

**Northern Cape Province
DEPARTMENT OF
ENVIRONMENT & NATURE
CONSERVATION**



**Porofensi Ya Kapa Bokone
LEFAPHA LA BOJANALA,
TIKOLOGO LE
SHOMARELO**

**RECTIFICATION OF UNLAWFUL COMMENCEMENT OR CONTINUATION OF A
LISTED ACTIVITY
in terms of Section 24G of the National Environmental Management Act, 1998
(Act No. 107 of 1998), as amended**

Reference Number:

Last Amended:

Holder of Authorisation:

S24G03/01/2018

Location of activity:

**UNLAWFUL CONSTRUCTION OF CLEARANCE OF
AGRICULTURAL LAND OF MAIZE ON PORTION 7
OF FARM STOCKENSTROM KOP NO 77,
NORVALSPONT , NORTHERN CAPE.**

DEFINITIONS

“Activity” means an activity identified in Government Notice No. 38282 R. 983 and of 2014 as a listed activity.

“Applicant” means a person who has submitted an application

“Application” means an application for an environmental authorization in terms of chapter 3 of these regulations

“Basic assessment” means a process contemplated in regulation 22

“Basic assessment report” means a report contemplated in regulation 23

“EAP” means an environmental assessment practitioner as defined in section 1 of the Act

“Environmental management plan” means an environmental management plan in relation to identified or specified activities envisaged in chapter 5 of the Act and described in regulation 34

“Interested and affected party” means an interested and affected party contemplated in section 24(4) (d) of the Act, and which in terms of that section includes

Any person, group of persons or organisation interested in or affected by an activity, and

Any organ of state that may have jurisdiction over any aspect of the activity

“Public participation process” means a process in which potential interested and affected parties are given an opportunity to comment on, or raise issues relevant to, specific matters

“The Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998)

DECISION

The Department is satisfied, on the basis of information available to it and subject to compliance with conditions of this environmental authorisation, that the applicant should be authorised to continue with the activity specified below.

Details regarding the basis on which the Department reached this decision are set out in Annexure 1.

ACTIVITIES AUTHORISED

By virtue of the powers conferred on it by Section 24G of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended the Department hereby authorises –

Van Der Merwe Boerdery with the following contact details:
PO Box 202
Gariiep Dam
9922

Within the jurisdiction of Umsombovu Local Municipality of the Pixely Ka Seme District Municipality, hereafter referred to as "the property".

The granting of this environmental authorisation is subject to the conditions set out below.

Listing Notice 1, Activity 12 , is defined as *The development of infrastructure or structures with a physical footprint of 100 square metres or more where such development occurs (a) within a watercourse , (c) within 32 metres of a watercourse, measured from the edge of a watercourse.*

Listing Notice 1, Activity 19 , is defined as *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.*

Listing Notice 2, Activity 15 , is defined as *The clearance of an area of 20 hectares or more of indigenous vegetation, excluding where such clearance of indigenous vegetation is required for (i) the undertaking of linear activity, or (ii) maintenance purposes undertaken in accordance with a maintenance management plan.*

Listing Notice 3, Activity 4, is defined as *The development of a road wider than 4 metres with a reserve less than 13,5 metres: (a) In the Northern Cape: (iii) Outside urban areas in: (ee) Critical Biodiversity Areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans.*

Listing Notice 3, Activity 12, is defined as *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 management plan (G) In Northern Cape: (ii) Within critical bioregional plans.*

Listing Notice 3, Activity 14, is defined as *The development of (ii) infrastructure or structure with a physical footprint of 10 square or more where such development occurs-(A) Within a watercourse (G) In Northern Cape (ff) Critical biodiversity plans adopted by the competent authority or in bioregional plans.*

The site is located approximately on the portion 7 of farm Stokenstrom Kop No 77, Norvalspont, Pixely Ka Seme District Municipality Northern Cape.

CONDITIONS

Scope of authorisation:

1. Rectification of the activity is subject to the conditions contained in this authorisation, the conditions form part of the environmental authorisation and are binding on the holder of the authorisation.
2. The holder of the authorisation shall be responsible for ensuring compliance with the conditions by any person acting on his or her behalf, including but not limited to, an agent, sub-contractor, employee or person rendering a service to the holder of the authorisation.
3. The activities which are rectified may only be carried out at the property indicated above.
4. Any changes to, or deviations from the project description set out in this rectification authorisation must be approved, *in writing*, by the Department before such changes or deviations may be effected. In assessing whether to grant such approval or not, the Department may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for the holder of the authorisation to apply for further authorisation in terms of the regulations.

5. This rectification authorisation does not negate the holder of the authorisation's responsibility to comply with any other statutory requirements that may be applicable to the undertaking of the activity.

General conditions:

6. A copy of this rectification authorisation **must** be kept at the property where the activity will be undertaken. The authorisation **must** be produced to any authorised official of the Department who requests to see it and **must** be made available for inspection by any employee or agent of the holder of the authorisation who works or undertakes work at the property.
7. Where any of the applicant's contact details change, including the name of the responsible person, the physical or postal address and/ or telephonic details, the applicant must notify the Department as soon as the new details become known to the applicant.
8. The holder of the authorisation **must** notify the Department, in writing and within 24(TWENTY FOUR) hours, if condition 17 of this authorisation cannot be or is not adhered to.
9. In all other cases, the holder of the authorisation **must** notify the Department, in writing, within seven (7) days if any condition of this authorisation is not adhered to. Any notification in terms of this condition must be accompanied by reasons for the non-compliance.
10. Non-compliance with a condition of this authorisation may result in criminal prosecution or other actions provided for in the National Environmental Management Act, 1998 and the regulations.
11. This rectification authorisation is subject to the approval by the relevant local authorities i.e. in terms of any relevant legislation administered by those local authorities.
12. The commenced without the necessary permits/licenses/approvals, where it is relevant, from or with the relevant regulatory authorities whether national, provincial or local (these include but are not limited to National Department of Environmental Affairs National Department of Agriculture Forestry & Fisheries, Department of Water and Sanitation,, Department of Transport, Roads & Public Works, South African Heritage Resources Agency, remains illegal.
13. The activity, including site preparation, may not commence before the thirty (30) day appeal period expires or until such time as the Department has considered any appeals that have been lodged.

- a. One week's written notice must be given to the Department before commencement with the activity.
 - b. Such notice shall make clear reference to the site location details and the reference number given above.
 - c. The said notice must also include proof of compliance with the following conditions described herein:
 - i. Conditions: 11 18 & 25.
14. The applicable conditions of this authorization must form part of all contractors' and sub-contractors' conditions of contract. A performance-based requirement with regard to environmental impact management must be included in all contracts related to any aspect of this authorization.
15. The applicant must carry out monthly frames environmental audits to establish compliance with the conditions of this authorization and contracts.
16. Records relating to the compliance/non-compliance with the conditions of the authorization and contracts must be kept in good order. Such records must be made available to the Department within 7 (seven) days of receipt of a written request by the Department for such records.
17. Any complaints regarding the said development must be brought to the attention of the Department within 24 hours after receiving the complaint. A complaints register must be kept up to date for inspection by the Department.
18. Officials in the employ of the Department shall be given access to the property as described above (see detailed description of the activity) for the purposes of assessing and/or monitoring compliance with the conditions contained in this Record of Decision. Where the activity is located on a third party's property the applicant shall be responsible to arrange access for departmental officials.
19. This Department may add to, change and/or amend any of the conditions in this authorization if, in the opinion of the Department, the addition, change of amendment is environmentally justified.
20. In the event of any dispute concerning the significance of a particular impact, the opinion of this department in respect of its significance will prevail.
21. This Department and any national department, provincial department, local authorities or committees appointed in terms of the conditions of this application or any other public authority or organization shall not be held responsible for any damage or losses suffered by the applicant or his successor in title in any instance where construction or operation subsequent to construction be temporarily or permanently stopped for reasons of non-compliance by the applicant with the conditions of approval as set out in this document or any other subsequent document emanating from these conditions of approval.

22. The applicant shall be responsible for all costs necessary to comply with the above conditions unless otherwise specified.

23. The applicant must apply the principle of best practicable environmental option for all technologies used/ implemented during construction.

Specific conditions:

24. Recommendations made on the ecological impact assessment report prepared by AJH Lamprecht are to be adhered to.

Appeal of authorisation:

25. The holder of the authorisation must notify every registered interested and affected party, in writing and within 7 (SEVEN) calendar days, of receiving notice of the Department's decision to authorise the activity.

26. The notification referred to in 24 must –

- specify the date on which the authorisation was issued;
- inform the interested and affected party of the appeal procedure provided for in Chapter 8 of the regulations; and
- advise the interested and affected party that a copy of the authorisation and reasons for the decision will be furnished on request.

If the applicant should appeal against this record of decision, he/she must inform all interested and affected persons that such an appeal is being lodged with the MEC and if requested, the applicant/appellant must provide those persons with reasonable access to a full copy of the appeal within a reasonable time before expiry of the thirty day appeal period.

Management of activity:

30. An Environmental Management Plan (EMP) which fulfils the requirements of this authorisation must be compiled and submitted to the Department for approval before the commencement of the development. The EMP must contain all the information specified in regulation 34 of the NEMA regulations;

31. All areas disturbed during the commissioning of the activity must be rehabilitated.

32. Best practice of waste avoidance, minimisation and disposal of waste at an appropriate facility must be implemented.

Monitoring:

33. The monitoring of the constructors' compliance with conditions of this Environmental Authorization is essential and **must** be done on a weekly basis. Any deviances from the conditions of this Environmental Authorization must be rectified immediately.
34. A copy of this Rectification Authorization and an EMP must always be available on site so as to monitor compliance with the conditions outlined in both the documents (EA and EMP). Both copies of an EMP and EA must be used as on-site reference documents during all phases of this development.

Recording and Reporting to the Department:

35. Records relating to compliance or non-compliance with any condition of this authorization must be kept in good order. Such records must be made available to any Official from Compliance and Monitoring section of the Directorate: Environmental Management within seven (7) days of written request by the said Officer.
36. Should the developer be requested to submit an audit report, it will be his/her (developer) responsibility to appoint an independent auditor at his or her own expenses and submit an audit report within the time specified by this Department.
37. Any complaints regarding then said development must be brought to the attention of the Department within 24 hours after receiving the complaints register must be kept up to date for inspection by the Department.
38. Where any of the applicant's contact details change, including the name of the responsible person, the physical or postal address and/ or telephonic details , the applicant must notify the Department as soon as the new details become known to the applicant.

Commissioning of the activity:

39. Seven (7) days written notice must be given to the Department that the activity will commence. Commencement for the purposes of this condition includes site preparation. The notice must include a date on which it is anticipated that the activity will commence.
40. General waste must be collected in containers disposed of regularly at a permitted landfill site. Recyclable waste must be recovered for recycling purpose. NB: No temporary dumping of waste is allowed on site. Precautionary measures should be taken to prevent refuse from spreading from or on the site.
41. Should protected trees be destructed, relocated and /or disturbed, permit must be obtained from Department of Agriculture, Forestry and Fisheries (DAFF) and Department of Environment and Nature Conservation (DENC).

42. Any complaint from the public during the construction and operation of this project must be attended to by the holder of this authorisation as soon as possible to the satisfaction of parties concerned.
43. The authorized activities, including site preparation shall not commence before the statutory 30 days of an appeal period has expired.
44. The safety of the participants must be ensured by having regular safety inspection and ensuring participants are equipped with necessary safety equipments.
45. Open fire is strictly prohibited on site.
46. All recommendations of the National Heritage Resources Act regarding protection of graves and archeological artifacts must be implemented.
47. Untreated sewage must not be discharged directly into the natural environment.
48. Spillage of petroleum products (fuel and lubricants) must be avoided. Temporary storage of petrochemical products and servicing of machinery and vehicles on site will be allowed except not at a site specifically designed for that purpose. In terms of accidental spillage, contaminated soil must be removed for bioremediation or disposed of at a recognized facility for the substance concerned. Disturbed land must be rehabilitated and seeded with vegetation seed naturally occurring on the site.
49. The development must comply with the Municipal by-laws
50. Chemical toilets must be available for workers on site during construction phase only, i.e. sewage waste must be disposed of at the Municipal sewage plant on a regular basis. No "long drop" toilets will be allowed. No open space or surrounding bush shall be used as toilet facility under any circumstances.
51. It is the holder of this authorization's responsibility to ensure that an ongoing management and monitoring of the impacts of the activity on the Environment throughout the life cycle of the activity is put into practice.
52. All the areas (e.g. stockpiling of material, machines, workshop, etc) in the construction site must be clearly defined.
53. The contractor must ensure that drip trays are always available to collect any fluid that may result from accidental spillage, overflow and/or servicing. All equipments that leak must be repaired immediately and/or removed from site when necessary.

54. It is the contractor's responsibility that all staff/employees are familiar with all the emergency procedures. The contractor must also ensure that emergency numbers are visible and available and always updated.
55. The contractors must use Ready-Mix concrete. Alternatively, concrete can be mixed on mixing trays only and not on exposed soil. Concrete must be mixed only in areas which have been specially demarcated for this purpose.
56. The contractor must take all the necessary precautionary measures to ensure that no fires are caused as a result of construction activities.
57. Old cement bags, mixing bags, platforms etc should be discarded in a wind and spill proof container. No cement bags closed or open should be left lying around the site. All visible remains of concrete should be physically removed as soon as possible, and disposed of at a suitable site.
58. All vehicles, equipment's and other assets belonging to the contractor must be removed from the property upon completion of the construction works.
59. Topsoil removed during excavations must be kept separate from other material.
60. Topsoil must be placed above other material during backfilling.
61. Precautionary principles must be followed as people's lives depend on the project.
62. The central waste collection point must be specific –where it will be situated to ensure that no soil or underground water contamination takes place the waste collection should be done at least on weekly basis.

Operation of the activity:

63. All forms of pollution must be prevented, or where it cannot, should be minimized or remedied.
64. General waste must be collected in drums and disposed of weekly at a permitted Municipal landfill site. Recyclable waste must be recovered for recycling purpose. **NB:** No temporary dumping of waste is allowed on site. Precautionary measure should be taken to prevent refuse from spreading from or on the site.
65. The sewage tanks must be large enough to contain the expected volume of sewage and must be built according to the approved regulations and must be inspected by a qualified official of the Municipality before use.

Site Closure and Decommissioning:

66. Should the activity ever cease or become redundant the applicant shall undertake the required actions as prescribed by legislation at the time and comply with all relevant legal requirements administered by any relevant and competent authority at the time.
67. Should the project be abandoned or decommissioned, a Closure Management Plan must be compiled and the holder of the Environmental Authorization must rehabilitate the site to the satisfaction of this Department.
68. No alien or invader plant species should be introduced on site during rehabilitation.

Non-compliance

69. In the event of non-compliance by employees and contractors during the construction, operation and decommissioning phases of the project, the applicant will be held liable.
70. The applicant shall be responsible for all the costs necessary to comply with the above conditions unless otherwise stated.
71. Provincial Government, Local Authority or committees appointed in terms of the application or any other public authority or organization shall not be held responsible for any damages or losses suffered by the developer or his/her successor in title in any instance where construction or operation subsequent to construction are to be temporarily or permanently stopped for reasons of non-compliance by the developer with conditions of approval as set out in the document or any other subsequent document emanating from this approval.

DURATION AND PERIOD OF VALIDITY


This activity(s) must commence from the date of issue within a period of three (3) years. If commencement of the activity does not occur within that period, the authorisation lapses and a new application for environmental authorisation must be made in order for the activity to be undertaken.

APPEAL

In terms of Chapter 7 of Environmental Impact Assessment Regulations, 2014, if the applicant or a person affected by this Decision wishes to appeal this decision, a notice of intention to appeal must be lodged within ten (20) days of being notified of the decision, and an appeal must **be lodged within thirty (30) days** after lapsing of 20 days contemplated in regulation 60 (1) of lodging of the notice to appeal to:

The Member of the Executive Council
Ministry of Environment & Nature Conservation
Private Bag X6102
Kimberley
8300
Fax: (053) 832 1032

Appeals must comply with the provisions of Chapter 7 of Environmental Impact Assessment Regulations, 2014 Government Notice No. R. 9833 of 08 September 2014.



**Mr. B. Fisher – Director
Environmental Management**

Department OF ENVIRONMENT & NATURE CONSERVATION

DATE OF ENVIRONMENTAL AUTHORISATION: 28 August 2018

ANNEXURE 1: REASONS FOR DECISION

1. Background

The applicant, Van Der Merwe Boerdery Trust applied for RECTIFICATION OF UNLAWFUL COMMENCEMENT OR CONTINUATION OF LISTED ACTIVITIES.

The activity already commenced with is situated on portion 7 of farm Stockenstrom Kop No 77, Novalspont, Pixely Ka Seme District Municipality Northern Cape.

Activities No. 12,19,15,12 4, and 14 GN. R 398 hereafter referred to as "the property"

The applicant appointed Mr. P. Badenhorst to undertake a screening process.

- a) The process followed is a section 24G
- b) The Environmental Assessment Practitioner did submit 24G application form with the Environmental Assessment Report
- c) Paid the fine of R55,000.00
- d) Proof of Public Participation draft was submitted on the 31 May 2018 and the final report received by the Department on the 3rd August 2018.

2. Information considered in making the decision

In reaching its decision, the Department took, *inter alia*, the following into consideration -

- a) The information contained in the 24G application submitted and reviewed by Ms. Tshepisho Lekwene;
- b) The comments received from interested and affected parties as submitted by Mr. Pieter Badenhorst;
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 24F(2) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), Environmental Conservation Act, 1989 (Act No. 73 of 1989); and
- d) The findings of the site visit undertaken by Issac Gwija based in the Pixely Ka Seme District, on the 11th May 2018.

3. Key factors considered in making the decision

All information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issues which, in the Department's view, were of the most significance is set out below.

- a) The application process.
- b) The legal and procedural requirements have been complied with and the information required for the section 24G of NEMA, has come to satisfaction of this Department.

4. Findings

After consideration of the information and factors listed above, the Department made the following findings -

- a) The surrounding area is already disturbed, and the development is illegal
- b) The development will be situated on a relatively flat area.
- c) The environmental impacts associated with the project can be reduced to acceptable levels if properly managed by both the applicant and contractor(s).

In view of the above, the Department is satisfied that, subject to compliance with the conditions contained in the environmental authorisation, the proposed activity will not conflict with the general objectives of integrated environmental management laid down in Chapter 5 of the National Environmental Management Act, 1998 and that any potentially detrimental environmental impacts resulting from the proposed activity can be mitigated to acceptable levels. The application is accordingly granted.