

thanks,, business plan should be in your handsshortly,,

On Mon, Nov 21, 2011 at 4:59 PM, Erika Kellerhals <[REDACTED]> wrote:

Good afternoon guys. I just wanted to follow up on a few outstanding matters and let you know when we stand on a few things:

1. EDC Application: I spent most of Sunday working with Jeanne & Cecile on the draft of the EDC application. I am finalizing the most recent version now – and will send out for review. Assuming we can work on the ownership issues, we should be in a position to file this week before the holiday and hopefully be on the agenda for the December 15, 2011 hearing. Jeffrey – will you be available to testify at that hearing if I can confirm that the new entity will be on it.
2. RT Park: Darren and I completed as much of the due diligence as possible. The key is the business plan of the RT park company – as I cannot vet the transactions and issue the necessary opinions without it. The opinions they want are pretty detailed so it will take a few days to get them completed from my end – so the sooner we get the business model the better.
3. Ownership Structure: You had asked whether or not a trust could apply for benefits under the EDC and RT Park. There is no prohibition in the EDC statute regarding an applicant being a trust (and when I use the term trust – I am referencing a living or otherwise revocable intervivos trust). Generally these are used to ensure business continuity in family enterprises. Darren has suggested using a Delaware or Massachusetts Business Trust –and I tend to agree that for purposes of the EDC – this may be a good idea.

The business trust would clearly work for the EDC (as would a regular trust). It would not likely work for the RT Park – as pursuant to the RT Park the company needs to be a Virgin Islands entity. The statute is silent on the use of a trust – but does reference "other entities" so it is arguable that we could use a USVI trust. Again – I think I am not clear on Jeffrey's desire to use an intervivos trust and perhaps he could give me a bit more insight into why he feels this may be the way to go. My suggestion again would be to use a VI entity that is owned by the trust so that the income flows up to the trust which is then taxed on jeffrey's individual return and subject to benefits to the extent he himself is a resident.

Jeffrey – please let me know your thoughts on the structuring side of this and the potential use of the trusts and the business trusts. This is the last piece that we need to get in place.

There are also a few other outstanding issues that we are working on and I just wanted to give you an update.

4. Tree companies: I executed all docs today and have formed them. What exactly are these companies being used for?

5. Transfer of LSJ/Permits.

In an effort to transfer the LSJ property from the existing Delaware LLC into CDE, Inc. a USVI S corporation – I had suggested that we merely redeed the parcel as there is a specific exemption from stamp tax in the VI Code for a corporate reorganization. So we could do it with minimal expense.

Darren raised the issue of the impact this would have on the permits in place with respect to LSJ. From what I understand and from my review of the documents – there are CZM permits, building permits, TPDES permits and DPNR/DEP Permits to Operate, Authority to Construct.

- **Transfer of CZM Permits.** These permits can be transferred without having to reapply. The permits themselves indicate that they must be transferred in accordance with 12 V.I.R. Reg. section 910-15 which states Any person who has obtained a Coastal Zone Permit may request the Committee (in the case of a major permit), or the Commissioner (in the case of a minor permit) to assign or transfer such permit to another person. In order to assign or transfer a Coastal Zone Permit, the applicant must:
 - (1) Submit an application fee of \$75.00 to the Director. (Only for assignment or transfer of a major Coastal Zone Permit.)
 - (2) File with the Director an affidavit executed by the assignee or transferee which attests to his promise to comply with the terms and conditions of the permit.
 - (3) File with the Director evidence of the assignee's or transferee's legal interest in the real property involved and of his capacity to satisfy the provisions of the permit. In the case of a transfer from a person who filed a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or a reorganization or the readjustment of indebtedness under the federal bankruptcy laws or who was adjudged bankrupt under such laws or from a person against whom an order was made approving a petition filed by any of its creditors under such laws, the Director shall require copies of appropriate documents from the bankruptcy court.
 - (4) File with the Director the original permittee's request to assign or transfer all rights to undertake the development to the assignee or transferee.
 - (5) Satisfy the Director that all conditions of the permit have been or are being complied with.

In this circumstance – where the same person owns a beneficial interest in the transferor and transferee entity – I suspect we can streamline the process. I have asked for confirmation in writing that where the beneficial owner of the entity remains the same, the process can be completed by affidavit.

- **Transfer of TPDES Permits:** These can be transferred automatically under the Regs. 12 V.I.R. 184-71 requires 30 day notice to the Commissioner enclosing a copy of the agreement of transfer.
- **Transfer of Building Permits:** generally the same – we are confirming with DPNR Division of Permits.

6. **Transfer of NY Property:** It appears that the transfer will be exempt from NYC taxes although a return must be filed. We are confirming NYS consequences.

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