



**REFERENCE:** 14/1/1/E2/5/9/3/0336/17

**ENQUIRIES:** Najah Ben Jeddou

**BY EMAIL**

Email: [Billy.Miller@fruitways.co.za](mailto:Billy.Miller@fruitways.co.za)

Mr Miller

PO Box 25

Elgin

7180

RECEIVED: 5.2.20

## COMPLIANCE NOTICE

Dear Sir

### COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998

1. The Department's Pre-Compliance Notice dated 7 September 2017, the Botanical Assessment of Portion 22 of Farm Klipfontein 82 dated 26 October 2017 prepared by Nick Helme Botanical Surveys submitted to this Department, and representations submitted by yourself on 21 January 2019 have reference.

2. I, Mr Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issue Mr William Miller with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 ("NEMA") due to the fact that the site has not been rehabilitated and the environmental degradation is still continuing by the draining of the wetland, and the inadequate representation received.
3. This Compliance Notice relates to non-compliance with the provisions 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.

#### **Details of conduct constituting non-compliance**

4. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the NEMA, site inspections were conducted at Portion 22 of Farm Klipfontein no. 82, Caledon, by an Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement on 16 August 2017 and 22 August 2019 and it was confirmed that you have commenced with the clearance of critically endangered vegetation known as Elgin Shale Fynbos and conducted excavation of trenches and infilling activities within a functional wetland resulted in the drainage of water from the wetland and damage to vegetation without the requisite environmental authorisation.

**S 34° 02' 58.65" E 19° 09' 09.49"**

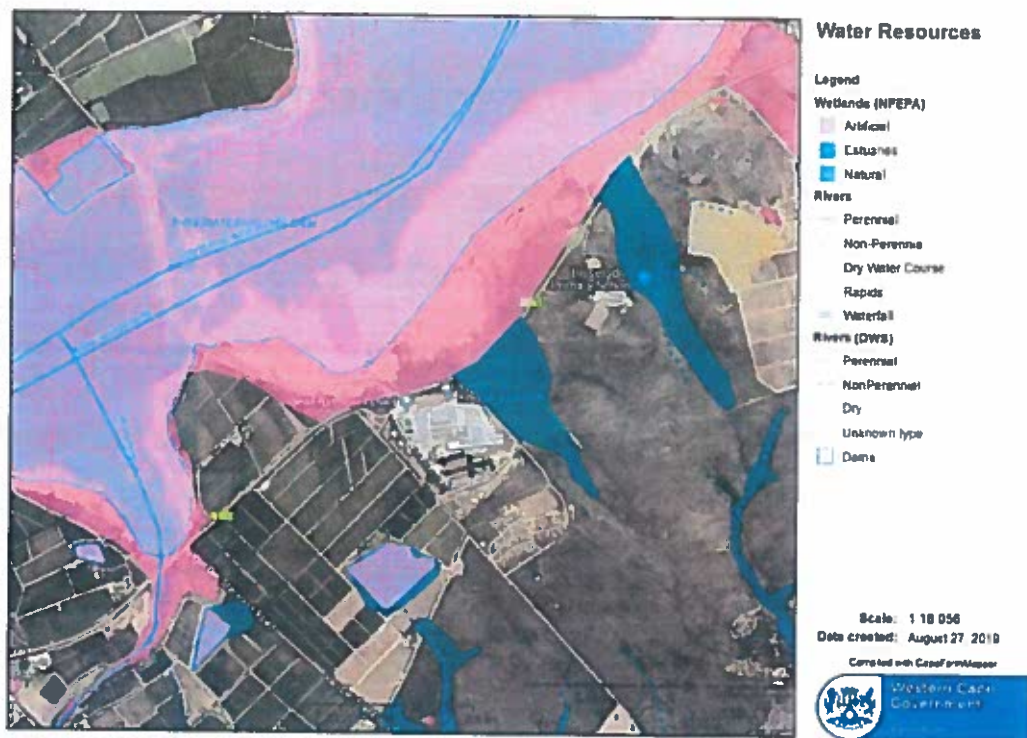


Aerial map 1: Location of alleged illegal activity and view of the trenches that were dug.



Aerial map 2: Location of alleged illegal activity in relation to the Theewaterskloof dam.





Aerial map 3: CapeFarmMapper image showing that the trenches were dug within a wetland area



Photo 1: View of the trench draining the wetland.





Photo 2: View of erosion and drainage of wetland and pipes within the trench.



Photo 3: View of erosion and drainage of wetland

5. On considering the evidence before me there are reasonable grounds to believe that you have commenced the following 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;***

*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*

*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.*

Listing Notice 1 of 2014:

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

*maintenance purposes undertaken in accordance with a maintenance management plan.*

Listing Notice 3 of 2014:

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.***

**a. Western Cape**

- i. 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;***
- ii. Within critical biodiversity areas identified in bioregional plans;***
- iii. 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;***
- iv. 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***

***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.***

6. **You are hereby instructed to:**

- 6.1 Immediately cease the above listed activities;
- 6.2 Submit to the Department within **30 (thirty) calendar days** of receipt of this Compliance Notice a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
  - 6.3 Assessment and evaluation of the impact on the environment;
  - 6.4 Identification of proposed remedial and/or mitigation measures; and
  - 6.5 Rehabilitate the entire site to its original condition; and
  - 6.6 Carry out any other measures to rectify the effects of unlawful activity.
- 7. Approval of the plan by the Department does not remedy the unlawful commencement of the above activities, which remain unlawful in terms of section 49A (1) (a) and/or (d) of the NEMA.
- 8. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
- 9. 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.
- 10. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.



## Varying this Compliance Notice

11. If you would like me to vary this Compliance Notice or extend the period to which it relates, you may make representations to me, in writing, to do so.

## Failure to comply with this Compliance Notice (section 31N of the NEMA) and related offences in terms of the NEMA

12. In terms of section 49A(1)(a) 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.
13. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of such an offence is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.
14. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:
- 14.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
  - 14.2 take any steps necessary to ensure compliance with the provisions of the law, permit or authorisation to which this Compliance Notice relates and recover from you the cost of doing so.

## **Procedure for lodging an objection to this Compliance Notice (section 31L and 31M of the NEMA)**

15. If you wish to lodge an objection to this Compliance Notice, you may do so by making representations, in writing, to the Provincial Minister of Environmental Affairs and Development Planning ("the Minister") within 30 days of receipt of this Compliance Notice.

16. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.

17. The objection must be in writing and forwarded to the Appeal Administrator, Mr Marius Venter at the contact details below and must be accompanied by a statement detailing the grounds of the objection and supporting documentation, if any.

By post: Western Cape Ministry of Local Government, Environmental  
Affairs and Development Planning

Private Bag X9186

CAPE TOWN

8000

By facsimile: (021) 483 4174

By hand: Attention: Mr Marius Venter (Tel: 021 483 3721)

Room 809

8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za)

18. Irrespective of any representations you may make to me or to the Minister, you must comply with this Compliance Notice within the time period stated in the Compliance Notice, unless the Minister agrees to suspend the operation of this Compliance Notice.



**Achmad Bassier**

**Director: Environmental Law Enforcement**

**Grade 1 Environmental Management Inspector**

**Date: 10/10/2019**

CC: Andrie Sommers (CapeNature)

Nick Helme (Nick Helme Botanical Surveys)

Email: [Asommers@capenature.co.za](mailto:Asommers@capenature.co.za)

Email: [botoneek@iafrica.com](mailto:botoneek@iafrica.com)

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