



**REFERENCE:** 14/1/1/E2/7/9/3/0798/23

**ENQUIRIES:** Fahd Said

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Mr James Du Toit

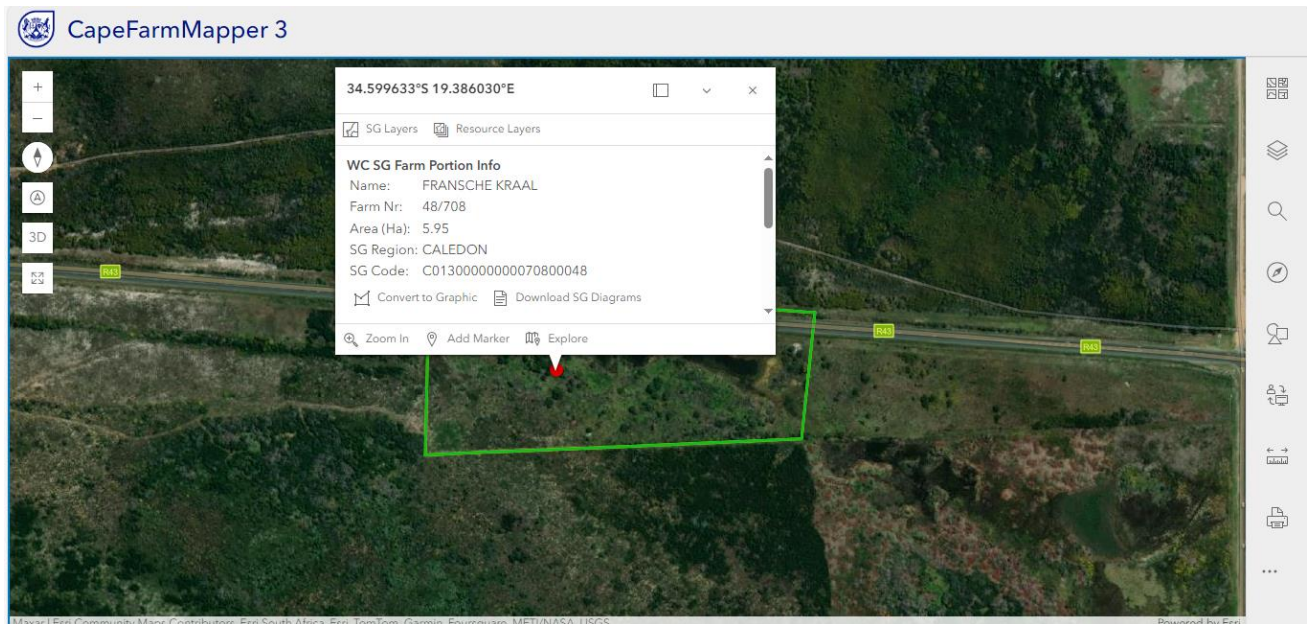
## **PRE-COMPLIANCE NOTICE**

Dear Sir

### **INTENTION TO ISSUE A COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998**

1. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the National Environmental Management Act, 1998 ("NEMA"), a site inspection was conducted at Portion 48 of Farm No. 708 (Fransche Kraal), Gansbaai, by an Environmental Management Inspector from the Department's Directorate: Environmental Law Enforcement on 24 April 2024, which confirmed that you have commenced with the alleged illegal clearing of critically endangered indigenous vegetation and the infilling of a watercourse (wetland) without environmental authorisation.

[34°35'58.4"S 19°23'16.9"E]



Aerial map: Location of alleged illegal activities.

2. In terms of section 24F of the NEMA, no activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 & 3 of 2014 may commence without environmental authorisation from the competent authority.
3. On considering the evidence before me, there are reasonable grounds to believe that you have commenced the following listed 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*
- (e) *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.*

EIA Regulations 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.

### **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*
- v. *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.*





Photo 1: The banks of the wetland was infilled with some inert material (indicated by red arrows).



Photo 2: Removal of critically endangered vegetation (Agulhus Limestone Fynbos) next to the wetland and infilling of inert material on the banks of the wetland (indicated by red arrows).



Photo 3: Critically endangered vegetation (Agulhus Limestone Fynbos) was removed on the property to create animal camps.

4. In terms of section 49A 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.
5. As such, you are hereby given notice of the Department's intention to issue you with a Compliance Notice in terms of section 31L of the NEMA, which will instruct you to:
  - 5.1 immediately cease the above listed activities;
  - 5.2 investigate, assess and evaluate the impact that the listed activity has / has had on the environment;
  - 5.3 rehabilitate the entire site to its original condition; and
  - 5.4 carry out any other measure necessary to rectify the effects of the unlawful activity;



6. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of failing to comply with a Compliance Notice is liable to a maximum fine of R5 million or 5 years imprisonment or both such fine and such imprisonment.
7. You are afforded a period of **7 (seven) calendar days** from the date of receipt of this Pre-Compliance Notice to make written representations to the Department as to why a Compliance Notice should not be issued.
8. If you inform the Department, in respect of paragraph 7 above that you intend to rectify the non-compliance, **you must submit to the Department for approval, within 30 (thirty) calendar days** of receipt of this Pre-Compliance Notice, a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
  - 8.1 assessment and evaluation of the impact on the environment; and
  - 8.2 identification of proposed remedial and/or mitigation measures;
9. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
10. 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.
11. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G ("s24G") application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.
12. **Should you choose to apply in terms of s24G on the NEMA, you must submit to the Department for approval, within 30 (thirty) calendar days** of receipt of this Pre-Compliance Notice, a project schedule compiled by a suitably qualified and

experience independent environmental assessment practitioner. The project schedule must clearly stipulate the time frames in terms of the s24G process and by when a s24G application will be submitted to the Sub-Directorate: Rectification.

13. Notwithstanding the section 24G application, the Department may issue a Compliance Notice and/or commence criminal proceedings should circumstances so require.



**Mr A. Bassier**

**Director: Environmental Law Enforcement**

**Grade 1 Environmental Management Inspector**

**Date: 05/08/2024**

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