

THE WATERSHEDS PROTECTION ACT

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THE WATERSHEDS PROTECTION ACT

Acts
4 of 1963,
21 of 1975,
9 of 1991
3rd Sch.

[1st April, 1963.]

1. This Act may be cited as the Watersheds Protection Act. Short title.

2. In this Act— Interpreta-
tion.

“approved scheme” means a scheme approved under section 15;

“assisted improvement agreement” means an agreement entered into under section 10;

“Authority” means the Natural Resources Conservation Authority established under the Natural Resources Conservation Authority Act; 9/1991
3rd Sch.

“chairman” means the chairman of the Authority or any person for the time being performing the functions of the chairman; 9/1991
3rd Sch.

“claimant” means a person who claims compensation under section 17 or 18;

“Committee” means a Watersheds Protection Committee constituted under section 22;

“construction parcel” means any parcel of land wholly or partially within a watershed area on which is done or is proposed to be done any improvement work;

“daylight” means the interval between five o’clock in the morning and the succeeding six o’clock in the evening;

“improvement work” means work of any nature which—

WATERSHEDS PROTECTION

(a) is likely to reclaim or rehabilitate any land or to remedy, retard or prevent erosion or other deterioration of land; and

(b) is designed to encourage, assist or secure the conservation of water resources;

“interested person” means any person in whom is vested any estate or interest in possession, remainder or reversion in or interest by way of charge on—

(a) any construction parcel; or

(b) any parcel of land the value of which is likely to be enhanced or diminished or the deterioration of which is likely to be occasioned, prevented, diminished, increased, accelerated or retarded by the doing of any improvement work upon such parcel or upon any construction parcel;

“owner” means in relation to any construction parcel the person in whom is vested the estate in fee simple in that parcel;

“provisional scheme” means a scheme at any time before it becomes an approved scheme;

“scheme” means a compulsory improvement scheme prepared under this Act;

“Valuation Board” means a Valuation Board constituted under the provisions of the Land Valuation Act, or, in relation to any parish in respect of which that Act is not in operation, a Board of Assessment established under the provisions of the Valuation Act;

“watershed area” means an area defined and declared to be a watershed area under section 5.

3. [Deleted by Act 9 of 1991, 3rd Schedule.]

4. It shall be the duty of the Authority with a view to promoting the conservation of water resources to institute such measures and to recommend to the Minister for implementation such programmes as it considers necessary for the protection of those areas which constitute or adjoin the watersheds of the Island.

Duties of Authority.
9/1991
3rd Sch.

5. The Minister may upon the recommendation of the Authority by order declare any area defined in the order to be a watershed area for the purposes of this Act.

Declaration of watershed areas.
9/1991
3rd Sch.

6. During the continuance in force of an order made under section 5, in the watershed area to which that order relates the controls and restrictions imposed by or under this Act shall have effect notwithstanding the provisions of any other enactment.

This Act to prevail in watershed area.

7. During the continuance in force of an order made under section 5 the watershed area to which that order relates shall for the purposes of the Country Fires Act be deemed to be an area in relation to which the Minister has made an order under section 6 of that Act, so, however, that an application for a permit under section 7 of that Act in relation to that watershed area may be granted only by a forest officer.

Prohibition of fires.

8.—(1) The Authority may with the approval of the Minister make regulations for ensuring the proper, efficient and economic utilization of land in watershed areas with a view to promoting the conservation of water resources, and in particular but without prejudice to the generality of the foregoing may make regulations in relation to watershed areas or any part thereof or any prescribed category of land therein—

Power of Authority to make regulations.
9/1991
3rd Sch.

- (a) prohibiting, regulating or restricting the planting of any crop specified in the regulations;
- (b) prescribing the conditions to be observed in relation to the planting or cultivation of any crop specified in the regulations;
- (c) prohibiting, regulating or restricting the use of any land for any purpose specified in the regulations;
- (d) prohibiting the adoption in relation to any land of any practices specified in the regulations;
- (e) prohibiting the felling, barking or destruction of any trees or the clearing of vegetation.

(2) In this section "category of land" means land of a specified slope, soil type or proximity to a stream, watercourse or spring.

Powers of
inspection.
9/1991
3rd Sch.

9.—(1) Subject to subsection (2) any person authorized in writing by the Authority in that behalf may at any time in daylight—

- (a) enter upon any land within a watershed area for the purpose of—
 - (i) inspecting the condition of the land or of any improvement work thereon;
 - (ii) ascertaining what crops are cultivated or are most suitable to be cultivated upon the land and the conditions under which such crops are so cultivated; or
 - (iii) ascertaining the expediency or otherwise of the doing upon the land of any improvement work;
- (b) inspect the condition of such land or of any improvement work thereon; and

- (c) take such angles, bearings or measurements of the land or samples of the soil upon such land as may be necessary for the purpose for which that person entered upon the land.

(2) A person shall not enter upon any land under the provisions of this section—

- (a) except with the consent of the occupier of the land; or
- (b) unless he has given to the occupier not less than three days' notice of his intention to enter upon such land; or
- (c) if the name or address of the occupier of the land is not known to and cannot reasonably be ascertained by him, unless a period of not less than three days has elapsed since he has posted on or near to the land a notice of his intention to enter upon the land.

10.—(1) Subject to subsections (2) and (3), the Authority may enter into an agreement with the owner of any construction parcel and with any other interested person for the carrying out of improvement works in relation to such construction parcel (in this Act referred to as an assisted improvement agreement).

Assisted
improvement
agreement.
9/1991
3rd. Sch.

(2) Before entering into any assisted improvement agreement the Authority shall take such steps as it considers reasonable to afford to all interested persons an opportunity of becoming parties to such agreement.

9/1991
3rd Sch.

(3) Every assisted improvement agreement may make such provision as may be agreed between the parties thereto as to—

- (a) the work to be done;

- (b) the persons by whom, the place where, the period within which and the manner in which such work is to be done;
- (c) the extent to which and the manner in which any such party is to participate in or contribute to the doing of such work;
- (d) the payment of compensation to any such party who may be prejudiced by the doing of such work;
- (e) the apportionment between the parties to the agreement of the cost of such work and of such compensation; and
- (f) any matter incidental to or connected with any of the foregoing matters.

Provisional
compulsory
improvement
scheme.
9/1991
3rd Sch.

9/1991
3rd Sch.

11.—(1) Where the owner of any construction parcel and any interested person in relation to that construction parcel have been afforded an opportunity of entering into an assisted improvement agreement in relation to the doing upon that parcel of any work and have refused or failed within such time as the Authority considers reasonable to enter into such agreement, the Authority in its discretion subject to the provisions of this section may prepare a provisional compulsory improvement scheme for the doing of such work.

(2) Every provisional scheme shall—

- (a) contain a description in general terms of each construction parcel of such a nature as to enable the situation of that parcel to be readily ascertained, so, however, that it shall not be necessary for any such description to specify the exact boundaries of any construction parcel;
- (b) specify the nature of the work proposed to be done upon each construction parcel;

- (c) describe in general terms the approximate locality upon each construction parcel where it is proposed to do the work; and
- (d) contain an estimate of the aggregate cost of the proposed work.

12. So soon as may be after the preparation of any provisional scheme the Authority shall cause to be published in not less than three issues of the *Gazette*, and at intervals of not less than seven nor more than ten days in three issues of a daily newspaper printed for sale and published in Jamaica, a notice—

Notification
of schemes.
9/1991
3rd Sch.

- (a) specifying that the Authority has prepared a provisional scheme;
- (b) specifying the watershed area to which the scheme relates;
- (c) specifying some place within the parish in which the major portion of the improvement works is proposed to be carried out where the scheme and the plan relating thereto may be inspected without fee during such period (not being less than fourteen days after the last publication of the notice in a daily newspaper) as may be specified in such notice upon such days and at such times as may be so specified;
- (d) specifying the name and address of some person from whom copies of the scheme and of the plan relating thereto may be obtained on payment of a reasonable fee specified in such notice; and
- (e) stating that provision is made by section 13 for the making of objections to the scheme.

9/1991
3rd Sch.

13.—(1) Subject to subsection (2) any person may object to the confirmation of a provisional scheme in relation to which he is an interested person on the ground that—

Objections
to schemes.

- (a) the scheme is impracticable; or
- (b) the scheme is uneconomic; or
- (c) he was not afforded a reasonable opportunity of becoming a party to an assisted improvement agreement in relation to the doing of the work proposed to be done under the scheme; or
- (d) the terms upon which he was afforded an opportunity of becoming a party to an assisted improvement agreement in relation to the doing of the work proposed to be done under the scheme were unreasonable, or, having regard to the terms upon which other interested persons were afforded an opportunity of becoming parties to such scheme, were inequitable.

(2) Every person who desires to object to any provisional scheme under this section shall give notice in writing to the Authority within fourteen days after the expiration of the period referred to in the notice under paragraph (c) of section 12 of the ground of his objection and of the facts and reasons upon which he relies in support of such objection.

9/1991
3rd Sch.

14. So soon as may be after the expiration of the period during which notice of objection to any provisional scheme may be given under section 13 the Authority shall transmit the scheme together with any objections made thereto and the comments of the Authority upon such objections (if any) to the Minister.

Trans-
mission of
scheme to
Minister.
9/1991
3rd Sch.

15. Where the Minister is satisfied that the implementation of any provisional scheme is likely to be in the public interest, he may by order declare the scheme, subject to such modifications as may be specified in the order, to be an approved scheme.

Approved
compulsory
improvement
scheme.

16.—(1) Where a scheme has been approved under section 15, the Authority may give notice in writing to the owner of any construction parcel—

Procedure
after
approval
of scheme.
9/1991
3rd Sch.

(a) requiring him, within such period as may be specified in the notice (not being less than thirty days from the date of the notice) to elect in writing whether or not he will enter into an agreement with the Authority for the doing, to the satisfaction of the Authority, within such period and upon such terms and subject to such conditions as may be specified in the agreement, of all the work proposed to be done under the scheme upon his construction parcel; or

9/1991
3rd Sch.

(b) of its intention to enter by its servants or agents upon such construction parcel on the day specified in the notice (not being less than seven days after the date of such notice) for the purpose of doing the work proposed to be done upon such parcel under the scheme; so, however, that the notice referred to in this paragraph shall not be given unless the Authority is satisfied that having regard to all the circumstances of the case it is preferable for the work to be done by the Authority or its servants or agents rather than by the owner of the construction parcel.

9/1991
3rd Sch.

9/1991
3rd Sch.

(2) Where the owner of any construction parcel enters into an agreement of the nature referred to in subsection (1), the Authority shall make to such owner such payments as may be specified in the agreement entered into between the Authority and the owner at such times and subject to such conditions as may be so specified, and the owner shall do all acts necessary fully and effectually to implement such agreement.

9/1991
3rd Sch.

(3) Where the owner of any construction parcel—

- (a) elects not to enter into any agreement of the nature referred to in subsection (1); or
- (b) having elected to enter into such an agreement, fails within thirty days next after the day on which he so elects to enter into such an agreement; or
- (c) having entered into such an agreement, fails to complete to the satisfaction of the Authority either—

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3rd Sch.

- (i) all the work to which the agreement relates within the period specified in the agreement for the completion of all such work; or

- (ii) any part of the work to which the agreement relates within the period specified in the agreement for the completion of that part of the work,

9/1991
3rd Sch.

the Authority may at any time, after not less than seven days' notice to the owner of such parcel of intention so to do, enter upon such parcel and there do, at its own expense, all the work authorized to be done under the approved scheme and not previously done to the satisfaction of the Authority by the owner of the parcel.

9/1991
3rd Sch.

9/1991
3rd Sch.

(4) Where the Authority gives the notice referred to in paragraph (b) of subsection (1), the Authority may at any time not being less than seven days after the date on which the notice was given enter upon the construction parcel in relation to which the notice was given and there do, at its own expense, all the work authorized to be done under the scheme.

9/1991
3rd Sch.

(5) Where the name or the address of the owner of any construction parcel is not known to the Authority the provisions of subsection (1) shall apply as if there

were substituted for the reference to notice in writing to the owner of such parcel a reference to the posting up upon the construction parcel of a notice requiring such owner to enter into an agreement of the nature referred to in subsection (1) or specifying the intention of the Authority to enter thereon for the purpose of doing work authorized to be done under the scheme, as the case may be.

9/1991
3rd Sch.

17.—(1) Where the value of any parcel of land (in this section referred to as “the affected parcel”) whether situated without or within any watershed area is substantially diminished as a direct consequence of the doing of any improvement work under an assisted improvement agreement or under an approved scheme compensation shall be payable in accordance with the provisions of this section to every person who is an interested person in relation to the affected parcel.

Compensation for substantial diminution in value of affected parcel.

(2) The compensation payable under this section to any interested person in relation to any affected parcel shall be such sum as is agreed between such person and the Authority or in default of agreement determined by the Valuation Board under section 20 to be equivalent to the amount by which the market value of that person’s estate or interest in the affected parcel has been diminished as a direct consequence of the doing of the work in respect of which compensation is payable.

9/1991
3rd Sch.

18.—(1) Where any person who is an interested person in relation to any construction parcel suffers pecuniary loss or damage as a direct consequence of the doing upon such parcel of any improvement work under an assisted improvement agreement or under an approved scheme other than loss or damage which is of such a nature as substantially to diminish the value of such parcel, compensation shall be payable to such person in accordance with the provisions of this section.

Compensation for loss or damage which does not affect the value of land.

9/1991
3rd Sch.

(2) The compensation payable under this section to any interested person in relation to any construction parcel shall be such sum as is agreed between such person and the Authority or in default of agreement determined by the Valuation Board under section 20 to be equivalent to the pecuniary loss suffered by that person as a direct consequence of the doing of the work in respect of which such compensation is payable, so, however, that—

- (a) a person shall not be entitled to receive compensation in respect of any loss or damage suffered by him which might have been avoided by the taking by him of any reasonable steps to mitigate the consequences of the act in respect to the doing of which compensation is claimed;
- (b) in assessing the amount of compensation under this section there shall be set off against the loss or damage sustained by the interested person any increase in the value of that person's land accruing from the carrying out of the improvement work.

Procedure
in relation
to com-
pensation.
9/1991
3rd Sch.

19.—(1) Every person who desires to claim compensation under section 17 shall give notice in writing to the Authority within two years next after the doing of the work in respect of which he desires to claim compensation, specifying—

- (a) the parcel of land in respect of which he desires to claim compensation;
- (b) the parcels of land upon which was done the improvement work by reason of the doing of which he desires to claim compensation;
- (c) the manner in which the parcel of land referred to in paragraph (a) has been prejudicially affected by the doing of the work referred to in paragraph (b); and

- (d) the amount which he is prepared to accept in full satisfaction of his claim for compensation under this Act.

(2) Every person who desires to claim compensation under section 18 shall give notice in writing to the Authority within six months next after the occurrence of the loss or damage in respect of which he desires to claim compensation, specifying—

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3rd Sch.

- (a) the nature of the loss or damage suffered by him;
- (b) the date upon which such loss or damage was suffered by him or in the case of a continuing injury the dates between which he suffered such loss or damage; and
- (c) the amount which he is prepared to accept in full satisfaction of his claim for compensation in respect of such loss or damage.

(3) Where the Authority fails within sixty days of the date of the receipt of the notice referred to in subsection (1) or in subsection (2) to pay or to enter into an agreement with the claimant for the payment of the sum specified in such notice or such lesser sum as may be agreed between the Authority and the claimant, the Authority shall notify the claimant in writing of his right to refer his claim for compensation to the Valuation Board and the claimant may at any time within thirty days thereafter give notice in writing to the Authority requiring the Authority to refer his claim for compensation to the Valuation Board, and thereupon the Authority shall refer such claim to the Valuation Board.

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3rd Sch.

9/1991
3rd Sch.

20.—(1) So soon as may be after there is referred to the Valuation Board any claim for compensation under section 17 or section 18, the Valuation Board shall appoint a day, time and place for the hearing of such claim and shall notify the Authority and the claimant, and any person

Reference
of com-
pensation
claims to
Valuation
Board.
9/1991
3rd Sch.

who in the opinion of the Valuation Board is likely to be prejudiced by any order which the Valuation Board may make upon the hearing of such claim of the day, time and place so appointed.

(2) Upon the hearing of any claim under subsection (1) the Valuation Board shall afford to every person to whom notice has been given as aforesaid under subsection (1) an opportunity of tendering evidence and of producing any documents relevant to the issue to be determined and of cross-examining any witnesses and of inspecting any documents called or tendered by any other person to whom the notice under subsection (1) has been given.

(3) Upon the determination of any claim for compensation referred to a Valuation Board under section 19, the Valuation Board shall forthwith give notice to the Authority and to the claimant of their findings in respect of that claim.

9/1991
3rd Sch.

Appeal to
Court of
Appeal.

21. An appeal shall lie from the decision of a Valuation Board under section 20 to the Court of Appeal.

Appoint-
ment of
Watersheds
Protection
Committees.
9/1991
3rd Sch.

22. The Authority may with the approval of the Minister from time to time appoint committees to be known as Watersheds Protection Committees to whom work may be committed by the Authority.

Functions
of
Watersheds
Protection
Committees.
9/1991
3rd Sch.

23. It shall be the duty of each Committee to assist the Authority in the performance of its functions with a view to the proper carrying out of the provisions and objects of this Act, and for the purpose of carrying out work committed to it under section 22 a Committee shall, in the watershed area for which it is appointed, have all the powers of the Authority other than—

(a) the power to make regulations; and

(b) the power to enter into an assisted improvement agreement unless so authorized by the Authority; and 9/1991
3rd Sch.

(c) the power to acquire, hold and dispose of property.

24. [Deleted by Act 9 of 1991, 3rd Schedule.]

25. [Deleted by Act 9 of 1991, 3rd Schedule.]

26. [Deleted by Act 9 of 1991, 3rd Schedule.]

27. [Deleted by Act 9 of 1991, 3rd Schedule.]

28. Any person who—

Offences.

(a) assaults or obstructs a servant or agent of the Authority acting in the execution of his duty under this Act; or 9/1991
3rd Sch.

(b) wilfully or maliciously destroys, damages, or obstructs any improvement works,

shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred dollars or to imprisonment with or without hard labour for a term not exceeding twelve months, and in the case of an offence against paragraph (b) the Resident Magistrate may order the person convicted to pay to the Authority in respect of the destruction of or damage to any improvement works compensation not exceeding four hundred dollars recoverable by distress or in default of distress imprisonment for a term not exceeding twelve months. 9/1991
3rd Sch.

29. Notwithstanding the provisions of section 29 of the Interpretation Act regulations made under section 8 may prescribe greater penalties than those specified in the said Penalties in
regulations.

section 29, so, however, that the maximum penalty that may be imposed by any such regulations shall be a fine of five thousand dollars or imprisonment with or without hard labour for a term of twelve months.

9/1991
3rd Sch.

Application
of Act to
Crown.

30. This Act shall bind the Crown.

SCHEDULE

[Deleted by Act 9 of 1991, 3rd Sch.]