

**FINAL**

**THE ENVIRONMENTALLY SENSITIVE AREAS  
CONSERVATION AND MANAGEMENT ACT (2009)**

**Prepared for:**

**Ministry of Environment and National Development Unit  
Government of Mauritius**

**for the**

**Project on Environmentally Sensitive Areas  
in Mauritius and Rodrigues**

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# **The Environmentally Sensitive Areas Conservation and Management Act (2009)**

*Note: Text highlighted in yellow, such as the fine attached to a particular violation of law, is unique to the circumstances of Mauritius. For that reason, the consultant felt that these questions should be answered by those more familiar with Mauritius.*

## **PART 1 – PRELIMINARY**

### **1. Short Title**

This Act may be cited as the Environmentally Sensitive Areas Act 2009.

### **2. Interpretation**

- (1) “conserve” and “conservation” mean to use and the use of all methods and procedures that are necessary to maintain the natural functions, biodiversity, habitat and amenity of wildlife, national parks and other reserved lands. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat restoration, acquisition and maintenance, propagation, live trapping, and trans-plantation.
- (2) “discharge” means any discharge or discharge of a pollutant.
- (3) “discharge of a pollutant” means any addition of any pollutant or combination of pollutants to any underground or surface waters of the State from any:
  - (a) discernable, confined, or discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, container, or vessel, or
  - (b) any surface runoff from agricultural practices; or
  - (c) any discharges through pipes, sewers, or other conveyances that do not lead to treatment works.

The term does not include discharges of waste water, as that term is defined by the Waste Water Authority Act, through pipes, sewers, or other conveyances leading into treatment works.
- (4) “EIA” means environmental impact assessment;
- (5) “EIA Committee” means the EIA Committee established under section 22 of the Environment Protection Act 2002.
- (6) “ESA” means Environmentally Sensitive Area;

- (7) “ESA Map” means the map, produced by the Ministry of Environment and described in Section 7 of this Act, that identifies ESAs in Mauritius.
- (8) “Minister” means the Minister responsible for the subject of the environment;
- (9) “payment for environmental services” means any of the payments and programs included in Part V of this Act;
- (10) PER means preliminary environmental report;
- (11) “person” means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of a local or national government, municipality, or political subdivision, or of any foreign government; or any other entity subject to the jurisdiction of the Republic of Mauritius.
- (12) “pollutant” or “pollution” means any human-made or man-induced alteration of the physical, chemical, biological, or radiological integrity of water;

### **3. Application of Act**

This Act shall—

- (1) Bind the State, including any ministry, subagency, department or other division of a ministry, and any parastatal body thereof;
- (2) Apply to—
  - (a) The Republic of Mauritius; and
  - (b) any person.

## **PART II – ADMINISTRATION**

### **4. Powers of the Minister**

- (1) The Minister of Environment is charged with implementation of this Act and promulgating regulations consistent with section 42 of this Act.
- (2) Subject to any direction by the National Environmental Commission established under section 5 of the Environment Protection Act 2002, the Minister shall for the purposes of this Act—
  - (a) propose and develop policies for the conservation of ESAs;
  - (b) coordinate and monitor all programmes relating to ESAs, and where he deems necessary, issue directions to any public department or local authority for the promotion of such programmes;
  - (c) establish a prosecution unit within the ministry responsible for the subject of environment for the purpose of enforcing the provisions of this Act and any other provision of environmental law; and

- (d) promote the use of incentives, exchanges, and conservation easements for the conservation of ESAs on private land.

## **5. EIA Committee**

The EIA Committee shall provide a central coordinating role for the receipt and issuance of ESA Clearances, as described in Part III of this Act.

## **6. Consistency with other Acts**

To the extent that the provisions of other laws are stricter than those provided in this Act, the provisions of those other Acts shall prevail over the provisions of this Act.

# **PART III – ENVIRONMENTALLY SENSITIVE AREA CLEARANCE**

## **7. The ESA Map**

- (1) This Act gives the ESA Map, and the data that supports the ESA Map, the force of law for identifying the existence of ESAs on private land and State land.
- (2) The ESA Map identifies the ESAs within the Republic of Mauritius. In particular, it identifies—
  - (a) Category 1 ESAs—those ESAs which possess the high ecosystem services value; all adverse impacts must be avoided in Category 1 ESAs.
  - (b) Category 2 ESAs—those ESAs that possess moderate ecosystem services value; impacts to Category 2 ESAs may be allowed provided that the ESA is maintained in a healthy state and any impacts are offset by on-site mitigation that provides positive environmental impacts.
  - (c) Category 3 ESAs—those ESAs that possess low ecosystem services value; they will be managed for sustainable use, provided that all significant environmental impacts to Category 3 ESAs must be avoided.
- (3) No later than July 1 of each year, the Minister shall update the ESA Map based on the best available scientific information, including any monitoring reports such as EIA post-monitoring, water quality, and other relevant reports.

## **8. Applications for an ESA Clearance**

- (1) No development permit of any kind, including a Building and Land Use Permit, may be issued without the prior issuance of an ESA Clearance by the relevant agency or Ministry, as designated by the EIA Committee pursuant to Section 9.
- (2) Prior to applying for a development permit, a person (the “applicant”) must first apply to the EIA Committee for an ESA Clearance.
- (3) The application for an ESA Clearance must include:
  - (a) The precise boundaries of the property for which development is proposed;
  - (b) A copy of the title deed or lease;

- (c) A certificate issued by a notary expressing his opinion as to the ownership of the land on which the undertaking is to be executed, or where the proponent is not the owner of the land, by a written evidence of the permission of the owner, and a certificate issued by a notary expressing his opinions as to the owner's title.
- (d) A plan showing—
  - (i) existing and proposed buildings on the site, including setbacks (in metres) from boundaries, front and rear entrances, and current uses;
  - (ii) any existing or proposed fences, walls, swimming pools, and other structures or developments, including golf courses, hiking trails, or any other projects;
  - (iii) street frontage features, such as poles, trees, kerbs, crossings, handrails, and drains;
  - (iv) existing and proposed vehicular access to site; and
  - (v) existing and proposed on-site parking.
- (4) For clarity, the plan required subject to subsection 2(d) of this section is not intended to be a specific site plan required for purposes of obtaining a development permit; it is intended to allow the EIA Committee to provide guidance to the applicant prior to the preparation of specific site plans.

## **9. Review of Applications**

- (1) Within 15 days of receiving an application for an ESA Clearance, the EIA Committee shall review the information contained in the application and identify whether any ESA is on or near the property to be developed.
- (2) When identifying whether an ESA is on or near the property to be developed, the EIA Committee shall have reference to the ESA Map and, to the extent that the ESA Map does not adequately assist the EIA Committee in identifying whether an ESA is on or near the property to be developed, the EIA Committee shall conduct a site visit of the property to be developed. By applying for an ESA Clearance, the applicant grants the EIA Committee the right to enter the property that is the subject of the application for the purpose of identifying whether any ESA is on or near the property to be developed under this section.
- (3) The EIA Committee may delegate the responsibility to conduct the site visit described in subsection (2) of this section to the ministry or agency represented on the EIA Committee with the relevant expertise to conduct such site visit. The ministry or agency to which such responsibility is delegated shall report its findings to the EIA Committee.
- (5) Within 15 days of the site visit or careful review of the ESA map, described in subsection (2) of this section, the EIA Committee shall issue to the applicant an ESA Clearance that verifies that—

- (a) no ESA will be affected by the project; or
  - (b) an ESA of a particular type (e.g. river, coastal marshland, etc.) and categorization (Category 1, 2 or 3) may be affected by the project.
- (6) Upon a finding that an ESA is on or near the property to be developed, the EIA Committee shall—
- (a) inform the applicant that no EIA licence will be granted for an undertaking in or on a Category 1 ESA;
  - (b) inform the applicant of relevant laws, regulations, standards, and planning policy guidance that relates to that ESA.
  - (c) without prejudice to any conditions that may be imposed pursuant to Sections 16 to 25 of the Environment Protection Act 2002 concerning PER approvals and EIA licences, provide guidance to the applicant, when preparing site plans, architectural plans, and any other plans concerning a proposed development, on how to—
    - (i) avoid adverse effects to the natural functions, biodiversity, habitat and amenity of any Category 1 ESA;
    - (ii) ensure that any potential adverse effects to a Category 2 ESA are offset by beneficial environmental projects, such as restoration projects, on the same property; or
    - (iii) avoid potential significant adverse effects to a Category 3 ESA.

## **10. Submission of ESA Clearance**

The EIA Committee shall forward a copy of the ESA Clearance issued pursuant to section 9(5) of this section, including any guidance given to applicant pursuant to section 9(6) of this section, to the relevant local authority.

## **PART IV – CONSERVATION EASEMENTS**

### **11. Definitions**

In this section—

- (1) “Conservation easement” means a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations, in order to—
  - (a) maintain, conserve, or manage an ESA;
  - (b) maintain, conserve, or manage natural, scenic, or open-space values of real property;
  - (c) maintain, conserve, or manage real property for agricultural, forest, recreational, or open-space uses;
  - (d) conserve natural resources;

- (e) maintain or enhance air or water quality; or
  - (f) preserve the historical, architectural, archeological, or cultural aspects of real property.
- (2) “Holder” means:
- (a) a governmental body empowered to hold an interest in real property under the laws of the Republic of Mauritius; or
  - (b) a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include maintaining, conserving or managing ESAs of natural, scenic, or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.
- (3) “Third-party right of enforcement” means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

## **12. Creation, Conveyance, Acceptance, and Duration**

- (1) Except as otherwise provided in Part IV of this Act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

*Note: subsection (1) assumes that easements exist in Mauritian law. If not, then additional provisions are needed to describe how to modify and terminate conservation easements.*

- (2) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.
- (3) Except as provided in section 13(3), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.
- (4) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.
- (5) The ownership or attempted enforcement of rights held by the holder of an easement shall not subject such holder to any liability for any damage or injury that may be suffered by any person on the property or as a result of the condition of such property encumbered by a conservation easement.

### **13. Judicial Actions**

- (1) An action affecting a conservation easement may be brought in the Environment Appeal Tribunal by:
  - (a) an owner of an interest in the real property burdened by the easement;
  - (b) a holder of the easement;
  - (c) a person having a third-party right of enforcement; and
  - (d) a person authorized by other law.
- (2) The easement holder shall be a necessary party in any proceeding of or before any governmental agency which may result in a licence, permit, or order for any demolition, alteration, or construction on the property.
- (3) This article does not affect the power of a Tribunal or court to modify or terminate a conservation easement in accordance with the principles of law and equity.
- (4) Any party who is dissatisfied with the final decision of Tribunal, relating to an appeal, may appeal to the Supreme Court, consistent with the rules for appeal under Section 57 of the Environmental Protection Act 2002.

### **14. Validity**

A conservation easement is valid even though:

- (1) it is not appurtenant to an interest in real property;
- (2) it can be or has been assigned to another holder;
- (3) it is not of a character that has been recognized traditionally at common law;
- (4) it imposes a negative burden;
- (5) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (6) the benefit does not touch or concern real property; or
- (7) there is no privity of estate or of contract.

### **15. Applicability**

- (1) Part IV of this Act applies to any interest created after the Act's entry into force and which complies with Part IV of this Act, whether designated as a conservation easement or as a covenant, protective covenant, equitable servitude, restriction, easement, or otherwise.



- (2) Part IV of this Act applies to any interest created before the Act's entry into force, if such interest would have been enforceable had such interest been created after the Act's entry into force, unless retroactive application contravenes the Constitution or laws of the Republic of Mauritius.
- (3) Part IV of this Act does not invalidate any interest, whether designated as a conservation easement or as a covenant, protective covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of the Republic of Mauritius.

## **16. Uniformity of Application and Construction**

Part IV of this Act applies to easements created for a purpose included in Section 11 to the extent of any inconsistency with any other laws of the Republic of Mauritius.

## **17. Recording of Conservation Easements**

A conservation easement shall be recorded with the [Court/Ministry/authority where title is recorded] where the land is located.

## **18. Valuation of Conservation Easements**

- (1) Upon recording of a conservation easement, the [board of tax assessors] shall perform a revaluation of the encumbered real property so as to reflect the existence of the conservation easement.
- (2) The maximum value of a conservation easement is 50% of the diminished value of the property resulting from the conservation easement, or XX rupees, whichever is less.
- (3) Any owner who records a conservation easement and who is aggrieved by a revaluation or lack thereof under this section may appeal to the District Court.

## **19. Applying the Value of the Easement**

- (1) At the time the easement is created, the Parties, in consultation with the Minister [and the Minister of Finance], shall specify one of the following methods by which the landowner may benefit from the conservation easement—
  - (a) reduction in property tax imposed on the property covered by the conservation easement;
  - (b) reduction in income tax;
  - (c) reduction in excise taxes; or
  - (d) reduction in ad valorem or other taxes applied to the production of goods, provided that those goods are produced on the property covered by the conservation easement.
- (2) The landowner may use this benefit for a maximum of five years.

## **20. Transferability**

The tax benefits accruing from a conservation easement are not transferable to another taxpayer.

## **PART V—PAYMENT FOR ENVIRONMENTAL SERVICES**

### **21. Conservation Payments**

- (1) Where a landowner owns real property which contains an ESA, and such landowner is eligible to receive subsidies or other governmental benefits, such as agricultural price supports, loan credits, or export subsidies, such landowner may receive those subsidies or benefits only if the landowner—
  - (a) for a Category 1 ESA, avoids all adverse impacts;
  - (b) for a Category 2 ESA, avoids all adverse impacts from activities, unless expressly authorized subject to an EIA licence;
  - (c) for a Category 3 ESA, avoids all significant adverse impacts, and any activity causing such impacts is authorized by an EIA licence.
- (2) The landowner must submit an annual report to the Minister describing the actions taken from January 1 to December 31 of that year—
  - (a) to protect and manage the ESA, and
  - (b) that may have adversely affected the ESA.
- (3) Where the annual report referred to in subsection (2) of this section provides evidence that the ESA has been adversely affected beyond the limits acceptable for such ESA, and in any event not less than every two years, the Minister shall direct an authorised officer to inspect the ESA to ensure that it is not being adversely affected.
- (4) The authorised officer may access, with or without notice, a property for which a conservation payment is made for the purpose of determining compliance with this actions described in the subsection (2) of this section.
- (5) If the conditions of subsection (1) of this section are violated, the landowner will not be eligible for subsidies or any other governmental benefit of any kind for a period of 10 years.

### **22. ESA Benefits Program; Eligibility**

- (1) Where a landowner owns real property which contains an ESA, and such landowner is not eligible to receive subsidies or other governmental benefits, such as agricultural price supports or loan credits, such landowner may receive an ESA Benefits Payment, provided the conditions of this section are met.
- (2) A landowner who owns real property which contains an ESA may submit an application to obtain an ESA Benefits Payment to the Minister.
- (3) To be eligible for an ESA Benefits Payment, the landowner must—

- (a) have owned the property for more than one year prior to applying for an ESA Benefits Payment.
- (b) otherwise demonstrate that the property was not acquired for the purpose of obtaining an ESA Benefits Payment.
- (4) To be eligible for an ESA Benefits Payment, the landowner must prepare a management plan that—
  - (a) for a Category 1 ESA, includes actions that will be undertaken to avoid all impacts to the ESA and restoring the ESA;
  - (b) for a Category 2 ESA, includes actions that will be undertaken to enhance and restore the ESA with the goal of making the ESA a Category 1 ESA; or
  - (c) for a Category 3 ESA, includes actions that will be undertaken to enhance and restore the ESA with the goal of making the ESA a Category 2 ESA.

### **23. ESA Benefits Program; Management Plan**

- (1) The actions included in a management plan may include—
  - (a) establishing a barrier along the edge of a field to prevent agricultural waste, fertilizers, and other pollution from entering surface waters;
  - (b) increasing the size of a wetland;
  - (c) eliminating non-native species and replacing them with native species;
  - (d) establishing a buffer zone around an ESA for its conservation; and
  - (e) any other action that will lead to the long-term management of the ESA consistent with the conservation goals of this Act.
- (2) The management plan shall explain, and the Minister must agree, that the actions included in the management plan will lead to the long-term management of the ESA consistent with the conservation goals of this Act.

### **24. ESA Benefits Program; Payments**

- (1) Upon approval of a management plan that includes actions for the long-term conservation of an ESA, the landowner—
  - (a) for a Category 1 ESA, will receive up to **Rs XX.**
  - (b) for a Category 2 ESA, will receive up to **Rs XX.**
  - (c) for a Category 3 ESA, will receive up to **Rs XX.**
- (2) The amount of the payment to be paid to the landowner will be based on the following characteristics of the actions included in the management plan —
  - (a) their cost-effectiveness, implementation efficiency, and innovation;

- (b) their degree and effectiveness in treating priority resource concerns;
- (c) the number of resource concerns the actions will address;
- (d) the longevity of the actions' environmental benefits;
- (e) the actions' ability to assist producers in meeting regulatory requirements; and
- (f) other pertinent local considerations.

## **PART VI—ACQUISITION OF ESAs AND EXCHANGE OF LANDS**

### **25. Acquisitions**

- (1) Consistent with the State Lands Act and the Pas Géométriques Act, the Minister may acquire by purchase, donation, or eminent domain, lands or interests therein for the purpose of conserving and managing ESAs.
- (2) Notwithstanding subsection (1) of this section, the Minister may exercise the power of eminent domain only if necessary to—
  - (a) secure access to an ESA; or
  - (b) acquire a Category 1 ESA.
- (3) Lands and interests in lands acquired by the Minister pursuant to this Act shall, upon acceptance of title, become State lands. To the maximum extent possible, such lands shall be incorporated into a reserve, such under the Wildlife and National Parks Act 1993 or the Forests and Reserves Act 1983, and transferred to the appropriate agency.
- (4) The cost of purchasing any lands under this section may not exceed the fair market value of such lands. Prior to any purchase, the Minister shall obtain three appraisals from persons certified in the Republic of Mauritius to appraise real property. The fair market value shall be the average of the three appraisals.

### **26. Exchange of State Land**

- (1) Consistent with the State Lands Act and the Pas Géométriques Act, the Minister may authorise the exchange of any State land for non-State land that includes an ESA upon such terms and conditions as the Minister may approve.
- (2) Notwithstanding subsection (1) of this section, the lands exchanged must be of equal monetary value.
- (3) Prior to any exchange of State land or interests therein, the Minister shall determine that such exchange is in the public interest. When considering the public interest, the Minister shall give full consideration to the need to conserve an ESA to maintain environmental services as well as the need for lands for the

- economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife. The public interest value of the lands to be acquired in the exchange must exceed the public interest value of the lands to be exchanged.
- (4) The Minister shall not, under any circumstances, offer in an exchange any lands designated as, or including any, Category 1 or 2 ESA.

## **27. Exchange of State Land: Valuation**

- (1) Prior to the approval of any land exchange, the value of all lands that are part of the exchange must be appraised by three persons certified in the Republic of Mauritius to appraise real property. The fair market value of all lands involved in the exchange shall be the average of the three appraisals.
- (2) If within one hundred and eighty days after the submission of an appraisal or appraisals for review and approval by the Minister, the Minister concerned and the other party or parties involved cannot agree to accept the findings of the appraisal or appraisals, the appraisal or appraisals shall be submitted to an arbitrator appointed by the Minister from a list of arbitrators submitted to him by the Permanent Commercial Arbitration Court of the Mauritius Chamber of Commerce and Industry for arbitration to be conducted in accordance with the real estate valuation arbitration rules of the Permanent Commercial Arbitration Court of the Mauritius Chamber of Commerce and Industry. For purposes of exchanging lands under this Act, such arbitration shall be binding for a period not to exceed two years.
- (3) Within thirty days after the completion of the arbitration, the Minister and the other party or parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or withdraw from the exchange. A decision to withdraw from the exchange may be made by either the Minister concerned or the other party or parties involved.
- (4) The Minister concerned and the other party or parties involved in an exchange may mutually agree to suspend or modify any of the deadlines contained in this section, except that the two-year period concerning any arbitration over the fair market value of lands involved in an exchange may not be suspended or modified.

## **28. Transfer of Title**

All titles to be issued for land or interests therein to be acquired by the Republic of Mauritius and lands or interests therein to be transferred out of State ownership shall be issued simultaneously after the Minister has taken any necessary steps to assure that the Republic of Mauritius will receive acceptable title.

## 29. Exchange of State Land: Appraisal Regulations

- (1) The Minister shall adopt rules and regulations governing appraisals of lands and interests therein that reflect nationally or internationally recognized appraisal standards, provided, however, that rules and regulations shall ensure that—
  - (a) the same approved appraisal standards are used to appraise lands or interest therein being acquired by the State and lands or interests therein being transferred out of State ownership; and
  - (b) all costs and requirements of completing the exchange—such as land surveys and appraisals, mineral examinations, title searches, archeological surveys and salvage, removal of encumbrances, and arbitration pursuant to section 27—shall be shared equally by the Minister and all parties involved in the exchange.
- (2) Until such time as new rules and regulations governing appraisal of lands and interests therein are adopted pursuant to subsection (1) of this section, land exchanges may proceed in accordance with existing laws and regulations, and nothing in this Act shall be construed to require any delay in, or otherwise hinder, the processing and consummation of land exchanges pending adoption of such new rules and regulations. However, no purchases, donations, or exchanges of land or interests therein may occur if, after two years from the entry into force of this Act, no rules and regulations governing the appraisal of lands and interests therein have been adopted until such rules and regulations are adopted.
- (3) Notwithstanding the provisions of this Act and other applicable laws which require that exchanges of land or interests therein be for equal value, where the Minister concerned determines it is in the public interest and that the consummation of a particular exchange will be expedited thereby, the Minister concerned may exchange lands or interests therein which are of approximately equal value in cases where—
  - (a) the combined value of the lands or interests therein to be transferred from State ownership by the Minister concerned in such exchange is not more than Rs2,000,000; and
  - (b) the “approximate equal value” means—
    - (i) the difference in monetary value between the lands or interest to be acquired by the State and the lands or interests to be transferred out of State ownership does not exceed 3% the total value of lands and interests involved in the exchange; and
    - (ii) the comparative public interest value of the land, as described in section 24(3), is readily apparent and the public interest value of the lands to be acquired by the State exceeds that of the public interest value of the lands to be transferred out of State ownership.

- (4) Within 10 days of completing an agreement to exchange lands and interests therein, but at least 60 days before the actual exchange of the title, the Minister shall publish notice in two local newspapers of general publication that describes the details of the proposed exchange. The notice shall specify the address to which comments must be sent and the date by which such comments must be sent.
- (5) The Minister shall take any such comments into account in finalizing the exchange. The exchange shall not be completed until 30 days after receiving comments pursuant to subsection (4) of this section.

### **30. Qualified Conveyees**

No tract of land may be conveyed under this Act, whether by sale, exchange, or donation, to any person who is not a citizen of the Republic of Mauritius, or in the case of a corporation, is not subject to the laws of the Republic of Mauritius.

### **31. Conveyances**

- (1) The Minister shall issue all documents of conveyance after any disposal authorized by this Act. The Minister shall insert in any such document of conveyance he issues, except in the case of land exchanges, for which the provisions of sections 25 to 29 of this Act shall apply, such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest.
- (2) Notwithstanding subsection (1) of this section, a conveyance of lands by the Minister, subject to such terms, covenants, conditions, and reservations—
  - (a) shall not exempt the grantee from compliance with applicable law, regulation or Outline Scheme; and
  - (b) the Minister shall not make conveyances of State land containing terms and conditions that would, at the time of the conveyance, constitute a violation of any law, regulation, or Outline Scheme.

### **32. Reservation and Conveyance of Minerals**

- (1) All conveyances of title issued by the Minister, except those involving land exchanges provided for in section 24, shall reserve to the Republic of Mauritius all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Minister may prescribe, except that if the Minister makes the findings specified in subsection (2) of this section, the minerals may then be conveyed together with the surface to the prospective surface owner as provided in subsection (2) of this section.
- (2) The Minister, after consultation with the appropriate Ministers or agency heads, may convey mineral interests owned by the Republic of Mauritius where the



surface is or will be in non-State ownership, regardless of which agency may have administered the surface, if he finds—

- (a) that there are no known mineral values in the land, or
  - (b) that the reservation of the mineral rights in the Republic of Mauritius is interfering with or precluding appropriate non-mineral development of the land and that such development is a more beneficial use of the land than mineral development.
- (3) Conveyance of mineral interests pursuant to this section shall be made only to the existing or proposed record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.
- (4) Before considering an application for conveyance of mineral interests pursuant to this section—
- (a) the Minister shall require the deposit by the applicant of a sum of money which he deems sufficient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the character of the mineral deposits in the land, evaluating the data obtained under the exploratory program to determine the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance. However, if the administrative costs exceed the deposit, the applicant shall pay the outstanding amount, and, if the deposit exceeds the administrative costs, the applicant shall be given a credit for or refund of the excess; or
  - (b) the applicant, with the consent of the Secretary, shall have conducted, and submitted to the Secretary the results of, such an exploratory program, in accordance with standards promulgated by the Secretary.
- (5) Moneys paid to the Ministry for administrative costs pursuant to this subsection shall be paid to the agency which rendered the service and deposited to the appropriation then current.

## **PART VII– PERFORMANCE BONDS**

### **33. Filing with regulatory authority; scope; number and amount**

- (1) After a development permit has been approved but before such a permit is issued, the applicant shall file with the Ministry of Environment, on a form prescribed and furnished by the Minister of Environment, a bond for performance payable, as appropriate, to the Republic of Mauritius, and conditional upon faithful performance of all the requirements and conditions of the EIA licence related to an ESA. The bond shall cover that area of land to which the requirements and conditions of the EIA licence apply.
- (2) The amount of the bond required for each bonded area shall:
- (a) depend upon the requirements and conditions of the approved EIA licence;



- (b) reflect the probable difficulty of implementing the requirements and conditions of the EIA licence due to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the regulatory authority.
  - (c) be sufficient to ensure the completion of all requirements and conditions of the EIA licence if the work had to be performed by the Minister of Environment in the event of forfeiture or failure to complete the requirements and conditions of the EIA licence.
  - (d) be, at a minimum, **XX rupees**.
- (3) The amount of the bond required and the terms of each acceptance of the applicant's bond shall be adjusted by the Minister of Environment from time to time as affected land acreages are increased or decreased or where the cost of compliance with the requirements and conditions of the EIA licence changes.

#### **34. Liability period; execution**

- (1) Liability under the bond shall be for the duration of the project or until such time as the requirements and conditions are fully implemented.
- (2) The bond shall be executed by the holder of the EIA licence and a corporate surety licensed to do business in the Republic of Mauritius, except that the operator may elect to deposit cash, negotiable bonds of the Republic of Mauritius, or negotiable certificates of deposit of any bank organized or transacting business in the Republic of Mauritius. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

### **PART VIII – PENALTIES AND ENFORCEMENT**

#### **35. Powers of entry**

- (1) An authorised officer may, at any time, enter any premises other than a dwelling house, for the purposes of—
  - (a) carrying out any lawful direction given by any enforcing agency, or the Minister, under this Act; or
  - (b) determining compliance with any provision, regulation, conservation easement, or payment for environmental services under this Act;
- (2) An authorised officer shall not enter a dwelling house unless—
  - (a) he has given to the owner or occupier of the house 24 hours' notice in writing of his proposed entry; or
  - (b) he has obtained the consent of the owner or occupier of the house; or

- (c) a magistrate has issued a warrant, upon being satisfied that the authorised officer has reasonable grounds for believing that a violation of a provision, regulation, conservation easement, or payment for environmental services under this Act has occurred, authorizing the authorised officer to enter a dwelling house.
- (3) An authorised officer may on entering any premises—
- (a) require the owner to produce any records, documents or licences;
  - (b) examine any such records, documents or licences, and take copies or extracts from them;
  - (c) make plans, take photographs and carry out inspections;
  - (d) make tests, take measurements and samples, and inspect plants, machineries, equipments, vehicles and any other relevant property;
  - (e) require the owner of the premises entered upon, or any person employed by him, or any other person on the premises, to give to the authorised officer all reasonable assistance and to answer all reasonable questions either orally or in writing.
- (4) For the purposes of carrying out his duties under this section, the authorised officer may bring with him any person or equipment he considers necessary.

### **36. Authorised Officer to Produce Authority**

- (1) When exercising his duties under this Act, the authorised officer, other than a police officer, must—
- (a) hold a card signed by the Director showing his authority; and
  - (b) produce that card, upon request, to any affected person.
- (2) A police officer shall produce his warrant card as proof of his authority.

### **37. Obstruction of an Authorised Officer**

It shall be an offence for any person who, in relation to the exercise of powers conferred by this Act,—

- (1) refuses to allow an authorised officer to enter any premises or to take any person or equipment with him in the exercise of his powers;
- (2) obstructs or impedes an authorised officer in the exercise of any of his powers;
- (3) fails to provide assistance or information requested by the authorised officer; or
- (4) gives to an authorised officer any information which is false or misleading.

### **38. Penalties**

- (1) Any person who violates any provision of this Act, including any regulation promulgated pursuant to it, or a provision of a conservation easement or condition of a payment for environmental services, is guilty of an offence and—
  - (a) on a first conviction shall be liable for each offence for a fine not exceeding Rs50,000 and imprisonment for term not exceeding three months.
  - (b) on a second conviction shall be liable for each offence for a fine not exceeding Rs1,000,000 and imprisonment not exceeding nine months.
  - (c) for any subsequent conviction, shall have his or her land confiscated which shall become the property of the State, and the person shall be subject to imprisonment not exceeding 2 years for each offence.
- (2) Any personal property, including any vehicle, vessel, equipment, computers, or any other item, used to commit or aid in the commission of a violation of this Act shall be subject to forfeiture when a person has been found guilty of an offence.
- (3) Each violation of this Act shall be a separate offence, and in the case of continuing violation, each day's continuance shall be deemed to be a separate and distinct offence.
- (4) Any person who commits an offence under this Act shall restore the ESA to its state prior to the violation. If a violator does not restore an ESA to its prior state within a reasonable time of an order to do so, the Minister shall have the authority to restore the ESA to its state prior to the violation and the violator shall be liable to the Ministry for the cost of restoration.

### **39. Citizen Suits**

- (1) Except as provided in subsection (2) of this section, any person may commence a civil suit on his own behalf—
  - (a) to enjoin any person, including any governmental instrumentality or agency, who is alleged to be in violation of any provision of this Act, regulation issued under the authority thereof, or conservation easement or payment for environmental services authorised under this Act; or
  - (b) against the Minister where there is alleged a failure of the Minister to perform any act or duty under this Act which is not discretionary.
- (2) No action may be commenced under subsection (1) of this section—

- (a) prior to sixty days after written notice of the violation has been given to the Minister and to any alleged violator of any such provision or regulation, except in the case of an action brought to avoid significant adverse impacts to a Category 1 or 2 ESA; or
  - (b) if the Minister has commenced and is diligently prosecuting an action to impose a penalty pursuant to subsection (a) of this section.
- (3) The Environmental Appeal Tribunal shall have jurisdiction to hear any appeal brought under section (1) of this Act. In any appeal commenced under section (1)(b), the Environmental Appeal Tribunal shall compel the Minister to apply the provision in dispute if the Tribunal finds that the allegation is supported by substantial evidence.
- (4) In any such suit under this section in which the Republic of Mauritius or the Minister is not a party, the Attorney General, at the request of the Minister, may intervene on behalf of the Republic of Mauritius as a matter of right.
- (5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Minister).
- (6) Except as provided in this section, the rules and regulations of sections 55 through 58 of the Environment Protection Act 2002 shall apply to any appeal brought under section (1).

#### **40. Attorney Fees**

- (1) For the purposes of this section—
- (a) “appeal” means an appeal initiated under this Act, the Environment Protection Act 2002, or any other environmental law in which the position of the Republic of Mauritius is represented by counsel or otherwise, but excludes a hearing for the purpose of challenging the denial or renewal of a licence;
  - (b) “fees and other expenses” include the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the Tribunal to be necessary for the preparation of the party’s case, and reasonable attorney or agent fees. The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished.
  - (c) “party” means a person named or admitted as a party to the appeal who is—
    - (i) an individual whose net worth did not exceed **RsXXX** at the time the appeal was initiated, or

- (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed **RsXXX** at the time the adversary adjudication was initiated, and which had not more than 200 employees at the time the appeal was initiated; except that a non-profit, charitable organization may be a party regardless of its net worth or the number of its employees.
- (2) The Environmental Appeal Tribunal, after a final decision concerning an appeal against an agency, shall award to a prevailing party other than another agency of the Republic of Mauritius fees and other expenses incurred by that party in connection with that proceeding, unless the Tribunal finds that the position of the agency was substantially justified or that special circumstances make an award unjust. Whether or not the position of the agency was substantially justified shall be determined on the basis of the **administrative record**, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.
- (3) A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in the appeal, submit to the Tribunal an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the agency was not substantially justified. When the Republic of Mauritius appeals the underlying merits of the hearing, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made under this section until a final and unreviewable decision is rendered by the Tribunal or court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.
- (4) The Tribunal may reduce the amount to be awarded, or deny an award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy. The decision of the Tribunal under this section shall be made a part of the record containing the final decision of the agency and shall include written findings and conclusions and the reason or basis for those findings and conclusions.
- (5) If a party other than the Republic of Mauritius is dissatisfied with a determination of fees and other expenses made under subsection (2) or (4), that party may, within 30 days after the determination is made, appeal the determination to the Supreme Court to review the merits of the underlying decision of the Tribunal. The Supreme Court's determination on any appeal heard under this subsection shall be based solely on the factual record made before the Tribunal. The Supreme Court may modify the Tribunal's determination of fees and other expenses only if

the Supreme Court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by substantial evidence.

- (6) Fees and other expenses awarded under this subsection shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.
- (7) Each Minister shall report annually to the Cabinet on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this section. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Parliament in evaluating the scope and impact of such awards. Each Minister shall provide its report to the cabinet by June 30th of each year.

## **PART XX – MISCELLANEOUS PROVISIONS**

### **41. Consistency with Other Laws**

To the extent that the provisions of this Act conflict with the provisions of any other law, the provisions of this Act prevail.

### **42. Regulations**

The Minister may make any regulations necessary for carrying out the purposes of this Act.

### **43. Amendments**

- (1) The **Environment Protection Act 2002** is amended—

- (a) by deleting Paragraph 24 of Part B of the Fifth Schedule and replacing it with the following paragraph:

“Any undertaking that may adversely affect an ESA.”

*Comment: In this way, any undertaking (not just land clearing and development) affecting an ESA would require the preparation of an EIA. In addition, an undertaking in or near an ESA would require an EIA if it may adversely affect an ESA. This standard triggers an EIA based on the potential impact of the undertaking, not the type of undertaking. However, the list of specific undertakings should be retained in the Fifth Schedule in case there is a dispute about whether a particular undertaking may affect an ESA. The list provides an alternate means for requiring an EIA.*

- (b) In Section 3, by inserting in their appropriate places the following definitions:

“Direct effects” are caused by the undertaking and occur at the same time and place.

“Indirect effects” are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

“Cumulative effects “ are the impacts on the environment that result from the incremental impact of the undertaking when added to other past, present, and reasonably foreseeable future undertakings regardless of which ministry (or department) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant undertakings over a period of time.

“Connected undertakings” are closely related undertakings that must be discussed in the same EIA. Undertakings are connected if they:

- (a) automatically trigger other actions that may require environmental impact assessments.

- (b) cannot or will not proceed unless other undertakings are taken previously or simultaneously; or

- (c) are interdependent parts of a larger undertaking and depend on the larger undertaking for their justification.

- (c) In Section 3, by deleting the definition of “owner of a pollutant” and replacing it with the following:

“owner of a pollutant” means the owner or the person who has the charge, management or control of an activity, enterprise, or undertaking, including any subsequent owner or operator of such activity, enterprise or undertaking that was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment or similar means to any other person.

- (d) In Section 18(2)(f), by deleting the words “direct and indirect effects” and replacing them with the words “direct, indirect, and cumulative effects”.

- (e) In Section 18(2)(k), by inserting before the words “in which the undertaking” the following words:

“, and an assessment of its direct, indirect, and cumulative effect,”

- (f) In Section 21(1)(c), by inserting the following language:

- (c) Notwithstanding subsection 2(b), the Director shall submit comments to the EIA Committee that describe the mitigation measures, including the establishment of a buffer zone where appropriate, that must be adopted—

- (i) to avoid adverse effects to the natural functions, biodiversity, habitat and amenity of any Category 1 ESA;

- (ii) to ensure that any potential adverse effects to a Category 2 ESA are offset by beneficial environmental projects, such as restoration projects, on the same property; or
  - (iii) to avoid potential significant adverse effects to a Category 3 ESA.
- (g) by inserting the following language in Section 22(8) immediately following the words “under Section 21(1)(b)”:
- (c) In its recommendations to the Minister, the EIA Committee shall provide recommendations that describe the mitigation measures, including the establishment of a buffer zone where appropriate, that must be adopted—
  - (i) to avoid adverse effects to the natural functions, biodiversity, habitat and amenity of any Category 1 ESA;
  - (ii) to ensure that any potential adverse effects to a Category 2 ESA are offset by beneficial environmental projects, such as restoration projects, on the same property; or
  - (iii) to avoid potential significant adverse effects to a Category 3 ESA.
- (h) By deleting Section 23(2) and replacing it with the following:
  - (a) No EIA licence will be granted for any undertaking in or on a Category 1 ESA.
  - (b) The Minister may approve the issue of an EIA licence for an undertaking that may adversely affect an ESA only where mitigation measures, including the establishment of a buffer zone where appropriate, are incorporated into the EIA licence that—
    - (i) avoid all adverse effects to the natural functions, biodiversity, habitat and amenity of any Category 1 ESA;
    - (ii) ensure that any potential adverse effects to a Category 2 ESA are offset by beneficial environmental projects, such as restoration projects, on the same property; or
    - (iii) avoid potential significant adverse effects to a Category 3 ESA.
- (d) For undertakings not affecting an ESA, the Minister may—
  - (i) subject to section 24, approve the issue of an EIA licence on such terms and conditions as he may deem appropriate, provided that those terms and conditions include measures to mitigate the significant adverse effects of the undertaking; or



(ii) disapprove the EIA and reject the application.

(i) In Section 33, by inserting a new subsection (1)(d):

(1)(d) any measure taken to restore the environment to its previous state.

(j) In Section 38(1), by inserting immediately after the words “the environment” the following words:

“, protect the characteristics for which ESAs have been designated,”

(k) In Section 39(a), by inserting immediately after the words “by effluents” the following words:

“to protect public health, welfare and the environment, protect the characteristics for which ESAs have been designated, and to provide adequate safeguard for the quality of water, and”

(l) In Section 40(1), by inserting immediately after the words “health and welfare” the following words:

“, protect the characteristics for which ESAs have been designated,”

(m) In Section 42(3), by inserting immediately after the words “the environment” the following words:

“, protect the characteristics for which ESAs have been designated,”

(n) By deleting Section 52(1) and replacing it with the following:

“Subject to subsection (2), no person shall release, or cause to release, into the zone any pollutant, waste or other noxious substance (a) from or through the atmosphere, or (b) by dumping.”

(o) By deleting Section 52(1) and replacing it with the following:

“It shall be a defence to a prosecution under subsection (1) to prove that the release or dumping was due to or was rendered necessary by “force majeure” or for the protection of human life.

(p) In Section 54(1), by inserting a new subsection (f):

Any matter arising under this Act.

(2) The **Beach Authority Act 2002** is amended—

(a) in section 5(a)(i) by inserting immediately after the words “public beaches” the following:

“, including as a priority the restoration of public beaches through planting of native vegetation.”

(b) in section 5 by inserting a new paragraph (f) as follows:

“prohibit adverse impacts to the flora and fauna of a “public beach.”

(3) The **Pas Géométriques Act 1982** is amended—

(a) In Section 7(1), by inserting a new paragraph (b) as follows:

(b) In granting any lease pursuant to subsection (1) above, the Minister shall impose conditions in the lease:

(i) to avoid adverse effects to the natural functions, biodiversity, habitat and amenity of any Category 1 ESA;

(ii) to ensure that any potential adverse effects to a Category 2 ESA are offset by beneficial environmental projects, such as restoration projects, on the same property; or

(iii) to avoid potential significant adverse effects to a Category 3 ESA.

(c) To comply with the requirements of paragraph (b), the Minister shall consult with the EIA Committee.

(b) In Section 7(1), by renumbering paragraphs (b) and (c) as paragraphs (d) and (e).

(c) In Section 24A, by deleting subsection (2) and replacing it as follows:

(2) The Minister shall, no later than 12 months from the date of entry into force of this Act, identify all jetties, walls, fences, groins and other structures built or erected on any part of the Pas Géométriques without any right, title or capacity or without express authorisation.

(3) For all jetties, walls, fences, groins and other structures identified in subsection (2) above, the Minister shall require the lessee or occupant of the property on which the jetty, wall, fence, groin or other structure is built or erected to demolish and remove the jetty, wall, fence, groin or other structure in its entirety no later than 24 months from the date of entry into force of this Act.

(4) Where the lessee or occupant of the property on which the jetty, wall, fence, groin or other structure is built or erected does not remove the jetty, wall, fence, groin or other structure in its entirety within 24 months, the Minister shall cause the structure to be demolished and removed in its entirety no later than within 36 months from the date of entry into force of this Act. The Minister shall recover the costs of demolition and removal from the lessee or occupant of the property.

(d) In Section 24A, by renumbering subsection (3) as subsection (5).

(e) By adding a new Section 15 as follows:

Subject to sections 20 and 10(4) and any lease for the commercial production of timber, only native vegetation may be planted in the Pas Géométriques.

(4) The **Fisheries and Marine Resources Act 2007** is amended—

- (a) By adding immediately before Section 11 a new Section 10A to Part IV, “Control of Fishing Activities” as follows:
  - (1) The Minister shall ensure that quotas are based on the maximum sustainable yield for the fishery, as reduced by any relevant economic, social, or ecological factors.
  - (2) A fishery is “overfished” when the rate of fishing mortality jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.
  - (3) In the case of an overfished fishery, the Minister shall provide for rebuilding the fishery to a level consistent with producing the maximum sustainable yield in such fishery.
- (b) In Section 8(2), by inserting a new paragraph (c) immediately after paragraph (b) as follows:
  - (b) In the application described in paragraph (a), provide information that demonstrates that the proposed fish farm will not or is not likely to cause adverse impacts to an ESA.
- (c) By deleting section 8(5) and replacing it as follows:

After consideration of the application, any objection lodged under subsection (3) and any documents, clearances or representations made by the authorities specified in subsection (4)—

  - (a) The Permanent Secretary shall refuse the application unless the applicant—
    - (i) demonstrates that the fish farm will not adversely affect a Category 1 ESA;
    - (ii) agrees, where the fish farm will adversely affect a Category 2 ESA, to implement measures to restore or develop ESA resources that are the same as and contiguous to the ESA resource to be adversely affected;
    - (iii) agrees to mitigation measures to avoid significant adverse impacts to a Category 3 ESA.
  - (b) The Permanent Secretary may refuse the application for other reasons;
  - (c) The Permanent Secretary may grant the application subject to such terms and conditions as he may impose, and issue a written authorization to the applicant, upon payment of such fee as may be prescribed.
- (d) In section 12, by inserting paragraph (i) after paragraph (h) as follows:

(h) fish with any gear type or method, such as a bottom trawling, that may adversely affect a coral reef, seagrass bed, or any other ESA.

(e) By deleting section 23(1)(b) and replacing it with the following:

(b) The Permanent Secretary shall refuse the issuance of a permit under paragraph (a) unless the applicant, consistent with section 23(3)—

- (i) demonstrates that the activity proposed in paragraph (a) will not adversely affect a Category 1 ESA;
- (ii) agrees, where the activity proposed in paragraph (a) will adversely affect a Category 2 ESA, to implement measures to restore or develop ESA resources that are the same as and contiguous to the ESA resource to be adversely affected;
- (iii) agrees to mitigation measures to avoid significant adverse impacts to a Category 3 ESA.

(c) The Permanent Secretary may refuse the issuance of the permit under paragraph (a) for other reasons, consistent with any other provision of this Act or its regulations; or

(d) The Permanent Secretary may issue the permit under paragraph (a) subject to such terms and conditions as he thinks fit.

(5) The **Plant Protection Act 2006** is amended—

(a) In section 2, by deleting the definition of “pest” and replacing it with the following:

“pest” means “Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: (A) A protozoan. (B) A nonhuman animal. (C) A parasitic plant. (D) A bacterium. (E) A fungus. (F) A virus or viroid. (G) An infectious agent or other pathogen. (H) Any article similar to or allied with any of the articles specified in the preceding subparagraphs.”

(b) In section 5, by adding deleting paragraph (c) and replacing it with the following:

Protect endangered areas and “environmentally sensitive areas”, as that phrase is defined by section 2 of the Environmentally Sensitive Areas Conservation and Management Act 2009, from pests and, as a priority, designate, maintain and survey such areas to ensure they remain or become pest free areas or areas of low pest prevalence.

(6) The **Central Water Authority Act 1971** is amended—

(a) In Section 2, by deleting the definition of “polluted water” and replacing it with:

“pollution” means any human-made or man-induced alteration of the physical, chemical, biological, or radiological integrity of water;”

(b) In Section 2, by inserting in the appropriate place the following definitions:

“Discharge” means any discharge or discharge of a pollutant;

“Discharge of polluted water/a pollutant” means any addition of any pollutant or combination of pollutants to any underground or surface waters of the State from any:

(a) discernable, confined, or discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, container, or vessel, or

(b) any surface runoff from agricultural practices; or

(c) any discharges through pipes, sewers, or other conveyances that do not lead to treatment works.

The term does not include discharges of waste water, as that term is defined by the Waste Water Authority Act, through pipes, sewers, or other conveyances leading into treatment works.

(c) By deleting Section 46A(1) and replacing it with the following words:

“No person shall discharge a pollutant into any underground or surface waters, including the lagoon, of Mauritius.”

(7) The **Ground Water Act 1969** is amended—

In Section 4(2)(a) by inserting after the words “animal or plant” the following words:

“or ESA, as that phrase is defined by section 2 of the Environmentally Sensitive Areas Conservation and Management Act 2009.”

(8) The **Removal of Sand Act 1982** is amended—

(a) In section 6(1) by inserting after the words “observance of those conditions.” the following words:

“However, the Minister may not grant a lease if the removal of sand (a) will adversely affect a Category 1 ESA; (b) result in adverse impacts to a Category 2 ESA that are not mitigated by on-site beneficial environmental projects; or (c) will cause significant impacts to a Category 3 ESA.”

(b) In section 9(3) by inserting after the words “officer thinks fit.” the following words:

However, the authorised officer may not grant a permit if the removal of sand (a) will adversely affect a Category 1 ESA; (b) result in adverse impacts to a

Category 2 ESA that are not mitigated by on-site beneficial environmental projects; or (c) will cause significant impacts to a Category 3 ESA.

(9) The **Forests and Reserves Act 1983** is amended—

(a) In Section 2, by adding in the appropriate place the following definition:

“ESA” means environmentally sensitive area, as that phrase is defined by section 2 of the Environmentally Sensitive Areas Conservation and Management Act 2009.

(b) In Section 8(1), by adding after the words “may authorize” the following words:

“, subject to subsection 8(2),”

(c) by deleting section (2) and replacing it as follows:

(2) Notwithstanding subsection (1), the authorized officer—

(a) shall not authorize the owner or occupier of a mountain reserve or river reserve the authority to cut or remove trees—

(i) in a Category 1 ESA if cutting or removing trees will adversely affect the ESA;

(ii) in a Category 2 ESA if cutting or removing trees will adversely affect the ESA, unless the owner or occupier agrees to plant native vegetation or otherwise restore the ESA;

(iii) agrees to mitigation measures, such as planting native vegetation, to avoid significant adverse impacts to a Category 3 ESA.

(b) may impose such conditions on the grant of an authorization under subsection (1) as he thinks fit, including section 8—

(i) to enable forest officers to exercise proper control over the operations;

(ii) as to the security to be furnished by the owner or occupier for the payment of expenses incidental to any control exercised under paragraph (a);

(iii) concerning replanting of the land, especially the planting of native vegetation.

(10) The **Wildlife and National Parks Act 1993** is amended—

(a) In Section 2(1), by adding after the following definitions in their appropriate places:

“The term “conservation” means to use and the use of all methods and procedures that are necessary to maintain the natural functions, biodiversity, habitat and amenity of wildlife, national parks and other reserved lands. Such methods and procedures include, but are not limited to, all activities

associated with scientific resources management such as research, census, law enforcement, habitat restoration, acquisition and maintenance, propagation, live trapping, and trans-plantation.”

“ESA” means environmentally sensitive area, as that phrase is defined by section 2 of the Environmentally Sensitive Areas Conservation and Management Act 2009.

- (b) In Section 10(1)(a), by deleting the words “of land generally” and replacing them with the following words:

“of State and private land.”

- (c) By adding the following new Section 15A immediately before Section 15 in Part V:

“(1) The provisions of Part V apply on State and private lands.”

(2) All provisions of Part VII concerning offences and powers to enforce this Act apply on State and private lands.

- (11) The **Local Government Act 2003** is amended—

- (a) In Section 98(3) by inserting a new paragraph (d) as follows:

“the Environment Protection Act 2002.”

- (b) In Section 98(6), by deleting the words “2 weeks” and replacing them with “15 business days”.

- (c) In Section 98(6)(a)(ii), by inserting the following words after “EIA licence”:

“obtained in accordance with the relevant provisions of the Environment Protection Act 2002.”

- (d) In Section 98(7), by deleting the words “3 days” and replacing them with “10 business days”.

- (e) In Section 98(7)(a)(ii), by inserting the following words after “EIA licence”:

“obtained in accordance with the relevant provisions of the Environment Protection Act 2002.”

- (12) The **Investment Promotion Act 2000** is amended—

- (a) In Section 16, by inserting a new paragraph (2) as follows:

“(2) Prior to submitting an application for an IRS certificate or a RES certificate, the investor must first have an EIA licence approved in accordance with the relevant provisions of the Environment Protection Act 2002 by the Minister of Environment.”

- (b) In Section 16, by renumbering paragraph (2) as paragraph (3).