

TESTIMONY BEFORE 11 July 2023 COMMITTEE OF THE WHOLE

PROPOSED ST JOHN “LAND SWAP” BILL FOR PUBLIC SCHOOL ON ST JOHN

Good day President Francis and members of the 35th Legislature.

My name is David Silverman and I am a resident of Coral Bay. Before I begin, I need to preface my remarks with two critical pieces of information:

1. First, I am clearly not a native St Johnian, and I strongly believe that the matter being discussed today – a public school on St John – is a matter which should be decided based on the needs and wishes of ancestral native St Johnians. My comments are being offered solely to assist this body in reaching a legally valid solution.
2. Second, although my remarks are critical of the Governor’s bill under consideration by this body, in NO WAY am I opposed to the construction of a public school on St John island. Let me say that once more: I stand FULLY in support of a public school on St John.

Three minutes is insufficient time to discuss anything in detail, so I have submitted written testimony to accompany my verbal testimony. In the time allotted for remarks I will simply summarize the contents of the written testimony.

My principal concerns with the Governor’s bill are twofold: first, I question the legality of the proposed swap and the statement that the GVI will retain water rights. Second, I question whether there are far better ways to accomplish the swap without the Government of the Virgin Islands having to convey Whistling Cay.

Let me begin with water rights. When the United States acquired the Virgin Islands from Denmark in 1917, along with the land the US acquired ownership of the submerged lands surrounding the islands, up to the 3-mile territorial limit.

The 1936 and 1954 Organic Acts transferred control of the land the U.S. had acquired to the GVI, however the two Organic Acts only transferred fast land, and did not transfer ownership or control of submerged lands to the VI government.

In 1956 the Virgin Islands National Park was created, consisting of around 5,000 acres of uplands on St John. In 1962 the park was expanded to include 5,650 acres of submerged lands surrounding St John, including the submerged land surrounding Whistling Cay.

It wasn’t until 1974 that the remaining submerged lands surrounding the Virgin Islands were transferred to the Government of the Virgin Islands to be held in trust for the people of the

Virgin Islands. The 1974 transfer of submerged lands explicitly excluded any submerged lands within the VI National Park.

So the situation today is that although the VI Government owns the land of Whistling Cay, it does not have any rights, including any water rights, to the submerged land surrounding Whistling Cay.

Those submerged land rights were purchased by the US Government in 1917, added to the National Park in 1962, and excluded from the transfer of submerged lands to the VI Government in 1974.

A June 8 Government House press release stated “under the Governor’s proposed legislation, the GVI will retain the water rights to Whistling Cay” however this is meaningless since the GVI has never had rights to the submerged land surrounding the cay.

Second, the proposed transfer of Whistling Cay violates Title 31 Section 205 of the Virgin Islands Code which states that “No portion of a shoreline shall be sold, leased or otherwise disposed of by the Government of the Virgin Islands.” The proposed transfer includes the sale or disposal of approximately 5,000 feet of shoreline, which is illegal under Title 31.

In my written submission I have proposed that the GVI swap GVI-owned submerged lands for the Susannaberg parcel. This transfer would not violate any existing laws and would not diminish the land on St John currently owned by the GVI. I believe this is a superior proposal to the one currently on the table and would not meet with any public resistance.

Thank you and I am happy to answer any questions.

David Silverman

6 July 2023