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Hon. Senator Javan E. James, Sr.
Chairman, Committee on Economic Development and Agriculture
Legislature of the U.S. Virgin Islands
Capitol Building, Charlotte Amalie
P.O. Box 1690
St. Thomas, Virgin Islands 00804

12 November 2024

Re: *The Summer's End Group, LLC*

Honorable Senator James and Fellow Members of the Committee:

I have been representing the Summer's End Group in regard to proposed marina in Coral Bay since 2014. In that time, Summer's End has diligently pursued its permitting the completion of all administrative and judicial reviews. The consolidated permit remains valid and in effect.

In that process, Summer's End has:

- Completed the CZM process, with public hearings, DPNR staff review, and the issuance of permits for land and water issued by the St. John Committee;
- Completed an appeal process through the Board of Land Use Appeals. Appeals were brought by the VI Conservation Society and the Moravian Church Conference. Despite the 90 days provided in the CZM Act, this process took 17 months. The Board of Land Use Appeals then affirmed the issuance of the permits, but at the request of the appellants, consolidated the two permits into a single permit.

Since the completion of the administrative process, Summer's End has prevailed in litigation before the Superior Court, the Virgin Islands Supreme Court, and the United States Supreme Court. Litigation remains pending before both the Virgin Islands Superior Court, and in 2022 project opponents opened a new litigation before the US District Court for the Virgin Islands. The litigation history is provided below, and for your information and convenience, a summary timeline is attached.

Hon. Senator Javan E. James, Sr.
Chairman, Committee on Economic Development and Agriculture
Re: The Summer's End Group, LLC
12 November 2024
Page 2 of 5

Both the VI Conservation Society and the Moravian Church Conference petitioned for a writ of review before the Superior Court. The Court consolidated the two proceedings, and set a schedule for briefing; that briefing was completed in January 2017 – seven years ago. Over the next three years, the Summer's End Group repeatedly – at least five times – sought a hearing or decision in the matter, but all requests were ignored. Following the Legislature's passage of Act No. 8407, the Summer's End Group moved for the dismissal of these petitions on February 2, 2021. After nearly four years, one hearing, and dozens of filings, no action has been taken and the petitions remain pending.

But not all judges or courts have been so slow to perform their work.

In 2020, in another effort to prevent the Legislature from ratifying both the Consolidated Permits and the Governor's modifications pursuant to the CZM Act, David Silverman, acting through his group Save Coral Bay, Inc., filed another lawsuit. Following the passage of Act No. 8407, Summer's End moved to dismiss this case. Following a hearing before the Court, the motion to dismiss was granted on May 12, 2021.

Silverman's SCB then petitioned the Virgin Islands Supreme Court, and the matter was heard by the Court in November 2021. On March 30, 2022, the Virgin Islands Supreme Court affirmed the dismissal and the ratification of the Consolidated Permits.

Silverman's SCB then sought review by the United States Supreme Court by filing a petition for writ of certiorari. In October 2022, the US Supreme Court denied the petition, which is an affirmation of the VI Supreme Court's decision.

Still, the Superior Court has not taken any action on the long pending Motion to Dismiss the writ proceedings, despite extensive briefing and notices of the each of the other relevant court decisions.

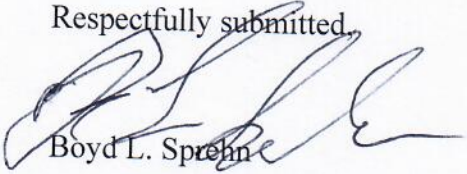
In October 2022, the Moravian Church Conference started yet another litigation, this time in the U.S. District Court. That suit is fairly described as a collateral attack on the VI Supreme Court's ruling on Act No. 8407. That case has generated at least 55 more filings. The parties have submitted cross-motions to end the case on motions to dismiss or for summary judgment; the District Court has acknowledged its responsibility to make those rulings, but has not yet done so.

Throughout this process, and particularly since the Legislature's passage of the permit ratification in Act No. 8407, the Summer's End Group has pursued the necessary United States Army Corps of Engineer's permit ("USACE permit"). While USACE stalled the process pending the Legislature's ratification, and the periodic assignment of new offices and personnel to the matter, the Summer's End Group has continuously pursued this matter, and resolution is near at hand.

Hon. Senator Javan E. James, Sr.
Chairman, Committee on Economic Development and Agriculture
Re: The Summer's End Group, LLC
12 November 2024
Page 3 of 5

The Consolidated Permits provide that the term of the permit is 20 years from the date of ratification (Section 3 of the Consolidated Permit; ratification occurred with Act No. 8407; December 21, 2020), and that prior to any work commencement, any required federal permits shall be obtained (Consolidated Permit, Section 5.O.). The Consolidated Permit remains in effect and good standing.

Respectfully submitted,



Boyd L. Sprehn

Law Office of John H. Benham, P.C.

Cc: Members of the Committee:

Hon. Angel L. Bolques, Jr. (senatorbolques@legvi.org)
Hon. Marvin A. Blyden (mblyden@legvi.org)
Hon. Diane T. Capehart (dcapehart@legvi.org)
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Hon. Alma Francis Heyliger (senatorfrancisheylinger@legvi.org)
Hon. Donna Frett-Gregory (senatorfrett-gregory@legvi.org)

The Summer's End Group, LLC's Coral Bay Marina Project in Summary History:

- 2014 April Application for St. John Marina Permits (L) submitted to CZM.
- 2014 April Application for St. John Marina Permits (W) submitted to CZM (Land and water were concurrent filings, per DPNR requirements).
- 2014 June Applications for St. John Marina permits(L) & (W) deemed complete by DPNR/CZM and public notices sent out.
- 2014 June Through August – Public Comments and comments from other agencies received, reviewed and responded.
- 2014 Aug. DPNR/CZM issues staff reports recommending approval of both (L)&(W) permits.
- 2014 Oct. St. John CZM Committee completes review and approves (L)&(W)permits.
- 2014 Nov. Governor de Jongh completes review and approves permits.
- 2014 Dec. VICS files Notice of Appeal with Board of Land Use Appeals.
- 2104-Present U.S. Army Corps of Engineers Permit process on-going, despite delays caused by the Storms of 2017; USACE process cannot be completed until VI permit process completed.
- 2016 Jun BLUA *unanimously* uphold decision of STJ CZM Comm., orders permits be consolidated into one major permit.
- 2016 Sept. VICS and Moravian Church Conference file a writ of review suit in Superior Court.
- 2017 Jan. All briefings complete in Superior Court writ proceeding.
- 2017-19 All efforts by Summer's End to obtain a hearing in Superior Court ignored by VICS/Silverman.
- 2018 July NOAA evaluates and *upholds* DPNR/CZM &STJ CZM Comm. review and approval process.
- 2018 Aug. U.S. Fish & Wildlife Service completes consultation and determines Marina *not likely to adversely affect sea life*.
- 2019 April Governor Bryan completes *review and approves permit*.

- 2019 April 33rd Leg. Receives permit (W) portion from Gov. Bryan and request for approval of submerged lands lease.
- 2019 Oct. 33rd Legislature Committee of the whole holds a full day hearing on the Summer's End project, consolidated (L)&(W) permit, and project modifications resulting from the US Army Corps of Engineers permitting process.
- 2019 Dec. Major CZM Permits (L&W) documents merged/consolidated as ordered by BLUA. These permits (L&W) are the same documents reviewed and approved by the St. John CZM Commission and have completed the CZM review process.
- 2019 Dec. Governor Bryan modifies the consolidated permit as requested by 33rd Legislature, as is authorized to do by VI Code Title 12, §911(g).
- 2019 Dec. 33rd Legislature receives consolidated permit and modification to the consolidated permit as they requested by Governor Bryan.
- 2020 Jan. VICS filed a second Notice of Appeal with the Board of Land Use appeals.
- 2020 July The Legislature holds a full day hearing devoted to this project.
- 2020 Nov. Board of Land Use Appeals affirmed that the permit consolidation was effective on its 2017 Order, and that the Second Appeal was dismissed.
- 2020 Nov. Save Coral Bay, Inc. (David Silverman, president) files new suit against Summer's End.
- 2020 Dec. Legislature ratifies Consolidated Permits and Governor's Modifications in Act No. 8407.
- 2021 Feb. Summer's End moves to dismiss both the Consolidated Writs cases and the Silverman/SCB cases in Superior Court.
- 2021 May Superior Court Judge Gumbs-Carty dismisses Silverman/SCB case.
- 2022 Mar. Supreme Court affirms Superior Court dismissal and Legislative authority on ratification of Consolidated Permit.
- 2022 Oct. US Supreme Court denies Silverman/SCB Petition for Writ of Certiorari.
- 2022 Oct. Moravian Church initiates new litigation in District Court.