



REFERENCE: 14/1/1/E3/9/10/3/L1019/19

ENQUIRIES: D Mouton

BY EMAIL

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Ruitersbos

6499

PRE-COMPLIANCE NOTICE

Dear Sir

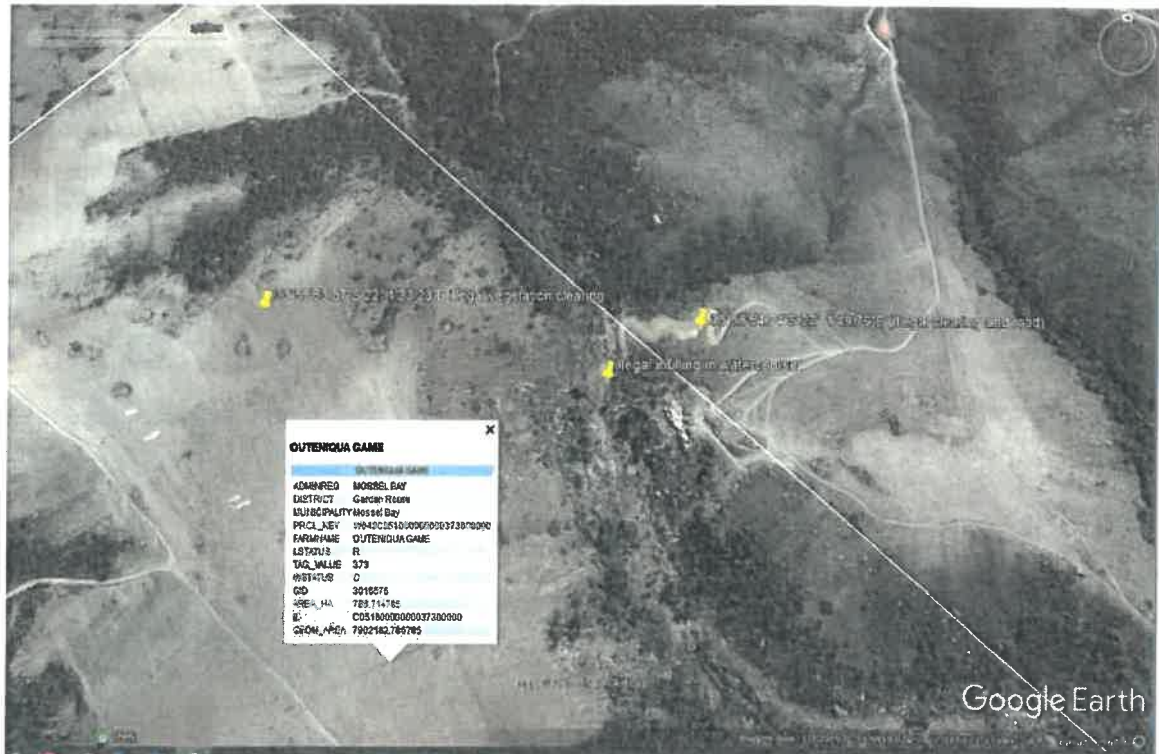
INTENTION TO ISSUE A COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998

1. During an investigation into allegations of the commencement of listed activities in contravention of section 24F of the National Environmental Management Act, 1998 ("NEMA") a site inspection was conducted at Farm Outeniqua Game No 420 and Farm No 373, Mossel Bay ("the properties") by Environmental Management Inspectors (EMIs) from the Department's Directorate: Environmental Law Enforcement together with officials from the Mossel Bay Municipality and accompanied by yourself on 13 February 2019, which confirmed that you have commenced with the clearing of indigenous vegetation of more than 1 ha, the clearing of endangered ecosystem vegetation (Garden Route Granite Fynbos) of more than 300m², the construction of a road wider than 4

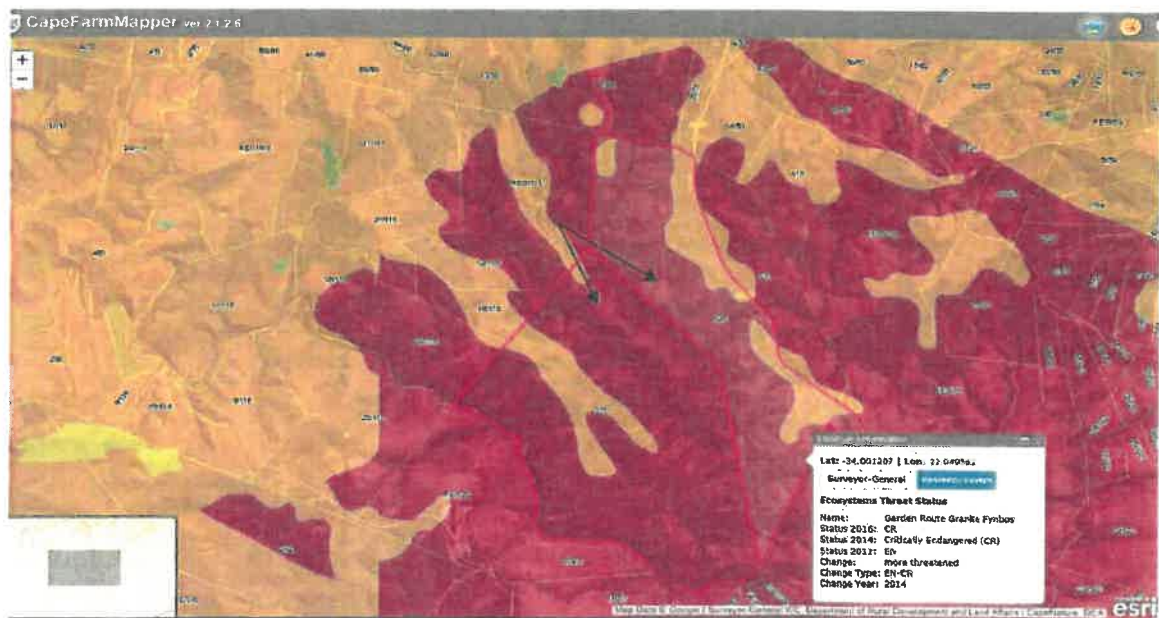
metres as well as infilling / moving of material within a watercourse on the aforesaid properties without environmental authorisation.



Aerial map 1: Location of some of the areas that have allegedly unlawfully been cleared on Farm No. 420 (Outeniqua Game Farm), Mossel Bay.



Aerial map 2: Location and indication of alleged illegal vegetation clearing, illegal construction of a road and illegal infilling within a watercourse on Farm No 420 and 373, Mossel Bay.



Aerial map 3: Indication of the Ecosystem Threat Status classification of Critical Endangered Garden Route Granite Fynbos evident on the properties.

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Aerial map 4: Indication of the Ruiterbos River traversing through the properties and as indicated in white the area of concern regarding road construction and infilling within the watercourse that occurred.

2. In terms of section 24F of the NEMA, no activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 and 3 of 2014 may commence without environmental authorisation from the competent authority.
3. On considering the evidence before me, there are reasonable grounds to believe that you have commenced the following listed activities without environmental authorisation:

EIA Regulations Listing Notice 1 of 2014:

Activity no. 19:

The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;

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but excluding where such infilling, depositing, dredging, excavation, removal or moving—

- (a) will occur behind a development setback;
- (b) is for maintenance purposes undertaken in accordance with a maintenance management plan;
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or
- (e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.

Activity no. 27:

The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—

- (i) the undertaking of a linear activity; or
- (ii) maintenance purposes undertaken in accordance with a maintenance management plan.

Activity no. 28:

Residential, mixed, retail, commercial, industrial or institutional developments where such land was used for agriculture, game farming, equestrian purposes or afforestation on or after 01 April 1998 and where such development:

- (i) will occur inside an urban area, where the total land to be developed is bigger than 5 hectares; or
- (ii) **will occur outside an urban area, where the total land to be developed is bigger than 1 hectare;**

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excluding where such land has already been developed for residential, mixed, retail, commercial, industrial or institutional purposes.

EIA Regulations Listing Notice 3 of 2014:

Activity no. 2:

The **development of reservoirs**, excluding dams, with a capacity of more than 250 cubic metres.

i. Western Cape

- ii. A protected area identified in terms of NEMPAA, excluding conservancies;
- iii. **In areas containing indigenous vegetation;** or
- iv. Inside urban areas:
 - (aa) Areas zoned for use as public open space; or
 - (bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority, or zoned for a conservation purpose.

Activity no. 4:

The **development of a road wider than 4 metres with a reserve less than 13,5 metres.**

i. Western Cape

- ii. Areas zoned for use as public open space or equivalent zoning;
- iii. **Areas outside urban areas;**
 - (aa) **Areas containing indigenous vegetation;**
 - (bb) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined; or
- iv. Inside urban areas:
 - (aa) Areas zoned for conservation use; or
 - (bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority.

Activity no. 12:

The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

i. Western Cape

- ii. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;***
- iii. Within critical biodiversity areas identified in bioregional plans;*
- iv. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;*
- v. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or*
- vi. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister.*



Photo 1: View of alleged unlawful development of a dwelling within 32 metres from a watercourse and construction of an access road through the watercourse below on Farm 373 and Farm 420, Mossel Bay.



Photo 2: Another view of the construction of a road and associated infilling within a watercourse on Farm 373 and Farm 420, Mossel Bay.



Photo 3: View of alleged unlawful vegetation clearing expansion occurred on Farm 420, Mossel Bay.



Photo 4: View of alleged unlawful vegetation clearing that occurred on another portion of Farm 420, Mossel Bay.

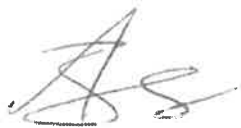


Photo 5: View of alleged unlawful vegetation clearing and the development of a reservoir that occur on Farm 420, Mossel Bay.

4. The Department wishes to advise that on 4 December 2014, the Minister of Environmental Affairs promulgated the 2014 EIA Regulations. These Regulations came into effect on 8 December 2014 and was amended on 7 April 2017. Accordingly, activities which commenced prior to 7 April 2017 and which are similarly listed in the 2014 Regulations require prior environmental authorisation.
5. In terms of section 49A of the NEMA it is an offence to commence a listed activity without environmental authorisation. A person convicted of such an offence is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

6. As such, you are hereby given notice of the Department's intention to issue you with a Compliance Notice in terms of section 31L of the NEMA, which will instruct you to:
 - 6.1 immediately cease the above listed activities;
 - 6.2 investigate, assess and evaluate the impact that the listed activity has / has had on the environment;
 - 6.3 rehabilitate the entire site to its original condition;
 - 6.4 carry out any other measure necessary to rectify the effects of the unlawful activity
7. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of failing to comply with a Compliance Notice is liable to a maximum fine of R5 million or 5 years imprisonment or both such fine and such imprisonment.
8. You are afforded a period of **7 (seven) calendar days** from the date of receipt of this Pre-Compliance Notice to make written representations to the Department as to why a Compliance Notice should not be issued.
9. If you inform the Department, in respect of paragraph 7 above that you intend to rectify the non-compliance, you must cease the above listed activities and submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Pre-Compliance Notice, a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
 - 9.1 assessment and evaluation of the impact on the environment;
 - 9.2 identification of proposed remedial and/or mitigation measures
10. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.

11. Approval of the above report by the Department does not remedy the unlawful commencement of the above activity, which remains unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
12. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.
13. Notwithstanding the section 24G application, the Department may issue a Compliance Notice and/or commence criminal proceedings should circumstances so require.



Achmad Bassier

Director: Environmental Law Enforcement

Grade 1: Environmental Management Inspector

Date: 18/08/2019

CC:

Mr W Manuel (Mossel Bay Municipality) Email: wmanuel@mosselbay.gov.za

Mr R Leroux (Mossel Bay Municipality) Email: rleroux@mosselbay.gov.za

Ms S Pullen (DEA&DP - D:DM) Email: Shireen.Pullen@westerncape.gov.za