

The Department of Interior and National Park Service Should Use an Open Bidding Process for the Caneel Bay Lease or Concession.

January 13, 2021

The United States Park Service, Department of Interior (DOI), should reduce the current acreage set aside for the operation of any resort at the Caneel Bay property within the VI National Park on St John, United States Virgin Islands and use an open bidding process for the awarding of a lease or concession for the operation of a new Caneel Bay resort. The following factors (1-42) support such proposal:

Basics of Caneel Bay / Context

1. Laurance Rockefeller stated in the document deeding the Caneel property to the People of the United States the following:
 - a. **Term of Retained Use Estate. Subject to the right of Grantor to terminate the Retained Use Estate pursuant to paragraph number 8 below, the Retained Use Estate shall continue for a term of forty (40) years from the date hereof.**
 - b. **Maintenance of Premises by Grantor Prior to Termination of Retained Use Estate. It is Grantor's expectation and intention that at some future time, to be determined by Grantor pursuant to the provisions set forth herein, the Retained Use Estate will be terminated and Extinguished in order to carry out the longstanding objective of Grantor that the Premises ultimately be an integral part of the Virgin Islands National Park (the "Park") under the jurisdiction of the Secretary for the use and enjoyment by visitors to the Park of the outstanding scenic and other features of national significance located both within the Premises and in other areas of the Park. In keeping with this objective, Grantor agrees that, at all times prior to the termination of the Retained Use Estate pursuant to paragraph numbered 8 below Grantor will use and maintain the Premises in such a manner that will (a) be consistent with the preservation of such outstanding scenic and other features of national significance and (b) preserve the Premises to the extent feasible in their natural condition for the public benefit, enjoyment and inspiration, subject, however, to the right of Grantor to operate guest facilities for the accommodation of visitors to the Park on the Premises as provided for in paragraph numbered 3 below.**
(Indenture, dated September 30, 1983, signed by Laurance S. Rockefeller)
2. The Retained Use Estate described above is to expire on September 30, 2023. According to the clearly stated terms and the stated intention of Mr. Rockefeller, the Retained Use Estate will expire so that the Caneel property will be an integral part of the Virgin Islands National Park for the use and enjoyment of visitors of its outstanding scenic beauty and other features of national significance.
3. The Caneel property, approximately 150 acres, has many significant natural features unique to the Caribbean but also to the world. There are 7 beaches of unprecedented beauty, coral features immediately offshore and significant evidence of occupation by humans predating occupation by Danes operating plantations with slave labor. The many ruins and artifacts on the Caneel property have not to this date been properly protected, excavated, inventoried and studied.

4. The terms of the Deed granting the Caneel property to the United States do not prescribe that access to the property and its historical and environmental riches should be allowed only to people who can afford to stay at housing on the Caneel property after the Retained Use Estate expires.
5. If a resort is to be operated at all, the Caneel property should be open and accessible to all visitors, not just people of substantial means.
6. Access to the outstanding scenic and other features of national significance, including beaches, requires that a lease or concession for a resort provide for wider access to the property than currently exists.
7. The Retained Use Estate was misused by the current operators of Caneel to restrict or prohibit public access to its 150 acres by visitors and residents of St John who provide labor and infrastructure support for visitors to Caneel and the Park with no tax revenue to pay for such support.
8. 150 acres is not necessary for the operation of a resort of any kind. Historic operations demonstrate that less than 30 acres is needed to operate the resort as it was previously managed.

Certain Lease Parameters

9. If a concession or lease is given for the operation of a hotel resort it should only be for the minimum amount of land necessary for such operation.
10. If Mr. Rockefeller's intentions are to be honored enjoyment of the outstanding and scenic features by the public cannot occur unless access is granted to the 7 beaches. Any new lease should provide for such access.
11. In keeping with Mr. Rockefeller's vision of Caneel as an "eco-resort" any lease or concession agreement should require that any resort be consistent with current standards and recommendations for the operation of eco resorts, including state-of-the-art and environmentally sustainable water, sewer, electrical and other utility services as well as the use of safer chemicals for cleaning and pest control, avoiding introductions of exotic species, enhancement of native vegetation, etc.
12. The operation of any resort should provide access by the public to the significant ruins existing at Caneel providing for the education of people regarding the history of St. John, including the operation of the plantation system through slave labor, and the resistance to it during the 1733 slave rebellion and otherwise.

13. Although legislation enacted in October 2010 (P.L. 111-261) authorized the Secretary of DOI to enter into a new lease with the owners of the Retained Use Estate (RUE) under certain conditions, it certainly did not require the Secretary to do so – and circumstances since then have changed greatly, with the 2017 hurricanes having damaged or destroyed most of the buildings and with CBIA’s failure to rebuild the resort despite receiving insurance funds to do so. Such a new lease should not be entered into now, for the reasons below.

Problems with Past CBIA Management

14. The current operator of Caneel, CBI Acquisitions (CBIA) and EHI Acquisitions (EHIA) should not be given a no-bid lease or concession for the following reasons:
 - a. Mr. Gary Engle and CBIA have operated the Caneel resort on the Retained Use Estate property since 2004 and have had the responsibility for its upkeep and management.
 - b. Significant environmental contamination exists on the Caneel property as evidenced by three different environmental assessments and reports prepared at the direction of the Park. It is likely that a significant amount of the contamination occurred as a result of activities after 2004. A full environmental assessment is necessary to identify contamination that occurred prior to and after 2004. Mr. Engle and his entities have not undertaken any studies to determine the nature and extent of any contamination, nor has there been any attempt at remediation.
 - c. CBIA and EHIA have failed to protect the significant historical and other assets existing on the Caneel property. This includes the destruction by CBIA and its agents of a significant portion of historical structures done without consideration of their significance and without the permission of the Department of Interior. For example, portions of former slave quarters and burial grounds were destroyed by Mr. Engle’s groups without any effort to protect them.
 - d. Mr. Engle has confirmed that his companies received significant insurance proceeds (understood to be well over \$30 million) after the damage caused by hurricanes Irma and Maria in 2017, yet the insurance money has not been spent to restore Caneel.
 - e. Little or no effort has been made to restore the Caneel property to its pre-Irma and Maria condition.
 - f. None of the insurance proceeds have been shared with the people of the United States even though the proceeds were presumably intended to restore the damage and provide compensation for the destruction of property owned by the People of the United States.
 - g. As of December 2020, a significant amount of personal and real property damage and debris from two hurricanes remains evident at Caneel.
 - h. The current operator receives Economic Development Commission (EDC) benefits under a certificate issued by the government of the Virgin Islands. There is no evidence that the current operator has paid any taxes to the Territory. There is no evidence that CBIA or EHIA are in compliance with the EDC certificate they have held since September of 2017.
 - i. The current operator does not pay any compensation to the People of the United States for the use of the Caneel property.

- j. Mr. Engle, in an interview with the Virgin Islands Daily News on June 12, 2018, stated the following: "So what I can say with absolute conviction is that until Caneel Bay.(pause). next year you're going to see more shuttered stores. Two years from now, this place is going to be a ghost town. It is going to be a shithole". These statements insult and attempt to belittle our island and its people. Mr. Engle was incorrect in his predictions and as of this writing the St. John community continues to thrive without Caneel.
- k. The current operator laid off employees during a significant portion of the calendar year leaving employees without income and causing the government of the Virgin Islands to incur significant costs for unemployment benefits.
- l. On information and belief, CBIA laid off employees during such periods in part to create "breaks in service" to avoid paying for retirement and other benefits.
- m. CBIA and EHIA have not engaged the St John community in any way in relation to the future operation of Caneel even though they are seeking a 40 year no-bid lease agreement with an option to extend that lease. The people of St. John have not had an opportunity to affect the future of the most significant and valuable piece of real property on St. John.
- n. There is no mandate or requirement that a no-bid lease or concession agreement be entered into with CBIA or EHIA.
- o. CBIA and EHIA are not hotel or resort operators and have not shown that they have the specialized knowledge and experience to operate an eco-type resort.
- p. CBIA and EHIA have not demonstrated that they have a commitment to building and operating a resort that meets applicable building codes and standards or environmental requirements.
- q. CBIA and EHIA have refused access to the Caneel grounds by the public for over a decade and have limited access to only their guests who pay a significant amount of money to stay at Caneel.
- r. CBIA and EHIA have made access to the 7 Caneel beaches almost impossible for the public.
- s. CBIA and EHIA have not engaged with the Virgin Islands government in any way to address the ongoing disposal of waste products produced as a result of the operation of Caneel including solid and hazardous waste.
- t. A significant amount of contaminated soils exist on the Caneel site with no plan by CBIA or EHIA to clean up the contamination.
- u. Mr. Engle previously prohibited access to the Caneel property by the Park Service to allow a proper assessment and recommendations for cleanup of the environmental contamination.
- v. CBIA and EHIA have not at any time offered a vision of what a reconstructed Caneel resort might look like.
- w. No plans for the future excavation of archeological assets has been offered by CBIA and EHIA and significant damages continue to occur to the ruins with no effort having been made to stem the damage.
- x. CBIA and EHIA have been parties to over 25 lawsuits in the Virgin Islands. A review of those files shows that CBIA and EHIA have frequently been at odds with the Public, employees, and a concession operator on St. John.

15. No plans for preservation and protection of significant archeological assets have been offered by CBIA and EHIA. Current Department of Interior, United States Park Service laws, regulations and policies require protection of those assets.

16. A no-bid process is contrary to the existing policies, rules, regulations and laws applicable to the leasing of Park property.

17. A no-bid process would likely result in a compensation arrangement for the Public which is less than what would be obtained by a bid process.

Benefits of Competitive Bid Process

18. A bid process would increase the chances that a state-of-the-art Eco Resort would be constructed.

19. A bid process would increase the likelihood that people of St. John will have access to the property and would have a positive relationship with the operator of the resort.

20. A bid process would increase the likelihood that the people of the Virgin Islands would have more opportunities for employment and training opportunities would exist for training Virgin Island workers. Opportunities could exist for the University of the Virgin Islands to use the Caneel operation for educating university students.

21. A bid process would increase the likelihood that a shared use of the land and facilities could occur such that the Caneel property and resort are an integral part of the St John life.

22. A bid process would increase the likelihood that local artists and vendors would have an opportunity to participate more fully in the Caneel economic activity.

23. A bid process would increase the likelihood that more people would have access to the trails and significant natural, historical and archeological assets existing on Caneel.

24. A bid process could result in the Caneel property being a demonstration site for off the grid solar energy production and other sustainable and eco-sensitive infrastructure and initiatives.

25. A bid process could result in the Caneel property being a significant site for agriculture production and would assist in providing food security for the people of St John.

26. A bid process could result in educational programs which would educate visitors regarding the fragile ecosystems of the Virgin Islands including coral and turtles.

27. A bid process could result in an operator for Caneel that has other Eco Hotel sites around the world, thus allowing Caneel employees the opportunity to work and train at other sites around the world.

28. A bid process removes the perception that the current operator has an advantage because it has had political connections to the Trump administration, or the appearance of a “sweetheart deal” or “crony capitalism” at work.

29. A bid process would allow the Park to obtain wide ranging input from St. Johnian residents and residents of the Virgin Islands, which is needed not only to determine future policies related to the Virgin Islands National Park but also to better allocate Park resources.

30. A bid process would result in the new operator restoring the operational ability and capacity of the resort (though this was CBIA’s responsibility given their responsibility to maintain the property under the MOU and their receipt of insurance proceeds for this purpose, and they should be held to that).

31. A bid process could result in a bidder being willing to accept the burdens associated with clean-up of any environmental contamination, though this also should be the burden of CBIA given their failure to do so over many years.

32. A bid process would go a long way towards reducing the animosity many residents of St. John have towards the current operator and the Park Service.

33. A bid process increases the likelihood that a facility could be constructed for use by the public for gathering and for educational programs and presentations. This might be of the nature of an auditorium or at least a large meeting room. No such facility currently exists on St. John.

34. A bid process could address the unfairness of allowing an operator to continue avoiding not only income tax but also other Virgin Islands taxes.

35. A bid process could result in the Park and Caneel addressing the recycling of glass, paper, plastic and other waste products in ways that have less impact on the environment.

36. A bid process could result in the operator agreeing to follow international guidelines and best practices for the operation of a true Eco Resort.

37. A bid process could result in a resort that increases the overall number of tourists to the Virgin Islands, particularly those who could best assist the islands’ economic recovery through patronizing local businesses and services.

38. A bid process could address the significant complexities and burdens upon the infrastructure on St. John related to Caneel and that will result from the construction of a new resort.

39. A bid process would likely result in agreements which would protect turtle nests and rare plants on the Caneel site.

40. A bid process could result in cooperative arrangements to protect the coral that is immediately offshore to Caneel including the treating of stony coral diseases and coral bleaching.

41. A bid process could result in programs to educate the public in the dangers of using sunscreen protections that contain oxybenzone and other hazardous chemicals.

42. A bid process could result in programs to reduce single use plastic in connection with the operation of the resort along with many other environmental benefits.

Conclusion.

For the reasons set forth above, the Department of Interior should reduce the current acreage set aside for the operation of a resort at the Caneel Bay property, and should use an open and competitive bidding process that allows other qualified parties to participate along with CBIA, so that the best proposal can be chosen that most benefits the people of St. John and the U.S. Virgin Islands. The advantages of using a competitive bid process are clear, as are the detriments of failing to do so by handing the future of the Caneel Bay resort and the island of St. John to the current operator.

Please let me know your response, and any questions. Many thanks for your attention and concern for these matters.

Respectfully,

David DiGiacomo
P.O. Box 37
St. John, VI 00831
303 931 2554
davedigiacomo@mac.com