

**ATTACHMENT 3: Questions and Concerns Relating to Topics in the
Public Interest Review**

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Public Interest Review – Public Comments and Concerns

1. Introduction

Although the time period for public comment has been significantly curtailed due to the end of year holidays, and the information available for review has been extremely limited and self-contradictory, the project proposed by T-Rex St John (Sirius Marina) has nonetheless generated significant levels of comment and concern.

Many people have posed questions that they believe should have been answered by the applicant prior to applying for Army Corps permits. Our "normal" review cycle for projects of this sort first passes through our local Coastal Zone Management process, thereby ensuring a consistent set of detailed documentation will be available for review. In this case, however, the applicants have applied for the Department of the Army permits prior to entering the VICZM public review process.

This comment note consists of two parts:

- First, we have compiled a list of questions that people have asked in public forums, private conversation, and in their submitted letters. This list is organized generally by topic and we believe each of the questions on the list needs to be fully answered, and the answers support by scientifically sound data, in order to fully assess the probably impacts of the proposed project.
- Second, we have summarized the key public concerns within the context of the statutory requirements for the Army Corps "Public Interest Review". We have included the full text of the statute and interspersed our summary of public concerns within the provisions of the regulation.

Our strong conclusion, based on the data presently available to the public as presented in the Army Corps Public Notice, documents authored by the applicant and their agent and received through the Freedom of Information Act (FOIA), and documents provided directly to the public by the applicant, is that this project does not meet the standards required to prove a benefit to the public interest and therefore the permits sought by the applicant should be denied.

2. Questions Raised by the Public

Listed below, in outline form by topic, are the questions which have arisen in discussions with members of the resident community, the boating community, and our visitors and part-time residents.

1) GENERAL CONCERNS

a) Permit Application Documents

- i) Only very rudimentary information was provided in the USACE application – no EAR, no Archeological study, no economic analysis. Although Sirius has provided some of this information to the Corps (we know this through FOIA), the Corps has not published it for public comment.

- ii) The drawings are incomplete and inconsistent: in some places a precast floating concrete dock is depicted, in others a fixed dock is shown. The location of pilings is not shown. Building elevations are not shown.
 - iii) The drawings do not align with each other or with other aerial maps of the region. The project location drawing does not encompass the actual project.
- b) Upland project components
- i) The application does not include any mention of the planned hotel and retail complex. Even though this may be outside USACE jurisdictional boundaries, the impacts on the marina design, water quality, runoff and potable water/waste water management are highly significant.
 - ii) The upland components which are depicted (gravel parking area, marina management, boat garage, bulkheads and concrete apron) are not accompanied by any detail required to analyze their impacts.
 - (1) No rain runoff computations for impervious and semi pervious areas.
 - (2) No description of rain water catchment – cisterns, etc.
 - (3) No information on the Waste Water Treatment Plant.
- c) Project boundaries
- i) A significant portion (approx 0.5 acre) of the "upland" land area is actually filled wetlands, filled illegally during 1973-74. There are many contemporaneous news articles and aerial photographs depicting the original shoreline and describing the legal action against the fill operation. This land is not owned by any private entity (including the Moravian Church) – it is Trust Land of the USVI.
 - ii) The project area impacts significantly on the littoral rights of adjacent land owners, specifically the owners of Usher Cay and Pickles restaurant.
 - iii) The boundary lines depicted in the drawings for natural features (shoreline, extent of mangroves) do not match aerial photographs.

2) INFRASTRUCTURE CONCERNS

a) Potable (Fresh) Water

- i) The public notice only provides a single sentence dealing with water requirements ("A wastewater treatment plant, brackish wells with an R/O plant, a cistern, underwater fuel tanks and an emergency generator would also be constructed.").
- ii) The EA received through FOIA contains a 2-page "Preliminary Hydrogeologic Summary" that does not appear to have been conducted with any field testing. The preliminary report only concludes that there is a potential for wells to provide adequate supplies of brackish water for reverse osmosis purification. There are caveats having to do with location, recharge capacity, infiltration of sea water and geological formations.
- iii) This is insufficient information to conclude that a well field would provide sufficient water for the marina, much less for the hotel and retail complex.
- iv) There is no description of the proposed R/O system. There is no description of the method or location of disposal of the R/O brine. There is no structure shown for water storage.

v) A combined calculation of potable water needs and supply methods (based on actual field data) for the marina and hotel complex must be provided for review and comment.

b) Waste Water Treatment

- i) The drawings depict a WWTP located 50' from Mean High Water and at an elevation of 4' above sea level. There is no description of how effluent will be pumped uphill or how the plant will function during power outages.
- ii) There is no quantitative data provided on the capacity requirements for the WWTP (no data in the PN), and no data on the W/W requirements of the hotel complex. Is a separate WWTP planned for the hotel? A combined calculation must be provided.
- iii) The EA describes a need for 0.63 acres (27,500 sf) of landscape to consume 1" per week of waste water effluent (marina only). However the drawings do not show any landscaped area in the marina site (concrete apron and gravel parking lot).

c) Marina Fuel Supply

- i) The drawings depict two "Underground Fuel Storage Tanks". These tanks are located seaward of the current shoreline. No information has been provided in the PN to describe how this will be safely engineered to prevent catastrophic water pollution if a tank should fail.
- ii) The marina fuel is apparently dispensed from a floating fuel dock. How will the fuel line connection to the floating fuel dock be secured to ensure it will not fail during high wind/wave/tide turbulent conditions?
- iii) Will fuel be delivered by barge? Where is the fuel barge dock ?
- iv) The fuel dock is located in an area of extremely low water circulation, exacerbated by the dock structures and wave attenuators. It is also adjacent to healthy mangroves. Why was this location selected?

d) Site Access During Construction

- i) Public Roadways – how will our fragile roads be protected from the impact of heavy equipment?
- ii) Barge Access – How will concrete barges access the site before the site is complete?

e) Solid Waste Disposal

- i) How will the additional solid waste be managed, given the overburdened state of our current solid waste management system?

3) MARINA DESIGN AND CONSTRUCTION

a) Marina Dock Design

- i) Although the drawings are not all consistent, it appears as though the majority of the marina is constructed from precast concrete floating sections. The size, design, and method of securing these sections (pilings) is not clearly shown.
- ii) There is no data provided to indicate how floating concrete docks will perform under the wind, wave and tide conditions of Coral Bay Harbor.

- iii) There are no drawings illustrating the location of the 420 pilings described in the Public Notice.
- iv) There are no geological studies done of the seabed to verify the depth of sediments, or depth to bedrock. This is critical to evaluate the feasibility of both the piling installation as well as the planned dredging. Local knowledge indicates that depth to hard bedrock is very shallow in the vicinity of the dredge site.
- v) The noise impacts from pile driving will be extremely disruptive to tourists and residents of Coral Bay. The hillsides act as a natural amphitheater and sound reverberates.
- vi) The floating dock sections are opaque to sunlight (as opposed to elevated gratings). This is contrary to dock guidelines for construction over sea grass.
- vii) The double-wide slips (accommodating two vessels each), in conjunction with floating finger piers, may not be safe for boats or boaters.
- viii) Site specific wind and wave data should be provided.

b) Marina Construction – Dredging

- i) The PN and drawings describe and depict a dredge area of approximately one acre (40,210 sf). Approximately 3,890 cubic yards of material are proposed to be removed to create a basin at a depth of -6 feet. This volume is equivalent to approximately 400 truck loads of sediments. The proposed primary disposal site is on the south west corner of the "triangle", adjacent to the Pickles restaurant.
- ii) The limits of the benthic survey do not apparently extend into the dredge area. On the benthic survey maps this area is not coded with any indication of the bottom conditions.
- iii) The dredge area appears to significantly overlap the mangroves on Usher Cay and will most likely disrupt their root systems.
- iv) There has been no data supplied to evidence the feasibility of dredging to -6 feet. Anecdotally it has been said that bedrock is very close to the seabed in parts of this area.
- v) The proposed disposal site appears to be a wetland, based on the soil type (Solitude A, frequently flooded), the elevation (2-4' above sea level), and the presence of a gully in this parcel. This disposal would therefore constitute filling of wetlands.
- vi) The proposed disposal site would create unhealthful and unsanitary conditions for the adjacent property owner and business establishment (a restaurant and art complex).
- vii) The effect of leaching of salts from the dredge spoil has not been discussed.

c) Bulkheads and Concrete Apron

- i) The Public Notice and drawings describe construction of approximately 800 linear feet of bulkheads at an elevation of 4' above sea level, and seaward of the current shoreline in some areas.
- ii) The bulkheads would be backfilled with some dredge material to create new fast land. The entire surface landward of the bulkheads would be paved with a concrete apron.
- iii) The environmental impacts of the bulkheads and paving have not been discussed. Storm water runoff from the concrete apron (approximately 1 acre, inclusive of buildings) has not been quantified or addressed. No catchment or cisterns are depicted.
- iv) The potential for the bulkhead and dredging to impact sea water exchange with the adjacent salt pond has not been addressed.

- d) Construction – General Concerns
 - i) The timetable forecast by for start-to-finish of the project seems entirely unrealistic based on experience with large projects in Coral Bay.
 - ii) Construction equipment traversing the roadways will cause major damage. Delivery of construction equipment by barge will be impossible due to depth of water.

4) ENVIRONMENTAL CONCERNS

- a) Natural Environment
 - i) The impacts on documented shark habitat have not been discussed.
 - ii) The impacts on commercially valuable species (whelk, lobster, conch, etc.) have not been discussed.
 - iii) The sonic impacts on marine reptiles (turtles) and marine mammals (whales and dolphin) has not been discussed.
 - iv) The dredge area is directly adjacent to a known and frequently studied bird habitat (site of frequent Audubon bird studies). The impact on avian habitat has not been discussed.
 - v) The extent of mangrove removal appears to be greater than what is stated in the PN.
- b) Economic Questions
 - i) The PN does not supply sufficient information to evaluate the economic viability of the project. Will the marina be economically viable on a standalone basis, or does it depend upon the proposed hotel and resort complex for economic viability?
 - ii) How will the construction and operation of the marina impact existing businesses and ecotourism in Coral Bay? This has not been addressed.
 - iii) What is the justification and rationale for a 92-slip marina and 30-40 slip "dry stack" boat garage? Would a smaller facility meet the needs of the public better?
- c) Historic Resources
 - i) The dinghy dock is an historically significant structure, in continuous use since the 19th century. The project will demolish and remove this structure. This should not be permitted.
 - ii) The adequacy of the archeological studies done in the water and on the land are dubious, given the rich history of the area and the apparent lack of findings.

5) OTHER CONCERNS

- a) Earthquake hazard – the stability of the newly filled land behind the bulkheads has not been addressed. The dredged sediments may be fine grained materials which could liquefy in a moderate earthquake. Can a 3-storey boat garage be safely built within a few feet of this fill area?
- b) Tsunami hazard - the marina is in a tsunami hazard zone
- c) Social Impacts – the Kids and the Sea (KATS) program may be severely disrupted by this project.
- d) Social Impacts – the removal of the municipal dinghy dock during construction, without assurances that an alternative will be provided, will create severe hardship on existing boaters and charter operations.
- e) Emergency Services – what are the fire suppression procedures for a land-based fire in the "boat garage"? same question in the marina.

- f) Hazardous Materials – will boat maintenance operations be conducted on shore? Will this result in the creation of hazardous materials?
- g) Proximity to Restaurant – are there health or safety concerns given the proximity of a major Coral Bay eatery less than 200' from the waste water treatment plant, fuel storage tanks, and boat garage?
- h) Relocation of Navigational Channel – the project proposes relocation of the existing navigational channel. Has this been reviewed by appropriate interested parties? If the dredging is not feasible will there be a viable navigation channel to shore ?

6) CULTURAL HERITAGE

- a) What is the impact of the proposed marina on property taxes in Coral Bay given the oppressive property tax assessments on St. John?
- b) Is the marina going to create a space that reinforces schemas of racial and ethnic difference? Will it be an actual or de facto "gated community"?
- c) What's the cultural impact? What systems of knowledge and ways of being human are lost to predatory capitalism when our coastal areas are continuously converted into playgrounds for predominantly wealthy, non-local, typically white people?

3. Comments and Concerns Relating to the Statutory Public Interest Review Under NEPA

We have structured these comments in the following way. First, we have copied the verbatim text of 33 CFR 320.4 - General policies for evaluating permit applications, and reproduced it below (in *italicized font*). Following those sections for which there were significant public concerns we have inserted a block of text, enclosed in a box, indented and in **yellow highlighted bold type** (to clearly offset it from the text of the regulation), summarizing the public concern. In some places we have made references to other documents included in these comments.

§ 320.4 General policies for evaluating permit applications.

The following policies shall be applicable to the review of all applications for DA permits. Additional policies specifically applicable to certain types of activities are identified in 33 CFR parts 321 through 324.

(a) Public Interest Review.

(1) The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.

The decision to issue a permit must consider the impacts of the activity (construction) as well as its ongoing use. In the case of the Sirius Marina the ongoing use is a major concern relating to the continuous impact of boat traffic, pollutants, and human impact on National Park resources.

Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so, the conditions under

The criteria for balancing factors is "reasonably expected" benefits versus "reasonably foreseeable detriments." The applicant has provided no evidence whatsoever that would lead one to reasonably expect benefits from the proposal. No economic benefit has been demonstrated and in fact the public has demonstrated a reasonable expectation of economic loss. No environmental benefit has been demonstrated and extensive comments have demonstrated foreseeable detriments to the environment. The "balance" of this proposal clearly does not demonstrate balancing detriments with benefits.

which it will be allowed to occur, are therefore determined by the outcome of this general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. For activities involving 404

Each of the factors listed in the preceding language will be addressed later in this analysis.

discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding

As clearly identified in our comments, the permit requested by the applicant does not comply with the EPA's 404(b)(1) guidelines since it involves discharge of dredge materials in wetlands and other waters of the US and is not the least environmentally damaging practicable alternative, as required by the guidelines. Pursuant to the language above, the permit must be denied.

sentence and any other applicable guidelines and criteria (see §§ 320.2 and 320.3), a permit will be granted unless the district engineer determines that it would be contrary to the public interest.

(2) The following general criteria will be considered in the evaluation of every application:

(i) The relative extent of the public and private need for the proposed structure or work:

The public has clearly stated, in the form of thousands of individual and group comment letters and petitions, that the project does not meet a public need and in fact will destroy the qualities of Coral Bay that are valued by residents and visitors.

(ii) Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work; and

We have provided detailed analysis of alternative locations and methods which will achieve the purpose of the project. These alternatives help to resolve conflicts between the public interest and the private developer's interest.

(iii) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited.

This is a critical concern of hundreds of comments: that the impacts on the natural environment through dredging, filling, and habitat destruction are permanent and cannot be undone. The benefits, if any, are transient and accrue only to the developers and not to the community or the environment.

(3) The specific weight of each factor is determined by its importance and relevance to the particular proposal. Accordingly, how important a factor is and how much consideration it deserves will vary with each proposal. A specific factor may be given great weight on one proposal, while it may not be present or as important on another. However, full consideration and appropriate weight will be given to all comments, including those of federal, state, and local agencies, and other experts on matters within their expertise.

We believe that the weight of each factor should reflect not only the relevance to the proposal, but also the importance attributed to it by public comments. Many people who have commented are experts in specific subject areas relevant to this proposal, including habitat, history, navigation and cultural concerns.

(b) Effect on wetlands.

(1) Most wetlands constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest. For projects to be undertaken or partially or entirely funded by a federal, state, or local agency, additional requirements on wetlands considerations are stated in Executive Order 11990, dated 24 May 1977.

(2) Wetlands considered to perform functions important to the public interest include:

(i) Wetlands which serve significant natural biological functions, including food chain production, general habitat and nesting, spawning, rearing and resting sites for aquatic or land species;

The mangrove wetlands directly and indirectly impacted by this proposal serve significant biological functions, in particular for habitat, nesting, spawning and rearing. The special considerations relating to the shark habitat have been well documented. The bird habitat has been documented. Mangroves, in general, are a highly productive wetland environment.

(ii) Wetlands set aside for study of the aquatic environment or as sanctuaries or refuges;

(iii) Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;

We have demonstrated that the bulkheads placed in the mangrove wetland will directly impact the natural drainage, flushing and salinity of the adjacent salt pond.

(iv) Wetlands which are significant in shielding other areas from wave action, erosion, or storm damage. Such wetlands are often associated with barrier beaches, islands, reefs and bars;

(v) Wetlands which serve as valuable storage areas for storm and flood waters;

(vi) Wetlands which are ground water discharge areas that maintain minimum baseflows important to aquatic resources and those which are prime natural recharge areas;

(vii) Wetlands which serve significant water purification functions; and

(viii) Wetlands which are unique in nature or scarce in quantity to the region or local area.

The unique character of the Coral Bay mangroves which combine a sheltered location with access to open seas is perhaps one of the reasons they are a special pupping ground for live birth sharks. According to the expert (Skomal) this may be unique in the region.

(3) Although a particular alteration of a wetland may constitute a minor change, the cumulative effect of numerous piecemeal changes can result in a major impairment of wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it may be part of a complete and interrelated wetland area. In addition, the district engineer may undertake, where appropriate, reviews of particular wetland areas in consultation with the Regional Director of the U. S. Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency, the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate state agency to assess the cumulative effect of activities in such areas.

The cumulative effect on this mangrove wetland is a matter of critical importance. We have provided aerial photographs and survey data from the mid 1940's through the present day to document the filling of this portion of Coral Bay over the years. Significant portions of the original water and mangroves have been lost in this most protected corner of Coral Bay. The proposed incremental dredge, fill and bulkhead operation, on top of what has already taken place, would quite possibly result in the complete loss of the creek mangrove ecosystem. This cumulative effect must be considered fully.

(4) No permit will be granted which involves the alteration of wetlands identified as important by paragraph (b)(2) of this section or because of provisions of paragraph (b)(3), of this section unless the district engineer concludes, on the basis of the analysis required in paragraph (a) of this section, that the benefits of the proposed alteration outweigh the damage to the wetlands resource. In evaluating whether a particular discharge activity should be permitted, the district engineer shall apply the section 404(b)(1) guidelines (40 CFR part 230.10(a) (1), (2), (3)).

We have extensively documented the fact that the discharge activity associated with this permit may not be permitted under section 404(b)(1) guidelines. This is of particular concern given the importance of this particular mangrove wetland under paragraph (b)(2) and (b)(3) above.

(5) In addition to the policies expressed in this subpart, the Congressional policy expressed in the Estuary Protection Act, Pub. L. 90-454, and state regulatory laws or programs for classification and protection of wetlands will be considered.

(c) Fish and wildlife. In accordance with the Fish and Wildlife Coordination Act (paragraph 320.3(e) of this section) district engineers will consult with the Regional Director, U.S. Fish and Wildlife Service, the

Regional Director, National Marine Fisheries Service, and the head of the agency responsible for fish and wildlife for the state in which work is to be performed, with a view to the conservation of wildlife resources by prevention of their direct and indirect loss and damage due to the activity proposed in a permit application. The Army will give full consideration to the views of those agencies on fish and wildlife matters in deciding on the issuance, denial, or conditioning of individual or general permits.

(d) Water quality. Applications for permits for activities which may adversely affect the quality of waters of the United States will be evaluated for compliance with applicable effluent limitations and water quality standards, during the construction and subsequent operation of the proposed activity. The evaluation should include the consideration of both point and non-point sources of pollution. It should be noted, however, that the Clean Water Act assigns responsibility for control of non-point sources of pollution to the states. Certification of compliance with applicable effluent limitations and water quality standards required under provisions of section 401 of the Clean Water Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water quality aspects to be taken into consideration.

We are extremely concerned about the impacts of this proposal, both direct and cumulative, on non point-source pollution, specifically storm water runoff containing upland contaminants. The proposal to build a 1 acre concrete apron directly on the shoreline, a semi-permeable parking lot, and new roadways, in an area already impacted by sheet runoff, needs thorough review following an engineering proposal. The applicants have not even addressed the topic in their application.

(e) Historic, cultural, scenic, and recreational values. Applications for DA permits may involve areas which possess recognized historic, cultural, scenic, conservation, recreational or similar values. Full evaluation of the general public interest requires that due consideration be given to the effect which the proposed structure or activity may have on values such as those associated with wild and scenic rivers, historic properties and National Landmarks, National Rivers, National Wilderness Areas, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, estuarine and marine sanctuaries, archeological resources, including Indian religious or cultural sites, and such other areas as may be established under federal or state law for similar and related purposes. Recognition of those values is often reflected by state, regional, or local land use classifications, or by similar federal controls or policies. Action on permit applications should, insofar as possible, be consistent with, and avoid significant adverse effects on the values or purposes for which those classifications, controls, or policies were established.

This is perhaps the topic most widely commented upon by the public – the direct and indirect impacts which the proposed marina will have on the Virgin Islands National Park and on historic resources in Coral Bay. The National Parks Conservation Association, the Friends of the VI National Park, and thousands of petition signers have expressed these concerns. We have documented direct impacts on historic structures (including the historic town dock and the home on Usher Cay). We have submitted a petition with over 3500 names specifically objecting to impacts on the National Park. We believe that this concern, alone, should be sufficient to deny a permit under public interest review criteria established by the National Environmental Policy Act.

(f) Effects on limits of the territorial sea. Structures or work affecting coastal waters may modify the coast line or base line from which the territorial sea is measured for purposes of the Submerged Lands Act and international law. Generally, the coast line or base line is the line of ordinary low water on the mainland; however, there are exceptions where there are islands or lowtide elevations offshore (the Submerged Lands Act, 43 U.S.C. 1301(a) and United States v. California, 381 U.S.C. 139 (1965), 382 U.S. 448 (1966)). Applications for structures or work affecting coastal waters will therefore be reviewed specifically to determine whether the coast line or base line might be altered. If it is determined that such a change might occur, coordination with the Attorney General and the Solicitor of the Department of the Interior is required before final action is taken. The district engineer will submit a description of the proposed work and a copy of the plans to the Solicitor, Department of the Interior, Washington, DC 20240, and request his comments concerning the effects of the proposed work on the outer continental rights of the United States. These comments will be included in the administrative record of the application. After completion of standard processing procedures, the record will be forwarded to the Chief of Engineers. The decision on the application will be made by the Secretary of the Army after coordination with the Attorney General.

(g) Consideration of property ownership. Authorization of work or structures by DA does not convey a property right, nor authorize any injury to property or invasion of other rights.

The impact of this project on property rights of adjacent land owners is a major concern of the public. We have reviewed the littoral rights of these individuals and believe this project, if permitted to be built, would severely impair their rights to use the waters offshore of their land. Absent any legal analysis or rational explanation for the location of the proposed marina, or how it is consistent with common law policy on littoral rights, it would be contrary to the public interest to condone such use. It should be noted that the land owner of this project – the Moravian Conference – formally objected to the infringement of their littoral rights when the project of the Summer's End Group was proposed. However they are now proposing to do the same thing they objected to – they are disregarding the littoral rights of their neighbors.

(1) An inherent aspect of property ownership is a right to reasonable private use. However, this right is subject to the rights and interests of the public in the navigable and other waters of the United States, including the federal navigation servitude and federal regulation for environmental protection.

(2) Because a landowner has the general right to protect property from erosion, applications to erect protective structures will usually receive favorable consideration. However, if the protective structure may cause damage to the property of others, adversely affect public health and safety, adversely impact floodplain or wetland values, or otherwise appears contrary to the public interest, the district engineer will so advise the applicant and inform him of possible alternative methods of protecting his property. Such advice will be given in terms of general guidance only so as not to compete with private engineering firms nor require undue use of government resources.

(3) A riparian landowner's general right of access to navigable waters of the United States is subject to the similar rights of access held by nearby riparian landowners and to the general public's right of navigation on the water surface. In the case of proposals which create undue interference with access to, or use of, navigable waters, the authorization will generally be denied.

We have commented on the littoral rights (riparian rights) of adjacent landowners. This proposal creates a severe impediment to the use of the northern shoreline of Usher Cay. The proposal should be denied pursuant to the language above.

(4) Where it is found that the work for which a permit is desired is in navigable waters of the United States (see 33 CFR part 329) and may interfere with an authorized federal project, the applicant should be apprised in writing of the fact and of the possibility that a federal project which may be constructed in the vicinity of the proposed work might necessitate its removal or reconstruction. The applicant should also be informed that the United States will in no case be liable for any damage or injury to the structures or work authorized by Sections 9 or 10 of the Rivers and Harbors Act of 1899 or by section 404 of the Clean Water Act which may be caused by, or result from, future operations undertaken by the Government for the conservation or improvement of navigation or for other purposes, and no claims or right to compensation will accrue from any such damage.

(5) Proposed activities in the area of a federal project which exists or is under construction will be evaluated to insure that they are compatible with the purposes of the project.

(6) A DA permit does not convey any property rights, either in real estate or material, or any exclusive privileges. Furthermore, a DA permit does not authorize any injury to property or invasion of rights or any infringement of Federal, state or local laws or regulations. The applicant's signature on an application is an affirmation that the applicant possesses or will possess the requisite property interest to undertake the activity proposed in the application. The district engineer will not enter into disputes but will remind the applicant of the above. The dispute over property ownership will not be a factor in the Corps public interest decision.

A portion of the land that the applicant proposes to use for this project is filled land, created in 1971 through illegal filling of wetlands. We have provided extensive documentation of this fact and identified the extent of the filled lands. Filled lands are not privately owned in the Virgin Islands – they are "Trust Lands" and the use of Trust Lands can only be secured through a lease agreement with the Virgin Islands. Although we recognize that the Corps does "not enter into disputes" and disputes are not a factor in the public interest decision, we do believe that the provision of (g)(6) above requires the district engineer to "remind the applicant" of the fact that their proposal involves use of filled lands not owned by the Moravian Conference.

(h) Activities affecting coastal zones. Applications for DA permits for activities affecting the coastal zones of those states having a coastal zone management program approved by the Secretary of Commerce will be evaluated with respect to compliance with that program. No permit will be issued to a non-federal applicant until certification has been provided that the proposed activity complies with the coastal zone management program and the appropriate state agency has concurred with the certification or has waived its right to do so. However, a permit may be issued to a non-federal applicant if the Secretary of Commerce, on his own initiative or upon appeal by the applicant, finds that the proposed activity is consistent with the objectives of the Coastal Zone Management Act of 1972 or is otherwise necessary in the interest of national security. Federal agency and Indian tribe applicants for DA permits are responsible for complying with the Coastal Zone Management Act's directives for assuring

that their activities directly affecting the coastal zone are consistent, to the maximum extent practicable, with approved state coastal zone management programs.

As stated in our comments, we were surprised that this applicant chose to apply for a DA permit prior to receiving any form of local Coastal Zone Management authorization. We understand that VICZM has not accepted the application as complete. Lack of a local hearing has put the public at a disadvantage due to the scarcity of documentation for this project. We respectfully request that a Public Hearing be scheduled by the Corps as soon as sufficient documentation is available to make substantive and meaningful comments on the application.

(i) Activities in marine sanctuaries. Applications for DA authorization for activities in a marine sanctuary established by the Secretary of Commerce under authority of section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, will be evaluated for impact on the marine sanctuary. No permit will be issued until the applicant provides a certification from the Secretary of Commerce that the proposed activity is consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary.

(j) Other Federal, state, or local requirements.

(1) Processing of an application for a DA permit normally will proceed concurrently with the processing of other required Federal, state, and/or local authorizations or certifications. Final action on the DA permit will normally not be delayed pending action by another Federal, state or local agency (See 33 CFR 325.2 (d)(4)). However, where the required Federal, state and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application, the district engineer will, after considering the likelihood of subsequent approval of the other authorization and/or certification and the time and effort remaining to complete processing the Army permit application, either immediately deny the Army permit without prejudice or continue processing the application to a conclusion. If the district engineer continues processing the application, he will conclude by either denying the permit as contrary to the public interest, or denying it without prejudice indicating that except for the other Federal, state or local denial the Army permit could, under appropriate conditions, be issued. Denial without prejudice means that there is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state and/or local agency on a previously denied authorization and/or certification. Even if official certification and/or authorization is not required by state or federal law, but a state, regional, or local agency having jurisdiction or interest over the particular activity comments on the application, due consideration shall be given to those official views as a reflection of local factors of the public interest.

(2) The primary responsibility for determining zoning and land use matters rests with state, local and tribal governments. The district engineer will normally accept decisions by such governments on those matters unless there are significant issues of overriding national importance. Such issues would include but are not necessarily limited to national security, navigation, national economic development, water quality, preservation of special aquatic areas, including wetlands, with significant interstate importance, and national energy needs. Whether a factor has overriding importance will depend on the degree of impact in an individual case.

The United States Environmental Protection Agency (EPA) has stated that Coral Bay is an "Aquatic Resource of National Importance." This determination was made in the EPA comments to the proposed "Summer's End Group Marina" in Coral Bay. The Sirius Marina project is not only located within an Aquatic Resource of National Importance, but it also proposes to destroy and/or impair the aquatic function of multiple acres of wetlands, as well as remove environmentally significant mangroves. So, although the upland parcel may be zoned for marina use, we believe that it is not in the public interest to utilize this particular parcel in the manner requested by the applicant, involving destruction of nationally important wetlands.

(3) A proposed activity may result in conflicting comments from several agencies within the same state. Where a state has not designated a single responsible coordinating agency, district engineers will ask the Governor to express his views or to designate one state agency to represent the official state position in the particular case.

(4) In the absence of overriding national factors of the public interest that may be revealed during the evaluation of the permit application, a permit will generally be issued following receipt of a favorable state determination provided the concerns, policies, goals, and requirements as expressed in 33 CFR parts 320-324, and the applicable statutes have been considered and followed: e.g., the National Environmental Policy Act; the Fish and Wildlife Coordination Act; the Historical and Archeological Preservation Act; the National Historic Preservation Act; the Endangered Species Act; the Coastal Zone Management Act; the Marine Protection, Research and Sanctuaries Act of 1972, as amended; the Clean Water Act, the Archeological Resources Act, and the American Indian Religious Freedom Act. Similarly, a permit will generally be issued for Federal and Federally-authorized activities; another federal agency's determination to proceed is entitled to substantial consideration in the Corps' public interest review.

In the United States Virgin Islands the territorial resources required for a thorough review of public interest according to the criteria and statutes cited above, are generally not available. In countless cases the territorial authorities have "passed the buck" to the federal authorities to perform these types of thorough review. In this case, where resources of national importance are at stake, we frankly do not believe that the territorial agencies have the staff, the training, or the resources to conduct the requisite level of review.

(5) Where general permits to avoid duplication are not practical, district engineers shall develop joint procedures with those local, state, and other Federal agencies having ongoing permit programs for activities also regulated by the Department of the Army. In such cases, applications for DA permits may be processed jointly with the state or other federal applications to an independent conclusion and decision by the district engineer and the appropriate Federal or state agency. (See 33 CFR 325.2(e).)

(6) The district engineer shall develop operating procedures for establishing official communications with Indian Tribes within the district. The procedures shall provide for appointment of a tribal representative who will receive all pertinent public notices, and respond to such notices with the official tribal position on the proposed activity. This procedure shall apply only to those tribes which accept this option. Any adopted operating procedures shall be distributed by public notice to inform the tribes of this option.

(k) Safety of impoundment structures. To insure that all impoundment structures are designed for safety, non-Federal applicants may be required to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons and, in appropriate cases, that the design has been independently reviewed (and modified as the review would indicate) by similarly qualified persons.

We are concerned that the placement of over 3,000 cubic yards of dredge spoils in a low-lying wetland could create an inadvertent impoundment and become unstable under heavy rain conditions. The proposed discharge site is located on top of a mapped drainage gully. Any dislocation of the disposed dredge materials could directly and catastrophically impact Coral Bay harbor.

(l) Floodplain management.

(1) Floodplains possess significant natural values and carry out numerous functions important to the public interest. These include:

(i) Water resources values (natural moderation of floods, water quality maintenance, and groundwater recharge);

(ii) Living resource values (fish, wildlife, and plant resources);

(iii) Cultural resource values (open space, natural beauty, scientific study, outdoor education, and recreation); and

(iv) Cultivated resource values (agriculture, aquaculture, and forestry).

There are multiple floodplains which will be impacted both directly and indirectly by this proposal. These include the salt pond just east of the project site, and the proposed dredge disposal area. Our comments about use of, and impacts to these resources are discussed below.

(2) Although a particular alteration to a floodplain may constitute a minor change, the cumulative impact of such changes may result in a significant degradation of floodplain values and functions and in increased potential for harm to upstream and downstream activities. In accordance with the requirements of Executive Order 11988, district engineers, as part of their public interest review, should avoid to the extent practicable, long and short term significant adverse impacts associated with the occupancy and modification of floodplains, as well as the direct and indirect support of floodplain development whenever there is a practicable alternative. For those activities which in the public interest must occur in or impact upon floodplains, the district engineer shall ensure, to the maximum extent practicable, that the impacts of potential flooding on human health, safety, and welfare are minimized, the risks of flood losses are minimized, and, whenever practicable the natural and beneficial values served by floodplains are restored and preserved.

The entire project is located within the floodplain as delineated on the FEMA floodplain maps. The impacts of the project are both direct (e.g. emplacement of dredge spoils) and indirect (isolating water exchange with a salt pond in a flood plain). The District Engineer should, as

required in this section, avoid to the extent practicable occupancy and modification of floodplains. We have identified practicable alternatives which achieve this goal.

(3) In accordance with Executive Order 11988, the district engineer should avoid authorizing floodplain developments whenever practicable alternatives exist outside the floodplain. If there are no such practicable alternatives, the district engineer shall consider, as a means of mitigation, alternatives within the floodplain which will lessen any significant adverse impact to the floodplain.

The entire project is within the floodplain as delineated on the FEMA floodplain maps. There is no evidence that the applicant has considered this in their designs. Disposing dredge material in a floodplain, as proposed by the applicant, cannot be permitted. Any flood event on the disposal parcel will wash vast quantities of the fine material directly into the waters of Coral Bay. We have documented our concerns regarding floodplains elsewhere in these comments.

(m) Water supply and conservation. Water is an essential resource, basic to human survival, economic growth, and the natural environment. Water conservation requires the efficient use of water resources in all actions which involve the significant use of water or that significantly affect the availability of water for alternative uses including opportunities to reduce demand and improve efficiency in order to minimize new supply requirements. Actions affecting water quantities are subject to Congressional policy as stated in section 101(g) of the Clean Water Act which provides that the authority of states to allocate water quantities shall not be superseded, abrogated, or otherwise impaired.

The applicant proposes to drill wells on the property and extract brackish water which will then be purified using a Reverse Osmosis (R/O) system. The hydrogeologist consultant for the project cautioned that the success of this water supply method would be contingent upon (a) locating suitably productive wells, (b) adequate recharge from rain in the upland watershed, (c) avoidance of infiltration of seawater due to depletion of the aquifer, and (d) finding an acceptable means to dispose of the briny effluent. We are concerned about this entire topic but particularly, in the context of a public interest review, with the potential that our meager underground water sources might become impaired by infiltration of sea water. This could impact agriculture, health of native vegetation, and having other unforeseen consequences.

(n) Energy conservation and development. Energy conservation and development are major national objectives. District engineers will give high priority to the processing of permit actions involving energy projects.

(o) Navigation.

(1) Section 11 of the Rivers and Harbors Act of 1899 authorized establishment of harbor lines shoreward of which no individual permits were required. Because harbor lines were established on the basis of navigation impacts only, the Corps of Engineers published a regulation on 27 May 1970 (33 CFR 209.150) which declared that permits would thereafter be required for activities shoreward of the harbor lines. Review of applications would be based on a full public interest evaluation and harbor lines would serve as guidance for assessing navigation impacts. Accordingly, activities constructed shoreward of harbor lines prior to 27 May 1970 do not require specific authorization.

(2) *The policy of considering harbor lines as guidance for assessing impacts on navigation continues.*

(3) *Protection of navigation in all navigable waters of the United States continues to be a primary concern of the federal government.*

The rerouting of the established navigation channel to place it closer to the shoreline of Usher Cay runs a risk of degrading the navigability of Coral Bay over a period of time. The marina structures will impede circulation of an already poorly flushed region, resulting in deposition of silt over time. Maintenance dredging in such close quarters may prove difficult, or not suitable for permitting. An alternative design which relies more on moorings and less on pilings and fixed marina structures, as suggested in our alternatives comments, would be more protective of navigation in Coral Bay.

(4) *District engineers should protect navigational and anchorage interests in connection with the NPDES program by recommending to EPA or to the state, if the program has been delegated, that a permit be denied unless appropriate conditions can be included to avoid any substantial impairment of navigation and anchorage.*

(p) *Environmental benefits. Some activities that require Department of the Army permits result in beneficial effects to the quality of the environment. The district engineer will weigh these benefits as well as environmental detriments along with other factors of the public interest.*

There are no net environmental benefits stemming from this project.

(q) *Economics. When private enterprise makes application for a permit, it will generally be assumed that appropriate economic evaluations have been completed, the proposal is economically viable, and is needed in the market place. However, the district engineer in appropriate cases, may make an independent review of the need for the project from the perspective of the overall public interest. The economic benefits of many projects are important to the local community and contribute to needed improvements in the local economic base, affecting such factors as employment, tax revenues, community cohesion, community services, and property values. Many projects also contribute to the National Economic Development (NED), (i.e., the increase in the net value of the national output of goods and services).*

In the case of the Sirius Marina, the private developer has offered no information whatsoever to demonstrate that proposal is economically viable. In fact, we have analyzed the scarce information available on construction costs and operating costs, and the marketing forecast on occupancy, slip rental revenue and ancillary revenues, and concluded that the project is overwhelmingly not economically feasible. Even with the most optimistic occupancy and revenue estimates, it barely covers the amortization of construction costs and falls far short of covering total operating costs. We have supplied the analysis of the applicant's data to demonstrate this point. Moreover, the claimed job creation is at a very low number of low paying positions. The increased burden in infrastructure costs to the territory from supporting this operation in such a remote location (the electrical power grid, fire services, police, public health, sanitation) will not be offset by any anticipated tax revenues. In short, the project makes no economic sense based on the data supplied by the applicant. We believe this is a

prime example of an appropriate case where the district engineer should make an independent review of the need for the project, as suggested in the language above.

(r) Mitigation.

(1) Mitigation is an important aspect of the review and balancing process on many Department of the Army permit applications. Consideration of mitigation will occur throughout the permit application review process and includes avoiding, minimizing, rectifying, reducing, or compensating for resource losses. Losses will be avoided to the extent practicable. Compensation may occur on-site or at an off-site location. Mitigation requirements generally fall into three categories.

(i) Project modifications to minimize adverse project impacts should be discussed with the applicant at pre-application meetings and during application processing. As a result of these discussions and as the district engineer's evaluation proceeds, the district engineer may require minor project modifications. Minor project modifications are those that are considered feasible (cost, constructability, etc.) to the applicant and that, if adopted, will result in a project that generally meets the applicant's purpose and need. Such modifications can include reductions in scope and size; changes in construction methods, materials or timing; and operation and maintenance practices or other similar modifications that reflect a sensitivity to environmental quality within the context of the work proposed. For example, erosion control features could be required on a fill project to reduce sedimentation impacts or a pier could be reoriented to minimize navigational problems even though those projects may satisfy all legal requirements (paragraph (r)(1)(ii) of this section) and the public interest review test (paragraph (r)(1)(iii) of this section) without such modifications.

(ii) Further mitigation measures may be required to satisfy legal requirements. For Section 404 applications, mitigation shall be required to ensure that the project complies with the 404(b)(1) Guidelines. Some mitigation measures are enumerated at 40 CFR 230.70 through 40 CFR 230.77 (Subpart H of the 404(b)(1) Guidelines).

(iii) Mitigation measures in addition to those under paragraphs (r)(1) (i) and (ii) of this section may be required as a result of the public interest review process. (See 33 CFR 325.4(a).) Mitigation should be developed and incorporated within the public interest review process to the extent that the mitigation is found by the district engineer to be reasonable and justified. Only those measures required to ensure that the project is not contrary to the public interest may be required under this subparagraph.

(2) All compensatory mitigation will be for significant resource losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment. Also, all mitigation will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable. District engineers will require all forms of mitigation, including compensatory mitigation, only as provided in paragraphs (r)(1) (i) through (iii) of this section. Additional mitigation may be added at the applicants' request.

We wish to reserve the right to comment on mitigation once the full environmental and resource impacts of the proposal are fully understood. At the moment we have insufficient information to assess the adequacy of the proposed mitigation.

David Silverman for Save Coral Bay, Inc.
25 January 2016