



CORAL BAY COMMUNITY COUNCIL

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November 4, 2019

Hon. Alicia Barnes
Legislature of the U. S. Virgin Islands (delivered via email)

Dear Committee Chairman Barnes and members of the Committee,

Thank you for the opportunity to testify about improvements to the Coastal Zone Management Act, Bill 33-0105. Unfortunately, I will not be able to attend the November 6th hearing directly. I am submitting this testimony to be read into the record.

The Coral Bay Community Council (CBCC) is a nonprofit organization in Coral Bay St. John dedicated to improving our community and its infrastructure, and acting as a watershed management agency. We strive to balance protecting the environment with advancing development for the benefit of the people of the Virgin Islands. We thank you for the opportunity to submit comments on Bill 33-0105, amendment no. 33-465.

Our organization has submitted CZM applications and received a number of minor CZM permits over the years, and one major permit in 2010. We have also reviewed minor and major permit applications and attended public hearings. We have been involved in appeal processes too. Therefore, we have experience as both an applicant and as members of the public and neighbors reviewing applications.

Bill 33-0105 has three laudable purposes 1) updating language, 2) updating dollar amounts and terms of commission members, and 3) shortening timeframes for review, thus potentially speeding up projects.

The first two purposes are easy to agree with, and we support DPNR's recommendations on the dollar amounts to be used, rather than the higher amounts in the bill. They have a good feel for the lasting impacts of larger size projects.

However, the third purpose of shortening timeframes for actions in half, in most cases (30 to 15 days for instance), means there is less time for thorough DPNR review, especially multilevel review with attorneys, or seeking information to clarify items, and for valuable public scrutiny of the details of a project – to enhance a project, and fix “unintended consequences” before they occur. One of the goals of the CZM Act, pursuant to 12 VIC § 903(b)(11), is to “promote public participation in decisions affecting the coastal planning, conservation and development,” and we ask that this be encouraged by all aspects of this law and regulations. Sufficient time for the public to make thoughtful responses and conduct fact finding is important.

Reducing timeframes could also have the undesirable impact of having more permits denied or applications deemed incomplete – with no detailed letter of deficiencies which is generally done now. (For instance, there is no requirement in the statute to offer a written letter of details on the deficiencies

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and ways to cure them.) Reducing the initial review time to 10 days from 15 days – makes providing thorough and helpful advice less likely, and could increase the chance of having a “deemed complete” application found to be defective during the approval process.

And consider the implication of a missed deadline with a bad-actor applicant – you could have a permit issued by default for a project with no public value and environmental harm, or a half-built structure left forever to impact the neighbors. This is not fair to every other applicant or the people of the Virgin Islands. In general, the longer timeframes have value for the public of the Virgin Islands and for the whole Coastal Zone Act.

Two possibilities to enhance public input on minor or major CZM applications would be to (1) require signage to be posted visible on the adjacent access road way at the same time an initial application is submitted – thus alerting neighbors at the beginning of the application process, rather than waiting until the time-limited “completed application” review period, with the official neighbors notice period that is so drastically shortened; and (2) post the parcel identification for every application submitted (as well as those deemed complete) on the DPNR website, so the public receives notice that way too – and has time to contact the applicant informally to discuss improvements and concerns. We would get better development for the Coastal Zone and the people of the Virgin Islands with more information.

If all the development application files were readily available on the internet, a 15-day review period for neighbors and the public might be possible, after the time necessary to mail letters to impacted people and for them to receive them. But without instant internet access, how does someone reasonably find time to get off from work and make an appointment with CZM 24 hours in advance – so they can locate the file to share with you, and get to go and review it, then talk with your neighbors or the applicant to understand the project – and make comments back in 15 days? Suppose you are on vacation, or ill, or busy at work – the 15 days will pass before you have a reasonable chance to review it. This shortening is denying real public access, a main feature of the Coastal Zone Management law and process.

And the above scenario assumes you are on St. Thomas or St. Croix – not on St. John where we normally have to go to St. Thomas DPNR to conduct business. Note DPNR also requires 24-hour notice and an appointment to review a permit application. This eats into a timeframe for comments too.

12 VIC § 910(c)(2) (B)-(E) CBCC concurs with DPNR’s recommendations that the cost delineation between minor and major permits be \$200,000, rather than \$400,000 on nonresidential projects, and \$125,000, rather than \$200,000, for improvements.

12 VIC § 910(d)(4)

CBCC shares DPNR’s concerns about the time-change amendments to this section for major permits decisions, and we repeat their comments below:

“The proposed amendments to 12 VIC § 910(d)(4) seek to reduce the timeframe for the Committee to render its determination on a major permit application from 30 days to 15 days after the conclusion of the public hearing, to reduce the timeframe from 60 days to 30 days for the Commissioner to make a determination on a minor permit; it also seeks to change the Commissioner or Committee from being able to “act” on a permit to having them “approve or disapprove a major or minor permit application” respectively. The Department has very serious concerns regarding the proposed changes to this paragraph. With respect to the Committee making its decision 15 days after the conclusion of the public

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hearing, it must be understood that the public has seven days to submit written comments based on the testimony at the public hearing. If the comments are submitted on the seventh day, this leaves virtually no time for the staff to review the comments and assess any revised concerns following the public hearing. The thirty-day period following the public hearing gives the staff the opportunity to assess all comments and concerns. It is important to note that many decision meetings are held within the thirty-day period, but if the application receives a fair amount of comments, it is appropriate to have the full thirty days to make the determination. “

12 VIC § 910(d)(3) – intended shortening of public comment period from 30 to 15 days. CBCC is concerned that shortening the minor permit approval time to 30 days from 60 days does not leave sufficient time for public comment. 45 days would be a better compromise – and leave the 30-day comment period intact for public comments & neighbor inquiries, to assure this important viewpoint on application details.

Also, in practice, the current process of notifying people within a 150 feet radius of the applicant's property is flawed. It seems to depend on use of one of the Lt. Governor's Office's databases that has not been able to keep current with both ownership and mailing addresses in a timely fashion. Thus receipt of notices can be problematic. Neighborhood word of mouth is likely to be the primary notice – from the one or two people who do get the notices. Most of us do not get mail daily either, relying on picking it up at post boxes once a week. 15 days is too short to assure an opportunity for public input.

For major permits, section 910. D. 4, asking a volunteer committee to meet within a set 15-day period to make the permit decision, or forfeit their responsibility seems unreasonable. Furthermore, often there are changes by the applicant, or improved information, between the public hearing and the decision meeting. This info gets developed over the 30-day period and hopefully leads to a better planned development, and written permit development conditions. Reducing the time period by 15 days will not improve the decisions which lead to buildings that we will see every day for decades. Better development needs to be our common goal. The Committee still has the discretion to meet sooner, if conditions warrant.

I think we need to balance the desire to shorten the process, with the practicalities of a thorough staff review of major permits and time for public review of all permits. These are important elements of public policy that will serve residents in the Virgin Islands. It takes many months to put together all the permit application information, it will take some time to review them too. Perhaps you can shave off a few days from some of the longer processes, but if it's just going to be rubber-stamped because there is no time for review, or any time to receive and review comments from the public, why bother to have a permit process at all?

In Title 12, chapter 21, section 904, subsection (b), the new proposal to have DPNR Executive Branch officials sit on CZM committees that don't have a quorum is not consistent with the Act's purpose to have public participation and members of the public make the decisions with DPNR advice. Furthermore, the path of least resistance, since the CZM Director proposes the hearing dates, is to not be overly concerned about choosing a date that convenient for all committee members, since there is an alternate easy internal path. But this contravenes the purpose of the committees – and the need for enough commission members that an actual discussion about the breadth of concerns for a major

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development can be discussed. Instead, we suggest that members of the other two committees can be invited by the sitting committee to join them for a particular permit application review. (Travel expenses intra island could be covered by law.)

If committees cannot be filled this way for a project, then perhaps the law should say that all permit application reviews and approvals are suspended until a quorum is met. It is the duty of the Governor and the Legislature to be sure there are functioning CZM committees. Scheduling becomes much more difficult if the deadlines are shortened, since there is, by definition, fewer day and less advance notice. Adding two more committee members, so 4 is a quorum might be easier to accomplish. Another approach would be to have 6 to 12 or more predetermined hearing dates scheduled for each Committee during the year, and make the applications comply with that timing.

A section has been added to Title 12, chapter 21, section 910(c) paragraph (2) wisely allowing the commissioner to determine that a minor permit application should become a major permit. However usually a major permit requires more studies and analysis than a minor permit, so it is likely in this situation that it cannot be deemed a complete major permit application (even if it was deemed complete for a minor application). Suggested additional words in caps: "..., determines that the proposed activity is likely to have significant adverse environmental consequences he **SHALL REVIEW FOR COMPLETENESS AS A MAJOR CZM PERMIT, AND IF COMPLETE**, and upon giving notice to the applicant, forward such application to the appropriate Committee of the Commission for review as a major coastal zone permit."

Perhaps beyond the scope of this legislation's intentions, there are substantial improvements that could be made to the CZM and other DPNR building permit processes that would cut down the total time and effort that it takes to get permits --such as reducing the number of forms, and having the CZM process for minor permits be integrated with and on the same timeframe with the building permit process, rather than being done serially. This would save people about a month minimum and they could pick up both permits in one trip. Also in 2012 and before, it was not necessary to get a building permit in Tier 1 for a road or stormwater management improvement/repair – only a CZM permit or waiver of permit was required then. This has changed and a building permit is also required, no matter how small a project that uses any stabilizing material like concrete. For instance, installing a \$2,000 curb or swale to direct stormwater needs both a CZM & a building permit, thus incurring costs higher than the actual construction costs -- in permit fees, engineering drawings, and time & trips to St. Thomas from St. John.

Some other improvements would help with permit self-enforcement – like mandating large permit signs on properties (as building permits is starting) , and making fully public all Notices of Violations issued and their settlement penalties. The legislation should make it clear that stop work orders and notices of violation and all aspects of the enforcement process are in the public domain. This would stop "the victims" of DPNR enforcement being the only communicators to the public about the reasons and the resolution. And enforcement could have its intended public purpose of showing that all are treated equally and fairly – rather than the current nonpublic enforcement which has the appearance of being selective.

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Thank you for your attention to updating and improving the CZM Act. Please be sure that it enhances public participation by neighbors and all, rather than thwarts participation by the public through shorter timeframes for public comment.

Sincerely,

(signed)

Sharon Coldren

President, CBCC