

ATTACHMENT 1: PERMIT APPLICATION DOCUMENTS

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Sirius Resort and Marina – Comments on Available Documents and Adequacy of Public Notice

1. Statutory Requirements for Public Notices

The statutory requirements for information that must be provided in a Department of the Army Public Notice are contained in 33 CFR 325.3 which reads, in part:

General. The public notice is the primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment.

5. *A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be erected on fills or pile or float-supported platforms, and a description of the type, composition, and quantity of materials to be discharged or disposed of in the ocean;*

6. *A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area;*

We believe that the Public Notice for the Sirius Marina did not, in certain areas, conform to the requirements of this regulation.

2. Insufficient Information Provided in the Public Notice

The Public Notice issued for this project, including its graphic attachments, did not provide sufficient information for meaningful comment on several topics, due to the following factors:

- 2.1. The construction of the principal marina structures, the docks and finger piers is not clearly identified. It is unclear whether and where floating docks or pile supported docks or other construction techniques are being used. The references in the drawings to cross sections and details were incorrect. The location of the 420 pilings were not identified. The physical and/or functional relationship between the marina docks and the proposed bulkhead was not identified. Without this information the public's ability to make meaningful comments about the marina dock design is very limited.
- 2.2. The function of the upland structures is not completely identified. In some documents the larger of the two structures is described as a "30 dry slip boat storage garage" and

in other places it is described as a "marine service building". This distinction in structure use is significant in providing meaningful comments and assessing water dependency.

- 2.3. The composition of the dredge material that will be discharged into the wetlands is not described. It is simply described as a certain number of cubic yards of "sea floor material" in the Public Notice, which does not meet the requirement to provide "a description of the type, composition, and quantity of materials to be discharged".
- 2.4. The proposed concrete boat ramp and queuing docks constitute a discharge of fill materials in WOTUS, however it is not identified as such or described as to its type, composition and quantity in the Public Notice.
- 2.5. The text of the Public Notice states that "A wastewater treatment plant, brackish wells with an R/O plant, a cistern, underwater fuel tanks and an emergency generator would also be constructed." However there is no further information in either the Public Notice or the graphic attachments identifying "the specific site location and character of all proposed activities" and, specifically, neither the site location nor character of the R/O plant, the cistern, or the emergency generator is described in the Notice. Without such information it is impossible to make meaningful comments on these components.
- 2.6. The description in the Public Notice of the fuel tank is an "underwater fuel tank". It is unclear if this is a typographical error (underground as opposed to underwater), or if it is accurate. The drawing indicates the fuel tanks are seaward of the current shoreline however it does not indicate their depth ("the relationship of the proposed structure ... to the waterway").
- 2.7. As detailed later, the permit application should not have been deemed complete by the Corps since it did not include all reasonably related activities for which a DA permit will be required. In particular it did not include the directly related hotel and resort complex with their associated reverse osmosis facilities, waste water treatment facilities, storm water management and modifications to an active storm water drainage gully. Without the inclusion of the upland project components in the Public Notice it is not possible to make meaningful comments about the direct, indirect and cumulative impacts of the entire project.

3. Lack of Clarity on Documents Available for Public Review and Comment

To the best of our knowledge, the most common sequence for applying for a Department of the Army permit in the Virgin Islands is to first go through the Coastal Zone Management review,

and following that to enter the Army Corps process. When done in that sequence the public has available a consistent set of project documentation on which to base review and comments. At a minimum, this sequence would ensure that an Environmental Assessment Report, an Archeological Field Report, a Historic Preservation Office report, as well as other technical analyses are available for review.

The present applicant has chosen to apply for the DA permit prior to completing the VICZM process. As a consequence the level of project documentation available for public review has been extremely limited and in some cases highly contradictory with the Public Notice. This has caused widespread public confusion as to the nature of the project, its scope, its purpose, and its potential impacts.

On December 11, 2015 (the day following publication of the Public Notice), we sent email to the Army Corps Project Manager requesting clarification on which documents should be reviewed by the public. The reply, received on January 7, 2016 (almost one month later), stated:

"Even though additional information and documents were submitted by the applicant and are available to the public through a Freedom of Information Act request, per our Regulations, our process is really designed to request public comments based on the information included in the Public Notice.

If you already have copies available of other documents related to the project, you may provide comments referencing those documents too.

The applicant did change some project components from the initial permit application submittal on June 16, 2015, to the latest information submitted on November 30, 2015.

However, the November 30, 2015 submittal, was mostly limited to updates and did not submit complete revisions for the EAR and supplemental information.

Our Public Notice was prepared based on all the information and updates received by November 30, 2015."

This response has put the public comment process at a disadvantage. We are unable to determine with any certainty exactly which documents accurately describe the project, what has changed since the publication of the documents, and what comments would be meaningful, and what would not be meaningful.

However, based on the guidance received from the Project Manager and on our understanding of the relevant federal regulations, we will primarily focus our comments on the information provided explicitly in the Public Notice and related graphic attachments. In those cases where there are gaps in information, or where the information published by the Corps differs from information received from the applicant either directly or through the Freedom of Information Act (FOIA), we may submit comments based on those other documents, as instructed by the Project Manager, and we will clearly identify the references to those other documents.

Attached hereto as Appendices 1-6 are the most relevant additional documents on which these comments are based. These documents are:

1. Environmental Assessment Report For Sirius Marina, Lease Area "A" – Parcel 10A, Estate Emmaus St. John, USVI, CZM Application, June 2015
2. Sirius Marina - ACE SAJ-1982-05019 (SP-JMS) Responses Submittal.pdf, November 30, 2015
3. Appendix.pdf (Technical Appendices, including Sediments, Hydrogeology, EFH, Terrestrial Habitats, Archeological, Cultural Resources, Market Analysis), various dates.
4. Sirius Resort and Marina Zoning Change Request, August 2014
5. Sirius Resort and Marina Conceptual Design, August 2014

4. Federal Regulations Require Including all Reasonably Related Activities in Same Application

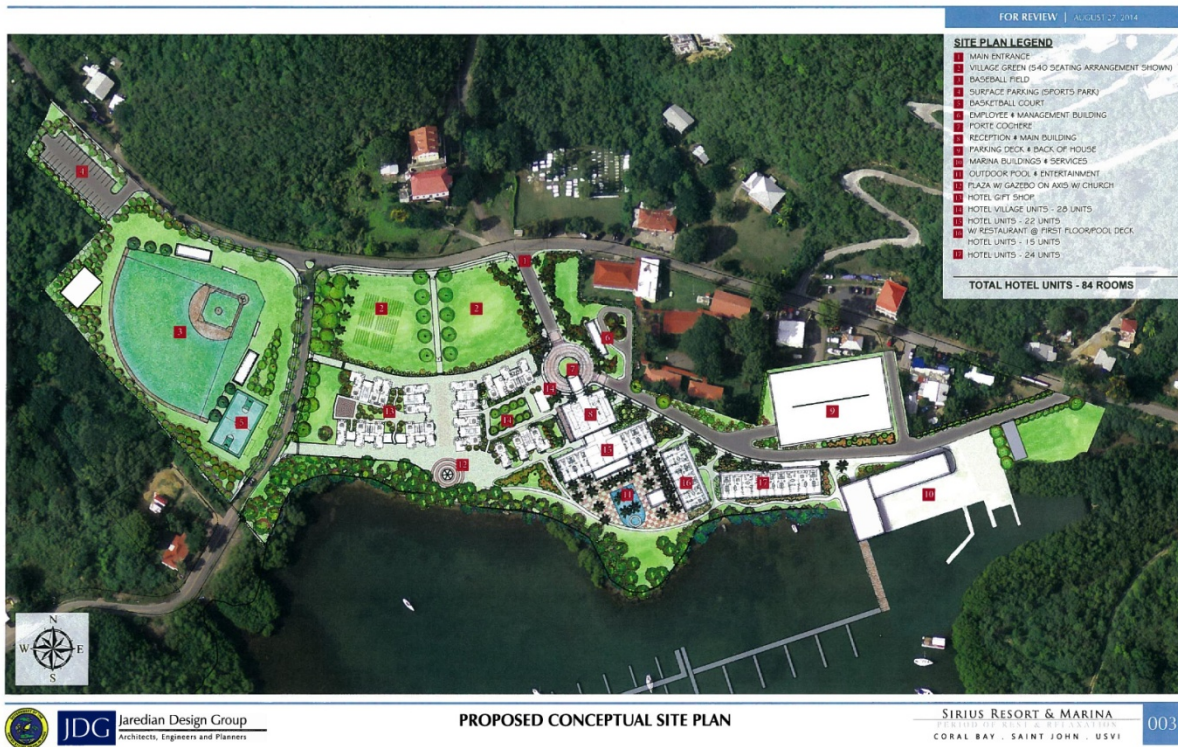
The requirement to include all "reasonably related" activities in a DA permit application in order for the application to be deemed complete is found in 33 CFR 325.1(d)2 which states:

"All activities which the applicant plans to undertake which are reasonably related to the same project and for which a DA permit would be required should be included in the same permit application. District engineers should reject, as incomplete, any permit application which fails to comply with this requirement."

It appears as though this applicant has sought to circumvent the requirements of 33 CFR 325.1 by not including the upland components of the Sirius Resort and Marina project in the current application. The intent of the regulation, according to my understanding, is to ensure that the public is provided with all of the information that is required to have a thorough understanding of the cumulative impact of the entire project.

The evidence that upland components of the project are, indeed, "reasonably related" is extensive and pervasive through all of the additional documents obtained through FOIA and directly from the developer. In fact statements made directly by the applicants to the Coral Bay community, further support this conclusion.

Attached as Appendix X is a news article from St John Source, published on October 18, 2014, reporting on the meeting convened at the Emmaus Moravian Church by the Sirius Development team, to present the Sirius Resort and Marina plans to the Coral Bay community. The title of the article – "Developers Unveil Plans for Coral Bay Hotel and Marina" – and the architect's conceptual drawing shown at the meeting (reproduced below) clearly demonstrate that the proposal was for a Hotel and Marina. In fact in several places the architect is quoted as saying that the plans were dependent upon one another.



No distinction is made between the marina components and the hotel components. No contingent phasing is described. It is described as one integrated project. The complete document containing this illustration is attached hereto as Appendix X.

Furthermore, numerous documents filed by the applicant with the Virgin Islands Department of Planning and Natural Resources (VI DPNR) pursuant to a request for rezoning of a portion of the project parcels, all identify the project as a mixed use resort hotel and marina complex. In their August 2014 "Zoning Change Request" the applicant described the project as shown below:

SIRIUS RESORT AND MARINA – ZONING CHANGE REQUEST
PARCELS 7, REM. 10A, 10A-1, AND 10C ESTATE EMMAUS, No. 2 CORAL BAY QUARTER
ST. JOHN, U. S. VIRGIN ISLANDS

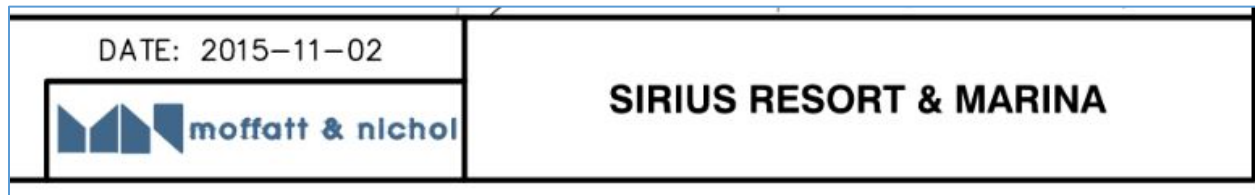
INTRODUCTION

The Moravian Church and T-Rex St. John, LLC (T-Rex), is proposing to construct a Major Project in Coral Bay consisting of: a Wet-slip and Dry storage Marina and related Retail; 89 Hotel/Condominium units; Underground and Above-ground Parking; Pool; Shopping Plaza; Wastewater Treatment Plant; Reverse Osmosis Plant and a new Ball Field with Bleachers. The Proposed Project will be built on Parcels 7, Rem. 10A, 10A-1, and 10C, Estate Emmaus, St. John, United States Virgin Islands.

In his report of January 15, 2015, following a public hearing on December 4, 2014 for the rezoning request, Mr. Stuart Smith (Director, Coastal Zone Planning) wrote "During the Department's public hearing, Mr. John Woods, principal of the Jaredian Design Group, testified that it is the developers' intent to construct an 89-unit hotel/condominium, a wet-slip and dry-dock storage marina, and related retail on the subject parcel." Not only are these components "reasonably related" but they are inextricably tied to one another in this statement and Mr. Wood's presentation. The application for the rezoning (filed by the property owner, the Moravian Church) included the following response to the "Detailed Description of Proposal":

13. Detailed Description of Proposal Moravian Church and T-Rex, St. John, LLC, is proposing to develop a mixed-use project comprising of 65-unit hotel/condominium resort, 88-slip marina and related retail. Construction will also include passive recreation consisting of "village green," baseball field, tennis and basketball courts for the general public.

In fact, the connection between the resort component and marina component is even evident, circumstantially, in the drawings included in the Army Corps Public Notice. Every single one of the drawings in the Public Notice graphic attachment include the following block of text at the bottom of the drawing:



These drawings are dated November 2, 2015, and are in the final submission by the applicant prior to publication of the Public Notice.

4.1. The Hotel and Resort Will Likely Require Department of the Army Permits

Based on the information available in documents obtained from the developer, it is our opinion that several features of the Hotel and Resort will require permits from the Army Corps.

The potable water requirements, which could be up to ten times higher for the 89-unit hotel and resort than for the marina (estimated requirements of 20-40,000 gallons per day based on peak occupancy of 3 persons per room, 75 gpd per person) will require multiple wells and brine discharge of tens of thousands of gallons per day depending upon recovery rate.

Additionally the Waste Water Treatment Plant with its associated effluent will very likely exceed the carrying capacity of the upland parcels, and could result in discharges into WOTUS.

The upland project traverses an existing active storm water drainage gully which will need to be channelized and diverted. The project creates tens of thousands of square feet of additional

impervious surfaces, including roadways, paved public areas, and roof tops. All of this impervious surface, in conjunction with the existing overland runoff, will require design and possibly DA permitting.

Based on this information, it is our belief that the permit application for one project component – the marina – should not have been deemed complete and put out for public comment, since a reasonably related activity (the hotel complex) will almost certainly require Army Corps permitting.

4.2. The Developer Has Not Supplied a "Standalone" Economic Analysis of the Marina

If the marina is to be viewed as a standalone project then it must be economically viable on its own account. The evidence provided in documents obtained through FOIA indicate, to the best of our knowledge, that this cannot possibly be true. These documents, analyzed elsewhere, indicate the construction costs (\$15,800,000) plus staff costs (11 employees), plus a reasonable estimate of Trust Land Lease costs, cannot possibly be offset by the revenues from slip fees. This demonstrates that the marina is dependent upon the upland resort component for economic viability.

4.3. The Impacts of the Hotel and Resort Will Be Cumulative With the Marina

As stated previously, we are of the strong opinion that the project components consisting of the Resort Hotel and associated Retail Amenities is not only "reasonably related" to the proposed Marina, but is intimately connected to it, with the two projects dependent upon one another.

Additionally, it is clear that the hotel and resort components will result in impacts that are cumulative with the impacts stemming from the marina. These impacts include:

- Potable water production – reverse osmosis intake and effluent
- Waste water treatment and effluent management
- Storm water management
- Nitrogenous waste production and eutrophication

Since the NEPA review requires looking at "reasonably foreseeable future actions" in the review of cumulative impacts, it is clear that the development of the hotel and resort complex must be included in the scope of the NEPA review for the marina.