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

MORAVIAN CHURCH CONFERENCE OF THE VIRGIN ISLANDS, Petitioner, vs. ST. JOHN COASTAL ZONE MANAGEMENT COMMITTEE and BOARD OF LAND USE APPEALS, Respondents.	CASE No. ST-16-CV-428 ACTION FOR: WRIT OF REVIEW

PETITIONER'S MEMORANDUM OF LAW

COMES NOW Petitioner Moravian Church Conference of the Virgin Islands ("Petitioner" or "Moravian Church"), pursuant to the Court's Order of August 4, 2016, who files the instant memorandum of law in support of Petitioner's Petition for Writ of Review. In support, Petitioner states as follows:

STANDARD OF REVIEW

The standard of review for a petition for writ of review of a decision of the Board of Land Use Appeals ("BLUA") is as follows:

> In reviewing decisions of an administrative agency such as the BOLUA, the Superior Court must "determine whether the BOLUA correctly applied the appropriate standard." *V.I. Conservation Soc'y. v. Board of Land Use Appeals,* 21 V.I. at 520. The Superior Court must accordingly determine:
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> (1) Whether the agency acted within the limits of its statutory powers;
> (2) Whether the agency applied the relevant law correctly;
> (3) Whether the agency findings are supported by substantial evidence on the record; [and]
> (4) Whether the agency has abused its discretion by acting in an arbitrary or capricious manner.
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> *Virgin Islands Conservation Soc'y, Inc. v. Virgin Islands Bd. of Land Use Appeals*, No. CIV. 0083/2005, 2007 WL 4800361, at *3 (D.V.I. Dec. 6, 2007)

The BLUA's standard of review for a decision of the St. John Coastal Zone Management Committee ("CZM") is as follows:

> The standard of review applied by the BOLUA to CZM Committee actions authorizes the BOLUA to review any decision or action of the Committee in which the findings, inference, conclusions or decisions are in any way:
>
> (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. *Id.*

In this case, CZM's decision and findings were erroneous as they were in violation of the relevant provisions governing CZM's decision and were also erroneous in view of the reliable, probative and substantial evidence on the whole record, and were also arbitrary, capricious, or characterized by abuse of discretion and clearly an unwarranted exercise of discretion. Similarly, BLUA's decision and findings[1] were erroneous based upon misapplying and disregarding the requirements of the law, relying upon and applying insufficient evidence to the law, and abused its discretion in an arbitrary and capricious manner.

ARGUMENT

Applications for any coastal zone permit, including the permits sought by the applicant in the Land Application and the Water Application, are governed, in part, by 12 V.I.C. § 910(a)(2)(B), which states, in pertinent part, that:

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[1] BLUA's decision and findings (with respect to the underlying merits of CZM's decision) simply adopted summarily CZM's decision and findings without addressing any issues that CZM left unaddressed. The only distinction rendered by BLUA was to merge the water and land permits.

> [a] permit shall be granted for a development if the appropriate Committee of the Commission ... finds that ... the development as finally proposed incorporates to the maximum extent feasible mitigation measures to substantially lessen or eliminate any and all adverse environmental impacts of the development; otherwise the permit application shall be denied. The applicant shall have the burden of proof to demonstrate compliance with these requirements.

As the evidence adduced before CZM and reviewed by BLUA does not sustain a finding that the applicant incorporated, to the maximum extent feasible, mitigation measures to substantially lessen or eliminate any and all adverse environmental impacts of the development, particularly as the marina and overall development were vastly oversized, and the environmental impact of the proposed development was plainly not scaled to substantially lessen or eliminate all adverse environmental impacts of the development, CZM and BLUA were statutorily required, as a matter of law, to deny both permit applications under 12 V.I.C. § 910(a)(2)(B)

I. A FINDING BY CZM AND BLUA THAT ALL OF THE REQUIREMENTS OF 12 V.I.C. §§ 903(a) AND 906(a)-(b) WERE MET WOULD BE ARBITRARY, CAPRICIOUS, AND AN ABUSE OF DISCRETION, WOULD RELY UPON INSUBSTANTIAL EVIDENCE, AND WOULD MISAPPLY THAT INSUBSTANTIAL EVIDENCE TO THE STATUTORY REQUIREMENTS

The Statutory Standard

Applications for any coastal zone permit, including the permits sought by the applicant in the Land Application and the Water Application, are governed, in part, by 12 V.I.C. § 910(a)(2)(A), which states that CZM shall grant a permit if the applicant's proposed development is "consistent with the basic goals, policies and standards provided in sections 903 and 906 of this chapter" before issuing a permit. 12 V.I.C. § 911(c)(1) is even more emphatic, stating, in pertinent part, that CZM:

> shall deny an application under section 910 hereof for a coastal zone permit which includes development ... of ... submerged or filled lands, unless it ... makes ... the following finding... that the application is consistent with the basic goals of section 903 and with the policies and standards of section 906 of this chapter.

12 V.I.C. § 903(b), in turn, states that the goals of the United States Virgin Islands with respect to its coastal zones, in pertinent part, are to:

> (1) Protect, maintain, preserve and, where feasible, enhance and restore, the overall quality of the environment in the coastal zone, the natural and man-made resources therein, and the scenic and historic resources of the coastal zone for the benefit of the residents of and visitors of the United States Virgin Islands;
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> (2) Promote economic development and growth in the coastal zone and consider the need for development of greater than territorial concern by managing: (1) the impacts of human activity and (2) the use and development of renewable and nonrenewable resources so as to maintain and enhance the long-term productivity of the coastal environment...
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> (4) Assure the orderly, balanced utilization and conservation of the resources of the coastal zone, taking into account the social and economic needs of the residents of the United States Virgin Islands;
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> (5) Preserve, protect and maintain the trust lands and other submerged and filled lands of the United States Virgin Islands so as to promote the general welfare of the people of the United States Virgin Islands;
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> (6) Preserve what has been a tradition and protect what has become a right of the public by insuring that the public, individually and collectively, has and shall continue to have the right to use and enjoy the shorelines and to maximize public access to and along the shorelines consistent with constitutionally-protected rights of private property owners...
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> (8) Conserve ecologically significant resource areas for their contribution to marine productivity and value as wildlife habitats, and preserve the function and integrity of reefs, marine meadows, salt ponds, mangroves and other significant natural areas;
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> (9) Maintain or increase coastal water quality through control of erosion, sedimentation, runoff, siltation and sewage discharge...

12 V.I.C. § 906(a), states that the development policies of the United States Virgin Islands with respect to the first tier of the coastal zone, in pertinent part, are to:

> (1) To guide new development to the maximum extent feasible into locations with, contiguous with, or in close proximity to existing developed sites

and into areas with adequate public services and to allow well-planned, self-sufficient development in other suitable areas where it will have no significant adverse effects, individually or cumulative[ly], on coastal zone resources; ...

(3) To assure that new or expanded public capital improvement projects will be designed to accommodate those needs generated by development or uses permitted consistent with the Coastal Land and Water Use Plan and provisions of this chapter; ...

(6) To assure that development will be cited [sic] and designed to protect views to and along the sea and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas;

(7) To encourage fishing and carefully monitor mariculture and, to the maximum extent feasible, to protect local fishing activities from encroachment by non-related development;

(8) To assure that dredging or filling of submerged lands is clearly in the public interest; and to ensure that such proposals are consistent with specific marine environment policies contained in this chapter. To those ends, the diking, filling or dredging of coastal waters, salt ponds, lagoons, marshes or estuaries may be permitted in accordance with other applicable provisions of this chapter only where there are no feasible, less environmentally-damaging alternatives and, where feasible, mitigation measures have been provided to minimize adverse environmental effects, and in any event shall be limited to the following: (i) maintenance dredging required for existing navigational channels, vessel berthing and mooring areas; (ii) incidental public service purposes, including but not limited to the burying of cables and pipes, the inspection of piers and the maintenance of existing intake and out-fall lines; [and] (iii) new or expanded port, oil, gas and water transportation, and coastal dependent industrial uses, including commercial fishing facilities, cruise ship facilities, and boating facilities and marinas...;

(9) To the extent feasible, discourage further growth and development in flood-prone areas and assure that development in these areas is so designed as to minimize risk to life and property; [and]

(10) To comply with all other applicable laws, rules, regulations, standards and criteria of public agencies.

12 V.I.C. § 906(b), in turn, states that the environmental policies of the United States Virgin Islands with respect to the first tier of the coastal zone, in pertinent part, are:

> (1) To conserve significant natural areas for their contributions to marine productivity and value as habitats for endangered species and other wildlife;
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> (2) To protect complexes of marine resource systems of unique productivity, including reefs, marine meadows, salt ponds, mangroves and other natural systems, and assure that activities in or adjacent to such complexes are designed and carried out so as to minimize adverse effects on marine productivity, habitat value, storm buffering capabilities, and water quality of the entire complex;
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> (3) To consider use impacts on marine life and adjacent and related coastal environment;
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> (4) To assure that siting criteria, performance standards, and activity regulations are stringently enforced and upgraded to reflect advances in related technology and knowledge of adverse effects on marine productivity and public health;
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> (5) To assure that existing water quality standards for all point source discharge activities are stringently enforced and that the standards are continually upgraded to achieve the highest possible conformance with federally-promulgated water quality criteria;
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> (6) To preserve and protect the environments of offshore islands and cays; ...
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> (8) To assure the dredging and disposal of dredged material will cause minimal adverse affects [sic] to marine and wildlife habitats and water circulation;
>
> (9) To assure that development in areas adjacent to environmentally-sensitive habitat areas, especially those of endangered species, significant natural areas, and parks and recreation areas, is sited and designed to prevent impacts which would significantly degrade such areas;
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> (10) To assure all of the foregoing, development must be designed so that adverse impacts on marine productivity, habitat value, storm buffering capabilities and water quality are minimized to the greatest feasible extent by careful integration of construction with the site. Significant erosion, sediment transport, land settlement or environmental degradation of the site shall be identified in the environmental assessment report prepared for

> or used in the review of the development, or described in any other study, report, test results or comparable documents.

The Courts have resolved any question as to whether or not these requirements are mandatory and the degree to which they describe concrete requirements of such permit applications. For instance, in *Environ. Assoc. League of Women v. V.I. Bd. Of Land Use Appeals*, 31 V.I. 9 (Terr. Ct. 1994), the Court stated emphatically that while "the Coastal Zone Management statute does allow for a permit to be issued subject to reasonable terms and conditions imposed by CZM... an Environmental and Sedimentation Control Plan is not a reasonable condition but appears to be mandated by the goals and policies of the CZM statute and must be an integral part of the [applicant's] application." *Id.* at 18. In other words, the requirement to satisfy these goals, policies, and standards is not merely an expression of a vague ideal but rather a set of concrete requirements, mandating the inclusion of professional plans and studies to confirm that those goals, policies, and standards have been met at the application stage of the process. The absence of any one of those findings requires the reversal of CZM's decision as a matter of law.

Even if CZM had made explicit, discrete findings that each of the requirements of 12 V.I.C. §§ 903(a) and 906(a)-(b) were met, any such findings were arbitrary and capricious and an abuse of discretion as they were insufficiently supported by the evidence. Via submissions and testimony at the hearing, CZM was alerted that the proposed development was opposed by many residents of the U.S. Virgin Islands. That public opposition was not vague, general, conclusory, or unsupported by evidence. On the contrary, it relied upon challenges to specific aspects and provisions of the applications. That public testimony identified the vague, general, conclusory, and unsupported statements found throughout both applications, and the numerous deficiencies

in both applications, as well as the numerous deficiencies in the documents offered in support of those applications[2]. No adequate evidence in rebuttal to this overwhelming public testimony was presented by the applicant. Thus, the record provided no basis for a finding to satisfy the requirements of law cited above.

a. CZM'S AND BLUA'S FINDING THAT THE APPLICANT MET ITS BURDEN OF PROOF REGARDING MITIGATION MEASURES

12 V.I.C. § 910(a)(2)(B) states explicitly that the applicant shall have the burden of proof to demonstrate that "the development as finally proposed incorporates to the maximum extent feasible mitigation measures to substantially lessen or eliminate any and all adverse environmental impacts of the development" and that absent a finding that the applicant has overcome that burden, the permit application must be denied. However, CZM and BLUA alerted by extensive public testimony and written submissions to numerous vague, general, conclusory, and unsupported statements throughout both applications on the environmental impact of the development. It was the applicant's burden to prove that all feasible mitigation measures had been incorporated in the proposed development. CZM and BLUA did not analyze the application based upon the issues the public comment process revealed and had no evidentiary basis for making a finding that 12 V.I.C. § 910(a)(2)(B) was satisfied. Rather, CZM and BLUA explicitly declined to address aspects of the applicant's proposed development that would clearly have an impact on CZM's specific jurisdictional duty under 12 V.I.C. § 910(a)(2)(B).

[2] The Moravian Church and its tenant also had an experienced environmental consultant, William McComb, review the Applicant's EAR, and he both appeared to testify at the public hearing and submitted timely and detailed observations on the defects in the Application under the CZM law. CZM did not require the Applicant to respond to these important issues, nor did it make findings adequate to support a decision to dismiss them out of hand.

Among the terms and conditions imposed by CZM upon both permits, was a statement that: "[t]his permit does not allow the removal of mangroves, if trimming of mangroves are required the Permittee must obtain a permit from [the] Department of Planning and Natural Resources/Division of Fish and Wildlife." Sharon Coldren, President of the Coral Bay Community Council, submitted a letter to Jean Pierre Oriol, Director of the Coastal Zone Management Program, on August 4, 2014, in which she noted that, in section 3.0-2 of the application, the applicant appeared to indicate that the planted mangroves would be trimmed as a low hedge. Whether the mangroves were pre-existing or proposed to be planted by the applicant, the trimming of mangroves as a low hedge was still depicted as part of the development and still implicates this limitation.

Under 12 V.I.C. §§ 910(a)(2)(B) and 911(c)(1), CZM may not approve a permit for a development that contemplates the trimming of mangroves without performing its own analysis and making its own findings. Any development that involves an impact upon the "integrity of reefs, marine meadows, salt ponds, mangroves and other significant natural areas" raises a clear question as to whether or not the proposed development satisfies the basic goals of the United States Virgin Islands for its coastal zone, which must be satisfied under 12 V.I.C. § 910(a)(2)(A) and 911(c)(1) or else the application must be denied. Noting the possibility that the applicant's proposed development might involve the trimming of a mangrove compelled CZM to make its own analysis of whether the proposed development was acceptable based upon CZM's duty to make a finding that the proposed development is consistent with the goal of "conserv[ing] ecologically significant resource areas for their contribution to marine productivity and value as wildlife habitats, and preserve the function and integrity of ... mangroves and other significant natural areas." 12 V.I.C. § 903(b)(8). Yet no such analysis was undertaken as confirmed by the

record below. If the planting of a mangrove was intended by applicant to reflect an environmental boon to the area, applicant's clear intention from the plans to then immediately trim that mangrove and keep it trimmed perpetually as a low hedge clearly indicates that mangrove would not have that affect and would not be the environmental boon implied by the applicant.

In the same letter, Sharon Coldren also noted that the proposed boating density at the proposed location for the docks as well as the shallow draft would obstruct sunlight for the seagrass bottom, stir up silt to further obstruct sunlight and damage seagrass, coral, and general water quality in an area she noted had been classified as an Essential Fish Habitat by the National Oceanic and Atmospheric Administration. The National Oceanic and Atmospheric Administration, in turn, expressed concerns over the environmental impact of the proposed marina. Actually, the National Oceanic and Atmospheric Administration ("NOAA") had expressed concerns about proposed plans for an earlier, smaller version of the proposed marina and was no less concerned after the applicant had revised its plans to make the marina *even larger*. In fact, in response to a request from CZM for commentary, the National Oceanic and Atmospheric Administration noted that the new, larger proposed development "result[ed] in greater impact to [the] benthic habitat that is used by sea turtles as well as creating the potential for greater water quality impacts in the bay, which contains habitat for ESA-listed and proposed corals in addition to sea turtles. For this reason [NOAA] continue[s] to have concerns regarding this project."

Unlike CZM, NOAA listed fifteen different additional pieces of information, studies, data, and surveys that would be required, noting that even with that information once the federal Endangered Species Act consultation began, additional information may also be required.

Though CZM shares a virtually identical duty to ensure that proposed developments do not negatively impact the Virgin Islands coastal zone environment, CZM required no additional information, studies, data, or surveys – not even a response to the most fundamental question raised by NOAA: are there feasible alternatives, including on and offsite alternatives and alternatives to a marina? This is virtually the same question CZM is statutorily required to ask under Virgin Islands law for any development of this kind requiring the dredging of submerged lands, as such developments are only permissible "where there are no feasible, less environmentally-damaging alternatives." 12 V.I.C. § 906(a)(8). The only alternatives identified by the applicant are the possibility of no development whatsoever and identification of alternative sites that are unavailable or less appealing for a marina of the exact size proposed. Inexplicably, there is no alternative presented for a less massive marina or for a development other than a marina, though NOAA specifically indicated it was a question NOAA had posed to the applicant in response to an earlier, smaller version of the proposed development. *See* Page 9-1. Rather than answer that question from NOAA, the applicant proposed an even bigger marina.

At numerous points in the Water Application, the applicant makes statements regarding alleged improvements to be achieved based upon alleged existing negative environmental factors. However, the applicant provides no evidentiary support for the existence of those alleged existing negative environmental factors. By citing potentially non-existent existing negative environmental factors, the applicant describes the proposed development, at times, as actually constituting an environmental mitigation effort, resulting in a net environmental benefit to Coral Bay. For instance, the applicant makes conclusory statements regarding damage to sea grass caused by existing mooring boats and boats routinely utilizing two anchors, causing damage to sea grass. However, in her letter to Director Oriol, Sharon Coldren, President of the

Coral Bay Community Council, indicated these conclusory statements were false. CZM required no evidence from the applicant to establish that these alleged negative existing environmental factors actually existed. Moreover, in disregard of its obligation to consider lessening environmental impacts, and considering alternatives, CZM did not require the applicant to address the simple solution of installing a reasonable number of moorings to replace anchors, without inclusion of a mammoth new marina. Meanwhile, NOAA noted that multiple acres of sea grass would be destroyed by the proposed development, impacting various species that rely upon the sea grass. This mass destruction was simply disregarded by CZM and BLUA.

The environment is also endangered by the prospect of damage to the proposed marina as a result of tropical storms and hurricanes. Sharon Coldren noted that safety concerns were raised by the placement of the proposed marina, noting the danger to life and property caused by mooring vessels in a location with insufficient protection from storm winds. In fact, she provided photographs of vessels that were apparently thrown onto the land in the area of the proposed development as a result of hurricanes. Obviously, adding the presence of concrete structures in the water in front of that shore increases the likelihood that in such an event the boats would be crushed against the slips and release whatever toxic substances might be contained within them directly into the sea grass as they are broken upon those slips and docks. She also noted that insufficient space was provided for maneuvering vessels of the size proposed by the applicant, increasing the likelihood of collisions and the release of toxic substances as a result of damage to the vessels. However, CZM required no further evidence from the applicant establishing the location was safe for mooring substantial numbers of large yachts, and appears to have simply disregarded this important testimony.

Many members of the public submitted letters emphasizing the exposed nature of the proposed marina location, including members of the public with clearly extensive nautical experience. One commenter had circumnavigated the world on a sailing vessel. Another was licensed to operate 50 ton seagoing vessels. One commenter submitted photographs of another marina on St. Thomas, located in a particularly exposed area, which has apparently been destroyed and repaired so many times after storms that it has been left to disintegrate – an eyesore for the public. If those people described the proposed location as particularly unsafe and particularly exposed to the elements in a storm and described the size of the proposed marina as unsafe and excessive, neither CZM nor BLUA had a substantial evidentiary basis for simply accepting the applicant's dismissive statement that no marina can be completely protected in a high category storm as sufficient to deem the proposed development to have justified a finding that no feasible alternative exists.

If the applicant claimed that its studies showed that there was minimal exposure to the elements and that the location was particularly protected from the elements, a member of the public submitting photographs of vessels beached in the location of the proposed development more than justified further inquiry on the part of CZM. Whether *any* marina placed in *that* location would be safe in a high category hurricane is irrelevant. Rather, the question is whether *that* location on *that* side of Coral Bay is an appropriate location for a marina of that size *at all* and whether there are alternative locations that, due to topography and the customary path of winds during a hurricane, would be far better protected than the proposed site. The applicant clearly failed to satisfy its burden of proof with respect to the establishment of mitigation

measures and thus any finding by CZM and BLUA that the applicant had done so was clearly arbitrary and capricious.[3]

b. CZM'S AND BLUA'S ASSUMPTION THAT THE APPLICANT HAD SUFFICIENT FUNDING

Perhaps the most important factor in any major development for purposes of determining whether the development satisfies the goals and policies stated in 12 V.I.C. §§ 903(b) and 906(a)-(b) is the question of whether or not the development will actually be completed as planned or will fail to be completed, resulting in substantial damage to the environment, an eyesore for the public, and damage to the community with no redeeming commercial or public interest purpose – a "bridge to nowhere" with horrible consequences for the coastal zone of the U.S. Virgin Islands. It is thus particularly shocking that CZM and BLUA disregarded the warnings of numerous members of the public, who questioned the applicant's ability to complete the project as proposed – the applicant's financial wherewithal to see to completion this massive proposed marina. One member of the committee questioned the applicant at the public hearing as to whether the applicant possessed sufficient financing to complete the development, to which the applicant purportedly responded, simply "yes." Apparently satisfied with this non-evidence of the sufficiency of the applicant's financing, CZM asked no further questions of the applicant on the subject. Given the massive cost for the development identified by the applicant itself, this was inexcusable.

[3] In the immediate aftermath of the meeting at which 2 of the 3 members of CZM voted to approve the permit, without any modifications – apparently an unprecedented action – one of the two members explained his vote to the press by stating that he was "keeping his fingers crossed and hoping it works out for the best." (St. Thomas Source, October 1, 2014.)

$35,000,000.00 Projected Cost and Alleged Existing Funding

The applicant's Market Study, Feasibility and Economic Analysis notes that the project is anticipated to cost $35,000,000.00 ($22,510,000.00 for CZJ-4-14(W) and $12,490,000.00 for CZJ-3-14(L)). *See* Funding, Page 1-1. At that point, the applicant proceeds to describe, via a number of conclusory statements, millions of dollars that have purportedly been raised for the project, totaling $4,900,000.00 with the addition of a U.S. Fish and Wildlife Service Boating Infrastructure Grant of $1,300,000.00. The applicant concludes: "[t]he St. John Marina is well funded to get through the permitting process." *See Id.* However, no documentation evidencing $4,900,000.00 in existing funding was provided as part of the application or supporting documents. Likewise, no documentation of the alleged $3,600,000.00 in funding, exclusive of the alleged $1,300,000.00 federal grant, was provided as part of the application or supporting documents.

With respect to the alleged $1,300,000.00 grant, the applicant provides a letter from the U.S. Department of the Interior, approving a grant award of $2,673,689.00, of which $1,273,689 was to come from federal funds. It does not indicate who is to provide the remaining funds or whether they have been provided. However, the letter states explicitly that only $255,000.00 is authorized to be released to secure permits and to conduct environmental and biological studies to determine impacts. It states specifically that the remaining funds are only to be released upon submission and approval of the required compliance documents. Moreover, the letter states that the grant was for the period of October 1, 2013 to September 30, 2014. In other words, at the time CZM voted to approve the applicant's permits on October 1, 2014, the grant had already expired and the applicant had provided no evidence that the remaining grant funds had been released, that the applicant's compliance documents had been approved, or even that the

applicant had submitted its compliance documents at all. The only evidence of funding, other than that letter from the Department of the Interior regarding the release of $255,000.00 and applicant's mere conclusory statement that the applicant is funded to the tune of $4,900,000.00, is a single letter. However, that letter provides no evidence of actual funding.

Letter from Anaconda Holdings, LLC

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

serpentine nature of the financing entity's name or perhaps by Anaconda Holdings, LLC's uncertainty as to whether to refer to itself as "TFG" or "TGF" in its one page letter of intent, CZM asked no further questions on the point, nor was an actual "firm commitment" made a part of the record below.

Letter from Applicant's Marina Designer

In addition to the concerns raised by many members of the public in light of analogous failed developments in the U.S. Virgin Islands and elsewhere as well as an expired grant and the obscure and unenforceable letter of intent as the applicant's sole evidence of financing, CZM had in its possession an August 11, 2014 letter from the primary developer that designed the entire marina project for the applicants, Applied Technology & Management, Inc. ("ATM"), alerting CZM that the applicant "owes ATM the sum of $51,803.87 which has been outstanding for well in excess of the thirty (30) days provided for under the Agreement." Moreover, the letter stated explicitly that, pursuant to Articles IV and VII of the Professional Services Agreement dated January 10, 2014 between the applicant and ATM, "[i]n light of [the applicant's] failure to pay, ... [the applicant's] permitted use of ATM Work product including all plans, reports and other materials and work done under the Agreement is hereby revoked [and that] ATM will not represent or appear on behalf of [the applicant] at any public hearings or decision meetings relating to the proposed project."

The applicant responded on August 13, 2014, noting its "cash flow situation" and assuring CZM that it was "taking steps to obtain funds to pay the outstanding invoice amount to ATM." The applicant assured CZM that there was a seven day period to cure before terminating or suspending service by ATM and that the breach would be cured within that time. Likewise, with respect to the revocation of their right to use ATM's plans, reports, and other materials, the

applicant assured CZM that the contract was silent as to ownership of documents, drawings, plans, reports or other materials created by ATM.

However, on August 15, 2011, ATM replied (to a letter apparently sent by the applicant's attorney in response to ATM's earlier August 11, 2011 letter), noting that under the contract, the right to terminate upon applicant's breach is not contingent upon a seven day period to cure and is effective regardless of the applicant's payment of the funds owed within that seven day period. In short, ATM specifically stated that it was demanding payment of all sums owed (including interest) and that it was not withdrawing its termination of the contract and revocation of the right to utilize its plans and work product even if paid within seven days.

The record below reveals no inquiry by CZM regarding this situation, though it goes to the heart of the question of whether or not the applicant is capable of completing the proposed development. It must be remembered that though the applicant assured CZM that the Professional Services Agreement between the applicant and ATM was allegedly silent as to ownership of documents, drawings, plans, reports or other materials created by ATM, the Professional Services Agreement is not part of the application and was apparently never provided to CZM. As a result, neither CZM nor BLUA had the requisite substantial evidentiary basis for accepting that unsupported, conclusory statement from the applicant as true in the face of an express statement from the actual contractor that any right to use its plans and work product had been revoked. Rather, CZM and BLUA were faced with a record that suggested great uncertainty as to whether the applicant had the right to use those plans at all, yet it failed to make any findings on this crucial point.

Even assuming the applicant's actual statement to be absolutely true ("the contract is silent as to ownership of documents, drawings, plans, reports or other materials created by

ATM"), this does not represent even a claim that the applicant continues to have the right to utilize those documents and materials. Rather, it describes the potential subject matter for future litigation between the applicant and its primary contractor to determine whether or not the alleged silence of the Professional Services Agreement regarding ownership of the documents, drawings, plans, reports or other materials created by ATM results in the applicant being permitted to utilize those documents, drawings, plans, reports or other materials to proceed with the proposed development. In fact, though ATM's original August 11, 2014 letter was addressed to the applicant itself, judging by ATM's August 15, 2014 follow up letter, it is sent in reply to a letter not from the applicant but rather from the applicant's attorney and immediately proceeds to cite specific contract provisions in response to whatever legal argument was presented by the applicant's attorney. In short, CZM was on notice on or about August 15, 2011 that the applicant itself was already contemplating the possible need for litigation with its primary contractor simply to establish its right to utilize those plans as the basis for the proposed development.

If, as the applicant's primary contractor stated to CZM, the applicant no longer had permission to utilize the plans, reports and other material and work done under the Professional Services Agreement, the fact that ATM's name appears as the "prime" designer on each and every drawing and plan for the proposed development potentially meant that CZM could not reasonably consider those reports and plans in its analysis of the applicant's application. *See* e.g. C001, C100, C200, C201, C202, C203, C204, C205, C206, C210, C400, C500, C501, C502, C510, Sheet No. 01, Sheet No. 02, Sheet No. 03, Sheet No. 04, Sheet No. 05, Sheet No. 06, Sheet No. 07, Sheet No. 08, and Sheet No. 09. Moreover, ATM is the only part of the applicant's design group that actually has any experience with respect to designing or implementing marinas.

44 of the 66 page qualifications portion of the applicant's package are dedicated to describing the experience and qualifications of ATM. The few remaining pages are dedicated to Bioimpact, Inc., which is offered as an expert in preparing environmental assessment reports, and Cairone & Kaupp, Inc., a landscape architecture and civil engineering firm. However, neither Bioimpact, Inc. nor Cairone & Kaupp, Inc. offer themselves as qualified to design or implement a marina. At no point in either company description is any reference made to design work or implementation work for a marina. Bioimpact, Inc.'s expertise may be relevant to the question of the environmental impact of the applicant's proposed development and Cairone & Kaupp, Inc.'s expertise may be relevant to the portions of the development located on the land, but neither entity is qualified to offer designs for the creation or implementation of a marina. In other words, without ATM, not only are there literally no plans for the marina in the application, but there is also no entity involved in the applicant's proposed development with any relevant experience with respect to designing or implementing marinas. If the applicant no longer has the right to use ATM's plans and work product, the applicant stands before CZM with literally no plans for the proposed marina and no expertise or experience in designing a marina. However, CZM and BLUA disregarded this fact, and the fact that this applicant would potentially have to obtain new plans for its marina as well as retain a new entity to provide the actual knowledge or expertise required to design or implement a marina – a new entity willing to accept the task despite the applicant failing to pay ATM.

In doing so, CZM and BLUA also disregarded this clear sign indicating that this applicant lacks the financial wherewithal to complete this massive proposed development, which will require, by the applicant's own estimate, thirty-five million dollars. This applicant, knowing that losing the services of its primary contractor and marina designer could impact the

applicant's ability to effectively present its permit application in the public hearing before CZM, was in such financial straits that it simply could not pay that key, indispensable contractor $51,803.87 to avoid breaching that contract as the public hearing was looming. Though the amount of arrearage was only approximately 1/700th of the $35,000,000.00 proposed cost of the development, the applicant's inability to cover that tiny fraction of the projected total cost of the development at a critical point in the permitting process apparently caused CZM no concern, and CZM required no further evidence that the applicant was in a financial position to complete the proposed development. Though the applicant assured CZM in its Market Study, Feasibility and Economic Analysis that "[t]he St. John Marina is well funded to get through the permitting process," this was clearly not true as the applicant stood at the public hearing without the assistance of its primary developer, without the permission of that primary developer to utilize its plans and work product, and thus incapable of answering technical questions only the marina designer could answer.

c. CZM AND BLUA FINDING THAT THE APPLICANT'S DEVELOPMENT WOULD NOT SUBSTANTIALLY AND NEGATIVELY IMPACT TRAFFIC

On July 31, 2014 the Commissioner of Public Works sent a letter to CZM refusing to give approval for the proposed development pending approval of the driveway permit for the applicant's proposed 120 off street parking spaces in light of the impact upon access to the public infrastructure and the volume of increased traffic to the adjacent federal route. Though no additional information, studies, or evidence was provided, the Commissioner of Public Works reversed course in less than a month, granting "tentative approval" pending issuance of the road permit. Though CZM clearly recognized that the road access to Coral Bay was limited, justifying CZM's requirement that the applicant provide shuttle service for construction workers,

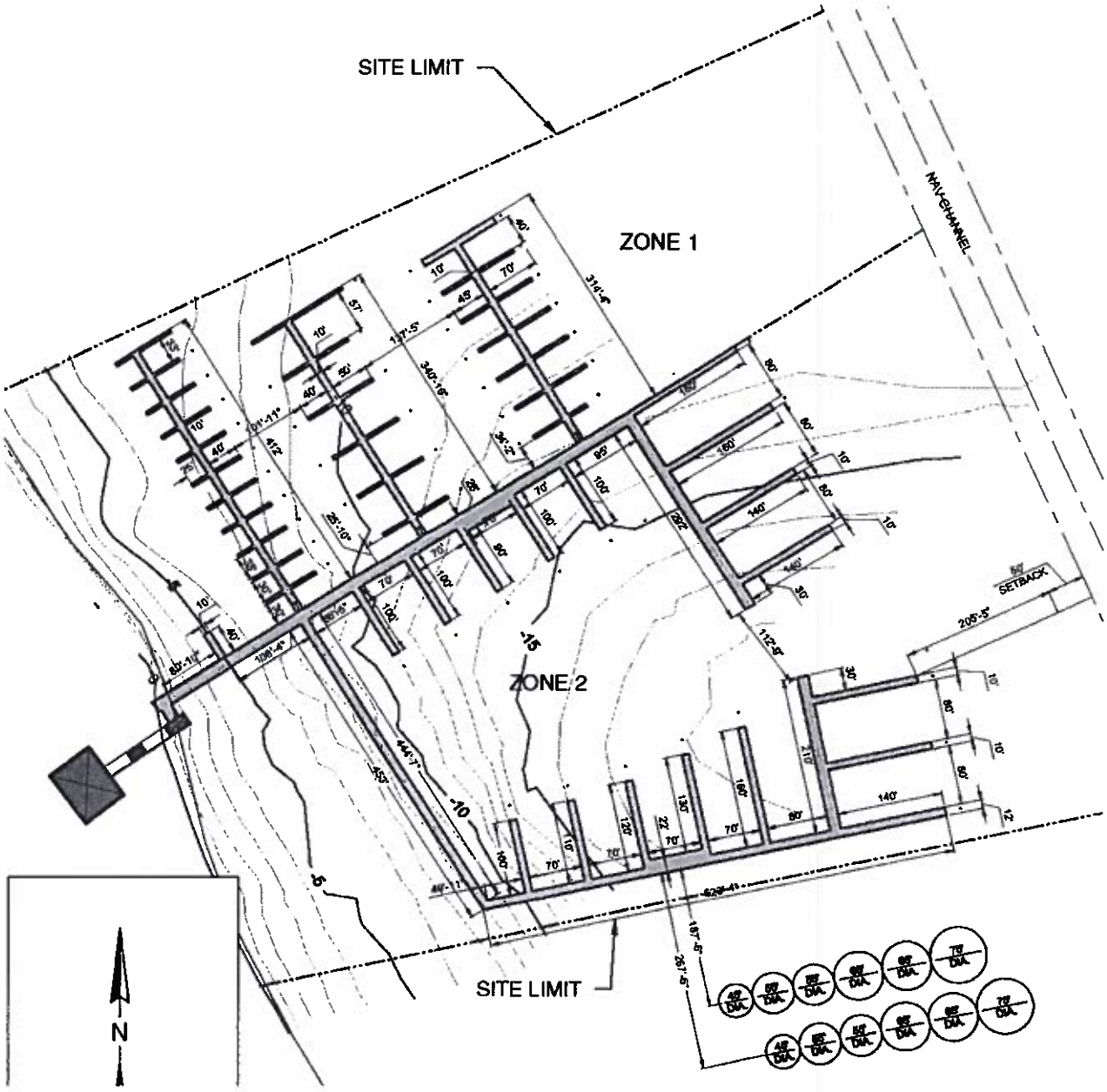
CZM ignored the impact to vehicular traffic that would be caused by adding 120 off road parking spaces to that same area as contemplated in the applicant's development. Moreover, CZM failed to acknowledge the fact that "tentative approval" from a political appointee may not be utilized to satisfy the applicant's duty to present an actual road permit to CZM.

Moreover, though the applicant included a Traffic Impact Study, it is limited solely to vehicular traffic on the public roads. It makes no mention and does not attempt to make any representations regarding the impact of the proposed development on traffic within the waters of Coral Bay Harbor. In as much as the development is, first and foremost, a marina, the omission of any study or report regarding the impact of the proposed development upon boat traffic in Coral Bay Harbor represents a glaring omission on the part of the applicant, which implicates not only issues of the impact upon the public and the use of the Harbor by other members of the public but also impacts the environmental impact of the proposed development on the flora and fauna residing in and dependent upon Coral Bay Harbor.

Though the application describes the length of slips and the length of boats and yachts that can be accommodated by the respective slips, the application at no point describes what depth of water is required for any of these vessels – not even for these "mega yachts" of anywhere from 121 to 225 feet in length. Likewise, the application provides no information regarding the amount of space required to maneuver these massive vessels into the proposed slips. However, the diagram depicts a footprint for the marina that stretches deep into and over the navigable waters of Coral Bay Harbor.

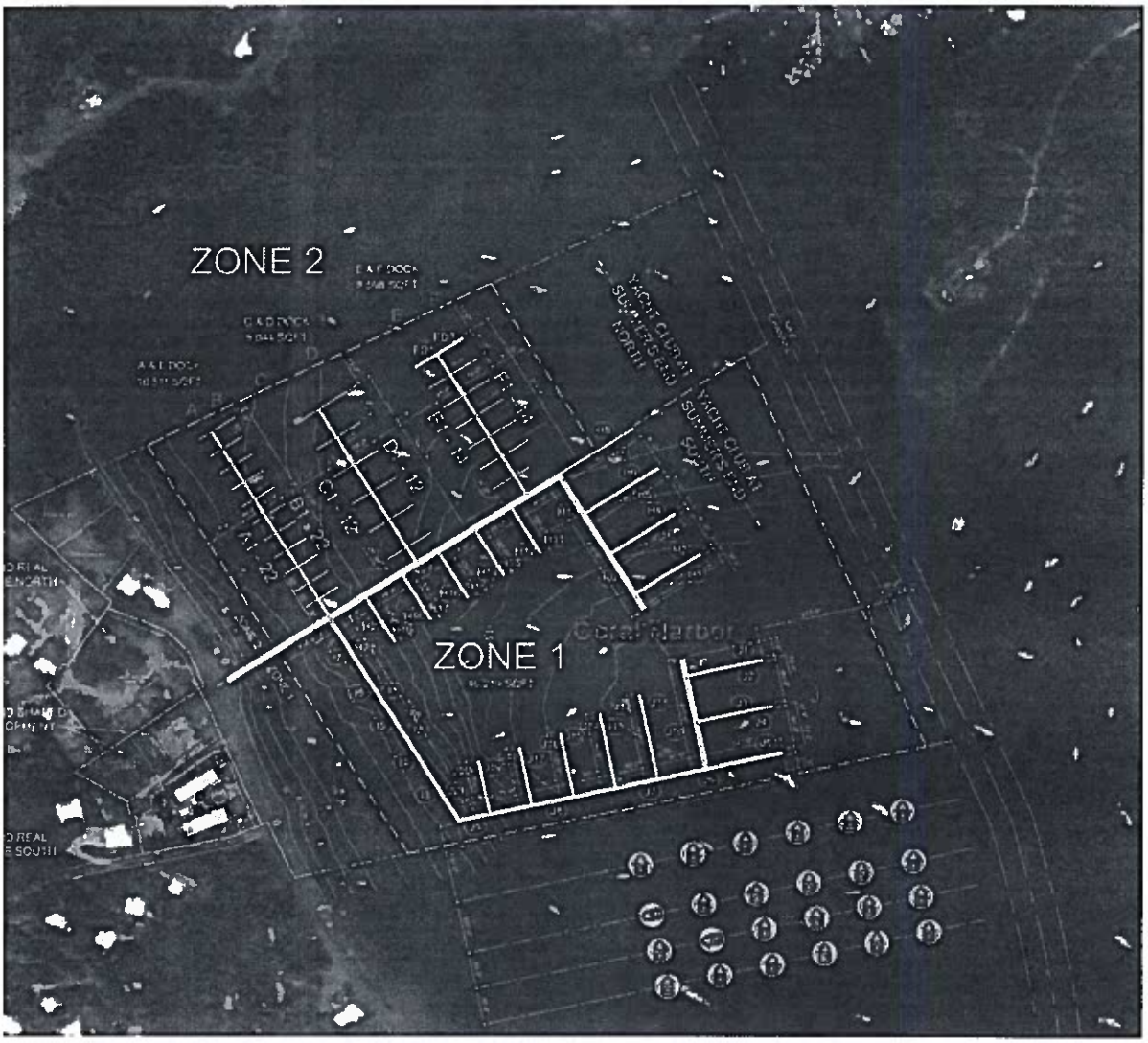
Though the applicant provides CZM with a diagram of its proposed development that depicts a series of straight lines to the east, which the applicant has entitled "nav. channel," the

applicant has provided no actual evidence that the area of water covered by that unusually straight line is actually navigable. *See* e.g. Sheet 04 of the USACE Permit Drawings.



Moreover, when that footprint is viewed in the context of the entire Coral Bay Harbor, the idea that this unusually straight line actually depicts an area of navigable water becomes even more questionable. *See* Figure 3 of the Archaeological Report & VISPHO Clearance Letter. In

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

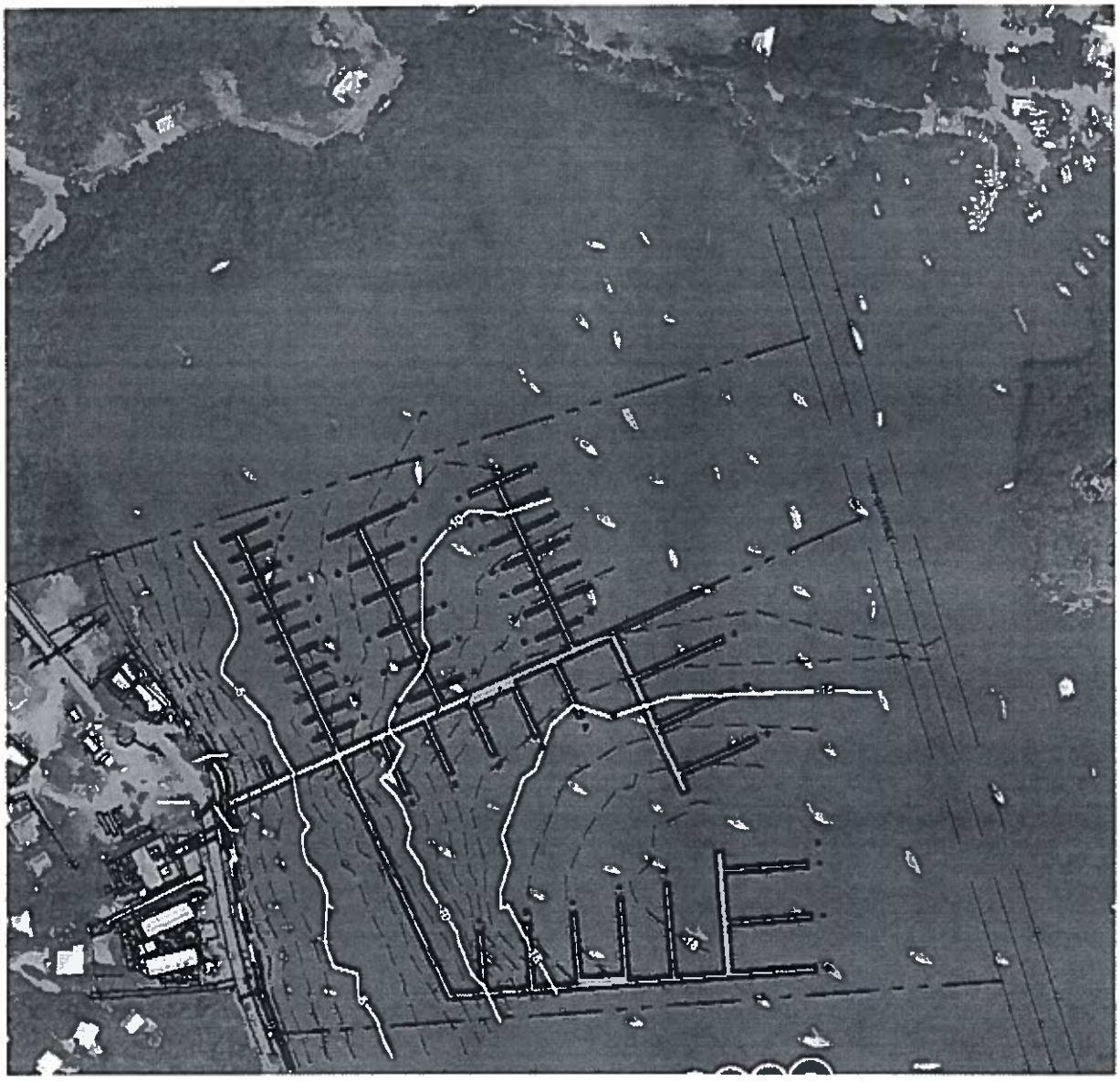


Meanwhile, when the depth of water beneath the proposed development is depicted, it is clear that the depth of water is not found in straight lines but varies considerably along the coast. *See* Sheet 02 of the USACE Permit Drawings.

Notably, no evidence was offered that the supposed "nav channel" was actually a recognized or approved navigation channel, so designated by any agency with regulatory authority to do so. In fact, the reasonable inference is that the actual, usable and used portion of the bay that functions as a primary navigation channel is far closer to the applicant's shoreline than this, and that placing an imaginary "nav channel" where it suited the applicant to site that crucial water passage, was no more than a self-serving deception.

In fact, Exhibit A to the applicant's legal counsel's August 11, 2014 letter to CZM, which is clearly based on Sheet 02, shows that for littoral owners to the north of the proposed development, waters of 10 feet in depth end within the footprint of the proposed development and then can only be found further to the northeast. Similarly, waters of 15 feet in depth appear

within the footprint of the proposed development end long before reaching the littoral owners to the north of the proposed development.



Neither CZM nor BLUA took any interest in validating the suspiciously straight and undocumented "nav. channel" that lead straight to the coast and the impact designating that area as the navigable channel for the entire Coral Bay Harbor would have on traffic for vessels travelling in Coral Bay Harbor or on the sea grass and other flora and fauna within that narrow

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

d. CZM AND BLUA DISREGARDING WHETHER THE APPLICANT WAS ENCROACHING UPON THE LITTORAL RIGHTS OF ADJACENT PROPERTY OWNERS

Perhaps the most striking example of CZM's and BLUA's error was their failure to even address the littoral rights of neighboring property owners, which implicates multiple goals and principles adopted for the U.S. Virgin Islands coastal zone. *See* e.g. 12 V.I.C. §§ 903(b)(4)-(6) and (8). Though the maps of the proposed development clearly stretched out to consume the vast majority of the entire area of navigable water in Coral Bay and though multiple members of the public and owners of littoral land impacted by the development of such a massive marina testified to the excessive size of the proposed marina and its encroachment upon the littoral rights of neighboring property owners, CZM and BLUA did nothing to address this critical concern.

At the public hearing, and in written submissions, this appellant, the Moravian Church, presented its strong objections to the proposed massive marina, because it was sited and designed to effectively consume all available marina capacity and more, when it was well known that the Church had long been planning a marina development on its property, directly on the opposite side of the Bay.[4] The clear impact of the Summers End Marina, if allowed to proceed at its

[4] The Moravian Church owns property located in the more protected northeast area of Coral Bay Harbor, along the south side of Route 10. The Church and its tenant had been working for some time on the design and development of a marina at the Church's property, and had already conducted pre-filing meetings with CZM.

proposed size and scale, was to be the destruction of the Church's right to proceed with its own marina plans. This was documented not only in testimony, but in a graphic presented by the Church showing the overlap of the applicant's marina over and into the very area where the Church's much smaller marina would be located, effectively leaving no space for the Church's plans. Specifically, the Moravian Church submitted to CZM legal authority on its rights as a nearby waterfront property owner. It demonstrated that size and scope of the marina development proposed by Summer's End would interfere with the rights of the Moravian Church and, its tenant, T-Rex, to access, and wharf out over, the water adjoining their land. The Church submitted significant legal authority in support of its objections. It said, in part:

> "The right of access to the water in front of his land is the fundamental riparian right which the owner of littoral land enjoys."[5] *Burns v. Forbes*, 412 F.2d 995, 998, 7 V.I. 256 (3d Cir. 1969), *citing Hughes v. Washington*, 389 U.S. 290, 293-294, 88 S. Ct. 438, 19 L. Ed. 2d 530 *and* 2 Tiffany, Real Property, §§ 659, 660; III American Law of Property § 15.35.
>
> As the owner of littoral land, the Moravian Church "has the right at common law to erect piers and docks on the submerged public land beyond the water line and to wharf out over it, subject to government regulation and control and with due regard to the rights of the public and adjoining land owners." *Burns*, 412 F.2d at 998 (citations omitted). The right of a littoral owner to access waters adjacent to its land "is not lightly to be deprived." *Id.* Development of The St. John Marina by Summer's End, in accordance with the current proposal, would deprive the Moravian Church of its littoral rights by unreasonably restricting the Moravian Church's ability to access the water adjacent to its land and to wharf out over it. *See, e.g., New Jersey v. Delaware*, 552 U.S. 597, 612, 128 S. Ct. 1410, 1421, 170 L. Ed. 2d 315 (2008) ("a riparian landowner ordinarily enjoys the right to build a wharf to access navigable waters far enough to permit the loading and unloading of ships."), *citing* 1 H. Farnham, Law of Waters and Water Rights § 62, p. 279 (1904) ("The riparian owner is also entitled to have his contact with the water

[5] "A littoral landowner is one whose land borders an ocean, sea, or lake." *Club Comanche, Inc. v. Gov't of the V.I.*, 278 F.3d 250, 261 n.1 (3d Cir. 2002), *citing Alexander Hamilton Life Ins. v. Gov't of the V.I.*, 757 F.2d 534, 538 (3d Cir. 1985). A riparian landowner is one whose land borders a river or stream. "Generally speaking, the special property rights of littoral and riparian owners are the same, and cases dealing with one type of waterfront landowner are freely applied when adjudicating the rights of the other." *Alexander Hamilton Life Ins.*, 757 F.2d at 538 n.5.

> remain intact. This is what is known as the right of access, and includes the right to erect wharves to reach the navigable portion of the stream."); *id.*, § 111, p. 520 ("A wharf is a structure on the margin of navigable water, alongside of which vessels are brought for the sake of being conveniently loaded or unloaded.").
>
> Furthermore, the size of the marina proposed by Summer's End must be sufficiently controlled such that a channel exists for the navigation of vessels between the proposed Summer's End marina and the marina development planned by the Moravian Church and T-Rex. *United States v. Willow River Power Co.*, 324 U.S. 499, 504-05, 65 S. Ct. 761, 765, 89 L. Ed. 1101 (1945) ("The fundamental principle of this system is that each riparian proprietor has an equal right to make a reasonable use of the waters of the stream, subject to the equal right of the other riparian proprietors likewise to make a reasonable use.") (internal citation and quotation marks omitted).

In addition to the factual submissions and legal argument regarding littoral rights raised by Attorney Maria Hodge on behalf of the Moravian Church both at the public hearing and via a letter to CZM, on August 28, 2014, David Silverman of the Coral Bay Community Council submitted a thoroughly researched and well supported report to CZM regarding the subject. He noted one of the factors for a regulatory body to consider in addressing littoral rights is the equitable access to the line of deep water. He cited a publication from the Florida Department of State, entitled Guidelines for Allocation of Riparian Rights, 2013, with a sample diagram depicting an equitable distribution of such rights. He then provided a diagram applying that equitable distribution pattern to Coral Bay based upon the location of the boundaries of littoral owners along Coral Bay.

In a letter to CZM from the applicant's legal counsel, Attorney John Benham, the arguments regarding littoral rights raised by Attorney Maria Hodge were dismissed out of hand by the applicant's legal counsel, who cited a drawing clearly based upon Figure 3 mentioned above, with a similar straight line depiction of navigable waters stretching from the open ocean straight to the land. However, as noted before, that same drawing included the far more variable

and natural water depth markings depicting the depths of 5 feet, 10 feet, and 15 feet within Coral Bay Harbor, though stopping short of depicting the depth of water throughout the straight line "nav. channel" depicted in the drawing. The drawing makes clear that adjacent littoral property owners to the northeast will be limited to waters of substantially less than 10' in depth before running into the footprint of the applicant's proposed development. The only way those littoral property owners can even reach navigable waters (assuming the suspiciously straight "nav. channel" accurately depicts navigable waters stretching all the way to the shore) is by crossing through the area of navigable water utilized by property owners further to the east.

The applicant's counsel was also dismissive of making reference to riparian rights with regard to the littoral rights of coastal property owners. In reality, as noted above, "riparian rights" is a term that is also used with respect to the rights of littoral property owners. They deal with the equitable distribution of the access and use of navigable waters amongst riparian and littoral property owners. As dismissive as the applicant may have been regarding the "riparian rights" of adjacent property owners, including the Moravian Church, it should be noted that the unusually shaped footprint depicted for the applicant's proposed development was not coincidental and was, in fact, based upon a disfavored approach to resolving riparian rights in situations involving a cove or bay.

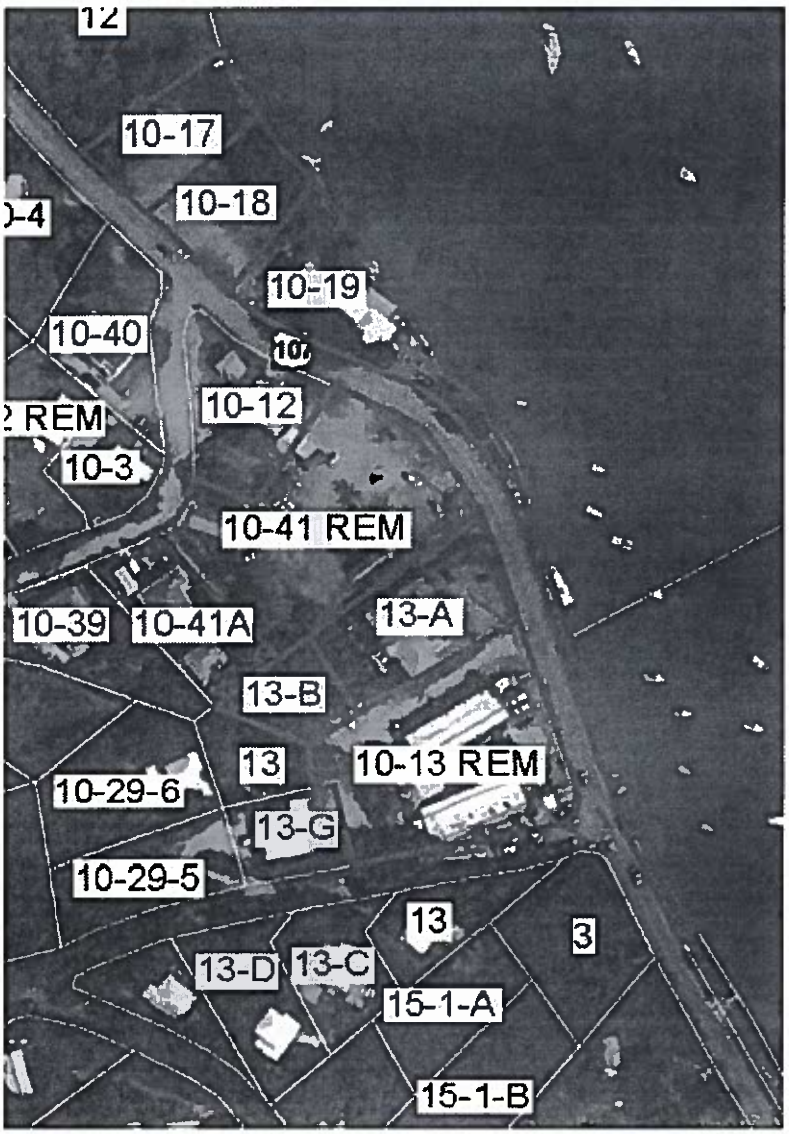
The applicant took the northernmost boundary line of the northernmost of its parcels and extended that boundary in a straight line (as far as it chose to go) into Coral Bay Harbor, apparently claiming that as its littoral right. That Parcel, Parcel 10-17, while not labeled as Parcel 10-17, is visible on the coast as a continuation of the northern boundary of the footprint of the proposed marina in several of the applicant's surveys. *See* e.g. Figure 3 of the Archaeological Report & VISPHO Clearance Letter.

Similarly, the applicant took the southernmost boundary of its southernmost parcel and extended that boundary in a straight line (as far as it chose to go) into Coral Bay Harbor. Unlike for the northern boundary, depictions of the footprint of the proposed marina do not depict the basis for that southern boundary on the coast.

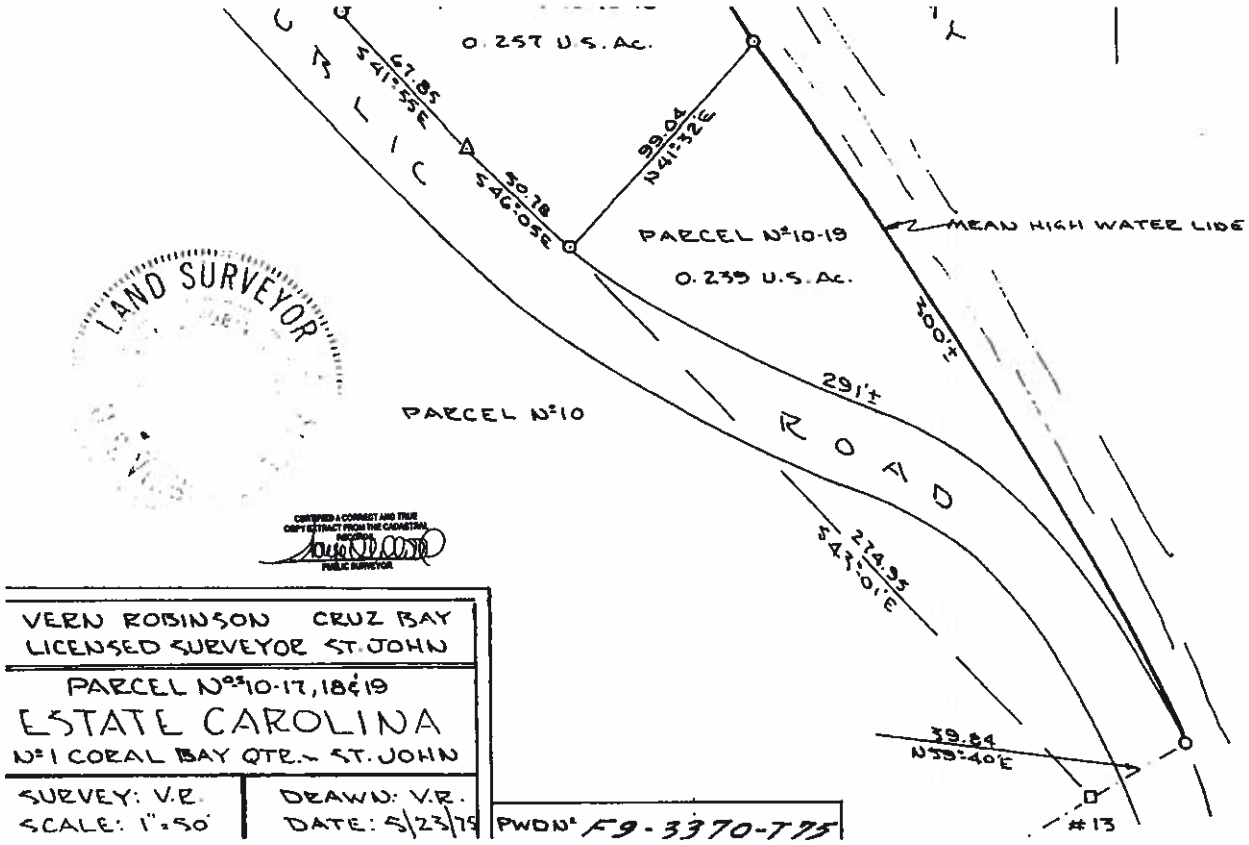
This approach of extending boundary lines straight into the water has only been approved in situations in which the adjacent properties are all along a relatively straight shoreline and in which the boundaries themselves are at approximately right angles to the shore. This approach is disfavored in cases involving a concave cove or bay and in which the property boundaries are not approximately right angles to the shore. In this case, the shoreline is a relatively narrow bay or cove and concave in shape rather than straight. Likewise, even if the shoreline was perfectly straight, and it clearly isn't, the boundary lines utilized by the applicant are not in a right angle to the coast, resulting in the strange trapezoidal shape of the proposed development.

Most troubling of all, is the fact that the southernmost boundary of the footprint of the proposed development does not actually extend from the southernmost boundary of the applicant's southernmost parcel. As noted before, while surveys of the footprint of the proposed marina clearly indicate the basis for the applicant's northern boundary for the proposed marina

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



From the end of that strange tail, the applicant produces the southern boundary of the footprint of the proposed development deep into Coral Bay. However, the actual Public Works Map submitted by the applicant itself for Parcel 10-19 clearly depicts the parcel ending at the point the road first reaches the Coral Bay coast. *See* F9-3370-T75.

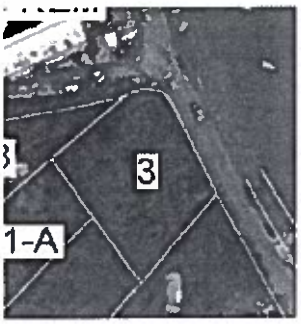


Likewise, the Post-Construction Drainage Area Map submitted by the applicant itself depicts that parcel ending at the point the road first reaches the Coral Bay coast. *See* C701.

In reality, the point at which Parcel 10-19 actually ends is approximately 400 feet north of the point at which the applicant begins drawing the southern boundary of its proposed marina footprint. In other words, the entire area designated "Zone 2" is based upon beginning from a

point on the coast that includes hundreds of feet of littoral land that is not owned or controlled by the applicant. *See* Sheet No. 2.

The Parcel to the south of that strange tail in the Adjacent Property Owner Key Map is not identified by the applicant, though it is required to identify neighboring property owners within 150 feet. However, the northern boundary of that Parcel to the south is depicted in the Adjacent Property Owner Key Map and, utilizing the approach adopted by the applicant, results in a littoral right boundary line for that southern parcel (and for Parcel 3 immediately to the north of it) that proceeds through the center of Zone 2 as depicted in Sheet 02 "Existing Conditions". Moreover, it makes clear that all of Parcel 3's littoral rights are completely encroached upon by the proposed marina as the marina footprint completely covers Parcel 3's access to the coast.



Even if the approach utilized by the applicant were not clearly improper in a concave bay or cove with parcels with boundaries that are not essentially at right angles to the coast, utilizing a boundary that does not exist and that does not appear in the map of record for that parcel and (if it did) would be hundreds of feet farther to the north of the point the applicant placed it, clearly renders the proposed development an improper and inequitable means of distributing the littoral rights of the various adjacent property owners. Clearly, utilizing this approach to achieving equality or even simple equity in the division of littoral rights in a cove or bay is manifestly improper, and CZM's and BLUA's approval of such an inequitable division of littoral rights was clearly arbitrary and capricious. This is particularly so when CZM and BLUA made no findings to demonstrate that the rights of neighboring property owners, and particularly the Moravian Church, had been considered, or would not be adversely and unfairly affected by the approval of this massive, and plainly oversized marina. The Court should not countenance the destruction of the historic rights of the Moravian Church to equitable rights as a waterfront property owner, by permitting the summary approval of a vastly over-sized and poorly sited marina in Coral Bay to stand.

CONCLUSION

All decisions of CZM and BLUA must rest on substantial evidence in the record. *Conservation Society v. Board of Land Use Appeals*, 21 V.I. 516 (1985). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 520 *citing Richardson v. Pearles*, 402 U.S. 389, 401 (1971). An objective review of the record below fails to reveal substantial evidence that the proposed development is consistent with the findings, goals and policies identified by the Coastal Zone Management Act, for all the reasons set forth above. Both CZM and BLUA then misapplied that insufficient evidence to

the requirements of the relevant statutes. Finally, CZM and BLUA did so in an arbitrary and capricious manner that represented a clear abuse of discretion. Accordingly, the Court should reverse the decisions below.

WHEREFORE, the Petitioner respectfully requests that the Court enter a Judgment vacating the decision of the BLUA and reversing the Decision of the St. John Coastal Zone Management Committee rendered on October 10, 2014 in the application of the Summer's End Group, LLC (the "applicant") for permit applications CZJ-4-14(W) and CZJ-3-14(L).

Dated: September 16, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 19th day of September, 2016, a true and exact copy of the foregoing was sent via first class mail, postage pre-paid and via electronic mail to the following counsel of record:

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