

**STATEMENT FROM THE APPLICANTS
IN THE JUDICIAL REVIEW ACTION AGAINST
THE NATURAL RESOURCES CONSERVATION AUTHORITY (NRCA)
AND
THE NATIONAL ENVIRONMENT AND PLANNING AGENCY (NEPA)
IN THE MATTER OF
THE BAHIA PRINCIPE RESORT
AT PEAR TREE BOTTOM, RUNAWAY BAY**

The Applicants were :-
THE NORTHERN JAMAICA CONSERVATION ASSOCIATION
THE JAMAICA ENVIRONMENT TRUST ET AL

*Kingston, Jamaica
June 27th, 2006*

Background

On June 23rd, 2006, Justice Bryan Sykes varied his May 16th, 2006 order in the above matter. The May 16th ruling made an order of certiorari quashing the environmental permit given to Hotels Jamaica Pinero Ltd. (HOJAPI), made an order of mandamus instructing the Natural Resources Conservation Authority (NRCA) and the National Environment and Planning Agency (NEPA) to reconsider the permit and made a declaration that the environmental regulatory agencies had breached their own procedures in granting the environmental permit to HOJAPI. HOJAPI then filed an application to the court to be heard as an affected third party, and this was followed by a similar application from the environmental impact assessment (EIA) consultants, Environmental Solutions Ltd.

On June 23rd, Justice Bryan Sykes ruled that HOJAPI was an affected third party under the Civil Procedure rules, that they should have been served as affected third parties in the original action and accepted that the earlier quash of the environmental permit would cause them financial loss. Although Justice Sykes did not accept that Environmental Solutions could be considered an affected third party, he stated that it appeared the deficiencies in the EIA arose not out of negligence on the part of Environmental Solutions, but out of NEPA's approvals process. Accordingly, Justice Sykes removed the orders of certiorari and mandamus to allow the hotel to continue on the original permit. He also expanded his declarations on the deficiencies of the approval process.

During the course of the court action, NJCA and JET were advised by their lawyers, DunnCox, not to speak publicly on the matter. Now that the court action has been concluded, the environmental groups would like to make the following statements:-

- (1) NJCA and JET accept the ruling of Justice Bryan Sykes. We feel Justice Sykes reviewed the case before him thoroughly and fairly. In particular, he clearly stated the environmental regulatory bodies breached both their own and the legal standards of consultation, including failure to consult with relevant government

- agencies. Justice Sykes also found that there was a breach of the legitimate expectation of the environmental groups that they would be provided with full, fair and accurate information. He was also critical of the environmental impact assessment process and emphasized the importance of protection of the environment for human safety and quality of life.
- (2) Both Justice Sykes' judgments have laid a strong foundation for the continued development of environmental jurisprudence in Jamaica.
 - (3) NJCA and JET did not file suit against the hotel – at times, the public discourse did not seem clear on this point. We did not seek to have the hotel stopped. Our concerns were the numerous failures of the environmental regulatory bodies to act in the best interests of the natural environment and the people of Jamaica.
 - (4) Further, NJCA and JET went to court as a last resort. The judicial review action came after more than ten years of advocacy from both groups. Despite a range of efforts to obtain information and to make recommendations on a suitable development for Pear Tree Bottom, the environmental groups received absolutely no response from the various government agencies concerned.
 - (5) We note and share the concerns of various private sector groups on the effect of Justice Sykes' first ruling on the investment climate and the need for developers to operate in the context of a predictable regulatory regime. However, we assert that business leaders should be equally concerned at the court's findings that the environmental state agencies were delinquent in their duties.
 - (6) We are concerned at the silence from the environmental regulatory agencies and the Minister of Local Government and the Environment. Perhaps they too were awaiting the results of the legal action, but we hope the people of Jamaica will now get an explanation for the failure of the NRCA and NEPA to abide by their own laws and regulations.
 - (7) We intend to monitor subsequent phases of the Bahia Principe development and other large developments. We are deeply concerned that it appears the coral reefs at Pear Tree Bottom are not currently being adequately monitored or protected, and there are credible reports of damage by siltation.
 - (8) We will continue to receive legal advice as to how the declarations of the court can achieve greater transparency, responsiveness and accountability from the NRCA and NEPA and other government agencies. In far too many cases, our correspondence goes unanswered or the answers are unsatisfactory. Even requests made under the Access to Information Act are not responded to in the time frames mandated by the Act. Two of our appeals under the ATI were heard yesterday – June 26th. One concerned documents relating to Pinero's introduction into Jamaica, and the other the status of the environmental levy announced in 2003. The appeals tribunal ruled the information should be released to us in the case of the Pinero appeal; and to the Tribunal itself in the case of the environmental levy, so the Tribunal can assess the public interest that would be served by not releasing the information requested.
 - (9) More broadly, we are concerned about the sale and development of Jamaica's coastline in an unsustainable manner. It appears the Government of Jamaica intends to pursue Cancun-style high-density, high-impact development along the coast, effectively denying Jamaicans access to our own coastline. Indeed, if the

hotel developments east of Montego Bay are an example, it appears we will soon be denied even the sight of the sea. We would have thought the lessons of Ocho Rios, Montego Bay and Negril would have been well-learned and are deeply concerned that this appears not to be the case.

- (10) We are concerned that this large-scale development is proceeding ahead of the required infrastructure and with insufficient attention to environmental quality. We understand the Planning Institute of Jamaica commissioned a study on the environmental, infrastructural, social and economic impacts of the large hotels. The Terms of Reference for this study were comprehensive and covered identification of the major socio-economic and environmental issues, determination of the implications of these findings for the planning process, assessments of the human resources needs and infrastructure requirements, and recommended courses of action. Although a final draft was submitted to the PIOJ in July 2005, it has not been released to the public, although those concerned about the scale and type of the hotel at Pear Tree Bottom were told in April 2005 that it would soon be available. Presumably this study was funded by taxpayers, and JET and NJCA request that it be released immediately.
- (11) The judicial review action filed by NJCA and JET was about the approvals process, not about enforcement of environmental laws. Nonetheless, we are extremely concerned about lax enforcement by the environmental regulatory agencies, who appear to have unlimited tolerance for clear breaches of the law, particularly when committed by other government agencies and large hotel developments. We cite as examples the continued failure of the National Water Commission to meet sewage effluent standards at many of its plants, and the permit breaches committed by all three RIU hotels, which were never the subject of prosecution.

We would like to thank the many people who helped us on this difficult task – the members of our respective boards who understood the principles at stake and approved the legal action despite the daunting risks; our team of lawyers for whom no praise can be too high; and very many Jamaicans, both at home and overseas, who sent letters, e-mails and phone calls of support.

Our interests remain the protection of Jamaica's important natural resources and sustainable development for our people.

NORTHERN JAMAICA CONSERVATION ASSOCIATION
JAMAICA ENVIRONMENT TRUST
June 27th, 2006