

Ms. Carolyn Farmer, Project Manager
US. Army Corps of Engineers
Jacksonville Regulatory Division
South Permits Branch
Palm Beach Gardens Permit Section
4400 PGA Boulevard, Suite 500
Palm Beach Gardens, FL 33410

1 July 2020

RE: **SAJ-2004-12518-CHF (St John Marina) – The Summer’s End Group LLC**

**Comments on Information Provided by Applicant Pursuant to NMFS HCD and NMFS
PRD Information Requests**

Dear Ms. Farmer,

I am writing to you on behalf of the Coral Bay Community Council (“CBCC”), the designated watershed management agency for Coral Bay, St John, United States Virgin Islands. I am also writing in my capacity as President, Save Coral Bay Inc, a Virgin Islands Non-Profit Corporation.

On April 15, 2020, we submitted a request for documents under the Freedom of Information Act (“FOIA”) relating to the United States Army Corps of Engineers (“USACE”) review of documents provided by the Summers End Group LLC (“SEG”) for a marina project in Coral Bay, St John, US Virgin Islands (the “St John Marina”). The USACE permit application number for this project is SAJ-2004-12518.

On May 28, 2020, we received several documents in response to the FOIA request, including correspondence from Ms. Kelly Egan, Project Manager (USACE) to Ms. Chaliese Summers (Summers End Group) dated March 26, 2020, requesting additional information from SEG (the “RAI”). On June 2, 2020, we filed an additional FOIA specifically requesting SEG’s response to the RAI. We received the SEG response documents via FOIA on June 19, 2020.

These documents all refer to information requests from the National Marine Fisheries Service (“NMFS”), specifically from the NMFS Habitat Conservation Division (“NMFS HCD”) and the Protected Resources Division (“NMFS PRD”). A brief history of the exchange of documents between NMFS, USACE and SEG is as follows:

- **July 10, 2018:** A formal consultation request was sent by USACE to NMFS PRD.
- **July 12, 2018:** A formal consultation request was sent by USACE to NMFS HCD.
- **September 26, 2018:** NMFS PRD sent email to USACE requesting additional information and studies required in order to initiate the formal consultation under Section 7 of the Endangered Species Act.

- **October 25, 2018:** NMFS HCD sent a letter to USACE requesting additional information and studies required to initiate the formal EFH consultation under the Magnuson-Stevens Act.
- **December 2019:** The Summers End Group (“Applicant”) submitted documentation to USACE including additional studies and partial responses to the information requested by the NMFS divisions.
- **March 26, 2020:** After reviewing the Dec 2019 documents submitted by the Applicant, USACE sent a Request for Additional Information (“RAI”) to the Applicant.
- **May 25, 2020:** The Applicant sent a response to the RAI to USACE.

For background reference we have attached to this note the first four of the items above (see Attachment 1).

We have now had the opportunity to review in detail the RAI and the Applicant’s response to the RAI. **It is our opinion that the majority of the additional information requested by USACE in the March 26, 2020 RAI has not been provided by the Applicant.** Rather than provide new analyses or study data responding to the USACE and NMFS requests, the Applicant has, for the most part, simply sent excerpts of documents and statements that have been provided to the Army Corps in the past. **In addition, it is our opinion that not all of the important information requested by NMDS HCD and by NMFS PRD in 2018 has been provided by the Applicant.**

Our key findings after reviewing the Summers End Group response include the following:

1. SEG did not respond to many of the Corps’ information requests and responded incorrectly to other requests.
2. The project has changed substantially since the July 2015 Public Notice, including features such as addition of a public mooring field, elimination of two of the central marina parcels , major reduction in the stormwater mitigation measures, and addition of a shoreline boardwalk. SEG has not accurately accounted for the many ways in which the project has changed since the July 2015 Public Notice.
3. SEG no longer has any access to develop on key parcels within the originally proposed project.
4. SEG has misrepresented their mitigation by failing to accurately assess impacts to protected resources and by including as mitigation many items which do not qualify as compensatory mitigation under federal regulations.
5. SEG has failed to perform a proper alternatives analysis as required by federal regulations.

We have prepared a detailed commentary on the Applicant’s May 25. 2020, response to the March 26, 2020, RAI in the notes below and the related Attachments. For ease of reading we have reproduced the USACE RAI in its entirety with the RAI text **highlighted in yellow**. Our comments follow the RAI text, inline, in normal font. For clarity each of our comments is preceded by the words **“CBCC Comments on SEG Response”** in bold red font.

We are sending this analysis to you in the hope that it will assist your review of the Summers End Group responses. We respectfully request that you place these comments in the official administrative record for this permit application review.

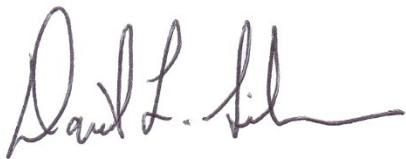
In addition to their responses to the questions asked in the RAI, we note that SEG has also sent two additional items which were not directly related to the RAI. The first of these is a promotional video, first produced in 2017, which purports to represent the opinions of a number of native St Johnians regarding marina construction in Coral Harbor. The second is a series of photographs which the Applicant has entitled "Current Conditions in Coral Harbor and Coral Bay Community." We are taking the opportunity in this submission to respond to both of these items as well.

As part of this submission we are including a petition signed in March 2020 by over 4,000 individuals who are concerned about the future of Coral Bay, St John, and the impacts which the proposed Summers End Marina would have on the human and natural environment. Many of these individuals have offered their own individual comments. We respectfully request that you view the comments of the roughly 20 individuals contained in the Summers End video in light of the comments of the 4,127 individuals who have signed the petition requesting that the permit be denied as not being in the public interest.

It is our strong opinion that, given the many opportunities to provide information requested by the Army Corps and other federal agencies over the last six years and given the significant changes in the project since the July 2015 Public Notice, the current permit application should be denied and the applicant should be given an opportunity to submit a new permit application that will be required to go through the full permit review process including public comment and a public hearing.

If we can be of further assistance in the review of this application please do not hesitate to let us know.

Respectfully submitted,

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

David L Silverman
Secretary, Coral Bay Community Council, a 501(c)3 organization
President, Save Coral Bay Inc., a Virgin Islands non-profit corporation

LIST OF ATTACHMENTS

- Attachment 1: USACE Consultation Requests to NMFS and NMFS RAI Letters
- Attachment 2: CBCC March 2020 Comments (to SEG NMFS Response)
- Attachment 3: Parcel 13 Remainder Owner Affidavit
- Attachment 4: Excerpt of SEG 2017 Compensatory Mitigation Plan
- Attachment 5: CBCC May 2018 Comments to USACE
- Attachment 6: Summers End Group CZM Permit Status Commentary
- Attachment 7: Jan 2020 Letter to USACE re CZM Permits
- Attachment 8: July 2016 Letter to USACE re Parcels 13-A and 13-B Carolina
- Attachment 9: Jan 2015 National Park Service Comment Letter to USACE
- Attachment 10: US EPA Comment Letter and 404(q) Memorandum of Agreement

March 2020 Petition to the Army Corps of Engineers

Completeness Summary/ Request for Additional Information

Description and Narratives:

1. Please provide a table that compares all previously proposed activities with currently proposed activities.
 - This table at a minimum shall include all past proposed activities which are no longer part of the current proposal; it should include all proposed works, including but not limited to upland activities, docking structures, piles, mooring slips, mooring buoys, navigation channel, riprap, removal of vessels, coral/ seagrass relocation or transplantation, mangrove impacts, stormwater management activities, fill activities, wave attenuator, mitigation efforts, etc.

CBCC Comments on SEG Response:

The Applicant has provided a spreadsheet entitled “Exhibit 1 – 2020 RAI Response Table” which purports to identify, on the sheet entitled “Proposed Works”, all of the currently proposed activities compared with previously proposed activities.

Based on the publicly available documents submitted by the Summers End Group to the Army Corps and to local USVI permitting authorities over the past six years, it is apparent that there are multiple errors and omissions in this spreadsheet. Listed below are the most significant of these:

- a. **Addition of 75-Position Mooring Field:** The original proposal submitted by SEG to the Corps in 2014 included creation of a 75-position mooring field as a public/private cooperative venture with the Virgin Islands Department of Planning and Natural Resources (“DPNR”). This component was explicitly identified in SEG’s USACE permit application in April 2014 and again in SEG’s September 2014 permit application. The January 2015 USACE Public Notice included the mooring field in the description of the project:

“The applicant seeks authorization to construct a private commercial marina with 145 slips of varying length, dinghy to 210 feet, and 87 moorings buoys, 75 of which would be managed through a public private partnership with the DPNR.” (January 2015 USACE Public Notice)

However, when SEG submitted a third USACE permit application in May 2015, the mooring field was removed from the project. This component was not included in the documents distributed by USACE for Public Comment in July 2015. The July 2015 Public Notice included the following statement:

“BACKGROUND: On January 7, 2015, the Corps issued a Public Notice for this project. As indicated in the Public Notice, the U.S. Fish and Wildlife Service (FWS) was acting as lead agency in the Federal environmental compliance review, coordination and consultation procedures for the project. However, via letter dated April 3, 2015, the Corps received notification that USFWS had withdrawn from the Federal lead agency role for this project. In addition, various components of the proposed project (mainly the 75-buoy mooring field and the repairs to an existing rip-rap) were eliminated. Based on the above, the Corps determined that a new Public Notice for the proposed project was warranted.”

The management of public mooring areas in the USVI is under the authority of DPNR. SEG received a letter of intent for the creation of the mooring field from DPNR in March 2014. That letter required a formal agreement within 90 days, which never happened. As a consequence, to the best of our knowledge, the Summers End Group has no authority for construction of the 75-position public mooring field, and hasn't had authority to do so for over six years.

Needless to say, the public would be highly impacted if the current designated mooring field were put under the management of a private entity (SEG). But since this component was removed from the USACE Public Notice in July 2015, there has been no opportunity for public comment to the Army Corps regarding this major component of the proposed project. It should be noted that all public comments submitted to the Army Corps during the January 2015 public comment period were lost due to a computer failure in the San Juan USACE office.

The mooring field has been cited by SEG as a highly significant component of their compensatory mitigation plan. In various documents they claim (without any supporting evidence or analysis) that it will “protect 16 acres of Submerged Aquatic Vegetation”. However there has NEVER been any proposed design for the mooring field, no location maps, no description of management and operational procedures. No detailed information whatsoever has ever been provided to the public for the mooring field.

At this point in time, based on the current statements of the Applicant, it appears as though the “75-position mooring field” is once again part of their proposed works, and if so, it would be a major change from the most recent Public Notice (July 2015) which did not include this component. This change in scope alone should trigger a new Public Notice and Public Comment period.

It should be noted that in their table of “Proposed Works” the Applicant indicates that there is “No Change” with respect to the Mooring Field. This is incorrect, since the Mooring Field was explicitly eliminated from the July 2015 Public Notice and has now “reappeared.”

- b. Marina Structural Redesign:** The original (2015) design for the fixed marina structures was based on 1333 concrete and steel pilings. According to testimony given at the 2014 CZM hearing this design was capable of withstanding the impacts of a major hurricane. Mr. Jeff Boyd, consultant to the Summers End Group, made that statement in August 2014 at the CZM Public Hearing.

In September 2017 the island of St John was impacted by two major hurricanes within a two week period. On September 6, 2017, hurricane Irma hit Coral Bay with sustained winds in excess of 200 miles per hour. Just ten days later, on September 16, 2017, hurricane Maria hit Coral Bay with Category 5 winds of over 160 miles per hour.

In August 2017 a modified marina design by a new engineering firm was submitted by SEG to USACE. It is based on a revised structural design with a lower piling count of 960 pilings. It is also based on a substantially lower wind speed design criterion than the prior design. According to the documents accompanying the August 2017 submission, the marina is designed for maximum winds of 96 MPH, which is obviously far less than a major hurricane. Even with the stated 50% safety factor this design would have failed in both hurricanes Irma and Maria. The data block below is from the August 2017 design documents submitted by SEG to the Corps:

TECHNO MARINE	
Advanced Docking Solutions	
Projet	SUMMER'S END MARINA, ST-JOHN'S, VIRGIN ISLAND
Project	
DESIGN CRITERIA	
WIND SPEED (25 yrs) FULL OCCUPANCY: 83 mph	
WIND SPEED (50 yrs) WITHOUT BOATS: 96 mph	
SECURITY FACTOR (WIND LOAD) : 1.5	

This data may be found in the Applicant response at “Exhibit 16 - Dock Drawings Final Set - Techno Marine” on page 2, entitled “General Layout.”

The public is entitled to comment on this major change in marina structural design. Failure of a marina due to catastrophic storm damage could have severe implications for public health, public safety and public welfare.

It should be noted that although the Applicant identified the reduction in piling count as a change, the Applicant has not identified the reduced structural strength of the new marina dock design as a change in their table of Proposed Works.

- c. Major Change to Storm Water Management / Mitigation:** The proposed location for the Summers End marina is at the foot of a major storm water drainage gut. One of the most significant environmental benefits of the 2015 proposed marina design was engineering of a large storm water detention and retention pond and underground storage. This was designed to capture the heavy sediment laden stormwater and provide an opportunity for settling of sediments before water was released into the harbor. The storm water management required diverting the main gut into a filter strip and detention pond using Parcels 13-A, 13-B and 10-41 Carolina.

The data below is an excerpt from the EAR submitted by the Applicant to the Army Corps in 2015, indicating a requirement for 33,380 cubic feet of detention pond and 25,281 cubic feet of underground storage for a total of 58,611 cubic feet total storage. This was calculated for the expected 1-Year rainfall event.

14 0304SW-Overall Marina Calcs VI-Coral Bay 1-Year Duration=30 min, Inten=1.28 in/hr
Prepared by Hewlett-Packard Company Printed 3/28/2014
HydroCAD® 10.00 s/n 05445 © 2011 HydroCAD Software Solutions LLC Page 9

Summary for Pond BMP1: BMP 1 - Main Detention/Retention Pond & UG Basin

Inflow Area = 2,989,826 sf, 11.37% Impervious, Inflow Depth = 0.44" for 1-Year event
Inflow = 33.68 cfs @ 0.50 hrs, Volume= 109,417 cf
Outflow = 25.55 cfs @ 0.77 hrs, Volume= 85,714 cf, Atten= 24%, Lag= 16.0 min
Primary = 25.55 cfs @ 0.77 hrs, Volume= 85,714 cf

Routing by Dyn-Stor-Ind method, Time Span= 0.00-37.00 hrs, dt= 0.01 hrs
Peak Elev= 4.02' @ 0.77 hrs Surf.Area= 13,145 sf Storage= 52,564 cf

Plug-Flow detention time= 257.8 min calculated for 85,691 cf (78% of inflow)
Center-of-Mass det. time= 248.8 min (294.5 - 45.8)

Volume	Invert	Avail.Storage	Storage Description
#1	-2.00'	33,380 cf	Custom Stage Data (Prismatic) Listed below (Recalc)
#2	-1.50'	25,281 cf	66.00'W x 96.00'L x 4.20'H Prismatic
			26,611 cf Overall x 95.0% Voids
		58,661 cf	Total Available Storage

When Parcels 13-A and 13-B Carolina were sold to a third party and became unavailable for use in the marina project, Summers End was forced to revise the storm water management design. The drawings submitted in August 2017 (the most current design) has reduced the capacity of the storm water detention by at least 70% and eliminated most of the rechanneling of the drainage gut. This new design will be inadequate to contain runoff and remove sediments which will be deposited into Coral Harbor directly at the head of the marina. The new design does not even meet the requirements identified by the Applicant in their own 2014 EAR, as shown above.

The Applicant's table of "Proposed Mitigations" includes the descriptive comment "underground stormwater sediment settlement and detention of 3,294 gallons +/- provided on Parcel 10-41 Rem. Identified on civil plans as Underground Storm Storage." This must be an error. A capacity of 3,294 gallons (equivalent to 422 cubic feet) is less than 2% of the required capacity. The 2017 drawings indicated 9450 cubic feet of underground capacity, which is still a small fraction of the required capacity for the 1-Year storm event.

This is a major change in design, a major reduction in public and environmental benefits, and raises the potential that deposition of sediments within the marina footprint will necessitate dredging in the future.

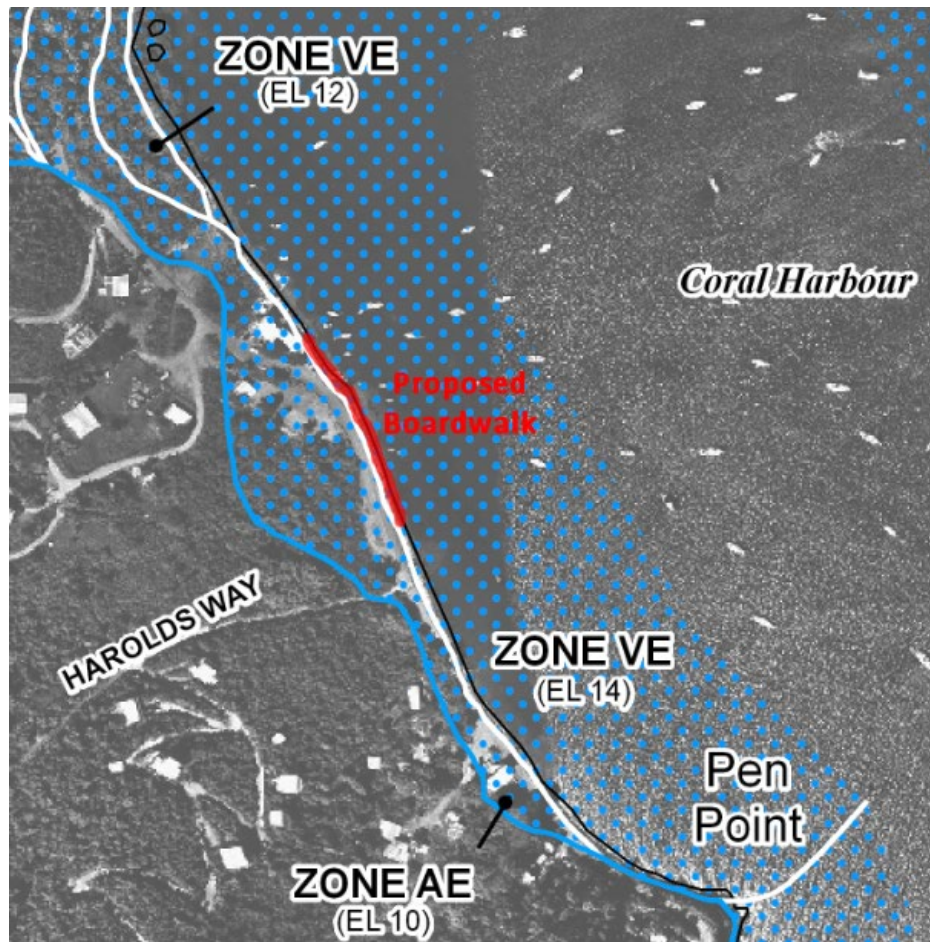
It should be noted that the Applicant has not identified the major reduction in storm water management and sediment control as a change in their table of Proposed Works, and in fact this is labeled, incorrectly, as "No Change".

- d. Addition of Shoreline Boardwalk:** Due to the loss of parcels 13-A and 13-B Carolina the upland component of the Summers End Marina now consists of two detached land areas, which were previously connected via 13-A and 13-B Carolina. In order to avoid foot traffic on the main roadway SEG is now proposing a boardwalk above the stone revetment on the shoreline of Coral Harbor.

This component of the Summers End plan was never mentioned in any of the three USACE permit applications or public notices (Jan 2015, July 2015). It first appeared in the August 2017 document submission.

As detailed by us in comments to USACE in March 2020 (Attachment 2, page 33), the proposed boardwalk is infeasible for multiple reasons. First, this shoreline is heavily impacted by wind and wave action due to the open fetch to the

southeast. The boardwalk is located at the boundary of a FEMA VE-14 coastal high hazard zone and an AE-10 flood zone. It is highly likely that the structure would be severely impacted in any significant storm event with the possibility of undermining and compromising the roadway (which is the sole access road to the south side of Coral Bay). A detail of the FEMA flood zone map is shown below, with the proposed boardwalk highlighted in red:



The public has never been given an opportunity to comment on the feasibility or desirability of a boardwalk along this portion of the shoreline of Coral Harbor. The boardwalk will effectively block access to approximately 400' of shoreline that is frequently used by recreational kayakers and local fishermen.

It should also be noted that in their table of Proposed Works the Applicant states that there will be no piling impacts to the seabed or marine habitat from the boardwalk and that all pilings are installed "on shore." However the engineering drawings submitted for the boardwalk in August 2017 indicate that the seaward pilings are installed at or below mean high water, so it appears that the

statement in the table of Proposed Works is inconsistent with the engineering drawings.

- e. **Use of Parcel 13 Remainder:** In June 2019 the owners of Parcel 13 Remainder, Jim Phillips and Genoveva Rodriguez, submitted an affidavit to the Army Corps stating unequivocally that they will not allow the Summers End Group to conduct any construction activity on their property and that they have no intention now or in the future of selling or conveying this property to the Summers End Group (see Attachment 3).

In spite of this statement by the owners of the parcel, the Applicant continues to include major portions of their proposed project on the land and within the littoral rights of Parcel 13 Remainder. These project components should have been removed from the Proposed Works table but they have not been.

There are currently two lawsuits pending between the Summers End Group and the owners of Parcel 13 Remainder. Why is the Army Corps continuing to review a permit involving this parcel while these lawsuits remain unresolved and while the owners steadfastly refuse to convey the property to the developers?

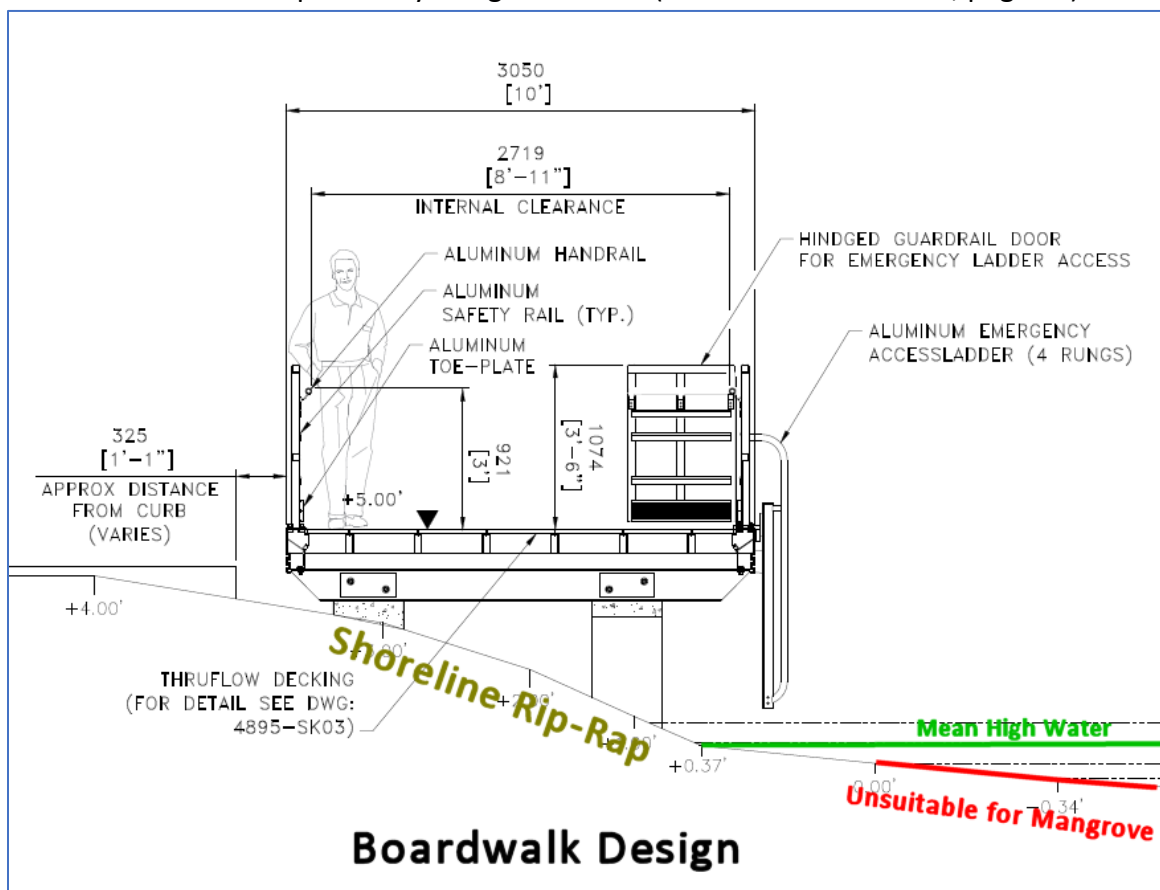
- f. **Discovery of Significant Submerged Historic Resources:** In October 2019 an independent archaeological survey of the seabed within the footprint of the SEG marina discovered a shipwreck of great antiquity and historical significance. This site had previously been surveyed by PanAmerican Consultants, who incorrectly identified it as an early 20th century wreck. Current studies indicate that the wreck may date from the 18th century and may be the oldest shipwreck ever surveyed in the waters of St John. VISHPO (Historic Preservation Office) is aware of the findings. The removal of one finger pier at the southeast corner of the marina was required by VISHPO to prevent destruction of the main ballast pile of this site. However it is likely that VISHPO will need to revise its clearance once the full extent of this wreck is known. The public has never had an opportunity to provide comments on the historic significance of these underwater artifacts since they were not identified at the time of the July 2015 public comment period. The potential for construction impacts to historic and cultural resources is a matter of great public concern in the Virgin Islands.
- g. **Planting of 300 Mangroves / Boardwalk Impacts:** In their table of “Proposed Mitigation” the Applicant indicates that there is “No Change” in the planting of 300 mangroves along the shoreline. However, as we indicated in our March 2020 comments to USACE (Attachment 2, page 33), the construction of the

proposed boardwalk renders it infeasible to plant 300 mangroves seaward of the boardwalk.

Applicant's "Exhibit 13 – 2020 Compensatory Mitigation" includes the following statement regarding the planting of shoreline mangroves:

"Three hundred red mangrove propagules will be placed along the shoreline across the 850 linear feet of shoreline on approximate 3-foot centers. The mangroves will be carefully placed so that they have the greatest chance of survival and will be placed just above the MHW line. The mangroves will be placed amid the riprap/stones on the southern end of the property. Mangroves will be replaced over the five-year monitoring as necessary to assure colonization of the entire shoreline."

The illustration below, excerpted from the Applicant's 2017 Site Plan, clearly indicates that the proposed boardwalk will completely cover the shoreline riprap, and extends beyond the MHW line. It is therefore impossible to plant the mangroves in a suitable location, and this is incompatible with the statement in the "2020 Compensatory Mitigation Plan" (also see Attachment 2, page 33).



The table of “Proposed Mitigation” should be corrected to either indicate that the planting of mangroves is no longer part of the plan, or alternatively the boardwalk design should be changed to allow for suitable mangrove habitat. The two cannot coexist as currently proposed.

- h. Grant Funded DPNR Enforcement Officer:** This proposed mitigation should be identified as aspirational, at best. It is highly unlikely that Applicant will be able to privately fund, or grant fund, a permanent employee within DPNR. We are unaware of any documents which support this claim.
- i. Customs and Border Protection Office:** It must be noted that the Applicant has never provided any confirmation from the US Department of Homeland Security that DHS is willing to staff a CBP office in Coral Bay. This proposal is aspirational at best, and unlikely to ever happen. It should not be identified as a “Proposed Work” unless and until confirmed as being supported by Homeland Security. We are unaware of any documents which support this claim.
- j. Elimination of Removal of Hurricane Debris from Seabed:** In the Applicant’s December 2017 Compensatory Mitigation Plan (prepared subsequent to hurricanes Irma and Maria) the Applicant identified a need to survey 750 acres of Coral Harbor for debris removal and reattachment of broken living corals. The relevant page of that plan is attached as Attachment 4. In the current “2020 Compensatory Mitigation Plan” that component of mitigation has been eliminated. This should have been indicated as a change in the table of Proposed Mitigations.
- k. Elimination of Mitigation for Impacts to the Virgin Islands National Park:** In their December 2017 letter to USACE, the Applicant addressed mitigation for impacts to the Virgin Islands National Park (“VINP”). The letter stated that Summers End was removing all mitigation relating to impacts to VINP due to their inability to meet with and agree the approach with Park Service staff. This is an excerpt of the Applicant’s response to USACE from December 2017:

Applicant’s Response: Summers End Group (SEG) worked with representatives of the National Park Service in May and June of 2017, to develop the mitigation that were previously presented. Unfortunately, changes in the park administration and staffing meant that a response from the Service accepting the proposed mitigation was not received prior to the earlier submittal. SEG continued to reach out to the Park to complete coordination through the beginning of September. Once the hurricanes hit, the applicant has not been successful in reaching anyone associated with the VINP and VICRNM since that time. Accordingly, we are withdrawing all the proposed mitigation associated with the park from this submittal and providing alternative mitigation proposals. When the Park is fully staffed and their hurricane recovery is complete, SEG will reach out to them again to continue its efforts to work with the NPS to protect the area.

The “withdrawal of all the proposed mitigation associated with the VINP” should be identified as a change in the table of Proposed Mitigations.

We also note that the VINP is now fully staffed and has had a fulltime superintendent since Jan 2020, and the same resource officers for more than 5 years. Although there may have been logistical problems in the immediate aftermath of the 2017 hurricanes, SEG’s claim of inability to meet with VINP seems disingenuous at this point in time.

- I. Elimination of Reattachment of Damaged Coral:** In addition to the cleanup of hurricane debris from 750 acres of Coral Bay, the Applicant proposed in December 2017 to repair hurricane damage to coral colonies throughout a 750 acre region of Coral Bay. Their December 2017 plan included the following statement:

Divers will survey the reef and corals which have been knocked loose during the 2017 hurricanes will be re-attached to their substrate using two-part underwater epoxy (Splashzone). The base of each coral will be carefully cleaned with a wire brush and the substrate cleaned to remove algae and any other material which might interfere with the adhesion of the epoxy or cement. Each coral will be carefully placed and held until the epoxy or cement starts to set. Corals will be photographed prior and after re-attachment.

This component of compensatory mitigation has now, apparently, been removed from Applicant’s plans. It should be identified as a change in their table of Proposed Mitigations.

- m. Removal of Two Parcels (13-A and 13-B):** Although the Applicant has identified the removal of two parcels (13A Carolina and 13B Carolina) as a change in their spreadsheet of proposed works, they have failed to accurately describe the impact of that change. These two parcels were the central parcels of the upland project. The main pier of the proposed marina leads directly to Parcel 13-A. Removal of these parcels splits the upland portion of the marina into two discontinuous land areas. This has significant implications for public safety since pedestrians will now need to cross over the roadway (the main thoroughfare) or walk in the roadway to travel between the shops and parking areas. This is a significant public safety concern.

The July 2015 Public Notice was published prior to the removal of these two central parcels and the reconfiguration of the upland project. The public has a

right to comment on this major change to project scope and configuration as it directly impacts public safety and transportation on the public roadway.

CBCC Comments Regarding Section 404 of the Clean Water Act

In addition to the comments above which related to Applicant's table of proposed works, we note that the Applicant has made the following comment regarding project changes and regulatory review:

"In 2016, Applicant eliminated two driveway culverts and fill activities that were previously proposed works in the ghut located between parcel 10-41 Rem and 13b. As a result as of these changes, the Corps reviewer notified Applicant that the application would continue to be reviewed under Section 10 of the Rivers and Harbor Act of 1899, but that the project was no longer subject to review under Section 404 of the Clean Water Act¹ due to the elimination of the fill and rip rap work. Further, the reviewer and his supervisor informed Applicant that the letter of objection filed by EPA relative to the Section 404 activities was no longer an issue in the application since those activities had been eliminated."

The July 2015 Public Notice specifically stated that the project would be reviewed under Section 404 of the Clean Water Act ("Evaluation of the impact of the activity on the public interest will also include application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Clean Water Act...").

If it is the intent of the Corps to change the authorities under which this permit is being reviewed and to eliminate review under Section 404 of the Clean Water Act, then this would constitute a significant change to the July 2015 Public Notice and the public is entitled to an opportunity to comment on this change. **We have never been notified of such a decision by the Army Corps and we believe, for the reasons stated below, that it would be an incorrect and inappropriate decision.**

It has always been our opinion that the design of this marina, consisting of close to one thousand pilings in a low circulation body of water will result in significant changes to flow patterns and materially increase the deposition of sediments on the seabed. The elimination of effective storm water management and the resulting transport of large amounts of terrestrial sediment will exacerbate this condition. It is clear that the marina will adversely impact aquatic function of the vegetated shallows, a "special aquatic site".

¹ Please note that we have requested through FOIA all correspondence between the Army Corps and the Summers End Group. We are unaware of any document stating that the project was no longer subject to review under Section 404 of the Clean Water Act. If such a document exists we respectfully request that it be sent to us, as it would have been subject to a prior FOIA request.

The federal regulations governing Section 404 permits define “Discharge of Fill Material” in 40 CFR § 232.2, which reads as follows:

“Discharge of fill material: Placement of pilings in waters of the United States constitutes a discharge of fill material and requires a Section 404 permit when such placement has or would have the effect of a discharge of fill material. Examples of such activities that have the effect of a discharge of fill material include, but are not limited to, the following: Projects where the pilings are so closely spaced that sedimentation rates would be increased; projects in which the pilings themselves effectively would replace the bottom of a waterbody; projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of waters of the United States; and projects involving the placement of pilings which would result in the adverse alteration or elimination of aquatic functions.”

It is abundantly clear, from the Applicant’s own statements, that the pilings required by this project will “result in the adverse alteration or elimination of aquatic functions”, specifically through the loss of many acres of marine grasses. It is also clear that the marina pilings will impair the circulation to the mangrove just north of the marina location.

For these reasons we continue to believe that this project must be reviewed under the Section 404(b) Guidelines of the Clean Water Act, as stated in the July 2015 Public Notice. We also believe that the United States Environmental Protection Agency letter of August 19, 2015 (Attachment 10) remains relevant to the project and the elevation procedures described therein must be followed.

Finally, we want to point out that the authority of the EPA to require elevated review of projects that “will have a substantial and unacceptable impact on aquatic resources of national importance” is not limited to projects reviewed under Section 404 of the Clean Water Act. The 1992 Memorandum of Agreement between EPA and the Army Corps specifically states that the authority includes projects that are only authorized under Section 10 of the Rivers and Harbors Act. Please see Attachment 10 for the documents relating to EPA review (EPA comment letter, 1992 Memorandum of Agreement, 1992 Questions and Answers on MOA).

We would like to draw your attention to Section 3 (“Applicability”) of the 1992 Memorandum of Agreement, which clearly states that the agreement is applicable to permits granted under Section 10 of the Rivers and Harbors Act:

3. Applicability: This agreement shall apply to Regulatory authorities under: a) Section 10 of the Rivers and Harbors Act of 1899; b) Section 404 of the Clean Water Act; and c) Section 103 of the Marine Protection, Research and Sanctuaries Act.

We would further like to draw your attention to Question and Answer number 21 in the Interagency Questions and Answers document:

INTERAGENCY QUESTIONS AND ANSWERS
CONCERNING THE 1992 404(q) MEMORANDA OF AGREEMENTS

21. **Q.** Does Part IV restrict elevations of individual permits to those authorized under Section 404?

A. No. The MOA clearly states on page 1 that the agreement is applicable to Section 10 and Section 103 permits, as well as those issued under Section 404. The use of the term "discharge" in Part IV was not intended to further limit the applicability of the MOA to Section 404 only.

For the reasons cited above, we believe (a) the permit requested by the Summers End Group must be reviewed under Section 404 of the Clean Water Act, and (b) regardless of the review authority (Section 10, Section 404, or both), the designation by the EPA of Coral Bay as an "aquatic resource of national importance" and the elevation of review requested by the EPA in their comment letter are relevant to the current project.

- Please include all permanent, temporary, and/or secondary impacts with the quantities of the impact and type.

CBCC Comments on SEG Response:

The Applicant responded to this request by stating "the project impacts are delineated in the table as requested." However the table (Exhibit 1 - 2020 RAI Response Table) does not contain any information on impacts other than an incorrect computation of impacts to EFH on the "Summary" tab of the spreadsheet.

SEG has not identified any secondary impacts, temporary impacts, or cumulative impacts. SEG has not identified any impacts to air quality stemming from use of

diesel generators on board yachts. SEG has not identified any sound or light impacts from 144 yachts and associated tender vessels berthed at the marina.

SEG has not identified any potential water quality impacts stemming from toxic effluents, including detergents and hydrocarbons from mega yachts. SEG has not made any statements about the impacts of toxic ablative bottom paints, including TBT which is still available in some jurisdictions.

SEG has not listed any impacts to ESA-listed corals or to critical habitat for coral growth. SEG has not identified any impacts to other protected species, including Green Sea Turtles, Hawksbill Turtles and Nassau Grouper.

SEG has not listed any impacts to marine life from erosion due to pile driving.

SEG has incorrectly quantified direct impacts to EFH (see discussion on this topic later in these comments).

SEG has not considered any impacts to the human environment or the economic environment, including sonic impacts to residents and visitors from construction and piling installation.

In short, the Applicant has not responded to this request.

- Please note that if the project varies from the previous Corps issued Public Notice dated July 9, 2015, a new public notice may be required.

CBCC Comments on SEG Response:

The project has changed substantially from what was described in the July 2015 public notice. Two parcels out of seven parcels have been removed from the plan. Effective storm water mitigation has been removed from the plan. A boardwalk has been added. Proposed mitigation has changed. Site conditions have changed following major storms in 2017. A 75-position mooring field has been added to the plans.

We offer the following comments regarding the need for a new public notice and public comment period:

- a. The many changes in proposed scope and design identified above have never had the opportunity for public comment. Some of these changes will be highly sensitive and of concern to residents, property owners and visitors to Coral Bay and St John.

- b. It is the opinion of literally thousands of individuals with direct connections to Coral Bay, St John, that this permit application should be denied because the project is clearly not in the Public Interest. We are attaching a petition signed in March 2020 by over 4,100 individuals requesting that the Army Corps of Engineers deny the permit application of the Summers End Group. Many of these individuals included optional comments which we have included with the list of names. It has always been, and remains our firm belief that this project is not in the Public Interest.
- c. The site conditions throughout Coral Bay were dramatically changed by hurricanes Irma and Maria. The environment is in a state of fragile recovery where any additional impacts could have lasting consequences. Many individuals feel that the potential for impacts on public safety and the human environment have been exacerbated following the devastating storms of 2017. These individuals deserve a right to have their opinions heard by the Corps.

It is therefore our opinion that either (a) the permit requested by the Summers End Group should be denied, or (b) the project should be required to prepare a complete Environmental Impact Statement due to the fact that the project will significantly affect the human and natural environment.

- 2. Please clarify the parcels where the proposed works are to take place and provide a table to include what portion of the proposed works are to occur on each individual parcel and identify the ownership of the parcels.
 - It is unclear from the provided information if upland activities are still to occur as there are various documents that still reference such.
 - If activities located on the uplands are no longer part of this proposed project, all documents (including drawings) shall be revised to exclude the upland activities and be provided for review.

CBCC Comments on SEG Response:

The Applicant has offered three exhibits in response to this question (Exhibits 2, 3 and 4). We wish to make the following observations about these responsive exhibits:

- a. **Inconsistencies in the storm water management design:** Exhibit 4 – Summers End Final Civil Drawings illustrates the “Underground Storm Storage” on two drawing sheets – C301 (Utility, Electrical Plan and Storm

Drainage) and C400 (Stormwater Management Plan). However the dimensions of the main stormwater containment feature differ on these two sheets. On Sheet C301 the depth is shown as 2' and on Sheet C400 the depth is shown as 1.5', a difference of 25% in total volume. Neither of these dimensions agree with the capacity stated in Exhibit 1 (3,294 gallons).

- b. **Building footprints in violation of local zoning code (Parcel 10-19):** The preexisting structure on this parcel was nonconforming with the setback requirements of the zoning code, as noted on the drawing. This building was destroyed in hurricane Irma. The zoning code does not allow reconstruction of nonconforming structures after one year, and that time window has long passed. The drawing for this parcel is therefore incorrect.
- c. **Works on Parcel 13 Remainder:** The ownership of Parcel 13 Remainder (Eastern and Western Portions) is correctly shown as Jim Phillips and Genoveva Rodriguez. These owners have submitted an affidavit to USACE stating that they do not and will not allow the Summers End Group to conduct any work on their property (see Attachment 3). There is currently a pending lawsuit by the property owners alleging title slander against the Summers End Group and Chaliene Summers.
- d. **Dispute with owner of Parcels 13A / 13B regarding water rights:** The main pier of the SEG marina is directly offshore of Parcel 13A Carolina. The owner of that property has publicly stated that he will not agree to have the marina structures placed "in his front yard", directly across the public road from his property.

As must be apparent from Applicant's response, the Summers End Group does not presently own any of the upland parcels involved in their development plan.

In conclusion, although the Applicant has responded showing current property ownership, they have not provided any evidence that they currently have the rights to develop on these parcels, nor do they have any reasonable expectation of obtaining those rights as required under 33 CFR § 325.1(d)(8) ("The signature of the applicant or the agent will be an affirmation that the applicant possesses or will possess the requisite property interest to undertake the activity proposed in the application").

We have in the past formally requested that USACE deny the permit due to the fact that the applicant cannot demonstrate that they will possess the requisite

property interests to undertake the activity proposed in their application. We reiterate that request in these comments.

3. Thank you for the submitted circulation study which was conducted to assess the action area (question 1 in your 12/13/19 response), however it appears that the calibration and validation of the model study was not provided.

- Please provide this information to continue review of the study.

CBCC Comments on SEG Response:

In March 2020 we provided extensive comments on the circulation study, including our findings that the conclusions of the model were invalid because the model had not been calibrated or validated against field observations (please see Attachment2, pages 5-24). The primary model parameter which requires validation is the current velocity profile, since it is the current that transports sediments from the marina to surrounding areas.

The Applicant has supplied “Exhibit 5 - Model Study - Calibration Validation” and “Exhibit 6 - Sea Diversified Letter to Response RAI SER-2018-19433” in response to the validation and calibration request.

These responses do not provide the required information to validate and calibrate current velocity. Sea Diversified has provided a chart indicating that the tidal elevations predicted by the model correlate with observed tidal elevations at their two ADCP locations. What is needed however is calibration and validation of current velocity throughout the water column, which has not been provided by SDI.

As noted by us in March 2020, the model predicts a current velocity which differs from actual measurements of current provided by SEG in other documents. This difference is indicative of a calibration error in the model.

- Also, please note that the model did not take into account the design of a navigational channel nor did it account for a buffer that vessels would need from existing resources so as not to impact those resources with sedimentation.
- Please provide an overlay of the resources and the in situ measurements from the study.

CBCC Comments on SEG Response:

Applicant’s response that there will be no impacts to protected resources as a result of navigation within the harbor channel is incorrect because it is based on a flawed sediment transport model. As we have stated elsewhere, we do not believe

that the Applicant's circulation model correctly accounted for the fine sediment component of Coral Harbor, nor did it correlate with observed current velocity measurements. As a consequence of these two errors the Applicant's proposed "action area" is far less than what it should be.

This has direct implications for the navigational channel and the potential for circulation currents to transport sediments into the federally protected waters of Hurricane Hole. The revised model detailed in our March 2020 comments indicate that sediments will fall to a depth of 3-4 meters near the mouth of Coral Harbor. It is our belief that larger yachts entering or exiting via the navigational channel will continually resuspend these sediments allowing them to be transported for greater distances.

In our March 2020 comments (Attachment 2) we illustrated how sediments suspended at the marina can be transported by tidal currents to a point where circulation currents could carry them into Hurricane Hole. The movement of large yachts in the navigational channel can only exacerbate this potential.

4. Please provide a drawing showing the areas of all impacts, permanent, temporary, and/or secondary, for all proposed activities (this should match the table provided in question #1 of this request) and should be labeled as either a permanent, temporary, and/or secondary effect; including but not limited to the marina, the docking structures, the navigation channel, the mooring buoy area, the removal of vessels, the installation of piles, any proposed dredge or fill activities, any potential effects from mitigation efforts, wave attenuator, storm water management activities, shading in mooring slips, etc. Please also include drawings showing the exact locations of all benthic aquatic resources (please provide a legend with the species type and quantity on the drawings).

CBCC Comments on SEG Response:

The three drawings submitted by the Applicant in response to this request ("Exhibit 9 - Potential Project Impacts Graphic") are non-responsive to the specific information requested for the following reasons:

- 1) The table submitted by the Applicant in response to question #1 is incomplete and incorrect with respect to the identification of all impacts. The only impact identified in the question 1 tabular response was an incorrect computation of sea grass loss.
- 2) The drawings do not identify species (e.g. coral colonies within the marina footprint).
- 3) The drawings are limited to impacts in the direct vicinity of the marina itself and not throughout the complete action area.

- 4) There are no drawings of the location of the proposed mooring field or of the moorings to be removed. There are no impacts identified for the removal or installation of moorings.
- 5) There are no drawings indicating locations of sunken vessels or other large and potentially colonized pieces of debris to be removed.
- 6) There is no indication of the location of the outfall pipe for storm water and the potential discharge of land based sources of pollution.
- 7) There is no drawing of shoreline boardwalk construction.
- 8) There is no drawing of proposed mangrove mitigation.

5. In the December 13, 2019 submittal, a comprehensive benthic aquatic resource survey was not provided.

- Please provide a benthic aquatic resource survey, which has been completed within one year of the date of this request. Please conduct a survey to identify the essential features of designated critical habitat for elkhorn and staghorn corals (i.e., substrate of suitable quality and availability [i.e., consolidated hardbottom or dead coral skeletons free from fleshy macroalgae or turf algae and sediment cover]; such substrate supports successful larval settlement, recruitment, and reattachment and recruitment of asexual fragments). Please also quantify the amount (in square feet or acres) of designated critical habitat (where the essential feature is present) in and around the action area.
- The survey at a minimum shall include a detailed methodology developed in concert with NMFS in order to ensure it is capable of detecting and identifying any ESA-listed coral species that may be present and essential features of designated critical habitat, any other species of corals not listed that may be present and coral hardbottom, any native and non-native seagrasses that may be present, any sponges or octocorals, etc.
- Please note that the request is for all areas that may be impacted directly or indirectly by the proposed project. This includes at a minimum the proposed navigation channel, both Pen Point and Harbor Point known coral areas, the proposed marina and all mooring areas, any proposed mooring buoy areas, any area where stormwater activities are to take place, etc.

CBCC Comments on SEG Response:

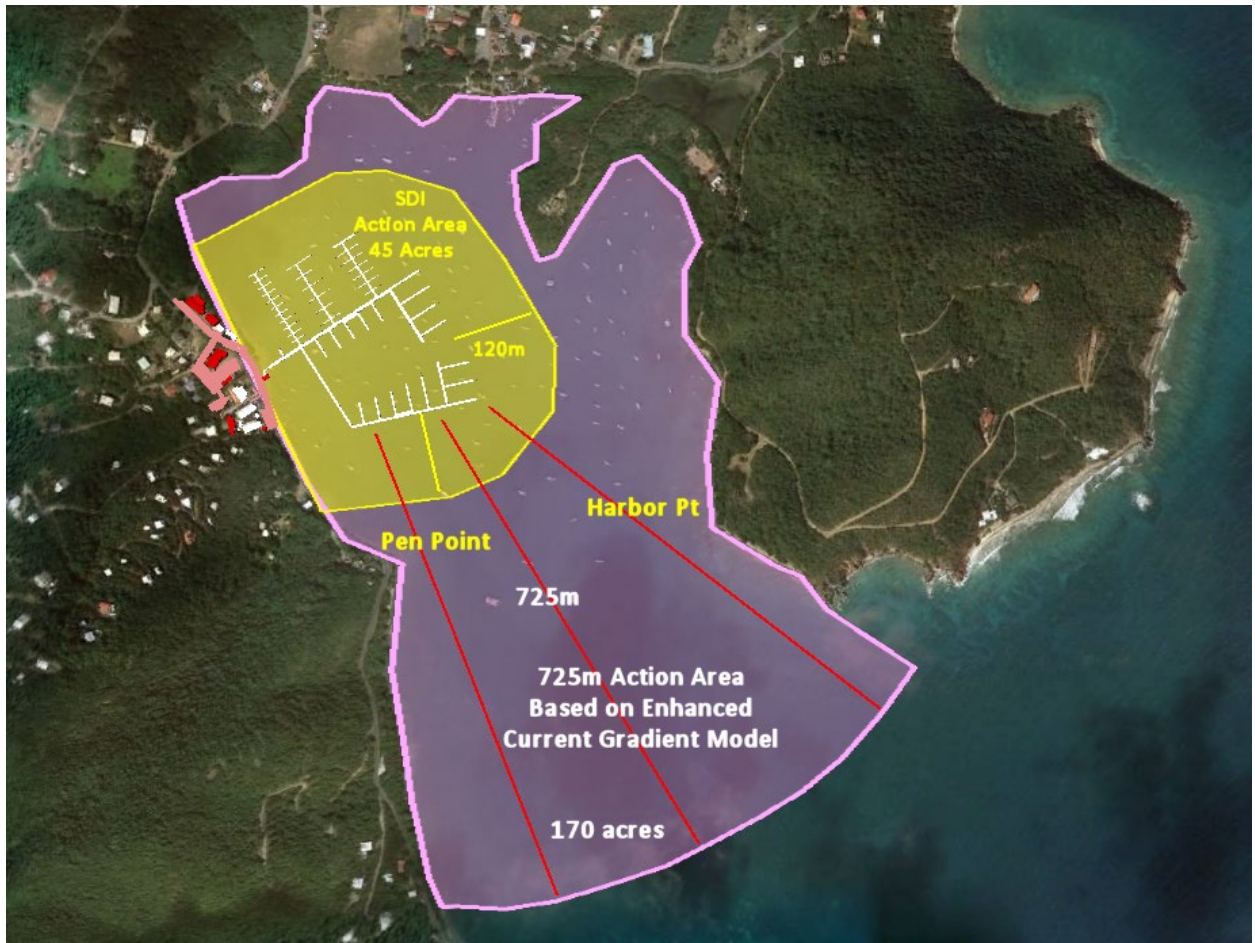
In response to the Corps request for a current, comprehensive benthic aquatic resource survey, the Applicant has simply produced benthic resource studies performed years ago over a far smaller area than what is required.

On March 22, 2020, we submitted comments to the Army Corps reviewing, among other things, the Applicant's proposed limits to the "action area" for the marina project (Attachment 2). We concluded that the Applicant had grossly underestimated the size of the action area due to the following factors:

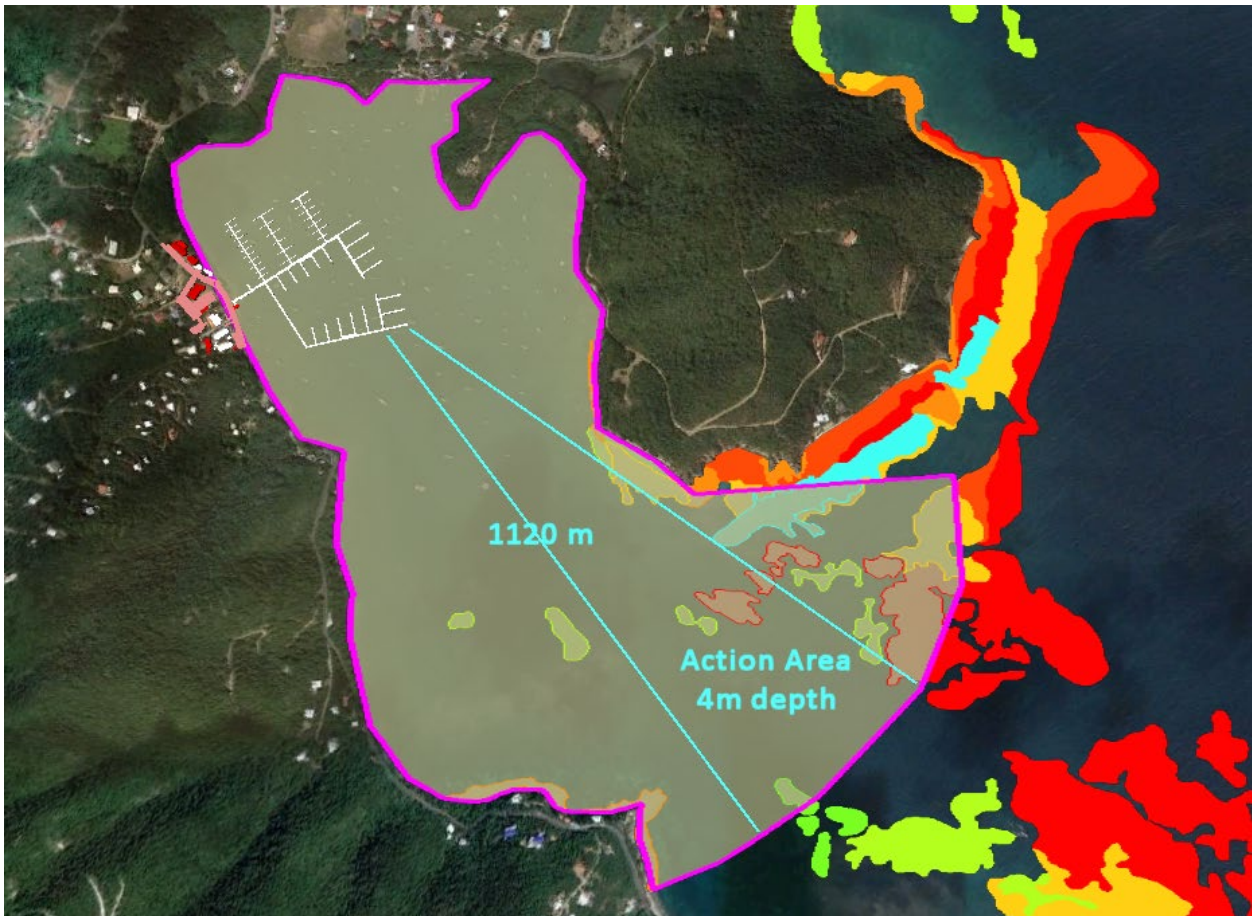
1. The composition of sediments described by the Applicant does not agree with far more detailed scientific studies performed by others.
2. The Applicant failed to provide any data at all on the depth of sediments or the volume of sediments that would be resuspended over time.
3. The tidal current velocity was based on a model using data from a buoy which does not measure wave heights entering Coral Bay.
4. The tidal current used in the estimate does not agree with direct observations of current velocity made over a longer period of time and reported by the Applicant in other documents submitted for this same project.
5. The Applicant failed to consider the transport of sediments by circulating current patterns as shown in their own current models (they solely considered straight line tidal currents).
6. The Applicant failed to consider the transport of finer sediments in the uppermost portions of the water column where the currents are the greatest.
7. The Applicant used a 92% cutoff value for current velocity in their model without any explanation or justification for this assumption, which we believe is incorrect.

After analyzing the data provided by the Applicant, particularly their water circulation study, and incorporating the best available scientific information, as required by federal regulations, we concluded that the Action Area should extend 725 meters from the southernmost reach of the marina, and encompass an area of 170 acres. We also concluded that at least two identified sites for ESA-listed coral species at the entrance to Coral Harbor (Pen Point and Harbor Point) will be within the Action Area and will be impacted by resuspended sediments transported to these locations. We also concluded that there is a significant likelihood that circulation patterns modeled by the Applicant will be capable of transporting sediments into Hurricane Hole, within the Virgin Islands Coral Reef National Monument.

The diagram below, which is fully explained in our March 2020 report, illustrates the Applicant's proposed action area ("SDI Action Area 45 acres"), and the corrected action area based on an enhanced current gradient sediment transport model, and based on actual sediment composition sourced from recent scientific studies. It is apparent that the Applicant has grossly underestimated the area of impacts.



It is certain that not only ESA-listed species are within the action area, but also critical habitat in the form of consolidated hardbottom. When the action area is computed based on fine sediment transport to a depth of 4 meters (as opposed to the 2 meters used by the Applicant), the resulting action area encompasses areas of known coral substrate, as illustrated below:



Rather than conduct the required analysis, the Applicant is refusing to do further studies, and states: “it is unreasonable for the Corps to require or request any such additional survey work by the applicant on areas that have been definitively shown to be outside the range of the project’s impacts.” We strongly dispute the claim that the referenced areas are “outside the range of the project’s impacts.”

The Applicant’s significant under-estimation of the “Action Area” must be addressed prior to considering the scope of any additional benthic resource studies. The term “action area” is defined by regulation as “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action” (50 Code of Federal Regulations [CFR] 402.02). In the case of this project the Action Area must include all areas of Coral Bay that are likely to be impacted by suspended sediments resulting from the construction and operation of the proposed marina. The extremely limited area defined by the applicant is merely the immediate area of the marina.

It is well known that there are protected resources outside the very limited action area defined by the Applicant. Not only are there reefs at Pen Point and Harbor Point, but there is critical coral habitat at greater depths than those surveyed by the Applicant. There is a strong potential for sediment resuspension in the navigation channel and

transport by circulation currents into Hurricane Hole. The National Park Service has explicitly commented regarding the potential for direct, indirect and cumulative impacts to the Virgin Islands National Park and the Virgin Islands Coral Reef National Monument.

It is critical that the full scope of the potential impacts to protected resources be identified for this project and that it not be based on a biased and flawed analysis by the Applicant.

6. In the December 13, 2019 submittal response, the applicant does not address impacts to Essential Fish Habitat. The permanent, temporary, and/or secondary impacts to seagrass from the proposed marina remain unclear.

- Please provide the areas of seagrass impact including, but not limited to, direct and indirect impacts from the installation of pilings, installation of moorings, spudding of vessels, shading from dock structures, shading from vessels, shading from shadow extensions, prop wash, bottom scour, and any additional impacts due to proposed marina construction and operations.

CBCC Comments on SEG Response:

The Applicant has supplied the following documents in response to the Corps question, above, regarding impacts to EFH:

- Exhibit 1 RAI Table
- Exhibit 9 Potential Project Impacts Graphic
- Exhibit 10 Benthic Map
- Exhibit 13 2020 Compensatory Mitigation Plan

None of the response documents listed above include impacts on EFH resulting from (a) shading from vessels, (b) shading from shadow elongation, (c) sediment deposition from prop wash, (d) bottom scour, and (e) storm water sediment deposition.

We have, on multiple occasions, provided estimates for the impact on EFH stemming from each of these factors and concluded that the most likely total impact to EFH, including sea grasses, is in the range of 12.1 – 14.3 acres. The Applicant, by ignoring multiple direct and indirect impacts to EFH, concludes that the total impact will be 3.71 acres.

Please see Attachment 5, pages 15-20, which includes an analysis of permanent, temporary and secondary impacts to Essential Fish Habitat. This document was submitted to Mr. Jose Cedeno-Maldonado in May 2018. The conclusions in this document are completely consistent with comments submitted to USACE, by us, during the public comment period in August 2015. For over six years the Applicant, the

Summers End Group, has steadfastly refused to acknowledge the full extent of impacts to Essential Fish Habitat resulting from the construction and operation of this 28 acre marina project located in dense marine meadows.

7. In the December 13, 2019 submittal response #2 regarding Essential Fish Habitat and the circulation study, the applicant states that the “overall analysis provides reasonable assurances that the proposed marina will not adversely impact the ESA-listed corals located at the west and east mouth of the harbor, due to both the depth of those resources and the distance from the marina”; however since a comprehensive benthic aquatic resource survey was not conducted, how does the applicant know the depth of the resources or what resources are present? Please provide the following information.
- The applicants’ statement does not include the potential effects of placing a navigation channel and the distance vessels would need to remain away from existing resources in order to not impact those resources with turbidity and sedimentation of use of the channel. Please include the navigation channel in the analysis.
 - The applicants’ statement also does not take into account that the sediment deposition from the marina itself was determined to have a deposition effect on at the very least Pen Point corals at a rate of 8% occurrence, which is still considered an impact. Please address this accordingly.

CBCC Comments on SEG Response:

The Applicant’s response to these questions is misleading because it is based on a flawed conclusion, namely that the “action area” proposed by Sea Diversified Inc (“SDI”) encompasses the entire region of sediment transport to a depth of 2 meters. This conclusion is incorrect because it does not accurately account for the fine grained composition of sediments in Coral Harbor, it does not account for current gradients over the water column, and the average transport velocity does not comport with other data reported by the Applicant.

In March 2020 we offered a detailed sediment transport model based on the best available scientific evidence and published reports. This model concluded that the 2 meter sediment transport area (the “action area”) is substantially larger than that proposed by the Applicant. We also analyzed the potential that prevailing currents outside the mouth of Coral Harbor could transport deeper (4 meter) sediments into Hurricane Hole, which has a rich diversity of ESA-listed species.

Without a consensus on the action area it is not possible to assess sediment impacts to grasses and corals at a distance from the proposed marina. **We strongly urge the**

Army Corps to review all of the best available science and local knowledge before agreeing to the extremely limited action area proposed by the Applicant.

- Please evaluate impacts to corals not listed under ESA as well in the response.
- Please evaluate impacts to seagrass in the response.
- Please provide the reasonable assurances the applicant states are present.

CBCC Comments on SEG Response:

The Applicant's response to each of these topics is flawed due to the assumptions inherent in the model regarding sediment particle size and current gradients.

- a. The Applicant's model is based on the transport distance for "Coarse Silt", whereas multiple independent studies have shown large quantities of "Medium Silt" particularly in the inner harbor in the vicinity of the proposed marina. The "fall velocity" of Medium Silt is 5 times slower than Coarse Silt (0.023 cm/sec as opposed to 0.1 cm/sec).
- b. The Applicant's model is based on a modeled transport current of 0.06 m/s or less 92% of the time. Actual observations reported by the Applicant and others indicate an average transport current of 0.1 m/s, roughly twice the model value.
- c. The combination of these two factors results in a substantial increase in Action Area, which includes protected resources at both Pen Point and Harbor Point.

8. The applicant states that side sonar and multibeam sonar were conducted on both Harbor Point and Pen Point reefs, and indicates no coral or area of concern below 2 meters depth. Please provide this information as it appears Pen Point reef is the only Figure submitted. Also, please note that the comprehensive benthic aquatic survey of both reef areas will confirm the sonar information.

CBCC Comments on SEG Response:

Applicant's response is dismissive of the Corps request for comprehensive information on these two critical reef areas. Applicant states "It is unreasonable for staff to require or request any such additional survey work by Applicant on these areas outside of the project impacts when Applicant has provided data and analysis showing that these areas are unlikely to be impacted by the proposed project."

We take great issue with this response because it is based on the presumption that the action area defined by the Applicant is correct. We have presented scientific evidence that the model is incorrect because it does not properly account for fine sediments and tidal currents. In fact, when the Action Area is correctly defined we believe that not only will Harbor Point and Pen Point reefs be within the action area, but

also other hard bottom and coral rubble areas suitable for coral colonization. We have demonstrated this in our March 2020 comments to the Corps.

9. Thank you for the provided Geophysical Investigation and Bathymetric Survey conducted on July 16, 2019, however it appears that the survey is incomplete as there is a portion of the proposed works area that was not surveyed; a portion of the main access walkway, and the first (B) and second (C) piers off of the access walkway were not included due to obstructions; these areas could potentially contain bedrock due to the existing depths in this area, as shown on the submitted benthic contours.

- Please provide a complete geophysical survey that encompasses all areas of proposed works, otherwise the Corps will assume these areas to contain bedrock and the proposed project will need to be redesigned to avoid these areas. In response number #5 of the December submittal, the applicant states that no hard substrate is present within the proposed project; however this is an inaccurate statement as not all areas have been investigated.

CBCC Comments on SEG Response:

Please refer to our comments at Question 14 and our stated concerns, after consultation with scientists who have performed seismic analysis in this area, that the results presented by SDI in the Geophysical Investigation are highly dubious. The device used to conduct the seismic studies is advertised by the manufacturer (EdgeTech) to have a maximum penetration depth of 6 meters in calcareous sand (a main constituent at the marina location). If this is correct then it would not have been possible to detect bedrock at 40-150' beneath the surface.

10. With regards to the provided Summer's End Harbor Management Docking and Mooring Plan (HDMP):

- Since the management of the marina will include the installation of the channel markers, these need to be considered in the proposed project action area.

CBCC Comments on SEG Response:

Applicant's response seems to indicate that placement of channel markers is not required for marina operation but is required for other boats using the harbor. In reality, with the marina encompassing 30 acres of a 90 acre harbor, and consuming most of the deep water in the inner harbor, boat navigation following construction of the marina will be extremely difficult and pose hazards that did not exist prior to marina construction. For this reason channel markers will be essential and must be considered within the project scope.

- Please describe how the applicant determined the vessels shall remain eighteen inches from the submerged bottom at low tide. Please indicate if the applicant is stating that the vessels shall remain eighteen inches above all existing resources in addition to the submerged bottom, as any existing resources, including seagrasses, may be impacted through prop wash with this minimal distance.

CBCC Comments on SEG Response:

Applicant's response is focused on berth depth, and not on navigation throughout the marina footprint. There have been many examples of large yachts attempting to navigate in Coral Harbor and encountering unexpected shallow water with ensuing disruption to the benthic habitat. The claim that "operation of the boats within the marina will be closely monitored" does not seem to be a practical solution, given the potential for up to 144 yachts and their associated tender vessels utilizing the marina. It is our expectation that if this project were constructed in this location there would be frequent incidents of prop wash and disruption of benthic habitat.

Applicant states that "on the larger yachts the props are normally higher than the lowest point" however the photograph below is not unusual – a yacht exiting Yacht Haven Grande marina in St Thomas leaving behind an extensive trail of suspended sediments from prop wash:



- The HDMP states that 75 public moorings will be installed, please include these locations (shown in a table format and on a drawing noting latitude and longitudes) and any proposed impacts.

CBCC Comments on SEG Response:

The authorization from DPNR to construct a 75 position public mooring field was never a binding authority; it was a letter of intent, which expired in 2014. To the best of our knowledge Applicant has no current authority from DPNR to redesign and manage the designated public mooring area in Coral Harbor.

However, **since SEG is now claiming that this is part of their plan, we respectfully request that the DPNR authorization and the full description of the proposed mooring field project be produced for public comment.** This should include, at a minimum, maps and drawings, procedures for mooring removal and installation, complete assessment of resource impacts, management of the mooring field, hurricane preparedness planning, and any other facet of the project which impacts the environment and/or the public, none of which has been provided by the Applicant to date.

- The HDMP states that condemned moorings shall be professionally removed with no impacts. Please address how this is to occur, include information pertaining to the removal and methodologies. How will the contractor know there will be no impacts to existing resources? Has a survey been conducted in these areas, if not, one needs to be provided.

CBCC Comments on SEG Response:

The Applicant response is non-specific, and laden with generalities lacking supporting data or evidence.

- The proposed twelve moorings directly associated with the marina will need to be shown on the proposed drawings with locations denoted via latitude and longitudes. Ensure that the proposed number of vessels is included in the overall total vessel count.
- The HDMP states that non-compliant vessels in the harbor are expected to vacate Coral Harbor to places unknown. Please state other locations locally these individuals can relocate to. Also, provide who is to identify them as non-compliant and who will be in charge of removing them.

CBCC Comments on SEG Response:

Applicant has not responded to the question about other locations for vessels expected to vacate Coral Harbor. **In reality, Coral Bay is the only designated**

mooring area on the east end of St John and it is unlikely that individuals who have moored for many years in Coral Bay would “vacate Coral Harbor to places unknown”.

- Please discuss the measures that will ensure during hurricane or other severe weather events that the proposed marina will have in place to ensure all vessels will be removed as stated. Please also indicate where these vessels will be placed.

CBCC Comments on SEG Response:

Applicant’s response to this question is indicative of a lack of understanding of recent history of hurricanes in the Virgin Islands. During the 2017 storm season, in spite of the normal hurricane preparations, literally hundreds of vessels were grounded or sunk in Coral Bay and elsewhere on St John and St Thomas. There simply is no way to outrun or achieve safe harbor from a large, fast moving Category 5 hurricane. The addition of up to 200 vessels to Coral Harbor (144 slips plus tenders) severely exacerbates this problem.

Applicant states “all vessels must be removed by the owner in the event of a hurricane and failure to do so would allow the marina to remove the vessel from the dock at the owner’s expense. ... It is assumed that most smaller vessels that can readily be hauled out will be hauled out in either the BVI and or St Thomas.”

This response does not answer WHERE the vessels would be removed to, or WHO would do it. The “assumption” that smaller vessels will be hauled out was not the experience in 2017 when large numbers of boats were sunk or grounded.

It is our opinion that neither the Summers End Group nor their advisors have offered a viable hurricane preparedness plan that will address the potential for severe impacts to the community if a major hurricane impacted Coral Bay while the marina was in operation.

- Will the vessels utilizing the proposed 75 moorings also be limited to depth requirements?
- Please provide the drafts of all vessels that shall utilize the proposed marina and any proposed moorings in a table format and on a drawing, ensuring that the proposed vessels shall not impact the bottom contours or any existing resources.

CBCC Comments on SEG Response:

Applicant has not supplied the requested information (draft of all vessels in a table and drawing). The response is basically “trust us” that SEG will measure bottom depth after construction and limit vessels to appropriate draft in each berth. It is our experience that in spite of such assurances large yachts frequently disrupt the benthic habitat by navigation in waters of insufficient depth.

A further concern regarding berth depths is that the most recent revision of the marina plans (August 2017) has effectively eliminated storm water sediment reduction from the plans. By reducing the capacity for storm water detention to less than 1/3 of what is required (for a 1-Year storm event), the Applicant has proposed a design that will quickly lead to sediment deposition and shoaling within the marina footprint. As a consequence of this, together with the reduction in circulation and sediment capture resulting from close to a thousand pilings, it is very likely that berth depths will decrease over time, unless the marina is periodically dredged.

The Applicant has made no mention whatsoever of the need for periodic maintenance dredging, but it is our expectation that the marina, located at the foot of a major storm drainage gut, cannot operate long term without maintenance dredging.

- Please indicate how the increased ingress and egress of the Harbor will not impact existing resources within the harbor itself and the adjacent resources and provide the measures the HDMP will stipulate to ensure this.

CBCC Comments on SEG Response:

The presence of up to 200 additional vessels (144 slips plus attendant tender vessels) in Coral Harbor will inevitably have significant impacts on protected resources throughout the greater Coral Bay marine environment. This concern was expressed by the Superintendent of the Virgin Islands National Park in the Park Service comments submitted to the Corps in August 2015 (see Attachment 9, NPS Comments to USACE). The Park Superintendent’s comments were focused exclusively on the federally managed resources within the Virgin Islands National Park and the Virgin Islands Coral Reef National Monument.

Those comments included the following statement:

“This project proposes construction of dock facilities for 145 vessels in a harbor area where there is currently only a small dingy dock. In reading the proposal it appears that designers of the new facility anticipate that approximately 45 of these slips will be for vessels of 90' to 140' in length with another 20+ of the slips for vessels over 45' in length. It can be expected that each of the 90'-140' vessels will also have a tender which would be a vessel of between 16' to 30' in length, while many of the "smaller" vessels between 45' and 55' in length will have a

dingy of 14' to 16' in length. There is mention of a letter of intent with VI DPNR for management of a 75 vessel mooring field(s) north and east of the dock facility. Finally there are an additional 12 moorings identified for vessels 45' to 75' in length. The potential marine traffic impacts would need to consider a conservative estimate of an additional 75 vessels used as tenders and for recreational purposes by these larger yachts.

I find no mention of Virgin Islands National Park or Virgin Islands Coral Reef National Monument in the permit information as supplied on the ACE web site. Likewise I have read the Environmental Assessment Report provided by the Summer's End group to VI DPNR some months ago. I want to call to your attention and to the attention of the U.S. Fish and Wildlife Service that there is no mention whatsoever of potential impacts to the natural or cultural resources of either Virgin Islands National Park or Virgin Islands Coral Reef National Monument in this document. This, in spite of the fact that the applicant states that the "largest factor" in locating this marina is its proximity to the Park and Monument and the proliferation of corals contained therein. What is most disturbing, given this statement is the complete lack of consideration given by the applicant to the potential negative cumulative impacts to Park and Monument resources caused by the increased vessel traffic associated with the marina. There is no evidence of consideration or thought given to impacts on water quality, marine resources, wetlands (mangrove areas), coral reefs, sea grasses, fish and marine invertebrates and species of concern protected by the Endangered Species Act. There is no indication of consideration of impacts to Park and Monument soundscapes, lightscapes or cultural and archaeological resources; not to mention visitor use and experience."

The concerns expressed by the Park Superintendent are shared by us. The damage that a single vessel can do as a result of incorrect anchoring, accidental or intentional discharges, or accidental grounding in shallow water have been seen on many occasions in Coral Bay. It is a virtual certainty that the addition of up to 200 additional vessels, up to mega yacht in size, will impact adjacent protected resources in ways difficult to quantify but virtually certain to happen.

11. Avoidance and minimization efforts:

- Please indicate why the proposed docks are to be located only a minimum of 4-feet above mean high water line and not 5-feet which is industry standard to allow maximum light penetration in addition to the grated decking.

- Thank you for stating that there will be proposed boat lifts to dock A. Please address if with the addition of the lifts there are to be additional piles that were not included in the 960 count.
- Please indicate how the applicant is proposing to limit the vessel access to shallow water areas (depths below minus 7 feet).

CBCC Comments on SEG Response:

Applicant states that this concern will be addressed by monitoring the movement of vessels and if a vessel enters shallow water it will be “hailed via VHF and notified of their threatening activity, further if necessary a marina vessel will be dispatched to intercept the vessel and notify the vessel operator that they are to cease and desist immediately and return to deeper water. If the vessel operator persists a call will be made immediately to DPNR requesting enforcement interdiction.”

We do not believe that this approach can be effective. At full capacity there will be over 200 vessels in the marina (including tenders). Monitoring their movements and dispatching interception boats when violations are observed cannot be done effectively based on visual monitoring. DPNR enforcement is extremely slow to respond to violations in Coral Bay. By the time the depth violation is observed the damage will be done.

- Has a grant been funded? If not what funds are available and what are the allocation timelines for a full time DPNR enforcement officer?

CBCC Comments on SEG Response:

Applicant’s response indicates that this is entirely aspirational and therefore cannot be considered a binding part of the proposal. To the best of our knowledge USVI government employees (including full time DPNR enforcement officers) cannot be funded through private sources.

- It is unclear if Exhibit 4, attachment A is from the applicant or suggestions from an agency. Please clarify. Is the applicant stating that an informational center to educate the public is going to be part of this proposal? If so this needs to be included as part of the project and additional questions may be asked. The same goes for the proposed mobile application, additional questions may be asked if it is part of this proposal.
- The applicant states that a detailed mitigation plan will be provided. Please provide an updated detailed mitigation proposal for review; taking into account all proposed permanent, temporary, and/or secondary effects from the proposed project activities.

CBCC Comments on SEG Response:

Applicant has submitted “Exhibit 13 - 2020 Compensatory Mitigation” in response to this question. We note that this is the fifth “compensatory mitigation plan” to be submitted by the Summers End Group for this project (plans have been submitted in March 2014, July 2017, Dec 2017, Feb 2018 and May 2020). We also note that in spite of these multiple revisions the Applicant has never provided a correct assessment of impacts to protected resources and has never met the requirements for adequate compensatory mitigation for unavoidable impacts. The most recent submission repeats this pattern.

As you know, federal regulations (40 CFR 230.92) define Compensatory Mitigation as follows: “*Compensatory mitigation* means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.” Although other actions may be environmentally beneficial, such as signage, education, waste management, etc., these actions do not directly restore, create, enhance or preserve aquatic resources and therefore cannot be construed to be compensatory mitigation, according to the regulations.

In Appendix A we have enumerated each of the measures identified by the Applicant in each of their five “Mitigation Plans” and assessed whether or not they constitute compensatory mitigation, as defined by the Corps regulations. It is our conclusion that

- a) the Applicant has not correctly identified all of the unavoidable impacts to protected resources, and
- b) the Applicant has not properly quantified the impacts to resources, and
- c) the Applicant has not provided any compensatory mitigation in the manner required by the regulations, i.e. restoration, establishment, enhancement or preservation of aquatic resources.

If, after six years, the Summers End Group continues to refuse to correctly account for adverse impacts to protected resources, and steadfastly refuses to provide any real compensatory mitigation, we believe this is adequate reason for the Army Corps to deny the current permit application. There is no reason to believe that at any point in the future this Applicant will offer adequate mitigation for their proposed project.

- Please indicate if the use of single pilings were considered in place of finger piers. Please provide a justification as to why the use of single pilings was not adapted in an effort to minimize impacts to Essential Fish Habitat.

12. Alternatives Analysis:

CBCC Comments on SEG Response:

As evidenced by the Applicant's response in this document and their response over many years, we do not believe that the Applicant has EVER seriously considered any alternative to their preferred plan and design in Coral Harbor. None of their "alternative analyses" have met the regulatory requirements for Army Corps of Engineers permitting, as further discussed below.

- As stated under 40 C.F.R Section 230.10(a)(2) property that the applicant cannot reasonably obtain, utilize or manage to fulfill the project purpose is not a practicable alternative. It appears from the submitted alternatives analysis that several of the proposed areas are located within the National Park boundaries and as such shall not be considered in the alternatives analysis.

CBCC Comments on SEG Response:

We do not agree with the applicant that a mega yacht marina inside the boundaries of the Virgin Islands National Park ("VINP") or the Virgin Islands Coral Reef National Monument is a practicable alternative. The VINP has made it clear over many years that recreational vessels may only be attached to specifically maintained mooring balls. These moorings have been designed to accommodate vessels of different sizes, and there are none sufficient to accommodate the largest size mega yachts proposed to be visiting the Summers End Marina.

In short, we agree with USACE that locations inside the federally managed VINP and VICRNM are not "practicable alternatives" for consideration to achieve the basic purpose of this project. The Applicant's citing of concessions within the park system is not relevant to this particular project.

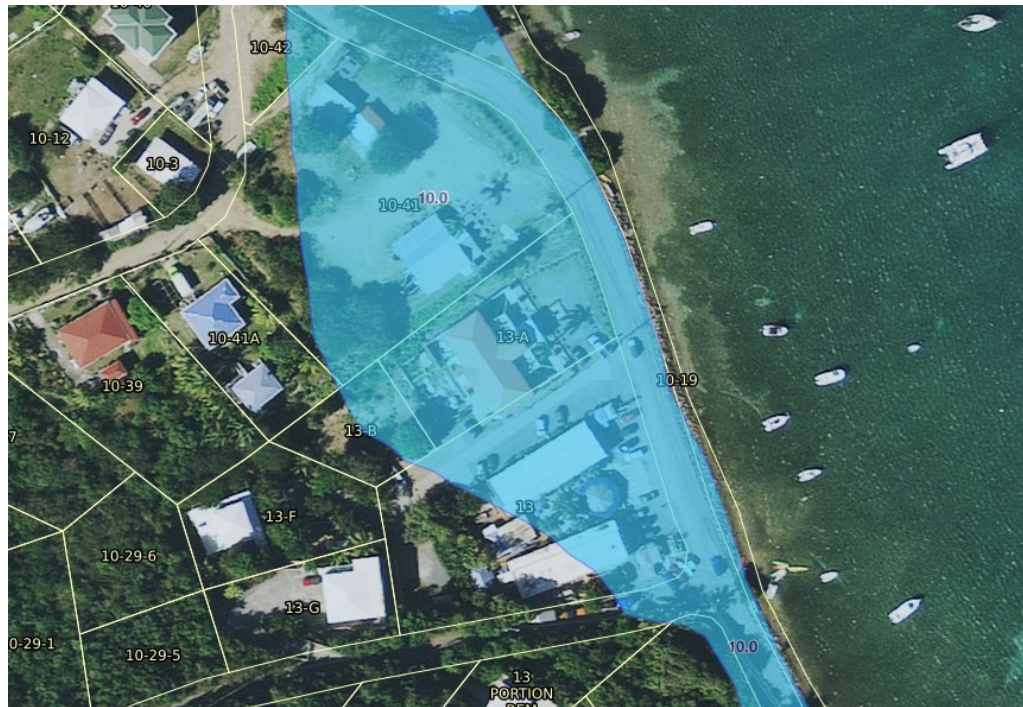
- The submitted alternatives analysis (Exhibit 5 Attachment A) states that there are proposed impacts to the uplands per a previous submittal. Please discuss if the proposal is also to include upland works. If so please provide information pertaining to this and updated drawings reflective of this.

CBCC Comments on SEG Response:

The proposal includes significant upland works, including parking areas, retail shops, restaurants, apartments, fuel storage and other amenities. It is significant to note that much of this work will result in indirect impacts to the marine environment

through increased storm water runoff, hydrocarbon contaminants from parking areas, and disruption of land forms and drainage patterns. It is also significant to note that virtually none of the upland components are “water dependent” as they could perform their function at sites remote from the marina.

We further note that the proposed location is within a VE-10 flood plain which is a highly undesirable location for the upland components of the plan.



- It appears from the submitted analysis that Enighed Pond would have the least amount of environmental impacts, it has been previously dredged, is accessible via an existing road, navigation is deep enough due to the ferry terminal created and is in an area of compatible use, it also is available for purchase, and is within an storm safe area. Please provide a detailed analysis of this area including various configurations showing how this area is inadequate for the project purpose (as stated in the Corps July 9, 2015 Public Notice: Construct a private commercial offshore marina with ancillary and commercial facilities in adjacent uplands in St. John, USVI).

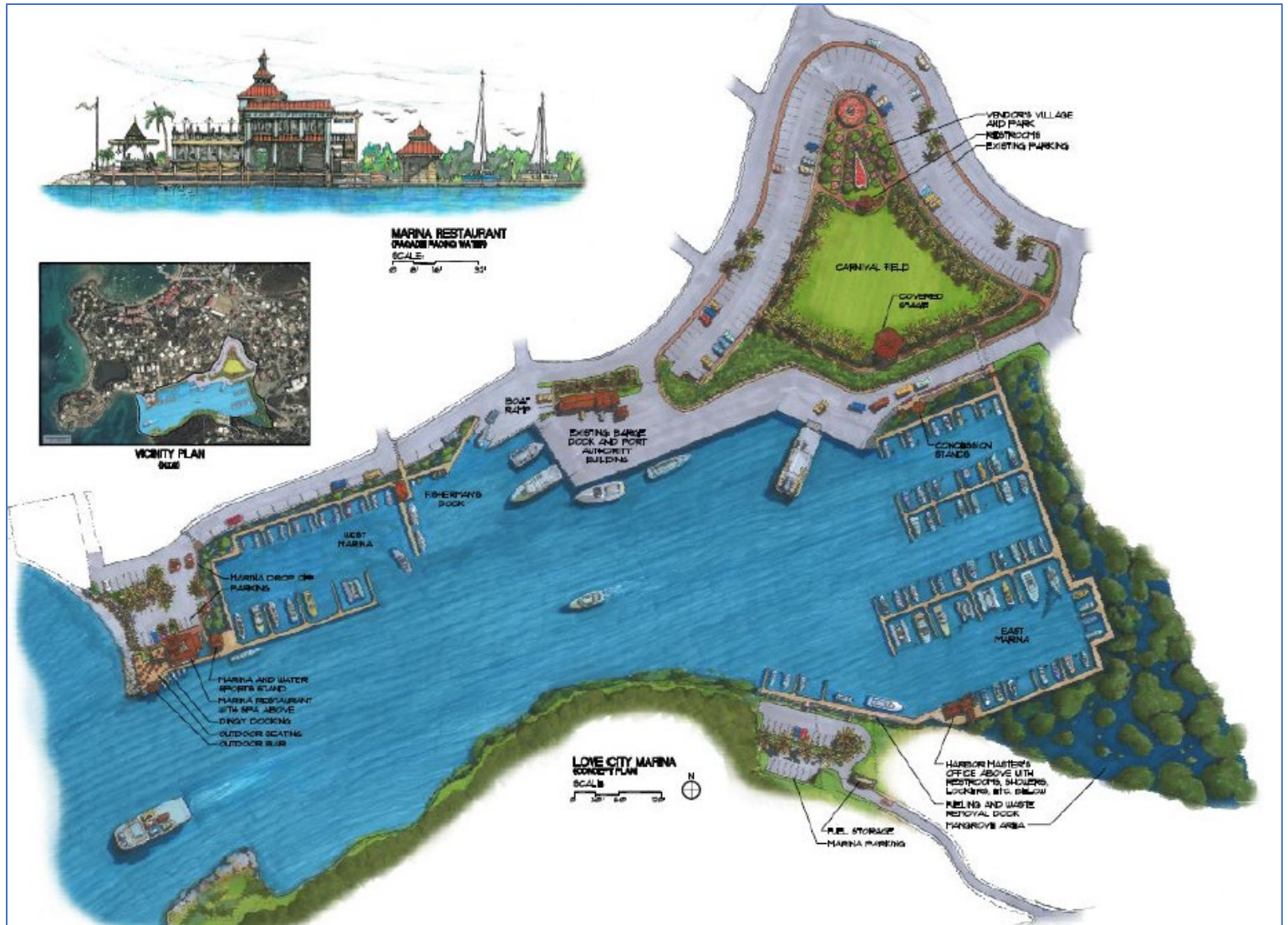
CBCC Comments on SEG Response:

Applicant’s failure to respond to this request for a detailed analysis of Enighed Pond further indicates that their sole focus is on their preferred alternative without due consideration of other alternatives, as required by federal regulations.

Applicant states “This site is far too small to accommodate the marina that has been under application to the Corps for more than five years based on the documentation submitted. This site will not physically accommodate the proposed project spatially even without the existing commercial use of Enighed Pond already occupies the majority of the area within the harbor. The project as designed requires more considerably more space for dockage and mooring than is presently available within Enighed Pond.”

Regulations require detailed analysis of all practicable alternatives that meet the Project Purpose. Rejecting an alternative because it doesn’t “accommodate the marina that has been under application” or because “the project as designed requires considerably more space” are not valid objections if the alternative does meet the Project Purpose as defined by the Corps.

In August 2015 we submitted an independent Alternatives Analysis to the Corps during the Public Comment period with an illustration of a feasible configuration in Enighed Pond for a “private commercial offshore marina with ancillary and commercial facilities in adjacent uplands” as required to meet the Project Purpose. This design is reproduced below:



It is also worth noting that the 1989 Coastal Zone Management Permit for the construction of the commercial facilities in Enighed Pond also approved construction of a marina at that location. Although this permit has long since expired, the prior CZM approval indicates that the location was deemed suitable for a project of this nature. An excerpt of the 1989 CZM permit is shown below:

MAJOR COASTAL ZONE PERMIT NO. CZJ-1-89L&W

1. **AUTHORITY.** This permit is issued by the St. John Committee of the Coastal Zone Management Commission and is administered and monitored by the Department of Planning and Natural Resources on behalf of the Coastal Zone Management Commission pursuant to Title 12, Chapter 21, Virgin Islands Code. As herein, "Permitter" is the Government of the Virgin Islands and "Permittee" is VIRGIN ISLANDS PORT AUTHORITY.

2. **SCOPE.** The permit authorizes: the dredging of 216,970 cubic yards of sediment from Enighed Pond and Turner Bay; filling of 6.80 acres of land along the northside of the pond; construction of a 1,260 foot bulkhead, a 2,500 sq. ft. Port Authority office, a 3,750 U.S. Customs Office, a cargo terminal including bulkhead, breakwater, security structures, warehouses, and service building for ferries; construction of a marina including boat slips, retail office building, restaurant and service facilities, automobile parking areas, marine fuel facilities, and sediment ponds. Site plans and architectural plans shall be submitted to the St. John CZM Commission Committee for review and approval consistent with the drawings approved in the pre-development process located on Enighed Pond, Estate Enighed, St. John, U.S. Virgin Islands.

We believe there are a number of locations on St John, including Enighed Pond, which are suitable alternative locations that meet the basic Project Purpose and involve far less environmental damage than the Applicant's preferred alternative.

- Please provide onsite alternatives for the proposed project. At a minimum this must include varying configurations, varying slip counts, proposed impacts with alternative configurations, etc.

CBCC Comments on SEG Response:

Applicant's response to this question is non-responsive at best, and untrue at worst. Applicant states:

"These questions have been asked and answered in previous submittals when Applicant was requested to provide economic justification for the size of the marina which is designed to provide much needed dockage for a broad range of boat sizes. The configuration that is presently under consideration for permit has been based on years of discussion and negotiation with staff for the Corps."

One of the primary objections of many residents of Coral Bay to the current proposal is that the facility is designed for mega yachts, which cannot safely enter into Coral Harbor and which are inappropriate in a harbor of this limited size and depth. The Applicant has never seriously considered the on-site alternative of limiting the marina to smaller vessels, and to fewer of them. The current proposal

covers 28 acres and over half the navigable water of Coral Harbor.

The statement that the current configuration is based on “years of discussion and negotiation with staff for the Corps” is simply not true. The current configuration is virtually identical to the configuration proposed in 2014, even prior to submitting a permit application to the Corps. There has been no “negotiation” of size at any time over the past six years leading to the current configuration.

Statutes and regulations require serious consideration of on-site alternatives including the probable resource impacts of the alternative configurations. This has never been done by the Summers End Group.

- Please provide a no action alternative; please note that simply stating that the no action alternative does not meet purpose and need is not sufficient. The no action alternative should be discussed in two ways: 1) can the project be constructed without the need for a permit, and 2) in terms of what will transpire should the facility not be constructed.

CBCC Comments on SEG Response:

The Applicant’s response to this question regarding analysis of the “no action alternative” clearly indicates their lack of knowledge of Coral Harbor and its recent history. Applicant states:

“the harbor will continue to be used for mooring without regard for the number of boats moored, impacts to seagrasses and corals, the use of compliant moorings, pump-out facilities, or a meaningful regulatory presence to address these concerns, all of which the proposed project commits to address. Further, in the absence of a permit to construct the marina, the proposed mitigation activities to restore and maintain existing stormwater management facilities will not occur. Continued use of the harbor, without compliant moorings and appropriate regulation, together with the unabated and unregulated dumping of wastes into Coral Harbor and the discharge of stormwater from unmaintained facilities will result in the continuing degradation of the marine environment and water quality in Coral Harbor.”

Over the past ten years there has been a significant reduction in the number of boats moored in Coral Harbor. Prior to hurricane Irma there were approximately 165 small to medium size vessels, predominantly sailboats. There are now approximately 75 vessels, still predominantly sailboats but more motorboats than before. The number of moorings in Coral Harbor is actively managed by DPNR (not “without regard for number”) and will be subject to a Marine Uses Plan currently

being worked on by DPNR. The current situation in Coral Harbor is still an active recovery phase from the 2017 hurricanes

The claim that the current use is creating impacts to coral contradicts other statements made by the Applicant. In their benthic survey the Applicant has not identified any coral colonies within the public mooring areas of Coral Bay.

The claim that without the marina there would not be any maintenance or improvement of stormwater management is entirely contrary to the facts on the ground. The Coral Bay Community Council is heavily involved in ongoing storm water management projects, with an increased intensity of work following the 2017 hurricanes. The Virgin Islands government is also actively involved in these projects.

Ongoing water sampling by DPNR and by independent researchers indicates that water quality is responding positively to the storm water BMP's which have been put in place. On many days the water shows significantly improved clarity, and frequent sightings of marine mammals, turtles, eagle rays, and shark species indicate that the ecosystem of Coral Harbor is healthy.

Management of marine sewage is an ongoing concern and efforts are being made to implement strategies, including a on-demand pumpout boat, to address these concerns. However water quality testing for bacterial contaminants does not indicate that the vessels in the harbor are contributing to enterococci or human coliform bacteria beyond the levels established by the EPA for recreational water use.

- Please provide an updated alternatives analysis with a conceptual site plan for each alternative.

CBCC Comments on SEG Response:

We note that the Applicant has failed to respond to this request, and emphatically refuses to do so ("applicant objects to this request as unnecessarily burdensome and duplicative"). Without a conceptual site plan, which has never been produced by the Applicant, the feasibility of alternative sites cannot be fully explored as required by statute and regulations.

It is our belief that at least two alternative locations, and possibly three, on St John, provide a superior sites with less environmental damage. These sites are the northern end of Coral Harbor, Enighed Pond, and possibly Cruz Bay Creek. Without the conceptual site plans it is not possible to fully assess these and other alternative locations.

13. Thank you for the provided letters from Mr. Goodrich, P.E. and Mr. Boyd, stating that there are other alternatives other than a wave attenuation infrastructure. Could you please elaborate on these alternatives, the alternative marina management measures, and how the proposed project shall employ these methods to ensure the vessels are to remain safe when conditions exceed tranquil criteria. Are the alternative measures going to be included within the HDMP, if so please provide an updated copy showing this.

CBCC Comments on SEG Response:

The Applicant's response to this question regarding conditions that exceed tranquil marina criteria can be summarized as "use more rope." The response states "a vessel that [is] receiving a fetch and or adverse wave action [is] able to sustain its position by use of additional mooring lines and cross ties that might not normally be required."

In contrast with Mr. Boyd's assertion that "good design and good judgment can effectively address these challenges" and that otherwise there would be "no marinas in the Virgin Islands" we would like to bring to your attention the comments of James Robertson (Retired, US Coast Guard) who evaluated the SEG marina design in 2014. In the comments submitted by us during the 2015 Public Comment Period, Mr. Robertson stated:

"I have personally visited hundreds if not thousands of marinas in my 31 years in the United States Coast Guard and 5 years in maritime private sector, and have seen good planning and construction and have seen bad planning and construction. The proposed Coral Bay Marina is in my professional opinion very bad planning and design. The prevailing winds and seas (as per chart below) are 120 deg or East Southeast 53% of the time and the average wind speed is 11.7 knots which blows directly into Coral Bay. Whitecaps on waves begin to form at 7-10kts, after 11kts of wind, and the seas could be anywhere between 1-4 feet (as per chart below).

The overlay of the marina design shows most of the boat slips would be Beam (side) to the seas/waves, which would cause constant damage to the vessels and the pier. Vessels are designed to take the seas/waves on or directly off the bow, NO VESSEL is designed to take seas from abeam (side). When you add to these adverse conditions the fact that the vessel is moored (tied up) to something fixed there will be damage to the vessels, making the marina unsafe and inappropriate. The only way to eliminate the everyday results from this "act of nature" would be to erect a Sea Wall across most of the entrance to the bay, an

untenable and unreasonable alternative due to its very invasive character and effect on the on the makeup of Coral Bay.”

Based on the expert opinion of Mr. James Robertson (which was submitted in formal comments to USACE during the August 2015 public comment period), we are of the opinion that there is no approach that will result in safe berthing at the proposed Summers End marina.

14. Pile installation:

- Thank you for providing the letter from Mr. Bigler. Please update it as needed per the findings of the additional geophysical investigation which encompasses all areas of the proposed works.
- Please provide the number of strikes per pile and the number of seconds of vibration per pile.

CBCC Comments on SEG Response:

The geophysical survey and conclusions presented by Sea Diversified Inc. (“SDI”) in their September 2019 report (submitted to USACE in December 2019) have been questioned by numerous local authorities with extensive first-hand knowledge of Coral Harbor. Individuals with experience in the installation of helical screw anchors know that impenetrable rock is found in many locations in close proximity to the surface. The findings of SDI that throughout the proposed marina site the bedrock is between 40’ and 150’ beneath the sea floor were questioned by multiple individuals.

The report itself is extremely limited. None of the underlying seismic data is presented, which would be required for independent verification of the findings. Only a very limited number of transects were included and their location was not identified. The presence of “shallow reflectors” was identified in the report without any further analysis of their composition or significance.

Most troubling, however, is the limitation of the equipment used (EdgeTech SB-216S) with respect to penetration of sandy substrates. The literature published by EdgeTech indicates that the maximum penetration depth of the SB-216S is 6 meters (roughly 20 feet) in coarse calcareous sand:



3100

PORTABLE SUB-BOTTOM PROFILING SYSTEM

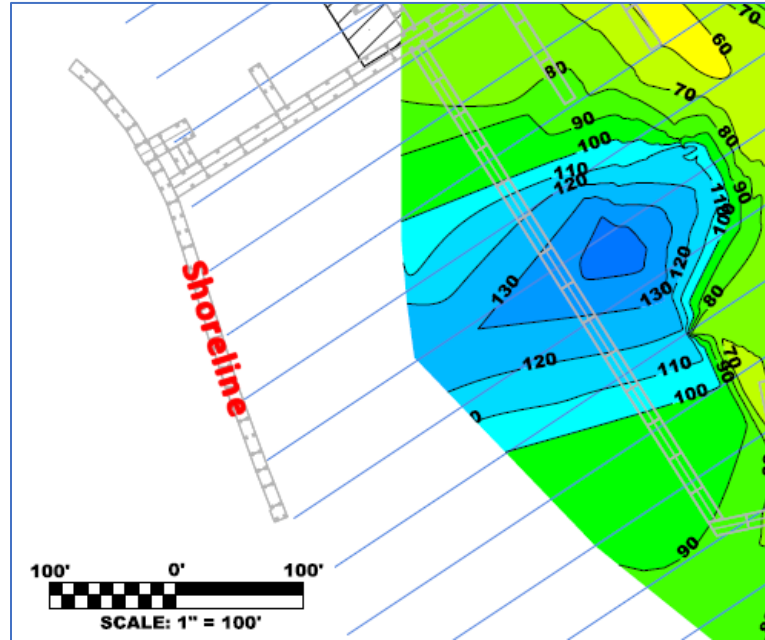
KEY SPECIFICATIONS

TOWFISH	SB- 216S	SB- 424
Frequency Range	2-16 kHz	4-24 kHz
Vertical Resolution (depends on pulse selected)	6-10 cm	4-8 cm
Penetration		
In coarse calcareous sand	6m	2m
In clay	80m	40m

We discussed the SDI report with individuals who had performed scientific research in Coral Harbor, including seismographic analysis, and their comments on the SDI report were as follows:

- SDI used an EdgeTech 2-16, which ranges from 2-16 kHz frequency. Frequency is inversely related to penetration beneath the sea floor.
- In our survey of the same area, we used an EdgeTech 4-24, which ranges from 4-24 kHz (therefore very slightly higher frequency).
- SDI say they are hitting "apparent bedrock" at 40'-150'.
- We penetrated a max of 2 m (<7') with a similar system and same topside unit.
- The sediments in Coral Harbor are a mixture of siliciclastic and carbonate sands (primarily), with the later dominating in the proposed marina area. It is very difficult for the acoustic signal to penetrate through carbonate sands, which is likely why we only got ~2 m max. Therefore, I would say their claim of 40-150' penetration is highly suspect at best.
- The interpretation of "apparent bedrock" based on very few subbottom reflectors is an over interpretation, and therefore is suspect.
- Our cores in the same area encountered non-marine pre-Holocene material less than 1 m down core, which means >1m of sediment has accumulated since the area was flooded by the Holocene sea-level rise ~6,000 years ago. Therefore, it is highly unlikely that bedrock would lay 40-150' below the surface.

In addition to these expert comments, the presence of bedrock outcroppings on the surface in close proximity to the shoreline casts doubt on the extreme bedrock depths reported by SDI. For example, SDI reports a depth to bedrock of 120' at a distance of less than 100' from the shoreline which seems highly unlikely:



Given the extreme significance of the geophysical survey to the viability of the piling installation, we respectfully request that additional independent verification be performed. This could take the form of a test core or probe in a number of locations to validate depth to bedrock, or an independent analysis of the data collected by SDI. At the very least additional measurements should be taken in the areas not covered by the current report.

15. Upland Permitting:

- Please discuss if this is part of this proposed project.

CBCC Comments on SEG Response:

The Applicant has provided "Exhibit 17 - Approval Summary - CZM Permit" which purports to provide the timeline for approval of their Virgin Islands Coastal Zone Management ("CZM") permit. There are so many errors and omissions in this document that we have provided commentary within the document itself to clarify the true status of the CZM permitting process. Please see Attachment 6 attached hereto.

In summary, the Summers End Group does not currently have a valid, approved CZM permit for this project. In order to obtain a CZM permit they are required, under USVI law, to submit a modified, consolidated land and water permit application to DPNR, obtain approval from the St John CZM Committee, and have that modified and consolidated permit ratified by the Governor and approved by the Legislature. None of this has happened.

There are currently three lawsuits contesting the validity of approvals granted by the Board of Land Use Appeals. There are two civil lawsuits between the Summers End Group and land owners within the marina footprint. There is potential for a fourth lawsuit if the action taken by the Governor to illegally modify the permits is not rescinded.

The Legislature has returned the permits to the applicant and refuses to ratify them until a properly modified, consolidated land and water permit, reflecting the actual project, is submitted to the Legislature. Please see Attachment 7, letter from Attorney Robert Fox to USACE, discussing this status.

- Please explain what measures will be taken to prevent stormwater runoff and discharges into the Harbor and Bay.

CBCC Comments on SEG Response:

Applicant has offered no explanation and has simply reproduced pages of documents previously submitted to the Corps. The entire marina site is at the foot of a major storm water drainage gut and is subject to frequent flooding after heavy rainfalls. Any excavation or soil disturbance in this area carries the risk of extensive erosion and discharge directly into the Harbor and Bay. This is particularly concerning for Parcels 10-17, 10-18 and 10-19 which indicate a Limit of Disturbance and Silt Fence directly on the shoreline of the harbor.

An additional concern relating to stormwater runoff is the potential for hydrocarbon contamination of storm runoff from paved parking areas. Leakage of automobile fluids is common on St John due to the poor condition of roadways. The creation of over 100 parking spaces in close proximity to the shoreline raises a serious concern about hydrocarbon pollution.

- Please identify the stormwater mitigation efforts in the proposed mitigation plan.

CBCC Comments on SEG Response:

In response to these two requests the Applicant has simply reproduced several pages from their engineering plan submission of August 2017, without offering any commentary or analysis of the adequacy of the proposed measures.

In their original submission to the Army Corps, in April 2014 and again in June 2015, the Applicant submitted a detailed analysis of storm water flows through the major drainage gut traversing the property. They concluded that a storm water detention and retention facility of 58,661 cubic feet capacity would be sufficient to manage the initial sediment laden storm water from an expected 1-Year storm event and allow sediment pollution to be removed prior to allowing water to enter Coral Harbor. This design was dependent on re-channeling the drainage gut that is located on Parcels 13-A and 13-B Carolina so it could be diverted into an underground detention basin located on Parcel 10-41.

In 2016 Parcels 13-A and 13-B Carolina were sold to a third party with no interest in the marina project. USACE was notified of this fact, and that the sale of these parcels would invalidate many aspects of the SEG plans, including their proposed storm water mitigation (see July 2016 Letter to USACE, Attachment 8).

In the current proposal, as modified by SEG in August 2017, the storm water detention has been reduced to less than 1/3 of the prior capacity. The redirection of the drainage gut located on Parcel 13A is no longer feasible, and it is unclear if any of the storm water can be successfully routed into the limited detention pond on Parcel 10-41. The Applicant has supplied no analysis or commentary to explain the changes to the stormwater management or discharge plans.

It is our conclusion that the current design will release the vast majority of sediment laden storm water, exacerbated by the construction of the marina upland parcels and the paved parking areas, directly into Coral Harbor precisely at the location of the marina.

In past years major storm events have created shoaling on this shoreline due to deposited sediments. It is our opinion that without properly engineered storm water management practices the marina would suffer from extensive sediment deposition leading to requirements for periodic dredging and the concomitant environmental impacts of such maintenance.

16. **Please provide a valid Section 401 Water Quality Certification**

CBCC Comments on SEG Response:

The Section 401 Water Quality Certification submitted by the applicant as Exhibit 22 is no longer valid for the following reasons:

- a. Special Restriction T of the permit requires the applicant to “adhere to all provisions set forth in the submitted Environmental Assessment Reports – June 2014 (Land) and April 2014 (Water)...” However the applicant has made substantial changes to the development plans, including material changes to the minimization and mitigation of impacts to water quality, major reduction in storm water pollution and prevention measures, changes in the scope of the land development, and changes in the marina structural design. All of these changes will require reassessment of the Section 401 certification and they invalidate the 2014 certification.
- b. Special Restriction I of the permit requires that “The Benthic Mitigation Plan (April 2014 EAR – Appendix C) or subsequent approved amendments must be complied with to ensure that the amount of seagrass and all benthic invertebrates lost during this project is minimized. This includes transplanting these organisms located within the construction footprint to a site to be approved by DPNR; it has been noted that the northwestern corner of Coral Bay Harbor has been proposed.” Applicant has, in this submission, stated that they will no longer be transplanting seagrass within the construction footprint. This change will require reassessment of the Section 401 certification.
- c. Site Conditions: The hurricanes of 2017 (Irma and Maria) have changed the baseline conditions of the site, requiring reevaluation of water quality impacts and the potential for adverse impacts to the recovery of mangroves and wetlands.

Additional Materials Submitted by Applicant

We note that the Applicant has submitted a promotional video entitled “The Truth About Coral Bay” which includes statements by a number of native St Johnians regarding their opinions on the need for a marina in Coral Bay. We are submitting with these comments a petition signed by 4,127 individuals strongly opposed to the construction of the Summers End Marina on the basis that it is contrary to the public interest. We respectfully request that you consider the weight of these opinions when reviewing the opinions of the individuals in the Applicant’s video.

The Applicant has offered “Exhibit 24 – Current Conditions in Coral Harbor” which, although non responsive to any of the questions in the RAI, nonetheless requires a response.

Photograph 1 purports to show “4 of the 70 +/- of non-compliant vessels in Coral Harbor” however these vessels, which were dismantled by hurricane Irma and refloated following the storm no longer appear to be located in Coral Harbor. There are not even close to 70 “non-compliant vessels” in Coral Harbor today.

Photograph 2 shows dead mangroves at the northern end of Coral Harbor, with the caption “Coral Harbor mangroves decimated by hurricanes Irma and Maria whose return will take decades, if ever.” This statement is factually incorrect. Numerous propagules are growing within that mangrove and recovery will take place provided there are no further impacts to their environment. Construction and operation of a marina and fuel dock directly down current from that mangrove presents substantial risks to the mangrove recovery.

The photographs below were taken on June 24, 2020 at the same location as shown in the Applicant’s photo. You will note that there is extensive mangrove growth, currently at a height of approximately 3-4 feet, and the trunks of dead vegetation are in the background. You will also note healthy propagules on the young mangroves, evidencing their ability to recover.



Mangrove Propagules



Mangrove regrowth post-Irma

Photograph 3 shows a destroyed building on the shoreline of Coral Harbor, which has remained in this condition since the storms of September 2017. The caption states “Coral Harbor’s shoreline and economy remains devastated from the effects of hurricanes Irma and Maria.” This photograph is particularly ironic because all of the properties surrounding this parcel have been fully repaired and all storm damage remediated during 2018 and 2019. This particular parcel is controlled by the Summers End Group and in spite of numerous pleas by the community to Summers End, they

have steadfastly refused to do any remediation, reconstruction, or demolition of this eyesore. This is a testament to the lack of community caring by the Applicant.

Several photographs of storm water BMP's are shown without location information or dates. There was extensive damage to storm water BMPs during the hurricanes, and much of this damage has subsequently been corrected, as well as extensive debris removal from drainage guts.

A series of photographs purport to show human excrement in the water. It is unclear exactly what the photograph depicts, or when or where it was taken, but over 15 years living in Coral Bay I have never seen what this photograph claims to show.

The final three photographs are particularly troubling and disingenuous. This graffiti was spray painted at a number of locations on St John following the CZM hearings in 2014. It was never discovered who was responsible for the graffiti, however after extensive discussions it was determined that it was nobody associated with either the Coral Bay Community Council or with Save Coral Bay. There was some suspicion that it might have been a "false flag" tactic done by Summers End supporters in order to elicit sympathy for their project. In any case, all of the graffiti was removed by Save Coral Bay supporters the following day. To claim that this is somehow indicative of "current conditions in Coral Bay" is highly disingenuous.

Appendix A

Summary of Summers End Proposed Compensatory Mitigation Measures

APPENDIX A: SUMMERS END STATEMENT OF RESOURCE IMPACTS AND COMPENSATORY MITIGATION MEASURES

	Resource Impacts and Compensatory Mitigation Plans Submitted by Applicant					
Protected Resource Impacts	Mar 2014	July 2017	Dec 2017	Feb 2018	May 2020	COMMENTS
Essential Fish Habitat (Sea Grasses)	~2.8 acres	Loss of 3.75 acres	Loss of 3.75 acres	Loss of 3.75 acres	Loss of 3.71 acres	Should be loss of 12.1 – 14.3 acres of sea grass as documented
ESA-Listed Corals	potential to impact protected species through vessel strikes	No impact	No impact	No impact	No impact	Probable impacts to Pen Point and Harbor Point reefs. Possible impacts to numerous corals in Hurricane Hole.
Critical Habitat for Corals	No impacts identified	No impacts identified	No impacts identified	No impacts identified	No impacts identified	Probable impact to hardbottom at mouth of Coral Harbor
Nassau Grouper, Green Sea Turtle, Other Protected Species	No impacts identified	No impacts identified	No impacts identified	No impacts identified	No impacts identified	Probably impacts to Nassau Grouper, Green Sea Turtles
Proposed Mitigations						
Thalassia transplant to offsite location	X	X	X	X		Not an effective mitigation due to inappropriate recipient site.
Clean up of debris and moorings at marina site	X	X	X	X	X	Not compensatory mitigation
Mangrove planting along shoreline		X	X	X	X	Ineffective with boardwalk design
Placement of Informational Buoys	X	X	X	X	X	Not compensatory mitigation
Informational Signage	X	X	X	X	X	Not compensatory mitigation
Donation to Research	X	X	X		X	Not compensatory mitigation
Pumpout and Waste Facilities	X	X	X	X	X	Required of any marina - not compensatory mitigation
Debris Cleanup in 750 acres of Coral Bay			X	X		Deleted in 2020 plan.
Coral Repair in 750 acres of Coral Bay			X	X		Deleted in 2020 plan.
GIS Navigational Data					X	Not compensatory mitigation
Fund DPNR Enforcement Officer					X	Not compensatory mitigation
Dockage for DPNR Enforcement Vessel					X	Not compensatory mitigation
On Demand Pumpout Vessel					X	Not compensatory mitigation
Harbor Oversight and Management of Public Mooring Field					X	Not compensatory mitigation
Watershed Projects Restoration and Maintenance					X	No data provided to support claims.
Stormwater Sediment Reduction					X	Inadequate design for required capacity – ineffective.

APPENDIX A: SUMMERS END STATEMENT OF RESOURCE IMPACTS AND COMPENSATORY MITIGATION MEASURES

Proposed Mitigation	Comments
Thalassia transplant to offsite location	Applicant previously proposed to relocate approximately 1500 square feet of seagrass. This has now been removed from the plan.
Clean up of debris and moorings at marina site	This is not compensatory mitigation because sea grasses will not be viable within the marina site following construction, due to shading and turbidity.
Mangrove planting along shoreline	This is no longer viable due to installation of the shoreline boardwalk. Mangroves have never colonized this section of shoreline because the wind and wave exposure is not suitable for mangrove growth.
Placement of Informational Buoys	This is not “compensatory mitigation” as defined by Corps regulations.
Informational Signage	This is not “compensatory mitigation” as defined by Corps regulations.
Donation to Research	This is not “compensatory mitigation” as defined by Corps regulations.
Pumpout and Waste Facilities	This is a requirement of any marina design and is not “compensatory mitigation” as defined by Corps regulations.
Debris Cleanup in 750 acres of Coral Bay	This has been removed from the plan. Applicant previously stated “In order to provide sufficient mitigation for the impacts surveys will be made of 750 acres of Coral Harbor.”
Coral Repair within 750 acres of Coral Bay	This has been removed from the plan. Applicant previously stated “In order to provide sufficient mitigation for the impacts surveys will be made of 750 acres of Coral Harbor.”
GIS Navigational Data	This is not “compensatory mitigation” as defined by Corps regulations.
Fund DPNR Enforcement Officer	There is no commitment to funding this and it is unlikely to be allowed under USVI regulations. Furthermore this is not “compensatory mitigation” as defined by Corps regulations.
Dockage for DPNR Enforcement Vessel	This is not “compensatory mitigation” as defined by Corps regulations.
On Demand Pumpout Vessel	This is not “compensatory mitigation” as defined by Corps regulations.
Harbor Oversight and Management of Public Mooring Field	Installation of 75 moorings creates additional impacts which have not been identified by Applicant. Applicant’s claim that the mooring field will “protect 16 acres of SAV” has never been supported by any analysis, and in any case does not constitute “protection” as defined in Corps regulations since there is no imminent threat to destruction of 16 acres of sea grass.
Watershed Projects Restoration and Maintenance	Applicant has not quantified the level of degradation of these BMPs, nor have they quantified the improvements to water quality from improved maintenance.
Stormwater Sediment Reduction	Applicant has reduced the scale of this project component to the point that it can no longer be effective, according to Applicant’s own engineering calculations.