

## **ATTACHMENT 7: The Sirius Marina Infringes Littoral Rights of Neighboring Property Owners**

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## The Sirius Marina Infringes Littoral Rights of Neighboring Property Owners

The rights of landowners to utilize the water in front of their property is explicitly cited as one of the factors which is considered in the Army Corps Public Interest Review. The relevant regulation (33 CFR 320.4(g)(4) states:

*(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.*

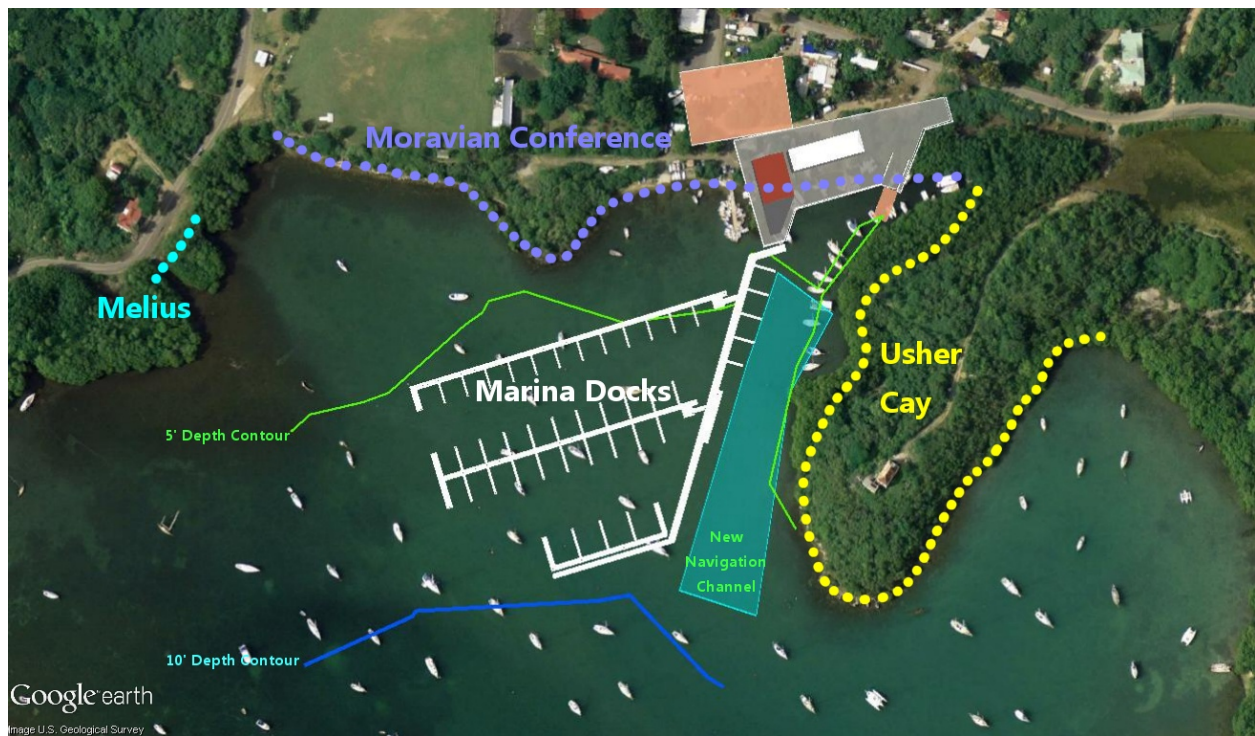
Infringement of littoral rights was a major issue for the landowner of the Sirius Marina project (the Moravian Conference) when the Summer's End Group proposed a mega yacht marina on the western shore of Coral Bay. The Moravian Church felt that the size and location of the Summer's End Marina was such that the Church would not be able to use their waterfront in the manner they wished. This was such a significant concern that the Moravian Church first offered comments at the CZM Public Hearing and subsequently filed an appeal with the Virgin Islands Board of Land Use Appeals when the CZM committee recommended approval of the Summer's End Group permit.

Attached hereto as Appendix A is the letter from the Church attorney, Ms. Maria Hodge, to VI DPNR, discussing the legal basis for littoral rights, and the explanation why the marina proposed by the Summer's End Group infringed upon the rights of the Moravian Church. Here is one of several relevant comments in that letter:

Our client has learned that the Summer's End Group, LLC ("Summer's End") seeks to develop The St. John Marina, a 145-slip marina project located on the western shore of Coral Bay. Based on public reports and review of your Department's records, the size and scope of the marina development proposed by Summer's End would interfere with the rights of the Moravian Church and T-Rex to access, and wharf out over, the water adjoining their land.

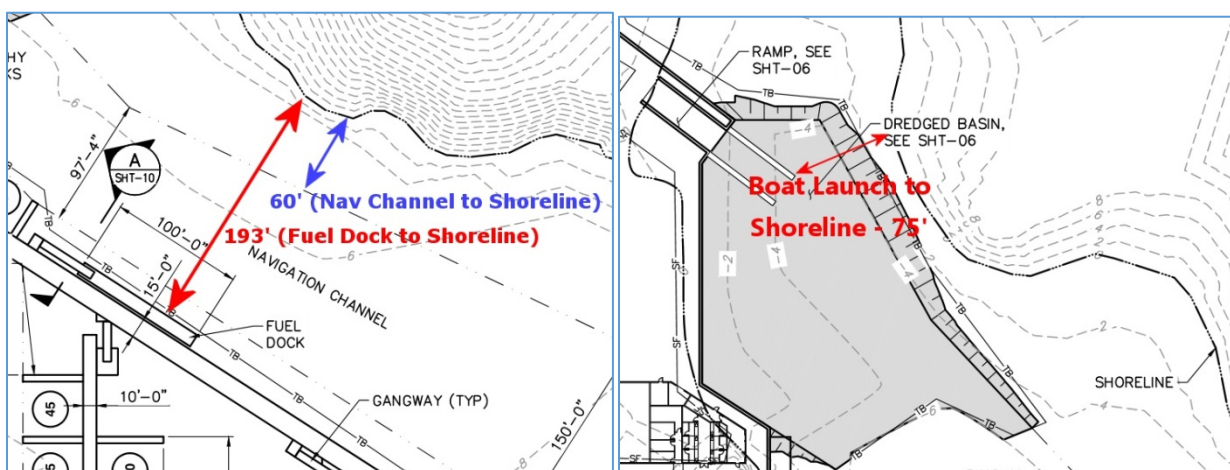
After reviewing the location and size proposed for the Sirius Marina, and its relationship to the shoreline properties of adjacent owners, we strongly believe that the proposed Sirius Marina infringes upon the littoral rights of the owners of Usher Cay, and infringes upon the littoral rights of Beverly Melius, owner of Pickles Restaurant.

Illustrated below are the land and water features that relevant to this discussion. The shoreline of the Moravian Conference is shown with a purple dotted line. The shoreline owned by the family of Usher Cay is a yellow dotted line. The shoreline of Beverly Melius is the turquoise dotted line. The depth contours of 5' and 10' are shown in green and blue respectively.



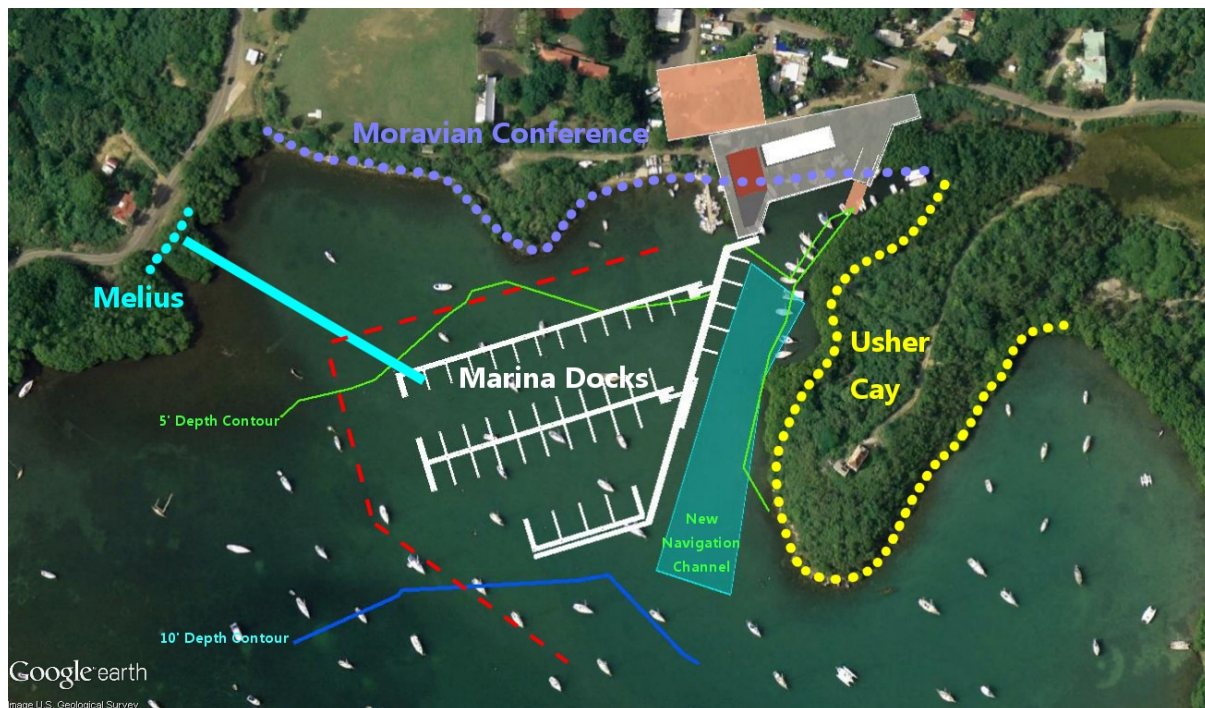
It should be immediately apparent that the marina structures proposed by T-Rex St John for the Sirius Marina not only preclude the Usher Cay owners from making any use of over half their shoreline, but it also impedes their view, subjects them to light pollution from nighttime marina lighting, sound pollution from diesel generators, air pollution from diesel exhaust, and entirely deprives them of the view from their shoreline.

In addition to the indirect environmental impacts, the Sirius Marina project proposes to dredge directly offshore of the Usher Cay property, and the proposed dredge zone, as illustrated in other comments, will impact approximately 10,000 square feet of fringing mangroves on Usher Cay. The marina structures – boat ramp and fuel dock – are less than 200' from the Usher Cay shoreline, as illustrated below:



However it is not only the Usher Cay owners who are deprived of right of access to navigable water. The Melius property is located on a shallow part of Coral Bay, and needs to wharf out to navigable water in front of their shoreline if they decide at some point to construct a dock. Since their property is narrow, they do not have the option to wharf out an angle that might avoid the Sirius Marina – if they were to do so they would infringe upon the littoral rights of their neighbors or be atop a shoal to the south.

The designers of the Sirius Marina stipulated that a 125' navigation channel was required between their marina docks and those of the adjacent marina (Summer's End Group). This channel width is required to provide a safe navigation way for vessels entering and exiting the marina. The illustration below shows the Sirius Marina structure, with the red dashed line at a distance of 125' from the fixed docks.



This illustration makes it apparent that the Melius property cannot reach water depths of over 5' in front of their property without entering the area reserved for the proposed Sirius Marina. In fact, the entire 5' contour in front of the Melius shoreline is consumed by the navigational channel surrounding the Sirius Marina.

As a consequence of its excessive design and location, the Sirius Marina precludes Melius from wharfing out to deep water – the fundamental littoral right of a shoreline property owner. This was the express concern raised by the Moravian Church when the Summer's End Group project was evaluated and so it is surprising that the Sirius Marina developers would impose the same unfair burden on their neighbors and deprive them of the precise rights that the Moravian Church strove to preserve for themselves.

As a matter of Public Interest under NEPA, this project should not be permitted until each of the adjacent property owner's rights of access to navigable water is protected, as required by 33 CFR 320.4(g)(4).

David Silverman, President, Save Coral Bay Inc.  
22 January 2016



## **APPENDIX A**

### **Attorney Hodge Protest Regarding Littoral Rights of Moravian Conference**



# HODGE & HODGE

August 5, 2014

Department of Planning and Natural Resources  
Division of Coastal Zone Management  
Via hand Delivery



RE: Opposition to Scope of The Summer's End Group, LLC's Permit Application for  
Proposed Development of The St. John Marina (CZJ-3-14 L and CZ- 4-14W)

To Whom It May Concern:

We represent the Moravian Church VI Conference ("Moravian Church" or "the Church"). We are writing to express concerns of the Moravian Church and T-Rex St. John, LLC ("T-Rex"), the lessee of the Church's property at Coral Bay, regarding the permit application of The Summer's End Group, LLC for development of a proposed marina project in Coral Bay, St. John.

The Moravian Church owns property located at the head of Coral Harbor, along the south side of Route 10. T-Rex leases this property from the Moravian Church. The Church has a longstanding interest in developing a marina on the subject property and, jointly with T-Rex, has been drafting an application to CZM for such development. As you know, the Moravian Church and T-Rex attended pre-filing meetings with CZM in May 2014, and intend to submit an application for development of an 85-slip marina to CZM in the immediate future, in conformity with the discussions at those meetings.

Our client has learned that the Summer's End Group, LLC ("Summer's End") seeks to develop The St. John Marina, a 145-slip marina project located on the western shore of Coral Bay. Based on public reports and review of your Department's records, the size and scope of the marina development proposed by Summer's End would interfere with the rights of the Moravian Church and T-Rex to access, and wharf out over, the water adjoining their land.

"The right of access to the water in front of his land is the fundamental riparian right which the owner of littoral land enjoys."<sup>1</sup> *Burns v. Forbes*, 412 F.2d 995, 998, 7 V.I. 256 (3d Cir. 1969), citing *Hughes v. Washington*, 389 U.S. 290, 293-294, 88 S. Ct. 438, 19 L. Ed. 2d 530 and 2 Tiffany, Real Property, §§ 659, 660; III American Law of Property § 15.35.

<sup>1</sup> "A littoral landowner is one whose land borders an ocean, sea, or lake." *Club Comanche, Inc. v. Gov't of the V.I.*, 278 F.3d 250, 261 n.1 (3d Cir. 2002), citing *Alexander Hamilton Life Ins. v. Gov't of the V.I.*, 757 F.2d 534, 538 (3d Cir. 1985). A riparian landowner is one whose land borders a river or stream. "Generally speaking, the special property rights of littoral and riparian owners are the same, and cases dealing with one type of waterfront landowner are freely applied when adjudicating the rights of the other." *Alexander Hamilton Life Ins.*, 757 F.2d at 538 n.5.

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As the owner of littoral land, the Moravian Church “has the right at common law to erect piers and docks on the submerged public land beyond the water line and to wharf out over it, subject to government regulation and control and with due regard to the rights of the public and adjoining land owners.” *Burns*, 412 F.2d at 998 (citations omitted). The right of a littoral owner to access waters adjacent to its land “is not lightly to be deprived.” *Id.* Development of The St. John Marina by Summer’s End, in accordance with the current proposal, would deprive the Moravian Church of its littoral rights by unreasonably restricting the Moravian Church’s ability to access the water adjacent to its land and to wharf out over it. *See, e.g., New Jersey v. Delaware*, 552 U.S. 597, 612, 128 S. Ct. 1410, 1421, 170 L. Ed. 2d 315 (2008) (“a riparian landowner ordinarily enjoys the right to build a wharf to access navigable waters far enough to permit the loading and unloading of ships.”), *citing* 1 H. Farnham, *Law of Waters and Water Rights* § 62, p. 279 (1904) (“The riparian owner is also entitled to have his contact with the water remain intact. This is what is known as the right of access, and includes the right to erect wharves to reach the navigable portion of the stream.”); *id.*, § 111, p. 520 (“A wharf is a structure on the margin of navigable water, alongside of which vessels are brought for the sake of being conveniently loaded or unloaded.”).

Furthermore, the size of the marina proposed by Summer’s End must be sufficiently controlled such that a channel exists for the navigation of vessels between the proposed Summer’s End marina and the marina development planned by the Moravian Church and T-Rex. *United States v. Willow River Power Co.*, 324 U.S. 499, 504-05, 65 S. Ct. 761, 765, 89 L. Ed. 1101 (1945) (“The fundamental principle of this system is that each riparian proprietor has an equal right to make a reasonable use of the waters of the stream, subject to the equal right of the other riparian proprietors likewise to make a reasonable use.”) (internal citation and quotation marks omitted).

Neither our client nor T-Rex oppose, in principle, the right of the Summer’s End developers to construct a marina at Coral Bay. However, to fairly protect the rights of the Moravian Church VI Conference and its lessee, T-Rex St. John, LLC, we respectfully urge the Division of Coastal Zone Management to appropriately limit the scope of the marina development proposed by The Summer’s End Group, LLC, to ensure that the littoral right of Moravian Church VI Conference and T-Rex St. John, LLC to access and make reasonable use of Coral Harbor is protected.

Sincerely,



Maria Tankenson Hodge

Cc: Moravian Church VI Conference; T-Rex St. John, LLC

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