



November 17, 2016

**Via Electronic Mail**

Michele Baker, Esq.  
Legal Counsel  
Division of Coastal Zone Management  
8100 Lindberg Bay, Suite 61  
Cyril E. King Airport  
Terminal Building, 2<sup>nd</sup> Floor  
St. Thomas, VI 00802

**Re: Notice to Cure & NOVA-04-16-STT**

Dear Attorney Baker:

I wanted to let you know that Great St. Jim, LLC is well underway in addressing the items set forth in the Notice to Cure, having completely removed both the concrete pad and the foundation materials referred to in Section I, Paragraphs 7A and 7C, respectively, of the Notice to Cure. Photographs of the completed work are attached for your reference. As you can see, Great St. Jim, LLC is doing everything it can to comply as quickly as possible with DPNR's directives in the Notice to Cure. In continuing work with regard to the remaining items in Section I, Paragraph 7 of the Notice to Cure, there are a number of significant issues which require clarification. Those issues would have been addressed at the meeting scheduled for November 16, 2016 in advance of the cure deadline, which pursuant to your email, dated November 14, 2016, was extended to November 18, 2016. Now that our meeting is being rescheduled at DPNR's request for Tuesday, November 22, 2016, a date after the November 18, 2016 deadline, in order to avoid any misunderstandings, violations and unintended environmental consequences, I would respectfully request written clarification of the matters below after you have an opportunity to review and discuss them with your team and an extension of the cure deadline.

- Section I, Paragraph 7H – Four Moorings. DPNR's citing the moorings as a violation of Section 3(a) of the Settlement Agreement, however these moorings were in place prior to Great St. Jim, LLC's acquisition of Great St. James Island. See attached Google Earth image from 2014 and photos taken in January 2016 prior to the acquisition of Great St. James Island. The moorings were not installed by Great St. Jim, LLC nor have they been nor are they maintained by Great St. Jim, LLC. The moorings are affixed to submerged land which is not part of Great St. James Island and not owned by Great St. Jim, LLC. Although Great St. Jim, LLC is happy to assist DPNR by facilitating the removal of the moorings, we wanted to ensure that the act of removing them would not create any issues at the federal level, with Army Corp of Engineers, for example. Clarification is respectfully requested that Great St. Jim, LLC has permission from DPNR to remove the moorings and does not have to separately obtain any permissions from any federal agencies prior to undertaking the removal. Under the circumstances, it is evident that obtaining any necessary permissions and facilitating the removal of the moorings prior to November 18, 2016 would not be possible.
- Section I, Paragraph 7B – A new access road cut and a retaining wall to facilitate vehicular access to the concrete pad. The access road cited in Section I, Paragraph 7B of the Notice to Cure is not "new" and was part of the roads/pathways encompassed by the Settlement Agreement previously entered into by the parties. We respectfully submit that any environmental impact from the road has

been addressed by Great St. Jim, LLC's payment of a fine and DPNR's grant of a release under the Settlement Agreement, and that no cure is required for the road. The so called "retaining wall" on the area addressed by the Settlement Agreement was already in place as of the time that the Settlement Agreement was executed and was also addressed by the Settlement Agreement. After the Settlement Agreement was executed, the height of the wall was increased by approximately two feet, which created no additional environmental impact, and we are unaware of any permit required to increase the height of an existing wall. Great St. Jim, LLC seeks clarification as to what specifically DPNR claims to be the violation involved in the item described in Paragraph 7B. Although Great St. Jim, LLC disagrees that the retaining wall constitutes a violation, we will be happy to remove it after receiving clarification as to what cure DPNR requires.

- Section I, Paragraph 7E - Paving of a recently excavated driveway. Great St. Jim, LLC believes this to be another of the roads/pathways encompassed by the Settlement Agreement previously entered into by the parties. And for the same reasons discussed above with regard to the item identified in Section I, Paragraph 7B of the Notice to Cure, Great St. Jim, LLC believes that the cure for the driveway has already been addressed by Great St. Jim, LLC's payment of the fine and DPNR's grant of the release under the Settlement Agreement. With regard to the paving applied to this area, Great St. Jim, LLC submits that this involved no environmental impact beyond that which was already resolved by the Settlement Agreement and should not be deemed a separate violation. Moreover, inasmuch as the Settlement Agreement required no further action be taken to address the area of the exposed dirt driveway, it was thought that paving this area would be beneficial as it would at least mitigate against soil erosion and blow off. Great St. Jim, LLC will remove the paving, but respectfully seeks clarification that DPNR requires this removal, as digging up the pavement and restoring the area to its exposed dirt surface left after the execution of the Settlement Agreement may be more harmful than leaving the surface covered and protected from erosion and blow off.
- Section I, Paragraph 7F - An excavation area of approximately 3500 square feet to 4000 square feet being prepared for future development. This area is not being prepared for future development. Rather, this area comprises an old garbage dump. The dump was cleared prior to and encompassed by the Settlement Agreement previously entered into by the parties. Great St. Jim, LLC respectfully seeks clarification of the specific violation implicated by this item and as to what DPNR requires as a cure for the same.
- Section I, Paragraph 7G - A beach bar/cabana approximately 150 feet from the dock. The beach bar/cabana referenced in Section I, Paragraph 7G of the Notice to Cure is a non-permanent, moveable structure that Special Project Coordinator David Rosa was made aware of during prior inspections of Great St. James Island. Great St. Jim, LLC respectfully requests clarification as to why this is now being cited as a violation when it was not previously cited, and as to whether DPNR now requires that it be dismantled when it had not previously required it.
- Section I, Paragraph 7D - Two fuel storage tanks with an approximate capacity of 3200 gallons were installed on the island for dispensing fuel to heavy equipment. The two fuel tanks are located on the same pad as, connected directly to, and are an integral part of the generator that was installed on Great St. James Island well before Great St. Jim, LLC's acquisition of the island. The tanks were not installed for the purpose of dispensing fuel to heavy equipment. The two new double walled tanks were installed to replace an old, environmentally unsound, pre-existing generator fuel tank in a state of disrepair. Under 12 VIC §902(b)(1), we do not believe that the repair of outdated existing equipment utilizing substantially safer components requires a permit under 12 VIC §910(a)(1).

Nor do we believe that the tanks should require a terminal facility license as neither the generator nor the tanks themselves are a terminal facility. 12 VIC §703(9) defines a terminal facility as:

“any waterfront facility of any kind, other than vessels not owned or operated by such facility, and related appurtenances located on land, including submerged lands, or on or under the surface of any kind of water, which facility and related appurtenances are used or capable of being used for the purpose of drilling for, pumping, storing, handling, transferring, processing or refining oil or other pollutants, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility or a governmental or quasi-governmental body. A vessel shall be considered a terminal facility only in the event of a ship-to-ship transfer of oil, petroleum products or their by-products and other pollutants, and only that vessel going to or coming from the place of transfer and the terminal facility. . .”

The two tanks in question, each with only a holding capacity of 2,000 gallons and 1,200 gallons, respectively, are not fuel storage tanks. They are not stand-alone tanks, but are part of the electricity generator on Great St. James Island. Neither they nor the generator were installed for the purpose of drilling for, pumping, storing, handling, transferring, processing or refining oil or other pollutants. Moreover, the tanks and the generator are well inland of any “waterfront” on Great St. James Island. For these reasons, Great St. Jim, LLC believed and still maintains that they do not require a terminal facility license.

Although both tanks are double walled and do not require the installation of any barrier, should DPNR seek additional protection, Great St. Jim, LLC will install a barrier around the pad on which the tanks are situated as a redundant spill control measure. Clarification is respectfully requested as to what violations are alleged with respect to the fuel tanks and what measures DPNR would require to address its concerns.

Great St. Jim, LLC has been diligent in complying with DPNR’s directives, particularly where what DPNR requested for compliance is evident, as is the case for the items cited in Section I, Paragraphs 7A and 7C of the Notice to Cure. As demonstrated by the attached photographs, any violations with respect to the concrete pad or the foundation materials cited in Section I, Paragraphs 7A and 7C of the Notice to Cure have been cured and the areas have been restored to their condition as of the time the Settlement Agreement was executed. This has been accomplished well within any cure period required under the Settlement Agreement and cannot be deemed a breach of the same.

The Settlement Agreement resolved all of the alleged and disputed unpermitted development identified in the original April 22, 2016 NOVA (the “NOVA”), including, without limitation, the development of the area identified in Paragraph 7A and the development of the area of the site identified in Paragraph 7C on which the forms have been prepared for pouring concrete. Pursuant to the Settlement Agreement, Great St. Jim, LLC paid a fine for the alleged unpermitted development in exchange for a release for the same, thereby eliminating any requirement to restore the cited areas to their condition prior to the execution of the Settlement Agreement.

Moreover, any environmental impact in connection with the unpermitted development alleged by the NOVA had already been resolved by the Settlement Agreement. Neither item identified in Section I, Paragraph 7A or 7C of the Notice to Cure is a source of additional adverse environmental impact. Indeed, left untouched, the sites of alleged unpermitted development in the NOVA could potentially be sources of soil erosion, blow off and runoff, and the concrete covering identified in Paragraphs 7A and C would have substantially mitigated any potential for soil erosion, blow off or runoff.

As to the remaining items identified in the Notice to Cure, Great St. Jim, LLC is committed to resolving all issues as quickly as is reasonably possible and in the manner reasonably required by DPNR. Indeed, if there are any other measures that DPNR requires as a response to the Notice to Cure, we respectfully request those requirements be specifically conveyed to us in writing so that they may properly be addressed. This is also to confirm that John Woods has been tasked to work closely with DPNR on behalf of Great St. Jim, LLC. In the coming days, he will be working to provide DPNR with a full and complete overview of all activity intended for Great St. James Island over the next few months, which is limited to providing access and power to Great St. James Island and properly surveying the Island so that both Great St. Jim, LLC and DPNR may have an accurate record of the same for the future. In this way it is hoped that Great St. Jim, LLC will be able avoid any further disputes with DPNR and create a smooth working relationship going forward.

Very truly yours,



Erika Kellerhals

cc: Dawn L. Henry, Esq., Commissioner, Department of Planning and Natural Resources via [REDACTED]  
Jean-Pierre Oriol, Director, Division of Coastal Zone Management via [REDACTED]  
John P. Woods, AIA, Jaredian Design Group, LLC via [REDACTED]  
Amy Claire Dempsey, M.A., President, Bioimpact, Inc. via [REDACTED]

*Encs.*



Buoys with jet skis on them in 2014



January 2016.



RF: Removed Concrete Pad



800-555-1212