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Accessing land in Ghana for agricultural investment:

Advice for women and youth

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Brief

Women and youth in Ghana see secure access to land as an important element for engaging in agriculture. Yet, land tenure is full of challenges, which are often more intensified for females and young people. While women and youth interested in agriculture may find opportunities in other segments of the value chain, those who actively seek farmland should be aware of their rights and duties. The purpose of this brief is to provide advice on how women and youth may access farmland in Ghana. Following the appropriate process can help them to identify and address potential problems and avoid conflicting claims and litigation. It can also help them to ensure that the rights of all legitimate tenure rights-holders are respected. The brief is part of a series on the Inclusion of women and youth in responsible investment in agriculture and food systems in Ghana, and draws on information provided by Ghanaian experts and participants of an online forum on the same theme.

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Introduction

The Principles for Responsible Investment in Agriculture and Food Systems of the Committee on World Food Security^{1,2} (CFS-RAI) call for the empowerment of women and youth, including through the advancement of tenure rights that provide equal access to and control over land and productive resources (CFS, 2014). The purpose of this brief is to provide advice on how women and youth may access farmland in Ghana³.

The youth in Sub-Sahara Africa see secure access to land as an important element for engaging in agriculture. Yet, the process of accessing land is full of challenges, which are often exacerbated for females. Inheritance laws and customs often overlap, which makes the transfer of land to young farmers notoriously complex and problematic. In addition, loans to assist youth in acquiring land are rare (FAO, 2014).

While women and youth with difficulties in accessing land could engage in other segments of the agricultural value chain, those who actively seek land should be aware of the appropriate processes, rights, and duties that are in place. In this regard, all investors that seek to acquire land, including women and youth, have a responsibility to respect human rights and legitimate tenure rights in accordance with Ghanaian laws and regulations as well as CFS-RAI, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGT)⁴ as well as the African Union Declaration on Land Issues and Challenges (African Union Assembly/AU/Decl.1(XIII) Rev.1 and its Framework and Guidelines on Land Policy in Africa (AUC-ECA-AFDB Consortium Addis Ababa 2010).

Relevant Ghanaian laws include but are not limited to *The Constitution of the Republic of Ghana 1992* (Government of Ghana, 1992); *State Lands Act 1962 (Act 125)* (Government of Ghana, 1962a); *Administration of Lands Act, 1962 (Act 123)* (Government of Ghana, 1962b); *Land Registry Act, 1962 (Act 122)* (Government of Ghana, 1962c); Land Title Registration Act, 1986 (PNDCL 152) (Government of Ghana, 1985) and Conveyancing Act 1973 (NRCD 175) (Government of Ghana, 1973).

The main target groups of this note are women and youth that wish to access relatively small plots of land, and who want to invest in them. The note does not contain recommendations to other actors, such as large-scale investors or government entities.



1. General advice on how to access land for agricultural investment in Ghana

I. The tenure system and types of land ownership in Ghana

Ghana's tenure system is pluralistic, with overlapping customary and statutory frameworks. The Constitution vests state/government land in the state, customary land in clans, extended families and customary authorities (known as stools or skins)⁵ and individual/private land in individuals or private entities. Prospective investors must be aware of the different types of tenure, as well as the ways and levels in which different types of land may be accessed, either through lease or purchase or share-cropping.

- A. Individual/Private Land:** Individual/private land is owned by individuals and private entities. For all outright sales or leases from confirmed private owners, agricultural investors should deal directly with the legal owner(s) in the presence of at least two witnesses.

Note:

- > This type of land can be acquired on a freehold basis
- > Agricultural investors should avoid middlemen in the land acquisition process.

- B. Stool/Skin Land:** Stool/skin land is under the custodianship of chiefs: Stool and Skin lands are equivalent, their difference is geographic. Stool lands are located in southern Ghana whereas Skin lands are located in northern Ghana. Whereas the authority of chiefs in southern Ghana is symbolized by Stools, the authority of chiefs in Northern Ghana is symbolized by Skins.

i. Acquiring Stool/Skin land (original transaction):

- > The hierarchy of the customary institutions varies and may be different from one location to another. In some cases, investors may lease land directly from chiefs and principal elders of the stool or skin in the presence of the principal elders of the stool or skin. In other cases, the allocation of land may not lie with a local chief of a community even though the local chief may be the point of contact. Potential investors must understand the hierarchy in the particular location in which she or he desires to lease land and interact with the appropriate authority in order to ensure safe transactions. The prospective investor should not deal with an individual other than the head of the entity that claims to be its representative as it may lead to fraud. All transactions must be carried out in the presence of witnesses who are normally the principal elders of the community. It is also advisable that the potential investor is always accompanied by his/her own witnesses.
- > Stool and skin lands are usually occupied by local community members who may be subjects (indigenes) of the landowning stool/skin and have usufructuary land rights that are perpetual and inheritable. Other occupants (non-indigenes) of the land may include migrants who have been given user rights to specific portions of the land or other settlers or users who may have secondary or derived rights in specific portions of the land. Unoccupied or uncultivated portions of the land may not necessarily mean idle lands. They could be lands left for fallowing (due to the farming systems practiced in the location) or lands used by the community as a common resource for grazing, collection of non-timber forest products, hunting or other common uses. These lands often provide vital resources for community livelihoods. Investors must take all of this into account when conducting investigations for the acquisition of the land.

Stool and skin land can only be leased and never purchased outright. Even though the amount of money charged by the stool may resemble the sale value of the land, the transaction will still be a lease for which the investor will be expected to pay ground rents every year. The ground rents are collected by the Office of the Administrator of Stool Lands on behalf of the stools/skins.

ii. **Subleases or assignments:**

Subleases or assignments are transfers made by people with leases. The tenant needs the written consent from the stool or skin (chief and principal elders at the appropriate level of hierarchy depending on the location) before making a transfer or a sublease. Investors that have acquired land from secondary rightsholders (including users of the land, relatives of the head of family or chiefs, widows, etc.) should not assume that the transfer has actually occurred in the eyes of all interested parties.

Note:

- > Agricultural investors should not deal with an individual when acquiring land under this type of tenure; the chief must always act in the presence of duly appointed witnesses (generally the principal elders and/or advisors of the chief, who are sometimes themselves sub-chiefs or heads of families). The prospective investor should not deal with another individual that claims to be the representative of the head of the skin or stool as it may lead to fraud
- > Stool and Skin lands cannot be acquired on a freehold basis as it is prohibited by law.

C. Family/clan land: Family/clan lands are managed by heads of extended families/lineages or clans.

In all cases of outright sales or leases, agricultural investors should deal directly with the head of the family/clan in the presence of the principal elders of the family in accordance with local customs.

Note:

- > This type of land can be purchased on freehold bases but such purchases are rare. Most family/clan lands are granted on leases. The investor must enquire during negotiations for the acquisition.
- > Investors should avoid negotiating with middlemen in the absence of the heads of families/clans and relevant customary authorities.

D. State and vested land: State lands are owned by the state and managed by the government through the Lands Commission. Vested lands are owned by stools and skins but vested in government in trust for the stools/skins. They are also managed by the government through the Lands Commission. Potential investors should negotiate the acquisition of state and vested lands with the Lands Commission. Investors should, however, note that local communities or customary authorities may have legitimate tenure rights and claims over both State and Vested lands. To avoid conflicts and ensure respect of legitimate tenure rights, potential investors must inspect the land and become aware of the existence of potential legitimate tenure rights holders in accordance with the VGGT (including paragraph 3B, principle on consultations and participation) when considering to enter discussions over the acquisition of such land.

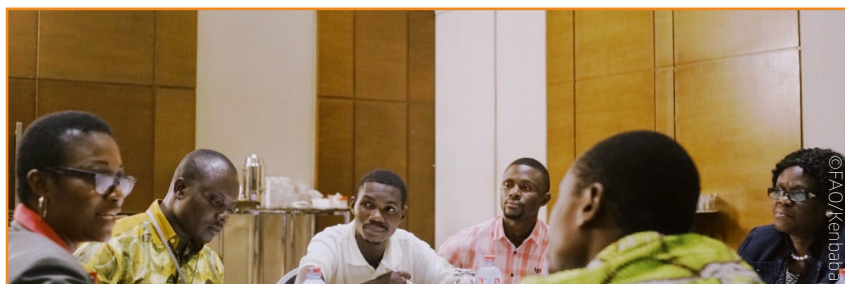
Note:

- > A prospective agricultural investor may deal with an individual if that individual has a lease from the Lands Commission that she/he wants to sublease or transfer. However, in such cases, the written consent of the Lands Commission must be obtained.
- > State and Vested lands can only be leased. This type of land cannot be acquired on a freehold basis as it is prohibited by law.

General land ownership in Ghana (by region)⁶

Region	Type(s) of land ownership
1 Greater-Accra	State lands, vested lands and blend of stool, family, clan, and private lands
2 Ashanti	State lands, vested lands and predominantly stool lands
3 Volta	State lands and predominantly family lands except within Akan-speaking areas of the Northern Volta which are stool lands
4 Northern	State lands and predominantly skin lands
5 Eastern	State lands, vested lands and blend of stool and family lands
6 Western	State lands, vested lands and blend of stool and family lands
7 Central	State lands, vested lands and blend of stool and family lands (lands within cape-coast are however predominantly privately-owned)
8 Upper-East	State lands and predominantly family lands (under the custodianship of the Tendamba).
9 Upper-West	State lands and predominantly family lands (under the custodianship of the Tendamba)
10 Brong-Ahafo	State lands, vested lands and predominantly stool lands

Source: FAO's Interview with Dr Gad A. Akwensivie MGHIS, MAFRES, Ministry of Lands and Natural Resources; complemented by inputs from Mrs Joyce Atta-Gyamfi, Lawyer at the Lands Commission, Dr Wordsworth Odame Larbi, Land Tenure Officer at FAO as well as a number of participants of the Online forum on the inclusion of women and youth in responsible investment in agriculture and food systems in Ghana.



II. Investigations:

Thorough investigations are very important in the land acquisition process. Prospective agricultural investors must note that this stage is crucial. At this stage, the rightful owner(s) and legitimate tenure rightsholders of the piece of land should be ascertained.

Agricultural investors must engage the services of qualified land surveyors (licensed by the State) from the start of the process to measure and delineate the exact land parcel under consideration and produce a site plan, to be used for verification of transactions that have taken place in respect of the land by the Lands Commission. The site plan should conform to the provision of the current law Survey (Supervision and approval of Plans) Regulation, 1989 (LI 1444) and signed by a Licensed Surveyor. This process is known as a 'Land Search'.

Note:

- A. Agricultural investors must deal directly with the Lands Commission and should engage the services of professionals (such as land surveyors, valuers or legal experts) as appropriate.
- B. Agricultural investors are advised to stop with the acquisition process if any of the preparatory stages including the search results from the Lands Commission reveals contrary information. For example, agricultural investors should abort the acquisition process if unresolved land disputes or past displacement of legitimate tenure rightsholders are identified.
- C. According to experts from the Lands Commission, most land disputes in Ghana emanate from lack of proper investigations. There is a need to be entirely thorough with this stage and engage credible experts.
- D. The Lands Commission does not have information on all lands in the country. It can only provide information stored in its records through registration. Therefore where the search results indicate 'no recorded transaction' the investor should depend on the expert advice of lawyers or professional surveyors or land administration professionals.

III. Land inspection:

As part of the Investigations (II above) and before acquiring land for agricultural use, investors should inspect the land and its boundaries with the help of professionals and in consultation with landowners and legitimate tenure rightsholders as follows:

- a. Visit the land physically and assess information about the rightful ownership of the land.
- b. Verify land availability for acquisition. The land ownership and land-use structure should be verified with help from the community. A number of other circumstances must also be verified through physical inspections. For example, it must be ascertained if the land is vacant and, if not, what it is being used for, by whom and under what conditions. If it is not directly used, it may still provide community benefits which must be taken into account in the investment proposal. Potential disputes and conflicts on the land, including cases pending in the court, must also be identified.
- c. Verify the full extent (borders) of the land at the local level. If possible walk along the entire perimeter of the land.
- d. Ensure that the type of soil would support the type of crop that the investor wants to cultivate with the help of an agronomist.
- e. Observe plants and trees on the land in order to detect any parasites prevalent on and around the land (less experienced agricultural investors will need the help of an agronomist for this purpose)

Note:

- A. Land inspection must be done in the presence of the landowners and principal elders.
- B. Women and youth interested in acquiring land must take personal security precautions during land inspections and should always be accompanied in areas prone to land guards who are hired by landowners to watch over and protect the land against encroachers. Inspections should be done together with the purported landowners and never alone by the prospective investors. Prospective investors should not argue with claimants of land on the site and are advised to leave the area immediately if their presence is challenged.
- C. Prospective agricultural investors can also consider the services of a land lawyer to research the land and prove its availability. Checks must also be done with appropriate government agencies, in this case, the local planning authority, to determine whether the land has been earmarked for any development projects.

IV. Negotiations and actual acquisition:

After the availability and suitability of the land for agricultural investment have been established, prospective investors must negotiate on lease terms and cost with the legitimate owners. Prospective investors are advised not to negotiate through appointed agents of the landowners in the absence of the landowners. Once a verbal agreement is reached, it also needs to be documented.

Note:

- D. The agricultural investor must deal directly with the correct entity or owner (as identified by the Lands Commission or advised by professionals). This can be straight forward for privately owned lands, but more complex for land under other forms of tenure. There are instances where although land has been leased, it has not been formally registered at the Lands Commission.
- E. There may also be instances where an investor may have to deal with individuals other than the Lands Commission, owner, chief or the stool occupant. This may, for example, happen if the land has previously been leased by a chief to an individual or between individuals. In the case of Stool or Skin land, the individual who intends to sublet must have the written consent of the stool/skin occupant or the chief. Being patient, and probing by asking the right questions, can unearth controversies surrounding the piece of land in question.
- F. In cases of lease transfers or subleases, the agricultural investor must always review the terms and conditions of the original lease (the "head lease") or potential previous lease agreements such as for example between an individual and a chief. If the head lease has been registered at the Deeds Registry of the Land Commission a 'Certified True Copy' can be obtained. It is advisable to engage a landed property investment advisor or a legal person or abstain from the sublease.
- G. For stool/skin lands, family/clan lands and state/government vested lands, the lease process may be particularly complex since there are likely to be other legitimate right-holders of the land apart from the legal holder. Such rights-holders must be included in the negotiation process. If the tenure situation of the land has been judged to be too complex during the investigation and land inspection phases, the investor may choose to terminate the acquisition process and search for suitable land elsewhere. If the investor chooses to continue the process, she or he must achieve all the right holders' consent through honest dialogue with special consideration to the needs of marginalized groups and individuals. The "Guidelines on Large Scale Land Transactions", published by the Lands Commission 2017 as well as the VGGTs provide useful information on the duties of prospective investors.
- H. Agricultural investors must deal directly with owners and legitimate tenure rightsholders and should avoid middlemen.

V. Land documentation and registration

Documentation

After the search has been conducted at the Lands Commission and ownership of the land ascertained and negotiations concluded, the investor may pay the purchase price and immediately execute or sign the sale and purchase agreement and collect a receipt for the payment which could be full or part-payment. The investor must then make a request for the lease documents (the indenture) stipulating the terms and conditions agreed. Alternatively, the lease/sublease documents should be prepared and signed on the day payment is made. The indenture must be in quadruplicate and must be prepared and signed by a lawyer. The indenture must also contain the site plan of the land in question and approved by the Regional Surveyor of the region where the land is situated. The indenture must be signed by the grantor of the land (Chief, head of family/clan or individual) and the investor in the presence of witnesses who should also sign. At least one qualified person from both parties must sign as witnesses. All the witnesses must sign with their full names, addresses, and original signatures.

The signed indenture must be sent to the High Court for the Oath of Proof (usually signed by one of the grantor's witnesses – the deponent) to be executed. The proper execution of the Oath of Proof is very important as the courts have nullified transactions based on wrong execution.

Submission of documents to the Lands Commission

The four copies of the signed indenture with the oath of proof executed must be submitted for stamp duty assessment and payment at the Lands Commission. After the stamp duty has been paid, the document will be embossed. After this procedure, the document is ready for the actual registration.

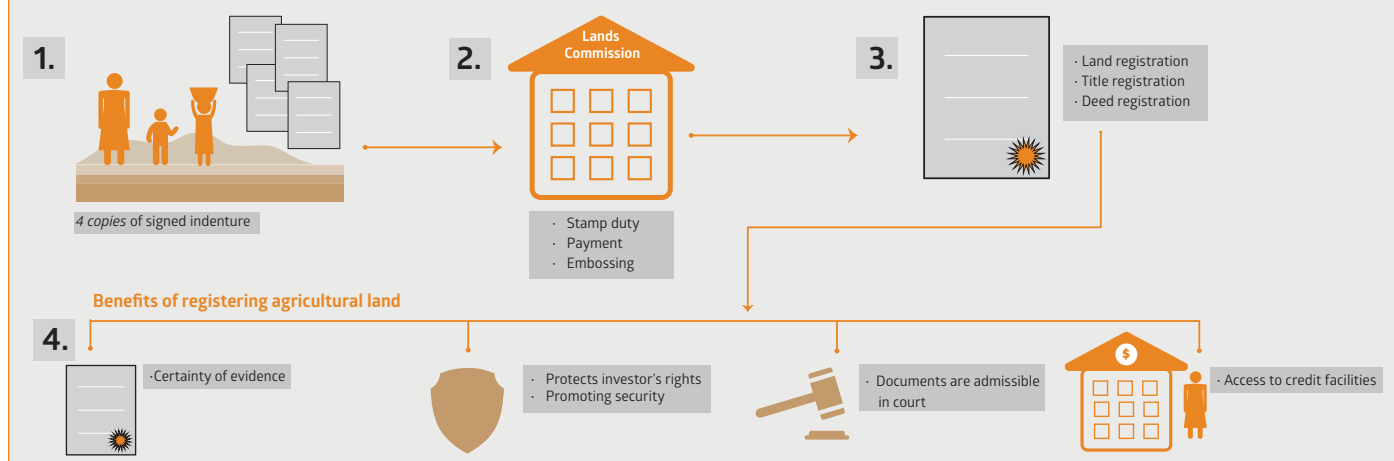
What is land registration?

Land registration is the recording in a public office of rights and interests in land as evidenced by legal instruments after the acquisition of land from the rightful owner. Ghana practices two types of registration: Deeds registration and title registration. Deed registration, which is likely to be most applicable to many agricultural investments, is the recording of instruments evidencing transactions affecting the land such as leases, subleases, mortgages, etc. It does not record the specific rights and interest in the land. Title registration, on the other hand, is a recording of the specific rights and interests in the land and confers title on the registered proprietor. Title registration by the law provides state guarantee and indefeasible titles.

Title Registration operates in the Greater Accra Region, Kumasi and very few selected localities in the Central and Northern Regions. All other areas operate under the Deed Registration system. Registration is done in the Regional Capitals of each region. The Lands Commission will be able to advise as to which type of registration will be done in respect of a particular land transaction. Prospective investors are advised to ensure that their lands are registered.

What are the benefits of registering agricultural land?

- A. It ensures certainty of evidence of the existence of certain rights and interests or ownership of the land
- B. It establishes and protects the agricultural investor's rights and interests in the land, promoting security of tenure
- C. It renders the agricultural investor's documents admissible in court in case of disputes
- D. It enables the investor to access credit facilities in the future.



2. Highlights

In all types of land transactions, it is important for women and youth to strengthen their awareness of land tenure systems and their peculiar processes and the relative legal aspects. This brief provides general advice for women and youth seeking to acquire agricultural land in Ghana. Being thorough about land inspection and investigations, and respectful of all legitimate tenure rightsholders, will help ensure that land acquired for agricultural use is safe from litigation. It is important to identify and involve all rightsholders in the negotiation processes through inclusive dialogue before finally acquiring land from legal owners. It is important to visit the location of the land and talk to adjoining owners and people around to ensure that all legitimate rightsholders are identified and involved in the process. This will help unearth information not available from the Lands Commission.

Accessing land in an appropriate way is a precondition for safe investment in agricultural production. However, it is also equally important for women and youth agricultural investors to access training, finance, and inputs that would allow them to produce on the land they acquire in a sustainable manner. Beyond this, efforts should be made to add value to the produce, reduce post-harvest losses, to improve processing and marketing, all of which ultimately become catalysts for fostering further responsible investment in agriculture and food systems.

Summary of key steps

- > Initial investigation and inspections
- > Preparation and approval of site plan
- > Search at the Lands Commission
- > Negotiation and payment for the land
- > Preparation and signing of the indenture (agreement)
- > Execution of Oath of Proof
- > Stamping
- > Registration

Key institutions and summary of their functions

The main institutions involved in land administration whose services are important for the acquisition of land are the Lands Commission and the Office of the Administrator of Stool Lands (OASL). The Lands Commission has four divisions whose functions are provided in the summary below

Institution	Summary of functions
Survey and Mapping Division (SMD) (Lands Commission Act 2008, (Act 767) Section 20)	<ul style="list-style-type: none">(a) Supervise, regulate and control the survey and demarcation of land for the purposes of land use and land registration;(b) take custody of and preserve records and operations relating to the survey of any parcel of land;(c) direct and supervise the conduct of trigonometric, hydrographic and topographical surveys;(d) coordinate the preparation of plans from the data derived from the survey and any amendment of the plans;(e) coordinate the production of photogrammetric surveys (aerial photography, orthophoto mapping, etc);(f) survey, map and maintain the national territorial boundaries including maritime boundaries;(g) develop and maintain the national geodetic reference network for the country;(h) supervise, regulate, control and certify the production of maps; and(i) other functions determined by the Commission.

Institution	Summary of functions
Public and Vested Lands Management Division (Lands Commission Act, 2008 (Act 767) Section 23)	<ul style="list-style-type: none"> (a) facilitating the acquisition of land for Government; (b) managing state acquired and vested lands in conformity with approved land use plans; and (c) other functions determined by the Commission.
Land Valuation Division (Lands Commission Act, 2008 (Act 767) section 22)	<ul style="list-style-type: none"> (a) assessing the compensation payable upon acquisition of land by the Government; (b) assessment of stamp duty; (c) determining the values of properties rented, purchased, sold or leased by or to Government; (d) preparation and maintenance of valuation list for rating purposes; (e) valuation of interests in land or land related interests for the general public at a fee; (f) valuation of interests in land for the administration of estate duty; and (g) other functions determined by the Commission
Land Registration Division (Lands Commission Act, 2008 (Act 767) section 21)	<ul style="list-style-type: none"> (a) publication of notices of registration upon receipt of an application for registration; (b) registration of title to land and other interests in land; (c) registration of deeds and other instruments affecting land in areas outside compulsory title registration districts; (d) maintaining land registers that contain records of land and other interests in land. (e) other functions determined by the Commission.
OASL (Office of the Administrator of Stool Lands Act, 1994 (Act 483) section 1)	<ul style="list-style-type: none"> (a) the establishment of a stool land account for each stool into which shall be paid rents, dues, royalties, revenue and any other payments whether in the nature of income or capital from the stool lands, (b) the collection of those rents, dues, royalties, revenues or the other payments whether in the nature of income or capital and to account for them to the beneficiaries specified in section 8, and (c) the disbursement of the revenues determined in accordance with section 7.

Endnotes

- ¹ **Important notice:** This document was written in the year 2018 and does not supersede any national or international rules, laws or regulations. Information was gathered through literature review as well as from interviews with a subject matter expert and it does not necessarily represent the view of FAO.
- ² In principle this advisory note equally applies to land acquisition by other persons for small scale agricultural purposes for land sizes of less than 50 acres. For large scale land acquisitions acquirers are advised to consult the Lands Commission 'Guidelines for the acquisition of land for large scale investments'.
- ³ Endorsed by the Committee on World Food Security in 2012, *the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)* is the most authoritative international document on tenure issues. African Union Assembly/AU/Decl.1(XIII) Rev. 1.
- ⁴ In essence stool, skin, family and clan lands are all held in trust by customary authorities for the members of particular groups. According to customary law, family land belongs to a group of people tracing their lineage to a particular patriarch. Hence, a family in this context should not be understood as a nucleus family but an extended family.
- ⁵ **Note:** *This table serves as a general guide for agricultural investors. Ownership types underlined under each region merely reflect the general (predominant) situation of that region, and may not necessarily hold for all lands within the designated region.*

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Notes

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