



November 17, 2016

Via Hand Delivery & Electronic Mail

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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. Great St. Jim, LLC is doing everything it can to comply as quickly as possible with DPNR's directive in the Notice to Cure, albeit with little guidance from DPNR as to how it should do so. However, 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 to 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.

- Paragraph 7H – Four Moorings. DPNR's citing the moorings as a violation of Section 3(a) of the Settlement Agreement and 12 VIC §910(a)(1) is prime example of why further discussion and clarification is required before Great St. Jim, LLC takes further action and DPNR declares Great St. Jim, LLC in default under the Settlement Agreement. These moorings were in place prior to Great St. Jim, LLC's acquisition of Great St. James Island. They 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.
- Paragraph 7B – A new access road cut and a retaining wall to facilitate vehicular access to the concrete pad. The access road cited in 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. We further submit that there has been no additional environmental impact from the so called "retaining wall" on the area already addressed by the Settlement Agreement and that this feature is an example of a common household gardening hardscape feature outside the purview of DPNR. That the feature is located on a larger residential property makes it no less a common household feature. 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.

- 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 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 relatively small 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. Great St. Jim, LLC also seeks clarification if any further action is required as to this item by DPNR.
- 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. We are unaware of any permit being required for the clearing and removal of additional debris, refuse and garbage from this area. Great St. Jim, LLC respectfully seeks clarification of the specific violation implicated by this item and what DPNR requires as a cure for the same.
- Paragraph 7G - A beach bar/cabana approximately 150 feet from the dock. The beach bar/cabana referenced in 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.
- 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.

Great St. Jim, LLC acknowledges, however, that its employees had been using one of the fuel tanks to fuel machinery that was temporarily on the island, which is not the purpose for which that tank was installed. It was believed that removing fuel from the tanks was preferable to barging fuel trucks back and forth to and from Great St. James on the limited occasions when fuel for such machinery might be required. In the future, Great St. Jim, LLC is prepared to discontinue this practice, should DPNR find it preferable to barge fuel trucks to and from Great St. James Island. Moreover, should additional assurance be required that this practice will not continue, Great St. Jim, LLC is prepared to decommission the fuel tank being used to fuel other machinery on the Island. Both tanks are currently full, so decommissioning them at this time would be problematic. However, if DPNR so requires, Great St. James, LLC can decommission the fuel tank as soon as it is empty.

Great St. Jim, LLC has been diligent in complying with DPNR’s directives, where what is required for compliance is evident, as is the case for the items cited in Paragraphs 7A and 7C of the Notice to Cure. Any violations with respect to the concrete pad or the foundation materials cited in 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, which was erroneously designated by DPNR as a “helipad,” 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. Although “further development of the Property” is prohibited by Section 3(a) of the Settlement Agreement, no specific prohibition was made in the Settlement Agreement regarding the areas of alleged unpermitted development for which Great St. Jim already paid a fine and was granted a release.

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 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.

In addition, had Great St. Jim, LLC elected to mitigate the potential for soil erosion, blow off and runoff at the site identified in Paragraph 7A by covering the area with a large rubber mobi-mat as had once been contemplated, rather than with concrete, such action unquestionably would have been outside the purview of DPNR. That Great St. Jim, LLC chose to cover that area with one material (concrete) over another (rubber) should not result in regulatory action when there is little difference in the environmental impact between the two alternatives.

With regard to the so called building excavation site in Paragraph 7C, the preparation of the forms to pour the concrete was specifically determined in paragraph 7C of the Notice to Cure to be incomplete and no concrete had been poured. Inasmuch as the preparation of those forms resulted in no adverse impact, their removal, which has already been effectuated well within the Settlement Agreement's cure period completely resolves any claimed violation.

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 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. 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 JP.Oriol@dpnr.vi.gov

Encs.