

**RESPONSE TO THE OFFICE OF THE UNITED NATIONS HIGH  
COMMISSIONER FOR HUMAN RIGHTS' JOINT COMMUNICATION  
FROM SPECIAL PROCEDURES (REF: AL OTH 188/2021)**

**AUGUST 20, 2021**

**VIA E-MAIL**

*Submitted To:*

**Office of the High Commissioner for Human Rights**

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## I. Introduction<sup>1</sup>

We are writing as counsel to PLH (Barbuda) Limited (“PLH”), a company registered in Antigua and Barbuda, in response to a Joint Communication from the Special Procedures Branch of the United Nations Office of the High Commissioner for Human Rights (“OHCHR”) dated June 22, 2021 with reference AL OTH 188/2021 (the “Joint Communication”) concerning the Barbuda Ocean Club, a project that PLH is developing in the island of Barbuda. In particular, the Joint Communication was signed by David R. Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Dante Pesce, Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Karima Bennoune, Special Rapporteur in the field of cultural rights, Saad Alfarargi, Special Rapporteur on the right to development, Michael Fakhri, Special Rapporteur on the right to food, Pedro Arrojo-Agudo, Special Rapporteur on the human rights to safe drinking water and sanitation (“Special Rapporteurs”).

The Joint Communication states that it is being sent to “seek clarification on information” the Special Rapporteurs have received concerning potential human rights violations that have already occurred, are ongoing or which have a high risk of occurring. The Joint Communication does not state from whom this information was received. Respectfully, we submit to the OHCHR and the Special Rapporteurs that the Joint Communication contains inaccurate facts and draws incorrect conclusions regarding the Barbuda Ocean Club.

We appreciate the opportunity to address the OHCHR and the Special Rapporteurs and to respond in detail to the issues raised in the Joint Communication. This response will describe the planning, development and status of the Barbuda Ocean Club, as well as the steps that PLH has taken to ensure the highest degree of sustainable development and environmental protection for Barbuda and its citizens. This response also provides as Exhibits all the relevant documents and studies relating to the project.

While we will address each allegation in turn, we would like at the outset to discuss several facts on which the Joint Communication seems to be premised. First, the Joint Communication appears to suggest that Barbuda enjoyed a sustainable social, economic and environmental model prior to Hurricane Irma in 2017 and that, after the Hurricane, PLH targeted Barbuda to take advantage of and exploit the island’s devastation by developing the Barbuda Ocean Club.<sup>2</sup> Second,

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<sup>1</sup> We are providing this response and its exhibits in a secure electronic file. For ease of reference, **Appendix A** to this response contains an index listing the exhibits.

<sup>2</sup> The Joint Communication states that Barbuda was hit by Hurricane Maria as well as Hurricane Irma. This is incorrect. A Post Disaster Needs Assessment conducted in the aftermath of Hurricanes Irma and Maria by the Government of Antigua and Barbuda, with assistance from the World Bank Group, the European Union, the United Nations, the Caribbean Development Bank, and the Eastern Caribbean Central Bank, states that “Hurricane Maria (also a category 5 storm) affected the island of Antigua. Although Hurricane Maria did not make landfall, Antigua was exposed to the north-eastern quadrant of [the] storm and experienced again tropical storm force winds and associated rainfall.” *Hurricane Irma Recovery Needs Assessment: A Report by the Government of Antigua and Barbuda, Executive Summary*, GLOBAL FACILITY FOR DISASTER REDUCTION AND RECOVERY 1

the Joint Communication also implies that PLH is developing the project to the detriment of the island, its inhabitants and the environment. Third, the Joint Communication suggests that PLH has not been transparent with the community in Barbuda and is developing the project without proper engagement with the relevant constituents. Respectfully, we strongly disagree with this characterization of the relevant events.

Prior to Hurricane Irma, Barbuda was already facing severe environmental degradation. Hurricane Irma exacerbated these issues. PLH had been working with the community on the island since *before* the Hurricane and it took every possible step in its aftermath to restore the environment and to promote social and economic growth on the island. Indeed, after the Hurricane, PLH has been the leading actor in Barbuda working to restore the environment and rebuild its shattered social and economic infrastructure. Specifically, PLH has been at the forefront of growing local food production, has sponsored dozens of local cultural events, has invested, for no financial benefit, millions of dollars in local residential housing and in the island's healthcare system, and has made substantial investments in the local population's water resources. In any event, as will be discussed in greater detail below, the project is not threatening the environment on the island, nor endangering its inhabitants or wildlife.

Further, contrary to the Joint Communication's suggestion, PLH has been completely transparent with the community about the project—it has engaged with the people of Barbuda throughout the development of the Barbuda Ocean Club, discussing the project at length and on multiple occasions with the community. In fact, since late 2017, PLH has participated in dozens of meetings with the Barbuda community to keep them apprised of developments with the project and to address any and all concerns that have been raised. **Appendix B** of this response contains a sample listing of PLH's meetings on the island since late 2017, including the members of the Barbuda community who participated in such meetings, as well as the topics discussed.

To be sure, the community response to the development of the Barbuda Ocean Club has been from its inception overwhelmingly positive, with *one* exception. Namely, there is a small group of islanders who oppose the project because it sits on land where sand mining operations were historically conducted. This group insists on and is determined to continue conducting sand mining operations. Through this approach, this small minority of the island's inhabitants stands in the way of sustainable development and is attempting to hinder the island's opportunity for long-term growth and prosperity.

Although sand mining is profitable and has historically been an important source of revenue for Barbuda (or at least for those who engaged in this practice),<sup>3</sup> it is a highly destructive practice that devastates the environment. As the OHCHR and the Special Rapporteurs know, sand

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[https://www.gfdrr.org/sites/default/files/publication/Antigua%20and%20Barbuda%20executive%20summary\\_print\\_text%282%29.pdf](https://www.gfdrr.org/sites/default/files/publication/Antigua%20and%20Barbuda%20executive%20summary_print_text%282%29.pdf) (last visited Aug. 18, 2021). Because Barbuda is located 29 miles north of Antigua, it did not experience these same effects from Hurricane Maria. *Id.*

<sup>3</sup> Sand is the single most mined commodity and is used in many manufacturing and industrial projects around the world. *See, e.g.,* Matthew Hall, *6 Things You Need to Know About Sand Mining*, MINING TECHNOLOGY (May 7, 2020), <https://www.mining-technology.com/features/six-things-sand-mining/>.

mining destroys sand dunes and beaches, removes natural barriers of protection against hurricanes and storms, increases the risk of flooding, and affects wildlife. Indeed, by 2016, when PLH began discussing the Barbuda Ocean Club project with the government, the island's beaches and landscape had been destroyed as a result of sand mining.

PLH neither conducts nor permits sand mining on the land that it has leased from Barbuda for the development of the Barbuda Ocean Club. To the contrary, it has worked to protect the fragile ecosystems where the sand mining occurred and to rebuild beaches and dunes to prevent further erosion and protect the island and its inhabitants against future hurricanes.

Notwithstanding PLH's commitment to restore the environment on the island, a handful of individuals continue attempting to enter PLH's leased land to conduct illegal sand mining. As discussed in detail below, PLH reported these actions to the Antigua and Barbuda Government and obtained an injunction prohibiting these individuals from continuing to sand mine. With full and fair due process, these individuals participated in, and vigorously opposed the injunction proceeding. They lost. It is our belief that it is these same individuals and their allies, unhappy with their defeat in the local courts, who are fabricating allegations of human rights violations on the island.

Throughout the life of the project, PLH has worked closely with the government and with the community to ensure that the Barbuda Ocean Club is significantly and positively contributing to the growth and welfare of Barbuda and its people. Its mission is to create a sustainable, environmentally friendly resort that provides the community with employment and economic opportunity. Its environmental studies are public, and it is conducting regular environmental assessments. Further, PLH has complied with every recommendation or measure that the government has issued. As is further discussed in this response, PLH has rehabilitated sand dunes and wetlands, increased access to freshwater, modernized septic and sanitation systems, provided microfinance loans to small businesses, funded the re-building of critical island infrastructure, sponsored key cultural events, and has provided jobs and revenue to hundreds of local citizens.

All documentation and information relating to the Barbuda Ocean Club is available for your review and at the disposal of the OHCHR and the Special Rapporteurs. Please contact us if you have any further questions about the project or if you wish to review any additional information or documentation.

## **II. Background of the Barbuda Ocean Club Project**

### **A. Hurricane Irma Devastated Barbuda**

PLH and the Barbuda Council first entered into discussions about the development of a socially, economically and environmentally sustainable beach resort in Barbuda in 2016. In late 2016, the population of Barbuda approved the project, and PLH and the government entered into a framework agreement regarding the potential development of the resort (as discussed below, a Memorandum of Agreement). In February 2017, PLH and the government began entering into lease agreements pursuant to which Barbuda leased to PLH the land where PLH would develop the Barbuda Ocean Club. These lease agreements, as discussed in more detail below, were

executed prior to Hurricane Irma and prior to the 2018 amendment to the Barbuda Land Act, the local statute governing land rights.

In September 2017, Hurricane Irma devastated the island of Barbuda. As the Joint Communication describes, the effects of this category 5 hurricane led to the evacuation of the entire population (around 1,600 people), destroyed hundreds of houses and damaged key infrastructure including roads and energy distribution networks. Approximately 95% of Barbuda's structures were damaged or destroyed, including the lands that PLH had leased.<sup>4</sup>

Rather than turning its back on the population or on its commitment to create an environmentally sustainable resort, PLH intensified its efforts to ensure that the Barbuda Ocean Club would comply with the highest degree of environmental principals. It also worked tirelessly with the government and the community to help restore and rebuild the island following the Hurricane and to create economic and employment opportunities for the population.

**B. PLH is a Reputable Company Backed by Decades of Experience in Socially and Environmentally Sustainable Real Estate Projects**

The Joint Communication was addressed to The Peace Love and Happiness Partnership. However, there is no entity with that legal name. PLH (Barbuda) Limited (as defined above, "PLH") is a company legally registered in Antigua and Barbuda. Its information is publicly available on the government's Company Registry website.<sup>5</sup>

As has been publicly reported in several media outlets, the Barbuda Ocean Club project is being developed by Discovery Land Company ("DLC"), a U.S. real estate development company. DLC is company with decades of experience developing real estate projects worldwide, including residential communities and beach resorts. One of the defining characteristics of its projects is that they are environmentally and socially sustainable. DLC has developed dozens of environmentally and socially sustainable projects across the world.

**C. PLH's Lease Agreements with Barbuda are Lawful, Have Never Been Challenged and Have Been Falsely Described by Some Media Outlets**

The Joint Communication echoes an article published on the website of the Global Legal Action Network ("GLAN") in December 2020, which was immediately replicated in about four media articles.<sup>6</sup> In particular, the Joint Communication appears to suggest that, *after* Hurricane

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<sup>4</sup> See Joint Communication at 2 (citations omitted).

<sup>5</sup> See *Registration of PLH (Barbuda) Limited*, ANTIGUA AND BARBUDA ONLINE COMPANY REGISTRY, <https://abipco.gov.ag/efile/#/ocrs/search/PLH/0> (last visited Aug. 18, 2021).

<sup>6</sup> See *Land Grab & Wetland Destruction in Barbuda*, GLOBAL LEGAL ACTION NETWORK, <https://www.glanlaw.org/barbudalandgrab> (last visited Aug 18, 2021); see also Alleen Brown, *Caribbean Islanders: "Environmental" Billionaire Building Resort on Protected Wetlands*, THE INTERCEPT (Dec. 9, 2020, 7:03 AM), <https://theintercept.com/2020/12/09/barbuda-resorts-dejoria-de-niro/>; Gemma Handy, *Barbudans 'Fight for Survival' as Resort Project Threatens Islanders' Way of Life*, THE GUARDIAN (DEC. 14, 2020, 5:00 AM), <https://www.theguardian.com/world/2020/dec/14/barbuda-luxury-resort-project->

Irma, PLH strong-armed Barbuda into a series of agreements that made it the *owner* of the land on which it is developing the Barbuda Ocean Club, in violation of Barbuda law and contrary to long-standing practice on the island.<sup>7</sup>

Respectfully, this is inaccurate. As PLH's agreements with Barbuda reflect, they predate Hurricane Irma by many months. Further, they do not make PLH the owner of any land. And neither Barbuda nor any of its inhabitants has filed any court challenges or in any way taken measures to revoke or rescind the agreements. All told, PLH's agreements with the government pursuant to which it is developing the Barbuda Ocean Club are lawful, have never been challenged, and the media reports regarding them are simply false. Equally important, it has long been the practice in Barbuda to lease land to resort developers. Since 1956, several developers have established hotels on leased land including Barbuda Belle, Coco Point Lodge and K Club.

First, on December 6, 2016, close to a year before Hurricane Irma, the Government of Antigua and Barbuda, the Barbuda Council and PLH signed a Memorandum of Agreement ("MoA"). The MoA described in detail the Barbuda Ocean Club project and also discussed the conditions that PLH would have to meet to develop the project, including job creation and the employment of locals, the investments it was required to make in the island and the preparation of an environmental impact assessment. Nothing in the MoA makes PLH the owner of any land in Barbuda and the MoA makes clear that PLH will only be a tenant, which will require it to make periodic lease payments.

Pursuant to the Barbuda Land Act, the inhabitants of Barbuda needed to vote on and approve the project.<sup>8</sup> On November 7, 2016, Barbuda convened a vote and the participants overwhelmingly approved the project.<sup>9</sup> Accordingly, the parties entered into the MoA after the population of Barbuda approved the project.

Second, in furtherance of the MoA and the Barbuda vote approving the project, from February 2017 (again, *before* Hurricane Irma) to September 2018, the government and PLH entered into three lease agreements pursuant to which Barbuda leased to PLH the land where PLH would develop the Barbuda Ocean Club. The first two lease agreements are dated February 22, 2017 (between the Barbuda Council and PLH) and the third lease agreement is dated September 11, 2018 (between the Government of Antigua and Barbuda and PLH). The three lease agreements

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dispute; Oren Gruenbaum, *Antigua and Barbuda: Legal Challenge to 'Land Grab' for Barbuda Resort*, THE ROUND TABLE: THE COMMONWEALTH JOURNAL OF INTERNATIONAL AFFAIRS (Jan. 25, 2021), <https://www.commonwealthroundtable.co.uk/commonwealth/americas/antigua-and-barbuda/antigua-and-barbuda-legal-challenge-to-land-grab-for-barbuda-resort/>; Louise Boyle, 'Vulnerable to Climate Change So the Rich Can Play Golf': An Untouched Island, a Billionaire 'Environmentalist' and a Legal Fight Over a Luxury Resort, INDEPENDENT (Dec. 13, 2020, 2:33 PM), <https://www.independent.co.uk/climate-change/news/barbuda-climate-luxury-resort-robert-deniro-hurricane-irma-b1769559.html>.

<sup>7</sup> See Joint Communication at 2-3 (citations omitted).

<sup>8</sup> Specifically, the Barbuda Land Act (2007) and the Barbuda Land Regulations (2010).

<sup>9</sup> A record of the vote is reflected in Appendix 1 of the February 2017 lease agreements which, as discussed below, are part of Exhibit 1.

are collectively referred herein as “Lease Agreements” and attached as composite Exhibit 1. The Lease Agreements make clear that PLH *does not* become the owner and that PLH must at all times remain compliant with its obligations under the Barbuda Land Act and all applicable environmental laws and regulations.

To date, neither the Government of Antigua or Barbuda nor the Barbuda Council nor any inhabitant of Barbuda have filed any claim to revoke, rescind or cancel the Lease Agreements.

**D. The 2018 Amendment of the Barbuda Land Act is of No Consequence to the Barbuda Ocean Club**

The Joint Communication references the 2018 amendment of the Barbuda Land Act, the local statute governing land use, and suggests that PLH was either involved in the approval of the amendment or that the amendment benefited PLH. This is also inaccurate. PLH had no involvement whatsoever nor any participation in the approval of the amendment to the Barbuda Land Act.<sup>10</sup> No allegations have been made, let alone any evidence provided, that PLH intervened in, improperly or otherwise, the approval of the 2018 amendment.

In any event, the 2018 amendment is of no consequence to the Barbuda Ocean Club project. As the literal text of the amendment states, the amendment did not create or vest anyone with ownership rights. It merely created the *possibility* for an application by inhabitants of the island to become owners of lots of land.<sup>11</sup> PLH has not made any such application. PLH entered into lease agreements (as described above) with the Government of Antigua and Barbuda and the Barbuda Council, following all requirements and approvals under the Barbuda Land Act, and is making rent payments in furtherance of the leases. PLH is not and has not taken any steps to become the owner of any land, nor has it benefitted in any way from the 2018 amendment.

**III. Development of the Barbuda Ocean Club Project**

As described in this section, PLH has been working closely with Barbuda authorities to ensure that the Barbuda Ocean Club complies with the Barbuda Land Act and with all applicable laws and regulations, in all respects, and to implement all of the recommendations issued by the Government of Antigua and Barbuda. Further, PLH has independently conducted additional studies, far and beyond those required by the government, to enhance the measures to protect and preserve the island’s environment.

The Joint Communication suggests that PLH ignored the recommendations of the government when it approved the project. This is false. As discussed below, PLH not only adhered to the recommendations and conducted the required studies but also recommended that certain

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<sup>10</sup> See Joint Communication at 2-3 (citations omitted).

<sup>11</sup> See Barbuda (Amendment) Act, 2018 (Act No. 7/2018) (Barb.), Part II, Section 5, <http://laws.gov.ag/wp-content/uploads/2019/02/No.-7-of-2018-Barbuda-Amendment-Act-2018.pdf>.

additional studies should be completed prior to even starting the project. PLH then conducted those studies and many others prior to commencing the project.

**A. The Government Conditionally Approved the Project and Issued Detailed Terms of Reference for the EIA**

On October 20, 2017, PLH submitted an application (#G18-2017) to the Department of Environment (“DoE”), the Development Control Authority (“DCA”) and the Department of Fisheries for the Government of Antigua and Barbuda laying out the Barbuda Ocean Club project, including a masterplan detailing the proposed use of the land on which the project would be developed. On November 15, 2017, the DoE issued a letter conditionally approving the project, subject to filing an environmental impact assessment (“EIA”). The DoE’s letter of conditional approval is attached as Exhibit 2. The DoE’s letter included the terms of reference to which the EIA had to adhere.<sup>12</sup>

The conditional letter of approval provided that the Barbuda Ocean Club would include a luxury hotel, residential allotments, a beach club, a golf course, marina facilities, and the development of critical island infrastructure such as a waste water treatment plant, power generation facilities, a telecommunications network, roads, and bridges.<sup>13</sup> The project would be divided into three phases, potentially taking as much as 10 years.<sup>14</sup> The first phase would entail critical infrastructure, employee housing, the beach club, the golf course and some residential units.<sup>15</sup> Phases 2 and 3 would entail residential units, dependent on sales.<sup>16</sup>

As reflected in the DoE’s letter, the Barbuda Ocean Club project is located in the southwest corner of the island, including the Palmetto Peninsula. The conditional letter of approval discussed the dire situation of Palmetto Point, which is the area with beaches in the south corner of the Palmetto Peninsula, that was caused by sand mining.<sup>17</sup> The letter also indicated that no development should take place in other areas absent submission of additional studies and the issuance of appropriate permits.<sup>18</sup> As discussed below, PLH has significantly restored Palmetto Point and has not conducted any activities in unauthorized areas.

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<sup>12</sup> See DoE Conditional Letter (Exhibit 2) at 12-21.

<sup>13</sup> See DoE Conditional Letter (Exhibit 2) at 7.

<sup>14</sup> See DoE Conditional Letter (Exhibit 2) at 7.

<sup>15</sup> See DoE Conditional Letter (Exhibit 2) at 7.

<sup>16</sup> See DoE Conditional Letter (Exhibit 2) at 7.

<sup>17</sup> See DoE Conditional Letter (Exhibit 2) at 9-10.

<sup>18</sup> See DoE Conditional Letter (Exhibit 2) at 11.

**B. PLH Prepared and Delivered a Comprehensive and Detailed EIA**

1. Background Regarding the EIA

On January 29, 2018, PLH delivered a 339-page detailed and comprehensive EIA to the DoE and to the DCA, the government agency responsible for large project developments. The EIA is attached as Exhibit 3. The EIA provided a detailed assessment of the current status of the area of Barbuda in which the project would be developed and analyzed in detail the measures that PLH would take to ensure a socially and environmentally sustainable project. The EIA complied with all of the elements and requirements set forth in the DoE's terms of reference, which are discussed in the prior section. The EIA also included an Environmental Monitoring and Management Plan ("EMMP").<sup>19</sup>

In addition, the EIA recommended several studies that should be completed prior to commencing any activities at the site including: (i) a study of Palmetto Peninsula vegetation to identify the health of the ecosystem and to evaluate the claim in previous publications that over 90% of the native vegetation had been obliterated by mining and that livestock are contributing to the elimination of native species in favor of invasive plants; (ii) topographic studies; (iii) bathymetric studies; (iv) hydrodynamic risks analysis from sea level rise and storm surge; (v) setback and elevation risk assessment and (vi) sea turtle monitoring.<sup>20</sup> All studies have been completed or are ongoing, at significant expense to PLH. The studies have been provided to the DCA and the DoE and they are attached here as Exhibits 4.1 to 4.6.

On February 13, 2018, shortly after submitting the EIA, PLH also submitted a revised version of the masterplan detailing the proposed use of the land on which the project would be developed (version 5.0).

2. The Joint Communication Does Not Accurately Discuss the EIA

The Joint Communication suggests that the EIA was poorly prepared, did not refer to the latest available data, is not supported by studies, and was issued without participation from the public and the government.<sup>21</sup> Respectfully, this is simply incorrect.

The EIA was developed through a lengthy, independent, detailed and professional process. It was drafted and finalized after conducting a comprehensive review of existing literature, the completion of several site visits, and thorough consultation with the people and with the Government of Antigua and Barbuda. Further, the EIA complied with the Physical Planning Act of 2003 and the Environmental Management and Protection Act of 2019. It also complied with all local laws and terms of reference issued to PLH by the DoE and DCA.

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<sup>19</sup> See EIA (Exhibit 3) at 231-234.

<sup>20</sup> EIA at 238.

<sup>21</sup> See Joint Communication at 5 (citations omitted).

In July 2017, PLH contacted Dr. Deborah Brosnan, a scientist who has lived and worked in the Caribbean for over 25 years with a deep familiarity with island ecosystems and cultures. Dr. Brosnan is the founder and leader of Deborah Brosnan and Associates, the firm that prepared the EIA.

Prior to conducting the EIA, Dr. Brosnan and her team confirmed the Barbuda Ocean Club project had the approval of the Government of Antigua and Barbuda, the Barbuda Council and the people of Barbuda. This was later confirmed by the DoE. In August 2017, Dr. Brosnan began reviewing existing literature related to Barbuda and preparing for site visits and surveys. Dr. Brosnan and her team conducted a full and comprehensive analysis of existing data, including scientific assessments that had not been released at the time, to ensure they were using the most accurate and up-to-date information in making their assessments. In addition, the team went to great lengths to source original and historic information so they could have access to the full set of data and primary literature related to the environment on the island of Barbuda. These efforts included contacting the World Bank to secure the entire data set for temperatures in Barbuda from 1901 until 2015 and extensive searching for the original watershed and hydrological studies conducted by Mather in 1971, a paper generally unavailable in libraries.

Hurricane Irma postponed Dr. Brosnan's access to the island until September 2017. Once they were able to access the island, Dr. Brosnan and her team conducted site visits and surveys to gather current data for the environmental assessment. While conducting field visits, and prior to drafting the EIA, Dr. Brosnan met with members of the Barbuda Council and members of the community to gather their input on the environmental history and cultural use of the area. She conducted additional field visits, accompanied by members of the community, including National Park and DoE employees. She consulted with additional members of the DoE, the DCA, the Fisheries Department and the Ministry of Environment. During these consultations, the DoE expressed their concerns regarding the long-running destruction of the Barbuda landscape, particularly the destructive sand-mining practices in the Palmetto Peninsula, an issue that is discussed throughout this response.

The final EIA contained historic data as well as the most currently available information. Where information was not sufficiently current or more studies were required the EIA listed studies that should be completed. As discussed throughout this response, these recommended studies have been completed or are ongoing and have been provided to the government. They are also attached as Exhibits to this response.

### **C. The DoE, the DCA and the Fisheries Division Pre-Approved the EIA**

On February 19 and 26, 2018, and on March 2, 2018, the DoE, the DCA and the Fisheries Division pre-approved the EIA (known as an "approval in principal"). The DoE's pre-approval letter and report are attached as Exhibit 5, the DCA's pre-approval letter is attached as Exhibit 6 and the Fisheries Division's report is attached as Exhibit 7.

As reflected in the DoE's pre-approval letter and report, it instructed PLH to conduct several of the studies that PLH suggested in the EIA (which are listed above).<sup>22</sup> As discussed above, PLH has conducted these studies, has provided them to the Antigua and Barbuda Government and to the Barbuda Council and they are being provided as Exhibits to this response.

The DoE and the Fisheries Division commended PLH for its proposed measures to rehabilitate the sand dunes in Palmetto Point. The DoE, the DCA and the Fisheries Division agreed with these proposed rehabilitation measures and directed PLH to implement them.

#### **D. PLH Has Carried Out Additional Environmental Studies and Projects**

PLH has conducted additional studies, in addition to those that the DoE ordered (at PLH's suggestion), to further analyze, manage and advance the protection and preservation of the environment. In particular, during 2018, PLH conducted a geographical information system ("GIS") survey of the vegetation in the Palmetto Peninsula, an area partially where the Barbuda Ocean Club project is located. This is a first-of-its-kind study, essentially creating an encyclopedia of the vegetation on the island (geo-referenced electronic data). PLH provided this study to the government for the government and PLH to use in supervising and monitoring the environmental development of the area as the Barbuda Ocean Club project evolves. The GIS-based vegetation survey is attached as Exhibit 4.1.

This study confirmed the degraded state of the Peninsula and that, as a result of the storm surge from Hurricane Irma, many invasive species had spread across the Peninsula. The report also provides guidance to PLH regarding the preservation of remaining native species and removal of invasive species.<sup>23</sup>

In addition, when conducting the EIA, PLH discovered that the Palmetto Peninsula had some sea turtle nests. Some members of the community indicated that sea turtle poaching might be taking place. To preserve and protect sea turtles in the area, PLH created a turtle monitoring program, which includes local training for GPS monitoring, species and nest identification, and tagging sea turtles. To date, PLH has issued two annual reports (in 2019 and 2020) regarding the sea turtle program. The 2019 and 2020 sea turtle monitoring program reports are attached as composite Exhibit 4.6. This program is continuing in 2021 and survey findings will be made available in 2022.

Dr. Karen Eckert and the Wider Caribbean Sea Turtle Conservation Network (WIDECAST) at the University of the West Indies have also assisted in developing the sea turtle monitoring program. Antiguan natural historian, Jepson Prince, who started the first and international award-winning sea turtle monitoring program in Antigua, also joined the team.

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<sup>22</sup> See DoE Approval in Principal (Exhibit 5) at 14, 16-17.

<sup>23</sup> Indeed, one of the first PLH development efforts was to hire around 50 members of the local community to assist in invasive species removal under the guidance of independent biologists and local Barbuda citizen Abishair Thomas.

**E. The DCA Granted Approval to Carry Out Preliminary Activities**

On April 6, 2018, the DCA issued a letter to PLH authorizing it to conduct preliminary clean-up and pre-development activities (including removing five tons of household trash and invasive species), as well as environmental restoration measures. The DCA instructed PLH to carry out those measures in close coordination with the DoE and the DCA. The DCA's Approval Letter for Preliminary Activities is attached as Exhibit 8.

**F. The DoE Approved Phase 1 of the Project**

By late 2019, PLH had spent over a year in clean-up and pre-development efforts, as well as carrying out environmental restoration measures. In addition, all studies recommended in the EIA had been completed and provided to the government. As a result, PLH was ready to commence Phase 1.

On October 17, 2019, PLH submitted an application (#A454-2019) to the DoE to commence the development of Phase 1 of the project, which, as discussed above, comprises the golf course, employee housing, key infrastructure and certain residential units. In connection with this application, PLH submitted a specific EMMP. This is an adaptive plan that sets forth guidelines to implement the highest possible environmental standards and to monitor the project as it progresses to ensure that it meets those standards.

On November 19, 2019, the DoE approved the application.

**G. PLH Prepares and Provides to the Government Detailed Monthly Reports**

Since January 2020, in furtherance of the EMMP for Phase 1 (discussed above) and as PLH has been developing Phase 1 of the project, PLH has been issuing monthly reports that discuss in detail the status of the project. PLH provides those reports to the DoE and the DCA. Each report is extensive and documents in detail all the environmental issues and measures associated with the project. The monthly reports issued to date are attached here as Exhibits 9.1 to 9.15.

The monthly reports monitor plant density, plant composition, including protocols for conserving and increasing native vegetation, and sand dune location, volume and height. Pursuant to the framework set forth in the EMMP for Phase 1, if additional issues are identified that require monitoring, the monthly reports will begin monitoring those issues. For example, PLH has begun monitoring the restored wetland and bird population.

Close monitoring of these issues will enable PLH to make precise adjustments to its management practices in real time in order to optimize the health and functionality of the ecosystem.

**H. The Project has Evolved Successfully and in Full Compliance with All Applicable Laws and the Government's Recommendations**

As discussed in the prior section, every month, the DoE and the DCA receive the reports prepared by PLH. As the reports reflect, whenever the DoE and the DCA have made observations

or recommendations, PLH has strictly adhered to them. The project has been developed to the complete satisfaction of the DoE and the DCA.

Further, the DCA and the DoE regularly inform the Barbuda Council about the status of the project. Attached as Exhibit 10 is one of the letters, dated July 14, 2020, whereby the DCA informed the Barbuda Council that it inspected the project site in January, February and June 2020, and concluded that PLH is complying with all applicable laws and regulations and with the authorizations of the government.

Equally important, as of January 2021, the project had proven to be a growing environmental success. Among other milestones, (i) PLH restored 1.5 miles of dunes to a minimum height of 10 feet (the goal is to restore at least seven miles of dune); (ii) existing ponds refilled by PLH and new lagoons created by PLH now hold approximately five hectares of open water habitat (at the commencement of the project there were only two ponds with 0.5 hectares of open water habitat); and (iii) several wetland areas have been salvaged and vegetation is being planted (this has been successful as frigate birds and other species, such as whistling ducks and at least one white American Pelican, have been using the habitats).

Despite the track record of the project to date, the Joint Communication states that “operations started, with alterations to the natural surroundings including the removal of mangroves by the contractors in certain areas.”<sup>24</sup> It also states that on August 26, 2020, the government “informed the developers of ongoing violations in the project’s implementation phase including the reversal of wetland mitigation measures, impact on historic dunes and vegetation and work not being conducted in line with previous environmental review, guidance, monitoring and recommendation.”<sup>25</sup> This description is simply false. The government did not make any such finding on August 26<sup>th</sup> and at no point has it informed PLH, let alone made any finding, that PLH is engaging in repeated violations.

Further, in August 2020, no mangroves were removed. As discussed in detail in the August 2020 monthly report (attached here as Exhibit 9.7), in a joint site visit, the government and PLH identified that a small area (0.2 hectares) that PLH had been restoring as a wetland was impacted due to earth movements during the prior month. The area, which due to earth movements had been rendered practically useless, was by mistake filled with sand. PLH and the government agreed that the best approach to remediate this issue was to reestablish the wetland restoration area and expand other areas for wetland restoration, which is what occurred. The efforts to continue restoring the wetlands, and all remediation efforts associated with the August 2020 visit, are discussed at length in the subsequent monthly reports. The DCA’s letter to PLH and PLH’s response as a result of the August 2020 site visit are attached as composite Exhibit 11. The DCA’s final letter (in October 2020) confirming that all issues had been successfully remediated is attached as Exhibit 12.

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<sup>24</sup> See Joint Communication at 5.

<sup>25</sup> See Joint Communication at 6.

## **I. PLH has a Dedicated Office to Engage with the Community**

During 2020, PLH opened an office in the heart of Codrington, the population center of Barbuda. The purpose of the office is for the members of the community to visit or call to ask questions or raise any concerns. No concerns or complaints have been received to date regarding the project or its impact on the environment and the community.

## **IV. PLH's Permanent Engagement with the Government and the Community**

As described in this section, PLH has made extensive efforts to engage with the government and the community and to be an engine of social and economic development in the island. The Joint Communication suggests that PLH prepared, designed and began developing the project without transparency and without involving the community.<sup>26</sup> Nothing can be farther from the truth. Among other meetings, PLH held two town hall meetings, four meetings with the Barbuda Council and put the project to a successful public referendum. Additionally, as reflected in **Appendix B**, PLH has met on dozens of occasions since late 2017 with different members of the community to discuss the status of the project, elicit feedback and address any resulting concerns. Further, it has invested millions of dollars in key infrastructure on the island, as well as in social and economic projects necessary for the island's development.

### **A. Meetings with the Community**

**Appendix B** to this response is a log of some of the meetings between PLH and members of the community since 2017. There are dozens of additional meetings that have not been included; the log is meant to provide a representative sample only. Nonetheless, the log makes plain that PLH has participated in dozens of meetings with members of the Barbuda community, including the Barbuda Council, other government agencies and community leaders. At every step of the project, PLH has discussed many aspects with all interested and involved constituents. The only voices that have raised concerns are those of a limited number of individuals who are determined to eviscerate the environment by continuing to conduct sand mining. As discussed further below, PLH was forced to obtain an injunction against these people to prevent further sand mining.

### **B. Social and Economic Support**

PLH has worked diligently and intensely and has invested millions of dollars to support the people of Barbuda in re-building the island's social, cultural and economic independence after the devastation of Hurricane Irma. PLH has been at the forefront of increasing the island's food independence, investing in local housing and infrastructure, developing the local population's water resources, enhancing sanitation on the island, and supporting the resurgence of cultural and community events. The following sections contain examples of PLH's involvement in the island's social and economic development.

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<sup>26</sup> See Joint Communication at 5 (citations omitted).

1. Job Creation

PLH has become, and will continue to be, the most significant employer on the island. The Barbuda Ocean Club is creating, directly and indirectly, quality, stable jobs with wages that are twice the national minimum wage. During the first 15 years of development, the Barbuda Ocean Club will hire approximately 1,200 inhabitants of Antigua and Barbuda.

At present, the project employs 160 Barbuda locals, 35 Antiguan, totaling 195 of 220 employees—88% of the total workforce is from Antigua or Barbuda. In addition, PLH employs 50 Barbuda construction workers and 50 third party entrepreneurs offering services to the project on a weekly basis, totaling 260 Barbuda residents. All PLH employees have full health insurance, access to interest-free housing loans and to interest-free loans for emergencies and family matters. Equally important, the project's minimum wage is ECD \$18.0/hour. This is more than twice the ECD \$8.50 minimum wage of Antigua and Barbuda.

2. Revenue Generation

PLH is becoming one of the largest, if not the largest contributor of revenue for the island. In 2021, PLH will contribute over USD \$4.35 million in tax and duties revenue to Antigua and Barbuda including, rents payable under the Lease Agreements, food and beverage, government duties and fuel, staff gratuities and pensions, and import charges and duties.

Once the club is operational, the annual amount will likely exceed USD \$25 million.

3. Supporting Food Security

PLH has invested in and supported local food production through several coordinated efforts. For example, PLH has assisted local farmers in expanding livestock farming. Importantly, PLH's investment in local farming and livestock has led local farming production to its highest level in the last 50 years and has allowed for a more diverse livestock sector, now including goats, chickens, sheep and pigs. Importantly, livestock are now kept within fenced areas and controlled farm environments to help prevent water contamination.

PLH has also worked with a team of local horticulturalists to develop a two-acre farm. Any unused produce is donated to families in the local town of Codrington. This achievement was recognized by the Ministry of Agriculture, Fisheries, & Barbuda Affairs, which nominated PLH "as one of our National Food Heroes, in recognition of invaluable contribution to feeding and nourishing the most vulnerable among us."

In 2021 and beyond, PLH is focused on helping the community develop high value products that can be exported, like honey and soursop, and the fishery industry. Further, PLH developed a close relationship with the Barbuda Fisherman Cooperative, which is a reliable source of income for 15 registered fishermen. PLH has worked with the Cooperative to eliminate Barbuda's dependence on stock sent from Antigua. And PLH has planned the construction of a permanent fisherman's dock, which would provide consistent access for all fishermen on the island to the southwestern waters of Barbuda.

Additionally, to assist local families struggling with food security, PLH collaborates with local church groups to support families in need of assistance through a food bank supply. PLH is supporting approximately 30 families every month.

4. Supporting Housing and Infrastructure Redevelopment

Hurricane Irma destroyed 95% of all housing in Barbuda and much of the other infrastructure on the island. In the wake of the storm, PLH has assisted with re-housing and infrastructure re-building efforts through the following actions: (i) PLH built a health clinic to be used until the central hospital could be rebuilt (in late 2020); (ii) after Hurricane Irma, PLH donated 500 beds to the inhabitants of Barbuda who had been evacuated from Hurricane Irma and were living in shelters in Antigua; (iii) it installed a fully serviced mortuary for the island (prior to PLH's donation, bodies were packed on ice and sent to Antigua); (iv) it offered interest-free loans to all its local staff members to assist in financing the rebuilding of their homes (over 50 staff members have taken advantage of this loan in 2021 and 30 additional staff are expected to participate by the end of 2022); and (v) it provided 500 tons of materials and supplies for community projects like the local fire brigade, hospital, primary school, cultural center, and the Barbuda Council administrative building.

5. Supporting Access to Freshwater

PLH has helped develop access to freshwater resources for members of the local community. It spearheaded a campaign with several NGOs to build a 150,000-gallon water tank linked to an existing desalination plant, increasing the capacity of the plant to a three-days' supply of fresh water for the town of Codrington. The new tank was delivered in March 2021 and has been providing a reliable supply of safe fresh water to the town. PLH also provided training for four local citizens in building and managing the water system.

Additionally, PLH arranges and finances community water drives, servicing the water tanks of all elderly pensioners in Codrington village, free of charge. This complimentary service has assisted approximately 30 homes per year for the last three years.

6. Supporting Island Sanitation

PLH has invested in a new, state-of-the-art membrane bioreactor (MBR) sewer processing system. MBR systems provide barrier technology that ensures consistently safe and odorless effluent. The effluent from this plant will be used for irrigation throughout the Barbuda Ocean Club property. These systems are the proven technology in the region for high-end developments that are unwilling to tolerate risks to the health and safety of their people and the environment. This processing system will result in a zero impact to the island of Barbuda.

7. Fostering Barbuda's Culture

PLH has supported efforts to re-establish the island's culture after Hurricane Irma. Specifically, PLH has invested over USD \$500,000 in the local community each year, with significant sponsorship to local cultural events at the request of local community members.

For example, PLH has donated to five local church groups in the last 18 months to aid rebuilding efforts. Donations from the local community have been limited, so PLH's donations are essential to re-establishing these churches and ensuring they have the resources to hold services every Sunday.

PLH also provided a USD \$10,000 sponsorship for the school steel pan band to provide for teachers, equipment, and operational costs in 2021. This project reaches over 100 students each year, ensuring the band will continue on Barbuda.

Further, PLH donates over USD \$10,000 annually to Pastor Francis' Barbuda New Channel, to assist with programming and equipment costs, maintaining the availability of local news for the local population, and providing resources to help expatriated Barbuda residents maintain their connection to the island while offshore.

Each year PLH provides over USD \$10,000 to Carribana, the annual carnival celebration in Codrington, which is the highlight of the social calendar each year. And PLH donated USD \$25,000 towards refurbishing the horse racing track, which helps bring the people of Barbuda together for monthly races.

PLH helped to develop and provided \$10,500 in sponsorship donations to BECOMING, a summer camp for local teenage girls that teaches independence and helps girls develop strategies for personal development and creative expression. This is but one of a handful of summer camps that PLH invests in on the island.

PLH has also financed and managed over 50 "Clean Up Barbuda" days, organizing volunteers to pick up waste within Codrington to ensure a clean and healthy environment.

Finally, PLH collaborated with the Coco Point Fund to beautify the Codrington Cemetery, which had been destroyed by feral animals. PLH and the Coco Point Fund collectively donated two hundred fencing posts to the Barbuda Council and the Department of Health to secure the grounds.

8. Employment Opportunities and Support for Small Businesses

PLH has also worked intensively to ensure the livelihood of the island's population. For example, when the Barbuda Council halted its system of weekly welfare-based payments for 480 people on the island due to a lack of funds from the tourism market which was depressed during the COVID-19 pandemic, PLH stepped into help. PLH increased its local employment capacity to 160 local Barbuda staff, plus an additional 50 who work with third party contractors on the construction site, and an additional 50 to support the project with catering, transport, truck driving,

and utility and service provision support. These 260 Barbuda locals are provided financial support through either weekly salaries or small business interface. In addition, PLH hired eight Barbuda citizens to its local management team to supervise and lead the project in key areas like development, the golf course, security, and operations, and provides them with management training and higher-skill opportunities. Local staff receives no less than ECD (Eastern Caribbean Dollar) \$18.00 per hour, which is more than double the minimum wage in Antigua and Barbuda. Additional employee benefits include catered onsite meals, uniforms and safety equipment, transport to and from work each day, and 100% paid health insurance coverage.

PLH has also created a Business Microloan Program to support local businesses with developing business plans, financial structures, employee contracts, and accounting systems, all while providing financial support. The initial five businesses funded by this program include a poultry farm, electric supply store, auto supply store, bakery, and insect repellent company. PLH's initial investment in this program was approximately USD \$40,000, and PLH intends to continue to invest in the program every six months.

9. Supporting Education

PLH has committed to investing USD \$1 million in improving education in Barbuda. Investments to date have included, back-to-school packs for primary schools students, online reading software for Codrington primary schools, funding for music lessons for all primary school students, an intern program for Sir Chesney Senior School, offering work experience and the opportunity for employment, and teacher appreciation days at the end of each year.

10. Supporting Access to Telecommunications

PLH is building a new telecommunications infrastructure from scratch and will share it with the Barbuda people. This includes a recently completed Category 5-proof 180' tower along with support infrastructure. The Barbuda Ocean Club will provide a minimum of 1 GB of data to the local primary school with free ongoing service no later than 2023.

11. Supporting Recycling

There is no recycling program in Barbuda. The Barbuda Ocean Club is currently developing a major recycling initiative to be launched in January 2022. The objective is to process and sell at least 75% of waste streams of organics, cardboard, PET, glass, aluminum, steel, and wood by 2022 and to have zero waste within five years. Details of this plan will be outlined in early 2022.

**V. Specific Issues Raised in the Joint Communication**

The Joint Communication mentions several key issues relating to the Barbuda Ocean Club. Respectfully, the Joint Communication does not cite accurate or reliable information regarding these issues. The following sections address in detail each of the issues raised in the Joint Communication.

**A. Removal of Dunes**

The Joint Communication suggests PLH is responsible for the degradation of the sand dunes in the beach area of the project.<sup>27</sup> The opposite is true.

As the EIA extensively discussed, the dunes in Barbuda were severely degraded long before PLH arrived at the island. The cause for removal of the dunes—sand mining—has been ongoing in the area for more than 50 years.<sup>28</sup> Moreover, according to the EIA, over 90% of the original and native plant assemblages of species and growth forms has been “obliterated by sand mining,” before PLH even contemplated development of the Barbuda Ocean Club.<sup>29</sup> In fact, plant assemblages in the area reflected human disturbance as early as 1997.<sup>30</sup> These issues had been reported to the island authorities on several occasions before PLH began development of the Barbuda Ocean Club.

For example, in 2006, environmental experts warned of serious consequences if sand mining continued.<sup>31</sup> The *Antigua Observer*, one of the largest newspapers on the island, reported that the last dune in Barbuda had been breached in 2012.<sup>32</sup> In 2017, the *Observer* again reported on the issue, quoting environmental activist John Mussington, who said sand mining’s removal of the previously 20-foot dunes in Palmetto Point eliminated coastal protection against storms and hurricanes.<sup>33</sup> This unfortunately proved to be true just three months later when Hurricane Irma devastated the island.<sup>34</sup>

To remediate the devastating effects of sand mining, PLH has restored and continues to restore the dunes. As discussed above, PLH has restored approximately 1.5 miles of dunes to a minimum height of 10 feet (the goal is to restore at least seven miles of dune).

In addition, PLH has sought approval for more dune restoration measures. For example, it requested establishing an independent coastal engineer report to assess the dune design, which the DCA has approved.

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<sup>27</sup> See Joint Communication at 6 (citations omitted).

<sup>28</sup> See EIA (Exhibit 3) at 28.

<sup>29</sup> See EIA (Exhibit 3) at 24, 28, 54, 214, 237.

<sup>30</sup> See EIA (Exhibit 3) at 30-31, 54.

<sup>31</sup> See EIA (Exhibit 3) at 28.

<sup>32</sup> See EIA (Exhibit 3) at 28.

<sup>33</sup> See EIA (Exhibit 3) at 28.

<sup>34</sup> See EIA, (Exhibit 3), Appendix [10.1k] for photos showing flooding of sand mining area before and after hurricane Irma.

## **B. Palmetto Point**

The Joint Communication expresses concern “about the potential consequences of the developments on Codrington Lagoon and Palmetto Point’s fragile ecosystems, parts of which are supposed to be protected by designation as a national park and pursuant to the Ramsar Convention on internationally important wetlands.”<sup>35</sup> The Joint Communication mentions that the area was “partially affected by sand mining,”<sup>36</sup> but this minimizes the extent of the damage to Palmetto Point that existed before PLH.

While researching the EIA, Dr. Brosnan analyzed existing literature and received input from the DoE and National Parks staff, all of which showed that the majority of the Palmetto Peninsula was badly degraded and most of the native vegetation had been eliminated. RAMSAR cited sand mining as a threat to the site when the Palmetto Peninsula was designated as a RAMSAR and National Park site. Nevertheless, the Barbuda Council continued its sand mining operations, further damaging the site. The science team’s own field analysis and GIS mapping conducted in 2018 confirmed that most of the area’s vegetation had been destroyed due to sand mining and over-grazing, and that many invasive species had colonized the area.<sup>37</sup> In fact, the team’s report asserts “[s]and mining is the single most destructive activity causing the elimination of native vegetation communities.”<sup>38</sup>

Additionally, in the immediate aftermath of Hurricane Irma, local residents began dumping waste on the Barbuda Ocean Club project site on Palmetto Point. PLH later collected over five tons of metal, glass, plastic, hospital records, and primary school books. Dumping this waste into the fragile ecosystem on Palmetto Point has been an ongoing practice in the island, as there has been no proper solid waste disposal strategy in Barbuda. PLH is seeking to address this environmentally destructive practice and develop a solution that works for the people of Barbuda.

The Joint Communication also states that Palmetto Point is a protected area under the Sustainable Island Resource Management Zoning Plan for Antigua and Barbuda (SIRMZP).<sup>39</sup> With all due respect, this is inaccurate. Section 3.2.3 of the SIRMZP does not include Palmetto Point as an existing or proposed protected area.<sup>40</sup> While the SIRMZP does identify a potential protection site on Palmetto Point, a hotel had already been built in this area by a previous lessor.

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<sup>35</sup> See Joint Communication at 7.

<sup>36</sup> See Joint Communication at 3.

<sup>37</sup> See Palmetto Peninsula Vegetation Survey and Mapping Report (Exhibit 4.1) at 41.

<sup>38</sup> See Palmetto Peninsula Vegetation Survey and Mapping Report (Exhibit 4.1) at 41.

<sup>39</sup> See Joint Communication at 3.

<sup>40</sup> *Sustainable Island Resource Management Zoning Plan for Antigua and Barbuda (including Redonda)*, GENIVAR TRINIDAD & TOBAGO 39 (Dec. 2011) [https://environment.gov.ag/assets/uploads/attachments/816fb-sustainable\\_island\\_resource\\_management\\_zoning\\_plan\\_antigua\\_-\\_barbuda.pdf](https://environment.gov.ag/assets/uploads/attachments/816fb-sustainable_island_resource_management_zoning_plan_antigua_-_barbuda.pdf) (hereinafter “SIRMZP”).

Further, the Joint Communication claims “Palmetto Point plays a key role in channeling the water from the groundwater aquifer, located under the sand, to the lagoon and in ensuring the health of its rich ecosystem.”<sup>41</sup> This, too, is inaccurate. The water beneath Palmetto Point is an aquifer, not an estuary linked to the Codrington Lagoon. The groundwater is maintained in its own ecosystem and does not channel water into the Lagoon.

### **C. Wetlands**

PLH agrees with the Joint Communication that the Codrington Lagoon and wetlands in the island are “a vital environment for migratory birds including endangered species such as the West Indian whistling duck and frigate.”<sup>42</sup> In fact, both the EIA and the SIRMZP note that the whistling duck depends on wetlands for foraging and nesting. As was the case for much of the environment in the area, the wetlands were also destroyed by sand mining before PLH began work in Barbuda. PLH has sought to restore the wetlands in the Palmetto Peninsula, and it has been successful in doing so.

Since the start of project development, PLH has created over 5.84 hectares of ponds at Palmetto, with additional ponds currently under construction. Ponds 7, 8, 10 and 11 have been planted with sawgrass and common rush plantings totaling 1.13 hectares of wetland plants. These ponds have provided important bird habitat. Since their creation, several species, such as the Black-necked Stilt (*Himantopus mexicanus*) and the Caribbean Coot (*Fulica caribaea*), which had previously not been observed by the science team at Palmetto, have now been observed foraging and nesting. As a result of PLH’s efforts, large flocks of whistling ducks are also successfully breeding in the created wetlands. Perhaps most impressive, the very first sighting of an American White Pelican in Barbuda was recorded on one of the newly created wetlands in the spring of 2021.

### **D. Access to Water**

The Joint Communication suggests that PLH’s development will increase the cost of potable water for the citizens of the island. Further, the Joint Communication suggests that the project’s proposed desalinization plant produces toxic spurge. The Joint Communication also asserts that the Barbuda Ocean Club will interrupt the flow of freshwater into the Codrington Lagoon.<sup>43</sup>

The truth is that access to freshwater on the island has been minimal since before PLH arrived. The Joint Communication suggests that “the primary source of freshwater has been the shallow aquifers underlying the 650 ha of sand in the Palmetto Point area.”<sup>44</sup> This is not correct. As discussed at length in the EIA, while the Palmetto Point aquifer was, at one time, the best aquifer on the island, it is only one of ten watersheds in Barbuda and it does not supply water to

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<sup>41</sup> See Joint Communication at 4.

<sup>42</sup> See Joint Communication at 4.

<sup>43</sup> See Joint Communication at 4.

<sup>44</sup> See Joint Communication at 4.

the Barbuda Ocean Club or the town of Codrington, the island's population hub.<sup>45</sup> Rather, the source of water for Codrington historically came from a source east of the town. As of 2012, however, the main source of clean drinking water for the town comes from a desalination plant at the River Dock.

PLH has taken numerous steps to increase access to freshwater resources for members of the local community. It spearheaded a campaign with several NGOs to build a 150,000-gallon water tank linked to an existing desalination plant, increasing the capacity of the plant to a three-days' supply of fresh water for the town of Codrington. The new tank was delivered in March 2021 and has been providing a reliable supply of safe fresh water to the town. PLH also provided training for four local citizens in building and managing the water system.

Additionally, PLH arranges and finances community water drives, servicing the water tanks of all elderly pensioners in Codrington village, free of charge. This complimentary service has assisted approximately 30 homes per year for the last three years.

In any event, as discussed in the EIA, the aquifers in Palmetto Point have not been a viable source of drinking water for a long time due to sand mining, which exposed the fresh water in the aquifer to the environment when excavation eventually reached the water table.<sup>46</sup> The mining also eliminated the natural sand filtration system for recharging the aquifer, resulting in further loss of fresh water via evaporation and contamination.<sup>47</sup> Thus, the Palmetto Point aquifers do not provide a source of clean drinking water for anyone, including the Barbuda Ocean Club.

Instead, the Barbuda Ocean Club has a totally independent water system that runs independently of the local population's requirements for fresh water and does not impact the natural groundwater aquifer under Palmetto Point. PLH utilizes deep wells to access brackish water located below the impacted aquifer on Palmetto Point that is typically 30 feet in depth. These wells have no impact on groundwater or the surrounding environment, as they run 120 to 150 feet below the surface. PLH's desalination plant will provide substantial access to freshwater, not only to its guests, but also to its workforce and residents of Barbuda who need greater access to clean potable water.

As the EIA discusses, most of the citizens of Barbuda utilize wells and rainwater capture cisterns.<sup>48</sup> The water collected from wells and cisterns "is used for all purposes including drinking."<sup>49</sup> However, the wells' and cisterns' proximity to leaking sewage systems, along with their contamination by freely-roaming animals are common contamination pathways for drinking

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<sup>45</sup> See EIA (Exhibit 3) at 43 and 133. Palmetto Point is downstream of Codrington, and thus, never sourced drinking water for the town.

<sup>46</sup> See EIA (Exhibit 3) at 135.

<sup>47</sup> See EIA (Exhibit 3) at 47 and 135.

<sup>48</sup> See EIA (Exhibit 3) at 90.

<sup>49</sup> See EIA (Exhibit 3) at 90.

water on Barbuda.<sup>50</sup> Water contamination is a common source of gastroenteritis, which ranks the second highest among the leading instances of disease in Antigua and Barbuda.<sup>51</sup> To make matters worse, the removal of the dunes due to sand mining allowed saltwater storm surges from Hurricane Irma to flood the island. This further contaminated the ground water and increased the salinity of ponds and aquifers on the Palmetto Peninsula, rendering the water unusable for plants and livestock.<sup>52</sup> Fully aware of the water quality and accessibility issues that have plagued the people of Barbuda, as discussed above, PLH has taken several steps to support access to drinking water and even supplies water tanks to the elderly at no cost.

#### **E. Repair of and Fuel in Marina**

The Joint Communication suggests that the repair and fuel facility of the marina raises concerns regarding potential leakage and contamination risks. Notably, however, to date, PLH has neither sought nor obtained any permits or approvals regarding the marina. Evidently, no works have been commenced regarding the marina. We are unaware why the Joint Communication includes references to a marina.

#### **F. Regasification Station**

The Joint Communication also mentions “potential negative impacts on the environment” resulting from the construction of the regasification station. Notably, however, to date, PLH has neither sought nor obtained any permits or approvals regarding a regasification station on Palmetto Point. Evidently, no works have been commenced regarding any sort of regasification station. We are unaware why the Joint Communication includes references to a regasification station.

#### **G. Wastewater Treatment Plant**

The Joint Communication suggests PLH’s proposed wastewater treatment plant will cause leakage and contamination of the water off the coast of the island, and potentially the coral reefs nearby. This is inaccurate. PLH has taken every possible step to ensure that the island has proper wastewater treatment and sanitation infrastructure.

Prior to PLH’s arrival, Barbuda lacked any type of reliable and comprehensive sanitation system. For example, the town of Codrington does not have septic tanks, sending sewerage into the ground which in turn impacts the aquifer and availability of freshwater.

As discussed above, to address this dramatic situation, PLH has invested in a new, state-of-the-art membrane bioreactor (MBR) sewer processing system. MBR systems provide barrier technology that ensures consistently safe and odorless effluent. The effluent from this plant will be used for irrigation throughout the Barbuda Ocean Club property. These systems are the proven

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<sup>50</sup> See EIA (Exhibit 3) at 90.

<sup>51</sup> See EIA (Exhibit 3) at 90.

<sup>52</sup> See Palmetto Peninsula Vegetation Survey and Mapping Report (Exhibit 4.1) at 26-27.

technology in the region for high-end developments that are unwilling to tolerate risks to the health and safety of their people and the environment.

In addition, PLH is implementing a bagger system for the additional waste in an effort to recycle the maximum amount of sewage possible. This plant will be commissioned in 2022 and will ensure minimal impact in Barbuda.

## **H. Fisheries and Fishing**

The Joint Communication claims that PLH's proposed construction will impair fishing activities off the island's coast. Respectfully, there is no basis for this reference in the Joint Communication.

The Barbuda Ocean Club is *not* discharging into the Lagoon. There are no ongoing developments in the Codrington Lagoon.

Further, biodiversity and fishing activity is low in the southern area of the Lagoon and, generally, fish abundance is low.<sup>53</sup> To assist fishing activity, the project is conducting reef and seagrass monitoring and is making efforts to support fisheries, restore coral habitat, and support the fishermen directly, including by creating a reliable market for their catch. For example, on Coco Point, the fishermen use the dock that was repaired by PLH and also bring their boats up on the sand.

With regard to coral reefs it is important to note that there are no significant reefs adjacent to the Palmetto Peninsula. Indeed, the lack of reefs contributes to the erosion and dynamic nature of the west coast. Coral cover is generally low. The project is establishing an independent coral restoration effort that will recover biodiversity and support fisheries.

## **VI. Local Litigation<sup>54</sup>**

### **A. Civil Litigation**

The local civil litigation that is described below is the sole meaningful incident that has taken place in the development of the project and is at the root of the recent media articles and actions against the project.

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<sup>53</sup> The low fish abundance has been documented by the scientific community. For example, a 2018 study mapped the variety and concentration of fish in Barbuda and concluded that there was a substantially low fish abundance across the island. See Benjamin Ruttenberg et al., *Ecological Assessment of the Marine Ecosystems of Barbuda, West Indies: Using Rapid Scientific Assessment to Inform Ocean Zoning and Fisheries Management*, PLOS ONE, Jan. 8, 2018, 13(1): e0189355 (Jan. 8, 2018) <https://doi.org/10.1371/journal.pone.0189355>.

<sup>54</sup> See PLH (Barbuda) Ltd. v. The Barbuda Council, Claim No. ANUHCV 2020/0243 (E. Caribbean Sup. Ct. 2020).

By 2020, it was clear that certain members of the Barbuda council were determined to continue conducting illegal sand mining operations in the area of the Barbuda Ocean Club project. Importantly, by February 2020, the Government of Antigua and Barbuda had instructed that all sand mining operations had to end. Undeterred, some members of the Council continued attempting to sand mine. The government’s February 2020 letter is attached as Exhibit 13.

As a result, PLH brought a suit against the Barbuda Council alleging that the Council was in breach of the leases (discussed above). PLH sought an injunction against the Council to prevent any of its members from continuing to sand mine, and the Council countersued seeking a ruling from the Court that the Council had an inalienable right to continue to sand mine and requested an injunction prohibiting PLH from continuing to develop the project due to alleged environmental violations.

On January 25, 2021, the Eastern Caribbean Supreme Court High Court of Justice granted PLH’s request for an injunction, enjoining the members of the Council from continuing to engage in illegal sand mining operations. Equally important, the Court denied the Council’s injunction request, ruling that the DoE and the DCA, the authorities responsible for monitoring the project and enforcing alleged environmental violations, had not identified any environmental violations or required the PLH to halt construction activities. The Council filed an appeal, which is pending. The Court’s decision granting PLH’s injunction and denying the Council’s injunction, as well as the Council’s appeal, are attached as Exhibit 14.

## **B. Trespass and Arrests**

On September 18, 2020, close to 40 people, including two members of the Barbuda Council (████████████████████), trespassed on PLH’s leased land. They trespassed to attempt to force PLH into covering supposedly unpaid Council salaries. This was a misguided and improper effort—PLH neither pays nor owes any moneys to the individual members of the Barbuda Council.

The people—none of whom were scientists—entered the site briefly and were asked to leave because it was an active construction site and not safe for them. While most of them complied, the two Council members mentioned by name above did not. The Director of Safety and Security for the Barbuda Ocean Club reported the incident to the Royal Police Force of Antigua and Barbuda. Ultimately, the police arrested ████████████████████ for obstruction. No one else (certainly *not the 21 individuals* mentioned in the Joint Communication) was arrested or is facing charges.

The Joint Communication inaccurately summarizes this event and creates an inaccurate chronology by stringing together and conflating unrelated issues. The Joint Communication states that two members of the Barbuda Council “were arrested on the occasion of a visit to the site to inspect the concession, forming part of a case in court summoning 21 people facing similar charges.”<sup>55</sup> As discussed above, ████████████████████, the two Council members, were not arrested in connection with an “inspection.” Rather, they were arrested for brazenly trespassing.

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<sup>55</sup> See Joint Communication at 6.

Further, nothing in the Barbuda Land Act or the Lease Agreements allows the Council to inspect the premises in the manner described above or without prior discussion with PLH. In addition, the 21 individuals were not arrested nor are they facing charges. The arrests and charges were limited to [REDACTED]

## **VII. The Joint Communication's Questions**

The Joint Communication asks several questions regarding PLH's efforts to comply with international human rights, principles and standards applicable to real estate projects, such as the Barbuda Ocean Club. The following section discusses PLH's compliance with, adherence to and respect of all applicable rights, principles and standards, as well as additional steps that PLH is prepared to implement to ensure the highest degree of protection of human rights.

### **A. Legal Framework**

The applicable international legal framework consists of the United Nations Guiding Principles on Business and Human Rights ("Guiding Principles"), the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean ("Escazú Agreement"), and the United Nations Declaration on the Right to Development ("Development Declaration"). These instruments require developers like PLH to prevent any harm to the environment, consult with the local government and community and account for and address their concerns, refrain from altering, affecting, or destroying the social or economic status of the people in areas like housing and utilities, mitigate and redress any of these issues should they arise, and to build in mechanisms that can be used to report and compensate for any harm.

Mainly, the Guiding Principles recognize "the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; [and] the need for rights and obligations to be matched to appropriate and effective remedies when breached."<sup>56</sup> Its foundational principles, as they relate to businesses, include that (i) business enterprises should respect human rights; (ii) business enterprises should avoid causing or contributing to adverse human impacts and mitigate adverse human rights impacts, if any are caused; and (iii) business enterprises should have in place policies and processes appropriate to their size and circumstances to ensure respect for human rights, including a human rights due diligence process for assessing human rights impacts, and processes to remediate any adverse human rights impacts.<sup>57</sup>

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<sup>56</sup> "United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," United Nations Office of the High Commissioner for Human Rights (2011) at 1 (hereafter "Guiding Principles").

<sup>57</sup> See Guiding Principles at 13-16, 16-26.

The Escazú Agreement is a treaty signed by 24 nations from Latin America and the Caribbean, including the Government of Antigua and Barbuda.<sup>58</sup> The objective of the Escazú Agreement is “to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development.”<sup>59</sup> In essence, the Escazú Agreement requires developers to frequently and transparently engage with communities and governments in connection with any projects that have the potential of causing any environmental impact, and to address and remediate any resulting negative environmental consequences.

The Development Declaration states that “development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.”<sup>60</sup> Further, Article 2 of the Development Declaration states that “[a]ll human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.”<sup>61</sup> Namely, the Development Declaration encourages the implementation of projects that advance the social, political and economic order.

## **B. PLH Has Complied with the Applicable Legal Framework**

PLH has plainly complied with the legal framework described above. The Joint Communications focused on whether PLH ever prepared or conducted a human rights assessment or whether it has policies or procedures regarding prevention and remediation of human rights impacts. PLH did not conduct a human rights assessment and does not have any such policies or procedures. However, PLH undertakes to engage an independent firm specializing in human rights assessments and procedures, to conduct a human rights due diligence and assessment and to prepare and implement policies aimed at preventing and remediating any human rights impacts that the Barbuda Ocean Club may generate.

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<sup>58</sup> “Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean,” United Nations Economic Commission for Latin America and the Caribbean (2018) at 38 (hereinafter “Escazú Agreement”).

<sup>59</sup> Escazú Agreement at 14.

<sup>60</sup> “United Nations Declaration on the Right to Development,” United Nations General Assembly (1986) at Annex (hereinafter “Development Declaration”).

<sup>61</sup> Development Declaration at Article 2.

That said, and while no formal human rights impact assessment has been made, PLH has fully and materially complied with the applicable legal framework. For example, as discussed above:

- PLH has consistently, extensively and transparently engaged with the local community and the government;
- PLH has discussed the project with the local community and the government at length and has addresses their concerns;
- PLH has acted in strict adherence to the authorizations that it has received from the government;
- No government agency has taken any action against PLH for environmental or human rights violations, and no agency or court has imposed as much as a fine on PLH;
- PLH has an office in Codrington for the members of the community to visit or call to ask questions or raise any concerns—no concerns or complaints have been received to date regarding the project or its impact on the environment and the community;
- PLH is continuously monitoring the evolution of the project and prepares monthly reports, which it delivers to the government, discussing in detail the progress of the project and any related environmental issues (and PLH will continue to monitor and remediate issues if and/or when they arise beyond the evolution or early stages of the project); and
- PLH has taken important, meaningful and lasting steps to promote social, cultural and economic growth and self-sufficiency in the island and has invested millions of dollars in healthcare, housing and critical infrastructure.

The facts and evidence provided in this response cannot leave any doubt that PLH has at all times acted consistently with and in furtherance of the Guiding Principles, the Escazú Agreement and the Development Declaration. Moreover, PLH continues to maintain its open dialogue with the government and community in Barbuda and will permanently keep this dialogue open as long as the Barbuda Ocean Club is in operation. Finally, PLH is committed to and will compensate the government and the people of the island immediately if any issues requiring compensation under the various domestic and international laws arise. To date, no issue has arisen that would require compensation.