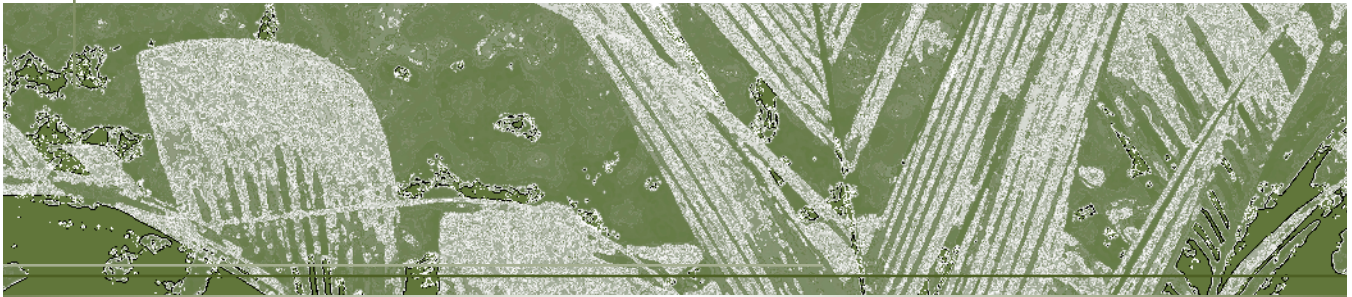


# DEVELOPING PRIVATE PROTECTED AREAS:

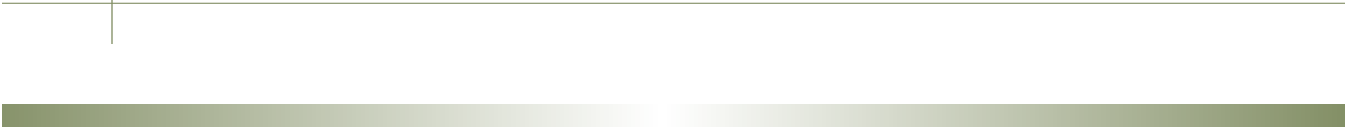
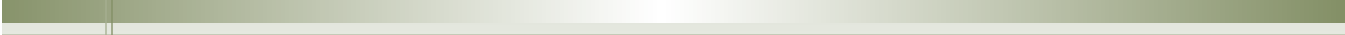
## TOOLS, CRITERIA AND INCENTIVES

CARLOS M. CHACÓN  
THE NATURE CONSERVANCY



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# T ABLE OF CONTENTS

Acknowledgments .....	i
Executive Summary .....	ii
Introduction .....	1
What is private conservation? .....	2
Who are the main actors in private lands conservation? .....	3
What are the most common tools used? .....	4
Private Nature Reserves .....	4
Conservation easements .....	7
How many types of Private Protected Areas (PPAs) should there be? .....	8
Which criteria may be used in the recognition of a private property as a PPA? .....	10
What rights and obligations of the landowner, State and NGO arise when creating a PPA? .....	12
What activities may or may not be carried out on PPAs? .....	13
Should all or part of the property be designated as PPA? .....	14
What incentives can be used in order to promote the creation of PPAs? .....	15
Payments for Environmental Services (PES) .....	15
Tax deductions .....	18
Tradable Development Rights .....	19
Legal security .....	20
Public relations and Marketing .....	22
Technical assistance .....	22
How is compliance with the PPA agreement verified? .....	23
What happens when a PPA agreement is violated? .....	24
How do you terminate a PPA? .....	26
How do you design a system of protected areas that include PPAs? .....	27
Recommended references .....	28

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# E XECUTIVE SUMMARY

Conservation and sustainable use of natural resources generates multiple benefits. The water we drink, the fertility of soil we till, the plants that feed us, much of the medicine and cosmetics we use, the insects and birds that pollinate our crops, the spiritual peace we obtain from being at natural sites, the beautiful scenery sought by tourists, the raw materials for the goods we produce, are only a few examples of all the environmental services that nature provides for us each day. These services make present and future development of our society possible.

At this time, most countries are protecting a significant area of their national territories through the creation of several protected areas. Our countries are also working on the development and consolidation of biological corridors. Upon observing the natural sites in Latin America, it is noted that many of them are located on privately owned lands. For this reason, it is important to work with their owners in designing conservation alternatives and sustainable uses for their lands, through the creation of private protected areas (PPAs).

Based on the previous information, this publication summarizes in plain terms some of the basic elements that should be considered when including PPAs within a National System of Protected Areas (NSPA). In the preparation of this document, various experiences found throughout Latin America were considered.

The beginning of this document highlights the necessity of working with private land owners to encourage their voluntary participation in accomplishing national conservation objectives. Without the incorporation of PPAs, it would be very difficult, expensive and of little viability, from both a social and political point of view, to conserve all sites that the country wishes to protect.

After defining private conservation and PPAs, the main tools available for these types of efforts are described. Special emphasis is given to Private Nature Reserves and Conservation Easements. Likewise, the main actors in this field and the roles that they play are also mentioned.

In the following sections, the technical aspects of developing PPAs are analyzed, such as: different types of PPAs; criteria for their recognition that may be used by Governments; the rights and obligations of the landowner, State and NGOs; activities that may be carried out on a PPA and the decision to designate all or only part of the property as a PPA.

Subsequently, several options for incentives are analyzed. Payments for environmental services, some legal incentives, tax deductions, technical assistance and marketing are highlighted. Further on, the importance of verifying compliance of private conservation agreements, the establishment of sanctions if violated, and ways to terminate such agreements are discussed. At the end, some recommendations are given for those interested in developing a National System of Protected Areas that includes PPAs.

# I NTRODUCTION

Due to the importance of protecting natural resources, most countries in Latin America have designated a significant percentage of their territory as a protected area. Upon observing the countries' natural areas, it is noted that:

- There are both public and private lands within most protected areas. Therefore, in order to increase natural resource conservation within these protected areas, negotiating voluntary conservation agreements with private landowners is recommended.

- Because of increasing urban development and farming, protected areas are becoming “islands” of natural sites that are found surrounded by pastures and crops. This situation complicates the migration of wildlife searching for suitable feeding and reproductive habitats. For that reason, promoting the preservation and development of biological corridors, as areas within the territory that connect protected sites and combine the existence of natural habitat with areas of sustainable productivity, is recommended. Due to the fact that the lands in such biological corridors are mainly in *private* hands, it is necessary to work with their owners on voluntary conservation agreements to achieve their protection and sustainable use.

Therefore, as previously noted, the conservation and sustainable development of natural resources in Latin America is closely linked to the implementation of conservation activities on private lands. For this reason, it is important to develop policies and legislation that promote the participation of the private sector in conservation efforts. Many landowners are already doing it; however, to achieve its greatest potential it is necessary to develop a framework that supports these types of private initiatives.

This publication attempts to bring together, in a simple and summarized form, some of the experiences gained throughout the Latin American region in the development of **Private Protected Areas** (PPAs). It begins by defining private conservation, PPAs and the main tools used in this field. Next, it analyzes several types of management categories, criteria for selecting properties to be recognized as PPA, permitted activities, responsibilities of the landowners, incentives and other critical elements for the development of this type of work. It concludes with some important recommendations to consider in this line of work and a list of recommended references, including PROARCA/TNC's new “Strategy for the Development of the Conservation of Private Lands in Central America.”

# WHAT IS PRIVATE CONSERVATION?

*Private conservation* consists of carrying out protection activities and appropriate natural resource use through the *voluntary* participation of *private* actors. These actors may be landowners, environmental organizations, enterprises, community or indigenous groups, associations or foundations. Within this concept, it is important to emphasize that private conservation is based on voluntary participation. For example, this occurs when a landowner decides to protect all or part of the forest on his or her land.

Within this framework, PPAs are defined as those natural sites on private property that are being conserved through a formal voluntary agreement between the owner and the Government or a qualified NGO.

Private conservation has multiple benefits. For example, creating and managing PPAs could be less expensive than creating and managing public protected areas. Furthermore, these efforts protect lands that would otherwise be almost impossible to protect. Finally, due to its voluntary nature, working on PPAs is socially and politically attractive since one does not face the conflicts encountered when trying to create public protected areas.

A very important matter to keep in mind is that all conservation efforts, both public and private, should have a very sound **scientific** basis. Science should be used to **prioritize** natural sites for conservation and specific strategies for the conservation of those sites should be built based on the participation of all the stakeholders.



## WHO ARE THE MAIN ACTORS IN PRIVATE LANDS CONSERVATION?

Generally speaking, the entire society participates in private lands conservation because we all benefit from the environmental services it provides. However, the specific main actors in this field are:

- Landowners: they are the owners of the properties and, therefore, key elements in working to create PPAs. They may be individuals, a family or group of relatives, a private company, communities or indigenous groups.

- Government: the entity that manages and implements the policies and legislation which serve as the framework for creating PPAs. They receive requests from those landowners interested in creating PPAs, review them, then approve or reject them. Likewise, they have the responsibility to follow-up on the implementation of the PPAs Management Plan and granting incentives.

- NGOs: among the many NGOs in existence, we are referring here to those non-profit private organizations that, as part of their mission, have decided to work with private landowners in the creation of PPAs. Those that are exclusively dedicated to this activity are known as land trusts. They usually carry out educational activities on this issue and provide technical assistance and follow-up on the PPA Management Plan. Some also grant various types of private incentives.

# WHAT ARE THE MOST COMMON TOOLS USED?

In this field, there are a variety of tools available to work with landowners interested in private conservation. One of them is the creation of Private Nature Reserves, usually known as Private Reserves. Another tool that is gaining attention in the region is the use of conservation easements. Similarly, there are other agreements that may be used, such as, leasing contracts, conservation trusts, environmental condominiums, etc. Below you will find a description of two of these tools: Private Reserves and conservation easements.<sup>1</sup>

## PRIVATE NATURE RESERVES

There are 3 main types of private reserves:

- **Private Nature Reserves “de facto”:** These are private properties in which the owners have voluntarily decided to conserve part or all of their existing natural resources, even though these reserves have not received any type of official recognition from the Government or from any other independent qualified organization in this field. The management of these properties is left up to the discretion of the owner as well as the establishment the time frame for which they are created. This means, that if the owner does not want to continue at all with their private reserve or wishes to change the rules of use that he or she has established, it can be done at any time. The advantage to this type of reserve is its ability to generate diverse environmental services without having to fulfilling any requirements for their creation. The main disadvantage is the fact that its existence depends on the will of the landowner, which is not practical when the priority is to develop stable, long-term conservation programs.

- **Private Nature Reserves recognized by the Government:** These are properties in which the owners have made the voluntary decision to conserve all or part of their property and, additionally, have requested and obtained official recognition from the Government as a Private Nature Reserve. To achieve this, they must have fulfilled some preliminary requirements (usually demonstrating land ownership and presenting a management plan for the property). The management of the property must

<sup>1</sup> There are some important differences between Common Law conservation easements and Civil Law ecological servitudes. The most important one is the fact that ecological servitudes are land use restrictions on 1 property established to benefit another property (similar to Common Law appurtenant conservation easements). Conservation easements are also land use restrictions on one property but for the benefit of the public. The holder of the easement is a qualified entity such as the government or a charitable NGO. Both are usually created in perpetuity. Even though conservation easements and ecological servitudes have some differences, given their similarities both terms are used interchangeably in this document.

be carried out according to certain rules established for this type of Reserve. In some countries, it is required that they maintain the PNR for a minimum number of years. The advantage of this type of reserve is that depending on the rules established and the amount of time for which they were created, they are useful when planning medium to long term site conservation. The main disadvantage is the cost and time it may take to comply with the requirements which, depending on the capacity of the responsible governmental entity, may be high thus discouraging potential landowners. Also, follow-up on Management Plan compliance depends on the Government's ability to periodically carry it out.

■ **Private Nature Reserves recognized by NGOs:** In some countries, a number of NGOs have programs that formally recognize private properties as PNR. There are also some NGOs that have been created by groups of PNR landowners.<sup>2</sup> These NGOs have established certain requirements that interested landowners must comply with in order to obtain recognition from them as a PNR. Requirements often vary and, in the majority of the cases, the commitments are created through simple agreements that may or may not have established time frames. The advantages and disadvantages of these reserves are similar to those recognized by the Government, therefore, depending on the rules established and the amount of time for which they were created, they are useful when planning medium to long term site conservation. However, the cost and time that is needed to comply with the requirements may be high, thus discouraging potential landowners. Also, follow-up on Management Plan compliance depends on the NGO's ability to periodically carry it out.

As previously indicated, in some countries, for instance in Guatemala or Brazil, the Private Reserve is a management category officially recognized by their governments as a PPA within their System of Protected Areas. In these countries, landowners interested in obtaining recognition from the Government as a Private Nature Reserve must comply with certain requirements, among them, presenting a *Management Plan* for their land that demonstrates its *biological significance* to the National System of Protected Areas (NSPA). This plan should also describe the property's land use, as well as a description of the inspection and protection activities to be carried out on the property in the future. Once this status has been granted, landowners

<sup>2</sup> In all Central American countries, recognition is issued through existing Networks of Private Nature Reserves. There are also some NGOs that have Private Reserve programs such as, the Center for Tropical Science in Costa Rica, CODEFF in Chile and the Wildlife Foundation in Argentina.

must comply with the rules established by the legislation for private reserves and they may receive various types of incentives.<sup>3</sup>

There are other countries, like Costa Rica, that also have properties recognized by the Government as PPAs similar to those Private Reserves previously mentioned. However, they have a distinct name; they are called National Private Wildlife Refuges.<sup>4</sup> On the other hand, there are some countries that do not yet have an officially recognized category for PNR, as in the case of Venezuela.

Some countries have anticipated the creation of such protected areas in their legislation; however, they have not yet provided regulations for the procedures to recognize them. Panama is one of those cases in which their laws incorporate the concept of private protected areas, but do not provide any regulations that described the procedures for their creation, yet.<sup>5</sup>

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3 For more information on Brazilian regulations see: <http://www2.ibama.gov.br/unidades/rppn/inrppn.doc> and for Guatemala: <http://www.reservasdeguatemala.org/procedimiento.html>

4 In Costa Rica the creation of these Refuges are based on article 82 of the Law of Wildlife Conservation and its regulations [http://www.turismo-sostenible.co.cr/EN/participar/hoteles/ley\\_conser\\_vida\\_silv.shtml](http://www.turismo-sostenible.co.cr/EN/participar/hoteles/ley_conser_vida_silv.shtml)

5 For more information: Brazil: <http://www.sociedadcivil.cl/ftp/brasil.doc>, Guatemala: <http://www.reservasdeguatemala.org/quees.html>, Venezuela: <http://www.fudena.org.ve/tema15.htm>

## ■ CONSERVATION EASEMENTS

Another private lands conservation tool that is gaining popularity in Latin America is the ecological servitude. They are similar to conservation easements used in Common Law countries. Even though they have some differences, in this document both terms are used interchangeably. This is a voluntary private agreement where two landowners consent to conserve and sustainably use the natural resources occurring on one or both of the properties, restricting its land use, in order to benefit the species and environment of the other. From a legal point of view, the signing of the contract legally binds both parties. This contract is then registered with the Public Land Registry and noted on both of the property titles. Normally conservation easements are done in perpetuity, however, these agreements may also be established for a specific amount of time.

The most common example of a conservation easement is when a landowner agrees not to cut down the forest on his/her property so that the birds on another property can continue to visit these trees in order to feed, live and reproduce.

Conservation easements have been created in various countries throughout Latin America, for example, in Costa Rica, Honduras, Guatemala, Mexico, Ecuador, Paraguay, and Argentina. They have been based on the legal framework provided by the Civil Code of each country, using existing regulations for *voluntary servitudes*.

Even though conservation easements may be created based on existing legislation, it is advisable to draft new regulations that specifically indicate the manner in which they should be established. This is recommended because in practice, existing laws and regulations tend to complicate and slow down the creation of conservation easements. In addition, interested parties incur in greater costs, thus discouraging some interested landowners. A law establishing a specific framework for conservation easements will solidify them by making the necessary procedures for their creation much easier, cheaper and quicker. Several countries within the region have already approved specific legislation for conservation easements, for example, in some states of Argentina and Mexico.

# H

## OW MANY TYPES OF PRIVATE PROTECTED AREAS (PPAs) SHOULD THERE BE?

When considering the creation of PPAs, one of the key points that need to be considered is if the legislation will allow for the creation of just one or various types of PPA. Experience in other countries has demonstrated that normally only one type of PPA has been established. It is important to note that this issue is currently being reviewed and, at this time, the preferred approach is to establish various types of PPA. What is currently being proposed is to have one type of category that leans toward absolute conservation in perpetuity, while at the same time there are other management categories combining conservation and sustainable production activities on the property, for a shorter amount of time. Incentives would vary for each category, depending on the type of conservation and the time committed, with the intention of promoting categories with the most conservation activities for the greatest amount of time.

### **Establishing four types of PPA: Chile**

Chile is considering establishing 4 types of PPAs within their regulations: Private Nature Reserve, Private Area for Strict Preservation, Private Nature Park and Private Nature Monument. These PPAs are defined in the draft Regulations in the following manner:

**a) Private Area for Strict Preservation:** Areas where existing flora, fauna, housing and communications are in a natural, primitive state, absent of roads for motorized vehicle traffic and commercial exploitation is completely prohibited.

**b) Private Nature Park:** A natural, generally extensive, area where uniquely diverse environments or environments representing the natural biological diversity of the country exist, significantly unaltered by human actions, or requiring restoration of their past ecosystemic value; that are self-perpetuating and the species of flora and fauna or the geomorphological formations are of special educative, scientific or recreational interest.

**c) Private Nature Monument:** An area generally reduced in size, characterized by the permanent or temporary presence of native species of flora and fauna or by the existence of geomorphological accidents or paleobiological sites relative from the ecological, educational or scientific perspective.

**d) Private Nature Reserve:** Area whose natural resources need to be conserved and used with special care, due to their susceptibility to degradation or for their relevant importance in safeguarding the community's well-being."

Draft Regulations for Private Protected Areas. Chile, 2004.



## WHICH CRITERIA MAY BE USED IN THE RECOGNITION OF A PRIVATE PROPERTY AS A PPA?

There are many diverse criteria that can be established by governmental authorities or NGOs for the process of accepting or rejecting a private property as a PPA. It is important to keep in mind that, as mentioned above, there may be one or more types of PPA and each one may have their own distinct criteria.

Experience in Latin America has shown that interested landowners are usually required to present a Management Plan for their land when requesting that their property be recognized as a PPA by the NSPA. Some of the variables considered when accepting or rejecting the designation of a private property as a PPA are:

- **Environmental significance:** This is the most important criteria. A description of the natural characteristics of the land (actual use) should be provided, along with an explanation emphasizing the importance of conserving this land for the country. The importance of wild plant and animal populations that exist within the property is often emphasized. However, other environmental services generated on private properties must also be considered, such as: water source, scenic beauty, carbon fixation, erosion prevention, and others. Upon a closer property analysis, there are 3 types of lands that should be recognized as PPA:

- Those lands that have an intrinsic value due to the environmental benefits produced by the natural resources within its boundaries. These lands may contain key species or ecosystems, offer protection to source water areas, etc.

- Lands being maintained in their natural state that are strategically located to a biological corridor or another site, even though the environmental benefits within their boundaries may not be significant, they are important to the NSPA by offering *connectivity* between key sites the system as a whole wishes to protect. For example, the wildlife and plants on these properties are not especially unique or in need of protection since they are represented in other protected areas; however, conserving their habitat on these properties is essential in maintaining the *connectivity* of the Biological Corridor or the ecosystems integrity within the protected area.

- Finally, there are those properties that have been previously degraded, but are valuable for their location, for example, within the buffer zone of a national park or a biological corridor, and their restoration potential.

■ **Conservation objectives:** The landowner must clearly establish the purpose of creating the PPA, which of course should be relevant to the NSPA's priorities. What species or ecosystems does the landowner wish to protect? What are the goals? In a good Management Plan, the environmental significance of the land coincides with the conservation objectives of the landowner. For example, if a property is important for jaguar populations, one of the conservation objectives should be protecting their habitat and populations. If these objectives concur with the conservation objectives of the NSPA, the site should be declared as a PPA.

■ **Location:** As indicated above in the first criteria, lands located within the country's priority areas for conservation should be preferred. Accordingly, those private properties that are bordering or close to protected areas (buffer zones), or those that are located within biological corridors, are generally preferred.

■ **Size:** A minimum size can be required if desired; however, taking the risk of leaving out the smaller, important properties. For this reason, the size of the property is not usually a relevant criteria as is demonstrating the property's environmental significance.

■ **Future management:** This is a detailed description of the activities to be carried out on the property (future use). A description of the strategies directed at accomplishing the conservation objectives of the PPA should also be included. Whether a property is recognized as a PPA or not depends on the type of management proposed. Obviously, this management should be geared towards the conservation objectives of the area.

■ **Time commitment:** A variety of options exist:

■ Not establishing a given amount of time during which the landowner should maintain his or her PPA. That is, the landowner has the option to voluntarily terminate the PPA when he or she desires, usually by way of a letter directed to the NSPA authorities.

■ Establish a specific amount of time (i.e. 5, 10, 20 years) that may or may not be renewable.

■ Require that the PPA is created in perpetuity (i.e. in Brazil).



## WHAT RIGHTS AND OBLIGATIONS OF THE LANDOWNER, STATE AND NGO ARISE WHEN CREATING A PPA?

The official recognition of a PPA carries with it certain rights and obligations of the landowner, State and NGOs working in this field. The most common ones are described below.

### LANDOWNER

<i>Rights</i>	<i>Obligations</i>
<ul style="list-style-type: none"> <li>▪ <i>The right to identify their property as a PPA:</i> this is often useful in public relations.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Fulfil Management Plan:</i> must execute the activities described therein, including the responsibility for inspecting and protecting the property throughout the agreed term.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <i>Obtain Incentives:</i> if incentives exist, they may receive technical assistance from the Government or NGOs, payments for environmental services, tax deductions, etc.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Present Reports:</i> on some occasions the landowners are requested to turn in annual reports to the NSPA authorities regarding the management carried out on the PPA.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ <i>Consent to monitoring:</i> it is usually established that the landowner must allow public authorities or qualified NGOs to visit their properties, given previous warning, to verify the compliance with the PPA Management Plan.</li> </ul>

### GOVERNMENT AND NGOs

<i>Rights</i>	<i>Obligations</i>
<ul style="list-style-type: none"> <li>▪ Establish requirements for recognition of private properties as PPA.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Recibir solicitudes de finqueros interesados en crear APP y resolverlas.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Accept or deny recognition of properties as PPA.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Cumplir con otorgamiento de incentivos acordados.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Grant incentives.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Controlar cumplimiento de Plan de Manejo.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Cancel declaration of private properties previously recognized as PPA once the time period has elapsed or there are grounds to do so.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Sancionar a los que incumplen el acuerdo de conservación privada.</li> </ul>



## WHAT ACTIVITIES MAY OR MAY NOT BE CARRIED OUT ON PPAs?

Among the properties trying to obtain PPA status, it is common to find that their owners currently have and wish to continue a combination of natural resource use, thus allowing certain activities to be carried out while at the same time prohibiting others. In this sense, experience has shown that Governments and NGOs working in this field have distinct policies over which activities are to be permitted on the PPA and which are not. It is important to point out that a consensus has not been reached as to whether or not the activities described below should be permitted within a PPA. In this regard, that mentioned earlier in this document, regarding the possibility of allowing the creation of several types of PPA, must also be considered; therefore, on some PPAs certain activities could be allowed while on others they could be prohibited.

The most common activities related to PPA are described below. It must be clear that it is up to each country to choose which activities, in light of their own *conservation and development priorities*, will be permitted or not on PPA.

PROHIBITED	PERMITTED	OPTIONAL*
<ul style="list-style-type: none"> <li>■ Hunting.</li> </ul>	<ul style="list-style-type: none"> <li>■ Environmental education.</li> </ul>	<ul style="list-style-type: none"> <li>■ Sustainable extraction of standing wood.</li> </ul>
<ul style="list-style-type: none"> <li>■ Cutting down the forest or altering existing natural habitat.</li> </ul>	<ul style="list-style-type: none"> <li>■ Recreation (use of trails and look outs).</li> </ul>	<ul style="list-style-type: none"> <li>■ Controlled hunting of certain species.</li> </ul>
<ul style="list-style-type: none"> <li>■ Traditional agriculture and cattle ranching.</li> </ul>	<ul style="list-style-type: none"> <li>■ Scientific research.</li> </ul>	<ul style="list-style-type: none"> <li>■ Controlled, low impact residential development .</li> </ul>
<ul style="list-style-type: none"> <li>■ Industrial development.</li> </ul>	<ul style="list-style-type: none"> <li>■ Ecosystem restoration.</li> </ul>	<ul style="list-style-type: none"> <li>■ Lodging, recreation and low impact adventure facilities for eco-tourism.</li> </ul>
<ul style="list-style-type: none"> <li>■ Extraction of materials or other types of mining.</li> </ul>	<ul style="list-style-type: none"> <li>■ Extraction of exotic species.</li> </ul>	<ul style="list-style-type: none"> <li>■ Extraction of non-timber products from the forest.</li> </ul>
<ul style="list-style-type: none"> <li>■ Road construction.</li> </ul>	<ul style="list-style-type: none"> <li>■ Fruit extraction.</li> </ul>	<ul style="list-style-type: none"> <li>■ Extraction of wood (fallen trees).</li> </ul>
<ul style="list-style-type: none"> <li>■ Building large infrastructure.</li> </ul>		<ul style="list-style-type: none"> <li>■ Breeding of wild species</li> </ul>
<ul style="list-style-type: none"> <li>■ Storing or disposal of wastes on the property.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Introducing exotic or non-native species.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Interrupt or alter the course of rivers or streams.</li> </ul>		

\* In some countries they are authorized while in others they are not.

## S HOULD ALL OR PART OF THE PROPERTY BE DESIGNATED AS PPA?

A simple matter that must be considered by governmental authorities is if the PPA designation should be given to the entire property or only to a part of it. In some countries, the entire property is designated PPA only if 100% of it is going to be dedicated to nature conservation activities. On the other hand, if only a portion of the property is for conservation and the rest of the property has other uses (these uses may be sustainable or low impact, or not), the authorities only designate the part of the property that is dedicated to conservation as PPA.

In other countries, it is possible to designate 100% of your property as PPA even though only part of it is being conserved while the rest is being used for traditional productive activities. Under these circumstances, it is optional for the landowner to request that all of the property be designated as PPA or only the part that is designated for conservation. Therefore, every country has to make a decision on this matter.

# WHAT INCENTIVES CAN BE USED IN ORDER TO PROMOTE THE CREATION OF PPAs?

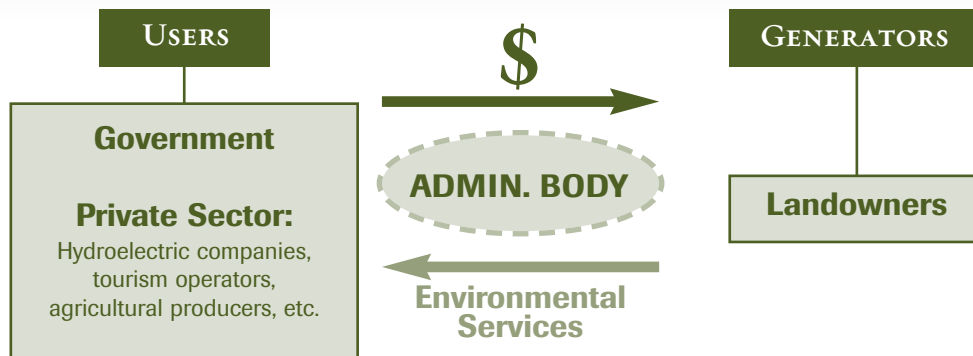
In order to increase the number of PPAs created to significant levels, it is necessary to develop and implement a system of public and private incentives that attract a greater number of landowners. The most frequent options for economic, legal and marketing incentives used in this field are described below.

## ■ PAYMENTS FOR ENVIRONMENTAL SERVICES (PES)

It is a payment to landowners who are conserving their properties and thus providing environmental services to the society through their conservation actions. There are many types of environmental services, such as:

- Carbon fixation
- Water: potable, hydroelectric and agricultural uses
- Scenic beauty
- Species maintenance: for pharmaceutical, medicinal, food or cosmetic uses, among others
- Disaster prevention
- Erosion and sedimentation prevention

In order to understand how a PES system works, one must understand that there are “users” of these services. These “users” are individuals, communities, national or foreign companies and government, all using water, scenic beauty, etc. in their daily activities and therefore, are the ones who should pay for the use of such environmental services in their activities. On the other hand, there are those who “generate” the environmental services, which are usually the owners of those properties being conserved. In this type of system an “administrative body” is generally needed to charge and receive the payments from the users (all of us) and ensure that these payments get to the “producers” (landowners). A summarized version of a PES system is graphically described below.



A PES system may be either publicly or privately implemented. That is, the administrative body previously mentioned may be a governmental or private entity. Similarly, a PES system can be implemented at the national, regional or local level. In order to develop this system, some important variables should be considered, such as:

- **Transaction costs:** These are the costs that the PES administrative body will incur. These costs are directly related to the process of searching for and obtaining funds in order to finance the system (within the Government as well as from companies or individuals), their control, accounting and financial management, the cost of promoting private landowner participation, receiving and reviewing PES requests and granting such payments and carrying out the respective follow-up. These transaction costs must be as low as possible, preferably less than 10% of the amount of funds received for PES and should take into consideration the economies of scale that occur when many “producers” and “users” participate in the system. For example, in Costa Rica the current administrative cost of the entity in charge of managing the national system of PSE is estimated at 7%.

- **Cost of participating in the system:** These are the costs that the generators (landowners) would have to cover to be able to comply with the requirements to apply for and receive PES. These costs should be as low as possible in order to facilitate the participation of all interested landowners. Some of these costs are:

- *Legal documents:* In general, landowners are required to show proof of land title by handing in a certificate from the Public Registry. Those who do not have a registered title are requested to present proof of their possession rights and sometimes, sworn declarations from their neighbours certifying the property is in fact of the person requesting the PES.

■ **Management Plan:** This is the cost related to the development of a plan for the conservation and use of the property (management plan), which is usually a requirement to apply and receive PES. This plan should be prepared by a qualified professional (i.e. biologist, forester, etc.). It consists of a description of all or only the part of the property that is going to be conserved, clearly indicating which areas will be conserved and in what way.

■ **Verification and compliance:** This is the cost of periodically verifying that the landowner is complying with the management plan. It is usually done through annual visits by the same qualified professional that created the Plan.

For example, in Costa Rica the cost of creating the plan and annually verifying its compliance (1 visit per year) is paid by the landowner. The law establishes that this cost may be no more than 18% of the PES that the landowner will receive. However, what is actually happening, according to the market, is that organizations and foresters that work in this field are charging between 7% and 18% of the amount of money the landowner would receive.

■ **Permitted activities:** What activities carried out by the landowners will receive funds? Is it only absolute conservation of natural forest or others such as restoring degraded ecosystems, certified sustainable forest management, etc.? Each country should base their decision on their own conservation objectives and national priorities.

■ **Participation requirements:** Can only landowners with registered property titles obtain PES or can those with possession rights also obtain them? What requirements and controls will be required to demonstrate ownership or possession of the property? Will a Management Plan be required or not? Who will be the authorized professionals to develop management plans?

■ **Financial sustainability:** Will the “users” of the environmental services continue to pay for them in the future? And, will the “generators” (the landowners) continue to receive the payments for the as long as they want or only over a definite period of time? Obviously in order to respond to these questions, one must be familiar with the availability of present and future funds to make payments over time. One must think in having sources of funds that lead to financial sustainability across time. For example, some countries, like Costa Rica and Mexico, are working to charge a fee on the water bill for this environmental service while in others, they are considering charging a fee to the tourists at the airport since they have come to enjoy the scenic beauty of their countries.

▪ **Form and term of payment:** The payment is typically in the form of cash, given to the landowner for each hectare of land that is conserved. These payments may be made annually or in other instalments and are usually delivered once the generator (landowner) has demonstrated that his or her land is being conserved.

Once the previous topics have been analyzed, the PES can be designed. Of course, the administrative procedures necessary for its implementation must also be included in the design. This incentive is very attractive to landowners because they receive cash in exchange for their conservation activities. It is also attractive to the government since it is not a subsidy for conservation, but instead they are channelling the direct payment of services to the landowners that are conserving, on behalf of the “users” of these services.

## ■ TAX DEDUCTIONS

This is the most common type of incentive in countries such as the United States where there are high tax rates and an efficient system to collect them. Generally, these types of countries have looked to promote conservation through total or partial tax exemption, particularly from land taxes, idle land tax (where it exists) or as income tax deductions.

However, in Latin America, experience has shown that tax deductions are not a very effective way of promoting conservation. This is due to the fact that the majority of the landowners in these countries do not pay taxes (income, land, etc.) or, if they do, they pay very little. Therefore, partial or total tax exemption is not an important benefit that motivates them to conserve. This is commonly caused due to inefficient and insufficient organization for tax collection among these countries, low tax rates placed on some taxes like land tax, or out-of-date taxable base information (i.e. out of date land prices).

In spite of that previously mentioned, this situation has been changing, but in completely opposite directions. On the one hand, partial or total tax exemption as an incentive for conservation is gaining more attention as tax collection by the governments improves and tax rates go up. However, at the same time, the fiscal authorities have been eliminating these types of exemptions with the intention of increasing the amount of money collected for national or local state funds, as a consequence of high fiscal deficits in the public sector.

## ■ **T**RADABLE DEVELOPMENT RIGHTS

When developing territories, different land uses are combined, for example, agricultural, timber, livestock, urban and conservation. One tool that has been used among certain countries to promote orderly land use, where development and conservation activities are equally supported, is the use of *Tradable Development Rights*. These rights are defined as the landowner's right to use their land in a certain way or to develop it in a certain area, at a specific density, quantity, level or intensity. One example would be the right of a landowner of 2 hectares for building a maximum of two, 250 m<sup>2</sup> homes each, on its own piece of land.

In a tradable development rights program, these rights may be bought and sold, in such a way that the landowner who does not wish to construct anything on his/her land (because he/she wishes to conserve it) or for example only wishes to build one house, can sell his/her construction rights that will not be used to another landowner. Therefore, the landowner who buys those rights is permitted not only build the two houses to which he or she already has the right, but can now build three or four, because he/she has purchased these development rights from the other landowner. Obviously, these "development rights" are sold for a certain cash value. In this way, the landowner who conserves will obtain a cash incentive for not developing his/her land and, the landowner who wishes to develop his/her land on a larger scale, can do so through a payment to the conserving landowner.

A program for tradable development rights is, of course, based on the country's or region's land management plan, as well as being linked to the zoning regulations, which are usually the municipality's responsibility. Through zoning, specific areas within the municipality are established for conservation and others for development. In this way, the most suitable areas are set aside for conservation and development activities take place on the most appropriate areas for it. Similarly, certain rules and requirements are established in order to participate in the program.

## ■ LEGAL SECURITY

There are many incentive options relating to the legal security of the land being conserved on private properties. These are directly related to the fact that all landowners want security regarding their private property. Owners of private lands need to feel secure that their country's Constitution protects their right to private property and, therefore, they should not be afraid that someone will come and take away their land by force. It is known that judicial security is, among others, fundamental in promoting private investment, sustainable resource use and improving the country's quality of life. It is also essential in encouraging private lands conservation. Based on the previous information, some of the incentives related to land's legal security are briefly described below:

- *Titles for conservation:* this consists of facilitating the process for those who do not have a land title for their property (they have rights to possession) and are interested in taking on voluntary conservation obligations on all or part of their land in exchange for obtaining the respective land title through an easier and faster process. These people will privately title their lands to conserve all or part of them, using the tools previously mentioned (private nature reserves or conservation easements).

- *Speedy evictions:* in the case that private properties protected by conservation agreements have been invaded by a third party, the legislation should establish that the police authorities must act in a prompt way to carry out land evictions. For example, Costa Rica has established a maximum period of 5 days, after the landowner presents the constancy or certification proving his or her land is a PPA to the respective police authorities, to carry out an eviction.

- *No property right prescription:* this incentive hopes to protect the property rights of those landowners that have private conservation agreements and whose lands have been occupied by third parties without authorization from its legitimate owners. The objective of this incentive is to guarantee, by law, that positive prescription of property rights (usually 10 years) would not apply under these circumstances. If the property is protected by a conservation agreement, this type of prescription would not apply. Therefore, squatters would not feel attracted to invade, deforest and occupy those private properties protected by conservation agreements, thus providing a sense of security for landowners and becoming an incentive for them to protect their lands.

- *Protection against Expropriation:* In some countries, landowners feel threatened when they list their property as a PPA because they are afraid that the Government will be able to identify their land and become interested in

their expropriation to include their property in a public protected area. Therefore, this incentive consists of indicating within the law that the Government will not expropriate lands declared as PPA for various reasons, such as their inclusion within a public protected area, for distribution through land reform programs, for dams, for the construction of public infrastructure, etc.. An exception could be to indicate that expropriation may only be carried out in the case of public interest, by way of a Law that authorizes it and based on a previous Environmental Impact Assessment.

■ *Protection against mining and other subsoil uses:* In most countries, landowners own just the topsoil and almost everything on top of it (i.e. not the rivers). However, they usually do not own the mineral rights and everything underground. Therefore, because they don't own those rights, even though they can protect everything on top of their lands creating a private reserve or conservation easement, they cannot commit to protecting their lands from mining and other underground activities. Of course, this is a very important loophole because there is always the underlying risk of potential mining or other underground activity that would damage the conservation of the property even though above ground it is protected as a PPA. This incentive seeks to establish that the subsoil within a PPA is also considered protected and, therefore, the incentive determines that mining activities will not be permitted on the PPA by the owner or third parties.

■ *Establish that conservation is a legitimate land "use" activity:* In some countries there are laws that authorize people to occupy private properties of other people and to claim property rights over them after some time. They are able to obtain property rights based on the claim that those are vacant lands that are not being used by their legal owners. In many cases the law openly states that this is possible in lands that are not being "used" while in other cases, even though the law does not openly have such provisions, the courts have interpreted existing legislation in that way. These types of provisions or interpretations exist because they are based on the consideration that it should be the role of the State to support people that are actually "using" the land instead of those who aren't. The main problem with these types of provisions or legal interpretations is the fact that traditionally, nature conservation is not seen as "using" the land because the land is not being used for any traditional activity such as agriculture, cattle grazing, etc. Therefore, if a landowner is conserving a property, the land is under the risk of somebody being able to take it over and claim that it is not being used in order to obtain property rights over time. For this reason, many landowners deforest private properties as a precaution to avoid this type of risk. Where these types of provisions or legal interpretation still exist, governments should promote new laws that recognize conservation of private lands through PPAs as a legitimate land use. In this way, landowners interested in conserving their private property will be able to do so by creating PPAs without feeling threatened that somebody will say that he/she is not "using" the land and therefore are able to take over it.

## ■ PUBLIC RELATIONS AND MARKETING

This incentive basically consists in publicly recognizing the contributions PPAs are making, through all possible means. The properties that are protected as well as the names of the landowners could be widely publicized. Properties declared as PPA could be included in country reports, media ads, web sites, publications, etc. where they are mentioned as part of the NSPA and highlight the voluntary conservation work that these landowners are doing. In this way, the landowners would obtain economical and spiritual benefits by the “green image” brought about by this type of recognition. This is especially true in those cases where the productive activities being carried out on the property are related to their conservation efforts. The logic behind this is that little by little consumers are looking harder for products from companies with corporate social responsibility that are sustainable and support conservation efforts. The companies or persons with PPA show their commitment to the social and environmental wellbeing and, in this way, they could obtain more clients, thus increasing their income.

## ■ TECHNICAL ASSISTANCE

In some cases, the Government and NGOs offer technical assistance as an incentive so that landowners are able to develop certain types of activities. In the past, this was a very common practice in the agricultural field with farming extension programs implemented by Ministries of Agriculture interested in promoting certain farming activities. In this same way, NGOs and some public entities exist with specialties in diverse areas of environmental conservation which offer support to private landowners at cost or even for free. This collaboration brings in exchange the commitment of the landowner to conserve and use their land in an appropriate way. This technical support can be offered in a variety of areas, such as:

- Creating Management Plans.
- Design and construction of infrastructure or trails.
- Cleaning and maintenance of borders and trails.
- Inspection and guarding of prohibited activities (hunting, illegal logging, etc.)
- Environmental education and recreational events.
- Design and construction of markers and interpretative signs.

# H

## OW IS COMPLIANCE WITH THE PPA AGREEMENT VERIFIED?

The easy answer is that this is done through periodical field visits to each one of the PPA by qualified Governmental personnel, NGOs or independent third parties. During these visits, compliance with the respective Management Plan is verified. There are 2 key sets of documents that are recommended to perform this verification:

- *Base line information file:* This record should include a written and graphic description of the land, its biophysical characteristics, existing roads, trails and all types of infrastructure, etc. at the time the PPA was created. The inclusion of land use maps and photographs is very useful in knowing exactly what the PPA had when it was created.

- *Management Plan and conservation agreement:* these documents should clearly describe the activities that are and are not permitted to be carried out on the land.

Based on the base line information file and the description of activities included in the Management Plan-Agreement, periodic field visits to each PPA are implemented in order to verify that they are, in fact, complying with the agreed obligations. Including a preauthorization to the personnel of these groups that enables them to enter the property and carry out these visits in the agreement between the landowner and NGO or Government is recommended. The landowner should be notified in advance of their arrival.

Something that is currently being explored is the use of aerial photographs and satellite images so that one may execute this verification without the need of having to physically visit the property. The purpose of this is to lower the costs of having to periodically carry out these visits and to also lower the amount of time it takes. If the use of this type of technology proves successful, it is anticipated that the most appropriate thing to do would probably be to combine field visits with this type of remote analysis and not depend solely on the latter in the future.



## HAT HAPPENS WHEN A PPA AGREEMENT IS VIOLATED?

When creating a PPA, a formal voluntary agreement occurs between the landowner and a NGO or the State. In this agreement, fixed responsibilities are established on behalf of the landowner, such as no cutting down the natural forest, no hunting, no construction, etc. What happens if one of these activities is executed on the property? There are various types of approaches with respect to what is recommended to do when a non authorized activity occurs on a PPA.

First of all, it must be understood that there are many types of offences. Therefore, a system of sanctions may be developed that considers classifying these offences into various categories, for example: light, regular and serious. Depending on the seriousness of the offense, different types of sanctions are given. Obviously, previous to the application of any sanction, the appropriate procedure to prosecute it must be considered, giving the parties an opportunity to defend themselves. Likewise, it is recommended to consider Alternative Conflict Resolution mechanisms, which provides opportunities for negotiation, arbitration, conciliation, etc. instead of having to go to court all the time.

An interesting variable, and one that should be anticipated, is that the offense could have been committed by a third party and not by the landowner. What should be done in this case?

Some of the possible sanctions for violation of private conservation agreements are described below:

- *Exclude the property from the PPA system:* it consists of notifying the landowner of his or her exclusion from the list. However, it must be clear that this may be an incentive for a person to change his or her mind in regard to having the PPA status, because by simply committing an offense his/her property would be excluded from the PPA system.

- *To return to the Government, in cash, the incentives received:* this is clear in those cases where the landowners have received some form of

payment or tax exemption. Therefore, it is foreseen that they have to return this money to the treasury and, in some cases, with interest.

- *Restoring the property to its original condition:* when the natural resources of the property are damaged, it should be restored.

- *Payment for the damages and losses caused to the conservation values of the property.*

- *Forceful compliance of the conservation agreement:* in these cases the owner is forced to comply with the agreement made and is ordered to refrain from carrying out the offense.

- *Fines or other penal sanctions:* this depends on what the legislation established by each individual country.

# H

## OW DO YOU TERMINATE A PPA?

Some PPA agreements, such as conservation easements, are created to exist forever and, therefore, it is not expected that they be terminated. However, since various forms of PPA exist, it should be anticipated that they may be terminated and in what way. PPA agreements can be expected to be terminated in the following ways:

- The term for which they were created ends.
- By mutual agreement between parties (landowner and NGO or State).
- Violation of the Management Plan (see the section in this document corresponding to violation above).

# H

## OW DO YOU DESIGN A SYSTEM OF PROTECTED AREAS THAT INCLUDE PPAs?

Below, you will find various recommendations based on the experience of several Latin American countries:

**1.** Determine if the legislation in your country permits the creation of PPAs. If permitted, draft regulations for the law in order to establish the procedures that landowners must follow to request that their property be declared a PPA. If the creation of PPAs is not authorized under current legislation, it is recommended that a bill be presented to the Congress to foster private conservation to protect the country's biodiversity and once approved, proceed to draft its regulations.

**2.** PPA Regulations should contain the following components:

- a. *Definitions:* such as what is a PPA, private nature reserves, conservation easement, environmental services, qualified NGO, Management Plan, Base line, etc.
- b. *Private conservation tools:* it is recommended to include at least those previously described: Private Nature Reserve and Conservation easement.
- c. *Requirements for recognition as a PPA.* Among others to consider are:
  - i. To request a basic Management Plan prepared by a qualified professional (biologist, forester, ecologist).
  - ii. Proof of property or possession rights.
  - iii. Demonstrate the environmental significance of the land.
  - iv. Indicate the exact location and area of the land to be conserved through a land survey.
  - v. Description of the conservation objectives, actual land use (base line) and future use, including proposed actions for protection of the property.
- d. *Term of the PPA.*
- e. *Obligations and rights of the owners of the PPA.*
- f. *Permitted and prohibited activities.*
- g. *Incentives: PES, legal incentives, tax breaks, etc.*
- h. *Verifying the compliance of the PPA agreement.*
- i. *Sanctions for violating the private conservation agreement:* describe the types of offenses and their corresponding sanctions.
- j. *Ways to terminate a PPA.*

**3.** If a Regulation already exists, work with the private landowners and NGOs in the implementation of the existing legal framework to create PPAs.

**4.** Implement a system of incentives that are attractive to the landowners and are easily administered.

**5.** Verify compliance.

# R

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The Nature Conservancy  
Región Mesoamérica y el Caribe  
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