

David L Silverman
9901 Emmaus, St John, VI 00830
DLSILVERMAN@YAHOO.COM

The Honorable President Novelle E. Francis, Jr.
Members of the 33rd Legislature of the Virgin Islands
Legislature of the Virgin Islands
Capitol Building, Charlotte Amalie
P.O. Box 1690, St Thomas, VI 00804

July 6, 2020

re: **CZM Permitting Documents for the Summers End Group LLC**

Dear President Francis and Members of the 33rd Legislature,

I am writing to you today in my capacity as a duly appointed member of the St John Coastal Zone Management Commission, a position I have held since my appointment in October 2018.

It is my understanding that the Committee of the Whole will be meeting on July 7, 2020, to discuss ratification of certain documents relating to the Summers End Group LLC marina project in Coral Bay, St John. And although I have never received these documents in my official capacity as a member of the CZM Commission, it is my understanding that the Legislature is being asked to ratify two documents: a “consolidated land and water permit” and a “letter of permit modification”.

The first of these documents – the “consolidated land and water permit” – has never been reviewed or approved by the St John CZM Committee, and in fact has never even been shown to the Committee. The applicant is apparently claiming that this is **not a permit**, per se, and therefore did not need to be approved by the CZM Committee. However there is a major legal flaw in that argument: if, as the applicant claims, this is not a “permit” then it cannot be ratified by the Legislature. The Legislature may **only** ratify major permits which have been approved by the CZM Committee (“Any coastal zone permit which the appropriate Committee of the Commission recommends for approval pursuant to this section ... must be ratified by the Legislature of the United States Virgin Islands.” 12 VIC 911(e)).

On the other hand, if this document **is a permit**, then it suffers from the fact that it has never been approved. It was not approved by the St John CZM Committee. And to the best of my knowledge it has never been seen or approved by the Board of Land Use Appeals, so BLUA could not have approved it. In short, it has not been approved by any agency authorized to do so.

There is no way out of this conundrum. If it is a permit then it must have been approved, which has not happened. If it is not a permit, then it cannot be ratified by the Legislature. Obviously the correct way to have addressed this was for the applicant to submit a Consolidated Land and Water CZM Permit for approval by the St John CZM Committee, but this has not happened.

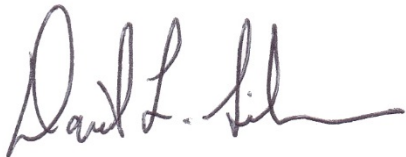
David L Silverman
9901 Emmaus, St John, VI 00830
DLSILVERMAN@YAHOO.COM

The second document, a letter from Governor Albert Bryan to Ms. Chaliene Summers purporting to modify terms of the consolidated permit, suffers from even greater legal problems. Put simply, there is no statute or regulation which allows the Governor to unilaterally modify CZM permits which have not yet been approved. The sole authority that the Governor has to modify a CZM permit is to for emergency enforcement when actions being taken by a developer under an approved permit are causing environmental harm and risks to public health and safety. This clearly is not applicable under the current circumstances.

Furthermore, modification of CZM permits is a process that is fully described in the Rules and Regulations applicable to the CZM Act. Modification requires an application to DPNR and subsequent review and approval by the Commissioner or the Commission, depending on the scope and nature of the modification. The applicant in this case could have done that six months ago when requested to do so by the Legislature, but chose not to.

I respectfully submit to you, the President and Senators of the 33rd Legislature of the Virgin Islands, that the action you are being asked to take on these documents is not consistent with the Virgin Islands Coastal Zone Management Act and its associated Rules and Regulations. I urge you to take this to heart when you consider the appropriate next steps for this project.

With kind regards,

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

David Silverman, Coral Bay, St John
Member, St John Committee of the Virgin islands Coastal Zone Management Commission

cc: Senators of the 33rd Legislature, Attorney Yvonne Tharpes

Attachment: **Legal Problems with CZM Documents for Coral Bay Marina**

LEGAL PROBLEMS WITH THE CZM DOCUMENTS FOR THE CORAL BAY MARINA

The "Consolidated CZM Land and Water Permit"

- 1) **The "Consolidated Land and Water Permit" has never been reviewed by or approved by the St John CZM Committee.** The St John CZM Committee has never approved a Consolidated Land and Water Permit for this project. The signature of the Chairman of the St John CZM Committee does not indicate that the Committee was ever provided an opportunity to review the document.
- 2) To the best of my knowledge, the "Consolidated Land and Water Permit" has never been seen by or approved by the Board of Land Use Appeals. **The BLUA order that the two permits "be consolidated" was an explicit order to consolidate the permits according to the VI code, which has not been done.**
- 3) Summers End ("SEG") may claim that this document is not a "permit" and so it doesn't need any approval, however **if it is not a permit then it cannot be ratified by the Legislature.** The Legislature can ONLY ratify approved permits.
- 4) If, on the other hand, it is a permit, then it **needs to be approved by the CZM Committee before it can be ratified by the Legislature**, which has not happened. This "consolidated document" was prepared by SEG with the assistance of DPNR. It has never been reviewed or approved by anyone authorized to approve major CZM permits.
- 5) The "consolidated permit" has the **exact same defects as were identified in the prior Committee of the Whole meeting on this project**, namely:
 - a) The permit allows construction on private land which is not under the control of SEG (Parcel 13A Carolina, Parcel 13B Carolina).
 - b) The permit allows construction on a parcel which is currently in litigation, the land owner stating that SEG has no authority to use their property (Parcel 13 Remainder Carolina).
 - c) The permit allows construction on two parcels (10-17 and 10-18 Carolina) which were assigned to SEG through a lease signed by a cognitively impaired St Johnian elder without the consent of her adult children.
 - d) The permit has an ILLEGAL Trust Land Occupancy Fee which is based on a mangrove wetland parcel not in the project. This blatant violation of the CZM Rules and Regulations results in an illegal \$7 million discount to the private developers over the 20 year term of the lease.
 - e) The permit is based on fundamentally flawed application documents, in which Chaliiese Summers swore she had the "irrevocable authority" from all of the land owners to complete the development on their property. This was untrue, she never had the

authority of property owners. Furthermore, the CZM Regulations require the signature of land owners on the CZM application when the applicant is not the property owner. This signature line was blank – not a single one of the owners of the seven parcels signed the application agreeing to allow SEG to develop on their property.

f) The consolidated permit describes aspects of the project which cannot be executed, such as a 75 position public mooring field, because SEG has no authority to perform that construction.

6) **The two documents - the "consolidated permit" and the "letter of modification" - have been appealed to BLUA.** If BLUA denies the appeal (which is likely) then they will be immediately contested in VI Superior Court where they will most likely be declared illegal. The BLUA appeal is only necessary to “exhaust administrative remedies” before going to court.

7) The BLUA appeal, by statute, stays the action of any CZM permit. **The Legislature cannot act on a CZM permit which is under appeal to BLUA.**

The Governor’s “Permit Modification Letter”

8) The "Letter of Modification" from the Governor cites a **statute (911(g)) in the CZM code** as his authority to modify CZM permits. However that statute SOLELY applies to modifying approved permits to prevent damage to the environment and to protect the public welfare. **It is an emergency enforcement provision and is totally NOT APPLICABLE in this situation.**

9) **The "permit modification" document, signed by the Governor, describes project features which have NEVER been seen or reviewed by the St John CZM Committee.** In fact, it includes features which have never been reviewed or approved by ANY Virgin Islands authority. These include

- a) **elimination of most of the storm water detention pond**, which was intended to improve water quality in the harbor, and
- b) **reduction of the design strength of the marina structure** to a maximum wind speed of 96mph, and
- c) **construction of a boardwalk in a coastal hazard zone**, and
- d) **elimination of all actual environmental mitigation** for loss of sea grass meadows.

Procedural Issues

10) Procedurally, scheduling this hearing without contacting any of the affected property owners is very problematical. Conducting the hearing at a time and in a manner which makes it impossible for public participation is also troubling. The public is effectively being “shut out” from participating in this hearing because there has been no public notice.