ENVIRONMENTAL ASSESSMENT REPORT FOR THE MODIFICATION OF CZT-2-10(W) AND SAJ 2014 02968(SP-JMS) FOR THE EXTENSION OF AN EXISTING REVERSE OSMOSIS INTAKE LINE
MARGARITAVILLE VACATION CLUB
ESTATE SMITH BAY
ST. THOMAS, U.S. VIRGIN ISLANDS

Prepared for:
THE OFFICE OF COASTAL ZONE MANAGEMENT
DEPARTMENT OF PLANNING AND NATURAL RESOURCES,
AND THE GOVERNMENT OF THE VIRGIN ISLANDS

Prepared by:
BIOIMPACT, INC.

JULY 2020
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APPENDIX 1

Existing CZM Permit CZT-2-10(W)
Existing USACE Permit SAJ 2014 02968(SP- JMS)
1.0 NAMES AND ADDRESS OF APPLICANT

Margaritaville Vacation Club by Wyndham, Inc
C/O Dudley, Topper and Feuezeig, LLP
Law House, 1000 Frederikbergs Gade
St. Thomas, VI 00802

2.00 LOCATION OF PROJECT

Margaritaville Vacation Club by Wyndham, Inc., is located on the north shore of St. Thomas on Water Bay. The resort is comprised of Parcels 39, 41, 49 and Rem. 64 (including 24 through 30) Estate Frydendahl, East End Quarter, St. Thomas, U.S. Virgin Islands. The reverse osmosis line will extend from Parcel 49 Estate Frydendahl.

The Location and Agency Review Map in Figure 2.00.1 below depicts the areas of Coastal Zone Management First Tier jurisdiction.
Figure 2.00.1 – Location and Agency Review Map. The areas in color, fall under the jurisdiction of D.P.N.R.’s Division of Coastal Zone Management.

Figure 2.00.2 – Location of Margaritaville Vacation Club by Wyndham, Inc. in reference to other island features.

3.00 ABSTRACT

Margaritaville Vacation Club by Wyndham, St. Thomas, USVI would like to extend their seawater intake for their reverse osmosis plant. The reason for the extension is to get the line out far enough so that it is not negatively impacted when Sargassum weed builds up along the beach. The line which is located on the dock can easily become inoperable when the Sargassum builds up around the dock which has happened several times over the last few years.

The 4” diameter line would be extended 147ft beyond the end of the dock and be held in place with saddle clamps with 2ft screw anchors every 20ft.
The line will terminate with a low velocity wedge wire in approximately 10ft of water. The intake will extend 32" above the seafloor. The intake will stabilized by a 6" diameter, 24" long PVC concrete filled foot and two guy wires with 2ft screw anchors.

4.00 STATEMENT OF OBJECTIVES SOUGHT BY THE PROPOSED APPLICATION

This objective of this application is to extend the existing reverse osmosis line so that it is not impacted when Sargassum weed builds up along the shoreline which can make the intake inoperable.

5.0 DESCRIPTION OF PROJECT

5.01 Summary of Proposed Activity

Margaritaville Vacation Club by Wyndham, St. Thomas, USVI is proposing to extend their seawater intake for their reverse osmosis plant. The reason for the extension is to get the line out far enough so that it is not negatively impacted when Sargassum weed builds up along the beach. The line which is located on the dock can easily become inoperable when the Sargassum builds up around the dock which has happened several times over the last few years.

The 4" diameter line would be extended 147ft beyond the end of the dock and be held in place with saddle clamps with 2ft screw anchors every 20ft. The line will terminate with a low velocity wedge wire in approximately 10ft of water. The intake will extend 32" above the seafloor. The intake will stabilized by a 6" diameter, 24" long PVC concrete filled foot and two guy wires with 2ft screw anchors.

5.01.a Purpose of Project

The purpose of the project is to extend the reverse osmosis intake line so that the production of potable water for the resort is not interrupted.

5.01.b Presence and Location of Any Critical Areas and Possible Trouble Spots

The line will be extended from under the dock out 147ft. There are no corals on the dock and no seagrass colonization along the proposed route. There are no critical areas or trouble spots.

5.01.c Method of Construction

The intake line will be installed by divers supported by a work boat. The helix type anchor will be hand driven by divers into the intake location and a 6” diameter support pipe will be placed over the upper 2ft the anchor and filled with cement. The riser will be attached to the anchor and a Johnson model S-12 intake will be installed. The 4” diameter intake line will be installed by divers along the designated...
route and avoids corals, seagrass and consolidated hardbottom and helix type anchors will be placed every 20’ to stabilize the line.

5.01.d Methods to Limit Site Disturbance

The intake has been located so that it avoids all resources. The intake will be installed by divers and will use helix type anchors to minimize impacts. The pipeline will be lain across uncolonized sand.

5.01.e Sediment Control Measures to be Implemented

The intake installation should only result in minimal sediment resuspension as the result of divers working on the bottom. Resuspension of the sand will be short-term and limited to the area of work. When the 2’ pipe is filled with cement it will be done by hand by divers and will result in minimal release of fines. No turbidity control should be necessary.

5.01.f Schedule for Construction Activities and Implementation Sediment Control Measures

The intake anchor will be installed and then the pipe lain to the landing and the intake structure installed. The stabilizing anchors will then be set. No turbidity control should be necessary.

5.01.g Maintenance of Sediment Control Measures

Because of the nature of the work no sediment control measures should be necessary.

5.02 Site Plans

Reverse Osmosis Intake Line
6.0 ECOLOGICAL SETTING AND PROBABLE PROJECT IMPACT ON THE NATURAL ENVIRONMENT

6.01 Marine Resources

BENTHIC SURVEY

The proposed project involves the extension of an existing reverse osmosis intake line 150ft beyond the end of the existing dock so that it is not impacted when Sargassum builds up in the bay. The benthic colonization of the seafloor off shore of Margaritaville has significantly changed over the last several years due to the expansion of the invasive sea vine Halophila stipulacea and the large mats of Sargassum which have been trapped in the bay and eventually sank scouring and smothering the existing seagrass beds.

Margaritaville is located in Water Bay on the north side of the island of St. Thomas. Water Bay was dredged in 1961, 1965 and again in 1968. A study of the area suggested wide spread coral mortality in the bay as a result of this activity.

Within the bay area are dense grass beds in the center of the bay in areas that were not dredge, there is a scattered cobble/rock shoreline community which fringes the southern side of the point and there is a hard rock bottom community surrounding the terminus of Coki Point. The hard substrate areas enjoy moderate coral colonization and there are large scattered coral heads and large soft corals. In most areas there is a band of sand between the shoreline areas of colonized bedrock and the off shore seagrass beds. There is a sandy beach located at the western shoreline of the bay on which Margaritaville lies, the existing dock extends off the northern portion of the beach and the existing intake line extends off the northern side of the dock. There are Acropora palmata along the outer rocky substrates of the bay more than 1250 ft. off the end of the proposed intake line extension and Orbicella annularis, O. faveolata, and Dendrogyra cylindrus also occur within areas of rock substrate to the northeast, the closest hardbottom area containing these species is more than 1000 ft. from the termination of the proposed intake line. The entire water front along the resort is sandy, the areas around the dock are and have been uncolonized sand. There was very sparse algae and sparse Halodule immediately offshore of the beach extending approximately 100 ft. offshore, dense macro algae and 30-80% seagrass (Thalassia testudinum, and Syringodium filiforme) patchily distributed start approximately 100ft. off shore across most of the water front. Halophila stipulacea became more prevalent about 3 years ago throughout the area both in the shallows and seagrass beds. This however would not result in the greatest changes. The Sargassum which has impacted the area periodically over the last few years, has scoured the nearshore area resulting in major impact to the nearshore seagrass beds.

Benthic Community Survey Methods

Benthic surveys in Water Bay were undertaken in the proposed project area during the summer of 2010 and summer of 2014, winter of 2017 and in April and June of 2020. The surveys were conducted with snorkeling and diving equipment and transects were conducted within the area and meter squares were used to assess percent covers along the transect lines (Rogers, 1994) in 2014.
The quantitative data from 2014 is present in Table 6.06.1. Figure 6.06.1 immediately below provides the Benthic Habitat Map provided by NOS, NOAA. The habitats shown in the NOAA map were somewhat consistent with those noted during the field work in 2014 and 2017. The map shows the area which was previously dredged and seagrass areas offshore. In 2020, the seagrass beds more than 200ft offshore of the dock had been almost completely destroyed by the Halophila stipulacea.

![Figure 6.06.1 The NOS Benthic Habitat Map, Tile 13.](image-url)
The Benthic Community

The bay was dredged in 1961, 1965 and 1968. The dredging of 400,000 cubic yards of material was permitted to be dredged from below a depth of 27ft. This material was deposited in the salt pond where Pineapple Village was constructed and was used to nourish the beach. Most of the dredged areas now contain a minimal amount of algal cover although seagrass beds intermixed with H. stipulacea are slowly becoming established. The dredging was described as having resulted in the dead of corals throughout the bay in a 1969 study conducted by the Caribbean Research Institute, College of the Virgin Islands (1969). The closest hardbottom or coral habitat areas occur more than 1000ft from the proposed intake line alignment.

Water quality offshore is impacted by runoff from the large water shed and the large drainage ditch on the southern end of the beach there is a scoured area and an area of macro immediately offshore. Improvement have been made to the drainage and water quality has slightly improved. To the east and along the shoreline further offshore there area Thalassia testudinum and Syringodium filiforme beds with densities of 30-80%. At one time these beds were within 100ft of the shoreline now they are over 200ft offshore. There are numerous boat scars within the seagrass beds. Offshore of the beach extending approximately 100 ft. offshore there used to be very sparse scattered algae and some very very sparse Halodule. Only widely scattered patches of only a few blades were seen in 2020. Around the dock and to the north there is an accumulation of detritus on the seafloor which is primarily composed of dead Sargassum. The bottom is barren and there is uncolonized sand to the northern corner of the beach. There are macro algae on the dock pilings but no corals. Beyond the dock for more than 200ft off shore the seafloor has less than 5% colonization by macro algae, H. stipulacea and T. testudinum.
The *Thalassia* and *Syringodium* offshore of the dock in 2017.

Sparser grass beds with macro-algae including *Penicillus*, *Caulerpa*, *Laurencia* and *Halimeda* and *H. stipulacea* in 2017.

Off the dock in 2020, accumulations of Sagassum on the seafloor.

There is some very sparse *H. stipulacea*, but much of it is buried by Sargassum.
A few Thalassia blades can be seen coming up through the Sargassum on the seafloor.

Areas without Sargassum show debris on the bottom and muddy sand.

There is virtually no colonization along the proposed route.

Tangles of Sargassum offshore.
A small patch of Thalassia offshore.

Table 6.06.1 Result of quadrat analysis done along the transect lines in 2014.

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The nearshore area around the dock now has less than 5% overall colonization by algae, seavine and seagrass.

**IMPACT OF DEVELOPMENT**

The area offshore along the proposed alignment has less than 5% colonization by seagrass, algae or *H. stipulacea*. The intent is to place saddle clamps and screw anchors every 20ft to stabilize the pipeline thereby minimizing potential impact due to movement. Due to the lack of colonization, any impact of the placement will be negligible.
A low velocity wedge wire intake will be utilized with less than 0.5fps velocity to minimize impingent of fish and invertebrate larva.
APPENDIX I
MAJOR COASTAL ZONE MANAGEMENT PERMIT NO. CZT-02-10(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 910 and 911, and any other provisions of Chapter 21 that apply. As herein, "Permittee" is the ST. THOMAS COMMITTEE OF THE VIRGIN ISLANDS COASTAL ZONE MANAGEMENT COMMISSION and "Permittee" is WYNDHAM ST. THOMAS DEVELOPMENT COMPANY, LLC.

2. **SCOPE**  This permit allows the Permittee to conduct the following:

   a. Improvement of the existing dock to its original condition and the addition of a canopy over the leg portion of the dock,
   b. Creation of a 180-foot protected swim area – the four (4) previously permitted swim buoys spaced at 36 feet will be re-deployed in their previously permitted locations; two additional buoys will be installed.
   c. Replace Reverse Osmosis Intake and Discharge pipes located under the dock.
   d. addition of floating Water Trampoline.

The project is located seaward of Parcel No. 49, Estate Frydendahl, St. Thomas, Virgin Islands.

3. **TERM**  This permit is effective upon its signing by the Chairman of the St. Thomas 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 ratification. This permit will expire twenty (20) years after the Effective Date. The Permittee shall have the option to renew the permit within ninety (90) days before the permit expires and the terms are subject to negotiation. This permit is issued for a definite term, twenty (20) years, and shall not constitute a property right.

The Permit shall be renewed only if the requirements of Title 12 of the Virgin Islands Code, Section 911, are met. Authorization for the development under this permit shall 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 B: Copy of Warranty Deed dated January 12, 2007.
Exhibit C: Copy of the Dock and Water Improvement Layout dated July 24, 2009.
Exhibit D: Copy of the Environmental Assessment Report dated April 5, 2010.

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 Permittee 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 R&REGS.

(d). **Permit to be Displayed**  A placard evidencing the permit shall be posted in a conspicuous place at the project site.

(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 CZM Commission, its Committees, the DPNR 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 CZM Commission, its Committees or the DPNR 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 DPNR 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 revocation 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 Permittor, 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 Permittor may hereinafter designate. If addressed to the Permittee, same shall be sent to George B. Hewes, Sr. Vice President, c/o Dudley, Topper & Feuerzeig Attorneys at Law, P.O. Box 756, St. Thomas, Virgin Islands, 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 Permittor 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 Permittor to or of any acts by the Permittee requiring the Permittor'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 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 abandons, 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 applicant 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 applicant requests a written extension and the Department grants the written extension.
6. **SPECIAL CONDITIONS**

   a. The Permittee shall notify the Division of Coastal Zone Management (CZM) two working days prior to commencement of construction in accordance with the proposed activities.

   b. A turbidity curtain shall be installed around the dock area to prevent construction debris from escaping outside the project area.

   c. All necessary Territorial and Federal permits (i.e. Army Corps of Engineers, Building Permits, Environmental Protection, etc.) must be obtained and, when applicable, copies submitted to the Division of CZM prior to commencement of any construction on the project.

   d. The Permittee shall comply with the provisions of the Water Quality Certificate.

   e. The Permittee shall cease the work immediately and contact the V.I. State and Historic Preservation Office (VISHPO) if any submerged cultural resources or any historic features are found.

   f. No fueling of vessel are allowed at the dock.
7. FEES

Pursuant to Virgin Islands R & REGS, Title 12, Section 910-5 (e) (8), the Commissioner of the Department of Planning and Natural Resources negotiated the following fees to be paid by the Permittee. Certified or bank draft checks shall be made payable to the Department of Planning and Natural Resources five (5) days after the Legislature ratifies the permit.

A. A fee of Twenty Three Thousand Dollars ($23,000.00) per year, payable annually in advance, shall be charged for the use and occupancy of the submerged lands area occupied under this permit. The fee is assessed pursuant to Virgin Islands Code, Title 12, Section 911 (f).

B. The annual fees payable under this permit shall be adjusted at the commencement of the sixth (6th) year of the permit term, and every year thereafter, 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 (1967-100 percent)" (the "CPI"), as follows: The CPI as of the first month of the sixth year of the term of the permit shall be the base price index and the CPI as of the month immediately preceding the commencement of the sixth year of the permit term shall be the current price index. 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 fee of the prior year. The resulting product shall be the Annual fee for the sixth year to the tenth year of the permit term; provided however, that in no event shall the Annual Fee, following adjustment, be less than the initial Twenty Three Thousand Dollars ($23,000.00) fee or greater than 150 percent of the Twenty Three Thousand Dollars ($23,000.00) fee during the initial sixty (60) months of term of the permit.

D. Prior to the eleventh (11th) year of the permit term, the annual fees shall be renegotiated in accordance with the provisions of V.I. R. & REGS. Title 12 §910-5(e) (2006). In no event shall any fee to be determined be reduced below an annual fee of Twenty Three Thousand Dollars ($23,000.00). Failure to renegotiate prior to the due date of the eleventh payment shall result in the automatic increase of the submerged land fee by fifteen percent (15%) of the previous annual amount.
The annual fees payable under this permit shall be adjusted at the commencement of the sixteenth (16th) 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 (1967-100 percent)". (the "CPI") as follows: The CPI as of the first month of the eleventh year of the term of the permit shall be the base price index and the CPI as of the month immediately preceding the commencement of the sixteenth year of the permit term shall be the current price index. 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 fee of the prior year. The resulting product shall be the Annual fee from the sixteenth year to the twentieth year of the permit term; provided however, that in no event shall the annual fee, following adjustment, be less than the annual fee negotiated pursuant to Paragraph C of this Section or greater than 150 percent of the fee negotiated pursuant to Paragraph C of this Section.

IT IS EXPRESSLY UNDERSTOOD by the parties hereto that the title to all submerged or filled land which is altered or occupied on the basis of this permit is the Government of the Virgin Islands, and the Permittee shall have no right or interest therein, of any kind whatsoever, other than such rights as are expressly set forth herein, and that this instrument is not a lease.
IT IS EXPRESSLY UNDERSTOOD by the parties hereto that the title to all submerged or filled land which is altered or occupied on the basis of this permit is the Government of the Virgin Islands, and the Permittee shall have no right or interest therein, of any kind whatsoever, other than such rights as are expressly set forth herein, and that this instrument is not a lease.

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

ST. THOMAS COMMITTEE OF THE VIRGIN ISLANDS CZM COMMISSION
Permitor

By: Austin M. Monsanto, Chair
St. Thomas Committee of the Virgin Islands

03/17/17
Date

WYNDHAM ST. THOMAS DEVELOPMENT CO., LLC
Permittee

By: Alan Litwack
Senior Vice President

5/3/12
Date

APPROVED

The Honorable John P. de Jongh, Jr.
Governor of the Virgin Islands

6/21/12
Date

RATIFIED
Legislature of the Virgin Islands

8/28/12
Date

President of the Legislature
Wyndham St. Thomas Dev., Co., LLC
CZT-02-10(W)
Permit Document

I, Alan Litwack, do hereby certify that as Senior Vice President of WYNDHAM ST. THOMAS DEV., CO., LLC, I am hereby authorized and empowered to sign this Permit on behalf of WYNDHAM ST. THOMAS DEV., CO., LLC.

[Signature]
Alan Litwack

[Date]
5/3/12

SWORN AND SUBSCRIBED before me
this 3rd Day of May, 2012

[Signature]
Notary Public
BASIS FOR NEGOTIATIONS
WYNDHAM ST. THOMAS, DEV., CO., LTD.
St. Thomas, Virgin Islands

I. General Information

 Permit No.: CZT-02-10(W)
 Applicant: Wyndham St. Thomas, Dev., Co., Ltd.
 Location: Seaward of Parcel No. 49
 Estate Frydendahl, St. Thomas, Virgin Islands.

II. Activity:

 Dock Improvement and Installation of buoys:
 dock area: 1,251.34 ft.²
 trampoline/water toy 900 ft.²
 six (6) morring buoys 6 ft.²
 Total 2,157.34 ft.²

III. Fees:
 Current fee negotiated = $23,000.00 per year

IV. Calculations

 \[
 FMV = \frac{3,592,700}{7.70} = \frac{3,592,700}{7.70} = 466,584.41 \text{ acre}
 \]

 \[
 2,157.34 \text{ ft.}² / 43,560 \text{ ft.}² = 0.05 \text{ acre}
 \]

 \[
 466,584.41 \times 0.05 = 23,329.22 \]

 \[
 23,329.22 \times 12\% = 2,799.50
 \]

 \[
 13,500 \text{ ft.}² / 43,560 \text{ ft.}² = 0.30 \text{ acre}
 \]

 \[
 466,584.41 \times 0.30 = 139,975.32
 \]

 \[
 139,975.32 \times 12\% = 16,797.03
 \]

V. Summary:
 Fee Negotiated = $23,000.00 (total submerged land fees)
DEPARTMENT OF THE ARMY PERMIT

Permittee: Margaritaville Wyndham Grand Beach Hotel
Mr. George Dudley
Law House
1000 Frederiksberg Gade
St. Thomas, VI 00802

Permit No: SAJ-2014-02968-(SP-JMS)

Issuing Office: U.S. Army Engineer District, Jacksonville

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The permittee is authorized to excavate material from, and discharging fill material into, about 1.23 acres (53,750 square meters) of non tidal wetlands, for drainage improvements of an existing channel between Pineapple Village and Margaritaville Vacation Club by Wyndham. The construction project involves deepening and widening the existing channel, and placing of geo-textile and riprap material within the channel as erosion control to prevent scour. Also, the applicant will cut the vegetation, by hand, in order to avoid impacting the VI Tree Boa. When possible, excavation and fill activities, within the channel, would be performed from upland. Soil and sand would be placed amid the riprap to allow for planting of Sporobolus virginicus and Distichlis spicata to assist in sediment catchment and nutrient uptake. Approximately 9,000 cu. yds of material would be excavated, of which 4,790 cy are below the ordinary high water line in the channel (ranging from 0-2.5'). A total of 3,430 sq. yds of filter fabric would installed, 1,580 cu. yds of rock erosion protection and 630 cu. yds of soil would be deposited for planting. A reinforced concrete erosion protection would be constructed east and west of the existing bridge. A total of four concrete retaining walls would be constructed to help maintain wetland hydrology and minimize erosion caused by the turbulence, two on each side of the bridge downstream and upstream. Also, the project entails the planting of wetland grass species, and mangroves along the impacted channel area.

As compensatory mitigation, to offset unavoidable adverse impacts to the aquatic environment and wetlands, the applicant proposes to create 9,100 sq. ft. of mangrove
wetland and enhance 41,250 sq. ft. of existing wetland improving habitat quality and discharge water quality. Also, plant wetland grass species amid riprap and in the settling pond, plant 115 mangroves along the channel sides in clumps, and as compensatory mitigation, the resort will be placing educational signage throughout the resort and will be featuring environmental materials on the in-room programming.

The settling pond, adjacent to the wetland, will be planted with *Sporobolus virginicus* and *Distichlis spicata* to help assist in the settling of sediments and the uptake of nutrients. These grasses will also be planted in the fill that will be placed between the riprap slope protection, which in turn will be placed adjacent to Smith Bay Road at the discharge point between the existing wetland and channel. They will also be planted within the channel, between the wetlands and the sea. These areas may be periodically cleaned out to remove sediment and debris, and once the material removal is completed, any disturbed areas will be reseeded with Sporobolus and Distichlis. In addition to create habitat, clumps of red mangroves will be planted on either side of the channel at approximately 80 ft. spacing. There will be a total of 23 clumps of mangroves would be planted; totaling 115 red mangrove propagules. It is very important to prevent future flooding that the channel be maintained at the greatest volume possible; therefore, the mangroves may be trimmed to prevent impact to water flow.

The applicant would also be removing an old outfall concrete structure that sits about 20 feet from the shore, inside the Water Bay which is a safety hazard. Double sets of turbidity barriers would be installed to the east and west of the existing footbridge and at the mouth of the channel through the completeness of the project and until the impacted area has been re-vegetated.

The work described above is to be completed in accordance with the 3 pages of drawings [and 7 attachments] affixed at the end of this permit instrument.

**Project Location:** The project would affect waters of the United States (WOTUS) associated with the Caribbean Sea. The project site is located on the east shore of St. Thomas in Water Bay.

**Directions to site:** From Redhook take Smith Bay Road (Hwy 38) north and then west, the resort is 1.8 miles west of Redhook on the right side of the roadway. The property is 0.4 miles west of Sugar Bay Beach Resort.

**Approximate Central Coordinates:**
Latitude: 18.3458° North
Longitude: -64.8675° West

**Permit Conditions**
General Conditions:

1. The time limit for completing the work authorized ends on **December 10, 2020**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature and the mailing address of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. This permit does not authorize the discharge of dredged or fill material into waters of the United States, other than as indicated in the project description.

2. This permit does not authorize the discharge of dredged or fill material into waters of the United States, associated with return water.
3. This permit does not authorize the take of an endangered species, in particular the Federally listed endangered Hawksbill (*Eretmochelys imbricata*) and Leatherback (*Dermochelys coriacea*) sea turtles, the Federally listed threatened Green sea turtle (*Chelonia mydas*), or the Federally listed threatened Elkhorn (*Acropora palmata*) and Staghorn Coral. In order to legally take a listed species, separate authorization under the ESA (e.g., an ESA section 10 permit, or a Biological Opinion under ESA section 7, with “incidental take” provisions with which you must comply) is required.

4. This permit does not allow the use of equipment inside tidal water, associated with the removal of the old concrete outfall. Outfall will be lifted up, without being dragged, by heavy equipment from the shoreline.

5. This permit does not authorize the impacts to seagrass while performing any of the work indicated in the project description.

6. A trained certified consultant would conduct visual and photographic surveys to monitor seagrass beds after the removal of the outfall structure and completion of drainage channel improvements.

7. Financial Assurance would request Margaritaville Vacation Club by Wyndham to secure a performance bond in the amount of the cost of mitigation program and subsequent monitoring throughout the implementation and monitoring period.

   a. **Mitigation Implementation Financial Assurances:**

      i. A copy of the executed financial assurance instrument for a total of $794,298.00 shall be provided to the Corps before initiation of the authorized work.

   b. **Implementation of Financial Assurances** shall be released upon the successful completion and verification as detailed in the final approved mitigation plan.

8. **Deed Restriction:** The Permittee shall have a legally sufficient deed restriction prepared to ensure that the areas referenced in the Compensatory Mitigation Special Condition will remain in their natural state in perpetuity. The deed restriction will encompass 1.14 acres of wetlands. These natural preserve areas will not be disturbed by any dredging, filling, land clearing, agricultural activities, planting, or other construction work whatsoever. The Permittee agrees that the only future utilization of the preserved areas in question will be as a purely natural area. The
deed restriction shall cite this permit number. To show compliance with this condition the Permittee shall complete the following:

a. Within 30 days from the date of initiating the authorized work submit to the Corps a draft deed restriction document with a legal description, survey, and scale drawings of the area in question. The following paragraph shall be incorporated in the deed restriction language:

i. Rights of U.S. Army Corps of Engineers (Corps). The Corps, as a third-party beneficiary, shall have the right to enforce the terms and conditions of this Conservation Easement, including:
   1. The right to take action to preserve and protect the environmental value of the Property;
   2. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;
   3. The right to enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement;
   4. The right to enforce this Conservation Easement by injunction or proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and the right to require Grantor, or its successors or assigns, to restore such areas or features of the Property that may be damaged by any inconsistent activity or use or unauthorized activities; and
   5. The Grantor, including their successors or assigns, shall provide the Corps at least 60 days advance notice in writing before any action is taken to amend, alter, release, or revoke this Conservation Easement. The Grantee shall provide reasonable notice and an opportunity to comment or object to the release or amendment to the Corps. The Grantee shall consider any comments or objections from the U.S. Army Corps of Engineers when making the final decision to release or amend this Conservation Easement.

b. Within 30 days of Corps’ approval of the draft deed restriction, record the deed restriction in the public records of St. Thomas US Virgin
Islands. A certified copy of the recorded document and plat shall be forwarded to the Corps within 60 days of Corps’ approval of the draft deed restriction.

c. Prior to the transfer of the permit, the Permittee shall notify the Corps and submit the signed transfer page to the Corps. A new deed registering the name of the transferee shall be prepared, filed, and registered in the registry of property. A copy of the recorded documents shall then be provided to the Corps.

9. All work will be conducted during daylight time.

10. The permittee should submit the final lighting plan and subsequent lighting survey with any recommendations and or corrections to the Corps. A copy of the initial light plan is provided as attachment #1.

11. In order to comply with FWS, The Virgin Islands Tree Boa conditions, attachment #2, will be implemented prior to the use of any machinery on the site, forested areas slated for construction will be cleared by hand.

12. A monitor trained in the biology of the tree boa, approved and permitted by the Division of Fish and Wildlife (DFW) will be on hand during the initial clearing of the site and while work is being performed.

13. All personnel involved in site clearing and site construction will be informed of the potential presence of the snake, and the importance of protecting the snakes.

14. Photographs of the tree boas will be shown to all workers as well as a description of their behavior and habitat. All workers must acknowledge that they understand the importance of protecting this rare and endangered species.

15. All excess material/debris resulting from the improvements of the channel and construction of concrete structures shall be adequately discarded in an authorized upland site.

16. Best management practices for sedimentation and turbidity control shall be implemented and maintained at all times during the construction/fill activities. Silt fences shall be used around work areas to minimize turbidity and sediment transport to adjacent aquatic environments. All measures shall prevent siltation and turbid discharges into the aquatic environment.
17. Prior to the initiation of any of the work authorized by this permit, the Permittee shall install floating turbidity barriers with weighted skirts that extend to within 1 foot (maximum distance) of the bottom around all work areas that are in, or adjacent to, surface waters. The turbidity barriers shall remain in place and be maintained until the authorized work has been completed and all suspended and erodible materials have been stabilized. Turbidity barriers shall be removed upon stabilization of the work area.

18. Prior to the initiation of any work authorized by this permit, the Permittee shall install erosion control measures along the perimeter of all work areas to prevent the displacement of fill material outside the work area into waters of the United States. Immediately after completion of the final grading of the land surface, all slopes, land surfaces, and filled areas shall be stabilized using sod, degradable mats, barriers, or a combination of similar stabilizing materials to prevent erosion. The erosion control measures shall remain in place and be maintained until all authorized work is completed and the work areas are stabilized.

19. Siltation and turbidity curtains shall be made of material in which sea turtles cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid entanglement or entrapment of any animals. Barriers must not impede movement of sea turtles.

20. Siltation and turbidity control devices shall be placed around wetland areas during construction activities in uplands.

21. Siltation and turbidity control devices shall be placed east and west of the vehicle bridge during construction activities.

22. Double sets of turbidity barriers would be installed to the east and west of the existing footbridge and at the mouth of the channel through the completeness of the project and until the impacted area has been re-vegetated.

23. The Permittee shall use only clean fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete block with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

25. The Permittee shall instruct all personnel associated with the project about the potential presence of sea turtles in the vicinity of the project area and the need to avoid collisions with an injury to these species.

26. The Permittee shall advise all project personnel that there are civil and criminal penalties for harming, harassing, or killing sea turtles, which are protected under the Endangered Species Act of 1973.

27. Personnel in charge and related with the construction activities will be trained to be able to identify sea turtles within the project area.

28. All on-site project personnel are responsible for observing water-related activities for the presence of sea turtles.

29. If a sea turtle is seen within 100 meters of the active daily construction or vessel movement, all appropriate precautions shall be implemented to ensure the protection of the animal. These precautions shall include cessation of operation of any moving equipment, including vessels, closer than 50 ft of a sea turtle. Operation of any mechanical equipment shall cease immediately if a sea turtle is seen within a 50 ft radius of the equipment. Activities may not resume until the protected species has departed the 50 ft radius of its own volition, or until 30 minutes elapse if the animal has not reappeared within the 50 ft radius. Animals must not be herded away or harassed in any way into leaving.

30. Any collision with and/or injury to a sea turtle shall be reported immediately to the Antilles Regulatory Section (787-729-6905), the U.S. Fish and Wildlife Service, Caribbean Field Office (787-851-7297), and the National Marine Fisheries Service's Protected Resources Division (787-851-3700).

31. Temporary signs warning about the potential presence of sea turtles shall be installed in prominent locations within the project area prior to commencement of the construction activities. Also, signs will include information about the procedure to be followed in case sea turtles are sighted within the project area. Temporary signs are to be removed by the Permittee upon completion of the project construction.

32. The Permittee shall keep a log detailing sightings, collisions, or injury to sea turtles, which have occurred during the construction period. Following project completion, a report summarizing the above incidents and sightings will be submitted to the U.S. Army Corps of Engineers, Antilles Regulatory Section (Fundacion Angel Ramos Annex Building, 2nd Floor Suite 202, #383 Franklin Delano Roosevelt Ave., San Juan, PR 00918), the U.S. Fish and Wildlife Service, Caribbean Field Office (P.O. Box
33. Within 12 months from the date of initiating the work authorized by this permit, the Permittee shall complete all construction and implementation mitigation activities in accordance with the approved final mitigation plan included as Attachment #4 of this permit. In addition, the Permittee shall complete all additional required mitigation plan components as detailed in the same attachment.

34. **Monitoring and Reporting Timeframes:** To document achievement of the performance standards identified in the approved mitigation plan. The Permittee shall complete the following:

   a. Perform a time-zero monitoring event of the wetland mitigation area(s) within 60 days of completion of the compensatory mitigation construction and implementation activities identified in the approved mitigation plan.

   b. Submit the time-zero report to the Corps within 60 days of completion of the monitoring event. The report will include at least one paragraph depicting baseline conditions of the mitigation site(s) prior to initiation of the compensatory mitigation objectives and a detailed plan view drawing of all created, enhanced and/or restored mitigation areas.

   c. Subsequent to completion of the compensatory mitigation objectives, perform semi-annual monitoring of the wetland mitigation areas for the first 2 years and annual monitoring thereafter for a total of no less than 5 years of monitoring.

   d. Submit annual monitoring reports to the Corps within 60 days of completion of the monitoring event. Semi-annual monitoring will be combined into one annual monitoring report.

   e. Monitor the mitigation area(s) and submit annual monitoring reports to the Corps until released in accordance with the Mitigation Release Special Condition of this permit.

35. **Reporting Format:** The Permittee shall submit all monitoring documentation to the Corps on 8½-inch by 11-inch paper, and include the following:

   a. Project Overview:
      i. Department of the Army Permit Number.

      ii. Name and contact information of Permittee and consultant.
iii. Name of party responsible for conducting the monitoring and the date(s) the inspection was conducted.

iv. A brief paragraph describing the purpose of the approved project, acreage and type of aquatic resources impacted, and mitigation acreage and type of aquatic resources authorized to compensate for the aquatic impacts.

v. Written description of the location, any identifiable landmarks of the compensatory mitigation project including information to locate the site perimeter(s), and coordinates of the mitigation site (expressed as latitude, longitude, UTMs, state plane coordinate system, etc.).

vi. Dates compensatory mitigation commenced and/or was complete.

vii. Short statement on whether the performance standards are being met.

viii. Dates of any recent corrective or maintenance activities conducted since the previous report submission.

ix. Specific recommendations for any additional corrective or remedial actions.

b. Requirements: List the monitoring requirements and performance standards, as specified in the approved mitigation plan and special conditions of this permit, and evaluate whether the compensatory mitigation project site is successfully achieving the approved performance standards or trending towards success. A table is a recommended option for comparing the performance standards to the conditions and status of the developing mitigation site.

c. Summary Data: Summary data should be provided to substantiate the success and/or potential challenges associated with the compensatory mitigation project. Photo documentation may be provided to support the findings and recommendations referenced in the monitoring report and to assist the PM in assessing whether the compensatory mitigation project is meeting applicable performance standards for that monitoring period. Submitted photos should be formatted to print on a standard 8½-
inch x 11-inch piece of paper, dated, and clearly labeled with the
direction from which the photo was taken. The photo location points
should also be identified on the appropriate maps.

d. Maps and Plans: Maps shall be provided to show the location of the
compensatory mitigation site relative to other landscape features, habitat
types, locations of photographic reference points, transects, sampling
data points, and/or other features pertinent to the mitigation plan. In
addition, the submitted maps and plans should clearly delineate the
mitigation site perimeter(s). Each map or diagram should be formatted to
print on a standard 8½-inch x 11-inch piece of paper and include a
legend and the location of any photos submitted for review. As-built
plans may be included.

e. Conclusions: A general statement shall be included that describes the
conditions of the compensatory mitigation project. If performance
standards are not being met, a brief explanation of the difficulties and
potential remedial actions proposed by the Permittee or sponsor,
including a timetable, shall be provided. The District Commander will
ultimately determine if the mitigation site is successful for a given
monitoring period.

36. Remediation: If the compensatory mitigation fails to meet the
performance standards 5 years after completion of the compensatory mitigation
objectives, the compensatory mitigation will be deemed unsuccessful. Within 60 days
of notification by the Corps that the compensatory mitigation is unsuccessful, the
Permittee shall submit to the Corps an alternate compensatory mitigation proposal
sufficient to create the functional lift required under this permit. The alternate
compensatory mitigation proposal may be required to include additional mitigation to
compensate for the temporal loss of wetland functions associated with the
unsuccessful compensatory mitigation activities. The Corps reserves the right to fully
evaluate, amend, and approve or reject the alternate compensatory mitigation
proposal. Within 120 days of Corps approval, the Permittee will complete the alternate
compensatory mitigation proposal.

37. Cultural Resources/Historic Properties:

a. No structure or work shall adversely affect impact or disturb properties
listed in the National Register of Historic Places (NRHP) or those eligible
for inclusion in the NRHP.
b. If during the ground disturbing activities and construction work within the permit area, there are archaeological/cultural materials encountered which were not the subject of a previous cultural resources assessment survey (and which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native cultures or early colonial or Spanish settlement), the Permittee shall immediately stop all work and ground-disturbing activities within a 100-meter diameter of the discovery and notify the Corps within the same business day (8 hours). The Corps shall then notify the Virgin Islands State Historic Preservation Officer (VISHPO) to assess the significance of the discovery and devise appropriate actions.

c. Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries as referenced in accordance with the above Special Condition; and if deemed necessary by the VISHPO or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on non-federal lands without written authorization from the VISHPO for finds under his or her jurisdiction, and from the Corps.

38. **Reporting Address:** The Permittee shall submit all reports, notifications, documentation and correspondence required by the general and special conditions of this permit to the following address:
   a. For standard mail: U.S. Army Corps of Engineers, Regulatory Division, Special Projects and Enforcement Branch, 4400 PGA Boulevard, Suite 500, Palm Beach Gardens, Florida 33410.
   b. For electronic mail CESAJ-ComplyDocs@usace.army.mil (not to exceed 10 MB). The Permittee shall reference this permit number, SAJ-2014-02968 (SP - JMS), on all submittals.

39. **Commencement Notification:** Within 10 days from the date of initiating the work authorized by this permit, the Permittee shall provide a written notification of the date of commencement of authorized work to the Corps.

40. **As-Built Certification:** Within 60 days of completion of the work authorized by this permit, the Permittee shall submit as-built drawings of the authorized work and a completed “As-Built Certification By Professional Engineer” form (Attachment #5) to the
Corps. The as-built drawings shall be signed and sealed by a registered professional engineer and include the following:

a. A plan view drawing of the location of the authorized work footprint, as shown on the permit drawings, with transparent overlay of the work as constructed in the same scale as the permit drawings on 8½-inch by 11-inch sheets. The plan view drawing should show all "earth disturbance," including wetland impacts and water management structures.

b. A list of any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the attached “As-Built Certification By Professional Engineer” form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or “As-Built Certification By Professional Engineer” form does not constitute approval of any deviations by the Corps.

c. Include the Department of the Army permit number on all sheets submitted.

41. **Posting of Permit:** The Permittee shall have available and maintain for review a copy of this permit and approved plans at the construction site.

42. The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the U.S. Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

   (x) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

   (x) Section 404 of the Clean Water Act (33 U.S.C. 1344)
Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

2. Limits of this authorization.

   a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

   b. This permit does not grant any property rights or exclusive privileges.

   c. This permit does not authorize any injury to the property or rights of others.

   d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

   a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

   b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

   c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

   d. Design or construction deficiencies associated with the permitted work.

   e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

   a. You fail to comply with the terms and conditions of this permit.
b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

_______________________________________ ____________________
(PERMITTEE)        (DATE)

_______________________________________
(PERMITTEE NAME-PRINTED)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

_______________________________________ ____________________
(DISTRICT ENGINEER)      (DATE)
Jason A. Kirk, P.E.
Colonel, U.S. Army
District Commander
When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

________________________________________________________________________
(TRANSFEREE-SIGNATURE) (DATE)

________________________________________________________________________
(NAME-PRINTED)

________________________________________________________________________
(ADDRESS)

________________________________________________________________________
(CITY, STATE, AND ZIP CODE)
PERMIT NUMBER: SAJ-2014-02968
PERMITTEE: Mr. George Dudley
PAGE 17 of 17

Attachments to Department of the Army
Permit Number SAJ-2014-02968

1. PERMIT DRAWINGS: 3 pages, dated December 2015

2. SEA TURTLE LIGHTING PLAN: 4 pages.

3. VIRGIN ISLANDS TREE BOA CONDITIONS: 7 pages

4. SEA TURTLE – SAWFISH CONDITIONS: 1 page, Sea Turtle and Smalltooth Sawfish Construction Conditions, revised March 23, 2006

5. MITIGATION PLAN: 13 pages

6. AS-BUILT CERTIFICATION FORM: 2 pages

7. WATER QUALITY CERTIFICATION: Specific Conditions of the water quality permit/certification in accordance with General Condition number 5 on page 2 of this DA permit. 3 pages.
May 11, 2017

Antilles Permits Section
SAJ-2014-02968 (LOP-JMS)

Margaritaville Wyndham Grand Beach Hotel
Mr. George Dudley
Law House
1000 Frederiksberg Gade
St. Thomas, VI 00802

Dear Mr. Dudley:

This is in reference to your request for a Department of the Army (DA) permit to perform work in or affecting waters of the United States. If you determine the permit provided is acceptable in its entirety and you have chosen to proceed with the authorized activity, then upon recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and/or Section 404 of the Clean Water Act (33 U.S.C. 1344), you are authorized under a Letter of Permission to install six (6) swimming buoys, 75 ft. from the shoreline starting 180 ft. south of the existing Margaritaville Vacation Club dock and then spaced 36 ft. apart as well as to install six (6) mooring buoys, for vessels up to 60 ft. in length, and a floating swimming platform/swimming toy of no more than 900 square feet. The 6 swimming buoys, the 6 mooring buoys and the swimming platform will be held in place by screw anchors positioned by divers using a hand auger. The screw anchors will be in barren sandy patches not colonized by corals, sponges, seagrass or algae. The general location of the six (6) swimming buoys and the swimming platform includes areas of un-colonized sand and minimal algal/Halophila colonization, which should be negligibly impacted due to screw anchor installation method and positioning. The swimming platform will be located over an barren sand not colonized by corals, sponges, seagrass or algae and therefore should have no shading impacts. The six (6) mooring buoys will prevent vessel anchoring impacts to benthic habitats. These will be installed in general areas known to have approximately 30% to 80% seagrass cover. As stated above, the buoys should have no impact on the benthic community as screw anchors will be installed in barren sandy patches not colonized by corals, sponges, seagrass or algae. The project is located at the east shore of St. Thomas in Water Bay.

Geographic Position:

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<td>Location of Mooring Buoys</td>
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</table>

The project must be completed in accordance with the 2 enclosed construction drawings, and the general and special conditions which are incorporated in, and made a part of, the permit.

**Special Conditions:**

1. This permit does not authorize the discharge of dredged or fill material into waters of the United States, including wetlands.

2. This permit does not authorize the take of an endangered species, in particular the Federally listed endangered Hawksbill (Eretmochelys imbricata) and Leatherback (Dermochelys coriacea) sea turtles, the Federally listed threatened Green sea turtle (Chelonia mydas), or the Federally listed threatened Elkhorn (Acropora palmata) and Staghorn Coral. In order to legally take a listed species, separate authorization under the ESA (e.g., an ESA section 10 permit, or a Biological Opinion under ESA section 7, with “incidental take” provisions with which you must comply) is required.

3. This permit does not authorize the impacts to seagrass while performing any of the work indicated in the project description.

4. All work will be conducted during daylight time.


6. The Permittee shall comply with NMFS Southeast Region Vessel Strike Avoidance Measures and Reporting for Mariners; revised February 2008.

7. All screw anchors will be positioned by divers using a hand auger and in barren
sandy patches not colonized by corals, sponges, seagrass or algae.

8. Any collision with and/or injury to a sea turtle shall be reported immediately to the Antilles Regulatory Section (787-729-6905), the U.S. Fish and Wildlife Service, Caribbean Field Office (787-851 7297), and the National Marine Fisheries Service’s Protected Resources Division (787-851-3700).

9. Cultural Resources/Historic Properties:
   a. No structure or work shall adversely affect impact or disturb properties listed in the National Register of Historic Places (NRHP) or those eligible for inclusion in the NRHP.

   b. If during the ground disturbing activities and construction work within the permit area, there are archaeological/cultural materials encountered which were not the subject of a previous cultural resources assessment survey (and which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native cultures or early colonial or Spanish settlement), the Permittee shall immediately stop all work and ground-disturbing activities within a 100-meter diameter of the discovery and notify the Corps within the same business day (8 hours). The Corps shall then notify the Virgin Islands State Historic Preservation Officer (VISHPO) to assess the significance of the discovery and devise appropriate actions.

   c. Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries as referenced in accordance with the above Special Condition; and if deemed necessary by the VISHPO or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on non-federal lands without written authorization from the VISHPO for finds under his or her jurisdiction, and from the Corps.

10. The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the U.S. Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
If the work authorized is not completed on or before **May 11, 2022**, authorization, if not previously revoked or specifically extended, shall cease and be null and void.

**Instructions for Objecting to Permit Terms and Conditions:** This letter contains an initial proffered permit for your proposed project/permit application. If you object to certain terms and conditions contained within the permit, you may request that the permit be modified. Enclosed you will find a Notification of Administrative Appeal Options and Process fact sheet and Request for Appeal (RFA) form. If you choose to object to certain terms and conditions of the permit, you must follow the directions provided in Section 1, Part A and submit the completed RFA form to the letterhead address.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria under 33 CFR Part 331.5, and that it has been received by the District office within 60 days of the date of the RFA. Should you decide to submit an RFA form, it must be received at the letterhead address by **July 11, 2017**.

Should you have any questions regarding this letter, please contact the project manager Johann M. Sasso in writing the letterhead address, by telephone at 787-729-6860, or by email at johann.m.sasso@usace.army.mil.

The Corps Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to take a few minutes to visit [http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey) and complete our automated Customer Service Survey. Your input is appreciated – favorable or otherwise.

**BY AUTHORITY OF THE SECRETARY OF THE ARMY:**

Jason A. Kirk, P.E.  
for Colonel, U.S. Army  
District Commander

Enclosures

Copies Furnished w/ enclosures: (via email)

Amy Dempsey, Bioimpact Inc.  
Edwin R. Cruz, Pietrantoni Mendez & Alvarez LLC
REQUEST PERMIT TRANSFER: PERMIT NUMBER: SAJ-2014-02968 (LOP-JMS)

When the structures or work verified by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, the present permittee and the transferee should sign and date below. This document must then be provided to the U.S. Army Corps of Engineers, Regulatory Division, Post Office Box 4970, Jacksonville, Florida 32232-0019.

______________________________________      ___________________
(TRANSFEREE SIGNATURE)                           (DATE)
______________________________________       ___________________
(Name - Printed)                   Lot/Block of site
______________________________________
(Street Address)
______________________________________
(City, State, and Zip Code)

Flood Plain Information:

This Department of the Army permit does not give absolute authority to perform the work as specified on your application. The proposed work may be subject to local building restrictions. You should contact the local office in your area that issues building permits to determine if your site is located in a flood-prone or floodway area, and if you must comply with the local building requirements mandated by the National Flood Insurance Program. If your local office cannot provide you the necessary information, you may request a flood hazard evaluation of the site by providing this office with a letter and a small scale map showing the location of the site. The request should be addressed to the Chief, Flood Control and Floodplain Management Branch, Jacksonville District, U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232-0019. Phone inquiries may be made at 904-232-2515.
1. The time limit for completing the work authorized ends on **May 11, 2022**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow a representative from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL**

Applicant: Mr. George Dudley  
File Number: SAJ-2014-02968  
Date: May 11, 2017

Attached is: See Section below

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**SECTION I** - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at [http://www.usace.army.mil/CECW/Pages/reg_materials.aspx](http://www.usace.army.mil/CECW/Pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT**: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- **OBJECT**: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT**: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- **APPEAL**: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT**: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

- **APPEAL**: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.
SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:
If you have questions regarding this decision you may contact:

Project Manager as noted in letter

If you have questions regarding the appeal process you may contact:

Jason W. Steele
Administrative Appeals Review Officer
USACE – South Atlantic Division
60 Forsyth Street SW, Room 10M15
Atlanta, Georgia 30303-8801
(404) 562-5137

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent. Date: Telephone number: