

**Department of Planning and Natural Resources**

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St. Thomas, U.S. Virgin Islands 00802-
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FACSIMILE TRANSMITTAL

To:	Maria Hodge, Esq. Offices of Hodge & Francois
Fax Number:	[REDACTED]
Pages:	9 (Including Cover Page)
From	Jean-Pierre L. Oriol, Director CZM
Date:	March 8, 2012
Re:	

Urgent:

☐ For Review and Approval ☐ Please Comment ☐ Please Reply ☐ For Your Information

Comments:

As requested, attached is the Notice of Violation for Nautilus, Inc.

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

**ALICIA BARNES, COMMISSIONER
DEPARTMENT OF PLANNING AND NATURAL
RESOURCES,**

COMPLAINANT,

VS.

NAUTILUS, INC.

RESPONDENT.

NOVA-01-12-STT

**NOTICE OF VIOLATION,
NOTICE OF ASSESSMENT
OF CIVIL PENALTY,
ORDER FOR
CORRECTIVE ACTION
AND NOTICE OF
OPPORTUNITY FOR
HEARING**

**PROCEEDING UNDER V.I. CODE ANN. TIT. 12, SECTION 913(6)
OF THE COASTAL ZONE MANAGEMENT ACT.**

I. AUTHORITY

Consistent with the policy of the United States Virgin Islands, as declared in V.I. Code Ann. tit. 12, Section 903(b)(1), to protect, maintain, preserve and where feasible, enhance and restore, the overall quality of the environment in the coastal zone, the natural and man-made resources therein, and the scenic and historic resources of the coastal zone for the benefit of residents and visitors of the Virgin Islands, the Commissioner of the Department of Planning and Natural Resources issues this NOTICE OF VIOLATION, NOTICE OF ASSESSMENT OF CIVIL PENALTY, ORDER FOR CORRECTIVE ACTION and NOTICE OF OPPORTUNITY FOR HEARING, in accordance with the authority conferred upon him by V.I. Code Ann. tit. 12, Section 913(b)(6).

NOVA-01-12-STT
NAUTILUS, INC.
Page 2

II. FINDINGS OF FACT

1. Respondent, Nautilus, Inc. (hereinafter "Respondent") is a duly registered limited liability company conducting business in the United States Virgin Islands.
2. Respondent is a person as that term is defined in Section 902 of the Coastal Zone Management (CZM) Act.
3. Respondent is the owner of property described as Little St. James Cay, on St. Thomas, Virgin Islands (hereinafter "the Property").
4. Little St. James Cay is located within the first tier of the Coastal Zone.
5. On or about December 8, 2011 personnel from the divisions of Coastal Zone Management and Fish and Wildlife conducted a site visit at Little St. James Cay.
6. Upon inspection personnel found excavation at the shoreline and possible near shore soil disposal at the cay.
7. Further inspection revealed track hoe operations at the northern point of Little St. James, Cay.
8. The work conducted at Little St. James Cay listed herein constitutes a violation of the Coastal Zone Management Act.

III. STATEMENT OF LAW

1. V.I. Code Ann. tit. 12, § 902(v) states:

"Person" means any individual, organization, partnership, association, corporation or other entity, including any utility, the Government of the Virgin Islands, the Government of the United States, any department, agency, board, authority or commission of such governments, including specifically the Virgin Islands Port Authority and the Virgin Islands Water and Power Authority, and any officer or governing or managing body of any of the foregoing.

2. V.I. Code Ann. tit. § 902(i) states:

"Coastal zone permit" means a permit for any development within the first tier of the coastal zone that is required pursuant to section 906 of this chapter [chapter 21].

NOVA-01-12-STT
NAUTILUS, INC.
Page 3

3. V.I. Code Ann. tit. 12, § 902(r) states:

"First Tier" means that area extending landward from the outer limit of the territorial sea, including all offshore islands and cays, to distances inland as specified in the maps incorporated by reference in section 908, subsection (a) of this chapter [chapter 21].

4. V.I. Code Ann. tit. 12, § 902(l) states:

"Development" means the placement, erection, or removal of any fill, solid material or structure on land, in or under the water; discharge or disposal of any dredged material or of any liquid or solid waste; grading, removing, dredging, mining, or extraction of any materials, including mineral resources; subdivision of land pursuant to Title 29, chapter 3, of this Code; construction, reconstruction, removal, demolition or alteration of the size of any structure; or removal or harvesting of vegetation, including coral. Development shall not be defined or interpreted to include activities related to or undertaken in conjunction with the cultivation, use or subdivision of land for agricultural purposes which do not disturb the coastal waters or sea, or any improvements made in the interior of any structure.

5. V.I. Code Ann. tit 12, §903 (a)(5) states, it is CZM's mandate to:

promote the public safety, health and welfare, and to protect public and private property wildlife ocean resources and the natural environment.

6. V.I. Code Ann. tit. 12, § 910(a)(1) states:

On or after the effective date of this chapter, any person wishing to perform or undertake any development in the first tier of the coastal zone, except as provided in subsection (b) of this section, shall obtain a coastal zone permit in addition to obtaining any other permit required by law from any public agency prior to performing or undertaking any development.

7. V.I. Code Ann. tit., 12 § 911(a)(1) states, in pertinent part:

No person shall develop or occupy the trust lands or other submerged or filled lands of the United States Virgin Islands without securing a coastal zone permit which includes, in addition to the elements of a section 910 permit, a permit or lease for the development or occupancy of the trust lands or other submerged or filled lands.

8. V.I. Code Ann. tit. 12, Section 913(b)(6) states, in pertinent part:

NOVA-01-12-STT
NAUTILUS, INC.
Page 4

When the Commissioner or a Committee member has reason to believe that any person has undertaken, or is threatening to undertake, any activity that may require a coastal zone permit without securing a coastal zone permit, or that may be inconsistent with any coastal zone permit previously issued, the Commissioner or Committee member may issue a written order directing such person to cease and desist. The cease and desist order shall state the reasons for the Commission's or Commissioner's decision and may be subject to such terms and conditions as the Commission or Commissioner deems necessary to ensure compliance with the provisions of this chapter including, without limitation, immediate removal of any fill or other material, suspension of the coastal zone permit, or the setting of a schedule within which steps must be taken to obtain a coastal zone permit pursuant to this chapter....

9. V.I. Code Ann. tit. 12, § 913(c)(1) states:

Any person who violates any provision of this chapter, or any regulation or order issued hereunder, shall be subject to a civil fine of not to exceed ten thousand (\$10,000) dollars.

10. V.I. Code Ann. tit. 12, § 913(c)(3) provides:

In addition to any other penalties provided by the law, any person who intentionally and knowingly performs any development in violation of this chapter shall be subject to a civil fine of not less than one thousand dollars nor more than ten thousand dollars per day for each day during which such violation occurs.

11. V.I. Code Ann. tit. 12, § 913(c)(5) states:

All civil penalties permitted herein shall be assessed by the appropriate court; provided, however, that at such time, if any, that the Commissioner may promulgate rules and regulations establishing a procedure for the administrative assessment of civil penalties, it or the Commissioner shall have the alternative of proceeding by means of court assessment or such administrative procedure.

IV. CONCLUSIONS OF LAW

1. The Commissioner is authorized to bring this enforcement action and issue this NOVA pursuant to V.I. Code Ann. tit. 12, § 913.
2. Respondent is considered a "person" within the meaning of V.I. Code Ann. tit. 12, § 902(v).
3. Respondent has violated Section 910(a)(1) of the Coastal Zone Management

NOVA-01-12-STT
NAUTILUS, INC.
Page 5

Act by conducting work on the island of Little St. James, thus performing or undertaking development without first obtaining a CZM permit.

4. Respondent is subject to enforcement pursuant to V.I. Code Ann. tit. 12, § 913(b)(1).

V. DETERMINATION

The Commissioner has determined that the Respondent's violation of Section 910(a) of the Virgin Islands Coastal Zone Management Act has unreasonably subjected the coastal zone and the land and waters thereof to serious and unreasonable risk. Stringent enforcement action, therefore, is reasonable and required under Section 913(b)(6) in order to attain the goals and policies of the Coastal Zone Management Program and to protect the public health, welfare and the environment.

Section 913(c)(3) of the Code authorizes CZM to assess civil fines of up to \$10,000 per day per violation of any provision of Chapter 21 that is done intentionally and knowingly.

VI. ORDER FOR CORRECTIVE ACTION

In consideration of the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that:

- (1) Respondent shall remove the structure that is the subject of this Notice of Violation.

Failure to comply with the Order of Corrective Action constitutes an additional violation, and will subject the Respondent to further enforcement action.

VII. NOTICE OF PENALTY ASSESSMENT

Pursuant to V.I. Code Ann. tit. 12, § 913-(c) 3 the Respondent is hereby ORDERED to pay a civil penalty in the total amount of ONE HUNDRED FIFTY THOUSAND and 00/100 Dollars (\$150,000.00), for engaging in development at Little St. James Cay without a valid CZM permit; for endangering Acropora coral, a federally protected species; for detrimentally impacting water quality in a marine habitat known to contain federally protected species; for initiating development without a permit; and for engaging in a pattern of violations of the CZM Act.

NOVA-01-12-STT
NAUTILUS, INC.
Page 6

VIII. OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a formal administrative hearing pursuant to V. I. R. & Regs. tit. 12, § 913-3(g)(5). Respondent may mail or personally serve its request to Alicia Barnes, Commissioner of the Department of Planning and Natural Resources, Cyril E. King Airport Terminal Building Second Floor, St. Thomas, Virgin Islands 00802. This notice must be received by the Commissioner within thirty (30) days after Respondent is served in order to preserve your right to a hearing. Respondent should include a copy of this NOVA or refer to the case number contained in the caption. If Respondent chooses not to request a hearing, Respondent may take one of the following actions:

- (a) Accept the penalty by taking the actions described in Section X herein.
- (b) Seek to have the NOVA Amended, Modified or Rescinded pursuant to V. I. R. & Regs. tit. 12, section 913 (g) (2); or
- (c) Take no action, in which case the NOVA becomes a final administrative decision the 30th day after service.

Respondent's request for hearing may include an answer in which Respondent clearly and directly admits, deny, or explain each of the factual allegations in the Notice of Violation and Assessment (NOVA) of which you have knowledge. In addition, Respondent's answer should contain (1) a definite statement of the facts that constitute the grounds for Respondent's defense, and (2) a statement of the facts that it intends to place in issue at the Hearing. Should Respondent decline to file a written Answer within thirty (30) days of receipt of this Notice, such inaction will be construed to constitute an admission of all facts alleged in the Notice of Violation and a waiver of Respondent's right to a Formal Hearing and grounds for the imposition of the assessed penalty without any further proceedings.

IX. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a Formal Hearing, it is the policy of DPNR to promote early resolution of environmental actions through settlement. An informal conference provides a forum in which Respondent may comment on the allegations made in the Notice of Violation. Respondent may also present any additional information Respondent considers relevant to the disposition of this matter, including actions Respondent has taken to mitigate the violation, and any special circumstances Respondent cares to raise. DPNR is empowered to modify the amount of the assessed penalty under appropriate circumstances to reflect any settlement agreement reached in an informal settlement conference.

Any request for an informal settlement conference or any questions Respondent may have relative to this Notice and Order may be directed to Winston Brathwaite, Legal Counsel,

NOVA-01-12-STT
NAUTILUS, INC.
Page 7

Division of Coastal Zone Management at the address listed in Section X of this Notice, or by telephone at (340) 774-3320.

Please take notice that a request for an informal settlement conference does not extend the thirty (30) day period during which a written Answer and request for a Hearing must be submitted. The informal conference procedure may be pursued either as an alternative to or simultaneously with the adjudicatory hearing procedures. Please take further notice that participation in a settlement conference does not constitute assurance of penalty remission. Any settlement that may be reached as a result of the conference will be memorialized in a Settlement Agreement to be issued by the Commissioner. The signing of a Settlement Agreement constitutes a waiver of the right to request a hearing on any matter stipulated therein.

X. PAYMENT OF PENALTY

Respondent may choose to comply with the terms of the Order for Corrective Action and to pay the penalty. The payment should be made by sending a cashier's or certified check payable to the Department of Planning and Natural Resources in the full amount of the penalty assessed in this Order to the following address: Department of Planning and Natural Resources, Division of Coastal Zone Management, 8100 Lindberg Bay, Suite #61, Cyril E. King Airport, St. Thomas VI 00802 or # 45 Mars Hill, Frederiksted, St. Croix, Virgin Islands 00840-44740. Should Respondent elect to pay the penalty in this manner, a copy of Respondent's letter transmitting the check should be sent to the attention of Attorney, Winston Brathwaite, Legal Counsel, Division of Coastal Zone Management.

XI. CAVEAT

Failure to comply with any of the terms of this Order will subject Respondent to additional enforcement action. Compliance with the terms of this Order does not constitute a waiver of Respondent's responsibility to comply with all other applicable territorial and federal laws and regulations.

XII. CONTACT

Should Respondent have further questions, please contact Winston Brathwaite, CZM Legal Counsel, Division of Coastal Zone Management at 774-3320 ext. 5118.

SO ORDERED THIS _____ DAY OF _____, 2012

ALICIA BARNES, COMMISSIONER
DEPARTMENT OF PLANNING AND NATURAL RESOURCES

NOVA-01-12-STT
NAUTILUS, INC.
Page 7

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XII. CONTACT

Should Respondent have further questions, please contact Winston Brathwaite, CZM Legal Counsel, Division of Coastal Zone Management at [REDACTED]

SO ORDERED THIS 24 DAY OF February, 2012


ALICIA BARNES, COMMISSIONER
DEPARTMENT OF PLANNING AND NATURAL RESOURCES