

AFFIDAVIT

I, ALAN D. SMITH, having been duly sworn depose and state:

1. I am an adult resident and citizen of the United States Virgin Islands and have personal knowledge of the facts stated herein.
2. This affidavit is given at the request of Mr. Jose Rosario-Fabregas-Fabregas, Project Manager (GS-0401-12), Antilles Permits Section, North Permits Branch, Regulatory Division.
3. I have been advised that Mr. Rosario-Fabregas has been served with a Notice of Proposed Removal from Federal Service for assisting outside parties in pursuing complaints against the Army Corps of Engineers in violation of 5 CFR 752.
4. I was admitted to practice law in the courts of the United States Virgin Islands in 1978 and licensed to practice law in the Virgin Islands in 1991.
5. At all time relevant I was Of Counsel to the Law Offices of Hodge & Francois in St. Thomas, United States Virgin Islands.
6. In 2008 the Law Offices of Hodge & Francois were retained by Little St. James, LLC, a Virgin Islands Limited Liability Company to represent it in an administrative enforcement action commenced in 2003 by the United States Army Corps of Engineers, Antilles Regulatory Section for alleged violations of SAJ-1999-3354 (IP-VG).
7. I was assigned to represent Little St. James, LLC in the aforementioned matter.
8. In the course of representing Little St. James, LLC I requested a meeting with Mr. Sindulfo Castillo, of the United States Army Corps of Engineers, Regulatory Section to discuss the status of the SAJ-1999-3345 (IP-VG).
9. My request was granted and a meeting was held on April 27, 2009 at the Army Corps of Engineers offices in Puerto Rico.
10. Mr. Castillo and Mr. Jose Rosario-Fabregas represented the Army Corps of Engineers at the April 27, 2009 meeting.
11. During the April 27, 2009 meeting Mr. Castillo and Mr. Rosario-Fabregas provided background information, discussed the status of the pending enforcement action, and specified the course of action that Little St. James would have to pursue in order to resolve the outstanding enforcement issues.
12. On or about May 11, 2009, I prepared a draft letter to Mr. Sindulfo. My letter summarized my understanding of the relevant background, the items discussed during meeting and the course of action that Little St. James, LLC would have to follow in order to resolve the outstanding enforcement issues.
13. I shared this letter with Mr. Rosario-Fabregas and requested that he review the letter and confirm the accuracy of its content both with respect to the background, discussion, the agreements reached during the meeting, and the steps to be taken by Little St. James, LLC.
14. On June 12, 2009, I sent a follow-up email to Mr. Rosario-Fabregas and requested his comments regarding the May 11, 2009 draft letter to Mr. Sindulfo.

15. On June 16, 2009, Mr. Rosario-Fabregas responded via email to my initial request with his comments and corrections to my May 11, 2009 draft letter to Mr. Sindulfo.
16. Shortly after receiving Mr. Rosario-Fabregas response, and after consulting with my client, I prepared the final version of the letter and sent to it Mr. Sindulfo.
17. To my knowledge Little St. James, LLC has never filed a complaint against the Army Corps of Engineers for any action it took or failed to take in connection with the enforcement action commenced in 2003 for alleged violations of SAJ-1999-3354 (IP-VG).
18. My communications with Mr. Rosario-Fabregas were taken only for purpose of confirming the accuracy of the content of my May 11, 2009 draft letter to Mr. Sindulfo with respect to the background, discussion, the agreements reached during the meeting, and the steps to be taken by Little St. James, LLC.
19. At no time did I file or pursue a complaint against the Army Corps of Engineers on behalf of Little St. James, LLC nor did I request, solicit, suggest or imply that the Mr. Rosario-Fabregas assist me or Little St. James, LLC with respect to any complaint against the Army Corps of Engineers.

Dated:

Alan D. Smith

Subscribed to and sworn to
before me this ____ day of November 2009

Notary Public