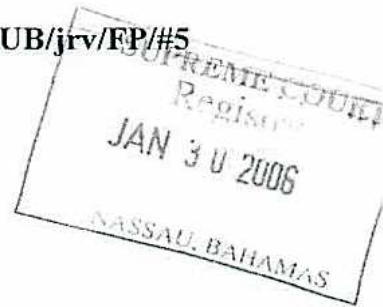


**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Public Law Division**

2005/PUB/jrv/FP/#5



IN THE MATTER of an application for judicial review

BETWEEN:

THE QUEEN

and

WENDELL MAJOR

As Secretary to the National Economic Council

First Respondent

THE MINISTER RESPONSIBLE FOR CROWN LANDS

In the person of the Honorable Mr. Perry Gladstone Christie,
Prime Minister of the Commonwealth of The Bahamas

Second Respondent

THE TREASURER OF THE BAHAMAS

Third Respondent

Ex parte

SAVE GUANA CAY REEF ASSOCIATION LIMITED

The Applicant

AFFIDAVIT OF DONALD COOPER

I, DONALD COOPER, Ph. D., of the Eastern district of the Island of New Providence, one of the Islands of the Commonwealth of the Bahamas, make oath and say as follows:

1. From 2000 to the present I have been employed as Under Secretary in the Ministries of Health and Environment, Agriculture and Fisheries and Office

of the Prime Minister with responsibility for the management of the Bahamas Environment, Science and Technology Commission (“the BEST Commission”).

2. The BEST Commission was established in 1994 and is comprised of a chairman and a number of board members from various governmental and non-governmental agencies which have responsibility for environmental oversight in The Bahamas.
3. I am duly authorised to make this affidavit and I do so from knowledge acquired by me in my aforesaid employment capacity.
4. The BEST Commission’s functions include, amongst other things, advising the Government on the environmental impact of various development proposals submitted for the Commission’s review.
5. The proposed touristic development at Guana Cay in the Abaco chain by Passerine at Abaco Holdings Ltd., Passerine at Abaco Ltd., Baker’s Bay Club Ltd., Baker’s Bay Hoa Ltd., Baker’s Bay Foundation Ltd. and Baker’s Bay Marine Ltd. (“the Developers”) is one such development proposal that the BEST Commission was asked to advise the Government on.
6. On or about 27th October 2004 the BEST Commission received the Environmental Impact Assessment (“EIA”) prepared by the Developers’ environmental consultants: Dr. Kathleen Sullivan Sealey, Associate Professor, University of Miami, Coral Gables, Florida; Applied Technology Management, a marine, coastal, environmental and water resources engineering firm with offices in the United States; Bethell Environmental

of Marsh Harbour, Abaco; Moffit and Nickel Coastal Engineering Firm of Tampa, Florida and others.

7. After a team of its technical officers completed a review of the said EIA and visited Guana Cay, the BEST Commission had the following initial concerns and comments about the EIA and the proposed development:
 - (i) The lack of a landfill site or transfer station for the current residents of Great Guana Cay needed to be addressed as part of the development plan.
 - (ii) It needed to be clearly expressed to the Commission in writing who was to be responsible for the clean up of the hazardous waste and abandoned structures left on the proposed development site by Disney.
 - (iii) The impact of the influx of 500 construction workers on Guana Cay, as well as 150 permanent workers, needed to be addressed, including the provisions that would be made to accommodate them.
 - (iv) A map needed to be provided showing the existing natural features of the proposed development site, including Gumelemi Cay, Joe's Creek and the adjacent wetlands, with an overlay of the features of the proposed development.
 - (v) The "No action" alternative, which is considered an integral part of all EIA documents, had not been explored therein.
 - (vi) The number for Figure 4.2 in the EIA did not correspond with the maps in Appendix A, making referencing difficult.
 - (vii) Figures 4.5, 4.10 and the elevation map in the EIA were very difficult to read due to their small size.
 - (viii) Due to the impact of the proposed development on wetland areas, the EIA document needed to be reviewed by the Wetlands Subcommittee of the Commission.
 - (ix) As part of its review of the EIA, the Commission needed to be supplied with reports from any public meetings that were held, which would be taken into account along with complaints that it had received from residents regarding the proposed development.

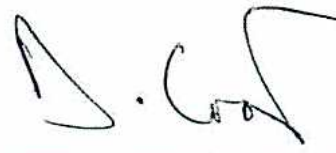
- (x) The EIA gave no indication of the volumes of solid waste to be generated by the proposed development and needed to provide clarification on where the various types of wastes outlined in Table 4.8 of the EIA were to be removed to. The Department of Environmental Health Services also needed to advise if the volume and types of waste slated to be removed from the proposed development could be accommodated on mainland Abaco.
- (xi) There was no Table 2 in the Appendix to the EIA.
- (xii) There was no indication in the EIA as to what mitigation measures, if any, would be utilized for large Casuarina trees.
- (xiii) The EIA stated that “movement of fill from the marina basin will be used to create two islands within the marina for housing lots”. The Commission required more detailed information on the creation of these “islands”.
- (xiv) The Commission questioned if the use of sediment curtains would offer sufficient mitigation for the large-scale dredging proposed for the project, and asked the Developers to provide more detail on the methodology for mitigation during dredging.
- (xv) If golf course management practices are found to decrease or cause severe negative impacts to groundwater, the Commission queried whether it would not then be too late to prevent groundwater contamination if the wells are contaminated.
- (xvi) With respect to page 96 of the EIA, the Commission required provision of the setback distances from mean high tide for high energy beaches and dunes and high energy rocky shores.
- (xvii) With respect to page 102 of the EIA, whilst leash confinement for dogs is given as a mitigation option for controlling pets on the island, the Commission required information as to what other confinement methods for pets, especially cats and dogs, would be mandated for residents of the proposed development.
- (xviii) The Commission queried whether each lot in the proposed development would have beach access and whether there would be common access points.
- (xix) Whilst sufficient detail was provided on use of reef balls, the Commission required more detail on the mitigation option of replanting seagrasses and an indication of the Developers’ preference with respect to these two options.

- (xx) The completed Environmental Management Plan (“EMP”) needed to be provided to the Commission for review and approval prior to any construction beginning.
 - (xxi) As the specifications for the proposed marina did not meet the Commission’s flushing requirements, it was recommended that the Developers consider design options that would enable the required flushing rate and present these to the Commission to review.
 - (xxii) As it was the Commission’s understanding that mooring in the area previously used by Disney cruise ships was often not possible due to wind and current conditions at the site, it needed to know how these were to be overcome.
 - (xxiii) The Commission needed the identity of the employee that was to be specifically responsible for management of wastes generated at the marina and their disposal.
8. In response to the above-mentioned concerns and comments, the Developers made a number of modifications to the original design of the proposed development and provided additional material to the BEST Commission for review.
9. These modifications included, for instance:
- (i) changing the private access points to the beach so as to lessen coastal impact;
 - (ii) changing the design of the proposed golf course so that all aspects of it would be no less than 50 feet from the mean high water mark; and
 - (iii) altering the design of the marina so that a flushing-rate of 90% turn over within a 24 hour period could be achieved.
10. As a result of the various modifications to the original design of the proposed development and the additional material provided, the BEST Commission was satisfied that most of its concerns had been favourably addressed by the Developers. However, the BEST Commission still awaits receipt of a final design for the proposed golf course that would minimise

or eliminate any ecological risk associated with the current design, and a revised EMP.


11. The contents of this affidavit are true and correct to the best of my knowledge, information and belief.

Sworn to at Nassau, The)
Bahamas this 30th day of)
January, A.D. 2006)



DONALD COOPER

BEFORE ME,



DESIGNATED CLERK SUPREME COURT NO. 1.