



Land Tenure Center

COUNTRY EXPERIENCE IN LAND ISSUES

MONTSERRAT

by

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1. INTRODUCTION

Over the years various land management measures have been instituted in Montserrat, in response to particular development issues (e.g the alien landholding license), and to meet certain social and economic objectives, such as the stimulation of construction activity etc. However, such measures did not benefit from an overall integrated and co-ordinated approach to land policy formulation.

With the onset of the volcanic crisis in 1995, more recently emerging land related issues require clear policy guidelines for their resolution and control. The finite nature of the land resources on Montserrat warrants proper management for this to be achieved, and to maintain a sustainable pattern of growth and development. From a policy perspective, there is a need to develop processes to:

- review and update existing policies in keeping with the changing circumstances;
- formulate policy for evolving issue areas;
- eliminate conflicts and secure consistency in the administration of land related matters.

As far back as 1992, the Ministry of Agriculture, took the initiative with respect to the formulation of the policy for the sale of Government lands for housing. This initiative was supported, and a draft policy statement on the subject was developed. Subsequently, the Ministry was of the view that the approach should be broadened to involve the establishment of a comprehensive and coherent set of policy measures for the use, development, conservation and management of the country's land resource. This expanded approach saw the establishment of a Land Policy Committee to undertake the exercise.

This paper will look at the current situation in Montserrat, and the related implications for Land Policy, Administration and Management for the country

2. LAND TENURE

2.1. Unclaimed Lands

It was noted that one of the main objectives of the Cadastral Survey was to have all parcels of land properly registered. However, several parcels have remained unclaimed under the new registrations system (Registered Land Ordinance, No. 4 of 1978). In some cases, unclaimed lands are in fact occupied by bona fide owners who cannot meet the cost of formal surveys required for registration. Additionally the problem of unclaimed lands is affecting government revenue from land taxation since unclaimed properties are not assessed for tax purposes.

With assistance from the University of the West Indies, a number of parcels were surveyed in 1997. Additionally, the Government of Montserrat has enacted the Crown Title Act No. 4 of 1998, and its subsequent amendment, No. 1 of 2000. This Act sets out the procedures for registering titles, and establishes the time frame within which this should be done.

2.2. Squatting:

Squatting on Government-owned lands is not considered a significant problem in Montserrat at this time. The problem is however, existent on private lands, and the key issue appears to lie in the relatively short period of time in which a squatter has to be in possession of land before he can make a claim for such land.

The Registered Land Ordinance as amended by the Registered Land (Amendment) Ordinance allows a squatter to acquire ownership of land on proof that he has enjoyed the property without interference from anyone claiming. The Limitation Ordinance stipulates that in the case of private land, the squatter must have been in possession thereof for at least twelve (12) years, whereas in the case of Crown Land, the period stipulated is thirty (30) years.

In view of the changing circumstances in Montserrat, particularly in relation to increase levels of travel and emigration, the twelve (12) year limitation for private lands appears too short, and needs to be increased to give extended protection, particularly to landowners who reside abroad.

An investigation into the background and justification for the existing periods of limitation will need to be undertaken, and recommendations for amendments in keeping with current circumstances. A recommendation of an extension to twenty years for private lands is under consideration.

3. LAND REGISTRATION

The existing system of Land Registration uses as its base the network of land parcels weaved together by the Demarcation and Adjudication process of 1978 – 1980, commonly referred to as the Cadastral Survey. Within this network, all land parcels are given a unique identifier and plotted on the Cadastral Index Map. Within the Land Registry, all interests in land are registered in the Property Register as to the parcels to which they relate.

The main problems associated with the existing system are:

- There are still many parcels without formal surveys;
- The larger holdings are demarcated only by their natural boundaries and their areas have not been determined;

- Parcels for which there were no owners or claimants at the time of the Cadastral Survey are registered as unclaimed;
- There is a need to increase the security of the records (maps, registers etc) from fire, natural disasters etc.

Within recent years, Government of Montserrat has taken measures to improve the land registration system to achieve security of title for all landowners. This will facilitate expeditious land transactions and the flow of sufficient supply of land to meet development needs.

As part of the process, Government of Montserrat has started the development of a Geographical Information System (GIS). With funding from DFID, work is ongoing in the following areas:

- Quality verification and updating of already developed spatial databases;
- Development of new GIS layers for a sustainable Land Information System;
- Computerization and integration of the Montserrat Cadastre and Land Registry systems with the LIS;
- Development of other GIS related sources/facilities including GPS assisted land surveys and computerization of aerial photography.

4. LAND VALUATION AND TAXATION

Prior to 1988 the system of property appraisal for taxation purposes was based on the Annual Rental Value method. This involved the computation of taxable value on the basis of a determination as to how much a property would rent per annum. The system was reviewed in 1983 and found to be crude and grossly inefficient.

Between 1984 and 1986, a complete valuation survey was undertaken for the island. On that basis, the decision was made to change the computation from Rental Value to Market Value for the computation of property taxes. Legislation governing the new system is the Property Tax Ordinance, No. 3 of 1988.

The Ordinance contains provisions to discourage speculation, and to encourage agricultural development. However, the effectiveness of these provisions are limited by delays in applying penalties and by the general lack of public awareness of the tax benefits which could be derived from certain development activities.

There is a need to review the application of fiscal incentives and penalties to discourage land speculation and to encourage agriculture and other forms of appropriate development of idle lands. A land revaluation programme is currently being undertaken by the Government of Montserrat. The objective of this exercise is to improve and update the island's Property Tax System and to create a

fairer and more equitable tax system. This data will provide valuable information for decision making and also lead to increased revenue generation.

5. LAND USE

5.1. Land Use constraints:

Land in terms of soil and slope conditions have resulted in farmers utilizing unsuitable land for cultivation and grazing. This problem has been exacerbated as a result of the volcanic crisis, where almost two-thirds of the island has been made inaccessible. Associated with such land use practices, however, are problems of soil erosion, landslides, reduction of the quality and quantity of the ground water resources, and a decline in landscape amenity value.

On the other hand, there are also cases of inappropriate and inefficient use of good agricultural lands. Prior to the volcanic crisis (1995), approximately 25% of the land found to be suitable for agricultural purposes was already lost to built development. This represented a loss of a prime resource and resultant decline in the agricultural development potential of the country.

Because of the crisis as well, the problems of inefficient use or non-use of land also exist in the urban context, and affect the timely supply and development of prime land for housing, industry, and community facilities. These problems are associated with such development constraints such as the holding of land for speculative purposes, the high cost of land, scarcity of development finance, and the absence of clear land use policies to provide the level of certainty and confidence needed by developers to make investment decisions.

The Government of Montserrat has sought to promote efficient utilization of the remaining land resource of the country through the formulation and implementation of appropriate land use policies to guide the development process. To this end, the Physical Planning Unit (PPU) was established as separate department within the Ministry of Agriculture, Land Housing and the Environment.

Additionally, in 1996, the Town and Country Planning Ordinance 1975, was repealed and replaced with the Physical Planning Act, No. 4 of 1996. This new Act incorporates the need for Environmental Impact Assessments (EIAs), for specified developments. Further, the Development Control Authority (DCA) was replaced with the Planning and Development Authority (PDA), with a broader based membership incorporating major stakeholders in the development process. The emphasis and focus has also changed from strictly development control to the Authority playing a more proactive role in the development process, through a structured development promotion

programme. On behalf of the PDA, the Physical Planning Unit promotes the adopted land use policies and key development projects amongst major landowners, developers, public sector agencies, financial institutions and the general public. The Unit also assists the various participants in the development process in the conceptualization of projects.

The Unit also carries out an ongoing review of the development control process (regulations, policies, standards, application procedures, etc.) with a view to streamlining the process in keeping with current circumstances, and in order to reduce delays and costs in the process of land development.

Government of Montserrat now has an Approved Physical Development Plan for North Montserrat 2000-2009. The plan has been prepared to facilitate planning on a pro-active basis, and to guide and direct from a physical planning perspective, the development and re-building of Montserrat in the north part of the island. The purpose of the plan is to provide a framework for land use and development in the longer term, to provide a basis for the co-ordination of development by government, the private sector and the community and to help instill confidence in the future of the island.

5.2. Land Subdivision:

The segregation, division or subdivision of any building or land for any use, whether achieved by sale, transfer, lease, letting, use, trust, or for any other transaction constitutes development by virtue of the definition contained within the Physical Planning Act. As such the process of subdivision a lot or parcel of land into two or more parts requires planning permission.

The principal issues associated with land subdivision are as follows:

- Prior to the enactment of the Physical Planning Act 1996, there was legal uncertainty as to whether agricultural subdivisions require planning permission. This uncertainty has led to challenges, which have been corrected with the enactment of the Physical Planning Act.
- The implementation and registration of unauthorized subdivisions. Some of the effects of unauthorized subdivisions particularly residential subdivisions, include inadequately serviced plots; unsatisfactory layouts and inadequate provisions for amenities (open space etc.); encroachment of residential use into agricultural land; fragmentation of agricultural land into small parcels.

Since the establishment of the PPU, there have been measures instituted to encourage submission of development applications for subdivisions and to secure better quality layouts. The PPU has documented and publicized guidelines for land subdivision, including such details as the size and shape of plots, layout, access, building lines, site coverage, parking, density of development. This has had some success. Since the onset of the volcanic crisis, and the increasing pressure to find land for residential purposes, some developers have tried to circumvent the process. As a result, land is being

sold, without proper infrastructure, and the issue of affordability is land has come to the fore.

In collaboration with the Land Registry, evidence of planning permission is needed before any new subdivisions are registered. Under the Registered Land Ordinance 1978, all the requirements of other agencies must be met before registration takes place. Additionally, permission for subdivision is usually verified before a building permit is issued.

5.3. Restrictive Covenants:

In the latter part of the 1960s and the early 1970s, the Government of Montserrat established a programme of encouraging the development of residential subdivisions as part of its economic development programme. This programme was to create “exclusive” residential subdivisions, aimed at attracting North Americans who would build homes in Montserrat, and eventually spend the winter months on island.

The programme was two-fold. The first was to ensure that the construction industry that fueled a substantial part of the island’s economy would remain vibrant. Secondly, the then Government of Montserrat felt that mass tourism was not the best type of product that the island could market effectively. As a result, the GoM sought to create an environment where “residential tourism”, would flourish in an atmosphere of peace and tranquility.

Based on this philosophy, a number of these subdivisions were established. Along with this came Restrictive Covenants, which sought to establish certain minimum standards which had to be adhered to (to include minimum lot sizes, size of dwelling, the exclusion of livestock, business or commercial structures and multiple dwellings). The Law as it relates to Restrictive Covenants can be found in the Registered Land Ordinance, No. 4 of 1978, Sections 94, 96 and 97.

In 1997, at the peak of the volcanic crisis, the PPU examined the future role of some these residential subdivisions. This resulted from requests for temporary approval for some businesses to be set up in specific residential subdivisions which had Restrictive Covenants. In response, the PDA put in place a “fast track” approval process for “temporary” structures and uses. These requests and approvals have caused some concern to those who wish to see the integrity of the residential subdivisions maintained. There is a counter argument, however, that some small scale commercial uses can co-exist in the residential subdivisions.

The law provides that the High Court may modify or discharge a restrictive covenant on the application by any person who owns an interest in the land which is affected by the covenant. The applicant, must, however, satisfy the court that:

- Changes in the character of the property or neighbourhood or other circumstances renders the restrictive covenant obsolete;
- The continued existence of the restrictive covenant interferes with the reasonable user of the land for public or private purposes without securing practical benefits to other persons, and
- That the proposed modification or discharge will not cause damage.

The Planning and Development Authority in responding to requests for “approval in principle” for projects in residential subdivisions in such residential subdivisions have been guided by Section 17 of the Physical Planning Act 1996. This section outlines the procedures which should be followed where it appears to the Authority that a proposed development may affect a locality. The law allows for a process of consultation and comments submitted in writing to the Authority, within specified time.

With the impact of the volcanic activity on Montserrat, it is quite clear that additional areas, including the residential subdivisions will have to play an increasing role in the resettlement strategy of the country. The escalation in and the impact of the volcanic activity has increased the number of relocated persons and has necessitated a larger and faster housing programme.

While the residential subdivisions contain a high proportion of the island’s visitor accommodation, and their contribution to the residential tourism has been significant, the volcanic activity has placed an added pressure on the utilization of these areas, and the number of breaches of covenants has increased, albeit, on a temporary basis, and until such time as permanent alternative facilities are provided, particularly for the commercial sector.

The issue therefore, is whether the residential subdivisions should remain residential areas and continue to play their part in the island’s tourism development, or whether non-residential uses should be allowed to develop in the areas to relieve the development pressures that are building up in the safe area.

6. LAND RESOURCES MANAGEMENT

Although Montserrat is a small island, the natural resource development potential of the island rests in its high ecological and scenic value, ground water resources, and certain geologic resources (deposits of rock, gravel quarry sand). Of potential value are the prospects for nature-based tourism activities.

The island, is however a very sensitive and fragile ecosystem and signs of environmental stress are evident in certain areas. The more significant natural resources management problems include:

- Loss of forest cover from volcanic activity and from indiscriminate agricultural practices and the implications for soil and water conservation and the maintenance of wildlife habitats, landscape amenity value and recreation-tourism potential;
- Soil depletion and erosion associated with the clearing of vegetation on steep slopes and other poor land use and land management practices, such as uncontrolled grazing of loose livestock;
- Until recently, the unregulated extraction of beach sand for construction purposes, resulted in severe problems of coastal erosion and reduction of the recreation capability of beaches. Restrictions have since been introduced on this activity.

The achievement of a sustainable pattern of development over the island will require innovative approaches towards natural resources utilization.

Based on the above, the completion of the Physical Development Plan has assisted, in that it includes policies for environmental management and the rational utilization of natural resources. Additionally, for purposes of environmental planning and monitoring, the establishment of the integrated natural resources database as part of the GIS now being established is critical. This system will be accessible to other relevant agencies.

The Forestry Division, within the Ministry of Agriculture, in collaboration with other relevant agencies (Montserrat Water Authority, PPU) has intensified its watershed management efforts, including reforestation of disturbed areas, implementation of soil conservation measures, protection of coastal resources, and national park development. The Forestry, Wildlife, National Parks and Protected Areas Legislation (No. 3 of 1996), has also been enacted, along with the strengthening of the institutional capacity for environmental management.

7. LAND ADMINISTRATION

7.1. Legislation

The legal powers relating to the management of land in Montserrat are scattered in various pieces of legislation. There are at least twenty (20) pieces of legislation which deal with issues affecting land management. These laws were drafted over different time periods and were influenced by different perceptions and objectives of land management.

In view of the importance of rational management of the scarce land resource of the country, there is need at this stage to review the land laws and eliminate any inconsistencies, conflicts and obsolescence. While there have been amendments to existing laws, and the enactment of draft legislation in order to

refine and update certain land management procedures, in overall terms, however, the need for a comprehensive review of land laws is justifiable. This exercise should form part of the ongoing law reform exercise for Montserrat. What is needed is a manual on the land laws of Montserrat. The objective should be the production of a single document which explains the provisions of the various pieces of legislation in a coherent and simplified manner for the benefit of the public and private sector agencies as well as for the general public.

8. INSTITUTIONAL FRAMEWORK

Several agencies are responsible for the administration of various aspects of legislation dealing with land management in Montserrat. Most of these agencies fall within the Ministry of Agriculture, Land, Housing and the Environment, has the overall responsibility for land administration. Outside the Ministry of Agriculture, the Inland Revenue department which falls under the Ministry of Finance and Economic Development holds responsibility for property valuation and taxation.

In view of the dynamic nature of the land development process and land related issues, it is important that the institutional arrangements for management of the land resource of the country are co-ordinated.

9. CONCLUSION

It is clear that there are a number of land related issues that need to be addressed in Montserrat. However the framework for addressing these issues has been developed through the establishment of the Physical Planning Unit and the enactment of up to date legislation. These, along with other institutions and legislation should assist Montserrat in dealing with current land related issues and those that may arise in the future.