

Chapter 8: Disposals of Crown Land		
Document	Report Reference	Page
Joseph Smith Abbott Sixth Affidavit (2 September 2021)	Paragraph 8.2 footnote 4	1 – 38
Letter Dr Marcia Potter to the Governor (18 November 2020)	Paragraph 8.2 footnote 6	39 – 42
Cabinet Memorandum No 440/2019: Revocation of Land in Spooners Estate (7 January 2020) (disclosed to the COI in the Exhibit to Joseph Smith Abbott Sixth Affidavit)	Paragraph 8.18 footnote 50	43 – 47
Spooner's Estate Advisory Land Committee Report (18 May 2007) (disclosed to the COI in the Exhibit to Joseph Smith Abbott Sixth Affidavit)	Paragraph 8.19 footnote 52	48 – 52
Memorandum Permanent Secretary Ministry of Natural Resources and Labour to the Attorney General (4 July 2011)	Paragraph 8.21 footnote 58	53
Cabinet Memorandum No 480/2020: "Lease of Crown Land at Paraquita Bay for Agricultural Purposes – Daniel Cline Poultry Farm" (4 December 2020)	Paragraph 8.27 footnote 65	54 – 60
Smiths Gore BVI Limited: Appraisal Report for Parcel 145, Block 3238B, Long Look Registration Section (12 November 2020)	Paragraph 8.27 footnote 66	61 – 62
Lease Agreement (Instrument No 2219/2001) (20 May 1996)	Paragraph 8.27(i) footnote 68	63
Smiths Gore BVI Limited: Market Rent Report (disclosed in to the COI in Exhibit to Joseph Smith Abbott Sixth Affidavit) (May 2018)	Paragraph 8.27(ii) footnote 69	64 – 89
Letter John Cline to Permanent Secretary Ministry of Natural Resources, Labour and Immigration Ronald Smith-Berkeley (26 June 2018)	Paragraph 8.27(ii) footnote 70	90 – 91
Expedited Extract (28 November 2018)	Paragraph 8.27(ii) footnote 71	92 – 93
Cabinet Memorandum No 56/2020 (12 February 2020)	Paragraph 8.27(iii) footnote 72	94 – 98
Record of Cabinet Decision (19 February 2020)	Paragraph 8.27(iii) footnote 73	99 – 100
Cabinet Memorandum No 529/2020 (22 December 2020)	Paragraph 8.28 footnote 76	101 – 108
Expedited Extract for Memorandum No 529/2020 (disclosed to the COI in the Exhibit to Joseph Smith Abbott Sixth Affidavit)	Paragraph 8.29 footnote 77	109 – 111
Cabinet Memorandum No 531/2020: Lease of Crown Land on Virgin Gorda to Pond Bay	Paragraph 8.32 footnote 85	112 – 117

Development Corporation Limited (22 December 2020)		
Cabinet Handbook	Paragraph 8.33 footnote 86	See Chapter 1
Hon Vincent Wheatley Response to COI Warning Letter No 3 (29 September 2021)	Paragraph 8.34 footnote 87	118 – 126
Letter Governor Jaspert to Hon Vincent Wheatley (16 November 2020)	Paragraph 8.34 footnote 88	127
Letter Governor Jaspert to Permanent Secretary Ministry for Natural Resources, Labour and Immigration Dr Marcia Potter (18 December 2020)	Paragraph 8.34 footnote 89	128
Virgin Islands Land and Marine Estate Policy	Paragraph 8.35(i) footnote 91	129 – 167
Executive Memorandum No 133/96: 'Policy for Management and Administration of the Marine Estate' (14 May 1996)	Paragraph 8.35(iv) footnote 97	168 – 184
Marine Estate Administration Policy	Paragraph 8.35(iv) footnote 98	185 – 206
Expedited Extract for Cabinet Memorandum No 222/2020 (24 June 2020)	Paragraph 8.35(iv) footnote 99	207 – 208
Cabinet Memorandum No 26/2020 (4 February 2020) (disclosed to the COI in the Exhibit to Joseph Smith Abbott Sixth Affidavit)	Paragraph 8.40 footnote 111	209 – 216
Cabinet Memorandum No 185/2008 (5 June 2008) (disclosed to the COI in the Exhibit to Joseph Smith Abbott Sixth Affidavit)	Paragraph 8.42 footnote 113	217 – 219
Memorandum from MNRLI with outline response to COI Letter of Request to Hon Vincent Wheatley No 2 (undated)	Paragraph 8.45 footnote 115	220 – 224
Email IRU to COI (30 September 2021)	Paragraph 8.52 footnote 121	225 – 228
Hon Vincent Wheatley's Response to Follow-up Request to Warning Letter No 3 (7 October 2021)	Paragraph 8.53	229 – 234
Email COI to Bevis Sylvester (7 October 2021)	Paragraph 8.54 footnote 124	235 – 236
Email exchange between COI and McW Todman & Co (7 – 12 October 2021)	Paragraph 8.54 footnote 125	237 – 241
Bevis Sylvester Affidavit (10 November 2021)	Paragraph 8.54 footnote 126	242 – 247
Exhibit to Bevis Sylvester Affidavit (10 November 2021)	Paragraph 8.54 footnote 126	248 – 289
Letter from Maya Barry to COI (17 November 2021)	Paragraph 8.56 footnote 127	290 – 293

Application to rely on Ronald Smith-Berkeley Fourth Affidavit (5 November 2021)	Paragraph 8.58 footnote 129	294
Ronald Smith-Berkeley Fourth Affidavit (26 October 2021)	Paragraph 8.58 footnote 129	295 – 297
Delta Petroleum Application to Reclaim and Lease Portion of Sea Bed (10 January 1992)	Paragraph 8.63 footnote 130	298 – 301
Letter from Ministry for Natural Resources and Labour to Gerard St C Farara (Delta Petroleum's legal adviser) (31 August 1992)	Paragraph 8.63 footnote 131	302
Executive Council Memorandum No 28/2007: Request for Permission to Lease Lots 3 and 3A of Block 2938B in the Road Town Registration Section – Nature's Way Limited (26 January 2007)	Paragraph 8.64 footnote 132	303 – 307
Expedited Extract for Cabinet Meeting (19 March 1997)	Paragraph 8.64(iv) footnote 133	308
Memorandum from Attorney General to Permanent Secretary Ministry for Natural Resources and Labour "Acquisition of Land formerly offered to Egypt Construction Co Limited – Joan Penn" (26 January 2006)	Paragraph 8.65 footnote 134	309 – 310
Order of Indira Charles J (23 November 2005)	Paragraph 8.66 footnote 135	311 – 312
Letter Joan Penn to Sheila Brathwaite (22 February 2006)	Paragraph 8.67 footnote 138	313 – 316
Memorandum from Permanent Secretary Ministry for Natural Resources and Labour to the Governor (15 March 2007)	Paragraph 8.67 footnote 140	317
Expedited Extract for Cabinet Memorandum No 490/2007 (18 July 2007) (disclosed to the COI in the Exhibit to Joseph Smith Abbott Sixth Affidavit)	Paragraph 8.68(b)(v) footnote 141	318 – 319
Letter Olga Rabsatt to Joan Penn (1 August 2007) (disclosed to the COI in the Exhibit to Joseph Smith Abbott Sixth Affidavit)	Paragraph 8.69 footnote 142	320 – 321
Letter Joan Penn to Josephine Callwood (20 August 2007)	Paragraph 8.69 footnote 143	322
Letter to Mr Stoutt (1 August 2007)	Paragraph 8.70 footnote 144	323 – 324
Memorandum Chief Surveyor to Permanent Secretary Ministry of Natural Resources (18 December 2006)	Paragraph 8.70 footnote 145	325 – 326
Letter Bevis Sylvester to Ministry (17 September 2007)	Paragraph 8.72 footnote 146	327
Letter Bevis Sylvester to Hon Ralph O'Neal (31 May 2011)	Paragraph 8.73 footnote 147	328
Cabinet Memorandum No 396/2019: Application to lease Parcel 310 of Block 2938B, Road Town Registration Section – Bevis Sylvester (15 November 2019)	Paragraph 8.73 footnote 148	329 – 333

Survey map prepared by the Survey Department for the Subdivision of Reclamation adjacent to Parcels 221 and 252 (7 June 2011)	Paragraph 8.75 footnote 149	334
Mutation No 81/2011 (15 June 2011)	Paragraph 8.75 footnote 150	335
Judicial Review Claim No BVIHCV 2013/0379 (17 December 2013)	Paragraph 8.76 footnote 151	336 – 350
Notice of Discontinuance for Claim No BVIHC 2013/0379 (13 March 2014)	Paragraph 8.76 footnote 152	351 – 352
Grant of Easement Instrument No 1068/2017 (25 July 2017) (disclosed to the COI in the Exhibit to Joseph Smith Abbott Sixth Affidavit)	Paragraph 8.77 footnote 155	353 – 355
Email Ronald Smith-Berkeley to Maya Barry (17 May 2018)	Paragraph 8.77 footnote 156	356
Letter Maya Barry to Robert Liburd (27 June 2018)	Paragraph 8.78 footnote 157	357
Letter Veritas Law to Baba Aziz (11 July 2018)	Paragraph 8.79 footnote 158	358 – 359
Letter Maya Barry to Veritas Law (1 October 2018)	Paragraph 8.79 footnote 159	360
Expulsion Notice to Trespasser Occupying Crown Land Parcel 310, Block 2938B, Road Town Registration Section addressed to Delta Petroleum (BVI) Limited (18 January 2019)	Paragraph 8.80 footnote 160	361
Letter Bevis Sylvester to Hon Vincent Wheatley (12 June 2019)	Paragraph 8.81 footnote 162	362
Draft Cabinet Paper: Application to revoke – request for permission to lease proposed Lot 2 (formerly part of Lots 3 and 3A) of Block 2938B in the Road Town Registration Section – Nature's Way Limited Memo No 490/2007 (20 June 2019)	Paragraph 8.82 footnote 163	363 – 366
Email Ronald Smith-Berkeley to Hon Vincent Wheatley (23 July 2019)	Paragraph 8.84 footnote 165	367 – 368
Maya Barry Affidavit (2 February 2022)	Paragraph 8.84 footnote 165	369 – 376
Letter Ronald Smith-Berkeley to Bevis Sylvester (25 July 2019)	Paragraph 8.84 footnote 166	377
Written Resolution of the Sole Ordinary Shareholder for Tortola Pier Park Limited (2 October 2019)	Paragraph 8.85 footnote 167	378
Cabinet Memorandum No 386/2019: Sale of Crown Land – Nature's Way Limited (7 November 2019)	Paragraph 8.86 footnote 168	379 – 383
Valuation Report for Parcel 290, Block 2837E, Road Town Registration Section prepared by Smiths Gore BVI Limited (6 October 2020) (disclosed to the COI in the Exhibit to Joseph Smith Abbott Sixth Affidavit)	Paragraph 8.86 footnote 169	384 – 395

Expedited Extract for Cabinet Memorandum No 396/2019 (22 November 2019) (disclosed to the COI in the Exhibit to Joseph Smith Abbott's Sixth Affidavit)	Paragraph 8.87 footnote 171	396 – 398
Cabinet Memorandum No 29/2020 (6 February 2020) (disclosed to the COI in the Exhibit to Joseph Smith Abbott Sixth Affidavit)	Paragraph 8.87 footnote 171	399 – 402
Memorandum Governor Jaspert to the Permanent Secretary for the Ministry of Natural Resources, Labour and Immigration (3 June 2020)	Paragraph 8.90 footnote 175	403
Application to Register/Change Address completed by Bevis Sylvester (19 May 2020)	Paragraph 8.91 footnote 176	404
Elected Ministers' Closing Submissions (undated)	Paragraph 8.97 footnote 185	See Chapter 5
Memorandum Karen Reid to the Permanent Secretary for the Ministry (9 August 2011)	Paragraph 8.108 footnote 196	405 – 406

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

SIXTH AFFIDAVIT OF JOSEPH SMITH-ABBOTT

I, Joseph Smith Abbott, Pusser's Warehouse, 3rd Floor, Road Town, Tortola, VG1110, Virgin Islands, Acting Permanent Secretary, MAKE OATH and SAY as follows:

1. Introduction

2. I am the Acting Permanent Secretary of the Ministry of Natural Resources, Labour and Immigration (the '**Ministry**'). I have served in this capacity since 17 May 2021. The statements made in this Affidavit derive from information and documents reviewed during the course of my role as Acting Permanent Secretary, and are true to the best of my knowledge, information and belief.

2.1 I make this Affidavit as a result of the letter sent to the Honourable Vincent Wheatley on Saturday 26 June 2021 by Ms Rhea Harrikissoon, Solicitor to the Commission of Inquiry (the '**COI**'), entitled '*The Minister of Natural Resources, Labour and Immigration, Request for Affidavit No 2*' in relation to the disposal of Crown lands (the '**Request**').

2.2 At the outset, I should further say that in this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it unless I do so expressly.

2.3 I shall refer in this Affidavit to the exhibit marked 'JSA-6', which is a paginated bundle of documents. I should explain that in searching for documents during the preparation of this affidavit, my team in the Ministry have encountered significant challenges. The basement of the Ministry's previous offices at the Ralph T. O'Neal Administration Complex at Road Town, Tortola were flooded during the hurricanes of 2017. All archives held in the basement were therefore lost. The Ministry did not have a complete electronic archive. Therefore, the electronic record is only partial. Further, in August 2020 the Ministry relocated to its current offices at the Pusser's Building (Lower Estate). During the process of relocation, the Ministry's surviving historic files were placed in a restored pool of documents which has proved hard to use as there is no index and the software with which it was scanned does not facilitate easy searches.

3. Question 1: What is meant by Crown Land?

3.1 Pursuant to section 41 of the Virgin Islands Constitution Order 2007 (the '**Constitution**'), Crown lands are described as "*lands or other immovable property in the Virgin Islands or interests in such property that are vested in Her Majesty for the purposes of the Government of the Virgin Islands*" (see page [27] of Exhibit JSA-6).

3.2 Crown land can also be identified as land registered as such pursuant to the Registered Land Ordinance 1970 (Cap.229) (the '**1970 Land Ordinance**') (see pages [39ff] of Exhibit JSA-6).

- (a) The registration and disposal of land, including Crown Land, in the Virgin Islands, is in general founded upon absolute title and leasehold title (see sections 23 to 25) (pages [51-52] of Exhibit JSA-6).
 - (b) Section 26 of the 1970 Land Ordinance also provides as follows:

"The registration of land as Crown land shall, subject to any registered incumbrances, enable the Governor in Council by a disposition registered under this Ordinance to dispose of such land" (page [52] of Exhibit JSA-6).
- 3.3 Maps showing Crown land exist and can be provided to the Commission if required. They do not lend themselves easily to inclusion in Exhibit JSA-6 because of the scale to which they are produced. Further we are aware that they are not fully up to date. In addition, it should be noted that much of the Crown land shown is not available for disposal as it is designated for particular use, for example the location of Government buildings, public parks and protected areas.
4. **Question 2: The stages through which an application to purchase or lease Crown land passes)**
- 4.1 Pursuant to section 41 of the Constitution, together with section 26 of the 1970 Land Ordinance, the Governor, with the prior approval of Cabinet, has the power to make or authorise a disposal of Crown lands:
- "Crown lands*
41.—(1) Subject to any law for the time being in force in the Virgin Islands, the Governor or the Minister when duly authorised by the Governor by writing under his or her hand, in Her Majesty's name and on Her Majesty's behalf, may, under the public seal, make grants and dispositions of lands or other immovable property in the Virgin Islands or interests in such property that are vested in Her Majesty for the purposes of the Government of the Virgin Islands; but any such grant or disposition shall require the prior approval of the Cabinet" (page [27] of Exhibit JSA-6).
- 4.2 Pursuant to sub-sections 41(2) and 41(3) of the Constitution, the Minister of Natural Resources, Labour and Immigration ("**the Minister**") has responsibility for administering Crown lands.
- 4.3 There are essentially three routes to a disposal of Crown land:
- (a) direct application to the Ministry, including with the encouragement and/or facilitation of a district representative;
 - (b) application via the various Committees established in respect of different areas of land in the Virgin Islands, known as Estates ("**Estate Land Committees**"), which I deal with in more detail in answer to Questions 5 and 12 to 13 (below);
 - (c) discretionary allocations, for example to recognise a particular achievement (see for example in the case of the Pan American Games 2019 gold medallist in the Women's Long Jump, Chantel Malone (see Cabinet Paper Memo No. 26 of 2020 and the accompanying decision, at pages [121-128] of Exhibit JSA-6 described further, below at paragraph 14.17.), or to fulfil a particular policy objective (for example, supporting those in hardship) (see example of the Stevens Estate Subdivision in Memo No. 319 of 2018 and its Appendices, at pages [131-153] of Exhibit JSA-6).
- 4.4 There can be some overlap in relation to the three routes to a disposal of Crown land identified above.
- 4.5 No Crown land can be transferred unless the land has been subdivided and new registers opened in respect of each subdivision (see section 87 of the 1970 Land Ordinance at page [79] of Exhibit JSA-6). Section 160 of the 1970 Land Ordinance expressly provides that it binds the Crown and the

Government (page [109] of Exhibit JSA-6). I exhibit examples of the latest registers prepared on a monthly basis by the Land Registry for 2021 detailing the land transfers of registered lands for Crown land in the Virgin Islands at pages [111-120] of Exhibit JSA-1.

- 4.6 I will address purchases and leases in turn, then the provisions in respect of execution of the appropriate instrument, and finally the stages which apply if application is made via the Estate Land Committees.

Purchase

- 4.7 The following stages apply:

- (a) A letter containing an application to purchase Crown land is submitted to the Ministry (see for example Cabinet Paper, Memo No. 351 of 2019, Appendix B at page [167] of Exhibit JSA-6).
- (b) The applicant's name is added to a file (kept for each of Virgin Gorda, Tortola, Anegada and Jost Van Dyke) of those who have expressed an interest in acquiring Crown land.
- (c) That list is periodically reviewed by the Minister, who from time to time will make a recommendation to Cabinet for an allocation of land to one of the applicants.
- (d) Cabinet then considers whether to accept that recommendation in a land allocation decision (see for example Cabinet Paper, Memo No. 351 of 2019 (Sinclair H. Flemming Sr) at pages [157-199] of Exhibit JSA-6).
- (e) A disposition approved by Cabinet is then sent to the Ministry for processing (see Cabinet Paper, Memo No. 351 of 2019 recording the decision in respect of Mr Flemming at pages [200-201] of Exhibit JSA-6). That process involves the following stages:
 - (i) The Lands Unit prepares and sends a letter to the successful applicant (see Cabinet Paper, Memo No. 351 of 2019).
 - (ii) A survey is prepared by the Chief Surveyor of the Survey Unit (Lands and Survey Department of the Government of the Virgin Islands), prior to any recommendation being made to Cabinet for approval.
 - (iii) A valuation is prepared by the Senior Lands Officer of the Ministry, or outsourced to private companies. I deal with the valuation in more detail in answer to Question 16 below. If valuations are used, they should be prepared prior to the matter going to Cabinet and should form a part of the submission to Cabinet (see for example the Appraisal Report attached to Memo No. 351 of 2019 Appendix C at pages [169-194] of Exhibit JSA-6).
 - (iv) The standard transfer pursuant to the provisions of the 1970 Land Ordinance set out above is prepared and executed.

Leases

- 4.8 This process is the same as the process outlined above.

Execution of the appropriate instrument (purchases and leases)

- 4.9 The provisions of Part VI of the 1970 Land Ordinance govern the instruments to be used for dispositions of land. Pursuant to section 106(1) "[e]very disposition of land, a lease or a charge shall be affected by an instrument in the prescribed form or in such other form as the Registrar may in an

particular case approve, and every person shall use a printed form issued by the Registrar unless the Registrar otherwise permits." (page [87] of Exhibit JSA-6)

- (a) Leases are to be presented for registration in triplicate (see sub-section 106(2) of the 1970 Land Ordinance at page [87] of Exhibit JSA-6).
- (b) Instruments "*shall contain a true statement of the amount of value of the purchase price or loan or other consideration (if any), and an acknowledgement of the receipt of the consideration*" (see sub-section 106(3) of the 1970 Land Ordinance at page [87] of Exhibit JSA-6).
- (c) Every instrument has to be executed by the proprietor and all other parties (see section 107(1) of the 1970 Land Ordinance at page [87] of Exhibit JSA-6). Provision is made for the manner of execution in sections 107 and 108 of the 1970 Land Ordinance (see pages [88-89] of Exhibit JSA-6). In the case of Crown land, the instrument must be signed by the Governor.
- (d) The instrument must then be stamped. Section 109 of the 1970 Land Ordinance provides that "*[n]o instrument required by law to be stamped shall be accepted for registration unless it is duly stamped*" (see page [89] of Exhibit JSA-6). This is the stage at which the Inland Revenue become involved in the transaction.

4.10 The Attorney General's Chambers assists in drawing up the appropriate documents. Draft transfers or leases are sent to the Attorney General's Chambers for vetting by the Permanent Secretary. Documents in support of the disposition or lease are also provided, for example the application, valuation, map of land and copy of the Register demonstrating the registration of the land as Crown land. The Attorney General's Chambers returns the documents with whatever amendments that are required for the documents to be ready for execution by the Governor. All transfers and leases must be sent to the Governor's Office by the Attorney General's Chambers.

4.11 It can therefore be seen that the various stages of the application engage the involvement of 5 different Government departments: the Ministry, the Attorney General's Chambers, the Governor's Office, the Inland Revenue and the Land Registry.

Estate Land Committees

4.12 Where the application is made through the Estate Land Committees established in respect of different areas of land, the stages are as follows:

- (a) The application is first made to the Ministry. Any application forms are usually drafted by the Ministry. The Ministry collates the applications and passes them to the Estate Land Committee. However, I am aware that the Anegada Advisory Land Committee take the view that direct applications can be made.
- (b) Applications are then considered by the Estate Land Committee.
- (c) The Estate Land Committee produces a report with a list of persons recommended for approval, to whom the sale or lease of Crown Land may be made, and a recommendation as to the price per square foot at which disposals should be made (see for example Stevens Land Subdivision Committee Report dated March 1998 in particular Appendix II at pages [13ff and 213-216] of Exhibit JSA-6).
- (d) That report is considered by Cabinet, which will then decide whether to endorse that list and the recommended prices, in a land allocation decision

(e) A copy of the Cabinet Extract approved by Cabinet is then sent to the Ministry for processing. That process involves the following steps:

- (i) The Lands Unit prepares and sends letters to the successful applicants.
- (ii) The standard transfer pursuant to the provisions of the 1970 Land Ordinance set out paragraph 4.9 (above), is prepared and executed.

5. **Question 3: The process by which an individual, company, business or other entity can make an application to purchase or lease Crown land**

5.1 I will address the process for the sale and lease of Crown land in turn.

5.2 As Question 5 (below) recognises, the process differs where the application is made through the Estate Land Committees. I have already dealt with the process before the Estate Land Committees in answer to Question 2 (above). I further describe the role of the Estate Land Committees in the process at paragraph 7.1 (below) in answering Question 5.

Purchases

5.3 The Applicant sends a letter to the Ministry outlining their desire to purchase Crown land. The application letter must include their name, immigration status, a preamble of why they would like to own Crown land and, if a particular parcel or plot is referred to, a specific block and parcel number with its Registration Section should be provided.

5.4 The Applicant should also provide copies of their picture page of their passport, whether they are applying as an Individual, a Company, or a Statutory Body; a copy of the proposed business plan if applying as a Company, and documents relating to the business (such as a Certificate of Incumbency, Certificate of Good Standing, Memorandum and Articles of Association, listing of Directors and Shareholders) and, where required, dependent on the size of the proposed development, a registered copy of a Development Agreement between the Developer and the Government of the Virgin Islands.

Question 3(a): How persons come to be aware of the existence of available parcels of Crown Land – Purchases

5.5 Persons would conduct land information searches/inquiries at the Lands and Survey Department (Land Registry and Survey Units, respectively).

Question 3(b) and (c): What constitutes a valid application to purchase and what form is required

5.6 In general, an application is considered valid where the following details are provided; the purpose/type of use proposed, proof of status and identity of the applicant (Belonger, BVislander, etc).

Question 3(d): To whom an application to purchase should be made

5.7 The Permanent Secretary at the Ministry.

Question 3(e): What information is required in support of an application to purchase

5.8 In addition to the matters referred to at paragraph 5.4 (above) proof of status and identity (Belonger, BVislander, etc), and a description of the purpose of application is also required.

Question 3 (f): What are the timeframes within which an application to purchase should be made

- 5.9 An application to purchase crown land may be made at any time.

Leases

- 5.10 The Applicant sends a letter to the Ministry outlining their desire to lease Crown land. The application letter must include their name, immigration status, a preamble of why they would like to lease Crown land (and the nature of the proposed operation) and, if a particular parcel or plot is identified, a specific block and parcel number with its Registration Section.
- 5.11 The Applicant should also provide copies of the picture page of their passport, whether they are applying as an Individual, a Company, or a Statutory Body; a copy of the proposed business plan if applying as a Company, and documents relating to the business (such as a Certificate of Incumbency, Certificate of Good Standing, Memorandum and Articles of Association, listing of Directors and Shareholders) and, where required, dependent on the size of the proposed development, a registered copy of a Development Agreement between the Developer and the Government of the Virgin Islands.

Question 3(a): How persons come to be aware of the existence of available parcels of Crown Land – Leases

- 5.12 Persons would conduct land information searches/inquiries at the Lands and Survey Department (Land Registry and Survey Units, respectively).

Question 3(b) and (c): What constitutes a valid application to lease and what form is required

- 5.13 An application is considered valid where it is accompanied by the following; an indication of the purpose/type of use envisaged by the applicant (Agricultural or Commercial), Proposed Business Plan, Development Agreement between the Government of the Virgin Islands and the Developer (Commercial Applications), Valuation Report, Company Documents (where applicant is a Company), Proof of Status and Identity of Applicant (Belonger, BVIslander, etc).

Question 3(d): To whom an application to lease should be made

- 5.14 The Permanent Secretary, at the Ministry.

Question 3(e): What information is required in support of an application to lease

- 5.15 In addition to the matters referred to at paragraph 5.11 (above) proof of status and identity (Belonger, BVIslander, etc), and a description of the purpose of application is also required.

Question Point 3(f): What are the timeframes within which an application to lease should be made

- 5.16 An application to lease crown land may be made at any time.

6. Question 4: Published policies or guidance setting out the process for applying to purchase or lease Crown land

- 6.1 There are no published policies or guidance setting out the process. The Ministry is in the process of producing guidelines for publication. Further the Ministry is always happy to respond to individual inquiries.

7. Question 5: Differences in the process described under Question 3 based on the historical significance of the land – the Estate Committees

- 7.1 The Principal Estates where land committees have been active are the following; Tortola (Stevens Estate, Spooner's Estate, Nibbs Estate, Long Look), Virgin Gorda (Coppermine and North South),

Anegada. The only currently active Estate Land Committee is the Anegada Land Development Advisory Committee.

7.2 I have already outlined the process before Estate Land Committees in answer to Question 2 at paragraph 4.12 (above). The Estate Committees' role in that process can be summarised by reference to the Anegada Land Advisory Committee:

- (a) To advise and report upon applications for a disposal of Crown Land in their designated area;
- (b) To act as a conduit for communication between the local community and the Ministry (AALC request for information 18 December 2020 p.1) including building trust between the communities and the Government (see AALC Minutes 16.08.20, at pages [226] of Exhibit JSA-6);
- (c) To provide information to the local community about the process, (including encouraging applications (see the AALC Minutes 07.10.20 and 10.01.21 at pages [237ff and 245ff] of Exhibit JSA-6);
- (d) To consider the terms of reference proposed by the Ministry, for example considering the definition of Anegadian in the context of the allocation process (see AALC Minutes 19.08.20 at pages [228ff] of Exhibit JSA-6);
- (e) To review the application process proposed for the allocation (see AALC Minutes 04.10.20 at pages [231ff] of Exhibit JSA-6);
- (f) To conduct hearings in respect of particular applications (see AALC Minutes 13.12.20 & 19.12.20, and Hearing Record for 22.12.20 at pages [240ff, 243ff and 247ff] of Exhibit JSA-6);
- (g) To consider the price at which disposals are to be made (see AALC Minutes 04.10.20 at pages [231ff] of Exhibit JSA-6);
- (h) To apply their local knowledge, (the AALC has a 'Historian Advisor', see AALC Proposed Terms of Reference 7/2020 under Officers at G at page [666] of Exhibit JSA-6);
- (i) To consider the wider context (see for example the AALC consideration of the 'Food Security Initiative' AALC Minutes 27.07.20 at pages [223ff] of Exhibit JSA-6).

7.3 As described under Questions 12 and 13 (below) Estate Land Committees may produce their own application forms.

The process for purchase through the Estate Land Committees

7.4 The applications are sent to the Ministry, which collates all applications and then sends them to the Estate Land Committee. The Estate Land Committee makes its recommendations and sends them to the Ministry in the form of a report.

7.5 Unsuccessful applicants remain on file pending any further land allocation process at the Estate in question. Where grants are made and successful applicants default on payment, they may be placed back on the deferred list. For example, spaces became available at Spooner's Estate because some successful applicants had defaulted on payment and had been placed back on the waiting list (see Memo No. 440 of 2019 at pages [250-254] of Exhibit JSA-6).

The process for taking a lease of Crown Land through the Estate Land Committees

7.6 The process is as described above for purchases.

8. **Question 6: Differences in the process described under Question 3, depending upon whether the land to be leased or purchased is to be used for residential or commercial purposes**

- 8.1 In respect of a commercial development, in addition to the usual application, the Applicant may submit a presentation to the Minister which includes a business plan. Such considerations, as to the viability of a business plan, are usually for the Premier's Office. Particular concerns have arisen in the context of leases, where the lease is granted but then financing falls through and the development never proceeds.

Question 6(a): Differences between process for residential and commercial purposes

- 8.2 The processes are similar, however, residential approvals are predominantly freehold and commercial approvals are predominantly leasehold.

Question 6(b): Differences in process for Commercial purposes depending upon the Commercial Value of the business or development

- 8.3 Depending on the commercial value, the difference would be having a registered Development Agreement between the Developer and the Government of the Virgin Islands. In some cases, a public consultation may be required depending on the environmental impact of the development.

9. **Question 7: Differences in the process described under Question 3 depending upon the citizenship or immigration status of the Applicant**

- 9.1 There are differences in the process for Belongers and Non-Belongers. A Non-Belonger must obtain a Non-Belonger's Land Holding Licence to own land. Additionally, Non-Belongers do not make applications to Estate Land Committees.
- 9.2 Applicants are required to identify the Status and Identity of Applicant (Belonger, BVIlander, etc.), because preference is typically given to Belonger and BVIlander applicants who do not possess the economic resources to purchase land otherwise. Additionally, non-Belongers and non-BVIlanders are not permitted to own land without first obtaining a Non-Belonger's Land Holding Licence.

Belongers

- 9.3 The processes for Belongers are as described above.

Non-Belongers

- 9.4 The processes for Non-Belongers differ in the following respects.
- 9.5 Non-Belongers are required to have a Non-Belonger's Land Holding Licence to own land. See section 3 of the Non-Belongers Land Holding Regulation (Cap 122) 1 February 1923, (at pages [272-282] of Exhibit JSA-6) and amendments (at pages [283-296] of Exhibit JSA-6) and Non-Belongers Land Holding Licence Application Forms (at pages [297-301] of Exhibit JSA-6).
- 9.6 Non-Belongers do not make applications to Estate Land Committees. As far as I am aware the Terms of Reference always confine eligibility to Belongers and (historically) BVIlanders. This is a product of the historical context in which the Estate Land Committees operate, where links to the land are paramount.

10. **Question 8: Who in any respective Government Ministry or Department is responsible for assessing applications to purchase or lease Crown Land**
- 10.1 The Minister is responsible for assessing applications to purchase or lease Crown Land, after consultation with the Permanent Secretary of the Ministry. In respect of lands for agricultural leases, the Minister and Permanent Secretary of the Ministry of Education and Culture, Agriculture and Fisheries is responsible, after recommendation from the Director of the Department of Agriculture.
11. **Question 9: The criteria applied in assessing an application for purchase or lease Crown land, the criteria, how they have evolved and whether they are recorded in written policies or guidance**
- 11.1 The criteria are not recorded in written policies or guidance. However, as I have pointed out above the Ministry is always happy to help with individual enquiries.
- 11.2 The general criteria for residential applications include the age of the applicant, family considerations and housing considerations, whether they can afford to develop and whether they have other property.
- 11.3 With commercial applications, considerations may include the nature of the business, reason for purchase, whether the company has the resources to develop the land and the need for an environmental study, for example an Environmental Impact Assessment, 'EIA', or business plan. It may also involve political and policy considerations and particular economic and social aims that the Government might have.
12. **Question 10: Variation of criteria since 2007**
- 12.1 The general criteria have not changed since 2007.
- 12.2 There are three things which are now due to be insisted upon, going forwards, in respect of applications made direct to the Ministry for a disposal of Crown Land for residential purposes:
- (a) That the applicant be a first time homeowner;
 - (b) That the applicant have a genuine intention to develop the property for residential use within a reasonable time;
 - (c) That the applicant is able to demonstrate an ability to develop the property for residential use.
- 12.3 This is to ensure that the disposals fulfil the policy objective of providing the applicant with their own home.
13. **Question 11: Written Policies or Guidance Materials in respect of the criteria**
- 13.1 There are no standing policies applicable. However, the Estate Land Committees' criteria, as evolved over time for the different Estates (and dealt with in more detail below in answer to Questions 11 and 12) are available and can be a useful guide.
- 13.2 Further, as described below, various Estate Land Committees have used application forms, which give an indication of the matters which will be taken into account.
- 13.3 Further, it is open to each Minister to develop guidance during his or her tenure.

- 13.4 We are currently preparing guidance for a distribution in respect of the Copper Mine Estate sub-division. In 2019 a draft Terms of Reference for the Virgin Gorda Lands Advisory Committee was prepared (see pages [302-305] of Exhibit JSA-6).
14. **Questions 12 and 13: The different criteria applied in assessing applications to purchase or lease Crown Land depending upon the historical significance of the land – the Estate Land Committees including since 2007**
- 14.1 With the exception of the Stevens Estate Land Committee criteria, to which I have made reference at paragraph 4.3 (above), I have confined myself to those Committees which have been active since 2007, namely Tortola (Nibbs Estate, Spooners Estate, Long Look), Virgin Gorda (North Sound) and Anegada. I deal with them in the order set out above, grouped by island location, Tortola, Virgin Gorda and Anegada. The Tortola Estate Land Committees are dealt with in chronological order, by reference to the principal recent allocations and/or reports which I describe. I have endeavoured to summarise the history of the Estate Land Committees to which I refer.
- 14.2 It will be noted that in general the criteria used and the manner of their use by the Estate Land Committees are based upon a combination of immigration status and the applicant's links to the land in the Estate together with a variety of social factors, such as marital status and the number of dependents. This reflects the policy priorities of promoting land ownership among BVI Islanders and Belongers as well as using the disposal of Crown Land in support of social welfare.
- 14.3 The Terms of Reference and criteria are produced by the Ministry in the first instance, for the consideration of the Estate Land Committees.

Tortola - Stevens (1998)

- 14.4 In 1991 the Government purchased 42 acres of land from the Stevens family to increase the Crown's land holding and make land accessible to BVI Islanders (see Cabinet Paper No.319/2018 19 September 2018, 1st paragraph, at page [131] of Exhibit JSA-6). In 2002 it was decided that 60% of the lots were to be reserved for East End/Long Look residents, with 40% for other BVI Islanders, although in the end 95% was allocated to residents of Long Look and East End (see Cabinet Paper No.319/2018 19 September 2018, 1st paragraph, at page [131] of Exhibit JSA-6).
- 14.5 In 1998 the Stevens Land Sub-division Committee used the following criteria to make recommendations for allocation (see Stevens Land Subdivision Committee Report dated 10 March 1998 p.3, at page [206] of Exhibit JSA-6):

"(i) CATEGORY A: B.V.Islanders who do not own land, reside in the B.V.I., are single parents/persons. Preference would be given to those applicants who are to purchase an allotment without need for leasing arrangements to gain financial equity.

CATEGORY B: B.V.Islanders who do not own land, reside in the B.V.I. and are married with children. Preference would be given on the same basis as CATEGORY A.

CATEGORY C: B.V.Islanders who do not own land, reside in the B.V.I and are married without children. Preference would be given on the same basis as CATEGORY A.

CATEGORY D: B.V.Islanders who do not own land and do not reside in the B.V.I. Preference would be given to those applicants with children under the age 10.

(ii) A minimum of sixty percent of the plots to be allocated to B.V.Islanders and Belongers in the East End/Long Look area and the remainder to other B.V.Islanders.

(iii) A lease/purchase option to be extended to applicants on terms to be agreed by the Ministry."

- 14.6 These would have been applied in descending order of preference.

- 14.7 Three residential lots were to be reserved for exchange with persons whose properties were to be acquired for public use (see Stevens Land Subdivision Committee Report dated 10 March 1998 p.4 (iv), at page [207] of Exhibit JSA-6). In addition, applications in respect of a Day Care Centre and certain commercial plots were designated for handling by the Ministry (see Stevens Land Subdivision Committee Report dated 10 March 1998 p.4, (v) at page [207] of Exhibit JSA-6-)
- 14.8 An Application form was prepared to assist applicants (see Stevens Land Subdivision Committee Report dated 10 March 1998 Appendix III, at page [217] of Exhibit JSA-6).
- 14.9 Three vulnerable families whose homes were destroyed in Hurricanes Irma and Maria were considered for and obtained land on the Stevens Estate (Cabinet Paper No.319/2018 and Appendices at pages [131-153] of Exhibit JSA-6).

Tortola - Spooner (2007/2008)

- 14.10 In 2003 the Government of the Virgin Islands purchased 95 acres of land in Spooner's Estate to increase the Crown's holdings and promote first-time home-ownership through the sale of affordable residential lots, the guiding principles being that successful applicants should not be recipients of land and should not be in a position to purchase property on the open market (see Cabinet Paper Memo No.156/2020 21 February 2020 paragraph 1), at page [306] of Exhibit JSA-6).
- 14.11 On 12 January 2007 the Spooner's Estate Land Advisory Committee ("**the Spooner's Committee**") were appointed (see Spooner's Estate Advisory Land Committee Report May 18, 2007 p.1, paragraph 1, at page [329] of Exhibit JSA-6). The Committee made recommendations for allocation on the following basis (see Spooner's Estate Advisory Land Committee Report May 18, 2007 p.2, at page [330] of Exhibit JSA-6).
 - "i. BVIIslander who does not own land or have access to land, and
 - ii. residing in the BVI as a single parent with minor children; or
 - iii. residing in the BVI and are married with minor children; or
 - iv. residing in the BVI and are married; or
 - v. residing in the BVI and does not have an immediate family member (i.e. mother, father, sister, or brother) recommended in current phase of land allocation"
- 14.12 These would have been applied in descending order of preference. The Spooner's Committee proceeded to assess applications, based on those criteria and the following considerations (see Spooner's Estate Advisory Land Committee Report May 18, 2007 p.2, at page [330] of Exhibit JSA-6).
 - "a) Persons who already owned land were not considered.
 - b) Preference was given to BVIIslanders.
 - c) Consideration was given to persons who resided in or had ties to the area
 - d).Working persons with children were given preference".
- 14.13 An application form was developed for the process (see Extract from the Minutes of Cabinet Meeting on 28 May 2008, Memo No. 185/2008 (c) & (d), at page [340] of Exhibit JSA-6).
- 14.14 In June 2008 Cabinet approved the allocation recommended by the Spooner's Estate Land Advisory Committee in their report of 31 May 2007 (see Extract from the Minutes of Cabinet Meeting on 28 May 2008, Memo No. 185/2008 (a), at page [338] of Exhibit JSA-6). Cabinet also accepted recommendation of the Second District Representative as to the 74 persons on the Committee's list

who should receive allocations in Phase I of the distribution (see Extract from the Minutes of Cabinet Meeting on 28 May 2008, Memo No. 185/2008 (b), at page [338] of Exhibit JSA-6). Cabinet further accepted recommendation of the Second District Representative that 4 persons should be placed on a supplementary list in Phase I of the distribution (see Extract from the Minutes of Cabinet Meeting on 28 May 2008, Memo No. 185/2008 (b), at page [338] of Exhibit JSA-6). Cabinet also decided to adopt the application form developed for this (see Extract from the Minutes of Cabinet Meeting on 28 May 2008, Memo No. 185/2008 (b), at page [338] of Exhibit JSA-6)

- 14.15 The allocation eventually proceeded through three phases during which a total of 104 persons were awarded residential lots within the estate, of which 86 had received transfers by 2020 (see Cabinet Paper Memo No.156/2020 21 February 2020 2), at page [306] of Exhibit JSA-6).
- 14.16 However in 2019, 14 grants at Spooners Estate were revoked for failure on the part of the applicants to meet obligations to make payment for the land transferred (see Cabinet Paper Memo No.156/2020 21 February 2020 4), at pages [307] of Exhibit JSA-6).
- 14.17 A further allocation was then made by the Ministry. A grant was made to the Gold Medallist Chantel Malone for her performance at the Pan American games 2019 (see Cabinet Paper Memo No.26/2020, 12 February 2019 5), at page [122] of Exhibit JSA-6) . Allocation was also made to seven applicants recommended by the Minister and other persons who had been approved during the earlier Spooner's estate distribution, but were still awaiting assignment of a particular parcel (see Cabinet Paper Memo No.156/2020 21 February 2020 4)-5), at page [307] of Exhibit JSA-6). The selection was made by considering the applicants' number of dependents, access to land and inability to qualify for a loan due to limited income (see Cabinet Paper Memo No.156/2020 21 February 2020 5), at page [307] of Exhibit JSA-6). The proposed grantees were BVI Islanders and Belongers, meeting the requirements to be landholders in the Territory, but who were not currently landowners (see Cabinet Paper Memo No.156/2020 21 February 2020 5), at page [307] of Exhibit JSA-6). The purpose of this additional allocation was to promote first-time ownership through the sale of affordable land (see Cabinet Paper Memo No.156/2020 21 February 2020 7), at page [307] of Exhibit JSA-6). I understand that the Ministry took the view that this was a beneficial adjunct to the Housing Assistance Programme spearheaded through the Ministry of Health and Social Development and would create economic activity, employment through development of the homes and instil a sense of pride in property ownership (see Cabinet Paper Memo No.156/2020 21 February 2020 6), at page [307] of Exhibit JSA-6).

Tortola - Nibbs (2010/2011)

- 14.18 The Nibbs Estate was bought by the Government of the Virgin Islands (see Nibbs Estate Land Use Committee Report 12 September 2011 pp 2-3, at pages [343-4] of Exhibit JSA-6). At the time of the acquisition there were several tenants in occupation, some of whom had been there for over 50 years (see Nibbs Estate Land Use Committee Report 12 September 2011 p.3, at page [344] of Exhibit JSA-6). Most of those in occupation had well established family connections to the wider Sea Cows Bay community, with a few exceptions (see Nibbs Estate Land Use Committee Report 12 September 2011 p.3, at page [344] of Exhibit JSA-6). An allocation took place in 1998 (see Nibbs Estate Land Use Committee Report 12 September 2011 p.2, at page [343] of Exhibit JSA-6).
- 14.19 A new Nibbs Estate Land Use Committee ("**the Nibbs Committee**") was appointed on 8 January 2010 (see Nibbs Estate Land Use Committee Report 12 September 2011 p.1, at page [342] of Exhibit JSA-6). It was asked to deal with non-qualifying applicants in occupation of estate lands (who were to be relocated on short term tenancies at reduced rates as an interim measure) and revisit the 1998 allocation and make adjustments to facilitate the expansion of the district road network (see Nibbs Estate Land Use Committee Report 12 September 2011 p.1, 1. and 2. at page [342] of Exhibit JSA-6).

The Nibbs Committee was made up of individuals with considerable local knowledge of the Sea Cows Bay Community (see Nibbs Estate Land Use Committee Report 12 September 2011 p.3, at page [344] of Exhibit JSA-6).

- 14.20 The Nibbs Committee used the criteria established in 1998 for priority rating of applicants, save for Category A, whose allocation had already been completed (see Nibbs Estate Land Use Committee Report 12 September 2011 p.2, at page [343] of Exhibit JSA-6).

“Category A: Virgin Islanders who have lived on the Estate for more than 50 years together with those now residing on the land who will have to be relocated. These persons should be granted freehold title

Category B: Virgin Islanders whose ancestors fall in Category A, who do not own land and reside in the Virgin Islands. Preference to be given to those applicants able to purchase an allotment without the need for a leasing arrangement in order to gain financial equity.

Category C: Virgin Islanders from the wider Sea Cows Bay community with no ancestral ties to the Estate, who own land and reside in the Virgin Islands. Preference as in Category B.

Category D: (1) Virgin Islanders from the wider Sea Cows Bay community with no ancestral ties to the Estate, who do not own land and do not have to enter into a lease/purchase arrangement

(2) Virgin Islanders from the wider Sea Cows Bay community with no ancestral ties to the Estate, who do not own land and have to enter into a lease/purchase arrangement.

Category E: Virgin Islanders from the wider Sea Cows Bay Community with no ancestral ties to the Estate who own land (preference given to those with small number of holdings”.

- 14.21 Categories B-E would have been applied in descending order of preference.
- 14.22 The Nibbs Committee produced a list of applicants organised by reference to Categories B-E (see Nibbs Estate Land Use Committee Report 12 September 2011 p.6 and Appendix C, at pages [347 & 350-352] of Exhibit JSA-6). The Committee took careful consideration of the particular circumstances of applicants in making recommendations as to the particular lots suitable for certain applicants (see for example in respect of various applicants, the Nibbs Estate Land Use Committee Report 12 September 2011 p.5, at page [346] of Exhibit JSA-6). It also identified lots suitable for commerce and agriculture (see Nibbs Estate Land Use Committee Report 12 September 2011 p.5, at page [346] of Exhibit JSA-6). I understand that the Nibbs Committee recommendations were accepted by Cabinet.
- 14.23 The Nibbs Committee also dealt with the non-qualifying applicants, lot adjustments and relocations (see Nibbs Estate Land Use Committee Report 12 September 2011 pp 4-5, at pages [345-346] of Exhibit JSA-6).

Tortola - Long Look (2010)

- 14.24 In 1782 Mary and Samuel Nottingham gave their land to the freed slaves of the estate and their descendants who lived on the estate, in perpetuity (see Final Report on Land Subdivision in Nottingham Estate Long Look, Tortola British Virgin Islands, by the Long Look Lands Commission April 2010 (“**the Long Look 2010 Report**”) p.1, at page [357] of Exhibit JSA-6). As no proper conveyances were made, in 1968 the Long Look Land Commission and Titles Ordinance, 1968 No.13 of 1968 (Cap.225) (“**the Long Look 1968 Ordinance**”) provided for the grant of title and established a land commission for the purposes of examining applications for the issue of such grants (see Long Look 2010 Report p.1, at page [357] of Exhibit JSA-6 and see Long Look 1968 Ordinance, at pages [376-388] of Exhibit JSA-6). The Commission was established in 1969 with power to determine the parcels of land on which any inhabitant was ordinarily resident or settled and to make recommendations as to grants and the terms and conditions of any such grants (see Long Look 2010 Report pp 1-2, at pages [357-358] of Exhibit JSA-6).

- 14.25 So great was the pressure of applications that in 1995 the Long Look Lands Commission recommended that a lottery be used for the allocation of the final lots (see Long Look Lands Commission 1995 Report attached to the Long Look 2010 Report as Appendix A, p.3, 2nd paragraph, at page [465] of Exhibit JSA-6).
- 14.26 Nevertheless, the distribution at Long Look in accordance with the powers given to the Long Look Commission, appears to have been grounded upon the ordinary residence or settlement of the inhabitants and such freedoms or permissions as such inhabitants enjoyed (see Long Look 2010 Report pp 1-2 at (a) and (e)-(f), at page [357-358] of Exhibit JSA-6).
- 14.27 By 2010, 83 acres of land had been distributed (see Long Look 2010 Report p.3, and Appendices B & C at pages [359 & 367-372] of Exhibit JSA-6). In 2010 Title to 3 lots was yet to be transferred. One applicant had moved to the United States and was not responding to correspondence and another had died (see Long Look 2010 Report p.4, at page [360] of Exhibit JSA-6). The Long Look Lands Commission recommended that unsuccessful Long Look applicants be considered for Crown Land that might be available elsewhere (see Long Look 2010 Report p.4 and p.5, 4., at pages [360-361] of Exhibit JSA-6).

Virgin Gorda - North Sound (2014)

- 14.28 I understand that this Estate has always been Crown land.
- 14.29 The Review of Crown Land Disposals by Mr John Vincent FRICS in November 1993 (**"the Vincent Report"**) concluded that in the early 1970s at North Sound *"the main criteria for approving an application was that the applicant had built a house on the land and had effectively occupied the same"* (see the Vincent Report p.2, at page [391] of Exhibit JSA-6).
- 14.30 A Virgin Gorda (North Sound) Lands Advisory Committee was appointed on 13 December 2013 (see Virgin Gorda (North Sound) Lands Advisory Committee Report, 14 July 2014 **"the North Sound 2014 Report"** p.1 at page [415] of Exhibit JSA-6).
- 14.31 The following criteria were approved by the Minister for Natural Resources and Labour (see the North Sound 2014 Report p.2 at page [416] of Exhibit JSA-6):

"A Land would be allocated to

i. Belongers who do not own land;

ii. Belongers who do not own land and reside in Virgin Gorda as a single parent or single person (with preference given in this class of persons to those who can purchase an allotment with institutional or other financing and without the need for leasing arrangements to gain financial equity);

iii. Belongers who do not own land and are residing in the Virgin Islands and are married with children over the age of eighteen; and

iv. Belongers who do not own land and who would qualify (as per the established and approved mechanism) for a short term lease to buy option, the terms of which shall be agreed by the Ministry of Natural Resources and Labour;

B Consideration will not be given to persons who are able to purchase land on the open market, same is determined by the Committee utilizing the fair mechanism transparently established and approved"

- 14.32 It should be noted that the criteria are based here on Belongership. Belongership is wider in scope than BV Islander status. This may be an example of an Estate Land Committee attempting to address the restriction of Estate Land Committee allocations to BV Islanders. Further, it appears to me that Category A iv is designed to favour those who are in a position to comply with any payment requirements, so that any approved allocations can be progressed more smoothly.

- 14.33 Consideration was given to the allocation of lots for residential, commercial and agricultural purposes (see the North Sound 2014 Report p.2, C. at page [416] of Exhibit JSA-6).

Anegada

- 14.34 Anegada is regarded as a place of special significance (see Virgin Islands Land and Marine Estate Policy 2018 7.2, 2., at page [475] of Exhibit JSA-6).

- (a) Anegada has its own separate history. This includes a long-standing belief that Queen Victoria bequeathed the island to the Anegadians (see Report of the Anegada Lands Commission, prepared by John Renwick Q.C. in February 1988 ("**the Renwick Report**") at p.4, at pages [495] of Exhibit JSA-6). The ties of applicants to the island of Anegada have accordingly been of particular significance in the disposal of land. They have historically been demonstrated by reference to the enclosures, known as 'walls' ("**Walls**") historically erected to mark the occupation of a particular area (see the Renwick Report p.4, at pages [495] of Exhibit JSA-6).
- (b) In 1885 the people of Anegada complained of the "*inconvenience and disputes*" often arising from persons on the island "*having no fixed bounds to their location*" (see preamble to the Virgin Lands Ordinance No.3 of 1885 ("*the 1885 Ordinance*") at page [478] of Exhibit JSA-6). The 1885 Ordinance was passed in response and provided for the Governor to grant and dispose of rights to Crown land on Anegada subject to certain conditions, for example occupancy for 10 years or expenditure of a "*considerable amount of Capital*" on the land (see the 1885 Ordinance at 1. and 1. d. & e. at pages [478-479] of Exhibit JSA-6). Land which had been occupied for less than 10 years and in relation to which little or no capital had been expended was open for sale at auction with an "*upset price*" of four shillings per acre and a right of first refusal to the occupant (see the 1885 Ordinance at 1. f. at pages [479] of Exhibit JSA-6). Unoccupied land was to be available for sale by auction at the same upset price, or by private contract but only with the approval of Her Majesty's Secretary of State (see the 1885 Ordinance at 1. g. at page [479] of Exhibit JSA-6). The Governor was also given the power to issue a Commission to examine and report on applications for grants of land on Anegada and all matters relating thereto (see the 1885 Ordinance at 1. And 1. d. & e. at pages [478-479] of Exhibit JSA-6).
- (c) There was a further attempt by the Anegada Ordinance, Chapter 146 of the Revised Laws of the Virgin Islands ("**the 1961 Ordinance**") to regularise the land-holding in Anegada. The preamble declared that the 1885 Ordinance was to be replaced (see at page [485] of JSA-6). It was further declared that all lands within the Island of Anegada were vested in the Crown (see section 4 at pages [486] of Exhibit JSA-6). The 1961 Ordinance defined a settlement area 'the Village' within which land could be disposed of only to Anegadians (see sections 5 and 6 and Schedule 1 at pages [486 & 488] of Exhibit JSA-6), permitted other land to be reserved for repairing roads and paths (see section 9 at page [487] of Exhibit JSA-6) and for cultivation and grazing (see section 10(1) at page [487] of Exhibit JSA-6), with the remainder to be held in trust for the Anegadians (see section 12 at pages [487] of Exhibit JSA-6). Sales were prevented and the proceeds of leases were to be paid into a separate account for the benefit of the island ("**the Anegada Account**") (see sections 13 and 14 of the 1961 Ordinance at page [487] of Exhibit JSA-6 and the Renwick Report pp 6-7, at pages [541-542] of Exhibit JSA-6).
- (d) In 1968 all of the island save 1500 acres was leased to the Development Corporation of Anegada Ltd for 199 years (see Renwick Report p.7, at page [498] of Exhibit JSA-6). However, that lease was subsequently terminated.

- (e) By the Anegada (Repeal) Ordinance, 1973, the 1961 Ordinance was repealed and the money which had been paid into the Anegada Account was transferred to the general revenue of the Virgin Islands: (see the Renwick Report p.8, at page [499] of Exhibit JSA-6).
- 14.35 Despite this history, the Renwick Report concluded that in 1988 title to the land on Anegada was confined firstly to those who had had title issued to them pursuant to the 1970 Land Ordinance and the Land Adjudication Ordinance 1970, which the report listed in Appendix II and secondly to the Crown in which all the other land was vested (see the Renwick Report p.11 at page [502] of Exhibit JSA-6). However, the Renwick Report did recommend that in future, title should be given where a Wall could be identified and the persons who occupied the Wall prior to the 1968 lease were known (see Renwick Report p.18, at page [509] of Exhibit JSA-6). It also concluded that the price Anegadians paid for the land should be subsidised (see Renwick Report p.19, at page [510] of Exhibit JSA-6). When Mr Renwick returned in 1998 to deal with land around the airport in Anegada, he described the process of identifying the Walls (see the Further Report on Anegada Lands 22 August 1998 ("**the 1998 Renwick Report**") pp 1-3 at pages [523-525] of Exhibit JSA-6). He recommended that a deadline be imposed for applications for Walls, by which he meant applications for the recognition of historic occupancy of a Wall (see the 1998 Renwick Report, final page, at (5) at page [527] of Exhibit JSA-6). However, I am not aware that any such deadline was imposed and applications for Walls continue to be made.
- 14.36 An Anegada Land Development Advisory Committee ("**ALDAC**") was appointed in 2008 (see Cabinet Paper Memo No.369 of 2020 at 1) at page [549] of Exhibit JSA-6). A draft "*Anegada Land Redistribution Project*" paper dated 10 July 2009 noted that one of the expected benefits was that "*Anegadians will have title to property and thus be able to realize the benefits of property ownership*" at 4 on the 3rd page (see page [534] of Exhibit JSA-6). By a Cabinet Paper dated 30 July 2009, proposals were made to Cabinet for criteria to be applied in the allocation of Crown Land on Anegada (see Cabinet Paper Memo No. c00/2009, paragraphs (1) and (2) at pages [537] of Exhibit JSA-6). The Ministry noted that land distribution on Anegada was a long-standing issue and that the purpose of the Land Distribution Project on Anegada was to "*facilitate the process of handing over registered titles to Anegadians based on the Renwick Report and previous Cabinet decisions*", to avoid the loose and haphazard approach to land tenure caused by lack of proper title (see Cabinet Paper Memo No. c00/2009, 10. at page [540] of Exhibit JSA-6). An Anegada Land Application Form was produced (see Cabinet Paper Memo No. c00/2009, (5) at page [538] of Exhibit JSA-6). Detailed notes were prepared for Anegadians to help them identify their potential entitlement and status (see pages [542-544] of Exhibit JSA-6). Eventually, 115 persons were granted freehold title based on the following criteria (see Cabinet Paper Memo No.369 of 2020. at 2) pp.1-2 at pages [549-550] of Exhibit JSA-6):
- (a) Freehold titles to Anegadians who were recommended for land by the ALDAC Committee between 2002-2005 (resulting in both residential and commercial grants);
 - (b) Freehold titles to qualified Anegadians with no claim to land (resulting in residential grants);
 - (c) Freehold titles to qualified persons who previously occupied land under a Crown lease and had developed the land, with title being offered for the land which they occupied (resulting in grants for commercial development).
- 14.37 A further ALDAC was appointed in 2011 (see Cabinet Paper Memo No.369 of 2020 at paragraph 4) at page [550] of Exhibit JSA-6).
- 14.38 An ALDAC for the 2016 distribution was also appointed. On 10 February 2016 Cabinet approved the continued allocation of land at Anegada under the following criteria with accompanying lists of

successful applicants (see Cabinet Record and Extract from the Minutes Memo No. 23 of 2016 at page [545-546] of Exhibit JSA-6):

"(a)...(i) qualified persons (Anegadians) residing in the Virgin Islands and overseas with no claim to land be granted more or less 0.5-0.599 of an acre of land for residential or commercial purposes in accordance with the sub-division and/or as described on the registered survey plans

(ii) descendants of Anegadians residing overseas with claims to land be awarded one-half (1/2) of an acre of land or in accordance with the registered subdivision plans for allocation on the island of Anegada within the requested area;

(iii) three (3) qualified applicants be allocated approximately one-half (1/2) an acre of land for residential purposes under the special category of long standing residency;

(iv) agricultural lots be leased to the qualified persons for a period of fifty (50) years at an annual ground rent of one hundred dollars (\$100.00) per acre with an option to renew every five (5) years at one (1) percent of the unimproved market value of the leased area;....

(b) approved the granting of land for residential purposes to the descendants of Anegadians residing in the Virgin Islands and overseas with no claim to land, who were recommended by the Anegada Lands Development Committee (2002-2005) and thereafter included in the listing approved by Cabinet in November 2009 and July 2011, as well as inadvertently omitted from the said listings but were subsequently approved by Cabinet, purposes in accordance with the Subdivision and as described on the registered Survey Plans for allocation on the island of Anegada"

- 14.39 New members of an Anegada Advisory Land Committee ("AALC") were appointed on 6 July 2020 (see Cabinet Paper Memo No.369/2020 at 5) at page [551] of Exhibit JSA-6). Between 6 July 2020 and 18 September 2020, the Ministry drafted fresh 'Terms of Reference' for the ALDAC which were approved by Cabinet on 30 September 2020 (see Cabinet Paper Memo No.369/2020 Decisions sought at a. and Appendix A at pages [553 & 556 to 560 respectively] of Exhibit JSA-6 and Cabinet Memo 369/2020 (Memorandums/792) at pages [616 to 617] of Exhibit JSA-6. The criteria within those Terms of Reference at 4. are as follows (see pages [557-558] of Exhibit JSA-6):

"A Land would be allocated to

i. Anegadians who do not own land;

ii. Consideration may be made by the Committee to consider persons who already own land only after all other applications for persons who do not have any deeds have been considered and processed with the exception of:

Top Priority Cases: Persons who can identify their walls need to have them surveyed and title granted to them regardless of any other properties they may own; persons who have owned or lived in houses for years with no title to the land on which they are built should be given their titles.

iii. Consideration for lots shall be for residential (housing) purposes with the view of having the land remain in the family.

iv. Preference may be given for lots to persons who demonstrate that they are ready to build within two years of acquiring lot".

- 14.40 Under the 2020 Terms of Reference, there is to be a full Final Report to the Ministry with a full record of the AALC's Minutes procedure and deliberations, including their recommendations, advice and reasons (terms of Reference at 8., page [558] of Exhibit JSA-6).
- 14.41 The AALC provided a proposed amended terms of reference which largely adopted the same criteria (see 4. at page [567] of Exhibit JSA-6).
15. **Question 14: Differences in the criteria described under Question 9, depending upon whether the land to be leased or purchased is to be used for residential or commercial purposes**
- 15.1 Crown land may be disposed of for residential or commercial purposes. Disposals for residential purposes tend to be freehold and for commercial purposes leasehold

- 15.2 The differing criteria which have been applied by the Estate Land Committees depending upon whether the land was sought for commercial or residential use, have been described in answering Question 13 above.

Question 14(a): Differences between criteria for residential and commercial purposes

- 15.3 I am not aware of any differences in the general criteria depending on whether the land to be leased or purchased is to be used for residential or commercial purposes.

Question 14(b): Differences between criteria for purchasing or leasing for Commercial purposes depending upon the Commercial Value of the business or development

- 15.4 I am not aware of any such differences in the criteria.

16. Question 15: Differences in the criteria described under Question 9 depending upon the citizenship or immigration status of the Applicant

- 16.1 As I have already said above Non-Belongers must have a Non-Belonger Land Holdings Licence.

- 16.2 The Policy behind this is to empower through land ownership, making land available to BVIIslanders and Belongers at less than market value. If land were only sold to Belongers at full market value, that would significantly limit its affordability.

17. Question 16: What use is made of Valuation reports when assessing or processing an application for the sale or lease of Crown Land

- 17.1 As I shall describe below, whilst valuation reports have been used for some time in respect of disposals of Crown land for commercial purposes, they were not being used for disposals for residential purposes until very recently. In most residential disposals, valuations were not a part of the process as disposals would take place as part of a mass land development project and it was not considered necessary to obtain valuations. Where disposals were made in isolated cases (parcels not a part of land development projects), valuations were prepared prior to Cabinet's Approval and in some cases after Cabinet's approval.

- 17.2 It had been thought in the past that, as Government policy has consistently been to make land available at deliberately low prices to BVIIslanders and Belongers for residential purposes (as described under Question 15 (above)), it was not necessary to obtain a valuation before such a disposal.

- 17.3 However, the current policy view is that even if the Government of the Virgin Islands wishes to maintain support to BVIIslanders and Belongers in this way, it is right that the cost of that policy, in terms of the difference between the value of the land on the open market and the price at which it is disposed of, should be recognised. Accordingly, in February of this year the Minister instituted the standing requirement for valuations for residential disposals also referred to at paragraph 17.13 below.

Question 16(a): The stage of the process at which valuation reports are used

- 17.4 The position has historically differed depending upon the route through which the disposal is being made. However the position is now as follows:

- (a) Where the disposal is to be made on direct application to the Ministry, a valuation report for a disposal for both residential and commercial purposes is now considered. The valuation report is generally required prior to submitting the matter to Cabinet for approval.

- (b) Where the disposal is to be made as an exercise of discretion, a valuation report is generally required prior to submitting the matter to Cabinet for approval.
- (c) Where the disposal is to be made following the recommendations of an Estate Land Committee, which will already have considered the price for disposal, the valuation report is prepared between the survey and the transfer, for the Ministry's records. The valuation report is prepared before the Transfer is executed by the Governor.

Valuation when Land is disposed of through the Estate Land Committees

- 17.5 The principal requirement for Estate Land Committees in valuing land is to choose a price which is affordable to Belongers. The Estate Land Committees arrive at their valuations based on their considerable local knowledge and the previous values found by previous constitutions of the Committee.
- 17.6 On initial consideration by the Stevens Land Subdivision Committee, the appropriate sale price for the Stevens 1998 distribution was considered to be between \$1 and \$1.20 per square foot (see Stevens Land Subdivision Committee Report dated 10 March 1998 Appendix IV, at page [219] of Exhibit JSA-6). In December 2003 prices of \$0.70 per sq ft and \$0.90 per sq ft were approved for the Stevens Estate (see Appendix E to Cabinet Paper Memo No.319 of 2018, Extract from the Minutes of Executive Council Meeting on 10 December 2003 at (a) and (b) at page [154] of Exhibit JSA-6).
- 17.7 The price recommended and decided upon by Cabinet for the Spooner's Estate allocation in 2008 was \$1.00 and \$1.25 per square foot for residential and commercial lots respectively, were approved (see Spooner's Estate Advisory Land Committee Report May 18, 2007 p.2, at page [330] of Exhibit JSA-6 and Extract from the Minutes of Cabinet Meeting on 28 May 2008, Memo No. 185/2008 (a)(i), at page [338] of Exhibit JSA-6). The price suggested for the later 2019 Spooner allocation was \$1.00 per square foot: see Cabinet Paper Memo No.156/2020 21 February 2020 10), at page [308] of Exhibit JSA-6).
- 17.8 The original fee for grants at Long Look (in the late 1960 and early 1970s) was \$25 per plot which then increased to \$100 and then \$150 (see Long Look 2010 Report p.3, at page [359] of Exhibit JSA-6).
- 17.9 The price in North Sound in 1986 and 1989 appears to have been \$500 per acre (see the Vincent Report pp 20-21, at pages [409-410] of Exhibit JSA-6). The prices recommended for the North Sound 2014 allocation were \$0.25 and \$0.50 per square foot for residential and commercial lots respectively (see the North Sound 2014 Report p.3 at page [417] of Exhibit JSA-6. The Committee concluded that the earlier price of \$500 a lot plus fees, which equated to about \$0.05 per square foot had to be increased (see the Virgin Gorda (North Sound) Land Advisory Committee Minutes 29 March 2014 at page [433] of Exhibit JSA-6).
- 17.10 In Anegada the valuation recommended and decided upon in 2003 for purchases was \$1 per ½ acre (see allocation of land in Anegada 2 December 2003, Decision sought a., page [577] of Exhibit JSA-6)).
- 17.11 As I have observed at paragraph 9.5 to 9.6 (above), Non-Belongers cannot make applications for land via the Estate Land Committees. So the valuation process which results in land being disposed of below market value, is deliberately not available to them, pursuant to the policy described at paragraph 16.2 (above).

Question 16(b): Whether a valuation report is requested for commercial and residential land disposals and when such a requirement was introduced

17.12 As far as those in my team at the Ministry are aware, valuation reports have been considered for disposals of Crown land for commercial use since at least the 1970s, as the value provides the basis for the rent and rent reviews (see one example page [583-608] of Exhibit JSA-6).

17.13 In February of 2021 the Minister introduced a standing requirement in the Ministry that valuations were to be obtained for the disposal of Crown land for residential purposes.

Question 16(c): What weight is given to valuation reports

17.14 As far as I am aware the Cabinet of the Virgin Islands will usually follow the guidance given in valuation reports as to the market value of the land.

Reform

17.15 In February 2020 it the Financial Secretary noted on the question of subsidised rent that *"perhaps it is high time that Government review and modernise its leasing policy of Crown properties"* (see paragraph 12) of Paper Memo No. 56 of 2020 at page [612] of Exhibit JSA-6. I believe this was prompted by the fact that there was no established system beyond calculation of rent based on percentage of the unimproved market value, with no guidance as to the particular percentage of that value which ought to be applied.

17.16 In December 2020 the Financial Secretary further noted as follows: *"A review and modernisation of leasing policies for Crown properties should occur with the view of amending existing leases to ensure that rent is closer to market value"* (see paragraph 16) of Memo No. 529 of 2020 at pages [869] of Exhibit JSA-6). This comment was prompted by the fact that the valuation was not presented to cabinet prior to cabinet's decision in respect of the Zimomi lease, a subject to which I return below at paragraph 23.59(b) and 23.63.

Conditions of Sale other than Price (the Estate Land Committees)

17.17 The 2008 Spooner's Estate allocation included standard covenants binding the transferee as registered proprietor, including a covenant *"(ix) not to erect more than one dwelling house on the said land and the same shall be used for residential purposes and no other purpose"* and *"(xxiii) (a) Not to alienate the interest herein granted before the elapse of sixty (60) months from the date hereof"* save having given the Government first refusal (see 'Spooner's Estate Covenants', Second Schedule preamble and covenants (ix) and (xxiii) (a) and (b) at pages [335 336-337] of Exhibit JSA-6).

17.18 In 2014 the Virgin Gorda (North Sound) Land Advisory Committee recommended a covenant prohibiting onward sale within 7 years of the transfer and a Government right of first refusal on such a sale (see the North Sound 2014 Report p.3, and 'RESTRICTIVE COVENANTS-Residential at 17, pages [417 & 420-421] of Exhibit JSA-6). The Committee also recommended that there be a condition that any grant be executed within 7 years (see the North Sound 2014 Report p.2 under A, and the proposed restrictive covenants at 17 at pages [416 & 420-421] of Exhibit JSA-6). The Committee may have had in mind the need to ensure, as far as possible, that the allocation process proceeded smoothly and without undue delay.

17.19 The new Anegada Advisory Land Committee Terms of Reference, which were produced on or before 18 September 2020 for the Hon. Minister's Cabinet Paper, File:ANE.A4/83, Memo No. 369/2020 were approved in the Cabinet Meeting at which they were considered (see page [558] of Exhibit JSA-6). The Terms of Reference include the following recommendations as to conditions which should be imposed:

"5. To increase the number of years to seven (7) given to land owners (crown land) before land can be sold and in the event that this should happen, the Government of the Virgin Islands has first preference or right of refusal in

purchasing the crown land (undeveloped land) back from the land recipients for redistribution to other applicants who did not receive crown land before at the same cost between land owner and the Government of the Virgin Islands.

6. Additionally, after seven (7) years of ownership, if persons wish to part with possession of said land, the land must remain in the possession of a member of the family household. They will be required to refrain from selling and to seek other options i.e. leasing, renting, or transfer to a relative of the same family line, whichever is possible."

- 17.20 This was a deliberate initiative taken late last year, to protect Anegada from abuse of the process. In particular, it was designed to prevent flipping, where a Belonger obtains land at a heavily discounted price and makes a windfall profit on an onward sale.
- 17.21 The AALC's proposed amended conditions followed the basic structure of the Cabinet approved paragraphs 5 and 6, whilst proposing that the period in paragraphs 5 and 6 be increased to 21 years, that the right of refusal at paragraph 5 be in favour of "an Anegadian", and that the additional restriction preventing sale beyond a member of the family household be removed (see page [568] of Exhibit JSA-6).
- 17.22 The 1961 Ordinance in Anegada had provided that grants were to be issued subject to regulations and conditions set out in the Second Schedule which provided at paragraph 10 that "*land in the Village in respect of which a grant has been passed shall not be alienated, let or encumbered for a period of 10 years from the passing of the grant without the written authority of the Administrator, and any land so alienated, let or encumbered shall immediately be forfeited to the Crown and any right, estate or interest purported to be created thereby shall immediately be extinguished*" (see page [489] of Exhibit JSA-6).
- 17.23 Sub-section 2 (9) (a) of the Long Look Lands Commission and Titles (Amendment) Act 2002 amended the first schedule of the Long Look Lands and Titles Ordinance Cap 225 as follows: "(9) *Subject to sub-paragraph (10), every grant shall contain, and if it does not shall be deemed to contain, (a) a covenant to the effect that the person granted title to the land shall not, within a period of five years from the date of the grant, sell or otherwise dispose of the property except to a father, mother, brother, sister, son or daughter for no consideration and, for this purpose, the payment by the recipient of any registration fees, lawyer's fees or other similar fees is not consideration*" (See page [616] of Exhibit JSA-6).
- 17.24 In light of the sorts of conditions and legislative provisions I have described in the paragraphs at 17.17 to 17.23 immediately above and the comments of the Financial Secretary referred to a paragraphs 17.15 and 17.16, the Ministry is actively considering reforms to provide further protection against abuses such as flipping.
18. **Question 17: Whether in the last 3 years to date land has been sold below the valuation price and in what circumstances**
- 18.1 Land is sold below the valuation price, on the recommendations of Estate Land Committees. One allocation took place in respect of Spooner's Estate in 2019, which I have already described at paragraph 14.17 (above).
19. **Question 18: Whether in the last 3 years to date title to land has been transferred to the successful applicant before complete payment for the land has been received**
- 19.1 Title to land cannot be transferred until the full payment of the consideration sum has been received.
- 19.2 Transfers of land are provided for in Division 4, Sections 83 to 92 of the 1970 Land Ordinance (see pages [78-80] of Exhibit JSA-6). The provisions of sections 83 and 85 operate so that a transfer has to be completed by registration. A transfer of land takes effect immediately on registration of such

transfer, therefore no transfer can be registered if it is conditional upon a future event (such as payment of taxes and fees to inland revenue).

- (a) Section 83 of the 1970 Land Ordinance provides, in relevant part, as follows (see page [78] of Exhibit JSA-6):

"(1) A proprietor, by an instrument in the prescribed form, may transfer his land, lease or charge to any person with or without consideration. (2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or charge and by filing the instrument...."

- (b) Section 85 of the 1970 Land Ordinance provides, in relevant part, as follows (see page [79] of Exhibit JSA-6):

"A transfer to take effect on the happening of any event or on the fulfilment of any condition or at any future time shall not be capable of registration"

- 19.3 Full payment has been made for all disposals during the last three years. No transfer has been made until full payment has been made.

20. **Question 19: Whether in the last 3 years to date leases of Crown land have remained in effect despite the lessee having breached the term of a lease (for example by the non-payment of rent**

- 20.1 I shall first describe the provisions of the 1970 Land Ordinance which govern the termination of leases.

- (a) Pursuant to Section 53 of the 1970 Land Ordinance various *agreements* are implied into the lease, including, pursuant to sub-section 53 (a) *"to pay the rent reserved by the lease at the times and in the manner therein specified."* (see page [63] of Exhibit JSA-6).

- (b) Section 55 of the 1970 Land Ordinance (see pages [64-65] of Exhibit JSA-6) provides the lessor with a right of forfeiture subject to section 57 and to any provision to the contrary in the lease if, pursuant to sub-section 55(1)(a) the lessee *"commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease."* A right to forfeit is also provided for in sub-sections 55(1)(b) and (c) if the lessee is adjudicated bankrupt or being a company goes into liquidation.

- (c) Sub-section 55(3) of the 1970 Land Ordinance provides for the situation in which the right of forfeiture shall be taken to have been waived, by acceptance of rent and the lessor is or should have been aware of the breach.

- (d) Pursuant to section 56 of the 1970 Land Ordinance the service of a *"notice of forfeiture"* is required before a lessor is entitled to exercise the right of forfeiture *"for the breach of any agreement or condition in the lease."* (see page [65] of Exhibit JSA-6)

- (e) Section 57 of the 1970 Land Ordinance provides for relief against forfeiture(see page [65] of Exhibit JSA-6).

- (f) Section 62(1) provides for the determination of leases as follows (see page [67-68] of Exhibit JSA-6):

"(1) Where – (a) the period of a lease has expired; or (b) an event upon which a lease is expressed to terminate has happened; or (c) a lessor has lawfully re-entered; or (d)

a notice duly given to terminate the lease has expired, and the lessor has recovered possession of the land leased, the lease and every other interest appearing on the register relating to the lease shall thereupon terminate, and the lessor may apply in writing to the Registrar to cancel the registration."

- 20.2 Crown leases usually take the form in the example at pages [618-630] of JSA-6.
- 20.3 Pursuant to section 55 of the 1970 Land Ordinance, the lessor therefore has the right to forfeit for breach of the lease (see page [64] of Exhibit JSA-6).
- 20.4 People do go into arrears on both leases and licences and find themselves in breach of the conditions. I am aware that the Ministry has historically been slow to take action in respect of such breaches. However, this is something which we intend to rectify.
21. **Question 20: Instances where applications to purchase or lease Crown Land have taken a number of years to resolve**
- 21.1 No lease or transfer is executed until full payment of the approved consideration amount. Awardees are given the option of a lump sum payment or a payment plan not exceeding 3 – 5 years.

Question 20(a) Why certain applications can take a number of years to resolve

- 21.2 Input is required from other agencies whose involvement in the process has been described at paragraphs 4.7 to 4.11 (above). Thus, for example the Inland Revenue have to confirm that Stamp Duty has been properly paid or any exemption properly justified, the Lands and Survey Department are required to perform Surveys and approve the Survey Plans and the Town & Country Planning Department are required to approve any development or subdivision which may be involved. The Attorney General's Chambers also have to draft the necessary instruments.
- 21.3 In addition, disputes can arise over the ownership of the land, for example where adverse possession is claimed.

Question 20(b): In the case of delayed applications, which criteria would apply at the time of determination – those applicable as at the date of the application or as at the date of the decision

- 21.4 The criteria are those applicable as at the date of the application.

22. **Question 21: Updated Table**

- 22.1 I can confirm that from the information with which I have been provided by my officers, in relation to the transactions detailed in the Memorandum referred to
- (a) the land has not been sold on to another individual or entity;
 - (b) the land has not been leased to another individual or entity; and
 - (c) the land has not be sub-leased to another individual or entity.

- 22.2 I exhibit a copy of the original Memorandum for completeness (see pages [631-635] of Exhibit JSA-6).

23. **Question 22**

- 23.1 I endeavour now to set out a description, in summary, of what took place in respect of transactions set out in the Table under Question 22, for which my team have been able to find the papers.

1. Application for Consent to sell lease property Parcel 218/1 of Block 2534B Mount Sage Registration Section for Ms Patricia Romney as Executrix of the Estates of Lilian Arosa Romney and Cyril Brandford Romney (Memo 12/2020) (see pages [636-670] of Exhibit JSA-6)

- 23.2 As can be seen from the papers exhibited at JSA-6 pages [636-670], this transaction involved a sale by the Estate of Mr and Mrs Romney. The executrix of Mr and Mrs Romney's estate sought to sell the lease of Parcel 218/1, measuring 0.125 of an acre, to Mr Vanterpool's company, Shoreside Development.
- 23.3 I believe that this was intended to form part of a larger transaction, which included two parcels of freehold land and that the total transaction value was to be \$5million (see Cabinet Paper Memo 12/2020 at 2) page [637] of Exhibit JSA-6). However Cabinet only had to consider the assignment of the Crown Lease, from the point of view of the Crown as landlord.
- 23.4 In that context Cabinet noted that the proposed assignee was a company in good standing and therefore apparently a suitable lessee (see Cabinet Paper Memo 12/2020 at 4) page [637] of Exhibit JSA-6). The rent was to remain \$1,000 per annum based on the relatively recent 2017 rent review (see Cabinet Paper Memo 12/2020 Decision Sought a ii. page [639] of Exhibit JSA-6). The 2017 Lease re-executed after the review is exhibited at pages [645-655].
- 23.5 The assignment has now taken place.
- 23.6 The Cabinet decision is exhibited at pp [668-670] of Exhibit JSA-6.

2. Transfer of Land to the BVI Ports Authority (Memo 453/2019) (see pages [671-694] of Exhibit JSA-6)

- 23.7 This disposal, in response to a direct application from the BVI Ports Authority, concerned a transfer of several plots of land to the BVI Ports Authority for the public good, each for a nominal consideration of \$1 (see Cabinet Memo 453/2019 Decision sought at a. b. c. d. at page [693] of JSA-6).
- 23.8 The Cabinet Paper describes the need of the BVI Ports Authority following destruction of their base during the 2017 hurricanes (see Cabinet Paper Memo 453/2019 5) and 7) at page [672] of JSA-6).
- 23.9 The Cabinet decision is recorded in the Minutes of the Cabinet Meeting No.34 on 9 December 2019 (see pages [692-694] of Exhibit JSA-6).
- 23.10 This disposal is in the process of completion.

3. Transfer of Crown Lands to the BVI Airports Authority (Memo 460/2019) (see pages [695-739] of Exhibit JSA-6)

- 23.11 In summary I understand the position in respect of this disposal to be as follows.
- (a) The BVIAA is a body corporate established under the Airports Act 2003 (No.16 of 2003) as amended by the Airports (Amendment) Act, 2006 (No.7 of 2006) (see Cabinet Paper 'Transfer of Crown Lands to the BVI Airports Authority', Memo No.460/2019 Extract No.REx/460/2019 (/decisions/185), at 1, at page [695] of Exhibit JSA-6 and Appendix A at pages [703-709]).
 - (b) Bevis Sylvester is the Chairman of the Board of the BVI Airports Authority. In 2019 the BVI Airports Authority was granted the transfer of Crown land by Cabinet Memo No. 460/2019 at a price of \$1 per parcel, plus the \$200 statutory survey fee. The approval was granted to the BVIAA and not to Bevis Sylvester personally.
 - (c) Parcels 50 and 51 comprised the parking lot beside the runway at the airport which also contained a dump.

- (d) Parcel 52 is adjacent to the parking and principal access route.
 - (e) On 21 February 2019, Hon. Marlon Penn had been granted approval via Memo No.80/2019, to lease Parcel 52, Block 3740B, Beef Island Group Registration Section for 99 years (see Cabinet Paper 'Transfer of Crown Lands to the BVI Airports Authority', Memo No.460/2019 Extract No.REx/460/2019 (/decisions/185), at paragraph 10. at page [698] of Exhibit JSA-6). However, the decision to grant a lease to Mr Penn was revoked and Parcel 52 was then transferred to the BVIAA.
- 23.12 I believe the relevant background and chronology to be as follows.
- 23.13 On 16 July 2019 by Resolution No.7 of 2019 the BVIAA sought a transfer of Crown Lands to the North-West of runway 7 for constructing hangars at the airport (see Cabinet Paper Memo No.460/2019 paragraph 3. at page [695] of Exhibit JSA-6).
- 23.14 On the same day Mr Sylvester wrote to the Office of the Premier copying the Minister requesting a transfer of Crown Lands to the North-West of runway 7, for the BVIAA for the construction of hangars (the absence of hangars since the 2017 hurricanes having caused loss of revenue) (Cabinet Paper Memo No.460/2019 paragraph 2. at page [695] of Exhibit JSA-6).
- 23.15 On 24 July 2019 the BVIAA requested the transfer of Crown Land, specifically parcels 50,51 & 52, to the BVIAA in accordance with the Airports Act 2003 Section 12(1) (see Cabinet Paper Memo No.460/2019 paragraph 7.at page [697] of Exhibit JSA-6).
- 23.16 On the same day Mr Sylvester wrote again to the Premier's Office copying the Minister, seeking a transfer of parcels 50,51 & 52 (see Cabinet Paper Memo No.460/2019 paragraph 4. at page [696] of Exhibit JSA-6).
- 23.17 Parcel 50 is a reclamation measuring 0.061 of an acre with a jetty, at that time used by Mr Ashbel Lettsome (Cabinet Paper Memo No.460/2019 at 5. at page [696] of Exhibit JSA-6). Parcel 51 measuring 0.823 of an acre, was being used as a parking lot and had a barge ramp attached to it, used by the barges travelling between Trellis Bay and Virgin Gorda and had attached to it the Government jetty, used by the ferries and other vessels travelling to Marina Cay, Scrub Island, Guana Island, Peter Island, Anegada and Virgin Gorda (see Cabinet Paper Memo No.460/2019 paragraph 5. at page [696] of Exhibit JSA-6). Parcel 52 measuring 0.318 of an acre was vacant (see Cabinet Paper Memo No.460/2019 paragraph 5. at page [696] of Exhibit JSA-6).
- 23.18 The requests by the BVIAA were to upgrade and modernise the TBL International Airport (see Cabinet Paper No.460/2019 paragraph 6. at page [696] of Exhibit JSA-6).
- 23.19 On 15 November 2019, Mr Sylvester wrote again on behalf of the BVIAA to the Ministry highlighting all the parcels needed for the modernisation programme (Cabinet Paper Memo No.460/2019 at 8. at page [697] of Exhibit JSA-6).
- 23.20 The Cabinet Paper dated 10 December 2019 and signed on 16 December 2019 sought the following decision (see Cabinet Paper Memo No.460/2019 Decision Sought, a.-c.at pages [700-701] of Exhibit JSA-6):
- (a) That the decision in Memo No.80/2019 (the grant of the lease to Hon. Marlon Penn) be revoked in its entirety.
 - (b) That freehold title to parcels 50,51 and 52 be transferred to the BVIAA, save for a 24 ft right of way over or taken/subdivide out of Parcel 51, along the coast between the barge ramp and the government jetty;

(c) That each parcel be transferred to the BIAA for \$1 plus a Statutory Fee of \$200.

23.21 The Cabinet Paper noted as follows:

- (a) If acquisition of all the parcels, including parcel 51, were to be granted, that would impact the transport route to and from the resorts/other islands, which was critical in the development of the territory, so that it was practical to create a 24ft right of way over/or take and subdivide out of parcel 51 such a right of way, between the barge ramp and the government jetty to preserve the route (see Cabinet Paper Memo No.460/2019 at 9.at page [697] of Exhibit JSA-6).
- (b) The earlier Cabinet approval in respect of [REDACTED] and parcel 52 was also noted, together with the need to revoke the approval in order to transfer to the BVIAA: see Cabinet Paper Memo No.460/2019 paragraphs 10.-12. at page [698] of Exhibit JSA-6).
- (c) The Permanent Secretary at the Premier's Office supported the Decision sought as *"The re-purposing of Trellis Bay will create a seamless link between the arrivals at the TB LIA and their onward transportation to the sister islands"* which would *"increase the attractiveness of using the airport at Beef Island"* which served *"the Government's overall agenda of expanding the tourism sector"* (see Cabinet Paper Memo No.460/2019 paragraphs 3) & 4) at page [699] of Exhibit JSA-6) .
- (d) The Ministry of Finance commented that the decision *"should improve the fiscal position"* of the BVIAA and reduce its reliance on subvention from central government (see Cabinet Paper Memo No.460/2019 paragraph 5).at page [699] of Exhibit JSA-6). However, even though the BVIAA was a Government entity the transaction proposed would constitute removing Government asset and the re-purposing of Trellis Bay would reduce and displace the current users which would *"definitely have a negative impact on economic and commercial well being of neighboring [sic] islands users of the area and its amenities"*:

23.22 On 18 December 2019 Cabinet made the decision sought (see Cabinet Paper 'Transfer of Crown Lands to the BVI Airports Authority', Memo No.460/2019 (/expedited extracts/96), at page [738-739] of Exhibit JSA-6).

23.23 It can therefore be seen that the land was to be transferred to the BVIAA in the public interest. Based on the information received from BVIAA in their application, it appears that this land was needed in the further development plans for the airport expansion project.

23.24 This disposal is in the process of being completed.

4. BVI Electricity Corporation

23.25 I regret that my officers have not yet been able to locate and gather the paperwork for this transaction.

5. Eileen E.Hodge (Memos 410/2011 & 401/2016) (see pages [740-744] of Exhibit JSA-6)

23.26 This disposal concerns an allocation to Ms Hodge by the Nibbs Committee approved by Cabinet on 5 October 2011 (see Memo 410/2011 exhibited at pages [740-743] of JSA-6).

23.27 Ms Hodge subsequently sought to swap the parcel she had received for a slightly larger parcel for which she had to pay an additional amount (see Memo No. 401/2016 exhibited at page [744] of JSA-6).

6. Request for Permission to Assign Crown Lease No. 1452/1993 for Parcel 5/1, Block 5044A, Virgin Gorda Central Registration Section – Bayview Development (Memo 352/2019) (see pages [745-801-] of Exhibit JSA-6)

- 23.28 In this transaction permission was sought for an assignment of Lease No. 1452/1993 from Plumtree Estate Limited ("**Plum Tree**") to Bayview Development Group Ltd ("**Bayview**") as it had been realised that a previous attempt to assign the lease in 2006 was probably void or voidable (see Memo 352/2019, Decision sought at a. at page [749] of Exhibit JSA-6 and application letter dated 12 December 2018 at Appendix K pages [793-794] of Exhibit JSA-6).
- 23.29 As is shown by Appendix I to Memo No. 352/2019, the directors and members of both Plum Tree and Bayview remained the same (see at pages [788-789] of Exhibit JSA-6).
- 23.30 Permission was also sought to vary the term of the lease to term of 99 years commencing on 1 January 2018 (see Memo 352/2019, Decision Sought at b. at page [749] of Exhibit JSA-6).
- 23.31 It can be seen that the applicant brought their rental arrears up to date prior to the decision (see Memo 352/2019, Appendix E at pages [760-761] of Exhibit JSA-6). In addition an overview of Bayview's business plan was appended to the Cabinet Paper at Appendix J (see 6) v. of the paper and Appendix J at pages [746 and 792] of Exhibit JSA-6).
- 23.32 The Ministry of Finance made the following observations (see Appendix N to Memo 352/2019 at pages [799] of Exhibit JSA-6)
- (a) Only the time remaining on the existing lease should be assigned and Bayview should have been required to apply separately to extend the lease;
 - (b) No advice on rent had been offered.
- 23.33 On 25 October 2019 Cabinet decided to grant permission for the assignment by Plum Tree to Bayview and for the lease to be varied as requested (see Memo 352/2019 at pages [801-801] of Exhibit JSA-6).
- 23.34 I would observe that:
- (a) Cabinet appear to have wanted to deal with the application to assign and for a new lease in one go rather than having to deal with two separate applications.
 - (b) The Ministry apparently wished to defer the rent review to enable the matter to be expedited, but the Ministry intended to conduct a rent review at the earliest time possible (see Memo 352/2019 paragraph 7), at pages [746-747] of Exhibit JSA-6).
- 23.35 Further, I understand that the assignment has not yet actually taken place. Nor has there been any rent review. I am told that Bayview were supposed to provide the Ministry with a draft of the assignment and we have never received it.

7. Allocation of Crown Land – Charles and Willis Wheatley (Memo 251/2020) (see pages [802-823]-of Exhibit JSA-6)

- 23.36 This disposal was made to satisfy an obligation to the Wheatley family in respect of land encroachment.
- 23.37 The encroachment in this case involved a situation where a plot of land which had been disposed of to Charles, Willis and Hilford Wheatley in the 1990s was later discovered to have been built on, when a construction was put up on the next door plot by Hilford Wheatley.

- 23.38 I understand the relevant background and chronology to be as follows.
- 23.39 On 16 August 1995 the Executive Council approved an allocation in North Sound to Charles, Willis and Hilford Wheatley of Parcel 66, Block 5344B, Virgin Gorda Central Registration Section (see Memo No. 302/2011 paragraph 2, at page [803] of Exhibit JSA-6 and the Executive Council decision Appendix A of 251/2020 at page [811] of Exhibit JSA-6). However, as the Vincent Report was awaited, the transfer was held (see Memo No. 302/2011 paragraph 3., at page [803] of Exhibit JSA-6). I understand from enquires I have made that the transfer was never executed. So Parcel 66 remained Crown Land.
- 23.40 However, it was also discovered by the Survey Department that a building erected on the next door Parcel 12 Block 5344B, Virgin Gorda Central Registration Section owned by Mr Hilford Wheatley had been built over the boundary between Parcel 12 and the neighbouring Parcel 66 which was to have been transferred to the Wheatley Family (see Memo No. 302/2011 paragraph 3, and aerial photo attached Mutation 1 of 2013 at page [821] of Exhibit JSA-6).
- 23.41 Following notification of the encroachment on what remained Crown Land at Parcel 66, Mr Hilford Wheatley sought to have the situation regularised (see Memo No. 251/2020, paragraph 3), at page [806] of Exhibit JSA-6.
- 23.42 August 2011, Cabinet decided that the sale of Parcel 66 should be revoked and new plot created by amalgamating Parcel 66 with other plots (see decision under Memo No.302/2011, paragraphs a) – d). Appendix C of 251/2020 at page [815] of Exhibit JSA-6 and description in Memo No.251/2020 paragraph 4), at pages [806-807] of Exhibit JSA-6). However, it seems that these steps would not have rectified the encroachment problem.
- 23.43 Mr Wheatley unfortunately passed away before the position could be regularised (see Memo No.251/2020 paragraph 5), at page [807] of Exhibit JSA-6).
- 23.44 It appears that in 2013, subdivision took place in which Parcel 66 and neighbouring Parcel 157 were deleted to create Parcels 158 to 162, i.e. an additional 3 parcels, with the old Parcel 66 now forming part of what is now Parcel 159 (see Mutation No. 9 of 2013 at pages [818-820] of Exhibit JSA-6). That is why the 2020 Memo refers to the encroachment being upon new Parcel 159 not Parcel 66 (see paragraph 6) at page [807] of Exhibit JSA-6). However, this sub-division only affected the land on the old Parcel 66 side of the boundary with Parcel 12. Parcel 12 remained, as did the building erected over the boundary between Parcel 12 and the next door Parcel (once Parcel 66 now Parcel 159) which remained Crown Land. Therefore the problem of the encroachment still existed.
- 23.45 It appears that in 2020 Cabinet sought to resolve the problems which had arisen by taking the following steps:
- (a) Cabinet decided to revoke the August 2011 decision, including in respect of amalgamation, which had not been implemented (see Memo No. 251/2020 (/memorandums/521) at a.) at page [822] of Exhibit JSA-6)).
 - (b) Cabinet also decided that Parcels 158 and 159 (the Parcels bordering Parcel 12), representing the old Parcels, including Parcel 66, which had been previously been intended to be transferred to the Wheatley family, should now be sold to them at prices of \$500, plus the \$200 statutory survey fee for each parcel (see Memo No. 251/2020 (/memorandums/521) at b.-c.) at pages [822-823] of Exhibit JSA-6)).

- (c) Cabinet also decided now finally to amalgamate Parcels 158 and 159 with Parcel 12 to remove the encroachment problem (see Memo No. 251/2020 (/memorandums/521) at c.) at page [823] of Exhibit JSA-6)).
- (d) Cabinet further decided that the Crown land so disposed of to the Wheatley family should be confined to residential use ((see Memo No. 251/2020 (/memorandums/521) at e.) at page [823] of Exhibit JSA-6))

23.46 The consideration has now been paid and the transfer is going through the process of finalisation.

8. Transfer of Parcel 210, Block 2963B Road Town Registration Section to Lordan Limited (Memo 479/2020) (see pages [824-865] of Exhibit JSA-6-1)

23.47 I understand that this disposal, in response to a direct application, was another transaction designed to resolve an encroachment difficulty.

23.48 I believe that the relevant background and chronology are as follows.

23.49 Parcels 38 and 65 of Block 2837B are owned by Lordan Limited ("Lordan") which is a company owned by Mr Daniel O Smith (Dr Orlando Smith the former Premier). They had been developed with the construction of a building and perimeter walls, which encroached onto Parcel 169, Block 2936B which is Crown Land (see Memo 479/2020 paragraph 3), at page [824] of Exhibit JSA-6 and Appendix A, the letter from Dr Smith dated 16 July 2020 at page [828] of Exhibit JSA-6 and plans at pages [837 & 840-841] of Exhibit JSA-6).

23.50 The acquisition of Parcel 169 by Dr Smith would therefore have eliminated the encroachment problem. However, it was proportionate to consider a transfer to Dr Smith of the encroached portion alone. Accordingly, Parcel 169 was subdivided on 10 November 2020 into Parcels 210 and 211 of Block 2936B, Parcel 210 being only 0.56 of an acre, was the one intended for transfer to resolve the encroachment issue (see Memo 479/2020 paragraph 4) and 5), at pages [824-825] of Exhibit JSA-6 and Appendix D, Mutation No 84/2020 at page [838-840] of Exhibit JSA-6).

23.51 Parcel 210 was valued at \$17,850 (see Memo 479/2020 paragraph 3), at page [956] of Exhibit JSA-6 and Appendix, the valuation at pages [824 & 842]). The Ministry of Finance noted that the valuation had been obtained and that it was intended that market value be obtained for Parcel 210 (see Memo 479/2020 paragraph 10), at page [826] of Exhibit JSA-6). Cabinet was invited to decide that Parcel 210 be disposed of to Lordan for \$17,850 plus the \$200 Statutory Survey Fee.

23.52 However Cabinet decided that the small strip of land constituting Parcel 210 should be transferred to Lordan for a nominal sum of \$1, in recognition of the "*invaluable service of Dr D Orlando Smith to the Virgin Islands*" (see Memo 479/2020 (/memorandums/851) paragraph b. at page [865] of Exhibit JSA-6).

23.53 This disposal has been completed.

9. Lease of portion of Crown Land for Commercial Purposes – Zimomi Limited (Memo 529/2020) (see pages [866-929] of Exhibit JSA-6)

23.54 I believe that the relevant background and chronology to this disposal, following a direct application, is as follows.

23.55 On 4 December 2020, Zimomi Limited ("**Zimomi**") wrote asking the Ministry for a lease of Crown Land adjacent to the QEII Park and opposite the Dr.D.Orlando Smith Hospital, for commercial purposes, for 99 years (see Cabinet Paper Memo No.529/2020, File: LAN.L4/497 VOL III, Lease of a portion of

Crown Land for Commercial Purposes – Zimomi Limited' at 1) & 2) at page [866] of Exhibit JSA-6 and Appendix A the application letter dated 4 December 2020 at page [874] of Exhibit JSA-6)

- 23.56 The Ministry sought a business plan (see Cabinet Paper Memo No.529/2020, at 3), at page [866] of Exhibit JSA-6).
- 23.57 On 15 December 2020 the Ministry received the business plan entitled "*Proposal for a Vibrant Mixed-Use Development in Road Town*", dated 14 December 2020 (see Cabinet Paper Memo No.529/2020, at 4), at page [866] of Exhibit JSA-6 and the business plan at pages [1015-1034]). This described the proposals as follows.
- (a) The development project was estimated to cost \$10 million and consisted of a 5 storey mixed-use complex (see Cabinet Paper Memo No.529/2020, paragraph 5), at pages [866-867] of Exhibit JSA-6).
 - (b) The complex would include 15,000 sq ft of retail space on the ground floor (see Cabinet Paper Memo No.529/2020, paragraph 5) i., at page [867] of Exhibit JSA-6).
 - (c) It would include 15,000 sq ft of Commercial and Office space on the 2nd, 3rd and 4th floors: see Cabinet Paper Memo No.529/2020, paragraphs 5) & ii., at page [867] of Exhibit JSA-6).
 - (d) It would also include residential accommodation with a mix of 2 and 3 bedroom penthouse apartments (see Cabinet Paper Memo No.529/2020, paragraphs 5) & iii., at page [867] of Exhibit JSA-6).
- 23.58 The Ministry made a survey request to the Land and Survey Department which established that the plot for the one acre or 43,557 sq ft being sought was to be taken from Parcel 125, Block 2937B, Road Town Registration Section and was adjacent to Parcel 124, Block 2937B which was designated for the Helipad (see Cabinet Paper Memo No.529/2020, at 6), at page [867] of Exhibit JSA-6).
- 23.59 In the Cabinet Paper drafted on 16 December 2020 and signed by the Minister on 22 December 2020, made observations as follows.
- (a) The sub-division would have to be approved by the Town and Planning Department and the Lands & Survey Department, with any approved plan being attached to an application to the Land Registry Department for the subdivision of Parcel 125, Block 2937B (see Cabinet Paper Memo No.529/2020, paragraph 7), at page [867] of Exhibit JSA-6).
 - (b) A valuation report was required to "*ascertain a fair rental value*", which would be conducted by BCQS BVI Limited at the expense of the applicant (see Cabinet Paper Memo No.529/2020, paragraph 8), at page [867] of Exhibit JSA-6).
- 23.60 The Ministry asked Cabinet to decide as follows:
- (a) To subdivide Parcel 125, Block 2937B, Road Town Registration Section, adjacent to Parcel 124 Block 2937B, subject to approvals from the Town and Country Planning Department and the Lands and Survey Department (see Cabinet Paper Memo No.529/2020, Decision Sought paragraph a., at page [871] of Exhibit JSA-6);
 - (b) That permission be granted to Zimomi to lease a portion of Parcel 125 measuring c. 1 acre or 43,557 sq ft for commercial purposes, with an initial rent to be determined by a Valuation Survey, for which Zimomi was to pay, a 50 year term with option for renewal, a 5 yearly rent review, revision to be at 5 % of the unimproved market value of the land and sub-lease

payments of 2.5% of the revenue collected (see Cabinet Paper Memo No.529/2020, Decision Sought, b.-c., at pages [871-872] of Exhibit JSA-6);

- (c) That Zimomi pay the Statutory Survey Fee of \$800 in accordance with the Fourth Schedule of the Statutory Rates, Fees and Charges Act, 2005 before execution of the lease (see Cabinet Paper Memo No.529/2020, Decision Sought, d., at page [872] of Exhibit JSA-6);
 - (d) That approval from the Town and Country Planning Department and the Building Authority be sought before commencement of any development as well as for the proposed subdivision (see Cabinet Paper Memo No.529/2020, Decision Sought at d.,at page [872] of Exhibit JSA-6). That construction of the building accommodate parking and "*the required setbacks on site*" (see Cabinet Paper Memo No.529/2020, Decision Sought, f.,at page [872] of Exhibit JSA-6).
- 23.61 The relevant survey dated 18 December 2020 is Appendix E to Memo No. 529/2020 at page [900] of Exhibit JSA-6.
- 23.62 On 23 December 2020, Cabinet decided that Parcel 125 was to be subdivided and that the portion of Parcel 125 measuring 1 acre be leased to Zimomi for a term of 99 years, with the rent to be determined following completion of a Valuation Survey and Subsequent report (see Memo 529/2020 (/memorandums/940) at a. and b. at pages [927-928] of Exhibit JSA-6).
- 23.63 As I have observed above, the absence of information as to the appropriate rent was pointed out to Cabinet. However, the decision was expressly subject to the proviso that the applicable rent was to be determined following a valuation survey and report.
- 23.64 The valuation process for this lease is now underway.
- 10. Lease of Crown Land on Virgin Gorda to Pond Bay Development Corporation Limited (Memo 531/2020) (see pages [930-962] of Exhibit JSA-6)*
- 23.65 I understand that this disposal involved the replacement of a void lease.
- 23.66 The original lease was granted to Pond Bay Development Corporation Limited ("PBDCL") on 15 March 1989, of Parcel 17, Block 5042A Virgin Gorda Central Registration Section ("**the Original Lease**") (see Memo 531/2020, at paragraph 1) at page [930] of Exhibit JSA-6). I am aware from researches undertaken that the rent was \$100 per acre per annum (see Lease 1043 of 1991 at p.1 at pages [956-960] of Exhibit JSA-6).
- 23.67 The land in the Original Lease was supposed to have covered 10 acres. However, it was subsequently discovered that Parcel 17 only amounted to 7.78 acres (see Memo 531/2020, at paragraph 2) at page [930] of Exhibit JSA-6). What had been Parcel 17, then became Parcel 81, by a subdivision to correct the size of the Parcel, to as close to 10 acres as possible (see Memo 531/2020, at paragraph 2) at page [930] of Exhibit JSA-6)
- 23.68 Then, in 2003 during the preparation of the new lease of Parcel 81, the Original Lease was found to be void, because at the time PBDCL did not exist and had subsequently been struck off (see Memo 531/2020, at paragraphs 4) & 5) at page [931] of Exhibit JSA-6).
- 23.69 On 14 January 2019 PBDCL, having regularised its own position, wrote to ask for a lease (see Memo 531/2020, at paragraph 8) at page [932] of Exhibit JSA-6 and letter of 14 January 2019 at page [947] of Exhibit JSA-6).
- 23.70 In February 2020 the Register was rectified to delete reference to the Original Lease of Parcel 17.

23.71 On 23 December 2020 Cabinet decided that a lease be granted to PBDCL of Parcel 81 for a term of 99 years from 1 January 2020, at the rent of \$100 per acre per annum (see Memo No.531/2020 (/memorandums/424) at a. and a. i. at pages [961-962] of Exhibit JSA-6).

23.72 I note that this is the same rent provided for in the Original Lease but that the Financial Secretary observed that the lease sought was for a tourism-related development, which *"would suggest that there will be some benefits to the territory's economy with the enhancement of this tourism business by providing employment opportunities"* (see Memo 531/2020, at paragraph 12) at page [933] of Exhibit JSA-6).

23.73 This disposal is in the process of being completed.

11. Transfer of Crown Land to the Youth Empowerment Project (YEP) Foundation – Block 4941B Parcel 2 Virgin Gorda South Registration Section (Memo 380/2020) (see pages [963-1008] of Exhibit JSA-6)

23.74 I understand that this disposal, in response to a direct application, was to the Youth Empowerment Project.

23.75 The Youth Empowerment Project (YEP) Foundation ("**YEP**") was formed for the education and assistance of young people (see Memo 380/2020, at paragraph 1) at page [963] of Exhibit JSA-6).

23.76 On 24 January 2020 the Executive Director of YEP wrote to the Ministry requesting land in Virgin Gorda to assist with its activities by developing a new YEP centre (see Memo 380/2020, at paragraph 2) at page [963] of Exhibit JSA-6 and letter at Appendix B pages [968] of Exhibit JSA-6).

23.77 The Financial secretary noted that YEP had a *"track record at its current centre of shaping and developing the youths of the Territory"* and that *"this service to the community while not quantified in monetary value, would continue to be of tremendous value in Virgin Gorda once completed"* (see Memo 380/2020, at paragraph 11) at page [965] of Exhibit JSA-6).

23.78 On 9 December 2020 cabinet decided to make the disposal in favour of YEP for \$1 plus a \$400 Statutory Survey Fee (see Memo No. 380/2020 (/memorandums/574), a. and c. at pages [1007-1008] of Exhibit JSA-6).

23.79 I note that there was no valuation in respect of this disposal but that it appears to have been thought to be for the public good. However, in future, I would expect that valuation reports would be obtained for such a transaction, so that the cost of any policy decision to assist an organisation like YEP can be identified. I also note that the disposal was subject to the requirement that YEP make use of the land, developing it as they had said they wished to, by creating a new YEP centre (see Memo No. 380/2020 (/memorandums/574), c. at page [1008] of Exhibit JSA-6).

23.80 This disposal is in the process of being completed.

12. Lease of Crown Land at Paraquita Bay for Agricultural Purposes – Daniel Cline [REDACTED] (Memo 480/2020) (see pages [1009-1083] of Exhibit JSA-6)

23.81 I understand that this disposal, in response to a direct application, was made in order to support the policy initiative to promote agriculture in the Virgin Islands, which is traced in the Background Information given in the relevant Cabinet Paper (see Memo No. 480/2020 1) and 2) at pages [1009] of Exhibit JSA-6).

23.82 I believe the relevant background and chronology to be as follows.

- 23.83 The Applicant Mr Cline operated a [REDACTED] from his home in the Cane Garden Bay area, holding 300 hens produced about 250-300 eggs a day (see Memo No. 480/2020 paragraph 4) at pages [1009-1010] of Exhibit JSA-6).
- 23.84 Mr Cline's [REDACTED]
[REDACTED]
[REDACTED] (see Memo No. 480/2020 paragraphs 5)-7) at page [1010] of Exhibit JSA-6).
- 23.85 Nevertheless, the Ministry of Education, Culture, Agriculture and Fisheries and the Department of Agriculture supported the relocation of Mr Cline's operations to Paraquita Bay and Parcel 145 Block 3238B, Long Look Registration Section, measuring 0.54 acres in size (see Memo No. 480/2020 paragraph 9) at page [1010] of Exhibit JSA-6 and Appendix A & B Memoranda of 5 and 2 October 2020 at page [1022-1025] of Exhibit JSA-6).
- 23.86 The market value of Parcel 145 was assessed by Smiths Gore (BVI) Limited at \$75,000 (see Memo No. 480/2020 paragraph 10) at pages [1010-1011] of Exhibit JSA-6 and Appendix C, the valuation at pages [1026-1038]). I understand this may be because rent can sometimes be calculated based on the market value of the land.
- 23.87 However in this case, it appears that the rents being charged at the following comparable parcels at Paraquita Bay were considered.
- (a) In 2018 Parcel 162 of three acres was calculated to be worth Ground Rent of \$43,000 per annum (equating to a little over \$14,000 per annum per acre). However, it was decided that the lessee's counter-offer of \$2,400 per annum (equating to \$800 per annum per acre) (see Memo No. 480/2020 paragraphs 11) to 12) at page [1011] of Exhibit JSA-6).
 - (b) In 2020 [REDACTED] was granted a lease of 1.289 acres for \$800 per annum (see Memo No. 480/2020 paragraph 13) page [1011] of Exhibit JSA)
- 23.88 It was therefore said that there was precedent in the area for a rental value of \$800 per acre per annum, giving an appropriate rent in respect of Mr Cline of \$400 per acre per annum (see Memo No. 480/2020 paragraphs 1) and 2) at pages [1009] of Exhibit JSA-6).
- 23.89 Further, applying the 1% calculation discussed at paragraphs 16) and 18) of the relevant Memo the appropriate rental value for Parcel 145 was \$750 (see page [1012] of Exhibit JSA-6).
- 23.90 The Financial Secretary supported the decision sought as part of the initiative to ensure sustainable and viable food security for the Territory (see Memo No. 480/2020 22) at pages [1013] of Exhibit JSA-6).
- 23.91 Cabinet decided to grant the lease to Mr Cline for 15 years at \$750 per annum with the proviso that if the land was not used for the approved agricultural purposes, the lease would become null and void (see Memo No. 480/2020 (/memorandums/829), a and b. at pages [1081-1083] of Exhibit JSA-6).
- 23.92 The lease is in the process of being finalised.
- 13. Application to lease Parcel 310 of Block 2938B, Road Town Registration Section – Bevis Sylvester (Memos 396/2019 and 29/2020) (see pages [1084-1144] of Exhibit JSA-6)*
- 23.93 I understand that this disposal involved a grant of a lease of Crown Land to Bevis Sylvester as recorded in Memo 396/2019, and amended by Memo 29/2020.
- 23.94 The relevant background and chronology is, I believe, as follows.

- 23.95 1997 Egypt Construction Co Limited ("**Egypt CCL**") was granted permission to reclaim 0.58 of an acre of the seabed (what is now Parcel 310, Block 2938B, Road Town Registration Section, at Pasea) in a Land exchange agreement with the Government, by way of Executive Council Memo No.095/1997: see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) at 1) and Appendix A (Memo No.095/1997) at i., at pages [1084 & 1090] of Exhibit JSA-6). A lease was to be given on the seabed or freehold, for \$186,672 (see Cabinet Paper Memo No.386/2019 Appendix A, Memo No.095/1997 iii. & iv. at page [1090] of Exhibit JSA-6).
- 23.96 In 2007 the Executive Council revoked its 1997 decision to grant a lease or freehold of the 0.58 acres (what is now Parcel 310 at Pasea) to Egypt CCL, as per paragraph iii. of 095/1997, since paragraph iii. had not been acted upon no lease had been granted and Egypt CCL no longer existed.
- 23.97 Instead a decision was taken to grant a 50 year lease of Lot 2 (0.526 acres) of Block 2938B in the Road Town Registration Section (now Parcel 310 at Pasea) to Nature's Way Limited, a company owned by Mrs Joan Penn at \$800 per annum, with a 5 yearly rent review, subject to a parcel number being assignment to the lot, an easement over Parcel 252 Block 2938B in the Road Town Registration Section to give access to Lot 2 and an easement in favour of the Crown over Lot 2 for access to the sea (see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) at 2) at page [1084] of Exhibit JSA-6 and Appendix B (Memo 490/2007) at (a) and (b) (i)-(iii) & (iv), at pages [1091-1092] of Exhibit JSA-6).
- 23.98 On 1 August 2007, the Ministry wrote to Mrs Penn confirming the agreement to grant the lease of Lot 2 on the terms and conditions decided by the Executive Council (see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) Appendix C at pages [1093-1094] of Exhibit JSA-6).
- 23.99 However, no lease was actually executed or registered between Nature's Way and the Government (see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) at 4) at pages [1084] of Exhibit JSA-6).
- 23.100 On 31 May 2011 Mr Sylvester applied for a lease of Parcel 310 (at Pasea) but was told that it could not be granted as it was already awarded to Nature's Way (see Cabinet Paper Memo No. 396/2019 paragraph 6), at page [1113] of JSA-6. I note that although the lease to Nature's Way agreed upon in 2007 does not appear to have been executed, it appears that there was an agreement for a lease.
- 23.101 On 15 June 2011, Parcel 308 of Block 2938B was subdivided to create Parcel 309 (Lot 1) measuring 0.265 acres and Parcel 310 (Lot 2) measuring 0.526 acres, so this was when Parcel 310 at Pasea came into being (see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) at 4) at pages [1084] of Exhibit JSA-6 & Appendix D at pages [1095] of Exhibit JSA-6).
- 23.102 A dispute had arisen between Mrs Penn and Mr Sylvester over the land in Parcel 310, to which Mr Sylvester also claimed to be entitled.
- 23.103 On 12 June 2019 Mr Sylvester applied again for a lease of Parcel 310 (at Pasea), together now with part of Parcel (Lot 1) but was again told that it could not be granted as it was already awarded to Nature's Way (see Cabinet Paper Memo No. 396/2019 paragraph 7), at page [1113] of JSA-6 and Appendix F at page [1126] of JSA-6. On 27 June 2019 Cabinet Paper 396/2019 was drafted.
- 23.104 On 26 July 2019 Mrs Penn of Nature's Way met with the Minister (see as recorded in letter of 31 July 2019, J Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) Appendix E at page [1096] of Exhibit JSA-6)].

- (a) The Minister proposed that the Crown grant a lease to Nature's Way of a commercial lot of 0.33 acres and rental of a kiosk at the Pier Park, in exchange for rescission of the interest in Parcel 310: see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) paragraph 5) at page [1085] of Exhibit JSA-6).
 - (b) As I understand it, the Minister's intention was to obtain Parcel 310 in order to be able to grant it to Mr Sylvester, so ending his dispute with Mrs Penn.
- 23.105 On 31 July Mrs Penn wrote to the Ministry referring to the meeting on 26 July: see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) paragraph 5) at pages [1085] of Exhibit JSA-6 & letter at page [1096] of Exhibit JSA-6).
- (a) She made a counter-proposal, that the 0.33 acres be transferred as a freehold interest to Nature's Way without further cost, and ground level space be granted to Nature's Way in the Pier Park at "*a significantly reduced rate*" (see as recorded in letter of 31 July 2019, J Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) Appendix E, at page [1096] of Exhibit JSA-6).
 - (b) With respect to the Kiosk, the Ministry understood this to be a proposal to rent the Kiosk at a reduced rate (see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) paragraph 5) at page [1085] of Exhibit JSA-6).
- 23.106 On 2 August 2019, the Minister met with the CEO of Tortola Pier Park Limited ("TPPL") and discussed the possibility of a lease of a Kiosk to Nature's Way (see as recorded in letter of 12 August 2019, J Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) Appendix F at pages [1097] of Exhibit JSA-6).
- 23.107 Between 8 and 12 August 2019, the Minister discussed the matter with the then Permanent Secretary (see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) at Appendix E, at page [1096] of Exhibit JSA-6).
- 23.108 On 12 August 2019 the Minister wrote to the CEO of Tortola Pier Park Limited ("TPPL") about the rental of a Kiosk by Nature's Way, noting that the current rate was \$1,000 per month, but asking that a preferential rate of \$500 be granted as an "*introductory price*", to be increased gradually in line with the current fees, the rationale being "*to facilitate the closure of a long outstanding matter between the government and Mrs Penn*" (see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) paragraph 6) at page [1085] of Exhibit JSA-6) and Appendix F at pages [1097] of Exhibit JSA-6).
- 23.109 On 2 October 2019 the CEO of TPPL wrote to the Ministry advising the Ministry that TPPL had decided to approve the lease of the Kiosk to Nature's Way at an introductory rate of \$500 per month (see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) at 6) at page [1085] of Exhibit JSA-6 and Appendix G at page [1098] of Exhibit JSA-6) .
- 23.110 The Ministry decided to offer the 0.33 acres to Nature's way at a nominal cost. This was the portion of Parcel 251, Block 2837E, Road Town Registration Section, marked as Lot 1 on plan #MI-2837E-49-T. (See Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) at 7) at page [1085] of Exhibit JSA-6 & Decision Sought (b) at page [1088] of Exhibit JSA-6 and Appendix H at page [1099] of Exhibit JSA-6).
- 23.111 On 7 November 2019 the Minister presented a paper to Cabinet seeking approval for a grant of land to Nature's Way Limited as follows (see 'Sale of Crown Land- Nature's Way Limited Memo No.386/2019 at (a). (c). at page [1087-1088] of Exhibit JSA-6):

- (a) to revoke the grant of a lease of Lot 2 (now Parcel 310 at Pasea) to Nature's Way;
- (b) to grant approval to Nature's Way to purchase the 0.33 acres of Parcel 251, for \$1.00 subject to two conditions i. the property was to be used for commercial purposes only and ii. development of the site was to comply with Planning Regulations and Guidelines;
- (c) That the Ministry instruct the Attorney General's Chambers to prepare the documentation to execute Cabinet's decision.

23.112 I believe that the Minister's purpose was to bring closure to what was described in the paper as "a long-standing land dispute spanning over 20 years": see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) paragraph at 8) at page [1085] of Exhibit JSA-6). I believe that he was referring to the dispute between Mrs Penn and Mr Sylvester as well as between Mrs Penn and the Government, about Parcel 310.

23.113 The Financial Secretary expressed the following views about the proposed transaction involving Nature's Way:

- (a) With respect to the sale of the 0.33 acres of Parcel 251, consideration should have been given to the market value and potential income to offset the operating and development costs of the Territory and the loss of the Government asset (Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) paragraph 10) at page [1086] of Exhibit JSA-6).
- (b) Whilst the Paper indicated that the property was to be used for commercial purposes and development was to comply with planning regulations and guidelines, there was no indication of timing, from which any assumptions could be made as to the time frame within which Government could recoup revenues from the concession made (see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) paragraph 11) at page [1086] of Exhibit JSA-6).
- (c) The arrangements for increasing the rate on the kiosk would have to be specified (see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) paragraph 12) at pages [1086-1087] of Exhibit JSA-6).

23.114 The Attorney General's Chambers found no adverse legal implications (see Cabinet Paper Memo No.386/2019 Extract No.REx/386/2019 (/decisions/103) paragraph 13) at page [1087] of Exhibit JSA-6).

23.115 On 7 November 2019 Cabinet decided as follows, freeing up Parcel 310 (see Cabinet Decision on Memo No.386/2019, Nature's Way paragraphs a.-c., at pages [1130-1131] of Exhibit JSA-6):

- (a) to revoke the grant of a lease of what is now Parcel 310 at Pasea to Nature's Way,.
- (b) to grant approval to Nature's Way to purchase the 0.33 acres of Parcel 251, for \$1.00 subject to the two conditions;
- (c) That the Ministry instruct the Attorney General's Chambers to prepare the documentation to execute Cabinet's decision.

23.116 With respect to the lease to Mr Sylvester of Parcel 310, on 22 November 2019 Cabinet considered his request, described in Cabinet Paper 396/2019. Cabinet decided as follows:

- (a) To revoke the decision recorded in Minute No. 0927 of Memo No.490/2007 in its entirety (the decision to grant of the lease of Lot 2 (now Parcel 310) to Nature's Way – the lease that was

never actually executed) (see 'Application to lease Parcel 310 of Block 2938B, Road Town Registration section – Bevis Sylvester Memo No.396/2019' (/expedited extracts/50) at a.at page [1128] of Exhibit JSA-6);

- (b) That a lease of Parcel 310 at Pasea instead be granted to Mr Sylvester for Commercial purposes (see Memo No.396/2019' at b. at page [1128] of Exhibit JSA-6);
- (c) That an easement granted to the Crown by Garvin Ishmel Stoutt Sr. by Instrument No.1068 of 2007, dated 25 July 2017 should remain, as it was required to "provide access to Parcel 310" (see Memo No.396/2019' at c.at page [1128] of Exhibit JSA-6);
- (d) That the lease be for a term of 50 years at a rent of \$800 per annum (see Memo No.396/2019' at e.i-iii at page [1128] of Exhibit JSA-6).

23.117 On 12 February 2020 a decision by round robin approved the lease of Parcel 310, correcting an error in the previous decision on Memo 396/2019 to grant the lease of Parcel 310 to Mr Sylvester, so that rent review period was specified to be in the 10th year and thereafter every 5 years (see 'AMENDMENT-Application to lease Parcel 310 of Block 2938B, Road Town Registration Section – Bevis Sylvester Memo No. 29/2020 (/roundrobins/22), at page [1141-1142] of Exhibit JSA-6).

23.118 Although, as I have described above, Parcel 251 was sold to Nature's Way for \$1, I understand that this was in order to facilitate the resolution of the long-running disputes which is described in the papers and to which I have also referred.

23.119 I can add that following Cabinet's decision, at the behest of the former Governor, His Excellency Augustus Jaspert, a valuation of Parcel 251 was commissioned and the valuation in October 2020 concluded that the market value for Parcel 251 (now Parcel 290) was \$600,000 (see at pages [1101-1111 and 1109] of Exhibit JSA-6).

14. Blunder Development Corporation Limited lease of land, dated 31 May 2014 at Blunder Bay

23.120 I regret that despite all our considerable efforts, my officers have not yet been able to locate and gather the papers in respect of this transaction.

Sworn by: Joseph Smith Abbott)

On 2 September 2021)

At)

Joseph Smith Abbott

Ministry of Natural Resources, Labour and Immigration
Pusser's Warehouse
3rd Floor
Road Town Tortola

Before me: KELVIN M. DAWSON

Notary/Commissioner [REDACTED]



Kelvin M. Dawson
Notary Public

Joseph Smith Abbott
Sixth
2 September 2021
Exhibit 'JSA-6'

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN
ISLANDS COMMISSION OF INQUIRY 2021**

**AND THE COMMISSION OF INQUIRY ACT (CAP 239)
(THE 'ACT')**

**SIXTH AFFIDAVIT OF JOSEPH
SMITH-ABBOTT**

Received by the
Public

OUR REF: LAN. I4/40

18 November, 2020

His Excellency
Augustus J.U. Jaspert
Governor of the Territory of the Virgin Islands
Road Town, Tortola VG1110
British Virgin Islands

Your Excellency:

Re: LAND DISTRIBUTION IN THE BRITISH VIRGIN ISLANDS

The above caption refers.

Land development and land distribution of Crown lands within the Territory of the Virgin Islands have been the responsibility of the Ministry of Natural Resources and Labour (now Ministry of Natural Resources and Labour & Immigration). Over the years, several land development and distribution programmes have taken place. The areas for these programs are as follows;

<i>Island</i>	<i>Area of Development</i>
Aneгада	West End
	North Airport
	The Settlement
	Pomato Point
	Salt Heap Point
	Bones Bight
	Keel Point
	Loblolly Bay
	Nutmeg Point
Tortola	McNamara
	Horse Path
	Stevens Estate
	Nibbs Estate
	Spooners' Estate
	Nottingham Estate
	Long Bush
Virgin Gorda	Coppermine
	Leverick Bay
	Great Hill
	The Bond
	Baker's Bay

Initially, lands distributed within government development projects such as McNamara and Horse Path on Tortola and The Bond on Virgin Gorda, were the responsibility of the Ministry responsible for Lands. Subsequently, as the demand and application for land increased and became overwhelming for the Ministry, it was recommended that the processing and assessment of applications for crown lands be designated to Land Committees. Members of these committees are approved by Cabinet based on the recommendation of the Minister responsible for Crown lands. These committees in turn advise the Minister with regard to matters concerning fair and equitable distribution of Crown land throughout the Territory.

Before any decisions can be made on the recommendations of applicants, an approved development or master plan must be prepared and approved by the Town & Country Planning Department. These plans are prepared with input from the Lands & Survey Department, Town & Country Planning Department and the Ministry of Natural Resources to designate roads, preservation areas, tourism areas, town centres and other features. Unfortunately, this was not the case with the initial Bond subdivision on Virgin Gorda in the early 1970's as stated in a report prepared by Mr. John Vincent, FRICS, in November 1993, entitled, *British Virgin Islands Disposal of Crown Lands*. This report was at the behest of the Governor of the British Virgin Islands to carry out an investigation into the disposal of Crown lands in general and in particular the disposal of Crown land in North Sound, Virgin Gorda.

With the implementation of land committees to assess Crown land applications on behalf of the Ministry, all applications that are received by the Ministry are collated for each island or area and then forwarded to the varying committees for their recommendation of applicants for the allocation of Crown land. The recommendations are based on various criteria such as land use i.e. residential, commercial, and agricultural, age, citizenship, etc. The recommendations of the committees are submitted in respective reports to the Ministry for the approval of Cabinet. These reports would contain details such as (a) the price structure for the acquisition of crown land (b) restrictive covenants (c) list of recommended applicants for crown land, and (d) copies of minutes of the meetings held by the committee, just to name a few. Copies of the development plans are also sent to the committees to assist them in their decision making process for land allocation. Copies of these reports are attached for further reference.

The Long Look Lands Commission for the development of Nottingham Estate in Long Look was established under different circumstances. In September, 1782, the owners of the Nottingham Estate, Mary & Samuel Nottingham purported to donate their land to the freed slaves and their descendants who lived on the estate forever. Years passed and no conveyances were made to the descendants of the freed slaves as they did not always occupy the area and were unable to get title to land in the area.

In December 1968, the *Long Look Lands Commission and Titles Ordinance, 1968, No. 13 of 1968 (CAP. 225)* was read into Law. This law was amended in 1970 to define the word "inhabitant" and again in 1971 to make provision for the area to be vested in the *Crown, Section (3)*, and for all Crown grants under the Ordinance to be certificates of title and for all notings of mortgages and encumbrances on these Crown grants to be indefeasible, *Section (3A)*.

The membership of the Commission comprised of 5 members inclusive of a Chairman which were all appointed by the Governor. As required by law, the distribution of land was done in public meetings held in the Long Look village. After the meetings, the names of the successful applicants were posted in the village for 21 days, giving residents the opportunity to object. At the end of the 21 days, the required fee was to be paid and the Land Transfer document prepared for execution and registration.

Furthermore, there are recommendations based on the discretion of the Minister responsible for Crown lands as well as recommendations by the Representative for the District that the development falls within. In one instance recommendations were made to the Premier's Office (formerly Chief Minister's Office) as is the case for the recent Great Hill, The Bond and Baker's Bay developments. Cabinet Memo No. 097/2015 gives reference to this.

Over the years, the pricing structure for the purchasing of Crown land for residential purposes has gone through varying changes and stages. With the absence of Valuation Reports in the early years, prices were determined based on the advice from the Ministry of Natural Resources. These recommendations would be sent to the Executive Council for consideration. Executive Council would either concur with the purchase price mentioned in the decision sought in its entirety or make amendments accordingly. It would then be for the Ministry to execute the decision of Executive Council. In most cases, this would be done but as reported by Mr. John Vincent, this was not always the case. For lands within the Nottingham Estate, the original fee for the grant was \$25.00. It was later increased to \$100.00 and then to \$150.00 as is stated in the Long Look land Commission Report 2010. Section (2) of the First Schedule states, *"the expense of survey and of the deed of grant and of the registration thereof shall be borne by the grantee, the amount of which expenses may be fixed by the Governor, and may be altered from time to time by the Governor."*

It was also noted in his report that it was difficult to ascertain the current market value of the lands to be disposed without the basic infrastructure of roads, electricity, etc. even for the most experienced valuator. Therefore, with this in mind, the concerns of the then Governor, as it relates to the apparent loss of revenue due to the sale of Crown lands at a nominal fee, were being realized.

However, in more recent times, matters relating to the transfer of Crown lands have been more systematic as Valuation Reports are required before any Crown Land transfers are executed. The same can be said for Leases for Crown lands for Commercial purposes. The Ministry has outsourced most of the requests for Valuations for the sale of Crown lands with a few being conducted internally by the Senior Lands Officer.

Notwithstanding the above, the approved costs for the land development areas throughout the Territory are cited in Table 1 below. The data shows the prices approved by Executive Council and Cabinet of the Virgin Islands over the years as it relates to the pricing structure. Some of the fields could not be filled as that data was not accessible at the time of writing this report.

In summary, the distribution of Crown lands have gone through several changes over the years. All of the decisions that related to who received was down to the Minister/Ministry of Natural Resources who is responsible for the management of Crown lands in the Territory and Executive Council/Cabinet. As the demand for Crown lands increased, land committees were put in place to assist the Minister/Ministry with the fair and equitable distribution of available lands. Besides the land committees, recommendations were also made by the Minister and in some cases by the District Representative of the District where the development took place, where the committees are not in place. The pricing structure was sporadic as no clear mechanism was in place in determining the cost for land. However, as time progressed a more systematic approach was taken in determining the cost for Crown land. Valuation Reports now form the basis on which the cost for Crown land is determined. However, at the end of the day, the Cabinet of the Virgin Islands makes the final decision as it relates to the approval of the granting of Crown lands. Nonetheless, the recommendations made by the land committees to the Ministry/Minister of Natural Resources is generally accepted and approved.



Table 1 – Approved Costs per Lot for Residential Purposes

<i>Island</i>	<i>Area of Development</i>	<i>Extract No.</i>	<i>Date of Approval</i>	<i>Cost per Lot (Residential)</i>
Anegada	West End	373/2009	17 th December, 2009	\$1.00
	North Airport	373/2009	17 th December, 2009	\$1.00
	The Settlement			
	Pomato Point			
	Salt Heap Point			
	Bones Bight			
	Keel Point			
	Loblolly Bay			
	Nutmeg Point			
Tortola	McNamara	158/83	6 th September, 1983	\$0.70 per sq. ft.
	Horse Path	252/81	6 th October, 1981	\$0.50 per sq. ft.
		312/2004	22 nd September, 2004	\$0.70 per sq. ft.
		088/2011	17 th March, 2011	\$0.50 per sq. ft.
	Stevens Estate			
	Nibbs Estate			
	Spooners' Estate	185/2008	5 th June, 2008	\$1.00 per sq. ft.
	Nottingham Estate			\$25.00
				\$100.00
				\$150.00
Virgin Gorda	Long Bush	126/1992	20 th May, 1992	\$0.30 per sq. ft.
		130/93	26 th May, 1993	\$0.20 per sq. ft.
	Coppermine	350/2010	1 st December, 2010	\$500.00
	Leverick Bay	439/2005 & 444/2008	15 th December, 2005 & 5 th January, 2008	\$500.00 per acre
	Great Hill	097/2015	8 th April, 2015	\$0.50 per sq. ft.
	The Bond	11/64	4 th February, 1964	\$500.00 per acre
		235/70	30 th November, 1970	\$500.00 per acre
		148/84	October, 1984	\$0.25 per sq. ft.
		097/2015	8 th April, 2015	\$0.50 per sq. ft.
	Baker's Bay	097/2015	8 th April, 2015	\$0.50 per sq. ft.

.....
(for) Marcia Potter, PhD
Permanent Secretary, MNR&L

Revocation of Land in Spooners Estate

Signed

· 16 October 2019 · MNRLI · File: LAN. L6/58

· Mrs. Heather James-Skelton · Memo No. 440/2019

· Extract No. REx/440/2019 (/decisions/201)

Background Information

1) By Extract No. 185/2008, the Cabinet of the Virgin Islands approved seventy-four (74) applicants, on the advice of the Spooners Estate Land Advisory Committee, for residential house lots within the Spooners Estate subdivision. In 2010 and 2015, the Ministry wrote to the grantees to communicate the purchase price and subsequent steps to be taken to fulfill their financial obligation regarding the land purchase (**see Appendix A**).

2) In 2010 and 2015, a number of site visits were conducted with the applicants, to select a house lot of their choice. Upon selection of a preferred parcel, the applicants were required to execute a “Spooners Estate Parcel Selection” form, which confirms the lot selected (**see Appendix B**). Subsequently, the applicants were issued letters from the Ministry of Natural Resources and Labour indicating the details of the purchase price, in addition to the steps to be taken to fulfill his or her financial obligation regarding the land purchase.

3) On 29th June, 2012, the Ministry of Finance issued letters to notify applicants of the payment arrears and issued a deadline to make full payment (**see Appendix C**). The Ministry of Natural Resources and Labour issued several reminder letters to applicants requesting payment or to confirm whether they remain interested in purchasing the said lots (**see Appendix D**).

4) By Extract No. 022/2016, Cabinet advised that persons, in exceptional circumstances, the Minister may grant permission for a monthly payment plan of \$400.00 towards the purchase price not exceeding five years(see Appendix E).

5) On 4th June, 2019, the Ministry advised those delinquent applicants, that a deadline of six (6) weeks was extended to submit full payment for the property. The letter further conveyed that failure to comply will result in the lot being reassigned (see Appendix F).

6) Members are asked to note that there are currently ten (10) persons, who were earlier approved by the Cabinet of the Virgin Islands awaiting a lot of assignment. The availability of these lots will satisfy the legal obligation of the Government to these individuals. Further to the concerns raised by the Financial Secretary, there should be no liability to the Government since these individuals were given the opportunity to make a payment or indicate whether they remained interested in the land.

Purpose

7) To revoke lands grants offered to persons, who have defaulted on their obligation to purchase land in Spooners Estate.

Cross-Ministry Consultation

8) The nature of this paper does not require cross-ministry coordination.

Financial Implications

9) Once the revocation of the land grants does not expose Government to any liability, there will be no other adverse financial implication for Government.

Legal Implications

10) In principle, the Decision Sought is in order for Cabinet's favourable consideration Save and Except that each matter must be individually reviewed to ensure that no liability to the revocation is foreseen in each particular set of circumstances. A draft of each letter informing of the revocation should be, therefore, legally vetted before issue.

Communication Strategy

11) The applicants will be notified of Cabinet's decision via an official letter.

Conclusion

12) Cabinet is asked to review and concur with the decision sought.

Decision Sought

Cabinet is invited to:

- a. revoke Cabinet Memo Nos. 185/2008, 422/2011 & 106/2016 which granted lands in the Spooners Estate Subdivision to the enclosed list of persons for failure to meet the obligations required under the grants;

[illegible]

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent
Wheatley
Minister for Natural
Resources, Labour
and Immigration
07 January 2020

Spooner's Estate Advisory Land Committee

Report

May 18, 2007

Background

A letter dated January 12, 2007, informed that Executive Council had appointed an eleven member committee called the Spooner's Estate Advisory Land Committee. The charge of the Committee as stated in the letter was:

- a) to establish relevant covenants in respect of the property;
- b) to review all applications and recommend a mechanism for the allocation of house lots in Spooner's Estate in phases as the survey and road designs are completed.
- c) to recommend a sale price per square foot; and
- d) to submit a final report to the Minister within two months of the appointment of the Committee.

Action Plan

The first meeting of the committee was held on February 8, 2007 where it was agreed that efforts would be made to complete the work of the Committee and submit the report by April 7th, 2007.

Two sub-committees were formed; namely, the Covenants Sub-committee and the Mechanism Sub-committee.

The role of the Covenants Sub-committee was to make recommendations on the establishment of covenants in respect of the property. This sub-committee was chaired by Mr. David Abednego, with Ms. Najan Christopher Mr. Marvin Blyden and Mr. Leroy Moses as members.

The members of the Mechanism Sub-committee were Mr. Ian Smith (chair), Mr. Larry Adams, Diane Parsons and Mr. Wendell Gaskin as members. This sub-committee was charged with recommending criteria for the allocation of the house lots.

The reports of both sub-committees are attached as Appendices A and B.

On March 28, 2007, members of the Spooner's Estate Advisory Land Committee made a site visit to Spooner's Estate to assist them with deliberations regarding its recommendations.

A list containing three hundred and eighty five (385) applicants was reviewed. Our mandate was to select seventy five (75) of the applicants who best met the criterion set out by the Minister of Natural Resource and Labour and the report of the Mechanism Sub-committee.

The criterions were as follows:

- i. BVI islander who does not own land or have access to land, and
- ii. residing in the BVI as a single parent with minor children; or
- iii. residing in the BVI and are married with minor children; or
- iv. residing in the BVI and are married; or
- v. residing in the BVI and does not have an immediate family member (i.e. mother, father, sister, or brother) recommended in current phase of land allocation.

Applicants were assessed as follows:

- a) Persons who already owned land were not considered.
- b) Preference was given to BVI islanders.
- c) Consideration was given to persons who resided in or had ties to the area.
- d) Working persons with children were also given preference.

Recommendations

In accordance with the mandate, the Spooner's Estate Advisory Committee hereby makes the following recommendations:

1. Seventy five (75) persons listed in Appendix C to be awarded house lots.
2. The price for the land be fixed at:
 - a) \$1.00 per square foot for residential lots.
 - b) \$1.25 per square foot for commercial lots.

The committee noted that at \$1.00 per square foot, the cost per lot would be approximately \$15,000 compared to the market price of \$35,000 - \$40,000 for 1/3 of an acre of land.

3. Persons granted a lot be required to pay for land in a lump-sum payment rather than installments in the following manner:
 - a) Full payment is made within six months of the date of the offer letter.
 - b) College students should pay for their lots within six months after completion of the degree being pursued, at time of receiving the offer letter.

The Committee made this recommendation, based on the value of the land compared to the price. The purchaser will have equity almost twice the cost of the land and therefore should be able to secure bank financing relatively easy.

4. A copy of the Covenants be attached to the offer letter. This will ensure that prospective land owners are duly informed of what is expected of him/her prior to acceptance/ agreement.
5. An application form be established to include the nationality, place of birth, marital status, number of minor dependants and access to land. A passport size picture, a copy of a valid passport and birth certificate should also be attached.

This recommendation is made as the need to verify the identity and national status of each applicant was necessary for application of criterion. The work of the committee would have been enhanced if the identity of applicants was readily available.

6. The seventy five (75) persons listed in Appendix C, be required to complete the application form.
7. The list of qualified and eligible persons be used for allocations in the next phase, or in the event an applicant withdraws from the first phase (this list is with Miss Patricia Thomas).

Conclusion

While the Minister allocated the committee two (2) months to conclude its work, the work of the committee was delayed over one month due to the difficulties experienced in confirming the national status of the applicants. The complete list of applicants was submitted to the Immigration Department and the Passport Office for verification of national status. As there is currently no proper system in place to verify the status, this resulted in the aforementioned delay.

The Committee expresses its gratitude to the Government of the British Virgin Islands for the opportunity to render service in this capacity.

Chairman

SPOONERS ESTATE MECHANISM SUB-COMMITTEE REPORT

The members agreed that the criteria for the awardees should be distributed by a certain percentage of the overall list. The suggestions made were for two (2) categories:

- A) no less than 90% of the awardees should be BVI belongers by birth (indigenous BVI Islanders)
- B) 10% of the awardees should be Belongers who have lived in the BVI 20 years or more and have contributed to the territory.

THE 90% CATEGORY SHOULD BE DISTRIBUTED AS THE FOLLOWING:

No less than 10% of the awardees should be from the age group 18 – 35 years.

At least 80% of the awardees should be residents of the BVI with first preference given to persons in the immediate community, namely Great Mountain, Anderson, Mt. Healthy, Brewers Bay, Georges Northside, Little Bay, Soldiers Hill, New Bush, Diamond Estate, Meyers Estate and Fahie Hill.

Recommendations made by the Committee for the allocations of House Lots – Spooners Estate.

- (a) BV Islanders who do not own land or have access to land, residing in the BVI as single parent/person. Preference would be given to those applicants who can purchase an allotment whether through bank financing or otherwise, without the need for leasing arrangement to gain financial equity; (Fits category A - 20% being BV Islanders by birth and 10% for the age group 18-35 years)
- (b) BV Islanders who do not own land, residing in the BVI and are married with children under school age; (Fits category A.)
- (c) The majority of the land would be allocated to BV Islanders who are residents in the area or have ties to the community, the remainder offered to other BV Islanders; (Fits category A)
- (d) We are considering freehold titles only instead of granting short term leases;
- (e) 5 lots should be leased for commercial purposes (whether it be daycare, laundry, small retail store or privately operating park or a land owners association to be put in place to contribute owners up keep of a privately operated park);

- (f) Age limit should start from the legal age of 18 years (banks have no restriction as to the age limit for acquiring a loan once the applicant meets the legal age).
- (g) Salary \$15,000.00/or more (subject to meeting financial facility)
- (h) Working a steady job for 2 years or more
- (i) Civil contribution to society.

Definition of an Indigenous BVIlander is a person who is born in the country, whose parents were born in the country and whose grandparents were also born in the country.

A person who is born in the country but whose parents and grandparents were born outside of the country do not qualify as an indigenous BVIlander.

RECOMMENDATIONS

We recommend that the Ministry create an application form mechanism 80 percent BVIlander by birth 10 percent 18-35 years. Application should be submitted with a picture ID.

URGENT ^{ik}

MEMORANDUM

TO: Ag. Attorney General
Attn: P.C.C Karen Reid

FROM: Permanent Secretary/MNR&L

DATE: 04 July, 2011

OUR REF: LAN. 10/2/991
LAN. L5/69
LAN. L4/234

Re: Lease of Crown Land – Pasea Estate

Further to your memorandum dated 29 June, 2011, the following response are directed to your inquires:

- (1) Mr. Stoult has not submitted an acceptance to the Ministry's offer letter dated 1 August, 2007, although he is in occupation of the property. In addition, the Ministry's record does not reflect receipt of any payment for or on behalf of Mr. Stoult in relation to this grant.
- (2) Mr. Stoult's offer is being rejected on the basis of:
 - (i) We have received undocumented information from the Minister for Natural Resources and Labour that the area encompassing Parcels 221 and 223 were part of the properties previously owned by Egypt Construction Limited. The company subsequently went into liquidation. By High Court Claim No. 193 of 2003, the properties went up for auction, which Delta Petroleum won the bid. Joan Penn, Past Director of Egypt Construction gave permission to Government to place the new highway through it. It appears as though the Government wanted to give her an opportunity to start over, although we are not under any obligations to do so.
 - (ii) We have further been advised that since Mr. Stoult has a piece in that area, another applicant should be given the opportunity.
- (3) Bevis Sylvester submitted a letter dated 31 May, 2011 expressing interest in leasing Parcel 309 (formerly Lot 2) for development purposes. We were further able to determine that Mr. Sylvester is seeking to lease the area on behalf of Delta Petroleum (Caribbean) Limited for the purpose of constructing a building to house its regional headquarters.


(for) Ronald Smith-Berkeley (Mr.)
Permanent Secretary

/hj

Lease of Crown Land at Paraquita Bay for Agricultural Purposes - Daniel Cline Poultry Farm

Signed

· 14 October 2020 · MNRLI · File: MEC/AGR.2.003 · Mr. Norval Young

· Memo No. 480/2020

Background Information

- 1) Historically, the Virgin Islands have been heavily reliant on the importation of food which makes food security vital to the Territory's economy. The revamping of the agriculture industry, more particularly crop and loose livestock, will contribute significantly to economic growth and job creation.
- 2) In 2018, the Central Statistics Office reported that the Territory's food import bill for meat and poultry was recorded at eight million, seven hundred and ninety-six thousand, six hundred and thirty dollars (\$8,796,630.00) in comparison to 2017, which was reported at seven million, four hundred and twelve thousand dollars (\$7,412,000.00). This shows an increase in demand for imported meat and poultry as well as an increase of over one million, three hundred eighty-six thousand, six hundred and thirty dollars (\$1,386,630.00). After the passage of Hurricanes Irma and Maria, the Territory's dependency on food supply became vulnerable; hence, food security was brought to the fore.
- 3) By letter dated 5th October, 2020, the Ministry of Education submitted a letter to the Ministry on behalf of Mr. Daniel Cline for the leasing of a parcel of land in the Paraquita Bay area for a poultry farm (see Appendix A).
- 4) Mr. Daniel Cline operates a layer poultry farm in Cane Garden Bay, Tortola on a portion of Parcel 7 of Block 2438B, West Central Registration Section. The farm holds approximately three hundred (300) hens used for commercial egg

production, with an output of roughly two hundred and fifty (250) to three hundred (300) eggs per day. Mr. Cline's primary customer is Bobby's Supermarket who he supplies on a weekly to bi-weekly basis, along with other individual customers.

5) [REDACTED]
[REDACTED]
[REDACTED]

6) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7) [REDACTED]
[REDACTED]
[REDACTED]

8) Mr. Cline would like to also increase production by expanding his operations but unfortunately, that will not be achievable at its current location. Therefore, in a memorandum dated 2nd October, 2020, the Department of Agriculture and Fisheries supported a request made by Mr. Cline to relocate the poultry facility to the Paraquita Bay Estate **(see Appendix B)**.

9) The Department of Agriculture and Fisheries has also identified Parcel 145, Block 3238B, Long Look Registration Section in the Paraquita Bay estate as being suitable for the relocation of the poultry farm. It is recommended that this site be for poultry farming ONLY and not used to rear small ruminants, the likes to which Mr. Cline also has at the Cane Garden Bay location **(see Appendix B)**.

10) Smiths Gore (BVI) Limited was commissioned to carry out an independent appraisal on Parcel 145, Block 3238B Long Look Registration Section that would assist in determining the market rent for agricultural purposes **(see Appendix C)**.

Based on the Valuation Report, the open market value was listed as seventy-five thousand dollars (\$75,000.00).

11) The Ground Rent for Parcel 162, Block 3337B, Long Look Registration Section, which measures three (3) acres, situated at Paraquita Bay was determined to be forty-three thousand dollars (\$43,000.00) per annum for 25 years with an option to renew for a further 25 years (see Appendix D). This was communicated to the applicant Infinite ECO Ltd at that time. However, the applicant made a counter-proposal of two thousand, four hundred dollars (\$2,400.00) per annum to the Ministry. The matter was forwarded to Cabinet for consideration.

12) Cabinet via Memo No. 375/2018, made a decision to grant approval to Infinite ECO Ltd to lease Parcel 162, Block 3337B, Long Look Registration Section for the establishment of an indoor protected agriculture facility (aquaponics), shaded grow beds and a 600Kw solar power micro grid to independently power the facility, at the rate of two thousand, four hundred (\$2,400.00) dollars per annum (see Appendix E).

13) A similar process was conducted for KNK Poultry Farm which was granted permission by Cabinet via Memo No. 56/2020 for the establishment of a poultry farm on Parcel 175, Block 3337B, Long Look Registration Section. This parcel is also located in the Paraquita Bay estate. This parcel is 1.289 acres in size and the annual rental amount is eight hundred (\$800.00) dollars (see Appendix F).

14) There appears to be a precedence or Policy set as it relates to the rental amount.

Lessee	Parcel Info	Acreage	Rent per Annum
Infinite ECO Ltd.	Block 3337B Parcel 162	3.000 acres	\$2,400.00
KNK Poultry Farm	Block 3337B Parcel 175	1.289 acres	\$800.00
Daniel Cline	Block 3238B Parcel 145	0.540 acres	???

15) From the information above, it gives the relation that the price per acre is eight hundred dollars (\$800.00). Therefore, it would put the rental amount for Mr. Cline be four hundred dollars (\$400.00) per annum as Parcel 145, Block 3238B, Long Look Registration Section, is approximately half the size of the parcel leased to KNK Poultry Farm.

16) However, ground rents for lands for agricultural purposes on Virgin Gorda were reviewed to be assessed at one (1) percent of the value of the land and that such value shall only take account of the use of the land for agricultural activity as advised by the Chief Agricultural Officer. Clause 2 (a) of the lease agreement, Instrument No. 2219/2001 which was executed for Mr. Arnold George at **Appendix G** gives evidence to this as an example.

17) As mentioned by the Financial Secretary as part of the Financial Implications in the matter for KNK Poultry Farm, "Perhaps it is high time that Government review and modernise its leasing policy of Crown properties."

18) Therefore, the recommended ground rent for Parcel 145, Block 3238B, Long Look Registration Section is 1% of the value of the land. The value as stated in the Valuation Report at **Appendix C** is seventy-five thousand dollars (\$75,000.00) so the rental amount would be seven hundred and fifty dollars (\$750.00) per annum.

19) Attached as **Appendix H**, is a certified copy of the land register and an aerial map for Parcel 145, Block 3238B, Long Look Registration Section.

Purpose

20) To Grant a Lease for Agricultural Purposes.

Cross-Ministry Consultation

21) The Draft Paper was prepared in collaboration with the Ministry for Education, Culture, Youth Affairs, Fisheries and Agriculture. Therefore, no further comments are required at this time.

Financial Implications

22) In review of the Cabinet paper and associated appendices, the Ministry is commended for considering and implementing the recommendations made by the Ministry of Finance to ensure that the appropriate revenue is realized by central government from rents collected for use of crown lands. It is noted that out-of-pocket expenses for the cost of the appraisal were borne by the Government. Therefore, the development of a policy to guide the management of crown lands should give consideration to additional revenue possibilities that can be realized by central government such as application fees, penalties etc. Consequently, the Ministry of Finance supports the decision being sought to ensure sustainable and viable food security for the Territory.

Legal Implications

23) We have reviewed the draft Paper and have discerned no adverse legal implications which would arise for Government, if Cabinet is minded to decide in accordance with the decision sought.

Communication Strategy

24) The applicant will be notified of Cabinet's decision via all means of communication available.

Conclusion

25) Cabinet is asked to consider and concur with the decision sought.

Decision Sought

Cabinet is invited to decide:

- a. that permission be granted to Mr. Daniel Cline to lease Parcel 145 of Block 3238B, Long Look Registration Section which measures 0.54 acre, for the establishment of a poultry farm, based on the following terms and conditions:
 - i. Lease Term – Fifteen (15) years;
 - ii. Commencement – 1st December 2020;
 - iii. Rent – Seven hundred and fifty dollars (\$750.00) per annum;
 - iv. Rent Review – On the 5th Anniversary & every succeeding 5th year at a rate of 5% of the unimproved market value of the leased area;
 - v. Sublease Payment – 2.5% of the rents collected, if subleasing the property; and
 - vi. Land Use – Agricultural Purposes (Poultry) ONLY.
- b. that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent Wheatley
Minister for Natural
Resources, Labour and
Immigration
04 December 2020

Intended User	Ministry of Labour, Natural Resources & Immigration				
Property Address	Paraquita Bay Estate				
City	Tortola	County	N/A	State	BVI
Client	Ministry of Labour, Natural Resources & Immigration				
		Zip Code	VG 1120		

12 November 2020

The Permanent Secretary
Ministry of Natural Resources Labour & Immigration
Road Town, Tortola
British Virgin Islands

Client : The Permanent Secretary (File No. 2019-156S)
Property Address : Paraquita Bay, Tortola, British Virgin Islands
Legal Description : Block 3238B Parcel 145 Long Look Registration Section

In accordance with your instructions, we have carried out an inspection and analysis of the above property. The purpose of the valuation is to estimate market value of the vacant site along with other related valuation opinions mentioned in the report. The valuation is carried out in accordance with the Uniform Standards of Appraisal Practice (USPAP 2020/2021) Residential Appraisal Report Format in conjunction with the Global Valuation Guidance (Red Book) of the Royal Institution of Chartered Surveyors (Revised Edition 31st January 2020) and International Valuation Standards (Revised 31st January 2020).

Further we have confirmed to the basis of value adopted is appropriate for, and consistent with, the purpose of the valuation. VPS 4.

In concluding to market value of the we confirm to analysis and evidences in conformity of VPS 2 of RICS Valuation- Global Standards January 2020.

The report is intended for the use of Ministry of Natural Resources Labour & Immigration for internal purposes. It is not intended for any other use and we cannot accept responsibility to any third party for the whole or any part of its content.

Having regard to the matters referred to in the report Reference 2019-156S we have concluded to market value of the subject property (vacant site) as follows:

Seventy Five Thousand Dollars (US) \$75,000

In deriving the value of the subject property, we took into consideration the assumptions and limiting conditions contained in this report.

We further took into consideration of "Uncertainty of the Pandemic of Covid 19" as follows:

Abnormal Uncertainty

At the time of issuing this report the World Health Organization had declared the rapidly spreading Coronavirus, a global pandemic. As governments around the world implement measures to control the spread of the disease, the normal operation of markets is being severely disrupted by restrictions on movement. This is already impacting the tourism and offshore financial sectors of the British Virgin Islands.

We anticipate that the Real Estate market will be affected based on our past experience with the natural disaster of Hurricanes Irma and Maria in 2017. The extent of the effects of this market will depend on how long it will last and or curtailed. If this trend of the virus continues for more than a year we will be in great social and economic distress, hence the crippling of the Real Estate Market.

Intended User	Ministry of Labour, Natural Resources & Immigration		
Property Address	Paraquita Bay Estate		
City	Tortola	County	N/A
State	BVI	Zip Code	VG 1120
Client	Ministry of Labour, Natural Resources & Immigration		

However, based on the above comments we would like to advise all stakeholders based on the Red Book Guidance (VPGA 10 – 2.4) RICS Valuation – Professional Standards as follows:

The RICS 'Red Book' provides the following guidance for valuers on 'abnormal uncertainty'.

Markets can be disrupted by relatively unique factors. Such disruption can arise due to unforeseen financial, macro-economic, legal, political or even natural events. If the valuation date coincides with, or is in the immediate aftermath of, such an event there may be a reduced level of certainty that can be attached to a valuation, due to inconsistent, or an absence of, empirical data, or to the valuer being faced with an unprecedented set of circumstances on which to base a judgment. In such situations demands placed on valuers can be unusually testing. Although valuers should still be able to make a judgment, it is important that the context of that judgment is clearly expressed." (VPGA 10 (2.4), RICS Valuation – Professional Standards 2020).

The full impact of the Coronavirus pandemic on the BVI economy is not yet known. Investment activity is likely to be curtailed definitely in the short term. Based on Global predictions we will take into consideration that it may last up to a year then the rebuilding of economies would begin. We cannot anticipate the gestation period at this time.

However, based on the "Red Book" purpose as follows we would strive to provide valuations to our Clients with utmost Integrity:

"To provide an effective framework within the Rules of Conduct so that the users of valuation services can have confidence that the valuation of a RICS Member is consistent with IVSC internationally recognised standards"

Users of this report should be aware that our opinion is expressed without the benefit of any directly comparable transactions that have occurred under these new market conditions.

Neither the whole nor any part of this report nor any reference thereto may be included in any published document or referred to in any way without prior written approval of the form and context in which it may appear.

Yours truly



Smiths Gore BVI Ltd.

A.I. Sattaur MRICS, MICE, PEng, MCInstCES, CBuildE

Chartered Surveyor, Chartered Civil Engineer & Chartered Building Engineer

RICS Registered Valuer

RICS Membership No. 1101598

22/9/2001
VIRGIN ISLANDS

THE REGISTERED LAND RULES

Form R.L.8

(Rule 6)

LEASE

REGISTRATION SECTION

EXEMPT FROM
STAMP DUTY
FILED LAND REGISTRY
BLOCK VIRGIN ISLANDS PARCEL

Virgin Gorda Central

5245B

NOV 06 2001

17/1

AN AGREEMENT made the 20th day of May 1996 between
His Excellency David P.R. Mackilligin, CMG Governor of the Territory of the Virgin
Islands acting herein for and on behalf of Her Majesty the Queen in Her Government of
the said Territory (hereinafter called the Lessor which expression wherever the context
so allows includes his successors in office and assigns) of the one part and **ARNOLD
GEORGE** of North Sound, Virgin Gorda (hereinafter called the Lessee which
expression wherever the context so allows includes his heirs, personal representatives
and assigns) of the other part.

WHEREBY IT IS AGREED AS FOLLOWS:

REGISTRATION FEE 18.50
DATE PAID NOV. 6. 01
RECEIPT NO. 184425
INITIAL OF OFFICER

The Lessor lets and the Lessee takes all that piece or parcel of land containing
approximately 4.69 acres and situate at The Bond, North Sound, Virgin Gorda in
the Territory of the Virgin Islands and recorded in the Land Register as Parcel No.
17 of Block No. 5245B, as above ("the holding") TO HOLD the same unto the
Lessee for a period of twenty five (25) years commencing on the 1st day of
January 1996, paying therefor a yearly rent of US\$23.45 payable in advance.
The first such payment to be made on the commencement of the lease and
thereafter every year on the date of the lease.

2. (a) If the Lessor at the end of the Term hereby granted decides to lease the
holding, the Lessee shall have the right to first refusal.

(b) The rent shall be \$5.00 an acre a year for the first 15 years and shall be
reviewed every fifth year thereafter.

(c) The reviewed rent shall be assessed at 1% of the value of the land. Such
value shall only take account of the use of the land for agricultural
activity as advised by the Chief Agricultural Officer
3. The Lessee covenants with the Lessor as follows:
(1) to pay the rent hereby reserved in the manner aforesaid:
(2) not to assign or sub-let the holding without the consent in writing of the
Lessor previously obtained;



On the instructions of the Government of the Virgin Islands

**Paraquita Bay
Parcel 162 Block 3337B
Long Look Registration Section**



View of Parcel 162 Block 3337B LL (13 May 2018)

**Market Rent Report
May 2018**



Britannic Hall, PO Box 135, Road Town, Tortola, British Virgin Islands
Tel: 284 494 2446 Fax: 284 494 2141.

Table of Contents

Transmittal Letter	3
Summary of Salient Facts and Conclusions.....	4
Special Assumptions	5
Terms of Engagement.....	6
General Assumptions.....	8
Property Description.....	9
Land Market Overview	11
Ground Lease Discussion	14
Market Rent Valuation.....	16
Reconciliation and Final Estimate of Value.....	20

Appendices

Identification and location plans	Appendix I
Photographs of the subject property	Appendix II
Survey Plan CA-3337B-062-T	Appendix III
Copy of the Land Register.....	Appendix IV

23 May 2018

Mr. Ronald Smith-Berkeley
Permanent Secretary
Ministry of Natural Resources & Labour
Government of the Virgin Islands
Administration Complex
Road Town, Tortola,
British Virgin Islands VG1110

Dear Sir:

Market Rent: Parcel 162 Block 3337B, Long Look Registration Section

In accordance with your instructions, we have carried out an inspection and analysis of the above property. The purpose of this report is to estimate the market rent of the land comprised in the above property as of 13 May 2018, the date of our inspection. The client is the Government of the Virgin Islands.

The report is intended for the use of the client to establish the market rent for the property. The report is not intended for any other use and we cannot accept responsibility to any third party for the whole or any part of its contents. This report has been prepared in accordance with the *RICS Valuation – Global Standards 2017* published by the Royal Institution of Chartered Surveyors, with the *International Valuation Standards 2017* and with the terms of engagement.

The legal description of the subject property is Parcel 162 Block 3337B, Long Look Registration Section which comprises approximately 3.280 acres (142,877 square feet). We value the market rent for the land comprised in the subject property subject to draft lease terms which we understand will be included in the final lease for the subject property.

The property has been improved with the construction of greenhouses. However, these were destroyed in Hurricane Irma in September 2017. The site has been mainly cleared of debris, leaving just a flattened area of land. We have been provided with draft lease terms which will eventually be incorporated into the lease. We have been advised by the client that the permitted user clause in the lease will be for agriculture and ancillary agriculture uses including the retailing of agricultural products from the site and educational uses.

Having regard to the matters referred to in this report, we are of the opinion that the market rent of the land comprised in the subject property as of 13 May 2018, and subject to the special assumptions and limiting conditions contained in this report, would be fairly represented in the following figures:

25 year lease with tenant's option to renew for 25 years

\$43,000 per annum

This estimate of value is subject to, and can only be fully understood when read in conjunction with the special assumptions listed on page 5 of this report. We have noted the use of the subject property is restricted to agricultural and ancillary uses including retail and education.

Neither the whole nor any part of this report nor any reference thereto may be included in any published document, or referred to in any way without our prior written approval of the form and context in which it may appear.

Yours faithfully

Edward Childs MRICS

Client	Government of the Virgin Islands
Purpose of Valuation	To estimate the market rent for the subject property, subject to the special assumptions relating to the proposed lease terms.
Legal Description:	Parcel 162 Block 3337B, Long Look Registration Section
Interest Appraised	Market Rent
Location	Paraquita Bay, Tortola, British Virgin Islands
Type of Property	The property comprises land with the remnants of greenhouse structures. The land has been flattened to prepare a base for the construction of greenhouses which were eventually destroyed in Hurricane Irma on 6 September 2017.
Permitted Land Use	Agriculture and ancillary agricultural uses including retail and education.
Land Area	3.280 acres (142,877 square feet)
Improvements	None
Definition of Market Rent	<i>"the estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion." (VPS4 (5), RICS Valuation – Professional Standards 2017)</i>
Date of Inspection	13 May 2018
Date of Valuation	13 May 2018
Date of Report	23 May 2018
Market Rent Conclusion	\$43,000 per annum (FORTY THREE THOUSAND US DOLLARS)
Special Assumption	This estimate of Market Rent is subject to, and can only be fully understood, when read in conjunction with, the special assumptions listed on page 5 of this report.

The valuation is made subject to the following special assumptions, reservations and special instructions.

Abnormal Uncertainty

The British Virgin Islands suffered catastrophic damage on 6 September 2017 during the passage of Hurricane Irma, a Category 5 storm. This was followed by Hurricane Maria, also a Category 5 storm, a few days later, on 20 September 2017.

At the effective date of value, nine months later, the Territory remains in recovery and many months of reconstruction lie ahead to build back commercial properties, private homes, infrastructure and Government services.

The RICS 'Red Book' provides the following guidance for valuers on 'abnormal uncertainty'.

Markets can be disrupted by relatively unique factors. Such disruption can arise due to unforeseen financial, macro-economic, legal, political or even natural events. If the valuation date coincides with, or is in the immediate aftermath of, such an event there may be a reduced level of certainty that can be attached to a valuation, due to inconsistent, or an absence of, empirical data, or to the valuer being faced with an unprecedented set of circumstances on which to base a judgment. In such situations demands placed on valuers can be unusually testing. Although valuers should still be able to make a judgment, it is important that the context of that judgment is clearly expressed." (VPGA 10 (2.4), RICS Valuation – Professional Standards 2017).

The long-term impact of Hurricanes Irma and Maria on the land market is uncertain. Our opinion of market rent for the subject property reflects our impression, based on discussions with BVI investors, that the commercial land market remains strong. However, users of this report should be aware that our opinion is expressed with the benefit of only limited comparable transactions that have occurred post Hurricane Irma.

Assumed Lease Terms

We have been advised by the client that the following draft lease terms are being considered for the lease over the subject property.

1. Parties	Lessor Lessee	Crown not identified
2. Demised Property	Parcel 162 Block 3337B Long Look	
3. Land Area	3.280 acres	
4. Term	25 years with option to renew for an additional 25 years	
5. Lease Commencement Date	1 July 2018	
6. Rent	TBD	
7. Rent Review Pattern	every fifth year of the lease	
8. Rent Review Formula	5% of the unimproved value of the freehold land.	
9. User Restrictions	Agricultural use with ancillary retail and educational uses only with the Lessee permitted to sell agricultural products grown on the site, from the site.	
10. Alienation	No assignment of the whole or sub-leasing the whole or part without the prior written consent of the lessor, not to be unreasonably withheld or delayed. A fee of 2.5% of the rent collected shall be paid by the Lessee to the Lessor in the event the property is sub-leased.	
11. Existing Improvements	All remnants of the greenhouse development will be removed from the site prior to the lease commencement date.	

1	Identification of Valuer responsible and status	<p>The valuation will be undertaken by Edward Childs MRICS who has more than 27 years' experience in the valuation of property in the British Virgin Islands and the Caribbean.</p> <p>In accordance with the <i>RICS Valuation – Professional Standards (VPS1)</i>, the valuer confirms:</p> <ul style="list-style-type: none"> – That the valuer is in a position to provide an objective and unbiased valuation. – That the valuer has sufficient current local, national and international knowledge of the market for the subject property and the skills and understanding to undertake the valuation competently.
2	Identification of client and any other intended users:	Ministry of Natural Resources & Labour, Government of the Virgin Islands.
3	Purpose of the valuation:	The report is required by the Client to provide a market ground rent valuation of a leasehold interest prior to the granting of the lease by the Crown to a third party. It may not be relied upon for any other purpose.
4	Identification of the asset or liability to be valued	<p>The legal description of the subject property is Parcel 162, Block 3337B, Long Look Registration Section.</p> <p>The subject property contains a land area of approximately 3.280 acres.</p> <p>A plan showing the boundaries of the subject property is appended to these terms of engagement, with the subject property shaded in red.</p>
5	Interest to be valued:	We will value the ground rent for the leasehold interest in the subject property.
6	Type of asset or liability and how it is used or classified by the client:	The property has been graded to provide a flat surface which was previously part of the greenhouse development. The greenhouses on Parcel 162 were destroyed in Hurricane Irma with only parts of the frame remaining on the property. The subject property is currently held by the Crown as part of the Paraquita Bay neighbourhood where the H Lavity Stoutt Community College campus has been developed. The remainder of the land is devoted to a range of uses, primarily farming and the development of a water plant and sewerage plant.
7	Basis or bases of value:	<p>The basis of value adopted in this report is 'Market Rent', which is defined as follows:</p> <p><i>"the estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion." (VPS4 (5), RICS Valuation – Professional Standards 2017)</i></p>
8	Valuation date:	The valuation date will be the date of inspection.
9	Extent of investigations:	<p>We will carry out enquiries and an inspection of the subject property to determine the general characteristics, use and overall dimensions of the land and any buildings, the apparent construction and accommodation of any buildings, their approximate age, state of repair and condition as well as utilities available to the property. We may rely upon plans and schedules provided to us for dimensions, areas, utilities, details of construction and age of improvements.</p> <p>We will gather the market data necessary to estimate the market value of the</p>

		subject property. We will prepare a narrative report summarizing our conclusions, including a summary of the data used in the analysis and the methodology used to arrive at the value.
10	Nature and source of information to be relied upon:	<p>We will rely upon information gathered during our inspection.</p> <p>In order to proceed with this assignment, we will require the following information to be provided to us:</p> <ul style="list-style-type: none"> — Copies of Land Register (confirm receipt of this document) — Confirmation of the lease terms <p>Any delay in providing this information may result in a delay in the final delivery of our report.</p>
11	Disclosure of any material involvement:	In accordance with the <i>RICS Valuation – Professional Standards 2017</i> , Smiths Gore BVI Limited confirms that they have no material past or current involvement in the subject property.
12	Currency adopted:	All values in the report will be expressed in US dollars unless otherwise stated.
13	Assumptions and special assumptions:	<p>The valuation is made subject to the General Assumptions and Limiting Conditions appended to these Terms of Engagement.</p> <p>Any other special assumptions, reservations and special instructions will be agreed with the client and identified in the report.</p>
14	Restrictions on use, distribution or publication:	Neither the whole nor any part of the report nor any reference thereto may be included in any published document, or referred to in any way without our prior written approval of the form and context in which it may appear.
15	Limits or exclusion of liability to parties other than the client:	Our valuation is provided for the benefit of the named client alone and solely for the purposes of the instruction to which it relates. Our valuation may not, without our written consent, be used or relied upon by any third party, even if that third party pays all or part of our fees, or is permitted to see a copy of our valuation report. If we do provide written consent to a third party relying on our valuation, any such third party is deemed to have accepted the terms of our engagement.
16	Valuation Standards:	The valuation will be made in accordance with the <i>RICS Valuation – Professional Standards 2017</i> , published by the Royal Institution of Chartered Surveyors and the <i>International Valuation Standards 2017</i> .
17	Description of Report	The report will be prepared in accordance with the minimum reporting requirements contained in <i>International Valuation Standards 2017 (IVS) 103</i> .
18	Basis on which the fee will be calculated:	<p>The fee for the valuation will be \$3,000.</p> <p>In accordance with our standard practice 50% of the fee will be payable upon receiving instructions, and the balance will be payable upon delivery of the completed report. Two signed, bound copy of the report will be included in this fee. There will be a charge of \$100 for any additional copies that may be required.</p>
19	Compliance Monitoring	Compliance of the valuation with the <i>RICS Valuation – Professional Standards 2014</i> , published by the Royal Institution of Chartered Surveyors, may be subject to monitoring under the Institution's conduct and disciplinary regulations.

Our valuation of the subject property is made subject to the following general assumptions and limiting conditions.

Government Consent:	We assume that if any Government consent is required to accomplish a sale of the property that it would be granted by the Government without undue delay or restriction.
Planning and Building consents:	We assume that all necessary planning and building consents required for the construction of the improvements have been obtained.
Licences:	We assume that all licences required by Government have been obtained.
Title and Legal Matters:	<p>We assume that information on the title for the subject property is accurate and correct.</p> <p>We accept no responsibility or liability for legal matters and assume that our interpretation of title and any agreements affecting the property is correct.</p> <p>Unless stated in the report, we assume that there are no onerous or unusual conditions or restrictions affecting the property and that it is free and clear of any mortgages or charges.</p>
Soil conditions:	We assume that there are no adverse site or soil conditions that would cause us to make deductions for exceptional site or construction costs.
Engineering	We have not undertaken any engineering investigation or structural analysis of improvements on the subject property.
Environmental conditions:	<p>We are not aware of the content of any environmental audit or other environmental investigation or soil survey which may have been carried out on the property and which may draw attention to any contamination or the possibility of such contamination.</p> <p>We have not carried out an investigation into past or present uses of the property to establish whether there is any contamination or potential for contamination to the subject property from these uses, and have assumed that none exist.</p> <p>Should it be established subsequently that contamination, seepage or pollution exists at the property, or that the premises have been or are being put to a contaminative use, this might reduce the values now reported</p>
Cost of sale and taxation:	We make no allowance for any expenses of realisation, or for taxation, which might arise in the event of a disposal.
General considerations:	<p>in undertaking valuations in the Caribbean region, we would bring attention to the following points:</p> <ul style="list-style-type: none"> – Sovereign Risk: Sovereign risk is a significant factor in the investment equation in the Caribbean. – Micro-Economies: The economies of small Caribbean islands rely on external factors beyond the control of local Governments. The impact of the North American and European markets on both tourist arrivals and investment could be significant in the uncertainty of the present economic climate. – Time to accomplish a sale: Primarily due to the limited size of the market, the time required to accomplish a sale of investments in the Caribbean is often much longer than in North America or Europe. The requirement for overseas investors to obtain landholding licences prior to acquiring real estate can also extend the time taken to accomplish a sale.

Identification	The subject property forms part of the former greenhouse development at Paraquita Bay and is located approximately three and a half miles east of the central business district of Road Town. Beef Island Airport is located approximately three miles to the east.
Neighbourhood	<p>The property is located at Paraquita Bay, which has been developed as the H.Lavity Stoutt Community College (HLSCC) and also as the agricultural station providing farm land to local farmers. In more recent years, development in the Paraquita Bay area has included expansion of the HLSCC, the development of greenhouses for intensive agricultural production and the development of a new water plant and sewerage system by BiWater (now operated by Seven Seas Water).</p> <p>Identification and location plans are attached as Appendix I.</p>
Subject Property	<p>The subject property comprises a rectangular shaped area of land which was levelled when developed as part of the greenhouse site. The greenhouses were destroyed in Hurricane Irma with the site cleared of most, but not all, the debris.</p> <p>The site is situated behind the HLSCC and is surrounded by mainly undeveloped land which has been in agricultural use. The land to the west of the site appears to have been utilized to store materials and debris post Hurricane Irma.</p> <p>Photographs of the subject property are attached as Appendix II.</p>
Legal Description	Parcel 162, Block 3337B, Long Look Registration Section.
Land Area	3.280 acres (142,877 square feet) as identified on Survey Plan CA-3337B-062-T which is attached as Appendix III.
Site Shape and Dimensions	The subject property is approximately rectangular in shape, oriented in a north east-south west direction. It measures approximately 484 feet in length and approximately 296 feet in width.
Access and Frontage	The subject property is accessed via a concrete road and is approximately 1,500 feet from the public road. The access road extends along the north east boundary of the property.
Neighbouring Property	<p><i>West:</i> Undeveloped land formerly part of the greenhouse development and storage land</p> <p><i>North:</i> Undeveloped land formerly part of the greenhouse development</p> <p><i>East:</i> Agricultural land and the HLSCC</p> <p><i>South:</i> Agricultural land</p>
Services	There is electricity to the boundary.
Improvements	The subject property has been levelled. The improvements comprising the greenhouse development have, for the main part, been removed. There are still some parts of the structure on the land.
Planning & Zoning	<p>We are unaware of any existing planning approvals for the subject. While there is no land use zoning in the BVI, the land at Paraquita Bay is owned by the Government and has been traditionally used for agriculture, with the agricultural station located there. In the 1990's, the HLSCC was developed to provide secondary education opportunities to residents. In the last few years, land fronting the public highway has been developed as a water and sewerage plant.</p> <p>We have been advised by the Client that land in Paraquita Bay would have restrictions on use with either agricultural or agriculture with ancillary uses being permitted uses.</p>

Land Register The following is a summary of the Land Registry entries for the subject property as of 2 May 2018. A copy of the Land Register is attached as Appendix IV.

Parcel 162
Block 3337B
Registration Section Long Look
Description of Land Crown
Title Absolute
Origin Mutation 10/2018
Approximate area 3.280 acres
Proprietor [Crown]
Appurtenances Has a 30ft right of way over Parcel 168 of 3337B
Encumbrances Easement (Inst 2607/2008) Gives a 20 ft right of way to Parcels 154-156 of 3238B

Summary The subject property is a level, rectangular, undeveloped parcel of land of comprising 3.280 acres (142,877 square feet) with frontage to a surfaced road leading to the public road. The property is held with freehold title by the Crown. There are no land use restrictions on the title registered by way of restrictive covenants although the surrounding land is primarily used for agriculture and is also the location of the HLSEC.

We have undertaken research into comparable land sales, selecting sales generally in the vicinity of the subject property. All the comparables sales occurred prior to Hurricane Irma on 6 September 2017 with the exception of Sale 1 which occurred in May 2018.

The British Virgin Islands suffered catastrophic damage on 6 September 2017 during the passage of Hurricane Irma, a Category 5 storm. This was followed by Hurricane Maria, also a Category 5 storm, two weeks later, on 20 September 2017.

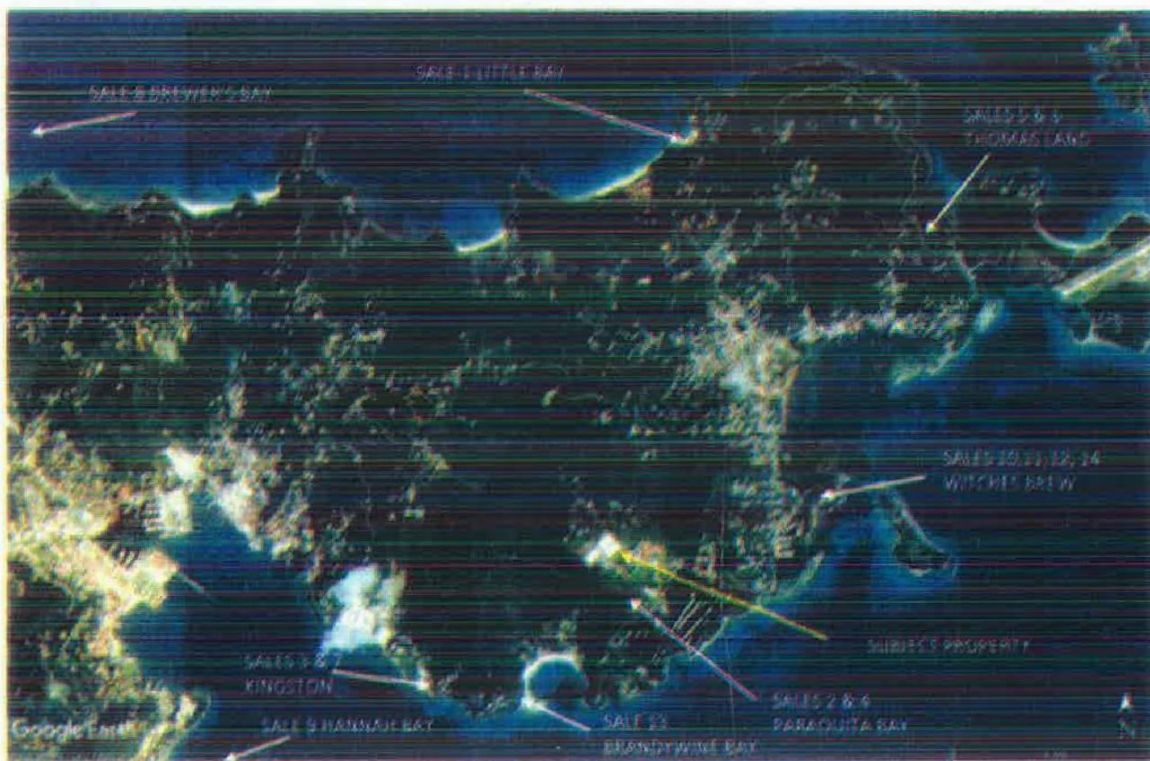
At the effective date of value, nine months later, the Territory remains in recovery and many months of reconstruction lie ahead to build back commercial properties, private homes, infrastructure and Government services. Although the yachting sector has been able to recover relatively quickly, the land-based resort sector will take much longer, with several of the major resorts likely to be closed for one and possibly two seasons while rebuilding takes place.

The long-term impact of the storm on real estate markets is still uncertain. Activity has increased in new areas of business. An active market in storm-damaged residential properties is emerging, with many willing sellers and buyers. Both the office and residential leasing markets are more active than before the storm, with displaced tenants seeking both long term and interim accommodation solutions. Commercial rents have remained stable but there is anecdotal evidence of residential rents increasing due to increased demand as a result of a drop in supply.

Tortola: Comparable Land Sales

Sale	Location	Date	Seller / Buyer (Instrument)	Legal Description	Price	Acres	\$/Acro	Sq Ft	\$ PSF
1	Little Bay	May-18	[REDACTED]	EE/32408 172-220	\$2,900,000	10.158	\$285,489	442,482	\$6.55
2	Paraquita Bay	Apr-17	[REDACTED]	LL 3337B.122	\$450,000	3.694	\$121,819	160,911	\$2.80
3	Kingston	Jan-17	[REDACTED]	RT 3136B.52	\$500,000	1.040	\$480,769	45,302	\$11.04
4	Paraquita Bay	Nov-15	[REDACTED]	LL 3337B.123	\$420,000	3.940	\$106,599	171,626	\$2.45
5	Thomas Land	Aug-15	[REDACTED]	EE/ 35408 /213	\$585,000	6.693	\$87,405	291,547	\$2.01
6	Thomas Land	Aug-15	[REDACTED]	EE/ 35408 /229	\$665,000	2.874	\$231,385	125,191	\$5.31
7	Kingston	Jul-13	[REDACTED]	RT 3136B.50 & 51	\$499,000	0.908	\$549,559	39,552	\$12.62
8	Brewer's Bay	Sep-11	[REDACTED]	WC 2640B.31	\$875,000	2.500	\$350,000	108,900	\$8.03
9	Hannah Bay	Jun-09	[REDACTED]	SCB 2635B.27	\$300,000	1.000	\$300,000	43,560	\$6.89
10	Witches Brew	Aug-05	[REDACTED]	LL 3438B.259	\$500,000	6.218	\$80,412	270,856	\$1.85
11	Witches Brew	Apr-05	[REDACTED]	LL 3438B.225	\$1,200,000	7.276	\$164,926	316,943	\$3.79
12	Witches Brew	Apr-18	[REDACTED]	LL 3438B.229	\$450,000	3.240	\$138,889	141,134	\$3.19
13	Brandywine Bay	Nov-04	[REDACTED]	LL 3236B.5 & 2	\$750,000	6.970	\$107,604	303,613	\$2.47
	Brandywine Bay	Nov-04	[REDACTED]	RT 3136B.24					
14	Witches Brew	Aug-02	[REDACTED]	LL 3438B.257	\$237,000	1.940	\$122,165	84,506	\$2.80

Location : For the most part, we have looked at comparables sales in the eastern end of Tortola with the exception of sale 8 located on the north side at Brewer's Bay and sale 9 at Hannah, near Nanny Cay. Of the comparables, sales 1, 3, 6, 7, 8, 9, 11, and 13 have water frontage. The remainder are located inland, although close to the water. There will normally be a premium value associated with land with water frontage compared to inland sites. The following plan identifies the location of the comparable sales in relation to the subject property.



Date of Sale : The selected comparable sales occurred between August 2002 and May 2018. Generally, more weight is given to sales that have occurred recently, primarily to reflect similar market conditions. However, as noted above, all the comparable sales occurred prior to Hurricane Irma on 6 September 2017 except sale 1.

Sales 2 and 3 closed in April and January 2017 respectively while sales 4 to 6 closed in 2015. The remainder of the sales took place in 2013, or earlier. Despite these sales having occurred sometime ago, they do have some relevance as they are located in reasonably close proximity to the subject property. They are also generally of larger acreage, similar to the subject property.

Title : All the comparable sales were of freehold properties.

Acreage : The comparables range in size between 0.908 acre to 10.158 acres. We would generally expect to see larger parcels of land to be sold at correspondingly lower values per square foot (psf), the common unit of comparison for this type of comparable sale analysis. Greater weight is placed on comparable sales which are closest in land area to the subject, in this case comparable sales around three acres in size. Smaller parcels of land, generally under an acre, are not considered good comparables as the rate psf will normally increase significantly due to the smaller size.

Price / \$ PSF : The sales range between \$237,000 to \$2.9M with many of the sales in the \$400,000 to \$600,000 value range. The value psf ranges between \$1.05 to \$12.62 psf. Generally, the water front parcels have achieved higher rates psf, reflecting the premium normally associated with water front land. The highest priced achieved was sale 7 at Kingston which sold at \$12.62 psf reflecting the water front location and hope value for reclamation of additional land. Sale 1 comprised a larger acreage of land and achieved \$6.55 psf which included excellent beach land and some inland sites. The inland sale

comparables reflect values ranging between \$1.85 to \$3.19 psf. These rates are fairly typical for larger (excess of two acre) parcels.

User: As there is no land zoning in the BVI, there are normally no restrictions on land use in terms of zoning, although restrictive covenants can be registered against the title, normally in relation to residential property. The value of each of the comparables therefore reflects an unrestricted use based on highest and best use of the property and subject to the appropriate planning and building authority consents.

Sales 2 and 4 were acquired to be assembled into a single parcel for sub-division and sale of smaller lots with the rate psf reflecting the risk of creating a sub-division for the sale of smaller lots at higher values. Sales 3 and 7 were the acquisition of land by a private school for the amalgamation of an expansion site. Sales 1, 5, 6 and 9 were speculative acquisitions for future development. Sales 8 and 13 were both acquisitions by Government. Sale 7 was to acquire land for a community centre and sale 13 was to acquire a water front property adjacent to a beach for future development as an alternative cruiseship passenger location. Sales 10 and 14 were by the same purchaser at different times to secure land for a landscape company should the existing location not be available at some stage in the future. Sales 11 and 12 were to a local developer who acquired the larger parcel (sale 11) for speculative future development and the smaller parcel (sale 12) for commercial development including the construction of a water plant.

Purchasing Entity: Of the fourteen sales, twelve were to private sector purchasers and two were to Government. All the private sector purchasers were Belongers or BV Islanders with the exception of sales 3 and 7 which were to a private school. This reflects the more commercial use of the land acquisitions, whether to create a sub-division, to hold for speculative future development or to protect an existing commercial enterprise through a strategic land acquisition. Very few foreign investors can compete in this market and are generally restricted to being purchasers of residential sites.

Summary

Prior to Hurricanes Irma and Maria in September 2017, the commercial land market was active. The market for commercial land is underpinned by demand from BVIslander who recognize that commercial land is fundamental to the operation of businesses and the continued growth of the Territory. The availability of flat land for commercial use is rare and such sites, when placed on the market, will normally be sold relatively quickly at a premium value. Flat commercial land in a good location will often achieve values more commonly associated with water front land.

While there are a number of sales of land in the two to four acre size range on Tortola, these are mainly for residential use which we do not consider to be comparable in use to the subject property.

The long-term impact of Hurricanes Irma and Maria on the land market is uncertain. Our opinion of market value for the subject property reflects our impression, based on discussions with BVI investors, that the commercial land market remains strong. However, it is important that users of this report are aware that our opinion is expressed with the benefit of only one comparable transaction that has occurred post Hurricane Irma.

Ground Leases in the British Virgin Islands

Ground leases are most commonly found in the British Virgin Islands in Crown land that is leased for terms of 50 to 99 years. Several significant leases were established in the late 1960s for resort sites, including Little Dix Bay and Nail Bay on Virgin Gorda. The rationale for selling leasehold interests was that it enabled the land to be developed by foreign investors but without alienating the property in perpetuity.

In the early 1970s, the Wickhams Cay Development Authority was established to promote, sell and manage the development of the newly reclaimed areas of land on Wickhams Cay I and II. Apart from some sites sold to banks, which were sold on a freehold basis, the land was transferred on a leasehold basis. All leases commenced on 1 January 1974 and run for a term of 99 years from that date.

The Government continues a policy of selling land within the Crown Estate on a leasehold basis in preference to the sale of freehold. Only in exceptional circumstances will land be sold or leased to a non-BVI islander individual or entity. A number of significant leases have been renegotiated or extended, including Nanny Cay (2005) and Nail Bay on Virgin Gorda (2014).

Long term ground leases have also been established in the private sector. Pasa Trading Estate, first subdivided in the late 1960s has been sold subject to 99-year leasehold interests. Residential estates have also been created by private developers including Privateers Bay on Great Camanoe (with a head lease from the Crown) and Little Mountain Estate on Beef Island. In the former case the leases run for a 99 year term and in the latter, unusually, they run for 999 years.

Ground Rental Rate

Most ground leases in the British Virgin Islands include provision for the ground rental rate to be reviewed at intervals over the term of the lease based on "unimproved freehold land value", "unimproved land value" or some similar basis. The ground rent is related to the value of the unimproved land, unencumbered by the lease and without taking into consideration leasehold improvements.

In some instances, the leases will contain a specific direction that the ground rental rate is to be based on a given percentage of the unimproved land value. In our experience, the percentage ranges from 2.5% to 10.0%, with most leases falling towards the lower end of this range. We understand that the Ministry of Natural Resources and Labour, based on Cabinet decisions, is now implementing a ground rent rate of 5% of unimproved freehold value in relation to Crown leases.

Almost all Wickhams Cay Development Authority leases contain a complicated formula for calculating the ground rent on review. To our knowledge, none of the leases have ever been reviewed based on this formula, so that the formula has not been tested in practice. We estimate that the effect is that the lease rate upon review would be approximately 5.0% of freehold land value.

These rates appear to be established by policy as opposed to market negotiation. This is especially the case where the Crown is leasing areas of seabed for reclamation because the Crown ultimately controls all of the marine estate and is in a strong position to determine the rate.

Many older leases do not contain any specific direction as to the percentage but instead direct that a "fair market rental value" or "the then current rental value of the demised premises" is to be determined by the parties. Such leases give rise to greater uncertainty. Some leases may further refine the amount of the ground rent review by placing a ceiling on the amount by which a ground rent can increase at each review.

Methods of Establishing Ground Rental Rate

Establishing ground rental rates is a perennial challenge for valuers in any jurisdiction usually because of the lack of adequate comparable market data. In the British Virgin Islands, there is a further complication that while ground rental rates in leases may be subject to review, often the reviews are not correctly implemented, meaning that the affordability of the ground rents established is, in many cases, untested.

In any ground lease negotiation, the lessor and lessee look at the transaction from different perspectives. For the lessor, it is typically a question of obtaining an appropriate long-term rate of return on the freehold land value in exchange for the grant of the lease. For the lessee it is a question of the affordability of the rent in relation to the revenues that they expect to realise from the intended development. The lessee will also have consideration of the alternative cost of securing a freehold site, if such an alternative exists.

In estimating the market rent for a ground lease, we consider two approaches:

1. Assessment of the ground rent based on a percentage of the unimproved value of the freehold land, where the percentage reflects rates that are commonly achieved in the market.
2. Analysis of existing ground leases to determine the rate per square foot that is achieved for the land based on the agreed lease terms.

As noted above, the biggest challenge to the valuer is establishing market ground rents based on comparables. There are relatively few transactions recorded with most ground rents agreed between two parties without reference to the wider market. We have researched ground leases and consider the following lease transactions to provide some guidance as to the market rents achieved in the BVI.

No.	Block / Parcel	User	Date of Lease	Term + Option	Land Area Sq Ft	Premium	Rent Review Method	First Rent Review	Review cycle	Rent PA	Rent PSF
1	MS 2534B/4/1 Pockwood Pond	Landscaping & Storage	Apr-10	5 + 5	43,560		Option to renew is at initial rent +10%	None	None	\$19,800	\$0.45
2	BIG 3838A/9 part Trellis Bay	Landscaping	Oct-11	1	94,000		None	None	None	\$36,000	\$0.38
3	SCB 2735B / 200 - 203 Nanny Cay	Restaurant & Bar	Jun-07	10	47,392		Fixed increases 25% in Yr 1 and 11% pa thereafter.	2	1	\$24,000	\$0.51
4	RT 3038B.89/2 Purcell Estate	Offices & storage	Jun-17	50	37,418	\$100,000	Cumulative CPI	7	7	\$14,400	\$0.38
5	WE 2034B/311/1 Smugglers Cove	Restaurant & gift shop	Jan-14	25	24,481		2% unimproved value of the leased land	5	5	\$11,000	\$0.45
6	MS 2534B/106 pt Pockwood Pond	Lobster farm	month to month		26,000		None	None	None	\$60,000	\$2.31

Source : BVI Land Registry (compiled by Smiths Gore)

Lease 1 : One acre of land located at Pockwood Pond leased for 10 years (5 + 5) for use as a landscape business and storage facility. The rent is not reviewed during the first five years and increased by 10% on exercising the option. The initial rent equated to \$0.45 psf but with the option being exercised, increased to \$0.49 psf. The user is relevant to the subject property where a user restricted to agricultural and ancillary uses is being contemplated.

Lease 2 : Approximately 2.16 acres of land leased to a landscape company on Beef Island on an annual tenancy. The ground rent equates to \$0.38 psf and reflects the short term nature of the lease interest.

Lease 3 : Water front parcel of land comprising approximately 1.09 acres of land leased for ten years. The rent increases by 25% at the end of year one and 11% per annum thereafter. The initial rent was \$0.51 psf and the passing rent, on the basis all the rent reviews have been initiated, would equate to \$1.62 psf after 11 years.

Lease 4 : Fifty year lease signed in 2017 for a commercial site close to Port Purcell. The user allows offices and storage which is commercially more viable than agricultural user clauses. The tenant paid a premium of \$100,000 at the commencement of the lease resulting in a reduced annual rent equating to \$0.38 psf.

Lease 5 : A Crown lease for 25 years with a user clause permitting restaurant and gift shop and ancillary uses. The ground rent equates to \$0.45 psf and is reviewed every five years to 2% of the then unimproved value of the leased land.

Lease 6 : A month to month lease of a water front site for a high intensity agricultural use (lobster farm). The ground rent equates to \$2.31 psf reflecting the need to be located adjacent to the sea and the high intensity user.

We have been instructed to undertake a market rent valuation of the subject property based on assumed terms for a Crown lease.

Assumed Lease Terms for Crown Lease

We understand that the lease over the subject property has yet to be drafted. However, we have been advised that the following lease terms are being considered.

1. Parties	Lessor Lessee	Crown not identified
2. Demised Property	Parcel 162 Block 3337B Long Look	
3. Land Area	3.280 acres	
4. Term	25 years with option to renew for an additional 25 years	
5. Lease Commencement Date	1 July 2018	
6. Rent	TBD	
7. Rent Review Pattern	every fifth year of the lease	
8. Rent Review Formula	5% of the unimproved value of the freehold land.	
9. User Restrictions	Agricultural use with ancillary retail and educational uses only with the Lessee permitted to sell agricultural products grown on the site, from the site.	
10. Alienation	No assignment of the whole or sub-leasing the whole or part without the prior written consent of the lessor, not to be unreasonably withheld or delayed. A fee of 2.5% of the rent collected shall be paid by the Lessee to the Lessor in the event the property is sub-leased.	
11. Improvements	All remnants of the greenhouse development will be removed from the site prior to the lease commencement date. The tenant will be permitted to erect structures with the consent of the landlord.	

Commentary on Draft Lease Terms

The amount of ground rent agreed in a lease is dependent upon a number of factors beyond the attributes of the property itself – location, land area, topography, suitability for the use to which it is intended to be used etc. The main determining factors in a lease are :

Term of the lease	Lessees who are intending to undertake substantial improvements on the property will only do so if there is a sufficient term on the lease. For commercial property, where the return on investment plays a significant role in the investment equation, a term of fifty years may be sufficient. For residential property, investors generally seek a longer term, often up to 99 years or 125 years. In contrast, a lessee who has a low intensity use requiring little investment, such as storage, agriculture or builders yard, may agree a shorter lease term. The availability of alternative sites to relocate to also plays a significant role in determining the length of lease. Where alternative locations are scarce, a tenant will prefer a longer term lease.
User Restrictions	User restrictions in a lease will have a significant impact on the desirability of a lease, particularly in the BVI where local investors generally shy away from strict user restrictions. A user clause restricting the use to agricultural use only could have a significant impact on the ground rent. However, opening the user clause to agriculture or ancillary uses will create wider opportunities which will be reflected in a correspondingly higher ground rent.
Rent Review Provisions	It is common in longer term leases for the ground rent to be fixed for a number of years, with rent being reviewed every five years being considered standard. More frequent rent review patterns can be tolerated provided the rent review formula is based on either a fixed percentage

increase or a CPI (consumer price index) adjustment. Reviews to market rent would create uncertainty on the part of the lessee and would be considered less favourably with a corresponding downward adjustment in the ground rent.

In the BVI, it is standard to adopt fixed rent increases or rent increases based on CPI adjustments in commercial leases. Both landlords and tenants prefer to avoid market rent adjustments as determining market rent in a small market can be difficult if adequate data is not available.

The Government tends to adopt a formula whereby the ground rent is expressed as the percentage of the unimproved freehold value of the land. These percentages can vary between 2% to 10%, with leases often adopting a rent review formula based on either 3% or 5% of the unimproved freehold value. Where land values remain low, for example with agricultural land, these rent review formulas can work well. Where land values increase quickly, these rent review formulas are often not popular with lessees as ground rents can escalate rapidly.

Other Considerations We assume that the lease will not include any terms which are not standard which could have a material impact on ground rent. For example, parties can sometimes agree a termination clause of thirty days or sixty days, despite a long-term lease having been agreed. Crown leases can also include certain provisions which are not common in commercial leases. Provided they are included in all Crown leases, they are often assumed to be standard for that type of lease and therefore will not have an impact on the ground rent.

Assessment of Ground Rent

As noted above, we can assess the market rent for the subject based on either the percentage of unimproved freehold value or by analysing the rental levels achieved in similar ground leases. The agreed lease terms, as discussed above, can also impact the assessment of ground rent.

Market Rent calculated as a Percentage of the Unimproved Freehold Value of the Land

In order to determine the market rent based on a percentage of the unimproved freehold value of the land, it is first necessary to estimate the unimproved freehold value of the land. In the market commentary section above, we have discussed fourteen comparable sales for land generally located in the vicinity of the subject. The comparables also comprise larger lots generally in excess of two acres, with most over three acres.

The subject property is situated at Paraquita Bay where land uses include agricultural production, education through the HLSCC and, more recently, the development of a new water and sewerage treatment plant. While the land is flat, an unusual commodity in the BVI, and suitable for a range of commercial uses given its proximity to both Road Town and the airport, it is unlikely that the Government would permit a use outside the three outlined above. This restriction on use would have a negative impact on land values compared to the comparables, all of which have unrestricted uses. We have been advised that the proposed Crown lease will permit agriculture and ancillary uses including education and retail.

As noted in the comparable sale discussion, the land values range between \$1.85 to \$12.62 psf with all the comparables occurring pre-Irma with the exception of sale 1 which closed in May 2018. Waterfront parcels of land range between \$2.47 to \$12.62 psf while inland parcels range between \$1.85 to \$3.19 psf. If restrictions on user were excluded, we consider the subject property, comprising an extensive area of flat land, would be attractive to local investors in a market where the availability of flat, commercial land is rare and prices would be nearly equivalent, in the right circumstances, to some waterfront parcels of land.

We have therefore valued the subject property taking into consideration the water front comparables as well as the inland comparables. We have adjusted the value of the subject down compared to sales 3 and 7 which achieved \$11.04 psf and \$12.62 respectively due to waterfrontage and smaller acreage. Sale 3 occurred in January 2017 while sale 7 occurred in July 2013. We therefore adjust the subject up due to time for sale 7 but down for sale 3. Compared to sale 1, we have adjusted the value of the subject up for acreage and down for beach frontage. Sale 1 closed in May 2018 and represents post Irma market conditions so no adjustment for time is necessary. We have adjusted the subject down compared to sale 8 for water frontage but up for time of sale which occurred in 2011 when the property market was still recovering from the recession. We have not adjusted sale 8 for size as it is similar to the subject at 2.5 acres. Finally we have adjusted the subject down compared to sale 9 for waterfrontage and acreage but up for the date of sale which occurred in June 2009 right after the recession in 2008.

For the inland sales, we have adjusted the subject up compared to sales 2 and 4 as both parcels were acquired to create a residential sub-division with the price paid reflecting the development risk associated with the sub-division process. We have also adjusted the subject up compared to sale 6 which is of hill side land located at the east end of Tortola.

We are not aware of any sales of agricultural land in the BVI where the land is covenanted to remain in agricultural use. As there is no zoning in the BVI, land is valued based on its highest and best use which would normally be some other use apart from agriculture.

We conclude to an unrestricted use land value for the subject of \$8.00 psf which equates to a freehold value of \$1,143,014. However, we apply a discount of 25% to account for the restricted use of the land at Paraquita Bay which could be used for agricultural or ancillary agricultural uses only including retail and education. The restricted use value of the freehold land equates to \$6.00 psf or \$857,261. The choice of percentage discount for the restricted user is difficult to determine as there are no comparables that we are aware of providing the value for land with restricted use. If the user were restricted to agricultural use only, a larger percentage discount would apply. The ability of the tenant to create some kind of retail business associated with agricultural use has widened the permitted user.

The final part in assessing the ground rent is to determine the percentage rate to be applied to the unimproved freehold land value to calculate the ground rent. As noted above, this approach to calculating ground rents is more commonly adopted by Government for Crown leases. The percentage rates can vary between 2% to 10%, with most leases being assessed at either 3% or 5%. Theoretically, the percentage will be determined by the lease terms, with longer term leases attracting a higher percentage rate than leases with a shorter term. Similarly, leases with a restrictive user clause, for example agricultural use, will be assessed with a lower percentage rate. In reality, the percentage rates are more likely to be assessed by Government on a case by case basis, depending on the circumstances of the Lessee. We have been advised by the client that the ground rent, in this lease, will be assessed at 5% of the unimproved value of the freehold land.

The calculation of ground rent, based on a unimproved land value with a user clause restricted to agricultural and ancillary uses including retail and education would be as follows :

	Acres	Sq Ft	25 year Lease + 25 year option
Subject Property	3.280	142,877	
Unimproved Value of Freehold Land (Restricted Use) \$ PSF		\$6.00	
Unimproved Value of Freehold Land (Restricted Use)		\$857,261	
Percentage Applied to Unimproved Freehold Value			5%
Ground Rent Based on Percentage of Unimproved Value		per annum	\$42,863
		per month	\$3,572

Market Rent based on Comparable Ground Leases

We have reviewed above six ground leases, some of which have similar user restrictions to the subject. Two of the leases are used for landscape businesses, two for restaurants and bars and one as a high intensity agriculture use. The final ground lease has a user clause for offices and storage which is a more general use than that proposed for the subject.

The six leases are for a range of years, from month to month arrangements up to a 50 year lease. The land areas range between 24,481 sq ft (0.56 acres) to 94,000 sq ft (2.17 acres) and the rents range from \$0.38 psf to \$2.31 psf. There seems to be little correlation between the length of the lease and the rent psf agreed with the month to month lease also reflecting the highest rate psf (\$2.31 psf). Often rates are agreed based on the availability of land with tenants often unable to find suitable alternative sites.

We have included in the comparables two ground leases which are for landscape users where the ground rents range between \$0.38 psf to \$0.45 psf. We have assumed that landscape use would fall within the ancillary agricultural use restriction as the businesses sell direct to clients similar to the proposed use for the subject property. However, landscape businesses also provide additional services to clients including landscape architectural consulting and on-site plant installation. In the BVI, these are more conventional, and proven, land uses. While these ground leases provide the closest comparable evidence to establish the rate per square foot based on user, it is recognised that there are also additional services which contribute to business value. The high intensity agricultural use (lobster farm), where the ground rent

equates to \$2.31 psf, reflects the need to be located close to the sea which has restricted the land availability options. We have therefore excluded this in establishing the ground rent for the subject property as it is significantly outside the ranges of the other comparable ground leases.

The remaining ground leases range between \$0.38 psf to \$0.51 psf. The lease with the office and storage user also had a premium of \$100,000 paid on the commencement of the lease in June 2017 which reduced the annual ground rent payment.

We have noted in the market commentary on ground leases that there are few comparable leases to analyse and also that the majority of ground rents are agreed between the parties without reference to the wider market. Given the restriction on the subject property to agricultural and ancillary uses, we consider the market ground rent for the subject would be below the range outlined by the comparables. We have applied a rate of \$0.30 psf to the subject property which is consistent with the assessment of ground rents based at a rate of 5% on a restricted freehold value of \$6.00 psf.

Our assessment of market rent, based on comparable ground leases would be as follows :

Market Rent Based on Comparable Ground Leases

	acres	sq ft / \$PSF
Subject Property	3.280	142,877
Ground Rent based on comparable leases (\$ PSF)		\$0.30
Ground Rent Based on Percentage of Unimproved Value		\$42,863
		\$3,572

Reconciliation

In the preceding analysis we have developed two approaches to estimate the Market Rent for the subject property. The first approach estimates the market value of the unimproved land, based on comparable land sales, to which a percentage is applied to derive the ground rent. This approach is based on a restricted use value of the land as the subject property is located at Parequita Bay where land uses are restricted to agricultural and ancillary uses including retail and education. The selection of the percentage rate to derive the ground rent is derived from existing Crown leases where the percentages typically range between 2% to 10% and more commonly are either 3% or 5%. We have been advised by the client that the lease will be assessed at 5% of the unimproved value of the land.

The second approach is based on comparable ground rents calculated on a rate per square foot basis. We have reviewed the comparable ground leases and concluded that the ground rent for the subject, based on a rate psf, lies below the range established by the comparables due to the more restricted use.

The Market Rent, based on these two approaches, is estimated as :

25 year lease with tenant's option to renew for 25 years	\$42,863 per annum	Round	\$43,000 per annum
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Abnormal Uncertainty

The long-term impact of Hurricanes Irma and Maria on the land market is uncertain. Our opinion of market rent for the subject property reflects our impression, based on discussions with BVI investors, that the commercial land market remains strong. However, it is important that users of this report are aware that our opinion is expressed with the benefit of only one comparable transaction that has occurred post Hurricane Irma.

Final Estimate of Value

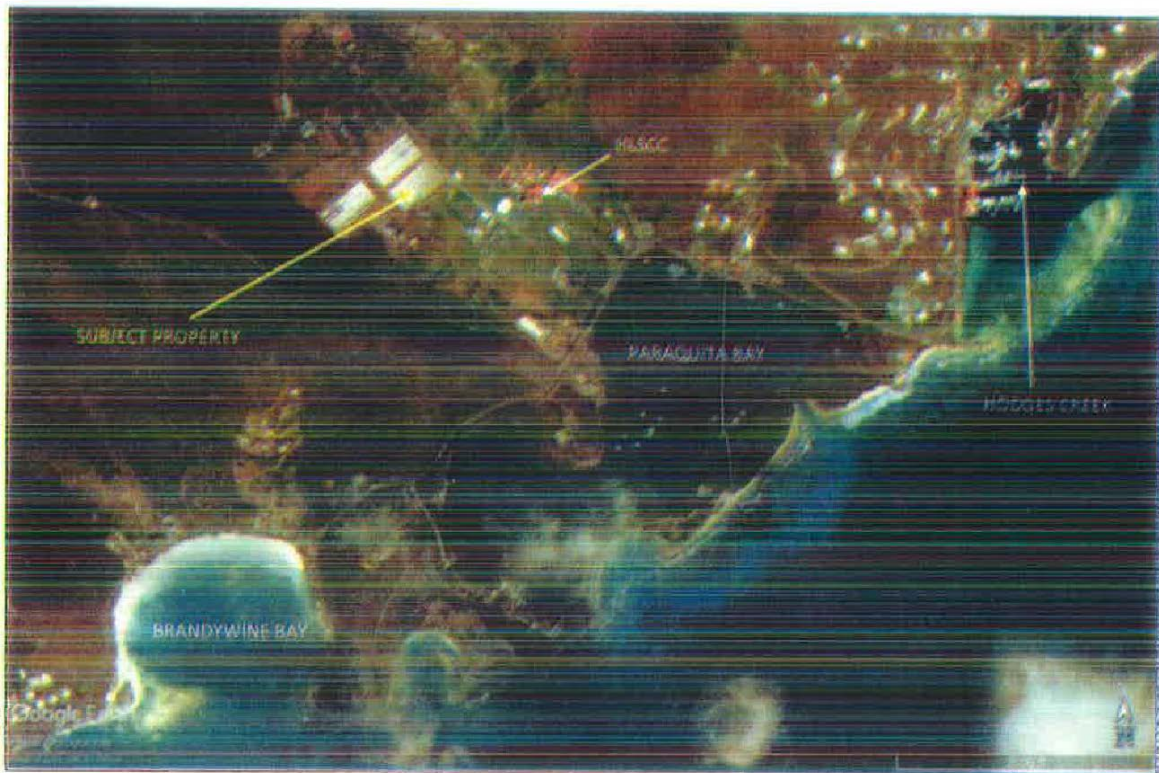
Having regard to the matters referred to in this report, we are of the opinion that the market rent of the land comprised in the subject property as of 13 May 2018, and subject to the special assumptions and limiting conditions contained in this report, would be fairly represented in the following figure:

25 year lease with tenant's option to renew for 25 years	\$43,000 per annum
-----------------------------------------------------------------	---------------------------

This estimate of value is subject to, and can only be fully understood when read in conjunction with, the special assumptions listed on page 5 of this report.

Appendices

Identification and location plans	Appendix I
Photographs of the subject property	Appendix II
Survey Plan CA-3337B-062-T	Appendix III
Copy of the Land Register	Appendix IV





SUBJECT PROPERTY



SUBJECT PROPERTY



SUBJECT PROPERTY LOOKING NORTH



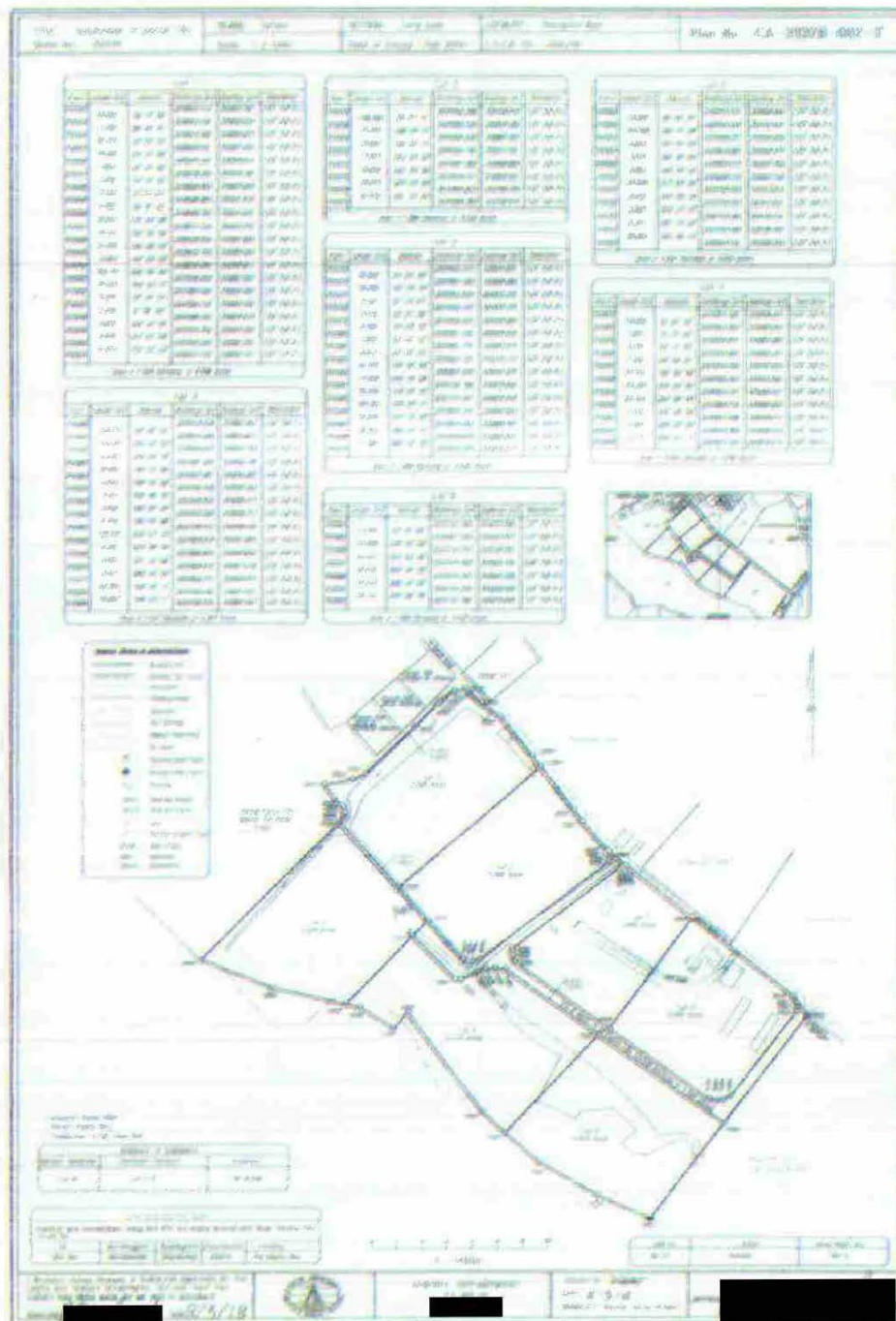
SUBJECT PROPERTY LOOKING SOUTH



SURROUNDING AGRICULTURAL LAND



HLSCC WITH SUBJECT PROPERTY TO REAR



BRITISH VIRGIN ISLANDS LAND REGISTER

CERTIFIED TRUE COPY
PWS 2 DAY OF May 2014

A- PROPERTY SECTION

APPURTENANCES

Has a 30ft. Right of Way over Parcel 168 of 3337B

Description of Land **6** CROWN ~~PRIVATE~~

Nature of title: **ABSOLUTE** / **PROVISIONAL**

Particulars recorded in para. 7 of application Record
(Provisional titles only)

Approx. Area: 3.280 Acres

Synonym of title

MUTATION NO. 16/2018 vide inst# 16/2018

B - PROPRIETORSHIP SECTION

[illegible]

334780 1962



CERTIFIED A TRUE COPY

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[illegible]

INFINITE ECO LTD.

P. O. Box 4506
Road Town, Tortola
Islands VG1110

REF: LAN.L4/526

26 June 2018

Ministry of Natural Resources & Labour
Government of the Virgin Islands
Central Administration Complex
#33 Admin Drive
Road Town, TORTOLA VG1110
Virgin Islands

Dear Mr. Ronald Smith-Berkeley,

As per your letter dated 6th April 2018, RE: Lease of Crown Land at Paraquita Bay to Infinite ECO Ltd. for the Purpose of Establishing an Aquaponics Facility.

In an effort to revitalize the local agricultural industry, boost local crop production, and thereby ensure greater food security and health benefits for the Territory, the Government of the Virgin Islands. Infinite ECO Limited (IEL) wishes to proceed with the lease, under the following conditions.

Prior to Hurricane Irma, Infinite ECO Limited (IEL), represented by John Cline, Donald Loyd, and Angela TenBroeck approached the Government of the Virgin Islands with a proposal for the revitalization of the inoperative greenhouse facilities in Paraquita Bay through the development and operation of a commercial aquaponics system. Although the greenhouse structures have been destroyed, Infinite ECO Limited (IEL) remains interested in using two of the parcels once occupied by the greenhouses to rebuild a smaller and more climate resilient operation using aquaponics. Infinite ECO Limited (IEL) had an MOU that included the following provisions: a grant of Five Hundred Thousand dollars (USD \$500K) from the Government of the Virgin Islands, materials at Fish Bay, electricity and water supplied by the Government, but due to current

Phone: [REDACTED]

Email: [REDACTED]

recovery efforts the developers understand and agree that the prior MOU would be void and the following lease terms apply.

The lease states that we are in an agreement for the following terms and conditions:

- (i) The lease area three (3) acres as Identified as Lot #2 on a preliminary plan
- (ii) Lease terms fifteen (15) years with the right of an option to renew for a further term of fifteen (15) years
- (iii) Commencement 1st April 2018
- (iv) Rent Subject to an independent valuation report (FINALIZED)
- (v) Rent Review On the 5th anniversary and every succeeding 5th year
- (vi) Sublease Payment 2.5 percent of the rents collected

The independent valuation report has been commissioned/finalized, it was noted by the majority share member, John Cline, that the amount of assessment was told to be Forty-Three Thousand Dollars (\$43K) per year which translates into thirty-five hundred and eighty-three dollars per month (\$3583) which is in line with commercial real estate leases, not agricultural land. Infinite ECO Limited (IEL) has done research property comparisons within the region. The findings were that agricultural land averages about fifty (\$50) dollars per acre per month. We wish to offer the Government of the Virgin Islands two hundred dollars (\$200) per month for the three (3) acres, have access to the materials at Fish Bay and any remaining usable equipment left at the Paraquita Bay site.

We expect the commencement to be within 30 days of this letter if approved.

Yours Sincerely,



John Cline

Owner, Infinite ECO Limited (IEL)

Phone:



Email:



**CABINET PAPER RECORD & EXTRACT FROM THE MINUTES OF THE MEETING
OF THE VIRGIN ISLANDS CABINET HELD AT
PREMIER'S CONFERENCE ROOM ON
28th NOVEMBER, 2018**

To: Minister for Natural Resources and Labour

**Cc: The Premier
Financial Secretary
Permanent Secretary/Ministry of Natural Resources and Labour**

Date: 7th January, 2019

Paper No. Memo No. 375/2018

Date Arrived in the Cabinet Office: 2nd November, 2018

Date Approved by the Cabinet Steering Group: 21st November, 2018

Date Sent to Cabinet: 28th November, 2018

Cabinet Confirmation Date: 12th December, 2018

Expedited Extract Issued: 28th November, 2018

Cabinet Extract:

**Lease of Crown Land at Paraquita Bay to Infinite ECO Ltd.
for the purpose of Establishing an Aquaponics Facility
Memo No. 375/2018**

3351. Cabinet decided:

- (a) to amend the decision to grant a lease of Crown Land to Infinite ECO Ltd. for the establishment of an indoor protected agriculture facility (aquaponics), shaded grow beds and a 600kw solar power micro grid to independently power the facility, to reflect the following changes to the terms and conditions of the lease agreement:

- | | |
|--------------------|-----------------------------------------------------------------------------------------|
| (i) The lease area | three (3) acres as identified as Parcel 162, Block 3337B Long Look Registration Section |
| (ii) Lease term | fifteen (15) years with an option to renew for a further term of fifteen (15) years. |

.../P.T.O.

(iii) Commencement	1 st December, 2018
(iv) Rent	\$2400.00 per annum
(v) Rent Review	On the fifth anniversary and every succeeding fifth year at a rate of five (5) percent of the unimproved market value of the lease area
(vi) Sublease payment	2.5 percent of the rents collected
(vii) Land Use	Agricultural and educational purposes only with ancillary retail of products grown on site.

- (b) that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

Cabinet Secretary's Signature

Cabinet Secretary's Sign-off Date

Date Sent to Ministry



09.01.19.

09.01.19.

Lease of Crown Land at Paraquita Bay for Agricultural Purposes - KNK Poultry Farm

Signed

· 04 December 2019 · MNRLI · File: Lan. L4/544

· Mrs. Heather James-Skelton · Memo No. 56/2020

· Extract No. REx/56/2020 (/decisions/247)

Background Information

1) By letter dated 2nd July 2019, [REDACTED] owner of KNK Poultry farm submitted an application to lease 1.5 acres of Crown land at Paraquita Bay for the construction of two (2) poultry houses, one office building, three (3) silo feeding systems and storage of four (4) two thousand (2,000) gallon water tanks (see Appendix A).

2) KNK Poultry currently operates solely out of Josiah's Bay, which houses a population of 19,200 chickens. At present, the farm processes 500 chickens per day for sale. The inclusion of two (2) additional poultry houses at Paraquita Bay will enable the chicken population to increase by 20,000 chickens.

3) Historically, the Virgin Islands has been heavily reliant on the importation of food which makes food security vital to the Territory's economy. The revamping of the agriculture industry, more particularly crop and loose livestock, will contribute significantly to economic growth and job creation.

4) In 2018, the Central Statistics Office reported that the Territory's food import bill for meat and poultry was recorded at \$8,796,630 in comparison to 2017, which was reported at \$7,412,000. This shows an increase in demand for imported meat and poultry. After the

passage of Hurricanes Irma and Maria, the Territory's dependency on food supply became vulnerable; hence, food security was brought the fore.

5) Smiths Gore (BVI) Limited was commissioned to carry out an independent appraisal on Parcel 162, Block 3337B Long Look Registration Section to determine the market rent for agricultural purposes (see Appendix B). Parcel 162 is situated adjacent to the subject property at Paraquita Bay. The market rent was computed at \$43,000 per annum for 25 years with an option to renew for a further 25 years.

6) Subsequent to this, the intended lessee submitted a counter-proposal for \$2,400.00 per annum, citing research findings of comparable agricultural leases for Government ranged at \$50.00 per acre per annum. Based on the Ministry's Asset Registry, this data was out-dated and did not reflect market rents. Cabinet via Extract No. 375/2018 made a policy decision to reduce the rent to \$2,400.00 per annum (see Appendix C).

7) We are therefore requesting that a similar subsidy be adopted to the base rent for the land intended for lease to KNK Poultry during its initial phase. Honorable Members are asked to note that 3 acres of land was granted to Infinite Eco Limited for agricultural/commercial purposes, while 1.289 acres of land is being offered to KNK Poultry for a similar type of development. We are therefore proposing to offer a base rent of \$800.00 per annum, which is a fraction of the approved rent for Infinite Eco Limited. The expansion of KNK Poultry farm will contribute significantly towards the recovery of the agricultural section as well as to introduce new technology-based farming in the Territory.

Purpose

8) To grant a lease for agricultural purposes.

Cross-Ministry Consultation

9) The draft paper was prepared in collaboration with the Ministry for Education, Culture, Youth Affairs, Fisheries, and Agriculture. Therefore, no further comments are required at this time.

Financial Implications

10) The Ministry of Finance is in support of initiatives that are geared towards food security in the Territory. The poultry industry is one area where farmers have proven to perform well as is the case with KNK Poultry Farm who is now seeking to expand his operations. As a result, the business expansion would spur economic activities from infrastructure development, employment opportunities and the sale of the various products.

11) Therefore, the proposed lease which is at a subsidized rate of \$800 per annum would aid KNK Poultry Farm in meeting its objectives. The background of the Paper noted that the rate is consistent with previous leases awarded by Government. Notwithstanding that support of the agriculture sector should be encouraged and supported; consideration must be given to the opportunity cost if the property was used for other purposes. In addition, Smith-Gore computed the rental market value at \$43,000 per annum for 25 years with an option to renew for a further 25 years.

12) Therefore, a renewal period of 5 years may be reasonable. At such time through negotiations and assessment of the company records, a determination to increase the rent closer to market value should be taken into consideration. Perhaps it is high time that Government review and modernise its leasing policy of Crown properties.

Legal Implications

13) We have reviewed the draft Paper and have discerned no adverse legal implications which would arise for Government if Cabinet is minded to decide in accordance with the decision sought.

14) Notwithstanding the foregoing, we recommend that the draft Paper be amended in accordance with the comments separately communicated to the Ministry, prior to being submitted to Cabinet for consideration.

Communication Strategy

15) The applicant will be notified by the regular medium.

Conclusion

16) Honourable Members are asked to review the decision sought and advise accordingly.

Decision Sought

Cabinet is invited to:

- a. decide that KNK Poultry Farm be granted permission to lease Parcel 175, Block 3337B, Long Look Registration

Section for the establishment of a poultry farm, based on the following terms and condition:

The lease area	1.289 acres as identified as Parcel 175, Block 3337B, Long Look Registration Section
Lease term	fifteen (15) years
Commencement	1 March 2020
Rent	\$800.00
Rent Review	On the 5th anniversary and every succeeding 5th year at a rate of 5% of the unimproved market value of the lease area
Sublease payment	2.5% of the rents collected, if sub-leasing the property
Land Use	Agricultural purposes only

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent
Wheatley
Minister for Natural
Resources, Labour
and Immigration
12 February 2020

CABINET PAPER RECORD & EXTRACT FROM THE MINUTES OF THE MEETING
OF THE CABINET OF THE VIRGIN ISLANDS HELD AT
PREMIER'S CONFERENCE ROOM, CUTLASS TOWER
12th February, 2020

TO: Minister for Natural Resources, Labour and Immigration

CC: The Premier
Financial Secretary
Permanent Secretary, Ministry for Natural Resources, Labour and
Immigration

DATE: 19th February, 2020

Paper No.	<u>Memo No. 56/2020</u> <u>(/memorandums/472)</u>
Date Arrived in the Cabinet Office:	<u>12th February, 2020</u>
Date Approved by the Cabinet Steering Group:	<u>LATE</u>
Date Sent to Cabinet:	<u>12th February, 2020</u>
Cabinet Confirmation Date:	<u>19th February, 2020</u>
Expedited Extract Issued:	<u>12th February, 2020</u> <u>(/expedited extracts/134)</u>
Cabinet Extract:	

Lease of Crown Land at Paraquita Bay for Agricultural
Purposes - KNK Poultry Farm
Memo No. 56/2020

Cabinet:

- a. decided that KNK Poultry Farm be granted permission to lease Parcel 175, Block 3337B, Long Look Registration Section for the establishment of a poultry farm, based on the following terms and condition:

The lease area	1.289 acres as identified as Parcel 175, Block 3337B, Long Look Registration Section
Lease term	fifteen (15) years
Commencement	1 March 2020
Rent	\$800.00
Rent Review	On the 5th anniversary and every succeeding 5th year at a rate of 5% of the unimproved market value of the lease area
Sublease payment	2.5% of the rents collected, if sub-leasing the property
Land Use	Agricultural purposes only

- b. decided that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

Ms. Sandra Ward
21st February, 2020

Lease of a portion of Crown Land for Commercial Purposes - Zimomi Limited

Signed

· 16 December 2020 · MNRLI · File: LAN.L4/497 VOL III

· Mr. Norval Young · Memo No. 529/2020

Background Information

- 1) On 4th December, 2020, Zimomi Limited submitted a letter to Ministry of Natural Resources, Labour and Immigration requesting to lease a portion of Crown land adjacent to the Queen Elizabeth II Park and opposite the Dr. D. Orlando Smith Hospital for commercial purposes, for a term of ninety-nine (99) years **(see Appendix A)**.
- 2) An amended letter dated 4th December, 2020 was received at the Ministry, which made mention of the amount of land being requested **(see Appendix B)**.
- 3) The Ministry acknowledged receipt of the application letter to the applicant and made mention that in order for the application to be considered for further processing, a detailed business plan outlining the proposed venture was required **(see Appendix C)**.
- 4) The Ministry received a copy of the requested business plan on Tuesday, 15th December, 2020 entitled, Proposal for a Vibrant Mixed-Use Development in Road Town, dated 14th December, 2020 **(see Appendix D)**.
- 5) The development project is estimated at \$10 million dollars consisting of a five (5) storey mixed-use complex, which will provide the following:

- i. Retail spaces on the street level as a capacity of 15,000 sq. ft.;
- ii. Commercial and Office spaces on the floors 2, 3 and 4, each floor measuring 15,000 sq. ft.;
- iii. Residential component which will consist of a mixture of two (2) and three (3) bedroom condominium penthouse apartments.

6) The Ministry made a survey request to the Lands and Survey Department to prepare a proposal for the aforementioned area. The proposal shows the location for the one (1) acre or 43,557 sq. ft. that is to be taken from Parcel 125, Block 2937B, Road Town Registration Section (see Appendix E). This portion to be extracted is adjacent to Parcel 124, Block 2937B, Road Town Registration Section that is designated as the site for the Helipad.

7) Members are to note that before any leasing of the portion of land can be completed, the portion needs to be extracted or subdivided from Parcel 125, Block 2937B and be given its own parcel number. This means that the proposal will need to be approved by the Town Planning Department; and the survey carried out on ground and a survey plan, to be approved by the Lands & Survey Department. The approved plan would be attached to an application to the Land Registry Department for the subdivision of Parcel 125, Block 2937B, and new parcels given to the portion to be leased, and the remainder portion(s).

8) Furthermore, in order to ascertain a fair rental value of the said portion of land, a Valuation Report is required. The valuation exercise and report will be conducted by BCQS BVI Limited at the expense of the applicant.

9) Once the above processes are completed, a Lease Agreement can then be prepared and executed between the Directors of Zimomi Limited and the Government of the Virgin Islands and finally be registered at the Land Registry Department.

10) Attached are copies of the Land Register for Parcel 125, Block 2937B, Road Town Registration Section **(see Appendix F)**.

11) The following appendices are copies of the Company Documents for Zimomi Limited;

- i. Certificate of Good Standing **(see Appendix G)**;
- ii. Certificate of Incorporation **(see Appendix H)**;
- iii. Listing of Directors and Shareholders **(see Appendix I)**; and
- iv. Memorandum and Articles of Association **(see Appendix J)**.

12) Cabinet is asked to note that the comments and advice from the Financial Secretary and the Attorney General's Chambers have been reviewed and those changes have been made to reflect same.

Purpose

13) To lease the portion of land for the development of a mixed-use building complex.

Cross-Ministry Consultation

14) For this matter there was no need for cross-ministry consultation

Financial Implications

15) The Ministry of Finance is in support of development in the Territory that promises long-term positive impacts on our economy. The proposed development by Zimomi Limited, which is subject to Town and Country Planning Department and the Building Authority approval, would provide employment and generate commercial activity in this period of uncertainty due to COVID-19.

16) The lease, which is essential for this development, would require the Government to relinquish ownership, in accounting terms. Thus, it would result in the removal of the property as a GoVI asset that could be used as collateral for a future financial transaction. Nevertheless, the Government will receive revenue from the initial rent and subsequent renewal at 5% of the unimproved market value of the land and sub-lease payments of 2.5% of revenue collected. The renewal period of 5 years is consistent with existing leases. However, a review and modernisation of leasing policies for Crown properties should occur with the view of amending existing leases to ensure that rent is closer to market value.

17) The Attorney General's comments are similar to the observations that the Ministry of Finance has made especially as it relates to the absence of an evaluation of the property and the subdivision being completed. Nevertheless, the comments have been noted and consultation with the Ministry of Natural Resources took place with the view of addressing these concern prior to presenting these comments.

Legal Implications

18) We have reviewed the draft Cabinet Paper presented and are of the view that it appears premature since the portion of Parcel 125 to be leased is premised on a subdivision (see paragraph 7 of the Background Information) and the rent is to be calculated by reference to a valuation (see paragraph 8 of the Background Information); neither of which has been conducted to date. Ideally these events should precede the Paper being presented to Cabinet so that there are no outstanding matters which impinge on Cabinet's deliberations.

19) However, in the event that there is a desire, to proceed with this matter despite this advice; we recommend that the following amendments should be made to the draft Paper:

20) **Paragraph (a) of the Decision Sought** should commence with: "Subject to the relevant parcel being duly subdivided from Parcel 125 and the requisite approvals being obtained from the Town and Country Planning and the Land Survey Departments...".

21) Under the heading "**Initial Rent**" at paragraph (a) of the Decision Sought, the following words should be inserted: "To be determined once the relevant valuation report from BCQS (BVI) is received".

22) Under the heading "**Area to be leased**" at paragraph (a) of the Decision Sought, the following words should be inserted: "To be inserted once the relevant subdivision is completed".

23) And we so advise.

Communication Strategy

24) The applicant will be notified of Cabinet's decision via all mediums of communication.

Conclusion

25) Cabinet is asked to review the Decision Sought and advise accordingly.

Decision Sought

Cabinet is invited to decide:

- a. to subdivide Parcel 125, Block 2937B, Road Town Registration Section, which is adjacent to Parcel 124, Block 2937B, Road Town Registration Section, subject to the requisite approvals being obtained from the Town and Country Planning Department and the Lands and Survey Department;
- b. that permission be granted to Zimomi Limited, to lease a portion of Parcel 125, Block 2937B, Road Town Registration Section, which measures approximately one (1) acre or 43,557 sq. feet and is adjacent to Parcel 124, Block 2937B, for Commercial purposes, subject to the following conditions:
 - i. Effective date of lease - date of parcel creation & registration by Land Registry
 - ii. Initial rent - to be determined following the completion of the Valuation Survey & subsequent report
 - iii. Term - fifty (50) years with an option to renew for a further period

- iv. Area to be leased - to be inserted once the relevant subdivision survey is completed
 - v. Rent Review Period - every five (5) years
 - vi. Rent Revision - 5% of the unimproved market value of the land
 - vii. Sub-Lease Payment - 2.5% of revenue collected
 - viii. Payment Due Date - 1st day of January annually
- c. that the cost of conducting the Valuation Survey and the preparation of the Valuation Report be borne by the applicant, Zimomi Limited;
 - d. that the Statutory Survey Fee of eight hundred dollars (\$800.00) in accordance with the Fourth Schedule of the Statutory Rates, Fees and Charges Act, 2005, be paid prior to the execution of the lease;
 - e. that approval from the Town and Country Planning Department and the Building Authority must be sought prior to commencement of the development as well as for the proposed subdivision survey as governed by the Planning Act, 2004;
 - f. that construction of the building should be done to accommodate parking and the required setbacks on site; and
 - g. that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent
Wheatley
Minister for Natural
Resources, Labour
and Immigration
22 December 2020

EXPEDITED EXTRACT

Ref: CO/C/070/2

FROM: Cabinet Secretary

TO: Minister for Natural Resources, Labour and Immigration

CC: The Premier
Financial Secretary
Permanent Secretary, Ministry for Natural Resources, Labour and Immigration

DATE: 23rd December, 2020

Lease of a portion of Crown Land for Commercial Purposes - Zimomi Limited
Memo No. 529/2020 (/memorandums/940)

Further to the decision made by the Cabinet on 23rd December, 2020, below is the amended decision taken by the Cabinet in respect of the captioned matter:

Cabinet decided:

- a. to subdivide Parcel 125, Block 2937B, Road Town Registration Section, which is adjacent to Parcel 124, Block 2937B, Road Town Registration Section, subject to the requisite approvals being obtained from the Town and Country Planning Department and the Lands and Survey Department;

- b. that permission be granted to Zimomi Limited, to lease a portion of Parcel 125, Block 2937B, Road Town Registration Section, which measures approximately one (1) acre or 43,557 sq. feet and is adjacent to Parcel 124, Block 2937B, for Commercial purposes, subject to the following conditions:
- i. Effective date of lease - date of parcel creation & registration by Land Registry
 - ii. Initial rent - to be determined following the completion of the Valuation Survey & subsequent report
 - iii. Term - ninety nine (99) years, with an option to renew for a further period
 - iv. Area to be leased - to be inserted once the relevant subdivision survey is completed
 - v. Rent Review Period - every five (5) years
 - vi. Rent Revision - 5% of the unimproved market value of the land
 - vii. Sub-Lease Payment - 2.5% of revenue collected
 - viii. Payment Due Date - 1st day of January annually
- c. that the cost of conducting the Valuation Survey and the preparation of the Valuation Report be borne by the applicant, Zimomi Limited;
- d. that the Statutory Survey Fee of eight hundred dollars (\$800.00) in accordance with the Fourth Schedule of the Statutory Rates, Fees and Charges Act, 2005, be paid prior to the execution of the lease;
- e. that approval from the Town and Country Planning Department and the Building Authority must be sought prior to commencement of the

development as well as for the proposed subdivision survey as governed by the Planning Act, 2004;

f. that construction of the building should be done to accommodate parking and the required setbacks on site; and

g. that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

Please be guided accordingly.

Ms. Sandra Ward

23rd December, 2020

Lease of Crown Land on Virgin Gorda to Pond Bay Development Corporation Limited

Signed

· 04 November 2019 · MNRLI · File: LAN. L4/160

· Mrs. Heather James-Skelton · Memo No. 531/2020

Background Information

1) On 15th March 1989, Executive Council via Extract Memo No. 48/89, approved 10 acres of Crown land for lease at Pond Bay, Virgin Gorda to Pond Bay Development Corporation Limited (hereinafter referred to as "PBDCL") for tourism-related development (**see Appendix A**). A lease was executed over Parcel 17, Block 5042A, Virgin Gorda Central Registration Section between the Crown and the Directors of PBDCL via Instrument No. 1043/199.

2) Upon further investigations, the Land and Survey Department reported that the points were not accurately installed as well as mathematical errors occurred while computing Cadastral Plan No. CA-5042A- 37-V. In accordance with the survey plan, the leased area was depicted as 7.78 acres as opposed to 10 acres. Due to this error, the Ministry instructed the Survey Department to revise the survey plan to ensure that 10 acres of land as stipulated in the lease was granted to the developers. As a result, Cadastral Plan No. CA-5042A-42-V was approved, which replaced the said plan. As per Mutation No. 68/2001, Parcel 81, Block 5042A (Lot 2) measuring 9.993 acres was demarcated for lease to the PBDCL (**see Appendix B**).

3) Notwithstanding this, PBDCL was prohibited from taking possession of the premises pending finalisation of the amended parcel, as there was an existing boundary issue with Little Dix Bay Hotel. Negotiations were conducted among all stakeholders in an

effort to provide the company with the correct acreage. The arrangement between Government and PBDCL was that the original lease would be surrendered and a new lease be re-issued giving effect to the new survey plan. In light of these arrangements, the annual rent for PBDCL would not fall due until it was afforded possession of the property.

4) By Extract No. 207/2003, Council advised that the original lease executed in 1991 be varied to reflect Parcel 81, Block 5042A, Virgin Gorda Central Registration Section as the new parcel to be leased as per the original Instrument executed in 1991 (see Appendix C). The Directors were notified of Cabinet's decision by letter dated 19th June, 2003. In preparation for the lease, a search at Corporate Registry revealed that PBDCL was registered on 7th March 1994, three (3) years after the execution of the original lease and had been struck off the Companies Register on 1st January, 1996 for non-payment of the corporate fees (see Appendix D).

5) The Attorney General was asked to provide advice on the matter. In response, he advised that the execution date of the lease, rendered both the original lease signing and the continuation of the leasehold interest invalid. The Ministry was advised to consult with the Directors of PBDCL to confirm whether the company would be re-instated in preparation for finalising the lease.

6) On 25th July 2003, the Ministry wrote to the directors of PBDCL to inquire if the company would be reinstated on the Corporate Register, and to provide a Certificate of Good Standing (see Appendix E). Subsequent to this, the Ministry wrote to the Attorney General to indicate that the Certificates of Good Standing, Incorporation and Incumbency would follow shortly. The Attorney General was therefore asked to provide a draft Variation of Lease to effect Cabinet's decision.

7) By memorandum dated 29th December, 2010, the Attorney General reiterated his earlier opinion that the original lease was void by virtue of the company not being incorporated and registered at the time of signing (see Appendix F). On 7th January, 2011, the Ministry wrote to PBDCL requesting the relevant documents required to proceed with the execution of the new lease (see Appendix G).

8) By way of letter dated 14th January, 2019, PBDCL wrote to request a new lease to be entered with the Crown for Parcel 81, Block 5042A, Virgin Gorda Central Registration Section (see Appendix H). Copies of the Company documents were attached to support the application.

9) The Land Register was rectified to delete reference to the Lease which is void. The register for the current parcel Parcel 81, Block 5042A, Virgin Gorda Central Registration Section, is attached as Appendix I.

Purpose

10) To surrender the existing lease due to its invalidity and to execute a new lease.

Cross-Ministry Consultation

11) The nature of this paper does not require cross-ministry coordination.

Financial Implications

12) The draft Cabinet paper, speaks more specifically to the approval and issuing of a new lease to Pond Bay Development Corporation Limited. However, it is noted that Pond Bay Development Corporation Limited is desirous of doing tourism-related development. This would suggest that there will be some benefits to the territory's economy with the enhancement of this tourism business by providing employment opportunities. If the development is executed, government stands to benefit through areas such as payroll tax, trade license fees, customs duty, and other applicable fees.

13) Should Cabinet approve the decision sought, the Ministry of Natural Resources, Labour and Immigration must ensure that the terms of the lease are strictly adhered to and should also advise the Accountant General of such to ensure that the asset is appropriately adjusted in Government's financial records in accordance with International Accounting Standards.

Legal Implications

14) We have reviewed the draft Paper and have discerned no adverse legal implications which would arise for Government if Cabinet is minded to decide in accordance with the decision sought.

Communication Strategy

15) The applicant will be notified of the decision taken by Cabinet via an official letter.

Conclusion

16) Cabinet is asked to consider and concur with the decision sought.

Decision Sought

Cabinet is invited to decide:

- a. that Pond Bay Development Corporation Limited be granted permission to lease Parcel 81, Block 5042A, Virgin Gorda Central Registration Section, measuring 9.993 acres as outlined on CA-5042A-42-V based on the following terms and conditions:
 - i. the Lease shall be for a term of ninety-nine (99) years effective 1st January, 2020 at a rate of \$100.00 per acre, per annum, to be paid annually in advance, commencing on 1st January each year;
 - ii. there shall be a rent review in the fifth year of the term, and every succeeding seventh year of the term;
 - iii. the annual rent should be calculated at no more than five percent (5%) of the unimproved value of the land;
 - iv. any under lease to be calculated at 2.5 percent of the rent paid; and
 - v. the Lessor agrees that the Lessee may develop the premises to provide tourism-related facilities which shall include, but not limited to, villas, luxury homes and/or townhouses.
- b. that the additional 15 acres of Crown land granted by Extract No. 207/2003 be delayed until Pond Bay Development

Corporation Limited has commenced development of Parcel
81, Block 5042A, Virgin Gorda Central Registration Section.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent
Wheatley
Minister for Natural
Resources, Labour
and Immigration
22 December 2020

APPENDIX A

Crown Land: Potential Criticisms – RESPONSE of the Hon. Minister

(All references are to the bundle accompanying the relevant Warning Letters unless otherwise stated)

	Potential criticism/RESPONSE	Evidence (references to page numbers in the hearing bundle)
1.	<p>On the available evidence, it appears that:</p> <ol style="list-style-type: none"> 1. There are no (or alternatively inadequate) published/written policies or guidance that set out the process to be followed by applicants when making an application to purchase or lease Crown land. 2. There are no (or alternatively inadequate) published/written policies or guidance that set out the process to be followed by the Ministry for Natural Resources, Labour and Immigration ("Ministry"), Minister for Natural Resources, Labour and Immigration ("Minister") and Cabinet when deciding whether to dispose of Crown land and, if so, the terms upon which such disposal should be made. 3. There are no (or alternatively inadequate) published/written policies or guidance which record the criteria which the Ministry, Minister and Cabinet should take into account when deciding whether to dispose of Crown land. 4. No and/or no adequate use has been made of valuation reports by the Ministry, Minister and Cabinet of valuation reports when deciding whether to dispose of Crown land, and if so, for what consideration. 5. Applications for Crown land are sometimes made with the encouragement and/or facilitation of a district representative which will include the Minister and elected members of the Cabinet. 	<p>Sixth Affidavit and Exhibit of Mr Joseph Smith Abbot dated 2 September 2021 ("the Affidavit") at pages 10 - 1199</p> <p>COI hearing transcript for Day 3 dated 7 May 2021 (pages 2808 – 2875)</p> <p>Disclosure from the Governor's office (pages 1200 – 1304)</p> <p>Disclosure provided in response to COI's Letter of Request to the Minister of Natural Resources, Labour and Immigration No. 2 and Letter to the Minister of Natural Resources, Labour and Immigration and Dr Potter to dated 10 May 2021 (pages 1311 – 2732)</p>
	<p>Points 1 & 2 (Published/Written Policies/Guidance on Process) RESPONSE</p> <p>a) It is correct that there are no published/written policies or guidance setting out the process for an application to lease or purchase crown land, save for the Marine Estate Policy</p>	<p>JSA6th/6.1 [15]</p>

Potential criticism/RESPONSE	Evidence (references to page numbers in the hearing bundle)
<p>b) The Ministry is in the process of producing guidelines to applicants for publication and has noted the suggestions of the former Governor made in his letters to me and to the Ministry dated 16 November and 18 December 2020. We will also consider producing guidelines for the Ministry and Cabinet.</p>	<p>Letters 19.11.20 & 18.12.20 [1299] & [1304]</p>
<p>Point 3 (Published/Written Policies or Guidance Criteria) RESPONSE</p> <p>c) It is correct that there are no published/written policies or guidance setting out the general criteria for an application to lease or purchase crown land.</p> <p>d) However, the Estate Land Committees' criteria are available and can be a useful guide. Some of those which have been used are set out in JSA6th/14.3-14.41 and 15.2 [19-27].</p> <p>e) In addition, there is Policy for the Management and Administration of the Marine Estate, to which I refer in the context of the Parcel 310 transactions, below.</p>	<p>JSA6th/11.1 & 13.1 [18]</p> <p>JSA6th/13.1 to 13.2 [18], 14.5, 14.11-14.12, 14.20, 14.31, 14.38-14.39 [19-26] and 15.2 [27]</p> <p>Letter 1st page penultimate paragraph [1294]</p>
<p>Point 4 (Valuation Reports) RESPONSE</p> <p>f) In the past valuation reports have been used for disposals for commercial purposes but not usually those for residential purposes.</p> <p>g) It was recognised that valuations should be used for residential disposals too, so from February of this year I have instituted the standing requirement that they are.</p>	<p>JSA6th/17.1 & 17.12 [27 & 29]</p> <p>JSA6th/17.3, 17.4 (a) and (b) [27-28] & 17.13 [29]</p>

Potential criticism/RESPONSE	Evidence (references to page numbers in the hearing bundle)
<p>h) The particular approach to valuation by the Estate Land Committees and the historical context from which that has arisen, is described in JSA6th.</p>	<p>JSA6th/14.4, 14.10, 14.18, 14.24, 14.29, 14.34-14.35 [19-25], 17.4(c) & 17.5-17.11 [28]</p>
<p>Point 5 (Encouragement/Facilitation of District Representative) RESPONSE</p> <p>i) Direct applications to the Ministry are sometimes made with such encouragement or facilitation.</p> <p>j) However, the application then has to go through an application process involving 5 different Government departments.</p> <p>k) District Representatives might be consulted for their local knowledge. However, any decision will be based on the individual's particular circumstances, their need and ability to meet the financial requirements, as I explained in my letter to the former Governor dated 11 November 2020.</p> <p>l) For example, where a recommendation was later made by me in respect of Spooner's Estate, to fill vacancies left by those who had failed in their obligations in respect of their allocations, the merits of those applications, in the context of providing housing support and promoting economic activity, were carefully considered before any new allocations were proposed to Cabinet (see Cabinet Paper Memo</p>	<p>JSA6th/4.3(a) [11]</p> <p>JSA6th/4.11 [13]</p> <p>Letter 1st page last paragraph [1294]</p>

	Potential criticism/RESPONSE	Evidence (references to page numbers in the hearing bundle)
	No.156/2020 paragraphs 5) and 6)).	JSA6th/14.17 [21], JSA-7/307 [361]
	<p>In light of the above, there is an absence of any effective fetter on the exercise of i) the Minister's decision as to whether or not to recommend a disposal of Crown land to Cabinet and the amount of consideration to be paid in respect of any such disposal and ii) Cabinet's decision as to whether to make a disposal of Crown land and the amount of consideration to be paid in respect of any such disposal.</p> <p>The process and procedures for the disposal of Crown land are neither open nor transparent and it does not make for consistent decision making. This risks decisions being made on an inconsistent basis utilising variable (including subjective) criteria and is without any (or, at least, any adequate) safeguards to prevent abuse.</p>	
	<p>RESPONSE</p> <p>m) As I have already pointed out at paragraph i) answering Point 5 above, the approval of applications engages the involvement and scrutiny of 5 different Government Departments.</p> <p>n) However, the desirability of making improvements in order to conform better to the principles of good governance, is recognised. Hence I have now insisted on a wider use of valuation reports, to which we have referred at paragraph g) answering Point 4 above and the steps which are to be taken to produce guidelines for applicants and for the Ministry, an initiative to which I have referred at paragraph b) answering Point 2 (above). In addition, the draft Virgin Islands Land and Marine Estate Policy (2018) will be strengthened to</p>	

	Potential criticism/RESPONSE	Evidence (references to page numbers in the hearing bundle)
	<p>publish policies, guidelines and criteria for the management of Crown Lands. In particular, the Crown Land Management Plan is to be produced. We will also, for the first time in the history of the Virgin Islands, be creating a 'Land Distribution Programme' which will be part of the next budget.</p> <p>o) The particular approach to valuation by the Estate Land Committees and the historical context from which that has arisen, is described in JSA6th. Paragraph h) answering Point 4 (above), is repeated.</p>	See the Land and Marine Estate Policy 3.1 [494]ff at [513]
	<p>The processes and procedures that are adhered to by the Ministry, Minister and the Cabinet when making decisions surrounding the disposal of Crown land are inconsistent with the principles of good governance; and the identified evidence set out may fall within paragraph 1 of the COI Terms of Reference because, when taken as a whole, it may amount to information that corruption, abuse of office or other serious dishonesty in relation to officials (notably the Minister and elected members of the Cabinet) may have taken place in the form of action being knowingly taken other than in the public interest.</p>	
	<p>RESPONSE</p> <p>p) The answers given at paragraphs m)-o) (above) are repeated.</p> <p>q) I presume that the words "<i>evidence set out</i>" refer to the material set out in respect of Point 2, which I deal with below.</p>	
2.	The transactions which led to the grant of a lease of Crown land (Parcel 310, Block 2938B, Road Town Registration Section) to	The Affidavit at pages 10 –1199

	Potential criticism/RESPONSE	Evidence (references to page numbers in the hearing bundle)
	Mr Bevis Sylvester	
	<p>r) Within a few months after I had become the Minister, in 2019, my permanent secretary briefed me on a dispute that existed in connection with a parcel of land, of which two separate parties had asserted a right to be granted a lease.</p> <p>s) Parcel 310 lies between the sea and a plot of land (Parcel 221), held by Delta Petroleum ("Delta"). Parcel 221 straddles the west bound, southern carriageway of Walter Francis Drive. The Delta gas station on parcel 221, is situated on an 'island' in the middle of Walter Francis Drive.</p> <p>t) Parcel 310 is now reclaimed land. It was reclaimed by the spoil from Government road-building operations. That reclamation interposed itself between Parcel 221 and the sea, preventing Delta's seaward access to Parcel 221. Since then, Delta had consistently asserted its right to have the opportunity to be leased the reclaimed land.</p> <p>u) Despite that claim, in 2007, the Executive Council decided to grant a lease of Parcel 310 to Nature's Way. Nature's Way was informed of that decision, but no lease or conveyance was executed.</p> <p>v) Delta objected to that decision and refused to grant an easement over Parcel 221 to give access to Parcel 310. This meant that the Government had to seek an</p>	<p>see plan [1207A])</p> <p>see plans at [1201] and [1206]</p> <p>[1145-1148]</p>

	Potential criticism/RESPONSE	Evidence (references to page numbers in the hearing bundle)
	<p>owned, or had a long-term interest over, land already adjacent to the foreshore should be given primary consideration when it came to leases of reclaimed land. That approach had been applied in other instances in which the seaward access had been removed by Government action. For example, in respect of the hotel 'Maria's by the Sea' in Road Town, the harbour was dredged by the Port Authority to accommodate the expansion of the cruise pier, and the sand and fill were deposited on the seaward side of 'Maria's By the Sea', which, like Delta had previously enjoyed sea access. Maria's was offered the opportunity to lease the land. I understood Delta had asserted that any lease of Parcel 310 should have been offered to Delta <i>before</i> Nature's Way.</p> <p>z) At the same time, by the Executive Council decision in 2007, the Government had clearly promised a lease to Nature's Way, which, through no fault of Nature's Way, had not been granted. As a result of the advice I received, I understood that promise was likely to give rise to enforceable obligations against the Government.</p> <p>aa)At meetings in 2019, the Ministry was expressly advised by the Attorney General's Chambers that a sensible way to resolve the competing claims might be to explore with Mrs Penn whether Nature's Way would be prepared to relinquish their claim to Parcel 310, in return for a grant of Crown land elsewhere.</p>	

Potential criticism/RESPONSE	Evidence (references to page numbers in the hearing bundle)
<p>bb) The Ministry followed that advice and having negotiated with Mrs Penn, arrived at the solution represented by Decision 386/2019, involving a grant of the freehold of Parcel 251 to Nature's Way, together with the Ministry's facilitation of the lease of kiosk at the Pier Park to Nature's Way at a favourable rate. Delta's claim was resolved, by granting the lease that Mr Sylvester had sought over Parcel 310, as per Decision 396/2019.</p> <p>cc)Based on the advice I had received, I believed these arrangements to be fair and in the public interest. The sole intention was to resolve a long-standing and potentially expensive dispute and to put Parcel 310 and parcel 251, to good use in the economic interests of the Territory.</p> <p>dd) Mr Sylvester is a Belonger (see the Revised Voters' List for the 6th Electoral District, attached).</p>	<p>[2303-2304]</p> <p>[1238-1239]</p> <p>[2300-2302]</p> <p>(See Attached Bundle pages 22-33, No 307 on p.32)</p>
Point 5 on page 9 of Appendix A	Pages 1241-1242
ee)I attach copies of the missing appendices to Cabinet Paper Memo No.396/2019	(see Attached Bundle pages 34-44)

I believe that the facts stated in this response are true

[Redacted Signature]

Hon Vincent M Wheatley

29 September 2021



Ref No. GOV/LAN/03

16th November, 2020

Hon Vincent Wheatley
Minister, Natural Resources Labour & Immigration
Road Town, Tortola
Virgin Islands

Dear Hon. Wheatley,

Files Returned to the Ministry with regards to Land Transfers

Thank you for your letter of 11th November, 2020 regarding the captioned subject.

I note your comments that the individual decision referring to transfer of lands were discussed and approved by Cabinet and that the Ministry carried out the instructions of Cabinet in preparing files for my review and signature. I am grateful for your Ministry's work in preparation.

As I am sure you will agree, it is important that comprehensive guidelines are in place to be used as a benchmark for anyone who is involved in the decision making process and would serve as an essential document, not only for me, but for my successor and it would serve as a guideline for the Attorney General's Chambers when providing comments and or advice on land matters. I assume that the Ministry is operating from guidelines that stipulate the priority of the allocation process, the selection process and the guidelines by which individuals are recommended to Cabinet for disbursement of Crown Land.

I look forward to receiving the guidelines used in the decision making process for all the outstanding matters pending my signature for Spooner's Estate, Anegada and Virgin Gorda.

I am grateful for the Ministry's work on this

[Redacted Signature]

Governor of the Virgin Islands

:cf

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Ref No. GOV/LAN/03

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18th December, 2020

Dr. Marcia Potter
Permanent Secretary, Natural Resources Labour & Immigration
Road Town, Tortola
Virgin Islands

Dear Dr Potter:

Land Distribution in the British Virgin Islands

Thank you for your letter of 18th November, 2020 regarding the captioned subject.

I note the current process provided for the distribution of Crown Land within the Territory as well as the notable changes highlighted as a result of the increasing demand for Crown Land over the years. I also note that the recommendations by the respective committees are guided based on land use, age and citizenship etc. which are supported by development plans that serves to further assist in decision making. I am sure we agree that such information is essential for persons involved in the distribution of land in the territory.

However, in keeping with our efforts to maintain transparency, as it relates to the equitable and fair distribution of Crown Land, I am seeking further clarity on the process outlined:

- What if any specific, tangible criterion is used by the committees, ministers and district representatives to determine how land is allocated? Who is eligible? How are lands apportioned? How do allocations support the economic development objectives of the Territory etc?
- What considerations are used when the Minister uses discretion and what are the rights and privileges that are granted as well as any other associated conditions?

I note that valuation reports now form the basis on which the cost for Crown Land is determined, however, valuations were not provided for any of the files submitted on 8th December 2020, please expound.

I feel compelled to reiterate the importance and need for comprehensive guidelines that would support the process and provide a fair and equitable system for decision making. I therefore look forward to your response to the questions and concerns posed as we seek to advance the outstanding matters and establish a framework that would enhance the overall land distribution process.

I am grateful for the Ministry's work on this.

Augustus J. U. Jaspert
Governor of the Virgin Islands

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VIRGIN ISLANDS LAND AND MARINE ESTATE POLICY

*Promoting Sustainable
Administration and
Management of Terrestrial/
Marine Natural Resources*



Vision

The establishment and implementation of the enabling framework (policy, laws and institutions) for the sustainable administration and management of terrestrial and marine natural resources so as to -

- ensure a safe, clean and pristine natural environment;
- conserve biodiversity and ecosystem integrity;
- maintain a distinct archipelagic landscape/seascape;
- maintain/strengthen a unique culture with strong affinity to land and natural resources;
- building and maintaining resilience to climate change;
- promote/advance balanced national development (sound/sustainable environment, social and economic development).

Guiding Principles

1. The terrestrial and marine natural resources of the Virgin Islands are the common heritage of all citizens, and it is their legal right and duty to ensure that such resources are responsibly managed and used in a sustainable manner for the benefit of present and future generations.
2. The duty to manage natural resources for the benefit of present and future generations is the responsibility of Government working in collaboration with all segments of society, including non-governmental organizations, the private sector, all residents and visitors.
3. The sustainable management of natural resources can only be achieved when fully integrated into the Territory's fiscal, physical and infrastructure planning development process.

VIRGIN ISLANDS LAND AND MARINE ESTATE POLICY

Promoting Sustainable Administration and Management of Terrestrial/Marine Natural Resources

1.0. Background and Context

The land and the marine estate form the base of The Virgin Islands' critical natural resources (that collectively make up the environment) and also underpin all social and economic activity. The importance of land as a resource to the Virgin Islander is highlighted in the first few paragraphs of *The Virgin Islands Constitution Order 2007* which recognises that:

"the people of the Virgin Islands have a free and independent spirit, and have developed themselves and their country based on qualities of honesty, integrity, mutual respect, self-reliance and the ownership of the land engendering a strong sense of belonging to and kinship with those Islands"

In its recent development history, the land and the marine estate have been perceived and treated as mere economic assets and have not been managed using a holistic approach. This policy seeks to rationalize management of the land and the marine estate within a comprehensive framework that appreciates, respects and balances both the natural resource and economic value of the same.

Significant progress has been achieved in many areas of environmental management within Organisation of Eastern Caribbean States (OECS) countries (to which the Virgin Islands is an Associate Member), most notably among these is the precedent-setting *St. George's Declaration of Principles for Environmental Sustainability in the OECS* (the Declaration) which was adopted through signature by Member States in April of 2001. The Declaration was informed by previous policy work that includes the 1992 *Rio Declaration on the Environment and Development*, and the *United Nations Programme of Action on the Sustainable Development of Small Island Developing States*, popularly referred to as the Barbados Program of Action (POA), concluded in Barbados in 1994 at the first Global Conference on the Sustainable Development of Small Island States.

The *Barbados Program of Action* and the *St. George's Declaration of Principles for Environmental Sustainability* both recognise that efficient and effective management of natural resources is essential to sustainable development, and both recognise the need for an integrated approach to managing natural resources. Article 24.1. of the *Revised Treaty of Basseterre*, signed on the 18th June 2010, provides that each OECS Protocol Member State shall implement the *St. George's Declaration of Principles for Environmental Sustainability* to minimize environmental vulnerability, improve environmental management and protect the region's natural (including historical and cultural) resource base for optimal social and economic benefits for Member States.

The *Environment Charter* of the Virgin Islands, concluded between the Territory and the United Kingdom on the 26th September 2001, includes guiding principles and a set of mutual commitments by the UK Government and the Government of the Virgin Islands in respect of integrating environmental conservation into all sectors of policy planning and implementation. The first two guiding principles recognise that all people need a healthy environment for their well-being and livelihoods which everyone has a responsibility to conserve and sustain, and the need to manage natural resources in a wise and fair manner for the benefit of present and future generations. Additionally, the guiding principles provide for the safeguarding and restoration of native species, habitats and landscape features. Under the *Environment Charter*, the Government of the Virgin Islands committed to ensure that environmental considerations are integrated within social and economic planning processes, and to promote sustainable patterns of production and

consumption within the Territory. The Government also committed to implement effectively those Multilateral Environmental Agreements extended to the Territory.

In order to further develop the policy and legal framework required to give effect to these imperatives under domestic and international law, the Virgin Islands has received support under two projects to develop a comprehensive policy and legal framework for the management of terrestrial and marine resources. The first project, funded by the Australian Government, sought to improve land policies and land management within the OECS Member States. Under this initiative, the Organization of Eastern Caribbean States (OECS) implemented a project for improving land policies and land management in its Member States. The project's goal was to achieve "enhanced sustainability of development in the OECS - economic development, poverty reduction, social stability and the protection of environmentally sensitive areas - through the formulation, adoption and implementation of comprehensive land policies." Under this project an evaluation of relevant issues was undertaken, as provided in the document *Land Management Issues in the Virgin Islands* (July, 2013).

Subsequently, the Virgin Islands secured support under the European Union funded *Global Climate Change Alliance (GCCA) project on Climate Change Adaptation (CCA) and Sustainable Land Management (SLM) in the Eastern Caribbean* which is organized to contribute to the achievement of the provisions enshrined in Article 24 of the Revised Treaty of Basseterre, that each Protocol Member State shall implement the *St. George's Declaration of Principles for Environmental Sustainability*. The overall objective of the OECS Project for island Resilience (**iLAND**), of which this initiative is a part, is to improve the resilience of the region's natural resource base to the impacts of climate change through the development and implementation of effective and sustainable land management policy frameworks and practices. The development, through a broad-based consultative process, of a policy for land and marine resource management, is one component of this project. A separate initiative is underway, with support under the OECS GCCA programme, to develop the associated legal framework for enhanced environmental management in the Virgin Islands.

**Land "administration", land "management", "sustainable land management" and
"natural resource management".**

Land administration is the process of determining, recording and disseminating information about the tenure, value and use of land, and facilitating the legal transfer of **land as an asset**.

Land management is the practices (legal, policy, institutional) and process for **managing** the use and development (in both urban and rural settings) of **land** resources to support social, economic and environmental development, and can be unsustainable leading to the depletion and degradation of land resources.

Sustainable land management (SLM) refers to practices, processes and technologies that aim to integrate the **management** of **land**, water, biodiversity, and other environmental resources to meet human needs while ensuring the long-term sustainability and resilience of ecosystem services and livelihoods including from threats due to climate change.

Natural resource management refers to the management of natural resources such as land, water, soil and sand, plants, fish and animals, with a particular focus on how management affects the quality of life for both present and future generations (stewardship). Natural resource management deals with managing the way in which people and natural landscapes/seascapes interact. It brings together land use planning, water and soil management, coastal resource management, biodiversity conservation, pollution control, and the future sustainability of human settlements and industries like tourism, agriculture, fisheries and commerce. It recognises that people and their livelihoods rely on the health and productivity of terrestrial and marine resources, and their actions as stewards of such resources play a critical role in maintaining this health and productivity.

The OECS Guidelines (June 2014) state that “a National Land Policy defines what actions a government intends to take in managing its land and related natural resources, including water resources, fisheries, forest and wildlife.” Experience from the region is informative. In Jamaica, the *National Land Policy* (January 1997) defined the main policy drivers as ‘sustainable, productive and equitable development, use and management of the country’s natural resources’, to complement socio-economic development initiatives of the country. The policy is to be achieved by challenging and removing ‘inefficient, onerous and outdated legal, administrative, management and other barriers that affect the planning, use, control, development, protection and conservation of Jamaica’s physical resources’.



In the Virgin Islands as in other ‘Small Island Developing States’ (SIDS) of the OECS, a comprehensive and inclusive approach to managing natural resources (terrestrial and marine) is relevant due to the very intense competition for such resources between settlements, rural agriculture, tourism and other infrastructure and preservation, in the face of accelerating rural-to-urban migration, population growth and climate change, including rising sea level. In developing the Terrestrial and Marine Management Policy for the Virgin Islands, it must be recognised that public policy is a course of action chosen by government to address a given problem, or a set of interrelated problems, for the achievement of declared objectives. Essentially, these constitute the key elements of any proposed policy for the management of the territory’s natural resources.

This Policy seeks to give effect to a fundamental legal right that has long been recognised in the Virgin Islands. The *Virgin Islands Constitution Order* (No. 1678 of 2007) established a new Constitution for the Virgin Islands, to replace the Constitution of 1976. Under Chapter 2 concerning fundamental rights and freedoms of the individual, Section 29 of the new Constitution, dealing with Protection of the Environment, provides as follows:

“Every person has the right to an environment that is generally not harmful to his or her health or well-being and to have the environment protected, for the benefit of present and future generations, through such laws as may be enacted by the Legislature including laws to-

- (a) prevent pollution and ecological degradation;*
- (b) promote conservation; and*
- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”*

2.0. Process to Develop the Virgin Islands Land and Marine Estate Policy

The development of the policy has been undertaken through a broad-based consultative process to ensure that any personal or party political biases are set aside in the process of policy formulation in order to ensure its widespread and enduring support. The process was guided by an Inter-agency Working Group, convened by the Ministry of Natural Resources and Labour. To avoid any perceptions of bias, the Ministry of Natural Resources and Labour appointed a team of international/regional consultants to assist with the development and drafting of the policy. However, ownership of the policy rests with the Ministry of Natural Resources and Labour and the Inter-agency Working Group, which led the process. An initial draft

of the proposed policy ('Green Paper') is to be presented for public comment before submission of a final draft policy ('White Paper') to the Minister and Cabinet for consideration. The White Paper will contain information about the likely scope and scale of any financial and legal implications of the proposed policy.

3.0. Key Issues to be addressed in the Policy

With support from the OECS GGCA programme, an assessment was undertaken of the key issues that need to be addressed in any proposed policy for the **administration** and **management** of the Territory's natural resources. These have been further evaluated and refined during the situation analysis undertaken to develop this document and are summarised below.

Sustainability

1. The Virgin Islands consists of 16 inhabited islands including Tortola, Virgin Gorda, Anegada, Jost van Dyke, Peter Island, Salt Island and Necker Island, along with over 50 other smaller islands and cays, altogether about 150 square kilometres (59 square miles) in extent and with 80 km of coastline. Like many Small Island Developing States (SIDS), the Virgin Islands must cope with challenges arising from limited areal extent, diverse topography and susceptibility to natural disasters. Most of the islands are volcanic in nature with many slopes, steep ridges and narrow valleys that are vulnerable to erosion and landslides. The highest point (Sage Mountain) rises to 1,780 feet above sea level. Anegada is a flat low-lying coral island which is extremely vulnerable to sea-level rise and coral loss from climate change. The majority of the population of 28,000 (estimated) reside on Tortola which has a population exceeding 23,000, with 63% of the workforce being foreign-born. Poor soils and scarce water supply limit the Territory's ability to meet domestic food and potable water requirements. In addition to the importance of protecting marine and terrestrial resources¹, sufficient land must be set aside for agriculture and for urban development, including settlement, commerce, light industry, tourism and related infrastructure, taking into account demographic growth, climate change and rising sea level. Balancing these competing demands on fragile and limited natural resources requires the establishment of a comprehensive legal and administrative framework for the sustainable management of all natural resources.



¹ The yachting industry, which relies on a pristine marine environment, brings in over US\$250 million in revenue annually and employs a large number of the local workforce.

2. Two distinct land development patterns are evident, each presenting its own environmental and social challenges. Firstly, residential development on steep slopes attendant with issues associated with access, costs of construction, and ongoing environmental problems related to soil instability on small steeply sloped parcels of land that transverse ghuts with seasonal fluctuations in water flows. Secondly, commercial and coastal/marine tourism development and associated reclamation in narrow coastal areas attendant with loss of mangroves, seagrass and corals, and ever-present pollution of coastal waters from land-based activities. Some stakeholders have commented that the Territory is fast reaching a tipping point whereby, if these unsustainable patterns of creeping unplanned development continue, the terrestrial and marine landscape will be irreversibly changed in such a manner that it will no longer support the unique social, cultural and economic development that constitutes the Virgin Islands.

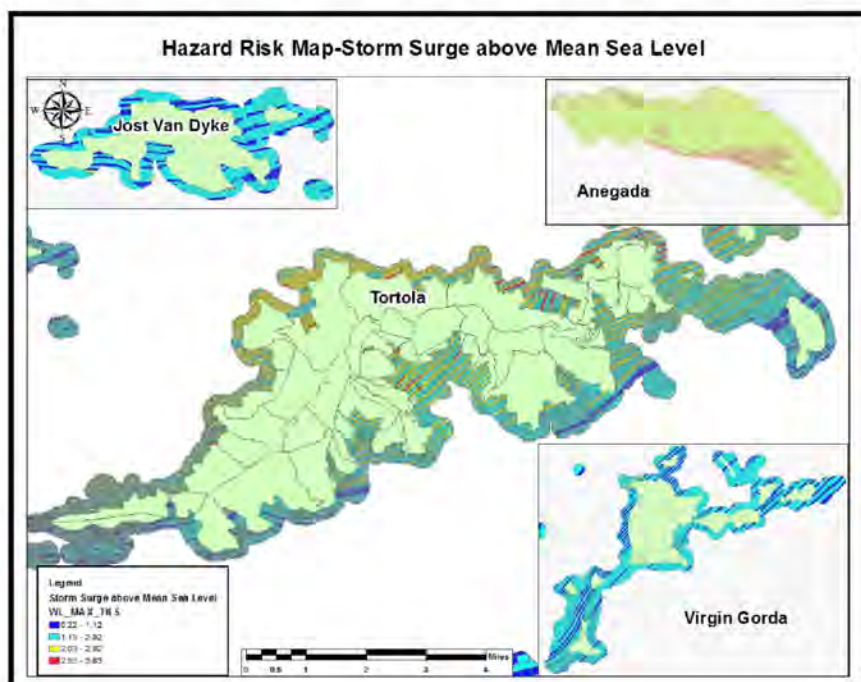


Sound Natural Resources Management and Use

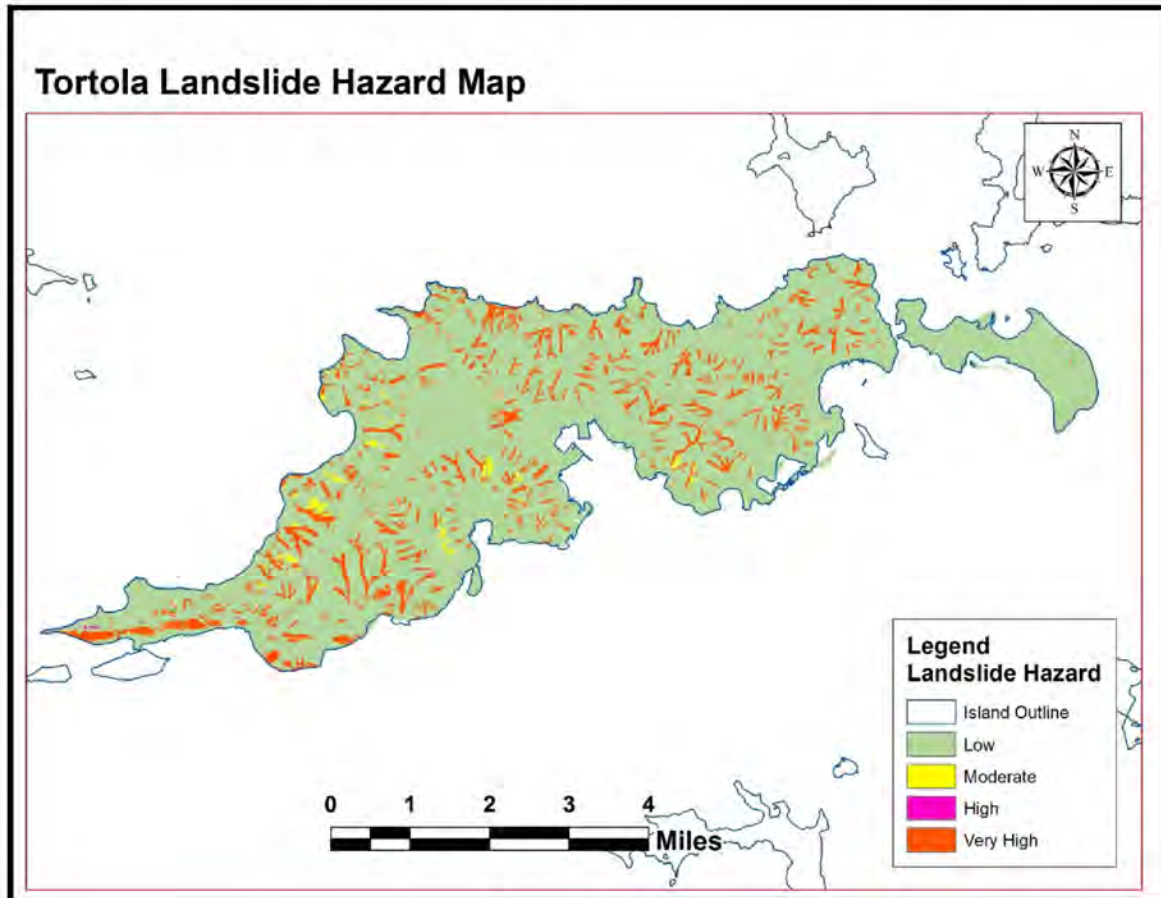
3. Lack of legal or administrative frameworks for sustainable resource management - Terrestrial and marine natural resources, including intermittent watercourses that drain the land (ghuts) and pristine coastal and marine zones, are a primary resource for the Virgin Islands and the basis for sustaining the livelihoods of its people. However, there exists neither legal nor administrative frameworks to facilitate the sound and sustainable management of terrestrial and marine resources. Sustainable terrestrial and marine management is concerned with the management of natural resources from an environmental and an economic perspective. There exists neither comprehensive legislation for environmental protection nor for the sustainable management of natural resources. The absence of such a comprehensive framework for sound management of natural resources results in development activities that affect the carrying capacity of existing natural resources, thereby undermining their long-term sustainability as a basis to support economic and social growth and development. The Ministry of Natural Resources and Labour is responsible for the effective management of the natural resources of the Virgin Islands. This function is carried out through the various departments and a statutory body (National Parks Trust) in the Ministry's portfolio. However, the work of the Ministry is not anchored in any national policy or legislation defining its role and responsibility in relation to the management of the natural resources of the Territory. The absence of such a framework has constrained the ability of the Ministry to proactively manage natural resources, control pollution and influence development activities that harm the environment, thereby reducing the ability of the Government to implement measures required to enhance resilience to climate change. In the absence of enabling legislation, the Ministry has limited ability to influence and inform the fiscal/national development planning processes and the capital investment programme that require and rely upon the sound management of all natural resources within the Territory.
4. Outdated/suboptimal approach to land administration and management - The current legal and institutional framework focuses on land administration, principally the process of determining, recording and disseminating information about the tenure, value and use of land, and facilitating the legal transfer of land as an asset. Existing laws for land and marine administration require updating and new laws need to be formulated. Rules and regulations to accompany land administration legislation do not exist or require revision, among other reasons to limit the discretionary powers of public officers. Institutions and agencies responsible for terrestrial and marine administration have overlapping responsibilities

established under outdated policies and legislation, resulting in duplication of effort and/or inaction in the absence of legal/institutional mechanisms for effective cooperation, coordination and enforcement.

5. Land scarcity - The steep topography that is the characteristic of most of the inhabited islands means that limited land is available for residential and commercial development. Additionally, short-term resale of land purchased by Belongers from the Crown for profit has reduced the availability of residential land for local residents.
6. Land affordability - The scarcity of land and the increasingly unaffordable price of land for Belongers, partly a result of wealthy expatriates and foreign companies purchasing and transacting land and fixed property, is creating social inequity and undermines the ability of Belongers to own land. The shortage of suitably priced land to support the construction of housing for Belongers has resulted in the Government and the Virgin Islands Social Security Board embarking on a "First Time Ownership Programme" using private land. Under this programme, nearly 200 acres of private land has been or is actively being purchased by the Social Security Board, some of which is held in trust for future sale, while other lots are subdivided for purchase by families with household incomes of less than US\$150,000 per year. However, the acquisition of parcels is not informed by a Land Management Plan for determining suitability or defining how lands should be used, and acquisitions by the Social Security Board have been decided using procurement guidelines geared to the sound financial management of the assets of the Board.
7. Suitability of lands for development - Small lot sizes that are subject to further sub-division through inheritance amongst family members creates special challenges for the planning of development. The historical absence of a National Physical Development Plan has resulted in a development pattern that does not recognise the suitability of lots to the proposed use and consequently often creates conflict from health and environmental impacts associated with varied, unplanned and largely unregulated resource use. In addition to areas that are dedicated to preservation and conservation objectives, there are parcels of land in the Virgin Islands that should not be recommended for certain types of development due to concerns related to hazards as the country is susceptible to a number of hazards including, *inter alia*, landslides, flooding, storm surge, volcanic activity, and the potential impacts from



tsunami. As a means of informing development, the Department of Disaster Management provides a service to the public by conducting a Hazard Vulnerability Assessment (HVA) of properties or proposed developments. However, this is not legally required², with the consequence that information affecting the viability of land for development is not made available to prospective buyers or developers.



8. Sprawl - The effects of the unsustainable pattern of creeping unplanned development that has taken place in the absence of a National Physical Development Plan and the definition of a suitable Natural Resource Management Framework (policy, legislation and administrative structure) are evident throughout the Territory. Poorly designed and managed residential and tourism development has resulted in reduced land values for owners, increased incidents of environmental degradation and costs for restoration and rehabilitation, and increasing conflict and litigation between neighbours.

² Although not legally required, it is standard for all development applications to be sent to Town and Country Planning where they will determine if the application will need an HVA. Proposed amendments to the *Physical Planning Act* seek to make the HVA a legal part of the application for development process.

Economic benefits of sound natural resource planning and management

A 270 acres parcel of private land on Tortola was recently developed for residential purposes. The Belonger family that owned the parcel retained an engineer who worked with Town and Country Planning Department and the Ministry of Natural Resources to subdivide the lot and develop a sound management plan that addressed key environmental issues associated with the lot, principally the need for access and lot utility for the proposed residential units, while also maintaining an attractive environment for future home-owners. Utilising the land as collateral to raise financing, the owners spent US\$4.5 million in developing the parcel, constructing an access road and creating green spaces, and established covenants to prevent environmental degradation and pollution. The value of each subdivided parcel of land before development was US\$35,000. After completion of the development, 135 acres comprising 72 lots were being sold for US\$225,000 each, achieving a 400% return on investment. The remaining portion of the original parcel has been left undeveloped for future use by the owner family. Not only was the value of the parcel considerably improved through sound natural resource planning and management, but risks, conflicts and potential litigation from environmental damage was also eliminated. The sound high quality development has also considerably increased the value of undeveloped land for the Belonger family and neighbouring land owners.

9. Comprehensive land use planning - The *Physical Planning Act*, Cap 214 requires among other things that development be guided by a National Physical Development Plan, and all development must be approved/permitted. Development plans were prepared in 1976, 1996 and 2005, but never approved. Cabinet recently approved a Needs Statement for the preparation of a National Physical Development Plan 2013-2025 with the completion time set for early 2014. The National Physical Development Plan is currently being finalised with support from the OECS GCCA program, and is expected to be completed in 2019. The formulation of the National Physical Development Plan and the sound management of natural resources requires the establishment of long-term policy goals and objectives to guide mid and long-term development planning, including goals for: (a) the conservation and protection of the cultural, aesthetic, and environmental conditions that constitute the unique marine and terrestrial landscapes of the Virgin Islands; (b) the conservation, protection and active management of terrestrial and marine natural resources and areas of cultural, historic and ecological value to support social and economic development and for the preservation and protection of biodiversity; (c) the identification of the proportion of land suitable for residential development that shall be reserved for ownership by Belongers.

Costs of Poor Planning

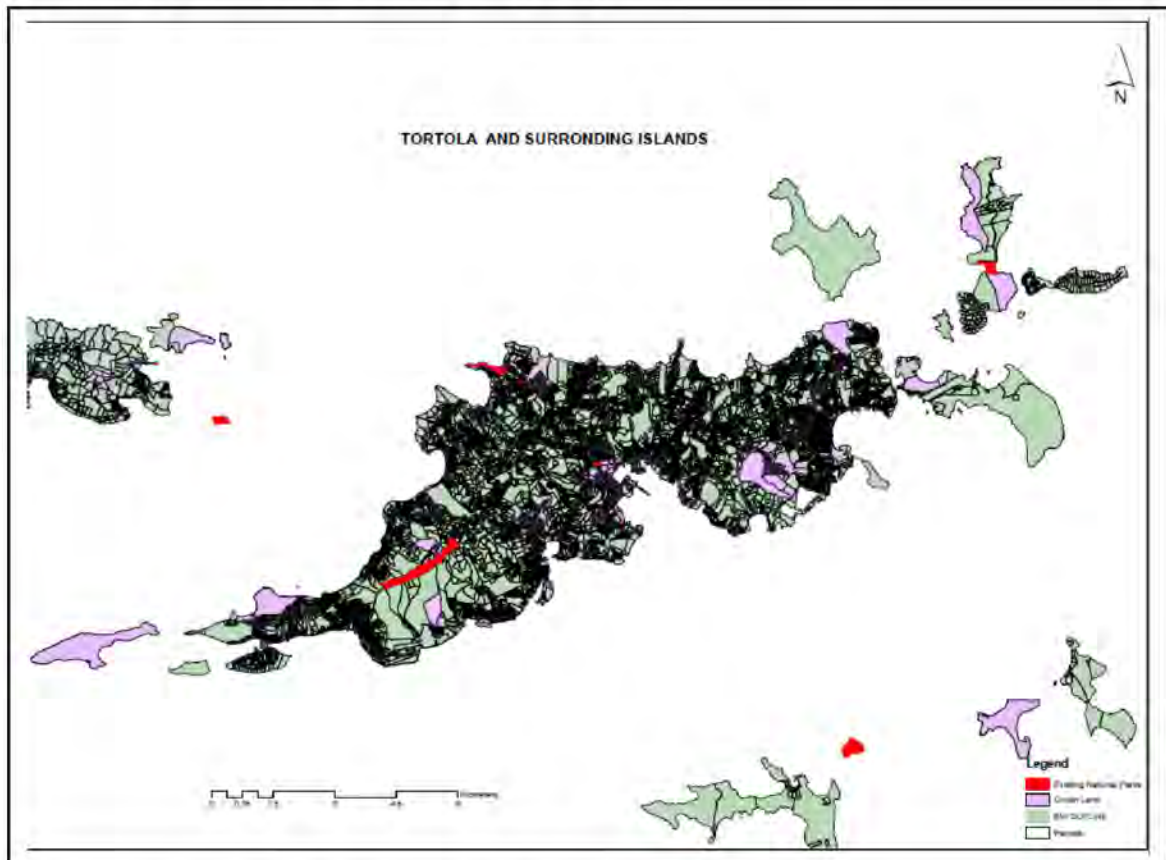
- Flooding event (13 November 2003) - 85 premises report total loss of \$3,600,000.
- Landslide event (8 November 2008) - boulder through restaurant - damage \$105,000.
- Landslide event (2 July 2010) - boulder hit moving vehicle - child injury - damage - \$275,000.
- Flooding event (6 October 2010) - 107 premises report total loss of \$2,200,000.
- Landslide event (13 November 2013) - boulder through home - damage - \$243,000.



Total loss of beachfront development on Anegada from erosion

Land and Marine Estate Administration

10. Small lot holdings / land fragmentation - The land mass of the Virgin Islands is comprised of approximately 37,000 acres which is divided into over 17,000 plots, approximately 78 percent located in Tortola. In terms of land size, over 75% of the land parcels are less than 1 acre in size and less than 3% over 10 acres. This fragmentation of the land resulted from the fact that at the time of Emancipation the plantation system had virtually collapsed and the planters left the island. The estates were divided and sold to estate workers and other locals, and these plots were passed down over the years as family inheritance or claimed by Prescription. The multitude of small privately-owned lots (particularly on Tortola – see map below) located in often inaccessible locations presents considerable challenges for Belongers, constraining ability of access, driving up costs for construction, and encouraging unsustainable and costly development patterns.



Map of Tortola showing small sizes of Parcels of Land (black lines)

11. Land ownership disputes - The shortage of available land combined with conflicting claims for existing private land presents significant challenges. The *Land Adjudication Act*, which was developed to facilitate the cadastral survey undertaken during 1967-1969, establishes a process for the resolution of conflicts concerning land title. However, the adjudication process under the Act has not been effectively utilised in recent times, creating an environment whereby conflict continues amongst persons laying claim to parcels of private land, land ownership remains unresolved, and parcels under dispute are often neglected or managed by one family member to the exclusion of others.

12. Management of Crown lands - Approximately 33 percent of all lands in the Territory are owned by the Crown, although Anegada, North Sound (Virgin Gorda) and Salt Island Crown lands (where this Crown ownership is concentrated) have a history of traditional use by indigenous families. Administration and management of Crown Lands includes both terrestrial and marine areas, each creating unique challenges. There exists no Management Plan to provide for the sound planning, management and use of Crown lands.
13. Private ownership of sensitive environmental areas - Historically, under common law water in water courses and the water (and land under the water) up to the highwater mark in coastal areas were common property to be managed by the Crown for the public good. However, the absence of any effective enforcement has resulted in most ponds and ghuts being infilled. The absence of a coastal resources management plan and legal framework to permit the active management of coastal resources and the marine estate continues to result in the loss of mangrove and seagrass areas, and damage and destruction of coral reefs that serve as natural coastal defense mechanisms and are important nursery ground for fish.



14. Seabed administration - The processes for managing physical planning associated with development that affects the seabed and the acquisition of sea-bed leases and licenses in areas that are Crown Lands are not harmonised. As highlighted in the draft *Marine Estate Administration Policy*, physical planning associated with developments in the seabed are administered and managed under processes established under separate legislation or administrative arrangements which operate in isolation³, with little opportunity for collaboration and coordination between key stakeholders responsible for managing the marine estate. This is a legacy of the historical “silo” approach to legislation and administration that does not recognise the necessity of an integrated and harmonised approach to the management of marine resources. Additionally, there exist no legislative framework for managing pollution in the marine estate.
15. Fees for seabed use - Fees are charged for mooring licenses in addition to areas of reclaimed land under Crown Leases of coastal marine areas, which in the latter case are based on the area or footprint of the reclamation, and in the former case the associated area of use on the seabed. The inability of the Survey Department to undertake underwater surveys to locate and define the underwater boundary of mooring licenses and reclamation activities has resulted in the practice that license and lease fees are only charged for the above water area for moorings and reclaimed land, causing significant loss of revenue to Government. Crown leases and seabed rights, mooring fees and jetty leases are very low and often

³ An example is the Technical Review Committee established under the Ministry of Natural Resources and Labour which is used for assessing applications for Seabed Licenses and Leases (not legally established process) and the Pre-planning Committee consultations coordinated by the Town and Country Planning Department under the *Physical Planning Act 2004*.

go uncollected. Existing rates were established many years ago and need to be revised to reflect current market values.

16. Public access to land data - There is limited public access to information that is required for sound administration of the terrestrial and marine estate. The current National Geographic Information System (NGIS) links key government agencies that have a common interest in accessing geo-spatial information for informed decision-making, including the departments of Inland Revenue, Land Registry, Town and Country Planning Department, Survey Department, Disaster Management, Conservation and Fisheries, and the National Parks Trust. The NGIS currently provides geospatial data on topography, cadastral surveys, land title, areas of special ecosystem value, construction and physical development, and hazard vulnerability from the disaster management perspective. However, such information is not currently accessible to the public⁴, nor the banking and insurance sector which needs such information for the management of risks associated with financing land transfers and ownership.
17. Management of Protected Areas - National Parks have existed in the Virgin Islands for over half a century. Established in 1961, the National Parks Trust (NPT) of the Virgin Islands is responsible for the preservation, conservation and management of the 21 designated protected areas of natural and cultural significance for present and future generations. The National Parks System Plan was approved in 2008 and tabled in the House of Assembly, but requires updating and approval. In the absence of an updated National Parks System Plan, there is a risk that other areas containing valuable terrestrial and marine ecosystems will be lost to development. The National Parks Trust has over the years developed a Mooring System dedicated to protecting the reefs and dive sites system which is complimented by an extensive system of commercial moorings managed through the Territorial Mooring Programme.⁵ However, the shortage of moorings has resulted in the situation that the over 2,000 local yachts and numerous foreign yachts using the Territory's coastal areas annually continue to anchor in sensitive areas causing damage to vulnerable corals, beaches and associated ecosystems.



⁴ However there are plans underway to develop a subscription base system to provide this service. .

⁵ There is a well-defined separation between day use moorings which are managed by the Trust and overnight moorings which are located within anchorages. Anchorages are managed by local businesses along the shore side. The Trust collects the annual licence which was initially the responsibility of the Ministry of Natural Resources and Labour. Commercial entities or individuals can apply for a mooring and the same would be passed on by the NPT to the Technical Review Committee (TRC) for consideration. The proposal from the TRC is forwarded to the Ministry and a Cabinet paper prepared for a decision on whether to grant approval or not. Cabinet has reserved the right to approve moorings within anchorages. NPT typically does not require permission to install day use moorings throughout the network of areas with environmentally sensitive resources.

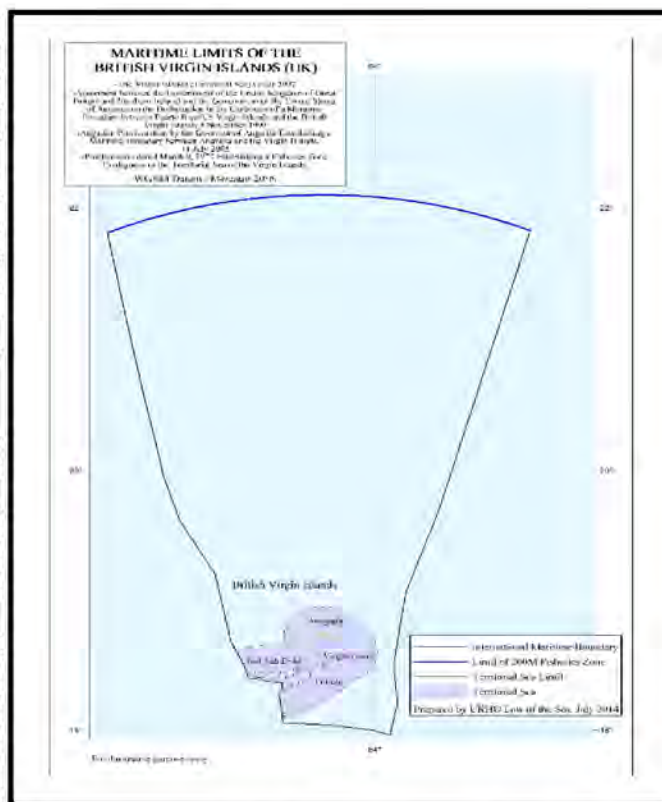
18. Comprehensive road planning and enhanced way leave system - Way leave is the process used when government negotiates with property owners for land for infrastructural purposes. Historically, the Ministry of Communication and Works and/or the Public Works Department would approach the land owner for the property, but the final transaction was then passed to the Ministry of Natural Resources and Labour to conclude the process. Under current administrative responsibilities the Ministry of Natural Resources and Labour manages the entire process. However, there exists no Road Network Master Plan to guide and inform the planning and development of roads including access roads for remote areas and landlocked residential lots, and for the design of easements for access.

19. Need for marine spatial planning and management - The *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America on the Delimitation in the Caribbean of a Maritime Boundary between Puerto Rico/US Virgin Islands and the British Virgin Islands*, which entered into force on 1 June 1995, establishes the maritime boundary of the Virgin Islands. The Exclusive Fisheries Zone (EFZ) of the Virgin Islands is 30,933 square miles. The Virgin Islands marine estate includes the ocean space of the Territorial Sea and the resources contained therein (e.g. living marine resources, minerals and other non-living resources) on and under the seabed.

Managing this expansive Marine Estate includes the conservation of coastal and marine habitats (wetlands, mangroves, coral reefs, seagrass beds) and coastlines including beaches, dunes and headlands together with salt ponds and ghuts connected to the ocean, administering seabed leases/licenses and land reclamation, the planning and management of sub-sea cables and territorial moorings for both public and private entities, the planning and management of ferry routes and

yachting to protect vulnerable marine habitats and prevent pollution, control of underwater treasures and historical artefacts and non-living resources, and the implementation of coastal ecosystem-based adaptation interventions to address risks from climate change.

Currently, the whole of the Marine Estate of the Virgin Islands is not planned for and managed in a strategic and integrated manner. The Competent Ministry - the Ministry of Natural Resources and Labour – is currently working on updating the National Marine Estate Administration Policy, but does not have a marine resources management policy, nor a comprehensive Marine Spatial Plan together with an appropriate institutional and supporting legal framework. The recognition that the permission to use the seabed, its duration, general terms and conditions are contained in a myriad of legally binding instruments has led to the re-assessment of the current situation and the recognition of the need to



approach Marine Estate Administration and marine resource management in a more strategic and integrated manner.

4.0. Policy Options

Based on the analysis undertaken as part of the *OECS Technical Assistance for the Establishment of National Land Policies* (OECS/GCCA/2016/SER-37), it became apparent that existing legal, administrative and policy constraints and gaps could not be remedied *without addressing the underlying structural root causes*, namely the absence of a comprehensive and integrated framework (policy, legislation, institutions) to better administer and manage the use and exploitation of the terrestrial and marine natural resources of the Virgin Islands. The only viable policy option is the adoption of a “Natural Resource Management Framework Option.” At the heart of the “**Natural Resources Management Framework Option**” is the recognition that historical efforts to manage land and the environment have focussed on administering the transfer of land as an asset and managing pollution/waste without addressing the underlying structural root causes of a number of priority issues, namely the absence of a comprehensive and integrated framework (policy, legislation, institutions) to better manage the use and exploitation of the terrestrial and marine natural resources of the Virgin Islands. In order to address the gap in the overall framework, it is proposed that the Natural Resources Management Framework be comprised of the following key elements, which will lead to greater synergy and effectiveness in natural resource management:

- a. The performance of **Natural Resource Inventories**, which geo-spatially catalogue and describe the biophysical, geographic and historical attributes of the Virgin Islands in order to enhance the understanding of the resource base;
- b. The creation and definition of an **Environmental Sensitivity Index (ESI)** that would be a geographic information system (GIS) based map covering the terrestrial, coastal and marine space and indicating the natural resources present in different areas/zones, including an indication of their quality, diversity, specialness, rareness, sensitivity etc. On this basis, the map should also indicate acceptable environmental impact thresholds for each area/zone. Environmental impact thresholds can be determined for discrete site characteristics/resources (e.g. water quality, mangrove cover etc.) and may be expressed in varying appropriate means such as change in quality or percentage loss in cover. The ESI should further include an analysis of appropriate development types, densities, scales, etc. based on the underlying natural resource characteristics and impact thresholds defined. The Inventory/Index should be legally mandated to feed into/inform the development of any National Physical Development Plan (NPDP) and local area plans and should be the basis for review of EIAs and HVAs. ESIs would harness the investment in the acquisition of inventories and geographic information systems and will guide decision making leading to improved means of achieving sustainable development goals; and
- c. The formal establishment of a robust **legal, regulatory and institutional framework**, which will strengthen and have at its core the protection of the natural resources of the Territory and which significantly takes into account biodiversity conservation, climate change adaptation and disaster risk reduction as central thematic areas of consideration in development planning and control.

It is essential that a policy be adopted for the management of the Marine Estate, and that the Ministry of Natural Resources and Labour be given legal standing to administer and manage the Marine Estate. In order to rectify this situation, the relevant provisions of the draft *Marine Estate Administration Policy* which fall under the jurisdiction of the Ministry of Natural Resources and Labour should be codified in the *Draft, Environment and Climate Change Bill* thereby establishing the legal framework to implement both the *Virgin Islands National Land Policy* and the draft Policy for the Administration of the Marine Estate.

An additional urgent priority is that the *Virgin Islands National Land Policy* establishes the legal and institutional framework that captures the spirit and purpose of Section 29 of the *BVI Constitutional Order*

2007, thereby empowering the Ministry of Natural Resources and Labour to put in place a regime to manage the natural capital of the BVI in an ecologically sustainable manner while promoting justifiable economic and social development. This policy intervention is based on the principles contained in the *Convention on Biological Diversity* where certain biological resources such as fish, corals, air, water, forests, beaches, minerals, and mangroves are treated as common property that need to be managed for the public good. This *legal status needs to be recognized in the Policy and the legal and administrative framework that is to be established as a key element of the Policy*. This policy intervention was presented to the National Land and Marine Estate Policy (NLMEP) Working Group of the VI for their consideration. There was unanimity that the “Natural Resources Management Framework” was the best policy intervention for the VI going forward.



Photo – Participants at NLMEP Working Group Meeting (9th March 2017).

5.0. Key Objectives of the Virgin Islands Land and Marine Estate Policy

The policy aims to:

- establish the framework for the sustainable, productive and equitable development, management and use of the Virgin Islands’ terrestrial and marine natural resources (inclusive of all islands and areas included in the foreshore, territorial waters and the exclusive fisheries zone) to complement socio-economic development initiatives of the Territory;
- define the framework (legal and administrative) to support the sound and sustainable development and management of the terrestrial and marine natural resources of the Virgin Islands for the benefit of present and future generations;

thereby removing inefficient, onerous and outdated legal, administrative, management and other barriers that affect determining, recording and disseminating information about the tenure, value and use of land and the marine estate, and facilitating the legal transfer of land and parts of the marine estate as an asset.

5.1. Strategic Objectives

The objective of the policy is to define and establish (within the next 5 years) the legal and institutional framework for the sound and sustainable administration and management of terrestrial and marine resources that is necessary to achieve (within the next 20 years) and maintain, the following measurable policy and strategic planning goals/outcomes for the environmentally sound and sustainable management of marine and terrestrial natural resources to support social and economic development:

- maintenance of the distinct terrestrial and marine landscape that constitutes The Virgin Islands, including:
 - i. no less than 50% of land suitable for housing development owned by Belongers;
 - ii. all beaches managed in a manner that conserves their pristine environment while ensuring public access;
 - iii. marine resources and coastal areas managed to preserve ecosystem resilience and biodiversity and support ecosystem-based livelihood and tourism activities;

- iv. no less than 30% of terrestrial and marine resources designated and actively managed as protected areas for the conservation of biodiversity;⁶
- pro-active management of the marine estate so as to conserve biodiversity, reduce pollution from land and marine based sources, and support sustainable and environmentally sound social and economic opportunities.

6.0. Time Period

The Policy defines measures to be taken over the next 5 years, and should be reviewed and updated every five years.

7.0. Policy Measures

The table provided in the following pages defines measures required to address inefficient, onerous and outdated legal, administrative, management and other barriers that affect the planning, management, use, control, development, protection and conservation of the Virgin Islands' terrestrial and marine natural resources.

⁶ By 2016 the Virgin Islands had declared 8.5% of its land and 0.1% of its marine areas as Protected Areas - according to the United Nations Environmental Program and the World Conservation Monitoring Centre, as compiled by the World Resources Institute based on data from national authorities, national legislation and international agreements.

**THE VIRGIN ISLANDS LAND AND MARINE ESTATE POLICY:
PROMOTING SUSTAINABLE MANAGEMENT OF TERRESTRIAL AND MARINE RESOURCES**

POLICY RECOMMENDATIONS FOR ADDRESSING IDENTIFIED ISSUES

A. LAND ADMINISTRATION AND MANAGEMENT

1. Lack of legal or administrative frameworks for sustainable resource management

Historical efforts to manage land and the environment have focussed on administering the transfer of land as an asset and managing pollution/waste without addressing the underlying structural root cause of a number of priority issues, namely the absence of a comprehensive and integrated framework (policy, legislation, institutions) to better manage the use of the terrestrial and marine natural resources of the Virgin Islands. There is an urgent need for the Ministry responsible for natural resources to be given a clear legal mandate for the management of the environment and natural resources, including land, and to formally establish a dedicated administrative entity to manage such resources.

Preferred Policy Options	Requirements	Responsibility	Estimated Cost	Implementation Start ⁷
1.1. Approval and implementation of the <i>Virgin Islands Land and Marine Estate Policy</i>	Requires High-Level political commitment, allocation of adequate resources (human, technical, financial) and development/approval/implementation of enabling legislation.	Ministry of Natural Resources and Labour in collaboration with other government agencies as detailed across policy options.	\$2,100,000 (Estimated cost includes all actions detailed below)	2018 ⁸ with ongoing implementation.
1.2. Undertake an evaluation to guide and inform the restructuring and capacity building of agencies involved in land and marine estate management to facilitate the implementation of this Policy.	Requires dedicated resources, enactment of enabling legislation, and possible restructuring/rationalisation of agencies involved in land and marine estate management.	Ministry of Natural Resources and Labour in collaboration with other government agencies.	N/A	2019
1.3. Complete the development/drafting, through broad-based public consultation, of comprehensive legislation for	<ul style="list-style-type: none"> Dedicated resources to complete the 	Ministry of Natural Resources and Labour in collaboration	\$50,000	2016 - ongoing -

⁷ The implementation timeline for the policy is anticipated to be 5 years. The policy was drafted in 2018, which will represent Year 0 along the proposed timeline and will not be accounted within the initial implementation period. The full implementation period will span 2019 -2024. The proposed implementation year further represents the starting year of the action.

⁸ Approval of the policy is anticipated to be secured.

climate change, environmental protection and the management of natural resources.	development and drafting of the legislation; • Public outreach and education programme to support the development, adoption and implementation of the legislation.	with the Office of the Attorney General and other government agencies with the technical assistance of an expert consultant.		
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2. Outdated/ suboptimal approach to land administration and management

The institutional arrangements between and within Ministries and Departments that administer and manage land and its development require better integration. In keeping with this, the legislative framework for management of development needs to be reviewed to facilitate improved institutional coordination.

Preferred Policy Options	Requirements	Responsibility	Estimated Cost	Implementation Start
2.1 Merge the Land Registry and Survey Departments into one governmental entity. Increase operational synergies between the nascent department and the Town and Country Planning Department. Merge the Planning Authority's Pre-Planning Technical Committee with the Ministry of Natural Resources and Labour's Technical Review Committee to create a single point of entry and technical review of any development proposal across the land and marine estates. Consider the viability, benefits and costs associated with integrating the Department responsible for Physical Planning within the Ministry of Natural Resources and Labour.	Cabinet Paper and Decision	Ministry of Natural Resources and Labour	Costs are embedded within the recurrent annual budget for MNRL	2019-2020
2.2 Establish a BVI-specific datum and densify the network of survey control stations and tidal gauges to increase survey-level accuracy, establish Mean Sea Level (MSL) and monitor Sea Level Rise	• Technical Assessment to determine BVI Datum and MSL	Ministry of Natural Resources and Labour in collaboration with other government agencies.	\$250,000	2019

	<ul style="list-style-type: none"> Tidal gauges for all major islands, including repairs and installation to existing network 		\$140,000	
2.3 Complete the development of an integrated, Land Information System, which incorporates the framework established under the National Geographic Information System (NGIS) Committee.	<ul style="list-style-type: none"> Computerization of the Land Registry and expansion of information available on the Land Information System to include all cadastral information, the natural resource inventory and hazard and vulnerability assessments undertaken by the Department of Disaster Management. <p>Part of this information has already been collected on a computerised Land Information System and requires the documentation of the metadata and policies governing data access and use.</p>	Ministry of Natural Resources and Labour in collaboration with the Department of Disaster Management (DDM)	\$150,000	2019
2.4 Develop and test a business continuity plan for land information services and train managers of data systems to protect against loss of spatial data needed for planning purposes	Internal discussions/meetings to agree on the plan. Internal training exercises conducted by agencies with led capacity such as TCP.	Entities making up the National GIS with support from the Department of Disaster Management.	Costs are embedded within the recurrent annual budget for BVIG	2019-2020
2.5 Coordinate the development of access and benefits sharing agreements to support the implementation of community natural resource management plans (see C.1. and Section 7.1.3. below), which would form part of development plans under the Physical Planning Act.	Technical Assessment	Ministry of Natural Resources and Labour in collaboration with Town and Country Planning	Costs are embedded within the recurrent annual budget for BVIG	2019-2020

2.6 Establish through legislation appropriate market and regulatory-based mechanisms ⁹ (e.g., increased land tax for abandoned poorly managed land which creates a risk to human health or the environment) and access and benefits sharing agreements (e.g. covenants running with the land that legally establishes sound conservation practices amongst multiple land owners in a subdivision) amongst private land owners to promote sound land management practices	Requires public consultation to define and agree upon appropriate market and regulatory-based mechanisms to be established through enabling amendments to the appropriate legislation. Consultations should include insurance and banking companies, realtors and Government agencies.	This policy intervention shall be undertaken within the next 5 years by the Ministry of Natural Resources and Labour in collaboration with Inland Revenue and other government agencies with the technical assistance of a consultant or expert.	\$50,000.00	2019
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3. Suboptimal Management of Crown Lands

There exists no Management Plan to provide for the sound and sustainable acquisition, distribution and use of Crown Lands. Publicly managed lands / public authorities are not collecting revenue / fees / dues. There is loss of revenue to government and limited mechanisms to address poor management practices on Crown lands.

Preferred Policy Options	Requirements	Responsibility	Estimated Cost	Implementation Start
3.1 Enact legislation that requires the Ministry of Natural Resources and Labour to develop and implement a comprehensive Crown Lands Management Plan, including plans for the short and long-term suitable uses of Crown Lands within the framework of a wider National Development Plan (NDP), and the identification of additional Crown lands that are required for essential public purposes. The Crown Lands Management Plan should include plans for the acquisition and disbursement of Crown Lands, and define sustainable financing mechanisms for Crown Land acquisition and the creation of a <i>Land Bank</i> .	<ul style="list-style-type: none"> • Dedicated resources and enabling legislation; • Public consultation to determine how Crown Lands should be used; • Formal linkages to the Road Infrastructure Master Plan (see 10.1 below); • In cases of pollution and degradation on Crown Land – appropriate enforcement provisions should be included in the proposed Natural Resources Management and Climate Change Bill (see 1.3.). 	This policy intervention shall be undertaken within the next 5 years by the Ministry of Natural Resources and Labour in collaboration with other government agencies.	Costs are embedded within the recurrent annual budget for BVIG and the formulation of the National Physical Development Plan	2019-2020

3.2 Develop a database of all Crown Lands and publically managed lands.	Dedicated staff, and resources within the Crown Lands Unit of the Ministry of Natural Resources and Labour and the Land Registry Department, Office of the Auditor General, Inland Revenue/Ministry of Finance and other revenue collecting agencies.	Ministry of Natural Resources and Labour in collaboration with the Office of the Auditor General and other government agencies.	Costs are embedded within the recurrent annual budget for BVIG	2019
3.3. Identify land parcels where revenue, fees and dues are to be collected and agency responsible for collection.				2019
3.4. Undertake an audit to ensure that the enforcement of penalties and the collection of these revenues is brought within a centralised public accounting and financial management system.				2020

4. Poor Seabed Administration

The Marine Estate of the Virgin Islands is not planned for and managed in a strategic and integrated manner. There are a multiplicity of stakeholders involved with the administration of the marine estate, often with conflicting or poorly defined responsibility. The Ministry of Natural Resources has no legal mandate for managing the Marine Estate. There is ongoing pollution and environmental degradation in marine and coastal areas.

There is poor implementation of valuation and revenue collection systems for leases and licenses in coastal areas. The inability of the Survey Department to undertake underwater surveys to locate and define the underwater boundary of mooring licenses and reclamation activities has resulted in the practice that license and lease fees are only charged for the above water area for moorings and reclaimed land, causing significant loss of revenue to Government. The expansive underwater area associated with the slope of reclaimed areas and the easement area in adjoining waters required for mooring use is not included in the calculation of license and lease fees. Additionally, existing rates were established many years ago and need to be revised to reflect current market values.

Preferred Policy Options	Requirements	Responsibility	Estimated Cost	Implementation Start
4.1 Complete the development/drafting, through broad-based public consultation, of: <ul style="list-style-type: none"> the <i>Marine Estate Administration Policy</i>; a comprehensive Marine Spatial Plan together with an appropriate institutional and supporting legal framework; Comprehensive legislation to implement the Marine Estate Administration Policy and Marine Spatial 	<ul style="list-style-type: none"> Dedicated resources to complete the development and drafting of the Policy and Spatial Plan; Public outreach and education program to support the development, adoption and implementation of the Policy and Spatial Plan. 	Ministry of Natural Resources and Labour in collaboration with Town and Country Planning Department and other government agencies.	\$300,000 (Marine Spatial Planning of the 200 nm/Territorial Waters of the Virgin Islands)	2019-2020

Plan leading to the establishment of the Exclusive Economic Zone				
4.2 Enhance revenue collection systems by: <ul style="list-style-type: none"> • upgrading capacity of staff to locate and define the underwater boundary of mooring licenses and reclamation activities in addition to the acquisition of bathymetric equipment; • periodically reviewing and updating rates for mooring fees and leases. 	<ul style="list-style-type: none"> • Dedicated resources to upgrade capacity of staff. 	Ministry of Natural Resources and Labour in collaboration with other government agencies.	\$350,000 Training and Equipment Costs	2020

5. Management of Protected Areas

The System Plan of Protected Areas for the Virgin Islands (which includes proposals for the declaration of areas under both the National Parks and Fisheries Acts and which was approved in 2008) is relevant. The declaration of outstanding areas is required. As a subsequent exercise, it can be updated and undergo approval, as outlined in the Act. If the areas recommended for protection within the plan are not declared there is a risk that other areas containing valuable terrestrial and marine ecosystems will be lost to development. The shortage of moorings has resulted in the situation that the over 2,000 local yachts and numerous foreign yachts using the Territory's coastal areas annually continue to anchor in sensitive areas causing damage to vulnerable corals, beaches and associated ecosystems.

Preferred Policy Options	Requirements	Responsibility	Estimated Cost	Implementation Start
5.1 Cabinet to urgently consider declaring and transferring all areas included in the presently approved National Parks Systems Plan.	The Ministry of Natural Resources and Labour to continue the process of declaration of areas presented to Cabinet to facilitate the transfer of all areas included in the presently approved Protected Areas Systems Plan.	Ministry of Natural Resources and Labour and the National Parks Trust in collaboration with other government agencies.	N/A	2018
5.2 The National Parks Trust to review and update the National Parks System Plan.	The acquisition of dedicated human, technical and financial resources for the National Parks Trust to review and update the Protected Areas System		\$250,000 (for the update of the coastal atlas and training of	2019-2020

	Plan.		staff in the creation of marine habitat maps from LIDAR and other sources of hydrographic data	
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6. Public access to information/data

There is limited access to information that is required for sound administration of the terrestrial and marine estate which is required by a variety of Government agencies, landowners, design and engineering professionals and persons outside of Government.

Preferred Policy Options	Requirements	Responsibility	Estimated Cost	Implementation Start
6.1 Make the proposed Land Information System available to all government agencies, landowners, professionals and persons outside of government through an online GIS portal.	<ul style="list-style-type: none"> Dedicated human, technical and financial resources to implement. Requires agreements to be concluded concerning sharing of information, privacy and cost sharing. 	Ministry of Natural Resources and Labour and the Town and Country Planning Department in collaboration with other government agencies.	Costs are embedded in the development of the system as per 2.3 on page 16	2019

B. LAND OWNERSHIP, ACCESS AND DEVELOPMENT

7. Land scarcity and limited affordability of land for residential development by locals and for agriculture

There are high land prices across the board, alienation of lands and reduced opportunities for locals or lower wage earners to purchase land. The Non Belonger Land Owners Licence process is not working effectively to help regulate the market.

Preferred Policy Options	Requirements	Responsibility	Estimated Cost	Implementation Start
7.1 Transform the existing land allocation programme into a sustainable one that leases lands to private developers at a concessionary rate and for long periods of time. Developers would be responsible for the construction of medium and high density affordable housing (multi-family, condominium type, etc., as opposed to individual homeownership) for resale or rent to own programmes. Part of the proceeds from the developer's sales would revert to Government for continued purchasing of lands for the same purposes. TCP shall work collaboratively with DDM to ensure that as a variety of housing styles are implemented and that the selected sites are assessed for natural hazard risks.	<ul style="list-style-type: none"> Dedicated resources to complete the development, drafting and implementation of a land allocation program. Public outreach and education program to support the development, adoption and implementation of the land allocation program. Dedicated resources to (a) identify land suitable for residential development; (b) negotiate agreements with private developers; (c) establish guidelines for development; and (d) oversee land allocation and ensure compliance with development guidelines. 	Ministry of Natural Resources and Labour and the Town and Country Planning Department in collaboration with the Ministry of Finance and other government agencies.	Costs are embedded within the recurrent annual budget for BVIG	2019
7.2 Develop a policy that addresses defaulting on repayment for currently allocated Crown Lands initially given out for first time homeownership to ensure the utilisation of the lands for the intended purpose. Government has invested in the allocation of former estates of Crown land which have not resulted in the development of	<ul style="list-style-type: none"> Dedicated resources to complete the development, drafting and implementation of a Policy on Crown Lands Repayments that supports the land allocation program (see 7.1.) 	Ministry of Natural Resources and Labour in collaboration with the Ministry of Finance and other government agencies.		2019

housing for low and medium income households. The lack of timely payment on allocated lands excludes the land from being developed by other potential applicants.				
7.3 Assess a shift in the land tenure pattern for Non-Belonger Land Holders from freehold to long-term leases. This would reduce the impact of Non-Belonger acquisitions on the affordability of land for locals/Belongers and should reduce the influence of Non-Belonger purchases on freehold market prices, keeping rates more affordable for Belongers.	Performance of an economic assessment of impacts of the proposed changes to the current practice.	Ministry of Natural Resources and Labour in collaboration with the Ministry of Finance and other government agencies.	\$75,000	2019
7.4 Consider the imposition of a greater property tax on the value of development through the NBLH Act (a % of the construction/appraised value).	Performance of an economic assessment of impacts of the proposed changes to the current practice.			
7.5 Facilitate consultations with the banking sector to explore the feasibility of options to lower down payments for mortgages to 10% of land and completed value of construction. This can increase the affordability of homeownership making the initial investment in acquiring land more attractive economically.	<ul style="list-style-type: none"> Dedicated resources to undertake consultations with the banking sector. 		Costs are embedded within the recurrent annual budget for BVIG	
7.6 Promote rent to own programmes and condominiums as alternative models for home ownership.	<ul style="list-style-type: none"> Explore mechanisms to incentivize a shift to this type of development. Public outreach and education program to support the development, adoption and implementation of alternative models for home ownership 		Costs are embedded within the recurrent annual budget for BVIG	2020

7.7 The Ministry of Natural Resources and Labour shall identify which parcels of Crown Lands are suitable for agricultural development or those that were previously allocated to farmers who are not utilising the same. Available land shall be made available to Belongers who are new to farming to be used for a farming enterprise. Previously allocated agricultural lands, such as in Paraquita Bay should be assessed for maximum use. If it is determined that the allocated land is unproductive or underutilised (below a pre-determined yield) it should be returned to the pool of available lands for future allocation to other eligible farmers. In addition, the Department of Agriculture should identify and work with private landowners to lease lands for agricultural purposes.	Requires inventory of Crown Lands and the identification of land suitable for housing development; assessment/identification of lands suitable for housing use; an evaluation and documentation of lessons learned from previous programs in particular how land for housing and farms have been apportioned in the past; agreement with local commercial banks to partner in the scheme; and public outreach program to promote the scheme (see 7.1.).	Ministry of Natural Resources and Labour in collaboration with other government agencies.	Costs are embedded within the recurrent annual budget for BVIG	2019
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8. Land ownership disputes

Long-standing family disputes over land ownership and title; fragmentation of lands into parcels too small to legally develop; associated legal rights/development expectations.

Preferred Policy Options	Requirements	Responsibility	Estimated Cost	Implementation Start
8.1 Make the proposed Land Information System available to all government agencies, landowners, professionals and persons outside of government through an online GIS portal.	<ul style="list-style-type: none"> Dedicated human, technical and financial resources to implement. Requires agreements to be concluded concerning sharing of information, privacy and cost sharing. 	Ministry of Natural Resources and Labour and the Town and Country Planning Department in collaboration with other government agencies.	Costs are embedded in the development of the system as per 2.3 on page 16	2018

8.2 Encourage owners of parcels too small to develop as housing/traditional developments to pursue other economically-viable uses of land.	Public outreach and education program	Town and Country Planning Department in collaboration with Ministry of Natural Resources and Labour and Government Information Services	Costs are embedded within the recurrent annual budget for BVIG	2019
8.3 Promoting medium density housing model (low-rise condominiums, townhouses) as an alternative to achieve independent property ownership (as opposed to families subdividing land into individual lots to build single family units);	<ul style="list-style-type: none"> Public outreach and education program Explore the application of incentives such as reduced import duty on building materials. 	Town and Country Planning Department in collaboration with Ministry of Natural Resources and Labour and Government Information Services	Costs are embedded within the recurrent annual budget for BVIG	2019
8.4 Reactivate the Land Tribunal by including the mandate within the proposed Sustainable Development Tribunal under the proposed <i>Environment and Climate Change Bill</i> (see 1.3.) as a mechanism to address disputes within families. Provide education to public about opportunities and mechanisms for dispute resolution .	<ul style="list-style-type: none"> Dedicated resources to operationalise and administer the Land Tribunal. Public outreach and education program 	Ministry of Natural Resources and Labour in collaboration with the Office of the Attorney General and the British Virgin Islands Bar Association.	Costs would be absorbed under the proposed Sustainable Development Tribunal called for in the Environment and Climate Change bill.	2019

9. Private “ownership” of sensitive areas and natural resources

Pressure to develop in environmentally sensitive areas (e.g. mangroves, coral reefs, salt ponds, ghuts), leading to loss of or damage to such areas or resources, and conflict over use.

Preferred Policy Options	Requirements	Responsibility	Estimated Cost	Implementation Start
9.1 Make provisions within the proposed <i>Natural Resources Management and Climate Change Bill</i> to: <ul style="list-style-type: none"> Declare certain resources (water, salt ponds, 	Requires public consultation to define and agree upon areas and resources to be declared as Environmentally	This policy intervention shall be undertaken within the next 5 years by the Ministry of Natural	N/A (cost covered under a previous project)	2018 - 2019

<p>mangroves, coral reefs, ghuts, wildlife) as common property to be managed by the Government in Trust for the benefit of present and future generations;</p> <ul style="list-style-type: none"> Require the designation and management of Environmentally Sensitive Areas (ESAs) and Environmentally Sensitive Species (ESSs) – including co-management plans where such resources are on private lands; Mechanisms for the establishment, management and financing of conservation easement and private conservancy areas Economic incentives for property owners to be good stewards of the land – e.g. small low/no -interest loans to invest in eco-tourism attractions that protect areas and demonstrate their ecological value. 	<p>Sensitive Areas (ESAs) (salt ponds, mangroves, coral reefs, ghuts) and Environmentally Sensitive Species (ESSs) (wildlife) under the proposed Natural Resources Management and Climate Change Bill, and resources for the development, financing and implementation of management plans for such areas and resources – including co-management plans where such resources are on private lands.</p>	<p>Resources and Labour in collaboration with other government agencies.</p>		
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10. Land access via unsustainable/poorly-planned road and utility networks

Majority of land holdings are small (under 1 acre), access to individual lots is on a subdivision by subdivision basis with no system to ensure coordination of road networks across subdivisions/wider areas, resulting in inefficient use of lands and poor road design/cuts not best suited to the mountainous terrain, ultimately resulting in poor drainage systems and runoff issues; lack of roadside reserves for installing adequate infrastructure – sidewalks, drainage, utilities.

Preferred Policy Options	Requirements	Responsibility	Estimated Cost	Implementation Start
10.1 Develop and implement a Road Infrastructure Master Plan in keeping with the National Physical Development Plan. This should include local area road network plans as a part of local area plans that will clearly establish the intended network of public	Requires dedicated resources and comprehensive inventory of public and private road and utility networks. Requires the establishment of an institutional framework between public and private sector partners (utilities,	Ministry of Natural Resources and Labour in collaboration with other government agencies.	\$150,000 (inclusive of the capacity to develop in house or through technical	2019

roads;	phones, water, electricity, etc.) that would coordinate and inform the planning processes to ensure that Road and Utilities Infrastructure Master Plans informs and guides the development planning process for subdivisions and individual parcels of land.		assistance)	
10.2 Develop and legally adopt guidelines/standards for road design, including drainage along roads	<ul style="list-style-type: none"> • Revisions to legislation • Dedicated resources to develop, adopt and implement road design standards and guidelines. . • Public outreach and education program 	Ministry of Natural Resources and Labour in collaboration with other government agencies.	\$30,000	2019
10.3. Develop guidelines and establish frameworks to facilitate smart road network planning and implementation within and across subdivisions - this may include provision of a toolkit (e.g. landowner contact information and sample agreements) that neighbouring landowners can utilize in forming and registering agreements. If such agreements are not in place, the state should take an active role in ensuring coordinated road networks through approval processes and pro-active community planning. In terms of implementation, private estate road design (including drainage) should require Building Authority approval. Absent independent landowner agreements, the state	<ul style="list-style-type: none"> • Dedicated human, technical and financial resources to implement. • Public outreach and education program 	Town and Country Planning Department in collaboration with the Public Works Department, Inland Revenue and other government agencies.	\$25,000 (Legal consultancy or can be done in house by Lands Officer)	2019

should take an active role in ensuring landowners share in the investment cost for private estate roads. Once a road development plan is approved and costed, benefiting land owners should be required to share in the cost through increased land taxes for a calculated period. These increased taxes should be held in escrow to recoup Government or private owner initial outlay in constructing the road.				
10.4 Enhance the way leaves process/relevant legislation to make it easier/automatic for the Crown to access lands in the typical road reserve area to install proper drainage and lay utility lines;	<ul style="list-style-type: none"> Dedicated human, technical and financial resources to implement. Public outreach and education program 	Town and Country Planning Department, Ministry of Communication and Works and Attorney General Chambers	N/A Costs are embedded within the recurrent annual budget for BVIG	2019
10.5 Develop and implement a comprehensive Utilities Infrastructure Master Plan to coordinate and rationalise the use of underground utility corridors in new development and reconstruction and to support for the implementation of the National Physical Development Planning process. ¹⁰		Ministry of Natural Resources and Labour in collaboration with other government agencies.	N/A (embedded in the existing NPDP development contract as part of the Capital Improvement programming)	2019
10.6 Enact legislation requiring common access easements for all residential lands, and joint ownership and title of access road be legally transferred to joint owners of the parcels within subdivisions.		Land Registry in collaboration with Town and Country Planning Department and the Attorney General Chambers	N/A Costs are embedded within the recurrent annual budget for BVIG	2020

¹⁰ Priority be given to burying electrical transmission lines and other utilities for new development and the introduction of renewable energy solutions (solar PV backed up with batteries for households, businesses, government buildings and critical infrastructure, including schools, clinics, and ports) to address shortcomings in electricity supply services – subject to cap to ensure adequate demand as determined by revised Integrated Development Plan being developed by the Rocky Mountain Institute.

10.7 Enact legislation to facilitate the formal designation and reclassification (on request) of private roads and public roads, with passing of associated legal ownership and responsibility.		Land Registry in collaboration with Town and Country Planning Department, Public Works Department and the Attorney General Chambers	N/A Costs are embedded within the recurrent annual budget for BVIG	2019
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11. Unmanaged, unsustainable, ad hoc development of land

- *Suboptimal land development decision-making and regulatory processes*

Land development decision making is not benchmarked against plans, policies, standards and guidelines and does not maximise the use of geospatial and information management technologies and hazard data that can reduce poor development practices and environmental degradation, whilst enhancing resilience. There is also an absence of incentives that would encourage sound land management practices during and after development. The need for an enhanced framework is urgent as 1) climate change presents a risk to the sustainable use of natural resources and land and 2) pressure to develop on vulnerable/high hazard sites like steep slopes and low-lying coastal lands remains high leading to erosion and inundation of coastal areas, landslides, and loss of water resources. During Hurricane Irma in 2017, it was estimated that 30% of buildings suffered major damage from wind damage. These were mostly old buildings or buildings constructed in an inferior manner or with poor quality materials. There were also a significant number of cases where structures were illegally built with no planning approval. Reconstruction is taking place in the absence of adoption and enforcement of the OECS Building Code which is hurricane resilient, resulting in sub-standard structures and a landscape that is vulnerable to future storms. There is need for enhanced coordination between TCP and the Building Authority in oversight of rebuilding following disasters.

- *Small lot holdings, land fragmentation, and conflicting land use mix throughout the Territory*

There are fragmented land ownership patterns, scarcity of suitable lands for various applications, and an absence of land use planning and a framework to ensure sound management of development and natural resources. There is a lack of coordination between physical planning and management of natural resources.

- *Sprawl and Need for Comprehensive Land Use Planning*

Unsustainable pattern of creeping unplanned development are evident throughout the Territory. Poorly designed and managed residential and tourism development has resulted in reduced land values for owners, increased incidents of environmental degradation and costs for restoration and rehabilitation, and increasing conflict and litigation between neighbours.

Preferred Policy Options	Requirements	Responsibility	Estimated Cost	Implementation Start
11.1 Develop and implement the National Physical Development Plan	<ul style="list-style-type: none"> The National Physical Development Plan is in preparation but may face political and public resistance to implement. Enabling legislation to provide that the Environmental Sensitivity Index (ESI) should be legally mandated to feed into/inform the development of future National Physical Development Plans (NPDP) and local area plans and should be the basis for review of EIAs and HVAs. 	The Department responsible for Physical Planning shall complete the National Development Plan, which shall be presented to Cabinet for consideration	N/A – covered under the iLAND Resilience Project	2019
11.2 Develop and implement Local Area Plans. (Plans should take into account land requirements for climate resilient business continuity plans for the yachting sector and other major industries, that have significant impact on land and land use implication. A Technical Working Group should be established to develop Continuity Plans before next Hurricane Season).	<ul style="list-style-type: none"> Dedicated human, technical and financial resources to implement. Public outreach and education program 	The Ministry of Natural Resources and Labour in collaboration with the Department responsible for Physical Planning	N/A Costs are embedded within the recurrent annual budget for BVIG	2018
11.3 Facilitate the development and implementation of Community Natural Resource Management Plans amongst land owners and users that have shared interest/ use of a natural resource that address conflicting resource use issues at local levels (See section 7.1.3. below)	Passage of the comprehensive Environment and Natural Resources Bill that shall facilitate the development and implementation of Community Natural Resource Management Plans and their integration into the physical planning and development process.	Ministry of Natural Resources and Labour in collaboration with the Town and Country Planning Department	N/A Costs are embedded within the recurrent annual budget for BVIG	2019-2020

11.4 Approve draft physical planning regulations to prevent developments that present an unacceptable risk of harm to human health or the environment.	<ul style="list-style-type: none"> • Dedicated human, technical and financial resources to implement. • Public outreach and education program 	The Department responsible for Physical Planning	N/A Costs are embedded within the recurrent annual budget for BVIG	2019
11.5 Formally incorporate the hazard and vulnerability assessment process into the development planning approval process. Promote and coordinate site specific land-based climate change risk and disaster reduction measures in development plans (e.g. site-specific drainage plans, terracing, wind breaks etc.).	<ul style="list-style-type: none"> • Enabling legislation • Dedicated human, technical and financial resources to implement. • Public outreach and education program 	Ministry of Natural Resources and Labour in collaboration with the Town and Country Planning Department and the Department of Disaster Management .	N/A Costs are embedded within the recurrent annual budget for BVIG	2019
11.6 Integrate Certificates of Environmental Clearance into the land development process	<ul style="list-style-type: none"> • Passage of the enabling legislation • Development of the Environmental Sensitivity Index 	Ministry of Natural Resources and Labour in collaboration with the Town and Country Planning Department	\$250,000 Cost to develop NRI and the ESI	2019
11.7 Enact legislation to enforce the <i>OECS 2015/2016 Building Code</i> .	<ul style="list-style-type: none"> • Draft legislation based on the outputs of the ongoing iLAND Resilience Building Code project to localize the administrative sections of the Building Code. • Dedicated human, technical and financial resources to implement • Public outreach and education program 	Public Works Department	N/A Costs are embedded within the recurrent annual budget for BVIG	2018-2019
11.8 Develop Sustainable Housing Models that focus on best practices for subdivision of land, development siting, road placement/cutting, foundation cutting etc. for use/adoption by developers.	<ul style="list-style-type: none"> • Dedicated human, technical and financial resources to implement. • Public outreach and education program 	Ministry of Natural Resources and Labour in collaboration with the Town and Country Planning Department	\$30,000	2019

7.1. Strategic Planning - Directives

1. In recognition of rights enshrined under Section 29 of the *Constitution*, the Government of the Virgin Islands shall enact at the earliest opportunity, laws to prevent pollution and ecological degradation, promote ecosystem resilience and conservation, and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development while addressing the causes and impacts of climate change.
2. The Ministry of Natural Resources and Labour, working in collaboration with other agencies and the public, shall establish and administer:
 - a comprehensive policy, legal and administrative framework for the sound and sustainable management of terrestrial and marine natural resources within the Territory (*see conceptual framework over*);
 - a coordinated process and information system for the management of projects or development activities that impact or affect terrestrial and marine natural resources or which may be affected by climate change or other natural disasters;
 - a process for integrating environmental protection and sound management of natural resources into the fiscal, physical and national development planning processes including the capital investment planning process.
3. Essential for the sustainable administration and management of terrestrial and marine natural resources of the Virgin Islands is improved information and data upon which sound decision-making can be based. Accordingly, the Ministry of Natural Resources and Labour will:
 - (a) establish and administer a coordinated process and computerised geo-spatial information system for the inventory and sustainable management of natural resources, the recording of land titles, leases and land transfers, and for the mapping of hazards from climate change;
 - (b) for natural resources of special significance such as watersheds, wetlands and mangrove, develop a natural resource management plan through community consultation and engagement in order to inform and guide future planning decisions concerning proposed development involving these resources;
 - (c) assist and support communities in the establishment of community natural resource management plans, community trust funds and the negotiation of access and benefits sharing agreements to facilitate the sound and sustainable management of natural resources at the local level.

The inventory of natural resources mentioned in paragraph (a) shall include an inventory of:

- i. geographic and topographic features;
- ii. soil types and geological formations including known mineral deposits and geothermal resources;
- iii. ecological systems and classifications, including:
 - (A) locations of nationally significant flora and fauna;
 - (B) locations of endangered species of flora or fauna, threatened ecological habitats, and biodiversity reserves;
 - (C) surface water catchment areas together with surface and sub-surface water reserves;
 - (D) wetlands, including salt ponds
 - (W) marine and coastal resources, including coral formations, mangrove areas, sand deposits, tidal estuaries, fish breeding areas and aquaculture areas;
 - (F) forestry resources and activities, including forest types and densities, and forestry management plans; and
 - (G) agriculture resources and activities, including, where appropriate, crop varieties, rotational routines, animal husbandry areas, and land tenure systems;

- iv. cultural, archaeological and historic sites;
- v. areas vulnerable to sea-level rise, storm surge, flooding, landslides, erosion, soil loss and land degradation, ecosystem degradation, and other significant risks from climate change.

The inventory of natural resources will be presented geo-spatially on a Geographic Information System (GIS) that shall facilitate:

- public access;
- the preparation of community Natural Resource Management Plans;
- the identification of lands suitable for residential and agricultural development;
- consultation and decision-making on climate change risk management options and priorities;
- the formulation and maintenance of community vulnerability maps to document risks at the local level from climate change and natural disasters that can facilitate the formulation of natural resource and climate change risk management and adaptation plans at the community level;
- development of an Environmental Sensitivity Index (ESI) which will inform the physical planning process
- the establishment of a Coastal Sensitivity Atlas that can facilitate consultation on the management of risks from pollution;
- monitoring and reporting on ecosystem resilience to impacts from climate change.

The community natural resource management plans mentioned in paragraph (b) shall serve to identify the most appropriate use for natural resources in the area and identify areas and management options for, inter alia:

- ✓ protection from the impacts of climate change;
- ✓ the protection of unique ecological, cultural and historic features;
- ✓ the conservation of biodiversity;
- ✓ the protection of ecosystems from desertification, degradation or soil loss;
- ✓ the maintenance and enhancement of natural streams, rivers and water supplies;
- ✓ the promotion of silviculture;
- ✓ agricultural activities;
- ✓ urban-settlement;
- ✓ where appropriate, mining and quarrying activities, commercial and industrial activities, transportation, service and communications systems;

and as such shall provide the basis for all sound resource planning, management and use decision making at the local level.

In undertaking these responsibilities, the Ministry of Natural Resources and Labour shall, within the next 5 years, establish a balance between natural resource administration that has historically been the focus of the work of the Ministry, and natural resource management which is required to address social, climate change and other environmental pressures on terrestrial and marine natural resources.

- 4. The Ministry of Natural Resources and Labour shall establish a Policy and Strategic Planning Unit to coordinate and guide the implementation and periodic review/revision of this Policy that shall be undertaken no later than every 5 years.
- 5. The formulation of the National Physical Development Plan under the *Physical Planning Act, Cap 214* shall provide for the sound management of natural resources through the establishment

of long-term policy goals and objectives to guide mid and long-term development planning, including goals for: (a) the conservation and protection of the cultural, aesthetic, and environmental conditions that constitutes the unique marine and terrestrial landscapes of the Virgin Islands; (b) the conservation, protection and active management of terrestrial and marine natural resources and areas of cultural, historic and ecological value to support social and economic development and for the preservation and protection of biodiversity; (c) the identification of the proportion of land suitable for residential development that shall be reserved for ownership by Belongers. Additionally, in order to inform and guide future planning decisions concerning proposed development for areas of special significance such as Anegada and Virgin Gorda, a natural resource management plan shall be developed through community consultation and engagement. The formulation and implementation of such community-owned natural resource management plans are necessary in order to achieve, and to prevent unsustainable development activities.

7.2. Terrestrial and Marine Natural Resources Management – Directives

1. The Ministry of Natural Resources and Labour shall, through a broad-based consultative process, conclude the development of the *Natural Resources, Environment and Climate Change Management Bill* that gives effect to this Policy which shall be presented to Cabinet for consideration no later than 2 years after the approval of this Policy.
2. The Ministry of Natural Resources and Labour, working in collaboration with the Town and Country Planning Department shall, for areas of special significance such as Anegada, develop a natural resource management plan through community consultation and engagement in order to inform and guide future planning decisions concerning proposed development.
3. The Ministry of Natural Resources and Labour shall develop legislation for the sound management of land in the Virgin Islands. The *Draft Natural Resources, Environment and Climate Change Bill* shall be reviewed and revised as necessary to establish the legal and administrative framework to implement the *Virgin Islands Land and Marine Estate Policy* and Marine Estate Administration Policy.

7.3. Land Administration - Directives

1. The *Land Adjudication Act* shall be revised to permit the designation of an “Adjudication Area” in the event of any dispute over land title, which would then trigger the adjudication process overseen by the Land Judge (Chief Registrar of Lands). Any persons who have legal title to any portion of the land in dispute would be exempt from such adjudication process.

8.0 Implications of the Policy

It is anticipated that the measures to be implemented under this policy will be financed to a large part, under existing projects and programs that are being implemented by the Ministry of Natural Resources and Labour. As an initial activity in support of this Policy, the development and drafting of the enabling legislation that is required to implement this Policy is being supported by a follow-on project under the European Union funded Global Climate Change Alliance (GCCA) project on Climate Change Adaptation (CCA) and Sustainable Land Management (SLM) in the Eastern. It is foreseen that additional costs required to transform to the conceptual framework will be provided within the operating budget of the restructured Ministry of Natural Resources and Labour and from financing through international sources that are available to support sustainable land management and climate resilient measures at the national and community levels.

Managing the Virgin Islands' Natural Resources in a Sustainable Manner (Conceptual Framework)

Measurable Results-based Goals (Indicators) in Policy to Guide SEED, MTFP, MTDP, NPDP and Resource Management/ Planning
(SEED - Social, Economic, Environment, Direction/Government; MTFP - Medium Term Fiscal Plan; MTDP - Medium Term Development Plan; NPDP - National Physical Development Plan)

DRIVERS *for Sustainable Management of Natural Resources*

- Basis for social and economic growth.
- Maintaining BVI competitiveness as a choice tourism destination.
- Quality of life and support for distinct culture.
- Section 29 of Constitution.
- Environment Charter.
- Multilateral environmental agreements (MEAs).
- Required to be implemented under existing policies (e.g. Climate Change Policy, Parks System Plan).
- Public and political recognition and support for sustainable resource management.
- Natural resources and environmental management legislation.
- Building resilience to climate change and disasters.
- SEED in the MTFP.

REQUIREMENTS *for Sustainable Management of Natural Resources*

- Harmonisation and rationalisation of existing policies.
- Establishment of policy, legal and administrative framework for sustainable management of natural resources and to implement the VI obligations under the various instruments to which the VI is a party (e.g. Environmental Charter, St. Georges Declaration, etc.)
- Provide the Ministry of Natural Resources with the legal mandate to put Policy in place to guide the sustainable management of all natural resources.
- Enactment of the relevant legislation to implement the Policy for the management of natural resources, environment and climate change.
- Inventory of all natural resources.
- Geo-spatial assessment identifying natural resources at risk or under stress (Environmental Sensitivity Index).
- Management Plans (national, local level and for individual resources at risk) to address risks to natural resources.
- Inventory and management plans inform and guide decisions concerning natural resource use.
- Information management systems legally established linking all resource users and regulatory agencies to natural resource inventory and management plans.
- Inventory and management plans serve as basis for all regulatory processes concerning natural resource planning, development and use.

ADMINISTRATIVE AND LEGAL FRAMEWORK *for Sustainable Management of Natural Resources*

- Ministry with legal mandate to develop, implement and keep policy and strategic plan for natural resources management under regular review.
- Agency at Department level with legal mandate for the management of all natural resources, for pollution management, and for the protection of natural resources.
- Policy and legislation for sustainable management of all resources (terrestrial and marine) implemented & reviewed on regular basis.
- Enhanced Land and Marine Estate Administration framework.
- Inventory of natural resources + Environmental Sensitivity Index (ESI) on legally constituted shared geographic information system shared by all agencies that have a regulatory mandate concerning natural resource use.
- Inter-agency consultative mechanisms (Pre-Planning Committee and Council on Climate Change, Environment and Sustainable Development) to ensure coordination and avoid conflict amongst regulatory agencies in the implementation of the natural resource management plans and in exercising regulatory functions concerning use of land and marine resources.
- Existing land and marine planning/use legislation and administrative framework harmonised to ensure that natural resource inventory and management plans guide and inform land and marine administration.
- Natural resource inventory, Environmental Sensitivity Index and management plans inform and guide National Physical Development Plan, three year national development plans, SEED and Medium Term Fiscal Plan, Capital Investment Plans. and Tourism Master Plan.

KEY:

Blue Text – already in place.

Green Text – partially in place.

Red Text – not in place.

Purple Text Box - Linkages to strategic planning mechanisms and processes.

The *Virgin Islands Land and Marine Estate Policy* has been developed with Technical Assistance provided by



ORGANISATION OF EASTERN CARIBBEAN STATES

**GLOBAL CLIMATE CHANGE ALLIANCE (GCCA)
PROJECT ON CLIMATE CHANGE ADAPTATION (CCA)
AND SUSTAINABLE LAND MANAGEMENT (SLM)
IN THE EASTERN CARIBBEAN**



Technical Assistance for the Establishment of National Land Policies

OECS/GCCA/2016/SER-37

RESTRICTED

**THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF THE
BRITISH VIRGIN ISLANDS**

E. C.: 133/96

M.P.: LAN L4/187

Date: 14th May, 1996

POLICY FOR MANAGEMENT AND ADMINISTRATION OF THE MARINE ESTATE

Decision Sought:

Honourable Members are invited to advise that policies be adopted for the future management and administration of the seabed in terms of statement attached as Appendices A and B.

Background information

1. In November, 1994 ExCo approved the adoption of general principles it was agreed that specific policies should be developed as a guide to future management and administration.
2. This draft Marine Estate Policy provides an overall framework for administration of seabed occupations. For the most part it is a statement of existing practice which has not previously been documented or formally endorsed; Appendix C provides a comparison of current and proposed practice.
3. For the information of Members, the rationales for this management policy are set out as an attachment to Appendix A.
4. Government's policy on General conditions of Tenancy states that standard conditions of tenure will be adopted for different types of occupation. Whilst specific conditions will be proposed to cater for different types of use (moorings, berths etc.), there are several conditions which should be common to all leases. These standards (as outlined in Appendix B) provide protection to Government and facilitate improved administration – rationale for these conditions is outlined in an attachment to that appendix.
5. It is proposed that the date of implementation of these policies be the date of approval by Executive Council.
6. It is important that members of the community be made aware of Government's policies in relation to the Marine Estate. A public awareness programme will be implemented by the Ministry of Natural Resources and Labour using the information brochures which are attached as Appendix D to this paper – see envelope.
7. Subject to adoption of this draft policy, use specific policy and tenure statements will be presented for approval by ExCo.
8. The adoption of these policies will set guidelines for the management and administration of Crown tenures. Just as importantly, administrators will have an unambiguous understanding of Government's objectives. The latter point is particularly important in training new (and current) staff, minimizing potential tenants. I therefore invite Honourable Members to endorse these proposals.

Minister
Natural Resources and Labour

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APPENDIX A

POLICY B1: ESTABLISHMENT OF BERTHS AT JETTIES OR DOCKS

Date of Authorisation:

Policy Statement:

Government encourages the establishment of fixed berths at jetties or docks as a means of ensuring safe berthing. The following criteria must be met before approval is granted to the construction of docks or jetties;

- 1) the applicant owns or has long – term tenure over the dryland from which the dock or jetty is to be established;
- 2) the water depth leading to the berthing are is sufficient to accommodate vessel access without dredging of the seabed;
- 3) the location of the dock or jetty will not present navigational access problems for users with existing rights to use the seabed for reclamation, construction of docks/jetties or establishment of moorings;
- 4) the construction of the dock or jetty will not have an adverse impact on the marine environment, particularly including vegetation such as sea grass or mangroves;
- 5) the foreshore area in which construction is proposed is not already used as a general area for public recreation;
- 6) the use of berths for ‘live –aboard’ accommodation would not have adverse environmental or public health consequences – and in the case of commercial occupancies, there are already established on-shore facilities for such occupants;
- 7) there are no pre-existing rights or use permissions which could conflict with the allocation of berthing sites.

Management Process:

Applications for the establishment of berths must be made on the appropriate application form and accompanied by the approved application fee. Each application will be reviewed in the context of the Water Use Plan for the area and the policy criteria outlined above- if there is no existing Water Use Plan, consideration of the application will be deferred until one has been prepared.

Recommendations on allocation are made following technical review of the application. The decision to allow the construction of berths is a matter of Government discretion. Even if an application meets all the policy criteria, Government reserves its right to reject the application.

The use and occupation of water areas is subject to regular review by the Ministry of Natural Resources and Labour, in conjunction with other agencies. The monitoring process will assess:

- ❖ Water quality in the associated water area,
- ❖ Navigational access and safety
- ❖ Authorised and unauthorized construction or use of berths.

APPENDIX B: BERTHS PACKAGE (2)

APPENDIX H: KEY POINTS TO ALLOCATION POLICY – BERTHS

	CURRENT	PROPOSED
APPLICANT TENURE	No requirement to link tenure of seabed with actual tenure of dryland	If dryland tenure is leasehold then Crown lease will issue only for term remaining on lease. Applicant must have reasonable tenure – i.e. greater than 10 years.
WATER DEPTH	Generally assumed by applicants that approval of a jetty will allow dredging	Dredging approval not automatic – application may be refused if water depth is not sufficient to accommodate vessels without dredging.
NAVIGATIONAL ACCESS	Assumption that applicant has water rights which follow the boundaries of any adjacent dryland and can therefore construct jetties almost up to the boundaries of adjoining properties	Proposed location will not impede navigational access for neighbors – particularly if there are proposals for development of adjacent water areas
PUBLIC ACCESS & USE	Assumption of ‘water rights’ if applicant has freehold land nearby (whether directly fronting water edge or across a road)	Variation of policy to provide that water rights are not automatic – if there is a well – established existing public use this must be accommodated or an application not approved- or if there is need for public use (eg berthing or beaching of fishing vessels) application will not be approved)
‘LIVE – ABOARD IMPACT	Not considered	Technical assessment will assume that a percentage of boats will be used as live-aboards – provision of suitable on-shore facilities will be reviewed as part of assessment
MONITORING	Use & occupation monitored only in response to conflict or complaint	Regular monitoring to ensure construction complies with Govt approvals – eg, length of jetties and siting of berths. Monitoring of on-going use re number of berths and usage

APPENDIX A: POLICY M1: ESTABLISHMENT OF MOORINGS ON CROWN SEABED- ALLOCATION

Date of authorization: < insert >

Policy Statement:

Government encourages the establishment of fixed mooring sites as an alternative to anchoring on the basis that use of such sites minimizes damage to the seabed and promotes safe berthing practice. The following criteria must be satisfied before seabed is allocated for the establishment of moorings:

1. anchoring in the water is creating (or would create) unacceptable damage to the seabed- such as drag of anchors through coral or underwater vegetation;
2. The immediate and surrounding areas of the seabed are suitable for the establishment of fixed moorings;
3. There is no reasonable alternative for long-term accommodation or storage of vessels- such as a jetty or dock;
4. The water area and surrounding dryland is a significant tourist or recreational destination – or is proposed to be developed as such;
5. There is no established fishing ground or nursery area which could be adversely affected by the development of fixed mooring sites;
6. There is capacity within the water area to designate haven anchorages in the event of storm or any other emergency;
7. The water area has been surveyed to identify such factors as depth, tide movement and the maximum number of moorings which could be established within the area;
8. There is reasonable access to and from the foreshore of dinghys;
9. Use of a portion of the water area for long-term ‘live-aboard’ accommodation would not have adverse environmental or public health consequences;
10. There are no pre-existing rights or use permissions which would be in conflict with the allocation of fixed mooring sites.

In general, applications will not be approved for the establishment of a single private mooring in an area not previously used for fixed moorings.

Management Process

Applications for the establishment of moorings must be made on the appropriate form and accompanied by the approved application fee. Each application will be reviewed in the context of the Water Use Plan for the area and the policy criteria outlined above- if there is no existing Water Use Plan, consideration of the application will be deferred until one has been prepared.

Recommendations on allocation are made following technical review of the application. The decision to allocate seabed for moorings is a matter of Government discretion. Even if an application meets all the policy criteria, Government reserves its right to refuse an application.

The use and occupation of water areas is subject to regular review by the Ministry of Natural Resources and Labour, in conjunction with other agencies. The monitoring process will assess:

- ✦ the environmental impact of established moorings,
- ✦ relocation requirement,
- ✦ redefinition of any special reserved areas,
- ✦ the potential for marine associated developments on dryland, and
- ✦ authorised and unauthorised occupation of the seabed.

Subject to the reports of environmental monitoring, occupants of mooring sites may be requested to remove, relocate or redesign their moorings.

APPENDIX G: KEY POINTS TO ALLOCATION POLICY

	CURRENT	PROPOSED
ANCHORING IMPACT	Unacceptable damage to seabed and habitat (eg coral or sea grass)	No change
SEABED STRUCTURE	Type of mooring proposed assessed against seabed characteristics to check for safety and suitability	No change
ALTERNATIVE TO MOORINGS	No alternative to provide long-term accommodation or storage	No change
LOCATION DEMAND	Location (& water area) is under high use for tourism or recreation or commercial purposes – or development is proposed which will increase use – also consideration of navigational safety	No change
FISHING GROUNDS	Considered but no priority assigned to fishing over boating	Protection of fishing grounds and fish nurseries to be given priority over boating
HAVEN ANCHORAGE	Not specifically considered unless there is high demand in the area	Area to be reserved for emergency anchoring
CAPACITY SURVEY	Capacity assessment made in terms of depth & no. of boats (assuming average size)	No Change
LIVE-ABOARD IMPACT	Not considered	Tidal movement & on-shore facilities to be assessed in view of potential for 'live-aboard' use
EXISTING USE	Applications generally reviewed on an ad hoc basis & with reference to water use only	Review of existing use & permissions (dryland & water area) to identify potential conflicts.
MONITORING	Use & occupation monitored only in response to conflict or complaint	Regular monitoring proposed against environmental factors & also identification of illegal occupation

APPENDIX B: BERTHS PACKAGE (3)

APPENDIX B: POLICY B2: TENURE CONDITIONS FOR BERTHS AT JETTIES OR DOCKS

Date of Authorisation:

Authority: Virgin Islands Constitution- Governor's power to dispose of Crown land followed by the issue of a registered Crown Lease on completion.

Conditions: Standard conditions apply irrespective of whether tenure is by licence or lease. The area occupied by the berths will be defined to include all berths within a single parcel for lease purposes.

The applicant must be able to prove ownership or long-term tenancy of the dryland from which the dock or jetty is to be established – and in the case of tenancy, this must be at least as long as the term of occupation granted under this policy.

Tenant status: **Private:**

The dock or jetty is to be constructed to provide a maximum of 3 berths and one or another of the following conditions applies in relation to the dryland from which the dock or jetty is to be constructed:

- ❖ The applicant owns and resides on the adjacent dryland
- ❖ The applicant holds a Crown lease over and resides on the adjacent dryland

Commercial:

One or all of the following apply:

- ❖ The berths will sub-let to a third party
- ❖ The tenant will derive an income by charging for the use of the berths
- ❖ The berths will be managed for the tenant by a third party
- ❖ The applicant is a company
- ❖ The vessels berthed are used for commercial purposes (such as chartering).

Term: Private – 20 years
Commercial – 40 years

Rent: Private - \$100 per berth per annum
Commercial - \$200 per berth per annum – each dinghy dock will be regarded as being the equivalent of one berth and charged at the appropriate rate.

Rent date: All sites have a common rental date of 01 March in each year. Accounts are sent 21 days in advance.

Rent review: The rental rate per berth is adjusted annually in line with the Consumer Price Index for the preceding 12 months (as published on 01 December). The revised rate is published in the Government Gazette and local media at the beginning of January in each year.

Every five years (commencing in 2000) the rent rate per berth is reviewed against market trends. All rates are adjusted at that time (whether by increase or decrease), irrespective of nature or length of occupation.

Renewal? No, leases are not subject to automatic renewal. A lessee wishing to continue to occupy the site must make application for approval to issue a lease, six months prior to expiration of the current lease.

Transfer? ## YES, licences or leases may be transferred to a third party.

Mortgage? ## YES, provided the site is held under a registered Crown lease.

Sub- lease? ## YES, licences or leases may be sub-let.

NBLH licence? YES, the usual requirements for the issue of the Licence must be met.

These are all subject to prior written consent by Government.

APPENDIX C: ADMINISTRATION AND IMPLEMENTATION

APPENDIX G: KEY POINTS TO TENURE POLICY

	CURRENT	PROPOSED
APPLICANT TENURE	Information sought on application form	Applicant must either own the adjacent dryland or have a long-term lease (private or Crown) whose term is as long as the term which would be granted for the jetty or dock.
TENANT STATUS	Distinction made in charges between private and commercial but terms not defined	Private – applicant owns or resides on adjacent land Commercial- applicant will derive income from third party use of the berths (direct charge, sub-letting, management) OR the tenant is a company.
TERM OF OCCUPATION	Not specified but generally 99 years	Proposed to be 20 years for private and 40 years for commercial
RENT	Licence fee per berth per annum: Private (\$50) Commercial (\$75) Lease fee per annum – flat fee irrespective of number of berths: private (\$150) Commercial (\$300)	Fees to be combined into a single rate per berth per annum: Private - \$100 Commercial - \$200 Same charge for licence or lease occupation
RENT DATE	All fees due on 01 January each year. -no accounts sent	Common rental date on 01 March in each year for all licences and leases- accounts to be sent 30 days in advance.
RENT REVIEW	Varies according to lease provisions – no standard for Government review	Annual revision in line with CPI Five yearly review against market rates
LEGAL IDENTIFICATION	Generally defined by an imaginary line across a whole water area	Survey to define actual structures and parcel number issued for the structures- exclusion of adjacent water area to maintain total Govt control over future use and allocation
ADMIN FEES	Single charge of \$100, irrespective of number of berths/jetties – called an installation fee	Charge to be renamed an Application Fee, increased to \$200 per application and payable in advance with lodging of application (non-refundable) in the event of refusal) – scaled fees for large applications which require more investigation.
NBLH LICENCE	Seems to be inconsistency in requirements	Provision of long-term tenure therefore licence required under the relevant act.

APPENDIX B: POLICY M2: TENURE CONDITIONS FOR MOORINGS ON CROWN SEABED

Date of authorization: <insert>

Authority: Virgin Islands Constitution – Governor’s powers to dispose of Crown land.

Tenure: Occupation Licence in the case of unsurveyed sites, to be followed by registered Crown Lease on completion of survey.

Conditions: Standard conditions apply irrespective of whether tenure is by license or lease.

Contiguous or adjacent sites will be held under a single lease unless separated leases are requested. A separate documentary fee will be charged for the issue of each lease.

Tenant status

Private: a maximum of three sites in a single location held for personal or family use.

Commercial: If one or all of the following apply –

sites are sub-let to a third party;

the tenant derives an income by charging for the use of the site(s);

sites are managed for the tenant by a third party;

the tenant is a company.

Term:

Private – 10 years

Commercial – 20 years

Rent:

Private - \$250.00 per mooring per annum

Commercial - \$450.00 per mooring per annum

Rent is charged annually and in advance per mooring. A penalty off 9% per annum will be levied for rents which are more than 21 days in arrears.

Rent date:

All sites have a common rental dated of 01 April in each year.

Accounts are sent 21 days in advance.

Rent review:

Rents per mooring are increased annually in line with the Consumer Price Index (CPI) for the preceding 12 months (as published in 01 January in each year). The revised rate is published in the Government Gazette and local media on 01 March in each year.

Every five (5) years, commencing 2000, the Government reviews the rate per mooring against market trends. All rents are adjusted (whether by increase or decrease) on the basis of that review, irrespective of the length of tenure prior to review.

Renewal?

No, licenses or leases are not automatically renewed at expiration. A new application must be made six months prior to the date of expiration.

Transfer? ## Yes, licences or leases may be transferred to a third party.

Mortgage? ## Yes, provided the site is held under a registered Crown lease.

Sub-lease? ## Yes, licences or leases may be sub-let.

NBLH Licence? Yes, the usual requirements for the issue of this licence must be met.

These are all subject to prior written consent by Government.

APPENDIX H: KEY POINTS TO TENURE POLICY

	CURRENT	PROPOSED
TENANT STATUS	Distinction made between private & commercial but terms not defined	Definition terms: Private- personal or family use to a maximum of 3 sites Commercial – company occupancy OR various conditions under which income is derived from the site/s
TERM OF OCCUPATION	Not specified- draft agreement implies year- by- year occupation	Private – 10 years Commercial – 20 years
RENT	Licence fee: Private & commercial at \$100 per mooring per annum Lease fee: Private - \$150 pa flat fee Commercial - \$300 pa flat fee	Fees combined into a rate per mooring: Private \$250 pa Commercial \$400 pa Same charge for licence & lease
RENT DATE	Fees due on 01 January – no accounts sent	Common rent date for fees of 01 April – accounts sent 21 days in advance
RENT REVIEW	No provision for rent review	Annual revision in line with CPI Five-yearly review against market rates
TRANSFER TO THIRD PARTIES	Not specified but assent assumed	Subject to written consent for the balance of the term remaining- requirement registered as incumbrance
RENEWAL ON EXPIRATION	Not specified	Renewal not allowed – new application to be made & grant subject to: environmental monitoring & Government priorities
MORTGAGE AND SUB-LEASE	Not specified	Subject to written consent of the lessor – requirement to be registered as an incumbrance
NBLH LICENCE	Not required due to yearly nature of occupation	Provision of long-term tenure therefore licence required under Regulation
LEGAL IDENTIFICATION	Mooring to be identified by approximation on plan	Mooring to be specifically identified by survey & parcel number issued
PRACTICAL IDENTIFICATION	Mooring to be marked for safety purposes – discussions on ID marking	Moorings to be painted white for safety & block/parcel no. painted on
ADMIN FEES	Single charge of \$100, irrespective of number of sites – called an Installation fee	Charge to be renamed as Application fee & increased to \$200 per mooring (scaled for large nos) to cover assessment costs
	CURRENT	PROPOSED
ANCHORING IMPACT	Unacceptable damage to seabed and habitat (eg coral or sea grass)	No change
SEABED STRUCTURE	Type of mooring proposed assessed against seabed characteristics to check for safety and suitability	No change
ALTERNATIVE TO MOORINGS	No alternative to provide long-term accommodation or storage	No change

LOCATION DEMAND	Location (&water area) is under high use for tourism or recreation or commercial purposes – or development is proposed which will increase use – also consideration of navigational safety	No change
FISHING GROUNDS	Considered but no priority assigned to fishing over boating	Protection of fishing grounds and fish nurseries to be given priority over boating
HAVEN ANCHORAGE	Not specifically considered unless there is high demand in the area	Area to be reserved for emergency anchoring
CAPACITY SURVEY	Capacity assessment made in terms of depth & no. of boats (assuming average size)	No Change
LIVE-ABOARD IMPACT	Not considered	Tidal movement & on-shore facilities to be assessed in view of potential for ‘live-aboard’ use
EXISTING USE	Applications generally reviewed on an ad hoc basis & with reference to water use only	Review of existing use & permissions (dryland & water area) to identify potential conflicts.
MONITORING	Use & occupation monitored only in response to conflict or complaint	Regular monitoring proposed against environmental factors & also identification of illegal occupation

APPENDIX C: RECLAMATION PACKAGE

POLICY R1: ALLOCATION OF THE SEABED FOR RECLAMATION

Date of authorisation: <INSERT>

Policy Statement

The reclamation of the seabed supports the economic development of the British Virgin Islands by increasing the stock of land suitable for development. Government therefore encourages the reclamation of the seabed provided the following criteria can be met:

- 1 the applicant owns or has long-term tenure over the dryland immediately adjacent to the foreshore;
- 2 the reclamation of the seabed will not lead to unacceptable environmental impact in terms of damage to mangroves, reefs or dryland habitat;
- 3 reclamation will not adversely affect public usage of the area for recreation or impede other commercial activities such as fishing;
- 4 there are no pre-existing rights or use permissions which could conflict with the allocation of the seabed for reclamation;
- 5 the applicant has the financial capacity to complete the reclamation (including bulkheading) within a reasonable time-frame.

Approval of an application for reclamation shall not imply approval for any of the following:

- 1 dredging to accommodate any subsequent development of the area as a marina;
- 2 establishment of berths, slips or haulout facilities in the water area immediately adjacent to the reclaimed land.

Management Process:

Applications for reclamation must be made on the appropriate application form and accompanied by the approved application fee. When reclamation is proposed as part of development of a marina which include establishment of berths and moorings, the applications for berths and moorings must be lodged at the same time as the application for reclamation.

Each application will be reviewed in the context of the Water Use Plan for the area and the policy criteria outlined above – if there is no existing Water Use Plan, consideration of the application will be deferred until one has been prepared.

Recommendations on allocation are made following technical review of the application. The decision to allow reclamation is a matter of Government discretion. Even if an application meets all policy criteria, Government reserves its right to reject the application.

The use and occupation of the seabed for reclamation is subject to regular review by the Ministry of Natural Resources and Labour, in conjunction with other agencies. The monitoring process will assess:

- impact of the method of reclamation on neighboring properties taking account of such factors as siltage from dredging (where approved), cleanliness and security of the site (including drifting of materials used for reclamation) and any impact on access to neighboring sites;
- containment of the reclamation to the approved acreage in terms of both overall acreage and recovery of seabed;
- progress against approved time-frames for reclamation and bulkheading.

APPENDIX C: RECLAMATION PACKAGE

KEY POINTS TO ALLOCATION POLICY - RECLAMATION

	CURRENT	PROPOSED
APPLICANT TENURE	Information sought on application for but tenure over seabed not linked to tenure over dryland	Applicant must have acceptable long-term tenure – and in the case of a lease, owner's permission to make an application for reclamation and written approval for establishment of easement access to any newly created land.
TERM OF OCCUPATION	99 years	No change
ENVIRONMENTAL IMPACT	Reclamation should not lead to unacceptable damage or destruction of natural environment	Restrictions on damage to or removal of mangroves to be specified as part of Water Use Plan together with other protections for the natural environment.
PUBLIC USE & ACCESS	Not generally considered if the applicant has 'water rights' gained by ownership of adjacent or nearby land	Concept of water rights to be modified to provide for overriding protection of well-accepted public usage of an area whether for recreation or other commercial activities (such as fishing)
FINANCIAL CAPACITY	Information sought on application but not followed up	Applicants will need to demonstrate financial ability to complete (including bulk-heading) within an approved time – eg, loan commitment letter from a financial institution
DEVELOPMENT TIME-FRAMES	Not generally specified or enforced – particularly in relation to commencement of reclamation	Reasonable start and finish dates to be enforced by licence conditions to ensure land is not left waste
MONITORING	Use & occupation monitored only in response to conflict or complaint	Regular monitoring of development against approved start and finish dates- also monitoring of extent of reclamation to ensure are not expanded without approval.

HOW WILL THIS AFFECT LOCAL DEVELOPMENT?

Government wants its citizens to share in the prosperity which can come from careful and sensitive use of the marine estate.

In deciding who can lease the seabed, Government will give preference to BVI Islanders or Belongers— particularly those who wish to undertake a commercial development.

To assist local entrepreneurs, there will be preferential rent rates for some types of seabed licences and leases.

HOW WILL THIS WORK?

Government is preparing specific policy and tenure condition statements for different types of seabed use.

If you are thinking of preparing a development proposal, call the Ministry of Natural Resources & Labour on 43701 xtn . . . - you can find out about:

- specific use policies (such as moorings, berths or reclamation);
- Conditions of tenure;
- Standard lease documents;
- Rents.... and more.

GOVERNMENT OF THE BRITISH VIRGIN ISLANDS

POLICY FOR THE MANAGEMENT ALLOCATION AND ADMINISTRATION OF THE MARINE ESTATE

Date of Authorisation:

WHAT IS THE MARINE ESTATE?

The beaches, territorial waters and seabed together make up the Marine Estate in the British Virgin Islands.

WHO OWNS THIS LAND?

The seabed, water and foreshore are vested in the Crown and can be regarded as part of the public land asset of this country.

WHAT IS GOVERNMENT'S ROLE

Government makes decisions on who is allowed to occupy and use the seabed for specific developments such as moorings, berths (at jetties and docks) and reclamation.

In making these decisions Government acts as the caretaker for current and future generations of this country.

WHY IS THE MARINE ESTATE SO IMPORTANT?

Access to clear beaches and pristine waters is one of the many advantages of living in the British Virgin Islands.

Our waters provide not only personal recreation but also a base for our economy—many of us make our living from the diverse marine activities (diving, boating, etc) that are part of our tourism ventures. Not forgetting, of course, the fishermen whose livelihood puts a variety of fresh fish on our tables.

To maintain our advantages we need to make sure that our marine assets are protected both now and in the future.

WHAT IS GOVERNMENT GOING TO DO TO PROTECT OUR MARINE ESTATE?

The policy set out in this brochure illustrates the planning approach which Government will adopt for all future marine-based proposals.

Standards for allocation of the seabed, its use and criteria for decision-making are now clearly documented for all current and future users of the marine estate.

By adopting standards, and forward planning, Government administration will be more efficient—and there can be greater emphasis on monitoring and managing development.

POLICY STATEMENT

Government's goal for the marine estate is to achieve harmonious development which does not compromise the marine environment.

It will achieve this by:

1. ensuring that the seabed, territorial waters and foreshore remain part of the public domain.
2. Requiring prior assessment of marine capability and sustainability (via Water use Plans) before any area of seabed is licensed or leased for development.
3. Linking approvals for the use of the seabed with the authorisations of the Development Control Authority.
4. Adopting standard contracts (licenses or leases) which clearly set out the requirements for use and development—and which can be enforced if there is any deviation from the contract agreement.

- * To avoid delays, ensure that all supporting documentation is provided with the application.
- * The documents needed to accompany your application are:

Individual Applications for moorings:

- α) A scale map showing the proposed location of the mooring(s); and,
- β) A drawing to show size/ weight of anchor/sinker; length of chain, etc.

For reclamation and jetties:

- α) A preliminary plan of proposed development;
- β) An Environmental Impact Assessment Study; and
- χ) A copy of the Land Register for the Parcel adjacent to where the development is to be undertaken.

Company Applications

The same information as indicated above as well as the following:

- α) Certificate of Incorporation
- β) Certificate of Good Standing
- χ) Annual Members Listing; and
- δ) Memorandum and Articles of Association.

Fees for Moorings:

Private: \$250/mooring per year (10 yrs)
Commercial: \$400/mooring per year (20 yrs)
Payment due April 1, each year

Fees for Berths:

Private: \$100/berth per year (20 yrs)
Commercial: \$200/berth per year (40 yrs)
Dinghy dock and barge ramps \$250.00 per year with same time period as above. Payment due March 1, each year.

Fees for Reclamation:

\$750.00 per acre year (99 yrs)
All rents are payable yearly and in advance on January 1. At the request of the lessee, the rent may be paid half-yearly in advance.

Dredging:

Environmental fee \$2,500.00
Any sand produced as a result of the dredging process attracts royalties of 20% of the selling price.

For more information, please contact us at:

*Government of the British Virgin Islands
33 Admin. Drive
Central Administration Complex
Road Town, Tortola
British Virgin Islands*

*Tel: (284) 468-0675
Or (284) 494-3701 Ext: [REDACTED]*

Fax: (284) 494-4283



Ministry of Natural Resources and Labour

PROCEDURES FOR APPLYING FOR PERMISSION TO:

RECLAIM THE SEA BED & INSTALL MOORINGS AND/OR JETTIES



THE USE OF THE SEABED

In the British Virgin Islands, the seabed within the 200 miles Exclusive Economic Zone (EEZ) belongs to the Crown. Development activities taking place in our EEZ include dredging, reclamation and installation of various marine structures such as moorings and jetties, barge ramps, docks and breakwaters. In the past, mineral and petroleum exploratory activities were conducted but have not been commercially exploited.



MARINE ALLOCATION POLICY

The seabed (both developed and undeveloped), together with the territorial waters and the foreshore, is the largest component of the Crown's estate in the British Virgin Islands. Use of this marine estate contributes to the economic well-being of the British Virgin Islands through the success of the tourist, recreational and commercial ventures associated with marine activities.

THE OVERALL MARINE ESTATE MANAGEMENT GOAL IS:

- ⇒ To achieve harmonious development which will not compromise the marine environment;
- ⇒ To minimize the environmental impact of development activities.

PROCEDURES

Phase 1

- ◇ Applications for moorings, reclamation and jetties are received at the Ministry of Natural Resources and Labour.
- ◇ A search of the records at Land Registry to determine ownership of the property adjacent to where the development is to be done.
- ◇ Copies of applications are sent to Conservation and Fisheries Department.

- ◇ The review of applications and research of site are carried out by Conservation and Fisheries Department.
- ◇ Applications are referred to the Technical Review Committee.
- ◇ The technical review Committee makes recommendations and informs the Ministry of Natural Resources and Labour.

Phase 2

- ◇ The Ministry of Natural Resources and Labour forwards recommendations to the Cabinet of the Virgin Islands for their approval.
- ◇ The Cabinet of the Virgin Islands makes the decision (approval or denial).
- ◇ The Ministry of Natural Resources and Labour issues a letter of approval with conditions or denial to you.
- ◇ The Ministry of Natural Resources and Labour by copy of the correspondence sent to you outlines the responsibilities of the Conservation and Fisheries, Survey and Town & Country Planning Departments and Building Authorities.
- ◇ Time frame for processing applications is 8 to 12 weeks (once all the requested information is supplied.)

Marine Estate Administration Policy



Contents

1. Commencement of this policy	3
2. Interpretation	3
3. Policy Aims	4
4. Values of the Marine Estate Administration Policy	5
5. General Principles of the Marine Estate Administration Policy	6
6. Environmental protection and mitigation for loss of biodiversity and ecosystem function	7
7. Climate Change Considerations	8
8. Disaster Risk Reduction Considerations	9
9. Planning and Administration of the Marine Estate	9
10. Types of Agreements	10
11. Public Rights of Access and Use	12
12. Types of structures and activities for which the seabed may be licenced or leased	12
13. Governance of Structures and Activities for which the Seabed may be licenced or leased	13
(i) Basis for the application of fees for the use of the seabed and punitive charges	13

1. Commencement of this policy

The Government of the Virgin Islands has over the years approved the use of the seabed and has subsequently entered into a number of licence and lease agreements, which govern the specific conditions that may apply in each instance. The policy acknowledges the fact that the duration, general terms and conditions are enshrined into a myriad of legally binding instruments. Notwithstanding, the policy, where relevant, seeks to clarify future agreements and those which may be considered for renewal. Moreover, it aims to regularize general matters related to the administration of the seabed, reiterates the fundamental need to balance the integrity of natural resources against economic development, articulates the need to consider the manner in which climate change and disaster risk reduction should factor into decision-making with respect to the ongoing and future use of the seabed and asserts the need for the wise and rational management of this environmentally significant public good, which benefits the Virgin Islands, both socially and economically.

2. Interpretation

“Beach” - the zone where the accumulation of unconsolidated material (muds, sands, stones, gravels, shingles, coral fragments or boulders) extends seaward to the 20m bathymetric depth (unless depth of closure exceeds 20m) and landward to the place where there is a marked change in material, physiographic form, or to the line of permanent vegetation (usually the effective limit of storm waves), whichever is furthest landward.

“Berth” - a vessel's allotted place at a wharf or dock.

“Breakwater” - a barrier built out into the sea to protect a coast or harbour from the force of waves.

“Certificate of Non-Objection¹” –a certificate signed by an applicant seeking the grant of development permission under the Physical Planning Act, 2004, indicating that he has notified the owner of the land of his intent to develop and the owner has no objection.

“Coastline” - a line that forms the boundary between the land and the ocean.

“Development Fee” – fee applied for the exclusive, private or commercial use of the seabed by an applicant upon approval by Cabinet. The fee shall be applied on an annual basis.

“Easement”² – 1) right of way over another’s property, 2) means the right attached to a parcel of land which allows the proprietor of the parcel either to use the land of another in a particular manner or to restrict its use to a particular extent, but does not include a profit (the right to enter the land of another and take a particular substance from that land, including the soil or products of the soil).

“Land” – includes land covered with water, all things growing on land and buildings and other things permanently affixed to land³ or means any corporeal hereditament including a building and other

¹ Virgin Islands Physical Planning Act, 2004 , Section 24

² Land Registered Act, 1991, Chapter 229, Section 2

³ Land Registered Act, 1991, Chapter 229, Section 2

things permanently affixed to land and includes the foreshore, sea-bed and land covered by water within the boundaries of the territorial waters of the Territory;⁴

“Jetty” - a landing stage or small pier at which boats can dock or be moored.

“Lease”⁵ – means the grant, with or without consideration, by the proprietor of land of the right to the exclusive possession of his land, and includes the right so granted and the instruments granting it, and also includes a sublease, but does not include an agreement for lease.

“Licence”⁶ – means a permission given by the proprietor of land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit.

“Marine Estate” – comprises the seabed and Territorial Waters vested in the Crown and is regarded as a public asset.

“Mooring” – a place where a boat or ship is moored including the ropes, chains, or anchors by or to which a boat, ship or buoy is moored. It may also represent a marked position identifying a location for repeat use with a device on the seabed, e.g., navigation lights.

“Reclamation” - the act of creating new land from the sea, or wetlands, or other water bodies, such as ponds, through infilling;

“Restoration” - measures taken to return a site to pre-violation conditions.

“Seabed” – the ground under the sea; the ocean floor.

“Territorial Waters” – synonymous with the “Virgin Islands waters” means the sea or other waters within the seaward limits of the territorial sea of the Virgin Islands; and waters landward of the baselines for measuring the breadth of its territorial sea.⁷

“Water Rights” – refers to the rights that may be attached to the use of adjacent bodies of water in the case of a landowner whose land borders navigable oceans. Landowners with littoral rights have unrestricted access to the waters but own the land only to the high water mark. After this point, the land is owned by the Crown. Water rights are appurtenant, meaning that they are attached to the land and not to the owner, and must be assigned by the Crown.

3. Policy Aims

The Ministry of Natural Resources, Labour & Immigration recognises that the marine estate contains some of the Territory's most important areas for conservation and protection. These areas are also prized for leisure, commercial activities and development. It therefore, seeks to maintain the highest standards for its assets by ensuring that management of these important areas is carried out in a responsible way with all necessary statutory consents, whilst deriving benefit from the consent(s) given.

⁴ Virgin Islands Physical Planning Act, 2004, Section 2

⁵ Land Registered Act, 1991, Chapter 229, Section 2

⁶ Land Registered Act, 1991, Chapter 229, Section 2

⁷ Merchant Shipping Act, 2001, Section 2(2)

The Ministry of Natural Resources, Labour & Immigration has two key remits:

1. the stewardship role to conserve natural (assets?) resources; and
2. the sustainable development of its assets to generate revenue and facilitate economic development.

The ecosystem services provided by natural systems have social and economic value. These ecosystem services include recreation, fisheries, aesthetics, tourism, maintenance of ecological integrity, and resilience to the impacts of climate change and other hazards. Therefore, proposed developments within the marine estate should not lead to unacceptable changes to these natural systems, which in turn will affect their social and economic value to be quantified over time.

The policy aims to achieve the following objectives:

1. Rationalise and standardize the allocation of the seabed for various uses within the context of the overarching sustainable development goals of the Virgin Islands;
2. Enhance the management and administrative framework related to the development and conservation of the Territory's marine estate.
3. Ensure that Virgin Islanders, residents and visitors have access and may benefit from recreational opportunities and other types of activities afforded within the Marine Estate.
4. Include disaster risk reduction and climate change considerations into the decision-making framework related to the use of the marine estate.

4. Values of the Marine Estate Administration Policy

The *Marine Estate Administration Policy* shall be underpinned by the following values and principles:

- 1) **Equity** - as provided by the Constitution of the Virgin Islands, current and future generations have a right to a clean and healthy environment that is protected. Every person has the right to an environment that is generally not harmful to his or her health, and as such, stakeholders should (a) prevent pollution and ecological degradation; and (b) promote conservation as far as is possible;
- 2) **Balance** - ecologically sustainable development will be pursued and use of natural resources secured while promoting justifiable economic and social development.
- 3) **Fairness** - administration of the public interest in the rational and sustainable management of the marine estate will be the objective, to ensure that the public's interests are weighed and accounted for in all decisions that are taken. In addition, there shall be standard principles relating to the manner that fees and procedures are applied to all stakeholders.
- 4) **Transparency** – there shall be clear and consistently applied guidelines to address all aspects of decision making and ongoing administration of the marine estate.

5. General Principles of the Marine Estate Administration Policy

The general principles to follow are based in part on the United Kingdom's Crown Estate's Guidance Note⁸ on decision making related to the use of the Marine Estate. In addition, local context has been enshrined into the principles for the effective administration of this important public asset.

- The Marine Estate is comprised of the territorial waters and seabed, which are vested in the Crown and are regarded as a public asset. The Marine Estate is a resource of Territorial importance.
- The Ministry of Natural Resources, Labour & Immigration has a delegated duty on behalf of the Crown to manage the Marine Estate. The Ministry of Natural Resources, Labour, & Immigration has a duty to maintain and enhance the value of the Marine Estate and the return obtained from it with due regard to the requirements of good management.
- The Ministry of Natural Resources, Labour & Immigration will consider each application for rights to use the seabed on its merits in keeping with its obligation to realise value and meet its good management duty.
- Fragmentation of ownership of the territorial seabed would potentially detrimentally impact national economic and security interests. It could impede the effective achievement of government regulation, such as environmental and marine conservation objectives. It would also compromise the future development and management of the asset. For these reasons, Government will retain ownership and grant rights by lease or licence.
- The segregation of the use of the marine estate by lease or licence should not further adversely affect public usage of the surrounding area for recreation or impede other commercial activities such as fishing.
- Emphasis on the public's interest should be paramount, as the seabed and the marine estate is a public good. Whenever conflicts arise in terms of conflicting uses, public interests should be weighed heavier.
- Individuals or entities should not be allowed to lease the seabed for the sole purpose of excluding traditional and customary uses. Therefore, leases of the seabed will be limited solely for reclamations, marine renewable energy installations and development beyond the high water mark.
- For the avoidance of speculative reclamation, which can result in adverse environmental and social impacts, applicants must provide not only plans for the reclamation but also conceptual/schematic plans for the development on the reclamation.

⁸ <http://>

Marine Estate Administration Policy (Draft)

Last revised: 28 May. 21

- Determining factors for the award of any agreement should include an assessment of the irreversible damage or loss of biodiversity and the increased likelihood of impacts from environmental, climate change or hazard-related factors.
- Development within the marine estate may support the economic activity of the Virgin Islands by increasing the stock of land available for development or increasing recreational or other values. This however must be weighed against the possible environmental, social and wider economic impacts.
- Permission shall be required to install moorings and jetties and will be required to deposit any substance or object within the Territorial waters, either in the sea or on or under the sea bed, from— (a) any vehicle, vessel, aircraft or marine structure, (b) any container floating in the sea, or (c) any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea. Sinking of any vessel or floating container shall also require permission.
- The applicant must be able to prove ownership or consent of landowner(s) of the dry land parcel(s) adjacent to or from which a structure or asset is to be established on the basis of full disclosure of the planned development. Adjacent landowners have the right of first refusal for any development along the shore next to their property. When there is a shared water frontage, various mechanisms for conflict or negotiated solutions should be exhausted between the interested parties (joint ventures, swapping of development rights, and creation of easements and/or establishment of covenants). Additional allocation of seabed rights, which could conflict with existing allocated rights or for use of the seabed, should be avoided.
- Fees assessed in relation to the use of the marine estate will be based on the area affected by the use and not strictly the built footprint of the use only.

6. Environmental protection and mitigation for loss of biodiversity and ecosystem function

The protection of the environment is paramount in the development and utilisation of the marine estate. The placement of any asset and their continued operation should not result in environmental degradation within the Marine Estate. During the consideration of any development proposals, Environmental Impact Assessments will be conducted and will assist in identifying environmental impacts and mitigation measures. Moreover, ongoing operations post-development should also be addressed. Mitigation measures may include, but are not limited to:

1. Preventing damage to coastal and marine habitats;
2. Preventing dumping of garbage, solid or liquid waste;
3. Preventing discharge of sewage, especially through the provision or retrofitting of facilities for pump out and storage at commercial docks, jetties and marinas;
4. Preventing discharge of pollutants or hazardous substances into the marine estate;

5. Preventing noise or light pollution, especially within ecologically sensitive areas.

The developer shall bear the cost of the implementation of all agreed upon mitigation measures.

1. Impacts below a certain threshold value will not attract an environmental fee
2. If mitigation measures are required, the restoration costs will be fully borne by the developer. The capital required for the implementation of the mitigation measures may be paid into the Climate Change Trust Fund (CCTF) with administrative costs added. The CCTF will be responsible for dispersing such capital for implementation of any environmental management plan derived from actions required of the developer. The CCTF will employ its standard Monitoring, Reporting and Verification procedures to ensure that the mitigation works are delivered.

The Physical Planning Act, 2004 provides for the establishment of Environmental Protection Areas and Special Resource and Use Area. These areas, once declared, can take into account the presence of habitats of importance and define measures to ensure that proper measures are employed in maintaining and improving their value. Allocation and ongoing within the Marine Estate use would have to comply with management plans.

Government should establish a framework for monitoring of ecosystem services and values, as well as environmental change, which would support cost benefit analyses.

Determining factors for the award of any agreement for the use of the seabed should include an assessment of the irreversible damage or loss of biodiversity and the increased likelihood of impacts from environmental, climate change or hazard-related factors. Replenishment of damaged or loss marine habitats, such as coastal vegetation, mangroves, seagrasses, eroded dryland, sand dunes, etc. by applicants for use of the seabed should be considered during the review of applications.

7. Climate Change Considerations

Structures constructed and operated within the foreshore should not adversely impact natural habitats which comprise a part of the Territory's natural resilience to the impacts of climate change. Seagrasses, mangroves, coral reefs and salt ponds, must not be damaged or destroyed. Structures built within the Marine Estate should be designed and constructed taking into account projected climate change impacts, including, but not limited to, sea level rise and stronger storm surge impacts on the shore. Notwithstanding the foregoing, Government shall not be held liable for the loss of lands and structures or other impacts resulting from climate change.

Hazard events (storm, hurricane, fire, etc) can result in damage or alteration to reclamations, jetties, breakwaters or other structures residing on the seabed. As a result, these structures may require restoration, relocation or removal depending on the nature and severity of the event or changes to the prevailing climatic or environmental conditions. Decision making with respect to the manner in which structures residing on the seabed are re-built, relocated or eliminated should be guided by technical assessments which review the feasibility and suitability of any actions and their effect on the Territory's resilience to Climate Change. Lessees or licencees are advised to consult with relevant technical bodies that may assist in this regard.

Offsite restoration and mitigation of systems impacted by proposed development should be employed as a measure only when and where the likelihood of success of the effort will result in undiminished resilience to the impacts of climate change. Uses of the marine estate should be in keeping with the Climate Change Policy.

8. Disaster Risk Reduction Considerations

Development should not result in greater vulnerability to natural or manmade hazard/disaster events, unless the development's proponent (lessee) can mitigate and sustain such increased risk.

The Energy, Environment and Climate Adaptation (EECA) Committee under the National Disaster Management Council and chaired by the Ministry of Natural Resources, Labour & Immigration can serve as a coordinating body for Disaster Risk Reduction matters under this policy.

Implementation of the policy in general should support the objects and provisions of the Disaster Management Act, 2003. Specifically, Part VII of the Act prescribes the preparation of Special Area Precautionary Plans for Specially Vulnerable Areas, which would need declaration and delimitation. Assets residing on the seabed proposed or existing in such areas need to adhere to the Precautionary Plans, which may include strategies, policies and standards for development and maintenance of structures.

Post-hazard event assessments undertaken by teams led by the Department of Disaster Management employ two important mechanisms, namely the *Damage Assessment and Needs Analysis* (immediately post-event) and the *After Action Reporting* (one month after) to assess impacts. Damage to the natural assets of the marine estate should be comprehensively integrated into all assessment processes so as to account for the damage to the environment and related loss of productivity.

Damage to assets built in the marine estate that are impacted by hazard events should be assessed either independently or by the national damage assessment teams as soon as practicable. The result of the assessment should be reported to the appropriate agency to guide the determination of the assets' long-term viability. Irreparable or substantial damage to built marine assets would require planning approval for their rehabilitation or reconstruction.

The Act allows for the designation of marine shelters, which provide safe havens during storms and other emergency events. Areas that serve as marine shelters should not be encumbered by leases, licences or agreements that may limit their functions and accessibility.

Insofar as possible, Government should prepare marine habitat restoration plans in order to improve the manner in which the aftermath of a disaster is addressed as part of the Disaster Risk Reduction framework for the Territory.

9. Planning and Administration of the Marine Estate

The Marine Estate Administration Policy should be guided by the availability of the best and most current data and information about the state of the resources and their value as well as broader socioeconomic conditions. Natural resource inventories, which catalogue key habitats of national importance to the fisheries, biodiversity conservation and tourism sectors should be established and

kept current. Up to date data should inform environmental sensitivity and guide decisions regarding the costs and benefits of development within the marine estate.

All structures residing on the seabed shall be surveyed and included into National Geographic Information Systems (NGIS). Reclamations, in addition to their inclusion into the NGIS framework, shall form part of the cadastre after the lands are surveyed.

A **marine spatial plan** based on natural resource inventories and environmental sensitivity shall be developed to guide decision making regarding development within the Marine Estate. Synergy should also be sought with other important national planning processes and documents, such as the National Physical Development Plan and National Disaster Plan.

10. Types of Agreements

Three types of agreements are advanced under this policy: leases, licences and easements.

Easements may be conferred to adjacent land owners to facilitate access and navigation into and around adjoining docks and jetties (generally within zones A and B, as displayed below). All other rights besides rights of access in the easement area shall be retained by the Crown. Easements may also be granted to ensure public access to the coastline or unhindered access and navigation around other types of assets affixed to the seabed.

Licenses are instruments that grant permission to an individual or an entity to use the marine estate for a specific purpose such as installation of moorings, jetties and other structures and carrying out of permitted operations. Licenses do not convey an interest in real property. Leases convey an interest in real property and shall be applied for reclamations, marine renewable energy installations and development beyond the high water mark.

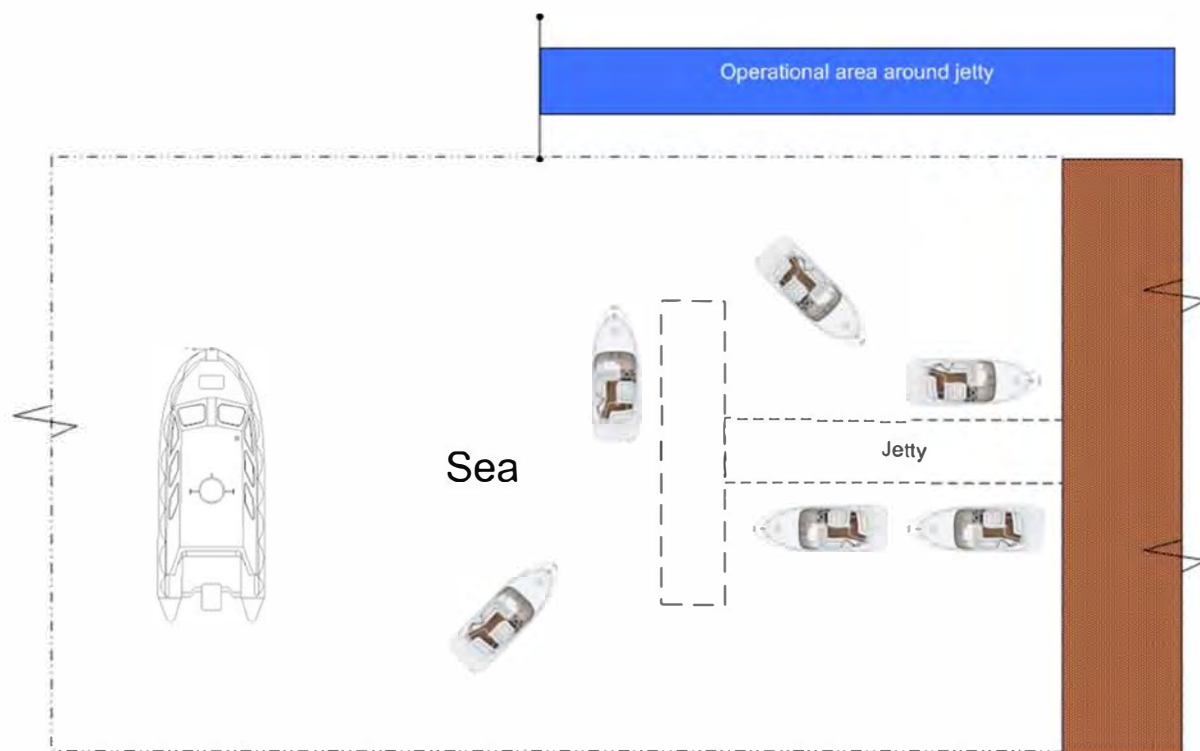


Figure 1

The table **Error! Reference source not found.** below outlines the characteristics of each type of agreement and the rights conferred.

Characteristics	Lease	Licence	Easement
Conveys an interest in real property	Yes	No	Yes
Revocable	No (usually)	Yes (usually)	No (usually)
Transferrable	Yes	No	Yes
Exclusive right	Yes	Optional	Optional
Applicability	Reclamations, marine renewable energy installations and development beyond the high water mark	Jetties, moorings and other types of structures described in Error! Reference source not found.	Facilitate unfettered access to assets under lease or licence or to continue traditional and customary uses through access by various stakeholders

Table 1. Types of agreements

11. Public Rights of Access and Use

The UN Convention on the Law of the Seas⁹ establishes a broad principle of the freedom of-the-seas doctrine, which essentially limits national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation's coastline, called the Territorial Sea. The remainder of the seas are proclaimed to be free to all and belonging to none.

In the context of the Virgin Islands, the marine estate belongs to the Crown. Inherently, therefore, there is a right to unimpeded navigation. Vessels in transit passage, however, must observe navigational safety, prohibition of vessel-source pollution and the conditions that vessels proceed without delay and without stopping except in distress situations and that they refrain from any threat or use of force.

The grant of seabed licences and easements does not preclude the rights of other stakeholders to enjoy, navigate, traverse or otherwise use the water column, unless otherwise stated. By default, a lease shall provide exclusive rights to the use of the seabed and that part of the water column occupied by the approved development (i.e. the development's footprint). A seabed licence or lease does not otherwise alienate any waters surrounding assets such as moorings, jetties or reclamations from other customary or traditional uses related to commerce or recreation. Stakeholders therefore, have rights to access and enjoy resources once they do not adversely impact on the rights of licencees and lessees to free and unhindered access to their assets.

12. Types of structures and activities for which the seabed may be licenced or leased

Any use of the seabed requires permission. Applicants may request permission for the use of the seabed for the following purposes:

- a. Moorings installation, including within hurricane shelters, excluding live aboard purposes
- b. Jetties and Docks, including floating
- c. Reclamations
- d. Breakwaters and wave/current attenuation devices
- e. Dredging
- f. Floating platforms
- g. Marker and swim line buoys inside and outside of reserved Government harbours and ports¹⁰
- h. Fish Aggregation Devices
- i. Cables and pipelines
- j. Marine Renewable Energy Systems
- k. In-situ scientific monitoring stations
- l. Artificial reef formation
- m. Mariculture operations
- n. Recreational operations extending beyond the high water mark
- o. Any other development beyond the high water mark

⁹ http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm

¹⁰ The Ministry of Natural Resources and Labour, in considering these applications must consult the Virgin Islands Shipping Registry and the BVI Ports Authority where marker buoys may be installed for navigational purposes.

13. Governance of Structures and Activities for which the Seabed may be licenced or leased

(i) Basis for the application of fees for the use of the seabed and punitive charges

Seabed licenses and leases may attract a development fee and an embedded environmental fee. Illegal development on the seabed will attract punitive charges.

Development fee

The Development Fee is based on the principle that the seabed, which is a common good and resource held by the Crown is being segregated for commercial or private use. This fee will be assessed for the rights of the use of the licensed or leased space. The common nature of access and benefits which may be derived by any stakeholder has now been segregated from public use for private or commercial benefit. The Crown (and by extension the public) should be compensated for the private or commercial right now being derived by the applicant.

Fees shall be applied for the use of the seabed for moorings, jetties, docks, breakwaters, reclamations and any other use. A new schedule of fees will be developed, which will aim to standardize the manner in which Government will charge for the use of the seabed. The Fee Structure, which will support the implementation of the policy, shall take into account the full area of the seabed affected by the use, including the operational area for jetties.

A standard fee for the use of moorings will be promulgated. The use of the seabed for jetties, docks, breakwaters, reclamation and other structures will be calculated on the square footage occupied by the structure plus the affected zone. In the case of jetties and docks, fee calculations will not be based on the estimated number of berths. Instead, fee calculations will be based on the square footage of the structure.

Environmental fee

An *Environmental Fee* will comprise a component of the *Development Fee* and will be prorated within the Annual Ground Rent assessed for all assets under license or lease except moorings. The calculation of an Environmental Fee will be commensurate with the environmental impact and associated loss of ecosystem values. For instance, the pre-determined economic value of undisturbed or natural habitats on a per unit of measurement basis – square foot of coral reef or seagrass – will be used to assess the Environmental Fee to be applied to a development project.

If any development on the seabed requiring a license or lease proceeds without permission a punitive charge may be levied. If the action has caused environmental damage, penalties should be compounded based on the size of the area impacted by the unauthorized activity. The fine to be applied will be calculated based on a pre-assessed and standard value of the habitat applied to the total area affected by the activity. Therefore, pre-assessed values will be determined for mangroves, sea grasses, corals, salt ponds, sandy bottom, rock/rubble etc.

The punitive charge will apply irrespective of whether the development is subsequently allowed to proceed or not. If upon review, the development is allowed to proceed, the development fee will also be applied in addition to the punitive charge. The developer may be required to mitigate environmental impacts caused or restore sites especially in cases where the development is not allowed to proceed.

Resource driven considerations to establish costs for mitigating loss and restoring sites shall be established by law.

	Moorings	Jetties/Docks and Breakwaters	Other assets under License	Reclamations	Other assets under Lease
General Conditions	<p>Applicants can request the use of the seabed for private or commercial moorings, including swim line buoys. Applications should be accompanied by a survey map detailing the proposed location of the moorings. Individuals or entities licenced to operate commercial moorings must obtain a valid Trade Licence before the licence agreement can be finalized.</p> <p>Swim line buoys (demarcated by mooring buoys) must be approved in accordance with this policy. Justification for the installation of swim marker buoys must be provided at the time of application.</p> <p>The placement of swim marker buoys shall not result in the 'privatisation' of beaches</p> <p>Upon completion of the installation process, the licensee shall allow the NPTVI to verify that the location of the installed moorings or swim line bouys are in keeping with the approved location on the survey map submitted to and approved by Cabinet.</p> <p>Permanently anchored vessels (those without the ability to propel and residing in the same space for more than one (1)</p>	<p>Applicants can request the use of the seabed for private or commercial jetties, docks or breakwaters. Individuals or entities with commercial jetties must have a valid Trade Licence to operate before the licence agreement can be finalized. Applications for the construction of jetties will be considered in tandem with any applications for the grant of development permission for associated shore side facilities by the Planning Authority.</p> <p>In the event that the land on which part of the jetty will be placed is not owned by the applicant a notarized letter from the land owner (certificate of non-objection) consenting to the proposed development is required. Development and use of the seabed exceeding a depth of fifty (50) feet should undergo greater review, as greater impacts and disturbance of the foreshore may be created.</p>		<p>Areas suitable for reclamation will be clearly demarcated in the Marine Spatial Plan. Applications for reclamation should comply with the Plan.</p> <p>Applicants are encouraged, very early in the process, to consult with the Town and Country Planning Department, the Environment & Seabed Units of the Ministry of Natural Resources, Labour and Immigration, and the Public Works Department regarding the feasibility of their plans. A conceptual plan should constitute part of the application submitted to the Ministry of Natural Resources, Labour & Immigration for the lease of the seabed.</p> <p>Permission should be sought and secured to dredge any material in tandem with the application for the use of the seabed to reclaim, with an environmental fee and royalties if sand is mined from the seabed.</p> <p>Upon completion of the technical review, the Ministry of Natural Resources, Labour & Immigration shall advance the application to Cabinet for a decision to:</p> <ol style="list-style-type: none"> 1. Issue an approval letter (a <i>Certificate of Non-Objection</i>, as required by section 24 of the Physical Planning Act); 2. Enter into an Interim Development 	

	<p>year on the seabed) shall be prohibited. Vessels that are left either abandoned or being stored on anchor for a period exceeding 1 year should be removed at the owners' expense. No anchor areas should be established and penalties should be set for any infractions.</p>			<p>Agreement with the developer contingent upon Planning and Building Authorities' approvals and prior to the commencement of any works; and,</p> <p>3. Issue a seabed lease upon completion of the reclamation project.</p> <p>The Interim Development Agreement would address, among other factors:</p> <p>(1) the general conditions guiding the reclamation (2) the maximum term for completion of the project (3) the start date for the payment of fees to the Ministry of Natural Resources, Labour & Immigration for the right to use the seabed for reclamation (4) penalties for the non-exercise to reclaim within the agreed upon period.</p> <p>The interim agreement shall be superseded by the lease upon completion of the project and the registration of the new parcel.</p> <p>The application process is outlined Error! Reference source not found. Error! Bookmark not defined..</p>	
Public Access & Use	<p>The public has a right to use surrounding waters and to freely enjoy the same without hindrance. Various types of</p>	<p>There shall be no rights conferred for the public use of private docks, however access</p>		<p>Intended purpose of the reclamation must be taken into account when determining the rights of the public to use and traverse</p>	

	users of waters (fishers, divers, recreationists etc.) should also generally not be hindered from use of the foreshore or the resources contained therein.	to the surrounding water column remains public. Marinas should allow for access and use within the context of its commercial activities.		reclaimed land. Most leases do provide for the public to traverse to make use of the sea.	
Rights Imposed by Adjacent Land Ownership	Shoreside commercial interests or land ownership may be taken into consideration in the award of moorings, but may not be the sole determining factor. Equity, fairness and access by other stakeholders to the seabed may also be weighed in determining the allocation of moorings. The adjacent landowner has first preference to commercial or private moorings in the water in front of their property up to an extent to be defined in the Marine Spatial Plan. A letter of objection can be issued by the landowner if they do not want commercial moorings in front of their property.	Adjoining lands may be a determining factor in awarding licences for jetties and marinas without prejudicing the rights of other adjacent landowners and users to enjoy and derive benefit from the use of the foreshore. Under circumstances where the proposed installation of the jetty may result in environmental, social or economic impacts, such will be weighed in determining approval.		Ownership of the land immediately ahead of the foreshore may be a determining factor in establishing the ability to reclaim. Land owners will be given the first right to reclaim in front of their properties. Environmental, Disaster Risk Reduction and social factors will guide decision making on permission to reclaim including ability to mitigate for loss of biodiversity, implement disaster recovery measures and initiatives, conserve natural resources and ensure traditional access (which may include any customary, prevailing practices such as fishing, beach use, recreation, diving or any other reasonable use of coastal resources) to the foreshore and its resources by stakeholders.	
Navigational Access and Other Interests	The placement of moorings should not hinder navigation and access to existing jetties, marinas and channels. Government reserves the right to relocate moorings or revoke the licence in the interest of health and safety, navigation or to prevent environmental degradation.	Licencees should be able to establish no wake zones. The placement of a jetty should not conflict with navigation and access into harbours and bays.		No navigational issues arise.	
Water Depth Allowed	No dredging allowed. Moorings must conform to existing depth and should	The grant of a dredging licence to facilitate a jetty or dock is		N/A	

	account for maximum vessel draft and navigational issues.	not automatic. An applicant may be refused if water depth is not sufficient to accommodate vessels without dredging or if environmental damage may not be mitigated or controlled.			
Application Process	Cabinet shall approve all applications for the use of the seabed. Applications for the installation of moorings should be lodged at the National Parks Trust of the Virgin Islands. Any other types of applications should be made to the Ministry of Natural Resources, Labour & Immigration. Applications for moorings are considered by the Technical Advisory Committee (TAC) chaired by the National Parks Trust. Other applications for the installation of jetties, docks reclamations and other assets are reviewed by the Environmental Unit of the Ministry of Natural Resources, Labour & Immigration and referred to the Technical Review Committee (TRC) chaired by that department. Increasingly, however, an integrated approach will be sought whereby all applications for the use of the seabed and terrestrial areas can be reviewed by a joint committee comprised of the Pre-Planning Committee under the Town & Country Planning Department, TAC and TRC. (Further detail on the reclamation application process is provided in Table 2).				
Financial Capacity	No demonstration of financial capacity required.	Applicants will need to demonstrate financial ability to complete within an approved time.		Applicants will need to demonstrate financial ability to complete the reclamation (including bulk heading) within an approved time.	
Commencement period of Agreements	A letter of approval once issued will require that a licence be executed within six months by the licensee. Renewal will be executed on an annual basis.	A letter of approval once issued will require that a licence and an Interim Development Agreement be executed within two months by the licensee after Planning Authority's approval.		A letter of approval once issued will require that an Interim Development Agreement be executed within three months by the licensee after Planning Authority's approval.	
Development Timeframe	Applicants must install moorings within three months of issuance of an approval letter. The National Parks Trust must be informed in writing when the mooring buoys have been installed, with the date of installation stated in such information and the name of the person or company who performed the installation. Moorings should only be installed by	Applicants must install permanent jetties and breakwaters within three years of approval prior to the revocation of permission upon Cabinet's approval. Visible notices of approval should be posted on site during	Applicants must install floating docks and all other assets approved within one year.	Applicants must complete reclamation within 3 years of approval. If the development has not been completed or taken place within the allowed development timeframe the Crown may exercise the option to repossess the area. Visible notices of approval should be posted on site during the construction/development	

	<p>qualified personnel using approved techniques. The applicant must renew the seabed licence every 10 years. Licence fees are due on an annual cycle. Failure to pay will result in the licence being revoked and the mooring(s) being removed after two years of non-payment.</p> <p>If the licensee decides to remove a mooring, permission must be sought from the Cabinet of the Virgin Islands through the NPTVI. Any request for the adjustment of the annual fee on the basis of the permanent removal will not be honoured otherwise. The seabed will thereafter be made available for use by other applicants. If a mooring buoy is permanently removed by the licensee, they must re-apply for any future installations.</p>	the construction/development phase in order to facilitate monitoring and compliance by Government agencies.		phase in order to facilitate monitoring and compliance by Government agencies.	
Term of Agreements	<p>Mooring licences are to be awarded for a period of ten years. Payment is to be made annually for private and for commercial entities. A Trade Licence for commercial moorings will be required for any operations. An arrears fee after 21 days of the bill becoming due will be assessed at 5% per annum. If the fees are not paid year over, it shall be compounded. Non-payment of fees after two years shall result in a revocation of the licence.</p>	<p>If the adjoining lands are held in leasehold, then the licence will be issued only for the term remaining on the lease. The term for a licence for a jetty and breakwater is 40 years with the option of renewal. If an extension of a jetty, dock or breakwater is envisaged, the starting period for the same will be associated with the original date of issuance of a licence.</p>		<p>Leases for reclamations are awarded up to 99 years. If an extension of reclamation is envisaged, each parcel (original reclamation and each extension) may be governed by separate leases and terms in which case the starting period for the same will be associated with the original date of issuance of a lease.</p> <p>However, if the lessee wishes to amalgamate the parcels, then the new parcel will be subject to terms and conditions of a new re-</p>	

				negotiated lease. Under said circumstances, the value of the lease will reflect fair market value of the unimproved land at the time of renegotiation. Upon amalgamation, the period of commencement shall coincide with the date of the new agreement unless otherwise agreed upon.	
Commencement of the Application of Annual Seabed License Fees	Annual fees will apply three months after the issuance of the licence. A flat Development Fee will be assessed for all moorings.	Annual fees will apply after six (6) months after approval and issuance of the licence. The Development Fee will be assessed per square foot of asset installed/constructed. A separate fee may be assessed for the operational area surrounding a jetty. A schedule of fees is to be developed.		<p>Fees will be due upon the execution of the Interim Development Agreement. The Development Fee will be 25% of the unimproved value of the reclaimed acreage. This is founded on the principle that the approval grants the right to develop along the seabed and all other interests were excluded.</p> <p>At first instance, fees will apply up to the maximum area approved under the agreement. Final calculation of the annual fees will be undertaken after completion of the reclamation project and the final acreage calculation performed by Survey Department. Fees may be adjusted upwardly if the extent of the reclamation exceeds the approved area of the seabed.</p> <p>All related costs for undertaking surveys to establish the extent of land reclaimed under a seabed lease shall be assessed to the applicant at fair market value of the service rendered by the Survey Department as per the Lands Surveyors Regulations of 2005, Section 28 of the Lands Surveyor's</p>	

				Ordinance (CAP 215) Schedule 6, section J (professional services).	
Rent Review	No rent review.	Rent shall be reviewed at first instance at the expiry of 10 years from the issuance of the licence. Thereafter, rent will be reviewed every 5 years.		The value of the reviewed lease may be based on 5% of the current unimproved market value of the land.	
Transfer of Leases and Licenses and Sub-Letting	Licences are non-transferrable.	Licences are non-transferrable.		Leases are transferrable	2.5% of the fees collected
Changes to the extent or location of assets on the seabed	No variations to the terms and conditions of licences will be allowed. Movement of moorings must be approved by the Cabinet of the Virgin Islands.	Changes to the location and the extent of assets will require Cabinet and Planning Authority's approval.		Increases in size or extent will require Cabinet and Planning Authority's approval prior to implementation.	
Cessation of Agreements	<p>Agreements may be terminated with six months' notice of a breach to the terms and conditions if the licensee has not corrected the nature of the breach nor provided reasonable notice of their intent to correct any defect or change in the nature of the agreement. Notwithstanding a notice by the licensee to correct defects to the terms and conditions, the Ministry of Natural Resources, Labour & Immigration and NPTVI shall determine a reasonable period to correct any defects that result in short or long term adverse impacts to the environment. The Town and Country Planning Department shall determine a reasonable period to correct any defects in the design or size of development of jetties, docks and other assets and impose timeframes for the completion of works. The corrective measures shall be communicated to the licensees, who shall be bound to complete works or correct any issues within the stated period. Non-compliance shall result in the recommendation for termination of the agreement to the Cabinet and for costs to be recovered by BVIG.</p> <p>In cases of moorings, the NPTVI may withdraw the grant of a license to any licensee for non-payment of annual fees after two consecutive years upon approval by the Cabinet and as communicated to the licensee by way of reasonable notice thereafter. The licensee is liable for the cost of removal and the outstanding fees. Upon the end of the term of licences, the asset</p>			Termination of leases will be governed by the terms and conditions contained therein.	

should be removed at the owner's expense, should there not be a new agreement in place.

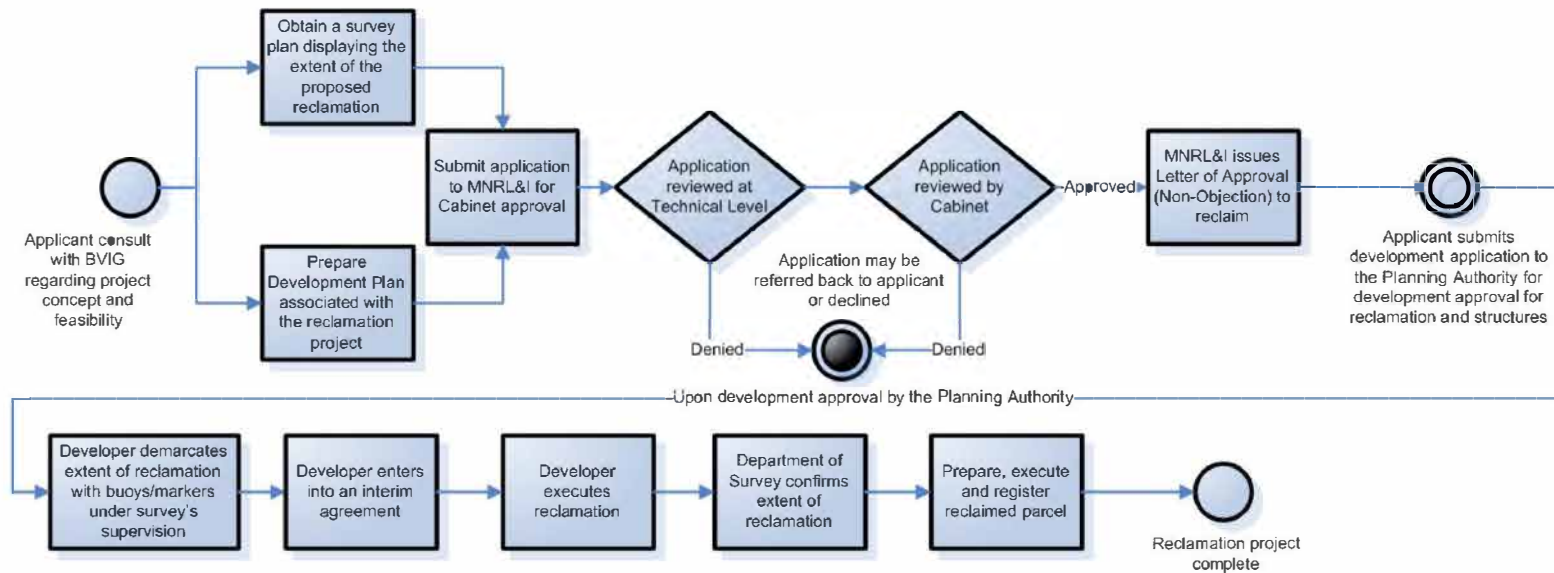


Figure 2 Application process for reclamation.

EXPEDITED EXTRACT

Ref: CO/C/070/2

FROM: Cabinet Secretary

TO: Minister for Natural Resources, Labour and Immigration

CC: The Premier
Financial Secretary
Permanent Secretary, Ministry for Natural Resources, Labour and Immigration

DATE: 24th June, 2020

Virgin Islands Marine Estate Administration and Coastal Zone Management
Bill
Memo No. 222/2020 (/memorandums/592)

Further to the decision made by the Cabinet on 24th June, 2020, below is the decision taken by the Cabinet in respect of the captioned matter:

Cabinet:

- a. noted the draft Virgin Islands Marine Estate Administration and Coastal Zone Management Bill;
- b. reviewed and accepted the Virgin Islands Marine Estate Administration Policy, which provides policy and operational guidance related to the

issuance of licenses, permits and leases for the use of the seabed among other issues; and

c. decided that the Ministry of Natural Resources, Labour and Immigration instruct the Attorney General's Chambers to vet the Virgin Islands Marine Estate Administration and Coastal Zone Management draft Bill for its finalisation and submission to the Cabinet for consideration; and

d. decided that an expedited extract be issued to allow for the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

Please be guided accordingly.

Ms. Sandra Ward

24th June, 2020

Grant of Crown Land – Parcel 73, Block 2740B, West Central Registration Section – Chantel Malone

Signed

· 12 November 2019 · MNRLI · File: HOUS. H9/104

· Mr. Norval Young · Memo No. 26/2020

· Extract No. REx/26/2020 (/decisions/232)

Background Information

1) In 2008, via Memo No. 185/2008, Government approved and granted several persons for residential lots within the Spooner's Estate Development Subdivision(see Appendix A). This decision was communicated to the grantees accordingly by this Ministry along with the steps required to fulfill their financial obligation with regards to the purchase of the selected parcel.

2) Over time, persons were delinquent in fulfilling their financial obligations towards the purchase of the parcel of land. The Ministry of Natural Resources as well as the Ministry of Finance communicated with these persons with regards to honoring their obligation.

3) Subsequently, the Ministry made a decision in June 2019 that persons who were delinquent in honoring their financial obligations towards the land purchase had six (6) weeks to finalize and pay all monies owed accordingly. If at the end of this period they did not honor their obligation, they would forfeit their right to the granted parcel of land.

4) At the end of that period, several persons failed to honor this request and hence have forfeited their right to the granted parcels of land.

5) Furthermore, the Premier of the Virgin Islands made a request to this Ministry that the Government of the Virgin Islands would grant a parcel of land to Ms. Chantel Malone for her outstanding achievements made at the Pan American Games 2019, where she won a Gold Medal in the Women's Long Jump Event. This was a gesture of support and commitment of the Government of the Virgin Islands and the athletes who represent this country and have had outstanding achievements of note.

6) The parcel of land being granted to Ms. Malone is one such parcel within the Spooner's Estate Development Subdivision where the grantee forfeited their right to such parcel. The parcel allotted to her is Parcel 73, Block 2740B, West Central Registration Section, measuring 0.4775 of an acre.

Purpose

7) To facilitate the request and approval for the allocation of Crown Land for outstanding achievements representing the Territory of the Virgin Islands.

Cross-Ministry Consultation

8) There is no need for Cross Ministry Consultation on this matter.

Financial Implications

9) This accolade in the form of land is to be awarded to Ms. Chantel Malone for her stellar performance during the 2019, Pan American Games, winning the Gold in Women's Long Jump.

10) If this Parcel of land was to be sold, the selling price based on the Cabinet's decision 185/2008 would have been \$20,800.00. However, the decision sought is commendable and is supported by this Ministry.

Legal Implications

11) We have reviewed the draft Paper and have discerned no adverse legal implications which would arise for Government if Cabinet is minded to decide in accordance with the decision sought.

Communication Strategy

12) Cabinet's decision will be communicated to the applicant via all available mediums.

Conclusion

13) Cabinet is asked to review the decision sought and advise accordingly.

Decision Sought

Cabinet is invited to decide:

- a. that permission be granted to Chantel Malone to acquire the freehold interest in Parcel 73, Block 2740B, West Central

Registration Section, measuring 0.4775 of an acre at a consideration sum of one dollar (\$1.00) and a statutory survey fee of two hundred dollars (\$200.00);

b. that the following conditions should be included in the transfer document:

- i. not to sell or otherwise part with possession of the parcel herein before the elapse of five (5) years from the date hereof;
 - ii. to deliver to the Transferor a written notice of intention to dispose of the parcel herein no less than six (6) months before the Transferee disposes of the said parcel;
 - iii. to offer the Transferor herein the first right of refusal when disposing of the said parcel;
 - iv. that the property should be used for residential purposes only; and
- c. that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the minutes.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent
Wheatley

Minister for Natural
Resources, Labour
and Immigration
04 February 2020

EXTRACT FROM THE MINUTES OF THE MEETING OF THE VIRGIN
ISLANDS CABINET HELD AT THE CONFERENCE ROOM GOVERNOR'S
OFFICE ON 28th MAY, 2008

TO: Permanent Secretary, NR&L

DATE: 5th June 2008

Land Allocation in Spooners Estate
Memo No. 185/2008

1038. The Minister of Natural Resources and Labour confirmed that the second District Representative used the same criteria as the Spooners Estate Advisory Lands Committee to recommend persons for award of house plots.

Cabinet:

- (a) noted the report of the Spooner's Estate Land Advisory Committee (the Committee) dated May 31, 2007 and submitted to the Ministry of Natural Resources and Labour, June 16, 2007 (Appendix A), and agreed with the following recommendations:
 - (i) the sale price be set at \$1.00 per sq ft for residential lots, \$1.25 per sq ft for commercial lots,
 - (ii) persons recommended for house lots be required to pay a consideration in one "lump-sum" payment rather than installments,
 - (iii) draft covenants and conditions of sale be included in the offer made to the grantees of land in the estate,
- (b) accepted the recommendations of the Second District Representative, Hon J. Alvin Christopher dated September 20th, 2007 and to allocate the following seventy-four persons house plots in Phase I of the Spooner's Estate land distribution project as well to place four persons on the supplementary list:

- (c) decided to review the proposed application form being developed for this and other subdivisions to ensure that information provided is consistent and relevant to the applicant and the application process.
- (d) decided that government adopt this process as the template to follow for the future.
- (e) decided that the covenants as submitted by the committee should not be relaxed.

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67.	68.	69.
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73.	74.	

SUPPLEMENTARY LIST

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2.	
3.	
4.	

42

**EXTRACT FROM THE MINUTES OF THE MEETING OF THE VIRGIN
ISLANDS CABINET HELD AT THE CONFERENCE ROOM GOVERNOR'S
OFFICE ON 28th MAY, 2008**

TO: Permanent Secretary, NR&L

DATE: 5th June 2008

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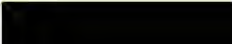
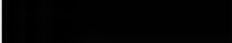

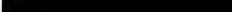
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✓1.		2.		✓3.	
✓4.		✓5.		✓6.	
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✓46.		✓47.		✓48.	
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✓52.		53.		✓54.	
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✓58.		59.		✓60.	
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✓64.		65.		✓66.	
✓67.		✓68.		✓69.	
70.		71.		72.	
✓73.		✓74.			

SUPPLEMENTARY LIST

1. 
2. 
3. 
4. 

- (c) decided to review the proposed application form being developed for this and other subdivision to ensure that information provided is consistent and relevant to the applicant and the application process.
- (d) decided that government adopt this process as the template to follow for the future.
- (e) decided that the covenants as submitted by the committee should not be relaxed.


QUESTION 1

See the attached file links for this question.

[Land Distribution in the BVI Research 2020\Distribution of Land in the BVI - 2020 \(Edited\).doc](#)

[VI Land and Marine Estate Policy \(DRAFT\).pdf](#)

QUESTION 2

SUBJECT/GRANTEE	CABINET MEMO NO.	INSTRUMENT NUMBER	REGISTRATION COMPLETED (Y/N)	COMMENT
Application to Purchase Crown Land in Joint Proprietorship – Parcel 333, Block 3440B, East End Registration Section - Larhoney Hill & Divannia Hill	202/2018	1037/2018	Y	
			N	Payment of Consideration Sum ON-GOING
Application to Lease Crown Land – Parcel 63, Block 1440B - Jost Van Dyke Registration Section - Sendrick Chinnery		241/2018	Y	Consideration Sum Paid
Jeannette Richardson	084/2002	240/2018	Y	Consideration Sum Paid
Virgin Islands Search and Rescue		429/2018	Y	Consideration Sum Paid
Joel Meyers	069/2018	2097/2018	Y	Consideration Sum Paid
Azil Nibbs	410/2011	2099/2018	Y	Consideration Sum Paid
Walford Farrington		216/2018	Y	Consideration Sum Paid
Wanda Brewley, Trisha Smith-Gomes, Danielle Hanley and Darin Perry	159/2015 & 002/2018	199/2018	Y	Consideration Sum Paid
Tamika Herbert	185/2008	408/2018	Y	Consideration Sum Paid
Guy Michel Hill	185/2008	659/2018	Y	Consideration Sum Paid
John Erickson Watkins	185/2008	739/2018	Y	Consideration Sum Paid
Jay Archibald	422/2011	1036/2018	Y	Consideration Sum Paid
Juline Lloyd	185/2008	2101/2018	Y	Consideration Sum Paid
Donald George		198/2018	Y	Consideration Sum Paid
Clement Augustus Faulkner		556/2018 557/2018	Y	Consideration Sum Paid
Paul Franklin Barone	023/2016	1035/2018	Y	Consideration Sum Paid
Kamal Marshall	241/2018	2100/2018	Y	Consideration Sum Paid
Wendell L. Creque	23/2016	2102/2018	Y	Consideration Sum Paid
Aretha Thomas		47/2019	Y	Consideration Sum Paid

	170/2013			Sum Paid
Bernerdean Brazier, Latoya Brazier & Devonte Prentice	319/2018	570/2019	Y	Consideration Sum Paid
Kimberley Parker	200/1998	679/2019	Y	Consideration Sum Paid
Lesmore Smith	77/2019	682/2019	Y	Consideration Sum Paid
Tekeisha Drew	403/2011	678/2019	Y	Consideration Sum Paid
Jeffrey Forbes	200/1998 & 424/2019	1171/2019	Y	Added Spouse to Title
M. Joyce Titley	158/2013 & 94/2019	1192/2019, 1193/2019	Y	Consideration Sum Paid
Monique T. Penn	203/2011	1170/2019	Y	Consideration Sum Paid
Eileen E. Hodge	410/2011 & 401/2016	1256/2019, 1304/2019	Y	Parcel Exchange with the Crown
B.V.I. Electricity Corporation		16/2019	Y	Consideration Sum Paid
Marissa Varlack	241/2018	46/2019	Y	Consideration Sum Paid
Sabrina Smith	241/2018	47/2019	Y	Consideration Sum Paid
Esther Francis	241/2018	78/2019	Y	Consideration Sum Paid
Alvin Francis Sr.	241/2018	79/2019	Y	Consideration Sum Paid
Kinza Gottlieb	241/2018	80/2019	Y	Consideration Sum Paid
Joanna Norman	241/2018	158/2019	Y	Consideration Sum Paid
Deborah Joanne Ruan Abbott	023/2016	445/2019	Y	Consideration Sum Paid
Daniel Keith Vanterpool	373/2009	447/2019	Y	Consideration Sum Paid
Leonard Vanterpool	241/2018	444/2019	Y	Consideration Sum Paid
Velma D. Faulkner	241/2018	795/2019	Y	Consideration Sum Paid
Janice Callwood	241/2018	794/2019	Y	Consideration Sum Paid
Ena C. Faulkner	241/2018	740/2019	Y	Consideration Sum Paid
Lucille I. Abramson	373/2009 & 156/2017	1411/2019	Y	Consideration Sum Paid
Brian Blyden	422/2011	680/2019	Y	Consideration Sum Paid
Stacia Huggins-Foy	422/2011	1410/2019	Y	Consideration Sum Paid
Lornette Marisa Stevens	439/2005	1075/2019	Y	Consideration Sum Paid
Lorna Lucia Stevens	439/2005	1080/2019	Y	Consideration Sum Paid
Ernest George	443/2008	1168/2019	Y	221 Consideration Sum Paid

Arthur D. George	439/2005	1172/2019	Y	Consideration Sum Paid
			N	Payment of Consideration Sum ON-GOING
	351/2019		N	Payment of Consideration Sum ON-GOING
	352/2019		N	Lease Execution & Payment of Consideration Sum ON-GOING
Sale of Crown Land – Nature’s Way Limited	386/2019	385/2021	Y	Consideration Sum Paid
Application to lease Parcel 310 of Block 2938B, Road Town Registration Section – Bevis Sylvester	396/2019		Y	Consideration Sum Paid
	440/2019		N/A	Parcels To Be Re- Assigned
	453/2019		N	Documents from BVIPA Missing
	460/2019		N	Documents from BVIAA Missing
Application for consent to sell lease property identified as Parcel 218/1 of Block 2534B Mount Sage Registration Section for Ms. Patricia Romney as Executrix of the Estates of Lillian Arosa Romney and Cyril Brandford Romney	12/2020		Y	Consideration Sum Paid
Grant of Crown Land – Parcel 73, Block 2740B, West Central Registration Section – Chantel Malone	26/2020	430/2021	Y	
AMENDMENT - Application to lease Parcel 310 of Block 2938B, Road Town Registration Section – Bevis Sylvester	29/2020		Y	
	52/2020		N	
Lease of Crown Land at Paraquita Bay for Agricultural Purposes - KNK Poultry Farm	56/2020	528/2020	Y	Consideration Sum Paid
	86/2020		N	Available Parcels Re-Assigned.
Variation of Lease - Eustatia Corporation Limited - Amendment	154/2020	1061/2020	Y	Consideration Sum Paid
	155/2020		N	New Lease Agreement Pending
	156/2020	N/A	N	Awaiting Final Registration for 2 Awardees
	158/2020	N/A	N	Parcels To Be Re- Assigned
Application for Permission to Transfer Approval granted to Mark Simmonds in the Name of Manuel Reef Marina Limited	187/2020		Y	
	221/2020		N/A	HoA Approval Pending
	222/2020		N/A	HoA Approval Pending
	241/2020		N	Payment of Consideration

	327/2020		N	Finalized by Grantee
	380/2020		N	Payment of Consideration Sum PENDING
	381/2020		N	Payment of Consideration Sum PENDING
Application To Purchase A Portion Of The Public Access - Parcel 311, Block2840B, East Central Registration Section – Benedicta P.T. Samuels	459/2020	417/2021	Y	Consideration Sum Paid
	460/2020		N	Payment of Consideration Sum PENDING
Transfer of Parcel 210, Block 2936B, Road Town Registration Section to Lordon Limited	479/2020	363/2021	Y	Consideration Sum Paid
	480/2020		N	Land Occupied Illegally by another farmer & Payment of Consideration Sum PENDING
	529/2020		N	Parcel Creation & Payment of Consideration Sum PENDING
	531/2020		N	Lease Execution & Payment of Consideration Sum ON-GOING
	559/2020		N	Parcel Creation & Payment of Consideration Sum PENDING
Bernard George	439/2005	321/2021	Y	Consideration Sum Paid
Lynn Hodge	422/2011	317/2021	Y	Consideration Sum Paid
Desirae Kimisha Farrington	156/2020	316/2021	Y	Consideration Sum Paid
Tanya Elizabeth Christopher	156/2020	315/2021	Y	Consideration Sum Paid
Lyneth Smith	185/2011	314/2021	Y	Consideration Sum Paid
Merle Freeman	156/2020	312/2021	Y	Consideration Sum Paid
Natasha Lettsome	156/2020	311/2021	Y	Consideration Sum Paid
Lamisha R. Gumbs	156/2020	431/2021	Y	Consideration Sum Paid
Lauriann W. Creque	23/2016	319/2021	Y	Consideration Sum Paid
Norma Melvena Smith	23/2016	318/2021	Y	Consideration Sum Paid
Linda Rosemarie George	241/2018	320/2021	Y	Consideration

QUESTION 3

For any disposal of Crown Lands to take place, the BVI Government must receive full payment of the consideration sum for that portion of land that was approved by the Cabinet of the Virgin Islands, formerly Executive Council. Therefore, no Instrument of Sale is produced or executed without the consideration sum being paid in full by the awardee/grantee.

From: Peaty, Lauren <[REDACTED]>
Sent: 30 September 2021 20:54
To: Andrew King (Sensitive); [REDACTED]
Cc: [REDACTED]; Haeri, Hussein; Olympitis, Niki; [REDACTED]
[REDACTED]; Knock, Sara-Jane; Rhea Harrikissoon (Sensitive); Juienna Tasaddiq
(Sensitive); Steven Chandler (Sensitive)
Subject: RE: APPLICATION FOR PERMISSION TO QUESTION WITNESSES [W-
EU.FID1853837]

Dear Andrew

Mr Smith-Abbott has read and agrees with the Minister's Response, and does not intend to submit a separate response. We will revert separately in relation to Cabinet.

Kind regards

Lauren

Lauren Peaty
Senior Associate
Dispute Resolution
t +1 284 494 4949 +44 20 7597 6084
withersworldwide.com | [my profile](#)

Withers BVI
Little Denmark, PO Box 145, Road Town, Tortola VG1110, British Virgin Islands



From: Andrew King (Sensitive) [mailto:andrew.king@bvi.public-inquiry.uk]
Sent: 30 September 2021 14:13
To: Peaty, Lauren <[REDACTED]>; [REDACTED]
Cc: [REDACTED]; Haeri, Hussein <Hussein.Haeri@[REDACTED]>; Olympitis, Niki <[REDACTED]>; [REDACTED]; [REDACTED]
[REDACTED]; Knock, Sara-Jane <[REDACTED]>; Rhea Harrikissoon (Sensitive) <rhea.harrikissoon@bvi.public-inquiry.uk>; juienna.tasaddiq@bvi.public-inquiry.uk; Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>
Subject: RE: APPLICATION FOR PERMISSION TO QUESTION WITNESSES [W-EU.FID1853837]

Dear Lauren

The Commissioner has directed that an update please be provided by return as to when written responses to the Warning Letters to Mr Joseph Smith-Abbot and the Cabinet will be provided with respect to the topic of Crown Land. Your email below only requests an extension to the Warning Letter for the Hon Vincent Wheatley which has now been provided to the COI.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk

From: Peaty, Lauren <[REDACTED]>
Sent: 30 September 2021 13:15
To: [REDACTED]; Andrew King (Sensitive) <andrew.king@>; Steven Chandler (Sensitive) <steven.chandler@>
Cc: [REDACTED]; Haeri, Hussein <[REDACTED]>; Olympitis, Niki <[REDACTED]>; [REDACTED]; [REDACTED]; [REDACTED]; Knock, Sara-Jane <[Sara-Jane.Knock@\[REDACTED\]](mailto:Sara-Jane.Knock@[REDACTED])>; Rhea Harrikissoon (Sensitive) <rhea.harrikissoon@>; Juienna Tasaddiq (Sensitive) <juienna.tasaddiq@>
Subject: RE: APPLICATION FOR PERMISSION TO QUESTION WITNESSES [W-EU.FID1853837]

Dear Andrew

We respectfully request extensions (insofar as they are required) in respect of the Minister for Natural Resources' Response to Warning Letter No.3 and the Application to Question Witnesses.

Kind regards

Lauren

Lauren Peaty
Senior Associate
Dispute Resolution
t +1 284 494 4949 +44 20 7597 6084
withersworldwide.com | [my profile](#)

Withers BVI
Little Denmark, PO Box 145, Road Town, Tortola VG1110, British Virgin Islands



From: Peaty, Lauren
Sent: 30 September 2021 11:23
To: [REDACTED]; Andrew King (Sensitive) <andrew.king@bvi.public-inquiry.uk>; Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>
Cc: [REDACTED]; Haeri, Hussein <[REDACTED]>; Olympitis, Niki <[REDACTED]>; [REDACTED]; [REDACTED]; [REDACTED]; Knock, Sara-Jane <[REDACTED]>

rhea.harrikissoon@bvi.public-inquiry.uk; juienna.tasaddiq@bvi.public-inquiry.uk

Subject: RE: APPLICATION FOR PERMISSION TO QUESTION WITNESSES [W-EU.FID1853837]

Dear Andrew

Please see attached the authorities referred to in the Application sent by Ms Cameron-McDowell a few moments ago.

Kind regards

Lauren

Lauren Peaty

Senior Associate

Dispute Resolution

t +1 284 494 4949 +44 20 7597 6084

withersworldwide.com | [my profile](#)

Withers BVI

Little Denmark, PO Box 145, Road Town, Tortola VG1110, British Virgin Islands



From: [REDACTED]

Sent: 30 September 2021 11:12

To: Andrew King (Sensitive) <andrew.king@bvi.public-inquiry.uk>; Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>

Cc: [REDACTED]; Haeri, Hussein <[REDACTED]>; Olympitis, Niki <[REDACTED]>; [REDACTED]; Peaty, Lauren <[REDACTED]>; Knock, Sara-Jane <[REDACTED]>; [REDACTED]; rhea.harrikissoon@bvi.public-inquiry.uk; juienna.tasaddiq@bvi.public-inquiry.uk

Subject: APPLICATION FOR PERMISSION TO QUESTION WITNESSES

Dear Sirs,

Please see the attached submission from the Honourable Attorney General for your kind attention.

Kind regards,

Desary Cameron-McDowell
Assistant Secretary



Attorney General's Chambers
TTT Building, Wickhams Cay I
Road Town, Tortola VG1110
Tel: (284) 468-2979/2960

Withers BVI - Little Denmark, PO Box 145, Road Town, Tortola, British Virgin Islands T: +1 284 494 4949 F: +1 284 494 4947

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IN THE MATTER THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021 AND IN THE
MATTER OF THE COMMISSION OF INQUIRY ACT (CAP 237) (“the Act”)

RESPONSE OF THE HON. V WHEATLEY TO EMAIL OF MR KING DATED 2
OCTOBER 2021 IN RESPECT OF THE HON. V WHEATLEY’S 29 SEPTEMBER
2021 RESPONSE TO WARNING LETTER No. 3 DATED 21 SEPTEMBER 2021

Note:-

References in square brackets are to the relevant Hearing Bundle.

Other references are:

I. to the additional bundle served with the Hon. V Wheatley’s Response to Warning Letter No.3 (“**the Warning Letter**”), dated 29 September 2021 (“**The Response**”), given as follows: **AB/Tab/Page**; and

II. to the further additional bundle served with this Response (“**the Further Response**”), given as follows **AB2/Tab/Page**.

1. The Response states: “r) Within a few months after I had become the Minister, in 2019, my permanent secretary briefed me on a dispute that existed in connection with a parcel of land, of which two separate parties had asserted a right to be granted a lease.”

a. Copies of any written briefings that were sent to the Hon Vincent Wheatley regarding this disposal of Crown land.

1. I received oral not written briefings with respect to this disposal of Crown land.

b. Confirmation as to whether the permanent secretary referred to is Dr Potter.

2. The Permanent Secretary in question was Mr Ronald Smith-Berkeley, who held the position of Permanent Secretary at the Ministry of Natural Resources, Labour and Immigration from 2 May 2011 to 6 September 2019.

2. The Response states: “t) Parcel 310 is now reclaimed land. It was reclaimed by the spoil from Government road-building operations. That reclamation interposed itself between

Parcel 221 and the sea, preventing Delta's seaward access to Parcel 221. Since then, Delta had consistently asserted its right to have the opportunity to be leased the reclaimed land."

Please provide the disclosure upon which the Hon Vincent Wheatley's based his statement that "....Delta had consistently asserted its right to have the opportunity to be leased." If there is no such documentation, please provide an explanation as to the sources of information from which the Hon Vincent Wheatley made that statement.

3. I attach the papers from the Judicial Review Proceedings brought by Delta in 2013 (**"the Delta JR papers"**) **AB2/1-4/1-17**.

3. The Response states: "v) Delta objected to [the Executive Council's 2007 Decision to grant a lease of parcel 310 to Nature's Way] and refused to grant an easement over Parcel 221 to give access to Parcel 310. This meant that the Government had to seek an alternative, much less suitable, means of access, which was eventually obtained from Mr Stoutt in 2017. I understand that in 2013 Delta had brought judicial review proceedings of the decision to grant a lease to Nature's Way but that since a lease had not yet been granted, the application had been regarded as premature. The Government was on notice, however, that if an attempt were made to execute the Executive Council's decision, Delta would seek to challenge it. As a result, it appeared that nothing had been done and the dispute had lingered on without resolution until 2019. The land remained unoccupied, although I believe Delta had made use of it for some or all that time."

Please provide the following:

a. An explanation as to why the Hon Vincent Wheatley considered that Parcel 310 required an easement over Parcel 221. It appears to the COI that Parcel 310 does not require an easement over Parcel 221 to gain access to Parcel 310. Furthermore, Parcel 221 and Parcel 310 appear to be separated by the public highway. It appears to the COI that the easement required to grant access to Parcel 310 was over Parcel 309 not Parcel 221. That easement was given by a Grant of Easement dated 25 July 2017 (instrument No. 1068/2017) from Mr Garvin Ishmael Stoutt Sr. (who had a leasehold interest of Crown land known as Parcel 309) to the Governor to pass and repass over Parcel 309. This provided the Crown with access to Parcel 310. Conversely, it appears that it is Delta who would have required an easement over Parcel 310 if it wished to have direct seaward access from Parcel 221.

4. Parcels 221 and 310 are not separated by the public highway. Parcel 221, of which Delta have the freehold, is divided by the public highway. It is that portion of Parcel 221 which lies south of the highway which shares a boundary with Parcel 310 **[1207A] & [1206]**. I provide a copy of an aerial photograph of the site from the Land Survey Department dated 5 October 2021 **AB2/5/18**. Delta made the point that Parcel 310 did not enjoy a right of access to the road in their Judicial Review Application, in 2013 (see Application paragraph 5 **AB2/1/2**). It was for this reason that in 2011 the Government sought an easement over Parcel 221 to give access to Parcel 310 from the main road (see Memo 25 May 2011 at paragraph 2. **AB2/11/37**

and Cabinet Paper Memo c00/2011 dated 14 September 2011 paragraph 5 **AB2/6/20** and Appendix D **AB2/6/28**. Had Delta granted an easement over Parcel 221, the easement over Parcel 309 would not have been necessary.

b. Copies of any papers relating to the judicial review proceedings brought by Delta in 2013. If there is no such documentation, please provide an explanation as to how the Hon Vincent Wheatley considered that "...Government was on notice, however, that if an attempt were made to execute the Executive Council's decision, Delta would seek to challenge it."

5. I have already attached the Delta JR papers, in answer to Point 2 above.

c. An explanation as to what steps the current government administration took to enforce the Expulsion Notice to Trespasser Occupying Crown Land that was signed by the Governor on 19 January 2019 concerning Parcel 310 and addressed to Delta Petroleum. If no steps were taken, please provide an explanation as to why that was the case.

6. The current administration took no steps to enforce the Expulsion Notice. I was unaware of the Expulsion Notice which had been issued under the previous Government, until my attention was drawn to it by the Governor in the latter half of 2020.

4. The Response states: "w) After that briefing, as far as I can recall, I requested that the advice of the Attorney General's chambers should be sought. I attended a meeting in mid or late 2019 with my permanent secretary and some others, when I was advised by counsel of the competing claims to the land and that both parties appeared to have reasonable claims."

Please provide the following with respect to the disposals of Crown land to Mr Sylvester and/or Nature's Way in 2019

a. Copies of any minutes or other written records of meeting(s) held with Attorney General's Chambers in 2019.

7. I understand, from enquiries I have made of the Attorney General's Chambers, that a note of the meeting to which I referred at paragraph 4 of the Response is believed to have been taken by Ms Barry, in her notebook.

b. Details of attendees at any such meeting(s) including the name(s) of counsel.

8. I believe that the attendees at the meeting were myself, Principal Crown Counsel, Ms Maya Barry, PS Smith-Berkeley and Mrs Heather Skelton.

c. The names(s) of all counsel who advised in respect of this matter whether orally or in writing.

9. In 2019, counsel who advised was Ms Barry.

d. Copies of any request(s) for advice from the Attorney General's Chambers along with any advice received.

10. It seems that advice may neither have been requested nor received in writing in this instance. Informal requests for advice from the Attorney General's Chambers are made orally from time to time. This may have been such an example.
11. However, I have now been able to locate an email from Mr Smith-Berkeley dated 23 July 2019 **AB2/20/47-48**. As far as I can recall, this email followed preliminary discussions which I had had with Mrs Penn, to understand her complaints and a preliminary consideration of a draft of Cabinet Paper Memo 396/2019, which proposed a lease of Parcel 310 to Mr Sylvester. It seems to include potential draft insertions for a Cabinet Paper. The Financial Implications passage appears in paragraphs 10) and 11) of the eventual Paper **[1242-1243]**. The Legal Implications passage contains a suggestion on the part of the Attorney General's Chambers that they be given an opportunity to advise and contains only partial, preliminary views on the questions arising in respect of Parcel 310. The Attorney General's Chambers were given an opportunity to provide advice to me in the 2019 Meeting to which I refer at paragraph 4 of my Response dated 29 September 2021, when Principal Crown Counsel advised in the manner I describe in that Response.

The Response states: "y) I understood Delta had asserted that any lease of Parcel 310 should have been offered to Delta before Nature's Way."

Please provide the disclosure upon which the Hon Vincent Wheatley's based this statement. If there is no such documentation, please provide an explanation as to the sources of information from which the Hon Vincent Wheatley made that statement.

12. I understood that Delta had asserted that it should have been granted a lease before Nature's Way at least from the advice I received from the Attorney-General's Chambers and the background I had been given by the then Permanent Secretary.
13. I note that in the Delta JR Papers, Delta asserted that the decision not to grant a lease to Delta, "*and instead grant the same to a third party was irrational and unreasonable*" (see Judicial Review Application, paragraph 3 (1) **AB2/1/1**). Delta argued that it was, in particular, irrational to grant a lease to a third party who would have no means of access to Parcel 310, without the easement which Delta was unwilling to grant (see Judicial Review Application, paragraphs 12 and 14 **AB2/1/3**).

Mr Sylvester in his affidavit, sought leave to apply for Judicial Review “*of the decision of the Respondent to not grant it a 50 year lease over Lot 2 and to grant same instead to a third party*” (see paragraph 22 **AB2/2/8**). As paragraph 13 on page 12 of Appendix A to the Warning Letter correctly notes, Lot 2 became Parcel 310.

14. I can now also attach material from the Ministry’s Delta Petroleum Non-Belonger Land Holding Licence File. This file had proved very difficult to locate when my officials were attempting to find material to assist the Commission. The relocation of the Ministry to an alternate site required the storage of files in an off-site location. The storage facility contains various departments’ files within the Ministry in unmarked boxes. Despite great exertions, the file was not located. However, a final attempt resulted in it being found by the Ministry on Thursday 7 October 2021. The material within it traces the history of Delta’s involvement at the site of Parcel 310 and provides further background to the Delta JR Papers. It shows, in particular, consideration given by the Government in 2011 to granting a lease of Parcel 310 to Delta (see Cabinet Paper Memo c00/2011 dated 14 September 2011 2nd decision sought **AB2/6/19-20**).

14.1. On 23 November 2005, the court permitted the liquidators of Egypt Construction, a company of which Mrs Penn was a director, to sell various Parcels, including 221, to Delta (see Order of 23 November 2005, paragraph 1 **AB2/7/33** and Memo of 4 July 2011, paragraph (2)(i) **AB2/18/44**).

14.2. On 17 September 2007, Delta sought a 50 year lease of Lots 3A and B, which included what later became Parcel 310, adjacent to Parcel 221, on which they intended to construct their headquarters **AB2/8/34**.

14.3. On 18 April 2010, the Director of Delta wrote to the then Permanent Secretary, indicating that they wanted the lease of what became Parcel 310 to be in the name of Mr Sylvester **AB2/10/36**.

14.4. On 27 May 2011, Mr Sylvester wrote to the then Premier, agreeing that in exchange for a 50 year lease of Lot 2 (later Parcel 310), Delta would grant an easement to give the Crown access to Lot 1 (later Parcel 309) from the road **AB2/12/38**. Mr Sylvester referred to the intention that what is now Parcel 310 would be used to house Delta’s Regional Headquarters. Mr Sylvester referred to the intention that what is now Parcel 310 would be used to house Delta’s

Regional Headquarters and Delta's commitment to expanding their operations in the BVI market.

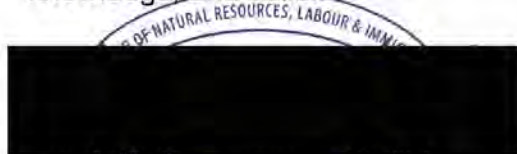
- 14.5. On 9 August 2011, Principal Crown Counsel advised that in light of the fact that the lease of Parcel 310 was supposed to be consideration for Delta's grant of easements, it should be a lease to Delta (see Cabinet Paper Memo c00/2011 dated 14 September 2011 Appendix E final paragraph **AB2/6/29-30**).
- 14.6. In September 2011, the Cabinet Paper was deferred twice (Extracts of Cabinet Meetings on 14 and 21 September 2011 under Memo No.381/2011 **AB2/19/45-46**).
- 14.7. As is apparent from the Delta JR Papers, the Government did not in the end grant the lease to Mr Sylvester in 2011.

The Response states: "bb) Delta's claim was resolved, by granting the lease that Mr Sylvester had sought over Parcel 310, as per Decision 396/2019."

Please provide an explanation as to how the Hon Vincent Wheatley considered that a disposal of Crown land to Mr Sylvester in his personal capacity could be considered as resolving any potential dispute with Delta.

15. Mr Sylvester, the Regional General Manager of Delta, had applied for the lease on 12 June 2019 (see paragraph 13 on p.12 of Appendix A of the Warning Letter and **[1219]** and **[1210]**). I understood that Delta were aware of that application and were content that it represented a satisfactory resolution. I note that in 2011 Delta had specifically asked for Mr Sylvester to take the lease of Parcel 310. I recall having seen these communications from Delta in the past.

The facts and matters set out in this response are true to the best of my recollection, knowledge, and belief.



The Hon. V. Wheatley

7 October 2021

From: Andrew King (Sensitive) <[REDACTED]>
Sent: 07 October 2021 21:56
To: Bevis Sylvester; Bevis Sylvester; Nelcia St. Jean
Cc: rhea.harrikissoon@bvi.public-inquiry.uk; juienna.tasaddiq@bvi.public-inquiry.uk;
Steven Chandler (Sensitive)
Subject: BVI Commission of Inquiry
Attachments: COI000228.pdf
Importance: High

Dear Mr Sylvester

As you are aware, Sir Gary Hickinbottom was appointed as Sole Commissioner of the COI on 19 January 2021. I am the Senior Solicitor to the COI. Further details about the COI including its Terms of Reference are available at <https://bvi.public-inquiry.uk>.

During the course of your previous evidence to the COI, you confirmed that you were granted a lease of Crown land in 2019. The Commissioner has recently received disclosure from Government of the Virgin Islands in relation to the topic of Crown land and is due to hear further evidence from the Hon Vincent Wheatley (and others) in respect of the topic on Thursday 14 October 2021.

The Commissioner considers it important to hear further oral evidence from you in respect of your leasing of Crown land in 2019. Therefore, the Commissioner now directs under your summons which continues to apply (copy attached), that you appear before him at the BVI International Arbitration Centre, 3rd Floor, Ritter House, Wickham's Cay II, Road Town, Tortola at **4pm on Friday 15 October 2021**, for the purpose of being further examined under oath or affirmation. The Commissioner asks that you confirm that you will attend as directed above via email to andrew.king@bvi.public-inquiry.uk by no later than **4pm on Monday 11 October 2021**.

The Commissioner has also directed that you please provide me with the following information/documents ("the Disclosure") via email to andrew.king@bvi.public-inquiry.uk by no later than **4pm on Tuesday 12 October 2021**:

1. Confirmation and details of (along with disclosure of any relevant documentation such as copies of claim forms, judgments and orders etc) whether you and/or Delta Petroleum has been involved in any judicial review (or other litigation) in respect of the Crown land known as Parcel 310 that was leased to you in 2019.
2. Confirmation and details of (along with disclosure any relevant documentation such as a lease, licence, letters and email etc) whether Delta Petroleum has occupied Parcel 310 since you were granted a lease over the same in 2019.
3. Confirmation of whether you hold Belonger status, and if so, on what date that status was granted.

The Commissioner appreciates that the timing of the request gives you limited time to collate relevant documents. The Commissioner does not consider, however, that any delays in obtaining documentary material should prevent you from providing the explanations and confirmation sought by the time it is requested.

This request seeks voluntary disclosure of the information required. However, by section 10 of the Commissions of Inquiry Act (Cap 237), the Commissioner has the powers of a Judge of the High Court in respect of calling for the production of documents. It is hoped that you will be willing to comply with the request in this letter; but, if you are unwilling to comply, could you please give your reasons for non-compliance. The Commissioner will take those into account when considering the exercise of his powers of compulsion. If your reason for not being able to comply with

any of the requests set out above is that the information is not available to you then the Commissioner would be assisted by a full explanation as to why that is the case.

Exercising his powers under section 9 of the Commissions of Inquiry Act, the Commissioner has published two Protocols, one concerning the 'Provision of Documents' to the COI, and the other concerning the 'Redaction of Documents'. They can be found on the COI's website. The Protocols are designed to facilitate the prompt delivery of documents to the COI and help you understand the COI's procedures for the provision of documents, and the redaction of any documents it intends to disclose further.

The Commissioner considers that the Disclosure provided to the COI will be used at a public hearing and further. Accordingly, at the same time as providing the Disclosure you must indicate which part or parts of any documents, you consider should be redacted (including of any personal data). You should do this by providing two copies of the Disclosure. One copy should show the redactions you seek marked but still visible; the other should show the same redactions marked out so that they are no longer visible. Detailed reasons must be given for any proposed redactions.

If you have any queries about this request, please do not hesitate to contact me. As you will note, this email has been copied to your legal representative Ms Nelcia St. Jean.

Thank you in anticipation of your cooperation.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk

From: Nelcia St. Jean [REDACTED]
Sent: 12 October 2021 23:57
To: Andrew King (Sensitive); Bevis Sylvester; Bevis Sylvester
Cc: Rhea Harrikissoon (Sensitive); Juienna Tasaddiq (Sensitive); Steven Chandler (Sensitive)
Subject: RE: BVI Commission of Inquiry

Dear Mr. King,

We are instructed by Mr. Sylvester that he will be unavailable to give evidence remotely. He is out of the territory and unavailable at the time requested. Additionally, he is more comfortable giving his evidence in person as the last time he gave evidence remotely when he appeared before this Commission he had difficulties including hearing properly and he had to continuously repeat himself and ask counsel for the Commission to repeat himself as well.

Kind Regards
Nelcia St. Jean | Partner
McW Todman & Co



McNamara Chambers
116 Main Street
P.O. Box 3342
Road Town, Tortola
VG1110
British Virgin Islands

Tel: 284-494-2810 [REDACTED] **Email:** [REDACTED] **Web:** www.mctodman.com

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From: Andrew King (Sensitive) <andrew.king@bvi.public-inquiry.uk>
Sent: Tuesday, October 12, 2021 5:16 PM
To: Nelcia St. Jean [REDACTED]; Bevis Sylvester [REDACTED]; Bevis Sylvester [REDACTED]
Cc: rhea.harrikissoon@bvi.public-inquiry.uk; juienna.tasaddiq@bvi.public-inquiry.uk; Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>
Subject: RE: BVI Commission of Inquiry

Dear Ms St. Jean

Thank you for your email below.

The Commissioner has confirmed that Mr Sylvester will be able to give evidence remotely (as he did previously) on Friday 15 October 2021. In light of that please could you confirm whether Mr Sylvester will appear as directed by the Commissioner under his summons?

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi-public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi-public-inquiry.uk

From: Nelcia St. Jean [REDACTED]

Sent: 12 October 2021 15:04

To: Andrew King (Sensitive) <andrew.king@>; Bevis Sylvester [REDACTED]; Bevis Sylvester <[REDACTED]>

Cc: Rhea Harrikissoon (Sensitive) <rhea.harrikissoon@>; Juienna Tasaddiq (Sensitive) <juienna.tasaddiq@>; Steven Chandler (Sensitive) <steven.chandler@>

Subject: RE: BVI Commission of Inquiry

Dear Mr. King,

Apologies for the delayed response in this matter.

We are instructed that while Mr. Sylvester he wishes to comply with the request of the Commissioner, he is unable to do so within the time specified for the following reasons:

1. He is out of the Territory and will not return until the First week of November and so will not be available to give evidence before that time.
2. Due to no. 1 above he does not have the direct access to the documentation which has been requested.

Mr. Sylvester confirms that:

1. There was a judicial review between Delta Petroleum and the Government of the Virgin Islands in respect of parcel 310. The determination was that the judicial review was premature as parcel 310 was not transferred to anyone at the time of the judicial review, which was the subject of the same.
2. Parcel 310 was leased to Mr. Sylvester in 2019. This was because upon assessment it was confirmed that without access through Delta's property access which Delta was not willing to grant that there would be no benefit to the land. Additionally, instead of transferring the property to Delta Petroleum, the property was transferred to Mr. Sylvester because he was/is a Belonger and Delta Petroleum is a foreign company and the Government was not in the practice of transferring crown land to non-Belongers.
3. Mr. Sylvester is a Belonger pursuant to the BVI Constitution Order 2007, being a person born in the BVI prior to 1983.

Kind Regards

Nelcia St. Jean | Partner

McW Todman & Co



McNamara Chambers
116 Main Street
P.O. Box 3342
Road Town, Tortola
VG1110
British Virgin Islands

Tel: 284-494-2810 **Email:** [REDACTED] **Web:** www.mctodman.com

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From: Andrew King (Sensitive) <andrew.king@bvi.public-inquiry.uk>
Sent: Tuesday, October 12, 2021 2:21 PM
To: Bevis Sylvester [REDACTED]; Bevis Sylvester [REDACTED]; Nelcia St. Jean [REDACTED]
Cc: rhea.harrikissoon@bvi.public-inquiry.uk; juienna.tasaddiq@bvi.public-inquiry.uk; Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>
Subject: RE: BVI Commission of Inquiry
Importance: High

Dear Mr Sylvester

I write with reference to my email below.

Please could you confirm by return whether you intend to comply with the Commissioner's direction under your summons to appear before him at the BVI International Arbitration Centre, 3rd Floor, Ritter House, Wickham's Cay II, Road Town, Tortola at 4pm on Friday 15 October 2021.

Please could you also confirm by return whether you intend to comply with the Commissioner's direction to produce the Disclosure sought below.

I look forward to hearing from you.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi-public-inquiry.uk

From: Andrew King (Sensitive)

Sent: 07 October 2021 16:56

To: Bevis Sylvester <[REDACTED]>; Bevis Sylvester <[REDACTED]>; Nelcia St. Jean <[REDACTED]>

Cc: rhea.harrikissoon@bvi-public-inquiry.uk; juienna.tasaddiq@bvi-public-inquiry.uk; Steven Chandler (Sensitive) <steven.chandler@bvi-public-inquiry.uk>

Subject: BVI Commission of Inquiry

Importance: High

Dear Mr Sylvester

As you are aware, Sir Gary Hickinbottom was appointed as Sole Commissioner of the COI on 19 January 2021. I am the Senior Solicitor to the COI. Further details about the COI including its Terms of Reference are available at <https://bvi-public-inquiry.uk>.

During the course of your previous evidence to the COI, you confirmed that you were granted a lease of Crown land in 2019. The Commissioner has recently received disclosure from Government of the Virgin Islands in relation to the topic of Crown land and is due to hear further evidence from the Hon Vincent Wheatley (and others) in respect of the topic on Thursday 14 October 2021.

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2. Confirmation and details of (along with disclosure any relevant documentation such as a lease, licence, letters and email etc) whether Delta Petroleum has occupied Parcel 310 since you were granted a lease over the same in 2019.
3. Confirmation of whether you hold Belonger status, and if so, on what date that status was granted.

The Commissioner appreciates that the timing of the request gives you limited time to collate relevant documents. The Commissioner does not consider, however, that any delays in obtaining documentary material should prevent you from providing the explanations and confirmation sought by the time it is requested.

This request seeks voluntary disclosure of the information required. However, by section 10 of the Commissions of Inquiry Act (Cap 237), the Commissioner has the powers of a Judge of the High Court in respect of calling for the production of documents. It is hoped that you will be willing to comply with the request in this letter; but, if you are unwilling to comply, could you please give your reasons for non-compliance. The Commissioner will take those into account when considering the exercise of his powers of compulsion. If your reason for not being able to comply with any of the requests set out above is that the information is not available to you then the Commissioner would be assisted by a full explanation as to why that is the case.

Exercising his powers under section 9 of the Commissions of Inquiry Act, the Commissioner has published two Protocols, one concerning the 'Provision of Documents' to the COI, and the other concerning the 'Redaction of Documents'. They can be found on the COI's website. The Protocols are designed to facilitate the prompt delivery of documents to the COI and help you understand the COI's procedures for the provision of documents, and the redaction of any documents it intends to disclose further.

The Commissioner considers that the Disclosure provided to the COI will be used at a public hearing and further. Accordingly, at the same time as providing the Disclosure you must indicate which part or parts of any documents, you consider should be redacted (including of any personal data). You should do this by providing two copies of the Disclosure. One copy should show the redactions you seek marked but still visible; the other should show the same redactions marked out so that they are no longer visible. Detailed reasons must be given for any proposed redactions.

If you have any queries about this request, please do not hesitate to contact me. As you will note, this email has been copied to your legal representative Ms Nelcia St. Jean.

Thank you in anticipation of your cooperation.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk

AFFIDAVIT OF BEVIS SYLVESTER

I, Bevis Sylvester of c/o McW Todman & Co, 116 Main Street, Road Town, Tortola, British Virgin Islands and I **MAKE OATH** and **SAY AS FOLLOWS**:

1. I am a witness before the Commission of Inquiry ("COI") in the British Virgin Islands, and I am the Regional General Manager of Delta Petroleum (Caribbean) Limited.
2. I make this affidavit at the request of the COI to provide evidence by way of affidavit in respect of Parcel 310 Block 2938B Road Town, Registration Section ("Parcel 310"). Unless otherwise stated, I make this affidavit from my own information, knowledge and belief.
3. I am a BVIlander and Belonger of the Territory of the Virgin Islands. Whilst I am not currently resident in the BVI full time it is my permanent home and domicile. I reside temporarily in St. Lucia, and I am currently in St. Kitts for the purposes of work.
4. I will respond to the matters requested in the order in which they were listed in the requesting email.

A detailed explanation (along with copies of any relevant disclosure) of Mr Sylvester's and/or Delta Petroleum's endeavours to purchase or lease Parcel 310 from 2003 until Mr Sylvester was granted a lease over it in 2019.

5. Parcel 221 Block 2938B Road Town, Registration Section which is owned by Delta enjoyed access to the sea and this was an important consideration in our its decision to purchase same since it was felt that sea access would enhance its business operations and allow it to deliver a better quality of service to its customers. An area of land adjacent to Parcel 221 was subsequently reclaimed by the Government, now Parcel 310, which had the effect of eliminating Delta Petroleum's Sea access via Parcel 221.

Parcel 310 did not however have an easement or legal right of way and was only accessible with Delta Petroleum's permission through Parcel 221. **[A copy of the survey Plan confirming this is exhibited herewith as "A"]**.

6. Delta Petroleum subsequently entered into discussions with the Government for an extended lease of Parcel 310 which without access to the public road would not be of any use to a third party. Delta Petroleum was however informed that its application for a lease of Parcel 310 had not been successful and that the Government had instead decided to grant a lease of same to a third party. There was no formal notification.
7. Further, by letter dated 19 August 2013, through its legal counsel McW Todman & Co, Delta Petroleum again requested a lease from the Government, but the lease was denied.**[A copy of the letter is exhibited herewith as "B"]**.
8. After Delta Petroleum was unsuccessful in getting the lease even after the above letter, Delta brought a judicial review claim based on the facts of the letter. This was unsuccessful and declared premature.
9. After Delta Petroleum was unsuccessful in getting lease and they refused the right of way to Parcel 310, I applied for a lease of the land in my personal capacity. I do not have a copy of the application because it was such a long time ago, but I was notified in June 2020 by the Permanent Secretary of the Ministry of Natural Resources and Labour that the lease was granted to me. **[A copy of the lease duly signed by the Governor of the Virgin Islands is exhibited herewith as "C"]**.
10. Upon receiving the lease, the survey points revealed that the land was not 22937 sq. ft. but rather was less by 4745.625 sq. ft. This means that the reclamation was not complete. To my understanding, I will have to go back to the crown to seek permission to complete the reclamation. Because the reclamation involves the sea, the same will be very costly. The COVID-19 pandemic commenced, and everything changed, preventing me the opportunity to revisit my plans for that area.

In respect of Delta Petroleum's Non-Belonger Land Holding Licence please provide details of (along with copies of any relevant disclosure) the following:

- a. **The number of Non-Belonger Land Holding Licences held by Delta Petroleum.**
- b. **Details of the parcels of land for which each Licence was obtained.**
- c. **The date on which each Licence was obtained.**
- d. **Confirmation as to whether Delta Petroleum ever sought or obtained a Licence in respect of Parcel 310.**

11. Delta Petroleum (Caribbean) Limited does not hold a Non-Belonger Land Holding Licence in the Territory. Delta Petroleum is the holder of Parcels 221, 223, 224, 79 and 147 Block 2938B Road Town, Registration Section which was purchased at auction pursuant to exercise of the rights of a chargee who had a security over the said property. Delta Petroleum was the successful bidder at the auction and thus purchased the property. **[A copy of the Registers of Land in respect of the properties is exhibited herewith as "D"]**. at the time that the properties were purchased there was a waiver in the law that where non-Belongers purchased properties pursuant to the exercise of a chargee's rights there was no requirement to obtain a Non-Belonger Land Holding Licence (Non-Belonger Land Holding Licence Regulations Cap 122 – Regulation 3(c) . **[A copy of that legislation is exhibited herewith as "E"]**.

12. Delta Petroleum applied for a lease of Parcel 310 but the same was not granted. I repeat paragraphs 5 to 8 above.

A detailed explanation of (along with copies of any relevant disclosure) Delta Petroleum's purchase or leasing of Crown land from Egypt Construction Limited in around 2004.

13. Paragraph 11 above is repeated. The properties were purchased pursuant to an auction in exercise of the rights of the chargee who had security on the Property (forced sale). Please see attached the Incumbencies Section of the Registers of Land of the properties.

A detailed explanation of (along with disclosure of any relevant documentation such as copies of claim forms, judgments and orders etc) Delta Petroleum's judicial review (or other litigation) in respect of Parcel 310.

14. Paragraphs 7 and 8 this affidavit are repeated as response to this question. Once the Delta Petroleum became aware that they would not receive the lease Delta Petroleum sought judicial review. The copies of the court documents were destroyed in a fire in 2018 and upon trying to obtain the same from the High Court Registry I am advised by my counsel that the Registry has been unable to locate the same. I am however advised by my counsel, and I verily believe that the said documents were requested of the and should have been provided by the Government of the Virgin Islands to the COI.

A detailed explanation of how long Delta Petroleum has occupied Parcel 310 and its legal basis for doing so.

15. Delta Petroleum does not occupy Parcel 310. Delta Petroleum parked its vehicles on Parcel 310 many years ago but when an eviction notice was received from the Governor of the Virgin Islands, Delta Petroleum removed its vehicles and have not occupied that parcel since.

A detailed explanation (along with disclosure any relevant documentation such as a lease, licence, letters and email etc) whether Delta Petroleum has occupied Parcel 310 since Mr Sylvester was granted a lease over it in 2019.

16. Delta Petroleum has not occupied Parcel 310 since I was granted a lease over the property in 2020. It is to be noted that since the property was leased to me, I had no communication with Delta Petroleum for use of the property and I have not granted permission to Delta Petroleum for the use of the property. Upon enquiry I was told that Delta Petroleum is not occupying the said land, save and except the sea entrance, meaning that they traverse the land to access their barge when docked at sea.

Confirmation (along with disclosure of any relevant documentation such as a valuation report) as to whether Mr Sylvester and/or Delta Petroleum sought or obtained any valuation of Parcel 310 from 2003 to date

17. Neither Delta Petroleum nor I have obtained any valuation of Parcel 310 since 2003 to current date.

Any matters you wish to respond to that arise from the Hon Vincent Wheatley's evidence to the COI on 14 October 2021 regarding this matter. A copy of the transcript for that hearing can be found on the COI's website.

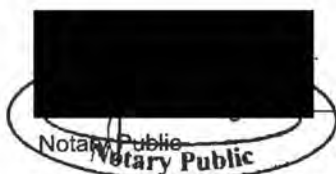
I have not had the time to read the transcript of Hon. Vincent Wheatley's evidence and so I have no comments or response on the same at this time. However, if there are any specific aspects of his testimony which you would like for me to address, please do so via the usual means.

Sworn by the above Bevis Sylvester)

on the 10th day of November 2021)

Before me:)

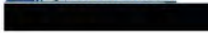


Bevis Sylvester



Chesley O. Hamilton
West Independence Square Street
Baserre St. Kitts, West Indies
869-466-4848

AFFIDAVIT OF BEVIS SYLVESTER

McW. Todman & Co.
Legal Representatives for the Witness
McNamara Chambers
116 Main Street
Road Town,
Tortola,
British Virgin Islands
www.mctodman.com



EXHIBITS TO THE AFFIDAVIT OF BEVIS SYLVESTER

McW. Todman & Co.
Legal Representatives for Bevis Sylvester
McNamara Chambers
116 Main Street
Road Town,
Tortola,
British Virgin Islands
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INDEX TO EXHIBITS

Exhibit	Page Number
Exhibit 'A'	1
Exhibit 'B'	2 - 4
Exhibit 'C'	5 - 15
Exhibit 'D'	16 - 27
Exhibit 'E'	28 - 39

TITLE : Subdivision of Reclamation
Adjacent to Parcels 221 & 252
Sheet No. : 2938B

ISLAND : Tortola

SECTION : Road Town

LOCALITY : Pasea Estate

Plan No. : CA-2938B-160-T

Scale : 1/750

Date of Survey : May, 2011

L.D.C.A. No. : GS/16/11

LOT 1

LINE	BEARING	DISTANCE(M)	NORTHINGS	EASTINGS	DESCRIPTION
5DS0826	73°34'30"	25.640	2038435.180	329709.928	Nt. Pl.
2RS827	330°45'23"	45.597	2038442.430	329734.521	Nt. Pl.
2RS828	242°05'24"	25.006	2038482.216	329712.246	5/8" S.R. PL.
4AS1401	150°45'28"	22.519	2038470.511	329690.149	5/8" S.R. FD.
4AS1700	150°45'33"	17.972	2038450.862	329701.149	5/8" S.R. FD.
5DS0826			2038435.180	329709.928	Nt. Pl.

AREA = 0.265 Acres or 11,583 sq. ft.

LOT 2

LINE	BEARING	DISTANCE(M)	NORTHINGS	EASTINGS	DESCRIPTION
4AS1409	242°05'23"	69.550	2038514.772	329773.706	5/8" S.R. FD.
2RS828	150°45'23"	45.598	2038482.217	329712.246	5/8" S.R. PL.
2RS827	73°34'08"	18.723	2038442.430	329734.521	Nt. Pl.
5DS0827	17°33'53"	27.538	2038447.726	329752.480	Nt. Pl.
4AS1701	17°34'08"	42.788	2038473.980	329760.790	5/8" S.R. FD.
4AS1409	17°34'08"		2038514.772	329773.706	5/8" S.R. FD.

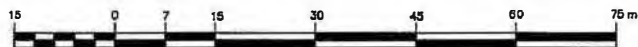
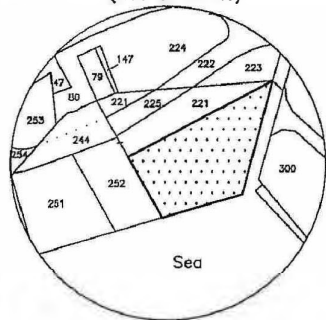
AREA = 0.526 Acres or 22,937 sq. ft.

This plan supercedes CA-2938B-126-T with respect to Lot 3 & 3A

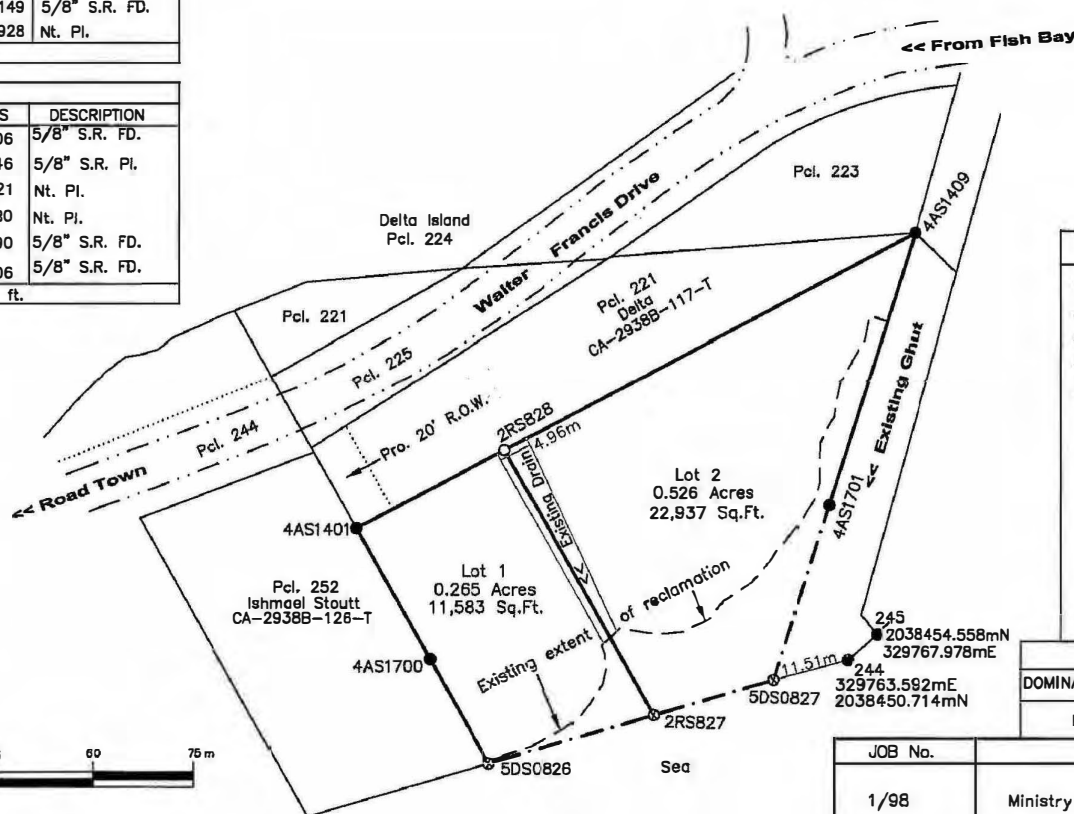
G.N.

Ellipsoid: Clarke 1866
Datum: Puerto Rico
Coordinates: U.T.M. Zone 20N

Location Sketch
(not to Scale)



Scale 1 : 750



LEGEND, NOTES AND ABBREVIATIONS

—	Boundary line
---	Public Road
- - - -	Extent of Reclamation
.....	Present extent of filled area
.....	Right of way
O	Boundary Mark Placed
●	Boundary Mark Found
⊙	Boundary mark not placed
Nt. Pl.	Not Placed
Pl.	Placed
FD.	Found
S.R.	Steel Rod
R.O.W	Right of Way
Pcl.	Parcel
Pro.	Proposed

SCHEDULE OF EASEMENTS

DOMINANT TENNEMENT	SERVIENT TENNEMENT	EASEMENT
Lot 1	Parcel 221	Pro. 20' R.O.W.

JOB No.	CLIENT	FIELD BOOK No.
1/98	Ministry of Natural Resources & Labour	TC01

I, SYLVIA RICHARDS, A SURVEYOR EMPLOYED BY THE LANDS AND SURVEY DEPARTMENT,
DECLARE THAT THIS SURVEY HAS BEEN MADE BY ME AND IS ACCURATE.

SIGNATURE: [Signature] DATE: 7th June, 2011



SURVEY DEPARTMENT
P.O. BOX 142
ROAD TOWN
TORTOLA, B.V.I.s.

CHECKED BY: [Signature]
DATE : 06-07-11
DRAWN BY : Sherkhoya Forbes

APPROVED: [Signature] 7/6/11
CHIEF SURVEYOR DATE

August 19, 2013

Permanent Secretary
Ministry of Natural Resources & Labour
Government Administration Complex
Road Town
Tortola

Dear Sir,

Re: Parcel 221 Block 2938 B Road Town Registration Section ("Parcel 221") -Delta Petroleum (Caribbean) Limited

We act on behalf of Delta Petroleum (Caribbean) Limited.

We are instructed that our client is the registered proprietor of a parcel of land situate in Road Town registered as Parcel 221 having purchased same in September 2007 together with Parcels 223, 224, 79 and 147 for the sum of \$1,100,000. At the relevant time of the purchase Parcel 221 enjoyed access to the sea and this was an important consideration in our client's decision to purchase same since it was felt that sea access would enhance its business operations and allow it to deliver a better quality of service to its customers.

We are further instructed that an area of land adjacent to Parcel 221 was subsequently reclaimed by the Government (the "New parcel") which had the effect of eliminating our client's sea access via Parcel 221. The New parcel did not however have an easement or legal right of way and was only accessible with our client's permission through Parcel 221. Our client subsequently entered into discussions with the Government for an extended lease of the New Parcel which without access to the public road would not be of any use to a third party. Our client was however recently informed that its application for a lease of the New parcel had not been successful and that the Government had instead decided to grant a lease of same to a third party. Further that the Government was seeking our client's consent for the granting of an easement over Parcel 221 in favour of the New Parcel to the Government and/or a third party in order to facilitate access to the public road.

We are instructed to advise that under no circumstances is our client willing to grant an access over Parcel 221 in favour of the New Parcel to the Government and/or a third party. As far as our client is concerned it is the only person who is entitled to be granted a lease of the New Parcel given that the creation of same deprived it of its sea access while at the same time considerably reducing the value of its property and also could not be used by anyone else without an easement being granted by our client.

August 19, 2013

Permanent Secretary
Ministry of Natural Resources & Labour
Government Administration Complex
Road Town
Tortola

Dear Sir,

Re: Parcel 221 Block 2938 B Road Town Registration Section ("Parcel 221") -Delta Petroleum (Caribbean) Limited

We act on behalf of Delta Petroleum (Caribbean) Limited.

We are instructed that our client is the registered proprietor of a parcel of land situate in Road Town registered as Parcel 221 having purchased same in September 2007 together with Parcels 223, 224, 79 and 147 for the sum of \$1,100,000. At the relevant time of the purchase Parcel 221 enjoyed access to the sea and this was an important consideration in our client's decision to purchase same since it was felt that sea access would enhance its business operations and allow it to deliver a better quality of service to its customers.

We are further instructed that an area of land adjacent to Parcel 221 was subsequently reclaimed by the Government (the "New parcel") which had the effect of eliminating our client's sea access via Parcel 221. The New parcel did not however have an easement or legal right of way and was only accessible with our client's permission through Parcel 221. Our client subsequently entered into discussions with the Government for an extended lease of the New Parcel which without access to the public road would not be of any use to a third party. Our client was however recently informed that its application for a lease of the New parcel had not been successful and that the Government had instead decided to grant a lease of same to a third party. Further that the Government was seeking our client's consent for the granting of an easement over Parcel 221 in favour of the New Parcel to the Government and/or a third party in order to facilitate access to the public road.

We are instructed to advise that under no circumstances is our client willing to grant an access over Parcel 221 in favour of the New Parcel to the Government and/or a third party. As far as our client is concerned it is the only person who is entitled to be granted a lease of the New Parcel given that the creation of same deprived it of its sea access while at the same time considerably reducing the value of its property and also could not be used by anyone else without an easement being granted by our client.

In light of the above, we are instructed to request that a lease over the New Parcel be granted to our client. In the meantime our client reserves all its legal rights in the matter including but not limited to the bringing of a claim against the Government for the diminution in the value of its property as a result of the creation of the New parcel and/or a judicial review application to challenge any decision to grant a third party a lease of the New parcel in preference to our client.

Yours sincerely,

A black rectangular box redacting the signature of the sender.

McW. Todman & Co

LANDS AND SURVEY DEPARTMENT
LANDS UNIT
INSTRUMENT NO.

799/2020

"C"

VIRGIN ISLANDS

THE REGISTERED LAND RULES

Form R.L. 8

LANDS AND SURVEY DEPARTMENT
LEASE **FILED** LANDS UNIT
VIRGIN ISLANDS

REGISTRATION SECTION

BLOCK

JUL 09 2020

PARCEL

Road Town

2938B AL

310/1

I, **AUGUSTUS J. U. JASPERT**, Governor of the Territory of the Virgin Islands acting herein for and on behalf of Her Majesty the Queen in Her Government of the said Territory (hereinafter called "the Lessor" which expression shall where the context so admits include the person for the time being entitled to the reversion immediately expectant upon the determination of the term hereby created and shall include my successors in office and assigns) hereby lease to **BEVIS SYLVESTER** of East End, Tortola in the Virgin Islands (hereinafter called "the Lessee" which expression shall where the context so admits include his personal representatives and assigns) the land comprised in the above-mentioned parcel measuring 0.526 acres and identified on the attached Cadastral Survey Plan Number CA-5172A-039-A ("the Leased Area") for a term of fifty (50) years in consideration of the rent and covenants reserved by and contained in this Lease.

The Grant of Easement given to the Crown by Garvin Ishmael Stoutt Sr. by Instrument No. 1068, dated 25th July, 2017 remains; as this will provide access to Parcel 310 of the said block and registration section.

1. **TERM**

The Lease shall be for a term of fifty (50) years effective 1st January 2020 and ending 31 December 2070 ("the Term"), determinable as provided by this Lease, with an option to renew for a further period of twenty-five (25) years. The Term shall include the period of any holding over or any extension or continuance thereof whether by statute or be common law where the context so admits.

2. **RENT**

- The annual rent shall be eight hundred dollars (\$800.00 USD) to be paid on or before 1st January each year.
- The rent shall be fixed at Eight Hundred Dollars (\$800.00 USD) per annum for the first ten (10) years and thereafter the rent payable will be calculated every five (5) years at five (5) percent of the unimproved market value of the land.
- Rent Cap - NIL
- If at any time the whole or part of the Leased area is sub-let to a third party the Lessee shall make a yearly payment in addition to the base rent in the amount equivalent to two and a half (2.5%) percent of the rents paid due to the Lessee

EXEMPT FROM STAMP DUTY

STAMP DUTY DATE: 6/24/20

INITIALS of OFFICER: [REDACTED]

REGISTRATION FEE
DATE PAID
RECEIPT NO.
INITIAL OF OFFICER



LANDS AND SURVEY DEPARTMENT
LANDS UNIT
JUL 09 2020

RECEIVED

- by all sub-lessees (hereinafter called the "rent increment").
- e) To pay and discharge any taxes, assessments or charges and outgoing whatsoever which may from time be imposed or charged upon the owner or occupier of the demised property except only such as the owner is by law bound to pay notwithstanding any contract to the contrary.

3. RESERVATIONS AND EXCEPTIONS

The Lease shall at all times be subject to the following reservations and exceptions:-

- a) The right of the Lessor and his authorized agents at all reasonable times and on reasonable notice to enter upon the Leased Area for the purpose of:-
- (i) inspecting its state and condition;
 - (ii) cleaning, decorating, maintaining or repairing the Leased Area in accordance with the provisions of this Lease;
 - (iii) inspecting or ascertaining the boundaries of the Leased Area and erecting or maintaining any marks to delineate those boundaries;
 - (iv) inspecting the Leased Area for the assessment of rent in accordance with the provisions of this lease;
 - (v) installing, repairing, renovating or maintaining any public services or utilities on or under the Leased Area.
 - (vi) satisfying himself that the covenants on the part of the Lessee herein contained are being duly observed and performed.
- b) The right of the Lessor to use his adjacent property in such manner as the Lessor thinks fit.
- c) The right of the Lessor to establish and maintain an easement for a road reserve between the public road and the landward boundary of the Leased Area provided that the width and location of the easement are established to the satisfaction of the Government official responsible for roads.

4. LESSOR'S COVENANTS AND OBLIGATIONS

The Lessor covenants with the Lessee as follows:-

- a) Throughout the Term of the Lease to be bound by the implied agreements set out in **Section 52 of the Registered Land Ordinance, Chapter 229** in so far as the same are applicable and do not conflict with the covenants herein contained.
- b) To pay compensation for the value of improvements to the Leased Area affected by the Lessee during the Term of the Lease in the event that a new Lease is not issued to the Lessee at the determination of this Lease.
- c) That the Lessee paying the rents hereby reserved and performing and observing the Lessee's covenants herein contained may quietly enjoy and use the leased area during the term without any interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor.

5. LESSEE'S COVENANTS AND OBLIGATIONS

The Lessee's covenant with the Lessor as follows:-

- a) Throughout the Term of the Lease to be bound by the implied agreements set out in **Section 53 of the Registered Land Ordinance, Chapter 229** in so far as the same are applicable and do not conflict with the covenants herein contained.
- b) To pay the rents on the days and in the manner set out in this Lease without deduction and in the event of a dispute until the dispute is settled and, if any rent falls in arrears for more than thirty (30) days from the due date, to pay compound interest at the rate of 2% above the New York Prime Rate applicable on the date when such rent fell due if called upon by the Lessor to do so.
- c) To comply with and observe the Laws of the Virgin Islands and any lawful directions made pursuant to them so far as they apply to the use, occupation and development of the Leased Area.
- d) Not to make any alteration or addition to the Leased Area without the Lessor's prior written Consent.
- e) To clean, decorate and to keep and maintain the grounds of the Leased Area together with all buildings and other structures in good and substantial repair and to repair or otherwise make good any defect of construction repair or appearance of which notice has been given by the Lessor to the Lessee and if the Lessee shall not within three months after the service of such have completed the repair and made good such defects then to permit the Lessor to enter upon the Leased Area and execute such repair or make good such defect and to repay the Lessor on demand the

entire costs incurred by him in executing such repair or making good such defect as are notified in accordance with this clause.

- f) To indemnify and keep indemnified the Lessor from and against all proceedings, costs, liabilities, claims, demands, actions, expenses, loss or damages incurred in consequence of the Lessee's use and occupation of the Leased Area, or arising out of the breach or negligent performance or failure in performance by the Lessee of any of the terms, covenants or conditions of this Lease.
- g) To promptly notify the Lessor of any change in his address for service for the purposes of this lease.
- h) To take all necessary steps to prevent and not permit any encroachment on the Leased Area and promptly to give notice to the Lessor of any such encroachment or threat thereof.
- i) To yield up the Leased Area at the expiration or sooner determination of the term (and any extension thereof) in good and substantial repair and condition in accordance with the provisions of this Lease.

6. RESTRICTIONS AS TO USER

The Lessee shall not throughout the Term of the Lease:-

- a) Use, permit or suffer to be used the Leased Area for any purpose other than for commercial purposes;
- b) Use, occupy or permit the Leased Area or any part of it to be used or occupied for any of the following prohibited uses:-
 - (i) for any illegal, immoral or disreputable purpose;
 - (ii) for any dangerous, offensive, noxious, noisome, or hazardous purpose;
 - (iii) in such a way as may reasonably cause nuisance or annoyance to the Lessor or to occupiers of any neighboring premises;
- c) Transfer, assign, charge, sublet or otherwise deal with the Lessee's interest in the Leased Area or any part of it without first obtaining the written permission of the Lessor (which permission shall not be unreasonably withheld, but may be subject to conditions).
- d) Enter into any agreement to assign, charge, sublet or

otherwise deal with the Lessee's interest in the Leased Area in a manner which is inconsistent with or does not impose the reservations, covenants and conditions contained in this Lease.

7. YIELD UP IN REPAIR AT THE END OF THE TERM

At the expiration or sooner determination of the Term (and any extension thereof) the Lessee shall in accordance with the Lessee's covenants herein contained yield up to the Lessor the Leased Area together with all buildings and other improvements constructed on the land in good and tenantable repair and condition whereupon the following provisions, where applicable, will come into effect:-

- a) The Lessor shall compensate the Lessee for the fair market value of such improvements taking account of their age, condition, and suitability for the business conducted on the Leased Area at the time of determination.
- b) In the event that agreement cannot be reached on the amount of compensation within 3 months of the Lessor making an offer in writing, the question of value shall be referred to arbitration and both parties agree to be bound by the decision of the arbitrator.
- d) The Lessor may deduct from the compensation payable any amount owed in respect of rent, taxes or other Government charges over the Leased Area, buildings or business operations on that land together with any interest accrued on the said amount owed.

8. TERMINATION

The conditions for termination of this Lease shall be in accordance with **Sections 55 and 56** of the **Registered Land Ordinance, Chapter 229**.

Termination may also occur:-

- a) At any time by mutual agreement.
- b) Upon Ninety (90) days' notice in writing by either side.
- c) If and whenever the whole or part of the rents hereby reserved are at any time unpaid for 30 days or more after becoming due (whether formally demanded or not).
- d) If a Receiver of the Lessee's assets is appointed.

e) If and whenever the Lessee fails to comply with any lawful direction made in accordance with any Law of the Virgin Islands relating to the occupation, use or development of the Leased Area.

e) If this Lease was obtained by false declaration or statement.

9. MISCELLANEOUS PROVISIONS

a) Agreement to co-operate

Both parties agree to execute any and all supplemental documents and to take all reasonably required steps to give full force and effect to the basic terms and intent of this Agreement.

All disputes or differences which arise out of or in connection with this lease shall be settled (as far as possible) by means of negotiation between the parties. The parties undertake that they shall at all times work together to avoid any disputes.

b) Entire Understanding and Amendments

This instrument comprises the entire agreement between the parties and may not be varied in any way unless in writing and signed by them or their duly authorized representatives.

c) Force Majeure

The parties hereto shall be excused from their affected contractual obligations when their performance is prevented by an act of God, war, civil commotion, industrial action, riot, earthquake, fire or other natural catastrophic force majeure.

Non-performance or failure to fulfill contractual obligations due to such force majeure conditions will not be considered a breach of contract, provided always that those obligations affected shall be suspended only for the duration of those force majeure conditions.

During the existence of any force majeure condition, all parties shall use a reasonable effort to protect each other's property and interests.

d) Mutual Indemnities

Each of the parties hereby undertakes to indemnify and hold the other harmless from and against all proceedings, costs, liabilities, claims, demands, actions, expenses, damage and losses arising out of the breach or negligent performance by

them of any of the terms of this Lease.

e) Damage to or destruction of the Leased Area

If the Leased Area or any part thereof is at any time during the Term, damaged or destroyed so as to be unfit for occupation and use and if the insurance effected or carried by the Lessee has not yet been rendered void by reason of any act or default of the Lessee then the rents hereby reserved or a fair proportion thereof according to the nature and extent of the damage sustained shall be suspended until the Leased Area is again rendered fit for occupation and use.

f) Changed conditions or events

Each party hereto shall notify the other of any material change in conditions or the occurrence of any event which interferes or threatens to interfere with the performance of this lease. Upon such notice, the parties shall establish a joint report as to the existence of such change or event and, pending the establishment of the said report, either may submit to, or invite proposals to be submitted by the other as to the measures which may be taken by either party or others to overcome the interference or as to any alternative steps to be undertaken by either party or others with a view to continued performance under this Lease.

These proposals may include recommendations for the suspension of any condition or performance under this Lease, for a modification of the terms of performance, or for the termination of the Lease and for the assumption by either party of any cost incurred or to be incurred as a result of the change or event which has arisen or in giving effect to the recommendations.

Failure of the parties to agree on the establishment of the joint report referred to in this clause, or to make proposals, or to give effect to the recommendations advanced by the other, shall be considered a dispute within the meaning of sub-clause (g) below.

g) Arbitration

All disputes or differences which may arise concerning the construction, meaning or effect of this Lease or concerning the rights and liabilities of the parties hereunder or any other matter arising out of or in connection with this Lease shall be referred to a single arbitrator to be agreed between the parties.

Failing such agreement within 30 days of the request by one

partly to the other that a matter be referred to arbitration in accordance with this clause such reference shall be to an arbitrator appointed by the President for the time being of the British Virgin Islands Bar Association. The arbitrator shall be an independent person of good repute and standing chosen after due regard for the basic point of disagreement (e.g. a lawyer, accountant or technical expert).

The decision of such arbitrator shall be final and binding upon the parties.

Any reference under this clause shall be deemed to be a reference to arbitration within the meaning of the **Arbitration Act 2013 of the Laws of the Virgin Islands** or any other law enacted in substitution.

h) Costs

The Lessee shall pay the following costs in connection with the preparation and grant of this Lease:-

- (i) the Lessee's own legal costs;
- (ii) all other costs charges and expenses incurred by the Lessor incidental to the preparation and service of any notice in respect of any breach of any covenant or condition in this Lease even though forfeiture is avoided otherwise than by relief granted by the Court.

i) Waiver

In no event shall any delay, failure or omission on the part of either of the parties in enforcing, exercising or pursuing any right, power, privilege, claim or remedy which is conferred by this Lease, or which arises under this Lease, or arises under any breach by the other party of any of its obligations hereunder be deemed to be or be construed as a waiver thereof or of any such right, power, privilege, claim or remedy or operate so as to bar the enforcement or exercise thereof or of any other such right, power, privilege, claim or remedy, in any other instance at any time or times thereafter.

The Lessor's right of forfeiture under Section 55 of the Registered Land Ordinance, Chapter 229 shall not be taken to have been waived by the Lessor's acceptance of rent which has become due since the breach of covenant or condition which entitled the Lessor to forfeit this Lease.

j) Severance (unenforceable, void or illegal provisions)

If any clause or provision of this Lease or part thereof is rendered void, illegal or unenforceable in any respect then:-

- i) Where the context so allows, the parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the objectives of the invalid or unenforceable provision.
- ii) The remaining provisions and rest of the Lease shall remain in full force and effect and shall not in any way be affected or impaired thereby.

k) **Application of Registered Land Ordinance**

Section 151 of the Registered Land Ordinance, Chapter 229 shall apply to all notices and certificates required to be served or given under this Lease.

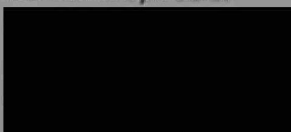
Notices, communication and service

- i. Without prejudice to the right to serve notices by any other means, all notices and communication under this lease shall be in writing.
- ii. Notices and communications shall be deemed to be sufficiently served if telefaxed or transmitted by other electronic means of written communication, provided there is immediate confirmation by letter.
- iii. Notices and communications to the Lessor shall be deemed to be sufficiently served on the Lessor if delivered to:

**The Permanent Secretary
Ministry of Natural Resources and Labour
33 Administration Drive
Road Town, Tortola
Virgin Islands, VG1110**

- iv. Notices and communications shall be deemed to be sufficiently served on the Lessee if delivered to:

Mr. Bevis Sylvester



or such alternative address for service of which the Lessor is notified by the Lessee in writing.

l) Governing Law

This Lease shall be governed by and construed in accordance with the Laws of the Virgin Islands and the parties hereby agree to submit to the Jurisdiction of the Courts of the Virgin Islands.

In witness whereof the Lessor has hereunto set his hand and affixed the Public Seal and the Lessee has hereunto set his hand and seal this 18th day of JUNE, 2020

THE PUBLIC SEAL appointed for the)
Territory of the Virgin Islands was)
hereto affixed to these presents)
signed by **HIS EXCELLENCY,**)
AUGUSTUS J. U. JASPERT, Governor)
of the said Territory for and behalf of)
HER MAJESTY THE QUEEN before and)
in the presence of:)



AUGUSTUS J. U. JASPERT
HIS EXCELLENCY THE GOVERNOR

Witness

Name: Chellay Forbes

Signed and Delivered by)
BEVIS SYLVESTER, as)
Transferee, before and in the)
presence of:)

BEVIS SYLVESTER

Witness

Name: Michelle Bhajan

RT 2938B - 221
C — INCUMBRANCES SECTION

BRITISH VIRGIN ISLANDS

LAND REGISTER

Edition 1
 Opened 15.08.1997

A - PROPERTY SECTION

Registration Section ROAD TOWN	APPURTENANCES	Description of Land CROWN/PRIVATE
Block 2938B Parcel No. 223	CERTIFIED A TRUE COPY [REDACTED] DAY OF NOV-2021 CHIEF REGISTRAR OF LANDS	Nature of title ABSOLUTE/ PROVISIONAL
Rem. of Pcl 148		Particulars recorded in para. 7 of adjudication record (provisional titles only)
Approx. Area 0.15 Acres		Origin of title FIRST REGISTRATION MUTATION No. 93/1997

B - PROPRIETORSHIP SECTION

ENTRY NO.	DATE	INSTRUMENT NO.	NAME AND ADDRESS OF PROPRIETOR(S)	SIGNATURE OF REGISTRAR
1	15.8.97	1678/1997	EGYPT CONSTRUCTION LIMITED, Road Town, Tortola	[REDACTED]
2	18.10.2005	2581/2005	DIANNE WHEATLEY, as Liquidator of Egypt Construction Limited	[REDACTED]
3	12.9.2007	2349/2007	DELTA PETROLEUM (CARIBBEAN) LIMITED	[REDACTED]



268

BRITISH VIRGIN ISLANDS

LAND REGISTER

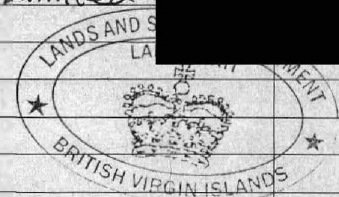
Edition 1
 Opened 15.08.1997

A - PROPERTY SECTION

Registration Section ROAD TOWN Block 2938B Parcel No. 224 Rem. of Pcl 148 0.50 Acres Approx. Area 0.15 Acres	APPURTENANCES	Description of Land CROWN/PRIVATE Nature of title ABSOLUTE/PROVISIONAL Particulars recorded in para. 7 of adjudication record (provisional titles only) Origin of title FIRST REGISTRATION 93/1997 MUTATION No.
	CERTIFIED A TRUE COPY [REDACTED] OF ADJ. 2021 CHIEF REGISTRAR OF LANDS	

B - PROPRIETORSHIP SECTION

ENTRY NO.	DATE	INSTRUMENT NO.	NAME AND ADDRESS OF PROPRIETOR(S)	SIGNATURE OF
1	15.8.97	1678/1997	EGYPT CONSTRUCTION LIMITED, Road Town, Tortola	[REDACTED]
2	18.10.2005	2581/2005	DIANNE WHEATLEY, as Liquidator of Egypt Construction Limited	[REDACTED]
3	12.9.2007	2349/2007	DELTA PETROLEUM (CARIBBEAN) LIMITED	[REDACTED]



C — INCUMBRANCES SECTION



SIGNATURE OF
REGISTRAR

BRITISH VIRGIN ISLANDS

LAND REGISTER

Edition 1

Opened 19.10.73

A — PROPERTY SECTION

Registration Section <u>ROAD TOWN</u> Block <u>2938B</u> Parcel No. <u>79</u> Approx. Area <u>0.1 acre</u>	APPURTENANCES	Description of land <u>CROWN/PRIVATE</u>
	CERTIFIED A TRUE COPY THIS <u>016</u> DAY OF <u>NOV</u> 2021 <u>[Signature]</u> CHIEF REGISTRAR OF LANDS	Nature of title <u>ABSOLUTE/PROVISIONAL</u>
		Particulars recorded in para. 7 of adjudication record (provisional titles only)
		Origin of title FIRST REGISTRATION MUTATION No.

B — PROPRIETORSHIP SECTION

ENTRY No.	DATE	INSTRUMENT No.	NAME AND ADDRESS OF PROPRIETOR(S)	SIGNATURE OF REGISTRAR
1	19.10.73	A. RECORD	TORTOLA INVESTMENT TRUST LIMITED, P.O. Box 68, Road Town, Tortola, B.V.I.	[Redacted]
2.	11.10.82	806/1982	EGYPT CONSTRUCTION LIMITED, ROAD TOWN, TORTOLA, BRITISH VIRGIN ISLANDS	[Redacted]
3	18.10.2005	2581/2005	DIANNE WHEATLEY as Liquidator of Egypt Construction Limited	[Redacted]
4	12.9.2007	2349/2007	DELTA PETROLEUM (CARIBBEAN) LIMITED	[Redacted]



Moore's Modern Methods Ltd., London
To repeat order state No. 552841-2-L

Block 2938B Parcel 79

C — INCUMBRANCES SECTION



ENTRY No.	DATE	INSTRUMENT No.	NATURE OF INCUMBRANCE	FURTHER PARTICULARS	SIGNATURE OF REGISTRAR
1	22.7.75	888/1975	CAUTION	THE BANK OF NOVA SCOTIA <i>Extended in 2nd</i> No dealings altogether <i>ROBERTSON LODGE CLAIM AS</i> INTEREST AS MORTGAGES AND FORBID THE REGISTRATIONS OF DEALINGS ALTOGETHER.	
1.	30.12.83 11.10.1982	1203/1983 807/1982	DISCHARGE CHARGE OF CHARGE	<i>CHARGE TO SECURE \$227,000.00 REPAYABLE 1st SEPTEMBER, 1985</i> <i>PROMOTOR: CHASE MANHATTAN BANK AN. HONG KONG, TORTOLA</i> <i>Note: This charge is made with and subject to the covenants, agreements and conditions contained in Memo. See Inst. # 807/1982.</i>	
3.	6.8.1988 28.3.1985	1566/1988 315/1985	DISCHARGE CHARGE	<i>CHARGE TO SECURE \$40,000.00 REPAYABLE IN SEMESTERS</i> <i>PROMOTOR: JAMES RENTALS LTD. HONG TOWN TORTOLA</i> <i>Note: This charge is made with and subject to the covenants, agreements and conditions contained in Memo. See Inst. # 315/1985.</i>	
4.	6.8.1988 28.3.1985	1566/1988 315/1985	CHARGE	<i>CHARGE TO SECURE \$40,000.00 REPAYABLE IN SEMESTERS</i> <i>PROMOTOR: JAMES RENTALS LTD. HONG TOWN TORTOLA</i> <i>Note: This charge is made with and subject to the covenants, agreements and conditions contained in Memo. See Inst. # 315/1985.</i>	
5.	30.12.1986 12.12.05	1553/1986 3085/2005	LEASE WITHDRAWAL	<i>LEASEHOLD # 2938B 79/1.</i>	
6.	22.8.1999	577/1999	CAUTION OF CAUTION	<i>No dealings altogether without the consent of Eugene Melbadys Christopher who claim an interest under a will, until this caution is removed by her or ORDER of the COURT or of the Registrar.</i>	
7	2.11.2007	2882/2007	OFFICIAL SEARCH	<i>STAY OF REGISTRATION FOR 14 DAYS FROM NOV 2-15, 2007</i> <i>APPLICANT: FIRST CARIBBEAN INTERNATIONAL BANK (CAYMAN) LIMITED</i>	

BRITISH VIRGIN ISLANDS LAND REGISTER



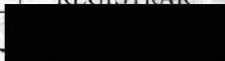
Edition.....2.....

Opened..13.11.2007.....

A - PROPERTY SECTION

Registration Section <u>ROAD TOWN</u> Block <u>2938B</u> Parcel No. <u>79</u> <hr style="border-top: 1px dotted black;"/> Approx. Area <u>0.1</u>Acres	APPURTENANCES <div style="border: 1px solid black; padding: 5px; display: inline-block;"> CERTIFIED TRUE COPY DAY OF <u>NOV</u> 2021 REGISTRAR OF LANDS </div>	Description of Land <input checked="" type="checkbox"/> CROWN /PRIVATE <input type="checkbox"/> Nature of title <input type="checkbox"/> ABSOLUTE / PROVISIONAL <input checked="" type="checkbox"/> Particulars recorded in para. 7 of adjudication Record (Provisional titles only) Origin of title <u>FIRST REGISTRATION</u> MUTATION NO.
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B - PROPRIETORSHIP SECTION

ENTRY NO.	DATE	INSTRUMENT NO.	NAME AND ADDRESS OF PROPRIETOR(S)	SIGNATURE OF REGISTRAR
1	12.9.2007	2349/2007	DELTA PETROLEUM (CARIBBEAN) LIMITED	



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BRITISH VIRGIN ISLANDS

LAND REGISTER

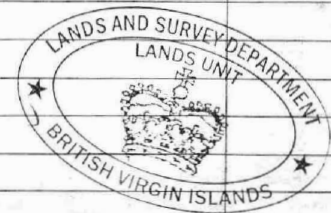
Edition 1
Opened 2.4.81

A - PROPERTY SECTION

Registration Section <u>ROAD TOWN</u> Block <u>2938B</u> Parcel No. <u>147</u> Approx. Area <u>0.019 acre</u>	APPURTENANCES	Description of land <u>CROWN/PRIVATE</u>
	<p>CERTIFIED A TRUE COPY THIS <u>9th</u> DAY OF <u>NOV</u> 2021 [REDACTED] CHIEF REGISTRAR OF LANDS</p>	Nature of title <u>ABSOLUTE/PROVISIONAL</u>
		Particulars recorded in para. 7 of adjudication record (provisional titles only)
		Origin of title FIRST REGISTRATION MUTATION No. <u>29/1981</u>

B - PROPRIETORSHIP SECTION

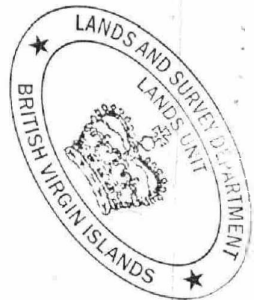
ENTRY No.	DATE	INSTRUMENT No.	NAME AND ADDRESS OF PROPRIETOR(S)	SIGNATURE OF REGISTRAR
1	2.4.81	267/1981	TORTOLA INVESTMENT TRUST LIMITED, Bank of Nova Scotia Building	[REDACTED]
2	9.5.1984	COURT ORDER 4/1/1984	EGYPT CONSTRUCTION LIMITED, Road Town, TORTOLA	[REDACTED]
3	18.10.2005	1581/2005	DIANNE WHEATLEY, as Liquidator of Egypt Construction Limited	[REDACTED]
4	12.9.2007	2349/2007	DELTA PETROLEUM (CARIBBEAN) LIMITED	[REDACTED]



2938B.147

C - INCUMBRANCES SECTION

ENTRY No.	DATE	INSTRUMENT No.	NATURE OF INCUMBRANCE	FURTHER PARTICULARS	SIGNATURE OF REGISTRAR
1.	5.10.1982	788/1982	CAUTION	no dealings altogether without the consent of DEAN SKELTON & others who claim an interest at none. See Inst. # 788/1982.	
2.	28.3.1985	315/1985	CHARGE	CHARGE TO SECURE \$40,000 REPAYABLE ON DEMAND	
3.	28.3.1985	315/1985	CHARGE	Proprietor: JAMES KENYAS Ltd, ROAD TOWN, TORTOLA Note: This charge is made with and subject to the conditions, agreements and covenants contained in Memo. See Inst. # 315/1985	
27 4.	30.12.1986	1553/1986	LEASE	LEASEHOLD # 2938B 147/1	
5.	22.3.1999	577/1999	CAUTION OF CAUTION	No dealings altogether without the consent of Eugene Mekoo Christopher who claim an interest under a Will, until this Caution has been withdrawn by her or by ORDER of the Court of the Registrar	
6	08.11.07	2882/2007	Official Search	Stay of Registration for 14 days from November 2 nd - 15 th 2007 Applicant: FirstCaribbean International Bank (Cayman) Limited	
7	13.11.2007	2961/2007	CHARGE	CHARGE TO SECURE \$770,000.00 REPAYABLE ON DEMAND	
8	13.11.2007	2961/2007	NOTE	Proprietor: FirstCaribbean International Bank (Cayman) Limited The Bank shall have the right to tack and to consolidate this charge under Sections 81 & 82 of the RLO	



CHAPTER 122.

NON-BELONGERS LAND HOLDING REGULATION.

Amended by Act 6 of 1994
 " ACT 2 of 1998
 (1st February, 1923.)
 " Act 9 of 35 1 2004

14/1922
 3/1949
 S.R.O. 22/1956
 10/1960.
 9/1961
 9/1970
 3/1972
 31/1977
 8/1980
 8/1982
 5/1986
 13/1987

1. This Act may be cited as the Non-belongers Land Holding Regulation Act.

Short title.
 31/1977.

2. In this Act—

Interpretation.

"banker" means any person, body corporate, partnership or unincorporated body of persons lawfully carrying on the business of banking in the Territory who holds a general banking licence under section 5 (2) (a) of the Banking Ordinance;

"debenture" includes every mortgage or charge by a company whether floating or otherwise on any of the company's property or on its undertaking or on its uncalled capital and also every obligation by the company (not being a bill of exchange or promissory note) for the payment of a debt or the repayment of money lent or to be lent;

"member of a company" includes any person entitled under the memorandum or articles or any resolution of the company to participate in its assets or in its divisible profits but a servant or agent of the company shall not be deemed to be a member by reason only that the amount of his emoluments depends wholly or partially on the amount of the company's profits;

"mortgage" includes every instrument creating a mortgage or charge on land except a debenture;

"non-belonger" means any person other than a person deemed to belong to the Virgin Islands under the provisions of section 2 (2) of the Constitution and includes a non-belonger company;

13/1987.

"non-belonger company" means—

13/1987.

- (i) any company incorporated outside the Territory;
- (ii) any company incorporated in the Territory and to which the provisions of section 6 apply;

"share" includes stock and in the case of a company not having a share capital the interest of a member in the assets of the company;

"unlicensed non-belonger" means a non-belonger who does not hold a licence granted under this Act.

PART I.

HOLDING OF LAND BY UNLICENSED NON-BELONGERS.

Forfeiture of
land and
mortgages held
by unlicensed
aliens.

3. Subject to the provisions of this Act, neither land in the Territory nor a mortgage on land in the Territory shall, after the commencement of this Act, be held by an unlicensed alien, and any land or mortgage so held shall be forfeited to Her Majesty:

Provided that—

9/1961.

(a) land may be acquired and held by on an annual tenancy or for any less interest for the purposes of his residence, trade, or business, but an unlicensed non-belonger shall not so hold more than five acres of land in all;

9/1961.

(b) land or any interest therein acquired by a banker in the exercise of any right of foreclosure of a mortgage held by such banker shall not be forfeited to Her Majesty while such land or interest therein is held by such banker within a period of five years from the date of such acquisition or within such extended time (if any) as the Governor may decide to be reasonable;

13/1987.

(c) land or any interest therein acquired by an unlicensed non-belonger by sale from a banker who—

- (i) holds such land or interest therein under the preceding paragraph (b); or
- (ii) sells such land or interest therein in the exercise of any right or power as mortgagee under a mortgage held by such banker,

shall not be subject to the provisions of this Act;

*Amended
2009*

(d) land acquired by an unlicensed non-belonger under a will or on an intestacy shall not be forfeited if, within one year from the death of the testator or intestate or within such extended time (if any) as the Governor may decide to be reasonable, the land is sold or the non-belonger obtains a licence to hold the land;

(e) a mortgage acquired by an unlicensed non-belonger under a will or on an intestacy shall not be forfeited; but the non-belonger shall not unless he obtains a licence to hold the mortgage, be entitled to foreclose or enter into possession of the mortgage land;

(f) (i) nothing in this Act shall affect the interest of a judgment creditor in the land of his judgment debtor, but save as hereinafter provided the debtor's land shall not be acquired by an unlicensed non-belonger; 9/1961.

(ii) land or any interest therein acquired by an unlicensed non-belonger on sale in the enforcement of any right or power as mortgagee under a mortgage held by a banker shall not be subject to the provisions of this Act; 13/1987.

(g) nothing in this Act shall affect the estate or interest of a non-belonger in any land or mortgage held by him at the commencement of this Act;

(h) nothing in this Act shall affect any citizen or subject of a foreign state upon whom there has been conferred by Treaty the right to hold land within the Territory or the Government of any foreign state in so far as such Government may be enabled to own land within the Territory for consular use. 13/1987.

4. (1) The Governor may grant a licence—

(a) to a non-belonger;

(b) to a non-belonger company that has been granted any licence required under section 9,

to hold any land or any interest therein as owner, tenant or mortgagee.

Licenses for non-belongers and non-belonger companies to hold land or mortgages. 13/1987.

(2) A licence granted under subsection (1), other than a licence granted under the provisions of the Banking Act, to hold a general banking licence shall—

(a) be subject to such terms and conditions as the Governor may deem fit; and

(b) be operative only as to the person or company, as the case may be, and the land described and as to the interest specified therein.

(3) A licence granted under this Act shall be of no force or effect until registered in the Record Office of the Territory.

(4) On the breach of any condition in a licence granted under this Act, the land or interest therein of the non-belonger or the non-belonger company held under authority thereof shall be forfeited to Her Majesty or such non-belonger or non-belonger company shall be subject to such penalty as the Governor may determine.

Effect of
forfeiture.

5. (1) Land or a mortgage forfeited under this Act shall not vest in Her Majesty unless and until a judgment is obtained declaring the forfeiture; but on such judgment being obtained the title of Her Majesty shall relate back to and commence at the time when the forfeiture took place.

(2) A judgment declaring a forfeiture of land shall operate to vest in Her Majesty all the estate and interest of the non-belonger in the forfeited land.

(3) A judgment declaring a forfeiture of a mortgage shall operate to vest in Her Majesty all the estate and interest of the non-belonger in the mortgaged land subject to any right of redemption subsisting therein, and also to vest in Her Majesty the right to recover and receive and to enforce all securities for the mortgage money.

PART II.

13/1987.

RESTRICTIONS ON COMPANIES UNDER NON-BELONGER CONTROL HOLDING OR INTENDING TO ACQUIRE LAND OR ANY INTEREST THEREIN.

Companies
under
non-belonger
control.

6. (1) For the purposes of this Act a company shall be deemed to be under non-belonger control—

(a) if any of its directors is an unlicensed non-belonger,

(b) if more than one-third of the votes exercisable at any meeting of the company or which would be exercisable if a meeting of the company was held are vested in unlicensed non-belongers, or

(c) in the case of a company, if more than one-third of the shares are held by non-belongers

(d) in the case of a company, if more than one-third of the capital, if more than one-third of the shares are unlicensed non-belongers

(e) if the company has, within the twelve months preceding the date of the judgment, a company who has acquired more than one-third of the company as directors

(f) if more than one-third of the outstanding shares of the company are unlicensed non-belongers

(g) if the company has, within the twelve months preceding the date of the judgment, a company for whom more than one-third of the non-belongers exercise control over all the debentures outstanding.

(2) Every company to which the provisions of this Act apply, shall make a declaration of the nature of any licence received by it.

7. Shares or debentures acquired by an unlicensed non-belonger on sale or otherwise, shall be held by a banker subject to the provisions of this Act until they are sold to a person other than such banker a sum in respect of such sale interest and cost unpaid on account of its enforcement.

8. Notwithstanding anything to the contrary in any instrument for securing a loan or interest in land, a company shall not—

(a) restrict the transfer of shares or debentures

(c) in the case of a company having a share capital, if more than one-third of the nominal amount of its issued shares are held by unlicensed non-belongers, or

(d) in the case of a company not having a share capital, if more than one-third in number of its members are unlicensed non-belongers, or

(e) if the amount paid or payable in any period of twelve months as dividends to those members of the company who are unlicensed non-belongers exceeds one-third of the total amount paid or payable by the company as dividends in the same period, or

(f) if more than one-third of the nominal value of the outstanding debentures of the company are held by unlicensed non-belongers, or

(g) if the annual interest on the debentures of the company for the time being held by unlicensed non-belongers exceeds one-third of the annual interest on all the debentures of the company for the time being outstanding.

(2) Every company to which the provisions of subsection (1) apply, shall make an application to the Governor for the grant of any licence required under the provisions of section 9. 13/1987.

7. Shares or debentures of any company which are acquired by an unlicensed non-belonger for valuable consideration on sale in the enforcement of any charge or lien held by a banker shall not thereafter be subject to the provisions of this Act until such shares or debentures are held by a person other than a non-belonger, unless at the time of such sale a person other than a non-belonger shall have offered such banker a sum in cash sufficient to pay all principal, interest and cost unpaid and due upon such judgment and by reason of its enforcement.

Shares and debentures held as security. 31/1977.

8. Notwithstanding anything contained in any law relating to companies, or in the memorandum or articles of association of the company, or in any debenture, or in any instrument for securing any issue of debentures, a company incorporated in the Territory holding or intending to acquire land or interest in land may—

Power for a company to restrict the holding by non-belongers of its shares and debentures. 13/1987.

(a) restrict or prohibit the issue or transfer of its shares or debentures to non-belongers;

(b) restrict or prohibit the holding by non-belongers of share warrants and of debentures transferable by delivery;

(c) refuse to register a non-belonger as a member or as the holder of a debenture;

(d) require such evidence as it may think fit as to the nationality of any person desiring to be registered as a member or as the holder of a debenture, and as to the nationality of the holder of a share warrant or debenture transferable by delivery or of a coupon or other document entitling the bearer to payment of any dividend or interest.

Licences for non-belongers to hold directorships, shares or debentures. 13/1987.

9. (1) Where a company has made an application under the provisions of section 6, the Governor may, if he thinks fit, grant licences, either subject to conditions or not, for all or any of the following matters, that is to say—

(a) for a non-belonger to be a director of a company,

(b) for a non-belonger to vote at meetings of a company,

(c) for a non-belonger to hold shares or debentures, and

(d) for a non-belonger to be a member of a company having no share capital:

Provided that a licence shall be operative only as to the company named therein and as to the number of votes, shares, or debentures specified therein.

(2) On breach of any condition in a licence granted under this section, the licensee shall forthwith cease to be a director of the company and to be entitled to vote at any meeting of the company, and all shares and debentures in the company held by the licensee shall be forfeited to Her Majesty.

Effect of forfeiture of shares.

10. (1) A judgment declaring that a share or debenture has become forfeited under this Act shall operate to vest in the Governor the right to transfer that share or debenture and to recover and receive dividends or income thereof as from the time when the forfeiture took place.

(2) A share or debenture which has been declared to be forfeited under this Act shall be sold or otherwise dealt with for the benefit of the Territory as the Governor may direct.

11. Repealed.

31/1977.

12. (1) A company shall cause a copy of every licence received by it to be recorded in the company's register of members or debenture holders (as the case may require) opposite the name of the licensee, and to be endorsed on every share certificate or debenture issued in respect of any share or debenture held by the licensee.

Registration of
licence by
company.

(2) If a company makes default in complying with the requirements of this section it shall be liable on summary conviction to a fine not exceeding twenty-four dollars for every day during which the default continues, and every director, manager and officer of the company who knowingly and wilfully authorises or permits the default shall be liable on summary conviction to a like penalty.

13. (1) A company shall not without the consent of the Governor issue a share warrant or debenture transferable by delivery in respect of any share or debenture held by a non-belonger under a licence granted under this Act.

Restriction on
the issue of share
warrants or
debentures to
bearer to
licensed
non-belongers.

(2) If a company issues a share warrant or a debenture transferable by delivery in breach of the provisions of this section it shall be liable on summary conviction to a fine not exceeding four hundred and eighty dollars in respect of each share specified in the warrant and in respect of each debenture, and every director, manager, and officer of the company who knowingly and wilfully authorises or permits such issue shall be liable on summary conviction to a like penalty.

14. Notwithstanding anything contained in any law relating to companies, or in the memorandum or articles of association of the company, or in any shares, debentures, or in any instrument for securing the issue of shares or debentures, no transfer of a share or debenture held by a non-belonger or a non-belonger company under a licence shall be made unless—

Transfer of
shares or
debentures held
under licences.
13/1987.

(a) such transfer is by an instrument in writing;

(b) such instrument has been submitted to the Commissioner of Inland Revenue for assessment of stamp duty under section 21;

(c) the requisite stamp duty, assessed on such instrument has been paid; and

(d) the consent of the Governor has been obtained.

Fees.
31/1977.

14A. (1) Every application for a licence under section 4 or 9 shall be accompanied by a licence application fee of fifty dollars in respect of each person in whose favour it is desired that a licence shall issue.

(2) All moneys received under the provisions of subsection (1) shall be paid forthwith into the Consolidated Fund and shall not be refundable in the event of an application being unsuccessful.

(3) In the event of a successful application for a licence under section 4 or 9 such licence shall be granted subject to the payment of a licence fee of one hundred and fifty dollars in respect of each person in whose favour the licence shall issue, which fee shall be in addition to any fee paid under subsection (1) and which shall be paid by the licensee into the Consolidated Fund before such licence is registered in the Record Office of the Territory.

PART III.

RESTRICTION ON TRUSTS IN FAVOUR OF NON-BELONGERS.

Restriction on
trusts in favour
of non-belongers.

15. (1) This section applies to the following property only, namely land situate in the Territory, mortgages of such land, and shares and debentures of any company incorporated in the Territory.

(2) With a view to preventing evasion of the foregoing provisions of this Act, no person shall without the licence of the Governor hold any property to which this section applies in trust for a non-belonger, and any such property so held shall be forfeited to Her Majesty.

(3) Any person who intentionally contravenes the provisions of this section shall be guilty of a misdemeanour punishable summarily by a Magistrate or on indictment:

Provided that the punishment on summary conviction shall not exceed a fine of ninety-six dollars.

(4) Nothing in this Act shall apply to a trust in favour of a non-belonger subsisting at the commencement of this Act.

(5) In
arrangements
and whether
to which the
rights attached
the order of
include—

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discovery

(5) In this section the expression "trust" includes any arrangement whether written or oral, expressed or implied, and whether legally enforceable or not, whereby any property to which this section applies or any interest therein or any rights attached thereto is or are held for the benefit of or to the order or at the disposal of a non-belonger but does not include—

(a) the duties incident to a mortgage;

(b) the duties of a satisfied mortgagee to the mortgagor, if within three months after satisfaction of the mortgage the mortgaged property is revested in the mortgagor or his interest therein is extinguished;

(c) the duties of a vendor to the purchaser pending payment of the purchase money, or after payment of the purchase money, if within three months after such payment the property sold is vested in the purchaser or his interest therein is extinguished;

(d) the duties of a trustee in bankruptcy to the bankrupt or his creditors; or

(e) the duties of a trustee for the purpose of any composition or scheme of arrangement for the payment of debts to the debtor or his creditors.

16. The provision of this Act, as to licences and the effect of breach of a condition in a licence shall apply to land, mortgages, shares and debentures intended to be held or held in trust for a non-belonger in like manner as it applies to land, mortgages, shares or debentures intended to be held or held by a non-belonger.

Licences to hold property in trust for non-belongers.

PART IV.

PROCEDURE AND EVIDENCE.

17. For the purposes of establishing as forfeiture under this Act the Attorney General may, in accordance with the procedure provided by the Crown Proceedings Ordinance, apply to the High Court for a declaration that any right, title or interest sought to be affected is forfeited to the Crown.

Procedure.

Cap. 21.

18. (1) Without prejudice to any other right to discovery the Attorney General may in proceedings for

Discovery.

establishing a forfeiture under this Act administer interrogatories to and obtain discovery of documents from a defendant as to any matter or document tending to prove his alienage or the alienage of any other person or to discover any land, mortgage, share or debentures held by him or in trust for him or as to any relevant matter or document.

(2) It shall not be a valid ground for refusing to answer any such interrogatory or to disclose or produce any document that the answer or document might or would expose the defendant or any other person to the risk of a prosecution under this Act:

Provided that in the prosecution of a defendant under this Act, the fact that he has disclosed any matter in answer to an interrogatory administered under this section and disclosed or produced any document in compliance with an order for discovery obtained under this section shall not be admissible in evidence.

Regulations
31/1977.

19. The Governor may make regulations, not inconsistent with this Ordinance, prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

Section 14(2) of
Cap. 67 not to
apply.
31/1977.

20. The provisions of section 14(2) of the Registration and Records Ordinance shall not apply to any licence granted under this Act.

Instruments
executed for
transfer of right,
title or interest of
property liable to
stamp duty
specified in
Schedule.
Cap. 212.
13/1987.

21. Notwithstanding the provisions of the Stamp Act, every instrument executed conveying any right, title or interest of any property, to a non-belonger shall be liable to stamp duty at the rate specified in the Schedule hereto, in lieu of such duty under the Stamp Act.

Provisions of this
Act to prevail
over any other
law.
8/1980.

22. Where there is any conflict or inconsistency between the provisions of this Act and any other law the provisions of this Act shall prevail over the provisions of such other law.

SCHEDULE

S. 21 8/1980.
8/1982.
5/1986.

Conveyance or Transfer on sale — 8% of the consideration or the market value of the property, whichever is higher.

Conveyance or Transfer of any other kind — ⁴5% of the market value of the property.

Conveyance or Transfer by way of security of any property or of any security —

(a) by a non-belonger —

(i) to a non-belonger carrying on the business of banking in the Territory under a general banking licence issued under the Banking Ordinance — 5% of the amount secured.

(ii) to any other non-belonger — 5% of the market value of the property or the amount secured, whichever is higher.

(b) by a person other than a non-belonger — to any non-belonger — $2\frac{1}{2}\%$ of the amount secured.


Lease —

(a) for a term of 20 years or more — ^{1 + 1/2} 8% of the total of rent payable for 20 years and other money consideration, however described, to be paid under the lease.

(b) for a term of less than 20 years — ^{1 + 1/2} 8% of the total of rent payable for the period and other money consideration, however described, to be paid under the lease.

EXHIBITS TO THE AFFIDAVIT OF BEVIS SYLVESTER

McW. Todman & Co.
Legal Representatives for Bevis Sylvester
McNamara Chambers
116 Main Street
Road Town,
Tortola,
British Virgin Islands
www.mctodman.com





Our ref:

17 November 2021

Ms. Rhea Harrikissoon
Solicitor to the Commission of Inquiry
BVI Commission of Inquiry
BVI International Arbitration Centre
3rd Floor, Ritter House
Wickham's Cay II, Road Town, Tortola

Dear Ms. Harrikissoon,

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY ("COI")

Reference is made to your similarly captioned letter to me dated 10 November 2021.

2. Your letter referred to the evidence that the COI has received in relation to the lease of Parcel 310 of Block 2938B, Road Town Registration Section to Mr. Bevis Sylvester. You also notified me that the Commissioner has directed that I provide the following disclosure by 4 p.m. on 17 November 2021:

- (i) Copies of notes of any meetings that I attended in relation to Parcel 310;
- (ii) Copies of the Advice in written form, notes or correspondence in relation to the Advice.

3. Kindly accept the following as my response to the Commissioner's directive for disclosure in relation to (i) and (ii) above:

- (a) I recollect attending one meeting where a lease of Parcel 310 was discussed.
- (b) I do not recall the date of that meeting, but I do recall that Minister for Natural Resources and Labour and Immigration (MNRL&I) Honourable Vincent Wheatley, and Mr. Ronald Smith-Berkeley former Permanent Secretary ("PS"), MNRL&I were both present at the meeting. On that basis, I believe that the meeting would have occurred sometime between March and September 2019. This is my belief because subsequent to September 2019, Mr. Smith-Berkeley was assigned as PS, to the Ministry for Transportation, Works and Utilities ("MTW&U"). In this respect, I would add that I do not myself recollect the date that Mr. Smith-Berkeley was assigned as PS to MTW&U, and have thus relied on the date averred to in paragraph 2 of Mr. Berkeley's 26 October 2021 affidavit to the COI.

- (c) It is customary for me to take informal notes for my own use whenever I attend meetings. As such, said notes would not usually be kept as a part of the official files and records of Chambers. However, there are instances where my notes are used to prepare formal file notes, legal opinions or other formal documents. Normally, I would use my discretion as to when it would be necessary to prepare a formal file note, and requests of the various Ministries/Departments or the demands of any litigation or alternative dispute resolution process, would dictate the necessity to prepare any other formal documents in reliance on my notes.
- (d) Despite diligent and continuing searches for the notes taken during the meeting referred to at paragraph 3(c) above, I have been unable to locate the notes.
- (e) I have been searching, without success, personally and with the assistance of staff at these Chambers since the time that Honourable Vincent Wheatley was in the process of preparing his Responses to the COI relating to this matter.
- (f) I did not prepare any formal document recording the meeting or the advice given at the meeting referred to herein at paragraph 3(b).

4. The second paragraph of your letter refers to *"any steps taken in terms of the expulsion order"*, although the direction regarding disclosure does not deal with this. Nevertheless, by way of response, I wish to indicate that I did not receive any instructions relative to taking any further steps pertaining to the *"expulsion order"* subsequent to the said order being served.

5. Further, I wish to take this opportunity to bring the following to the attention of the Commissioner:

- (a) In the course of searching for the notes relating to the advice referred to in paragraph 3(c), files of the MNRL&I which touch and concern Parcel 310 were found at Chambers.
- (b) These files should have been disclosed to the COI by the MNRL&I when the said Ministry was served with a request for disclosure but it appears that unbeknownst to both the Ministry and these Chambers, the said files were with Chambers.
- (c) Files of Ministries or other Government Departments are not usually held at these Chambers, save when transmitted to assist counsel's preparation of legal advice or in some instances representation of Government in litigation. In such instances, the files would remain with Chambers until no longer required for the purpose transmitted. As far as I am aware this is the same process that has existed in the Attorney General's

Chambers and Government of the VI since I joined the staff of the Chambers as a Clerical Trainee in November 1993.

- (d) The Attorney General's Chambers recently commenced an exercise to scan all the files and records of Chambers into an electronic file management database.
- (e) It was during the scanning further to the initiative described in paragraph 5(d) above, that the files held in storage (*as opposed to with the current files of Chambers*) that they were found by the staff at Chambers' Records Unit. Based on what was relayed to me by Ms. Blyden-Caines of the Records Unit, it appears that those files (*and others*) were sent to storage after my office was destroyed by the 2017 hurricanes.
- (f) The recently found files were discovered with other files and records which were salvaged, cleaned and put into storage after the hurricanes. It was an error, likely inadvertent, that those files were sent to storage instead of back to the MNRL&I. This may explain why no one at these Chambers or at the MNRL&I thought to look through those files in order to comply with the earlier direction for disclosure by the COI.
- (g) Once the files were discovered, I was informed. The staff of the Records Unit are aware that I was searching for notes pertaining to a lease of Crown land relating to Delta/Nature's Way and thus informed me straight away. I, in turn, advised the Mr. Smith-Abbott, Permanent Secretary, MNRL&I and the IRU.
- (h) However, even though the files are in generally good condition they needed to be properly cleaned and decontaminated before being handled. My own brief interaction with them (*which was without gloves and a mask prior to cleaning and disinfecting*) resulted in me having a reaction that left my hands and face burning.
- (i) Importantly though, although the files do not satisfy the request for disclosure which has been made of me, with respect, it appears that they contain documents which would assist the Commissioner's inquiry into the lease of Parcel 310. However, I am not aware of the full scope of the disclosure that has already taken place and so cannot say with certainty whether or not all the documents contained on the files have been previously disclosed, and thus cannot now confirm whether the files actually contain new documents.
- (j) The files are (i) *Ref. LAN.L5/211 and Ref. LAN.L5/211 Temp. Application for Permission to Reclaim and Lease the Seabed Purcell Delta Petroleum (Caribbean) Limited (Purcell)* and *Ref. LAN.L5/69 – Application to Lease the Seabed Wilson Fahie, Tortola Transport, Nature's Way Ltd.*

- (k) The said files will be transmitted in electronic format to the IRU (*in accordance with the internal directive that has been issued for disclosure of documents to the COI*). I understand that there are certain processes which need to be engaged before any further disclosure can be made to the COI, and that part of said processes will be to determine the documents which may have already been disclosed, and any documents which were not previously disclosed.

I stand ready to provide any further assistance required by the Commissioner.

Respectfully,



Maya M. Barry
Principal Crown Counsel

IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION
OF INQUIRY 2021

AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')

APPLICATION TO PRODUCE EVIDENCE OF Mr
RONALD SMITH-BERKELEY (ORDER No.23
Paragraph 10)

1. The Attorney General applies to produce the Fourth Affidavit of Mr Ronald Smith-Berkeley dated 26 October 2021 (the '**Affidavit**') as provided to the Commission on 28 October 2021.
2. The Affidavit corroborates the evidence given by the Hon. V Wheatley Minister for Natural Resources Labour and Immigration ("**the Minister**") in his responses to Warning Letter No.3, ("**the Warning Letter**") dated 29 September 2021 ("**The Response**") and 7 October 2021 ("**the Further Response**"), concerning the transaction involving a lease of Parcel 310, of Block 2938B, Road Town Registration Section to Mr Bevis Sylvester ("**the Transaction**").
3. In particular, the Affidavit corroborates the evidence given by the Minister as to the advice he received from the Attorney General's Chambers at a meeting in 2019 ("**the Advice**") (see paragraphs 3.5-3.6 and 4.2 to 4.3 of the draft) and some of the background to that advice in respect of Delta's claims (see paragraphs 3.3-3.4 and 4.4 of the draft) Mr Smith-Berkeley attended the meeting at which the Advice was given. Mr Smith-Berkeley was also the author of the email which appears in the bundle accompanying the Further Response at Tab 20, pp 47-48.
4. It was not possible to produce evidence beyond the Response and the Further Response in time for the hearing on Day 48 due to the overwhelming number of other tasks with which the Attorney-General was dealing, including the outstanding Response to Warning Letter No.6 from the Premier (in respect of the EZ radar barges) for which the Commission was understandably pressing.
5. However, following the hearing on Day 48 it was apparent that doubt might arise in respect of the evidence about the Advice in the absence of any documentary record (see in particular questions from Counsel to the Inquiry, Transcript Day 48 p.263/16 to p.264/8). Further, the nature and strength of Delta's claims appeared to be the subject of some doubt (see Transcript Day p.252/4-11) p.254/11 to p.255).
6. Accordingly, if the Commissioner is entertaining such doubts, we would invite him to receive the Affidavit.


.....
Niki Olympitis for and on behalf of the Attorney General

5 November 2021

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

FOURTH AFFIDAVIT OF RONALD SMITH-BERKELEY

I, Ronald Smith-Berkeley, Permanent Secretary of the Ministry of Transportation, Works and Utilities, of Manuel Reef Marina, Sea Cows Bay, Tortola, **MAKE OATH** and **SAY** as follows:

1. Introduction

2. I am the Permanent Secretary of the Ministry of Transportation, Works and Utilities. Before that, I was Permanent Secretary at the Ministry of Natural Resources, Labour and Immigration from 2 May 2011 to 6 September 2019. The statements made in this Affidavit derive from information and documents reviewed during the course of my role as Permanent Secretary, and are true to the best of my knowledge, information and belief.
- 2.1 I give this Affidavit in connection with the transaction involving a lease of Parcel 310, of Block 2938B, Road Town Registration Section to Mr Bevis Sylvester ("**the Transaction**").
- 2.2 In the course of preparing this Affidavit I have reviewed the Responses of the Hon. V Wheatley Minister for Natural Resources Labour and Immigration ("**the Minister**") dated 29 September 2021 ("**The Response**") and 7 October 2021 ("**the Further Response**"), concerning the Transaction.
- 2.3 I shall refer in this Affidavit to the bundles accompanying the Minister's responses, namely **AB** and **AB2**.

3. The Response

- 3.1 I have reviewed the Response, together with the documentation to which it refers.
- 3.2 I recall the briefing referred to at paragraph r) and I agree with the description of the site in question at paragraph s) and the first two sentences of paragraph t), on page 6.
- 3.3 I recall that Delta had consistently asserted a right to have an opportunity to be leased the reclaimed land in Parcel 310 as the Minister says in the third sentence of paragraph t) on page 6. That is reflected in the Delta JR Papers to which I refer below.
- 3.4 I also agree with the background described at paragraph v) in particular, that the Government was on notice, following Delta's Judicial Review proceedings in 2013, that Delta might well challenge any attempt to grant a lease of Parcel 310 to Mrs Penn.
- 3.5 I recall the Meeting in 2019. The description of paragraphs w) to aa) accords with my recollection. Principal Crown Counsel gave the advice described by the Minister. She advised that both Delta and Nature's Way had potentially strong competing claims to a lease of Parcel 310.
- 3.6 As described by the Minister, in the Response at paragraph aa), it was her advice that a sensible way to resolve the competing claims might be to explore with Mrs Penn whether Nature's Way would be prepared to relinquish their claim to Parcel 310, in return for a grant of Crown land elsewhere.

4. **The Further Response**

- 4.1 I have also reviewed the Further Response.
- 4.2 As to paragraph 8, I also recall that those attending the Meeting in 2019 to which I have referred were myself, the Minister, Principal Crown Counsel and Mrs Heather Skelton.
- 4.3 As to paragraphs 10 to 11, I note the email from myself dated 23 July 2019 at **AB2/20/47-48**. The draft 'Legal Implications' passage within it does, as the Minister indicates, contain a suggestion by the Attorney General's Chambers that they be given an opportunity to advise in respect of the Transaction as the relevant Cabinet Paper was prepared. I believe it was probably pursuant to that initiative that Principal Crown Counsel took the opportunity which presented itself to advise the Minister in the meeting in 2019.
- 4.4 I also note the contents of the Delta JR Papers to which the Minister has referred at paragraph 13, which do provide useful background to the advice which was given. In particular, I can see that Delta complained of the loss of sea access at Parcel 221 due to the land reclamation (see Application paragraphs 3 & 4 **AB2/1/2**). I can see that Delta also deployed an argument based on legitimate expectation in connection with alleged promises made in 2011 (see Application paragraph 3(1), 7-9 and 13, **AB2/1/1-2** and Mr Sylvester's Affidavit paragraphs 9-13 **AB2/2/6-7**).

Sworn by: Ronald Smith-Berkeley

On 26 October 2021

At Road Town, Tortola

)

)

)

Ronald Smith-Berkeley

Before me:

Notary/Commissioner of Oaths



Ronald Smith-Berkeley
First
26 October 2021

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN
ISLANDS COMMISSION OF INQUIRY 2021**

**AND THE COMMISSION OF INQUIRY ACT (CAP 239)
(THE 'ACT')**

**FOURTH AFFIDAVIT OF RONALD
SMITH-BERKELEY**

271

FARARA & GEORGE-CREQUE

*Barristers & Solicitors
Notary Public*

GERARD ST. C. FARARA LL.B. (Hons.)
JANICE M. GEORGE-CREQUE LL.B. (Hons.)

Chambers,
P.O. Box 144,
Road Town,
Tortola,
British Virgin Islands.
Tel: (809) 494 - 2717
Fax: (809) 494 - 4834

Our Ref:

Your Ref:

January 27, 1992

Miss Ethlyn Smith
Permanent Secretary
Ministry of Natural Resources & Labour
BVI Government
Road Town
Tortola
British Virgin Islands

Dear Miss Smith,

Re: Application for permission to reclaim and lease sea bed

We act for Delta Petroleum (Caribbean Limited).

On behalf of our client we submit herewith the following:-

1. 4 copies of the completed application form for the said company to reclaim and lease a portion of the sea bed;
2. copy of plans prepared by Ira L. Smith showing the nature and extent of the reclamation and the intended development.

Please do not hesitate to contact either Mr. Vernon Lake or myself concerning any aspect of this application.

Yours sincerely,
FARARA & GEORGE-CREQUE

[Redacted Signature]
Gerard St. C. Farara



MINISTRY OF NATURAL RESOURCES AND LABOUR
GOVERNMENT OF THE BRITISH VIRGIN ISLANDS
ROAD TOWN, TORTOLA
British Virgin Islands

PART I APPLICATION FOR PERMISSION TO RECLAIM THE SEA BED

- | | | |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| 1 | Name of Applicant (if in the name of a company state date and place of incorporation) | DELTA PETROLEUM (Caribbean) Ltd.
7th March 1985
Road Town, Tortola, B.V.I. |
| 2 | Nationality (Delete if necessary) | B.V.I. |
| 3 | Address | Purcell, Tortola, British Virgin Islands. |
| 4 | Location and description of site (A preliminary plan must be included) | Purcell, Reclamation of approximately 54,000 square feet of the Sea Bed.
(1.24 Acres) Construction of Bulk Head. |
| 5 | An environmental impact assessment study must be submitted as a part of the application process. This study should include:- | |
| | (a) physical, biological and social description of area | |
| | (b) description of project
Reclaiming 1.24 Acres of the Sea Bed, construction of a bulkhead, and dredging adjacent area to a depth of 8'-0". | |
| | (c) procedure and time frame
Bulkhead construction, dredging using constructed bulkhead as dyke. | |
| | (d) environmental impact
None, no physical conditions affected. | |
| | (e) mitigation measures/recommendations | |

- | | | |
|----|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 6 | Is the frontage to the sea owned by the applicant | Yes |
| 7 | Are any other landowners in the vicinity likely to be affected and, if so, have they been consulted | No |
| 8 | What is the proposed use of the land after reclamation | Commercial/continued development of Delta, see attached drawings. |
| 9 | What is the estimated cost of the reclamation | \$195,500.00 |
| 10 | What is the estimated value of the land after reclamation | \$ 274,865.00 |
| 11 | What is the estimated time before completion of the scheme | 12 months after approval is granted |
| 12 | Estimated acreage to be reclaimed | 1,24 |
| 13 | Confirmation of availability of financial resources | To be financed by Delta Petroleum (Caribbean) Ltd. |

NOTE:

- (a) A _____ non refundable application fee must be paid when this application is submitted.
- (b) If permission is granted there is a _____ option fee that must be paid before reclamation can commence.
- (c) A rental fee of 10% of property value must be paid annually to the Ministry of Natural Resources.

- (d) At the end of the specified reclamation period there will be one option for renewal for one year only. This option carries a penalty fee of _____ or 5% property value.
- (e) A penalty fee for non compliance may be imposed and permission to reclaim the sea bed will be revoked.

Dated this 10 day of January 1992,


DELTA PETROLEUM (CARIBBEAN) LTD.

.....
Signature of Applicant

Our ref: LAN. L5/211

ur ref:

MINISTRY OF NATURAL RESOURCES AND LABOUR
GOVERNMENT OF THE BRITISH VIRGIN ISLANDS,
TORTOLA,
British Virgin Islands.

31st August, 1992 .

Mr. Gerard St.C. Farara
Barrister & Solicitor
P.O. Box 144
Road Town, Tortola,
British Virgin Islands.

Dear Mr. Farara:

APPLICATION TO RECLAIM AND TO LEASE THE SEA BED -
DELTA PETROLEUM (CARIBBEAN) LTD.

Reference is made to the captioned subject.

In reviewing the application you submitted it is noted that in response to question #4 you failed to indicate the Block, Parcel Number and Registration Section in the description of the property. It is also noted that at question #6 you indicated that the frontage to the sea is owned by the applicant. However, according to the plans submitted the property adjacent to which the reclamation is to take place is described as Parcels #79, #147 and #148 Block 2938B Road Town Registration Section and research has revealed that this property is owned by Egypt Construction Limited and is leased to Delta Petroleum (Caribbean) Limited for a period of twenty years.

In keeping with Government's policy with regard to reclamation of the sea bed, the right of first refusal to reclaim must be given to the landowner adjacent to the sea bed and in this case Egypt Construction Limited applied since 1982 to carry out some reclamation there.

Yours sincerely,

Permanent Secretary.

cc.: Mrs. Joan Penn
L5/69
Chief Conservation & Fisheries Officer.

THIS IS THE PROPERTY OF THE GOVERNMENT OF THE BRITISH
VIRGIN ISLANDS

E.C.: 028/2007

M.P.: LAN. L5/69

DATE: 23 January 2007

**REQUEST FOR PERMISSION TO LEASE LOTS 3 AND 3A OF BLOCK 2938B IN
THE ROAD TOWN REGISTRATION SECTION - NATURE'S WAY LIMITED**

DECISION SOUGHT

Council is asked to

- (a) revoke Executive Council's decision in relation to item (iii) of Memorandum No. 95/97 (**Appendix A**) since the decision was never acted upon and the firm Egypt Construction Company Limited no longer exists; and
- (b) advise that Lots 3 and 3A of Block 2938B in the Road Town Registration Section which measure 0.53 and 0.2358 of an acre respectively, be leased to Mrs. Joan Penn, Director of Nature's Way Limited, subject to the following conditions:
 - (i) the Ministry of Natural Resources and Labour with the assistance of Land Registry and Survey Departments have the lots amalgamated and a parcel number assigned;
 - (ii) an easement be registered from Parcel 252 of Block 2938B in the Road Town Registration Section on the eastern side to ensure access to the lot;
 - (iii) the Crown be granted an easement to traverse over the property now identified as Lots 3 and 3A to the sea;

RESTRICTED

(iv) the Instrument of Lease and the Grant of Easement be prepared by the Ministry and forwarded to the Attorney General for vetting to be executed simultaneously;

(v) the terms of the lease be as follows:

Term	-	50 years in the first instance with an option to renew for a further period of twenty five years
Rent	-	\$ 1,000.00 annually
Rent review period	-	every five years
Rent revision	-	5% of the unimproved value of the leased area
Rent cap	-	nil
Late payment	-	2% above New York Prime rate
Period for payment	-	30 days
Subletting	-	2.5% of rent collected from sublease agreement
Payment due date	-	1 January each year

BACKGROUND INFORMATION

During the construction of the dual carriageway in the 1990's, it was necessary for Government to utilize a portion of land measuring 0.33 of an acre from Block 2938B, in the Road Town Registration Section. As a result, Egypt Construction Company Limited was given land in exchange for land they gave up measuring 0.34 of an acre from Block 2938B in the Road Town Registration Section.

Council is asked to recall item (iii) of its earlier decision made on 19 March, 1997 via
..... Memorandum 95/97 **Appendix A** which stated that:

RESTRICTED

- (iii) "a lease of the seabed be issued or freehold title be given at market value for the reclaimed area of 0.58 acres, the option to remain with the Company.

The approvals be on condition that:

- a) the reclaimed area be bulkhead;
- b) if a lease of the seabed is to be issued, that the standard lease terms be applied;
- c) if freehold title is to be issued for the 0.58 acres, that the sum of \$182,672.00 be paid by the Company."

2. In addition to that exchange of land, the Company was also offered the option to lease or secure freehold title at market value for a portion of reclaimed land measuring 0.58 of an acre. The Director was informed of Executive Council's decision in 1997 and up until October 2005 she had only acted on the exchange of lands. Instrument No. 2150/1997 was executed for Parcel 221 measuring 0.34 of an acre from the Crown to Egypt Construction Company Limited and Instrument No. 2151/1997 was executed for Parcel 222 measuring 0.33 of an acre from Egypt Construction Company Limited.

3. In October of 2005 Egypt Construction Company Limited went into liquidation and the Company's assets have been sold to Delta Petroleum Limited for the sum of one million one hundred thousand dollars (\$ 1,100,000.00). As Lots 3 and 3a were not part of Egypt Construction Company Limited's assets, they now represent reclaimed land available to the Crown for leasing or purchasing by any interested party. The Ministry has now received an application from Mrs. Joan Penn, Director of Nature's Way Limited to lease or purchase the lots in question, **Appendix B**. Attached in support of Mrs. Penn's application as **Appendices C and D** are Certificates of Incorporation and Good Standing relating to the Company.

LEGAL IMPLICATIONS

5. The matter was referred to the Attorney General for his comments and he advised
..... **Appendix E** that "the only basis upon which this application can be facilitated is if (i)
Executive Council is apprised of the matter and requested to revoke the decision of 19th
March 1997, as Egypt Construction Company Limited is no longer in existence; (ii) a new
application be submitted by Ms. Penn with no reference to the previous company,
requesting to purchase the property for and on behalf of Nature's Way Ltd. and (iii)
Executive Council upon this basis makes an offer to Ms. Penn to either purchase or lease
the property. We recommend, in the interim, that a new valuation be carried out for the
property so that Executive Council is aware of its present value." Members are asked to note
that a valuation was done on the property which valued Lot 3 at three hundred and forty
six thousand dollars (\$ 346,000.00) and Lot 3a at one hundred and seventy three
thousand dollars (\$ 173,000.00), giving a combined value of five hundred and nineteen
..... thousand dollars (\$ 519,000.00) **Appendix F.**

FINANCIAL IMPLICATIONS

6. The matter was referred to the Financial Secretary **Appendix G** and
..... The Ministry of Finance supports the leasehold in favour of Nature's Way Limited. However,
the term of the lease should be adjusted as follows:

- a. the term should be reduced to twenty five (25) years, in order to allow a
window for recovery by the Government for future development if
necessary; and
- b. the annual rent figure for the total 0.7658 acres seems to be exceptionally
low as two (2) cents per square foot.

The concerns raised by the Ministry of Finance were considered and based on the

RESTRICTED

fact that the reclamation was undertaken by the Government of the British Virgin Islands, the decision sought has been amended to reflect a lease term of fifty years with an option to renew

for a further period of twenty five years and an annual rental of \$1,000.00 per year.

7. Council is asked to note the contents of this paper and to advise whether or not the lots should be leased and the conditions that should apply.

**HONOURABLE EILEENE L. PARSONS
MINISTER OF NATURAL RESOURCES AND LABOUR**

Attachments (7)

Appendix A	-	Executive Council Memo No. 95/97
Appendix B	-	Letter of Application from Mrs. Joan Penn
Appendix C	-	Certificate of Incorporation
Appendix D	-	Certificate of Good Standing
Appendix E	-	Comments from the Attorney General
Appendix F	-	Valuation report of lots 3 and 3a
Appendix G	-	Comments from the Financial Secretary

To: Permanent Secretary/Ministry for Natural Resources, Labour and Immigration

Requested Date: 29th April, 2019


**EXTRACT FROM THE MINUTES OF A MEETING OF THE
EXECUTIVE COUNCIL OF THE VIRGIN ISLANDS
HELD AT THE CONFERENCE ROOM, GOVERNOR'S OFFICE ON
WEDNESDAY 19th MARCH, 1997**

Egypt Construction Co. Ltd.
Memo No. 025/1997

212. Council advised that:

- i. Egypt Construction Co. Limited be permitted to reclaim 25,467.17 sq. ft. or 0.58 acres of land over and above the exchange of land between itself and the Government;
- ii. Freehold title be issued for the reclamation of 14,516.95 sq. in exchange for the company's private property;
- iii. A lease of the seabed be issued OR freehold title be given at market value for the reclaimed area of 0.58 acres, the option to remain with the Company.
- iv. If freehold title is to be issued for the 0.58 acres, that the sum of \$186,672.00 be paid by the company.

Cabinet Secretary's Signature



Date Sent to Ministry

03.05.19.

MEMORANDUM

From: Attorney General

To: Permanent Secretary, MNR&L
Attn: Mrs. Jennifer Hodge Penn

Ref. No. AG/36/005

Date: January 26th 2006

Re: Acquisition of Land formerly offered to Egypt Construction Co. Limited-Joan Penn

The caption refers.

We have read with interest the application letter submitted by Ms. Joan Penn for and on behalf of Nature's Way Ltd. for the purchase of 0.58 of an acre of land known as Lots 3 & 3A, Block 2938B of the Road Town Registration Section, previously offered to Egypt Construction Company Limited in keeping with the Executive Council Decision rendered on 19th March 1997 which stated as follows:

- i. Egypt Construction Co. Limited be permitted to reclaim 25,467.17 sq. ft. or 0.58 acres of land over and above the exchange of land between itself and the Government;
- ii. Freehold title be issued for the reclamation of 14, 516.95 sq. ft. in exchange for the company's private property;
- iii. A lease of the seabed be issued OR freehold title be given at market value for the reclaimed area of 0.58 acres, the option to remain with the Company.

The approvals be on condition that:

- a) the reclaimed area be bulkheaded.
- b) if a lease of the seabed is to be issued, that the standard lease terms be applied.
- c) If freehold title is to be issued for the 0.58 acres, that the sum of \$186,672.00 be paid by the company.

Cognisance is taken of her explanation for the inaction on the part of Egypt Construction Company Limited of which she was a former Director, to the offer made by the Government of the Virgin Islands, to either purchase the said property or to lease it. She stated as follows:

"For the past eight years I have been in negotiation with the other director of Egypt Construction (Mrs. Eugenie Christopher) in an effort for us to settle the matters relating to the company; hence the inability to conclude the transaction. As an end result the company was put into liquidation by Mrs. Christopher and in February 2004 the court ordered the winding up of the company and sale of its assets. Government's consent to the lease or sale was not a part of the winding up proceedings."


We have also noted the terms of the Order made by Justice Indra Charles on 23rd November 2005 for the liquidation of Egypt Construction Company Limited. It was also observed that the land, the subject matter of the Executive Council decision, did not form part of the pool of assets of the Company.

It has not been averred on the part of Ms. Penn that Nature's Way Ltd is a related company or a successor company of Egypt Construction Company Limited. The only identifiable connection between the companies is through her directorship. Obviously, Ms. Penn being aware that Egypt Construction Company Limited has not, is in no position to and will not act upon this offer, has sought to use it to her benefit hoping to capitalise on the offer to purchase the property at the nine year old purchase price of One Hundred and Eighty-Six Thousand, Six Hundred and Seventy-Two Dollars (\$186,672.00). Naturally, this application is not inimical to the interest of Government. The approach, however, creates some discomfort, as it is based upon intimate knowledge of the transactions of a now liquidated company. We understand from the Ministry that the reclamation of the 0.58 of an acre was in fact carried out by the Government and not by Egypt Construction Company Limited. Notwithstanding that, we understand that the offer still remained open to the Company to opt to either purchase the parcel of land or to lease it from Government. To date, there has been no exercise of this option and the land remains the property of the Crown.

It is readily palpable that decisions of Executive Council are specific and unique to that individual unless the decision is revoked, amended or substituted for another. It is our considered view that Ms. Penn, on behalf of Nature's Way Ltd, is in no position to act upon this 1997 offer made to Egypt Construction Company Limited as no offer has been made to her company. The only basis upon which this application can be facilitated is if (i) Executive Council is apprised of the matter and requested to revoke the decision of 19th March 1997, as Egypt Construction Company Limited is no longer in existence; (ii) a new application is submitted by Ms. Penn with no reference to the previous company, requesting to purchase the property for and on behalf of Nature's Way Ltd. and (iii) Executive Council upon this basis makes an offer to Ms. Penn to either purchase or lease the property. We recommend, in the interim, that a new valuation be carried out for the property so that Executive Council is aware of its present value.

Please be guided accordingly.

Your file is returned herewith.


Arlyn Gordon
Crown Counsel
for Attorney General

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS

CLAIM NO. BVIHCV 2003/0193
BETWEEN:



IN THE MATTER OF THE COMPANIES ACT CAP 285

AND

IN THE MATTER OF EGYPT CONSTRUCTION LIMITED
(In Liquidation)

BETWEEN

EUGENE CHRISTOPHER

Petitioner

AND

EGYPT CONSTRUCTION LIMITED

First Respondent

JOAN PENN

Second Respondent

ORDER

BEFORE: THE HONOURABLE MADAM JUSTICE INDRA CHARLES (In
Chambers)

DATED: THE 23rd DAY OF NOVEMBER 2005

ENTERED: THE 1st DAY OF ~~NOVEMBER~~ *December* 2005

UPON the Summons for Directions filed herein by the Liquidator on 13 October 2005
coming on for hearing.

AND UPON HEARING Mr. Terrance Neale with Mr. Kevon Swan Counsel for the
Liquidator, Dr. J.S. Archibald Q.C. with Ms. Michelle Worrell Counsel for Delta

Petroleum Limited, Ms. Hazelann Hannaway Counsel for the Petitioner and Mr. Kerry Anderson, Counsel for the Second Respondent

IT IS ORDERED THAT:

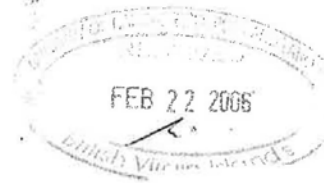
1. The Liquidator is allowed to sell Parcels 221, 223, 224, 79 and 147 of Block 2839B, Road Town Registration Section to Delta Petroleum Limited for the sum of \$1.1 million.
2. The Petitioner removes the caution placed by her on Parcels 221, 223, 224, 79 and 147 of Block 2839B, Road Town Registration Section.
3. The costs of the application to be costs in liquidation.
4. The costs of \$1000 to be paid by the Petitioner to Delta Petroleum Limited out of the Petitioner's share in the liquidation.

By the Court

REGISTRAR

NATURE'S WAY LTD

P.O. Box 273
Road Town, Tortola
British Virgin Islands
Tel: 284 494-6393
Fax: 284 494-1393
Email: natsway@surfbvi.com
Website: www.naturesway.vg



February 22, 2006

Mrs. Sheila Braithwaite
Permanent Secretary
Ministry of Natural Resources
Government of the Virgin Islands
Road Town, Tortola
British Virgin Islands

Dear Mrs. Braithwaite:

Re: Road Town Registration Section Block 2938B Lots 3 and 3A

I hereby make application on my company's behalf for the lease or purchase of the above-mentioned lots.

Nature's Way Ltd was incorporated in 1992 as a company whose mission is to provide alternative health, nutritional, therapeutic and self-care services in a professional and caring manner and to educate the general public about the positive benefits of healthy living; to provide them with related health services and offer a selection of organically grown products for consumption and external use.

We have been providing these services and products and meeting a desired and daily expressed need of the peoples of the Virgin Islands over the past thirteen years. To be able to continue to provide these needed services, it is becoming more and more crucial for us to obtain our own facilities that would enable us to provide the needed services in a more convenient and suitable location. Presently, we operate in very cramped spaces in the Mill Mall and the increase in rent yearly is making it more difficult for us to continue to provide our services on an economical scale to our clientele.

As a citizen of the Virgin Islands whose right it is to benefit and grow with the development of our home, it is my sincere desire that you would seriously consider my

Mrs. Sheila Braithwaite

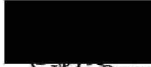
-2-

February 22, 2006

application for the lease or purchase of the above property in light of the positive contributions we are making to the growth and sustenance of this our home.

I look forward to your early and favourable consideration of my application.

Yours truly,

A black rectangular box redacting the signature of Joan Penn.

Joan Penn
Managing Director

Appendix C

TERRITORY OF THE BRITISH VIRGIN ISLANDS

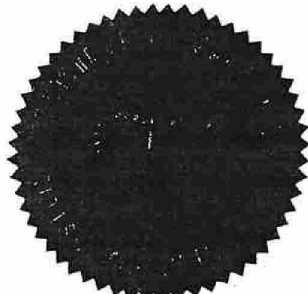
THE COMPANIES ACT CAP. 243

CERTIFICATE OF INCORPORATION

No. 8201

I HEREBY CERTIFY THAT NATURE'S WAY LIMITED
whose Registered Office is situated at ROAD TOWN, TORTOLA,
in the Territory of the British Virgin Islands is incorporated under the Companies Act, and that the Company is limited.

Given under my hand at Road Town, Tortola in the Territory of
the British Virgin Islands this 14th
day of APRIL,
1992



.....
REGISTRAR OF COMPANIES

REGISTRAR OF COMPANIES

ROAD TOWN, TORTOLA

BRITISH VIRGIN ISLANDS

TERRITORY OF THE BRITISH VIRGIN ISLANDS
THE COMPANIES ACT
(CAP.285)

CERTIFICATE OF GOOD STANDING

No. 8201 NATURE'S WAY LIMITED

The Registrar of Corporate Affairs in the Territory of the British Virgin Islands *HEREBY CERTIFIES*
that:

1. The above Company was incorporated on the 14th day of April, 1992 as Company No. 8201
of the Register of Companies.
2. Due notice has been filed with me that the Registered Office of the Company is:
*Road Town
Tortola*
3. The last Annual Return filed was made up to 30th day of June, 2005
4. No steps are being taken to have the Company removed from the Register.

Dated this 7th day of March, 2006

CRT1102D

REGISTRAR OF CORPORATE AFFAIRS



MINISTRY OF NATURAL RESOURCES & LABOUR
Government of the Virgin Islands
33 Admin Drive, Central Administration Complex
Road Town, Tortola, British Virgin Islands
Tel: (284) 468-0675
Fax: (284) 494-4283
Email: nrl@gov.vg

MEMORANDUM



TO: His Excellency, the Governor

FROM: Permanent Secretary/MNR&L

DATE: 15th March, 2007


OUR REF: LAN.L5/69

REQUEST FOR PERMISSION TO LEASE LOTS 3 AND 3A
OF BLOCK 2938B IN THE ROAD TOWN REGISTRATION SECTION
- NATURE'S WAYS LIMITED
MEMO. NO. 028/2007

Reference is made to Executive Council Minute No. 0109 wherein a decision was made to defer the paper to hold further discussions with the Chief Minister.

Please refer to Minutes 86, 87 and 88. The property in question, does not form part of the parcels of land purchased by Delta Petroleum.

Grateful if the matter could be re-submitted to Council for a decision at the next sitting.


.....
Josephine Callwood (Mrs.)
Permanent Secretary

cc: Honourable Chief Minister

JHP/ms-m

CONFIDENTIAL

**CABINET PAPER RECORD & EXTRACT FROM THE MINUTES OF THE MEETING
OF THE EXECUTIVE COUNCIL OF THE VIRGIN ISLANDS
HELD AT THE CONFERENCE ROOM, GOVERNOR'S OFFICE ON
18th JULY, 2007**

To: Permanent Secretary, Ministry of Natural Resources and Labour

Date: 11th June, 2018

Paper No.

Memo No. 490/2007

Date Arrived in the Cabinet Office

Date Approved by the Cabinet Steering Group

Date Sent to Cabinet

18th July, 2007

Cabinet Confirmation Date

25th July, 2007

Cabinet Extract:

**Request for Permission to Lease Proposed Lot 2 (Formerly Part of Lots 3 and 3a) of Block
2938b in the Road Town Registration Section - Nature's Way Limited
Memo No. 490/2007**

0927. Council:

- (a) revoked Executive Council's decision in relation to item (iii) of Memorandum No. 95/97 since the decision was never acted upon and the firm Egypt Construction Company Limited no longer exists; and
- (b) agreed that the proposed Lot 2 of Block 2938B in the Road Town Registration Section which measures approximately 0.526 of an acre, be leased to Nature's Way Limited, subject to the following conditions:
 - (i) the Ministry of Natural Resources and Labour with the assistance of the Land Registry and Survey Departments have a parcel number assigned to the lot;
 - (ii) an easement be registered over Parcel 252 Block 2938B in the Road Town Registration Section on the eastern side to ensure access to the lot;
 - (iii) the Crown be granted an easement to traverse over the property now identified as proposed Lot 2 to the sea;

.../P.T.O.

- (iv) the Instrument of Lease and the Grant of Easement be prepared by the Ministry and forwarded to the Attorney General for vetting to be executed simultaneously;
- (v) the terms of the lease be as follows:

Term		50 years in the first instance with an option to renew for a further period of twenty five years
Rent	-	\$ 800.00 annually
Rent review period	-	every five years
Rent revision	-	5% of the unimproved value of the leased area
Rent cap	-	nil
Late payment	-	2% above New York Prime rate
Period for payment	-	30 days
Subletting	-	2.5% of rent collected from sublease agreement in addition to the rent
Payment due date	-	1 January each year

Requested on 11th June, 2018

Cabinet Secretary's Signature

Date:



11.06.18.



Ministry of Natural Resources and Labour
Government of the Virgin Islands
33 Admin Drive, Central Administration Complex
Road Town, Tortola, British Virgin Islands
(284) 468-0675 / (284) 468 -3701 Ext. [REDACTED]
Fax: (284) 494-4283

Appendix 1

OUR REF: LAN. L5/69

August 1, 2007

Mrs. Joan Penn
Managing Director
Nature's Way Ltd.
P.O. Box 273
Road Town, Tortola
British Virgin Islands

Dear Mrs. Penn:

**RE: REQUEST FOR PERMISSION TO LEASE PROPOSED LOT 2 (formerly part of
Lots 3 and 3a) OF BLOCK 2938B IN THE ROAD TOWN REGISTRATION SECTION -
NATURE'S WAY LIMITED**

The caption refers.

I am directed to inform you that Executive Council has agreed that the proposed Lot 2 of Block 2938B in the Road Town Registration Section as identified in the attached map which measures approximately 0.526 of an acre, be leased to Nature's Way Limited, subject to the following conditions:

- (i) the Ministry of Natural Resources and Labour with the assistance of the Land Registry and Survey Departments have a parcel number assigned to the lot;
- (ii) an easement be registered over Parcel 252 Block 2938B in the Road Town Registration Section on the eastern side to ensure access to the lot;
- (iii) the Crown be granted an easement to traverse over the property now identified as proposed Lot 2 to the sea;
- (iv) the Instrument of Lease and the Grant of Easement be prepared by the Ministry and forwarded to the Attorney General for vetting to be executed simultaneously;


(v) the terms of

(v) the terms of the lease be as follows:

Term of lease:	50 years in the first instance with an option to renew for a further period of twenty five years
Rent:	\$800.00 annually
Rental revision period:	every five years
Rent revision:	5% of the unimproved value of the leased area
Rent cap:	nil
Late payment:	2% above New York Prime Rate
Period for payment:	30 days
Subletting:	2.5% of rent collected from sublease agreement in addition to the rent
Payymment due date	1 January each year

Please be guided accordingly.

Yours truly,



Olga Rabsatt
for Josephine Callwood (Mrs.)
Permanent Secretary

cc: Chief Surveyor
Chief Physical Planning Officer
Registrar of Lands

Attachment (1)

:oor

"Professional Services delivered to the Public"

1248
131

NATURE'S WAY LTD

P.O. Box 273
Road Town, Tortola
British Virgin Islands

August 20, 2007

Mrs Josephine Callwood
Permanent Secretary
Ministry of Natural Resources
Government of the Virgin Islands
33 Admin Drive
Road Town, Tortola
British Virgin Islands



Dear Mrs Callwood:

Re: Lease of Proposed Lot 2 (formerly part of Lots 3 & 3a) of Block 2938B Road Town
Registration Section

Thank you for your letter of August 1, 2007 (received on August 16, 2007) informing us that Executive Council has agreed to lease us the above-mentioned parcel of land measuring 0.526 acres under the conditions set forth in your said letter.

Please forward us a copy of the Instrument of Lease as soon as possible so that this matter can be concluded in an expeditious manner.

Thank you once more for your favourable consideration of our application.

Yours truly,

Joan Penn (Mrs)
Managing Director



123

*Ministry of Natural Resources and Labour
Government of the Virgin Islands
33 Admin Drive, Central Administration Complex
Road Town, Tortola, British Virgin Islands
(284) 468-0675 / (284) 468 -3701 Ext. [REDACTED]
Fax: (284) 494-4283*

OUR REF: LAN. L5/234

August 1, 2007

Mr. Garvin Ishmael Stoutt, Sr.
Director
Caribbean Transport Ltd.
P.O. Box 591
West End, Tortola
British Virgin Islands

Dear Mr. Stoutt:

**RE: REQUEST FOR PERMISSION TO LEASE PROPOSED LOT 1 OF BLOCK 2938B
IN THE ROAD TOWN REGISTRATION SECTION – GARVIN ISHMAEL STOUTT, SR.**

The caption refers.

I am directed to inform you that Executive Council has agreed that the lot labeled as Proposed Lot 1 of Block 2938B in the Road Town Registration Section as identified on the attached map which measures approximately 0.265 of an acre, be leased to you, subject to the following conditions:

- (i) the Ministry of Natural Resources and Labour with the assistance of the Land Registry and Survey Departments have a parcel number assigned to the lot;
- (ii) the Crown be granted an easement to traverse over the property now identified as Lot 1 to the sea;
- (iii) the Instrument of Lease and the Grant of Easement be prepared by the Ministry and forwarded to the Attorney General for vetting to be executed simultaneously;
- (iv) the terms of the lease be as follows:

Term of lease:	50 years in the first instance with an option to renew for a further period of twenty five years
----------------	--------------------------------------------------------------------------------------------------

Rent:	\$400.00 annually
-------	-------------------

Rental revision period:	every five years
-------------------------	------------------

Rent revision:

Rent revision: 5% of the unimproved value of the leased area

Rent cap: nil

Late payment: 2% above New York Prime Rate


Period for payment: 30 days

Subletting: 2.5% of rent collected from sublease agreement in addition to the rent

Payment due date 1 January each year

Please be guided accordingly.

Yours truly,



Olga Rabsatt
for Josephine Callwood (Mrs.)
Permanent Secretary

cc: Chief Surveyor
Chief Physical Planning Officer
Registrar of Lands

Attachment (1)

:oor

"Professional Service Delivered to the Public"



LAND & SURVEY DEPARTMENT

Ministry of Natural Resources and Labour, Government of the British Virgin Islands
JR O'Neal Plaza, P.O. Box 142, Road Town, Tortola, British Virgin Islands
Tel: 284-494-3459 direct
284-494-3895 fax
[REDACTED] exts.



Delivering consistently, high quality mapping products and services that satisfies the developing needs of the British Virgin Islands.

MEMORANDUM

To: Permanent Secretary Min. NR&L

Your Ref. No.:

Attention: Jenifer Hodge-Penn

SD Ref. No.: Job No 01/98

From: Chief Surveyor

Date: December 18, 2006.

RE: Proposed Subdivision of Pasea Reclamation

As discussed on Thursday 14th December 2006, please find a copy of map on the proposal easement over parcel 252 to Lot 3 and 3A.

The proposal as outlined by Mr. Stoutt to grant access for consideration of acquiring part of the remaining land is presented for your information.

If additional information is required on this matter please contact me at the department.

[REDACTED]

Winston Donovan
Chief Surveyor

*We view ourselves as partners with our employees, customers, community
And the environment*



150



DELTA PETROLEUM (CARIBBEAN) LTD.

P.O. Box 3318, Road Town, Tortola, British Virgin Islands ph: (284)494-3281 fax:494-4914 e-mail: [REDACTED]

Post-It® Fax Note	7671	Date	31/5/11	# of pages	1
To	MS-K206	From	BEVIS SYLVESTER		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	4944283	Fax #	4944914		

September 17, 2007

The Permanent Secretary
Ministry of Natural Resources & Labour
Government Administration Complex
Road Town
Tortola

Dear Madam,

Re: Block 2938B, Parcel 221, Lots 3A and B

I write in reference to the caption. Please be advised that Delta Petroleum is desirous of leasing for a period of fifty (50) years with a renewable clause, Lots 3A and B, property adjacent Parcel 221.

Once the lease of the two parcels is approved we will construct a four (4) storey building, with one floor for parking, to house our headquarters offices.

Yours truly
Delta Petroleum (Caribbean) Ltd.

[REDACTED]
Bevis Sylvester
Regional General Manager



c.c.
Hon. Omar W Hodge, Minister of Natural Resources & Labour

Serving the Caribbean

AP

Bevis Sylvester
East End
Tortola, BVI

31 May 2011

Hon. Premier Ralph T. O'Neale, OBE
Office of the Premier
Government of the BVI
Government Administration Complex
Road Town


Dear Hon. Premier,

As a local resident and entrepreneur, I would like to request the opportunity to lease land in Pasea Estates, specifically Lot 2, which is owned by the Crown.

My interest in leasing Lot 2 from the Crown is for the purpose of future developments in the BVI. It is further my request to be granted a 50-year lease for Lot 2, which ensures that I can contribute economically to the territory.

Again, thank you in advance for your consideration and I look forward to hearing from you soon on this matter.

Best Regards,


Bevis Sylvester
Regional General Manager

CC: Minister Omar Hodge, Labour and Natural Resources
Sandra Ward, Acting Permanent Secretary to the Chief Minister



Application to lease Parcel 310 of Block 2938B, Road Town Registration Section – Bevis Sylvester

Signed

· 27 June 2019 · MNRLI · File: LAN. L5/487

· Mr. Ronald Smith-Berkeley · Memo No. 396/2019

· Extract No. REx/396/2019 (/decisions/113)

Background Information

1) Executive Council by item (iii) of Minute No. 212 of Memo No. 095/1997 (**see Appendix A**) agreed that a portion of reclaimed land be awarded to Egypt Construction Limited in exchange for land given by the company during the dual carriageway construction.

2) By Minute No. 0927 of Memo No. 490/2007 (**see Appendix B**), a decision was taken to revoke item (iii) of the decision on account of the decision not being acted on and the fact that the awardee, Egypt Construction Limited, was no longer in existence.

3) Cabinet further agreed to award Nature's Way Limited a lease for a parcel of land now identified as Parcel 310 of Block 2938B in the Road Town Registration Section which measures 0.526 of an acre, subject to conditions.

4) Members are asked to note that the directive of Cabinet was communicated to the applicant by a letter dated 1st August, 2007 (**see Appendix C**). Members are further asked to note that due to the issue of a right of way to service Parcel 310 of Block 2938B, Road Town Registration Section, the property could not be transferred to the awardee.

5) By Instrument No. 1068 of 2017, a grant of easement was given in favour of the Crown, providing access to the parcel **(see Appendix D)**.

6) By a letter dated 31st May, 2011 **(see Appendix E)**, a request was made by Mr. Bevis Sylvester requesting the opportunity to lease the same property identified as Parcel 310 of Block 2938B in the Road Town Registration Section. However, upon submission of that request, no decision was made as it was recognized that the land was already awarded.

7) By a letter dated 12th June, 2019, **(see Appendix F)** Mr. Bevis Sylvester again submitted a request to lease Lot 1 (Parcel 309) and Lot 2 (Parcel 310) of Block 2938B in the Road Town Registration Section. However, Lot 1 (Parcel 309) is currently leased to Garvin Stoutt Sr.

Purpose

8) The decision sought assists to facilitate economic growth.

Cross-Ministry Consultation

9) The nature of this paper does not require cross-ministry coordination at this time.

Financial Implications

10) Upon review of the Cabinet memorandum, is there any known or foreseen liability for Government if they were to revoke Minute No. 0927 of Memo No. 490/2007 and to reverse Instrument No. 1068 of 2007, dated 25th July 2017? If so, what is the estimated money value of the liability? It is the view of the Ministry of Finance that

without proper negotiations and or an amicable settlement, the decision sought could give rise to Government having to pay compensation as a result of Cabinet's decision being judicially reviewed.

11) As such, it is important that the appropriate responses to the foregoing questions and the business plan is provided to Cabinet for their consideration before any decision is made. Furthermore, the draft paper says nothing about how the persistent and continuing contraventions by Delta Petroleum Caribbean Ltd is to be resolved. The decision being sought, without more, exposes Government to too much avoidable risks.

Legal Implications

12) We have reviewed the draft Paper and have discerned no adverse legal implications which would arise from Cabinet deciding in accordance with the decision sought.

13) Notwithstanding the foregoing, we consider that the Background Information section should be amended in accordance with the comments separately communicated to the Ministry of Natural Resources, Labour and Immigration.

Budget

14) There is not budget associated with this initiative; however, the crown, stands to benefit from rent for the lease properties.

Communication Strategy

15) The decision of Cabinet will be formally communicated to the applicant.

Conclusion

16) Members are asked to consider and concur with the decision sought.

Decision Sought

Cabinet is asked to decide:

- a. that the decision recorded by Minute No. 0927 of Memo No. 490/2007 be revoked in its entirety;
- b. that Parcel 310 of Block 2938B in the Road Town Registration Section which measures 0.526 of an acre as evidenced by a copy of the Land Register be granted to Mr. Bevis Sylvester for Commercial purposes;
- c. that the Grant of Easement given to the Crown by [REDACTED] by Instrument No. 1068 of 2007, dated 25th July, 2017, to remain as this will provide access to Parcel 310 of the said block and registration section;
- d. that the instrument of lease be prepared by the Ministry and forwarded for vetting to the Attorney; and
- e. that the terms of the Lease to be as follows:
 - i. Term – Fifty (50) years in the first instance with an option to renew for a further period of twenty-five (25) years
 - ii. Rent – \$800.00
 - iii. Rent Review Period – 5% of the unimproved value of the lease area

- iv. Rent Cap – nil
- v. Late Payment – 2% above the New York Prime Rate
- vi. Period for – 30 days
- vii. Payment:
 - Subletting – 2.5% of rent collected from the sublease agreement in addition to the rent
 - Payment Due Date – 1 January each year

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent
Wheatley
Minister for Natural
Resources, Labour
and Immigration
15 November 2019

TITLE : Subdivision of Reclamation Adjacent to Parcels 221 & 252 Sheet No. : 2938B		ISLAND : Tortola	SECTION : Road Town	LOCALITY : Paseo Estate	Plan No. : CA-2938B-160-T
		Scale : 1/750	Date of Survey : May, 2011	LD.C.A. No. : GS/16/11	

LOT 1

LINE	BEARING	DISTANCE(M)	NORTHINGS	EASTINGS	DESCRIPTION
5DS0826	73°34'30"	25.640	2038435.180	329709.928	Nt. Pl.
2RS827	330°45'23"	45.597	2038442.430	329734.521	Nt. Pl.
2RS828	242°05'24"	25.006	2038482.216	329712.246	5/8" S.R. PL
4AS1401	150°45'28"	22.519	2038470.511	329690.149	5/8" S.R. FD.
4AS1700	150°45'33"	17.972	2038450.862	329701.149	5/8" S.R. FD.
5DS0826	150°45'33"	17.972	2038435.180	329709.928	Nt. Pl.

AREA = 0.265 Acres or 11,583 sq. ft.

LOT 2

LINE	BEARING	DISTANCE(M)	NORTHINGS	EASTINGS	DESCRIPTION
4AS1405	242°05'23"	69.550	2038514.772	329773.706	5/8" S.R. FD.
2RS828	150°45'23"	45.598	2038482.217	329712.246	5/8" S.R. PL
2RS827	73°34'08"	18.723	2038442.430	329734.521	Nt. Pl.
5DS0827	17°33'53"	27.538	2038447.726	329752.480	Nt. Pl.
4AS1701	17°33'53"	27.538	2038473.980	329760.790	5/8" S.R. FD.
4AS1405	17°34'08"	42.788	2038514.772	329773.706	5/8" S.R. FD.

AREA = 0.526 Acres or 22,937 sq. ft.

This plan supercedes CA-2938B-126-T with respect to Lot 3 & 3A

Ellipsoid: Clarke 1866
Datum: Puerto Rico
Coordinates: U.T.M. Zone 20N

LEGEND, NOTES AND ABBREVIATIONS	
—	Boundary line
---	Public Road
- - - -	Extent of Reclamation
.....	Present extent of filled area
.....	Right of way
O	Boundary Mark Placed
⊙	Boundary Mark Found
⊙	Boundary mark not placed
Nt. Pl.	Not Placed
PL	Placed
FD.	Found
S.R.	Steel Rod
R.O.W	Right of Way
Pol.	Parcel
Pro.	Proposed

SCHEDULE OF EASEMENTS		
DOMINANT TENNEMENT	SERVIENT TENNEMENT	EASEMENT
Lot 1	Parcel 221	Pro. 20' R.O.W.

JOB No.	CLIENT	FIELD BOOK No.
1/98	Ministry of Natural Resources & Labour	TC01

I, SYLVIA RICHARDS, A SURVEYOR EMPLOYED BY THE LANDS AND SURVEY DEPARTMENT, DECLARE THAT THIS SURVEY HAS BEEN MADE BY ME AND IS ACCURATE.

SIGNATURE: _____ DATE: 7th June, 2011

SURVEY DEPARTMENT
P.O. BOX 142
ROAD TOWN
TORTOLA, B.V.I.s.

CHECKED BY: _____
DATE: 06-07-11
DRAWN BY: Sherkhoya Forbes

APPROVED: _____
CHIEF SURVEYOR
DATE: 7/6/11

VIRGIN ISLANDS

THE REGISTERED LAND RULES

FORM R.L. 26

CERTIFIED A TRUE COPY
 THIS 9th DAY OF June
 REGISTRAR OF LANDS

MUTATION

MUTATION NO: 81/2011

REGISTRATION SECTION	BLOCK	PARCEL (S)
Road Town	2938B	308

MUTATED BY: 79/2011

SURVEY REFERENCE
 CA-2938B-160-T

REGISTERED ACREAGE: 0.791

Surveyor Acreage:

To Chief Surveyor

Please give effect to the attached Application for
 SUBDIVISION in the above-mentioned parcels in accordance
 with Survey Plan No. CA-2938B-160-T Drawn by Sylvia
 Richards a licensed Surveyor under the Land Surveyor's
 Ordinance of 1970 dated 07 June 2011

Dated 15.06.11

Sean s. Leonard
 For Registrar of Lands

(For use of the Survey Office) Number and area of the Parcels

State number
 and area of new
 Parcels and where
 required of old
 Parcels. Insert
 Headings as
 Necessary.

Delete Pcl. 308

Create Pcl. 309 = Lot 1 = 0.107 Ha (0.265 Acres)

Create Pcl. 310 = Lot 2 = 0.213 Ha (0.526 Acres)



See back of page.....

Area(s) Calculated by: Dayton DeFreitas

Date: 15th June 2011

Registry Map amended by: Dayton DeFreitas

Date: 15th June 2011

Registrar of Lands

I certify that the Registry map 2938B has been amended

Date: 15.06.2011

Chief Surveyor

For use of the Registrar of Land

Entered in Register(s)

Date: 15 June 2011

Registrar of Lands

NB: There is a note regarding
 the need for a ROW on
 the Registers

RECEIVED
 70172 JUN 15 2011

LAND REGISTRY
 BRITISH VIRGIN ISLANDS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS



CLAIM NO. BVIHCV 2013/ 0379

BETWEEN:

DELTA PETROLEUM (CARIBBEAN) LIMITED Applicant

AND

MINISTER OF NATURAL RESOURCES Respondent



EX-PARTE NOTICE OF APPLICATION
(for leave to apply for judicial review)

1. The Applicant is **DELTA PETROLEUM (CARIBBEAN) LIMITED**, a company duly incorporated under the laws of the British Virgin Islands with its registered office at Road Town, Tortola engaged in the business of wholesale and retail sale of petroleum in the British Virgin Islands.
2. The Respondent is the **MINISTER OF NATURAL RESOURCES**, the Minister in the present Government entrusted with the responsibility for land matters involving the Crown.
3. The Applicant seeks the leave of the Court to make a claim for judicial review against the Respondent and seeks the following Order:
 - (1) A declaration that the decision of the Respondent to not grant a lease of the parcel of land more particularly described as Lot 2 Block 2938B Road Town Registration Section ("Lot 2") to the Applicant and instead grant same to a third party was irrational and unreasonable and should therefore be quashed.
 - (2) A declaration that the Applicant had a legitimate expectation that it would be granted a lease over Lot 2 and that such expectation should not have been defeated by the granting of a leasehold or freehold interest to a third party.

A draft of the Order that the Applicant seeks is attached.

25 February 2014

The Grounds of the Application are as follows:

1. The Applicant, Delta Petroleum (Caribbean) Limited is a company duly organized and existing under the laws of the British Virgin Islands and engaged in the business of retail and wholesale distribution of petroleum and petroleum related products in the British Virgin Islands and the wider Caribbean.
2. The Applicant is also the registered proprietor of various parcels of land registered as Parcels 221, 223, 224, 79 and 147 having purchased same in September 2007 from Egypt Construction Limited for the sum of \$1,100,000.
3. At the time of purchase Parcel 221 enjoyed sea access and this was an important consideration for the Applicant's decision to purchase these properties as same was intended to facilitate the development of its business operations in the British Virgin Islands. The right of sea access also affected the value of Parcel 221 and hence the price paid for the properties.
4. An area of land adjacent to Parcel 221 ("Lots 1 and 2") was subsequently reclaimed by the Government which resulted in the loss of sea access previously enjoyed by Parcel 221 which also adversely impacted on its value as well as usefulness to the Applicant's business operations.
5. Lots 1 and 2 do not have a right of access to the public road and could only be accessed by passing over Parcel 221 for which permission was need from the Applicant.
6. In or around January 2010 the Applicant entered into discussions with the Respondent with a view to negotiating a purchase Lots 1 and 2 since without an easement it was not possible for a third party to access the said parcels.
7. The Applicant was informed during the negotiations that the Respondent was unwilling to sell Lots 1 and 2 but that it would instead be willing to grant a 50 year lease over Lot 2 to the Applicant in exchange for the Applicant granting an easement or registered right of way over Parcel 221 in favour of Lots 1 and 2.
8. The Applicant accepted this offer and by letter dated June 14, 2011 informed the Respondent that it was *"willing to grant the owner of Lot 1 the necessary access on said property for an easement of 12 feet right through Parcel 221."* The clear understanding of the parties was that this access was on the basis that the Applicant would be granted a lease over Lot 2.
9. In keeping with its agreement to grant an easement over Parcel 221 the Applicant instructed a registered land surveyor at its own expense to prepare

the necessary survey plans for the granting and registration with the Registrar of Lands of a 12 feet easement over Parcel 221.

10. The Applicant was recently informed by the Respondent that it was in the process of selling Lots 1 and 2 to a third party and whether the Applicant would still be willing to give a right of access over Parcel 221 in favour of Lots 1 and 2 so that the registered proprietor could access same.
11. The Applicant by letter dated August 20, 2013 made it abundantly clear that it was unhappy with this new development particularly given the history of the matter and the representations made by various officers of the Respondent that the Applicant would be granted a 50 year lease of Lot 2 and that in the circumstances it was not willing to grant any easement over Parcel 221 in favour of Lots 1 and 2.
12. The decision of the Respondent to not grant a lease of Lot 2 to the Applicant but to instead grant same to a third party was irrational and unreasonable and should therefore be quashed since without a right of access to the public road little or no use can be made of Lot 2 by a third party.
13. The Applicant also had a legitimate expectation based on representations made by the Respondent during the course of discussions between the parties in the matter that it would be granted a 50 year lease over Lot 1.
14. The Applicant therefore seeks the leave of the Court to bring a claim for Judicial Review against the decision of the Respondent not to grant the Applicant a 50 year lease over Lot 2 and instead to grant same to a third party who is unable to access same without the grant of an easement over Parcel 221 by the Applicant who has made it quite clear that such permission would not be forthcoming in the circumstances.

Dated the 18th day of December, 2013



Terrance B. Neale
McW. Todman & Co
Legal Practitioners For the Applicant

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS**

CLAIM NO. BVIHCV 2013/

BETWEEN:

DELTA PETROLEUM (CARIBBEAN) LIMITED Applicant

AND

MINISTER OF NATURAL RESOURCES Respondent

**EX-PARTE NOTICE OF APPLICATION
(for leave to apply for judicial review)**

**MCW TODMAN & CO
LEGAL PRACTITIONERS FOR THE APPLICANT**

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS

CLAIM NO. BVIHCV 2013/ 0379

BETWEEN:



DELTA PETROLEUM (CARIBBEAN) LIMITED

Applicant

AND

MINISTER OF NATURAL RESOURCES

Respondent

AFFIDAVIT IN SUPPORT OF APPLICATION FOR JUDICIAL REVIEW

I, BEVIS SYLVESTER of East End, Tortola make oath and say as follows:

1. I am the Regional General Manager of the Applicant and I am duly authorised to make this Affidavit on its behalf.
2. I make this Affidavit truthfully and from matters within my own knowledge and in support of the Applicant's application for leave to apply for Judicial Review against the July 2, 2013 decision of the Respondent revoking permission granted to the Applicant's tanker, MV Ocean Princess to discharge fuel to the Corporation until 9pm of the same day.
3. The Applicant is a company duly organized and existing under the laws of the British Virgin Islands and engaged in the business of retail and wholesale distribution of petroleum and petroleum related products in the British Virgin Islands and the wider Caribbean.

4. The Applicant is also the registered proprietor of various parcels of land registered as Parcels 221, 223, 224, 79 and 147 having purchased same in September 2007 from Egypt Construction Limited for the sum of \$1,100,000.
5. At the time of purchase Parcel 221 enjoyed sea access and this was an important consideration for the Applicant's decision to purchase these properties since which was intended to facilitated the development of its business operations in the British Virgin Islands. The right of sea access also affected the value of Parcel 221 and the price which was paid for the properties.
6. An area of land adjacent to Parcel 221 ("Lots 1 and 2") was subsequently reclaimed by the Government. This reclamation resulted in the loss of sea access previously enjoyed by Parcel 221 and also had an adverse impact on the value of Parcel 221 and the plans which the Applicant had for developing its property so as to improve the efficiency of its business operations.
7. Lots 1 and 2 did not have a right of access to the public road and could only be accessed by crossing over Parcel 221 for which permission had to be obtained from the Applicant.
8. In or around January 2010 the Applicant entered into discussions with the Respondent with a view to negotiating a purchase of Lots 1 and 2 since it was common knowledge that without an easement it was not possible for a third party to access the land.
9. I attending the negotiations on behalf of the Applicant and during the course of discussions was advised by the Permanent Secretary in the Minister of Natural Resources during that the Respondent was unwilling to sell Lots 1 and 2 to the Applicant since it was not the Respondent's policy to sell Crown land to a Non Belonger company. I was then advised however that the Respondent would be willing to grant a 50 year lease to the Applicant over Lot 2 in exchange for the granting of an easement or registered right of way over Parcel 221 by the Applicant in favour of Lots 1 and 2.
10. I orally confirmed the acceptance of this offer on behalf of the Applicant and by letter dated June 14, 2011 informed the Respondent that the Applicant was *"willing to grant the owner of Lot 1 the necessary access on said property for an easement of 12 feet right through Parcel 221."* The clear understanding of the parties at the time was that the granting of an easement over Lots 1 and 2 was on the basis of the Applicant being granted a lease over Lot 2.
11. The Respondent responded by letter dated June 21, 2011 to the effect that *"In order for a lease to be granted over Lots 1 and 2 of Block 2938B Road Town Registration, land access is required to include Lot 2, Block 2938B"*. A copy of the said letter is now shown to me and exhibited as "BS 1".

12. By letter dated June 24, 2011 I responded on behalf of the Applicant informing the Respondent that *"Delta Petroleum hereby grants the Crown the necessary land access for easement through Parcel 221, Block 2938B. This easement will allow access over to Lots 1 and 2 as requested."* A copy of the said letter is now shown to me and exhibited as "BS 2"
13. In keeping with its agreement to grant an easement over Parcel 221 the Applicant instructed a registered land surveyor at its own expense to prepare the necessary plans for the granting and registration with the Registrar of Lands of a 12 feet easement over Parcel 221.
14. I was recently informed by the Permanent Secretary in the Ministry of Natural Resources Applicant that the Respondent was in the process of transferring Lots 1 and 2 to a third party and whether the Respondent would still be willing to grant an easement over Parcel 221 in favour of Lots 1 and 2 in order for the registered proprietor to be able to access same from the public road.
15. By letter dated August 20, 2013, I made it abundantly clear that the Applicant was very unhappy with this new development which was contrary to the discussions between the parties and the representations made by various officers of the Respondent specifically that the Applicant would be granted a lease of Lot 2. I also informed the Respondent that under no circumstances would the Applicant be willing to grant an easement over Parcel 221 in favour of Lots 1 and 2 in light of the decision of the Respondent's decision. A copy of the said letter is now shown to me and exhibited as "B S 3"
16. The decision of the Respondent not to grant a lease of Lot 2 to the Applicant and to grant same to a third party instead was irrational and unreasonable and should therefore be quashed since without a right of access to the public road no serious use can be made of Lot 2 by a third party.
17. The Applicant also had a legitimate expectation based on representations made by the Respondent during the course of discussions between the parties on the matter that it would have been granted a 50 year lease over Lot 1.
18. There is no time limit in respect of making this application to which the Applicant has not complied.
19. The Applicant does not have any other legal remedy available to it to address the matter.
20. The Applicant is personally affected by the decision of the Respondent because it has (a) lost its right of access to the sea which Parcel 221 previously enjoyed (b) had the value of Parcel 221 substantially reduced because of the loss of sea access; and (c) had its development plans for its property adversely affected.
21. The Applicant's address for service is [REDACTED]

22. The Applicant therefore seeks the leave of the Court to apply for Judicial Review of the decision of the Respondent to not grant it a 50 year lease over Lot 2 and to grant same instead to a third party.

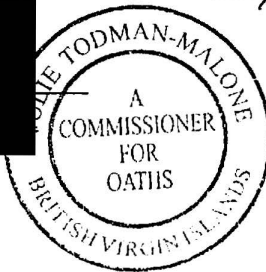
SWORN by BEVIS SYLVESTER

At Road Town, Tortola

On the 17th day of Dec. 2013

In the pres

COMMISS



BEVIS SYLVESTER

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS**

CLAIM NO. BVIHCV 2013/

BETWEEN:

DELTA PETROLEUM (CARIBBEAN) LIMITED Applicant

AND

MINISTER OF NATURAL RESOURCES Respondent

AFFIDAVIT IN SUPPORT OF APPLICATION FOR JUDICIAL REVIEW

**MCW TODMAN & CO
LEGAL PRACTITIONERS FOR THE APPLICANT**

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

BRITISH VIRGIN ISLANDS

BV14CV 2013/0379

BETWEEN:

DELTA PETROLEUM (CARIBBEAN) LIMITED

Applicant

And

MINISTER OF NATURAL RESOURCES

Respondent



CERTIFICATE OF EXHIBITS

THIS IS TO CERTIFY that the Exhibits "BS1 to BS3" referred to in the Affidavit of BEVIS SYLVESTER sworn on the 17th day of Dec., 2013.

A Commissioner to Administer Oaths
in the British Virgin Islands





MINISTRY OF NATURAL RESOURCES & LABOUR
Government of the Virgin Islands
33 Admin Drive, Central Administration Complex
Road Town, Tortola, British Virgin Islands
Tel: (284) 468-0675
Fax: (284) 494-4283
Email: nrfa.gov.vg

BS1

OUR REF: LAN. 10/2/991

21 June, 2011

Mr. Bevis Sylvester
Regional General Manager
Delta Petroleum (Caribbean) Limited
P. O. Box 3318
Road Town, Tortola
British Virgin Islands VG1110

Dear Mr. Sylvester:


Re: Parcel 221, Block 2938B, Road Town Registration Section

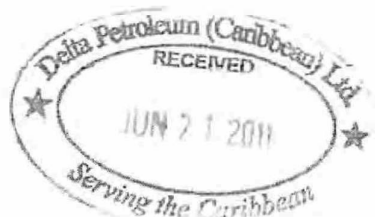
I acknowledge receipt of your letter dated 14 June, 2011 in relation to the property adjacent to Delta Gas Station in Pasea Estate.

In order for a lease to be granted over Lots 1 and 2 of Block 2938B, Road Town, land access is required on both parcels. We are therefore requesting that the grant of easement be extended to include Lot 2, Block 2938B.

If you have any additional questions or concerns, please do not hesitate to contact the undersigned.

Sincerely,


Ronald Simon Berkeley (Mr.)
Permanent Secretary



"Professional Services Delivered to the Public"



DELTA PETROLEUM (CARIBBEAN) LTD.

P.O. Box 3318, Road Town, Tortola VG1110 British Virgin Islands ph: (284)494-3291 fax: (284)494-4914 email: delta1@surfow.com

BS 2

June 24, 2011

Mr. Berkley
The Permanent Secretary
Ministry of Natural Resources & Labour
Government Administration Complex
Road Town, Tortola

Dear Permanent Secretary,

Re: Parcel 221, Block 2938B

I write in reference to the above caption property. Delta Petroleum hereby grants the Crown the necessary land access for easement through Parcel 221, Block 2938B. This easement will allow access over to Lots 1 and 2 as requested.

It is our intent to fully cooperate. Please inform me if additional information is necessary for the purpose of granting the easement. I can be reached at [REDACTED]

Kind Regards,

[REDACTED]
Bevis Sylvester
Regional General Manager

Cc: Hon. Omar Hodge, Minister of Natural Resources & Labour

Serving the Caribbean

BS3



DELTA PETROLEUM (CARIBBEAN) LTD.

P.O. Box 3318, Road Town, Tortola VG1110 British Virgin Islands ph: (284)494-3291 fax: (284)494-4914 email: delta1@surfbvi.com

August 20, 2013

Mr. Ronald Smith Berkeley
Permanent Secretary
Ministry of Natural Resources & Labour
Government Headquarters
Road Town

Dear Mr. Berkeley,

I refer to the captioned. As you are aware, the Ministry of Natural Resources and Labour ("the Ministry") has requested from Delta Petroleum (Caribbean) Limited (Delta) a grant of easement to facilitate Lots 1 & 2 of Block 2938B. The most recent history of your request has been outlined in letters dated June 21, 2011. In addition to written correspondence we (Sylvester/Smith-Berkeley) met at your request at a meeting held on April 18, 2010. For historical purposes, it is important to state here that the request for the easement from the Ministry preceeded your involvement.

Unfortunately, at our most recent meeting you informed me that the Ministry has decided against the grant of the seabed rights to Delta. To add insult to injury, you further informed me that notwithstanding the Ministry's refusal to grant the seabed rights, you still wish for Delta to grant the easement as requested by the Ministry to facilitate Lots 1 and 2 of Block 2938B. Frankly, Delta considers the Ministry's position not just insulting, but in bad faith. Because, the discussions have always been progressed on the premise that the Ministry will grant of the seabed rights to Delta and in return Delta will grant the easement, as seen in drawing attached.

As I indicated to you then, Delta considers the Ministry's current position to be unsatisfactory. We take that view in light of the history of these discussions, the intention of Delta throughout, the significant resources expended by Delta and the commitment offered by your predecessors. Simply put, we are bewildered. Having gone back on your word, it is unconscionable for the Ministry to expect Delta to further act to its own detriment by granting your request.

We have copied this letter to the Chief Registrar of Lands, so as to ensure there is no uncertainty as to Delta's position. Further, please be advised that Delta will robustly defend at all cost any attempts by the Ministry to circumvent Delta's right to its property. We would also advise that if there is any unauthorised access or usage by anyone acting with the Ministry's approval, or on

Serving the Caribbean

behalf of the Ministry that you advise them to refrain from any and all such unauthorized access or usage of Delta's property with immediate effect.

Delta regrets the position that these discussions have reached, but that has been entirely of the Ministry's own devise. Regrettably, given the position the Ministry has taken we have been left with no other alternatives. We remain desirous of achieving a workable solution. Further, Delta firmly believes that the best interest of all parties will be best served if the arrangements are done within the lines of the considerations that have previously existed. But given the position the Ministry has taken, we have been left with no other alternatives. You are of course, in position to change the way things currently stands.



Regional General Manager

Cc: Terrance Neale
Mr. SP Milonas
Mr. Vernon Lake

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS

BETWEEN:

DELTA PETROLEUM (CARIBBEAN) LIMITED
Applicant

And

MINISTER OF NATURAL RESOURCES
Respondent

CERTIFICATE OF EXHIBITS

McW. Todman & Co.
Legal Practitioners for the Applicant

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS



SUIT NO. BVIHCV 2013/0379
BETWEEN:

DELTA PETROLEUM (CARIBBEAN) LIMITED



And

MINISTER OF NATURAL RESOURCES

Respondent

NOTICE OF DISCONTINUANCE

Take notice that the Applicant hereby wholly discontinues its Claim made in this action against Respondent, Minister of Natural Resources.

Dated the 13th day of March, 2014.



McW. Todman & Co.
Legal Practitioners for the Applicant

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS

SUIT NO. BVIHCV 2013/0379

BETWEEN:

DELTA PETROLEUM (CARIBBEAN) LIMITED
Applicant

And

MINISTER OF NATURAL RESOURCES
Respondent

NOTICE OF DISCONTINUANCE

McW. TODMAN & CO.
Legal Practitioners for the Applicant

INSTRUMENT NO.

1068/2017

VIRGIN ISLANDS

THE REGISTERED LAND ~~REGISTRY~~ ^{FILED} LAND REGISTRY
VIRGIN ISLANDS

FORM R.L.12

Grant of Easement

AUG 04 2017

At Road TownREGISTRATION SECTIONBLOCKPARCELS

Road Town

2938B

309/1

I, **GARVIN ISHMAEL STOUTT SR.**, of Havers in the Territory of the Virgin Islands in consideration of the leasehold interest granted by the Crown to me for Parcel 309 of Block 2938B in the Road Town Registration Section **HEREBY GRANT** to **JOHN S. DUNCAN, OBE**, Governor of the Territory of the Virgin Islands, acting herein for and on behalf of Her Majesty the Queen in Her Government of the said Territory the interest comprised in the following easements:-

To pass and repass over Parcel 309 of Block 2938B in the Road Town Registration Section, to the sea.

Dated the 25th day of July, 2017.

Signed, sealed and delivered by)
Garvin Ishmael Stoutt Sr. as)
Grantor before and in the presence)
of:)

Garvin Ishmael Stoutt Sr.

Witness
Name: Lorraine Stoutt

THE PUBLIC SEAL appointed for the Territory of The Virgin Islands was hereto affixed and these presents signed and delivered by **HIS EXCELLENCY JOHN S. DUNCAN, OBE**, Governor of the said Territory for and on behalf, of Her Majesty the Queen as Grantee, before and in the presence of:

John S. Duncan, OBE
His Excellency the Governor

Witness....

Name: CHERRYL FANIE

EXEMPT FROM
STAMP DUTY

2-3-7



I **HEREBY CERTIFY** that the above-named **Garvin Ishmael Stoutt Sr.** appeared before me on the 17th day of July, 2017 and being known to me/~~identified to me by~~ acknowledged the above signature to be his and that he had freely and voluntarily executed this instrument and understood its contents.

[Redacted Signature]

SAO

Signature and Designation of Certifying Officer



NO. **1068** OF 2017

VIRGIN ISLANDS

GARVIN ISHMAEL STOUTT SR.

GRANTOR

AND

HIS EXCELLENCY THE GOVERNOR

GRANTEE

GRANT OF EASEMENT

LODGED at the Land Registry Department, Road Town, Tortola, this
day of 2017 at a.m./p.m.

.....
Chief Registrar of Lands
Virgin Islands



Attorney General

{In Archive} Joan Penn Matter
Ronald Smith-Berkeley to: Maya Barry
Cc: Jennifer V Hodge-Penn

05/17/2018 08:51 AM

Archive

This message is being viewed in an archive.

Good Morning Ms Barry,

We spoke.

AS Penn and I met with Mrs Penn re the land that Cabinet has decided to grant her in the vicinity of Delta Gas Station. The decision was made with a condition that Mrs. Penn would sort out access, which she was able to accomplish with the help of another land owner in the same area. AS Penn will commence the process which will lead ultimately to the execution of a lease between Mrs. Penn and the Crown. While that is in progress, we ask if you can write to Delta Gas Station via their attorney asking them to cease use of the said parcel of land.

Thank you for your continued support.

Regards,
Ronald Smith-Berkeley
Permanent Secretary
Ministry of Natural Resources & Labour
BVI Government
Road Town Tortola BVI
VG1110
Tel: 284 468 3701 ext. [REDACTED]
Fax: 284 494 4283
Email: [REDACTED]



Attorney General's Chambers
Government of the Virgin Islands

Our ref:

27 June 2018

Robert Liburd
Island Manager
Delta Petroleum Caribbean Limited
Pasea Estate
Road Town, Tortola
Virgin Islands, VG1110

JUN 29 2018

Dear Sirs,

Re: Parcel 310, Block 2938B, Road Town Registration Section

We have been instructed by the Ministry of Natural Resources and Labour that Delta Petroleum Caribbean Limited ("Delta") currently has chattles stored on Crown land situate in Pasea Estate, Tortola more particularly described in the Land Register of the Territory as Parcel 310, Block 2938B, Road Town Registration Section ("the property"). Furthermore, we are instructed that Delta also utilises the said property for docking marine vessels including barges.

Our instructions also indicate that Delta has no, or no proper permission to utilise the property in the manner aforesaid, or at all. In the circumstances, we are instructed to demand that all chattels belonging to Delta be removed from the property within fourteen (14) days of the date hereof, and to ask that Delta henceforth ceases and desists utilising the property for either storing chattels or docking marine vessels.

If Delta should fail to adhere to our demand herein, Government will be forced to take such further action as is deemed expedient without any further reference or notice to Delta.

Please be guided accordingly.

Sincerely,



Máya M. Barry
Crown Counsel
for Attorney General

cc: Permanent Secretary, Ministry of Natural Resources and Labour

TTT Building, 4th Floor, P.O. Box 242, Road Town, Tortola VG1110, Virgin Islands
Tel: (284) 468-2960 ~ Fax: (284) 468-2983 ~ E-mail: [REDACTED]



C.C. Barry
F.A. Please.
16/7/18

Veritas Law
Barristers Solicitors Notaries Public

P.O. Box 2937
East End
Tortola
Virgin Islands
VG1120
Email: info@veritaslaw.org
Phone: 1-284-344-9988

11th July, 2018

Mr. Baba Aziz
Honourable Attorney General
TTT Building, 4th Floor
P.O. Box 242
Road Town, Tortola
Virgin Islands, VG 1110

JUL 13 2018

Attention: Crown Counsel Ms. Mya Barry

Dear Sir,

Re: Parcel 310 Block 2938B Road Town Registration Section

We are solicitors for and on behalf of Delta Petroleum Caribbean Limited, in the captioned matter. Your letter of June 27, 2018 has been forwarded to us to respond.

Our client has informed us that since receipt of your letter, steps have been taken to rectify the matter and to comply with your request. We would be grateful if you would kindly convey to your client Delta Petroleum's deepest apologies.

As you may be aware, our client owns adjoining property, which they currently use for various purposes. Despite their best efforts, our client has been unable to fully comply with your request within the time given. In those circumstances, they respectfully request if your client would be minded to extend the compliance time to August 15, 2018.

Further, we wish to advise that our client would like to inquire from yours, whether they would be prepared to consider short term lease, or other suitable arrangements. If this is amenable, we would be happy to discuss such terms.

Justice is our signature



Mr. Baba Aziz
Honourable Attorney General

Thank you in advance for any courtesies that can be afforded to us in the circumstances.

Yours faithfully,


VERITASLAW

cc: Permanent Secretary, Ministry of Natural Resources and Labour
Mr. Robert Liburd, Island Manager Delta Petroleum



Attorney General's Chambers
Government of the Virgin Islands

Our ref:

1 October 2018

Veritas Law
P.O. Box 2937
East End, Tortola
Virgin Islands VG 1120

Dear Sirs,

Re: Parcel 310, Block 2938B, Road Town Registration Section

Reference is made to your 11 July 2018 letter regarding the captioned.

We have now had an opportunity to take full instructions on the matter, and I am now able to advise that Government is not in a position to discuss a lease of the subject parcel. In fact, a decision to lease the said parcel to other persons was taken by Cabinet in 2007, but never actually finalised for various reasons. However, steps had continuously been taken since that time in order to finalise, and both parties are now ready and able to do so. It is in this vein that we were instructed to demand that Delta Petroleum (BVI) Limited ("Delta") remove its chattels, and cease otherwise utilising the property in July 2018.

In light of the foregoing, I am instructed to demand that Delta ceases use of the property no later than 1 November 2018.

Please note that if Delta should fail to adhere to our demand, without reasonable excuse, Government will be forced to take such further action as is deemed expedient without further notice to Delta.

Sincerely,

[Redacted Signature]

Maya M. Barry
Crown Counsel
for Attorney General

cc: Permanent Secretary, Ministry of Natural Resources and Labour

12


VIRGIN ISLANDS

**EXPULSION NOTICE TO TRESPASSER OCCUPYING CROWN LAND
PARCEL 310, BLOCK 2938B, ROAD TOWN REGISTRATION SECTION**

Pursuant to section 40 of the Virgin Islands (Constitution) Order, 2007, I, **AGUSTUS J. U. JASPERT**, Governor of the Territory of the Virgin Islands acting herein for and on behalf of **HER MAJESTY THE QUEEN** in Her Government of the said Territory **HEREBY REQUEST THAT YOU REMOVE YOUR CHATTELS FROM, CEASE AND DESIST USING IN ANY WAY WHATSOEVER, LEAVE, AND DELIVER UP POSSESSION** of Parcel 310, Block 2938B, Road Town Registration Section (Crown Land), of which you are in occupation as a trespasser, on or before the 1st day of February, 2019.

Please be advised that failure to comply with this notice will result in such action as is deemed necessary being taken in order to secure your expulsion.

Dated the *18th* day of *JANUARY*, 2019.


Governor of the Virgin Islands

To: Delta Petroleum (BVI) Limited

*Please Execute
V.W. 12/6/2019*

**Bevis Sylvester
East End
Tortola
BVI
Tel: 1-284-346-1913**



12th June, 2019

Hon. Vincent Wheatley
Minister of Natural Resources and Labour
Road Town, Tortola
BVI

Dear Hon. Wheatley,

I write with respect to Lot 1 and 2 outside of block # 2938 and Parcel 221 and 222.

Please note that I hereby advise that I am requesting to apply to lease the said crowned property for a period of 99 years.

I look forward to your favourable response on this matter.

Thanks You.

Kind Regards

Bevis Sylvester

**THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF THE
VIRGIN ISLANDS**

DATE: 20th June, 2019

M.P.: LAN.L5/69 & LAN.L5/63

487

CABINET PAPER

NO. ____ OF 2019

**APPLICATION TO REVOKE - REQUEST FOR PERMISSION TO LEASE PROPOSED
LOT 2 (FORMERLY PART OF LOTS 3 AND 3A) OF BLOCK 2938B IN THE ROAD
TOWN REGISTRATION SECTION - NATURE'S WAY LIMITED MEMO NO. 490/2007**

DECISION SOUGHT



Cabinet is asked to agree that:

LIBURD

- (a) the decision recorded by Minute No. 0927 of Memo No. 490/2007 (**Appendix A**) be revoked in its entirety;
- (b) instead the property now identified as Parcel 310 of Block 2938B in the Road Town Registration Section which measures 0.526 of an acre as evidenced by a copy of the Land Register attached as **Appendix B** be granted to Mr. Bevis Sylvester as a lease for Commercial purposes;
- (c) the Grant of Easement given to the Crown by Garvin Ishmel Stoutt Sr. by Instrument No. 1068 of 2007 dated 25th July, 2017, to remain as this will provide access to Parcel 310 of the said block and registration section;
- (d) the instrument of lease be prepared by the Ministry and forwarded for vetting to the Attorney;

The terms of the Lease to be as follows:

Term	-	Fifty (50) years in the first instance with an option to renew for a further period of twenty five (25) years
Rent	-	\$800.00
Rent Review Period	-	5% of the unimproved value of the leased area
Rent Cap	-	nil
Late Payment	-	2% above the New York Prime Rate
Period for Payment	-	30 days
Subletting	-	2.5% of rent collected from the sublease agreement in addition to the rent
Payment Due Date	-	1 January each year;

- (e) the property identified in the attached map as Lot 1 of Parcel 171 of Block 2838F in the Road Town Registration Section which measures 0.500 of an acre be awarded to Nature's Way Limited for commercial development under conditions as the previous offer;
- (f) the Ministry takes steps to have a parcel number assigned to lot 1;
- (g) the lease be prepared by the Ministry and forwarded to the Attorney General for vetting.

BACKGROUND INFORMATION

1. Executive Council by item (iii) of Minute No. 212 of Memo No. 095/1997 **(Appendix C)** agreed that a portion of reclaimed land be awarded to Egypt Construction Limited in exchange for land given by the company during the dual carriageway construction.
2. By Minute No. 0927 of Memo No. 490/2007 **(Appendix A)**, a decision was taken to revoke item (iii) of the decision on account of the decision not being acted on and the fact that the awardee Egypt Construction Limited was no longer in existence.
3. Cabinet further agreed to award Nature's Way Limited a lease for a parcel of land now identified as Parcel 310 of Block 2938B in the Road Town Registration Section which measures 0.526 of an acre, subject to conditions.
4. Members are asked to note that the directive of Cabinet was communicated to the applicant by a letter dated August 1, 2007. Members are further asked to note that due to the issue of a right of way to service Parcel 310 of Block 2938B in the Road Town Registration Section, the property could not be transferred to the awardee.
5. By Instrument No. 1068 of 2017, a grant of easement was given in favour of the Crown, providing access to the parcel. After that hurdle was solved, the other issue to be rectified was to have Delta remove all equipment belonging to them and to cease using the property for docking.
6. The Government's request was communicated to the Island Manager for Delta, Mr. Robert Liburd by letter dated 27 June, 2018 **(Appendix D)** giving them fourteen (14) days from the date of the letter to remove all chattels belonging to them. Legal counsel for Delta, Veritas Law responded by letter dated 11th July, 2018 **(Appendix E)** exploring the possibility of having an extension of time to vacate the property until August 15, 2018 and inquired whether a short term lease or other arrangements could be considered. On instructions from the Ministry, a letter was issued by Chambers giving Delta until 1st November, 2018 **(Appendix F)** to cease use of the property. That letter further indicated that the Government was not in a position to discuss a lease of the subject parcel as a decision was already reached in terms of leasing the property. They were further informed that failure to adhere to the Government's demand without reasonable excuse, the Government would be forced to take further action as is deemed expedient without further notice to Delta.
7. Delta did not comply with the request of the Government, so the Chambers was further instructed to prepare an Expulsion Notice for execution

by the Governor to be served on Delta. The notice **(Appendix G)** was prepared, executed on 18th January, 2019 and served on Delta. To date the company continues to occupy the property.

8. By a letter dated 31 May, 2011 **(Appendix H)**, a request was made by Mr. Bevis Sylvester requesting the opportunity to lease the same property identified as Parcel 310 of Block 2938B in the Road Town Registration Section. However, upon submission of that request, no decision was made as it was recognized that the land was already awarded.

9. By a letter dated _____ **(Appendix I)** _____ submitted a request to lease Parcel 310 of Block 2938B in the Road Town Registration Section to continue the operation of there business. In exchange for this leasehold interest, Delta has entered into an agreement with Government to reduce the debt owed to them from _____ to _____. Attached as **Appendix J**, is a copy of that agreement.

10. Cabinet is asked to note that through no fault of her own Mrs. Penn, one of the directors of Nature's Way Limited or the Ministry that the issues were not resolved in as timely a manner as was anticipated. The matter was referred to the Attorney General for action on four (4) different occasions. After each request, the appropriate action was initiated by the Chambers. Members are asked to note that to avoid legal action against the Crown for opportunity lost as a result of the property being awarded to Delta it is important that Nature's Way Limited be awarded the parcel of land identified in item (g) of the decision sought under the same conditions as the previous offer.

CROSS MINISTRY CONSULTATION

11. There was no need for cross ministry consultation.

LEGAL IMPLICATIONS

12. The matter was referred to the Attorney General for his review and comments and he advised “

The full text is attached as **Appendix K**.

FINANCIAL IMPLICATIONS

13. The Financial Secretary was invited to review the information and provide his input on the matter and he advised “ .”
Attached as **Appendix L** are his comments.

14. Cabinet is asked to agree with the Decisions Sought and advise.

Hon. Vincent Wheatley
Minister for Natural Resources, Labour and Immigration

Attachments: (12)

- Appendix A** - copy of Executive Council's Minute No. 927 of Memo No. 490/2007 *Appendix A*
- ~~Appendix B - Grant of Easement -~~
- Appendix B** - copy of Land Register for Parcel 310
- ~~Appendix D - Attached Map~~
- Appendix E** - copy of Executive Council's Minute No. 212 of Memo No. 0951/1997
- Appendix D** - copy of letter dated 27 June, 2018
- Appendix E** - copy of letter dated 11th July, 2018
- Appendix F** - copy of letter dated 1st November, 2018
- Appendix G** - copy of Expulsion Notice dated 18th January, 2019
- Appendix H** - copy of letter dated 31 May, 2011
- Appendix I** - copy of letter dated _____ from _____
- Appendix J** - copy of Agreement between Delta and Government
- Appendix K** - Memorandum from the Attorney General dated _____
- Appendix L** - Memorandum from the Financial Secretary dated _____

From: Ronald Smith-Berkeley [REDACTED]
Sent: 23 July 2019 18:24
To: Hon. Vincent Wheatley <[REDACTED]>
Subject: Bevis Sylvester

Minister,

Please take note of the legal and financial implications. We may therefore want to conclude our discussions with Mrs. Penn so that we can make notations in the paper. Also, the files were sent to the chambers for for their perusal and then we make the necessary

adjustment. Please note that the FS is requiring a business plan as well before the matter goes to Cabinet. The office will therefore write to Mr. Sylvester and request same.

Financial Implications

Upon review of the Cabinet memorandum, is there any known or foreseen liability for Government if they were to revoke Minute No. 0927 of Memo No. 490/2007 and to reverse Instrument No. 1068 of 2007, dated 25th July 2017? If so, what is the estimated money value of the liability? It is the view of the Ministry of Finance that without proper negotiations and or an amicable settlement, the decision sought could give rise to Government having to pay compensation as a result of Cabinet's decision being judicially reviewed. As such, it is important that the appropriate responses to the foregoing questions and the business plan is provided to Cabinet for their consideration before any decision is made. Furthermore, the draft paper says nothing about how the persistent and continuing contraventions by Delta Petroleum Caribbean Ltd is to be resolved. The decision being sought, without more, exposes Government to too much avoidable risks.

Legal Implications

These Chambers are not currently in possession of the file relative to this Paper, and we would wish to be provided with same so that we may prepare a legal opinion relative to the Decision Sought herein. However, from the facts known to us, we are concerned that Government may be estopped from going back on the promise to lease to Mrs. Penn by virtue of the doctrine of proprietary estoppel. Therefore, before Cabinet proceeds to consider the Decision Sought herein, we would wish to properly advise Cabinet so that it is able to take a decision having due regard to all the possible legal consequences.

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF
INQUIRY 2021**

AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')

FIRST AFFIDAVIT OF MAYA BARRY

I, Maya M. Barry, of 4th Floor, TTT Building, Wickham's Cay I, Road Town, Tortola, VG1110, Virgin Islands MAKE OATH and SAY as follows:

1. **Introduction**
2. I am Principal Crown Counsel in the Attorney General's Chambers ('**Chambers**'). I have been employed with the Attorney General's Chambers, Government of the Virgin Islands since 1 November 1993. I have served as counsel in the Attorney General's Chambers since August 2010. The statements made in this Affidavit derive from information received, and documents reviewed during the course of my employment with the Government and are true to the best of my knowledge, information and belief.
 - 2.1 I have been asked to give an Affidavit in connection with the transaction involving a lease of Parcel 310, of Block 2938B, Road Town Registration Section to Mr. Bevis Sylvester ("**the Transaction**"), and I now do so.
 - 2.2 In deposing to the facts and matters contained in this Affidavit, it is my understanding that legal privilege has been waived in relation to the matters addressed in paragraphs 3.1 to 4.2, and that I am duly authorised to give this Affidavit.
 - 2.3 I have reviewed the Responses of the Honourable Vincent Wheatley, Minister for Natural Resources Labour and Immigration ("**the Minister**") dated 29 September 2021 ("**The Response**") and 7 October 2021 ("**the Further Response**"), concerning the Transaction.
 - 2.4 I have also reviewed the Affidavit of Ronald Smith-Berkeley dated 26 October 2021.

2.5 In this Affidavit, where necessary, I shall refer to the bundles accompanying the Further Response, namely **AB2**.

3. The Response

3.1 I have reviewed the Response, together with the documentation to which it refers.

3.2 The parcel of land identified as Parcel 310, Block 2938B, Road Town Registration Section ("**Parcel 310**") lies between the sea and a plot of land ("**Parcel 221**"), owned by Delta Petroleum Ltd. ("**Delta**"). Parcel 310 was formed via land reclamation. It was reclaimed using the spoil from Government road-building operations. That reclamation, now Parcel 310, once completed interposed itself between Parcel 221 and the sea.

3.3 I am aware that Delta Petroleum (BVI) Limited ("**Delta**") on several occasions requested a lease over the parcel which is identified as Parcel 310. I am also aware that Delta has over a number of years consistently asserted that it had a right to an opportunity to lease Parcel 310 in preference to others.

3.4 I am also aware that Delta had at one time even sought to bring judicial review proceedings in furtherance of said right, and that said proceedings were later discontinued.

3.5 I also agree that the Government was on notice following Delta's Judicial Review proceedings in 2013, that Delta may challenge any attempt to grant a lease of Parcel 310 to Mrs. Penn or Nature's Way Ltd.

3.6 I recall one meeting in 2019 where a lease of Parcel 310 was discussed.

3.7 I do not recall the date of that meeting, but I do recall that Minister for Natural Resources and Labour and Immigration (MNRL&I) Honourable Vincent Wheatley, and Mr. Ronald Smith-Berkeley, former Permanent Secretary ("PS"), MNRL&I were present. On that basis, I believe that the meeting would have occurred sometime between March and September 2019. This is my belief because subsequent to September 2019, Mr. Smith-Berkeley was assigned as PS, to the Ministry for Transportation, Works and Utilities ("MTW&U"). In this respect, I would add that I do not myself recollect the date that Mr. Smith-Berkeley was assigned as PS to MTW&U, and have thus relied on the date averred to in paragraph 2 of Mr. Berkeley's 26 October 2021 affidavit to the COI.

- 3.8 It is customary for me to take informal notes for my own use whenever I attend meetings. As such, said notes would not ordinarily be kept as a part of the official files and records of Chambers. However, there are instances where my notes are used to prepare formal file notes, legal opinions or other formal documents. Normally, I would use my own discretion as to when it would be necessary to prepare a formal file note. Typically, requests of the various Ministries/Departments or the demands of any litigation or alternative dispute resolution process, would dictate the necessity of preparing any other formal document(s) in reliance on my notes.
- 3.9 I did not prepare any formal document recording the meeting or the advice given at the meeting referred to herein.
- 3.10 Despite diligent and continuing searches for the notes taken during the meeting referred to above, I have been unable to locate the said notes.
- 3.11 I have been searching, without success, personally and with the assistance of staff at these Chambers since the time that Honourable Vincent Wheatley was in the process of preparing his Responses to the COI relating to this matter.
- 3.12 The description in paragraphs x) to aa) of the Minister's Response accords with my recollection. I gave the advice described by the Minister.
- 3.13 I advised that both Delta and Nature's Way Ltd. had competing claims to a lease of Parcel 310.
- 3.14 As owner of the adjacent parcel, I anticipated Delta's claim to be based on the loss of sea access when the land was reclaimed to the seaward side of Parcel 221. However, it was also my view that there could be a challenge based on legitimate expectation premised on the following bases:
- (a) various representations made by Government to Delta over the years; and
 - (b) based on the policy for the Management and Administration of the Marine Estate 1996 which guided the way reclaimed land was dealt with by Government, at the material time.
- 3.15 On the other hand, I anticipated that the claim of Nature's Way Ltd. would be based on proprietary estoppel premised on the 2007 Cabinet Decision. Alternatively, it was my view that a public law challenge based on legitimate expectation could be

advanced based essentially on the same facts which would be used to advance any private law claim of proprietary estoppel.

- 3.16 Against that background, it was my advice that a sensible way to resolve the competing claims might be to explore with Mrs. Penn whether Nature's Way Ltd. would be amenable to relinquishing its claim to Parcel 310, in return for a grant of Crown land elsewhere.
- 3.17 The said advice was given with the knowledge that Delta had a particularly unique interest in Parcel 310 which would make Delta unlikely to acquiesce to negotiations for a grant of Crown land elsewhere. Further, it was also my considered view that Delta had a potentially strong claim, and that it would be in Government's best interest to avoid litigation, if at all possible.
- 3.18 I also had a concern that any litigation brought by Delta, might well have evolved to the point where it delved, despite the passage of time, into the reasonableness or *vires* of the grant to Nature's Way Ltd.
- 3.19 Based on the information available to me, I harboured a number of concerns about the propriety of that grant which I considered might well have made it susceptible to challenge. Said concerns include, but are not limited to, the fact that the Nature's Way Ltd. did not own the adjacent parcel, and that although Ms. Penn was involved with the previous owner of Parcel 221 (i.e. Egypt Construction Ltd.), it ought to have been known at the material time that the said property was subject to imminent sale by auction.
- 3.20 In all the circumstances, I considered that the most prudent course forward would be to pursue the negotiations described at paragraph 3.16 herein.
- 3.21 I am aware that subsequent to my advice negotiations took place with Mrs. Penn/Nature's Way Ltd. I was not involved at all in any of those negotiations.
- 3.22 I am aware that Mr. Molinas of Delta had previously requested that the lease should be put into the name of Bevis Sylvester, and was instructed that this position remained the same. I was also able to confirm that this position remained the same with counsel then acting for Delta, Mr. Valston Graham of Veritas Law. It was also my understanding that despite its view that it had a strong legal claim to a lease in preference to others, Delta's consent to a lease in favour of Bevis Sylvester represented its willingness to reach a compromise position with Government.

- 3.23 In this respect, my understanding was that Delta was aware that in order for it to obtain a lease of Parcel 310, Government would have to revoke a grant to a Belonger/Belonger company, in favour of a non-belonger corporation. Delta considered that Government might perhaps be more willing to revoke the previous grant, in favour of another Belonger and would not be opposed to that course so long as the interests of the Belonger who was granted the lease, were not averse to Delta's.
- 3.24 On this issue, I also considered whether or not a lease to Mr. Bevis Sylvester would contravene the provisions of section 15 of the Non-Belonger Land Holding Licence Act (Cap. 122). After careful consideration of the issue, it was my view that it would be a matter for Delta and Mr. Sylvester to ensure that they were not caught by the provisions of Cap. 122. My view was that the arrangement between those parties could be ordered in such a way so as to ensure that it was not caught by Cap. 122., but that it would be a matter for them, as between themselves, to order their affairs accordingly. However, I considered that if at any time it turned out that the arrangement was caught by Cap. 122, the risk was wholly on Mr. Sylvester and Delta, since in addition to being a criminal offence to hold land contrary to section 15 of Cap. 122, the lease of Parcel 310 would be liable to forfeiture by the Crown.

4. The Further Response

- 4.1 I have also reviewed the Further Response.
- 4.2 As to paragraphs 10 to 11, I note the email from Mr Smith-Berkeley dated 23 July 2019 at **AB2/20/47-48**. It does, as the Minister indicates, contain a request that Chambers be given an opportunity to advise in respect of the Transaction. I authored that request, and agree that it may have been pursuant to that request, that I later took the opportunity which presented itself to advise the Minister in the meeting in 2019 to which he and I have referred.

5. Timing of this Affidavit

- 5.1 On 10 November 2021, the COI issued a witness summons directing me to appear for examination on oath on 24 November 2021 in respect of advice I had provided to the Minister in relation to Parcel 310.

- 5.2 On the same day, I sent an email to the COI explaining that I would be unable to attend on 24 November. I also suggested that I intended to produce an Affidavit to the Commission but would have difficulty in doing so before 17 November 2021, because I would be attending a funeral out of the Territory. I also explained that I had commitments in High Court Proceedings in my role as Principal Crown Counsel. For the avoidance of doubt, confidentiality and privilege are not waived in respect of the details of those High Court Proceedings, which were provided to the COI only so as to explain the timing pressures on me.
- 5.3 By email of 11 November the COI told me that in the circumstances my attendance on 24 November would not be required. The COI asked that I provide the disclosure requested by 17 November, indicating that thereafter the Commissioner would be in a position to confirm if further evidence, in oral or affidavit form, would be required.
- 5.4 On 17 November 2021, I wrote to the COI saying that I recollected the meeting with the Minister and Permanent Secretary at which the advice was given, but could not find any notes of that meeting. I said that I was ready to provide further assistance to the Commissioner as required.
- 5.5 At the time of the 24 November 2021 hearing, the Commissioner's team had not confirmed to me whether I was to be summoned on an alternative date, or if I would in due course be asked to give evidence in Affidavit form. I have been informed that at the end of the 24 November hearing Counsel to the Commission did indicate that I would not now be called by the Commission, saying that the Inquiry was not intending to call me that day, which he said was to be the final day of evidence.
- 5.6 As previously indicated to the Commissioner in my correspondence, I was willing to assist in the Inquiry with evidence as to the advice I had given. After the 24 November 2021 hearing it became apparent that this would need to be done by way of Affidavit rather than oral evidence. I also understood that if I was to provide an Affidavit to assist the Commissioner on this important point, that I ought to do it as soon as possible.
- 5.7 However, although I started drafting the affidavit in early December, I have been unable finalise my Affidavit until now. I have had an uncharacteristically rough time recently due to pressures associated with commitments which included two High Court trials in December, and ill-health in January as I was then battling Covid-19.

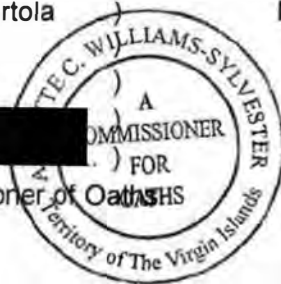
In addition, I have also been dealing with two deaths in my immediate family which occurred on 23 December and 25 December.

- 5.8 I remain willing to offer any further assistance that the Commissioner deems necessary and sincerely regret any inconvenience the timing of this affidavit causes to the Commissioner and other members of the COI team.

Sworn by: Maya M. Barry)
on 2 February 2022)
at Road Town, Tortola
Virgin Islands

Before me:

Notary/Commissioner of Oaths



Maya M. Barry

Maya M. Barry
First
2 February 2022

**IN THE MATTER OF THE TERRITORY OF THE
VIRGIN ISLANDS COMMISSION OF INQUIRY
2021**

**AND THE COMMISSION OF INQUIRY ACT (CAP
239) (THE 'ACT')**

**FIRST AFFIDAVIT OF MAYA
BARRY**



OUR REF: LAN.L5/487

July 25, 2019

Mr. Bevis Sylvester
East End, Tortola
British Virgin Islands

Dear Mr. Sylvester:

Re: Application to Lease Reclaimed Land

Reference is made to your request to lease the reclaimed land adjacent to Parcels 221 and 222 of Block 2938B in the Road Town Registration Section.

In order for your request to be further processed, you are required to provide the ministry with your business plan for the development of the reclamation.

Yours sincerely,

.....
(for) Ronald Smith-Berkeley (Mr.)
Permanent Secretary

/aam

TORTOLA PIER PARK LIMITED
incorporated in the British Virgin Islands
Company No. 1828131
(the *Company*)

Written resolutions of the Sole Ordinary Shareholder of the Company

RENTAL OF KIOSK

- 1 The following documents have been examined by [REDACTED] of the Company :
 - (a) Subsidy for lease by Nature's Way of a kiosk at Cyril B Romney Tortola Pier Park from the Company; and
 - (b) A Letter of Request from the Ministry of Natural Resources, Labour and Immigration.
- 2 [REDACTED] by signature below confirms that it has no conflicts of interest in relation to the matter contemplated thereby.
- 3 [REDACTED] by signature below confirms that, at an emergency meeting held on Tuesday, 13 August, 2019, it carefully considered the Subsidy for lease and the Letter of Request and the transactions contemplated thereby and does not wish to suggest any amendments to the Documents.
- 4 The undersigned, [REDACTED], hereby RESOLVED:

That the lease of a kiosk at Cyril B Romney Tortola Pier Park from the Company by Nature's Way be granted at an introductory rate of no more than half the amount of \$1,000, for a period of time to be determined, for the rent of a kiosk at the Cyril B Romney Tortola Pier Park.

[REDACTED]
For and on behalf of the
British Virgin Islands Ports Authority,

[REDACTED]
Chairman, Nathaniel Isaac, Sr.

02.10.19
Date

Sale of Crown Land – Nature’s Way Limited

Signed · 22 October 2019 · MNRLI · File: LAN. L5/69

· Mrs. Heather James-Skelton · Memo No. 386/2019

· Extract No. REx/386/2019 (/decisions/103)

Background Information

1) By way of Executive Council Memo No. 095/1997, Egypt Construction Co. Limited was granted permission to reclaim 0.58 of an acre of the seabed (hereinafter identified as Parcel 310, Block 2938B, Road Town Registration Section) in a land exchange agreement with the Government (see **Appendix A**).

2) As per Extract No. 490/2007, Executive Council revoked its earlier decision to lease Lot 2 (Parcel 310) to Egypt Construction Co. Limited. Subsequently, the decision to lease said land for 50 years to Nature’s Way Limited was taken (see **Appendix B**).

3) By letter dated 1st August, 2007, the Ministry of Natural Resources and Labour informed Ms. Joan Penn, Managing Director of Nature’s Way Limited of Cabinet’s approval to lease Lot 2 (now Parcel 310) of Block 2938B, Road Town Registration Section to be leased to Nature’s Way Limited (see **Appendix C**).

4) An agreement was neither executed or registered between Nature’s Way Limited and the Government as per the arrangement cited in the letter above. By Mutation No. 79/2011, Parcel 308 of Block 2938B, Road Town Registration Section was subdivided to create Parcels 309 (Lot 1) measuring 0.265 acres and Parcel 310 (Lot 2) measuring 0.526 acres (see **Appendix D**).

5) On 26th July, 2019, Joan Penn of Nature's Way Limited wrote to the Ministry regarding the outcome of certain undertakings resulting from an earlier meeting surrounding the land granted to the company for lease in the vicinity of Pasea Estate. The discussion entailed the leasehold offer by the Ministry of a commercial lot 0.33 acres and the rental of a kiosk unit at the Pier Park in exchange for Nature's Way Limited rescinding its interest in Parcel 310. (Appendix E) A counter-proposal was tendered, namely that the land be transferred as a freehold interest without further cost to Nature's Way, in addition to a ground-level kiosk at the Pier Park being granted at a significantly reduced rate.

6) Subsequently, the Ministry wrote to the CEO of Tortola Pier Park Limited regarding the rental of a kiosk on behalf of Nature's Way Limited (Appendix F) at the Cyril B Romney Tortola Pier Park. The Ministry noted the current rental rate of \$1,000 per month and requested that a preferential rate of \$500.00 at an introductory price, which will gradually be increased in line with the current fees.

7) By way of a Resolution, the Chairman of the Cyril B Romney Tortola Pier Park wrote to advise this Ministry of the decision taken to approve a lease of a kiosk at the Pier Park to Nature's Way Limited at an introductory rate of \$500.00 per month (seeAppendix G). On the instructions of the Minister for Natural Resources, Labour and Immigration, a decision was taken, in principle, to offer the land to Nature's Way Limited at a nominal cost.

Purpose

8) To bring closure to a long-standing land dispute spanning over 20 years.

Cross-Ministry Consultation

9) The Ministry consulted the Vice President of the Cyril B. Romney Tortola Pier Park on this matter. Therefore, no further consultation is required at this time.

Financial Implications

10) Cabinet is within its remit to sell Crown property in the way it sees fit. However, the merit on which the land was granted for \$1 was not supported in the Paper. Consideration should have been given to the market value of the property foregone and potential income from the proceeds of the sale that can assist in offsetting the operating and/or development cost of the Territory. Furthermore, it would be removed as an asset of the Government in accordance with accounting standards.

11) Nevertheless, the Paper did indicate that the property is to be used for commercial purposes and such development in support of this should comply with the Planning Regulations and Guidelines. No indication was presented as to when such a development would occur in order to make a reasonable assumption that the commercial activities from the development and future economic activities would transpire in a reasonable time frame that would allow Government to recoup the revenues from the concessions made.

12) Decision Sought 'C' proposes a lease of a kiosk at the Cyril B Romney Tortola Pier Park at a subsidized introductory price of \$500 per month. Paragraph 6 of the Background Information noted that the rate will be gradually increased to coincide with current fees.

Such an arrangement must be specific to the terms and conditions relating to the time frame as to when the rate will be increased and the concession eventually cease.

Legal Implications

13) We have reviewed the draft Cabinet Paper and have discerned no adverse legal implications which would arise for Government, if Cabinet is minded to decide in accordance with the decision sought.

Communication Strategy

14) The applicant will be notified of Cabinet's decision via an official letter.

Conclusion

15) Cabinet is asked to concur with the decision sought and advise accordingly.

Decision Sought

Cabinet is invited to:

(a) agree that extract No. 490/2007 granting a lease of Lot 2 (now Parcel 310) of Block 2938B, Road Town Registration Section, measuring 0.526 of an acre, to Nature's Way Limited be revoked in its entirety;

(b) agree that approval be granted to Nature's Way Limited to purchase a portion of Parcel 251, Block 2837E, Road Town Registration Section, measuring 0.33 of an acre, as demarcated on

plan # MI-2837E-49-T (see **Appendix H**), at a consideration sum of \$1.00, plus a statutory fee of \$200, subject to the following conditions:-

- i. the property shall be used for commercial purposes only; and
- ii. the development of the site should comply with the Planning Regulations and Guidelines.

(c) decide that the Ministry of Natural Resources, Labour and Immigration instruct the Attorney General's Chambers to prepare the draft Instrument of Transfer and other relevant documents in order to execute Cabinet's decision for Parcel 310, Block 2938B, Road Town Registration Section; and

(d) decide that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent
Wheatley
Minister for Natural
Resources, Labour
and Immigration
07 November 2019

Block 2837E Parcel 290 Road Town Registration Section

Valuation Report

October 2020



On Behalf of Ministry of Natural Resources, Labour & Immigration

Government of The British Virgin Islands



Britannic Hall, PO Box 135, Road Town, Tortola, British Virgin Islands
Tel: 284 494 2446 Fax: 284 494 2141

6 October 2020

The Permanent Secretary
Ministry of Natural Resources, Labour & Immigration
Central Administrative Complex
33 Admin Drive
Road Town, Tortola,
British Virgin Islands VG1110

Attention: Mr. Norval Young

Dear Sir

Valuation of property in this report (Vacant Land) Parcel 290 Block 2837E Road Town Registration Section.

In accordance with your instructions, we have carried out an inspection and analysis of the above property. The purpose of this report is to estimate the market value of the subject as of the date of our inspection on 4 October 2020. The client is the Permanent Secretary, Ministry of Natural Resources, Labour & Immigration.

The report is intended for the use of the client in connection with sale of the subject site comprising:

- Block 2837E Parcel 290 Road Town Registration Section and containing approximately 14,375 square feet.

The report is not intended for any other use and we cannot accept responsibility to any third party for the whole or any part of its contents. This report has been prepared in accordance with the *RICS Valuation – Professional Standards 2020*, with the *International Valuation Standards 2020* published by the Royal Institution of Chartered Surveyors, the International Valuation Standard and with the terms of engagement.

The legal description of the subject property is shown on aerial appended to this report. We value the interest of the Freehold of the subject property vested in the Crown and taking into consideration that the Leasehold Interest Inst. # 1522/1986 dated 20/12/86 assuming it is not in force.

Its highest and best use is to hold for future commercial development.

Having regard to the matters referred to in this report, we are of the opinion that the market value of the above mentioned site referred to as the subject property as of 4th October 2020, assuming that they are free and clear of all mortgages and charges, and subject to the special assumptions and limiting conditions contained in this report, would be fairly represented in the following figures:

Block 2837E Parcel 290	Six Hundred Thousand Dollars (US)	\$600,000 (US)
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We estimate a reasonable exposure time for the subject property of 6 to 9 months.

Neither the whole nor any part of this report nor any reference thereto may be included in any published document or referred to in any way without our prior written approval of the form and context in which it may appear.

Yours faithfully,



A.I. Sattaur MICE MRICS, CBuildE, PEng (UK), MASCE, MCInstCES
Chartered Surveyor & Chartered Civil & Building Engineer
RICS Registered Valuer
Director - Smiths Gore BVI Limited

Client	The Permanent Secretary Ministry of Natural Resources and Labour
Purpose of Valuation	To estimate the market value of the subject site (unencumbered by the Leasehold interest #1522/1986 in the Land Register) mentioned in this report.
Legal Description:	Block 2837E Parcel 290 Road Town Registration Section
Interest Appraised	Market value of the vacant site
Location	The site is located on Fish Lock Road Town comprising of 14,375 square feet as per Aerial Map in this report.
Type of Property	The subject site is Parcel 290 Block 2837E located at Fish Lock Road, Road Town, Tortola. Having regard to this we would assume that the best use of the land is for commercial use which is within a generally built up mixed use community.
Definition of Market Value	<i>"The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion."</i> (VPS4 (1.2), RICS Valuation – Professional Standards 2020)
Date of Inspection	4 th October 2020
Date of Valuation	4 th October 2020
Date of Report	6 th October 2020
Highest and Best Use	Based on the information above based on the type of property its highest and best use.
Special Assumption	This estimate of value is subject to, and can only be fully understood when read in conjunction with, the special assumptions listed on page 5 of this report.
Reasonable Exposure Time	6 to 12 months

The valuation is also made subject to the following special assumptions, reservations and special instructions.

Development Commitment

- We make no allowance for any penalty that may be imposed on the leaseholder and assume that the Crown would grant consent for transfer of the property while allowing the transferee to continue to hold the property on a speculative basis for resale or future development as market demand occurs.

Utilities

- We assume that all services, including water, sewer and electricity are available in the public road adjacent to the perimeter of the subject property.

Access

- We assume that a curb cut would be permitted along the public road to which the subject has frontage.

1	Identification of Valuer responsible and status	<p>The valuation will be undertaken by A I Sattaur MRICS, MICE, CBUILD Chartered Surveyor, Chartered Civil Engineer & Chartered Building Engineer who has more than 30 years' experience in the valuation and engineering professions in the British Virgin Islands and the Caribbean. In accordance with the <i>RICS Valuation – Professional Standards (VPS1)</i>- 31st January 2020 and the 2020-2021 Edition – Uniform Standards of Professional Appraisal Practice, the valuer confirms:</p> <ul style="list-style-type: none"> – That the valuer is in a position to provide an objective and unbiased valuation. – That the valuer has sufficient current local, national and international knowledge of the market for the subject property and the skills and understanding to undertake the valuation competently.
2	Identification of client and any other intended users:	Permanent Secretary, Ministry of Natural Resources, Labour & Immigration
3	Purpose of the valuation:	The report is required for assessing the market value of the land to be acquired by the Ministry of Natural Resources, Labour & Immigration Block 2837E Parcel 290 Road Town Registration Section. We will develop and conclude to market value for the site assuming the site is vacant and not taking into consideration any improvements on the site) based on current market trends. This valuation may not be relied upon for any other purpose. We understand that this is for internal purposes by the Ministry of Natural Resources, Labour & Immigration for acquisition.
4	Identification of the asset or liability to be valued	The legal description of the subject property recorded at the BVI Land Registry Department is Parcel 290 Block 2837E with a site area of 0.330 acre. The property has a Leasehold Interest Inst. # 1522/1986 dated 20/12/86
5	Interest to be valued:	Absolute Title to the Crown
6	Type of asset or liability and how it is used or classified by the client:	We understand that the subject property is required for a proposed development.
7	Basis or bases of value:	<p>The basis of value adopted in this report is 'Market Value', which is defined as follows:</p> <p><i>"The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion."</i> (VPS4, RICS Valuation – Professional Standards 2020)</p>
8	Valuation date and Time	The valuation date will be the date of inspection. We anticipate that the completion date for this valuation will be 12 – 14 working days upon acceptance of the Terms of Engagement by the Client.
9	Extent of investigations:	<p>We will carry out enquiries and an inspection of the subject property to determine the general characteristics, use and overall dimensions of the land and condition as well as utilities available to the property.</p> <p>We may rely upon plans and information provided by the Client.</p> <p>We will gather the market data necessary to estimate the market value of the subject property.</p>

		We will prepare a summary report summarizing our conclusions, including a summary of the data used in the analysis and the methodology used to arrive at the compensation.
10	Nature and source of information to be relied upon:	We will rely upon information gathered during our inspection and from the BVI Government's Land Registry.
11	Disclosure of any material involvement:	In accordance with the <i>RICS Valuation – Professional Standards 2020</i> , we confirm that Smiths Gore BVI Limited has no previous involvement in the subject property.
12	Currency adopted:	All values in the report will be expressed in US dollars unless otherwise stated.
14	Restrictions on use, distribution or publication:	Neither the whole nor any part of the report nor any reference thereto may be included in any published document or referred to in any way without our prior written approval of the form and context in which it may appear.
15	Limits or exclusion of liability to parties other than the client:	<p>The valuation report is prepared for the use only of the client to whom it is addressed, and we cannot accept responsibility to any third party for the whole or any part of its contents.</p> <p>In the event of a proposal to place the loan on the subject property in a syndicate, the client must notify the valuer, with a view to agreeing responsibility to the further named parties.</p>
16	Valuation Standards:	The valuation will be made in accordance with the <i>RICS Valuation – Professional Standards 20</i> , published by the Royal Institution of Chartered Surveyors, the <i>International Valuation Standards 2020</i> along with the <i>2020-2021</i> on of <i>Uniform Standards of Appraisal Practice</i> .
17	Description of Report	The report will be prepared in accordance with the minimum reporting requirements contained in International Valuation Standards 2020 (IVS) 103.
18	Basis on which the fee will be calculated:	<p>The fee for the valuation will be \$1,000, which will be payable upon satisfactory acceptance of the completed report. This fee does not cover the Cost of any further professional advice on this matter such as Litigation or otherwise.</p> <p>Electronic copy of the report will be provided. .</p>
19	Compliance Monitoring	Compliance of the valuation with the <i>RICS Valuation – Professional Standards 2020</i> , published by the Royal Institution of Chartered Surveyors, may be subject to monitoring under the Institution's conduct and disciplinary regulations.

Our valuation of the subject property is made subject to the following general assumptions and limiting conditions.

Government Consent:	We assume that if any Government consent is required to accomplish a sale of the property that it would be granted by the Government without undue delay or restriction.
Planning and Building consents:	We assume that all necessary planning and building consents required for the construction of the improvements have been obtained.
Licences:	We assume that all licences required by Government have been obtained.
Title and Legal Matters:	<p>We assume that information on the title for the subject property is accurate and correct.</p> <p>We accept no responsibility or liability for legal matters and assume that our interpretation of title and any agreements affecting the property is correct.</p> <p>Unless stated in the report, we assume that there are no onerous or unusual conditions or restrictions affecting the property and that it is free and clear of any mortgages or charges.</p>
Soil conditions:	We assume that there are no adverse site or soil conditions that would cause us to make deductions for exceptional site or construction costs.
Engineering	We have not undertaken any engineering investigation or structural analysis of improvements on the subject property.
Environmental conditions:	<p>We are not aware of the content of any environmental audit or other environmental investigation or soil survey which may have been carried out on the property and which may draw attention to any contamination or the possibility of such contamination.</p> <p>We have not carried out an investigation into past or present uses of the property to establish whether there is any contamination or potential for contamination to the subject property from these uses, and have assumed that none exist.</p> <p>Should it be established subsequently that contamination, seepage or pollution exists at the property, or that the premises have been or are being put to a contaminative use, this might reduce the values now reported</p>
Cost of sale and taxation:	We make no allowance for any expenses of realisation, or for taxation, which might arise in the event of a disposal.
General considerations:	<p>In undertaking valuations in the Caribbean region, we would bring attention to the following points:</p> <ul style="list-style-type: none"> – <i>Sovereign Risk:</i> Sovereign risk is a significant factor in the investment equation in the Caribbean. – <i>Micro-Economies:</i> The economies of small Caribbean islands rely on external factors beyond the control of local Governments. The impact of the North American and European markets on both tourist arrivals and investment could be significant in the uncertainty of the present economic climate. – <i>Time to accomplish a sale:</i> Primarily due to the limited size of the market, the time required to accomplish a sale of investments in the Caribbean is often much longer than in North America or Europe. The requirement for overseas investors to obtain landholding licences prior to acquiring real estate can also extend the time taken to accomplish a sale.

**General Characteristics
of Market**

Most land development and investment in the Road Town market is undertaken by BVI developers and investors, who hold land and commercial buildings as long-term investments.

In recent years much of the development has taken the form of offices developed for lease to third party tenants and office / retail buildings constructed for owner users.

Because land is typically held as a long-term investment, land sales transactions are scarce and there is often strong competitive demand when well-located sites are offered for sale.

The majority of commercial land in Road Town is located on Wickhams Cay I and II, which includes the land that is the subject of this report. Wickhams Cay I and II were created by reclamation in the 1970s. The land on Wickhams Cay I and II has been sold by the Crown on Long Leases which run for 99 years from 1974. The premiums achieved for the sale of leases on Wickhams Cay, which, until recently were at prices as low as \$7.00 per square foot, do not represent market land values because they have been granted on favourable terms to local investors, without market competition. Almost all available Crown land on Wickhams Cay I and II has now been leased.

Location

Two other significant areas of commercial land are Pasea Trading Estate, located to the north of Wickhams Cay, and Port Purcell, located at the north east side of Road Harbour. Both areas are privately owned.

Pasea Trading Estate, owned by UK investors since the 1960s, has been sold on long leases of 99 years and almost all of the land has been sold. Redevelopment of some of the sites is now occurring. A site of 1.5 acres remains undeveloped.

The Port Purcell Estate, owned by a BVI developer and investor, is located next to the main deep-water port for the Territory. Historically this area was developed with low rise warehouse buildings but is now being planned for redevelopment as an office park.

Development

The success of the financial service sector in the British Virgin Islands since the late 1980s, along with expansion of Government, has been the main demand driver for the development of commercial land in Road Town.

Recent office development has occurred on and around Wickhams Cay I and II. Since 2003 the planning authority has allowed several buildings of more than 3 stories. The latest buildings are six stories in height.

A shortage of land, traffic congestion and lack of parking in the central areas, including Wickhams Cay I, is now encouraging development of sites outside the commercial core.

Highest and Best Use***Physically Possible***

The site is flat located along Fishlock Road, Road Town with adequate road frontage which is physically capable of the proposed development. The site is located in the immediate vicinity of other commercial buildings such as the recently constructed Commercial Office building by Ashley Ritter.

Legally permissible

The subject property is held under the Crown.

Financially feasible

The site is currently in occupation as residential use. We do anticipate a change of use for the portion to be the site for the proposed commercial development to be approved by Planning Department. It is financially feasible to accommodate this improvement by utilizing the vacant site.

Maximally productive

We conclude that the highest and best use for the site as identified above. The proposed use is considered maximally productive.

Valuation Methodology

The primary approach most often used for the valuation of vacant land is the sales comparison approach.

Sales Comparison Approach

We develop the sales comparison approach to estimate the market value of the subject property as this is the method most often used by prospective purchasers of property similar to the subject in the BVI market.

In order to estimate the market land value by the sales comparison approach we have researched details of sales, listings and contracts for commercial land in Road Town. The following table contains a summary of the sales that we consider most relevant to the analysis of the subject.

No.	Location	Block/Parcel	Seller/Buyer/Inst	Date	Title	Sale Price	SF	ppsf
1	Festival Ground	RT2838F/265		Apr-19	Freehold	\$330,000	6,212	\$53.13
2	Wickhams Cay 1	RT293B/105		Aug-16	Leasehold	\$525,000	7,144	\$73.48
3	Festival Ground	RT2838F/264		Jul-16	Freehold	\$250,000	6,316	\$39.50
4	Pasea	RT2938B/251		Aug-15	Freehold	\$1,156,300	23,126	\$50.00
5	Main Street	RT2837E/101&102		Mar-07	Freehold	\$485,000	8,712	\$55.67
	Subject	RT2837E/290	Crown		Crown	\$603,742	14375	\$42.00

There have been very few recent arm's length commercial land sale transactions in Road Town. A number of additional transactions have occurred on Wickhams Cay II but these include buildings and improvements with remaining economic life that make it difficult to extract a land value and we therefore exclude them.

We do not consider the sales by the Crown to represent arm's length transactions or market value based on the evidence of resales that have taken place.

In concluding to market value of the vacant site we analyzed sales in the Table above and applied adjustments based primarily on size and location taking into consideration the scarcity of flat commercial sites in Road Town.

Based on our analysis we conclude to market value of the vacant site in the amount of \$600,000.

Calculated as follows: (14,375 sq. ft x \$42.00) = \$603,742. Rounded at \$600,000.

Reconciliation

Final Estimate of Value

Having regard to the matters referred to in this report, we are of the opinion that the values of the following site as of 4th October 2020 assuming that it is free and clear of all mortgages and charges, and subject to the special assumptions and limiting conditions contained in this report, would be fairly represented in the following figures:

Parcel 290 Block 2837E Road Town Registration Section

Six Hundred Thousand Dollars (US)

\$600,000 (US)

This estimate of value is subject to and can only be fully understood when read in conjunction with, the special assumptions listed in this report.

Reasonable Exposure Time

"Exposure time may be defined as: the estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective opinion based on an analysis of past events assuming a competitive and open market." (Uniform Standards of Professional Appraisal Practice SMT -6 2006)

Based on reported typical marketing times for vacant sites, we estimate a reasonable exposure time for the subject property of 6 to 12 months.



	
<p>The subject property</p>	<p>Fishlock Road and site</p>
	
<p>View of the immediate area</p>	

EXPEDITED EXTRACT**Ref:** CO/C/070/2**FROM:** Cabinet Secretary**TO:** Minister for Natural Resources, Labour and Immigration**CC:** The Premier
Financial Secretary
Permanent Secretary, Ministry for Natural Resources, Labour and Immigration**DATE:** 22nd November, 2019

Application to lease Parcel 310 of Block 2938B, Road Town Registration
Section – Bevis Sylvester
Memo No. 396/2019 (/memorandums/270)

Further to the decision made by the Cabinet on 22nd November, 2019 below is the decision taken by the Cabinet in respect of the captioned matter:

Cabinet decided:

- a. that the decision recorded by Minute No. 0927 of Memo No. 490/2007 be revoked in its entirety;
- b. that Parcel 310 of Block 2938B in the Road Town Registration Section which measures 0.526 of an acre as evidenced by a copy of

the Land Register be granted to Mr. Bevis Sylvester for Commercial purposes;

c. that the Grant of Easement given to the Crown by Garvin Ishmel Stoutt Sr. by Instrument No. 1068 of 2007, dated 25th July, 2017, to remain as this will provide access to Parcel 310 of the said block and registration section;

d. that the instrument of lease be prepared by the Ministry and forwarded for vetting to the Attorney; and

e. that the terms of the Lease to be as follows:

i. Term – Fifty (50) years in the first instance with an option to renew for a further period of twenty-five (25) years

ii. Rent – \$800.00

iii. Rent Review Period – 5 percent of the unimproved value of the lease area

iv. Rent Cap – nil

v. Late Payment – 2 percent above the New York Prime Rate

vi. Period for – 30 days

vii. Payment:

1. Subletting – 2.5 percent of rent collected from the sublease agreement in addition to the rent

2. Payment Due Date – 1 January each year

f. decided that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

Please be guided accordingly.

Ms. Sandra Ward
24th November, 2019

AMENDMENT - Application to lease Parcel 310 of Block 2938B, Road Town Registration Section – Bevis Sylvester

Signed

· 27 January 2020 · MNRLI · File: LAN.L5/487 · Mr. Norval Young
· Memo No. 29/2020 · Round-robin - C/2/MNRLI/R/1/2020 (/roundrobins/22)

Background Information

1) Cabinet via Memo No. 396/2019 (see Appendix A) agreed that Parcel 310 of Block 2938B, Road Town Registration Section, to be leased to Mr. Bevis Sylvester for a term of fifty (50) years in the first instance with an option to renew for a further twenty-five (25) years.

2) The terms of the lease were the following;

- i. Term – Fifty (50) years in the first instance with an option to renew for a further period of twenty five (25) years
- ii. Rent – \$800.00
- iii. Rent Review Period – 5% of the unimproved value of the leased area
- iv. Rent Cap – nil
- v. Late Payment – 2% above the New York Prime Rate
- vi. Period for Payment – 30 days
- vii. Subletting – 2.5% of rent collected from the sublease agreement in addition to the rent

viii. Payment Due Date – 1 January each year;

3) However, within the rent review period, the time frame within which a rent review is to be conducted was not included. This is a standard and very important part of the lease structure.

Purpose

4) To amend the terms of the lease to include the time frame for conducting rent reviews.

Cross-Ministry Consultation

5) There was no need for cross ministry consultation.

Financial Implications

6) The early detection of this unintentional error has safeguarded actual collection of future revenues from rent increases on said property, after scheduled rent evaluations.

7) If the error had gone unnoticed for any extended period of time and later discovered, the result would be the high probability of not recovering future revenues arising from potential rent evaluation increases; and the thought of using normal business procedures and legal means for recovery retroactively comes with a cost for resources used. The government would be at the mercy of the Lessee to honour established procedures even though the Cabinet Decision was later found to be an unintentional error. On the other hand, the Lessee would have lost the benefit of this clause where it provides relief, if a rent evaluation period required reduction in rents.

Legal Implications

8) We have reviewed the draft Paper and have discerned no adverse legal implications which would arise for Government if Cabinet is minded to decide in accordance with the decision sought.

Communication Strategy

9) The decision of Cabinet will be formally communicated to the applicant.

Conclusion

10) Cabinet is asked to agree with the Decisions Sought and advise accordingly.

Decision Sought

Cabinet is asked to decide:

- a. that the decision recorded by Memo No. 396/2019 (see **Appendix A**) be amended to include the following as part of the terms of lease;
 - i. There shall be a rent review in the tenth (10th) year of the term, that is, the year commencing 1st January 2030, and every succeeding fifth (5th) year of the term thereafter; and
 - b. that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the minutes.
-

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent
Wheatley
Minister for Natural
Resources, Labour
and Immigration
06 February 2020



OFFICE OF THE GOVERNOR
P. O. Box 702
Road Town, Tortola
British Virgin Islands

Telephone: (284) 468-3512
Facsimile: (284) 494-5790

MEMORANDUM

REF. NO.: GOV/LAN/03

TO: Permanent Secretary, Natural Resources Labour & Immigration

FROM: HM Governor

DATE: 3rd June, 2020

SUBJECT: Lease of Crown Land – Parcel 310/1, Block 2938B, Road Town, Registration Section – Bevis Sylvester

Reference is made to the licence in favour of Bevis Sylvester, which was on 26th May, 2020, for my signature.

I have examined the licence and the supporting documents on the file. The supporting evidence on the file seems to highlight some apparent anomalies. The last valuation carried out on the said property was done 23 years ago. I found no evidence on file indicating that a new assessment was carried out on the property, nor was it submitted to Cabinet for their consideration. Therefore, the current value of the property is unknown.

On 18th January 2019, I signed an Expulsion Notice to Trespasser Occupying Crown Land regarding the same property, and this also was not brought to Cabinet's attention when this matter was discussed. It is essential when a matter is brought to Cabinet for a decision it is presented with the necessary documents required to allow sound decisions to be made. This will also assist me in my role as signatory.

I have signed the attached licence and it would be appreciated if going forward that the required documents are presented at Cabinet level to avoid any delay in the process.

Augustus Jaspert
Governor of the Virgin Islands

:cf

VIRGIN ISLANDS

The Registered Land Rules

Form R.L.O (S.150)

Application to Register/Change Address

REGISTRATION SECTION	BLOCK	PARCEL
<u>ROAD TOWN</u>	<u>2938B</u>	<u>310</u>

I/WE, BEVIS SYLVESTER

Hereby apply for my address **for service in the Virgin Islands (BVI) to be:**

- ☒ Entered on the Land Register(s) for the above-mentioned parcel(s) as follows:
☐ Changed on the Land Register(s) for the above-mentioned parcel(s) as follows:
☐ Used in relation to Instrument # _____ and Case No. BVILR/ _____ as follows:

Postal (mandatory)	Physical (recommended)	Email (recommended)
<u>GENERAL DELIVERY</u>	_____	_____
<u>EAST END</u>	_____	_____
<u>TOROLA BVI</u>	_____	_____

In addition, please note/update the following information in your Land Registry database:

Physical/Residential or Company Address	Home Tel#
_____	_____
_____	Work/Company #
_____	_____
	Mobile #

	Email

I/We further note the requirement under law to notify the Chief Registrar in writing of any change in the above addresses and contact details.

Dated this 19 day of 05 2020.

Signature/ BEVIS SYLVESTER
 Print Name _____

Signature _____
 Print Name _____

Signature _____
 Print Name _____

Signature _____
 Print Name _____

MEMORANDUM



Appendix

From: Attorney General

To: Permanent Secretary, NR&L

Ref. No.: SS/5/5/7

Date: 9th August, 2011

Re: Cabinet Paper – Lease of Crown Land – Pasea Estate

Your memorandum dated 4th July, 2011 on file LAN.10/2/991 in relation to the captioned refers.

The Cabinet paper seeks to revoke a lease of Parcel 309, Block 2938B, Road Town Registration Section, which was granted to Garvin Ishmael Stoutt Sr. and communicated to him by letter dated 1st August 2007. The Paper also advises that Ms. Stoutt is in actual occupation of the land but has never executed any lease instrument for the land nor has he paid any rent for the premises. The Cabinet paper seeks to grant the said parcel to Joan Penn. Cabinet is also asked to grant a lease of Parcel 310, Block 2938B, Road Town Registration Section to Delta Petroleum Limited. In order to access both Parcel 309 and Parcel 310, an easement of Parcel 221, Block 2938B, Road Town Registration Section, which is owned by Delta Petroleum Limited, must be obtained. It is clear from the correspondence that Delta Petroleum Limited is agreeing to grant the easement in consideration of the grant of a lease of Parcel 310 to it by the Crown. Your memorandum clearly indicates that the land is to be used by Delta Petroleum Limited for the purpose of constructing a building to house its regional headquarters.

In relation to Parcel 309, notwithstanding that a formal lease was not executed between Mr. Stoutt and the Government of the Virgin Islands or that he has failed to pay rent in respect of the premises, the fact remains that he entered into actual occupation of the premises. In the circumstances, if Mr. Stoutt is ejected, he may be able to bring an action against the Crown for breach of the agreement for the lease, seeking specific performance of the agreement or an award in damages. In any event, non-payment of rent would only entitle the Government to institute forfeiture proceedings against Mr. Stoutt and would not entitle it to summarily terminate the agreement in the absence of a specific clause in the agreement enabling it to do so. Further, even if forfeiture proceedings are instituted, Mr. Stoutt can cure the breach by paying the outstanding rent, which appears to be minimal. Ultimately Cabinet has the power to approve the revocation and the new grant to Mrs. Penn and may elect to proceed to do so. It is advised, however, that this course not be adopted since doing so may expose the Government to a civil action for breach of the agreement.

In relation to Parcel 310, it is clear that this parcel is to be leased to Delta Petroleum Limited. It is imperative that the lease be made between Delta petroleum limited and

the Government of the Virgin Islands and not in the name of Bevis Sylvester (although he may sign the lease on behalf of Delta Petroleum Limited). It is patent that the lease to Delta Petroleum is some form of consideration for the easement being granted by Delta Petroleum over its land to facilitate access to parcels 309 and 310. It is advised that in order to avoid any legal complications which may arise from the lease being executed in the name of Bevis Sylvester on behalf of Delta Petroleum Limited, that the lease be executed in the name of Delta Petroleum Limited.

Please be guided accordingly.



Karen Reid
Principal Crown Counsel (Ag.)
for Attorney General (Ag.)