



REFERENCE NUMBER: 14/2/4/2/1/F4/5/0005/18

ENQUIRIES: Shafeeq Mallick

BY REGISTERED MAIL

The Owner
PO Box 4426
MODIMOLE
0510

Tel: 014 7171946
Fax: 014 7171984
Email: daanb@stgafrika.com

Attention: Mr Jan Daniel Britz

Dear Sir

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): UNLAWFUL CLEARANCE OF INDIGENOUS VEGETATION ON FARM GROOTE FONTYN, PORTION 1 OF FARM 305, HOPEFIELD

With reference to your application dated 09 April 2018 in terms of section 24G of the NEMA for the consequences of unlawful commencement of listed activities identified in terms of the NEMA, find below the decision in respect of your application.

ENVIRONMENTAL AUTHORISATION

A. DECISION

By virtue of the powers conferred by section 24G of the NEMA and the *Environmental Impact Assessment Regulations, 2014* ("EIA Regulations, 2014") (as amended), the competent authority herewith **grants environmental authorisation** to the applicant to continue with the listed activities specified in Section C below in accordance with the preferred alternative as described in the application and environmental assessment report of October 2018.

The granting of this Environmental Authorisation is for the continuation, conducting or undertaking of the listed activities as described in Section C below and is subject to compliance with the conditions set out in Section G. This Environmental Authorisation shall only take effect from the date on which it has been issued.

The Environmental Authorisation does not exempt the holder thereof from compliance with any other applicable legislation.

B. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

Jan Daniel Britz
PO Box 4426
MODIMOLE
0510

Tel: (014) 7171946
Fax: (014) 7171984
Email: daanb@stgafrika.com

The abovementioned applicant is the holder of this Environmental Authorisation and is hereinafter referred to as "the holder".

C. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
<p>Government Notice No. R. 983 of 4 December 2014</p> <p>Activity Number: 27</p> <p>Activity Description: <i>The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for (i) the undertaking of a linear activity; or (ii) maintenance purposes undertaken in accordance with a maintenance</i></p>	<p>In October 2016 the holder commenced with the clearing of natural vegetation within the Hopefield area resulting in the clearance of 10,3ha of Hopefield Sand Fynbos that was cleared for the cultivation of date palms.</p>

<i>management plan.</i>	
As similarly listed in Government Notice No. 327 of 7 April 2017 - Activity Number: 27 Activity Description: <i>The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for— (i) the undertaking of a linear activity; or (ii) maintenance purposes undertaken in accordance with a maintenance management plan.</i>	As described above.

The abovementioned list is hereinafter referred to as “the listed activity”.

D. PROPERTY DESCRIPTION AND LOCATION

The listed activity commenced on Farm Groote Fontyn, Portion 1 of Farm 305, Hopefield.

The SG digit code is: C0460000000030500001

The co-ordinates for the property boundary are:

Point	Latitude (S)	Longitude (E)
1	33° 03' 28.94" South	18° 19' 02.82" East
2	33° 04' 56.21" South	18° 19' 55.11" East
3	33° 05' 26.65" South	18° 17' 32.65" East
4	33° 04' 00.61" South	18° 17' 09.16" East

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
1	33° 04' 14.81" South	18° 18' 31.54" East
2	33° 04' 21.92" South	18° 18' 21.56" East

3	33° 04' 15.71" South	18° 18' 16.65" East
4	33° 04' 08.65" South	18° 18' 25.34" East

Refer to Annexure 1: Locality Plan and Annexure 2: Site Plan.

Herein-after referred to as "the site".

E. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER ("EAP")

Advanced Environmental Corporation (Pty) Ltd

c/o Mr Johannes Adriaan van der Walt

PO Box 325

PORTERVILLE

6810

Tel: (082) 305 8945

Fax: (086) 556 4669

Email: admin@aecorp.co.za

F. DETAILS OF THE ACTIVITY/IES UNDERTAKEN

The development entails the unlawful clearance of indigenous vegetation on farm Groote Fontyn, Portion 1 of Farm 305, Hopefield. The farm was used for grazing by the previous owner and no cultivation has taken place within the last ten years.

In October 2016 the holder commenced with the clearing of natural vegetation for the cultivation of date palms as an agricultural venture, resulting in the clearance of 10,3ha of Hopefield Sand Fynbos.

The clearance of vegetation occurred next to an existing access road to the site.

The holder also constructed 2 storage farm sheds next to the date orchards. The sheds are 12x30m in dimensions.

Water for drip irrigation is obtained from 2 new boreholes on the site and access to the sheds are done via a newly created 4x4 road.

G. CONDITIONS OF AUTHORISATION

The following are conditions of authorisation that are set and must be implemented for this Environmental Authorisation.

PART I

Scope of authorisation

1. The holder is authorised to undertake the listed activity/ies specified in Section C above;
 - 1.1 in accordance with and restricted to the preferred alternative described in the application and assessment report of October 2018;
 - 1.2 on the site as described in Section D above.
2. 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.
3. Any changes to, or deviations from the scope of the alternative described in Section F 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 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.

PART II

Written notice to the competent authority

4. Seven (7) calendar days' notice, in writing, must be given to the competent authority before continuation of activities.
 - 4.1 The notice must make clear reference to the site details and 24G reference number given above.
 - 4.2 The notice must also include proof of compliance with the condition 5 and 7.

PART III

Notification and administration of an appeal

5. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 5.1 notify all registered Interested and Affected Parties (“I&APs”) of –
 - 5.1.1 the outcome of the application;
 - 5.1.2 the reasons for the decision as included in Annexure 3;
 - 5.1.3 the date of the decision; and
 - 5.1.4 the date when the decision was issued.
 - 5.2 draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the *National Appeals Regulations, 2014* detailed in Section I below.
 - 5.3 draw the attention of all registered I&APs to the manner in which they may access the decision.
 - 5.4 provide the registered I&APs with:
 - 5.4.1 the name of the holder (entity) of this Environmental Authorisation;
 - 5.4.2 name of the responsible person for this Environmental Authorisation;
 - 5.4.3 postal address of the holder;
 - 5.4.4 telephonic and fax details of the holder;
 - 5.4.5 e-mail address, if any, of the holder; and
 - 5.4.6 the contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the *National Appeal Regulations, 2014*.
6. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided.

PART IV

Management of the activity/development

7. The draft Environmental Management Programme ("EMPr") of August 2018 compiled by Advanced Environmental Corporation and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.
8. The EMPr must be included in all contract documentation for implementation of the activity.

PART V

Monitoring

9. A copy of the Environmental Authorisation, EMPr, audit reports and compliance monitoring reports must be kept at the site of the authorised activity, and must be made available to anyone on request.
10. Access to the site referred to in Section D must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the competent authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

PART VI

Auditing

11. In terms of regulation 34 of the *EIA Regulations, 2014* the holder must conduct environmental audits to determine compliance with the conditions of the Environmental Authorisation, the EMPr and submit Environmental Audit Reports to the competent authority upon receiving such request in writing from the competent authority. The Audit Report must be prepared by an independent person and must consider all the information required in Appendix 7 of the *EIA Regulations, 2014*.

PART VII

Activity/ Development Specific Conditions

12. The holder must ensure groundwater usage is implemented in a sustainable manner. The quality of the groundwater must therefore be monitored on a regular basis.

H. GENERAL MATTERS

1. Notwithstanding this Environmental Authorisation, the holder must comply with any other statutory requirements that may be applicable when undertaking the listed activity.
2. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. The holder must submit an application for amendment of the Environmental Authorisation to the competent authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed, an application for Amendment in terms of Part 1 of the *EIA Regulations, 2014* must be submitted.

Please note that an amendment is not required if there is a change in the contact details of the holder. In this case, the competent authority must only be notified of such changes.

4. The manner and frequency for updating the EMPr is as follows:
Amendments to the EMPr, must be done in accordance with regulations 35 to 37 of the *EIA Regulations, 2014* or any relevant legislation that may be applicable at the time.

I. APPEALS

Appeals must comply with the provisions contained in the *National Appeal Regulations, 2014*.

1. An appellant (if the holder) must –
 - 1.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator and a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder was notified by the competent authority of this decision.

2. An appellant (if NOT the holder) must –
 - 2.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator, and a copy of the appeal to the holder, any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder notified the registered I&APs of this decision.
3. The holder (if not the appellant), the decision-maker, I&APs and Organ of State must submit their responding statements, if any, to the Appeal Authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.
4. This appeal and responding statement must be submitted to the address listed below-
 - By post: Attention: Marius Venter
Western Cape Ministry of Local Government, Environmental Affairs &
Development Planning
Private Bag X9186, Cape Town, 8000; or
 - By facsimile: (021) 483 4174; or
 - By hand: Attention: Mr Marius Venter (Tel: 021-483 3721)
Room 809, 8th floor Utilitas Building
1 Dorp Street, Cape Town, 8000; or
 - By e-mail: DEADP.Appeals@westerncape.gov.za
- Note:** You are also requested to submit an electronic copy (Microsoft Word format) of the appeal and any supporting documents to the Appeal Administrator to the address listed above and/ or via e-mail to DEADP.Appeals@westerncape.gov.za.
5. A prescribed appeal form, as well as assistance regarding the appeal processes is obtainable from the office of the appeal authority/ at: Tel. (021) 483 3721, E-mail DEADP.Appeals@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>.

J. CONSEQUENCES OF NON-COMPLIANCE WITH CONDITIONS

Non-compliance with a condition or term of this Environmental Authorisation or EMPr may result in suspension or withdrawal of this Environmental Authorisation and may render the holder liable for criminal prosecution.

K. DISCLAIMER

The Western Cape Government, appointed in terms of the conditions of this Environmental Authorisation, shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Yours faithfully



ADV. CHARMAINE MARÉ

DIRECTOR: ENVIRONMENTAL GOVERNANCE

DATE OF DECISION: 20 MARCH 2020

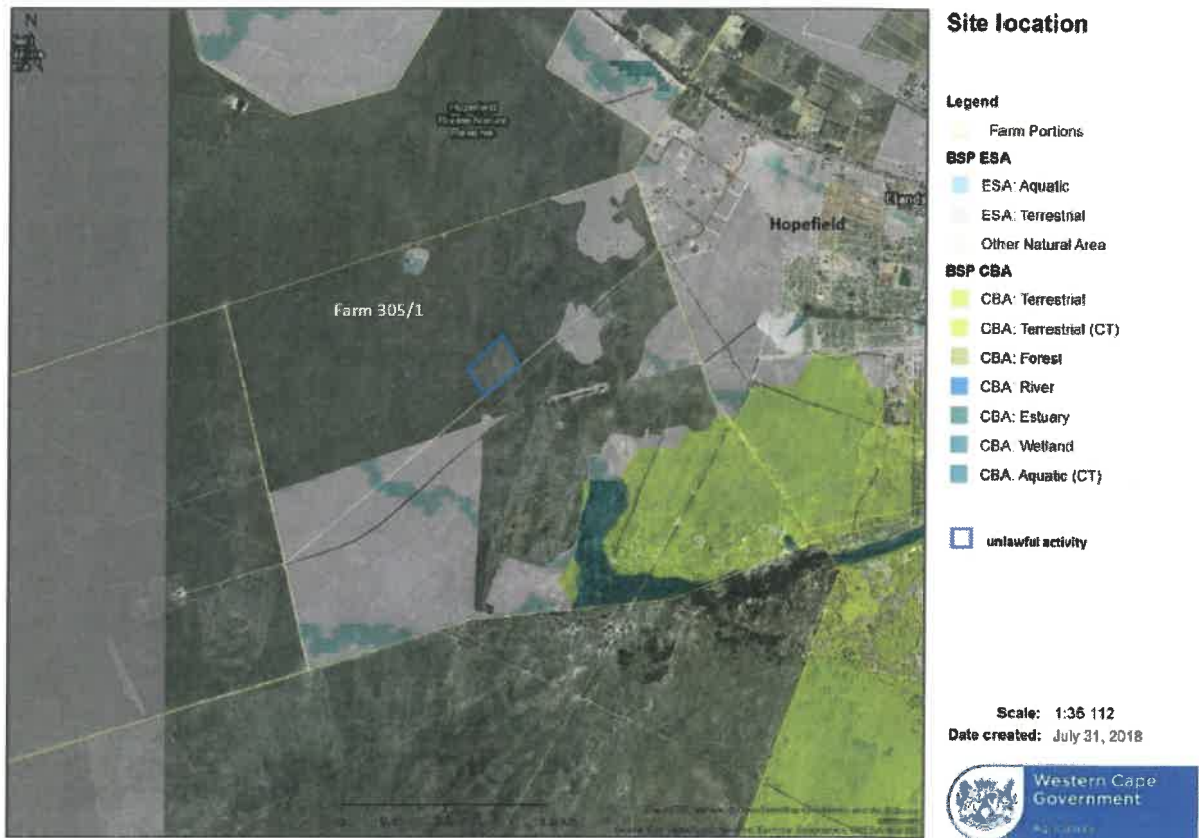
Copied to:

(1) Johannes van der Walt / Riaan van Der Walt (EAP)

Email: admin@aecorp.co.za

Fax: (086) 556 4669

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE PLAN



FOR OFFICIAL USE ONLY:

S24G REFERENCE:

14/2/4/2/1/F4/5/0005/18

APPEAL REFERENCE:

14/3/6/F4/5/0428/19

ANNEXURE 3: REASONS FOR THE DECISION

This Environmental Authorisation is in respect of the consequences of commencement of the afore-mentioned illegal activities. An Environmental Assessment Practitioner ("EAP") was appointed to submit a section 24G application and Environmental Impact Assessment ("EIA") to the Department to obtain this Environmental Authorisation. The EIA was considered adequate for informed decision-making. In addition, the holder paid an administrative fine of R25 000 (Twenty-five thousand Rand) to meet the requirements of section 24G of the *National Environmental Management Act, 1998* ("NEMA").

In reaching its decision, the competent authority, *inter alia*, considered the following:

- a) The section 24G application and Environmental Impact Assessment and Mitigation Measures as outlined in the report dated 09 October 2018.
- b) The additional information requested by the Department in the letter dated 15 March 2019 and the responses to thereto from the applicant dated 18 April 2019 and 24 April 2019, respectively.
- c) The public participation process conducted by the appointed EAP, including the consultations with various organs of state having jurisdiction in respect of the activity.
- d) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- e) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto.
- f) The sense of balance of the negative and positive impacts and proposed mitigation measures.
- g) The site visit conducted on 22 January 2019 attended by officials of this sub-directorate.
- h) The appeal decision on the 24G administrative fine dated 5 December 2019.

All information presented to the competent authority was taken into account in the consideration of the application for environmental authorisation. A summary of the issues which, according to the competent authority, were the most significant reasons for the decision is set out below.

1. Public Participation Process

In terms of section 24G(1)(vii)(dd) of the NEMA, "...a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed ...", is required.

The public participation process conducted by the EAP comprised of the following:

- identification of and engagement with I&APs.
- fixing a notice board at the site where the listed activity unlawfully commenced.
- giving written notice to the owners and occupiers of land adjacent to the site where the listed activity was undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activity on 10 August 2019.
- the placing of a newspaper advertisement in the **Westlander** on 08 March 2018 and 09 August 2018.

Consultation with organs of state in terms of section 24O of the NEMA

The following organs of state provided comment on the application:

- Heritage Western Cape (HWC)
- Department of Agriculture (DoA)
- CapeNature (CN)

HWC indicated that any heritage resources uncovered by future activities on site should be reported to HWC.

The DoA indicated that a *Conservation of Agricultural Resources Act, 1983 (Act 43 of 1983)* ("CARA") application must be submitted to the DoA. The landowner must remove alien vegetation on site (*Acacia Saligna*) and prevent it from spreading.

Additionally, groundwater resource availability and quality must be checked on a regular basis.

CN highlighted the fact that the site was historically covered by Hopefield Sand Fynbos, which is listed as Vulnerable and is known for supporting a high number of Species of Conservation Concern (SCC). It is likely that Hopefield Sand Fynbos should qualify as Endangered under Criterion D1 (number of threatened species associated with this habitat). CN indicated that, although the site was previously partially strip ploughed (longer than 10 years ago), it appears that the site had rehabilitated well and should be considered in natural vegetation condition. There is also a moderate to high possibility that SCC were lost. The conservation importance of the site is elevated due to its proximity to the West Coast National Park and Hopefield Nature Reserve. Ideally, no further disturbance of natural vegetation should take place on this farm, especially in the western parts of the property and any areas that were not previously disturbed or are mapped as Ecological Support Area (category 1 or 2). Provided this is guaranteed, CN is of the opinion that the 10.3ha as applied for in this application can be mitigated to have a local biodiversity impact.

2. Alternatives

2.1 Alternative 1- location/site (Herewith authorized)

The applicant chose a site next to an access road for the establishment of the date palms/orchard that resulted in the unlawful clearing of the 10,3-ha vegetation. The whole property was covered with natural vegetation (Hopefield Sand Fynbos) and the applicant did not have the option to consider a previously cultivated area for his development.

The property is bordered by the West Coast National Park to the south and Hopefield Nature Reserve to the west. Any clearing of natural vegetation on these borders should be avoided as these areas serve as a buffer zone for the protected areas. The unlawful development did not take place next to these protected areas and these buffer areas are still intact. Any future land clearing applications on this property should be guided by a specialist botanical report and the buffer areas should be kept intact.

According to the application, the EAP indicates that if the correct procedure were followed by the applicant, the EIA process would have determined if the

activity should be allowed on the property and what would be the best location for such a development on the property. The criteria that most likely would have determined the best location for the development would have been a specialist botanical report.

2.2 The option of not implementing or continuing with the activity ("No-Go" Alternative)

According to the EIA report, the activity is completed, and the natural vegetation has been permanently removed. Rehabilitation is therefore considered not a viable option, and there is no benefit for the applicant to cease activity on site.

3. Environmental Impact Assessment (EIA) and Mitigation Measures

In reaching its decision, the competent authority, considered the following in respect of the EIA and mitigation measures:

3.1. Regional/ Planning Context

The Hopefield area is seen as a moderate agricultural development area by the PSDSF. The PSDF also gives the following guidelines on development outside an urban edge:

"DEVELOPMENT OUTSIDE THE URBAN EDGE

4. Compatible and sustainable rural activities (i.e. activities that are appropriate in a rural context, generate positive socioeconomic returns, and do not compromise the environment or ability of the municipality to deliver on its mandate) and of an appropriate scale and form can be accommodated outside the urban edge (except in bona fide wilderness areas). The 2009 PSDF draft Rural Land Use Planning & Management Guidelines should be reviewed and updated to serve as basis for clarifying the interpretation of this policy. The following criteria should be applied in assessing consistency with this policy:

- i. Environmental authorisation*
- ii. Compatibility with land use activities suitable in the CBA it is situated in, and subject to an EIA*
- iii. Does not alienate unique or high value agricultural land or compromise existing farming activities.*
- iv. Does not compromise the current or future possible use of mineral resources v. Is consistent with the cultural and scenic landscapes within which it is situated.*

- vi. Does not involve extensions to the municipality's reticulation networks (i.e. served by off-grid technologies)*
- vii. Does not impose real costs or risks to the municipality delivering on their mandate.*
- viii. Does not infringe on the authenticity of rural landscapes."*

3.2. Biodiversity Impacts

The impact relating to the loss of vegetation is seen as having a localised biodiversity impact. This is due to the loss of 10ha of natural vegetation. The EAP indicated that no rehabilitation of the site is possible due to the clearing and planting of date palms.

The vegetation that was unlawfully cleared was classified as Hopefield Sand Fynbos which is currently classified as vulnerable. A botanical scan of the natural vegetation around the activity indicated that at least two threatened plant species was most likely present on the site that was unlawfully cleared by the applicant. However, both species are still widespread and present at a high number of other sites and the impact on the total population of these species are not significant.

CapeNature, however, indicated that, although the site was previously partially strip ploughed (longer than 10 years ago), it appears that the site had rehabilitated well and should be considered natural. There is also a moderate to high possibility that Species of Conservation Concern were lost. The conservation importance of the site is elevated due to its proximity to the West Coast National Park and Hopefield Nature Reserve and ideally, no further disturbance of natural vegetation should take place on this property, especially in the western parts of the property and any areas that were not previously disturbed or are mapped as an Ecological Support Area (category 1 or 2).

3.3. Visual / Sense of Place

The activity is in keeping with the surrounding environment as the farm was previously used for agricultural purposes.

3.4. Heritage / Archaeological / Built Environment Aspects

The activity did not impact on any cultural aspects as none were identified.

3.5. Heath Impacts

The development will not impact on the health and wellbeing as it involves the cultivation of date palms.

4. **NEMA Principles**

The National Environmental Management Principles (set out in section 2 of the NEMA), which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with the EMPr, the competent authority is satisfied that the listed activity will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and that any potentially detrimental environmental impacts resulting from the listed activity can be mitigated to acceptable levels.

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