

FILED

July 27, 2021
SCT-Civ-2021-0017
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

In the Supreme Court of the Virgin Islands

No. SCT-CIV-2021-0017

SAVE CORAL BAY, INC.,

APPELLANT/PLAINTIFF,

V.

ALBERT BRYAN, JR. IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF THE VIRGIN ISLANDS AND SUMMER'S END GROUP,

APPELLEES/DEFENDANTS

ON APPEAL FROM THE SUPERIOR COURT OF THE VIRGIN ISLANDS,
DIVISION OF ST. THOMAS & ST. JOHN, CASE No. ST-2020-CV-00298

JOINT APPENDIX

Prepared by:
Andrew C. Simpson
V.I. Bar No. 451
ANDREW C. SIMPSON, P.C.
2191 Church St., Ste. 5
Christiansted, VI 00820
340-719-3900
asimpson@coralbrief.com
www.coralbrief.com

APPENDIX

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FILED

May 22, 2021
SCT-Civ-2021-0017
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

SAVE CORAL BAY, INC.,

APPELLANT-PLAINTIFF,

V.

**ALBERT BRYAN, JR. IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF THE VIRGIN
ISLANDS AND SUMMERS END GROUP,
LLC,**

APPELLEES-DEFENDANTS.

SCT- CIV-2021-_____

**RE: SUPER. CT. NO.
ST-2020-CV-00298**

NOTICE OF APPEAL

Save Coral Bay, Inc., plaintiff-appellant in the above captioned case, by and through the undersigned counsel, hereby appeals a final order entered on May 14, 2021, which dismissed Save Coral Bay's complaint on separation of powers grounds. Save Coral Bay appeals from all issues inherent in the dismissal, including, *without limitation*, the following:

1. Whether interpretation of the term "ratify" as found in 12 V.I.C. § 911 is beyond the power of the judiciary under the Separation of Powers Doctrine;

2. Whether the scope of legislative ratification is beyond the power of the judiciary under the Separation of Powers Doctrine;
3. Whether the Governor's modification of a Coastal Zone Management Permit was void *ab initio* because the modification did not meet the limited criteria of 12 V.I.C. § 911(g) that would allow such a modification and/or because the modification exceeded what was authorized by the statute.
4. Whether it is possible for the Legislature to ratify an act of the Governor that was void *ab initio*.
5. Whether the Legislature's ratification of an act of the Governor that was void *ab initio* is not subject to judicial review under the Separation of Powers Doctrine.

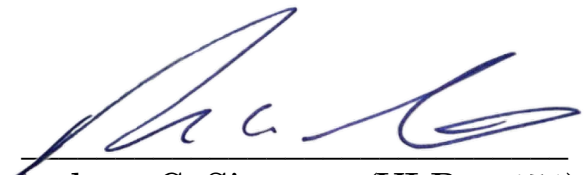
This is an appeal from a final order of the Superior Court entered on May 14, 2021 and therefore this Court has jurisdiction under 4 V.I.C. § 32(a).

Respectfully submitted,

ANDREW C. SIMPSON, P.C.
Attorneys for Appellant/Plaintiff

Dated: May 22, 2021

By:



Andrew C. Simpson (VI Bar 451)
2191 Church Street, Suite 5
Christiansted, VI 00820
(T) 340-719-3900
asimpson@coralbrief.com

CERTIFICATE OF SERVICE

I certify that on May 22, 2021, the foregoing notice was served via U.S. Mail upon The Hon. Renée Gumbs Carty, Judge of the Superior Court, Post Office Box 70, St. Thomas, USVI 00804 and using the Court's electronic filing system upon:

<p>Christopher M. Timmons, Esq. Assistant Attorney General 213 Estate La Reine, RR1 Box 6151 Kingshill, V.I. 00851 christopher.timmons@doj.vi.gov</p> <p>(counsel for Governor Albert Bryan, Jr.)</p>	<p>David J. Cattie, Esq. The Cattie Law Firm, P.C. 1710 Kongens Gade St. Thomas V.I. 00802 david.cattie@cattie-law.com</p> <p>(counsel for Summers End Group)</p>
<p>Boyd L. Sprehn, Esq. Law office of John H. Benham, P.C. P.O. Box 11720 St. Thomas, VI 00801 sprehn@benhamlawvi.com</p> <p>Counsel for Summer's End Group, LLC</p>	



Andrew C. Simpson

FILED

May 12, 2021

ST-2020-CV-00298

TAMARA CHARLES

CLERK OF THE COURT

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

SAVE CORAL BAY, INC.,)	
)	CASE NO. ST-20-CV-298
Plaintiff,)	
)	
v.)	ACTION FOR INJUNCTIVE
)	AND DECLARATORY RELIEF
ALBERT BRYAN, JR. IN HIS OFFICIAL)	
CAPACITY AS GOVERNOR OF THE VIRGIN)	
ISLANDS AND SUMMERS END GROUP, LLC,)	
)	
Defendants.)	
_____)	

ORDER

THIS MATTER is before the Court on Defendants’ second joint “Motion to Dismiss for Mootness and Failure to State a Claim” filed on January 7, 2021. Plaintiff Save Coral Bay, Inc. filed an “Opposition to Second Motion to Dismiss” on February 10, 2021, and Defendants filed their Reply on February 24, 2021. A hearing was held on March 18, 2021. For the reasons set forth below, Defendants’ motion will be granted.

Factual and Procedural Background

This case is about a proposal to build a large-scale commercial marina with restaurants, office spaces, retail spaces, and other shore facilities in the harbor of Coral Bay, St. John, Virgin Islands. On or about April 4, 2014, the project’s proponent, Summers End Group, LLC (SEG) sought approval from various territorial and federal agencies for construction of the marina. SEG was successful in obtaining both land and water permits. Save Coral Bay, Inc. (Save Coral Bay) is a citizens’ group that opposes the project for several reasons, but primarily for environmental concerns of construction and operation having a negative impact on the Coral Bay harbor.

Specifically, Save Coral Bay posits that Governor Albert Bryan Jr.'s Modification of Consolidated Major Coastal Zone Management Permit dated December 18, 2019, is improper because it was done prior to the Virgin Islands Legislature's ratification without the review of the Commission for a proper environmental assessment.

Defendant SEG applied for a Major Coastal Zone Management permit CZM-003-14(L) for the redevelopment of seven (7) adjacent parcels in Estate Carolina consisting of 10-17, 10-18, 10-19, 10-41 REM, 13A, 13B, and 13 REM. Simultaneously, SEG filed a separate application CZM-004-14(W) – for the development of the seaward area consisting of approximately 27.5 acres of submerged lands to build a 145-slip marina and other facilities.

On June 18, 2014, Coastal Zone Management (CZM) issued a Letter of Completeness to SEG. Thereafter, SEG availed themselves to the public for comments between June and August 2014. On August 20, 2014, the St. John Committee of the CZM Commission conducted a public hearing regarding the permits. In 2014, the Virgin Islands Conservation Society¹ (VICS) and the Moravian Church Conference of the Virgin Islands (Moravian Church) filed appeals with the Board of Land Use Appeals (BLUA), which BLUA affirmed the approval of the CZM committee. VICS and the Moravian Church subsequently filed for writs of review in the Superior Court challenging BLUA's Decision and Order of June 6, 2016. Almost three years later, on March 27, 2019, the committee chairman re-signed CZM-004-14(W) and forwarded the Consolidated Permit to Governor Bryan for his approval in accordance with 12 V. I. C. § 911(e). In 2019, Governor Bryan approved the permit and forwarded it to the Legislature for ratification. On December 10, 2019, the

¹ The Virgin Islands Conservation Society is the petitioner in another pending action (writ of review) before the Superior Court. *Virgin Islands Conservation Society, Inc. v. Virgin Islands Board of Land Use Appeals*, Case No. ST-16-CV-395. Similar issues have been raised in that case as stated herein. Defendants have referred to Petitioner as the alter ego of the named Plaintiff herein, Save Coral Bay, Inc. Moravian Church Conference of the Virgin Islands has also joined in that suit.

president of the Legislature disapproved the permit and returned it to the Governor. On December 16, 2019, the CZM Commission St. John Committee chairman signed the consolidated permits CZJ-003-14(L) and CZJ-004-14(W) consistent with the Board of Land Use Appeals 2016 Decision and Order, thereby administratively re-affirming the consolidation of the land and water permits.

On December 18, 2019, Governor Bryan approved and modified the Consolidated Permit by, *inter alia*, removing Parcels 13A and 13B, removing a mega-yacht slip, and allowing for the construction of a community boardwalk that was currently under federal permitting review. The Consolidated Permit and Modification of December 18, 2019, delineating all the changes and the environmental impacts were re-submitted to the Legislature for approval. In January 2020, VICS filed a second appeal to BLUA. On July 7, 2020, the Legislature conducted an extensive hearing allowing testimony from several interested parties including opponents of the project.² On December 21, 2020, the Legislature ratified the Consolidated Permit and the Governor's Modification.

Plaintiff contends, *inter alia*, the modification applies only to submerged lands permits; applies only to issues that arise necessitating preventative measures to protect the environment after the permit has been issued, and the Governor failed to fully disclose the environmental impacts of the modifications before the Legislature. They further argue the subject Modification was done during the permitting/approval process to purposely circumvent the requirements of § 911(g), which allows for modification only if it "is in the public interest and necessary to prevent significant environmental damage to coastal zone resources and to protect the public health, safety and general welfare." By modifying the plans after the project has been approved, but prior to construction, and

² The Court takes judicial notice pursuant to V.I.R.E. 201 (b)(2) of the V. I. Legislature's Committee of the Whole's hearing where the proponents, opponents, and respective counsel appeared and testified. Notably, the hearing lasted about seven (7) hours. Prior to the July 2020 hearing, the Legislature held another hearing on October 18, 2019, also lasting approximately seven (7) hours.

without engaging in the coastal zone management committee review process, Save Coral Bay contends the modification escapes without a proper environmental assessment. Consequently, because an updated environmental assessment report was not done, the Legislature was not fully informed of any adverse impact that may occur, hence, the Governor's Modification is not in compliance with the law. To ferret out these concerns, Save Coral Bay argues discovery should be allowed and, at the appropriate time, summary judgment should be considered as Defendants have raised issues beyond the scope of the pleading.

Defendants, on the contrary, assert the Complaint should be dismissed because the extensive permitting process has been fully vetted; the Modification was not for the mere appeasement of the permittee or the Legislature, but it was done in accordance with the statutes. The Modification is in the public interest, it mitigates negative environmental impact, and helps to boost economic opportunities and growth. More importantly, Defendants claim the Legislature's ratification of the Consolidated Permit and the Modification has rendered all issues moot and leaves no justiciable issue.

Discussion

Virgin Islands Rule of Civil Procedure 12(b)(1) provides a defendant may challenge the court's ability to hear a case by asserting lack of subject matter jurisdiction as a defense. The Virgin Islands Supreme Court reiterated in *Martinez v. Columbian Emeralds, Inc.* 51 V.I. 174, 188 (2009) the framework established by the Third Circuit in *Mortenson v. First Fed. Sav. & Loan Ass'n*, 549 F. 2d 884 (1977). Rule 12(b)(1) motions attacking the court's subject-matter jurisdiction may either be treated as facial or factual. In a facial challenge, the defendant attacks the complaint on its face, specifically "arguing that the complaint on its face does not allege sufficient grounds to establish subject matter jurisdiction." *Racz v. Cheetam*, 2019 V.I. SUPER 99U, 8, 2019 V.I. LEXIS

101, *3, 2019 WL 4855532. In addressing a facial challenge, the court accepts the allegations in the complaint as true viewing the allegations in the light most favorable to the non-moving party. *Id.* Alternatively, in addressing a factual challenge, the court does not presume the plaintiff's allegations as true; because it is based in fact and separate from the pleadings, the court must weigh the evidence to determine its own jurisdiction. *Id.* The factual attack disputes the existence of jurisdictional facts as sufficient to confer subject matter jurisdiction. *See Joseph v. Legislature of the V. I.*, 2017 V.I. Lexis 175, citing *James - St. Jules v. Thompson*, 2015 V.I. Lexis 74.

V. I. R. Civ. P. 12(b)(6) allows a party to move for a dismissal for “failure to state a claim upon which relief can be granted.” The sufficiency of a complaint is governed by the rule of pleading in V.I. R. Civ. P. 8(a)(2) which provides this is “a notice pleading jurisdiction and requires that a complaint present a short plain statement of the cause of action and basis for the claims for relief.” The Virgin Islands Supreme Court in *Mills-Williams v. Mapp*, 67 V.I. 574, 585-86 (V.I. 2017) stated the plaintiff must “adequately allege facts that put an accused party on notice of claims brought against it.” The proper standard for evaluating motions to dismiss for failure to state a claim requires the plaintiff to provide a basic legal and factual basis for the claim alleged, describe the essence of the claim, and provide facts sufficient to show that the plaintiff is entitled to relief.³

In the present case, Defendants claim the Legislature's ratification has rendered all issues moot; the Court lacks subject matter jurisdiction and there is no remaining relief to be granted. Although the Virgin Islands' notice pleading standard is now more lenient than the former *Twombly*⁴ plausibility standard, Plaintiff must still allege some factual and legal basis for each count of the complaint. Here, the Plaintiff's claims for declaratory judgment and injunctive relief have

³ *Greaux v. Frett*, 2019 V.I. Super. 77U, at *4 (V.I. Super. 2019); *Racz v. Cheetam*, 2019 V.I. Super. 99U at* 11 (V.I. Super. 2019).

⁴ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

dissipated with the passage of Act No. 8407. The claims do not surpass legislative ratification therefore the Complaint does not survive the scrutiny of Rule 8(a). Title 12 V. I. C. § 911(e) provides the Virgin Islands Legislature with the inherent power to confirm the Governor's approval and modification. The Legislature's authority to ratify all prior actions is equivalent to the presence of the original authority. Section 911 (e) provides:

“Any coastal zone permit which the appropriate Committee of the Commission or the Commissioner recommends for approval pursuant to this section, ... shall be forwarded by the Committee or Commissioner to the Governor for the Governor's approval or disapproval within thirty days following the Committee's or Commissioner's final action on the application for the coastal zone permit or the Board's decision on appeal to grant such a permit. The Governor's approval of any such permit or lease must be ratified by the Legislature of the United States Virgin Islands. Upon approval and ratification of such permit, occupancy and any development proposed in connection therewith shall not commence until the permittee has complied with the requirements of the United States Army Corps of Engineers pursuant to Title 33 of the United States Code.”

Further § 911 (g) provides “[t]he failure of the Legislature either to ratify or rescind the Governor's action within said thirty-day period shall constitute a ratification of the Governor's actions.” The Governor's approval of the consolidation of major permit CZJ-004-014(W) and permit CZJ-003-14(L); and the Modification Letter to Ms. Chaliene Summers, even without any further action by the Legislature results in ratification. Ratification is the action of signing or giving formal consent to a treaty, contract, or agreement making it officially valid.⁵ To ratify means to confirm by expressing consent, approval, or formal sanction.⁶ The Legislature explicitly created and reserved this inherent power to ratify the Governor's actions under the CZM Act. The language is unambiguous.

⁵ “Ratify”. *Merriam-Webster.com Dictionary*, Merriam -Webster, <https://www.merriam-webster.com/dictionary/ratify>. Accessed 6 May. 2021.

⁶ <https://www.dictionary.com>

Prior to ratification, § 911(g) confers upon the Governor the authority to modify or revoke any coastal permit. Upon modification, § 911(e) grants the Legislature the absolute right to ratify.

The Legislature has proscribed the following under Act No. 8407:

Pursuant to 12 V.I.C. § 911(e), the Legislature of the Virgin Islands ratifies the Governor's approval of the Consolidation of Major Coastal Zone Permit No. CZJ-04-14(W) and the Letter to Ms. Chaliese Summers, Managing Member of the Summers End Group, LLC, titled Modification of Consolidated Major Coastal Zone Management Permit CZJ-04-14(W) and CZJ-03-14(L), for the operation of a marina in Coral Bay, St. John.

Before the ratification, the Virgin Islands Legislature - Committee of the Whole- conducted an extensive hearing on July 7, 2020, allowing ample opportunity for all concerned parties to raise any, and all issues regarding the environmental, social impacts, or any negative impact SEG's project would have upon Coral Bay. On November 19, 2020, the Board of Land Use Appeals, for the second time, dismissed the VICS's appeal that challenged the Governor's Modification and Consolidated Permit. After two full-blown hearings, the Legislature ratified the Governor's approval of the Consolidated Permit, including subsequent modifications.

Plaintiff seeks a declaratory judgment asking this Court to render invalid a Consolidated Permit and its Modification that has undergone the scrutiny of the appropriate committees, board, and respective federal and territorial agencies. The separation of powers doctrine precludes this Court from interfering in the executive and legislative processes unless there is a clear violation of the law. "Unless expressly provided or incidental to the powers conferred ... the judiciary may not exercise either executive or legislative power." *In re Joseph*, 65 V.I. 217 (2016); *see also Bryan v. Fawkes*, 61 V.I. 201 (2014). The Court's role is not to create or modify the law, but to interpret and apply the laws as written. "Ordinarily, when the language of a statute is clear, courts apply the statute as written. Courts also should avoid creating ambiguity in statutes where there is none."

Jones v. Lockheed Martin Corporation, 68 V.I. 158 (2017). Here, the Court has concluded from the record that SEG has been vetted at all levels of the permitting process as proscribed in the CZM Act. The BLUA, as the reviewing administrative body, has twice dismissed the appeals of the VICS thereby re-affirming the decision of the Commission. The Legislature's ratification has sanctioned the entire permitting process including the Governor's approval and the Modification.

It is not this Court's responsibility to determine how much testimony before the legislative body is considered "full disclosure". Neither is it the Court's place to substitute its judgment for that of the CZM Commission, the BLUA, the Legislature, or the Governor. Plaintiff's argument that the ratification of the Modification does not necessarily mean that the Modification complied with the law is without merit. In effect, Plaintiff is asking this Court to step into the role of the Legislature and unratify the Governor's actions and declare invalid Act No. 8407 where there is no constitutional violation or other legitimate basis (other than their objection) to do so. Ratification has been addressed by the courts in *Monsanto v. V.I. Housing Authority*, 18 V.I. 113, 118 (1982). "Consequently, the Authority possesses the power to terminate Monsanto's employment so long as the termination was not in violation of any constitutionally protected right, citing *Hodgin v. Noland*, 435 F.2d 859 (4th Cir. 1970)." "Accordingly, the board possessed the power to *ratify* its decision to terminate Monsanto's employment, and whatever defects with respect to the by-laws occurred at the July meeting were corrected at the October meeting." *Id.* As stated, this Court is not in the position to determine what constitutes full disclosure to the legislative body, but clearly the Legislature was satisfied with the information provided by all interested parties and ultimately, in accordance with their inherent power, chose to ratify the Consolidated Permit and the Governor's Modification.

Conclusion

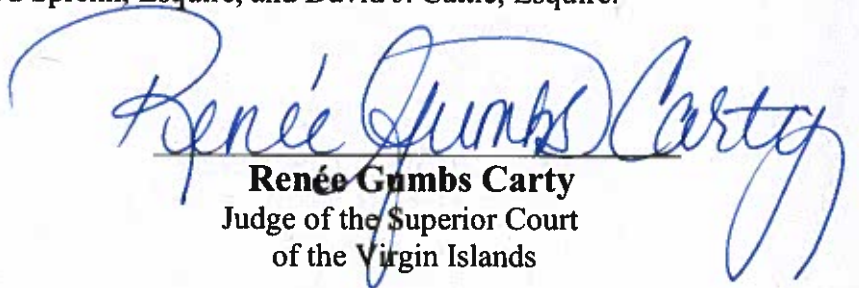
The CZM Act is designed for the permit process for review and appeal to be conducted within less than one (1) year. This process commencing seven years ago and having been approved has far surpassed the statutory deadlines. *See Virgin Islands Conservation Society v. Board of Land Use Appeals and Golden Resort, LLP*, D.C. Civ. App. 2006/089 (April 9, 2020), *Cowgirl Bebop, LLP v. Oriol*, 2021 V.I. Lexis 16 (March 5, 2021) speaking to the importance of deadlines. As the only issue before this Court is whether there is a colorable claim of relief that can be granted; this Court cannot find any. There is no justiciable issue for this Court to adjudicate as Act No. 8407 is the law and it is clear. Therefore, Defendants' joint motion for dismissal due to mootness and lack of subject matter jurisdiction will be granted. Accordingly, it is hereby

ORDERED that Defendants' motion is **GRANTED**; and it is further

ORDERED that this matter is **DISMISSED**; and it is further

ORDERED that a copy of this Order be distributed to Andrew C. Simpson, Esquire, Christopher M. Timmons, Esquire, Boyd Sprehn, Esquire, and David J. Cattie, Esquire.

Dated: May 12, 2021


Renée Gumbs Carty
Judge of the Superior Court
of the Virgin Islands

ATTEST:
Tamara Charles
Clerk of the Court

By: 
Donna D. Donovan
Court Clerk Supervisor 5/13/2021

SUPERIOR COURT OF THE VIRGIN ISLANDS
OFFICE OF THE CLERK
DIVISION OF ST. THOMAS

INDEX

CASE CAPTION: SAVE CORAL BAY, INC., v. ALBERT BRYAN, JR, ET AL.

SUPER. CT. CASE NO. ST-2020-CV-00298 S.CT. CASE NO. 2021-0017

No. of Pages Transmitted: 14

DOCUMENT

PAGES NOS.

CERTIFIED JUDGMENT/ORDER: 10

CERTIFIED DOCKET SHEETS: 03

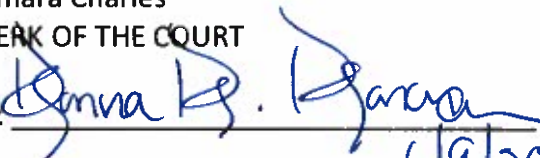
OFFICIAL TRANSCRIPT OF HEARING DATED: _____
Reporter: _____

Check One: Attached Here _____ Uploaded Separately by Reporter _____

OTHER DOCUMENTS: (list)

COVER LETTER 1

Tamara Charles
CLERK OF THE COURT

By: 
6/9/2021

SUPERIOR COURT OF THE VIRGIN ISLANDS
OFFICE OF THE CLERK
DIVISION OF ST. THOMAS

Date: June 9, 2021

Veronica Handy, Esq.
Clerk of the Court
Supreme Court of the Virgin Islands
P.O. Box 590
St. Thomas, USVI 00801

CASE CAPTION: SAVE CORAL BAY, INC., v. ALBERT BRYAN, JR, ET AL.

SUPER. CT. CASE NO. ST-2020-CV-00298 S.CT. CASE NO. 2021-0017

Dear Attorney Handy:

Pursuant to the Supreme Court's Scheduling Order entered on **MAY 27, 2021** in the above-noted case, which requires this office to file the e-Record on or before **JUNE 14, 2021**, please find enclosed an Index of documents required and the documents referenced therein. This letter further serves as the Certificate of Completion.

Sincerely,

Tamara Charles
CLERK OF THE COURT

By: 
6/9/2021

**Superior Court of the Virgin Islands
Docket Sheet**

Case #	ST-2020-CV-00298	Judge	Hon. Renee Gumbs Carty
Case Title	SAVE CORAL BAY, INC., v. ALBERT BRYAN, JR., IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE VIRGIN ISLANDS et al	Case Type	Civil - Real Property - Preliminary Injunction

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
39	06-09-2021 03:30 PM	Superior Court Transmittal - Superior Court Record	Official		Superior Court e-Record forwarded to the Supreme Court.	
38	06-09-2021 03:17 PM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Supreme Court Scheduling Order Received	
37	05-25-2021 05:16 PM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Notice of Appeal and Supreme Court Docketing Order Received. Appeal docketed as SCT-CIV- 2021-0017	
36	05-14-2021 12:21 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Order	
35	05-12-2021 12:19 PM	Order - Order Signed	Official		Order Signed Ordered that Defendants' motion is GRANTED; Ordered that this matter is DISMISSED	Hon. Renee Gumbs Carty
34	05-11-2021 11:24 AM	Response - Reply	Official		Defendant Summer's End Group, LLC'S Reply Re Motion to Supplement Defendant's Motion to Dismiss and Request to take Judicial Notice	Boyd L. Sprehn, Esquire
33	04-22-2021 08:49 AM	Response - Opposition Received	Official		Opposition to Defendants' Supplemental Motion to Dismiss	Andrew C. Simpson On Behalf of SAVE CORAL BAY, INC.,
32	03-29-2021 03:14 PM	Motion - Motion to Dismiss	Official		Motion to Supplement Defendants Motion to Dismiss and Request for Judicial Notice	SUMMERS END GROUP, LLC Boyd L. Sprehn, Esquire
31	03-18-2021 11:49 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Completed by Clerk	
30	03-10-2021 08:13 AM	Action - File Forwarded To Judge's Chambers	Official		File Forwarded To Judge's Chambers with Calendar for 3/18/21 Attached	
29	03-01-2021 11:14 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Order	
28	02-26-2021 11:11 AM	Order - Order Signed	Official		Order Signed Ordered that this matter shall come on for a hearing on Thursday, March 18, 2021 at 10:00 a.m. via Zoom	Hon. Renee Gumbs Carty
27	02-25-2021 12:07 PM	Motion - Motion to Dismiss	Official		REPLY TO PLAINTIFF VICS' OPPOSITION TO DEFENDANT SUMMER'S	SUMMERS END GROUP, LLC Boyd L. Sprehn,

**Superior Court of the Virgin Islands
Docket Sheet**

Case #	ST-2020-CV-00298	Judge	Hon. Renee Gumbs Carty
Case Title	SAVE CORAL BAY, INC., v. ALBERT BRYAN, JR., IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE VIRGIN ISLANDS et al	Case Type	Civil - Real Property - Preliminary Injunction

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					END GROUP, LLC MOTION TO DISMISS FOR MOOTNESS AND FAILURE TO STATE A CLAIM	Esquire
26	02-11-2021 08:18 AM	Response - Opposition Received	Official		OPPOSITION TO SECOND MOTION TO DISMISS	Andrew C. Simpson On Behalf of SAVE CORAL BAY, INC.,
25	01-28-2021 10:53 AM	Notice - Notice of Filing	Official		NOTICE OF NEGOTIATED EXTENSION OF DEADLINE TO FILE RESPONSE TO SECOND MOTION TO DISMISS	Andrew C. Simpson On Behalf of SAVE CORAL BAY, INC.,
24	01-08-2021 09:32 AM	Action - File Forwarded To Judge's Chambers	Official		File Forwarded To Judge's Chambers	
23	01-08-2021 09:02 AM	Notice - Notice to the Court	Official		Defendant Bryan's Notice of Joinder In Defendant Summer's End Group's Motion to Dismiss	Christopher M. Timmons, Esq.; AAG
22	01-08-2021 08:55 AM	Motion - Memorandum Of Law Received	Official		Memorandum Of Law in Support of Defendants' Motion to Dismiss for Mootness and Failure to State Claim	Boyd L. Sprehn On Behalf of SUMMERS END GROUP, LLC
21	01-08-2021 08:39 AM	Motion - Motion to Dismiss	Official		Defendant Summer's End Group, LLC's Motion to Dismiss for Mootness and Failure to State Claim	Boyd L. Sprehn On Behalf of SUMMERS END GROUP, LLC
20	12-08-2020 01:03 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Order	
19	12-07-2020 12:39 PM	Order - Order Signed	Official		Order Signed Ordered that the motion is DENIED; Ordered that Defendant shall file an answer within (30) days after entry of this Order.	Hon. Renee Gumbs Carty
18	11-24-2020 04:37 PM	Response - Response	Official		Response to Motion to Dismiss	Andrew C. Simpson On Behalf of SAVE CORAL BAY, INC.,
17	11-24-2020 03:59 PM	Initiating Document - Amended Complaint	Official		Amended Complaint Received	Andrew C. Simpson On Behalf of SAVE CORAL BAY, INC.,
16	11-24-2020 03:59 PM	Initiating Document - Amended Complaint	Official		Amended Complaint Received (Redline Copy)	Andrew C. Simpson On Behalf of SAVE CORAL BAY, INC.,
15	11-04-2020 03:59 PM	Action - File Forwarded To Judge's Chambers	Official		File Forwarded To Judge's Chambers	

**Superior Court of the Virgin Islands
Docket Sheet**

Case #	ST-2020-CV-00298	Judge	Hon. Renee Gumbs Carty
Case Title	SAVE CORAL BAY, INC., v. ALBERT BRYAN, JR., IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE VIRGIN ISLANDS et al	Case Type	Civil - Real Property - Preliminary Injunction

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
14	11-04-2020 09:26 AM	Notice - Notice to the Court	Official		The Summer's End Group, LLC's Notice of Joinder in Co-Defendant's Motion to Dismiss	
13	11-04-2020 09:11 AM	Notice - Notice of Appearance	Official		Notice of Appearance	David J. Cattie, Esq.
12	11-04-2020 09:08 AM	Motion - Motion to Dismiss	Official		Memorandum of Law in Support of Defendants' Motion to Dismiss for Lack Subject Matter Jurisdiction	Christopher M. Timmons, Esq.
11	09-01-2020 11:12 AM	Service - 20 Day Summons	Official		20 Day Summons issued	Andrew C. Simpson On Behalf of SAVE CORAL BAY, INC.,
10	08-13-2020 12:41 PM	Service - 20 Day Summons	Official		(3) 20 Day Summons Issued	
9	08-03-2020 09:40 AM	Notice - Deficiency Notice	Official		Deficiency Notice	
8	07-30-2020 01:55 PM	Financial - Payment Received	Official		Receipt #: 194729 Payor: Andrew C. Simpson, Amount: \$75.00	
7	07-23-2020 08:36 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Order of Recusal	Latoya A. Camacho, Court Clerk II
6	07-23-2020 08:30 AM	Order - Order of Recusal	Official		Order of Recusal Signed	Hon. Denise M. Francois
5	07-23-2020 08:27 AM	Action - File Returned To Clerk's Office	Official		File Returned To Clerk's Office with an Order of Recusal attached.	
4	07-22-2020 01:13 PM	Action - File Forwarded To Judge's Chambers	Official		File Forwarded To Judge's Chambers	
3	07-22-2020 01:04 PM	Initiating Document - Docket Letter Processed	Official		Docket Letter Processed	
2	07-21-2020 11:19 AM	Initiating Document - Civil Complaint	Official		Civil Complaint	Andrew C. Simpson On Behalf of SAVE CORAL BAY, INC.,
1	07-21-2020 11:19 AM	Initiating Document - Litigant Personal Data Form	Official		Civil Litigant Personal Data Form	Andrew C. Simpson On Behalf of SAVE CORAL BAY, INC.,

CERTIFIED TO BE A TRUE COPY
 This 14th day of June 2021
TAMARA CHARLES
CLERK OF THE COURT

By [Signature] Court Clerk

FILED

May 14, 2021

ST-2020-CV-00298

TAMARA CHARLES

CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

District of St. Thomas/St. John

SAVE CORAL BAY, INC.,
Plaintiff

Case Number: **ST-2020-CV-00298**

Action: **Preliminary Injunction**

v.

**ALBERT BRYAN, JR., IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF THE
VIRGIN ISLANDS et al,**
Defendant.

**NOTICE of ENTRY
of
ORDER**

To: Andrew C. Simpson, Esq.

David J. Cattie, Esq.

Boyd L. Sprehn, Esq.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
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_____	_____
_____	_____

Please take notice that on May 14, 2021
a(n) _____ **ORDER**
dated May 12, 2021 was/were entered
by the Clerk in the above-titled matter.

Dated: May 14, 2021

Tamara Charles
Clerk of the Court

By:



Tanasha Pemberton
Court Clerk II

FILED

May 12, 2021

ST-2020-CV-00298

TAMARA CHARLES

CLERK OF THE COURT

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

SAVE CORAL BAY, INC.,)

Plaintiff,)

v.)

ALBERT BRYAN, JR. IN HIS OFFICIAL)
CAPACITY AS GOVERNOR OF THE VIRGIN)
ISLANDS AND SUMMERS END GROUP, LLC,)

Defendants.)

CASE NO. ST-20-CV-298

ACTION FOR INJUNCTIVE
AND DECLARATORY RELIEF

ORDER

THIS MATTER is before the Court on Defendants’ second joint “Motion to Dismiss for Mootness and Failure to State a Claim” filed on January 7, 2021. Plaintiff Save Coral Bay, Inc. filed an “Opposition to Second Motion to Dismiss” on February 10, 2021, and Defendants filed their Reply on February 24, 2021. A hearing was held on March 18, 2021. For the reasons set forth below, Defendants’ motion will be granted.

Factual and Procedural Background

This case is about a proposal to build a large-scale commercial marina with restaurants, office spaces, retail spaces, and other shore facilities in the harbor of Coral Bay, St. John, Virgin Islands. On or about April 4, 2014, the project’s proponent, Summers End Group, LLC (SEG) sought approval from various territorial and federal agencies for construction of the marina. SEG was successful in obtaining both land and water permits. Save Coral Bay, Inc. (Save Coral Bay) is a citizens’ group that opposes the project for several reasons, but primarily for environmental concerns of construction and operation having a negative impact on the Coral Bay harbor.

Specifically, Save Coral Bay posits that Governor Albert Bryan Jr.'s Modification of Consolidated Major Coastal Zone Management Permit dated December 18, 2019, is improper because it was done prior to the Virgin Islands Legislature's ratification without the review of the Commission for a proper environmental assessment.

Defendant SEG applied for a Major Coastal Zone Management permit CZM-003-14(L) for the redevelopment of seven (7) adjacent parcels in Estate Carolina consisting of 10-17, 10-18, 10-19, 10-41 REM, 13A, 13B, and 13 REM. Simultaneously, SEG filed a separate application CZM-004-14(W) – for the development of the seaward area consisting of approximately 27.5 acres of submerged lands to build a 145-slip marina and other facilities.

On June 18, 2014, Coastal Zone Management (CZM) issued a Letter of Completeness to SEG. Thereafter, SEG availed themselves to the public for comments between June and August 2014. On August 20, 2014, the St. John Committee of the CZM Commission conducted a public hearing regarding the permits. In 2014, the Virgin Islands Conservation Society¹ (VICS) and the Moravian Church Conference of the Virgin Islands (Moravian Church) filed appeals with the Board of Land Use Appeals (BLUA), which BLUA affirmed the approval of the CZM committee. VICS and the Moravian Church subsequently filed for writs of review in the Superior Court challenging BLUA's Decision and Order of June 6, 2016. Almost three years later, on March 27, 2019, the committee chairman re-signed CZM-004-14(W) and forwarded the Consolidated Permit to Governor Bryan for his approval in accordance with 12 V. I. C. § 911(e). In 2019, Governor Bryan approved the permit and forwarded it to the Legislature for ratification. On December 10, 2019, the

¹ The Virgin Islands Conservation Society is the petitioner in another pending action (writ of review) before the Superior Court. *Virgin Islands Conservation Society, Inc. v. Virgin Islands Board of Land Use Appeals*, Case No. ST-16-CV-395. Similar issues have been raised in that case as stated herein. Defendants have referred to Petitioner as the alter ego of the named Plaintiff herein, Save Coral Bay, Inc. Moravian Church Conference of the Virgin Islands has also joined in that suit.

president of the Legislature disapproved the permit and returned it to the Governor. On December 16, 2019, the CZM Commission St. John Committee chairman signed the consolidated permits CZJ-003-14(L) and CZJ-004-14(W) consistent with the Board of Land Use Appeals 2016 Decision and Order, thereby administratively re-affirming the consolidation of the land and water permits.

On December 18, 2019, Governor Bryan approved and modified the Consolidated Permit by, *inter alia*, removing Parcels 13A and 13B, removing a mega-yacht slip, and allowing for the construction of a community boardwalk that was currently under federal permitting review. The Consolidated Permit and Modification of December 18, 2019, delineating all the changes and the environmental impacts were re-submitted to the Legislature for approval. In January 2020, VICS filed a second appeal to BLUA. On July 7, 2020, the Legislature conducted an extensive hearing allowing testimony from several interested parties including opponents of the project.² On December 21, 2020, the Legislature ratified the Consolidated Permit and the Governor's Modification.

Plaintiff contends, *inter alia*, the modification applies only to submerged lands permits; applies only to issues that arise necessitating preventative measures to protect the environment after the permit has been issued, and the Governor failed to fully disclose the environmental impacts of the modifications before the Legislature. They further argue the subject Modification was done during the permitting/approval process to purposely circumvent the requirements of § 911(g), which allows for modification only if it "is in the public interest and necessary to prevent significant environmental damage to coastal zone resources and to protect the public health, safety and general welfare." By modifying the plans after the project has been approved, but prior to construction, and

² The Court takes judicial notice pursuant to V.I.R.E. 201 (b)(2) of the V. I. Legislature's Committee of the Whole's hearing where the proponents, opponents, and respective counsel appeared and testified. Notably, the hearing lasted about seven (7) hours. Prior to the July 2020 hearing, the Legislature held another hearing on October 18, 2019, also lasting approximately seven (7) hours.

without engaging in the coastal zone management committee review process, Save Coral Bay contends the modification escapes without a proper environmental assessment. Consequently, because an updated environmental assessment report was not done, the Legislature was not fully informed of any adverse impact that may occur, hence, the Governor's Modification is not in compliance with the law. To ferret out these concerns, Save Coral Bay argues discovery should be allowed and, at the appropriate time, summary judgment should be considered as Defendants have raised issues beyond the scope of the pleading.

Defendants, on the contrary, assert the Complaint should be dismissed because the extensive permitting process has been fully vetted; the Modification was not for the mere appeasement of the permittee or the Legislature, but it was done in accordance with the statutes. The Modification is in the public interest, it mitigates negative environmental impact, and helps to boost economic opportunities and growth. More importantly, Defendants claim the Legislature's ratification of the Consolidated Permit and the Modification has rendered all issues moot and leaves no justiciable issue.

Discussion

Virgin Islands Rule of Civil Procedure 12(b)(1) provides a defendant may challenge the court's ability to hear a case by asserting lack of subject matter jurisdiction as a defense. The Virgin Islands Supreme Court reiterated in *Martinez v. Columbian Emeralds, Inc.* 51 V.I. 174, 188 (2009) the framework established by the Third Circuit in *Mortenson v. First Fed. Sav. & Loan Ass'n*, 549 F. 2d 884 (1977). Rule 12(b)(1) motions attacking the court's subject-matter jurisdiction may either be treated as facial or factual. In a facial challenge, the defendant attacks the complaint on its face, specifically "arguing that the complaint on its face does not allege sufficient grounds to establish subject matter jurisdiction." *Racz v. Cheetam*, 2019 V.I. SUPER 99U, 8, 2019 V.I. LEXIS

101, *3, 2019 WL 4855532. In addressing a facial challenge, the court accepts the allegations in the complaint as true viewing the allegations in the light most favorable to the non-moving party. *Id.* Alternatively, in addressing a factual challenge, the court does not presume the plaintiff's allegations as true; because it is based in fact and separate from the pleadings, the court must weigh the evidence to determine its own jurisdiction. *Id.* The factual attack disputes the existence of jurisdictional facts as sufficient to confer subject matter jurisdiction. See *Joseph v. Legislature of the V. I.*, 2017 V.I. Lexis 175, citing *James - St. Jules v. Thompson*, 2015 V.I. Lexis 74.

V. I. R. Civ. P. 12(b)(6) allows a party to move for a dismissal for “failure to state a claim upon which relief can be granted.” The sufficiency of a complaint is governed by the rule of pleading in V.I. R. Civ. P. 8(a)(2) which provides this is “a notice pleading jurisdiction and requires that a complaint present a short plain statement of the cause of action and basis for the claims for relief.” The Virgin Islands Supreme Court in *Mills-Williams v. Mapp*, 67 V.I. 574, 585-86 (V.I. 2017) stated the plaintiff must “adequately allege facts that put an accused party on notice of claims brought against it.” The proper standard for evaluating motions to dismiss for failure to state a claim requires the plaintiff to provide a basic legal and factual basis for the claim alleged, describe the essence of the claim, and provide facts sufficient to show that the plaintiff is entitled to relief.³

In the present case, Defendants claim the Legislature's ratification has rendered all issues moot; the Court lacks subject matter jurisdiction and there is no remaining relief to be granted. Although the Virgin Islands' notice pleading standard is now more lenient than the former *Twombly*⁴ plausibility standard, Plaintiff must still allege some factual and legal basis for each count of the complaint. Here, the Plaintiff's claims for declaratory judgment and injunctive relief have

³ *Greaux v. Frett*, 2019 V.I. Super. 77U, at *4 (V.I. Super. 2019); *Racz v. Cheetam*, 2019 V.I. Super. 99U at* 11 (V.I. Super. 2019).

⁴ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

dissipated with the passage of Act No. 8407. The claims do not surpass legislative ratification therefore the Complaint does not survive the scrutiny of Rule 8(a). Title 12 V. I. C. § 911(e) provides the Virgin Islands Legislature with the inherent power to confirm the Governor's approval and modification. The Legislature's authority to ratify all prior actions is equivalent to the presence of the original authority. Section 911 (e) provides:

"Any coastal zone permit which the appropriate Committee of the Commission or the Commissioner recommends for approval pursuant to this section, ... shall be forwarded by the Committee or Commissioner to the Governor for the Governor's approval or disapproval within thirty days following the Committee's or Commissioner's final action on the application for the coastal zone permit or the Board's decision on appeal to grant such a permit. The Governor's approval of any such permit or lease must be ratified by the Legislature of the United States Virgin Islands. Upon approval and ratification of such permit, occupancy and any development proposed in connection therewith shall not commence until the permittee has complied with the requirements of the United States Army Corps of Engineers pursuant to Title 33 of the United States Code."

Further § 911 (g) provides "[t]he failure of the Legislature either to ratify or rescind the Governor's action within said thirty-day period shall constitute a ratification of the Governor's actions." The Governor's approval of the consolidation of major permit CZJ-004-014(W) and permit CZJ-003-14(L); and the Modification Letter to Ms. Chaliene Summers, even without any further action by the Legislature results in ratification. Ratification is the action of signing or giving formal consent to a treaty, contract, or agreement making it officially valid.⁵ To ratify means to confirm by expressing consent, approval, or formal sanction.⁶ The Legislature explicitly created and reserved this inherent power to ratify the Governor's actions under the CZM Act. The language is unambiguous.

⁵ "Ratify". *Merriam-Webster.com Dictionary*, Merriam -Webster, <https://www.merriam-webster.com/dictionary/ratify>. Accessed 6 May, 2021.

⁶ <https://www.dictionary.com>

Prior to ratification, § 911(g) confers upon the Governor the authority to modify or revoke any coastal permit. Upon modification, § 911(e) grants the Legislature the absolute right to ratify.

The Legislature has proscribed the following under Act No. 8407:

Pursuant to 12 V.I.C. § 911(e), the Legislature of the Virgin Islands ratifies the Governor's approval of the Consolidation of Major Coastal Zone Permit No. CZJ-04-14(W) and the Letter to Ms. Chaliiese Summers, Managing Member of the Summers End Group, LLC, titled Modification of Consolidated Major Coastal Zone Management Permit CZJ-04-14(W) and CZJ-03-14(L), for the operation of a marina in Coral Bay, St. John.

Before the ratification, the Virgin Islands Legislature - Committee of the Whole- conducted an extensive hearing on July 7, 2020, allowing ample opportunity for all concerned parties to raise any, and all issues regarding the environmental, social impacts, or any negative impact SEG's project would have upon Coral Bay. On November 19, 2020, the Board of Land Use Appeals, for the second time, dismissed the VICS's appeal that challenged the Governor's Modification and Consolidated Permit. After two full-blown hearings, the Legislature ratified the Governor's approval of the Consolidated Permit, including subsequent modifications.

Plaintiff seeks a declaratory judgment asking this Court to render invalid a Consolidated Permit and its Modification that has undergone the scrutiny of the appropriate committees, board, and respective federal and territorial agencies. The separation of powers doctrine precludes this Court from interfering in the executive and legislative processes unless there is a clear violation of the law. "Unless expressly provided or incidental to the powers conferred ... the judiciary may not exercise either executive or legislative power." *In re Joseph*, 65 V.I. 217 (2016); *see also Bryan v. Fawkes*, 61 V.I. 201 (2014). The Court's role is not to create or modify the law, but to interpret and apply the laws as written. "Ordinarily, when the language of a statute is clear, courts apply the statute as written. Courts also should avoid creating ambiguity in statutes where there is none."

Jones v. Lockheed Martin Corporation, 68 V.I. 158 (2017). Here, the Court has concluded from the record that SEG has been vetted at all levels of the permitting process as proscribed in the CZM Act. The BLUA, as the reviewing administrative body, has twice dismissed the appeals of the VICS thereby re-affirming the decision of the Commission. The Legislature's ratification has sanctioned the entire permitting process including the Governor's approval and the Modification.

It is not this Court's responsibility to determine how much testimony before the legislative body is considered "full disclosure". Neither is it the Court's place to substitute its judgment for that of the CZM Commission, the BLUA, the Legislature, or the Governor. Plaintiff's argument that the ratification of the Modification does not necessarily mean that the Modification complied with the law is without merit. In effect, Plaintiff is asking this Court to step into the role of the Legislature and unratify the Governor's actions and declare invalid Act No. 8407 where there is no constitutional violation or other legitimate basis (other than their objection) to do so. Ratification has been addressed by the courts in *Monsanto v. V.I. Housing Authority*, 18 V.I. 113, 118 (1982). "Consequently, the Authority possesses the power to terminate Monsanto's employment so long as the termination was not in violation of any constitutionally protected right, citing *Hodgin v. Noland*, 435 F.2d 859 (4th Cir. 1970)." "Accordingly, the board possessed the power to *ratify* its decision to terminate Monsanto's employment, and whatever defects with respect to the by-laws occurred at the July meeting were corrected at the October meeting." *Id.* As stated, this Court is not in the position to determine what constitutes full disclosure to the legislative body, but clearly the Legislature was satisfied with the information provided by all interested parties and ultimately, in accordance with their inherent power, chose to ratify the Consolidated Permit and the Governor's Modification.

Conclusion

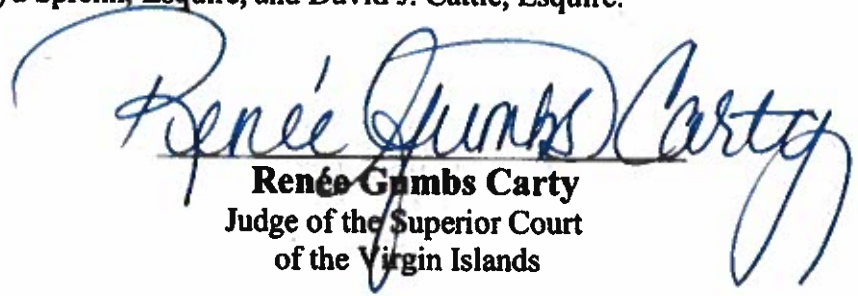
The CZM Act is designed for the permit process for review and appeal to be conducted within less than one (1) year. This process commencing seven years ago and having been approved has far surpassed the statutory deadlines. See *Virgin Islands Conservation Society v. Board of Land Use Appeals and Golden Resort, LLP*, D.C. Civ. App. 2006/089 (April 9, 2020), *Cowgirl Bebop, LLP v. Oriol*, 2021 V.I. Lexis 16 (March 5, 2021) speaking to the importance of deadlines. As the only issue before this Court is whether there is a colorable claim of relief that can be granted; this Court cannot find any. There is no justiciable issue for this Court to adjudicate as Act No. 8407 is the law and it is clear. Therefore, Defendants' joint motion for dismissal due to mootness and lack of subject matter jurisdiction will be granted. Accordingly, it is hereby

ORDERED that Defendants' motion is **GRANTED**; and it is further


ORDERED that this matter is **DISMISSED**; and it is further

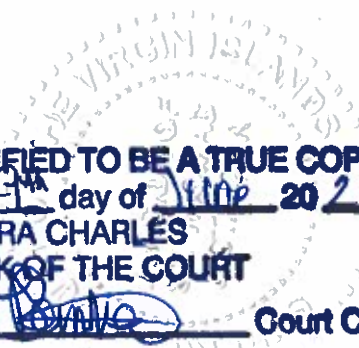

ORDERED that a copy of this Order be distributed to Andrew C. Simpson, Esquire, Christopher M. Timmons, Esquire, Boyd Sprehn, Esquire, and David J. Cattie, Esquire.

Dated: May 12, 2021


Renée Gumbs Carty
Judge of the Superior Court
of the Virgin Islands

ATTEST:
Tamara Charles
Clerk of the Court

By: 
Donna D. Donovan
Court Clerk Supervisor 5/13/2021


CERTIFIED TO BE A TRUE COPY
This 9th day of June 2021
TAMARA CHARLES
CLERK OF THE COURT
By  Court Clerk

FILED

November 23, 2020
ST-2020-CV-00298
TAMARA CHARLES
CLERK OF THE COURT

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

SAVE CORAL BAY, INC.,

PLAINTIFF,

VS.

**ALBERT BRYAN, JR. IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF THE VIRGIN
ISLANDS AND SUMMERS END GROUP, LLC**

DEFENDANTS.

CIV. NO. ST-2020-CV-00298

**ACTION FOR PRELIMINARY
INJUNCTION, INJUNCTION
AND DECLARATORY RELIEF**

FIRST AMENDED COMPLAINT

Now comes Save Coral Bay, Inc., through undersigned counsel, and seeks (a) [omitted]; (b) a declaratory judgment that modifications made by the Governor of the Virgin Islands to the consolidated permit are invalid and (c) equitable relief in the form of a preliminary and permanent injunction prohibiting Summers End Group, LLC from conducting any actions under the modified permit as it was illegally modified and without the illegal modification authorizes construction upon land that SEG neither owns nor controls.

JURISDICTION AND NATURE OF THE CASE

1. This Court has jurisdiction pursuant to 12 V.I.C. § 913(b) and 4 V.I.C. § 76(a).
2. In accordance with 12 V.I.C. § 913(b)(1), “Any person may maintain an action for declaratory and equitable relief to restrain any violation of this chapter [Chapter 21 of Title 12 of the Virgin Islands Code].”
3. Upon a prima facie showing of a violation of Chapter 21 of Title 12 of the Virgin

Islands Code, “preliminary equitable relief *shall* be issued to restrain any further violation” and no bond shall be required to be posted by the plaintiff. 12 V.I.C. § 913(b)(1).

PARTIES

4. Plaintiff, Save Coral Bay, Inc. , is a non-profit corporation organized and existing under the laws of the U.S. Virgin Islands with its principal place of business in the U.S. Virgin Islands. Save Coral Bay’s primary mission is to advocate for the proper stewardship of the natural resources and environment of Coral Bay, St. John, U.S. Virgin Islands. Save Coral Bay is a “person” within the meaning of 12 V.I.C. § 913(b)(1).
5. Defendant Albert Bryan, Jr. is the Governor of the Virgin Islands and is sued in his official capacity only.
6. Defendant, Summers End Group, LLC (“SEG”), is a limited liability limited company organized and existing under the laws of the U.S. Virgin Islands with its principal place of business in the U.S. Virgin Islands.

FACTS RELATING TO THE ISSUANCE AND MODIFICATION OF THE CONSOLIDATED PERMIT

7. On December 16, 2019, Andrew Penn, Sr., the Chairman of the St. John Committee of the Virgin Islands Coastal Zone Management Commission signed a consolidated permit that authorizes the construction of a marina and related shore facilities in Coral Bay, St. John.

8. The consolidated permit signed by Penn authorizes SEG to build marina infrastructure, a restaurant, retail spaces, office spaces and other structures 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.
9. SEG neither owns nor controls Parcels Nos. 13A and 13B Estate Carolina and the owner of those parcels will not authorize SEG to construct anything relating to the development authorized by the consolidated permit upon those parcels.
10. According to the plans accompanying the CZM permit application, which are incorporated in, and govern, the consolidated permit, SEG is authorized to destroy many of the structures on Parcels 13A and 13B.
11. According to the plans accompanying the CZM permit application, which are incorporated in, and govern, the consolidated permit, SEG is authorized to build a waste water treatment plant and generator on Parcels 13A and/or 13B and authorized to renovate the existing structure on Parcel 13A into a restaurant with apartments and build a driveway and a variety of pedestrian walkways on Parcel 13A.
12. According to the plans accompanying the CZM permit application, which are incorporated in, and govern, the consolidated permit, SEG is authorized to perform significant earth change activity on Parcels 13A and 13B relating to the redirection of a storm water drainage gully.

13. SEG signed the consolidated permit as permittee on December 17, 2019.
14. The Governor approved the permit on December 18, 2019 under the authority set forth in 12 V.I.C. § 911(e).
15. Despite approving the permit on December 18, 2019, on that same day, the Governor issued a purported modification of the permit, after stating that modifications *requested by* SEG were “in the public interest” were “necessary to prevent significant environmental damage to coastal zone resources,” and would “protect the general welfare by minimizing the impact to the environment.”
16. The Governor’s modifications removed Parcels 13A and 13B from the permit.
17. In his letter modifying the permit, the Governor stated that the restaurant and two apartments on Parcel 13A are no longer a part of the project and indicated that additional cisterns have been located on the Remainder of Parcel 13 “to maintain the necessary water supply.”
18. There is no mention in the Governor’s modification letter of the elimination of the waste water treatment plant or generator that are authorized by the consolidated permit to be built upon Parcels 13A and/or 13B.
19. Since the waste water treatment plant and generator cannot be built upon those parcels by virtue of SEG’s lack of control over them, they are effectively eliminated from the project as there is no authority to build them elsewhere.
20. The Governor’s modification also eliminates the ability of SEG to use a ghut on Parcel 13A and 13B to shunt runoff from a major portion of the Coral Bay

watershed into a catchment basin. This feature of the project was considered a significant mitigation factor that SEG relied upon before the CZM Committee to support its proposal. As modified, this mitigation feature is eliminated, thereby substantially altering the scope of the project in a manner that is harmful to the environment.

21. Moreover, the Governor's unilateral decision to allow the construction of additional cisterns on Remainder of Parcel 13 was done without any environmental review and without any assessment of the impact this construction will have. Nothing in the plans incorporated in the consolidated permit authorizes the construction of such additional cisterns on that parcel.
22. The Governor's modification also authorizes the construction of a "shoreline boardwalk."
23. The plans for this boardwalk are not incorporated in the consolidated permit or shown on any drawings that are a part of the consolidated permit.
24. On information and belief, at least part of the boardwalk is to be constructed upon the submerged lands of the Virgin Islands.
25. The consolidated permit, as modified, does not provide for the rental fees required by 12 V.I.C. § 911(f)(1).
26. The rental fee specified in the consolidated permit is identical to the rental fee set forth in the original permit issued in 2014 and thus could not include rental fees for the boardwalk's occupancy of submerged lands since the boardwalk was

- not a part of the proposal in 2014.
27. There has been no environmental assessment of the impact of the construction of this boardwalk by the St. John Committee of the Coastal Zone Management Commission.
28. There has been no environmental assessment by the St. John Committee of the Coastal Zone Management Commission of any of the significant changes created by the removal of Parcels 13A and 13B from the project, such as the relocation of the cisterns; the addition of the boardwalk; the removal, without authorized relocation, of the wastewater treatment plant and generator; and the redesign of the marina docks with a *reduction* in their strength to only withstand winds of 96 mph.
29. There is no authorization in the consolidated permit to build a boardwalk.

COUNT I – [OMITTED]

**COUNT II – DECLARATORY JUDGMENT
THE GOVERNOR’S MODIFICATION OF THE PERMIT IS INVALID**

30. The Governor has no authority to modify a Coastal Zone Management Permit except pursuant to 12 V.I.C. § 911(g), which provides in pertinent part,

In addition to any other powers of enforcement set forth in section 913 of this chapter, the Governor may modify or revoke any coastal zone permit that includes development or occupancy of trust lands or submerged or filled lands approved pursuant to this section upon a written determination that such action is in the public interest *and* that it is necessary to prevent significant environmental

damage to coastal zone resources *and* to protect the public health, safety and general welfare.

(Emphasis added.)

31. As the introductory phrase of Section 911(g) indicates, the section is an *enforcement* power and is not designed to give the Governor the power to modify a permit for the convenience of a permittee or to accommodate legal concerns raised by the Legislature of the Virgin Islands.
32. The “action” of the Governor in modifying a permit must be (a) in the public interest; *and* (b) necessary to prevent significant environmental damage to coastal zone resources *and* (c) taken to protect the public health, safety and general welfare. 12 V.I.C. § 911(g). In other words, the Section 911(g) authority does not grant the Governor *carte blanche* to modify the permit to authorize additional construction or activity that would, or could, have a negative environmental impact.
33. The “significant environmental damage” identified by the Governor when he modified the consolidated permit was not in any way related the modifications that he made. Rather, the Governor cited “improving public health in part by providing solid and wastewater collection, proper fueling using EPA approved methodology, and coordination with FEMA to provide receipt of emergency supplies and evacuation from Coral Bay in the event of natural disasters like hurricane and earthquake.”
34. These benefits to the environment were provided by the proposal as originally

approved. The “action”—the modifications—do not in any way, shape, or form increase the cited benefits from the original proposal.

35. The modification of a permit in accordance with Section 911(g) must be for the purposes of halting environmental damage authorized by the permitted activity rather than for the purpose of halting environmental damage that exists prior to the authorized development.
36. The Governor’s stated reasons explaining why he was justified in modifying the permit are not supported by the facts or the action he took. For example, the Governor cited improved wastewater collection as a basis for modifying the permit yet the modification removes a wastewater treatment plan from the design with no authority given to install a replacement wastewater treatment plant in a different location; and, by eliminating Parcels 13A and 13B from the proposal, further reduces the storm water management capability that was used as a mitigating factor in the original permit application.
37. The major reduction in storm water management capability described in the preceding paragraph will result in significant degradation of Coral Bay’s water quality as compared to the unmodified consolidated permit.
38. The Governor’s action in modifying the permit was contrary to law for the following reasons, each of which is sufficient to render the modification void as a matter of law:

- a. The Governor lacked the authority to modify the consolidated permit in any manner other than to prevent environmental damage that would be caused by the permitted project *if not modified*.
- b. The Governor’s action in approving the addition of a boardwalk to the project is not authorized by Section 911(g) and is contrary to law.
- c. The Governor’s action in approving the addition of a boardwalk on, in or near the submerged lands of the Virgin Islands without environmental review, without the required findings set forth in 12 V.I.C. § 911(c); and without negotiating rent for the occupancy is contrary to law.
- d. The Governor’s action in modifying the permit to withdraw Parcels 13A and 13B from construction without addressing all of the consequences of doing so, such as the removal of a wastewater treatment plant from the project, is contrary to law.

COUNT III – INJUNCTIVE RELIEF
SAVE CORAL BAY IS ENTITLED TO A PRELIMINARY INJUNCTION PROHIBITING
SEG FROM COMMENCING DEVELOPMENT.

39. Under 12 V.I.C. § 913(b)(1), Save Coral Bay is entitled to “preliminary equitable relief” upon a “prima facie showing of a violation” of the Coastal Zone Management Act, 12 V.I.C. §§ 901 – 914 (“CZMA”).
40. Save Coral Bay has established a prima facie case of several violations of the CZMA including, without limitation:

- a. the Governor's action in modifying the consolidated permit without the legal authority to do so;
 - b. the Governor's action in modifying the consolidated permit without the factual predicate required by 12 V.I.C. § 911(g);
 - c. the Governor's modifications to the consolidated permit in a manner not authorized by 12 V.I.C. § 911(g);
 - d. the authorization given to SEG to occupy submerged lands of the Virgin Islands without any negotiation of the rent for same;
41. Each of the above-cited violations of the CZMA provides an independent basis for the issuance of preliminary injunction prohibiting SEG from commencing any construction activity under the consolidated permit.
42. Monetary damages cannot provide Save Coral Bay with a remedy for the issuance of a permit in violation of the law.
43. There is no administrative remedy available to plaintiff to address the situation where a permittee loses legal control of property upon which a CZM permit authorizes construction.
44. There is no administrative remedy available to plaintiff to address the situation where the scope of a permitted project changes materially after the permit is issued.
45. There is no administrative remedy available to address the Governor's illegal

modifications of the consolidated permit.

RELIEF REQUESTED

Save Coral Bay respectfully submits that after appropriate judicial proceedings, it is entitled to the following relief:

1. A preliminary injunction enjoining SEG from commencing any construction purportedly authorized by the consolidated permit;

4. A declaration that the Governor's modification of the permit is null and void; and

5. Such other relief as this Court may deem appropriate and equitable, including an award of attorney's fees and costs in accordance with 5 V.I.C. § 541.

Respectfully submitted,

ANDREW C. SIMPSON, P.C.
Attorneys for Save Coral Bay, Inc.



ANDREW C. SIMPSON, ESQ.
V.I. Bar No. 451
2191 Church St., Ste. 5
Christiansted, VI 00820
(340) 719-3900
asimpson@coralbrief.com
www.coralbrief.com

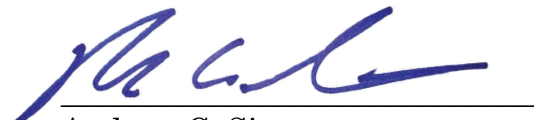
CERTIFICATE OF SERVICE

I certify that this document complies with the page limitations and font requirements of V.I.R.Civ.P. 6-1(e) and that a true copy of the document was served via email on November 23, 2020 to the following at the email addresses shown:

Christopher M. Timmons, Esq.
Assistant Attorney General
213 Estate La Reine, RR1 Box 6151
Kingshill, V.I. 00851
christopher.timmons@doj.vi.gov

David J. Cattie, Esq.
The Cattie Law Firm, P.C.
1710 Kongens Gade
St. Thomas V.I. 00802
david.cattie@cattie-law.com

(counsel for Governor Albert Bryan, Jr.) (counsel for Summers End Group)



Andrew C. Simpson

**APPEAL
BEFORE THE BOARD OF LAND USE APPEALS**

**VIRGIN ISLANDS CONSERVATION
SOCIETY INC.,**

Appellant,

v.

**ST. JOHN COMMITTEE OF THE
VIRGIN ISLANDS COASTAL ZONE
MANAGEMENT COMMISSION,**

Appellee,

SUMMERS END GROUP, LLC,

Intervenor.

Appeal No. 2020/02

DECISION AND ORDER

The Virgin Islands Board of Land Use Appeals (“BLUA”) by and through its Acting Chairman, James H. Hindels, Esq., H.C.,¹ 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 grants the Motion to Dismiss, filed by Summer’s End Group, LLC (“SEG”) and joined by the St. John Committee of the Virgin Islands Coastal Zone Management Commission, the herein Appeal regarding Permit No. CZJ-04-14(W) (“the Permit”).

BACKGROUND

1. On or about April 4, 2014, SEG applied for Major Coastal Zone Permit No. CZJ-03-14(L) for the redevelopment of seven adjacent properties in Estate Carolina,

¹ BLUA Chairman John P. Woods has recused himself from voting on any decision in this matter.

Coral Bay, St. John (in two phases) for the construction of various supporting facilities for the Coral Bay Marina. 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, (hereinafter “Land Permit”).

2. Simultaneously, SEG filed another application for Major Coastal Zone Permit No. CZJ-04-14(W) for 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 permit also allows the use and occupancy of the structures described in Section 2 (a) of the permit, including 27.5 acres of submerged land areas surrounding the structures described in Section 2, (a) (hereinafter “Water Permit,” collectively with Land Permit as “the Permit”).
3. On or about June 18, 2014, CZM issued a Letter of Completeness to SEG regarding the Permits.
4. From June 2014 through August 2014, SEG reviewed and responded to public comments and comments from other related agencies.
5. On or about August 20, 2014, CZM issued Preliminary Staff Findings regarding the Permits.
6. On or about August 20, 2014, the St. John Committee of the VI CZM Commission (hereinafter “Appellee” or “Committee”) conducted a Public Hearing regarding the Permits.

7. On or about October 1, 2014, CZM issued its Final Staff Reports regarding the Permits.
8. On or about October 1, 2014, CZM conducted a Decision Meeting regarding the Permits.
9. On or about October 10, 2014, CZM issued a Decision Letter to SEG regarding the Permits.
10. On or about October 24, 2014, the St. John Committee of the Virgin Islands Coastal Zone Management Commission issued to SEG Major Coastal Zone Management Permit Nos. CZJ-03-14(L) and CZJ-04-14(W).
11. On or about November 14, 2014, the Virgin Islands Conservation Society (hereinafter “VICS” or “Appellant” or “Appellant VICS”) filed its Appeal of the issuance of Permit Nos. CZJ-03-14(L) and CZJ-04-14(W) to SEG with the Board of Land Use Appeals (“BLUA”).
12. On or about June 13, 2016, in an Order dated June 6, 2016, the BLUA affirmed Permit Nos. CZJ-03-14(L) and CZJ-04-14(W) issuance by the St. John CZM Committee but ordered that the permits be consolidated into one major permit.
13. On or about July 7, 2016, VICS filed a writ of review suit in Superior Court. That matter has been fully briefed by the parties and is awaiting a decision.
14. On or about August 8, 2016, the Moravian Church Conference of the Virgin Islands (“Moravian Church”) filed a writ of review suit in Superior Court. That matter has been fully briefed by the parties and is awaiting a decision.

15. On or about March 27, 2019, the St. John CZM Committee Chairman re-signed Permit No. CZJ-04-14(W).
16. On or about April 4, 2019, Governor Bryan approved and transmitted Permit No. CZJ-04-14(W) to the Legislature for ratification.
17. On December 10, 2019, a letter issued by the President of the Legislature stated, “After an exhaustive review of documentation submitted, it has been determined that the 33rd Legislature is presently unable to take action on this permit as it is considered defective. Accordingly, Major Coastal Zone Management Permit No. CZJ-04-14 (W) and the accompanying documents are being returned to your office.”
18. On or about December 16, 2019, the Chairman of the St. John CZM Committee consolidated permits CZJ-03-14(L) and CZJ-04-14(W) into CZJ-04-14(W) pursuant to the 2016 Order of the BLUA from VICS’s previous appeal.
19. On or about December 18, 2019, Governor Bryan approved and modified the consolidated permit and transmitted the modified permit to the Legislature for ratification.
20. In January 2020, VICS filed a second Notice of Appeal.
21. On or about February 21, 2020, SEG filed a Motion to Dismiss for lack of subject matter jurisdiction.
22. On or about April 8, 2020, CZM filed a Motion for Joinder of SEG’s Motion to Dismiss.
23. On or about May 1, 2020, SEG filed a Renewed Motion to Dismiss.

24. On or about May 1, 2020, VICS filed Opposition to SEG's Renewed Motion to Dismiss.
25. On November 19, 2020, the BLUA conducted a hearing in this case. All members of the BLUA were present. However, Chairman Wood recused himself from the matter, and Member Jose Penn abstained from voting.
26. All four voting members voted to dismiss the herein Appeal.

FINDINGS OF FACT

27. The Board finds that the consolidated permit which VICS challenges in the instant Appeal was approved by the St. John CZM Committee in 2014. With the acceptance of the record submitted by SEG, the Board ordered the permits consolidated in 2016.
28. The Board finds that it was within its power to consolidate the permits.
29. The Board finds that the permits were consolidated by the Chair of the St. John CZM Committee in accordance with its 2016 Order.
30. The Board finds that the consolidated permit is valid.
31. The Board finds that Governor Bryan modified the permit pursuant to his authority under 12 V.I.C. § 911(g).

JURISDICTION

32. Any aggrieved person may file an appeal of an action by the St. John CZM Committee within forty-five days thereof with the BLUA. 12 V.I.C. § 914(a).
33. 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, as amended 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.

34. In this case, VICS alleges that the St. John Committee Chair did not have the statutory authority to consolidate the permit. Furthermore, the modified consolidated permit is different from the original permits. Therefore, the BLUA should vacate the permit

35. The BLUA, however, lacks jurisdiction to hear this Appeal.

CONCLUSIONS OF LAW

36. VICS's herein Appeal of the issuance of the permit affirmed by the BLUA in 2016 and order consolidated is out of time pursuant to 12 V.I.C. § 914(a). See *La Vallee Northside Civic Asso. v. V.I. Bd. of Land Use Appeals*, Civil No. 1988/168, 1988 U.S. Dist. LEXIS 9165 (D.V.I. August 12, 1988), rev'd on other grounds sub nom, *La Vallee Northside Civic Asso. v. V.I. Coastal Zone Mgmt. Com.*, 866 F.2d 616 (3d Cir. 1989). Therefore, the Board lacks jurisdiction to hear the herein appeal.

37. The Board's jurisdiction to hear appeals is found in 12 V.I.C. § 914, which provides that an aggrieved person may appeal "an action by the Commission, its Committee, or Commissioner taken pursuant to section 910 or 911 . . . within forty-five days thereof."

38. Jurisdiction is further explained in Board regulations, which provide that the Board “may review any “decision below” in which the findings, inferences, conclusions, or decisions are:

- a. in violation of constitutional, 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.

12 V.I.R. & R. § 914-3.

39. “Decision below” is defined as any decision of an authority below which is final and conclusive upon an applicant 12 V.I. R. & R. 914(f), and “authority below” is defined as the Commission, Committee or Commissioner who rendered a decision in connection with an application for a major or minor coastal zone permit, whose decision is final and conclusive upon the applicant. 12 V.I.R. & R. § 914(d)

40. Here, the CZM Committee has not rendered any “new decision” in this matter. On the contrary, pursuant to the Board’s Order, Chairman Penn performed the “ministerial act” of affixing his signature to the approved permit consolidated by this Board’s June 6, 2016 Order. In affixing his signature, Penn did not render a decision that gives rise to BLUA review, nor did he “take an action” requiring a majority vote of the committee pursuant to 12 V.I.C. § 904(b).

41. A “ministerial act” is defined as an act “which a person performs under a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, and without regard to or exercise of his judgment upon the propriety of the act being done.” *Galey v. Bd. of Comm'rs*, 174 Ind. 181, 183, 91 N.E. 593, 594 (1910).
42. The Board’s June 6, 2016 Order directed that Permit Nos. CZJ-03-14(L) and CZJ-03-14(W) be consolidated. The Board acted under its authority pursuant to 12 V.I.C. § 914 and 12 V.I.R. & R. § 914-3. Chairman Penn consolidated the permits as directed by this Board and did not exercise his own judgment regarding the Board’s order's propriety. Therefore, the St. John Committee's quorum was not required pursuant to 12 V.I.C. § 904(b).
43. Furthermore, this Board lacks the statutory authority to review a modification of a major permit by the Governor pursuant to his authority under 12 V.I.C. § 911(g).
44. Title 12 of the Virgin Islands Code, section 911, subsection (g) authorizes the Governor to approve, modify, and transmit permits to the Legislature for ratification. Section 911(g) permits the Governor to modify permits he believes necessary to protect the public health, safety, and general welfare, including permits that include submerged lands. *See also* 12 V.I.C. § 911(c)
45. Title 12 of the Virgin Islands Code, section 911, subsection (g) states:

(g) Modification and revocation. In addition to any other powers of enforcement set forth in section 913 of this chapter, the Governor may modify or revoke any coastal zone permit that includes development or occupancy of trust lands or submerged or filled lands approved pursuant to this section upon a written determination that such action is in the public interest and that it is necessary to prevent significant environmental

damage to coastal zone resources and to protect the public health, safety, and general welfare. Such written determination shall be delivered both to the permittee and to the Legislature, together with a statement of the reasons therefor. It shall state the effective date of such modification or revocation and shall provide a reasonable time in which the permittee or lessee either may correct the deficiencies stated in such written determination or may establish, to the Governor's satisfaction, that any or all of the deficiencies or reasons stated therein are incorrect. If the permittee shall fail to correct or establish the inaccuracy of such deficiencies or reasons within the time provided in such written determination, the modification or revocation of such occupancy permit shall be effective as of the date stated therein; provided, however, that the Legislature, shall ratify the Governor's action within thirty days after said effective date. The failure of the Legislature, either to ratify or rescind the Governor's action within said thirty-day period shall constitute a ratification of the Governor's action.

12 V.I.C. § 911

46. In his December 18, 2019 letter to the President of Legislature, the Governor expressly stated that he modified the Permit pursuant to his authority under 12 V.I.C. § 911(g).
47. However, pursuant to 12 V.I.R. & R. § 914-3(b), the Board only has jurisdiction to review the actions of the CZM Commission, a Committee, or the Commissioner.
48. Rule 914-3(b) does not grant the Board the authority to review the actions of the Governor.
49. Consequently, for the purposes of this Appeal, the modified consolidated permit, of which VICS complains herein, is the same permit that this Board affirmed in 2016.
50. Therefore, VICS's Appeal of the permit herein is untimely pursuant to 12 V.I.C. § 914(a).

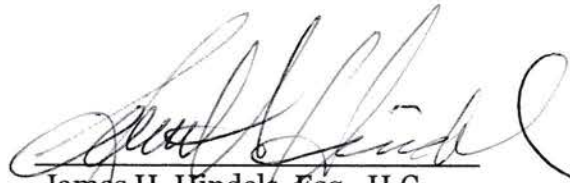
51. Accordingly, the BLUA finds that it lacks jurisdiction to hear the instant Appeal for the reasons stated above.

ORDER

IT IS HEREBY ORDERED that Intervenor Summers End, LLC's Motion to Dismiss the herein Appeal is **GRANTED**; it is further **ORDERED** that the herein Appeal is dismissed.

Ordered This 4th Day of January 2021.

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



James H. Hindels, Esq., H.C,
Acting Chairman
Board of Land Use Appeals

Via Email:

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

December 3, 2019

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

Hon. Governor Bryan:

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

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

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

The changes contained in the consolidated permit are:

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

Hon. Governor Bryan

Re: Major Coastal Zone Management Permit No. CZJ-04-14(W) & (L)
St. John Marina Project (Coral Bay)

December 3, 2019

Page 2

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

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

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

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

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

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

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

Hon. Governor Bryan

Re: Major Coastal Zone Management Permit No. CZJ-04-14(W) & (L)
St. John Marina Project (Coral Bay)

December 3, 2019

Page 3

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

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

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

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

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

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

Chalièse



Legislature of the Virgin Islands

NO. 1110 STRAND STREET
CHRISTIANSTED, UNITED STATES VIRGIN ISLANDS 00820
PH. (340) 712-2324
SENATORFRANCIS@LEGVL.ORG

Honorable
Novelle E. Francis, Jr.
Senate President

December 10, 2019

The Honorable Albert Bryan, Jr.
Governor of the Virgin Islands
Office of the Governor
No. 20-21 Kongens Gade
Christiansted, Virgin Islands 00820

This document was received

by the Governor this 10th

Day of December 2019

Omeara
Secretary to the Governor

RE: Major Coastal Zone Management Permit No. CZJ-04-14 (W)

Dear Governor Bryan:

The members of the 33rd Legislature received extensive testimony on Major Coastal Zone Permit No. CZJ-04-14(W), the application for Summer's End Group, LLC to construct a marina and supporting facilities on the island of St. John on October 28, 2019. After an exhaustive review of all documentation submitted, it has been determined that the 33rd Legislature is presently unable to take action on this permit as it is considered defective. Accordingly, Major Coastal Zone Management Permit No. CZJ-04-14(W) and the accompanying documents are being returned to your office.

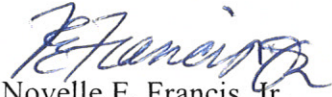
Pursuant to the Virgin Islands Coastal Zone Management Act, Virgin Islands Code, Title 12, section 911 (e), the Legislature may ratify the Governor's approval of only those coastal zone permits that have been duly approved by the appropriate Coastal Zone Management Committee. However, the permit transmitted to the Legislature was not approved by the St. John Committee of the Virgin Islands Coastal Zone Management Commission (the St. John Committee). Rather, on March 27, 2019, the permit was modified and issued unilaterally by the Chairman of the St. John Committee without a vote of approval or any other involvement of the St. John Committee. This lack of a vote invalidates the permit. Since this permit is considered invalid, it cannot be ratified by the Legislature and is therefore improperly before the Legislature.

Unfortunately, the defect cannot be resolved merely by submitting the original permit approved by the St. John Committee and the Governor in 2014. As the applicant's testimony and correspondence has disclosed, the project described and approved in 2014 is no longer the project the applicant intends to develop today. Neither the 2014 permit nor the 2019 permit truly reflects or conforms to the applicant's current proposal for the development of a marina. Consequently, Coastal Zone Management Permit No. CZJ-04-14 (W) authorizing a project that is different from the project that Summer's End actually intends to develop is not properly before the Legislature.

In short, the project as currently proposed by Summer's End Group, LLC cannot be developed under the Major Coastal Zone Management Permit No. CZJ-04-14 (W) and its accompanying plans, maps and drawings. It is the consensus of the Legislature that the marina project proposed by Summer's End Group, LLC has not been yet submitted for CZM review, thereby rendering this permit and all related processes invalid.

When a new, valid, consolidated land and water permit for the marina project is transmitted for the Legislature's ratification, I assure you that the Thirty-Third Legislature will act promptly.

Cordially,



Novelle E. Francis, Jr.
Senate President

cc: Commissioner Jean-Pierre Oriol
Department of Planning and Natural Resources

Attachments

**THIS CONSOLIDATION OF MAJOR COASTAL ZONE MANAGEMENT
PERMIT NO. CZJ-04-14(W) AND MAJOR LAND PERMIT CZJ-03-14(L) IS BEING
ISSUED PURSUANT TO AN ORDER BY THE BOARD OF LAND USE APPEALS IN
CASE 005-6/2014; 008/2014**

1. **AUTHORITY** This consolidation of Major Coastal Zone Management Permit No. CZJ-04-14(W) and Major Land Permit CZJ-03-14(L) (hereinafter collectively referred to as the "Original Permits") is being issued pursuant to an Order by the Board Of Land Use Appeals (hereinafter "BOLUA") in Case No. 005-6/2014; 008/2014 in accordance with Virgin Islands Code, Title 12, Section 914 and any other provisions of THE CZM Act. As herein, "Permitter" remains the original Permitter from the Original Permits, the **ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS COASTAL ZONE MANAGEMENT COMMISSION** and "Permittee" remains the original Permittee from the Original Permits, **THE SUMMER'S END GROUP, LLC**.

2. **CONSOLIDATED SCOPE**

(a) **MAJOR WATER PERMIT CZJ-04-14(W)** as approved by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014, (See Permit attached as *Exhibit I*); 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.

(c) **MAJOR LAND PERMIT CZJ-03-14(L)** as approved by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014 (See Permit attached as *Exhibit II*); 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

CONSOLIDATED Permit Nos. CZJ-04-14(W); CZJ-03-14(L)

By Order of BOLUA

The Summer's End Group

St. John, Virgin Islands

- 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.

3. **TERM** This Consolidated Permit is effective upon approval by the Governor of the Virgin Islands, and approval by the Legislature of the Virgin Islands of this Consolidated Permit which incorporates the Original Permits as signed by the Chairman of the St. John Committee of the Virgin Islands CZM Commission as ordered by the BOLUA. As used herein, the "Effective Date" or "the date hereof" means the date of such ratification as defined by the Virgin Islands Code. 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 I: MAJOR WATER PERMIT CZJ-04-14(W) including original exhibits attached:

- Exhibit A: CZM Permit Application dated June 7, 2012 and amended on March 21, 2014.
- Exhibit B: Site Plan and Drawings dated June 7, 2012 and amended on March 21, 2014.
- Exhibit C: Environmental Assessment Report dated June 7, 2012 and amended on March 21, 2014.
- Exhibit D: Water Quality Certificate dated October 16, 2014

Exhibit II: MAJOR LAND PERMIT CZJ-03-14(L) including original exhibits attached:

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

5. CONSOLIDATED GENERAL CONDITIONS

The following conditions, as approved in the Original Permits by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014 shall apply:

- 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 Permitter, same shall be sent to the Commissioner of the Department of Planning and Natural Resources, 4607 Tutu Park Mall, Charles W. Turnbull Regional Public Library Virgin Islands 00802, or to such other place as the Permitter may hereinafter designate. If addressed to the Permittee, same shall be sent to Chaliese 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. **CONSOLIDATED FEES- CZJ-04-14(W)**

The following fees, as approved in the Original Permits by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014 shall apply:

- 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

CONSOLIDATED Permit Nos. CZJ-04-14(W), CZJ-03-14(L)
By Order of BOLUA
The Summer's End Group
St. John, Virgin Islands

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 (5th) 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 month of the initial term (5th year), and as of the first month of each subsequent year, shall be the base price index and CPI as of the month immediately preceding the first of any year 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.

7. CONSOLIDATED SPECIAL CONDITIONS

The following special conditions, as approved in the Original Permits by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014 shall apply:

Special Conditions relating to Consolidated Scope (a) & (b) or original Permit - CZJ-04-14(W):

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.*

CONSOLIDATED Permit Nos. CZJ-04-14(W); CZJ-03-14(L)
By Order of BOLUA
The Summer's End Group
St. John, Virgin Islands

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.

Special Conditions relating to Consolidated Scope (a) & (b) or original Permit - CZJ-03-14(L):

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) two (2) days prior to the commencement of development activities.

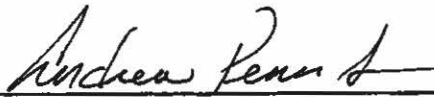
CONSOLIDATED Permit Nos. CZJ-04-14(W); CZJ-03-14(L)
By Order of BOLLUA
The Summer's End Group
St. John, Virgin Islands

3. All erosion and sedimentation measures shall be installed prior to the start of construction and fully maintained during all construction activities on the site until completion of this project.
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. This permit does not allow any work within territorial waters.
6. Debris located along the shoreline of the project site must be removed during and upon completion of the project.
7. Construction activities associated with this permit is limited to the hours between 7:00 am to 5:00 pm daily except that on Sundays, construction activities are not permitted.
8. 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.
9. To reduce vehicular traffic at the project site, and the area required for employee parking during construction, the Permittee shall provide offsite shuttle services for construction workers.

CONSOLIDATED Permit Nos. CZJ-04-14(W); CZJ-03-14(L)
By Order of BOLUA
The Summer's End Group
St. John, Virgin Islands

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
Original Permittor, as ordered by the Board of Land Use Appeals



Andrew Penn, Sr.
Chairman

12/16/2019
Date

THE SUMMER'S END GROUP, LLC
Permittee



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

12/17/2019
Date

CONSOLIDATED Permit Nos. CZJ-04-14(W); CZJ-03-14(L)
By Order of BOLUA
The Summer's End Group
St. John, Virgin Islands

APPROVED
Governor of the Virgin Islands



The Honorable Albert Bryan Jr.
Governor

12-18-19

Date

RATIFIED
Legislature of the Virgin Islands

The Honorable
President, 33rd 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.



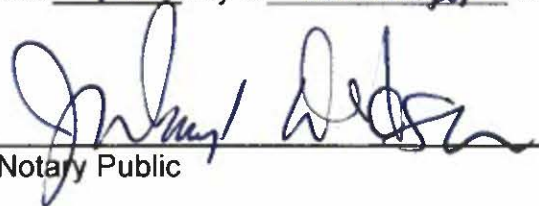
Chaliese Summers
Managing Member

12/17/19

Date

SWORN AND SUBSCRIBED before me

this 17 day of December 2019



Notary Public



J. DARYL DODSON
Notary Public
St. Thomas/St. John, U.S. Virgin Islands
LNP-51-19
My Commission Expires January 16, 2023



THE UNITED STATES VIRGIN ISLANDS
OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE
Charlotte Amalie, V.I. 00802
340-774-0001

December 18, 2019

Ms. Chaliene Summers
Managing Member
The Summer's End Group, LLC
5000 Estate Enighed, PMB 63
St. Thomas, VI 00802

**MODIFICATION of Consolidated Major Coastal Zone Management Permit
Nos. CZJ-04-14(W) & CZJ-03-14(L); The Summers End Group, LLC**

Dear Ms. Summers:

By letter dated December 3, 2019 you requested a modification of the Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) & CZJ-03-14(L) for The Summers End Group, LLC ("Permittee"). After review of the request by The Summers End Group LLC, I find that the requested modifications is in the public interest, that it is necessary to prevent significant environmental damage to coastal zone resources, and to protect the general welfare by minimizing the impact to the environment as follows:

- Virtually eliminate the current common practice of noncompliant boaters dumping their untreated wastewater and solid waste into the waters of the harbor. This will be accomplished through the St. John Marina providing both dockside and remote wastewater pumpout.
- The utilization of improved water quality with EPA approved fueling.
- Funding of a grant by the marina for the employment of a full-time DPNR enforcement officer for St. John to ensure compliance by boaters of regulations specifically designed to protect public health.
- Coordination through the Federal Emergency Management Administration (FEMA) for the receipt of emergency supplies and evacuation of injured, infirmed or elderly during natural disasters like hurricanes and earthquakes that cut off Coral Bay from Coral Bay.

The following modifications were requested by the Permittee:

- Consolidation of the Development – As originally proposed the development would have occurred in two phases. The second phase included conditional development (such as a potential 2nd restaurant) and would have extended the period of construction. By consolidation, any uncertainty as to the scope of the development is removed, and the overall period of construction is reduced. The consolidation of the development both reduces the total impacts and the time period in which such impacts will occur. Subsections 903(1), (2), (3), (4) (5) & (10).
- Removal of Parcels 13A & 13B: the options on these parcels expired due to the length of time it has taken to receive permitting. It was determined by the Permittee that it was not economically feasible to retain these parcels without permitting in place. Consequently, the first restaurant, which was on that parcel, is no longer part of the project; however, the second restaurant is now a committed part of the project with the consolidation of the development into a single phase. With the removal of these parcels, additional cisterns have been located on Parcel 13 Remainder West, to maintain the necessary water supply. This is a reduction in project impacts. Comprehensively, the removal of the restaurant and two apartments on 13A is a reduction overall in the size of the project and constitutes a significant reduction in parking requirements. The generator previously located on Parcel 13A has been relocated to the Fish and Farmer’s Market to be located on Parcel 10-41, of which the net effect is neutral. Subsections 903(2), (4) (9) & (10).
- Reduction of parking spaces from 120 to 110 is a result of the removal of Parcels 13A and 13B, and the overall reduction in the number of buildings within the project. The reduction in parking spaces reduces the amount of impermeable surface and will reduce the amount of runoff. Subsections 903(1), (5), (8), (9) & (10).
- Reduction of the Marina by one slip reduce the amount of seafloor that is disturbed. Removal of the one mega-yacht slip will reduce long-term effects from shading and decrease the total amount of space that the marina occupies. It also preserves any potential historical resources in the area. Subsections 903(1), (2), (3), (5), (7), (8), (9) & (10).
- Consolidation of Parcels 10-17 and 10-18 is a reflection of the ownership of those parcels. The effect of this change is net neutral. Subsections 903(2), (3), (4), (9) & (10).
- The inclusion of a community boardwalk referenced in on-going Federal permitting process.

Accordingly, pursuant to the authority granted to me by Title 12, Section 911, Subsection (g) of the Virgin Islands Code, the Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) & CZJ-03-14(L) for The Summers End Group, LLC. is modified as follows:

Removal of Parcels 13A & 13B
Reduction of Parking Spaces from 120 to 110 Reduction of Impact
Removal 56 Seat Restaurant
Reduce Marina Slips from 145 to 144
Inclusion of Shoreline Boardwalk
Consolidation of Parcels 10-17 and 10-18
Completion of land development in a single phase.

I find that with the above listed modifications to the Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) & CZJ-03-14(L) for The Summers End Group, LLC both protects our environment, but also allows critical economic development.

APPROVED

Governor of the Virgin Islands



The Honorable, Albert Bryan Jr.
Governor

12-18-19

Date

RATIFIED

Legislature of the Virgin Islands

The Honorable
President, 33rd Legislature

Date



Office of the Senate
President DEC 18 RECD, 2019
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THE UNITED STATES VIRGIN ISLANDS
OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE
Charlotte Amalie, V.I. 00802
340-774-0001

December 18, 2019

VIA MESSENGER

The Honorable Novelle E. Francis
President
Thirty-Third Legislature of the Virgin Islands
Capitol Building
St. Thomas, VI 00802

RE: Consolidated Major Coastal Zone Management Permit No. CZJ-04-14(W) & CZJ-03-14(L) & B Modification; Summers End Group

Dear Senate President Francis:

Transmitted herewith in accordance with the provisions of Title 12, Section 911, Subsection (e) of the Virgin Islands Code is the Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) & CZJ-03-14(L) ("the Permits") as approved by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014, and consolidated by Order of the Board of Land Use Appeal on June 6, 2016 (hereinafter "Consolidated Permit") and the Modification of the Consolidated Permit approved by me pursuant to Title 12, Section 911, Subsection (g) of the Virgin Islands Code (hereinafter the "Modification"). It is my opinion that as modified this permit both protects our environment and also allows critical economic development to occur in St. John where there is no marina. This administration strongly supports this project, which offers both economic growth opportunities for the Virgin Islands and an increased significance in the charter boat business.

As you are aware, this permit was originally approved by the St. John CZM Committee in 2014 as two separate, albeit jointly processed, permits. Those permits were appealed to the Board of Land Use Appeals, which ordered in 2016 that the permits be consolidated. That consolidation of the Permits has been effected by the attached Order of the Coastal Zone Commission ("Consolidated Permits"). The legal role of the Legislature is the ratification of the Water Permit and the Submerged Lands lease; however, with the consolidation of the Permits, we are presenting you with the administratively Consolidated Permits for further action.

We recognize that the Senate had numerous questions about the issues and changes which

have occurred with this project in the 62 months since those permits were approved. Based on the issues and concerns discussed at the Legislative hearing and pursuant to Title 12 V.I.C. Section 911(g), I have taken the opportunity to modify the permit to reflect the changes needed and address the concerns of the Legislature and community as a whole.

Despite the more than five years since this project received approval from the CZM Committee, the project’s proponents and developers have both held together the majority of the properties and secured sufficient financing to move this project forward rapidly, if it is ratified now. However, the intervening years have caused the project to remove two, non-shoreline properties not essential for the marina, that became too expensive to retain without the final permits. The removal of the two properties, Parcels 13A and 13B is actually a reduction of project impacts.

All of these changes fall within the category of minor amendments, as they are either reductions in impact, or the provision of additional benefits to the public and the environment.

The changes contained in the consolidated permit are:

1. Consolidation of the Development Process From Two Stages to a Single Stage	Reduction of Impact
2. Removal of Parcels 13A & 13B	Reduction of Impact
3. Removal 56 Seat Restaurant ¹	Reduction of Impact
4. Reduction of Parking Spaces from 120 to 110	Reduction of Impact
5. Reduce Marina Slips from 145 to 144	Reduction of Impact
6. Consolidation of Parcels 10-17 and 10-18	No Impact
7. Inclusion of Shoreline Boardwalk	Community Benefit Funded by Developer

In support of these changes, attached are:

- 2017 August Final Civil Drawings (21 pages)
- 2018-09-21 Community Boardwalk (Artist Rendering, 1 page)
- 2019 Dock Plans Final – 4895 A Layout 13 (13 pages)
- Parcel 10-17 and Parcel 10-18 Consolidated (Now “Consolidated Parcel 10-17”; 1 page)
- St. John Marina At-A-Glance (2 pages)
- YCSE – Marina – Map (1 page)

The St. John Marina improves public health in part by providing both solid and wastewater collection, proper fueling using EPA approved methodology, and coordination with FEMA to provide receipt of emergency supplies and evacuation from Coral Bay in the event of natural disasters like hurricane and earthquake.

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

The St. John Marina is critical to the restoration and health of Coral Harbor. In coordination with DPNR, the St. John Marina will significantly improve the water quality by organization, enforcement, and management of all boating activities in the harbor as well as the restoration and maintenance of 50 watershed projects that will significantly reduce the sediment run off into Coral Harbor.

Safety is improved through the development of the proposed marina in part by the construction of sidewalks and raised crosswalks. Additional safety benefits include a clearly marked navigational channel, signage protecting boaters from reefs, a Hurricane Preparedness Plan, 24 hour electronic and manned security, and free dockage to enforcement agencies including DPNR, Coast Guard, ICE, EPA, ATF and others.

The general welfare of both residents and visitors significantly improves through an improved economy by creating 362 jobs territory wide, 80+ long-term FTE jobs in Coral Bay, \$34 Million spent locally on construction and development, initial economic impact of \$45.8 Million and total labor income of \$29.8 Million.

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

The Legislature' expedited and favorable consideration of the Consolidated Major Coastal Zone Management Permit No. CZJ-04-14(W) & CZJ-03-14(L) and Modification for Summers End Group is urged. As always, I thank you for all that you do for our fellow Virgin Islanders.

Sincerely,



Albert Bryan Jr.
Governor

Enclosures
cc: Honorable Senators of the Thirty-Third Legislature

ACT NO. 8407

BILL NO. 33-0428

THIRTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2020

An Act ratifying the Major Coastal Zone Permits titled The Consolidation of Major Coastal L Zone Management Permit NO. CZJ-04-14(W) AND MAJOR LAND PERMIT CZJ-03-14(L) and the Letter from Governor Albert Bryan, Jr, to Ms. Chaliese Summers, Managing Member, The Summer's End Group titled Modification of Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) & CZJ-03-14(L); The Summers End Group, LLC, dated December 18, 2020

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Be it enacted by the Legislature of the Virgin Islands:


SECTION 1. Pursuant to 12 V.I.C. § 911 (e), the Legislature of the Virgin Islands ratifies the Governor's approval of the Consolidation of Major Coastal Zone Permit No. CZJ-04-14 (W) and the Letter to Ms. Chaliese Summers, Managing Member of the Summer's End Group, LLC titled Modification of Consolidated Major Coastal Zone Management Permit CZJ-04-14 (W) and CZJ-03-14 (L), for the operation of a marina in Coral Bay, St. John.

Thus passed by the Legislature of the Virgin Islands on December 11, 2020.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 21st day of December, A.D., 2020.




Novelle E. Francis, Jr.
President


Alicia V. Barnes
Legislative Secretary



Bill No. 33-0428 is hereby approved.

Witness my hand and the seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, this 31st day of December, 2020 A.D.

A handwritten signature in blue ink, appearing to read "Albert Bryan, Jr.", with a stylized flourish extending to the right.

**Albert Bryan, Jr.
Governor**



**THE UNITED STATES VIRGIN ISLANDS
OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE
Charlotte Amalie, V.I. 00802
340-774-0001**

December 18, 2019

Ms. Chaliene Summers
Managing Member
The Summer's End Goup, LLC
5000 Estate Enighed, PMB 63
St. Thomas, VI 00802

**MODIFICATION of Consolidated Major Coastal Zone Management Permit
Nos. CZJ-04-14(W) & CZJ-03-14(L); The Summers End Group, LLC**

Dear Ms. Summers:

By letter dated December 3, 2019 you requested a modification of the Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) & CZJ-03-14(L) for The Summers End Group, LLC ("Permittee"). After review of the request by The Summers End Group LLC, I find that the requested modifications is in the public interest, that it is necessary to prevent significant environmental damage to coastal zone resources, and to protect the general welfare by minimizing the impact to the environment as follows:

- Virtually eliminate the current common practice of noncompliant boaters dumping their untreated wastewater and solid waste into the waters of the harbor. This will be accomplished through the St. John Marina providing both dockside and remote wastewater pumpout.
- The utilization of improved water quality with EPA approved fueling.
- Funding of a grant by the marina for the employment of a full-time DPNR enforcement officer for St. John to ensure compliance by boaters of regulations specifically designed to protect public health.
- Coordination through the Federal Emergency Management Administration (FEMA) for the receipt of emergency supplies and evacuation of injured, infirmed or elderly during natural disasters like hurricanes and earthquakes that cut off Coral Bay from Coral Bay.

The following modifications were requested by the Permittee:

COPY

- Consolidation of the Development – As originally proposed the development would have occurred in two phases. The second phase included conditional development (such as a potential 2nd restaurant) and would have extended the period of construction. By consolidation, any uncertainty as to the scope of the development is removed, and the overall period of construction is reduced. The consolidation of the development both reduces the total impacts and the time period in which such impacts will occur. Subsections 903(1), (2), (3), (4) (5) & (10).
- Removal of Parcels 13A & 13B: the options on these parcels expired due to the length of time it has taken to receive permitting. It was determined by the Permittee that it was not economically feasible to retain these parcels without permitting in place. Consequently, the first restaurant, which was on that parcel, is no longer part of the project; however, the second restaurant is now a committed part of the project with the consolidation of the development into a single phase. With the removal of these parcels, additional cisterns have been located on Parcel 13 Remainder West, to maintain the necessary water supply. This is a reduction in project impacts. Comprehensively, the removal of the restaurant and two apartments on 13A is a reduction overall in the size of the project and constitutes a significant reduction in parking requirements. The generator previously located on Parcel 13A has been relocated to the Fish and Farmer’s Market to be located on Parcel 10-41, of which the net effect is neutral. Subsections 903(2), (4) (9) & (10).
- Reduction of parking spaces from 120 to 110 is a result of the removal of Parcels 13A and 13B, and the overall reduction in the number of buildings within the project. The reduction in parking spaces reduces the amount of impermeable surface and will reduce the amount of runoff. Subsections 903(1), (5), (8), (9) & (10).
- Reduction of the Marina by one slip reduce the amount of seafloor that is disturbed. Removal of the one mega-yacht slip will reduce long-term effects from shading and decrease the total amount of space that the marina occupies. It also preserves any potential historical resources in the area. Subsections 903(1), (2), (3), (5), (7), (8), (9) & (10).
- Consolidation of Parcels 10-17 and 10-18 is a reflection of the ownership of those parcels. The effect of this change is net neutral. Subsections 903(2), (3), (4), (9) & (10).
- The inclusion of a community boardwalk referenced in on-going Federal permitting process.

Accordingly, pursuant to the authority granted to me by Title 12, Section 911, Subsection (g) of the Virgin Islands Code, the Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) & CZJ-03-14(L) for The Summers End Group, LLC. is modified as follows:

- Removal of Parcels 13A & 13B
- Reduction of Parking Spaces from 120 to 110 Reduction of Impact
- Removal 56 Seat Restaurant
- Reduce Marina Slips from 145 to 144
- Inclusion of Shoreline Boardwalk
- Consolidation of Parcels 10-17 and 10-18
- Completion of land development in a single phase.

I find that with the above listed modifications to the Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) & CZJ-03-14(L) for The Summers End Group, LLC both protects our environment, but also allows critical economic development.

APPROVED
Governor of the Virgin Islands



The Honorable, Albert Bryan Jr.
Governor

12-18-19

Date

RATIFIED
Legislature of the Virgin Islands



The Honorable
President, 33rd Legislature

12-11-2020

Date

THIS CONSOLIDATION OF MAJOR COASTAL ZONE MANAGEMENT PERMIT NO. CZJ-04-14(W) AND MAJOR LAND PERMIT CZJ-03-14(L) IS BEING ISSUED PURSUANT TO AN ORDER BY THE BOARD OF LAND USE APPEALS IN CASE 005-6/2014; 008/2014

1. **AUTHORITY** This consolidation of Major Coastal Zone Management Permit No. CZJ-04-14(W) and Major Land Permit CZJ-03-14(L) (hereinafter collectively referred to as the "Original Permits") is being issued pursuant to an Order by the Board Of Land Use Appeals (hereinafter "BOLUA") in Case No. 005-6/2014; 008/2014 in accordance with Virgin Islands Code, Title 12, Section 914 and any other provisions of THE CZM Act. As herein, "Permitter" remains the original Permitter from the Original Permits, the **ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS COASTAL ZONE MANAGEMENT COMMISSION** and "Permittee" remains the original Permittee from the Original Permits, **THE SUMMER'S END GROUP, LLC**.

2. **CONSOLIDATED SCOPE**
 - (a) **MAJOR WATER PERMIT CZJ-04-14(W)** as approved by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014, (See Permit attached as *Exhibit I*); 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.

 - (c) **MAJOR LAND PERMIT CZJ-03-14(L)** as approved by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014 (See Permit attached as *Exhibit II*); 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

CONSOLIDATED Permit Nos. CZJ-04-14(W), CZJ-03-14(L),

By Order of BOLUA

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- 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.

3. **TERM** This Consolidated Permit is effective upon approval by the Governor of the Virgin Islands, and approval by the Legislature of the Virgin Islands of this Consolidated Permit which incorporates the Original Permits as signed by the Chairman of the St. John Committee of the Virgin Islands CZM Commission as ordered by the BOLUA. As used herein, the "Effective Date" or "the date hereof" means the date of such ratification as defined by the Virgin Islands Code. 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 I: MAJOR WATER PERMIT CZJ-04-14(W) including original exhibits attached:

- Exhibit A: CZM Permit Application dated June 7, 2012 and amended on March 21, 2014.
- Exhibit B: Site Plan and Drawings dated June 7, 2012 and amended on March 21, 2014.
- Exhibit C: Environmental Assessment Report dated June 7, 2012 and amended on March 21, 2014.
- Exhibit D: Water Quality Certificate dated October 16, 2014

Exhibit II: MAJOR LAND PERMIT CZJ-03-14(L) including original exhibits attached:

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

5. CONSOLIDATED GENERAL CONDITIONS

The following conditions, as approved in the Original Permits by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014 shall apply:

- 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 Permitter, same shall be sent to the Commissioner of the Department of Planning and Natural Resources, 4607 Tutu Park Mall, Charles W. Turnbull Regional Public Library Virgin Islands 00802, or to such other place as the Permitter may hereinafter designate. If addressed to the Permittee, same shall be sent to Chalièse 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. **CONSOLIDATED FEES- CZJ-04-14(W)**

The following fees, as approved in the Original Permits by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014 shall apply:

- 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 (5th) 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 month of the initial term (5th year), and as of the first month of each subsequent year, shall be the base price index and CPI as of the month immediately preceding the first of any year 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.

7. CONSOLIDATED SPECIAL CONDITIONS

The following special conditions, as approved in the Original Permits by the St. John Committee of the Virgin Islands Coastal Zone Management (CZM) Commission on October 24, 2014 shall apply:

Special Conditions relating to Consolidated Scope (a) & (b) or original Permit - CZJ-04-14(W):

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.*

CONSOLIDATED Permit Nos. CZJ-04-14(W), CZJ-03-14(L)

By Order of BOLUA

The Summer's End Group

St. John, Virgin Islands

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.

Special Conditions relating to Consolidated Scope (a) & (b) or original Permit - CZJ-03-14(L):

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) two (2) days prior to the commencement of development activities.

CONSOLIDATED Permit Nos. CZJ-04-14(W); CZJ-03-14(L)

By Order of BOLL 1

The Summer s End Group


St. John, Virgin Islands

- 3. All erosion and sedimentation measures shall be installed prior to the start of construction and fully maintained during all construction activities on the site until completion of this project.*
- 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. This permit does not allow any work within territorial waters.*
- 6. Debris located along the shoreline of the project site must be removed during and upon completion of the project.*
- 7. Construction activities associated with this permit is limited to the hours between 7:00 am to 5:00 pm daily except that on Sundays, construction activities are not permitted.*
- 8. 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.*
- 9. To reduce vehicular traffic at the project site, and the area required for employee parking during construction, the Permittee shall provide offsite shuttle services for construction workers*

CONSOLIDATED Permit Nos. CZJ-04-14(W); CZJ-03-14(L)
By Order of BOLUA
The Summer's End Group
St. John, Virgin Islands

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
Original Permittor, as ordered by the Board of Land Use Appeals



Andrew Penn, Sr.
Chairman

12/16/2019
Date

THE SUMMER'S END GROUP, LLC
Permittee



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

12/17/2019
Date

CONSOLIDATED Permit Nos. CZJ-04-14(W), CZJ-03-14(L)
By Order of BOLLU
The Summer's End Group
St. John, Virgin Islands

APPROVED
Governor of the Virgin Islands



The Honorable Albert Bryan Jr.
Governor

12-18-19

Date

RATIFIED
Legislature of the Virgin Islands



The Honorable
President, 33rd Legislature

Date

12/11/2020

I, Chaliase 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.

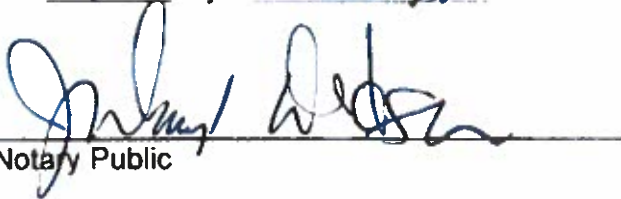


Chaliase Summers
Managing Member

12/17/19
Date

SWORN AND SUBSCRIBED before me

this 17 day of December 2019



Notary Public

J. DARYL DODSON
Notary Public
St. Thomas/St. John, U.S. Virgin Islands
LNP-51-19
My Commission Expires January 16, 2023