

## POLICY BRIEF

# BRAZIL'S NEW FOREST CODE PART I: HOW TO NAVIGATE THE COMPLEXITY

## KEY POINTS OF THE NEW FOREST CODE

- The new Forest Code governs the use and protection of private lands in Brazil. It is one of the most important pieces of legislation with the potential to drive efficient land use in Brazil and become an effective tool against climate change.
- The new Forest Code relies on two types of protection instruments for conservation on private lands: **Permanent Preservation Areas** and the **Legal Forest Reserve**.
- The new Forest Code introduced an innovative database and environmental management tool called the **Rural Environmental Registry**, which provides a way to monitor and control deforestation in private landholdings.
- The new Forest Code created a special regime that offers some rural landowners greater leniency; this special regime applies solely to rural properties where native vegetation was illegally clear-cut for agriculture or livestock breeding purposes prior to July 2008.
- Special regime landowners can enroll in the **Environmental Regularization Program** in order to take full advantage of the benefits available to them and to help ensure compliance.
- The new Forest Code will need to be implemented at state level, which provides states with flexibility to set their own rules and parameters but may further delay the implementation process. Effective and broad enforcement will remain critical to the code's success.

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## INTRODUCTION: BRAZIL'S DRIVE TOWARD FOREST PROTECTION

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With its vast natural resources rich in biodiversity, fresh water, and carbon stock, and its growing agricultural sector, Brazil makes some of the most important land use decisions in the world. To balance agricultural productivity with environmental protection successfully, Brazil must use its available land efficiently. The Brazilian Forest Code represents one of the key instruments to achieve this goal. It imposes land use requirements on property holders to preserve native vegetation on private lands.

In 1934 Brazil passed its first Forest Code, which was motivated more by the demand to regulate logging activities than to protect the forests' environmental benefits. A more modern version of the code was enacted in 1965, which increased forest protection substantially; however, enforcement of these tougher rules languished.

Not until the 1990's did Brazil's executive and judiciary powers begin enforcing the Forest Code. The stricter enforcement frustrated many of the rural producers who wanted to clear-cut and manage their lands without government interference. This spurred a national debate about revising the Forest Code again.

After more than a decade of intense dispute and after concessions by both environmentalists and rural producers, the new Forest Code was enacted in 2012. It retains the same structure and basic concepts as the old code, but offers greater leniency for areas that were deforested prior to July 2008. Small landholders with these areas inside their properties receive even more benefits.<sup>1</sup> It also establishes new instruments to help ensure compliance with the legislation.

Now Brazil must implement the sweeping changes of the new code. It will not be easy. The design of the new Forest Code reflects the political disputes that surrounded the law's revision process. In order to achieve political support and approval of the new Forest Code, proponents made compromises that created complexities in how the law is applied and enforced.

This document aims at providing an overview of the code and its instruments and helping to navigate its complexity. Brazil's ability to meet environmental and climate change goals depends heavily on individual producers and farmers understanding the code, complying with its requirements, and balancing the need for agricultural production with environmental protection. INPUT researchers at Climate Policy Initiative in Brazil have completed an extensive legislative mapping and analysis and this document is the first in a series that seeks to clarify the Forest Code in hopes of accelerating implementation and ensuring its success.

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<sup>1</sup> Small landholders who deforested after 2008 do not receive additional benefits. They only benefit from a simplified Rural Environmental Registry (*Cadastro Ambiental Rural* - CAR).

## NEW FOREST CODE IMPOSES TWO TYPES OF PROTECTION RULES, INTRODUCES INNOVATIVE DATABASE

At the heart of the new Forest Code lie two types of legally-binding protection instruments for conservation on private lands: Permanent Preservation Areas (*Áreas de Preservação Permanente*) and the Legal Forest Reserve (*Reserva Legal*).

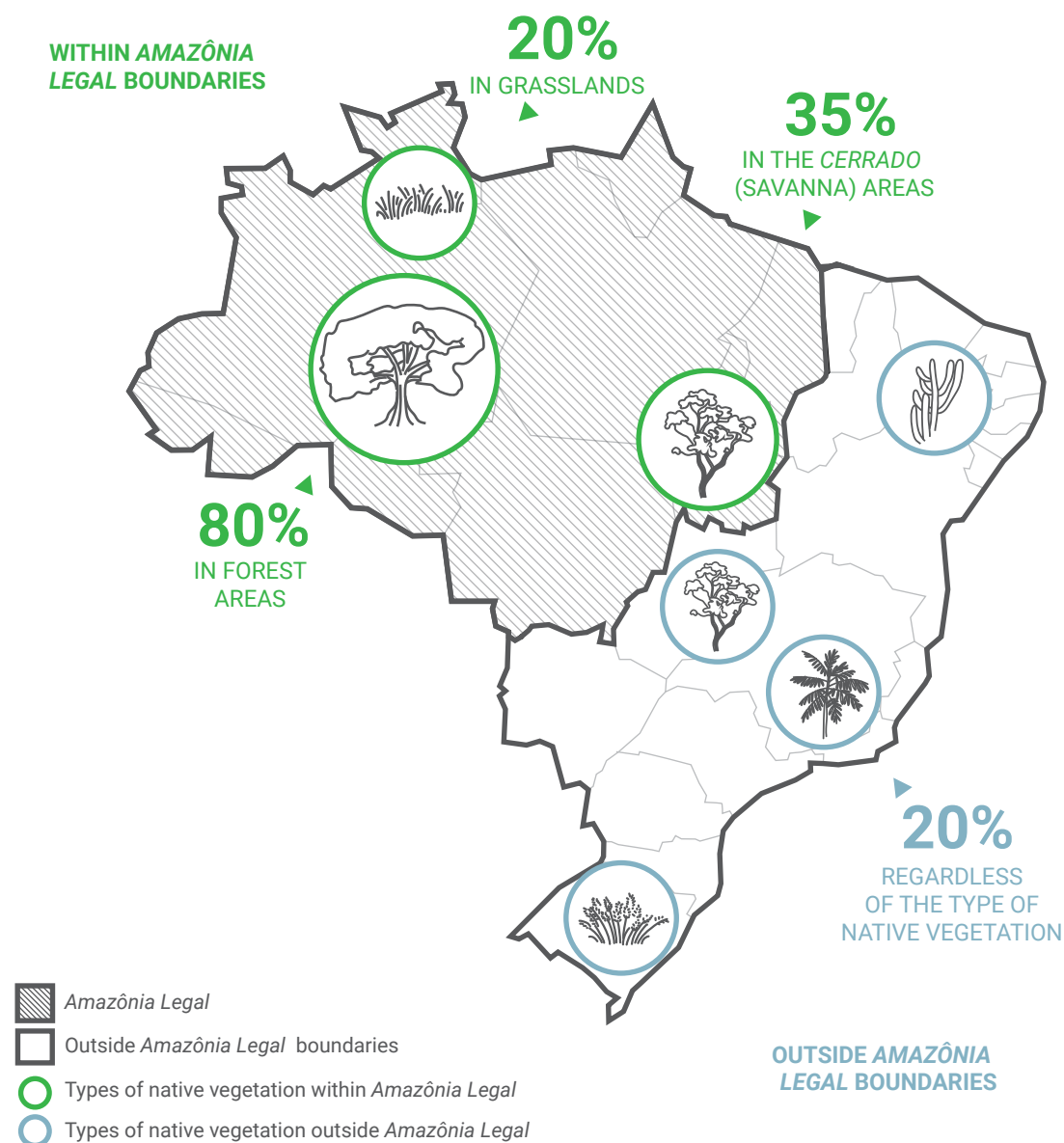
**Permanent Preservation Areas (APP)** are areas of vegetation that have been designated for protection because they have been identified as critical to the preservation of essential ecosystem functions, such as ensuring a clean and steady water supply, regulating hydrological and weather cycles, protecting geological and soil stability, or conserving biodiversity. The Forest Code requires that the vegetation in Permanent Preservation Areas be left intact. The code also sets Permanent Preservation Areas restrictions according to geographical features and their physical attributes. Geographical features that may be protected include banks of rivers, springs, and lakes, mangroves, *vereda* (type of wetland), hilltops, steep slopes, and sandbanks.

The second protection rule of the Forest Code requires that rural landowners designate and maintain a percentage of their property area as **Legal Forest Reserve**. The goal is to preserve the remnants of native vegetation on rural lands and to conserve biodiversity. This protected percentage varies from 20 to 80% depending on the type of vegetation present and the property's geographical location in the country. In general, properties located within the *Amazônia Legal*<sup>2</sup> must conserve a much higher percentage of land as Legal Forest Reserve than properties outside of that region (Figure 1). On every Legal Forest Reserve, clear-cutting is prohibited and only sustainable forest management is allowed.

The new Forest Code also introduced an innovative database called the **Rural Environmental Registry** (*Cadastro Ambiental Rural – CAR*) that provides georeferenced data on private properties' Permanent Preservation Areas and Legal Forest Reserve. CAR is a national, online public registry, and the new code requires that every rural property be registered. CAR serves several purposes. It integrates the environmental information of the rural properties for more effective management and planning in rural areas. It also serves as a tool to monitor and control deforestation in private landholdings. Landowners must register in the CAR in order to exercise several rights in the Forest Code, such as obtaining authorization to remove native vegetation, accessing benefits granted to landowners who illegally cleared forest prior to July 2008, and accessing rural credit from financial institutions.

<sup>2</sup> *Amazônia Legal* is a political concept, created in 1953, for territorial and socio-economic planning purposes. It corresponds to the geographic space that covers the states of Acre, Amapá, Amazonas, Mato Grosso, Pará, Rondônia, Roraima, Tocantins and western Maranhão. *Amazônia Legal* not only contains the Brazilian Amazon biome, but also parts of the *Cerrado* and *Pantanal* biomes.

**FIGURE 1:** Legal Forest Reserve Percentage Based on Type of Vegetation and Geographical Location



## HOW THE FOREST CODE IS APPLIED

The Forest Code requires all landowners to comply with the Permanent Preservation Areas and Legal Forest Reserve rules. **However, the new code creates a special regime for consolidated areas. It applies solely to rural properties where native vegetation was illegally clear-cut for agriculture or livestock breeding purposes prior to July 2008.**

The special regime also establishes even more flexible rules for small landowners.

This special regime was created to provide an affordable way for older offenders to comply with the new Forest Code, however, it is important to note that it does not make special considerations for, or reward, landowners who complied with the former legislation and preserved these areas.

## Brazil's New Forest Code

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### Key Compliance Requirements for All Landowners:

- Protect Permanent Preservation Areas (APP)
- Maintain Legal Forest Reserve
- Enroll in the Rural Environmental Registry (CAR)

### Reduced Requirements for Landowners under the SPECIAL REGIME:

- Applies to landowners who have rural, private properties where native vegetation was illegally clear-cut prior to July 2008
- More flexible, or reduced, APP requirements
- More flexible options for maintaining Legal Forest Reserve requirements
- Small landholders are allowed to designate their Legal Forest Reserve percentage based on native vegetation prior to July 2008

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## BENEFITS AND EXCEPTIONS PROVIDED BY THE SPECIAL REGIME

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### Accessing Benefits

Landowners in the special regime, who illegally clear-cut Permanent Preservation Areas and Legal Forest Reserve prior to July 2008, must comply with the Forest Code but are also entitled to benefits from the special regime's rules through their enrollment in the **Environmental Regularization Program** (*Programa de Regularização Ambiental - PRA*). The commitment to restore Permanent Preservation Areas and Legal Forest Reserve vegetation within the Environmental Regularization Program's scope grants these landowners some advantages, such as: immunity from prosecution for all clear-cutting before July 2008; amnesty for environmental fines for deforestation before July 2008; new Permanent Preservation Areas restoration requirements; and the possibility to offset the Legal Forest Reserve by purchasing credits from landowners who have kept more forest than required by law.

## Permanent Preservation Areas (APP)

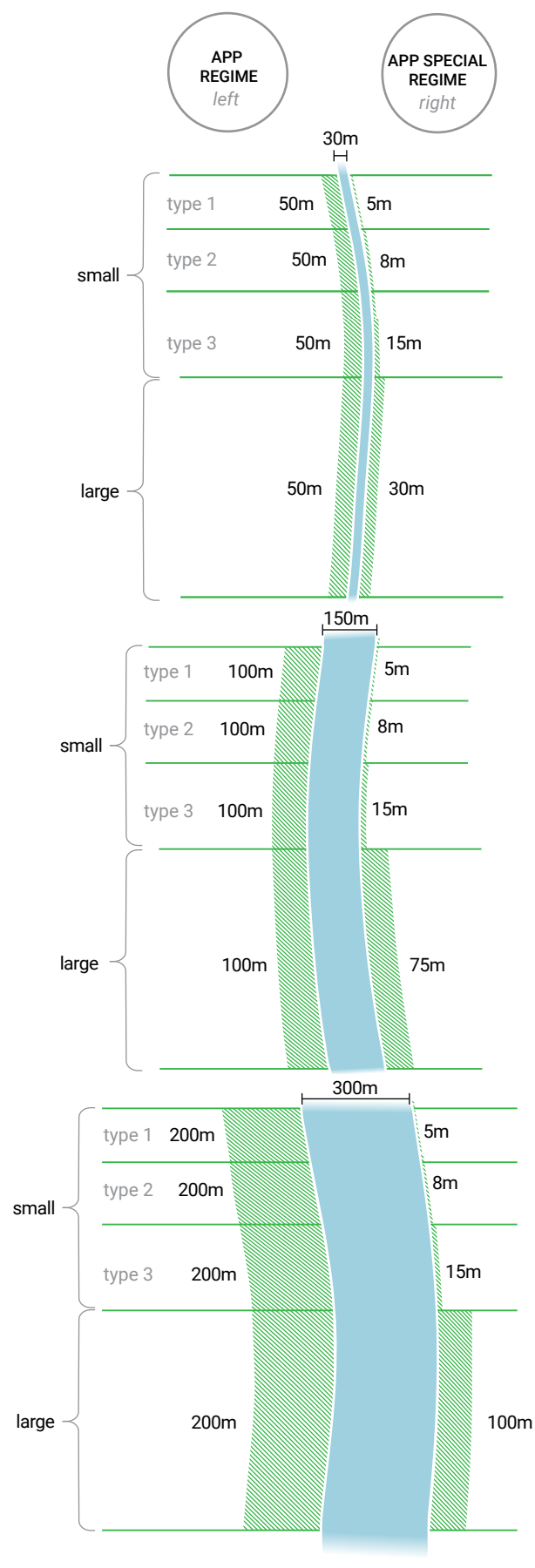
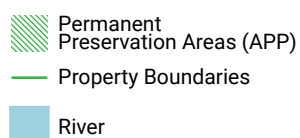
The special regime not only reduces the extent to which landowners are required to restore their Permanent Preservation Areas along the banks of rivers, springs, and lakes, but it also eliminates landowners' obligation to recover areas that were cleared before 2008 on hilltops and steep slopes.

Under the Forest Code framework, landowners bordering the river area are required to protect a specific portion of the river's banks. The size of the APP should be relative to the size of the water body (larger water bodies require larger APP). **However, the new code allows landowners under the special regime to restore a smaller area that varies according to their property size, regardless of the water body size.** Figure 2 illustrates the required size of APP for different property sizes depending on the watercourse width.

To get a better sense of how the APP rules differ for the special regime, consider a river 30m wide. Under the Forest Code framework, landowners must conserve an APP of 50m, while landowners under the special regime area are allowed to maintain an APP ranging from 5 to 30m depending on their property's size.

**FIGURE 2:** Permanent Preservation Areas Requirements Based on Property Size, Regime Type and Watercourse Width

**Note:** The new Forest Code establishes special requirements according to the rural property size, in fiscal modules (unit of land measure). Rural property type 1 is equivalent to rural properties up to one fiscal module; type 2 is equivalent to rural properties larger than one and up to two fiscal modules; type 3 is equivalent to rural properties larger than two and up to four fiscal modules.



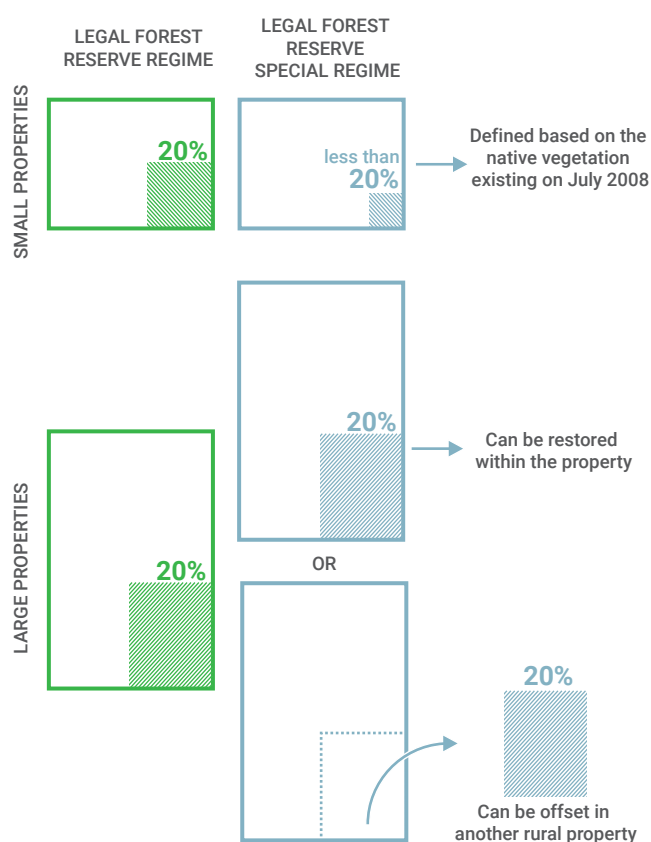
## Legal Forest Reserve

The Forest Code sets the size of designated areas for Legal Forest Reserve as a standard percentage, regardless of the property size. However, small properties that qualify under the special regime enjoy greater leniency in how they are required to maintain these areas.

Under the special regime, landowners have the option to purchase credits from landowners who have kept more forest than required by law and thereby offset their own Legal Forest Reserve requirements through a different property. The new Forest Code establishes four paths to offsetting these requirements, which are summarized in Box 1.

To illustrate, consider a property outside the *Amazônia Legal* (Figure 3). The Forest Code requires landowners in this particular area to designate 20% of the property as Legal Forest Reserve. However, landowners under the special regime have the option to offset, or compensate, their Legal Forest Reserve in another rural property, instead of restoring and maintaining the reserve within their own property's perimeter. Furthermore, landowners with small properties are given extra leniency—under the special regime they are allowed to designate their Legal Forest Reserve based on the native vegetation existing on that land prior to July 2008 rather than on their overall property size, which could be much lower than 20%, possibly even zero. This is an example of how the special regime provides some accommodations for some landowners.

**FIGURE 3:** Legal Forest Reserve Requirements Based on Property Size and Regime Type



### BOX 1: OPTIONS FOR OFFSETTING LEGAL FOREST RESERVE UNDER THE SPECIAL REGIME

The Forest Code requires all landowners to restore deforested areas on their properties. The special regime permits landowners who deforested prior to 2008 to offset their Legal Forest Reserve shortages through four different mechanisms:

- Designate surplus areas in their other properties as Legal Forest Reserve on a property that lacks sufficient restored area
- Establish a Conservation Easement Agreement
- Buy land from a private owner in a Protected Area and donate it to the government
- Buy an Environmental Reserve Quota (CRA)

## CHALLENGES AHEAD

Despite the promise of vast, potential benefits for Brazil, implementing the new Forest Code faces many challenges. While the Forest Code is federal legislation, its implementation depends on the states' legislation, which may vary significantly. While states have flexibility to address their priorities and address regional differences as they create their own rules and mechanisms, this flexibility also presents an enormous challenge for implementation and regularization. Indeed, as of October 2015 only 15 of 26 states have enacted provisions related to the Environmental Regularization Program, and, even in these states, the program is still not fully operational.

The Forest Code also faces many legal challenges, which introduces uncertainty and could potentially discourage compliance. Legal actions have been filed, and are still pending, alleging the unconstitutionality of the new Forest Code. In addition, some of the instruments outlined in the new Forest Code lack sufficient guidance, or regulation, to be fully implemented.

One of the biggest challenges facing the Forest Code, however, is that landholders are expected to initiate the process of environmental compliance themselves, but many lack the information, capacity, and resources they need to do so. This, too, may delay compliance.

The Forest Code regulations, database, and new management tools give the nation a promising environmental roadmap. If implemented effectively and the challenges are navigated successfully, Brazil will be in its strongest position yet to manage its lands for the economic and environmental benefit of the nation.

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The **Land Use Initiative (INPUT – Iniciativa para o Uso da Terra)** is a dedicated team of specialists who work at the forefront of how to increase environmental protection and food production. INPUT engages stakeholders in Brazil's public and private sectors and maps the challenges for a better management of its natural resources. Research conducted under INPUT is generously supported by the Children's Investment Fund Foundation (CIFF) through a grant to the Climate Policy Initiative. [www.inputbrasil.org](http://www.inputbrasil.org)