

**BEFORE THE BOARD OF LAND USE APPEALS**

**VIRGIN ISLANDS CONSERVATION SOCIETY, INC.,**

**APPELLANT**

**v.**

**ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS  
COASTAL ZONE MANAGEMENT COMMISSION**

**APPELLEE**

Land Use Appeals  
No. \_\_\_\_ /2020

**NOTICE OF APPEAL**

The Virgin Islands Conservation Society, Inc., (“Appellant”) c/o Andrew C. Simpson PC, 2191 Church St., Ste. 5, Christiansted, VI 00820 hereby gives notice of its appeal of the purported decision of the St. John Committee of the Virgin Islands Coastal Zone Management Commission rendered on December 16, 2019 in the application of Summer’s End Group, LLC for the development of a marina and associated buildings in Coral Bay, St. John. This appeal concerns the “consolidated” permits issued as Major Permit CZJ-04-14(W) and CZJ-03-14(L).

**Notice:**

**To:** Chairman, Virgin Islands Board of Land Use Appeals  
Department of Justice  
34-38 Konprindsens Gade  
GERS Complex, 2<sup>nd</sup> Floor  
St. Thomas, VI 00802

and

Andrew Penn, Sr., Chairman,  
St. John Committee of the Virgin Islands CZM Commission

and

The Summer’s End Group, LLC (applicant) (“SEG”)  
5000 Estate Enighed, PMB 63  
St. Thomas, VI 00802

The Appellants hereby appeal pursuant to 12 V.I.C. § 914 from the permit signed

by Andrew Penn, Sr. on December 16, 2019, purportedly on behalf of the St. John Committee of the Virgin Islands CZM Commission. This decision purported to approve a consolidated Land and Water Permit. A copy of the decision is attached as Exhibit 1.

## STATEMENT OF COMPLAINT AGAINST THE DECISION

### BACKGROUND

1. The proposed marina and associated infrastructure that is the subject of this appeal was previously before the Board of Land Use Appeals in Appeal Nos. 005-6/2014 and 008/2014 (“the prior appeal”).
2. On June 6, 2016, the Board of Land Use Appeals issued its decision in the prior appeal. (Exhibit 2.)
3. The decision in the prior appeal remains the subject of writ of review proceedings pending in the Superior Court of the Virgin Islands under Case Nos. AT-16-CV-395 and ST-16-CV-428 (the two cases have been consolidated).
4. On March 27, 2019, the Chairman of the St. John Committee of the Virgin Islands CZM Committee. Andrew Penn, re-signed the “submerged lands permit” (Permit No. CZJ-04-14(W)) notwithstanding this Board’s order of June 6, 2016 requiring consolidation of the permits. (Exhibit 3.)
5. This March 27, 2019 permit was signed by both the permittee and the Governor of the Virgin Islands, and then submitted to the Legislature for ratification, in a transparent effort to supersede the Order of this Board and the pending writ of review proceedings.
6. On October 28, 2019, the Legislature, sitting as a Committee of the Whole, held a lengthy hearing on the permit. In a December 10, 2019 letter to the Governor, Senate President Novelle E. Francis, Jr. explained that the Legislature had determined that it was unable to take action on the permit as it was “considered defective.” (Exhibit 4.)
7. A specific defect noted by the Legislature was that the permit had not been approved by the St. John Committee of the CZM Commission. “Rather, on March 27, 2019, the permit was modified and issued unilaterally by the Chairman of the St. John Committee without a vote of approval or any other involvement of the St. John Committee.” *Id.* As the Legislature stated, “This lack of a vote invalidates the permit. Since the permit is considered invalid, it cannot be ratified by the Legislature and is therefore improperly before the Legislature.” *Id.*
8. As the Legislature also noted,

the defect cannot be resolved merely by submitting the original permit approved by the St. John Committee and the Governor in 2014. As the applicant's testimony and correspondence has disclosed, the project described and approved in 2014 is no longer the project the applicant intends to develop today. Neither the 2014 permit nor the 2019 permit truly reflects or conforms to the applicant's current proposal for the development of a marina. Consequently, Coastal Zone Management Permit No. CZJ-04-14(W) authorizing a project that is different from the project that Summer's End actually intends to develop is not properly before the Legislature.

*Id.*

9. The Legislature further stated:

It is the consensus of the Legislature that the marina project proposed by Summer's End Group, LLC *has not been yet submitted for CZM review, thereby rendering this permit and all related processes invalid.*

*Id.*

10. A mere six days after the letter from Senate President Francis (Exhibit 4), the Chairman of the St. John Committee of the CZM Commission ignored the Legislature's specific statement that he lacked the authority to act on his own. In open defiance of the Legislature, he signed yet another permit ("the new permit") that had not yet been acted upon by the St. John Committee. (Exhibit 1.)
11. The new permit (which is the subject of the instant appeal), purports to consolidate the two permits (Exhibits 5 [2014 water permit] and 6 [2014 land permit] originally issued in 2014.
12. In actuality, the new permit relies upon different information than was incorporated in either the land or water permit issued in 2014. The following table demonstrates some of the key differences between the documents incorporated by reference as set forth in Section 4 of the respective permits:

New permit, Section 4, referring to Exhibit I (relating to the water portion of the new permit)	2014 water permit (Exhibit 5)
Exhibit A is “CZM Permit Application dated June 7, 2012 and amended on March 21, 2014.”	Exhibit A is “CZM Permit Application dated April 4, 2014”
Exhibit B is “Site Plan and Drawings dated June 7, 2012 and amended on March 21, 2014.”	Exhibit B is “Site Plan and Drawings dated July 11, 2014.”
Exhibit C is “Environmental Assessment Report dated June 7, 2012 and amended on March 21, 2014.”	Exhibit C is “Environmental Assessment Report dated April 4, 2014.”
New permit, Section 4, referring to Exhibit II (relating to the land portion of the new permit)	2014 land permit (Exhibit 6)
Exhibit B is “Site Plan and Drawings dated June 11, 2014.”	Exhibit B is “Site Plan and Drawings dated July 11, 2014.”

13. The Department of Planning and Natural Resources Certified List of Record of Proceedings is a part of the public record in the writ of review proceedings and is attached hereto as Exhibit 7. It conclusively demonstrates that the CZM applications relied upon with respect to the new permit were not a part of the record relied upon with respect to the 2014 permits.
14. On December 3, 2019 (while the issue of the permit was pending before the Senate, and before Senate President Francis had transmitted his letter to the Governor explaining why the permit was invalid), SEG apparently submitted a written request seeking a modification of “the Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) and CZJ-03-14(L).” Although this letter has not yet been made public, it is referenced in a December 18, 2019 letter from the Governor of the Virgin Islands, the Hon. Albert Bryan, Jr., to SEG. (Exhibit 8).
15. On December 18, 2019, Governor Bryan issued a letter purporting to modify the conditions of the consolidated permits (presumably referring to the new permit issued two days earlier even though it did not officially exist at the time of SEG’s December 3, 2019 request). (Exhibit 8)

**THE LEGISLATURE'S REJECTION OF THE APPLICATION REQUIRES THE SUBMISSION OF A NEW APPLICATION AND NEW CZM REVIEW**

16. Notwithstanding any other decision relating to the permits in this case, the following determinations by the Legislature are binding upon SEG, CZM and BLUA:
  - a. The chairman of the St. John CZM Committee does not have the power to approve a permit absent the participation and approval of the St. John CZM Committee.
  - b. Because the scope of the project has changed, a new review by the St. John CZM Committee is required.
17. Consequently, as determined by the Legislature, SEG must submit a new (consolidated) application to CZM and seek the issuance of a new (consolidated) permit.
18. The documents incorporated in the new permit were never subject to CZM review or public comment. Nor were they considered by the St. John CZM Committee when it voted to approve the separate land and water permits in 2014.
19. The new permit is invalid because it was issued without legal authority because
  - a. a new permit application for the consolidated project was never submitted;
  - b. a consolidated Environmental Assessment Report addressing the overall impact of the entire proposal was never submitted;
  - c. the new permit was never subjected to the CZM review process such as review for completeness, inter-agency review;
  - d. the new permit was never the subject of a required public hearing; and
  - e. the new permit was never voted upon by the St. John CZM Committee. Exhibit 9 and 10 (affidavits of two members of the St. John CZM Committee).

**THE NEW PERMIT IS INVALID FOR MANY OTHER REASONS**

20. The new permit is invalid because the applicant failed to provide certification from the Bureau of Internal Revenue and Department of Finance that the applicant has filed and paid all taxes, penalties and interest and from the Office of the Lieutenant Governor that the applicant has filed its required annual report or has satisfactorily made agreement to pay the taxes or file the required reports.

21. The new permit is invalid because there has been no finding by the St. John CZM Committee that the development is consistent with the basic goals, policies and standards provided in 12 V.I.C. §§ 903 and 906.
22. The new permit is invalid because there has been no finding by the St. John CZM Committee that the development as finally proposed incorporates to the maximum extent feasible mitigation measures to substantially lessen or eliminate any and all adverse environmental impacts of the development.
23. The new permit is invalid because none of the findings required by 12 V.I.C. § 911(c) were made. Specifically, there were no findings by the St. John CZM Committee that
  - a. the application is consistent with the basic goals of 12 V.I.C. § 903 and with the policies and standards of 12 V.I.C. § 906;
  - b. the grant of the permit will clearly serve the public good, will be in the public interest and will not adversely affect the public health, safety and general welfare or cause significant adverse environmental effects;
  - c. the occupancy and/or development to be authorized by the permit will enhance the existing environment or will result in minimum damage to the existing environment;
  - d. there is no reasonably feasible alternative to the contemplated use or activity which would reduce the adverse environmental impact upon the trust lands or other submerged or filled lands;
  - e. there will be compliance with the United States Virgin Islands territorial air and water quality standards;
  - f. the occupancy and/or development will be adequately supervised and controlled to prevent adverse environmental effects; or
  - g. that an occupancy or development permit for the filled land is not sufficient or appropriate to meet the needs of the applicant for submerged land lease.
24. The new permit is invalid because it includes no findings of fact that allow this Board to review the permit to determine whether the proposal meets the requirements of the CZM Act.
25. The new permit is invalid because it only requires a bond of 20% or “up to \$5M of the cost of development” whereas this Board ordered that SEG provide a

performance bond of “20 percent, up to \$10 million, of the estimated construction cost of the development.” Exhibit 2, p.6, ¶16.

26. The new permit is invalid because it was issued without any consideration of the cumulative impacts of other development in the area, including the Moravian Church's proposed marina.
27. The new permit is invalid because the application failed to prove that it had the right to perform development upon all of the property upon which work would be performed if the application were approved. 12 V.I.R.&R. § 910-3(b).
28. The new permit is invalid because the owners of the property proposed for development did not co-sign the application. V.I.R.&R. § 910-3(b).
29. The new permit is invalid because any determination that the application for the consolidated permits was complete (to the extent such a determination was even made) was arbitrary and capricious. If the determination was not made, then the permit is void because the failure to follow the requirements of law is itself an arbitrary and capricious act.
30. The new permit is invalid because whatever Environmental Assessment Report was used failed to meet the requirements of the CZM Act and thereby precluded the CZM Committee from making a determination that the proposed development complied with the statutory criteria under which it might be approved. 12 V.I.C. § 910(e)(2).
31. The Environmental Assessment Reports submitted by the applicant failed to meet the above requirements of the CZM Act for numerous reasons, including, *inter alia*, (and without limitation) the following:
  - a. Failure to address the cumulative impact of development (discussed above).
  - b. Failure to properly address the sewage treatment requirements of the overall marina proposal. The EAR supporting the application for the Land Permit describes sewage treatment solely for the land based aspect of the proposal. (It states that only 10.830 gallons/day of sewage (from toilets, sinks, etc.) will be generated from the sewage treatment facility – such a small amount of wastewater could not possibly include wastewater from the boats using the proposed marina; nor could it include the “crew showers” based on shore.) The EAR supporting the application for the Water Permit relies upon a holding tank to be constructed under the auspices of the Land Permit and simply states that sewage/wastewater pumped (from boats) into the holding tank will be trucked from Coral Bay to Cruz Bay. There is no assessment of the impact of this additional wastewater upon the Virgin Islands Waste Management

Authority. Critically, SEG utterly failed to address the problems associated with boats that might use its facility and improperly discharge wastewater into Coral Bay. Other problems with the assessment of the sewage treatment issues included:

- i. little detail was provided regarding the location, management and stability of the pump-out storage facility;
  - ii. no plans or mitigation measures were considered to substantially lessens or eliminate the adverse impacts of a spill from the pump-out facility;
  - iii. there was no discussion of the tank design and how spills would be contained;
  - iv. there was no management plan for depositing and removing sewage from the storage tank.
- c. Failure to provide adequate information such that the project's impact upon water quality could be properly addressed. Specifically, the EAR for the Land Permit application<sup>1</sup> should have provided, at a minimum, the following:
- i. How the use of sewage treatment grey water for irrigation (the entire land-based portion of the marina is in close proximity to the shore and a gut that runs between Parcels 13A and 12B and Coral Harbor) would affect water quality;
  - ii. How the discharge of grey water (in excess of the capacity needed for irrigation) into the marina project's drain fields would affect water quality;
  - iii. the location of the drain fields (how can the environmental impact be ascertained when the location of the drain fields is not identified?);
  - iv. the design of the drain fields;
  - v. adequate information about the erosion and sedimentation controls that were to be used during construction
- d. Failure to adequately describe the construction methods proposed and provide a schedule for construction activities (Land Permit EAR).
- e. Failure to include a plan for implementation of, and maintenance of, sediment

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<sup>1</sup> For convenience, criticisms are directed to the EARs as submitted. By doing so, VICS is in no way conceding that the submission of separate EARs for the land and water aspects of the marina proposal was appropriate.



and run-off control devices (Land Permit EAR).

- f. Failure to include adequate information regarding the required analysis of alternatives to the proposed development (both EARs).
- g. Failure to include a plan to address emissions of particulate matter and other air pollutants (both EARs).
- h. Failure to provide sufficient water quality data to establish the existing water quality and then assess the impact that both construction and operation of the marina development would have upon the water quality. Such an analysis is required by CZM's own Supplemental EAR Guidelines for Marina Development.
- i. Failure to include requisite information regarding the methodology to be used for water quality monitoring and modeling (also required by CZM's own Supplemental EAR Guidelines for Marina Development).
- j. Submission of inaccurate, incomplete, and outdated water sampling data with no evidence to establish that the water samples were representative of the project site (in particular, the use of water samples that were taken prior to the completion in 2012 of significant measures taken by the nonprofit agencies with the cooperation of the U.S. Virgin Islands government to control storm water sedimentation reaching Coral Harbor. In other words, after 2012, water quality in Coral Harbor should be significantly better than it was prior to 2012. By using samples taken prior to 2012, SEG presented an inaccurate picture of the baseline water quality. This would mean that as water samples were taken during construction to assess the impact of construction and compared to samples prior to 2012, the use of the older samples would make it appear that the construction activities were having a lesser impact upon construction than they actually were.
- k. Failure to provide reliable wave studies so that CZM could assess the adequacy of measures taken to prevent damage to boats and the environment; or to assess whether SEG's economic projections relating to the usage of its proposed marina (relevant to the issue of alternatives to the proposed development) were realistic. Many people providing testimony at the CZM hearing raised questions as the viability of the marina and the quality of the yachting experience in the marina given its exposure to waves.
- l. Failure to address the impact that the increased marine traffic (to the marina) would have on the limited safe hurricane harbors in the Virgin Islands.
- m. Failure to address contingency plans relating to hurricane damage to the

fueling facilities and fuel spills at any time reaching the nearby shoreline mangroves.

- n. Failure to address the ability of the proposed docks to withstand typical conditions anticipated in a hurricane (and thereby to potentially contribute to significant marine debris creating a hazard to boaters and the adjacent protected mangroves).
- o. The use of irrelevant factors, such as data regarding swells, to conclude that the fetch in Coral Bay is insufficient to allow the creation of large wind waves.<sup>2</sup>
- p. Failure to propose feasible or adequate mitigation measures. Specifically, but without limitation:
  - i. There was insufficient information provided from which CZM could have concluded that the proposed transplantation of seagrass was feasible: there was no evidence that the proposed transplant location was suitable; nor were criteria established by which success of the mitigation effort could be considered; no consideration was given to the littoral rights of landowners adjacent to the planned transplant location (*e.g.*, whether they would be deprived of the right to seek to develop the submerged lands adjacent to their properties or, alternatively, whether if they were permitted to use such rights, how they would be burdened by having to deal with relocating the transplanted seagrasses).
  - ii. The proposed location for transplanting the seagrasses was an area where seagrasses have previously been destroyed by high sedimentation; SEG failed to produce evidence that the same result would not occur with the transplanted seagrasses.
  - iii. SEG's proposed transplant area covered approximately 0.06 acres whereas the impacted area consisted of eight acres of direct impact (within the project footprint) plus an additional approximately twenty acres that would sustain indirect impact from the project.
- q. Failure to provide any information regarding the turbidity controls (turbidity curtains) so that CZM-STJ could assess whether or not the turbidity controls

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<sup>2</sup> Fetch refers to the amount of open water over which wind must blow in order to build wind waves of various sizes. Although wind waves can contribute to swell, the opposite is not true – swell plays no part in the creation of wind waves. Thus, data regarding swells is irrelevant to the determination of fetch and/or the size of wind waves.

were sufficient and would properly control the migration of suspended particles. These deficiencies included, without limitation:

- i. providing no information about the placement or depth of the turbidity curtains;
  - ii. no addressing how construction vessels and barges could enter and exit the construction site without causing a release of suspended particles beyond the curtains;
  - iii. establishing that the turbidity curtains were practical for the actual wave activity anticipated at the site;
- r. Failure to provide any information as to the impact of the turbidity controls upon marine life and measures that would be taken to protect marine life from the turbidity controls.
- s. Failure to consider mitigation of construction impacts. The dock construction will result in damage due to barge spuds and tugboat propeller wash. SEG proposed no mitigation measure and instead improperly delegated responsibility for controlling this damage to unknown contractors. SEG stated that these contractors would be provided with a “construction management plan.” No such construction management plan was included in the application and thus CZM could not review it.
- t. Failure to provide adequate information about the proposed mooring field for 75 boats. SEG proposed the use of a 75 boat mooring field to mitigate the impact of its displacement of 115 existing boats currently on moorings in Coral Bay. It offered no information from which CZM could determine how the existing mooring users would be incentivized to use the new moorings. SEG indicated that it would have a memorandum of understanding with DPNR to manage the mooring field. The memorandum of understanding was not submitted as part of the application process. There is no evidence that the proposed mooring field would comply with the Mooring and Anchoring Act, 25 V.I.C. §§ 401, *et seq.* (which, among other things, requires community participation in the development of mooring fields). There was no information provided to properly delineate the location, size or design of the mooring area such that CZM could possibly consider its impact upon the environment.
- u. The proposed “out-of-kind” mitigation through the planting of mangroves was insufficiently described. No adequate plan was provided of this proposed mitigation measure.
- v. Failure to properly eliminate, or address, impacts upon endangered species.

SEG admitted in its EAR that the seagrass beds in Coral Bay were “forage habitat for endangered sea turtle species.” Water EAR at 5-2. SEG also acknowledged that its project would “impact seagrass beds” which are “considered a critical foraging habitat for sea turtles. *Id.* at 6-39. SEG also admitted that construction activity had the potential to impact endangered coral species “due to water quality impacts and due to vessel strikes.” *Id.* at 6-40. Despite these admissions, SEG offered no substantive solutions to eliminate or minimize such impacts.

- w. Failure to address the potential for impact upon significant areas of marine resources adjacent to Coral Harbor, including Hurricane Hole, the Virgin Islands National Park, the Virgin Islands Coral Reef National Monument, as well as Lagoon Point National Natural Landmark. 12 V.I.C. § 911(b)(1)(A) requires an EAR that adequately states the prevailing conditions of the site as well as adjacent properties.
- x. Failure to comply with the Supplemental EAR Guidelines for Marina Development which includes management measures that “must” be addressed in an EAR as well as “recommended measures” that can be used to implement the required management measures.
- y. Failure to address the impacts of destruction of spawning and feeding habitat on the fish population. The application did not contain a survey of fish habitat to determine the variety of fish species that use the habitat. There was insufficient information as to the impact upon the fishing community due to the destruction of critical habitat.
- z. Failure to address the reduced shoreline/boating access for the fishermen who currently use the project shoreline as their access to the water. There is no provision for mooring/docking their fishing boats in SEG’s plans, despite their current active presence on the subject property and shoreline.
- aa. SEG’s analysis of the economic impact of the proposed marina lacked detail or support for its rosy economic projections. Among other deficiencies, SEG only included positive economic impacts while pretending that negative economic impacts did not exist.
- bb. SEG stated in its water EAR that “conditions permitting, piles are anticipated to be driven with a vibratory hammer and local geological conditions are not expected to adversely impact this plan.” Water EAR at 6-13. SEG plans to drive 1,333 piles. *Id.* at 6-16. No information was provided as to how deep these piles would have to be driven in order to properly anchor the docks. No information was provided as to the geology of the seabed so that it could be determined whether the use of piles is appropriate or whether vibratory pile

driving would be successful.

- cc. The EAR also lacked sufficient information regarding the sonic impact of the pile driving upon endangered species or steps that would be taken to minimize such impacts.
32. The new permit is invalid because it fails to set forth the basis for the submerged land rental fees as required by 12 V.I.C. § 911(f) and 12 V.I.R.&R. § 910- 5(e). These provisions require, among other things, that the basis for negotiation of the rental fees be attached to the lease or permit and that it be based on the fair market value, gross receipts of the commercial operations, and any other factors that may be pertinent. If the fees are to be waived or reduced, it must be determined to be in the public interest. In addition, the determination must be in writing specifying the reasons for it. A copy must be attached to the permit and transmitted to the Governor for approval, and to the Legislature for ratification.
- a. The basis for the calculation of the rental fees was not included as part of the Water Permit.
  - b. Without the required document, there is no way to know the basis of CZM's calculation. Consequently, it is impossible to determine how the rent was calculated or whether it considered all of the submerged lands that are subject occupancy by SEG (including the mooring field and transplant areas).
  - c. To the extent that the calculated fee reflects a reduction or waiver of the rent that is required, the term for reconsideration or reassessment of the rental fees cannot exceed 3 years. In this case, the Permit provides a term of 5 years.
33. The new permit is invalid because it is subject to improper conditions.
- a. 12 V.I.R.&R. § 910-11(b) and (c) prohibits the issuance of a CZM permit when conditions of the permit have not yet been met.
  - b. 12 V.I.C. § 904(d) vests the CZM Commission with “primary responsibility for the implementation of the provisions of” the CZM Act.
  - c. The new permit illegally usurps this authority by issuing by giving SEG or other unknown parties the primary responsibility for implementation of the provisions of the CZM Act rather than the CZM Committee.
  - d. The new permit includes a condition that the turbidity curtains need to be installed at an “adequate depth” in order to prevent suspended sediments from migrating outside the work area. This condition establishes that new information was necessary, but was not submitted to the Committee

beforehand for review. It assumes, without any evidence, that there is an adequate depth at which the curtains will perform properly.

- e. Such belated conditions are specifically prohibited by the CZM Act, *See Virgin Islands Conservation Society v. Virgin Islands Port Authority*. 21 V.1. 584 (Terr. Ct. St. T. and St. J. 1985); *Virgin Islands Conservation Society v. Virgin Islands Board of Land Use Appeals*, 857 F. Supp. 1112, 1 120 (D. V.I. 1994) (“deferring the review of plans and studies until after a permit is issued creates twin evils: the tendency to tolerate more environmental harm once development has begun, and the incentive for applicants to present the CZM Committee with a *fait accompli* by delaying the submission of the requested information”) and violates 12 V.I.C. § 903(b)(11) by depriving the public of its right to be involved in and review coastal zone planning and development.

### **THE APPLICANT’S REQUEST TO MODIFY THE PERMIT REQUIRES NEW CZM REVIEW**

- 34. In accordance with the authority granted by 12 V.I.C. § 910(e), the Virgin Islands CZM Commission has promulgated regulations governing the amendment of CZM permit applications and modifications of CZM permits.
  - a. 12 V.I.R.&R. § 910-4(b) governs amendments to applications for major CZM permits.
    - i. Amendments to applications for major CZM permits are allowed at any time within 30 days of receipt of the original completed application or at least 30 days before the public hearing, *whichever is earlier. Id.*
    - ii. If a proposed amendment “would substantially modify the scope, nature or characteristics of the proposed development, the original proposal shall be deemed withdrawn.” 12 V.I.R.&R. § 910-4(c).
    - iii. There is a fee of \$500 charged for the amendment of a permit application. 12 V.I.R.&R. § 910-5(d)(1)(D)
  - b. 12 V.I.R.&R. § 910-14 governs modifications for *approved* CZM permits.
    - i. An application for the modification of an approved CZM permit “shall be treated as a new application for a Coastal Zone Permit *unless* the Commissioner [of DPNR] determines that such modification would not substantially alter or modify the scope, nature or characteristics of the existing permit or approved development.” 12 V.I.R.&R. § 910-14(a) (emphasis added).
    - ii. Even if the Commissioner finds that the proposed modification would not

substantially alter or modify the scope, nature or characteristics, the CZM Committee “may nevertheless impose such conditions to approval of the modification as it deems necessary” to satisfy the provisions of the CZM Act. 12 V.I.R.&R. § 910-14(b).

iii. There is a fee of \$500 charged for the modification of an approved CZM permit. 12 V.I.R.&R. § 910-5(d)(1)(J).

35. It is not clear whether SEG considered itself to have a valid permit or a pending permit application when it made the December 3, 2019 request for a modification. But,

a. it is clear that the time established by the CZM regulations for amending an *application* had expired more than 5 years earlier thus, no amendment is authorized under the law; and

b. it is clear that the Commissioner of DPNR has *not* made the required determination for the modification of *existing* permits: that the “modification would not substantially alter or modify the scope, nature or characteristics of the existing permit or approved development.”

i. The Governor of the Virgin Islands is not empowered to make such a determination; in any event, his December 18, 2019 letter (Exhibit 8) contains no such determination. Thus, to the extent SEG sought a modification of an *existing* permit, it was required to submit a new application.

36. Upon information and belief, Summer’s End Group has not paid the requisite fee for an amendment to a permit application or for the modification of an approved permit.

37. Governor Bryan’s December 18, 2019 letter purports to be an exercise of the power granted to him under 12 V.I.C. § 911(g) to modify a permit.

38. 12 V.I.C. § 911(g) states that “the Governor may modify or revoke any coastal zone permit that includes development or occupancy of trust lands or submerged or filled lands *approved pursuant to this section* upon a written determination that such action is in the public interest and that it is necessary to prevent significant environmental damage to coastal zone resources and to protect the public health, safety and general welfare.” (Emphasis added.)

a. The “*approv[al]* pursuant to this section” referenced in 12 V.I.C. § 911(g) refers to an earlier portion of Section 911, which requires that the permit be approved by the Governor and ratified by the Legislature. 12 V.I.C. § 911(e).

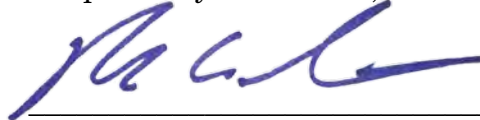
- i. Since the Legislature has not yet ratified any permit relating to the SEG proposal, the Governor lacks the power to modify the permit as set forth in Subsection 911(g).
- b. Subsection 911(g) is not intended as a vehicle to correct major deficiencies (such as those manifest in SEG's CZM permit applications) through a gubernatorial modification that completely bypasses the CZM permitting process. Rather, the subsection specifies that it is "[i]n addition to any other powers of enforcement set forth in [12 V.I.C. § 913]." In other words, it is intended to allow the Governor to exercise emergency power when it becomes clear that an approved project involving submerged lands is causing, or will cause, "significant environmental damage to coastal zone resources."
  - i. If the Governor has determined that the project, *as approved, but before construction has ever begun*, will cause "significant environmental damage," then there could be no clearer proof provided that the permit applications were defective from Day One and should never have been approved.

#### CONCLUSION

There were no public proceedings in the decision-below and thus there is no transcript to order. Accordingly, appellants have complied with 12 V.I.R.&R. § 914-15(f).

Wherefore, the appellant petitions the Board of Land Use Appeals for a hearing, for a reversal of the new permit and the modification thereto.

Respectfully submitted,



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January 30, 2020



**CERTIFICATE OF COUNSEL**

- I, Andrew C. Simpson, certify that: this Appeal is based upon a true belief that
- the decision appealed from was in error;
  - there exist meritorious grounds to reverse the decision; and
  - this Appeal is not filed for the purposes of delay or harassment; and it is not frivolous.



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Andrew C. Simpson

**CERTIFICATE OF SERVICE**

I certify that a copy of this appeal was served upon Jean Pierre Oriol, Commissioner of the Department of Planning and Natural Resources, No. 45 Estate Mars Hill, Frederiksted, VI 00840 as well as upon Summer's End Group at the address shown in the body of this Notice, on January 30, 2020, by U.S. Mail, postage prepaid.



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Andrew C. Simpson

**THIS CONSOLIDATION OF MAJOR COASTAL ZONE MANAGEMENT  
PERMIT NO. CZJ-04-14(W) AND MAJOR LAND PERMIT CZJ-03-14(L) IS BEING  
ISSUED PURSUANT TO AN ORDER BY THE BOARD OF LAND USE APPEALS IN  
CASE 005-6/2014; 008/2014**

1. **AUTHORITY** This consolidation of Major Coastal Zone Management Permit No. CZJ-04-14(W) and Major Land Permit CZJ-03-14(L) (hereinafter collectively referred to as the "Original Permits") is being issued pursuant to an Order by the Board Of Land Use Appeals (hereinafter "BOLUA") in Case No. 005-6/2014; 008/2014 in accordance with Virgin Islands Code, Title 12, Section 914 and any other provisions of THE CZM Act. As herein, "Permitter" remains the original Permitter from the Original Permits, the **ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS COASTAL ZONE MANAGEMENT COMMISSION** and "Permittee" remains the original Permittee from the Original Permits, **THE SUMMER'S END GROUP, LLC**.

2. **CONSOLIDATED SCOPE**

(a) **MAJOR WATER PERMIT CZJ-04-14(W)** as approved by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014, (See Permit attached as *Exhibit I*); This permit allows the construction of a 145 slip marina, a designated mooring field of up to 75 moorings, a pump-out station and a fuel station at and seaward of Plot Nos. 10-17, 10-18, 10-19, 10-41 Rem., 13A, 13B and 13 Rem. Estate Carolina, St. John, U. S. Virgin Islands.

(b) This permit also allows the use and occupancy of the structures described in Section 2 (a) of this permit including 27.5 acres of submerged land areas surrounding the structures described in Section 2, (a) of this permit.

(c) **MAJOR LAND PERMIT CZJ-03-14(L)** as approved by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014 (See Permit attached as *Exhibit II*); This permit allows the redevelopment of seven contiguous properties in Estate Carolina, Coral Bay, St. John (in two phases) for the construction of various supporting facilities for the Coral Bay Marina. Phase 1 will enhance the existing commercial business sites at CoCo Loba, Shoreline Inn and Island Blues and renovate the "Voyages" restaurant building. Phase 1 redevelopment will include the following:

- 120 off street parking spaces
- A new 56 seat restaurant
- Customs and Border Protection office
- A Marina Office
- Marina Engineering
- Marina Security
- Fish and Farmers Market

CONSOLIDATED Permit Nos. CZJ-04-14(W); CZJ-03-14(L)

By Order of BOLUA

The Summer's End Group

St. John, Virgin Islands

- Crew shower and locker facilities
- Apartments to support marina management
- Proper solid, hazardous and liquid waste management
- Proper storm water management , and
- Proper fueling.

Phase 2 of the development (implemented strictly on demand) will include:

- Additional retail
- Restaurant
- Office space
- Commercial space and
- Six short-term rental units

The project is located on Parcel Nos. 10-17, 10-18, 10-19, 10-41 Rem., 13A, 13B and 13 Rem. Estate Carolina, St. John, U.S. Virgin Islands.

3. **TERM** This Consolidated Permit is effective upon approval by the Governor of the Virgin Islands, and approval by the Legislature of the Virgin Islands of this Consolidated Permit which incorporates the Original Permits as signed by the Chairman of the St. John Committee of the Virgin Islands CZM Commission as ordered by the BOLUA. As used herein, the "Effective Date" or "the date hereof" means the date of such ratification as defined by the Virgin Islands Code. This permit will expire twenty (20) years after the Effective Date. This permit is issued for a definite term of 20 years and shall not constitute a property. This Permit shall be renewed only if the requirements of Title 12 of the Virgin Islands Code, Section 911, are met.

4. **DOCUMENTS INCORPORATED BY REFERENCE**

*Exhibit I: MAJOR WATER PERMIT CZJ-04-14(W)* including original exhibits attached:

- Exhibit A: CZM Permit Application dated June 7, 2012 and amended on March 21, 2014.
- Exhibit B: Site Plan and Drawings dated June 7, 2012 and amended on March 21, 2014.
- Exhibit C: Environmental Assessment Report dated June 7, 2012 and amended on March 21, 2014.
- Exhibit D: Water Quality Certificate dated October 16, 2014

*Exhibit II: MAJOR LAND PERMIT CZJ-03-14(L)* including original exhibits attached:

- Exhibit A: CZM Permit Application dated April 4, 2014.
- Exhibit B: Site Plan and Drawings dated June 11, 2014
- Exhibit C: Environmental Assessment Report dated April 4, 2014

## 5. CONSOLIDATED GENERAL CONDITIONS

The following conditions, as approved in the Original Permits by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014 shall apply:

- A. Liability The Permittee agrees to assume full and complete responsibility for all liability to any person or persons, including employees, as a result of its control of the area described in Paragraph 2 of this permit, and all improvements thereon (which area and improvements are hereinafter referred to as "the premises"), and to hold the Permitter free and harmless for civil or other liabilities of any kind during the time the Permittee is in control of the premises pursuant to this permit.
- B. Personal Property and Damage All personal property of any kind or description whatsoever located on the premises shall be there at the Permittee's sole risk.
- C. Assignment or Transfer This permit may not be transferred or assigned except as provided in Section 910-15 of the Virgin Islands Rules and regulations.
- D. Permit to be Displayed A placard evidencing the permit shall be posted in a conspicuous place at the project site during the entire work period.
- E. Reliance on Information and Data The Permittee affirms that the information and data which it provided in connection with its permit application are true and accurate, and acknowledges that if subsequent to the effective date of this permit such information and data prove to be false or inaccurate, the permit may be modified, suspended or revoked in whole or in part, and that the Commissioner or the Committee may, in addition, institute appropriate legal action.
- F. Development to be Commenced Any and all development approved by this Coastal Zone Permit shall begin within twelve (12) months from the date this permit becomes effective and shall be continuous until completion. Failure to perform at least fifty (50%) percent of the work within such period and continuously construct thereafter until the completion of construction shall cause the permit to terminate automatically and render it null and void, unless the Permittee requests an extension in writing and demonstrates to the satisfaction of the Committee that good cause exists for granting such extension.
- G. Notification of Completion Upon completion of any activity authorized or

required by this CZM Permit, the Permittee shall promptly so notify the Director of the Division of CZM and where the services of a professional engineer were required in undertaking the activity, a certification of compliance provided by the project engineer that the plans and specifications of the project and all applicable Virgin Islands Code requirements have been met, shall be filed with said Director.

- H. Inspection The Commission, its Committee, the Commissioner or their authorized agents or representatives shall have the power to enter at reasonable times during project working hours upon any lands or waters in the coastal zone for which this Coastal Zone Permit has been issued. The Permittee shall permit such entry for the purpose of inspection and ascertaining compliance with the terms and conditions of said Coastal Zone Permit. The Permittee shall provide access to such records as the Commission, its Committee, or the Commissioner in the performance of it or his duties under the CZM Act may require the Permittee to maintain. Such records may be examined and copies shall be submitted to the Commission, its Committee or the Commissioner upon request.
- I. Conditions of Premises The Development authorized by this permit shall be maintained in a safe condition and in accordance with the description, plans, or drawings approved by the Commissioner or by the Committee, and all applicable Virgin Islands Laws.
- J. Public Access to Shoreline The development shall be operated so as to assure optimum public access to the shoreline.
- K. Restoration of Area The Permittee, upon renovation or expiration of the permit, shall upon order of the Committee, or the Commissioner, and in their sole discretion, remove all structures authorized by the permit and restore the area to its original condition, and/or modify such structures or site, and/or comply with any directive of the Committee, or the Commissioner in satisfying the original permit conditions in such time and manner as the Committee, or the Commissioner may direct.
- L. Notices All notices sent or required to be sent hereunder must be by certified mail, return receipt requested. If addressed to the Permitter, same shall be sent to the Commissioner of the Department of Planning and Natural Resources, 4607 Tutu Park Mall, Charles W. Turnbull Regional Public Library Virgin Islands 00802, or to such other place as the Permitter may hereinafter designate. If addressed to the Permittee, same shall be sent to Chaliese Summers, Managing Member, The Yacht Club at Summer's End, LLC, 5000 Estate Enighed, Suite 63, St. John, Virgin Islands, 00803, or to such place as the Permittee may hereinafter designate by certified mail, return receipt requested.

CONSOLIDATED Permit Nos. CZJ-04-14(W); CZJ-03-14(L)  
By Order of BOLUA  
The Summer's End Group  
St. John, Virgin Islands

- M. Non Waiver One or more waivers by the Permitter of any covenant or condition of this permit shall not be construed as a waiver of a further breach of the covenant or condition. The consent or approval of the Permitter to or of any acts by either the Permittee requiring the Permitter's consent or approval shall not be construed as approval of any subsequent similar act by the Permittee.
- N. Revocation It is specifically understood that all the foregoing covenants and agreements, as well as other terms and special conditions hereby agreed to by the Permittee, are to be well and faithfully kept by Permittee and that any failure by the Permittee to keep same will result in revocation of this permit.
- O. Other Approval If the development covered under this permit requires separate and distinct approval from the United States Government or the Government of the Virgin Islands, or any agency, department, commission or bureau thereof, then no development or occupancy is allowed under this permit until such permits or approvals have been obtained.
- P. Abandonment If the Permittee abandon, deserts or vacates the premises or discontinues its operation at the premises for a period totaling six (6) consecutive months, the permit will terminate automatically and be rendered null or void.
- Q. Signatures on the Permit Document The Permittee shall sign and return the permit document to the Department within sixty (60) days of receipt thereof. Failure to return the signed permit within the time period specified herein will be considered a rejection of the terms and conditions of the permit and will render the offer of the permit null and void, unless the Permittee requests a written extension and the Department grants the written extension.
- R. Damage and Repair of Premises Described in Paragraph 2 In the event of damage to or destruction of the premises, described in paragraph 2 hereof, repair work may be done only after a request to do so has been submitted in writing to the Department and written permission has been granted by the Department.

6. CONSOLIDATED FEES- CZJ-04-14(W)

The following fees, as approved in the Original Permits by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014 shall apply:

- 1. A rental fee of **One Hundred Ninety-Four Thousand, Twenty Six Dollars and Forty Six Cents (\$194,026.46)**, per year shall be charged for the use and

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The Summer's End Group  
St. John, Virgin Islands

occupancy of the submerged land area occupied under this permit. Prior to the completion of construction of the permitted marina described in Section "2" of this permit, the Permittee shall pay an annual rental fee of **Sixty Four Thousand Twenty Seven Dollars and Eight Cents (\$64,027.08)**, per year for the use and occupancy of the submerged lands as described in Section "2" of this permit. The fees are assessed pursuant to 12 VIC §911(f) and have been negotiated with the Permittee pursuant to 12 VIRR §910-5(e). The initial payment under this permit is due upon receipt of the effective permit, and subsequent payments are due on the anniversary of the effective date. Payments are to be made to the Department of Planning and Natural Resources.

- A. The rental fees payable under this permit shall be adjusted at the commencement of the fifth (5<sup>th</sup>) year of the permit term, in accordance with the increase of the Consumer Price Index as established by the United States Department of Labor, Bureau of Labor Statistics, for "All Items, All urban Consumers (1984-100 percent)" (the "CPI"), as follows:
- i. The CPI as of the month of the initial term (5<sup>th</sup> year), and as of the first month of each subsequent year, shall be the base price index and CPI as of the month immediately preceding the first of any year after the initial term shall be the current price index.
  - ii. The current price index shall be divided by the base price index and the quotient thereof shall be multiplied by the sum of the annual rent of the prior year.
  - iii. The resulting product shall be the annual base rent for the current year.

## **7. CONSOLIDATED SPECIAL CONDITIONS**

The following special conditions, as approved in the Original Permits by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014 shall apply:

Special Conditions relating to Consolidated Scope (a) & (b) or original Permit - CZJ-04-14(W):

1. *All applicable Territorial and Federal permits or other necessary approvals must be obtained, prior to commencement of development activities.*
2. *The Permittee shall notify the Division of Coastal Zone Management (CZM) 72 hours prior to the commencement of development activities.*

CONSOLIDATED Permit Nos. CZJ-04-14(W); CZJ-03-14(L)  
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3. Turbidity curtains shall be installed at an adequate depth in order to prevent suspended sediment from migrating outside the work area.
4. This permit does not allow the removal of mangroves. If trimming of mangroves are required the Permittee must obtain a permit from Department of Planning and Natural Resources/Division of Fish and Wildlife.
5. Water quality monitoring shall be as out lined in the Water Quality Monitoring Plan and as approved by the Division of Environmental Protection.
6. Permittee shall include language in slip lease agreement mandating the use of pump-out facilities.
7. Automatic shut-off nozzles must be used when fueling vessels.
8. The Permittee must install signage to inform boaters of the availability and proper usage of pump-out facilities.
9. The Permittee shall maintain on site, a log for pump-out activities. The log must be available for inspection by DPNR at all times.
10. During construction of the permitted development, temporary restroom facilities must be located onsite and available to workers employed for the development.
11. Prior to start of work, Permittee shall submit to CZM, a performance bond in the amount of 20 percent, up to \$5M, of the estimated construction cost of the development.
12. Following the completion of the development, the Permittee shall be required to maintain a bond in the amount of \$2M such that in the event of a default, the Permittee may return the area to its original state.
13. During installation of the pilings, construction activities associated with this phase is limited to the hours between 8:00 am to 4:00 pm daily except that on Sundays, construction activities are not permitted.

Special Conditions relating to Consolidated Scope (a) & (b) or original Permit - CZJ-03-14(L):

1. All applicable Territorial and Federal permits or other necessary approvals must be obtained, prior to commencement of development activities.
2. The Permittee shall notify the Division of Coastal Zone Management (CZM) two (2) days prior to the commencement of development activities.



*CONSOLIDATED Permit Nos. CZJ-04-14(W); CZJ-03-14(L)*

*By Order of BOLUA*

*The Summer's End Group*


*St. John, Virgin Islands*

- 3. All erosion and sedimentation measures shall be installed prior to the start of construction and fully maintained during all construction activities on the site until completion of this project.*
- 4. This permit does not allow the removal of mangroves. If trimming of mangroves are required the Permittee must obtain a permit from Department of Planning and Natural Resources/Division of Fish and Wildlife.*
- 5. This permit does not allow any work within territorial waters.*
- 6. Debris located along the shoreline of the project site must be removed during and upon completion of the project.*
- 7. Construction activities associated with this permit is limited to the hours between 7:00 am to 5:00 pm daily except that on Sundays, construction activities are not permitted.*
- 8. Prior to start of work, Permittee shall submit to CZM a performance bond in the amount of 20 percent, up to \$5M, of the estimated construction cost of the development.*
- 9. To reduce vehicular traffic at the project site, and the area required for employee parking during construction, the Permittee shall provide offsite shuttle services for construction workers.*

CONSOLIDATED Permit Nos. CZJ-04-14(W); CZJ-03-14(L)  
By Order of BOLUA  
The Summer's End Group  
St. John, Virgin Islands


IN TESTIMONY WHEREOF, the parties herein have hereunto set their hands and seals on the days and years appearing herein below.

ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS CZM COMMISSION  
Original Permitter, as ordered by the Board of Land Use Appeals

  
\_\_\_\_\_  
Andrew Penn, Sr.  
Chairman

12/16/2019  
\_\_\_\_\_  
Date


THE SUMMER'S END GROUP, LLC  
Permittee

  
\_\_\_\_\_  
Chaliene Summers, Managing Member  
The Summer's End Group, LLC

12/17/2019  
\_\_\_\_\_  
Date

CONSOLIDATED Permit Nos. CZJ-04-14(W), CZJ-03-14(I)  
By Order of BOLU  
The Summer's End Group  
St. John, Virgin Islands

APPROVED  
Governor of the Virgin Islands

  
\_\_\_\_\_  
The Honorable Albert Bryan Jr.  
Governor

12-18-19  
\_\_\_\_\_  
Date

RATIFIED  
Legislature of the Virgin Islands

\_\_\_\_\_  
The Honorable  
President, 33<sup>rd</sup> Legislature

\_\_\_\_\_  
Date

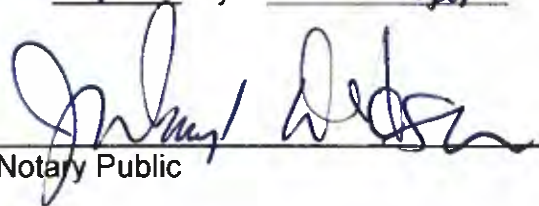
I, Chaliese Summers, do hereby certify that as Managing Member, The Summer's End Group, LLC, I am duly authorized and empowered to sign this Permit on behalf of the The Summer's End Group, LLC.

  
\_\_\_\_\_  
Chaliese Summers  
Managing Member

12/17/19  
\_\_\_\_\_  
Date

SWORN AND SUBSCRIBED before me

this 17 day of December 2019

  
\_\_\_\_\_  
Notary Public

**J. DARYL DODSON**  
Notary Public  
St. Thomas/St. John, U.S. Virgin Islands  
LNP-51-19  
My Commission Expires January 16, 2023

**THE VIRGIN ISLANDS BOARD OF LAND USE APPEALS**

In the matter of: )  
)  
**VIRGIN ISLANDS CONSERVATION** )  
**SOCIETY,** )  
)  
**AND MORAVIAN CHURCH CONFERENCE** )  
**OF THE VIRGIN ISLANDS,** )  
)  
**AND T-REX ST. JOHN LLC AND SIRIUS** )  
**DEVELOPMENT, LLC,** )  
)  
Appellants, ) **Appeal Nos. 005-6/2014; 008/2014**  
)  
v. )  
) **Permit Nos. CZJ-03-14 (L); CZJ-03-14(W)**  
**ST. JOHN COMMITTEE OF THE VIRGIN** )  
**ISLANDS COASTAL MANAGEMENT** )  
**COMMISSION,** )  
)  
Appellee. )  
\_\_\_\_\_ )

**DECISION AND ORDER**

The Virgin Islands Board of Land Use Appeals (“BLUA”) by and through its Acting Chairman, Aloy Nielsen hereby renders its Decision and Order in the above-captioned appeal, pursuant to 12 V.I.R.R. § 914-11(a). For the following reasons, the BLUA finds that the land and water permits are to be consolidated as one permit, and affirms the decision of the St. John Committee of the Virgin Islands Coastal Zone Management Commission (“CZM”).

**FINDINGS OF FACT**

- 1) On April 4, 2014, Summer’s End Group, LLC (“SEG”) submitted to the Division of Coastal Zone Management of the Department of Planning and Natural Resources (“CZM”) two (2) Major Coastal Zone Permit Applications for a Marina Project in Coral Bay, St. John; the land

and water permits were numbered as Nos. CZJ-03-14(L) and CZJ-04-14(W), respectively (collectively, “the Permits”).

- 2) On April 29, 2014, CZM issued a Letter of Incompleteness and Request for More Information to SEG regarding the Permits.
- 3) SEG submitted to CZM the requested information from the Letter of Incompleteness, and on June 18, 2014, CZM sent SEG two (2) letters indicating that both permit applications were complete.
- 4) From July 27, 2014 to August 18, 2014, CZM received comments on the Permits from the League of Women Voters, the Environmental Association of St. Thomas (East), the National Oceanic and Atmosphere Administration, the Virgin Islands Department of Public Works Commissioner Daryl Smalls, the Coral Bay Community Counsel, Attorney Maria Hodge, Esq., the U.S. Department of Fish and Wildlife, and counsel for the Moravian Church Conference.
- 5) On August 20, 2014, CZM issued Preliminary Staff Findings regarding the Permits.
- 6) On August 20, 2014, CZM conducted a public hearing regarding the Permits.
- 7) Between August 23, 2014 and August 24, 2014, CZM received comments on the Permits from William McComb, the University of the Virgin Islands, the National Park Service, and David Silverman.
- 8) On September 24, 2014, SEG submitted responsive comments to CZM.
- 9) On October 1, 2014, CZM issued its Final Staff Reports on the Permits.
- 10) On October 1, 2014, CZM held a Decisional Meeting on the Permits.
- 11) CZM issued its Decision Letter to SEG on October 10, 2014, explaining that CZM approved the Permits.

- 12) CZM issued the Permits to SEG on October 24, 2014.
- 13) Between November 14, 2014 and December 5, 2014, Virgin Islands Conservation Society (“VICS”), Moravian Church Conference, T-Rex St. John LLC and Sirius Development LLC (collectively, “Appellants”) filed appeals to the BLUA challenging CZM’s decision to issue the Permits to SEG.
- 14) The BLUA scheduled a public hearing on this appeal for April 5, 2016.
- 15) However, starting on March 23, 2016, the parties filed numerous motions and briefs raising procedural issues. To start, on March 23, 2016, the VICS filed a Motion to Supplement Appellant’s Notice of Appeal.
- 16) CZM then filed an Opposition to the VICS’ Motion to Supplement on March 31, 2016. That same day, March 31, 2016, SEG filed a Motion to Intervene in the BLUA appeal.
- 17) On April 1, 2016, SEG filed an Opposition to the VICS’ Motion to Supplement. Moravian Church Conference and the VICS each filed an Opposition to SEG’s Motion to Intervene on April 1, 2016.
- 18) SEG filed an amended Motion to Intervene on April 4, 2016. CZM filed a Consolidated Response Brief on April 4, 2016. Moravian Church Conference filed a Motion to Strike Appellee’s Brief on April 4, 2016.
- 19) The BLUA held a public hearing on April 5, 2016.

#### **JURISDICTION**

- 1) Any aggrieved person may file an appeal of an action by CZM within forty-five (45) days thereof with the BLUA. 12 V.I.C. § 914(a).
- 2) Furthermore, pursuant to 12 V.I.R.R. § 914-3, the BLUA has jurisdiction to review any decision in which the findings, inferences, conclusions, or decisions are: (a) in violation of

constitutional, Revised Organic Act of 1954, or statutory provisions; (b) in excess of the statutory authority of the Commission, Committee, or Commissioner; (c) made upon unlawful procedure; (d) affected by other error of law; (e) erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

- 3) The Appellants raise numerous challenges to CZM's issuance of the Permits, including subsections (d), (e), and (f) above. Therefore, the BLUA has jurisdiction over this appeal.

#### **CONCLUSIONS OF LAW**

- 1) In accordance with 12 V.I.R.R. § 914-11(a), the BLUA's decisions shall be based on the record of the proceedings below.
- 2) The record shall constitute the original papers and exhibits filed in the proceeding-below and the transcript in the proceeding-below. 12 V.I.R.R. § 914-6.
- 3) All of the documents and memoranda that the VICS sought to include in its Supplement to its Notice of Appeal is dated after the decisional meeting of CZM, which occurred on October 1, 2014.
- 4) Therefore, the BLUA denies the VICS' Motion to Supplement filed on March 23, 2016, as the BLUA can only take into consideration and review the evidence that was considered by CZM at its decisional meeting in reviewing this appeal. *See* 12 V.I.R.R. § 914-11(a); 12 V.I.R.R. § 914-6.
- 5) BLUA grants SEG's amended Motion to Intervene, dated April 4, 2016.
- 6) SEG filed its original Motion to Intervene on April 1, 2015, pursuant to 12 V.I.R.R. § 914-17, which states that "[a]ny aggrieved person or applicant may intervene in an appeal by filing a petition with the Board not less than ten (10) days prior to the public hearing."

- 7) As previously stated, SEG filed its original motion on April 1, 2016, therefore it could not be considered an Intervener as the filing was made within ten (10) days of the public hearing. *See* 12 V.I.R.R. § 914-17.
- 8) However, in its amended Motion to Intervene, SEG asked to be considered an Amicus Curie party pursuant to 12 V.I.R.R. § 914-9, which states that the BLUA “may, in its discretion, permit an amicus curiae to file briefs or appear on oral argument on such terms and conditions as the [BLUA] determines.”
- 9) Since there is no time restriction to filing an amicus curiae brief, the BLUA grants SEG’s April 4, 2016 Motion to Intervene, allowing SEG to participate in the appeal as an amicus curiae party.
- 10) The BLUA affirms CZM’s decision to issue the Permits to SEG.
- 11) The BLUA concurs with CZM that findings were made by CZM in a legally sufficient manner. The Final Staff Recommendations by CZM were issued for each permit—land and water—on October 4, 2014, containing the legally sufficient findings.
- 12) Furthermore, the BLUA is unpersuaded by Appellant’s arguments as to how these findings are inconsistent with the goals and policies articulated in 12 V.I.C. § 903, or the procedures of 12 V.I.C. §§ 910(a)(2) and 911(c).
- 13) In affirming CZM’s decision to issue the Permits to SEG, the BLUA also concurs with the Moravian Church Conference’s argument that the Permits should be consolidated as one (1) permit application.
- 14) As Moravian Church correctly identified, the Environmental Assessment Reports for each application repeatedly state that each Permit is dependent upon the other. Because the land



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and the water permit applications are for mutually dependent developments, they must be treated as one permit application.

- 15) The BLUA notes that both the Land and Water Permits have a condition that reads: "Prior to the start of work, [SEG] shall submit to CZM a performance bond in the amount of 20 percent, up to \$5M, of the estimated construction cost of the development."
- 16) Because the BLUA finds that the permits are to be consolidated, the BLUA notes that this now requires that SEG, prior to the start of construction, submit to CZM a performance bond in the amount of 20 percent, up to \$10 million, of the estimated construction cost of the development.

**ORDER**

**IT IS HEREBY ORDERED** that the Motion to Supplement Appellant's Notice of Appeal filed by the VICS is DENIED; and it is further

**ORDERED** that SEG's amended Motion to Intervene as an amicus curie party is GRANTED; and it is further

**ORDERED** that the Permits at issue, Nos. CZJ-03-14(L) and CZJ-04-14(W), be consolidated; and it is further

**ORDERED** that the St. John Committee of the Virgin Islands Coastal Zone Management Commission approval and issuance of the Permits Nos. CZJ-03-14(L) and CZJ-04-14(W) is AFFIRMED.

Ordered This 6 Day of JUNE 2016.

**BY THE VIRGIN ISLANDS BOARD OF LAND USE APPEALS**

  
Aloy Nielsen, Acting Chairman

**MAJOR COASTAL ZONE MANAGEMENT PERMIT NO. CZJ-04-14(W)**

1. **AUTHORITY** This permit is issued by the St. Thomas Committee of the Virgin Islands Coastal Zone Management (CZM) Commission and is administered and monitored by the Department of Planning and Natural Resources (the "Department") on behalf of the Coastal Zone Management Commission pursuant to Virgin Islands Code, Title 12, Sections 904, and any other provisions of THE CZM Act. As herein, "**Permitter**" is the **ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS COASTAL ZONE MANAGEMENT COMMISSION** and "**Permittee**" is **THE SUMMER'S END GROUP, LLC**.
  
2. **SCOPE** (a) This permit allows the construction of a 145 slip marina, a designated mooring field of up to 75 moorings, a pump-out station and a fuel station at and seaward of Plot Nos. 10-17, 10-18, 10-19, 10-41 Rem., 13A, 13B and 13 Rem. Estate Carolina, St. John, U. S. Virgin Islands.  
  
(b) This permit also allows the use and occupancy of the structures described in Section 2 (a) of this permit including 27.5 acres of submerged land areas surrounding the structures described in Section 2, (a) of this permit.
  
3. **TERM** This permit is effective upon its signing by the Chairman of the St. John Committee of the Virgin Islands CZM Commission, approval by the Governor of the Virgin Islands, and ratification by the Legislature of the Virgin Islands. As used herein, the "Effective Date" or "the date hereof" means the date of such approval. This permit will expire twenty (20) years after the Effective Date. This permit is issued for a definite term of 20 years and shall not constitute a property right. This Permit shall be renewed only if the requirements of Title 12 of the Virgin Islands Code, Section 911, are met.
  
4. **DOCUMENTS INCORPORATED BY REFERENCE**  
  
Exhibit A: CZM Permit Application dated April 4, 2014.  
  
Exhibit B: Site Plan and Drawings dated July 11, 2014.  
  
Exhibit C: Environmental Assessment Report dated April 4, 2014.  
  
Exhibit D: Water Quality Certificate dated October 16, 2014
  
5. **GENERAL CONDITIONS**  
  
A. **Liability** The Permittee agrees to assume full and complete responsibility for all liability to any person or persons, including employees, as a result of its control of the area described in Paragraph 2 of this permit, and all improvements thereon (which area and improvements are hereinafter

referred to as "the premises"), and to hold the Permittor free and harmless for civil or other liabilities of any kind during the time the Permittee is in control of the premises pursuant to this permit.

- B. Personal Property and Damage All personal property of any kind or description whatsoever located on the premises shall be there at the Permittee's sole risk.
- C. Assignment or Transfer This permit may not be transferred or assigned except as provided in Section 910-15 of the Virgin Islands Rules and regulations.
- D. Permit to be Displayed A placard evidencing the permit shall be posted in a conspicuous place at the project site during the entire work period.
- E. Reliance on Information and Data The Permittee affirms that the information and data which it provided in connection with its permit application are true and accurate, and acknowledges that if subsequent to the effective date of this permit such information and data prove to be false or inaccurate, the permit may be modified, suspended or revoked in whole or in part, and that the Commissioner or the Committee may, in addition, institute appropriate legal action.
- F. Development to be Commenced Any and all development approved by this Coastal Zone Permit shall begin within twelve (12) months from the date this permit becomes effective and shall be continuous until completion. Failure to perform at least fifty (50%) percent of the work within such period and continuously construct thereafter until the completion of construction shall cause the permit to terminate automatically and render it null and void, unless the Permittee requests an extension in writing and demonstrates to the satisfaction of the Committee that good cause exists for granting such extension.
- G. Notification of Completion Upon completion of any activity authorized or required by this CZM Permit, the Permittee shall promptly so notify the Director of the Division of CZM and where the services of a professional engineer were required in undertaking the activity, a certification of compliance provided by the project engineer that the plans and specifications of the project and all applicable Virgin Islands Code requirements have been met, shall be filed with said Director.
- H. Inspection The Commission, its Committee, the Commissioner or their authorized agents or representatives shall have the power to enter at reasonable times during project working hours upon any lands or waters in the coastal zone for which this Coastal Zone Permit has been issued. The Permittee shall permit such entry for the purpose of inspection and

ascertaining compliance with the terms and conditions of said Coastal Zone Permit. The Permittee shall provide access to such records as the Commission, its Committee, or the Commissioner in the performance of it or his duties under the CZM Act may require the Permittee to maintain. Such records may be examined and copies shall be submitted to the Commission, its Committee or the Commissioner upon request.

- I. Conditions of Premises The Development authorized by this permit shall be maintained in a safe condition and in accordance with the description, plans, or drawings approved by the Commissioner or by the Committee, and all applicable Virgin Islands Laws.
- J. Public Access to Shoreline The development shall be operated so as to assure optimum public access to the shoreline.
- K. Restoration of Area The Permittee, upon renovation or expiration of the permit, shall upon order of the Committee, or the Commissioner, and in their sole discretion, remove all structures authorized by the permit and restore the area to its original condition, and/or modify such structures or site, and/or comply with any directive of the Committee, or the Commissioner in satisfying the original permit conditions in such time and manner as the Committee, or the Commissioner may direct.
- L. Notices All notices sent or required to be sent hereunder must be by certified mail, return receipt requested. If addressed to the Permitter, same shall be sent to the Commissioner of the Department of Planning and Natural Resources, Charles Wesley Turnbull Regional Public Library, 4607 Tutu Park Mall, St. Thomas, Virgin Islands 00802, or to such other place as the Permitter may hereinafter designate. If addressed to the Permittee, same shall be sent to Chaliесе Summers, Managing Member, The Yacht Club at Summer's End, LLC, 5000 Estate Enighed, Suite 63, St. John, Virgin Islands, 00803, or to such place as the Permittee may hereinafter designate by certified mail, return receipt requested.
- M. Non Waiver One or more waivers by the Permitter of any covenant or condition of this permit shall not be construed as a waiver of a further breach of the covenant or condition. The consent or approval of the Permitter to or of any acts by either the Permittee requiring the Permitter's consent or approval shall not be construed as approval of any subsequent similar act by the Permittee.
- N. Revocation It is specifically understood that all the foregoing covenants and agreements, as well as other terms and special conditions hereby agreed to by the Permittee, are to be well and faithfully kept by Permittee and that any failure by the Permittee to keep same will result in revocation of this permit.

- O. Other Approval If the development covered under this permit requires separate and distinct approval from the United States Government or the Government of the Virgin Islands, or any agency, department, commission or bureau thereof, then no development or occupancy is allowed under this permit until such permits or approvals have been obtained.
- P. Abandonment If the Permittee abandon, deserts or vacates the premises or discontinues its operation at the premises for a period totaling six (6) consecutive months, the permit will terminate automatically and be rendered null or void.
- Q. Signatures on the Permit Document The Permittee shall sign and return the permit document to the Department within sixty (60) days of receipt thereof. Failure to return the signed permit within the time period specified herein will be considered a rejection of the terms and conditions of the permit and will render the offer of the permit null and void, unless the Permittee requests a written extension and the Department grants the written extension.
- R. Damage and Repair of Premises Described in Paragraph 2 In the event of damage to or destruction of the premises, described in paragraph 2 hereof, repair work may be done only after a request to do so has been submitted in writing to the Department and written permission has been granted by the Department.

## 6. FEES

- 1. A rental fee of **One Hundred Ninety Four Thousand, Twenty Six Dollars and Forty Six Cents (\$194,026.46)**, per year shall be charged for the use and occupancy of the submerged land area occupied under this permit. Prior to the completion of construction of the permitted marina described in Section "2" of this permit, the Permittee shall pay an annual rental fee of **Sixty Four Thousand Twenty Seven Dollars and Eight Cents (\$64,027.08)**, per year for the use and occupancy of the submerged lands as described in Section "2" of this permit. The fees are assessed pursuant to 12 VIC §911(f) and have been negotiated with the Permittee pursuant to 12 VIRR §910-5(e). The initial payment under this permit is due upon receipt of the effective permit, and subsequent payments are due on the anniversary of the effective date. Payments are to be made to the Department of Planning and Natural Resources.
- A. The rental fees payable under this permit shall be adjusted at the commencement of the fifth (5<sup>th</sup>) year of the permit term, in accordance with the increase of the Consumer Price Index as established by the United States Department of Labor, Bureau of Labor Statistics, For "All Items, All urban

Consumers (1984-100 percent)" (the "CPI"), as follows:

- i. The CPI as of the month of the initial term (5<sup>th</sup> year), and as of the first month of each subsequent year, shall be the base price index and CPI as of the month immediately preceding the first of any year after the initial term shall be the current price index.
- ii. The current price index shall be divided by the base price index and the quotient thereof shall be multiplied by the sum of the annual rent of the prior year.
- iii. The resulting product shall be the annual base rent for the current year.


## **7. SPECIAL CONDITIONS**

1. *All applicable Territorial and Federal permits or other necessary approvals must be obtained, prior to commencement of development activities.*
2. *The Permittee shall notify the Division of Coastal Zone Management (CZM) 72 hours prior to the commencement of development activities.*
3. *Turbidity curtains shall be installed at an adequate depth in order to prevent suspended sediment from migrating outside the work area.*
4. *This permit does not allow the removal of mangroves. If trimming of mangroves are required the Permittee must obtain a permit from Department of Planning and Natural Resources/Division of Fish and Wildlife.*
5. *Water quality monitoring shall be as out lined in the Water Quality Monitoring Plan and as approved by the Division of Environmental Protection.*
6. *Permittee shall include language in slip lease agreement mandating the use of pump-out facilities.*
7. *Automatic shut-off nozzles must be used when fueling vessels.*
8. *The Permittee must install signage to inform boaters of the availability and proper usage of pump-out facilities.*
9. *The Permittee shall maintain on site, a log for pump-out activities. The log must be available for inspection by DPNR at all times.*

10. *During construction of the permitted development, temporary restroom facilities must be located onsite and available to workers employed for the development.*
11. *Prior to start of work, Permittee shall submit to CZM, a performance bond in the amount of 20 percent, up to \$5M, of the estimated construction cost of the development.*
12. *Following the completion of the development, the Permittee shall be required to maintain a bond in the amount of \$2M such that in the event of a default, the Permittee may return the area to its original state.*
13. *During installation of the pilings, construction activities associated with this phase is limited to the hours between 8:00 am to 4:00 pm daily except that on Sundays, construction activities are not permitted.*


**IN TESTIMONY WHEREOF**, the parties herein have hereunto set their hands and seals on the days and years appearing herein below.

**ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS CZM COMMISSION**  
Permitter

  
\_\_\_\_\_  
Andrew Penn, Sr.  
Chairman

March 27, 2019  
\_\_\_\_\_  
Date

**THE SUMMER'S END GROUP, LLC**  
Permittee

  
\_\_\_\_\_  
Chaliese Summers, Managing Member  
The Summer's End Group, LLC

March 26, 2019  
\_\_\_\_\_  
Date

**APPROVED**  
Governor of the U.S. Virgin Islands

  
\_\_\_\_\_  
Governor

4/4/19  
\_\_\_\_\_  
Date

**RATIFIED**  
Legislature of the U.S. Virgin Islands

\_\_\_\_\_  
President

\_\_\_\_\_  
Date



CZJ-04-14(W)  
The Summer's End Group  
St. John, Virgin Islands

I, Chaliese Summers, do hereby certify that as Managing Member, The Summer's End Group, LLC, I am duly authorized and empowered to sign this Permit on behalf of The Summer's End Group, LLC.



Chaliese Summers,  
Managing Member

March 28, 2019  
Date

SWORN AND SUBSCRIBED before me

this 28<sup>th</sup> day of March 2019

  
\_\_\_\_\_  
Notary Public

Edith R. Principaal  
Notary Public, U.S. Virgin Islands  
My Commission Expires September 8, 2020  
NP-63-16



GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES  
-----0-----  
DEPARTMENT OF PLANNING AND NATURAL RESOURCES  
Division of Coastal Zone Management

Charles Wesley Turnbull Regional Public Library  
4607 Tutu Park Mall  
St. Thomas, Virgin Islands 00802

Telephone: (340) 773-1082

FAX: (340) 773-3343

**Basis For Negotiations**  
**The Summer's End Group, LLC**  
-----

I. General Information

Permit No. CZJ-4-14(W)  
Applicant: The Summer' End Group, LLC  
Location: Seaward of No. 12 Carolina, St. John  
Action: Construction of a marina, a designated mooring area of up to 75 moorings and the use and occupancy of submerged land area surrounding the marina.

II. Activity

Permittee proposes to construct a marina and designated mooring field, and the use and occupancy of approximately 1.7 acres or 74,900 sq. ft. of structures occupying submerged land, and 25.8 acres or 1,123,848 sq. ft. of submerged lands surrounding the structures. Permittee will also install a total of 75 boat moorings for boats of various sizes.

III. FMV Plot No. 12, Carolina - \$336,500.00/1.7 acres = \$197,941.17/acre (Tax Assessors Office)

Calculations

Total square footage of structures = 1.7 acres:  
 $\$197,941.17/\text{per acre} \times 1.7 \text{ acres} = \$336,500.00 \times 6\% = \underline{\$20,190.00}$

Total square footage for submerged area surrounding the structures  
1,123,848.0 or 25.8 acres

$\$197,941.17/\text{per acre} \times 25.8 \text{ acres} = \$5,106,882.18 \times 3\% = \underline{\$153,206.46}$   
(Structures)

75 total boat moorings at an average boat length of 27.5 feet per mooring and a fee of \$10.00 per foot = **\$20,625.00.**

IV. Fees

**Annual fee = \$194,021.46 per year**

Until such time that construction of the marina is completed, the Permittee shall pay 33% of the total annual fee (**\$194,021.46**). Therefore, the annual submerged land fee to be paid until such time that construction of the marina is completed is **\$64,027.08.**



# Legislature of the Virgin Islands

NO. 1110 STRAND STREET  
CHRISTIANSTED, UNITED STATES VIRGIN ISLANDS 00820  
PH. (340) 712-2324  
SENATORFRANCIS@LEGVL.ORG

Honorable  
Novelle E. Francis, Jr.  
Senate President

December 10, 2019

The Honorable Albert Bryan, Jr.  
Governor of the Virgin Islands  
Office of the Governor  
No. 20-21 Kongens Gade  
Christiansted, Virgin Islands 00820

This document was received

by the Governor this 10<sup>th</sup>

Day of December 2019

Omeara  
Secretary to the Governor

## RE: Major Coastal Zone Management Permit No. CZJ-04-14 (W)

Dear Governor Bryan:

The members of the 33<sup>rd</sup> Legislature received extensive testimony on Major Coastal Zone Permit No. CZJ-04-14(W), the application for Summer's End Group, LLC to construct a marina and supporting facilities on the island of St. John on October 28, 2019. After an exhaustive review of all documentation submitted, it has been determined that the 33<sup>rd</sup> Legislature is presently unable to take action on this permit as it is considered defective. Accordingly, Major Coastal Zone Management Permit No. CZJ-04-14(W) and the accompanying documents are being returned to your office.

Pursuant to the Virgin Islands Coastal Zone Management Act, Virgin Islands Code, Title 12, section 911 (e), the Legislature may ratify the Governor's approval of only those coastal zone permits that have been duly approved by the appropriate Coastal Zone Management Committee. However, the permit transmitted to the Legislature was not approved by the St. John Committee of the Virgin Islands Coastal Zone Management Commission (the St. John Committee). Rather, on March 27, 2019, the permit was modified and issued unilaterally by the Chairman of the St. John Committee without a vote of approval or any other involvement of the St. John Committee. This lack of a vote invalidates the permit. Since this permit is considered invalid, it cannot be ratified by the Legislature and is therefore improperly before the Legislature.

Unfortunately, the defect cannot be resolved merely by submitting the original permit approved by the St. John Committee and the Governor in 2014. As the applicant's testimony and correspondence has disclosed, the project described and approved in 2014 is no longer the project the applicant intends to develop today. Neither the 2014 permit nor the 2019 permit truly reflects or conforms to the applicant's current proposal for the development of a marina. Consequently, Coastal Zone Management Permit No. CZJ-04-14 (W) authorizing a project that is different from the project that Summer's End actually intends to develop is not properly before the Legislature.

In short, the project as currently proposed by Summer's End Group, LLC cannot be developed under the Major Coastal Zone Management Permit No. CZJ-04-14 (W) and its accompanying plans, maps and drawings. It is the consensus of the Legislature that the marina project proposed by Summer's End Group, LLC has not been yet submitted for CZM review, thereby rendering this permit and all related processes invalid.

When a new, valid, consolidated land and water permit for the marina project is transmitted for the Legislature's ratification, I assure you that the Thirty-Third Legislature will act promptly.

Cordially,



Novelle E. Francis, Jr.  
Senate President

cc: Commissioner Jean-Pierre Oriol  
Department of Planning and Natural Resources

Attachments

## **MAJOR COASTAL ZONE MANAGEMENT PERMIT NO. CZJ-04-14(W)**

1. **AUTHORITY** This permit is issued by the St. Thomas Committee of the Virgin Islands Coastal Zone Management (CZM) Commission and is administered and monitored by the Department of Planning and Natural Resources (the "Department") on behalf of the Coastal Zone Management Commission pursuant to Virgin Islands Code, Title 12, Sections 904, and any other provisions of THE CZM Act. As herein, "Permitter" is the **ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS COASTAL ZONE MANAGEMENT COMMISSION** and "Permittee" is **THE SUMMER'S END GROUP, LLC**.
  
2. **SCOPE**
  - (a) This permit allows the construction of a 145 slip marina, a designated mooring field of up to 75 moorings, a pump-out station and a fuel station at and seaward of Plot Nos. 10-17, 10-18, 10-19, 10-41 Rem., 13A, 13B and 13 Rem. Estate Carolina, St. John, U. S. Virgin Islands.
  
  - (b) This permit also allows the use and occupancy of the structures described in Section 2 (a) of this permit including 27.5 acres of submerged land areas surrounding the structures described in Section 2, (a) of this permit.
  
3. **TERM** This permit is effective upon its signing by the Chairman of the St. John Committee of the Virgin Islands CZM Commission, approval by the Governor of the Virgin Islands, and approval by the Legislature of the Virgin Islands. As used herein, the "Effective Date" or "the date hereof" means the date of such approval. This permit will expire twenty (20) years after the Effective Date. This permit is issued for a definite term of 20 years and shall not constitute a property. This Permit shall be renewed only if the requirements of Title 12 of the Virgin Islands Code, Section 911, are met.
  
4. **DOCUMENTS INCORPORATED BY REFERENCE**
  - Exhibit A: CZM Permit Application dated April 4, 2014.
  
  - Exhibit B: Site Plan and Drawings dated July 11, 2014.
  
  - Exhibit C: Environmental Assessment Report dated April 4, 2014.
  
  - Exhibit D: Water Quality Certificate dated October 16, 2014
  
5. **GENERAL CONDITIONS**
  - A. **Liability** The Permittee agrees to assume full and complete responsibility for all liability to any person or persons, including employees, as a result of its control of the area described in Paragraph 2 of this permit, and all improvements thereon (which area and improvements are hereinafter

referred to as "the premises"), and to hold the Permitter free and harmless for civil or other liabilities of any kind during the time the Permittee is in control of the premises pursuant to this permit.

- B. Personal Property and Damage All personal property of any kind or description whatsoever located on the premises shall be there at the Permittee's sole risk.
- C. Assignment or Transfer This permit may not be transferred or assigned except as provided in Section 910-15 of the Virgin Islands Rules and regulations.
- D. Permit to be Displayed A placard evidencing the permit shall be posted in a conspicuous place at the project site during the entire work period.
- E. Reliance on Information and Data The Permittee affirms that the information and data which it provided in connection with its permit application are true and accurate, and acknowledges that if subsequent to the effective date of this permit such information and data prove to be false or inaccurate, the permit may be modified, suspended or revoked in whole or in part, and that the Commissioner or the Committee may, in addition, institute appropriate legal action.
- F. Development to be Commenced Any and all development approved by this Coastal Zone Permit shall begin within twelve (12) months from the date this permit becomes effective and shall be continuous until completion. Failure to perform at least fifty (50%) percent of the work within such period and continuously construct thereafter until the completion of construction shall cause the permit to terminate automatically and render it null and void, unless the Permittee requests an extension in writing and demonstrates to the satisfaction of the Committee that good cause exists for granting such extension.
- G. Notification of Completion Upon completion of any activity authorized or required by this CZM Permit, the Permittee shall promptly so notify the Director of the Division of CZM and where the services of a professional engineer were required in undertaking the activity, a certification of compliance provided by the project engineer that the plans and specifications of the project and all applicable Virgin Islands Code requirements have been met, shall be filed with said Director.
- H. Inspection The Commission, its Committee, the Commissioner or their authorized agents or representatives shall have the power to enter at reasonable times during project working hours upon any lands or waters in the coastal zone for which this Coastal Zone Permit has been issued. The Permittee shall permit such entry for the purpose of inspection and

ascertaining compliance with the terms and conditions of said Coastal Zone Permit. The Permittee shall provide access to such records as the Commission, its Committee, or the Commissioner in the performance of it or his duties under the CZM Act may require the Permittee to maintain. Such records may be examined and copies shall be submitted to the Commission, its Committee or the Commissioner upon request.

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- K. Restoration of Area The Permittee, upon renovation or expiration of the permit, shall upon order of the Committee, or the Commissioner, and in their sole discretion, remove all structures authorized by the permit and restore the area to its original condition, and/or modify such structures or site, and/or comply with any directive of the Committee, or the Commissioner in satisfying the original permit conditions in such time and manner as the Committee, or the Commissioner may direct.
- L. Notices All notices sent or required to be sent hereunder must be by certified mail, return receipt requested. If addressed to the Permitter, same shall be sent to the Commissioner of the Department of Planning and Natural Resources, Cyril E. King Airport, Terminal Building, Second Floor, St. Thomas, Virgin Islands 00802, or to such other place as the Permitter may hereinafter designate. If addressed to the Permittee, same shall be sent to Chalièse Summers, Managing Member, The Yacht Club at Summer's End, LLC, 5000 Estate Enighed, Suite 63, St. John, Virgin Islands, 00803, or to such place as the Permittee may hereinafter designate by certified mail, return receipt requested.
- M. Non Waiver One or more waivers by the Permitter of any covenant or condition of this permit shall not be construed as a waiver of a further breach of the covenant or condition. The consent or approval of the Permitter to or of any acts by either the Permittee requiring the Permitter's consent or approval shall not be construed as approval of any subsequent similar act by the Permittee.
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- Q. Signatures on the Permit Document The Permittee shall sign and return the permit document to the Department within sixty (60) days of receipt thereof. Failure to return the signed permit within the time period specified herein will be considered a rejection of the terms and conditions of the permit and will render the offer of the permit null and void, unless the Permittee requests a written extension and the Department grants the written extension.
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6. **FEES**

- 1. A rental fee of **One Hundred Ninety Four Thousand, Twenty Six Dollars and Forty Six Cents (\$194,026.46)**, per year shall be charged for the use and occupancy of the submerged land area occupied under this permit. Prior to the completion of construction of the permitted marina described in Section "2" of this permit, the Permittee shall pay an annual rental fee of **Sixty Four Thousand Twenty Seven Dollars and Eight Cents (\$64,027.08)**, per year for the use and occupancy of the submerged lands as described in Section "2" of this permit. The fees are assessed pursuant to 12 VIC §911(f) and have been negotiated with the Permittee pursuant to 12 VIRR §910-5(e). The initial payment under this permit is due upon receipt of the effective permit, and subsequent payments are due on the anniversary of the effective date. Payments are to be made to the Department of Planning and Natural Resources.
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Consumers (1984-100 percent)" (the "CPI"), as follows:

- i. The CPI as of the month of the initial term (5<sup>th</sup> year), and as of the first month of each subsequent year, shall be the base price index and CPI as of the month immediately preceding the first of any year after the initial term shall be the current price index.
- ii. The current price index shall be divided by the base price index and the quotient thereof shall be multiplied by the sum of the annual rent of the prior year.
- iii. The resulting product shall be the annual base rent for the current year.

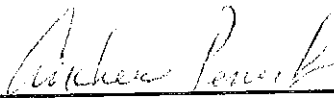
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2. *The Permittee shall notify the Division of Coastal Zone Management (CZM) 72 hours prior to the commencement of development activities.*
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12. *Following the completion of the development, the Permittee shall be required to maintain a bond in the amount of \$2M such that in the event of a default, the Permittee may return the area to its original state.*
13. *During installation of the pilings, construction activities associated with this phase is limited to the hours between 8:00 am to 4:00 pm daily except that on Sundays, construction activities are not permitted.*

IN TESTIMONY WHEREOF, the parties herein have hereunto set their hands and seals on the days and years appearing herein below.

**ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS CZM COMMISSION**  
Permitter

  
\_\_\_\_\_  
Andrew Penn, Sr.  
Chairman

10/24/2014  
\_\_\_\_\_  
Date

**THE SUMMER'S END GROUP, LLC**  
Permittee

  
\_\_\_\_\_  
Chaliese Summers, Managing Member  
The Summer's End Group, LLC

10/24/2014  
\_\_\_\_\_  
Date

APPROVED  
Governor of the Virgin Islands

\_\_\_\_\_  
The Honorable John P. de Jongh, Jr.  
Governor

\_\_\_\_\_  
Date

APPROVED  
Legislature of the Virgin Islands

\_\_\_\_\_  
The Honorable Shawn Michael Malone  
President, 30<sup>th</sup> Legislature

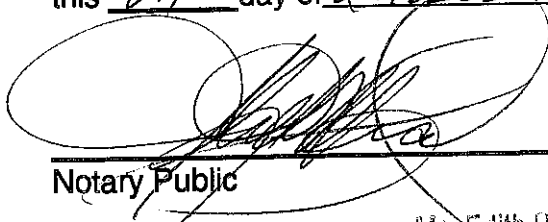
\_\_\_\_\_  
Date

I, Chaliese Summers, do hereby certify that as Managing Member, The Summer's End Group, LLC, I am duly authorized and empowered to sign this Permit on behalf of the The Summer's End Group, LLC.

  
\_\_\_\_\_  
Chaliese Summers  
Managing Member

October 24, 2014  
Date

SWORN AND SUBSCRIBED before me  
this 24<sup>th</sup> day of October 2014

  
\_\_\_\_\_  
Notary Public

Ms. Edith Principaal  
Notary Public, U.S. Virgin Islands  
My commission Expires: June 7, 2016  
NP-48-12

## MAJOR COASTAL ZONE MANAGEMENT PERMIT NO. CZJ-03-14(L)

1. **AUTHORITY** This permit is issued by the St. Thomas Committee of the Virgin Islands Coastal Zone Management (CZM) Commission and is administered and monitored by the Department of Planning and Natural Resources (the "Department") on behalf of the Coastal Zone Management Commission pursuant to Virgin Islands Code, Title 12, Sections 904, and any other provisions of THE CZM Act. As herein, "**Permitter**" is the **ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS COASTAL ZONE MANAGEMENT COMMISSION** and "**Permittee**" is **THE SUMMER'S END GROUP, LLC**.

2. **SCOPE** This permit allows the redevelopment of seven contiguous properties in Estate Carolina, Coral Bay, St. John (in two phases) for the construction of various supporting facilities for the Coral Bay Marina. Phase 1 will enhance the existing commercial business sites at CoCo Loba, Shoreline Inn and Island Blues and renovate the "Voyages" restaurant building. Phase 1 redevelopment will include the following:

- 120 off street parking spaces
- A new 56 seat restaurant
- Customs and Border Protection office
- A Marina Office
- Marina Engineering
- Marina Security
- Fish and Farmers Market
- Crew shower and locker facilities
- Apartments to support marina management
- Proper solid, hazardous and liquid waste management
- Proper storm water management , and
- Proper fueling.

Phase 2 of the development (implemented strictly on demand) will include:

- Additional retail
- Restaurant
- Office space
- Commercial space and
- Six short-term rental units

The project is located on Parcel Nos. 10-17, 10-18, 10-19, 10-41 Rem., 13A, 13B and 13 Rem. Estate Carolina, St. John, U.S. Virgin Islands.

3. **TERM** This permit is effective upon its signing by the Chairman of the St. John CZM Committee, pursuant to Virgin Islands Code, Title 12, Chapter 21. Authorization for construction under this permit will expire if the Permittee fails to commence work within twelve (12) months from the date this permit becomes effective.

**4. DOCUMENTS INCORPORATED BY REFERENCE**

- Exhibit A: CZM Permit Application dated April 4, 2014.  
Exhibit B: Site Plan and Drawings dated July 11, 2014  
Exhibit C: Environmental Assessment Report dated April 4, 2014

**5. GENERAL CONDITIONS**

- A. Liability The Permittee agrees to assume full and complete responsibility for all liability to any person or persons, including employees, as a result of its control of the area described in Paragraph 2 of this permit, and all improvements thereon (which area and improvements are hereinafter referred to as "the premises"), and to hold the Permitter free and harmless for civil or other liabilities of any kind during the time the Permittee is in control of the premises pursuant to this permit.
- B. Personal Property and Damage All personal property of any kind or description whatsoever located on the premises shall be there at the Permittee's sole risk.
- C. Assignment or Transfer This permit may not be transferred or assigned except as provided in Section 910-15 of the Virgin Islands Rules and regulations.
- D. Permit to be Displayed A placard evidencing the permit shall be posted in a conspicuous place at the project site during the entire work period.
- E. Reliance on Information and Data The Permittee affirms that the information and data which it provided in connection with its permit application are true and accurate, and acknowledges that if subsequent to the effective date of this permit such information and data prove to be false or inaccurate, the permit may be modified, suspended or revoked in whole or in part, and that the Commissioner or the Committee may, in addition, institute appropriate legal action.
- F. Development to be Commenced Any and all development approved by this Coastal Zone Permit shall begin within twelve (12) months from the date this permit becomes effective and shall be continuous until completion. Failure to perform at least fifty (50%) percent of the work within such period and continuously construct thereafter until the completion of construction shall cause the permit to terminate automatically and render it null and void, unless the Permittee requests an extension in writing and demonstrates to the satisfaction of the Committee that good cause exists for granting such extension.
- G. Notification of Completion Upon completion of any activity authorized or

required by this CZM Permit, the Permittee shall promptly so notify the Director of the Division of CZM and where the services of a professional engineer were required in undertaking the activity, a certification of compliance provided by the project engineer that the plans and specifications of the project and all applicable Virgin Islands Code requirements have been met, shall be filed with said Director.

- H. Inspection The Commission, its Committee, the Commissioner or their authorized agents or representatives shall have the power to enter at reasonable times during project working hours upon any lands or waters in the coastal zone for which this Coastal Zone Permit has been issued. The Permittee shall permit such entry for the purpose of inspection and ascertaining compliance with the terms and conditions of said Coastal Zone Permit. The Permittee shall provide access to such records as the Commission, its Committee, or the Commissioner in the performance of it or his duties under the CZM Act may require the Permittee to maintain. Such records may be examined and copies shall be submitted to the Commission, its Committee or the Commissioner upon request.
- I. Conditions of Premises The Development authorized by this permit shall be maintained in a safe condition and in accordance with the description, plans, or drawings approved by the Commissioner or by the Committee, and all applicable Virgin Islands Laws.
- J. Public Access to Shoreline The development shall be operated so as to assure optimum public access to the shoreline.
- K. Restoration of Area The Permittee, upon renovation or expiration of the permit, shall upon order of the Committee, or the Commissioner, and in their sole discretion, remove all structures authorized by the permit and restore the area to its original condition, and/or modify such structures or site, and/or comply with any directive of the Committee, or the Commissioner in satisfying the original permit conditions in such time and manner as the Committee, or the Commissioner may direct.
- L. Notices All notices sent or required to be sent hereunder must be by certified mail, return receipt requested. If addressed to the Permitter, same shall be sent to the Commissioner of the Department of Planning and Natural Resources, Cyril E. King Airport, Terminal Building, Second Floor, St. Thomas, Virgin Islands 00802, or to such other place as the Permitter may hereinafter designate. If addressed to the Permittee, same shall be sent to Chalièse Summers 5000 Estate Enighed, Suite 63, St. John, VI 00830 or to such place as the Permittee may hereinafter designate by certified mail, return receipt requested.
- M. Non Waiver One or more waivers by the Permitter of any covenant or



condition of this permit shall not be construed as a waiver of a further breach of the covenant or condition. The consent or approval of the Permitter to or of any acts by either the Permittee requiring the Permitter's consent or approval shall not be construed as approval of any subsequent similar act by the Permittee.

- N. Revocation It is specifically understood that all the foregoing covenants and agreements, as well as other terms and special conditions hereby agreed to by the Permittee, are to be well and faithfully kept by Permittee and that any failure by the Permittee to keep same will result in revocation of this permit.
- O. Other Approval If the development covered under this permit requires separate and distinct approval from the United States Government or the Government of the Virgin Islands, or any agency, department, commission or bureau thereof, then no development or occupancy is allowed under this permit until such permits or approvals have been obtained.
- P. Abandonment If the Permittee abandon, deserts or vacates the premises or discontinues its operation at the premises for a period totaling six (6) consecutive months, the permit will terminate automatically and be rendered null or void.
- Q. Signatures on the Permit Document The Permittee shall sign and return the permit document to the Department within sixty (60) days of receipt thereof. Failure to return the signed permit within the time period specified herein will be considered a rejection of the terms and conditions of the permit and will render the offer of the permit null and void, unless the Permittee requests a written extension and the Department grants the written extension.
- R. Damage and Repair of Premises Described in Paragraph 2 In the event of damage to or destruction of the premises, described in paragraph 2 hereof, repair work may be done only after a request to do so has been submitted in writing to the Department and written permission has been granted by the Department.


## 6. SPECIAL CONDITIONS

1. *All applicable Territorial and Federal permits or other necessary approvals must be obtained, prior to commencement of development activities.*
2. *The Permittee shall notify the Division of Coastal Zone Management (CZM) two (2) days prior to the commencement of development activities.*

3. All erosion and sedimentation measures shall be installed prior to the start of construction and fully maintained during all construction activities on the site until completion of this project.
4. This permit does not allow the removal of mangroves. If trimming of mangroves are required the Permittee must obtain a permit from Department of Planning and Natural Resources/Division of Fish and Wildlife.
5. This permit does not allow any work within territorial waters.
6. Debris located along the shoreline of the project site must be removed during and upon completion of the project.
7. Construction activities associated with this permit is limited to the hours between 7:00 am to 5:00 pm daily except that on Sundays, construction activities are not permitted.
8. Prior to start of work, Permittee shall submit to CZM a performance bond in the amount of 20 percent, up to \$5M, of the estimated construction cost of the development.
9. To reduce vehicular traffic at the project site, and the area required for employee parking during construction, the Permittee shall provide offsite shuttle services for construction workers.


**IN TESTIMONY WHEREOF**, the parties herein have hereunto set their hands and seals on the days and years appearing herein below.

**ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS CZM COMMISSION**  
Permitter

  
\_\_\_\_\_  
Andrew Penn, Sr.  
Chairman

10/24/2014  
Date

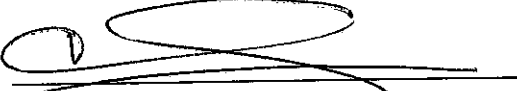
**THE SUMMER'S END GROUP, LLC.**  
Permittee

  
\_\_\_\_\_  
Chaliese Summers  
Managing Member

10/24/2014  
Date

CZJ-03-14(L)  
The Summer's End Group, LLC.  
St. Thomas, Virgin Islands

I, Charliese Summers, do hereby certify that as Managing Member of The Summer's End Group, LLC., I am duly authorized and empowered to sign this Permit on behalf of The Summer's End Group, LLC.

  
Charliese Summers  
Managing Member

October 24, 2014  
Date

SWORN AND SUBSCRIBED before me

this 24<sup>th</sup> day of October 2014

  
Notary Public

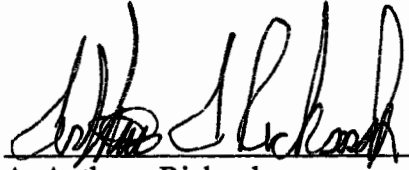
Ms. Edith Principaal  
Notary Public, U.S. Virgin Islands  
My commission Expires: June 7, 2016  
NP-48-12



	driveway permit	
15	VIWMA - Letter to DPNR Environmental Assessment Review Certificate	
16	ATM - Letter to SEG Notification of termination of contract	August 15, 2014
17	Benham & Chan (BC) - Letter to DPNR Response to Hodge & Hodge comment on behalf of Moravian Conference	August 11, 2014
18	SEG - Letter to DPNR Response to ATM termination notice	August 13, 2014
19	SEG - VI Daily News Public Notice of Public Hearing	August 13, 2014
20	CZM - US Fish and Wildlife Comments	August 18, 2014
21	CZM - Preliminary Staff Findings CZM Permit Application Water	August 20, 2014
22	CZM - Preliminary Staff Findings CZM Permit Application Land	August 20, 2014
23	CZM - Public Hearing for The St. John Marina Land and Water applications	August 20, 2014
24	CZM - Bill McComb Comments	August 23, 2014
25	CZM - UVI Comments	August 25, 2014
26	CZM - National Park Service Comment	August 28, 2014
27	CZM - National Park Service Comment on Lagoon Point	August 29, 2014
28	CZM - Silverman Comments	August 24, 2014
29	SEG - Letter to DPNR requesting extension of decision hearing on behalf of Com. Roberts request	September 17, 2014
30	SEG - Responses submitted to DPNR to all comments	September 24, 2014
31	SEG - VI Daily News Public Notice of Decision Meeting	September 25, 2014
32	CZM - Final Staff Report Water Permit	October 1, 2014
33	CZM - Final Staff Report Land Permit	October 1, 2014
34	CZM - Decision Hearing	October 1, 2014
35	CZM - Decision Letter	October 10, 2014
36	SEG - Approved submerged lease fee	October 14, 2014
37	CZM - CZM Land Permit Issued to SEG	October 24, 2014
38	CZM - CZM Water Permit Issued to SEG	October 24, 2014

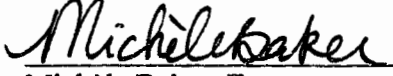
I, A. Anthony Richards, Permits Coordinator and Records Custodian for the Coastal Zone Management Division of the V.I. Department of Planning and Natural Resources certify that the above list comprises the complete list of filings and record for the matter of the CZM Permit Nos. CZJ-03-14(L) and CZJ-04-14(W), with the oldest date being April 4, 2014 and the last being the issuance of the permits dated October 24, 2014, which is the subject of Writ of Review Case No. ST-16-CV-395.

Dated: 9/1/16

  
A. Anthony Richards  
Permits Coordinator, CZM  
Virgin Islands Department of Planning and  
Natural Resources

Dated this 1<sup>st</sup> day of September, 2016

Respectfully submitted,

  
Michèle Baker, Esq.  
Legal Counsel  
Division of Coastal Zone Management  
Department of Planning & Natural Resources  
8100 Lindberg Bay, Suite #61  
Cyril E. King Airport, 2nd Floor  
St. Thomas, VI 00802  
Tel: (340) 774-3320  
Email: michele.baker@dprn.vi.gov



**THE UNITED STATES VIRGIN ISLANDS**  
OFFICE OF THE GOVERNOR  
GOVERNMENT HOUSE  
**Charlotte Amalie, V.I. 00802**  
**340-774-0001**

December 18, 2019

Ms. Chaliene Summers  
Managing Member  
The Summer's End Group, LLC  
5000 Estate Enighed, PMB 63  
St. Thomas, VI 00802

**MODIFICATION of Consolidated Major Coastal Zone Management Permit  
Nos. CZJ-04-14(W) & CZJ-03-14(L); The Summers End Group, LLC**

Dear Ms. Summers:

By letter dated December 3, 2019 you requested a modification of the Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) & CZJ-03-14(L) for The Summers End Group, LLC ("Permittee"). After review of the request by The Summers End Group LLC, I find that the requested modifications is in the public interest, that it is necessary to prevent significant environmental damage to coastal zone resources, and to protect the general welfare by minimizing the impact to the environment as follows:

- Virtually eliminate the current common practice of noncompliant boaters dumping their untreated wastewater and solid waste into the waters of the harbor. This will be accomplished through the St. John Marina providing both dockside and remote wastewater pumpout.
- The utilization of improved water quality with EPA approved fueling.
- Funding of a grant by the marina for the employment of a full-time DPNR enforcement officer for St. John to ensure compliance by boaters of regulations specifically designed to protect public health.
- Coordination through the Federal Emergency Management Administration (FEMA) for the receipt of emergency supplies and evacuation of injured, infirmed or elderly during natural disasters like hurricanes and earthquakes that cut off Coral Bay from Coral Bay.

The following modifications were requested by the Permittee:

**Exhibit 8**




- Consolidation of the Development – As originally proposed the development would have occurred in two phases. The second phase included conditional development (such as a potential 2<sup>nd</sup> restaurant) and would have extended the period of construction. By consolidation, any uncertainty as to the scope of the development is removed, and the overall period of construction is reduced. The consolidation of the development both reduces the total impacts and the time period in which such impacts will occur. Subsections 903(1), (2), (3), (4) (5) & (10).
- Removal of Parcels 13A & 13B: the options on these parcels expired due to the length of time it has taken to receive permitting. It was determined by the Permittee that it was not economically feasible to retain these parcels without permitting in place. Consequently, the first restaurant, which was on that parcel, is no longer part of the project; however, the second restaurant is now a committed part of the project with the consolidation of the development into a single phase. With the removal of these parcels, additional cisterns have been located on Parcel 13 Remainder West, to maintain the necessary water supply. This is a reduction in project impacts. Comprehensively, the removal of the restaurant and two apartments on 13A is a reduction overall in the size of the project and constitutes a significant reduction in parking requirements. The generator previously located on Parcel 13A has been relocated to the Fish and Farmer’s Market to be located on Parcel 10-41, of which the net effect is neutral. Subsections 903(2), (4) (9) & (10).
- Reduction of parking spaces from 120 to 110 is a result of the removal of Parcels 13A and 13B, and the overall reduction in the number of buildings within the project. The reduction in parking spaces reduces the amount of impermeable surface and will reduce the amount of runoff. Subsections 903(1), (5), (8), (9) & (10).
- Reduction of the Marina by one slip reduce the amount of seafloor that is disturbed. Removal of the one mega-yacht slip will reduce long-term effects from shading and decrease the total amount of space that the marina occupies. It also preserves any potential historical resources in the area. Subsections 903(1), (2), (3), (5), (7), (8), (9) & (10).
- Consolidation of Parcels 10-17 and 10-18 is a reflection of the ownership of those parcels. The effect of this change is net neutral. Subsections 903(2), (3), (4), (9) & (10).
- The inclusion of a community boardwalk referenced in on-going Federal permitting process.

Accordingly, pursuant to the authority granted to me by Title 12, Section 911, Subsection (g) of the Virgin Islands Code, the Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) & CZJ-03-14(L) for The Summers End Group, LLC. is modified as follows:

- Removal of Parcels 13A & 13B
- Reduction of Parking Spaces from 120 to 110 Reduction of Impact
- Removal 56 Seat Restaurant
- Reduce Marina Slips from 145 to 144
- Inclusion of Shoreline Boardwalk
- Consolidation of Parcels 10-17 and 10-18
- Completion of land development in a single phase.

I find that with the above listed modifications to the Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) & CZJ-03-14(L) for The Summers End Group, LLC both protects our environment, but also allows critical economic development.

**APPROVED**  
Governor of the Virgin Islands

  
\_\_\_\_\_  
The Honorable, Albert Bryan Jr.  
Governor

12-18-19  
\_\_\_\_\_  
Date

**RATIFIED**  
Legislature of the Virgin Islands

\_\_\_\_\_  
The Honorable  
President, 33<sup>rd</sup> Legislature

\_\_\_\_\_  
Date

**AFFIDAVIT OF ST JOHN CZM COMMITTEE MEMBER**

I, DAVID L SILVERMAN  
currently residing at 10-30B CAROLINA, ST JOHN, USVI  
do hereby swear and affirm the following:

1. I am a duly appointed member of the St John Committee of the Virgin Islands Coastal Zone Management Committee.
2. I was appointed by Governor Kenneth Mapp and my appointment was confirmed by the 32nd Legislature of the United States Virgin Islands in October 2018, for a term of two years.
3. I was a member of the St John Committee of the Virgin Islands Coastal Zone Management Committee continually throughout the time period from October 1, 2019 through January 29, 2019 and continue to be a member of said Committee as of this date.
4. At no time during my tenure as a member of said Committee has an application for Coastal Zone Management Permits ("CZM Permits") for the Summers End Group, LLC been presented to said Committee for review, approval, modification or consolidation.
5. I have seen a copy of a document entitled "CONSOLIDATION OF MAJOR COASTAL ZONE MANAGEMENT PERMIT NO. CZJ-04-14(W) AND MAJOR LAND PERMIT CZJ-03-14(L)" signed by Mr. Andrew Penn, Sr. who is identified as "Chairman, St John Committee of the Virgin Islands Coastal Zone Management Commission" and dated December 16, 2019. This document is hereinafter referred to as the "Consolidated Permit."
6. The "Permitter" identified in said Consolidated Permit is the "St John Committee of the Virgin Islands Coastal Zone Management Commission."
7. This Consolidated Permit was never shown to me, and I did not see it, nor know of its existence prior to January 27, 2020.
8. The St John Committee of the Virgin Islands Coastal Commission did not review, authorize or approve the signing of the Consolidated Permit, nor did it authorize the Chairman, Mr. Andrew Penn, Sr., to sign the Consolidated Permit on behalf of the Committee.

Signed this 29 day of JANUARY 2020.

[Handwritten Signature]

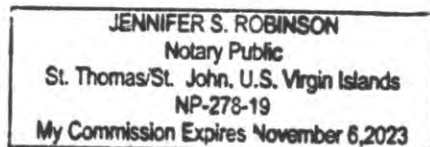
Signature, Member, St John CZM Committee

DAVID L SILVERMAN

Name, Printed

SWORN AND SUBSCRIBED before me this 29 day of JAN, 2020.

Jennifer S. Robinson  
Notary Public



**AFFIDAVIT OF ST JOHN CZM COMMITTEE MEMBER**

I, Ralf H. Boulton, Jr.  
currently residing at # 2 Trunk Bay, St. John  
do hereby swear and affirm the following:

1. I am a duly appointed member of the St John Committee of the Virgin Islands Coastal Zone Management Committee.
2. I was appointed by Governor Kenneth Mapp and my appointment was confirmed by the 32nd Legislature of the United States Virgin Islands in October 2018, for a term of two years.
3. I was a member of the St John Committee of the Virgin Islands Coastal Zone Management Committee continually throughout the time period from October 1, 2019 through January 29, 2019 and continue to be a member of said Committee as of this date.
4. At no time during my tenure as a member of said Committee has an application for Coastal Zone Management Permits ("CZM Permits") for the Summers End Group, LLC been presented to said Committee for review, approval, modification or consolidation.
5. I have seen a copy of a document entitled "CONSOLIDATION OF MAJOR COASTAL ZONE MANAGEMENT PERMIT NO. CZJ-04-14(W) AND MAJOR LAND PERMIT CZJ-03-14(L)" signed by Mr. Andrew Penn, Sr. who is identified as "Chairman, St John Committee of the Virgin Islands Coastal Zone Management Commission" and dated December 16, 2019. This document is hereinafter referred to as the "Consolidated Permit."
6. The "Permittor" identified in said Consolidated Permit is the "St John Committee of the Virgin Islands Coastal Zone Management Commission."
7. This Consolidated Permit was never shown to me, and I did not see it, nor know of its existence prior to January 27, 2020.
8. The St John Committee of the Virgin Islands Coastal Commission did not review, authorize or approve the signing of the Consolidated Permit, nor did it authorize the Chairman, Mr. Andrew Penn, Sr., to sign the Consolidated Permit on behalf of the Committee.

Signed this 30 day of January 2020.

[Signature]

Signature, Member, St John CZM Committee

Ralf H. Boulton, Jr.

Name, Printed

SWORN AND SUBSCRIBED before me this 30 day of January, 2020.

[Signature]  
Notary Public

Edith R. Principaal

Notary Public, U.S. Virgin Islands

My Commission Expires September 8, 2020

NP-63-16

**Exhibit 10**