

October 9, 2020

The Most Honourable Dr. Hubert A. Minnis,
Prime Minister,
Office of the Prime Minister,
Cecil Wallace Whitfield Centre,
West Bay Street,
Nassau, Bahamas.

Dear Prime Minister,

Re Comments by reEarth, the Bahamas Reef Environment Educational Foundation, Save the Bays, Waterkeepers Bahamas, and the Waterkeeper Alliance on the The Department of Environmental Planning and Protection's 2020 Draft EIA Regulations.

We are writing to respectfully submit for your consideration the attached detailed comments provided by the above-named organizations in relation to the 2020 Draft Environmental Impact Assessment (EIA) Regulations that were recently tabled in the House of Assembly.

In response to a request from the Department of Environmental Planning and Protection on July 29th, the organizations undertook an extensive review with domestic and international experts of the draft regulation. The organizations submitted proposed additions and revisions on September 3rd. On Monday September 14th, the organizations had a productive meeting by Zoom with the Director of the Department of Environmental Planning and Protection, Rochelle Newbold. We were informed during that call that unfortunately our revisions had been made on an outdated draft. The organizations then communicated that we would apply their revisions to the correct draft and submit them to the Department that Friday. However, on Tuesday September 15th, we were informed that a final draft had been tabled in the House of Assembly.

We have now reviewed the tabled draft regulations and we have incorporated our proposed revisions to the tabled draft of the EIA Regulations in the hope that our comments might be considered before this important legislation is finalized.

We set out below for your convenience a summary of the matters which the tabled regulations did not cover. It is our hope that some or all of these matters might still be addressed:

- The Regulations leave it up to the discretion of the Director to determine which projects will require an Environmental Impact Assessment to be done and which will not. The Regulations have failed to include the suggested requirement for a full Environmental

Impact Assessment to be conducted in the case of certain types of projects. The suggested revisions that were submitted included a schedule of types of hazardous or high impact projects for which the requirement to conduct a full Environmental Impact Assessment should be obligatory.

- The Regulations have failed to incorporate the suggestions for information to be extensively available to the public through publication on a website maintained by the Department. It was suggested that the Regulations include a requirement that the Department maintain a register containing details of all applications received by the Department for a Certificate of Environmental Clearance (“the Register”) and that the Register be published on the Department’s website together with a copy of the application, a copy of all reports and relevant information received by the Department in connection with the applications. It was suggested that the public be allowed not less than 21 days from the date on which the information was published to make representations and that a mechanism be provided on the website for public comment.
- With regard to the consultation process, key suggestions that have been omitted included the requirement that the Project Proponent provide an opportunity for meetings between the Project Proponent and interested members of the public, especially within or immediately adjacent to the geographical area of the proposed project and the suggestion that notification of all meetings be published on the Department’s Website and that following a consultation exercise, the project proponent be required to provide the Director with a summary of the views expressed and that this summary be published by the Director on the Department’s Website.
- Suggestions were made with regard to the conduct of an environmental audit to determine the accuracy of the projections made in the environmental impact assessment. In addition, the proposed revisions also included detailed provisions with regard to the mechanism for appeals by members of the public opposing the grant of a Certificate of Environmental Clearance.
- Under the Appeals section of the regulations, the final version tabled in the House stated that “a project proponent may appeal any decision of the Director to the Minister who may vary or reverse such decision.” The regulations as they stand place all of the power in the hands of the Minister, and provide no transparency of process. Our revisions include detailed additions that give the Project Proponent and the public a stronger voice in the decision-making process and provide avenues for further appeals if they feel the decision is unjust.

- The proposed revisions included detailed suggestions as to matters to be included in the EIA and critically, the proposed revisions addressed the steps in the EIA process including: A. SCREENING STEP to determine whether a proposed project is subject to the EIA regulations, B. SCOPING STEP to focus each EIA on the key environmental, social, and economic issues associated with the project, and to ensure that each EIA addresses all important issues, by identifying the key environmental issues associated with the subject proposed project, C. ASSESSMENT STEP to carry out a thorough assessment of the likely environmental impacts of a proposed project and D. REVIEW STEP to allow the Department to study the information submitted by the Project Proponent in the EIA, gather additional information from other sources as appropriate, and based on this information, determine whether the proposed project is environmentally acceptable. These suggested revisions have not been included.
- The final version tabled in the House specified under the Performance Bond section that the “sum to be deposited pursuant to subsection (1) shall be fixed by the Director to a sum no more than five per cent of the value of the project.” The proposed revisions, by contrast, suggest that the “sum to be deposited pursuant to paragraph (1) shall be no less than five per cent and no more than fifty per cent of the value of the project.” In our respectful submission the regulations, as they currently stand, are inadequate to offset potential adverse environmental impacts identified in the assessment process and the restriction of the bond to less than five per cent of the value of the project will render the bond requirement meaningless. This is particularly a concern in cases where the project value may be low, but the risk of causing significant environmental damage may be high.

We are cognizant of the The Department and the Government of The Bahamas’ mandated public consultation process and we hope that, in view of the communication between the organizations and the Department and the understanding as to the agreed timeline for submission of comments, the Government would allow the time for our comments to be considered before the regulations are finalized.

We respectfully point out that, in preparing the comments, the groups and their consultants were mindful of the fact that The Bahamas is the most vulnerable nation in the Caribbean region to climate change impacts. Thus, environmental protection and sustainability is a paramount concern for The Bahamas. The groups are also keenly aware that EIA regulations are perhaps the most critical tool to ensuring that large-scale developments address and effectively abate relevant environmental, social, and economic concerns and that as The Bahamas and the world work to recover from the COVID-19 pandemic, it is more important than ever for these regulations to be as comprehensive and robust as possible.

The organizations are partners in the Stop Disney - Last Chance for Lighthouse Point campaign that cooperates with an independent network of almost 30 Bahamian and international scientists and experts eager to contribute to the EIA process, both at Lighthouse Point and in The Bahamas at large with the 2020 regulations.

We are eager to elaborate on our comments with the Department and its officials further, and we would be grateful to explore and discuss how our comments can be incorporated into the final regulations.

Respectfully,



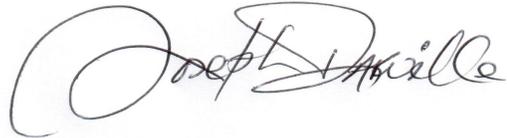
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cc: Rochelle Newbold, Director, Department of Environmental Planning and Protection
Hon. Romauld Ferreira, Minister of the Environment and Housing

