VIRGIN ISLANDS DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

October 2, 2025

ATTORNEY GENERAL OPINION

The Honorable Albert Bryan, Jr.
Governor of the Virgin Islands
Government House
Nos. 21-22 Kongens Gade
St. Thomas, VI 00802

Re: Request for Legal Opinion on CZM Permit Validity Pending Federal Approval

Dear Governor Bryan:

On September 10, 2025, you requested an Opinion from the Office of the Attorney General concerning the applicability of the deadline set forth in 12 V.I.C. 910(d)(7) to contingent coastal zone permits requiring approval from the federal government. The response is as follows:

Question Presented[1]

Whether a contingent coastal zone permit issued pursuant to 12 V.I.C. § 910(g) is subject to the twelve-month deadline for the commencement of development or construction set forth in 12 V.I.C. § 910(d)(7) prior to receipt of all requisite federal permits or approvals.

Answer

No. Considering the plain meaning of the relevant statutory language, the twelve-month deadline for the commencement of a proposed development or construction approved by a contingent coastal zone permit does not begin to run until all required federal permits or approvals are received.

[1] The question submitted in the Request for Legal Opinion has been restated in terms of the operative statutory language.

Discussion

Title 12, section 910(d)(7), of the Virgin Islands Code provides, in relevant part:

> *Any development or construction approved by a coastal zone permit shall be commenced within twelve months from the date such permit is issued*. Failure to commence development or construction within such period shall cause the permit to lapse and render it null and void unless an extension is granted by the appropriate Committee of the Commission or the Commissioner.

(emphasis added). Under the statute, the twelve-month deadline for the commencement of "development or construction approved by a coastal zone permit" begins to run "from the date such permit is issued." *Id.*

At the same time, 12 V.I.C. § 910(g) provides:

> Where the development or occupancy of trust lands or other submerged or filled lands, or other development in the coastal zone, requires separate and distinct approval from the United States Government or any agency, department, commission or bureau thereof, *the coastal zone permit shall be contingent upon receipt of all other such permits and approvals,* and no such development or occupancy shall commence prior to receipt of all of such permits and approvals.

(emphasis added).

Lastly, 12 V.I.C. § 911(e) states that:

> Any coastal zone permit which the appropriate Committee of the Commission or the Commissioner recommends for approval pursuant to this section, together with the recommended terms and conditions thereof, shall be forwarded by the Committee or Commissioner to the Governor for the Governor's approval or disapproval within thirty days following the Committee's or Commissioner's final action on the application for the coastal zone permit or the Board's decision on appeal to grant such a permit. The Governor's approval of any such permit or lease must be ratified by the Legislature of the United States Virgin Islands. *Upon approval and ratification of such permit, occupancy and any development proposed in connection therewith shall not commence until the permittee has complied with the requirements of the United States Army Corps of Engineers pursuant to Title 33 of the United States Code*.

(emphasis added).

Framed in terms of the operative statutory language, the relevant question is whether a proposed coastal zone development or construction has been "approved by a coastal zone permit" within the meaning of §910(d)(7) where that permit is "contingent upon receipt of [federal] permits and approvals" that have not yet been received.

I. Pursuant to the plain meaning of the statute, the twelve-month deadline for the commencement of development or construction set forth § 910(d)(7) does not begin to run until all required federal approvals are received

Considering the plain meaning of the statutory language, it is the Opinion of the Office of the Attorney General that a proposed coastal zone development or construction which has been granted a contingent coastal zone permit of the type described in §§ 910(g) and 911(e) has not been "approved by a coastal zone permit" within the meaning of § 910(d)(7)—and consequently, the twelve-month deadline for the commencement of development or construction does not begin to run—until the necessary federal permits and approvals are received.

When interpreting statutory text, the first step "is to determine whether the language at issue has a plain and unambiguous meaning." *One St. Peter, LLC v. Bd. of Land Use Appeals*, 67 V.I. 920, 924 (V.I. 2017) (quoting *In re L.O.F.,* 62 V.I. 655, 661 (V.I. 2015)). In doing so, words and phrases must be read in the context of the statute and construed according to the common and approved usage of the English language. *Id.* (citing 1 V.I.C. § 42). "The plainness or ambiguity of statutory language is determined [not only] by reference to the language itself, [but as well by] the specific context in which that language is used, and the broader context of the statute as a whole." *Yates v. United States*, 574 U.S. 528, 537 (2015).

Pursuant to 12 V.I.C. § 902 (u): "'Permit' means any license, certificate, approval, or other entitlement for use granted or denied by any public agency." Though the statute does not define the terms 'approve' or approval,' Merriam-Webster provides the following definition: "to give formal or official sanction;" with the word "sanction," in this sense, meaning "explicit or official approval, permission, or ratification."[2] According to the common and approved usage of these terms then, a coastal zone permit may only be said to 'approve' a proposed coastal zone development or construction within the meaning of § 910(d)(7) when that permit grants official permission to develop or construct in accordance with the proposal submitted.

With respect to coastal zone permits not requiring any separate and distinct federal approval, application of the plain language of § 910(d)(7) is straightforward. In such cases, once a coastal zone permit application is approved by the Commissioner (for minor coastal zone permits) or the appropriate Committee of the Commission (for major coastal zone permits) in accordance with § 910(d)(4), the applicant has received the full measure of approval required by law and is officially permitted to commence the proposed development or construction.[3] In these cases, there is no question that, upon issuance of the decision of the Commissioner or the appropriate Committee approving the application, the proposed development or construction has been

---

[2] *See* "Approve." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/approve. Accessed 30 Sep. 2025; *and* "Sanction." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/sanction. Accessed 30 Sep. 2025.

[3] In cases in which the decision of the Commissioner or appropriate Committee approving a proposed coastal zone development is appealed to the Board of Land Use Appeals, "the operation and effect of the Committee's or the Commissioner's action shall be stayed pending a decision on appeal." 12 V.I.C. § 910(d)(5).

"approved by a coastal zone permit" within the meaning of § 910(d)(7) and failure to commence development within twelve months renders the permit null and void unless an extension is granted.

By contrast, where proposed development or construction in the coastal zone "requires separate and distinct approval from [the federal government]," § 910(g) expressly provides that "the coastal zone permit shall be contingent upon receipt of all other such permits and approvals, and no such development or occupancy shall commence prior to receipt of all of such permits and approvals." Because the statute does not define the term 'contingent,' the meaning of this term must be construed according to its common and approved usage in the context of the statute. The 1982 edition of the American Heritage Dictionary[4] defines the word 'contingent' as follows: "1. Likely but not certain to occur; possible. 2. Dependent upon conditions or events not yet established; conditional…"[5]

Considered in the context of the statute as a whole, a proposed development or construction that has received a contingent permit does not constitute a "development or construction approved by a coastal zone permit" within the plain meaning of § 910(d)(7) because a contingent coastal zone permit does not grant official permission to develop or construct anything. *See United States v. San Juan Bay Marina*, 239 F.3d 400, 402-403 (1st Cir. 2001) ("A contingent permit does not allow construction to start until the permit conditions are met."). Indeed, §§ 910(g) and 911(e) expressly prohibit the commencement of any development or construction until the required federal permits and approvals are received. It is only once the necessary conditions have been satisfied, by obtaining the requisite federal permits and approvals, that the coastal zone permit *approves*—that is, officially sanctions or permits—the proposed development.

II. Regulations indicating that the deadline begins to run from the date a coastal zone permit is signed by the Committee or Commissioner contradict the plain meaning of the statute and are invalid

Additionally, the relevant regulations that may appear to indicate a different resolution of this issue are overbroad and contrary to the plain language of the statutory framework. 12 C.V.I.R. § 910-10(a)(4) states that "any development approved by a Coastal Zone Permit shall begin within twelve (12) months from the date such permit becomes effective…" In turn, § 910-10(a)(3) defines the effective date as "the date on which it is signed by the Committee or the Commissioner."

At first glance, this simple definition of the "effective date" of a coastal zone permit appears logically sound, at least as applied to coastal zone permits issued pursuant to 12 V.I.C. § 910 which do not require the approval of the Governor, the Legislature, or the federal government. Even in such cases, however, this definition fails to account for situations in which permitting decisions of the Committee or the Commissioner are appealed to the Board of Land Use Appeals. Given that "the *operation and effect* of the Committee's or the Commissioner's action shall be stayed pending a decision on appeal," a permit does not and cannot, by law, become 'effective'—in any ordinary

[4] Published shortly after the enactment of the Virgin Islands Coastal Zone Management Act in 1978.

[5] *See* "Contingent." American Heritage Dictionary, Houghton Mifflin Company, 1982.

and common sense of the word—on the date on which it is signed by the Committee or the Commissioner. *See* 12 V.I.C. § 910(d)(5) (emphasis added). Even if no appeal is filed with the Board, "[a]ny action by the appropriate Committee of the Commission or the Commissioner shall become final" only "*after* the forty-fifth day following a decision…" *Id.* (emphasis added).Even leaving aside the issue of federal approval, with respect to coastal zone permits for the development of occupancy of trust lands or other submerged or filled lands issued pursuant to 12 V.I.C. § 911, such permits have no legal effect, whatsoever, until they are approved by the Governor and ratified by the Legislature. In the terminology of the statute, a proposal for development of construction falling within the ambit of § 911 is not "approved by a coastal zone permit," even by the Government of the Virgin Islands, until it is approved and ratified by the Governor and the Legislature respectively. Because 12 C.V.I.R. § 910-10 purports to establish a deadline for the commencement of development or construction that is contrary to the deadline set forth in 12 V.I.C. § 910(d)(7), those sections of the regulation should be deemed null and void or, at least, wholly inapplicable to coastal zone permits issued pursuant to 12 V.I.C. § 911. *See Francis v. People of the Virgin Islands,* 54 V.I. 313, 319-20 (V.I. 2010) (explaining that "it is well established that administrative agencies may not enact regulations that contradict the plain language of their enabling statutes") (citations omitted).

Conclusion

Because the issuance of a coastal zone permit contingent upon the receipt of federal approvals or permits does not 'approve' any proposed development or construction in the common and ordinary sense of the word, a proposed coastal zone development which has been granted a contingent coastal zone permit of the type described in §§ 910(g) and 911(e) has not been "approved by a coastal zone permit" within the meaning of § 910(d)(7) until the necessary federal approvals and permits are received. Additionally, the relevant regulations indicating that the deadline for the commencement of development begins to run from the date a coastal zone permit is signed by the appropriate Committee or Commissioner are inapplicable, if not null and void, as they contradict the plain language of § 910. Accordingly, it is the position of the Office of the Attorney General that the twelve-month deadline for the commencement of development or construction set forth in the statute does not begin to run until any and all required federal approvals are received and the proposed development or construction is, unambiguously, "approved by a coastal zone permit" in accordance with plain meaning of the statute.

I trust that this answers your question, however, should you need further assistance please feel free to contact me.

Sincerely,

Gordon C. Rhea

Gordon C. Rhea, Esq.
Attorney General