

Applicable Legislation, Policies and/or Guidelines associated with the development of Montana 2 SEF

Legislation	Applicable Requirements	Relevant Authority	Compliance Requirements
National Legislation			
Constitution of the Republic of South Africa (No. 108 of 1996)	<p>In terms of Section 24, the State has an obligation to give effect to the environmental right. The environmental right states that:</p> <p><i>“Everyone has the right –</i></p> <ul style="list-style-type: none"> » <i>To an environment that is not harmful to their health or well-being, and</i> » <i>To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:</i> <ul style="list-style-type: none"> * <i>Prevent pollution and ecological degradation,</i> * <i>Promote conservation, and</i> * <i>Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”</i> 	Applicable to all authorities	There are no permitting requirements associated with this Act. The application of the Environmental Right however implies that environmental impacts associated with proposed developments are considered separately and cumulatively. It is also important to note that the “right to an environment clause” includes the notion that justifiable economic and social development should be promoted, through the use of natural resources and ecologically sustainable development.
National Environmental Management Act (No 107 of 1998) (NEMA)	<p>The 2014 EIA Regulations have been promulgated in terms of Chapter 5 of NEMA. Listed activities that may not commence without EA are identified within the Listing Notices (GNR 327, GN,R 325 and GNR 324) which form part of these Regulations (GNR 326).</p> <p>In terms of Section 24(1) of NEMA, the potential impact on the environment associated with these listed activities must be assessed and reported on to the competent authority charged by NEMA with granting of the relevant environmental authorisation.</p> <p>Considering the location of the project site within the Upington Renewable Energy Development Zone (REDZ 7) and the requirements GG 44191 of 26 February 2021, a Basic Assessment Process is required to be undertaken for</p>	<p>DFFE – Competent Authority</p> <p>Western Cape DAEARD&LR – Commenting Authority</p>	The listed activities triggered by the proposed project have been identified and are being assessed as part of the BA process currently underway for the project. The BA process will culminate in the submission of a final BA Report to the competent in support of the application for EA.

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	<p>the proposed project. All relevant listing notices for the project (GN R327, GN R325 and GN R324) will be applied for</p>		
<p>National Environmental Management Act (No 107 of 1998) (NEMA)</p>	<p>In terms of the "Duty of Care and Remediation of Environmental Damage" provision in Section 28(1) of NEMA every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.</p> <p>In terms of NEMA, it is the legal duty of a project proponent to consider a project holistically and to consider the cumulative effect of a variety of impacts.</p>	<p>DFFE Western Cape DAEARD&LR</p>	<p>While no permitting or licensing requirements arise directly by virtue of the proposed project, this section finds application through the consideration of potential cumulative, direct, and indirect impacts. It will continue to apply throughout the life cycle of the project.</p>
<p>Environment Conservation Act (No. 73 of 1989) (ECA)</p>	<p>The Noise Control Regulations in terms of Section 25 of the ECA contain regulations applicable for the control of noise in the Provinces of Limpopo, Northwest, Mpumalanga, Northern Cape, Eastern Cape, and KwaZulu-Natal Provinces.</p> <p>The Noise Control Regulations cover the powers of a local authority, general prohibitions, prohibitions of disturbing noise, prohibitions of noise nuisance, use of measuring instruments, exemptions, attachments, and penalties.</p> <p>In terms of the Noise Control Regulations, no person shall make, produce or cause a disturbing noise, or allow it to be made, produced or caused by any person, machine,</p>	<p>DFFE Western Cape DAEARD&LR Central Karoo District Municipality</p>	<p>Noise impacts are expected to be associated with the construction phase of the project. As the site is located a great distance from noise-sensitive receptors and communities, construction noise is unlikely to present a significant intrusion on the local community. There is therefore no requirement for a noise permit in terms of the legislation.</p>

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	device or apparatus or any combination thereof (Regulation 04).		
National Water Act (No. 36 of 1998) (NWA)	<p>A water use listed under Section 21 of the NWA must be licensed with the Regional DWS, unless it is listed in Schedule 1 of the NWA (i.e. is an existing lawful use), is permissible under a GA, or if a responsible authority waives the need for a licence.</p> <p>Water use is defined broadly and includes consumptive and non-consumptive water uses, taking and storing water, activities which reduce stream flow, waste discharges and disposals, controlled activities (activities that impact detrimentally on a water resource), altering a watercourse, removing water found underground for certain purposes, and recreation.</p> <p>Consumptive water uses may include taking water from a water resource (Section 21(a)), and storing water (Section 21(b)).</p> <p>Non-consumptive water uses may include impeding or diverting flow in a watercourse (Section 21(c)), and altering of bed, banks, or characteristics of a watercourse (Section 21(i)).</p>	Regional Department of Water and Sanitation	<p>Several non-perennial drainage features are present within the development area and within close proximity of the development area.</p> <p>The project proponent would need to apply for a WUL or register a GA with the DWS should any trigger water use activities be undertaken.</p>
Minerals and Petroleum Resources Development Act (No. 28 of 2002) (MPRDA)	In accordance with the provisions of the MPRDA, a mining permit is required in accordance with Section 27(6) of the Act where a mineral in question is to be mined, including the mining of materials from a borrow pit.	Department of Mineral Resources and Energy	Any person who wishes to apply for a mining permit in accordance with Section 27(6) must simultaneously apply for an Environmental Authorisation in terms of NEMA. No borrow pits are expected to be required for the construction of the project, and as a result, a mining permit or EA is not required to be obtained.

Applicable Legislation, Policies and/or Guidelines associated with the development of Montana 2 SEF

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	Section 53 of the MPRDA states that any person who intends to use the surface of any land in any way which may be contrary to any object of the Act, or which is likely to impede any such object must apply to the Minister for approval in the prescribed manner.		In terms of Section 53 of the MPRDA approval is required from the Minister of Mineral Resources to ensure that the proposed development does not sterilise a mineral resource that might occur on site.
National Environmental Management: Air Quality Act (No. 39 of 2004) (NEM: AQA)	<p>The National Dust Control Regulations (GNR 827) published under Section 32 of NEM: AQA prescribes the general measures for the control of dust in all areas and provides a standard for acceptable dustfall rates for residential and non-residential areas.</p> <p>In accordance with the Regulations (GNR 827) any person who conducts any activity in such a way as to give rise to dust in quantities and concentrations that may exceed the dustfall standard set out in Regulation 03 must, upon receipt of a notice from the air quality officer, implement a dustfall monitoring programme.</p> <p>Any person who has exceeded the dustfall standard set out in Regulation 03 must, within three months after submission of the dustfall monitoring report, develop and submit a dust management plan to the air quality officer for approval.</p>	Western Cape DAEARD&LR / ZF Central Karoo District Municipality	In the event that the project results in the generation of excessive levels of dust, the possibility could exist that a dustfall monitoring programme would be required for the project, in which case dustfall monitoring results from the dustfall monitoring programme would need to be included in a dust monitoring report, and a dust management plan would need to be developed. However, with mitigation measures implemented, Montana 1 Solar Energy facility is not anticipated to result in significant dust generation.
National Heritage Resources Act (No. 25 of 1999) (NHRA)	<p>Section 07 of the NHRA stipulates assessment criteria and categories of heritage resources according to their significance.</p> <p>Section 35 of the NHRA provides for the protection of all archaeological and palaeontological sites, and meteorites.</p>	Heritage Western Cape	No archaeological resources of significance were identified within the area proposed for development although the broader area has archaeological significance in terms of the sensitive dolerite outcrops in the area (Appendix G). No impacts to significant archaeological heritage are anticipated.

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	<p>Section 36 of the NHRA provides for the conservation and care of cemeteries and graves by SAHRA where this is not the responsibility of any other authority.</p> <p>Section 38 of the NHRA lists activities which require developers or any person who intends to undertake a listed activity to notify the responsible heritage resources authority and furnish it with details regarding the location, nature, and extent of the proposed development.</p> <p>Section 44 of the NHRA requires the compilation of a Conservation Management Plan as well as a permit from SAHRA for the presentation of archaeological sites as part of tourism attraction.</p>		<p>Five observations of palaeontological significance were noted within the area proposed for development. Three of these have higher levels of significance and are graded IIIB. These paleontological resources must be collected by a palaeontologist under an approved workplan prior to construction.</p> <p>There are limited impacts anticipated to archaeological and palaeontological heritage from this proposed development and as such, the principle of a renewable energy facility in this location is supported from a heritage perspective provided that the infrastructure is located in areas able to tolerate the impact of the high degree of change from a cultural landscape perspective.</p> <p>Should a heritage resource be impacted, a permit may be required from SAHRA or Heritage Western Cape in accordance with Section 48 of the NHRA, and the SAHRA Permit Regulations (GNR 668). This will be determined once the final location of the development footprint and its associated infrastructure within the development area has been determined.</p>

Applicable Legislation, Policies and/or Guidelines associated with the development of Montana 2 SEF

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<p>National Environmental Management: Biodiversity Act (No. 10 of 2004) (NEM: BA)</p>	<p>Section 53 of NEM: BA provides for the MEC / Minister to identify any process or activity in such a listed ecosystem as a threatening process.</p> <p>Three government notices have been published in terms of Section 56(1) of NEM: BA as follows:</p> <ul style="list-style-type: none"> » Commencement of TOPS Regulations, 2007 (GNR 150). » Lists of critically endangered, vulnerable, and protected species (GNR 151). » TOPS Regulations (GNR 152). <p>It provides for listing threatened or protected ecosystems, in one of four categories: critically endangered (CR), endangered (EN), and vulnerable (VU) or protected. The first national list of threatened terrestrial ecosystems has been gazetted, together with supporting information on the listing process including the purpose and rationale for listing ecosystems, the criteria used to identify listed ecosystems, the implications of listing ecosystems, and summary statistics and national maps of listed ecosystems (NEM:BA: National list of ecosystems that are threatened and in need of protection, (Government Gazette 37596, GNR 324), 29 April 2014).</p>	<p>DFFE</p> <p>Western Cape DAEARD&LR</p>	<p>Under NEM: BA, a permit would be required for any activity which is of a nature that may negatively impact the survival of a listed protected species.</p> <p>The Ecological Impact Assessment (Appendix D) identified listed species. Based on the SANBI POSA records for the site and surrounding area, species of conservation concern are potentially present on the site. A permit from Cape Nature will be required for the removal of listed species identified in the project site.</p>
<p>National Environmental Management: Biodiversity Act (No. 10 of 2004) (NEM: BA)</p>	<p>Chapter 5 of NEM: BA pertains to alien and invasive species, and states that a person may not carry out a restricted activity involving a specimen of an alien species without a permit issued in terms of Chapter 7 of NEM: BA, and that a permit may only be issued after a prescribed assessment of risks and potential impacts on biodiversity is carried out.</p>	<p>DFFE</p> <p>Western Cape DAEARD&LR</p>	<p>Restricted Activities and the respective requirements applicable to persons in control of different categories of listed invasive species are contained within the Alien and Invasive Species Regulations (GNR 598) published under NEM: BA, together with the requirements of the Risk Assessment to be undertaken.</p>

Applicable Legislation, Policies and/or Guidelines associated with the development of Montana 2 SEF

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	<p>Applicable, and exempted alien and invasive species are contained within the Alien and Invasive Species List (GNR 864).</p>		<p>The Ecological Impact Assessment (Appendix D) identified listed species. Based on the SANBI POSA records for the site and surrounding area, species of conservation concern are potentially present on the site. A permit from Cape Nature will be required for the removal of listed species identified in the project site.</p>
<p>Conservation of Agricultural Resources Act (No. 43 of 1983) (CARA)</p>	<p>Section 05 of CARA provides for the prohibition of the spreading of weeds.</p> <p>Regulation 15 of GNR 1048 published under CARA provides for the classification of categories of weeds and invader plants, and restrictions in terms of where these species may occur.</p> <p>Regulation 15E of GNR 1048 published under CARA provides requirement and methods to implement control measures for different categories of alien and invasive plant species.</p>	<p>Department of Agriculture, Land Reform and Rural Development (DALRRD)</p>	<p>CARA will find application throughout the life cycle of the project. In this regard, soil erosion prevention and soil conservation strategies need to be developed and implemented. In addition, a weed control and management plan must be implemented.</p> <p>The permission of DALRRD and the Western Cape Department of Agriculture will be required if Montana 1 Solar Energy facility requires the draining of vleis, marshes or water sponges on land outside urban areas. However, this is not anticipated to be relevant for the project.</p> <p>In terms of Regulation 15E (GNR 1048) where Category 1, 2 or 3 plants occur a land user is required to control such plants by means of one or more of the following methods:</p> <ul style="list-style-type: none"> » Uprooting, felling, cutting or burning.

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			<ul style="list-style-type: none"> » Treatment with a weed killer that is registered for use in connection with such plants in accordance with the directions for the use of such a weed killer. » Biological control carried out in accordance with the stipulations of the Agricultural Pests Act (No. 36 of 1983), the ECA and any other applicable legislation. » Any other method of treatment recognised by the executive officer that has as its object the control of plants concerned, subject to the provisions of sub-regulation (4). » A combination of one or more of the methods prescribed, save that biological control reserves and areas where biological control agents are effective shall not be disturbed by other control methods to the extent that the agents are destroyed or become ineffective.
<p>National Forests Act (No. 84 of 1998) (NFA)</p>	<p>According to this Act, the Minister may declare a tree, group of trees, woodland or a species of trees as protected. Notice of the List of Protected Tree Species under the National Forests Act (No. 84 of 1998) was published in GNR 734.</p> <p>The prohibitions provide that “no person may cut, damage, disturb, destroy or remove any protected tree, or collect, remove, transport, export, purchase, sell, donate</p>	<p>DFFE</p>	<p>A licence is required for the removal of protected trees. It is therefore necessary to conduct a survey that will determine the number and relevant details pertaining to protected tree species present in the development area for the submission of relevant permits to authorities prior to the disturbance of these individuals.</p>

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	<p>or in any other manner acquire or dispose of any protected tree, except under a licence granted by the Minister”.</p>		<p>The Ecological Impact Assessment undertaken as part of the BA Report indicated that One species of flora protected under provincial legislation were recorded within the project area during the survey period, namely:</p> <p>» Aizoaceae (<i>Mesembryanthemum coriarium</i>)</p> <p>A license in terms of the NFA will be required for impacting on the protected species identified at the site, (refer to Appendix D of this BA Report).</p>
<p>National Veld and Forest Fire Act (No. 101 of 1998) (NVFFA)</p>	<p>Chapter 4 of the NVFFA places a duty on owners to prepare and maintain firebreaks, the procedure in this regard, and the role of adjoining owners and the fire protection association. Provision is also made for the making of firebreaks on the international boundary of the Republic of South Africa. The applicant must ensure that firebreaks are wide and long enough to have a reasonable chance of preventing a veldfire from spreading to or from neighbouring land, it does not cause soil erosion, and it is reasonably free of inflammable material capable of carrying a veldfire across it.</p> <p>Chapter 5 of the Act places a duty on all owners to acquire equipment and have available personnel to fight fires. Every owner on whose land a veldfire may start or burn or from whose land it may spread must have such equipment, protective clothing, and trained personnel for</p>	<p>DFFE</p>	<p>While no permitting or licensing requirements arise from this legislation, this Act will be applicable during the construction and operation of the Montana 1 Solar Energy facility, in terms of the preparation and maintenance of firebreaks, and the need to provide appropriate equipment and personnel for firefighting purposes.</p>

Applicable Legislation, Policies and/or Guidelines associated with the development of Montana 2 SEF

Legislation	Applicable Requirements	Relevant Authority	Compliance Requirements
	extinguishing fires, and ensure that in his or her absence responsible persons are present on or near his or her land who, in the event of a fire, will extinguish the fire or assist in doing so, and take all reasonable steps to alert the owners of adjoining land and the relevant fire protection association, if any.		
Hazardous Substances Act (No. 15 of 1973) (HAS)	<p>This Act regulates the control of substances that may cause injury, or ill health, or death due to their toxic, corrosive, irritant, strongly sensitising or inflammable nature or the generation of pressure thereby in certain instances and for the control of certain electronic products. To provide for the rating of such substances or products in relation to the degree of danger, to provide for the prohibition and control of the importation, manufacture, sale, use, operation, modification, disposal or dumping of such substances and products.</p> <ul style="list-style-type: none"> » Group I and II: Any substance or mixture of a substance that might by reason of its toxic, corrosive, etc., nature or because it generates pressure through decomposition, heat or other means, cause extreme risk of injury etc., can be declared as Group I or Group II substance » Group IV: any electronic product, and » Group V: any radioactive material. <p>The use, conveyance, or storage of any hazardous substance (such as distillate fuel) is prohibited without an appropriate license being in force.</p>	Department of Health (DoH)	It is necessary to identify and list all Group I, II, III, and IV hazardous substances that may be on site and in what operational context they are used, stored, or handled. If applicable, a license would be required to be obtained from the DOH.
National Environmental Management: Waste Act (No. 59 of 2008) (NEM: WA)	The Minister may by notice in the Gazette publish a list of waste management activities that have, or are likely to have, a detrimental effect on the environment.	DFFE – hazardous waste	No listed activities are triggered by Montana 1 Solar Energy facility and therefore no Waste Management License

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	<p>The Minister may amend the list by –</p> <ul style="list-style-type: none"> » Adding other waste management activities to the list. » Removing waste management activities from the list. » Making other changes to the particulars on the list. <p>In terms of the Regulations published in terms of NEM: WA (GNR 912), a BA or EIA is required to be undertaken for identified listed activities.</p> <p>Any person who stores waste must at least take steps, unless otherwise provided by this Act, to ensure that:</p> <ul style="list-style-type: none"> » The containers in which any waste is stored, are intact and not corroded or in » Any other way rendered unlit for the safe storage of waste. » Adequate measures are taken to prevent accidental spillage or leaking. » The waste cannot be blown away. » Nuisances such as odour, visual impacts and breeding of vectors do not arise, and » Pollution of the environment and harm to health are prevented. 	<p>Western Cape DAEARD&LR – general waste</p>	<p>is required to be obtained. General and hazardous waste handling, storage, and disposal will be required during construction and operation. The National Norms and Standards for the Storage of Waste (GNR 926) published under Section 7(1)(c) of NEM: WA will need to be considered in this regard.</p>
<p>National Road Traffic Act (No. 93 of 1996) (NRTA)</p>	<p>The technical recommendations for highways (TRH 11): “Draft Guidelines for Granting of Exemption Permits for the Conveyance of Abnormal Loads and for other Events on Public Roads” outline the rules and conditions which apply to the transport of abnormal loads and vehicles on public roads and the detailed procedures to be followed in</p>	<p>SANRAL – national roads</p> <p>Western Cape Department: Transport and Public Works</p>	<p>An abnormal load / vehicle permit may be required to transport the various components to site for construction. These include route clearances and permits will be required for vehicles carrying abnormally heavy or abnormally dimensioned loads. Transport vehicles</p>

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	<p>applying for exemption permits are described and discussed.</p> <p>Legal axle load limits and the restrictions imposed on abnormally heavy loads are discussed in relation to the damaging effect on road pavements, bridges, and culverts.</p> <p>The general conditions, limitations, and escort requirements for abnormally dimensioned loads and vehicles are also discussed and reference is made to speed restrictions, power/mass ratio, mass distribution, and general operating conditions for abnormal loads and vehicles. Provision is also made for the granting of permits for all other exemptions from the requirements of the National Road Traffic Act and the relevant Regulations.</p>		<p>exceeding the dimensional limitations (length) of 22m. Depending on the trailer configuration and height when loaded, some of the on-site substation components may not meet specified dimensional limitations (height and width).</p>
Provincial Policies / Legislation			
<p>Western Cape Nature Conservation Ordinance (Act No. 19 of 1974)</p>	<p>This Act provides for the sustainable utilisation of wild animals, aquatic biota, and plants; provides for the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora; provides for offences and penalties for contravention of the Act; provides for the appointment of nature conservators to implement the provisions of the Act; and provides for the issuing of permits and other authorisations. Amongst other regulations, the following may apply to the current project:</p> <ul style="list-style-type: none"> » Boundary fences may not be altered in such a way as to prevent wild animals from freely moving onto or off of a property; » Aquatic habitats may not be destroyed or damaged; 	<p>Cape Nature</p>	<p>A collection/destruction permit must be obtained from Western Cape Nature Conservation for the removal of any protected plant or animal species found on site.</p>

Applicable Legislation, Policies and/or Guidelines associated with the development of Montana 2 SEF

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	<ul style="list-style-type: none"> » The owner of the land upon which an invasive species is found (plant or animal) must take the necessary steps to eradicate or destroy such species; <p>The Act provides lists of protected species for the Province.</p>		