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LANDS & SURVEY DEPARTMENT
P.O. BOX 1089GT
Grand Cayman KY1-1102
CAYMAN ISLANDS

Ref No: LR/R


Concerned Citizens Group
P.O. Box 287
Grand Cayman, KY1-1301

January 17, 2017


Dear Sirs,

**Request under the Prescription Law (1997 Revision)
Registration of Public Rights of Way**

Reference is made to your letter dated the 27 October 2016. Our response is set out in detail below addressing the issues that have been raised, including the registration of the captioned public accesses.

The provisions that deal with the registration of easements under the Registered Land Law (RLL) are covered under Part V, Division 5 and Part X. 

Section 92 of the RLL provides for the registration of an easement granted by the registered proprietor of lands or leases over his lands for the benefit of another land. The section clearly indicates that the registration of these easements requires the usual fulfillment of the essentials of an easement including, that there must be a dominant tenement (lands for the benefit of which an easement exists) and a servient tenement (lands which are subject to the burden of an easement existing for another parcel of land).

Section 138 of the RLL makes provisions for the acquisition of an easement by peaceable, open and uninterrupted enjoyment for a period of twenty years and presumes that again traditional dominant and servient tenements are in place. Section 138 (2) states that the Registrar can, after making a determination, direct the registers to be amended to show the easement as an incumbrance of the land affected and as an appurtenance of the land that benefits. 

There are no provisions under the RLL that deal with the registration of public easements and the law does not recognize the right of way that exists without a dominant land.

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The RLL does not provide for the registration of these types of "rights of way" that accrue to the public or any class of the public to be registered. It is acknowledged that the Prescription Law, Section 4, recognizes the right of access to the beach for the purposes of bathing, fishing or recreational activities used for over twenty (20) years; but there are no supporting provisions in the RLL to facilitate the registration of such a right of way.

The RLL would need amendments to ensure the registration of such a right of way. As it stands today, the only registration provided for under the law is clearly stated in Section 92 and Section 138 of the RLL and neither of the two are intended to cover public rights of way.

Where there has been long and continued use or exercise of a right as laid down in the Prescription Law, in theory, the Court will presume the establishment of a public right of way. The legal recognition of this right depends ultimately upon the acquiescence of the servient owner. There must be proof that the owner knew of the right, was under no legal disability and did not take steps to prevent or limit the acts of the public. This particular prescriptive right of way cannot be registered without some provisions being made under the RLL, although they remain effective even though not recorded on the register. In order for the subsisting prescriptive right of way to be recorded on the Register, it is necessary to obtain an Order of the Court confirming the existence, nature and extent of the easement.

In any event, the Court must be called upon to intervene, where there is no express provision in the law. There is no discretion that resides in the Registrar to register a public right of way, on the basis of a claim being made for prescriptive beach access, unless he or she is directed by a Court to do so.

I have been informed by my Ministry that Cabinet has approved and referred to the next sitting of the Legislative Assembly amendments to the following legislation:

1. The Registered Land Law, to allow for the registration of Dedications, and;
2. The Prescription Law, to allow the Government to intervene to have these beach accesses established before the Grand Court whether or not in dispute.

In relation to the issue raised regarding the report of the Chief Surveyor, I understand that the 2003 Report has been updated by the Lands and Survey Department and they are also working to extend the report to cover geographical areas that were not covered by the 2003 Report, including the sister islands. It is anticipated that the Report will be completed by March, 2017.

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In reference to your letter dated 30 November 2016 your concerns relating to the affidavits will be addressed by separate letter by our Freedom of Information Manager.

Yours faithfully,



Sophia Williams
Registrar of Lands

COPY

Hon. Kurt Tibbets, OBE, JP, MLA
Minister, Planning, Lands
Agriculture, Housing and Infrastructure

Rupert Vasquez
Director, Lands and Survey