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The Managing Director
Blaarfontein Slanghoek (Pty) Ltd
P.O. Box 26
RAWSONVILLE
6845

Tel: 023 344 3124
Fax: 086 562 6052

Dear Sir/Madam

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE SECTION 24G ADMINISTRATIVE FINE ISSUED FOR THE UNLAWFUL CONSTRUCTION OF STRUCTURES WITHIN 32M OF A WATERCOURSE ON PORTION 1 OF THE FARM NO. 407, BREELAND FARM, SLANGHOEK VALLEY, RAWSONVILLE

The appeal on your behalf lodged against the administrative fine issued by the Department of Environmental Affairs and Development Planning on 31 August 2017, refers.

After considering all relevant facts and supportive documents I wish to advise that, in terms of section 43(6) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") I have decided to partially uphold your appeal and vary the abovementioned decision of the delegated officer.

In terms of section 24G(4) of the NEMA you are hereby informed that in order for the competent authority to process your application further, an administrative fine of **R123 750-00** (one hundred and twenty three thousand seven hundred and fifty Rand) must be paid.

Payment may be made by cash, cheque or electronic transfer as follows:

Cash Payment:

The amount may be paid at the cashier's office of the Department of Environmental Affairs and Development Planning, 1st floor Utilitas Building, 1 Dorp Street, Cape Town from Mondays to

Fridays between 8h00 and 12h30. The following allocations must be given to the cashier when making the payment:

Reference No: **S24G00199**

Company/ Individual Name:

ID No:

Cheque Payment:

The cheque must be crossed and made payable to the Department and may either be deposited at the aforementioned cash office under the allocations mentioned above or deposited directly in the bank account. (See bank details below)

Electronic Transfer

An electronic transfer may be made to the following account:

Name of Bank:	NEDBANK
Name of Account:	Provincial Government of the Western Cape Department of Environmental Affairs and Development Planning
Account Type:	Current Account
Account Number	1452 045 003
Branch Name:	NEDBANK CORPORATE
Branch Code:	145 209
Reference No.:	S24G00199

You are hereby requested to forward a copy of the proof of payment (e.g. receipt, deposit slip, electronic transfer confirmation) to the Sub-directorate: Rectification for the attention of Mr Shafeeq Mallick (Tel: 021 483 2991, Fax: 021 483 4033/2704 and Email: shafeeq.mallick@westerncape.gov.za) and quote the abovementioned reference number to ensure that the competent authority can acknowledge the payment of the administrative fine.

The administrative fine must be paid within **30 days** from the date of this letter. However, the payment of the administrative fine in instalments may be arranged with the competent authority. If no payment of the administrative fine is received and/or no arrangement of the fine payment is made with the competent authority within the abovementioned timeframe, the competent authority will proceed with the law enforcement action.

Please take note that the administrative fine is not an authorisation of the unlawful commencement of the listed activities according to the NEMA. Consideration of your application will only commence upon the payment of the administrative fine.

1. REASONS FOR THE DECISION:

1.1 The reasons outlined in the original administrative fine decision of R 1 375 000 are applicable to the appeal decision and the following are additional reasons to uphold your appeal and vary the original administrative fine issued by the delegated authority from R 1 375 000 to R123 750:

a. The administrative fine imposed on the appellant is in line with the requirements set out in section 24G(4) of the NEMA which requires that a person who has commenced with an activity without a requisite environmental authorisation, must pay an administrative fine, which may not exceed R5 million, as determined by the competent authority.

b. The administrative fine was calculated using the 2014 administrative fine calculator as developed by the National Department of Environmental Affairs due to the fact that the application was submitted on 22 July 2015, after the coming into effect of the 2014 administrative fine calculator.

c. The 2014 administrative fine calculator is based on the following indices (under section 8: Impact Summary of Activity of the Final EIA Report) that were informed by the environmental assessment practitioner on the section 24G EIA Report, as follow:

- The Social Benefit Index rated in the EIA Report that *"The activity provides no social service / Infrastructure to the affected community"*.

I have deviated from this rating assigned by the EAP due to South Africa's current economic situation, in conjunction with the drought currently being experienced in the Western Cape which makes job security increasingly difficult. This is significant considering the economic climate in the South Africa. The Social Benefit Index is rerated as *"The activity provided indirect social service / infrastructure to the affected community"*.

- The Socio-Economic Impact Index was rated that *"The activity will not give rise to any negative socio-economic impacts"*.
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I conclude that no negative socio-economic impacts resulted from the unlawful activity and that in fact it will increase the economic viability of the farm through increased water storage capacity concurs with the rating assigned by the EAP.

- The Biodiversity Impact Index was rated that "*The activity could give rise to significant biodiversity impacts*". Observations of the surrounds suggest that the vegetation that was present at the clay borrow pit was Breede Alluvium Fynbos (heavily infested by Black Wattle trees); the vegetation along the haul road is Breede Alluvium Fynbos with some variation in and around the braided streams and watercourses; and the expansion of the Middle Dam resulted in the loss of some Breede Alluvium Fynbos.

The impact of loss of Breede Alluvium fynbos ranges from high negative to medium negative at the clay borrow pit. Restoration of the clay borrow pit was found to be not feasible and it is recommended that the borrow pit be converted into a storage dam.

The initial impact on biodiversity of the haul road was rated as high negative but since this area was decommissioned and with attempts to restore the vegetation the impact was rated as medium negative. It is proposed that, should the further expansion to the Middle Dam and the conversion of the borrow pit into a dam be approved, the haul road will be used to transport material after which it will be actively restored to natural veld as per an approved Environmental Management Programme.

The Freshwater Assessment concluded that that the impact on the freshwater system in terms of modified flow and associated modification to aquatic habitat and biota range from Medium -Low Negative with the clay borrow pit due to excavations occurring within a wetland area; and to Medium Positive with the Middle Dam due to the reduced need to abstract water from the Slanghoek River.

I concur with the rating assigned by the EAP for the Biodiversity Index and I am satisfied that the haul road, conversion of the borrow pit into the Kleigat Dam and the upgrade to the Middle Dam's impacts have been assessed and will be adequately managed through the proposed mitigation measures.

- The Sense of Place &/or Heritage Impact Index is rated that "*The activity is in keeping with the surrounding environment and / or does not negatively impact on the affected areas' sense of place and / or heritage*". The motivation for this rating is that the activities commenced is in line with an agricultural landscape.
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I concur with the rating assigned by the EAP for the Sense of Place &/Heritage Impact Index.

- The Pollution Impact Index was rated that "*The activity will not give rise to any pollution*". The motivation for this rating is that the soil material was moved from the borrow pit to the Middle Dam. The conversion of the borrow pit into the proposed Kleigat Dam and the further upgrade to the Middle Dam is not anticipated to produce any pollution.

I concur with the rating assigned by the EAP for the Pollution Impact Index.

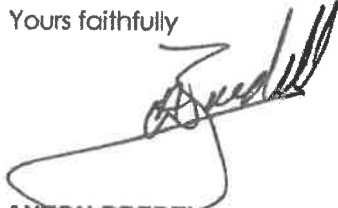
- 1.2 Breeland Farm is a fully functioning farm specialising in the growing of vineyards. I am satisfied that the correct category of applicant, i.e. category 1, was applied in the calculation of the fine.
 - 1.3 The activities took place between March and May 2014 thus it triggered activities listed in Government Notice("GN") No. R. 544 Listing Notice 1 of the EIA regulations, 2010. The recalculated fine amount is R247 500-00.
 - 1.4 On 27 May 2017, Mr. Marais, tragically passed away. Mr. Marais was, at the time of the unlawful activities occurred, was the sole director of the company and acted independently and without consultation of any party. Mr. Marais leaves behind his wife and three children, who were all scholars at the time of his passing. I have decided to reduce the administrative fine of R247 500-00 by 50%.
2. 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. In terms of the NEMA Principles, the effects of decisions on all aspects of the environment are to be taken into account. As such, the consideration, assessment and evaluation of the social, economic and ecological impacts of activities (disadvantages and benefits) must be undertaken, and decisions are to be appropriate in the light of such consideration and assessment.

After considering all the above factors and relevant documentation, I am of the view that a deviated administrative fine from R 1 375 000-00 to R123 750-00, is an appropriate fine. However, I wish to advise the appellant to approach in future an environmental assessment practitioner and/or the Department of Environmental Affairs and Development Planning for advice prior to commencement

of an activity/activities on the farm which may require an environmental authorisation in terms of the National Environmental Management Act, 1998 ("NEMA").

Your interest in the future of our environment is greatly appreciated.

Yours faithfully



ANTON-BREDELL
WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE: 9/5/2018

CC: (1) Adv C Maré (DEA&DP)
(2) Ms Z Toefy (Sub-Directorate: Rectification)
(3) Ms S Msila (DEA&DP: Financial Accounting)
(4) Mr S Mallick (DEA&DP)

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