

**IN THE SUPREME COURT OF BERMUDA  
COMMERCIAL COURT  
2018: No. 249**

**IN THE MATTER OF A JUDICIAL REVIEW**

**BETWEEN: -**

**BERMUDA ENVIRONMENTAL SUSTAINABILITY TASKFORCE  
(a registered company limited by guarantee, also known as BEST)**

**Applicant**

**- and -**

**MINISTER OF PUBLIC WORKS  
(in his capacity as the Minister responsible for Parks)**

**Respondent**

**- and -**

**RUDOLPH HOLLIS**

**First Interested Party**

**- and -**

**BERMUDA NATIONAL TRUST**

**Second Interested Party**

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**AFFIDAVIT OF DR. DAVID WINGATE**

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I, Dr. David Wingate, of 2 Pomander Road, Paget, HEREBY MAKE OATH AND SAY as follows:

1. I am a founding Council Member of the Bermuda National Trust (BNT) and current member of its Preservation Committee, responsible for advocacy as per the Bermuda National Trust Act 1969. I am duly authorized and do swear this affidavit in support of the Bermuda National Trust's application to intervene in this matter and in support of BEST's application.
2. The facts and matters to which I depose are within my own knowledge and I verily believe them to be true. Where the facts and matters are not within my knowledge, they are true to the best of my information and belief.

3. There is now produced and shown to me and exhibited hereto a paginated bundle of documents marked “DW-1”, which I believe to be true copies of the originals to which I refer below. References to page numbers herein are references to **DW-1**.
4. I served as a BNT Council member from 1970-2009 and currently sit on the organisation’s Preservation Committee.
5. I was a founding member of the organisation in 1969.
6. I held the position as the island’s first and longest-serving Government Conservation Officer in the Department of Agriculture, Fisheries and Parks from 1966 to 2000.
7. As established under section 9 of the Bermuda National Parks Act 1986, I served as a member of the National Parks Commission from 2001-2017.
8. As Conservation Officer in the Department of Agriculture, Fisheries and Parks in 1986, I played a role in formulating the Bermuda National Parks Act 1986. The whole purpose of our parks system (created by the Act) was to set aside open spaces free of commercial development for the passive recreational enjoyment of locals and tourists in a natural setting: a chance to get away from our rapidly urbanising landscape and our increasingly dangerous and noisy roads. Allowing the commercial use of all-terrain vehicles (ATV) in our parks would be setting an extremely dangerous precedent, given the primary purpose of our Parks and Nature Reserves system as enshrined in the National Parks Act of 1986.
9. Some of our parks are already facing a chronic threat of illegal use by motorised “scramble” bikes that tear up the trails, endanger pedestrians, scare away wildlife and create noise pollution. How can our park rangers and police hope to control that if we give legislative approval for even larger and noisier four-wheeled vehicles in these protected areas, which would do even more damage to the trails?
10. Their task is made even more difficult by a failure at political levels to recognise the budgets and resources our Parks adequately require. For example, the Parks Department currently has only two full time park rangers in a system of approximately 112 parks, nature reserves and recreational areas.
11. The safety risks are alarming. Does anyone really obey the speed limit on Bermuda? Will the ATVs have limiters installed to ensure they remain at or below 10mph. ATVs are prone to tip over and pose an incredible safety threat to their operators (some of whom will not be experienced) and other users of the Parks.
12. Most of our parks are managed as natural areas to counter the urban aspect of the rest of Bermuda.<sup>1</sup> Because of the islands method of water catchment on roofs and storage in cisterns under each house it is not possible to allow trees to grow in close proximity this means that small lot subdivision must remain essentially treeless. The retention of adequate

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<sup>1</sup> Pg 12 – UN Population and Vital Statistic Report - January 2018 (see at **page 1 of DW-1**)  
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woodland for wildlife in woodland in our parks is necessary to counter this. Allowing ATVs into our parks is therefore regressive.

13. I have looked at the map of the proposed route and, apart from the tarmacked railway trail, which is also supposed to be kept free of motor traffic<sup>2</sup>, all the proposed routes within Scaur Hill Fort Park and Hog Bay Park are in fact unpaved nature trails, only some of which are wide enough to be used when occasion requires, intermittently, by parks maintenance vehicles or by farm tractors and trucks in those cases where farm fields are leased within the parks – a use essential for the parks' maintenance.
14. Those unpaved tracks make up approximately one fifth of the total route proposed and most are exceptionally steep, which would make them even more prone to erosion. The limestone rock in Somerset is especially soft. Some may recall that when Coney Island was used for dirt-bike racing before the move to Southside, the erosion ruts created were up to 4ft deep and 15ft wide. The noise pollution from Southside today on race days can be heard two miles away. I am informed that the particular model of ATV proposed for these tours is capable of doing up to 40mph and emit a noise in the region of 82 decibels<sup>3</sup>.
15. Bermuda's Parks are not of a scale that can support activities such as ATV tours. ATVs are the terrestrial equivalent of jet-skis. Like jet-skis, they have nothing whatever to do with enjoying Bermuda's natural wonders, but everything to do with getting a high from speeding or manoeuvring over rough terrain. The relatively vast area of our inshore waters allows a niche for jet-skis, but the comparison cannot be drawn with allowing their terrestrial equivalent in our minuscule parks.
16. In reality, none of our parks are large enough to need motorised vehicles for access and using such vehicles would only make them seem smaller.
17. The proposers have tried to assure us that speed limit of the ATVs will be set at 10mph and that they are, as described to the Parks Commission<sup>4</sup>, after all, to be used for ecotourism. But this is the equivalent of using a sledgehammer to kill a fly. There will be an expectation by the customers to use ATVs in the way designed to be used.
18. Birders and naturalists will not be able to observe wildlife in the parks when ATVs are in the vicinity. Bird-watching, in particular, requires slow quiet movements to observe birds in their natural habitat, so as not to disturb them. This is so obvious; it hardly needs stating. An analogy I would draw for this proposal would be to allow duck shooting in Spittal Pond Bird Sanctuary.
19. The noise impact of the ATVs has been described as slightly less than that of a lawn mower. I find it amazing that this is being asserted as a good thing. Not only are lawn mowers substantial noise-makers, in this instance, there would be multiple ATVs (up to eight)

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<sup>2</sup> Road Traffic (Western Section Of The Railway Path) Order 1955

<sup>3</sup> Pg 1145 – Bermuda House of Assembly Official Hansard Report 26 February 2018 (See at **page 2 of DW-1**)

<sup>4</sup> Minutes of the National Parks Commission Tuesday, September 15, 2015 (See at **page 4 of DW-1**)

running simultaneously for three hours across three parks. The disturbance to residents, park-users and wildlife will be great.

20. While the impact of the tours on wildlife is difficult to accurately quantify, we know that most of Bermuda's resident birds are edge-habitat users in that they congregate, feed and socialise on the edge of woodland, paths and farmland. Bermuda's Ground Doves in particular feed mainly on paths and trails. All these birds would be detrimentally impacted by the presence of ATVs. Either they are startled or, their songs and ability to communicate is impaired as their habitat is disturbed and degraded.
21. ATVs, by their very nature as I understand it, were developed for a fast-recreational sport in an off-road environment. Because of their weight and tires, their erosion potential is even greater than dirt bikes. Any tourists naive enough to sign up for a Bermuda ATV tour are going to have the expectation, as previously stated, that they will be able to operate them in the same way as jet-skis — and therein lies the real problem.
22. The huge difference between Bermuda and the continents, where these machines were developed, is that we are a minuscule oceanic island and simply do not have the luxury of vast areas of open land where it is still possible to find derelict strip mines or back-beach dune areas remote from habitation, where groups of these vehicles can joyride and rip up the ground to their hearts content without offending the neighbours and other users.
23. As a member of the Parks Commission until to 2017, I was and am alarmed at what I would describe as the shift in focus by the Government to commercialize our parks to what in my opinion amounts to exploiting our parks, ultra vires. One example would be that the Bermuda Tourism Authority failed to consider the Bermuda National Parks Act 1986 when they tried to diversify our tourism offerings in our parks by encouraging local entrepreneurs to provide all kinds of commercialised new adventure sports in our protected park areas.
24. As a result, the Commission in recent years has seen a large number of non-starter unsuitable proposals for our parks, outside the realm of possibility under the Bermuda National Parks Act 1986, and a host of other regulations. Everything from zip lines for Horseshoe Bay Park to the present proposal seem to have been encouraged without thought given to the actual amount of space available, impact on the environment or suitability. Even a relatively small recreational park in America or Canada may have an area of hundreds, or even thousands, of hectares — enough to accommodate a car park for hundreds of vehicles, and a service centre offering a restaurant, a fairground and several intensive recreational sports facilities while taking only a fractional bite out of the total natural open space available.
25. The Parks Commission's purpose is not to prevent the use of our parks. Due to their small size, careful management is essential to prevent their damage, preserve public enjoyment and protect our wildlife. Control is therefore required which will always undoubtedly upset someone. Indeed, some of our parks are so pristine, no commercial activity should be allowed in them. In fact, the Commission has recently graded the parks into two categories those which should remain pristine and those in which limited commercial activity can be permitted.

26. Our largest park on Bermuda — Horseshoe Bay and Warwick Long Bay — is only 40 hectares. This is barely large enough to serve the passive recreational needs of our own population, let alone the busloads of cruise ship tourists that visit there through the summer. If we really tried to provide all the parking, catering, sporting and beach services that locals may wish for and that have been applied for to the Parks Commission, a good half of our parks would have to be sacrificed for service infrastructure alone.
27. I fear that in Bermuda, we have begun to disregard input from technical experts and people with credentials in favour of short-term commercialism with indifference or little attention paid to damaging outcomes. I cannot over emphasize the fact that the Parks Department technical officers were/are not in favour of these tours.
28. Oceanic island Bermuda is minuscule in land area and already one of the most densely populated, self-governing, geopolitical units in the world. We must accept, therefore, that we have limited options in our attempt to enhance tourism, and ATVs in our parks is certainly not one of them.
29. As a former conservation officer, I truly believe that this is a matter where the impact on the environment must be considered. I believe that had an environmental impact study been conducted, much of the concerns noted above would have been investigated and, in my opinion, the conclusions would have been that the environment is bound to be negatively impacted.

**SWORN** by the above named  
**DR. DAVID WINGATE**  
 in the City of Hamilton this  
 1<sup>st</sup> day of November 2018

)  
 ) *David B. Wingate*  
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**BEFORE ME:**

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**COMMISSIONER FOR OATHS**

Samantha Saunders  
 Barrister & Attorney of the  
 Supreme Court of Bermuda  
 Commissioner for Oaths  
 ASW Law Limited  
 Date: *1 November 2018*

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**RUDOLPH HOLLIS**

**First Interested Party**

**- and -**

**BERMUDA NATIONAL TRUST**

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**EXHIBIT DW-1**

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This is the Exhibit marked **DW-1** referred to in the Affidavit of Dr. David Wingate sworn before me this 1<sup>st</sup> day of November, 2018.



**COMMISSIONER FOR OATHS**

Samantha Saunders  
Barrister & Attorney of the  
Supreme Court of Bermuda  
Commissioner for Oaths  
ASW Law Limited

Date: 1 November 2018

## 2. Population, latest available census and estimates (2015 - 2016)

Continent and country or area	Population						
	Latest available census					Mid - year estimate (2015 - 2016)	
	Date	Code <sup>a</sup>	Total	Male	Female	Code <sup>a</sup>	Total
<b>ASIA (cont.)</b>							
Oman	12 Dec 2010	DF	2 773 479	1 612 408	1 161 071	DF	4 414 051 <sup>80</sup>
Pakistan <sup>81</sup>	15 Mar 2017	DF	207 774 520*	106 449 322 <sup>*82</sup>	101 314 780 <sup>*82</sup>	DF	191 710 000*
Philippines	1 Aug 2015 <sup>83</sup>	DJ	100 979 303	...	...	DJ	103 242 900 <sup>8</sup>
Qatar	20 Apr 2015	DF	2 404 776	1 816 981	587 795	DF	2 617 634
Republic of Korea	1 Nov 2015	DJ	51 069 375	25 608 502	25 460 873	DJ	51 245 707
Saudi Arabia	27 Apr 2010	DF	27 236 156	15 531 471	11 704 685	DF	31 742 308
Singapore	30 Jun 2010 <sup>84,85,86</sup>	DJ	3 771 721	1 861 133	1 910 588	DJ	5 607 283 <sup>47,87,88</sup>
Sri Lanka	20 Mar 2012	DJ	20 359 439	9 856 634	10 502 805	DJ	21 203 000*
State of Palestine	1 Dec 2007 <sup>89</sup>	DF	3 669 244	1 862 027	1 807 217	DF	4 816 503
Syrian Arab Republic <sup>90</sup>	22 Sep 2004	DF	17 921 000*	9 161 000*	8 760 000*		...
Tajikistan	21 Sep 2010	DF	7 564 502	3 817 004	3 747 498	DF	8 640 700*
Thailand	1 Sep 2010	DJ	65 981 659	32 355 032	33 626 627	DJ	65 931 550
Timor-Leste	11 Jul 2015	DF	1 167 242*	588 561*	578 681*		...
Turkey	3 Oct 2011 <sup>67,91</sup>	DJ	74 526 000	37 431 000	37 095 000	DJ	78 741 053 <sup>*70,92</sup>
Turkmenistan	10 Jan 1995	DF	4 483 251	2 225 331	2 257 920		...
United Arab Emirates <sup>83</sup>	5 Dec 2005	DF	4 106 427	2 806 141	1 300 286	DF	9 121 167 <sup>70</sup>
Uzbekistan	12 Jan 1989	DJ	19 810 077	9 784 156	10 025 921	DJ	31 298 929 <sup>*94</sup>
Viet Nam	1 Apr 2009	DJ	85 846 997	42 413 143	43 433 854	DF	92 695 121 <sup>*95</sup>
Yemen	16 Dec 2004	DF	19 685 161	10 036 953	9 648 208		...
<b>EUROPE</b>							
Aland Islands	31 Dec 2000 <sup>86</sup>	DJ	25 776	12 700	13 076	DJ	29 099 <sup>30</sup>
Albania	1 Oct 2011	DJ	2 800 138	1 403 059	1 397 079	DF	2 886 026 <sup>14</sup>
Andorra <sup>30</sup>	31 Dec 2011	DJ	78 115	39 863	38 252	DJ	72 358
Austria	31 Oct 2011	DJ	8 401 940	4 093 938	4 308 002	DJ	8 690 076 <sup>14</sup>
Belarus	14 Oct 2009	DJ	9 503 807	4 420 039	5 083 768	DJ	9 498 364 <sup>14</sup>
Belgium	1 Jan 2011	DJ	11 000 638	5 401 718	5 598 920	DJ	11 311 117 <sup>14</sup>
Bosnia and Herzegovina	30 Sep 2013	DJ	3 791 622*	...	...	DF	3 512 855*
Bulgaria	1 Feb 2011	DJ	7 364 570	3 586 571	3 777 999	DJ	7 153 784 <sup>14</sup>
Croatia	1 Apr 2011	DJ	4 284 889	2 066 335	2 218 554	DJ	4 190 669 <sup>14</sup>
Czechia	25 Mar 2011	DJ	10 436 560	5 109 766	5 326 794	DJ	10 564 900*
Denmark <sup>30,97</sup>	1 Jan 2011	DJ	5 560 628	2 756 582	2 804 046	DJ	5 724 456
Estonia	31 Dec 2011	DJ	1 294 455	600 526	693 929	DJ	1 316 900*
Faeroe Islands	11 Nov 2011	DJ	48 346	25 125	23 221	DJ	49 503
Finland	31 Dec 2010	DJ	5 375 276	2 638 416	2 736 860	DJ	5 507 000 <sup>30,98</sup>
France <sup>99</sup>	1 Jan 2010	DJ	62 765 235	30 393 079	32 372 156	DJ	64 732 099*
Germany	9 May 2011	DJ	80 219 695	39 145 941	41 073 754	DJ	82 175 684 <sup>3,14</sup>
Gibraltar <sup>100</sup>	12 Nov 2012	DJ	32 194	16 061	16 133	DF	33 573 <sup>*70</sup>

*and a breakdown of the areas where they are employed?*

**QUESTIONS: DEPARTMENT OF  
TRANSPORTATION BUSES**

2. *Will the Honourable Minister please provide this Honourable House with the aggregate cost of the four buses recently delivered, as well as the costs of any new buses on order for the Department of Public Transportation?*
3. *Will the Honourable Minister please inform this Honourable House when the Department of Public Transportation Bus Schedule will be put to arbitration?*

**The Speaker:** We now move on to the third set of questions. And the third set of questions, there are two for Minister Burch from the Honourable Member Sylvan Richards. Mr. Richards, you have the floor.

**QUESTION 1: PROPOSED ATV TOURS  
IN WEST END**

**Mr. Sylvan D. Richards, Jr.:** Thank you, Mr. Speaker.

Mr. Speaker, would the Honourable Minister please advise this Honourable House of the number of citizens who responded to the request for objections as it pertains to the all-terrain vehicle [ATV] tours being considered for the West End Railway Trail?

**Lt. Col. Hon. David A. Burch:** Mr. Speaker.

**The Speaker:** Yes, Minister.

**Lt. Col. Hon. David A. Burch:** Firstly, to clarify, the request was to solicit comments from the proposed change of use as opposed to objections. And the answer to the question is there were 368 responses submitted by email. Six were duplicates, so that left 362. There were 268 responses submitted in writing, 1 from Toronto, 1 from Connecticut, 40 from Somerset residents, 91 from non-Somerset residents, and 135 unknown name or addresses. So the total is 40.

**The Speaker:** Supplementary or going on to your next question?

**Mr. Sylvan D. Richards, Jr.:** Next question.

**The Speaker:** Next question. Question number 2.

**QUESTION 2: PROPOSED ATV TOURS  
IN WEST END**

**Mr. Sylvan D. Richards, Jr.:** I guess this was answered in his first part. But, will the Honourable Minis-

ter please advise this Honourable House how many citizens responded in favour and how many opposed the proposal, the proposed change?

**The Speaker:** Minister.

**Lt. Col. Hon. David A. Burch:** Mr. Speaker, there would have been three who would have responded in favour had my vote been considered. But I live east of White Hill, so it is not.

*[Laughter]*

**Lt. Col. Hon. David A. Burch:** So, 2 responses were in favour of the proposal and 402 opposed.

**The Speaker:** Thank you.

Supplementary? Supplementary from the Honourable Member Gibbons.

**SUPPLEMENTARY**

**Hon. Dr. E. Grant Gibbons:** Thank you, Mr. Speaker.

Could the Honourable Minister tell us, of the 402 opposed, were those Sandys residents, or was that the entire group of those who opposed?

**The Speaker:** Minister.

**Lt. Col. Hon. David A. Burch:** Mr. Speaker, the 368 responses that came by email cannot be identified as to where they live, in most cases. So, all of them were included. The 40 who are Sandys residents, from written responses, are those that were included.

**The Speaker:** Supplementary?

No supplementary. Third question.

**QUESTION 3: PROPOSED ATV TOURS  
IN WEST END**

**Mr. Sylvan D. Richards, Jr.:** Thank you, Mr. Speaker.

Will the Honourable Minister please provide this Honourable House with a description of the model of all-terrain vehicle being considered for tours in the West End, including the manufacturer, the engine capacity, and noise level in decibels?

**The Speaker:** Minister.

**Lt. Col. Hon. David A. Burch:** Mr. Speaker, the manufacturer is ATV 2017 Tao Tao. The engine capacity is 150 cc. The noise level is 82 decibels, slightly less than a lawnmower, which is 90 decibels.

**The Speaker:** Supplementary?



**SUPPLEMENTARY**

**Mr. Sylvan D. Richards, Jr.:** Thank you, Mr. Speaker.

Honourable Minister, when you imagine noise levels at decibels it is usually at a speed, miles per hour. Can the Honourable Minister advise if that is the standing idle decibel level, or is that at speed?

**The Speaker:** Minister.

**Lt. Col. Hon. David A. Burch:** I have no clue, Mr. Speaker.

*[Laughter]*

**The Speaker:** Thank you, Minister.

Supplementary? Supplementary from the Honourable Member Gibbons.

**SUPPLEMENTARIES**

**Hon. Dr. E. Grant Gibbons:** Thank you, Mr. Speaker.

Could the Honourable Minister please tell us what the maximum speed of these ATV vehicles is?

**The Speaker:** Minister.

**Lt. Col. Hon. David A. Burch:** I do not have the answer to that question, either, Mr. Speaker. But I will undertake to get it for the Honourable Member.

**The Speaker:** Thank you, Minister.  
Any more supplementaries?

**Hon. Dr. E. Grant Gibbons:** Thank you, Mr. Speaker.

Could the Honourable Minister give us an indication of how many ATVs the proposer intends to bring in, should he be successful?

**The Speaker:** Minister.

**Lt. Col. Hon. David A. Burch:** Mr. Speaker, the proposer has already had permission to bring in six ATVs now on the Island.

**The Speaker:** Thank you, Minister.

Supplementary? No further supplementaries and no more questions. So we now move on to questions in relation to the Statements that were given this morning.

And, Minister Burch, there is one Member who has indicated that he has a question regarding your Statement on Cross Island, and that is the Honourable Member Gibbons. Honourable Member.

**QUESTION 1: CROSS ISLAND INTERIM USE**

**Hon. Dr. E. Grant Gibbons:** Thank you, Mr. Speaker.

Mr. Speaker, on the first page, the Honourable Member refers to the BAR Base buildings and their use. Could the Honourable Member give us indication of any arrangements that have been worked out with the Oracle base, and also the Softbank Team Japan base, in terms of their use or rental?

**The Speaker:** Minister.

**Lt. Col. Hon. David A. Burch:** Mr. Speaker, there have been initial discussions in relation to both of those locations, but nothing as yet has been finalised.

**The Speaker:** Thank you.  
Supplementary?

**Hon. Dr. E. Grant Gibbons:** Actually, a new question, Mr. Speaker.

**The Speaker:** A new question. Okay.

**QUESTION 2: CROSS ISLAND INTERIM USE**

**Hon. Dr. E. Grant Gibbons:** Yes. At the top of page 2 again, the Honourable Member refers to the music studio at Moresby House. Could the Honourable Member give us indication of the rent that is being anticipated by WEDCO and the duration of the lease that has been anticipated?

**The Speaker:** Minister.

**Lt. Col. Hon. David A. Burch:** Mr. Speaker, the arrangement with the occupant is to get a percentage of their income over the course of the year. It is rent free for the first year and a percentage of income over the balance of the lease, which is for five years.

And what was your second question?

**The Speaker:** The length of the lease.

**Lt. Col. Hon. David A. Burch:** Oh, the length of the lease. Again, five years.

**The Speaker:** Thank you, Minister.  
Supplementary?

**Hon. Dr. E. Grant Gibbons:** Yes, thank you, Mr. Speaker.

**The Speaker:** Supplementary?

**SUPPLEMENTARIES**

**Hon. Dr. E. Grant Gibbons:** Yes, supplementary.

Is there any further work that WEDCO has to do, or is the fitting-out of the studio and any other arrangements, is that at the cost of the new tenant?

**MINUTES OF THE MEETING OF THE NATIONAL PARKS COMMISSION HELD  
ON TUESDAY, SEPTEMBER 15, 2015 AT 3:30 PM  
AT THE ENVIRONMENTAL PROTECTION BOARDROOM, BOTANICAL GARDENS**

**Present:** Mr. Eric Clee (Chairman) – Bermuda Zoological Society  
Mr. Edwin Mortimer (Deputy Chairman)  
Dr. Tucker Murphy - Friends of the Bermuda Railway Trail  
Mrs. Penne Leseur – Bermuda National Trust  
Mr. Antony Francis  
Ms. Anita Masters - Campers' Association  
Mr. David Cox – Bermuda Maritime Museum

**Apologies:** Mrs. Leila Madeiros  
Dr. David Wingate  
Mr. Keith Paynter  
Mr. Andrew Pettit - Director of Conservation Services

**In Attendance:** Ms. Lisa-Dawn Johnston – Director of Parks  
Mrs. Jameka Smith – Park Planner (Technical Officer)  
Mr. Marcus Wade – Recording Secretary

**1. CONFIRMATION OF MINUTES**

The minutes of the meetings of July 20<sup>th</sup>, 2015, and July 28<sup>th</sup>, 2015 were approved for signature by the Chairman.

**2. MATTERS ARISING**

**A. Presentation; Mr. Rudolph Hollis ; ATV Adventure Tour; Bermuda Railway Trail**

The Technical Officer introduced the Commission to Mr. Rudolph Hollis, who had requested permission to present his new tourism initiative to the Commission.

In brief, his proposal included a request to operate a business within the Railway Trail Park, Fort Scaur, and Hog Bay Park. The proposal detailed the following:

- A new tourism initiative that involved all terrain vehicle (ATV) tours.
- The company will employ Bermudians. Public/Private partnership.
- The vehicle specifications were detailed as ATV J010 – 150cc utility ATV with automatic transmission, reverse and footbrakes.
- The tour information shared will have an emphasis on the natural environment, ecotourism, religion, fortifications, agriculture, colonization, architecture, culture and history of Bermuda.
- Will include 8 ATV vehicles, 2 of which will be operated by trained tour guide staff.
- Areas for the tour included the Bermuda Railway Trail (from Somerset bus depot to Somerset Bridge), Fort Scaur, Heydon Trust, Hog Bay Park.
- Applicant has a great passion for Bermuda's environmental and cultural history and seeks to make this tour reflective of his knowledge of these areas of interest.

These tours would be conducted on All Terrain Vehicles (ATV's), capable of traveling at approximately 10mph, with each tour consisting of two trained tour guides and 6 tourists and lasting 3 hours each. Mr. Hollis reviewed with the Commission photographs of the railway trail that the tours would traverse, highlighting the photo opportunities and historical content that would be offered to their clients, including a visit to the Heydon Trust property. It was stated that the ideal place to conclude the ATV tours would be Hog Bay Park, where the tourists could disembark and enjoy an hour of swimming and relaxation before returning through the railway trail to their start location.

Mr. Hollis brought to the attention of the Commission the main challenges that he anticipates having to overcome in establishing these tours as an aspect of Bermuda's tourism product. These challenges included: legislative issues, restoration of the railway trail in this Sandy's region, and key junctions for road crossing, namely in the Somerset Bridge area and at Hog Bay Park. Mr. Hollis discussed his views on how to safely manage the crossing of Middle Road, and the potential for collaboration on the maintenance of the railway trail along the tour trail.

The Commission discussed with Mr. Hollis the potential of using electric mountain bikes as opposed to ATV's, which, due to their weight, are at higher risk of increasing the erosion damage along the Sandy's section of the railway trail. Mr. Hollis stated that, due to the target market for the business, ATV's were seen as the most appropriate tour vehicles. Mr. Hollis thanked the Commission for their time, and exited the meeting to allow the Commission to deliberate.

The Director expressed to the Commission that she is concerned with the level of erosion these ATV vehicles will cause, the speeds that they can reach, and the dangers that these vehicles could pose to those members of the public that currently utilize the railway trail in Sandy's. The Director also informed the Commission that permitting Mr. Hollis' use of the railway trail could lead to unrealistic maintenance expectations. It was noted that, although Mr. Hollis may be a responsible tour operator, there needs to be clear boundaries so that the Department of Parks was not liable for repairing damages caused by the ATV's.

The Commission discussed the environmental impact of allowing for a concessionaire to operate an ATV tour throughout the railway trail. Several members expressed strong opinions that the Department of Parks had labored long to acquire the Railway Right of Way (RROW) as part of the National Parks System, a linear park where all could walk and take exercise. Strenuous efforts had been made by Parks to prevent motor cyclists and cars using it, along various parts of its length with gates of different types with the intention that it be maintained for use as a quiet, safe, walking or pedal cycling trail, which could be used by members of the public wanting a quiet walk, for dog walkers, infants in strollers, where there was little likelihood of meeting up with a noisy, intrusive motor vehicle. Allowing the use of ATV's on the RROW was completely contrary to these aims. Furthermore, regardless of the intentions of the applicant, once ATV's were allowed on one part of the RROW, and adjacent parkland, it would be extremely difficult to make a case for them not to be used in other National Parks. It would likely set an undesirable precedent which could lead to negating the purposes for which the RROW was intended for use within the Parks System. The Commission discussed the maintenance of the railway trail in the Sandy's region, taking note of the consequences and stressing that there needed to be clear parameters as the Director indicated.

### DECISION

The Commission took a vote on the matter, and voted four for, and three against, in favor of granting Mr. Hollis permission to operate the all terrain vehicle (ATV) tours along the section of the Bermuda Railway Trail, Fort Scaur Park, and Hog Bay Park for a one (1) year trial period with the following conditions:

- Permission was granted for a one (1) year trial of this tourism initiative.
- Operation of the ATVs was restricted to paved surfaces only.
- Permission was not granted for the all terrain vehicles to operate within the walking trails of Fort Scaur Park and Hog Bay Park. At these locations, the

**IN THE SUPREME COURT OF BERMUDA  
COMMERCIAL COURT  
2018: No. 249**

**IN THE MATTER OF A JUDICIAL REVIEW**

**BETWEEN:**

**BERMUDA ENVIRONMENTAL SUSTAINABILITY TASKFORCE  
(a registered company limited by guarantee, also known as BEST)**

**Applicant**

**- and -**

**MINISTER OF PUBLIC WORKS  
(in his capacity as the Minister responsible for Parks)**

**Respondent**

**- and -**

**RUDOLPH HOLLIS**

**First Interested Party**

**- and -**

**BERMUDA NATIONAL TRUST**

**Second Interested Party**

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**EXHIBIT DW-1**

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**MJM Limited  
Thistle House  
4 Burnaby Street  
Hamilton HM11  
Tel: 441 292 1345  
JTK/ms/26001-67**



SUPREME COURT BERMUDA  
2018 NOV -1 PM 4:43

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**AFFIDAVIT OF DR. DAVID WINGATE**

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