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Department :
Economic Development, Tourism and
Environmental Affairs
PROVINCE OF KWAZULU-NATAL

KZN Department of Economic Development,
Tourism & Environmental Affairs
Directorate: Environmental Services, N Region
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Directorate: Environmental Services

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Reference: DC24/Dir/002/2016 Fax : 034 – 299 7904 Date : 12 January 2017
Inkomba: iFeksi : Usuku :
Verwysing: Faks : Datum :

Directorate: Environmental services

The Municipal Manager
Nquthu Local Municipality
Private Bag X 5521
NQUTHU
3135

Attention : Mr. Bonginkosi Gumbi

*Cc: Steve Congdon (Anderson Vogt & Partners)
Solomon Fataki (Afzelia)*

HAND DELIVERY

Dear Sir

DIRECTIVE IN TERMS OF SECTION 28 (4) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT OF 1998 (ACT NO. 107 OF 1998), AS AMENDED IN RESPECT OF THE PROPOSED UPGRADING OF A PORTION OF MANTULI ROAD LOCATED IN WARD 8, NQUTHU LOCAL MUNICIPALITY

The site investigation carried out on 13th December 2016 by the officials of the Department of Economic Development Tourism and Environmental Affairs, (hereafter referred to as “the Department”) on site refers.

1. I, Dr Khumbulani Mbatha, in my capacity as the Deputy Director-Environmental Services, hereby issue you Mr. Bonginkosi Gumbi in your personal capacity as the Municipal Manager of Nquthu Local Municipality with a directive in terms of Section 28 (4) of the National Environmental Management Act of 1998 (Act No 107 of 1998) as amended (hereafter referred to as “NEMA”).

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2. This directive relates to your failure to comply with the provisions of section 28 (1) of NEMA regarding your responsibility relating to the duty of care and remediation of environmental damage in that you have commenced with the road construction activities beyond an area for which the Department has given an exemption for environmental authorization (Refer to the Department's correspondence dated 27 October 2016).
3. The site assessment by an Environmental Assessment Practitioner (EAP) from Afzelia Environmental Consultants revealed that the area beyond the exempted area could be a wetland.
4. An EAP further proposes that wetland specialist study as well as wetland delineation be conducted before any construction activities can commence.

Details of conduct constituting non-compliance

5. The aforementioned site investigation revealed that you have failed to comply with the provisions of section 28 (1) of NEMA, by the road construction activities that you have commenced with beyond the area for which the Department has given an exemption for environmental authorization.
6. Section 28 (1) of NEMA states that, *“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 authorized by the law or cannot reasonably be avoided or stopped, to minimize and rectify such pollution or degradation of the environment”*.

Steps to be taken

You are required to;

7. With effect from the day of receipt of this directive, cease construction work in the area that is beyond the area for which exemption for environmental authorization was issued by the Department in the correspondence dated 27 October 2016.
8. Engage the services of an independent wetland specialist to investigate if there is a wetland beyond the area for which the Department has given exemption. Studies from any other specialists which the EAP may have engaged as part of the Basic Assessment Process may also be included.
9. Evaluate and assess the impact (if any) of the above mentioned activity on the environment.
10. Conduct specialist wetland study, delineate wetland, and compile rehabilitation and implementation plans for all affected areas and report thereon to the Department.
11. No further construction activities must occur on site, outside the exempted area until the Environmental Authorization Section of the Department has received all of the specialist studies and has had time to review them.
12. The specialist wetland study reports as well as the rehabilitation and implementation plans must be submitted to the Department for the attention of the Control Environmental Officer: Environmental Impact Assessment, Umzinyathi District: at the following address: **Private Bag X 2055, DUNDEE 3000 or hand delivered at: Talana Building, 26 Beaconsfield Street, DUNDEE 3000**
13. Upon reviewing the submitted reports, the Department will then make a decision based on the submitted information.

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Failure to comply with this Directive

14. In relation to the aforementioned directive, please take due cognizance of the following:
- 14.1 In terms of Section 49A (1) (g) a person is guilty of an offence if that person fails to comply with a directive issued in terms of this Act.
- 14.2 In terms of Section 49B (1) of NEMA a person convicted of an offence in terms of section 49A (1) (g) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.

Reasons why advance notice in writing of my intention to issue this directive should not be given

15. The threat to the environment is imminent; an advance notice will take time while the risks escalate.

Signed on this 12th day of JANUARY 2017 at DLUNDI



Dr Khumbulani Mbatha
Deputy Director-Environmental Services
Department of Economic Development, Tourism and Environmental Affairs

Acknowledgement of Receipt:

Received by Mr/Ms _____ on behalf
of _____ on this _____ day of _____ 2017 at

Signature: _____

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