



GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

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DEPARTMENT OF PLANNING AND NATURAL RESOURCES

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Office of the Commissioner

November 8, 2024

The Honorable Kenneth L. Gittens
Chair
Committee on Homeland Security, Justice and Public Safety
35th Legislature of the Virgin Islands

RE: Update on DPNR's Enforcement Division

Good day Chair Gittens, other members of the 35th Legislature's Committee on Homeland Security, Justice and Public Safety; non-committee members and legislative staff present, and members of the viewing and listening public. My name is Marlon Hibbert, Director of DPNR's Division of Coastal Zone Management, and I am present today representing Jean-Pierre L. Oriol, Commissioner for the Department of Planning and Natural Resources (DPNR). I am here to provide an update on DPNR's actions to remedy noncompliance on our beachfront areas, as well as provide an update on the status of the removal of derelict vessels because of Tropical Storm Ernesto, as requested in your letter dated November 1, 2024.

Beginning with the abandoned and derelict vessels, as you know, on August 13, 2024, Tropical Storm Ernesto struck the US Virgin Islands, creating many impacts. 15 vessels across the Territory were washed ashore as a result of the storms. Following the passage of the storm, DPNR's Enforcement Officers began to assess all of the vessels, trying to identify ownership through registrations and hull identification numbers. DPNR was able to identify seven of the owners immediately, and as a result of not being able to identify eight of the owners, we issued a press release on August 16, 2024 advising the boating public of their responsibility to remove their vessels from the shoreline within seven days, or they would be considered storm-related debris pursuant to 23 VIC § 1015. After the release, two additional owners came forward, one of which has since removed their vessels, leaving six – five vessels in STT, and one on STX – to be removed by the Department (the seventh vessels will be removed by the owner as the individual has insurance coverage). On September 6, 2024, DPNR worked with the Department of Property and Procurement (DPP) to encumber funding prior to the close of the fiscal year while we negotiated with potential contractors for the removal of the vessels. DPNR has agreed in principle with a contractor, the contract and additional documentation has been submitted to DPP for their review and approval, and the contract is currently in processing. The salvage contractor that DPNR is using is the same contractor that the owner of the vessel with insurance is using. Work was scheduled to begin in mid-October on the private vessel; however, due to a ruptured sewage line on Norre Gade that was leaking into the harbor through stormwater outfalls, the Contractor did not begin the work. WMA completed repairs to the ruptured line on October 24, 2024, and the Department is in discussion with the contractor on when they will begin work. The past

few weeks with the consistent rainy weather have continued to hamper the efforts to remove the vessels as stormwater runoff also impacts the wastewater and stormwater outfalls.

With respect to noncompliant structures being erected on beachfront property, the issues we face vary by district. In St. Croix, the misinterpretation of what the Open Shoreline Act actually states and what rights belong to the citizens of the Territory is the root cause. 12 VIC §§ 400-403, more commonly known as the Open Shorelines Act, sets the right of our citizens to use and enjoy the shoreline; it defines exactly what the shorelines are, and it establishes that no obstructions may be constructed on the shorelines that would impede the use and enjoyment by the public. Contrary to public belief, it does NOT convey all beach areas to the Government of the Virgin Islands, nor does it state that ALL beaches are public. In the St. Croix district, the misinterpretation of the law has caused people to trespass on private land, erect structures in the name of “camping,” and when approached, tell our enforcement teams that all the beaches are public and they are free to camp on them. Specifically in the Frederiksted area, DPNR has posted notices on illegally-built structures, private property owners have filed police reports of trespassing, and with the assistance of our sister agencies like the Department of Public Works, the VI Police Department and the Office of the STX Administrator, we have removed the illegally constructed structures, but only to have them re-constructed weeks later by some of the same individuals. As such, we have now requested the assistance of the Department of Justice to get court approval to once again have the structures removed, only this time, if someone violates the order, they will be arrested. It’s unfortunate that we must resort to these measures; however, we no longer have any choice but to exercise our powers to the full extent of the law.

In the St. Thomas district, the issues are slightly different. What we are experiencing is businesses exceeding the scope of permissions that they have been granted and operating in noncompliant fashion. There are three shoreside businesses on Lindberg Beach. While all three businesses may have received approval from the Department of Sports, Parks and Recreation (DSPR) to operate from DSPR managed land, DSPR does not grant approval for the construction of structures. Only one business – CTC Charters – has received approval for structures to operate their businesses. DPNR posted Cease and Desist notifications on the structures with a notice to correct the noncompliance pursuant to 29 VIC § 312(e) earlier this year. As the structures were never removed, in September we again posted Cease and Desist notifications with an order to remove the structures within 14 days pursuant to the same provisions; however, we were served with a Temporary Restraining Order from the court, and we are awaiting a hearing date. While we await the hearing date, we have also asked DOJ for similar court approval to arrest persons who fail to comply with whatever order will be mandated by the court. DPNR has also met with our sister agencies to address the other infractions outside of the scope of DPNR’s mandate so that we may comprehensively address the issues. The Waste Management Authority scheduled inspections of their officers to address the waste oil being generated from the businesses and being left on leased VI Port Authority (VIPA) property; the Department of Licensing and Consumer affairs was addressing the fact that the vendors were undertaking activities, such as the preparation and serving of food, that was not included in their permit from DSPR and holding a show-cause hearing to determine whether or not their existing licenses would be revoked; if I am not mistaken, VIPA is also investigating that vendors are operating on their leased property without

any sublet approval. Lastly, DPNR's officers have been inspecting the area to observe the jet ski operations as we have received video of the vendor passing in and out of a swim zone on jet skis, an offense that is subject to a \$200 fine for each infraction.

It is important to note for this Body that while DPNR may have an enforcement division with Peace Officers, infractions of CZM, Building Codes and Operation of Vessels are classified as "civil" infractions, subject to an assessment of penalties. In order for an infraction to be elevated as a criminal action, or one where an arrest may be made, DPNR must consult with the Attorney General as Peace Officers only have arresting powers without a warrant pursuant to the provisions as described in 5 VIC § 3562 (we note that most of the provisions in this section are felonies, which DPNR infractions are not). As we see a growing number of unauthorized developments ignoring Cease and Desist orders, we ask this body to consider elevating the powers of our enforcement officers when failure to adhere to stop-work orders have been served.

This concludes my testimony. I am here to answer any questions you may have at this time.