

Final Evaluation Findings

U.S. Virgin Islands Coastal Management Program

December 2007 to August 2017

Published July 2018



Office for Coastal Management
National Ocean Service
National Oceanic and Atmospheric Administration
United States Department of Commerce

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Executive Summary

The Coastal Zone Management Act (CZMA) requires the National Oceanic and Atmospheric Administration (NOAA) to conduct periodic evaluations of the performance of states and territories with federally approved coastal management programs. This evaluation examined the operation and management of the U.S. Virgin Islands Coastal Zone Management Program by the Department of Planning and Natural Resources, the designated lead agency, for the period from December 2007 to August 2017. The evaluation focused on two target areas: permitting, regulations, and enforcement; and coastal planning and active management.

The findings in this evaluation document will be considered by NOAA in making future financial award decisions concerning the U.S. Virgin Islands Coastal Zone Management Program. The evaluation came to these conclusions:

Accomplishment: The U.S. Virgin Islands Coastal Zone Management Program has made vast improvements to staffing, including the development of GIS expertise that services all of the Department of Planning and Natural Resources. Coastal program staff members are accessible, detail-oriented, professional, and well regarded, and the program manager has an encyclopedic knowledge of the U.S. Virgin Islands code for Coastal Zone Management rules and regulations. Coastal program staff members provide support to other department divisions and other territorial departments to achieve their missions. Examples include ground-truthing sites for moorings to ensure no negative impacts to resources, creating GIS maps for mooring applications for the Division of Environmental Enforcement, and GIS work for the Department of Agriculture. Coastal program staff members also serve as the public face of the department as they often work with members of the public.

Accomplishment: The U.S. Virgin Islands Coastal Zone Management Program's move in 2012 from paper applications for major and minor permits to electronic application materials has resulted in cost savings to applicants and has facilitated faster, more efficient reviews of the permits and associated files across the department, the coastal zone management committees, and external agency partners. Both applicants and reviewers praised this change.

Accomplishment: The U.S. Virgin Islands coastal zone management committees on the three islands of the Virgin Islands have demonstrated a high level of commitment to the duties of reviewing major permit applications in Tier 1 of the coastal zone and have all shown dedication by participating beyond the limits of their original 2-year terms.

Accomplishment: The U.S. Virgin Islands Coastal Zone Management Program's new outreach coordinator has increased community engagement related to coastal issues through the coastal program's new website and social media accounts, outreach efforts related to a marine debris and plastics removal and recycling program in partnership with TerraCycle, monthly Science Saturday gatherings, and coordination with Blue Flag Beaches.

Accomplishment (post-hurricane): The U.S. Virgin Islands Coastal Zone Management Program was requested by the Virgin Islands Professional Charter Association to be a committee member for the new nonprofit Marine Rebuild Fund in the wake of the catastrophic 2017 hurricane season. The fund seeks to help with the immediate cleanup efforts of beaches and marine facilities and address the viability of the boating and charter industry in the Virgin Islands.

Recommendation: The NOAA Office for Coastal Management recommends that the U.S. Virgin Islands Coastal Zone Management Program provide updated and readily accessible information on its website for a more consistent understanding of the jurisdiction and requirements of the coastal program. Specifically, the coastal program should provide information on the permitting processes for minor and major permits, the jurisdiction of the coastal program within Tier 1 and Tier 2, and a quarterly summary of citations related to permit violations. Additionally, the coastal program should provide targeted outreach to key audiences through educational workshops on an annual basis, such as the permitting 101 workshops carried out by the program until 2012.

Recommendation: The NOAA Office for Coastal Management recommends that the Virgin Islands Division of Coastal Management develop options for ongoing education and professional development for the coastal zone management committees to ensure that the members receive adequate training, that historical knowledge is transferred to new members, and that each committee is receiving timely information regarding topics that pertain to coastal zone management and emerging issues affecting coastal areas. Given the difficulties in recruiting new members, the coastal program may also consider developing a brochure to recruit new members of the Coastal Zone Management Commission. In addition, the office recommends that the full commission meet by January 31, 2019 and schedule annual meetings thereafter.

Recommendation: The NOAA Office for Coastal Management recommends that the Department of Planning and Natural Resources address the issue of compliance monitoring and enforcement for permit conditions, especially related to sediment and erosion control measures. The department should improve communication and information sharing across divisions to better identify projects with sedimentation and erosion issues and identify violations when they are observed. For example, the department may consider using an internal process through the Coastal Zone Management Commission to develop a citation system that includes coastal zone management infractions on the ticketing schedule used by the Division of Environmental Enforcement and provide broad training to all inspectors within the department that empowers staff to recognize and act upon coastal zone management permit violations.

Recommendation: The NOAA Office for Coastal Management recommends that the Virgin Islands Division of Coastal Management:

1. Develop a white paper with relevant Department of Planning and Natural Resources staff members, including representatives from the Division of Building Permits and Coastal Zone Management Commission members, to analyze various options for how reviews of major activities and earth change projects in Tier 2 could receive a review consistent with

- the coastal program policies and procedures in accordance with Section 903 (b) 9 and 906 (b) 10 of the Virgin Islands Coastal Program to reduce sedimentation and erosion impacts.
2. The white paper should be vetted with the relevant department divisions that make up the coastal program. The coastal program should choose a feasible scenario that addresses the cumulative and secondary impacts from development projects in Tier 2 and should implement the recommendations from the paper that will provide the best solutions to reduce sediment and erosion impacts to the coast.

Recommendation: The NOAA Office for Coastal Management recommends that the Virgin Islands Division of Coastal Zone Management work with other Department of Planning and Natural Resources divisions, nongovernmental organization partners, and other territorial and federal agencies to co-develop a comprehensive environmental management strategy for the Virgin Islands to better coordinate future restoration work and identify the Virgin Islands Coastal Zone Management Program’s niche, as well as any additional staff expertise needed to support habitat restoration.

Recommendation: The NOAA Office for Coastal Management recommends that the Virgin Islands Division of Coastal Zone Management work with the Division of Fish and Wildlife to define habitats considered environmentally sensitive, including ghuts and wetlands, for inclusion in the policies and procedures of the coastal program to ensure they are given adequate consideration in review of permit applications.

Necessary Action: The U.S. Virgin Islands territorial government must begin to fill the vacancies of the CZM committees by July 31, 2019 and aim to fill all vacancies across the coastal zone management committees by July 31, 2020. The Department of Planning and Natural Resources must continue to work with the Office of the Governor and legislature during this time to remind them of the importance of these positions and the need for them to be filled. The department may consider providing educational briefings to the governor and legislature on this matter and developing a plan for recruitment and retention of new committee members. The department must report to the Office for Coastal Management on the status and challenges of filling these vacancies in the semi-annual progress reports and by semi-annual phone calls with the commissioner of the department and the director of the coastal program.

Necessary Action: The Virgin Islands Coastal Zone Management Program must fill the vacancy for Environmental Planner II based on St. John, providing stakeholders in St. John with a local point of contact for the coastal program by April 30, 2019.

Necessary Action: The Virgin Islands Coastal Zone Management Program must develop and begin implementing a consistent, durable, visible, and recognizable system, posted at the site of the permitted activity, to provide public notice about coastal permits for developments, pertinent information about the proposed development, and how to contact the Department of Planning and Natural Resources about violations. A description of the proposed process must be submitted to and approved by the Office for Coastal Management within by October 31, 2018.

The posting of the yellow permit placards that were discussed during the evaluation site visit would satisfy this necessary action.

This evaluation concludes that the U.S. Virgin Islands Department of Planning and Natural Resources is implementing and enforcing its federally approved coastal management program, adhering to the terms of the federal financial assistance awards, and addressing coastal management needs identified in section 303(2)(A) through (K) of the CZMA.

Program Review Procedures

The National Oceanic and Atmospheric Administration (NOAA) evaluated the U.S. Virgin Islands Coastal Management Program in fiscal year 2017. The evaluation team consisted of Susie Holst Rice, evaluation team lead, NOAA Office for Coastal Management; Bill O’Beirne, Southeast and Caribbean region lead, Office for Coastal Management; Grover Fugate, executive director, Coastal Resources Management Council, State of Rhode Island; and Marlon Hibbert, Site Liaison, Office for Coastal Management. The support of the coastal management program staff was crucial in conducting the evaluation, and their support is most gratefully acknowledged.

NOAA sent a notification of the scheduled evaluation to the commissioner of the Department of Planning and Natural Resources, published a notice of “Intent to Evaluate” in the *Federal Register* on July 11, 2017, and again on January 24, 2018, to extend the comment period due to hurricanes Irma and Maria, and notified members of the U.S. Virgin Islands’ congressional delegation ahead of the evaluation site visit. The coastal management program posted a notice of the public meetings and opportunity to comment in *The Avis* on July 30, 2017, and the extended comment period was announced on the Department of Planning and Natural Resources Facebook page on February 1, 2018.

The evaluation process included a review of relevant documents, a survey of stakeholders, the selection of two target areas, and discussions with staff members and stakeholders about the target areas. In addition, three public meetings were held: St. Thomas – Tuesday, August 29, at the Cyril E. King Airport Terminal Building, Second Floor, Department of Planning and Natural Resources Conference Room at 6:00 p.m.; St. Croix – Wednesday, August 30, at the St. Croix Curriculum Center at 6:00 p.m.; and St. John – Thursday, August 31, at the St. John Legislature Conference Room at 6:00 p.m., to provide an opportunity for members of the public to express their opinions about the implementation of the program. Stakeholders and members of the public were also given two opportunities to provide written comments. A summary of the written comments received, and the NOAA Office for Coastal Management’s responses, are included in Appendix A. NOAA then developed draft evaluation findings, which were provided to the coastal management program for review, and the program’s comments were considered in drafting the final evaluation findings.

Due to the unusual circumstance of two major hurricanes impacting the Virgin Islands within weeks of the evaluation site visit, we altered the usual evaluation process by re-opening the public

comment period after the site visit and delaying the development of the findings until we could re-establish post-hurricane communications with the coastal program. Additionally, the findings herein include post-hurricane considerations that NOAA believes are important to document.

Final evaluation findings for all coastal management programs highlight the programs' accomplishments in the target areas and include recommendations, which are of two types:

Necessary Actions address programmatic requirements of implementing regulations of the Coastal Zone Management Act (CZMA) and of the state coastal management program approved by NOAA. These must be carried out by the date specified. Failure to address necessary actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA §312(c).

Recommendations are actions that the office believes would improve the program, but which are not mandatory. The state is expected to have considered the recommendations by the time of the next evaluation or dates specified.

Evaluation Findings

Overview

The last evaluation of the Virgin Islands Coastal Zone Management Program in 2007 was focused on the single issue of program staffing, since that was a pervasive issue identified in the prior evaluation in 2003 and was still relevant in 2007. For this evaluation in 2017, after reviewing the coastal program's information submittal and responses from the stakeholder survey, the program demonstrated that it has worked to address many of the previous staffing issues, and this evaluation should cover more of the program's work. Now it is evident that coastal program staff members often serve as the public face of its parent agency, Department of Planning and Natural Resources (DPNR), and often support the work of other divisions within the department, as well as other territorial departments, to achieve their missions. For example, the geospatial information services (GIS) specialist housed within the coastal program has significant expertise and supports the mission for all of the Department of Parks and Natural Resources, and his support is requested by other departments within the Virgin Islands government. Also, a number of comments were made that the review of permit proposals has gotten much better, especially in the last 3-4 years, and this was attributed to new staff members who bring the right background to the coastal program. Despite the forward progress on staffing, it is worth noting that at the time of the evaluation site visit the coastal program had a vacancy for the St. John permit inspector and the deputy director, and did not have anyone on staff with a background in wetlands.

For the current evaluation, NOAA expanded the scope to include two target areas that cover program implementation (permitting, regulations, and enforcement) and coastal planning activities conducted by the coastal program (coastal planning and active management). Details

about these topics are broken into specific focus areas within them for the purposes of this evaluation and are provided below.

By the nature of the Virgin Islands, the program is implemented across the three main islands, and a higher level of coordination is needed here than in other places. Also, the terrain in the Virgin Islands is dominated by high slopes and intermittent waterways (e.g., ghuts) that are not directly managed by the coastal program but provide pathways for transporting sediment across the boundary from Tier 2 to Tier 1 of the coastal zone and into nearshore waters. This can impact important marine ecosystems and affect the goods and services those ecosystems provide to the people of the Virgin Islands. The islands are vulnerable to powerful storms that can exacerbate coastal runoff issues and increase these impacts. Additionally, the development pressure in the Virgin Islands is high because of the valuable tourism industry. These factors indicate the need for the coastal program, as well as the importance of balancing the environmental and economic factors associated with development in the Virgin Islands.

Accomplishment: The U.S. Virgin Islands Coastal Zone Management Program has made vast improvements to staffing, including the development of GIS expertise that services all of the Department of Planning and Natural Resources. Coastal program staff members are accessible, detail-oriented, professional, and well regarded, and the program manager has an encyclopedic knowledge of the U.S. Virgin Islands code for Coastal Zone Management rules and regulations. Coastal program staff members provide support to other department divisions and other territorial departments to achieve their missions. Examples include ground-truthing sites for moorings to ensure no negative impacts to resources, creating GIS maps for mooring applications for the Division of Environmental Enforcement, and GIS work for the Department of Agriculture. Coastal program staff members also serve as the public face of the department as they often work with members of the public.

Permitting, Regulations, and Enforcement

Electronic Access for Coastal Zone Management Permit Proposals

The move in 2012 to electronic applications (fillable PDFs) for major and minor permits has been a positive change for the coastal program and has resulted in less burden on applicants. Also, upgrades made to DPNR's email system in 2015 have improved communications across the DPNR divisions and among Coastal Zone Management (CZM) Commission members as they relate to permit application review (e.g., digital copies of permit applications and hyperlinks to these documents). Additionally, the coastal program looked into developing an online permit application system to further serve the public, but the expense of such an upgrade was quoted at \$750,000 for just the Coastal Zone Management Division and roughly \$3 million for all of DPNR and doesn't cover the ongoing maintenance costs. These costs may prohibit the switch to a full online application system at this time. NOAA applauds the coastal program for taking the initiative to explore these options for improving the CZM permit process and encourages the program to continue to find ways to either implement the online system or further streamline the permit application process for the public. Despite these improvements, the CZM website was

down for four years during the review period and attention to preventing this in the future is needed.

Numerous comments received during the site visits confirmed that the fillable PDFs were a major improvement.

- “So much easier.” “Going digital is huge! The last 3-4 years has gotten better and better.” “Provides savings of \$3,000 – 4,000 on large projects.” – said an interviewee and professional who regularly works with the coastal program.
- Internal comment from the coastal program’s watershed coordinator: external agencies are very happy with the new process. Anecdotally the new digital process may be faster.
- Internal comment from CZM commissioner: more convenient to have digital files. With travel, electronic files are better.

Accomplishment: The U.S. Virgin Islands Coastal Zone Management Program’s move in 2012 from paper applications for major and minor permits to electronic application materials has resulted in cost savings to applicants and has facilitated faster, more efficient reviews of the permits and associated files across the department, the coastal zone management committees, and external agency partners. Both applicants and reviewers praised this change.

Improving Understanding of the Permitting Process

Through the stakeholder survey and during the site visit in August, the evaluation team met with a number of CZM stakeholders and received information that indicated the CZM permitting process is not well understood by the public. We also learned the Permitting 101 workshops conducted by the coastal program for the public ceased in 2012, and a number of the CZM Commission members have specifically asked for professional development training opportunities to stay current on topics that pertain to CZM and emerging issues affecting coastal areas.

An overarching challenge facing the coastal program is the need for improved awareness and understanding of the program for the public, development professionals, other DPNR divisions, other departments with permitting authorities, and the members of the CZM Commission. The coastal program could benefit from a user base with better understanding of what the program does and doesn’t do and specifically the permitting function of the CZM Division by providing more information on the process for users and the public. Ample language exists in the Virgin Islands Coastal Management Program document and the program’s approval findings.¹ The major concepts that seem least understood are as follows:

¹ *The Virgin Islands Coastal Management Program and Final Environmental Impact Statement*, U.S. Department of Commerce (1979); and *Findings of Robert. W Knecht, Assistant Administrator, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration for Approval of the Virgin Islands Coastal Zone Management Program* (1979). A copy of these documents is available at the Division of Coastal Zone Management offices.

- The coastal program was developed to manage all development activities that have a direct and significant impact on coastal waters in the Virgin Islands.
- The Virgin Islands Coastal Zone Management Act (VICZMA) designates DPNR (originally DCCA) as the lead agency for the coastal program and created the Coastal Zone Management Commission to share permitting and policy development responsibilities.
- The comprehensive coastal zone permit system is focused only on proposals in Tier 1.
- There are 25 policies in Section 906 of the VICZMA that provide the basis for decision-making in Tier 1.
- There are 11 policies in Section 903 (b) of the VICZMA that pertain to both Tier 1 and 2.
- All development projects in Tier 2 must be consistent with the goals of the VICZMA and the relevant authorities, which must be consulted for Tier 2 projects and which include Division of Building Permits, Comprehensive Coastal Zone Planning, and the Virgin Islands State Historic Preservation Office.
- Earth Change permits in Tier 2 issued by the Division of Building Permits must be consistent with the coastal program.²
- DPNR commissioner is responsible for all enforcement actions arising from the implementation of the CZM permit system.
- “Other relevant permits and programs which must be consistent with the goals of the VICZMA are the Building Permit, Subdivision and Historic District approval, Zoning and Oil Spill Prevention Plan.”
- Virgin Islands Planning Office, now the Comprehensive Coastal Zone Planning Division, is required to grant subdivision permits and historic district approvals consistent with the VICZMA.
- Public Works Department must grant building permits and zoning permits in Tier 2 consistent with the VICZMA.

The coastal program should make sure that these aspects are clearly presented on their website and included in any trainings offered to program constituents. Also, clear linkages between the coastal program and the Division of Building Permits, and the Virgin Islands State Historic Preservation Office, should be re-established for future development projects within the Virgin Islands and the associated permits they require.

During the site visit, the program manager shared some draft flow charts he prepared outlining the steps in the permit process for both minor and major permit applications. These and other materials (e.g., an FAQ section) could be made available on the CZM website, designed as an

² The Virgin Islands Coastal Zone Management Act of 1978 Section 905(j), Virgin Islands Code Title 12, Chapter 21 § 905(j) (1978)

informational brochure, and incorporated into regularly scheduled trainings (e.g., Permitting 101) conducted by the coastal program.

In addition to providing information on the permitting process, it may be just as important to clearly explain the jurisdiction of the coastal program across the two tiers of the islands as well as the structure of the program with respect to the enforcement of and compliance with any conditions that are associated with permits approved by the coastal program. (More on these topics in the sections below.)

One component of the coastal program that needs attention is the Coastal Zone Management Commission, which is responsible for issuing, denying, or modifying all major coastal zone permits. This body comprises three committees—one for each island (St. Thomas, St. John, and St. Croix)—consisting of up to five citizen members who must be residents on the islands. The commission citizen members are appointed by the governor and then voted in by the legislature to serve for a two-year term. The full commission, which includes two ex-officio non-voting members, the commissioner of DPNR and the director of planning, as well as the committee members from each of the three islands, has not met since February 2011. According to the Virgin Islands Code (12 VIC 904(f)), this body should provide the governor and legislature with an annual progress report on the implementation of the coastal program and is currently out of compliance with this code. NOAA would be very supportive of annual meetings of the commission to comply with the code and serve as an opportunity for trainings or other capacity-building activities.

On each island, the coastal zone management committee is filled with the bare minimum of only three members per island and all of the seats are beyond their term limits. Reaching a quorum is challenging under these conditions since all three members must be present. Under normal conditions, we heard that achieving quorum of the committees was difficult, but now with the rebuilding efforts associated with the 2017 hurricane damage, it is more important than ever to have fully staffed and functional coastal zone management committees to facilitate scheduling of and ensure quorum is met at future hearings to deliberate over new applications for major permits. On many occasions when meeting with coastal zone management committee members, the evaluation team heard that despite the governor's office calling for nominations to fill vacancies on the committees, attempts to appoint new members have failed because of the adversarial and invasive nature of the process of going before the legislature. Also, a number of the current committee members would like to retire from their positions; however, out of duty, they feel compelled to remain active until new members are appointed.

With regard to permitting, the Summers End Marina project was identified by a number of commenters as a controversial permit decision. In 2014, developers submitted a permit application for a 145-slip marina in Coral Bay Harbor, St. John, known as Summers End Marina. The permit application was submitted to the coastal program for review, and the St. John coastal zone management committee held a public hearing to vote on the proposal. The three members of the committee were present, thus a quorum was reached, and due to a perceived conflict of interest, one member abstained from the vote. The remaining two members voted to approve

the permit, so the permit was approved through the standard process. However, the case was appealed to the Board of Land Use Appeals (BLUA), which then upheld the determination of the committee. Currently, the decision of the BLUA has been appealed again to the Territorial Court and now all parties are waiting for that case to be scheduled.

Despite significant public opposition to the project due to potential impacts on submerged aquatic vegetation and impacts to threatened and endangered species, the report prepared for the proposal indicated that the program manager and the staff of the coastal program found the proposed marina project to be consistent with the Virgin Islands land and water zoning requirements incorporated into the coastal program (waterfront pleasure and business zones), and the impacts were not inconsistent with other coastal program policies. They maintain that neither the upland portions to be redeveloped nor the bay itself is a pristine area—and the additional impacts from the marina (versus those from the existing mooring field) will not be significant and will be mitigated. Thus, the proposal includes an appropriate balance between environmental protection and economic development as called for in the coastal program policies. Since the permit decision is still being adjudicated, the Office for Coastal Management will continue to monitor the outcome of this process to see if program processes are being followed.

Accomplishment: The U.S. Virgin Islands coastal zone management committees on the three islands of the Virgin Islands have demonstrated a high level of commitment to the duties of reviewing major permit applications in Tier 1 of the coastal zone and have all shown dedication by participating beyond the limits of their original 2-year terms.

Recommendation: The NOAA Office for Coastal Management recommends that the U.S. Virgin Islands Coastal Zone Management Program provide updated and readily accessible information on its website for a more consistent understanding of the jurisdiction and requirements of the coastal program. Specifically, the coastal program should provide information on the permitting processes for minor and major permits, the jurisdiction of the coastal program within Tier 1 and Tier 2, and a quarterly summary of citations related to permit violations. Additionally, the coastal program should provide targeted outreach to key audiences through educational workshops on an annual basis, such as the permitting 101 workshops carried out by the program until 2012.

Recommendation: The NOAA Office for Coastal Management recommends that the Virgin Islands Division of Coastal Management develop options for ongoing education and professional development for the coastal zone management committees to ensure that the members receive adequate training, that historical knowledge is transferred to new members, and that each committee is receiving timely information regarding topics that pertain to coastal zone management and emerging issues affecting coastal areas. Given the difficulties in recruiting new members, the coastal program may also consider developing a brochure to recruit new members of the Coastal Zone Management Commission. In addition, the office recommends that the full commission meet by January 31, 2019 and schedule annual meetings thereafter.

Necessary Action: The U.S. Virgin Islands territorial government must begin to fill the vacancies of the CZM committees by July 31, 2019 and aim to fill all vacancies across the coastal zone management committees by July 31, 2020. The Department of Planning and Natural Resources must continue to work with the Office of the Governor and legislature during this time to remind them of the importance of these positions and the need for them to be filled. The department may consider providing educational briefings to the governor and legislature on this matter and developing a plan for recruitment and retention of new committee members. The department must report to the Office for Coastal Management on the status and challenges of filling these vacancies in the semi-annual progress reports and by semi-annual phone calls with the commissioner of the department and the director of the coastal program.

Enforcement Challenges

A recurring comment during the public meetings and in the responses to the stakeholder survey was that there is insufficient compliance monitoring and enforcement of the coastal zone management permit conditions—especially for erosion and sedimentation issues. As mentioned in the section above, DPNR is responsible for all enforcement actions arising from the implementation of the coastal zone permitting system. However, because the coastal program is responsible for permitting in Tier 1 this means that the compliance monitoring and subsequent enforcement by program personnel is limited to permitted activities within Tier 1. Many of the comments weren't specific about whether they were concerned with sites in Tier 1 or Tier 2, making it difficult to know whether enforcement actions are within the jurisdiction of the coastal program. Regardless, given the close proximity of the two tiers and the steep-sloped nature of the Virgin Islands, the cumulative and secondary impacts from activities in Tier 2 will have an effect on Tier 1 and coastal waters. Given this reality, as well as the language in the Virgin Islands Coastal Zone Management Act (§905(j) that permitting in Tier 2 should be consistent with the goals of the VICZMA, there is reason for concern if development activities in Tier 2 are causing excessive sedimentation or erosion problems.

The Office for Coastal Management evaluation team found a critical gap in compliance enforcement resources for St. John Island. Within the coastal program are several staff positions responsible for processing permits and conducting compliance monitoring (e.g., site inspections) of permitted activities. At the time of the evaluation site visit, there was an open vacancy for one of these positions in St. John. Many of the comments received during meetings with stakeholders made it clear that the coastal program is not well represented in St. John, and the program needs to fill this gap as soon as possible.

Also, there is a need for greater communication and coordination between numerous divisions within DPNR that grant permits in the two tiers, as well as DPNR's Division of Environmental Enforcement (DEE) regarding enforcement of permit conditions. A number of stakeholders interviewed suggested potential improvements to the compliance monitoring and enforcement implementation. One suggested that cross-trainings for DEE personnel with the various permitting divisions would allow them to be the "eyes on the ground" and could improve their understanding of the various types of permits issued by DPNR and increase compliance

monitoring for the permit conditions. Another suggested changing the ticketing schedule used by DEE to include coastal zone management infractions and training all enforcement officers from DEE on these infractions. Given that DEE is a sister division to the coastal program and the program supports one DEE enforcement officer, the two suggestions above seem quite feasible to implement. Lastly, it was suggested that the coastal program periodically publish known violations of CZM permits on their website to elevate transparency and awareness of known violations now that the coastal program has developed a permit violation tracking capacity.

During the site visit, a number of stakeholders stated a need to improve transparency of the process and indicated that it was unclear whether a permit had been issued or obtained for a proposed development, the nature of the permit, and when appellate processes were to begin. The program manager shared an idea to improve the transparency for CZM-permitted activities through the use of a highly visible, standardized placard issued by the coastal program. This placard would contain pertinent information about awarded permits and be provided to the permit holder for required posting at the site of the permitted activity. This would reduce confusion about whether a permit had been obtained and the nature of the permit, and would be useful to any compliance monitoring that takes place by the coastal program or DEE.

Recommendation: The NOAA Office for Coastal Management recommends that the Department of Planning and Natural Resources address the issue of compliance monitoring and enforcement for permit conditions, especially related to sediment and erosion control measures. The department should improve communication and information sharing across divisions to better identify projects with sedimentation and erosion issues and identify violations when they are observed. For example, the department may consider using an internal process through the Coastal Zone Management Commission to develop a citation system that includes coastal zone management infractions on the ticketing schedule used by the Division of Environmental Enforcement and provide broad training to all inspectors within the department that empowers staff to recognize and act upon coastal zone management permit violations.

Necessary Action: The Virgin Islands Coastal Zone Management Program must fill the vacancy for Environmental Planner II based on St. John, providing stakeholders in St. John with a local point of contact for the coastal program by April 30, 2019.

Necessary Action: The Virgin Islands Coastal Zone Management Program must develop and begin implementing a consistent, durable, visible, and recognizable system, posted at the site of the permitted activity, to provide public notice about coastal permits for developments, pertinent information about the proposed development, and how to contact the Department of Planning and Natural Resources about violations. A description of the proposed process must be submitted to and approved by the Office for Coastal Management by October 31, 2018. The posting of the yellow permit placards that were discussed during the evaluation site visit would satisfy this necessary action.

Challenges Regarding Tier 1 and Tier 2 of the USVI Coastal Zone

While the entirety of the Virgin Islands is considered within the coastal zone, the coastal zone is divided into two tiers. The DPNR commissioner issues permits for all minor activities, and the three coastal zone management committees issue all permits for major activities within Tier 1. In Tier 2, the DPNR Division of Building Permits issues permits for activities under the Earth Change law, while Division of Planning issues zoning and subdivision permits. The evaluation team received numerous comments in the survey, as well as from interviews, about a perceived need to change or remove the boundary between Tiers 1 and 2. The principal issues that the team heard were—the need to have the coastal program review all major developments in both Tier 1 and 2; that review of activities generating erosion and sedimentation impacts in coastal waters would benefit from the coastal program permitting procedures, including its public participation and appeals procedures. The team also heard that management of activities near ghuts could be improved. Ghuts are intermittent waterways that provide pathways for sediment to be transported from uplands to the coastal zone and can experience erosion during heavy periods of rain (e.g., tropical storms and hurricanes). Ghuts are currently managed by the department’s Division of Fish and Wildlife.

Commenters and interviewees provided a wide range of suggestions to address these issues, including the following:

- getting rid of Tier 2, and having Tier 1 cover all the islands;
- moving Tier 1 inland to the 300-foot contour;
- identifying significant development activities within Tier 2 that that would be subject to the coastal program review;
- Revise the review of Earth Change activities so that activities in or adjacent to ghuts within Tier 2 are consistent with procedures employed by the coastal program in Tier 1.

There are pros and cons associated with each option. For example, if the territory were to move to a one-tier system, major activities would be addressed more consistently; however, a single tier would add significantly to the number of major and minor permit applications that the Division of Coastal Management would need to review, with no assurance of additional permit staff members, and would require legislative action for which the political will to do so is uncertain. If, on the other hand, they chose to apply the coastal program permitting procedures to other DPNR divisions’ permits in Tier 2, rather than expand to just one tier, this would address the public participation and appeals issues and potentially result in a more rigorous review, but it may not address review of the major activities in Tier 1.

There is a need for the coastal program to better assess the underlying development and erosion and sedimentation issues in Tier 2 and evaluate the various options to determine the most appropriate way to improve permit reviews in Tier 2 to be consistent with the coastal program policies and procedures to reduce cumulative and secondary impacts related to sedimentation and erosion.

In addition, since ghuts are locally managed by the Division of Fish and Wildlife and fall within the jurisdiction of the U.S. Army Corps of Engineers, increased coordination may be needed to better manage development near these hydrological features of the Virgin Islands. NOAA heard that a memorandum of understanding is currently under discussion between U.S. Army Corp of Engineers and the Virgin Islands to achieve this coordination. We encourage DPNR to finalize this agreement with the Corps.

Recommendation: The NOAA Office for Coastal Management recommends that the Virgin Islands Division of Coastal Management:

1. Develop a white paper with relevant Department of Planning and Natural Resources staff members, including representatives from the Division of Building Permits and Coastal Zone Management Commission members, to analyze various options for how reviews of major activities and earth change projects in Tier 2 could receive a review consistent with the coastal program policies and procedures in accordance with Section 903 (b) 9 and 906 (b) 10 of the Virgin Islands Coastal Program to reduce sedimentation and erosion impacts.
2. The white paper should be vetted with the relevant department divisions that make up the coastal program. The coastal program should choose a feasible scenario that addresses the cumulative and secondary impacts from development projects in Tier 2 and should implement the recommendations from the paper that will provide the best solutions to reduce sediment and erosion impacts to the coast.

Coastal Planning and Active Management

Community Engagement Initiatives

In February 2017, a new outreach coordinator was hired, and it is clear from the information we received during the site visit and stakeholder comments that the new coordinator has brought new energy and needed attention to this aspect of the coastal program. In particular, the program has established monthly “Science Saturdays” that are open to the public to provide information on coastal issues, established a beach plastics recycling program with Terracycle to remove accumulated debris from the coast, developed a social media presence on Facebook, Instagram, and the DPRN website, and is working with the tourism sector through the Blue Flag beach program. These efforts have already leveraged experts from the University of the Virgin Islands to bring their considerable knowledge about coastal ecosystems to the people of the Virgin Islands. NOAA applauds the coastal program on these efforts and encourages continued investment to inform the public about topics relevant to the coasts.

As the coastal program builds a constituency that cares about the health of the coasts and nearshore environment of the Virgin Islands, a major outreach and education effort about the effects of sedimentation and run-off should be undertaken. Attention should focus on educating not only the public, but also businesses in the tourism and development sectors, as well as department staff members and CZM Commission members involved with permitting in both Tier 1 and Tier 2 and environmental enforcement activities related to those permits. The recommended programmatic efforts across DPNR in the section above to align permitting

activities across the tiers so that they are consistent with the VICZMA would be strengthened by a focused outreach campaign supporting efforts to improve development practices in Tier 2 related to sedimentation. The issue of sedimentation and erosion related to development practices is a very high-priority management issue in the territory. It was raised often during meetings with stakeholders and in the public meetings, and provides an opportunity for the coastal program to develop a holistic education and outreach strategy on cumulative impacts from excess sedimentation and erosion on the natural resources of the coast due to development activities.

Accomplishment: The U.S. Virgin Islands Coastal Zone Management Program's new outreach coordinator has increased community engagement related to coastal issues through the coastal program's new website and social media accounts, outreach efforts related to a marine debris and plastics removal and recycling program in partnership with TerraCycle, monthly Science Saturday gatherings, and coordination with Blue Flag Beaches.

Coastal and Habitat Restoration Opportunities

The coastal program is interested in expanding beyond the role of permitting to actively engage in coastal and habitat restoration efforts that benefit the coastal environment in the Virgin Islands. The Office for Coastal Management commends the program for aspiring to play a more proactive role within this topic, and there could be synergies with others who are involved with similar efforts in the Virgin Islands. In fact, efforts to promote natural and nature-based infrastructure as a means to enhance coastal resilience may accelerate the program's interest in habitat restoration. During our meetings, stakeholders mentioned that there were a number of projects happening in the Virgin Islands to restore coastal resources, and these good efforts could benefit from increased coordination and integration to enhance habitat conservation and restoration outcomes. The coastal program is encouraged to work with the entities currently involved with these activities to understand the role it can play in this field and identify its niche.

A clear role for the coastal program in restoration projects is streamlining and facilitating review of proposals submitted to conduct the restoration projects. However, there is no reason to stop at this stage if the program has the capability and interest in expanding its involvement in proactive management activities to restore coastal habitats. In fact, the coastal program has expressed interest in implementing more projects identified in completed watershed management plans. Since the DPNR Division of Coastal Zone Management administers funding received from NOAA for both coastal zone management and coral reef conservation activities, there is an opportunity to engage in ridge-to-reef management actions that connect activities on land with their impacts to waters where valuable coral reef resources are located.

A final issue regarding wetlands restoration and permitting is the need for expertise in wetland and mangrove ecology, ecological engineering, hydrology, and water management. The topic of wetland restoration came up during stakeholder meetings, and the need for local wetlands expertise (e.g., a wetlands scientist) was identified. The U.S. Army Corps of Engineers has a wetlands biologist based in Puerto Rico, but that capacity is needed locally in the Virgin Islands as well. Wetlands are within the purview of the coastal program, and it was noted that it was not

clear whether wetlands were consistently considered during review of permit applications, since there is little guidance in policy or statute. Policies on impacts to ghuts or refinements to generalized wetlands policies would be helpful. The U.S. Fish and Wildlife Service noted that during Section 7 consultations permits often miss wetlands considerations. The coastal program ought to explore options for identifying or building capacity in wetlands science and could look to expertise at the University of the Virgin Islands or within DPNR. The Division of Environmental Protection holds the primary responsibility for wetland protection and management in the Virgin Islands.

Recommendation: The NOAA Office for Coastal Management recommends that the Virgin Islands Division of Coastal Zone Management work with other Department of Planning and Natural Resources divisions, nongovernmental organization partners, and other territorial and federal agencies to co-develop a comprehensive environmental management strategy for the Virgin Islands to better coordinate future restoration work and identify the Virgin Islands Coastal Zone Management Program’s niche, as well as any additional staff expertise needed to support habitat restoration.

Recommendation: The NOAA Office for Coastal Management recommends that the Virgin Islands Division of Coastal Zone Management work with the Division of Fish and Wildlife to define habitats considered environmentally sensitive, including ghuts and wetlands, for inclusion in the policies and procedures of the coastal program to ensure they are given adequate consideration in review of permit applications.

Leveraging Funding Opportunities

Numerous responses to the stakeholder survey indicate that the coastal program would be more effective if it had more capacity for planning, proactive management, additional compliance inspections, etc. Additional capacity, however, requires additional funding. In talking with stakeholders, it seems that there may be opportunities for the coastal program to leverage or supplement the federal funds provided by NOAA. Ideas include adjusting or increasing the fees associated with the CZM permit application process and violations of permit conditions; engaging with tourism operators on increased stewardship of the coastal areas where hotels, restaurants, and marinas are located; working with relevant entities such as the Nature Conservancy and other federally funded programs that are active in the Virgin Islands, such as the U.S. Fish and Wildlife Service’s Coastal Program and the Army Corps of Engineers; and developing a closer relationship with the Department of Tourism to determine ways to share tourism-related revenues to conserve and enhance the natural resources that are the foundation for a long-term, robust, and resilient tourism and recreation economy for the Virgin Islands.

Before the 2017 hurricanes, the U.S. Virgin Islands hosted between two and three million visitors annually. Tourism and recreation is the main industry of the Virgin Islands, making up almost

60%, or \$3.79 billion (2016),³ of the US Virgin Island's gross domestic product. Those resources that the coastal program manages—accessible beaches, exotic coasts, and coral reefs—are the main draw for many visitors and are the foundation of the tourism and recreation economy. The coastal program has expressed interest in increasing its work with the Department of Tourism and the Department of Sports, Parks, and Recreation, and NOAA encourages this interest. In fact, during our site visit, we planned to hold a meeting with Commissioner Doty (Department of Tourism) and Commissioner Henry (DPNR) to discuss the benefits and impact of applying a head fee on cruise ship passengers to fund the Territorial Park System Trust Fund. Unfortunately, conflicting schedules prevented this meeting from occurring, but NOAA encourages the commissioners to meet and discuss the concept. The revenue created from even a small fee on such a large number of visitors could increase the capacity of the program. Conducting a territory-wide willingness-to-pay study may be a way to determine whether this kind of fee would be acceptable. If the coastal program is able to increase the revenue to the program, NOAA encourages directing a portion of it toward increased salaries to fill vacancies within the coastal program with highly qualified individuals. Crucial staff positions should be well compensated to prevent turnover.

Post-Hurricane Considerations

On September 6, 2017, within one week of the evaluation team's site visit to the Virgin Islands, the first of two direct Category 5 hurricanes struck the Virgin Islands with direct hits. Hurricane Irma's path went over St. John and St. Thomas, and then two weeks later Hurricane Maria passed over St. Croix. After the hurricanes, the office of Congresswoman Stacey Plaskett (VI) stated that 90 percent of buildings in the Virgin Islands were damaged or destroyed and 13,000 of those buildings had lost their roofs. Given the reports of massive damage across the Virgin Islands and limited communications possible in the aftermath of the storms, NOAA's Office for Coastal Management put a hold on developing the findings until we could re-establish contact with the coastal program. In late 2017, NOAA and the program agreed to re-open the comment period for the evaluation, since the official comment period for the evaluation had not ended when Irma struck. The comment period was re-opened on January 24, 2018, and concluded on March 16, 2018.

In early January 2018, NOAA followed up with the coastal program to ensure that the information obtained during the site visit was still relevant and that no other pressing matters related to the implementation of the VICZMP emerged as a result of the hurricanes before drafting the findings. We wanted to ensure that the findings were not "tone deaf" to the issues the Virgin Islands were dealing with in the wake of the storms and to provide the public with the full opportunity to provide comments. The steps taken by NOAA to re-open the comment period and review the information from the site visit are not typical for conducting periodic Section 312 evaluations; however in light of the circumstances, we felt they were necessary.

³ <https://coast.noaa.gov/data/digitalcoast/pdf/econ-report-summary-usvi.pdf>

As a result of the hurricanes, NOAA has compiled a list of considerations for the coastal program:

Program Preparedness and Staff Safety

- Reprogram CZM funding or request additional funding to purchase satellite phones for CZM staff members.
- The coastal program needs a fully developed emergency management plan for future storm events that addresses staff safety, post-storm permitting needs, and preparations for office materials.
- The coastal program’s website has been down since the hurricane with no reliable information for when it will be available.
 - DPNR should identify cloud hosting for the website in order to fully serve the public should other catastrophic storm events occur.

Program Opportunities

- Consider updating codes regarding building on steep slopes (i.e., setbacks from ghuts, maximum slopes, etc.) and building standards needed to withstand strong hurricanes.
- Improve marine debris planning, coordination, preparation, and implementation
 - Consider creating a marine debris plan and develop memorandum of understandings to implement for small and large debris.
 - Consider memorandum of understandings with Coast Guard, Army Corps of Engineers, etc. to have plan for marine debris collection, storage, ultimate disposal – including what to do with fiberglass hulls, etc.
 - Consider how to take care of vegetation debris and paper materials in an environmentally sensitive manner.
- Place more emphasis on restoration of natural infrastructure to increase resilience of the Virgin Islands to future events.
 - May require more coordination and leadership across all DPNR offices.
 - Consider developing proposals for FEMA’s Hazards Mitigation and Pre-disaster Mitigation funding, Economic Development Administration’s Disaster Supplemental funding, or HUD Community Development Block Grant Supplemental Funding to assist the islands’ recovery.
- Take advantage of resilience and hazards mitigation trainings from FEMA, National Disaster Preparedness Training Center, NOAA Office for Coastal Management, and others to address issues arising from the hurricanes.
 - These entities can provide trainings and technical assistance on hazards mitigation planning, natural infrastructure as alternatives to shoreline armoring, and other issues.
- In the wake of the hurricanes, the coastal program can consider focusing program enhancement efforts around hazard mitigation (309 strategy).
- Hurricane impacts reinforce the program manager’s plan to hire a resilience specialist for the coastal program.
- Consider updating the Coastal Land and Water Use Plan to reflect the current conditions of the coastal zone and ensure the plan’s use as a guide when making permitting decisions.

The list above is not exhaustive and should not be considered by the coastal program as official recommendations from NOAA; however, we hope that these items will be taken under consideration by the coastal program and DPNR as the Virgin Islands continues to recover from the catastrophic 2017 hurricane season and plan for the future.

Additionally, we are aware that staffing issues have been worsened by the hurricanes, with two resignations on top of the existing vacancies already noted within these findings. The impacts are especially heavy on the permitting activities, since both the inspector positions for St. Thomas and St. John are now vacant. Given the need to rebuild after the hurricanes of 2017, these vacancies are a top priority, and NOAA will continue to monitor the progress for recruiting and filling the vacancies within the coastal program.

Accomplishment (post hurricane): The U.S. Virgin Islands Coastal Zone Management Program was requested by the Virgin Islands Professional Charter Association to be a committee member for the new nonprofit Marine Rebuild Fund in the wake of the catastrophic 2017 hurricane season. The fund seeks to help with the immediate cleanup efforts of beaches and marine facilities and address the viability of the boating and charter industry in the Virgin Islands.

Evaluation Metrics

Beginning in 2012, state coastal management programs began tracking their success in addressing three evaluation metrics specific to their programs. The evaluation metrics include a five-year target and provide a quantitative reference for each program about how well it is meeting the goals and objectives it has identified as important to the program.

METRIC 1

Goal: Increase the public's recreational use of the coastal areas

Objective: By 2017, the VICZMP will increase recreational use of shorelines in by enhancing public access to shorelines within the territory.

Strategy: The VI CZM Act of 1978 provides that the VICZMP will enhance and where feasible increase public coastal recreational areas and facilities. There are a number of designated public access sites throughout the territory; however many of access points are unknown to the public. The VICZMP will increase awareness of the public to the coastal recreational areas by installing the appropriate signage.

Performance Measure: Number of public access signs installed by the VICZMP throughout the territory.

Target: Sixty (60) public access signs will be installed by the VICZMP throughout the territory between 2012 and 2017.

Cumulative Results: 25 signs installed on St. Thomas

Discussion: Before 2012, the coastal program identified 70 beaches across the islands and used a subset of these beaches for the target of this metric. The intent of this sign campaign was to build off of the Hotel and Tourism Association’s (HTA) color-coded road signs and driving routes shown on maps of the islands. The public access signs were to be color-coded to match the HTA road signs. The 25 signs that were installed were all posted on St. Thomas starting in 2014-2015; however, we learned that a number of these signs were lost in the 2017 hurricanes. On St. Croix, the HTA ran out of funding for the color-coded map, so the effort has been halted for additional sign installation until that effort can be completed. On St. John, many of the beaches are within the national park and the coastal program needs to develop a memorandum of understanding, or agreement, to place signs on park property.

Ultimately, the coastal program fell short by more than half of the total number of signs they were aiming to have installed, with 25 of 60 completed by 2017. NOAA encourages the program to continue to work with the HTA and the National Park Service to install additional signs to improve public access to the shoreline of the Virgin Islands.

METRIC 2

Goal: Increase protection of coastal habitat

Objective: Improve the protection of coastal habitat through the permit review process.

Strategy: Currently, the VICZMP protects coastal habitat through the permitting process and monitoring of activities within the territory. The VICZMP staff consults with developers during the permit review process to improve site design and mitigate potential impacts to coastal resources. Special conditions are issued to effectively ensure compliance with development and environmental polices cited in section 906 of the CZMA. VICZMP processes an average of 100 to 120 permits per year.

Performance Measure: Percentage of permits issued by the CZMP that incorporate special conditions or design changes that will minimize impacts to coastal habitats as a result of the implementation of development policies and consultation with staff of CZMP.

Target: Between 2012-2017, 100 percent of permits issued by the CZMP incorporate special conditions or design changes that will minimize impacts to coastal habitats as a result of the implementation of development polices and consultation with staff of CZMP.

Cumulative Results: 100% for 2016-2017

Discussion: According to the available data for 2016-2017, the coastal program reached its target for the final year, with 100% of both minor and major permits including special conditions to increase protection for coastal habitat. Special conditions added to the approved permits are consistent with the program's coastal nonpoint plan to reduce land-based sources of pollution and include activities to reduce runoff (e.g., limiting disturbance to areas designated on the approved drawings, ensuring excavated areas are protectively bermed, installing silt fencing consistent with the USVI environmental handbook, limiting excavation activities to the footprint of the structure to be built) and ensure adequate wastewater treatment. Additionally, all CZM permits are mandated to obtain all other federal and territorial authorizations and permits and maintain compliance with them.

With proper implementation of these special conditions, the impacts of permitted activities should be reduced, and NOAA encourages the coastal program to continue the practice of adding these special conditions and ensuring regular inspections to make sure compliance is occurring. However, the data provided for this metric did not have any information for the years preceding 2016-2017. Moving forward in the next cycle of 312 evaluation metrics, NOAA requests the program to do better record keeping to track progress of the coastal program towards its identified targets.

METRIC 3

Goal: Coastal Hazards will be mitigated through design and planning of new development

Objective: Applications submitted to the VICZMP will incorporate planning or design measures to address climate change.

Strategy: The VICZMP will use the application process to mandate that potential impacts of climate change will be addressed by the applicant. The VICZMP will revise the Environmental Assessment Report (EAR) guidelines to include provisions where applicants specifically address potential climate change impacts such as flooding, sea level rise, storm surge, and increased intensity of tropical storms and others. The EAR guidelines are anticipated to be completed in 2015. The EAR will reference the VI Environmental Protection Handbook to provide guidance to potential developers for properly addressing climate change impacts.

Performance Measure: Percentage of major development permit applications that incorporate planning or design measures to address climate change as a result of consultation with CZMP.

Target: By 2017, 100 percent of major development applications will incorporate applicable planning and design measures to address climate change, through the application of the EAR guidelines.

Cumulative Results:

0% with revised EAR since the program has not yet completed the modified EAR and made it publicly available.

66% – 25 of the 38 major permits from 2012-2017 address drainage and flooding under the existing EAR.

Discussion: The coastal program failed to make any progress on this metric, as it is written, because the revised EAR was not completed. However, in the current EAR, the applicant must address drainage and flooding in a proposed application, which is consistent with a subset of the considerations to be included in the revised EAR, since flooding is exacerbated by climate change impacts. Flooding considerations have been addressed in 25 of the new permit proposals between 2012 and 2017, and those 25 permits account for 66% of the total number of major permits processed by the coastal program during the timeframe associated with the metric. NOAA encourages the coastal program to complete the revisions to the modified EAR so that coastal hazards associated with climate change impacts for proposed development in the Virgin Islands can be mitigated to the greatest extent possible.

Conclusion

For the reasons stated herein, I find that the U.S. Virgin Islands is adhering to the programmatic requirements of the Coastal Zone Management Act and its implementing regulations in the operation of its approved U.S. Virgin Islands Coastal Zone Management Program.

These evaluation findings contain three necessary actions and six recommendations. The necessary actions are mandatory and must be completed by the dates given. Recommendations must be considered before the next regularly scheduled program evaluation but are not mandatory at this time. Recommendations that must be repeated in subsequent evaluations may be elevated to necessary actions.

This is a programmatic evaluation of the U.S. Virgin Islands Coastal Zone Management Program that may have implications regarding the state's financial assistance awards. However, it does not make any judgment about or replace any financial audits.

signed by Dr. Jeffrey Payne
Jeffery L. Payne, PhD
Director, NOAA Office for Coastal Management

on July 26, 2018
Date

Appendix A: Response to Written Comments

Jim Gallagher

Mr. Gallagher shared that he was pleased to hear about the recent 312 evaluation of the USVI Coastal Zone Management Program. His comments pertained to St. John and the way a specific proposal for a marina in Coral Bay was managed by the St. John coastal zone management committee. Mr. Gallagher noted there were only three committee members to hear cases for major permit proposals and two seats have been vacant on the committee. He noted that when the meeting for the marina project came to order, one of the three members of the committee recused himself due to a conflict of interest with the project and expressed concerns regarding the process being unfair.

Mr. Gallagher commented that NOAA needs to look at why the seats have been vacant and how those seats are filled. He also inquired about who provides ethical guidance and oversight to the committee.

NOAA Office for Coastal Management's Response: The NOAA Office for Coastal Management thanks Mr. Gallagher for his comments. The office concurs that the number of vacant seats on the coastal zone management committees, including St. John, are a significant issue. As mentioned in the findings, the process used by the legislature to fill these positions has deterred potential appointees from filling the empty seats. In the findings we have included a necessary action for the Department of Planning and Natural Resources to bring the issue of unfilled seats on the coastal zone management committees to the attention of the governor and U.S. Virgin Islands Legislature, since the appointments to these seats are subject to their processes and work together to address the issue. The findings also include a recommendation for the coastal program to develop ongoing education opportunities for sitting committee members and a succession plan for filling empty seats on the committees to keep the committees at full capacity to avoid future situations like the one cited by Mr. Gallagher.

When committee members have a conflict of interest, they are to recuse themselves from voting on projects (see 12 VIRR 904-6). As the committee member believed he had a conflict of interest regarding the marina proposal in Coral Bay, it was appropriate that he recuse himself from the vote. The findings provide a brief synopsis of the marina proposal under question by Mr. Gallagher, which is still pending a hearing with the Territorial Court.

There is no specific "ethical oversight position" for the Coastal Zone Management Commission; however, CZM has legal counsel that provides a legal opinion on a project before providing its report on a permit application to the coastal management zone committees. Commission members are responsible for following the administrative procedure laws and are subject to prosecution under federal or U.S. Virgin Island laws as appropriate if laws are broken.

Sue Parten, P.E., Community Environmental Services, Inc.

Ms. Parten shared comments pertaining to non-point source pollution concerns in the territory and she discussed a number of issues with decentralized wastewater treatment systems in the USVI. Ms. Parten noted the importance of staff with the necessary technical backgrounds and training to (1) conduct sound and detailed technical reviews of permit applications for wastewater systems and physical inspections of systems, and (2) vet outside consultants and services including by local non-profits and stateside firms to ensure that services and studies are performed by qualified and experienced individuals.

Ms. Parten discusses that she re-wrote DPNR's CZM regulations for onsite wastewater systems to be in-step with industry-accepted / state-of-the-art design and construction standards, but in 2006 the draft regulations were shelved due to a change of governorship and DPNR Commissioner. Ms. Parten states that by adopting those rules with necessary revisions a great deal of time and funds could be saved, and designers and contractors would have sound guidelines for their projects.

Ms. Parten also notes that there is currently nowhere close to adequate enforcement of existing rules, including failure by DPNR to conduct inspections of systems as they're installed to verify compliance and construction in accordance with permitted plans and specifications.

NOAA Office for Coastal Management's response: The NOAA Office for Coastal Management thanks Ms. Parten for her comments. Upon receiving these comments, the coastal program agrees that it's time to review and update wastewater regulations. With the approved coastal nonpoint program for the U.S. Virgin Islands, the coastal program is responsible for promulgating rules and regulations for residential wastewater treatment systems in accordance with 12 VIRR 910-1(e). Since the current version was adopted in 2003, the Office for Coastal Management encourages DPNR to work with the coastal program to do this review, and apply minimum standards for wastewater treatment systems across the territory (not just in tier 1), consider developing nutrient standards for coastal water quality, and expand the use of the updated standards beyond single-family residences to include condominiums, hotels, and commercial spaces. Accordingly, the Office for Coastal Management encourages DPNR to ensure that sufficient enforcement of any new or amended regulations is done by appropriate DPNR staff, including the Division of Environmental Protection through its Water Pollution Control Program.

Updates to the USVI Environmental Handbook will include updated stormwater standards, and those standards have been developed in collaboration with the coastal program. However, they have not yet been adopted and they are awaiting action from DPNR Division of Environmental Protection to complete the process and update the USVI Environmental Handbook so it may be utilized by designers, architects, etc. In lieu of the updated handbook, some recent materials are currently available to guide low impact development⁴ and green construction.⁵

⁴ https://www.coris.noaa.gov/activities/stormwater_lid/

⁵ <http://www.horsleywitten.com/greenconstructiontraining/>

Michael Milne, AIA, Barefoot Design Group, LLC

Mr. Milne provided written comments after the public comment period was extended due to a very active 2017 hurricane season. Mr. Milne's comments concern proper review of permits and enforcement of permit conditions and existing laws. Mr. Milne describes staffing cutbacks across several departments in the USVI government and believes that loss of staff due to these cutbacks has affected the VICZMP's ability to provide permit reviews. Mr. Milne states they are not able to keep up with the demand of development, and raises the need for adequate review of development to ensure prevention of future issues such as construction failures, injuries, and damage to the environment. Mr. Milne believes that the majority of development has occurred without any oversight and this has gotten worse since the hurricanes in 2017. He also states that post hurricanes, much of the building is being done by people unfamiliar with local conditions. Mr. Milne emphasizes the need to improve the situation through public education, improved licensing of professionals, increased standards for submissions, improved agency review, staffing and consistent enforcement.

NOAA Office for Coastal Management's response: The NOAA Office for Coastal Management thanks Mr. Milne for his comments. In prior 312 evaluations, staffing issues have been the primary focus, and although staffing was not a target area for this evaluation, the findings include a necessary action for the coastal program to hire to fill the vacancy on St. John, which includes responsibilities for reviewing permit applications and inspecting permitted activities. Also, we've learned that additional vacancies now exist because of two resignations since the hurricanes, and the Office for Coastal Management is monitoring the situation to ensure the coastal program has adequate staff to review permit applications and conduct inspections. Mr. Milne's observation that many post-hurricane projects are moving forward without proper review is acknowledged and appears to be the result of the loss or resignation of some key staff members after the hurricanes. The Office for Coastal Management has notified the program to resolve the issue; however, this was not a pattern that we observed prior to the hurricanes. Additionally, the lack of a functioning coastal program website since the hurricanes may also be contributing to the issue.

The Office for Coastal Management did not find a pattern of not responding to certain violations due to "influence with the government." The coastal program's response to activities does vary based on the level of offense and what is defensible; for example, a warning letter, cease and desist order, or notice of violation may be issued.

The findings discuss the need to find ways to improve the public's understanding of the coastal program's responsibilities related to permitting development activities in the coastal zone, and recommends providing updated information on the department's website to increase overall understanding by users, stakeholders, and other departments and divisions with permitting authorities. The recommendation also includes a suggestion that the coastal program re-institute regular trainings on the permitting process to educate key audiences. Within the "enforcement challenges" section of the findings is a recommendation to improve compliance monitoring and enforcement of permit conditions using staff across the divisions of DPNR. Although the Office for Coastal Management does not currently provide training on enforcement, our office will continue

working with the coastal program to identify relevant and appropriate training opportunities to address this recommendation. To improve transparency and clearly identify sites that have obtained permits, there is also a necessary action for sites with approved coastal program permits to display durable signage at the site with pertinent information about permitted activities.

The Denis Bay example provided by Mr. Milne was shared with the coastal program. Within the report provided by Mr. Milne, the planned development was in Tier 2, outside of the jurisdiction for the coastal program's permit review process. During construction, the project illegally entered into Tier 1 but the activity primarily took place on National Park Service land where the coastal program has no jurisdiction. Since the development crossed the coastal zone boundary, the commissioner at the time appointed the division with the most infractions, Division of Permits, to be the lead and assess the fines associated with the illegal work.

David Silverman, Resident, Coral Bay, St John; President, Save Coral Bay; past CZM Committee member Long Island, New York

Mr. Silverman submitted extensive comments specific to his observations of the Division of Coastal Zone Management and the CZM Committee on St. John with many suggestions for the coastal program to consider moving forward. Mr. Silverman praised the senior staff of the coastal program for their exceptional accessibility and responsiveness to enquiries, and commends the program for filling the Outreach Coordinator position.

Transparency: Mr. Silverman commented that the St. John community feels there is a lack of adequate transparency for the permit review process. He noted that related to the concerns about transparency, is the lack of an easily accessible electronic file for CZM permit applications, and recommended that the coastal program adopt an electronic document management system which makes all CZM permit applications available to authorized users online, from the moment the initial application is received, through the review process and committee action, and then electronically archived for future reference.

Environmental Review Process: Mr. Silverman commented about the environmental review process and has concerns about the process used by the coastal program to review permit applications. Mr. Silverman noted that from his experience the review of major permit applications between the CZM staff and CZM Commission is often superficial and in many cases the St. John CZM Committee "rubber stamps" the conclusions of CZM staff without performing an independent assessment for consistency with the policies and standards of the CZM law or having a thorough evaluation of the environmental impacts of the proposed project.

Enforcement: Mr. Silverman notes a lack of consistent enforcement and provided examples of activities that were documented and shared with DPNR to notify them of the issue. Mr. Silverman feels that the inconsistent enforcement not only harms the coastal resources but also harms the entire coastal program and calls for the program to do better.

St. John CZM Committee: Mr. Silverman commented about the inadequate CZM Committee on St. John and the failure to appoint enough members for reaching a quorum on major permit approvals. Mr. Silverman noted that two existing members have conflicts of interest with certain applications, and due to this issue raises this as a critical matter in urgent need of resolution. Mr. Silverman stated that several highly qualified St. John residents have volunteered for service on the St. John CZM Committee; however, no action has gone forward to make those appointments.

Two Tier System: Mr. Silverman points out that the two-tier system delineated by the VICZMA in 1979 when it was enacted is out of date with the level of development occurring on St. John today. Mr. Silverman suggested changes to the Tier 1 boundary so that it includes all of St. John to ensure that a thorough CZM consistency review is conducted for all projects with the potential to adversely impact coastal resources. Mr. Silverman also offered another solution by amending existing maps and code so that all large projects including multi-unit housing, commercial construction, and all roadways require a comprehensive CZM consistency review regardless of their location on St. John.

APC Management Plans: Mr. Silverman notes a lack of progress on APC Management Plans and states that since 1979 no APC management plan has been adopted on St. John. Mr. Silverman is aware of a 1993 draft plan for Coral Bay APC that has never been formally adopted and he strongly encourages the coastal program to adopt APC management plans for the island of St. John and particularly for Coral Bay.

Land and Water Use Plan: Lastly, Mr. Silverman commented on the failure to adhere to, or update the Land and Water Use Plan of the VICZMA, and provided examples when zoning changes were made in Coral Bay that were not consistent with the plan. Mr. Silverman recommends that the Coastal Land Use and Water Use Plan of the Virgin Islands be updated to reflect the current conditions and that procedures to ensure its proper use as stipulated in the VICZMA are followed.

NOAA Office for Coastal Management's response: The NOAA Office for Coastal Management thanks Mr. Silverman for his comments. Many of Mr. Silverman's comments are related to the target areas of the evaluation and addressed within the findings.

Transparency: The findings discuss the effort that the coastal program undertook to scope out an online permit application system and they encourage the program to continue to streamline the permit application process for the public. One aspect of this continued work includes understanding the public's needs and identifying solutions to meet those needs. Based on Mr. Silverman's comments, one such area to consider would be an online electronic document management system for permit applications to increase public access. Additionally, the coastal program may wish to consider providing the public with early notification once a permit application is received and facilitating input from the community in the early stages to increase public buy-in for projects.

Environmental review process: Although the specific environmental review process used by the coastal program was not a focus of this evaluation, we did discuss the permitting process with many stakeholders and did not observe or hear about any patterns similar to what Mr. Silverman describes in his comments. Additionally, there are examples (including projects on St. John) when the CZM committees have ruled against the recommendations prepared by the coastal program staff review, indicating that the committees are providing novel input and not simply “rubber stamping.”

Enforcement: The findings discuss the enforcement challenges of the coastal program and include a recommendation for the program to improve compliance monitoring and enforcement of existing laws with the understanding that this issue is larger than CZM alone, and that there are multiple divisions within DPNR and other departments that need to be involved. The findings also include two necessary actions on this issue: 1) The coastal program must hire to fill the vacant St. John inspector position (which includes responsibilities for inspections of permitted activities) and, 2) the coastal program must use a consistent, durable, visible, and recognizable system to provide public notice of CZM development permits and how to contact DPNR about violations. The second necessary action would also address Mr. Silverman’s comments about transparency. Regarding the specific instances of illegal dumping on St. John, the Office for Coastal Management notified the coastal program of the issue and learned that there was a response made by the coastal program and a Notice of Violation in the amount of \$160,000 for the filling of wetlands. The respondent appealed and requested a formal hearing, which is still pending. If Mr. Silverman wishes to be a witness on behalf of the coastal program when the formal hearing occurs, he is encouraged to do so.

St. John CZM Committee: The findings include a discussion of the CZM committees, the need for all vacant positions to be filled, and for the full CZM Commission to meet annually. The Office for Coastal Management concurs that the number of vacant seats on the coastal zone management committees, including St. John, are a significant issue. In the findings we have included a necessary action for the Department of Planning and Natural Resources to bring the issue of unfilled seats on the coastal zone management committees to the attention of the U.S. Virgin Islands Legislature, since the appointments to these seats are subject to their processes and work together to address the issue. The findings also include a recommendation that the coastal program develop ongoing educational opportunities for sitting committee members and a succession plan for filling empty seats on the committees to keep the committees at full capacity. NOAA encourages the coastal program to consider the offers by highly qualified St. John residents; however, the proper entities for any interested parties to contact about joining the coastal zone management committee is either the St. John administrator or the Boards and Commissions coordinator within the Office of the Governor.

Two Tier system: The findings include two recommendations regarding the tiers of the USVI coastal zone. To improve the review of proposed development in Tier 2, ensure that permitted activities in Tier 2 are aligned with the VICZMA, and ensure that secondary and cumulative impacts are minimized, the Office for Coastal Management recommends that the coastal program develop a white paper analyzing scenarios for improving the review process and adopt a

scenario that best addresses the issue of sedimentation and erosion impacts to coastal resources. Additionally, the Office for Coastal Management recommends DPNR ensure that Earth Change permits issued by the Division of Building permits in Tier 2 that may negatively impact Tier 1 are consistent with the VICZMA.

Area of Particular Concern (APC) Management Plans: During the past five years the coastal program has focused on Coral Bay, St. John, the St. Thomas East End Reserve, and the St. Croix East End Marine Park. The focus on these priority areas by the program director is consistent with geographic priorities established by NOAA's Coral Reef Conservation Program and includes the potential for receiving additional federal funding to develop watershed management plans for these areas. Since watershed management plans provide a higher level of specificity on recommended actions needed to achieve the conservation targets for these areas, and can leverage additional funds from the U.S. Environmental Protection Agency through Section 319 of the Clean Water Act, any existing information found in draft APC plans (such as the 1993 Coral Bay APC plan) has been incorporated into the development of watershed management plans. More recently, both Salt River and Magens Bay have received attention from the coastal program as well.

Coastal Land and Water Use Plan: The Office for Coastal Management is supportive of the coastal program updating the plan, and this is included in the post-hurricane considerations section of the findings.

Sharon Coldren, President of Coral Bay Community Council

Ms. Coldren shared written comments after the public comment period was extended due to a very active 2017 hurricane season. Ms. Coldren emphasized that the CZM guidelines and principles could be an important tool during the recovery efforts from Hurricanes Irma and Maria. Ms. Coldren also noted the need for large signage for permitted activities, requested more information be made available to the public regarding violations of permit conditions, and supports merging tier 1 and tier 2 permit processes. She also raised issues regarding the 2014 review of the marina project in Coral Bay and specifically noted the following aspects of the proposed project: seagrass was not respected, the wastewater plant was sited close to the shoreline, and development on illegally filled wetlands. Ms. Coldren also noted excessive amounts of sargassum washing up on the shores of St. John.

NOAA Office for Coastal Management's response: The NOAA Office for Coastal Management thanks Ms. Coldren for her comments. The evaluation findings include a necessary action to develop durable signage related to the CZM permits issued by the coastal program. The findings also discuss improving the understanding of the coastal program, including its roles and responsibilities, among users, stakeholders, and across the various permitting authorities that intersect with the VICZMA, and includes a recommendation to provide more information about the coastal program and its responsibilities for managing development across Tiers 1 and 2, and provide quarterly citation information to the public to increase transparency on enforcement activities. The findings also include a separate recommendation for the coastal program to develop a white paper for how to ensure that projects in Tier 2 are reviewed so that they are

consistent with the program and limit any cumulative impacts especially related to sedimentation and erosion issues.

The 2014 Coral Bay Marina project has received several comments. As discussed in the findings, the process used during the review by the coastal zone management committee on St. John was consistent with the coastal program's normal program procedures. The Office for Coastal Management understands that the decision made by the coastal zone was appealed to the Board of Land Use Appeals, where it was upheld and is currently still in the process of an additional appeal to the Territorial Court.

Addressing sargassum seaweed on the beach is beyond the scope of this evaluation. The Office for Coastal Management is supportive of any coastal program efforts to coordinate among the Department of Health, Department of Tourism, and DPNR Division of Environmental Protection, and engage with private industries to determine how to address the issues and the roles for which agencies are best suited.