

**GOVERNMENT OF THE VIRGIN ISLANDS
BEFORE THE DEPARTMENT OF PLANNING AND NATURAL RESOURCES
DIVISION OF COASTAL ZONE MANAGEMENT**

IN THE MATTER OF THE DEPARTMENT OF PLANNING AND NATURAL RESOURCES, COMMISSIONER DAWN L. HENRY, ESQUIRE,)	NOVA 04-16-STT
)	
)	
)	
COMPLAINANT,)	NOTICE OF FAILURE TO CURE
)	BREACH OF SETTLEMENT
vs.)	AGREEMENT AND
)	ENFORCEMENT OF SETTLEMENT
GREAT ST. JIM, LLC)	AGREEMENT
)	
)	
)	
RESPONDENT.)	
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SUPPLEMENTAL CONSENT AGREEMENT

WHEREAS, the Complainant, the Department of Planning and Natural Resources (~~“(“DPNR”);”~~), is responsible for the administration and enforcement of laws and regulations pertaining to the protection and preservation of the coastal resources of the United States Virgin Islands, including the Coastal Zone Management Act (the “CZM Act”), Title 12, Chapter 21, of the Virgin Islands Code, and the Division of Coastal Zone Management (“CZM”) is a division thereof; and

WHEREAS, the Complainant; commenced an administrative enforcement proceeding on April 25, 2016 by serving Respondent ~~on April 25, 2016~~ with Notice of Violation No. NOVA-04-16-STT dated April 22, 2016 (“NOVA”); (Complainant and Respondent are hereinafter referred to collectively as the “Parties”); and

WHEREAS, on or about August 4, 2016, ~~respondent~~Respondent entered into a Settlement Agreement (“Settlement Agreement”) with DPNR regarding issues pertaining to the NOVA; and

WHEREAS, on or about November 4, 2016, Complainant served Respondent with a Notice to Cure Breach of Settlement Agreement (“Notice”) ~~requiring Respondent within ten (10) days to remove all alleging certain~~ unpermitted development and structures in violation of the Settlement Agreement and ~~failure to comply will~~demanding that within ten (10) days Respondent remove all of said development and structures cited therein or be subject ~~Respondent~~ to further enforcement action pursuant to V.I. Code Ann. Tit. 12 § 913 and Section 3(d) of the Settlement Agreement; and

WHEREAS, on or about December 15, 2016, Complainant served Respondent with a Notice of Failure to Cure Breach of Settlement Agreement and Enforcement of Paragraph 3(d) of the Settlement Agreement ~~“Failure to Cure”) requiring Respondent to pay DPNR the remaining penalty balance of Two Hundred Ten Thousand Dollars (\$210,000.00); (“Failure to Cure”) demanding that Respondent comply with the terms of the Settlement Agreement alleged to have been triggered by a beach of the Settlement Agreement by Respondent and that Respondent make a substantial payment to DPNR of moneys claimed to be due under the Settlement Agreement as a result of said breach;~~ and

~~**WHEREAS**, Complainant and Respondent are collectively referred to herein as the Parties; and~~

~~WHEREAS, Respondent neither agrees with nor admits to the statements made in the foregoing recitals and has contested the statements, findings of fact and conclusions of law set forth in both the Notice and the Failure to Cure; and~~

WHEREAS, the Parties agree that: (a) settlement of the matters set forth in the NOVA, ~~the~~ Settlement Agreement, ~~the~~ Notice and ~~the~~ Failure to Cure are in the best ~~interest~~interests of the Parties and the public; ~~and~~ (b) ~~entry of~~entering into this Supplemental Consent Agreement without litigation is the most appropriate means of resolving this matter; ~~and (c)~~

~~WHEREAS, although~~ by entering into this Supplemental Consent Agreement, Respondent neither ~~agree~~admits to nor agrees with ~~nor admit to any~~the statements, findings of ~~the foregoing recitals but~~fact and conclusions of law made in the Notice and the Failure to Cure, ~~Respondent~~ agrees that this Supplemental Consent Agreement shall be enforceable in the event Respondent fails to comply with the provisions contained herein; and

WHEREAS, the Parties recognize that this Supplemental Consent Agreement has been negotiated in good faith and that it is fair, reasonable, and in the public interest.

NOW THEREFORE, the Parties agree as follows:

The Respondent shall ~~fund the following~~procure funding, whether directly by ~~Respondent or indirectly through one or more affiliates of Respondent, of a total of~~ _____ Dollars (\$) _____) which shall be applied to pay the ~~fees, costs and expenses for the construction of a raveling wall at Fort Christian located in Tier 1 on St. Thomas, U.S. Virgin Islands. The construction of said raveling wall shall be deemed a Supplemental Environmental Project (“SEP”)-in Lieu of Stipulated Penalties of not less than One~~

~~Hundred Seventy Thousand Dollars (\$170,000.00): Construction of the Raveling Wall at Fort Christian located on St. Thomas in Tier 1, that same total funded amount (hereinafter referred to as the "SEP").~~

~~1. Escrow Requirements:~~

~~1. Payments for the SEP.~~

~~A. Payments for the SEP will be made to the St. Thomas Historical Trust, an exempt entity under Section 501(c)(3) of the Internal Revenue Code (the "Historical Trust"), which shall use the proceeds of such payments exclusively to fund the fees, costs and expenses of implementing and completing the SEP.~~

~~A.B. Within five business (5) days of receipt of this fully executed Supplemental Consent Agreement, Respondent shall pay into an escrow account not less than One Hundred Seventy Thousand Dollars (\$170,000.00). The purpose of the escrow account is solely for the benefit of the SEP. or its affiliates shall pay to the Historical Trust an aggregate amount equal to _____ (\$_____).~~

~~B. The escrow account must be an interest bearing account and its terms, to include disbursements must be approved by DPNR. The account must be at a banking institution located on St. Thomas USVI.~~

~~C. Any interest earned must go towards the SEP.~~

~~D. Respondent shall not be a signatory~~

~~E. Respondent shall be responsible for all cost associated with opening and maintaining of the escrow account. The escrow account should be for a period of no more than two years or until funds are expended.~~

~~F. Respondent shall select a bonded 3rd party to act as the agent for the escrow account. The agent's primary responsibility is to disburse funds from the escrow account based on DPNR's written approval.~~

C. By no later than the first business day in January 2018, Respondent or its affiliates shall pay to the Historical Trust an aggregate amount equal to _____ (\$ _____).

D. By no later than the first business day in January 2019, Respondent or its affiliates shall pay to the Historical Trust an aggregate amount equal to _____ (\$ _____).

E. The terms under which the Historical Trust shall disburse funds paid to it for the SEP shall be set forth in a grant agreement between the Historical Trust and the grantor thereof (the "Grant Agreement"), and such disbursement terms shall be subject to the prior written approval of by DPNR.

F. Once funds are transferred to the Historical Trust for the SEP, neither Respondent nor its affiliates shall have any control over the disbursement of the same, except that the terms and conditions of such disbursement shall be set forth in the Grant Agreement which shall be signed by Respondent or its affiliates, as the case may be.

2. SEP Management.

- G. ~~Respondent shall have a qualified~~ The Grant Agreement shall provide that the Historic Trust shall appoint a representative to attend construction meetings ~~to assist with managing and provide input in the management of~~ the SEP until the SEP is fully implemented.
- H. Due to the nature and character of the SEP as an historical and a preservation ~~nature of the~~ project, DPNR-State Historic Preservation Office will oversee all aspects of the implementation and completion of the SEP, ~~to include~~ including, but not limited to, the design of the ~~Raveling~~ graveling wall, selection of contractor(s);) for the same, management of the SEP, approval of work for the SEP, and payment. ~~— of fees, costs and expenses of the SEP, and the Grant Agreement for the SEP shall so provide.~~

3. Compliance with Applicable Laws.

~~This~~ Except with respect to the liability of Respondent and Respondent Parties (as hereinafter defined) for violations of any and all laws, regulations and permits within the enforcement jurisdiction of Complainant arising out of any and all matters described in the Notice and the Failure to Cure, this Agreement in no way relieves Respondent of its responsibility to comply with any ~~other~~ applicable federal or territorial laws, regulations

and permits not specifically mentioned herein, and compliance with this Agreement shall not constitute a defense to any action pursuant to said laws, regulations, or permits raised by any territorial or federal agency other than DPNR.

4. Release.

~~Upon compliance with all terms and conditions of this Agreement~~Except as otherwise expressly set forth in this Agreement, including, but not limited to, Paragraph 6 hereof, DPNR fully and unconditionally releases and discharges Respondent and its successors, assigns, members, managers, employees, affiliates, subsidiaries, agents, representatives and attorneys (hereinafter "Respondent Parties"), ~~except as specifically provided in Paragraph 7 of this Agreement,~~ from any and all claims, demands, liens, causes of action, suits, damages, judgments, debts or liabilities whatsoever, both at law or in equity, which DPNR and any of its successors or assigns may have now against Respondent or any Respondent Parties relating to any alleged violation ~~indicated~~of any and all laws, regulations or permits within the enforcement jurisdiction of Complainant arising out of any and all matters contemplated herein and/or in the Notice of Violation Assessment NOVA-04-16-STT, the Settlement Agreement, the Notice, and or the Failure to Cure-(hereinafter referred to, collectively, as "Released Claims").

5. ~~Covenant~~ Covenants Not to Sue.

In consideration of Respondent's agreement to the ~~actions that will be performed by Respondent under the terms of~~ obligations set forth in this Agreement, and except as ~~specifically expressly~~ provided in Paragraph 6 of this Agreement, DPNR covenants not to sue or to take further administrative action against Respondent or any Respondent Parties for ~~alleged violations of the Act, relating to any alleged violation indicated herein or in the Notice of Violation Assessment NOVA-04-16-STT, Settlement Agreement, Notice, and Failure to Cure now known~~ any Released Claims. These covenants not to sue are conditioned upon ~~satisfactory~~ performance by Respondent of its obligations under this Agreement.

6. Reservations of Rights by DPNR-CZM.

DPNR reserves and this Agreement is without prejudice to, all rights against Respondent with respect to all matters not expressly included within the Covenants Not To Sue in Paragraph ~~(5)~~ hereof. Notwithstanding any other provisions of this Agreement, DPNR reserves, and this Agreement is without prejudice to, all rights against Respondent with respect to:

- (a) Liability for failure of Respondent to ~~meet a requirement of~~ perform any of its obligations under this Agreement; and

(b) Liability for ~~costs incurred or to be incurred by the United States Virgin Islands not specifically covered by this Agreement or unbeknownst to the Complainant;~~

~~(e) Liability for future violations (occurring that occur after the Commissioner's approval of this Agreement.)~~ by the Commissioner of DPNR.

(d) Liability for damages for injury to, destruction of, or loss of natural resources, and for costs of any natural resource damage assessments ~~not specifically covered by this Agreement or unbeknownst to the Complainant,~~ arising out of events, conditions or circumstances not within the scope of the Released Claims.

Nothing in this Agreement is intended to be or shall be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Government of the Virgin Islands may have against any person, firm, corporation or other entity not a signatory to this Agreement, other than Respondent Parties. ~~This Supplemental Settlement~~ Except as expressly set forth herein, this Agreement does not limit or affect the rights of Respondent or the Government of the Virgin Islands against any third parties not named herein, nor the rights of third parties not parties to this Agreement against any other parties, ~~other than Respondent Parties.~~

7. No Admission.

Neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by Respondent of any liability, unlawful conduct of any kind or violation by Respondent of any law, regulation or permit.

8. Modification.

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any and all prior agreements, representations and understanding~~understandings~~, whether written or oral, relating to the subject matter hereof. Prior drafts of this Agreement shall not be used in any action involving the interpretation or enforcement of this Agreement. All modifications to this Agreement shall be in writing and signed by the Parties hereto.

9. Jurisdiction.

This Agreement shall be construed and its performance enforced under the laws of the United States Virgin Islands.

10. Representations.

Each person executing this Agreement represents that the party hereto on whose behalf the person is executing this Agreement has duly authorized the execution of this Agreement and that such person is authorized to execute this Agreement on behalf of such party.

JEAN-PIERRE L. ORIOL
Director – Coastal Zone Management
~~of JIM, LLC~~
8100 Lindberg Bay, Suite #61
~~Inc., Sole Member, President~~
Cyril E. King Airport
Terminal Building, 2nd Floor
St. Thomas, USVI 00802

JEFFERY EPSTEIN, President of
GREAT-ST. Poplar, Inc., as Sole Member
Respondent, GREAT ST. JIM, LLCPoplar,

SO ORDERED THIS ____ DAY OF _____ 2017

HONORABLE DAWN L. HENRY, COMMISSIONER
DEPARTMENT OF PLANNING AND NATURAL RESOURCES