IGY-AYH ST. THOMAS HOLDINGS, LLC

American Yacht Harbor

January 11, 2014

Alicia Barnes, Commissioner
Department of Planning and Natural Resources
Division of Coastal Zone Management
Cyril E. King Airport, Terminal Building Second Floor
St. Thomas, USVI 00802

Re: IGY-AYH St. Thomas Holdings, LLC objections to St. Thomas Sport Fishing Center, Inc.'s ("STFSC") Application for Renewal of Major CZM Permit No. CZT-7-93W designated CZT-4-13W for submerged lands seaward of Parcel No. 16-3 Estate Smith Bay. St. Thomas, U.S. Virgin Islands (the "STSFC CZM Application")

Dear Commissioner Barnes:

Please accept this letter as IGY-AYH ST. THOMAS HOLDINGS, LLC's ("AYH") notice and registration that it is an "aggrieved person" as that term is defined in 12 V.I.C. Section 902(a) of the Coastal Zone Management Act (the "CZM Act") and hereby reserve all rights and remedies available to it as an aggrieved person under the CZM Act, at law and in equity.

AYH is the abutting owner of Parcel Nos. 18B Remainder, 18B-1 Remainder and 18A-1 Remainder Estate Smith Bay, St. Thomas and permittee for the use of adjacent submerged lands under Coastal Zone Management Permit No. CZT-05-11(W) comprising the Marina and commercial buildings generally known as American Yacht Harbor.

In accordance with the Notice dated December 12, 2013 issued by the Department of Planning and Natural Resources and received on December 19, 2013, we hereby submit our written comments and objections regarding the STSFC CZM Application.

1. AYH's Coastal Zone Management Permit No. CZT-05-11(W) (the "AYH CZM Permit") and the Survey Plan incorporated therein by reference, a reduced copy of the Survey Plan being attached hereto as Exhibit A (the "AYH Site Survey"), permit AYH's use of 4.36 acres of submerged lands for which AYH pays the Government of the Virgin Islands an annual Permit Fee in the amount of $65,000.00. The submerged lands boundary limits are shown on the AYH Site Survey and in particular show that AYH is permitted to use submerged lands extending out approximately 80 feet from the eastern side of A Dock.

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Phone [redacted] Fax [redacted]

2. STFSC's expired CZM Permit No. CZT-7-93W (the "STFSC 1993 Permit") sets forth the existing limits of STFSC's submerged lands area which is shown as the grey area on the attached plan drawn by Applied Technology & Management (ATM) attached hereto as Exhibit B (the "ATM Dock Relation Plan"). As indicated in the STFSC 1993 Permit and as shownon the ATM Dock Relation Plan, STFSC's submerged lands on the western side of the STFSC Dock ("P Dock") extend out only 10 feet from the edge of P Dock. The pilings located 25 feet to the west of P Dock are outside the limits of the permitted submerged lands area as are the pilings located to the east of P Dock.

3. STSFC now seeks to "renew" the STFSC 1993 Permit in its STSFC CZM Application for Coastal Zone Management Permit No. CZT-4-13W. We note that the STSFC CZM Application and the site plan submitted by STSFC drawn by Brian Moseley & Associates, Drawing No. 5685-4 (the "STSFC New Plan") attached as Exhibit C propose the following changes to the STSFC 1993 Permit: (a) a dramatic increase in the size of STSFC submerged lands area extending out 68.4 feet from the western side of P Dock and 51 feet from the eastern side and (b) adding an additional line of pilings extending out 40 feet from the western side of P Dock.

4. We note that both the STSFC CZM Application, including the original STSFC submittal letter dated May 6, 2013 states in various places and as shown on the STSFC New Plan that the proposed submerged lands are based on an agreed 1/3 AYH, 1/3 Navigational Channel and 1/3 STSFC arrangement. In a recent meeting with Messrs. Hoffman and Paiewonsky, the principals of STSFC, it was conceded that in fact no such agreement exists. We are advised that STSFC will amend its STSFC CZM Application to reflect this fact in the near future. This incorrect position is the sole basis for the extended submerged lands area requested by STSFC.

In fact, the 1/3 proposal was made by STSFC in 2001-2002 when the abutting owners were trying to work out whether certain pilings added by the then owner of American Yacht Harbor were installed along the outer submerged lands area at 60 feet from A Dock could remain. The 1/3 proposal was rejected by the then owner of American Yacht Harbor based upon the historical docking at American Yacht Harbor servicing large fishing vessels and the smaller fishing and recreational vessels traditionally docked at P Dock. At that time in 2002, and without the 1/3 proposed agreement in place, the then owner of AYH modified its existing CZM Permit to reduce the number of slips on the east side of A Dock and remove the outer pilings. AYH's existing pilings have been and remain at 42 feet from A Dock as shown on the AYH Site Survey at Exhibit A and as permitted under the AYH CZM Permit. Documentation evidencing the foregoing can be found in the existing AYH CZM Permit files or provided by AYH to DPNR at DPNR's request.

In 2003, the then owner of American Yacht Harbor and STSFC entered into a Management Agreement pursuant to which the owner of American Yacht Harbor would manage P Dock (the "2003 Agreement"). In the 2003 Agreement, the owner of American Yacht Harbor and STSFC agreed that neither party could assert rights based on the location of vessels that occurred during the time the owner of American Yacht Harbor

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managed P Dock and that both parties were left to historic uses to assert their rights. See Section 17 of the 2003 Agreement attached hereto as Exhibit D.

5. It is respectfully submitted that the STSFC CZM Application requests far more than what the permitted and historical uses of P Dock have been prior to 2003 and that their permitted submerged lands area under the 1993 CZM Permit is a fact that both DPNR and the CZM Committee must consider when reviewing the STSFC CZM Application. The net result of the STSFC CZM Application, if granted as requested, will have a both a significant effect on AYH's ability to use A Dock, as permitted, resulting in a significant economic impact on AYH's historical business as the premier large vessel fishing fleet marina in Red Hook (and in fact regionally) which dates back several decades. AYH sponsors many international recognized events out of American Yacht Harbor that would be dramatically impacted by STSFC's expanded submerged lands area.

6. When two docks are located in close proximity, it is industry standard that there be a navigable waterway maintained between the two docks such that vessels from either dock may safely navigate in and out of the berths. The width of this shared waterway is recommended by the in the American Society of Civil Engineers' ("ASCE") *Planning and Design Guidelines for Small Craft Harbors*, it is recommended that the width of this shared waterway be between 1.3 and 1.5 times the length of the largest boat expected to access the berths. The current existing navigable waterway measures approximately 102 feet, from the edge of AYH's submerged lands to the current edge of the STSFC submerged lands. See the ATM Dock Relation Plan at Exhibit B.

7. It is our interpretation of the AYH CZM Permit and marine regulations that we are allowed to dock vessels within our submerged lands boundary, specifically up to approximately 80 feet east of A Dock. Therefore, AYH requires a navigable waterway at the boundary of our submerged lands that is sufficient for a 70-80 ft vessel to turn and access the slips on A Dock. Based on the ASCE design guidelines, the turning radius for an 80 ft vessel should be between 104 and 120 ft. However, with careful planning and engineering, AYH believes it can accept a slightly narrower channel. This possibility, however, would make STSFC's request for additional pilings extending out 40 feet unacceptable as the turning radius within the navigational channel area would be further reduced by the location of new pilings off of the western side of P Dock.

8. Special Condition No. 6.(i) in the AYH CZM Permit states that "*The limit of the submerged lands on the eastern side of the marina extends to the midway point between AYH's "A" Dock and the St. Thomas Sport Fish or "P Dock". Oversized vessels that will impede the turning radius for boats at the "P" dock shall not be kept on the eastern side of the "A" dock.*" Given the permitted submerged lands area for AYH, this language is somewhat confusing in that, without understanding the size vessels that may be berthed on the west side of P Dock, or the definition of "Oversized vessels" it is impossible to determine what conditions would result in an impediment of vessels on P Dock. It is noted that when this language was proposed and inserted into AYH's CZM Permit, it was our understanding that the vessels docked on P Dock could be only legally of the size and orientation that could fit within P Dock's submerged land boundaries measuring 10 feet

6100 Red Hook Quarters #2, St Thomas, USVI 00802
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from the west side of P Dock, just as AYH is limited by its 80 feet. Thus, no conflict with docks on A Dock was ever anticipated. Furthermore, without any clear definition of "Oversized vessels", it is reasonable to conclude that "Oversize" would be a vessel in excess of the permitted 80 feet extending outside of AYH's permitted submerged lands area.

We further submit that and hope the DPNR and the CZM Committee will agree that AYH's historical right and practice to berth larger vessels at A Dock (the only AYH Dock that can accommodate larger vessels) in conjunction with the permitted submerged lands area of P Dock in the STSFC 1993 Permit must be considered in their review of STSFC's CZM Application and the dramatic increase in size of submerged lands rejected by both DPNR and the CZM Committee as an unacceptable increase to the detriment of AYH's ability to conduct its permitted business as historically documented, as having a material adverse economic impact on AYH as well as the commercial tenants which have historically catered to these vessels and as a matter of safety to vessels berthed at both A Dock and P Dock. As you are likely aware, berthing fees are based on linear feet of a vessel and the impact on AYH were DPNR and the CZM Committee to accept and grant the STSFC CZM Application without adjustments to the submerged lands boundary and rejection of the new pilings proposed would result in serious damage to AYH's business, as well as the local tax paying economy that thrives on supporting the larger class of vessels.

9. Notwithstanding the ASCE design guidelines, in the event that AYH docks vessels of up to the permitted 80 feet, with further review and engineering, it is possible that AYH could accept an expansion of P Dock's western submerged lands (but not the new pilings). Preliminary measurements suggest that vessels of up to 26.4 feet may be berthed on the west side of P Dock while still reserving the ASCE recommended turning clearances without impinging upon AYH's submerged lands rights and its necessary safe turning radius. As long as vessels berthed on the western side of P Dock were limited to being no larger than 26.4 feet in length, and the extent of the P Dock submerged lands on their CZM renewal limited to 26.4 feet as well (without any new pilings at 40 feet), it appears that AYH could still reasonably accommodate the size vessels that have been historically berthed and permitted on A Dock. It should be noted that an increase to 26.4 feet would still represent a significant increase in the size of the current permitted STSFC submerged lands area. Further, we wish to call attention to the fact that there is ample room on the east side of P Dock to accommodate STSFC berthed vessels considerably longer than 26.4 feet and AYH has no objection to a "no vessel length limit" on the east side of P Dock. Additional engineering measurements are being undertaken as further evidence of AYH's efforts to find reasonable compromise. AYH may be able to present additional plans at the Public Hearing.

10. AYH would consider the expansion of the STSFC submerged lands permit as long as a shared navigable channel of no less than 97.5 feet is maintained between AYH and STSFC submerged lands as shown on the ATM Dock Relation Plan. This would at a minimum ensure that the entire area conforms with the best practices as set forth by the ASCE and are in the best interests of the safety of all vessels berthing at A Dock and P

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Dock. In meetings with STFSC principals, this very fair approach based on both history and all previously issued CZM Permits to STSFC has been rejected by STSFC. While we continue to hope to reach agreement with STSFC during the pendency of the STSFC CZM Application process, we are filing these comments and objections now to preserve our rights as an aggrieved person.

We plan to appear at the Public Hearing for the STSFC CZM Application to present this letter, larger scale plans and additional information to the CZM Committee. In the meantime, we will continue to work with STSFC to try to find a mutually acceptable compromise consistent with foregoing.

Thank you for your consideration of our position. We are available to meet with you and your staff should you have any questions or comments either prior to or after the Public Hearing.

Very truly yours,

IGY-AYH St. Thomas Holdings, LLC

By: _____

By e mail and by Hand with enc.
cc: Jean Pierre Oriol, Director, Division of Coastal Zone Management
Anthony Richards, Permits Coordinator

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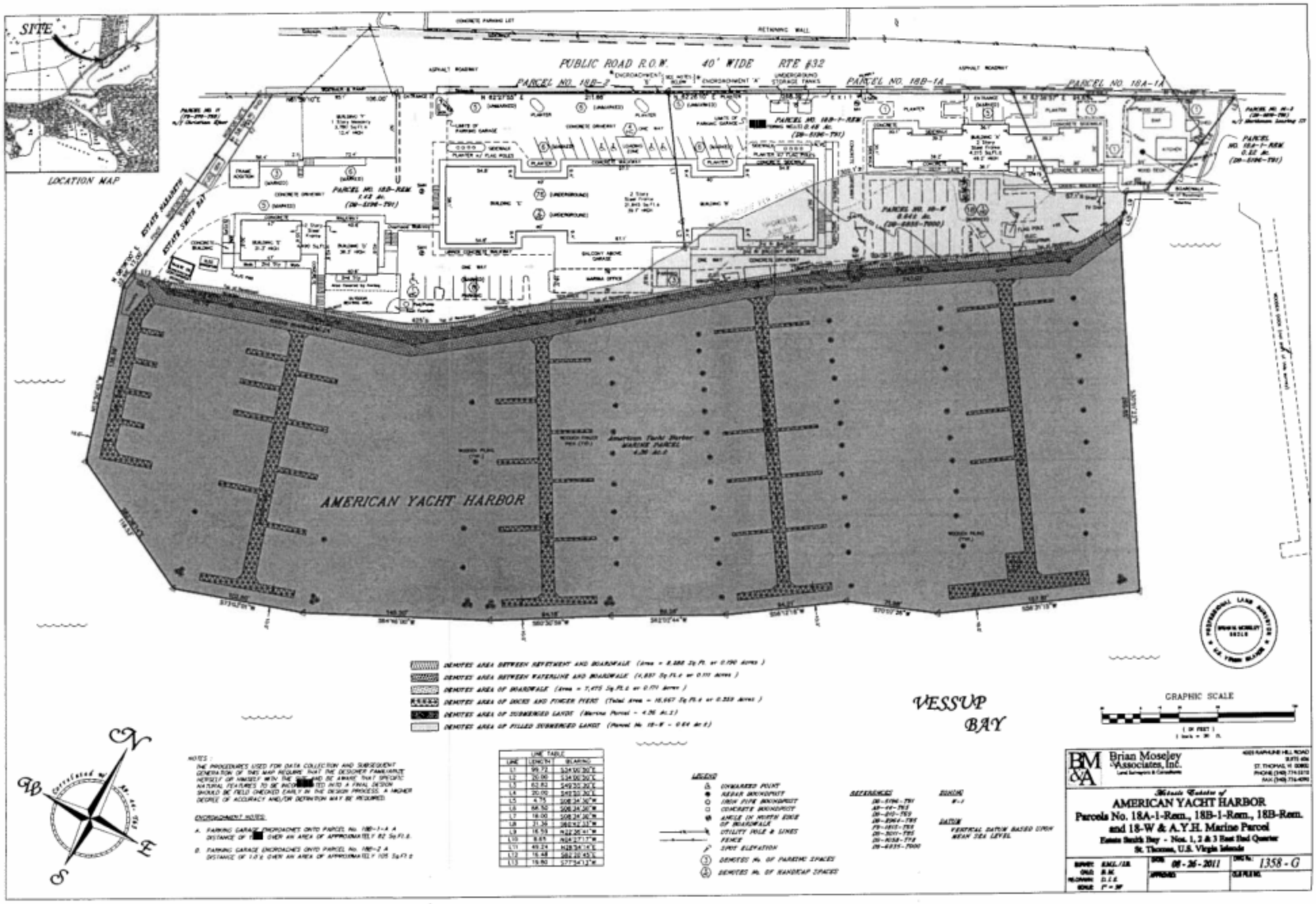
EXHIBIT A

THE AYH SITE SURVEY

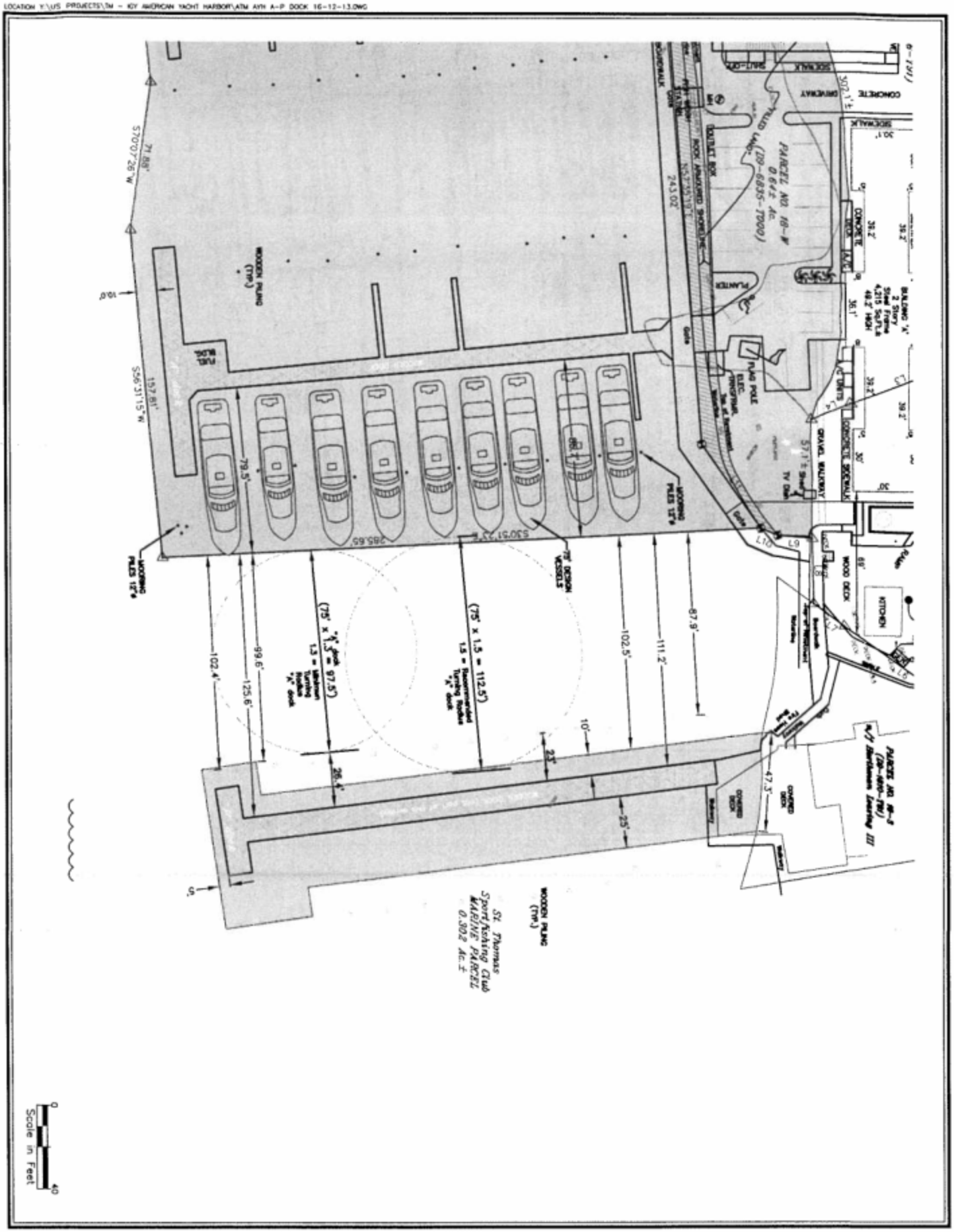


EFTA00590596

EXHIBIT B

THE ATM DOCK RELATION PLAN

LOCATION Y:\US PROJECTS\IM - IGY AMERICAN YACHT HARBOR\ATM AYH A-P DOCK 16-12-13.DWG



P Dock

American Yacht Harbor

IGY MARINAS

ATM APPLIED TECHNOLOGY & MANAGEMENT

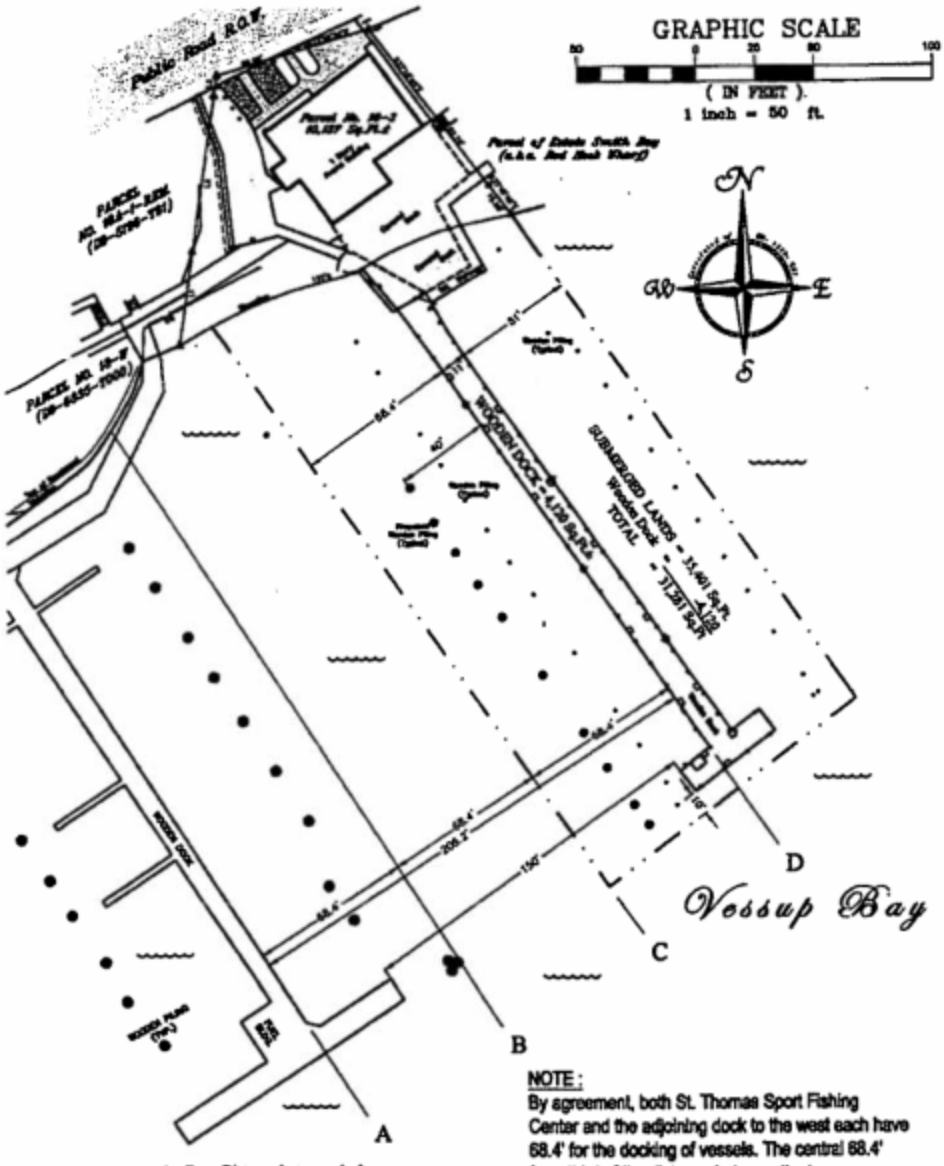
EFTA00590598

EXHIBIT C

THE STSFC NEW PLAN

5.02 Exhibits and Drawings

Drawing	Page
Site Exhibit showing Area	4
As-built of Existing Dock And piling location plan	5



A - D = Distance between docks
A - B = Area for A.Y.H. vessels (max length)
B - C = Channel (common usage area)
C - D = Area for S.T.S.F.C. vessels (max length)

NOTE:
By agreement, both St. Thomas Sport Fishing Center and the adjoining dock to the west each have 68.4' for the docking of vessels. The central 68.4' (one-third of the distance between the two structures) represents the channel which is shared between the two as well as the public.

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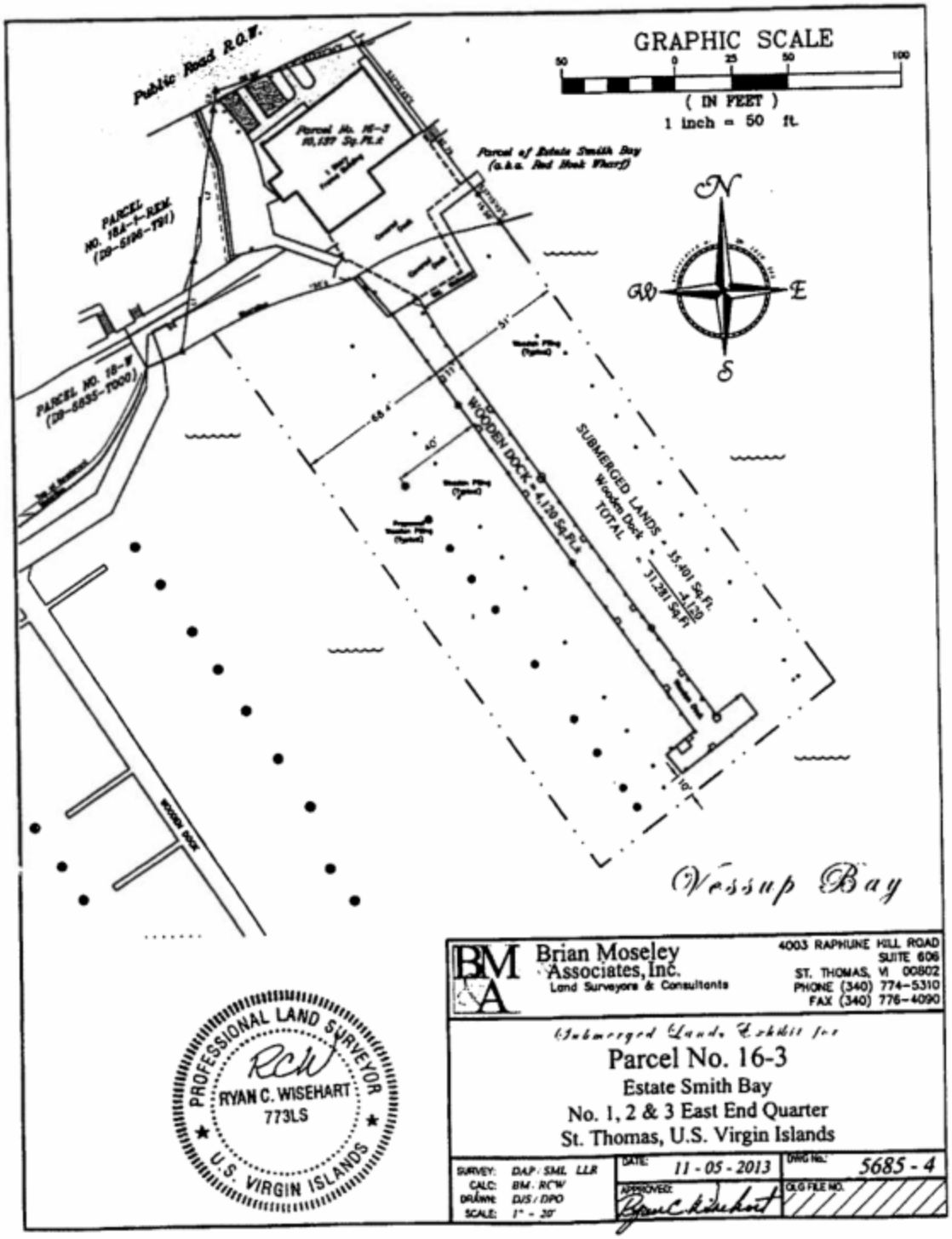

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EXHIBIT D

SECTION 17 OF THE 2003 MANAGEMENT AGREEMENT

Mandatory copy to: Paul Hoffman, P.C.
P.O. Box 870
St. Thomas, VI 00804.

17. The parties to this Agreement acknowledge that there has been a dispute between them over the past several years with respect to the length of the vessels to be docked on the west side of the STSFC dock and on the east side of the A dock operated by AYH ("Facing Docks"). During the term of this Agreement, AYH may use the Facing Docks for any length vessel which may be safely accommodated, all in AYH's sole discretion. Upon the termination or earlier expiration of this Agreement, whichever is earlier, unless AYH continues as a month to month manager in which case the terms and provisions of this Agreement shall control, AYH shall have no right to assert as precedent their use of the Facing Docks during the term of this Agreement, which AYH hereby expressly waives. In the event of a dispute regarding use of the Facing Docks as a result of actions by either party, their agents, successors or assigns, occurring after the expiration or earlier termination of this Agreement, the parties shall be entitled to assert as evidence of their respective rights any documents, permits, laws, rules, regulations, practices prior to this Agreement and any other lawful basis the parties may choose to support their respective positions. The provisions and the agreements of the parties hereto set forth in this Section 17 shall survive the termination or expiration of this Agreement, whichever shall occur.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

WITNESSES:

St. Thomas Sport Fishing Center, Inc.

Paul Hoffman, Vice President

MOF VI LIMITED PARTNERSHIP

By PRESIDENT
AMERICAN YACHT HARBOR, INC.

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