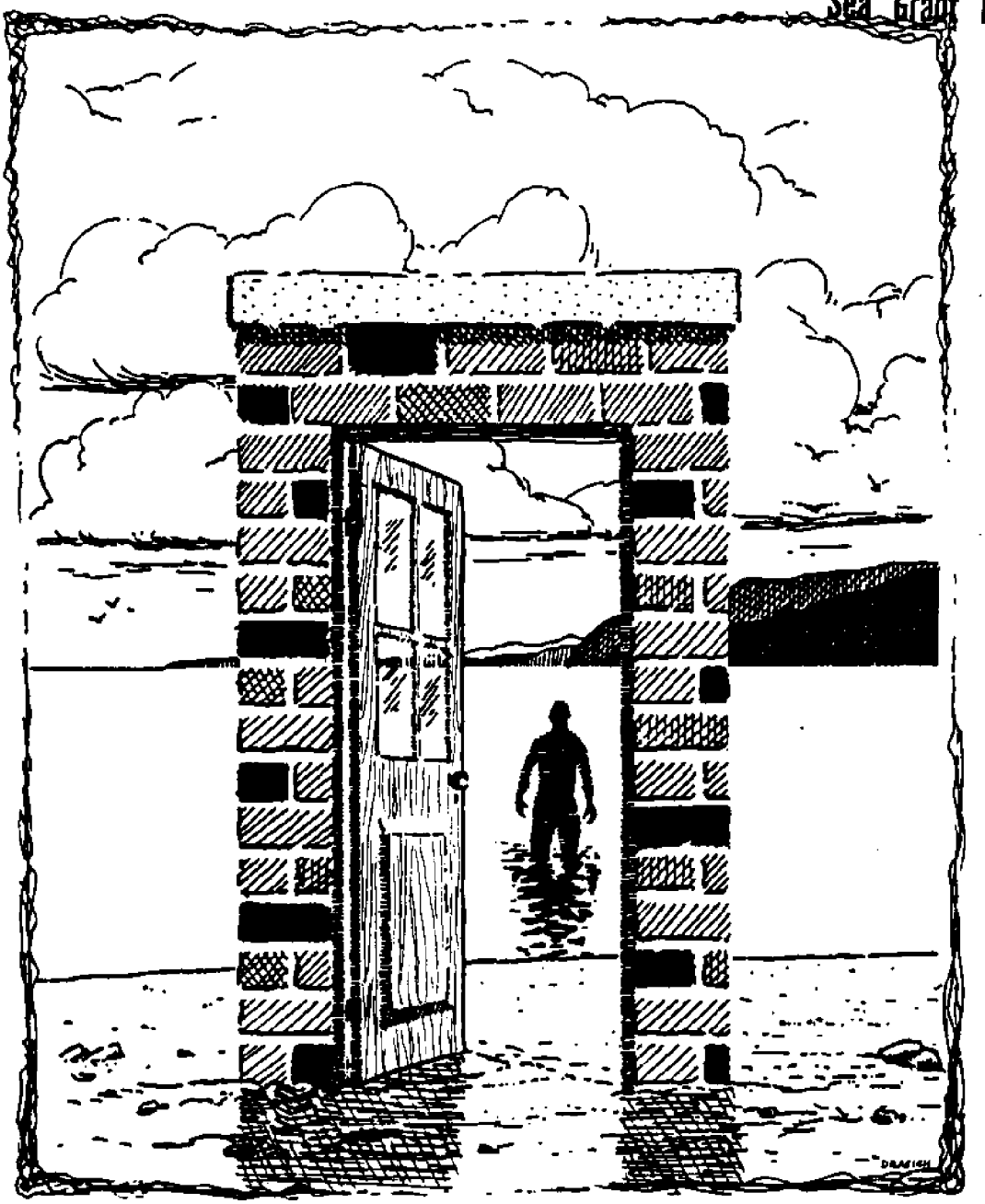
PUBLIC ACCESS TO THE VIRGIN ISLANDS SHORELINE



UNIVERSITY OF PUERTO RICO
SEA GRANT COLLEGE PROGRAM

PUBLICATION NUM. UPRSG-WA-38

PUBLIC ACCESS

TO THE

VIRGIN ISLANDS SHORELINE

A COMPILATION OF RELEVANT WRITTEN MATERIALS

EDITED BY NATHALIE PETER

VIRGIN ISLANDS MARINE ADVISORY SERVICE

UNIVERSITY OF PUERTO RICO

SEA GRANT PROGRAM

A SUPPLEMENT

TO THE WORKSHOP PROCEEDINGS

PUBLIC ACCESS TO THE VIRGIN ISLANDS SHORELINE

ST. THOMAS/ST. JOHN WORKSHOP

5 NOVEMBER 1987

ST. CROIX WORKSHOP

6 NOVEMBER 1987

In memory of Marva Sprauve Browne

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SECTION G. Relevant Planning Documents

U.S., Dept. of Commerce, NOAA, Office of Coastal Zone Management. The Virgin Islands Coastal Zone Management Program and Final Environmental Impact Statement (1979), pp. 37-39, 121-134.

Virgin Islands, Department of Conservation and Cultural Affairs. Handbook for Homebuilders and Developers (1984), pp. 60-63.

_____, Planning Office. Authorities and Organization. Technical Supplement No. 3 (1977), pp. 45-51, 77-82.

_____. Preliminary Virgin Islands Coastal Zone Management Program (1977), pp. 118-137; Section pp. 44-47.

SECTION H. Historical Documents related to the Free Beach Movement

"Do You Want More Beaches for All of the People of the Virgin Islands?" Information Sheet (December 11, 1970).

"Petition for Beaches Submitted to Senate." The Daily News (February 9, 1971), p. 5.

Emanuel, Cory. "Free Beaches in the Virgin Isles." Calypso (February 21, 1971).

Citizens Committee to Free All Beaches. "Do We Want More of This?" Pictoral Flyer (June 1971).

Letter and Proposed Legislation to Senate President John Maduro from the Citizens Committee to Free All Beaches (June 30, 1971).

Letter to Dept. of Law Attorney William Taylor From Wilhemina B. Lewis, Darwin A. King, and Marva Sprauve Browne (December 21, 1975).

Letter to Senate President Derek Hodge from Edwin Hatchette, Marva Sprauve Browne, and Darwin A. King (January 24, 1986).

SECTION I. Recent News Clippings

PREFACE

In November, 1987, the Virgin Islands Marine Advisory Service (VIMAS) at the University of the Virgin Islands conducted one day workshops on "Public Access to the Shoreline" on St. Thomas and St. Croix. The workshops were attended by Department of Planning and Natural Resources personnel; legislative, judicial, and executive government personnel; representatives from consulting firms, realtors, civic groups, and attorneys involved in land use and development; and representative coastal developers and landowners with beachfront property.

The purpose of the workshops was twofold: (1) to provide the participants with basic legal and practical information about shoreline access in the Virgin Islands and (2) to address selected V.I. shoreline access issues in a discussion group format in order to arrive at recommendations for the government on guidelines, studies, and/or legal measures it can undertake to mitigate future access conflicts.

The Virgin Islands Marine Advisory Service (VIMAS) of the University of Puerto Rico Sea Grant Program conducted the access workshops and prepared Public Access to the Virgin Islands Shoreline: a Workshop Proceedings. Funding for both was provided by VIMAS and the Coastal Zone Management Program of the Department of Planning and Natural Resources.

VIMAS selected public access as a critical issue that it should address, given the growing potential for conflict between the simultaneous increases in the demand for and use of public recreation areas and in private development along the coast. More specifically, "perpendicular access" -- that is, access to beach areas within the public domain from public roadways -- was identified as a planning issue requiring more immediate attention. It is this issue which was the focus of the November workshops.

Public Access to the Virgin Islands Shoreline: a Compilation of Relevant Written Materials represents a comprehensive compilation of public documents and other written materials on shoreline access which were assembled in the course of the workshop and proceedings preparations. It is intended to serve as a companion volume to the Proceedings, providing a full picture of the V.I. shoreline access issue to date.

Included are workshops programs; diagrams of shoreline access in the Virgin Islands; relevant territorial statutes, pending legislation, judicial decisions, and historical and planning documents; a pertinent federal statute; useful legislation from other jurisdictions; and recent news clippings.

Both the Proceedings and this Compilation are available from the University of Puerto Rico Sea Grant office at a minimum charge.

The comprehensive combination of presentations, findings, and recommendations found in Public Access to the Virgin Islands Shoreline: a Workshop Proceedings and the documents in this Compilation should make useful desk references for those who are involved in land use planning either in a public, private, or civic capacity. Both should serve as the basis for a number of recommended initiatives -- some of which require legislation -- that the Territory should implement as soon as it is practicable.

THE VIRGIN ISLANDS MARINE ADVISORY SERVICE

The Virgin Islands Marine Advisory Service (VIMAS) is part of the National Sea Grant College Program in the United States. Sea Grant is a federal/ state and territorial partnership administered through local academic institutions. It is designed to promote the wise use and development of the nation's coasts and oceans through a program of applied research, education, and advisory service. Sea Grant programs are located in all the coastal and Great Lakes states, Guam, Puerto Rico, and the U.S. Virgin Islands.

VIMAS is an inter-institutional project. It is part of the University of Puerto Rico Sea Grant Program and administered locally through the University of the Virgin Islands and West Indies Laboratory of Fairleigh Dickinson University.

Marine research, technology, and information are not especially useful unless there is some way to get that knowledge to the people. Marine advisory services basically operate under the philosophy of transferring skills and knowledge to the marine community. They are an outreach program to such marine user groups as fishermen, coastal zone management personnel, boaters, the marine industry, and youth who are interested in the sea.

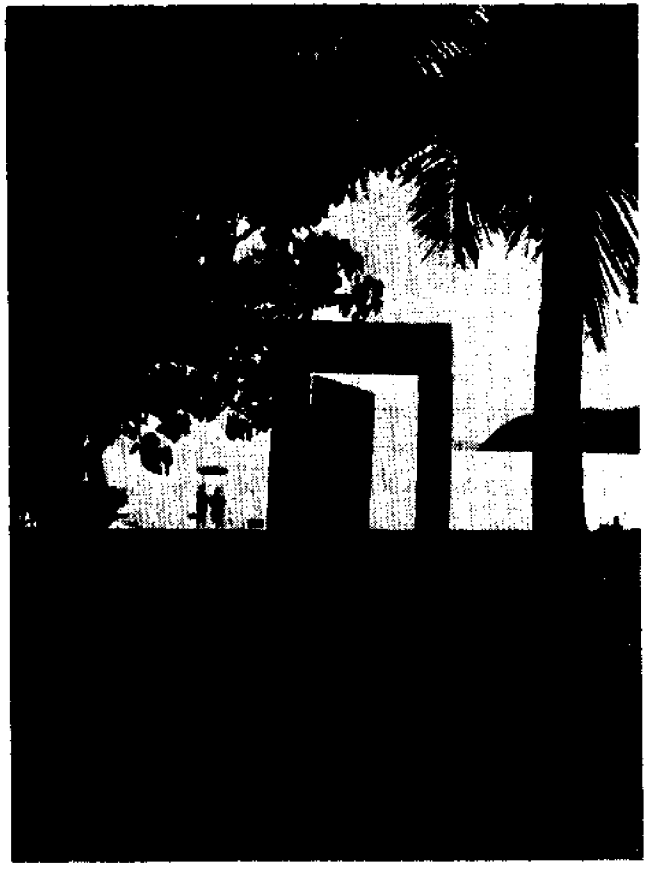
VIMAS, housed at the University of the Virgin Islands, brings together the diverse talents, expertise, and facilities of its associated academic institutions and members of the V.I. community. It can also draw upon the expertise and information networks available through Sea Grant nationwide.

VIMAS activities include one-on-one advisory services, the distribution of materials, and larger scale projects, such as workshops, a marine camp, reports and publications, radio and television spots, and news columns.

For further information about VIMAS, you can contact:

Nathalie Peter
Virgin Islands Marine Advisory Service
University of the Virgin Islands
St. Thomas, Virgin Islands 00802
(809) 776-9200 ext. 1242

SECTION A.
PROGRAMS FROM THE SHORELINE ACCESS WORKSHOPS



Photographs by E. C. Jones

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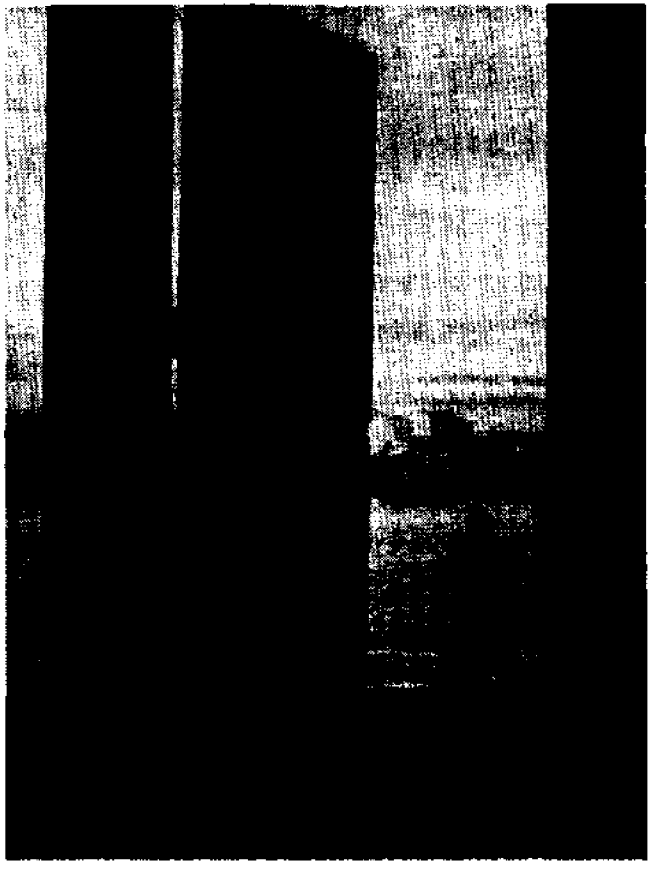
PUBLIC ACCESS TO THE SHORELINE



ST. THOMAS / ST. JOHN WORKSHOP
5 NOVEMBER 1987

CHASE AUDITORIUM
UNIVERSITY OF THE VIRGIN ISLANDS

MORNING SESSION

OVERVIEW OF PUBLIC ACCESS TO THE SHORELINE

9:00 Opening remarks -- What is Public Access and Accessibility
Nathalie Peter, Marine Advisor
Virgin Islands Marine Advisory Service

9:20 The Problems of Public Access: Public Rights vs. Private Rights vs. Natural Resource Protection
Dennis Nixon, Director,
Marine Affairs Program, University of Rhode Island

9:40 Relevant Federal and Territorial Laws and Judicial Decisions
Godfrey de Castro, Attorney General
Office of the Attorney General

10:00 The Role of the Department of Planning and Natural Resources in Public Access
Brian Turnbull, Assistant Commissioner of Planning,
Department of Planning and Natural Resources

10:20 Summary Report on the June 1987 Public Hearings Conducted by the Virgin Islands Legislature
Virdin Brown, Senator,
Virgin Islands Legislature

10:40 Break

11:00 Methods of Acquiring Public Access
Nathalie Peter, Marine Advisor,
Virgin Islands Marine Advisory Service

11:20 How Other States and Territories Handle Public Access
Alex Wypyszinski, Director,
New Jersey Sea Grant Extension Service

11:40 How Other Caribbean Nations Handle Public Access
Edward Niles, Planner,
Physical Planning Unit, Grenada

12:00 Lunch

AFTERNOON SESSION

TOWARD A TERRITORIAL POLICY ON SELECTED ACCESS ISSUES

1:15 I. Assessing the Need for Improved Public Access
A. Is It Now Necessary to Develop an Inventory of Existing Public Accessways?
B. How Should We Determine What Additional Areas Should Be Designated Public Accessways?
C. How Can We Determine How Existing and Future Accessways Should Be Used and How They Can Be Made Accessible?
Facilitator -- Ronald Belfon, Counsel, Division of Coastal Zone Management, Department of Planning and Natural Resources
Resource Panel -- Victor Giraud, Marva Sprauve Browne, Edward Niles

2:30 Summary of Key Points and Findings
Rapporteur -- Alex Wypyszinski

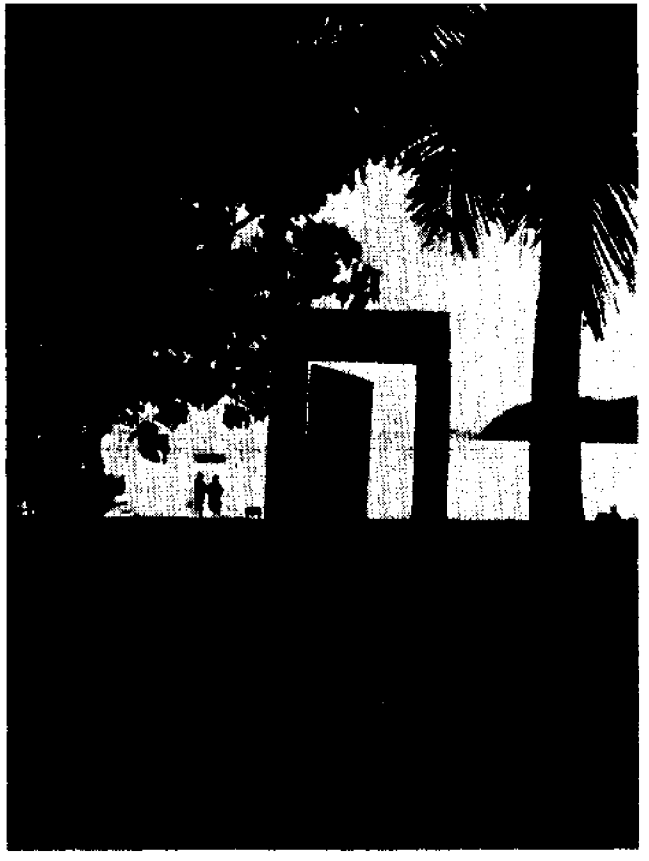
2:45 Break

3:00 II. Means of Mitigating Conflicts Arising with Adjacent Property Owners
A. How Can Accessways Be Designed Both to Afford Protection to Adjacent Property Owners and to Optimize Accessibility?
B. What Is the Status of Beachfront Liability?
Facilitator -- LaVerne Ragster, Coordinator, Virgin Islands Marine Advisory Service
Resource Panel -- Edith Bornn, Lucien Moolenaar, Dennis Nixon

4:15 Summary of Key Points and Findings
Rapporteur -- Dennis Nixon

4:30 Open Discussion

5:00 Adjourn



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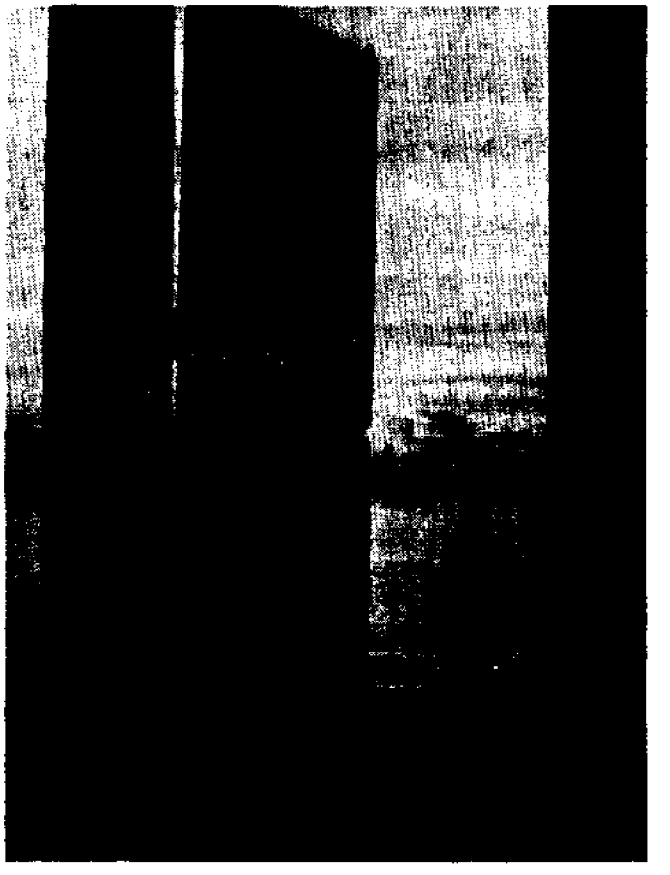
SEA GRANT PROGRAM

PUBLIC ACCESS TO THE SHORELINE



ST. CROIX WORKSHOP
6 NOVEMBER 1987

MELVIN EVANS CENTER
UNIVERSITY OF THE VIRGIN ISLANDS

MORNING SESSION

OVERVIEW OF PUBLIC ACCESS TO THE SHORELINE

9:00 Opening remarks -- What is Public Access and Accessibility
Nathalie Peter, Marine Advisor
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C. How Can We Determine How Existing and Future Accessways Should Be Used and How They Can Be Made Accessible?

Facilitator -- Ronald Belfon, Counsel, Division of Coastal Zone Management, Department of Planning and Natural Resources
Resource Panel -- Helmut Gieben, Terence Joseph, Manolo Valdes Pizzini, Lionel Jacobs

2:30 Summary of Key Points and Findings
Rapporteur -- Alex Wypyszinski

2:45 Break

3:00 II. Means of Mitigating Conflicts Arising with Adjacent Property Owners
A. How Can Accessways Be Designed Both to Afford Protection to Adjacent Property Owners and to Optimize Accessibility?
B. What Is the Status of Beachfront Liability?

Facilitator -- LaVerne Ragster, Coordinator, Virgin Islands Marine Advisory Service
Resource Panel -- John Ogden, Raymond Richards, Dennis Nixon

4:15 Summary of Key Points and Findings
Rapporteur -- Dennis Nixon

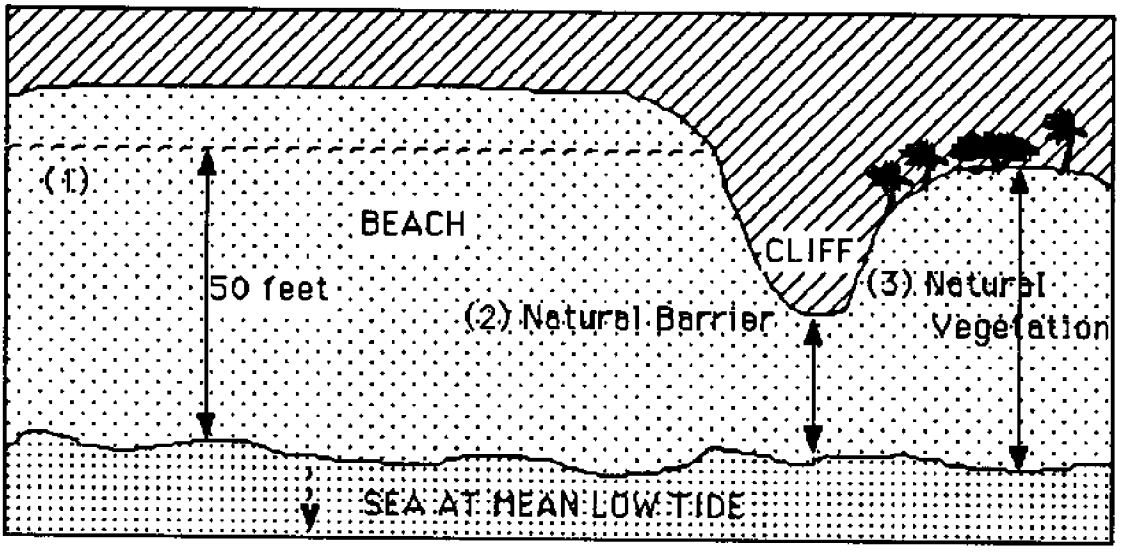
4:30 Open Discussion

5:00 Adjourn

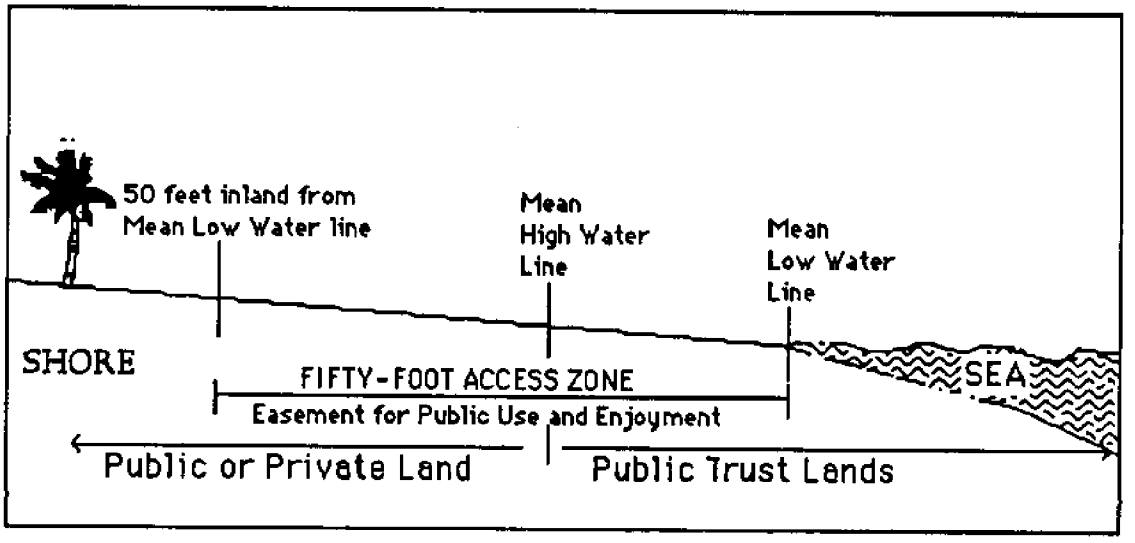
SECTION B.
DIAGRAMS OF SHORELINE ACCESS IN THE VIRGIN ISLANDS

DIAGRAMS OF THE VIRGIN ISLANDS OPEN SHORELINES ACT OF 1971

OVERVIEW OF THE VIRGIN ISLANDS SHORELINE ACCESS



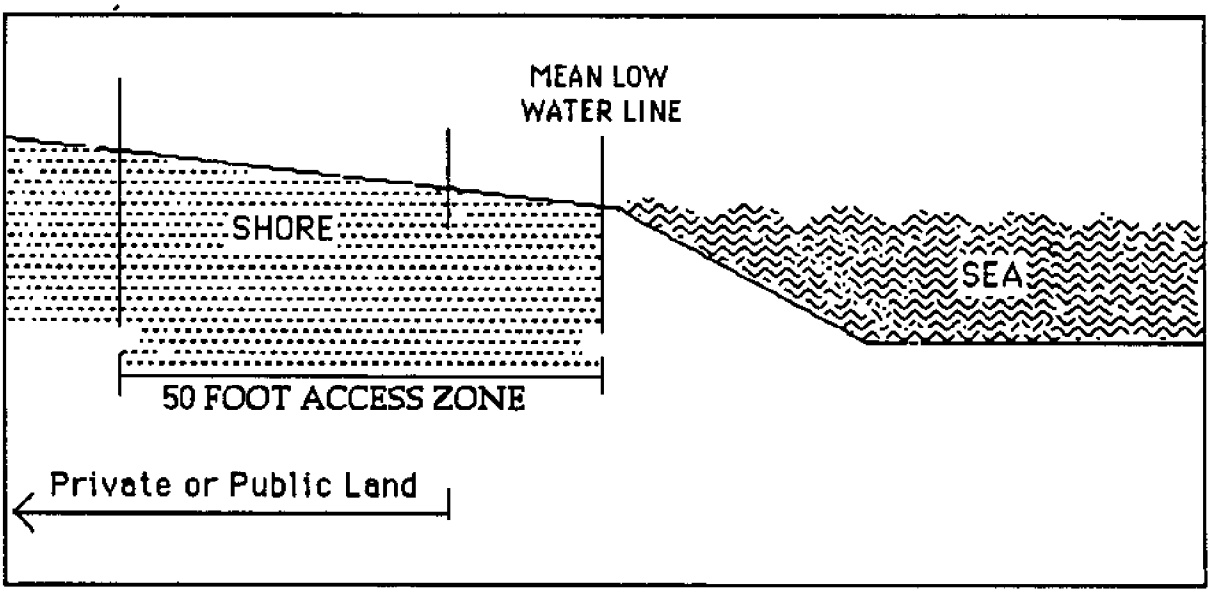
SIDE VIEW OF VIRGIN ISLANDS SHORELINE ACCESS ZONE AND OWNERSHIP



DIAGRAMS OF THE THREE SHORELINE POSSIBILITIES

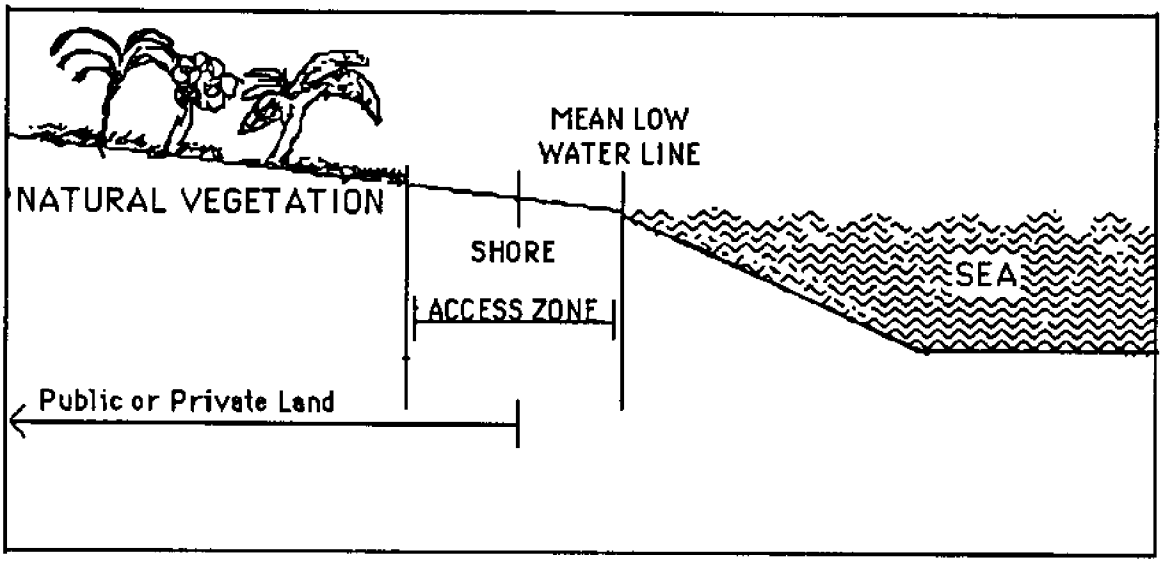
" THE AREA ALONG THE COASTLINES OF THE VIRGIN ISLANDS FROM THE SEAWARD LINE OF LOW TIDE

RUNNING INLAND A DISTANCE OF FIFTY FEET



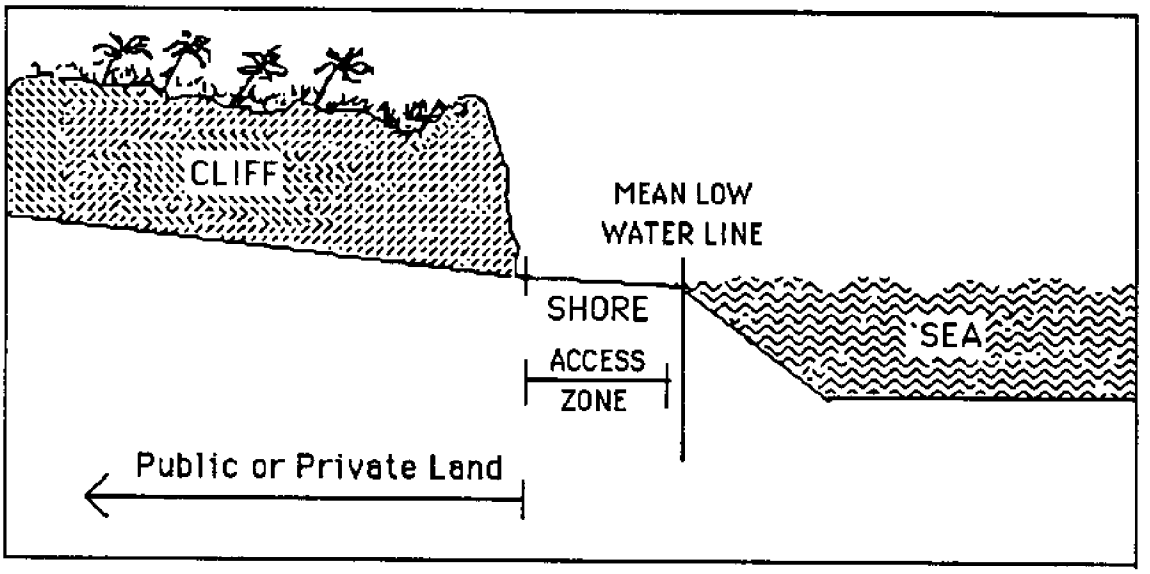
OR

TO THE EXTREME SEAWARD BOUNDARY OF NATURAL VEGETATION
WHICH SPREADS CONTINUOUSLY INLAND



OR

TO A NATURAL BARRIER



WHICHEVER IS THE SHORTEST DISTANCE. "

SECTION C.
RELEVANT VIRGIN ISLANDS STATUTORY LAW AND PENDING LEGISLATION

Virgin Islands. Coastal Zone Management Act of 1978. Virgin Islands Code Title 12, Chapter 21, Sections 901-906, 910(a)(4) (1987).

_____. Coastal Zone Management Regulations. Title 12, Subchapter 21, Sections 910-10, 910-11 (1981).

_____. Industrial Development Program Act. Virgin Islands Code Title 29, Chapter 12, Section 708(i) (1987).

_____. Open Shorelines Act of 1971, Virgin Islands Code Title 12, Chapter 10, Sections 401-407 (1987).

_____. "Adverse Possession." Virgin Islands Code, Title 28, Chapter 1, Section 11 (1987).

_____. V.I. Zoning and Subdivision Law, Virgin Islands Code Title 29, Chapter 3, Sections 230(a), 238 (1987).

Virgin Islands Legislature. "To prohibit the interference and restrictions of public access to the shorelines, to establish the Shoreline Beach Access Program, and to create the Shoreline Land Acquisition Fund." Bill No. 17-0089 (June 25, 1987).

Chapter 21. Virgin Islands Coastal Zone Management

SECTION ANALYSIS

§ 901. Common name

This chapter shall be known and may be cited as the Virgin Islands Coastal Zone Management Act of 1978.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 282.

HISTORY

Effective date. Act Oct. 31, 1978, No. 4248, § 24, Sess. L. 1978, p. 317, provided: "The effective date of this Act [No. 4248] shall be February 1, 1979."

Natural Resources Reclamation Fund. Act Oct. 31, 1978, No. 4248, § 21, Sess. L. 1978, p. 317, provided: "Fees accruing to the use and benefit of the Government of the Virgin Islands from submerged lands permits granted by the Government of the United States prior to the effective date of Act No. 3667 [Jan. 24, 1975] and which, pursuant to section 2 of that act, were covered into the Natural Resources Reclamation Fund created by section 1 of that act, are hereby continued without hiatus for the purposes of section 1 of this act."

§ 902. Definitions

For the purposes of this chapter, and unless the context otherwise requires:

(a) "Aggrieved person" means any person, including the applicant, who, in connection with a decision or action of the Commission on an application for a major coastal zone permit either appeared in person or through representatives at a public hearing of the Commission on said application, or prior to said decision or

action informed the Commission in writing of the nature of his concern, or on an application for a minor coastal zone permit informed the Commissioner in writing prior to said decision or action of the nature of his concern, or who for good cause was unable to do any of the foregoing.

(b) "Areas of particular concern" means areas in the coastal zone that require special and more detailed planning analyses and the preparation of special plans and implementation mechanism.

(c) "Board" means the Board of Land Use Appeals established in Title 29, chapter 3 of this Code.

(d) "Coastal dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function effectively.

(e) "Coastal Land and Water Use Plan" means the comprehensive plan for the development of the first tier of the coastal zone which is intended to serve as a policy guide for decision-making relative to development activities within this tier.

(f) "Coastal waters" means sea, as that term is defined in subsection (x) herein, as well as those waters adjacent to the shorelines which contain a measurable quantity or percentage of seawater, including, but not limited to, sounds, bays, lagoons, bayous, ponds and estuaries.

(g) "Coastal zone" means all land and water areas of the Territory of the Virgin Islands extending to the outer limits of the territorial sea, specified on the maps identified in section 908, subsection (a) of this chapter, and is composed of two parts, a first tier and a second tier.

(h) "Coastal Zone Management Program" means the program prepared by the Virgin Islands Planning Office for the management of the Coastal Zone of the Virgin Islands and submitted by the Governor of the Virgin Islands to the U.S. Department of Commerce pursuant to section 306, subsection (c), paragraph 4 of the Federal Coastal Zone Management Act of 1972 (P.L. 92-583).

(i) "Coastal zone permit" means a permit for any development within the first tier of the coastal zone that is required pursuant to section 906 of this chapter.

(j) "Commission" means the Coastal Zone Management Commission as created by section 904 of this chapter.

(k) "Commissioner" means the Commissioner of Conservation and Cultural Affairs.

(*l*) "Development" means the placement, erection, or removal of any fill, solid material or structure on land, in or under the water;

discharge or disposal of any dredged material or of any liquid or solid waste; grading, removing, dredging, mining, or extraction of any materials, including mineral resources; subdivision of land pursuant to Title 29, chapter 3 of this Code; construction, reconstruction, removal, demolition or alteration of the size of any structure; or removal or harvesting of vegetation, including coral. Development shall not be defined or interpreted to include activities related to or undertaken in conjunction with the cultivation, use or subdivision of land for agricultural purposes which do not disturb the coastal waters or sea, or any improvement made in the interior of any structure.

(m) "Emergency" means an unexpected situation that poses an immediate danger to life, health or property and demands immediate action to prevent or mitigate loss or damage to life, health, property or essential public services.

(n) "Environment" means the physical, social and economic conditions which exist within the area which will be affected by a proposed project.

(o) "Environmental Assessment Report" means an informational report prepared by the permittee available to public agencies and the public in general which, when required by this chapter, shall be considered by the Commission prior to its approval or disapproval of an application for a major coastal zone permit. Such report shall include detailed information about the existing environment in the area of a proposed development, and about the effects which a proposed development is likely to have on the environment; an analysis and description of ways in which the significant adverse effects of such development might be mitigated and minimized; and an identification and analysis of reasonable alternatives to such development.

(p) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

(q) "Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

(r) "First tier" means that area extending landward from the outer limit of the territorial sea, including all offshore islands and cays, to distances inland as specified in the maps incorporated by reference in section 908, subsection (a) of this chapter.

(s) "Major coastal zone permit" means a permit required for development within the coastal zone, which development is not

"minor development" as defined in section 910, subsection (c) of this chapter.

(t) "Minor coastal zone permit" means the permit required for development defined in section 910, subsection (c) of this chapter.

(u) "Permit" means any license, certificate, approval, or other entitlement for use granted or denied by any public agency.

(v) "Person" means any individual, organization, partnership, association, corporation or other entity, including any utility, the Government of the Virgin Islands, the Government of the United States, any department, agency, board, authority or commission of such governments, including specifically the Virgin Islands Port Authority and the Virgin Islands Water and Power Authority, and any officer or governing or managing body of any of the foregoing.

(w) "Public Agency" means Government of the United States, the Government of the Virgin Islands or any department, agency, board, authority, or commission of either government, including specifically the Virgin Islands Port Authority and the Virgin Islands Water and Power Authority, and any officer or governing or managing body of any of the foregoing.

(x) "Sea" means the Atlantic Ocean, the Caribbean Sea and all coastal waters including harbors, bays, coves, channels, estuaries, salt ponds, marshes, sloughs and other areas subject to tidal action through any connection with the Atlantic Ocean or the Caribbean Sea, excluding streams, tributaries, creeks and flood control and drainage channels.

(y) "Second tier" means the interior portions of the Islands of St. Thomas, St. John and St. Croix, including all watersheds and adjacent land areas not included in the first tier.

(z) "Shorelines" means the area along the coastline of the Virgin Islands from the seaward line of low tide, running inland a distance of fifty feet, or to the extreme seaward boundary of natural vegetation which spreads continuously inland, or to a natural barrier, whichever is the shortest distance. Whenever the shore is extended into the sea by or as a result of filling, dredging or other man-made alteration activities, the landward boundary of the shorelines shall remain at the line previously established.

(aa) "Significant natural area" means land and/or water areas within the coastal zone of major environmental value, including fish or wildlife habitat areas, valuable biological or natural productivity areas; and unique or fragile coastal ecological units or ecosystems which require special treatment and protection.

(bb) "Structure" means anything constructed or erected which

requires location or placement on or in the ground, the submerged land, or coastal waters, or which is attached to something located in or on the ground, the submerged lands, or coastal waters.

(cc) "Submerged and filled lands" means all lands in the Virgin Islands permanently or periodically covered by tidal waters up to, but not above, the line of mean high tide, seaward to a line three geographical miles distant from the coastline of the Virgin Islands, and all artificially made, filled in, or reclaimed lands, salt ponds and marshes which were formerly permanently or periodically covered by tidal waters.

(dd) "Trust lands" means all submerged and filled land conveyed pursuant to Public Law 93–435, 88 Statutes 1210, by the United States to the Government of the Virgin Islands to be administered in trust for the benefit of the people of the Virgin Islands.

(ee) "Vested rights" means the rights obtained by a person to complete development without having to obtain a coastal zone permit where, prior to the effective date of this chapter, such person has obtained the necessary permit or permits, issued by the appropriate pubic agency(ies), which would have been sufficient to legally authorize such development prior to said effective date.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 282.

HISTORY

Effective date. For effective date of this section, see note under section 901 of this title.

References in text. Section 306 of the Federal Coastal Zone Management Act of 1972, referred to in subsection (h), is classified to 16 U.S.C. § 1455.

§ 903. Findings and goals

(a) The Legislature hereby finds and declares that:

(1) the coastal zone, and the lands and waters thereof, constitute a distinct and valuable natural resource of vital importance to the people and economy of the Virgin Islands;

(2) the protection of the natural and scenic resources of the coastal zone is of vital concern to present and future residents of the Virgin Islands;

(3) title to certain submerged and filled lands surrounding the Virgin Islands has been conveyed in trust to and is held in trust by the Government of the Virgin Islands for the benefit of the people of the Virgin Islands;

(4) the shorelines provide a constant source of food and recreation to, and enhance all aspects of the lives of, the people of the Virgin Islands, and the public has made frequent, uninterrupted

and unobstructed use of the shorelines throughout Danish and American sovereignty;

(5) to promote the public safety, health and welfare, and to protect public and private property, wildlife, ocean resources and the natural environment, it is necessary to preserve the ecological balance of the coastal zone, and to prevent its deterioration and destruction;

(6) there has been uncontrolled and uncoordinated development of the shorelines and attempts to curtail the use of the shorelines by the public;

(7) improper development of the coastal zone and its resources has resulted in land use conflicts, erosion, sediment deposition, increased flooding, gut and drainage fillings, decline in productivity of the marine environment, pollution and other adverse environmental effects in and to the lands and waters of the coastal zone, and has adversely affected the beneficial uses of the coastal zone by the people of the Virgin Islands;

(8) the present system of regulatory controls in the Virgin Islands affecting the coastal zone consists of fragmented or overlapping laws and regulations which are not properly coordinated and which when taken together do not constitute a comprehensive or adequate response to the needs of the people of the Virgin Islands to protect, and to effect the best use of, the resources of the coastal zone; and

(9) there exists no comprehensive program for the overall management, conservation and development of the resources of the coastal zone, for the prevention of encroachment on natural areas in the coastal zone by urbanized developments and for the avoidance of irreversible commitments of coastal zone resources which provide short-terms benefits at the cost of adverse effects on the long-term productivity and amenity of the coastal zone environment.

(b) The Legislature hereby determines that the basic goals of the Virgin Islands for its coastal zone are to:

(1) protect, maintain, preserve and, where feasible, enhance and restore, the overall quality of the environment in the coastal zone, the natural and man-made resources therein, and the scenic and historic resources of the coastal zone for the benefit of residents of and visitors of the Virgin Islands;

(2) promote economic development and growth in the coastal zone and consider the need for development of greater than territorial concern by managing: (1) the impacts of human activity and

(2) the use and development of renewable and nonrenewable resources so as to maintain and enhance the long-term productivity of the coastal environment;

(3) asssure priority for coastal-dependent development over other development in the coastal zone by reserving areas suitable for commercial uses including hotels and related facilities, industrial uses including port and marine facilities, and recreation uses;

(4) assure the orderly, balanced utilization and conservation of the resources of the coastal zone, taking into account the social and economic needs of the residents of the Virgin Islands;

(5) preserve, protect and maintain the trust lands and other submerged and filled lands of the Virgin Islands so as to promote the general welfare of the people of the Virgin Islands;

(6) preserve what has been a tradition and protect what has become a right of the public by insuring that the public, individually and collectively, has and shall continue to have the right to use and enjoy the shorelines and to maximize public access to and along the shorelines consistent with constitutionally-protected rights of private property owners;

(7) promote and provide affordable and diverse public recreational opportunities in the coastal zone for all residents of the Virgin Islands through acquisition, development and restoration of areas consistent with sound resource conservation principles;

(8) conserve ecologically significant resource areas for their contribution to marine productivity and value as wildlife habitats, and preserve the function and integrity of reefs, marine meadows, salt ponds, mangroves and other significant natural areas;

(9) maintain or increase coastal water quality through control of erosion, sedimentation, runoff, siltation and sewage discharge;

(10) consolidate the existing regulatory controls applicable to uses of land and water in the coastal zone into a single unified process consistent with the provisions of this chapter, and coordinate therewith the various regulatory requirements of the United States Government;

(11) promote public participation in decisions affecting coastal planning conservation and development.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 286.

HISTORY

Effective date. For effective date of this section, see note under section 901 of this title.

§ 904. Coastal Zone Management Commission

(a) There is hereby created within the Department of Conservation and Cultural Affairs a Coastal Zone Management Commission composed of the Commissioner of Conservation and Cultural Affairs, who shall be a non-voting member, ex officio, the Director of the Virgin Islands Planning Office who shall be a non-voting member, ex officio, and fifteen other members appointed by the Governor with the advice and consent of the Legislature. Of the fifteen appointed members, five shall reside on St. Croix, five shall reside on St. Thomas and five shall reside on St. John. Ex officio members of the Commission may appoint a designee to serve at his or her pleasure who shall have all the powers and duties of such member pursuant to this chapter. The Commission shall elect a Chairman from among its members. Eight voting members of the Commission shall constitute a quorum for the transaction of all business of the Commission. A majority of those voting members present shall decide on all matters before the Commission. The Commission may adopt such other rules as it deems necessary to conduct its business.

(b) There are created within the Coastal Zone Management Commission three Commission Committees: one of such Committees shall consist of the members who reside on St. Croix, one of such Committees shall consist of the members who reside on St. Thomas and one of such Committees shall consist of members who reside on St. John. Each Committee shall exercise the full authority of the Commission over the issuance of Coastal Zone Permits within the jurisdiction of the Commission pertaining solely to the respective resident island of the Committee. Each Committee shall elect a Chairman from its members. A quorum of each Coastal Zone Management Committee shall consist of three of its members. A majority of those present shall decide on all matters before a Commission Committee.

(c) Appointed members of the Commission shall serve a term of two years and may be reappointed. Upon the conclusion of the term of any appointed member of the Commission, such person shall continue to serve until a new member has been appointed. The appointed members of the Commission shall receive the sum of $30 for each day or part thereof spent in the performance of their duties. Every member of the Commission shall be reimbursed for necessary travel, subsistence and other expenses actually incurred in the discharge of his duties as a member of the

Commission. Appointed members of the Commission may be removed by the Governor for cause.

(d) In addition to all powers specifically assigned the Commission by this chapter, the Commission shall have the primary responsibility for the implementation of the provisions of this chapter. The Department of Conservation and Cultural Affairs as directed by the Commission is hereby designated as the territorial coastal zone management agency for the purpose of exercising powers set forth in the Federal Coastal Zone Management Act of 1972 or any amendment thereto or any other federal act heretofore or hereafter enacted that relates to the management of the coastal zone except for those activities or programs presently being carried out by any other agency of the Government of the Virgin Islands or which the Governor may assign to any other agency. In addition to other authority, the Commission may grant or issue any certificate or statement required pursuant to any federal law that an activity of any person is in conformity with the provisions of this chapter.

(e) The Commission shall prepare and submit to the Legislature of the Virgin Islands for adoption any additional plans and undertake any studies it deems necessary and appropriate to better accomplish the purposes, goals and policies of this chapter.

(f) The Commission shall evaluate progress being made towards the implementation of the provisions of this chapter and shall submit a report to the Governor and Legislature on an annual basis.

(g) The Commission shall promulgate rules and regulations necessary to carry out the provisions of this chapter; Provided, however, That no such rules or regulations shall be promulgated unless public hearings are held by the Commission after appropriate notice as hereinafter provided. Any rules and regulations promulgated pursuant to this chapter may be modified, amended or revised by the Legislature in accordance with the provisions of subsection (b), section 913, Title 3 of this Code.

(h) *Division of Coastal Zone Management.* There is hereby established within the Department of Conservation and Cultural Affairs a Division of Coastal Zone Management, the powers and duties of which are, without limitation, to assist the Commission and Commissioner in administering and enforcing the provisions of this chapter.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 289.

HISTORY

Effective date. For effective date of this section, see note under section 901 of this title.

References in text. The Federal Coastal Zone Management Act of 1972, referred to in subsection (d), is classified to 16 U.S.C. § 1451 et seq.

§ 905. General provisions

(a) Nothing in this chapter shall be construed as amending or altering in any way the existing zoning designations of lands within the Virgin Islands or the Zoning District Maps adopted pursuant to Title 29, chapter 3, of this Code.

(b) Every use permitted under an existing zoning designation of lands pursuant to sections 227 and 228, Title 29, chapter 3, of this Code shall be permitted provided the use is consistent with the provisions of sections 903, 906 and 910 of this chapter.

(c) Any proposed use for which a coastal zone permit is required but not permitted pursuant to sections 227 and 228, Title 29, chapter 3, of this Code, and is consistent with the applicable zoning district and goals and policies of this chapter may be approved by the authority responsible for issuing such permits.

(d) This chapter is not intended, and shall not be construed as authorizing the Commission, Commissioner or any public agency acting pursuant to this chapter to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use without the payment of just compensation therefor. This chapter is not intended to increase or decrease the rights of any owner of property under the Revised Organic Act of the Virgin Islands or Constitution of the United States.

(e) In carrying out the provisions of this chapter, conflicts between the policies of this chapter shall be resolved in the manner which is the most protective of significant coastal resources.

(f) No provision of this chapter is a limitation on any of the following:

(1) except as otherwise specifically limited by territorial or federal law, on the power of any public agency to adopt and enforce additional regulations, not in conflict with this chapter, imposing further conditions or restrictions on land or water uses or other activities which might adversely affect coastal zone resources;

(2) on the power of the Government of the Virgin Islands to declare, prohibit and abate nuisances or to bring an action in the

name of the people of the Virgin Islands to enjoin any waste or the pollution of resources of the coastal zone; and

(3) on the right of any person to maintain an appropriate action for relief against a private nuisance or for any other private relief.

(g) Nothing herein contained shall be construed to abridge or alter vested rights obtained in a development in the first tier coastal zone prior to the effective date of this chapter or any occupancy permit or lease of trust lands or other submerged or filled lands issued prior to the effective date of this chapter, except to the extent provided in said occupancy permit or lease.

(h) No person who has obtained all necessary and required permits to construct or undertake development in the coastal zone and who, prior to the effective date of this chapter, has commenced construction of such development in good faith, shall be required to secure approvals for such development pursuant to this chapter; Provided, however, That notwithstanding subsections (g) and (h) of this section, no substantial change may be made in any such development without prior approval having been obtained in accordance with the provisions of this chapter.

(i) Nothing herein contained shall be construed to repeal, alter, abrogate, annul or in any way limit, diminish, impair or interfere with any of the following, but shall be held and construed as auxiliary and supplementary thereto:

(1) any easements, covenants or other agreements between parties to the extent that such easements, covenants, or agreements impose greater restrictions upon the use or alteration of land or water in the coastal zone than the requirements of this chapter;

(2) any or all rights the public has acquired by whatever means to use, traverse, enjoy or occupy lands or waters or both in the coastal zone as of the effective date of this chapter by reason of express or implied dedication or otherwise;

(3) the Commissioner's authority to administer and enforce any other provision of law related to, involving or affecting the coastal zone; and

(4) any laws of the Virgin Islands relating to air or water quality, air or water pollution, oil spill prevention or earth change.

(j) All public agencies of the Government of the Virgin Islands shall cooperate with the Commission, its Committees, and Commissioner in the administration and the enforcement of this chapter. All public agencies of the Government of the Virgin Islands currently exercising regulatory authority in the coastal zone shall administer such authority consistent with the provisions of this chapter and the rules and regulations promulgated hereunder.— Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 291.

HISTORY

Effective date. For effective date of this section, see note under section 901 of this title.

References in text. The Revised Organic Act of the Virgin Islands and the Constitution of the United States, referred to in subsection (d), are set out preceding Title 1 of this Code.

§ 906. Specific policies applicable to the first tier of the coastal zone

Consistent with the basic goals set forth in section 903(b) of this chapter, and except as may otherwise be specifically provided in this chapter, the policies set forth in this section shall apply to all proposed developments in the first tier of the coastal zone, and no such development shall be approved which is inconsistent with such goals and policies.

(a) Development policies in the first tier shall be as follows:

(1) to guide new development to the maximum extent feasible into locations with, contiguous with, or in close proximity to existing developed sites and into areas with adequate public services and to allow well-planned, self-sufficient development in other suitable areas where it will have no significant adverse effects, individually or cumulative, on coastal zone resources;

(2) to give highest priority to water dependent uses, particularly in those areas suitable for commercial uses including resort hotels and related facilities, industrial uses including port and marine facilities, and recreation; to give secondary priority to those uses that are water-related or have special siting needs; and to discourage uses which are neither water-dependent, water-related nor have special siting needs in areas suitable for the highest and secondary priority uses;

(3) to assure that new or expanded public capital improvement projects will be designed to accommodate those needs generated by development or uses permitted consistent with the Coastal Land and Water Use Plan and provisions of this chapter;

(4) to assure that all new subdivisions, in addition to the other requirements contained in this chapter and in the Virgin Islands Zoning and Subdivision Law, are physically suitable for the proposed sites and are designed and improved so as to avoid causing environmental damage or problems of public health;

(5) to encourage waterfront redevelopment and renewal in developed harbors in order to preserve and improve physical and visual access to the waterfront from residential neighborhoods and commercial downtown areas;

(6) to assure that development will be cited and designed to protect views to and along the sea and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas;

(7) to encourage fishing and carefully monitor mariculture and, to the maximum extent feasible, to protect local fishing activities from encroachment by non-related development;

(8) to assure that dredging or filling of submerged lands is clearly in the public interest; and to ensure that such proposals are consistent with specific marine environment policies contained in this chapter. To these ends, the diking, filling or dredging of coastal waters, salt ponds, lagoons, marshes or estuaries may be permitted in accordance with other applicable provisions of this chapter only where there are no feasible, less environmentally-damaging alternatives and, where feasible, mitigation measures have been provided to minimize adverse environmental effects, and in any event shall be limited to the following: (i) maintenance dredging required for existing navigational channels, vessel berthing and mooring areas; (ii) incidental public service purposes, including but not limited to the burying of cables and pipes, the inspection of piers and the maintenance of existing intake and outfall lines; (iii) new or expanded port, oil, gas and water transportation, and coastal dependent industrial uses, including commercial fishing facilities, cruise ship facilities, and boating facilities and marinas; (iv) except as restricted by federal law, mineral extraction, including sand, provided that such extraction shall be prohibited in significant natural areas; and (v) restoration purposes;

(9) to the extent feasible, discourage further growth and development in flood-prone areas and assure that development in these areas is so designed as to minimize risks to life and property;

(10) to comply with all other applicable laws, rules, regulations, standards and criteria of public agencies.

(b) Environmental policies in the first tier shall be as follows:

(1) to conserve significant natural areas for their contributions to marine productivity and value as habitats for endangered species and other wildlife;

(2) to protect complexes of marine resource systems of unique productivity, including reefs, marine meadows, salt ponds, man-

groves and other natural systems, and assure that activities in or adjacent to such complexes are designed and carried out so as to minimize adverse effects on marine productivity, habitat value, storm buffering capabilities, and water quality of the entire complex;

(3) to consider use impacts on marine life and adjacent and related coastal environment;

(4) to assure that siting criteria, performance standards, and activity regulations are stringently enforced and upgraded to reflect advances in related technology and knowledge of adverse effects on marine productivity and public health;

(5) to assure that existing water quality standards for all point source discharge activities are stringently enforced and that the standards are continually upgraded to achieve the highest possible conformance with federally-promulgated water quality criteria;

(6) to preserve and protect the environments of offshore islands and cays;

(7) to accommodate offshore sand and gravel mining needs in areas and in ways that will not adversely affect marine resources and navigation. To this end, sand, rock, mineral, marine growth and coral (including black coral), natural materials, or other natural products of the sea, excepting fish and wildlife, shall not be taken from the shorelines without first obtaining a coastal zone permit, and no permit shall be granted unless it is established that such materials or products are not otherwise obtainable at reasonable cost, and that the removal of such materials or products will not significantly alter the physical characteristics of the area or adjacent areas on an immediate or long-term basis; or unless the Commission has determined that a surplus of such materials or products exists at specifically designated locations;

(8) to assure the dredging and disposal of dredged material will cause minimal adverse effects to marine and wildlife habitats and water circulation;

(9) to assure that development in areas adjacent to environmentally-sensitive habitat areas, especially those of endangered species, significant natural areas, and parks and recreations areas, is sited and designed to prevent impacts which would significantly degrade such areas;

(10) to assure all of the foregoing, development must be designed so that adverse impacts on marine productivity, habitat value, storm buffering capabilities and water quality are minimized to the greatest feasible extent by careful integration of con-

Number STCZM-1 to 5, SCCZM-1 to 11, SJCZM-1 to 4, and OICZM-1, inclusive, which are filed in the Office of the Lieutenant Governor (with copies in the offices of the Commissioner and the Virgin Islands Planning Office), and shall be interpreted by the Commissioner. Such maps are hereby declared to be part of this chapter as if fully set forth herein.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 297.

HISTORY

Effective date. For effective date of this section, see note under section 901 of this title.

§ 909. Areas of particular concern

The Commission may recommend, after reasonable notice and public hearings, designation of areas of particular concern within the first tier of the coastal zone and submit such recommendations to the Legislature for adoption. In recommending the designation of areas of particular concern, criteria for selection and implementing actions shall be included in a report prepared and adopted by the Commission.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 297.

HISTORY

Effective date. For effective date of this section, see note under section 901 of this title.

§ 910. Coastal zone permit

(a) *When required, terms and conditions*

(1) On or after the effective date of this chapter, any person wishing to perform or undertake any development in the first tier of the coastal zone, except as provided in subsection (b) of this section, shall obtain a coastal zone permit in addition to obtaining any other permit required by law from any public agency prior to performing or undertaking any development.

(2) A permit shall be granted for a development if the appropriate Committee of the Commission or the Commissioner, whichever is applicable, finds that (A) the development is consistent with the basic goals, policies and standards provided in sections 903 and 906 of this chapter; and (B) the development as finally proposed incorporates to the maximum extent feasible mitigation measures to substantially lessen or eliminate any and all adverse environmental impacts of the development; otherwise the permit application shall be denied. The applicant shall have the burden of proof to demonstrate compliance with these requirements.

(3) Any coastal zone permit that is issued shall be subject to reasonable terms and conditions imposed by the appropriate Committee of the Commission or the Commissioner, whichever is applicable, in order to ensure that such development will be in accordance with the provisions of this chapter. To this end, any of the development provisions in section 229 of Title 29, chapter 3, of this Code may be made more or less restrictive by the appropriate Committee of the Commission in the case of a major coastal zone permit and more restrictive by the Commissioner in the case of a minor coastal zone permit.

(4) In connection with any land subdivision or major coastal zone permit issued for development adjacent to the shoreline, the appropriate Committee of the Commission may require the dedication of an easement or a fee interest in land for reasonable public access from public highways to the sea in accordance with section 906, subsection (c), paragraph (7) of this chapter.

(b) *When not required or may be waived.*

(1) Notwithstanding any provision in this chapter to the contrary, no coastal zone permit shall be required pursuant to this chapter for activities related to the repair or maintenance of an object or facility located in the coastal zone, where such activities shall not result in an addition to, or enlargement or expansion of, such object or facility.

(2) Where immediate action by a person or public agency performing a public service is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities or services destroyed, damaged, or interrupted by natural disaster or serious accident, or in other cases of emergency, the requirement of obtaining a permit under this section may be waived by the appropriate Committee of the Commission or the Commissioner upon notification to the Commissioner of the type and location of the work, the length of time necessary to complete the work and the name of the person or public agency conducting the work.

(c) *Standards for major and minor coastal zone permits.* A major coastal zone permit shall be issued by the appropriate Committee of the Commission for all approved applications for development except:

(1) a development which is to be conducted completely or substantially seaward of the line of mean high tide and is designated by the appropriate Committee of the Commission pursuant to subsection (e), paragraph (5) of this section; or

Chapter 17. Oil Spill Prevention and Pollution Control

§ 715. Derelict vessels

(1) It is unlawful for any person, or corporation to store or leave any vessel in a wrecked, junked or substantially dismantled condition or abandoned upon any public waters or at any port in this territory without the consent of the Department of Conservation and Cultural Affairs or docked at any private property without consent of the owner of the private property.

* * *

—Amended Feb. 1, 1985, No. 5036, § 1, Sess. L. 1984, p. 452.

1984—Paragraph (1): Substituted "Department of Conservation and Cultural Affairs" for "Virgin Islands Port Authority" preceding "or docked".

Chapter 21. Virgin Islands Coastal Zone Management

1. Constitutionality. Since section 903 of this title indicates the limits within which the Coastal Zone Management Commission and the Board of Land Use Appeals must act, this chapter is not an impermissible delegation of legislative authority. Great Cruz Bay Development Co., Inc. v. Virgin Islands Board of Land Use Appeals, D.C.V.I. 1981, 18 V.I. 536.

§ 903. Findings and goals

1. Cited. Cited in Great Cruz Bay Development Co., Inc. v. Virgin Islands Board of Land Use Appeals, D.C.V.I. 1981, 18 V.I. 536; Government of the Virgin Islands, Department of Conservation v. Virgin Islands Paving, Inc., C.A.3d 1983, 714 F.2d 283; West Indian Co. v. Government of the Virgin Islands, D.C.V.I. 1986, 643 F.Supp. 869.

§ 905. General provisions

* * *

(i) Nothing herein contained shall be construed to repeal, alter, abrogate, annul or in any way limit, diminish, impair or interfere with any of the following, but shall be held and construed as auxiliary and supplementary thereto:

* * *

(5) [Repealed.]

* * *

—Amended April 7, 1982, No. 4700, § 1, Sess. L. 1982, p. 65; Aug. 11, 1986, No. 5188, § 1(b), Sess. L. 1986, p. 200.

1986—Subsection (i)(5): Repealed.
1982—Subsection (i)(5): Added.

§ 906. Specific policies applicable to the first tier of the coastal zone

Consistent with the basic goals set forth in section 903(b) of this chapter, and except as may otherwise be specifically provided in this chapter, the policies set forth in this section shall apply to all proposed developments in the first tier of the coastal zone, and no such development shall be approved which is inconsistent with such goals and policies.

* * *

(b) Environmental policies in the first tier shall be as follows:

* * *

(8) to assure the dredging and disposal of dredged material will cause minimal adverse affects to marine and wildlife habitats and water circulation;

* * *

Editorial note. Subsection (b)(8) is set out to correct an error in the text of the subsection as it appears in the bound volume.

§ 910. Coastal zone permit

1. Cited. Cited in Hans Lollik Corporation v. Government of the Virgin Islands, Terr. Ct. St. T. and St. J. 1981, 17 V.I. 220; Great Cruz Bay Development Co., Inc. v. Virgin Islands Board of Land Use Appeals, D.C.V.I. 1981, 18 V.I. 536; Government of the Virgin Islands, Dept. of Conservation v. Virgin Islands Paving, Inc., C.A.3d 1983, 714 F.2d 283.

§ 911. Additional requirements for development or occupancy of trust lands or other submerged or filled lands

See Act 5265 § 305 (b)

(f) *Rental and reclamation fees.*

* * *

(4) Rental and reclamation fees paid pursuant to this section shall be paid to the Commissioner and covered into the Natural Resources Reclamation Fund, which fund is hereby continued by this paragraph, without hiatus, from existing law. The Commissioner of Finance is directed to maintain and provide for the administration of this fund as a separate and distinct fund in the Treasury, and to authorize disbursements therefrom, upon the certification of the Commissioner, to meet expenses incurred in the administration and enforcement of the provisions of this chapter and in the discharge of the Commission's duties thereunder. The

Copy below is hereby certified to be a true and correct copy of regulations adopted pursuant to authority granted by 12 V.I.C. Chapter 21, Sections 904(g), 910(e), and 911(b)(1), by the Coastal Zone Management Commission.

DATED: 2/26/81

DARLAN BRIN, Commissioner
Department of Conservation & Cultural Affairs

ORVILLE KEAN, Chairman
Coastal Zone Management Commission

APPROVED:

JUAN LUIS
Governor of the Virgin Islands

Dated: March 18, 1981

The schedule entry of a Committee meeting shall include an agenda of items to be considered by the Committee at the meeting.

(c) Minutes shall be kept of all meetings of a Committee. Minutes may include a short summary of the business which was conducted by the Committee and a record of all official actions taken, if any, by the Committee. Such minutes shall be available for public inspection.

(d) The Committee shall conduct site visits whenever it determines that such visits would be helpful in evaluating Coastal Zone Permit applications, Coastal Zone Permits and compliance therewith.

(e) At a vote on any matter, including but not limited to applications for Coastal Zone Permits, a tie vote on a motion shall be deemed disapproval of the motion.

Section 910-10. Coastal Zone Permit Provisions.

(a) Coastal Zone Permits for coastal zone applications which have been approved shall include:

(1) A concise and accurate description of the development authorized by the Coastal Zone Permit.

(2) Identification of any documents, incorporated by reference, which are required to clarify the terms of the Coastal Zone Permit or to facilitate carrying out the intent of the Committee or the Commissioner.

(3) The date on which the permit becomes effective (which date shall be the date on which it is signed by the Committee or the Commissioner) and, where appropriate, the date on which the permit shall expire.

(4) A statement that construction of any development approved by a Coastal Zone Permit shall begin within twelve (12) months from the date such permit becomes effective and shall be continuous until completion and that failure to so commence 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 or Commissioner that good cause exists for granting such extension. If a permittee requests an extension of a major Coastal Zone Permit, notice shall be published of such request, and the public shall have the right to comment in writing concerning such request.

(5) A statement that the permit may not be transferred or assigned except as provided in Section 910-15 of these regulations.

(6) A statement that the Commission, its Committees, the Commissioner or their authorized agents or representatives shall have the power to enter at reasonable times upon any lands or waters in the coastal zone for which a Coastal Zone Permit has been issued, and that the permittee shall permit such entry, for the purpose of inspecting and ascertaining compliance with the terms and conditions of said Coastal Zone Permit, and that the permittee shall provide access to such records as the Commission, its Committees or the Commissioner, in the performance of its or

his duties under the Act, may require the permittee to maintain. Such records may be examined, and copies shall be submitted to the Commission, its Committees or the Commissioner upon request.

(7) A statement that if the permit is revoked or expires, the permittee shall, upon order of the Committee or the Commissioner, and in their sole direction:

(A) Remove all structures authorized by the permit and restore the area in the manner specified by the Division of Coastal Zone Management; and/or

(B) Modify such structure or site; and/or

(C) Comply with any reasonable 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.

(8) A statement that if the development or occupancy of trustlands or other submerged or filled lands, or other development in the coastal zone, requires separate and distinct approval from the United States Government or any agency, department, commission or bureau thereof, then no such development or occupancy shall begin before receipt of all such permits and approvals.

(9) A statement that the development will operate so as to assure optimum public access to recreational opportunities at the shoreline. (This provision shall not be included in minor Coastal Zone Permits).

(10) A statement that a placard evidencing the permit shall be posted conspicuously at the project site during the entire period of work.

(11) A statement that in issuing this permit, the Committee or the Commissioner has relied on the information and data provided by the permittee and that if, after the issuance of this permit, such information or data prove to be false or inaccurate, then the Committee or the Commissioner may modify, suspend, or revoke the permit, in whole or in part, and institute appropriate legal proceedings.

(12) A statement that when the activity authorized or required by a Coastal Zone Permit is complete the permittee shall promptly so notify the Director and provide him with a certification of compliance that the plans and specifications of the project and all applicable Department of Conservation permit requirements have been met.

(13) A statement that if the permittee abandons, deserts or vacates the premises or discontinues its operations at the premises for a period totalling six (6) consecutive months, then the permit will terminate automatically and be rendered null and void.

(b) In addition to those provisions required by subsection (a), the Committee or the Commissioner may require additional conditions to be included.

(c) In addition to those provisions required by subsections (a) and (b), all Coastal Zone Permits for the occupancy or development

of trustlands or other submerged or filled lands shall include:

(1) The amount and manner of payment of rental and/or use fees.

(2) A statement that a Coastal Zone Permit that includes an occupancy or development permit is issued for a definite term, shall not constitute a property right, and shall be renewable only if the requirements of 12 V.I.C. Section 911 are satisfied.

(3) A statement that a Coastal Zone Permit for the occupancy or development of trustlands or other submerged or filled lands shall be subject to approval by the Governor and ratification by the Legislature or, if the Legislature is not in session, then by the Committee on Conservation, Recreation, and Cultural Affairs of the Legislature.

(d) All Coastal Zone Permits shall contain a statement that violation of any provision of the permit shall result in revocation of the permit.

Section 910-11. Issuance of Major Coastal Zone Permits; Easements.

(a) Development for which a major Coastal Zone Permit has been approved shall not begin until the Committee has signed and issued the Coastal Zone Permit to the applicant.

(b) If approval of a major Coastal Zone Permit has been given subject to conditions, including but not limited to a condition

requiring conveyance of an easement or right-of-way, then no Coastal Zone Permit shall be issued until all such conditions have been met, including but not limited to receipt of an easement or right-of-way conveyance acceptable to the Committee; provided, however, that the Committee, in its discretion, may issue a Coastal Zone Permit prior to compliance with all conditions where:

(1) The applicant has evidenced his intent to comply with the condition;

(2) The applicant has satisfied the Committee and demonstrated in writing why the condition cannot be partly or fully complied with before issuance of the permit; and

(3) No reasonable grounds for insecurity have arisen as to the applicant's compliance with, or intent to comply with, the condition(s).

(c) Notwithstanding the provisions of paragraph (b), if any condition of a major Coastal Zone Permit requires the applicant to submit a plan for satisfaction of a condition to the Division of Coastal Zone Management and/or to the Committee for review and approval, no Coastal Zone Permit shall be issued until such plan(s) has been reviewed and approved.

(d) If a Committee requires grant of an easement or public accessway as a condition of a major Coastal Zone Permit application, then the following procedures shall apply:

(1) Any such easement shall be granted to the Government of the Virgin Islands and shall allow free and unrestricted access to the shoreline by the public:

(2) Any such easement shall be in a form sufficient to satisfy the requirements of the Virgin Islands Code; and

(3) Any such easement shall be delivered to the Director, who shall promptly record the easement at the Office of the Recorder of Deeds.

Section 910-12. Conservation Practices.

Any development for which a Coastal Zone Permit is required and issued shall be performed in accordance with the standards set forth in applicable local and federal law and regulations.

Section 910-13. Certificates of Occupancy.

(a) No structure which has been constructed pursuant to a Coastal Zone Permit, shall be occupied or used until a Certificate of Occupancy has been applied for, approved, and issued by the Commissioner pursuant to his duties as Zoning Administrator under the Act and Title 29 V.I.C., Chapter 3.

(b) An applicant for a Certificate of Occupancy may make joint application for said Certificate (to be issued by the Commissioner) and for a Certificate of Use and Occupancy pursuant to Title 29 V.I.C. Chapter 5 (to be issued by the Commissioner of the

Department of Public Works) under a joint application form.

(c) The joint application form shall be as approved and amended from time to time by the Commissioner of the Department of Public Works and the Commissioner of the Department of Conservation and Cultural Affairs. Approval may be preceded by consultation with the public and interested persons.

(d) The joint application form shall request, and each application filed shall contain, such information, statements and supplementary data as are reasonably required to determine whether the project complies with all land and water use laws and regulations administered by the Departments of Public Works and Conservation and Cultural Affairs.

Section 910-14. Modification of Approved Coastal Zone Permits.

(a) An application for modification of the provisions of a Coastal Zone Permit shall be treated as a new application for a Coastal Zone Permit unless the Commissioner determines that such modification would not substantially alter or modify the scope, nature or characteristics of the existing permit or approved development.

(b) Where the Commissioner finds that such proposed modification would not substantially alter or modify the scope, nature or characteristics, the Committee may nevertheless impose such conditions to approval of the modification as it deems necessary to satisfy the provisions of the Act.

(c) The Commissioner may waive in whole or in part administrative processing fees and/or information requirements for processing such new application. He shall base such a waiver on the extent to which information or fees previously submitted are adequate for processing of the new application. (Sections 910-4(d) and 910-5 set forth additional provisions relating to Coastal Zone Permit fees.)

Section 910-15. Assignment and Transfer of Coastal Zone Permits.

(a) If an applicant transfers or assigns his interest in a development for which a Coastal Zone Permit has been applied, but not yet acted upon, a new permit application shall be required. The Commissioner may waive in whole or in part administrative processing fees, informational requirements and/or time limits for processing such an application if the development is substantially similar to the one for which the permit application is pending and no significant question appears concerning the capacity of the transferee or assignee to comply with any applicable permit conditions.

(b) Any person who has obtained a Coastal Zone Permit may request the Committee (in the case of a major permit), or the Commissioner (in the case of a minor permit) to assign or transfer such permit to another person. In order to assign or transfer a Coastal Zone Permit, the applicant must:

person, firm or corporation does not exceed by more than fifteen (15%) percent the bid of any nonresident persons, firms or corporations; and further agrees in writing to invite competitive bidding, and to require all contractors retained by him to invite competitive bidding, for all such services, goods and materials pursuant to the publication requirements of Title 31, section 236 of the Code, and to apprise each bidder in writing regarding the name of the successful bidder and the amount of his bid.

(i) For any applicant who proposes to do business on land adjoining any beach or shoreline of the Virgin Islands, agree to grant to the Government of the Virgin Islands a perpetual easement upon and across such land to the beach or shoreline to provide free and unrestricted access thereto to the public, which easement shall be duly recorded in the Recorder of Deeds upon the granting of a certificate of industrial development benefits. This provision shall not be construed as requiring free use of private facilities, but only as requiring free access to the beach or shoreline to the general public as a condition precedent to the granting of industrial development benefits.

(j) Meet any time restraints or deadlines imposed by the Commission with respect to the initiation of operations or construction activity; provided, that the Commission may extend any such time restraints or deadlines upon good cause shown by the beneficiary.

(k) Agree in writing to notify the Virgin Islands Employment Service as to the availability of employment by him or his subcontractors, the number of employees required, the occupational classification of such workers, and the applicable wage rate.—Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 145; amended Oct. 27, 1980, No. 4502, § 1(b)–(d), Sess. L. 1980, p. 237; Dec. 19, 1984, No. 5031, § 1(a), (b), Sess. L. 1984, p. 412; Dec. 8, 1986, No. 5224, § 1(10)–(14), Sess. L. 1986, p. 345; Dec. 29, 1986, No. 5227, § 4, Sess. L. 1986, p. 383.

References in text. Sections 934 and 936 of the Internal Revenue Code, referred to in subsec. (c)(1), are classified to 26 U.S.C. §§ 934 and 936.

1986—Act No. 5224 added the second sentence in the introductory paragraph.

Subsection (a): Act No. 5224 substituted "$50,000" for "$20,000" following "invest at least" and inserted "designated service businesses" following "recreation" in the first sentence and added the fifth sentence.

Subsection (c)(1): Amended generally by Act No. 5224.

Subsection (f): Act No. 5224 substituted "ten (10)" for "two" following "employ at least" at the beginning of the subsection.

Subsection (j): Added by Act No. 5224.

Subsection (k): Added by Act No. 5227.

1984—Subsection (a): Substituted "$20,0 sentence.

Subsection (f): Substituted "two" for "ten

1980—Deleted the words "all of" after " graph.

Subsection (b): Added "in the case of within the meaning of that term under the la ing "United States."

Subsection (c): Amended generally.

Effective date of 1986, No. 5224 amendm § 10(a), Sess. L. 1986, p. 365, provided th amended this section shall take effect Januar the exchange of tax subsidies for tax exempt effect until October 1, 1987.

Legislative intent of 1980 amendment. A Sess. L. 1980, p. 239, provided: "It is the ex this act [which amended this section and s this title] that no partnership otherwise qu Virgin Islands Industrial Development Progr solely by reason of the fact that it is a partners

Effective date. For effective date of this section 701 of this title.

Rules and regulations. Act Dec. 8, 1986, No. provided that: "The Industrial Development C and regulations concerning Title 29, section by this act. However, those rules and regul date of this act with respect to local procure the IDC, § 708-701 through § 708-718) shall date of this act to the extent that they are n

§ 708a. Exemptions to beneficiary quali

(a) Notwithstanding the specific req of benefits provided in section 708 of exempt support business as defined in 1401, Title 22, Virgin Islands Code, wh quirements of section 934 or 936 of Code, shall be eligible to receive an inc cate and the tax benefits authorized pu this chapter in this territory but only t ties of said licensed exempt support bu business of an exempt insurer.

(b) The Virgin Islands Industrial De establish and from time to time amend as are necessary to effectuate the provi

(c) Nothing contained in this chapt Virgin Islands Code, shall be construed from imposing reasonable requirement ceipt by any licensed exempt support b velopment certificate. In making any det

promulgated thereunder or knowingly shares in any of the proceeds of said violation by receiving or possessing fish, shall be deemed to have incurred the penalties imposed thereby upon the person guilty of such violation.

(b) Any person violating any provision of this chapter, unless otherwise provided, is guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not more than five hundred ($500) dollars or to imprisonment for not more than one (1) year, or to both such fine and imprisonment.

(c) Any penalty imposed under this chapter shall be in addition to the suspension or revocation of licenses, permits, certificates or registrations as authorized by this chapter, and to any confiscation and forfeiture proceedings authorized under this chapter.

(d) Any person, other than a person charged with enforcing the provisions of this chapter, furnishing evidence sufficient to convict any violator of sections 318, 319, 322 or 323 of this chapter, shall receive a reward of fifty ($50) dollars for each conviction. The reward shall be paid by the Commissioner from the Fish and Game Fund upon certification of conviction by the Attorney General.—Added Nov. 21, 1972, No. 3330, § 2, Sess. L. 1972, p. 502.

§ 325a. Public fish markets

(a) All public fish markets in the Virgin Islands heretofore established under the jurisdiction of the Department of Agriculture are hereby transferred to and continued without interruption within the Department of Conservation and Cultural Affairs.

(b) The Commissioner of Conservation and Cultural Affairs is authorized to establish a schedule of reasonable fees for the use of the facilities and to issue appropriate rules and regulations in the manner provided by law to govern the use of the fish markets.—Added Feb. 20, 1976, No. 3782, § 2, Sess. L. 1976, p. 6.

§ 326. Separability

It is hereby declared to be the intent of the Legislature of the Virgin Islands of the United States that if a court of competent jurisdiction finds any provisions of this chapter to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this chapter shall continue to be separately and fully effective.—Added Nov. 21, 1972, No. 3330, § 2, Sess. L. 1972, p. 502.

Chapter 10. Open Shorelines

SECTION ANALYSIS

HISTORY

Codification. This chapter was enacted as "Chapter 13" but was renumbered as "Chapter 10" to avoid conflict with "Chapter 13" as added by Act March 25, 1971, No. 2967.

CROSS REFERENCES

Coastal zone management, see section 901 et seq. of this title.

§ 401. Declaration of policy

The sea has long dominated the history of the Virgin Islands. It has, until the advent of the air age, been the only route to the outside. The sea has brought to these islands all of the seven flags that have reigned over them. It has also been a constant source of food and recreation. The threshold to the sea that surrounds us is the shoreline. The shorelines of the Virgin Islands have in the past been used freely by all residents and visitors alike. The seashore has been a place of recreation, of meditation, of physical therapy and of rest to Virgin Islanders past and present. To fishermen the sea and its shores are a way of life. The second half of the twentieth century has brought adverse changes to the Virgin Islands shorelines. There has been uncontrolled and uncoordinated development of this area, together with attempts, sometimes successful, to curtail the use of these areas by the public.

The Legislature recognizes that the public has made frequent, uninterrupted and unobstructed use of the shorelines of the Virgin Islands throughout Danish rule and under American rule as recently as the nineteen fifties. It is the intent of the Legislature to preserve what has been a tradition and to protect what has become a right of the public.—Added June 3, 1971, No. 3063, § 1, Sess. L. 1971, p. 224.

ANNOTATIONS

1. Validity. Lack of implementation of section of the Open Shorelines Act which provided for an Open Beaches Committee to do a study of the shorelines did not invalidate the remainder of the act. 7 V.I.Op.A.G. 292.

§ 402. Open beaches and shorelines; shorelines defined

(a) It is hereby declared and affirmed that the public, individually and collectively, has and shall continue to have the right to use and enjoy the shorelines of the Virgin Islands as "Virgin Islands" is defined in section 2(a) of the Revised Organic Act of the Virgin Islands.

(b) For the purposes of this chapter "shorelines of the Virgin Islands" shall mean the area along the coastlines of the Virgin Islands from the seaward line of low tide, running inland a distance of fifty (50) feet; or to the extreme seaward boundary of natural vegetation which spreads continuously inland; or to a natural barrier; whichever is the shortest distance. Whenever the shore is extended into the sea by filling or dredging, the boundary of the shorelines shall remain at the line of vegetation as previously established.—Added June 3, 1971, No. 3063, § 1, Sess. L. 1971, p. 224.

History

References in text. Section 2(a) of the Revised Organic Act of the Virgin Islands, referred to in subsection (a), is set out preceding Title 1 of this Code.

Annotations

1. Constitutionality. Provisions of this section and § 403 of this title, defining Virgin Islands shoreline as the area from the seaward line of low tide inland 50 feet, and forbidding obstructions in that area, do not take property without just compensation and are not so vague as to be unconstitutional. United States of America v. St. Thomas Beach Resorts, Inc., D.C.V.I. 1974, 11 V.I. 79.

§ 403. Obstruction of shorelines prohibited

No person, firm, corporation, association or other legal entity shall create, erect, maintain, or construct any obstruction, barrier, or restraint of any nature whatsoever upon, across or within the shorelines of the Virgin Islands as defined in this section, which would interfere with the right of the public individually and collectively, to use and enjoy any shoreline.—Added June 3, 1971, No. 3063, § 1, Sess. L. 1971, p. 225.

Cross References

Shorelines defined, see section 402 of this title.

Annotations

1. Constitutionality. Provisions of this section and § 402 of this title, defining Virgin Islands shoreline as the area from the seaward line of low tide inland 50 feet, and forbidding obstructions in that area, do not take property without just compensation and are not so vague as to be unconstitutional. United States of America v. St. Thomas Beach Resorts, Inc., D.C.V.I. 1974, 11 V.I. 79.

§ 404–407. Repealed. Oct. 31, 1978, No. 4248, § 4, Sess. L. 1978, p. 313.

History

Former sections 404–407. Former sections 404–407 related to permits for shoreline construction and for removal of sand, classification maps and penalties for violations and were derived from Act June 3, 1971, No. 3063, § 1, Sess. L. 1971, p. 225.

either by degradable netting made by any of the materials listed below, or by a cover made of any material and fastened to the fish trap or pot with any of the materials listed below:

(1) Untreated fiber of biological origin not more than three millimeters (approximately ⅛ inch) maximum diameter, including, but not limited to: tyre palm, hemp, jute, cotton, wool or silk;

(2) Non-galvanized black iron wire not more than 1/16 inch (approximately 1.59 millimeters) in diameter; that is, 16 gauge wire.

(i) Any person violating any provision of this section is guilty of a misdemeanor and shall upon conviction therefor be punished by a fine of not less than one hundred ($100) dollars nor more than six hundred ($600) dollars or by imprisonment for a period not to exceed one (1) year, or by both such fine and imprisonment.—June 1, 1984, No. 4953, § 1(e)(1)–(6), Sess. L. 1984, p. 163.

1984—Substituted "three and one-half (3½) inches" for "3 inches or shall have a tail measurement of more than five and one-half (5½) inches, not including any protruding muscle tissue" following "more than" in the first sentence and rewrote the third and fourth sentences of subsec. (b), deleted "and" preceding "are provided with adequate food" in the first sentence and added "and are immediately returned into the water" thereafter and "provided they are of at least the minimum size set forth in subsection (b) above" following "water" in the second sentence of subsec. (d), inserted "shaving, scraping, clipping" following "stripping" in subsec. (e), redesignated former subsecs. (g) as present subsec. (i), added present subsecs. (g) and (h), and made other minor stylistic changes.

§ 322. Fishing with explosives, poisons, drugs, chemicals, spears, hooks, or similar devices

(a) It is prohibited to fish by means of explosives in the territory, or to sell or to possess fish caught by means of any kind of explosives, except that sharks may be taken with an implement popularly known as a "bang stick" and possession of sharks taken by such means shall not be unlawful.

(b) Spiny lobsters shall not be taken with explosives, poisons, drugs, or other chemicals, nor with spears, hooks or similar devices.

(c) Any person violating the provisions of this section is guilty of a misdemeanor and shall upon conviction therefor, be punished by a fine of not less than three hundred ($300) dollars nor more than five hundred ($500) dollars on each count or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.—Amended June 1, 1984, No. 4953, § 1(f), Sess. L. 1984, p. 164.

1984—Amended section generally.

§ 323a. Interference with commercial fishing

(a) It shall be unlawful for any person to enter the tidal zone to the lee of the stern of any floating fishing craft at anchor for a distance of one hundred and seventy-five feet by the width of the transom, but not less than 10 feet in width, provided that such craft is not closer than 200 feet from any shoreline, and provided further that such craft is displaying a flag referred to in subsection (b) of this section identifying it as a fishing craft.

(b) The Commissioner, within thirty days from July 27, 1982, shall cause to be made, and shall make available to, all Virgin Islands commercial fishermen for a nominal charge identical brightly colored flags of a distinctive nature which can be displayed by such fishermen on their fishing boats while engaged in legitimate fishing activities; Provided, however, That the Commissioner shall keep a list of all persons who obtain flags pursuant to the provisions of this subsection.—Added July 27, 1982, No. 4731, Sess. L. 1982, p. 121.

Revision note. In subsec. (b), substituted "July 27, 1982" for "the date of enactment of this act" for conformity with general V.I.C. style.

Chapter 10. Open Shorelines

1. Cited. Cited in Water Isle Hotel v. Kon Tiki St. Thomas, Inc., C.A.3d 1986, 795 F.2d 325.

§ 402. Open beaches and shorelines; shorelines defined

2. Cited. Cited in Bachman v. Hecht, D.C.V.I. 1986, 659 F.Supp. 308.

Chapter 13. Environmental Protection

See Act 5265 § 303 (N)

§ 534. Earth change permits

* * *

(b) A fee of fifty dollars ($50) for an Earth Change permit shall be paid at the time of the submission of an Earth Change Plan to the Conservation District if submitted pursuant to section 533(1) of this chapter or to the Department of Conservation and Cultural Affairs if submitted pursuant to section 533(2) of this chapter.

(c) Notwithstanding any law to the contrary, the Department of Public Works shall not issue any permit authorizing an earth change or any disturbance of land as described in section 533 of this chapter until the applicant for such permit has presented to the Department an approved Earth Change Permit obtained in accordance with this chapter.—Amended May 14, 1985, No. 5060, § 304, Sess. L. 1985, p. 46.

1985—Added present subsec. (b) and redesignated former subsec. (b) as present subsec. (c).

When an estate by the entirety is created the spouses, by reason of their legal unity by marriage, are deemed by the common law to take the whole estate as a single person with the right of survivorship so that if one dies the entire estate belongs to the other by virtue of the title originally invested. Id.

A creditor of an individual spouse cannot reach the spouse's interest in an estate held by the entirety during the joint lives of the spouses and if the debtor spouse dies first the surviving spouse takes the entire estate free from the debts of the deceased. Id.

The interest of defendant in the real property which he and his wife held as tenants by the entirety was not subject to seizure and sale under judgments rendered against him alone. Id.

§ 8. Descent, solely or jointly

When there is but one person entitled to inherit he shall take and hold the inheritance solely; when an inheritance or a share of an inheritance descends to several persons they shall, except as otherwise provided in section 7 of this title, take as tenants in common, in proportion to their respective rights.

History

Revision note. Section is new. It was suggested by section 84 of the New York Decedent Estate Law.

§ 9. Implied covenants generally

No covenant shall be implied in any conveyance of real estate, whether such conveyance contains special covenants or not.

History

Revision note. Based on 1921 Codes, Title II, ch. 15, § 6.

§ 10. Covenant for payment in mortgage

A mortgage does not imply a covenant for the payment of the sum thereby intended to be secured. When there is no express covenant for such payment in the mortgage, and no bond or other separate instrument to secure such payment has been given, the remedies of the mortgagee are confined to the property mentioned in the mortgage.

History

Revision note. Based on 1921 Codes, Title II, ch. 15, § 7.

§ 11. Adverse possession

The uninterrupted, exclusive, actual, physical, adverse, continuous, notorious possession of real property under claim or color of title for 15 years or more shall be conclusively presumed to give title thereto, except as against the Government.

History

Revision note. Based on 1921 Codes, Title III, ch. 90, § 10, as amended Ord. Mun. C. St. T. and St. J. app. Nov. 18, 1952 (Bill no. 173).

The 1952 amendment in St. Thomas and St. John changed "color and claim of title" to "claim or color of title".

Annotations

1. Conduct of tenant in possession. In the Virgin Islands the uninterrupted, exclusive, actual, physical, adverse, continuous, notorious possession of real property under claim or color of title for 15 years will divest the owner's title by adverse possession. Myers v. Canton, C.A.3d 1970, 7 V.I. 500.

Where appellant occupied a small house within the land in question, which land was entirely enclosed by a fence, and generally treated the entire enclosed land as his own for over 15 years, and where there was no evidence that appellant's continuing occupancy of the land of the owners of record was or appeared to be merely a permissive use in connection with his occupancy of a superficial house, the appellant exercised adverse possession over the land and acquired title thereto. Id.

In action to establish title to entire estate by adverse possession, where original entry was not hostile to interest of cotenant, character of possession could become hostile through conduct of tenant in possession plainly and openly showing that he was holding in his own right alone and in derogation of the common right. Prince v. Duvergee, D.C.V.I. 1938, 1 V.I. 425.

2. Hostility. For purposes of adverse possession, possession under a claim of right is actually no more than possession hostile to that of the true owner, so that the decisive inquiry is whether the possession is hostile. Tutein v. Daniels, D.C.V.I. 1973, 10 V.I. 255.

Hostile claim of right necessary to adverse possession existed where adverse possessor of vacant urban lot built bakery and butcher shop on the lot, enlarged them later, paid property taxes, rented the property and collected the rents, and demanded a deed from defendant. Id.

3. Colorable title. Donee of land under a parol gift does not have merely permissive possession, and the gift can constitute colorable title originating adverse possession. Tutein v. Daniels, D.C.V.I. 1973, 10 V.I. 255.

4. Duration and continuity of possession. Uninterrupted, adverse, continuous and notorious possession of superficiary house under claim of ownership for over 50 years entitled decedent to be adjudged the owner thereof by adverse possession. In re Wright's Estate, D.C.V.I. Comm'r 1961, 4 V.I. 291, 192 F.Supp. 812.

5. Personal property. The rule with respect to acquiring title by adverse possession is applicable to chattel or personal property, as well as to real property. In re Wright's Estate, D.C.V.I. Comm'r 1961, 4 V.I. 291, 192 F.Supp. 812.

6. Common ownership. A claim of prescriptive right can arise only between different owners, and an individual, owning adjoining parcels of land, cannot

claim a right by prescriptive use in one of them against himself. 1 V.I.Op.A.G. 101.

7. Survey. The Superintendent of Public Works may conduct a survey of real property at the request of a person who claims title to it by reason of at least fifteen years of adverse possession. 2 V.I.Op.A.G. 226.

8. Easements. Where a power company's pole has been on private property for 20 years in a manner amounting to adverse possession, the company has an easement by prescription, and a subsequent purchaser with notice would take subject to the easement, the existence of the power line being notice of the easement. 3 V.I.Op.A.G. 228.

To establish an easement by prescription, and bind a subsequent purchaser with notice, the use of a power line and pole upon private property must be adverse, uninterrupted, exclusive, continuous and under claim of right. Id.

9. Assessment designation. It was of no probative significance that after adverse possession controversy began and after appellant's possession had continued much longer than 15 years, the local taxing authorities inserted new language in certain annual assessments to designate the dwelling as a "superficiary house". Myers v. Canton, C.A.3d 1970, 7 V.I. 500.

10. Superficiary house. One who enters land under a claim of right and possesses the land and its superstructures adversely to all others is not deemed to be the owner of a superficiary house simply because the land turns out to have been owned by another. Myers v. Canton, C.A.3d 1970, 7 V.I. 500.

11. Fiduciary. District Court was justified in concluding that plaintiff suing for title by adverse possession was acting in a fiduciary capacity with respect to the land in question and thus unable to prove compliance with the standards of this section, where his stepfather died intestate and plaintiff occupied the land and took care of the repairs, taxes and renting of it. Canton v. Duvergee, C.A.3d 1971, 8 V.I. 332, 438 F.2d 1218.

12. Inference. In action to establish title through adverse possession, ouster of cotenants was a proper inference from long continued exclusive possession and manifest claim of sole dominion without any accounting for profits or demand for contributions. Prince v. Duvergee, D.C.V.I. 1938, 1 V.I. 425.

13. Evidence. In action to establish title through adverse possession a sufficient showing of ouster of all cotenants and subsequent running of statutory period was made when a period of 25 years was established during which the plaintiff and his father had possessed, occupied, and improved the property, paid all taxes and costs of maintenance, and failed to make any accounting to or demand upon any cotenant. Prince v. Duvergee, D.C.V.I. 1938, 1 V.I. 425.

§ 11. Adverse possession

4. Duration and continuity of possession. Where plaintiff claimed title to land by adverse possession, and plaintiff's father, assisted by plaintiff, had undertaken acts which manifested adverse, continuous, notorious possession, and immediately following plaintiff's father's death, plaintiff continued utilizing the land in similar ways, plaintiff was entitled to lay claim to the period in which the property was utilized by his father, for purposes of determining adverse possession. Emanuel v. A Section of Parcel 119 and 121 Estate Smith Bay, D.C.V.I. 1984, 21 V.I. 92.

In an action claiming title to property by adverse possession, contention that during the last three or four years plaintiff made little or no use of property at issue, was immaterial, where plaintiff put forward evidence sufficient to show continuous, notorious possession for a period far in excess of the 15 years necessary to show adverse possession, even without taking into account the last three or four years. Id.

Where plaintiff's father, assisted by plaintiff, from sometime prior to 1942 up until 1954, and where plaintiff alone, from immediately thereafter until at least 1981, had utilized land under claim of title, by acts including occupying, planting, grazing animals, building terraces, planting fruit trees, building a fence on three sides of the land, storing building materials, cutting a road, and where plaintiff in face to face conversation with defendants made clear his claim to the land, plaintiff was entitled to title of the land by adverse possession. Id.

8. Easements. An adverse use is necessary to establish a prescriptive easement. Schindel v. Pelican Beach, Inc., Terr. Ct. St. T. and St. J. 1979, 16 V.I. 237.

Chapter 3. Conveyances of Property

§ 47. Construction of conveyance; description of property

The following are the rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it:

* * *

(5) When the shoreline is the boundary, the rights of the grantor to the line of mean high tide, subject to the right of the public to make reasonable recreational use of the shoreline, as "shoreline" is defined in section 402 of chapter 13 of Title 12 of this Code, are included in the conveyance.

* * *

—Amended Oct. 31, 1978, No. 4248, § 8, Sess. L. 1978, p. 314.

1978—Paragraph (5): Substituted "the rights of the grantor to the line of mean high tide, subject to the right of the public to make reasonable recreational use of the shoreline" for "the rights of the grantor to the landward boundary of the shoreline" following "is the boundary".

Effective date of 1978 amendment. Act Oct. 31, 1978, No. 4248, § 24, Sess. L. 1978, p. 317, provided: "The effective date of this Act [No. 4248] shall be February 1, 1979."

services; and licenses to continue operation of the company in airport building were properly denied as contrary to the zoning law. 8 V.I.Op.A.G. 116.

§ 230a. Use of subdivision roadways or streets

The use of any roadway or street onto, within or through any subdivision of residential development of ten or more dwellings, which roadway or street is open to the use of any other persons as guests, visitors or permittees, other than the actual inhabitants thereof, shall not be denied or restricted directly, indirectly or by subterfuge, to any person, subject only to the conditions and limitations established by law and applicable in like manner to all persons.—Added Dec. 27, 1983, No. 4881, § 4, Sess. L. 1983, p. 257.

§ 231. Uses permitted subject to conditions

Required conditions for permitted uses

(a) The general uses of land permitted by the TABLE OF PERMITTED USES in each district are intended to be used with common characteristics which are consistent with the purpose established by this subchapter for each district. However, certain uses of land provide accommodations consistent with, or necessary to, the purpose intended for each district but differ in their general characteristics from the principal permitted activity and in their impact thereon.

Special conditions are, therefore, established for these uses in order to retain a consistent relationship between their greater or unique intensity or kind activity and the principal activity permitted in the district where they may be permitted, subject to the additional conditions.

Every use conditionally permitted in any district, as set forth in the TABLE OF PERMITTED USES in this subchapter shall be subject to all regulations of the district in which such use is conditionally permitted and located unless otherwise stated and set forth under specific conditions of the following sections for each conditionally permitted land use.

* * *

7. *Churches, synagogues, temples, and Sunday school buildings.* Churches, synagogues, temples, and Sunday school buildings are permitted in the R-1 and R-2 Districts subject to the following conditions:

A. There shall be a minimum zoning lot area of three-quarter (¾) acres;

* * *

Revision note. Redesignated subsec. (a)(1), as added by Act No. 4774, as subsec. (*l*) to avoid conflict with existing subsec. (a)(1) as added by Act No. 3284, and added the subsection catchline to conform with general V.I.C. style.

Board of Land Use Appeals. Act Oct. 31, 1978, No. 4248, § 12(b), Sess. L. 1978, p. 315, provided: "All references in Title 29, sections 236 [this section], 277 and 295, Virgin Islands Code, to the Board of Zoning, Subdivision and Building Appeals shall be deemed to mean and refer to the Board of Land Use Appeals."

2. Variances. Board of Zoning, Subdivision and Building Appeals may grant a lot size requirement variance to applicants who purchased lots in subdivisions prior to the adoption of new lot size requirements in zoning code if all the requirements upon which variances may be granted are complied with. 7 V.I.Op.A.G. 289.

Board of Zoning Appeals does not have jurisdiction to grant a variance where the applicant has by his own actions precipitated the need for a variance. 8 V.I.Op.A.G. 66.

§ 237. The Virgin Islands Planning Office

* * *

Notification of zoning amendments by Planning Office

(f) The Planning Office shall notify the Office of the Tax Assessor and the Department of Finance of all amendments or changes to the text of the zoning law or the zoning district maps within 15 days of every such change. Within sixty days of notification of any zoning changes, the Office of Tax Assessor shall reassess the affected properties.—Amended March 16, 1984, No. 4907, Sess. L. 1984, p. 73.

Revision note. Subsection heading, "Notification of zoning amendments by Planning Office", was added preceding subsec. (f) for purposes of conformity with existing style of section.

1984—Subsection (f): Added.

Board of Land Use Appeals. The Board of Zoning, Subdivision and Building Appeals, referred to in this section, has been redesignated as the Board of Land Use Appeals. See section 135 of Title 3 and note under section 236 of this title.

§ 238. Amendments

* * *

Referral to the Planning Office

(c) Every proposed amendment to the Zoning Law, including changes in the Zoning District Maps or boundaries, shall be referred to the Planning Office at least thirty (30) days prior to the date assigned for a public hearing to be held thereon by the Legislature of the Virgin Islands.

The Planning Office, after due public notice and hearing wherein parties in interest and citizens shall have the opportunity to be heard,

shall transmit to the Legislature a report containing its recommendations on the proposed amendment.

Failure of the Planning Office to report prior to or at the hearing of the Legislature shall be taken as approval of the proposal.

A statement of the recommendation of the Planning Office approving, disapproving or proposing a modification of such proposal shall be read at any public hearing held by the Legislature. The report of the Planning Office regarding such proposal shall include the reasons for the vote thereon and shall be incorporated into the records of any public hearing held thereon.

A proposal disapproved by the Planning Office may be adopted by the Legislature.

Notwithstanding any other law, after receiving a necessary zoning change from the Legislature, the owner of property that plans a development on such property as the reason for such zoning change shall begin construction within thirty-six (36) months after receiving all the necessary permits pursuant to the Virgin Islands Code; if construction has not commenced within the aforesaid time period, the owner will again have to obtain the approval of the Legislature as provided under this section; provided further, that if the property abuts a shoreline, the owner of such property shall also grant, provide and maintain public easements to the shoreline abutting such property that are easily accessible to the general public.

* * *

—Amended Jan. 2, 1987, No. 5248, § 11, Sess. L. 1986, p. 438.

1986—Subsection (c): Added the sixth paragraph.

§ 239. Public hearings

Board of Land Use Appeals. The Board of Zoning, Subdivision and Building Appeals, referred to in this section, has been redesignated as the Board of Land Use Appeals. See section 135 of Title 3 and note under section 236 of this title.

§ 242. Fees

Establishment of fees

(a) Certain fees are herein established for filing of applications with the Virgin Islands Planning Office or the Board of Land Use Appeals. Such fees shall not apply to applications initiated by the Government of the Virgin Islands.

CONSERVATION, RECREATION AND CULTURAL AFFAIRS

Tabled: 10/14/87

BILL NO. 17-0089

Seventeenth Legislature of the Virgin Islands of the United States

June 25, 1987

To prohibit the interference and restrictions of public access to the shorelines, to establish the Shoreline Beach Access Program and to Create the Shoreline land acquisitic fund

PROPOSED BY: Senator Iver A. Stridiron and John A. Bell; Co-sponsored by Senator Lorraine L. Berry

BE IT ENACTED by the Legislature of the Virgin Islands:

Section 1. Title 12, Section 403, Virgin Island Code, is amended to read as follows:

Section 403. Obstruction of shorelines and access to shorelines prohibited

(a) No person, firm, corporation, association or other legal entity shall create, erect, maintain, or construct any obstruction, barrier, or restraint of any nature whatsoever upon, across or within the shorelines of the Virgin Islands, including any access road to these shorelines, whether publicly or privately owned, as defined in this section Chapter which would interferes with the

free and unrestricted right of the public, individually and collectively, to enter, leave, cross or, to use and enjoy any shoreline.

(b) Any person, firm, corporation, association or legal entity who violates the provisions of this section shall be guilty of a misdemeanor and fined not less than $500 for the first offense or less than $1,500 for each and every other subsequent offense.

Section 2. Title 12, Chapter 10, Virgin Islands Code, is amended by adding a new Section 404 to read as follows:

Section 404 Shoreline Beach Access Program

(a) There is created the Shoreline Beach Access Program, to be administered by the Department of Natural Resources and Planning, for the purpose of acquiring, improving and maintaining property along the shorelines of the Virgin Islands.

(b) The Department of Natural Resources and Planning shall establish and carry out a program to assure the acquisition, improvement and maintenance of a system of public access to beaches. This beach access program shall include standards to be adopted by the Department for the acquisition of property and the use and maintenance of said property. The standards shall be written to assure that land acquisition funds shall only be used to purchase interests in property that will be of benefit to the general public. The program shall be designed to provide

and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all areas of the Virgin Islands shorelines where access is compatible with the natural resources involved and where reasonable access is not already available. Prior to the purchase of any interest in property, the Commissioner of Natural Resources and Planning shall make a written finding of the public purpose to be served by the acquisition. The shoreline land acquisition fund shall not be used to purchase property held for less than two years by the current owner. These funds may be used to meet matching requirements for federal or other funds. The Department of Natural Resources and Planning shall make every effort to obtain funds from sources other than the General Fund for these purposes. Funds may be used to acquire or develop land for pedestrian access including parking.

Section 3. Title 33, Chapter 111, Virgin Islands Code is amended by adding a new Section 3073 to read as follows:

Section 5073 Shoreline land acquisition fund

(a) There is hereby created in the Treasury of the Virgin Islands a separate and distinct fund to be designated as the shoreline land acquisition fund (hereinafter referred to in this section as the "Fund"). The Commissioner of Finance is authorized and directed to provide for the administration of the Fund, and no monies contained therein shall be available for expenditure

except as provided for in this section.

(b) The Fund shall consist of all sums appropriated from time to time by the Legislature, and all gifts contributions and bequests of all monies made thereto, all of which shall remain available until expended.

(c) Monies deposited in the Fund shall be disbursed by the Commissioner of Finance, at the direction of the Commissioner of Natural Resources and Planning, exclusively for expenditures to carry out the provisions of Title 12, Chapter 10, Section 404, Virgin Islands Code.

(d) The Commissioner of Finance shall quarterly forward to the Legislature, and shall make available to the public, detailed accounting of the disbursements from the Fund and the unobligated balance thereof.

BR87-0207
June 19, 1987
EA:bh

SECTION D.
RELEVANT VIRGIN ISLANDS JUDICIAL DECISIONS

Virgin Islands. Opinion of the Attorney General. 3:228 (1957).

Schindel v. Pelican Beach Beach, Inc., 16 V.I. 237 (D.C.V.I. 1979), aff'd 18 V.I. 647 (Ct. App. 3d 1981).

United States of America v. St. Thomas Beach Resorts, Inc. 11 V.I. 79 (D.C. V.I. 1974).

The Department Heads, therefore, would not be legally justified in utilizing their funds for this purpose.

There recently came to my attention an instance where one of the departments' head paid such a claim out of its operating fund. This had the effect of acknowledging fault where an investigation would seem to indicate that none in fact existed. The recipient has been encouraged thereby to submit an additional claim based upon his inability to use his damaged automobile for several months while it was ostensibly being repaired. It might be well at this time to call to the attention of department heads the procedure herein suggested whereby all such matters should be forthwith referred to the Governor.

Sincerely yours,

Leon P. Miller
United States Attorney

1957–3

Power Lines and Poles

1. Virgin Islands—Virgin Islands Corporation—Power Lines

The Electric Power Division of the Virgin Islands Corporation has no right to string a wire over private property unless done by consent or agreement of landowner. See 28 V.I.C. §§ 411, 413, 415.

2. Virgin Islands—Virgin Islands Corporation—Power Lines

A written easement is the suggested form of the consent by landowner to stringing of wire over his property by Electric Power Division of Virgin Islands Corporation. See 28 V.I.C. § 412.

3. Virgin Islands—Virgin Islands Corporation—Power Lines

Branches may be removed or trimmed over highway where they interfere with the wires of Virgin Islands Corporation where cutting is necessary and is performed properly and it does not mutilate or injure the trees permanently. See 28 V.I.C. § 413.

4. Adverse Possession—Generally

Where a power pole of Virgin Islands Corporation has stood on private property for 20 years, it may not be removed by landowner as it would appear the power company has an easement by prescription, based on adverse possession and continuous user. See 28 V.I.C. § 11.

5. Adverse Possession—Generally

To establish an easement by prescription, binding a subsequent purchaser notice of the use by the pole and line is shown by the existence of said pole and line provided the use is (1) adverse, (2) uninterrupted, (3) exclusive, (4) continuous and (5) under claim of right. See 28 V.I.C. § 11.

February 18, 1957

Mr. Louis A. Donastorg
Office Manager
St. Thomas Power Division
Virgin Islands Corporation
Charlotte Amalie, Virgin Islands
Attention: Mr. Enrique H. Moron, Chief Electrician

Dear Sir:

As a result of a conference recently held in the Office of the United States Attorney, in which you and Mr. Moron of your Power Division participated, our opinion on the following matters is now given in response to your request. The questions are taken up individually, as follows:

1. Can the Electric Power Division run a wire over one person's property?

It is our view that a power company may not string wire over land which is the private property of another, unless done by agreement with, or consent of, the landowner. We suggest that such consent be in the form of a written easement.

2. Can the Electric Power Division cut branches which interfere with its wire, and which overhang highways?

Branches may be removed or trimmed, where such branches overhang the highway, providing the cutting or trimming is necessary, and is done in the proper manner, i.e., without mutilation or permanent injury to the trees involved.

3. If the Electric Power Division has had a pole on a person's property for 20 years, can the person now require that it be removed?

We are of the opinion that under the circumstances recited in your inquiry, it would be difficult for such a landowner to compel the removal of the pole. It would appear that the power company now has an easement by prescription, based on adverse possession and continuous user. Any subsequent purchaser who had notice of the power company's easement takes subject to that easement. On the matter of "notice", the existence of a power line upon the property is notice to a subsequent purchaser of an easement therefor. We assume, of course, that the use of such pole is (1) adverse,

(2) uninterrupted, (3) exclusive, (4) continuous, and (5) under claim of right.

Very truly yours,

Leon P. Miller
United States Attorney

By: John W. Newman
Assistant United States Attorney

No. 1957-4

Trade Tax and Its Administration

1. Taxation—Trade Tax—Construction

The provisions of section 3(a) and (b) of the Internal Revenue Act of the Virgin Islands, (Act No. 146), eff. Sept. 1, 1956, are not to be construed as a tax on imports and therefore unconstitutional. See 33 V.I.C. §§ 41, 42.

2. Taxation—Trade Tax—Construction

The tax imposed under section 3(a) and (b) of the Internal Revenue Act of the Virgin Islands is actually on the use or disposition in the course of trade or business or for processing, manufacturing or other business purposes and not on imports. See 33 V.I.C. §§ 41, 42.

3. Taxation—Trade Tax—Assessment

In the computation of the tax under section 3(a) and (b) of Act No. 146, records of imports are used as a basis for assessment because they furnish a convenient method of determining values, but to be consistent the requirement for monthly reports of taxpayers should also include goods locally acquired as well as those imported. Internal Revenue Act of Virgin Islands (Act No. 146), § 5(a) eff. Sept. 1, 1956. See 33 V.I.C. § 723.

March 1, 1957

Mr. Percy de Jongh
Commissioner of Finance
Charlotte Amalie
St. Thomas, Virgin Islands

Dear Mr. de Jongh:

Reference is made to your letter of February 27, 1957, in which you invite my comment concerning one section of Act No. 146, 2nd Special Session, 1956, and which is now being given consideration by the Tax Advisory Committee. The provision in question is section 3(b) which reads as follows:

> "For the purpose of this law, the value of articles, goods, merchandise and commodities brought into the Virgin Islands for disposition in the course of trade or business shall be the net invoice value, not

nature and condition of the goods and the purpose to which they were adapted and used, they had to him.

This Court adopts the above-stated rule as the prevailing rule of common law and the rule of decision in the Virgin Islands. 1 V.I.C. 4.

[7] Put in simple terms, we hold that the owner of household furniture and furnishings may recover their useable value to himself and not merely their value to a secondhand dealer, though no sentimental value can be taken into account. 2 Sedgwick, Damages, 1508 (9th Edition).

[8] We further hold that "where from the nature of the case the amount of damages cannot be proven with exactitude, all that can be required is that the evidence with such certainty as the nature of the case may permit, lay a foundation which will enable the trier to make a fair and reasonable estimate." Holmes v. Freeman, supra.

[9] In the case at bar, involving such items as a bathtub stopper, refrigerator butter dish, a toaster, doorstops, linens, cookware and utensils, and various other furnishings, ascertainment of depreciation is difficult if not impossible, and a ready secondhand market does not exist. The measure of damages, then, is the value of these items to plaintiff; it is the replacement cost of the articles in question, all as established by the plaintiff by a preponderance of the evidence, through the bills presented to the Court.[8]

For the foregoing reasons, we conclude that plaintiff should recover the sum of $83.80 for unpaid electric bill, the sum of $147.45 for the unpaid rent for 15 days of November 1978, and the sum of $485.86 as replacement, repair or cleaning costs as demanded by plaintiff, less a credit of $295.00, being the security deposit paid to plaintiff by defendants and retained by plaintiff.

[8] Plaintiff's Exhibit No. 7, in evidence.

A judgment in conformity with this Memorandum Opinion shall be entered.

JUDGMENT

A Memorandum Opinion in the above-entitled matter having been entered this day; it is

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against the defendants, William Harvey and Josephine Harvey, jointly and severally, in the sum of $422.11, together with Court costs in the sum of $12.00.

NANCY B. SCHINDEL, Plaintiff

v.

PELICAN BEACH INC., Defendant

Civil No. 267/77

NANCY B. SCHINDEL, Plaintiff

v.

ROBERT and CATHERINE CUMMINGS, Defendants

Civil No. 713/77

Territorial Court of the Virgin Islands

Div. of St. Thomas and St. John

April 20, 1979

Actions for damages and injunctive relief, alleging breach of covenants of a deed to property in a bayside subdivision. The Territorial Court, Feuerzeig, J., held (1) that the doctrine of res judicata was not applicable because in the earlier, similar suit, on which the claim of res judicata was based, no notice had been given and no attempt had been made to join or implead the plaintiff in the present case; (2) the district court's decision in the earlier case did not control the instant case; (3) equitable relief was available for some of plaintiff's claims but others were barred by laches

or the doctrine of relative hardships; and (4) only nominal damages were available because of the speculative nature of any actual damages.

1. Easements—Prescription—Requirements for Acquisition

An adverse use is necessary to establish a prescriptive easement. 28 V.I.C. § 11.

2. Parties—Non-Parties to Action—Effect of Prior Decisions

A person not a party to an action, other than an action in rem, is not bound by an adjudication of any matter decided in the action; in fact, the judgment normally has no evidentiary value in a subsequent action between one of the parties to the judgment and the stranger.

3. Judgments—"In Rem" Actions—Affected Parties

In rem proceedings affect the interests in the property in issue not merely of particular persons but of all persons in the world.

4. Judgments—"In Rem" Actions—Notice Requirements

In order to obtain a valid and binding in rem judgment, all parties whose interests in the property are or may be affected are entitled to reasonable notice and an opportunity to be heard; the notice must be sufficiently calculated to give knowledge of the proceedings in light of all the circumstances.

5. Res Judicata—Actions Not Barred—Particular Cases

Plaintiff's action to enforce covenants of a deed was not barred by res judicata nor was plaintiff collaterally estopped where she was not a party to a previous action involving an identical issue, where record from the earlier case did not reflect any attempt to serve plaintiff (in the instant case) personally or contain any evidence of constructive service by publication, posting or mailing and where no attempt was made to implead or join plaintiff.

6. Appeal and Error—Holdings—Appellate Decisions

A decision of the District Court of the Virgin Islands, which is the appellate court of any order or judgment of the territorial court, must be considered the law of the Virgin Islands unless found to be inapplicable.

7. Deeds and Conveyances—Construction—Intent of the Parties

Ambiguous deed must be construed against the party who drafted it.

8. Limitations of Actions—Recovery of Land

Actions for the determination of any right or claim to or interest in real property may be commenced within the limitations period provided for actions for the recovery of the possession of real property, which is twenty years. 5 V.I.C. §§ 31(1)(A), 32.

9. Limitations of Actions—Recovery of Land—Enforcement of Covenant

Actions to enforce covenant of a deed to property, seeking determination of a right to an interest in real property and having been commenced well within the limitations period for actions for the recovery of real property, was not barred by the statute of limitations.

10. Covenants—Restrictive Covenants—Enforcement

Without a further factual showing, a suit demanding the removal of a fence erected in violation of a covenant in a deed is not so inherently prejudicial as to constitute laches as a matter of law.

11. Laches—Elements—Generally

One factor to be considered in determining whether plaintiff is guilty of laches is the opportunity he had to discover the facts giving rise to his claim.

12. Laches—Elements—Nature of Action

Where the delay in bringing an action demanding the removal of a fence did not constitute laches as a matter of law and where the fence owner failed to show a disproportionate hardship in erecting the fence, laches did not constitute a bar to the action.

13. Injunction—Standards—Generally

In view of the relief ordered, laches did not bar plaintiff's action, which demanded removal of a wall and fence erected by the defendants, where plaintiff's predecessor in interest continued to cross over the wall erected, where plaintiff objected to the wall long before the fence was constructed and where she never acted in such a way to preclude her from seeking injunctive relief.

14. Covenants—Covenants Running With the Land—Particular Cases

Plaintiff was entitled, under a covenant in a deed, to direct easterly access across defendant's parcel of land to beach where purchasers believed they had such a right, where defendant drafted the deed,

and acted in conformity with that understanding and where plaintiff was not barred by the statute of limitations or equitable considerations.

15. Covenants—Covenants Running With the Land—Particular Cases

Appropriate relief for a landowner, entitled under covenant in a deed to direct access to beach which excess defendant had blocked by a wall and fence, required defendant to provide access by installing a locked gate to which plaintiff would have either a key or the combination.

16. Easements—Intention of the Parties

Where grantors draft the deed, and along with grantees, contracted with reference to an existing road, over which grantees reasonably believed they were acquiring the right of access, the grantees and their successors in interest retained a right of access over that road.

17. Equity—Relief Available—Particular Cases

Where plaintiff had a perpetual easement over all roads in and to defendants' beach club, equitable accommodation of her right and the beach club's security need required that she be issued key to the gate at the road's entrance.

18. Injunctions—Standards for Granting—Generally

A plaintiff must act with reasonable promptness in applying for an injunction.

19. Injunctions—Standards for Granting—Discretion of Trial Court

A plaintiff is not entitled to an injunction as a matter of right because its issuance is extraordinary and rests within the sound discretion of the trial judge.

20. Laches—Elements Prejudice

Plaintiff was barred by laches from obtaining an injunction requiring removal of beach club's tennis courts, where, although plaintiff almost immediately put them on notice of her belief that the tennis courts were in violation of the deed, she did not file suit for seven years and, in the interim, defendant constructed the

tennis courts, advertised tennis as one of the club's amenities, and where an injunction might subject the club to a breach of contract or restitutionary action or force it into the position of having to make partial refunds to guests, would harm the club's reputation and would require a recall of the club's brochure and the printing of new brochures.

21. Injunctions—Standard for Granting—Doctrine of Relative Hardships

Under the doctrine of relative hardships, injunctive relief will be denied if the hardship imposed by granting it would be disproportionately greater than the benefits that would be served by its issuance; thus, where tennis courts, constructed in violation of deed restrictions, were of some real value to defendant and the harm to plaintiff was de minimus, if any, plaintiff would be barred from injunctive relief.

22. Laches—Elements—Generally

Although defendants who violated deed restriction by building two tennis courts for commercial use were guilty of unclean hands, this fact should not estop them from asserting plaintiff's laches where defendants' wrongful conduct occurred seven years before the suit was filed.

23. Deed—Construction—Particular Cases

Where language of a deed, standing alone, was susceptible to both parties' interpretation, but the evidence made clear that one interpretation was reasonable while the other rendered illusory the obligation imposed by the deed, the interpretation shown to be unreasonable must be rejected; thus, where deed referred to existing roads and required defendants to construct roads in a "proper manner" with adequate ditches, drains and culverts to provide proper drainage, the defendants had an affirmative duty to construct ditches, drains and culverts and not just to provide proper drainage.

24. Laches—Elements—Delay

Although plaintiff was guilty of an unreasonable delay in bringing an action, laches would not bar the action where defendant suffered no detriment because of delay; to constitute laches, defendant must show not only plaintiff's lack of diligence but also that defendant's injury was due to that lack of diligence.

25. Injunctions—Standards for Granting—Immediate Threat of Harm

Where plaintiff's easement in a strip of defendants' beachfront property was only for recreational purposes and where she did not show that the erection of windbreakers and a barbed wire fence impaired her use or enjoyment of the beach, she was not entitled to an injunction ordering their removal.

26. Damages—Amount and Ascertainment—Sufficiency of Evidence

Where the fact and amount of damage, suffered by a property owner who spent only four to eight weeks a year at the property, were speculative, trier of fact would have no basis for fixing an award of damages.

27. Damages—Nominal Damages

Nominal damages are presumed to follow from the violation of any legal right, even if no damages are proven, and will be awarded where it is clear that the compensable injury was suffered.

28. Damages—Punitive Damages—Determination

Punitive damages are awardable in the sound discretion of the court and, generally, it must be demonstrated that the guilty party's conduct was outrageous or that it was done with a bad motive or with a reckless indifference for the interests of others.

DESMOND L. MAYNARD, ESQ., St. Thomas, V.I., *for plaintiff*

CHARLES S. WAGGONER, II, ESQ., St. Thomas, V.I., *for defendants*

FEUERZEIG, *Judge*

MEMORANDUM OPINION

The plaintiff has brought actions against each defendant for damages and injunctive relief, alleging that the defendants have breached several covenants of a deed to property

that fronts on St. John's Bay in an area in St. Thomas known as Pelican Bay Beach.[1]

The defendant, Pelican Beach Inc. (hereinafter Pelican), acquired Parcel No. 11B, Estate Smith Bay Nos. 1, 2 and 3, East End Quarter, St. Thomas, Virgin Islands (hereinafter Parcel 11B), by a warranty deed dated September 19, 1957, from David E. and Eleanor M. Maas.[2] Parcel 11B subsequently was subdivided by Pelican and the lots sold in fee simple to various individuals. One of the lots, Parcel No. 11B-3 (hereinafter 11B-3), was sold by Pelican by warranty deed dated March 4, 1958 (hereinafter the 1958 deed), to John and Agnes Rahlff.[3] By warranty deed of August 26, 1968 (hereinafter the 1968 deed), the Rahlffs conveyed 11B-3 to the plaintiff, Nancy Schindel, subject to the "conditions, covenants, restrictions and zoning ordinances of record".[4]

On September 16, 1968, defendants Robert and Catherine Cummings acquired Parcel No. 11B-10 (hereinafter 11B-10) from Carl and Florence Aster.[5] Parcel 11B-10, like 11B-3, is a part of Parcel 11B. The original warranty deed for 11B-10 contained the same covenants, restrictions and easements as the 1958 deed,[6] and the conveyance to the Cummings was made expressly subject to these covenants.

The provisions of the 1958 deed that are pertinent to these two cases provide that 11B-3 was transferred by Pelican to the Rahlffs,

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[1] Civil No. 267/1977 came on for a hearing on November 4, 1977, January 27, 1978, and February 2, 1978. Civil No. 713-1977 was instituted on November 15, 1977, and was consolidated and was heard in conjunction with Civil No. 267/1977 on January 27 and February 2, 1978. The court requested counsel to submit proposed findings of fact and conclusions of law. This prompted the parties to request transcripts of the trial. As a result, proposed findings and memoranda in support thereof were not submitted until December 22 and 27, 1978. Before the findings and memoranda were submitted, the court, at the request of the parties, inspected the property in the presence of counsel.

[2] Defendants' Exhibit H.

[3] Plaintiff's Exhibit 1.

[4] Plaintiff's Exhibit 2.

[5] Plaintiff's Exhibit 8.

[6] Compare Plaintiff's Exhibit 9 with Plaintiff's Exhibit 1.

[3] TOGETHER with all the appurtenances and all the estate, title, rights and interest of [Pelican], its successors and assigns, in and to said premises, *including a perpetual easement to [the Rahlffs], their or the survivor of them [sic] heirs and assigns, to run with the land over all roads in and to Parcels Nos. 11B and 12 which are now in existence or shall hereafter be constructed for ingress to and egress from the public road and otherwise.* This deed shall be subject to the restrictions set forth hereafter, which shall apply to all parts or parcels of Parcels Nos. 11B and 12 for the benefit of [Pelican], the [Rahlffs], and all subsequent grantees, the said restrictions to run with the land. Whenever the restrictions set out hereafter are more restrictive than the provisions of any zoning laws applicable to Parcels Nos. 11B and 12, these restrictions shall control.

a. *No structure other than a one-family residence, together with the customary appurtenances (guest house, garage, cabana, servants' quarters, if any) shall be erected upon the parcel of land herein described;* and such residential structure including any appurtenances shall be so situated that no part of the said structure or any appurtenances shall be less than 25 feet from any boundary line of said parcel, except the boundary line of the common roadway upon which said parcel abuts. . . . *No such residence or appurtenances shall be used as a commercial guest house or other commercial rental purposes.*

. . .

j. *The common roadways (except any road running substantially parallel to the sea between Parcels 11B-3, 4, 5 and 6 and the sea, which said roadway [Pelican] shall have the right to abandon or relocate in its discretion) shall be constructed by and at the cost and expense of [Pelican] in a proper manner with adequate ditches, drains and culverts to provide proper drainage.* Thereafter, [Pelican, the Rahlffs] and all subsequent purchasers of parts of Parcels Nos. 11B and 12 Estate Smith Bay, shall maintain the common roads in Parcels Nos. 11B and 12 in reasonably good condition on a pro rata expense basis in a proportion equal to the proportion that their respective parcels bear to all of the land in Parcels 11B and 12 for use of the other lot owners until such time as the Government accepts a dedication of said roads . . . . Maintenance shall not include paving, widening or extending said roads.

k. The [Rahlffs] *shall have a perpetual easement over, on and to the beach area of St. John bay on the easterly side of Parcel No. 11B* for the use by himself and the members of his immediate family and bona fide house guests, for recreational purposes only, but this use shall not include the use of any beach club facilities that may be constructed in said beach area by [Pelican]. The beach area shall be an area 50-feet wide paralleling St. John's Bay (except in Parcel No. 11B-8). (Emphasis added.)

None of the parties disputes the validity of any of the above conveyances, and all agree that the plaintiff is the successor in interest to the Rahlffs and thereby is entitled to enforce the deed restrictions. See Restatement of Property §§ 487, 542 (1944).[7] It also is undisputed that the Cummings are the sole Pelican stockholders, with Mr. Cummings being president and Mrs. Cummings being secretary-treasurer.[8] The parties also agree that Pelican drafted the deeds for each lot of Parcel 11B and that each deed has the same restrictions that are in the 1958 deed.[9] This presumably was done to insure that the area retained a certain character and ambiance that would be conducive to the establishment of Pelican's beach club.

Sometime between 1960 and 1968 Pelican constructed a wall along the entire southeast boundary of 11B-3 and the eastern boundaries of 11B-4, 5 and 6.[10] The wall is approximately 24 to 30 inches high,[11] and is entirely on Pelican's property—the unsubdivided portion of 11B (hereinafter

[7] The rules of the common law, as expressed in the Restatements of Law approved by the American Law Institute, shall be the rules of decision in the courts of the Virgin Islands, in the absence of local laws to the contrary. 1 V.I.C. § 4. See also Varlack v. S.W.C. Caribbean, 13 V.I. 666, 550 F.2d 171 (3d Cir. 1977); but see Murray v. Beloit Power Systems, Inc., 450 F.Supp. 1145 (D.V.I. 1978).

[8] Tr. III at 11; Tr. II at 11–12.

[9] See, e.g., Tr. II at 33, 36; Deposition of David Maas at 8–9.

[10] The testimony failed to reveal the exact date—or even the approximate date—of the wall's construction. The plaintiff, in her proposed findings of fact, paragraph 1, contends the wall was constructed between 1958 and 1968. The court is convinced, however, that the wall was not constructed before 1960 and that it probably was built much later. The deposition testimony of Agnes Rahlff discloses that she and her husband did not move onto the property until 1960, Tr. I at 32, and that they used to go to the beach by the most direct easterly route "until Bob Cummings built a wall . . . and we had to go over it." Tr. I at 40. In any event, the exact date of the wall's construction is not crucial.

[11] Tr. I at 96–97.

11B Prime).[12] The court finds, based on the depositions of John and Agnes Rahlff, that the Rahlffs continued to use the same route to the beach before and after the wall was built. They would leave their property from the corner nearest the beach and walk along a route on 11B Prime down to the beach.[13] After the wall was constructed, they used this route simply by stepping over the wall.[14] Although inconvenient, the wall was not high enough to block the Rahlffs' passage or to create a substantial hardship for them. They continued to use that route because it was the "shortest access to the beach"[15] and because the Rahlffs believed their deed gave them a right to use that route.[16]

After Mrs. Schindel acquired the property in 1968, she and her husband utilized the same route as the Rahlffs to gain access to the beach. Sometime between January and April of 1976 Pelican constructed a four- to five-foot high chain link fence topped with three strands of barbed wire along the length of the wall.[17] In addition, Pelican placed a locked gate adjacent to the southernmost corner of 11B-3[18] at the bottom of the road that runs along the south-southwest boundary of 11B-3, which gate is connected to the wall and the fence. Because of the wall-fence and gate Mrs. Schindel's direct easterly access to the beach has been blocked. Although at various times over the years Mr. and Mrs. Schindel objected to the wall, no legal action was

[12] Tr. I at 60–61.

[13] Utilizing the map attached hereto as Appendix A, the Rahlffs would leave their property at Point 2, walk across 11-B Prime along Point 3 down to the beach at Point 5. Their house, now the house of plaintiff, is located at Point 1. See Tr. I at 41–43, 58, 61; Deposition of John Rahlff at 6.

[14] The wall was constructed approximately between Points 3 and 4 of Appendix A and runs in a northerly direction on 11-B Prime adjacent to Parcels 11B-3, 4, 5 and 6.

[15] Tr. I at 67.

[16] Tr. I at 62; Deposition of John Rahlff at 5–6.

[17] Tr. I at 96–97.

[18] Point 12 on Appendix A.

taken until Civil No. 267-1977 was instituted on October 8, 1976.[19]

The court further finds that sometime in 1969 the Cummings had a tennis court built on their land, Parcel 11B-10.[20] The Cummings and Pelican subsequently entered into an arrangement by which guests at the Pelican Beach Club were allowed to use the tennis court free of charge. In fact, the tennis court was advertised in Pelican's brochures as one of the amenities offered to Pelican's guests.[21] Although Mr. Cummings testified that neither plaintiff nor anyone on her behalf ever raised any objection to the tennis court before these suits,[22] the court finds that on at least two occasions plaintiff's agents put Pelican's attorneys on notice that the tennis court was in violation of the restrictive covenants of the deed.[23]

The court further finds, and it is undisputed, that at no time has Pelican ever constructed ditches, drains or culverts for the common roadways of Parcels 11B and 12.[24] Finally, there is no dispute that Pelican has constructed windbreakers and has erected a barbed wire fence on Parcel 11B Prime, both of which run substantially parallel to to the sea.

With this factual backdrop, the court turns to the issues upon which a resolution of this matter depends, and the five alleged deed violations, which will be treated seriatim.

Access to St. John's Bay

The plaintiff contends that the wall and fence violate paragraph k of the deed by denying her the easement "to

[19] The action was instituted in the United States District Court but was transferred to this court by order of Judge Warren H. Young on April 4, 1977.

[20] Tr. II at 11.

[21] Plaintiff's Exhibit 3.

[22] Tr. III at 51.

[23] Defendants' Exhibit D, dated April 7, 1969, and Plaintiff's Exhibit 14, dated January 29, 1976.

[24] Defendants' proposed findings of fact, paragraph 5.

the beach area of St. John Bay".[25] Alternatively, plaintiff argues that irrespective of her rights under the deed she acquired a prescriptive easement across Pelican's land from the easternmost corner of her property to the road on Parcel 11B Prime that leads to the beach[26] because both she and the Rahlffs regularly walked this route for a period in excess of 15 years.[27]

[1] Pelican denies that paragraph k grants the plaintiff an easement across its land, relying on McCarter v. Pelican Beach, Inc., Civ. No. 135-1965 (D.V.I., Div. St. T. & St. J., April 19, 1967) (Gordon, J.). In McCarter, the plaintiffs were the owners of Parcel No. 11B-5 and similarly sought access to the beach over 11B Prime. In that action the court held:

> That plaintiffs are not entitled to an easement directly east from their parcel to the beach across Parcel 11B for ingress and egress to the beach but that plaintiffs' ingress and egress to and from the said beach is through the entrance for the public of Pelican Beach Club.

Pelican contends that this holding is res judicata in the present actions. It also contends that the statute of limitations and laches bar the plaintiff's action.[28] Finally, in response to plaintiff's alternative contentions, Pelican asserts that Mrs. Schindel's passage over 11B Prime has not been adverse, but was permissive. Adversity, of course, is necessary to establish a prescriptive easement. 28 V.I.C. § 11.

[2–5] The court does not believe that the plaintiff's action is barred by res judicata. Pursuant to the Restatement

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[25] See p. 244–45.

[26] Point 3 to Point 5 on Appendix A.

[27] Pursuant to 28 V.I.C. § 11, 15 years is the statutory prerequisite for a prescriptive easement.

[28] Pelican, in its second amended answer, also interposed the defense of estoppel. Apparently, Pelican and the Cummings have abandoned this defense because no reference to estoppel appears in their post trial memorandum of points and authorities or in their proposed findings of fact and conclusions of law. In any event, the defense is without merit and is unsupported by the evidence.

of Judgments § 93(b) (1941), a person not a party to an action, other than an action in rem, is not bound by the adjudication of any matter decided in the action.[29] In fact, the judgment normally has no evidentiary value in a subsequent action between one of the parties to the judgment and a stranger. See id. Comment b; see also id. Comment d. The court has reviewed the District Court file and concludes that McCarter clearly was not an in rem action.[30] In rem proceedings affect the interests in the property at issue "not merely of particular persons but of all persons in the world." Restatement, supra, § 32, Comment a; see also Restatement (Second) of Judgments § 73, Comment a (Tent. Draft No. 1, March 28, 1973). In order to obtain a valid and binding in rem judgment, all parties whose interests in the property are or may be affected are entitled to reasonable notice and an opportunity to be heard. Restatement, supra, § 32, Comments f and g. The notice must be "sufficiently calculated to give knowledge of the proceeding" in light of all the circumstances. Id. Comment f; cf. Restatement (Second) of Judgments § 9, Comment a (Tent. Draft No. 5, March 10, 1978). The McCarter record reflects no attempt to effect personal service on Mrs. Schindel or the other owners of the subdivided lots of Parcel 11B or 12. Nor is there any evidence of constructive service on any interested party by publication, posting or mailing; nor did the defendant ever seek to implead or join Mrs.

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[29] Section 93 provides in pertinent part:

> "Except as stated in §§ 94–111, [sections not relevant here] a person who is not a party or privy to a party to an action in which a valid judgment other than a judgment in rem is rendered
>
> . . .
>
> (b) is not bound by or entitled to claim the benefits of an adjudication upon any matter decided in the action."

[30] Although the plaintiffs in McCarter sought only damages, the action was in the nature of a quasi in rem proceeding rather than one in personam. This is so because plaintiffs' entitlement to damages partly was predicated on their alleged right of access over Parcel 11B Prime. The judgment declaring that plaintiffs had no right of access across 11B Prime had the effect of adjudicating the parties' "rights to property", see Restatement, supra, §§ 2 and 3, and thus is more appropriately described as a quasi in rem judgment.

Schindel or any of the other lot owners of Parcels 11B or 12. Thus, McCarter, while binding on Pelican and the McCarters, is not res judicata as to Mrs. Schindel nor is Mrs. Schindel collaterally estopped by the decision.

[6, 7] The discussion of the application of McCarter, however, cannot end with an analysis of res judicata because McCarter was decided by the District Court of the Virgin Islands, the appellate court of any order or judgment of this court. 4 V.I.C. § 33 (1977 Supp.). Thus, McCarter must be considered the law of the Virgin Islands unless otherwise found to be inapplicable. This court does not believe that McCarter is binding for two reasons. First, the McCarter decision, albeit brief, contains sufficient findings of fact regarding the intent of the parties for this court to conclude that the basis for the holding is factually distinguishable from the present cases. The court in McCarter specifically found:

> 5. That the terms of said deed are ambiguous as to the means of ingress and egress to said beach by plaintiffs but that *the intent of the parties* to the deed was that the plaintiffs should have ingress and egress to said beach by means of entering and leaving the beach through an area that is now the entrance for the public of Pelican Beach Club. (Emphasis added.)

This court agrees with McCarter that the deed is ambiguous but since it was drafted by Pelican, it must be construed against Pelican. Restatement of Contracts § 236(d) (1932); Restatement (Second) of Contracts § 232 (Tent. Draft Nos. 1–7, 1973). While the evidence in McCarter caused the District Court to conclude that the parties intended that the McCarters have access by means of the public entrance,[31] the evidence in this case reveals that it was understood by the Rahlffs that they would have access to the beach from their property directly across Pelican's

[31] On Appendix A this would be accomplished by travelling along the route that is between numbered points 8 and 9 and then from Point 9 to Point 10.

property, 11B Prime. Moreover, they acted in conformity with that intent. As a result, when the Rahlffs sold 11B-3 to Mrs. Schindel, she too expected that she would have direct access to the beach and likewise acted in conformity with that intent.[32] Had the District Court in McCarter had the facts of this case before it, that court presumably would have reached the result this court reaches.

[8, 9] Pelican's statute of limitations defense is equally unavailing. Actions for the determination of "any right or claim to or interest in" real property may be commenced within the limitations provided for actions for the recovery of the possession of real property. 5 V.I.C. § 32. This, pursuant to 5 V.I.C. § 31(1)(A), is twenty years. Clearly, plaintiff seeks a determination of her "right or claim to or interest in" the alleged easement across Pelican's land. Having been commenced well within the twenty-year limitations period, plaintiff's actions for access to St. John's Bay are not barred by the statute of limitations.[33]

[10–12] The defense of laches also is unavailing on the issue of access to St. John's Bay. As the court already has found, the fence running the length of the wall was not erected until sometime between January and April of 1976, and Civil No. 267-1977 was instituted in October of the same year. Thus, there was no more than a ten-month delay between the erection of the fence and the commencement of legal action. Without a further factual showing of prejudice this court cannot find that a ten-month delay in bringing suit is so inherently prejudicial as to constitute laches as a matter of law. This is especially so in view of the testimony that the plaintiff was not on the premises when the

[32] Tr. I at 41, 58, 61, 85–90; Tr. III at 38, 52, 54, 107–08, 110; Deposition of John Rahlff at 5–6.

[33] Pelican and the Cummings also rely on the statute of limitations defense to plaintiff's claim for relief with respect to the tennis court, the common roadways and the windbreakers. Each of these claims also falls within the scope of 5 V.I.C. § 32, and thus the statute of limitations defense is equally unavailing.

fence was erected, but only heard of it afterwards.[34] See Restatement of Property § 562, Comment b (1944) (one factor to be considered in determining whether plaintiff is guilty of laches is the opportunity he had to discover the fact of the violation). In the absence of some showing of disproportionate hardship on Pelican's part in the erection of the fence—a showing that was not made and which this court does not believe could have been made—this court does not believe that laches constitutes a bar to the plaintiff's action. See Restatement, supra, § 563.

[13] The question remains, though, as to whether Mrs. Schindel is guilty of laches as to the 24- to 30-inch wall that was constructed sometime between 1960 and 1968. The court is of the belief, particularly in view of the relief that will be ordered, that the plaintiff is not barred by laches. First, although there is no evidence that the Rahlffs ever complained of the wall, they continued to cross over it on their way to the beach. In fact, Mr. Cummings never advised them that they were not to cross over the wall or walk across Pelican's property.[35] Moreover, it also is clear that Mrs. Schindel, or persons on her behalf, objected to the wall long before the fence was constructed,[36] and she never acted in such a way as to preclude her from seeking injunctive relief.

[14] Consequently, having concluded that the deed is ambiguous and is to be construed against its drafter, Pelican; having concluded that it was the Rahlffs' and Mrs. Schindel's understanding that they had a right to direct easterly access from 11B-3 to the beach; having concluded that they always acted in conformity with that understanding even after the erection of the wall, and having concluded that the plaintiff's claim is not barred by res judi-

[34] Tr. I at 96.
[35] Tr. I at 41.
[36] See Defendants' Exhibits D, E and F.

cata, the statute of limitations or laches, the court is compelled to conclude that Mrs. Schindel is entitled to a direct easterly access across Parcel 11B Prime to the beach.

[15] Having decided that plaintiff has right of direct easterly access to the beach, the court must consider what relief is appropriate. In this regard, the court has reviewed the various alternatives. The most drastic would be to order complete removal of the wall and fence in front of plaintiff's property. Keeping in mind the serious concern of Pelican for its guests and the relative increase in value that the various measures would bring to the plaintiff's property, the court believes that Pelican should provide the plaintiff access simply by installing a gate with a lock at the easternmost corner of Parcel No. 11B-3[37] and by giving the plaintiff either a key or the combination to the lock, depending upon which type of lock Pelican selects. Pelican also should be required either to remove the wall at the point where the gate is erected or cause steps to be placed on both sides of the wall.

Perpetual Easement Over Roads

The plaintiff also claims a violation of paragraph [3] of the 1958 deed in that she has been denied a perpetual easement to run with the land "over all roads in and to Parcel Nos. 11B and 12 which are *now in existence* or shall hereafter be constructed for ingress to and egress from the public road and otherwise." (Emphasis added.)

The court believes that it is clear that a road running across Parcel 11B Prime and parallel to the sea was in existence at the time of the 1958 conveyance; that this road is substantially the same route used by the Rahlffs and Mrs. Schindel to get from 11B-3 to the beach, and that this road still exists today.[38]

[37] Point 2 on Appendix A.
[38] The road runs in a northerly direction from the vicinity of Point 12 to approximately Points 3–4, then across 11B Prime to the vicinity of Point 5 on Appendix A.

The 1958 deed, by its own terms, recognized the existence of such a road. In paragraph j a parenthetical reference was made to a road "running substantially parallel to the sea between Parcels 11B-3, 4, 5 and 6 and the sea."[39] Moreover, the map of Parcels 11B and 12, P.W.D. No. C3-92-T57, clearly outlined the boundaries of a road, and a copy of this map was "annexed [to the 1958 deed] and made a part [t]hereof."[40] The defendant's own witness, David Maas, the original grantor from whom Pelican acquired Parcel 11B, testified to the existence of access along this route, variously describing it as a "tract",[41] and a "dirt tract".[42] It was not a "narrow footpath", but it was "big enough to drive a pick-up on."[43] It was not paved, but Mr. Maas had a "small dozer" give it a "brush over",[44] and it could accommodate motor vehicles and trucks as well as pedestrians.[45] In fact, Mr. Maas testified that this route is the same route described as a "road" in the 1958 deed,[46] and he sketched it on P.W.D. No. B9-30-T57[47] in approximately the same area where the road appears on P.W.D. C3-92-T57.[48] In addition, defendants concede that this "tract or vehicular roadway" was the roadway referred to in the deed restrictions in paragraph j as the "road running substantially parallel to the sea".[49]

[16] Even Mr. Cummings recognized that a road of some kind existed. Although he denied that Pelican ever

[39] Plaintiff's Exhibit 1.

[40] Defendants' Exhibit A and Appendix A attached hereto. See the figures 434'±, 165'±, and 112'± for the road as depicted on Appendix A.

[41] Tr. I at 228.

[42] Tr. I at 237. Counsel for Pelican, however, appears to have inadvertently referred to this route as a "road". See Tr. I at 236–37.

[43] Tr. I at 249.

[44] Tr. I at 228.

[45] Tr. I at 227, 237; Maas Deposition at 7–8, 12.

[46] Maas Deposition at 12–13. Defendants concede this. See paragraph 3 of Defendants' proposed findings of fact.

[47] Defendants' Exhibit B.

[48] Defendants' Exhibit A, Appendix A hereto.

[49] Defendants' proposed findings of fact, paragraph 3.

constructed or established such a road, he admitted that tire marks were the result of trucks using that route.[50] More damaging, however, was his admission that "everybody" would come onto Parcel 11B by the route in issue, including Mr. Maas,[51] and the "UDT and Navy [who] used to go down there with their jeeps for picnics."[52] Finally, in response to the question—

> Was that [route] referring to the dirt track you have described through the palm trees, was that a road in existence that you intended to give the purchasers of lots access over?

Mr. Cummings replied:

> Oh, no.[53]

The only reasonable construction of the question and answer, and indeed of the whole of Mr. Cummings' testimony, is that a road, albeit unpaved and rough, did exist in 1958. It was not constructed or established by Pelican, and, based on Mr. Cummings' testimony, it was not Pelican's intention to give access over this particular road to the various Parcel 11B grantees.[54] Pelican merely referred to it in the plan affixed to the 1958 deed and in paragraph j of the deed in case Parcel 11B Prime was subdivided into a beach area for homes because in that event this route would be needed as an access road.[55] This area was not subsequently subdivided, but was used for a hotel and beach cottages.[56] However, despite Pelican's subjective intent, paragraphs [3] and j when construed together are unambiguous insofar as establishing that a road did exist, which ran substantially parallel to the sea, between Parcel Nos. 11B-3, 4, 5 and 6 and the sea. Even assuming an ambiguity, in light of the

[50] Tr. II at 36.

[51] Tr. III at 32–33.

[52] Tr. III at 33.

[53] Tr. III at 34.

[54] Tr. III at 88–89.

[55] Tr. II at 36; Tr. III at 11.

[56] Tr. III at 11.

settled law that instruments are to be interpreted against the drafter, Restatement of Contracts, supra, § 236(6); Restatement (Second) of Contracts, supra, § 232; cf. Union County Industrial Park v. Union County Park Commission, 95 N.J. Super. 448, 231 A.2d 812 (1967), this court finds that the road referred to in paragraph j of the 1958 deed existed at that time, that the parties contracted in reference to it, and that the grantees reasonably believed that they were being given the right of access over it. From these facts the court must conclude that pursuant to paragraph [3] of the deed Mrs. Schindel retains the right of access over that road, it having been a road in existence at the time of the 1958 deed's execution.[57]

[17] The question remains as to what relief the plaintiff is entitled. As in connection with the question of access to the beach, the court has considered the various alternatives, including complete removal of the gate located adjacent to the southernmost corner of plaintiff's property,[58] ordering that the gate be kept unlocked, or ordering that Pelican issue a key to the plaintiff. The court is mindful of the serious concerns of the defendant for the security of its guests, and the relative increase in the value of the plaintiff's property that the various measures would bring. On balance, the court concludes that the most equitable relief it can fashion is ordering the defendant to issue the plaintiff a key to the gate. This will accommodate Pelican's need for security and the plaintiff's right to a perpetual easement over all roads in and to Parcels 11B and 12.

[57] In light of this holding, the court does not reach the issue of an easement by prescription. Although there certainly was ample testimony from which to conclude that the road has not been abandoned or relocated, that question is irrelevant in light of the easement given by paragraph [3] over all roads then in existence. See, e.g. Tr. III at 72. The court is not holding, however, that the road cannot be abandoned by Pelican. Pelican can choose to abandon or relocate the road parallel to Parcels 11B-3, 4, 5 and 6. Thus, it also can decide to do nothing to maintain it. What it cannot do, however, is deny the plaintiff the perpetual easement over the road that is provided by paragraph [3] of the 1958 deed.

[58] Point 12 on Appendix A.

Tennis Court

The plaintiff concedes that the tennis court is a "customary appurtenance" to a one-family residence within the meaning of paragraph a of the 1958 deed,[59] but argues that its commercial use should be enjoined. The defendants deny that the tennis court is a "structure" or a "customary appurtenance", although they concede that the small wooden structure adjacent to it does violate the 1958 deed.[60]

[18, 19] The court need not decide the definitional dispute between the parties because it is convinced that laches bars plaintiff's prayer for an injunction. Pursuant to the Restatement of Property, supra, § 562, a plaintiff must act with reasonable promptness in applying for an injunction. See id. Comment b. The plaintiff is not entitled to an injunction as a matter of right, Holmes Harbor Water Co. Inc. v. Page, 8 Wash. App. 600, 508 P.2d 628 (1977); Gilpin v. Jacob Ellis Realties, 47 N.J. Super. 26, 135 A.2d 204 (1957), because its issuance is extraordinary and rests within the sound discretion of the trial judge. Johnson v. Shaw, 137 A.2d 399 (N.H. 1957); Holmes Harbor Water Co. Inc. v. Page, supra; Gilpin v. Jacob Ellis Realties, supra.

[20] In this matter plaintiff waited seven years to file suit. Although Mrs. Schindel put the defendants on notice of the tennis court's alleged violation of the deed as early as April 7, 1969,[61] no legal action was taken until the complaint was filed on October 7, 1976. In the interim, defendant constructed the tennis court, and has made it available to its guests. Pelican has advertised tennis as one of the amenities offered by it to its guests, and has had brochures printed that describe and depict the tennis courts.[62] An in-

[59] Plaintiff's proposed findings of fact, paragraph 7.

[60] Defendants' proposed conclusions of law, paragraph 7.

[61] Defendants' Exhibit D.

[62] Plaintiff's Exhibit 3.

junction at this late date would deprive Pelican's guests of an amenity they assumed was available to them. It also might subject Pelican to a breach of contract or restitutionary action or force Pelican into the position of having to make partial refunds to guests. Pelican's reputation certainly would suffer, and perhaps a few of its steady customers would no longer be inclined to return. Further, the present brochures would have to be recalled, and different brochures printed without mention of the tennis courts. In view of these circumstances, the court is of the belief that the plaintiff sat on her rights and should be barred from asserting them. Cf., e.g., Valhouli v. Coulouras, 142 A.2d 711 (N.H. 1958) (a delay of only two years barred plaintiff from obtaining an injunction).

[21, 22] Finally, plaintiff's husband by letter of January 29, 1976, stated that "the tennis court in its present location does not bother me."[63] Thus, while the tennis court is of some real value to the defendant, the harm, if any, to the plaintiff from this deed violation is de minimis. This brings into operation the doctrine of relative hardship, under which injunctive relief will be denied if the hardship imposed by granting it would be disproportionately greater than the benefits that would be secured by its issuance. Restatement, supra, § 563; see also, Easton v. Careybrook, 210 Md. 286, 123 A.2d 342 (1956); Holmes Harbor Water Co. Inc. v. Page, supra; Union County Industrial Park v. Union County Park Commission, supra; Gilpin v. Jacob Ellis Realties, supra; Rossi v. Sierchio, 30 N.J. Super. 575, 105 A.2d 687 (1954); cf. Restatement of Torts § 941 (1939).[64] The combination of laches and the disproportion

[63] Plaintiff's Exhibit 14. Although the property is only in Mrs. Schindel's name, it is clear that her husband has been intimately involved in this ongoing dispute, probably even more so than the plaintiff.

[64] While it might be argued that the facts concerning the tennis court are not significantly different from the wall, the court is not of that belief. First, and most important, no damages have been shown by the presence of the tennis courts. On the other hand, the wall and fence, according to

of hardship bars the plaintiff from the equitable relief she seeks.[65]

Ditches, Drains or Culverts for the Common Roadway

As pointed out, Pelican admits it did not construct any ditches, drains or culverts for the common roadways.[65a] The defendant maintains, however, that its sole duty under paragraph j of the deed was to construct the roads with "proper drainage" and that if this could be accomplished without constructing ditches, drains or culverts, it was free to do so. Pelican claims that the road's drainage is, or at least initially was, adequate and that any inadequacies that now may exist are a result of improper maintenance. Mrs. Schindel, on the other hand, contends that the language of the deed imposes an affirmative duty on Pelican to construct ditches, drains or culverts. The court agrees.

[23] The court believes that the language of paragraph j, standing alone, could reasonably be susceptible of both parties' interpretations: However, the evidence made it clear that the common roads—and specifically, the road running from the southernmost corner of the plaintiff's property, then northwest to the public road, then due north to Parcel 12B where the road turns east and leads to the beach and the public entrance to the Pelican Beach Club[66] —were already in existence at the time Pelican acquired

plaintiff's expert, considerably decrease the value of plaintiff's property. Second, the tennis court has never been considered very objectionable. In fact, it has been used principally as a lever by Mrs. Schindel in the discussions between the parties over the years.

[65] Neither Pelican nor Mr. Cummings come into court entirely with clean hands. There was unrefuted evidence that when Mr. Schindel orally objected to the tennis court's construction, he was told by Mr. Cummings that it was only for "personal" and not commercial use. Plaintiff's Exhibit 14; Tr. III at 126–27. However, it very soon became clear that this was not the case. The court, however, does not believe defendants should be estopped to assert plaintiff's laches because of the defendants' wrongful conduct that occurred some seven years before this suit was filed.

[65a] See footnote 24 and accompanying text.

[66] From Point 12 to Point 11 to Point 13 to Point 9 to Point 10 on Appendix A.

Parcels 11B and 12."[47] In fact, Mr. Cummings testified that the above-described road was the means by which Pelican intended all of the grantees of parcels in the subdivision to have access to the beach and thus to enjoy the easement granted to them by paragraph k. In light of this, it is clear that the obligation imposed on Pelican was not to "construct" the roads, for they already were constructed. Pelican's obligation was to "construct" them in a "proper manner", which was defined by the deed as including ditches, drains and culverts. No other reasonable interpretation can be given to the deed's language. Pelican's interpretation would mean it could choose to do nothing and assert that the roads already had proper drainage. This would render the obligation imposed on Pelican by paragraph j illusory, while the grantees would still have to bear the maintenance expenses. The court rejects such a construction. Pelican was to construct ditches, drains and culverts, not roads.

[24] The defense of laches again is presented. This matter, however, is distinguishable from the tennis court dispute. While the plaintiff is guilty of an unreasonable delay in bringing this action, this has not in any way inured to the detriment of the defendant. To constitute laches defendant must show not only plaintiff's lack of diligence but that the defendant's injury was due to such lack of diligence. Decker v. Hendricks, 97 Ariz. 36, 396 P.2d 609 (1964). No reliance has been placed on plaintiff's acquiescence and no harm will befall the defendant from constructing the necessary ditches, drains and culverts, other than the expenditure of funds necessary to accomplish same, which should have been accomplished in any event. Accordingly, a mandatory injunction will issue ordering Pelican to construct adequate ditches, drains and culverts to provide proper drainage.

[47] See Defendants' Exhibit A, incorporated by reference into the 1958 deed; see also Tr. II at 34, 36–37; Tr. III at 27–32, 34.

Windbreakers and Barbed Wire Along the Beach

[25] The plaintiff alleges that the erection of windbreakers and a barbed wire fence along a portion of Parcel 11B Prime is violative of the 50-foot easement conferred by paragraph k of the 1958 deed. There is no merit to this claim. The easement is for the plaintiff's "use . . . for recreational purposes." No showing has been made of even the slightest impairment of plaintiff's use or enjoyment of the beach since these structures were erected. On the basis of the court's observation, neither the windbreaker nor the "fence" could reasonably interfere with the plaintiff's enjoyment of her easement. Accordingly, plaintiff's request for an injunction with respect to these structures will be denied.

Damages

Plaintiff also had prayed for $30,000 compensatory and $20,000 punitive damages. As this court recently said with respect to compensatory damages,

> the fact of damage as well as the amount of damage must be proven with reasonable certainty. The trier of fact is not at liberty to speculate, but must be able to find some basis in the evidence for fixing the award.

St. Thomas House, Inc. v. Barrows, 15 V.I. 435 (Terr. Ct. 1979); see also Munson v. Duval, 11 V.I. 615, 646 n. 13 (D.V.I. 1975); Tebbs v. Alcoa Steamship Co., Inc., 3 V.I. 186, 139 F.Supp. 56 (D.V.I. 1965), aff'd, 3 V.I. 592, 241 F.2d 276 (3d Cir. 1957); Restatement of Torts § 912 (1939). Moreover, in a case such as this one,

> where the injury to real property is temporary the measure of damages, if the property is occupied by the owner, is limited to the diminution in the value of its use by the owner during the period of its injury. . . . Since there is no permanent injury in such a case, evidence as to diminished value of the property resulting from the injury is not relevant. (Citations omitted.)

Brannigan v. LaCrosse, 6 V.I. 96, 98 (D.V.I. 1967).

[26] In the present action plaintiff's expert merely testified that the property would increase in value by $10,000 if direct access to the beach were provided to plaintiff at the easternmost point of 11B-3,[68] but by only $5,000 if access were provided at the southernmost corner of the property.[69] Assuming that these figures represent the actual diminished value of the property in its present state, they are not relevant to this action. To determine what, if any, loss Mrs. Schindel has suffered while she has occupied 11B-3 without such access would be the height of speculation. Although it would be reasonable to suppose that the wall without the fence was an inconvenience to the plaintiff and her husband between 1968 and 1976, and that erection of the fence in 1976 and the resulting alternative route to the beach along the common roads was an imposition on the plaintiff, any estimation by this court of plaintiff's damages would be without a factual basis.[70] Equally speculative and without any supporting basis are plaintiff's damages from defendant's failure to construct ditches, drains and culverts. The evidence would lead the court to believe plaintiff was inconvenienced, but to what extent would require a crystal ball.

[27] Accordingly, plaintiff shall recover nothing by way of compensatory damages. She will, however, be awarded $100 in nominal damages, as it is clear to this court that she has suffered a compensable injury. Cf. St. Thomas House, Inc. v. Barrows, supra. (Nominal damages are "presumed to follow" from the violation of any legal right even if no actual damages are proven.)

[68] Point 2 on Appendix A.

[69] Point 12 on Appendix A.

[70] Plaintiff is a resident of Weston, Connecticut, Tr. I at 27, and with her husband also jointly owns Parcel No. 12A, Estate Smith Bay. According to her husband, they spend "four to eight weeks of the year on one property or the other," Tr. I at 78, and used the direct easterly access to the beach "almost daily when we were in residence here at the island." Tr. I at 89. However, according to Mr. Schindel, Mrs. Schindel has rented 11B-3 since June of 1976, Tr. I at 84, shortly after the fence was constructed.

[28] Plaintiff also is not entitled to recover punitive damages. These are awardable in the sound discretion of the trial court. Robert L. Merwin & Co., Inc. v. Strong, 7 V.I. 282 (D.V.I. 1969), aff'd in part and rev'd in part, 7 V.I. 567, 429 F.2d 50 (3d Cir. 1970); see also Restatement of Torts, supra, § 908(2). Generally, it must be demonstrated that the guilty party's conduct is outrageous or that it was done with a bad motive or with a reckless indifference for the interests of others. Id.; St. Thomas House, Inc. v. Barrows, supra. Nothing in the record suggests that Pelican's conduct was in any way so motivated. Moreover, the court believes that the equitable relief it has decreed and the award of nominal damages grants the plaintiff the full relief to which she is entitled.

REYNOLD QUEELEY, Plaintiff

v.

MARIE CHARLES, Defendant

Civil No. 992/1977

Territorial Court of the Virgin Islands

Div. of St. Croix at Christiansted

May 10, 1979

Action to impress a resulting or constructive trust in real property interest and defendant's counterclaim for compensation for providing room and board. The Territorial Court, Silverlight, J., dismissed the claims of both parties; plaintiff's claim was dismissed because his general financial contribution to defendant's purchase of property was insufficient to establish the intent requisite to establish a resulting trust, because there was no evidence of fraud or inequitable conduct to establish a constructive trust and an equitable lien could not be imposed because the benefits he conferred in making improvements were offset by the benefits he received; the defendant's claim was dismissed because there

particularly enlightening in interpreting § 573. That comment states:

"Disparaging words to be actionable per se under the rule stated in this Section, must affect the plaintiff in some way which is peculiarly harmful to one engaged in his trade or profession. Disparagement of a general character, equally discreditable to all persons, is not enough unless the particular quality disparaged is of such a character that it is peculiarly valuable in the plaintiff's business or profession."

It is unpleasant to suffer an excrementitious epithet pertaining to one's cerebellum and I do not mean to condone the all-too-prevalent use, in these days, of rough, vulgar and excremental language. However, I do not believe that words of general and vulgar abuse are actionable per se. The epithet applied to plaintiff implies a lack of intelligence on his part. Intelligence is a valuable asset in any trade or profession, but it is not "peculiarly valuable" to masonry sub-contractors. This statement was one of general disparagement, equally discreditable to all persons. Therefore, the utterance is not actionable per se. No evidence was presented of special damages incurred by plaintiff due to the statement of Pavarini, and the fact that plaintiff had been continuously employed as a contractor since his termination by Emery belies any special damages. Since no damages were proven, there is no actionable slander.

ORDER

For reasons stated in the foregoing Memorandum Opinion, it is hereby

ORDERED, DECREED and ADJUDGED:

1. That the judgment of the Municipal Court holding George Emery liable to Edward Francis in the sum of $4,775.90 plus attorney's fees and costs, be REVERSED and REMANDED for further proceedings as directed by this opinion; and

2. That the judgment of the Municipal Court, holding Charles Pavarini liable to Edward Francis in the sum of $1,500.00 plus attorney's fees and costs, be REVERSED and REMANDED for the entry of judgment by the Municipal Court dismissing the complaint as to defendant PAVARINI and awarding to him attorney's fees in the sum of $300.00.

UNITED STATES OF AMERICA and GOVERNMENT OF THE VIRGIN ISLANDS, Plaintiffs

v.

ST. THOMAS BEACH RESORTS, INC., Defendant

Civil No. 74-339

District Court of the Virgin Islands

Div. of St. Thomas and St. John

December 13, 1974

Action for injunction. District Court, Christian, Chief Judge, held that statute defining Virgin Islands shoreline as the area from the seaward line of low tide inland 50 feet, and forbidding obstructions in that area, does not take property without just compensation and is not so vague as to be unconstitutional, and fences built in the area by resort would be ordered removed.

1. Judgments—Summary Judgment—Grounds

Summary judgment may be granted where there is no genuine issue as to any material fact, as shown by the pleadings, affidavits and other documents submitted.

2. Boundaries—The Sea

United States owns submerged lands on the Virgin Islands shores up to the mean high-watermark and resort which built fences seaward of that mark was a trespasser and would be required to remove them.

3. Constitutional Law—Property

Statute defining Virgin Islands shoreline as the area from the seaward line of low tide inland 50 feet, and forbidding obstruc-

tions in that area, does not take property without just compensation and is not so vague as to be unconstitutional, and fences built in the area by resort would be ordered removed. 12 V.I.C. §§ 402, 403.

4. Public Lands—Beaches

Public's right to use the beaches was paramount to resort's desire to fence them off.

HONORABLE ISHMAEL MEYERS, Assistant U.S. Attorney, St. Thomas, V.I. *for plaintiff U.S.A.*

JAMES W. SILVER, ESQ., Assistant Attorney General of the V.I., St. Thomas, V.I., *for plaintiff Government of V.I.*

CHARLES S. WAGGONER, ESQ., St. Thomas, V.I., *for defendant*

CHRISTIAN, *Chief Judge*

MEMORANDUM

Plaintiffs in this action are the Governments of the United States and the United States Virgin Islands. The defendant, St. Thomas Beach Resort, Inc., is a Virgin Islands corporation and is the owner of an establishment known as Bolongo Bay Beach and Tennis Club, which borders on the Caribbean Sea in the area of Frenchman's Bay Quarter, St. Thomas, Virgin Islands. The sole relief sought by plaintiffs is an injunction.

The gravamen of the complaint as alleged by plaintiffs is that sometime during the month of March, 1974, defendant erected, or caused to be erected, two fences each approximately nine feet in height, and each of which traverses the beach area adjoining defendant's property and extends into the Caribbean Sea for distances of approximately 50 and 30 feet at the eastern and western extremities, respectively, of the Bolongo Bay Beach and Tennis Club (hereinafter

the Club). It is said by plaintiffs that the portions of the fences seaward of the mean high-tide mark are trespasses upon property belonging to the United States, and that the inland extension of the fences from the mean high-tide mark, within a distance of 50 feet of the mean low-tide mark, obstruct the Virgin Islands shoreline in violation of the Virgin Islands Open Shorelines Act, Chapter 10 of Title 12 of the Virgin Islands Code. Moreover, allege plaintiffs, the erection and the maintenance of these fences by defendant contravene rights of property acquired by the United States of America, as successor sovereign to the Kingdom of Denmark, at the time of the purchase of these islands in 1917. Accordingly, plaintiffs demand the removal of the fences and that defendant be permanently enjoined from maintaining any fences or "other obstruction upon the property of the United States; or any obstruction interfering with the right of the public, individually and collectively to use and enjoy the shoreline of the Virgin Islands".

The defendant answering, freely admits the erection and maintenance of ". . . chain links and barbwire fences approximately 9 feet in height . . . on its inland property and several feet into the water of Bolongo Bay on each end of its inland property line". Beyond denying that its action is in any way wrongful, the defendant urges three affirmative bases for the dismissal of the complaint: (a) that the complaint does not state a cause of action upon which relief can be granted; (b) that the Open Shorelines Act ". . . is unconstitutionally vague and uncertain as to its application and effect"; and (c) that the Open Shorelines Act ". . . is in violation of the Revised Organic Act of 1954, § 3 . . .". These defenses will be addressed in reversed order. For the reasons to be outlined below, in brief, I conclude that the Virgin Islands Open Shorelines Act suffers from no discernible constitutional defect, and that the plaintiffs are entitled to the relief sought.

The broad gauge attack levelled at the statute in question by the defendant in its third defense above focuses on no particular prohibition of section 3 of the Revised Organic Act. It may be gleaned, however, from examination of section 3, the answer and affirmative defense of defendants and the memorandum submitted on behalf of plaintiffs, that the contention of defendant is, that as applied to it in these circumstances, an order directing the removal of the allegedly offending fences and forbidding the future maintenance of any like obstruction, works a "taking" by the governments of property of the defendant without justly compensating it therefor. In any event, it is to this constitutional challenge that we will first direct attention.

In its present posture, the case is before the Court on the plaintiffs' motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The joint motion for summary judgment was filed on September 26, 1974. In support thereof, plaintiffs submitted nine affidavits relating to factual matters and one which, with its attachment, dealt with the respective right of the public, the government and abutting property owners of tideland properties as such rights existed under Danish law at about the time of the transfer of these islands. Under Rule 6(f), defendant was required to respond within five days after it had been served with the motion. Receiving no such response, and because of the gravity of the situation, the Court, on or about October 30, 1974, notified defendant, through its counsel, that it was allowed 10 days from that date to comply with the rules regarding response to a motion for summary judgment. To date, nothing has been heard from defendant. As a consequence, the Court will proceed to decide the motion on the strength of the memorandum and affidavits submitted by plaintiffs and the governing rules of law.

[1] The proposition is so well settled, as not to require discussion or citation of authority, that summary judgment may be granted where there is no genuine issue as to any material fact, and this is demonstrated by the pleadings, affidavits and other documents submitted. And the rule is no less valid where constitutional or other questions of large public import are raised so long as there is the adequate factual basis in the record to support such a judgment. See 6 Moores Federal Practice, § 56.16 and the host of cases there cited.

[2] At the threshold, it must be noted and recognized that submerged lands in the Virgin Islands, necessarily including the Bolongo Bay area, up to the mean high-watermark, are owned by plaintiff, the United States of America.[1] Plaintiff having demonstrated by the affidavit of Stanley C. Carpenter that the defendant did not have the permission of the United States of America to construct or maintain the fences in question, and defendant, by its answer, having admitted thereto, it follows that the defendant has, in fact, committed a trespass on the land seaward of the mean high-watermark and such fences, which constitute the trespass, should be removed. Likewise, by its admission that it has erected and presently maintains fences "on its inland property and several feet into the water of Bolongo Bay on each end of its inland property line", defendant has made clear, beyond peradventure, that the plain language of the Open Shorelines Act has been violated by it. In section 402 of that statute, "Shorelines of the Virgin Islands" are defined to be those areas,

> along the coastlines of the Virgin Islands from the seaward line of low-tide, running inland a distance of fifty (50) feet; or to the extreme seaward boundary of natural vegetation which spreads

[1] See Red Hook Marina Corp. v. Antilles Yachting Corp., 9 V.I. 236, 242-244 (3 Cir. 1971); Convention Between United States and Denmark, August 4, 1916, 1 V.I.C. p. 27, 39 Stat. 1706, T.S. 629, Art. 6.

continuously inland; or to a natural barrier, whichever is the shortest distance.

And under section 403, the Act commands that,

> No person, firm, corporation, association or other legal entity shall create, erect, maintain, or obstruct any obstruction, barrier, or restraint of any nature whatsoever upon, across, or within the shorelines of the Virgin Islands as defined in this section, which would interfere with the right of the public, individually and collectively, to use and enjoy any shoreline.

Unquestionably, these fences erected by defendant create just such an obstruction and manifestly interfere with the right of the public to enjoy the shoreline in that area.

[3, 4] Even though defendant's action contravenes the provisions of the Open Shorelines Act, however, this would count for nothing if, in fact, that act infringes upon defendant's property rights and, in fact, takes its property without providing just compensation therefor, for such a deprivation would be constitutionally impermissible by virtue of the Fifth and Fourteenth Amendments to the Constitution of the United States made applicable to the Virgin Islands through section 3 of the Revised Organic Act. This I do not find to be the case, however, for I conclude that the act is constitutionally sound, that whatever defendant's property right in and to Bolongo Bay Beach, they have always been subject to the paramount right of the public to use the said beach as established by firmly, well-settled, long-standing custom. Insofar as this beach front property is concerned, the Open Shorelines Act does no more than merely codify this confirmed right.[2] And if further proof were needed, plaintiffs' unopposed affidavits abundantly support their position that Bolongo Bay Beach was used by the public on a regular and continuing basis

[2] As this Court had occasion to note in Red Hook Marina, supra, at p. 43 (n. 19), public use of the beach generally dates back to the period when these islands were under Danish dominium.

for swimming and recreation, without permission from, or need of permission of the upland owners, at least from 1923 through March, 1974. Most telling, perhaps, is the affidavit of a former owner of the property now known as Bolongo Bay Beach and Tennis Club. In that affidavit, the former owner states that during her ownership, the beach was "always . . . open for the use of the public for . . . recreational purposes", that she never interfered with the public use of the beach, and that the public never asked her permission to use the beach, "but simply used it as if it were a public beach". See Affidavit of Winia M. Giroux.

I am persuaded that the custom of the inhabitants of the Virgin Islands of using the beach at Bolongo Bay as a public recreation area was not only extant at the time defendant erected its fences, but was notorious.[3] I am satisfied that notice of the custom on the part of persons buying land at Bolongo Bay must therefore be presumed. Because public use of the beach at Bolongo Bay, before defendant erected its fences: (a) existed over a long period of time; (b) was free from dispute and was peaceable; (c) was exercised without interruption by anyone possessing a paramount right; (d) was exercised in a manner appropriate to the beach; (e) was exercised within a definable area; (f) was similar to that at other beaches in the jurisdiction; (g) was not repugnant to other laws, See 1 Blackstone, Commentaries 75–78. I conclude that the Open Shorelines Act has taken nothing from defendant which it had a legitimate reason to regard as its exclusive property or right. See

[3] The general custom of using the beaches as if they were public has been affirmed by our own Legislature:

> The shorelines of the Virgin Islands have in the past been used freely by all residents and visitors alike. . . .
>
> The Legislature recognizes that the public has made frequent, uninterrupted and unobstructed use of the shorelines of the Virgin Islands throughout Danish rule and under American rule as recently as the nineteen fifties. It is the intent of the Legislature to *preserve what has been a tradition and to protect what has become a right of the public.* (Emphasis added.) 12 V.I.C. Section 401.

State ex rel. Thornton v. Hay, 462 P.2d 671 (S.Ct. Ore. 1969),[4] cited in Red Hook Marina, supra. at p. 240.

Turning next to defendant's "void-for-vagueness" defense, I regard this as no more than "make-weight". Defendant does not state whether it believes the Open Shorelines Act to be unconstitutional for this reason, on its face, or in its application. There is nothing before the Court other than defendant's naked assertion to this effect. Nonetheless, whatever may be the unexpressed contention of the defendant in this regard, I do not believe the act to suffer from vagueness but rather consider it to pass constitutional muster with flying colors. The elements of the void-for-vagueness doctrine have been developed in a large body of precedent, and are categorized in, e.g. Grayned v. City of Rockford, 408 U.S. 104, 108–109 (1972). The doctrine incorporates notions of fair notice or warning.[5] See Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972). As the Supreme Court stated in Conally v. General Construction Company, 269 U.S. 385, 391 (1926):

> [A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

Legislatures are required by the Constitution to set reasonably clear guidelines for law enforcement officials and triers of fact, in order to prevent "arbitrary and discrimi-

[4] Parenthetically, I note that, even were I to find that the public had not established a customary right to use defendant's beach, I would be persuaded that the conduct of former owners of the Bolongo Bay uplands in acquiescing in the public use of the beach and not attempting to prevent or limit such use had in light of the strong public policy expressed in the Open Shorelines Act resulted in an implied dedication to the public of the use of the beach area. See Gion v. City of Santa Cruz, 465 P.2d 50, 58 (S.Ct. 1970). I believe it might also be said that the public has acquired a prescriptive easement appurtenant in the beach for recreational purposes.

[5] I note that because this is not a First Amendment case, Duel Process imposes less stringent requirements upon such a statute in terms of its clarity. See e.g. United States v. National Dairy Products, 372 U.S. 29 (1963).

natory enforcement" of statutes. Grayned, supra. at 108. For me, the Open Shorelines Act meets all of the tests laid down in these cases. It is not as though we were dealing here with a statute like that in Smith v. Goguen, 515 U.S. 566 (1974) where defendant was charged with "publicly . . . treat[ing] contemptuously the flag of the United States", where a particular word in the statute is considered to have a very subjective meaning. We are confronted with an act so clear and straightforward in its terms that read realistically permits of no varied interpretation. I see no semblance of fatal vagueness in the Open Shorelines Act.

The third affirmative defense raised by defendant, that the complaint fails to state a cause of action on which relief can be granted, I find it to be totally devoid of merit and reject out of hand.

On all the foregoing, I conclude that the obstructing fences erected and maintained by defendant cannot be permitted to remain. They must be removed by the defendant and the defendant will be permanently enjoined from erecting any like structures on or over the proscribed area.

Let summary judgment enter accordingly.

IN RE ESTATE OF JOSEPH ALEXANDER, Deceased

Probate No. 42-1973

District Court of the Virgin Islands

Div. of St. Croix

December 17, 1974

Claim against estate. District Court, Young, J., held necessary party must be impleaded.

Parties—Necessary Parties

Final determination of claim against estate would be reserved until such time as necessary party, who had an interest in the prop-

SECTION E.
RELEVANT FEDERAL LEGISLATION

United States. "Tidelands, Submerged Lands, or Filled Lands." Public Law 93-435, Sec. 1-6, Oct. 5, 1974, 88 Stat. 1210-1212, 48 U.S.C. 1705-1708.

(b) Notwithstanding the provisions of subsection (a) of this section, the President may from time to time exclude from the concurrent jurisdiction of the government of Guam persons found, acts performed, and offenses committed on the property of the United States which is under the control of the Secretary of Defense to such extent and in such circumstances as he finds required in the interest of the national defense.

(Pub.L. 88-183, § 4, Nov. 20, 1963, 77 Stat. 339.)

Library References

Criminal Law ⇐16, 166, 201.
C.J.S. Criminal Law §§ 16, 244, 296.

§ 1705. Tidelands, submerged lands, or filled lands

(a) Conveyance to Guam, Virgin Islands, and American Samoa

Subject to valid existing rights, all right, title, and interest of the United States in lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastlines of the territories of Guam, the Virgin Islands, and American Samoa, as heretofore or hereafter modified by accretion, erosion, and reliction, and, in artificially made, filled in, or reclaimed lands which were formerly permanently or periodically covered by tidal waters, are hereby conveyed to the governments of Guam, the Virgin Islands, and American Samoa, as the case may be, to be administered in trust for the benefit of the people thereof.

(b) Retention of certain lands and mineral rights by United States

There are excepted from the transfer made by subsection (a) hereof—

(i) all deposits of oil, gas, and other minerals, but the term "minerals" shall not include coral, sand, and gravel;

(ii) all submerged lands adjacent to property owned by the United States above the line of mean high tide;

(iii) all submerged lands adjacent to property above the line of mean high tide acquired by the United States by eminent domain proceedings, purchase, exchange, or gift, after October 5, 1974, as required for completion of the Department of the Navy Land Acquisition Project relative to the construction of the Ammunition Pier authorized by the Military Construction Authorization Act, 1971 (84 Stat. 1204), as amended by section 201 of the Military Construction Act, 1973 (86 Stat. 1135);

(iv) all submerged lands filled in, built up, or otherwise reclaimed by the United States, before October 5, 1974, for its own use;

(v) all tracts or parcels of submerged land containing on any part thereof any structures or improvements constructed by the United States;

(vi) all submerged lands that have heretofore been determined by the President or the Congress to be of such scientific, scenic, or historic character as to warrant preservation and administration under the provisions of sections 1 and 2 to 4 of Title 16;

(vii) all submerged lands designated by the President within one hundred and twenty days after October 5, 1974;

(viii) all submerged lands that are within the administrative responsibility of any agency or department of the United States other than the Department of the Interior;

(ix) all submerged lands lawfully acquired by persons other than the United States through purchase, gift, exchange, or otherwise;

(x) all submerged lands within the Virgin Islands National Park established by sections 398 to 398b of Title 16, including the lands described in sections 398c and 398d of Title 16; and

(xi) all submerged lands within the Buck Island Reef National Monument as described in Presidential Proclamation 3448 dated December 28, 1961.

Upon request of the Governor of Guam, the Virgin Islands, or American Samoa, the Secretary of the Interior may, with or without reimbursement and subject to the procedure specified in subsection (c) of this section convey all right, title, and interest of the United States in any of the lands described in clauses (ii), (iii), (iv), (v), (vi), (vii),

ıg e provisions of subsection (a) of this section, the President e : :lude from the concurrent jurisdiction of the government of acts performed, and offenses committed on the property of the is under the control of the Secretary of Defense to such extent ıta es as he finds required in the interest of the national

v. 20, 1963, 77 Stat. 339.)

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rged lands within the Buck Island Reef National Monument as id tial Proclamation 3448 dated December 28, 1961.

Go rnor of Guam, the Virgin Islands, or American Samoa, the rior may, with or without reimbursement, and subject to the subsection (c) of this section convey all right, title, and interest n r of the lands described in clauses (ii), (iii), (iv), (v), (vi), (vii), or (viii) of this subsection to the government of Guam, the Virgin Islands, or American Samoa, as the case may be, with the concurrence of the agency having custody thereof.

(c) Submittal to Congressional Committees of proposals for conveyance of retained lands or rights

No conveyance shall be made by the Secretary pursuant to subsection (a) or (b) of this section until the expiration of sixty calendar days (excluding days on which the House of Representatives or the Senate is not in session because of an adjournment of more than three days to a day certain) from the date on which the Secretary of the Interior submits to the Committees on Interior and Insular Affairs of the House of Representatives and the Senate an explanatory statement indicating the tract proposed to be conveyed and the need therefor, unless prior to the expiration of such sixty calendar days both committees inform the Secretary that they wish to take no action with respect to the proposed conveyance.

(d) Oil, gas, and other mineral deposits in submerged lands conveyed to Guam, Virgin Islands, and American Samoa; conveyance by United States; existing leases, permits, etc.

(1) The Secretary of the Interior shall, not later than sixty days after March 12, 1980, convey to the governments of Guam, the Virgin Islands, and American Samoa, as the case may be, all right, title, and interest of the United States in deposits of oil, gas, and other minerals in the submerged lands conveyed to the government of such territory by subsection (a) of this section.

(2) The conveyance of mineral deposits under paragraph (1) of this subsection shall be subject to any existing lease, permit, or other interest granted by the United States prior to the date of such conveyance. All rentals, royalties, or fees which accrue after such date of conveyance in connection with any such lease, permit, or other interest shall be payable to the government of the territory to which such mineral deposits are conveyed.

(Pub.L. 93–435, § 1, Oct. 5, 1974, 88 Stat. 1210, amended Pub.L. 96–205, Title VI, § 607, Mar. 12, 1980, 94 Stat. 91.)

Unconstitutionality of Legislative Veto Provisions

The provisions of section 1254(c)(2) of Title 8, Aliens and Nationality, which authorize a House of Congress, by resolution, to invalidate an action of the Executive Branch, were declared unconstitutional in Immigration and Naturalization Service v. Chadha, 1983, 103 S.Ct. 2764. See similar provisions in this section.

References in Text. The authorization for the construction by the Navy of the Ammunition Pier under the Military Construction Authorization Act, 1971 (84 Stat. 1204) is contained in section 201 of Pub.L. 91-511, Oct. 26, 1970, 84 Stat. 1204, as amended by section 201 of Pub.L. 92-545, Oct. 25, 1972, 86 Stat. 1138, which was not classified to the Code.

Section 398b of Title 16, referred to in subsec. (b)(1), was repealed by Pub.L. 85-404, May 16, 1958, 72 Stat. 112.

1980 Amendment. Subsec. (c). Pub.L. 96-205, § 607(b), inserted "subsection (a) or (b) of" preceding "this section".

Subsec. (d). Pub.L. 96-205, § 607(a), added subsec. (d).

Change of Name. The Committee on Interior and Insular Affairs of the Senate, referred to in subsec. (c), was abolished and replaced by the Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

Legislative History. For legislative history and purpose of Pub.L. 93-435, see 1974 U.S.Code Cong. and Adm.News, p. 5464. See, also, Pub.L. 96-205, 1980 U.S.Code Cong. and Adm.News, p. 135.

PROCLAMATION NO. 4346

Feb. 1, 1975, 40 F.R. 5127, as amended by Proc. No. 4359, Mar. 28, 1975, 40 F.R. 14565

RESERVING CERTAIN LANDS ADJACENT TO AND ENLARGING BOUNDARIES OF BUCK ISLAND REEF NATIONAL MONUMENT IN VIRGIN ISLANDS

The Buck Island Reef National Monument, situated off the northeast coast of Saint Croix Island in the Virgin Islands of the United States, was established by Proclamation No. 3443 of December 28, 1961 (76 Stat. 1441). It now has been determined that approximately thirty acres of submerged land should be added to the monument site in order to insure the proper care and management of the shoals, rocks, undersea coral reef formations and other objects of scientific and historical interest pertaining to this National Monument.

These thirty acres of submerged lands are presently owned in fee by the United States. They will be conveyed to the Government of the Virgin Islands on February 3, 1975, pursuant to Section 1(a) of Public Law 93-435 (88 Stat. 1210) [subsec. (a) of this section], unless the President, under Section 1(b)(vii) of that Act [subsec. (b) of this section], designates otherwise.

Under Section 2 of the Act of June 8, 1906, 34 Stat. 225 (16 U.S.C. 431) [section 431 of Title 16, Conservation], the President is authorized to declare by public Proclamation objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected. The aforementioned thirty acres of submerged lands are contiguous to the site of the Buck Island Reef National Monument, constitute a part of the ecological community of the Buck Island Reef, and will not enlarge the monument boundaries beyond the smallest area compatible with its proper care and management.

Now, Therefore, I, Gerald R. Ford, President of the United States of America, by virtue of the authority vested in me by Section 1(b)(vii) of Public Law 93-435 (88 Stat. 1210) [subsec. (b)(vii) of this section], do hereby proclaim that the lands hereinafter described are excepted from the transfer to the Government of the Virgin Islands under Section 1(a) of Public Law 93-435 [subsec. (a) of this section]; and, by virtue of the authority vested in me by Section 2 of the Act of June 8, 1906, 34 Stat. 225 (16 U.S.C 431) [section 431 of Title 16, Conservation], do hereby proclaim that, subject to valid existing rights, the lands hereinafter described are hereby added to and made a part of the Buck Island Reef National Monument, and Proclamation No. 3443 of December 28, 1961, establishing the Buck Island Reef National Monument is amended accordingly.

Beginning at latitude 17°47'30" N, longitude 64°36'32" W; thence approximately 1000 feet to latitude 17°47'27" N, longitude 64°36'22" W; thence approximately 900 feet to latitude 17°47'18" N, longitude 64°36'22" W; thence approximately 1000 feet to latitude 17°47'15" N, longitude 64°36'22" W; thence approximately 1500 feet to latitude 17°47'30" N, longitude 64°36'32" W, the place of beginning, embracing an area of approximately 30 acres.

In Witness Whereof, I have hereunto set my hand this first day of February, in the year of our Lord nineteen hundred seventy-five, and of the Independence of the United States of America the one hundred and ninety-ninth.

GERALD R. FORD

PROCLAMATION NO. 4347

Feb. 1, 1975, 40 F.R. 5129

RESERVING CERTAIN SUBMERGED LANDS ADJACENT TO ROSE ATOLL NATIONAL WILDLIFE REFUGE IN AMERICAN SAMOA AND CERTAIN SUBMERGED LANDS FOR DEFENSE NEEDS OF UNITED STATES IN GUAM AND VIRGIN ISLANDS

The submerged lands surrounding the Rose Atoll National Wildlife Refuge in American Samoa are necessary for the protection of the Atoll's marine life, including the green sea and hawksbill turtles. The submerged lands in Apra Harbor and those adjacent to Inapsan Beach and Urano Point in Guam, and certain submerged lands on the west coast of St. Croix, United States Virgin Islands are required for national defense purposes. These submerged lands in American Samoa, Guam and the United States Virgin Islands will be conveyed to the Government of those territories, on February 3, 1975, pursuant to Section 1(a) of Public Law 93-435 (88 Stat. 1210) [subsec. (a) of this section], unless the President, under Section 1(b)(vii) of that Act [subsec. (b)(vii) of this section], designates otherwise.

Now, Therefore, I, Gerald R. Ford, President of the United States of America, by virtue of authority vested in me by Section 1(b)(vii) of Public Law 93-435 (88 Stat. 1210) [subsec. (b)(vii) of this section], do hereby proclaim that the lands hereinafter described are excepted from the transfer to the Government of American Samoa, the Government of Guam and the Government of the United States Virgin Islands under Section 1(a) of Public Law 93-435 [subsec. (a) of this section].

American Samoa. The submerged lands adjacent to Rose Atoll located 78 miles east-southeast of Tau Island in the Manua Group at latitude 14°32'52" south and longitude 168°08'34" west, which lands shall be under the joint administrative jurisdiction of the Department of Commerce and the Department of the Interior.

PROCLAMATION NO. 4346

75, 40 F.R. 5127, as amended by Proc. No. 4359, Mar. 28, 1975, 40 F.R. 14565

'AI LANDS ADJACENT TO AND ENLARGING BOUNDARIES OF ND REEF NATIONAL MONUMENT IN VIRGIN ISLANDS

ef ational Monument, ast ast of Saint Croix nd f the United States, lamation No. 3443 of De- L 1441). It now has been na thirty acres of sub- ad to the monument e proper care and als, rocks, undersea coral r objects of scientific and as to this National

sub rged lands are pres- the United States. They Government of the Virgin 19 pursuant to Section 35 Stat. 1210) [subsec. les he President, under Act [subsec. (b) of this rwise.

of June 8, 1906, 34) [tion 431 of Title 16, ide... is authorized to de- ation objects of historic or re situated upon the lands Government of the na nonuments, and may pa... ds of land, the limits shall be confined to the with the proper care and ect be protected. The ser of submerged lands te he Buck Island Reef nstitute a part of the eco- he Buck Island Reef, and nu it boundaries beyond the smallest area compatible with its proper care and management.

Now, Therefore, I, Gerald R. Ford, President of the United States of America, by virtue of the authority vested in me by Section 1(b)(vii) of Public Law 93-435 (88 Stat. 1210) [subsec. (b)(vii) of this section], do hereby proclaim that the lands hereinafter described are excepted from the transfer to the Government of the Virgin Islands under Section 1(a) of Public Law 93-435 [subsec. (a) of this section]; and, by virtue of the authority vested in me by Section 2 of the Act of June 8, 1906, 34 Stat. 225 (16 U.S.C 431) [section 431 of Title 16, Conservation], do hereby proclaim that, subject to valid existing rights, the lands hereinafter described are hereby added to and made a part of the Buck Island Reef National Monument, and Proclamation No. 3443 of December 28, 1961, establishing the Buck Island Reef National Monument is amended accordingly.

Beginning at latitude 17°47'30" N, longitude 64°36'32" W; thence approximately 1000 feet to latitude 17°47'27" N, longitude 64°36'22" W; thence approximately 900 feet to latitude 17°47'18" N, longitude 64°36'22" W; thence approximately 1000 feet to latitude 17°47'15" N, longitude 64°36'22" W; thence approximately 1500 feet to latitude 17°47'30" N, longitude 64°36'32" W, the place of beginning, embracing an area of approximately 30 acres.

In Witness Whereof, I have hereunto set my hand this first day of February, in the year of our Lord nineteen hundred seventy-five, and of the Independence of the United States of America the one hundred and ninety-ninth.

GERALD R. FORD

PROCLAMATION NO. 4347

Feb. 1, 1975, 40 F.R. 5129

AL SUBMERGED LANDS ADJACENT TO ROSE ATOLL NATIONAL IGL N AMERICAN SAMOA AND CERTAIN SUBMERGED LANDS NEEDS OF UNITED STATES IN GUAM AND VIRGIN ISLANDS

u unding the Rose At- ef in American Samoa pr ection of the Atoll's he green sea and hawksbill ed lands in Apra Harbor Ina an Beach and Urano ert submerged lands on Croix, United States Virgin national defense purposes. ds in American Samoa, Stat Virgin Islands will be nm t of those territories, pursuant to Section 1(a) of Stat. 1210) [subsec. (a) of e President, under Section sub (b)(vii) of this sec- vis

Now, Therefore, I, Gerald R. Ford, President of the United States of America, by virtue of authority vested in me by Section 1(b)(vii) of Public Law 93-435 (88 Stat. 1210) [subsec. (b)(vii) of this section], do hereby proclaim that the lands hereinafter described are excepted from the transfer to the Government of American Samoa, the Government of Guam and the Government of the United States Virgin Islands under Section 1(a) of Public Law 93-435 [subsec. (a) of this section].

American Samoa. The submerged lands adjacent to Rose Atoll located 78 miles east-southeast of Tau Island in the Manua Group at latitude 14°32'52" south and longitude 168°08'34" west, which lands shall be under the joint administrative jurisdiction of the Department of Commerce and the Department of the Interior.

Guam. (1) The submerged lands of inner and outer Apra Harbor; and, (2) the submerged lands adjacent to the following uplands: (a) Unsurveyed land, Municipality of Machanao, Guam, as delineated on Commander Naval Forces, Marianas Y & D Drawing Numbered 597-464, lying between the seaward boundaries of Lots Numbered 9992 through 9997 and the mean high tide, containing an undetermined area of land, (b) unsurveyed land, Municipality of Machanao, Guam, as delineated on Commander Naval Forces, Marianas Y & D Drawing Numbered 597-464, lying between the seaward boundary of Lot Numbered 10080 and the line of mean high tide, containing an undetermined amount of land, and (c) Lot Numbered PO 4.1 in the Municipality of Machanao, Guam, as delineated on Y & D Drawing Numbered 597-464, more particularly described as surveyed land bordered on the north by Lot Numbered 10080, Machanao, east by Northwest Air Force Base, south by U.S. Naval Communication Station (Finegayan) and west by the sea containing a computed area of 125.50 acres, more or less. All of the above lands within the territory of Guam shall be under the administrative jurisdiction of the Department of the Navy.

The Virgin Islands. (1) The submerged lands as described in the Code of Federal Regulations revised as of July 1, 1974, cited as 33 CFR 207.817 areas "A" & "B", (2) the submerged lands seaward of the 100 fathom curve off the coast of St. Croix beginning at a point 17°40'30" N and ending at a point 17°46'30" North, as depicted on Coast and Geodetic Survey Chart Numbered 25250, Third Edition; Title: St. Croix, Virgin Islands Underwater Range, and (3) the submerged lands seaward of the Underwater Range Operational Control Center, St. Croix, Virgin Islands presently leased to the Department of the Navy and described as Plot #18 of Estate Sprat Hall subdivision, located in northside Quarter "A", St. Croix containing 4.84 acres of land. All of the above lands within the territory of the Virgin Islands shall be under the administrative jurisdiction of the Department of the Navy.

In Witness Whereof, I have hereunto set my hand this first day of February, in the year of our Lord nineteen hundred seventy-five, and of the Independence of the United States of America the one hundred and ninety-ninth.

GERALD R. FORD

Notes of Decisions

1. Property transferred by the government

Title to those parts of seashore plot that became fastlands through natural accretion became vested in the upland owner and should be quieted in favor of the owner's successor in title; however, with respect to those parts of the plot that were created by artificial activity undertaken pursuant to permits, title remained vested in the owner of the submerged lands, the United States, and should be quieted in favor of the government of the Virgin Islands, because of notice language in the permits, which superseded common-law rules. Alexander Hamilton Life Ins. Co. of America v. Government of Virgin Islands of U.S., C.A.3 (Virgin Islands) 1985, 757 F.2d 534.

Where plot was solely in existence by reason of construction under permit granted by Department of Interior, and permit included agreement by property owner's predecessor in title that no claim of ownership of such property so created could be made, and that any improvements would be property of the United States, plot did not become property of successor in interest, but, rather, was included in transfer by federal government to Virgin Islands and was owned by government of Virgin Islands in trust for people. Alexander Hamilton Life Ins. Co. of America v. Government of Virgin Islands of U.S., D.C. Virgin Islands 1983, 573 F.Supp. 429, affirmed in part, reversed in part 757 F.2d 534.

2. Persons within section

Where marina created by property owner's successor in interest was never naturally closed off to sea, government of Virgin Islands was owner of submerged land under marina waters by reason of transfer from the United States. Alexander Hamilton Life Ins. Co. of America v. Government of Virgin Islands of U.S., D.C. Virgin Islands 1983, 573 F.Supp. 429, affirmed in part, reversed in part 757 F.2d 534.

3. Conveyance to Virgin Islands

Government of Virgin Islands, as counterclaimant in quiet title action, carried its burden of persuasion that marina was once composed of tidal waters that were cut off from the sea by unauthorized artificial fill deposited by littoral owner, with effect that, pursuant to the Territorial Submerged Lands Act, district court properly quieted title to the land underlying the marina in the name of the government. Alexander Hamilton Life Ins. Co. of America v. Government of Virgin Islands of U.S., C.A.3 (Virgin Islands) 1985, 757 F.2d 534.

4. Remand

Government of the Virgin Islands was entitled to ownership only of that portion of plot that was unlawfully raised above sea level by adjoining upland owner's unlawful filling activity between two spits of land created by natural accretion; remand for specific factual findings as to how much of the fastlands were created in that manner was required. Alexander Hamilton Life Ins. Co. of America v. Government of Virgin Islands of U.S., C.A.3 (Virgin Islands) 1985, 757 F.2d 534.

§ 1706. Reserved rights

(a) Establishment of naval defense sea areas and airspace reservations

Nothing in this Act shall affect the right of the President to establish naval defensive sea areas and naval airspace reservations around and over the islands of

Guam, American Samoa, and the Virgin Islands when deemed necessary for national defense.

(b) Navigation; flood control; power production

Nothing in this Act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of the lands transferred by section 1705 of this title, and the navigable waters overlying such lands, for the purposes of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control or the production of power.

(c) Navigational servitude and powers of regulation for purposes of commerce, navigation, national defense, and international affairs

The United States retains all of its navigational servitude and rights in and powers of regulation and control of the lands conveyed by section 1705 of this title, and the navigable waters overlying such lands, for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically conveyed to the government of Guam, the Virgin Islands, or American Samoa, as the case may be, by section 1705 of this title.

(d) Status of lands beyond the three-mile limit

Nothing in this Act shall affect the status of lands beyond the three-mile limit described in section 1705 of this title.

(Pub.L. 93–435, § 2, Oct. 5, 1974, 88 Stat. 1211.)

References in Text. This Act, referred to in subsecs. (a), (b), and (d), is Pub.L. 93–435, Oct. 5, 1974, 88 Stat. 1210, which enacted sections 1705 to 1708 of this title, amended section 1545 of this title, and repealed sections 1701 to 1703 of this title. For complete classification of this Act to the Code, see Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 93–435, see 1974 U.S.Code Cong. and Adm.News, p. 5464.

§ 1707. Payment of rents, royalties, and fees to local government

On and after October 5, 1974, all rents, royalties, or fees from leases, permits, or use rights, issued prior to October 5, 1974, by the United States with respect to the land conveyed by this Act, or by the amendment made by this Act, and rights of action for damages for trespass occupancies of such lands shall accrue and belong to the appropriate local government under whose jurisdiction the land is located.

(Pub.L. 93–435, § 4, Oct. 5, 1974, 88 Stat. 1212.)

References in Text. This Act, referred to in text, is Pub.L. 93–435, Oct. 5, 1974, 88 Stat. 1210, which enacted sections 1705 to 1708 of this title, amended section 1545 of this title, and repealed sections 1701 to 1703 of this title. For complete classification of this Act to the Code, see Tables volume.

The amendment made by this Act, referred to in text, means the amendment made by section 3 of Pub.L. 93–435 to section 1545(b) of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–435, see 1974 U.S.Code Cong. and Adm.News, p. 5464.

§ 1708. Discrimination prohibited in rights of access to, and benefits from, conveyed lands

No person shall be denied access to, or any of the benefits accruing from, the lands conveyed by this Act, or by the amendment made by this Act, on the basis of race, religion, creed, color, sex, national origin, or ancestry: *Provided, however*, That this section shall not be construed in derogation of any of the provisions of the April 17, 1900 cession of Tutuila and Aunuu or the July 16, 1904 cession of the Manu's Islands, as ratified by the Act of February 20, 1929 (45 Stat. 1253) and the Act of May 22, 1929 (46 Stat. 4).

(Pub.L. 93–435, § 6, Oct. 5, 1974, 88 Stat. 1212.)

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...al ...l affect the use, development, improvement, or control by ...ior ...authority of the United States of the lands transferred by ...title, and the navigable waters overlying such lands, for the ...n or flood control or the production of power, or be construed ...qu ...ment of any rights of the United States arising under the ...y ... Congress to regulate or improve navigation, or to provide ...e production of power.

...de—ed powers of regulation for purposes of commerce, navigation, ...an... international affairs

...etu... all of its navigational servitude and rights in and powers ...trol of the lands conveyed by section 1705 of this title, and the ...rlying such lands, for the constitutional purposes of commerce, ...let... ...se, and international affairs, all of which shall be para... ...st... deemed to include, proprietary rights of ownership, or the ...it, ...administration, leasing, use, and development of the lands ...s which are specifically conveyed to the government of Guam, ... A—erican Samoa, as the case may be, by section 1705 of this

...and the three-mile limit

...t shall affect the status of lands beyond the three-mile limit ...(7... of this title.

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Legislative History. For legislative history and purpose of Pub.L. 93-435, see 1974 U.S.Code Cong. and Adm.News, p. 5464.

...f... ...ts, royalties, and fees to local government

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The amendment made by this Act, referred to in text, means the amendment made by section 3 of Pub.L. 93-435 to section 1545(b) of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-435, see 1974 U.S.Code Cong. and Adm.News, p. 5464.

...ction prohibited in rights of access to, and benefits from, ...l ...ds

...ve ...nied access to, or any of the benefits accruing from, the ...his Act, or by the amendment made by this Act, on the basis of ...color, sex, national origin, or ancestry: *Provided, however,* That ...: b... ...onstrued in derogation of any of the provisions of the April ...Tu... ...ila and Aunuu or the July 16, 1904 cession of the Manu'a ...by the Act of February 20, 1929 (45 Stat. 1253) and the Act of ...at. 4).

...ct. 1974, 88 Stat. 1212.)

References in Text. This Act, referred to in text, is Pub.L. 93-435, Oct. 5, 1974, 88 Stat. 1210, which enacted sections 1705 to 1708 of this title, amended section 1545 of this title, and repealed sections 1701 to 1703 of this title. For complete classification of this Act to the Code, see Tables volume.

The amendment made by this Act, referred to in text, means the amendment made by section 3 of Pub.L. 93-435 to section 1545(b) of this title.

Act of February 20, 1929 (45 Stat. 1253), referred to in text, is Act Feb. 20, 1929, c. 281, 45 Stat. 1253, which enacted section 1661 of this title.

Act of May 22, 1929 (46 Stat. 4), referred to in text, is Act May 22, 1929, c. 6, 46 Stat. 4, which amended section 1661 of this title.

Legislative History. For legislative history and purposes of Pub.L. 93-435, see 1974 U.S.Code Cong. and Adm.News, p. 5464.

CHAPTER 16—DELEGATES TO CONGRESS

SUBCHAPTER I—GUAM AND VIRGIN ISLANDS

SUBCHAPTER II—AMERICAN SAMOA

SUBCHAPTER I—GUAM AND VIRGIN ISLANDS

§ 1711. Delegate to House of Representatives from Guam and Virgin Islands

The territory of Guam and the territory of the Virgin Islands each shall be represented in the United States Congress by a nonvoting Delegate to the House of Representatives, elected as hereinafter provided.

(Pub.L. 92-271, § 1, Apr. 10, 1972, 86 Stat. 118.)

Legislative History. For legislative history and purpose of Pub.L. 92-271, see 1972 U.S.Code Cong. and Adm.News, p. 2226.

§ 1712. Election of delegates; majority; runoff election; vacancy; commencement of term

(a) The Delegate shall be elected by the people qualified to vote for the members of the legislature of the territory he is to represent at the general election of 1972, and thereafter at such general election every second year thereafter. The Delegate shall be elected at large, by separate ballot and by a majority of the votes cast for the office of Delegate. If no candidate receives such majority, on the fourteenth day following such election a runoff election shall be held between the candidates receiving the highest and the second highest number of votes cast for the office of Delegate. In case of a permanent vacancy in the office of Delegate, by reason of death, resignation, or permanent disability, the office of Delegate shall remain vacant until a successor shall have been elected and qualified.

(b) The term of the Delegate shall commence on the third day of January following the date of the election.

(Pub.L. 92-271, § 2, Apr. 10, 1972, 86 Stat. 119.)

Legislative History. For legislative history and purpose of Pub.L. 92-271, see 1972 U.S.Code Cong. and Adm.News, p. 2226.

SECTION F.
RELEVANT LEGISLATION FROM OTHER STATES

Rhode Island. "Public Use of Private Lands -- Liability Limitations."
General Laws of Rhode Island, Title 32, Chapter 6, Sec. 1-7.

32-5-2. Closing of trails. — No bridle or hiking trail shall be closed except by the director of environmental management and only after he, after a public hearing of which due and proper notice is given, shall have found as a fact that the trail is not used at all and that there is no prospect for future use.

History of Section.
As enacted by P.L. 1971, ch. 62, § 1.

Compiler's Notes. The 1982 Reenactment substituted "director of environmental management" for "director of natural resources" to conform to §§ 42-17.1-1 and 42-17.1-3.

CHAPTER 6

PUBLIC USE OF PRIVATE LANDS—LIABILITY LIMITATIONS

32-6-1. Purpose. — The purpose of this chapter is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability to persons entering thereon for such purposes.

History of Section.
As enacted by P.L. 1978, ch. 375, § 1.

32-6-2. Definitions. — As used in this chapter:

(a) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(b) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.

(c) "Recreational purposes" includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, horseback riding, bicycling, pleasure driving, nature study, water skiing, water sports, and viewing or enjoying historical, archaeological, scenic or scientific sites.

(d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

(e) "User" means any person using such land for recreational purposes.

History of Section.
As enacted by P.L. 1978, ch. 375, § 1.

32-6-3. Liability of landowner. — Except as specifically recognized by or provided in § 32-6-5, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

(a) Extend any assurance that the premises are safe for any purpose.

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.

(c) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.

History of Section.
As enacted by P.L. 1978, ch. 375, § 1.

Compiler's Notes. The 1982 Reenactment substituted "§ 32-6-5" for "§ 32-6-6."

32-6-4. Application to land leased to state. — Unless otherwise agreed in writing, the provisions of § 32-6-3 and this section shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision or agency thereof for recreational purposes.

History of Section.
As enacted by P.L. 1978, ch. 375, § 1.

32-6-5. Limitation on chapter. — Nothing in this chapter limits in any way any liability which, but for this chapter, otherwise exists:

(a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity after discovering the user's peril.

(b) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the state or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

History of Section.
As enacted by P.L. 1978, ch. 375, § 1.

32-6-6. Construction. — Nothing in this chapter shall be construed to:

(a) Create a duty of care or ground of liability for injury to persons or property.

(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of

this chapter to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.

(c) Create a public or prescriptive right or easement running with the land.

History of Section.
As enacted by P.L. 1978, ch. 375, § 1.

32-6-7. Permission by owner. — An owner desiring to make his property available for recreational purposes under this chapter, must first offer such permission to the public for all or specified recreational purposes by letter, sent by registered or certified mail, addressed to the director of the department of environmental management. Such letter of permission shall contain:

(1) A statement of the owner's interest in the land;

(2) A description of the land subject to such permitted recreational use;

(3) A statement of the specific recreational purposes for which such permission is granted or that such permission extends to all recreational purposes contemplated by this chapter;

(4) The signature of the owner;

(5) Said offer by the owner pursuant to this chapter must be accepted or rejected by the director of the department of environmental management or his designee within sixty (60) days of the sending of the letter from the landowner and during said sixty (60) day period the department shall inspect said property for dangerous and/or perilous condition.

History of Section.
As enacted by P.L. 1978, ch. 375, § 1.
Compiler's Notes. The 1982 Reenactment corrected a misspelling of "perilous" in subdivision (5).

SECTION G.
RELEVANT PLANNING DOCUMENTS

U.S., Dept. of Commerce, NOAA, Office of Coastal Zone Management. The Virgin Islands Coastal Zone Management Program and Final Environmental Impact Statement (1979), pp. 37-39, 121-134.

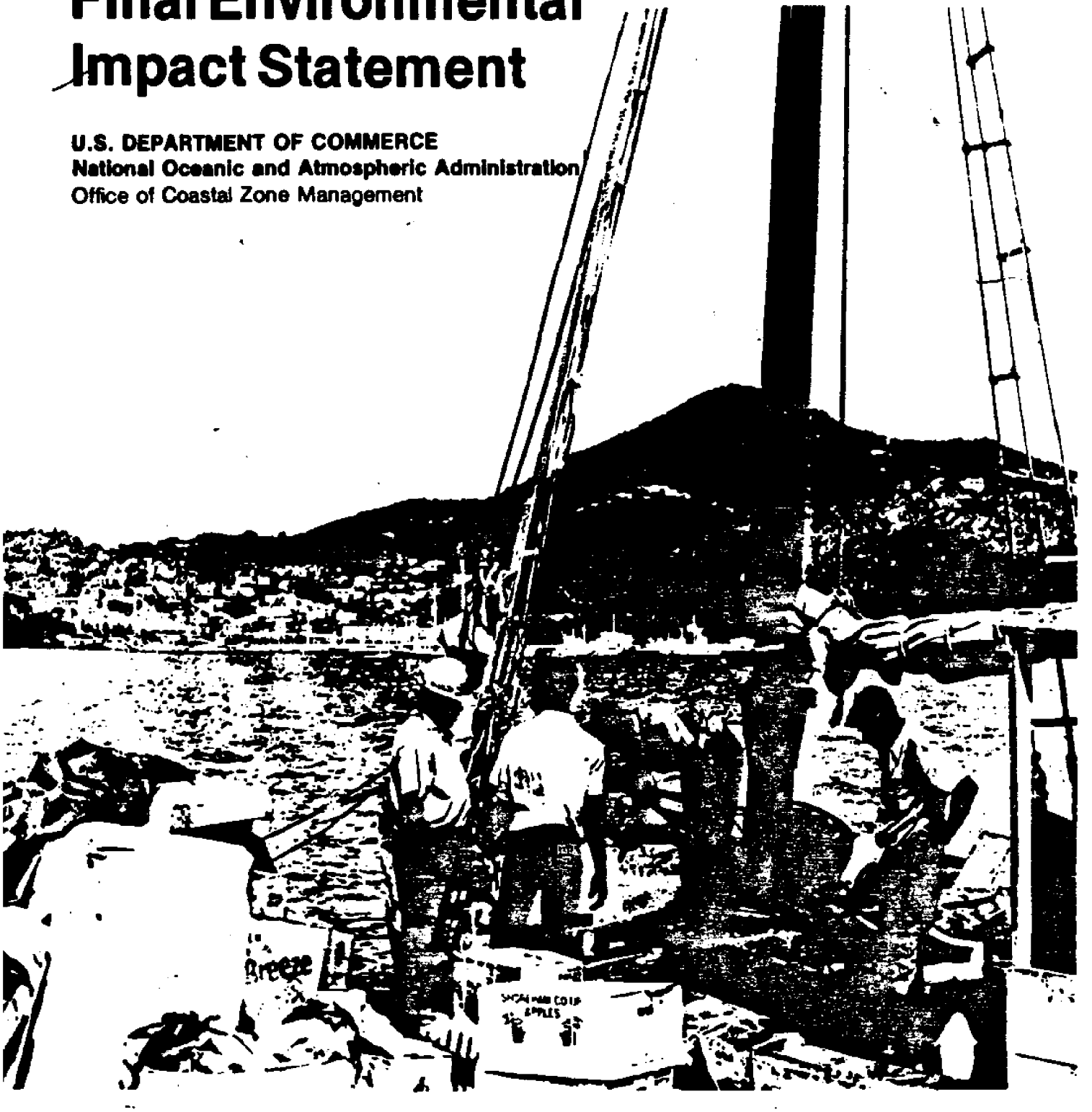
Virgin Islands, Department of Conservation and Cultural Affairs. Handbook for Homebuilders and Developers (1984), pp. 60-63.

_____, Planning Office. Authorities and Organization. Technical Supplement No. 3 (1977), pp. 45-51, 77-82.

_____. Preliminary Virgin Islands Coastal Zone Management Program (1977), pp. 118-137; SECTION pp. 44-47.

The Virgin Islands Coastal Management Program and Final Environmental Impact Statement

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management



Public Attitudes Regarding Shoreline Use

Two surveys were conducted to assess public attitudes toward shoreline use, a newspaper questionnaire and a household survey. The self-administered newspaper questionnaire was carried out through the daily newspapers on St. Thomas and St. Croix. The household survey was conducted by personal interviews on all three islands. Both surveys indicate that the public appears to be divided primarily along educational lines regarding the relative importance of economic, natural and amenity values. Those with higher levels of education tend to emphasize conservation and recreational development; others tend to place greater emphasis on economic development. This division is greatest with respect to future coastal development overall, but is also reflected in differing preferences within specific categories of development. Public opinion regarding coastal development priorities is divided along geographic lines also. Differences among the islands tend to reflect differences in both resources and the feasibility of development options.

TERRITORY-WIDE DEVELOPMENT PRIORITIES

While there is apt to be considerable disagreement among population sub-groups as to the importance of economic development, there is a consensus territory-wide that agriculture and food processing industries should be encouraged.

The extent of support for tourism varies among the islands, but respondents across the territory tend to prefer hotel/guest house and cruiseship related development over other forms of tourism.

The great majority of respondents agree that coastal recreational development is important. There is considerable support throughout the territory for the improvement of beach access and, to a lesser extent, beach facilities. The newspaper survey provided considerable information about existing patterns of recreational activity, including a listing of beaches where access is considered an issue. Poor roads or an exclusively private atmosphere are the most frequently cited obstacles, although the lack of facilities and safety are also concerns.

ISLAND DEVELOPMENT PRIORITIES

ST. CROIX

Recreational development, and beach access in particular, is of greater concern on St. Croix than on the other two islands. Respondents from Christiansted voiced the strongest concern. Compared with St. Thomas and St. John, concern about conservation is greater, but less interest is expressed in commerce and industry. Agriculture and light industry are clearly the most preferred and widely supported development options. However, the precentage of population favoring heavy industry is larger than on St. Thomas or St. John.

Interest in fishing and tourism is weaker in St. Croix than the other two islands. Attitudes toward tourist development are reflective of the territorial preference for hotel/guest houses and cruise ships. Support for condominium/second home development is stronger on St. Croix than on the other islands.

ST. THOMAS

The survey data indicate that over-all development priorities are the least clear on St. Thomas. Industrial and conservation uses are a high priority and while recreational and residential development are not a high priority, they are recognized as being important. Respondents are more united in their support for agriculture, light industry, and, to a lesser extent, tourism as modes of economic development. Regarding tourism, there was agreement with the territory-wide preference for hotel/guest house and cruiseship development. Respondents also support other territorial-wide recreational concerns. Beach access is paramount, but beach facilities, fishing piers and waterfront parks are concerns in certain areas.

ST. JOHN

With respect to overall development priorities, respondents from St. John seem to be in considerable agreement. Residential and commercial development are of greatest concern. Interest in conservation is less widespread. Respondents have very little interest in industrial use, giving strong support to the development of agriculture, tourism and fishing. Interest in fishing and tourism is stronger on St. John than anywhere else in the Virgin Islands.

With respect to tourism development, respondents express a clear support for the territory-wide preference for hotel/guest houses and cruise ships. In addition, there is equally clear and strong support for developing boating. While recreational development is rarely considered to be a first priority, it is widely acknowledged as important. There is considerable support for the development of waterfront parks and fishing piers.

SHORELINE PROTECTION

Seventy percent of the household respondents and ninety-seven percent of all newspaper respondents feel some shore areas need protection from over-development. Less than eight percent of those questioned were opposed to shoreline protection measures. Rationales for protection include both statements of appreciation for an area's amenity qualities and concern about possible negative effects induced by development.

When asked which areas were in need of protection, respondents nominated those areas highly valued in terms of recreation, scenic, and/or natural qualities. Sand beaches, harbors with waterfront parks, and undeveloped mangrove areas are given the highest priority. Strong support is also given to the protection of some undeveloped salt ponds and rocky shores, as well as intensively developed harbor areas. Those surveyed generally feel new construction could best be accommodated in areas which already have some development, particularly harbor or industrial areas and low relief or steep rocky shorelines. To a lesser extent, gravel or rocky beaches and saltponds are also considered suitable for development.

Political/Institutional Setting

POLITICAL AND GOVERNMENTAL HISTORY

The Virgin Islands is an unincorporated territory of the United States which was purchased from Denmark in 1916. As such, the islands are subject to the power of the U. S. Congress which has the authority to enact suitable rules and regulations to govern the territory and to delegate powers to it. A series of Federal Rules and Regulations, Executive Orders of the President, and Congressional Acts have been instrumental in the evolution of the Virgin Islands Government. Those actions most related to land use, and coastal issues are discussed below. A "Chronology of Coastal Related Activities," Table 3.1, is found at the end of this section and illustrates the progression of events towards the development of a coastal zone management program.

CHAPTER EIGHT

Shoreline Access

This chapter represents a portion of the development of the shorefront access and protection element of the Virgin Islands CZMP (pursuant to Section 305(b) (7), CZMA Amendment of 1976, P.L. 94-370). This chapter focuses on the shorefront access aspect. It presents a brief legal analysis of the shoreline access issue, defines shoreline, outlines enforceable policies, identifies critical access areas and identifies funding sources. The development of a process for the protection of shoreline areas of environmental, aesthetic, recreational historical, cultural and ecological value are demonstrated in other sections of the Program.

Goals and policies related to shorefront protection are contained in Chapter Five, Authorities and Organizations of the program and Sections 903 and 906 of the Virgin Islands Coastal Zone Management Act (VICZMA). Designation of areas for shorefront protection and guidelines on use are found in Chapter Six, Areas of Particular Concern. The method for designating shorefront areas as areas of particular concern or as areas for preservation and restoration is also outlined in Chapter Six and Section 909 of the VICZMA.

The protection needs of the offshore islands and cays have been addressed by the Virgin Islands Program. Chapter Seven contains guidelines for their use and protection. Chapter Six designates certain islands as areas of particular concern and outlines further use/protection guidelines. The Section 903 Goals and Findings and Section 906 Policies speak to the islands protection issue.

BACKGROUND OF THE PROBLEM

The importance of the shoreline to the lives of the people of the Virgin Islands is clear. However, in the last quarter century, the patterns of shoreline use in the Territory have been drastically altered. Several beaches and shoreline areas available to many users have disappeared due to dredging, the mining of sand, landfill operations, or commercial developments. Some have been severely altered as a result of the secondary effects of shoreline development. Additionally, access to beaches has been intentionally or unintentionally restricted by shorefront development. Accordingly, shoreline and particularly beach access has developed into an important social, cultural, political, and legal issue in recent years.

Over the past several years, considerable legislative and judicial attention has been devoted to preserving and establishing the public's right to utilize the shorelines of the Virgin Islands. Considerably less attention and energy has been directed to providing public access rights to the shoreline or towards resolving a variety of problems associated with increased public use (congestion, parking, safety, liability, maintenance, etc.)

The principal issue involved with shoreline access is that of the public's right to free and unrestricted utilization of the recreational beaches of the Virgin Islands. The territorial government took action to remedy the latter situation by enacting the "Open Shorelines Act" (No. 3063) in 1971. Essentially, the Act affirms the public's right to use the shorelines of the islands. The shoreline, as defined by the Act, includes "the area along the coastline ... from the seaward line of low tide, running inland a distance of 50 feet; or to the extreme seaward boundary of natural vegetation which spreads continuously inland, or to a natural barrier; whichever is the shortest distance.

While this legislation creates a "zone of public use", and assures seaward access and lateral use and access along the shoreline, it does not assure landward access. An upland property owner is not required to permit beachgoers to cross his land to reach the zone of public use. Because of the terrain, and the pattern of development in the islands, landward access is often a critical factor in beach use.

Even when landward access is available (as is generally true of hotels), development may significantly alter the character of the beach not only in an aesthetic sense, but also in terms of the numbers and types of users it attracts.

The declining availability of prime beaches and other amenity areas places an increased burden on those remaining. Some beaches are so heavily used that congestion and parking are becoming problems, and use conflicts among swimmers, divers, picknickers, fishermen and boatsmen arises. In many areas unsanitary, unsightly, even dangerous, conditions prevail. With the exception of the few public facilities, the Virgin Islands government has not assumed general responsibility for maintenance or liability. Since resident and tourist populations are growing steadily, increasing demand is inevitable and can be expected to exacerbate these shoreline access and use problems.

MEANS OF ACQUIRING ACCESS

The Virgin Islands Government can acquire public accessways and shoreline areas in a variety of ways. These include: (1) acquiring shoreline areas and accessways via the

expenditure of public funds or donations; (2) seeking judicial confirmation of existing access and use rights via implied dedication or customary use; and (3) obtaining accessways to shoreline areas and/or facilities as a condition of granting certain development permits or tax incentives. The principal attributes of each type of action are outlined below:

(1) ACQUISITION THROUGH EXPENDITURE OF PUBLIC FUNDS

One means by which public access can be provided is for the Virgin Islands government to acquire such access by fee simple purchase or gifts. Such direct action, although usually requiring the expenditure of public funds, affords certain advantages that the other means do not. For example, acquisition of access can be effected with less time or delay than would be involved in acquiring access by judicial determination. Similarly, planned acquisitions could implement broader recreation programs or plans and could be planned and coordinated with the ongoing programs of other territorial agencies. Such acquisitions could be made in fee simple ownership or in lesser interests such as easements.

Purchase in fee simple would vest all ownership rights in the Territorial Government. This is the most expensive option and is efficient only where intensive use is anticipated and the ownership of the beach uplands would serve some useful public purpose. Where only moderate use and no further public facility development are intended, there is little point in increasing public holdings of economically unproductive land.

The Virgin Islands government may secure an easement (that is, a particular portion of the ownership rights) on beachfront land without assuming ownership. In this case, an easement would consist of the right of the public to cross the beach uplands, or a specified portion to reach the shoreline. Easements may be acquired by gift, negotiation, condemnation, or required as a condition for a development permit.

Securing beach access easements assures the public of its right to use the shoreline, and allows the economic use of the uplands to remain in the private sector. In particular, it facilitates beach access in areas which are already developed. The concept of purchasing easements has been relatively untried in the Virgin Islands, and it is difficult to estimate cost, in advance.

Easements or fee simple ownership also may be obtained through gifts, but for the most part will require purchase through negotiation or condemnation. The former solutions are preferrable, and the revised Organic Act of 1954, does provide the Legislature with the authority to enact legislation for the condemnation of lands, or interest in such

lands, for public purposes. There would be little doubt that a properly drawn statute that provided for condemnation of access easements to the shoreline would be constitutional. Furthermore, acquisitions pursuant to its authority would be similarly valid.

(2) JUDICIAL DETERMINATION

There are two primary theories supporting the creation of public access rights over private land of non-consenting landowners. One theory is implied dedication. Closely akin to this theory is the doctrine of adverse possession and prescription which, for the purpose of this discussion, will be analyzed in the same manner as implied dedication. The other theory is customary use.

ADVERSE POSSESSION, PRESCRIPTION, IMPLIED DEDICATION

Adverse possession, prescription, and implied dedication are legal doctrines which recognize that under certain circumstances, rights to land may be obtained through use and may be applied to maintain public access to privately held shoreline areas. To secure this right under adverse possession and prescription, the use must be actual, adverse, continuous and uninterrupted on the lands of another, and either be conducted with the knowledge of the owner, or so open, notorious, and visible, that knowledge of the use is implied to the owner.

There are subtle, if not clearly agreed upon, distinctions between adverse possession and prescription. In adverse possession, the claimant must be in "possession" of land, while under prescription the claimant may have the use or privilege without possession. Furthermore, under the doctrine of prescription the owner may enjoy the use in common with the claimant. With adverse possession he may not.[1] The Virgin Islands Code (Title 28, Chapter 1, Section 11) statutorily defines adverse possession. The Code recognizes that exclusive actual, physical, adverse, continuous or notorious possession of real property after fifteen years or more shall be conclusively presumed to give title thereto, except as against the government.

The theory of implied dedication is also a common law doctrine and, as in adverse possession and prescription, the key issue is whether a landowner by his conduct (expressed implied actions) has indicated an intent to dedicate his land for public use, and that the public use

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[1] Downing v Reid (Fla. Supreme Court 1958) 100 Sd. 2nd, 57,64,65

itself is evidence of the public's intention to accept the dedication offered. The landowner's inaction may be evidence of his acquiescence in the public use and thus of his intention to donate land. A recent California Supreme Court decision recognized and affirmed the importance of adverse public use, rather than the owner's donative intent, as being the critical doctrinal element supporting the conclusion of public use.2 The court allowed the dedication of use only after five years of public use.

Whether the theory is implied dedication or prescriptive rights the results are the same: the public, by using the property in a particular way for a particular purpose, in a manner adverse to the true owner for a period of five years, acquires the right to continue to use such property, regardless of the landowner's later intent or actions. In light of recent litigation, implied dedication will necessitate the documentation of access or use over a period of time. While this procedure may require little capital outlay, there may be lengthy legal procedures, thus making this option less satisfactory than others.

CUSTOMARY USE

Customary use (or customary right) is a legal doctrine which arose in medieval England and which until recently had little application in the United States. The doctrine establishes that customary use of land peaceably engaged, consensual or not, for a long period of time without a claim of superior right interrupting such use, establishes public rights in such land without regard to the record title held by private landowners.

Customary right arose in favor of the community and was strictly limited to a small geographic location. Examples of local customary rights included the right to place nets on a certain beach, to use a certain green, or pasture animals in a certain field. Traditionally, only easements of passage or use are obtained through custom. Recent court rulings, however, have expanded this doctrine. The Oregon Supreme Court ruled that the doctrine applied to the entire State coastline, rather than just the particular property under litigation.[3]

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2 Dietz v King and Gion v City of Santa Cruz - The Court upheld that there had been an implied dedication of an easement for recreational purposes because the public had used the land for more than five years with "knowledge of the owner, without asking or receiving permission to do so."

3 State ex rel. Thornton V., V, Hay, 462 P. 2nd 67 (1969).

The doctrine of customary use of beaches was recognized as being applicable in the Virgin Islands in the recent decision of the United States of America and Government of the Virgin Islands v St. Thomas Beach Resorts, Inc., VIDC Number 74-339, affirmed by the Third Circuit of Appeals, Number 75-1242 (3d Cir., 1967), more commonly known as the Bolongo Beach case. The court upheld the constitutionality of the Open Shorelines Act which sought to recognize and maintain this public right of use. However, it did not address the issue of rights to traverse private property for the purpose of gaining access to the shoreline.

Securing beach access through the customary use doctrine would require no capital outlay on the part of the Virgin Islands Government. It would, however, require lengthy court procedures and a documented history of public use over a long period of time. This action has one built-in advantage. Culturally important beaches which have sustained public usage over a period of years are those properties for which a case for customary usage can be most easily documented. However, while it may be feasible to use this doctrine to secure the use of the shoreline, its applicability for assuring access is questionable.

(3) OTHER MEANS OF ACQUIRING ACCESS

Subdivision and zoning regulations offer two possible means of obtaining public accessways to the shoreline. Since private development of uplands along the coastline may often impair public shoreline access, developers can be required to dedicate public easements for beach access where the subdivision would block existing or potential shoreline access. Regulations can be drafted to require applicants to dedicate lands (and improvements) to public use as a pre-condition to receiving development approval.

The rationale for requiring such dedications has been clearly upheld by most courts in the United States. The process and result of development creates demands on existing public facilities, or for new facilities, which should be satisfied in whole, or in part, by the developer. Although these requirements are usually applied in the context of parks, playgrounds, streets or drainage facilities, and sometimes even schools, this rationale can be applied to providing public access to the shoreline as well. Indeed, whether the specific rationale is that the purchaser will benefit from the dedication (or improvements) as well as the general public, or that the development of the land will inevitably produce increased pressures on such resources or preclude public use the result is that reasonable public dedications can be required. This theory is most appropriate in the subdivision context

where the process of subdivision clearly justifies and provides a rationale for such dedications. However, such dedications can also be required as part of a rezoning application, or grant of a conditional use or special exception permit.

Although there are advantages and disadvantages to such requirements, the advantages, particularly in the Virgin Islands, are so significant that dedication requirements could be the critical factor in insuring a successful beach (or shoreline) access program.

This means of acquiring public accessways can be utilized by the Virgin Islands Government through the Industrial Incentive Act (Title 29, Chapter 12) and VICZMA the Coastal Zone Management Act of 1978 (Title 12, Chapter 21). These statutes provide means by which the dedication of accessways may be required as a condition of receiving tax exemption status or a coastal zone permit. The relevant provisions of these Acts are discussed below.

SHORELINE ACCESS POLICIES

Several Virgin Islands laws contain enforceable shorefront access policies. The most notable is the provision in the "Open Shorelines Act" which provides for lateral public access along the coastline from the line of low tide running inland a distance of 50 feet or the line of natural vegetation or natural barrier.

The Industrial Development Law provides a stipulation that as a requirement for tax exemption each business with a coastal site "grant to the Government of the Virgin Islands a perpetual easement upon and across such land to the beach or shoreline to provide for an unrestricted access thereto to the public".

The Virgin Islands Coastal Zone Management Act of 1978 is explicit in its enuciation of enforceable access policy. In the Act the legislature determined that the basic goals (section 903) of the Virgin Islands for its coastal zone are to:

> (6) preserve what has been a tradition and protect what has become a right of the public by insuring that the public, individually and collectively, has and shall continue to have the right to use and enjoy the shorelines and to maximize public access to and along the shorelines consistent with constitutionally protected rights of private property owners;
>
> (7) promote and provide affordable and diverse public recreation opportunities in the coastal zone for all residents of the Virgin Islands through acquisition, development, and restoration of areas consistent with sound resource conservation principles;

In Section 906 the Legislature has declared it a policy;

> (5) To foster, protect, improve, and ensure optimum access to, and recreational opportunities at, the shoreline for all the people, consistent with public rights, constitutionally protected rights of private property owners, and the need to protect natural resources from overuse.

(6) Development shall not interfere with the public's right of access to the sea where acquired through customary use, legislative authorization or dedication, including without limitation the use of beaches to the landward extent of the shoreline.

The Coastal Act not only provides for the dedication of "perpendicular", or "landward" access, but outlines a procedure for assessing whether an access easement is appropriate. Before requiring the dedication, the Commission or Commissioner is directed to consider the five criteria found in policy (7) below.

(7) The Commission may require that public access from the nearest public roadway to the shoreline be dedicated in land subdivisions or in new development projects requiring a major coastal zone permit. Factors to be considered in requiring such dedication of public access include(i) whether it is consistent with public safety or protection of fragile coastal zone resources; (ii) whether adequate public access exists nearby; (iii) whether existing or proposed uses or development would be adversely affected; (iv) the type of shoreline and its appropriate potential recreational, educational, and scientific uses; and (v) the likelihood of trespass on private property resulting from such access and the availability of reasonable means for avoiding such treapass. Dedicated accessways shall not to required to be opened to public use until a public agency or private association agrees to accept responsibility for providing off-street parking areas and for maintenance and liability of the accessway, shoreline, and beach areas.

The Act further clarifies the conditions placed upon access by stating:

Nothing in this subsection shall be construed as restricting existing public access nor shall it excuse the performance of duties and responsibilities of public agencies as provided by law to acquire or provide public access to the shoreline. This provision shall not be construed as requiring free use of private facilities on land adjoining any beach or shoreline but only as requiring access to the beach or shoreline to the general public as a condition precedent to the grant of a coastal zone permit.

BEACH INVENTORY

In addition to policies which insure shorefront access where appropriate, public sentiment has directed the management program to focus on securing access and providing adequate services and/or facilities in those areas having the greatest need. Consequently, attention should be directed toward ensuring that some of the higher quality undeveloped beaches be acquired and developed as public beaches. If conveniently located and properly developed with attractive facilities, such public beaches can attract and accommodate a larger share of resident demand. Establishing good public beaches should ease some of the pressure on other areas, would make it easier for the government to provide for maintenance, resolve conflicts among user groups, and insure that some undeveloped beaches are preserved for the future.

Not all of these objectives can be attained by enforcing the "zone of public use" provision of the Open Shorelines Act or the easement dedications under the Industrial Incentive and Coastal Zone Management Acts. The construction of public facilities and preservation of undeveloped beaches will require not only the acquisition of accessways, but sufficient upland property. In an effort to identify particular shorefront areas where either access should be acquired, or beach and upland property purchased, the Coastal Management Program looked to a study by the Department of Conservation and Cultural Affairs.

In the spring of 1976, the Office of Planning and Development of the Department of Conservation and Cultural Affairs, in conjunction with the CZMP study of the Virgin Island Planning Office, undertook a complete field inventory of Virgin Islands beaches. An evaluation of this type was mandated by the Open Shorelines Act. The study was undertaken to help determine the area where landward access and major public beaches should be established.

The beach inventory procedures were developed to assess the particular conditions in the Virgin Islands. Objective physical, recreational, and land use data for each beach as well as an evaluation of the scenic and environmental quality of the site was recorded. The beach inventory form is included in Appendix F, and copy of the inventory for Cruz Bay, St. John, is included as an example of the manner in which information was collected.

BEACH EVALUATION AND RECOMMENDED CRITICAL AREAS

The criteria which were used to identify and evaluate the critical shoreline areas are discussed below.

CRITERIA FOR EVALUATION BEACHES

1. Accessibility - Beaches were evaluated on the basis of proximity to population concentrations, and by the presence of an access road usable by the general public. This factor will prove of importance since the territorial government may become responsible for beach maintenance.

2. Beach Quality - Evaluation of beach quality was based on factors such as the area of the beach, the beach material, the type and appearance of shoreline vegetation, the attractiveness of the user's view from the beach, and the beach's scenic quality. These factors are complementary rather than cumulative. Therefore, a very attractive small beach may receive a heavier weighting than a large uninteresting one.

3. Potential for Multiple Activities - In addition to swimming, the potential of each beach for other water-related activities, such as snorkeling, offshore diving, or pleasure boating was noted. The inventory of land-based activities included picnicking, tidal pool walking, and the possible educational opportunities offered by historic ruin or a salt pond. Beaches which offer users a choice of activities were rated more highly than "swimming only" beaches.

4. Environmental Damage Potential - At several of the beaches inventoried, the existing land use was natural open space. Very often these areas constitute extremely fragile offshore and onshore environments. This is expecially true of several beaches, in northeast St. Croix which cannot sustain heavy use without environmental damage.

5. The Multiple Effects - Priority attention was given to the sites which are potentially the basis of a complex recreational facility, or where a single easement will provide access to an extensive shoreline.

6. Access - Priority attention has also been given to those areas which ranked high in criteria threatened 1-5 and where access is threatened. These areas included beaches and shoreline areas where access is presently restricted, or where impending or proposed development may restrict free access in the near future.

RECOMMENDED AREAS FOR GOVERNMENT ACTION

In developing recommendations regarding the areas where government action is needed to improve public access and use, consideration was given to several other factors besides beach inventory information. Supply and demand was a major consideration. The Coastal Zone Management staff was concerned about the availability of public beaches near highly populated areas. A second consideration was the need to alleviate user conflicts and problems at heavily used beaches. Third consideration was availability of adequate land adjacent to desirable beaches for parking and beach facilities. A final factor given consideration was public attitude.

Throughout the course of program development of a number of informal and formal public meetings and hearings were held to obtain public sentiment regarding shorefront access. Many individuals and groups expressed concern, commented, and made suggestions concerning both the issue of access in general and as it relates to specific shorefront areas. This input was taken into account and considered in the development of the following list of critical areas where it is recommended that access and use need to be improved. Only St. Thomas and St. Croix are dealt with, since the most significant beaches on St. John are already within the National Park. Further study of these areas will be undertaken in order to develop a specific program for action.

St. Croix

1. West Christiansted - Christiansted is heavily populated and has several large public housing projects and hotels, but is lacking in terms of good beaches. The best beach runs westward from Antille Airboats to St. Croix by the Sea. Most of the shoreline here, however, is extensively developed with condominum complexes and therefore beach access and facilities are largely restricted to condominum residents. A good public beach is needed in this area for Christiansted residents.

2. Cane Bay/Davis Bay - Cane Bay and Davis Bay are two beautiful undeveloped beaches on the northwest shore. They currently serve many tourists, as well as residents

from all over the the island. Cane Bay experiences the heavier use partly because an access fee is charged at Davis Bay and partly because it is so popular with scuba divers, fishermen and picknickers. On the weekends user and vehicular congestion is extreme and potentially dangerous. Both beaches have maintenance and sanitation problems. Davis Bay should be acquired and developed as public beach. The government should assist with maintenance at Cane Bay Beach and should acquire some land for parking and restrooms.

3. Machenil Bay/Ha'penny Bay

This area is centrally located on the south shore and is very popular with local residents. Its attractiveness is due to its accessibility, as well as the quality of the beach and swimming conditions - features which are rare on the south shore. The accessibility of this area, however, poses maintenance, sanitation and liability problems for adjacent property owners. One of these two beaches should be acquired and developed as a public beach.

4. Chenay Bay/Coakley Bay

Reasonably convenient to Christiansted on the northeast shore, both of these areas have good potential for multiple activities. Both Bays have attractive beaches with good picknicking, swimming and snorkeling. Some both are adjacent to salt ponds of considerable ecological value, and there is also potential for educational and scientific activities. Green Cay, which was recently set aside as a wildlife preserve, is a quarter mile off Chenay Bay. Coakley Bay has some ruins of historic interest as well. Chenay Bay, or alternatively Coakley Bay, should be acquired and developed as a public beach.

St. Thomas

1. Smith Bay

Smith Bay is located on the east end of St. Thomas near the growing population centers of Tutu and Estate Smith Bay. The crescent shaped white sand beach approximately 1/4 mile long, is in a protected bay. The beach uplands are relatively undeveloped at this time although there are tentative plans proposed for a golf course. In addition to good swimming and snorkeling, the beach is a popular picknicking area which is used by organized groups with the owner's permission. The vegatative cover is not dense but there are many large shade trees on the beach and fine views of St. John and offshore cays.

Because of the high use potential of Smith Bay and the growing development pressure on the surrounding area, high priority should be given to public acquisition of Smith Bay Beach and the upland area.

2. Mueller Bay

Mueller Bay is located on the east end of St. Thomas in Redhook Bay. Mueller Bay contains two beach areas; Vessup Beach and Mueller Beach, both of which can provide important recreation opportunities for East End residents. Access to Mueller Bay is currently limited since it is necessary to cross private property to reach the beaches. The east end of St. Thomas is experiencing one of the fastest growth rates in the Virgin Islands. The demand for housing, new tourist facilities, public services, and recreational areas in this area is intense. Therefore, the government should take steps to secure the Mueller Bay Beaches, including sufficient area for public facilities before this option is foreclosed by private development.

3. Magens Bay Beach - South End

The extreme southern end of the Beach is not publicly owned. Since this portion of the bay is presently zoned W-1, there exists the possibility of some future development threatening the naturaland unique character of Magens Bay Beach. Accordingly, the southern end of Magens Bay Beach should be acquired.

4. Botany Bay

Estate Botany Bay comprises the westernmost end of St. Thomas. Included within the estate are: two beaches, (one in Sandy Bay and one in Botany Bay,) a long expanse of highly scenic but steep shoreline, and an important historic site. At the present time, landward access is limited since the surrounding upland is in private ownership.

Negotiations between the owner of Estate Botany Bay and the Virgin Islands Government are in progress. Possibly certain portions of the estate will be donated to the Territorial Park System. In addition, public access rights to Sandy Beach Bay may be granted.

Since Estate Botany Bay and particularly the shoreline and beach areas are of outstanding recreational, educational and scenic value, every effort should be made to ensure that this area can be enjoyed by island residents.

5. Frenchman's Bay

Frenchman's Bay is situated on the southeast coast of St. Thomas; directly north of Green Cay. The beach at Frenchman's Bay is the only undeveloped one remainin between Morningstar and Benners Bay.

Presently, access to Frenchman's Bay is by boat only. The potential recreationa and educational value of this shoreline area is high and there is adequate leve land behind the beach for parking and other necessary facilities. The adjacent salt pond and nearby offshore island, Green Cay add to the educational and aesthetic value of the site.

The government should make an effort to acquire Frenchman's Bay Beach. Access from the main road to the beach and sufficient space for parking must also be secured.

6. Neltjeberg Beach

Neltjeberg Beach is located on the northwest coast of St. Thomas due south of Inner Brass Island and directly west of Ruy Point. The Virgin Islands Government already owns 17.42 acres of Estate Neltjeberg including and access-way from the main road to the beach. The area already owned by the government is inadequate to provide for public use. The beach should be purchased, as well as some of the surrounding upland area for parking. Neltjeberg Beach and the surrounding area should be incorporated into the Territorial Park System.

NEW GOVERNMENT RESPONSIBILITIES

Regardless of whether improved public access and use are secured through purchases, gifts, judicial determinations, or the conditioning of development permits and incentives, the Government of the Virgin Islands will probably have to assume some liability and responsibility for support services. Public safety and maintenance are two important issues.

The government's liability in case of injury or death on newly opened beaches is unclear. The best, but most expensive, protection would be the provision of lifeguards. At a minimum a warning will have to be posted on each beach. The presence of lifeguards, however, might also help to deter crime and littering problems. The introduction of the mounted patrol has been highly effective in St. Thomas in protecting public safety on the beaches. The ex-

pansion of this program may be appropriate.

In studying the maintenance problem, interviews were conducted with the maintenance supervisors at Magens Bay, the National Park Service on St. John, and the College of the Virgin Islands (Brewer's Bay Beach).

The maintenance effort will depend on the intensity of beach use, the desired level of maintenance, and consists primarily of the removal and disposal of trash. The Magens Bay Authority requires a full-time crew of nine to maintain that heavily used beach at a moderate level. In season, a three man National Park Service crew works full time on the maintenance of Trunk Bay, St. John, and receives some additional assistance from the lifeguards. Finally, the College of the Virgin Islands employs one maintenance worker full time at Brewer's Beach, which receives consistent, frequent use. These examples overstate the possible obligation of the Territorial Government since each of those crews performs activities, e.g., cutting back brush, other than cleanup. It is unlikely that existing Department of Conservation crews will "stretch" to cover additional beach cleanup, especially as properties are acquired for the Territorial Park System. The formation and equipping of additional crews will require a budget of $100,000 - $150,000 per year.

IDENTIFICATION OF FUNDING PROGRAMS THAT CAN HELP MEET MANAGEMENT NEEDS

Depending on the proposed scope of such an acquisition program, the major difficulty to implementing such an effort would be financing the costs of such land acquisition and management. Financial assistance in securing shoreline access is forthcoming from Section 315(2) of the CZMA Amendments, which authorizes grants for up to 50 percent of the cost of acquiring lands to provide access to public beaches and other public coastal areas of value.

The Land and Water Conservation Fund, Bureau of Recreation, U.S. Department of the Interior; Community Development Block Grants, U.S. Department of Housing and Urban Renewal; and the Virgin Islands General Fund, among others can also provide sources of funding for land acqusition and management.

In addition, administrative funds (Section 306 of the national Coastal Zone Management Act) can be used to fund beach maintanance. The funds can be utilized for the purchase of

beach cleaning equipment and to hire the necessary staff and personnel.

FURTHER RECOMMENDATIONS CONCERNING PUBLIC SHORELINE ACCESS AND USE

Based upon investigations conducted by the CZM staff and the Department of Conservation and Cultural Affairs, as well as public discussion, and input, the following actions and guidelines are recommended:

1. Continued public use and enjoyment of the shoreline should be guaranteed.

   a. To accommodate increasing demand for recreational opportunities and ease the resulting strain on accessible recreational resources, several new public beaches should be aquired on both St. Croix and St. Thomas.

   b. In other areas where it is appropriate and feasible, public access rights, under implied dedication and customary use doctrines, should be established.

   c. The subdivision and zoning laws should be amended to allow the requirement of a dedicated accessway in instances where this is appropriate and desirable.

   d. Vigorously enforce the provisions of the Industrial Incentive and Coastal Zone Management Acts which require the dedication of accessways for public use.

   e. The beach inventory conducted by Conservation and Cultural Affairs should be refined and expanded to assess other shoreline areas where public access and use should be improved.

   f. Development should be discouraged from encroaching on public use areas not currently protected by the Open Shoreline and Coastal Zone Management Acts. Such areas include bluffs, other areas landward of the statutory definition of shoreline.

   g. In urbanized areas, in addition to maintaining access to the shoreline, maximum feasible opportunity for lateral pedestrian access along the urbanized waterfront should be included on any development of alteration of the shoreline.

2. The territorial government should absorb the necessary costs of shorelines maintenance and safety resulting from public access and use. Additionallly, a program should be developed to educate the public regarding the constraints and responsibilities involved in using public accessways and shoreline areas.

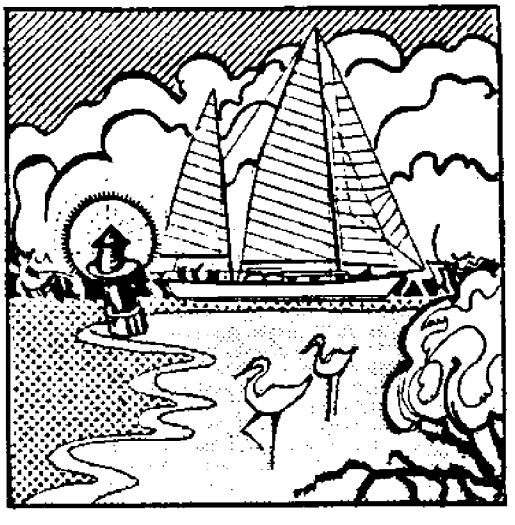
3. The emerging Territorial Park System should be utilized to coordinate the acquisition and management of public accessways and shoreline areas.

VIRGIN ISLANDS COASTAL ZONE MANAGEMENT PROGRAM

JUAN LUIS
Governor

ANGEL LUIS LE BRON
Commissioner

HANDBOOK FOR HOMEBUILDERS & DEVELOPERS



DEPARTMENT OF CONSERVATION AND CULTURAL AFFAIRS

1.3 PUBLIC ACCESS TO THE SHORELINE

Background

The Open Shorelines Act (No. 3063) of 1971 clarified the public's right to use a strip of land immediately adjacent to the water (50 feet inland from the low tide line or the seaward boundary of natural vegetation or a natural barrier, whichever is less). This Act guarantees the public's right to lateral passage along the shoreline, but not the right to passage over private property. Public access to many beaches is in effect limited to boat owners who can approach by sea. Elsewhere, as in many resort areas, access roads are open to the public, but the rather exclusive character of the resort facilities and adjacent shoreline tend to pose a psychological barrier to local residents.

Visual access to the shoreline is also of concern. In some instances, good vistapoints are on private property and not available to the public. In others, coastal views which were accessible from public roads have been blocked by buildings, walls, fences, landscaping, signs, poles, electrical lines, etc.

Guidelines

* Maintain and where possible enhance the public's physical and visual access to coastal areas.

* To provide physical access to the sea, public accessways between the shoreline and the nearest public road may be required of sub-divisions and any project requiring a major CZM permit.

    - In determining access requirements- the CZM Commission will consider whether public use of the shoreline in question is traditional, as well as the following: 1) whether adequate public access exists nearby; 2) the type of shoreline and its potential recreational, educational, and scientific uses; 3) whether it is consistent with public safety and protection of fragile coastal zone resources; 4) whether existing or proposed uses of development would be adversely affected; and 5) the likelihood of trespass on private property and the availability of reasonable means of avoiding such trespass.

    - In some instances, these considerations may limit rather than preclude public access (e.g. limiting the numbers of people or types of activities that may be engaged in, providing pedestrian rather than automobile access, etc.).

* The nature of public access requirements will depend on the site and the nature of the project under consideration. Provision of substantial public access improvements may in some instances be a reasonable means of compensating for any adverse impacts which cannot be mitigated or for projects which commit the shoreline to low-priority uses.

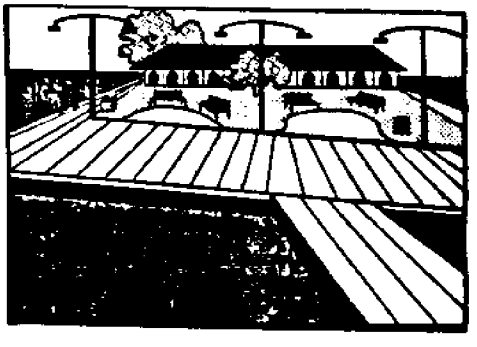
- In general, projects in urban areas or near heavily populated residential areas should provide substantial access.

- Commercial uses which cater to the public (e.g., hotels, restaurants, etc.) should provide substantial access because these types of projects serve large numbers of people, and will benefit the most from well-designed and improved public shoreline areas. Vegetated setbacks are generally required for structures and facilities not open to the public.

- Industrial and port uses should provide access to vistapoints which offer safe views of the coastal zone and the water-dependent activities. Where possible, projects should provide public access for fishing or boating.

- Residential projects and sub-divisions should provide substantial access and generally include a vegetated setback to seperate public and private areas.

- Uses adjacent to salt ponds, mangroves, or other wildlife habitat should provide public access in a manner that protects the area's natural values. Vertical access to vistapoints is generally more appropriate than continuous lateral access along the shore. Provide controls to protect wildlife, vegetation or other resources. Interpretive displays are encouraged.



* All public access should be designed, on the basis of the following principles:

Public access should <u>feel public</u>.

- Design public access to that the user is not intimidated by adjacent structures or uses.

- Where public and private uses may conflict, clearly delineate the public use areas via signs, plantings, elevational changes, or fences.

- Identify public access sites with a standard "Public Shore" sign both on site and at the nearest public road.

Make public access area usable

- Provide public access improvements such as parking, paved walkways, benches, signs, trash containers, and drinking fountains where the costs of the improvements are reasonably related to the private benefits of the shoreline use.

- Take advantage of intrinsic recreational capabilities, such as fishing, viewing, and picnicking that are consistent with the site and surrounding area.

- Where appropriate, provide educational opportunities for the user through identification of unique natural features and historical landmarks.

Make public access areas attractive

* Provisions for public access should be made in one or four forms:

  1) deed restrictions; 2) grant of a fee interest in the accessway; 3) grant of an easement; or 4) offers of such dedicated grants. The proposed use of the accessway and project type should be considered in determining the most appropriate legal mechanism.

* New development should not be permitted to block views of the shoreline and coastal waters from key public viewing points (i.e., public roads, parks, beaches, and other public areas).

  - Locate buildings, structures, parking lots, and landscaping of new shoreline projects so as not to obstruct or detract from coastal views. These should be placed on the inland side of the road wherever possible.

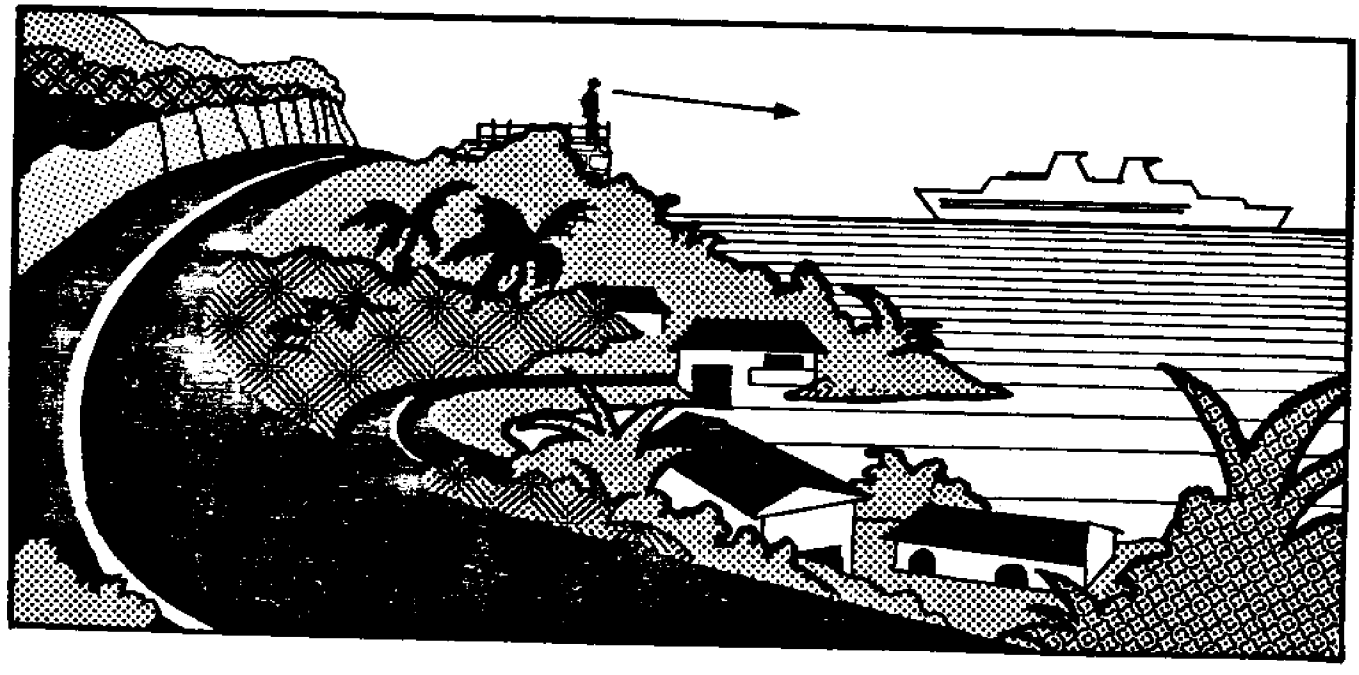
- Tall structures which would block coastal views are generally prohibited.

- Control landscaping to preserve views, especially in side yards and along public roads.

- Walls, fences, hedges, signs, and other ancillary structures should be low except in areas where views have already been blocked by buildings.

* For all major development projects attractive coastal views from adjacent public roads shall be protected. Enhancement of visual access via clearing of obscuring vegetation, construction of roadside overlooks, and undergrounding of utilities, are encouraged. Roadside parking and signs are generally prohibited.

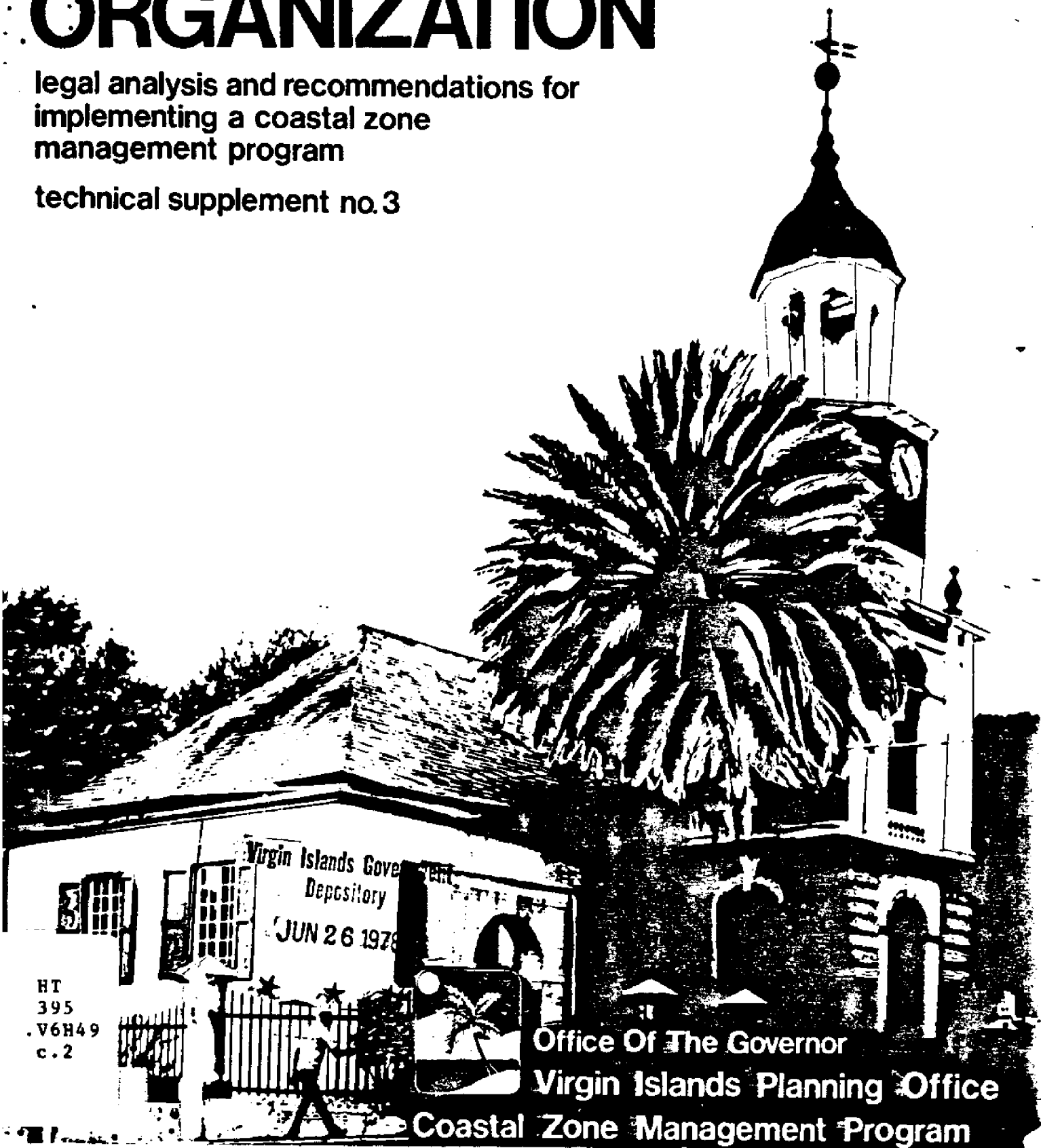
* Where no beach area exists and a project is proposed along a coastal ridge or bluff, public access a coastal vistapoint rather than the shoreline itself may be required.



AUTHORITIES AND ORGANIZATION

legal analysis and recommendations for implementing a coastal zone management program

technical supplement no. 3



Office Of The Governor
Virgin Islands Planning Office
Coastal Zone Management Program

THE OPEN SHORELINES ACT

1. Introduction

Act Number 3063, the Open Shorelines Act, affirms the public's right to use and enjoy the shorelines of the Virgin Islands.[1] It was held constitutional in the recent landmark case of **United States of America and Government of the Virgin Islands v. St. Thomas Beach Resorts, Inc,**[2] and constitutes one of the most important legislative enactments in the Virgin Islands relevant to the Coastal Program; indeed, this Act, together with a few other equally important local laws, forms an essential basis for implementing the Program. Passed in 1971, prior to the conveyance to the Virgin Islands, of the federal interests in the territorial submerged lands, it established the legal basis for public use of the shorelines. Note that it only involves public use (and perhaps ownership) of the shoreline; it does not involve public access to the shoreline from the landward side.

2. Analysis

This Act seeks to achieve three basic purposes. First, to establish in statute the public right to use and enjoy the shorelines, as defined, of the Virgin Islands free from obstruction, physical or otherwise, by private persons. Second, to regulate construction in the shoreline area. Third, to regulate the extraction of sand, rocks, minerals, marine growth or other natural products, except fish and wildlife, from the shoreline areas.

With respect to the first objective, the Act contains a legislative declaration of the importance of public access and use of the shorelines to the public welfare, a statement recognizing the free, uninterrupted, unobstructed and frequent public use of the shorelines over the past two centuries, and a statement of legislative intent concerning the need to protect the public rights previously acquired to use and enjoy the shorelines.[3] This declaration of policy and intent draws on a history of public use which started while the Virgin Islands were under Danish rule and has continued after the cession to the United States. After stating the long maintained history of public use, the Act declares and affirms that "the public, individually and collectively, has and shall continue to have the right to use and enjoy the shorelines of the Virgin Islands..."[4] This public right is based on the customary use of the shoreline which, as noted above, was traced back in the **Bolongo Beach** case to the time when the Virgin Islands were governed by Denmark. It should also be noted that under the reasoning of the **Bolongo Beach** case, the public right of use may have accrued pirior to cession of the Virgin Islands in 1917 and that such rights and interests passed to the United States under the Treaty. This raises the interesting question that such rights may still be vested in the United States, although control and management of such rights have been transferred to the Virgin Islands.[4a]

The doctrine of customary use was recognized in Danish law[5] and has also been recognized in Oregon.[6] Although the **Bolongo Beach** decision is limited to the facts at issue therein, the court noted that under Danish law, which remains applicable even after the change of sovereignty the burden of proving that the public use of a beach did not constitute a customary use is on the landowner. Because this decision is applicable in all similar situations in the Virgin Islands, it has a broad, far-reaching impact on the public use of all shoreline areas in the Virgin Islands. This decision upholding the constitutionality of the Act provides clear precedent for resolving future challenges to the Act and provides a strong mandate for implementing policies of public use of the shoreline to be established in the Coastal Plan. The nature of this public right is akin to an easement, which means that attempts to curtail, limit or extinguish this right will be unsuccessful because American law is clear that no rights of adverse possession, prescriptive easement or of a similar nature can be obtained against the public. As described elsewhere in this Report,[7] this declaration of customary use avoided the difficult legal problem of establishing that the public littoral estate extended inland beyond the line of mean high tide. Whether or not the Virgin Islands government possessed the legal right and authority to establish this inland boundary remains an open, but basically moot question today.

Shorelines are defined as "the area along the coastlines of the Virgin Islands from the seaward line of low tide, running inland a distance of fifty (50) feet; or to the extreme seaward boundary of natural vegetation which spreads continuously inland; or to a natural barrier; whichever is the shortest distance. Whenever the shore is extended into the sea by filling or dredging, the boundary of the shorelines shall remain at the line of vegetation as previously established."[8] This definition is very important for several reasons.

First, it provides a landward zone of public use which is more extensive than previously existed under settled American law, which is limited to the area up to the mean high tide line, although this law is not necessarily applicable or limiting in the Virgin Islands' context.

Second, it recognizes that the extent of this public use zone varies according to the topographical and

natural features in particular areas. By providing a flexible definition of the landward boundary of the shoreline, the Act recognizes the varied nature of the coastline in the Virgin Islands, and avoids establishing an arbitrary boundary.

Third, it provides a measureable definition which can be easily mapped, interpreted and enforced. This is particularly important to the administration of a public shoreline program.

Fourth, it attempts to diminish the significance of the effect of any filling and dredging of the coastline on the extent of the public use zone. This effort is not completely satisfactory for several reasons. It does not deal with the effect on the public use zone of natural or artificial accretions. In the event of such developments, absent any other public policy or law, the shoreline area could be divided into different zones of public and non-public use: this would pose difficult administrative and enforcement problems. And, it establishes a standard of reference (i.e., the line of vegetation as previously established) which may not be universally applicable throughout the shoreline area.

Fifth, by including lands above the low water mark as within the shoreline area, the Act not only affected lands which until the Territorial Submerged Lands Act of 1974[9] were owned by the Federal government, but also continues referencing the low water mark as a possible (but doubtful) boundary of the upland owners' estate. This continued reference may be explained by the fact that the decision in **Red Hook Marina Corp. v Antilles Yachting Corp.**10) which firmly established that private conveyances to shoreline property extended to the line of mean high tide was not rendered until October 1971.

However, the Open Shorelines Act also establishes a rule of conveyance in the coastal zone that is somewhat inconsistant with the rules established in the **Red Hook Marine** case and that may prove troublesome in the future. Section 3 of the Act provides that "when the shoreline is the boundary [of a description of a parcel], the rights of the grantor to the landward boundary of the shoreline as 'shoreline' is defined [in the Act], are included in the conveyance." But inasmuch as the landward extent of the public right in the shoreline includes fifty (50) feet or the extreme seaward boundary of natural vegetation or a natural barrier, whichever is the shortest distance, a question is raised as to whether such area may be included in the conveyance of private property. As described elsewhere in this Report,[11] the Danish law on this subject provided that private property interests extended to the line of mean high tide. The traditional rule in American law on this question is similar. Thus, the Act seems to have affected a change in these rules, which prior to 1971 had been applicable in the Virgin Islands. If this provision of the Act is intended to affect that result, a serious question of constitutionality is raised. To recognize a public easement based on customary use or prescriptive rights is quite different from establishing a conveyance rule which acts to limit the extent of private ownership.

In addition to recognizing a public right to use the shoreline, the Act prohibits the creation, erection, maintenance or construction of barriers, restraints or obstructions upon, across or within the shoreline which would interfere with the right of the public individually and collectively to use and enjoy the shoreline.[12] The prohibition on future obstructions is clear, but the effect of this provision on existing barriers is not clear. Although a fine and misdemeanor penalty are provided for violations, no specific authority is granted for the abatement or removal of such existing barriers. This is particularly significant in light of the legislative declaration that "there has been uncontrolled and uncoordinated development of...[the shoreline], together with attempts, sometimes successful, to curtail the use of these areas by the public."[13] If such actions were or are now in violation of public rights, then the continuation of such obstructions would seem to be prohibited by the clear intent and purpose of the Act. But the authority for removal of such barriers is not clearly provided. Moreover, no conditions, guidelines or criteria are provided to assist public agency efforts in this regard. And, the right of private individuals acting in a private attorney general capacity to effect such results when a public agency fails to take such actions is similarly unclear. Whether this omission is of any significance depends on the number and magnitude of such existing barriers. It should be noted that this prohibition extends to actions of persons, firms, corporations, associations or other legal entities. None of these listings on their face include public agencies. In the absence of other statutory provisions which would require public agencies to observe this prohibition, this omission should be corrected.

The Act also contains certain other provisions which are relevant to the public use and enjoyment of the shoreline. First, the Act specifies that the Department of Conservation and Cultural Affairs shall maintain and supervise the shorelines which are not in the express control of the United States Department of the Interior.[14] The Act, of course, was passed prior to the 1974 Territorial Submerged Lands Act[15] which conveyed all federal interests in and to territorial submerged lands to the Virgin Islands, with certain express exceptions. But, the 1974 Territorial Submerged Lands Act did not significantly alter the existing management control exercised by the territorial government over such lands pursuant to the 1936 and 1954 Organic Acts. This provision, therefore, merely reflects existing law at the time with respect to the submerged lands portion of the shoreline,

with the exception that under the 1963 Territorial Submerged Lands Act and the Organic Acts, other Federal departments and agencies in addition to the Department of Interior held interests in territorial submerged and territorial lands. Therefore, it is questionnable whether the Virgin Islands government could or can maintain and supervise the shorelines which are or were reserved by the various Federal agencies pursuant to Federal law, unless such agencies expressly permit such action. Finally, the concept of maintenance is not specified. Does it mean administer or restore and enhance or some combination of these actions?

Second, the Department, subject to the approval of the Legislature and Governor, is to promulgate rules and regulations governing the use of all shorelines under its supervision. And the Department is to classify the shorelines to define the use of all areas on the shoreline. In establishing such classifications, the Department is to take into consideration the existence of facilities and the need to establish protected zones for the protection of marine resources and wildlife.[16] The implications of these provisions on the planning and regulatory process in the coastal zone are exceedingly broad. The Department is in effect authorized to establish, subject to the approval of the Governor and Legislature a zoning system for the shoreline and to enact standards and criteria for the use of such land. Not only is this authority exceedingly broad and without specific legislative direction or statements of purpose or policy, but the classifications system envisioned may be duplicative of existing zoning classifications established under the Zoning Law, but this distinction is not clear. Indeed, the concept of classification and the uses of such a classification system are not clearly articulated in the Act. The enforcement of such a system is similarly unclear. Although penalties are provided, presumably the provisions of Section 404 of the Act relating to permits for shoreline construction are to serve as the primary means of enforcing the classifications established. Construction is not defined in the Act, but presumably would be broadly interpreted to include all significant development activities and erection of structures. However, land use controls are distinguishable from construction controls in that the former is broader than the latter. The reason for distinguishing between land use construction controls and development controls is not clear. The latter is a more typical and effective way to resolve this dilemma.

Third, the Act does not clearly and consistently establish what the nature of the public rights are to the shoreline. In some provisions, the presumption is clear that the public right is akin to an easement, with the underlying ownership remaining with the private owner. In other provisions, the term used bespeak of complete public ownership. On balance, the Act is most properly construed, as was done in the **Bolongo Beach** case, to mean that the public, as a result of long and customary use, had acquired a right to the use of the shoreline. This right, it should be clearly understood, is different than a declaration establishing the public littoral zone to extend inland, for example, to the line of nearest vegetation.

Fourth, the Act limits the authority of the Virgin Islands government to sell, lease or otherwise dispose of any portion of the shoreline, except for leases of concession stands approved under the Act.[17] Not only does this Section modify in effect the rights of the Territorial government, but also reinforces the provisions in the 1974 Territorial Submerged Lands Act wherein the Federal Submerged lands were transferred to the Virgin Islands in trust for its people. However, this Section also raises the inference, as described in the preceding paragraph above, that the Act should be read to provide that all shorelines are owned by the Territorial government. If such were not the case, then the provision "no portion of a 'shoreline'...shall be sold, leased or otherwise disposed of by the Government of the Virgin Islands" is very misleading, because it is not limited to publicly owned shorelines.

Fifth, the Act establishes the Virgin Islands Open Beaches Committee to assist the Department of Conservation and Cultural Affairs in carrying out its responsibilities under the Act.[18] The Committee is composed of the Commissioner of Conservation and Cultural Affairs, the Commissioner of Public Works, the Attorney General, the Director of the Planning Board, the Director of the Caribbean Research Institute, two private citizens appointed by the Governor, and two members of the Legislature appointed by the President of the Legislature. These nine members are to be assisted by the Attorney General's office, the Departments of Public Works and Health and the Office of Planning; the Committee may also employ outside consultants. In addition to assisting the Department of Conservation and Cultural Affairs, as noted, the Committee is to undertake a study of the shorelines that is to include a number of matters: (1) The Committee is to conduct a survey of the shorelines to establish the landward boundaries of the shoreline in accordance with the Act; these boundaries, when adopted by the Legislature, shall become the legal basis for determining the boundary between public and private property as well as the territorial sea boundary of the Virgin Islands. This provision creates a tangled web of implications of critical relevance to the development and implementation of a Coastal Zone Management Program. First, the Act, as noted above, defines shorelines; however, the implication is created that until the Legislature adopts this survey, this definition is not operative. Although the **Bolongo Beach** case held that the Act is constitutional and that the specific shoreline area in dispute in that case was subject to public use, no

determination was reached that this survey was a precondition to establishing such public use. This distinction is relevant because it suggests that the Act goes beyond merely establishing or recognizing a right of public use as held in the Bolongo Beach case and in fact seeks to define the landward extent of the public littoral estate. There is, therefore, the possibility that the Act should be interpreted to provide not only a right of public use of the shoreline, but also the public ownership of the shoreline. If this latter interpretation is correct, then the full thrust and effect of the Act has not been fully felt yet and will not be until the Legislature adopts the aforesaid survey. Whether this provision and indeed the Act itself provides clear authority for establishing the landward extent of the public littoral estate is open to debate, as is the constitutionality of these provisions. If the Legislature intended to establish such a rule, it should have done so in a clearer and more definite manner.

Second, the provision that the survey, when adopted, is to "become the legal basis for determining the boundary between public and private property as well as the territorial sea boundary of the Virgin Islands,"19) seemingly suggests that there is a legal distinction between the public and private boundary and the territorial sea boundary. If the latter extends landward to the lines or points provided in the Act, then it, by its own force, will define the boundary between public and private ownership and the prior reference to the survey becoming the legal basis for determining said boundary is seemingly unnecessary and ambiguous. The survey in such instance will establish the boundaries and need not be the legal basis for such determination, unless the Legislature can modify, interpret or alter the results of the the survey or redefine the bases on which it was prepared.

(2) The Committee is to determine the existing status of title, ownership and control, in accordance with the provisions of this Act, of all land within and adjoining the shorelines. This provision appears inconsistent with the purposes of preparing a survey in that the determination of the existing status of title, etc., is irrelevant if the survey is to establish the demarcation between public and private ownership. Knowledge of the owners or of their claims or bases of their claims to the shoreline is irrelevant to this determination as set forth in the Act. No arbitration, negotiation or adjudication is provided in the Act; nor is any notice even required to be provided to affected landowners. In fact, no provision is even contained in the Act that relates to the ownership, right of use, right of removal or compensation for private improvements which had been constructed on lands determined to be public;

(3) Also required is Committee preparation of surveys, maps and charts showing routes of public access, if any, to all sandy beaches within the shorelines of the Virgin Islands, including recommendations as to proposed public access easements to those beaches where there is presently no public access. This requirement is consistent with either or both interpretations of the effect of the Act with respect to public ownership or use of the shoreline, in that in neither instance do public rights extend to providing or establishing access to the shoreline. This provision not only requires the mapping of existing public access routes, but requires the identification of proposed routes. Although no policy or planning guidelines are established to guide or aid this work, there is no restriction imposed on how this work is to be undertaken; consequently, such recommendations could be made on the basis of planning work undertaken in connection with other coastal related planning studies,20)

(4) Finally, the Act calls Committee classification of all beaches and other segments of the ocean for wildlife, marine and estuarine protection. It is not clear what classification or recommended uses mean; the purpose of this undertaking is equally unclear inasmuch as the Act essentially delegates this same authority and change to the Department of Conservation and Cultural Affairs. Moreover, there is no requirement that the Legislature, Governor or Department utilize or consider the classifications and recommendations of the Committee proposes, even assuming that some administrative direction or guidance could be gleaned from the Act to aid the Committee in its efforts.

The Committee is to submit its findings and recommendations to the Legislature and Governor, but it is not clear what the Legislature is required to do or what the legal effects would be of the failure of the Legislature to adopt the survey of shorelines as described above, or the provisions in the report. Indeed, the legal effects of the Committee's actions and recommendations are also unclear, particularly as they relate to shorelines previously built upon or improved lands created by filling or other alteration means prior to the Act, and the validity of the conveyances of such rights and interests after the effective date of the Act.

With respect to the second objective (regulation of construction), the Act establishes a series of conditions that presumably must all be met before the Commissioner of Conservation and Cultural Affairs may issue a permit for shoreline construction.21) Construction is not defined in the Act, but presumably would include any structure, activity or improvement that would be inconsistent with the provisions of Section 403 (obstruction of shoreline). This permit system assumes that the shoreline is in public ownership because the Commisioner cannot approve a permit unless the permittee pays "just compensation under the terms and conditions of the permit."22)

Apart from the fact that just compensation is a constitutional standard, and has no specific or general relevance to calculating permit or concession fees, no guidance or criteria is provided to establish a basis for the payment or a rationale for its amount. The substantive conditions on granting permits all are broad, particularly conditions number four ("similar construction is impossible on alternative sites above the line of vegetation of the shoreline") and three ("that such construction will not jeopardize the public need for healthful, safe, and esthetic surroundings and environment; scenic beauty; recreational uses or potential uses; natural resources of the shoreline; or the present and prospective need for conservation and development of the shoreline and its resources."). Although no permit procedure is established, and therefore no application requirements are set forth, the Commissioner presumably has the authority to enact such regulations to administer the requirements of this Section. Although the Commissioner is not required to make findings, a grant of a permit could be subject to legal challenge on the grounds that the Commissioner had an affirmative duty to make such findings under the Section as a condition precedent to granting such permit. Given the breadth of the conditions, particularly those specifically set out above, it would seem difficult to make such findings in the absence of a comprehensive plan (such as a Coastal Zone Management Program) to guide such determinations. It is unclear whether all persons, public agencies and private entities, are required to apply for and receive such permits before commencing such construction. The Commissioner has the implicit authority to establish terms and conditions of such permits; but the nature of the permit itself is ambiguous: It is a contract right or is it a property right? A strict reading of the Act would construe the permit as a contract right.

With respect to the third objective (regulation of extraction of natural resources), the Act establishes a separate permit requirement,[23] for the "taking" of specified resources (excluding fish and wildlife) from the shorelines. The term taking is not defined. The implication is that taking refers to removal from the shoreline, rather than alteration to, distubance of or relocation of the resource within the shoreline. The Commissioner of Conservation and Cultural Affairs administers the permit program; presumably he has the authority to adopt rules and regulations to administer the permit program and establish the terms and conditions of such permits. The two conditions (no reasonable alternative source and no material alteration of the physical characteristics of the area) which must be met before a permit can be issued are quite broad, and if coupled with an affirmative duty to making findings, could be difficult to satisfy without adequate planning data to guide the decision-making. Finally, there is a provision which authorizes the Commissioner to grant a permit for the taking of certain resources if a surplus of that certain resource exists in that proposed location, notwithstanding the other provisions of this Section 405. The requirements of the other Sections would still apply in such instances. It is unclear whether a fee based on the value of the resources extracted could be changed for such permits. The Commissioner has the implied power to require or impose conditions on the grant of the permit, including the right to require restoration activities.

Finally, it should be noted that the only penalties provided are misdemeanor violations or civil fines of $500.[24] Each day of violation is a separate offense. Whether these penalties are sufficient to deter violations is not clear. Because no independent enforcement powers are given to the Attorney General and no cease and desist orders are provided, no effective remedies exist to deter or discourage violations before they occur or provide an expeditious solution to the violation.

3. Conclusion

The Act leaves many unanswered questions concerning the nature and extent of public rights in the shorelines and the status of existing private claims or interests in the shorelines and improvements therein. The extent and nature of these rights of public use of the shorelines are of considerable significance in developing and implementing a Coastal Zone Management Program; in fact, determination of this issue, together with the delineation of areas of public ownership of the lands and waters in the coastal zone and the regulatory controls imposed on the use of such lands and waters, form the essential bases for implementing a Plan or Program. However, the Act is critically vague as to whether the public rights in the shoreline area are primarily use-related or are based on ownership rights. The nature of the legal, administrative and planning rights and policies in the context of a Coastal Zone Management Porgram are considerably different depending on the underlying basis and rationale of control. The permit programs established by the Act are also vague in important areas, and do not provide sufficiently detailed criteria or guidance to the administrator. The authority of the Commissioner to adopt implementing rules and regulations, while not provided in the Act, probably exists in the general statutory delegation of authority to the Commissioner or could be supported as an implied exercise of administrative authority inherent in the Commissioner's office. Nonetheless, clarification of this authority should be provided. Finally, and of considerable significance, is the fact that the Act does not establish or declare legis-

lative policy or intent concerning the public rights of access to the shoreline over traditional (and presumably documented) routes. Without the ability to get to the shoreline from the landward side (as opposed to the seaward side), the rights of public use and enjoyment of the shorelines are significantly affected, and in "a practical" sense, limited.

FOOTNOTES
Open Shorelines Act

1. Act Number 3063, Ninth Legislature of the Virgin Islnds, Regular Session, passed May 14, 1971, adding Chapter 13 to Title 12 of the Virgin Islands Code, commencing with Section 401 et seq, as similarly numbered Sections in prior legislation enacted, renumbered to Chapter 10 of Title 12 to avoid conflict; hereinafter referred to as the Act.

2. Civil Number 74-339 (U.S. District Court of the Virgin Islands. Division of St. Thomas and St. John), affirmed by the United States Court of Appeals, 3rd Circuit, December, 1975; hereinafter referred to as the Bolongo Beach case.

3. Section 401 of the Act.

4. Section 402(a) of the Act.

5. Bolongo Beach case, supra note 2.

6. **State ex rel Thornton v Hays,** 462 P. 2d E71 (1969, Oregon Supreme Court).

7. Paper on Ownership and Control of Submerged Lands.

8. Section 402 (b) of the Act.

9. P.C. 93-435 (October 5, 1974).

10. 9 V.I. 236, F Supp (1971), affirmed 478 F. 2d 1273 (1973).

11. See Paper on Colonial Law.

12. Section 403 of the Act.

13. Section 401 of the Act.

14. Section 406(a) of the Act.

15. P.C. 93-435 (October 5, 1974).

16. Ibid

17. Section 2 of the Act.

18. Section 4 of the Act.

19. Ibid

20. A report has now been prepared by the Department of Conservation and Cultural Affairs entitled An **Implementation Plan for Open Shorelines in the U.S. Virgin Islands** (April 1976) which identifies target beaches "at which it would be desirable for the Territorial Government to take action to secure public landward access.

21. Section 404 of the Act.

22. Ibid., Section 404 (5)

23. Section 405 of the Act.

24. Section 407 of the Act.

GENERAL LEGAL CONSIDERATIONS RELEVANT TO IMPLEMENTING A COASTAL ZONE MANAGEMENT PLAN IN THE VIRGIN ISLANDS

(Shoreline Access, Vested Rights; Equitable Estoppel; Acquitision)

1. Introduction

In addition to the various statutory authorities and administrative regulations based thereon relevant to developing an implementation program for a Coastal Zone Management Program which have been previously discussed and analyzed, this Section describes several general legal principles or standards which are similarly relevant to implementing a Coastal Zone Management Program. Four such general principles are described here: first, the various means by which public access to the shoreline can be provided or required as part of the land use development approval process; second, the circumstances under which a landowner, developer or other person using land may achieve a legal right to maintain, perfect or complete a land use activitiy or development which had been previously started; third, the circumstances under which public officials are restrained from taking action against landowners, developers or other persons using land inconsistent with statements or actions previously made; fourth, the specific legal problem associated with undertaking a coordinated regulatory and land acquisition program as a means of implementing a land use plan. To be certain, the second and third principles are primarily relevant either when new regulatory requirements or programs are enacted which seek to restrict or limit land use development activity or when changes in administrative or political policies create uncertainty in the land use development and approval process. The first principle is relevant only to the extent that providing such access is considered an important public policy objective. The fourth principle is relevant only to the extent that land acquisitions are undertaken on or for lands which are concurrently being extensively regulated.

2. Public Access to the Shoreline

The importance of the shoreline to the lives of the people of the Virgin Islands is manifest. For whatever reason, considerable legislative and judicial attention and energy has been devoted in the past several years in the Virgin Islands to preserving (or establishing) the public rights in and to these shorelines. Not as much attention and energy has been devoted to preserving (or providing) public rights to get to the shoreline. Even though analyses contained elsewhere in this Report conclude that substantial areas of the Virgin Islands' coastline are in public ownership or are subject to public rights of use, it appears as though these same statues, decisions or principles which support or give rise to those conclusions, or which have been the bases for extending the public claims to shoreline areas have limited or no applicability to supporting claims for public access to these public areas. Indeed, the statute most directly relevant to this issue makes no mention of providing access to the shorelines,[1] thereby reinforcing the view that the rationales and analyses supporting the statutory requirements cannot be extended to include or support such public access. Without prejudging the ultimate outcome of any lawsuit challenging or seeking to force such public access, it is significant to note that the existing statutory scheme in the Virgin Islands is singularly silent on the question of such public access. This may be due in part to the belief or conclusion that adequate public access exists to the shoreline; or to the belief that such public access is not necessary or desirable; or to the belief that such public access can only be provided by acquiring the necessary lands or interests in land. Without concluding that existing public access is insufficient for whatever reason, the following analysis suggest possible lines of argument or means of providing such increased public access. There are three principal means of providing such increased public access. First, by judicial determination or confirmation that public rights of access exist or have been created. Second, by exercise of police power regulation in the land development approval process. Third, by public acquisition in fee or of lesser interests in lands for such purposes.

a. Judicial Determination or Confirmation

The fact that the shorelines are in public ownership or are subject to public rights of use although underscoring the need for public access to such areas, is in and of itself not supportive of a determination that particular land routes of public access exist to enjoy such areas. There certainly exists a lateral right of access along the shoreline to permit the movement of the public.[2] However, geographical or physical barriers as well as logistical impediments serve to diminish the importance or general usefulness of such lateral access. And there is no

doubt that the public has a right to utilize the water as a means of gaining access to such shoreline areas. These two means of public access exist whether the shoreline is owned by the public, is subject to public rights of use or is owned by private persons who purchased such shoreline areas from the Federal or Territorial government. In the latter case, the grant of such lands does not change the public character or public rights previously existing therein. But the more important means of access, and the one to which attention is devoted here, is through the upland property to the shoreline.

The provision of such access does not depend on determination of the public right or interest established or determined. On the contrary, and as apparently has been the custom in some areas of the Virgin Islands, landowners have permitted residents of the Virgin Islands access to the shoreline for a variety of purposes. Although such voluntary provisions may be withdrawn or revoked by the landowner without sanction or penalty, unless public rights had accrued therein, such a privately initiated and maintained system does offer certain advantages: In any event, one of the most important policy considerations to be evaluated in determining what, if any, course of legislative, administrative or judicial action should be undertaken to expand the amount of such public access is the effect such action will have on the existing censensual rights of access.[3)]

There are two primary theories supporting creation of public access rights over private land of non-consenting landowners. One theory is implied dedication. Closely akin to this theory are the doctrines of adverse possession and prescription which, for the purpose of this discussion, will be analyzed in the same manner as implied dedications. The other theory is customary use. The doctrine of customary use of beaches was recognized as being applicable in the Virgin Islands in the recent decision of **United States of America and Government of the Virgin Islands v. St. Thomas Beach Resorts, Inc.**, VIDC Number 74-339, affirmed by the Third Circuit of Appeals, Number 75-1242 (3d Cir., 1976), more commonly known as the **Bolongo Beach** case. Customary use (or customary right) is a legal doctrine which arose in medieval England, which until recently had little application in the United States,[4)] and which in effect establishes that customary use of land, peaceably engaged, consensual or not, for a long period of time without a claim of superior right interrupting such use, establishes public rights in such land without regard to the record title held by private landowners. Of relevance here is that in the **Bolongo Beach** case, the Court held that under Danish law, applicable in the Virgin Islands prior to the cession to the United States in 1917, a right existed in the public to use the shoreline area for certain temporary recreational purposes. Relying heavily on this fact and on the record of such long use, the Court upheld the constitutionality of the Open Shorelines Act which sought to recognize and maintain this public right of use. Based on the present understanding of Danish colonial law, there apparently did not exist a comparable right to get to the shoreline. Although the Court in **Bolongo Beach** did not establish the time frame for determining customary rights; it presumably extended back prior to 1917. Accordingly, in the absence of any analysis suggesting rights under Danish law to traverse private property for purpose of gaining access to the shoreline, it is unlikely that a court would uphold a claim of public access based on customary use.

The theory of implied dedication, also a common law doctrine, is that a landowner by his conduct (express or implied actions) has indicated an intent to dedicate his land for public use; and that public use itself is evidence of the public's intention to accept the dedication offered. The landowners inaction may be evidence of his acquiescence in the public use and thus of his intention to donate the land. Once the offer has been accepted, the offer cannot be revoked; the public cannot lose its right by failure to use them or by adverse possession or prescription. As can be seen, the landowners offer of dedication is more than a convenient legal fiction; the landowner most often has no intention at all of donating his land for public use. Indeed, the same can be (and has been) reached by construing the public use for the same period as adverse to the landower's interest and by concluding that a prescriptive easement was required. The California Supreme Court decision in **Dietz v. King and Gion v City of Santa Cruz**,[5)] recognized and affirmed the importance of the adverse public use, rather than the owners' donative intent, as being the critical doctrinal element supporting the conclusion of public use.[6)] Whether the theory be one of implied dedication or prescriptive rights, the result is the same: the public by using the property in a particular way or for a particular purpose in a manner adverse to the true owner for a period of years, acquires the right to continue to use such property, regardless of the landowers' later intent or actions. There are a variety of subsidiary or secondary legal problems that emerge from the application of such a doctrine. For example, what is the effect of a discontinued public use? Although the public right presumably vests at the end of the allotted time period necessary to accrue the public right, would such a right be found if a considerable period had elapsed between the time the right vested and the time the action was brought seeking judicial recognition of such right? For another example, are there time limits within which such an action must be brought? Or for another example, how continuous must the public use be to warrant a declaration of public rights in the use of such lands? Or finally, what acts of the landowner are sufficient to indicate his permission for the public use, thereby negating the implication or claim of adverse public use? What kinds of actions must

he undertake, for how long must he undertake them and how serious of actions must he undertake, for how long must he undertake them and how serious or beneficial must his efforts be in relation to the actual public use being made of the property?[7]

Apart from the factual problems in establishing the necessary evidence to support such a claim, the application of an implied dedication (or prescriptiive rights) theory to establish public rights of access to the shorelines of the Virgin Islands raises certain practical as well as policy problems. First, is such a policy equitable in light of the cultural values and mores that have developed in the Virgin Islands, or are such theories more applicable in those areas of the United States where the public need for and pressure on recreational resources justifies the application of such theories?[8] Second, what disruptions or reductions will occur or can be anticipated to occur in existing patterns of quasi-permissive use of such access in the event such theories are successfully applied in the Virgin Islands? Third, what is the likelihood that sufficient instances of such use could be documented sufficiently to support prompt legal actions declaring such public rights prior to landowner reaction? Fourth, are population and development pressures and demands for such public access sufficient to justify general application of such theories? For these and other reasons, it would appear that the application of such theories in the Virgin Islands has limited potential for securing or establishing substantial amounts of public beach (or shoreline) access.

b. Acquisition Through Exercises of the Police Power

The most common forms of police power regulation in the land use area, and the ones most appropriate and relevant to the inquiry here, are subdivision and zoning regulations. These regulatons can be drafted to require applicants as a condition of receiving development approval to dedicate lands (and improvements) to public use. However, neither the existing subdivision nor zoning laws of the Virgin Islands contain appropriate provisions to support or require dedications of such access as a condition of development approval. The rationale for requiring such dedications has been clearly upheld by most courts in the United States;[9] the process and result of development creates demands on existing public facilities or new facilities which should be satisfied in whole or in part by the developer. Although these requirements are usually applied in the context of parks, playgrounds, streets or drainage facilities and sometimes even schools, no reason exists why this rationale cannot be applied to providing public access to the shoreline as well. Indeed, whether the specific rationale is that purchases from such developers will benefit from the dedication (or improvements) as well as the general public, or that development of the land will inevitably produce increased pressures on such resources or preclude public use thereof, the result is that reasonable public dedications can be required. The theory has been more fully developed in the subdivision context where the process of subdivision seems more clearly to justify or provide a rationale for such dedications than in the land use zoning regulation area; nonetheless, such dedications can also be required as part of a rezoning application or grant of a conditional use or special exception permit. In either instance, so long as the dedication required is determined pursuant to a rationally conceived method, and appears reasonable in light of the conditions, development proposed and uses intended, most courts will uphold such requirements. These requirements, although they would have to be amended into the existing Virgin Islands laws, do offer an equitable means by which a comprehensive program of beach access can be developed and implemented, albeit incrementally, as part of the land use approval process. Although there are advantages and disadvantages to such requirements, on balance the advantages, particularly in the Virgin Islands' context, are so significant that dedication requirements could be the critical factor in insuring a successful beach (or shoreline) access program.

c. Acquisition Through Expenditure of Public Funds

Yet another means by which public access can be provided to the shoreline is for the Virgin Islands government to acquire such access by purchase or gift. Such direct action, although perhaps requiring the expenditure of public funds, affords certain advantages that the other means discussed above do not. For example, acquisition of such access can be determined according to needs based on a variety of planning factors and criteria and can be effected with less time delay than would be involved in acquiring such access by judicial determination as described above. Similarly, planned acquisitions could implement broader recreation programs or plans and could be planned and coordinated with the ongoing programs of other territorial agencies. Such acquisitions could be made in fee ownership or in less estates or interests in lands such as easements or licenses, although the administrative and enforcement problems associated with licenses or permits would outweigh their advantages. Such acquisitions could be made by voluntary agreement with the landowner, or could be coordin-

ated. The Legislature pursuant to the Revised Organic Act of 1954,[10] has the authority to enact legislation providing for the condemnation of lands or interests in such lands for public purposes.[11] There would be little doubt that a properly drawn statute that provided for condemnation of access easements to the shoreline would be constitutional and that acquisitions pursuant to its authority, if undertaken in accordance with that statute and other applicable procedural requirements, would be similarly valid. Although such acquisitions would have to be undertaken in accordance with the relevant provisions of the territorial Real Property Acquisition Act,[12] unless such Act were amended, such requirements present no major difficulties in implementing a public access program. Depending on the proposed scope of such an acquisition program, the major difficulty to implementing such an effort would be financing the costs of such land acquisition and management.

d. Conclusion

Acquisition of public access to the shoreline presents one of the major issues in implementing a Coastal Zone Management Program in the Virgin Islands. Although several theoretical means of acquisition exist, the most practical methods of undertaking such acquisitions in light of the legal, political and administrative issues involved are public acquisition through purchase or by exercise of the police power. Depending on the actual needs and locations of such needs, the combination of such efforts would likely produce satisfactory results. Acquisition as a result of a process of judicial determination should be limited in scope to prevent the likely curtailment by landowners of existing voluntary routes of access which would result from a vigorous effort at establishing such routes through litigation, unless the factual evidence in particular instances clearly support hte determination that the public by continuous use over a period of years had treated such access routes as a public use. The selection of legal methods to use to acquire or establish such public access depends initially on a review and determination of the needs, location of and purposes for such access.

3. Vested Rights

The doctrine of vested rights as applied in the land use development and control area provides that landowners after having secured all necessary public approvals, incurred substantial financial expenditures and began physical development work on a project are legally entitled to complete that project regardless of intervening or supervening changes in laws or regulations governing such activities. The precise definitions or standards determining the quantum of work to be performed or money to be expended vary between jurisdictions. Articulation and expansion of this concept has occurred as a result of the passage of complex, multi-jurisdictional land use controls which have imposed additional regulations. Landowners or developers who began under one system of controls and who find themselves subject to additional controls, have looked increasingly to the courts for relief and determination of their rights to proceed with their proposed developments. As in most complex legal areas, the case law in this area reflects many variants of the main doctrinal holdings: factual distinctions are very important in affecting the outcome.

Whether a doctrine of vested rights emerges in the Virgin Islands as a result of a Coastal Zone Management Program depends in large measure on the nature of the land use regulations that are adopted to implement such a plan. If existing controls are not significantly altered, or if a new permit process is not imposed, then few court cases are likely to be brought on a theory of vested rights. In such instances, assuming some rezonings (or reclassifications) of land or modifications of development standards, the legal issues involved would focus on whether the landowner (developer) had actually received all local permits and approvals and had commenced work prior to the new laws (or standards) becoming effective. Even though it is unlikely that a multi-jurisdictional land use review and approval process will be established to implement a Virgin Islands Coastal Zone Management Plan, any change in existing rules or standards will likely cause some conflicts between landowners (developers) and persons (or public agencies) seeking to restrict or limit development plans of such landowners. In anticipation of this problem, the (enabling) legislation implementing the Plan should provide clearly a standard for determining which development projects are affected by any change in rules and at what time these new rules become effective. Although the doctrine of vested rights involves consideration of constitutional issues, legislative statements and determinations are very important and influential in shaping the scope of judicial inquiry and aiding the courts in determining legislative intent regarding the application of the new rules. These legislative standards should be provided even though the frequency of vested rights claims in the Virgin Islands probably will be low due to the bifurcated (zoning and development permits) regulatory process currently in effect in the shoreline area.

4. Equitable Estoppel

A related doctrine to vested rights is equitable estoppel. This is a claim asserted by landowners (or developers) who assert that they relied on statements or actions of public officials in pursuing a particular course of action and that it would be unfair to permit such officials from later seeking to restrict such action on the basis of a change in policy or interpretation. This theory does not extend to include official action based on changes in law or regulation. This doctrine as its title implies developed from the equity powers of courts to restrain unfair or inequitable actions of public officials. Most courts which recognize this doctrine or which have applied it in deciding cases, have adopted a narrow interpretation of the requirements to allege such claims. Most often, it is successfully applied when physical improvements have been constructed on the basis of such prior public interpretations or decisions and the alternative to applying it results in a harsh, unfair decision. This doctrine which has not yet apparently been adopted in the Virgin Islands, would most probably be sought to be applied in instances where prior government conduct (or inaction) had approved or acquiesced in private actions. For example, persons who had constructed improvements on public lands either on the basis they did not realize the lands were public or with the acquiescence of public officials would be likely to assert equitable estoppel against efforts to enforce new rules or regulations. It will be difficult to either identify these instances in advance or establish legislative policy to guide public action in all instances where such claims may be asserted. Once a plan is adopted and implementation strategies are being developed and applied, individual reviews of factual claims will be the most appropriate method of determining public policy on these matters and fashioning appropriate decisions and enforcement actions.

5. Acquisition of Real Property and the Effect of Regulation on Land Acquisition Costs

As noted above, a land acquisition program designed to provide additional public access to the shoreline affords certain benefits and advantages in implementing a coastal recreation or management plan that other means of securing such access do not provide. These include coordination with the planning program, utilization of public resources in accordance with needs, allocation of financial resources in accordance with public needs and political acceptance. A question is raised, however, by implementation of an acquisition program in the context of a land use regulation program; even though such functions would be conducted by separate agencies or departments, the effects of regulation on land acquisition both have important consequences for the implementation of a land acquisition program for the coastal zone. One problem may occur by the designation of future acquisition sites in planning documents. Although it is unlikely that this problem would arise if areas were only designated for acquisition for access purposes, nonetheless the threat of inverse condemnation actions might cause a certain reluctance either to designate such lands as potential acquisition sites or to regulate such areas in a restrictive manner. It is clear, however, that the mere designation of such sites does not give rise to such inverse condemnation liability. Another problem is posed when regulations are imposed and the land is acquired at a reasonably proximate later date. Regulations imposed solely to depress land values in anticipation of future acquisition, particularly by condemnation, are invalid. However, regulations imposed, which are otherwise valid, will not rendered invalid simply by virtue of a possibility of future condemnation. Because it is unlikely that specific regulations will be enacted primarily for or applied to lands to be acquired, particularly for access purposes, any relationship between regulation and land acquisition costs will likely be merely incidental and not a cause for concern. The fact that lands may be later acquired does not render regulation of such lands invalid. This will be particularly true if there exists independent bases for the regulations imposed. Therefore, the relationship between regulation and acquisition will not pose significant legal problems if such programs are based on independent criteria and justification; it is only when regulations are imposed in a manifest attempt to reduce acquisiton costs that the threat of invalidity or illegality becomes significant.

FOOTNOTES

GENERAL LEGAL CONSIDERATIONS RELEVANT TO IMPLEMENTING A COASTAL ZONE MANAGEMENT PLAN IN THE VIRGIN ISLANDS

1. The Open Shorelines Act.

2. This right is both contained in and confirmed by the Open Shorelines Act; Ibid.

3. One of the unexpected results of the recent legislative and judicial determinations in California concerning public access to the shoreline has been the refusal of landowners to permit continued public use and access over private lands and the consequent reduction of available public access routes. See "Public Access to Beaches" 22 Stanford Law Review 564, February 1970: "Public or Private Ownership of Beaches: An Alternative to Implied Dedication" 18 U.C.L.A. Law Review 795, 1971; "Public Rights in Ocean Beaches: A Theory of Prescription" 24 Syracuse Law Review 935, 1973.

4. See **State ex rel Thornton v Hay**, 462 P. 2d 671 (1969) wherein the Oregon Supreme Court held that the dry sand beaches in Oregon were subject to public recreation rights on the basis of the application of customary use. For an analagous decision, see **In re Ashford**, 50 Hawaii 314, 440 P. 2d 76 (1968).

5. 2 Cal 3d 29, 465 p2d 50 (1970).

6. One commentator has noted the apparent unwillingness of the California Supreme Court to label its conclusion as a prescriptive easement, rather than an implied dedication, because of the California precedent and statute establishing that the public cannot acquire rights by prescription and that such rights cannot be acquired where landowners have posted signs permitting such uses.

7. 18 U.C.L.A. 795, 802, (1975) op cit. fn. 3, supra.

8. Although the Virgin Islands Legislature has enacted several statutes which contain broad statements of legislative policy and concern for the preservation of the shoreline, few similar statements exist for the needs for public access thereto. Such statements would of course be implied from the fact that if the public is to enjoy its shoreline, it must be able to get there. But, there is no existing legislative statement which either clearly recognizes the need for such access or establishes a clear public policy for providing or maintaining such access. Compare this apparent lack of support with the provisions of Article XV, Section 2 of the California Constitution: "No individual, partnership, or corporation, claiming or possessing the frontage to tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose...."

9. Probably one of the most important cases in this area was the California Supreme Court decision in the **City of Walnut Creek v the Association of Homebuilders of the Greater East Bay, Inc** 4 C 3rd 633, 484 P. 2d 606 (1971) which upheld the city requirement that certain amounts of parklands or fees in lien thereof must be dedicated or paid as part of the subdivision approval process.

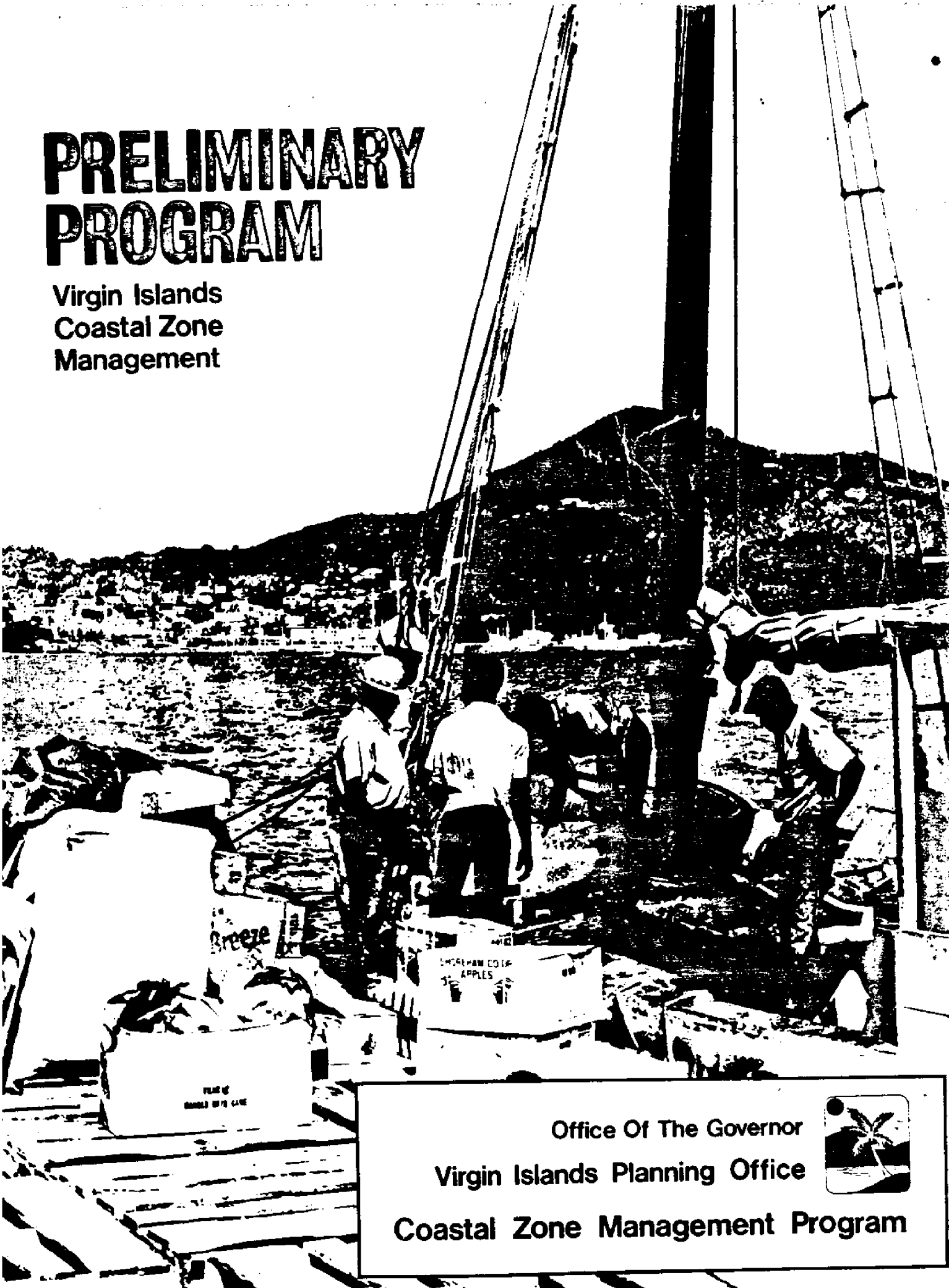
10. Revised Organic Act of 1954, July 22, 1954, Chapter 558, 68 Stat. 499.

11. Section 8 of the Revised Organic Act of 1954 contains a broad grant of legislative authority to the Virgin Islands Legislature. For example, Section 8 (a) states that "the legislative authority and power of the Virgin Islands shall extend to all rightful subjects of legislation not inconsistent with this Act or the laws of the United States made applicable to the Virgin Islands..." Certainly, provisions of public access to the shoreline is a rightful subject of legislation; many states have enacted comparable laws. And there are no specific restraints or prohibitions in the laws of the United States that would limit the authority of the Virgin Islands Legislature to enact such a law.

12. 28 V.I.C. S430 **et seq.**

PRELIMINARY PROGRAM

Virgin Islands Coastal Zone Management



Office Of The Governor

Virgin Islands Planning Office

Coastal Zone Management Program

CHAPTER SIX

Shoreline Access and Use

This chapter describes the development of the shoreline access and use element of the Virgin Islands Coastal Zone Management Program (pursuant to Section 305, Coastal Zone Management Act Amendment of 1976, P.L. 94-370). Since this work element is not scheduled for completion until later this year, only the results of a preliminary investigation are reported here. In addition to a brief legal analysis of the shoreline access issue, critical areas are identified, and recommended future policies are outlined.

Background of the Problem

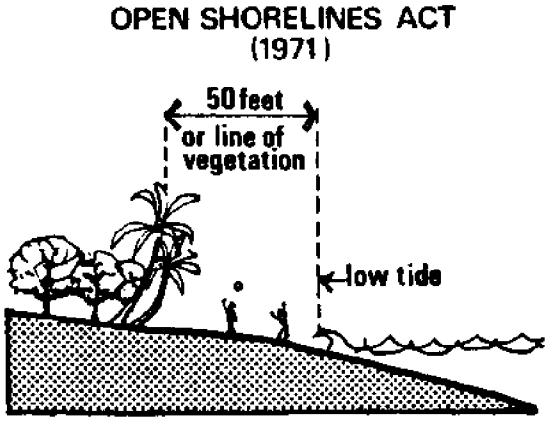
The importance of the shoreline to the lives of the people of the Virgin Islands is manifest. However, in the last quarter century, the patterns of shoreline use in the Territory have been drastically altered. Several beaches and shoreline areas convenient to many users have disappeared due to dredging, the mining of sand, landfill operations, or commercial developments. Some have been severely altered as a result of the secondary effects of shoreline development. Additionally, access to beaches has been intentionally or unintentionally restricted by the construction of many projects, most notably large tourist oriented hotels and condominiums. Accordingly,

shoreline, and particularly beach access, has developed into an important social, political, and legal issue in recent years.

In the past several years, considerable legislative and judicial attention has been devoted to preserving and establishing the public rights in and on the shorelines of the Virgin Islands. Considerably less attention and energy has been directed to providing public access rights to the shoreline.

The principal issue involved with shoreline access is that of the public's right to free and unrestricted use of the recreational beaches of the Virgin Islands. The territorial government took action to remedy the latter situation by enacting the "Open Shorelines Act" (No. 3063) in 1971. Essentially, the Act affirms the public's right to use the shorelines of the islands. The shoreline, as defined by the Act includes "the area along the coastline ... from the seaward line of low tide, running inland a distance of fifty (50) feet; or to the extreme seaward boundary of natural vegetation which spreads continuously inland, or to a natural barrier; whichever is the shortest distance."

While this legislation assures the citizens of the Virgin Islands of seaward access and lateral use and access along the shoreline, it does not assure landward access. An upland property owner is not required to permit beachgoers to cross his land to reach the zone of public use. Because of the terrain, and the pattern of development in the Islands, landward access is often a critical factor in beach use.



Beach Inventory

In the spring of 1976, the Office of Planning and Development of the Department of Conservation and Cultural Affairs, in conjunction with the Coastal Zone Management Program study of the Virgin Islands Planning Office, undertook a complete field inventory of Virgin Islands beaches. An evaluation of this type was called for in the 1971 Open Shorelines Act. The study was undertaken to help identify those beaches for which territorial governmental action was needed to secure public landward access.

The beach inventory procedures were developed to assess the particular conditions in the Virgin Islands and consisted of two parts. The first records objective physical, recreational, and land use data for each beach. The other consists of an evaluation of the scenic and environmental quality of the site. The beach inventory form is included in Appendix F, and a copy of the inventory for Cruz Bay, St. John is included as an example of the manner in which information was collected.

The CZM program has used the inventory information as a basis for recommending shoreline areas where: 1) access or right of use should be secured, or 2) areas where action should be taken to assure that existing access or use is preserved. A further refinement of the shoreline access study is scheduled to be conducted this year under the third year CZM planning grant. The study and recommendations will be completed by January 31, 1978.

- accessibility
- beach quality
- multiple activities
- potential environmental damage
- multiple effects
- threatened access

RECOMMENDED TARGET AREAS

BEACH EVALUATION AND RECOMMENDED CRITICAL AREAS

The criteria which were used to identify and evaluate the critical shoreline areas are discussed below. A listing of the critical areas which were identified in the preliminary assessment is also included.

CRITERIA FOR EVALUATING BEACHES

1. Accessibility - Beaches were evaluated on the basis of proximity to population concentrations, and by the presence of an access road usable by the general public. This factor will prove of importance since it appears that the territorial government may become responsible for beach maintenance.

2. Beach Quality - Evaluation of beach quality was based on the factors such as the area of the beach, the beach material, the type and appearance of shoreline vegetation, the attractiveness of the user's view from the beach, and the beach's scenic quality. These factors are complementary rather than cumulative. Therefore, a very attractive small beach may receive a heavier weighting than a large uninteresting one.

3. Potential for Multiple Activities - In addition to swimming, the potential of each beach for other water-related activities, such as snorkeling, offshore diving, or pleasure boating was noted. The inventory of land-based activities included picnicking, tidal pool walking, and the possible educational opportunities offered by historic ruin or a salt pond. Beaches which offer users a choice of activities were rated more highly than "swimming only" beaches.

4. Environmental Damage Potential - At several of the beaches inventoried, the existing land use was natural open space. Very often these areas constitute extremely fragile offshore and onshore environments. This is especially true of several beaches in northeast St. Croix which

cannot sustain heavy use without environmental damage.

5. The Multiple Effects - Priority attention was given to the sites which are potentially the basis of a complex recreational facility, or where a single easement will provide access to an extensive shoreline.

6. Access - Priority attention has also been given to those areas which ranked high in criteria 1-5 and where access is threatened. These areas included beaches and shoreline areas where access is presently restricted or where an impending or proposed development may restrict free access in the near future.

RECOMMENDED TARGET AREAS

Based on the assessment criteria a list of shoreline areas is being developed where it is recommended that access and right of use be secured. Only St. Thomas and St. Croix are dealt with since the most significant beaches in St. John are already within the National Park. The following represents the preliminary recommendations to date (see Figure 6.1)

St. Croix:

1. North Christiansted Beach - This beach area extends from the vicinity of St. Croix by The Sea southward to the Nature Conservancy property at Little Princesse. The shoreline here is extensively developed by condominium complexes while further inland there are numerous multi-family housing projects. The area is heavily populated and there are few recreation facilities available for local residents. Beach access is

FIGURE 6.1

TARGET BEACH AREAS

ST. THOMAS

1. Dorothea Beach
2. Smith Bay
3. Mueller-Vessup-Great Bay Beaches
4. Bolongo Bay

ST. CROIX

1. North Christiansted Beach
2. Buccaneer Beach
3. Cheney Beach
4. Grass Point

restricted to condominium residents, largely as a result of poor public access.

2. Buccaneer Beach Area - This sandy beach is located east of Christiansted, adjacent to the Buccaneer Hotel. The beach is immediately east of, but not accessible from, the Territory's recreational complex at Altona Lagoon. The primary importance of this area is its close proximity to the Christiansted urbanized area. Access is presently restricted by a use fee.

3. Cheney Bay - Cheney Bay Beach is situated on the north shore of St. Croix, east of Christiansted. Green Cay is just one-quarter mile offshore. There is a fine sandy beach with potential for swimming and picnicking. Southgate Pond, which is situated within this area, has declined recently in biological productivity, but is still a significant breeding ground and refuge for indigenous and migratory birds. Their ecological and educational value is important. In addition, there is a long history of public use of this area.

4. Grass Point - Grass Point is located on the southeast coast west of Turner Hole. Traditionally this site has been one of the favorite St. Croix picnicking areas. The present owners discourage use of the site for picnicking.

Buccaneer Beach, St. Croix

Grass Point, East End, St. Croix

Cheney Bay, Southgate Pond, St. Croix

St. Thomas:

Dorothea Beach (center), St. Thomas

1. Dorothea Beach - The Dorothea Beach is located on the northwest shore of St. Thomas opposite the Brass Islands. This beach is lushly vegetated, highly scenic, and has an excellent view of Inner Brass Island. Although Dorothea and Neltjeberg Beaches are suitable for swimming and snorkeling purposes, the potential for land-based activities in this area is also considerable. These activities include: picnicking; tide pool walking; historical, archaeological, geological and biological interpretation; and hiking both on the shore and on adjacent uplands owned by the Government of the Virgin Islands. The area is also suitable for expanded access and parking.

2. Smith Bay - Smith Bay Beach is located on the east end of St. Thomas near the growing population centers at Estate Smith Bay and Tutu. The crescent-shaped white sand beach of approximately one-quarter mile is located on a protected bay. The beach uplands are relatively undeveloped at this time. In addition to good swimming and snorkeling, the beach is a popular picnicking spot which is used by organized groups with the owner's permission. Although the vegetative cover is not dense, there are many large shade trees on the beach and fine views of St. John and the offshore cays.

Mueller, Vessup, Great Bay Beaches, St. Thomas

3. Mueller-Vessup-Great Bay Beaches - Mueller Beach is located on the east end of St. Thomas at Mueller Bay, just south of Vessup Bay. Vessup Bay Beach is adjacent to this area on the east and is

separated by a large rock outcropping. The inland area behind both beaches is largely undeveloped, with only a few scattered single family homes. Public access to these areas is poor; however, both are presently used to some extent by local residents for picnicking and swimming. Great Bay Beach (often called Bluebeard's Beach) is just south of this area. Here too, there is limited public access. There is an existing hotel development along this beach. The prime feature of these beach areas is their proximity to the growing population of the east end of St. Thomas.

4. Bolongo Bay Beach - Bolongo Bay Beach is located on the southeast shore of St. Thomas about midway between Frenchman's Reef Hotel and Benner Bay. There is about 1000 feet of sandy beach here with some rocky bottom close to shore. An excellent reef with good snorkeling is just offshore. Adjacent to the beach area is a 35 unit hotel and private beach club. Access through its beach club property is restricted to members. It is possible to reach the beach laterally via a dirt road at the extreme western edge of the beach.

Bolongo Beach, St. Thomas

APPENDIX F

Beach Inventory-Assessment Form

Beach:

Island:

Inventory Factors	Ranking/Description
	Ranking/Description
Beach Material	Sand (Coral, Algal) Gravel, Cobble, Rock, Pebble
Beach Texture	Fine Granular Rocky
Length	
Width	
Recreational Use	Swimming, Snorkeling, Scuba, Picnicking, Fishing, Boating
Shoreline Vegetation	
Geomorphic Char.	Embayed, Peninsular, Ridge
Seasonality/Stability	
Tenure	Private/Public/Disputed
Access Tenure	Public/Private-Open/Private-Restricted
Adjacent Land Use	
Parking Availability	
Development Intensity	High-Medium-Light-Natural
Development Type	Hotel-Condominium-Single-Industrial
Boat Ramp Potential	Yes No
Public Facilities	Toilets, Showers, Food, Recreational Rentals (Skindiving, Sailboats)
Waves/Currents	
Anchorage Potential	
Traditional Land Use	

Comments

Other

Polaroid Picture or Sketch

Location on Map

Shorescape Scenic Quality Rating

Visual Components	High	Medium	Low
Topographic Complexity	1	2	3
Shoreline Complexity	1	2	3
Vegetative Integrity	1	2	3
Vegetative Diversity	1	2	3
Ecosystem Continuity	1	2	3
Uniqueness (Scarcity)	1	2	3
Endangerment (Issue Reality)	1	2	3
True-to-Form Townscape	1	2	3
True-to-Form Rurality	1	2	3
Human Dynamics	1	2	3
Instructive Quality	1	2	3
Sail/Island Horizons	1	2	3
Sensitivity to Change	1	2	3

Beach: CRUZ BAY

Island: ST. JOHN

Inventory Factors	Ranking/Description
	Ranking/Description
Beach Material	(Sand) (Coral) Algal) Gravel, Cobble, Rock, Pebble
Beach Texture	(Fine) Granular Rocky
Length	
Width	
Recreational Use	(Swimming), (Snorkeling), (Scuba), (Picnicking), (Fishing), Boating
Shoreline Vegetation	coco palms; introduced landscaping
Geomorphic Char.	(Embayed), Peninsular, Ridge
Seasonality/Stability	
Tenure	Private/(Public)/Disputed
Access Tenure	(Public)/Private-Open/Private-Restricted
Adjacent Land Use	public; some commercial; roads
Parking Availability	yes
Development Intensity	High-(Medium-Light)-Natural
Development Type	Hotel-Condominium-Single-Industrial town center
Boat Ramp Potential	(Yes) No
Public Facilities	Toilets, Showers, (Food), (Recreational Rentals) (Skindiving, Sailboats)
Waves/Currents	No
Anchorage Potential	High; boats present
Traditional Land Use	Major settlement on St. John

Comments

Other Cruz Bay Harbor is now heavily used and there are use conflicts; see Enighed Pond Masterplan

Beach Survey
Page 2

Polaroid Picture or Sketch

Location on Map No. 1

Shorescape Scenic Quality Rating

Visual Components	High	Medium	Low	
Topographic Complexity	1	2	(3)	
Shoreline Complexity	1	2	(3)	
Vegetative Integrity	1	2	(3)	
Vegetative Diversity	1	2	(3)	introduced.
Ecosystem Continuity	1	2	(3)	
Uniqueness (Scarcity)	(1)	2	3	location
Endangerment (Issue Reality)	(1)	2	3	
True-to-Form Townscape	(1)	2	3	
True-to-Form Rurality	1	2	3	N.A.
Human Dynamics	(1)	2	3	
Instructive Quality	1	2	3	
Sail/Island Horizons	(1)	2	(3)	
Sensitivity to Change	(1)	2	3	

SECTION H.
HISTORICAL DOCUMENTS
RELATED TO THE FREE BEACH MOVEMENT

"Do You Want More Beaches for All of the People of the Virgin Islands?" Information Sheet (December 11, 1970).

"Petition for Beaches Submitted to Senate." The Daily News (February 9, 1971), p. 5.

Emanuel, Cory. "Free Beaches in the Virgin Isles." Calypso (February 21, 1971).

Citizens Committee to Free All Beaches. "Do We Want More of This?" Pictorial Flyer (June 1971).

Letter and Proposed Legislation to Senate President John Maduro from the Citizens Committee to Free All Beaches (June 30, 1971).

Letter to Dept. of Law Attorney William Taylor From Wilhemina B. Lewis, Darwin A. King, and Marva Sprauve Browne (December 21, 1975).

Letter to Senate President Derek Hodge from Edwin Hatchette, Marva Sprauve Browne, and Darwin A. King (January 24, 1986).

December 11, 1970

Do You Want More Beaches For All The People of The Virgin Islands? Read and Find out How It Can Be Done

When planning a picnic do you stop and think how limited the choices are in beaches available to the majority of the population? This is, because of the:

1. Poor Condition of roads leading to some beaches.
2. High entrance fees charged at others.
3. Whole question of whether a beach is or should be private or public.

The fact remains that it is a real shame that so few are available to us when you consider we live on islands that have so many beautiful beaches...

This is a Community Problem That Must Be Solved... So that all of us may be able to enjoy the natural beauties we want.

1. Free public access to all beaches

2. Affirmation in law that all beaches have always been, are now and shall always be the property of the people of the Virgin Islands.

As an informed citizen, did you know that:

a. All shores, beaches, tideline and other places where salt water flows were held not as private property but in trust by the Danish Crown for the people of the V.I. (Bill 3917 and Colonial Law April 6, 1906)?

b. The Convention signed between the U.S. and Denmark, ratified Jan. 17, 1917 showed that the Citizens in the Islands should continue to enjoy all the rights and liberties secured to them under Danish rule?

c. The Organic Act of 1936, Section 4 placed these lands under control of the Government of the V.I.?

d. On Feb. 3, 1969, our Legislature passed a resolution (to recommend charges in the territorial submerged Land Act) admitting its responsibilities as trustee for the people and requesting a change in Federal Law which would permit it to act in occordance with local wishes? It is now up to us to say with one loud clear voice the wish of the people is that the beaches be Public.

e. The V.I. Code. Title 32 Section 2 charges the commissioner of Agriculture and Labor with the responsibility of planning and operating, etc. all public beaches? (Now, under Dept. of Conservation & Cultural Affairs)

f. The Board of Director of the St. Thomas Park Authority is charged with the development of beach areas (V.I. Code Title 32 Section 51-61)?

g. In 1969 a Bill was being studied in the U.S. Congress recommending that the public have access to all beaches within the U.S.

h. By law, anyone may approach a beach by water and use it for recreational purposes, but how many of us have boats?

i. The Commissioner of Public Works is charged with maintaining all government grounds (V.I. Code Title 31 Section L)?

Please Continue To Read Further

Were you aware that:

j. The Olde Man Study made in 1967 recommended that the Public have access to all beaches and coastline?

k. The Youth Council of the V.I. drew up a petition proposing that all beaches be made public? Approximately 1000 signatures were submitted to the Governor and Legislature in February 1970?

l. The Subcommittee on Recreation For Virgin Islands and the Sea Study was set up to investigate the best means of the sea for recreational purposes. It was not truly representative of the people's needs and did not hold a public hearing as scheduled?

m. Beaches in other Caribbean Areas have free public access?

n. Most Commercially operated beaches have tax exempt status, therefore the argument with regard to paying for their entrance or access should be heavily weighed with this factor in mind?

o. Most commercially operated beaches where there are hotel and Condominium facilities dump their raw untreated sewage into the water?

p. Entrance Fees and Policies to the Various Beaches are as follows:

St. John

Caneel Bay Plantation	$5.00/person

St. Thomas

Lindbergh Bay	Adults $.50; Children and Military $ .25 Family per mo. $5.00
Morningstar	Adults $2.00; Children $1.00 Children under 6 Free
Lime Tree	$3.50 per person
Bolongo Bay	Hotel and Bolongo Bay Beach Club Members Only
Scott	Adults $1.00; Children $.50
Bluebeards	$3.00 per person
Sapphire	$3.00 per person
Pineapple	no charge to public usually
Pelican	Members only can use Beach
Water Isle	$5.00 per person; Rope also placed out in ocean to avoid boats from Coming in.

Hagens	Adults $.25 Children $.15 Parking Free
Coki Point	Adults $.25 Children $.15
St. Croix	
St. Croix Beach Hotel	Adults $2.00 Children $1.00
Grape Tree Bay	No Outsiders Admitted
Queen Quarter Beach Hotel	Adult $2.00 Children $1.00
St. Croix By the Sea	Must Eat Lunch in order to use Beach
Hotel on the Cay	Adults $2.00 Children $1.00
Buchaneer Hotel	Everyone $2.00
Davis Bay Condominium	Adults $2.00 Children $1.00
Green Cay Condominium	Only Residents of the Village
Ha' Penny Bay Beach Club	Members Only
Mill Harbor Condominium	Ask Manager's Permission
Magic Isle	Everybody $2.00 Notify in Advance
Sprat Hall	Adults $2.00 Children $1.00

Based on the information presented, it is quite clear that there has been ample time in which this problem should have been solved. It has been shunted away for much too long. In addition, it is obvious that the Virgin Islands Government has sufficient authority and resources to control and regulate the use of shoreline areas.

It seems then, that this problem will not be resolved until the citizens let their elected representatives know that they are no longer satisfied with the situation as it now exists. Beaches belong to all, they are not the property of a few. As a scarce natural resource, the beaches must be returned to the use and enjoyment of all.

With your signature on this attached petition our elected representatives will be put on notice that they must exercise their ample authorities to protect what belongs to all.

From: Group of Concerned and Interested Community Minded Persons

Edwin Hatchette	Darwin King
Hugo Dennis	Loredon Boynes
Grace Emmanuel	Gilbert Sprauve
Bingley Richardson	Valarie Brown, M.D.
Verna Garcia	Marva Sprauve Browne
Raymond Moorehead	Naomi Varlack

Petitions For Beaches Submitted To Senate

(Following is the full text of a petition asking for free public access to Virgin Islands beaches submitted to the Legislature last week by the Committee For Free Beaches For All. The petition had over 2,500 signatures when submitted to the Senate and committee members are still collecting signatures.)

PETITION FOR BEACHES FOR ALL

WHEREAS, the Virgin Islands of the UnitedStates possess some of the world's most beautiful and sought after sandy beaches and waters; and

WHEREAS, the aggressive exploitation in recent years of the Islands' potential for a lucrative tourism, has resulted in a disturbing, perhaps devastating rate of commercialization of precious natural resources: and

WHEREAS, generations of Virgin Islanders have enjoyed and used the said beaches and waters as their natural birthright and legacy; and

WHEREAS, this process of commercialization has been particularly severe in its impact on the use of sandy beaches, resulting in the virtual deprivation of the rights of large numbers of Virgin Islanders to made reasonable use of those lovely entrances to the sea and

WHEREAS, this deprivation has been effected by means of exorbitant, unjustifiable entrance fees which have no other apparent purpose than the practical exclusion of a large majority of Virgin Islanders and

WHEREAS, the establishments charging these exclusionary fees and the condominiums or beach clubs often associated with or close by these establishments, are subjecting the sandy beach areas and waters on which they front, to such concentrated pollutive use as to give rise to concern that the beauty and utility of these areas will be seriously impaired in the not too distant future and

WHEREAS, these same establishments justify their business operations as making an essential contribution to the economy and development of the Virgin Islands and in many cases have persuaded the local government to exempt their business from taxation; and

WHEREAS, prior to the date of the Convention of 1917 for the purchase of the Virgin Islands the United States Government apparently had adopted the common law doctrine that the sovereign owned the submerged lands under navigable or tidal waters at least up to the high water mark and holds these lands in trust for the people under his jurisdiction; and

WHEREAS, the Organic Act of 1936 gave the Virgin Islands Government control over all territory and other realty not reserved for the purpose and use of the Federal Government, apparently without prejudice to the latter Government's naked legal title; and

WHEREAS, the Territorial Submerged Lands Act of 1963 represents an application of the said common law doctrine on submerged lands to the Virgin Islands and an implied assertion of the Federal Government's common law, sovereign rights of ownership; and

WHEREAS, reparian or littoral owners can have no substantial grievance so long as they are guaranteed access to the waters on which they front; and

WHEREAS, the continued trafficking in supposed exclusive beach rights will work hardship on unwitting purchasers and will result in unjust profits to those purporting to convey such rights; and

PETITION FOR BEACHES FOR ALL

WHEREAS, the Virgin Islands Legislature adopted in 1969 a resolution which, in part and in essence, requested the Federal Government to treat the Virgin Islands on a parity with the states as to its submerged lands, on the ground among others that the Territorial Submerged Lands Act of 1963, if not so amended, would severely disrupt the private titles and expectations of, among others, establishments which now charge excessive, exclusionary fees; and

WHEREAS, the local ordinance, now attempted to be preserved by the Virgin Islands Code, to the effect that a deed conveying land bounded by water shall be construed to convey title down to the low water mark, where the water boundary is not described in clear terms or indicated by other probative circumstances, is, on principle and precedent, unconstitutional and in direct conflict with the rights of the Federal Government; and

WHEREAS, under the Territorial Submerged Lands Act, the Secretary of the Interior is authorized to convey "upon request of the Governor" territorial submerged lands for "specific economic development purposes or to satisfy a compelling public need;" and

WHEREAS, neither federal nor local law adequately protects the aquatic and beach resources for the free and low cost use and enjoyment by all and against economic ventures of only short run value and of manifest, long-term detriment; Now Therefore, We the Undersigned hereby solemnly petition and demand that the Virgin Islands Legislature, the Governor of the Virgin Islands and other responsible Government Authorities, take the following action:

1. Declare and affirm in law that all sandy beaches and the entire shoreline are the property of all the people of the Virgin Islands, which shall be forever free and open to all Virgin Islanders and shall not be the subject of sale or lease to any private person or entity.

2. Establish by negotiation, gift or eminent domain free public access to all sandy beaches.

3. Repudiate so much of the 1969 Resolution as gives support to alleged private titles and to the entrance fees prevalent at the Islands' beaches.

4. Enact Legislation which shall preclude any local public authority or entity including the Govenor, from invoking any legal powers or authorization to subject any beach or submerged lands or shoreline to private sale or lease or to the exclusive use of any private person of entity.

5. Require by legislation that all commercially operated residences including but not limited to condominiums, aquaminiums and other multidwelling and/or collectively owned residences, any and all of which may front on the sea and beaches, to cease and desist emptying into the sea untreated waste products of any kind.

New College In St. Lucia

CASTRIES, St. Lucia, (AP)--The Morne Technical College, the first of seven such schools in the region built by British foreign aid, formally began operations last week.

Part of an educational complex on top of Morne Fortune, a 10-minute straight-up drive from Castries, the college offers certificate and diploma courses for motor mechanics, electricians, carpenters, plumbers, fitter machinists and masons. A hotel and catering department is scheduled to open next fall.

Under construction or in the planning stage are similar colleges in Antigua, Grenada, Dominica, St. Vincent, St. Kitts, and Monserrat.

Archbishop Installed

KINGSTON, Jamaica--Most Rev. Samuel Carter, S.J., was installed as the Roman Catholic archbishop of Kingston Friday at Holy Trinity cathedral by Luigi Barbarito Apostolic delegate to Antilles Episcopol conference. Governor General Sir Clifford Campbell and Prime Minister Hugh Shearer were among dignitaries present.

Some men expect their rights to give them special privileges.

Disc-Jockey Special

One Bad Apple by Osmonds is at the top of the list of hit tunes compiled by Cash Box magazine. In second place is Rose Garden by Lynn Anderson. The third-ranking hit is Knock Three Times by Dawn.

Here are the first ten tunes in the Cash Box listing (with last week's spot in parenthesis):

1. One Bad Apple--Osmonds (7)
2. Rose Garden--Lynn Anderson (1)
3. Knock Three Times--Dawn (2)
4. I Hear You Knocking--Dave Edmunds (6)
5. Lonely Days--Bee Gees (3)
6. If I Were Your Woman--Gladys Knight and Pips (5)
7. Mama's Pearl--Jackson 5 (17)
8. Remember Me--Diana Ross (9)
9. Watching Scotty Grow--Bobby Goldsboro (11)
10. Groove Me--King Floyd (4)

Here are the second ten tunes, according to Cash Box:

11. Stoney End--Barbra Streisand (8)
12. Precious, Precious--Jackie Moore (14)
13. I Really Don't Want To Know--Elvis Presley (13)
14. Mr. Bojangles--Nitty Gritty Dirt Band (28)
15. Sweet Mary--Wadsworth Mansion (26)
16. Amazing Grace--Judy Collins (20)
17. Young Song--Elton John (10)
18. Born To Wander--Rare Earth (18)
19. If You Could Read My Mind--Gordon Lightfoot (29)
20. Let Your Love Go--Bread (22)

Now, a look at hits of past years: Ten Years Ago: Wheels...Spanish Harlem.

Five Years Ago: At The Scene...The Ballad of the Green Berets.

One Year Ago: Travelin' Band...No Time.

It's much better to be late down here than early up there — so drive carefully and live.

FREE BEACHES IN THE VIRGIN ISLES
(A Calypoem in the Native Language)

by Corey Emanuel
2/21/71

Well, we ain't go'n beg,
And we ain't go'n bawl--
Every beach in the Virgins
Must be free for all!
John and the public sure bound to agree
That the beaches are ours and got to be FREE!

All this Ecology study, and Environment,
Pollution, and Ethnic Disagreement
Ain't meaning a thing to the common man
If he can't even swim in he own native lan' !

I ain't picking on no one to go put in "sing"
But them rich man build big condominium and thing;
They bar off the road, put the price outa reach,
Just to keep off the public from their own beach.

Yes, some of them fellow got money for so,
They buy-up the landscape wherever they go;
They make "pappyshow" outa we government
While they using our lan' for their aggrandissement!

We'n care who get hurt, or who go'n get mad,
This beach situation ain't nothin' but bad.
Our senator-them got to put up a fight
To see that our people get back all their right.

If Fairchild could give us all big Magens Bay,
An' plenty of lan' to make we right-of-way,
They could donate a'lil road through their property
An' let we use <u>our</u> beach what they usin' for free!

The Senate an' Governor seem to agree
That Virgin Isles beaches suppose to be free.
"Where's the cash for the roads?" we hear them complain,
You mean they ain't know about Eminent Domain?

If the government ain't going to enforce the law,
Man, we'n go'n see nothing but big disaster.
Let them fence-off the road-them through their property
An' we'll fence <u>them</u> right out of we public sea!

Thank God for the labor of the Committee
An' alla them folks who work diligently;
They force out the issue, the point is well made--
We go'n open the beaches so people could bathe!

DO WE WANT MORE OF THIS?
ARE PORTABLE SWIMMING POOLS ACCEPTABLE?
THOUSANDS OF VIRGIN ISLANDERS SAY NO!

The answer from our Legislators is embodied in Bill No. 4849, which, although recognizing the moral, legal and philosophical issues of the people's right to use the shorelines and beaches, has DISTINCTLY STRONG NEGATIVE features:

1. It is an ambiguous and misleading Bill which is not firm in protecting the people's right to free public use of beaches and shorelines.
2. The major part of the Bill echoes the opinions of the very persons and organizations who showed contempt for our community by suggesting FIRST CLASS BEACHES FOR TOURISTS, SECOND CLASS BEACHES FOR RESIDENTS.
3. The bill names an unnecessary committee to be made up of Government officials and alleged experts who are NOT REPRESENTATIVE OF THE PEOPLE. These individuals showed no initiative and concern and were strangely silent when the issue was brought to the public's attention.

What does the future hold for our Virgin Islands?

WHO WILL LISTEN TO THE PEOPLE???

In the past, the wishes of those with money and position prevailed. Now — will our Elected Representatives heed the voice of the people or will they continue to SELL US OUT???

Every able-bodied thinking Virgin Islander is needed to support this Project. Take your family and visit the Beaches regularly . . . DO NOT PAY TO SWIM!

BEACHES BELONG TO YOU!
DEMAND YOUR RIGHT!

CITIZEN COMMITTEE FOR FREE BEACHES FOR ALL – June 1971

The Citizens Committee To Free All Beaches
P. O. Box 2953
St. Thomas, Virgin Islands 00801

June 30, '71

Hon. John L. Maduro
President, Legislature of the Virgin Islands
Senate Building
Charlotte Amalie, St. Thomas
Virgin Islands 00801

Dear Senator Maduro:

Enclosed for your consideration is a copy of the proposal of the Citizens Committee for legislation on Open Beaches which we feel more adequately assures the free and unrestricted right of the public to use and benefit from the seashores of the Virgin Islands.

You will please note that there are essential differences between this proposal and the present law on beaches. Unless the changes effected by this document are enacted and the deficiencies of the present law are thereby corrected, the matter of Open Beaches will remain a doubtful proposition and a source of public frustration.

We further point out that the proposal hereby submitted does not depend for its effectiveness on the enactment of an appropriation as does the present law. Furthermore, our proposal incorporated critical evidentiary advantages left out of the present law and present in the federal Bill on Open Beaches.

In view of the availability of a thorough Report on Beach Law and the elapse of sufficient time for consideration of the relevant factors, we feel, that the Legislature as a whole should be prepared to consider and act upon our proposal without any further Legislative Committee action. Therefore we urge swift action in July on this item of first priority.

Respectfully submitted,

Edwin E. Hatchette
Co-Chairman

Marva S. Browne
Marva Sprauve Browne
Co-Chairman

O. K.
Darwin King, Coordinator
St. Croix

Enclosure

cc: Hon. Melvin H. Evans, Governor of the Virgin Islands
Members of the Ninth Legislature of the Virgin Islands

Open Beaches and Seashores Act

The Legislature of the Virgin Islands finds that the sea beaches and seashores of the Virgin Islands are natural outlets to and inseparable appendages of the sea and partake of the inherently public nature of the sea. It is necessary and proper to a full effectuation of the public welfare that the Legislature, in the exercise of the authority and control conferred upon the Government of the Virgin Islands by the Organic Act of 1936 and continued or conferred by the Revised Organic Act of 1954 and recognized or conferred by other federal law, recognize, confirm, and provide orderly protection of, the public interest in the sea beaches and seashores of the Virgin Islands. The Legislature finds that the inherently public nature of sea beaches and seashores which derives from the public nauter of the sea, is the ultimate source of the rights of the public to control and use these littoral areas free of

private impediments and is the foundation for sound marine law and policy. Thus, in the absence of clear public authorization, private control and ownership of sea beaches and seashores is conceptually and jurisprudentially incapable of establishment.

Moreover, the Legislature finds that, in recognition (affirmation) and fulfillment of the inherently public nature of sea beaches and seashores, the public has made frequent, uninterrupted and unobstructed use of these littoral areas. Sea beaches and seashores have traditionally served as places of recreation for the citizenry and visitors and as thoroughfares and havens for fishermen and sea ventures. The Legislature recognizes and seeks to preserve as permanent elements of the public domain rights of use of and access to the sea, sea beaches and seashores, acquired by the public over the years by custom, long-continued user, prescription,

implied dedication, or other legal process, or retained by the public by virtue of continuous rights in the public.

The Legislature further finds that the elements and consequences of such title in littoral landowners as may have been legally acquired or recognized are colored and/or encumbered by the traditional public concept and uses of sea beaches and seashores. The Legislature finds that the traditional concept of sea beaches and seashores as a common and a public natural resource is being threatened by seashores being controlled, fenced or enclosed in direct derogation of the rights of the public. It is the intent of the Legislature to preserve what has been a public tradition and to protect what is a public right.

§101 The Legislature hereby declares and affirms that the sea beaches and seashores of the Virgin Islands are impressed with a public interest and that the public, individually and collectively, has and shall have the free and unrestricted right to use them as a common to the full extent that such

public right may be exercised consistently with such property rights of littoral landowners as may be protected absolutely by the United States Constitution as it may apply to the Virgin Islands. It is the declared intention of the Legislature to exercise the full reach of its authority and control in the premises and to recognize and confirm the rights of the public in their fullest extent.

§102 No person or legal creature or entity shall create, erect, maintain or construct any obstruction, barrier or restraint of any nature which interferes with the free and unrestricted right of the public, individually and collectively, to enter, leave, cross or use as a common the sea beaches and seashore of the Virgin Islands.

(a) Any person or entity claiming interference with his or its free and unrestricted rights or use of the sea beaches

and shorelines, in violation of this statute or seeking to enforce his or its free and unrestricted rights of use of the sea beaches and seashores, may bring an action in the District Court of the Virgin Islands without regard to the fact or amount of damage as a jurisdictional requirement.

(b) It shall be the duty of the Attorney General of the Virgin Islands to institute on behalf of the public or any member or members of the public an action or actions to effectuate, protect, preserve or enforce the free and unrestricted rights of the public to use and control the sea beaches and seashores of the Virgin Islands. Nothing in this section shall be construed to present or require separate or joint actions by the Attorney General and any private person or entity against any person or entity or several of the same.

(c) Actions instituted under the authority of this section may be for injunctive, declaratory, compensatory, a combination of any of the foregoing or any other suitable relief.

(d) In any action whatsoever instituted or defended under the authority of this Act or in any other action whatsoever in which issues arise whose determination is affected by this Act, a showing that the area involved is a sea beach or is a portion of the seashore, as sea beach and seashore are defined by this Act, shall, as to that part of the area which is a sea beach or is seashore, be prima facie evidence for purposes of requiring a decision by the finder of fact and shall give rise to a presumption, conclusive upon the finder of fact and the judge unless rebutted by a preponderance of the credible evidence, that:

(1) the title of the littoral owner, if any, does not include the right to prevent the public from using the area as a common;

(2) the area is impressed with a public interest and is subject to a public prescriptive right to use it as a common.

§103 The minimum zone of public littoral control along the seashores of the Virgin Islands shall at all times be fifty (50) feet from the lint of mean high tide, as determined over a tidal cycle of 18.7 years in accordance with federal standards of tidal measurements,

(a) or the line of vegetation, whichever is greater. The said zone shall in no event be diminished in any way by the natural or induced erosion or natural or induced submergence of dry land, but shall in the event of erosion or submergence extend inland at least fifty(50) feet from the new line of mean high tide. However, in every case where accretions to or relictions from the seashore occur, whether naturally, artificially, or from any cause or causes whatsoever, the zone of public littoral control shall be permanently enlarged pro tanto.

(b) Nothing in this section or in this Act shall be construed as a relinquishment, diminution or impairment of public rights of use and control of a larger area of the seashore and sea beaches than is provided for in this

Act, where such rights have been acquired by or under any legal process or doctrines or retained by virtue of continuous right in the public and/or any government.

§104 The following definitions are applicable throughout this Act:

(a) "Sea beach" refers to any "beach", as hereinafter defined, lying along the Atlantic Ocean or the Caribbean Sea.

(b) "Beach" denotes that area between the water's edge at extreme low tide and the landward boundary of the minimum zone of public littoral control or boundary of such larger area as may be subject to public rights of use and/or control (whichever area is greater) acquired by means of any legal doctrine or any legal process or retained by the public and/or any government, which is covered principally by sand and/or other soil, including matter naturally found in the sea and deposited by tidal, wave or water action.

(c) the "line of vegetation" is the extreme seaward boundary of natural vegetation whic typically spreads continuously inland. In any area where there is no clearly marked vegetation line, recourse shall be had to the nearest clearly marked line of vegetation on each side of such unmarked area to determine the line of constant elevation connecting the two clearly marked lines of vegetation on each side, which line shall constitute the line of vegetation for the unmarked area. In the event the elevation of the two points on each side of the unmarked area is not the same, then the extension defining the line reached by the highest waves or tides of the sea, whichever is greater, shall be the average elevation as between the two points. The "line vegetation" shall not be affected by the occasional sprigs of salt grass upon the sand, mounds or dunes, or seaward of them, and shall not be affected by artificial full, the addition or removal of turf, or by other artificial changes in the natural vegetation of the area.

Where such changes have been made and thus the vegetation line has been obliterated or has been created artificially, then the line of vegetation shall be determined in the same manner as in those areas where there is otherwise no clearly marked "line of vegetation."

(d) The "line reached by the highest waves or tides of the sea" is that line bordering the area swept by the highest swell of the surf or tide with such regularity that vegetation is prevented and does not embrace that area reached by storm waves. The said line shall include scattered stones cast ashore or washed by the sea but not storm debris.

(e) "Litoral owner" means the owner of land adjacent to the seashore as defined in this Act and includes anyone acting under the littoral owner's authority.

(f) "Virgin Islands" is all that territory, property and water in the Virgin Islands to which the constitutional authority of the United States extends.

(g) "Seashore" refers to that area contiguous with the sea and extending inland which is or becomes subject to rights of public use and/or control, whichever is greater, and includes sea beaches.

§105 It shall be an offense punishable by a fine of not less than $500 for each occurrence or such greater amount as to the court may seem just in the circumstances of each occurrence, for any person or any legal entity of any kind to:

(a) create, erect, construct or maintain any obstruction, barrier, or restraint of any nature whatsoever which interferes with the free and unrestricted right of the public, individually or collectively, to enter, leave, cross, or use any sea beach or other portion of the seashore as a common and each person or legal entity whose free and unrestricted right is interfered with or restrained in violation of this Act shall be counted individually for the purpose of assessing separate fines of $500 or more as the Court deems just;

(h) It shall be an offense punishable by a fine of not less than $500 and/or by incarceration for not more than sixty (60) days, for any person or legal entity of any kind to:

(1) conduct, participate in or fail to halt or prevent where the legal authority to do so exists, any act on below or above real property contigious with or inland of the zone of public littoral use and/or control as here in above described which would make use of or preserve in the sea or the zone of public littoral use/andor control hazardous or unsafe to life or health;

(2) intimidate, coerce, molest, threaten or deter any person or legal entity of any kind in or against the use of any non beach or any portion of the seashore ;

(3) charge or collect any fee or price for use of or presence in the zone of public littoral use and/or control or erect or allow to be displayed any signs declaring or suggesting that that zone or a portion of the same is subject to such

a charge or collection or to private control or regulation.

§ 106 Rule (5) of Section 47 of Chapter 3 of Title 28, Virgin Islands Code is hereby repealed.

§ 107 No portion of the seashores and submerged lands of the Virgin Islands may or shall be sold, conveyed, or leased to any private person or entity; nor shall the same be subjected to any mortgage or financial or other encumbrance creating the possibility of sale to or by any private person or entity; nor shall the same be sujected to the exclusive use of any public or private person or entity in derogation of the free and unrestricted rights of the public, individulally and collectively, to use the seashores of the Virgin Islands.

DARWIN A. KING
P.O. BOX 2472
CHARLOTTE AMALIE
ST. THOMAS, VIRGIN ISLANDS 00801

December 21, 1975

Attorney William Taylor
Department of Law
Charlotte Amalie
St. Thomas, Virgin Islands 00801

Dear Attorney Taylor:

The recent ruling of the Third Circuit Court of Appeals upholding The Bolongo Beach ruling came as no surprise to us inspite of the extreme slow process that characterized social justice in the West Indies. This action represents the culmination of efforts to clearly establish the right of all the people to utilize any and all beaches of the Virgin Islands without "paying to swim".

The successful achievement of this phase of the free beach issue has been marked and scarred with disappointment, frustration, irresponsibility on the part of public officials, confrontation and education. However, one aspect of this struggle will long remain with us and that is, the cooperation received from Attorney General Verne Hodge and yourself in listening to our confrontation with Dick Doumang and the Bolongo Bay Beach. The objectivity and responsiveness of your agency is highly commendable especially in the face of the unprofessional tactics employed by Bolongo, such as inviting the Attorney General to join the Beach club after we had confronted them, and deceitfully implying that they had some understanding with your office that allowed them to errect the fence.

There is no time for anyone to be resting on assumed laurels for the price of freedom is eternal vigilance; nor is it the time for misguided politicians to be taking pride in the fact of past membership in citizen committe for free beaches when there is so much more to be done which could have been accomplished if our legislators would display courage stamina and persevere in defense of the people's rights.

It is our hope that the Office of the Attorney General will move expeditiously in tearing down the fences not only at Bolongo Bay Beach but also all fences and barriers that have been errected in flagrant violation of Act #3063. The below listed sites are just some of the places where said violation currently exist in the Virgin Islands:

Bolongo Bay Beach
Dorothea Beach
Mill Harbour Condominium
Cane Bay Plantation
Sugar Beach Condominium

The former Pelican Cove Beach Club
The Expansive white sandy beach on
the south shore of St. Croix in
the area of the Ha Penny Bay
Beach Club.

So few Virgin Islanders even know this beach exist because the fences have kept it as the exclusive playground for the selected few.

The question of access should also be dealt with expeditiously by both the executive and legislative arms of government. We have long respected the rights of private property adjoining and adjacent to our public beaches. However, it is rediculous to have commercial establishments such as Hotels, Guest Houses, Beach Clubs, etc. many which operate on a tax exempt basis and with public licenses denying the people access to public beaches, while utilizing it for their financial advancement. This practice should cease immediately. Steps must be taken now to obtain access to all our beaches by either negotiation or emminent domain. It is our continued contention that these tax exempt establishments as well as those operating with public licenses does not require any additional access since they have already been charted to do business with the public.

Investigations should also be carried out immediately into situations such as exist at the Frenchman Reef Hotel where tennis courts appear to have been constructed on public property. If this is the case then it must be rectified and if exceptions were made then the criteria for such exceptions needs to be investigated and revised.

Once again we would like to extend our commendation for the responsive objective manner in which your agency handled this entire matter.

Sincerely,

Wilhelmina B Lewis
(Mrs.) Wilhemina Lewis

Darwin A. King
Darwin A. King

Marva S. Browne
(Mrs.) Marva Sprauve Browne

cc: Governor Cyril E. King
Elmo Roebuck, President of the Legislature
Attorney General Verne Hodge
Commissioner Auguste Rimple
Commissioner Virdin Browne
News Media

P. O. Box 9023
St. Thomas, V.I. 00801
January 24, 1986

The Honorable Derek M. Hodge
Senate President
16th Legislature
Legislature Building
Charlotte Amalie,
St. Thomas, Virgin Islands 00801

Dear Senate President Hodge:

The access issue to all beaches of the Virgin Islands, which are public as confirmed by *Act 3063* ("*Free Beach Act*"), has surfaced once again.

In the recent past, this issue caused public controversy on the island of St. John (Hawks Nest Beach). These events along with the incidents at Shoy Beach in St. Croix are strong indications that the time is overdue for the formulation of definitive public policy guaranteeing free access to all the beaches of the Virgin Islands.

Attached are copies of *Act 3063* and the draft of the "*Open Beaches and Seashores Act*" that was proposed by the Citizens Committee for "Free Beaches For All" in 1971. You may recall that this Citizens Committee spearheaded the social action drive which culminated in the passage of *Act 3063*. Act 3063, however, failed to include the access provisions of the Committee's proposed legislation.

The essential difference between the Committee's proposal and *Act 3063* (a watered down version of the proposal) which the 9th Legislature and subsequent Legislative bodies failed to address, has contributed immensely to the issue of access not being resolved effectively and becoming a major social issue 15 years after the passage of *Act 3063*.

It is our earnest hope that this information will provide the necessary background for the implementation of effective public policy for the resolution of this vexing social problem.

Respectfully,

Edwin G. Hatchette
Mr. Edwin Hatchette

Marva S. Browne
Dr. Marva Sprauve Browne

Darwin A. King
Mr. Darwin A. King

Attachments
cc: Governor Juan Luis
Mr. Ron Delugo
Ms. Denise Richards

SECTION I.
RECENT NEWS CLIPPINGS

The Virgin Islands
Daily News
A Gannett Newspaper
40¢
57th Year No. 15037
THURSDAY, JULY 23, 1987

Most St. John beaches open; resort blocks others

This is the last of a three-part series on beach access.

By OSMOND FARRELL
Daily News Staff

St. John has some of the most beautiful beaches in the Virgin Islands — and some of the most exclusive.

A weekday beach tour of the island showed that while anyone can stroll onto most St. John beaches, access to some requires either a boat or lots of determination.

Caneel Bay Resort

After admiring the beautiful landscaping for awhile, I asked an employee for directions to the beach.

"Follow this road and go over the hill and you will come to a beach in about five minutes," she said.

After I walked about two minutes, the paved road became a dirt road that led to Honeymoon Beach. Nice beach. It's not near any resort buildings and provides lots of privacy for beach-goers — and for resort guests.

At the beach near the Caneel restaurant, a visitor is greeted by a sign stating, "Furniture for Guests Only." Venturing further down the beach, I was confronted by another sign: "Guests Only Beyond this Point."

"Why can't I bathe over there?" I asked one employee.

"Don't ask me, ask management. Not even the employees are supposed to bathe certain areas," he said.

"Who said that?" I asked.

"That's hotel rules," he said.

I swam in the "guest only" area anyway. The water felt the same as in the unrestricted areas.

The next stop was Scott Bay. Signs posted all over the area warn, "Registered Guests Only Beyond This Point."

Nonetheless, I again was determined

See BEACHES, page 12

Beaches

(Continued from page 1)

see all of the hotel's beaches. I asked a security guard about doing so; he listened sympathetically, then gave me a lecture.

"The V.I. beach law says all beaches are free but it does not state that owners of property fronting beaches must provide access to the beaches," he said. "In Antigua, the government ensures that access roads are available."

When he moved out of sight, I went to the restricted Scott Beach. After 15 minutes of relaxing there, I headed toward Turtle Beach, another off-limits area.

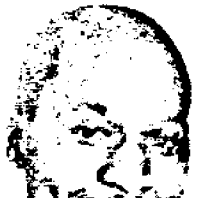
About 50 feet from the beach, a guard appeared and asked if I was a registered guest, then said he was sorry but I could not go onto the beach. "No one can stop you if you come in by sea, though," he added.

Hawksnest Beach

Hawksnest is divided into three sections. One borders Caneel Bay property, one is under the control of the National Park Service and the other borders property owned by the Gibney family.

I first tried the section bordering the resort's property. Another guard making the rounds pointed out that it is restricted and said I could get to it by using a rocky, bushy trail or by coming in from the sea.

Instead, I headed back to my jeep in the resort parking lot and drove to the Park Service section



Osmond Farrell

of Hawksnest Beach, which presented no problem.

Then, not being able to climb over rocks to reach the section bordering the Gibneys' property, I drove to a nearby dirt road leading to that beach section. It was blocked by chains strung across the road.

I waited until a park ranger came along and asked him if it was all right to use that road. "Travel down this road but keep to this side of land," he said, pointing to the side opposite the Gibneys' property.

The beach, where a V.I. government employee was shot on July 5 and free-beach demonstrators rallied on July 12, was pleasant except for seven signs near the water's edge that warned, "No Trespassing," "Beware of the Dog," and "Not Public." I swam with my eyes glued to the land.

Trunk Bay

A five-minute drive from Hawksnest brought me to this national park beach. There are publi parking areas, restrooms, ben ches, showers — and no restric tions.

Cinnamon Bay

Access to this national par beach also is easy. A watersport shop — I was told it's run by Canee Bay — rents chairs for $5. It als rents snorkeling equipment so yo can use the famous underwate trail.

Maho Bay

Parking here is along the roa that runs by the beach. There ar no facilities for visitors to th quiet beach.

Virgin Grand Hotel

After leaving the North Sho beaches, I headed back to Cr Bay. I picked up a friend, who lil me was dressed for the beach, ar headed toward the island's newe resort just outside town.

At the front desk we told a rece tionist we were on our way to t beach.

"Go straight through. You c look around if you care to," s said cheerfully.

After looking around, we went the beach, where no one question our presence. We sat around bri ly, then headed back to town.

While waiting for the 6 p. ferry, I started talking about bea access with several St. John re dents.

"What annoys me is that peo had to come from St. Thomas protest the shooting at Hawksn Bay," said Wenworth Stapleton.

"I am not blaming any indivi als for the shooting, but it is wrc to shoot someone who is enjoyi the beach. And the people h should have demonstrated th disgust for such action."

Daily News
A Gannett Newspaper
40¢
57th Year No. 15036
WEDNESDAY, JULY 22, 1987

Some club, residential St. Croix beaches closed

This is the second in a three-part series on beach access.

By PAUL JEFFERSON
and FREDREKA SCHOUTEN
St. Croix Bureau

St. Croix beaches are fairly accessible, depending on where you go and with whom.

Two Daily News reporters took their own survey of St. Croix's shores and found many of the beaches, even those bordered by "exclusive" resorts, are open to the public. But the survey also found that some beaches adjacent to pricey housing enclaves are restricted to all but the most determined beach-goers.

Buccaneer Hotel

Sure, you can get to this beach — actually two beaches — known for gentle waves and a pleasant view, but it's gonna cost you. It's $4 per person, collected by the guard at the gate who asks where you're going and takes your name.

Your $4 allows you to park in the hotel parking lot, then sit in a chair on a clean beach. Not interested in going further and a little short on cash, we backed up and off the property.

Tamarind Reef Beach Club

The people here were very polite in saying "No one from the outside can come in to walk on the beach." Guess that means no swimming, either, at the two beaches at this club/hotel.

"There's a nice beach about four miles down the road," the nice receptionist added with a smile.

Though we heard reports that for a few bucks, one could use the beach, chairs and swimming pool, the management says

See BEACHES, page 12

Shatkin says minority 'vindicate

Daily News Staff

Sen. Allan Paul Shatkin said Post Audit Division revenue projections released Friday "vindicate" minority senators' claims that the government could pay employees the entire $16.1 million tax windfall from International Telephone and Telegraph Co.

Post Auditor Elmo Roebuck said revenues are pouring into government coffers and are about 25 percent over projections.

Shatkin said statistics show that had the Legislature in April supported his initiative to pay government workers $16.1 million instead of $8 million, "the government cash flow would not have suffered."

Anticipated revenues were pegged at $239 million for the current fiscal year, but Roebuck said $242 million had been collected as of June 30, and the fiscal year doesn't end until Sept. 30. Roebuck said collections could easily top million.

"As more information bec available, all doubts are shattered (that were) creat jealous politicians in the ma trying to convince the peopl the minority's position wa responsible," Shatkin said.

He said minority senator contemplating relying on Audit's findings in July as a for speeding up arbitration a payments.

Beaches

(Continued from page 1)

that's no longer true. However, if you want to have lunch or a few drinks at the bar, you might be able to get on the beach.

Duggan's Reef

Four miles later we found ourselves on this very open beach. "Reef owners welcome you," said the sign at the entrance to the beach area.

The beachfront facility, owned by the condo dwellers at the Reef Condominiums across the road, is open to all except animals. Park your car in the sandy lot, walk 50 yards and you're in the water. And right on the beach is the restaurant and lively bar.

Chenay Bay Beach

One-quarter mile down a bumpy dirt road between Tamarind Reef and Duggan's Reef and you've arrived at Chenay Bay. No glitz here, just a friendly staff and a wide-open beach.

Park your car in the lot — guests have to do that, too — walk past the small open restaurant and you're on the beach. Keep on walking and you can dangle your feet off the pier erected in the beach's shallow water.

St. Croix Yacht Club

Here are a few ways to be a popular yacht club beachcomber:

1) Get a yacht.

2) Join the club (you don't need to own a yacht to join).

3) Go to the club and take note of the sign that says "Private property. Open to members and guests only." Smile. Leave.

Grapetree Beach Hotel

This hotel on the southeast shore

Paul Jefferson

Fredreka Schouten

is most accessible and most accommodating, from the minute you park your car, either in the lot (if there's room) or at the side of the road. All facilities, including beach chairs, are available to guests and public. The pleasant manager says it will stay that way.

La Grange Beach and Tennis Club

Here's the scoop on the West End. One can pay the $2.50 the friendly staff requests to use the beach chairs, a towel and the modesty of a changing and shower room. Or you can forego the money for amenities and walk through the club/restaurant right to the beach. Enjoy.

Rainbow Beach Club

This small, well-appointed beach club allows the public full use of its beach, and only asks that you don't bring your dogs, cats or other members of the animal world here. Someday, perhaps, they'll have their own beaches.

Carambola Beach Resort and Golf Club

This was the big one: the former Davis Bay Beach on the Shore that was a favorite beach until Carambola opene last year. Now it's part of said to be the best, most exc resort on the island. Woul owners live up to their pre-bu promise to always welcom public?

We arrived at the guard st "Buy a drink if you want — b really don't have to," the added conspiratorially. directed us to the parking l parked, walked through the covered walkways, down steps right to the beach.

Use the chairs — go ahea the drink. Sit, relax, no probl

Gentle Winds

This is a nice beach on the Shore east of Carambola, bu years away from anyone "owner or a guest," the sign entrance warns.

The guard at the gate wi firm it for the doubtful. He you where to go — up the roa Salt River Marina, along paved road to where Col landed on his second voyage.

You'll notice the "Crimewatch" signs posted trudge back up the shore the beach you first saw. A being watched? Is this beac ly worth it? Are you tire were.

Judith Fancy

"There's no beach here. told you this?" said the gu the entrance gate to this u residential area. We couldn didn't, argue. The mythical is said to be rocky and u nately attractive to offshore

The guard was probably d favor for true-blue beach After all, there are other b to visit.

Tommorrow: On St. Jo reporter is blocked from

Daily News
A Gannett Newspaper
40¢
57th Year No. 15035
TUESDAY, JULY 21, 1987

Residents cite beach access problems, solutions

By OSMOND FARRELL
Daily News Staff

Is access by Virgin Islands residents to the territory's beaches a widespread problem?

Visits by Daily News staff members to beaches on all three islands that front hotels and condominiums or other private developments, and interviews with residents, have found:

■ Most — but not all — hotels offer free parking and easy access to their beaches. Most charge residents a fee to use beach chairs or hotel facilities.

■ Some private developments or property owners openly discourage resident visitors, making access difficult or even impossible. Some beaches are accessible by only one road and that route is blocked by chains or fences.

■ Residents often would rather use public beaches because they feel less intimidated there — they don't have to go through hotel lobbies, restaurants or other private property.

The beach access issue surfaced earlier this summer when a Senate committee held hearings on all three islands to hear complaints from residents. There is a law in the territory providing free access to all beaches.

Then on July 5, a government employee was shot while swimming off St. John's Hawksnest Beach. The following weekend, a flotilla led by Sen. Bingley Richardson sailed into that beach

See PROBLEMS, page 12

Visits find few St. Thomas problems

This is the first in a three-part series on beach access in the Virgin Islands.

By NORECIA CALLWOOD
and OSMOND FARRELL
Daily News Staff

On St. Thomas, access to hotel and condominium beaches does not appear to be a major problem.

That is the conclusion of two summer interns at The Daily News who, on one day, visited the beaches at one condominium and several hotels on the island.

Stouffer Grand Beach Resort

At the resort's guard house, the woman guard watched us inquiringly.

"We are going to the beach," we said. We as-

See ACCESS, page 12

Access

(Continued from page 1)

pected some resistance as we had heard reports of locals being turned away or given a hard time.

She smiled and said: "Drive straight ahead and you will come to the hotel. The beach is just beyond."

We parked in the guest parking area and then sauntered through the lobby before going to the beach. We were not questioned by anyone. We then grabbed two beachchairs, sat down and waited for a security guard to relieve us of the chairs. But that never happened.

Minutes later, Ermine, a hotel employee, asked if we would like anything from the bar. We declined and left.

Sapphire Beach Resort

Getting to the beach through Sapphire's hotel lobby was no problem. This time, however, a large sign warned that the hotel's facilities are for guests only. And the chairs, which appeared to be closely guarded, were available for rent at $3 each.

Secret Harbour Beach Hotel

There was no problem parking here or getting to the beach, but a sign warned that chairs and facilities were for guests only.

"Why are the chairs for guests only?" we asked one hotel employee.

'If I were to give visitors chairs, there wouldn't be any left for the guests. And they are the ones who are paying for the use of hotel facilities.'

— Secret Harbour hotel employee

"If I were to give visitors chairs, there wouldn't be any left for the guests," she said. "And they are the ones who are paying for the use of hotel facilities."

Bolongo Bay Beach and Tennis Hotel

At Bolongo, after we parked in the hotel lot, an employee gave us directions that would have taken us outside the hotel property to get to the beach. We chose, however, to go through the hotel's restaurant. Once on the beach, we stood around for a few minutes, then decided to walk further on to Watergate Villas.

Watergate Villas

Nailed to the condominium's wall along the beach is a large sign warning that we were on private property.

"Hey, can we have two chairs?" we asked a young man who was cleaning beach chairs.

"Sure. Let me get two clean ones," he said.

"Don't bother," we said. "We are about to leave. We just thought, seeing the beach was private, the chairs would be also."

The young man, whom we later learned was Steve Wilkinson, said, "Man, the beach is public property, no one can chase you away. We don't stop anyone from using the chairs — well, only the children because little children destroy things."

Lime Tree Beach Hotel

The guard at the hotel's entranc asked what our mission was an took our names before telling u where to park and giving direc tions to the beach.

Signs warn that the pool an other hotel facilities are for use guests only, and there is a charg for beach chairs. A few locals wer enjoying the beach with hot guests. One of the main attractio here is feeding the many huge i uanas.

Morningstar Beach

There was no guard house ber and parking was available near t beach. A welcoming sign as visitors to be sensitive to fello beach-goers by not bringing pet playing loud music or playi games that might disturb others. was pleasant sitting on beac chairs, enjoying the ocean bree and reflecting on our incident-fr tour.

Is it normally this easy to u these beaches? Or had the rece publicity prompted the manag ment and staff of some hotels to b more cordial to residents?

Whatever the reason, spending day at the beach — or at seve beaches — was not a bad assig ment.

Tommorrow: On St. Croix, a cess to some beaches is impos ble.

Letters

Land access to beaches must be provided by V.I.

Dear editor:

Lately, there have been wide-ranging discussions concerning the free-beach law. However, the issue shouldn't just relate to the free-beach law, but rather should be centered around the issue of how to get to V.I. beaches that are surrounded by private property.

The law as it is now, according to The Daily News, does not provide access to beaches across private property. In my opinion, it is utterly absurd to pass the free-beach law without providing free access across private property that surrounds our beaches.

Getting to V.I. beaches by boat is fine, but not everybody has a boat. Weren't the senators thinking about the people who sometimes walk or drive to the beaches when they passed the free-beach law?

Amended to this law should be the right of free access by roads, wide enough for vehicles, leading to beaches across private property.

Why should our taxes pay for strips of land for roads when none of us knows if or when we will ever be attacked by beachfront owners or by people living next to V.I. beaches?

I could be wrong, but I doubt if the government employee who was shot in the head at Hawksnest Bay in St. John, presumably by a gunslinger hiding in the bush, had ever envisioned himself being shot by someone while he was swimming.

And he, unlike some other people, didn't walk or drive into the beach; he had sailed in there.

So this leaves me with the impression that if the government pays for strips of land leading to beaches across private property, beachfront property owners will do anything and everything possible to prevent the public from being at the beaches if they don't want the public on them.

However, in providing free access by roads leading to V.I. beaches across private property, the government should try to provide roads as far away as possible from the living quarters of beachfront owners and residents.

As for the public who inevitably would use those roads, if they value the free-beach law, they would avoid interfering with beachfront property owners/residents and keep the beaches clean, which will, in the long run, save the government money.

Vincent McKenzie Thompson
St. Thomas

The Daily News of the Virgin Islands

Founded Aug. 1, 1930 by J. Antonio Jarvis and Ariel Melchior Sr

Editorials represent the views of the editorial board
Members are:

ARIEL MELCHIOR JR. — Publisher & Editor
RONALD E. DILLMAN — General Manager
PENNY FEUERZEIG — Executive Editor

Our free beaches

Too many loose threads are dangling from the fabric of our free-beach law.

It is time for repairs, as last weekend's shocking shooting at Hawksnest Beach, St. John, has made clear.

But what pattern should our mending take? What do we want to accomplish to make sure we protect the public interest and private property rights?

Unquestionably, our beaches must be free to everyone.

Unquestionably, our beaches must be safe. No one using any beach in the Virgin Islands can be put in danger for exercising what are legal and moral rights.

But who is responsible for maintaining those beaches? Who is responsible for putting out garbage cans and cleaning up trash? Who is responsible for the safety of those who swim and cavort there?

And how are we to protect the private property rights of those who live nearby? If it is beyond question that our beaches are and must be free, it also is beyond question that people have the right to be safe in their own homes, and that beachgoers do not have the right to trespass on private property.

As the law is written, anyone has the right to use Virgin Islands beaches up to 50 feet beyond the mean high-water mark or to the shoreline vegetation, whichever is closer to the water.

But the law does not provide access to those beaches across private property.

In practice this generally has not been a problem if there is a commercial facility on a beach; there are exceptions.

However, access is a problem on undeveloped beaches. If someone gets to those beaches by water, fine. But we have not attempted to provide access by land, in part because it will be costly to buy the strips of land needed to put in public roads or walkways to all our beaches.

But this is an investment we must make in the future. It is the right thing to do, and we must do it the right way.

We also must try to reach a consensus on the conflicting rights and responsibilities involved in beach maintenance and safety. These are not easy or clear-cut issues, but they won't go away either. It's time to confront them, discuss them and resolve them.

Islanders: Let us on beaches

By PAUL JEFFERSON
St. Croix Bureau

Virgin Islanders are being denied or discouraged access to V.I. beaches, witnesses at a Wednesday public hearing told the Senate Conservation and Cultural Affairs Committee.

Witnesses also said the best way to solve this problem is for Coastal Zone Management to better enforce conditions it sets when granting development rights along Virgin Islands shores.

Richard Rounds, a member of the St. Croix Environmental Association, said the CZM board has "done a good job" in allowing gradual development of shorelines.

But Rounds, director of the National Undersea Research Program at the West Indies Laboratory on

See BEACHES, page 12

Beaches

(Continued from page 1)

St. Croix, suggested that:

- All commercial developments include a "buffer zone" to protect the original character of beaches and allow vehicular access.
- Developers initiate a perpetual easement through the property on maintained roads to the shoreline.
- Adequate parking areas and natural paths be provided for the public to reach the beach fronting any development.

The hearing's purpose was to examine the impact that past, current and future development has on public access to V.I. beaches and shorelines. Approximately 25 people attended the three-hour-plus hearing, and nearly one-third of the audience spoke.

Rounds said that the V.I. Open Shorelines Act prohibited private beachfronts.

Bruce Duers said that access to beaches in several areas, Pull Point, Judith's Fancy and Salt River, has been denied to him by people or by obstacles such as large boulders or mounds of dirt.

"There's just too much looseness in the access laws," Duers told committee chairman Virdin Brown. "We feel that we have access; we can see the paths."

Duers also questioned the existence of the Open Beaches Committee, a committee that was formed in 1971 but which, according to available records, was never convened.

He said that without a clear concern expressed by CZM regarding public access to beaches, trespassing charges and conflicts with landowners and developers could only increase.

"It's a problem that will cause more problems if not solved," Duers said.

Karen O'Brien read a paper she wrote while a student at Duke University on the importance of waterfront lands as "a public trust."

She specifically cited the Virgin Islands historical reservation of its beaches for use by residents.

Though she admitted to being a determined foe of high-priced housing development on the islands, particularly near Salt River, O'Brien said she supported development which allowed shore access and maintained the islands' ecological preserves.

She decried what she termed "a St. Thomasization of St. Croix."

The Daily News, Tuesday, June 23, 1987

High court limits public access to private property

WASHINGTON (AP) — The Supreme Court, in a second major victory for land developers and owners this month, ruled Friday that government regulators have limited power to grant public access to private property.

The court, ruling 5-4, overturned a decision by California officials that had allowed the public to walk along beachfront property between the Pacific Ocean and a couple's home without compensating the home owners, and placed strict limits on governmental authority to restrict the use of private land without paying the owners.

Justice Antonin Scalia, writing for the court, said granting public access to private property — and other government limitations on private property development — must be tied directly to a specific, justifiable public purpose.

A condition placed on development is unconstitutional if it "utterly fails to further the end advanced as the justification for the prohibition," Scalia said.

Scalia was joined by Chief Justice William A. Rehnquist and Justices Byron R. White, Sandra Day O'Connor and Powell. Dissenting were Justices William Brennan, Thurgood Marshall, Harry A. Blackmun and John Paul Stevens.

The ruling was praised by developers, real estate brokers and their allies, and is a victory for James and Marilyn Nollan, who sought to bar people from crossing back and forth across their beachfront property overlooking the Pacific Ocean in Ventura, Calif.

The Nollans decided in 1982 to replace a deteriorating bungalow on their Faria Beach property with a three-bedroom, two-story house.

The California Coastal Commission said that in exchange for the building permit, nearly one-third of the 3,800-square-foot property must be set aside for the public to cross back and forth.

Beach

(Continued from page 1)

> *'The right to beaches' is the same as 'the right to breathe.'*
>
> *—Victor O. Frazer*
> *St. Thomas attorney*

ment Commission was nearly as effective as it should be.

"We virtually never see a cease and desist order" enforced, Berne said.

John Bernier, a CZM commissioner, sat in the audience. He said he came only as an observer.

"We've got to move fast if we're going to keep these islands from private development," Berne said. There should be "a moratorium on beach building. It's time the Legislature addressed that." She warned of possible development of nearby cays.

"The government of these islands has been as much a violator as developers," Berne said.

"Indeed it has," Brown responded.

Dr. Lucien Moolenaar, a St. Thomas dentist, said residents may appear to be apathetic about the issue of beach access. He attributed that to intimidation because of being employed by the government. If the government has not "blessed" the issue, some people may believe they could lose their jobs, he said.

Moolenaar pointed out the loss of a beach with the Long Bay landfill project by the West Indian Co. Ltd. "They have destroyed a beach and put in a bulk head."

Brown said the committee would continue to investigate beach access, talking to CZM commissioners, the Industrial Development Commission and those who occupy beachfront property.

Beach access

Intimidating obstacles said scare many in V.I.

By ED CROUCH
Daily News Staff

There is access to beaches on St. Thomas. But there are also intimidating obstacles such as guard houses and hotel lobbies, Sen. Virgin Brown was told Monday at a hearing on the beach access issue.

In addition, the public needs to be educated on its rights, Brown was told.

Brown, chairman of the Senate Committee on Conservation, Recreation and Cultural Affairs holding the hearing, was the only senator present in the Senate chamber on St. Thomas.

Committee members John Bell, Robert O'Connor, David Puritz and Holland Redfield were absent, a point most of the speakers noted in their comments.

George Tyson, an Estate Nazareth resident, said he sympathized with developers' needs for security, but said guard houses discourage people from using beaches.

Edith Berne, a St. Thomas attorney, said she wasn't intimidated by the guard at the entrance to Stouffer's Grand Beach Resort.

Following interrogation, "I said none of your business and I went," Berne said. "We need to educate people" about their rights.

Berne and others commented on the fact that people feel self-conscious when they are wearing bathing suits and must walk through a restaurant or hotel lobby in order

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New buildings near beach worry St. Johnians

By AMY ROBERTS
St. John Correspondent

Almost two-thirds of St. John falls within the national park, so access to much of the island's shoreline is mandated by federal as well as territorial law.

But problems still exist concerning the use, development and access to beachfront property, several St. John residents said Thursday night.

They spoke at a hearing held at Boulon Center in Cruz Bay by the Senate's Conservation and Cultural Affairs Committee.

One of the main issues was construction of a five-unit condominium at Turner Bay which has been a source of controversy since last January.

According to resident Charlotte Fish, some of the footings for the building are directly on the beach property that is defined as public by the Open Shorelines Act.

She said the owner of the project, George Sarris, told another resident not to walk on the beach because it was private property.

The project also has drawn criticism because of a previous DCCA ruling that declared it small

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enough to qualify for a minor permit.

As a result of this ruling the development was never discussed at a public hearing or approved by the Coastal Zone Management board.

Sarris originally applied for a permit to build a two-unit structure "but it's obvious that he's building at least four units and he's advertised five for sale," said Fish.

Now that the project is nearing completion there is reason to believe that the minor permit was granted erroneously, according to committee chairman Virdin Brown. He promised to look into the matter.

Another issue discussed at the meeting was the inadequacy of the island's sewage treatment facility. The plant is pumping "practically raw" sewage into the Enighed Pond which flows directly into the sea, according to Victor Johanson who chaired a citizen's advisory group on the facility.

"Sewage effluent is being washed up all over the beaches in Cruz Bay. We have a small disaster on our hands," he said.

A study of this plant was completed recently, and Public Works was supposed to make recommendations for its improvement, said Sen. Robert O'Connor, the only other committee member to attend the meeting.

Other concerns expressed at the meeting included:

- Public access to what formerly was the Oppenheimer property at Hawksnest beach. Because of the hazardous condition of a building there, the territory has put a chain across the road to discourage access.
- The number of boats that tie up to shoreline vegetation on Cruz Bay beach.
- Continued public access to the beach at Chocolate Hole once the new 70-unit hotel-condominium development is built.
- The affect of imported sand on the beach at Great Cruz Bay, site of the New Virgin Grand Hotel.
- Room for expansion of port facilities at Red Hook and at Enighed Pond near Cruz Bay.

Sen. Virdin Brown

Developer Marc Crandall, a St. Thomas resident, said that public access to the beaches should be assured but property owners' rights should be protected as well.

Property owners should not have to pay taxes or liability insurance on beachfront land that is held in trust by the government as defined by the Open Shorelines Act, Crandall said.