

STATEMENT BEFORE THE 36TH LEGISLATURE ON BILL NO. 36-_____
BY THE VIRGIN ISLANDS COASTAL ZONE MANAGEMENT COMMISSION
AUGUST 28, 2025

Good morning Honorable Senate President Milton L. Potter, members of the 36th Legislature of the U. S. Virgin Islands, and the viewing and listening audiences. My name is May Adams Cornwall and I am the Chair of the Virgin Islands Coastal Zone Management (CZM) Commission and a member of the St. Croix CZM Committee.

I come before you today in my role as the Virgin Islands CZM Commission Chair. On Monday, August 18, I received a copy of the St. John CZM Committee letter signed by all members regarding *Opposition to Modification and Extension of Consolidated Major CZM Permit for the Summer's End Group, LLC – Upholding the Virgin Islands Code and CZM Process* dated and submitted to this body on August 15, 2025, as it relates to Bill No. 36-_____. This Bill was submitted to the Legislature on July 31, 2025, by the Honorable Governor Albert Bryan, Jr. for your ratification of the approval of the Modification and Extension of Consolidated Major Coastal Zone Management Permit Nos. CZJ-04-14(W) and CZJ-03-14(L), issued to the Summer's End Group, LLC, for continued development of the Summer's End Marina project in Coral Bay, St. John.

Upon my request, I received the transmittal letters and the draft Bill from the Office of the Senate President this past Monday, August 25. In addition to this short turnaround time, the CZM Commission lacks access to independent legal counsel to review and advise the Commission. Notwithstanding, I stand in support of the St. John CZM Committee's opposition to approval and ratification of this permit modification and extension and will endeavor to the best of my ability to represent the VI CZM Commission's position on this matter before the 36th Legislature.

Accordingly, I will focus my statement on two overarching legal and procedural deficiencies.

1. The previously approved consolidated CZM permit has expired. Additionally, the Applicant's failure to adhere to permit conditions has rendered the permit null and void;

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hence, there is no existing valid CZM permit for this project to extend and/or modify. *The St. John CZM Committee is the only legal body with the statutory authority to extend and/or, in this case, reinstate and extend, a CZM permit based on the facts, extenuating circumstances, and good cause to do so.* To do so, would require the Applicant to submit proposed project modifications with the requisite supporting documents to the St. John CZM Committee. At the time of this reading, the St. John CZM Committee has not received any such request to reinstate and extend the permit.

2. There is no provision in the CZM law that permits the Governor to unilaterally and administratively modify or extend an expired or null and void CZM permit. While it is not specifically cited or stated in the transmittal letter, the Governor's Office and this body may wish to rely on Section 911(g); however, this Section prefaces that *"In addition to any other powers of enforcement set forth in Section 913..."*. This request for modification and extension is not related to an enforcement action pursuant to Section 913, as this project is not currently permitted and work has not begun. The enforcement prerequisite enables the Governor to modify or revoke a permit for work in progress and provides 30-day window to expedite corrective actions and to minimize negative impacts of the "ongoing" work.

In 2019, then Senate President Novell E. Francis and the members of the 33rd Legislature notified the Governor of numerous defects and stated that a related request from the Executive Branch to modify this same permit could not be ratified. More specifically, I quote, *"Pursuant to the Virgin Islands Coastal Zone Management Act, Virgin Islands Code, Title 12, Section 911 (e), the Legislature may ratify the Governor's approval of only those coastal zone permits that have been duly approved by the appropriate Coastal Zone Management Committee. However, the permit transmitted to the Legislature was not approved by the St. John Committee of the Virgin Islands Coastal Zone Management Commission (the St. John Committee).*

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The letter goes on to reiterate that *the modifications of the current proposed project have not been properly submitted and reviewed by the St. John CZM Committee as required by law; thereby, rendering it impossible to determine if the project described and approved in the permit truly reflects or conforms to the applicant's current proposal for the development of a marina. The letter concluded that it was the consensus of the Legislature that the marina project proposed by Summer's End Group, LLC, has not been yet submitted for CZM review, thereby rendering this permit and all related processes invalid.* The VI CZM Commission agrees with the 33rd Legislature conclusion and finds it still applicable today – 5 years later.

In May 2025, the Honorable Jean-Pierre Oriol, Commissioner of the Department of Planning and Natural Resources, was credited with acknowledging in the VI Source *“that the St. John Committee of the Coastal Zone Management Board would have to approve this request to allow an extension of the permit.”* The VI CZM Commission agrees with Commissioner Oriol.

It appears that the 36th Legislature and the Governor may be relying on Section 911(g) entitled Modification and Revocation, which reads, **“In addition to any other powers of enforcement set forth in section 913 of this chapter, the Governor may modify or revoke any coastal zone permit that includes development or occupancy of trust lands or submerged or filled lands approved pursuant to this section upon a written determination that such action is in the public interest and that it is necessary to prevent significant environmental damage to coastal zone resources and to protect the public health, safety and general welfare. Such written determination shall be delivered both to the permittee and to the Legislature, together with a statement of the reasons therefor. It shall state the effective date of such modification or revocation and shall provide a reasonable time in which the permittee or lessee either may correct the deficiencies stated in such written determination or may establish, to the Governor's satisfaction, that any or all of the deficiencies or reasons stated therein are incorrect. If the permittee shall fail to correct or establish the inaccuracy of such deficiencies or reasons within the time provided in such written determination, the modification or revocation of such occupancy permit shall be effective as of**

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the date stated therein; provided, however, that the Legislature, shall ratify the Governor's action within thirty days after said effective date. The failure of the Legislature, either to ratify or rescind the Governor's action within said thirty-day period shall constitute a ratification of the Governor's action.

A cursory review of Section 913. Enforcement, Penalties, and Judicial Review reveals that the intent to this section is the enforcement of approved permit conditions, issuance of penalties, and opportunity for judicial review to ensure that ongoing activities and work is in accordance with the approved CZM permit, including the CZM Commission's permission to enter the project site and have access to records. There is no established project site and there are no ongoing activities or work that require enforcement action to prevent significant environmental damage to coastal zone resources and to protect the public health, safety and general welfare. This section should not be interpreted to justify project modifications that have not been reviewed by the St. John CZM Committee or to extend an expired CZM permit. All of the project modifications are specifically in response to the federal and territorial permitting processes, not in response to any enforcement action. Further, the 30-day period for the Legislature to ratify or rescind is arguably to expedite corrective action and, thereby, minimize environmental damage, none of which apply in this case.

As I was doing my limited research, I kept asking myself why what is the justification for bypassing the St. John CZM Committee and, thereby, the Virgin Islands law and CZM permit process? Honestly, I have my doubts about the reasons purported to bypass the St. John CZM Committee - specifically to avoid misalignment with federal permitting process and to avert financial risk. Truth be told, the continuing misalignment for the past 5 years appears due, in total part, to the Applicant's failure to simultaneously submit project modifications to USACE and the St. John CZM Committee. Equally disturbing is the Applicant's failure to comply with CZM permit conditions, to timely request extension before expiration (2020), and to request reinstatement in the past 5 years since that expiration date.

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In May 2025, Chalise Summers, of Summer's End Group, LLC, is credited in the VI Source with writing that *"Once the federal agencies have finalized their review and specifically the environmental work, and with the support of the DPNR and territorial officials the territorial CZM permit will go through the process to be updated and extended to mirror the additional environmental work that is being added and incorporated into this project, the additional mitigation measures, the additional lands secured to make this possible, and the reduction in the size of the marina."*

This statement is inaccurate and implies that the St. John CZM Committee does not have the legal duty and responsibility or technical expertise to conduct its own technical review of the project modifications. The CZM permit does not "mirror" the USACE permit. Conversely, the USACE permit does not guarantee that the CZM permit will be reinstated, extended, modified, and approved. Further, we may surmise that her statement supports the CZM Commission position that the CZM permit is not required for the USACE permit to be issued. While we continue to wait for USACE to issue its permit, the St. John CZM Committee could be conducting its review of the proposed project modifications to facilitate the "alignment".

For a project where all federal agencies initially consulted by USACE previously found the EAR lacking and recommended "denial", "not to authorize", "not issue permit", and "to place the permit in abeyance" and the more recent August 15, 2024, EPA recommendation to USACE to deny the permit for this project, it would have behooved the Applicant to maintain communications and ensure "alignment" of the federal and territorial permitting processes over the past 5 years. It seems disingenuous now to use misalignment of permits to justify bypassing the St. John CZM Committee review.

To my knowledge, the Applicant has not provided any written evidence or proof of financing nor any written evidence of financial risks to this body. Honestly, I would venture to say there were

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financial risks in 2014 and in 2020. It comes with the territory, so to speak. That being said, I would argue that financing risks did not justify breaking or bending the laws of the Virgin Islands then, nor should it now.

So, let's take a few minutes to reflect on missed opportunities in hopes we can inform our collective decision today and protect the integrity of the CZM process into the future.

The Applicant **has** missed the opportunity to:

- Engage in open communications with CZM re: permit non-compliances and extension
- Act timely in accordance with the law to request permit reinstatement and extension
- Submit project modifications to align territorial and federal permitting processes
- Provide written evidence or proof of funding and financial risk

The Executive Branch **may** miss the opportunity to:

- Communicate, consult, collaborate, and gain approval of the CZM Commission
- Allow CZM Commission to objectively carry out its legal duties and responsibilities
- Utilize the St. John CZM Committee's expertise to review the permit modifications
- Facilitate public involvement through the CZM permitting process

The Legislative Branch **should not** miss the opportunity to:

- Uphold the law, not break or bend it to correct or accommodate the Applicant's failure to adhere to the laws of the Virgin Islands
- Set the bar to balance economic development and environmental resource protection
- Hold all prospective developers to the same high standard of conduct and compliance

As I stated before, while the CZM Commission does not have independent legal counsel to review this matter, I respectfully urge this body to engage its legal counsel's opinion before acting on this request. It is the position of the VI CZM Commission that the 36th Legislature

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should either return this request for legal deficiencies as the 33rd Legislature did because it is not properly before this body OR it should rescind the Governor's approval of the permit modifications and extension within the 30-day timeframe.

As I wind down, I am reminded of the pledge I made to this body and the people of the Virgin Islands in my confirmation hearing. I stated then, if confirmed, I pledge to

- Utilize my technical and engineering knowledge, communication skills, work experience, and resources management expertise to comprehensively review proposed projects
- Exercise due diligence and integrity to assess, evaluate, and balance community and economic development needs with environmental and public health risks
- Apply permit conditions that avoid, minimize, and/or mitigate potential adverse effects and that increase the sustainability and build the resilience of our coastal resources
- Work closely, collaboratively and respectfully with the other CZM commissioners to achieve the very best outcomes we can for the people of the United States Virgin Islands

None of the VI CZM Commission members agreed to serve to be derelict of our duties and responsibilities to serve in the best interest of the public and our environment. Therefore, we stand united before this body today to honor those duties and responsibilities. On behalf of the VI CZM Commission, I would like to thank you for allowing me to testify on this Bill and I remain available to answer any questions you may have at this time.

Submitted by May Adams Cornwall

Chair

Virgin Islands Coastal Zone Commission