

CONCERNED CITIZENS GROUP

P.O. Box 287
Grand Cayman KY1-1301, Cayman Islands

By Email

3rd February, 2017

Lands and Survey Department
Government Administration Building
Elgin Avenue, George Town
Grand Cayman

Attn: Ms. Sophia Williams
Registrar of Lands
Email: Sophia.Williams@gov.ky

Dear Ms. Williams

RE: Refusal to Register Claimed Rights of Way Submitted by Concerned Citizens Group in 2001

Thanks for your January 17, 2017 decision letter received by us via email on January 20, 2017 (“Registrar of Lands January 17, 2017 Letter - Refusal to Register 2001 Claimed Prescriptive Rights of Way”) in which you refer to our letter of 27 October 2016, and which letter is finally a response to our many, many reminder letters and emails attempting to get the Registrar of Lands decision on some five hundred (500) Rights of Way registration claims submitted in 2001, over fifteen (15) years ago.

Now after taking more than an unreasonably long period of over fifteen (15) years to reach a decision, in the capacity of Registrar of Lands, you have refused to register the claimed prescriptive Rights of Way, which refusal, we respectfully submit, is in violation of each of the **Cayman Islands Constitution, Section 19 Lawful Administrative Action; the *Prescription Law 1997*** and the ***Registered Land Law***.

The Cayman Islands Constitution, Section 19 Lawful Administrative Action states:

- (1) **All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.**
- (2) **Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act.**

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- Not responding to the claimants for over fifteen (15) years violated our **Constitutional Section 19 (1) Lawful Administrative Action** rights for a procedurally fair process which requires a response to the claims within a reasonable time - by any measure, over fifteen (15) years is more than unreasonable.
- In addition, not releasing the legal advice to support the Registrar’s decision to refuse to register the claimed Rights of Way violated our **Constitution’s Section 19 (2) Lawful Administrative Action** rights.
- It was the intention of the Registrar (refer to the letter dated 11th November 2016 from the Information Manager, Lands & Survey Department to William Adam, copy attached), after 15 years without having taken any action, and without giving any Constitutionally required reasons, to return these affidavits to the Concerned Citizens Group. We declined this return.
- In compliance with our Constitutional rights, please release to us all relevant legal advice.

Hereunder is our response (“Concerned Citizens Group 3rd February, 2017 Response as an Aggrieved Party”), to the statements contained in the Registrar of Lands January 17, 2017 Letter - Refusal to Register 2001 Claimed Prescriptive Rights of Way.

REGISTRAR OF LANDS JANUARY 17,2017 LETTER - REFUSAL TO REGISTER 2001 CLAIMED PRESCRIPTIVE RIGHTS OF WAY	CONCERNED CITIZENS GROUP 3 rd FEBRUARY , 2017 RESPONSE AS AN AGGRIEVED PARTY
<p>The second and third paragraphs of the Registrar of Lands January 17, 2017 Letter states:</p> <p>“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.</p> <p>“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</p>	<p>The <i>Registered Land Law Section 92 Easements</i> has no relevance to the <i>Prescription Law 1997</i> acquired easements / Rights of Way or other benefits.</p> <p><i>Registered Land Law Section 92 Easements</i> is clearly limited in application to easements by agreement between “<i>The proprietor of land or a lease</i>”, the proprietor of the servient land (land owner) and “<i>the proprietor or lessee of other land for the benefit of that other land</i>”, the proprietor of the dominant land (the receiver of the benefit).</p>

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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)."

Your reference is –

Registered Land Law

[NB: The Law extract hereunder is not in Registrar of Lands January 17,2017 Letter but we are inserting it hereunder to assist with clarifying the issue]

Easements

- 92. (1) The proprietor of land or a lease may, by an instrument in the prescribed form, grant an easement over his land or the land comprised in his lease, to the proprietor or lessee of other land for the benefit of that other land.**
- (2) Any proprietor transferring or leasing land or a lease may in the transfer or lease grant an easement, for the benefit of the land transferred or leased, over land retained by him, or reserve an easement for the benefit of land retained by him.
- (3) The instrument creating the easement shall specify clearly-**
- (a) the nature of the easement**, the period for which it is granted and, any conditions, limitations or restrictions intended to affect its enjoyment;
 - (b) the land burdened by the easement and, if required by the Registrar, the particular part**

The appropriate section prescribing the registration of easements acquired by the *Prescription Law 1997 Section 2 Effect of twenty years enjoyment of easements, ways, etc. over lands* and *Section 4 Effect of twenty years use by the public or any class of the public of a beach and a means of access thereto* is the *Registered Land Law Section 138 Acquisition of easements and profits by prescription 1997 Revision.*

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<p>thereof so burdened; and</p> <p>(c) the land which enjoys the benefit of the easement,</p> <p>and shall, if required by the Registrar, include a plan sufficient in the Registrar's estimation to define the easement.</p> <p>(4) <u>The grant or reservation of the easement shall be completed by its registration as an encumbrance in the register of the land burdened and in the property section of the land which benefits, and by filing the instrument.</u></p> <p>(5) An easement granted by the proprietor of a lease shall be capable of existing only during the subsistence of the lease.</p>	
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<p>The fourth paragraph of the Registrar of Lands January 17, 2017 Letter states:</p> <p>“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.”</p>	<p>Your statement as to what the Law says is not agreed, the word “<u>can</u>” is not mentioned in the Law, it uses “<u>...shall register the easement or profit...</u>”.</p> <p>In compliance with Section 138 (2) the “<i>claims to have acquired an easement or profit by virtue of subsection (1) he may apply to the Registrar for the registration thereof</i>” were submitted to the Registrar of Lands in 2001.</p> <p>It is the obligation of “<i>...the Registrar, on being satisfied as to the claim and subject to such notices, advertisement and conditions as the Registrar may direct, shall register the</i></p>
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Your reference is copied below -

[NB: The Law extract hereunder is not in Registrar of Lands January 17,2017 Letter but we are inserting it hereunder to assist with clarifying the issue]

Registered Land Law

Acquisition of easements and profits by prescription 1997 Revision

138. (1) Subject to the Prescription Law (1997 Revision) easements and profits may be acquired without registration by peaceable, open and uninterrupted enjoyment thereof for a period of twenty years:

Provided that no easement or profit shall be so acquired unless the proprietor of the land burdened by such easement or profit is, or by reasonable diligence might have been, aware of such enjoyment and might by his own efforts have prevented it.

(2) Where any person claims to have acquired an easement or profit by virtue of subsection (1) he may apply to the Registrar for the registration thereof, and the Registrar, on being satisfied as to the claim and subject to such notices, advertisement and conditions as the Registrar may direct, shall register the easement or profit as an incumbrance on the register of the land affected and, in the case of an easement, in the property register of the land which benefits.

easement or profit...".

The Registrar to date has provided no evidence to show that the Registrar of Lands has ever begun the required process to be *"...satisfied as to the claim."*

Registered Land Law Section 138 Acquisition of easements and profits by prescription 1997 Revision, the section title specifically confirms its intent and function to be invoked when a right of way is claimed by the doctrine of prescription. Section 138 is the section by which the claimant, a member of the public (the dominant party), by long use acquires a right to pass over the servient land, it is assumed in the Law (the doctrine of lost grant) that the proprietor of the servient land acquiesced to the claimant's long use of the land without any form of agreement or grant of permission and by easy inspection could have seen that the dominant party was using the Right of Way.

Internationally this is the how easements / Rights of Way are acquired by quiet long use, this method to acquire a right is referred to as by "prescription".

The statement that *"...presumes that again that traditional dominant and servient tenements are in place"* also goes against the reasons why the UK Parliament enacted their ***Prescription Law 1832.***

The basic principal of prescription is that, if a land owner has exercised a right over his neighbour's land, *nec vi, nec clam, nec precario* "not by force, nor stealth, nor licence" and for a long

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	<p>period of time, the neighbour has effectively lost their right to object to that right and has acquiesced to that right being made lawful (doctrine of lost modern grant). A claim to register a right of way is often made on the basis that a right of way has been continually used for a period of time in excess of twenty years.</p> <p>When taken together all of the following references anticipate that there never was at any time any form of specific agreement in the over twenty years the claimant used the Right of Way over the servient land and the proprietor of the servient land did not object or prevent the claimant using the Right of Way, see:</p> <p><i>Prescription Law 1997</i></p> <p><i>Section 2 Effect of twenty years enjoyment of easements, ways, etc. over lands.</i></p> <p><i>Section 4 Effect of twenty years use by the public or any class of the public of a beach and a means of access thereto</i></p> <p><i>Registered Land Law</i></p> <p><i>Section 138 Acquisition of easements and profits by prescription 1997 Revision.</i></p>
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<p>The fifth paragraph of the Registrar of Lands January 17, 2017 Letter states:</p> <p>“There are no provisions under the RLL that deal with the</p>	<p>Rights of Way / Public Rights of Way:</p> <p>The fact that there are multiple claimants for the subject Rights of Way over the servient land and that the dominant lands</p>
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<p>registration of public easements and the law does not recognize the right of way that exists without a dominant land.</p> <p>“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.</p> <p><u>“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 138 in the RLL and neither of the two are intended to cover public rights of way.”</u></p>	<p>(roadway and foreshore) are owned by the Crown / government / public and the public has the right of access to those lands then the Right of Way automatically results in the Right of Way becoming Rights of Way to which the public has unfettered access – therefore it is by default a Public Right of Way.</p> <p>Proprietors of “Dominant Land” and “Servient Land” <u>DO Exist:</u></p> <ul style="list-style-type: none">• Do the claimed Public Rights of Way identify definitively “Dominant Land” and “Servient Land”?• The “Dominant land” proprietor is the Crown, by extension, the public - travelling from the public road (Crown land, dominant land), over the privately owned servient land (proprietor of the servient land) on the claimed Rights of Way to the foreshore (Crown land, dominant land). <p>We do not agree with the Registrar of Lands that in order to resolve registration of the claimed Rights of Way the Registered Land Law requires an amendment.</p> <p>For over 15 years the Registrar of Lands ignored the provisions of the Registered Land Law, thereby violating our prescriptive and Constitutional rights.</p>
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<p>The eighth paragraph (part) of the Registrar of Lands January 17, 2017 Letter states:</p> <p>“The legal recognition of the right depends ultimately upon the</p>	<p>The <i>Registered Land Law Section 138 Acquisition of easements and profits by prescription 1997 Revision</i> was specifically enacted to give the end product to the right of a claimant to</p>
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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..."

lawfully apply for the Registrar of Lands to register their claimed Right of Way over the servient land(s) pursuant to provisions in the **Prescription Law 1997**.

The prescriptive rights obtained by the **Prescription Law 1997 Section 2 Effect of twenty years enjoyment of easements, ways, etc. over lands** and **Section 4 Effect of twenty years use by the public or any class of the public of a beach and a means of access thereto** do **NOT** require the claimant to prove what the proprietor of the servient land (owner) knew or did not know, that burden of proof is exclusively on the proprietor of the servient land (owner) to bring to the attention of the Registrar of Lands and on appeal to the Court.

The **Registered Land Law Section 138 Acquisition of easements and profits by prescription 1997 Revision** anticipates that at times the proprietor of the servient land (owner) would object to the registration of the Right of Way and the **Registered Land Law Part XI – Decision of Registrar and Appeals** makes provisions for those objections to be heard by the Registrar of Lands and if necessary be appealed to the Court.

It is clearly the obligation and right of the proprietor of the servient land to present to the Registrar of Lands and / or the Court the evidence to refute the claimant's statements contained in the affidavit(s).

The Registrar of Lands decision to refuse to register the claimed Rights of Way on the above stated ground is ultra vires the intent of the **Prescription Law 1997**, the **Registered Land Law** and the

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	<p>doctrine of prescription.</p> <p>Therefore for reasons previously stated, there is total disagreement with the statement in the Registrar of Lands January 17, 2017 Letter that the acquisition of the Right of Way as laid down in the Prescription Law 1997 is dependent on proof provided by the claimant: <i>“The legal recognition of this right depends ultimately upon <u>the acquiescence of the servient owner</u>. 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.”</i> The Registrar of Lands has attempted to - ultra vires - introduce conditions for registration of the claimed Rights of Way that do not exist in Law.</p>
<p>The eighth paragraph (part) of the Registrar of Lands January 17, 2017 Letter states:</p> <p>“...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.”</p>	<p>Pursuant to the Registered Land Law Section 138 (2) it is the responsibility and obligation of the Registrar of Lands to consider the merits of each claim and determine their validity according to Law alone. Acceptance of your statement would turn the whole ancient doctrine of rights acquired by prescription on its head and the existence of:</p> <p><i>Prescription Law 1997</i></p> <p><i>Section 2 Effect of twenty years enjoyment of easements, ways, etc. over lands.</i></p> <p><i>Section 4 Effect of twenty years use by the public or any class of the public of a beach and a means of access</i></p>

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	<p style="text-align: center;">thereto</p> <p style="text-align: center;">Registered Land Law</p> <p style="text-align: center;">Section 138 Acquisition of easements and profits by prescription 1997 Revision.</p> <p>Throughout the United Kingdom, Colonies and Commonwealth the United Kingdom’s Prescription Law 1832 and their respective Land Registration Laws prescriptive acquisition of lands by adverse possession / squatter rights and rights of way has occurred for centuries and in many cases the rights are registered by their respective Registrar of Lands.</p> <p>The acquisition of lands and use of lands is not just a Cayman Islands issue: it is a worldwide recognized legal method for over thousands of years, from “time immemorial”, for users of lands acquiring rights by quiet long use possession to earn a right to continuing to use those lands without interference.</p>
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<p>The ninth paragraph of the Registrar of Lands January 17, 2017 Letter states:</p> <p>“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.”</p> <p>Your reference is:</p> <p>[NB: The Law extract hereunder is not in Registrar of Lands January 17,2017 Letter but we are</p>	<p>The Court is not involved in the first instance in the registration of Right of Way claims submitted pursuant to the currently existing Prescription Law 1997 and Registered Land Law.</p> <p>Again the Registrar of Lands appears to be attempting to ignore the provisions of the existing Registered Land Law Section 138 Acquisition of easements and profits by</p>
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inserting it hereunder to assist with clarifying the issue]

Prescription Law 1997

Extracts

2. When-

- (a) any profit or benefit;
- (b) any way or easement;
- (c) any water course; or
- (d) the use of any water,

a claim to which may be lawfully made at the common law, by custom, prescription or grant, has been actually enjoyed or derived upon, over or from any land or water of Her Majesty the Queen, any person or any body corporate by any person claiming right thereto, without interruption for twenty years, the right thereto shall, subject to the provisos hereinafter contained be deemed absolute and indefeasible, unless it appears that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

4. (1) When any beach has been used by the public or any class of the public for fishing, for purposes incident to fishing or for bathing or recreation, and any road, track or pathway passing over any land adjoining or adjacent to such beach has been used by the public or any class of the public as a means of access to such beach, without interruption for twenty years, the public shall, subject to the provisos hereinafter contained, have the absolute and indefeasible right to use such beach, land, road, track or pathway, unless it appears that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

(2) No act or other matter, whether submitted to or acquiesced in or not, shall be deemed to be an interruption within the meaning of subsection (1) if the same took place between the 8th February, 1954 and the 30th December, 1955.

Effect of twenty years enjoyment of easements, ways, etc., over lands

Effect of twenty years use by the public or any class of the public of a beach and of means of access thereto

prescription 1997 Revision, enacted for the specific purpose to give effect to the **Prescription Law 1997** to benefit the claimant's long use of the servient land to pass from the dominant public land over the private servient land to reach the dominant public land and to process the registration of that Right of Way.

The existing **Prescription Law 1997 Section 2 Effect of twenty years enjoyment of easements, ways, etc. over lands** and **Section 4 Effect of twenty years use by the public or any class of the public of a beach and a means of access thereto** is the **Registered Land Law Section 138 Acquisition of easements and profits by prescription 1997 Revision** provides for individual persons and the public at large to acquire property by adverse possession / squatters' rights and Rights of Way.

The Registrar of Lands January 17, 2017 Letter selectively referenced/quoted parts of the **Prescription Law 1997** in what appears to be an attempt to deny Caymanians, residents and visitors from enjoying the benefits of the full implementation and effect of the Law.

As Registrar of Lands you do recognize that the **Prescription Law 1997** exists, however, it is not

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<p>Procedure for establishing right under section 4</p> <p>1995 Revision</p>	<p>9. Where the public or any class of the public have used any beach, land, road, track or pathway in the manner specified in section 4(1) for the period mentioned in the said subsection and such user is disputed, any person concerned in the dispute may lodge a plaint in the Grand Court under the Judicature Law (1995 Revision), and the said Law shall apply to the matter in dispute.</p>	<p>evident that you do recognize generally the concepts of long user prescriptive rights, the genesis of this Law, the reasons why in 1832 the United Kingdom enacted their Prescription Law, then subsequently sent it to the Colonies and the process to implement the Law’s provisions enabling the public to acquire their Rights of Way and to register those Rights of Way, thereby giving the public the benefit of the full end product intended by the drafters of the Prescription Law by the working of the Registered Land Law.</p>
<p>Production of documents of title and procedure thereafter</p>	<p>10. (1) Any person in possession of any document of title relating to any beach, land, road, track or pathway with respect to the user of which a plaint has been lodged under section 9 shall produce such document to the Grand Court.</p>	

In the United Kingdom land law is different from Cayman Islands land law in that not all land documents are registered, therefore the application of the doctrine of prescription is somewhat different but the basic principles are consistent in both jurisdictions. There is movement in the United Kingdom for all land to be registered, in that respect the Cayman Islands is far advanced ahead of the United Kingdom.

In the United Kingdom Rights of Way can be and are usually now registered based on claims made by members of the public to the Registrar of Lands. In an effort to get all claims registered recent legislation requires that all Rights of Way be registered by 2026 or the right to registration may be lost.

As in the Cayman Islands, the claimants of a Right of Way do not have in the first instance, to take the registration claims to Court, only on appeal if the claimants do not agree with the Registrar’s refusal to register then they take the matter to Court. If after registration of the Public Right of Way by the Registrar of Lands there is an objection from the proprietor of the servient land, then that is the time when they take the matter to Court. These processes are also consistent with provisions in the Cayman Islands Prescription Law and Registered Land Law - the Court is the place of last resort to resolve matters arising on the registration of Rights of Way as an administrative function of the Registrar of Lands.

Rights of Way Establishment Usage and Compliance Tests.

What are the usage requirements for a Right of Way to be established in law; with or without registration?

The tests of the ***Prescription Law 1997 Section 2 Effect of twenty years enjoyment of easements, ways, etc. over lands; Section 4 Effect of twenty years use by the public or any class of the public of a beach and a means of access thereto AND Registered Land Law Section 138 Acquisition of easements and profits by prescription 1997 Revision:***

1. Does “dominant land” exist? **Yes.**
2. Does “servient land” exist? **Yes.**
3. Do “proprietors of the dominant land” exist? **Yes.**
4. Do “proprietors of the servient land” exist? **Yes.**
5. Are the proprietors (a member(s) of the public on publicly owned land e.g. roadway or foreshore) of the dominant lands adjoining lands travelled **from** and **to**, over the servient land (private / corporate owned land) different? **Yes.**
6. Has the claimant(s) proprietors (a member(s) of the public on publicly owned land e.g. roadway or foreshore) of the dominant lands openly, without secrecy, without force and without the proprietor of the servient land’s consent used the claimed Right of Way without interruption for twenty or more years? **Yes.**
7. Could the claimed Right of Way have been granted by deed by the proprietor of the servient land in accordance with the ***Registered Land Law Section 92 Easements*** to the claimant (a member(s) of the public on publicly owned land e.g. roadway or foreshore) of the dominant lands? **Yes.**
8. During the twenty or more years that the claimant was using the claimed Right of Way was there anything preventing the proprietor of the servient land from knowing the claimant was using the claimed Right of Way on the servient land? **No**
9. Was there any agreement or consent by the proprietor of the servient land in writing or verbally for the claimant to use the claimed Right of Way during the twenty or more years of use? **No.**

10. Did the claimant use the Right of Way at times or in such a manner that might have prevented the proprietor of the servient land from knowing that the claimant was using the claimed Right of Way? **No.**
11. Did the claimant use the Right of Way by stealth or force over the proprietor of the servient Land? **No**
12. During the twenty or more years that the claimant was using the claimed Right of Way was the use either been with the actual knowledge of the proprietor of the servient land or so open, notorious and visible that knowledge of the use by the claimant and others is imputed to the proprietor of the servient land? **Yes.**
13. During the twenty or more years that the claimant was using the claimed Right of Way did the proprietor of the servient land object to the claimant using the claimed Right of Way or warn the claimant to cease using the claimed Right of Way or post “No Trespassing” signs to warn the claimant to cease using the claimed Right of Way? **No.**
14. During the twenty or more years that the claimant was using the claimed Right of Way did the proprietor of the servient land take any action to prevent the claimant using the claimed Right of Way? **No.**
15. During the twenty or more years that the claimant was using the claimed Right of Way did other members of the public or community or visitors use the claimed Right of Way? **Yes.**
16. Did the claimant for the registration of the claimed Public Rights of Way satisfy the usage tests of the ***Prescription Law 1997 Section 2 Effect of twenty years enjoyment of easements, ways, etc. over lands; Section 4 Effect of twenty years use by the public or any class of the public of a beach and a means of access thereto AND Registered Land Law Section 138 Acquisition of easements and profits by prescription 1997 Revision?*** **Yes.**

The claimants for registration of the Rights of Way fully complied with all requirements of the ***Prescription Law 1997*** AND the ***Registered Land Law.***

It is fact that the proprietor of the servient land did not object to the claimants’ use of the claimed Rights of Way for over twenty or more years, was capable but did not enter into a deed to grant the Right of Way, in settled common law this fact is regarded as a “grant” by default (doctrine of lost grant) to have agreed to the claimants obtaining a right to use the servient land.

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In further support of our position on this subject, on **February 5, 2003, Steven Hall-Jones, Senior Crown Council, the Cayman Islands Government's legal advisor** referencing the *Prescription Law* confirmed; ***"under both section 2...and section 4...of the law, provided that the conditions in each of those sections are satisfied, the rights are created good as against the world"..."there is no need to "perfect" title to the rights by a court application (even if such a thing were possible) the Law does it for you"..."only time envisioned by Law when the court will adjudicate...on the...prescriptive right...is a dispute"..."the owner of a dominant tenement or a member of the public in the relation of a PROW"..."there would have to be individual applications brought in respect of each PROW brought by an individual member of the public"..."however, a member of the public claiming on behalf of the public that he had acquired a right of way under S.4 of the Prescription Law could apply to the Registrar for the registration thereof under s138(2) of the Registered Land Law (R) of a right of way"***.

The applications to register the claimed Rights of Way are fully compliant with the legal advice of governments own legal advisor, the Registrar of Lands decision to refuse to register the claimed Rights of Way is not compliant with the advice from their legal advisor and no other legal advice to support the refusal to register the Rights of Way has been provided..

We know from the now released Beach Access Report 2003 that for unknown and never released suspicious reasons the Registrar of Lands further frustrated the Right of Way registration process by illegally secretly trying to find some way to register the Right of Way under provisions of the Roads Laws when the provisions are already established in the ***Prescription Law 1997 AND Registered Land Law***.

The ***Registered Land Law Section 138 Acquisition of easements and profits by prescription 1997 Revision*** was specifically included in the Law with the intent to simplify the acquisition of an easement / Right of Way by prescription in compliance with the ***Prescription Law 1997***, to avoid the difficulties of acquiring prescriptive rights by the common law and lost modern grant.

In refusing to register the claimed Rights of way the Registrar of Lands is attempting to return to uncertainty when clearly certainty has been already made by the Legislative Assembly to exist in the ***Registered Land Law Section 138 Acquisition of easements and profits by prescription 1997 Revision***.

CONCLUSION

1. Under the provision of the **Constitution Section 19 Lawful Administrative Action** we hereby request all records relating to the attempts to register the Rights of Way under the Roads Law.

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2. We are not in agreement with your reasons **made** at for refusing to register the claimed Rights of Way; it is our opinion that existing legislation and common law enables the Registrar of Lands to register the claims without further delay for the following reasons:

2.1. The ***Prescription Law 1997, Section 2 Effect of twenty years enjoyment of easements, ways, etc. over lands*** makes provision whenever for profit or benefit; any way or easement; any watercourse; or the use of any water owned by the Queen, a private person, or company has been used or derived upon **without interruption or objection or express consent or express agreement or fee by the owner for a period of twenty (20) or more years then a lawful claim can be the common law, by custom, prescription or grant be deemed to establish as absolute and indefeasible for the enjoyment to continue as a right.**

The applications to the Registrar of Lands for registration of the Rights of Way are compliant with these ***Prescription Law 1997*** requirements.

2.2. ***Prescription Law 1997, Section 4 Effect of twenty years use by the public or any class of the public of a beach and a means of access thereto*** makes provisions for the establishment of an absolute and indefeasible Right of Way over any land to access the beach, land, track or pathway if it was done **without interruption or objection or express consent or express agreement or fee charged by the owners and it was not done in secret for a period of twenty (20) or more years then a lawful claim can be made.**

The applications to the Registrar of Lands for registration of the Rights of Way are compliant with these ***Prescription Law 1997*** requirements.

Claimed Rights of Way affidavits: These applications for registration pursuant to the ***Registered Land Law Section 138 Acquisition of easements and profits by prescription 1997 Revision*** were all made to the Registrar of Lands in full compliance of the ***Prescription Law, Section 2 of Twenty years enjoyment of easements, ways, etc. over lands, Prescription Law 1997, Section 4 Effect of twenty years use by the public or any class of the public of a beach and a means of access thereto*** and ***Registered Land Law Section 138 Acquisition of easements and profits by prescription 1997 Revision***.

We would draw your attention to the Registered Land Law Section 146 Power of Registrar to State Case:

Lands and Survey Department
Government Administration Building

Attn: Ms. Sophia Williams
Registrar of Lands

3rd February, 2017

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“Whenever any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on him by this Law, the Registrar may, and shall if required to do so by an aggrieved party, state a case for the opinion of the court; and thereupon the court shall give its opinion which shall be binding upon the Registrar.”

We are the aggrieved party as of 2001 and we insist that under the Registered Land Law you are authorised and legally obligated to carry out the powers vested in you under the Law.

Respectfully,

CONCERNED CITIZENS GROUP



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Attn: Ms. Sophia Williams
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3rd February, 2017

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