

**ADMINISTRATIVE COURT OF APPEAL  
FROM BORDEAUX**

**N° 22BX00793**  
**N°22BX00957**  
**N° 24BX03086**  
**N° 24BX03088**

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REPUBLIQUE FRANÇAISE

ST JEAN BEACH REAL ESTATE INVEST  
COMMUNITY OF SAINT-BARTHÉLEMY

IN THE NAME OF THE FRENCH PEOPLE

SOLID ROCK PROPERTY,  
AFTERNOONTEA and EDEN ROCK  
COMPANIES

Bordeaux administrative court of appeal

3<sup>e</sup>chamber

LIL ROCK BEACH COMPANY

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Mr Laurent Pouget  
Chairman

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Ms Marie-Pierre Beuve Dupuy  
Rapporteur

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Mr. Julien Dufour Public  
Reporter

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Hearing of April 1, 2025  
Decision of April 29, 2025

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In view of the following  
procedure

*Previous litigation*

The association Saint Barth Essentiel has asked the administrative court of Saint-Barthélemy to annul the deliberation of December 19, 2019 by which the executive council of the collectivity of Saint-Barthélemy issued a building permit to the société par actions simplifiées (SAS) St Jean Beach Real Estate Invest, together with the deliberation of June 3, 2021 by which the executive council of the collectivity of Saint-Barthélemy granted an amending building permit to the same company.

Solid Rock Property, Afternoontea and Eden Rock intervened in support of the Saint Barth Essentiel association's claim.

In judgment no. 200007 of December 23, 2021, the administrative court of Saint-Barthélemy, after admitting the intervention of Solid Rock Property, Afternoontea and Eden Rock, annulled the decisions of the executive council of Saint-Barthélemy on December 19, 2019 and June 3, 2021.

*Court proceedings*

I) Under No. 22BX00793, by a petition and briefs registered on March 10, 2022, and March 30, 2023, September 23, 2024 and January 8, 2025, and a summary brief registered on February 20, 2025, St Jean Beach Real Estate Invest, represented by Mr Robbes and Mr de Lesquen, asks the court to

1°) not to admit the intervention of Solid Rock Property, Afternoontea and Eden Rock

;

2°) annul the judgment of December 23, 2021 of the Administrative Court of Saint Barthélemy;

3°) to reject the request submitted by the association Saint Barth Essentiel to the administrative court of Saint-Barthélemy, as well as the conclusions of the companies Solid Rock Property, Afternoontea and Eden Rock;

4°) order Solid Rock Property, Afternoontea and Eden Rock to pay sum of 12,000 euros under article L. 761-1 of the French Code of Administrative Justice.

She maintains that

- the contested judgment is irregular,
- the court wrongly refused grant his request for a postponement of the hearing, even though his application for the issuance of a second modifying permit was under examination;
- the judgment was inadequately reasoned with regard to the incompleteness of the impact study on the points relating to the effects of the works on the natural environment and the effects of the project beach erosion; it also inadequately reasoned its response to the argument that article 112-2 of Saint-Barthélemy's Code de l'urbanisme, de la construction et de l'habitation had been disregarded;
- the court was wrong to admit intervention of Solid Rock Property, Afternoontea and Eden Rock; these companies do not have sufficient interest to intervene, the defects identified by the court could be rectified, so that it was wrong to refuse to apply the provisions of article L. 600-5-1 of the town planning code; the initial building permit, which had not been obtained by fraud, could be rectified;
- the initial building permit and the first amending building permit were not vitiated by any external or internal illegality,
- the court was wrong to uphold the argument that article 112 2 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction had been disregarded; the court confused the risk of flooding with the risk of hurricanes; the Emeraude hotel had not suffered any major damage during passage of hurricane Irma; the site is protected by a large coral reef located opposite the project's plots; the initial permit's requirement that basement premises be designed to take account of the risk of flooding in the event of a hurricane was not removed when the first amending permit was issued; the impact revealed that the risk had been taken into account.

The risk of tsunamis of tectonic origin was also taken into account; several hotels in Baie Saint Jean have basements;

- The impact study carried out prior to the adoption of the initial permit did not contain any shortcomings;

- contrary to the view of the first judges, the initial permit and the first amending permit did not infringe the provisions of articles U6, U7 and U9 of the Saint-Barthélemy town planning map;

- the other means invoked en première instance par l'association Saint Barth Essentiel riés étaient pas fondés ;

- the file attached to the application for the second amending permit indicates precisely the volume of excavated material and its destination; the argument based on incompleteness of the application file must therefore be rejected;

- The impact has been revised and supplemented, in particular with regard to foundation work, pollution during the operating phase, the risk of heaving at the bottom of the excavation, the risk of erosion, the risk flooding, electrical power, the effects of the project on road traffic and the effects on the landscape; the plea based on the inadequacies of impact study must therefore be rejected;

- on the occasion of the second modifying building permit, public information procedure was resumed and carried out in accordance with the provisions of articles L. 121-1 et seq. of the Saint-Barthélemy environmental code; the plea alleging disregard for article 7 of the environmental charter must therefore be rejected;

- the second amending permit modifies the water and electricity requirements and clarifies the project's service arrangements; the argument that article 66 of the Saint-Barthélemy town planning, housing and construction code has been disregarded must therefore be rejected,

- the second amending permit complies with the density rule set out article U6 of the Saint-Barthélemy town planning map,

- the second amending permit complies with the height rule set out article U7 of the Saint-Barthélemy town planning map;

- the second amending permit complies with the roof composition rule set out in article U8 of the Saint-Barthélemy town planning map,

- the new project is designed to comply with article 112-12 of the Saint-Barthélemy Code de l'urbanisme, de l'habitation et de la construction on parking;

- the second amending permit complies with the rule relating to the proportion of non-waterproofed and planted land set out article U10 of the Saint Barthélemy town planning map;

- the new project does not infringe article 112-1 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction; the footprint of the basement has been reduced by around , and its use is now limited to technical premises and an 83-space parking lot operated by valet parking, so that it is no longer accessible to customers and is no longer occupied on a permanent basis by staff; the procedures for protecting a basement have been strengthened in the event of the risk of flooding;

- the new project, in view of its reconfiguration, does not entail any risk damage to the environment, in particular pollution of the waters of the bay and erosion of the beach; the argument that article 112-7 of the Code de l'urbanisme, de l'habitation et de la construction de Saint-Barthélemy has been disregarded must therefore be rejected,

- the new project, in view of its reconfiguration, does not entail any risk damage to the landscape; the argument that article 112-6 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction has been disregarded must therefore be rejected,

- the argument that article 90 of the Code de l'urbanisme, de l'habitation et de la construction de Saint-Barthélemy had been disregarded must be dismissed as inoperative; indeed, at the date of issue of the initial permit, the urban planning map had not delimited any zone in which the demolition of buildings was subject prior authorization,

- the plea put forward by Solid Rock Property, Afternoontea and Eden Rock, alleging that the initial permit was obtained by fraud, did not have to be raised by the Court of its own motion and is inadmissible in view of the crystallization of the pleas in law; this plea is also unfounded;

- the submissions of Solid Rock Property, Afternoontea and Eden Rock against the second amending permit are inadmissible; as interveners, they can only associate themselves with the submissions of a party, which is not the case here since the St Barth Essentiel association does not intend to contest the second amending permit;

- the grounds put forward by Solid Rock Property, Afternoontea and Eden Rock to contest the second amending permit are unfounded; contrary to what these companies maintain

- the second amending permit does not have the effect of modifying the basis of the project, so the argument that it was obtained by fraud is inoperative; in any case, this argument is unfounded;

- the new impact was made available to the public from April 8 to May 3, 2024, and the results were presented to the Executive Board on August 14; the provisions of articles 13-17 and 11-14 of the Environmental Code have therefore been complied with;

- there is no reason to doubt that the members of the executive committee were provided with the building permit file;

- the new impact study presents no shortcomings with regard to the traffic study, foundation studies, the number of guests and staff at the planned hotel establishment, the risk of erosion, the use of jet grouting, the risk of water pollution, the wastewater treatment plant and desalination unit, the risk of flooding and the risk of marine submersion, and energy consumption;

- the second amending permit does not infringe the provisions of articles U9 and U10 of the Saint-Barthélemy town planning map,

- the second amending permit does not present any risk to public health and safety, and therefore does not infringe the provisions of article 112-2 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction ;

- the second amending permit improves the project's integration into its landscaped environment and therefore does not infringe article 112-6 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction;

- the second amending permit does not infringe article 112-7 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction.

By memoranda registered on March 24, 2023 and November 8, 2024, and a summary memorandum registered on February 13, 2025, the Saint Barth Essentiel association, represented by Me Hansen, in its final pleadings, requests that the amended building permit of August 14, 2024 resulting from the mediation between the parties be "taken into account" and, in the alternative, that the application by St Jean Beach Real Estate Invest be rejected

She maintains that :

- the pleas put forward by St Jean Beach Real Estate Invest are not valid.

founded,

- it does not intend to contest the second amending permit issued to the company on August 14, 2024.

By memoranda registered on March 28, 2023, November 8, 2024, January 30, 2025 and February 28, 2025, and a summary memorandum registered on March 10, 2025, Solid Rock Property, Afternoontea and Eden Rock, represented by Me Moustardier, are asking the court to dismiss the petition filed by St Jean Beach Real Estate Invest, to annul the decision of August 14, 2024 by which the Executive Council of Saint-Barthélemy issued a second, amending building permit to St Jean Beach Real Estate Invest, to order, on the basis of article L. 741-2, the deletion of the insulting passages from the company's documents, and order the company to pay sum of 10,000 euros under article L. 741-2 of the Code of Administrative Justice and the sum of 5,000 euros article L. 761-1 of the same code.

They argue that

- the contested judgment is not vitiated by any irregularity,
- the court rightly admitted their intervention;
- the court rightly considered that the defect relating to the disregard of the provisions article 112-2 of the Saint Barthélemy town planning, housing and construction code could not be rectified;
- the court rightly held that the initial permit and the first amending permit were vitiated by defects of external and internal legality;
- the first amending permit was issued following an inadequate public participation procedure;
- this first amending permit was issued on basis of an inadequate impact concerning the risk of water pollution during hotel operations, the risk of flooding, and water consumption during hotel operations;
- in breach of article 112-13 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction, no justification has been provided for the parking spaces planned on plot AI 742 ;
- the first amending permit infringes articles U8 and U10 of Saint-Barthélemy town planning map regulations,
- the initial permit and the first amending permit fail to comply article 112-2 of the Code de l'urbanisme, de l'habitation et de la construction de Saint-Barthélemy with regard to the risk to public safety due to traffic conditions and with regard to the risk to public health
- the initial permit and the first amending permit infringe article 112-7 of the Saint-Barthélemy town planning, housing and building code, in view of the risk erosion of the beach and the risk of water pollution during the construction and subsequent operation of the hotel;
- the initial permit and the first amending permit infringe article 112-6 of the Saint-Barthélemy urban planning, housing and construction code;
- the initial permit cannot be regularized if it was issued as a result of fraudulent maneuvers;
- they are entitled to contest the second amending permit granted to the petitioner company,
- the second amending permit constitutes a new building permit;
- this permit was obtained by fraud,
- this permit obtained an irregular procedure; in disregard articles 11-2 and 13-17 of Saint-Barthélemy's environmental code, no information was provided on the public availability of the new impact study; in disregard of article 11-3, no deliberation by the executive council set the dates for this public availability; in disregard of article 13-17 of Saint-Barthélemy's environmental code, no information was provided on the public availability of the new impact ; in disregard of article 11-3, no deliberation by the executive council set the dates for this public availability

In disregard of article 11-4 of the same code, deliberation by the executive council has drawn the consequences of the results of the public consultation,

- it has not been established that the members of the Executive Council were notified of the second amending permit; proof that the elected representatives were informed can only be provided by the local authority of Saint-Barthélemy;

- the new impact study is inadequate on many aspects of the project, in particular on the analysis of traffic conditions on the RD 209; it remains imprecise on the use of the "jet grouting" technique and on the scale of the foundations required; the impact study is based on a systematic underestimation of the number of customers and staff who will be present on the site, which affects the conclusions relating to the need for water and electricity, the sizing of the WWTP and impact on traffic conditions;

- the impact study minimizes the risk of erosion; the impact study is also inadequate with regard to the risks of groundwater pollution during construction and once the hotel is in operation; it is also inadequate with regard to the analysis of the risks of flooding and marine submersion in the event of a cyclone or tsunami; finally, the impact study minimizes the project's energy requirements,

- the new permit infringes the provisions article U9 of the Saint-Barthélemy town planning map,

- it ignores the provisions article U10 of the Saint Barthélemy town planning map;

- it fails to comply with article 112-2 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction with regard to the risk to public safety linked to the existence of a basement and with regard to the risk to public health,

- it fails to comply with article 112-6 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction by increasing the density of the project

- it fails to comply with article 112-7 of the Saint-Barthélemy urban planning, housing and construction ;

- assuming that this permit constitutes an amending permit, it is vitiated by the external and internal defects of legality noted above,

- their claims under article L. 742-1 of the French Code of Administrative Justice are admissible.

By memoranda registered on January 8, 2025 and March 7, 2025 and a summary memorandum registered on March 18, 2025, the local authority of Saint-Barthélemy, represented by Me Destarac, is seeking the annulment of the judgment of December 23, 2021 of the Saint-Barthélemy administrative court, the rejection of the claim brought before the court by the association Saint- Barth Essentiel and of intervention of the companies Solid Rock Property, Afternoontea and Eden Rock or, failing that, the implementation of the provisions of articles L. 600-5 and L. 600-5-1 of the French Town Planning Code, to reject the claims of Solid Rock Property, Afternoontea and Eden Rock against the amended building permit issued on August 14, 2024, and to charge these companies the sum of 3,000 euros under article L. 761-1 of the French Code of Administrative Justice.

She maintains that

- Solid Rock Property, Afternoontea and Eden Rock no interest in intervening at first instance, nor do they have such an interest in the appeal; as interveners, these companies are not entitled to challenge the latest amendment, which is not contested by the Saint Barth Essentiel association; arguments they put forward do not support any conclusions presented by the said association;

- the defects identified by the court could be rectified, so that it was wrong to refuse to apply the provisions article L. 600-5-1 of the French Urban Planning Code,
- the argument that the permit was obtained by fraud is inadmissible against the initial permit, inoperative against the amending permits and unfounded.

By an order dated February 13, 2025, the date for crystallization of the arguments set at March 10, 2025, pursuant to paragraph 3<sup>ème</sup> of article R. 600-5 of the French Code of Administrative Justice.

In a letter dated February 17, 2025, the court informed the parties, on the basis of article R. 611-7 of the French Code of Administrative Justice, that it could base its decision on a plea raised ex officio.

By an order dated March 11, 2025, the investigation was finally closed on March 18, 2025.

Notes for deliberation were submitted by St Jean Beach Real Estate Invest on April 1 and April 4, 2025, and by the Saint-Barthélemy local authority on April 7, 2025.

II) Under No. 22BX00957, by a petition and briefs registered on March 26, 2022, January 8, 2025 and January 30, 2025, a summary brief registered on March 7, 2025, and a second summary brief registered on March 18, 2025 (not communicated), the collectivity of Saint-Barthélemy, represented by Me Destarac, asks the court:

1° annul the judgment of December 23, 2021 of the Administrative Court of Saint Barthélemy;

2°) to reject the request submitted to the court by the association Saint-Barth Essentiel and intervention of the companies Solid Rock Property, Afternoontea and Eden Rock or, failing that, to apply the provisions of articles L. 600-5 and L. 600-5-1 of the town planning ;

3°) reject the claims of Solid Rock Property, Afternoontea and Eden Rock against the amended building permit of August 14, 2024;

4°) order Solid Rock Property, Afternoontea and Eden to pay sum of 3,000 euros under article L. 761-1 of the French Code of Administrative Justice.

She maintains that :

- the contested judgment is insufficiently reasoned and, consequently, irregular;
- Solid Rock Property, Afternoontea and Eden Rock had no interest in intervening at first , nor do they have any such interest on appeal,
- contrary to court's view, the impact study is not flawed in any way;
- the project complies with articles U6, U7, U9 of the Saint Barthélemy town planning map;
- the project does not contravene the provisions article 112-2 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction, which, incidentally, were not enforceable against the initial permit issued on December 19, 2019;

- the defects identified by the court could be rectified, so that it was wrong to refuse to apply the provisions article L. 600-5-1 of the French Urban Planning Code;
- the second amending permit rectified all the defects identified by the court;
- in their capacity as interveners, Solid Rock Property, Afternoontea and Eden Rock are not entitled to challenge the latest amending permit, which is not being contested by the Saint Barth Essentiel association; arguments they put forward do not support conclusions put forward by the said association;
- the argument that the initial permit was obtained by fraud is inadmissible against the initial permit, inoperative against the amending permits and unfounded,
- the second amending permit is not vitiated by any defect of external or internal legality;
- should a plea be accepted, the provisions of articles L. 600-5 and L. 600-5-1 of the French urban planning code.

By memoranda registered on March 24, 2023 and November 8, 2024, and a summary memorandum registered on February 13, 2025, the Saint Barth Essentiel association, represented by Me Hansen, in its final pleadings, principally claims that the amended building permit of August 14, 2024 resulting from mediation between the parties should be "taken into account" and, in the alternative, that the application by the Saint-Barthélemy local authority should be rejected.

She maintains that :

- the pleas put forward by the collectivity of Saint-Barthélemy are unfounded;
- it does not intend to contest the second amending permit issued on August 14, 2024.

By briefs registered on March 28, 2023, November 8, 2024 and January 30, 2025, and a summary brief registered on March 10, 2025, the companies Solid Rock Property, Afternoontea and Eden Rock, represented by Me Moustardier, are asking the court to reject the application by the collectivity of Saint-Barthélemy, annul the decision of September 9, 2024 by which the Executive Council of Saint-Barthélemy issued a second, amending building permit to St Jean Beach Real Estate Invest, and Saint-Barthélemy to pay the sum of 5,000 euros under article L. 761-1 of the French Code of Administrative Justice.

They argue that

- the contested judgment is not vitiated by any irregularity;
- the court rightly admitted their intervention;
- the court rightly considered that the defect relating to the disregard of the provisions article 112-2 of the Saint Barthélemy town planning, housing and construction code could not be rectified;
- the court rightly held that the initial permit and the first amending permit were vitiated by defects of external and internal legality;
- the first amending permit was issued following an inadequate public participation procedure;
- this first amending permit was issued on basis of an inadequate impact concerning the risk of water pollution during hotel operations, the risk of flooding, and water consumption during hotel operations;
- in breach of article 112-13 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction, no justification has been provided for the parking spaces planned on plot AI 742 ;
- the first amending permit infringes articles U8 and U10 of the Saint-Barthélemy town planning map regulations,

- the initial permit and the first amending permit fail to comply article 112-2 of the Code de l'urbanisme, de l'habitation et de la construction de Saint-Barthélemy with regard to the risk to public safety due to traffic conditions and with regard to the risk to public health;

- the initial permit and the first amending permit infringe article 112-7 of the Saint-Barthélemy town planning, housing and construction code, given the risk of beach erosion and water pollution during the construction and subsequent operation of the hotel,

- the initial permit and the first amending permit infringe article 112-6 of the Saint-Barthélemy urban planning, housing and construction code;

- the initial permit cannot be regularized if it was issued as a result of fraudulent maneuvers;

- they are entitled to contest the second amending permit granted to the petitioner company;

- the second amending permit constitutes a new building permit,

- this permit was obtained by fraud,

- this permit was obtained following an irregular procedure; in disregard articles 11-2 and 13-17 of Saint-Barthélemy's environmental code, no information was provided on the new impact being made available to the public; in disregard of article 11-3, no deliberation by the executive council set the dates on which the study would be made available; in disregard of article 11-4 of the same code, no deliberation by the executive council drew the conclusions from the results of making the study available to the public;

- it has not been established that the members of the Executive Council were notified of the second amending permit; proof that the elected representatives were informed can only be provided by the local authority of Saint-Barthélemy,

- the new impact study is inadequate on many aspects of the project, in particular with regard to the analysis of traffic conditions on the RD 209; it remains imprecise on the use of the "jet grouting" technique and on the scale of the foundations required; the impact study is based on a systematic underestimation of the number of customers and staff who will be present on the site, which affects the conclusions relating to water and electricity requirements, the sizing of the WWTP and impact on traffic conditions; 1 the impact study minimizes the risk of erosion; the impact study is also inadequate with regard to the risk of groundwater pollution during construction and once the hotel is in operation; it is also inadequate with regard to the analysis of the risk of flooding and marine submersion in the event of a cyclone or tsunami; the impact minimizes the project's energy requirements;

- the new permit infringes the provisions article U9 of the Saint-Barthélemy town planning map;

- it ignores the provisions article U10 of the Saint Barthélemy town planning map;

- it fails to comply with article 112-2 of Saint-Barthélemy's de l'urbanisme, de l'habitation et de la construction with regard to the risk to public safety linked to the existence of a basement and with regard to the risk to public health;

- it disregards article 112-6 of the Saint-Barthélemy urban planning, housing and construction by making the project denser;

- it fails to comply with article 112-7 of the Saint-Barthélemy urban planning, housing and construction ;

- assuming that this permit constitutes an amending permit, it is vitiated by the external and internal legal defects mentioned above.

By memoranda registered on March 31, 2022, March 28, 2023 and September 23, 2024, and a summary memorandum registered on February 20, 2025, the company St Jean Beach Real Estate Invest, represented by Mr Robbes and Mr de Lesquen, asked the court to reject the intervention of the companies Solid Rock Property, Afternoontea and Eden Rock, to annul the contested judgment and to reject the request presented by the association Saint Barth Essentiel before the administrative court of Saint-Barthélemy.

She maintains that

- the second amending permit regularized the defects identified by the court,
- the argument based on absence of a demolition permit is inoperative.

By an order dated February 13, 2025, the date for crystallization of the arguments set at March 10, 2025, pursuant to paragraph 3 of article R. 600-5 of the French Code of Administrative Justice.

By an order dated March 11, 2025, the investigation was finally closed on March 18, 2025.

A note en délibéré was produced for Saint-Barthélemy on April 7, 2025.

III) Under No. 24BX03088, by a petition and briefs registered on December 6 and 10, 2024, the companies Solid Rock Property, Afternoontea and Eden Rock, represented by Me Moustardier, asked the Saint-Barthélemy Administrative Court to

1°) annul deliberation no. 2024-1176 CE, dated September 9, 2024, by which the Executive Council of the Collectivité de Saint-Barthélemy granted an amended building permit no. PC 971123 19 00052 M03 to St Jean Beach Real Estate Invest ,

2°) order the company St Jean Beach Real Estate Invest and the local authority of Saint-Barthélemy to pay the sum of 5,000 euros each under the provisions of article L. 761-1 of the Code of Administrative Justice.

They argue that :

- the administrative court has jurisdiction to rule on their application;
- their application is admissible; the contested permit, issued after contentious annulment of the initial permit and when the petitioner and the local authority had not requested a stay of execution of the judgment, must be requalified as a new building permit; they have an interest in the case, including right to contest the modifications resulting from the disputed permit; their plots are in the immediate vicinity of the project site; the new project, which increases the density of construction, is detrimental to the environment and landscape; the project will be visible from Eden Rock hotel; although the eave height has been reduced to bring the project into line article U7 of the Saint-Barthélemy town planning map, the maximum ridge height has been increased, resulting in a greater volume of buildings; the new project is detrimental to the environment of the Baie de Saint-Jean, as risk of erosion will be aggravated; such erosion will have an impact on the conditions use of the Eden Rock hotel, located on a rocky outcrop, and will result in the disappearance of the coastline; the project presents a risk of marine water pollution; the project presents a risk personal safety hazards; the project affects traffic conditions,

- the initial permit was obtained by fraud, with the aim of concealing a densification of the building in disregard of article 6 of the carte communale and artificially increasing the proportion of non-impervious and vegetated surfaces stipulated in article U10 of the carte communale,
- in disregard of articles 11-2 and 13-17 of the environmental code of Saint Barthelemy, no information was made available to the public on the new impact study;
- in disregard of article 11-3, deliberation of the Executive Board has set the dates of this availability,
- in disregard of article 11-4 of the same code, deliberation of the executive council has drawn the consequences of the results of the public consultation;
- it has not been established that the members of the Executive Council were informed of this permit; proof that elected representatives were informed can only be provided by the Saint-Barthélemy local authority,
- the new impact study is inadequate on many aspects of the project, in particular with regard to the analysis of traffic conditions on the RD 209; it remains imprecise on the use of the "jet grouting" technique and on the extent of the foundations required; the impact study is based on a systematic underestimation of the number of customers and staff who will be present on the site, which affects the conclusions relating to the need for water and electricity, the sizing of the WWTP and impact on traffic conditions; the impact study underestimates the risk of erosion; the impact study is also inadequate with regard to the risks of groundwater pollution during construction and once the hotel is in operation; it is also inadequate with regard to the analysis of the risks of flooding and marine submersion in the event of a cyclone or tsunami; lastly, the impact downplays the project's electricity requirements;
- the permit infringes the provisions of article U9 of the Saint Barthélemy urban planning map;
- it ignores the provisions article U10 of the Saint Barthélemy town planning map;
- it fails to comply with article 112-2 of Saint-Barthélemy's de l'urbanisme, de l'habitation et de la construction with regard to the risk to public safety linked to the existence of a basement and with regard to the risk to public health;
- it disregards article 112-6 of the Saint-Barthélemy urban planning, housing and construction code by making the project denser;
- it fails to comply with article 112-7 of the Saint-Barthélemy urban planning, housing and construction code.

In a memorandum registered on December 16, 2024, St Jean Beach Real Estate Invest, represented by Mr Robbes and Mr de Lesquen, requested that the application be referred to the Bordeaux Administrative Court of Appeal.

In a memorandum registered on December 18, 2024, the local authority of Saint-Barthélemy, represented by Me Destarac, that the application be referred to the Bordeaux administrative court of appeal.

By order no. 2400060 of December 20, 2024, the president of the administrative court of Saint-Barthélemy, on basis of article R. 321-1 of the administrative justice code, transmitted the file of the companies' request to the administrative court of appeal of Bordeaux.

By briefs registered on January 20, 2025 and February 16, 2025, as well as two other briefs registered on February 6 and March 18, 2025 but not communicated, Solid Rock Property, Afternoontea and Eden Rock conclude to the same ends as their petition and further request the court to transmit the file of their petition to the administrative court of Saint-Barthélemy or, in the alternative, to the president of the litigation section of the Conseil d'État on basis of article R. 351-3 of the administrative justice code.

They also argue that

- the court is not competent to judge their request,
- the serious question of jurisdiction raised must be settled by the President of the Administrative Jurisdiction Division of the Conseil d'Etat.

By briefs registered on February 5 and March 7, 2025, St Jean Beach Real Estate Invest, represented by Mr Robbes and Mr de Lesquen, is seeking to have the application of Solid Rock Property, Afternoontea and Eden Rock dismissed and to have these companies pay the sum of 12,000 euros under article L. 761-1 of the French Code of Administrative Justice.

She maintains that :

- The Bordeaux administrative court of appeal responsible for ruling on the request,
- The companies' application is inadmissible; their interest in acting must be assessed in the light of the scope of the changes made by the building permit in dispute;
- none of the grounds put forward by the applicant companies is well-founded.

By briefs registered on February 11 and March 7, 2025, the local authority of Saint Barthelemy, represented by Me Destarac, seeks to have the application of Solid Rock Property, Afternoontea and Eden Rock dismissed and to have these companies pay sum of 3,000 euros under article L. 761-1 of the French Code of Administrative Justice.

She maintains that

- The Bordeaux administrative court appeal is responsible for ruling on the application;
- the companies' application is inadmissible; they do not justify having notified their application in accordance with the conditions set out in article R. 600-1 of the French town planning code; moreover, they have no interest in acting; their interest in acting must be assessed with regard to the scope of the modifications made by the building permit in dispute,
- none of the grounds put forward by the applicant companies is well-founded.

By an order dated March 11, 2025, the investigation was finally closed on March 18, 2025.

IV) Under No. 24BX03086, by a petition and briefs registered on December 6 and 10, 2024, the company Lil'Rock Beach, represented by Me Moustardier, asked the Administrative Court of Saint-Barthélemy to

1°) annul deliberation no. 2024-1176 CE, dated September 9, 2024, by which the Executive Council of Saint-Barthélemy granted an amended building permit no. PC 971123 19 00052 M03 to St Jean Beach Real Estate Invest ;

2°) order the company St Jean Beach Real Estate Invest and the local authority of Saint-Barthélemy to pay the sum of 5,000 euros each under the provisions of article L. 761-1 of the Code of Administrative Justice.

She maintains that :

- the administrative court has jurisdiction to rule on his request;
- her request is admissible; she is an immediate neighbor of the project; this project is likely to directly affect the operating conditions of the Nao Beach restaurant;
- the initial permit was obtained by fraud, with the aim of concealing a densification of the building in disregard article U6 of the town-planning map and artificially increasing the proportion of non-impervious and vegetated surfaces provided for in article U 10 of the town-planning map;
- in disregard articles 11-2 and 13-17 of the environmental code of Saint Barthelemy, no information was made available to the public on the new impact study;
- in disregard of article 11-3 of this code, no deliberation of the executive board has set the dates of this availability;
- in disregard of article 11-4 of the same code, deliberation of the executive council has drawn the consequences of the results of the public consultation;
- it has not been established that the members of the Executive Council were informed of this permit; proof that elected representatives were informed can only be provided by the Saint-Barthélemy local authority;
- the new impact study is inadequate on many aspects of the project, in particular with regard to the analysis of traffic conditions on the RD 209; it remains imprecise on the use of the "jet grouting" technique and on the extent of the foundations required; the impact study is based on a systematic underestimation of the number of customers and staff who will be present on the site, which affects the conclusions relating to water and electricity requirements, the sizing of the WWTP and impact on traffic conditions; the impact study underestimates the risk of erosion; the impact study is also inadequate with regard to the risks of groundwater pollution during construction and once the hotel is in operation; it is also inadequate with regard to the analysis of the risks of flooding and marine submersion in the event of a cyclone or tsunami; lastly, the impact downplays the project's electricity requirements,
- the permit infringes the provisions of article U9 of the Saint Barthélemy urban planning map,
- it ignores the provisions article U10 of the Saint Barthélemy town planning map;
- it fails to comply with article 112-2 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction with regard to the risk to public safety linked to the existence of a basement and with regard to the risk to public health;
- it infringes article 112-6 of the Saint-Barthélemy urban planning, housing and construction code by making the project denser;
- it fails to comply with article 112-7 of the Saint-Barthélemy urban planning, housing and construction .

In a memorandum registered on December 16, 2024, St Jean Beach Real Estate Invest, represented by Mr Robbes and Mr de Lesquen, requested that the application be referred to the Bordeaux Administrative Court of Appeal.

In a memorandum registered on December 18, 2024, the local authority of Saint-Barthélemy, represented by Me Destarac, that the application be referred to the Bordeaux administrative court of appeal.

By order no. 2400059 of December 20, 2024, the president of the administrative tribunal of Saint-Barthélemy, on the basis of article R. 321-1 of the administrative justice code, transmitted the file of the petition of the company Lil'Rock Beach to the administrative court of appeal of Bordeaux.

By briefs registered on January 20, 2025 and February 16, 2025, as well as two other briefs registered on February 6 and March 18, 2025 but not communicated, the company Lil'Rock concludes to the same ends as its petition and further asks the court to transmit the petition file to the administrative court of Saint-Barthélemy or, in the alternative, to the president of the litigation section of the Conseil d'État on basis of article R. 351-3 of the administrative justice code.

She maintains that

- the court is not competent to judge his request,
- the serious question of jurisdiction raised must be settled by the President of the Administrative Jurisdiction Division of the Conseil d'Etat.

In briefs registered on February 5 and March 7, 2025, St Jean Beach Real Estate Invest, represented by Mr Robbes and Mr de Lesquen, seeks to have the Lil'Rock Beach application dismissed and to have the company the sum of 12,000 euros article L. 761-1 of the French Code of Administrative Justice.

She maintains that

- The Bordeaux administrative court of appeal is responsible for ruling on this claim;
- the application is inadmissible; this admissibility must be assessed in the light of the scope of the changes made by the building permit in dispute;
- none of the grounds put forward by the applicant company is well-founded.

By briefs registered on February 11 and March 7, 2025, the local authority of Saint Barthelemy, represented by Me Destarac, is seeking the dismissal of Lil'Rock Beach's application and the payment of 3,000 euros under article L. 761-1 of the French Code of Administrative Justice.

It also maintains that

- The Bordeaux administrative court appeal is responsible for ruling on the request;
- the company's application is inadmissible; it does not justify having served notice of its application under the conditions set out in article R. 600-1 of the town planning code; moreover, it has no interest in acting; its interest in acting must be assessed with regard to the scope of the modifications made by the building permit in dispute,
- none of the grounds put forward by the applicant company is well-founded.

By an order dated March 11, 2025, the investigation was finally closed on March 18, 2025.

Viewed at

- the building and housing code ;
- the environmental code of Saint-Barthélemy ,
- the general local authority code ;
- the town planning code ;
- Saint-Barthélemy's urban planning, housing and construction code,
- the Code of Administrative Justice.

The parties were duly notified of the date of the hearing.

The following were heard at the public hearing:

- the report by Marie-Pierre Beuve Dupuy,
- the conclusions of Mr. Julien Dufour, public rapporteur,
- and comments from Me De Lesquen, representing St Jean Beach Real Estate Invest, Me Moustardier and Me Crottet, representing Solid Rock Property, Afternoontea, Eden Rock and Lil'Rock Beach, and Me Destarac, representing the local authority of Saint-Barthélemy.

Considering the following:

1. In a resolution dated January 17, 2020, the Executive Council of Saint-Barthélemy granted SAS St Jean Beach Real Estate Invest a building permit for the construction of a 25-key, 50-room hotel with several swimming pools, a restaurant, a spa, a boutique, technical premises, premises used by staff and an underground parking lot in the bay of Saint-Jean, on a plot of land cadastralized section AI n°s 58, 21 and 22, with a total surface area of 12,254 m<sup>2</sup>. In a resolution dated June 8, 2021, the Executive Council of Saint-Barthélemy granted the company an amending building permit to remove a floor from two buildings on the seafront, reorganize six buildings, remove one of the two communal swimming pools at the heart of the project, make minor modifications to three buildings and one structure, add a building for technical use and adapt wastewater treatment plant and basement level. The Saint-Barth Essentiel association asked the Saint-Barthélemy administrative court to annul these deliberations. In a ruling handed down on December 23, 2021, the court, after having accepted the admissibility of the voluntary intervention of Solid Rock Property, Afternoontea and Eden Rock in support of the Saint-Barth Essentiel association's claim, considered that these deliberations were vitiated by a failure to comply with the provisions of article L. 112-2 of the town planning code, which could not be rectified, and consequently annulled the deliberations. The company St Jean Beach Real Estate Invest and the local authority of Saint-Barthélemy appealed against this ruling in their petitions registered under nos. 22BX00793 and 22BX00957.

2. Following mediation between the appellants and Saint-Barth Essentiel association, the Saint-Barthélemy local authority, in a resolution dated August 14, 2024, issued St Jean Beach Real Estate Invest with a second, amending building permit which, among other things, reduced the number of hotel rooms to 38, eliminated some of the under-ground structures, and provided for the buildings to be set back from the sea front and reduced in height, as well as reducing the eaves height of the other structures. While the Saint-Barth Essentiel association has indicated that it does not intend to contest this second amending permit, the intervening companies Solid Rock Property, Afternoontea and Eden Rock argue that it does not regularize the initial building permit.

3. Li'Rock Beach on the one , and Solid Rock Property, Aftemoontea and Eden Rock on the other, asked the Administrative Court of Saint Barthelemy to annul the decision of August 14, 2024 by which the local authority of Saint Barthelemy issued St Jean Beach Real Estate Invest with a second amended building permit. By orders dated December 20, 2024, the president of the administrative court of Saint-Barthélemy, on the basis of article R. 321-1 of the administrative justice code, transmitted the file of these requests to the administrative court of appeal of Bordeaux, which were registered under n° 21BX03086 and 24BX03088.

4. The petitions registered under nos. 22BX00793, 22BX00957, 24BX03086 and 24BX03088 concern the same project for the construction of a hotel by St Jean Beach Real Estate Invest on land cadastralized in section AI nos. 58, 21 and 22 in Saint-Barthélemy, and have been examined together. They should therefore be joined and decided in a single judgment.

**On the jurisdiction of the court :**

5. Aux termes de l'article L. 600-5-2 du code de l'urbanisme : « *Lorsqu'un permis modificatif, une décision modificative ou une mesure de régularisation intervient au cours d'une instance portant sur un recours dirigé contre le permis de construire, de démolir ou d'aménager initialement délivré ou contre la décision de non-opposition à déclaration préalable initialement obtenue et que ce permis modificatif, cette décision modificative ou cette mesure de régularisation ont été communiqués aux parties à cet instance, la légalité de cet acte ne peut être contestée par les parties que dans le cadre de cette même instance* ».

6. It follows from the provisions cited in the previous point that when an appeal is lodged with the appeal court against a judgment of an administrative tribunal which has annulled a building permit on the grounds that one or more defects vitiate its legality, and an amending permit, an amending decision or a measure aimed at rectifying these defects has been issued, only the appeal court has jurisdiction to hear the , once the permit, decision or measure has been communicated to it and to the parties. Consequently, if an appeal on grounds of ultra vires has been lodged, including by a third party, against this permit, decision or measure before the administrative court, it is the latter's responsibility to forward it, in application of articles R. 351-3 and, where applicable, R. 345-2 of the Code of Administrative Justice, the administrative court of appeal hearing appeal against the judgment relating to the initial permit.

7. In this case, the deliberation of August 14, 2024 by the Executive Council of Saint-Barthélemy granting a second modifying building permit to St Jean Beach Real Estate Invest was communicated to the Court and to the parties in the cases registered under nos. 22BX00793 and 22BX00957. It follows from what has been said in point 6 that the Court has sole jurisdiction to hear the challenge to this permit and, , to rule on the appeals on grounds of ultra vires brought against this decision by Li'Rock Beach on the one hand, and by Solid Rock Property, Aftemoontea and Eden Rock on the other. The objection of lack of jurisdiction raised by these companies must therefore be rejected.

**Admissibility :**

With regard to the admissibility of petition no. 24BX03086 filed by Li'l Rock Beach seeking the annulment of the deliberation of August 14, 2024 by the Executive Council of Saint-Barthélemy

8. On the one hand, the competent authority, on receipt of a request to this effect, can issue the holder of a valid building permit with a modifying permit, as long as the construction authorized by the permit has not been completed, provided that the planned modifications do not disrupt the project to such an extent as to change its very nature.

9. On the other hand, under the terms of article L. 600-1-2 of the Code de l'urbanisme: *"A person other than the State, local authorities or their groupings, or an association, is only entitled to lodge an appeal for misuse of power against a decision relating to the occupation or use of land governed by the present code if the construction, development or project authorized is of such a nature as to directly affect the conditions of occupancy, use or enjoyment of the property that it regularly occupies.)"*

10. It follows from these provisions that, in particular, it is up to any claimant who brings an action before the administrative judge for excess of power seeking the annulment of a building, demolition or development, to specify the infringement that he or she is invoking to justify an interest giving him or her standing to act, by stating all sufficiently precise and substantiated elements likely to establish that this infringement is likely directly affect the conditions of occupation, use or enjoyment of his or her property. When the applicant, without having contested the initial permit or after having exhausted the remedies available against the initial permit, which has now become final, lodges an appeal against an amending building permit, his interest in acting must be assessed with regard to the scope of the modifications made by the amending permit to the construction project initially authorized. In all cases, it is up to the defendant, if he wishes to contest the applicant's right to bring an action, to provide all elements likely to establish that the alleged infringements are devoid of reality. The "juge de l'excès de pouvoir" assesses the admissibility of the petition in the light of the submitted by the parties, rejecting any allegations that it deems insufficiently substantiated, but without requiring the petitioner to provide proof of the certainty of the alleged infringements in support of the petition's admissibility. In view of the immediate neighbor's particular situation, he or she will in principle have an interest in bringing an action if he or she submits to the judge, who will rule on the basis of all the documents in the case file, information relating to the nature, size or location of the construction project or, when the dispute concerns an amending building permit, the modifications made to the project.

11. Furthermore, except where the particular characteristics of the proposed construction are such as to affect by themselves the operating conditions of a commercial establishment, the latter has no interest in challenging before the juge de l'excès de pouvoir a building permit issued to a competitor, even one located nearby.

12. In this case, it is common ground that on the date of August 14, 2024, when a building permit was issued to St Jean Beach Real Estate Invest, the construction of a hotel authorized by the building permit of December 19, 2019 had not been completed. The August 14, 2024 building permit authorizes the company to erect hotel buildings on the same site, and is intended to rectify the defects identified by the Saint-Barthélemy Administrative Court's ruling of December 23, 2021. The modifications

The proposed changes, which in particular involve reducing the surface area of the underground buildings from 5,341 m<sup>2</sup> to 2,800 m<sup>2</sup> and, correlatively, increasing the surface footprint by increasing the density of the buildings, profoundly alter the overall economics of the project. However, these changes do not disrupt the project to such an extent as to alter its very nature. Consequently, the building permit of August 14, 2024 is not a new building permit, but a permit amending the initial permit of December 19, 2019. In this respect, the fact that this amending permit was issued during proceedings, after the had annulled the initial building permit, is irrelevant. It follows that Lil'Rock Beach's interest in bringing an action must be assessed exclusively with regard to the scope of the modifications made by the amending permit of August 14, 2024.

13. The Lil'Rock Beach company, which has been operating a beach restaurant under the name "Nao Beach" since September 9, 2022 on the parcels cadastralized section AI n°s 224 and 229, adjacent to the parcel cadastralized section AI n°58 on which the disputed hotel project is to be built, points to the impact of this project on traffic conditions on the departmental road (RD) n° 209, which serves both the restaurant it operates and the project in question. However, contrary to what she indicates, it is clear from the documents in the file, and in particular from the explanatory note to the amending permit of August 14, 2024, that the purpose of this permit is to reduce the number of hotel rooms from 50 to 38 and to correspondingly reduce the capacity of the restaurant from 90 to 60 covers. Furthermore, while the first amending permit had increased the number of parking spaces to 188, this second amending permit reverts to the number of parking spaces provided for in the initial permit, i.e. 95, which has the effect, in view of the reduction in the size of the hotel, of improving parking capacity compared with the initial permit. Under these conditions, it is not clear from the documents in the file that the amending permit at issue would have the effect of worsening traffic conditions on the RD no. 209.

14. Lil'Rock Beach then invokes the visual impact of the project. However, while the amending permit in dispute provides for an increase in the ridge height of certain buildings, it also provides for a reduction in their eave height. In addition, it provides for the removal of one storey from all the buildings on the front line, whose position in relation to the mei is also moved back. Lastly, although the permit in provides for a densification of the buildings, this will not be directly visible from the restaurant operated by the applicant company. Under these conditions, the changes made to the initial project have no visual impact on the operating conditions of the restaurant in question.

15. Lil'Rock Beach also argues that the modifications will increase risk erosion of the Baie Saint-Jean beach, resulting in a retreat of the coastline that will have an impact on the operation of its beach restaurant. However, while the amending permit of August 14, 2024 maintains an underground level, it considerably reduces its surface area. Furthermore, the allegation that the increase in foundations, linked to the densification constructions, and the limited extension of the "jet-grouting technique, would in themselves have such an effect erosion that they could lead to a reduction in the size of the beach, is in no way substantiated.

16. Lastly, Lil'Rock Beach claims that there is a risk of groundwater and marine pollution. In this respect, it argues that the treatment plant provided for in the authorized project is undersized. However, it is clear from the documents in the file that the initial building permit provided for a wastewater treatment plant with a capacity of 250 p.e. (human equivalent) for a 50-room hotel, based on a occupancy rate.

The amending permit of August 14, 2024 provides for a wastewater treatment with a capacity of 200 p.e. for a 38-room hotel, based on a occupancy rate, so that the modification thus made, which increases the capacity of the wastewater treatment plant in relation to the hotel's , not aggravate the alleged pollution risk, even admitting that its implementation could have an impact on the company's operating conditions. Furthermore, the amending permit of August 14, 2024 maintains the construction a desalination unit as planned in the initial permit, without modifying its dimensions, and provides for the installation of a second discharge well near the beach. It has in no way been demonstrated that the creation of this second discharge well would entail an increase in the discharge of brine water, as claimed by the applicant company, nor indeed that such an increase in discharge could cause such pollution of bathing as to affect the operating conditions of the restaurant.

17. Thus, in view of the scope of the changes made to the initially authorized construction project by the amending permit in dispute, it is not clear from the documents in the file that these changes would be such as to directly affect the conditions of occupation, use or enjoyment of the Lil'Rock Beach company. As a result, Lil'Rock does not have a legitimate interest in seeking the annulment of the amended building permit issued to St Jean Beach Real Estate Invest on August 14, 2024.

18. It follows from the foregoing that Lil'Rock Beach's application must be dismissed. rejected.

Regarding admissibility of Solid Rock 's intervention, Afemoontea and Eden Rock seeking the annulment of the deliberation of August 14, 2024 of the Executive Council of the Saint-Barthélemy collectivity in cases registered under nos. 22BX00793 and 22BX00957

19. It is clear from the documents in the file that Solid Rock Property is the owner of the Eden Rock hotel, located on the parcels cadastralized in section AP n°s 400, 329, 398, 399, 670 and 671 in Saint-Barthélemy. Afemoontea, a subsidiary of Solid Rock Property, is the owner or lessee of parcels of land cadastralized section AI n°s 666, 709, 710, 711, 712, 125, 177 and 178, on which the Eden hotel's facilities and annexes are built. Eden Rock, which is also a subsidiary of Solid Rock Property, is the lessee of plot AI n°25, on which parking spaces for the same hotel complex are located. These companies' plots are located in the immediate vicinity the St Jean Beach Real Estate Invest hotel project. These plots and the site of the project are served by the RD no. 209, which, according surveys, already carries heavy traffic at various times of the day. The hotel project at issue, through its impact on traffic on this road, is likely to directly affect the conditions of occupation, use or enjoyment of the property of the intervening companies. As a result, and as noted by the court in a judgment that is sufficiently reasoned on this point, the intervening companies had an interest that gave them standing to intervene in support of the Saint Barth Essentiel association's request for the annulment of the deliberations of December 19, 2019 and June 3, 2021 by which the executive council of the collectivity of Saint-Barthélemy issued a building permit and an amending building permit to St Jean Beach Real Estate Invest.

20. In the light of the foregoing, Solid Rock Property, Afemoontea and Eden Rock have an interest in upholding the contested judgment, which was handed down in accordance with the law.

In their conclusion the Court annulled the building permit issued to St Jean Beach Real Estate Invest. Their appeal is therefore admissible.

21. Lastly, if an amending building permit is filed during the course of the proceedings, it is up to the party seeking the annulment of the initial permit, if it believes it has grounds to do so, to challenge the legality of the amending permit, which it can usefully do on its own merits and on the grounds that the initial permit could not be regularized. It follows that the intervening companies, which have an interest in upholding the annulment pronounced by the court, are entitled to challenge the legality of the second amending building permit issued to St Jean Beach Real Estate Invest on August 14, 2024. The arguments put forward by these companies against this second amending permit support the defense of the Saint Barth Essentiel association, which renounce the benefit of the contested judgment, and do not raise a legal cause distinct from that on which the conclusions of the Saint Barth Essentiel association are based. Consequently, the fact that the Saint Barth Essentiel association did not raise any arguments against this second amending permit does not preclude the admissibility of the arguments raised by the intervening companies against this same permit.

As regards the admissibility of petition no. 24BX03088 filed by Solid Rock Property, Afternoontea and Eden Rock seeking the annulment of the deliberation of August 14, 2024 by the Executive Council of Saint-Barthélemy.

22. It follows from the aforementioned provisions article L. 600-5-2 of the Code de l'urbanisme, parties to proceedings concerning an appeal against the building, demolition or development permit initially issued, or against the decision not to oppose a prior declaration initially obtained, are entitled to challenge the legality of an amending permit, an amending decision or a regularization measure taken during the course of these proceedings, when it has been communicated to them, as long as the judge has not ruled on the merits, without any condition as to form or time limit. If this challenge takes the form an appeal on grounds of ultra lodged with the court to which the initial decision was referred, or which is forwarded to that court in application article R. 351-3 of the Code of Administrative Justice, it must be considered as a pleading filed in current proceedings. However, the fact that it has been registered as a separate application has no bearing on the legality of the judgment or decision appealed, it has been joined to proceedings in in order to be decided by the same decision.

23. In the present case, in view of what has been stated in paragraph 19, Solid Rock Property, Afternoontea and Eden Rock, which were entitled to intervene in support of the conclusions of the Saint Barth Essentiel association, would have been entitled to appeal the judgment if it had rendered contrary to the conclusions of their intervention. Under these conditions, they must be considered, for the application of the principles recalled in the previous point, as parties in the dispute relating to the contestation of the building permit initially issued to the company St Jean Beach Real Estate Invest. As a result, their appeal on grounds of ultra vires, seeking the annulment of the decision of August 14, 2024 of the Executive Council of the Collectivité de Saint-Barthélemy to issue a second, amending building permit to St Jean Beach Real Estate Invest, must be regarded as a pleading filed in the appeal proceedings relating to the initial building permit. The objections raised by the local authority of Saint-Barthélemy and St Jean Beach Real Estate Invest to this request can therefore only be rejected.

**On the regularity of the contested judgment:**

24. In the first place, the judge, whose duty it is to ensure the proper administration of justice, is under no obligation to grant a party's request for a postponement of hearing, unless there are exceptional reasons arising from the requirements of adversarial debate.

25. In this case, in a letter dated October 29, 2021, St Jean Beach Real Estate Invest applied to the clerk's office of the Saint-Barthélemy administrative court for a two-month postponement of the hearing, which was then set for November 23, 2021, arguing that on October 5, 2021 it had applied for a second amending permit, which was expected to be issued by the end of January 2022. However, such a circumstance does not constitute an exceptional reason based on the requirements of adversarial debate, which would have required the court to grant the request to postpone the hearing. Moreover, the company was free to apply for a second amending permit without waiting until October 5, 2021. Thus, contrary to what the appellant company maintains, the court, in refusing to postpone the hearing until the end of January 2022, did not disregard the adversarial nature of the proceedings.

26. Secondly, although the Saint-Barthélemy local authority maintains that the contested judgment is vitiated by a contradiction in reasoning, such a plea, which relates to the merits of the judgment, has no bearing on its legality.

27. Thirdly, the fact, invoked by the collectivité de Saint-Barthélemy, that the court applied provisions of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction that were inapplicable at the date of issue of the initial building permit on December 19, 2019 relates to the merits of the contested judgment, not its legality.

28. Fourthly, the local authority of Saint-Barthélemy and St Jean Beach Real Estate Invest complain that court accepted the plea of manifest error of assessment with regard to article 112-2 of Saint-Barthélemy's Code de l'urbanisme, de l'habitation et de la construction, without explaining why it considered that the alarm, warning and evacuation measures provided for by the project were not sufficient prevent the risk of submergence of the basement premises in the event of a cyclone. However, the court, after noting that the petitioning company had not provided for a dam despite the proven risk of basement flooding in the event of a cyclone, assessed the danger in the light, in particular, of the project's configuration, which provided for the creation a vast 5,341 m' basement accessible to the public and staff, and failure of the amending permit to include the requirement for basement premises to take account of the risk of submersion. He therefore gave sufficient reasons for his response to the argument the above-mentioned provisions had been disregarded.

29. Fifthly, the Saint-Barthélemy local authority and St Jean Beach Real Estate Invest argue that the court accepted the argument that the impact study was inadequate, without sufficiently clarifying its response on certain points. However, on the one hand, the court noted that the impact did not include any analysis of the risks of water pollution linked to the use of the "jet-grouting technique, resulting in the discharge of "spoil" near the water table and the bay of Saint-Jean, and deduced that this incompleteness had had the effect of preventing the public from fully informed. On this point, it gave sufficient reasons for its response. On the other hand, the court found that the impact study was incomplete with regard to the absence of a precise analysis of the expected impact of the construction on the phenomenon erosion of Saint-Jean beach, noting in particular it was common knowledge that urbanization of the coastline accelerated the erosion of the beach.

erosion process. As the court based its decision on a constant fact, it did have to indicate which documents or data it relied on.

30. Lastly, in ruling that it had not been established that 39 parking spaces had been provided on the parcel cadastralized under section AI no. 742, the court based its decision on the absence of any specific development on this parcel allowing vehicle parking. In so doing, it relied on a factual circumstance and did not intend to hold the petitioning company to a planning standard that it had omitted to cite.

**On the merits of the contested judgment:**

**With regard to the court's grounds for annulment :**

31. Under the terms of article L. 600-5 of the French town planning code: "*Without prejudice to the application of article L. 600-5-1, the administrative judge who, after having noted that the other arguments are unfounded, considers that a defect affecting only part of the project can be rectified, limits the scope of the annulment he pronounces to that part and, where applicable, sets the time limit within which the holder of the authorization may request rectification, even after completion of the work. Reasons must be given for any refusal by the judge to grant a request for partial cancellation*". Under the terms of article L. 600-5-1 of the same code: "*Without prejudice to the application of article L. 600-5, an administrative judge hearing a claim against a building, demolition or development permit, or against a decision not to oppose a prior declaration, who, after noting that the other grounds are unfounded, considers that a defect leading to the illegality of this act may be regularized, shall stay the proceedings, after inviting the parties to present their observations, until the expiry of the time limit he has set for this regularisation, even after the work has been completed. If a regularization measure is notified to the judge within this time limit, the judge will rule after inviting the parties to present their observations. If the judge refuses to grant a request for a stay of proceedings, he or she must give reasons for doing so.*"

32. It follows from these provisions that a defect vitiating the validity of a planning permission may be regularized under the conditions they lay down, even if this regularization involves revising the general scheme of the project in question, provided that the planning rules in force at the date on the judge rules allow a regularization measure that does not involve making such a disruption to the project that it would change its very nature.

33. The court ruled that rectifying the breach of the rules set out in article 112-2 of the Saint Barthélemy town planning, housing and construction code would require, at the very least, the removal of all access to the basement, which, given the way the project is structured around this 5,341 m<sup>2</sup>basement, would entail a general reconfiguration of the buildings on the site in order to meet the parking and permeability requirements of the Saint Barthelemy town planning map. However, while such a regularization would have entailed modifying the overall layout of the project and, in particular, reducing the size of the planned hotel, it would not have disrupted the project to such an extent as change its very nature.

34. It follows from the above, as argued by the collectivity of Saint Barthélemy and the company St Jean Beach Real Estate Invest, that by the judgment under appeal, the court was wrong to reject their claims for the application of the provisions of the aforementioned law.

articles L. 600-5 and L. 600-5-1 of the French urban planning code and, consequently, for this reason, annulled the initial building permit issued on December 19, 2019 and the amending building permit issued on June 3, 2021 to the said company.

35. It is appropriate for the Court, seized of the dispute by the devolutive effect of the appeal, to examine the other grounds put forward both on appeal and at first instance by the Saint Barth Essentiel association and by the companies Solid Rock Property, Afternoontea and Eden Rock in support of their challenge to the initial building permit issued on December 19, 2019 to the company St Jean Beach Real Estate Invest and to the amending building permits issued to this company on June 3, 2021 and August 14, 2024.

Concerning the legality of the initial building permit of December 19, 2019

36. Under the terms of article R. 600-5 of the Code de l'urbanisme: *"Notwithstanding article R. 611-7-1 of the Code de justice administrative, and without prejudice to the application of article R. 613-1 du même code, lorsque la juridiction est saisie d'une requête relative à une décision d'occupation ou d'utilisation du sol régie par le présent code, ou d'une demande tendant à l'annulation ou à la réformation d'une décision juridictionnelle concernant une telle décision, les parties ne peuvent plus invoquer de moyens nouveaux passé un délai de deux mois à compter de la communication aux parties du premier mémoire en défense (...). The president of the hearing panel, or the magistrate he designates for this purpose, may, at any time, set a new date for the crystallization of the arguments when the case has decided /eyifSffJe (...)"*.

37. The companies Solid Rock Property, Afternoontea and Eden Rock argue, in a brief registered on November 8, 2024, that the initial building permit issued on December 19, 2019 to the company St Jean Beach Real Estate Invest was obtained by fraud. The said company argues that this plea, raised more than two months after the production of the first statement of defence, is inadmissible. However, in an order dated February 13, 2025, the presiding judge set March 10, 2025 as the date for crystallization of the arguments. The plea put forward by the intervening companies is therefore admissible.

38. Under the terms of article R. 423-1 of the same code: *"Applications for building, development or demolition permits and prior declarations are sent by registered post with acknowledgement of receipt, or deposited at the town hall of the commune in which the work is planned. a) Either by the owner(s) of the plot(s), their agent or by one or more persons attesting that they are authorized by them to carry out the work (...)"*.

39. According to the documents in the file, St Jean Beach Real Estate Invest entered into a construction lease with Emeraude Investissement, a société civile immobilière, by notarial deed dated October 30, 2018, on land belonging to the lessor, consisting of parcels cadastralized section AI n°s 21, 22 and 58 in Saint-Barthélemy. The contract stipulates that: "As a determining condition without which the parties would not have contracted, no construction may be built by the lessee, for the entire duration of the present construction lease, on the part shown in green on the appended plan (appendix no. 4), of which the lessor reserves exclusive enjoyment, nor on the part shown pink on the same plan, of which exclusive enjoyment is granted to the lessee". It is clear from the plan in Appendix 4 of the contract that the parcel of land cadastralized section AI no. 22 falls within the scope of the lessee's on building and, for the most part, is allocated to the exclusive use of the lessor. This contract, by which the lessee undertakes to on only part of the land owned by the lessor, thus entails the division of the use of this land by the lessor.

This division does not give St Jean Beach Real Estate Invest any right to build on the parcel registered under section AI no. 22. This division, which did not give rise to a prior declaration or a request for a development permit, resulted in the creation a new land unit consisting solely of plots AI n°s 21 and 58 on which St Jean Beach Real Estate Invest held building rights.

40. However, St Jean Beach Real Estate Invest, which could not have been unaware of the scope of the contractual stipulations analyzed above, applied for a building permit for a plot of land measuring 12,254 m<sup>2</sup> that included the parcel cadastral section AI no. 22, which was part of a separate land unit. By certifying that it met the conditions set out article R. 423-1 of the French town planning code, and by submitting its application for a building permit for a plot of land that included the parcel cadastralized under section AI n° 22, which was not included in the land unit, the company must be deemed to have engaged in a maneuver likely to the authorities, in particular as regards compliance with the building density rules set out article U6 of the Saint-Barthélemy town planning map. The argument that the December 19, 2019 building permit was obtained by fraud must therefore be accepted.

As regards the legality of the amending building permits of June 3, 2021 and August 14, 2024:

41. When an initial building permit has been issued in disregard of legislative or regulatory provisions relating land use, or without compliance with the forms or formalities required prior to the issue of building permits, the resulting illegality may be rectified by the issue of an amending permit, provided that the latter complies with the substantive rules applicable to the project in , meets the formal requirements or has been preceded by the regular execution of the formalities that had been omitted. Irregularities corrected in this way can no longer be usefully invoked in support of an appeal on grounds of ultra vires against the initial permit. However, where a building permit has obtained by fraud, the resulting illegality cannot be rectified by the issue of an amending building permit.

42. As stated above, the initial building permit issued to St Jean Beach Real Estate Invest on December 19, 2019 was obtained by fraud. As this illegality cannot be rectified by the issuance of an amending building permit, the amending building permits issued to the said company on June 3, 2021 and August 14, 2024 can only be cancelled as a consequence.

43. As a result of the foregoing, on the one hand, the Saint Barthélemy local authority and the company St Jean Beach Real Estate Invest have no grounds to complain , by the judgment under appeal, the Saint-Barthélemy Administrative Court annulled the initial building permit issued on December 19, 2019 and the amending building permit issued on June 3, 2021 to the said company, secondly, that the second amending building permit issued on August 14, 2024 to the same company can only be annulled as a consequence.

**On the other submissions of the parties:**

44. In the first place, St Jean Beach Real Invest's appeal application, registered under no. 22BX00957, although it refers to inappropriate behavior on the part of individuals who are members of the staff of Solid Rock Property and Eden Rock, by referring to pleadings a separate case, does not contain any defamatory remarks about Solid Rock Property, Afternoontea and Eden Rock. The conclusions of these

The latter's request apply the provisions of article L. 741-2 of the French Code of Administrative Justice must therefore be rejected.

45. Secondly, in the circumstances of case, there is no reason to uphold the parties' claims under article L. 761-1 of the French Code of Administrative Justice.

DECIDES :

Article 1" : Petition no. 24BX03086 submitted by Lil'Rock Beach is rejected.

Article 2 : Applications nos. 22BX00793 and 22BX00957 submitted by St Jean Beach Real Estate Invest and the local authority of Saint-Barthélemy are rejected.

Article 3 : The decision of August 14, 2024 by which the local authority of Saint-Barthélemy issued an amended building permit to St Jean Beach Real Estate Invest is cancelled.

Article 4 : The remainder of the parties' submissions is rejected.

Article 5 : The present ruling will be notified to the collectivity of Saint-Barthélemy, the company St Jean Beach Real Estate Invest, association Saint Barth Essentiel, the companies Solid Rock Property, Aftemoontea and Eden Rock and the company Lil'Rock Beach.

Deliberated after hearing of April 1, 2025 at which were seated

Mr Laurent Pouget, Chairman,  
Marie-Pierre Beuve Dupuy, President-Assessor, Valérie  
Réaut, Senior Advisor.

Made public at the Clerk's Office on April 29, 2025.

The rapporteur,



Marie-Pierre Beuve Dupuy

Le ~~president~~,



Laurent Pouget

The clerk,



Christophe Pelletier

The Republic directs and orders the Prefect of Guadeloupe, representative of the State in the collectivities of Saint-Martin and Saint-Barthélemy, as it is concerned, and all court commissioners as required, insofar as common law remedies against private parties are concerned, to provide for execution of the present judgment.

