

Reference 1:

Comparison of 2014 & 2019 CZM Major Water Permits

## **MAJOR COASTAL ZONE MANAGEMENT PERMIT NO. CZJ-04-14(W)**

1. **AUTHORITY** This permit is issued by the St. Thomas Committee of the Virgin Islands Coastal Zone Management (CZM) Commission and is administered and monitored by the Department of Planning and Natural Resources (the "Department") on behalf of the Coastal Zone Management Commission pursuant to Virgin Islands Code, Title 12, Sections 904, and any other provisions of THE CZM Act. As herein, "**Permitter**" is the **ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS COASTAL ZONE MANAGEMENT COMMISSION** and "**Permittee**" is **THE SUMMER'S END GROUP, LLC**.
  
2. **SCOPE** (a) This permit allows the construction of a 145 slip marina, a designated mooring field of up to 75 moorings, a pump-out station and a fuel station at and seaward of Plot Nos. 10-17, 10-18, 10-19, 10-41 Rem., 13A, 13B and 13 Rem. Estate Carolina, St. John, U. S. Virgin Islands.  
  
(b) This permit also allows the use and occupancy of the structures described in Section 2 (a) of this permit including 27.5 acres of submerged land areas surrounding the structures described in Section 2, (a) of this permit.
  
3. **TERM** This permit is effective upon its signing by the Chairman of the St. John Committee of the Virgin Islands CZM Commission, approval by the Governor of the Virgin Islands, and ~~approval~~ ratification by the Legislature of the Virgin Islands. As used herein, the "Effective Date" or "the date hereof" means the date of such approval. This permit will expire twenty (20) years after the Effective Date. This permit is issued for a definite term of 20 years and shall not constitute a property right. This Permit shall be renewed only if the requirements of Title 12 of the Virgin Islands Code, Section 911, are met.
  
4. **DOCUMENTS INCORPORATED BY REFERENCE**  
  
Exhibit A: CZM Permit Application dated April 4, 2014.  
  
Exhibit B: Site Plan and Drawings dated July 11, 2014.  
  
Exhibit C: Environmental Assessment Report dated April 4, 2014.  
  
Exhibit D: Water Quality Certificate dated October 16, 2014
  
5. **GENERAL CONDITIONS**  
  
A. **Liability** The Permittee agrees to assume full and complete responsibility for all liability to any person or persons, including employees, as a result of its control of the area described in Paragraph 2 of this permit, and all improvements thereon (which area and improvements are hereinafter

referred to as "the premises"), and to hold the Permitter free and harmless for civil or other liabilities of any kind during the time the Permittee is in control of the premises pursuant to this permit.

- B. Personal Property and Damage All personal property of any kind or description whatsoever located on the premises shall be there at the Permittee's sole risk.
- C. Assignment or Transfer This permit may not be transferred or assigned except as provided in Section 910-15 of the Virgin Islands Rules and regulations.
- D. Permit to be Displayed A placard evidencing the permit shall be posted in a conspicuous place at the project site during the entire work period.
- E. Reliance on Information and Data The Permittee affirms that the information and data which it provided in connection with its permit application are true and accurate, and acknowledges that if subsequent to the effective date of this permit such information and data prove to be false or inaccurate, the permit may be modified, suspended or revoked in whole or in part, and that the Commissioner or the Committee may, in addition, institute appropriate legal action.
- F. Development to be Commenced Any and all development approved by this Coastal Zone Permit shall begin within twelve (12) months from the date this permit becomes effective and shall be continuous until completion. Failure to perform at least fifty (50%) percent of the work within such period and continuously construct thereafter until the completion of construction shall cause the permit to terminate automatically and render it null and void, unless the Permittee requests an extension in writing and demonstrates to the satisfaction of the Committee that good cause exists for granting such extension.
- G. Notification of Completion Upon completion of any activity authorized or required by this CZM Permit, the Permittee shall promptly so notify the Director of the Division of CZM and where the services of a professional engineer were required in undertaking the activity, a certification of compliance provided by the project engineer that the plans and specifications of the project and all applicable Virgin Islands Code requirements have been met, shall be filed with said Director.
- H. Inspection The Commission, its Committee, the Commissioner or their authorized agents or representatives shall have the power to enter at reasonable times during project working hours upon any lands or waters in the coastal zone for which this Coastal Zone Permit has been issued. The Permittee shall permit such entry for the purpose of inspection and

ascertaining compliance with the terms and conditions of said Coastal Zone Permit. The Permittee shall provide access to such records as the Commission, its Committee, or the Commissioner in the performance of it or his duties under the CZM Act may require the Permittee to maintain. Such records may be examined and copies shall be submitted to the Commission, its Committee or the Commissioner upon request.

- I. Conditions of Premises The Development authorized by this permit shall be maintained in a safe condition and in accordance with the description, plans, or drawings approved by the Commissioner or by the Committee, and all applicable Virgin Islands Laws.
- J. Public Access to Shoreline The development shall be operated so as to assure optimum public access to the shoreline.
- K. Restoration of Area The Permittee, upon renovation or expiration of the permit, shall upon order of the Committee, or the Commissioner, and in their sole discretion, remove all structures authorized by the permit and restore the area to its original condition, and/or modify such structures or site, and/or comply with any directive of the Committee, or the Commissioner in satisfying the original permit conditions in such time and manner as the Committee, or the Commissioner may direct.
- L. Notices All notices sent or required to be sent hereunder must be by certified mail, return receipt requested. If addressed to the Permittor, same shall be sent to the Commissioner of the Department of Planning and Natural Resources, ~~Cyril E. King Airport, Terminal Building, Second Floor~~ Charles Wesley Turnbull Regional Public Library, 4607 Tutu Park Mall, St. Thomas, Virgin Islands 00802, or to such other place as the Permittor may hereinafter designate. If addressed to the Permittee, same shall be sent to Chaliесе Summers, Managing Member, The Yacht Club at Summer's End, LLC, 5000 Estate Enighed, Suite 63, St. John, Virgin Islands, 00803, or to such place as the Permittee may hereinafter designate by certified mail, return receipt requested.
- M. Non Waiver One or more waivers by the Permittor of any covenant or condition of this permit shall not be construed as a waiver of a further breach of the covenant or condition. The consent or approval of the Permittor to or of any acts by either the Permittee requiring the Permittor's consent or approval shall not be construed as approval of any subsequent similar act by the Permittee.
- N. Revocation It is specifically understood that all the foregoing covenants and agreements, as well as other terms and special conditions hereby agreed to by the Permittee, are to be well and faithfully kept by Permittee and that any failure by the Permittee to keep same will result in revocation of this permit.



- O . Other Approval If the development covered under this permit requires separate and distinct approval from the United States Government or the Government of the Virgin Islands, or any agency, department, commission or bureau thereof, then no development or occupancy is allowed under this permit until such permits or approvals have been obtained.
- P. Abandonment If the Permittee abandon, deserts or vacates the premises or discontinues its operation at the premises for a period totaling six (6) consecutive months, the permit will terminate automatically and be rendered null or void.
- Q . Signatures on the Permit Document The Permittee shall sign and return the permit document to the Department within sixty (60) days of receipt thereof. Failure to return the signed permit within the time period specified herein will be considered a rejection of the terms and conditions of the permit and will render the offer of the permit null and void, unless the Permittee requests a written extension and the Department grants the written extension.
- R. Damage and Repair of Premises Described in Paragraph 2 In the event of damage to or destruction of the premises, described in paragraph 2 hereof, repair work may be done only after a request to do so has been submitted in writing to the Department and written permission has been granted by the Department.

## 6. FEES

1. A rental fee of **One Hundred Ninety Four Thousand, Twenty Six Dollars and Forty Six Cents (\$194,026.46)**, per year shall be charged for the use and occupancy of the submerged land area occupied under this permit. Prior to the completion of construction of the permitted marina described in Section "2" of this permit, the Permittee shall pay an annual rental fee of **Sixty Four Thousand Twenty Seven Dollars and Eight Cents (\$64,027.08)**, per year for the use and occupancy of the submerged lands as described in Section "2" of this permit. The fees are assessed pursuant to 12 VIC §911(f) and have been negotiated with the Permittee pursuant to 12 VIRR §910-5(e). The initial payment under this permit is due upon receipt of the effective permit, and subsequent payments are due on the anniversary of the effective date. Payments are to be made to the Department of Planning and Natural Resources.
- A. The rental fees payable under this permit shall be adjusted at the commencement of the fifth (5<sup>th</sup>) year of the permit term, in accordance with the increase of the Consumer Price Index as established by the United states Department of Labor, Bureau of Labor Statistics, Foe "All Items , All urban

Consumers (1984-100 percent)" (the "CPI"), as follows:

- i. The CPI as of the ~~first~~ month of the ~~fourth (4<sup>th</sup>) year~~ ("initial term") (5<sup>th</sup> year), and as of the first month of each subsequent year, shall be the "base price index" and ~~the~~ CPI as of the month immediately preceding the first ~~month of the fifth (5<sup>th</sup>) any year,~~ and every year thereafter, after the initial term shall be the current price index.
- ii. The current price index shall be divided by the base price index and the quotient thereof shall be multiplied by the sum of the annual rent of the prior year.
- iii. The resulting product shall be the annual base rent for the current year.
- ~~iv. In no event shall the adjusted annual rent beginning in the fifth year of the permit term, and every year thereafter, be less than the rental fee of the preceding year.~~

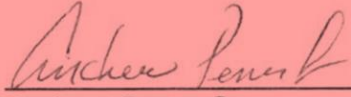
## 7. **SPECIAL CONDITIONS**

1. *All applicable Territorial and Federal permits or other necessary approvals must be obtained, prior to commencement of development activities.*
2. *The Permittee shall notify the Division of Coastal Zone Management (CZM) 72 hours prior to the commencement of development activities.*
3. *Turbidity curtains shall be installed at an adequate depth in order to prevent suspended sediment from migrating outside the work area.*
4. *This permit does not allow the removal of mangroves. If trimming of mangroves are required the Permittee must obtain a permit from Department of Planning and Natural Resources/Division of Fish and Wildlife.*
5. *Water quality monitoring shall be as out lined in the Water Quality Monitoring Plan and as approved by the Division of Environmental Protection.*
6. *Permittee shall include language in slip lease agreement mandating the use of pump-out facilities.*
7. *Automatic shut-off nozzles must be used when fueling vessels.*
8. *The Permittee must install signage to inform boaters of the availability and proper usage of pump-out facilities.*
9. *The Permittee shall maintain on site, a log for pump-out activities. The log must be available for inspection by DPNR at all times.*

10. *During construction of the permitted development temporary restroom facilities must be located onsite and available to workers employed for the development.*
11. *Prior to start of work, Permittee shall submit to CZM, a performance bond in the amount of 20 percent, up to \$5M, of the estimated construction cost of the development.*
12. *Following the completion of the development, the Permittee shall be required to maintain a bond in the amount of \$2M such that in the event of a default, the Permittee may return the area to its original state.*
13. *During installation of the pilings, construction activities associated with this phase is limited to the hours between 8:00 am to 4:00 pm daily except that on Sundays, construction activities are not permitted.*


**IN TESTIMONY WHEREOF**, the parties herein have hereunto set their hands and seals on the days and years appearing herein below.

**ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS CZM COMMISSION**  
Permitter

  
\_\_\_\_\_  
Andrew Penn, Sr.  
Chairman

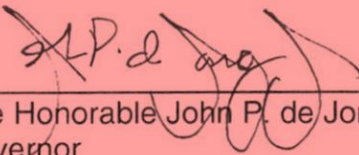
10/24/2014  
\_\_\_\_\_  
Date

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

  
\_\_\_\_\_  
Chaliесе Summers, Managing Member  
The Summer's End Group, LLC

10/24/2014  
\_\_\_\_\_  
Date

APPROVED  
Governor of the Virgin Islands

  
\_\_\_\_\_  
The Honorable John P. de Jongh, Jr.  
Governor

10/15/2014  
\_\_\_\_\_  
Date


APPROVED  
Legislature of the Virgin Islands

\_\_\_\_\_  
The Honorable Shawn Michael Malone  
President, 30<sup>th</sup> Legislature

\_\_\_\_\_  
Date


**IN TESTIMONY WHEREOF**, the parties herein have hereunto set their hands and seals on the days and years appearing herein below.

**ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS CZM COMMISSION**  
Permitter

  
\_\_\_\_\_  
Andrew Penn, Sr.  
Chairman

March 27, 2019  
Date

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

  
\_\_\_\_\_  
Chaliene Summers, Managing Member  
The Summer's End Group, LLC

March 26, 2019  
Date

**APPROVED**  
Governor of the U.S. Virgin Islands

  
\_\_\_\_\_  
Governor

4/4/19  
Date

**RATIFIED**  
Legislature of the U.S. Virgin Islands

\_\_\_\_\_  
President

\_\_\_\_\_  
Date



GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES

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DEPARTMENT OF PLANNING AND NATURAL RESOURCES

**Division of Coastal Zone Management**

Charles Wesley Turnbull Regional Public Library

4607 Tutu Park Mall

St. Thomas, Virgin Islands 00802

Telephone: (340) 773-1082

FAX: (340) 773-3343

**Basis For Negotiations**  
**The Summer's End Group, LLC**

I. General Information

Permit No. CZJ-4-14(W)  
Applicant: The Summer' End Group, LLC  
Location: Seaward of No. 12 Carolina, St. John  
Action: Construction of a marina, a designated mooring area of up to 75 moorings and the use and occupancy of submerged land area surrounding the marina.

II. Activity

Permittee proposes to construct a marina and designated mooring field, and the use and occupancy of approximately 1.7 acres or 74,900 sq. ft. of structures occupying submerged land, and 25.8 acres or 1,123,848 sq. ft. of submerged lands surrounding the structures. Permittee will also install a total of 75 boat moorings for boats of various sizes.

III. FMV Plot No. 12, Carolina - \$336,500.00/1.7 acres = \$197,941.17/acre (Tax Assessors Office)

Calculations

Total square footage of structures = 1.7 acres:  
 $\$197,941.17/\text{per acre} \times 1.7 \text{ acres} = \$336,500.00 \times 6\% = \underline{\$20,190.00}$

Total square footage for submerged area surrounding the structures  
1,123,848.0 or 25.8 acres

$\$197,941.17/ \text{per acre} \times 25.8 \text{ acres} = \$5,106,882.18 \times 3\% = \underline{\$153,206.46}$   
(Structures)



75 total boat moorings at an average boat length of 27.5 feet per mooring and a fee of \$10.00 per foot = **\$20,625.00.**

IV. Fees

**Annual fee = \$194,021.46 per year**

Until such time that construction of the marina is completed, the Permittee shall pay 33% of the total annual fee (**\$194,021.46**). Therefore, the annual submerged land fee to be paid until such time that construction of the marina is completed is **\$64,027.08.**

Reference 2:

Decision and Order of Board of Land Use Appeals



**THE VIRGIN ISLANDS BOARD OF LAND USE APPEALS**

In the matter of: )  
)  
**VIRGIN ISLANDS CONSERVATION** )  
**SOCIETY,** )  
)  
**AND MORAVIAN CHURCH CONFERENCE** )  
**OF THE VIRGIN ISLANDS,** )  
)  
**AND T-REX ST. JOHN LLC AND SIRIUS** )  
**DEVELOPMENT, LLC,** )  
)  
Appellants, ) Appeal Nos. 005-6/2014; 008/2014  
)  
v. )  
) Permit Nos. CZJ-03-14 (L); CZJ-03-14(W)  
**ST. JOHN COMMITTEE OF THE VIRGIN** )  
**ISLANDS COASTAL MANAGEMENT** )  
**COMMISSION,** )  
)  
Appellee. )  
\_\_\_\_\_ )

**DECISION AND ORDER**

The Virgin Islands Board of Land Use Appeals (“BLUA”) by and through its Acting Chairman, Aloy Nielsen hereby renders its Decision and Order in the above-captioned appeal, pursuant to 12 V.I.R.R. § 914-11(a). For the following reasons, the BLUA finds that the land and water permits are to be consolidated as one permit, and affirms the decision of the St. John Committee of the Virgin Islands Coastal Zone Management Commission (“CZM”).

**FINDINGS OF FACT**

- 1) On April 4, 2014, Summer’s End Group, LLC (“SEG”) submitted to the Division of Coastal Zone Management of the Department of Planning and Natural Resources (“CZM”) two (2) Major Coastal Zone Permit Applications for a Marina Project in Coral Bay, St. John; the land

and water permits were numbered as Nos. CZJ-03-14(L) and CZJ-04-14(W), respectively (collectively, “the Permits”).

- 2) On April 29, 2014, CZM issued a Letter of Incompleteness and Request for More Information to SEG regarding the Permits.
- 3) SEG submitted to CZM the requested information from the Letter of Incompleteness, and on June 18, 2014, CZM sent SEG two (2) letters indicating that both permit applications were complete.
- 4) From July 27, 2014 to August 18, 2014, CZM received comments on the Permits from the League of Women Voters, the Environmental Association of St. Thomas (East), the National Oceanic and Atmosphere Administration, the Virgin Islands Department of Public Works Commissioner Daryl Smalls, the Coral Bay Community Counsel, Attorney Maria Hodge, Esq., the U.S. Department of Fish and Wildlife, and counsel for the Moravian Church Conference.
- 5) On August 20, 2014, CZM issued Preliminary Staff Findings regarding the Permits.
- 6) On August 20, 2014, CZM conducted a public hearing regarding the Permits.
- 7) Between August 23, 2014 and August 24, 2014, CZM received comments on the Permits from William McComb, the University of the Virgin Islands, the National Park Service, and David Silverman.
- 8) On September 24, 2014, SEG submitted responsive comments to CZM.
- 9) On October 1, 2014, CZM issued its Final Staff Reports on the Permits.
- 10) On October 1, 2014, CZM held a Decisional Meeting on the Permits.
- 11) CZM issued its Decision Letter to SEG on October 10, 2014, explaining that CZM approved the Permits.

- 12) CZM issued the Permits to SEG on October 24, 2014.
- 13) Between November 14, 2014 and December 5, 2014, Virgin Islands Conservation Society (“VICS”), Moravian Church Conference, T-Rex St. John LLC and Sirius Development LLC (collectively, “Appellants”) filed appeals to the BLUA challenging CZM’s decision to issue the Permits to SEG.
- 14) The BLUA scheduled a public hearing on this appeal for April 5, 2016.
- 15) However, starting on March 23, 2016, the parties filed numerous motions and briefs raising procedural issues. To start, on March 23, 2016, the VICS filed a Motion to Supplement Appellant’s Notice of Appeal.
- 16) CZM then filed an Opposition to the VICS’ Motion to Supplement on March 31, 2016. That same day, March 31, 2016, SEG filed a Motion to Intervene in the BLUA appeal.
- 17) On April 1, 2016, SEG filed an Opposition to the VICS’ Motion to Supplement. Moravian Church Conference and the VICS each filed an Opposition to SEG’s Motion to Intervene on April 1, 2016.
- 18) SEG filed an amended Motion to Intervene on April 4, 2016. CZM filed a Consolidated Response Brief on April 4, 2016. Moravian Church Conference filed a Motion to Strike Appellee’s Brief on April 4, 2016.
- 19) The BLUA held a public hearing on April 5, 2016.

#### **JURISDICTION**

- 1) Any aggrieved person may file an appeal of an action by CZM within forty-five (45) days thereof with the BLUA. 12 V.I.C. § 914(a).
- 2) Furthermore, pursuant to 12 V.I.R.R. § 914-3, the BLUA has jurisdiction to review any decision in which the findings, inferences, conclusions, or decisions are: (a) in violation of

constitutional, Revised Organic Act of 1954, or statutory provisions; (b) in excess of the statutory authority of the Commission, Committee, or Commissioner; (c) made upon unlawful procedure; (d) affected by other error of law; (e) erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

- 3) The Appellants raise numerous challenges to CZM's issuance of the Permits, including subsections (d), (e), and (f) above. Therefore, the BLUA has jurisdiction over this appeal.

#### **CONCLUSIONS OF LAW**

- 1) In accordance with 12 V.I.R.R. § 914-11(a), the BLUA's decisions shall be based on the record of the proceedings below.
- 2) The record shall constitute the original papers and exhibits filed in the proceeding-below and the transcript in the proceeding-below. 12 V.I.R.R. § 914-6.
- 3) All of the documents and memoranda that the VICS sought to include in its Supplement to its Notice of Appeal is dated after the decisional meeting of CZM, which occurred on October 1, 2014.
- 4) Therefore, the BLUA denies the VICS' Motion to Supplement filed on March 23, 2016, as the BLUA can only take into consideration and review the evidence that was considered by CZM at its decisional meeting in reviewing this appeal. *See* 12 V.I.R.R. § 914-11(a); 12 V.I.R.R. § 914-6.
- 5) BLUA grants SEG's amended Motion to Intervene, dated April 4, 2016.
- 6) SEG filed its original Motion to Intervene on April 1, 2015, pursuant to 12 V.I.R.R. § 914-17, which states that "[a]ny aggrieved person or applicant may intervene in an appeal by filing a petition with the Board not less than ten (10) days prior to the public hearing."

- 7) As previously stated, SEG filed its original motion on April 1, 2016, therefore it could not be considered an Intervener as the filing was made within ten (10) days of the public hearing. *See* 12 V.I.R.R. § 914-17.
- 8) However, in its amended Motion to Intervene, SEG asked to be considered an Amicus Curie party pursuant to 12 V.I.R.R. § 914-9, which states that the BLUA “may, in its discretion, permit an amicus curiae to file briefs or appear on oral argument on such terms and conditions as the [BLUA] determines.”
- 9) Since there is no time restriction to filing an amicus curiae brief, the BLUA grants SEG’s April 4, 2016 Motion to Intervene, allowing SEG to participate in the appeal as an amicus curiae party.
- 10) The BLUA affirms CZM’s decision to issue the Permits to SEG.
- 11) The BLUA concurs with CZM that findings were made by CZM in a legally sufficient manner. The Final Staff Recommendations by CZM were issued for each permit—land and water—on October 4, 2014, containing the legally sufficient findings.
- 12) Furthermore, the BLUA is unpersuaded by Appellant’s arguments as to how these findings are inconsistent with the goals and policies articulated in 12 V.I.C. § 903, or the procedures of 12 V.I.C. §§ 910(a)(2) and 911(c).
- 13) In affirming CZM’s decision to issue the Permits to SEG, the BLUA also concurs with the Moravian Church Conference’s argument that the Permits should be consolidated as one (1) permit application.
- 14) As Moravian Church correctly identified, the Environmental Assessment Reports for each application repeatedly state that each Permit is dependent upon the other. Because the land

*V.I. Conservation Society v. STT-STJ Historical Preservation Committee*  
Appeal Nos. 005,006,008/2014  
Decision and Order  
June 3, 2016

and the water permit applications are for mutually dependent developments, they must be treated as one permit application.

- 15) The BLUA notes that both the Land and Water Permits have a condition that reads: "Prior to the start of work, [SEG] shall submit to CZM a performance bond in the amount of 20 percent, up to \$5M, of the estimated construction cost of the development."
- 16) Because the BLUA finds that the permits are to be consolidated, the BLUA notes that this now requires that SEG, prior to the start of construction, submit to CZM a performance bond in the amount of 20 percent, up to \$10 million, of the estimated construction cost of the development.

**ORDER**

**IT IS HEREBY ORDERED** that the Motion to Supplement Appellant's Notice of Appeal filed by the VICS is DENIED; and it is further

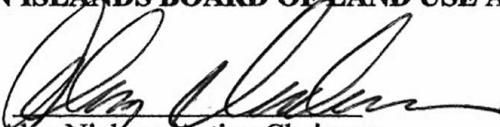
**ORDERED** that SEG's amended Motion to Intervene as an amicus curie party is GRANTED; and it is further

**ORDERED** that the Permits at issue, Nos. CZJ-03-14(L) and CZJ-04-14(W), be consolidated; and it is further

**ORDERED** that the St. John Committee of the Virgin Islands Coastal Zone Management Commission approval and issuance of the Permits Nos. CZJ-03-14(L) and CZJ-04-14(W) is AFFIRMED.

Ordered This 6 Day of JUN 2016.

**BY THE VIRGIN ISLANDS BOARD OF LAND USE APPEALS**

  
Aloy Nielsen, Acting Chairman

Reference 3:

Petition for Writ of Review - VICS

FILE

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS & ST. JOHN

VIRGIN ISLANDS CONSERVATION SOCIETY,  
INC.,

PETITIONER,

v.

VIRGIN ISLANDS BOARD OF LAND USE  
APPEALS,

RESPONDENT

ST-16-CV-\_\_\_\_\_

PETITION FOR WRIT OF  
REVIEW

16 JUN 9 PM 12:59  
SUPERIOR COURT  
ST. THOMAS

PETITION FOR WRIT OF REVIEW

Now comes the Virgin Islands Conservation Society, Inc., through undersigned counsel, and petitions this Court for a review of the written decision of the Board of Land Use Appeals dated June 6, 2016 in Board of Land Use Appeal Nos. 005-6/2014 and 008/2014.

1. This is a petition for review of a decision of the Virgin Islands Board of Land Use Appeals which consolidated Coastal Zone Management Permit CZJ-03-14(L) and CZJ-03-14(W) and then affirmed the decision of the St. John Committee of the Virgin Islands Coastal Zone Commission to issue both permits.
2. On or about April 4, 2014, Summer's End Group, LLC ("SEG") submitted two separate applications for the development of a marina complex in Coral Bay, St. John.
3. One of the two applications was for the development of the "land-side" aspects of



the marina complex. This application sought approval to construct 120 off-street parking spaces, a new 56 seat restaurant, a Customs and Border Protection office, A marina office, a marina engineering facility, a marina security office, a Fish and Farmers Market, a crew shower and locker facilities, apartments to support marina management, a sewage treatment system, and fuel facilities for the boats in the marina and other boaters. Phase 2 of the development (which was included as a part of the Land Permit application and authorized by the issuance of the Land Permit) will include: additional retail, restaurant, office and commercial spaces and six short-term rental units. This application was assigned the designation CZJ-03-14(L) by the Coastal Zone Management staff within the Virgin Islands Department of Planning and Natural Resources (“DPNR-CZM”).

4. The second application was for the “water-side” of the same marina complex. This application sought approval to construct a 145-slip fixed-dock marina with twelve permanent moorings, a sewage pump-out station and a fuel station, along with a mooring field for 75 boats in the western portion of Coral Harbor located within Coral Bay, St. John. The application also sought approval to use and occupy 27.5 acres of submerged lands. This application was assigned the designation CZJ-04-14(W) by DPNR-CZM.
5. On June 18, 2014, DPNR-CZM deemed both applications complete.
6. On August 20, 2014, the St. John CZM Committee (“CZM-STJ”) conducted a public hearing on both applications. An overflow crowd of St. John residents attended

with the overwhelming majority of same coming out in opposition to the two applications. Despite an admitted conflict of interest, Commissioner Brion Morrisette participated in the meeting for the purposes of establishing the quorum of three commissioners required by Virgin Islands law.

7. A duly-authorized representative of VICS testified at the August 20, 2014 hearing and gave reasons as to why both the Land Permit and the Water Permit should be denied. VICS also submitted written comments detailing why both the Land Permit and the Water Permit should be denied. VICS is therefore an “aggrieved person” as defined by 12 V.I.C. § 902(a).
8. On October 1, 2014, CZM-STJ held a decisional meeting on the two applications. Only three commissioners were present for the meeting. Despite the conflict of interest, Commissioner Brion Morrisette again participated in the meeting for the purposes of establishing the quorum of three commissioners required by Virgin Islands law. Acknowledging his conflict of interest, Commissioner Morrisette abstained from voting on the applications. The applications were approved by a 2-0 vote. Exhibit 1 is a copy of the transcript of the decisional meeting.
9. CZM-STJ issued written Major CZM Permits CZJ-03-14(L) (“the Land Permit”) (Exhibit 2) and CZJ-04-14(W) (“the Water Permit”) (Exhibit 3) on October 24, 2014.
10. VICS filed timely appeals of the above mentioned permits with the Board of Land Use Appeals on November 14, 2014.

11. The Virgin Islands Board of Land Use Appeals (“VIBLUA”) held a public hearing on VICS’s appeal (as well as on related appeals filed by other parties) on April 5, 2016.
  12. At the conclusion of the April 5, 2016 hearing, VIBLUA voted to consolidate the Land Permit and the Water Permit and then “affirmed” the decision of CZM-STJ.
  13. On June 6, 2016, VIBLUA issued its written decision on the Land Permit and Water Permit without stating “in writing and in detail the reasons for its decision and [the] findings of fact upon which its decision [was] based.” 12 V.I.C. § 914(d). A copy of the decision is attached as Exhibit 4.
- I. CZM-STJ FAILED TO CONSIDER THE CUMULATIVE IMPACT OF DEVELOPMENT AS REQUIRED BY 12 V.I.C. § 903.**
14. A development policy within the first tier of the Virgin Islands Coastal Zone is to guide new development “where it will have no significant adverse effects, individually *or cumulative*, on coastal zone resources.” 12 V.I.C. § 906(a)(1). (Emphasis added.)
  15. Further, 12 V.I.C. § 903(b)(4), requires a CZM Committee to assure the orderly, balanced utilization and conservation of the resources of the coastal zone.
  16. Consequently, a CZM Committee must consider not just the individual impact of a proposed development but must also consider the cumulative impact due to other existing or proposed development.
  17. It is error for a CZM Committee to grant a permit “without considering the impact of the fully built development” because to do so “would constitute a violation of the

VICZMA and a travesty of the administrative controls entrusted to the . . . Committee.” *Grapetree Area Property Owner’s Assoc., Inc. v. St. Croix Committee of the Virgin Islands Coastal Zone Management Commission*, App. No. 94/007 (VIBLUA March 30 1995) at p.11 (a copy of this decision is attached as Exhibit 5). For this reason, the “Environmental Assessment Report (“EAR”) submitted as part of a CZM Permit application must include “detailed information . . . about the effects which a proposed development is likely to have on the environment.” 12 V.I.C. § 902(o).

18. CZM-STJ allowed SEG to submit separate applications for its marina proposal: One application dealt with the land-side of the marina proposal. The second application dealt with the water-side of the same marina proposal.
19. Rather than consider the applications as a single application and consider the overall impact of development, CZM-STJ considered each application separately and failed to consider the overall impact of development.
20. The EAR submitted in support of the application for the Land Permit states in Section 9, “this project is entirely dependent on the adjacent marina project.”
21. The water-based marina has limited infrastructure (other than the docks and moorings). It relies solely upon management and marina support offices, emergency generators, restrooms, locker rooms, fuel storage, potable water supply, marine sewage holding tanks and parking that is provided by the development authorized under the Land Permit. Without the Water Permit, much of the

land-based development is unnecessary; and, without the Land Permit, the marina cannot function. At the CZM Public Hearing, SEG referred to the combined land and water developments as “the project” at least ten times, for example “I’m going to backtrack just a little bit to talk about how the project, which you’ll see tonight, came to be” and “I will now turn it over to Mr. Jeff Boyd, who will begin to talk about some of the technical aspects of the project” and in fact never once referred to the activity as two projects.

22. Although SEG isolated the environmental *impacts* of the two halves of the marina project (in order to minimize the apparent and cumulative impact), it nevertheless combined the economic *benefits* of the two halves of the marina project in the individual EARs so that the cumulative *benefits* supported each half of the project. Consequently, the EARs presented a skewed picture of the adverse impacts and benefits that precluded CZM-STJ from properly weighing the benefits and adverse impacts of the proposal.

**A. THE WHOLE IS GREATER THAN THE SUM**

23. The total impact of two projects in combination can be greater than the sum of the impacts from two projects when considered in isolation. For example, if land-based and water-based construction are occurring at the same time, the impact of erosion, run-off, and sedimentation can be greater than if each project is developed at separate times. Run-off from land-based construction activities could potentially overwhelm the turbidity screens used to control the migration of sediment from the

marine-based construction.

**B. WATER PERMITS ARE SUBJECT TO GREATER SCRUTINY; SEPARATING THE TWO APPLICATIONS ALLOWED THE LAND ACTIVITIES ASSOCIATED WITH THE SUBMERGED LAND OCCUPANCY TO ESCAPE THAT SCRUTINY.**

24. Additionally, by separating the two permits, SEG was able to reduce the level of scrutiny applied to its land-based activities.
25. For example, before a CZM Committee may issue a submerged land (a.k.a. “water”) permit, it must make a specific finding that there will be compliance with the Territory’s air and water quality standards. 12 V.I.C. § 911(c)(5).
26. The land-based development will require the disturbance of four acres of land with the resulting potential for the creation of dust and the release of emissions from construction equipment and generators. In addition to affecting air quality, these emissions can affect water quality as they land on the water.
27. These emissions, when quantified, can also be mitigated.
28. Because these emissions were not considered as part of a single, combined land and water permit application, they were not subjected to the scrutiny required under 12 V.I.C. § 911(c)(5).
29. As another example, the fuel storage tanks, the sewage holding tanks, and the construction which traverses the sole access road to communities south of the project (Federal Highway 107) all present impacts to public health, safety and general welfare. Because these project components were addressed in the application for the Land Permit, they escaped the “public interest” scrutiny of

911(c)(2).

**C. THE CZMA REQUIRES THAT THE CZM COMMITTEE CONSIDER THE CUMULATIVE IMPACT OF ALL PROPOSED DEVELOPMENT UPON THE COASTAL ZONE.**

30. CZM-STJ also failed to consider the cumulative impacts of other development in the area, including the Moravian Church's proposed marina.
31. The possibility of a second marina in Coral Bay would have a cumulative adverse impact on the environment; further, the existence of a competing marina could adversely impact the economic viability of SEG's proposal.
32. CZM-STJ erred when it failed to consider the cumulative impacts of SEG's activities and when it failed to consider the overall cumulative impact of development in Coral Bay. Those errors require that both the Land Permit and the Water Permit be vacated.

**II. VIBLUA LACKED THE AUTHORITY TO CONSOLIDATE THE TWO PERMITS.**

33. VICS and other aggrieved parties objected to CZM-STJ's failure to consider the cumulative impacts of development, both at the CZM level and then on appeal to VIBLUA.
34. VIBLUA agreed that each permit application was dependent upon the other and determined that "they must be treated as one permit application." Exhibit 4, Conclusion of Law No.14.
35. While this conclusion by VIBLUA was undoubtedly correct, it erred because it failed to recognize that CZM-STJ's failure to treat the permits as one application

correlated with CZM-STJ failure to assess the cumulative effects of the development.

36. Rather than reverse the issuance of the two permits, VIBLUA simply ordered that they be consolidated.
37. VIBLUA's decision did not address CZM-STJ's error in failing to consider the cumulative impact of development.
38. VIBLUA's decision to consolidate the two permits was *ultra vires*, as its appellate authority is limited to "either approv[ing] or deny[ing] an application for a coastal zone permit." 12 V.I.C. § 914(d).

**III. CZM-STJ FAILED TO MAKE THE FINDINGS OF FACT THAT MUST BE MADE BEFORE A PERMIT MAY BE ISSUED.**

39. The CZMA requires each committee to make a determination that the proposed activity is consistent with the goals, policies and standards of the CZMA, including the environmental policies set forth in 12 V.I.C. § 906(b) and § 911(c).
40. The CZMA mandates that if the project is not consistent with any of the goals, policies or standards of the CZMA, a permit must be denied. See 12 V.I.C. § 910(a)(2) and § 911(c).
41. The *conclusions* that *must* be made for *all* permits, as required by 12 V.I.C. § 910(a)(2) are:
  - a. that the development is consistent with the basic goals, policies and standards provided in 12 V.I.C. §§ 903 and 906; and
  - b. that the development as finally proposed incorporates to the maximum extent



feasible mitigation measures to substantially lessen or eliminate any and all adverse environmental impacts of the development.

42. Additionally, with respect to the Water Permit, CZM-STJ was required by 12 V.I.C. § 911(c) to make the following *conclusions*:

- a. that the grant of a submerged lands permit will clearly serve the public good, will be in the public interest and will not adversely affect the public health, safety and general welfare or cause significant adverse environmental effects;
- b. that the occupancy and/or development to be authorized by such a permit will enhance the existing environment or will result in minimum damage to the existing environment;
- c. that there is no reasonably feasible alternative to the contemplated use or activity which would reduce the adverse environmental impact upon the trust lands or other submerged or filled lands;
- d. that there will be compliance with the United States Virgin Islands territorial air and water quality standards;
- e. that the occupancy and/or development will be adequately supervised and controlled to prevent adverse environmental effects; and
- f. that in the case of the grant of an occupancy or development lease, an occupancy or development permit for the filled land is not sufficient or appropriate to meet the needs of the applicant for such lease.

43. CZM-STJ adopted the conclusions of the CZM Staff with respect to the conclusions

required by 12 V.I.C. § 910(a)(2) and 12 V.I.C. § 911(c)(1) and (2). However, it did not make *any* of the conclusions required by 12 V.I.C. § 911(c)(3) through (7). For this reason alone, the Water Permit must be vacated (and because the Land Permit application should have been consolidated with the Water Permit application before it was considered, it too must be vacated).

44. Further, even with respect to the *conclusions* reached by CZM Staff and adopted by CZM-STJ, the Committee made *no factual findings* such that VIBLUA or this Court could properly review those conclusions. Neither CZM Staff nor CZM-STJ offered any analysis of the criticisms of the proposed development that were offered by federal agencies, non-profit organizations and individual members of the public. Neither CZM Staff nor CZM-STJ articulated any reason for adopting, essentially verbatim, sections of the EARs even when those sections were the subject of considerable criticism by reputable sources.
45. “One of the most significant aspects of any administrative agency’s decision are the findings of facts.” *Virgin Islands Conservation Society, Inc. v. V.I. Board of Land Use Appeals*, 49 V.I. 581, 598 (D.V.I. 2007) (citing *Envtl. Ass’n v. V.I. Bd. of Land Use Appeals*, 31 V.I. 9, 12-16 (Terr. Ct. 1994). “The findings of fact should be sufficient in content to apprise the parties and the reviewing court of the factual basis for the action taken so that the parties and the reviewing tribunal may determine whether the decision has support in evidence and in law.” 49 V.I. at 598.

46. CZM-STJ failed to make any findings of fact.
47. CZM-STJ's failure to make findings of fact requires that its decision be reversed.
48. Ironically, VIBLUA's findings of "fact" in the appeal of this matter are limited to a recitation of facts relating to the procedural history of the permit applications. In Conclusion of Law No. 11, however, VIBLUA concluded that the Final Staff Recommendations of CZM staff "contain[ed] the legally sufficient findings." However, it is CZM-STJ that statutorily must make the findings of fact. Staff is limited to making recommendations.
49. CZM-STJ's failure to make the required findings of fact requires the reversal of the permit; VIBLUA's conclusion that the findings of fact were sufficient is an error of law that requires reversal of that decision.

**IV. THE CZM APPLICATION SUBMITTED BY SEG WAS INSUFFICIENT AS A MATTER OF LAW**

**A. SEG FAILED TO ESTABLISH THAT IT HAD THE LEGAL INTEREST TO DEVELOP THE PROPERTY IN ACCORDANCE WITH ITS PROPOSAL.**

50. An application for a major coastal zone management permit must include proof of legal interest in the property. 12 V.I.C. § 910(e)(2).
51. Further, the applicant must prove that it has the right to perform development upon all of the property upon which work would be performed if the application were approved. 12 V.I.R.&R. § 910-3(b).
52. If an applicant is not the owner of the property to be developed, then the owner must co-sign the application. V.I.R.&R. § 910-3(b).

53. The “Proof of Legal Interest” form prepared by CZM and required of all applicants for a CZM Permit requires the applicant to swear under oath that “I have the irrevocable approvals, permission or power of attorney from all other persons with a legal interest in the property to undertake the work proposed in the permit application . . . .” (See Form L&WD-5.)

54. The Land Permit authorizes SEG to develop Parcel Nos. 10-17, 10-18, 10-19, 10-41 Rem, 13A, 13B and 13 Rem, all of Estate Carolina.

**1. PARCELS 10-17 AND 10-18 ESTATE CAROLINA**

55. As part of its application for the Land Permit, SEG submitted deeds for Parcel Nos. 10-17 and 10-18, which established that the owners of those parcels were Eglah March Clendenin and Minerva Marsh Vasquez, at Trustees of the Marsh Sisters Trust.

a. Neither of the Trustee-owners co-signed the application for the Land Permit.

56. SEG also submitted a copy of a lease of Parcels 10-17 and 10-18 from the Trustee-owners to Brion Morrisette and Robert O’Connor, Jr.

a. Neither Morrisette nor O’Connor signed the application for the Land Permit.

57. SEG’s sole evidence that *it*, the applicant, had any legal right relating to Parcels 10-17 and 10-18 consisted of a limited power of attorney Morrisette and O’Connor that was “for the sole and limited purpose of providing [SEG] the legal authority to apply for” the CZM permit.

58. The limited power of attorney was revocable and expired on January 1, 2015 or

upon revocation, whichever first occurred.

59. SEG submitted no evidence establishing that it has the legal right to *develop* the Parcels 10-17 or 10-18.

60. No one with legal authority to develop the property signed the CZM permit.

**2. PARCELS 10-19 AND 10-41 REM**

61. As part of its application for the Land Permit, SEG submitted deeds for Parcel Nos. 10-19 and 10-41 Rem, which established that the owner of those parcels was Calvert Marsh, Inc.

a. No one acting on behalf of Calvert Marsh, Inc. signed the application for the Land Permit.

62. SEG also submitted a copy of a lease of Parcels 10-19 and 10-41 Rem from Calvert Marsh, Inc. to Brion Morrisette and Robert O'Connor, Jr.

a. Neither Morrisette nor O'Connor signed the application for the Land Permit.

63. SEG's sole evidence that *it*, the applicant, had any legal right relating to Parcels 10-19 and 10-41 Rem consisted of a limited power of attorney from Morrisette and O'Connor that was "for the sole and limited purpose of providing [SEG] the legal authority to apply for" the CZM permit.

64. The limited power of attorney was revocable and expired on January 1, 2015 or upon revocation, whichever first occurred.

65. SEG submitted no evidence establishing that it has the legal right to *develop* Parcels 10-19 or 10-41 Rem.

### 3. PARCEL 13 REM

66. As part of its application for the Land Permit, SEG submitted a copy of the deed for Parcel 13 Rem, Estate Carolina, which established that the owners of the parcel were Jim Phillips and Genoveva Rodriguez.

a. Neither Phillips nor Rodriguez signed the application for the Land Permit.

67. SEG's sole evidence that *it*, the applicant, had any legal right relating to Parcel 13 Rem consisted of a limited power of attorney from Phillips and Rodriguez that was "for the sole and limited purpose of providing [SEG] the legal authority to apply for" the CZM permit.

68. The limited power of attorney was revocable and expired on January 1, 2015 or upon revocation, whichever first occurred.

69. SEG submitted no evidence establishing that it has the legal right to *develop* Parcel 13 Rem.

### 4. PARCELS 13A AND 13B

70. As part of its application for the Land Permit, SEG submitted an Order Confirming the Marshal's Sale of parcels 13A and 13B Estate Carolina to Merchants Commercial Bank.

a. The Order Confirming the Marshal's Sale was subject to the owner's right of redemption.

71. No Marshal's Deed transferring the parcels to Merchants Commercial Bank was included in the record before the CZM-STJ.

72. It is a matter of public record that Merchants Commercial Bank assigned its certificate of sale for Parcel 13A to 13A Estate Carolina, LLC on June 23, 2014. The assignment is recorded in the St. Thomas/St. John Office of the Recorder of Deeds as document no. 2014005850. VICS requests that this Court take judicial notice of the assignment. A true copy of the assignment is attached as Exhibit 6.
73. No one acting on behalf of the Superior Court Marshal, Merchants Commercial Bank or 13A Estate Carolina, LLC signed the application for the Land Permit.
- a. SEG submitted no evidence establishing that it has the legal right to develop Parcels 13A or 13B.
74. SEG's sole evidence that *it*, the applicant, had any legal right relating to Parcels 13A and 13B consisted of a limited power of attorney from Merchant's Commercial Bank that was "for the sole and limited purpose of providing [SEG] the legal authority to apply for" the CZM permit.
- a. Merchant Commercial Bank's assignment of the certificate of sale to 13A Estate Carolina, LLC, revoked, as a matter of law, the limited power of attorney the bank had granted to SEG with respect to Parcel 13A.
75. The SEG application for the land-based development clearly did not contain proof of legal interest, the requisite signatures of the owners of the properties, or evidence that the applicant had the power to develop the properties. For this reason, the application failed to comply with 12 V.I.R.&R. § 910-7(a)(3) and should not have been deemed complete.

76. The determination that the application was complete was arbitrary and capricious.

*See Grapetree Bay Homeowner's Ass'n* (Exhibit 5), p.20 (CZM Committee's failure to follow its own regulations "constitutes an arbitrary and capricious act").

77. The Land Permit was issued to SEG; it was not issued to the individuals or entities that had granted the limited powers of attorney to SEG.

78. The decision to grant the Land Permit to SEG when it did not submit proof that it had the legal authority to develop the property was also arbitrary and capricious.

**B. SEG'S ENVIRONMENTAL ASSESSMENT REPORTS FAILED TO MEET THE LEGAL REQUIREMENTS OF THE CZM ACT.**

79. An application for a major coastal zone management permit must include a completed environmental assessment report as defined in 12 V.I.C. § 902(o) and appropriate supplementary data reasonably required to describe and evaluate the proposed development and to determine whether the proposed development complies with statutory criteria under which it might be approved. 12 V.I.C. § 910(e)(2).

80. Pursuant to 12 V.I.C. § 902(o), the "Environmental Assessment Report" is an "informational report prepared by the permittee available to public agencies and the public in general"

81. Pursuant to 12 V.I.C. § 902(o) the Environmental Assessment Report "shall include detailed information about the existing environment in the area of a proposed development, and about the effects which a proposed development is



likely to have on the environment; an analysis and description of ways in which the significant adverse effects of such development might be mitigated and minimized; and an identification and analysis of reasonable alternatives to such development.”

82. The Environmental Assessment Reports submitted by SEG failed to meet the above requirements of the CZMA for numerous reasons, including, *inter alia*, (and without limitation) the following:

- a. Failure to address the cumulative impact of development (discussed above).
- b. Failure to properly address the sewage treatment requirements of the overall marina proposal. The EAR supporting the application for the Land Permit describes sewage treatment solely for the land based aspect of the proposal. (It states that only 10.830 gallons/day of sewage (from toilets, sinks, etc.) will be generated from the sewage treatment facility – such a small amount of wastewater could not possibly include wastewater from the boats using the proposed marina; nor could it include the “crew showers” based on shore.) The EAR supporting the application for the Water Permit relies upon a holding tank to be constructed under the auspices of the Land Permit and simply states that sewage/wastewater pumped (from boats) into the holding tank will be trucked from Coral Bay to Cruz Bay. There is no assessment of the impact of this additional wastewater upon the Virgin Islands Waste Management Authority. Critically, SEG utterly failed to address the problems associated

with boats that might use its facility and improperly discharge wastewater into Coral Bay. Other problems with the assessment of the sewage treatment issues included:

- i. little detail was provided regarding the location, management and stability of the pump-out storage facility;
  - ii. no plans or mitigation measures were considered to substantially lessens or eliminate the adverse impacts of a spill from the pump-out facility;
  - iii. there was no discussion of the tank design and how spills would be contained;
  - iv. there was no management plan for depositing and removing sewage from the storage tank.
- c. Failure to provide adequate information such that the project's impact upon water quality could be properly addressed. Specifically, the EAR for the Land Permit application<sup>1</sup> should have provided, at a minimum, the following:
- i. How the use of sewage treatment grey water for irrigation (the entire land-based portion of the marina is in close proximity to the shore and a gut that runs between Parcels 13A and 12B and Coral Harbor) would affect water quality;
  - ii. How the discharge of grey water (in excess of the capacity needed for

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<sup>1</sup> For convenience, criticisms are directed to the EARs as submitted. By doing so, VICs is in no way conceding that the submission of separate EARs for the land and water aspects of the marina proposal was appropriate.

- irrigation) into the marina project's drain fields would affect water quality;
- iii. the location of the drain fields (how can the environmental impact be ascertained when the location of the drain fields is not identified?);
  - iv. the design of the drain fields;
  - v. adequate information about the erosion and sedimentation controls that were to be used during construction
- d. Failure to adequately describe the construction methods proposed and provide a schedule for construction activities (Land Permit EAR).
  - e. Failure to include a plan for implementation of, and maintenance of, sediment and run-off control devices (Land Permit EAR).
  - f. Failure to include adequate information regarding the required analysis of alternatives to the proposed development (both EARs).
  - g. Failure to include a plan to address emissions of particulate matter and other air pollutants (both EARs).
  - h. Failure to provide sufficient water quality data to establish the existing water quality and then assess the impact that both construction and operation of the marina development would have upon the water quality. Such an analysis is required by CZM's own Supplemental EAR Guidelines for Marina Development.
  - i. Failure to include requisite information regarding the methodology to be used

- for water quality monitoring and modeling (also required by CZM's own Supplemental EAR Guidelines for Marina Development).
- j. Submission of inaccurate, incomplete, and outdated water sampling data with no evidence to establish that the water samples were representative of the project site (in particular, the use of water samples that were taken prior to the completion in 2012 of significant measures taken by the nonprofit agencies with the cooperation of the U.S. Virgin Islands government to control storm water sedimentation reaching Coral Harbor. In other words, after 2012, water quality in Coral Harbor should be significantly better than it was prior to 2012. By using samples taken prior to 2012, SEG presented an inaccurate picture of the baseline water quality. This would mean that as water samples were taken during construction to assess the impact of construction and compared to samples prior to 2012, the use of the older samples would make it appear that the construction activities were having a lesser impact upon construction than they actually were.
- k. Failure to provide reliable wave studies so that CZM could assess the adequacy of measures taken to prevent damage to boats and the environment; or to assess whether SEG's economic projections relating to the usage of its proposed marina (relevant to the issue of alternatives to the proposed development) were realistic. Many people providing testimony at the CZM hearing raised questions as the viability of the marina and the quality of the

yachting experience in the marina given its exposure to waves.

- l. Failure to address the impact that the increased marine traffic (to the marina) would have on the limited safe hurricane harbors in the Virgin Islands.
- m. Failure to address contingency plans relating to hurricane damage to the fueling facilities and fuel spills at any time reaching the nearby shoreline mangroves.
- n. Failure to address the ability of the proposed docks to withstand typical conditions anticipated in a hurricane (and thereby to potentially contribute to significant marine debris creating a hazard to boaters and the adjacent protected mangroves).
- o. The use of irrelevant factors, such as data regarding swells, to conclude that the fetch in Coral Bay is insufficient to allow the creation of large wind waves.<sup>2</sup>
- p. Failure to propose feasible or adequate mitigation measures. Specifically, but without limitation:
  - i. There was insufficient information provided from which CZM could have concluded that the proposed transplantation of seagrass was feasible: there was no evidence that the proposed transplant location was suitable;

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<sup>2</sup> Fetch refers to the amount of open water over which wind must blow in order to build wind waves of various sizes. Although wind waves can contribute to swell, the opposite is not true – swell plays no part in the creation of wind waves. Thus, data regarding swells is irrelevant to the determination of fetch and/or the size of wind waves.

nor were criteria established by which success of the mitigation effort could be considered; no consideration was given to the littoral rights of landowners adjacent to the planned transplant location (*e.g.*, whether they would be deprived of the right to seek to develop the submerged lands adjacent to their properties or, alternatively, whether if they were permitted to use such rights, how they would be burdened by having to deal with relocating the transplanted seagrasses).

- ii. The proposed location for transplanting the seagrasses was an area where seagrasses have previously been destroyed by high sedimentation; SEG failed to produce evidence that the same result would not occur with the transplanted seagrasses.
- iii. SEG's proposed transplant area covered approximately 0.06 acres whereas the impacted area consisted of eight acres of direct impact (within the project footprint) plus an additional approximately twenty acres that would sustain indirect impact from the project.
- q. Failure to provide any information regarding the turbidity controls (turbidity curtains) so that CZM-STJ could assess whether or not the turbidity controls were sufficient and would properly control the migration of suspended particles. These deficiencies included, without limitation:
  - i. providing no information about the placement or depth of the turbidity curtains;

- ii. no addressing how construction vessels and barges could enter and exit the construction site without causing a release of suspended particles beyond the curtains;
- iii. establishing that the turbidity curtains were practical for the actual wave activity anticipated at the site;
- r. Failure to provide any information as to the impact of the turbidity controls upon marine life and measures that would be taken to protect marine life from the turbidity controls.
- s. Failure to consider mitigation of construction impacts. The dock construction will result in damage due to barge spuds and tugboat propeller wash. SEG proposed no mitigation measure and instead improperly delegated responsibility for controlling this damage to unknown contractors. SEG stated that these contractors would be provided with a “construction management plan.” No such construction management plan was included in the application and thus CZM could not review it.
- t. Failure to provide adequate information about the proposed mooring field for 75 boats. SEG proposed the use of a 75 boat mooring field to mitigate the impact of its displacement of 115 existing boats currently on moorings in Coral Bay. It offered no information from which CZM could determine how the existing mooring users would be incentivized to use the new moorings. SEG indicated that it would have a memorandum of understanding with DPNR to

manage the mooring field. The memorandum of understanding was not submitted as part of the application process. There is no evidence that the proposed mooring field would comply with the Mooring and Anchoring Act, 25 V.I.C. §§ 401, *et seq.* (which, among other things, requires community participation in the development of mooring fields). There was no information provided to properly delineate the location, size or design of the mooring area such that CZM could possibly consider its impact upon the environment.

- u. The proposed “out-of-kind” mitigation through the planting of mangroves was insufficiently described. No adequate plan was provided of this proposed mitigation measure.
- v. Failure to properly eliminate, or address, impacts upon endangered species. SEG admitted in its EAR that the seagrass beds in Coral Bay were “forage habitat for endangered sea turtle species.” Water EAR at 5-2. SEG also acknowledged that its project would “impact seagrass beds” which are “considered a critical foraging habitat for sea turtles. *Id.* at 6-39. SEG also admitted that construction activity had the potential to impact endangered coral species “due to water quality impacts and due to vessel strikes.” *Id.* at 6-40. Despite these admissions, SEG offered no substantive solutions to eliminate or minimize such impacts.
- w. Failure to address the potential for impact upon significant areas of marine resources adjacent to Coral Harbor, including Hurricane Hole, the Virgin



Islands National Park, the Virgin Islands Coral Reef National Monument, as well as Lagoon Point National Natural Landmark. 12 V.I.C. § 911(b)(1)(A) requires an EAR that adequately states the prevailing conditions of the site as well as adjacent properties.

- x. Failure to comply with the Supplemental EAR Guidelines for Marina Development which includes management measures that “must” be addressed in an EAR as well as “recommended measures” that can be used to implement the required management measures.
- y. Failure to address the impacts of destruction of spawning and feeding habitat on the fish population. The application did not contain a survey of fish habitat to determine the variety of fish species that use the habitat. There was insufficient information as to the impact upon the fishing community due to the destruction of critical habitat.
- z. Failure to address the reduced shoreline/boating access for the fishermen who currently use the project shoreline as their access to the water. There is no provision for mooring/docking their fishing boats in SEG’s plans, despite their current active presence on the subject property and shoreline.
- aa. SEG’s analysis of the economic impact of the proposed marina lacked detail or support for its rosy economic projections. Among other deficiencies, SEG only included positive economic impacts while pretending that negative economic impacts did not exist.

- bb. SEG stated in its water EAR that “conditions permitting, piles are anticipated to be driven with a vibratory hammer and local geological conditions are not expected to adversely impact this plan.” Water EAR at 6-13. SEG plans to drive 1,333 piles. *Id.* at 6-16. No information was provided as to how deep these piles would have to be driven in order to properly anchor the docks. No information was provided as to the geology of the seabed so that it could be determined whether the use of piles is appropriate or whether vibratory pile driving would be successful.
- cc. The EAR also lacked sufficient information regarding the sonic impact of the pile driving upon endangered species or steps that would be taken to minimize such impacts.

**V. THE WATER PERMIT FAILS TO SET FORTH THE BASIS FOR THE RENTAL FEES.**

83. The computation of rental fees for all permits for development of the submerged lands, rental reductions and waivers are all determined by 12 V.I.C. § 911(f) and 12 V.I.R.&R. § 910-5(e). These provisions require, among other things, that the basis for negotiation of the rental fees be attached to the lease or permit and that it be based on the fair market value, gross receipts of the commercial operations, and any other factors that may be pertinent. If the fees are to be waived or reduced, it must be determined to be in the public interest. In addition, the determination must be in writing specifying the reasons for it. A copy must be attached to the permit and transmitted to the Governor for approval, and to the

Legislature for ratification.

84. The basis for the calculation of the rental fees was not included as part of the Water Permit.
85. Without the required document, there is no way to know the basis of CZM's calculation. Consequently, it is impossible to determine how the rent was calculated or whether it considered all of the submerged lands that are subject occupancy by SEG (including the mooring field and transplant areas).
86. To the extent that the calculated fee reflects a reduction or waiver of the rent that is required, the term for reconsideration or reassessment of the rental fees cannot exceed 3 years. In this case, the Permit provides a term of 5 years.

**VI. THE WATER PERMIT WAS SUBJECT TO IMPROPER CONDITIONS.**

87. 12 V.I.R.&R. § 910-11(b) and (c) prohibits the issuance of a CZM permit when conditions of the permit have not yet been met.
88. 12 V.I.C. § 904(d) vests the CZM Commission with "primary responsibility for the implementation of the provisions of" the CZM Act.
89. The Respondent has illegally attempted to usurp this authority by issuing a permit that bypasses the CZM Committee and attempts to give SEG or other unknown parties the primary responsibility for implementation of the provisions of the CZM Act that apply to the permit conditions.
90. CZM-STJ included a condition in the Water Permit that the turbidity curtains needed to be installed at an "adequate depth" in order to prevent suspended

sediments from migrating outside the work area. In setting this condition, the Committee implied the information was necessary, but was not submitted to the Committee beforehand for review and assumed that there was an adequate depth at which the curtains will perform properly.

91. Such belated conditions are specifically prohibited by the CZMA, *See Virgin Islands Conservation Society v. Virgin Islands Port Authority*, 21 V.I. 584 (Terr. Ct. St. T. and St. J. 1985); *Virgin Islands Conservation Society v. Virgin Islands Board of Land Use Appeals*, 857 F. Supp. 1112, 1120 (D. V.I. 1994) (“deferring the review of plans and studies until after a permit is issued creates twin evils: the tendency to tolerate more environmental harm once development has begun, and the incentive for applicants to present the CZM Committee with a *fait accompli* by delaying the submission of the requested information”) and violates 12 V.I.C. § 903(b)(11) by depriving the public of its right to be involved in and review coastal zone planning and development.

**VII. IMPROPER PARTICIPATION OF A COMMISSIONER WITH A CONFLICT OF INTEREST.**

92. St. John CZM Committee member Brion Morrisette is a lessee of Parcels 10-17, 10-18, 10-19 and 10-41 Rem Estate Carolina under long term leases giving him and his co-lessee, Robert O’Connor, Jr. the right to develop the properties.
93. Morrisette executed a time-limited, fully revocable, power of attorney to SEG giving it the right to apply for the Permit as Morrisette’s (and Robert O’Connor,

Jr.'s) attorney-in-fact.

94. The power of attorney was submitted to CZM and was made a part of the file and the sufficiency of this power of attorney to allow SEG to receive a permit as the developer of the property was an issue before the CZM Committee.
95. On August 20, 2014, the St. John CZM Committee held a public hearing on the Permit along with the Water Permit. At the hearing, commissioners Penn, Roberts and Morrisette established the quorum necessary to allow the hearing to occur and then heard testimony from SEG and many members of the public.
96. At the decision meeting on October 1, 2014, the same three commissioners established the quorum necessary to allow the commission to meet.
97. The CZM rules and regulations, 12 V.I.R.&R. § 904-6( d), prohibit a Commission member from using his “official position to aid or impede the progress of or approval of a Coastal Zone application in order to further his own pecuniary interest, . . . .”
98. At the decision meeting on October 1, 2014, Morrisette, acknowledged that he had a conflict of interest [since he had a pecuniary interest in the lease of the four properties and acted as counsel for one of the land owners as well as one of the principals of SEG] and abstained from voting; but, he still participated in the meeting to maintain the quorum. Indeed, he stated that he was participating for the purposes of ensuring that there would be a quorum. Morrisette’s participation allowed the other members to vote. The remaining members voted 2-0 to grant the

### Permit to SEG.

99. Morrisette's participation in the August 20, 2014 hearing for the purposes of establishing a quorum "aid[ed] . . . the progress of . . . of . . . a Coastal Zone application." Thus, his participation, even if only for the purposes of creating the quorum, was contrary to law.

### CONCLUSION

100. CZM-STJ's actions were arbitrary and capricious and failed to comply with the CZMA. It erred because it:
- a. failed to consolidate the two permit applications and consider the cumulative impact of the development upon the entire coastal zone;
  - b. failed to consolidate the two permit applications and therefore did not subject the land-aspects of the development to the scrutiny required in 12 V.I.C. § 911;
  - c. granted the permits when SEG had failed to prove that it had the required legal interest in the properties and authority to develop the properties;
  - d. granted the permits when the EARs were insufficient, both as a matter of law and of fact;
  - e. failed to make any findings of fact that allowed its decisions to be properly reviewed on appeal;
  - f. failed to make all of the conclusions required by 12 V.I.C. § 911(c);
  - g. made some of the conclusions (by adopting CZM Staff recommendations) required by 12 V.I.C. §§ 910 and 910(c) when those conclusions are not

supported by the substantial evidence of record;

- h. failed to state the basis for the rental calculations for the Water Permit as required by the CZMA;
- i. imposed improper conditions upon the Water Permit; and
- j. proceeded to consider the permit with the participation of a Committee member who was disqualified from taking any steps to advance the progress of the permit.

101. The decision of VIBLUA was erroneous because it

- a. consolidated, without any statutory authority, the Land Permit and Water Permit instead of vacating the two permits when it recognized that they were improperly considered separately;
- b. affirmed the decision of CZM-STJ despite all of the errors listed above.

#### **REQUESTED RELIEF**

VICS prays that after due proceedings, this Court:


- A. grant its writ of review;
- B. order that no surety bond under Rule 15(b) of the Rules of the Superior Court is required, in as much as any decision of the Court is unlikely to result in an order directed at VICS that would require surety to ensure compliance;
- C. direct the clerk of court to issue the writ to the Respondent with instructions that the Respondent shall return the writ to the Court within 20 days together with a certified copy of the record;

- D. direct the Respondent to answer the petition, and, direct that in each instance where Respondent denies an allegation of the petition the Respondent cite to the portions of the record that it asserts support the denial;
- E. after Respondent has answered the petition, establish a briefing schedule; and
- F. reverse the decision of the Board of Land Use Appeals and remand with instructions that the Board of Land Use Appeals remand the permits to CZM-STJ with instructions that the Permits be vacated.

Respectfully submitted,

**LAW OFFICES OF ANDREW C. SIMPSON, P.C.**  
Attorneys for Petitioner, Virgin Islands  
Conservation Society, Inc.

July 7, 2016



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### **Certification of Counsel**

I, Andrew C. Simpson, an attorney and member of the Virgin Islands Bar certify that I have examined the processes and proceedings of the Board of Land Use Appeals and the Coastal Zone Management Committee and the decisions and determinations sought to be reviewed, and in my opinion, they are erroneous. I further certify that this petition is not filed for delay.



ANDREW C. SIMPSON



Reference 4:

Petition for Writ of Review - Moravian Conference

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS & ST. JOHN**

MORAVIAN CHURCH CONFERENCE OF THE  
VIRGIN ISLANDS,

Petitioner,

vs.

ST. JOHN COASTAL ZONE MANAGEMENT  
COMMITTEE,

Respondent.

)  
)  
) PETITION FOR WRIT OF  
) REVIEW

) No. \_\_\_\_\_

SUPERIOR COURT

16 JUL 20 PM 6: 37

RECEIVED

PETITION FOR WRIT OF REVIEW

COMES NOW Petitioner Moravian Church Conference of the Virgin Islands (“Petitioner” or “Moravian Church”), pursuant to 12 V.I.C. § 913(d), who seek a writ of review of the decisions of the St. John Coastal Zone Management Committee (“CZM”) rendered on October 10, 2014 in the application of the Summer’s End Group, LLC (the “applicant” or “SEG”) and the decision of the Board of Land Use Appeals (“BLUA”), dated June 6, 2016, and issued to the parties on or about June 13, 2016, dismissing Petitioner’s appeal of those decisions.

Jurisdiction

1. This court has jurisdiction over this appeal pursuant to 4 V.I.C. § 76 and 12 V.I.C. § 913(d).
2. Petitioner is a current and historic owner of shoreline property abutting Coral Bay harbor (“Petitioner’s Property”).
3. SEG is a developer who applied for two linked permits from CZM for the construction of a massive marina in Coral Bay harbor, a land permit (CZM Permit No. CZJ-3-14(L) or the “Land Permit”) for demolition of structures, construction of structures, upgrades



to structures, and construction of a waste treatment facility and parking facility as well as a water permit (CZM Permit No. CZJ-4-14(W) or the “Water Permit”) for construction of a 145 slip marina, mooring field consisting of up to 75 moorings, and a pump-out and fuel station.

4. On October 10, 2014, CZM granted both permits over the vehement objections of Petitioner, the community, and public interest groups.
5. On November 24, 2014, Petitioner filed a timely appeal of both decisions to BLUA.
6. Though BLUA’s order dismissing the appeal is dated June 6, 2016, the order was not provided to Petitioner and the other parties to the appeal until June 13, 2016 via electronic mail to the parties’ respective legal counsel.
7. Thus, the instant petition for writ of review is timely, being filed less than 45 days from the date of the final decision of BLUA.

#### CZM Decisions and Permits

8. CZM failed to adequately satisfy 12 V.I.C. § 911(c)(1), which requires CZM to deny any application under 12 V.I.C. § 910 for the development of submerged lands absent a finding that the application is consistent with the basic goals of 12 V.I.C. § 903 and with the policies and standards of 12 V.I.C. § 906.
9. With respect to those basic goals, 12 V.I.C. § 903(b)(1)-(2), (4)-(6), and (8)-(9) identify seven relevant goals that CZM was required to find SEG had achieved.
10. With respect to the developmental policies for the first tier of the coastal zone, 12 V.I.C. § 906(a)(1), (3), and (6)-(10) identify seven relevant policies that CZM was required to find SEG had satisfied.

11. With respect to the environmental policies for the first tier of the coastal zone, 12 V.I.C. § 906(b)(1)-(6) and (8)-(10) identify eight relevant policies that CZM was required to find SEG had satisfied.
12. Pursuant to 12 V.I.C. § 910(a)(2)(B), SEG had the burden of proof to demonstrate that the development as finally proposed incorporated to the maximum extent feasible mitigation measures to substantially lessen or eliminate any and all adverse environmental impacts of the development.
13. Absent a finding that SEG had overcome that burden, the permit application had to be denied.
14. However, CZM was alerted by extensive public testimony and written submissions to numerous vague, general, conclusory, and unsupported statements throughout both applications on the environmental impact of the development.
15. It was SEG's burden to prove that all feasible mitigation measures had been incorporated in the proposed development.
16. CZM did not analyze the application based upon the issues the public comment process revealed and had no evidentiary basis for making a finding that 12 V.I.C. § 910(a)(2)(B) was satisfied.
17. Rather, CZM explicitly declined to address aspects of SEG's proposed development that would clearly have an impact on CZM's specific jurisdictional duty under 12 V.I.C. § 910(a)(2)(B).
18. Among the terms and conditions imposed by CZM upon both permits, was a statement that if trimming of mangroves is required the Permittee must obtain a permit from the Department of Planning and Natural Resources/Division of Fish and Wildlife.

19. Sharon Coldren, President of the Coral Bay Community Council, submitted a letter to Jean Pierre Oriol, Director of the Coastal Zone Management Program, on August 4, 2014, in which she noted that, in section 3.0-2 of the application, SEG appeared to indicate that the planted mangroves would be trimmed as a low hedge.
20. Under 12 V.I.C. §§ 910(a)(2)(B) and 911(c)(1), CZM may not approve a permit for a development that contemplates the trimming of mangroves without performing its own analysis and making its own findings.
21. Any development that involves an impact upon the “integrity of reefs, marine meadows, salt ponds, mangroves and other significant natural areas” raises a clear question as to whether or not the proposed development satisfies the basic goals of the United States Virgin Islands for its coastal zone, which must be satisfied under 12 V.I.C. § 910(a)(2)(A) and 911(c)(1) or else the application must be denied.
22. Noting the possibility that SEG’s proposed development might involve the trimming of a mangrove compelled CZM to make its own analysis of whether the proposed development was acceptable based upon CZM’s duty to make a finding that the proposed development is consistent with the goal of “conserv[ing] ecologically significant resource areas for their contribution to marine productivity and value as wildlife habitats, and preserve the function and integrity of ... mangroves and other significant natural areas.” 12 V.I.C. § 903(b)(8).
23. However, no such analysis was undertaken as confirmed by the record before CZM.
24. Though CZM disregarded this issue at the time it made its decision, in defending its decisions before the BLUA, CZM argued that the mangroves were new plant life being

planted by SEG and, therefore, the fact that SEG intended to trim those mangroves as a low hedge was irrelevant.

25. In as much as the planting of mangroves was being cited by SEG as an environmental benefit of the development, the fact that SEG was simultaneously intending to trim those planted mangroves as a low hedge was clearly highly relevant.

26. Moreover, SEG expressing a pre-meditated intent to plant a mangrove and simultaneously damage that mangrove's function and integrity merely for SEG's aesthetic purposes clearly constitutes a violation of one of the basic and mandatory goals of 12 V.I.C. § 903(b)(8).

27. In the same letter, Sharon Coldren also noted that the proposed boating density at the proposed location for the docks as well as the shallow draft would obstruct sunlight for the seagrass bottom, stir up silt to further obstruct sunlight and damage seagrass, coral, and general water quality in an area she noted had been classified as an Essential Fish Habitat by NOAA.

28. NOAA, in turn, expressed concerns over the environmental impact of the proposed marina.

29. Actually, NOAA had expressed concerns about proposed plans for an earlier, smaller version of the proposed marina and was no less concerned after SEG had revised its plans to make the marina *even larger*.

30. In response to a request from CZM for commentary, NOAA noted that the new, larger proposed development "result[ed] in greater impact to [the] benthic habitat that is used by sea turtles as well as creating the potential for greater water quality impacts in the

bay, which contains habitat for ESA-listed and proposed corals in addition to sea turtles. For this reason [NOAA] continue[s] to have concerns regarding this project.”

31. Unlike CZM, NOAA listed fifteen different additional pieces of information, studies, data, and surveys that would be required for SEG, noting that even with that information once the federal Endangered Species Act consultation began, additional information may also be required.
32. Though CZM shares a virtually identical duty to ensure that proposed developments do not negatively impact the Virgin Islands coastal zone environment, CZM required no additional information, studies, data, or surveys – not even a response to the most fundamental question raised by NOAA: are there feasible alternatives, including on and offsite alternatives and alternatives to a marina?
33. This is virtually the same question CZM is statutorily compelled to ask for any development of this kind requiring the dredging of submerged lands, as such developments are only permissible “where there are no feasible, less environmentally-damaging alternatives.” 12 V.I.C. § 906(a)(8).
34. It should also be noted that SEG’s development clearly involves filling and dredging of submerged lands as it requires the installation of over one hundred pylons into the submerged lands, which requires the removal of sea grass for each such pylon, as well as a set of wide, opaque piers and walkways connecting those pylons, which (combined with the mega yachts to be moored along those piers and walkways) deprives the underlying sea grass of light – a situation that the National Oceanic and Atmospheric Administration (“NOAA”) indicated would kill acres of sea grass under the development.

35. Whether one kills all sea grass below one's development by dredging it, filling it, or depriving it of light (via targeted dredging to install pylons), the result is the same.
36. The only alternatives identified by SEG were the possibility of no development whatsoever and identification of alternative sites that were unavailable or less appealing *for a marina of the size proposed*.
37. Inexplicably, there is no alternative presented for a less massive marina or for a development other than a marina, though NOAA specifically indicated it was a question NOAA had posed to SEG in response to an earlier, smaller version of the proposed development.
38. Rather than answer that question from NOAA, SEG proposed an even bigger marina.
39. At numerous points in the Water Permit application, SEG made statements regarding alleged improvements to be achieved based upon alleged existing negative environmental factors.
40. SEG provided no evidentiary support for the existence of those alleged existing negative environmental factors.
41. By citing potentially *non-existent* "existing" negative environmental factors, SEG describes the proposed development, at times, as actually constituting an environmental mitigation effort rather than a commercial development, resulting in a net environmental benefit to Coral Bay.
42. For instance, SEG makes conclusory statements regarding damage to sea grass caused by existing mooring boats and boats routinely utilizing two anchors, causing damage to sea grass.



43. However, in her letter to Director Oriol, Sharon Coldren, President of the Coral Bay Community Council, indicated these conclusory statements were false.
44. CZM required no evidence from SEG to establish that these alleged negative existing environmental factors actually existed.
45. Moreover, in disregard of its obligation to consider lessening environmental impacts, and considering alternatives, CZM did not require SEG to address the simple solution of installing a reasonable number of moorings to replace anchors, without inclusion of a massive marina.
46. Meanwhile, NOAA noted that multiple acres of sea grass would be destroyed by the proposed development, impacting various species that rely upon the sea grass.
47. This mass destruction was simply disregarded by CZM.
48. The environment is also endangered by the prospect of damage to the proposed marina as a result of tropical storms and hurricanes.
49. Sharon Coldren noted before CZM that safety concerns were raised by the placement of the proposed marina, noting the danger to life and property caused by mooring vessels in a location with insufficient protection from storm winds.
50. In fact, she provided photographs of vessels that were apparently thrown onto the land in the area of the proposed development as a result of hurricanes.
51. Obviously, adding the presence of concrete structures in the water in front of that shore increases the likelihood that in such an event the boats would be crushed against the slips and release whatever toxic substances might be contained within them (such as gallons and gallons of fuel) directly into the sea grass as they are broken upon those slips and docks.

52. In fact, as SEG's proposed marina is specifically designed to be marketed to "mega yachts", the amount of toxic substances would be far greater in such large vessels.
53. Coldren also noted to CZM that insufficient space was provided for maneuvering vessels of the size proposed by SEG, increasing the likelihood of collisions and the release of toxic substances as a result of damage to the vessels.
54. However, CZM required no further evidence from SEG establishing the location was safe for mooring substantial numbers of large yachts, and simply disregarded this important testimony.
55. Many members of the public submitted letters to CZM emphasizing the exposed nature of the proposed marina location, including members of the public with clearly extensive nautical experience.
56. One commenter had circumnavigated the world on a sailing vessel. Another was licensed to operate 50 ton seagoing vessels.
57. One commenter submitted photographs of another marina on St. Thomas, located in a particularly exposed area, which has apparently been destroyed and repaired so many times after storms that it has been left to disintegrate – an eyesore for the public.
58. If those people described the proposed location as particularly unsafe and particularly exposed to the elements in a storm and described the size of the proposed marina as unsafe and excessive, CZM had no proper evidentiary basis for simply accepting SEG's dismissive statement that no marina can be completely protected in a high category storm as sufficient to deem the proposed development to have justified a finding that no feasible alternative exists.

59. If SEG claimed that its studies showed that there was minimal exposure to the elements and that the location was particularly protected from the elements, a member of the public submitting photographs of vessels beached in the location of the proposed development more than justified further inquiry on the part of CZM.
60. Whether *any* marina placed in *that* location would be safe in a high category hurricane is irrelevant.
61. Rather, the question is whether *that* location on *that* side of Coral Bay is an appropriate location for a marina of that size at all and whether there are alternative locations that, due to topography and the customary path of winds during a hurricane, would be far better protected than the proposed site.
62. SEG clearly failed to satisfy its burden of proof with respect to the establishment of mitigation measures and thus any finding by CZM that SEG had done so was clearly arbitrary and capricious.
63. In the immediate aftermath of the meeting at which 2 of the 3 members of the St. John CZM Committee voted to approve the permit, without any modifications – apparently an unprecedented action – one of the two members explained his vote to the press by stating that he was “keeping his fingers crossed and hoping it works out for the best.” (St. Thomas Source, October 1, 2014.)
64. Clearly, the V.I. Code mandates that CZM do far more than “cross its fingers and hope” that a developer has met the goals, policies, and standards required of CZM applications.
65. The V.I. Code requires CZM to make a finding that the requisite goals, policies, and standards have been met and satisfied, failing which the application must be denied.

66. In the course of making that finding, CZM must require of SEG any and all evidence, studies, and reports necessary to confirm that the relevant goal, policy, or standard has been met and satisfied.
67. In this case, CZM had no basis for such a finding and disregarded the key issues raised by all those who opposed the application.
68. Perhaps the most important factor in any major development for purposes of determining whether the development satisfies the goals and policies stated in 12 V.I.C. §§ 903(b) and 906(a)-(b) is the question of whether or not the development will actually be completed as planned or will fail to be completed, resulting in substantial damage to the environment, an eyesore for the public, and damage to the community with no redeeming commercial or public interest purpose – a bridge to nowhere with horrible consequences for the coastal zone of the U.S. Virgin Islands.
69. It is thus particularly shocking that CZM disregarded the warnings of numerous members of the public, who questioned SEG's ability to complete the project as proposed – SEG's financial wherewithal to see to completion this massive proposed marina.
70. One member of the committee questioned SEG at the public hearing as to whether SEG possessed sufficient financing to complete the development, to which SEG purportedly responded, simply "yes."
71. Apparently satisfied with this non-evidence of the sufficiency of SEG's financing, CZM asked no further questions of SEG on the subject.
72. Given the massive cost for the development identified by SEG itself, this was inexcusable.

73. SEG's Market Study, Feasibility and Economic Analysis noted that the project is anticipated to cost \$35,000,000.00 (\$22,510,000.00 for CZJ-4-14(W) and \$12,490,000.00 for CZJ-3-14(L)).
74. SEG proceeded to describe a U.S. Fish and Wildlife Service Boating Infrastructure Grant of \$1,300,000.00.
75. SEG concluded: "[t]he St. John Marina is well funded to get through the permitting process."
76. With respect to the alleged \$1,300,000.00 grant, SEG provided CZM with a letter from the U.S. Department of the Interior, approving a grant award of \$2,673,689.00, of which \$1,273,689 was to come from federal funds.
77. However, the letter stated explicitly that only \$255,000.00 is authorized to be released to secure permits and to conduct environmental and biological studies to determine impacts.
78. It also stated specifically that the remaining funds were only to be released upon submission and approval of the required compliance documents.
79. Moreover, the letter stated that the grant was for the period of October 1, 2013 to September 30, 2014.
80. In other words, at the time CZM voted to approve SEG's permits on October 1, 2014, the grant had already expired and SEG had provided no evidence that the remaining grant funds had been released, that SEG's compliance documents had been approved, or even that SEG had submitted its compliance documents at all.
81. The only evidence of funding, other than that letter from the Department of the Interior regarding the release of \$255,000.00, is a single letter.

82. However, that letter provides no evidence of actual funding.
83. SEG's sole piece of evidence regarding financing other than the grant letter was a non-binding letter of intent from an entity from St. Maarten in the Netherland Antilles by the name of "Anaconda Holdings, LLC" dated April 1, 2014.
84. Neither the letter of intent nor the company nor the content of the letter were referenced at any point in the actual text of SEG's Market Study, Feasibility and Economic Analysis.
85. Rather, the letter was appended to the end of the report as an apparent afterthought.
86. However, even if that letter had come from a well-known and well-respected bank or financial institution rather than a little-known entity, it would not constitute reliable evidence of sufficient financing for a development projected to cost tens of millions of dollars.
87. A mere "agreement to agree," unenforceable under the law, rather than a formal commitment, as is customarily provided by banks, financial institutions, and insurance companies, is no basis upon which to conclude that an applicant has provided evidence of financing, much less evidence of tens of millions of dollars in financing.
88. The text of the letter itself makes clear that it is not an actual commitment ("[b]ased upon a detailed review of The St. John Marina, YCSE due diligence information as well as on site meetings, and upon acceptance and compliance with this letter of intent, we *will* issue a firm funding commitment to The Summer's End Group, LLC...")(emphasis added).

89. However, apparently convinced by the serpentine nature of the financing entity's name in its one page letter of intent, CZM asked no further questions on the point, nor was an actual "firm commitment" made a part of the record before CZM.
90. In addition to the concerns raised by many members of the public in light of analogous failed developments in the U.S. Virgin Islands and elsewhere as well as an expired federal grant and the obscure and unenforceable letter of intent as SEG's evidence of financing, CZM had in its possession an August 11, 2014 letter from the primary developer that designed the entire marina project for SEG, Applied Technology & Management, Inc. ("ATM"), alerting CZM that SEG "owes ATM the sum of \$51,803.87 which has been outstanding for well in excess of the thirty (30) days provided for under the Agreement."
91. Moreover, the letter stated explicitly that, pursuant to Articles IV and VII of the Professional Services Agreement dated January 10, 2014 between SEG and ATM, "[i]n light of [SEG's] failure to pay, ... [SEG's] permitted use of ATM Work product including all plans, reports and other materials and work done under the Agreement is hereby revoked [and that] ATM will not represent or appear on behalf of [SEG] at any public hearings or decision meetings relating to the proposed project."
92. SEG responded on August 13, 2014, noting its "cash flow situation" and assuring CZM that it was "taking steps to obtain funds to pay the outstanding invoice amount to ATM."
93. SEG assured CZM that there was a seven day period to cure before terminating or suspending service by ATM and that the breach would be cured within that time.

94. Likewise, with respect to the revocation of their right to use ATM's plans, reports, and other materials, SEG assured CZM that the contract was silent as to ownership of documents, drawings, plans, reports or other materials created by ATM.
95. However, on August 15, 2011, ATM replied (to a letter apparently sent by SEG's attorney in response to ATM's earlier August 11, 2011 letter), noting that under the contract, the right to terminate upon applicant's breach is not contingent upon a seven day period to cure and is effective regardless of SEG's payment of the funds owed within that seven day period.
96. In short, ATM specifically stated that it was demanding payment of all sums owed (including interest) and that it was not withdrawing its termination of the contract and revocation of the right to utilize its plans and work product even if paid within seven days.
97. The record below reveals no inquiry by CZM regarding this situation, though it goes to the heart of the question of whether or not SEG is capable of completing the proposed development.
98. It must be remembered that though SEG assured CZM that the Professional Services Agreement between SEG and ATM was allegedly silent as to ownership of documents, drawings, plans, reports or other materials created by ATM, the Professional Services Agreement is not part of the application and was apparently never provided to CZM.
99. As a result, CZM had no evidentiary basis for accepting that unsupported, conclusory statement from SEG as true in the face of an express statement from the actual contractor that any right to use its plans and work product had been revoked.



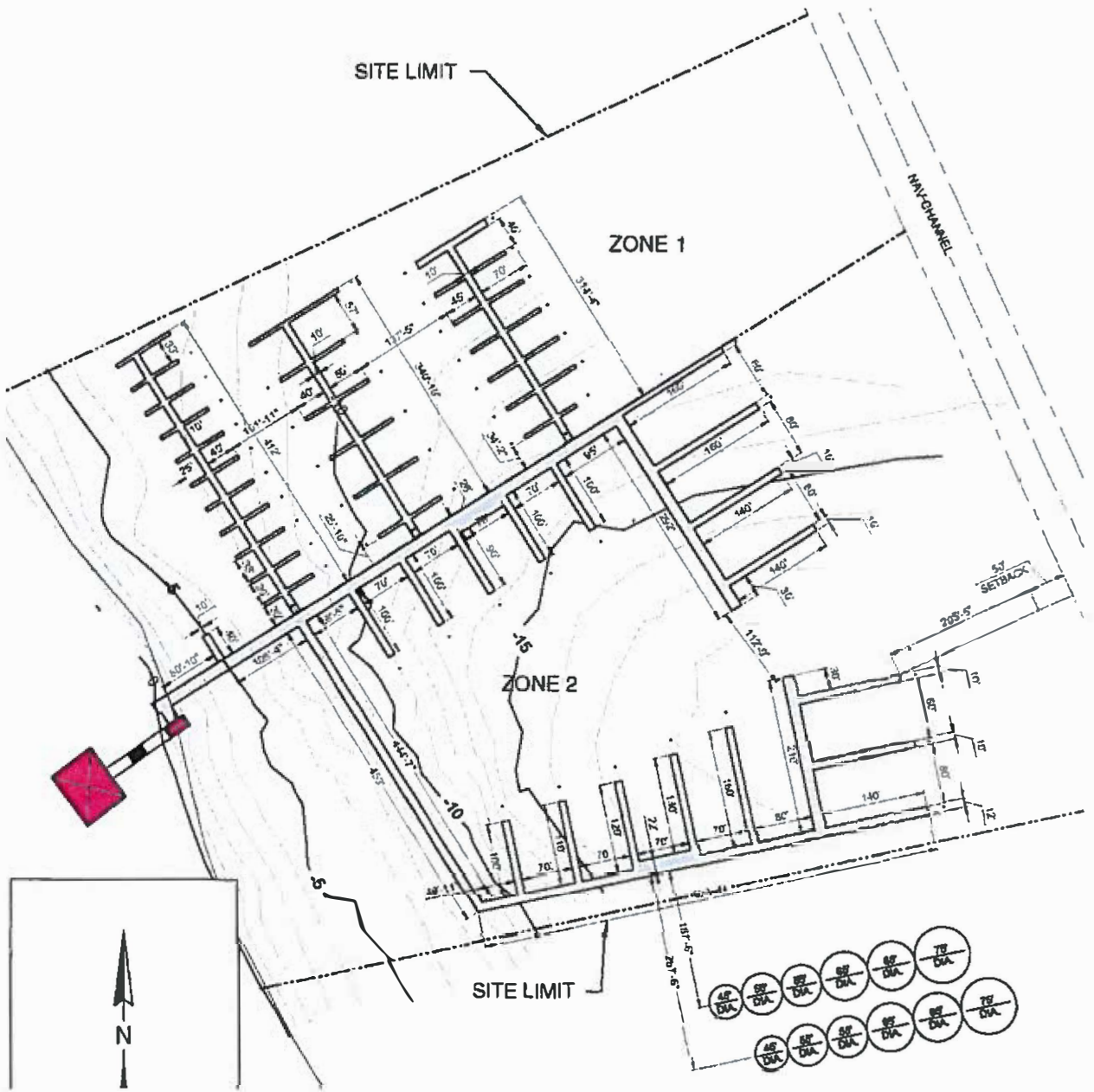
100. Rather, CZM was faced with a record that suggested great uncertainty as to whether SEG had the right to use those plans at all, yet it failed to make any findings on this crucial point.
101. Even assuming SEG's actual statement to be absolutely true ("the contract is silent as to ownership of documents, drawings, plans, reports or other materials created by ATM"), this does not represent even a claim that SEG continued to have the right to utilize those documents and materials.
102. Rather, it describes the potential subject matter for future litigation between SEG and its primary contractor to determine whether or not the alleged silence of the Professional Services Agreement regarding ownership of the documents, drawings, plans, reports or other materials created by ATM results in SEG being permitted to utilize those documents, drawings, plans, reports or other materials to proceed with the proposed development.
103. In fact, though ATM's original August 11, 2014 letter was addressed to SEG itself, judging by ATM's August 15, 2014 follow up letter, it is sent in reply to a letter not from SEG but rather from SEG's attorney and immediately proceeds to cite specific contract provisions in response to whatever legal argument was presented in the undisclosed letter by SEG's attorney.
104. In short, CZM was on notice on or about August 15, 2011 that SEG itself was already contemplating the possible need for litigation with its primary contractor simply to establish its right to utilize those plans as the basis for the proposed development.

105. If, as SEG's primary contractor stated to CZM, SEG no longer has permission to utilize the plans, reports and other material and work done under the Professional Services Agreement, the fact that ATM's name appears as the "prime" designer on each and every drawing and plan for the proposed development potentially means that CZM may not reasonably consider those reports and plans in its analysis of SEG's application.
106. Moreover, ATM is the only part of SEG's design group that actually has any experience with respect to designing or implementing marinas.
107. 44 of the 66 page qualifications portion of SEG's permit application package is dedicated to the experience and qualifications of ATM.
108. The few remaining pages are dedicated to Bioimpact, Inc., which is offered as an expert in preparing environmental assessment reports, and Cairone & Kaupp, Inc., a landscape architecture and civil engineering firm.
109. However, neither Bioimpact, Inc. nor Cairone & Kaupp, Inc. offer themselves as qualified to design or implement a marina.
110. At no point in either company description is any reference made to design work or implementation work for a marina.
111. Bioimpact, Inc.'s expertise may be relevant to the question of the environmental impact of SEG's proposed development and Cairone & Kaupp, Inc.'s expertise may be relevant to the development of portions of the development located on the land, but neither entity is qualified to offer designs for the creation or implementation of a marina.

112. In other words, without ATM, not only are there literally no plans for the marina in the application, but there is also no entity involved in SEG's proposed development with any relevant experience with respect to designing or implementing marinas.
113. If SEG no longer has the right to use ATM's plans and work product, SEG stands before CZM with literally no plans for the proposed marina and no expertise or experience in designing a marina.
114. However, CZM disregarded this fact, and the fact that SEG would have to obtain new plans for its marina as well as retain a new entity to provide the actual knowledge or expertise required to design or implement a marina.
115. In doing so, CZM also disregarded this clear sign indicating that SEG lacks the financial wherewithal to complete this massive proposed development, which will require, by SEG's own estimate, thirty-five million dollars.
116. SEG, knowing that losing the services of its primary contractor and marina designer could impact SEG's ability to effectively present its permit application in the public hearing before CZM, was in such financial straits that it simply could not pay that key, indispensable contractor \$51,803.87 to avoid breaching that contract as the public hearing was looming.
117. Though the amount of arrearage was only approximately 1/700<sup>th</sup> of the \$35,000,000.00 proposed cost of the development, SEG's inability to cover that tiny fraction of the projected total cost of the development at a critical point in the permitting process apparently caused CZM no concern, and CZM required no further evidence that SEG was in a financial position to complete the proposed development.

118. Though SEG assured CZM in its Market Study, Feasibility and Economic Analysis that “[t]he St. John Marina is well funded to get through the permitting process,” this was clearly not true as SEG stood at the public hearing without the assistance of its primary developer, without the permission of that primary developer to utilize its plans and work product, and thus incapable of answering technical questions only the marina designer could answer.
119. Notwithstanding these facts, CZM granted the permits just the same.
120. On July 31, 2014 the Commissioner of Public Works sent a letter to CZM refusing to give approval for the proposed development pending approval of the driveway permit for SEG’s proposed 120 off street parking spaces in light of the impact upon access to the public infrastructure and the volume of increased traffic to the adjacent federal route.
121. Though no additional information, studies, or evidence was provided, the Commissioner of Public Works reversed course in less than a month, granting “tentative approval” pending issuance of the road permit.
122. Though CZM clearly recognized that the road access to Coral Bay was limited, justifying CZM’s requirement that SEG provide shuttle service for construction workers, CZM ignored the impact to vehicular traffic that would be caused by adding 120 off road parking spaces to that same area as contemplated in SEG’s development.
123. Moreover, CZM failed to acknowledge the fact that “tentative approval” from a political appointee may not be utilized to satisfy SEG’s duty to present an actual road permit to CZM.

124. In addition, though SEG included a Traffic Impact Study, it was limited solely to vehicular traffic on the public roads.
125. It made no mention and did not attempt to make any representations regarding the impact of the proposed development on traffic within the waters of Coral Bay Harbor.
126. In as much as the development is, first and foremost, a marina, the omission of any study or report regarding the impact of the proposed development upon traffic in Coral Bay Harbor represents a glaring omission on the part of SEG, which implicates not only issues of the impact upon the public and the use of the Harbor by other members of the public but also impacts the environmental impact of the proposed development on the flora and fauna residing in and dependent upon Coral Bay Harbor.
127. Though the application described the length of slips and the length of boats and yachts that can be accommodated by the respective slips, the application at no point described what depth of water was required for any of these vessels – not even for these “mega yachts” of anywhere from 121 to 225 feet in length.
128. Likewise, the application provided no information regarding the amount of space required to maneuver these massive vessels into the proposed slips.
129. However, the diagram depicts a footprint for the marina that stretches deep into and over the navigable waters of Coral Bay Harbor.
130. Though SEG provided CZM with a diagram of its proposed development that depicted a series of straight lines to the east, which SEG had entitled “nav. channel,” SEG had provided no actual evidence that the area of water covered by that unusually straight line was actually navigable.



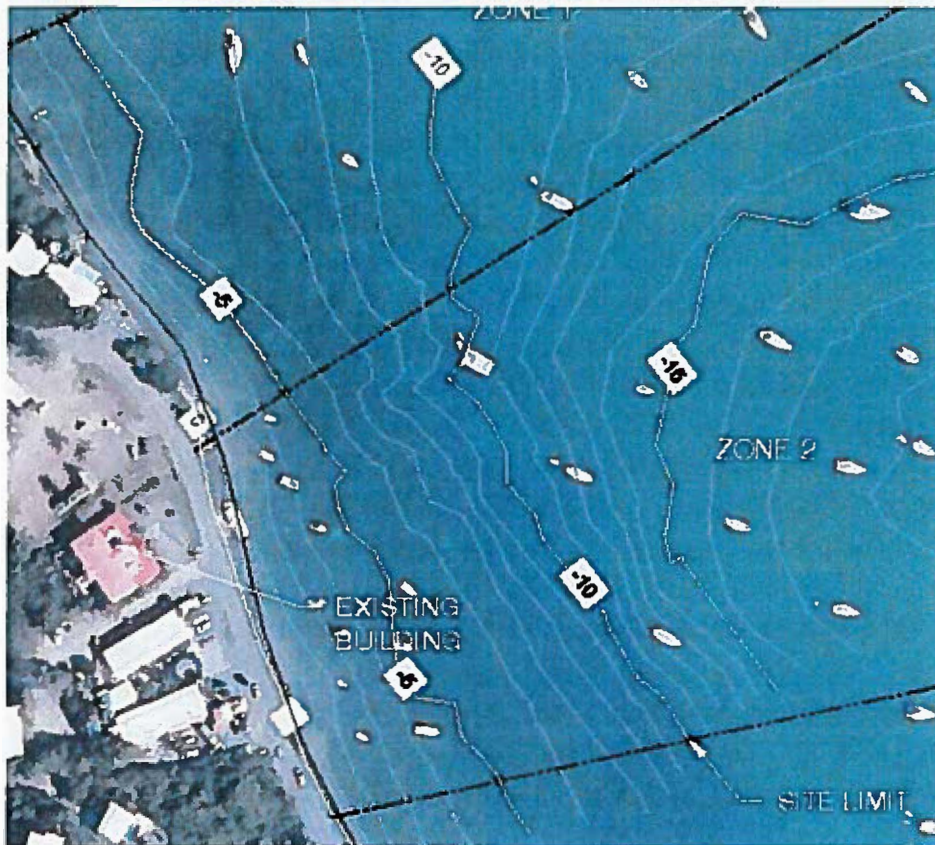
131. Moreover, when that footprint is viewed in the context of the entire Coral Bay Harbor, the idea that this unusually straight line actually depicts an area of navigable water becomes even more questionable.

132. In fact, that same diagram depicts that alleged lane of navigable water extending straight to the shore as though a single step from the land would plunge into 15 feet of water.





133. Meanwhile, when the depth of water beneath the proposed development is depicted, it is clear that the depth of water is not found in straight lines but varies considerably along the coast.



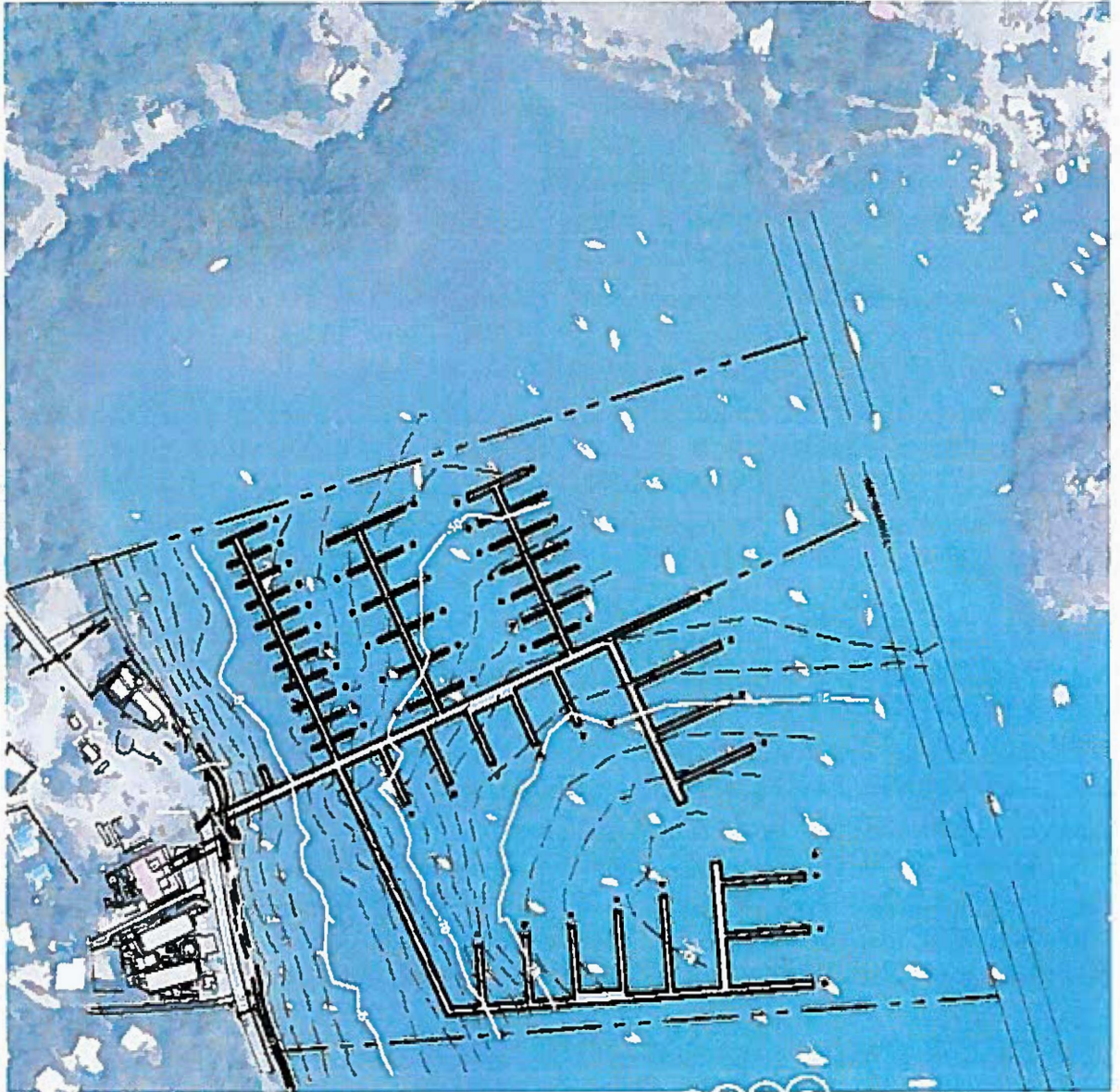
134. Notably, no evidence was offered that the supposed “nav channel” was actually a recognized or approved navigation channel, so designated by any agency with regulatory authority to do so.

135. In fact, the reasonable inference is that the actual, usable and used portion of the bay that functions as a primary navigation channel is far closer to SEG’s shoreline than this, and that placing an imaginary “nav channel” where it suited SEG to site that crucial water passage, was no more than a self-serving deception.

136. In fact, Exhibit A to SEG’s legal counsel’s August 11, 2014 letter to CZM, showed that for littoral owners to the north of the proposed development, waters of 10 feet in depth end within the footprint of the proposed development and then can only be found further to the northeast.



137. Similarly, waters of 15 feet in depth appear within the footprint of the proposed development end long before reaching the littoral owners to the north of the proposed development.



138. CZM took no interest in validating the suspiciously straight and undocumented “nav. channel” that lead straight to the coast and the impact designating that area as the navigable channel for the entire Coral Bay Harbor would have on traffic for vessels

travelling in Coral Bay Harbor or on the sea grass and other flora and fauna within that narrow “nav. channel.”

139. Any finding that the proposed development would not have a negative impact upon traffic among vessels traveling in Coral Bay Harbor (and upon the sea grass and other flora and fauna within the “nav. channel”) was based upon no evidence whatsoever and thus was clearly arbitrary and capricious.

140. Perhaps the most striking example of CZM’s error was its failure to even address the littoral rights of neighboring property owners, which implicates multiple goals and principles adopted for the U.S. Virgin Islands coastal zone. *See e.g.* 12 V.I.C. §§ 903(b)(4)-(6) and (8).

141. Though the maps of the proposed development clearly stretched out to consume the vast majority of the entire area of navigable water in Coral Bay and though multiple members of the public and owners of littoral land impacted by the development of such a massive marina testified to the excessive size of the proposed marina and its encroachment upon the littoral rights of neighboring property owners, CZM did nothing to address this critical concern.

142. At the public hearing, and in written submissions the Moravian Church presented its strong objections to the proposed massive marina, because it was sited and designed to effectively consume all available marina capacity and more, when it was well known that the Church had long been planning a marina development on its property, directly on the opposite side of the Bay.<sup>1</sup>

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<sup>1</sup>The Moravian Church owns property located in the more protected northeast area of Coral Bay Harbor, along the south side of Route 10. The Church and its tenant had been working for some

143. The clear impact of SEG, if allowed to proceed at its proposed size and scale, was to be the destruction of the Church's right to proceed with its own marina plans.
144. This was documented not only in testimony, but in a graphic presented by the Moravian Church showing the overlap of SEG's marina over and into the very area where the Moravian Church's substantially smaller proposed marina would be located, effectively leaving no space for the Moravian Church's plans.
145. Specifically, the Moravian Church submitted to CZM legal authority on its rights as a nearby waterfront property owner.
146. The Moravian Church demonstrated that the size and scope of SEG's marina development would interfere with the rights of the Moravian Church and its tenant to access, and wharf out over, the water adjoining their land.
147. The Moravian Church submitted significant legal authority to CZM in support of its objections based upon SEG's encroachment into the Moravian Church's (and other littoral property owners') littoral and riparian rights.
148. In addition to the factual submissions and legal argument regarding littoral and riparian rights raised by the Moravian Church both at the public hearing and via a letter to CZM, on August 28, 2014, David Silverman of the Coral Bay Community Council submitted a report to CZM regarding the subject.
149. He noted one of the factors for a regulatory body to consider in addressing littoral rights is the equitable access to the line of deep water.

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time on the design and development of a marina at the Church's property, and had already conducted pre-filing meetings with CZM.

150. He cited a publication from the Florida Department of State, entitled Guidelines for Allocation of Riparian Rights, 2013, with a sample diagram depicting an equitable distribution of such rights.
151. He then provided a diagram applying that equitable distribution pattern to Coral Bay based upon the location of the boundaries of littoral owners along Coral Bay.
152. In a letter to CZM from SEG's legal counsel, the arguments regarding littoral and riparian rights raised by the Moravian Church were dismissed out of hand, citing a drawing clearly based upon the diagram mentioned above, with a similar straight line depiction of navigable waters stretching from the open ocean straight to the land.
153. However, as noted above, that same drawing included the far more variable and natural water depth markings depicting the depths of 5 feet, 10 feet, and 15 feet within Coral Bay Harbor, though stopping short of depicting the depth of water throughout the straight line "nav. channel" depicted in the drawing.
154. The drawing makes clear that adjacent littoral property owners to the northeast will be limited to waters of substantially less than 10' in depth before running into the footprint of SEG's proposed development.
155. The only way those littoral property owners can even reach navigable waters (assuming the suspiciously straight "nav. channel" accurately depicts navigable waters stretching all the way to the shore) is by crossing through the area of navigable water utilized by littoral property owners further to the east.
156. SEG's counsel was also dismissive of making reference to riparian rights with regard to the littoral rights of coastal property owners.

157. In reality, “riparian rights” is a term that is also used with respect to the rights of littoral property owners.

158. They deal with the equitable distribution of the access and use of navigable waters amongst riparian and littoral property owners.

159. As dismissive as SEG may have been regarding the “riparian rights” of adjacent property owners, including the Moravian Church, it should be noted that the unusually shaped footprint depicted for SEG’s proposed development was not coincidental and was, in fact, based upon a disfavored approach to resolving riparian rights in situations involving a cove or bay.

160. SEG took the northernmost boundary line of the northernmost of its parcels and extended that boundary in a straight line (as far as SEG chose to go) into Coral Bay Harbor, apparently claiming that as SEG’s littoral right.

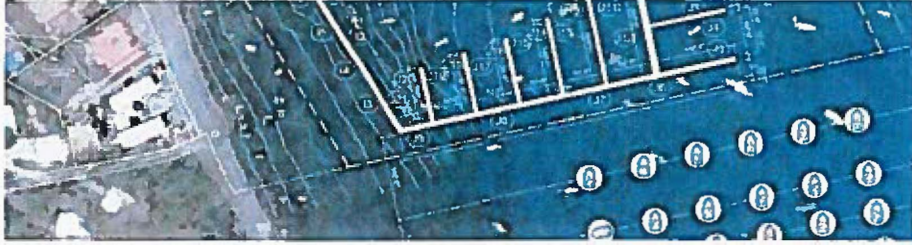
161. That Parcel, Parcel 10-17, while not labeled as Parcel 10-17, is visible on the coast as a continuation of the northern boundary of the footprint of the proposed marina in several of SEG’s surveys.



162. Similarly, SEG took the southernmost boundary of SEG’s southernmost parcel and extended that boundary in a straight line (as far as SEG chose to go) into Coral Bay Harbor.

163. Unlike for the northern boundary, depictions of the footprint of the proposed marina do not depict the basis for that southern boundary on the coast.





164. This approach of extending boundary lines straight into the water has only been approved in situations in which the adjacent properties are all along a relatively straight shoreline and in which the boundaries themselves are at approximately right angles to the shore.
165. This approach is disfavored in cases involving a concave cove or bay and in which the property boundaries are not approximately right angles to the shore.
166. In this case, the shoreline is a relatively narrow bay or cove and concave in shape rather than straight.
167. Likewise, even if the shoreline was perfectly straight, and it clearly isn't, the boundary lines utilized by SEG are not in a right angle to the coast, resulting in the strange trapezoidal shape of the proposed development.
168. Most troubling of all, is the fact that the southernmost boundary of the footprint of the proposed development does not actually extend from the southernmost boundary of SEG's southernmost parcel.
169. As noted above, while surveys of the footprint of the proposed marina clearly indicate the basis for SEG's northern boundary for the proposed marina footprint, those surveys do not indicate the basis for SEG's southern boundary for the proposed marina footprint.

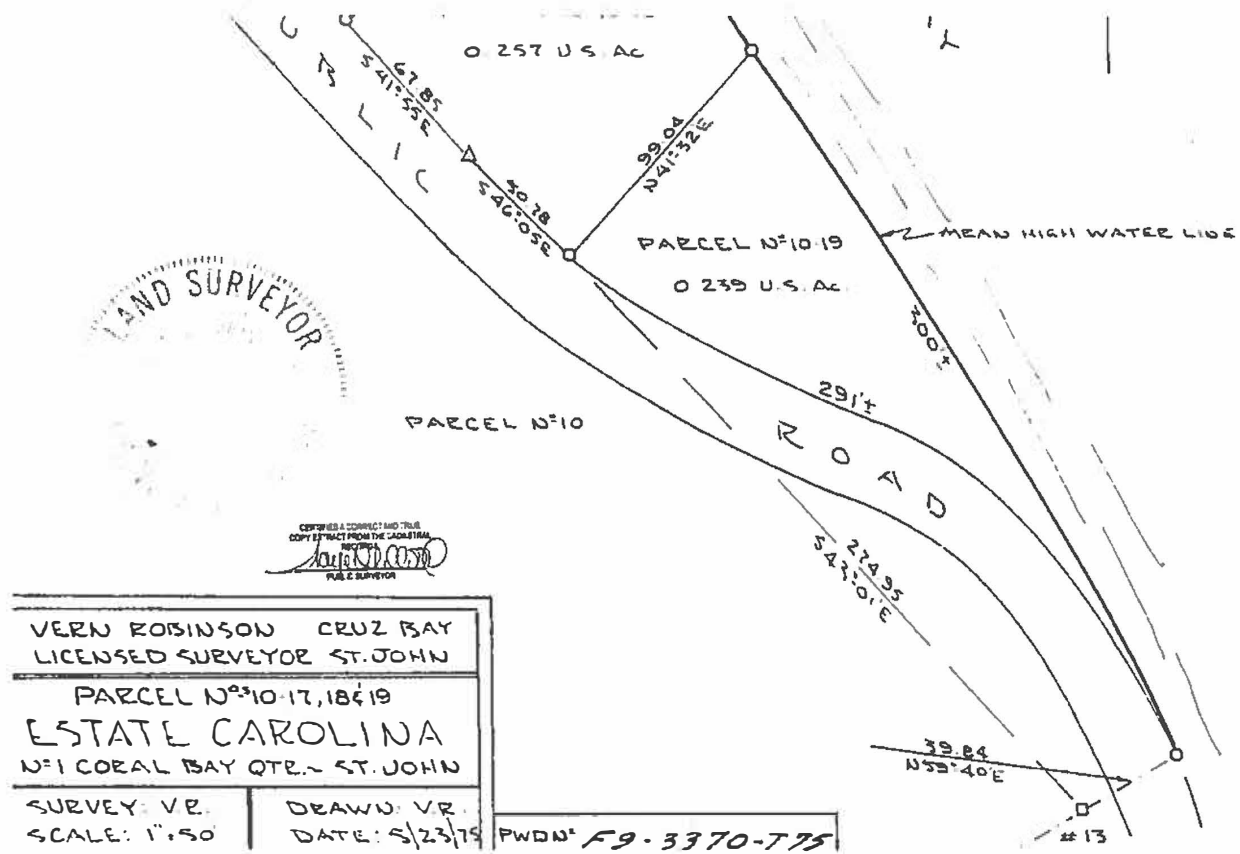
170. In reality, the basis for that southern boundary is Parcel 10-19 as depicted with a red highlight (applied by SEG or its contractor) in SEG's Adjacent Property Owner Key Map, which depicts Parcel 10-19 as featuring a strange tail extending along the coast of Coral Bay Harbor for approximately 400 feet, past Parcel 10-41 Rem., past Parcel 13-A, past Parcel 10-13 Rem., and even past Parcel 3, which is not among the parcels SEG owns or controls.



171. From the end of that strange tail, SEG produces the southern boundary of the footprint of the proposed development deep into Coral Bay.

172. However, the actual Public Works Map submitted by SEG itself for Parcel 10-19 clearly depicts the parcel ending at the point the road first reaches the Coral Bay coast.

See F9-3370-T75.



173. Likewise, the Post-Construction Drainage Area Map submitted by SEG itself depicts that parcel ending at the point the road first reaches the Coral Bay coast.

174. In reality, the point at which Parcel 10-19 actually ends is approximately 400 feet north of the point at which SEG begins drawing the southern boundary of its proposed marina footprint.



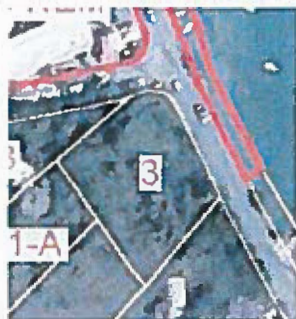
175. In other words, the entire area designated “Zone 2” is based upon beginning from a point on the coast that includes hundreds of feet of littoral land that is not owned or controlled by SEG.



176. The Parcel to the south of that strange tail in the Adjacent Property Owner Key Map is not identified by SEG, though SEG was required to identify neighboring property owners within 150 feet.

177. However, the northern boundary of that Parcel to the south is depicted in the Adjacent Property Owner Key Map and, utilizing the approach adopted by SEG, results in a littoral right boundary line for that southern parcel (and for Parcel 3 immediately to the north of it) that proceeds through the center of Zone 2.

178. Moreover, it makes clear that all of Parcel 3’s littoral rights are completely encroached upon by the proposed marina as the marina footprint completely covers Parcel 3’s access to the coast.



179. Even if the approach utilized by SEG was not clearly improper in a concave bay or cove with parcels with boundaries that are not at right angles to the coast, utilizing a boundary that does not exist and that does not appear in the map of record for that parcel and (if it did) would be hundreds of feet farther to the north of the point SEG placed it, clearly renders the proposed development an improper and inequitable means of distributing the littoral rights of the various adjacent property owners.
180. Clearly, utilizing this approach to achieving equality or even simple equity in the division of littoral rights in a cove or bay is manifestly improper, and CZM's approval of such an inequitable division of littoral rights is clearly arbitrary and capricious.
181. This is particularly so when CZM made no findings to demonstrate that the rights of neighboring property owners, and particularly the Moravian Church, had been considered, or would not be adversely and unfairly affected by the approval of this massive, and plainly oversized marina.
182. This Board should not have countenanced the destruction of the historic rights of the Moravian Church to equitable rights as a littoral property owner, by the summary approval of a vastly over-sized and poorly sited marina in Coral Bay.
183. All decisions of CZM must rest on substantial evidence in the record. *Conservation Society v. Board of Land Use Appeals*, 21 V.I. 516 (1985).

184. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 520 citing *Richardson v. Pearles*, 402 U.S. 389, 401 (1971).
185. An objective review of the record below fails to reveal substantial evidence that the proposed development is consistent with the findings, goals and policies identified by the Coastal Zone Management Act, for all the reasons set forth above.
186. Moreover, the permit would deprive the Moravian Church of its rights as a property owner on the same Bay, by effectively consuming all conceivable capacity for marinas in Coral Bay and preventing the Moravian Church and other littoral property owners from enjoying their littoral property rights.
187. CZM's decisions were unsupported by and contrary to the evidence, clearly erroneous, arbitrary, capricious, and an abuse of discretion.

#### BLUA Decision

188. During the administrative appeal of CZM's actions, the BLUA granted SEG's amended motion to intervene, though it was filed less than ten days before the scheduled hearing.
189. SEG originally sought to intervene pursuant to 12 V.I.R.R. § 914-17, but its motion was untimely.
190. SEG then filed an amended motion to intervene as an *amicus curie* pursuant to 12 V.I.R.R. § 914-9.
191. BLUA's decision to permit SEG, an interested party and in no way a "friend of the court" but rather a friend of itself, to intervene less than ten days before the scheduled

hearing, and at that time to raise new contentions and arguments in its own favor, was a clear abuse of discretion.

192. BLUA affirmed the decisions of CZM without providing any evidentiary or legal basis or justification for its decision, or any explanation for its failure to address any of the critical issues and defects in proceedings raised by Petitioner.

193. Instead, BLUA simply stated in a conclusory manner and without any discussion or analysis, that 1) it concurred with CZM and 2) it was unpersuaded by the appellants' arguments.

194. To the extent that BLUA members expressed any purported basis for the decision to dismiss the appeal, during the hearing, they stated the arbitrary and capricious, and legally erroneous, position, that Petitioner could not properly oppose the CZM permit, because its interest in constructing a marina on its own property created a "conflict of interest".

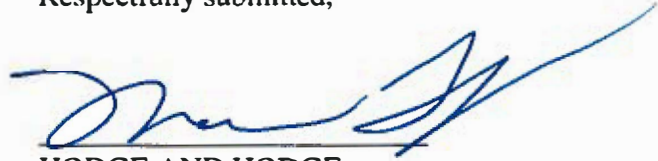
195. For the reasons stated above, CZM's decision was erroneous and thus BLUA concurring in that decision was likewise erroneous.

196. The one and only argument raised by the appellants that BLUA actually addressed resulted in BLUA's conclusion that SEG's Land Permit and Water Permit should be consolidated.

For all of the foregoing reasons, the decisions of CZM and BLUA should be reversed, SEG's Land Permit and Water Permit should be vacated and withdrawn, and CZM should be ordered to deny SEG's applications for the Land Permit and Water Permit.

Dated: July 20, 2016

Respectfully submitted,



HODGE AND HODGE

By: Mark D. Hodge

And Maria T. Hodge

1340 Taarneberg

Charlotte Amalie, VI 00802

(340)774-6845

*Counsel for Moravian Church Conference of  
the Virgin Islands*

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[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)

Reference 5:

Revised Site Plans - Army Corps - 2017



# ST. JOHN MARINA

## CORAL HARBOR, ST. JOHN, USVI

### THE SUMMER'S END GROUP, LLC



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 5001-12 Chandler's Wharf, Christiansburg, VA 22603  
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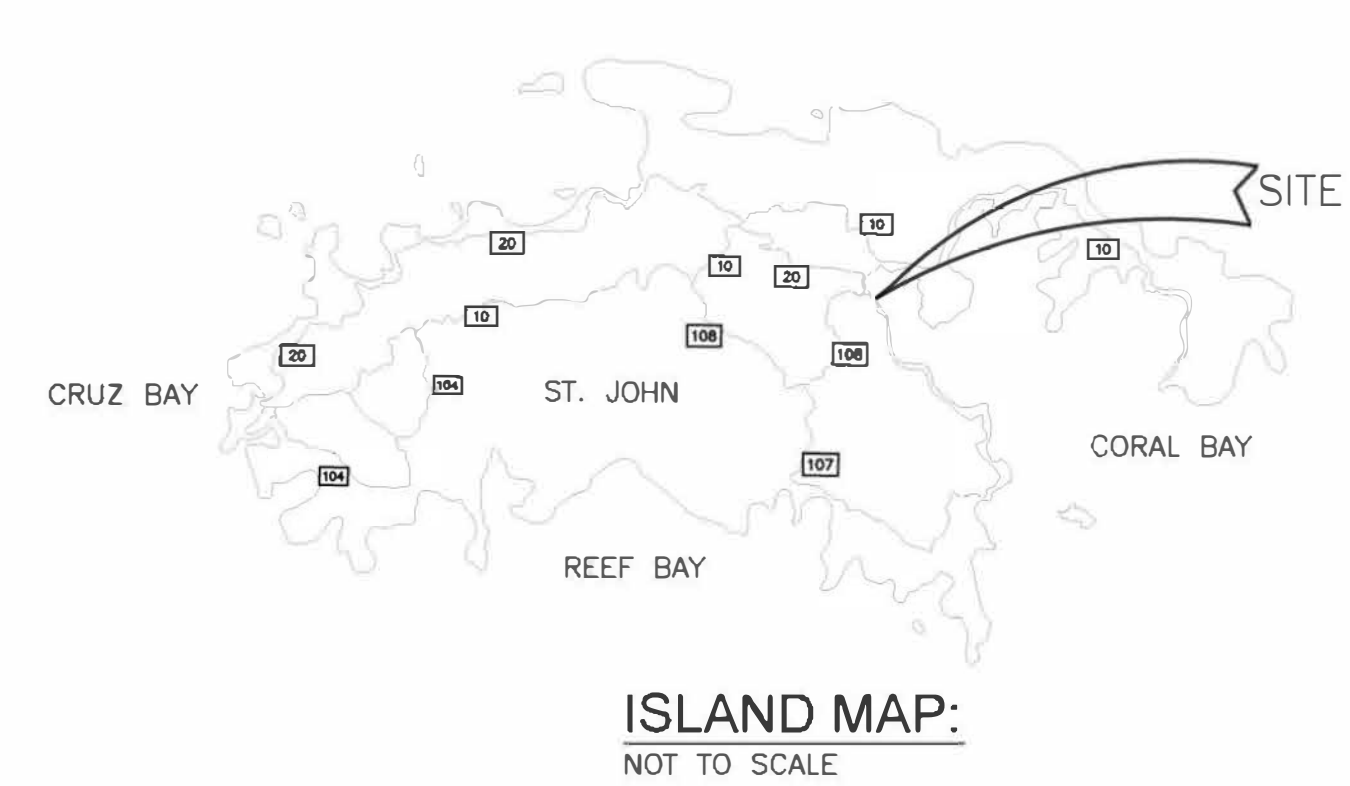
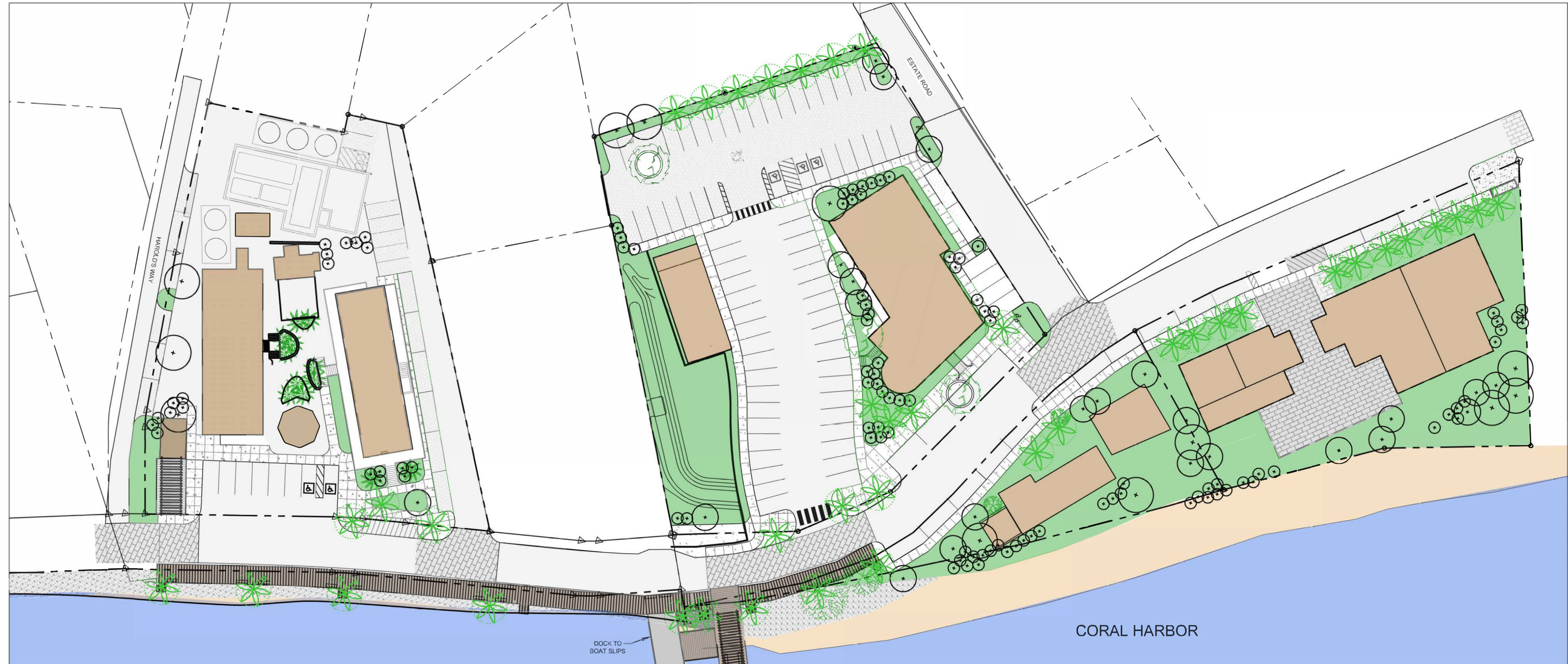


**ST. JOHN MARINA**  
 CORAL HARBOR  
 St. John, U.S. Virgin Islands

**COVER SHEET**

Designed By: MKD  
 Drawn By: MKD  
 Checked By: JLB  
 Scale: 1"=30'  
 Date: 08/11/2017  
 Revised:  
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Project Number: 16x065  
**C001**



SHEET INDEX	
DRAWING NO.	TITLE
C001	COVER SHEET
C100	EXISTING CONDITIONS AND DEMOLITION PLAN
C200	SITE PLAN (OVERALL)
C201	SITE PLAN (PARCEL 10-13 REM, WESTERN PORTION)
C202	SECTION VIEW-CISTERNS (PARCEL 10-13 REM, WESTERN PORTION)
C203	SECTION VIEW-FUEL STORAGE AREA (PARCEL 10-13 REM, WESTERN PORTION)
C204	SITE PLAN (PARCEL 10-13 REM (EASTERN PORTION))
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C207	SITE PLAN (PARCEL NO. 10-17 CONSOLIDATED)
C208	SITE PLAN (PARCEL NO. 10-19)
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C301	UTILITY PLAN (ELECTRICAL AND STORM DRAINAGE)
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L100	LANDSCAPE & IRRIGATION PLAN
C500	EROSION & SEDIMENT CONTROL PLAN (OVERALL & STAGE 1)
C501	EROSION & SEDIMENT CONTROL PLAN (STAGE 2 & STAGE 3)
C502	EROSION & SEDIMENT CONTROL PLAN (STAGE 4)
C600	SITE PLAN DETAILS
C601	SITE PLAN DETAILS
C602	SITE PLAN DETAILS
C700	EROSION & SEDIMENT CONTROL DETAILS

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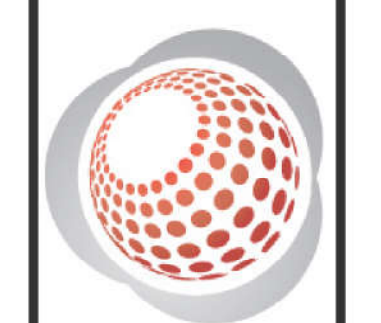
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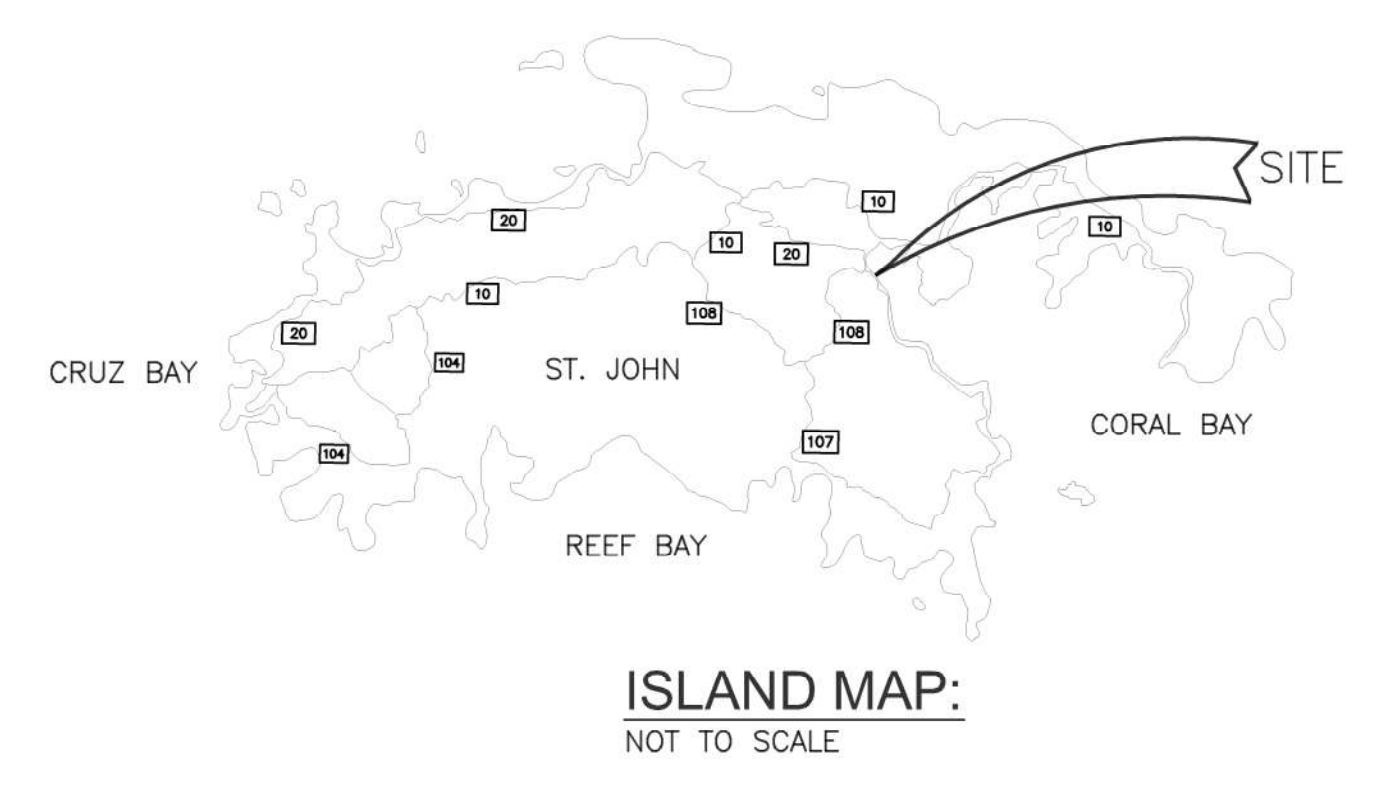


**ST. JOHN MARINA**  
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Reference 6:

Paul Sabers Letter re 13-A/B Carolina Property Rights

**Paul G. Sabers**  
*13-A ESTATE CAROLINA LLC.*  
*13A Est Carolina, Coral Bay*  
*St John, VI 00830*

The Honorable President Novelle Francis  
Legislature of the Virgin Islands  
Capitol Building, Charlotte Amalie  
P.O. Box 1690  
St Thomas, VI 00804

August 6, 2019

re: **CZM Major Water Permit CZJ-04-14(W) for the Summers End Group LLC**

Dear President Francis,

I am writing to you about a CZM Major Water Permit that is before the Legislature and which involves land that I own in Coral Bay, St John. I, Paul Sabers, am the managing member of 13-A Estate Carolina LLC and 13-B Estate Carolina LLC, which own parcels 13A Carolina, Coral Bay, St John and 13B Carolina, Coral Bay, St John, respectively.

I understand that the Virgin Islands Legislature may be considering the ratification of "Coastal Zone Management Major Water Permit CZJ-04-14(W)" for a marina project proposed by the Summer's End Group, LLC, in Coral Bay Harbor, St John. This permit was approved by the St John Committee of the Virgin Islands CZM Commission about five years ago, on October 24, 2014. I also understand that Governor Bryan recently signed this permit, on April 4, 2019.

This permit, and an associated CZM Major Land permit, were appealed by the Moravian Conference and the Virgin Islands Conservation Society to the Board of Land Use Appeals ("BLUA") in November 2014. The appeals were heard by BLUA in May 2016, and the decision of BLUA was rendered in July 2016. The BLUA decision included an order that the two individual permits (land and water) be consolidated into a single permit application since they were, in fact, two aspects of a single project.

It is clear that further processing of the separate CZM water permit by the Virgin Islands Legislature is in direct contradiction to the order of the Board of Land Use Appeals. I respectfully submit that the Legislature must return this CZM Major Water Permit CZJ-04-14(W) to the applicant until a consolidated permit is approved by CZM, as ordered by BLUA.

However, of even greater concern to me is the fact that the scope of the permit currently being considered by the Legislature directly infringes on my property rights as the owner of parcels 13A Carolina and 13B Carolina. The water component of this project is described as follows on the first page of Major Coastal Zone Management Permit No. CZJ-04-14(W):

- 2. SCOPE** (a) This permit allows the construction of a 145 slip marina, a designated mooring field of up to 75 moorings, a pump-out station and a fuel station at and seaward of Plot Nos. 10-17, 10-18, 10-19, 10-41 Rem., 13A, 13B and 13 Rem. Estate Carolina, St. John, U. S. Virgin Islands.

The reference to Parcel 13A Carolina and Parcel 13B Carolina has never been authorized by me. As the owner of these two parcels I wish to inform you that I have no intention now or in the future of

**CZM Major Water Permit CZJ-04-14(W) for the Summers End Group LLC**

providing such authorization to the Summers End Group. I will not now, or in the future sell these parcels to the Summers End Group or an affiliated entity. This permit cannot, therefore, be approved or issued inasmuch as it grants authorization to the Summers End Group, LLC to perform development activities at and seaward of my privately owned land which they do not own or control.

Moreover, the associated CZM Major Land Permit CZJ-04-14(L), which BLUA ordered to be consolidated with the Major Water Permit, describes the scope of the land development as follows:

2. **SCOPE** This permit allows the redevelopment of seven contiguous properties in Estate Carolina, Coral Bay, St. John (in two phases) for the construction of various supporting facilities for the Coral Bay Marina. Phase 1 will enhance the existing commercial business sites at CoCo Loba, Shoreline Inn and Island Blues and renovate the "Voyages" restaurant building. Phase 1 redevelopment will include the following:

- 120 off street parking spaces
- A new 56 seat restaurant
- Customs and Border Protection office
- A Marina Office
- Marina Engineering
- Marina Security
- Fish and Farmers Market
- Crew shower and locker facilities
- Apartments to support marina management
- Proper solid, hazardous and liquid waste management
- Proper storm water management , and
- Proper fueling.

Phase 2 of the development (implemented strictly on demand) will include:

- Additional retail
- Restaurant
- Office space
- Commercial space and
- Six short-term rental units

The project is located on Parcel Nos. 10-17, 10-18, 10-19, 10-41 Rem., 13A, 13B and 13 Rem. Estate Carolina, St. John, U.S. Virgin Islands.

I would like to bring your attention to the following matters of extreme concern to me as the owner of property referenced in this permit:

1. The DPNR Commissioner, Mr. Jean-Pierre Oriol, has stated to me that the CZM Major Land permit for the Summers End Group will become effective if and when the CZM Major Water permit is ratified by the Legislature.
2. Parcels 13A Carolina and 13B Carolina are not only listed within the Scope of the Major Water Permit (as described earlier in this letter), but they are also within the Scope of the related Major Land Permit (as shown above). I have given no authority for the Summer's End Group, LLC, or its managing partner Ms. Chaliese Summers, to apply for permits or to utilize these parcels as part of this project, and I have no intention of doing so in the future. In the CZM permit application,

**CZM Major Water Permit CZJ-04-14(W) for the Summers End Group LLC**

Summers End Group, LLC and Ms. Chaliese Summers fraudulently misrepresented that they had the right to use these properties for the proposed project. They do not and I intend to take legal action against them for their fraudulent misrepresentation which, if the Legislature approves the CZM permit, will constitute a slander on my title to the property.

3. In addition, the Scope of the Major Land permit specifically states that the permit allows the applicant to "renovate the Voyages restaurant building". I own this building and I have given no authorization for the Summer's End Group to undertake any work whatsoever on this building.
4. Both the CZM Major Water Permit and the related CZM Major Land Permit incorporate a number of documents by reference. These documents are identified as follows:

**4. DOCUMENTS INCORPORATED BY REFERENCE**

- Exhibit A: CZM Permit Application dated April 4, 2014.
- Exhibit B: Site Plan and Drawings dated July 11, 2014
- Exhibit C: Environmental Assessment Report dated April 4, 2014

5. The referenced document identified above as "Exhibit B" entitled "Site Plan and Drawings dated July 11, 2014" indicates that many of the features in the scope of the project are located on Parcel 13A or Parcel 13B Carolina. The features located on Parcel 13A are identified within this document as follows:

**PARCEL NO. 13-A**

**SEE DWG. NO. C203 FOR SITE PLAN**

- REMOVE POOL, SELECTED STRUCTURES AND BUILDINGS
- RECONFIGURE PEDESTRIAN ACCESS TO BUILDINGS ALONG ROADWAY
- EXPAND AND IMPROVE OUTDOOR SEATING AREA AROUND BUILDING
- NEW PARKING AREAS FOR 8 SPACES AND 1 ADA VAN ACCESSIBLE SPACES
- NEW CONCRETE PAVED WALKWAY SYSTEM
- NEW DOMESTIC WATER TREATMENT PLANT
- NEW GENERATOR
- NEW RAISED PEDESTRIAN CROSSWALK CONNECTING UPLAND WITH MARINA BOAT SLIPS
- NEW TIMBER DECKING AND PERGOLA CONNECTING UPLAND WITH MARINA BOAT SLIPS
- NEW STORM WATER MANAGEMENT MEASURES
- NEW DRIVEWAY OPENING
- NEW PLAZA AREA
- UPGRADE SELECTED LANDSCAPED AREAS
- NEW SANITARY SEWER TREATMENT FACILITY WITH WATER RECYCLING/GREYWATER SYSTEM
- NEW WATER CISTERN – 4,000 GALLONS REUSE
- EXISTING CISTERNS TO REMAIN – 52,800 GALLONS POTABLE

**CZM Major Water Permit CZJ-04-14(W) for the Summers End Group LLC**

6. The features located on Parcel 13B are identified as:

**PARCEL NO. 13-B**  
**SEE DWG. NO. C203 FOR SITE PLAN**

- REMOVE SELECTED STRUCTURES AND TREES
- NEW PARKING AREA FOR 17 SPACES
- NEW CONCRETE PAVED WALKWAY SYSTEM
- NEW WASTEWATER TREATMENT PLANT
- NEW STORM WATER MANAGEMENT MEASURES
- UPGRADE SELECTED LANDSCAPED AREAS
- NEW WATER CISTERN – 5,000 GALLONS REUSE

It should be readily apparent that a significant portion of the overall project, including parking, storm water management, sewage treatment, walkways and cisterns is located on Parcels 13A Carolina and 13B Carolina, both of which I own in their entirety. The Legislature has no authority to grant a permit for demolition, construction and occupancy of private land owned by me, against my express wishes.

I am writing to you today to inform you that if the Legislature were to undertake any action to ratify CZM Major Water Permit CZJ-04-14(W) then that action would take from me substantially all rights in my property and deprive me of the benefits I enjoy as the legal owner of the parcel under Virgin Islands law. I have been advised that such an action by the Legislature, the Governor and the CZM Board, under color of state law, taken against my express wishes, without my permission, is a clear violation of my rights under the Revised Organic Act, pursuant to 42 U.S.C. §1983, deprived me of rights, privileges or immunities governed under federal law and the U.S. Constitution, including but not limited to, my constitutional due process and property rights under the 5<sup>th</sup> and 14<sup>th</sup> Amendments.

It is my express intention to vigorously defend all of my rights as an owner of real estate in the United States Virgin Islands with all recourses available under Virgin Islands and US federal law. I have contacted Robert Fox (copied here), a well known environmental litigator ([www.mankogold.com](http://www.mankogold.com)), to represent me to pursue any and all claims should the Legislature so act. I strongly urge you to either deny, or not to consider this permit due to the serious defects embodied in it, including the use of my property without my authority.

Respectfully yours,



Paul G. Sabers, Managing Member, 13A Estate Carolina LLC

phone: 561-329-6298  
email: [ps\\_13a\\_carolina\\_llc@yahoo.com](mailto:ps_13a_carolina_llc@yahoo.com)

***CZM Major Water Permit CZJ-04-14(W) for the Summers End Group LLC***

cc: Senators of the 33rd Legislature of the USVI  
Attorney Yvonne Tharpes, Legal Counsel to the Legislature  
Mr. Jean-Pierre Oriol, DPNR Commissioner  
Mr. Marlon Hibbert, CZM Director  
Attorney Vonetta Norman, CZM Legal Counsel  
Robert D. Fox, Esquire

Reference 7:

Clendinen Family Letter re 10-17/18 Carolina Lease

October 24, 2019

Good Day Senators:

My name is Vincen Clendinen and I was born and raised in Coral Bay, St. John. My mother's name is Mrs. Eglah Clendinen. Our family has lived on St. John for many, many generations.

In 2013, my mother, Mrs. Eglah Clendinen and her sister, Mrs. Minerva Marsh-Vasquez, signed a fifty (50) year lease which gave Robert O'Connor and Brion Morrisette (which was also Eglah's attorney) the right to develop a marina on their property. My family did not have legal representation at the time they signed this lease. They placed their trust in Mr. O'Connor and Mr. Morrisette, who is an attorney, and who assured them this would be a good thing to do for their family and for their legacy.

Over the following years my mother and aunt became increasingly incapacitated due to mental decline (ex. dementia) from aging. In spite of this, my mother and aunt were asked to sign additional documents relating to their leased property, sometimes without the knowledge or consent of me or my siblings.

The original lease promised a payment of \$65,000 per year for two waterfront parcels, (Parcel 10-17 & 10-18 Carolina). These parcels are owned by the Marsh Sister Trust, with my mother and aunt as trustees.

In 2014, Mr. O'Connor and Mr. Morrisette assigned the lease to the Summers End Company. In 2016, my mother and aunt were asked to sign a second amendment to the lease. This amendment released the Summers End Company from all unpaid prior lease payments and eliminated all future lease payments until the Summers End Group received all their permits and began the Marina construction. My mother had no legal representation to assist her and her doctor had already diagnosed her as having dementia, when she signed this amendment.

To my knowledge... Over the past five years, the Summers End Company has not paid any monthly rent for our family property in Coral Bay. The Clendinen family is united in our wish to terminate the lease with The Summers End Company and be able to develop our property in a way which benefits our family and future generation. However, the lease which my mother and aunt signed, without any legal representation, does not give us the right to terminate and we do not have the financial resources to obtain a lawyer and take this matter to court.



Our family has been financially and morally harmed by the Summers End Company. They made promises which have turned out to be false manipulations. This company came to the Virgin Islands and took advantage of my elderly sick mother and aunt as well as other citizens of Coral Bay. Therefore, we are moving forward in asking for assistance in terminating the relationship with The Summers End Company and do a project that will be beneficial for our family and the entire St. John Community.

We understand that the permits from The Army Corps for this project may take several years to happened and/or may not even be granted at all. If this is the case, my family's property will be held hostage until such time. We are asking for you Senators, the powers that be, and the St. John Community, to assist us in regaining control of our property by denying the CZM Permits for this Coral Bay Marina.

Thank you for your time and consideration in this sensitive matter.

Sincerely

Vincen Clendinen 

And Others

Wayne Clendinen

Wayne Clendinen

Gary M. Clendinen





Ahena Esannason

Ahena Esannason

Reference 8:

Phillips Letter re 13 Rem Carolina Property Rights

May 13, 2019

VIA ELECTRONIC MAIL

The Honorable Novelle E. Francis, Jr.  
Legislature of the Virgin Islands  
56 King Street, Hamilton House  
Christiansted, St. Croix, VI 00820

Re: Summer's End Group, LLC and Parcel 13 Remainder, Estate Carolina,  
Coral Bay, St. John, U.S. Virgin Islands

Dear Senator Francis:

My name is James Peyton Phillips and I am the legally authorized representative for the owners of a parcel of land in Coral Bay, St. John, on which the Summer's End Group LLC is proposing to construct a marina. I am writing to you about a significant development impacting the feasibility of this project, proposed by Ms. Chaliесе Summers, the principal of the Summer's End Group.

As background, in 2014 a permit application was submitted to the Virgin Islands Coastal Zone Management Commission for construction of a 145 slip mega yacht marina and associated land-based amenities in Coral Bay Harbor, St. John. The project was proposed to be built on seven contiguous parcels of land, four of which were on the shoreline. These shoreline parcels provided the basis for the proposed use of submerged lands on which the marina would be built.

The developer, known as "The Summer's End Group", did not own any land in Coral Bay. The principal of the Summer's End Group, Ms. Chaliесе Summers, signed an affidavit submitted with her CZM application swearing that she had the "irrevocable approvals, permission, or power of attorney from all other persons with a legal interest in the property to undertake the work proposed in the permit application" (emphasis added). This proof of legal interest is a requirement under the VI Rules and Regulations before an application can be accepted by CZM. The applicant must have the irrevocable right to execute the project described in the application.

However, notwithstanding her signature on the affidavit, Ms. Summers did not have that permission to undertake the work, as required by law. On three of the parcels in the project area all she had received was a time-limited, restricted power of attorney. The power of attorney was limited to only giving Ms. Summers the right to apply for permits, and it did not give her the right to undertake any development.

In 2016, two of the parcels within the seven parcel project area were sold to a third party with no interest in the marina project. These two parcels were in the exact middle of the project layout, with the main pier of the proposed marina leading directly to one of the parcels. As a result of this sale, the Summer's End Group was required to modify the plans they had submitted to the Army Corps of Engineers and eliminate these parcels and their associated project components from their plans.

As the owner of the most significant of the five remaining parcels, we are writing this letter to inform you that we have revoked any and all authority from the Summer's End Group for permitting and

development activity on our parcel, including any activity on our shoreline or within the water rights of our property. Our parcel includes over half of the waterfront, and consequently over half of the marina footprint of the Summer's End Group proposed marina. Removing this parcel from the plans will require a major redesign of the Summer's End Group marina project.

The parcel that is no longer available to the Summer's End Group is the site of our retail mall known as "Coccoloba Plaza" - officially identified as Parcel 13 Remainder, Estate Carolina, Coral Bay, St. John. We have signed an Affidavit attesting to numerous facts about our relationship with the Summer's End Group, chief among these being that the Summer's End Group does not have the legally required interest or right to perform development on our parcel. Further, we affirm that such powers shall not be conveyed by us for any development conducted by the Summer's End Group, now or in the future. Please find this Affidavit attached to this letter.

In the illustration below, on the left, is the original marina design with seven land parcels (shaded in red) and the 145 slip marina. In the illustration on the right, the two parcels shaded in yellow were removed from the project in 2016 when they were sold to a third party. Our parcel is shaded in green, and the water rights associated with our parcel is the blue shaded area. Although it is difficult to see in the illustration, the shoreline portion of our parcel extends approximately 100 feet north and 100 feet south of the main parcel. As you can see, over half of the proposed marina is within the water rights of our parcel.



As a Senator of the 33rd Legislature of the US Virgin Islands, you may have had recent discussions with Ms. Chaliese Summers, or her partner Mr. Rick Barksdale, or one or more of their agents or consultants. Please be advised that any plan which the Summer's End Group is discussing involving use of Parcel 13 Remainder ("Coccoloba Plaza") does not have our approval or authority as the owner of the parcel. Any claim by the Summer's End Group that they have the development rights to that parcel or to the submerged land offshore of that parcel is simply incorrect.



Furthermore, any request by the Summer's End Group for the VI Legislature to consider the permits approved by the St John CZM Committee in 2014 should be denied on the basis that the Summer's End Group does not have our permission to conduct the development described in those permits. Until those permits are modified to eliminate all development on Parcel 13 Remainder, as well as eliminating any use of the submerged lands offshore of our parcel, any consideration of these permits would be contrary to Virgin Islands Code and would be a clear infringement of our rights as the private owners of this real estate.

Thank you for your service to the people of the Virgin Islands. If you have any questions about the content of this letter please do not hesitate to contact me using the contact information below.

Sincerely,



James Peyton Phillips  
P.O. Box 330428  
Coconut Grove, Florida 33233  
Phone: 617-909-4944  
eMail: jamesphillipsvi@gmail.com

Attachment: Notarized Affidavit of Owners of Parcel 13 Remainder,  
Coral Bay, St. John

cc: Governor Albert Bryan  
Attorney David Bornn, Chief Legal Counsel to the Governor  
Senators of the 33rd Legislature  
Attorney Yvonne Tharpes, Legal Counsel to the Legislature  
Attorney Matthew Duensing, V.I. Legal Counsel to the Owners

**STATEMENT BY OWNERS OF PARCEL 13 REMAINDER, ESTATE CAROLINA, ST JOHN, USVI**

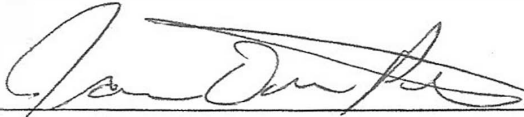
The undersigned owners of Parcel 13 Remainder, Estate Carolina, Coral Bay, St John, USVI do hereby state the following based on their personal knowledge and belief:

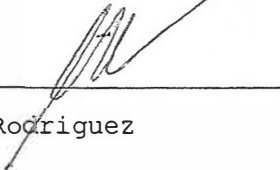
1. We, Jim Phillips a/k/a ~~James~~ James Owen Phillips, Jr. and Genoveva Rodriguez (the undersigned) are the sole owners of Parcel 13 Remainder, Estate Carolina, Coral Bay, St John, USVI, as shown on map OLG #D9-8685-T012, Eastern Portion and Western Portion (collectively known as the "Parcel").
2. James Peyton Phillips (undersigned), currently has the legal Power of Attorney over all matters pertaining to this parcel, including its use, sale or lease to any and all parties.
3. In March 2014 we granted the Summers End Group ("SEG") a time-limited Power of Attorney limited in scope to only applying for development permits, and fully revocable by us at any time. That Power of Attorney was subsequently amended on December 1, 2015, and March 16, 2016. The final amendment expired by its own terms on July 6, 2017 and is no longer in effect.
4. In August 2017, subsequent to the expiration of their authority under the Power of Attorney, the Summer's End Group submitted to the United States Army Corps of Engineers ("USACE") a modified plan for a marina project in Coral Bay Harbor, pursuant to their USACE permit application number SAJ-2004-12518 (SP-JCM). This modified plan continued to use our Parcel within the scope of their marina and USACE permit application. This was done without our permission and without legal authority.
5. Our Parcel includes approximately 400' of Coral Bay Harbor shoreline, which is a major component of their marina plan.
6. Neither the Summer's End Group, LLC, nor Chaliесе Summers, have the requisite property interest to undertake the activity proposed in their USACE permit application. Furthermore, we have no intention of ever selling the Parcel to SEG or assigning such interest to SEG or an affiliated entity in the future.
7. On March 19, 2014, Chaliесе Summers signed an affidavit entitled "L&WD5 - Proof of Legal Interest" and submitted this to the Virgin Islands Department of Planning and Natural Resources ("DPNR"). This was submitted as one component of a Major CZM Permit for development of a marina in Coral Bay. The CZM Permit Application Number was CZJ-03-14(L) and CZJ-03-14(W).
8. In this affidavit Ms. Summers swore that she had "the irrevocable approvals, permission, or power of attorney from all other persons with a legal interest in the property to undertake the work proposed in the permit application." This was incorrect at the time it was signed by Ms. Summers inasmuch as she only had a fully revocable power of attorney to apply for permits, and no authority from us to undertake any work involving our Parcel. As of October 2017, Ms. Summers has no authority from us to apply for permits, undertake work, or make any representations regarding her authority to use our Parcel.

Handwritten signature and initials in black ink, located in the bottom right corner of the page. The signature appears to be 'JOP' with a large flourish above it, and 'JP' below it.

9. On October 9, 2017, we notified all Senators of the Virgin Islands Legislature that the authority we had previously granted to the Summers End Group, LLC to apply for permits using our Parcel had been revoked.
10. The continuing activity of the Summer's End Group to pursue development permits with the US Virgin Islands DPNR and with the US Army Corps of Engineers, using our Parcel as a major component of their plan, is unauthorized by us, and directly impacts our rights in our property and our ability to sell or lease our property to third parties.
11. Considering the above, please ensure that any permit application by the Summer's End Group is modified to reflect the fact that our Parcel and associated littoral rights are not included within the scope of their permit application.

Signed:

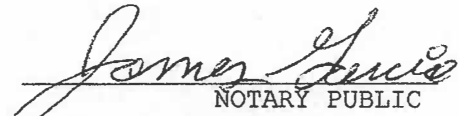
  
\_\_\_\_\_  
James Owen Phillips, Jr.

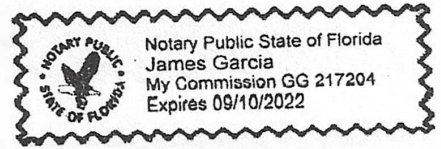
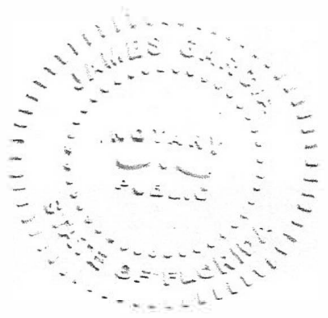
  
\_\_\_\_\_  
Genoveva Rodriguez

  
\_\_\_\_\_  
James Peyton Phillips

Dated:  
05/13/19

On this the 13<sup>TH</sup> day of May, 2019, before me, the undersigned, personally appeared JAMES OWEN PHILLIPS, JR., GENOVEVA RODRIQUEZ, and JAMES PEYTON PHILLIPS satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_



Reference 9:

Complete 2014 CZM Water Permit Transmittal





**THE UNITED STATES VIRGIN ISLANDS**

OFFICE OF THE GOVERNOR  
GOVERNMENT HOUSE

**Charlotte Amalie, V.I. 00802**  
**340-774-0001**

Honorable Shawn Michael Malone  
President  
Thirtieth Legislature of the U. S. Virgin Islands  
Capitol Building  
St. Thomas, Virgin Islands 00802

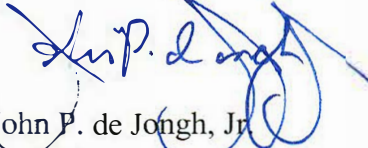
Dear Senate President Malone:

Transmitted herewith in accordance with the provisions of Title 12, §911, Subsection (e) of the Virgin Islands Code are three original copies of Major CZM Permit No. CZJ-04-14 (W) along with one (1) copy of the exhibits.

This subject permit is to allow the construction of a 145 slip marina, a designated mooring field of up to 75 moorings, a pump-out station and a fuel station at and seaward of Plot Nos. 10-17, 10-18, 10-19, 10-41 Rem., 13A, 13B and 13Rem. Estate Carolina, St. John, U.S. Virgin Islands. This permit also includes 27.5 acres of submerged land areas surrounding the structures described in this permit.

Your prompt and favorable consideration of Major CZM Permit No. CZJ-04-14 (W) will be appreciated.

Sincerely,

  
John P. de Jongh, Jr.  
Governor

## **MAJOR COASTAL ZONE MANAGEMENT PERMIT NO. CZJ-04-14(W)**

1. **AUTHORITY** This permit is issued by the St. Thomas Committee of the Virgin Islands Coastal Zone Management (CZM) Commission and is administered and monitored by the Department of Planning and Natural Resources (the "Department") on behalf of the Coastal Zone Management Commission pursuant to Virgin Islands Code, Title 12, Sections 904, and any other provisions of THE CZM Act. As herein, "**Permitter**" is the **ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS COASTAL ZONE MANAGEMENT COMMISSION** and "**Permittee**" is **THE SUMMER'S END GROUP, LLC**.
  
2. **SCOPE**
  - (a) This permit allows the construction of a 145 slip marina, a designated mooring field of up to 75 moorings, a pump-out station and a fuel station at and seaward of Plot Nos. 10-17, 10-18, 10-19, 10-41 Rem., 13A, 13B and 13 Rem. Estate Carolina, St. John, U. S. Virgin Islands.
  
  - (b) This permit also allows the use and occupancy of the structures described in Section 2 (a) of this permit including 27.5 acres of submerged land areas surrounding the structures described in Section 2, (a) of this permit.
  
3. **TERM** This permit is effective upon its signing by the Chairman of the St. John Committee of the Virgin Islands CZM Commission, approval by the Governor of the Virgin Islands, and approval by the Legislature of the Virgin Islands. As used herein, the "Effective Date" or "the date hereof" means the date of such approval. This permit will expire twenty (20) years after the Effective Date. This permit is issued for a definite term of 20 years and shall not constitute a property. This Permit shall be renewed only if the requirements of Title 12 of the Virgin Islands Code, Section 911, are met.
  
4. **DOCUMENTS INCORPORATED BY REFERENCE**
  - Exhibit A: CZM Permit Application dated April 4, 2014.
  
  - Exhibit B: Site Plan and Drawings dated July 11, 2014.
  
  - Exhibit C: Environmental Assessment Report dated April 4, 2014.
  
  - Exhibit D: Water Quality Certificate dated October 16, 2014
  
5. **GENERAL CONDITIONS**
  - A. **Liability** The Permittee agrees to assume full and complete responsibility for all liability to any person or persons, including employees, as a result of its control of the area described in Paragraph 2 of this permit, and all improvements thereon (which area and improvements are hereinafter

referred to as "the premises"), and to hold the Permittor free and harmless for civil or other liabilities of any kind during the time the Permittee is in control of the premises pursuant to this permit.

- B. Personal Property and Damage All personal property of any kind or description whatsoever located on the premises shall be there at the Permittee's sole risk.
- C. Assignment or Transfer This permit may not be transferred or assigned except as provided in Section 910-15 of the Virgin Islands Rules and regulations.
- D. Permit to be Displayed A placard evidencing the permit shall be posted in a conspicuous place at the project site during the entire work period.
- E. Reliance on Information and Data The Permittee affirms that the information and data which it provided in connection with its permit application are true and accurate, and acknowledges that if subsequent to the effective date of this permit such information and data prove to be false or inaccurate, the permit may be modified, suspended or revoked in whole or in part, and that the Commissioner or the Committee may, in addition, institute appropriate legal action.
- F. Development to be Commenced Any and all development approved by this Coastal Zone Permit shall begin within twelve (12) months from the date this permit becomes effective and shall be continuous until completion. Failure to perform at least fifty (50%) percent of the work within such period and continuously construct thereafter until the completion of construction shall cause the permit to terminate automatically and render it null and void, unless the Permittee requests an extension in writing and demonstrates to the satisfaction of the Committee that good cause exists for granting such extension.
- G. Notification of Completion Upon completion of any activity authorized or required by this CZM Permit, the Permittee shall promptly so notify the Director of the Division of CZM and where the services of a professional engineer were required in undertaking the activity, a certification of compliance provided by the project engineer that the plans and specifications of the project and all applicable Virgin Islands Code requirements have been met, shall be filed with said Director.
- H. Inspection The Commission, its Committee, the Commissioner or their authorized agents or representatives shall have the power to enter at reasonable times during project working hours upon any lands or waters in the coastal zone for which this Coastal Zone Permit has been issued. The Permittee shall permit such entry for the purpose of inspection and



ascertaining compliance with the terms and conditions of said Coastal Zone Permit. The Permittee shall provide access to such records as the Commission, its Committee, or the Commissioner in the performance of it or his duties under the CZM Act may require the Permittee to maintain. Such records may be examined and copies shall be submitted to the Commission, its Committee or the Commissioner upon request.

- I. Conditions of Premises The Development authorized by this permit shall be maintained in a safe condition and in accordance with the description, plans, or drawings approved by the Commissioner or by the Committee, and all applicable Virgin Islands Laws.
- J. Public Access to Shoreline The development shall be operated so as to assure optimum public access to the shoreline.
- K. Restoration of Area The Permittee, upon renovation or expiration of the permit, shall upon order of the Committee, or the Commissioner, and in their sole discretion, remove all structures authorized by the permit and restore the area to its original condition, and/or modify such structures or site, and/or comply with any directive of the Committee, or the Commissioner in satisfying the original permit conditions in such time and manner as the Committee, or the Commissioner may direct.
- L. Notices All notices sent or required to be sent hereunder must be by certified mail, return receipt requested. If addressed to the Permitter, same shall be sent to the Commissioner of the Department of Planning and Natural Resources, Cyril E. King Airport, Terminal Building, Second Floor, St. Thomas, Virgin Islands 00802, or to such other place as the Permitter may hereinafter designate. If addressed to the Permittee, same shall be sent to Chaliere Summers, Managing Member, The Yacht Club at Summer's End, LLC, 5000 Estate Enighed, Suite 63, St. John, Virgin Islands, 00803, or to such place as the Permittee may hereinafter designate by certified mail, return receipt requested.
- M. Non Waiver One or more waivers by the Permitter of any covenant or condition of this permit shall not be construed as a waiver of a further breach of the covenant or condition. The consent or approval of the Permitter to or of any acts by either the Permittee requiring the Permitter's consent or approval shall not be construed as approval of any subsequent similar act by the Permittee.
- N. Revocation It is specifically understood that all the foregoing covenants and agreements, as well as other terms and special conditions hereby agreed to by the Permittee, are to be well and faithfully kept by Permittee and that any failure by the Permittee to keep same will result in revocation of this permit.

- O. Other Approval If the development covered under this permit requires separate and distinct approval from the United States Government or the Government of the Virgin Islands, or any agency, department, commission or bureau thereof, then no development or occupancy is allowed under this permit until such permits or approvals have been obtained.
- P. Abandonment If the Permittee abandon, deserts or vacates the premises or discontinues its operation at the premises for a period totaling six (6) consecutive months, the permit will terminate automatically and be rendered null or void.
- Q. Signatures on the Permit Document The Permittee shall sign and return the permit document to the Department within sixty (60) days of receipt thereof. Failure to return the signed permit within the time period specified herein will be considered a rejection of the terms and conditions of the permit and will render the offer of the permit null and void, unless the Permittee requests a written extension and the Department grants the written extension.
- R. Damage and Repair of Premises Described in Paragraph 2 In the event of damage to or destruction of the premises, described in paragraph 2 hereof, repair work may be done only after a request to do so has been submitted in writing to the Department and written permission has been granted by the Department.

## 6. FEES

- 1. A rental fee of **One Hundred Ninety Four Thousand, Twenty Six Dollars and Forty Six Cents (\$194,026.46)**, per year shall be charged for the use and occupancy of the submerged land area occupied under this permit. Prior to the completion of construction of the permitted marina described in Section "2" of this permit, the Permittee shall pay an annual rental fee of **Sixty Four Thousand Twenty Seven Dollars and Eight Cents (\$64,027.08)**, per year for the use and occupancy of the submerged lands as described in Section "2" of this permit. The fees are assessed pursuant to 12 VIC §911(f) and have been negotiated with the Permittee pursuant to 12 VIRR §910-5(e). The initial payment under this permit is due upon receipt of the effective permit, and subsequent payments are due on the anniversary of the effective date. Payments are to be made to the Department of Planning and Natural Resources.
- A. The rental fees payable under this permit shall be adjusted at the commencement of the fifth (5<sup>th</sup>) year of the permit term, in accordance with the increase of the Consumer Price Index as established by the United States Department of Labor, Bureau of Labor Statistics, For "All Items, All urban

Consumers (1984-100 percent)" (the "CPI"), as follows:

- i. The CPI as of the first month of the fourth (4<sup>th</sup>) year ("initial term"), and as of the first month of each subsequent year, shall be the "base price index" and the CPI of the month immediately preceding the first month of the fifth (5<sup>th</sup>) year, and every year thereafter, shall be the current price index.
- ii. The current price index shall be divided by the base price index and the quotient thereof shall be multiplied by the sum of the annual rent of the prior year.
- iii. The resulting product shall be the annual base rent for the current year.
- iv. In no event shall the adjusted annual rent beginning in the fifth year of the permit term, and every year thereafter, be less than the rental fee of the preceding year.

## **7. SPECIAL CONDITIONS**

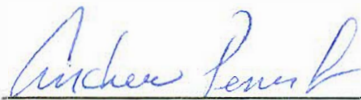
1. *All applicable Territorial and Federal permits or other necessary approvals must be obtained, prior to commencement of development activities.*
2. *The Permittee shall notify the Division of Coastal Zone Management (CZM) 72 hours prior to the commencement of development activities.*
3. *Turbidity curtains shall be installed at an adequate depth in order to prevent suspended sediment from migrating outside the work area.*
4. *This permit does not allow the removal of mangroves. If trimming of mangroves are required the Permittee must obtain a permit from Department of Planning and Natural Resources/Division of Fish and Wildlife.*
5. *Water quality monitoring shall be as out lined in the Water Quality Monitoring Plan and as approved by the Division of Environmental Protection.*
6. *Permittee shall include language in slip lease agreement mandating the use of pump-out facilities.*
7. *Automatic shut-off nozzles must be used when fueling vessels.*
8. *The Permittee must install signage to inform boaters of the availability and proper usage of pump-out facilities.*
9. *The Permittee shall maintain on site, a log for pump-out activities. The log must be available for inspection by DPNR at all times.*

10. *During construction of the permitted development, temporary restroom facilities must be located onsite and available to workers employed for the development.*
11. *Prior to start of work, Permittee shall submit to CZM, a performance bond in the amount of 20 percent, up to \$5M, of the estimated construction cost of the development.*
12. *Following the completion of the development, the Permittee shall be required to maintain a bond in the amount of \$2M such that in the event of a default, the Permittee may return the area to its original state.*
13. *During installation of the pilings, construction activities associated with this phase is limited to the hours between 8:00 am to 4:00 pm daily except that on Sundays, construction activities are not permitted.*



**IN TESTIMONY WHEREOF**, the parties herein have hereunto set their hands and seals on the days and years appearing herein below.

**ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS CZM COMMISSION**  
Permitter

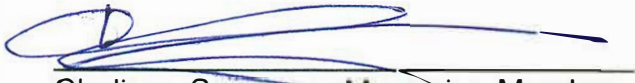


Andrew Penn, Sr.  
Chairman

10/24/2014

Date

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




Chaliese Summers, Managing Member  
The Summer's End Group, LLC

10/24/2014

Date

APPROVED  
Governor of the Virgin Islands



The Honorable John P. de Jongh, Jr.  
Governor

10/5/2014

Date

APPROVED  
Legislature of the Virgin Islands



\_\_\_\_\_  
The Honorable Shawn Michael Malone  
President, 30<sup>th</sup> Legislature

\_\_\_\_\_  
Date

I, Chaliese Summers, do hereby certify that as Managing Member, The Summer's End Group, LLC, I am duly authorized and empowered to sign this Permit on behalf of the The Summer's End Group, LLC.

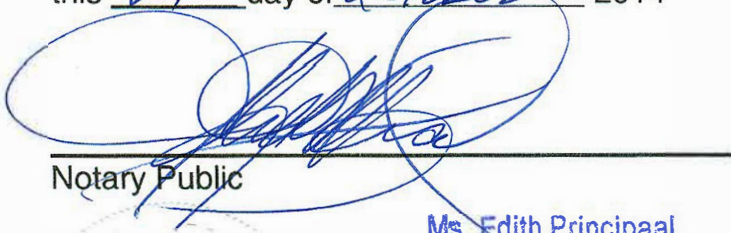


\_\_\_\_\_  
Chaliese Summers  
Managing Member

*October 24, 2014*  
Date

SWORN AND SUBSCRIBED before me

this *29<sup>th</sup>* day of *October* 2014

  
\_\_\_\_\_  
Notary Public

**Ms. Edith Principaal**  
Notary Public, U.S. Virgin Islands  
My commission Expires: June 7, 2016  
NP-48-12



Reference 10:

Form L&WD-2 CZM Permit Application

**GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES  
DEPARTMENT OF PLANNING AND NATURAL RESOURCES  
DEVELOPMENT PERMIT APPLICATION  
FORM L&WD-2  
PERMIT APPLICATION**

Date Received: \_\_\_\_\_

Date Declared Complete: \_\_\_\_\_

Permit No. \_\_\_\_\_

Application is hereby made for a Earth Change/Coastal Zone Permit

1. Name, mailing address and telephone number of applicant.

The Summer's End Group, LLC,  
5000 Estate Enighed PMB 63,  
St. John, USVI 00830  
(340) 777-9075

2. Name, title, mailing address and telephone number of owner of property and of developer.

Owner

Developer

James Phillips & Genoveva Rodriguez  
16134 Spring Garden, St. John, USVI 00830  
(340) 643-8896

Chaliese Summers – Managing Member  
The Summer's End Group, LLC  
5000 Estate Enighed PMB 63, St. John, USVI 00830  
(340) 777-9075

Merchants Commercial Bank, James Crites  
4608 Tutu Park Mall, St. Thomas, USVI 00802  
(340) 513-9210

Rick Barksdale – Member  
The Summer's End Group, LLC  
5000 Estate Enighed PMB 63, St. John, USVI 00830  
(340) 777-9075

Calvert Marsh Inc.  
PO Box 197, St. John, USVI 00831  
(340) 779-4429

Marsh Sister's Trust  
PO Box 506, St. John, USVI 008314  
(340) 514-0361

3. Location of activity. Plot No. Parcels Remainder 13, 13A, 13B, 10-17, 10-18, 10-19, Remainder 10-41

Estate Carolina Island St. John

4. Zoning District: (see attached letter of clarification from DPNR Division of Comprehensive & Coastal one Planning St. Thomas) Remainder 13 W-1, 13A W-1, 13B W-1, 10-17 W-1, 10-18 W-1, 10-19 W-1, Remainder 10-41 B-3

5. Name, mailing address and telephone number of project designer.

Joseph A. Mina, P.E., Director of Engineering (215) 291-2800 x. 20  
Cairone & Kaupp, Inc., 1118 East Columbia Avenue, Philadelphia, PA 19125

Steve Swann, M.E., P.E., Vice President (904) 249-8009  
Applied Technology & Management, 411 Pablo Avenue, Jacksonville Beach, FL 32250

Jeff D. Boyd, President (721) 545-2500  
Marine Management & Consulting, N.V. Sister Modesta Road, #21 Simpson bay Saint Maarten, Netherlands Antilles

6. Name, mailing address and telephone number of principal earthwork contractor.

Not yet selected

**FORM L&WD-2/PERMIT APPLICATION  
CONT'D**

7. Summary of proposed activity. Include all incidental improvements such as utilities, roads, etc. (Use additional sheets if necessary).

The Summer's End Group, LLC proposes to install a 145 wet slip, fixed dock marina with services including pump out, proper fueling, and other amenities for marina guests and the public. Also included are land based U.S. Customs facility, retail, restaurant, parking, and other services through the upgrade and renovation of existing buildings and property.

7a. State type of Land Uses as specified in the VI Zoning Law, which are applied for e.g., restaurant, hotel, single dwelling, etc.:

All property and parcels included in the proposed marina project are, according to the VI Zoning Law, zoned either W-1 Waterfront-Pleasure or B-3 Business-Scattered. Land uses including marina offices, restaurants, retail, commercial and other public areas such as restrooms, parking, crew services and all other improvements are specifically allowed on host parcel per VI Zoning Law. These uses have been verified appropriate with Stuart Smith, Director, CZM, DPNR. (see attached)

8. Date activity is proposed to start August 3, 2014, be completed eight months.

9. Classification of minor or major permit. Check one:

- Minor Permit Application  
 Major Permit Application

State below which criterion applies in making above check.

\_\_\_\_\_

10. Application is hereby made for a permit to authorize the activities described herein. I agree to provide any additional information/data that may be necessary to provide reasonable assurance or evidence to show that proposed project will comply with the applicable territorial water quality standard or other environmental protection standards both during construction and after the project is completed. I also agree to provide entry to the project site for inspectors from the environmental protection agencies for the purpose of making preliminary analysis application, and that to the best of my knowledge and belief such information is true, complete and accurate. I further certify that I possess the authority to undertake the proposed activities.

Signature of Applicant or Agent



Date

March 25, 2014

**Signature of Owner (Where Applicant or Agent is not Owner)**

\_\_\_\_\_

**FOR DEPARTMENT USE ONLY  
Inspector Record**

Date Inspected: \_\_\_\_\_

- Permit Approved  
 Permit Disapproved

Inspector's Remarks: \_\_\_\_\_

\_\_\_\_\_

Inspector

Date

Commissioner, Planning & Natural Resources

Date



GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

-----0-----

DEPARTMENT OF PLANNING AND NATURAL RESOURCES  
Division of Comprehensive & Coastal Zone Planning  
St Thomas

September 17, 2012

Theresa S. Roberts, AIA  
Springline Architects, LLC  
6100 Red Hook Quarter, Suite E2-1  
St. Thomas VI, 00802

RE: St. John Marina and Yacht Club Zoning Designation

Dear Ms. Roberts:

Below you will find corrections and zoning certifications for the (8) parcels located in Estate Carolina, St. John as requested in your letter dated August 29, 2012:

Remainder 13 - Western and Eastern Portion	W-1
Parcel No. 13A	W-1
Parcel No. 13B	W-1
Parcel No. 10-17	W-1
Parcel No. 10-18	W-1
Parcel No. 10-19	W-1
Parcel No. 10-41 Remainder (your letter indicated Parcel No. 41 Remainder)	B-3
Parcel No. 10-42 (your letter indicated R-2)	B-3
Parcel No. 10-40 (your letter indicated R-2)	B-3

I have also attached a spreadsheet showing the zoning map amendments on file with this office for Estate Carolina, St. John.

If you have any questions please do not hesitate to contact my office at (340) 774-3320

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart Smith", written over a horizontal line.

Stuart Smith  
Director

No.	Estate	Property Number	Acreage	Existig Zone	New Zone	Application #	Comments	Date	Act/Bill #
1	Carolina	6A & 6A-1		R1	B2	ZAJ-86-21	No Action		
2	Carolina	10-4	0.38	R2	B3	ZAJ-00-02			
3	Carolina	10-11	0.60	R2	R3	ZAJ-00-01	Override	01-Jun-00	6351
4	Carolina	10-11	0.60	R2	R3 (wrongly entered as B- 3)	ZAJ-00-01	Rezoned	19-Jun-00	6351
5	Carolina	8A-1	0.74	R1	B2	ZAJ-84-11	Rezoned	01-May-84	4940
6	Carolina	6B-4	0.88	R1	R2	ZAJ-89-16	Rezoned	01-May-92	5791
7	Carolina	8-4-2	1.26	R2	B2	ZAJ-92-10	Vetoed		
8	Carolina	10-41	1.27	R2	B3	ZAJ-94-12	Rezoned		5994
9	Carolina	8-4-2	1.74	R2	A2	ZAJ-92-10	Rezoned	01-Oct-93	20-0192
10	Carolina	8-4-1	1.77	A2	B2	ZAJ-92-10	Vetoed	01-Nov-93	5912
11	Carolina	10-40	10,028	R2	B3	ZAJ-94-16	Rezoned	01-Jul-94	5994
12	Carolina	10-42	10,183sf	R2	B3	ZAJ-94-15	Rezoned		5994
13	Carolina	8-4-1	15.08	R1	A2	ZAJ-85-09	Rezoned	01-Nov-85	5112
14	Carolina	8A-2 & 8a-3	2.6	R1	B2	ZAJ-89-16	Rezoned		5791
15	Carolina	13	3.1	R2	W1	ZAJ-94-09	Rezoned	01-Oct-94	6022
16	Carolina	6R	5.00	R2	B2	ZAJ-77-14	Rezoned	01-Apr-77	3970
17	Carolina	6R-2	9.89	R2	C	ZAJ-78-09	Rezoned	01-Dec-87	5307

## COMPANY RESOLUTION

I, Chaliese Summers, Member Manager of The Summer's End Group, LLC, a United States Virgin Islands limited liability company, (hereinafter called the "Company") with a mailing address of 5000 Estate Enighed #63, St. John, United States Virgin Islands, 00830, do hereby certify that the following is a true and correct copy of resolutions duly adopted by the Member Manger of the Company at a meeting thereof duly called and held on March 27, 2014 at which all members were present and acting throughout:

RESOLVED, that Chaliese Summers, acting as the Member Manager of the Company, was duly authorized to sign, on behalf of the Company, all documents, applications, forms, necessary to apply for and aquire Virgin Islands Coastal Zone Management Major Water and a Major Land Permits; and it is further

RESOLVED that Chaliese Summers, as the Member Manager of The Summer's End Group, LLC, is hereby authorized to execute any and all documents on behalf of The Summer's End Group, LLC necessary or incident to the Company's applications or other communications with the Department of Planning and Natural Resources and Coastal Zone Management of the USVI; and it is further

RESOLVED that Chaliese Summers, as the Member Manager of the Company, is hereby authorized and directed, on behalf of The Company, to do and perform all such acts and things and to sign all such other documents and certificates, and to take all such other steps as may be necessary, or advisable, convenient and proper to carry out the intent of the foregoing resolutions.

AND I do further certify that said resolutions have not been in anyway amended, annulled or rescinded and that the same are in full force and effect on the date hereof and that the Member Manager of the Company on the date hereof is as follows:

Chaliese Summers

AND I do further certify that the attached are a true and complete copy of the Articles of Organization of THE SUMMER'S END GROUP, LLC, and that such Articles of Organization have not been further amended or modified as of the date of the signing of this certificate.

<sup>4</sup> WITNESS my hand and the seal of the company this 27 day of March, 2013.

WITNESSES:

  
\_\_\_\_\_

THE SUMMER'S END GROUP, LLC

  
\_\_\_\_\_  
~~The Summer's End Group LLC, Member Manager~~  
(through its Member Manager, Chaliесе Summers)

  
\_\_\_\_\_  
(Member, Rick Barksdale)

  
\_\_\_\_\_  
(Member, Chaliесе Summers)

UNITED STATES VIRGIN ISLANDS)  
COUNTY OF St Thomas - St. John

ss:

The foregoing instrument was acknowledged before me by Chaliесе Summers, Member Manager of The Summer's End Group, LLC, this the 27<sup>th</sup> day of March, 2013~~14~~

  
\_\_\_\_\_  
Notary Public

**Vicki Bell**  
Notary Public-U.S. Virgin Islands  
District of St. Thomas St. John  
NP-083-11 Expires 9/21/2015



Rec'd 4/20/12  
SM

**ARTICLES OF ORGANIZATION  
OF  
The Summer's End Group, LLC**

ARTICLE I - Company name: The name of the Company is: **The Summer's End Group, LLC**

ARTICLE II - The mailing address of this Company is 5000 Estate Enighed #63, St. John, VI 00830 and the physical address of this Company is [REDACTED] St. John, VI 00830

ARTICLE III - The name of the organizer is Chaliесе Summers and the physical address is [REDACTED] St. John, VI 00830.

ARTICLE IV - Resident Agent: The resident agent and the street address of the resident agent of this Company in the United States Virgin Islands shall be:

Chaliесе Summers

[REDACTED]

St. John, VI 00830

ARTICLE V - Management: The Company shall be managed by its Member/Manager.

ARTICLE VI - The amount of capital with which Company shall commence business is [REDACTED]

ARTICLE VII - The duration of the Company shall have perpetual existence.

ARTICLE VIII - The Company shall have no member liable for the debts and obligations pursuant to Title 13, Chapter 15, Section 1303 (c) of the Virgin Islands Code.

IN WITNESS WHEREOF, the undersigned person has executed the foregoing Articles of Organization on this 20 day of Apr. 1, 2012.

  
Chaliесе Summers, Organizer

**ACKNOWLEDGEMENT**

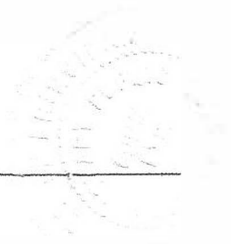
TERRITORY OF THE VIRGIN ISLANDS )

DISTRICT OF ST. THOMAS/ST. JOHN )

ss:

On this 20<sup>th</sup> day of April, 2012, before me, the organizer personally appeared **Chaliese Summers** known to me and satisfactorily proven to be the person whose name is subscribed to within the instrument and acknowledged that she executed the same for the purpose therein contained.

  
\_\_\_\_\_  
Notary Public



Commission expires: Ms. Edith Principaal  
Notary Public, U.S. Virgin Islands  
My Commission Expires: JUNE 26, 2012  
NP-057-08

Reference 11:

Form L&WD-5 Proof of Legal Interest

GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES  
DEPARTMENT OF PLANNING AND NATURAL RESOURCES  
DEVELOPMENT PERMIT APPLICATION

FORM L&WD-5  
PROOF OF LEGAL INTEREST

AFFIDAVIT

I, Chaliese N. Summers, being duly sworn depose and say that:  
Name

1. I am the (check one)

Record title owner (fee simple)

Lessee

Other (specify) Developer - Power of Attorney for all Parcel Numbers below

of the real property described as Parcel No(s) Remainder 13, 13A, 13B, 10-17, 10-18, 10-19, Remainder 10-41

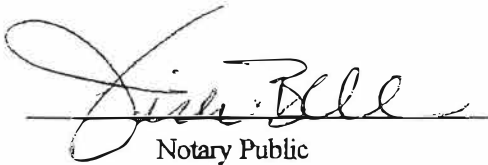
Estate Carolina

Quarter Coral Bay

Island St. John

2. I have the irrevocable approvals, permission, or power of attorney from all other persons with a legal interest in the property to undertake the work proposed in the permit application as more fully set forth in the exhibit (s) attached hereto:

The foregoing instrument was acknowledged before me this 19th day of March  
192014 by Chaliese Summers at Coral Bay St. John of VI

  
Notary Public

Vicki Bell  
Notary Public-U.S. Virgin Islands  
District of St. Thomas St. John  
NP-083-11 Expires 9/21/2015

9/21/2015  
My Commission expires

Reference 12:

2014 Correspondence With CZM re Legal Interest Defect

Mr. Winston Brathwaite, Esq.  
Department of Planning & Natural Resources  
Coastal Zone Management Division  
Cyril E. King Airport, Terminal Bldg., 2d Floor  
St. Thomas, Virgin Islands 00802

25 August 2014

re: CZJ-3-14(L) and CZJ-4-14(W), Summer's End Group LLC,  
Marina and Associated Facilities in Coral Bay, St. John  
Inadequate Proof of Legal Interest

cc: Mr. Anthony Richards, Permits Coordinator-Coastal Zone Management

Dear Mr. Brathwaite,

I am writing to you regarding the application of the Summer's End Group, LLC for Major Land and Major Water CZM Permits, for their proposed "St John Marina" located in Coral Bay harbor. In the interest of full disclosure, I will remind you that I testified at the public hearing on these permits, focusing on the requirements for granting of permits under the VI CZM Act, and I submitted written testimony on this subject as well.

I have recently become aware of what appears to be a significant legal problem with the CZM application, and one which could potentially become an embarrassment for all involved, including DPNR staff. It appears that the applicants have not provided the requisite Proof of Legal Interest as required by DPNR, and that this defect could potentially render the application unsuitable for review.

As you certainly know, all applicants are required to submit proof of legal interest in subject properties, in the form of a sworn affidavit on Form L&WD-5, "Proof of Legal Interest". In my experience this proof is generally provided through deeds, leases, or other instruments demonstrating the legal authority of the individual to undertake the proposed development. When I say "in my experience" I am specifically referring to my background as the chairman of a Planning Board for a small village in New York, several years ago. I have virtually no experience with these matters in the USVI.

In the case of the Summer's End Group application, the applicant has completed a Form L&WD-5 indicating that they are the "Developer - Power of Attorney for all Parcel Numbers" which list includes parcels 13 and 13A. I have attached hereto a copy of the L&WD-5 form sworn and signed by the applicant.

As you also must know, clause 2 of the Affidavit states "I have the irrevocable approvals, permission, or power of attorney from all other persons with a legal interest in the property to undertake the work proposed in the permit application as more fully set forth in the exhibit(s) attached hereto."

Today I spent some time reviewing the CZM applications and particularly reviewing the deeds, leases and powers of attorney provided by the applicant. Much to my surprise I found that the applicant,

Summer's End Group, LLC, through their manager Chaliесе Summers, did not have the requisite proof of legal interest, in spite of her having signed and sworn the affidavit.

I've attached two of the relevant Limited Powers of Attorney and would like to draw your attention to the language surrounding the limitations. The first, from James Phillips and Genoveva Rodriguez applies to parcels 13 and 13A, and includes the following language (emphasis added):

"All rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force and effect on the date hereof, and such rights, powers and authority shall remain in full force and effect **until December 1, 2014, or until revoked in writing by the undersigned**, whichever occurs first." (emphasis added)

The second Limited Power of Attorney, applying to a different set of parcels, contains identical language albeit with a different end date - January 1, 2015.

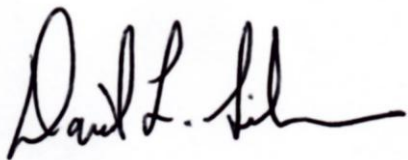
Now, as I understand the language of the Affidavit of Legal Interest, these powers of attorney do not fulfill the requirement to demonstrate "irrevocable approvals, permission, or power of attorney" since by their express language they may be "revoked in writing" at any time.

Based on these observations, it seems to me that the application should not have been "deemed complete" by DPNR and CZM staff. The applicants have not provided the required proof of legal interest or irrevocable authority to engage in the development activities described in the application. In fact, it is highly likely that the limited terms of the powers of attorney will expire well before permits could be granted.

I said earlier that this could become an embarrassment for all involved, particularly considering the extraordinary amount of effort which has already been put into review of the permit applications. I would appreciate it if you could acknowledge receipt of this letter and let me know whether you intend to follow up on the matter, and if so, in what manner.

Thank you for your time.

Respectfully yours,

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

David L Silverman

GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES  
DEPARTMENT OF PLANNING AND NATURAL RESOURCES  
DEVELOPMENT PERMIT APPLICATION

FORM L&WD-5  
PROOF OF LEGAL INTEREST

AFFIDAVIT

I, Chaliese N. Summers, being duly sworn depose and say that:  
Name

1. I am the (check one)

Record title owner (fee simple)

Lessee

Other (specify) Developer - Power of Attorney for all Parcel Numbers below

of the real property described as Parcel No(s) Remainder 13, 13A, 13B, 10-17, 10-18, 10-19, Remainder 10-41

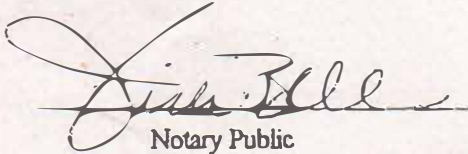
Estate Carolina

Quarter Coral Bay

Island St. John

2. I have the irrevocable approvals, permission, or power of attorney from all other persons with a legal interest in the property to undertake the work proposed in the permit application as more fully set forth in the exhibit (s) attached hereto:

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of March  
192014 by Chaliese Summers at Coral Bay St. John of VI

  
Notary Public

Vicki Bell  
Notary Public-U.S. Virgin Islands  
District of St. Thomas St. John  
NP-083-11 Expires 9/21/2015

9/21/2015  
My Commission expires



**LIMITED POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS that we, JIM PHILLIPS a/k/a JAMES PHILLIPS and GENOVEVA RODRIGUEZ, appoint THE SUMMER'S END GROUP, LLC, through its member/manager CHALIESE SUMMERS, our true and lawful attorney-in-fact and agent for us and in our name, place, and stead, for the sole and limited purpose of providing the said attorney-in-fact the legal authority to apply for all Virgin Islands Department of Planning and Natural Resources, and/or Virgin Islands Coastal Zone Management, and/or United States Army Corps of Engineers permits to enable the development and construction of a marina and related structures on the following property:

Remainder Parcel No. 13 Estate Carolina  
(Western Portion)  
No. 1 Coral Bay Quarter  
St. John, U.S. Virgin Islands,  
as shown on O.L.G. No. D9-8685-T012  
consisting of 0.759 acres, more or less,

and


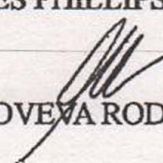
Remainder Parcel No. 13 Estate Carolina  
(Eastern and Western Portion)  
No. 1 Coral Bay Quarter  
St. John, U.S. Virgin Islands,  
as shown on O.L.G. No. D9-8685-T012  
consisting of 5800 square feet, more or less,

and for us and in our name and as our acts and deeds to sign, seal, execute, acknowledge and deliver any application documentation required in order to process said permit applications;

All rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and power herein granted shall commence and be in full force and effect on the date hereof, and such rights, powers and authority shall remain in full force and effect until December 1, 2014, or until revoked in writing by the undersigned, whichever occurs sooner.

IN WITNESS WHEREOF, we have signed this Power of Attorney this 31<sup>st</sup> day of March, 2014.

WITNESSES: (as to both)

  
JAMES PHILLIPS a/k/a JIM PHILLIPS  
  
GENOVEVA RODRIGUEZ

STATE OF FLORIDA

)

) ss: Acknowledgment

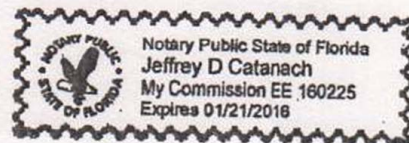
COUNTY OF *MIAMI-DADE*

)

ON THIS 31<sup>st</sup> day of March, 2014, before me, the undersigned officer, personally appeared James Phillips a/k/a Jim Phillips and Genoveva Rodriguez, known to me, or satisfactorily proven, to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
NOTARY PUBLIC



Rodriguezlimitedpowerofattorney2



**LIMITED POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS that we, ROBERT O'CONNOR JR. AND J. BRION MORRISSETTE, appoint THE SUMMER'S END GROUP, LLC, through its member/manager CHALIESE SUMMERS, our true and lawful attorney-in-fact and agent for us and in our name, place, and stead, for the sole and limited purpose of providing the said attorney-in-fact the legal authority to apply for all Virgin Islands Department of Planning and Natural Resources, and/or Virgin Islands Coastal Zone Management, and/or United States Army Corps of Engineers permits to enable the development and construction of a marina and related structures on the following property:

Parcel No. 10-41 Remainder Estate Carolina  
No. 1 Coral Bay Quarter  
St. John, U.S. Virgin Islands,  
as shown on O.L.G. No. D9-8722-T012  
consisting of 0.98 acres, more or less,

and

Parcels No. 10-17, 10-18, 10-19 Estate Carolina  
No. 1 Coral Bay Quarter  
St. John, U.S. Virgin Islands,  
as shown on O.L.G. No. F9-3370-T75  
consisting of .778 acres, more or less,

and for us and in our name and as our acts and deeds to sign, seal, execute, acknowledge and deliver any application documentation required in order to process said permit applications;

All rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and power herein granted shall commence and be in full force and effect on the date hereof, and such rights, powers and authority shall remain in full force and effect until January 1, 2015, or until revoked in writing by the undersigned, whichever occurs sooner.

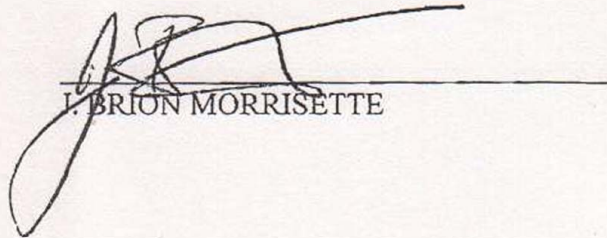
IN WITNESS WHEREOF, we have signed this Power of Attorney this 21<sup>st</sup> day of March, 2014.

WITNESSES: (as to both)

  
\_\_\_\_\_

  
ROBERT O'CONNOR JR.

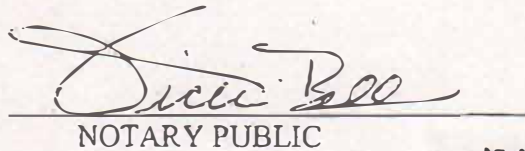
  
\_\_\_\_\_

  
J. BRION MORRISETTE

TERRITORY OF THE US VIRGIN ISLANDS )  
DIVISION OF ST. THOMAS/ST. JOHN ) ss: Acknowledgment

ON THIS 21<sup>st</sup> day of March, 2014, before me, the undersigned officer, personally appeared Robert O'Connor Jr. and J. Brion Morrisette, known to me, or satisfactorily proven, to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
NOTARY PUBLIC

Vicki Bell  
Notary Public-U.S. Virgin Islands  
District of St. Thomas St. John  
NP-083-11 Expires 9/21/2015

Reference 13:

Fully Revocable Limited Power of Attorney

**LIMITED POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS that we, MERCHANTS COMMERCIAL BANK, a U. S. Virgin Islands Banking Corporation, appoint THE SUMMER'S END GROUP, LLC, a Virgin Islands Limited Liability Company with a mailing address of 5000 Estate Enighed, PMB 63, St. John, USVI 00830, through its member/manager Chaliese Summers, our true and lawful attorney-in-fact and agent for us and in our name, place, and stead, for the sole and limited purpose of providing the said attorney-in-fact the legal authority to apply for all Virgin Islands Department of Planning and Natural Resources, and/or Virgin Islands Coastal Zone Management, and/or United States Army Corps of Engineers permits to enable the development and construction of a marina and related structures on the following property:


Parcel No. 13A Estate Carolina  
No. 1 Coral Bay Quarter  
St. John, U.S. Virgin Islands,  
as shown on O.L.G. No. D9-6366-T98  
consisting of 0.37 acres, more or less,

and

Parcel No. 13B Estate Carolina  
No. 1 Coral Bay Quarter  
St. John, U.S. Virgin Islands,  
as shown on O.L.G. No. D9-6533-T99  
consisting of 0.231 acres, more or less,

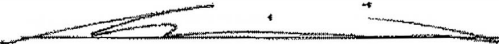
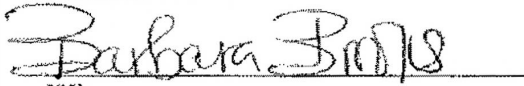
and for us and in our name and as our acts and deeds to sign, seal, execute, acknowledge and deliver any application documentation required in order to process said permit applications;

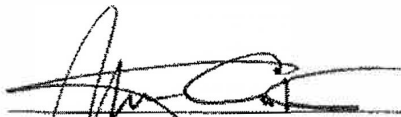
All rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and power herein granted shall commence and be in full force and effect on the date hereof, and such rights, powers and authority shall remain in full force and effect until December 1, 2014 or until revoked in writing by the undersigned, whichever occurs sooner.

IN WITNESS WHEREOF, we have signed this Power of Attorney this  day of March, 2014.



WITNESSES: (as to both)

  
Witness  
  
Witness

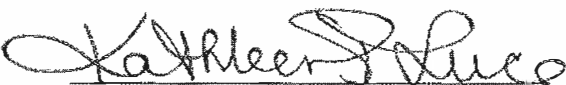
  
Merchants Commercial Bank  
By its President and CEO James E. Crites,

**TERRITORY OF THE US VIRGIN ISLANDS  
DIVISION OF ST. THOMAS/ST. JOHN**

) ss: Acknowledgment

ON THIS 26 day of March, 2014, before me, the undersigned officer, personally appeared James Crites as President and CEO of Merchants Commercial Bank, a Virgin Islands corporation, known to me, or satisfactorily proven, to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
NOTARY PUBLIC NP 91-13  
commission expires 11/7/2017

Reference 14:

SEG Marina Size Comparisons



# Charlotte Amalie Harbor – Approx. 450 Acres

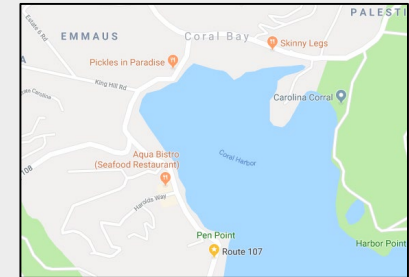
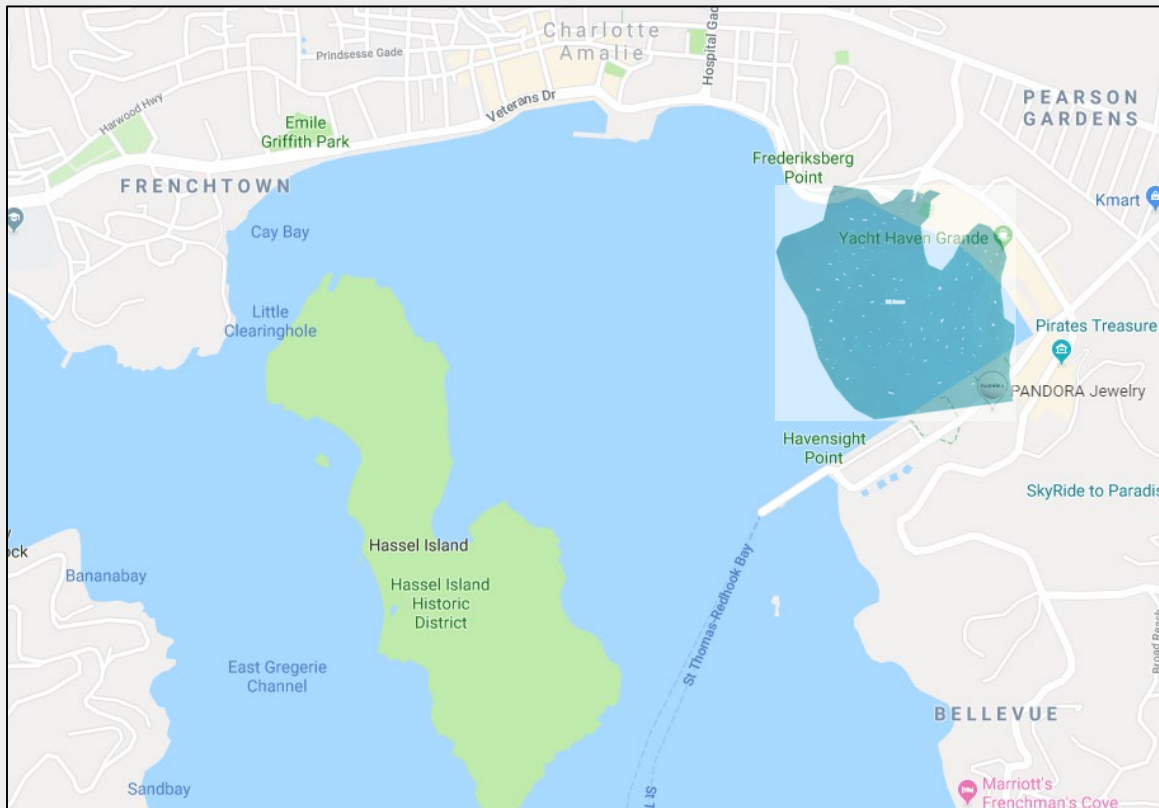


# Coral Bay Harbor – Approx. 90 Acres





# Charlotte Amalie Harbor vs. Coral Bay Harbor



Coral Bay Harbor is 1/5 the size of Charlotte Amalie Harbor. All of Coral Bay Harbor would fit between the WICO docks and the Legislature.

# Yacht Haven Grande vs. "St John Marina"

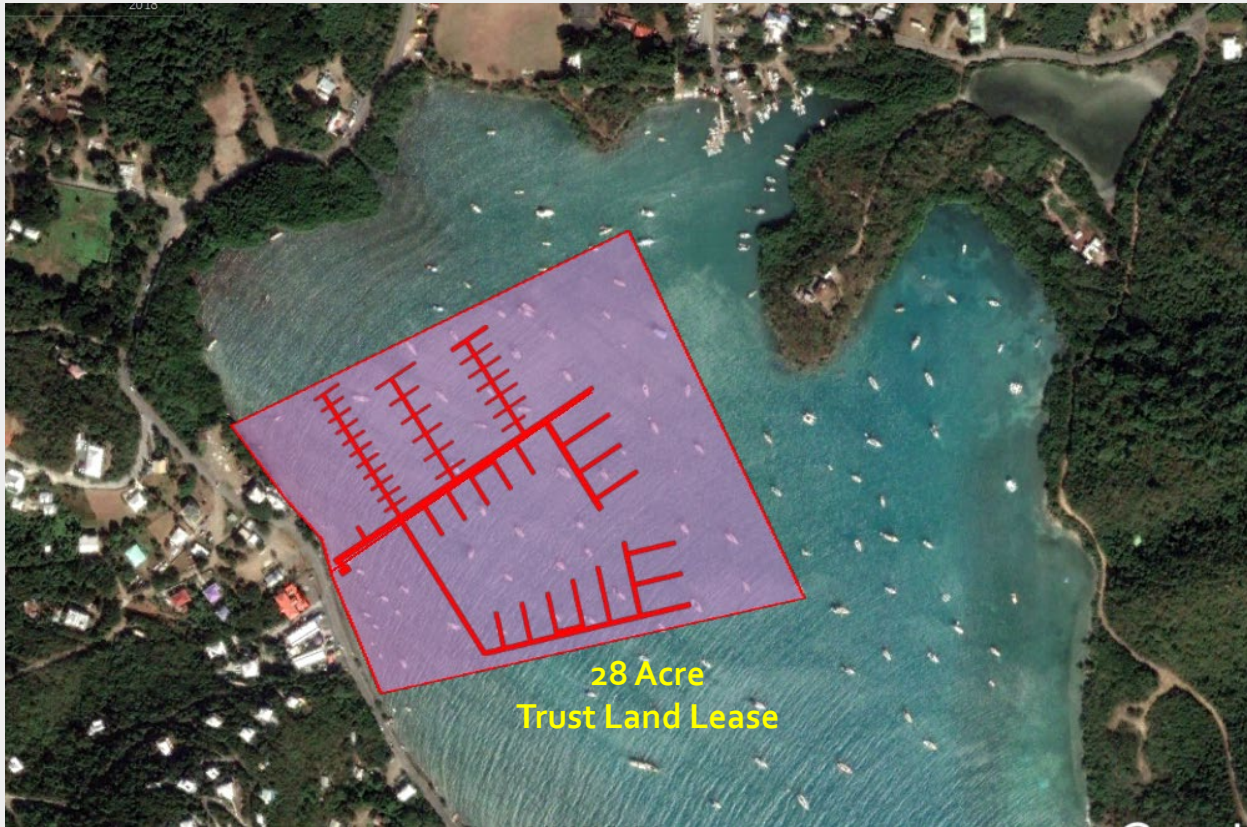


The "St John Marina" is larger than Yacht Haven Grande – 144 slips vs 46 slips.

- 10,000 feet of boat
- 960 pilings
- 900' main pier
- 28 acres

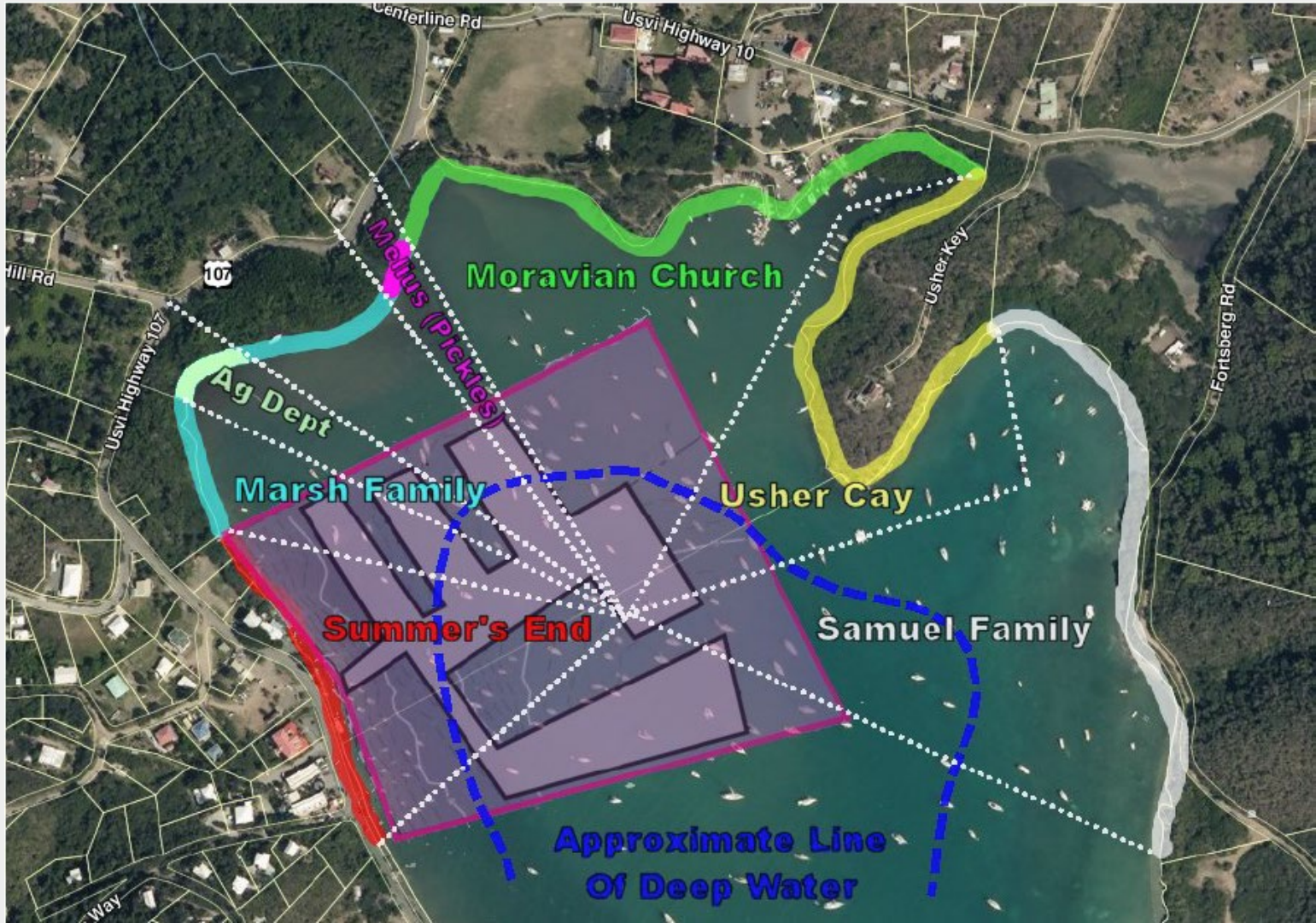


# Submerged Land Lease Area – 28 Acres





# The proposed marina blocks access to deep water for all other waterfront properties





# The 28 Acre Site covers most of the navigable deep water of Coral Bay Harbor



*Photorealistic scale rendering of the Summer's End Group marina at 75% occupancy*



Reference 12:

US EPA Comment Letter to Army Corps of Engineers



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

**MAR - 3 2015**

Col. Alan M. Dodd  
District Commander  
U.S. Army Corps of Engineers  
Jacksonville District  
P.O. Box 4970  
Jacksonville, FL 32232-0019

Dear Col. Dodd:

This is in regard to Permit Application No. SAJ-2004-12518 (SP-JMS) by Mrs. Chaliесе Summers on behalf of The Summer's End Group, LLC for the proposed construction of a new commercial marina and mooring field at Coral Bay, St. John, U.S. Virgin Islands. The proposed project entails the construction of 145 boat slips and the installation of 87 mooring buoys. Construction would require the installation of 1,333 piles (12-17 inch diameter) occupying a total of 2,500 square feet, plus dock structures totaling an area of 1.42 acres. The project also includes changes to an existing rip-rap shoreline protection area as well as the construction of administrative and commercial facilities on seven adjacent upland parcels at Coral Bay. **After reviewing the available data, the U.S. Environmental Protection Agency (EPA) believes that this project will result in significant impacts to aquatic resources of national importance. EPA thus strongly recommends the denial of a Department of the Army permit for this project.**

EPA has reviewed the public notice for this project, and the Environmental Assessment Report submitted by the applicant. Based on this review, **EPA has determined that the proposed project may result in significant impacts to the aquatic environment at Coral Bay. Moreover, the applicant failed to provide sufficient information on the extent of the proposed project's impacts and the adequacy of the proposed mitigation plans. Therefore, if the Department of the Army does not deny this permit, then it should require the submission of an Environmental Impact Statement** that would address, at a minimum, the environmental impacts discussed below.

The Virgin Islands Department of Planning and Natural Resources (VIDPNR) has designated Coral Bay as a mooring area due to its enclosed nature that provides storm and hurricane protection to boaters. Heavy use of the area has resulted in environmental impacts associated to mooring, anchoring and waste disposal. In addition, development on the lands surrounding the bay has resulted in an increase in the levels of pollutants and sedimentation reaching the harbor. **The development of the planned marina will compound the impacts on the ecosystem.**

Coral Bay is an enclosed harbor surrounded by mangroves that serve as a nursery ground and provides habitat for numerous species, such as the green sea turtle, the hawksbill sea turtle, as well as juvenile tarpon (*Megalops atlanticus*) and snook (*Centropomus undecimalis*), among other species. In addition, they provide a good measure of shoreline protection. It also contains extensive seagrass beds and submerged aquatic vegetation that provides food and foraging habitat to endangered sea turtles and nursery for commercially valuable fish stocks. Numerous coral species are found in the area, which also serves as a black tip, lemon and nurse shark nursery. In addition to the seagrass and mangrove habitats directly displaced, numerous coral species are found nearby, including *Acropora palmata*, *Acropora cervicornis*, and *Orbicella annularis*, which are listed as threatened under the Endangered Species Act. Despite the ecological importance of Coral Bay, which has been recognized by the government of the U.S. Virgin Islands (USVI) as an area of particular concern, no formal environmental management plans have been developed for the area. The National Oceanic and Atmospheric Administration (NOAA) and the USVI as a priority site also selected Coral Bay for the U.S. Coral Reef Task Force Local Action Strategy. This area was selected using a set of strategic coral reef management priorities developed by consensus by the coral reef managers in the USVI. Significant investments, by EPA and NOAA, have resulted to measureable improvements in the watershed and water quality of Coral Bay. EPA awarded \$300,000 in a Community Action for a Renewed Environment (CARE) grant to the Coral Bay Community Council that served to initiate hydrological assessments and strategies for improving the watershed. NOAA awarded approximately \$1.5 million to the Coral Bay Community Council through the American Recovery and Reinvestment Act (ARRA) of 2009 for implementation of best management practices for stabilizing erosion and sediment runoff conditions that were impacting Coral Bay habitats.

EPA is seriously concerned about the potential effects of the proposed development on water quality, sea grass and corals within Coral Bay. The applicant has estimated that the required pilings would result in the loss of 2,500 square feet of sea grass. Additional losses of sea grass due to shading impacts have been estimated as 1.42 acres from the dock structures, 5.7 acres from boats, and plus two additional acres of temporary impacts during construction. Direct impacts on sea grass and submerged aquatic vegetation in the bay may also cause indirect impacts to endangered sea turtles and other marine species that use this aquatic resource of national importance for refuge, foraging and spawning. The threatened/endangered species found in the project area and its vicinity are likely to be affected by the construction and the significant increase in boat traffic that would result from the proposed marina. These aquatic resources of national importance may also be affected by the degradation of water quality that would result from the construction and operation of the facilities, the potential for fuel and wastewater spills, the increases in runoff from the associated upland development, and the increasing overall stresses on the bay. EPA recommends that a comprehensive benthic survey of the complete project area, including the proposed mooring field and the transit routes that would be used by vessels entering or exiting the marina, must be performed in order to more fully quantify all potential impacts on aquatic resources of national importance. While some information on benthic communities was included in the Environmental Assessment Report for the project, the information was limited to the immediate area of the proposed marina. The benthic survey should also include the proposed mooring area and any areas of the bay that would be affected by the proposed upland elements of the project. Information regarding the type of moorings to be



installed, the installation techniques that would be used, and the operation plans for the proposed mooring field should be included. This information is required in order to fully evaluate all the potential impacts to benthic communities.

While the Environmental Assessment Report submitted by the applicant describes the current use of the bay by boaters, and establishes that only a portion of the moorings at Coral Bay have been placed through the established permitting authorities, information regarding the actual volume of vessels that routinely anchor at Coral Bay was not provided. While the applicant implies that such vessels would be accommodated at the proposed facility, and that at least a portion of the proposed mooring field would be managed through a public-private partnership with VIDPNR, no data regarding the actual footprint of the area to be occupied by vessels, nor details on a proposed relocation plan were included. In addition, EPA believes that any vessels that opt not to moor at the proposed facility may end up relocating to nearby areas, resulting in additional impacts that cannot be estimated with the available information.

To compensate for the unavoidable impacts of the project on sea grass, the applicant proposes the removal and disposal of debris and derelict vessels from the marina area, plus the planting of red mangroves along the shoreline in the marina area. The applicant also proposes to transplant sea grass from the footprint of the proposed pilings to barren areas of the sea floor within Coral Bay. While we conceptually agree with this approach, the information submitted does not adequately quantify the amount of sea grass to be restored within the bay. Therefore, at this time, it is difficult to determine whether the proposed mitigation would adequately compensate for the impacts to approximately 9 acres of sea grass. While the applicant has proposed other activities, such as the establishment of a local farmer's market and the placement of informational signs and buoys informing boaters of the importance of the aquatic resources of the area, EPA believes that these additional activities are not acceptable to compensate for the significant loss of aquatic resources of national importance that would result from the project. The applicant should develop and submit a comprehensive mitigation plan that includes the methodology to be used to compensate for impacts to sea grass and corals, an estimate of the area to be restored as compensation, and proposed performance measures to ensure that unavoidable impacts are fully mitigated.

The applicant has stated that turbidity barriers and other control measures would be deployed during construction to reduce the impacts of sediment resuspension. However, no details regarding the in-water and shoreline construction measures to control sedimentation and turbidity are included. In addition, the earth movement activities associated with the proposed upland components of the project (parking, restaurant, Customs and Border Protection office, marina offices, security, crew showers and lockers, and marina management housing) will involve land clearing, grading and excavation as well as major construction activity within the Coral Bay watershed. These activities would result in additional impervious surfaces in the vicinity of the bay that would contribute to greater runoff flows and the potential for the introduction of additional pollutants into the water column. According to the information furnished by the applicant, these potential impacts would be minimized and abated through the implementation of sediment and erosion control plan as well as a storm water management plan that were submitted to VIDPNR under a separate Coastal Zone Management permit application and was not included in the Environmental Assessment Report for the marina project. EPA advises that this proposed project requires permits under the Territorial Pollutant Discharge Elimination System (TPDES) program administered by VIDPNR for the discharge of storm

water runoff from the proposed construction activities. In addition, please note that certain construction activities in the ghuts within the project area (such as sediment traps, placement of rip rap, dam embankments, and others) may require compliance with the Territory Isolated Wetlands Permit requirements and Territory earth change requirements. Inland ghuts, such as those that may be present within the project area, are maintained by the Virgin Islands' Department of Public Works (VIDPW), who requires that the flow pathways not be impeded. The applicant should be aware of these requirements and explain how they will comply. Furthermore, the establishment of sediment controls and the diversion of storm water flows to control water velocity and the transport of sediments will be important factors in reducing the potential impacts from sedimentation in the bay. The developer should prepare a Storm Water Pollution Prevention Plan (SWPPP) addressing all storm water and sedimentation issues pursuant to the requirements of the TPDES General Permit. Emphasis should be placed on the development and establishment of controls prior to the start of any earth movement activities. A schedule for the development and implementation of these controls is critical to ensure that adequate storm water erosion and sedimentation management is achieved.

Land based sources of pollution are a major threat to corals and sea grass. In the case of Coral Bay, the surrounding steep slopes, and erodible soils contribute to high sediment loads. In 2009, the Coral Bay Community Council received funding from the American Recovery and Reinvestment Act (ARRA) for the development and implementation of watershed stabilization techniques specific to Coral Bay. As a result of these efforts, the ghuts in the area now receive less sediment-laden flows, reducing the threats from land based sources of pollution to corals and sea grass beds. The proposed project may undo the water quality improvements that have been gained from these efforts. For these reasons, EPA believes that the water quality data at the site must be benchmarked, and a regular monitoring plan must be developed and implemented in order to determine the project's impacts on water quality. Should this monitoring demonstrate the potential for adverse impacts from the project, controls and management strategies must be dynamically adjusted to prevent water quality deterioration within Coral Bay.

The Environmental Assessment Report for the proposed project states that wastewater from the facility would be transported via the marina's pump out system to a 3,000-gallon upland holding tank, and would ultimately be hauled offsite by a licensed carrier for treatment and disposal at Cruz Bay. However, the applicant has stated that the pump out services at the marina would be available to the general public in an effort to help improve water quality at Coral Bay. Furthermore, the applicant has stated that the volume of wastewater to be collected from the general public is unknown at this time. Given the popularity of Coral Bay among boaters, the volume of wastewater that would be collected will likely overwhelm the proposed holding tank, requiring more frequent hauling of the wastes. In addition, the Environmental Assessment Report does not specify whether the proposed holding tank will be used exclusively for the wastewater collected through the vessel pump out system. Since additional wastewater loads associated from the upland facilities associated with the marina are expected, the applicant should provide information regarding the estimated wastewater volume from such facilities, whether other additional holding tanks would be required, and the estimated frequency of wastewater hauling and the capacity of the proposed treatment facility at Cruz Bay. EPA is concerned that the treatment facility targeted to receive wastewater from the project could exceed its capacity as a result of the increased loads, resulting in additional impacts to water quality elsewhere in the U. S. Virgin Islands.



Another area of concern for EPA is waste management. Given the large scale of the proposed project, significant amounts of solid waste will be generated. In the case of solid waste, the applicant has stated that the wastes generated during construction and operation of the proposed facility would be deposited in 20-foot roll-off containers, and would be hauled by a local, licensed waste hauler to Bovoni Landfill in St. Thomas for disposal. The solid waste volume to be generated by the proposed marina was estimated at approximately 1,500 pounds per week. While this does not appear to be a significant volume, it is not clear whether this estimate takes into consideration solid waste generated from the upland elements/amenities associated with the marina project. If additional loads from the upland portions of the project were considered separately, they must be accounted for, since significant loads could impact the solid waste disposal facilities of the Virgin Islands, which are already compromised. Therefore, EPA requests that the applicant provide detailed data on the generation of solid wastes at the proposed facility, including estimates of the type and quantity of waste to be generated by both the aquatic and terrestrial elements of the proposed facility. The applicant must also explain how the waste would be ultimately disposed of in order to determine whether the existing solid waste management facilities at Bovoni Landfill can manage the estimated loads. If the applicant considers alternative solid waste management strategies, such as composting and recycling, EPA would like to review descriptions of the processes, the procedures to be followed, and the estimated reduction of solid wastes that would result from such strategies. This information should be incorporated into the solid waste management plan for the proposed development.

Given the large scale of this project, its potential impacts on water quality, aquatic resources of national importance and endangered species, EPA advises that the Environmental Assessment Report does not properly address potential project impacts. While EPA understands that the developers have tried to minimize impacts by avoiding dredging and proposing conceptual compensatory mitigation for the project's unavoidable impacts, it appears that much of the available studies and impact minimization measures have only focused on the sensitive aquatic ecosystem of the area immediately adjacent to the proposed marina. The direct and indirect impacts which may result from the proposed upland elements of the project are just as important and must be considered as a whole rather than as a separate permit action. In addition, while the applicant included a discussion of the alternatives analysis for the project within the Environmental Assessment report, such discussion only considers the full build out of the project and does not adequately assess and discuss the environmental impacts of each alternative. Based on the deficient alternatives analysis, EPA assumes that additional alternatives to achieve the proposed project purpose with lesser environmental impacts, as well as additional opportunities to further reduce the environmental impacts of the project, may be available and must be considered by the applicant.

There are a number of aspects of this project that are expected to impact the level of Greenhouse Gases (GHGs) being emitted into the local environment, such as increased emissions during construction, and long term increases associated with increased automobile and boat traffic to the area. Consistent with the recent Council on Environmental Quality revised Guidance for Greenhouse Gas Emissions and Climate Change Impacts, EPA recommends estimating the greenhouse gas emissions associated with the proposal. EPA also recommends considering measures to reduce greenhouse gas emissions associated with the project, including reasonable alternatives or other mitigation opportunities. Similarly, we recommend the Corps



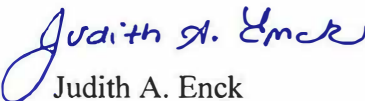
consider, as appropriate, changes to the proposal to make it more resilient to anticipated climate change.

Finally, EPA recommends that this project must be evaluated as a whole, and that the direct and indirect impacts on the surroundings must be considered prior to reaching a permit decision. The regulations by the Council on Environmental Quality for the implementation of the National Environmental Policy Act (NEPA) urge agencies to consider both the context and the intensity of impacts. Specifically, 40 CFR 1508.27(b) states that officials must consider that more than one agency may make decisions about partial aspects of a major action, and that the intensity of a project must be valued in terms of impacts that may be both beneficial and adverse; the degree to which the proposed action affects public health or safety; the unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas; the degree to which the effects on the quality of the human environment are likely to be highly controversial; and the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks. Given the high degree of interest that this project has generated, the unique characteristics of the area, its proximity to the Virgin Islands National Park, the uncertain risks associated with the proposed development, and the extent of the potential impact to aquatic resources, the applicant's Environmental Assessment Report is simply inadequate. In addition, I strongly encourage the Corps of Engineers to hold public hearings on this project in St. John, U.S. Virgin Islands.

After reviewing the available data, EPA remains concerned that the proposed St. John Marina will result in significant impacts to aquatic resources of national importance. This is based on the potential infrastructure needs of the project, its potential for significant water quality degradation, its effects on sea grasses and corals, its indirect impacts on endangered/threatened species and the consideration of the values and functions of the special aquatic sites within the project area. In addition, the applicant has failed to comply with the Clean Water Act Section 404(b)(1) Guidelines due to the lack of a suitable alternatives analysis and a detailed mitigation plan to compensate for the project's unavoidable adverse impacts to the greatest extent possible. EPA therefore recommends the denial of a Department of the Army permit for this project. This letter is intended to satisfy the requirements of both Part IV 3(a) and 3(b) of the Section 404(q) MOA between our two agencies.

If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff contact Mr. Jose C. Font, Director of EPA's Caribbean Environmental Protection Division, (787) 977-5870.

Sincerely,

  
Judith A. Enck  
Regional Administrator

cc: U.S. Army Corps of Engineers, San Juan, PR  
U.S. Fish and Wildlife Service, Boqueron, PR  
National Marine Fisheries Service, Boqueron, PR  
V.I. Department of Planning and Natural Resources  
National Oceanic and Atmospheric Administration

Reference 16:

NMFS Comment Letter to Army Corps of Engineers



**UNITED STATES DEPARTMENT OF COMMERCE**

National Oceanic and Atmospheric Administration

**NATIONAL MARINE FISHERIES SERVICE**

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701-5505

<http://sero.nmfs.noaa.gov>

February 5, 2015

F/SER47:LO/pw

Colonel Alan Dodd, Commander  
U.S. Army Corps of Engineers, Jacksonville District  
PO Box 4970  
Jacksonville, Florida 32232

Attention: Johann M. Sasso

Dear Colonel Dodd:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2004-12518 (SP-JMS) dated January 7, 2015. The applicant, Summer's End Group, LLC, proposes to construct a private commercial marina on the western shore of Coral Bay, St. John, U.S. Virgin Islands (USVI). The marina would have 145 slips of varying size to accommodate vessels up to 200 feet in length, a public dinghy dock, and 87 mooring buoys, of which 12 would service the marina and 75 would be located throughout Coral Bay and managed in partnership with the USVI Department of Planning and Natural Resources (DPNR). The marina construction would require installing 1,333 piles and repairing an existing rip-rap revetment. Additional upland infrastructure is also proposed, including construction of a restaurant, a Customs and Border Protection office, marina offices, parking areas, and amenities. The proposed project also includes a fueling facility, pump-out facility, and a sewage treatment facility for the upland development. As the nation's federal trustee for the conservation and management of marine, estuarine, and anadromous fishery resources, the following comments and recommendations are made pursuant to authorities of the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

*Essential Fish Habitat Consultation*

The Jacksonville District did not provide an initial determination on whether the impacts to approximately 12 acres of sea bottom<sup>1</sup>, including approximately 9.12 acres of seagrass designated essential fish habitat (EFH) by the Caribbean Fishery Management Council (CFMC), would result in an adverse impact on EFH or federally managed fishery species. The public notice indicates the U.S. Fish and Wildlife Service (USFWS) will be the lead Federal agency for consultation pursuant to the EFH provisions of the Magnuson-Stevens Act. According to the information provided, a portion of the project would be funded by the FWS Wildlife and Sport Fishing Restoration Program through a Boating Infrastructure Grant to the DPNR Division of Fish and Wildlife. By email dated January 21, 2015, NMFS provided USFWS with the mandatory and additional information requirements of an EFH Assessment from 50 CFR 600.920(e)(3) and (4). Please also note that the EFH conservation recommendation provided in this letter is preliminary and based on the information provided by the Jacksonville District. This EFH conservation recommendation may require augmenting once the EFH Assessment from USFWS is received and reviewed.

*Impacts to Aquatic Resources of National Importance*

Several fish and invertebrates known to inhabit the project area are aquatic resources of national importance (ARNI) in accordance with Section 906(e)(1) of the Water Resources Development Act of 1986 (PL 99-602), including tarpon (*Megalops atlanticus*) and snook (*Centropomus undecimalis*). These

<sup>1</sup> Additional impacts to seagrass and large coral colonies that would result from marina and mooring installation and vessel shading have not been quantified.



species utilize seagrass or coral habitats for spawning, refuge, foraging, or nursery areas (Randall and Bishop 1967, Aliaume et al. 1997, Kontos and Bologna 2008, Whittall et al. 2014). As proposed, the work would directly and permanently eliminate at least 9.12 acres of seagrass. In accordance with Part IV, Section 3(a) of the Memorandum of Agreement between the Department of Commerce and the Department of the Army, dated August 11, 1992, NMFS has determined that the proposed project may result in substantial and unacceptable impacts to ARNI.

#### *Background on NOAA Partnerships and Investments in Coral Bay*

NOAA recognizes land-based sources of pollution (LBSP) as a major threat to coral reefs in general and to the quality and quantity of seagrass and coral habitats within Coral Bay in particular. Studies specific to effects of LBSP in Coral Bay show steep slopes, highly erodible soils, and high runoff volumes, combined with a large percentage of dirt roads, active construction, and no existing stormwater management contribute to excessive sediment loading (Reed 2012). Research on St. John has also shown that unpaved roads can erode at rates many times higher than on undisturbed hillslopes (Ramos-Scharrón and MacDonald 2007). As a result, various NOAA programs, community stakeholders, and the territorial government, have placed much emphasis on stormwater management improvements along roads and associated ghuts in order to improve the quality and quantity of seagrass and coral habitats within Coral Bay.

As an example, NOAA awarded funds (approximately \$1.5 million<sup>2</sup>) to the Coral Bay Community Council through the American Recovery and Reinvestment Act (ARRA) of 2009 for implementation of best management practices (BMPs) based on watershed stabilization techniques appropriate for the USVI environment. These BMPs focus on targeting sources of sediment (e.g. trail erosion and drainage off unpaved roads). Of the 126 BMPs implemented during the course of this project, 74 actions were implemented in Coral Bay. As a result, over 11 acres of upland habitat benefited from this project. These areas are typically ghuts that now receive more natural-like and less sediment-laden flows (Reed 2012). Completion of this watershed stabilization project also reduced the threat of land-based pollution to Coral Bay habitats including seagrass and coral reefs.

The Local Action Strategy (LAS) developed for Coral Bay has additional strategies for improving the condition of seagrass and coral habitat. In 2002, the United States Coral Reef Task Force, which is co-led by NOAA and USFWS, adopted a resolution which called for the development of LAS by each of the seven U.S. states, territories, or commonwealths with coral reefs. The LAS for Coral Bay was developed by an interdisciplinary team including local stakeholders, academics, non-governmental organizations, and federal and local governments. The goals and objectives in the LAS for Coral Bay range from outreach and education to road and drainage improvements to improve water quality in Coral Bay, and research and monitoring projects to better understand the causes and effects of LBSP to the coral reef ecosystem that includes seagrass habitats.

#### *Description of the Proposed Project*

The public notice describes the project as containing six main components:

(1) Construction of 145 marina slips and a dinghy dock:

The over-water footprint of the multi-slip docking structure would be approximately 1.72 acres and occur within two zones. The Zone 1 docks would be approximately 21,100 square feet (0.48 acres), Zone 2 docks would be approximately 40,800 square feet (0.94 acres), and the main access walkway would be approximately 12,900 square feet (0.30 acres). In addition, a public dinghy dock (20 feet by 40 feet)<sup>3</sup> would be located midway between the shoreline and the first

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<sup>2</sup> [http://docs.lib.noaa.gov/noaa\\_documents/CoRIS/Watershed\\_Stabilization\\_Proj\\_Hansen\\_Bay.pdf](http://docs.lib.noaa.gov/noaa_documents/CoRIS/Watershed_Stabilization_Proj_Hansen_Bay.pdf)

<sup>3</sup> The dimensions of the dinghy dock are also described in the public notice as 210 square feet. Clarification on the size of this structure is needed.

slip at the marina. The marina would be primarily constructed from the waterside using barge-mounted equipment to drive the dock piles with a vibratory hammer, where possible, and place manufactured deck sections. Dock construction would consist primarily of 15-inch coated-steel piles tied together with pre-cast concrete pile caps supporting a grated decking intended to allow as much light as practicable to reach the seabed.

(2) Mooring field installation (87 moorings):

The marina would include 12 permanent mooring balls. In addition, as an attempt to provide a long-term comprehensive mooring program for Coral Bay, another 75 mooring balls would be installed through a public-private partnership with the DPNR. The 12-inch or 15-inch diameter mooring balls would utilize helix anchoring systems with floated lines. The installation of the anchors would be done with barge-mounted equipment.

(3) Riprap revetment:

Minor repair and replacement of the existing revetment along the shoreline would be conducted from the uplands, and planting of fringing red mangroves in front of the revetment would be done by hand.

(4) Wastewater management and fuel services:

Wastewater generated from the pump-out system, with a publicly accessible pump-out located on the fuel dock and individual connections at the larger boat slips, would be pumped to a 3,000-gallon high-density polyethylene holding tank on the uplands. A local licensed waste hauler would be contracted to empty this tank on an as-needed basis and haul the waste to a permitted wastewater treatment facility for treatment and reuse/disposal. In addition, in-slip fueling would be installed to provide for high-speed fueling, which would be serviced by upland above-ground fuel storage tanks with projected capacities of 45,000 gallons of diesel and 5,000 gallons of gasoline. Refilling the fuel tanks would normally occur via barge.

(5) Upland construction of facilities:

The marina would be developed concurrently with an upland re-development project on seven generally contiguous parcels in Estate Carolina in Coral Bay. This upland re-development project will provide services for the marina, including off-street parking, a restaurant, a Customs and Border Protection office, and a marina office with other facilities such as apartments to support marina management. Additional facilities for fueling, solid waste disposal, potable water supply and pump-out services for both the marina occupants and the public boating community would be constructed within uplands. No boat maintenance facilities would be associated with this upland re-development.

(6) Compensatory mitigation:

A variety of activities described in the public notice and environmental assessment report (EAR) are meant to provide compensatory mitigation for unavoidable impacts to seagrass and corals habitats in Coral Bay. These activities include removal and disposal of derelict vessels and debris from within the marina footprint and mangrove planting along the eroding shoreline immediately adjacent to the marina as a means of habitat enhancement.

*Essential Fish Habitat within the Project Area*

NMFS visited the project site in September 2014, and the habitat observations from the site visit are similar to the habitat descriptions in the EAR. Coral Bay is surrounded by dense mangroves, primarily composed of red mangroves (*Rhizophora mangle*). The Coral Bay bottom contains a mosaic of sandy bottom, live/hardbottom with coral, seagrass, and macroalgae beds. The seagrass beds are primarily composed of turtle grass (*Thalassia testudinum*) and manatee grass (*Syringodium filiforme*); however,



small patches of shoal grass (*Halodule beaudettei*) are also present. There are six relatively large smooth star corals (*Solenastrea bournoni*) and several small lesser starlet corals (*Siderastrea radians*) in the project site and offshore of the northernmost culvert within the project footprint. The EAR states there are no wetlands on the subject property beyond the mangrove fringed shoreline.

The CFMC identifies seagrass, algal flats, live/hardbottom, and sandy bottoms as EFH under the fishery management plans for spiny lobster, queen conch, coral, and reef fish. These habitats serve as nursery areas for fishery species. Seagrass, algal flats, sandy bottoms, and live/hardbottoms are part of a habitat complex that includes mangrove and coral, and this complex supports a diverse community of fish and invertebrates. Seagrass also provides important water quality maintenance functions (such as pollution uptake), stabilizes sediments, attenuates wave action, and produces and exports detritus (decaying organic material), which is an important component of marine and estuarine food chains. Additional information about these EFH designations and how these habitats support fishery species is found in *Essential Fish Habitat (EFH) Generic Amendment to the Fishery Management Plans (FMPs) of the U.S. Caribbean*<sup>4</sup>.

#### *Impacts to Essential Fish Habitat*

The information supplied in the public notice and EAR is limited to describing adverse impacts that would result from construction of the multi-slip marina and dinghy dock (project component 1). The EAR and public notice state the project may impact approximately 12 acres of Coral Bay bottom, including 9.12 acres of seagrass. However, it is unclear if this impact estimate only includes dock construction and shading, or if it also includes impacts that would result from in-water construction activities, including pile driving, vessel anchoring, or spudding. The impacts that would result from anchoring the mooring balls (project component 2) are not described. Impacts to seagrass and corals could occur from long-term shading effects from moored vessels and from scoring by mooring chains and vessel propwash. In addition, the stormwater run-off and associated sedimentation that may result from the upland construction (project component 5) are not well-described in the EAR or public notice. This project component should include a description of adverse impacts to seagrass and coral habitat in Coral Bay that could result from introduction of additional impervious surfaces for parking and subsequent greater runoff flows, and the potential for introduction of oils and greases into the water column.

NMFS does not expect adverse impacts to occur to mangroves from the repairs to the riprap revetment (project component 3). Regarding wastewater management and fuel services (project component 4), NMFS generally defers to expertise at the DPNR Division of Environmental Protection. The EAR states a subcontractor would be responsible for managing the fuel tanks and obtaining a DPNR Division of Environmental Protection operational license. The EAR states a *Marine Spill Prevention Control and Countermeasure (SPCC)* plan would be further developed to include the specific requirements of this permit, if awarded.

#### *Project Alternatives*

NMFS determines the alternatives analysis is overly narrow. Specifically, the analysis only considers alternative project sites and full build out and does not adequately analyze the environmental impacts of each alternative. NMFS determines information is lacking to support the applicant's conclusions that significant efforts have been made to eliminate and reduce potential environmental impacts. It is our understanding that the USFWS is preparing an Environmental Assessment or Environmental Impact Statement pursuant to the National Environmental Policy Act, and NMFS expects that document to present the environmental impacts to seagrass and corals in a comparative form and provide a clear basis for choice by decision makers. NMFS recommends less damaging alternatives be fully evaluated in the analysis.

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<sup>4</sup> Available at [caribbeanfmc.com/fmp\\_efh.html](http://caribbeanfmc.com/fmp_efh.html).

### *Compensatory Mitigation*

The applicant proposes several actions to compensate for impacts to seagrass. NMFS generally supports the proposed concept of removal and disposal of debris and derelict vessels from the marina footprint, as well as the red mangrove planting along the eroding shoreline adjacent to the marina. However, the seagrass habitat restored by these actions is not quantified. Therefore, NMFS does not have sufficient information to determine the proposed mitigation actions would sufficiently offset the impacts to at least 9.12 acres of seagrass. NMFS acknowledges the applicant has proposed other mitigation activities, including establishing a Marine Uses Advisory Panel, establishing a marketplace for local fishers and farmers, and installing informational buoys and signage aimed at protecting coral and seagrass. NMFS cannot accept these activities as mitigation for lost seagrass habitat.

### **EFH Conservation Recommendation**

In addition to the impacts to ARNI, NMFS concludes the docking structure construction, mooring facility, and upland development will adversely impact EFH. Section 305(b)(4)(A) of the Magnuson-Stevens Act requires NMFS to provide EFH conservation recommendations when an activity is expected to adversely impact EFH.

The Department of the Army shall not authorize the project as proposed.

NMFS may revise this recommendation upon review of:

- A complete impact assessment that quantifies all potential direct and indirect impacts to corals and seagrass, including work vessel spudding areas, shading by barges during construction, fuel barge operations, deck shading long-term, and mooring placement and potential impacts due to vessel shading in mooring field. The information provided should include a map clearly depicting and quantifying impacts by location and habitat type.
- Description of on-site and off-site project alternatives that demonstrate avoidance and minimization of impacts to corals and seagrass to the maximum extent practicable.
- A biological monitoring plan that gauges actual impacts relative to those predicted in the impact assessment and triggers additional compensatory mitigation when appropriate. The plan should include pre-construction, during construction, and post-construction water quality monitoring. In addition, the plan should include examination of long-term on-site stormwater management measures to reduce runoff created by the impervious surface constructed for the parking area.
- A spill contingency plan that includes precautionary measures, emergency actions should a spill occur, and spill reporting criteria. The plan also should demonstrate a tiered approach for minor versus major spills.
- An amended compensatory mitigation plan that describes how unavoidable impacts to seagrass and corals would be fully offset. The plan shall include a description of mitigation activities and the mitigation site(s), expected results from the mitigation, and a monitoring plan with schedule that will gauge how the performance criteria will be met. In this regard, NMFS would support the relocation of all corals (including corals smaller than 10 centimeters), which would eliminate the need for compensatory mitigation for corals. The mitigation plan shall demonstrate that the amount of seagrass and coral mitigation is sufficient through a functional assessment or appropriate analytical tool.
- A list of BMPs that will be implemented during construction and operation of the upland infrastructure, docking facility, and mooring field to ensure that impacts to coral and seagrass habitats are minimized to the maximum extent practicable.

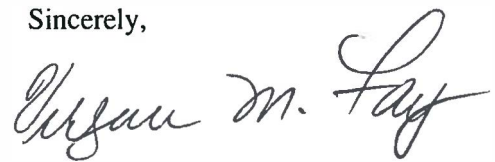
Section 305(b)(4)(B) of the Magnuson-Stevens Act and implementing regulation at 50 CFR Section 600.920(k) require the Jacksonville District to provide a written response to this letter within 30 days of its receipt. If it is not possible to provide a substantive response within 30 days, in accordance with

NMFS's "findings" with the Jacksonville District, an interim response should be provided to NMFS. A detailed response then must be provided prior to final approval of the action. The detailed response must include a description of measures proposed by the Jacksonville District to avoid, mitigate, or offset the adverse impacts of the activity. If your response is inconsistent with our EFH conservation recommendation, the Jacksonville District must provide a substantive discussion justifying the reasons for not following the recommendation.

The public notice or EAR also state that elkhorn coral (*Acropora palmata*) and boulder star coral (*Orbicella annularis*) have been identified within the vicinity of the project area. In addition, hawksbill sea turtles (*Eretmochelys imbricate*) have been observed in Coral Bay. Species protected under the Endangered Species Act and under the jurisdiction of NMFS may occur in the vicinity of the docking and mooring facility. Impacts to endangered or threatened species and their critical habitat may require consultation with the NMFS Protected Resources Division. Further questions about consultations under the Endangered Species Act should be directed to Dr. Lisamarie Carrubba at Lisamarie.Carrubba@noaa.gov.

Thank you for the opportunity to provide these comments. Related questions or comments should be directed to the attention of Ms. Lia A. Ortiz at NOAA HCD, 3013 Estate Golden Rock, Almeric Christian Federal Building Box 4, Christiansted, St. Croix, U.S. Virgin Islands. She may be reached by telephone at 340-718-1236 or 305-213-3089, or by e-mail at Lia.Ortiz@noaa.gov.

Sincerely,



Virginia M. Fay  
Assistant Regional Administrator  
Habitat Conservation Division

cc: (sent via electronic mail)

COE, Johann.M.Sasso@usace.army.mil  
FWS, Michael\_Evans@fws.gov, Marilyn\_Lawal@fws.gov  
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Reference 17:

NPS Comment Letter to Army Corps of Engineers





# United States Department of the Interior



NATIONAL PARK SERVICE  
Virgin Islands National Park  
Virgin Islands Coral Reef National Monument  
1300 Cruz Bay Creek  
St. John, VI 00830

IN REPLY REFER TO:

January 11, 2015

District Engineer  
Jacksonville District  
U.S. Army Corps of Engineers  
C/O Johann M. Sasso  
Antilles Permit Section  
400 Fernández Juncos Avenue  
San Juan, Puerto Rico 00901-3299

Dear Mr. Sasso,

I am writing to provide the District Engineer, Jacksonville District, U.S Army Corps of Engineers my comments on a pending permit, # SAJ-1998-05026 (SP-LSL), for the St. John Marina – Summer's End Marina in Coral Harbor on St. John. I have read the permit request and applicant supplied Environmental Assessment Report (EAR). The applicant is requesting a permit to construct a 145 slip marina, 12 moorings with associated land based facilities and amenities in Coral Bay/Coral Harbor here on St. John. According to the EAR, an additional 75 mooring buoys will be placed in a proposed partnership with the Virgin Island Department of Planning and Natural Resources (DPNR).

I am writing to express my concern about the potential negative impacts to the resources of Virgin Islands National Park and Virgin Islands Coral Reef National Monument as a result of the increased vessel traffic associated with this large proposed project. Given the proximity of the development to the Park and Monument I am disappointed to see that the EAR makes no mention of the potential negative impacts to either. **As you are aware the Parks authorized boundary encompasses all of the Fortsberg area down to the water line including that part contiguous with Coral Harbor. This area of the boundary is directly opposite and within 1/8th mile of the proposed development. The Hurricane Hole area of the Monument is only 1.5 miles away via water and approximately 1 mile as the crow flies.**

The Monument includes 20.3 square miles of submerged lands that adjoin Virgin Islands National Park while the Park contains some 8.7 square miles of waters along the South and North shores of the island. The Monument contains all the elements of a Caribbean tropical marine ecosystem. The biological communities of the monument live in a fragile, interdependent relationship and include habitats essential for sustaining and enhancing the tropical marine ecosystem, which includes mangroves, seagrass beds, coral reefs, octocoral hardbottom, sand communities, shallow mud and fine sediment habitat, deep algal plains, and other hard bottom



habitats. The fish habitats, deeper coral reefs, octocoral hardbottom, and other hard bottom habitats of the monument are all objects of scientific interest and essential to the long-term sustenance of the tropical marine ecosystem.

The clear waters of the Monument support a diverse and complex system of coral reefs. The health of these coral reefs is closely tied to plants and animals inhabiting the reef as well as adjacent non-coral marine environments such as sandy bottoms, seagrass beds, and mangrove forests. The submerged monument lands contain representative examples of the entire range of tropical marine ecosystems including shallow water mangrove nursery habitats, deep water spawning habitats that are essential to the overall function and productivity of regional fisheries, and habitat for great whales which forage, breed, nest, rest, or calve in the waters.

The monument contains biological objects, including several threatened and endangered species, which forage, breed, nest, rest, or calve in the waters. Humpback whales, pilot whales, four species of dolphins, brown pelicans, roseate terns, least terns, hawksbill sea turtles, leatherback sea turtles, and green sea turtles all use portions of the monument. Countless species of reef fishes, invertebrates, and plants and algae utilize these submerged lands during their lives, and over 25 species of seabirds feed in the waters. Between the near shore nursery habitats and the shelf edge spawning sites, habitats in the monument play essential roles during specific developmental stages of reef associated species, including spawning migrations of many reef fish species and crustaceans.

Virgin Islands Coral Reef National Monument was established on January 17, 2001, by Presidential Proclamation 7399 to provide greater protection to sensitive coral reef resources located within federally owned submerged lands beyond Virgin Islands National Park. The proclamation prohibits all boat anchoring in the Monument, except for emergency or authorized administrative purposes. The proclamation also prohibits all extractive uses, except for bait fishing at Hurricane Hole and for blue runner (hardnose) line fishing in the area south of St. John, both by permit only. Permits for bait fishing and hardnose fishing are allowed "to the extent that such fishing is consistent with the protection of the objects identified in this proclamation." In addition to these restrictions and others, personal watercraft are prohibited from operating in the park and the monument under federal regulations.

My area of greatest immediate concern, due to its geographic proximity to this proposed marina development is Hurricane Hole. The submerged monument lands within Hurricane Hole support the most extensive pristine and well developed mangrove habitat on St. John. The monument provides spawning stocks and critical developmental habitats that allow for the restoration of depleted fishery resources and enhancement of adjacent fishing grounds. The area offers outstanding opportunities for education and scientific research due to the diversity, complexity and relationship of the natural resources and provides a dynamic laboratory for study and learning.

Aside from the Hurricane Hole area, the majority of the Monument and some of the most pristine beach and marine habitat in Virgin Islands National Park lie due south of Coral Harbor on the South side of St. John with immediate access from this development. In addition to the Park and



Monument, Lagoon Point, a National Natural Landmark is located in Coral Bay directly along the transit routes to and from the proposed marina.


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.

Given that the applicant indicates that the single most important reason for locating the marina in Coral Harbor is the proximity of Park and Monument resources, I would ask that your office not issue a permit until the impacts on these critical resources are adequately considered with mitigation for negative impacts identified and required as a condition of this permit.

Thank you for your consideration on this matter.

Sincerely,



Brion FitzGerald  
Superintendent



Reference 18:

NOAA Comment Letter to Army Corps of Engineers



Lisamarie Carrubba - NOAA Federal &lt;lisamarie.carrubba@noaa.gov&gt;

**Re: USACE.Notice..Location: St. John-USVI (UNCLASSIFIED)**

1 message

Lisamarie Carrubba - NOAA Federal &lt;lisamarie.carrubba@noaa.gov&gt; Fri, Jan 16, 2015 at 2:27 PM

To: "Sasso, Johann M SAJ" &lt;Johann.M.Sasso@usace.army.mil&gt;

Cc: Anabel Padilla &lt;Anabel.Padilla@noaa.gov&gt;, Lia Ortiz &lt;lia.ortiz@noaa.gov&gt;, Pace Wilber &lt;pace.wilber@noaa.gov&gt;, Jocelyn Karazsia - NOAA Federal &lt;jocelyn.karazsia@noaa.gov&gt;, Felix\_Lopez@fws.gov, "Lawal, Marilyn" &lt;Marilyn\_Lawal@fws.gov&gt;, "FitzGerald, Brion" &lt;brion\_fitzgerald@nps.gov&gt;, Torre Anderson &lt;Torre\_Anderson@fws.gov&gt;, "Piccirilli, Mike" &lt;Mike\_Piccirilli@fws.gov&gt;

Saludos Johann:

This is in response to the public notice dated January 7, 2015, for permit application number SAJ-2004-12518 for the proposed construction of the Summer's End Marina in Coral Harbor, Coral Bay, St. John, U.S. Virgin Islands. The applicant is the Summer's End Group, LLC; however, a portion of the project is being funded through the U.S. Fish and Wildlife Service (USFWS) Boating and Infrastructure Grant program with funds provided to the Division of Fish and Wildlife of the Department of Planning and Natural Resources (DPNR) according to information in our project files. The project proposes the construction of a 145-slip marina with slips of varying sizes to accommodate vessels up to 200 feet in length based on the response provided by the Summer's End Group to comments presented as part of the Coastal Zone Management Program (CZMP) permit process. The construction and operation of the marina will impact 12 acres of seagrass. The project also proposes the installation of 12 mooring buoys to service the marina, which would be located immediately to the south of the marina facilities, and another 75 mooring buoys that would be located in various areas in Coral Bay and managed in partnership with DPNR. The installation and operation of the mooring buoys will impact additional areas containing seagrass, although the area to be impacted was not quantified. The project also has an upland component that will include restaurants, a Customs and Border Protection office, marina office, marina security office, crew shower and locker facilities, and apartments to support marine management, as well as parking areas. The project also includes a fueling facility, pump-out facility, sewage treatment facility for the upland development, and a public dinghy dock.

We received a request for formal Endangered Species Act (ESA) Section 7 consultation from the USFWS as the funding agency for a portion of the project on December 5, 2014, for this project. This will be a joint consultation with the U.S. Army Corps of Engineers (USACE) as the permitting agency and will require coordination with the USACE to determine measures that are proposed as permit special conditions in order to avoid and minimize potential project impacts to ESA resources. After reviewing the information that accompanied the consultation request and the information in the public notice, as well as the Environmental Assessment Report (EAR) prepared for the project, we continue to be unable to determine the potential extent of project impacts to ESA resources. Specifically, we continue to request the following information in order to proceed with the ESA Section 7 consultation for the project:

1. an adequate alternatives analysis that includes on and offsite alternatives and alternatives to the full marina project must be completed. At this time, the alternatives analysis does include some offsite alternatives, but only considers full build out and does not adequately analyze the environmental impacts of each alternative.
2. sea turtles are known to use Coral Bay and areas along the most common transit routes to and from the bay proposed as part of this project but, despite several requests, no sea turtle surveys have been conducted for the project. A sea turtle survey plan should be developed in coordination with the National Marine Fisheries Service (NMFS) Protected Resources Division and implemented in order to determine the use of the project area by different species of turtles so that avoidance and minimization measures can be developed for the project. An analysis of potential vessel strikes, including the time, number and size vessels are expected to be moored (in the marina or on mooring buoys) versus outside the marina in order to determine the potential extent of impacts to sea turtles from operation of the marine and mooring field.
3. a complete benthic survey to include the proposed mooring field areas and transit routes into and out of the bay needs to be conducted. To date, detailed benthic information has been presented only for the immediate

**area of the marina.**

4. details of pile driving and quantification of potential acoustic impacts to sea turtles given that 1,333 piles will be driven in order to construct the proposed facilities, as well as proposed impact minimization measures. These calculations and measures should be specific to the proposed marina project and should also include pile driving associated with shoreline construction as appropriate.
5. details of the proposed mooring plan, type of moorings, and operation of the mooring field to ensure this will not result in additional impacts to seagrass or corals
6. details of the fuel barge operation for refueling the marina facilities, including where barge will dock and its draft
7. information regarding the number of vessels currently within the proposed marina and mooring field footprint and the relocation plan for these vessels to determine whether this will result in additional impacts to other areas of Coral Bay
8. details of the construction plan for in-water and shoreline construction, including sediment and turbidity control measures, maintenance and monitoring schedules for these controls, and information regarding the proposed spud barge and work vessel anchor locations, including information as to whether spud holes will be back-filled
9. copies of recent water quality monitoring data for the project area, including the area of the marina and mooring field, as well as the proposed water quality and sediment monitoring program to be implemented for pre-, during, and post-construction and throughout project operation. This program should include the ghut as it will receive discharges from the upland portion of the project, the marina basin, the mooring field, and control sites in Coral Bay, as well as other sites that are downstream of the marina and mooring field based on current patterns in the bay.
10. current data for Coral Bay, including tidally-influenced and wind-driven transport patterns, as well as patterns during large storms such as hurricanes and tropical storms
11. details of the anticipated transit locations of users of the marina and mooring field to determine the potential extent of impacts to ESA resources due to the introduction of up to 235 new vessels to the area given the locations of ESA-listed corals, acroporid coral critical habitat, and habitat for ESA-listed sea turtles, as well as the presence of ESA-listed sea turtles in relation to the proposed project and likely transit routes and use of different areas around St. John

We will also be sending a formal request for additional information to the USFWS and the USACE as part of the ESA Section 7 consultation process reiterating the information request in this message.

Thank you for the opportunity to provide comments on this public notice,  
Lee

On Wed, Jan 7, 2015 at 4:10 PM, Sasso, Johann M SAJ <[Johann.M.Sasso@usace.army.mil](mailto:Johann.M.Sasso@usace.army.mil)> wrote:

A public notice for the permit application described below has been posted at <http://www.saj.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>

Classification: UNCLASSIFIED  
Caveats: NONE

Project Name: St. John Marina, Yacht Club at Summer's End

Country: USVI

Comment Due Date: January 31, 2015

File Name: SAJ-2004- 12518

Waterway and Location: Coral Bay, St. John

Proposed Work:



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. The project also proposes repairs to existing rip-rap revetment and upland facilities would be constructed for administrative and commercial purposes. Project would provide sewage pump out services and waste disposal facilities, potable water, electrical power and fuel pump out facility amid other facilities. The proposed project impacts to seagrass colonized marine bottom would be associated with 1,333 piles (12 -17 inch diameter) occupying 2,500 square feet (sq. ft.), dock structures totaling 1.42 acres, boat shading estimated in 5.7 acres and temporary construction impacts approximately up to additional 2 acres.

Classification: UNCLASSIFIED

Caveats: NONE

--- If you no longer wish to receive these emails, please send an email to <mailto:SAJ-RD-Webmaster@usace.army.mil>

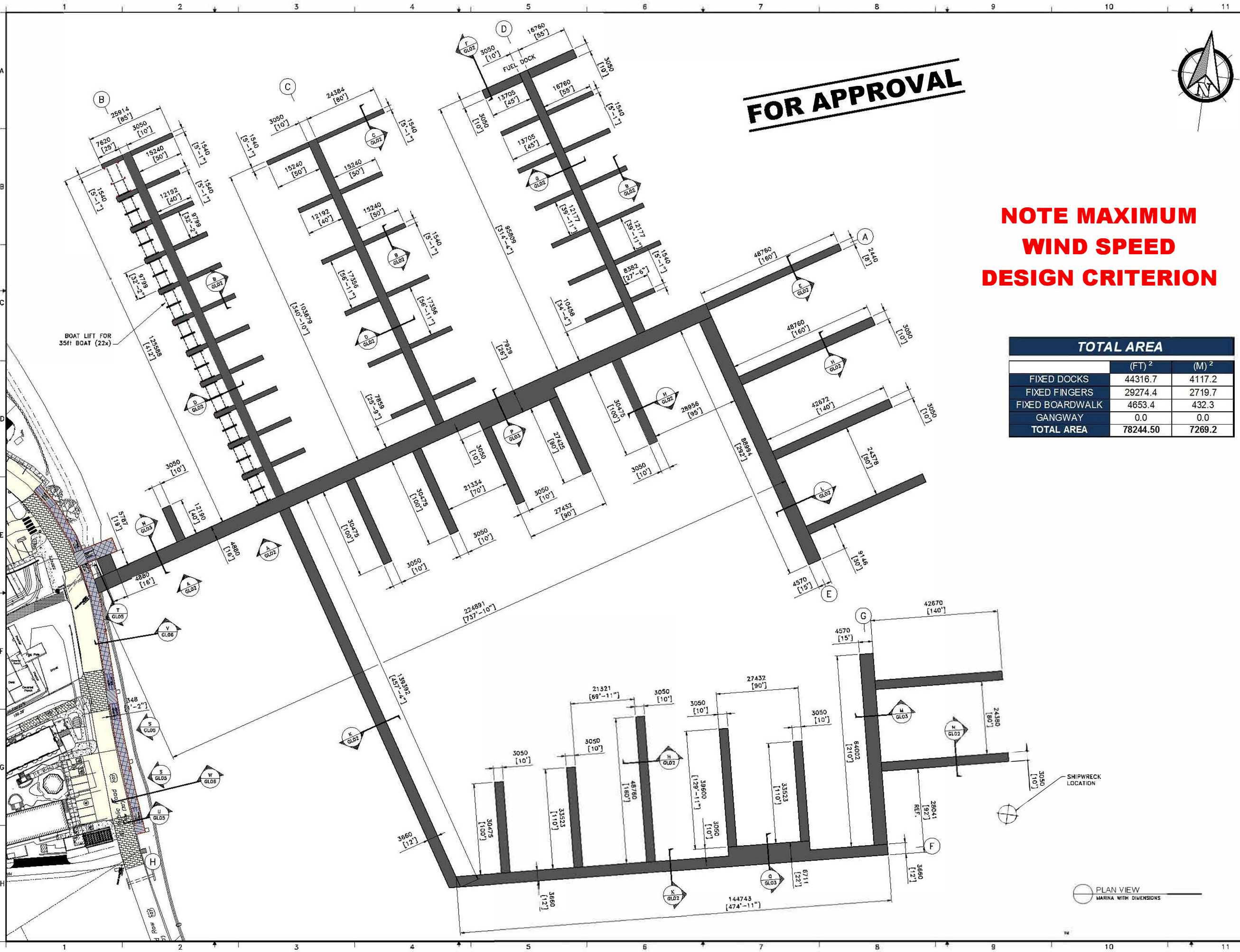
-- If you have comments regarding the permit application described above, please do not reply to this email. Your response should be provided to the project manager as described in the text of the notice.

--

Dr. Lisamarie Carrubba  
NOAA Fisheries  
Caribbean Field Office, PRD  
P.O. Box 1310  
Boquerón, PR 00622  
[787-851-3700](tel:787-851-3700)  
[787-851-5588](tel:787-851-5588) (fax)

Reference 19:

Marina Wind Speed Design Criteria



**FOR APPROVAL**

**NOTE MAXIMUM WIND SPEED DESIGN CRITERION**

TOTAL AREA		
	(FT) <sup>2</sup>	(M) <sup>2</sup>
FIXED DOCKS	44316.7	4117.2
FIXED FINGERS	29274.4	2719.7
FIXED BOARDWALK	4653.4	432.3
GANGWAY	0.0	0.0
<b>TOTAL AREA</b>	<b>78244.50</b>	<b>7269.2</b>

**LEGEND**

- ALUMINUM FIXED DOCKS
- ALUMINUM FIXED BOARDWALK

**DESIGN CRITERIA**

- WIND SPEED (25 yrs) FULL OCCUPANCY: 83 mph
- WIND SPEED (50 yrs) WITHOUT BOATS: 96 mph
- SECURITY FACTOR (WIND LOAD) : 1.5
- WAVE PERIOD (25 yrs): 2.6 sec.
- CURRENT SPEED (25 yrs) : 1.75 Knots (0.9m/s)
- BULKHEAD ELEV. : +4.2'
- SURGE (25 yrs)-STILLWATER ELEV. + WAVE : 5.7 ft MSL
- WAVE HEIGHT (25 yrs) : 1.2 ft MSL
- SURGE (100 yrs)-STILLWATER ELEV. + WAVE : 9.2 ft MSL
- WAVE HEIGHT (100 yrs) : 3.2 ft MSL

**HAT : +0.85' MSL**  
**MHHW : +0.43' MSL**  
**MHW : +0.39' MSL**  
**MTL : +0.03' MSL**  
**DTL : +0.02' MSL**  
**MSL : +0.00'**  
**VIVD09 : +0.02' MSL**  
**MELW : -0.33' MSL**  
**MILLW : 0.39' MSL**  
**LAT : -0.75' MSL**  
**SEALED ELEVATION : -5.00' TO -18.00' MSL**

SOIL TYPE : SAND  
 N VALUE : 10  
 BOAT PROFILE : TOBASSON 1989 BOAT PROFILE CURVE  
 METHOD OF : U.S. CORPS OF ENGINEER CALCULATION SPECIAL REPORT 1974

**NOTES**

SITE DATA SUCH AS TIDE LEVELS, BATHYMETRY, SHORE ELEVATION, SOIL STUDY, WIND SPEED AND WAVE HEIGHT TO BE CONFIRMED UPON FINAL DESIGN.

DESIGN DIMENSIONS ARE BETWEEN DOCK ALUMINUM EXTRUSIONS ONLY AND DO NOT TAKE INTO ACCOUNT THE FENDER WIDTHS UNLESS OTHERWISE NOTED.

NO.	DESCRIPTION	DATE	BY	APP.
1	PIER A FOR APPROVAL	17/05/10	R.G.	
2	REVISED NOTES FOR APPROVAL	17/05/10	R.G.	
3	PIER H BOARDWALK DESIGN CHANGES	17/05/10	R.G.	
4	PIER H BOARDWALK DESIGN CHANGES	17/05/10	R.G.	
5	PIER H BOARDWALK DESIGN CHANGES	17/05/10	R.G.	
6	BOAT LIFT ON PIER B	17/05/10	R.G.	
7	PIER F REDUCED	17/05/10	R.G.	
8	BOAT LIFT ON PIER B	17/05/10	R.G.	
9	FOR APPROVAL	16/06/11	R.G.	
10	FOR CONSTRUCTION	15/09/11	R.G.	
11	NEW DESIGN	14/05/11	S.G.	
12	INITIAL ISSUE	12/07/11	S.G.	

**PROPRIETARY INFORMATION**

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**TECHNOMARINE**  
Advanced Docking Solutions

Project: **SUMMER'S END MARINA, ST-JOHN'S, VIRGIN ISLAND**

Title: **GENERAL LAYOUT**

No. de Contrat: 4895-B	Gérant de projet: S. HUDON
Contract no.:	Project manager
Trouvé le: 12/07/11	Dessiné par: S. GELINAS
Printed:	Drawn by:
Dessin de réf.:	No. de dessin: 4895B-GLD1
Ref. drawing:	Rev. 09
	Rev. 09

PLAN VIEW  
MARINA WITH DIMENSIONS