

Via Email:

The Honorable Albert Bryan
Governor of the U. S. Virgin Islands
Government House
St. Thomas, VI 00802

December 3, 2019

**Re: Major Coastal Zone Management Permit No. CZJ-04-14(W) & (L)
St. John Marina Project (Coral Bay)
Approval Vote and Ratification by December 18, 2019**

Hon. Governor Bryan:

As we have previously discussed, following our hearing before the Legislature in October it now appears that the Senate is enthusiastically in support of our project, and on meeting certain requirements, passage appears likely on December 18th. However, we cannot stress enough how critical it is that this project move forward before the end of this year. The Legislature can vote to ratify the permit by the end of this year giving you an economic victory on the approval of a major development for St. John and the Virgin Islands.

We have prepared for you a draft modified permit for the Land and Water uses as approved by the St. John CZM Committee, and as confirmed and consolidated by the Board of Land Use Appeals. We recognize that the legal role of the Legislature is the approval of the Water Permit and the Submerged Lands lease, but the consolidation of the permits before the Board of Land Use Appeals provides us with an opportunity to update the permits to reflect the changes in the intervening 62 months, and to effectively address the concerns of the Legislature.

Despite the more than five years since this project received approval from the CZM Committee, the project's proponents and developers have both held together the majority of the properties and secured sufficient financing to move this project forward rapidly, if it is approved now. However, the intervening years have caused the project to remove two, non-shoreline, properties not essential for the marina that became too expensive to retain without the final permits. The removal of the two properties is actually a reduction of project impacts, which is one of the reasons cited by several of the Senators in requiring the permits be updated to accurately describe the project. The changes we have prepared in the consolidated permit accurately describe those changes, including some of the changes required in the course of the federal permitting process. All of these changes fall within the category of minor amendments, as they are either reductions in impact, or the provision of additional benefits to the public and the environment.

The changes contained in the consolidated permit are:

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| 1. Removal of Parcels 13A & 13B | Reduction of Impact |
| 2. Reduction of Parking Spaces from 120 to 110 | Reduction of Impact |

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| 3. Removal 56 Seat Restaurant ¹ | Reduction of Impact |
| 4. Reduce Marina Slips from 145 to 144 | Reduction of Impact |
| 5. Consolidation of the Development | Reduction of Impact |
| 6. Inclusion of Shoreline Boardwalk | Community Benefit
Funded by Developer |

We are providing as attachments to the consolidated permit the civil drawings and marina construction drawings that have been updated to reflect the above project updates and modifications.

As we have noted, Section 911(g) of the Coastal Zone Management Act provides:

(g) *Modification and revocation.* In addition to any other powers of enforcement set forth in section 913 of this chapter, *the Governor may modify or revoke any coastal zone permit that includes development or occupancy of trust lands or submerged or filled lands approved pursuant to this section upon a written determination that such action is in the public interest and that it is necessary to prevent significant environmental damage to coastal zone resources and to protect the public health, safety and general welfare. Such written determination shall be delivered both to the permittee and to the Legislature, together with a statement of the reasons therefor.* It shall state the effective date of such modification or revocation, and shall provide a reasonable time in which the permittee or lessee either may correct the deficiencies stated in such written determination or may establish, to the Governor's satisfaction, that any or all of the deficiencies or reasons stated therein are incorrect. If the permittee shall fail to correct or establish the inaccuracy of such deficiencies or reasons within the time provided in such written determination, the modification or revocation of such occupancy permit shall be effective as of the date stated therein; provided, however, that the Legislature, shall ratify the Governor's action within thirty days after said effective date. The failure of the Legislature, either to ratify or rescind the Governor's action within said thirty-day period shall constitute a ratification of the Governor's action.

While there have been no reported cases in testing this provision of the Virgin Islands Code, we believe that the section is clear on its face. To further assist, we will provide draft resolution for the Legislature's consideration with proposed findings of fact and law in the consideration of this project, along with a draft transmittal to the Senate meeting the requirements of the Coastal Zone Act. Moreover, approval of the appropriate language may discourage further litigation, and secure the benefits for the people of St. John and the Virgin Islands.

The one area we cannot address without the assistance of the Department of Planning and Natural Resources is the lease fees. The Virgin Islands laws and regulations are not specific, and

¹ The original permit called for a two-stage development, with a second restaurant a contingency in the second stage. That has now been consolidated into a single stage of full project development, including a restaurant.

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the use of fair market value of upland properties is based on a long-repealed statute. While we believe that a fair market value of the submerged lands is less than the amount calculated (for a variety of reasons), we have been and remain prepared to accept the current recommendation to move the project forward. Either Director Hibbert or Commissioner Oriol will have to correct any misperceptions for the record on this matter.

This development will include a Customs and Border Protection office positioning Coral Harbor and St. John to become the gateway for the yachting and charter industry into the USVI from the BVI. With the increased interest of the Virgin Islands in regaining its position in the charter yacht business, this project holds unique opportunities that cannot be replicated anywhere else in the territory.

The CZM Act specifies time limits that are intended to deliver a decision on a project in 225 days (7½ months); it has now been more than 5 years since the St. John CZM Committee approved this Project. As we have noted, under both Territorial and Federal law, the Army Corps permitting process cannot be completed until we have the completed Territorial Permits.

With the ratification and the advancement of the CZM Water Permit, we will finally be clear to move forward immediately with the upland development on the land. The Legislature can vote to ratify the permit before the end of this year giving you an economic victory on the approval of a major development for St. John and the territory.

We appreciate your interest and assistance in bringing this matter to a conclusion.

We want to begin 2020 with a win for the territory's future.

Chalièse