



STEPS TO LAND TENURE REGULARIZATION IN JAMAICA



NAGGO HEAD CASE STUDY

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INTRODUCTION

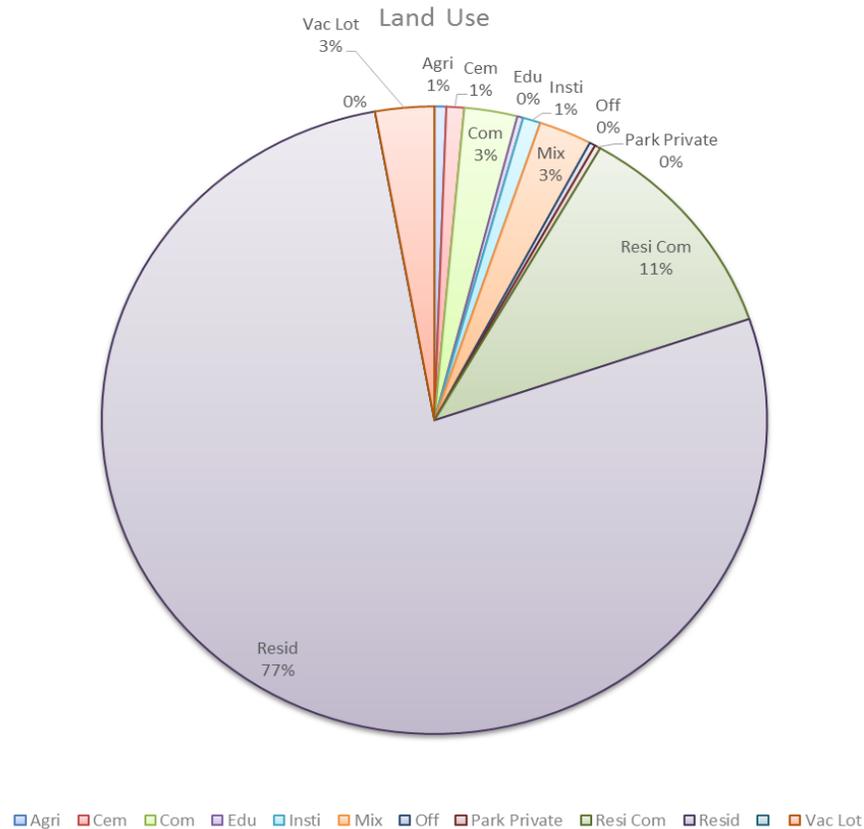
Habitat for Humanity International (HFHI) was founded in 1976 and is now operating in nearly 90 countries, has helped build over 500,000 decent, affordable houses and has served 2.5 million people in over 3,000 communities worldwide. HFHI's experience in Jamaica spans 25 years, involving many community networks and partners. Since December 2014, HFHI has worked in the communities of Gregory Park, Newlands, and Naggo Head through its Building Resilience and Capacities for Emerging Disasters (BRACED) Project.

One aim of the Jam Habitat for Humanity International 2014, BRACED project in Naggo Head, Portmore, Jamaica is to reduce the risk of disaster and environmental hazards and to make the homes and physical structures more resilient in case of flood, hurricane or other natural disasters. It is recognised that land use management and land tenure in particular play significant roles in disaster risk reduction (DRR). Security of tenure which encompasses land use, land access and land administration are also pivotal to the sustainability and resilience of the community, impacting the quality of shelter and access to basic amenities.

This document explores the following effects of tenure insecurity on the residents of Naggo Head as well as the community at large:

- Disincentive to improve housing by occupiers as well as disincentive to re-establish housing and livelihood after disasters.
- Lack of access to resources of agencies of the government e.g. the National Housing Trust and other housing providers, private sector and charities to construct housing.
- Informal occupiers or squatters who lack tenure security are most likely to suffer from deficient or inferior structures.

Naggo Head is a largely residential community, with 77% of land parcels occupied exclusively as residence and a further 11% with mixed use as residential and commercial.



Risk reduction for vulnerable housing stock, through community redevelopment and a community-based process to overcome the obstacles to DRR, is a priority. Land tenure security will improve the access of the community to common property resources and achieve the community's expressed wish list¹ of: -

- Widening of narrow lanes
- Construction of drains to prevent flooding
- Designated open/recreational spaces
- Land to be identified for a community center

Achievement requires consolidated information on land tenure and occupancy status and arrival at a tenure regularization strategy, to be shared with the community and all stakeholders.

¹ Arrived at in community focus group

MAIN TENURE TYPES

1.1 Land Ownership

There are two different legally embedded systems of documenting land ownership in Jamaica: the common law system and the state supported registration of titles:



The Common Law System: This is governed by a number of statutes such as the Record Office Act, the Record of Deeds Wills and Letters Patent Act, and the Conveyancing Act. Proof of land ownership is by way of Deed of Conveyance. The Deed of Conveyance has to be recorded at the Island Record Office (IRO) within three months of its execution and interested persons wanting to verify the ownership of a property are required to search the records of the IRO. This system is not only cumbersome but lends itself to inaccuracies, as the verification of the validity of a deed requires the search of a previous chain of history of dealings for a period of up to 30 years, with no guarantee that all previous interests in the land will be uncovered by such a search. Defects and deficiencies in an owner's title or in the title of a previous owner could easily be undetected.

For this reason, a Deed of Conveyance under the common law system is considered inferior proof of title and is no longer accepted by some public agencies and the private sector. Most financial institutions will not use them as security for loans.

State-supported Registration of Titles: This system is governed largely by the Registration of Titles Act.² The Registrar of Titles issues a Certificate of Title pursuant to an application to have a parcel of land registered. The main attribute of this system is that it records all interests in a property including mortgages, leases, easements, covenants and other rights in a single Certificate of Title which is guaranteed by the State. Save and except in the case of fraud, the Certificate of Title is conclusive proof of ownership of the lands registered therein and it is indefeasible.³ There is no need to search beyond the Certificate of Title to prove ownership and no instrument will pass an interest in the land until it is duly registered on the title. This superior proof of ownership is the only proof of ownership acceptable to most financial institutions and agencies of government. Lands that are not registered under the Registration of Titles Act are referred to as unregistered land, and the Deed of Conveyance referred to as common law title.

1.2 Leases

Leaseholds: Leases are a common form of land tenure where one is given the right to occupy land or a building for a given length of time. This right to occupy can only be granted by the true owner whose ownership is evidenced by a Certificate of Title under the RTA, a common law conveyance or someone acting as the owner's duly authorised agent.

² Enacted in 1889

³ RTA Section 68

TENURE VERIFICATION METHODOLOGY

The following activities were carried out in the tenure verification process:

- A public awareness campaign geared at stakeholder adoption of the aims and methodologies of the project. The sensitisation focused on gaining support of community members and an acceptance of the legitimacy of the process.



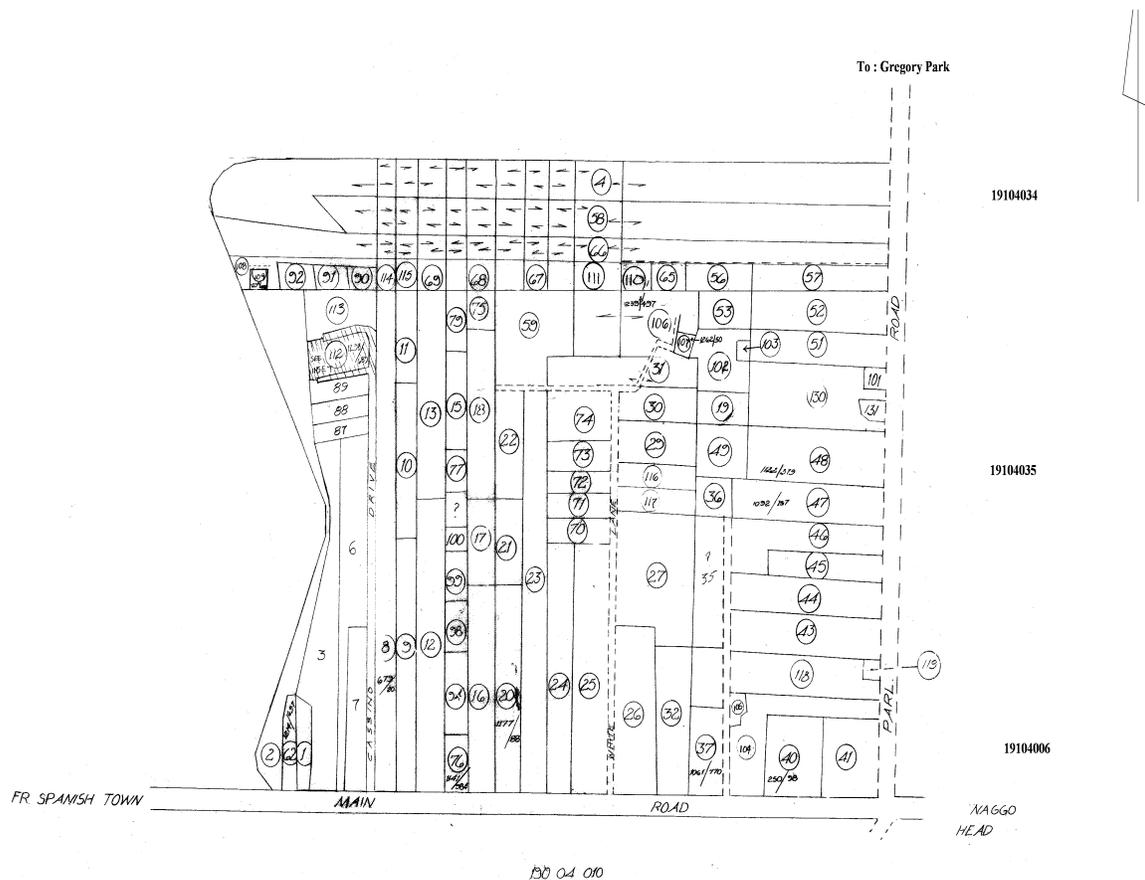
- Jam Habitat initiated and developed the primary methodology for a detailed land tenure survey in order to identify ownership of land parcels, as well as occupiers who are not owners and the status of their occupancy whether under lease or informally as squatters. Jam Habitat also conducted intensive research and data gathering by examining and extrapolating from the records of the National Land Agency (NLA).

- JamHabitat's GIS Specialist produced an area map overlay using NLA tax roll records and enclosure maps and georeferencing the enclosure map to reflect what exists on ground.
- Parcel by parcel community member validation of tenure information was also carried out. Maps were used by the community members to note owners and occupiers as commonly known in the community. (anecdotal)
- A Commissioned Land Surveyor verified plot by plot.
- JamHabitat conducted an enumeration exercise among 428 household respondents.

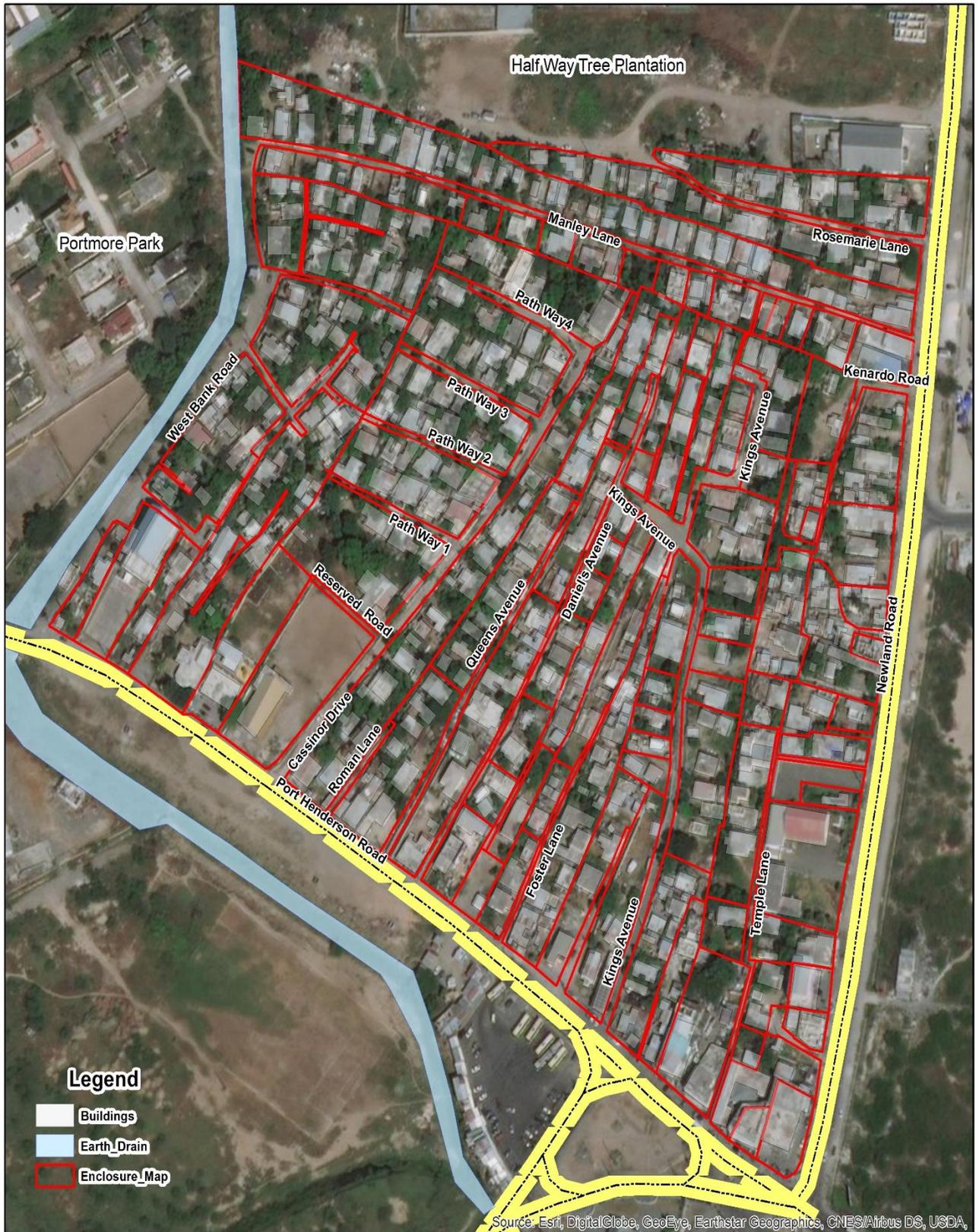
SUMMARY RESULTS FROM LAND TENURE SURVEY

1. **Government records are not reflecting current occupation or ownership.** There is a huge disparity between the number of lots represented by the NLA's tax roll records, the NLA enclosure maps and the lot parcels on ground. There are 129 NLA tax roll records for the Naggo Head area, of which the enclosure map has a total number of 135 parcels, while the total number of lots surveyed (boundary surveys) by Jam Habitat is 315. The number of lots surveyed does not, however, equate with the number of households as some lots have multiple dwellings. Some divisions also represent leaseholds.

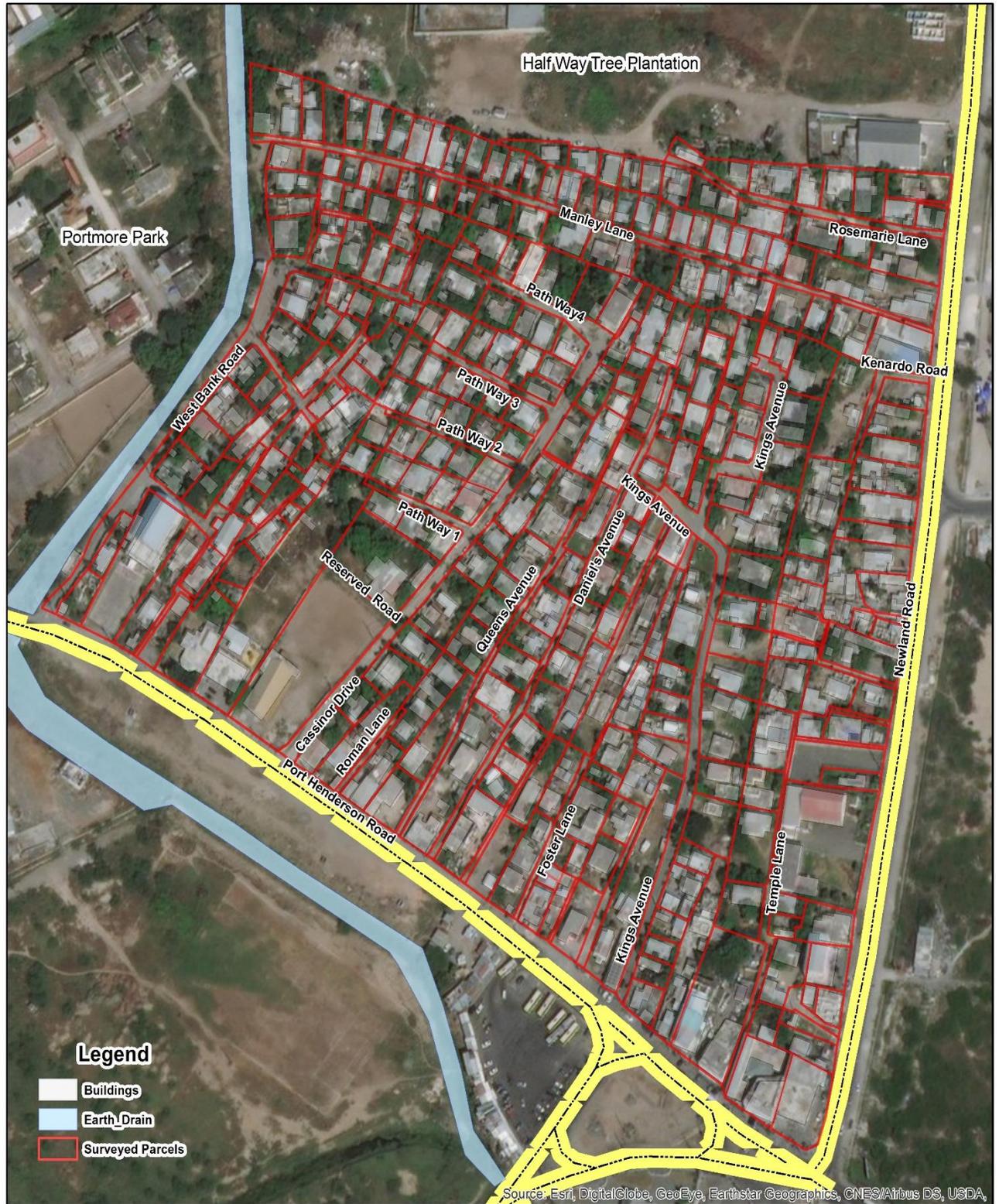
NLA's enclosure map of Naggo Head



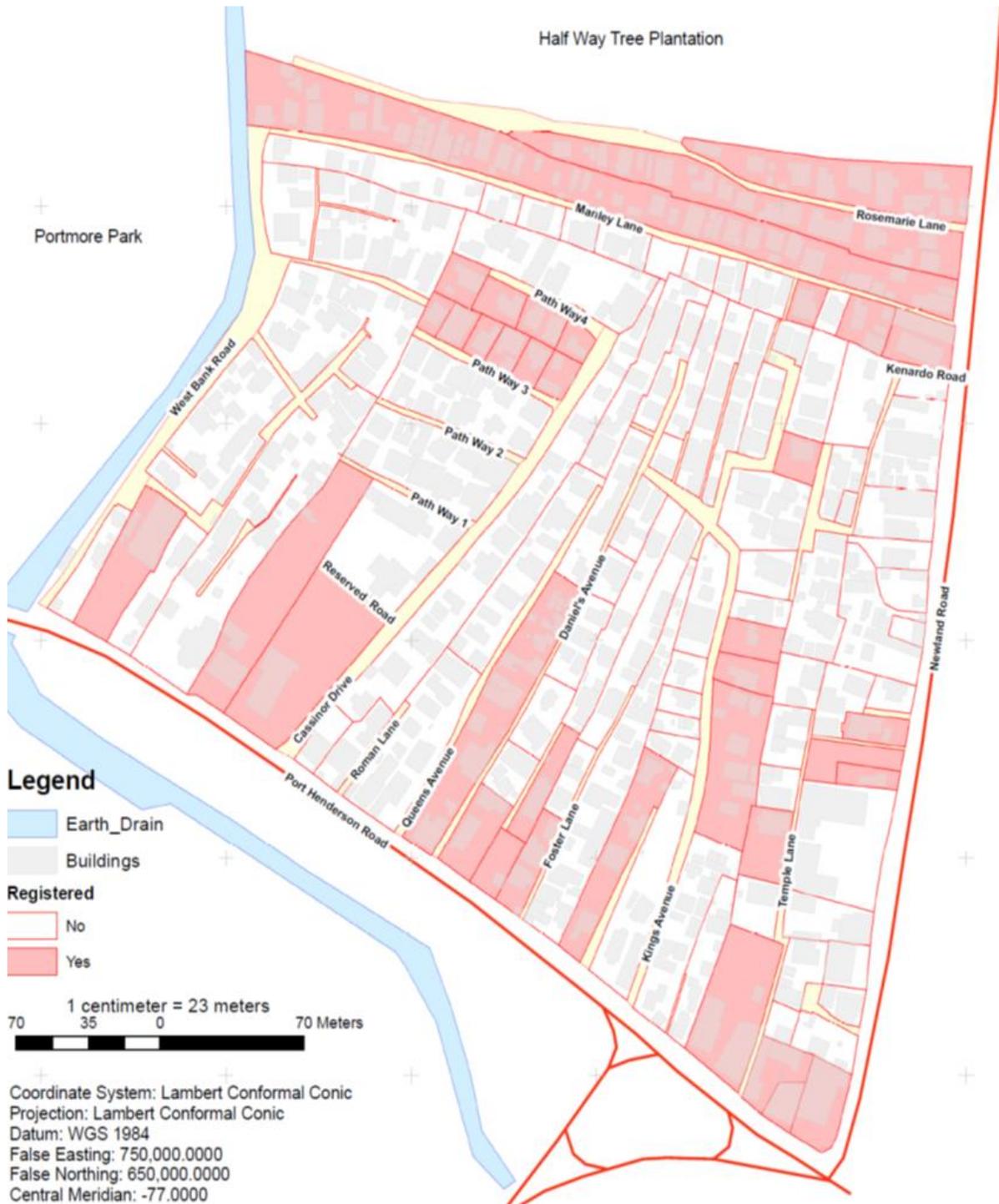
BRACED's georeferencing of enclosure map so parcels are configured to layout on ground



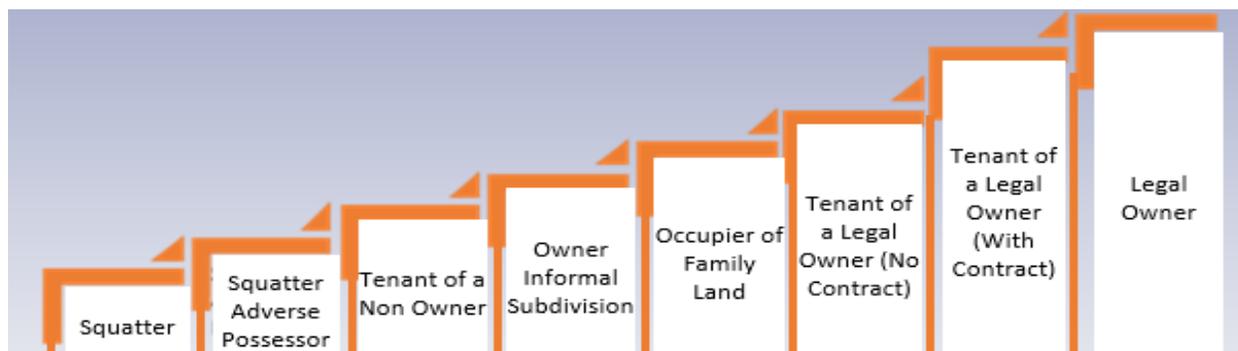
Parcels on ground from BRACED's Cadastral Mapping of Naggo Head



2. **Most land parcels have no registered titles.** Of the 129 NLA recorded parcels, 40 are registered lots (under Registration of Titles Act). The remaining 89 parcels are unregistered and would require ownership validation by presentation of common law titles. Even where parcels are recorded as registered titles, 32 of 40 registered owners are deceased. Consequently, the record of ownership is not reflective of the current status.



3. **Range of Land Rights.** There is a scale of land rights ranging from perception of tenure, occupancy (squatting), adverse possession, leasing through to legal ownership.



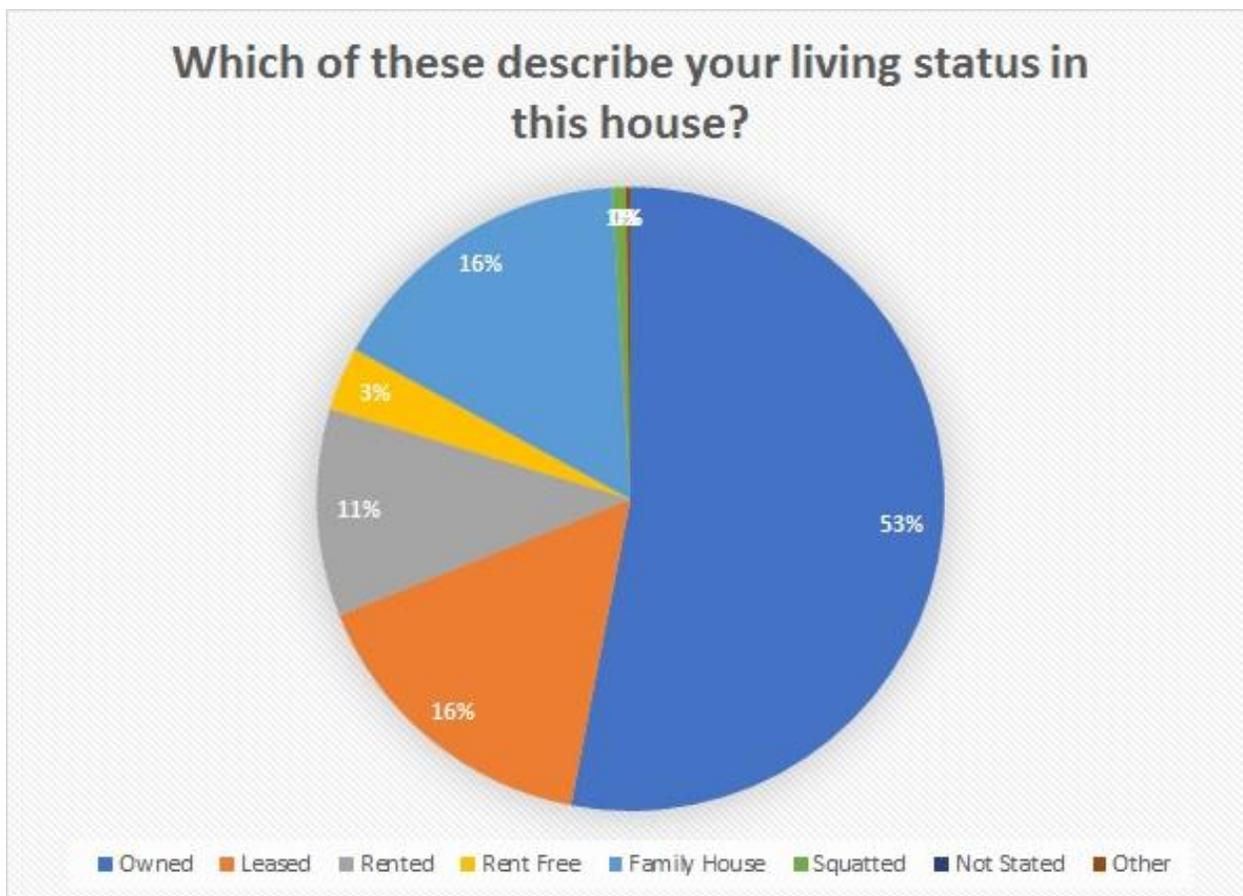
The lowest range on the continuum of tenure rights is usually considered least desirable with the highest risk of eviction, the goal therefore being for an advancement of individuals towards legal ownership. The freedom to dispose of one’s interest in the land by sale, gift or inheritance is greater as one advances along the tiers.

The following shows a breakdown of the distribution of tenure types in the Naggo Head community:

	Enumeration Data	Percentage Enumeration
	(x/428)	
Leagl Owner	12	3%
Lease Holder	221	52%
Tenant with Contract	17	4%
Tenant of a Legal Owner	6	1%
Occupier of Family Land	86	20%
Owner of Informal Sub-division	8	2%
Tenant of a Non-Owner	260	61%
Squatter Adverse Possessor	1	0%
Squatter	9	2%

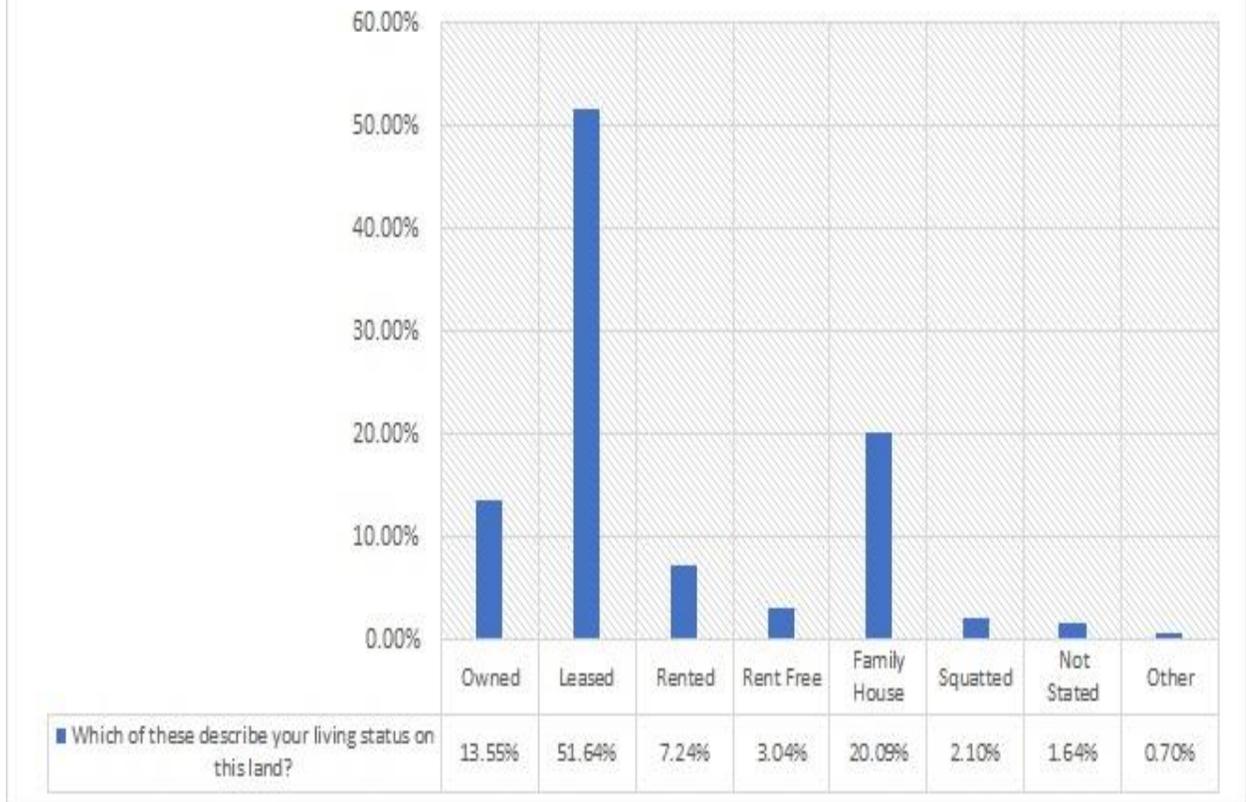
A tenure regularization strategy for the categories of land tenure has been developed and is being executed by the BRACED team. Enumeration data reflects the unique attributes of each case within the categories and further refines the effort of the BRACED team to expedite and streamline regularization efforts.

4. **Most owners of dwellings are not owners of the land on which the dwelling is situated.**



More than half of the occupiers of all lands (registered and unregistered) describe themselves as owners of the buildings in which they live (53%), yet only 14% describe themselves as owners of the land on which the building is located.

Which of these describe your living status on this land?

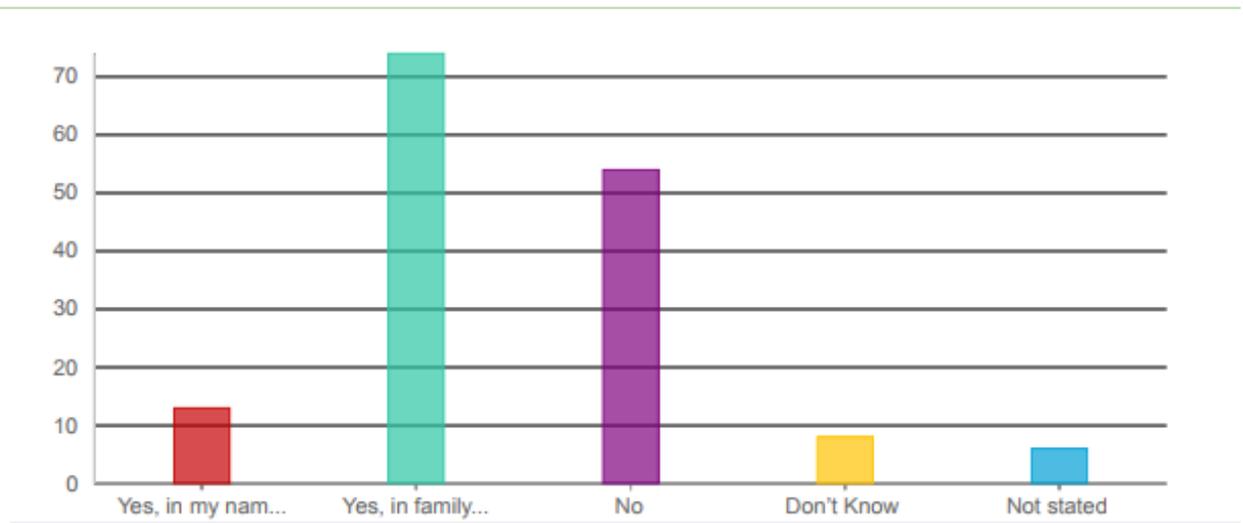


59% of respondents are holding under tenancies or leases, and a significant number of other occupiers occupy “family land” (20%), which is land owned by relatives who predeceased them, and without the formal transfer or formal subdivisions of those lands⁴. Family land is usually occupied by a number of descendants in multiple households. Owning the structure in which you live and not the land on which it is located, as well as generational wealth being locked up in family land that has not been appropriated gives rise to the question of tenure security.

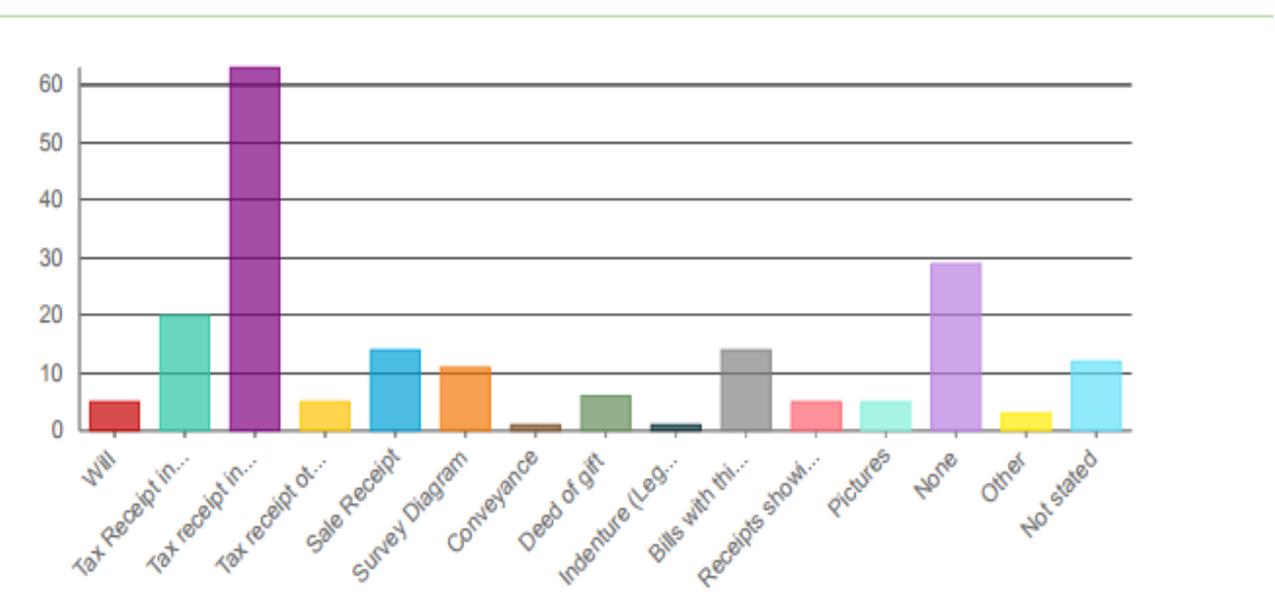
⁴ Jam Habitat for Humanity (2017)
[Naggo Head Household Survey]. Internal Document.

5. **Inadequate documentary proof of ownership.** Of the 155 respondents who answered questions regarding land ownership, an insignificant number of persons indicated having proof of ownership by way of a title in their name. a significantly larger amount claim that they have proof of ownership in the name of family predecessors. A significant number of respondents also report relying heavily on the tax receipts (revenue receipts for land tax paid to the Tax Administration of Jamaica), as proof of their right to ownership.

4.20 a. Do you have a title for the property this household is on?

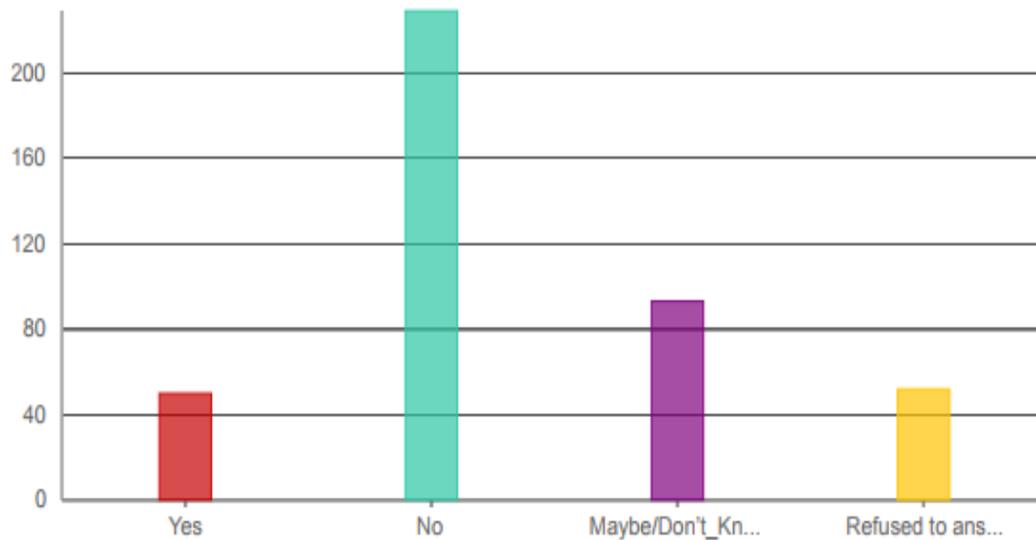


4.20 b. What other supporting documents do you have to prove that you have a right to be on this land? (multiple response)

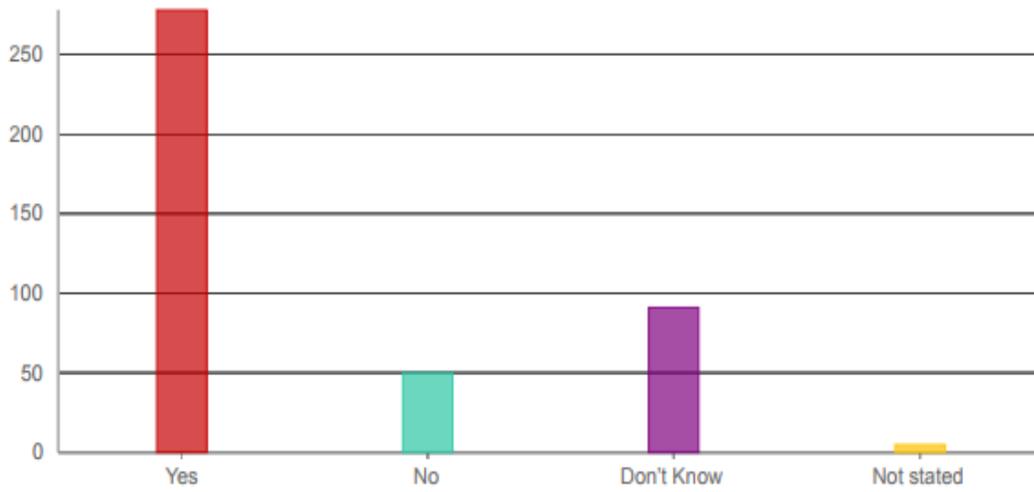


6. **Inadequate documentation of rental/lease arrangements.** The large majority of occupiers do so under leases. Most occupiers under tenancies or leases have no proper written contracts. 169 indicated having a written agreement but, upon further examination of the documentation supporting this claim, it was ascertained that these documents did not necessarily amount, in most cases, to an acceptable form of agreement. Given the number of parcels for which formal legal ownership is unsettled, many persons occupying under lease or tenancies are dealing with “landlords” without legal status and with only presumed ownership rights.
7. **Occupier’s high level of confidence in tenure security.** Despite the inability to provide documentary proof of one’s right to occupy, occupiers are confident that their right to do so will not be challenged. The survey indicated that there are few disputes, and the majority of those surveyed think that it is not likely that the government or other persons will try to remove them from the land. It is a widely held belief that their right to occupy the land would be upheld by a court.

4.36 a. Do you think you could be force off this land in the next 5 years?

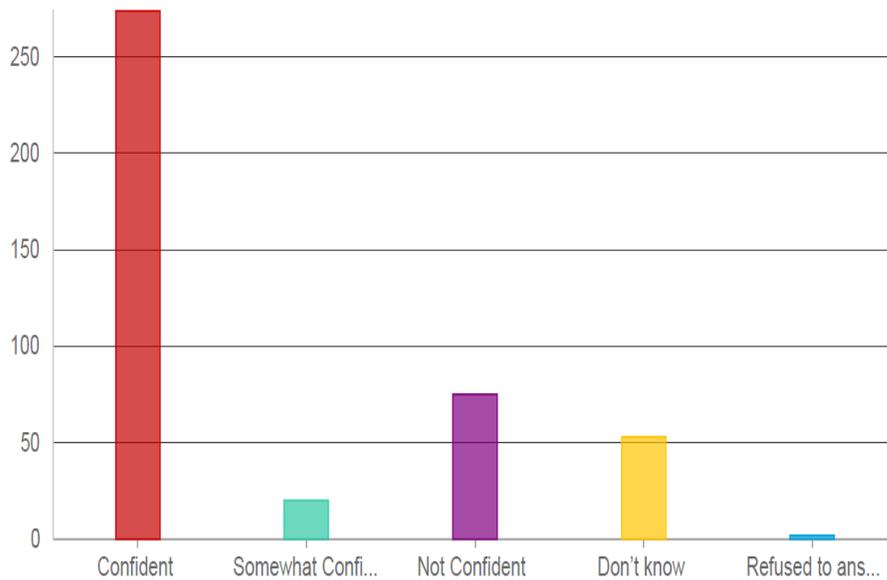


4.38 Do you think the authorities would protect you if somebody tried to take away your right to live in this property and force you to leave?



How confident are you in your ability to remain on the land:

4.44 j. If you couldn't pay the rent for 3 consecutive months



8. **Tenure insecurity impacting loans for home improvement.** Only one resident surveyed indicated ever using title to the land as security for a loan. This loan was used for home improvement.

An overwhelming 86% of occupiers are willing to contribute to the National Housing Trust, though 70% indicate an inability to make these contributions. The National Housing Trust is an organisation set up by the Government of Jamaica to lend money at low interest rates to contributors who wish to build, buy or improve their houses or who wish to buy or build on lots. Only contributors to the NHT are entitled to loan benefits, as income earners are obligated by law to make contributions. Loans from the NHT are primarily secured by the registration of mortgages on registered titles. However, under the Facilities for Title Act the NHT will accept common-law titles as security for loans to improve or build on unregistered land.

9. **Gender Balance.** Persons noted on the NLA records as owners are equal among the sexes; 59 males and 63 Females. There is no gender inequality relative to land ownership or tenure status noted in Jamaica; all land laws have equal applicability.

10. **Financial Status.** The majority of occupiers are living on incomes of less than US\$8.00 per day (see footnote 5 and Figure 4). These income levels may exceed the World Bank definition of poverty, but impact adversely on the ability of occupiers to secure land tenure (the World Bank defines extreme poverty as living on less than US\$1.90 per day, and moderate poverty as less than \$3.10 a day).

⁵ Jam Habitat for Humanity (2017) [Naggo Head Household Survey]. Internal Document

TENURE REGULARIZATION PROCEDURE

Notwithstanding that occupiers do not feel threatened and are confident in their tenure security, the aim of the BRACED project in Naggo Head is to bring actual and not notional security of tenure to the community members, that is, to establish the certainty that a person's rights to land will be recognized by others and protected in cases of specific challenges. This is achieved by advancing a tenure regularisation process that is in keeping with Jamaican laws, hence the thrust to document and record as appropriate these land rights, while advocating for measures that will reduce the financial and other burdens of community members to comply with the legal requirements.

Registration of Ownership

Persons who are able to establish ownership rights are being assisted to have that right registered under the Registration of Titles Act or, where the land is already registered, have the existing Certificate of Title updated to reflect their entitlement. Establishing land ownership rights is also critical to the tenure security of lessees and cannot be over-emphasised. The anecdotes supported by the data indicates that many lessees in Naggo Head have as their landlords, persons who do not themselves have established ownership rights.

The BRACED project has sought to fast-track the process of improving tenure security in Naggo Head by taking steps to have the community declared under the Special Provisions Act. Under this Act, residents are given the opportunity to corroborate their claims in the absence of documentation through an adjudication committee and are eligible for waivers in fee's which reduce cost. The BRACED team actively advocates for residents and acts as a bridge between the community and the local authorities, government agencies and other stakeholders that affect land tenure in the community and in Jamaica.

Of 129 NLA recorded parcels of land in the Naggo Head community only 40 are registered lots with registered titles. This is not inconsistent with national trends, as many land owners in rural and poor urban communities have no registered title for their land. Approximately 45% percent of the land in Jamaica is unregistered and, like Naggo Head, a large percentage of those properties with registered titles do not reflect the current claimants as owners, as many families who pass land ownership from parent to child often do not go through the proper legal processes.

The main deterrents to title registration are: -

1. The lack of appreciation of a large sector of the population (poor, rural) of the value of registered land titles and adherence instead to established long-standing community norms of land tenure.
2. Inability of landowners to meet the standard of documentary proof of ownership required. Many land transactions take place without proper documents or contracts. Landowners buy and sell land without obtaining or giving receipts or conveyances and, in some instances, documents are not protected or preserved as heavy reliance is placed on community knowledge and acceptance of ownership.

Due to ignorance, most gifts of land are undocumented as the belief is that putting the person in possession of the land being gifted is sufficient proof of the transfer of ownership.

Many applicants are unable to provide a Property Tax Certificate which is proof that tax revenue has been paid up to date on the land. An application for registered title will not be considered otherwise. Where land has been informally subdivided the property tax records would reflect the whole parcel and not the part for which registered title is being sought. Consequently, requiring the applicant for title to seek to settle the property taxes for the entire parcel is a cost deterrent. Additionally, many new owners have not been able to pay property taxes because the Land Valuation records, referred to as the "tax roll," is often reflecting the names of previous owners, due to efforts having not been made to have the records updated, or the inability of applicants to meet the requirements of the Land Valuation Division to effect such a change.

Documents needed to apply for legal ownership of land

To apply to register your land the following documents must be submitted:

1. An application form prescribed by the Registration of Titles Act and signed by the applicant.
2. A Statutory Declaration by the applicant to prove possession (a statutory declaration is a written statement confirmed by oath).
3. Supporting statutory declarations to prove ownership from two persons who have known the land for at least 30 years and, in cases where the applicant has no documentary proof of ownership, showing title for himself and predecessors in title for 40 years.
4. An up-to-date certificate of payment of Property Tax.
5. Survey pre-checked diagram (if the land is being registered by plan).
6. Any other document you may have that proves ownership (e.g. Receipt, Conveyance, Probate, Certificate of Compliance under the Facilities for Titles Act).

Applications otherwise than by Plan must describe the land, so as to enable identification of the location of the parcel on the ground by reference to a land mark, and must state the names by which the property is known. The description must state the distances along each boundary and the compass direction of each boundary line, the names of the abutting properties, the names of adjoining owners, and where the abutting land is registered land, the title reference for the property.

3. The inability of landowners to satisfy the mandates of local planning authorities and other agencies as it relates to approval for the subdivision of lands. Where the land for which a registered title is required is part of a larger tract of land, the land owner must obtain and submit with the title application approval from the relevant local authority, for the land to be so subdivided (Portmore Municipal Council in the case of Naggo Head and the National Environmental and Planning Agency). The local authority will give due consideration to existing land use, lot size, ingress and egress, traffic flow, population density, setback from the roadways, gullies, canals, rivers, drainage, water resources etc. Conditions of approval often made by the authority for parking, drainage, sewerage treatment and disposal, road width and surfaces and other infrastructure requirements are rarely achievable by the landowner, due to cost and the often limiting physical attributes of the land.
4. Expensive cost of application: These costs are largely ad valorem and could range between JA\$ 235,000 to JA\$475,000 (US\$1,800 to US\$3,800) for a ¼ acre of land valued at JA\$1,000,000 or US8, 000.

Activity	Cost (JA\$)	\$US equivalent
Surveyor's Cost of Survey Diagram	40,000	320.00
Stamp Duty	15,000	120.00
Transfer Tax (in case of nominee other than applicant for title)	37,000	296.00
Registration Fee	10,000	80.00
Final Title Fees	10,000	80.00
Publication Cost (legal notice)	15,000	120.00
Assurance Fund	55,000	440.00
Attorney's Cost	100,000	800.00
Additional Costs:		
If Claiming through the estate of a deceased person		
Transfer Tax on Estate	15,000	120.00
Stamp Duty on Estate	10,000	80.00
Attorneys legal fees on Probate or Letters of Administration	150,000	1,200.00
Subdivision Plan	65,000	520.00

1.3 Documentation of Leases

The tenure regularisation through title registration will lead to greater certainty of who land owners are and who can legally and legitimately pass on land rights to other persons. Identifying who has a legitimate right to enter into lease arrangements, sign lease documents and collect payment from occupiers.

NAGGO HEAD SPECIFIC TENURE SHORTCOMINGS AND CHALLENGES

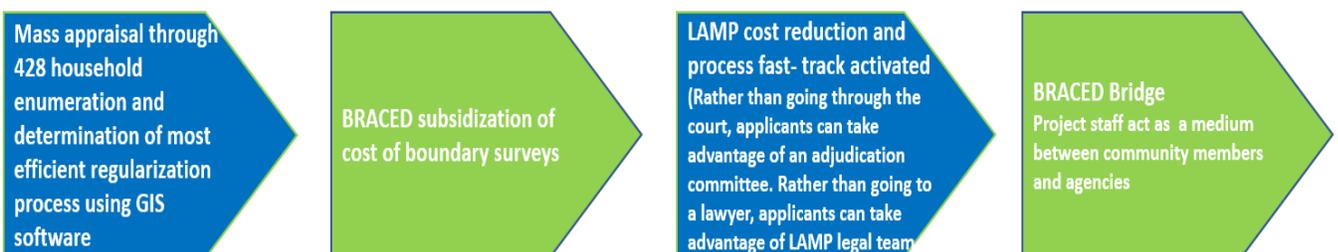
Although this list is not exhaustive, these are our findings of the tenure security shortcomings and challenges specific to Naggo Head:

1. Complications in meeting land tenure requirements.
2. Lack of documentation in proof of ownership, lease or other right to occupy land and dwelling.
3. High numbers of informal settlers.
4. Informal subdivision of larger land holdings.
5. Conflicts with the land records of the National Land Agency and the current on the ground situation. NLA records are not reflective of parcellation over time as only formal subdivisions are documented by the Agency.
6. Absentee owners: Inability to engage with true owners and persons entitled to grant leases and other occupancy rights.
7. Low income levels, inability to afford cost of regularising tenure.
8. Acceptance of the status quo and acceptance of perceived tenure

BRACED TENURE ROADMAP AND FAST-TRACKS

In recognition of the need to improve the access of persons particularly in poor rural communities, to registered land titles, the government initiated the Land Administration and Management Program in 2002 (LAMP). Recognizing the legal impediments and that cost is a disincentive to persons registering land, a new legislation was introduced in 2005. Registration of Titles, Cadastral Mapping and Tenure Clarification (Special Provisions) Act 2005 (SPA), was crafted to address the main issues that are preventing persons from successfully making an application to obtain a registered title.

The BRACED project in seeking to reduce disaster risk for vulnerable and marginalized groups in inner city communities sought a declaration of the Naggo Head community under the Special Provisions Act. Naggo Head is the second inner city community to ever be declared under this Act as the SPA is only applicable to geographical areas specially declared by government to benefit from the provisions of the Act. The BRACED team has also sought to reduce the time and cost required to regularize land not only by taking advantage of the concessions availed through LAMP, but also advocating for other cost waivers, acting as a medium between the community and agencies to speed up the process of completing applications and increasing assessment and processing capacity as well as internal efficiency through the use of GIS as follows:



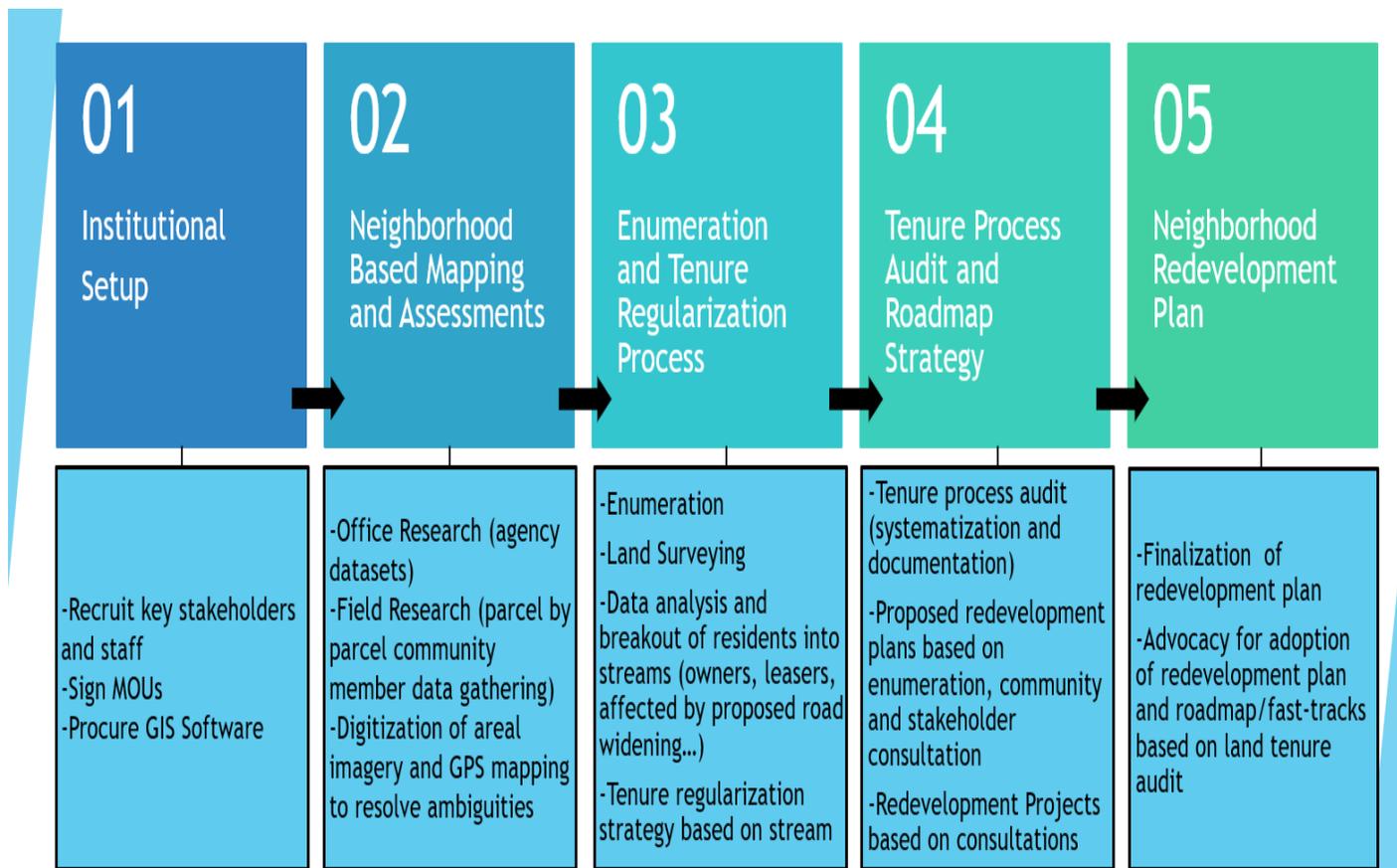
Participatory redevelopment (urban) planning and implementation of initiatives to widen narrow lanes, create open spaces, assess needed infrastructure and build the capacity of residents
 Advocacy such as petitioning for a one time property tax amnesty to facilitate regularization efforts which will result in an update of community records at the municipal and central government level



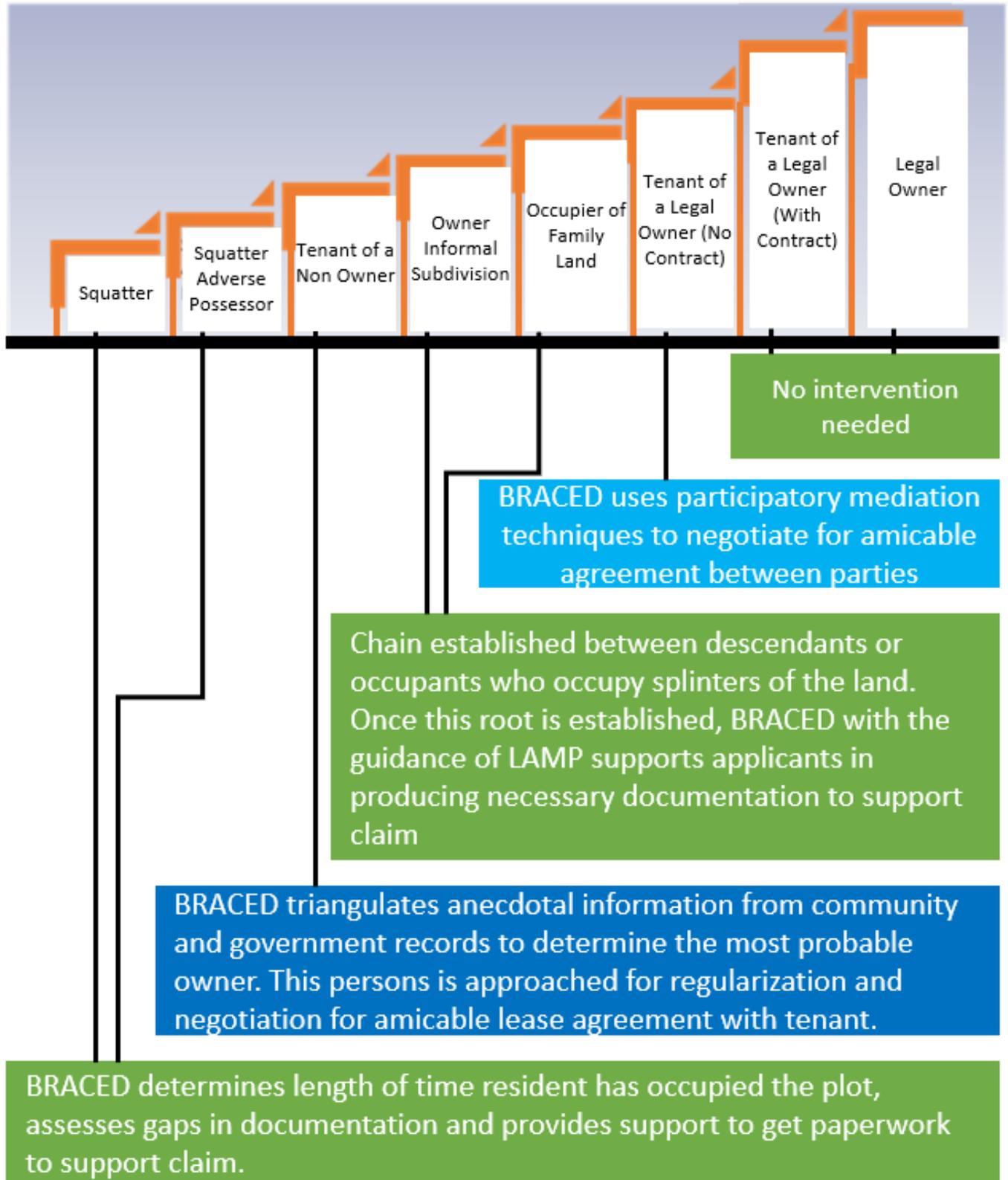
LAMP Committee reviewing titles

Benefits derived under the Special Provisions Act	
Reducing reliance on the absolute documentary proof of ownership	SPA provision for local Adjudication Committee to give a declaration on issues concerning the undocumented rights and interest of persons in relation to land also provides useful mechanism for mediating competing claims and conflicts.
Cost reduction (The cost adjustments reduce the application cost by 60-75%).	<ul style="list-style-type: none"> a. SPA waives Transfer Tax and Stamp duty on applications to register land and provides for all other fees related to the application to be based on the unimproved rather than the improved value of the land. b. Exemption from court fees in Probate and Letters of Administration proceedings c. Exemption from Transfer Tax on Estates
Reducing the requirement for Subdivision and Planning Approval	Ministerial discretion to grant exemption from the requirements of the Local Improvement Act, and other related statutes in respect of subdivisions.
Cost Reduction Legal Services	Alleviate the costs usually incurred in engaging a private attorney as the LAMP legal team will prepare and present title applications on behalf of claimants.

THE BRACED PROJECT (PARTICIPATORY) PROCESS



TENURE ROADMAP FOR NAGGO HEAD CONTINUUM



NAGGO HEAD TENURE SECURITY ACHIEVEMENTS

Whilst the Jamaican landscape is diverse, and each community has its own characteristics in terms of topography, social make up, land tenure specifics and economic resources, it is contemplated that the land tenure awareness and regularization process carried out in the Naggo Head Community of Portmore, Saint Catherine will be replicated in other communities.

Successful Stakeholder Consultation: The JAM HABITAT team, community members and leaders, church, The Municipality of Portmore, The Land Administration and Management Program (LAMP), Housing Agency of Jamaica and the Ministry of Economic Growth and Job Creation (MEGJC) embraced the vision of the community and provided the platform for the advocacy that has resulted in the project outcomes.



Public Sensitization and Awareness: The JAM HABITAT involvement resulted in community members being more educated on the correlation between tenure security, community building, personal security, economic advancement and mitigating disaster risk. The importance of tenure security for vulnerable and marginalized groups was also emphasized. Enumeration data was analysed based on vulnerability criteria and these persons given priority in tenure regularization efforts.



Community consultation

Survey and Mapping: JAM HABITAT's GIS consultant established community maps to enhance the capacity to geo-reference land rights, ad-hoc surveys and subdivisions. JAM HABITAT contracted a Commissioned Land Surveyor who conducted a parcel by parcel survey and mapping exercise clarifying tenure, to update and accurately reflect the existing legal rights to each parcel. The map produced will improve the deficiencies in existing land records in the National Land Agency, serve as a record in the event of a disaster and the parcel surveys will be used to support the applications for title registration.

Reduced Cost of Land Titling: The community is now benefitting from the cost saving provisions under the Registration of Titles Cadastral Mapping and Tenure Clarification Special

Provisions Act (SPA). JAM HABITAT advocacy resulted in a Cabinet approval for a Ministerial Order declaring the Naggo Head community a project area pursuant to the SPA. This resulted in a LAMP partnership to achieve title registration. LAMP will provide legal resources, reducing the usual legal fees. JAM HABITAT sponsored survey and mapping has removed the cost of obtaining the survey diagram needed to support an application for registered title.

12 vs 30 year burden of proof to establish root of title: Claimants without documents in proof of ownership will be entitled to obtain tenure security, through registered titles for their parcels by virtue of their years of occupation. The recognition of ownership of land already registered under the RTA by open, undisputed, quiet and undisturbed possession of 12 years or more was never in dispute, as the RTA provides for that.⁶

Doubt surrounded whether an applicant for first registration of land could so apply to be registered as the owner by virtue of possession. The Referees of Title in previous decades might have considered granting registered title to a claimant of unregistered land where he has been in possession for over 30 years, as that would coincide with the period required as good root of title. The Referees of Title have in the last decade been insisting on documentary evidence of ownership, failing to accept the plight and condition of the poor and failing to accept the poor's customary land tenure by way of possession, and rejecting applicant's claim of ownership based on periods of possession of 30 or more years. One such rejected applicant had the resources to approach the Supreme Court for a review of the Referee's refusal. The Court's response⁷, unless appealed by the State, has improved the chances of a claimant relying on evidence of possession for first registration. The Court ruled that there is no basis on which to impose a 30 year limitation on possession for title and that the claimant saying she had remained in undisturbed possession for 12 years or more suffices. All future applications should be guided by this watershed decision of the Court, which will have tremendous impact on the many claimants of unregistered lands in Naggo Head.⁸

⁶ RTA Section 85

⁷ Valerie Hall V David Pitter (In His Capacity As Referee Of Titles) and The Registrar Of Titles [2016 JMISC Civ203]

⁸ Applicable only to privately owned lands owned by the government require 60 years of adverse possession

Adjudication Committee: This is yet another benefit of Naggo Head being declared a project area under the SPA. The SPA provides for the establishment of an Adjudication Committee which is to be comprised of an attorney-at-law, a commissioned land surveyor and at least 2 community members. This community based committee has the power to adjudicate issues concerning the rights and interest of any person in relation to any land.

Without such a committee the adjudication of land rights would involve lengthy and costly court applications which community members are not able to afford. The committee can be guided by any information it receives and need not be reliant on documentary proof. The findings of the committee will be valued by the Referees of Title as evidence of ownership.

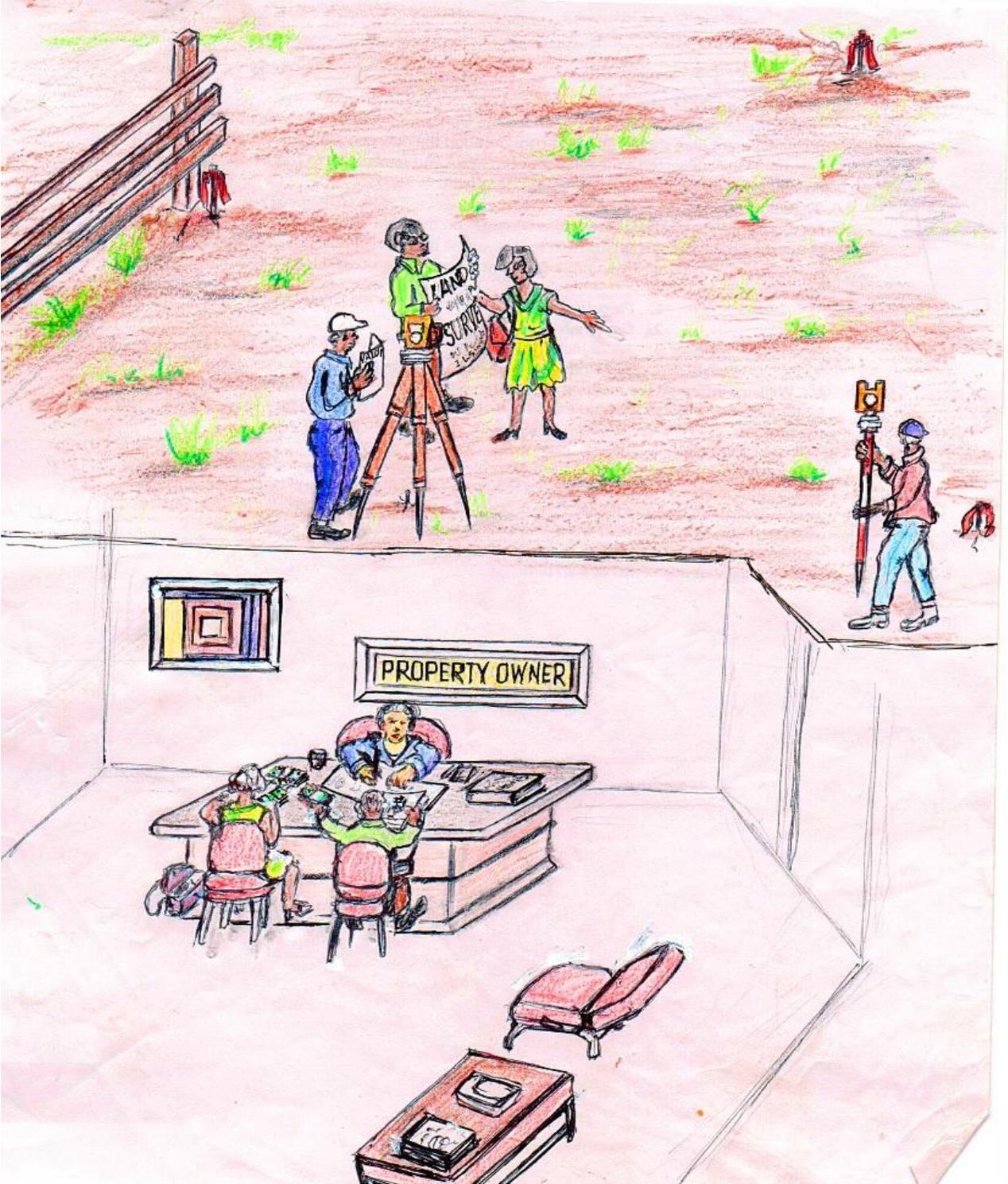
Documenting Leases: Simple document templates are made available and community members assisted, where possible, to finalise lease documents. The poor cannot avail themselves of the high cost of professional services and as such simple standardized forms for transactions allowing for nuances, where possible, are of great benefit.

Wills: Simple Will templates are being made available to the community members and, where possible, members assisted with making wills to preserve the succession of land tenure rights.

Trained Volunteers: Volunteers in the community are to benefit from tenure workshop, which will equip them as land tenure advisors for the dissemination of basic information on the regularisation of one's tenure status. It is a Jamaican custom for poor persons to seek advice and information on legal issues from someone deemed knowledgeable in the community, who is referred to colloquially as a "village lawyer". The advice of these individuals is often relied upon, and although well meaning, often lack the accurate information to offer correct guidance. These volunteers will be better equipped to point community members in the right direction.

Publications - Land Tenure Handbook and Pamphlet: A JAM HABITAT Land Tenure Guide as well as a pamphlet has been published for dissemination of information in a simple format to community members and stakeholders. This is aimed at increasing community knowledge of the land rights that are recognized by law, and the procedure to give effect to the legal recognition of those rights. The following is an illustration from the hand book aimed at sensitizing community

members on the need for a land surveyor to be present when pointing out property boundaries, and also for tenants to formally meet with property owners and document agreements when entering into tenancy arrangements. The excerpt on the following page highlights the benefits of secure land tenure .





Women empowerment: The country's laws affecting land tenure are gender neutral. There is no gender inequality with regard to inheritance rights and entitlements to ownership of land. The legal provision for the division of property belonging to spouses, after a breakdown of the union, recognizes co-habitation or common law unions of a period of at least five years⁹. The law also recognises the rights of common law spouses upon intestacy, where a spouse dies without leaving a will, as well as recognises the legitimate entitlement of children who are not born to parents in formal unions.¹⁰ Land tenure security is crucial for women's empowerment, and women empowerment is a prerequisite for building a secure and resilient Naggo Head community.

It is not inconsistent with national norms that Naggo Head has a high percentage of female heads of household and who are in common law unions. A large percentage of the participants in JAM HABITAT community meetings and focus groups on tenure regularization are women. The awareness of these property rights and the ability to secure tenure is appreciated as a means by which women can better access economic benefits for themselves, their families and their community.

⁹ The Property (Rights of Spouses) Act 2004

¹⁰ The Statement of Children's Act 1976

RECOMMENDATIONS

The SPA and LAMP have correspondingly provided the lowest cost mechanism for a land tenure formalization process reducing traditional costs by 60-75% for applicants who are geographically zoned to receive the benefit. Even this reduced cost will still not be affordable to some members of Naggo Head and other poor rural communities. The JAM HABITAT platform is being used to advance certain recommendations for reforms to the land titling process that would further reduce cost, and increase access by the poor enabling them to benefit from the provisions of the SPA. These recommendations are being advanced to the Ministry of Economic Growth and Job Creation, Housing Agency of Jamaica, LAMP, University of Technology, Naggo Head Citizens' Association, Social Development Commission and the Portmore Municipal Council.

1. Amend the Registration Process.

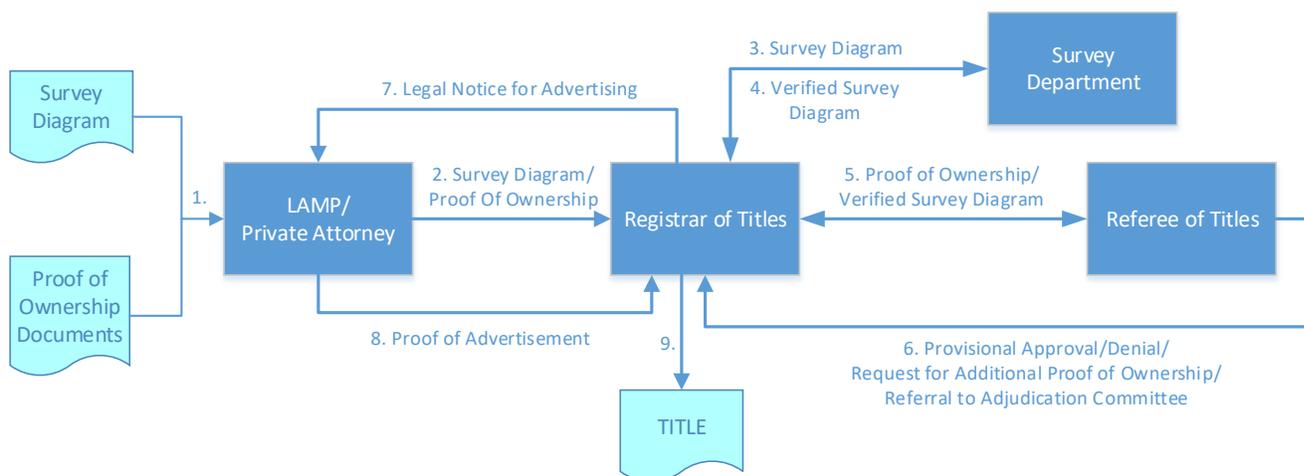


Figure 5 – Existing Process Flow for Title Registration

Step 1: The Claimant engages a Commissioned Land Surveyor to prepare Survey Diagram (a plan of the land claimed). The Survey Diagram is then submitted to the National Land Agency (Survey Department) for pre-checking (12-16 weeks).

The Claimant then gives the Survey Diagram and Proof of Ownership Documents to LAMP or private attorney. Due to duty waivers under SPA, LAMP is not required to assess or settle Stamp Duty and Transfer Tax. Private attorney sends Application to Tax Administration Jamaica for an

assessment and payment of Stamp Duty on the application and Transfer Tax if the owner is appointed a joint owner or a person other than himself to take the title (4-5 weeks).

Step 2: LAMP or Private attorney submits Diagram and Application with proof of payment of Stamp Duty and Transfer Tax to the Registrar of Titles, at the Titles Office of the National Land Agency

Steps 3 & 4: The application is reviewed by the Registrar and, if found satisfactory, the Diagram is resent to Survey Department for rechecking, having been previously checked when submitted by the Commissioned Land Surveyor. The verified Survey Diagram is then returned to the Registrar (4-5 weeks).

Step 5 & 6: The application is sent to the Referee of Titles for approval. The Referee issues Provisional approval or denial of the application or request for additional information, or referral is sent to an Adjudication Committee, Registrar of Titles. (3-4 weeks)

Step 7: If the application is provisionally approved, the Registrar sends Notice of Provisional Approval to LAMP or Private Attorney and to Government Gazette for publication.

Step 8: LAMP or Private Attorney publishes notice and returns proof of publication to the Registrar (Notice period 6 weeks after publication)

Step 9: The Registrar prepares and issues Certificate of Title (4 weeks)

Forty (40) weeks is the average system time for a perfect application. Matters referred to an Adjudication Committee or for additional information would rejoin the process at Step 5.

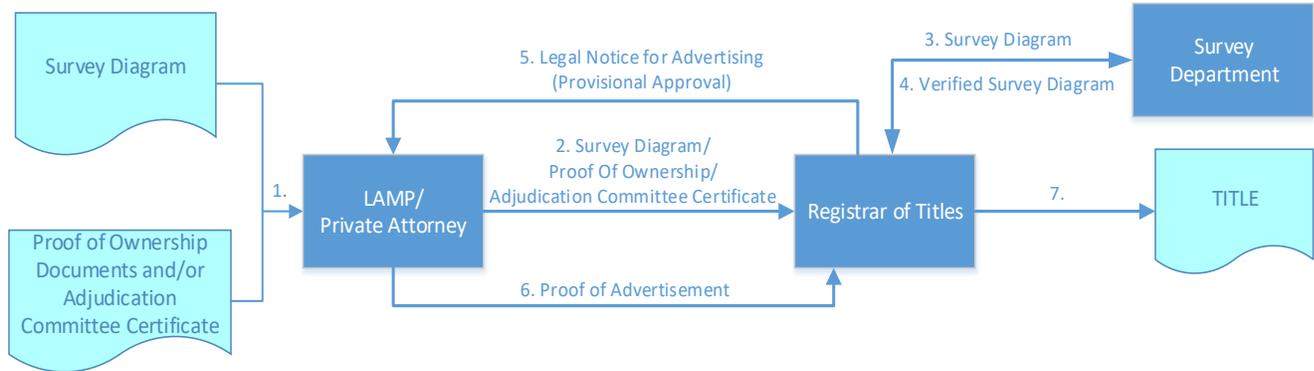


Figure 6 - Proposed Process Flow for Title Registration

Step 1: The Claimant engages a Commissioned Land Surveyor to prepare the Survey Diagram (a plan of the land claimed). The Survey Diagram is submitted to the National Land Agency (Survey Department) for pre-checking (12-16 weeks).

- It is recommended that all applications for the first Registration of Title regardless of the geographical location of the land benefit from the waiver of Transfer Tax and Stamp Duty. Revenue lost will be regained with dynamic land market activity in future transfers and mortgages [**Action:** Ministerial Waiver **Cost reduction** to applicant]
- It is recommended that LAMP or private attorney upon review of the applicant’s status determine whether or not to approach the Adjudication Committee for an initial determination of the applicant’s entitlement rather than submit a less than perfect application to be referred after the NLA review and Referee process. [**Cost reduction and time saving** as applicants are not able to recover costs when an application is denied].

Step 2: LAMP or Private attorney submits Diagram and Application with proof of payment of Stamp Duty and Transfer Tax to the Registrar of Titles, at the Titles Office of the National Land Agency.

Steps 3 & 4: The application is reviewed by the Registrar and, if found satisfactory, the Diagram is resent to Survey Department for rechecking, having been previously checked when submitted by the Commissioned Land Surveyor. The verified Survey Diagram is then returned to Registrar (4-5 weeks).

- It is recommended that only Survey Diagrams of 7 years upwards be rechecked in this stage of the process and that rechecking is otherwise done only when application is otherwise approved. [**Reduction in title process turnaround time**]

Step 5 & 6: The application is sent to the Referee of Titles for approval. The Referee issues Provisional approval or denial of the application or request for additional information, or referral is sent to an Adjudication Committee, Registrar of Titles. (3-4 weeks)

- It is recommended that the Referee of Titles be eliminated and the Registrar of Titles make a final determination of all applications using existing NLA resources [**Action:** Amendment of the RTA **Cost reduction** to applicant as the applicant currently pays the Referee fee of 1% of the market value of the land and its improvements. [**Reduction in title process turnaround time**]

Step 7: If the application is provisionally approved, the Registrar sends Notice of Provisional Approval to LAMP or Private Attorney and to Government Gazette for publication.

Step 8: LAMP or Private Attorney publishes notice and returns proof of publication to the Registrar (Notice period 6 weeks after publication)

Step 9: The Registrar prepares and issues Certificate of Title (4 weeks)

2. **Advance the full effect of the SPA** - The SPA is not having the full effect intended in eliminating the need for claimants to produce documentary proof of ownership when they are able to declare a period of possession as entitlement. The system has resisted an acceptance of social tenures demanding the illusive paper trail. The Referees of Title are citing the ambiguity of the SPA ¹¹as hindrance to this application. JAM HABITAT has made representation for the clause to be amended to dispel ambiguity. This provision was intended to extend the ability to obtain registered title by proving that one has been in sole, open, quiet and undisputed, continuous, undisturbed possession of unregistered land whether by himself his servants agents or tenants for any period when added together

¹¹ RTA Section 10 (1)

with period of possession by his predecessor amounting to at least 12 years, or where the property is owned by the state, 60 years. The section also states that a person who entered into possession of the land under a contract or lease, or as a beneficiary under a Will or upon intestacy and who is in possession of the land should not be prejudiced by having “entered into such possession,” and that the Courts decision,¹² is that undisturbed possession for 12 or more years, suffices.

3. **Advance the full application of existing provisions of the RTA** - The RTA contemplated that proof of title could not possibly be based on the standard “beyond a reasonable doubt” and provided safeguards against the issue of registered titles to persons who are not entitled, yet the backlog of declined applications for title in the Office of the Registrar of Titles is largely due to the inability of applicants to meet the standard of proof of ownership required. There are additional provisions in the RTA that are being ignored by Referees of Title that would assist in increasing the success rate of applications for registered title:

- **Assurance Fund** - The RTA makes provision for an indemnity contribution by each applicant for registered title to cover the risk of the issue of the title. The contributions are to be paid to the Accountant General for the maintenance of the Assurance Fund. The Registrar of Titles is liable to pay damages to any person who suffers loss by the act of registration by the Registrar.¹³ Appreciating, therefore, that there is recourse to compensation by any person claiming that a title was issued to another in prejudice to his own claim on the land, the timidity to issuing titles is unwarranted.
- **Publication of Notices** - The RTA makes it a prerequisite for the notice of all applications provisionally approved by the Referee to be brought to the public at large by advertising twice in the local newspaper and in the Gazette. It also

¹² Valerie Hall V David Pitter (In His Capacity As Referee Of Titles) and The Registrar Of Titles [2016 JMISC Civ203

¹³ RTA Section 18 & 20

mandates the notice of the provisional title approval be served on persons in possession or charge of adjoining lands.

- **Caveats** - Persons with opposing claims or objections to the issue of a registered title to any applicant may lodge a caveat with the Registrar of Titles forbidding the registration until the caveat lapses or the Court makes an order as to the applicant's entitlement.¹⁴ This provision allows for a significant check-and-balance.

- **Doubtful Title** - The RTA contemplates the granting of a registered title even where an owner's true claim of title is questionable and may be challenged. In the event of a doubtful title, the Referee may direct that the title applicant pay an additional sum of money, in any amount the Referee determines, as contribution to the Assurance Fund as "a sufficient indemnity by reason of the non production of any document affecting the title or of the imperfect nature of the evidence of title or against any uncertain or doubtful title claim or demand arising upon the title".¹⁵ This statutory provision is not being invoked and, consequently, title applications are being rejected where the evidence of title is not impeccable.

- **Qualified Title** - The title to any person to land brought under the Registration of Titles Act may either be registered as an absolute or a qualified title.¹⁶ Only absolute titles have been registered as there is no record of a qualified title being ever registered. In the United Kingdom, where a similar provision¹⁷ exists, qualified titles are granted where there is some specific defect that has been identified or where documents are unavailable by the applicant to back a good root of title. A qualified title holder can apply at some later date to be upgraded to an absolute title. The issue of qualified titles would improve the stock of registered parcels.

¹⁴ RTA Section 43

¹⁵ RTA Section 47

¹⁶ RTA Section 25

¹⁷ UK land Registration Act 2002

- **Share Titles** - In the case of jointly owned property, registered title may be issued to persons as tenants and in common or coparceners. The RTA makes provision for separate Certificates of Title to be issued for the undivided shares.¹⁸ This is a practical solution to “family or generational lands” that cannot meet the standards and cost needed to subdivide land occupied by multiple owners.
4. **Separate the issue of planning from titling** - It is being advanced that the focus of land titling is the recording of land rights and the securing of the land owner’s tenure. Titling should not be confused with land use, planning and development and the resultant demand on persons wishing to record their land rights to comply with planning regulations.¹⁹
5. **Lower Cost Surveys** - Survey costs are one of the largest costs to be borne by a landowner seeking to register property. Burns noted that “Policy needs to be developed for parcel boundaries and the status of survey records in re-establishing boundaries. One of the dangers of increasing accuracy and decreasing cost of surveying and mapping technology is the specification of a standard just because it is technically possible rather than because it is needed. Experience in many countries suggests that survey accuracy is not a major concern. No project in the developing world has been able to implement and sustain high-accuracy surveys over extensive areas of their jurisdiction. Those countries that have been successful in registering significant numbers of titles have tended to concentrate on relatively simple, low cost survey methods and produced graphical standard cadastral index maps”.²⁰ The system of title registration requires a description of the land parcel to be registered that protects the integrity of the register. The major risk factor on the register is that of dual registration so that, when the State guarantees a specific geography, there are no potential future contenders for that exact space. It is important to promote, study and analyze the minimum levels of accuracy required to correspond with the lowest possible surveying cost, and to have the statutory adjustments

¹⁸ RTA Section 65

¹⁹ See Paragraph 5.3 Supra

²⁰ Burns, T., & Dalrymple, K. (2008). Conceptual Framework for Governance in Land Administration. *International Federation of Surveyors (FIG) Article of the Month*, 16

to conform to these findings as, otherwise, title registration will not be achieved at the desired rate.

6. **Land Value** - The application fees are based on the market value, that is the value of the land including buildings and other improvements. The Registrar if not satisfied of the correctness of the value declared by the applicant “may” require the applicant to produce a certificate of such value under the hand of a valuator appointed under the Act.²¹ Except for LAMP applications, Referees are mandating that all applications be supported by a formal valuation report. A valuation report is an additional cost deterrent to poor applicants and is not a statutory requirement. It is also being proposed that the RTA be amended to reflect application fees based on the government’s Land Valuation Roll.

7. **The Facilities for Title Act.** To be amended to make it better able to help in the process of resolving land tenure issues and to better facilitate the registration of land process. The land owner will be able to avail himself of the investigation of title process under the FTA, and use a loan for the purpose of surveying the land. As already provided for by the FTA, a Compliance Certificate in proof of ownership may be issued to the land owner which will be proof of title to the land described and, in this way, resolve the root of title issue in appropriate cases. The Certificate is acceptable proof of root of title when bringing the land under the Registration of Titles Act.

8. **Private Sector involvement** – Being aware of the value of community enhancement, private sector groups often focus on advancement of education, poverty reduction and crime eradication and should be engaged to recognise the significance of tenure security to this process. Private companies seek to develop corporate social responsibility through sponsoring sports and other community events. Legal tenure assistance clinics will be suggested among community events.

²¹ RTA Section 18.



STEPS TO LAND TENURE REGULARIZATION IN JAMAICA: NAGGO HEAD CASE STUDY

LAND TENURE HANDBOOK

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FREQUENTLY ASKED QUESTIONS

What is land tenure?

In simplest terms, land tenure is the way in which one holds or occupies an area of land. It is a way of identifying who has the right to use and occupy land.

What are the common types of land tenure?

- a. Ownership
- b. Leases and Tenancies

What is security of tenure?

The legal right to continue living in or using a building, land, and generally being protected from involuntary removal from the land or residence (for example the right of a tenant of property to occupy).

What are the main ways to come into the ownership of land?

- a. By purchase.
- b. By gift
- c. By inheritance
- d. By possession

What are some of the false beliefs or ideas that are held about ways of coming to own land?

- a. Paying property taxes
- b. Paying the expenses of a funeral
- c. Being the person who took care of a deceased parent, child or other person
- d. Being the one who supported and maintained a parent, child or other person
- e. Unwritten "word of mouth" "say so" or pointing a finger at the land.
- f. By being "the firstborn"

What is a land title?

A title is a legal document identifying a person, or persons as the owner of a piece of property. It is the evidence of the right of the owner or the extent of his/her interest, and a means by which he/she can maintain control and as a rule assert right to exclusive possession and enjoyment of the property.

What is a registered title?

Property is registered if it has been brought under the Registration of Titles Act and a Certificate of Title issued for it by the Registrar of Titles. Owners of unregistered land are said to have "common law title".

Why is registration important?

Land owners should aim to ensure that their ownership cannot be disputed by obtaining a title. However, if this title is not registered, the ownership could be subject to challenge. Obtaining title and registering the title are essential steps for the secure ownership of property.

What are some benefits of a landowner having a registered title?

- a. Ownership is unchallengeable (unless title was obtained by fraud)
- b. Protection of the property rights leads to reduced ownership and reduced boundary disputes, therefore helping to promote peace.
- c. Greater opportunities and access to credit/loans, as almost all financial institutions and the National Housing Trust will want any loan secured by a Registered Title.
- d. Increased market value and increased marketability of the property as prospective buyers can be sure that the registered owner is the legal owner.

How does a land owner obtain a registered title?

A land owner may seek assistance to apply to the Registrar of Titles for registered title through the Land Administration and Management Program (LAMP) or through a private attorney-at-law.

What are the documents needed to obtain a registered title?

The documents needed depend on the specifics of each case. Consult the table at Page 15 for the documents usually required in the situations given.

How are registered titles updated when there is a new owner?

Once the property has a registered title any change of ownership should be noted on the Title. A change of ownership may come about as a result of the sale of the land, a gift of the land, the death of the owner or a claim by possession (squatter). An instrument or memorandum or an application appropriate to the specific case has to be sent to the Registrar of Titles for registration.

A land owner may seek assistance to apply to the Registrar of Titles for registration of a change of ownership on a Registered Title through the Land Administration and Management Program (LAMP) or through a private attorney-at-law and should be prepared to present the documents needed depending on the specifics of his/her case.

What are the documents needed to update a registered title when there is a new owner?

The documents needed depend on the specifics of each case. Consult the table at Page 59 for the documents usually required in the situations given.

What is a lease?

A lease is an agreement between the land owner and another person giving that person (called a tenant or lessee) exclusive rights to the use of a property for a payment (called the rent) for a fixed period of time e.g. 6 months, 5 years called a term.

Does a lease or rental agreement have to be written?

Yes, it is always a good idea to get a written lease or rental agreement. Although, most of the time, oral agreements made between tenant and landlords regarding the use of their property can be legally enforced, it is hard to verify the terms, as each party may remember them differently. Getting it in writing can prevent future disputes and misunderstandings.

What is the difference between a lease and a rental?

The tenant has exclusive rights to the use of the property under a lease or a rental however a lease is for a fixed period while a rental is usually from month to month.

Why is a written lease/rental agreement important?

Although, oral agreements made between tenant and landlords regarding the use of their property can be legally enforced, it is hard to verify the terms, as each party may remember them differently. It states the agreements between the owner and the tenant that must take place during the term of the lease/rental, how much the tenant should pay for rent, when it is due and who is responsible for repairs. The lease helps too as a guide for the tenants and answers a lot of questions. Getting it in writing can prevent future disputes and misunderstandings. A written lease/rental agreement is proof to anyone concerned that you have a right to be on the land especially when the landlord is not nearby to confirm your right

What should the lease agreement state?

The Lease agreement should state:

- the names of the Landlords (lessor) and the tenant (lessee)
- description of the property (area, location and title reference (if any))
- the sale price.
- Any other conditions of the lease for example right to build on the premises or to improve on any structure on the premises.

Is it necessary to make a Will?

By making a Will, those you wish to come into ownership of your property on your death actually do. By executing a Will you provide certainty as to your intentions and wishes. If you die without having made a valid Will then upon your death your estate passes according to the Rules of Intestacy. *See sample Will at Page 12*

What could make a will invalid?

- a. If it is not written, a will cannot be by word of mouth.
- b. If it is not signed by the deceased and witnessed by two people
- c. If the deceased was not mentally sound at the time of the making to understand fully the effect of the Will
- d. If the deceased did not make the will freely and without pressure from someone.

EXAMPLES OF PROOF OF OWNERSHIP

The following documents are examples of “Proof of Ownership:”

Assent (by Executor or Administrator of dead owner’s estate) - A document signed by the Executor or Administrator of the estate of the deceased land owner stating that the ownership has passed to the beneficiary of the deceased land owner’s estate.

Certificate of Compliance, under the Facilities for Titles Act - This certificate is issued by a government lending agency responsible for giving agricultural loans. The agency will grant loans on the security of lands reputedly owned by the borrower and upon the declarations of responsible persons such as Justices of the Peace, attorneys, school principals, and court officers. The Certificate states that all formalities of a mortgage has been complied with and is useful proof of an interest in land, when applying for a title.

Certificate of Title - A certificate prepared and kept by the Titles Office of the National land Agency stating

- a technical description of the land;
- the full name and address of the owner/s
- a record of all transactions made by the owner and other pertinent dealing with the land.

Conveyance or “common law title”- a legal document containing an agreement involving the transfer of ownership of property from one person to another. This is applicable to unregistered land only and should state the names of the person transferring and the name of the person to whom the land is being conveyed b) description of the property (area, location and survey diagram reference (if any), and c) sale price. All Conveyance or “common law title” should be stamped with the payment of Transfer Tax and Stamp Duty. This document can be prepared by an attorney-at-law and can also be purchased at several stationery stores, but must be signed and witnessed by a Justice of the Peace or Notary Public, and recorded at the Registrar General’s Department (RGD)

Deed of Gift - A document signed by the previous land owner stating that the land has been given as a gift to the current owner.

Purchase Receipt - The receipt should state

- the names of the Buyer and Seller
- description of the property (area, location and title reference (if any))
- the sale price.

The receipt should be stamped with the payment of Transfer Tax and Stamp Duty if it is not accompanied by a stamped Sale Agreement. These duties are ad valorem and are currently Transfer Tax 5% and Stamp Duty 3%.

Sale Agreement - The Agreement for Sale is the document which outlines the terms on which the owner sells and the buyer buys property. It should state

- the names of the Buyer and Seller
- description of the property (area, location and title reference (if any))
- The sale price.

All Agreements for Sale should be stamped with the payment of Transfer Tax and Stamp Duty. These duties are ad valorem and are currently Transfer Tax 5% and Stamp Duty 3%.

GLOSSARY OF TERMS

SURVEY DIAGRAM

A document prepared by a Commissioned Land Surveyor from a survey of the land. It shows the land's size, its shape, its boundaries and other dimensions. It enables identification of the location of the parcel on the ground by reference to a landmark and states the name by which the property is known.

VALUATION REPORT

A report by a licenced valuer stating what the property is worth. Fees payable on a title application are based on the valuation report. Applications for title under LAMP do not need a valuation report; all others do.

UP TO DATE TAX CERTIFICATE

A certificate given by the tax office that no property taxes are owed. No title will be granted if property taxes are owed.

PROBATED WILL

Where the owner of the property has died leaving a Will, the will has no effect to give ownership of the property unless it is put through the Court. The Court proves the validity of the Will.

LETTERS OF ADMINISTRATION

Where the owner of the property has died without leaving a Will the Court appoints someone to deal with the dead person's property. The person appointed by the court may be the spouse, child or other relative of the deceased person. The court appointed administrator is the only person legally authorised to transfer ownership to persons entitled to it.

SUBDIVISION PLAN

Where the land is part of a larger piece of land, a land surveyor draws a layout on paper showing how the land is divided into 2 or more lots

PARISH COUNCIL SUBDIVISION APPROVAL

The Parish Council (eg Portmore Municipal Council, Saint Mary Parish Council) decides which lands can be divided into smaller lots, how the subdivision should be done and grants approval for sub-division applications.

SUPPORTING DECLARANTS

Every application for title is required to have at least 2 persons who have known the land for at least 30 years state his knowledge of the ownership of the land over the last 30 years. Those persons are to state that the person applying for the title is now the owner.

TITLE BY POSSESSION (ADVERSE POSSESSION)

In order to make an application for a possessory title the claimant must have exercised total control and all acts of ownership over the land continuously for a period of not less than 12 years. You cannot obtain possessory title of land that you have leased or occupied pursuant to some arrangement with the registered owner. Any break in possession of the land whether caused by the land owner or any other party will mean that the 12 year period must recommence.

SAMPLE DOCUMENTS

DEED OF CONVEYANCE/COMMON-LAW-TITLE

SAMPLE CERTIFICATE OF TITLE/REGISTERED TITLE

JAMAICA S.S.

CONVEYANCE

THIS CONVEYANCE made the _____ day of September, in the year Two Thousand and Seventeen BETWEEN **RUBY A** Secretary of 10 McDonald Drive, #2, Kingston 8 in the Parish of Saint Andrew of the ONE PART and **John B** of United States of America, Electrician respectively of the OTHER PART.

WHEREAS **Mary A** had been possessed of the land hereinafter mentioned in fee simple since 1969 after the death of the previous owner, her husband Victor A. **Mary A** remained in open continuous and undisputed possession of the land in fee simple until she died on the 13th day of January, 2007 and Letters of Administration was granted to **Ruby A** by the Supreme Court of Judicature of Jamaica on 15th day of October, 2010.

NOW THIS DEED WITNESSETH THAT IN CONSIDERATION of the sum **THREE MILLION DOLLARS (\$3,000,000.00)** as purchase money to the said **Ruby A** this day paid by the said **John B** on or before the execution of these presents (the receipt whereof is hereby acknowledged) THE said **Ruby A** as Beneficial Owner HEREBY CONVEYS UNTO the said **John B** ALL THAT parcel of land situated and lying and being in the said Parish of Manchester and known as SPRING GARDEN containing by Survey 1453.46 square metres and of the shape and dimensions and butting and bounding as appears by Section 1 delineated on the Plan thereof bearing Survey Department Plan Examination Number 351487 prepared from survey conducted by Noel K. Brown, Commissioned Land Surveyor from survey conducted on the 6th day of April, 2011 TO HAVE AND TO HOLD THE same UNTO and TO THE USE OF THE said **John B** in fee simple.

IN WITNESS whereof the parties hereto have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED SEALED AND DELIVERED }
 by the said } -----
 in the presence of :- }

JUSTICE OF THE PEACE FOR THE PARISH OF:-

SIGNED SEALED AND DELIVERED }
 by the said } -----
 in the presence of :- }

JUSTICE OF THE PEACE FOR THE PARISH OF:-

Registered Title

A1098969

REGISTER BOOK	Folio	574
	Volume	1487



JAMAICA

Certificate of Title under the Registration of Titles Act

LO 1907556
Date Issued: 2nd day of January, 2015
Parent Title(s): Volume 825 Folio 100

I. Registered Owner

[Redacted] Administratrix [Redacted] Jersey Court, Brick, New Jersey 08724, United States of America
[Redacted] retired Nurse [Redacted] Brooklyn, New York 11237, United States of America are now the
proprietors of an estate as Joint Tenants in fee simple subject to the incumbrances notified hereunder.

II. Description of Property

Parish: ST. ANDREW
Property Name: PART OF TOMMY HILL SITUATE AT AIRY CASTLE IN THE DISTRICT OF STONY HILL
Estimation: Three Roods Thirty-two Perches more or less and butting Northerly on the Parochial Road from Stony Hill to Airy Castle, Southerly partly on land belonging to Loretta Thompson and partly on land belonging Eldred Tait Hunter et al, Easterly on land belonging to Dalretta Nicholson and Westerly on Old Barracks belonging to the said Eldred Tait Hunter et al.
Save and Except: the portions removed by Miscellaneous No. 29074/1 (11,671.0 sq. ft.) and 29074/2 (10,766.0 sq ft)

for Registrar of Titles



Lease 1 – with option to purchase

Land Lease Agreement (with purchase option)

This agreement sets out the terms as a binding agreement between the Tenant and the Landlord signed on this day _____ 20_____

The terms are as follows:-

1. The landlord gives the Tenant exclusive use of the land owned by Landlord for the purpose stated below.
2. The land to be leased in this agreement is described below;
3. The land will be leased at the rent stated below and shall be payable as set out.
4. The lease is for the number of years which period begins and ends as stated below.
5. This agreement shall be renewable for a further period as stated below.
6. Any future improvements or construction on the land by the Tenant must take place with the permission of the Landlord. The landlord cannot withhold his permission without a good reason. At the end of the lease period the Landlord shall pay the tenant a fair market price for the improvements or construction. If the Tenant is not reimbursed for improvements above the tenant has 90 days to remove all improvements from the leased land.
7. The Landlord may enter upon the leased land after giving 7 days notice to the Tenant but only for the purpose of looking at the state and condition of the land.
8. The Landlord can end this Agreement by giving the Tenant six (6) months written notice to quit.
9. The Landlord gives to the Tenant choice to buy the land and the Tenant shall exercise that choice at any time during the lease by giving a written notice to the Landlord of his willingness to purchase the property and the price he is willing to pay. If the Landlord does not agree with the price being offered then the President of the Realtor's Association of Jamaica should recommend the price to be paid by the Tenant. The Tenant should pay the price within 120 days otherwise he loses the right to buy the property at that price.

The above terms have been read and agreed upon by both the Tenant and the Landlord and they acknowledge that they understand it and agree to it.

Name and Address of Landlord:

Name and Address of Tenant:

Leased Land: Size:

Location/Address

Parish

Title Reference (if any): Volume Folio

Purpose of Letting: State if dwelling, farming, or shop _____

Rent : \$ _____ per/year or \$ _____ per/month

To be paid (state when [yearly on the _____ or monthly on the [_____]

Years of Lease: _____ years starting _____ 20__ ending _____ 20__

Years for renewal : _____ Y

Signed by the Landlord

in the presence of _____

JUSTICE OF THE PEACE

Signed by the Tenant

in the presence of

JUSTICE OF THE PEACE

Lease 2 – without option to purchase

This agreement sets out the terms as a binding agreement between the Tenant and the Landlord signed on this day _____ 20_____

The terms are as follows:-

1. The landlord gives the Tenant exclusive use of the land owned by Landlord for the purpose stated below.
2. The land to be leased in this agreement is described below;
3. The land will be leased at the rent stated below and shall be payable as set out.
4. The lease is for the number of years which period begins and ends as stated below.
5. This agreement shall be renewable for a further period as stated below.
6. Any future improvements or construction on the land by the Tenant must take place with the permission of the Landlord. The landlord cannot withhold his permission without a good reason. At the end of the lease period the Landlord shall pay the tenant a fair market price for the improvements or construction. If the Tenant is not reimbursed for improvements above the tenant has 90 days to remove all improvements from the leased land.
7. The Landlord may enter upon the leased land after giving 7 days notice to the Tenant but only for the purpose of looking at the state and condition of the land.
8. The Landlord can end this Agreement by giving the Tenant six (6) months written notice to quit.

The above terms have been read and agreed upon by both the Tenant and the Landlord and they acknowledge that they understand it and agree to it.

Name and Address of Landlord:

Name and Address of Tenant:

Leased Land: Size:

Location/Address

Parish

Title Reference (if any): Volume Folio

Purpose of Letting: State if dwelling, farming, or shop _____

Rent : \$ _____ per/year or \$ _____ per/month

To be paid (state when [yearly on the _____ or monthly on the [_____]

Years of Lease: _____ years starting _____ 20__ ending _____ 20__

Years for renewal : _____ Y

Signed by the Landlord

in the presence of

JUSTICE OF THE PEACE

Signed by the Tenant

in the presence of _____

JUSTICE OF THE PEACE

SAMPLE SIMPLE WILL

This Last Will and Testament is made by me *[Insert your full name here]* of *[Insert your full address here]*

I HEREBY REVOKE all former Wills made by me and declare this to be my Last Will

I APPOINT *[Insert first executor's name here]* of *[Insert first executor's full address here]* and *[Insert second executor's name here]* of *[Insert second executor's full address here]* to be the Executors of this my Will.

I GIVE (*e.g. furniture, jewelry, gifts of money etc.*) to *[full name and address of person to receive the gift]*

I GIVE the Property located at (*full address and or title description of the property*) to *[full name and address of person to receive the property]*

I GIVE the rest and residue of my estate both real and personal of whatsoever nature and wheresoever situated to *[Insert full name and address of person or persons who will receive residue]*.

IN WITNESS whereof I have hereunto set my hand this *[insert day]* day of *[insert month]* *[insert year]*

SIGNED by the said *[Insert your full name here]* as her last Will in the presence of us both present at the same time who at her request and in her presence and in the presence of each other have hereunto subscribed our names as witnesses.

SIGNED by the above named in our presence and by us in hers

Testatrix *[You sign in space provided]*

First Witness

Signed:

Name:

Address:

Occupation:

Second Witness

Signed:

Name:

Address:

Occupation:

INSTRUCTIONS ON SIGNING WILL

A Will can be entirely void if it is incorrectly signed and witnessed. In order to avoid risk:-

1. Read the will and satisfy yourself that it says what you intend.
2. Date the will with the date of signature.
3. Sign the will with your ordinary signature
4. Your signature should be made in the presence of two witnesses.
5. The witnesses must be capable of seeing you sign the will and it is desirable, but not strictly necessary that they have to watch you do so.
6. Each witness must then in your presence write his name, address and occupation under the signature clause.
7. Do not choose witnesses, who are beneficiaries otherwise the gifts to them may be void.
The witnesses may be related to each other and do not need to know you personally.
8. The will must then be kept in a safe place; and your close relations and executors should be told where it is kept.

RULES OF INTESTACY: NO WILL - WHO BENEFITS?

WHERE THE DECEASED DIED LEAVING A SPOUSE

Spouse gets: **All the personal property**, meaning furniture, cars and appliances that were not used principally for business by the person who died, is automatically given to the surviving spouse.

All other property is shared as follows:

Living Relatives of Deceased	Share of Estate
No Children No Parents	Spouse takes all
No Children Yes Parent/s	Parent/s 23% Spouse 67%
1 Child Yes Parents	Child 67% Spouse 23%
2 or more Children	Children 50% Spouse 50%

WHERE THE DECEASED DIED LEAVING NO SPOUSE

All deceased property is shared as follows:

Living Relatives of Deceased	Share of Estate				
1 Child	Child takes all				
2 or more Children	Children in equal shares				
No Children Yes Parent/s	Parent/parents take all				
No children, No Parents	Other relatives in this order: <table border="1" style="margin-left: 20px;"> <tbody> <tr> <td>Full Blood Brothers and Half Brothers and Sister</td> </tr> <tr> <td>Grand Parents</td> </tr> <tr> <td>Full Blood Aunt and Uncles</td> </tr> <tr> <td>Half Blood Aunt and Uncles</td> </tr> </tbody> </table>	Full Blood Brothers and Half Brothers and Sister	Grand Parents	Full Blood Aunt and Uncles	Half Blood Aunt and Uncles
Full Blood Brothers and Half Brothers and Sister					
Grand Parents					
Full Blood Aunt and Uncles					
Half Blood Aunt and Uncles					

Note: Where deceased has none of the above relatives: Estate goes to the State.

Spouse means A single man living with a single woman for a period of at least 5 years immediately preceding the death of the person who died intestate or a single woman living with a single man for a period of at least 5 years immediately preceding the death of the person who died intestate. An application has to be made to the Supreme Court for a single man or woman to be declared a spouse of the deceased.

DOCUMENTS NEEDED FOR TITLE REGISTRATION

DOCUMENTS NEEDED TO OBTAIN A REGISTERED TITLE

CASE TYPE	Documentary Proof of Ownership	Survey Diagram	Valuation Report (*)	Up to date Tax Certificate	Probated Will /Letters of Administration	Subdivision Plan	Parish Council Subdivision Approval	Supporting Declarants
Owner living	√	√	√	√	√			√
Owner living/part of land	√	√	√	√	√	√	√	√
Deceased owner	√	√	√	√	√	√		√
Deceased owner /part of land		√	√	√		√	√	√
Claiming By Possession		√	√	√				√

*- Only required for application by private attorney-at-law

DOCUMENTS NEEDED TO UPDATE A REGISTERED TITLE WHEN THERE IS A NEW OWNER

CASE TYPE	Transfer by Owner	Survey Diagram	Duplicate Certificate of Title	Transfer by Executor/ Administrator	Probated Will /Letters of Administration	Sub-division Plan	Parish Council Subdivision Approval	Supporting Declarants	Valuation Report (*)
Owner living	√		√						
Owner living/Part	√	√	√			√	√		
Deceased		√	√	√	√				
Deceased owner / part of land		√	√	√	√	√	√		
Claiming By Possession		√						√	√

*- Only required for application by private attorney-at-law

GOVERNMENT AGENCIES INVOLVED IN THE TITLE REGISTRATION PROCESS

Land Administration and Management Program(LAMP)	<p>Government of Jamaica program to assist persons in most rural and selected urban communities to obtain title for land they own at a low cost. Address: 16 A Half Way-Tree Road Telephone number 876-633-7300-9 Website : http://www.lampja.com/</p>
National Land Agency (NLA)	<p>The agency of government responsible for:-</p> <ul style="list-style-type: none"> • The Office of Titles where the Registrar of Titles deals with applications for land titles and registering changes to ownership on existing titles) • The Survey Department <p>Land Valuations department which deals with property on the tax roll. Address: 94 Hanover street, Kingston Telephone number 876-922-8535-9 : Website: http://www.nla.gov.jm/</p>
Registrar General Department (RGD)	<p>All legal instruments used to grant a right, e.g. Deed of Gift or Conveyance of unregistered land must be registered at the Island Records Office. The Island Records Office is a department of the RGD. Address: Twickenham park, Saint Catherine Telephone number 876-749-0550 Website: https://www.rgd.gov.jm/</p>
Parish Council or Municipal Council	<p>The authority responsible for granting approval for the subdivision of land. Address: 81-86 Portmore Pines Plaza, Greater Portmore Saint Catherine Telephone number: 876-740-7440-1 Website: http://portmoremc.gov.jm/</p>

LAWS THAT AFFECT LAND OWNERSHIP, LAND RIGHTS AND LAND TITLE REGISTRATION

THE REGISTRATION OF TITLES ACT

It deals with the procedure by which persons who own land and do not have a Registered Title can make an application to the Registrar of Titles to have the land registered. Once the land has a registered title all dealings with the title must follow the provisions of Act.

Operational Date: October 1, 1889 Last Amendment: 2005

THE LOCAL IMPROVEMENTS ACT

This Act regulates the subdivision of land stipulating that all subdivision of land for building or sale requires the permission of the local planning authority of the parish in which the land is located.

Operational Date: May 19, 1914 Last Amendment: 1991

THE CONVEYANCING ACT

This Act governs the dealings in all interest in property for example leases, sales, conveyance and mortgage

Operational Date: November 30, 1889 Last Amendment: 1979

THE FACILITIES FOR TITLES ACT

This Act facilitates proof of ownership of property in cases of loans made to small farmers and other persons using lands as security for these loans. In the absence of documentary proof of ownership, the government lending agency may grant loans on the security of lands reputedly owned by the borrower and upon the declarations of responsible persons such as Justices of the Peace, attorneys, school principals, and court officers. The government lending agency will issue a certificate stating that all formalities of a mortgage have been complied with. This certificate and is useful proof of an interest in land when applying for a title.

Operational Date: September 8, 1955 Last Amendment: 1957

THE TRANSFER TAX ACT

This Act imposes ad valorem Transfer Tax upon transfers of interests in land, including transfers by sale, gift or upon the death of the owner.

Operational Date: August 4, 1971 Last Amendment: 2003

THE WILLS ACT

This Act confirms the power of every adult to dispose of their property by Will on their death and sets out the requirement of a valid Will

Operational Date: January 1, 1840 Last Amendment: 1979

THE INTESTATES ESTATES AND PROPERTY CHARGES ACT

This Act makes provision with respect to inheritance and the distribution and administration of the estates of persons who die without leaving a will or persons who die leaving a will that has not specifically provided for portions of the estate.

Operational Date: June 1, 1937 Last Amendment: 1988

THE REGISTRATION OF TITLES CADASTRAL MAPPING AND TENURE CLARIFICATION (SPECIAL PROVISIONS ACT) 2005

This Act makes special provision for land title applications including the waiver of Transfer Tax and other statutory costs. The Act is only applicable to land in geographical areas specially declared by government to benefit from the provisions of the Act.

THE PROPERTY (RIGHTS OF SPOUSES) ACT

This Act makes provision for the division of property between spouses. A spouse is defined to include a single man or single woman who have cohabited for a period of not less than five years.

Operational Date: April 1, 2006 Last Amendment: 2006

THE BRACED PROJECT

The Building Resilience and Capacities Against Emerging Disasters Project has been carrying out extensive work in Gregory Park, Newlands and Naggo Head, St. Catherine to strengthen each community's ability to withstand the effects of natural and man-made hazards and resulting disasters. The project mainstreams disaster risk reduction, gender and vulnerable groups, and uses a community based, systematized, participatory approach.

The project has done this by increasing tenure security, retrofitting houses, building sanitary conveniences, training builders and community advocates and putting garbage receptacles in place among many other things.

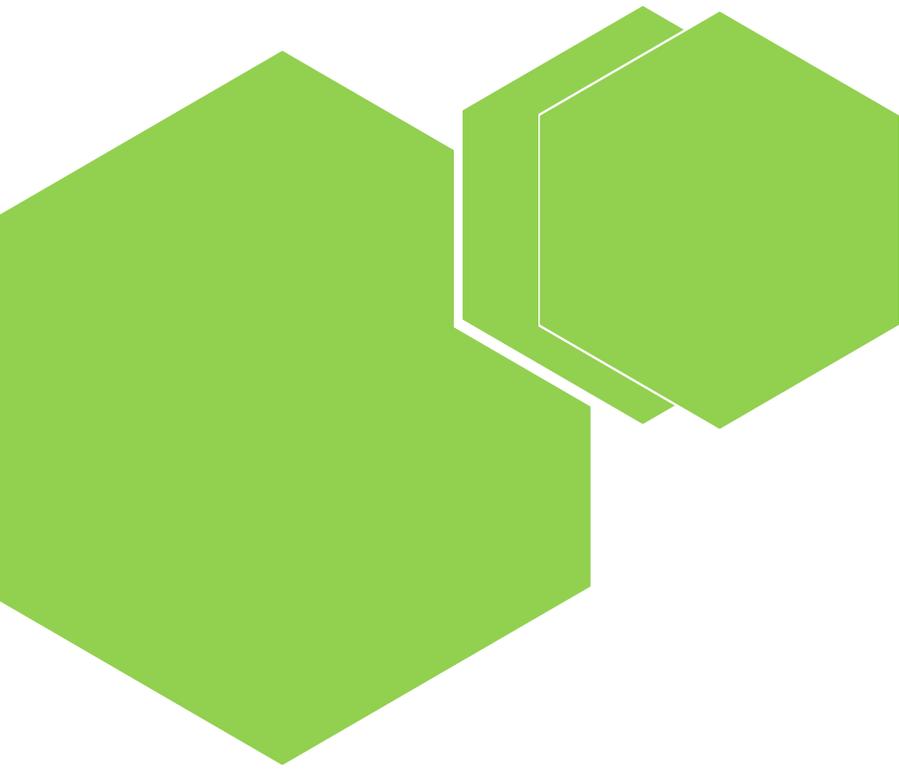
A special and noteworthy aspect of the BRACED project is our community redevelopment of Naggo Head, a community very near and dear to our hearts because of the community members who have become our friends, and some are even now like family. The community has shown us that they are ready and willing to help in any way possible to realize a better future for themselves and their children.

Our participatory approach to community development which guides the community in assessing their problems and coming up with their own solutions has been the key motivating and mobilizing factor in the success of the project.

Project funding has been used to complete boundary surveys of all the plots of land in the community, apply for land titles for approximately 80 families and seek legal advice to put in writing and ratify numerous lease agreements. Funding has also been expended on redevelopment plans and projects for the area which involved several community meetings, focus groups, workshops and visioning exercises to ensure that the plan is one the community is vested in and will sustain.

We thank all the project areas for accepting us into your communities and homes and we look forward to a continued partnership with you in realizing the dreams visions of your communities.





STEPS TO LAND TENURE REGULARIZATION IN JAMAICA



NAGGO HEAD CASE STUDY

