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October 7, 2021

Governor Albert Bryan, Jr.  
Lieutenant Governor Tregenza Roach  
Members of the 33<sup>rd</sup> and 34<sup>th</sup> Legislature  
Government House, St Thomas  
Virgin Islands Legislature, St Thomas  
(via email)

Subject: **Summers End Group Marina – Status of Army Corps Permit**

Dear Governor Bryan, Lt. Governor Roach and Members of the 33<sup>rd</sup> and 34<sup>th</sup> Legislature,

On December 11, 2020, the 33<sup>rd</sup> Legislature approved Act 8407, thereby ratifying a Coastal Zone Management permit for the Summers End Group LLC, and an associated Trust Land agreement providing a 20-year grant for occupancy of 28.5 acres of Coral Bay Harbor. These actions were taken in furtherance of Summers End stated intention to construct a mega yacht marina in Coral Bay, St John.

The Legislature's approval followed a full-day Committee of the Whole meeting on July 7, 2020, in which extensive testimony was provided by members and representatives of the Summers End Group LLC. Included among the testifiers on behalf of Summers End were Ms. Chaliase Summers, Attorney Katherine English and Attorney David Cattie.

Through their spoken and written testimony to the Legislature, the Summers End Group attempted to convince the body that the ratification by the Legislature was the last step required in order for SEG to receive permit approval from the United States Army Corps of Engineers, and that the Corp's issuance of the permit was imminent.

Specifically, Attorney Katherine English, in her written testimony, stated "The Project is on track with its Federal Permit application. If the Legislature acts swiftly to complete the approval of the submerged land lease, we have every expectation that **the federal permitting process will be completed expeditiously**, permitting this Project to move forward with investment and job creation."

Ms. Chaliase Summers testified that the Legislature's ratification of the submerged land lease was the **last remaining obstacle** to the approval of the Summers End Group permit by the Army Corps of Engineers.

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Attorney David Cattie, representing Summers End, wrote in his testimony: “If this Legislature votes positively on the CZM Permit and the Submerged Land Lease as proposed, **the US Army Corps of Engineers permit will soon follow.**”

At the time these statements and representations were made to the 33<sup>rd</sup> Legislature, in July 2020, the Summers End Group was in receipt of an extensive list of deficiencies that the Army Corps had provided years earlier and had determined needed resolution prior to any permit decision from the Corps. The principals and advisors for the Summers End Group were all aware of this, but rather than provide the Legislature with that information, they chose to mislead the Legislature. In a word, the Summers End Group knowingly misrepresented the status of their project to the Legislature on July 7, 2020.

How do we know this to be the case? The Legislature acted on the request of Summers End and ratified the CZM permit and submerged land agreement in the lame duck session of the 33<sup>rd</sup> Legislature on December 11, 2020. Act 8407 was transmitted to Governor Albert Bryan Jr. who signed it into law on December 31, 2020. However rather than seeing an Army Corps permit “soon follow” (in the words of Attorney Cattie) and rather than seeing a federal permitting process that was “completed expeditiously” (in the words of Attorney English) almost a year has now transpired without ANY positive action on the part of the Army Corps of Engineers.

In fact, to the contrary, on September 13, 2021, more than a year following the Committee of the Whole meeting, the reviewing officer within the Army Corps of Engineers transmitted an extensive list of serious deficiencies in the Summers End Group permit application to Ms. Chaliase Summers and indicated that the permit would be denied unless all of the issues were addressed. These deficiencies included virtually all of the previously noted problems, together with new issues that had appeared over the years.

The Army Corps letter (attached) reiterates the concerns of multiple federal agencies – the EPA, the National Park Service, the Habitat Conservation Division of NOAA, and the Protected Resource Division of NOAA, all of whom either recommended outright denial of the permit or extensive mitigation efforts to balance the adverse impacts on protected resources. The letter stated explicitly that the objections of those federal agencies had not been addressed by Summers End.

The letter not only identifies deficient responses, but further identifies non-responses by Summers End to multiple prior requests by the Army Corps for additional information and studies. The letter also identifies errors and inconsistencies in Summers End prior responses, leading the Corps to conclude that some of the submitted studies were unreliable and therefore not responsive to explicit requests. Finally, the letter identifies multiple public

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interest concerns expressed in community letters to the Corps, including impacts on the human environment, on esthetics, and on cultural values.

Significantly, in addition the letter identifies a new concern with a recently discovered early 18<sup>th</sup> century shipwreck within the trust lands allocated for SEG occupancy. The Corps is now requiring extensive additional investigation throughout the entire proposed marina site to determine the presence, significance, and impacts on federally protected historic resources, pursuant to Section 106 of the National Historic Preservation Act. That process is detailed, involved and time consuming.

In short, the 20-page letter from the Army Corps is the exact opposite of a letter indicating “imminent approval” by the Corps. The letter concludes with the following statement:

“Please provide the requested information for the Corps to continue processing the application. Please notify the Corps if you will need additional time to provide the information. If the Corps does not receive a response, we will assume you have no further interest in obtaining a Department of the Army permit and the Corps will either withdraw your permit application or proceed with a permit decision which may not be favorable. Such action will constitute final action by the Department of the Army.”

The current status of the Summers End Group permit application with the Army Corps is the culmination of many years of inaction, nonresponse, and inadequate attention being paid to the multiple requests for comprehensive studies by the Corps and other agencies. Indeed, this isn't the first time that the Legislature has been notified of the actual status of Summers End's Army Corps permit approach. In August 2019, prior to the first Committee of the Whole hearing on the Summers End Group CZM permit, Attorney Robb Fox, representing a group of Coral Bay residents, wrote to the Legislature and succinctly outlined the status at that time. His letter (attached), concluded as follows:

“As the above timeline of events demonstrates, SEG has grossly misrepresented the status of the Application. Nothing is imminent and for SEG to characterize it as such after five years of its own delays and failure to respond to public and agency comments is egregious. Moreover, the express, repeated written statements by the Corps reveal that the Corps has identified significant flaws in the Proposed Project that would lead to denial of the Application. These statements include the Corps' preliminary finding that the Proposed Project is not in the Public Interest and its statements to NOAA that the Proposed Project will likely affect threatened species, critical habitat, seagrass and coral. Indeed, based on the current administrative record, we would certainly challenge any issuance of a permit for the Proposed Project as being arbitrary and capricious.

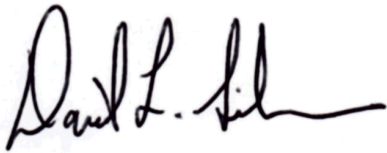
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For all of these reasons, we respectfully request that the Virgin Islands Legislature not act on the CZM permit until the issues with that permit have been resolved and the Corps is in fact, not as SEG falsely claims, ready to issue its own permitting decision.” [Letter from Attorney Robb Fox to Members of the 33<sup>rd</sup> Legislature, August 27, 2019.]

The Legislature, and the Governor, acted on information provided by the Summers End Group and their advisors that was knowingly false and has been proven, yet again, to be so. No decision of the Legislature or of the Governor should be based on that misleading record.

Coral Bay now finds itself in the unenviable position of having to look at hurricane ravaged derelict buildings on property controlled by the Summers End Group. Coral Bay is saddled with a 20-year agreement over more than half the navigable waters of Coral Harbor to an entity which is unlikely to ever be able to use those waters. While actual development is stymied, while property owners cannot use their own lands, Summers End is enjoying the fruits of an agreement signed by the Governor and ratified by the 33<sup>rd</sup> Legislature, obtained on false pretenses.

Sincerely,



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cc: Attorney Robb Fox, Manko, Gold, Katcher and Fox

ATTACHMENTS:

- (1) Letter from Alisa Zarbo, Section Chief, US Army Corps of Engineers to Chaliene Summers, dated September 13, 2021.
- (2) Letter from Attorney Robb Fox to Senate President Novelle Francis, dated August 27, 2019.