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March 3, 2015

Via Overnight Mail

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Re: Proposed Construction of St. John Marina Coral Bay, St. John, USVI  
SAJ-2004-12518 (SP-JMS)

Dear Messrs. Kinard, Collazo, Sasso and Castillo:

Manko, Gold, Katcher, & Fox LLP and Sive, Paget & Riesel, P.C. are submitting these comments on behalf of the Coral Bay Community Council ("CBCC"), and nineteen (19) individuals (listed on Appendix 38)<sup>1</sup> who oppose the permitting, construction and operation of a private, 145 slip commercial mega marina proposed to be located in Coral Bay, St. John, U.S. Virgin Islands (the "Proposed Project"). The applicant, the Summer's End Group, LLC ("SEG"), has submitted an application (the "Application") to the U.S. Army Corps of Engineers ("Corps")

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<sup>1</sup> Requests made in this letter by CBCC are also made on behalf of these nineteen (19) individuals.

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for a permit for the Proposed Project pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

This letter and its appendices constitute the CBCC's comments on the Proposed Project pursuant to the public notice issued by the Corps on January 7, 2015 and reissued on February 4, 2015 ("Public Notice").

The CBCC is a non-profit 501(c)(3) charitable organization with 400 voting members who are required to be residents or property owners surrounding Coral Bay. Anyone else can participate and donate funds. CBCC's mission is to provide an effective means for residents of Coral Bay to participate in planning the future of Coral Bay development. It focuses on land and water use planning, infrastructure, development and environmental issues relating to Coral Bay. CBCC also implements community improvement & youth projects and undertakes research and watershed restoration projects through grants, donations and volunteers.

In addition, the CBCC acts as the Coral Bay watershed management agency, and is implementing the Coral Bay Watershed Management Plan. Consequently, the organization has a strong commitment to community involvement in environmental stewardship and capacity planning for development, so that Coral Bay's water quality continues to improve, and people have safe drinking water, clean air and other environmental benefits.

Copies of personal letters submitted to the Corps in opposition to the Proposed Project are enclosed herewith as Appendix 1. Those letters are comprehensive and detailed in their opposition and many are submitted by individuals with expertise on a wide variety of topics directly relevant to the Corps' review of this application pursuant to the Corps' regulations and the 404(b)(1) Guidelines. In addition, enclosed herewith as Appendix 2 is a petition signed by over 4,500 people in opposition to the Application. As evidenced by this petition and these letters, there is a widespread public opposition due to the many significant negative impacts associated with the Proposed Project.

In addition, the CBCC has analyzed SEG's application materials submitted to the Corps, and has retained outside, independent experts in a variety of disciplines to analyze the Application and relevant information. These analyses, summarized below, demonstrate that the Application is palpably deficient and lacks sufficient information on a variety of required factors under the Corps' regulations and the 404(b)(1) guidelines. On the basis of these deficiencies alone, the Application should be denied. If the Application is not denied, the applicant should be required to submit a complete application containing all of the required information and expert

information in order to allow the public full and fair opportunity to comment on a complete application. Indeed, because of the incompleteness and deficiencies in the Application, the Corps' Public Notice lacks sufficient detail to allow the public to provide complete and informed public comment and for the agency to make the factual determinations required by 40 C.F.R. §§ 230.11 and 12.

As noted in prior submissions on behalf of CBCC, the Application is deficient for a second independent reason. Specifically the necessary certification of SEG's authority to conduct the proposed work and its affirmation of property interest have both expired, requiring rescission of the Public Notice and denial of the Application. Without evidence that the applicant has continued ownership or control over the properties subject to the Application, the Corps' regulations require that the Application be denied because the applicant lacks legal authority and standing to seek any approvals for property it does not own or control.

The CBCC makes two additional requests. First, given that the Proposed Project would significantly impact the environment, an Environmental Impact Statement ("EIS") should be required pursuant to the National Environmental Policy Act. As is a standard procedure, the EIS should be completed prior to the Corps' review of the application. Accordingly, if the Application is not denied now, the CBCC requests that the Public Notice be withdrawn and the Corps' review suspended until the EIS has been completed.

Second, as authorized explicitly in the Public Notice, the CBCC requests a public hearing on the Application. A public hearing is warranted for the Application because, among other reasons, the Proposed Project (1) faces unprecedented opposition from local residents, small business owners, property owners, and tourists and part year residents who return year after year to enjoy this unique nature-based community – Coral Bay, as is witnessed by over 13,000 letters and over 4,500 signatures on a petition in opposition; (2) lacks the detail required in the Application; (3) causes potential devastating effects on the Coral Bay ecosystem and community; and (4) is out of scale with Coral Bay.

If, despite the foregoing, the Corps proceeds to review the Application on its merits, it is indisputable that the Proposed Project would have numerous significant adverse impacts that require denial of the Application, including but not limited to (i) significant degradation of the waters of Coral Bay; (ii) significant adverse effects on special aquatic sites; (iii) significant adverse effects on recreational, aesthetic and economic values; (iv) significant adverse effects on the continued existence of endangered or threatened species; (v) significant adverse effects on cultural and historical resources; and (vi) significant negative effects on navigation.

Remarkably, the Application makes no showing that the proposal would have any benefits – even the prospective users of the marina would discover (too late) that its inappropriate location would create dangers to their vessels and passengers. There are reasonable alternative locations for a marina that would avoid these and the proposal’s myriad other negative impacts. Further, the Proposed Project falls far short of satisfying the Section 404(b)(1) Guidelines and the mitigation proposed is woefully deficient. In short, even the limited information that the Application does contain, as supplemented by the expert analyses submitted herein, demonstrates that the Proposed Project is contrary to the public interest and fails to satisfy the public interest and the criteria of Section 10 and Section 404. Accordingly the Corps, if it reaches the merits, should deny the Application.

I. The Application is Deficient Because the Applicant No Longer Owns or Controls the Property Subject to the Application.

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The applicant’s certification that it is authorized to do the work in the Application is deficient because its authorization expired. Specifically, the applicant has neither a current nor a future property interest to undertake the activity proposed in the Application because its property interest has similarly expired.

A. SEG’s certification of its authorization to do work has expired, making SEG’s Application incomplete and requiring the Public Notice to be rescinded.

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SEG’s application contains the following certification. “I certify that this information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.” (See Exhibit 1 to the 1/16/15 letter from Jonathan Rinde and Mark Chertok to the Corps, attached hereto as Appendix 3). Chaliere Summers signed the Application on April 1, 2014 certifying to all of the above. At the time, the document available at the Virgin Islands Department of Planning and Natural Resources (“DPNR”) supporting this statement included a proof of legal interest form and three “Limited Power[s] of Attorney” forms from three property owners on which the Proposed Project would be located, appointing SEG through its member/manager Chaliere Summers an attorney-in-fact for the “sole and limited purpose” of providing Ms. Summers the authority to apply for certain specified permits to enable the development of the Proposed Project. (See Exhibits 2 and 3 to the letter attached hereto as Appendix 3).

Each Limited Power of Attorney granted to Ms. Summers included an expiration date: December 1, 2014 for the Limited Power of Attorney provided by Mr. Phillips and Ms. Rodriguez; December 1, 2014 for the Limited Power of Attorney provided by the Merchants

Commercial Bank, and January 1, 2015 for the Limited Power of Attorney provided by Mssrs. O'Connor and Morrisette. A January 12, 2015 and a February, 2015 review of the DPNR files indicates that no new or extended Powers of Attorney, or new documents demonstrating a current interest in these three parcels, have been filed. Therefore, these three Limited Powers of Attorney have now terminated, and neither DPNR nor SEG has any further rights from these landowners to proceed with any aspect of the Proposed Project, including the permit application. Most importantly, Ms. Summers' certification that SEG has the authority to undertake the work described in the Application is no longer true and accurate, so the Application should be deemed incomplete, the Public Notice should be rescinded, and the Application should be denied.

- B. SEG's affirmation that it has the requisite property interest to undertake the activity described in the Application is no longer effective and, therefore the Public Notice should be rescinded.
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The Corps' regulations state that a signature on a Section 10/404 permit application is "an affirmation that the applicant possess or will possess the requisite property interest to undertake the activity proposed in the application." 33 C.F.R. § 325.1(d)(8). As noted above, the Application was signed by Ms. Chaliase Summers on behalf of SEG. Because SEG no longer possesses any property interest in several parcels required to implement the Proposed Project, and has no rights to possess these several parcels in the future, Ms. Summers' affirmation with respect to SEG's requisite property interest is similarly invalid. The Corps should therefore terminate its consideration of the Application and rescind the Public Notice.

- II. The Application Does Not Contain the Requisite Information for the Corps to Review the Application and Therefore the Application Should Be Denied.
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The Corps' regulations require the Corps to make specific factual findings regarding the impact of the proposed project on the physical, chemical and biological components of the aquatic environment. 40 C.F.R. § 230.11. These factual determinations include findings on individual and cumulative impacts on the physical substrate, water circulation and the aquatic ecosystem. In the absence of detailed information in the Application on these issues, the Corps' regulations state specifically that the Corps must determine that:

There does not exist sufficient information to make a reasonable judgment as to whether the [project] will comply with these guidelines.

40 C.F.R. § 230.12(a)(3)(iv). On its face, the Application provides insufficient information on these critical, required issues and as such the Application should be denied.

### III. The Public Notice Is Deficient

The Corps' regulations require its public notice to contain "sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment." (33 C.F.R. § 325.3(a)). This is critical as public notice provides "the primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable impact on the public interest." (Id.). The Public Notice issued by the Corps on January 7, 2015 (and reissued on February 4, 2015) fails to provide sufficient information to allow the public to evaluate the probable impact on the public interest. The deficiency in the Public Notice is a direct result of the complete absence of required information in the Application. As an example, the Public Notice fails to identify the area of sea grass beds affected in the "AVOIDANCE AND MINIMIZATION INFORMATION" section, which constitutes a significant impact affecting the public interest. The Public Notice also does not contain sufficient information in the "COMPENSATORY MITIGATION" section to allow the public to evaluate the probable impact of the Proposed Project on the public interest. Furthermore, the Public Notice contains virtually no actual data or information on the impact on natural resources, endangered species, essential fish habitat, cultural and historic resources, navigation, economic feasibility of the project alternatives to the Proposed Project or details of the mooring field including impacts to the benthic environment, all of which are highly controversial and meaningful topics affecting the public interest.<sup>2</sup> For these reasons, the Public Notice should be rescinded until more complete information is available to allow the public to meaningfully comment on the proposed project.

### IV. The Application Fails On Its Merits

The CBCC has conducted its own independent research – including the retention of experts in various disciplines – to evaluate the extent of the impacts of the Proposed Project on the public interest. These assessments have found that the Proposed Project will have overwhelmingly negative impacts in all of the areas of concern to the Corps and public alike. Consistent with 33 CFR § 320.4(a), the Corps must look at a number of factors to determine

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<sup>2</sup> See additional comments on specific factors lacking requisite information in Section IV. In this regard, the independent expert analyses herein submitted by CBCC depend in large measure on facts and information not provided in the Application, and which would be generally unavailable to non-expert members of the public. In essence, CBCC has been forced to do its own evaluation of each of the required aspects of the Application because the applicant failed to do so.

whether it is appropriate to grant a permit. Where the Corps finds that granting a permit would be contrary to the public interest, the permit will be denied. In its evaluation of whether the Proposed Project is in the public interest, the general criteria to be considered in evaluating a permit application are: (1) the relative extent of the public and private need for the project; (2) the practicability of reasonable alternative locations and methods to accomplish the goal of the project; and (3) the extent and permanence of the likely beneficial and/or detrimental impacts of the Proposed Project on the uses to which the area is suited. (33 C.F.R. § 320.4(a)(2).)

A. There is neither a public nor a private need for the Proposed Project.

As a threshold issue, the Corps is required to evaluate the public and private need and the practicability of reasonable alternatives to the Proposed Project, as well as the impacts arising from the Proposed Project. Specific impacts relating to a variety of environmental, social and economic factors are discussed in more detail below, but it is important to first note that the Application contains no information identifying the public and private need for a project of the scale and type proposed. The Proposed Project is entirely too large for the location, is situated in an area which is the most exposed to ocean waves in the entire Coral Harbor on a daily basis and especially during extreme weather, and there is no demonstrated financial need nor financial benefit associated with the Proposed Project. For a full analysis of the lack of a need for the project, the lack of any demonstrated financial viability of the project, see the expert reports of Richard Voith attached hereto as Appendices 4 and 5, and the Report of David Silverman, attached hereto as Appendix 6.

B. There are practicable and more reasonable alternative locations and methods to accomplish the goal of the Proposed Project.

There are a multitude of practicable and more reasonable alternative locations for a marina, both within and outside of Coral Bay, that would accomplish the goal of providing more leisure boats access to the island of St. John. The Proposed Project is plainly too large for Coral Bay, with 145 slips and an additional 12 moorings and management of 75 additional moorings in a Bay that currently accommodates far fewer boats. The "Project Purpose" as defined in Box 19 of the Application dated September 22, 2014 (Attached hereto as Appendix 7) is to construct a marina with 145 slips and provide an additional 12 moorings and manage 75 more moorings, a tautology that prevents the Corps from analyzing practicable and reasonable alternatives and prevents the public from being able to comment on the same. The CBCC has conducted an alternatives analysis that highlights the practicability of alternative marinas, both in location, design, and size. *See* CBCC Alternatives Analysis, Appendix 8. Specifically, without adding

any marina, there are over 200 existing moorings throughout the National Park and Monument, including 30-plus moorings for boats up to 60 feet near Cruz Bay, providing customs and other boating facilities. In addition, there are properties controlled by the Virgin Islands Port Authority that provide potential alternatives, including Cruz Bay Creek, Cruz Bay, Enighed Pond Port. The Cruz Bay Creek alternative ranks high on important criteria including the availability of infrastructure, easy transport to airport, medical and shopping, road access and proximity to population. Further, within Coral Harbor itself, alternatives include the Moravian Church Site and Usher Bay. Since there are reasonable alternatives that are more economically viable than the Proposed Project and have less environmental impact, the Corps should reject the Application.

- C. The Proposed Project is not in the public interest based on an analysis of relevant factors as set forth in in 33 CFR § 320.4(a).
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This section summarizes the accompanying expert analyses of factors relevant to whether the Proposed Project is in the public interest. While the Corps may assign varying weights to each factor due to the unique nature of the Proposed Project, in this matter, regardless of how each factor is weighed, these analyses demonstrate beyond doubt that the Proposed Project is contrary to the public interest and that the Application should be denied.

1. Conservation

Coral Bay contains significant marine diversity including highly diverse benthic habitat and Essential Fish Habitat, and is susceptible to degradation from stressors such as overfishing, pollution from development, pollution from increased recreational vessel use and transit, and other human impacts. The CBCC has conducted its own literature review of studies documenting the ecological diversity of Coral Bay, which review is included as Appendix 9 (Coral Bay Biodiversity Memo). In addition, the CBCC retained expert Rafe Boulon to provide his professional opinion regarding the composition of the ecosystems in Coral Bay, and the importance of protecting the valuable ecosystem from the destruction the Proposed Project would entail. Mr. Boulon concluded that the Proposed Project would create significant adverse impacts on the ecosystems of Coral Bay as a result of many sources of pollution associated with the Proposed Project, including toxic paints on the vessels frequenting the marina and wastes generated by and at the marina. In addition, Mr. Boulon concluded that the Proposed Project would result in significant adverse impacts to seagrasses, mangroves, sea turtles, and such impacts are not lessened by the proposed mitigation. Mr. Boulon's expert report is attached hereto as Appendix 10.



The CBCC undertook an initial inventory of natural resources in the inner Coral Harbor area of Coral Bay in 2004 and updated it in 2006. Comparable data was also collected in 2012 and 2014, in July/August (benthic portion), the same season of the year as the initial inventory. Appendix 11, CBCC Coral Harbor Natural Resources, includes these reports along with additional observational and academic research on natural resource inventories of fish and wildlife, EFH and Endangered species. Notable is the presence of many species of corals and fish, as well as shoreline and migratory birds. The delineation of seagrass and algae habitat vs. unconsolidated sediment in 2004 was reported in 2009 and later by a local environmental assessor to have expanded submerged aquatic vegetation over a larger area of Coral Harbor. Seagrass in visible shallow areas has notably increased, along with small patches of coastal fringing sandy shorelines and shallows.

Mangrove areas have continued to expand and are being populated by new and expanded stands of all three species of mangroves: Red, black and white mangroves, around the non – direct ocean exposed fringing shorelines of the harbor. Indeed, “restoration” efforts have not been necessary, since propagation of seedlings has occurred naturally and boaters and other shoreline users have been respectful of allowing the seedlings to grow unmolested, even in high use shoreline areas near the town dinghy dock. (See mangrove photos attached hereto as Appendix 12.)

## 2. Navigation

The CBCC retained James Robertson as an expert to analyze the navigation-related impacts of the Proposed Project. Mr. Robertson has over 25 years of experience with the United States Coast Guard, and is now a private maritime consultant. Mr. Robertson’s report is attached hereto as Appendix 13.

Mr. Robertson concluded that the location of the Proposed Project is unsuitable for a marina, and especially unsuitable for a marina of this size. In addition, Mr. Robertson concluded that the Proposed Project is poorly designed based on the wind and wave action in the vicinity of the marina. Mr. Robertson further concluded that the Proposed Project raises significant safety concerns, both for normal weather and extreme weather events. For these reasons, the Application should be rejected.

Mr. Robertson's conclusions are consistent with the CBCC's Navigation, Marina Design & Hurricane Concerns comments attached hereto as Appendix 14. In addition, the CBCC concludes that:

- the dock design is inconsistent with Corps' guidelines on structures placed over submerged aquatic vegetation;
- the mooring design is incomplete and inadequate;
- the location of the fuel dock will jeopardize existing mangrove habitats; and
- the design will greatly minimize the ability to sail in and out of Coral Bay.

### 3. 404(b)(1) Guidelines

The 404(b)(1) Guidelines require the Corps to consider the "adverse effects of the discharge of pollutants on aquatic ecosystem diversity." 40 C.F.R. § 230.10(c)(3). The aquatic ecosystem in Coral Harbor, as well as St. John's nearby Hurricane Hole and submerged lands of the Virgin Islands National Park, contain some of the most pristine waters and well-preserved coral reefs and diverse aquatic ecosystems in the Caribbean. The Proposed Project will significantly negatively impact and cause degradation of the aquatic ecosystem in Coral Harbor and surrounding waters through both the construction phase and operational phase of the marina, an action prohibited by the Section 404(b)(1) Guidelines contained in 40 C.F.R. § 230.10(c). *See* CBCC 404(b) General Concerns attached hereto as Appendix 15 and CBCC Megayacht and Marina Water Contamination concerns in Appendix 16.

Significant degradation will occur specifically because the Proposed Project is located above active flourishing seagrass essential fish habitat (EFH); the orientation of the docks and boats in the slips is primarily east/west in violation of the Florida Dock Guidelines, which are attached hereto as Appendix 17; the Proposed Project will cause significant shading which will destroy seagrass (*See* Report of David Silverman attached as Appendix 35); and boat bottom paint contaminants will enter the ecosystem and kill larvae in Coral Bay which is a nursery for various aquatic species.

Finally, the mitigation efforts contained in the Application are grossly inadequate, are not "in-kind," and no compensatory mitigation should be considered given that the Proposed Project will cause and contribute to significant degradation of aquatic resources. In addition, it is not

possible to determine the appropriate compensatory mitigation – to the extent any such consideration is appropriate - because the Application lacks baseline hydrology, water quality and other data. Further, there is no data that a sewage pump out system for boats would have any measurable positive input on water quality and thus qualify as mitigation. *See* CBCC Compensatory “Out Of Kind” Mitigation Comments in Appendix 18.

#### 4. Water Quality

The CBCC retained the services of Dr. Sarah Gray, Professor in the Environmental and Ocean Sciences Department at the University of San Diego, to determine the effects on water quality in Coral Bay from the Proposed Project. Since 2008, Dr. Gray has led a team which is studying the impacts to Coral Bay from land-based sedimentation, and the mineralogy and metal concentrations of watershed and marine sediments in Coral Bay. Dr. Gray has prepared a report of her findings, which are attached hereto as Appendix 19.

After reviewing the documents prepared by SEG about the Proposed Project, Dr. Gray concludes that construction and operation of the Proposed Project in Coral Harbor creates a strong potential for adverse effects on the water quality of Coral Bay for several reasons. First, because the sediments found in Coral Harbor are generally fine-grained, construction and operation of the Proposed Project will re-suspend these sediments in the water column, increasing turbidity and degrading water quality. The re-suspended sediments may also be transported laterally via currents to sensitive coral reef habitats around Coral Bay, negatively impacting these natural resources.

The re-suspension of sediments may also remobilize and redissolve pollutants that are currently trapped in the sediments, dispersing these pollutants and making them bio-available. In addition, the Proposed Project itself would be a source of pollution, including but not limited to the discharge of boat paint chips rich in metals, organic matter from sewage, etc.

Dr. Gray also notes that the “Water Quality Monitoring Plan” proposed by SEG is inadequate to accurately establish baseline (pre-construction) water quality conditions, as well as inadequate to monitor the effects on water quality from the construction and operation of the Proposed Project.

The CBCC has also prepared comments on Wastewater Treatment and Nutrients, which is attached hereto as Appendix 20. CBCC concludes that the Proposed Project does not adequately address wastewater treatment and potential nutrient loadings to the harbor for, among

other reasons (1) the proposed Cromaglass™ treatment system has experienced failure in other installations and has failed to meet nitrogen standards; and (2) the transient or live-aboard passengers and crew on vessels less than 80 feet long will likely prefer to use shoreline restroom facilities, and there is no evidence that this seasonal spike in usage is incorporated in the shoreside wastewater treatment plans.

5. Economic Feasibility and Economic Benefits to the Community

The Application and Public Notice contain no information supporting the purported need for or the economic feasibility of the Proposed Project, or any economic benefits of the Proposed Project. The only attempt at a financial justification of the Proposed Project is contained in *The St. John Marina Market Study, Feasibility and Economic Analysis* prepared by SEG, which is attached hereto as Appendix 21 (“SEG Market Study”), and the limited financial claims in the FWS application attached hereto. In order to analyze the claims made in the SEG Market Study and applications to the Corps and the FWS for the BIG funding, CBCC retained Richard P. Voith, Ph.D. President and Founding Principal of Econsult Solutions Inc. and adjunct Professor at the Wharton School at the University of Pennsylvania from which he received his doctorate in economics. Dr. Voith is an expert in Real Estate Economics and Economic Development and has authored over 40 professional articles and book chapters on the subject. He also frequently provides peer review of scholarly articles on these topics.

After reviewing the Application, Dr. Voith concludes in his first report that the SEG report is completely inadequate to demonstrate the economic feasibility of the proposed Marina and the need for the Marina. Among other things, Dr. Voith concludes that:

- The SEG Market Study provides virtually no quantitative analysis of projected financial performance, and does not contain a financial pro forma;
- The SEG Market Study does not quantify the size of any potential market segments of users of the Proposed Project;
- There is no data on pricing, sales, vacancies, seasonality, auxiliary businesses, labor costs, maintenance, expenditures, insurance and other costs, all of which are necessary for a financial evaluation;
- The SEG Market Study is silent on the financial risks of the Proposed Project, including risks from construction delays, weather delays and market risks. An

evaluation of risk is essential to any financial evaluation and to the viability of investment in the Proposed Project; and

- The SEG Market Study contains inadequate information on investment in the Proposed Project;

Based on his evaluation, Dr. Voith concludes that the Application is completely inadequate to demonstrate the economic feasibility of the Proposed Project and the need for the Proposed Project.

Dr. Voith's curriculum vitae and first report are attached hereto as Appendix 4.

Dr. Voith has issued a second report evaluating SEG's claims regarding claimed economic benefits to the St. John community from the Proposed Project. After reviewing SEG's economic evaluation in the Application as well as the application for BIG funding, Dr. Voith concludes that the SEG submissions are completely inadequate to demonstrate any potentially positive economic impacts from the Proposed Project on the St. John economy. Among other things, Dr. Voith concludes:

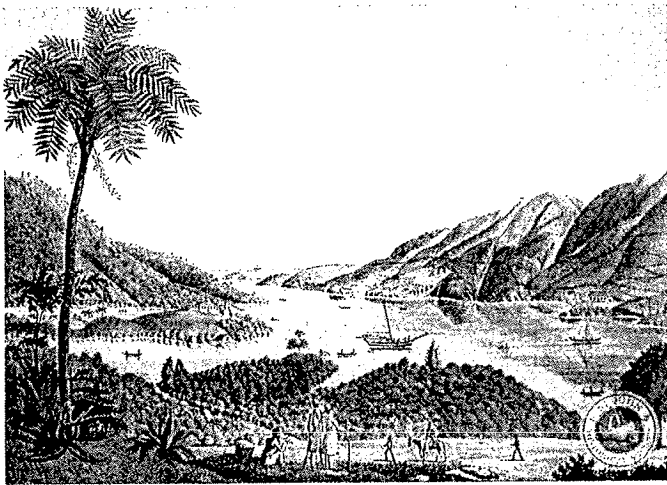
- The economic impacts claimed in the SEG submissions are based on flawed economic data that is outdated (2006-2008), using an outdated model that is based on the Florida boating market, a market that is not comparable on its face to the St. John market in terms of vessel sizes and overall economy;
- The SEG submissions do not account for economic or environmental risks that will decrease any positive economic impacts. These risks include construction risk, weather-related risk, market risk and risks of damage to the ecosystem.
- SEG's submissions are silent on the potential negative impacts on the tourist economy.
- SEG's claims regarding increased real estate property values and job creation were unsupported by any facts; SEG's claims are nothing more than unsubstantiated opinions.

- SEG's claim that St. John residents would be recipients of any economic benefits is inaccurate.

Dr. Voith's second report is attached hereto as Appendix 5.

Furthermore, CBCC members, including local business leaders, assisted member David Silverman conduct an economic analysis demonstrating that the Proposed Project would actually have a *negative* impact on the public and is not economically feasible. *See* Appendix 6, Summer's End St. John Marina Economic Impact Model dated August 28, 2014. Silverman's analysis shows that the Proposed Project would have a net negative impact both on the community of Coral Bay and the island of St. John. Numerous citizen comment letters have also drawn this same conclusion that the current successful and regionally appropriate tourism economy would be badly hurt if the Proposed Project would be permitted.

#### 6. Historic Properties



There are several historic structures within the viewshed from the shoreline where the Proposed Project is proposed to be built, including the Moravian Church, the Customs House on Usher Cay, and the Fortsberg Hill. Upon implementation of the Proposed Project, it will dominate the entire bay and shoreline. Megayachts that are longer and larger than any of the buildings on the shoreline will intrude upon the viewshed vistas from the shoreline, the water and road levels. Also, the current

focal points that the Emmaus Moravian Church and manse, the view up the valley toward the old plantation and mill ruins, and the old house on Usher Cay (known for at least a century as the customs house, even though this is not historically accurate.)-- white house visible in 1840s drawing/watercolor here, will also be lost.

Both Fortsberg and the Moravian Church are listed on the National Register of Historic Places, (as are several other sites within ½ mile, although not so prominently viewed, Bay rum factory, Carolina Plantation great house, slave village and mill and more.) The Application failed entirely to address impacts to any of these historic resources. Further, there is no indication that

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SEG or the Corps has complied with the requirements of Section 106 of the National Historic Preservation Act and its implementing regulations with respect to the historic structures located within the viewshed of the Proposed Project that are eligible for listing on the National Register of Historic Places, 16 U.S.C. § 470(f) and 36 C.F.R. § 800. The Corps cannot complete its review of the Application until the Section 106 process has been completed.

The St. John Historical Society has submitted a comment letter opposed to the construction of the Proposed Project. *See* Appendix 22. The CBCC has commented on the inadequacy of the submerged lands archeological survey in Appendix 23.

The Proposed Project is also in close proximity to the Virgin Islands National Park and Hurricane Hole, part of the Virgin Islands Coral Reef National Monument. As discussed by the CBCC's expert Rafe Boulon in his report attached hereto as Appendix 10, the Proposed Project will have a negative impact on the nearby National Park and National Monument. Mr. Boulon concluded that the Proposed Project's proximity to a portion of the Virgin Islands Coral Reef National Monument called Hurricane Hole has the potential to significantly degrade Hurricane Hole's pristine mangrove and juvenile fish habitat, which is unrivaled in the northern Virgin Islands.

## 7. Fish & Wildlife Values

### A. Sharks

CBCC consulted with Dr. Gregory B. Skomal, Senior Marine Fisheries Scientist, Massachusetts Marine Fisheries; Adjunct Scientist, Woods Hole Oceanographic Institute and Adjunct Professor, University of Massachusetts, to determine the effects of the Proposed Project on sharks. For the past ten years, Dr. Skomal has been collaborating with other scientists to study the use of Coral Bay by juvenile blacktip and lemon sharks. Dr. Skomal has prepared an expert report attached hereto as Appendix 24.

According to Dr. Skomal, Coral Bay is used by newborn and juvenile blacktip and lemon sharks as a shark nursery, since it is an area having plenty of food and also where young sharks can avoid predation. Based on intensive field studies, Dr. Skomal determined that newborn and juvenile blacktip and lemon sharks demonstrate high site fidelity to core areas within Coral Bay, primarily in the site of the Proposed Project. Further, Dr. Skomal believes that Coral Bay is one of the most productive and important nurseries for these species in the U.S. Virgin Islands. Because the Proposed Project would displace this important shark nursery by

habitat alteration and/or destruction, Dr. Skomal concludes that the Proposed Project would create irreversible and deleterious impacts on the local shark population and therefore the marine ecosystem in the region.

8. Flood Hazards & Floodplains

The Proposed Project is situated in a location that is exposed to storms and would pose a significant threat to public safety and environment during storm events as a result. In addition to anecdotal evidence that boats wash up on the shoreline of the Proposed Project after storms, Lawrence Best concluded that the Proposed Project is in fact located in the most exposed location out of seven nearby marinas, save for the St. Croix Marina in Christianstead. *See* Appendix 25, Letter from Lawrence Best, Registered Professional Land Surveyor, License No. 649LS. *See* Appendix 14 CBCC analysis of Navigation, Marina Design and Hurricane Concerns for storm surge data and conclusions.

9. Aesthetics

The CBCC has prepared a rendering of the marina at 75% occupancy to help focus attention on the actual development being proposed – if boaters use it, rather than limited and unoccupied rendering provided in the Public Notice by the Applicant, seeking to diminish its visual impact: Appendix 26. The scale, location and design of the Proposed Project will profoundly alter the aesthetic of Coral Bay, currently a pristine, natural area. The Proposed Project will occupy a large footprint and create an overdeveloped eyesore destroying the natural beauty of Coral Bay. Additional renderings of the marina complex and its visual and actual impacts on the aesthetics of the community can be seen in David Silverman's analysis in Appendix 35. *See also* Appendix 10, Boulon Report.

10. Noise

The Proposed Project calls for driving 1,333 pilings leading to the creation of excessive and continuous noise during an unspecified construction period that is likely to exceed one year. Coral Bay is a natural amphitheater which will exacerbate this noise level for residents and visitors and wildlife throughout the construction process. SEG provides no analysis of noise levels to the ambient air and under water. Attached information regarding noise levels from pile driving supports the conclusion that unacceptable and potentially damaging noise levels will result from the Proposed Project. *See* Appendix 27.



#### 11. Land Use

The Application does not contain any explicit reference to land-based components, but the Proposed Work described in the Public Notice includes reference to “upland facilities” that “would be constructed for administrative and commercial purposes.” All of the Proposed Work should be evaluated by the Corps, and the Corps must consider the SEG’s Environmental Assessment Report for the land-based portion of the marina.<sup>3</sup> Therefore the Applicant’s EAR for the land-based portion of the Proposed Project is included in Appendix 28, and CBCC’s comments previously submitted to the Virgin Islands Coastal Zone Management Committee are included in Appendix 29 for reference to evaluating the total development’s impact.

#### 12. Shore Erosion and Accretion

Coral Bay is known to take the brunt of tropical force weather, including storm surge and tidal and wave induced erosion. There is significant concern that a marina dock piling structure, with or without vessels tied at the docks, and a concentration of over 100 watercraft in this particular location would be disastrous in the event of a typical strong hurricane, resulting in significant loss to property, serious environmental damage, and possible loss of life.

#### 13. Recreation

The Proposed Project crosses approximately  $\frac{3}{4}$  of Coral Harbor, making it extremely difficult for all boaters, including recreational boaters, to navigate in and out of Coral Harbor. *See* James Robertson’s report attached as Appendix 13 at p. 2. The bay is currently used for sailing, fishing, paddle-boarding, kayaking, and small pleasure boating under 15 feet, among other recreational uses all of which would be severely impeded if not totally eliminated due to the Proposed Project. The Proposed Project is also located in an area that currently provides wade-in access and launch access for locals for access to small skiffs for fishing and recreational purposes. If the Proposed Project is approved, it would become illegal to enter the water in these areas, due to the planting of mangrove seedlings. For further information on negative impacts of the project on recreation, also see the Comment Letter from the Coral Bay Yacht Club included in Appendix 30. In addition, the physical barrier created by the marina docks would effectively limit sailing out of the harbor and force the relocation or [SC1]loss of two successful sailing programs for youths (Kids and the Sea) and the ANTs program for adults.

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<sup>3</sup> The Corps did not include the EAR for the land-based portion of the marina in its production in response to CBCC’s Freedom of Information Act request, therefore we assume the Corps did not possess a copy of the document and has thus not had the opportunity to consider the impacts of the upland work.

14. Water Supply

The CBCC has conducted a Water Needs Analysis, attached hereto as Appendix 31. Based on the Application, the Proposed Project will require 12,000 gallons per day and 4,380,000 gallons per year on average. Peak demand could be four (4) times that. Assuming 40 inches of rain per year and allocation based on total roof area of full Phase II build-out, the average rainfall collection will only be 1,939 gallons per day and 698,133 gallons per year. This leaves a shortfall in non-peak demand of 10,061 gallons per day and 3,681,867 gallons per year that is proposed to be trucked 8 miles over the only public access road for all purposes to Coral Bay. There is no indication in the Application how these water needs would impact the local community.

15. Energy Needs

The inadequacy of the electrical power has been addressed in a number of individual comment letters, including from marina operators in the United States and other knowledgeable people with information on the electrical systems in the Virgin Islands. See Letters included in Appendix 1. Furthermore, many of the larger yachts have their own power systems and European power systems that could not operate on local power, so would continue to use on-board generators which would cause additional air and water pollution and require significant amounts of fuel.

16. Safety

Above-ground storage tanks required for the Proposed Project pose a significant risk to public safety. Specifically, the proposed location is approximately 25 feet from a retaining wall near a private residence and only 15 feet from a restaurant building. See comment from CBCC staff Patricia Reed, enclosed herewith as Appendix 32, and does not follow EPA Caribbean Marina Guidelines per CBCC report in Appendix 33.

Further, the drawings submitted to the Army Corps leave out the presence of the busy roadway (Route 107), which must be crossed by all pedestrians leaving the dock and going to the principal marina building on the drawing. This design is unsafe, on its face.

The Application does not demonstrate how 145 boats will be safely moored or accommodated on-island in the event of a tropical storm or hurricane. Without a safety plan for these boats, it can only be assumed that the Proposed Project and the boats therein will be

severely damaged in a storm. *See* Robertson Report, attached hereto as Appendix 13, at p. 2 and CBCC Navigation, Marina Design and Hurricane Comments in Appendix 14, pp 18-22.

17. Considerations of Property Ownership

The CBCC has prepared a report on the littoral boundaries of Coral Bay, which demonstrates that the Proposed Project crosses the property boundaries of virtually every other property owner in Coral Bay. This precludes any other landowner on the harbor shore from using their littoral rights in a manner similar to SEG. *See* David Silverman's Littoral Boundaries Report attached as Appendix 34.

18. General Environmental and Other Impacts

Attached as Appendix 35 is a letter report prepared by David Silverman which provides a detailed evaluation of the adverse impacts from the Proposed Project and additional grounds for denial. Attached as Appendix 36 are videos of the proposed piling field and entire marina complex. Mr. Silverman is a resident of Coral Bay and previously served for ten years as a member of the Coastal Zone Management Board in Long Island, New York, in which capacity he reviewed hundreds of applications for Coastal Zone consistency. Mr. Silverman is a CBCC board member and has been actively involved in reviewing and commenting on the Application. Mr. Silverman concludes, among other things:

- SEG has not obtained a legally authorized CZM consistency determination because the determination has not been signed by the Governor, has not been ratified by the Legislature, and the Board approval was obtained in an unlawful manner. Therefore, the Application does not, as required, demonstrate consistency with the Virgin Islands Coastal Zone Management Plan;
- The Application underestimates the impact on sea grass;
- The Application contains erroneous or unsupported calculations regarding the size of the dock area and the size of the area that will suffer from boat shading; and
- The mitigation proposal is undefined and inadequate in terms of the calculations and value of mitigation required.

Mr. Donnie Kinard  
Mr. Johann M. Sasso  
March 3, 2015  
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- The cumulative impacts of the Proposed Project on sedimentation and water quality, aesthetic and historical resources are significant.
- Mr. Silverman has created a scale model of the density of the pilings which demonstrates visually the direct and indirect impacts to approximately 17 acres of sea grass as a result of construction, shading and ongoing turbidity from propeller wash and toxic effluents, as well as impacts to water movement and aquatic function of the area.

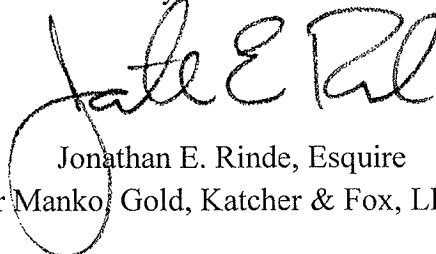
Finally, we have enclosed as Appendix 37 the resumes of the Principal CBCC contributors to these comments. For all of the reasons described above, the CBCC and the individuals identify herein respectfully request that the Application be denied.

Sincerely,



Robert D. Fox, Esquire  
For Manko, Gold, Katcher & Fox, LLP

Sincerely,



Jonathan E. Rinde, Esquire  
For Manko, Gold, Katcher & Fox, LLP

Sincerely,



Mark A. Chertok, Esquire  
For Sive, Paget & Riesel, P.C.

Sincerely,



Maggie Macdonald, Esquire  
For Sive, Paget & Riesel, P.C.

/kl

Enclosures

cc: Judith Enck, Administrator, Region 2, USEPA  
Charles Lobue, Region 2, USEPA  
Michael Piccirilli, U.S. Fish and Wildlife Service

## APPENDICES

1. Letters in Opposition
2. Petition in Opposition
3. Letter of Jonathan Rinde, Esquire and Mark Chertok, Esquire to Army Corps, dated January 16, 2015
4. Report on the Economic Feasibility, Richard Voith, Ph.D.
5. Report on Estimated Economic Impacts, Richard Voith, Ph.D.
6. Report on Estimated Economic Impacts, David Silverman
7. SEG Application
8. CBCC Alternatives Analysis
9. CBCC Coral Bay Biodiversity Comments
10. Report on Ecosystem Impacts, Rafe Boulon, M.S.
11. CBCC Coral Harbor Natural Resources Inventory
12. CBCC Mangrove Photos
13. Report on Navigation, James Robertson
14. CBCC's Navigation, Marina Design & Hurricane Comments
15. CBCC's 404(B) General Comments
16. CBCC's Mega Yacht and Marina Water Contamination Comments
17. Florida Dock Guidelines
18. CBCC Compensatory "Out of Kind" Mitigation Comments
19. Report of On Water Quality, Sarah Gray , Ph.D

20. CBCC's Wastewater Treatment and Nutrients Comments
21. SEG's St. John Marina Market Study, Feasibility and Economic Analysis
22. St. John Historical Society Letter, February 10, 2015
23. CBCC's Archeological Comments
24. Report Impacts on Shark Habitat, Gregory B. Skomal, Ph.D
25. Letter from Lawrence Best, Registered Professional Land Surveyor
26. CBCC's Marina Renditions
27. CBCC's Noise Comments
28. SEG's EAR
29. CBCC's Coastal Zone Management Comments
30. Letter from Coral Bay Yacht Club, February 4, 2015
31. CBCC's Water Needs Comments
32. CBCC's Safety Comments
33. EPA's Caribbean Marina Guidelines
34. Report on Littoral Boundaries, David Silverman
35. Report on General Environmental and Other Impacts, David Silverman
36. Videos of Coral Bay
37. CBCC Resumes
38. List of Individual Opponents Submitting the Comment Letter