



## GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES

### DEPARTMENT OF PLANNING AND NATURAL RESOURCES

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#### Office of the Commissioner

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Senator Marise C. James, Esq.  
Chair, Committee on Disaster Recovery Infrastructure and Planning  
36<sup>th</sup> Legislature of the Virgin Islands

#### **Subject: DEPARTMENT OF PLANNING AND NATURAL RESOURCES COMMENTS ON BILL NO. 36-0070**

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Good day Senator James, Chair of the 36th Legislature's Committee on Disaster Recovery, Infrastructure and Planning, other committee members, non-committee members and legislative staff present, and members of the viewing and listening public, my name is Jozette J. Walker, Assistant Commissioner of the Department of Planning & Natural Resources (DPNR). I appear today on behalf of Jean-Pierre L. Oriol, Commissioner of DPNR, to provide testimony on Bill No. 36-0070 as requested by the Chair's invitation dated May 30, 2025. With me in person and/or virtually are Marlon Hibbert, Director of the Division of Coastal Zone Management; Sean L. Krigger, Director & Deputy State Historic Preservation Officer; and Kristina Edwards, Director of the Division of Territorial Parks & Protected Areas.

#### **I. INTRODUCTION**

The Department of Planning and Natural Resources respectfully submits this testimony in support of Bill No. 36-0070, which amends Title 28, Chapter 19 of the Virgin Islands Code to establish a clear process for the use or return of property acquired through eminent domain. DPNR recommends additional provisions to strengthen the bill's alignment with the public trust doctrine, sustainable land stewardship, and equitable access to environmental and cultural resources. In particular, we urge the Committee to incorporate new language authorizing the use of perpetual easements as a practical, rights-respecting mechanism to expand public access to coastal and cultural commons. We further recommend amendments to § 411 (Public Use) and the addition of a new subsection (b) (Declaration of Public Necessity) to align with the bill's broader intent.

#### **II. POLICY CONTEXT**

##### **A. The Public Trust, Eminent Domain, and Legislative Alignment**

Title 28 V.I.C. § 421 authorizes the Government of the Virgin Islands to acquire private property for public use. However, existing provisions in § 411 lack criteria to ensure that acquisitions reflect sustainable, equitable, and culturally sensitive outcomes. DPNR urges the revision of § 411 to incorporate explicit considerations for public access, cultural preservation, ecological value, and climate resilience principles echoed in the proposed enhancements to § 423.

Additionally, DPNR recommends that the definition of “public use” in § 411 be amended to reflect these broader, community-centered goals.

### **III. ALTERNATIVE TO FULL TAKING: PERPETUAL EASEMENTS FOR PUBLIC COMMONS**

DPNR strongly recommends the inclusion of a new provision under proposed § 423 (subsection (i)) to authorize the creation and maintenance of perpetual easements as an alternative or complement to full property acquisition through eminent domain.

In many cases, securing a perpetual easement offers a more efficient, less invasive, and mutually agreeable solution to ensure public access. Easements may allow the public to cross privately owned land to access or preserve sites of shared environmental, cultural, or recreational value, without requiring subdivision or transfer of full ownership.

Such easements should be explicitly authorized for the following purposes:

- Beach and shoreline access for recreation, fishing, and cultural use;
- Traditional footpaths and trails used historically for community mobility;
- Access to freshwater sources, including springs, wells, and guts of communal significance;
- Scenic greenways and overlooks, valued for tourism, open space, and cultural interpretation;
- Cultural and historic sites, such as ruins, sacred lands, and cemeteries;
- Ecological corridors and natural buffers, including mangroves and floodplain areas used for public safety and resilience infrastructure.

This approach strengthens the Territory’s capacity to preserve public commons while promoting respectful coexistence with private property owners. It provides a legal mechanism consistent with the Virgin Islands Coastal Zone Management Act (12 V.I.C. § 901 et seq.) and the public trust doctrine without imposing excessive financial or administrative burdens on the Government.

### **IV. COMPARATIVE POLICY AND PRECEDENT**

Statutory frameworks from Hawaii, California, Florida, and Puerto Rico affirm the importance of guaranteed public access to coastlines and commons. For instance, HRS § 115-5 mandates public beach access routes through easements, and similar protections exist under California’s Coastal Act (§ 30210) and Puerto Rico’s Ley de Costas. These models demonstrate how easement-based access provisions can be codified without undermining private property rights or economic development.

In contrast, the U.S. Supreme Court in *Kelo v. City of New London*, 545 U.S. 469 (2005), cautioned against speculative takings when redevelopment fails. The Virgin Islands should proactively address this by mandating both transparency and alternative repurposing mechanisms—such as perpetual easements to uphold community benefit.

### **V. ADVANTAGES AND DISADVANTAGES**

The bill’s advantages include:

- Expanded access to public commons while respecting private ownership;

- The reduction of costs and delays associated with full eminent domain takings;
- Provisions for legal flexibility for shoreline, trail, and heritage preservation;
- Reinforcement of government accountability and long-term planning;
- Supports sustainable tourism, education, and natural resource management.

On the other hand, the bill's disadvantages will require:

- Interagency coordination to manage easement agreements and registry updates;
- May necessitate legislative development of easement templates or usage standards.

## **VI. ECONOMIC IMPACT**

Incorporating easement-based access and broader public use criteria will:

- Stimulate eco-cultural tourism and associated economic multipliers;
- Reduce maintenance and acquisition costs by limiting full property takings;
- Enhance climate adaptation and public safety through strategic land use;
- Align with the United Nations Sustainable Development Goals #11 (Sustainable Cities & Communities), 13 (Climate Action), and 15 (Life on Land), strengthening grant and funding eligibility for the territory.

## **VII. DPNR RECOMMENDATIONS**

To fully realize the goals of Bill No. 36-0070, DPNR recommends the following amendments:

- 1. Amend § 411 (Public use) and add new subsection(b) (Declaration of Public Necessity)**
  - Update the definition of “public use” to reflect the expanded criteria (10-14) proposed in § 423(e), ensuring consistency across the chapter.
  - Add subsection (b) Broaden public necessity criteria to include beach and shoreline access, cultural preservation, environmental resilience, and public commons use.
- 2. Amend § 423 – Proposed New Subsections**
  - (e) Public Use Definition – Incorporate uses such as beach access, climate infrastructure, greenways, and cultural sites.
  - (f) Repurposing Clause – Require agencies to consider environmental or cultural reuse when projects fail.
  - (g) Commons Priority Clause – Emphasize acquisition or protection of lands serving as public commons.
  - (h) Transparency Clause – Mandate annual publication of all eminent domain properties and their current status.
  - (i) Perpetual Easements Clause – Authorize the Government to obtain and manage easements for public access to beaches, trails, freshwater sources, scenic lands, cultural sites, and ecological buffers.

## **VIII. CONCLUSION**

DPNR supports the passage of Bill No. 36-0070 and recommends incorporating the proposed amendments to §§ 411 and 423. These enhancements will enable the Virgin Islands to exercise

eminent domain responsibly while securing public access to shared resources and honoring its cultural and environmental legacy.

Attached to this testimony are the:

1. Proposed Markup of Bill No. 36-0070 (including revisions to §§ 411 and 423); and
2. Comparative Statutory Models from Coastal and Island Jurisdictions

This concludes the Department's testimony, and we are available to answer any questions you may have to the best of our abilities.