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Guam Environmental
Protection Agency

December 13, 2019

RE: NOTICE OF VIOLATION and COMPLIANCE ORDER

Via Hand Delivery and Email

Mr. Walter S. Leon Guerrero
Administrator
Guam Environmental Protection Agency
17-3304 Mariner Avenue
Tiyán Barrigada, Guam 96913

RE: NOTICE OF VIOLATION and COMPLIANCE ORDER

Dear Mr. Leon Guerrero,

I am writing in response to the Notice of Violation and Compliance Order ("NOV") issued by the Guam Environmental Protection Agency dated December 6, 2019 and received on December 9, 2019. The NOV asserts that SandCastle is "discharging effluent across a public sidewalk . . . in violation of water quality standards for 'prohibited discharges' under 22 GAR §5104(f)(1)(J)." The Compliance Order provisions of the NOV require that SandCastle (1) immediately cease all discharge of flood water to the public sidewalk, (2) within 3 days provide a written plan detailing how we plan to safely discharge flood water going forward, (3) within 60 days submit a written plan outlining a permanent solution to the discharge issue, and (4) within 180 days complete construction on the permanent solution.

Upon receipt of the NOV, I immediately called and spoke with CDR Brian Bearden. I explained that due to GovGuam's inadequate storm water drainage system, SandCastle has been forced to act as the ponding basin for Tumon.

We are the lowest point in Tumon and so when the water in the Fujita ponding basin reaches the elevation of the box culvert pipe, it backflows to the low point (which is our property) and the storm drains in front of our property no longer act as drains but instead become *water supply points* as the water bubbles up, jumps the curb and floods into our property and down our driveways. We know this is true not only based on the GEDA Stanley Consultants study but also because after storms there are dead fish in our front driveway -- which come from the ponding basin. The government had thirty years to correct the problem so you can understand my disappointment and frustration at receiving an NOV that gives me three days to fix it.

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We have had to replace engines of employee cars because the water rises above the hoods of cars, rises above our loading dock and flows into our \$40 million theater. We only turn on the pump to push water back to San Vitores Road when the water level rises to the bottom of our transformer which creates a public life safety hazard. We have more than adequate on premises drainage and had no problem for the first 10 years of our operation but after Tumon continued to develop (often with government-approved projects containing no storm water retention) we simply can no longer handle all of Tumon's storm water in flash floods.

Although the cause of the discharge of water described in the NOV is not the fault of SandCastle, we would prefer to resolve GEPA's concerns cooperatively and so we have already taken the remedial steps outlined in the NOV. We have (1) ceased all discharge of flood water across the public sidewalk, and we are providing in this letter written plans for the (2) safe discharge of flood water going forward, and (3) a permanent solution to the discharge issue. We are also considering constructing in the future a flood wall and raised driveway as an added measure to prevent government storm water from running onto our property, but this is beyond the scope of the NOV.

In my conversation with CDR Bearden, he explained that the NOV was issued because of the "nuisance" created by the water gushing across the public sidewalk and creating a nuisance for pedestrians. He asked if we could connect the pipe directly into the storm drain system. I think that is an excellent idea and we ask for your support and assistance as we request permission from DPW to do this. In fairness, we feel this should be allowed since we are simply trying to put the government's flood water back where it came from.

In the meantime, we agreed that SandCastle engineers would redirect the pipe so that the water spreads across the SandCastle driveway rather than into the sidewalk. I believe CDR Bearden was satisfied with this plan. It is my understanding and expectation that the NOV will be deemed fully addressed and no longer pending since the above described steps have already been completed. I respectfully ask for confirmation in this regard.

If it is GEPA's position that the NOV has not been fully addressed by the steps described above, I ask that you provide a further written notice explaining the reason for this and a further opportunity for SandCastle to respond.

Also, for the record, we would like to point out two errors contained in the NOV.

- (i) The NOV erroneously states that the SandCastle has violated 22 GAR §5104(f)1(J) "Prohibited Discharges" No Person Shall Cause or Permit . . . any discharge which is in conflict with an approved Guam plan. Guam EPA relies on Tourism 2020 (Guam Visitors Bureau, 2014) as the Approved Guam Plan. This is incorrect since this document is not an approved Guam plan. It was prepared by the Guam Visitors Bureau and not approved by either the Legislature or the Governor. Furthermore, as the past Chairman of the Board for the Guam Visitors Bureau *and author of the Tourism 2020 Plan*, I can attest that the *intention* of the plan which you cited was for the *government* to correct the flooding issue.
- (ii) The NOV erroneously states that the SandCastle has violated 22 GAR §5104(a)(9) "Effluent Limitations" "No effluent shall, alone, or in combination with other sources, cause a violation of any applicable water quality standard."

The SandCastle is not discharging liquid waste or any form of waste. We are simply re-directing the storm water that flows onto our property back where it started. The source of the water is not from our property and as the Stanley Consultants Report shows, the source of the water is from the Fujita Pond. The quality of the water is the same as it starts when it runs onto our property from the street.

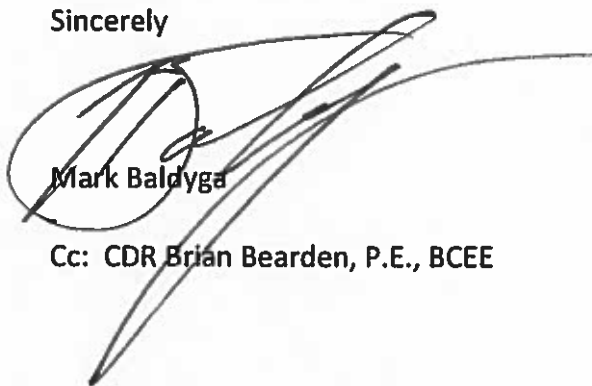
To recap, we propose the following action:

1. Pursuant to conversations with CDR Bearden, the discharge pipe has already been redirected to no longer spill across the public sidewalk. We believe that the reason for the NOV has therefore already been fully addressed and we respectfully request that GEPA confirm this to us in writing. If GEPA feels the NOV has not been fully addressed, please let us know so we may respond and, if appropriate, lodge a formal appeal.
2. We would greatly appreciate GEPA's assistance and support in working with DPW to permit the direct connection of the emergency pipe into the storm water system.
3. Longer term, in the absence of the government fulfilling its responsibilities, we are considering building a flood wall and raised driveway entrances to keep the government water off of our property. Given that this will cost over \$200,000, we will attempt to fund this as a priority but the direct connection into the storm drain system would work in the interim.

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In closing, I would like to thank your office and in particular CDR Brian Bearden for his and your positive cooperation and willingness to find the correction solution to the problem at hand.

Sincerely

A handwritten signature in black ink, appearing to read 'Mark Baldyga', is written over the printed name. The signature is stylized with a large loop at the beginning and a long, sweeping tail.

Cc: CDR Brian Bearden, P.E., BCEE