

**National Park Service  
US Department of the Interior**



**Virgin Islands National Park**

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**Finding of No Significant Impact  
Potential Land Exchange with the Government of the Virgin Islands for  
Public Education**

**November 2022**

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Recommended:

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Nigel A. Fields  
Superintendent  
Virgin Islands National Park and Virgin Islands Coral Reef  
National Monument

12/05/2022

Date

Approved:

\_\_\_\_\_  
Mark A. Foust  
Regional Director  
Interior Region 2, South Atlantic – Gulf

\_\_\_\_\_  
Date

## INTRODUCTION

The National Park Service (NPS) prepared an environmental assessment to evaluate the impacts of exchanging a portion of the Catherineberg Estate under NPS ownership (Tract No. 01-137A) for the island of Whistling Cay (Tract No. 02-101), which is owned by the territorial government of the US Virgin Islands (GVI or the Territory). The purpose of this project is to respond to a request from the Territory that the National Park Service convey to it a parcel of NPS-owned land (i.e., the Catherineberg Estate) as a possible location to support the island's local educational needs, in exchange for Territory-owned Whistling Cay.

The environmental assessment and this finding of no significant impact have been prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended [42 United States Code (USC) 4321 et seq]; the 2020 National Environmental Policy Act (NEPA) implementing regulations of the Council on Environmental Quality [40 Code of Federal Regulations (CFR) 1500-1508]; the Department of the Interior NEPA regulations (43 CFR Part 46); and NPS Director's Order 12: *Conservation Planning, Environmental Impact Analysis and Decision-making* and the accompanying NPS NEPA Handbook. The statements and conclusion reached in this finding of no significant impact are based on the documentation and analysis provided in the environmental assessment and associated decision file. To the extent necessary, relevant sections of the environmental assessment are incorporated by reference below. As required by NPS *Management Policies 2006*, a finding of non-impairment is included as attachment A.

## NPS SELECTED ALTERNATIVE

In August 2022, the National Park Service released the *Potential Land Exchange with the Government of the Virgin Islands for Public Education Environmental Assessment* that evaluated how to respond to a request from the Territory that the National Park Service convey to it a parcel of NPS-owned land (known as the Catherineberg Estate [Tract No. 01-137A]) as a possible location to support the island's local educational needs, in exchange for Territory-owned Whistling Cay. The environmental assessment described two alternatives: a no-action alternative and an action alternative. The environmental assessment then analyzed the potential impacts these alternatives would have on the natural, historic, and human environment on St. John.

### Selected Alternative Description

The alternative selected by the National Park Service for implementation is alternative 2 (proposed action/NPS preferred alternative), as described on pages 13-14 and shown on figures 2 and 3 of the environmental assessment. The following summarizes the NPS selected alternative; see the environmental assessment for full details.

Under the selected alternative, the National Park Service will exchange the approximately 11-acre parcel at Catherineberg for the approximately 18-acre Whistling Cay. According to federal law (54 USC §102901), the Secretary of the Interior is authorized to exchange lands within units of the national park system. Although Whistling Cay is owned by the Territory, it is within the boundaries of Virgin Islands National Park and has a similar property (real estate) value as the parcel at Catherineberg; under these conditions, an exchange may take place, and the need for any legislative action by the US Congress is precluded. This potential transfer will be subject to a final agreement signed by the National Park Service and the Territory. A preliminary land transfer agreement dated October 2020 (included in appendix A of the environmental assessment) has been drafted and is subject to mutually agreed upon revisions. The final agreement will provide the terms and conditions under which the transfer will take place, including deed restrictions that will direct future land use, among other conditions.

Ownership of the Catherineberg parcel will be transferred from the National Park Service to the Territory, subject to deed restriction specifying that the property will be used to construct educational facilities (for

public preschool, primary, secondary, and/or tertiary educational purposes). This restriction will not preclude the temporary, emergency use of the land for shelter or other responsive activities in the event of a natural disaster or catastrophic event or during a declared state of emergency.

Although construction of educational facilities is not part of the NPS selected alternative, impacts were considered at a programmatic level from the known intention by the Territory to construct educational facilities at the Catherineberg site. Preliminary conceptual plans call for a K-12 school, which will require associated infrastructure, including power lines, water, sewer, and lighting components. The National Park Service assumes that construction of educational facilities will require clearing of 6-8 acres and the construction of buildings, parking lot/driveway, and walkways, with additional landscaped areas. The National Park Service assumes that development will be focused on the western portion of the site because of the presence of sensitive resources on the eastern portion of the parcel. The presence of these resources is the basis for additional restrictions that the National Park Service will incorporate in the final land transfer agreement, which will be signed separately from this decision document. The findings stated in this document rely upon these restrictions (as described in the “Mitigation” section below) being in place.

Detailed design of the facilities will take place after the execution of the land exchange. Future design and construction of educational facilities will be subject to additional site-specific compliance with the National Environmental Policy Act and other laws (to be conducted by the Federal Emergency Management Agency and the Territory) due to the anticipated use of federal funding for construction.

The preliminary agreement for the land transfer was made subject to the National Park Service conducting requisite natural and cultural resource surveys at the Catherineberg parcel. The preliminary agreement states that if surveys reveal the presence of cultural resources, the resources must be preserved or protected before the exchange can proceed. Recent cultural landscape and archeological investigations have identified cultural resources on the parcel that are consistent with other sites identified on adjacent lands and across the island. Appropriate protection of this sensitive location was developed in consultation with the Virgin Islands State Historic Preservation Officer. Methods of preservation and protection are described in a Memorandum of Agreement and the deed restrictions, which will guide future development and/or use of the parcel as it relates to cultural resources. The Memorandum of Agreement stipulations and deed restrictions are summarized in the “Mitigation” section below. The executed Memorandum of Agreement is included in attachment B to this document.

While ownership of Whistling Cay will be transferred from the Territory to the National Park Service, the NPS management approach will continue to be one of conservation and preservation. No changes to access or interpretation at Whistling Cay are planned at this time. Transfer will be subject to a deed restriction that the land shall not be conveyed to any private persons, firm, or corporation for any private use or purpose.

## **RATIONALE FOR DECISION**

The NPS selected alternative 2 (proposed action / NPS preferred alternative) for implementation because the Catherineberg exchange parcel is a possible location on St. John for a new school due to its presence along an existing roadway and its relatively gentle slopes. Building a new school at this location would provide students the opportunity to complete their K-12 education on the island without having to commute by boat each day or relocate to St. Thomas during the school year. The selected alternative will help local officials achieve their long-standing effort to construct the first K-12 school on St. John. Implementing the selected alternative also aligns with NPS goals, as education is a component of its mission. The selected alternative will also achieve the project purpose of responding to the Territory’s request for the National Park Service to convey to it a parcel of NPS-owned land to support the island’s educational needs.

In addition, the compliance process has helped the park further engage with the Virgin Islands State Historic Preservation Officer and the Virgin Islands Department of Education through the development and signing of a memorandum of agreement. Surveys conducted on the Catherineberg parcel during the compliance process shed light on the island's complicated past. As part of the compliance process, the National Park Service has committed to developing imperative interpretation of both the Catherineberg parcel and Whistling Cay and bringing to light the painful history of these locations.

## MITIGATION

Under its Organic Act, the National Park Service has the authority to develop and direct mitigation for impacts to resources under its jurisdiction. This is in addition to the requirements that may be created through the need to comply with laws and regulations managing resource impacts that are overseen by other agencies. To meet these obligations, the National Park Service has developed Management Policies and Director's Orders that identify the authorities (laws, regulations, and executive orders) directing how impacts and mitigation to resources shall be managed, as well as identify the policies and procedures by which the National Park Service shall comply with these authorities. A full listing of the NPS policies is available from the NPS Office of Policy website at: <https://npspolicy.nps.gov/index.cfm>.

In the case of this particular action, the Catherineberg parcel would be transferred out of NPS ownership; however, the National Park Service has identified measures to avoid, minimize, and mitigate impacts related to the selected alternative. The measures are as follows:

- Following the development of specific proposals for construction and use of the site by the Territory, the National Park Service highly recommends that the Territory undertake a species survey for Thomas' Lidflower (*Calyptrothrix thomasi*), St. Thomas prickly-ash (*Zanthoxylum thomasi*), Marron bacora (*Solanum conocarpum*), and *Peperomia wheelerii* (also known as *Peperomia myrtifolia*), preferably during the flowering season for ease of plant identification. Previous NPS surveys have failed to disclose the existence of special status plant species on the Catherineberg parcel, but surveys during the flowering season would be more conclusive.
- Prior to construction, the site should be reviewed for presence of the Virgin Island Tree Boa (*Chilabothrus granti*) in accordance with protocols established by the Territory Department of Planning and Natural Resources, Division of Fish and Wildlife.
- The National Park Service shall record a restrictive covenant, as part of the conveyance documents in the permanent real estate records of the United States Virgin Islands. Restrictions will specify that the Catherineberg parcel shall be used for educational purposes. Furthermore, it identifies amended boundaries for the Catherineberg-Jockumsdahl-Herman Farm Historic District and specifies no construction (or placement of structures) within that portion of the parcel. More specific description of this restriction and a map of the construction prohibition area are included in the Memorandum of Agreement in attachment B.
- Pursuant to the Memorandum of Agreement between the National Park Service, the Virgin Island State Historic Preservation Officer, and the Territorial Government of the US Virgin Islands, the State Historic Preservation Officer will amend the existing National Register documentation for the Catherineberg-Jockumsdahl-Herman Farm Historic District based upon the findings and recommendations of recent cultural resource surveys.
- Pursuant to the Memorandum of Agreement between the National Park Service, the Virgin Island State Historic Preservation Officer, and the Territorial Government of the US Virgin Islands, within five years, the National Park Service will develop an interpretation plan that will outline and guide decisions about interpretative programming at Catherineberg and Whistling Cay. The interpretation plan will be created through a collaborative process

involving the National Park service, the Territory, interpretive specialists, subject matter experts, and stakeholders.

### **OTHER ALTERNATIVES CONSIDERED**

In addition to the NPS selected alternative described above, the environmental assessment also analyzed a no-action alternative (pages 13 of the environmental assessment). Under the no-action alternative, the land exchange between the National Park Service and the Territory would not take place.

An alternative proposed by some members of the public during both civic engagement and public comment was for the NPS to either lease or donate the Catherineberg parcel, rather than transfer it as a land exchange. Although NPS' leasing authority allows for the leasing of existing buildings and structures no longer of use to the NPS, Federal law (36CFR 18.12) prohibits the NPS from leasing land for new major construction. Similarly, a donation alternative was non-viable, as the NPS has no legal authority to donate the land. Federal law (54 U.S.C. §102901) prohibits conveyance of property from National Parks. That same law authorizes the Secretary of the Interior to exchange lands within National Parks. Whistling Cay, although owned by the GVI, is within the boundary of the National Park, and has a similar property value, so the NPS is authorized to make this proposed exchange. In general, only Congress can change the boundary of a National Park, therefore, altering the boundary and pursuing a legislative option was not considered. The GVI has the authority to exchange interests in land under Territorial law (Title 31 V.I. Code § 231a).

### **FINDING OF NO SIGNIFICANT IMPACT**

As described in chapter 3 of the environmental assessment, the NPS selected alternative will result in impacts on park resources, including impacts to cultural resources, adjacent communities, and visitor use and experience. No significant impacts were identified that require analysis in an environmental impact statement. The anticipated impacts to the affected resources are summarized below. See pages 16-37 of the environmental assessment for complete discussions of the impacts on these resources.

***Cultural Resources.*** The selected alternative will result in adverse impacts to cultural resources. Adverse impacts will result from future ground disturbance and other construction activities which have the potential to disturb existing archeological resources and remove or damage cultural landscape features. Specifically, adverse impacts will occur to the Catherineberg Historic District/Cultural Landscape from the development of the exchange parcel by the Territory for education facilities that will alter the historic setting of the historic district/cultural landscape and impact its integrity. The development of the exchange parcel would require clearing of vegetation to add elements, including buildings, parking lots, etc., to the property that were not present historically. If any character-defining vegetation subject to clearing within the exchange parcel qualifies as a mature tree specimen, it will be managed within the framework of the Community and Heritage Tree Law established by the Territory. This law governs that roadside trees and mature specimen trees are managed as a step toward protecting the territorial-wide heritage landscape. Adverse impacts resulting from the selected alternative will be resolved through the implementation of the Memorandum of Agreement included in attachment B. The Memorandum of Agreement specifies that the portion of the parcel that contains particularly sensitive cultural resources shall not be subject to ground disturbance or construction.

The selected alternative will not have direct impacts on historic resources within the historic district/cultural landscape that will remain in NPS ownership, such as the windmill, animal mill, factory, and rum still. Thus, although the historic property's integrity of setting will be impacted from adjacent development, the Catherineberg Historic District/Cultural Landscape will retain integrity of location, design, materials, workmanship, and association related to its significance as a sugar plantation (1718–1896). Future design of the educational facilities by the Territory will be subject to additional NEPA

compliance and will also require Territorial compliance with Section 106 of the National Historic Preservation Act (NHPA) prior to construction.

When considered together, the continued development along Centerline Road and the implementation of the proposed action would result in an overall, cumulative adverse impact on the Catherineberg Historic District/Cultural Landscape. Adverse cumulative impacts would be long-term and indirect and further compromise the property's integrity of setting, which has already been impacted by the current dense vegetation on the property, a change from the historic condition of open agricultural land. The presumed construction of educational facilities by the Territory would contribute a substantial increment to this overall cumulative adverse impact. Although the historic property's integrity of setting will be impacted from adjacent development, the Catherineberg Historic District/Cultural Landscape will retain integrity of location, design, materials, workmanship, and association related to its significance as a sugar plantation (1718–1896).

The selected alternative will not result in any impacts to cultural resources at Whistling Cay. The management approach will continue to be one of conservation and preservation.

***Adjacent Communities.*** Implementation of the selected alternative will result in both beneficial and adverse impacts to communities adjacent to the exchange parcel. In the short-term, adverse impacts will occur from noise disturbances and traffic disruptions associated with construction activities and equipment while the school is built. However, this impact will be temporary and cease once the school is constructed (length of construction will depend upon future design and planning). The selected alternative will also result in long-term adverse impacts to adjacent communities because use of the school will increase noise and light pollution as well as increase traffic and congestion on nearby roadways that residents use to access their communities. Congestion in this area could also delay general travel throughout the island. However, noise and light coming from the school will abide by local ordinances and thereby not produce excessive sound or illumination in adjacent communities. Furthermore, traffic congestion related to queues during school dismissal, and additional noise and light from the facilities, will only occur at certain times of the day (during the beginning of the school day and dismissal).

Under the selected alternative, there will also be beneficial impacts to adjacent communities by providing educational opportunities for the communities' youth in a more accessible and convenient manner. Students in grades 9-12 living on the island will no longer have to travel to St. Thomas each day for public education, which could reduce the current hardship that families experience and could encourage an increased community graduation rate. Having additional public educational facilities on St. John may also increase opportunities for more students' involvement in extracurricular activities and parents' involvement in meetings and other school events.

Other reasonably past, present, and foreseeable projects (e.g., development along Centerline Road and the Virgin Islands Water and Power Authority [WAPA] Electrical Underground Project) would result in short-term adverse impacts to adjacent communities by adding congestion due to construction and lane closures. However, these separate projects would provide long-term beneficial impacts to the community by providing smoother stretches of road and burying electrical components, which could help secure reliable power during future storm events. When considered together, the overall beneficial impact of the development along Centerline Road and WAPA projects would complement the beneficial impacts associated with the selected alternative due to improved roads and expanded educational opportunities for youth in the community.

There are no adjacent communities on Whistling Cay and thus, there will be no impacts from the selected alternative there.

***Visitor Use and Experience.*** The selected alternative will result in adverse impacts to visitor use and experience. Adverse impacts such as increased traffic and distant noise related to school construction will be temporary, however, and visitors will still be able to access the historic resources within the historic

district/cultural landscape that will remain in NPS ownership, such as the windmill, animal mill, factory, and rum still, as well as other nearby attractions such as trailheads. Implementation of the selected alternative will also result in long-term adverse impacts to visitor use and experience due to potential sounds from school activities and increased congestion on Centerline Road from the adjacent school drop-off/pick-up area and parking lot. This could occasionally make it more challenging for visitors to access park lands. However, these impacts will only occur at certain times of the day and will not prevent visitors from continuing to access and enjoy the attractions they come to experience at the park. Furthermore, views from park lands will likely not change because the exchange parcel is located through dense vegetation which will block any views visitors might have of the school campus. Visitors' understanding of the historic sites will remain unaltered for the near future, and they will still be able to access attractions, such as trailheads. In the long term, visitor understanding will improve as the National Park Service develops and implements an interpretive plan for these resources, in accordance with the Memorandum of Agreement executed for this project. Considering that the exchange parcel is surrounded by NPS lands, the National Park Service will request that the Territory coordinate school planning with them to develop a lighting design and management plan and appropriate mitigation measure that would protect the night sky quality and values associated with the park.

Other reasonably past, present, and foreseeable projects (e.g., development along Centerline Road and the Virgin Islands Water and Power Authority [WAPA] Electrical Underground Project) would result in short-term adverse impacts to visitor use and experience by adding congestion due to construction and lane closures, delaying visitors' access to attractions such as the structures at Catherineberg Estate and nearby trailheads. However, the WAPA project would provide long-term beneficial impacts to the community by burying electrical components, which could help secure reliable power during future storm events.

Visitors will not experience any impacts at Whistling Cay under the selected alternative. Although ownership will be transferred from the Territory to the National Park Service, the management approach will continue to be one of conservation and preservation. There will be no changes to access or interpretation on the cay in the near term. In the long term, visitor understanding of the cay's resources will improve as the National Park Service develops and implements an interpretive plan for this area, in accordance with the Memorandum of Agreement executed for this project. Access to and use of the waters around Whistling Cay will not change, as these waters have been owned and managed by the National Park Service for decades.

## AGENCY CONSULTATION

During the NEPA process, the park contacted the following agencies and Tribes for consultation:

- Virgin Islands State Historic Preservation Office
- Kalinago Tribe of the Virgin Islands of the US
- Guainía Taino Tribe of the Virgin Islands
- US Fish and Wildlife Service

As required by Section 106 of the NHPA, the park consulted with the Virgin Islands State Historic Preservation Office, associated Tribes, and additional consulting parties (specifically, St. John Historical Society and Rafe Boulon [former Chief of Resource Management at the park]) to assess the effect of the project on historic properties. The Section 106 consultation process was conducted separately from but concurrently to the NEPA process. The State Historic Preservation Office concurred with the NPS finding of an *adverse effect* on historic properties in a letter dated July 14, 2022. The National Park Service has since coordinated with the State Historic Preservation Office, the Territorial Government of the US Virgin Islands, and both the Kalinago and Guainía Taino Tribes during the next step of the Section 106 compliance process for this project, development of a Memorandum of Agreement. A signed copy of the

Memorandum of Agreement, which includes stipulations to resolve the *adverse effect* determination under Section 106, is included as attachment B. Future design of the educational facilities by the Territory will also require Territorial compliance with Section 106 prior to construction.

As required by Section 7 of the Endangered Species Act, the park made the following effect determinations and discussed with the US Fish and Wildlife Service the potential effects of the selected alternative on these federally listed or candidate species:

- Thomas' Lidflower (*Calyptanthus thomasi*): no effect
- St. Thomas prickly-ash (*Zanthoxylum thomasi*): no effect
- Marron bacora (*Solanum conocarpum*): no effect

On April 28, 2022, the National Park Service sent the US Fish and Wildlife Service a request for technical assistance to identify issues, concerns, and opportunities for the proposed land exchange in accordance with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.) and the Endangered Species Act (16 U.S.C. 1531 et seq. as amended). The US Fish and Wildlife Service responded on June 9, 2022, with several recommendations, including one to include updated environmental surveys in the NPS environmental assessment. The National Park Service included information about a recent survey that was completed; however, during follow-up discussions in September of 2022 following the release of the environmental assessment, the US Fish and Wildlife Service expressed continuing concern about species that may either not have been found during the 2022 survey or may populate the area prior to any construction activities. As such, the National Park Service is including in this Finding of No Significant Impact a strong suggestion that the Territory undertake additional site investigation prior to construction. A summary of this concern and associated errata are included in attachments C and D, respectively.

The park determined that a federal consistency determination to comply with the Coastal Zone Management Act (CZMA) would not be required for the land exchange. The Territory will reconsider the need for compliance with the CZMA for the future development of educational facilities.

## **CONCLUSION**

The NPS selected alternative does not constitute an action meeting the criteria that normally requires preparation of an environmental impact statement and as noted above, impacts resulting from implementing the action will not have a significant effect on the human environment. Based on the foregoing, it has been determined that an environmental impact statement is not required for this project and thus will not be prepared.



**ATTACHMENT A:  
NON-IMPAIRMENT DETERMINATION**

By enacting the National Park Service (NPS) Organic Act of 1916 (Organic Act), Congress directed the US Department of Interior and the National Park Service to manage units “to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such a manner and by such a means as will leave them unimpaired for the enjoyment of future generations” (54 USC 100101). Congress reiterated this mandate in the Redwood National Park Expansion Act of 1978 by stating that the National Park Service must conduct its actions in a manner that will ensure no “derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress” (54 USC 100101).

The NPS *Management Policies 2006*, Section 1.4.4, explains the prohibition on impairment of park resources and values:

While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

The *Potential Land Exchange with the Government of the Virgin Islands for Public Education Environmental Assessment* analyzes impacts to the following resources: cultural resources, adjacent communities, and visitor use and experience. NPS *Guidance for Non-Impairment Determinations and the NPS NEPA Process* states that:

The impairment determination does not include discussion of impacts to visitor experience, socioeconomics, public health and safety, environmental justice, land use, park operations, etc., as those do not constitute impacts to park resources and values subject to the non-impairment standard.

As a result, for purposes of this document, impairment findings are required for cultural resources at the park.

**IMPAIRMENT DETERMINATION FOR THE SELECTED ALTERNATIVE**

The National Park Service has determined that the land exchange of the 11-acre parcel at Catherineberg for the approximately 18-acre property of Whistling Cay will not result in the impairment of park resources and values. This determination on impairment has been prepared for the selected alternative described on pages 13-14 of the environmental assessment and in this Finding of No Significant Impact. An impairment determination is made for the resource impact topic of cultural resources. These cultural resources are considered fundamental to Virgin Islands National Park.

**Cultural Resources**

Cultural resources are fundamental to the history of Virgin Islands National Park. Cultural resources within the project areas include the Catherineberg Historic District/Cultural Landscape (encompassing the entirety of the Catherineberg-Jockumsdahl-Herman Farm Historic District and the Estate Catherineberg Cultural Landscape) and the Whistling Cay guard house (custom house). Key features within the historic district/cultural landscape include natural systems and features, topography, spatial organization, vegetation, buildings and structures, small scale features, and archeological resources. Part of the purpose of the park is to preserve and protect its cultural heritage from pre-Columbian through Danish colonial times. The park’s foundation document includes within one of its significance statements the topic of natural and cultural features. It states “Virgin Islands National Park provides unparalleled opportunities to

experience scenic views of natural and cultural features of St. John and Hassel Island—from historic ruins and forested hillsides and peaks to undeveloped beaches. The clear turquoise water of the park and monument creates the backdrop for these iconic scenes.”<sup>1</sup> The foundation document also identifies its diverse historic landscape and a scenic viewscape as some of its fundamental resources and values. Furthermore, some of the park’s interpretive themes include providing opportunities for visitors to “deepen their appreciation, understanding, and connection to natural and cultural resources found only in the Caribbean.”<sup>2</sup>

Actions associated with the land exchange will result in adverse impacts to cultural resources because future ground disturbance and other construction activities related to the development of educational facilities have the potential to disturb existing archeological resources and remove or damage cultural landscape resources. However, the preliminary land transfer agreement states that if natural and cultural resources surveys reveal the presence of cultural resources, the resources must be preserved or protected before the exchange can proceed. Also, the National Park Service assumes that development will be focused on the western portion of the parcel due to the presence of these sensitive resources on the eastern portion of the parcel. In addition, these adverse impacts would be avoided, minimized, or mitigated through continued consultation with the Virgin Islands State Historic Preservation Officer and other consulting parties, including the Kalinago Tribe of the Virgin Islands of the US, the Guainía Taino Tribe of the Virgin Islands, and the US Fish and Wildlife Service. Furthermore, the Section 106 Memorandum of Agreement includes stipulations to resolve the *adverse effect* determination under Section 106. Future design and construction of educational facilities would also be subject to additional NEPA and NHPA Section 106 compliance.

Development of the parcel will also alter the historic setting of the historic district/cultural landscape and impact its integrity. Activities will include clearing of vegetation to add elements, including buildings, parking lots, etc., to the property that were not present historically. Although the historic property’s integrity of setting will be impacted from this adjacent development, the Catherineberg Historic District/Cultural Landscape will retain integrity of location, design, materials, workmanship, and association related to its significance as a sugar plantation (1718–1896). Furthermore, the selected alternative will not result in changes to historic resources within the historic district/cultural landscape that will remain in NPS ownership, such as the windmill, animal mill, factory, and rum still. These resources will remain as contributing features and will maintain their historic spatial organization. Thus, visitors will still be able to deepen their appreciation, understanding, and connection to natural and cultural resources unique to the Caribbean. Although vegetation will be cleared to develop the exchange parcel, vegetation surrounding the parcel is dense and will continue to offer a natural environment and serve as a buffer for noise or light from the educational facilities in the future. This will help protect the diverse historic landscape and scenic viewscape as fundamental resources to the park. In addition, the Catherineberg-Jockumsdahl-Herman Farm Historic District will remain listed on the National Register.

The Catherineberg Historic District / Cultural Landscape will retain its integrity of location, design, materials, workmanship, and association related to its significance as a sugar plantation, and any discovered cultural resources will be preserved or protected prior to the land exchange. Therefore, the National Park Service has determined that the selected alternative will not result in impairment to cultural resources at the park.

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<sup>1</sup> National Park Service. *Foundation Document: Virgin Islands National Park, Virgin Islands Coral Reef National Monument*. December 2016. p. 6.

<sup>2</sup> National Park Service. *Foundation Document: Virgin Islands National Park, Virgin Islands Coral Reef National Monument*. December 2016. p. 11.

## **SUMMARY**

The National Park Service has determined that the implementation of the NPS selected alternative will not constitute an impairment of the resources or values of the park. As described above, implementing the selected alternative is not anticipated to impair resources or values that are essential to the purposes identified in the establishing legislation of the park, key to the natural or cultural integrity of the park, or identified as significant in the park's relevant planning documents. This conclusion is based on consideration of the park's purpose and significance, a thorough analysis of the environmental impacts described in the environmental assessment, the comments provided by the public and others, and the professional judgment of the decision-maker guided by the direction of the NPS *Management Policies 2006*.

**ATTACHMENT B:  
MEMORANDUM OF AGREEMENT**

MEMORANDUM OF AGREEMENT  
AMONG  
THE NATIONAL PARK SERVICE,  
DEPARTMENT OF PROPERTY AND PROCUREMENT OF THE TERRITORIAL  
GOVERNMENT OF THE U.S. VIRGIN ISLANDS,  
AND THE VIRGIN ISLANDS STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE EXCHANGE OF REAL PROPERTY BETWEEN THE NATIONAL  
PARK SERVICE AND THE GOVERNMENT OF THE VIRGIN ISLANDS FOR PUBLIC  
EDUCATION, ST. JOHN, U.S. VIRGIN ISLANDS

THIS MEMORANDUM OF AGREEMENT (“MOA” or “Agreement”) dated November 4, 2022, is made by and among the NATIONAL PARK SERVICE (“NPS”), the DEPARTMENT OF PROPERTY AND PROCUREMENT OF THE TERRITORIAL GOVERNMENT OF THE U.S. VIRGIN ISLANDS (“GVI”), and the VIRGIN ISLANDS STATE HISTORIC PRESERVATION OFFICER (“SHPO”). The NPS, GVI, and SHPO are collectively referred to as “Signatories” or individually as a “Signatory.”

WHEREAS, the GVI owns the fee simple interest in a parcel of land identified as Tract No. 02-101, located within the authorized boundary of the Virgin Islands National Park, hereinafter referred to as the “Park,” by virtue of the Revised Organic Act of 1954 (Act of Congress, July 22, 1954, Ch. 558, 68 Stat. 497), hereinafter referred to as the “GVI Property,” and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, the NPS owns the fee simple interest in a parcel of land identified as Tract No. 01-137A, also located within the Park, by virtue of a Warranty Deed dated October 3, 1968, and recorded October 9, 1968, and recorded among the Land Records of the U.S. Virgin Islands, Book 9-X, Page 266, Document 3523, Auxiliary 20, Page 144, hereinafter referred to as the “National Park Service Property,” and more particularly described in Exhibit “B,” attached hereto and made a part hereof; and

WHEREAS, any appendices or attachments referenced therein contained after the signature page are to be interpreted as is fully stated within the document notwithstanding their respective locations, and

WHEREAS, the GVI desires to acquire the fee simple interest in the National Park Service Property in order to expand public education acceptable to both parties, on the National Park Service Property; and

WHEREAS, the NPS is willing to convey to the GVI the fee simple title to the National Park Service Property, with certain restrictions as to the future use of the property for public preschool, primary, secondary and/or tertiary educational purposes, in return for GVI’s conveyance to the NPS of the fee simple title to the GVI Property; and

WHEREAS, the NPS administers the Park as a unit of the National Park System; and

WHEREAS, the GVI and the NPS believe that the public interest will benefit through the accomplishment of an exchange of interests in lands as described; and

WHEREAS, the exchange of interest in lands constitutes a federal Undertaking subject to Section 106 of the National Historic Preservation Act (“NHPA”) (54 U.S.C. § 306108; formerly 16 U.S.C. § 470f) and its implementing regulations (36 C.F.R. § 800); and

WHEREAS, the NPS has defined the Undertaking’s area of potential effects (APE) as the National Park Service Property boundary, the National Register of Historic Places (“National Register”)-listed Catherineberg-Jockumsdahl-Herman Farm Historic District boundary, the Estate Catherineberg Cultural Landscape Inventory boundary, the National Park Service Boundary, and the GVI Property illustrated in attachment 1; and

WHEREAS, following the procedures and terms and conditions of the Preliminary Agreement for Exchange of Real Property between the NPS and the GVI, executed October 22, 2020, and in consultation with the SHPO, the NPS and others completed Phase I and II archeological surveys and a Cultural Landscape Inventory of the National Park Service Property, hereinafter referred to as “Cultural Resource Surveys”; and

WHEREAS, the NPS has recommended the amendment of the National Register-listed Catherineberg-Jockumsdahl-Herman Farm Historic District boundaries based on the findings of the Cultural Resource Surveys and the SHPO concurred with this recommendation; and

WHEREAS, the Cultural Resource Surveys identified cultural resources within the National Park Service Property that contribute to the significance of the Catherineberg-Jockumsdahl-Herman Farm Historic District, which is listed in the National Register; and

WHEREAS, the NPS has determined that the undertaking and the reasonably foreseeable development of the National Park Service Property will have an adverse effect on the National Register-listed Catherineberg-Jockumsdahl-Herman Farm Historic District, and

WHEREAS, the future design and construction of public educational facilities on the National Park Service Property will be subject to additional compliance with Section 106 of the NHPA, the National Environmental Policy Act, and other laws, to be conducted by the Federal Emergency Management Agency and the GVI, due to the anticipated use of federal funding for construction; and

WHEREAS, the NPS will be included as a Consulting Party, defined in 36 C.F.R. Part 800.2(c)(5), in any future Section 106 compliance regarding the National Park Service Property; and

WHEREAS, the GVI will manage cultural resources within the National Park Service Property under the regulations set forth in the Antiquities and Cultural Properties Act of 1998 (Title 29, Chapter 17, §950 of the V.I. Code); and

WHEREAS, the GVI will manage mature specimen trees within the National Park Service Property under the framework of the Community and Heritage Tree Law (32-0062, 2019); and

WHEREAS, NPS has determined that the undertaking will result in no adverse effect to historic properties on the GVI Property; and

WHEREAS, the NPS has consulted with the SHPO pursuant to 36 C.F.R. § 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, the NPS has notified the public about the undertaking on the Park website and has provided the public an opportunity to comment through the NPS's online project compliance review process; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the NPS has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination on the Catherineberg-Jockumsdahl-Herman Farm Historic District with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

WHEREAS, the NPS determined that the Undertaking will not individually or cumulatively have a significant environmental impact and prepared an Environmental Assessment pursuant to NEPA (C.F.R. § 1508.9); and

NOW, THEREFORE, the NPS, GVI, and SHPO agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the undertaking on historic properties.

## **STIPULATIONS**

The NPS, GVI, and SHPO shall ensure that the following measures are carried out:

### **I. RESTRICTIVE COVENANT**

- A. The NPS shall record a Restrictive Covenant with language specified in attachment 2, as part of the conveyance documents in the permanent real estate records of the United States Virgin Islands. Upon notice of the recordation of the deed containing the Restrictive Covenant and of the National Park Service Property's transfer from the NPS to GVI, NPS will send the SHPO an official copy of the conveyance documents (e.g., complete copy of recorded deed) and any other documents deemed necessary by NPS.

## II. MITIGATION

- A. National Register Nomination Amendment. The SHPO will amend the existing National Register documentation for the Catherineberg-Jockumsdahl-Herman Farm Historic District. The amended nomination will be based on the findings and recommendations of the recent Cultural Resource Surveys and will include a more complete documentation of the property's history and evolution over time; an assessment of its historical significance and integrity; expanded documentation of its historical context; a comprehensive list of contributing and non-contributing features; and updated photographs.

The nomination will amend the historic district boundaries to the "Revised Catherineberg-Jockumsdahl-Herman Farm Historic District" boundaries illustrated on the attached map (attachment 3). The revised National Register nomination will include landscape features, archeological sites, and other elements identified in the recent Cultural Resource Surveys. Additionally, the nomination will recommend the expansion of the historic district at a future date if/when additional studies have been conducted and have identified additional resources and information related to the history and significance of the Catherineberg-Jockumsdahl-Herman Farm Historic District. The nomination will be submitted to the National Register of Historic Places for approval and acceptance.

From the date of the signing of this Agreement, the SHPO will adhere to the following schedule:

1. Within five years the SHPO shall submit a draft of the amended nomination to the NPS for review. The NPS will have 60 calendar days to review and provide written comments on the submission. The SHPO will incorporate NPS comments in the final nomination.
  2. Within five years the SHPO shall submit the final nomination to the NPS and to the National Register of Historic Places for formal acceptance.
- B. Interpretation Plan. Within five years the NPS will develop an interpretation plan that will outline and guide decisions about interpretative programming at Catherineberg and Whistling Cay. The interpretation plan will be created through a collaborative process involving the NPS, GVI, SHPO, interpretive specialists, subject matter experts, and stakeholders. The plan will inform the future development of wayside exhibits, museum exhibits, and/or other interpretive material for the Catherineberg and Whistling Cay properties.
1. The interpretation plan will identify significance statements, interpretive themes, existing and targeted audiences, visitor experience objectives, interpretive methods/media, and implementation strategies and actions.



2. To inform future interpretation content, NPS will complete a special history study on the ownership, size and use, and the enslaved people of the Catherineberg plantation and the use and occupation of Whistling Cay through archival research compiled at the Danish National Archives, National Archives and Records Administration, and other sources.

### C. PROFESSIONAL STANDARDS

1. Professional Qualifications. All cultural resource tasks implemented pursuant to this MOA shall be carried out by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards (48 FR 44738-39) for the appropriate disciplines. NPS and GVI shall submit a copy of the resume for any person conducting tasks under this MOA to the SHPO for approval prior to the initiation of any work.
2. Reporting and Documentation Standards. Reporting on and documenting the activities implemented pursuant to this MOA shall conform to the applicable provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740), as well as with all applicable standards, guidelines and forms for historic preservation activities established by the SHPO.

### III. DURATION

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, NPS may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

### IV. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, NPS shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NPS's and GVI's efforts to carry out the terms of this MOA.

### V. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the NPS shall consult with such party to resolve the objection. If NPS determines that such objection cannot be resolved, NPS will:

- A. Forward all documentation relevant to the dispute, including the NPS's proposed resolution, to the ACHP. The ACHP shall provide NPS with its advice on the resolution

of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NPS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. NPS will then proceed according to its final decision.

- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, NPS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
- C. NPS's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

## VI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

## VII. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, NPS must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. NPS shall notify the signatories as to the course of action it will pursue. Execution of this MOA by the NPS, GVI, and SHPO and implementation of its terms evidence that NPS has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

## VIII. ATTACHMENTS

The following documents are appended to this Agreement:

Exhibit A: Description of "GVI Property"

Exhibit B: Description of "NPS Property"


Attachment 1: Area of Potential Effect Maps

Attachment 2: Restrictive Covenants on the Exchange Property

Attachment 3: Map of the Revised Catherineberg-Jockumsdahl-Herman Farm Historic District Boundary and the Construction Prohibition Area

**SIGNATORY**

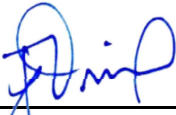
**NATIONAL PARK SERVICE**

By: **NIGEL  
FIELDS**  Digitally signed by NIGEL  
FIELDS  
Date: 2022.11.02  
11:25:53 -04'00' \_\_\_\_\_ Date: 11/02/2022

Nigel A. Fields  
Superintendent  
Virgin Islands National Park and Virgin Islands Coral Reef National Monument

**SIGNATORY**

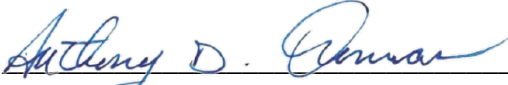
**VIRGIN ISLANDS STATE HISTORIC PRESERVATION OFFICER**

By:  \_\_\_\_\_ Date: 03-Nov-2022

Jean-Pierre L. Oriol  
Commissioner, Virgin Islands Department of Planning & Natural Resources  
Virgin Islands State Historic Preservation Officer

**SIGNATORY**

**TERRITORIAL GOVERNMENT OF THE U.S. VIRGIN ISLANDS**

By:  Date: 11/4/2022  
Anthony D. Thomas  
Commissioner  
Department of Property and Procurement

APPROVED FOR LEGAL SUFFICIENCY  
Virgin Islands Department of Justice

  
Assistant Attorney General

Date: 11/4/2022

# EXHIBIT A

EXHIBIT "A"

"GVI Property"

The island of Whistling Cay, also known as Whistling Island, as well as the surrounding islets and rocks lying above the Mean High Water Line, lying just West of Mary Point Peninsula, Maho Bay Quarter, St. John, United States Virgin Islands.

Containing 17.97 acres, more or less



# EXHIBIT B

EXHIBIT "B"

"National Park Service Property"

A portion of parcel number 6 of Estate Catherineberg, also known as Herman's Farm, also known as Hammer's Farm number 19, Cruz Bay Quarter, Island of St. John, United States Virgin Islands, described as follows

BEGINNING at a Concrete Boundary Post numbered 1647 at the intersection of the East line of Estate Adrian, the West line of Estate Catherineberg and the North line of a paved road know as Centerline Road (VI 10); thence along the West line of Estate Catherineberg, N 05 °47'00" E for a distance of 498.22 feet to a ½" rebar; thence leaving said West line, N 60°19'14" E for a distance of 579 .04 feet to a ¾" iron pipe;

thence S 24°30'5" E for a distance of 127.02 feet to a ¾" iron pipe;

thence S 24°30'5" E for a distance of 303.26 feet to a ¾" iron pipe;

thence S 3 °59'19" E for a distance of 324.00 feet to a ¾" iron pipe;

thence S 3 °59'19" E for a distance of 1.48 feet to the North line of an unpaved road known as John Head Road (VI 206);

thence along the North and West line of said John Head Road for the following eight courses;

S 69°17'22" W for a distance of 6.68 feet;

thence along a curve to the left with an arc distance of 23.78 feet, a chord bearing of S 62°28'37" W, a chord distance of 23.72 feet, and a radius of 100.00 feet;

thence S 55°39'51" W for a distance of 30.80 feet;

thence along a curve to the left with an arc distance of 26.81 feet, a chord bearing of S 48°0'26" W, a chord distance of 26. 73 feet and a radius of 100.00 feet;

thence S 40°21 '0" W for a distance of 24.84 feet;

thence along a curve to the left with an arc distance of 41.50 feet, a chord bearing of S 28°27'38" W, a chord distance of 41.20 feet and a radius of 100.00 feet;

thence S 16 °34' 17" W for a distance of 114.47 feet;

thence along a curve to the right with an arc distance of 31.30 feet, a chord bearing of S 61°24'23" W, a chord distance of 28.20 feet and a radius of 20.00 feet, to the North line paved road know as Centerline Road (VI 10) ; thence along the North line of said Centerline Road for the following three courses; N 73°45'30" W for a distance of 478.40 feet; thence along a curve to the left with an arc distance of 26.07 feet, a chord bearing of N 76°14'53" W, a chord distance of 26.06 feet, and a radius of 300.00 feet; thence N 78 °44' 16" W for a distance of 106.13 feet; returning to the POINT OF BEGINNING,

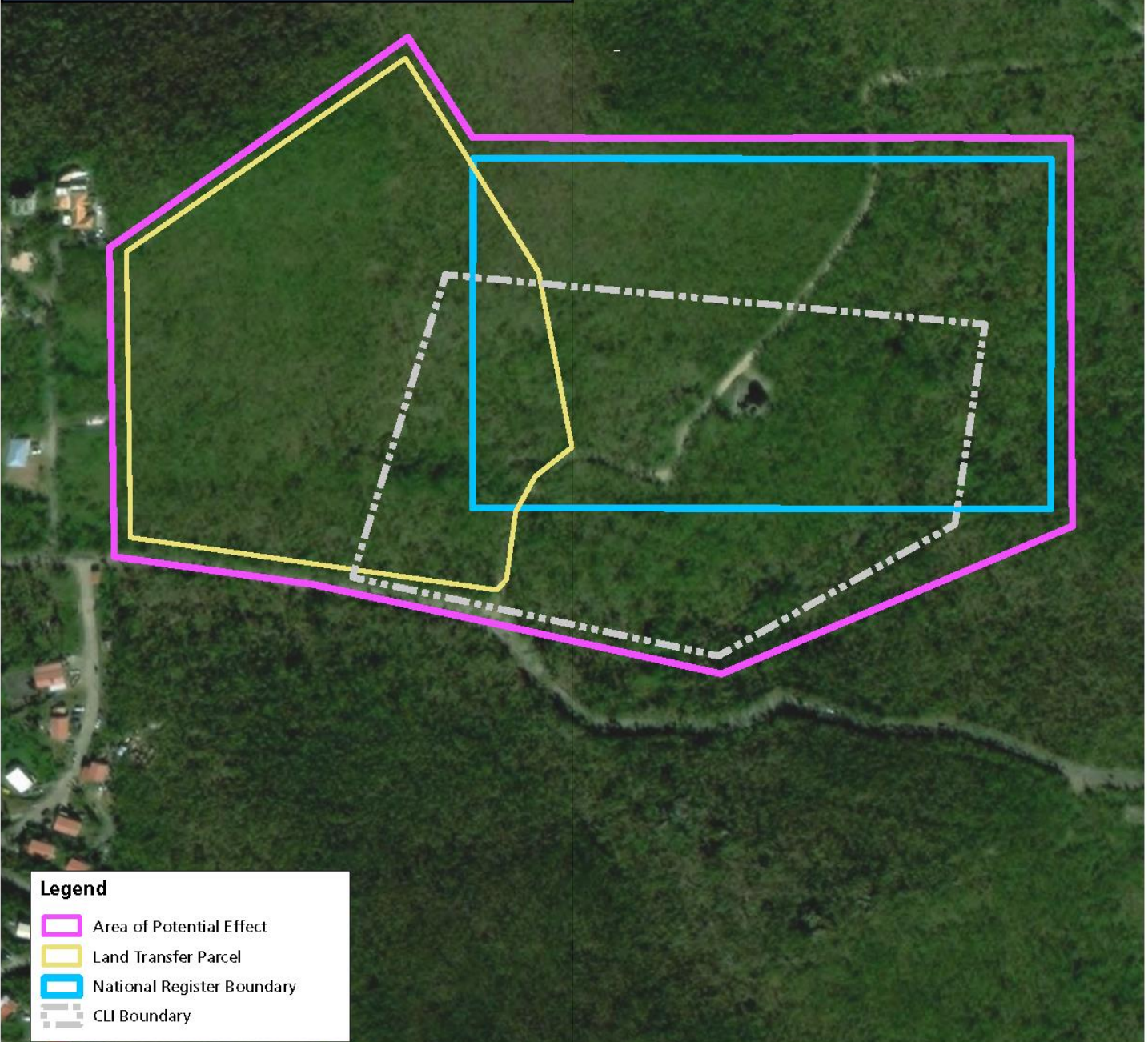
Containing 11.3 acres, more or less

# Attachment 1

# VIIS Estate Catherineberg

Area of Potential Effect (APE) Map

Virgin Islands National Park  
National Park Service  
U.S. Department of the Interior



**Legend**

- Area of Potential Effect
- Land Transfer Parcel
- National Register Boundary
- CLI Boundary



May 2022

Data Source: ESRI Imagery, NPS Park Data, NPS SEAC Data




# VIIS Whistling Cay

Area of Potential Effect (APE) Map

Virgin Islands National Park  
National Park Service  
U.S. Department of the Interior



**Legend**

 Area of Potential Effect

North



0 125 250 500 Feet



January 2022

Data Source: ESRI Imagery, NPS Park Data, NPS SEAC Data

# Attachment 2

**Attachment 2:  
Restrictive Covenants on the Exchange Property**

- **Property Use Clause:** The Parties agree that the conveyance of the NPS Property shall be subject to a deed restriction that restricts its future use for public preschool, primary, secondary and/or tertiary educational purposes, which may include both degree seeking, and informal non-degree seeking, educational purposes; provided the informal non-degree seeking educational uses are merely supplemental to the paramount and continuing use of the premises for public degree seeking educational purposes. Said deed restriction shall provide substantially as follows:

"TO HAVE AND TO HOLD the above described premises, provided, however, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein, or its successors and assigns shall never sell or convey or lease the above described land or any part thereof to any private persons, firm or corporation for any private use or purpose, it being the intention of this restriction that the said land shall be used solely for public preschool, primary, secondary and/or tertiary educational purposes, which may include both degree seeking, and informal non-degree seeking, educational purposes; provided however, that the informal non-degree seeking educational uses are merely supplemental to the paramount and continuing use of the premises for public degree seeking educational purposes. Provided however further, that this restriction does not preclude the temporary, emergency use of the land for shelter, or other responsive activities, in the event of a natural disaster, or catastrophic event, or during a declared state of emergency; it being an express condition of this conveyance that said temporary, emergency use shall never alter or convert the intended use of the land for public preschool, primary, secondary and/or tertiary educational purposes. It is covenanted and agreed that the above conditions subsequent shall run with the land and any violation thereof shall, at the sole and discretionary election of the National Park Service, render this deed null and void and the above described lands shall, in the event of such an election, revert to the Grantor or its successors."

- **Property Use Clause:** The Parties agree that the conveyance of Whistling Cay shall be subject to a deed restriction that restricts its future use for national park purposes. Said deed restriction shall provide substantially as follows:

"TO HAVE AND TO HOLD the above described premises, provided, however, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein, or its successors and assigns shall never sell or convey the above described land or any part thereof to any private persons, firm or corporation for any private use or purpose, it being the intention of this restriction that the said land shall be used solely for purposes of U.S. Virgin Islands National Park. It is covenanted and agreed that the above conditions subsequent shall run with the land and any violation thereof shall, at the sole and discretionary election of the GVI, render this deed null and void and the above described lands shall, in the event of such an election, revert to the Grantor or its successors."

- **Cultural Resource Protection:**
  1. **Historic Property Description:** The "National Park Service Property" contains 2.9 acres within the amended boundaries of the National Register of Historic Places ("National Register")-listed Catherineberg-Jockumsdahl-Herman Farm Historic District ("Historic Property"). The amended boundaries of the Historic Property are depicted in attachment

3 (attached hereto) and were agreed upon in consultation with Virgin Islands State Historic Preservation Office (SHPO). The Historic Property is described in detail in the Estate Catherineberg Cultural Landscape Inventory (“CLI”), dated August 2022. The CLI noted, among other items, the following facts:

- a. The Historic Property is eligible for listing in the National Register based on its significance on a local level Criterion A for its association with the eighteenth- and nineteenth-century agricultural practices on St. John related to sugar production; Criterion C for its importance as a territorial example of Danish utilitarian architecture through its collection of buildings and structures related to sugar production and the use of local materials for their construction; and Criterion D for its importance in potentially yielding further information on the history of the property, particularly during the historic period, through archival and archeological research.
- b. Contributing elements of the Historic Property within the boundaries of the National Park Service Property are Site 1/ Village 1, Cemetery, Western Gut, and Tamarind Tree.
- c. Features of the Historic Property within the boundaries of the National Park Service Property that do not contribute are the Bishop House and Wire Fences.

**2. Restrictions:** Restrictions on construction/ground disturbance within the Historic Property boundary:

- a. The Historic Property includes archeological and cultural landscape features that are eligible for listing in the NRHP as contributing resources and are also subject to the provisions of the Antiquities and Cultural Properties Act of 1998 (Title 29, Chapter 17, §950 of the V.I. Code). Except as hereinafter provided, the GVI shall keep the Historic Property, as described and mapped in the report entitled: "Estate Catherineberg Cultural Landscape Inventory" in its existing state in order to preserve its archeological and cultural landscape values, and to that end, except as otherwise provided herein, Grantee shall neither perform nor permit others to construct any building or place any other structure on, above or below the ground surface within the boundaries of the Historic Property as shown in attachment 3 as “Construction Prohibition Area.” The exact dimensions of the area subject to the construction prohibition will be specified in greater detail in the conveyance document (Quitclaim Deed). The specific description will be in the form of a legal description congruent with the appropriate survey standards accepted by the GVI.
- b. Notwithstanding the above, disturbance of the ground surface or any other action associated with permanent or temporary undertakings which would affect the physical integrity of the Historic Property can be undertaken or permitted to be undertaken only with the express prior written permission of the SHPO and Virgin Islands Territorial (State) Archaeologist, signed by a fully authorized representative thereof. Should the SHPO and Territorial Archaeologist require, as a condition of the granting of such permission, that the Grantee conduct archeological data recovery operations or other activities designed to assess archeological potential prior to ground disturbance and/or mitigate the adverse effect of the proposed activity on an archeology site, the Grantee shall at its own expense conduct such activities in



accordance with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37) and such standards and guidelines as the SHPO and State Archeologist may specify, including but not limited for research design, conduct of field work, conduct of analysis, preparation and dissemination of reports, disposition of artifacts and other materials.

- c. The GVI shall direct all of its personnel, and all the personnel of its contractors and subcontractors, not to engage in the illegal collection of historic and prehistoric materials. Pursuant to V.I. Code tit. 29, § 963, the GVI shall notify the proper authorities upon obtaining knowledge that any person who has knowingly and willfully removed, mutilated, defaced, excavated, injured, or destroyed a cultural resource on land in the Historic Property or knowledge that a person received, trafficked in or sold cultural property appropriated from land in the Historic Property without a valid permit. The GVI will cooperate fully with the proper authorities assist in the prosecution of any such individual.
- d. Pursuant to V.I. Code tit. 29, § 961, the GVI shall maintain the confidentiality of cultural resources and shall implement procedures to ensure that such information is available only to authorized personnel. The GVI shall not use cultural resource information for any purpose other than compliance with these restrictions and applicable laws. Any other use of cultural resource information by the GVI, such as for educational or interpretive uses, requires prior written approval of the SHPO.
- e. The GVI shall ensure that human remains and artifacts directly associated with burials encountered within the Historic Property are treated with the respect due such materials. The GVI, in coordination with the SHPO, shall ensure that all human remains and associated artifacts found on the conveyed land will be handled according to the provisions of V.I. Code tit. 29, § 960.

# Attachment 3



## **ATTACHMENT C: PUBLIC COMMENT SUMMARY**

The *Potential Land Exchange with the Government of the Virgin Islands for Public Education Environmental Assessment* (the environmental assessment) was released for public review on August 22, 2022, and was available via the park's Planning, Environment, and Public Comment website (<https://parkplanning.nps.gov/viis>) and hard copies were available upon request. An open public comment period was held from August 22 through September 22, 2022.

According to NPS policy, substantive comments are those that 1) question the accuracy of the information in the EA, 2) question the adequacy of the environmental analysis, 3) present reasonable alternatives that were not presented in the EA, or 4) cause changes or revisions in the proposal. Forty (40) pieces of correspondence were received during the comment period.

Many comments supported school construction on St. John, though only a portion of those supported the land exchange as evaluated in this environmental assessment. Some supported the land exchange strongly, while others opposed it and continued to make alternate suggestions or expressed concern over the impacts of construction and operation of a future school. While no comments were substantive to warrant changes to the environmental assessment, the National Park Service has provided response below to address a few comments that reasonably questioned the project. Where needed, updates to the environmental assessment are made via errata (see attachment D).

### **METHOD OF TRANSFER OF FEDERAL LAND**

**Concern Statement:** Some commenters expressed a preference for the NPS to donate the Catherineberg parcel, rather than transfer it as a land exchange.

**Response:** This alternative is non-viable, as the NPS has no legal authority to donate the land. Federal law (54 U.S.C. §102901) prohibits conveyance of property from National Parks. That same law authorizes the Secretary of the Interior to exchange lands within National Parks. Whistling Cay, although owned by the GVI, is within the boundary of the National Park, and has a similar property value, so the NPS could make this proposed exchange. In general, only Congress can change the boundary of a National Park, therefore, altering the boundary and pursuing a legislative option was not considered. The GVI has the authority to exchange interests in land under Territorial law (Title 31 V.I. Code § 231a). The purpose of this NPS project is for the NPS to respond to the request from the GVI to exchange a parcel of NPS-owned land, known as the Catherineberg Estate (Tract No. 01-137A), with the GVI as a possible location to support the island's local educational needs. In exchange, the GVI has offered the island of Whistling Cay (Tract No. 02-101) for consideration. Therefore, the exchange was the only legal alternative that could be considered in the Environmental Assessment.

### **EXISTING DEED**

**Concern Statement:** A few commenters questioned how the use of a portion of the former Bishop property for construction of educational facilities is consistent with the existing deed.

**Response:** The language in the deed is conservation-minded while also allowing for exceptions where the Secretary of Interior approves.

### **PROTECTION OF RESOURCES**

**Concern Statement:** Several commenters stated that the National Park Service should ensure that the land exchange includes protections for natural and cultural resources. The US Fish and Wildlife Service expressed continued concerns about future vegetation clearing. Some commenters asked that the deed

should require the land be returned to the National Park Service if the Territory does not use it for a school.

**Response:** The deed associated with the land transfer is currently under negotiation between the US Department of Interior and the Territory. Limitations on the area available for development and a reversionary clause will be included. Future surveys for special status species are anticipated, as stated more strongly via errata (see attachment D) and echoed in the Finding of No Significant Impact; such surveys would be coordinated by the Territory with the US Fish and Wildlife Service during the follow-up environmental reviews specific to more detailed plans for the site use and development. Furthermore, the Memorandum of Agreement between the National Park service, the Virgin Island State Historic Preservation Office, and the Territorial government of the US Virgin Islands documents those commitments made to improve understanding and protection of cultural resources at both Catherineberg and on Whistling Cay (see attachment B).

### **WHISTLING CAY TRANSFER PROCEDURE**

**Concern Statement:** One commenter requested details on how Whistling Cay would come into the possession of the Virgin Islands National Park along with including how local legislative input may be considered prior to consummation of the transaction.

**Response:** As stated in the Preliminary Agreement for Exchange of Real Property between United States Department of the Interior National Park Service and the United States Virgin Islands signed October 22, 2020, the Government of the Virgin Islands shall undertake all procedures required under U.S. Virgin Islands Code Title 31 V.I. Code Section 231a, preliminarily to obtain approval for the exchange from the Legislature of the Virgin Islands.

## ATTACHMENT D: ERRATA

These errata document changes to the text of the environmental assessment. Changes to the text below are noted by page number; additions to the text are denoted by bold text and deletions are denoted by strikeouts.

### CHAPTER 1, SPECIAL STATUS SPECIES, PAGE 9

A third flowering plant, marron bacora (*Solanum conocarpum*), is currently listed as ~~a candidate species for endangered status~~.

As such, none of these plants are expected to inhabit the Catherineberg project area. **Furthermore, it is outside of critical habitat for these species.**

A local plant expert with experience in the park confirmed the plants located were not of the genus Pinyon, but a follow-up survey during the flowering season ~~may~~ **would** be useful in the future.

Any impacts on special status species as a result of development of educational facilities by the Territory would be subject to review during a future compliance process for the construction. **Due to ongoing technical assistance from the US Fish and Wildlife Service, the National Park Service highly recommends that the Territory undertake species surveys for the plants noted above as well as *Peperomia wheelerii* (also known as *Peperomia myrtifolia*). There is a record of *P. wheelerii* about 1 kilometer from the parcel. These surveys would take place following the development of specific proposals for construction and use of the site by the Territory. Additionally, the site should be reviewed for presence of the Virgin Island Tree Boa (*Chilabothrus granti*) in accordance with protocols established by the Territory Department of Planning and Natural Resources, Division of Fish and Wildlife. Although there are no records of the VI Tree Boa occurring on St. John, it may become established on the island due to nearby populations on St. Thomas and Tortola.**

### CHAPTER 2, ALTERNATIVE 2: PROPOSED ACTION (NPS PREFERRED ALTERNATIVE), PAGE 13

... The preliminary agreement provides the terms and conditions under which the transfer would take place, including deed restrictions that would direct future land use, among other conditions. **While the existing deed for the land, as granted to the National Park Service by the Bishop family, specifies a number of conservation measures, it also allows the Secretary of Interior to approve exceptions to these measures.**

### CHAPTER 3, CULTURAL RESOURCES, AFFECTED ENVIRONMENT, PAGE 19

#### *Natural Systems and Features*

The south~~western~~**eastern** and ~~eastern~~**western** edges of the historic district/cultural landscape are bound by two guts (also spelled ghuts), which are the regional term for watercourses. It is unknown whether the guts are naturally occurring or were partially or entirely constructed. Within ~~the~~ guts, vegetation ~~is~~**may** be shorter and more open than the adjacent forest due to ~~frequent~~ intermittent high-water levels. ~~While~~ ~~w~~**Water** does not flow continuously in the guts; standing water is ~~common~~ **uncommon in this portion of Battery Gut and is absent from the minor intermittent drainage channel.** The south~~western~~**eastern** gut, known as Battery Gut, is present from the earliest maps of the area and was likely an important part

of water sourcing for the agricultural and residential uses of the landscape. This gut is outside the parcel proposed for transfer. The ~~eastern~~western gut is better referenced as a **minor intermittent drainage channel due to the fact that the depression collects seasonal runoff but does not have standing water during the wet nor dry season. It is** not present on historic maps but was likely at least a seasonal presence during the cultural landscape's period of significance. **This depression runs close to the eastern portion of the proposed exchange parcel.**

*Topography*

... The slope terminates at the gut on the south~~western~~eastern edge of the site.