

Marine Estate Administration Policy



Contents

1. Commencement of this policy	3
2. Interpretation.....	3
3. Policy Aims.....	4
4. Values of the Marine Estate Administration Policy.....	5
5. General Principles of the Marine Estate Administration Policy	6
6. Environmental protection and mitigation for loss of biodiversity and ecosystem function	7
7. Climate Change Considerations.....	8
8. Disaster Risk Reduction Considerations.....	9
9. Planning and Administration of the Marine Estate.....	9
10. Types of Agreements	11
11. Public Rights of Access and Use	12
12. Types of structures and activities for which the seabed may be licenced or leased	12
13. Governance of Structures and Activities for which the Seabed may be licenced or leased	13
(i) Basis for the application of fees for the use of the seabed and punitive charges.....	13

1. Commencement of this policy

Cabinet approved the Marine Estate Administration Policy on the 24th June 2020. The Government of the Virgin Islands has over the years approved the use of the seabed and has subsequently entered into a number of licence and lease agreements, which govern the specific conditions that may apply in each instance. The policy acknowledges the fact that the duration, general terms and conditions are enshrined into a myriad of legally binding instruments. Notwithstanding, the policy, where relevant, seeks to clarify future agreements and those which may be considered for renewal. Moreover, through the establishment of the Technical Review Committee (TRC) and adoption of the associated Terms of Reference on the 25th August 2022, Government aims to regularize general matters related to the administration of the seabed, reiterates the fundamental need to balance the integrity of natural resources against economic development, articulates the need to consider the manner in which climate change and disaster risk reduction should factor into decision-making with respect to the ongoing and future use of the seabed and asserts the need for the wise and rational management of this environmentally significant public good, which benefits the Virgin Islands, both socially and economically.

2. Interpretation

“Beach” - the zone where the accumulation of unconsolidated material (muds, sands, stones, gravels, shingles, coral fragments or boulders) extends seaward to the 20m bathymetric depth (unless depth of closure exceeds 20m) and landward to the place where there is a marked change in material, physiographic form, or to the line of permanent vegetation (usually the effective limit of storm waves), whichever is furthest landward.

“Berth” - a vessel's allotted place at a wharf or dock.

“Breakwater” - a barrier built out into the sea to protect a coast or harbour from the force of waves.

“Certificate of Non-Objection¹” – a certificate signed by an applicant seeking the grant of development permission under the Physical Planning Act, 2004, indicating that he has notified the owner of the land of his intent to develop and the owner has no objection.

“Coastline” - a line that forms the boundary between the land and the ocean.

“Development Fee” – fee applied for the exclusive, private or commercial use of the seabed by an applicant upon approval by Cabinet. The fee shall be applied on an annual basis.

“Easement”² – 1) right of way over another’s property, 2) means the right attached to a parcel of land which allows the proprietor of the parcel either to use the land of another in a particular manner or to restrict its use to a particular extent, but does not include a profit (the right to enter the land of another and take a particular substance from that land, including the soil or products of the soil).

¹ Virgin Islands Physical Planning Act, 2004, Section 24

² Land Registered Act, 1991, Chapter 229, Section 2

“Land” – includes land covered with water, all things growing on land and buildings and other things permanently affixed to land³ or means any corporeal hereditament including a building and other things permanently affixed to land and includes the foreshore, sea-bed and land covered by water within the boundaries of the territorial waters of the Territory; ⁴

“Jetty” - a landing stage or small pier at which boats can dock or be moored.

“Lease”⁵ – means the grant, with or without consideration, by the proprietor of land of the right to the exclusive possession of his land, and includes the right so granted and the instruments granting it, and also includes a sublease, but does not include an agreement for lease.

“Licence”⁶ – means a permission given by the proprietor of land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit.

“Marine Estate” – comprises the seabed and Territorial Waters vested in the Crown and is regarded as a public asset.

“Mooring” – a place where a boat or ship is moored including the ropes, chains, or anchors by or to which a boat, ship or buoy is moored. It may also represent a marked position identifying a location for repeat use with a device on the seabed, e.g., navigation lights.

“Reclamation” - the act of creating new land from the sea, or wetlands, or other water bodies, such as ponds, through infilling;

“Restoration” - measures taken to return a site to pre-violation conditions.

“Seabed” – the ground under the sea; the ocean floor.

“Territorial Waters” – synonymous with the “Virgin Islands waters” means the sea or other waters within the seaward limits of the territorial sea of the Virgin Islands; and waters landward of the baselines for measuring the breadth of its territorial sea.⁷

“Water Rights” – refers to the rights that may be attached to the use of adjacent bodies of water in the case of a landowner whose land borders navigable oceans. Landowners with littoral rights have unrestricted access to the waters but own the land only to the high water mark. After this point, the land is owned by the Crown. Water rights are appurtenant, meaning that they are attached to the land and not to the owner, and must be assigned by the Crown.

3. Policy Aims

The Ministry of Natural Resources and Labour recognises that the marine estate contains some of the Territory's most important areas for conservation and protection. These areas are also prized for leisure, commercial activities and development. It therefore, seeks to maintain the highest standards for its

³ Land Registered Act, 1991, Chapter 229, Section 2

⁴ Virgin Islands Physical Planning Act, 2004, Section 2

⁵ Land Registered Act, 1991, Chapter 229, Section 2

⁶ Land Registered Act, 1991, Chapter 229, Section 2

⁷ Merchant Shipping Act, 2001, Section 2(2)

assets by ensuring that management of these important areas is carried out in a responsible way with all necessary statutory consents, whilst deriving benefit from the consent(s) given.

The Ministry of Natural Resources and Labour has two key remits:

1. the stewardship role to conserve natural resources; and
2. the sustainable development of its assets to generate revenue and facilitate economic development.

The ecosystem services provided by natural systems have social and economic value. These ecosystem services include recreation, fisheries, aesthetics, tourism, maintenance of ecological integrity, and resilience to the impacts of climate change and other hazards. Therefore, proposed developments within the marine estate should not lead to unacceptable changes to these natural systems, which in turn will affect their social and economic value to be quantified over time.

The policy aims to achieve the following objectives:

1. Rationalise and standardize the allocation of the seabed for various uses within the context of the overarching sustainable development goals of the Virgin Islands;
2. Enhance the management and administrative framework related to the development and conservation of the Territory's marine estate.
3. Ensure that Virgin Islanders, residents and visitors have access and may benefit from recreational opportunities and other types of activities afforded within the Marine Estate.
4. Include disaster risk reduction and climate change considerations into the decision-making framework related to the use of the marine estate.

4. Values of the Marine Estate Administration Policy

The *Marine Estate Administration Policy* shall be underpinned by the following values and principles:

- 1) **Equity** - as provided by the Constitution of the Virgin Islands, current and future generations have a right to a clean and healthy environment that is protected. Every person has the right to an environment that is generally not harmful to his or her health, and as such, stakeholders should (a) prevent pollution and ecological degradation; and (b) promote conservation as far as is possible;
- 2) **Balance** - ecologically sustainable development will be pursued and use of natural resources secured while promoting justifiable economic and social development.
- 3) **Fairness** - administration of the public interest in the rational and sustainable management of the marine estate will be the objective, to ensure that the public's interests are weighed and accounted for in all decisions that are taken. In addition, there shall be standard principles relating to the manner that fees and procedures are applied to all stakeholders.

- 4) **Transparency** – there shall be clear and consistently applied guidelines to address all aspects of decision making and ongoing administration of the marine estate.

5. General Principles of the Marine Estate Administration Policy

The general principles to follow are based in part on the United Kingdom’s Crown Estate’s Guidance Note on decision making related to the use of the Marine Estate. In addition, local context has been enshrined into the principles for the effective administration of this important public asset.

- The Marine Estate is comprised of the territorial waters and seabed, which are vested in the Crown and are regarded as a public asset. The Marine Estate is a resource of Territorial importance.
- The Ministry of Natural Resources and Labour has a delegated duty on behalf of the Crown to manage the Marine Estate. The Ministry of Natural Resources, Labour, & Immigration has a duty to maintain and enhance the value of the Marine Estate and the return obtained from it with due regard to the requirements of good management.
- The Ministry of Natural Resources and Labour will consider each application for rights to use the seabed on its merits in keeping with its obligation to realise value and meet its good management duty.
- Fragmentation of ownership of the territorial seabed would potentially detrimentally impact national economic and security interests. It could impede the effective achievement of government regulation, such as environmental and marine conservation objectives. It would also compromise the future development and management of the asset. For these reasons, Government will retain ownership and grant rights by lease or licence.
- The segregation of the use of the marine estate by lease or licence should not further adversely affect public usage of the surrounding area for recreation or impede other commercial activities such as fishing.
- Emphasis on the public’s interest should be paramount, as the seabed and the marine estate is a public good. Whenever conflicts arise in terms of conflicting uses, public interests should be weighed heavier.
- Individuals or entities should not be allowed to lease the seabed for the sole purpose of excluding traditional and customary uses. Therefore, leases of the seabed will be limited solely for reclamations, marine renewable energy installations and development beyond the high water mark.
- For the avoidance of speculative reclamation, which can result in adverse environmental and social impacts, applicants must provide not only plans for the reclamation but also conceptual/schematic plans for the development on the reclamation.

- Determining factors for the award of any agreement should include an assessment of the irreversible damage or loss of biodiversity and the increased likelihood of impacts from environmental, climate change or hazard-related factors.
- Development within the marine estate may support the economic activity of the Virgin Islands by increasing the stock of land available for development or increasing recreational or other values. This however must be weighed against the possible environmental, social and wider economic impacts.
- Permission shall be required to install moorings and jetties and will be required to deposit any substance or object within the Territorial waters, either in the sea or on or under the sea bed, from— (a) any vehicle, vessel, aircraft or marine structure, (b) any container floating in the sea, or (c) any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea. Sinking of any vessel or floating container shall also require permission.
- The applicant must be able to prove ownership or consent of landowner(s) of the dry land parcel(s) adjacent to or from which a structure or asset is to be established on the basis of full disclosure of the planned development. Adjacent landowners have the right of first refusal for any development along the shore next to their property. When there is a shared water frontage, various mechanisms for conflict or negotiated solutions should be exhausted between the interested parties (joint ventures, swapping of development rights, and creation of easements and/or establishment of covenants). Additional allocation of seabed rights, which could conflict with existing allocated rights or for use of the seabed, should be avoided.
- Fees assessed in relation to the use of the marine estate will be based on the area affected by the use and not strictly the built footprint of the use only.

6. Environmental protection and mitigation for loss of biodiversity and ecosystem function

The protection of the environment is paramount in the development and utilisation of the marine estate. The placement of any asset and their continued operation should not result in environmental degradation within the Marine Estate. During the consideration of any development proposals, Environmental Impact Assessments will be conducted and will assist in identifying environmental impacts and mitigation measures. Moreover, ongoing operations post-development should also be addressed. Mitigation measures may include, but are not limited to:

1. Preventing damage to coastal and marine habitats;
2. Preventing dumping of garbage, solid or liquid waste;
3. Preventing discharge of sewage, especially through the provision or retrofitting of facilities for pump out and storage at commercial docks, jetties and marinas;
4. Preventing discharge of pollutants or hazardous substances into the marine estate;
5. Preventing noise or light pollution, especially within ecologically sensitive areas.

The developer shall bear the cost of the implementation of all agreed upon mitigation measures.

1. Impacts below a certain threshold value will not attract an environmental fee
2. If mitigation measures are required, the restoration costs will be fully borne by the developer. The capital required for the implementation of the mitigation measures may be paid into the Climate Change Trust Fund (CCTF) with administrative costs added. The CCTF will be responsible for dispersing such capital for implementation of any environmental management plan derived from actions required of the developer. The CCTF will employ its standard Monitoring, Reporting and Verification procedures to ensure that the mitigation works are delivered.

The Physical Planning Act, 2004 provides for the establishment of Environmental Protection Areas and Special Resource and Use Area. These areas, once declared, can take into account the presence of habitats of importance and define measures to ensure that proper measures are employed in maintaining and improving their value. Allocation and ongoing within the Marine Estate use would have to comply with management plans.

Government should establish a framework for monitoring of ecosystem services and values, as well as environmental change, which would support cost benefit analyses.

Determining factors for the award of any agreement for the use of the seabed should include an assessment of the irreversible damage or loss of biodiversity and the increased likelihood of impacts from environmental, climate change or hazard-related factors. Replenishment of damaged or loss marine habitats, such as coastal vegetation, mangroves, seagrasses, eroded dryland, sand dunes, etc. by applicants for use of the seabed should be considered during the review of applications.

7. Climate Change Considerations

Structures constructed and operated within the foreshore should not adversely impact natural habitats which comprise a part of the Territory's natural resilience to the impacts of climate change. Seagrasses, mangroves, coral reefs and salt ponds, must not be damaged or destroyed. Structures built within the Marine Estate should be designed and constructed taking into account projected climate change impacts, including, but not limited to, sea level rise and stronger storm surge impacts on the shore. Notwithstanding the foregoing, Government shall not be held liable for the loss of lands and structures or other impacts resulting from climate change.

Hazard events (storm, hurricane, fire, etc.) can result in damage or alteration to reclamations, jetties, breakwaters or other structures residing on the seabed. As a result, these structures may require restoration, relocation or removal depending on the nature and severity of the event or changes to the prevailing climatic or environmental conditions. Decision making with respect to the manner in which structures residing on the seabed are re-built, relocated or eliminated should be guided by technical assessments which review the feasibility and suitability of any actions and their effect on the Territory's resilience to Climate Change. Lessees or licencees are advised to consult with relevant technical bodies that may assist in this regard.

Offsite restoration and mitigation of systems impacted by proposed development should be employed as a measure only when and where the likelihood of success of the effort will result in undiminished

resilience to the impacts of climate change. Uses of the marine estate should be in keeping with the Climate Change Policy.

8. Disaster Risk Reduction Considerations

Development should not result in greater vulnerability to natural or manmade hazard/disaster events, unless the development's proponent (lessee) can mitigate and sustain such increased risk.

The Energy, Environment and Climate Adaptation (EECA) Committee under the National Disaster Management Council and chaired by the Ministry of Natural Resources and Labour can serve as a coordinating body for Disaster Risk Reduction matters under this policy.

Implementation of the policy in general should support the objects and provisions of the Disaster Management Act, 2003. Specifically, Part VII of the Act prescribes the preparation of Special Area Precautionary Plans for Specially Vulnerable Areas, which would need declaration and delimitation. Assets residing on the seabed proposed or existing in such areas need to adhere to the Precautionary Plans, which may include strategies, policies and standards for development and maintenance of structures.

Post-hazard event assessments undertaken by teams led by the Department of Disaster Management employ two important mechanisms, namely the *Damage Assessment and Needs Analysis* (immediately post-event) and the *After Action Reporting* (one month after) to assess impacts. Damage to the natural assets of the marine estate should be comprehensively integrated into all assessment processes so as to account for the damage to the environment and related loss of productivity.

Damage to assets built in the marine estate that are impacted by hazard events should be assessed either independently or by the national damage assessment teams as soon as practicable. The result of the assessment should be reported to the appropriate agency to guide the determination of the assets' long-term viability. Irreparable or substantial damage to built marine assets would require planning approval for their rehabilitation or reconstruction.

The Act allows for the designation of marine shelters, which provide safe havens during storms and other emergency events. Areas that serve as marine shelters should not be encumbered by leases, licences or agreements that may limit their functions and accessibility.

Insofar as possible, Government should prepare marine habitat restoration plans in order to improve the manner in which the aftermath of a disaster is addressed as part of the Disaster Risk Reduction framework for the Territory.

9. Planning and Administration of the Marine Estate

The Marine Estate Administration Policy shall be administered by the Technical Review Committee. The Technical Review Committee is a standing committee established by the Virgin Islands Cabinet on 24th August 2022 to provide technical and policy advice on sustainable use and development of the seabed and Crown land adjacent to the coast and beaches as well as to advise on sustainable use of the Exclusive Fisheries Zone, in keeping with applicable legislation, policies and principles of sound environmental management and sustainable development. The Committee is guided by a Terms of Reference (TOR) which identifies the governance and functions of the Committee.

The Technical Review Committee is comprised of thirteen (13) voting members from agencies that include:

Ministry/Department/Statutory Body	Voting Members
Ministry of Natural Resources and Labour	2
Land and Survey Department	1
Department of Agriculture and Fisheries	1
Department of Disaster Management	1
Virgin Islands Shipping Registry	1
British Virgin Islands Ports Authority	1
Environmental Health Division	1
National Parks Trust of the Virgin Islands	1
Virgin Islands Fire and Rescue Service	1
Department of Trade, Investment Promotions and Consumer Affairs	1
Royal Virgin Islands Police Force	1
Town & Country Planning Department	1

The policy should be guided by the availability of the best and most current data and information about the state of the resources and their value as well as broader socioeconomic conditions. Natural resource inventories, which catalogue key habitats of national importance to the fisheries, biodiversity conservation and tourism sectors should be established and kept current. Up to date data should inform environmental sensitivity and guide decisions regarding the costs and benefits of development within the marine estate.

All structures residing on the seabed shall be surveyed and included into National Geographic Information Systems (NGIS). Reclamations, in addition to their inclusion into the NGIS framework, shall form part of the cadastre after the lands are surveyed.

A **marine spatial plan** based on natural resource inventories and environmental sensitivity shall be developed to guide decision making regarding development within the Marine Estate. Synergy should also be sought with other important national planning processes and documents, such as the National Physical Development Plan and National Disaster Plan.

10. Types of Agreements

Three types of agreements are advanced under this policy: leases, licences and easements.

Easements may be conferred to adjacent land owners to facilitate access and navigation into and around adjoining docks and jetties (generally within zones A and B, as displayed below). All other rights besides rights of access in the easement area shall be retained by the Crown. Easements may also be granted to ensure public access to the coastline or unhindered access and navigation around other types of assets affixed to the seabed.

Licenses are instruments that grant permission to an individual or an entity to use the marine estate for a specific purpose such as installation of moorings, jetties and other structures and carrying out of permitted operations. Licenses do not convey an interest in real property. Leases convey an interest in real property and shall be applied for reclamations, marine renewable energy installations and development beyond the high water mark.

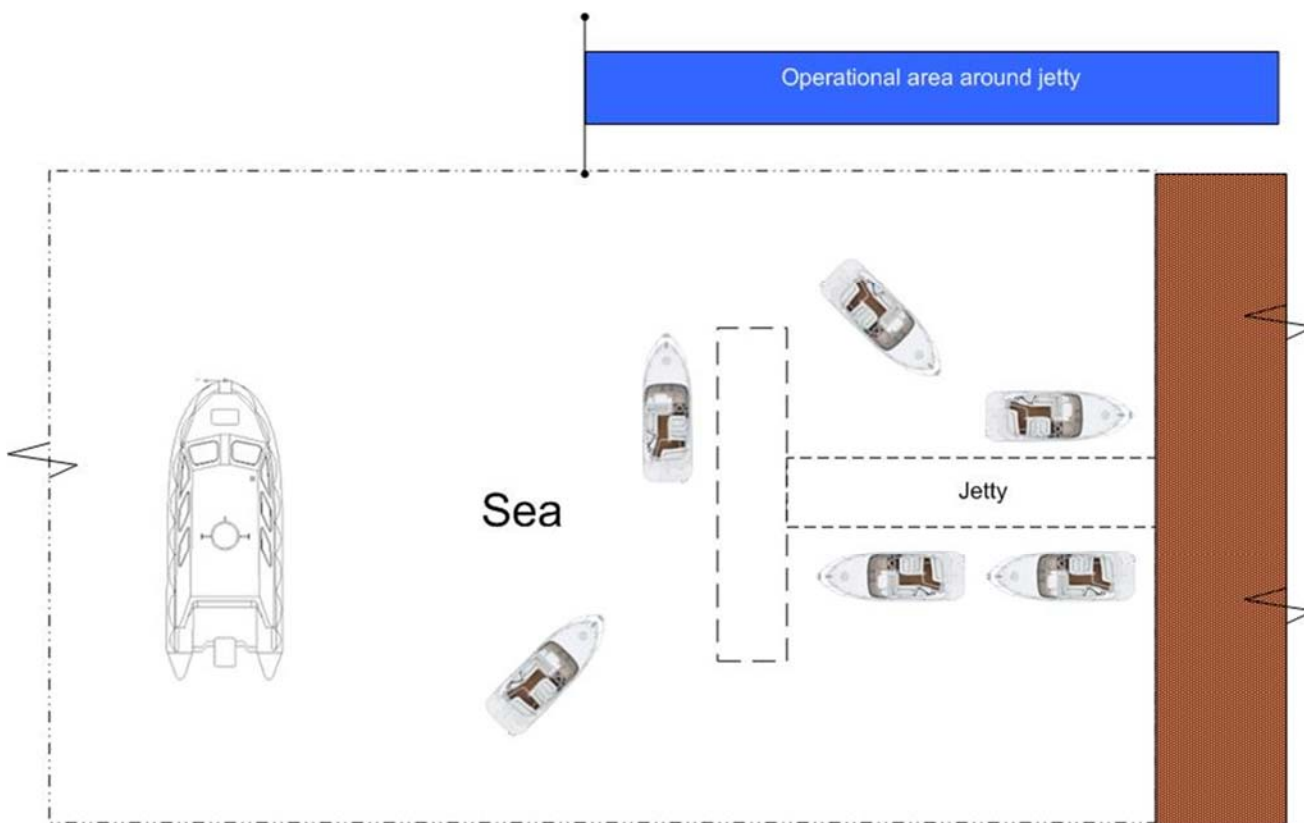


Figure 1

The table below outlines the characteristics of each type of agreement and the rights conferred.

Characteristics	Lease	Licence	Easement
Conveys an interest in real property	Yes	No	Yes
Revocable	No (usually)	Yes (usually)	No (usually)
Transferrable	Yes	No	Yes
Exclusive right	Yes	Optional	Optional
Applicability	Reclamations, marine renewable energy installations and development beyond the high water mark	Jetties, moorings and other types of structures	Facilitate unfettered access to assets under lease or licence or to continue traditional and customary uses through access by various stakeholders

Table 1. Types of agreements

11. Public Rights of Access and Use

The UN Convention on the Law of the Seas⁸ establishes a broad principle of the freedom of-the-seas doctrine, which essentially limits national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation's coastline, called the Territorial Sea. The remainder of the seas are proclaimed to be free to all and belonging to none.

In the context of the Virgin Islands, the marine estate belongs to the Crown. Inherently, therefore, there is a right to unimpeded navigation. Vessels in transit passage, however, must observe navigational safety, prohibition of vessel-source pollution and the conditions that vessels proceed without delay and without stopping except in distress situations and that they refrain from any threat or use of force.

The grant of seabed licences and easements does not preclude the rights of other stakeholders to enjoy, navigate, traverse or otherwise use the water column, unless otherwise stated. By default, a lease shall provide exclusive rights to the use of the seabed and that part of the water column occupied by the approved development (i.e. the development's footprint). A seabed licence or lease does not otherwise alienate any waters surrounding assets such as moorings, jetties or reclamations from other customary or traditional uses related to commerce or recreation. Stakeholders therefore, have rights to access and enjoy resources once they do not adversely impact on the rights of licencees and lessees to free and unhindered access to their assets.

12. Types of structures and activities for which the seabed may be licenced or leased

Any use of the seabed requires permission. Applicants may request permission for the use of the seabed for the following purposes:

- a. Moorings installation, including within hurricane shelters, excluding live aboard purposes
- b. Jetties and Docks, including floating
- c. Reclamations

⁸ http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm
Marine Estate Administration Policy

- d. Breakwaters and wave/current attenuation devices
- e. Dredging
- f. Floating platforms
- g. Marker and swim line buoys inside and outside of reserved Government harbours and ports⁹
- h. Fish Aggregation Devices
- i. Cables and pipelines
- j. Marine Renewable Energy Systems
- k. In-situ scientific monitoring stations
- l. Artificial reef formation
- m. Mariculture operations
- n. Recreational operations extending beyond the high water mark
- o. Any other development beyond the high water mark

13. Governance of Structures and Activities for which the Seabed may be licenced or leased

(i) Basis for the application of fees for the use of the seabed and punitive charges

Seabed licenses and leases may attract a development fee and an embedded environmental fee. Illegal development on the seabed will attract punitive charges.

Development fee

The Development Fee is based on the principle that the seabed, which is a common good and resource held by the Crown is being segregated for commercial or private use. This fee will be assessed for the rights of the use of the licensed or leased space. The common nature of access and benefits which may be derived by any stakeholder has now been segregated from public use for private or commercial benefit. The Crown (and by extension the public) should be compensated for the private or commercial right now being derived by the applicant.

Fees shall be applied for the use of the seabed for moorings, jetties, docks, breakwaters, reclamations and any other use. A new schedule of fees will be developed, which will aim to standardize the manner in which Government will charge for the use of the seabed. The Fee Structure, which will support the implementation of the policy, shall take into account the full area of the seabed affected by the use, including the operational area for jetties.

A standard fee for the use of moorings will be promulgated. The use of the seabed for jetties, docks, breakwaters, reclamation and other structures will be calculated on the square footage occupied by the structure plus the affected zone. In the case of jetties and docks, fee calculations will not be based on the estimated number of berths. Instead, fee calculations will be based on the square footage of the structure.

Environmental fee

⁹ The Ministry of Natural Resources and Labour, in considering these applications must consult the Virgin Islands Shipping Registry and the BVI Ports Authority where marker buoys may be installed for navigational purposes.

An *Environmental Fee* will comprise a component of the *Development Fee* and will be prorated within the Annual Ground Rent assessed for all assets under license or lease except moorings. The calculation of an Environmental Fee will be commensurate with the environmental impact and associated loss of ecosystem values. For instance, the pre-determined economic value of undisturbed or natural habitats on a per unit of measurement basis – square foot of coral reef or seagrass – will be used to assess the Environmental Fee to be applied to a development project.

If any development on the seabed requiring a license or lease proceeds without permission a punitive charge may be levied. If the action has caused environmental damage, penalties should be compounded based on the size of the area impacted by the unauthorized activity. The fine to be applied will be calculated based on a pre-assessed and standard value of the habitat applied to the total area affected by the activity. Therefore, pre-assessed values will be determined for mangroves, sea grasses, corals, salt ponds, sandy bottom, rock/rubble etc.

The punitive charge will apply irrespective of whether the development is subsequently allowed to proceed or not. If upon review, the development is allowed to proceed, the development fee will also be applied in addition to the punitive charge. The developer may be required to mitigate environmental impacts caused or restore sites especially in cases where the development is not allowed to proceed.

Resource driven considerations to establish costs for mitigating loss and restoring sites shall be established by law.

	Moorings	Jetties/Docks and Breakwaters	Other assets under License	Reclamations	Other assets under Lease
General Conditions	<p>Applicants can request the use of the seabed for private or commercial moorings, including swim line buoys. Applications should be accompanied by a survey map detailing the proposed location of the moorings. Individuals or entities licenced to operate commercial moorings must obtain a valid Trade Licence before the licence agreement can be finalized.</p> <p>Swim line buoys (demarcated by mooring buoys) must be approved in accordance with this policy. Justification for the installation of swim marker buoys must be provided at the time of application. The placement of swim marker buoys shall not result in the ‘privatisation’ of beaches</p> <p>Upon completion of the installation process, the licensee shall allow the NPTVI to verify that the location of the installed moorings or swim line buoys are in keeping with the approved location on the survey map submitted to and approved by Cabinet.</p> <p>Permanently anchored vessels (those without the ability to propel and residing in the same space for more than one (1) year on the seabed) shall be prohibited.</p>	<p>Applicants can request the use of the seabed for private or commercial jetties, docks or breakwaters. Individuals or entities with commercial jetties must have a valid Trade Licence to operate before the licence agreement can be finalized. Applications for the construction of jetties will be considered in tandem with any applications for the grant of development permission for associated shore side facilities by the Planning Authority.</p> <p>In the event that the land on which part of the jetty will be placed is not owned by the applicant a notarized letter from the land owner (certificate of non-objection) consenting to the proposed development is required. Development and use of the seabed exceeding a depth of fifty (50) feet should undergo greater review, as greater impacts and disturbance of the foreshore may be created.</p>		<p>Areas suitable for reclamation will be clearly demarcated in the Marine Spatial Plan. Applications for reclamation should comply with the Plan.</p> <p>Applicants are encouraged, very early in the process, to consult with the Town and Country Planning Department, the Environment & Seabed Units of the Ministry of Natural Resources, Labour and Immigration, and the Public Works Department regarding the feasibility of their plans. A conceptual plan should constitute part of the application submitted to the Ministry of Natural Resources, Labour & Immigration for the lease of the seabed.</p> <p>Permission should be sought and secured to dredge any material in tandem with the application for the use of the seabed to reclaim, with an environmental fee and royalties if sand is mined from the seabed.</p> <p>Upon completion of the technical review, the Ministry of Natural Resources, Labour & Immigration shall advance the application to Cabinet for a decision to:</p> <ol style="list-style-type: none"> 1. Issue an approval letter (a <i>Certificate of Non-Objection</i>, as required by section 24 of the Physical Planning Act); 	

	Vessels that are left either abandoned or being stored on anchor for a period exceeding 1 year should be removed at the owners' expense. No anchor areas should be established and penalties should be set for any infractions.			<p>2. Enter into an Interim Development Agreement with the developer contingent upon Planning and Building Authorities' approvals and prior to the commencement of any works; and,</p> <p>3. Issue a seabed lease upon completion of the reclamation project.</p> <p>The Interim Development Agreement would address, among other factors:</p> <p>(1) the general conditions guiding the reclamation (2) the maximum term for completion of the project (3) the start date for the payment of fees to the Ministry of Natural Resources, Labour & Immigration for the right to use the seabed for reclamation (4) penalties for the non-exercise to reclaim within the agreed upon period.</p> <p>The interim agreement shall be superseded by the lease upon completion of the project and the registration of the new parcel.</p>	
Public Access & Use	The public has a right to use surrounding waters and to freely enjoy the same without hindrance. Various types of users of waters (fishers, divers, recreationists etc.) should also generally not be hindered from use of the	There shall be no rights conferred for the public use of private docks, however access to the surrounding water column remains public. Marinas should allow for access		Intended purpose of the reclamation must be taken into account when determining the rights of the public to use and traverse reclaimed land. Most leases do provide for the public to traverse to make use of the sea.	

	foreshore or the resources contained therein.	and use within the context of its commercial activities.			
Rights Imposed by Adjacent Land Ownership	Shore side commercial interests or land ownership may be taken into consideration in the award of moorings, but may not be the sole determining factor. Equity, fairness and access by other stakeholders to the seabed may also be weighed in determining the allocation of moorings. The adjacent landowner has first preference to commercial or private moorings in the water in front of their property up to an extent to be defined in the Marine Spatial Plan. A letter of objection can be issued by the landowner if they do not want commercial moorings in front of their property.	Adjoining lands may be a determining factor in awarding licences for jetties and marinas without prejudicing the rights of other adjacent landowners and users to enjoy and derive benefit from the use of the foreshore. Under circumstances where the proposed installation of the jetty may result in environmental, social or economic impacts, such will be weighed in determining approval.		Ownership of the land immediately ahead of the foreshore may be a determining factor in establishing the ability to reclaim. Land owners will be given the first right to reclaim in front of their properties. Environmental, Disaster Risk Reduction and social factors will guide decision making on permission to reclaim including ability to mitigate for loss of biodiversity, implement disaster recovery measures and initiatives, conserve natural resources and ensure traditional access (which may include any customary, prevailing practices such as fishing, beach use, recreation, diving or any other reasonable use of coastal resources) to the foreshore and its resources by stakeholders.	
Navigational Access and Other Interests	The placement of moorings should not hinder navigation and access to existing jetties, marinas and channels. Government reserves the right to relocate moorings or revoke the licence in the interest of health and safety, navigation or to prevent environmental degradation.	Licencees should be able to establish no wake zones. The placement of a jetty should not conflict with navigation and access into harbours and bays.		No navigational issues arise.	
Water Depth Allowed	No dredging allowed. Moorings must conform to existing depth and should account for maximum vessel draft and navigational issues.	The grant of a dredging licence to facilitate a jetty or dock is not automatic. An applicant may be refused if water depth is not sufficient to accommodate		N/A	

		vessels without dredging or if environmental damage may not be mitigated or controlled.			
Application Process	Cabinet shall approve all applications for the use of the seabed. Applications for the installation of moorings should be lodged at the National Parks Trust of the Virgin Islands. Any other types of applications should be made to the Ministry of Natural Resources, Labour & Immigration. Applications for moorings are considered by the Technical Advisory Committee (TAC) chaired by the National Parks Trust. Other applications for the installation of jetties, docks reclamations and other assets are reviewed by the Environmental Unit of the Ministry of Natural Resources, Labour & Immigration and referred to the Technical Review Committee (TRC) chaired by that department. Increasingly, however, an integrated approach will be sought whereby all applications for the use of the seabed and terrestrial areas can be reviewed by a joint committee comprised of the Pre-Planning Committee under the Town & Country Planning Department, TAC and TRC. (Further detail on the reclamation application process is provided in Table 2).				
Financial Capacity	No demonstration of financial capacity required.	Applicants will need to demonstrate financial ability to complete within an approved time.		Applicants will need to demonstrate financial ability to complete the reclamation (including bulk heading) within an approved time.	
Commencement period of Agreements	A letter of approval once issued will require that a licence be executed within six months by the licensee. Renewal will be executed on an annual basis.	A letter of approval once issued will require that a licence and an Interim Development Agreement be executed within two months by the licensee after Planning Authority's approval.		A letter of approval once issued will require that an Interim Development Agreement be executed within three months by the licensee after Planning Authority's approval.	
Development Timeframe	Applicants must install moorings within three months of issuance of an approval letter. The National Parks Trust must be informed in writing when the mooring buoys have been installed, with the date of installation stated in such information and the name of the person or company who performed the installation. Moorings should only be installed by qualified personnel using approved techniques. The applicant must renew the seabed licence every 10 years.	Applicants must install permanent jetties and breakwaters within three years of approval prior to the revocation of permission upon Cabinet's approval. Visible notices of approval should be posted on site during the construction/development phase in order to facilitate	Applicants must install floating docks and all other assets approved within one year.	Applicants must complete reclamation within 3 years of approval. If the development has not been completed or taken place within the allowed development timeframe the Crown may exercise the option to repossess the area. Visible notices of approval should be posted on site during the construction/development phase in order to facilitate monitoring and compliance by Government agencies.	

	<p>Licence fees are due on an annual cycle. Failure to pay will result in the licence being revoked and the mooring(s) being removed after two years of non-payment.</p> <p>If the licensee decides to remove a mooring, permission must be sought from the Cabinet of the Virgin Islands through the NPTVI. Any request for the adjustment of the annual fee on the basis of the permanent removal will not be honoured otherwise. The seabed will thereafter be made available for use by other applicants. If a mooring buoy is permanently removed by the licensee, they must re-apply for any future installations.</p>	<p>monitoring and compliance by Government agencies.</p>			
Term of Agreements	<p>Mooring licences are to be awarded for a period of ten years. Payment is to be made annually for private and for commercial entities. A Trade Licence for commercial moorings will be required for any operations. An arrears fee after 21 days of the bill becoming due will be assessed at 5% per annum. If the fees are not paid year over, it shall be compounded. Non-payment of fees after two years shall result in a revocation of the licence.</p>	<p>If the adjoining lands are held in leasehold, then the licence will be issued only for the term remaining on the lease. The term for a licence for a jetty and breakwater is 40 years with the option of renewal. If an extension of a jetty, dock or breakwater is envisaged, the starting period for the same will be associated with the original date of issuance of a licence.</p>		<p>Leases for reclamations are awarded up to 99 years. If an extension of reclamation is envisaged, each parcel (original reclamation and each extension) may be governed by separate leases and terms in which case the starting period for the same will be associated with the original date of issuance of a lease.</p> <p>However, if the lessee wishes to amalgamate the parcels, then the new parcel will be subject to terms and conditions of a new re-negotiated lease. Under said circumstances, the value of the lease will reflect fair market value of the unimproved land at the time of</p>	

				renegotiation. Upon amalgamation, the period of commencement shall coincide with the date of the new agreement unless otherwise agreed upon.	
Commencement of the Application of Annual Seabed License Fees	Annual fees will apply three months after the issuance of the licence. A flat Development Fee will be assessed for all moorings.	Annual fees will apply after six (6) months after approval and issuance of the licence. The Development Fee will be assessed per square foot of asset installed/constructed. A separate fee may be assessed for the operational area surrounding a jetty. A schedule of fees is to be developed.		<p>Fees will be due upon the execution of the Interim Development Agreement. The Development Fee will be 25% of the unimproved value of the reclaimed acreage. This is founded on the principle that the approval grants the right to develop along the seabed and all other interests were excluded.</p> <p>At first instance, fees will apply up to the maximum area approved under the agreement. Final calculation of the annual fees will be undertaken after completion of the reclamation project and the final acreage calculation performed by Survey Department. Fees may be adjusted upwardly if the extent of the reclamation exceeds the approved area of the seabed.</p> <p>All related costs for undertaking surveys to establish the extent of land reclaimed under a seabed lease shall be assessed to the applicant at fair market value of the service rendered by the Survey Department as per the Lands Surveyors Regulations of 2005, Section 28 of the Lands Surveyor's Ordinance (CAP 215) Schedule 6, section J (professional services).</p>	

Rent Review	No rent review.	Rent shall be reviewed at first instance at the expiry of 10 years from the issuance of the licence. Thereafter, rent will be reviewed every 5 years.		The value of the reviewed lease may be based on 5% of the current unimproved market value of the land.	
Transfer of Leases and Licences and Sub-Letting	Licences are non-transferrable.	Licences are non-transferrable.		Leases are transferrable	2.5% of the fees collected
Changes to the extent or location of assets on the seabed	No variations to the terms and conditions of licences will be allowed. Movement of moorings must be approved by the Cabinet of the Virgin Islands.	Changes to the location and the extent of assets will require Cabinet and Planning Authority's approval.		Increases in size or extent will require Cabinet and Planning Authority's approval prior to implementation.	
Cessation of Agreements	<p>Agreements may be terminated with six months' notice of a breach to the terms and conditions if the licensee has not corrected the nature of the breach nor provided reasonable notice of their intent to correct any defect or change in the nature of the agreement. Notwithstanding a notice by the licensee to correct defects to the terms and conditions, the Ministry of Natural Resources, Labour & Immigration and NPTVI shall determine a reasonable period to correct any defects that result in short or long term adverse impacts to the environment. The Town and Country Planning Department shall determine a reasonable period to correct any defects in the design or size of development of jetties, docks and other assets and impose timeframes for the completion of works. The corrective measures shall be communicated to the licensees, who shall be bound to complete works or correct any issues within the stated period. Non-compliance shall result in the recommendation for termination of the agreement to the Cabinet and for costs to be recovered by BVIG.</p> <p>In cases of moorings, the NPTVI may withdraw the grant of a license to any licensee for non-payment of annual fees after two consecutive years upon approval by the Cabinet and as communicated to the licensee by way of reasonable notice thereafter. The licensee is liable for the cost of removal and the outstanding fees. Upon the end of the term of licences, the asset should be removed at the owner's expense, should there not be a new agreement in place.</p>			Termination of leases will be governed by the terms and conditions contained therein.	

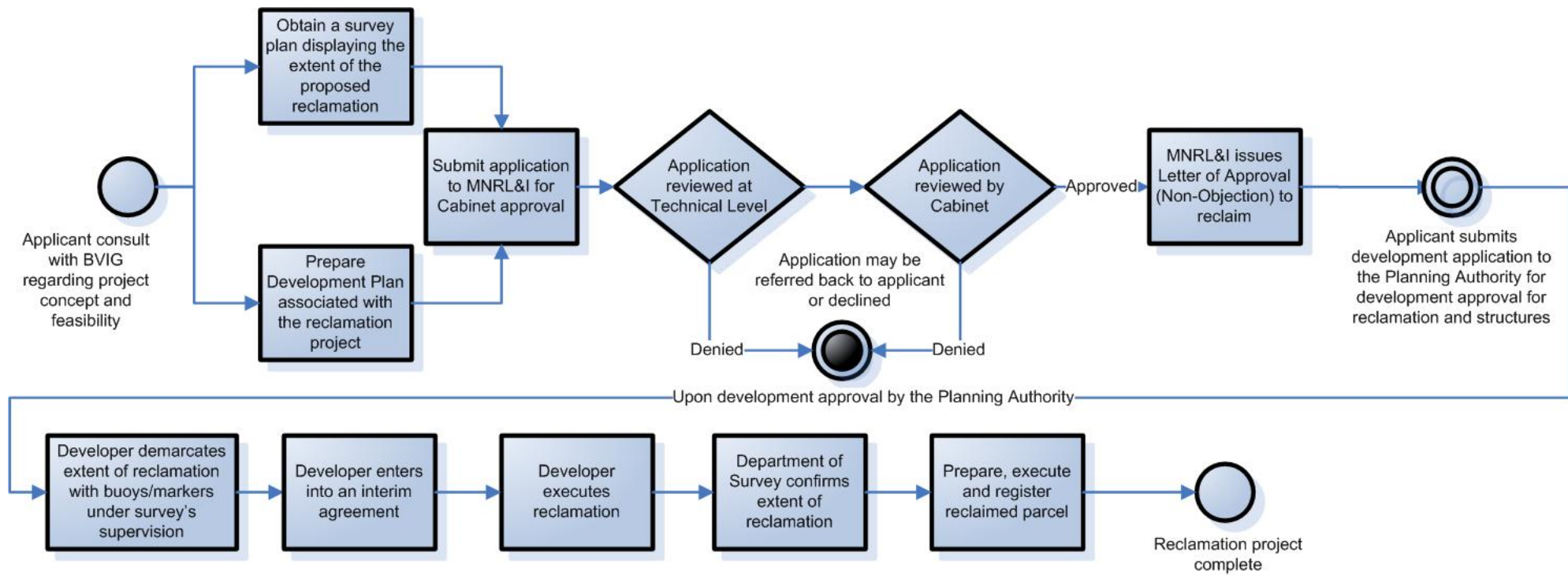


Figure 2 Application process for reclamation.