

NOW Offroad Self Regulation Strategy

Enviro-legal teleconference with SAROOF

Minutes: 7 November 2007

| | |
|-----------------------------|--|
| Date: | 7 November 2007 |
| Location: | Telephone conference |
| Participants: | <p><u>Present</u></p> <p>SOUTH AFRICAN ROUTE OWNERS AND OPERATORS FORUM (SAROOF):</p> <ul style="list-style-type: none"> • Francois Smit (FS) (in Cape Town) <p>SUSTAINABLE LAW SOLUTIONS</p> <ul style="list-style-type: none"> • Francois Joubert (FJ) (in Johannesburg) <p>FELEHETSA ENVIRONMENTAL</p> <ul style="list-style-type: none"> • Jeremy Boswell (JB) • Leah Buckwalter (LB) (for part of meeting) <p>(both in Johannesburg)</p> |
| Minutes Prepared by: | Jeremy Boswell, Felehetsa Environmental |

| | |
|---|--|
| | |
| <p>1. <u>Jeremy Boswell (JB) of Felehetsa Environmental (FE) briefly introduced the discussion:</u></p> <ul style="list-style-type: none"> • The consulting team, consisting of Felehetsa Environmental (to perform stakeholder engagement) and Grant Thornton (to prepare a self regulation strategy and framework) had been appointed by the National Off-road Workgroup (NOW) representing the 4X4 off-road industry. • During previous consultation by JB with Francois Smit (FS) of the South African Route Owners and Operators Forum (SAROOF), it had become apparent that a number of items of discussion were of an enviro-legal nature. • It was therefore suggested by JB that a telephone conference be arranged between Francois Smit (FS) of SAROOF, JB and Francois | |

Joubert (the environmental attorney from the company Sustainable Law Solutions) who had been engaged in turn by FE to perform the enviro-legal scan on the project. (The enviro-legal scan had previously been circulated and read by all).

2. Francois Smit (FS) of SAROOF then introduced the position of the owners and operators of trails and tracks in South Africa:

- SAROOF supports existing environmental legislation
- SAROOF acknowledges the need for operation of trails to be rendered environmentally compliant
- No environmental authorisations are currently in place for existing trails and tracks
- Attempts at obtaining environmental authorisation for existing trails have not been successful, since:
 - The law requires an EIA to be completed before an activity is commenced
 - In the experience of trail owners, the process had been found to be unaffordably expensive, time-consuming (over 2 years) and complicated.
- A process is required between the (national) Department of Environmental Affairs and Forestry (DEAT) and NOW to assist trails to become enviro-legally compliant
- SAROOF and NOW are not looking to short circuit or bypass the law and are committed to the principles of the act (NEMA and related legislation).
- We need to find a middle way

3. Francois Joubert (FS) of Sustainable Law Solutions (SLS) then responded to the points raised in the following way:

- (a) Getting illegal trails to become legal is easier said than done.
- (b) Its also very difficult for DEAT to go on site and address illegal activities
- (c)It is legally technicality impossible to get a Record of Decision (RoD) for an activity started already
- (d) Instead, it would be required by DEAT to issue a directive
- Do the following to render the trail legally compliant
 - Or we will close down the track
- (d) therefore there is a need for commitment to the process

How do we assist trail owners? FJ indicated that there is a void and it is required of the GT/FE consulting team to raise this with DEAT. Only the dune regulations are in place. One always wants regulation to protect the 4X4 guys who are doing a good job.

4. FS indicated that SAROOF had in the past also notified DEAT and the (Western Cape) Department of Environmental Affairs and Development Planning (DEADP) of environmental damage by trail owners and operators.

5. FJ then outlined the proposed legal means to render tracks and trails compliant with the law:

- An application in terms of Section 24G of the National Environmental Management Act (Act no 108 of 1998 (NEMA) would need to be prepared by the trail owner or operator.
- DEAT cannot generate a positive ROD for an activity which had already commenced.
- Instead, DEAT would issue the Section 24G applicant with a directive
- A proactive approach was thus required by all parties

6. FJ raised some technicalities:

A trail is not a road. Therefore there is no road reserve and it is not a listed activity. Only those built after 2006 would be strictly illegal because of uncertainty and the situation is somewhat “below the radar” at the moment. (There are far worse contraventions of the law and damage to the environment through other unrelated causes in the country at present, which are occupying closer attention of the authorities).

7. FS indicated that the Western Cape has

- (a) The greater majority (some 90%) of the known trails that are currently operating in SA.
- (b) SAROOF has a GIS layer for each one
- (c) With Cape Nature they have overlaid the GIS data regarding environmentally sensitive habitats, (and including rivers, ridges, archaeology, fauna and flora, etc)
- (d) All this data needs to be incorporated into a system and can thus also be included in any Section 24G application
- (e) An EMP standard had already been generated in the Western Cape,
- (f) Cape Nature are very positive, (Sean Ranger at the Piketberg office and Jaco Venter, also in partnership on the Greater Cederberg

project).

8. FJ agreed that this is the only way it would work.

- le, a joint solution prefaced with the words: “The Minister in concurrence with
- The current situation is unworkable and has in large part been acknowledged by all to be unworkable
- It was decided not to include 4X4 trails as a listed activity in the latest revision of NEMA.
- It is taking a long time to agree on the way forward
- DEADP (Paul Hardcastle) would be receptive to a provincial process.
- Each province would have a streamlining process, as well as the national DEAT approach.
- This is not an easy and short process.

9. FS concurred that the proposed approach was feasible.

- The SAROOF approach would not be generic and a blanket rubber stamp
- Therefore the application would have specifics, although there are 20 projects already in the management plan.
- It is a specific tool.

10. It was recorded by all participants that they agreed in principle on the approach.

11. FJ indicated that the overall initiative had to be led by DEAT in response to the Section 24G applications

- In a Section 24G application there was an inherent acknowledgement of activity which was not in compliance with the law (“You must not forget that you have been illegal here”)
- The activity in question was not usually deliberate
- A fault of the system
- The revised “listed activity” had been trimmed to exclude certain activities (of which 4X4 trails were one example)

12. Initial actions as agreed towards a way forward

- A generic EMP for trails and tracks would be procured by SAROOF and presented to the Minister
- A list of suggested actions (planning, operating, monitoring, remediation, rehabilitation and corrective action, itemised as a, b, c..etc) would be prescribed in the generic EMP, which would require to be populated with detail by each trail owner/operator.
- A Memorandum of Understanding (MoU) would outline how applications would be dealt with, including a typical affidavit which would be prepared for use in similar and typical cases.
- In principle this was a meeting of minds.
- All parties are committed to regulating this industry
- It was suggested by FJ that DEAT would be very sympathetic to such a suggested approach, and that it was likely that they would respond favourably.
- The strategy must be correct
- Compliance must be assured as a result of this process
- Current issues must all be addressed.

13. Further actions towards a way forward:

- SAROOF wished to
- advance the Western Cape (Hardcastle) guideline as a model, as well as the
- Cederberg pilot project
- Suggest rollout to other provinces insofar as Trails and tracks were concerned
- The process was acknowledged to be demanding and time consuming
- A continued a growing commitment and generation of good faith and trust was important
- Trail owners, operators, land owners and farm owners would respond favourably to a face-to-face approach

14. Class applications

FS raised the topic of class applications. He suggested for example:

- Agree on a set number of trails in area
- develop a register of all tracks in an area

15. EMF approach

- JB suggested that the EMF approach should be followed.
- There is usually donor funding or DEAT funding provision for the EMF and this approach could be guaranteed for 5 years.

16. Stewardship Agreements (third objective of SAROOF)

- There are currently in place stewardship agreements between SAROOF and conservation agencies.
- There are different levels for this agreement. Level 1: Minister has to sign it, down to level 4;
- this proforma agreement can be inserted into any deed and the land can be ceded to DEAT as well.
- A 5m buffer zone around each track would form part of the trail
- A 500m buffer zone would be under conservation and declassified but not exclusionary
- With these in place coexistence between other land uses and trail operation is then possible.

(LB left the teleconference at this point)

17. FS: Once the sensitive areas demarcation process is completed, 90% of the trails would be rendered illegal.

- FS asked: Legally, how will this be done?
- A consultative process would be needed for this demarcation and proclamation.
- Provision is made in NEMA for the way forward for this process

18. FJ: New amendments of NEMA were tabled in parliament yesterday

- WESSA,
- Habitat council and
- LRC were present

19. FJ outlined further legal requirements that would need to be included in the proposed Section 24G – directive approach agreed above

- Provision of other standard environmental management tools
- Norms and standards
- A Public process
- Gazetting

20. SAROOF have this approach with farmers:

- You must have a plan
- You must manage the activity
- We (DEAT, SAROOF) will assist you with the application
- We will put in place a stewardship agreement
- All environmental resources must be protected, including heritage resources
- in the Western Cape allow R40 000.00 to R 80 000.00 for a Basic Assessment Report, in the case of new applications
- There are no guarantees – go through the process
- It will depend on your own commitment and actions as well

21.A Rehabilitation strategy is required for existing trails, and areas requiring remediation:

- Rehabilitation needs to be planned from the commencement of activities, not when the trail has outlived its usefulness
- An incoming revenue stream is required, and must make provision for rehabilitation costs (much like the mine closure legislation)
- Keep the trail open in order to pay for the environmental rehabilitation
- Work towards a solution
- A trail could be permitted solely in order to allow for ordered closure (like an old landfill site)

22. Other items to be included in a Way Forward checklist:

- EMF approach
- Norms and standards
- Generic EMP
- GIS
- A register of trails
- Environmental Management Co-operation Agreements (EMCAs) (Regulation 6) and stewardship agreements
- Consultation
- Interim arrangements
- Guideline documents
- Funding

23. FJ would sketch in a short legal document (one or two pages) what we propose to do

- High level document
- Overarching principles only
- In brief
- **Action: Francois Joubert**

24. Moratorium on prosecution

SAROOF wished to recommend a moratorium on prosecution of trail owners, until such time as the strategy outlined above had been implemented.

Three cases were currently relevant:

- Trail owners had gone ahead in good faith, applying for authorisation of existing trails
- Applications in terms of NEMA for an EIA were submitted
- The applicants were rewarded with a summons

25. Closure of telephone conference.

- JB thanked the participants for their commitment and contribution
- It was agreed that JB would circulate draft minutes for approval.

Action: JB