastral surveying is the process of defining and describing boundary evidence

# Fixed vs General Boundaries

- Fixed - corners/bendpoints are beacons and boundary is the invisible line in between the beacons
- General – a physical feature (hedge, wall, fence, etc.) is accepted as the boundary and mapped



# Point Typology

- Parcel corner beacons
- Indicatory beacons
- Control stations (e.g. traverse) – connection to geodetic network
- Geodetic Control Points



# Cadastral Surveying Process

- Prior to fieldwork acquire cadastral data on previous surveys of the parcel and adjoining parcels (Reg. 10)
- Search for original beacons in field
- Survey in found monuments and permanently demarcate control stations (link to geodetic control)
- Compare found evidence with previous survey evidence (measurements, beacons, etc)
- Recompute and Replace missing beacons
- Document survey (report, coord list, comps, fieldbook, etc)

**How does this change with use of GPS technology??**

# Cadastral Surveying Challenge

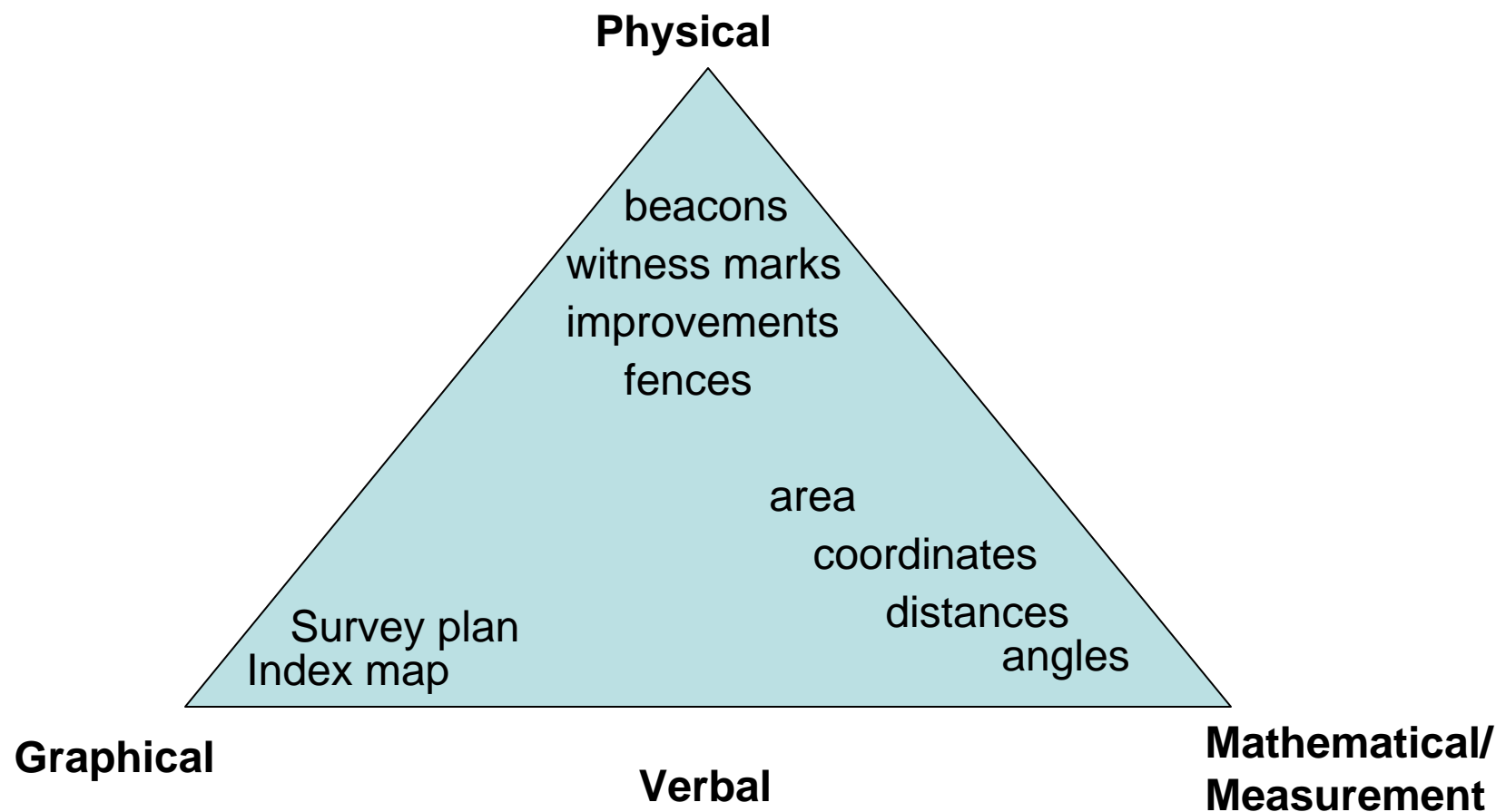
Cadastral boundaries are surveyed by different surveyors at different times to different specifications using different equipment.....

As a result they are a heterogeneous set of points

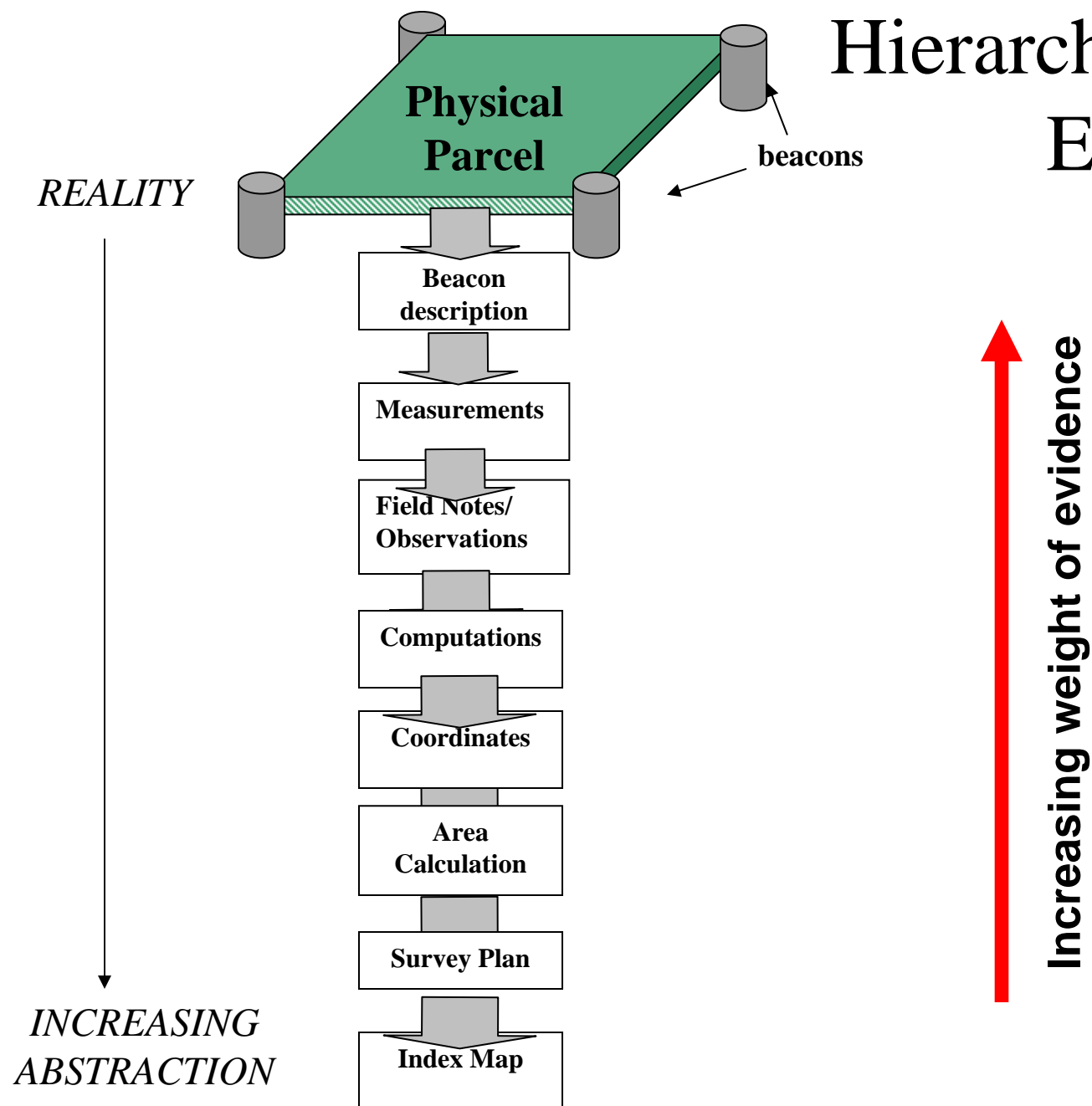
Can GPS promote homogeneity?

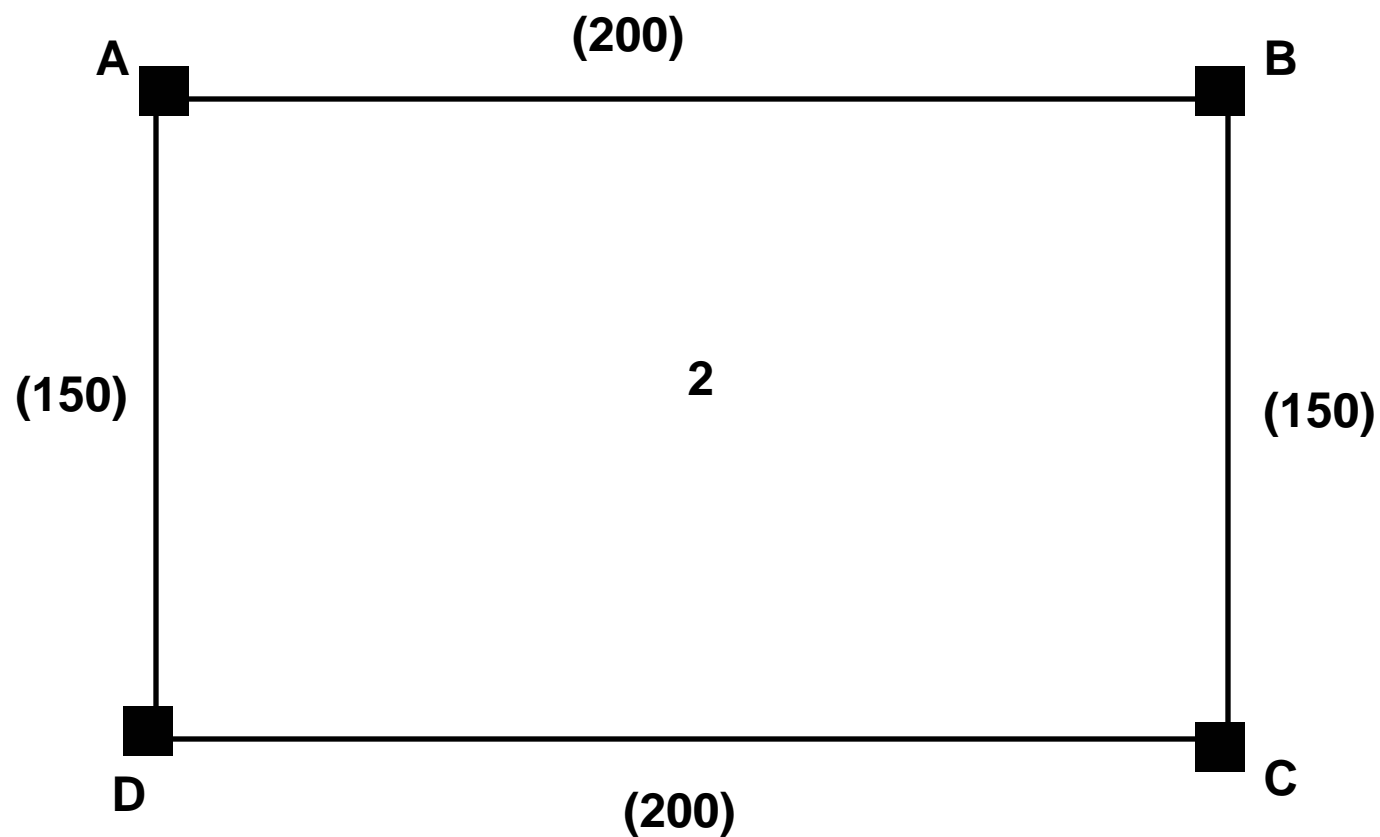


# Cadastral Data as Evidence



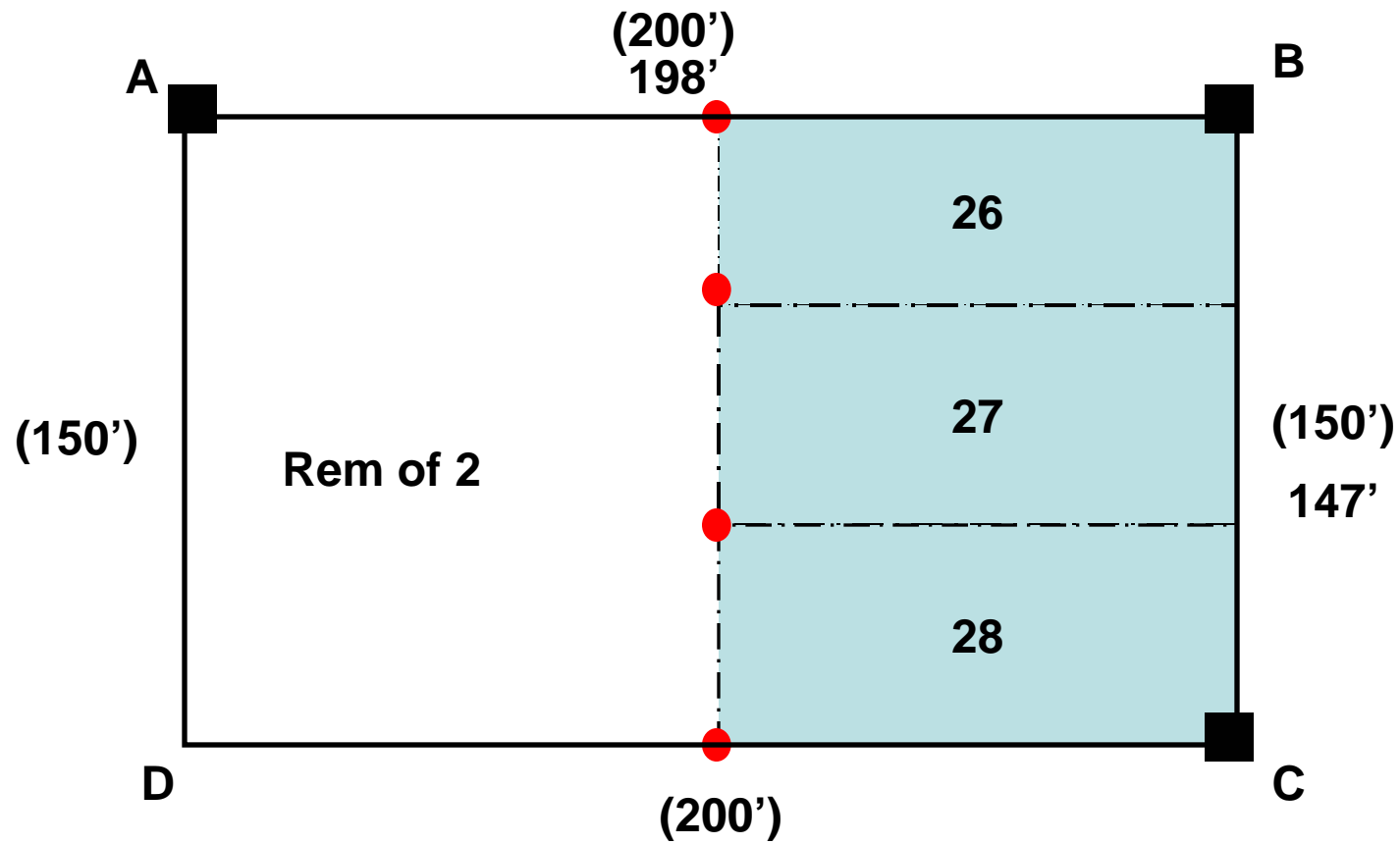
# Hierarchy of Cadastral Evidence



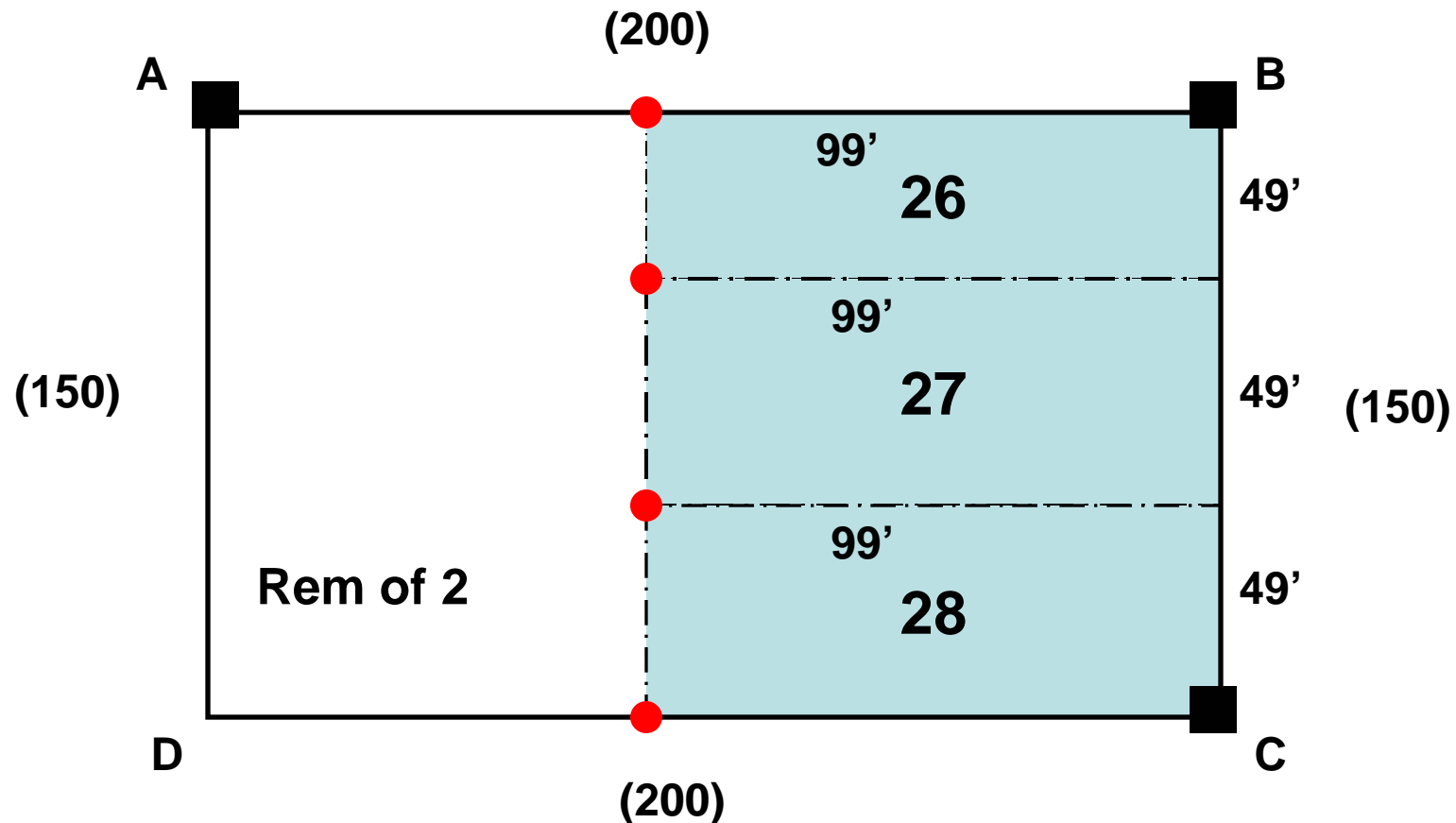


**ORIGINAL (PARENT) PARCEL**

**(Assume that coordinates are fixed in database)**



Owner of 2 requests three 50'x100' parcels be subdivided out of parent parcel



Surveyor finds A, B and C and several other original beacons and proves that these are original, undisturbed and consistent

What happens to the 'fixed' coordinates in the database???

Measurements are never exact – they contain systematic and random errors

# FUNDAMENTAL PRINCIPLES

- Equipment is calibrated prior to first use and periodically after that (e.g. 6 monthly)
- Measurement to property corners are checked with independent measurements
- The original survey provides a definitive description of the parcel boundaries
- Relocation of parcel boundaries is determined by a consideration of various evidence



		Terrain/Access				
		<i>Open</i>		<i>Thick bush</i>		
Cadastral Field Evidence	<i>Good</i>	Least Expensive			<i>Low</i>	
			More expensive		<b>Land Value</b>	
	<i>Poor</i>			Most Expensive		<i>High</i>
		Cadastral Record Evidence				
		<i>Good</i>		<i>Poor</i>		

## Matrix of Rural Survey Cost Components

# Surveying Professional Trends

- Develop 'thin' Survey/Mapping Department that deals primarily with Quality Control and Project Management
- Contract out surveys to private sector
- Government responsible for geodetic infrastructure
- Emergence of surveying profession (private and public)

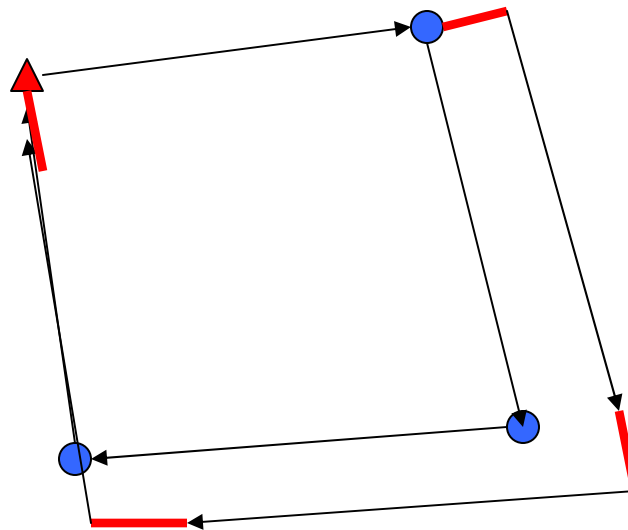
# Cadaastre 2014 – FIG 20 year Vision

- Show the complete legal situation of land, including public rights and restrictions.
- Separation between ‘maps’ and ‘registers’ will be abolished.
- Cadastral mapping will be defunct; it will be replaced by modeling.
- “Paper & pencil cadaastre” will be replaced by modern technology.
- Cadaastre will be highly privatized with public and private sector working closely together.
- Procedures for definition of private and public land objects will be identical.

<http://www.fig.net/cadaastre2014/>

## Reg. 36 (2)(c)

“A surveyor shall not use a loop traverse closing on his starting point if it is practicable to traverse between two previously fixed stations.”



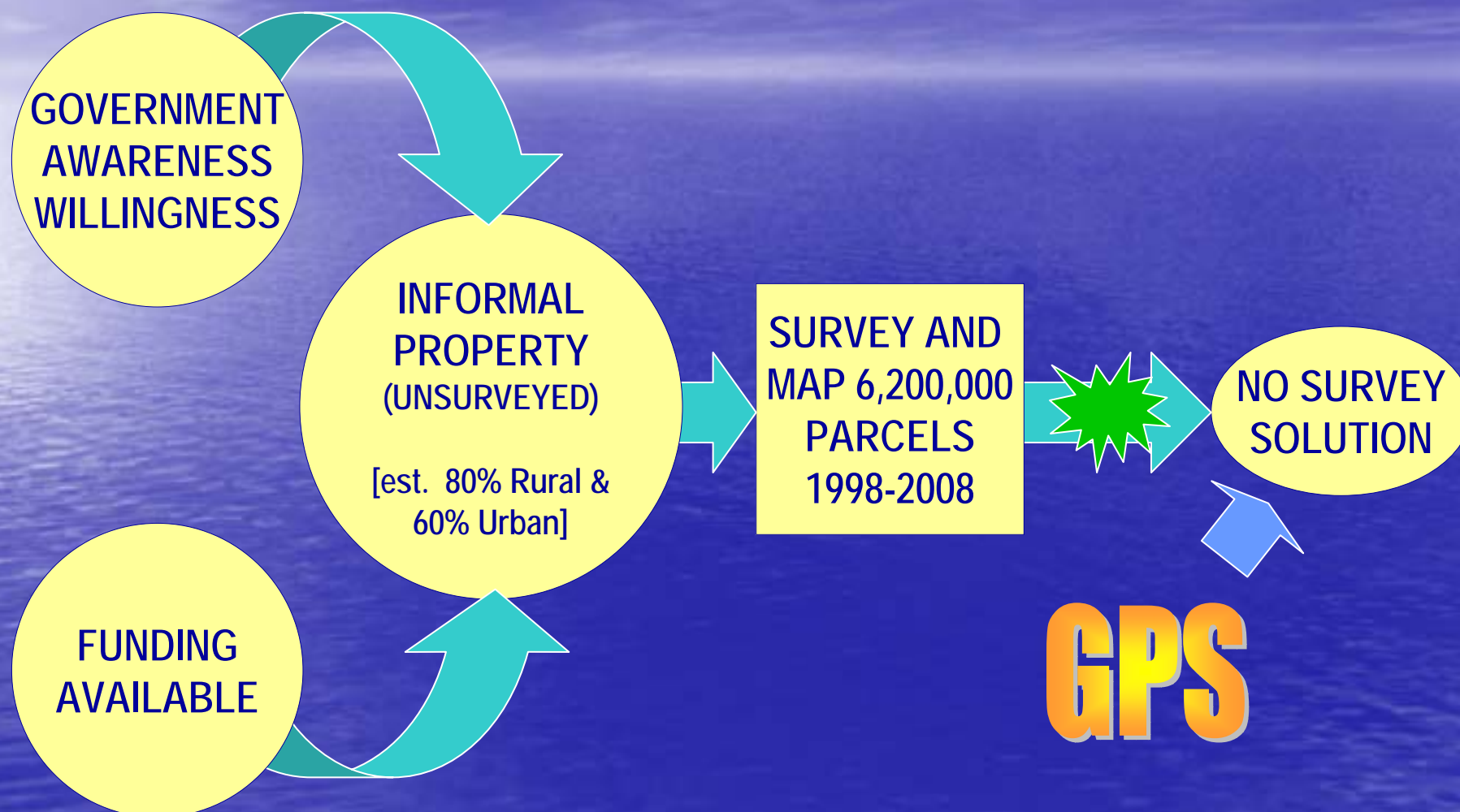
# Effective Tools for Cadastral Surveying in Latin America and the Caribbean

DR. GRENVILLE BARNES

# Outline

- Scope of Land Administration Activities in LAC
- Development of a GPS Methodology for Property Surveying
  - Challenges and Design Criteria
  - Cadastral Context
  - Equipment Acquisition and Transfer
  - Geodetic Infrastructure
  - Office and Field Procedures
- Evolution of Methodology
  - Toolbox Approach
  - IGS Stations as control
  - Real-time corrections
- Maintaining currency of property information

# Problem Statement





# Effective Tools...

- Over the past 10+ years governments in Latin America and the Caribbean have embarked on numerous 'land administration' projects with an estimated total cost of over US\$1billion
- This **funding** has come from the countries themselves, the international banking organizations (World Bank and IDB) and the bi-lateral donors (USAID, MCC, United Kingdom, France, Canada, Japan, Holland etc.)



# Land Administration Projects and Funding Agency

## MEXICO (WB & IDB)

## CENTRAL AMERICA

Belize (IDB)  
Guatemala (WB)  
Honduras (WB, EU, IDB)  
El Salvador (USAID, WB)  
Nicaragua (WB, MCC)  
Costa Rica (IDB)  
Panama (WB, IDB)

## CARIBBEAN

Jamaica (IDB)  
Trinidad & Tobago (IDB)  
Bahamas (IDB)  
Dominican Republic (IDB)  
Antigua & OECS Countries (OAS)  
Turks and Caicos (DFID)

## SOUTH AMERICA

Guyana (IDB, DFID)  
Colombia (IDB)  
Ecuador (IDB, WB)  
Peru (IDB, WB, USAID)  
Brazil (IDB)  
Bolivia (WB, USAID, Neth, Nordic)  
Paraguay (IDB)  
Suriname (Neth. IDB)

[<http://www.property-registration.org/Project-list.html>]

# Cadastral Methodology (challenges and design criteria)

# Major Challenges

- The **cost** of conventional property surveying approaches exceeds the value of the land
- The **time** required to survey large numbers of properties far exceeds the typical length of land administration projects (4 - 5 years)
- LAC countries (circa 1994) do not have the geodetic **infrastructure** to support the use of GPS



# Fundamental Principles of Cadastral Surveying

- ❑ Performed by **Qualified Professionals** (education/experience)
- ❑ **Minimum requirements** dictated by law
- ❑ **Calibrated Equipment**
- ❑ Measurements checked **Independently**
- ❑ Surveys **Georeferenced** to national coordinate system



# Design Criteria for GPS Methodology

- ❑ Efficient (short occupations)
- ❑ Long Base Lines (minimize control)
- ❑ Less Costly (than Conventional Methods)
- ❑ Realistic level of accuracy
- ❑ Realistic level of Technology
- ❑ Flexible
- ❑ Incorporate quality control mechanisms

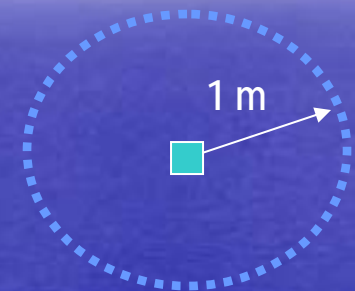


**The methodology must be needs driven**



# Realistic Accuracy

- ❑ Accuracy = f (land value, land use, parcel size, culture,.....)
- ❑ Cadastral Function of Coordinates:
  - relocation of property corners
  - re-monumentation
  - abstract representation

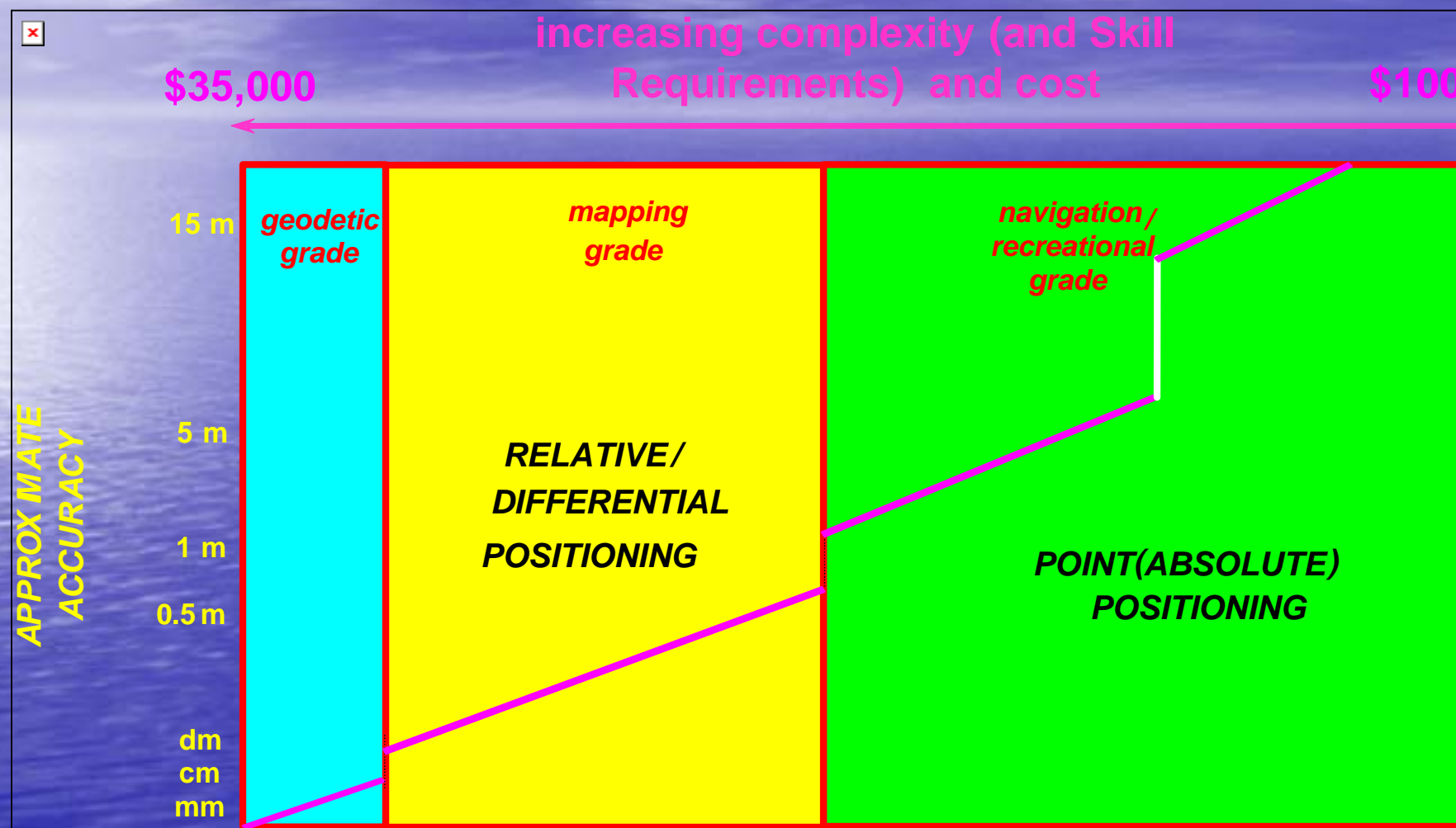


*In rural areas where property values are relatively low, sub-meter accuracy is adequate for fulfilling the three functions*



# Cadastral Methodology (equipment acquisition)

# Classes of GPS Positioning



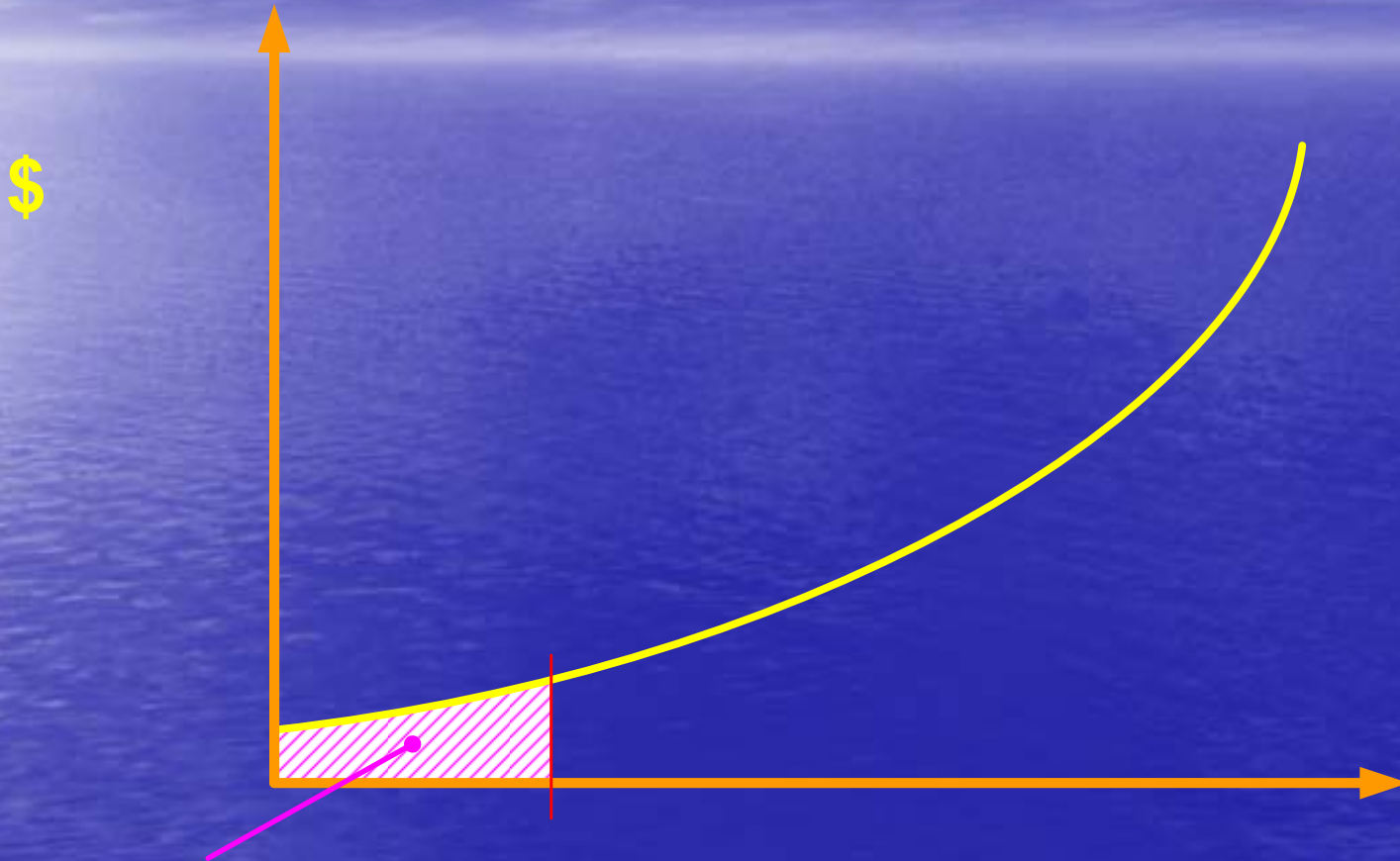


# Cadastral Methodology (geodetic infrastructure)

# Motivation for a New Geodetic Infrastructure

- Inadequacy of Local Datums
  - Incompatible with GPS Methods
    - Peru
      - Large regional distortions (e.g., The Coast vs. the Andes Valleys)
    - The Bahamas
      - Different NAD27 Realizations on Most Islands
- Crumbling Infrastructure:
  - Attrition of Physical Marks
  - Loss of Records

# Motivation for Not Delaying in Adopting ITRF





# Geodetic Infrastructure

- ☐ Reference points with coordinates referenced to WGS84/ITRF
- ☐ In-country base stations
- ☐ Calibration Site (10-20 Points)
- ☐ local reference points
- ☐ transformation parameters to convert local datum to/from WGS84

# GPS METHODOLOGY (field and office procedures)

# GPS Methodology

## CALIBRATION OF EQUIPMENT

before first use

changes in receiver, software, antenna, firmware, data collector  
create data dictionary

## OFFICE PREPARATION

recharge batteries

verify available memory

## FIELD WORK

occupy reference points  
program receiver

enter attribute data

reconnaissance of parcels  
notify base station

reoccupy corners

## POST-PROCESSING

- draw provisional field sketch
- transfer data to office computer
- obtain data from 2 base stations
- occupy parcel corners
- differentially correct GPS observation
- export coordinates to spreadsheet
- collect satellite data

draw final field sketch

transfer data to laptop

## VERIFICATION

- compare corrected coordinates:
  - base stations 1 and 2
  - 1<sup>st</sup> and 2<sup>nd</sup> occupations
- calculate means (if acceptable)
- export coordinates to mapping software

## DRAW CADASTRAL PLAN

- draw cadastral plan
- submit documents to Cadastre Office



# Initial Tests (UF + Albania)

- Occupation times ( 0.5 - 5 min.)
  - Variable base lines (2 km - 200 km)
  - Different types of GPS receivers
  - Two base stations
- ## Results
- Obtained submeter accuracy with:
    - Occupations of 1 min.
    - Base lines up to 200 km
    - Using Trimble Pro XL
    - Verified with dual base stations and double occupation

# Field Testing GPS Methodology

NICARAGUA



ALBANIA



BELIZE



# Field Testing GPS Methodology

TRINIDAD



ECUADOR



PERU



# Quality Control Issues

## Blunder Trapping:

- ☐ multipathing
- ☐ no of satellites and geometry
- ☐ "trailing" off point
- ☐ wrong base station coordinates
- ☐ change in receiver configuration (e.g. datum)

## Accuracy Check:

- ☐ Receiver meets sub-meter accuracy
- ☐ occupation times sufficient



# Quality Control Mechanisms

## Calibration:

- ☐ checks receiver meets sub-meter accuracy
- ☐ checks occupation times sufficient

## Local Reference Points:

- ☐ checks wrong base station coordinates entered
- ☐ checks change in receiver configuration

## Dual Occupation:

- ☐ checks for multipathing
- ☐ checks for trailing

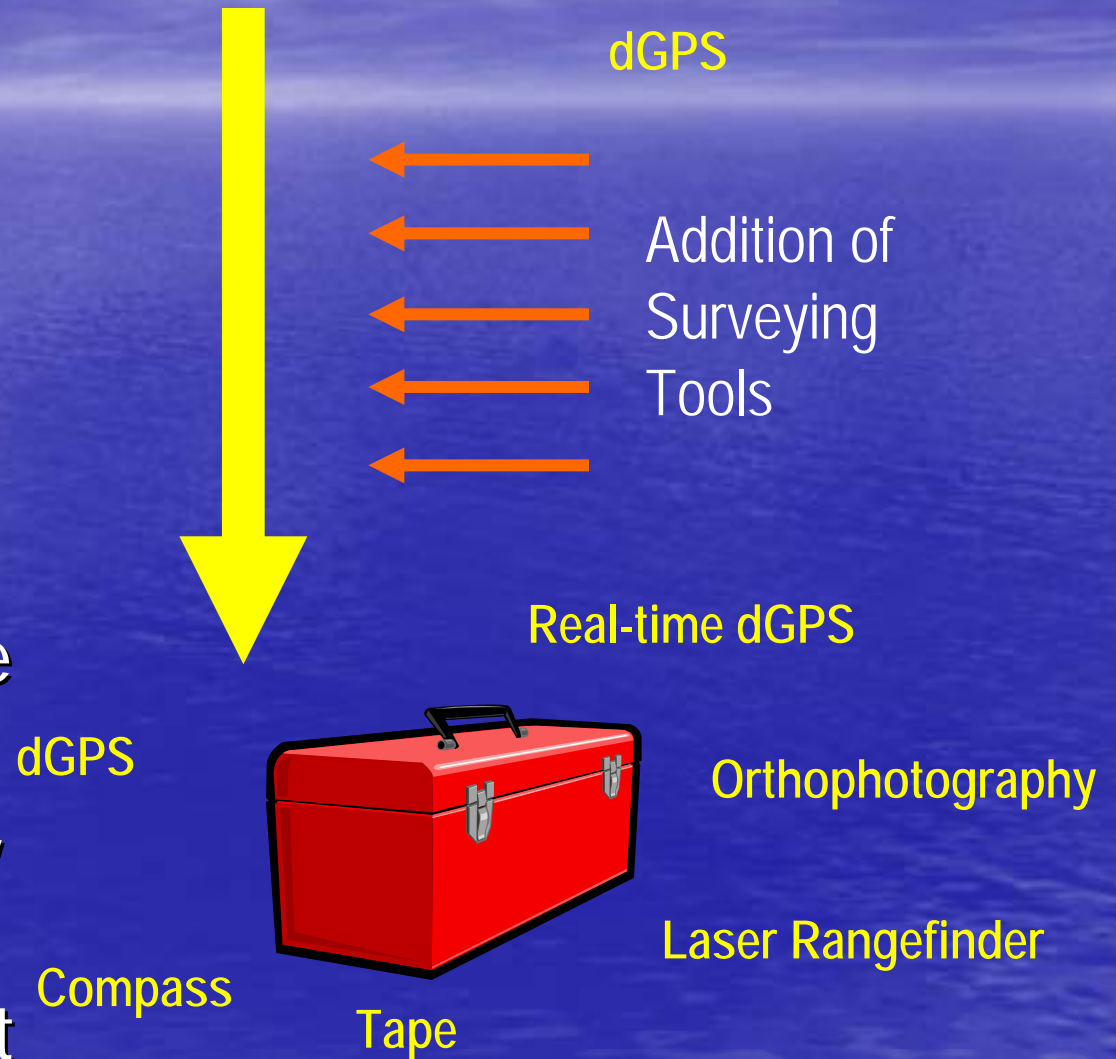
## Double Base Station:

- ☐ checks wrong base station coordinates
- ☐ second BS acts as back-up

# EVOLUTION OF GPS METHODOLOGY

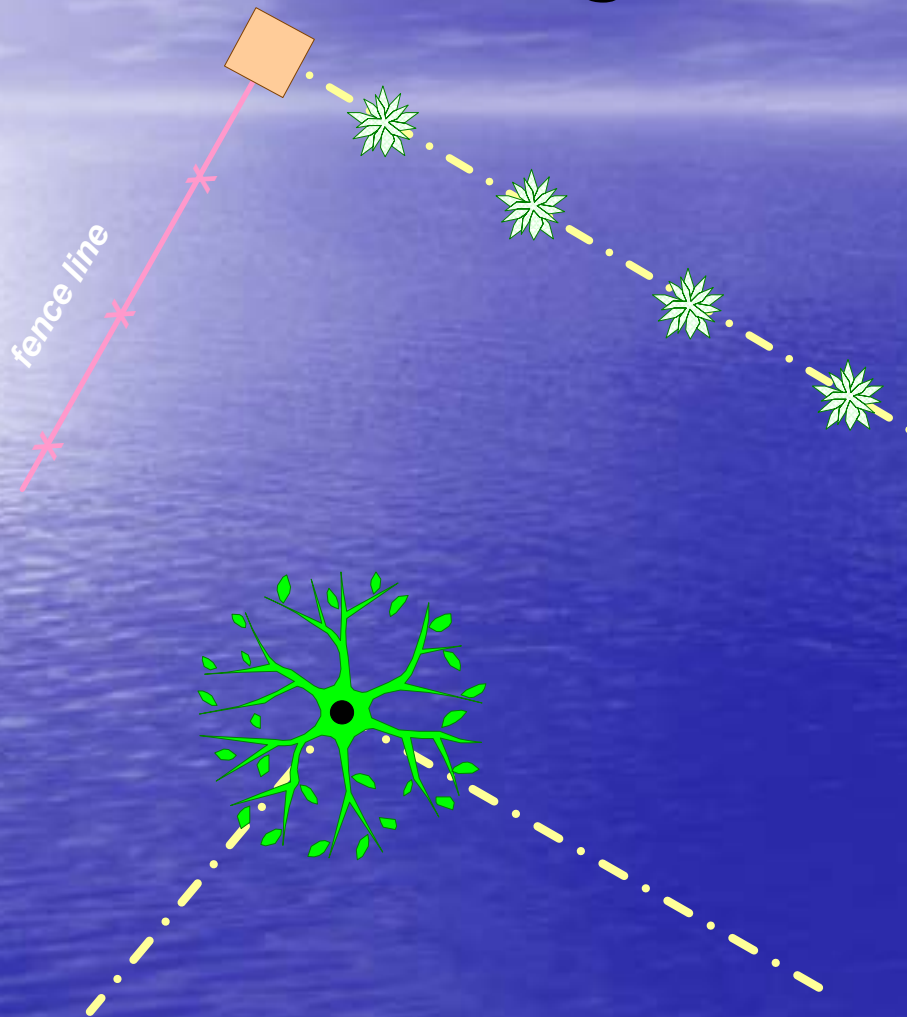
# Evolution of the Cadastral Surveying Methodology

- Initial Concept – dGPS
- Field Experience (Belize, Peru, Albania, etc.) Reveals Complexity of the Problem
- The Methodology Evolves to the 'Toolbox' Concept





# Boundary Types & Surveying Methodologies



**Type (i):** Surveyed directly using GPS - Post, fence and bushes not visible in aerial photography.

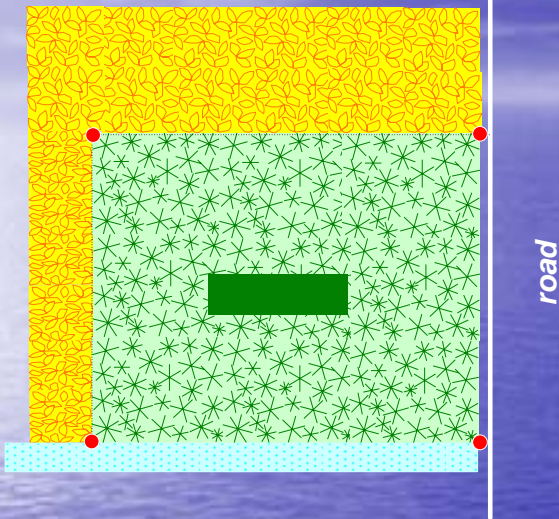
**Type (ii):** Surveyed by offsets using GPS, or by photo-identification, if clearly visible in photography. Could also serve as supplementary ground control.

# Eccentric Observations





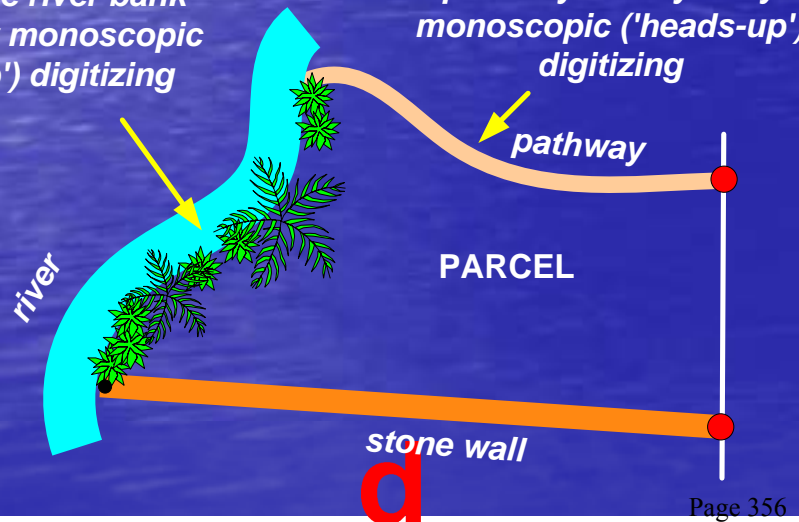
# Boundary Types & Surveying Methodologies



**Type (iii):** Surveyed by GPS and/or by photo-identification, if clearly visible in photography. Could also serve as supplementary ground control if clearly photo-identifiable.

*inaccessible river bank surveyed by monoscopic ('heads-up') digitizing*

*pathway surveyed by monoscopic ('heads-up') digitizing*

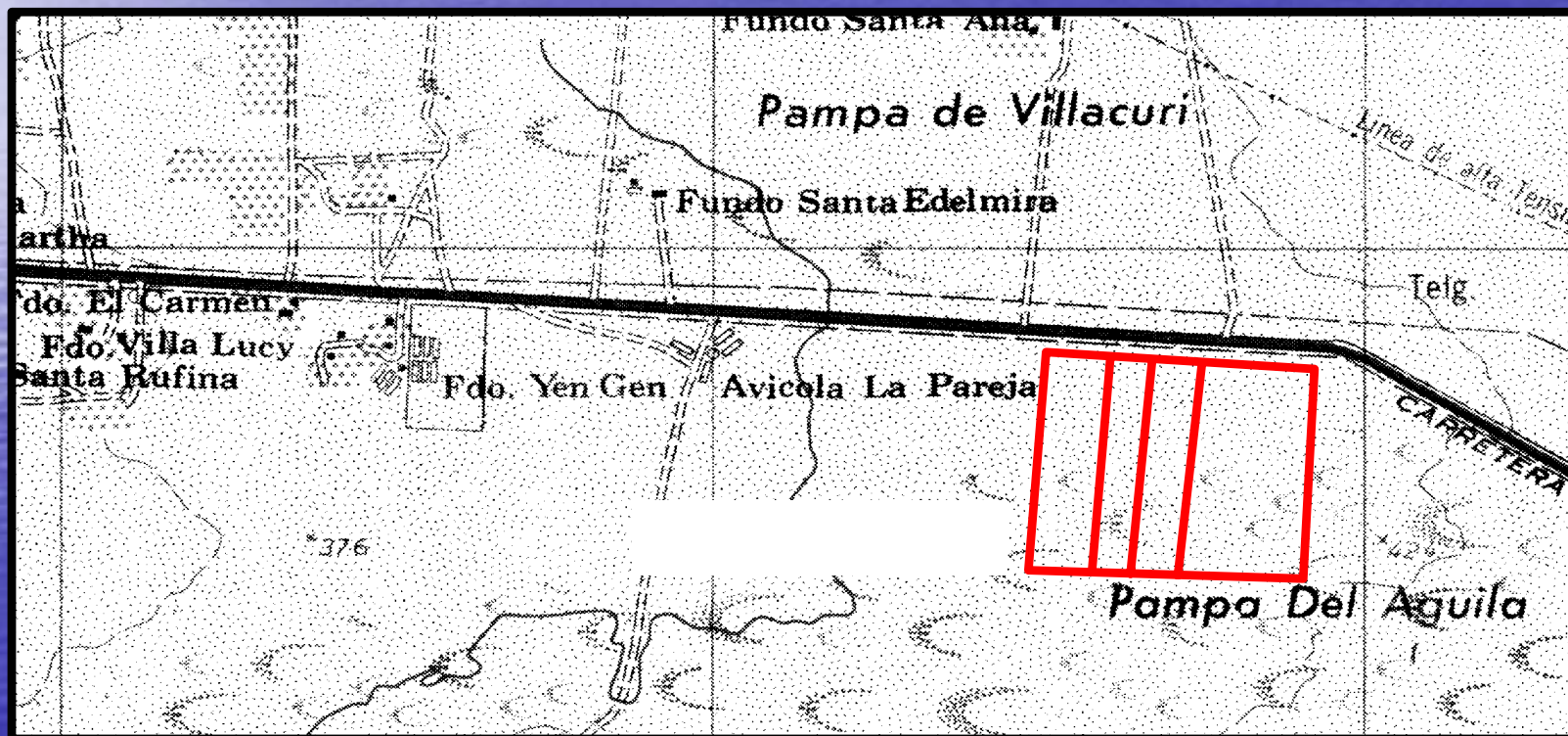


**Types (iv and v):** Surveyed by GPS if accessible and/or by photo-identification, if not accessible and clearly visible in photography.



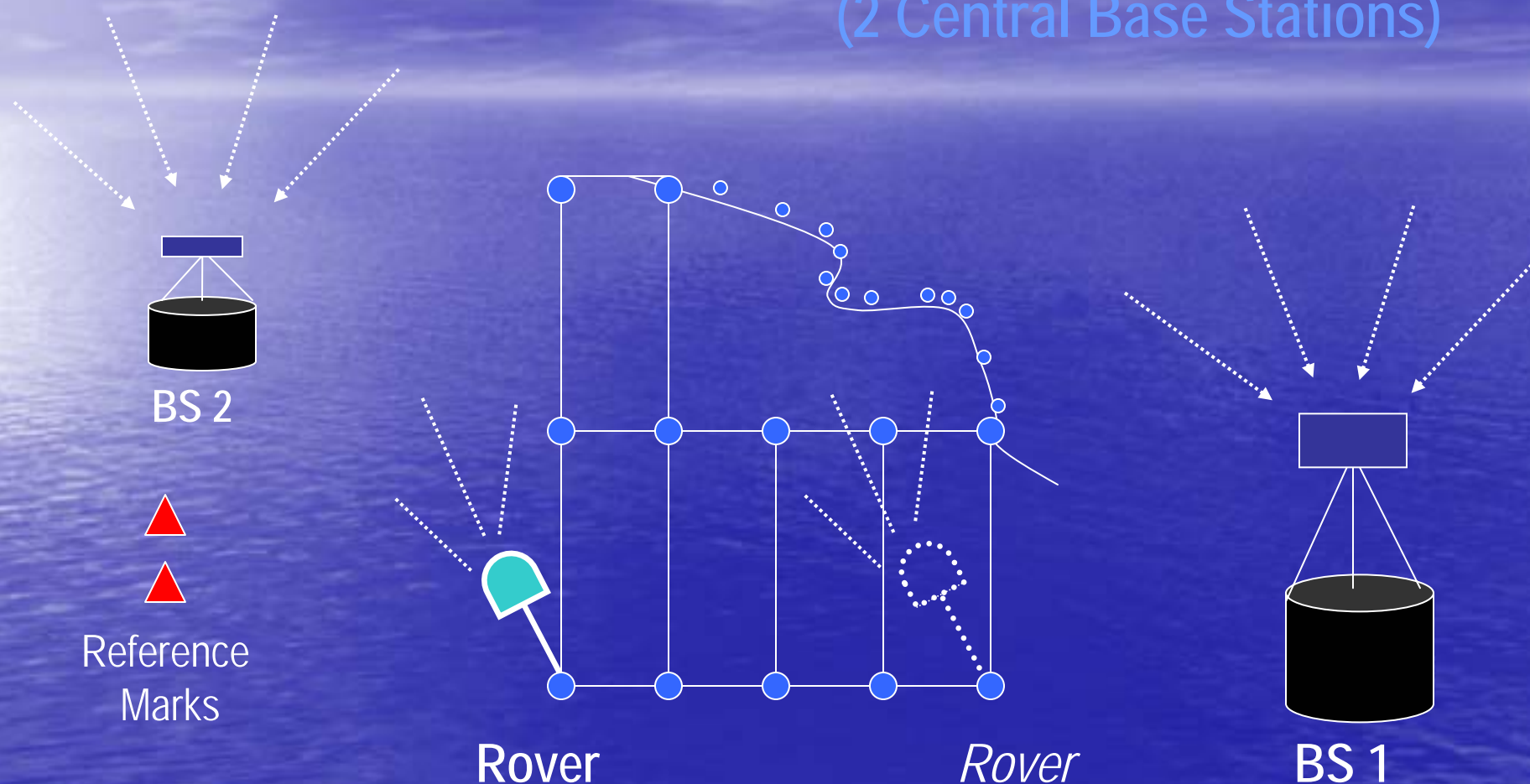
# Boundary Types & Surveying Methodologies

Type (vi) Delineated theoretically, can be set out using real-time dGPS.



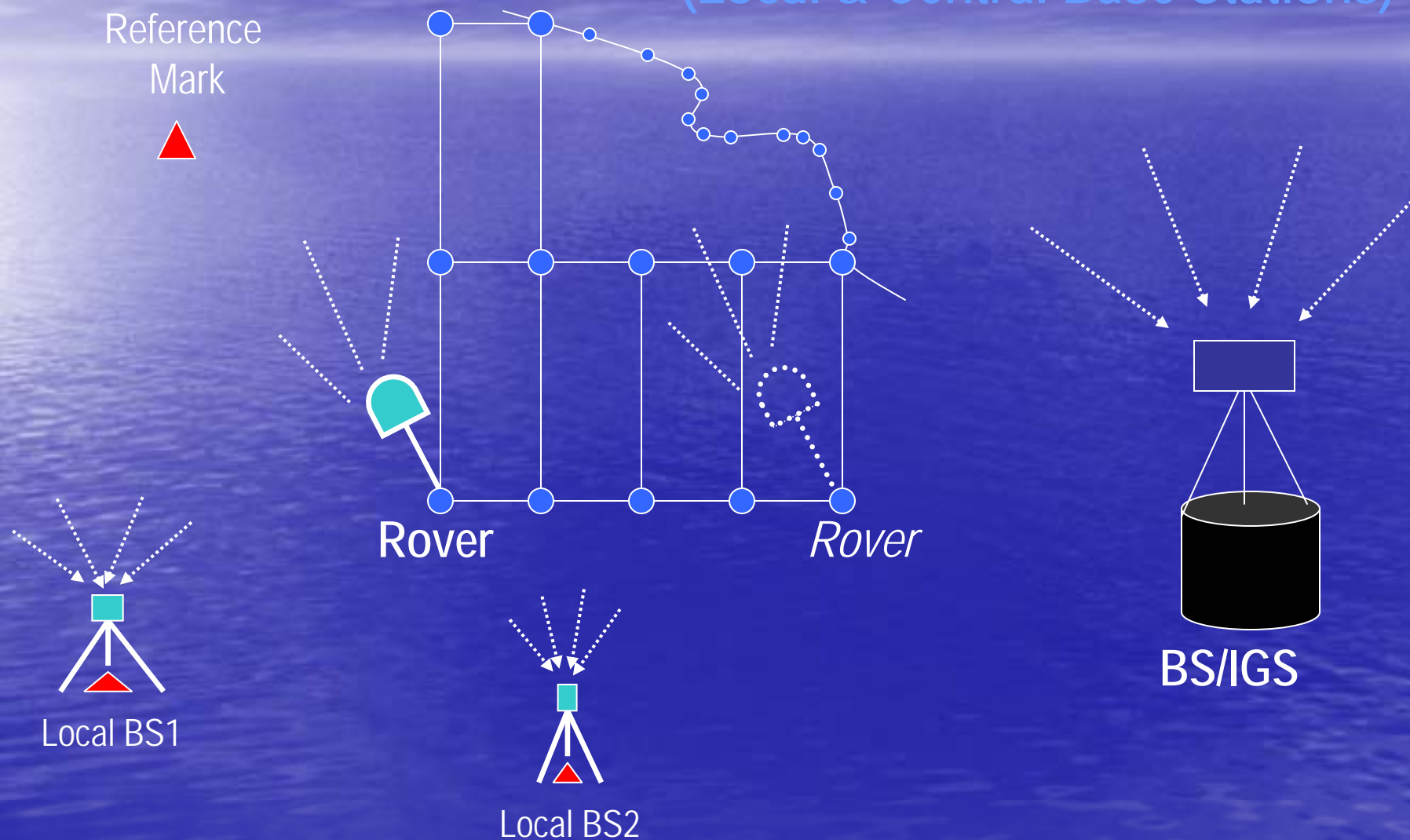
# Cadastral Survey Methodology

(2 Central Base Stations)



# Cadastral Survey Methodology

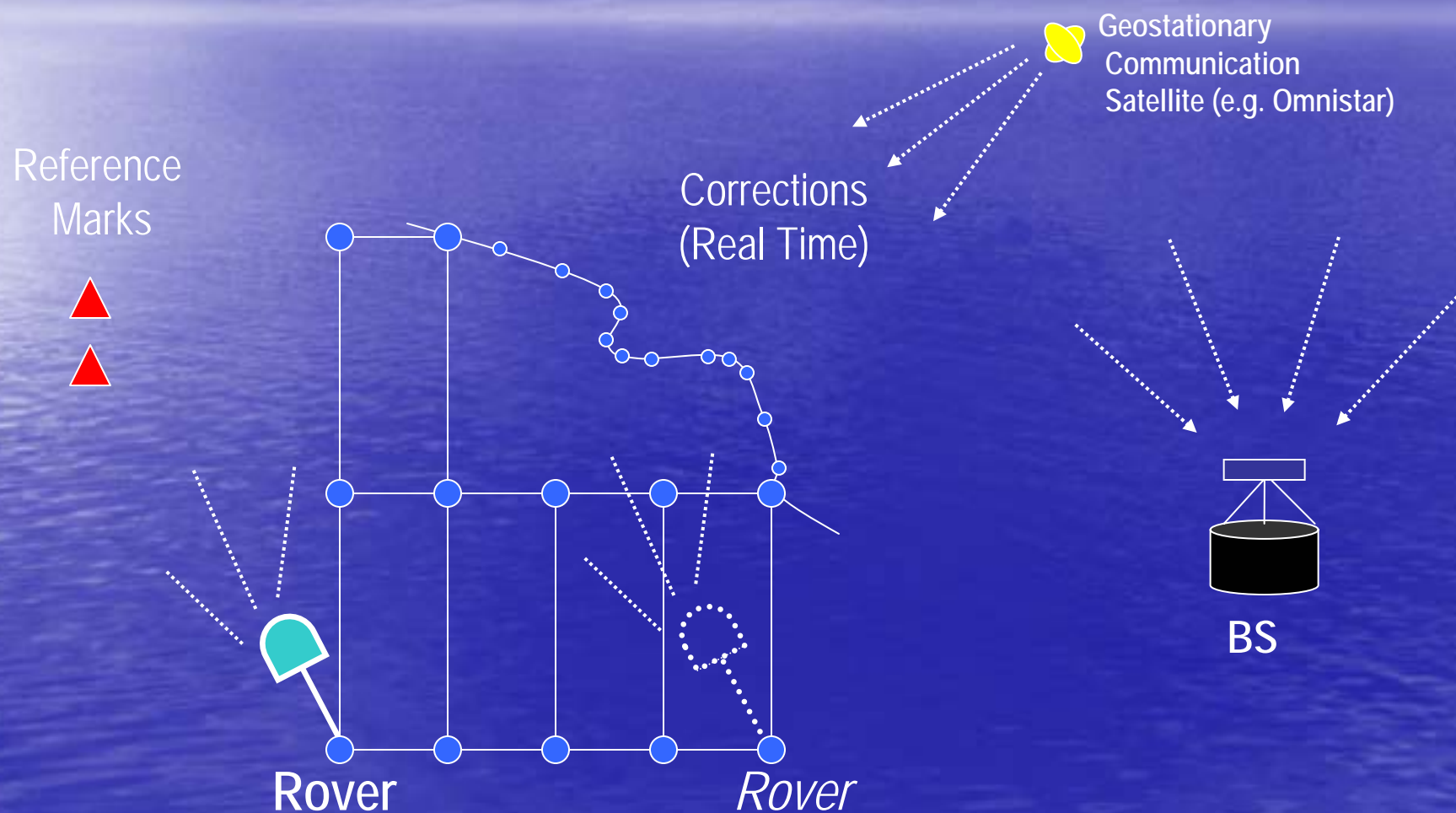
(Local & Central Base Stations)





# Cadastral Survey Methodology

(Real-Time Corrections via Satellite)



# Maintenance Issues

# Process & Constraints to Cadastral Data Maintenance





# Conclusion

- Sub-meter GPS is now being used widely in several land administration projects
- It offers a more efficient, less costly solution in certain circumstances, but not the total solution
- Even though benefits are proven, GPS technology transfer is still an obstacle
- GPS procedures need to be integrated into a complete business process (office to field to office)
- Need for technology extension agents

# GEODETTIC INFRASTRUCTURE

Walter Volkmann  
Manager of Technical Operations  
L. D. Bradley Land Surveyors  
Gainesville, Florida



# GEODETTIC INFRASTRUCTURE

## Brief History

### Pre-Satellite Epoch

1. Astronomical Observations (Laplace Fixes) & Base Line Extensions with Classical Triangulation (10ppm)
2. Spirit Levelling
3. Introduction of EDM - control of scale in triangulation networks, geodetic traversing with astro. Obs. to control orientation

Cumbersome and slow

Ad Hoc extensions of network, often disconnected

Difficult to maintain homogeneity across country

Horizontal separate from vertical

# GEODETIC INFRASTRUCTURE

## Satellite Epoch

1. Doppler Surveys - World wide coverage, absolute positioning accurate to 1m. Highly specialized application.
2. GPS - Global, diverse applications with accuracies from 30m to mm (1ppm)
3. GNSS – GPS, Glonass, Galileo?

# GEODETTIC INFRASTRUCTURE

## Components

1. Physical Monumentation

2. Abstract Parts

3. Enhancing Facilities



# GEODETTIC INFRASTRUCTURE

## PHYSICAL MONUMENTATION

Stable and Permanent

Protected by Law (Public Property)

Accessible

Appropriate density

Visibility conditions

# GEODETIC INFRASTRUCTURE

## NUMERICAL AND VERBAL ATTRIBUTES

3D Position, XYZ &  $\phi\lambda h_e$  on specified datum and ref ellipsoid

Accuracy Statement

Description (digital photo)

Visibility conditions

Recovery notes

Ideally this info should be maintained in an internet accessible database which allows users to contribute to the recovery history

# GEODETTIC INFRASTRUCTURE

AQ2646                      \*CURRENT SURVEY CONTROL

AQ2646

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AQ2646\* NAD 83(2007)- 29 58 59.99370(N) 081 45 05.91906(W) ADJUSTED

AQ2646\* NAVD 88 - 20.74 (meters) 68.0 (feet) GPS OBS

---

AQ2646

AQ2646 X - 793,238.641 (meters) COMP

AQ2646 Y - -5,471,977.426 (meters) COMP

AQ2646 Z - 3,168,769.766 (meters) COMP

AQ2646 LAPLACE CORR- -0.88 (seconds) DEFLEC99

AQ2646 ELLIP HEIGHT- -7.308 (meters) (02/10/07) ADJUSTED

AQ2646 GEOID HEIGHT- -28.05 (meters) GEOID03

AQ2646

AQ2646 ----- Accuracy Estimates (at 95% Confidence Level in cm) -----

AQ2646 Type PID Designation North East Ellip

~~AQ2646~~ -----

~~AQ2646 NETWORK AQ2646 FLGPS 31 1.12 0.96 2.25~~

AQ2646 -----

AQ2646

AQ2646.The horizontal coordinates were established by GPS observations

AQ2646.and adjusted by the National Geodetic Survey in February 2007.

AQ2646.The orthometric height was determined by GPS observations and a

AQ2646.high-resolution geoid model using precise GPS observation and

AQ2646.processing techniques. It supersedes the leveled height previously

AQ2646.determined for this station.

AQ2646.The ellipsoidal height was determined by GPS observations

AQ2646.and is referenced to NAD 83.

AQ2646

AQ2646.The geoid height was determined by GEOID03.



# GEODETTIC INFRASTRUCTURE

AQ2646\_U.S. NATIONAL GRID SPATIAL ADDRESS: 17RMP2749217176(NAD 83)

AQ2646\_MARKER: F = FLANGE-ENCASED ROD

AQ2646\_SETTING: 59 = STAINLESS STEEL ROD IN SLEEVE (10 FT.+)

AQ2646\_SP\_SET: STAINLESS STEEL ROD IN SLEEVE

AQ2646\_STAMPING: FLGPS 31 1988

AQ2646\_MARK LOGO: NGS

AQ2646\_PROJECTION: FLUSH

AQ2646\_MAGNETIC: N = NO MAGNETIC MATERIAL

AQ2646\_STABILITY: B = PROBABLY HOLD POSITION/ELEVATION WELL

AQ2646\_SATELLITE: THE SITE LOCATION WAS REPORTED AS SUITABLE FOR

AQ2646+SATELLITE: SATELLITE OBSERVATIONS - November 10, 2006

AQ2646\_ROD/PIPE-DEPTH: 24.4 meters

AQ2646\_SLEEVE-DEPTH : 0.9 meters

AQ2646 HISTORY	- Date	Condition	Report By
AQ2646 HISTORY	- 1988	MONUMENTED	NGS
AQ2646 HISTORY	- 19890424	GOOD	
AQ2646 HISTORY	- 19890530	GOOD	
AQ2646 HISTORY	- 19931014	GOOD	NGS
AQ2646 HISTORY	- 19950110	GOOD	KEISCH
AQ2646 HISTORY	- 19960218	GOOD	FLDEP
AQ2646 HISTORY	- 20030820	GOOD	FLDEP
AQ2646 HISTORY	- 20050109	GOOD	FLDEP
AQ2646 HISTORY	- 2006	GOOD	FLDEP
AQ2646 HISTORY	- 20061110	GOOD	BAKER

# GEODETTIC INFRASTRUCTURE

## MODERN FEATURES

Continuously Operating Reference Stations (CORS)

Raw observations archived and streamed to internet

Connection to internet via land lines or cell phone

Users can retrieve archived obs for in house post processing

Users can submit (on Line) own obs to processing center for post processing of base lines (OPUS)



# GEODETIC INFRASTRUCTURE

## MODERN FEATURES

Real Time Applications

Single Base Line real time solutions – range limits because of ionospheric effects

Virtual Reference Station Technology – eliminates ionospheric effects and serves differential corrections over wide areas

Significant improvements in efficiency

Automated control over datum usage

Powerful tool to migrate spatial data from superseded to current datum

Opportunities for online collaboration – Public/Private – Field/Office

Autonomous field operations

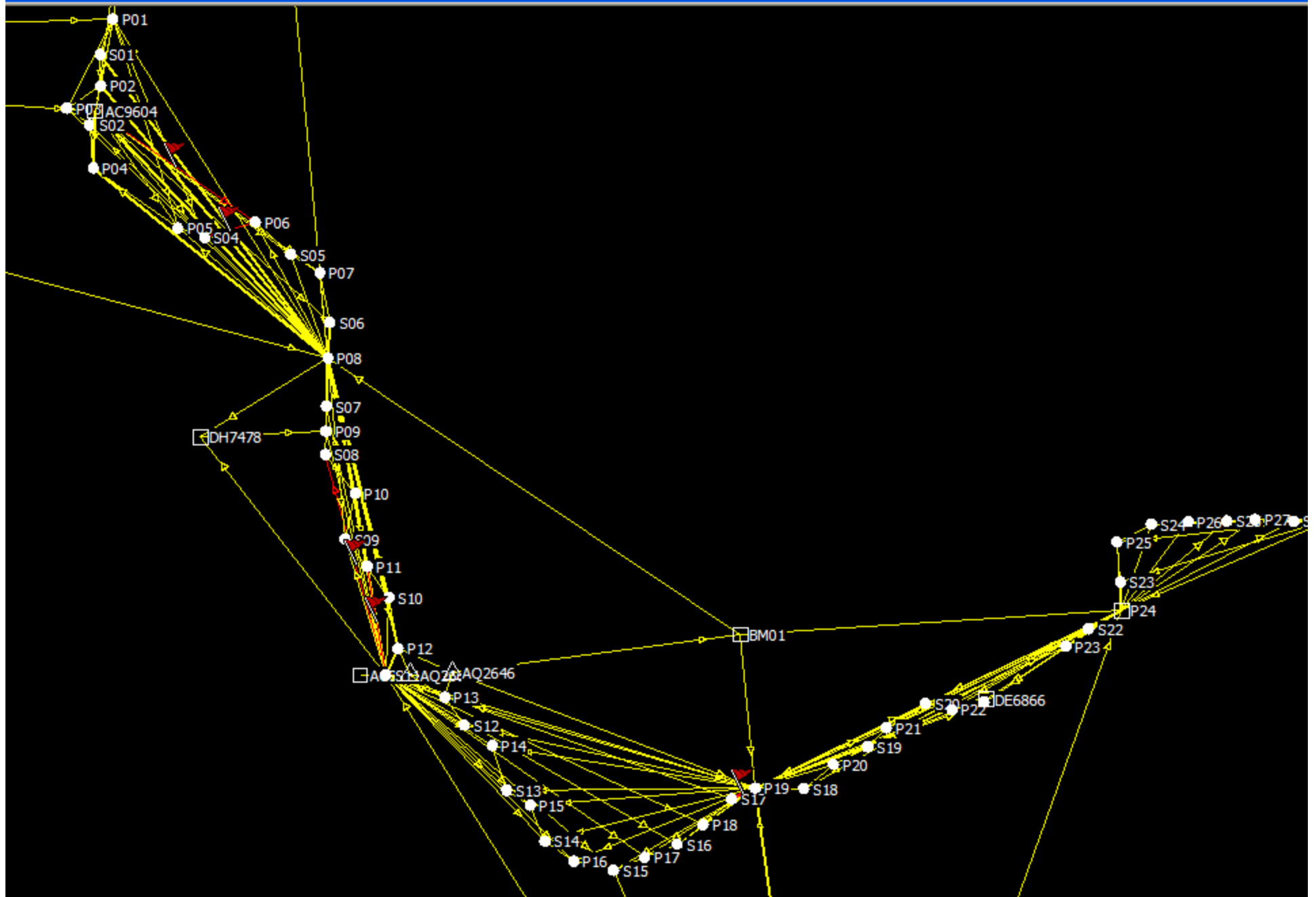
# GEODETTIC INFRASTRUCTURE

## MODERN FEATURES

**SERVICE CERTIFICATION**

**TELEMETRY STANDARDS**

**MOORE'S LAW!!!!!!!!!!!!!!!!!!!!!!!!!!!!**



# GEODETIC INFRASTRUCTURE

## OPERATING EXAMPLE

