



**Western Cape  
Government**  
Environmental Affairs and  
Development Planning

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

**ENQUIRIES:** D Mouton

**BY EMAIL**

Mr Clint Smith

E-mail: [ogfcc2@gmail.com](mailto:ogfcc2@gmail.com)

PO Box 59

Ruiterbos

6499

Attention: Mr Smith

Dear Sir

**ALLEGED UNLAWFUL CLEARANCE OF VEGETATION AND CONSTRUCTION OF  
INFRASTRUCTURE WITHIN 32 METRES OF A WATERCOURSE ON ERF 420 AND ERF 373  
OUTENIQUA FARM, MOSSEL BAY (THE PROPERTIES)**

1. This Department's Pre-Compliance Notice dated 18 March 2019 and the representation received from your appointed independent Environmental Assessment Practitioner, *Andrew West Environmental Consultancy*, dated 12 June 2019 (including a Botanical Impact Assessment Report) has reference.

2. The Department's Directorate: Environmental Law Enforcement (this Directorate) and CapeNature has perused the above representation and wish to respond as follows:

- 2.1. Activity 19 (LN 1): According to the information provided, this Directorate concurs with the findings that the amount of infilling is below the threshold of 10m<sup>3</sup> and therefore Activity 19 is not applicable;
- 2.2. Activity 27 (LN 1): Reference is made to the Google historical imagery of 2013 to 2019 and the visible changes in the clearing of the sites are noted. Even though it may have been the previous owner that commenced with the initial clearing, it remains unlawful. Therefore, before commencing with additional clearing on the property, you as the current owner, has the responsibility to do your due diligence and obtain the relevant authorisations / permits prior to commencing with any further clearing activities on the said properties;
- 2.3. You stipulated that the areas in question have been cleared of debris after the December 2016 fire and have been subsequently established for grazing. According to information received by this Directorate, these areas have not obtained the requisite permits by the Department of Agriculture (Western Cape) for the pastures nor have you obtained environmental authorisation from this Department before commencing with the clearing activities.
- 2.4. In addition, there is insufficient evidence to determine that these areas were not managed as cultivation and or grazing lands in the preceding 10 years and therefore are these areas considered as virgin lands as per the definition of indigenous vegetation in terms of the NEMA that states *"vegetation consisting of indigenous plant species occurring*

*naturally in an area, regardless of the level of alien infestation and where the topsoil has not been lawfully disturbed during the preceding ten years". As such, this Directorate is still of the view the Activity 27 (LN 1) and Activity 12 (LN 3 is applicable and therefore required prior environmental authorisation from this Department;*

- 2.5. Activity 28 (LN 1): The evidence provided entail that the cumulative footprint size for the buildings on the properties are below the threshold of 1 hectare. However, no approved building plans or Surveyor General Diagrams have been provided to confirmed this information. Hence, this activity is applicable unless the applicable information is provided;
- 2.6. Activity 2 (LN 3): According to the information received the total capacity of the dams (reservoirs) are below the threshold of 240 cubic metres. As such, this Directorate concurs that this activity has not been triggered;
- 2.7. Activity 4 (LN 3): The evidence provided indicate that the road is wider than 4 metres at certain sections and that indigenous vegetation had occurred here (according to the Botanical Assessment). Furthermore, the was no substantial evidence to confirm that the road in question was a historic 4x4 track. As such, this Directorate is still of the view that the construction of road is unlawful and therefore required prior environmental authorisation from this Department;

- 2.8. Furthermore, the level of alien infestation that occurred on the properties (pre and post fire) should not be seen as reducing the sensitivity of the sites, nor is the subsequent removal of alien vegetation from a property regarded as a mitigation measure due to this being a legal requirement in terms of the Conservation of Agricultural Resources Act ("CARA"), landowners must prevent the spread of alien invasive plants on their properties;
- 2.9. Furthermore, in terms of section 73 of National Environmental Management Biodiversity Act (NEM:BA) and the Alien & Invasive Species Regulations (GNR 598) dated 1 August 2014, it is a requirement to obtain approval for any physical alien vegetation clearing by compiling and submitting such an Invasive Control Plan to the National Department of Environmental Affairs, Biosecurity component prior to any physical clearing commencing on your properties. Kindly contact Mr Stiaan Kotze (Director: Biosecurity, Department of Environmental, Forestry and Fisheries) on tel: (021) 441 2816 or Email: [skotze@environment.gov.za](mailto:skotze@environment.gov.za), in this regard.
3. In light of the above, you submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this letter, a detailed rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
- 3.1 assessment and evaluation of the impact on the environment; and
- 3.2 identification of proposed remedial and/or mitigation measures.

4. 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.
5. 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.
6. Notwithstanding the section 24G application, the Department may issue a Compliance Notice and/or commence criminal proceedings should circumstances so require.
7. Your cooperation in this regard is appreciated.



**Achmad Bassier**

**Director: Environmental Law Enforcement**

**Date: 31/10/2019**

Cc	Ms K Smith	Email: <a href="mailto:ogfcc1@gmail.com">ogfcc1@gmail.com</a>
	Ms S Pullen (DEA&DP)	Email: <a href="mailto:Shireen.Pullen@westerncape.gov.za">Shireen.Pullen@westerncape.gov.za</a>
	Mr D Swanepoel (DEA&DP)	Email: <a href="mailto:Danie.Swanepoel@westerncape.gov.za">Danie.Swanepoel@westerncape.gov.za</a>
	Mr A West (Andrew West Environmental Consultancy)	Email: <a href="mailto:andrewwest@isat.co.za">andrewwest@isat.co.za</a>

