



**REFERENCE:** 14/1/1/E3/8/2/3/L1280/22

**ENQUIRIES:** Raheem Dalwai

**BY EMAIL:** [aubreywithers@mweb.co.za](mailto:aubreywithers@mweb.co.za)

Mr. Aubrey Withers

6 Santa Rosa Street

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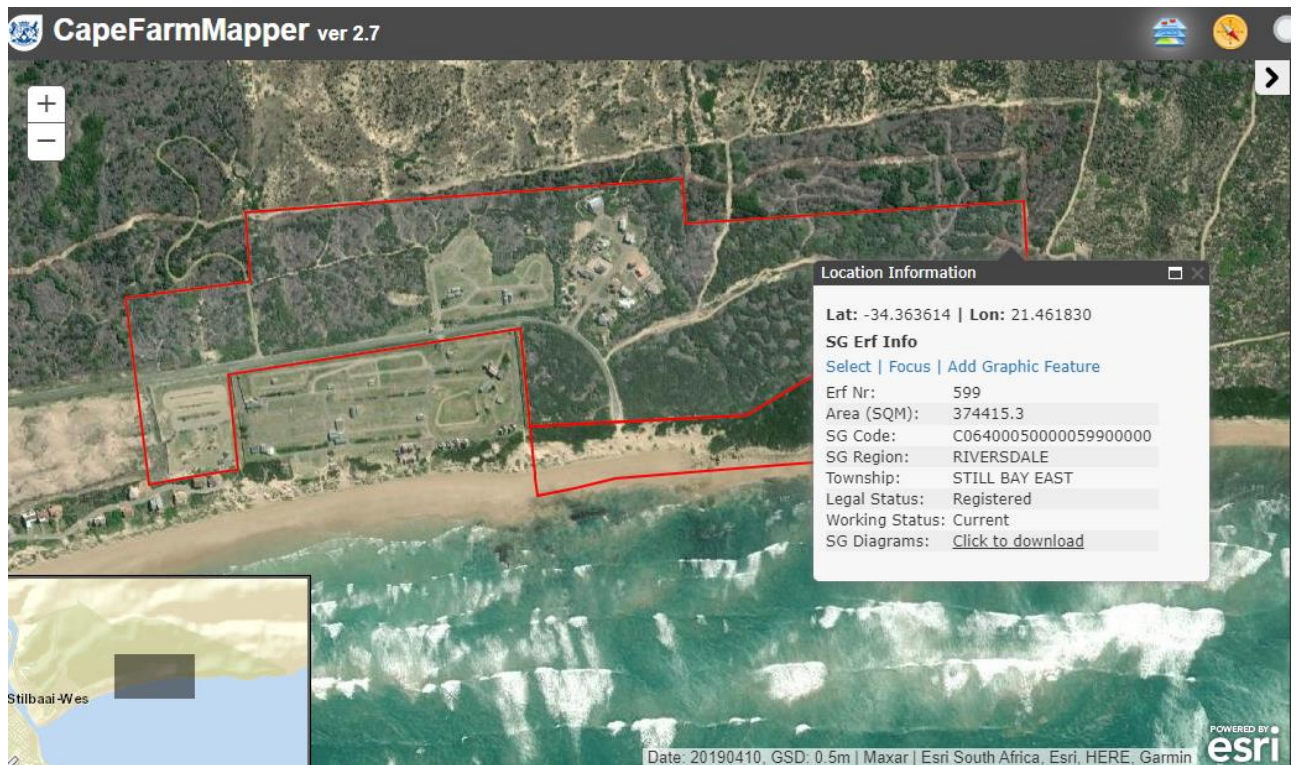
Attention: Mr. Aubrey Withers

## 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 non-compliance with Environmental Authorisation ("EA") 16/3/3/1/D5/18/0001/17 conditions, a site inspection was conducted at Erf 1028 and Erf 599 by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement on 06 December 2022 and it was confirmed that you have not complied with conditions of the abovementioned EA.



Map 1: Location of alleged unlawful activity.

2. On considering the evidence before me there are reasonable grounds to believe that you have not complied with the following conditions of your EA:

**Condition 4:**

*4. The holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.*

**Condition 5:**

*5. Any changes to, or deviations from the scope of the alternative described in section B above must be accepted or approved, in writing, by the Competent Authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the Competent Authority may request information in order to evaluate the significance and impacts of such changes or deviations, and it may be*

necessary for the holder to apply for further authorisation in terms of the applicable legislation.

**Condition 7:**

*7. Seven calendar days' notice, in writing, must be given to the Competent Authority before commencement of construction activities.*

*7.1. The notice must make clear reference to the site details and EIA Reference number given above.*

*7.2. The notice must also include proof of compliance with the following conditions described herein: Condition no.: 6, 8, 10, 17 and 21.*

**Condition 8:**

*8. The draft or Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation must be amended to address the following aspects, and must then be re-submitted to the Competent Authority and approved prior to commencement of construction.*

*8.1. Incorporate all the conditions given in this Environmental Authorisation;*

*8.2. Comply with section 24N of the National Environmental Management Act, 1998 and Appendix 4 of the Environmental Impact Assessment Regulations, 2014;*

*8.3. Clearly list the impact management outcomes and impact management actions for the proposed development;*

*8.4. Incorporate the recommendations from specialist reports (i.e. Botanical, HIA, Visual & Traffic)*

*8.5. Include detail on soil protection and rehabilitation measures that can be installed in areas where erosion may occur.*

*8.6. Include a site plan that —*

*(a) indicates the services on the site in terms of the sewer pipelines, water supply and electrical infrastructure; and*

*(b) provides a distinction between the private open space and the public open space.*

*8.7. Include a detailed Storm Water Management Plan that shows exactly where the specific water features / ponds will be located and associated infrastructure will be constructed.*

*8.8. Include a rehabilitation plan for the Frontal Dune System on Erf 1028. The "Rehabilitation Guidelines" for the Frontal Dune System on Erf 1028 may serve as reference for such a plan. The plan must inter alia address the following:*

*(a) Only locally indigenous vegetation species may be planted on exposed sand surfaces, dunes or blow-out areas. This must clearly include locally indigenous dune vegetation.*

*(b) Planting Marram Grass (*Ammophila arenaria*) or any other identified alien invasive species must be strictly forbidden.*

*(c) The irrigation plan during the non-operational phase must be detailed. The irrigation of the frontal dune with effluent must be prohibited. Only potable water or effluent treated to potable standard may be used and only for the initial establishment of the planted vegetation.*

*8.9. Include an Alien Vegetation Management / Eradication plan for the removal of alien invasive species and on-going management of the open space areas on the property. This plan must include targets that must be achieved. This plan must include fire management too;*

*8.10. Operational Aspects –*

*8.10.1. Provide an implementation plan with clear impact management outcomes and which highlights when each phase of the development will be handed over to a Homeowner's Association or Body Corporate for management of the open spaces etc.*

*8.10.2. Incorporate a schedule for the ECO to conduct site inspections during the operational phase of the development to monitor*

*compliance with the Environmental Management Programme and the Environmental Authorisation.*

*8.10.3. Include a conservation management plan for the private open space area in the estate and Erf 593; and*

*8.10.4. An indication of the persons who will be responsible for the implementation of the impact management actions.*

**Condition 18:**

*18. The holder must ensure that vehicular and pedestrian access to the Geelkrans Nature Reserve is established and maintained across the property during all phases of the proposed Preekstoel Coastal Estate. Further to this—*

*18.1. any member of the public must be allowed to gain vehicular or pedestrian access to the Geelkrans Nature Reserve across the site;*

*18.2. the holder of the authorisation must have an access servitude registered across the portion of Erf 599 for the access road along the proposed alignment. Such servitude must be registered against the title deed of the portion of land of Erf 599 and must be applicable to the successors in title of the portion of Erf 599;*

*18.3. the holder must formalise the road access to the Geelkrans Nature Reserve at his own cost;*

*18.4. the Geelkrans Nature Reserve must be accessible to the public (both vehicular and pedestrian access) at all times during the construction phase of the development.*

**Condition 21:**

*21. The holder must, prior to the activities commencing on site, register the following legally binding provisions or obligations on the land between the development setback line and the high water mark of the sea (i.e. private and public open space) to limit the use of the proposed open space area for a conservation use.*

*Such provisions must as a minimum be a —*

*21.1. "Non-User Conservation Servitude" The holder is required to register, in favour of the Hessequa Municipality and the Home Owners Association, a conservation servitude over the identified land which requires protection from development in perpetuity and in order to secure the conservation of the site. The conditions of the conservation servitude must inter alia address the following measures*

*—*

- (a) No earthworks or any form of development is permitted within the area, except if environmental authorisation is granted and in accordance with an approved conservation management plan;*
- (b) No landscaping; encroachment by gardens (albeit deliberate or inattentive) or planting except for rehabilitation in terms of an approved management plan;*
- (c) No collection or damaging of fauna and flora;*
- (d) No vehicles of any type are permitted, unless ORV permit has been issued by the competent authority for the purpose thereof;*
- (e) Access points and access control.*





Photograph 1: An excavator clearing indigenous vegetation.



Photograph 2: Construction in progress in area cleared within the previous year.

3. In terms of section 49A(1)(c) of the NEMA it is an offence to fail to comply with or contravene a condition of an environmental authorisation granted for a listed activity or specified activity. 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.
4. 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:
  - 4.1. Immediately cease all activities on site, and
  - 4.2. comply with the conditions of the above EA.
5. 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.
6. 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.
7. If you inform the Department, in respect of paragraph 6 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, **an Action Plan** outlining the measures which will be implemented to ensure compliance with the EA.
8. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.



9. Notwithstanding the above plan, the Department may issue a Compliance Notice and/or commence criminal proceedings should circumstances so require.



**Nicholas Kearns**

**Acting Director: Environmental Law Enforcement**

**Grade 1 Environmental Management Inspector**

**Date: 20 January 2023**

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