

APPENDIX 34  
Report on Littoral Boundaries, David Silverman



## CORAL BAY COMMUNITY COUNCIL

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### Littoral Boundaries Analysis

**THE BOUNDARIES OF THE PROPOSED "ST JOHN MARINA"**

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

**CZJ-3-14(L) and CZJ-4-14(W)**

*A Discussion of Littoral Rights and Matters of Public Policy*

**Prepared by David L Silverman on behalf of the**

**Coral Bay Community Council**

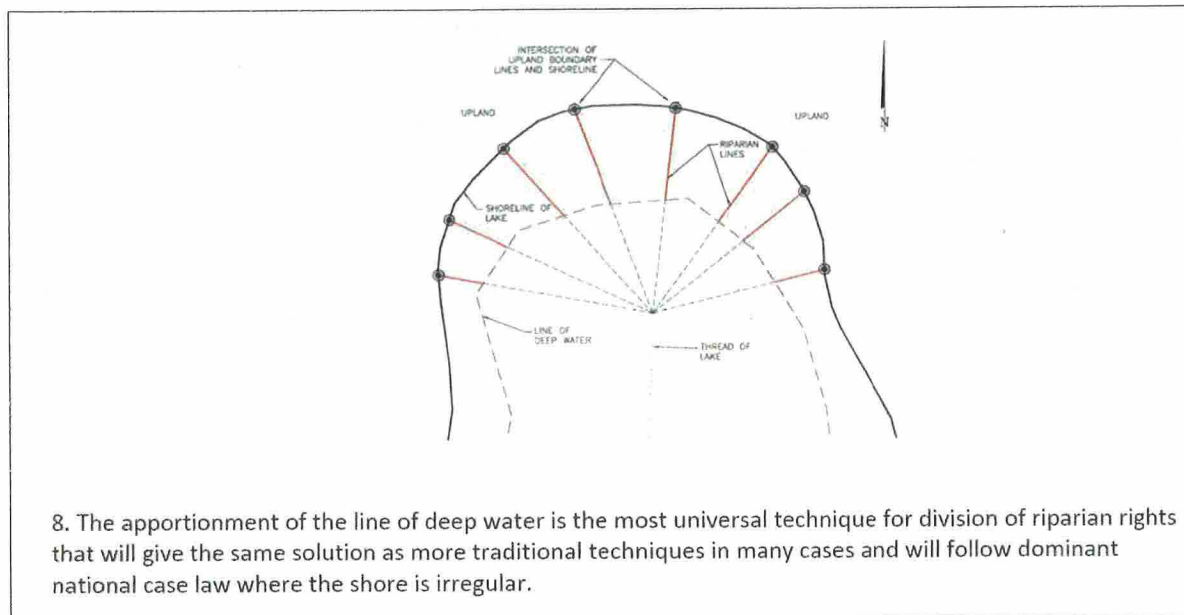
**28 August 2014**

### WHAT ARE THE LEGAL BOUNDARIES FOR THE SEG MARINA?

The counsel for the Moravian Church, Ms. Maria Hodge, raised an extremely important question about the rights of other land owners on the shores of Coral Bay harbor. Many members of the public commented on the "excessive size" of the Summer's End Group proposed marina, but Ms. Hodge raised the marina size question in a very specific context - that of the littoral rights of other landowners. The legal references cited by Ms. Hodge in her letter to CZM (attached) form the basis for the discussion which follows.

Based on available information regarding ownership of waterfront property on Coral Bay harbor, it appears that the "Site Limits" of the SEG marina vastly exceed what would be allowed after due consideration of the littoral rights of other land owners. The basic principles of littoral rights that are relevant in this discussion are (1) the right of land owners on the shore to use the water in front of their land, subject to the rules, regulations and permits required for such use, (2) the right to "pier out" to navigable water, and (3) "equitable" access to the line of deep water.

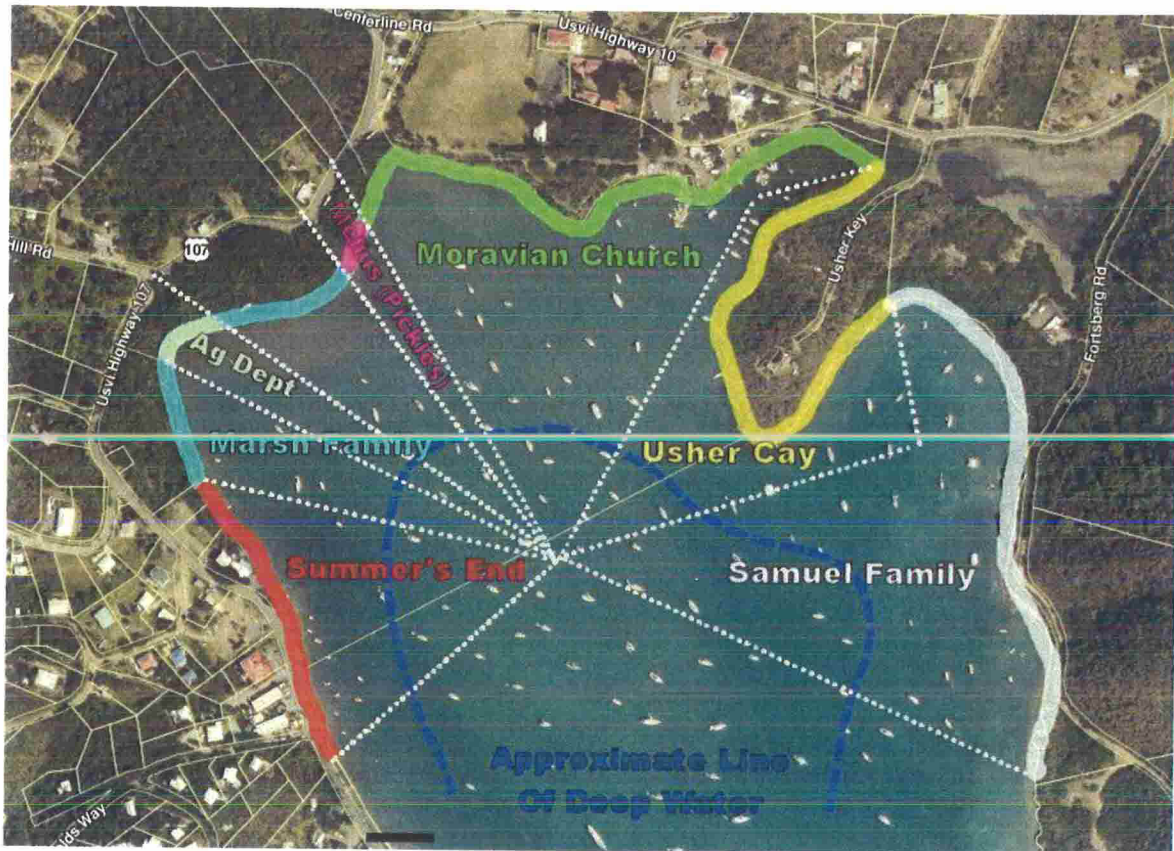
These principles are illustrated in the following drawing from a Florida Department of State publication which demonstrates the drawing of riparian boundaries by equitable allocation of the "line of deep water" (Guidelines for Allocation of Riparian Rights, 2013):



The apportionment is done by drawing the "line of deep water" contour, then starting at the ends of the upland parcels, drawing straight lines to the line of deep water so as to allocate it in proportion to the shoreline holdings. This ensures an equitable access to deep water for all owners. Those lines are then extended to a notional center for the body of water to complete the allocation. Depending upon the geometry of the body of water, the center might be deemed to be a single point (as in the illustration

above), or a central line (denoted "thread of lake" above). The example illustrated above is roughly analogous to the geometry of Coral Bay harbor, and is a good model to use in our case.

Applying these principles to Coral Bay harbor produces a set of littoral boundary lines similar to what is shown below:



There are at least six private land owners with littoral rights in this portion of the harbor: the Summer's End Group (shown in red), members of the Marsh family (shown in turquoise), Beverly Melius (shown in pink), the Moravian Church (shown in green), the owners of Usher Cay (shown in yellow) and members of the Samuel Family on Fortsberg (shown in white). Additionally, the VI Department of Agriculture appears to own the uplands to a small stretch of shoreline in the northwest portion of the harbor. The wide colored lines along the shoreline are the approximate waterfront of these owners, according to the GIS boundary lines (the Marsh Family line may actually be two or more individual and separate owners). We are aware of many inaccuracies in GIS data and this should **not** be seen as a survey or a definitive statement of ownership; it is shown for illustrative purposes only and is reasonably accurate for that purpose.

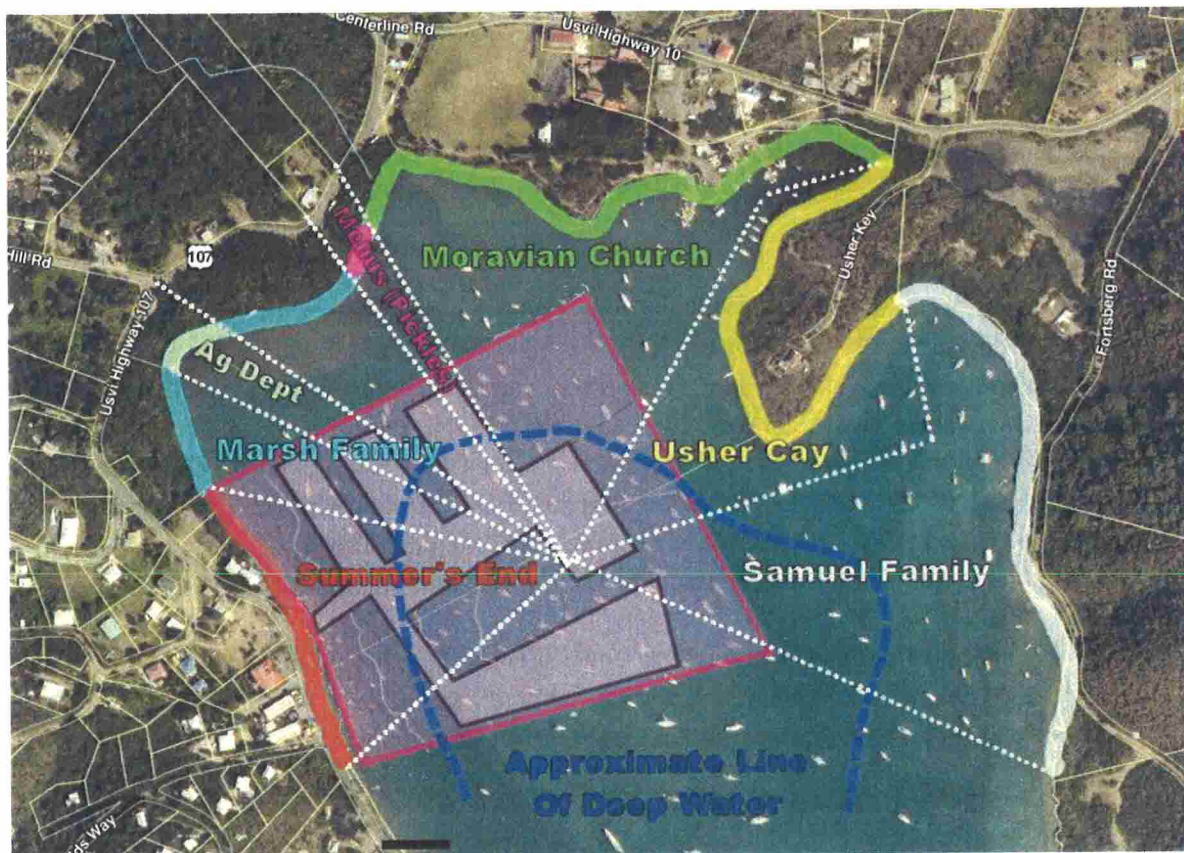
The dashed blue line is the approximate line of deep water at roughly the 12' contour. It should be stressed that this is approximate because only limited bathymetric data was available for this analysis. One could use other depths - 10' or 15' - but the results will be very similar. The 15' contour is quite



limited in extent (only the central portion of the harbor reaches this depth) and so is difficult to apportion. Similarly the 10' contour varies widely in its distance from the shoreline, and presents difficulties as well. The dashed lines are drawn towards a central point in such a way as to equitably apportion the line of deep water (at the 12' depth contour). This allows all shoreline owners to have access to deep water and to utilize their littoral rights, subject of course to requisite permits and regulations. This is certainly not the only apportionment which achieves equitable distribution, but it is representative.

Now if the proposed SEG marina and its "Site Limits" are overlaid on this map, the problem with encroachment becomes self-evident. The fixed marina structures consume virtually the entire line of deep water and encroach into all other littoral rights regions. This precludes any other land owner on the harbor shoreline from exploiting their littoral rights in a manner similar to Summers End.

Furthermore, the arrangement put forward by SEG forces the public moorings onto the portions of the harbor within the littoral rights of others, further impeding their use of the water. The illustration below demonstrates these points:



The region in purple are the "Site Limits" of the SEG plan, taken from the ACOE Permit Drawings. The area outlined in black within the Site Limits is the area occupied by fixed mooring structures and boats

(the physical marina "footprint"). The proposed "mooring field" has not been drawn since the applicant has stated that its actual location has yet to be determined.

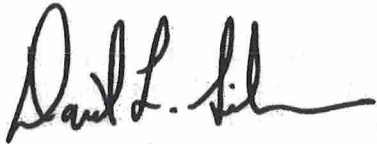
If CZM and/or DPNR were to approve such an allocation of littoral rights and the associated Trust Lands Lease it would very likely be challenged by some or all of the remaining shoreline land owners of Coral Bay harbor, and it does not seem probable that such an allocation would be deemed equitable by an impartial arbiter. The following defects are apparent:

1. Pursuant to the CZM Act a trust lands occupancy lease must be "in the public interest" (12 V.I.C. § 911: "such 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"). "Public interest," according to the Random House Dictionary, is "the welfare or well-being of the general public." In this case the interest of other property owners is apparently being ignored and impaired while furthering the interest of a single entity, and such action cannot be construed to be "in the public interest."
2. Littoral rights are real rights which accrue to owners of shoreline property - they cannot be ignored or trampled in a "land grab" by the first to apply. These rights are enshrined in common law. (See attached letter for reference.)
3. Although not every shoreline owners may want to build a pier or a marina, some may want to simply preserve their unobstructed shoreline views . This is another littoral right that that must be respected.
4. The excessive size of the Summer's End Group marina not only encroaches on the rights of other land owners, a practice which cannot be condoned by a permitting authority, but due to its excessive size it might also become an impediment to navigation, a matter of public concern. In the event of a natural disaster (hurricane, landslide) blocking Centerline Road, the preferred approach for emergency services and barges would likely be through Coral Bay harbor, landing at the northern end of the harbor. If this approach were impeded by the excessive expanse of a marina field with debris from wrecked boats and 1333 marina pilings presenting a navigational hazard, the welfare of the entire population of the East End of St John could be put at risk.
5. An inequitable allocation of littoral rights would very likely be challenged in court, leading to a potentially lengthy period of uncertainty and economic stagnation. A fair allocation of littoral rights, on the other hand, will promote properly scaled development.

The applicant was required, pursuant to 12 V.I.C. § 911 to provide: "a complete and exact written description of the proposed site, including charts, maps, photographs, topographic charts, submerged land contours, and subsurface profiles in accordance with the scope and complexity of the work and the site." These requirements apply specifically to applications for Trust Lands Occupancy Permits. The most basic element of such a description - the land area of the proposed site - was not provided anywhere in the application. Nor were complete submerged land contours, complete description of the

"Site Limits", a surveyor's description of the Site Limits, or any justification for the drawing of the Site Limits as they are depicted. The applicant's failure to supply such required information should have precluded acceptance of the application by DPNR and CZM staff.

If a landowner were to approach DPNR with a permit application to build a house, one of the very first requirements would be to provide a survey of the land parcel, and demonstrate that the house footprint conforms to setbacks, size, and other requirements of the zone and the lot. No planning agency would ever consider a building permit without a survey. The fact that this marina is being considered without any objective description of the area that the applicants are permitted to build in, is simply not acceptable. It appears as though the applicant may have designed the marina first, then drew lines to enclose it, with total disregard for the rights of others or the requirements of law.

A handwritten signature in black ink, appearing to read "David L. Silverman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Prepared by David L Silverman

Board Member, Coral Bay Community Council

28 August 2014



## HODGE & HODGE

August 5, 2014

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



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

To Whom It May Concern:

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

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

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

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

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

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

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

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

Sincerely,



Maria Tankenson Hodge

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

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