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STATEMENT OF ANDREW C. SIMPSON, ESQ. ON BEHALF OF THE VIRGIN ISLANDS CONSERVATION SOCIETY, INC.

Mr. President and honorable members of the 33rd Legislature of the Virgin Islands:

I apologize that I cannot be present in person to present this testimony; unfortunately, I was already committed to be in Florida on business when the matter of Major Coastal Zone Permit No. CZJ-04-14(W) issued to Summers End Group was scheduled for this session of the Committee of the Whole. I have asked my associate, Attorney Howard Phillips, to read my statement in my absence.

I submit this statement as counsel for the Virgin Islands Conservation Society (VICS), which is engaged in ongoing litigation regarding the CZM permits issued to Summers End Group (“SEG”). There is a general misunderstanding about the current status of the permits for the proposed SEG marina. Indeed, this misunderstanding is reflected in the April 5, 2019 letter transmitting the permit to the Senate for consideration.

So let’s start with that transmittal letter. That letter includes the following statement:

In the ruling made by (BLUA) regarding the issuance of the land and water permits, although the determinations by the St. John CZM Committee were upheld, BLUA placed a condition that development activities of the land permit could not commence without the water permit receiving all necessary territorial and federal approvals. Therefore, although it requires no action on your part, the land permit is provided for reference.

Respectfully, the above statement is wrong. The Board of Land Use Appeals specifically ordered that “the Permits at issue, Nos. CZJ-03-14(L) and CZJ-04-14(W), be consolidated.” Thus, at a minimum, the land and water permits *must* be considered as one. A Senate vote on only the water permit is a legal nullity because a separate water permit no longer exists by virtue of the decision by the Board of Land Use Appeals to consolidate the two permits.

It is important to understand *why* the entire proposed development must be analyzed as a whole rather than in a piecemeal approach such as was done by the CZM

Committee when it first considered the two permit applications. The Virgin Islands Code specifies that one of the policies behind the CZM Act is to guide development “where it will have no significant adverse effects, individually *or cumulative[ly]*, on coastal zone resources.” 12 V.I.C. § 906(a)(1). (Emphasis added.) Moreover, when development is intertwined between the land and the water, it makes no sense to isolate the two parts of the development. This marina project offers a perfect example of the problem that otherwise can develop: Suppose that the water permit is approved and construction goes forward but the land permit is subsequently defeated in VICS’s ongoing legal challenge. Where will the boats that dock at the marina dispose of their sewage when the land-based facilities to support the marina are not built? This is not an rhetorical question—as I explain later in this statement, SEG’s Land Permit authorizes construction of the sewage treatment plant on land it neither owns nor controls. And, the current owner emphatically will not allow SEG to build on those parcels.

Critically, the water-based marina (included as part of the Water Permit application) has limited infrastructure (other than the docks and moorings) and relies *solely* upon the infrastructure that was approved under the Land Permit—infrastructure such as marina offices for management and support, emergency generators, restrooms, locker rooms, fuel storage, potable water supply, marine sewage holding tanks and parking). Without a valid Land Permit, the marina cannot function.

I submit with my testimony copies of the permits that were issued to SEG by the CZM Committee. I think it is important for you to see them because *the permit that I understand you are scheduled to vote on is not the permit that was issued by the CZM Committee*. The original permits were signed on October 24, 2014, yet the Senate has been presented with a *new* water permit that was signed on March 28, 2019. There was no vote between October 24, 2014 and March 28, 2019 to authorize the signing of a new water permit.

Now consider the reason for this strange creation of a newly-signed CZM permit. You will note that both of the 2014 CZM permits (CZJ-04-14(W) and CZJ-03-14(L)) require that development commence within 12 months from the effective date of the permit and then continue until completion. Please note that if at least 50% of the work is not completed within the 12-month period, the permit will “terminate automatically and render it null and void” unless the SEG obtains an extension. See General Condition 5.F in each permit. The only way the permits could be extended is if the CZM Committee voted to extend them. SEG does not get to restart the clock for commencing development by somehow persuading the Chairman of the CZM Committee to sign and re-date the same permit without any action by the CZM Committee.

The permits were issued on October 24, 2014. VICS appealed the permits to the Board of Land Use Appeals. That appeal automatically stayed the permits (including the time for commencing and completing work). *See* 12 V.I.C. § 910(d)(5). However, the stay is only in effect while it is pending a decision on appeal. *Id.* BLUA decided the appeal on June 6, 2016, which restarted the 12-month time period. Even today, SEG has done nothing to either commence or complete construction. The permits are invalid as a matter of law because they terminated automatically when the 12-month time period expired.

Further, BLUA affirmed the issuance of the permits but ordered that the two permits be consolidated. *See* attached Order from BLUA. That has never happened, and the permit submitted to the Legislature to be approved is only the Water permit rather than a consolidated permit—the Senate is literally voting on a permit that does not have legal existence.

The Senate should also be aware that VICS currently has a writ of review pending before the Hon. Michael C. Dunston in the Superior Court of the Virgin Islands. The issues for review are fully briefed and the parties are awaiting a decision from Presiding Judge Dunston. In that proceeding, VICS raises the following arguments:

1. The St John CZM Committee failed to consider the cumulative impacts of land and water development, as required by 12 V.I.C. § 903.
2. Virgin Islands Board of Land Use Appeals (BLUA) lacks the authority to consolidate permits by order. The applicant must file a single CZM Major Land and Water permit application.
3. The CZM application submitted by the Summers End Group was insufficient as a matter of law. SEG failed to establish that it had the legal interest to develop the property in accordance with its proposal.
4. The Environmental Assessment Report (“EAR”) of the Summers End Group has a multitude of deficiencies and fails to meet the legal requirements of the CZM act.
5. The Submerged Land Lease does not comply with the requirements of VI Code and Regulations for the computation of the fee and the reasons for substantial fee discounts.
6. There was an improper participation of a CZM commissioner with a conflict of interest.
7. CZM-STJ's actions were arbitrary and capricious and failed to comply with the CZMA. It erred because it:

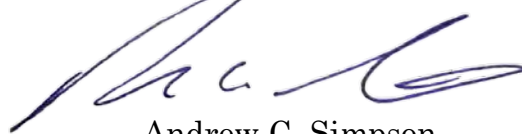
- a. failed to consolidate the two permit applications and consider the cumulative impact of the development upon the entire coastal zone;
 - b. failed to consolidate the two permit applications and therefore did not subject the land-aspects of the development to the scrutiny required in 12 V.I.C. § 911;
 - c. granted the permits when SEG had failed to prove that it had the required legal interest in the properties and authority to develop the properties;
 - d. granted the permits when the EARs were insufficient, both as a matter of law and of fact;
 - e. failed to make any findings of fact that allowed its decisions to be properly reviewed on appeal;
 - f. failed to make all of the conclusions required by 12 V.I.C. § 911(c);
 - g. made some of the conclusions (by adopting CZM Staff recommendations) required by 12 V.I.C. §§ 910 and 910(c) when those conclusions are not supported by the substantial evidence of record;
 - h. failed to state the basis for the rental calculations for the Water Permit as required by the CZMA;
 - i. imposed improper conditions upon the Water Permit; and
 - j. proceeded to consider the permit with the participation of a Committee member who was disqualified from taking any steps to advance the progress of the permit.
8. The decision of VIBLUA was erroneous because it
- a. consolidated, without any statutory authority, the Land Permit and Water Permit instead of vacating the two permits when it recognized that they were improperly considered separately;
 - b. affirmed the decision of CZM-STJ despite all of the errors listed above.

Finally, I would like to take just one of the above issues—SEG’s failure to prove that it had the required legal interest—and focus your attention on that. It is a matter of public record (Doc. No. 2014005850 recorded in the Office of the Recorder of Deeds for St. Thomas/St. John on July 22, 2014) that the Superior Court Marshal sold Parcel No. 13-A Estate Carolina, No.1 Coral Bay Quarter, St. John, U.S. Virgin Islands on September 13, 2013—more than a year before the CZM permits were issued—due to

a judgment obtained against the owner by Merchants Commercial Bank. That public record further establishes that Merchants Commercial Bank assigned the certificate of marshal's sale to 13-A Estate Carolina, LLC. Further, the Senate is in possession of the August 6, 2019 letter from Paul G. Sabers, the managing member of 13-A Estate Carolina LLC and of a similar entity that owns Parcel 13-B. As Mr. Sabers points out in that letter, the Land Permit authorizes construction of, among other things, the sewage treatment plant, on those parcels. Yet, as Mr. Sabers explains, the owners of those parcels, do *not* authorize any construction on those parcels. Even if the Water Permit was valid, *no matter what action the Senate takes on it*, this project can never be built because SEG lacks the permission of the owners of Parcel Nos. 13-A and 13-B to build on its property.

I respectfully submit that the Senate should vote to deny approval of the water permit. At the very least, it should refrain from taking any action until Judge Dunstan has ruled, as his ruling is likely to have a significant impact upon the proposal and the Senate should wait so that it at least knows what it is voting on.

Respectfully,

A handwritten signature in blue ink, appearing to read 'A. C. Simpson', written over a horizontal line.

Andrew C. Simpson

Attachments:

CZM Permit CZJ-04-14(W)
CZM Permit CZJ-03-14(L)
Board of Land Use Appeals Decision

Water Permit

(Signed October 24, 2014)

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

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

referred to as "the premises"), and to hold the 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, Cyril E. King Airport, Terminal Building, Second Floor, St. Thomas, Virgin Islands 00802, or to such other place as the Permitter may hereinafter designate. If addressed to the Permittee, same shall be sent to 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. FEES

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

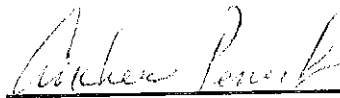
7. SPECIAL CONDITIONS

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

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

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

ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS CZM COMMISSION
Permitter



Andrew Penn, Sr.
Chairman

10/24/2014

Date

THE SUMMER'S END GROUP, LLC
Permittee



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

10/24/2014

Date

APPROVED
Governor of the Virgin Islands

The Honorable John P. de Jongh, Jr.
Governor

Date

APPROVED
Legislature of the Virgin Islands

The Honorable Shawn Michael Malone
President, 30th Legislature

Date

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



Chaliese Summers
Managing Member

October 24, 2014
Date

SWORN AND SUBSCRIBED before me
this 24th day of October 2014



Notary Public

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

Land Permit

(Signed October 24, 2014)

MAJOR COASTAL ZONE MANAGEMENT PERMIT NO. CZJ-03-14(L)

1. **AUTHORITY** This permit is issued by the St. Thomas Committee of the Virgin Islands Coastal Zone Management (CZM) Commission and is administered and monitored by the Department of Planning and Natural Resources (the "Department") on behalf of the Coastal Zone Management Commission pursuant to Virgin Islands Code, Title 12, Sections 904, and any other provisions of THE CZM Act. As herein, "**Permitter**" is the **ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS COASTAL ZONE MANAGEMENT COMMISSION** and "**Permittee**" is **THE SUMMER'S END GROUP, LLC**.

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

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

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

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

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

3. **TERM** This permit is effective upon its signing by the Chairman of the St. John CZM Committee, pursuant to Virgin Islands Code, Title 12, Chapter 21. Authorization for construction under this permit will expire if the Permittee fails to commence work within twelve (12) months from the date this permit becomes effective.

4. DOCUMENTS INCORPORATED BY REFERENCE

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

5. GENERAL CONDITIONS

- A. Liability The Permittee agrees to assume full and complete responsibility for all liability to any person or persons, including employees, as a result of its control of the area described in Paragraph 2 of this permit, and all improvements thereon (which area and improvements are hereinafter referred to as "the premises"), and to hold the Permitter free and harmless for civil or other liabilities of any kind during the time the Permittee is in control of the premises pursuant to this permit.
- B. Personal Property and Damage All personal property of any kind or description whatsoever located on the premises shall be there at the Permittee's sole risk.
- C. Assignment or Transfer This permit may not be transferred or assigned except as provided in Section 910-15 of the Virgin Islands Rules and regulations.
- D. Permit to be Displayed A placard evidencing the permit shall be posted in a conspicuous place at the project site during the entire work period.
- E. Reliance on Information and Data The Permittee affirms that the information and data which it provided in connection with its permit application are true and accurate, and acknowledges that if subsequent to the effective date of this permit such information and data prove to be false or inaccurate, the permit may be modified, suspended or revoked in whole or in part, and that the Commissioner or the Committee may, in addition, institute appropriate legal action.
- F. Development to be Commenced Any and all development approved by this Coastal Zone Permit shall begin within twelve (12) months from the date this permit becomes effective and shall be continuous until completion. Failure to perform at least fifty (50%) percent of the work within such period and continuously construct thereafter until the completion of construction shall cause the permit to terminate automatically and render it null and void, unless the Permittee requests an extension in writing and demonstrates to the satisfaction of the Committee that good cause exists for granting such extension.
- G. Notification of Completion Upon completion of any activity authorized or

required by this CZM Permit, the Permittee shall promptly so notify the Director of the Division of CZM and where the services of a professional engineer were required in undertaking the activity, a certification of compliance provided by the project engineer that the plans and specifications of the project and all applicable Virgin Islands Code requirements have been met, shall be filed with said Director.

- H. Inspection The Commission, its Committee, the Commissioner or their authorized agents or representatives shall have the power to enter at reasonable times during project working hours upon any lands or waters in the coastal zone for which this Coastal Zone Permit has been issued. The Permittee shall permit such entry for the purpose of inspection and ascertaining compliance with the terms and conditions of said Coastal Zone Permit. The Permittee shall provide access to such records as the Commission, its Committee, or the Commissioner in the performance of it or his duties under the CZM Act may require the Permittee to maintain. Such records may be examined and copies shall be submitted to the Commission, its Committee or the Commissioner upon request.
- I. Conditions of Premises The Development authorized by this permit shall be maintained in a safe condition and in accordance with the description, plans, or drawings approved by the Commissioner or by the Committee, and all applicable Virgin Islands Laws.
- J. Public Access to Shoreline The development shall be operated so as to assure optimum public access to the shoreline.
- K. Restoration of Area The Permittee, upon renovation or expiration of the permit, shall upon order of the Committee, or the Commissioner, and in their sole discretion, remove all structures authorized by the permit and restore the area to its original condition, and/or modify such structures or site, and/or comply with any directive of the Committee, or the Commissioner in satisfying the original permit conditions in such time and manner as the Committee, or the Commissioner may direct.
- L. Notices All notices sent or required to be sent hereunder must be by certified mail, return receipt requested. If addressed to the Permitter, same shall be sent to the Commissioner of the Department of Planning and Natural Resources, Cyril E. King Airport, Terminal Building, Second Floor, St. Thomas, Virgin Islands 00802, or to such other place as the Permitter may hereinafter designate. If addressed to the Permittee, same shall be sent to Chalièse Summers 5000 Estate Enighed, Suite 63, St. John, VI 00830 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. SPECIAL CONDITIONS

1. *All applicable Territorial and Federal permits or other necessary approvals must be obtained, prior to commencement of development activities.*
2. *The Permittee shall notify the Division of Coastal Zone Management (CZM) two (2) days prior to the commencement of development activities.*

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.

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


ST. JOHN COMMITTEE OF THE VIRGIN ISLANDS CZM COMMISSION
Permitter



Andrew Penn, Sr.
Chairman

10/24/2014
Date

THE SUMMER'S END GROUP, LLC.
Permittee

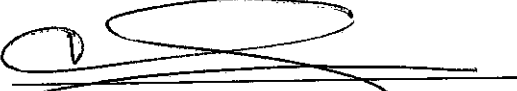


Chaliese Summers
Managing Member

10/24/2014
Date

CZJ-03-14(L)
The Summer's End Group, LLC.
St. Thomas, Virgin Islands

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


Charliese Summers
Managing Member

October 24, 2014
Date

SWORN AND SUBSCRIBED before me

this 24th day of October 2014


Notary Public

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

Board of Land Use Appeals Decision

THE VIRGIN ISLANDS BOARD OF LAND USE APPEALS

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

DECISION AND ORDER

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

FINDINGS OF FACT

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

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

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

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

JURISDICTION

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

ORDER

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

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

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

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

Ordered This 6 Day of JUNE 2016.

BY THE VIRGIN ISLANDS BOARD OF LAND USE APPEALS


Aloy Nielsen, Acting Chairman