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**Via Hand Delivery & Electronic Mail**

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

Dear Attorney Baker:

I wanted to follow up with you on some items regarding the Notice to Cure that we had intended to discuss during our meeting that was originally scheduled for today. As that meeting has been postponed at your agency's request, I have included a brief summary of our questions or concerns and provided an update where applicable. I would appreciate your responding to me in writing after you have an opportunity to review and discuss among your team.

Section VI of the Notice to Cure requires the removal of the "development and structures" listed in section 7 of the Notice to Cure

7.A. A concrete pad, approximately 73 feet in diameter and 14" in depth.

- The pad has been demolished and is presently being removed. A permit application for the terrace will be submitted to DPNR with appropriate drawings.

7.B. A new access road cut and a retaining wall to facilitate vehicular access to the concrete pad.

- This road is not new and was part of the roads/pathways encompassed by the Settlement Agreement previously entered into by the parties. See photo number 22 attached to NOVA-04-16-STT

7.C. A new foundation laid not previously approved for development to the left of the tennis court which was intended to serve as the foundation for a new storage building.

- The materials associated with the forming of the foundation have been removed and the appropriate permit application will be submitted to DPNR shortly.

7.D. 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, and connected directly to, the generator that was installed on Great St. James Island well before Great St. Jim, LLC's acquisition of the island. The fuel tanks are not used to fill heavy machinery. The fuel tanks are double walled.

- Additionally, our research indicates that a terminal facility license is not required because they are not a terminal facility under 12 VIC §703(9) which 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, with a useful holding capacity of less than 3,200 gallons, are not fuel storage tanks. They are not stand-alone tanks used for the purpose of drilling for, pumping, storing, handling, transferring, processing or refining oil or other pollutants. They are part of the electricity generator on Great St. James Island. The generator was installed on Great St. James Island prior to Great St. Jim, LLC's acquisition of the Island. The double-walled tanks at issue were installed to replace the tanks that were in place at the time of Great St. Jim, LLC's acquisition of Great St. James which were old and in danger of creating an environmental hazard.

- It should be noted that these tanks are now full and they cannot be moved while full.

#### 7.E. Paving of a recently excavated driveway.

- It is unclear to which area this is exactly referring to and whether its part of the previously agreed to Settlement Agreement. Further clarification on this point would be appreciated to ensure compliance.

#### 7.F. 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 which was there before the last settlement. We are not aware of any permit needed for cleaning up garbage.

#### 7.G. 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 the island. It is unclear why this must be dismantled and we would appreciate your clarifying DPNR's position on its removal.

#### 7.H. Four moorings in the water.

- The four moorings referred to in paragraph 7H of the Notice to Cure, were installed prior to Great St. Jim, LLC's acquisition of Great St. James Island and are not maintained or used by Great St. Jim, LLC. The four moorings are affixed to submerged land which is not part of Great St. James Island. That being said, we are happy to assist DPNR by facilitating their removal, but 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. Please confirm that we have your permission to remove the moorings and that we do not have to separately obtain any permissions from any federal agencies prior to undertaking the removal.

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.*