

COMMITTEE REPORT
IN APPEAL NO. 9/2021 (I.A. No. 18/2021) DILIP PANDURANG KOLI V/S UNION
OF INDIA & ORS - ORDER DATED 23.6.2021 BY HON'BLE NGT, PRINCIPAL
BENCH, NEW DELHI

Preamble:

An appeal no. 9/2021 (I.A No. 18/2021) has been filed by Dilip Pandurang Koli & Ors versus Union of India & ors against the CRZ and Environment Clearance dated 09.10.2019 granted to JNPT by MoEF&CC, New Delhi for balance work of 4th Container Terminal & Marine Container Terminal at JNPT.

Hon'ble NGT, New Delhi has passed an order dated 23.06.2021 in the matter. The said order at para 2 and 5, quotes various grievances expressed by the appellant at which are enumerated as below:

Para 2: *“Grievance of the appellants is that the area is identified as ecologically sensitive area by the Maharashtra Coastal Zone Management Authority (MCZMA) and falls under the CRZ-1A in the concerned map. No construction is permitted in CRZ-1A. The authorities have erroneously considered the area to be CRZ IV, which is against record. While at the time grant of clearance for Container in the year 2008 situation may have been different, by way of amendment in 2011, area with mudflats have been specifically declared to be part of CRZ 1A. Further, acknowledged violations of EC conditions mentioned in EC dated 29.07.2008 and traditional fishing activities have been overlooked. Public hearing has been wrongly dispensing with.”*

Para 5: *“in view of the contention that the area where expansion activities are to be undertaken is in CRZ-1A, where constructions are prohibited and that violations of EC conditions have been found established during the site in investigation on 31.12.2013.”*

Accordingly, in the matter, Hon'ble NGT passed following directions:

“Accordingly, while issuing notice to the MoEF&CC, and JNPT, we constitute a four member joint committee comprising nominee of MoEF&CC, State PCB, MCZMA and District Magistrate, Raigad to give an independent factual report in the matter within three months by email at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR support PDF and not in the form of image PDF. State PCB and MCZMA will be the nodal agency for coordination and compliance”

In the light of above and pursuant to directions of the State Environment & CC Department, GoM, the MPCB constituted a committee vide order dated 01.09.2021 comprising the following members:

- 1) Suresh Kumar Adapa, Scientist D, MoEF&CC, Western Central Regional Office-Nagpur
- 2) Sub-Divisional Officer, Panvel Sub Division for District Collector, Raigad
- 3) Dattatray Bhalerao, Scientist II, Environment & CC, GoM (MCZMA representative)

- 4) D. B. Patil, Regional Officer, Maharashtra Pollution Control Board, Navi Mumbai – Member Convenor

The TOR of the committee is as follows:

1. The Committee shall ascertain the ground factual situation in respect of expansion activities are to be undertaken in CRZ IA, where construction are prohibited and violation of EC conditions have been found established during the site investigation on 31.12.2013
2. The committee shall look into the issues raised by the Applicant in respect of EC granted to JNPT, by the MoEF&CC, GoI
3. The Committee shall give its independent factual report to the Tribunal within 3 months by email at judicial-ngt@gov.in from the date of Hon'ble NGT order dated 23.6.2021

Copy of the constitution order of the committee along with TOR is attached herewith as **Annexure I**.

In the above said matter, meetings were conducted by the committee on 07th & 08th September, 2021 at Regional office Navi Mumbai, MPCB, 7th floor, Raigad Bhavan, CBD Belapur, Navi Mumbai for deliberations. Due to some unavoidable circumstances, Dattatray Bhalerao, Scientist II, Environment & CC, GoM was unable to attend the meetings/ visits and Mr. Joy Thakur, Scientist I, Environment & CC, GoM represented MCZMA in the committee.

Committee noted that the scope of the committee is limited to balance work of 4th CT project of the JNPT.

As invited by the Committee through official communication dated 02.09.2021, Applicants Shri. Dilip Koli, Shri. Parmanand Koli, Shri. Nandukumar Pawar and other villagers attended the meeting on 7th September, 2021 and presented their say before the Committee. They presented that local fishermen have their rights for fishing in the areas around Nhava- Sheva and Uran area, as per Maharashtra Fisheries Act, 1960. Villagers showed various maps indicating the existence of creeks, mudflats and mangroves in the area around JNPT. They further informed that their livelihood exclusively depends on the creeks, mudflats, mangroves and fishing spaces/ fish breeding areas present in the area. Villagers claimed that the balance work of the project of 4th Container Terminal and Marine Container Terminal (4th CT) is proposed on mudflats and its impact on traditional fishing practices needs to be seriously considered so as to safeguard livelihood of the local fisherfolks. Villagers further stated that JNPT prohibits local fisherfolks boats and fishing activities in the area around JNPT. Appellants/ Villagers further submitted that due to development projects of JNPT, local fisheries and their livelihood is getting seriously affected. Therefore, local fisherfolks should be treated as project affected people (PAP), even though their lands were not acquired directly by the JNPT.

JNPT officials attended the meeting on 7th September, 2021 and presented their say. The 4th CT project was granted EC on 28th July, 2008 by MoEF&CC, New Delhi for the 200 Ha reclamation. The said EC was valid upto 2018. Presently, phase I of the project with

reclamation of 90 ha is completed. For balance work of 110 Ha reclamation, JNPT has obtained Environmental and CRZ Clearance dated 9th October 2019 from the MoEF&CC, New Delhi. JNPT official further presented that the balance work of the 4th CT is located in CRZ IV area as per the CRZ map. Officials further stated that JNPT is committed to comply with the conditions of the EC. JNPT further informed that the layout of balance reclamation is now revised, for which, an application is submitted before MoEF&CC, New Delhi for amendment in the EC.

Site inspection by the Committee:

Applicants Shri. Dilip Koli, Shri. Parmanand Koli, Shri. Nandukumar Pawar and other villagers insisted the Committee to visit the site of 4th CT and other areas on 8th September, 2021 during the low tide conditions at early morning at 5.30 am from Mora Jetty location. The water distance of 4th CT is at around 2.5 km from the Mora Jetty. Accordingly, Committee reached the Mora jetty on 8th Sep, 2021 at 5.30 am.

Committee interacted with applicants and other villagers. As shown by the villagers, committee observed the mudflats near Mora jetty, during low tide. Thereafter, Committee members along with villagers and JNPT officials, travelled through boat and inspected the site of 4th CT and other nearby jetties. Further, the Committee visited the project site of 4th CT from inside the JNPT premises with JNPT officials. Committee observed that the work of phase I of 4th CT project is completed. Balance work (Phase II) is yet to be initiated on the site. Site visit ended at around 11.00 am. Site photographs and Google image of the area around Mora Jetty, 4th CT project attached herewith as **Annexure II.**

Committee perused the appeal filed by appellants, order dated 23.6.2021 passed by the Hon'ble NGT, earlier site inspection reports of the MCZMA and clearances obtained by the JNPT, etc. In view of perusal of documents, site visit, hearing granted to appellants and JNPT, findings of the committee are as follows-

TOR 1: The Committee shall ascertain the ground factual situation in respect of expansion activities are to be undertaken in CRZ IA, where construction are prohibited and violation of EC conditions have been found established during the site investigation on 31.12.2013

Regarding issue of CRZ IA or CRZ IV

Committee noted the contention of the appellant is that the site of balance work of 4th CT falls in CRZ IA.

Committee perused the various documents like Form I submitted by the JNPT, earlier site inspection report of the MCZMA, minutes of the 130th meeting of the MCZMA held on 1st March, 2019 and approved Coastal Zone Management Plan under CRZ Notification, 2011.

Committee noted that Coastal Zone Management Plan (CZMP) was prepared by Authorized agency of Central Government under provisions of the CRZ Notification, 2011 identifying the High Tide Line, Low Tide Line and various CRZ classifications such as CRZ IA& IB, CRZ II, CRZ III and CRZ IV area. MoEF&CC, New Delhi approved the CZMP in 18th August, 2018 for Raigad District (JNPT area). As per the said approved CZMP, the site of triangular balance reclamation of the 4th Terminal is situated in CRZ IV area. Small part of landing point of triangular balance reclamation work is touching in CRZ IA area. Considering the approved CZMP, 2011, the Respondent No. 4 (MCZMA) in its 130th meeting held on 1st March, 2019 deliberated the said proposal of balance work and noted the site falls in CRZ IV area.

The Copy of extract of the said approved CZMP under CRZ Notification, 2011 showing the site of proposed balance work of 4th CT project is attached herewith as **Annexure III**

During meeting on 7th September, 2019, JNPT before the Committee clarified that the first page of Form I mentions the site as CRZ I, which is a typographic error. JNPT further clarified that, tabular description of the Form I rightly mentions that site as CRZ IV area, stating that the said project is port facility project which will be in the CRZ IV area. The JNPT officials further informed that layout of the triangular reclamation is now proposed to be revised and application is submitted to MoEF&CC for amended EC.

Regarding site inspection report dated 13.10.2013

The Committee further noted the inspection reports dated 13.10.2013 & 12.11.2013 of MCZMA members in appeal no. 19/2013, with respect to 4th CT (which is the present subject matter). As per the said reports, no work was initiated for the 4th CT at the time of inspection carried out by Members of MCZMA in the year 2013.

The Committee noted that, the construction work of the project started in 2015 and completed in 2017 as Phase-I. Balance work (Phase-II) is yet to started on site.

Committee noted that at present, the approved CZMP under CRZ notification, 2011 is applicable, as per which, balance work falls in CRZ IV area. Small part of landing point of triangular balance reclamation work is touching in CRZ IA area

As per para 4(i) (a) of the CRZ Notification, 2011, “*the clearance shall be given for any activity within the CRZ only if it requires waterfront and foreshore facilities*”. Activities of jetty, port are permissible activity, as per para 4(i) (f) of CRZ Notification, 2011.

The present proposal of JNPT aims to complete the balance work of the project of 4th CT project, for which EC (dated 29th July, 2008) was granted by MoEF, New Delhi. Now, the project obtained CRZ and EC (dated 09.10.2019) for the balance works of 4th CT.

TOR 2: The committee shall look into the issues raised by the Applicant in respect of EC granted to JNPT, by the MoEF&CC, GoI

Considering the observations in the Hon'ble NGT order dated 23.6.2021 in Appeal no. 9/2021(I.A. 18/2021) and hearing extended to appellants, following issues of appellants are summarized and findings of the Committee as tabulated as follows:

Sr No.	Issues of appellants	Findings of the Committee
1	Issue of Public hearing exemption for the phase-II balance work project by the EAC	As per the minutes of meetings of EAC, EC for the project 4 th CT was granted by MoEF, New Delhi in year 2008. Present project involves construction of balance works of the said project. During the meeting dated 07.09.2021, JNPT representatives informed to committee that JNPT requested the EAC for exemption of the public hearing. Committee felt that the EAC, might have exempted the public hearing, taking into consideration that proposed project involves construction of balance work for which EC was already granted by MoEF in year 2008.
2	Appeal states that, JNPT has violated the condition of previous Environment Clearance. The compliance report dated 10 th July, 2019 of the Regional Office, Nagpur of the previous EC dated 29 th July, 2008 noted general condition no. (ii) was found not complied with, while general condition no. (v), (vii) and (xiii) were found partially	Committee noted that the EAC, New Delhi deliberated on the compliance report dated 10.7.2019 issued by MoEF&CC, Regional Office (West Central Zone) Nagpur. As per the compliance report, general conditions no. ii was not found complied, while General condition no. v, vii and xiii were found partially complied. From the minutes, it is observed that project proponent presented the action taken report before EAC. Committee noted that compliance status was discussed by the EAC.

	complied with.	
3	<p>Issue of impact on the traditional fisheries and livelihood of local fisherfolks.</p> <p>Appellants claims that as per the letter dated 2nd July, 2012 of Commissioner, Fisheries to Konkan Commissioner, NoC from Commissioner Fisheries should be obtained for projects to be undertaken in Coastal areas. As per the said letter, JNPT should obtain No Objection Certificate (NoC) from the Department of Fisheries for the 4th CT project.</p>	<p>Committee noted that the balance work of 4th CT project will likely impact the traditional fishing in the area. Intertidal fishing is the main livelihood of the local fisherfolks. JNPT need to take into consideration that traditional fishing practices of local fisherfolks should not be hampered due to project, in order to safeguard the livelihood of local fisherfolks. MCZMA in its 130th meeting has prescribed a condition to that effect which states that JNPT to ensure that fishermen activities should not be hampered. Specific condition no. (xv), (xvi) and (xxi) pertaining to marine ecology / biodiversity also binds the JNPT for commitment towards protection of coastal resources and fisheries.</p> <p>Committee felt that JNPT shall proactively obtain the suggestions of the Commissioner, Fisheries for safeguarding the local traditional fishing in the area and other related measures with view to safeguard the livelihood of the local fisherfolks.</p> <p>Committee noted that scope of the committee is limited to project of balance work of 4th CT work. However, considering the repeated insistence & requests of applicants/ villagers, the committee visited the site of 330 m jetty (near Nhava creek) by boat. Villagers raised serious concerns about the impact of the said jetty & bundharas constructed in Nhava creek, on free natural flow of tidal water in Nhava Creek. Villagers stressed that free flow in the Nhava creek is utmost necessity so that boats of the local fisherfolks could navigate through the creek to enter in the sea for fishing.</p> <p>Committee taking into consideration above concerns raised by the local fisherfolks, noted that the JNPT should ensure the free flow of tidal water into the Nhava creek for safe navigation of fisherfolks boat in the creek and also ensure tidal water reaches to mangrove vegetation & biodiversity in the creek. It is felt that this will help in sustenance of fishing practices of local fisherfolks in the area.</p>

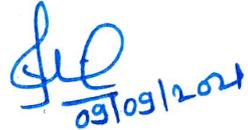
At the end, the Committee noted that at present, the balance project (Phase II) work of 4th CT is not yet commenced on the site. JNPT officials informed that layout of balance reclamation work is revised and accordingly, application for amendment in EC is submitted to MoEF&CC, New Delhi. Committee noted that while deliberating the amended application for revised reclamation, the concerned Authorities need to look into aspect of impact of revised reclamation on traditional fishing of local fisherfolks. EIA report for revised application need to cover a detailed chapter on impact of reclamation on local traditional fisheries/ fisherfolks and remedial measures/R&R issues if any, hydrodynamic modeling studies to comprehend tidal flow pattern around the area. NoC from the Commissioner Fisheries may be insisted, with a view to safeguard the local fishing and livelihood of fisherfolks.

TOR 3: The Committee shall give its independent factual report to the Tribunal within 3 months by email at judicial-ngt@gov.in from the date of Hon'ble NGT order dated 23.6.2021

The Committee factual report shall be submitted to Hon'ble NGT, on email judicial-ngt@gov.in by 13th Sep, 2021.


Suresh Kumar Adapa,
 Scientist D, MoEF&CC, New Delhi


Rahul Mundake,
 Sub-Divisional Officer, Panvel for District
 Collector, Raigad


Dhananjay. B. Patil,
 Regional Officer, Maharashtra Pollution
 Control Board


Joy Thakur,
 Scientist I, Environment & CC, GoM for
 MCZMA

MAHARASHTRA POLLUTION CONTROL BOARD

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Your Service is our duty

NO.MPCB/MS/B- 258

Date: 01/09/21

OFFICE ORDER

Sub: Constitution of Committee to ascertain facts on the issues raised by the Applicant in respect of EC granted to JNPT, by the MoEF&CC for an additional container terminal in Uran Taluka in District-Raigad, Maharashtra..

Ref: Order dated 23.6.2021 passed by Hon'ble NGT in OA No.09/2021 filed by Dilip pandhurang Koli and Ors v/s Union of India & Ors.

Dilip Pandurang Koli & Ors has filed an Original Application No 09/2021 against Union of India & Ors before the Hon'ble National Green Tribunal, regarding the issue of grant of Environmental Clearance to M/s JNPT, Uran, Dist- Raigad.

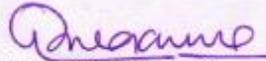
In the aforesaid matter, the Hon'ble NGT vide order dated 23/06/2021 stated that in view of the contention that the area where expansion activities are to be undertaken in CRZ-1A, where constructions are prohibited and violation of EC conditions have been found established during the site investigation on 13/12/2023 as per Annexure-A13, there is a substantial question of environment relating to enforcement of CRZ Regulation. In order to ascertain the ground factual situation, the Hon'ble NGT has constituted a Joint Committee, which is as under:

- | | |
|--|-----------------|
| 1. Mr Suresh Kumar Adapa
Scientist "D"
Ministry of Environment and Forest,
Western Central Regional Office-Nagpur | Member |
| 2. Sub Divisional Officer
Panvel- Sub-Division, Panvel | Member |
| 3. Mr Dattatray Bhalerao,
Scientist II, Environment and Climate Change Deptt.
(Representative from MCZMA),
Govt of Maharashtra. | Member |
| 4. Mr D B Patil
Regional Officer
Maharashtra Pollution Control Board
Navi Mumbai | Member Convenor |

: 2 :

The terms of reference of the Committee are as under :

1. The Committee shall ascertain the ground factual situation in respect of expansion activities are to be undertaken in CRZ-1A, where constructions are prohibited and violation of EC conditions have been found established during the site investigation on 31/12/2013.
2. The Committee shall look into the issues raised by the Applicant in respect of EC granted to JNPT, by the MoEF&CC, Govt. of India.
3. The Committee shall give its independent factual report to the Tribunal within three months by e-mail at judicial-ngt@gov.in from the date of Hon'ble NGT Order dtd.23/06/2021.


(Ashok Shingare, IAS)
Member Secretary

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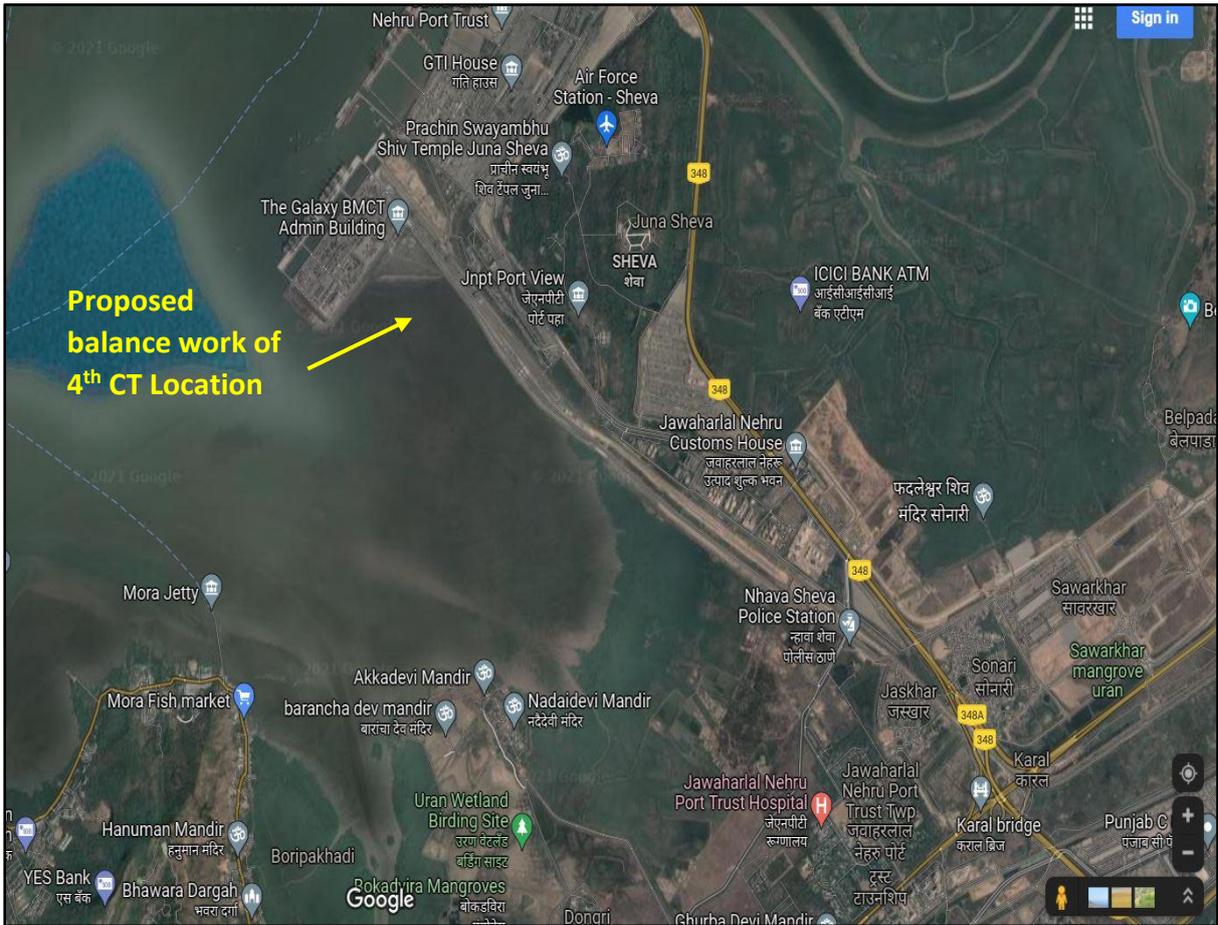
1. O/o Regional Officer, Ministry of Environment, Forests and Climate Change, West Central Regional Office ,Ground Floor, Eastern Wing, New Secretariat Building-Opposite Old VCA Stadium, Civil Lines -Nagpur-440001.
2. District Collector, Raigad.
3. Director, Environment and Climate Change Deptt., Govt of Maharashtra, Mantralaya, Mumbai-400 032.

Copy for information to:

1. Mr Suresh Kumar Adapa, Scientist "D", Ministry of Environment and Forest, West Central Regional Office-Nagpur
2. Sub Divisional Officer, Panvel- Sub-Division, Panvel
3. Mr Dattatray Bhalerao, Scientist II, Environment and Climate Change Deptt, Govt of Maharashtra.
4. Mr D B Patil, Regional Officer, Maharashtra Pollution Control Board, Navi Mumbai. He is directed to co-ordinate and provide necessary infrastructure and logistic support to the Committee Members.

Copy to: Chief Accounts Officer/Regional Officer(HQ)/Law Officer(P&L Divn.II), MPCB, Mumbai-for information and necessary action.

Annexure -II



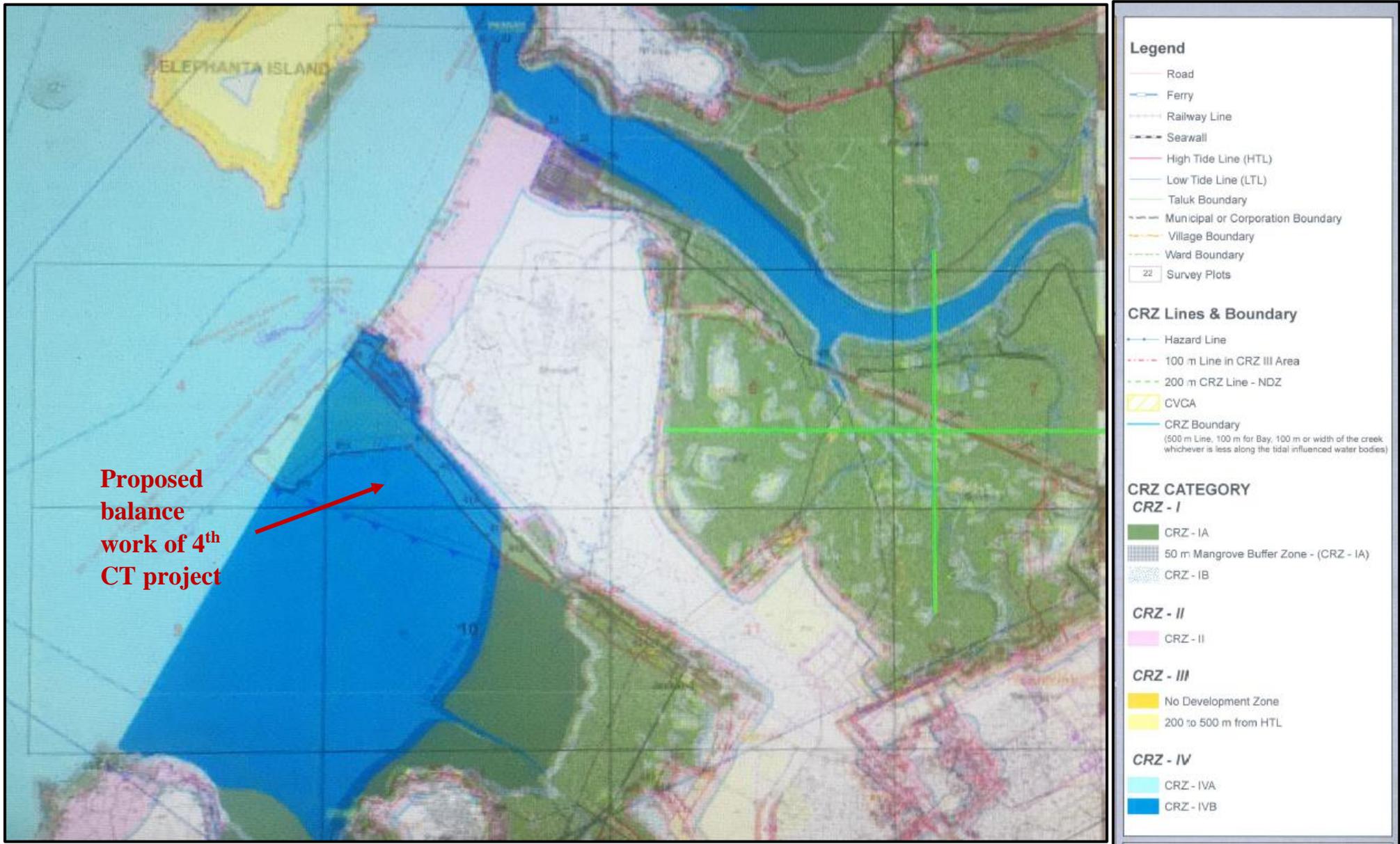
Google image showing the location of proposed balance work of 4th CT project



Area near Mora Jetty



Location of proposed balance work of 4th CT project



Proposed balance Work of 4th CT project located in CRZ-IV as per approved CZMP of 2011

Attendance Sheet for dated 7th & 8th September 2021

Sub: Committee Meeting scheduled on 07.09.2021 & 08.09.2021 at Regional Office, M.P.C.Board, 7th Floor, Raigad Bhavan, C.B.D.Belapur, Navi Mumbai in the Matter of O.A.No. 09/2021 filed by Dilip Pandurang Koli and Ors v/s Union of India & Ors.

Sr. No.	Name and Organization	Mobile No. / email Id	Signature
1	SUMIT KUMAR ADAPA Irr., Maharashtra, Nagpur	9049350409	A. Sumit (Am)
2	Joy S. Thakur MCZMA, ENV&CC Dept,	9869309563	Thakur
3	D B PATIL RO, MPC Board	8806688006	DBP
4	Rahul Munde CSDO, Jalgaon	7588736285	Rahul Munde
5			
5.	Sachin Adkar, SRO, Jalgaon	9156674711	Sachin
6.	Rupesh Mahale, Project officer, MCZMA	8369231439	Rupesh
7.	K.S. Langde F.O	9889450079	Langde
8.	P.V. Patil, FO. MPCB	9920160505	P.V. Patil
9)	Dilip Koli	9702445747	Dilip Koli
10)	Parmanand Koli	8356946030	Parmanand Koli
11)	Ramesh Koli		Ramesh Koli
12)	Nandkumar Pawar	9817831683	Nandkumar Pawar
13)	Neha Koli		Neha Koli
14)	Hitesh Koli	9820210911	Hitesh Koli

15) Ramakant Koli

16) Bharat Koli

17) Eknath Koli

18)

19)

20)

21)

B. Koli
D.P. Koli

