EXHIBIT B

STATEMENT OF COMPLAINT AGAINST THE DECISION

APPEAL
Before the BOARD OF LAND USE APPEALS

Virgin Islands Conservation Society, Appellant, v. St. John Committee of the Virgin Islands Coastal Zone Management Commission, Appellee.	)	LAND USE APPEALS NO.

EXHIBIT B

STATEMENT OF COMPLAINT AGAINST THE DECISION

Pursuant to the rights afforded by V.I. Code Ann. tit. 12, § 914, Virgin Islands Conservation Society ("VICS" or "Appellant"), as an aggrieved person, appeals the decision of the St. John Committee of the Virgin Islands Coastal Zone Management Commission ("St. John CZM Committee" or "Committee") to grant Major CZM Permit No. CZT-04-14(W) ("the Permit") to Summer's End Group, LLC.[1] As demonstrated below, the St. John CZM Committee failed to make all requisite findings, under V.I. Code tit. 12, §§ 903, 906 and 911 and disregarded V.I.R. & Regs. tit. 12, § 904-6(c) and (d) by allowing participation in all aspects of the public hearing and decision meeting by a committee member with a glaring conflict of interest. The Committee also granted the Permit, despite numerous deficiencies, upon an incomplete application and without sufficient information necessary to review the application.

[1] The Permit document refers to the St. Thomas Coastal Zone Management Committee, however, the Permit was issued by the St. John Coastal Zone Management Committee and signed by Andrew Penn, Chairman of the St. John Coastal Zone Management Committee.

Summary of Facts and Law

Given the mandate of Section 911 of the Coastal Zone Management Act ("CZMA") that a Committee must deny an application for a coastal zone permit, unless the Committee makes all of the findings delineated in the CZMA, and the prohibition by the CZM rules and regulations against participation in hearings and meetings by committee members with conflicts of interest, the facts and events in connection with the Permit and the insufficiency of the application demonstrate the magnitude of the dereliction on the part of the St. John CZM Committee. For these reasons, Appellant seeks a complete reversal of the decision and denial of Permit No. CZJ-04-14(W).

Summer's End Group, LLC ("SEG") submitted its application on April 4, 2014 to the Department of Planning and Natural Resources Division of Coastal Zone Management ("CZM") to construct a 145-slip fixed-dock marina with 12 permanent moorings in the western portion of Coral Harbor, located within Coral Bay, St. John. The application included the construction of a mooring field to hold 75 moorings in an area to be designated under an agreement that SEG planned to propose to the Department of Planning and Natural Resources (DPNR). In conjunction with the application to construct the marina, SEG also submitted a separate CZM land application to develop the upland with amenities and facilities designed to support the marina, including several buildings and a sewage treatment system, consisting of 5 self-contained treatment units. The upland development will comprise seven parcels of land namely, Parcel Nos. 10-17, 10-18, 10-19, 41-Rem, 13A, 13B and 13 Rem Estate Carolina., Coral Bay No. 1, St. John, U.S. Virgin Islands. CZM deemed the application complete on June 18, 2014. On August 20, 2014, the St. John CZM Committee held a public hearing to an overflowing audience

of St. John residents and heard testimony from many Coral Bay residents, most of whom opposed the project. Many other St. John residents submitted written comments before and following the public hearing. Most comments were from residents opposing the project. Comments were also submitted from various federal agencies and community organizations, including the Appellant.

The decision meeting was held on October 1, 2014. Commissioner Andrew Penn presided over both the public hearing and the decision meeting. In both cases, Penn, along with Brion Morrisette and Edmund Roberts, established a quorum. At the decision meeting, after the CZM Staff recommendations were read into the record, Committee members Penn and Roberts voted unanimously to approve the application. Morrisette abstained from voting. The St. John CZM Committee issued Major CZM Permit No. CZT-04-14(W) to SEG on October 24, 2014.

I. Failure to Make Findings about the Environmental Impacts

The CZMA requires each committee to make the determination that the proposed activity is consistent with the objectives and policies of the CZMA, including the environmental policies set forth in 12 V.I.C. § 906(b) and § 911(c). The CZMA mandates that if any of the policies are not met, a permit must be denied. *See* 12 V.I.C. § 910(a)(2) and § 911(c). The Committee's consideration of SEG's application, its unfettered reliance on the completeness review and recommendations of the Division of Coastal Zone Management (CZM) and its grant of the Permit displayed a gross dereliction of this duty.

A. No Relevant Water Quality Data or Water Quality Certificate

Among its many shortcomings, SEG's application lacked any relevant water quality studies or a Water Quality Certificate ("WQC"). Relevant studies and a WQC were critical to

determining the pre-development conditions of Coral Harbor and the full extent of the impacts the project would have on water quality. The CZM Supplemental EAR Guidelines for Marina Development ("CZM Marina Guidelines") requires applicants to conduct both a pre-development analysis and post-development monitoring of water quality. It further requires that the assessments be as thorough as possible, testing for parameters including, temperature, fecal coliform bacteria, heavy materials and other contaminants. It also requires applicants to include its water quality monitoring methodology and modeling in the submissions for review.

SEG did not submit relevant results and analyses for the project site as delineated in the CZM Marina Guidelines; instead, SEG submitted results of water sampling that it claimed was conducted by DPNR for small parts of 2009 and 2012. The results were from Station 53, however, these data points were not discovered in DPNR's records for this station. Moreover, no maps or details were provided regarding the proximity of the sampling site to the project site, and SEG did not discuss whether those samples are useful in determining the water quality conditions in or near the project site. Moreover, the National Oceanic and Atmospheric Administration (NOAA) reviewed the application and informed CZM that more recent and reliable sampling was needed, since conditions could be presumed to have changed after the DPNR and other agencies employed measures to control storm water sedimentation reaching Coral Harbor. These were completed in 2012. In essence, the 2009 and 2012 results were irrelevant and unreliable and could not be used as a baseline. Using data measured before the water quality was independently improved in 2012 ensures that deterioration in the water quality caused by SEG will go undetected.

The only other water quality data provided by SEG were results of six weeks of sampling during January and February 2014. Those results, however, did not include the methodology used to collect the samples or any water quality modeling. The parameters tested did not include temperature, fecal coliform bacteria, heavy materials and other contaminants, as required by the CZM Marina Guidelines. The 2014 results were also flawed since they did not include any samples taken during the rainy season or during any rainfall events. In fact, the SEG Environmental Assessment Report (EAR) included the Monthly Precipitation Schedule and showed that the least precipitation occurs in the months of January, February and March. The 2014 samples were taken for six weeks from January to February. There were no other tests conducted in 2013 or at any other time or during any of the rainy seasons. The limited 2014 results were not a scientifically reliable indicator of water quality for the project site.

It appeared CZM either ignored the comments by NOAA or relied only on the six weeks of sampling in 2014, as an indicator of current water quality conditions in Coral Harbor. If CZM ignored the comments, this action was arbitrary, capricious and an abuse of discretion. If CZM relied only on the 2014 sampling results, it clearly did not have enough evidence to determine the pre-development conditions of the project site. In any event, CZM required no additional sampling. SEG, which has the burden of proof to ensure that the CZMA's policies are met[2], failed to submit any additional sampling or results. SEG's only response to public comments was to insist that a large amount of data had been submitted. It never addressed the irrelevancy and insufficiency of the data.

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[2] *See* 12 V.I.C. § 910(a)(2)(B).

Using the irrelevant and insufficient data, SEG concluded that elevated nutrient levels in the bay were caused by boats mooring in Coral Harbor and were negatively impacting the benthic community. This conclusion, however, was not supported with any results of testing for nutrients. In response to comments, SEG promised to include nutrients as a parameter in the Water Quality Monitoring Plan, but it never amended the plan. The problem with this response is that the CZMA, the CZM rules and regulations and case law interpreting them, require denial of a permit if the plans and studies are not provided for a committee to review prior to a decision.

SEG also failed to provide any analysis of the data other than to state that the water quality conditions fluctuate in Coral Harbor. In the absence of any reliable analysis from SEG, the CZM could have relied on a WQC from the DPNR Division of Environmental Protection. The WQC, however, was not submitted until October 16, 2014, well after the decision on the Permit and, thus, could not have been considered by the St. John CZM Committee in making its decision.

Accurate and relevant water quality data based on adequate sampling and some scientifically based analysis of the results and/or a WQC were necessary for the St. John CZM Committee to find that SEG's project could meet the existing water quality standards, pursuant to 12 V.I.C. § 903(b)(9), 12 V.I.C. § 906(b)(2) and 12 V.I.C. § 911(c)(5). The only facts and data before the Committee on which it based its findings and decision were irrelevant or useless and certainly could not support SEG's conclusions that "the existing water quality in Coral Harbor was impacting the benthic community in the bay"[3]. To date, there is no reliable data and

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[3] The more impaired the bay appears, the easier it is for SEG to justify placing a marina that will destroy eight acres of dense seagrass beds in the process and propose to move boats that may or may not contribute significantly to the water quality conditions in the bay.

analyses of the pre-development conditions of the water quality in the area of the project. Yet, CZM concluded that the pre-development levels will be maintained. Thus, the St. John CZM Committee did not have substantial relevant data to find that there will be compliance with the Virgin Islands Water Quality Standards, and its decision was arbitrary, capricious, and characterized by abuse of discretion or a clearly unwarranted exercise of discretion, in violation of 12 V.I.C. § 903(b)(9), 12 V.I.C. § 906(b)(2) and 12 V.I.C. § 911(c)(5).

B. No Reliable Wave Studies

Despite acknowledging that the western portion of Coral Harbor where the marina would be sited is windier than the area where the Moravian Church VI Conference plans to put their marina, SEG failed to present any mitigation measures or a plan for preventing damage to boats and the environment during hurricanes, brief squalls or windstorms. The public comments noted that the project site is infamous as an area where boats wash ashore during hurricanes. SEG even acknowledged the degradation of Coral Harbor was caused, in part, by marooned boats. Many comments also centered around the quality of the experience promised to potential marina users and whether anyone would want to dock their boat at a marina where they will experience constant rocking.

In light of the overwhelming comments and concerns over the viability of the marina and the quality of the yachting experience, SEG presented no real plan for safe harbor for boats that could be stuck on St. John during hurricanes and windstorms or any relevant wind and wave energy studies. It is uncertain from the application where the boats and yachts would go given a shortage of sufficiently protected harbors on St. John and limited boat storage capacity on St.

Thomas. There was no discussion of the damage to the environment should a hurricane of a certain category destroy the dock; damage boats, allowing debris and petroleum spills; and cause boats to wash ashore. There were also no reliable studies that could determine if the dock could sustain winds at certain levels, whether for hurricane protection or to insure SEG could provide the desirable yachting experience it promised.

In response to comments, SEG stated that the boats would be required to vacate and mega-yachts would have to carry insurance protecting SEG in the event of damage from storms. There was no indication, however, where the boats would or could go and the impacts to these areas. There is no indication of the impact to public resources when boats from the marina are washed ashore in areas other than the proposed site. There was also no discussion of hurricane debris from the marina. This is important information, because of the proximity of the road to the project site and the probability that hurricane debris from the marina could block the only road to the southside of Coral Bay.

Rather, SEG tried to discount the wind impacts, by submitting only data for the entire island of St. John from various sources and wind data from studies supposedly conducted by the applicant without any discussion of methodology, location of sampling and frequency and dates of testing. The data collected on the prevailing winds is inconclusive, at best, and certainly does not prove, with any scientific certainty, SEG's conclusion that the fetch is limited and that the waters are calm. Moreover, the data collected from the Army Corps of Engineers shows no swells coming from the east or southeast during the period 1990-1999. Not only is this inconsistent with the reality that Coral Harbor has a great deal of wave action from the southeast,

there is no indication how this data on swells is relevant to SEG's conclusion regarding fetch.[4] The applicant uses a hodgepodge of irrelevant and inconsistent data to conclude that the site is well protected and has limited fetch and that the seas are calm. In response to comments, SEG provided more limited and inconsistent data calling into question the validity of the conclusions.

In the absence of proper wave studies and proper analyses of the data, the St. John CZM Committee could not have found the project will be properly sited, economically and environmentally sound; will serve the public good; will be in the public interest; and will not adversely affect the public health, safety and general welfare of the public. *See* 12 V.I.C. §§ 911(c)(2) and 911 (c)(4). Thus, the decision of the St. John CZM Committee was not supported by substantial evidence and was arbitrary, capricious, and characterized by abuse of discretion or a clearly unwarranted exercise of discretion.

C. No Feasible Mitigation Measures that Substantially Reduce Impacts

While the proposed project could literally destroy up to eight acres and impair an additional 20 acres of critical seagrass habitat for endangered species and various other benthic communities, damage endangered coral colonies and degrade the existing water quality of Coral Harbor, SEG proposed only minimal or infeasible mitigation measures. None of the mitigation measures SEG proposed were geared toward mitigating the impacts of the project itself other than the transplantation of seagrasses, the use of turbidity curtains and the construction methods. Yet, these measures either were infeasible or so lacking in pertinent details, it was impossible for the St. John CZM Committee to have made the requisite finding that the mitigation measures were feasible and would substantially lessen or eliminate any and all adverse impacts of the

[4] Fetch refers to the amount of open water over which wind must blow in order to build wind waves of various sizes. Swells are *not* wind waves (although wind waves can contribute to swell).

project. See 12 V.I.C. § 910(a)(2)(B). In order to be feasible, the measure must be capable of being accomplished in a successful manner, taking into account economic, environmental, social and technological factors. See 12 V.I.C. § 902(p). Likewise, the out-of-kind measures involving a new mooring field and the planting of new mangroves lacked the details necessary to determine whether the measures were feasible. Since the out-of-kind measures were unrelated to the project's impact, the Committee could not have found they would substantially lessen or eliminate any and all adverse impacts of the project.

Seagrass Transplantation. The SEG application did not have an actual plan for transplanting seagrasses. The discussion was so vague that the CZM Committee could not have found that transplantation was feasible. There was not sufficient information to determine if the receiving area was appropriate. Given the wind energy, proximity to the shoreline and the soil type, the Committee could not have determined if the transplanted seagrasses would remain anchored, much less thrive. The discussion lacked any performance standards or criteria that are measurable and that would have allowed the St. John CZM Committee to properly enforce the Permit. Also missing from the discussion was any mention of input from the upland property owners who have certain littoral rights concerning the submerged lands adjacent to their property where the transplantation would occur. Are these owners to be deprived of their littoral rights because SEG has chosen to transplant the seagrass in an area convenient, perhaps, to SEG, but having significant impact on the rights of other land owners to enjoy their littoral rights. No agreements or signatures were sought or provided from the property owners. Despite the lack of supporting data and detail or any basis for concluding the seagrasses will thrive in an area where

they have been killed in the past, SEG hopes for an unprecedented 80 percent survival rate of seagrasses transplanted.

Coupled with the lack of planning detail is the admission by SEG that the seagrasses will be transplanted into an area where seagrasses have been destroyed by high sedimentation. Obviously, stormwater will continue to flow in this area. It is highly likely that the plugs will be washed away and/or covered with sediment. In response to comments, SEG claimed the area is now good for planting due to watershed improvement measures, but no specific data was provided to support this convenient reversal.

Moreover, the amount of seagrasses to be transplanted and that is expected to thrive is negligible compared to the impact of eight acres just within the project footprint plus impacts to an additional 20 or so acres of seagrasses and Submerged Aquatic Vegetation (SAV) in Coral Harbor. This small measure (covering approximately 0.06 acres) pales in comparison to the tremendous adverse impacts of the entire project. Thus, the Committee could not have found the measure would substantially lessen or eliminate the adverse impacts of the project.

Turbidity Curtains. The turbidity control implementation plan was also severely lacking in pertinent details. The St. John CZM Committee merely relied on the general statement that turbidity curtains would be employed. It adopted the CZM staff findings that merely stated that turbidity curtains are an acceptable mitigation measure to address water quality impacts. That was the extent of its analysis. In its review, the Committee clearly was neither concerned about the types of turbidity control; the material to be used; whether the project would impact turtles, fish and other species swimming in the bay; the method of deployment; inspection schedules; nor the types of weights that would be employed. It also failed to consider the appropriateness of the

mitigation measure given the wind conditions in the bay and the lack of useful wind studies. There was no indication where the curtains would be placed during construction or to what depth. There were no drawings showing the area of placement and no discussion about how barges can be driven into and out of the containment area without releasing suspended sediments. This information was necessary to determine whether the controls would be effective whether the material would be appropriate, considering that the curtain itself could be a trap for endangered turtles, fish and other marine species.

Given the wave action in the bay, it was crucial that the Committee also consider whether the proposed curtains were practical for this site or whether they could remain anchored. None of these important details were included in the EAR. Instead of deeming the application incomplete and requiring additional information of the applicant, the St. John CZM Committee included a condition that the turbidity curtains needed to be installed at such an adequate depth in order to prevent suspended sediments from migrating outside the work area. In setting this condition, the Committee implied the information was necessary, but was not submitted to the Committee beforehand for review. This belated condition is specifically prohibited by the CZMA and relevant case law[5] and violates 12 V.I.C. § 903(b)(11) by depriving the public of its right to be involved in and reviewcoastal zone planning and development.

Construction Impacts Mitigation. Construction related impacts include barge spuds and propeller damage from tug boats and are a significant environmental concern. Yet, the mitigation

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[5] See *Virgin Islands Conservation Society v. Virgin Islands Port Authority*, 21 V.I. 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, 1120 (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")

measure SEG proposed was to delegate responsibility to unknown contractors with the only assurance against potential damage being its promise to provide the contractors with a construction management plan. No such plan was included in the application. The St. John CZM Committee had no plan to review in order to determine whether the construction management plan would be feasible or would substantially lessen or eliminate adverse environmental impacts. There was no information provided about what measures or performance standards would be contained in the plan. Barge operations can do a great deal of damage to the seagrass habitat and to coral near shore, but, there was no detail provided about what Best Management Practices (BMPs) will be employed to prevent damage from barges, tugs and working boats that must facilitate construction. There was also no discussion about protection against petroleum-related releases from these boats and barges while they are facilitating the driving of piles and loading and unloading materials. The application should not have been found complete without this information, and, without, it the Committee was required to deny the Permit.

Without the plans, details and information, the St. John CZM Committee could not have found that this measure was feasible or would substantially lessen or eliminate any and all adverse environmental impacts caused by the project.[6] Thus, the St. John CZM Committee also did not have substantial evidence to determine if the measure was feasible or would substantially lessen or eliminate adverse environmental impacts from the project. Not only should the application have been deemed incomplete and the information required; the Permit should have been denied.

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[6] *See* 12 V.I.C. § 910(a)(2)(B).

Mooring Field. The proposed mitigation measures included establishing a mooring field for 75 boats in conjunction with DPNR. This plan was neither feasible nor could it substantially lessen or eliminate any and all environmental impacts.

SEG never delivered the promised memorandum of understanding or other firm agreement between the applicant and the DPNR to ensure the plan would actually be implemented. Also, SEG never addressed whether DPNR can delegate its enforcement power to a private entity or whether legislative action is required. There was no discussion how the existing 115 or so mooring users will be incentivized to use the moorings or whether their rights can be restricted by a private entity under the Mooring and Anchoring Act. The Act states, in pertinent part:

> The Commissioner shall administer and enforce all laws and regulations relating to the mooring and anchoring of vessels and houseboats within the territorial waters of the United States Virgin Islands. The Department shall develop and implement a mooring plan, subject to the approval of the Legislature's Committee on Planning and Natural Resources. A vessel or houseboat is permitted to moor or anchor only in those areas designated by the Department. The Department shall work with the appropriate Ad-Hoc Community Committee for each designated mooring and anchoring area.

V.I. Code Ann. tit. 25, § 404.

There is provision under the current code allowing DPNR to delegate or share its authority with a private entity. DPNR, however, is required to appoint an Ad-Hoc Committee of community members for the implementation of a water use/mooring plan.[7] SEG does not address whether its plan to design, locate and manage the mooring area will circumvent § 404.

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[7] Coral Bay residents attempted implementation of a water use/mooring plan, but DPNR has abandoned two Ad Hoc committee starts in Coral Bay in the last 15 years, and, in 2013 rejected a written request to re-start the required water use/mooring area planning with a new Ad Hoc Committee.

SEG also failed to address whether a community-based mooring plan represents a more feasible alternative to a DPNR/SEG partnership for enforcing and managing mooring in Coral Harbor. Nonetheless, the Committee granted the Permit without, at a minimum, requiring that SEG enter into the agreement with DPNR. Furthermore, the Permit language states that the permit scope includes the 75 moorings, but it does not clarify what the inclusion means or its relationship to the Designation of Coral Bay as a Mooring Area pursuant to the Mooring and Anchoring Act. If the Legislature were to approve this Permit, it would be equivalent to amending the Act, without proper legislative procedures and protocol.

SEG's EAR lacked any details as to the location, size and design of the mooring area and any discussion about the impacts it would have on the environment. There was no information on anchoring methods, hardware proposed, line thicknesses, line scopes, length on deck of proposed vessels or accurate mooring circles. There was no analysis of the impact of constructing the new mooring field; no benthic habitat survey of the proposed mooring area; no submerged land contours; and not even a location drawing for where the mooring field would be located. It is likely the mooring field will adversely impact additional sea grass, but these impacts were never addressed in the EAR or in SEG's responses. In the response to comments, SEG indicated that the mooring field will consist of floating balls and that the size of the moorings will be determined by the demand and the size of the boats, if there is any demand. Thus, there was no significant details provided and no evidence to determine feasibility or impacts of the mooring area on seagrasses and other SAV. The Permit authorizes 75 moorings and there is nothing to prevent SEG from establishing all 75 moorings even though it submitted no information about the impact of 75 moorings.

Additionally, the EAR provided absolutely no evidence to support the contention that moving 115 boats from existing moorings would result in "protection of 16 acres of SAV". In fact, SEG provided testimony that the sea grass was quite healthy and was regenerating from scars. The only photograph submitted (with no date, no location and no measurement scale), showed a denuded area of around 100 square feet. If all 115 boats have a similar impact, this would amount to 10,000 sq ft, or 1/4 acre. This in no way mitigates for the loss of aquatic function from destruction of a minimum of 8 acres and impairment of an additional 20 acres of healthy marine meadow.

Notwithstanding, it is uncertain whether the mooring field will actually be constructed or used or whether it would be legal. The measure is also not related to the adverse impact of the project and could not, even in conjunction with all other measures, substantially lessen or eliminate any or all adverse impacts of the project under 12 V.I.C. § 910(a)(2)(B). Even if it was indirectly related, there was no way for CZM to measure the full value of the mitigation measure if it depends on future demand.

A portion of the proposed mooring field is directly in front of the Moravian Church property and would block any of their future use.

As proposed, the mooring plan is not only infeasible, it would not substantially lessen or eliminate the adverse impacts of the project. More importantly, it was not adequately delineated or properly described in the application, therefore, the Committee should not have granted a Permit to a developer, giving it unfettered discretion to designate mooring boundaries and make mooring policies in Coral Harbor, contrary to law. The St. John CZM Committee should not

have approved the application and acted illegally and outside the scope of its authority in granting the Permit to SEG, in violation of 12 V.I.C. § 910(a)(2)(B).

Mangrove Planting. The planting of mangroves as an out-of-kind mitigation measure was likewise lacking pertinent details. The U.S. Department of Interior Fish and Wildlife Service submitted comments in which it noted that more investigation was required for the plan. Despite the comment, no adequate plan was required by CZM or submitted by SEG. Without this information, there was not enough evidence for the Committee to determine if the measure was feasible or whether it will substantially lessen or eliminate adverse environmental impacts of the development under 910(a)(2)(B).

Moreover, the applicant did not obtain any approval from the DPNR Division of Fish and Wildlife or produce any proof of consultation with that agency. Thus, the St. John CZM Committee could not have found that the applicant complied with applicable laws of governmental agencies, under 12 V.I.C. §906(a)(10). For these reasons, the St. John CZM Committee was required to deny the Permit.

D. Conservation of Areas for Endangered Species

SEG's project will destroy up to eight acres and impair an additional 20 acres of seagrasses, which is critical habitat for endangered species such as leatherback, green and hawksbill turtles, as well as coral and certain species of fish. The construction and operations of the proposed development have the potential to destroy coral colonies in the harbor and harm endangered turtles and other species listed under the Endangered Species Act (ESA) by vessel strikes. Further, the environmental policies of the CZMA includes conservation of significant

natural areas for their contribution to marine productivity and value as habitats for endangered species and other wildlife.

SEG admits the project could directly and substantially impact endangered species and have a significant net loss of seagrasses while degrading the water quality in Coral Harbor. Marinas, even with adequate controls, have the potential to change the physical biological processes making bays undesirable for fish and other benthic species, both endangered and not endangered. Given this general knowledge and the overwhelming evidence of SEG's project's potential adverse impact on critical habitat of endangered species, the St. John CZM Committee should have conducted a more careful review of the project and have taken the time to require additional information where it was needed. There was no proper analysis of the feasibility of the mitigation measures.

At a minimum, SEG should have been required to produce the result of a Section 7 Consultation under the ESA when it contradicted the EAR by stating in its Storm Water Pollution Prevention Plan (SWPPP) that while there will be endangered species in or near the project, SEG's activity will not likely affect the listed, threatened or endangered species. Instead, the Committee adopted the staff recommendations that stated the project will have no impact on rare and endangered species. Thus, there was no mention in the staff recommendations about conserving the area of dense seagrasses for their contribution to marine productivity and value as habitat for endangered species and other wildlife. The Committee clearly violated 12 V.I.C. § 906(b)(1), and its decision was clearly arbitrary, capricious, or characterized by abuse of discretion or a clearly unwarranted exercise of discretion.

E. Adjacent Marine Protected Areas

Section 906(b)(2) of the CZMA requires the Committee to make findings to protect complexes of marine resource systems of unique productivity, including reefs, marine meadows, salt ponds, mangroves and other natural systems; and assure that activities in or adjacent to such complexes are designed and carried out so as to minimize adverse effects on marine productivity, habitat value, storm buffering capabilities, and water quality of the entire complex. In this regard, 12 V.I.C. § 911(b)(A) requires an EAR that adequately states the prevailing conditions of the site as well as adjacent properties. The EAR was also required to state the probable effects of the project on these properties.

SEG failed to provide any information regarding 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. These areas contain rich tropical marine resources including, wetlands, coral, seagrass and other critical fish habitat. There was no information about the impacts of the marina construction, increased boat traffic, noise, sedimentation, and contamination from petroleum spills and discharges from the sewage treatment facility on the marine ecosystem in these areas. In response to comments regarding the lack of information, SEG indicated it did not provide the information, because the resources in those area were the same as in Coral Harbor. It is even more egregious that CZM was satisfied with this comment.

Thus, the St. John CZM Committee clearly violated 12 V.I.C. § 906(b)(2) and 12 V.I.C. § 911(b)(A), since it had no evidence to make the requisite finding that the marina design would

protect unique marine resource systems adjacent to the project. The decision to grant the Permit was, therefore, arbitrary and capricious.

F. Siting and Design of Marina

The design and construction of the marina could alter the erosion, transport, and deposition patterns along the water body, and lead to even bigger physical and biological changes over a much larger stretch of the water body, including environmentally sensitive adjacent areas. Thus, all relevant guidelines and criteria regarding marina construction and operations had to be addressed. *See* 12 V.I.C. § 906(b)(4). The CZM Marina Guidelines requires that certain information regarding marina construction be included in the EAR. Yet, the Committee approved SEG's permit even though its application did not contain the required information.

Because of the unavoidable impacts associated with marina development, CZM's Marina Guidelines are stringent in requiring certain studies be included in the EAR.[8] These studies must be scientifically sound and detailed enough for the Committee to determine the condition of the areas to be impacted. In this regard, the guidelines strongly discourage locating marinas in areas comparable to pristine conditions.[9] In order to determine whether the area is comparable to pristine conditions, a rapid bioassay is required by the CZM Marina Guideline. SEG's application lacked a bioassay, which would have determined the biointegrity of the site. Perhaps, then SEG would be able to reconcile its opposing conclusions that seagrasses in dense mooring areas of Coral Harbor are healthy and thriving and its conclusion that seagrasses are being damaged by improper moorings.

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[8] 12 V.I.C. § 906(a(10) requires the Commission to comply with all other applicable, laws, rules, regulations, standards, criteria of public agencies. The CZM Marina Guidelines contain the standards for EAR preparation for marinas.

[9] The 1978 Federal Environmental Impact Statement (EIS) for facilitating and funding the creation of the Virgin Islands Coastal Zone Management Program was largely based on the need to avoid constructing marinas in other than sandy bottoms.

Further, the EAR submitted by SEG does not consider alternative sites or alternative marina designs that would minimize potential environmental impacts and minimize the disturbance to the seagrass habitat. In fact, very few details are given about the marina design. Although this information is required for a proper review, SEG delegates its responsibility for assuring the design is protective of the environment to an unidentified contractor, who will be provided a construction management plan. This should have been unacceptable to CZM and the Committee, since the response conflicted with requirements of the CZM Marina Guidelines. The Committee failed to discharge its responsibility to review a complete file.

Further, the EAR does not provide any design alternatives, the most obvious of which is to reduce the size and/or scope of the marina in order to minimize the direct impact to critical seagrass habitat. Basically, SEG dismissed any comments about alternative design and siting with its unsupported claim that reducing the size and scope would not be financially feasible. Thus, the Committee did not enforce its own CZM Marina Guidelines. Without a proper analysis of alternative designs, the Committee's decision to grant the Permit could not have been based on substantial evidence. Moreover, the grant of the Permit violates 12 V.I.C. § 906(b)(4) and was arbitrary, capricious, or characterized by abuse of discretion or a clearly unwarranted exercise of discretion.

G. Fishing Industry Impacts

The St. John CZM Committee was charged with ensuring that the project will encourage fishing and carefully monitor mariculture and, to the maximum extent feasible, protect local fishing activities from encroachment by non-related development. *See* 12 V.I.C. § 906(a)(7). While the entire Virgin Islands has been designated as an Essential Fish Habitat by the National

Marine Fisheries Service, the EAR does not 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 no real discussion at all about how fishing will be minimized when their critical habitat is destroyed. Providing a market is futile, if the fishing industry is destroyed. Without this information, the EAR underestimates the adverse impacts of the project on the environment.

Furthermore, the EAR does not 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. Thus, the Committee could not find that the fishing industry would be protected and encroachment on fishing activity would be avoided as required by 12 V.I.C. § 906(a)(7). For this reason, the Permit should have been denied.

II. **Lack of Proof of Legal Interest and Authority to Develop**

There was no proof of legal interest submitted for Parcel 13 Rem and the submerged lands or authority to develop as required under 12 V.I.R.R. § 910-7(a)(3) and 12 V.I.R.R. § 910-3(b). SEG relied on a power of attorney granted by James Phillips and Genova Rodriguez, the owners of Parcel 13 Rem. The power-of-attorney, however, was limited to the authority to apply for the Permit. This document is not legally sufficient as proof of SEG's legal interest in the property. Moreover, where the applicant was not the owner, the owners were required to sign the application, however, the application does not bear the signatures of the owners, pursuant to 12 V.I.R.R. § 910-3(b), which states:

> Upon filing an application, the applicant(s) shall be required to evidence in writing his legal interest in and right to perform development upon all property upon which work would be performed if the application were approved, including submission of all relevant legal documents. Where the applicant(s) is not the owner(s) of the property, the owner(s) must co-sign the application before it will be accepted for filing, except when the owner is the Government of the Virgin Islands...(*emphasis supplied.*)

V.I.R. & Regs. tit. 12, § 910-3(b).

The SEG application for marina development clearly did not contain the requisite signatures and should not have been deemed complete. Moreover, contrary to the rules, there is no power provided to develop the property. Thus, the applicant failed to comply with the CZM rules and regulations. For this reason, the application should not have been deemed complete. Under § 906(a)(9), the Permit should not have been granted with this defect. The Committee failed to act within the limits of its statutory powers and acted upon unlawful procedure. The decision was made contrary to 12 V.I.C. § 906(a)(9).

III. **Illegal Participation by a Conflicted Commissioner**

Parcels 10-17, 10-18, 10-19 and 41 Rem Estate Carolina are a part of the upland development, and the owners have littoral rights concerning development of the submerged lands. These parcels are leased by Brion Morrisette, who is a member of the St. John CZM Committee, along with his partner, Robert O'Connor, Jr. Mr. Morrisette and O'Connor gave a power of attorney to the SEG to apply for the Permit in their place. The power of attorney was relied upon by SEG to establish its property interest and authority to develop Parcel Nos. 10-17, 10-18, 10-19 and 10-41 for the land-based application.

On August 20, 2014, the St. John CZM Committee held a public hearing where commissioners Penn, Roberts and Morrisette established a quorum and heard testimony from

SEG and several members of the public. At the decision meeting on October 1, 2014, all three commissioners established a quorum and adopted all of the findings and recommendations of the CZM Staff without making any new findings. Mr. Morrisette, however, abstained from voting, but he still participated in the meeting to maintain the quorum, which allowed the other members to vote. The remaining members voted unanimously to grant the Permit to SEG.

The public hearing and decision meeting were held upon unlawful procedure. Commissioner Morrisette participated in both hearings by establishing a quorum, sitting through the hearings and, on at least two occasions, whispering to the Chairman during the public hearing. Moreover, he helped SEG's application process by giving a power of attorney to SEG to apply for the Permit. As one of the lessees of the property who stands to benefit if the project goes through, Mr. Morrisette should not have participated in any way in the SEG application and should have disqualified himself or been disqualified by the Chairman. Despite Mr. Morrisette's conflict of interest, he helped to establish a quorum and engaged somewhat with the Chairman during the public hearing.

The CZM rules and regulations have provisions that allow for self-disqualification or disqualification by the chairman after appropriate proceedings. *See* 12 V.I.R.R. § 904-6(d). The record is devoid of any such proceedings having been conducted regarding the SEG applications, and Mr. Morrisette never disqualified himself. Since no less than three members are required for a quorum, and Mr. Morrisette should have been disqualified, his participation made the public hearing and decision meeting illegal. Thus, the decision was void under 12 V.I.R.R. § 904-6 and 12 V.I.C. § 904(b).

IV. **Public Interest Determination**

The St. John CZM Committee was charged with assuring that development of the submerged lands will clearly be in the public interest, pursuant to 12 V.I.C. § 906(a)(8). Further, the Committee had to insure that the project will clearly serve the public good, will be in the public interest and will not adversely affect the public health, safety and general welfare, pursuant to 12 V.I.C. § 911(c)(2). The public hearings and public comments on record revealed large public opposition and even outcry against the project due to its size, design, location, and and viability--not to mention that this single marina will completely change the social fabric of the quiet Coral Bay Community. Notwithstanding, CZM did not require that SEG reduce the scope of the project and supply proper wave studies and construction details to determine if the marina will withstand certain category hurricanes or would leave a great mess for the public to address.

Despite receiving over 300 written and verbal comments, SEG did not submit any additional information or make any amendment to the project or the EAR. It only reiterated the contents of the grossly insufficient EAR and treated its decision to locate the project into deeper waters as adequate mitigation of the environmental impacts. The St. John CZM Committee determined it was satisfied with the responses to comments without making any specific findings. Surely, if so many residents of Coral Bay spoke out against the project, it was worth giving their comments serious consideration in making the public interest determination. Rather, the Committee adopted the staff recommendations that simply regurgitated the EAR. Additionally, the public did not have the benefit of reviewing the DPNR inter-departmental analyses or any department or staff comments, as access to these documents was denied. This

dereliction of duty does not foster the level of public involvement required by the CZMA

In attempting to show that the project is in the public interest, SEG claimed that there is a demand for the marina; it will be locally-owned; will cut down on mooring in the bay; and result in contributions to various schools, clubs and community groups, even though several of the groups stood in opposition to the project. On this basis alone, the Committee made its public interest determination. Thus, its action was arbitrary and capricious and violated 12 V.I.C. § 911(c)(2).

V. **Uncoordinated Development in Coral Harbor**

The Moravian Church VI Conference ("Church") proposes to construct a marina in the northernmost portion of Coral Harbor. CZM was aware of this project and entertained the Church at a pre-application meeting. In addition, at least five other property owners with littoral rights to develop the submerged lands adjacent to their property will be impacted by the project's size and scope. These owners have a right to apply to develop the submerged lands, and to pier out to navigable waters. The SEG marina, as proposed, is sprawled across the mouth of Coral Harbor and will affect the littoral rights of the other owners, collectively, and the Church, individually. In its comments, the Coral Bay Community Council ("CBCC") presented an actual study of the boundaries of the littoral rights of SEG versus those of the other property owners. On the other hand, SEG presented nothing, except a legal opinion from its counsel denying any impact of the project on the littoral rights of the Moravian Church and T-Rex St. John, LLC. SEG further faulted the Church for not presenting any evidence that its rights were impacted. Even though SEG has the burden of proof under 12 V.I.C. § 911(b)(2), it did not provide any maps or drawings outlining the respective boundaries of the littoral rights of the Church

compared to that of SEG. The Committee, which did not require any of this information of SEG, acted arbitrarily and capriciously and with absolutely no evidence. By not requiring a survey or considering other imminent development and the rights of all other owners in Coral Harbor, the St. John CZM Committee failed to meet an important goal of the CZMA to assure the orderly, balanced utilization and conservation of the resources in Coral Harbor under 12 V.I.C. § 903(b)(4). Thus, its decision was not based on substantial evidence and was arbitrary and capricious.

VI. **No Consideration of Cumulative Impacts**

The Committee failed to consider the cumulative impacts of the project, pursuant to 12 V.I.C. § 903, which requires the Committee to assure the orderly, balanced utilization and conservation of the resources of the coastal zone. First, the land and water permits were separated. The water permits received most of the comments and attention. When considered together, however, the impacts on the various marine habitat and resources are more illuminated than when the permits are separated. If joint permitting was required, as with other CZM applications, the Committee would have had to consider the full significance of the cumulative adverse impacts. The current EAR would be even more insufficient. It would have had to include details of the impacts of the upland development, including impervious spaces, and have provided for more erosion and storm water control devices. It was only after numerous comments that SEG offered to include additional controls, however, it never amended the EAR, and the controls cannot be enforced by CZM. By bifurcating the permitting, the Committee created the possibility that SEG could, for example, elect to proceed with development of its commercial and retail space on land and never build the water-based portion of the project –

even though SEG relied upon the *combined* economic impact of the land- and water-based projects to justify each permit.

Second, the Church's proposed marina and its anticipated impacts were ignored. Although, the Committee was aware of the Church's plans for a marina, it did not consider the cumulative impacts of having two competing marinas in Coral Harbor, and how this would affect the environment, the economic viability of the SEG project and the impact on the way and quality of life of Coral Bay residents.

The Committee disregarded its obligation to assure the orderly, balanced utilization and conservation of the resources of the coastal zone by considering the cumulative impacts of the project, and thereby, violated 12 V.I.C. § 903. Its action was also arbitrary and capricious.

VII. **Lack of Relevant Economic Studies**

The application lacked any relevant economic studies, and all discussions of the economic impact lacked detail and no support for any of the economic projections. While SEG claims there is a demand for a marina on St. John by boat owners who stay on St. John and inconveniently dock their boats at St. Thomas marinas, it did not consider the negative impacts on the yachting industry in St. Thomas or the negative impacts that amenities to the marina will have on other businesses in Coral Bay and St. John. Moreover, the Coral Bay Community Council (CBCC) commissioned its own Economic Impact Analysis of the whole Coral Bay tourism economy giving deference to SEG's projected values after completion of the second land construction phase. The conclusion was that Coral Bay will not receive a net benefit from the project. By failing to consider, or even mention, the CBCC's economic study and various other

comments challenging the SEG's economic claims, the Committee violated 12 V.I.C. § 903(b)(2). Moreover, SEG was required to identify all impacts, including adverse impacts, such as no net job creation and the negative impacts to the economy. Instead, SEG listed only positive economic impacts, such as job creation. Thus, its decision was not based on substantial evidence and was arbitrary and capricious.

VIII. **Improper Calculation of Rental Fees**

The computation of rental fees for all permits for development of the submerged lands, rental reductions and waivers are all determined 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.

Without the required document, there is no way to know the basis of CZM's calculation. Notwithstanding, the standard basis for determining Fair Market Value (FMV) for submerged land permits is to use the per-acre value of the upland parcels (based, for example, on assessed value), and then apply this value to the acreage of the submerged lands to be occupied. A factor, typically 12% is used to amortize the FMV into an annual payment. A calculation of the known values and the acreage for the area to be occupied by the permit, 27.5 acres, results in an annual lease payment of $1,360,528, a figure well in excess of the negotiated annual rental fee of

$194,026, after completion of the project, and $64,027 prior to completion. Even if the computation is based on projected gross revenues, the negotiated fees are extremely low.

It is also possible that the mooring area and the receiving area for seagrass transplantation were not figured into the calculations, despite the permit language that the fees are for the area occupied by the permit. Notwithstanding, these areas all require use of submerged land space and should also have been considered in the calculations. Why should SEG benefit from using these areas to justify it adversely impacting over 28 acres of SAV and the water quality of Coral Harbor while the public bears the costs? Including these areas would substantially increase the rental fees above what was negotiated. Not including them constitutes a waiver of rental fees and required a determination of public interest. There is no indication any public interest determination was conducted. Moreover, in the case of a reduction or waiver, the term for reconsideration or reassessment of the rental fees cannot exceed 3 years. The Permit provides a term of 5 years.

Thus, the extremely low negotiated fees clearly did not represent the fair market value of the entire area occupied under the submerged land permit, in violation of 12 V.I.C. § 911(f) and 12 V.I.R.R. § 910-5(e). Moreover, the reduction and/or waiver of the fees was illegal as no public interest determination was made, and the term for reconsideration exceeding 3 years was likewise illegal.

IX. **Lack of Pertinent, Details, Plans and Drawings**

The CZM rules and regulations require that, before an application can be deemed complete, it must contain all documents specified in the application form, contain sufficient information to enable CZM and the Committee to evaluate the application and proof of legal

interest, including all relevant legal documents. *See* 12 V.I.R.R. § 910-7(a). Particularly where the development is of trust lands, the CZMA does not authorize the grant of a Permit without; (1) a complete exact written description of the proposed site, including charts, maps, photographs, topographic charts, submerged land contours and subsurface profiles; and, (2) a complete and exact written description of the proposed occupancy or development for which the permit is sought, defining construction methods, including details of supervisory and control procedures and credentials, including the details of supervisory and control procedures and credentials of the personnel responsible for this function. *See* 12 V.I.C. § 911(b)(1)(C). SEG violated these provision and submitted an EAR that is grossly insufficient and that did not meet the requirements of the CZMA or the CZM rules and regulations. CZM also violated it by including the 75 moorings "area" with none of this analyses or even a delineation of the footprint. The following items of information were pertinent to the review, but were not including in the EAR or the application.

1. Construction methods proposed;
2. A bathymetric survey;
3. Relevant water quality studies;
4. Relevant wind and wave action studies;
5. Maps, drawings and details for proposed mooring area;
6. Maps, drawings, plans and details for proposed receiving area for seagrass transplantation;
7. Fuel Storage and Spill Prevention and Countermeasure Plan for barge operations during construction;
8. Schedule for construction activities and for implementation of sedimentation control devices;
9. Maintenance schedule for sediment and siltation devices;
10. Seafloor, sediment analysis;
11. Hurricane Contingency Plan;
12. Geological survey and soils testing;
13. Complete study and analysis of alternatives;
14. Auxiliary generator plans and specifications; and

15. An air quality certificate or plan that addresses emissions particulate matter and other air pollutants.

The application should not have been deemed complete without this information. The Committee clearly did not have sufficient information to evaluate the application. Thus, it should have been denied.

X. **Deficient EAR**

Pursuant to 12 V.I.C. § 910(e)(2) and 12 V.I.R.R. § 910-3, SEG was required to supply a completed EAR in compliance with CZM's Marina Guidelines. The SEG EAR, however, was deficient in the following regard:

1. There were no starting and ending dates for construction.
2. The boundaries for docking areas and mooring sites were not delineated.
3. Channels and waterways to be impacted by the project were not shown.
4. There was no work plan that included a phasing schedule.
5. An accurate depiction of the current conditions was lacking, particularly for water quality.
6. There was no discussion of the impact of wind and wave energy on specific features of the marina.
7. There was no analysis of the seafloor, including a chemical analysis of the sediment (for (heavy metals, toxic chemicals, etc.)
8. There was no or little discussion of general and storm wave impacts.
9. There was no station and location maps for currents and bathymetry.
10. There was no water quality data for temperature, salinity, and fecal coliform.
11. There was not a sufficient discussion of the normal wave action and the potential of storm wave action on the project.
12. There was no discussion of hurricane frequencies and the resulting increase in sea levels and wave heights.
13. There was no discussion of the impacts to commercial fishing and no thorough discussion of the impact on habitat displacement and decimation of aquatic organisms.
14. There was no methodology given for water sampling showing adequate sample size, and duration that is scientifically acceptable.
15. There was no habitat distribution map.
16. There was no discussion of the modification to air quality from noise, dirt, dust and other air contaminants.
17. The was no discussion on the preservation of open spaces and vistas.

18. There was no market survey demonstrating the need for the project.
19. There was not a full discussion of the impacts to recreational boating in the harbor.
20. There was no survey of the project site using GIS coordinates, acreage or other measurement unit to indicate the extent of the boundaries of the marina or the mooring area.

All of this data was required before the application could be deemed complete. Without this information, the Committee could not have known the current water quality conditions and determine whether the mitigation measures to reduce the impact to water quality were adequate.

Moreover, the wind and wave action studies were necessary to determine if the design and construction methods were adequate to prevent damage to the environment, assure the public's health, welfare and safety and to protect its interest. The geological studies were necessary to determine how far piles could be driven so that the full extent of the impacts from turbidity and total suspended solid could be assessed and whether the proposed turbidity controls would be effective. They were also necessary to determine the full impact from noise pollution. The bathymetric and geological surveys was necessary to determine how the project will alter the sea bed. The unsupported claim that there were too many boats in the harbor that prevented such a survey is unacceptable and is no justification for not having the required studies done

Additionally, a boundary survey that indicates the site limits of the project is a basic submission that was missing. Furthermore, the site limits for the 12 mooring balls and the 75 designated moorings appear nowhere. Without such a survey there was no way that SEG could make any definitive claims about the presence of endangered species or critical habitat. Similarly there was no way the CZM committee could have determined what the potential adverse impacts would be, and whether they were mitigated as required. Without knowing the

location, how could SEG or CZM conclude there are no endangered species or habitat being impacted? How would CZM enforce where SEG is to build, where there are no boundaries to determine how far or wide the project should go?

Taken together, the level the insufficiency of the EAR is alarming and proves, without a doubt, that the Permit should not have been deemed complete and should have been denied. Where the Committee grants a permit and leaves it to the applicant to decide where the project should be built (on Property belonging to the People of the Virgin Islands), this is a clear case of an abuse of discretion. This decision must be reversed.

XI. Inadequate Alternative Analysis

The SEG Alternative Analysis was grossly insufficient. While SEG mentioned the results of the analysis, it failed to show the methodology and criteria used by SEG to choose the site. The "analysis" failed to discuss other on-site alternatives (such as building only a dinghy dock and mooring field; or building a smaller marina). This prevented any meaningful public involvement as it prevents a review of the analysis of the alternatives and assessment of the criteria.

XII. Inadequately Addressed Public Comments

The CBCC submitted two sets of review agency comments both before the public hearing, at DPNR's formal request, and during the public comment period, as well as individual issue comments sent via email to CZM on various matters in the EAR and the overall application. Appellant, in addition to placing its comments on the record, joined the CBCC in its comments. In addition, to the matters already raised in this brief, there are also numerous other factual and objective points of significance for which there is no indication that CZM considered

these concerns in their evaluation. For the sake of brevity, those comments are incorporated herein as if raised as separate items for appeal.

Conclusion

In light of the foregoing, the St. John CZM Committee had, at a minimum, the obligation to make the proper findings under 12 V.I.C. § 911(c). Instead, the Committee has done nothing to fulfill its obligations. The few findings made were grossly inadequate, painfully deficient and bordered on complete dereliction of its statutory duty. Moreover, the SEG application was replete with procedural defects and a grossly inadequate EAR. Appellant believes, given the facts presented above, that the St. John CZM Committee had no basis for deeming the SEG application complete or granting the Permit. As a result, Appellant has no choice but to petition the Board to reverse the Decision of the Committee and deny Permit No. CZJ-04-14(W).

LAW OFFICES OF JENNIFER JONES

DATED: November 14, 2014

By: _____

Jennifer Jones, Esq.
9003 Havensight Mall, Ste. 319
St. Thomas, V.I. 00802
(340) 779-7386 (Phone)
(340) 714-5080 (Facsimile)
JJones@VIEnvironmentalLaw.com