



March 25, 2019

Attorney Vonetta Norman
Counsel
Virgin Islands Department of Planning and Natural Resources
Division of Coastal Zone Management
Charles Wesley Turnbull Regional Public Library
4607 Tutu Park Mall
St. Thomas, VI 00802

Re: Cease & Desist Order NO. C&D-01-19-STT
Great St. Jim LLC
Great St. James, St. Thomas, U.S. Virgin Islands

Dear Attorney Norman:

I am in receipt of your correspondence dated March 12, 2019. I apologize for the delay in responding, but as previously communicated to you, I was off-island for an extended period. Thank you for your thoughtful response. In the interest of bringing this matter to a speedy resolution, we would like to make a proposal which we believe would be satisfactory to both parties. However, I would first like to address the portion of your letter in which you address our allegations of an unauthorized search of Great Saint James.

You concluded in your correspondence that DPNR had full authority to conduct an invasive search of Great Saint James due to the fact that Permit CZT-05-17L was an active permit. While we do not disagree that the Commission has the right to reasonably enter and inspect parcels where a permit has been issued, you and your enforcement officers strayed well beyond the boundaries of your authority. Permit CZT-05-17L, the "active" permit, was for activity to be completed on Parcel C-1 of Great Saint James. However, your agency's search was clearly not limited to the parcel upon which the active permit was issued. Rather, the majority of your activities on the day in question, were on Parcel A of Great Saint James, a parcel for which, according to your correspondence, there was no active permit. Therefore, your activity on any parcel other than Parcel C was clearly unauthorized and was a blatant violation of my client's right to privacy. When we questioned your agency's authority for traipsing all over the island, you communicated multiple times that DPNR could go "wherever we want" when this is not the case. This is illustrative of why we have repeatedly requested some level of cooperation in connection with your agency's visits to the island. As stated above, we have no problem with DPNR inspecting the premises on which there is an open permit, but we ask that you respect the boundaries placed upon you by the statute and regulations and refrain from repeatedly and aggressively violating my client's rights.

I'd like to turn now to your position that Application No. CZT-28-L, Application No. CZT-29-17L and the Application for Modification to Permit Number CZT-05-17L ("Applications") were effectively withdrawn for lack of activity¹ and were not approved by operation of law. While I have touched upon our basis for

¹ Communications from your agency after the February 12, 2018 additional submission, indicate that additional action was taken on the Applications by your office despite your assertion now, one year later, that they were withdrawn. While we concur that V.I.R.R. tit.12 §910-7(a) provides that "all responses must be submitted within 90 days of the Notice of Deficiency, unless a request for extension is granted. Failure to provide the requested information *may* be deemed a withdrawal of the application pursuant to section 910-6(c) of these Rules and Regulations" it appears that the applications in fact have not been withdrawn due to the lack of notice to the applicant. V.I.R.R. tit.12 §910-6(c) requires that the applicant must be given written notice that the application will be deemed withdrawn if the

disagreement in the below footnote, I would much rather focus on how we can resolve the outstanding issue to the satisfaction of both parties. To the best of our knowledge your agency is in possession of all of the information necessary to process the permits. Therefore, we would ask that your agency reprocess the applications as previously submitted and issue the requested permits rather than require us to submit the exact same information for the second time.

We believe this is a reasonable solution to rectify these outstanding matters. We are happy to respond to any reasonable requests for additional information in connection with the issuance of the permits.

Please do not hesitate to contact me if you have any questions or need additional information.

Very truly yours,

Erika Kellerhals

information requested is not provided within 10 days of the service of the notice on the application. We received no such notice from your agency that the Commissioner had removed the application from active consideration. Further, the cited regulation clearly states that the failure to provide the requested information "may" be deemed a withdrawal. By its very language, the regulation does not make the withdrawal mandatory. This, coupled with your agency's further analysis of the Applications and the lack of notification of withdrawal would seem to conflict with your assertion that the Applications were withdrawn.