

CONFIDENTIAL SETTLEMENT AGREEMENT
BETWEEN
THE GOVERNMENT OF THE VIRGIN ISLANDS
DEPARTMENT OF PLANNING AND NATURAL RESOURCES
AND
GREAT ST. JIM, LLC

THIS SETTLEMENT AGREEMENT is entered into by the **VIRGIN ISLANDS DEPARTMENT OF PLANNING AND NATURAL RESOURCES** (“Complainant” or “DPNR”) and **GREAT ST. JIM, LLC** (“Respondent”).

WITNESSETH:

WHEREAS, the Complainant 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;

WHEREAS, the Respondent, Great St. Jim, LLC, a Virgin Islands limited liability company, (hereinafter “the Respondent”), is a person as that term is defined in Section 902 of the CZM Act.

WHEREAS, Respondent is the owner of property described as Parcels Nos. A Rem, A-1, and A-2, B-1 Rem, B-1-1, B-1-2, B-2 Rem, B-2-1, B-2-2, C-1 Rem, C-1-1, C-1-2, C-2 Rem, C-2-1, C-2-2 Great St. James Island, St. Thomas, Virgin Islands (hereinafter “the Property”).

~~WHEREAS, Parcels Nos. A Rem, A-1 and A-2 Great St. James Island, St. Thomas, Virgin Islands are~~ The Property is located within the first tier of the Coastal Zone.

~~WHEREAS, in response to numerous public complaints of development on Great St. James Cay,~~ a search of CZM records was performed and that revealed no permits or authorization letter for development or maintenance was issued for the Property other than a permit for the existing dock on Shallow Bay which is in the process of being assigned to Respondent.

WHEREAS, on or about April 18, 2016, Special Projects Coordinator David Rosa visited the ~~island~~ Property to conduct an unannounced inspection.

WHEREAS, upon arrival and initial inspection Coordinator Rosa observed what he believed was development in various areas at the Property. Immediately, Coordinator Rosa met with the local property manager, known as “Anna” and served upon her Cease & Desist Order No. [REDACTED]-01-STT dated April 18, 2016 and issued a verbal order to cease all activity on the island.

WHEREAS, upon further inspection ~~of at least 50%~~ of the Property, Coordinator Rosa observed what he believed were newly cut road paths, extensive bare soil with no vegetation growing from the exposed earth, four large circular areas were cleared at different ends of the island, un-weathered track hoe marks ~~allegedly from the equipment used to construct the helipad,~~ an excavation site with soil allegedly intended for a building site (Please see NOVA Exhibit Photos).

WHEREAS, DPNR acknowledges not all of the activities listed above were conducted by the Respondent and various unpermitted activities took place while the Property was under the control of the previous owner.

WHEREAS, Complainant has asserted that the activities ~~the infractions~~ listed above constituted violations of the Coastal Zone Management Act.

WHEREAS, accordingly, on April 22, 2016, NOVA-04-16-STT was issued and served April 25, 2016 on Respondent's representative Erika Kellerhals.

WHEREAS, on or about April 25, 2016, an informal conference was held between the parties and Respondent was informed of the allegations associated with NOVA-04-16-STT. At said meeting, negotiations ensued and the parties agreed to reconvene upon further investigation.

WHEREAS, Respondent has disputed Complainant's determinations stated in the NOVA.

WHEREAS, on or about June 10, 2015, the parties attended a telephone conference. At said telephone conference, negotiations ensued and the parties reached an Agreement to resolve this matter (the "Agreement");

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

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Parties Bound

Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to legally bind the party he or she represents.

2. Monetary Penalty

Respondent shall pay a stipulated penalty in the amount of **SEVENTY THOUSAND**

DOLLARS AND ZERO CENTS (\$70,000.00) payable upon execution of this Agreement.

3. Corrective Action

- (a) The Respondent shall immediately Cease and Desist from any further development at the Property without first obtaining approval and full authorization from DPNR to be granted through a CZM Permit or Letter of Authorization, which CZM Permit or Letter of Authorization shall be processed and approved in due course and in a timely manner by DPNR in accordance with applicable law.
- (b) Respondent shall submit to CZM a permit application for all work it currently would like to perform at the property to include a detailed proposed work plan.
- (c) Respondent and CZM shall conduct a “walk-through” of the Property to inspect the proposed work plan for the permit application.
- (d) Failure to comply with this Order of Corrective Action, after written notice to Respondent of the alleged failure to comply and the expiration of a ninety (90) day cure period without Respondent effectuating a cure, constitutes an additional violation, will subject the Respondent to further enforcement action, and shall cause an assessment of a new the penalty amount of this Settlement Agreement to revert back to the original fine amount of \$280,000.00 from the Notice of Violation Assessment NOVA-04-16-STT in an amount to be determined based upon the nature of the failure to comply, the condition of the Property at that time and the extent of Respondent’s compliance with the Order of Corrective Action at that time.

~~4. Compliance with Applicable Laws~~

~~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.~~

54. Release

~~Upon compliance with all terms and conditions of this Agreement, Respondent shall be released from civil liability for the specific violations of the Act mentioned herein. DPNR fully and unconditionally releases and discharges Respondent and its successors, assigns, members, managers, employees, affiliates, subsidiaries, agents, representatives and attorneys from any and all claims, demands, liens, causes of action, suits, damages, judgments, debts or liabilities whatsoever, both at law or in equity, whether known or unknown, suspected or unsuspected, which DPNR and any of its successors or assigns may have now against Respondent.~~

65. Covenant Not to Sue

In consideration of the actions that will be performed by Respondent under the terms of this Agreement, and except as specifically provided in Paragraph ~~76~~ of this Agreement, DPNR covenants not to sue or to take administrative action against Respondent for alleged violations of the Act, relating to any alleged violation indicated ~~to~~ herein [or in the NOVA], now known, or allegedly occurring prior to the date of this Agreement. These covenants not to sue are conditioned upon the reasonably complete and satisfactory performance by Respondent of its material obligations under this Agreement.

76. 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 (65). 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 this agreement; ~~and;~~
- ~~(b)—(a) _____ Liability for costs incurred or to be incurred by the United States Virgin Islands;~~
- (e)—Liability for future violations (occurring after the Commissioner's approval of this Agreement.) ~~and~~
- ~~(d)—(b) _____ Criminal liability; and~~
- ~~(e)—Liability for damages for injury to, destruction of, or loss of natural resources, and for costs of any natural resource damage assessments proven, by final adjudication in a court of law having personal and subject matter jurisdiction over this matter, to be caused by the Respondent.~~

~~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. This Settlement 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.~~

87. Indemnification

~~Respondent agrees to indemnify, investigate, defend, and hold harmless DPNR from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including any attorney's fees) and causes of action of whatsoever character which DPNR may incur, sustain or be subjected to, arising out of or in any way connected to the actions taken by Respondent that resulted in this Settlement Agreement, the actions to be performed by Respondent under this Agreement, and arising from any cause, except the sole negligence of DPNR.~~

78. 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.

89. Confidentiality.

a. This Agreement shall not be filed with any court. This Agreement may not be introduced in any proceeding except when required to obtain approval hereof, to enforce this Agreement or where this Agreement will be a defense.

b. Except as required by law, rule, regulation or subpoenas, neither DPNR nor its employees or representatives shall disclose to any person or entity any information whatsoever regarding: (i) DPNR's allegations of unlawful conduct by Respondent or (ii) the existence or substance of this Agreement. The above limitation does not include DPNR's disclosure of such information to any attorneys with whom it chooses to consult or seek advice

regarding the consideration of and decision to execute this Agreement with the understanding that DPNR shall inform anyone falling within this category of the confidentially provisions contained herein and the individual to whom the information is disclosed agrees to abide by the confidentiality provisions contained herein.

c. The parties acknowledge and agree that any violation of this Paragraph by DPNR or its employees or representatives, including but not limited to its attorneys, will constitute a material breach of this Confidential Settlement Agreement which will entitle Respondent to bring an action in Court for relief including injunctive relief and for damages.

d. The parties also acknowledge and agree that any violation of this Paragraph by Respondent or its representatives, including but not limited to its attorneys, will constitute a material breach of this Confidential Settlement Agreement which will entitle DPNR to bring an action in Court for relief including injunctive relief and for damages.

910. Permitted Actions

It is acknowledged and agreed by DPNR that the Respondent has requested and received final approval from DPNR for the following development activities to take place on the Property:

i)

It being further acknowledged and agreed by DPNR that Respondent shall not need any further approval by DPNR regarding the activities listed in this Section 910 and Respondent may commence said activities immediately upon execution of this Agreement.

9101. 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, 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 pParties hereto.

102. Jurisdiction

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

113. 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.

IN WITNESS WHEREOF, the undersigned have executed this Confidential Settlement Agreement as of the day and year written below.

GREAT ST. JIM, LLC
By: Poplar, Inc., Sole Member

By: ERIKA A. KELLERHALS, SOLE MEMBER
Its:

Date

GOVERNMENT OF THE VIRGIN ISLANDS
DEPARTMENT OF PLANNING AND NATURAL RESOURCES

JEAN-PIERRE L. ORIOL, DIRECTOR
DIVISION OF COASTAL ZONE MANAGEMENT

Date

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

Date