

New legislation aims to promote proper use of environment

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In December 2019 Parliament passed a package of environmental bills geared towards developing, reinforcing and strengthening the laws which promote and support the management, protection, enhancement and proper use of the Bahamian environment. This article provides an overview of the new legislation.

Environmental Planning and Protection Act

The Environmental Planning and Protection Act (EPPA) 2019 (40/2019), which came into operation on 20 January 2020, is one of the most notable new laws with respect to Bahamian real estate and development. The EPPA has not only established the Department of Environmental Planning and Protection and replaced the Bahamas Environment, Science and Technology Commission, it has also created provisions for ensuring the ease of doing responsible business by creating a streamlined process which requires individuals to obtain environmental clearances before commencing projects.

In order to regulate, monitor and control building projects and their subsequent environmental impact, Section 11 of the EPPA requires that no work on any project be commenced unless a certificate of environmental clearance has been issued. A 'project' is defined as:

any development that proposes a man-made change to the environment or any ecosystem, whether for business, sports or residential purposes, including a physical project, plan, program or policy of the private sector, government or any other entity that has not yet received final approval from all the relevant agencies.

According to the EPPA, where a person commences a project without first obtaining the requisite clearance, an offence is committed and that person is therefore liable either:

- upon summary conviction, to a fine of up to B\$5,000, up to one year's imprisonment or both; or
- upon conviction on information, to a fine of up to B\$10,000, up to three year's imprisonment or both.

Environmental Impact Assessment Regulations

The Ministry of the Environment and Housing has published subsequent supporting regulations. Under the powers conferred by Section 12 of the EPPA, the minister has issued the Environmental Impact Assessment Regulations (EIARs) 2020. The EIARs provide further guidance, outlining the procedures and defining the requirements and purpose of the certificate of environmental clearance. All persons seeking to commence or proceed with a proposed project must comply with the EIARs.

Procedure for proposed projects

The EIARs define a 'proposed project' or 'project' as any development, project, plan, programme or policy in the feasibility stage, including any demolition, abandonment, decommissioning, modification, addition or expansion of an existing project.

Any person intending to carry out a proposed project must submit to the Department of Environmental Planning and Protection:

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- an application for preliminary review of the proposed project, as set out in Part A of the First Schedule of the EIARs, and the requisite non-refundable fee; and
- an application for a certificate of environmental clearance in triplicate, as set out in Part A of the First Schedule of the EIARs.

The department will review the documents and determine whether an environmental impact assessment (EIA) and/or environmental management plan (EMP) or further studies are required. In the event that more information is required to reach a decision, the department may request such additional information in writing.

If an applicant disagrees with the department's decision, they may:

- appeal the decision in accordance with Regulation 21 of the EIARs; or
- withdraw the application for a certificate of environmental clearance.

The considerations for obtaining a certificate of environmental clearance may differ depending on numerous factors, such as:

- whether the applicant consists of solely Bahamian proprietors and investors or foreign investment of any amount is involved;
- the anticipated environmental impacts; and
- the level of public involvement.

If a project involves foreign investment, it is advisable that a letter, from the Bahamas Investment Authority, endorsing the project be submitted in support of the application. The application forms set out in Part A of the First Schedule of the EIARs also outline any additional supporting documents that should be submitted along with the application depending on the circumstances. For example, where the applicant is not the owner of the property, an authorisation letter from the property owner should be provided, supported by proof of ownership and a copy of a valid form of identification from the owner.

Requirements for certificates of environmental clearance

If the director of environmental planning and protection determines it necessary for an applicant to submit an EIA or EMP, the applicant should submit this electronically and in writing, as set out in the form in the Second Schedule of the EIARs. Following submission to the director, the applicant should, as soon as practicable, publish in any newspaper and any general circulation in The Bahamas a notice detailing that an EIA or EMP has been prepared in respect of the proposed project and submitted to the Department of Environmental Planning and Protection for review. The department will communicate its decision to the applicant within 60 days of the date of submission of the completed EIA or EMP.

If the director reviews the application and determines that an EIA or EMP is unnecessary or that all of the requirements for a certificate of environmental clearance are satisfied, the director may grant a certificate of environmental clearance which will set out the environmental clearance terms and conditions that must be complied with.

Compliance

The Department of Environmental Planning and Protection will continue to monitor a project to ensure compliance with all environmental clearance conditions during the construction and operational phases.

Comment

The Ministry of Environment and Housing has recognised the need for legislation that efficiently manages, enhances and promotes the proper use of the Bahamian environment. The EPPA and EIARs are steps in the right direction towards a formalised legal framework which establishes practical procedures and a system of environmental sustainability.

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