

Private Protected Areas:

Legal Framework for Pumalin Park (Chile)

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Information concerning the legal instruments discussed in this case study is current as of 30 November 2009.

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Abstract

The Pumalin Park Nature Sanctuary is the first large-scale private environmental conservation project in Chile. It covers a natural area containing fjords, glaciers and pristine forests in the Chilean Patagonia. It began as an initiative by American entrepreneur Douglas Tompkins, who in 1994 purchased approximately 300,000 hectares of primeval forest-covered land in Patagonia to protect the area and use it for ecotourism.

The Pumalin Park Nature Sanctuary is an unprecedented conservation initiative in Chile. It has encountered a number of difficulties and challenges, arising from the scope of the project, its characteristics and its purposes. Pumalin Park has nevertheless managed with relative success to overcome these challenges and the criticism it has faced, to become the country's largest private conservation area.

In this project, market tools including private ownership were used to protect land for conservation purposes and subsequently apply for nature sanctuary classification. This protected area category allows for private ownership but it is also subject to government regulation and control through the National Monuments Council. The nature sanctuary category covers sites that possess significant potential for geological, palaeontological, zoological, botanical or ecological research, or that contain natural features of interest to the scientific community or the state.

The project had to overcome a range of difficulties including irregularities in the land tenure of people living in the area, lack of transport services connecting the region (a government-owned strip of land across the park had to be established so that infrastructure projects could be implemented), and opposition and mistrust among political and social groups at the national and local levels.

The project ultimately succeeded; the area was designated as a nature sanctuary in 2005 and the Chilean Pumalin Foundation (Fundación Pumalín) was established as its owner and manager. A number of public-private agreements laid the foundations for this venture.

Pumalin Park is a fine example of how conservation and tourism business initiatives can be fostered using market tools, and how public-private cooperation agreements can be concluded. It also shows that public environmental policy can be guided to achieve specific goals: in this case, the conservation of vast areas of the country's southern region.

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1 Introduction

- 1 The Pumalin Park Nature Sanctuary is Chile's first large-scale private environmental conservation project. It covers a natural area containing fjords, glaciers and pristine forests in the region known as Continental Chiloe in Chilean Patagonia. The land was purchased in 1994 by American entrepreneur Douglas Tompkins in order to protect the area and use it for ecotourism. An investment of approximately 25 million US dollars was made for this purpose.
- 2 Pumalin Park is located in the Palena province of Chile's Region X, Los Lagos,¹ and covers a surface area of 288,689 hectares (Figure 1). It lies between 42°00' and 42°59' South and 71°56' and 72°49' West, in one of Chile's most sparsely populated regions, with 1.2 inhabitants per sq km. Seventy per cent of the population lives in rural areas, mainly in the valleys and on the coast and islands.
- 3 Through a Decree issued in 2005,² Pumalin Park was officially designated as a nature sanctuary under the National Monuments Law³ and placed under the administrative authority of the National Monuments Council (Consejo de Monumentos Nacionales),⁴ the government body responsible for nature sanctuaries. A Resolution issued in 2005⁵ recognized the legal personality of the Pumalin Foundation (Fundación Pumalín)⁶ and approved its statutes. Ownership was transferred to the Pumalin Foundation from the Conservation Land Trust, a non-profit organization created in the United States and currently chaired by Douglas Tompkins. This brought to a close the long development process for this conservation project, involving more than 10 years of negotiations.
- 4 This case study aims to briefly illustrate Chile's experience with private protected areas. Pumalin Park is an example of a private environmental conservation initiative that was required to use a variety of legal and economic tools in order to overcome social, political and cultural challenges.⁷

2 Legal framework for private protected areas in Chile

- 5 Chile has a long history of creating natural conservation areas⁸ but the country does not yet have a systematic, modern and integrated legal framework for natural protected areas. Nor are any regulations currently in force for private protected areas. The regulatory framework is scattered and fragmented, consisting of a series of individual legal texts and isolated provisions.
- 6 Although several protected areas were created prior to its enactment, the Forest Law of 1925⁹ provided the first legal basis for protected areas in Chile. The Forest Law created the categories of 'national tourism park' and 'forest reserve'. The 1940 Convention on Nature Protection and Wild Life Preservation

1 The region is Chile's main administrative subdivision. Regions are further divided into provinces.

2 Ministry of Education, Decree No. 1.137 of 19 August 2005.

3 Law No. 17.288 of 1970.

4 The National Monuments Council is part of the Ministry of Education.

5 Ministry of Justice, Resolution No. 1.625 of 26 April 2005.

6 The Pumalin Foundation is a Chilean non-profit private entity that was specifically established to own and manage the park.

7 See Ramírez and Folchi, 1999.

8 As early as 1879, there was an attempt to create a forest reserve area 10 km wide on the Andean slopes in the provinces of Arauco, Valdivia and Llanquihue, and 1 km wide in the Chilean Coast Range. The first decisive step, however, was the creation of the Malleco Forest Reserve in 1907.

9 Decree Law No. 656 of 1925.

such areas, comprising 33 national parks, 48 national reserves and 15 natural monuments, covering a total surface area of approximately 14 million hectares, or 19 per cent of the national territory.¹³

- 9 The protected areas system includes the following categories: pristine area reserves, national parks, national reserves and natural monuments, under the authority of the National Forestry Corporation;¹⁴ and marine parks and reserves, under the authority of the National Fisheries Service (Servicio Nacional de Pesca, or SERNAPESCA). These categories have been created by a variety of legal instruments.¹⁵
- 10 Private protected areas are mentioned for the first time in the Environmental Framework Law, which stipulates: “the State shall foster and establish incentives for the creation of privately owned natural protected areas, which shall be subject to identical tax regulations, rights, obligations and responsibilities as those pertaining to the National System of Natural Protected Areas” (art. 35).¹⁶ But the Law fails to define the term ‘private protected area’ and does not provide criteria for determining which areas may be designated as such.
- 11 The Environmental Framework Law is the only legal framework for private protected areas in the country. No regulatory implementing provisions have so far been issued pursuant to this Law. In 2003, the National Environment Commission (Comisión Nacional del Medio Ambiente, or CONAMA) finalized a Draft Regulation on Private Protected Areas, which which has yet to be adopted.¹⁷
- 12 In the meantime, starting in the 1990s, private conservation initiatives spontaneously emerged. In 1997, such areas were incorporated into the Network of Private Protected Areas (Red de áreas protegidas privadas, or RAPP), on the initiative of the National Committee for the Defence of Flora and Fauna (Comité Nacional Pro Defensa de la Flora y Fauna, or CODEFF) with financial support from the World Wildlife Fund. This project currently includes 133 private owners of this type of property, some of which are also state-recognized protected areas.¹⁸ The Network covers an estimated surface area of 1.25 million hectares across the country, and includes Pumalin Park, spread over approximately 300,000 hectares.¹⁹
- 13 According to National Environment Commission estimates, there are over 500 private protection initiatives in the country, covering a total surface area of approximately 1.7 million hectares and accounting for approximately 11 per cent of the areas included in the National System of Natural Protected Areas.²⁰

13 See National Forestry Corporation web site. Currently the National Environment Commission (CONAMA) is executing the GEF/CONAMA/UNDP project “Building a Comprehensive National Protected Area System in Chile”. It is a five-year project, which began in 2008 and will conclude in 2013. The GEF funding is approximately 5 million US dollars and the co-financing is 33 million US dollars. See National Environment Commission web site.

14 Pursuant to article 63 of Law No. 20.283 of 2008 on Native Forest Restoration and Forestry Development, the National System of Natural Protected Areas is managed by the National Forestry Corporation.

15 The categories of terrestrial protected areas are created by the following instruments: the Forest Law, Decree Law No. 656 of 1925; the State Property Rules, Decree Law No. 1.939 of 1977; the General Law on Fisheries and Aquaculture, Law No. 18.892 of 1989; and the Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (Western Hemisphere Convention) 1940, integrated into Chilean law by Supreme Decree No. 531 of 1967. The categories of marine parks and reserves were created by the Environmental Framework Law, No. 19.300 of 1994.

16 As is the case with the National System of Natural Protected Areas generally, the taxation regime applicable to natural protected areas is not regulated in an integrated and systematic manner, and is little studied. Natural protected areas are, however, exempt from real estate or property tax as they are generally state-owned.

17 See *Parques para Chile*, 2010.

18 For example, they include: the Cascada de las Animas Nature Sanctuary (3,600 hectares); the Los Huemules de Niblinto Nature Sanctuary (7,530 hectares); and the Oasis de La Campana ecological reserve (2,500 hectares).

19 See Environmental Law Institute et al., 2003.

20 See Comisión Nacional del Medio Ambiente, undated.

3 Designation of Pumalin Park as a nature sanctuary

In 2005, Pumalin Park, hitherto considered private property, was technically and legally designated as the Pumalin Park Nature Sanctuary, in accordance with the provisions of the National Monuments Law.²¹ 14

The nature sanctuary category is a special kind of protected area in the national legal framework. It is not included in the National Protected Areas System but is rather considered to be a sub-category of the ‘national monument’ category, which applies to cultural heritage and is defined and governed by the National Monuments Law.²² This law provides for the protection of sites and areas of cultural value and also creates nature sanctuaries. Nature sanctuaries may include private properties, unlike the National Protected Areas System categories which cover public or state-owned land or assets.²³ 15

The National Monuments Law defines nature sanctuaries as “marine or terrestrial areas that provide outstanding opportunities for geological, palaeontological, zoological, botanical or ecological research, or that contain natural features whose preservation is of interest for science or the State” (art. 31). No construction or excavation work may be undertaken in such areas without prior authorization from the Council, nor may activities such as fishing, hunting and farming, or any other activity that may alter the area’s natural state, be carried out (art. 31). The law provides: “If these sites are located on private property, the owners shall ensure their due protection and, in the case of damage beyond the owners’ control, shall duly notify the Council” (art. 31). 16

The Environmental Framework Law stipulates that any development, construction, programmes or activities in a nature sanctuary are subject to an environmental impact assessment, which evaluates the environmental appropriateness of any such project (art. 10(p)). 17

When private property is declared a nature sanctuary, the owner must comply with a series of environmental obligations and restrictions that curtail the rights that normally pertain to private property. These restrictions require the owner to preserve the objective, purpose and characteristics that justified the property’s listing as a nature sanctuary. 18

While the legal provisions that govern nature sanctuaries establish certain restrictions, they do not prohibit all uses or activities. However, other applicable legal instruments, such as environmental impact assessment legislation, may establish restrictions or prohibitions. Similarly, wildlife, water, land and other natural resources within a nature sanctuary are governed by the applicable legislation and regulations. Slopes with a gradient of 45 degrees or more, for instance, are subject to the provisions of the Forest Law. 19

Nature sanctuaries are under the authority of the National Monuments Council, a government agency under the Ministry of Education. The Monuments Council is in charge of evaluating applications for nature sanctuary designation, submitting them to the Ministry of Education and exercising administrative responsibility over such areas. The National Monuments Law provides that “sites designated as Nature 20

21 Law No. 17.288 of 1970. This law pre-dates the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) 1972, which was incorporated into Chilean law in 1980. See Ministerio de Educación, 2009.

22 There are currently 37 nature sanctuaries in Chile, totalling 469,123 hectares, in which flora, fauna, geology and geomorphology, as well as scenery, are protected for their heritage value.

23 Areas included in the National System of Natural Protected Areas are, by definition, state-owned or public property. There is, however, some controversy concerning overlap between these categories and certain types of private property, such as indigenous land situated within these areas. There is also some discussion regarding the ownership status of species listed as natural monuments, as is the case with plant species like the Patagonian cypress (*Fitzroya cupressoides*) and monkey-puzzle (*Araucaria araucana*) where these are located on private land.

Sanctuaries shall remain under the jurisdiction of the National Monuments Council, which shall, to this effect, request the advice of natural science experts” (art. 31). The Council exercises these functions without prejudice to the jurisdiction of other government agencies such as those responsible for the protection of threatened species, or the Ministry of Public Works which is in charge of infrastructure and public roads. In the case of Pumalin, the public roads situated within the park were specifically excluded from the nature sanctuary.

- 21 The Decree of 2005 designates Pumalin Park as a nature sanctuary without setting out any further special regulations. The preamble recognizes the ecological importance of the area and its natural heritage. It also mentions the owners’ will to protect the area and use it for environmental conservation and scientific research, as illustrated by the commitment to donate the park land to a foundation created specifically for this purpose.²⁴ The Decree mentions the commitment to keep settlers out of the area, regularize the situation of those already living in the park area, and allocate the land required for public roads and associated public works.
- 22 In addition to its nature sanctuary status, Pumalin Park is part of a designated temperate rainforest biosphere reserve, together with other national protected areas²⁵ and a number of Andean evergreen forest areas. The park is thus part of the UNESCO World Network of Biosphere Reserves.²⁶ According to UNESCO, because Pumalin Park is adjacent to the Andean-North Patagonian Biosphere Reserve, the potential exists for the establishment of a transboundary reserve shared by Chile and Argentina.²⁷ International recognition of national protected areas has no binding effect under national law.²⁸

4 Background

- 23 A key asset of Pumalin Park is its size,²⁹ which makes it possible to conserve ecosystems of great biodiversity and beauty, where there has been virtually no human intervention.³⁰ Native forests cover 64.3 per cent of the park. Other natural features include snow fields and glaciers (17 per cent) and land devoid of vegetation (8.1 per cent). The terrain is steep, with a significant percentage of the park area

24 See Agreement dated 7 July 1997; and Addendum to the 1997 Agreement dated 9 December 2003.

25 The Southern Andes Temperate Rainforest Biosphere Reserve, declared in 2007, also includes the following protected areas: Alerce Andino National Park, Hornopiren National Park, Puyehue National Park, Vicente Perez Rosales National Park and Villarrica National Park; and Futaleufu National Reserve and Mocho Choshuenco National Reserve.

26 The other Chilean biosphere reserves are: Bosque Fray Jorge National Park (designated in 1977); Juan Fernandez Archipelago (1977); Torres del Paine National Park (1978); Laguna San Rafael (1979); Lauca National Park (1981); Las Araucarias, comprising Conguillio National Park and Alto Bio-Bio National Reserve (1983); La Campana National Park and Lago Penuelas National Reserve (1984); and Cabo de Hornos National Park (2005).

27 For further information, see UNESCO Biosphere Reserves web site.

28 Puyehue National Park, like Pumalin Park, is part of a biosphere reserve. A recent Supreme Court decision rejected the protection requested for Puyehue National Park, which was endangered by a hydroelectrical power station project undertaken by the multinational corporation Hydroenergia, despite the fact that the national park enjoys protection under the national protected areas legal framework as well as the 1940 Western Hemisphere Convention, signed and ratified by Chile in 1967.

29 See Pizarro and Valenzuela, 2002.

30 The area allows for the natural evolution of terrestrial, riparian and coastal ecosystems, as well as for the protection of temperate broadleaf rainforests that are unique in the world and under strong pressure for use. The park contains sizeable populations of Patagonian cypress and other species of cypress, including some specimens over 1,000 years old, growing at its southernmost latitude, all of which have a vulnerable conservation status. It also protects five of the 12 native forest types found in Chile, which are home to several wildlife species in poor conservation status, some of them endangered, such as the Chilean pigeon, Chilean river otter, Chilean shrew opossum, Coscoroba swan, kodkod (or Chilean cat), lesser grison, Magellanic woodpecker, puma (or cougar), slender-billed parakeet, South Andean deer (Chilean huemul) and Southern pudu. The area contains many fjords, and protects at least 12 watersheds of varying size and volume, from source to estuary. See Gastó et al., 2000.

consisting of slopes with a gradient greater than 45 degrees. Nature sanctuary status recognizes the fact that this area has greater significance for the country than merely as a source of natural capital to be mined for development: it has intrinsic value worthy of protection and conservation.

The Decree creating the Pumalin Park Nature Sanctuary indicates in its preamble that the park is a coastal temperate rainforest ecosystem, almost untouched by humans, and which, owing to its scientific and recreational importance, deserves to be designated as a nature sanctuary, pursuant to the provisions of article 31 of the National Monuments Law. 24

These natural features were for the most part neglected until the arrival of Douglas Tompkins, an American investor who wished to establish large-scale conservation-related businesses in southern Chile and Argentina. He focused on the Pumalin region, taking advantage of the fact that this isolated area was largely untouched and uninhabited, which remains the case to this day. He began to purchase land for conservation, arousing suspicion and mistrust among diverse local and national social, political and business circles.³¹ 25

One initial controversy surrounding Tompkins's large-scale purchase of land in the area through various corporations and organizations that were established in Chile was that it was done without first dealing with the situation of settler communities in the area. In the southern regions of Chile, irregular land tenure is widespread. Settlers have often occupied land for many generations without possessing legal title. Such is the case with Pumalin, where settlers live within the park and in the surrounding areas. 26

The issue, which was taken up by the courts³² and the Chamber of Deputies,³³ had to be included in the commitments agreed between Douglas Tompkins and the Chilean government in order to obtain recognition of the purchased area as a nature sanctuary. The government and the Pumalin Foundation have committed, in the framework of the Pumalin Agreements, to settle this issue. 27

In addition to the question of settlers, there was another problem: roads were needed to link the area to the rest of the country, as well as for energy infrastructure. Park land completely cuts across the national territory from east to west. There are no other properties, private or public, in between, and very few public thoroughfares in much of the land, essentially meaning that part of the country is practically cut off by the park. This matter, too, had to be settled in the framework of prior agreements, before the nature sanctuary could be created. 28

Finally, there were challenges related to the sheer scale of the project, its location and its surface area. Pumalin is Chile's largest privately owned conservation area. The fact that the investor was a foreigner, shortfalls in social and communications policy, and misgivings concerning possible ulterior motives 29

31 These issues were frequently highlighted in the press in the 1990s and continue to receive coverage today. They are also studied in Ramírez and Folchi, 1999; and Camus and Hajek, 1998.

32 Supreme Court ruling *Antonio Horvath Kiss and others v Francisco Huenchumilla Jaramillo and others*, Case No. 8579-2003, 18 May 2005. The ruling addresses these issues and points out, in defence of the entrepreneur, that:

regarding alleged pressures by Mr Tompkins on the Pumalin area settlers in order to buy their land, it is indicated that this was not the case; that during the tenure and title regularization process, the representatives of various organizations related to the Pumalin project worked with the Ministry of National Assets in Region X and cooperated in every way with a view to implementing the 1997 Agreement's provisions; and that no official judicial claims have been filed concerning sales made under pressure.

33 The Chamber of Deputies is the lower house in the bicameral Chilean Congress. See Cámara de Diputados, 2001. The report contains the statements of the then Province Governor:

He strongly underlined that the families living in the areas of Casa de Pesca, Chumilden, Leptepu, Vododahue and Huinay had been harassed; Mr Douglas Tompkins and his staff were constantly visiting them and putting pressure to get them to sell their land. Furthermore, according to settlers' own statements, there were flights over the area, which the settlers considered as pressure.

were factors that partly explain the challenges the project encountered and the time required for its implementation.³⁴

5 The process of creating Pumalin Park

- 30 In the 1990s, Douglas Tompkins acquired, through various corporations and foundations,³⁵ the area that is now Pumalin Park. In 1991, he purchased the estate known as Renihue, spread over approximately 7,000 hectares, from its Swiss owners.³⁶ In 1994, he purchased 185,000 hectares of the adjacent property, known as Pumalin.
- 31 In mid-1995, Tompkins formally declared his interest in establishing a private park in the area, to be called Pumalin Park. The first application for the declaration of Pumalin Park as a nature sanctuary is dated 28 April 1995 and was submitted by El Bosque Pumalin Foundation³⁷ to the Executive Vice-President of the National Monuments Council.
- 32 To develop the project, Tompkins relied on Chile's Foreign Investment Statute.³⁸ Under this instrument, any investor may benefit from economic and tax incentives aimed at promoting foreign investment.³⁹
- 33 On 2 May 1995, the Education, Science and Ecology Foundation (Fundación Educación, Ciencia y Ecología, or EDUCEC), chaired by Tompkins, submitted the record of deeds and a map delineating the property's boundaries to the Executive Secretariat of the National Monuments Council. In its session on 3 May 1995, the Council unanimously decided to request the Ministry of Education to declare the area as the Pumalin Park Nature Sanctuary.
- 34 On 9 May 1995, by Ordinary Official Letter No. 146, the Executive Vice-President of the National Monuments Council asked the Ministry of Education to declare Pumalin Park a nature sanctuary.
- 35 In a letter dated 6 June 1997, Carlos Cuevas, representing El Bosque Pumalin Foundation and the Renihue Agricultural and Forestry Society, Ltd (Sociedad Agrícola y Forestal Reñihué Ltda), updated and resubmitted the request of 28 April 1995, specifying the boundaries in greater detail, as well as the human settlements and the total surface area of the property.
- 36 In the years between the initial application in 1995 and its update in 1997, an inter-ministerial working group was constituted, coordinated by the General Secretariat of the Presidency, and including representatives from El Bosque Pumalin Foundation, the Ministry of National Assets, the Ministry of Public Works, the Ministry of Education and the National Monuments Council. The objective was to guarantee continuous road links between Chaiten and Hualahue once the commitments assumed by all stakeholders (both legal and natural persons) had been fulfilled.

34 See Covarrubias et al., 2002; Nelson and Geisse, 2001; and Ramírez and Folchi, 1999.

35 Among them the US foundation, The Conservation Land Trust, owner of most of the Pumalin Park land; Fundación Educación, Ciencia y Ecología; Empresas Verdes LLC Chile; Inmobiliaria Cuarenta Grados Sur; and Sociedad Agrícola y Forestal Reñihué Ltda.

36 Gastó et al., 2000.

37 The name of this US foundation includes both Spanish and English words. 'El bosque' means 'the forest'.

38 Decree Law No. 600, Foreign Investment Statute, 1974.

39 A foreign legal entity may bring foreign currency into Chile to invest in the country under an agreement with the Chilean government. According to the Statute, the foreign investor is protected by several safeguard clauses, such as secure tax arrangements, immunity from regulatory changes, the right to repatriate the capital one year after the investment date, the right to repatriate profits at any time, open access on an equal footing to all production sectors, and access to the official foreign exchange market.

In July 1997, an agreement between Tompkins, El Bosque Pumalin Foundation and the Government of Chile, represented by the Minister Secretary-General of the Presidency, was concluded and signed.⁴⁰ This agreement was updated and completed with an additional agreement between the same parties in December 2003, which together created the foundation for the legal recognition of the future Pumalin Park Nature Sanctuary.⁴¹ 37

The scope and the legal validity of these agreements were challenged. It was alleged that the July 1997 agreement was “a mere statement of good intentions and has no legal effect”⁴² and it was challenged as unconstitutional despite the fact that it was ratified by the December 2003 agreement. Judicial proceedings were initiated and the court ruled that the agreements complied with the law.⁴³ 38

Finally, through Resolution No. 1.625 dated 26 April 2005, legal personality was granted to the Pumalin Foundation, which became the owner of the park. The statutes of the Pumalin Foundation, approved by the 26 April 2005 Resolution, were amended on 30 December of the same year by Resolution No. 4,560. Under Decree No. 1.137 of 19 August 2005, Pumalin Park was designated as a nature sanctuary. 39

6 Regulatory and contractual agreements

The regulatory and contractual agreements that together form the basis for the legal status of the Pumalin Park Nature Sanctuary are: 40

- Agreement dated 7 July 1997, signed between Juan Villarzu, the Minister Secretary-General of the Presidency at the time, and Douglas Tompkins;
- Addendum to the 1997 Agreement dated 9 December 2003, signed between Francisco Huenchumilla, the Minister Secretary-General of the Presidency at the time, and Douglas Tompkins;
- Resolution No. 1.625 of 26 April 2005, in which legal personality was granted and the statutes of the Pumalin Foundation and their amendments were approved; and
- Decree No. 1.137 of 19 August 2005, designating Pumalin Park as a nature sanctuary.

The 288,689 hectares of the private estate named Pumalin Park was granted the legal status of a nature sanctuary. As such, the park is subject to the provisions of the National Monuments Law, which governs this category of protected area. 41

By donation, the Pumalin Park property was transferred from The Conservation Land Trust to Empresas Verdes LLC Chile (Green Enterprises LLC Chile), which became the founding entity of the Pumalin Foundation, a Chilean non-profit private entity that was specifically established for this purpose. The Pumalin Foundation is managed by a seven-member board: four members are designated by the founding entity, Empresas Verdes LLC Chile; one member is appointed by the Catholic Church’s representative, the Bishop of the Ancud diocese; one by the public university, Universidad Austral de Chile; and one by the governor of Region X, Los Lagos, representing the regional political authority. The Pumalin Foundation remains, on a statutory level, under the management, control and funding of the US entrepreneur. 42

40 See Agreement dated 7 July 1997, signed between Juan Villarzu, the Minister Secretary-General of the Presidency at the time, and Douglas Tompkins.

41 See Addendum to the 1997 Agreement dated 9 December 2003, signed between Francisco Huenchumilla, the Minister Secretary-General of the Presidency at the time, and Douglas Tompkins.

42 Nelson and Geisse, 2001.

43 Supreme Court ruling in *Antonio Horvath Kiss and others v Francisco Huenchumilla Jaramillo and others*, Case No. 8579-2003, 18 May 2005.

- 43 The Foundation undertakes to submit the Management Master Plan for the nature sanctuary to environmental impact assessment, as required by the Environmental Framework Law.
- 44 The parties undertake to regularize the land tenure of settlers living within the boundaries of Pumalin Park. They state that progress has been made in this process between 1997 and 2003, and commit to undertake a series of additional legal actions, such as land exchange, donation or free transfer to meet this objective. It should be recalled that in the initial phase the government committed to undertake land registry operations and to cooperate with El Bosque Pumalin Foundation to settle unresolved issues. This task involves complex administrative and legal processes, which, according to the parties, are finalized.
- 45 Similarly, the parties commit to safeguarding the territorial continuity of the country, maintaining all existing public thoroughfares and excluding from the nature sanctuary the areas covered by existing or planned public roads. In other words, existing and planned roads are not part of the nature sanctuary and shall not have this status, regardless of whether the land in question belongs to the state or to the Pumalin Foundation. In this regard, the Decree creating the nature sanctuary stipulates:
- it is considered appropriate [...] to exclude those areas deemed useful for the installation of power lines and the Southern Highway (Carretera Austral) roadway, the existing course of the Southern Highway and a 100 metre strip earmarked for future construction of the Southern Highway, as well as other land to facilitate the region's normal development and to ensure the country's uninterrupted land transport connections.
- 46 The Pumalin Foundation undertakes to contribute to the development of Palena Province, in coordination with the regional development authority.
- 47 The commitments undertaken by the Pumalin Foundation are currently in various stages of implementation. Some have been fulfilled, as is the case with land tenure regularization. Others have not yet been complied with, such as the environmental impact assessment of the nature sanctuary's Master Management Plan. The nature sanctuary designation was made in 2005 and the assessment has not yet been submitted to the environmental authority. This should have been done when the designation Decree was enacted. Similarly, the commitment to ensure road connections is pending, as agreement has yet to be reached on how to guarantee it. Finally, the contribution to local development remains to be seen.

7 Challenges for the future

- 48 The Pumalin Park Nature Sanctuary is an unprecedented conservation initiative which has encountered a number of difficulties and challenges. Pumalin Park has nevertheless managed, with relative success, to overcome these challenges and the criticism it has faced to become the country's largest private conservation area.
- 49 Pumalin Park is a fine example of how conservation and tourism business initiatives can be fostered using market tools, and how public-private cooperation agreements can be concluded. It also shows that public environmental policy can be oriented to achieve specific goals: in this case, the conservation of vast areas of the country's southern region.
- 50 The challenges ahead, which are by no means minor, include cohabitation with the settlers in the area and the issue of land transport connections in the area. The latter, particularly, must be addressed, as the country lacks a terrestrial link between the northern, central and southernmost regions, and roads must necessarily pass through the nature sanctuary. Another pending issue is how to contribute in a clear and concrete way to regional development.

Finally, major new challenges lie ahead for Pumalin Park as well as other protected areas in southern Chile. Dams have been planned for the Aysen region, involving major electricity consortiums and other powerful private-sector interests.⁴⁴ The creation of quarries and reservoirs, and the construction of power lines, will undoubtedly affect vast areas near Pumalin Park as well as state-owned protected areas. Given the legislative precariousness of the public and private systems of protected areas, and considering the pro-development focus of the Chilean economic model, a conflict seems inevitable in the Patagonian region between conservation and production.

44 The National Electricity Enterprise (Empresa Nacional de Electricidad S.A., or ENDESA) is the largest electricity production company in Chile. Initially a state-owned corporation, it was privatized in the late 1980s, during the Pinochet dictatorship (1973–1990). It is currently a multinational corporation controlled by Italian and Spanish partners. COLBUN S.A. was also an important state-owned utility until 1997, when it was privatized. It is controlled by one of the wealthiest families in Chile, the Matte family. Other major electricity operators in the region include AES GENER (USA) and the Anglo-Swiss Xstrata.

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Web sites

National Committee for the Defence of Flora and Fauna, www.codeff.cl

National Environment Commission, www.conama.cl

National Forestry Corporation, www.conaf.cl

National Monuments Council, www.monumentos.cl

Parks for Chile, www.parquesparachile.cl

Pumalin Park, www.parquepumalin.cl

UNESCO Biosphere Reserves,

http://portal.unesco.org/science/en/ev.php-URL_ID=4801&URL_DO=DO_TOPIC&URL_SECTION=201.html.

Legal instruments

Most legal instruments discussed in this case study are available online. Readers may locate the full text on the ECOLEX web site (<http://www.ecolex.org>) using the identification codes indicated below, or at the URL provided.

Laws

Ley 17.288 sobre Monumentos Nacionales, 1970 (Law 17.288 on National Monuments, 1970)

[LEX-FAOC093426](#)

Ley 18.348 que crea la Corporación Nacional Forestal y de Protección de Recursos Naturales Renovables, 1984 (Law 18.348 creating the National Forestry and Renewable Natural Resources Protection Corporation, 1984)

[LEX-FAOC050366](#)

Ley 18.362 que establece el Sistema Nacional de Áreas Silvestres Protegidas del Estado, 1984 (Law 18.362 establishing the National System of Wild Areas Protected by the State, 1984)

[LEX-FAOC003753](#)

Ley 18.892 Ley General de Pesca y Acuicultura, 1989 (General Law 18.892 on Fisheries and Aquaculture, 1989)

[LEX-FAOC001227](#)

Ley 19.300 sobre Bases Generales del Medio Ambiente, 1994 (Law 19.300 Environmental Framework Law, 1994)

[LEX-FAOC004873](#)

Ley 20.283 sobre Recuperación del Bosque Nativo y Fomento Forestal, 2008 (Law 20.283 on Native Forest Restoration and Forestry Development, 2008)

[LEX-FAOC080993](#)

Decree Laws

Decreto Ley 656 que contiene la Ley de Bosques, 1925 (Decree Law 656, Forest Law, 1925)

[LEX-FAOC009302](#)

Decreto Ley 600, Estatuto de la Inversión Extranjera, 1974 (Decree Law 600, Foreign Investment Statute, 1974)

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Decreto Ley 1.939, Normas sobre Adquisición, Administración y Disposición de los Bienes del Estado, 1977 (Decree Law 1.939, State Property Rules, 1977)

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Decrees and resolutions

Decreto Supremo 531 de 1967 (Supreme Decree 531, 1967)

Resolución Exenta 1.625 de 26 de abril de 2005 (Ministry of Justice, Resolution 1.625, 26 April 2005)

Decreto Exento 1.137 del 19 de agosto de 2005 (Ministry of Education, Decree 1.137, 19 August 2005)

Court decisions

Causa “Horvath Kiss, Antonio y otros con Huenchumilla Jaramillo, Francisco y otros”, Rol 8579-2003 (Antonio Horvath Kiss and others v Francisco Huenchumilla Jaramillo and others, Case No. 8579-2003, 18 May 2005)

Agreements

Acuerdo de 1997 suscrito entre el Ministro Secretario General de la Presidencia de la época Juan Villarzu y Douglas Tompkins (Agreement dated 7 July 1997, signed between Juan Villarzu, Minister Secretary-General of the Presidency, and Douglas Tompkins)

Acuerdo de 2003 suscrito entre el Ministro Secretario General de la Presidencia de la época Francisco Huenchumilla y Douglas Tompkins (Addendum to the 1997 Agreement dated 9 December 2003, signed between Francisco Huenchumilla, Minister Secretary-General of the Presidency, and Douglas Tompkins)

Conventions

Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (Western Hemisphere Convention), 1940

[TRE-000085](#)

Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention), 1972

[TRE-155235](#)