



St. Croix Environmental Association

A Chapter of the Virgin Islands Conservation Society

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Oral Testimony

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on

Environmental Assessment Report

Estates William and Punch, Frederiksted, St. Croix VI

September, 2008

William and Punch, LLC

2111 Company Street, Suite 3

Christiansted, USVI 00820

November 6, 2008

Thank you for the opportunity to provide public comment on the application of William & Punch, LLC for a major CZM Permit. The testimony I offer tonight represents a summary of written testimony prepared by St. Croix Environmental Association and submitted to the Coast Zone Management Commission, St. Croix Committee for the record and your consideration at this time.

Before I begin SEA's testimony allow me to introduce myself. I am Paul Chakroff, Managing Director of the St. Croix Environmental Association. As for my understanding of the environmental issues under discussion tonight – I hold BS and MS degrees from the College of Environmental Science and Forestry in Syracuse. I worked for the US Environmental Protection Agency for 4 years, much of that time reviewing environmental assessments; and for 2 years, as advisor to the Commissioner of the National Pollution Control Commission of The Philippines. I understand the concepts and terms *environmental assessment, alternatives to the proposed development, minimize adverse effects, and mitigation*; concepts – codified in the National Environmental Policy Act of 1969, US Clean Water Act of 1977, and US Coastal Zone Management Act of 1972 – that made their way into the Virgin Islands Coastal Zone Management Act of 1978, and which apply to the CZM permit application before us tonight.

Staff and directors of the St. Croix Environmental Association have been in communication with the principals of William and Punch and representatives of the Mashantucket Pequot Tribal Nation for well over a year on the conceptual design of this project. SEA provided written recommendations to William & Punch October 24, 2007. While we appreciate the opportunities for community engagement afforded by William & Punch during this design phase, SEA staff

and directors are disappointed that our recommendations are not well reflected in the final Environmental Assessment Report. SEA is particularly disappointed, because with preparation of an responsive EAR and avoidance or minimization of environmental impact where practicable, and compensatory mitigation where not, the project may have been able to move forward without major opposition on environmental grounds.

General Comments on the William & Punch EAR

The William & Punch EAR includes detailed information on the project that is needed for design engineers and architects, and generally good baseline information about the existing environment in the area of the proposed development. What is generally missing is *information ... about the effects which [the] proposed development is likely to have on the environment; an analysis and description of ways in which the significant adverse effects of such development might be mitigated and minimized; and an identification and analysis of reasonable alternatives to such development. (VICZM Act of 1978)*

SEA determines that inconsistencies and insufficiencies in the EAR cause it to be inadequate for assessment of a) the project's potential environmental impacts or b) measures required to avoid, minimize or mitigate unavoidable adverse environmental impacts. DPNR Division of Fish and Wildlife staff appear to share SEA's general evaluation of the EAR in writing: *[t]he information provided by the applicant is insufficient for the Division of Fish and Wildlife to fully evaluate.*

For example:

Section 6.00 Setting and Probable Impacts on the Natural Environment

The EAR states that *total water volume will be similar in the pre- and post-development conditions* in the William/Prosperity wetland. Yet in EAR Appendix B it is written *[t]he project has achieved a reduction in flows to the wetland of between 30 and 40%*. To further confuse matters, in communications with SEA staff, William and Punch representatives stated that the water level would be raised permanently. Which of these statements represents the real effect of the project on the seasonal water level of the William/Prosperity wetland?

As a second example, there is much confusion in EAR drawings about the boundary of *the wetland*. The Clean Water Act Section 404 jurisdictional William/Prosperity wetland delineation is identified on some drawings. A different delineation is identified on other drawings as: WETLAND LINE or APPROX LOCATION OF EXISTING WETLAND. According to one EAR drawing, the relocated VI Route 63 will actually cross over the line defining the APPROX LOCATION OF EXISTING WETLAND.

SEA recommends that CZM require discrepancies in wetland delineation be resolved and that the applicant provide adequate buffers to protect the William/Prosperity wetland from adverse environmental impacts to the extent possible, and mitigate unavoidable impacts.

Section 7:00 Impact of the Proposed project on the Human Environment

As a final example, according to the VI navigation regulations pertaining to the operation of motorboats, personal watercraft and other thrillcraft:

William Beach is designated as non-motorized recreational watersports area specifically for wave surfing or windsurfing. When wave surfing or windsurfing activities are being conducted in the area, motorized recreational vessels are prohibited from using the area.

EAR Section 7.07 does not address the apparent conflict between non-motorized recreational watercraft and vessels entering and exiting the marina.

I could provide other examples, but I think the point is clear.

Section 8.00 Mitigation Plans

The partial page of the EAR in which mitigation plans are presented is not sufficient to adequately address environmental issues outlined in the CZM permit application. First, a list of 12 *aspects of the project* does not constitute a discussion of *mitigation plans*, and secondly, only six of the 12 aspects qualify as *mitigation*. DFW staff appears to share SEA's assessment of the mitigation plans, in writing: *[t]he applicant has not provided adequate mitigation plans that sufficiently address the potential impacts of the proposed project*. Furthermore, the US Fish and Wildlife Service concluded: *we believe that the project as proposed is a major construction project with significant impacts to various habitats without attempts at avoidance, minimization, or compensatory mitigation*.

SEA recommends that CZM require the applicant to prepare specific mitigation plans for unavoidable environmental impacts of the project, in order to enable SEA and others to make an informed determination of their adequacy as *mitigation*.

According to the VI CZM Act: an *Environmental Assessment Report ... shall include... an analysis and description of ways in which the significant adverse effects of such development might be mitigated and minimized*.

SEA's greatest concern with the turtle mitigation plan appended to the EAR, however, is that it is not a final plan. According to the Turtle Mitigation Plan:

[w]hen the CZM Permit is approved and detailed construction plans are being prepared, the designers will work with CZM and DFW for their review and input in the final beach nourishment, landscape, lighting and turtle mitigation plans.

It is SEA's understanding from advising in the preparation of the major CZM permit application for The Palms at Pelican Cove, that mitigation plans must be considered by CZM as part of the CZM permit application process, not after the approval of the CZM permit. According to the VI CZM Act, the CZM Committee may issue a permit only after finding that:

the development as finally proposed incorporates to the maximum extent feasible mitigation measures to substantially lessen or eliminate any and all adverse environmental impacts of the development; otherwise the permit application shall be denied. The applicant shall have the burden of proof to demonstrate compliance with these requirements.

In a 1994 legal opinion in the case of Virgin Islands Conservation Society v. BLUA, the CZM Commission, and Sugar Bay Land Development, U.S. District Court Judge Stanley S. Brotman wrote:

.... the CZM Committee is statutorily required to gauge the environmental impact of each project and to explore possible mitigative measures before granting a permit....

Deferring the review of plans and studies until after a permit is issued creates twin evils: the tendency to tolerate more environmental harm once development has begun, and the incentive for applicants to present the CZM committee with a fait accompli by delaying the submission of the requested information....

Adequate review and investigation of permit applications serves as the lynchpin of the VICZMA. To ensure adequate review, the legislature requires the CZM Committee to make certain findings before ever issuing a permit. Accordingly, the Committee must require all information reasonably necessary before making the delicate judgments required by the VICZMA ...

For these reasons, this court holds that no permit may issue until all necessary studies and plans have been submitted and approved by the Division of Coastal Zone Management and/or the Committee.

Section 9.00 Alternatives to Proposed Action

According to US Council on Environmental Quality the section of an Environmental Impact Statement discussing the alternatives to the proposed action is the “**heart**” of the EIS.

This section rigorously explores and objectively evaluates all reasonable alternatives including the proposed action... It should include relevant comparisons on environmental and other grounds... Discussion of the environmental impacts of these alternatives should be limited to a concise descriptive summary of such impacts in a comparative form, including charts or tables, thus sharply defining the issues and providing a clear basis for choice among options.

The partial page of the William & Punch EAR on Alternatives to Proposed Action is wholly inadequate for SEA or CZM to compare the proposed project design to alternative project designs.

In the EAR Alternatives to Proposed Action section, William & Punch states that they *looked at various alternatives to the present proposal*. It is not enough to say that they looked at alternatives and concluded that the proposed alternative is the best. In this section of the EAR,

the applicant must (according to the VI CZM Act) provide an *analysis of reasonable alternatives to such development*, and in accordance with federal guidelines they must *rigorously explore and objectively evaluate all reasonable alternatives including the proposed action... thus sharply defining the issues and providing a clear basis for choice among options*.

William & Punch's Responses to CZM 3/25/08 Checklist of Deficiencies includes a well written Alternatives Analysis for the marina entrance jetties apparently prepared by Moffatt & Nichol. Four alternatives are comparatively evaluated and *the alternative that represents the best balance of the stated project goals* is recommended.

While the Alternatives Analysis addresses jettie orientation, it fails to address alternative lengths of the jetties or the location of the marine entrance. Furthermore, we do not understand why the Alternatives Analysis is limited to the Marina Entrance jetties. It should have addressed the marina and flushing channel as well. The DPNR Division of Fish and Wildlife wrote:

The applicant has not addressed all possible alternatives for the marina entrance to reduce the proposed project impacts. The applicant should consider eliminating the flushing channel and having the entrance to the marina from the south end of the property.

SEA recommends that CZM require an adequate evaluation of alternatives for all aspects of the proposed project before deeming the EAR sufficient to adequately assess environmental issues outlined in the CZM permit application.

Conclusions

SEA agrees with DPNR Division of Fish and Wildlife staff finding that the information provided by the applicant is insufficient to fully evaluate potential environmental impacts of the project.

SEA agrees with the legal opinion of U.S. District Court Judge Stanley S. Brotman when he wrote *that no permit may issue until all necessary studies and plans have been submitted and approved by the Division of Coastal Zone Management and/or the Committee*.

SEA recommends that the William and Punch Environmental Assessment Report as appended with responses to deficiencies be deemed by the CZM Commission to remain not sufficient to adequately assess environmental issues outlined in the CZM permit application;

And SEA recommends that the CZM Commission not approve the major CZM permit application of William and Punch, LLC in its current form, and require the application to be re-submitted when it is responsive to the VI Coastal Zone Management Act.

We offer and would welcome the opportunity to work with William & Punch on completing the mandated requirements for future CZM Commission review. Thank you for the opportunity to provide public comment on the application of William & Punch, LLC for a major CZM Permit.