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30 November 2009

The Hon. Denis Lowe, M.P., Minister
Ministry of Environment, Water Resources and Drainage
1st Floor, S.P. Musson Building
Hincks Street
Bridgetown, Barbados

Subject: **Complaint**
 Convention on Wetlands
 Convention on Biological Diversity
 Location: Ramsar Site No. 1591, Graeme Hall Swamp, Barbados

Dear Minister Lowe,

Pursuant to Article 3.2 of the *Convention on Wetlands of International Importance*, and pursuant to Articles 7 and 8 of the *Convention on Biological Diversity* (the "Conventions"),¹ I am writing to inform you of serious changes to the ecological character of wetlands protected by the Conventions resulting from pollution and other human interference. As you are aware, this letter is the latest of many appeals, petitions and offers to the Government of Barbados over the past decade and longer regarding the environmental protection Graeme Hall Swamp and its contiguous lands.

I am a Canadian citizen who is a retired attorney, businessman and philanthropist, and the principal investor in the Graeme Hall Nature Sanctuary, Inc. ("Sanctuary").

The Sanctuary consists of 34.25 acres of natural wetlands situated entirely within the 81 acre Graeme Hall Ramsar Site No. 1591 on the south coast of Barbados. The Sanctuary contains the last significant mangrove forest and migratory bird habitat in Barbados.

Barbados ratified the Convention on Wetlands on April 12, 2006 and promptly designated the Graeme Hall Swamp on the List of Wetlands of International Importance.

Barbados became a party to the Biodiversity Convention on December 10, 1993.

¹ *Convention on Wetlands of International Importance especially as Waterfowl Habitat*. Ramsar (Iran), 2 February 1971. UN Convention Series No. 14583. As amended by the Paris Protocol, 3 December 1982, and Regina Amendments, 28 May 1987. *Convention on Biological Diversity*. Concluded at Rio de Janeiro (Brazil) on 5 June 1992. UN Treaty Series No.30619

Ramsar Site No. 1591 and Graeme Hall Nature Sanctuary, Inc.

A. My Interest In the Graeme Hall Wetlands

1. I acquired the lands for the Sanctuary in 1994 and 1995. With encouragement from Barbadian environmentalists and the Government of Barbados, I acquired these interests to develop a private-sector model to preserve original habitat in the Graeme Hall wetland. The expectation was that the Sanctuary would eventually earn revenues from its tourism and educational services that would offset the costs of acquiring, developing and operating the Sanctuary and its habitat protection programs. The long-range purpose of this investment was to create a financially self-sustaining environmental enterprise that would conserve the environmental heritage of Barbados at Graeme Hall in perpetuity.
2. The Sanctuary is the sole private environmental stakeholder within the boundaries of the Ramsar Site at Graeme Hall. The Sanctuary comprises approximately 42% of the entire Site. In turn, less than 10% of Sanctuary lands have been developed with low-impact visitor facilities (www.graemehall.com).
3. I have personally invested approximately US\$35 million to acquire and develop the Sanctuary as a world-class eco-tour, education and research facility, and to professionally manage wild habitat within its portion of the Ramsar Site.
4. As the primary private sector environmental mission stakeholder in Barbados, the Sanctuary has provided the majority of financial and technical resources to maintain and improve the health and welfare of the Ramsar Site at Graeme Hall by:
 - (a) providing the Government of Barbados with a progressive wetland restoration venue to showcase to Secretariat personnel the apparent “public/private” sector partnership model during its accession to the Convention on Wetlands;
 - (b) providing technical and scientific support from our staff administration and Biologist and for the Second National Report on the Implementation of the Convention on Biological Diversity as the only in-situ private stakeholder within the Graeme Hall wetland;
 - (c) financing and performing environmental studies and restoration of its portion of the Ramsar Site at Graeme Hall;
 - (d) financing specific Government technical capacity-building programmes and hydrological equipment associated with watershed hydrology, wetland restoration, water quality and wildlife monitoring, public education and related public programmes;
 - (e) building interpretive boardwalks, visitor facilities and implementing educational programs at the Sanctuary;
 - (f) training and employing Barbadian administrative staff, technical staff and educators; and

- (g) providing tourism and educational services to tens of thousands of both Barbadian residents and foreign tourists from the time of its opening in April 2004 until its closing in March 2009 due to the measures of Barbados described below.

The Actions and Omissions of Barbados Giving Rise To The Complaint

B. The Legal Framework Governing Ramsar Site No. 1591 and the Sanctuary

5. The Sanctuary is located within the Graeme Hall wetlands, a site protected under the Convention on Wetlands. Barbados ratified the Convention on April 12, 2006 and designated Graeme Hall on the List of Wetlands of International Importance. It thereby became obligated to formulate its planning so as to promote the conservation of the Graeme Hall wetlands.²
6. Barbados' treatment of the Sanctuary is also subject to obligations contained in the *United Nations Convention on Biological Diversity* (the "Biodiversity Convention").³ Barbados became a party to the Biodiversity Convention on December 10, 1993 and has acknowledged that the Graeme Hall wetlands (including the Sanctuary) are a major biodiversity resource for Barbados.⁴ Barbados thereby became obligated to integrate, as far as possible, the conservation of the Graeme Hall wetlands into its relevant plans, programmes and policies.⁵
7. In recognition of the environmental sensitivity of the Graeme Hall wetlands, Barbados agreed to maintain the surrounding Graeme Hall green space as an agricultural area, environmental buffer and urban open space in its 1988 National Physical Development Plan.⁶ The 1988 National Physical Development Plan was developed with technical assistance from the United Nations Centre for Human Settlements (HABITAT), and was the Parliament-ratified Plan in force at the time Barbados acceded to both Conventions.
8. Feasibility research in the 1990's for development of the Sanctuary revealed that the Graeme Hall wetland in its entirety was protected within the boundaries of the Graeme Hall 100-year floodplain in accordance with its OS-2 Natural Heritage Conservation Area designation, consistent with both the 1998 and 2003 National Physical Development Plans. However, in 2005 nine (9) acres (more or less) located within the western portion of the OS-2 Graeme Hall wetland (due west of the Sanctuary) and within the 100-year floodplain were excluded from Ramsar Site recognition. The excluded area is owned by a commercial interest. Under Barbadian regulations, with an acceptable Environmental Impact Statement an owner of such land may fill a floodplain so that they may build upon it. There is wide concern that these lands should have

² RAMSAR Convention, Article 3(1)

³ *Convention on Biological Diversity*. Concluded at Rio de Janeiro (Brazil) on 5 June 1992. UN Convention Series No.30619

⁴ Government of Barbados Report to the Convention on Biological Diversity, *A National Biodiversity Strategy & Action Plan for Barbados*, July 2002 at pp.35, 53-54 and 62

⁵ Biodiversity Convention, Article 6

⁶ *The Town and Country Planning Act* (cap.240) provides for the preparation of a Physical Development Plan which provide for the allocation of lands as open spaces, bird and other sanctuaries.

been included in within the boundaries of Ramsar Site No. 1591, consistent with the 100-year floodplain boundary used by the Ramsar Site elsewhere, and consistent with the traditional and historic Conservation designation by the Government of Barbados for the past 30 years or more.

9. The Sanctuary is also subject to the protections and obligations of, *inter alia*, the *Marine Pollution Control Act*, L.R.O. 1998, CAP.392A (the “Pollution Act”). The Pollution Act creates the offence of polluting the environment and establishes a Director to investigate the environment and prevent, reduce and control pollutants. The Act creates potential liabilities to occupiers of land who fail to reduce levels of pollution - even if they are not the source of the pollution itself.

C. *Barbados’s Failure to Abide by the Conventions*

10. Despite repeated oral and written requests for relief by the Board and staff at the Sanctuary since 1999, Barbados has consistently failed to enforce its domestic environmental laws and abide by its international Convention commitments and has failed to respond to requests for same with respect to the Ramsar Site. In particular Barbados has failed to:
 - (a) prevent the Barbados Water Authority, its state agency, from operating its South Coast Sewerage Treatment facility in violation of its environmental and operational terms of reference by abandoning existing and approved emergency discharge canal operations to the sea. Instead, the Barbados Water Authority has authorized routing of discharges of raw sewage and other effluents directly into the Graeme Hall wetlands, bypassing the approved emergency discharge canal. Barbados is responsible for the actions of the Barbados Water Authority under international law;
 - (b) repair, maintain or adequately operate drainage structures into the Graeme Hall wetland that regulate water levels, mosquito infestations and the biologic health of the wetland;
 - (c) construct or maintain the bisecting canal in the Graeme Hall wetlands and other roads using appropriate wetland roadbed technologies, causing interruption of wetland water flows and silting of the wetland;
 - (d) investigate or prosecute the sources of runoff of contaminated runoff including grease, oil, pesticides, herbicides and other effluents from neighbouring areas;
 - (e) investigate or prosecute poachers that have threatened the wildlife at the Sanctuary; and
 - (f) proactively work with the Sanctuary in good faith to define and coordinate best practice environmental management of all Ramsar Site lands, inclusive of the Sanctuary.
11. Barbados has failed to take any such measures despite formal offers and provisions of

technical and financial assistance from the Sanctuary.

12. The Government of Barbados has formed a policy and management advisory group called the Graeme Hall Committee. Despite its 42% land interest within the Ramsar Site, and its environmental and financial commitment to the Site, the Sanctuary continues to be pointedly excluded from participation in this Committee.
13. Barbados' actions and omissions have and continue to severely damage the natural ecosystem that the Sanctuary relies upon to attract visitors.

D. Barbados' Failures To Uniformly Classify Conservation Lands, Respond to Public Mandate, and Maintain Appropriate Land Use Policy

14. The Ramsar Site and the existence of the Sanctuary reasonably relied upon, *inter alia*, the existence of upland environmental buffers outlined in the 1988 National Physical Development Plan. This Plan, as well as others, provided assurances embodied by government's own Town and Country Planning Office that "Planning Office has a very stringent policy on significant environmental areas, whose fragility is in need of protection. It is felt that such areas require management as opposed to development and should be left for posterity".⁷
15. The Government of Barbados has been unresponsive to the mandate of its own people in regard to the Ramsar Site and its upland environmental buffers. In 2007 over 6,000 Barbadians signed a formal petition sponsored by the Friends of Graeme Hall (www.graemehallnationalpark.org) in favor of creating the 240-acre Graeme Hall National Park. As the largest green space on the South Coast between the Airport and Bridgetown and as embodied in the 1988 National Physical Development Plan, the proposed National Park would include the designated 81-acre RAMSAR wetland, the 34.25 acre Sanctuary, and recreational lands.
16. Despite the mandate of the people and the Convention, in early 2008 the Parliament of Barbados formally adopted a new National Physical Development Plan. The Amended National Physical Development Plan, which had first been announced in 2003, revoked the previous commitments and legal framework that protected the Ramsar Site and the investment in the Sanctuary. It did so by permitting development of all of the Graeme Hall green space immediately adjacent to the Ramsar Site. This land use change has caused, and will result in, further damage to the Ramsar Site through increased run off of pollutants, and will eliminate all environmental buffers adjacent to the Site.
17. The actions of Barbados in revoking the environmental buffers for the Graeme Hall wetlands in the 1988 National Physical Development Plan violate its obligations under the terms of the Conventions, and in regard to fair and equitable treatment of vested stakeholders in accordance with principles of international law.

⁷ Letter dated July 1995 from Mark Cummins, Chief Town Planner, to Peter Allard.

Applicable Provisions of the Conventions

These measures taken or not taken by Barbados have resulted in breaches of Convention Guidelines adopted by the Conference of the Contracting Parties, inclusive but not restricted to Article 3.2 of the *Convention on Wetlands of International Importance*, and Articles 7 and 8 of the *Convention on Biological Diversity*, and of past and present Ramsar Strategic Plan Goals outlined therein.

Relief Sought

I am requesting that Barbados provide tangible corrective environmental relief for Ramsar Site No. 1591 as required by the *Convention on Wetlands of International Importance* and the *Convention on Biological Diversity*, and to furthermore take measures to tangibly comply with the terms and conditions of the Conventions in regard to the aforementioned breaches associated with the Ramsar Site and its contiguous lands.

My representative is available to meet with representatives of Barbados to pursue an amicable settlement, to the extent possible.

Yours truly,

(web text copy)

Peter A. Allard

c:

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