



The Cattie Law Firm, P.C.

U.S. Virgin Islands EST. 2010

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The Hon. Novelle E. Francis, Jr.-Senate President
Legislature of the Virgin Islands
Capitol Building, Charlotte Amalie
P.O. Box 1690
St. Thomas, Virgin Islands 00804

Re: Coastal Zone Management Permit No. CZJ-04-14(W); Submerged lands lease

President Francis and members of the Thirty-Third Legislature of the Virgin Islands:

Along with the Firm of Moore Dodson & Russell, P.C. and the Law Offices of John H. Benham, P.C., I represent The Summer's End Group, LLC. I would like to thank each of you for taking the time to consider our position today and for your continued consideration of this very important project. I have been a practicing attorney for nearly 20 years, more than 15 of which have been in the U.S. Virgin Islands. I would like to address two issues which, while they are not directly germane to the ratification of the CZM Permit or the submerged lands lease, are of interest to this body and related to the Summer's End project. Before I address those two issues, I would like to make a brief comment about investments in the Virgin Islands.

As you are aware, Summer's End has diligently been working towards bringing a world-class marina to St. John, for several years. The last time I attended a hearing on this matter was on October 28, 2019 in St. John. While at that hearing, I heard an opponent to this project proudly proclaim that **she** was the reason that there is no Hyatt on St. Thomas. I was shocked to hear someone proudly proclaim that she unilaterally ended our opportunity to have a large hotel project come to the Territory. The loss of construction jobs, hotel and hospitality employment, and culinary opportunities, along with the loss of taxes and revenue from tourists were a source of pride for her. But she was wrong, the Hyatt was built, it just wasn't built here. While the Virgin Islands did not get the Hyatt, other investors did build one in St. Kitts in 2017. That hotel, the Park Hyatt St. Kitts, was recognized as "The Best Hotel in the Caribbean" by CNN Travel, and Conde Nast included it in "Best New Hotels in the World" in 2018. Rather than have a new 5-star resort in the Virgin Islands, we have not had a new major hotel in St. Thomas and St. John since well before I relocated here in 2004. In fact, we have lost both Caneel Bay and the Marriott to hurricanes and the current pandemic. Now, during a time of great economic calamity and uncertainty, Summers End and its investors stand ready and willing to bring a world-class marina project to our shores. Summers End and its investors have spent several million dollars just

trying to break ground on this marina. Despite an opposition to the project, well-funded by outside interests, Summer's End has stayed the course, and has continued work diligently to bring the next 5-star project to our Territory. The game plan of David Silverman, Save Coral Bay, and its supporters has been transparent since the beginning; delay the Summer's End project and drive up its costs until its investors walk away. This is not a good faith opposition to the project. Every legal challenge the project's opponents have filed has been defeated, but they will continue to file lawsuits just to drive up the cost of investment. Their plan is not to "win" on the merits, but to win a war of attrition by running up costs until our investors say "enough." To permit this type of bad-faith opposition defeat major investment in the U.S. Virgin Islands would send a signal to potential investors that their money is better spent elsewhere.

I also ask this body, do not be fooled by opponents of this project claiming, "we are not against investment, it is just that we do not want this particular project." This too is a bad-faith argument. Neither David Silverman nor Save Coral Bay support any major projects in the Virgin Islands. Their goal is simple, no developments ever. Mr. Silverman and his supporters want Coral Bay to remain as it is today. They oppose any investments as a matter of course. The lack of economic opportunity for native St. Johnians and the inability of many ancestral St. Johnians to remain on the island and raise families due to lack of financial opportunity does not concern Save Coral Bay. Indeed, David Silverman already fought against affordable housing in St. John. David Silverman has found his piece of paradise in St. John, and he intends on keeping it just the way HE likes it, no matter the consequences for ancestral St. Johnians.

In addition, whether David Silverman or Save Coral Bay claim that they would support some other project is irrelevant; there is no other project. Save Coral Bay cannot compel Summer's End's investors to build a project that Save Coral Bay desires. These investors determine whether they want to invest in a project, and they have already decided to invest in the Summer's End project, not some non-existent fairy-tale project of Mr. Silverman. I beseech this honorable body, please do not let the next great 5-star project leave the Virgin Islands and instead go to St. Kitts, the Bahamas, Barbados, or any of the countless other islands competing for tourist dollars. Investors will invest their money; it is just an issue of where. I say, let it be here.

I will now briefly discuss two pending legal issues of interest to the project. First, there has been issues raised by beneficiaries of the Marsh Sister's Trust about legitimacy of the lease between Summer's End and the Trust. We have had some discussions with counsel for the Trust's beneficiaries seeking to resolve any dispute. While the parties agreed to keep those discussions confidential, I can state that Summer's End has worked hard with the Trust's attorneys to come to an amicable resolution regarding these contentions. I was in communications with those attorneys just before submitting this testimony in writing.

That being said, Summer's End's lease with the Trust is in good standing, and there is no legitimate issue with the lease or the addendums thereto. The Original Lease between the parties was executed in 2012, with an addendum executed by the parties in 2013, and a Second Addendum signed for the Trust properties in 2016. Neither the Trust nor its beneficiaries has ever filed a legal challenge to the lease or addendums in the 8 years since the execution of the Original Lease, or the four years since the execution of the "Second Addendum" to the lease. Sadly, Save Coral Bay and David Silverman have been falsely suggesting to the Trust that if they can kill the Summer's End project, they

will assist the Marsh Trust in some other beneficial use of the land. This is a truly cynical attempt have the relationship between Summer's End and the Trust devolve into litigation. Mr. Silverman believes that if he can force the Marsh Trust and Summer's End into litigation, he can kill the project and tie up Summer's End and the Trust properties in Court for several years. If he can do that, he is "killing two birds with one stone." He can stop the Summer's End project and tie up the Marsh properties in litigation for years, thus precluding any development at all. Thus, he would get what he truly desires, No Development in Coral Bay.

The 2016 Addendum to the lease between the Trust and Summer's End granted the Trust 1% ownership in the Summer's End project plus rents once the project began. This was done to assist the project in getting started but, more importantly, to provide the Trust and its beneficiaries with generational wealth. With the Trust obtaining rents from its properties plus dividends from the marina itself, the Trust stands to generate wealth for its beneficiaries far in excess of what it would receive under a "rents only" agreement. This was the desire of Eglah Clendinen and Minerva Marsh and is why they each agreed to this proposal in 2016.

Both Eglah Clendinen and Minerva Marsh executed the Trust documents on November 1, 2004 and further executed quitclaim deeds for the subject properties on November 1, 2004 and November 4, 2004, respectively. The execution of the Trust documents and the execution of the quitclaim deeds established and funded the Trust in accordance with Virgin Islands' law. A quitclaim deed to a Trust properly funds and establishes a Trust as a matter of law in the Virgin Islands (even if neither is not recorded). Our Supreme Court affirmed this issue *King v. Appleton*, 2014 WL 4968290 (V.I. Oct. 6, 2014).

There has also been some suggestion of irregularity about whether the Marsh Sister's signed the Trust. Both the Marsh Sisters and the Successor Trustees have executed numerous documents recognizing the existence of the Trust in the nearly 16 years since inception. Furthermore, on March 13th and March 15th, 2006, Eglah Clendinen Marsh and Minerva Marsh, respectively, executed the *Trustee's Certification* further attesting that each had, in fact, created the Trust. That document attested that the sisters were:

2. ...the initial Trustees of the **MARSH SISTERS TRUST, dated November 1, 2004 (the "Trust")**. We retain our capacity as Trustees. (emphasis in original).
3. A true and accurate, copy of the Trust is attached hereto as **Exhibit A**. The Trust has not been amended and has not been dissolved since its declaration on November 1, 2004.
4. All provisions of the Trust remain in full force and effect.

Moreover, in December 2019, Jacqueline Clendinen named herself as the successor Trustee of Eglah Clendenin for the Trust, and Gary Lopez did the same on February 10, 2020. In executing these documents, both the then Trustees and the successor Trustees drafted and executed a document stating:

Whereas, effective as of November 1, 2004, Eglah Marsh Clendinen and Minerva Marsh Vasquez, as the Grantor/Settlors, and as Trustees, executed "The Marsh Sisters' Family Trust dated November 1, 2004" (the "Trust");

The succession documents also stated:

I, Jacqueline Clendinen, a/k/a Jacquelyn Clendinen, do hereby accept my appointment as Successor Trustee.

I, Gary Lopez, do hereby accept my appointment as Successor Trustee.

As such, the contention that the Trust was not created or that it was not executed is belied by the documents crafted by the lawyers for the Trust, and executed by the Trustees and Successor Trustees. No challenge to the existence of the Trust has ever been filed by any Trustee or beneficiary of the Trust, and the time that anyone could have done so is long-passed.

There has further been a suggestion that the 2016 Second Addendum to the Original Lease could not be signed by Eglah Clendinen because she had named Jacqueline Clendinen as her "Power of Attorney" in 2015. Signing a Power of Attorney does not divest a person of acting on her own behalf, it only grants another party to act on her behalf as well. It is axiomatic that a principal does not divest herself [here Eglah Clendinen] of authority to manage her affairs simply by granting another the authority also to act on her behalf. Eglah Clendinen had full authority to execute the Second Addendum on September 1, 2016. In fact, her sister executed that same document two months later on November 1, 2016. If there had been some irregularity with that document, Minerva Marsh would not have executed it two months after her sister, particularly with Gary Lopez, her successor Trustee, acting as the witness thereto.

There has also been some contentions about some earlier lease between the Trust and an entity called "Coral Bay Marina" in 2004. To be sure, that Lease is not part of this proposal and the Trust has already recognized and categorized the August 2, 2012 lease as the "Original Lease" between the parties in various documents. While there was an issue raised about a signature missing a witness, a witness is not required for a lease. More importantly, in the 2016 Addendum the Trust recognized the August 2, 2012 lease as the operative lease, along with the assignment to Summer's End and the 2013 First Addendum. Summer's End paid the Trust \$10,000 for the 2013 Addendum and \$25,000 for the Second Addendum. The Trust accepted both payments in accordance with the agreements. In the 16 years since the creation of the Trust, nobody filed any action to challenge the Trust, the lease, or any amendments thereto. As a matter of law, each of those documents are in good standing today.

If this Legislature votes positively on the CZM Permit and the Submerged Land Lease as proposed, the US Army Corps of Engineers permit will soon follow. Then, almost immediately the Marsh Trust, and the other properties in the project, will begin seeing revenues come in for the use of its land in the marina project. Our goal is the same as the Trust and its beneficiaries, we want to get to the point that our partners begin getting consistent payments for their contribution to the marina project, but this cannot happen until we receive permitting from this body.

As to the issue with Parcel No. 13 Remainder Carolina, the land owned by Jim Phillips and Genoveva Rodriguez, I have no doubt that all parties will close as soon as Summer's End obtains the permits for the project as outlined in the Original Contract and Addendums with the Phillips/Rodriguez family. The Phillips' family wants to close on the property, and so do we. The conditions to closing are the receipt of the permits from this body, and from the US Army Corps of Engineers.

To date, Summer's End has paid the sellers \$135,000 in non-refundable deposits pursuant to the agreements. As a matter of law, Summer's End retains equitable title to Parcel No. 13 Remainder Carolina today as it has since December 2013. Summer's End, therefore, holds the right to do all thing necessary to apply for and obtain permits as owner of the subject Property. Pursuant to the Contract of Sale and the amendments, the closing on the Property will take place within one week of the issuance of the CZM and USACE permits.

It is my understanding the son of Jim Phillips and Genoveva Rodriguez, James Peyton Phillips, has sent correspondence to the Legislature stating that SEG's right to the Property had expired or was otherwise revoked. Let me state this as directly as possible; neither Jim Phillip and Genoveva Rodriguez nor James Peyton Phillips have any legal right or authority to revoke, rescind, or alter the Contract of Sale and amendments. Because Summer's End retains equitable title to the Property, the sellers cannot lease, sell or otherwise take actions with the Property contrary to the agreements or contrary to the rights and interests of Summer's End.

Summer's End, as they are with the Marsh Trust, are excited at the opportunity to give them exactly what they want, payment for the property.

I would caution this body against any suggestion that we wait for all the litigation to cease before considering this project. Lawsuits take years under normal conditions. The Covid-19 outbreak has ground court operations to a standstill. Regardless of merit, David Silverman and Save Coral Bay will engineer lawsuits for the life of the project. The Virgin Islands cannot be held hostage by these bad faith tactics and lawsuits. Recently, I obtained some emails from Mr. Silverman in the course of litigation. In a September 17, 2019 e-mail, Mr. Silverman, when discussing the marina project with James Phillips stated:

Whatever is done, it is best for me to keep my name out of it, otherwise it raises the specter of conflict of interest with my role on CZM. But there are ways to get around all of that.

Despite the fact that Mr. Silverman recognizes that his actions in opposition to the marina project constitute a "conflict of interest," Mr. Silverman has hatched a plan to "get around all that." Mr. Silverman should simply comply with the conflict of interest rules, not look to "get around" them. I have further e-mails from Mr. Silverman directing the Phillips family how to challenge the permits to avoid closing on the property with Summer's End. But statements like these expose the real David Silverman as someone who is willing to violate his ethical obligations to pursue his self-interest. I would be happy to provide the Senate with a copy of these e-mails if it so desires, and I will be subpoenaing more documents from Mr. Silverman directly.

Summer's End does not desire to be in litigation with anyone. Summer's End is here to build, operate, and maintain a 5-star marina for years to come. This will benefit the Virgin Islands as a whole, but mainly St. John and the families of Coral Bay. It is not just tax revenue that marina will generate. This project will rejuvenate the waters of Coral Bay, and provide employment and career opportunities that we do not, and will not have without it.

As a final note, I was invited on a boating trip about 3 weeks ago. When we arrived at Lime Out on Coral Bay, one of the children aboard asked his mother if he could go in the water, the Captain, a local man born and raised on Water Island interjected and told the child "No, you can't swim here, the water's dirty." The Summer's End project aims to end the pollution of Coral Bay. No longer will Coral Bay be a graveyard for damaged or abandoned boats, spewing filth and debris in the water, and where mothers have to tell their children they cannot swim. The marina project will bring Coral Bay back to life, literally. I hope that you will vote in favor of this project, for the future of Coral Bay and the Virgin Islands.

Again, I thank you and your colleagues for taking the time to consider my testimony.

Sincerely,


DAVID J. CATTIE, ESQ.

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