

**IN THE SUPREME COURT OF BELIZE, A.D. 2010**

**CLAIM NO.                    of 2010**

**BETWEEN**

**PENINSULA CITIZENS FOR  
SUSTAINABLE DEVELOPMENT LIMITED**

**CLAIMANT**

**AND**

**DEPARTMENT OF THE ENVIRONMENT**

**DEFENDANT**

**PLACENCIA MARINA LIMITED**

**Interested Party**

**FIRST AFFIDAVIT OF MARY TOY**

I, MARY TOY, Businesswoman, of Placencia Village, Stann Creek District, Belize, MAKE OATH AND SAY as follows:-

1. I am a Director of the Claimant and the deponent herein. I am authorized to make this Affidavit on behalf of the Claimant and depose to the same from facts within my personal knowledge, information and belief.

**Name, Address and Description of the Claimant**

2. a) The Claimant is Peninsula Citizens for Sustainable Development Limited of Placencia Village, Stann Creek District, Belize, a not for profit corporation incorporated under the laws of Belize. A Copy of the Claimant's Certificate of Incorporation is now produced and shown to me marked "MT-1".
- b) The Claimant is committed to the preservation of the environment, with particular emphasis on the Placencia Peninsula, mangrove restoration, sustainable tourism development climate change, water quantity and quality, dredging in fragile environments, and other environmental areas of concern. Within the last 8 to 9 years since Hurricane Iris, the issues of dredging and erosion have gained prominence in the Peninsula as in some areas up to 10 to 15 feet of beach has been significantly eroded.
- c) The Claimant uses its best efforts to keep abreast of developments in Placencia Village, study their possible impact on the environment, and make representations regarding same to the public and the Department of the Environment.

### **Names, Addresses and Description of Defendant**

3. The Defendant is the Department of the Environment (hereinafter referred to as the “DOE”), which is established under section 3 of the Environmental Protection Act, Chapter 328 of the Laws of Belize, R.E., 2000 (hereinafter referred to as “the Act”). The Department is tasked with, *inter alia*, the assessment and approval or disapproval of environmental impact assessments submitted in accordance with the Environmental Impact Assessment (Amendment) Regulations, No. 24 of 2007 (sections 20 and 21 of the EPA) (hereinafter referred to as “the Regulations”).

### **Name, Address and Description of Interested Party**

4. The Interested Party is Placencia Marina Limited, a company incorporated under the Belize Companies Act, Chapter 250 of the Laws of Belize, with its registered office at No. 15 A Street, King’s Park Area, Belize City, Belize (hereinafter referred to as “PML”).

### **The Reliefs Sought**

5.
  - (1) A Declaration that the Defendant failed to approve the Placencia Marina Limited Environmental Impact Assessment (hereinafter referred to as “the EIA”) in accordance with its duties under Section 4 of the Environmental Protection Act, Chapter 328 of the Laws of Belize, as amended by Act No. 5 of 2009, and the Environmental Impact Assessment (Amendment) Regulations, No. 24 of 2007.
  - (2) A Declaration that the Defendant failed to exercise its statutory duties under Section 4 of the Environmental Protection Act, Chapter 328 of the Laws of Belize, as amended by Act No. 5 of 2009, and the Environmental Impact Assessment (Amendment) Regulations, No. 24 of 2007 when it purported to approve and sign the Environmental Compliance Plan for Placencia Marina Limited, and therefore acted *ultra vires*.
  - (3) A Declaration that the Defendant acted unlawfully by delegating, in the Environmental Compliance Plan for Placencia Marina Limited, its jurisdiction to vet and approve the final detailed technical/engineering designs of the Placencia Marina Limited Project to the Ministry of Works.

- (4) An Order that the Environmental Compliance Plan dated 6<sup>th</sup> April, 2010 is illegal and therefore null and void.
- (5) Further or other relief.
- (6) Costs.

**Grounds on which the Reliefs are sought**

- 6. (1) The DOE approved the PML Environmental Impact Assessment which failed to:
  - (a) Identify and evaluate the effects of specified developments on the pertinent environmental factors, including water and natural resources, contrary to section 20(2) of the Act and Regulations 5, 15(2), 19, 21 and 22 of the Regulations;
  - (b) Provide for mitigation of adverse environmental effects of the PML project contrary to regulation 20(3) of the Regulations;
  - (c) Carry out the environmental impact assessment process with the need to protect and improve human health and living conditions contrary to section 20(4) of the Act;
  - (d) Provide adequately for the protection of the environment, contrary to section 4 of the Act;
  - (e) Provide the bathymetry and oceanographic data and detailed technical designs of the project as required under the Terms of Reference contrary to regulations 16 and 21 of the Regulations;
  - (f) Comply with the requirements of the Terms of Reference, contrary to regulations 16 and 21 of the Regulations;
- (2) The DOE approved and signed the Environmental Compliance Plan dated 6<sup>th</sup> April, 2010 for the PML Project :
  - (a) which failed to specify the proposed developments, and identify and evaluate the effect of the development on the environment, contrary to 4 of the Act and regulation 19 of the Regulations;

- (b) without either having available to it or evaluating the bathymetric and oceanographic data, or any data regarding the land based components, the availability of potable water, or the appropriateness of the project site, as was required for properly assessing the effect of the PML project on the environment; and
- (c) unlawfully delegates to the Ministry of Works its function to vet and approve final detailed technical/engineering designs of the PML Project subsequent to the grant of approval of the Project.

## **Background**

7. Under section 4 of the Act, the DOE functions generally to, inter alia:

- (a) be responsible for the continuous and long-term assessment of natural resources and of pollution;
- (b) ensure the protection and rational use of natural resources for the benefit of the present and future generations;
- (e) issue the necessary licences, with or without conditions, for use for the exercise of activities that may cause pollution;
- (f) undertake surveys and investigations into the causes, nature, extent and prevention of pollution and to assist and co-operate with other persons or bodies carrying out similar surveys or investigations;
- (j) undertake investigations and inspections to ensure compliance with this Act or the regulations made thereunder;
- (m) examine and evaluate and if necessary carry out environmental impact assessments and risk analysis and to make suitable recommendations to mitigate against harmful effects of any proposed action on the environment;
- (n) monitor environmental health;
- (r) provide decision-making with the necessary information so as to achieve long term sustainable development;
- (u) conduct studies and make recommendations on standards relating to the improvement of the environment and the maintenance of a sound ecological system;

- (v) monitor trends in the use of natural resources and their impact on the environment;
  - (w) advise on the effects of any sociological or economic development of the environment;
  - (aa) exercise any other functions relating to the protection of the environment
- 8. To this end, the DOE plays a pivotal role in the environmental assessment process under the Act and the Regulations. The Environmental Impact Assessment (“EIA”) is defined in regulation 2 of the Regulations as “studies needed in identifying, predicting, evaluating, mitigating and managing the environmental, and key social and economic impacts of development projects, undertakings, programmes, policies or activities, the report of which is presented in a written document called the Environmental Impact Assessment report”.
- 9. The DOE carries out the following specific functions with regard to the EIA:
  - (1) Determines whether an environmental impact assessment is required for a project or activity (regulation 3);
  - (2) Identifies significant environmental issues at an early stage in the environmental impact assessment process and in any case before commencing or embarking on any such project or activity (regulation 4);
  - (3) Requires the preparation of terms of reference for the project, a review of the project by the National Environmental Appraisal Committee (hereinafter referred to as “NEAC”), and, where approval is recommended, the development and implementation of an Environmental Compliance Plan (ECP) (regulation 6);
  - (4) Determines the scope and extent of an EIA (regulation 7);
  - (5) Determines whether the terms of reference submitted by the developer under regulation 15 are adequate and satisfactory and, if not, directs the developer to modify the draft in such manner as it deems necessary (regulation 16);
  - (6) Approves the terms of reference to be followed by the developer in the EIA (regulation 17);

- (7) Determines the procedure for public participation in the EIA (regulation 18);
  - (8) Authorizes the publication of an approved EIA (regulation 20(1));
  - (9) Examines the EIA to determine whether it complies with the previously agreed terms of reference (regulation 21(1)(b));
  - (10) Examines the environmental impact assessment to determine whether either further environmental assessment is required or if any significant harmful impact is indicated (regulation 21(1)(c));
  - (11) Acts on the recommendation of NEAC where a developer's statement is deficient and requires further information, studies, amendment and resubmission by the developer (regulation 23);
  - (12) Acts on the recommendation of NEAC with respect to public hearings on the EIA, taking into consideration the magnitude and type of the environmental impact, the amount of the investment, the nature of the geographical area, the commitment of natural resources involved in the proposed undertaking, project or activity, the complexity of the problem and the possibility that the information presented at a public hearing may assist the developer to comply with its responsibilities regarding the proposed undertaking, project or activity (regulation 24).
10. NEAC is comprised of the Chief Environmental Officer, the Commissioner of Lands, the Director of Health Services, the Chief Forest Officer, the Fisheries Administrator, the Chief Meteorologist, the Director of Geology and Petroleum, the Chief Engineer, a suitably qualified person trained in Coastal Zone or Marine Resources Management or related field, a suitably qualified person trained in Human Development or Social Services, a suitably qualified person representing a Tertiary Level Institution in Belize, two registered non-governmental or private sector representatives appointed by the Minister on the recommendation of the Department. Under regulation 25(3) of the Regulations, the Chief Environmental Officer is the Chairman of the Committee.
11. NEAC's functions, as set out in regulation 25(1) of the Regulations, are to:
- (a) Review all environmental impact assessments;
  - (b) Advise the Department of the adequacy or otherwise of environmental impact assessment;
  - (c) Advise the Department of circumstances where a public hearing is desirable or necessary; and

- (d) Make recommendations to improve the efficiency and effectiveness of the environmental impact assessment process.
12. NEAC is mandated under regulation 26 to take into consideration the following factors in every screening and assessment of every project:
  - (1) The environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project by taking into consideration other projects or proposed projects that have been or will be carried out;
  - (2) The significance or seriousness of those effects;
  - (3) Comments concerning those effects received from the public in accordance with the provisions of these Regulations;
  - (4) Measures that are technically and economically feasible and that would mitigate or prevent any significant or serious adverse environmental effects of the project.
  - (5) The need for and the requirements of any follow up program in respect of the project;
  - (6) The short term or long term capacity for regeneration of renewable resources that are likely to be significantly or seriously affected by the project;
  - (7) Any other matter that the Committee at the request of the DOE may require.
13. Under the Act and the Regulations, where the DOE has determined that an EIA is required in respect of a project, the following steps shall be taken:
  - (1) Terms of Reference shall be developed for the purposes of the EIA. The developer shall submit draft terms of reference in writing to the DOE. The DOE shall examine the draft and advise the developer whether the same is adequate. If the draft is not adequate, the DOE shall require the developer to modify the draft. The DOE shall thereafter approve the draft in writing (regulations 16 & 17);
  - (2) The developer shall undertake the necessary studies for the preparation of the EIA and submit the same to the DOE (regulation 13);

- (3) The developer shall provide opportunities for public consultation on the EIA (regulation 18);
  - (4) The developer shall submit the EIA report, which shall include a description of the proposed development, comprising information about the site, the design and size, and scale of the development, and its immediate surroundings; a description of the environment (local and regional), and the data necessary to identify and assess the main effects which the proposed development is likely to have on the environment, the likely effects on the environment, environmental consequences of the project as proposed (regulation 19);
  - (5) The EIA shall be published by the developer, whereby the same is made available for inspection by the public (regulation 20);
  - (6) The DOE shall assess whether the terms of reference were complied with and or whether further assessment is required or significant harmful impact is indicated (regulation 21);
  - (7) NEAC shall conduct a full review of the EIA (regulations 6, 25, and 26);
  - (8) The DOE shall decide on the approval or otherwise of the project on the recommendation of NEAC (regulations 22 and 25);
  - (9) If the EIA is approved, the DOE shall develop and implement an Environmental Compliance Plan consisting of legally binding environmental conditions, guidelines, policies and restrictions with which the developer shall comply as conditions for the approval of the project.
14. The Terms of Reference with respect to PML's 200 to 300 slip marina project was agreed to between the DOE and PML, and approved by DOE. A copy of the said Terms of Reference is now produced and shown to me marked "MT-2".
  15. Under the Terms of Reference, PML was required to carry out the necessary studies and provide the following information, *inter alia*, in the EIA:
    - "6.02 Evaluate options for storage of water borne vessels. This will require examination of:
      - 6.02.1 Design of marina;
      - 6.02.2 Type of material to be used to construct the marina;

- 6.02.3 Dredging requirements/volume of materials to be dredged (if necessary);
- 6.02.4 Disposal/use of dredged materials (if necessary);
- 6.02.5 Physical characteristics of materials to be dredged (if necessary);
- 6.02.6 Type of dredging equipment (if necessary);
- 6.02.7 Benthic substrate;
- 6.02.8 Need for shoreline protection;
- 6.02.9 Near shore and off shore current patterns;
- 6.02.10 Near shore and off shore sedimentation patterns;
- 6.02.11 Wind conditions;
- 6.02.12 Wave conditions;
- 6.02.13 Transportation of construction materials;
- 6.02.14 Methods of controlling sedimentation of marina;
- 6.02.15 Requirement for maintenance dredging (frequency & volume);
- 6.02.16 Impacts to the hydrology of the area.

6.03 Provide bathymetry of the in particular the access channel and the marina area.” (sic)

- 16. In June, 2009, Placencia Marina Limited submitted an EIA to the DOE with respect to a 200 to 300 slip marina project (hereinafter referred to as the “Marina Project”). In the said EIA, PML sought the approval of DOE for dredging in the Caribbean Sea in connection with the Marina Project. A copy of the EIA is now produced and shown to me marked “**MT-3**”.
- 17. The EIA was not approved due to deficiencies therein, in particular the failure to comply with Clauses 6.02 and 6.03, abovementioned. The DOE therefore invited PML to submit an addendum to the EIA to address the deficiencies.

18. In December, 2009, PML submitted an addendum to the original marina EIA, hereinafter referred to as “the December Addendum”. A copy of the December Addendum is now produced and shown to me marked “**MT-4**”.
19. In the December Addendum, PML’s consultant states that his client, PML, is unable to perform the required bathymetry and modeling studies because of “inadequate historical information” about the site of the proposed marina.
20. By a correspondence dated 20<sup>th</sup> January, 2010, the Belize Fisheries Department provided detailed objections and recommended further substantial revisions to the December Addendum. The Belize Fisheries Department was of the view that the EIA was “generic”, “not site specific”, and that the preparers of the EIA should “conduct their own studies in the project location”. Further, oceanographic and bathymetrical data was deficient in that there was no prediction modeling, no information was provided on the impact on longshore currents, and a complete and thorough flora and fauna survey and habitat map was needed. A copy of the comments of the Belize Fisheries Department are now produced and shown to me marked “**MT-5**”.
21. At a meeting held on 21<sup>st</sup> January, 2010, NEAC formally reviewed the EIA as amended by the December Addendum. The meeting concluded that critical information was still lacking even after submission of the December Addendum, including oceanographic data, benthic substrate, bathymetry and coastal modeling studies, an aquifer test, and source of fill material and limestones for geotubes and rip rap armor. NEAC therefore stated that the aforementioned information was “*lacking and needs to be presented*” before approval could be granted. A copy of the minutes of the NEAC meeting of 21<sup>st</sup> January, 2010 is now produced and shown to me marked “**MT-6**”.
22. PML submitted a second addendum to the original marina EIA on 12<sup>th</sup> February, 2010 (hereinafter referred to as “the February Addendum”).
23. In a private letter of even date to Mr. Martin Alegria, the Chief Environmental Officer of DOE (“hereinafter “Alegria”), Mr. Ismael Fabro, principal, Belize Environmental Technologies, PML’s consultant (hereinafter “Fabro”), requested that DOE and NEAC approve the Marina Project without the bathymetry and modeling studies, despite earlier clear and lawful directive that NEAC and DOE could not adequately assess the environmental impact of the proposed marina without such studies, and in contravention of the Terms of Reference.
24. In support of his request, Mr. Fabro stated that sourcing and importing the equipment needed to carry out the oceanographic studies would “require additional time” and that this delay “poses a serious risk in [PML] losing current investors’ interest in the project”. Mr. Fabro also surmised that the

requirement of the oceanographic studies was unprecedented. Mr. Fabro therefore asked that the oceanographic studies be included as a condition of the Environmental Compliance Plan. A copy of Mr. Fabro's letter dated 12<sup>th</sup> February, 2010 is now produced and shown to me marked "MT-7".

25. By a letter dated 16<sup>th</sup> February, 2010 the Claimant therefore wrote to Mr. Alegria, and copied the same to the Hon. Prime Minister of Belize; Hon. Gaspar Vega, Ministry of Natural Resources; CEO, Ministry of Natural Resources; Belize Association of Conservation NGOs; South Coast Citizens for Sustainable Development; Southern Environmental Association; Belize Tourism Industry Association; Wil Maheia; Coastal Zone Management Authority and Ambergris Caye Citizens for Sustainable Development. In this letter the Claimant strongly objected to Mr. Fabro's request on grounds that the studies requested by NEAC were required by law for the EIA process and thus should not be performed after approval of the project as a part of the ECP. A copy of the Claimant's letter dated 16<sup>th</sup> February, 2010 is now produced and shown to me marked "MT-8".
26. On 24<sup>th</sup> February, 2010 NEAC met to formally review the amended EIA and addendums and approved the Marina Project. Contrary to its own stated requirements, NEAC and DOE approved the marina EIA without either the bathymetry and coastal modeling studies or the project designs that they had earlier required in accordance with the Act and the Regulations, and without compliance with the Terms of Reference for the Marina Project.
27. NEAC's decision is contained in the minutes of the meeting of 24<sup>th</sup> February, 2010, a copy of which is now produced and shown to me marked "MT-9", and is quoted as follows:

"5.1 After much discussion and deliberation, the NEAC recommended that environmental clearance be granted, subsequent to the signing of an ECP, with the following conditions:

5.1.1 The project is granted approval in three (3) phases:

- a) Phase 1 shall consist of Oceanographic Data Collection as stipulated in the Terms of Reference for the development of the EIA, for a minimum of 6 months.
- b) Phase 2 shall consist of the approval of the Detailed Technical/Engineering Designs for the proposed marina. The technical designs will be developed using the findings gathered by the data collection exercise. The final designs shall be vetted and approved by the Ministry of Works, with input from the Belize Port Authority, Geology and Petroleum Department, and the Department of the Environment.

c) Phase 3 shall encompass all the construction activities above water, which shall commence only after Phase 1 and Phase 2 has been completed. NEAC also designated the Ministry of Works as the final approval agency with regard to the project design.”

28. Immediately upon learning of NEAC’s decision, the Claimant wrote to the Chief Environmental Officer requesting information regarding the meeting of 24<sup>th</sup> February, 2010 under the provisions of the Freedom of Information Act. A copy of the Claimant’s letter dated 2<sup>nd</sup> March, 2010 is now produced and shown to me marked “**MT-10**”. The Claimant has not received a response to its letter.
29. By a further letter dated 17<sup>th</sup> May, 2010, the Claimant, through its Attorneys-at-Law, wrote to the Defendants requesting that they comply with the relevant environmental laws and:
- (1) Withdraw the approval of the PML EIA;
  - (2) Require PML to conduct bathymetry and oceanographic studies and to submit the design of its undertaking prior to further review and determination by NEAC; and
  - (3) Withdraw its decision that the grant of final approval of the project design be granted to the Ministry of Works.

The said letter is now produced and shown to me marked “**MT-11**”. This correspondence was also copied and delivered to PML. The Claimant has not received any response to this correspondence.

30. On or around 25<sup>th</sup> May, 2010 the Claimant learned that the DOE had prepared an Environmental Compliance Plan in respect of the PML marina project, and that the same was signed between the DOE and PML on 6<sup>th</sup> April, 2010. A copy of the ECP which was obtained by the Claimant is now produced and shown to me marked “**MT-12**”.
31. By a Notice of Intended Proceedings dated 26<sup>th</sup> May, 2010, the Claimant gave to the Defendants written notice under the ***Public Authorities Protection Act*** of its intention to institute proceedings against them for reliefs pertaining to, *inter alia*, the unlawful approval of the ECP. A copy of the said Notice of Intended Proceedings is now produced and shown to me marked “**MT-13**”.
32. The stated purpose of the ECP is to “officially institute best practice measures that would prevent, control and mitigate the environmental degradation that may arise from the project ... made only after careful

analysis by the relevant agencies, including the DOE, of the information contained in the EIA and identification of potential negative environmental impacts associated with such development projects”.

33. This notwithstanding, in the ECP, the DOE decided to approve the PML marina project without either the bathymetry and oceanographic data or the project designs as follows:

“Clearance is being granted for the following activities as per information submitted in the Environmental Impact Assessment:

Marina Component:

- Construction of a 34 acres marina semi-enclosed within breakwaters (within a surface area of approximately 2000 feet long by 1300 feet wide) to accommodate a maximum of 300 vessels of up to 210 feet in length.
- A 700 feet long, 16 feet wide pier with concrete piles.
- Construction of service platforms, mooring berths and walkways to facilitate moorage, fuel service and other auxiliary services, including utilities; and
- Installation of a fuel dispensing facility/system.

Land Based Component:

- A 50 rooms Boutique hotel;
- A fitness centre;
- A commercial/Retail area;
- A Casino of one storey;
- A parking area;
- Amenity areas for pools, bars, etc., and
- A public utilities area on the lagoon side of the Placencia Road to accommodate a state-of-the-art sewage treatment system among other utilities.

“This marina project will be implemented in three (3) phases as outlined below:

- (a) Phase 1 shall consist of “Data Collection” and the construction of the “Land Components”. This phase shall include the collection and submission of the requested oceanographic data and the microclimatic condition of the project site. This includes the following parameters: wind speed and direction, sea currents, wave height, tide, and sediment transport. On a pilot/experimental basis, and at the risk of the developer, the construction of the 700 feet long marina access pier, and the first 700 feet long breakwater with boulders on the north side of this project.
- (b) Phase 2 shall entail the “approval of the Detailed Technical/Engineering Designs” of the proposed marina. These technical designs will be developed using the findings accumulated during the data collection period. The final marina designs shall be approved by the Ministry of Works, with input from the Belize Port Authority, Geology and Petroleum Department, and the Department of the Environment.

- (c) Phase 3 shall consist of the construction of the Marina (sea floor) component.”
34. The Marina EIA does not meet the requirements of Regulation 19 of the Regulations because it does not provide critical information regarding the project, including bathymetric and oceanographic data, or any data regarding the land based components, the availability of potable water, or the appropriateness of the project site.
35. The provisions of the ECP, including the following, support the Claimant’s view that the DOE approved the Marina Project and granted environmental clearance thereto in contravention of the requirements of the TOR for the Marina Project, as approved by DOE under Regulation 16 of the Regulations.
- (a) Sections 1.0(a) and 3.01.1 of the marina ECP require PML to submit, post ECP approval, the same data required to be submitted in the marina EIA prior to approval under TOR Sections 6.02.9 (sea currents), 6.02.11 (wind speed and direction), 6.02.10 (near shore and off shore sedimentation patterns) and 6.02.12 (wave conditions).
- (b) Sections 3.01.3 and 3.01.5 of the ECP require PML to submit, post-ECP approval, the same data required to be submitted in the marina EIA, prior to approval, under TOR Sections 6.07 (specifications (dimensions) of proposed docking facilities, pier, breakwaters and boardwalk and type of construction materials to be used) and 6.09 (dimensions to scale (length, height, width) for all related structures, both land and water based, berthing and mooring arrangements as well as specific location of the various facilities such as fuel dispensing and boat storage off-land).
- (c) Section 3.03.1 of the ECP requires PML to conduct, post-approval, a proper pump test to verify the recharge rate of the proposed water supply for the Marina Project. Section 2.04 of the TOR required PML to provide, pre-approval, an inventory of other users in the zone of influence with respect to the selected water supply source and identify any impacts thereon and mitigation measures to be undertaken. The NEAC minutes of 21 January 2010 stress the importance of an aquifer test prior to approval because water resources for the Peninsula may have already reached capacity.
36. Without the information required in the TOR, NEAC was not in a position to properly assess the environmental impact of the project or to approve the EIA in accordance with the environmental protection laws. NEAC abdicated its duty to require and consider *specific* plans for the Marina Project in

determining whether to approve the Marina Project. NEAC also could not lawfully delegate its authority to vet and approve the project designs to the Ministry of Works, or to approve the marina project conditionally or unconditionally without first considering the same.

37. Both the DOE and PML fail to mention in the TOR and the EIA the land based components of the marina project which are vaguely described in Section 1.0 of the ECP as a hotel, a casino, pools, bars, a fitness center and a commercial retail area. However these land components are approved by Section 3.01.4 of the ECP. Failure to include these components in the marina EIA:
- (a) Negates the ability of NEAC to assess the environmental impacts of the land-based components as required under Regulations 6, 25 and 26 of the Regulations, particularly cumulative impacts critical to the continued health and welfare of the existing residents and businesses of the Placencia Peninsula, including, but not limited to:
    - (i) the adequacy of a clean and safe water supply for not only a marina, but also a casino, a hotel, bars and swimming pools;
    - (ii) the projected types and volumes of solid waste to be produced by the entire development, including options for collection, treatment and disposal of wastes;
    - (iii) the nature and volume of liquid waste to be generated, alternatives for disposal of liquid wastes, the residual impacts of liquid waste management and necessary mitigation measures;
    - (iv) effect on land based flora and fauna for the area – the TOR requires only aquatic flora and fauna to be studied under Section 1.0 of the TOR;
    - (v) projected energy requirements and alternatives for meeting energy requirements;
    - (vi) disaster management and climate change issues, such as a disaster evacuation plan for areas south of the Marina Project, which is affected dramatically by the existence of a casino and hotel in addition to a marina due to increased numbers of people and vehicles; and
    - (vii) the potential social impacts of a casino on the Placencia Peninsula.

- (b) Exclude the public from the environmental impact process by hiding the land components from them so that the public could not comment on them, particularly the casino that has now been approved without any public input.
38. In the ECP the DOE also fails to address the fundamental issue of whether the location of the Marina Project will or will not adversely impact the Placencia Peninsula and the livelihoods, property values and safety of residents and properties on the Peninsula south of the Marina Project. By requiring bathymetric data to be collected and analyzed subsequent to the approval of the project (Section 3.01.1 of the ECP), the DOE seems to assume that the location of the Marina Project is a safe one for the Placencia Peninsula and off-shore cayes, contemplate that the gathered data and studies will **only** be pertinent to the design of the marina, and ignore the issue whether the marina should be built in this location at all. Under the Regulations, this issue goes to the heart of the legal requirement for an EIA for projects of this type.
39. If PML had presented the bathymetric data prior to the approval of the Marina Project as required by the TOR, such data may have shown that a marina in the location now approved by DOE simply could not be constructed without having a significant detrimental impact on the Placencia Peninsula and its offshore cayes. With such data, NEAC and DOE would likely have denied approval of the Marina Project as contemplated by the Act and the Regulations. However, without regard to what such data may ultimately show, the DOE has approved the Marina Project, resulting in a complete failure of the legally mandated EIA process.
40. Section 3.01.3 of the ECP unlawfully delegates to the Ministry of Works the obligation of NEAC to review and assess the environmental effects of the final design of the marina and type of construction materials to be used under Regulations 25 and 26.
41. Section 3.01.4 of the ECP unlawfully delegates to the Ministry of Housing the obligation of NEAC to review and assess the environmental effects of the land-based structures under Regulations 25 and 26.
42. To the best of my knowledge, information and belief, the PML has not commenced any of the works approved under the ECP.
43. I therefore pray that the Honourable Court would grant the prayers sought in this application.
44. The Claimant's address for service is:

Andrea McSweaney-McKoy, Legal Practitioner for the Claimant, of  
FRED LUMOR & CO., Edem Place, 3750 University Blvd.,  
University Heights, P.O. Box 1797, Belize City, Belize, Tel: 223-  
6024, Fax: 223-6001, E-mail: [flumor\\_co@yahoo.com](mailto:flumor_co@yahoo.com)

SWORN at Belize City            )  
  )  
this                    day of        ) \_\_\_\_\_  
  )            Mary Toy  
  ), 2010        )

Before me,

\_\_\_\_\_  
Commissioner of the Supreme Court

This affidavit is filed on behalf of the Claimant and it is intended to use the same at the hearing of the Application herein.

FILED the            day of            , 2010 by FRED LUMOR & CO., Attorneys-at-Law of Edem Place, 3750 University Blvd., University Heights, P.O. Box 1797, Belize City, Belize, Tel: 223-6024, Fax: 223-6001, E-mail: flumor\_co @yahoo.com for and on behalf of the Claimant.