

S. S. Hussain I.A.S. (Ex)
Chief Executive Officer

Ref. No. MCHI/CEO/14-15/103

October 10, 2014

Subject : Constitution of High Level Committee under the Chairmanship of Shri T.S.R. Subramanian, Former Cabinet Secretary to review various Acts administered by Ministry of Environment, Forests & Climate Change - Our suggestions for the same.

Dear *Shri Hardik Shahji,*

Greetings from MCHI-CREDAI

Let us introduce our organisation to you Sir. MCHI-CREDAI is an apex body consisting of members from Real Estate Industry among Mumbai Metropolitan Region (MMR). This organisation formed in 1982, and it's the most prominent and the only recognized body of Real Estate Developers in Mumbai and MMR. We bring together members dealing in Real Estate Development on one common platform to address various issues facing the Industry. With a strong Membership of over 1800 leading Developers in Mumbai and the MCHI-CREDAI has expanded across MMR, having its own units in the region of Thane, Kalyan Dombivli, Mira Virar City, Raigad and Navi Mumbai.

MCHI-CREDAI is recognized by Government of Maharashtra and the Central Government and helps in meeting their objectives of providing housing, which is a basic necessity. We also work towards raising awareness among the General Public, Real Estate and Construction Industry while providing them with detailed information on new developments in and around Mumbai and MMR. We are also a Member of Confederation of Real Estate Developers' Associations of India (CREDAI) the apex body for Private Real Estate Developers in India and is also affiliated with leading Industry Associations like CII, FICCI, IMC and others.

With reference to above, I would like to file our say as under.

1. I congratulate the Ministry for removal fuzziness in Building construction projects and specifying only those categories of buildings where such NOC is required. This has cleared the way for not insisting NOC for religious buildings, Educational buildings, club houses, Govt/semi Govt operational buildings, purely parking lot buildings on independent plots, various projects such as pumping stations etc., sports complexes and the like buildings not covered therein.

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2. However, Residential buildings within "Legally designated Urban Areas" cannot have major environmental impacts, as the local municipal bye laws takes care of various environmental related aspects. More so, once a city is accepted as development centre, no purpose remains by carrying out any impact study, as "any construction activity" is going to create some or the other impact on natural environment. However, in any "CITY" the development and other aspects take the "Captain's Role" and only "Mitigation Measures" remain to be implemented, which can be done by a "Check List and Post project monitoring" approaches at Local municipal level. Hence such projects must be removed from the List for "Environmental Clearance."). The buildings situated in Mufassil/Village areas where lesser regulatory regime exist, can be appraised for EIA clearance.
3. The column No. 5 in clause 8(a) and Note no. (i) shall therefore be redrafted/replaced as under.

"Note:

- (i) The projects/Activities covered are *residential buildings situated beyond legally designated urban areas*, commercial buildings, hotels, hospitals, hostels, office blocks, and information technology/software development units/parks"

We in MCHI-CREDAI, also request you that the committee may please give us some time to meet and to present our views & concerns as a group as the only recognized body of Real Estate developers in Mumbai Region. We are also enclosing our views & concerns along with annexure with this letter.

Expecting for your positive response

Best regards

Yours *Sincerely*
S. S. Hussain

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To,
Shri Hardik Shah
Director of Environment Department &
Additional Secretary of Ministry of Environment, Forests
Government of Gujarat

Member Secretary for T.S.R. Subramanian High Committee,
Government of India
New Delhi

Encl: Annexure - Suggestion to Draft Notification (amending clause 8 of EIA Notification)

ANNEXURE

Suggestion to Draft Notification :

In response to the Constitution of High Level Committee under the Chairmanship of Shri T.S.R. Subramanian, Former Cabinet Secretary, Government of India, we have prepared the following few suggestions/recommendations for the necessary consideration of the Committee while going through various provisions of the relevant Environment & Forest Act in order to facilitate Environmental Clearances, NOCs and ease, the process of doing business, particularly in the Real Estate.

These points & issues may please be considered & taken into account while reviewing following Acts under reference.

- a) Environment (Protection) Act, 1986
 - b) Forest (Conservation) Act, 1980
 - c) Wildlife (Protection) Act, 1972
 - d) The Water (Prevention and Control of Pollution) Act, 1974
 - e) The Air (Prevention and Control of Pollution) Act, 1981
1. Any Residential, commercial or Retail project, (not involving industrial waste etc) proposed in A class Municipal Limits, where there exists an approved Development Plans under Regional Town Planning Act, and which has Fire, traffic, sewerage, storm water, and water supply systems in place, no Environmental Clearances should be insisted. All the prescribed conditions of environment should be incorporated in the Development Plan itself.
 2. Residential, Commercial or Retail projects consuming more than one lac sq.mtrs. of FAR,/FSI should only require the Environmental Clearance if it is situated in any Municipal limits other than prescribed in clause 1 above.
 3. Residential, Commercial or Retail projects consuming more than Twenty thousand sq.mtrs. of FAR,/FSI should only require the Environmental Clearance if it is situated outside any municipal limits.
 4. There should be only one committee in place of existing three committees, SEAC, SEIAA and CZMA, which should give CRZ as well as Environmental Clearances.
 5. In any Committees, only such people should be appointed who are willing to meet as frequently as is required to clear any proposal within 105 days as provided in the Act. OR there should be multiple Committees operating simultaneously to ensure that disposal is achieved in 105 days.

6. Construction upto plinth level should be allowed pending Environmental Clearance.
7. Any city (A category municipality and above) having Coastal Regulation Zone, should not be frozen to pre 1991 regulations. Provision of restricting development as prevailing on 19.2.1991 needs reconsideration. The CRZ authority should prescribe the norms of preserving the Coast for Local Body to incorporate in its Development plan. But uniform regulations needs to be applied to the entire city and city cannot have two or more sets of regulations to be applied and that too those prevailing on 1991. The process of development cannot be frozen on time.
8. Consent to Establish and Consent to Operate for Residential Complexes should not be required. The insistence of obtaining prior consent of the State Pollution Control Board with respect to residential projects, which is not contemplated under the Water and the Air Act, should be implemented.
9. Environment Clearances for Residential. Commercial and Retail project should be on concept plan and based on area of construction. Any change in design or layout or configuration, within the same area of construction should be permitted and should not require revised Clearance. Additional parameters, like generation of sewerage, ground water utilization, etc can also be prescribed, variation in which may require modified clearance.
10. Irrespective of the size of the project, the project proponent should be allowed to complete construction upto the basic exemption limit.
11. Validity of Clearances of Environment should be for entire life of the project and should not be for five years as it is present practice.
12. TOR for Residential, Commercial and retail projects should be standardized and published for project proponent to prepare its application. There should be no separate TOR for afore said kind of projects
13. Provisions of local regulations as approved by state governments should be accepted and plans prepared in accordance with Development Control Regulations, should not be asked to be modified. Any additional requirement to mitigate environment issues can be prescribed but local Development Regulations shall have to be accepted as basis on which all plans will have to be prepared. The committee can suggest any modifications to local regulations, if they are found to be against environmental issues, to state government, but project proponent cannot be asked to modify plans which are not in accordance with local DCR.

There are 8 industries covered in the Environmental Clearances Notification dated Sept 14, 2006 for "Building Construction" and "Township and Area Development" under Schedule 8(a) and 8(b) subjected to prior Environmental clearance. Amongst these industries, 7 are Petro-Chemicals, Power, and Pesticides etc. - which discharge effluents and are polluting, hazardous. The 8th Industry listed therein is 'Real Estate' which is added due to political reason which should be removed.

History

In our view the Environment Act was not meant for the Real Estate Industry, for that we need to refer to the Political history. Following was the history of this Act came to apply for the Real Estate Industry:

In the year 2003, the AIADMK Govt. was headed by Mrs. Jayalalithaa in Tamilnadu and they wanted to build a new Secretariat. At that time she was planning to build it in the campus of Queen Mary's College on the Beach Road. Then the opposite party DMK protested and it got shelved. Subsequently she managed to build it on OMR by acquiring 3000 Acres, even that got scuttled.

Again it was decided to build in the City by carving out 43 Acres from the Anna University Campus in Kotturpuram, Chennai. The Ground breaking Ceremony was fixed for 28th October 2003. Just to stop the Construction of the Secretariat building, the Ministry of Environment headed at then Minister by Mr. T. R. Balu of the DMK brought in the draft Notification on 27th Oct, 2003.

At that time all the Ministry of Urban Development and other Ministries were confident that as it was in the draft stage, it would not come in a way. However, in May 2004, Govt. changed and Environment Ministry headed by DMK Mr. A. Raja and they made it a Law.

It is pertinent to mention here that to get credibility and to scare anyone daring to reconsider it, the preamble for the Notification started with the sentence: "In view the concerns expressed the Green Bench of the Supreme Court in the Yamuna River Pollution Case....." If anyone studies the case referred to therein the Supreme Court was commenting on the reckless permissions given to the Industries permitted along the Yamuna River and the attended development wherein the effluents were being discharged into the Yamuna. This was never meant for Real Estate Industry.

Our Recommendations:

Sr. No.	Issues	Our concern	Proposal/ Requested Action
1	Simplification of implementation of relevant environmental provision	Delay of approval as per present procedure	Wherever already existing approved DP plan is in force, no separate EC should be demanded. All the prescribed condition could become part of local bylaws(DCR)
2 A	Time limit to clear the project	The clause is not implemented	As per environmental act permission must be granted in 105 days, otherwise it should be considered as "Deemed Approved, but the same is not in practice now. It should be implemented in letter and spirit.
2 B			It should be ensured that maximum pendency of application should not be more than 45 days from the date of application.
2 C			There should be more nos of committees as required to ensure clearances of the project in 45 days maximum
3	Increase the threshold limit for EC requirement	As per present threshold limit Most of the project comes under purview of EC	Only projects above 2 lac sqmt FAR, FSI should require EC that too, if they are situated outside any A class municipal limits..

4	Synchronies clearance for CRZ and MOEF		There should be only one common committee for all authorities and clearance committees like CRZ, SEACI, SEIAA etc.
5	Implementation of latest DP, FSI in CRZ	Implementation of antique DCR and three different DCR in same city is not desirable. DCR for any city cannot be frozen to a particular year.	In any already developed city, with sanctioned DP Plan, CRZ should be restricted only on the seaward side of existing road, irrespective of any distance from the Sea. Even if the CRZ is required to maintained, then for any projects located within developed city, the latest DCR and Development plan as applicable on the date of submission of proposal put up should be considered.
6	The notification dated 6 th January 2011 should be implemented.	CZMP maps are still under preparation, and will take more time before they are notified for the country.	The notification dated 6 th January 2011 should be implemented based on the maps issued by the authorized agency. The implementation of 2011 notification is not dependent upon the notification of CZMP maps. The classification of creek, bays, etc should be implemented forthwith.
7	Prior consent to establish & operate for Residential Complexes should not be required.		Removal of consent to establish for housing and commercial and Retail projects. The insistence of obtaining prior consent of the State Pollution Control Board with respect to residential projects, which is not contemplated under the Water and the Air Act, is causing unnecessary delays in construction projects pertaining to residential Complexes. Clearances for the area of construction, irrespective of configuration and design of the project should be the key consideration.

8	TOR for environmental clearance should be limited to only environmental issues.	Today the TOR for environment clearance covers all the issues concerned with planning, fire fighting, open space, and everything.	TOR for environmental clearance can and should only be limited to environmental and pollution issues. In name of environment, committee should not extend its scope to prescribing open spaces, density, fire fighting FAR norms etc, This are clearly within the powers of local authority. The environment clearance should restrict itself to only items to mitigate the pollution and environment hazards by prescribing the mitigating measures, for the given plan, which is approvable as per local planning authority. Environment clearance cannot replace local DCR or create an all India DCR. Clearance should be given on basis of Conceptual plan, and not on basis of detailed plans as insisted as of now.
8A	Requirement to obtain modified clearance for minor change in project		All environmental clearance are as of now, requiring even minor changes in the internal plans, to be resubmitted to modified clearance. In fact, the clearance should be given for area of construction, and the discharge of sewerage affluent and the ground water required. Any modification beyond 15% of original sanctioned parameters of water and sewerage and energy requirements and area of construction proposed only should only be required to be submitted for modified clearance. also as submitted, should be considered on the Environmental impact created by water required and sewerage created. So Clearances should be based on these 2 factors itself.
8 B	Revised environment clearance in case of increase in FAR during the life time of a project.	Increment in FAR due to change in regulation.	EC should be granted on basis of the maximum possible potential which developer is likely to get on a plot. EC can also be granted for phase wise considering more BUA than permitted as on date or as per anticipated FAR.
8 C	Terms of Reference for the clearance to be limited to environmental issues only.		While scrutinizing the application, at the time of giving permission, they should not go beyond the Terms of Reference (TOR).

9	Validity period of EC	Hold project half way if it gets delay due to legal or any other reason after getting EC	Validity of Clearances of Environment, NOC should be till the life of the project. The project proponent must be allowed to utilize full potential of the project, which was the case earlier
10 A	Approval as per DCR		Committees should have due respect for the provisions of existing DCR and the laws under which they are formed, while scrutinizing the project.
10 B			Applicability of any Rule should be considered on the date of application not year 1967 or the date of notification of MOEF.
11	Eco Sensitive Zone notification	Many areas considered as Eco Sensitive Zones has included large habitant which does not have any Ghat/Hills.	The draft Notification dated 19/10/2013 and OMR dated 16/11/2013 for "Eco Sensitive Area" should be withhold for areas within 1 km radius of Village boundary or National Highway or Railway Station.
12	Reduce buffer zone for CRZ II		The buffer zone from HTL for sea should be reduced to 100 m from existing 500 m within the urban areas/city limit and wherever retaining wall or road is there, it should be restricted only upto road or retaining wall.
13	Buffer zone for Nalla		Where ever there is trained Nalla, there should not be buffer zone required as overflow of water will not be possible after training considering the maximum flow.
14	Buffer zone beyond DP road		The land towards landward side of major existing road as on 2011, should not be considered for buffer zone irrespective of width of buffer zone.
15	Insisting local intimation of Approval before EC		The EC should be granted without IOA/IOD/Concession, just on submitting Conceptual Plan.