



Western Cape  
Government

Environmental Affairs and  
Development Planning

V5\_2018/01

Directorate: Environmental Law Enforcement

**REFERENCE:** 14/1/1/E3/5/2/3/L946/18

**ENQUIRIES:** Ms N Ndlumbini

Cold Creek Inv3 (Pty) Ltd

PO Box 2791

George

6530

**BY EMAIL**

Tell: 044 876 9059

Cell: 082 328 1614

Email: [senior@kuyler.co.za](mailto:senior@kuyler.co.za)

Attention: Mr George Kuyler

## COMPLIANCE NOTICE

Dear Sir

### COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998

1. The Department's Pre-Compliance Notice issued on 18 May 2018, subsequent telephone conversation and email dated 25 June 2018 addressed to Mr Kuyler Junior as referred by you and a follow-up telephone call dated 17 August 2018 has reference.

2. I, Mr Ayub Mohamed, Chief Director: Environmental Governance, Policy Co-ordination and Enforcement in my capacity as Grade 1 Environmental Management Inspector, hereby issues Mr George Kuyler representing Cold Creek Inv3 (Pty) Ltd with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 ("NEMA").
3. This Compliance Notice relates to non-compliance with the provisions of section 24F of the NEMA. No activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 and 3 of 2014 may commence without environmental authorisation from the competent authority.

#### **Details of conduct constituting non-compliance**

4. 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 farm 148/208, George by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement on 26 March 2018 and a further investigation at farm portion 147/208 George, and it was confirmed that you have commenced with the clearing of vegetation to develop land within a Critical Endangered Ecosystem (Garden Route Shale Fynbos) without environmental authorisation.

GPS coordinates: S34° '00'28.6."; E22° 23' 56.0"



Aerial map: Location of alleged illegal activity.

5. The Department wishes to advise that on 4 December 2014, the Minister of Environmental Affairs promulgated the 2014 EIA Regulations. These Regulations came into effect on 8 December 2014 and was amended on 7 April 2017. Accordingly, activities which commenced prior to 7 April 2017 and which are similarly listed in the 2014 Regulations require prior environmental authorisation.
  
6. On considering the evidence before me there are reasonable grounds to believe that you have commenced the following activities without environmental authorisation:

EIA Regulations Listing Notice 1 of 2017:

Activity no. 27

*The clearance of an area of 1 hectare 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.*

EIA Regulations Listing Notice 3 of 2017:

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.*

*(a) Western Cape provinces:*

- 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 or even in urban areas; or*

- 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.



Photo 1: Image view of the cleared lands on farm portion 147 and 148/208, George

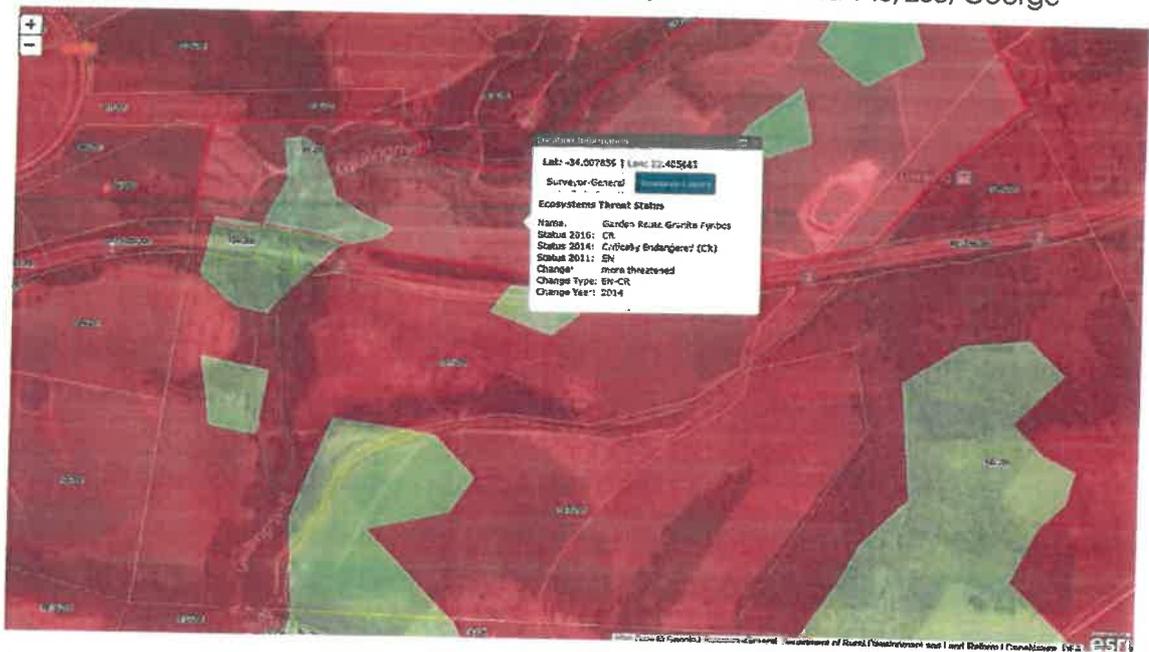


Photo2: Image view of the clearing of vegetation within a Critical Endangered Ecosystem

**7. You are hereby instructed to:**

- 7.1 Immediately cease the above listed activities;
- 7.2 submit to the Department within **30 (thirty) calendar days** of receipt of this Compliance Notice a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
  - 7.3 assessment and evaluation of the impact on the environment;  
identification of proposed remedial and/or mitigation measures.
8. Approval of the plan by the Department does not remedy the unlawful commencement of the above activities, which remain unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
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. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.
11. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

**Varying this Compliance Notice**

12. If you would like me to vary this Compliance Notice or extend the period to which it relates, you may make representations to me, in writing, to do so.

**Failure to comply with this Compliance Notice (section 31N of the NEMA) and related offences in terms of the NEMA**

13. In terms of section 49A(1)(a) 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.
14. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of such an offence is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.
15. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:
  - 15.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
  - 15.2 take any steps necessary to ensure compliance with the provisions of the law, permit or authorisation to which this Compliance Notice relates and recover from you the cost of doing so.

**Procedure for lodging an objection to this Compliance Notice (section 31L and 31M of the NEMA)**

16. If you wish to lodge an objection to this Compliance Notice, you may do so by making representations, in writing, to the Provincial Minister of Environmental Affairs and Development Planning ("the Minister") within 30 days of receipt of this Compliance Notice.

17. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.

18. The objection must be in writing and forwarded to the Appeal Administrator, Mr Jaap de Villiers at the contact details below and must be accompanied by a statement detailing the grounds of the objection and supporting documentation, if any.

By post: Western Cape Ministry of Local Government, Environmental  
Affairs and Development Planning  
Private Bag X9186  
CAPE TOWN  
8000

By facsimile: (021) 483 4174

By hand: Attention: Mr Jaap de Villiers (Tel: 021 483 3721)  
Room 809  
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: [Jaap.DeVilliers@westerncape.gov.za](mailto:Jaap.DeVilliers@westerncape.gov.za)

19. Irrespective of any representations you may make to me or to the Minister, you must comply with this Compliance Notice within the time period stated in the Compliance Notice, unless the Minister agrees to suspend the operation of this Compliance Notice.



**Ayub Mohamed**

**Chief Director: Environmental Governance, Policy Co-ordination and Enforcement  
Grade 1 Environmental Management Inspector**

Date: 17/09/2018

Cc: Kuyler jnr (farm manager), email: [jnr@kuyler.co.za](mailto:jnr@kuyler.co.za)

