

## Environmental Regulatory Authority

public sector might maintain oversight and ensure quality control of a service that was delivered by the private sector. In some cases, firms could be invited to compete to supply services; in other cases, a monopoly or preferred supplier might be the only realistic option (given Jamaica's small size), but the important principle here is that the public agency would still set and enforce the standards required, and do so in an independent and impartial manner. These include:

- Operation (of environmental facilities)
- Advisory services (on e.g. engineering, technical or management issues)
- Environmental impact assessment
- Environmental management

It is also desirable to minimize the number of organizations involved, in order to reduce overheads and the risk of duplication, but the need to keep certain functions separate means that the number cannot be reduced below three. The following groupings are therefore recommended<sup>26</sup>:

1. Policy
2. Planning, issuing permits and licences, inspection (to ensure that people comply with the conditions in their permits) administration, education and outreach, public consultation, advisory (limited to general recommendations<sup>27</sup>), management (of national parks, protected areas and species<sup>28</sup>), ensuring quality control with regard to the operation of environmental facilities, environmental impact assessment<sup>29</sup> and environmental management.
3. Standard-setting, monitoring, enforcement, prosecution.

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<sup>26</sup> Please note that this is for discussion, some other permutations are possible.

<sup>27</sup> This is because the giving of specific professional advice can entail assuming the legal liability for any directly-related consequences. It would not be appropriate for a regulatory agency to assume this responsibility, nor to grant indemnity against any failure of its own advice.

<sup>28</sup> This would include bio-diversity protection, game wardens and hunting licenses.

<sup>29</sup> This is to ensure, for example, that anyone offering environmental impact analysis or environmental management services has the appropriate professional qualifications and/or can operate systems to the relevant ISO 9000 or other applicable standard.

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The division of responsibilities and tasks between the agencies described in the next section is based on this proposed division of functions.

### 5.2 The roles and responsibilities of the lead agencies

There will be three lead agencies, each with a clear role and set of core activities. These are detailed below. There will also be a strengthened role for local government, which was explained earlier.

AGENCY	ROLE AND FUNCTION
OPM <sup>30</sup>	Responsible for setting strategic direction and determining policies and goals for development and the environment.
NEPA	Responsible for the national spatial plan, administration, development control, quality control, park management etc.
ERA	Responsible for setting technical environmental standards, monitoring and enforcement.
Local government	Responsible for local planning guidelines and control, working within the parameters of the national spatial plan

### 5.3 OPM - Strategy and Policy

The OPM will be responsible for setting strategy and for policy analysis and development, with different divisions of OPM involved as appropriate. Ministry officials would, of course, consult the technical staff in NEPA and the ERA. The tasks include:

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<sup>30</sup> Note that the Gazette of July 2008 states the subject matters for environment, planning and development under OPM; this allocation of responsibilities will now have to be reviewed.

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- To advise Ministers as to the costs and benefits of acceding to particular international treaties on the environment.
- To advise Ministers as to the environmental implications of treaties and protocols addressed to other areas, such as trade.
- To advise Ministers as to the costs and benefits of particular policy options, such as a comparison between command-and-control regulation versus market instruments to solve a given environmental problem.
- To advise Ministers on cross-cutting issues, such as the implications of trade liberalization for land use, the structure of employment and so on.
- To undertake regulatory impact assessment, to assess the benefits and costs of each proposed regulation or other policy intervention<sup>31</sup>.
- To assist with the drafting of relevant legislation.
- To liaise with international treaty secretariats, ensure compliance with treaty obligations and generate any reports required and so on.
- To ensure policy coherence, and that developmental and environmental objectives are aligned.

Some of these functions are already carried out by the Environmental Management Division (EMD), but some of them would require an expansion of the current programme. See Note 9 in Appendix 1.

### 5.4 NEPA - Planning and permitting

NEPA would have a significantly expanded role in this regard. It would be responsible for developing, maintaining and operating the national spatial plan, along with all necessary administrative support functions. This includes:

- Maintaining and updating the national spatial plan. This should explicitly state the nation's primary economic, social and environmental objectives, and link these to

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<sup>31</sup> The UK government recently proposed to give each Ministry a regulatory 'budget', which would oblige them to assess the economic impact of each new regulation and deduct this from their total allocation. Any Ministry that exceeded its three-year budget would have to offset the cost of new regulations by reforms to existing rules. The goal is to ensure that the total burden of government does not increase.

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specific development goals, land-use priorities and guidelines for the coordination and sequencing of particular developments<sup>32</sup>.

- Establishing the primary categorization of land under the three headings described earlier, and developing further categories if necessary.
- Checking all local plans to ensure that they comply with the primary land zoning and developments of national infrastructure set out in the national spatial plan.
- Checking all major applications<sup>33</sup> for compliance with the national spatial and development plans. In its formal response to each application, NEPA will always state its reasons for accepting, rejecting or requiring modifications to a proposal.
- Processing applications permits and licenses quickly and efficiently<sup>34</sup>.
- Setting and updating the procedures and standards on which the permits and licences are based. This in turn would involve keeping abreast of international best practice with regard to the environment and related areas, and of new environmental management concepts, such as cleaner technology and industrial symbiosis. This information would be reflected (in due course) in technical standards and requirements, and in the teaching and training programmes.

The operations of NEPA with regard to the maintenance of the national spatial plan and land zoning will be specifically protected from inappropriate interference by the political directorate or by Members of Parliament. In keeping with the principles of justice, however, there will be provision for appeal to the courts and/or a tribunal. Any individual or

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<sup>32</sup> It is possible to maximize the utility of land use if particular applications are encouraged in the right order. For example, urban housing effectively sterilizes land for mining and mineral extraction, but worked-out quarries can be graded, landscaped and developed for housing or industrial development. A more common example is that a particular location might be considered unsuitable for housing until the development of a new highway makes the area more accessible. The orderly and successful development of a community will therefore depend on both the spatial and temporal coordination of public expenditure in infrastructure (such as water and sewerage, roads, police and fire services) along with private investments in the development of land. In some circumstances, it might be necessary to consider the reversibility as well as sequencing of particular changes. If a government decided that food security might be a higher priority in future, for example, it might take into account the fact that agricultural land that is developed for industry and housing is effectively lost to agriculture forever, but farm land that is converted into a golf course can always be ploughed up and used again for agriculture.

<sup>33</sup> One of the decisions that will have to be made in phase two of this study is the appropriate division between the three main types of applications (planning, environmental and building).

<sup>34</sup> NEPA will have to maintain the in-house specialist skills needed to manage the permitting process for diverse applications (including housing developments, ports and airports, conch harvesting and so on).

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organization that feels that they have been seriously disadvantaged by a land zoning decision will have access to a proper appeal procedure.

### 5.5 NEPA – Advisory, Outreach and Training

NEPA would have a significantly expanded role in this regard. It would be responsible for environmental outreach, advisory assistance and training and educational workshops for sectors of industry, schools and so on. The programmes for the public and for schools would promote awareness of the ecological systems of Jamaica and their importance to the social and economic life of the island, as well as practical environmental ethics and codes of conduct, the workshops for businesses would aim to demonstrate that good environmental practice can also make good business sense.

One particularly important role is to assist private firms and public sector organizations to solve their environmental problems. This is for a number of reasons:

- Many businesses, especially Small and Medium Enterprises (SMEs), are not aware of much of the applicable environmental legislation that could affect their business. NEPA will therefore operate an outreach programme to ensure that businesses know and understand both the problems and the solutions<sup>35</sup>.
- Few businesses in Jamaica have the capacity to keep abreast of pending changes in key export markets. The European Union, for example, gives advance notice of pending changes in environmental requirements and standards (c.f. the permissible levels of pesticide residue), but this information is rarely acted on by exporters, because they do not keep track of the relevant sources. NEPA will therefore ensure that exporters are aware of any pending changes in environmental regulations and standards in major export markets<sup>36</sup>.

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<sup>35</sup> As before, it is important to ensure that the proposed business advisory role is integrated with the Government's 'one stop shop' project, so that business can continue to obtain all necessary advice and/or referrals through one access point.

<sup>36</sup> The Ministry of Industry, the Ministry of Foreign Affairs and Foreign Trade and the Caribbean Regional Negotiating Machinery all have some responsibilities in this area as well, so it would be necessary to have a clear allocation of tasks between these organizations.

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- There are a number of relatively new concepts, such as cleaner technology and industrial symbiosis, which can allow businesses to become more competitive and environmentally cleaner by eliminating waste. Few businesses in Jamaica are aware of these relatively new concepts. NEPA will therefore ensure that Jamaican firms learn about these new solutions and can access the necessary skills to implement them.
- It is important to ensure that good environmental solutions are both developed and disseminated. To that end, NEPA will organize exchanges of information as to environmental best practice, environmental management and quality control systems amongst firms, research institutes, environmental consultants, local and central government agencies, officials and other advisory and regulatory bodies.
- NEPA will liaise with architects, builders and engineers with regard to the energy efficiency and environmental impact of homes, offices, hotels, factories and transport systems. This is to ensure compliance with the building codes and standards that will be embodied in the development approval process, especially with regard to the certification of drawings and plans, but also to ensure that the construction industry is aware of current best practice in these areas<sup>37</sup>.
- NEPA will liaise with Environmental Impact Assessment professionals regarding the soundness of EIAs conducted and recommendations made as part of the development approval process<sup>38</sup>. NEPA will monitor the EIA process in order to ensure that EIAs are delivered to a high standard, to ensure that the public's right to know is protected and that any required actions (such as mitigation measures or conditions to be included in permits/approvals) are taken by the developer<sup>39</sup>.

There are two important caveats:

- First, the advisory and training division can only give generic advice. As noted earlier, this is because the giving of specific technical advice (by, for example, a

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<sup>37</sup> Such as, for example, the zero-carbon homes and offices being developed in the UK, USA and France; buildings that are so energy-efficient that they require no external input of energy at all.

<sup>38</sup> NEPA already has a procedure regarding EIAs and public presentations, so it would not be necessary to establish an entirely new system; only to upgrade the existing process.

<sup>39</sup> One of the decisions that will have to be made in phase two of this study is whether the monitoring of mitigation measures or conditions should be built in to the permitting process or the EIA process.

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consulting engineer or architect) can entail assuming the legal liability for any directly-related consequences. It would not be appropriate for a regulatory agency to assume this responsibility, nor to grant indemnity against any failure of its own advice. The division will therefore have to develop a list of approved environmental consultants to whom they can refer businesses for technical solutions to their problems.

- Firms must feel able to discuss their environmental problems with the advisory and training division of NEPA, and disclose relevant details of their current operations. This might well include situations where the firm is in breach of environmental regulations, either knowingly or unknowingly (i.e. they might or might not be aware of the relevant regulations and/or standards, and that they are in breach). It is therefore essential to allow these discussions to remain confidential; information disclosed should not be given to the ERA (unless there is a clear and imminent threat to human life)<sup>40</sup>.

### 5.6 ERA - Monitoring and enforcement

The new ERA would have the primary responsibility for environmental policing, compliance monitoring and enforcement. The ERA would be specifically empowered to police both public and private sectors. State-controlled agencies have been, in some cases, among the worst environmental offenders, so this serious anomaly must end.

It is strongly recommended that the ERA adopt a risk-based approach, and focus their efforts, at least initially, on the relatively small number of individuals and organizations that cause the most serious environmental damage, rather than spreading their limited resources widely and ineffectively<sup>41</sup>. One obvious priority, for example, is to focus on those

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<sup>40</sup> Another decision that will have to be taken in phase two of this study is the appropriate procedure to follow if a firm has been issued with a permit or licence by NEPA and is in breach of the terms. One possibility is that if the firm discloses this information, in good faith, it might be given a fixed period of time (perhaps 3 months) to remedy the situation, and failure to do so would then trigger prosecution.

<sup>41</sup> It is also true that a few high-profile prosecutions and convictions of the most serious offenders will send a strong message to the rest of the community and encourage the minor and casual offenders to mend their ways, thereby removing the need to prosecute many people.

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individuals and organizations known to be operating without a permit or in clear violation of a permit, as people with a cavalier attitude to the law are likely to have an equally dismissive attitude to the environment. As per the recommendations of the RIA report, ERA staff must have police support whenever necessary, which means that the ERA must also have an institutional relationship with the JCF and Coastguard.

It is important that decision-making, enforcement and justice are all swift and effective, and that fines or other sanctions are commensurate with the scale of the damage. Unduly lengthy court processes, pre-trial litigation or repeated appeals (when used as a tactic to delay the commencement of trials or the enforcement of rulings) and inadequate fines can completely undermine enforcement. Available sanctions should not be confined to fixed fines, but should where appropriate include full remediation or restoration at the perpetrator's expense<sup>42</sup>.

### 5.7 Cross-cutting regulatory functions

NEPA and the Ministry of Health may retain particular regulatory functions, i.e. where there is no apparent advantage to reassigning these functions to another agency. This should be reviewed, however, after the ERA has been in operation for a year in order to see whether any further reallocation of responsibilities would give better results.

In the interim period, therefore, NEPA might continue to regulate the National Solid Waste Management Authority (NSWMA) with respect to the construction and operation of landfills and dumpsites, and the National Water Commission (NWC) with regard to the construction and operation of sewage treatment plants. It is likely that the Ministry of Health will also retain its current regulatory responsibility for environmental health and safety (public health)<sup>43</sup>.

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<sup>42</sup> There is a precedent; the Beach Control Act (2004) contains non-monetary penalties, such as rehabilitating the beach.

<sup>43</sup> Any change in this regard is not recommended. The current position is clear and logical, the alternative is likely to be worse, and any removal of responsibilities from the Ministry of Health would require amending the Public Health Act, an onerous task with no apparent benefit.

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The responsibilities of the ERA will be clearly defined, with particular attention to the need to ensure policy coherence, and to eliminating costly gaps and overlaps. The relations between these institutions will be managed, initially, through agreements or memoranda of understanding (MOU). These agreements will eventually be formalized in any necessary changes in the legislation governing the different agencies.

It is important to note, however, that one of the main reasons why NEPA was not able to operate as effectively as intended was that a similar set of ad hoc arrangements were never properly ratified. It is therefore essential to ensure that all key stakeholders are fully committed at the outset to seeing this process completed.

### **5.8 The objectives of the ERA**

The ERA will have primary responsibility for environmental policing, compliance monitoring and enforcement. It will monitor and protect Jamaica's natural environment and biodiversity, and protect public health from environmental pollution. It will be independent and impartial. It will:

- Establish and maintain transparent, consistent and objective standards for the management and regulation of the environment in accordance with international best practice in these areas.
- Monitor compliance with these standards. This will include monitoring the performance of both public and private sector organizations to ensure compliance with zoning, national spatial plan and operational standards. With regard to public sector organizations, this will include those responsible for solid waste disposal, water and sewage treatment and discharge, construction, dredging and all other operations with significant environmental and/or health implications.
- Respond to complaints from the public as to environmental breaches perpetrated by individuals, developers, other firms or state agencies.
- Impose sanctions as appropriate (see below).

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The ERA will have the authority to deploy a range of sanctions and other remedial measures. These will include prosecution, charges for remediation/restoration and, when appropriate, punitive fines for individuals or organizations that deliberately or through gross negligence cause serious environmental damage. The ERA will be given the power to require, where appropriate, full restoration of the damaged site at the perpetrator's expense.

However, the ERA will also be given limited discretion to determine whether a more collaborative, non-adversarial or conciliatory approach would be more cost-effective in particular instances. For example, if the ERA determined that a particular breach was the result of simple ignorance or error, they would have the option to require the perpetrator to attend the environmental management training workshops run by NEPA. In such cases, the ERA would then be obliged to monitor the subsequent behavior of the individual or firm carefully for a set period<sup>44</sup> to ensure compliance, and any repeated offences would then attract a more severe penalty<sup>45</sup>.

With regard to public agencies, it is important to note that the National Water Commission is already regulated by the Office of Utilities Regulation with regard to the quality of its service, and by NEPA and the Ministry of Health with regard to the construction and operation of sewage treatment plants. These arrangements will remain in place. The ERA will be concerned, however, with any environmental or health impacts which could arise if there was a serious failure with regard to the proper treatment of either potable or waste water, and would have the option to prosecute the individuals responsible if this was determined to be a case of culpable negligence.

Similarly, the National Solid Waste Management Authority is regulated by NEPA with regard to the construction and operation of landfills and dumpsites. This arrangement will

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<sup>44</sup> This should be not less than three years.

<sup>45</sup> This is modelled on the regulatory approach in the Netherlands, where firms that exceed their discharge consent limit to inland waters may be given the option of either (a) making a binding commitment to research and solve their problem or (b) being prosecuted. Firms that chose (a) have to give quarterly reports on their progress, and any firm not acting in good faith is still liable for prosecution. The current equivalent in Jamaica is the compliance plan component of air quality control.

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also remain in place. The ERA will be concerned, however, with any environmental or health impacts which could arise if there was a serious failure with regard to the proper collection, handling and treatment of domestic, industrial, infectious or hazardous waste, and would have the option to prosecute the individuals responsible if this was determined to be a case of culpable negligence.

### **5.9 Specific subject matters to be placed under the ERA<sup>46</sup>**

- Air and water quality control
- Beach control and coastal zone protection
- Watershed protection
- Marine conservation
- Pollution prevention
- Pollution monitoring
- Biosafety
- Wildlife protection
- Hazardous chemicals management

### **5.10 Legal Implications**

The establishment of the ERA, the development of the national spatial plan and the other changes recommended in this report will require new Statutes and changes to a number of existing laws, regulations and policies, including the following:

- The Natural Resources Conservation Authority Act.
- The Town and Country Planning Act
- The Land Development and Utilization Act
- The Wildlife Protection Act

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<sup>46</sup> Note that this proposed list is provisional, and may be subject to change in phase two of this project. There are issues, for example, as to the Ministry of Health's responsibility for drinking water quality and the Water Resources Authority's responsibility for the national water resources. Similarly, the Ministry of Health also has responsibility for some pollution control measures under the Public Health Nuisance Regulations. These responsibilities would have to be either reassigned or reconfirmed.

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- The Beach Control Act
- The Watersheds Protection Act
- The Jamaica National Environmental Action Plan
- Policy for Jamaica's System of Protected Areas

### **5.11 Institutional and Reporting Arrangements**

The ERA will be an independent authority with veto powers, similar to the Office of the Utilities Regulation (OUR), with the following characteristics:

- There will be a clear distinction between policy and operational issues. The portfolio Minister will have ultimate responsibility for policy, but will not intervene or be in any way involved in operational issues, which will be the sole responsibility of the Director General.
- The operations of the ERA will be specifically protected from inappropriate interference by the political directorate.
- Legitimate decisions taken by the ERA in properly fulfilling its mandated regulatory duties will not be subject to reversal by the political directorate.
- The ERA will provide a quarterly performance and budget report to OPM and a comprehensive annual report to Parliament which will detail the ERA's strategic goals and progress towards its targets and objectives.

### **5.12 Management structure**

The ERA will be governed by an Independent Commission, with a Chairman. The Commission will be responsible for ensuring that the ERA is properly managed, meets its strategic goals and performance targets, and remains strongly focused on results. The Commission will also be responsible for ensuring that the ERA is protected from any political interference, attempts to influence officers or pervert the course of justice. There will be clear membership criteria to ensure that the members of the Commission are selected on the basis of their relevant technical expertise, training and qualifications, experience, integrity and managerial competence, so that they can properly assess the legal and technical aspects of the more complex environmental issues that come before

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the Commission. The Commission will ensure that all decisions taken by the ERA are impartial and based on a technically sound consideration of the legal and technical issues<sup>47</sup>.

A Director General will be the executive head, and be responsible for strategic programming, human resource and budget management. The Director General will ensure that the work-plans and objectives set by the Commission are met in the most efficient and effective manner.

There will be three major divisions, dealing with Standard and Regulation, Enforcement and Monitoring, and Research and Information Management. The Management Structure is shown in Appendix 2.

### **5.13 Specialist skills**

The staff of the ERA will be recruited from people with relevant qualifications, training and experience in both the legal and technical aspects of environmental regulation, including law enforcement. Other relevant specializations will include:

- Environmental engineering
- Forensic chemistry
- Environmental economics
- Dispute resolution and mediation
- National and international environmental law
- Environmental health, safety and protection
- Sustainable development

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<sup>47</sup> It may be necessary to further strengthen the Board with a Scientific Advisory Committee, which is the current practice in the UK, Sweden, Australia, Germany and Switzerland. The role of the Scientific Advisory Committee is to keep the Board abreast of any important new developments and innovations.

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The ERA must have access to high quality, laboratory resources, capable of conducting the forensic analyses required to support any ensuing legal action. This is essential for building and supporting a case in contested enforcement proceedings.

It is essential that the ERA have a strong emphasis on teamwork, as any particularly large or complex case is likely to require all the pertinent skills within the organization and the deployment of many officers.

### **5.14 Organizational reviews**

As routine good management practice, the ERA will annually review its role and structure, recommend any necessary changes, and identify and fill any gaps in its internal professional expertise.

The ERA will consider in this annual review whether it would be more efficient or cost-effective to decentralize any particular function to specialist sector agencies or to a local authority, with the proviso that the ERA will retain ultimate responsibility and oversight, and that the maintenance of the necessary environmental protection, with effective monitoring and enforcement, must be the paramount consideration.

### **5.15 Financial considerations**

There will be appropriate funding allocation for start-up and for the continuous operation and maintenance of the ERA. This will include allowances for vehicles and fuel for rapid, unannounced site inspections, chemical-resistant safety suits, boots, helmets and other material for entering contaminated sites, sampling and testing equipment.

Significant funding will also be required for offices and for secure communications equipment. The ERA must have an effective information system, with a secure computer network with wireless links to handheld PCs, to allow for field assessment and data gathering, and for storing, analyzing and using data for decision-making, including site contamination issues, as well as planning and performance assessment. Such systems

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must provide textual information (legislation, administrative forms, activity reports, state of environment reports and so on), all for the tracking and cross-checking of administrative information (including statistical reports, sampling and laboratory analysis reports, inspection reports, non-compliance responses, etc). These systems will also be linked to the information systems of other government environment agencies.

There is an important issue as to whether the ERA should be authorized to collect and spend the monetary penalties in addition to its core funding which will be provided from the state budget. The issue here is whether including penalty fees as a source of revenue could encourage the ERA to maximize its revenues rather than ensuring compliance. The recommendation here, therefore, is that any fines should be treated as public monies subject to fiscal control and be collected through the tax administration department of government. However, if the penalty levied is to ensure full remediation of a damaged site, then the funds raised must be hypothecated, i.e. used for the purpose for which the fine was imposed (such as environmental remediation), rather than disappearing into general revenue. The financial considerations, and on the start-up and first year operational costs are shown in Appendix 3.

### **5.16 Implementation plan**

The implementation plan for the new regulatory authority will be phased in over an appropriate transition period. The calculation of the duration required will take account of the role of the proposed new ERA and the scope of the actions to be undertaken, the time needed for the associated restructuring of NEPA, the time needed to establish the national spatial plan, and to establish the necessary MOUs (or policy directives) and links with other organizations, as well as the costs associated with each of these steps. A phase-in plan will also be developed for the new legislation that will be required.

Part of these pre-implementation actions will include an official publication to explain the new arrangements and requirements, and assistance for public and private sector organizations that need to know, in more detail, how they will be affected by the new arrangements.

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It is the expressed wish of the Prime Minister that the ERA be established in time to commence inspections and other operations by April 2009. However, it is anticipated that a core structure will be in place by January 2009. Other dates will therefore be calculated with this as the reference point. The implementation plan, including the phases and dates, is shown in Appendix 4.

## **6 Conclusions and Recommendations**

The goal of the various reforms proposed in this report is to allow Jamaica to achieve a combination of faster economic development and rising environmental quality. The various measures proposed are intended to ensure that valuable or vulnerable areas are strictly demarcated and protected, with better monitoring and enforcement, that limited government resources are focused to best effect, and that the country can offer a more transparent and risk-free environment for developers. The various measures proposed are also intended to clarify the function of the different tiers and arms of government. The three key steps recommended in this report are as follows:

1. To establish the proposed **Environmental Regulatory Authority** and to reassign responsibilities accordingly.
2. To develop a **National Spatial Plan**, with primary land zoning and a clear hierarchy of planning levels, and to give NEPA the primary responsibility for developing, maintaining and updating the national spatial plan.
3. To give NEPA a significantly expanded role in helping to **resolve environmental problems**, via education, outreach, advisory assistance and training workshops on topics such as cleaner technology and industrial symbiosis.

Thus NEPA's role in monitoring and enforcement would be transferred to the ERA. As a specialised, skilled agency, focused on the most serious offenders, the ERA is likely to be significantly more effective in this regard. This would allow NEPA to focus on its expanded role in planning and in resolving environmental problems.

The efforts of the two agencies will therefore complement each other. As the ERA becomes increasingly effective, more businesses are likely to turn to NEPA's advisory section to request assistance in solving their environmental problems, while NEPA's new role in managing the national spatial plan is going to start to reduce the number of environmental problems in the most cost-effective way; i.e. by good planning.

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### 6.1 Full integration

All parts of this new arrangement must mesh properly if it is to deliver the full range of developmental and environmental benefits. Consider the example, given earlier, of adapting to climate change:

1. OPM would determine that the implications of climate change are extremely serious, and that adaptation must become a new national priority. This new policy would be explained to NEPA, the ERA and local government, as well as the utilities and other stakeholders.
2. NEPA would then review the national spatial plan, determine which areas might have to be sacrificed to the rising sea, calculate the amount of land that will have to be made available for the new settlements, identify safe areas and amend the spatial plan accordingly. This would then immediately be reflected in the permitting and inspection process to ensure that all new housing was going into designated safe areas.
3. The local authorities would now be working with the new national spatial plan and adjusting their local plans accordingly. They would control the mix of housing, industry, retail, schools, clinics, recreation parks and so on in the new settlements, working within the broad parameters of the new national policy, and ensure that these plans were properly followed.
4. The ERA, in the meantime, would be policing the sacrificed areas to ensure that people did not attempt to rebuild, and monitoring the new-build areas to ensure that all proper environmental procedures were followed.

This integrated approach will deliver a range of important social, economic, health, safety and environmental benefits for the people of Jamaica. It is therefore recommended that the Government take the necessary steps to:

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- Establish the proposed ERA.
- Initiate the development of the national and local spatial plans and the initial zoning of land.
- Reassign the responsibilities for planning and regulation, as described above.
- Draft the necessary MOUs (or policy directives) to establish the working relationships between the various agencies involved.
- Prepare the necessary legislation to formalize these changes.

**Appendix 1 - Notes**

**Note 1**

Large dust particles are trapped in the nose, but particles smaller than 10 microns are inhaled directly into the lungs, then penetrate and damage lung tissue. Very small particles, less than 0.1 microns, can pass through the lungs directly into the bloodstream. Air-borne particle pollution has been linked to increased mortality in infants, increased rates of death from respiratory and cardiovascular disease, and increased severity of asthma attacks, especially among children. Most of these small particles are the result of some form of combustion; power stations are a major source of sulphate particles, and vehicle exhausts are a major source of nitrate particles. It is likely that badly-maintained vehicle engines contribute significantly to the level of asthma in Jamaica, which has serious consequences for families and for the health budget.

**Note 2**

The McCalla report noted that in addition to its statutory framework, the work of NEPA was further guided by over a dozen other policies and plans. These included:

- Jamaica National Environmental Action Plan (JANEAP) 1999-2002
- Policy for Jamaica's System of Protected Areas – 1997
- National Biodiversity Strategy and Action Plan
- Watershed Management Policy (Draft)
- Beach Policy for Jamaica (Draft)
- Environmental Management Systems Policy and Strategy (Draft)
- The National Environmental Education Action Plan for Sustainable Development
- Water Sector Policy, Strategy and Action Plan
- National Forestry Management and Conservation Plan
- Various Development Orders, the Developers Manual and general planning policy, including energy policy
- Other guidelines from the Government of Jamaica

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There were also a number of other agencies and legislation that directly affected NEPA's areas of responsibility. These included:

- The Housing Act whereby the Minister/ Ministry of Housing can act as "corporation sole", without any regard to other mandates.
- The Urban Development Act, which gave the UDC control over "UDC lands".
- The Building Act, which was administered by the Parish Councils.

### **Note 3**

At the time of the RIA study in 2006, NEPA also had multiple divisions and allegiances, with five divisions and twenty branches, and affiliations to a large number of other Government agencies. For example, the McCalla report noted that the NRCA's Technical Review Committee (TRC), along with the other agencies that might have to be consulted on particular issues, comprised a total of sixteen agencies of government with responsibility for particular aspects of various matters related to environmental management, including the following core members:

- Environment Health Unit; Ministry of Health
- Jamaica Bauxite Institute
- Mines & Geology Division
- Ministry of Local Government & Environment
- National Works Agency
- Water Resources Authority

The agencies that might be consulted on particular applications or issues included the following:

- Civil Aviation Authority
- Jamaica National Heritage Trust
- Jamaica Public Service Co. Ltd
- National Irrigation Commission, Ministry of Agriculture
- National Land Agency
- National Water Commission

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- Office of Disaster Preparedness and Emergency Management
- RPPD, Ministry of Agriculture
- Urban Development Corporation

In addition, the policy on protected areas had included co-management arrangements with NGOs.

Inter-agency cooperation will, of course, always be essential, as many of the matters for which NEPA is responsible are inextricably linked to responsibilities of other Agencies. Consider the following examples:

- NEPA are responsible for watershed management, but watersheds cannot be properly managed without the active cooperation of the Forestry Department (who are responsible for forest reserves and tree planting programmes), the WRA (who are responsible for water resources and planning), environmental health officials (water quality), agriculture (which is both a major consumer of water and a source of water-borne pollutants) and so on.
- Similarly, NEPA is responsible for coral reef management (coral is protected under the Endangered Species and WLP Acts), but one of the main sources of pressure on the coral is over-fishing, and fishing is the responsibility of the Fisheries Division.
- With regard to air quality standards; one of the main contributing factors is vehicular emissions which, in some cases, will be dealt with by the police.

So there is no disagreement about the need for inter-agency cooperation. The issue is about the speed of decision-making, as applications that have to be sent out to multiple agencies for review can (and do) incur very lengthy delays if the review process is not well-managed.

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### Note 4

The McCalla study assessed NEPA's performance with regard to the rate at which applications were processed (the study period was from April 1st, 2003 – March 31st, 2005). The main findings were as follows:

- In 2003 NEPA processed 40% of all planning and 31% of all subdivision applications within 90 days, so 60% of planning applications and 69% of subdivision applications took longer than 90 days. NEPA received 44 applications for environmental permits that year, and processed 24 of them, of which just 4 were processed within the stipulated 90 days. This contrasts markedly with the CITES applications; 55 were received and all them were processed within the 90 days. This was mainly because the processing operation was more direct in the section that handled CITES applications.
- In 2004-5 NEPA received 2,257 applications and processed 1,819 (81%) of them, between April 2005 and March 2006 NEPA received 2,637 applications (a 17% increase) and processed 2,182 (83%) of them, but half of these took longer than 90 days (source: NEPA Annual Report, 2005).
- Most of the applications concerned planning and subdivision matters. The largest category of applications in 2005 was for restrictive covenants, followed by subdivisions, then environmental permits.

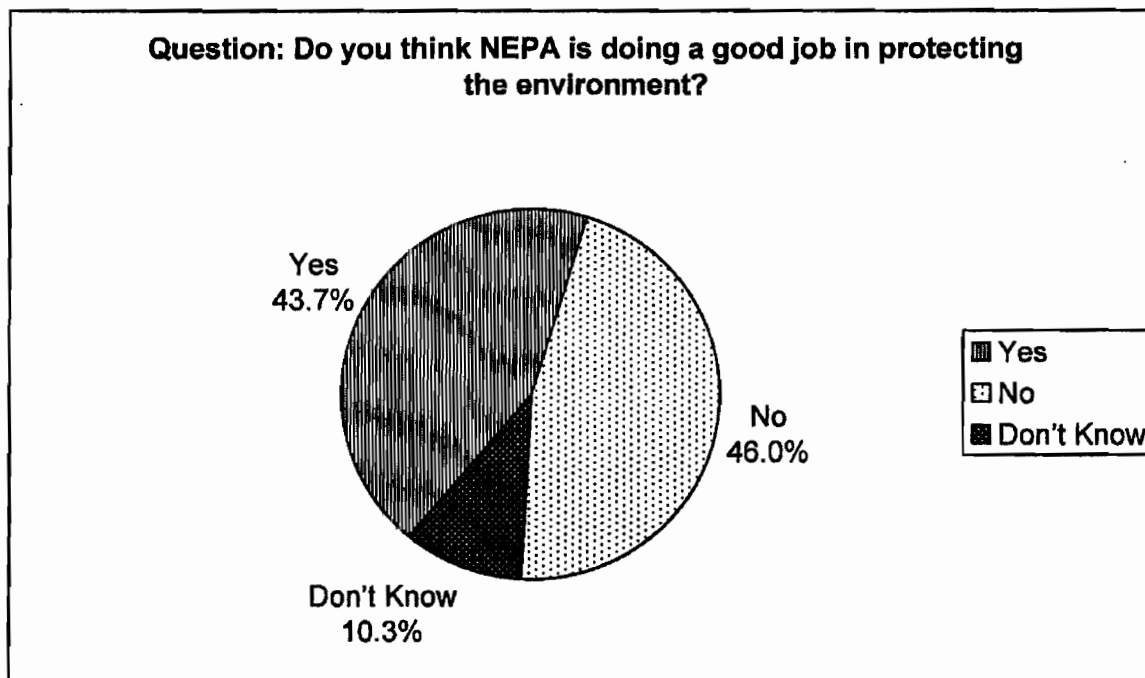
This flow of applications represented a very significant load on NEPA's relatively slender resources, with the volume and the complexity of the applications increasing markedly. With this increasing workload, it is not surprising that NEPA was obliged to focus more on development permitting and less on planning and environmental management.

### Note 5

With regard to NEPA's visibility and reputation, the Residential Consumer End Use Survey in 2006<sup>x</sup> asked respondents whether they had heard of NEPA, whether they had used its services in the past, and whether they thought it was doing a good job of protecting the environment. Some 53.0% of respondents knew of the agency, but only 1.8% had utilized the services provided, while some 46.1% felt that NEPA was not doing a good job in

## Environmental Regulatory Authority

protecting the environment, while 43.7% thought that it was performing adequately and 10.3% didn't know. This indicates that NEPA does not have very strong public support.



**Source: Residential Consumer End Use Survey**

### Note 6

The McCalla report recommended rapid resolution of the legal anomalies, with the repeal of the Land Development and Utilization Commission Act as "not consistent with the overall aims and objectives of NEPA and with environmental management and sustainable development principles" (the RIA study made a similar recommendation), and the establishment of three acts; a National Environment and Planning Agency (NEPA) Act, a revised Town and Country and Planning Act, and an Environment Act. It is important to note, however, that the McCalla report considered and specifically rejected the concept of a single unitary authority that centralized all planning and environmental management functions, suggesting instead that these functions would be better performed if split up and made the primary responsibility of specialist agencies. The McCalla report therefore recommended that the government should enact both a revised Town and Country Planning Act and a revised Environment Act.

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The original idea was, of course, to complete the unfinished merger with the introduction of a National Environment & Planning Act. Draft drafting instructions were drawn up, but did not go forward into the actual drafting stage. Various meetings with stakeholders indicated, however, that there were still a number of serious reservations. The McCalla report lists, for example, some of the main concerns raised by Parish Councils and other stakeholders as follows<sup>x</sup>:

- It was noted that the promulgation of a NEPA Act would necessitate changes in the existing legal mandates (repeals, amendments and new laws). However, there was a perception that the proposed repeal of the TCP Act would leave a major gap in the planning process.
- It was felt that the drafting instructions for the NEPA Act lacked clarity, and that the purpose of the NEPA Bill (as regards planning) could be achieved by completing the existing draft TCP Bill.
- There was concern that the Planning Act is still not applicable island-wide, as Development Orders cover only about 66% of the island, unlike the NRCA Act which is island-wide. It was therefore recommended that the TCP Act should be extended to cover the entire island.
- It was felt that the proposed legislation was mainly directed at environmental resource management, and that planning was not dealt with properly. It was therefore felt that the draft NEPA Act represented a "retrograde step in progress that has been made in land use planning over the years".
- It was pointed out that the interaction with local planning authorities (LPAs) was still problematic (LPAs have powers vested in them through the TCPA, to determine certain planning applications, while the TCPA can determine others and also has the power to "call in" certain applications for its own determination. However, it is not prescribed by law which applications can be called in, which can create uncertainty. It is also possible for a LPA, with detailed local knowledge, to disagree with the view of the TCPA).

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- The proposed legislation proposed to give additional powers to the local authorities with regard to environmental management, but these were felt to be inadequate, as it would not have transferred key decision-making powers with regard to major land developments.

### **Note 7**

These initiatives included:

- Updating the Town & Country Planning Act.
- The creation of NEPA.
- The development of the National Environment Policy.
- Various ENACT programs, including local sustainable planning projects.
- Various programs of the Ministry of Local Government.
- Local government capacity building projects.
- CIDA-funded local government reform.

Unfortunately, some of these reforms also had a cost, in terms of lost functions and continuity. In particular, the McCalla report points out that the functions of the Town Planning Department were not incorporated in the original TCPA Act, which meant that some of the services that the TPD provided were effectively discontinued. This is unfortunate, as the TPD had the important role of preparing advice to parish councils, developers and the general public on all aspects of land use planning and development, maintaining public education and information, and providing guidance for development in a context of growing population, urbanization and changing development and land use imperatives.

### **Note 8**

The KPMG report gives the example of Ontario, in Canada, which uses this approach for encouraging investment and development while protecting the environment. The Ontario plan is locally-based. There is provision for the involvement of other arms of government - but only when required - noting that a 'large or complex proposal' will trigger the need for

## Environmental Regulatory Authority

consultation with interested government agencies', but this process is still coordinated by the local planning authority.

A large or complex proposal is one where, for example, an amendment to the current plan would be required, where a major industrial use for the land was being proposed, where the development was on or near environmentally sensitive lands or prime agricultural lands, where the development would affect archeological sites, heritage structures, or known burial grounds, where there are sewage capacity concerns or water quality/quantity concerns. In Jamaica, this would probably extend to where the development would involve mining or mineral extraction or other development likely to result in irreversible changes, the development of agricultural land for non-agricultural purposes, or development near beaches.

### **Note 9**

The current goals, mandates and activities of the Environmental Management Division are as follows:

**Goal:** The protection of Jamaica's natural resources, the reduction and prevention of pollution, the integration of environmental considerations into national development policies, in contribution to the achievement of sustainable national development.

**Mandate:** The Division's mandate is the development of policies, legislation and programmes for effective environmental management, supported by well developed research and database systems in the area of environmental protection and conservation. The Division also has oversight responsibility for the National Environment and Planning Agency in terms of environmental issues.

### **Activities**

- ❖ Develop and review policies, programmes and legislation in areas such as:
  - Natural Resources – biodiversity (including national parks and protected areas, wildlife protection, watersheds management, endangered species, biosafety)

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- Pollution control (including air and water quality, the ozone layer, waste management particularly hazardous waste, persistent organic pollutants)
- Environmental Stewardship - (including energy conservation issues)
- Integrated Coastal Zone Management
- Renewable Energy
- Trade and Environment
- Climate Change

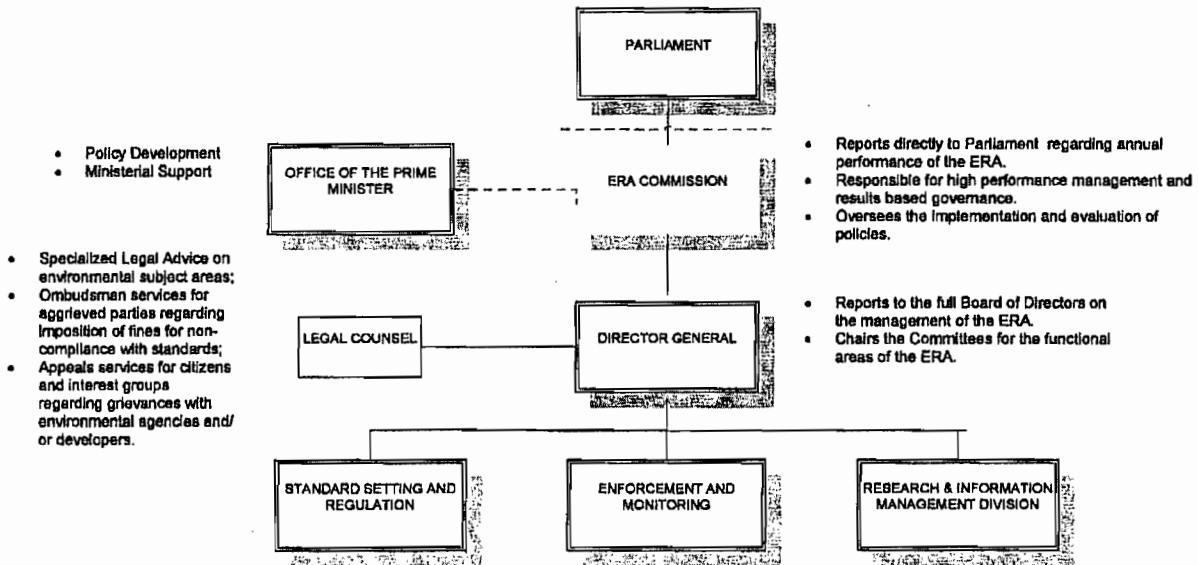
A particular focus of the Division is Sustainable Development (including issues related to Small Island Developing States)

- ❖ Provide policy advice including technical briefs for the Minister for presentation to the Natural Resources Committee of the Cabinet..
- ❖ Participate in the development and implementation of technical assistance programmes and projects.
- ❖ Provide technical support to the Minister with responsibility for the Environment in respect of the hearing of appeals under: Natural Resources Conservation Authority (NRCA) Act, 1991 and the Beach Control Act, 1956; and to the Tribunal appointed under the NRCA Act for the hearing of appeals related to enforcement notices.
- ❖ Participate in regional and international meetings on environmental policy and sustainable development.
- ❖ Monitor the implementation of regional and international environmental agreements, follow up issues of relevance to Jamaica, and ensure that treaty obligations are included in the formulation of national policies and legislation.
- ❖ Prepare and disseminate information for the public on environmental issues including Ministry Papers for the Houses of Parliament.
- ❖ Focal Point responsibilities and national reporting functions under various conventions and protocols

# Environmental Regulatory Authority

## Appendix 2 - ERA

### ENVIRONMENTAL REGULATORY AUTHORITY PROPOSED FUNCTIONAL/REPORTING STRUCTURE FOR START UP OPERATIONS 10/25/2010



# Environmental Regulatory Authority

## Appendix 3 – Finances

[REDACTED]

[REDACTED]

1	Technical Assistance - consultancy service - 60 days @\$152,250 per day	9,135,000.00
2	Office space rental (existing GOJ to be used temporary to house core ERA personnel) <i>rent is \$250,000 per month which includes parking space facilities</i> <i>payment is usually one month security deposit, plus current month rental</i>	750,000.00
3	Selection of Office Location for long term lease for permanent space ( 2,000 ft <sup>2</sup> or 180 m <sup>2</sup> )	750,000.00
4	Office Maintenance for temporary office space <i>service charge - \$125,000 per month</i>	375,000.00
5	Minor Refurbishing of temp office space	1,000,000.00
6	Design and approval of the floor plans (permanent space)- consultancy fee <i>consultancy fee is usually calculated at a percentage (20%) of the office refurbishing cost</i>	1,600,000.00
7	Purchase and installation of office equipment/technology for temp. space Technology - hardware, software and installation costs	500,000.00

Start up recurrent cost	Per month	
Utilities - light, water, telephone, internet per month	50,000.00	150,000.00
Staff emoluments (5)	1,250,000.00	3,750,000.00
Office supplies - stationery & toner for printer/copier per month	25,000.00	75,000.00
General Insurance - office equipment	5,000.00	15,000.00
employer's liability	4,166.66	12,499.98

[REDACTED]

**TOTAL START UP COST**

[REDACTED]



## **Appendix 4 – Implementation Strategy**

Subject to Cabinet approval, the implementation work was initially planned to start within the 2009/2010 financial year. However, with the budget cuts that became necessary, it was rescheduled to the 2010/2011 financial year.

Against the background of the current world recession and its continuing impact on the Jamaican Economy and the resources available to ministries and agencies, the proposed work to establish the ERA will now be anchored by the Public Sector Modernization Division of the Cabinet Office, leading a multi-disciplinary team of relevant and qualified technical and professional persons within government. External subject matter experts would be utilized when absolutely necessary, to reduce the dependence on consultants for implementation. It is proposed that implementation be in two phases, starting September 2010.

### **PHASE I (2010 – 2011 SEPTEMBER)**

- Preparation of the Scheme of Management (SoM) for the ERA based on a comprehensive review of options and the related cost-benefit analyses. The SoM will define the following:
  - The initial business plan with specific recommendations for the scope of its core functions, strategic objectives and organizational structure, and a structured implementation plan with defined timeframes and major milestones for its start-up and the first three years of operations.
  - A Medium Term Financing Plan which would include the cost of staffing, operations and physical facilities; and the institutional, legal, technical and performance frameworks required to fully establish the ERA as a new agency.
- Review of NEPA in order to identify the changes necessary to its existing organizational and operational arrangements.
- Cabinet would then be asked to consider the Scheme of Management for approval to operationalize the ERA, and also effect the required changes to NEPA.

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### PHASE II (2011 – 2012 JUNE)

- Restructuring of NEPA
- Identification and preparation of physical facilities for the ERA
- Recruitment of ERA's CEO first, then direct reports
- Recruitment of other ERA staff
- Official opening of the ERA

*Although a stakeholder meeting held May 13<sup>th</sup> 2008 which included the following agencies, Planning Institute of Jamaica, Local Government, Office of the Jamaica National heritage Trust, National Environment and Planning Agency, University of the West Indies, ministry of Agriculture, National Land Agency, Ministry of Health, Cabinet Office, Office of the Prime Minister, Ministry of Education, National Resource Conservation Authority/Town and Country Planning Authority- it is also proposed that:*

- 1. Further consultations with a wider cross section of stakeholders including Non-Governmental Organizations and as well as other relevant Ministries, Departments and Agencies (in particular Ministries of Transport and Works and Water and Housing) will be held. These consultations will **inter alia** ensure that all aspects of the Environmental Regulations including the impact on the environment and existing infrastructure; and the establishment "No Build Zones" are fully debated in the national arena prior to and during the implementation process;*
- 2. JIS will be involved in engaging the general public on the proposal to establish an Environmental Regulatory Authority.*

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### **Appendix 5 – Steering Committee**

Professor Anthony Clayton, University of the West Indies (Chairman)  
Patricia Sinclair McCalla, Permanent Secretary, Office of the Prime Minister  
Dr. Grace Allen Young, Permanent Secretary, Ministry of Health  
Mrs. Hillary Alexander, Chief Technical Director, Cabinet Office  
Mrs. Sancia Templer, Development & Planning Div., Office of the Prime minister  
Mr. Peter Reeson, Jamaica Institute of Environmental Professionals  
Ms. Denise Forrest, Jamaica Institute of Environmental Professionals  
Mr. Patrick Rousseau, Natural Resource Conservation Authority  
Dr. Leary Myers, CEO, National Environment & Planning Agency  
Mrs. Winsome Townsend, National Environment and Planning Agency  
Miss Leonie Barnaby, Office of the Prime Minister  
Mr. Howard Lynch, Ministry of Health  
Mr. Peter Knight, Ministry of Health  
Mr. Owen McKnight, Ministry of Finance and the Public Service  
Mrs. Eleanor Jones, Environmental Solutions Ltd.  
Mr. Winston McCalla, Environmental Consultants  
Mrs. Marsha Henry-Martin, Office of the Prime Minister  
Mrs. Lorna Perkins, PSMD, Cabinet Office  
Miss Zetta Allison, PSMD, Cabinet Office

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### Appendix 6 - References

<sup>i</sup> Anthony Clayton, Graham Spinardi and Robin Williams. *Strategies for Cleaner Technology: a new agenda for government and industry*. Earthscan, London. 1999.

<sup>ii</sup> Anthony Clayton. *Cleaner technologies: the implications for Developing Nations*. In *The Caribbean Economy- A Reader: The Economics of Natural Resources, the Environment and Sustainable Development*. D Pantin (ed), Randle, Kingston, 2005.

<sup>iii</sup> Michael Haley and Anthony Clayton. *The role of NGOs in environmental policy failures in a developing country: the mismanagement of Jamaica's coral reefs*. *Environmental Values*, Vol.12, No.1, February 2003, pp 29-54

<sup>iv</sup> Winston McCalla and Associates, May 2007. *Consultancy to Review Existing Environment and Planning Framework and Develop New Environment and Planning Legal Regime: Issues Paper*. Prepared for the Ministry of Local Government and Environment.

<sup>v</sup> Cambridge Economic Policy Associates Ltd. and the University of the West Indies, October 2006. *Public Private Infrastructure Advisory Facility: Jamaica Regulatory Impact Study (four volumes), Final Report, with particular reference to the Issues Paper and the Synthesis Paper*, Prepared for the Cabinet Office of the Government of Jamaica. (UWI team: Anthony Clayton, Akilah Anderson, Levi Atkinson, Simone Duncan, Hopeton Dunn, Edwin Jones, Stanford Moore, Jaquelin Stevens and Philip Osei).

<sup>vi</sup> Pauline McHardy, 2003. *Policy statements for Spatial Planning for the incorporation into the national environment and planning policy and strategy (NEpPS) and preparation of a template for development plans/orders*. Prepared for the Public Sector Modernization Project, Project Management Unit, Cabinet Offices, Office of the Prime Minister.

<sup>vii</sup> KPMG Consulting LP, March 2002. *A Planning Framework for Jamaica: Draft Discussion Paper*.

<sup>viii</sup> UN Habitat Agenda: *The Istanbul Declaration on Human Settlements*. UN, 1996

<sup>ix</sup> Planning Institute of Jamaica and the Statistical Institute of Jamaica, 2006. *The Residential Consumer End Use Survey (Volume 2 - Regulatory Authorities) Draft Report*. Prepared for the Petroleum Corporation of Jamaica.

<sup>x</sup> *Response to the draft National & Environment & Planning Act'*, Ministry of Local Government and Environment; review meeting on March 31, 2005, cited in the McCalla report.