



**Know your
Environmental Rights!**

**Make the difference in
the EIA process.**



**ENDANGERED
WILDLIFE TRUST**



PROGRAM

- Introduction to EWT 10:00 - 10:05
- EIA discussion how to get involved 10:05 - 11:05
- Break 10:05 - 10:15
- Case studies 11:15 - 11:40
- Panel discussion Q & A 11:40 - 12:00

ABOUT THE ENDANGERED WILDLIFE TRUST



**ENDANGERED
WILDLIFE TRUST**

Protecting forever, together.



WHAT IS AN EIA AND WHAT IS ITS PURPOSE

- Process to ensure that
- Valuable environmental resources are safeguarded by avoiding unacceptable negative irreversible changes through implementing acceptable mitigation measures;
- The social and economic dimensions of the proposed development are enhanced.
- Human health and safety is protected.
- EIA's ensure that sustainable development pursued



RIGHTS THAT HELP ME PROTECT MY ENVIRONMENT



Environment - section 24

- Everyone has the right—
- (a) to an environment that is not harmful to their health or wellbeing; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
- (i) prevent pollution and ecological degradation;
- (ii) promote conservation; and
- (iii) secure ecologically sustainable development and use of natural resources
- while promoting justifiable economic and social development.

Access to information (Act 2 of 2000)

- (1) Everyone has the right of access to—
- (a) any information held by the state; and
- (b) any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide
- for reasonable measures to alleviate the administrative and financial burden on the state.
- PAIA (Promotion of Access to information)

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

- **The new address is:**

33 Hoofd Street
Braampark Forum 3
Braamfontein
2198

- **Postal address remains as:**

Private Bag X 2700
Houghton
2041

- **New Telephone number:**

011 877-3600

Fax numbers: 011 403-0682.



KEY LEGISLATION IN EIA

- **National Environmental Management Act, 1998** – regulatory framework for the management and protection of environmental resources and coordination in relation thereto.
- National Environmental Management: **Protected Areas Act**, 2003- Regulates protected areas in South Africa.
- National Environmental Management: **Air Quality Act**, 2004- regulates air quality
- National Environmental Management: **Biodiversity Act**, 2004 - Regulates and sets out the mechanisms for managing and conserving SA's biodiversity, its components and institutions
- National Environmental Management: **Waste Act**, 2008- regulates waste management; provides for national norms and standards for regulating the management of waste by all spheres of government; and provides for the licensing and control of waste management activities.
- **Marine Living Resources Act**, 1998 (Act No. 18 of 1998), which deals with the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources in a fair and equitable manner to the benefit of all South African citizens
- **Tourism Act**, 1993 (Act No. 72 of 1993) – promotion of tourism; regulation and rationalization of tourism

ENVIRONMENTAL AUTHORISATION APPLICATIONS

- Defined as the authorisation by a competent authority of a listed activity.
- The National Environmental Management Act, 107 of 1998 (NEMA) is the key legislation in South Africa governing environmental authorisation which is managed by the **Department of Environmental Affairs** at local, provincial and national levels of the government.
- NEMA is an environmental legislation framework that creates an assisting environment for the promulgation and adoption of a variety of environmental laws which concentrate the regulatory efforts on a particular environmental sector or medium.
- Undertaking a BA or S&EIR process does not automatically mean that authorisation for the development will be granted.



1. GENERAL PRINCIPALS AROUND DEVELOPMENT

- Precautionary principal
- Polluter pays
- Needs and desirability of developments & economic viability
- Development of alternatives
- Impact mitigation and sustainable development

2 types of EIA principals are –
Precautionary principles & Polluter pays principle

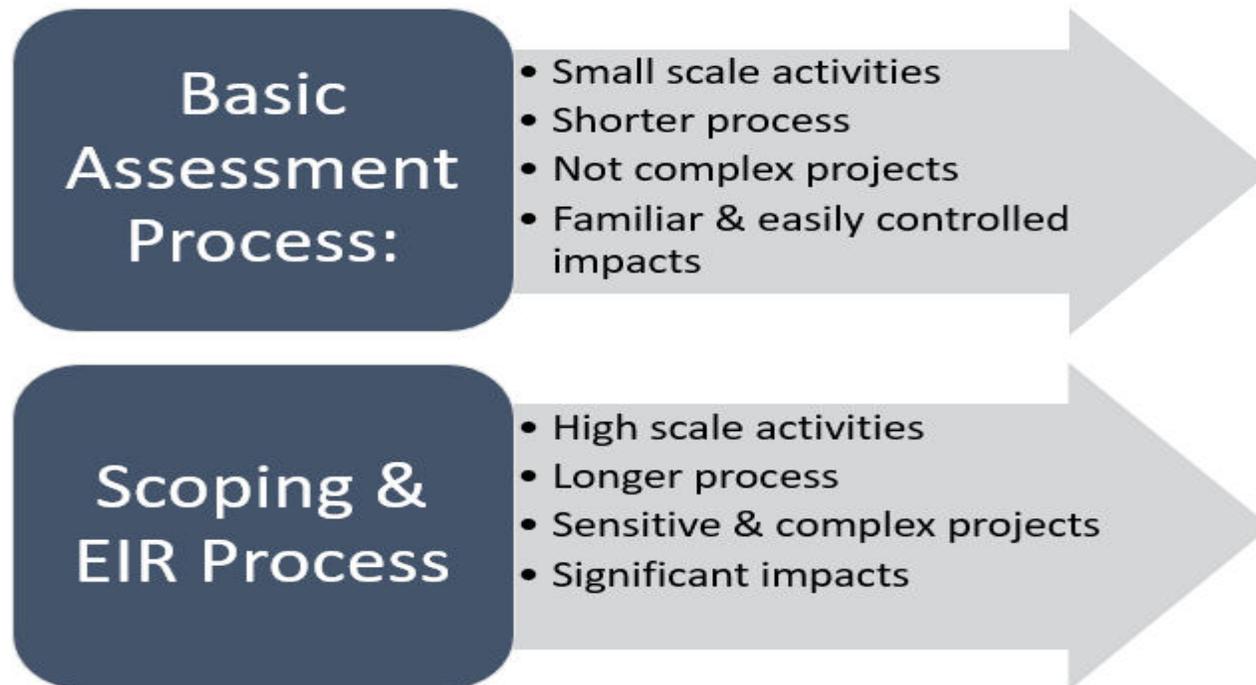
Precautionary principle – when an activity raises threats of harm to human health or the environment precautionary measures should be taken even if some cause effect relationship are not fully established scientifically.

Polluter pay principle - where the party responsible for producing pollution should also be responsible for damages done to the environment.



2. GENERAL TERMS

- Basic Assessment (BA) process: Listing Notice 1 GNR 983 & Listing Notice 3 GNR 985
- Scoping & Environmental Impact Report (S&EIR) process: Listing Notice 2 GNR 984
- Basic Assessment, Scoping and EIA and Exemption



2. GENERAL TERMS

- Appointment of an Environmental Assessment Practitioner
- Must be independent
- Registered as prof. scientist or part of an independent org. Such as IAIA

To protect this right of all citizens, prospective developers are bound by **law** to employ an independent Environmental Assessment Practitioner (**EAP**) to implement an Environmental Impact Assessment (**EIA**).

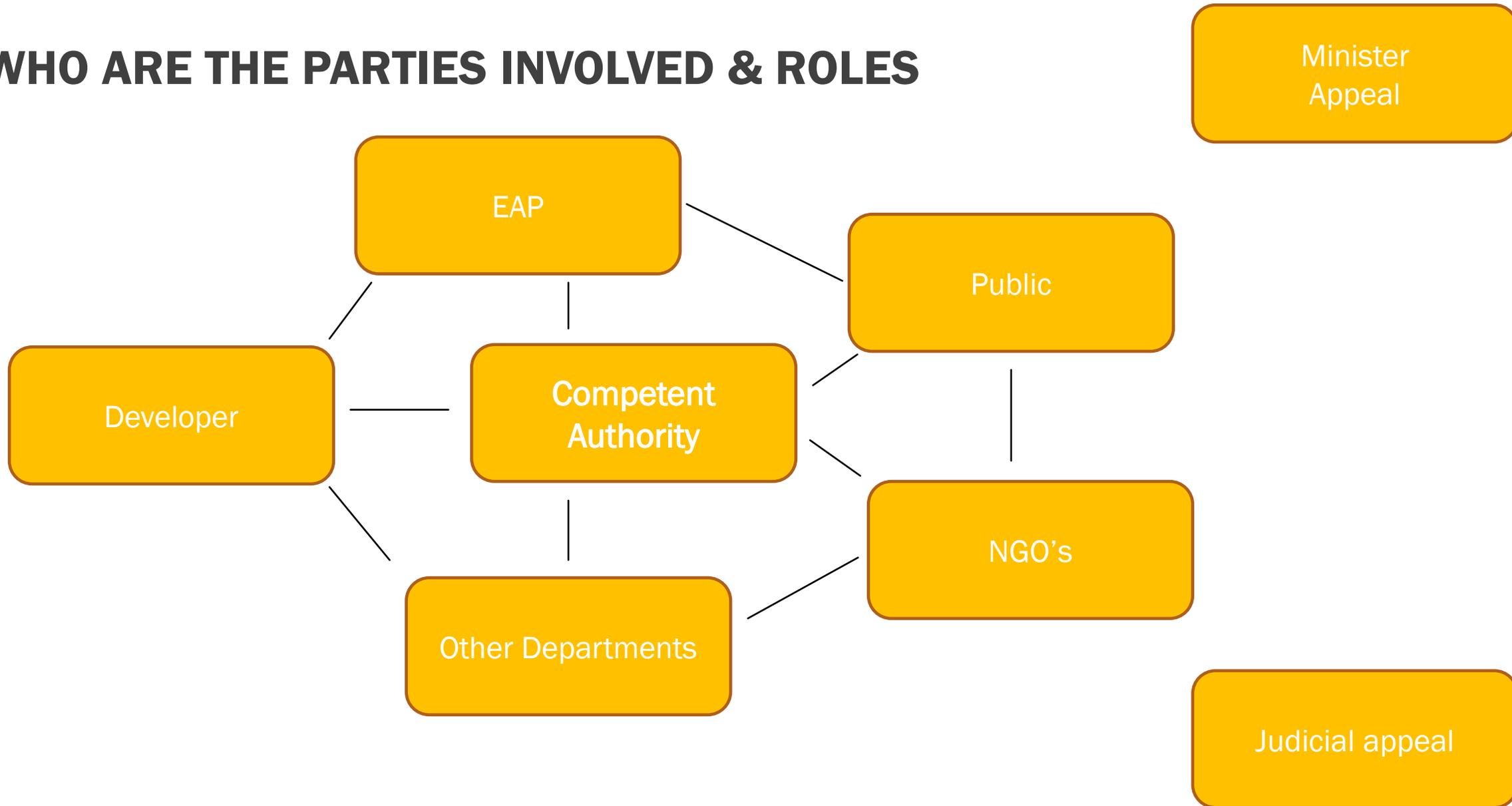


2. GENERAL TERMS REHABILITATION AND OFFSETS

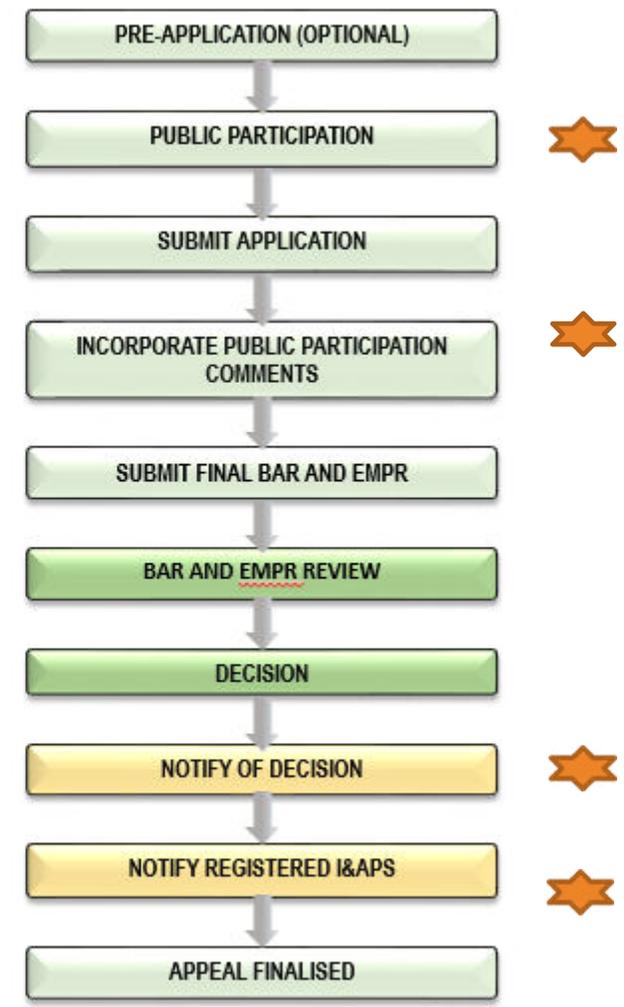
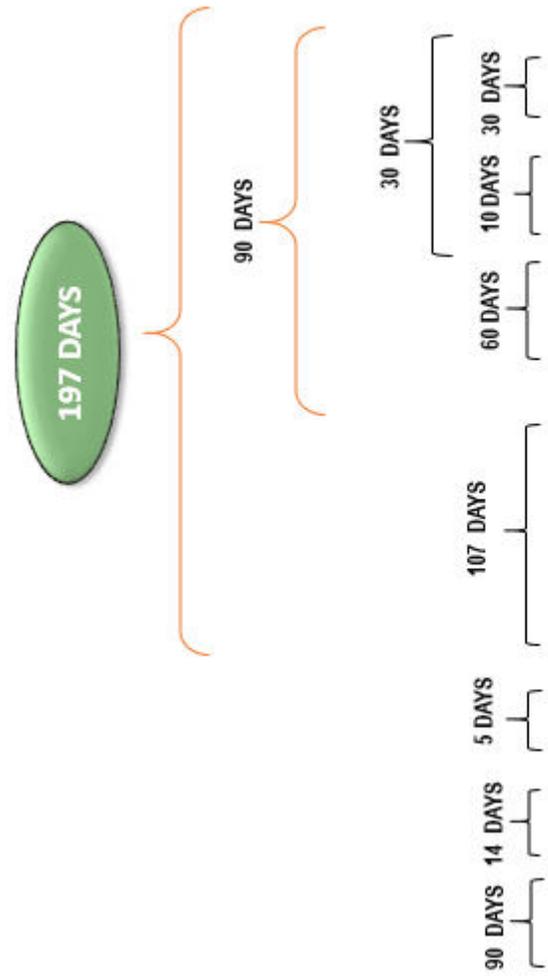
- **Rehabilitation** must be sufficient to restore ecological functioning and ecosystem processes.
- **Financial provisioning** for post development rehabilitation must be set aside by the developer up-front.
- **Offsets** should only be considered if minimising and avoiding and rehabilitating are not possible to mitigate impacts.
- Offsets will be guided by the draft National Environmental offset policy.



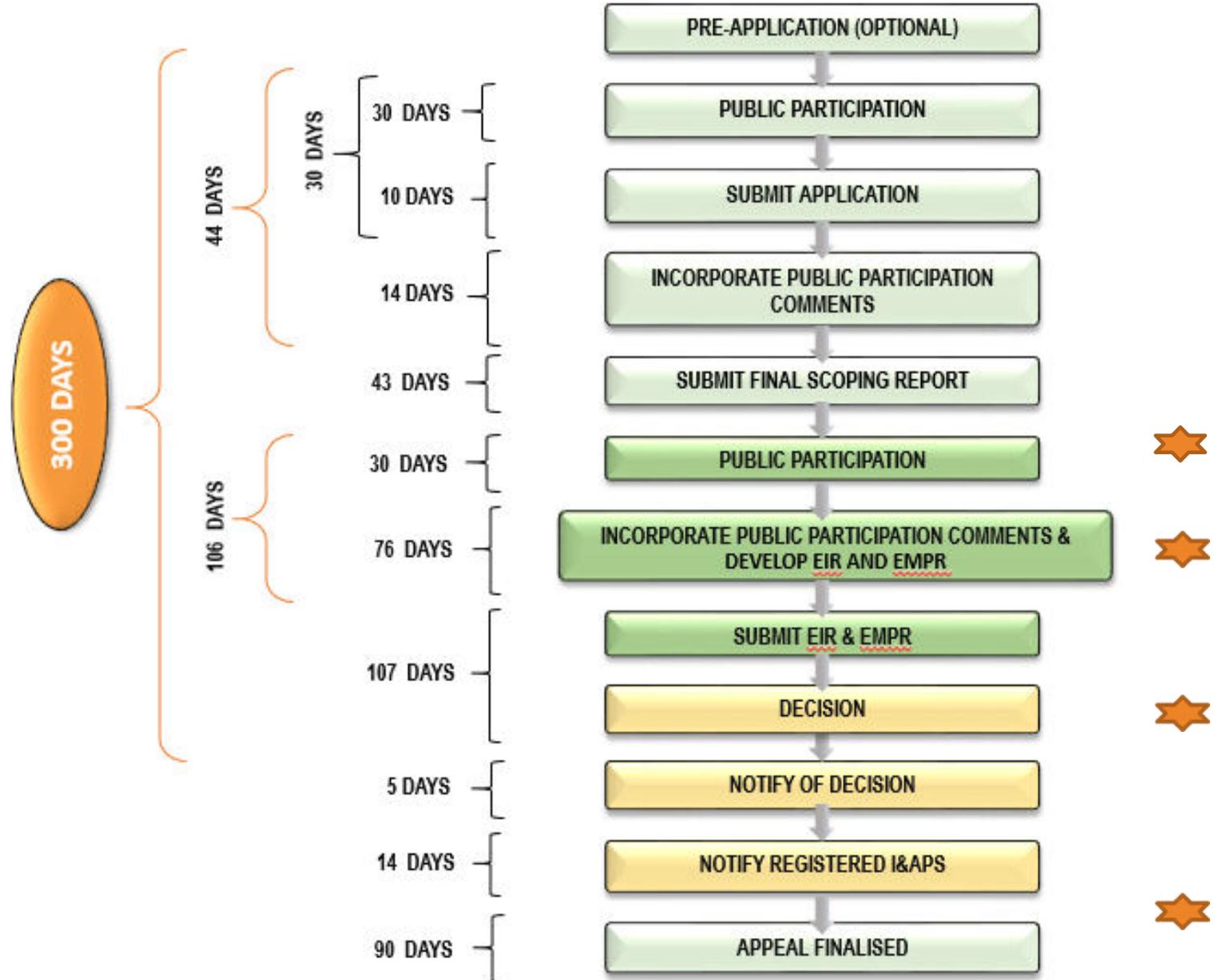
3. WHO ARE THE PARTIES INVOLVED & ROLES



4. ENVIRONMENTAL ASSESSMENT: BASIC ASSESSMENT PROCESS



4. ENVIRONMENTAL ASSESSMENT: EIA PROCESS

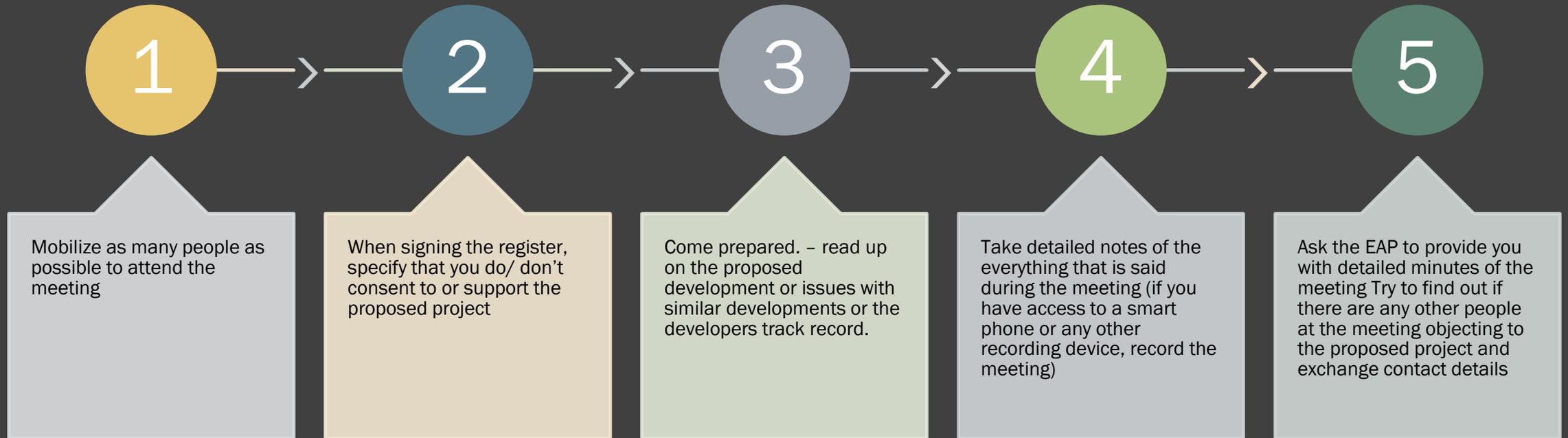


5. REGISTRATION AS AN INTERESTED AND AFFECTED PARTY

- Immediately **register** as an interested and affected party and ask for –
- The background information document
- The draft basic assessment report or scoping and environmental assessment report if it is available already (if it is not available, ask them to send it to you as soon as it is available)
- The date, time and venue of the public meeting – if they are not appropriate, let the **EAP** know as soon as possible



5. THE PUBLIC MEETING



5. PUBLIC PARTICIPATION PROCESS

Public involvement is a fundamental principle of the EIA process. ... At a minimum, public involvement must provide an opportunity for those directly affected by a proposal to express their views regarding the proposal and its environmental and social impacts.

Some common issues arising during PP

Notification

Technically challenging

Language

Overinflating project benefits

Intimidation

Notice period

Exclusion of affected parties

Inconsiderate dates / venues

Comments : Addressed and all included

5. GENERAL TIPS

- Check if the EAP is independent.
- Keep a “**paper trail**” of all correspondence between you and the EAP/applicant .
- Keep a **calendar** to keep track of what happens when and remember the rules for the counting of days.
- Public participation may not be conducted in the period between 15 December and 5 January.
- Ask the EAP to provide you with the final basic assessment report or environmental impact assessment report.
- If you live in a rural community, find out if the Traditional Leader has consented to the proposed project.
- Ask the relevant municipality for a copy of its integrated development plan, spatial development framework and environmental management framework. (if they have one)
- Notify the relevant conservation agency.

5. OBJECTING AND SUBMITTING WRITTEN COMMENTS ON THE BASIC ASSESSMENT REPORT OR ENVIRONMENTAL IMPACT ASSESSMENT REPORT

- Carefully read through the information with which you are provided (environmental impact assessment report, EMPr, specialist reports, etc.)
- Contact the EAP if anything in the documents is not clear and ask him or her to clarify it for you (keep a record of all correspondence between you and the EAP)
- If you know any engineers or scientists, ask them to help you understand the information in the relevant documents
- In your written objection and comments.

The Flying Eagles Environmental Association
Tel: 123 4567 8910
Email: tawny@eagle.co.za

Dear Ms EAP

**Objection to and comments on the proposed Anti-Eagle Development in Soaring Mountain
DEA Ref: 12345DEA**

We refer to your clients' proposed Anti-Eagle Mine on portion 2 of the farm Eyrie in the Soaring Mountain Municipality (property).

The Flying Eagles Environmental Association (FEEA) is a community-based organisation based in Soaring Mountain with the object of protecting the wild eagles found in the area.

FEEA hereby objects to your clients' application for environmental authorisation for its proposed Anti-Eagle Development on the property. We object for the following reasons:

- A. The Anti-Eagle Development will result in the poisoning of thousands of Eagles in the Soaring Mountain area**
[details]
- B. The Anti-Eagle Development will result in unacceptable pollution of water resources**
[details]
- C. The EAP did not follow the correct procedure**
[details]
- D. The Anti-Eagle Development will result in the loss of jobs in tourism**
[details]
- E. The Soaring Mountain community has a different vision for its future development**
[details]

Yours sincerely

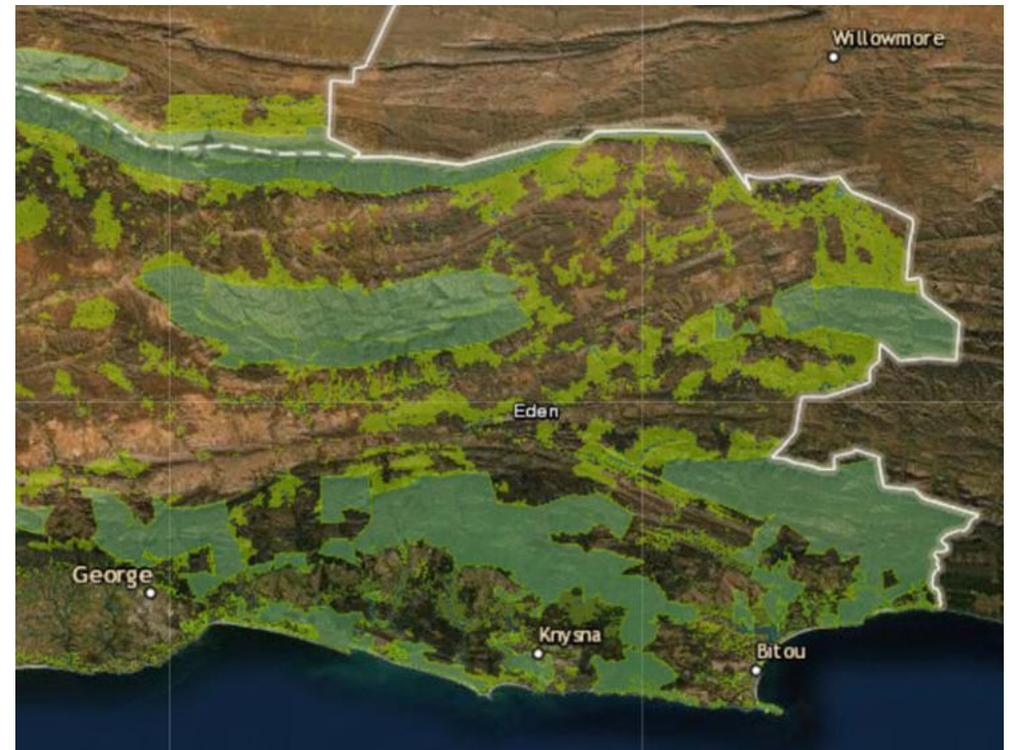
MARTIAL EAGLE
Chairperson of FEEA

6. ENVIRONMENTAL ASSESSMENT - SCOPING, SPECIALIST STUDIES, ENVIRONMENTAL IMPACT REPORT (EIR) , ENVIRONMENTAL MANAGEMENT PLAN & REPORTING ? (EMPR)



6. SCREENING

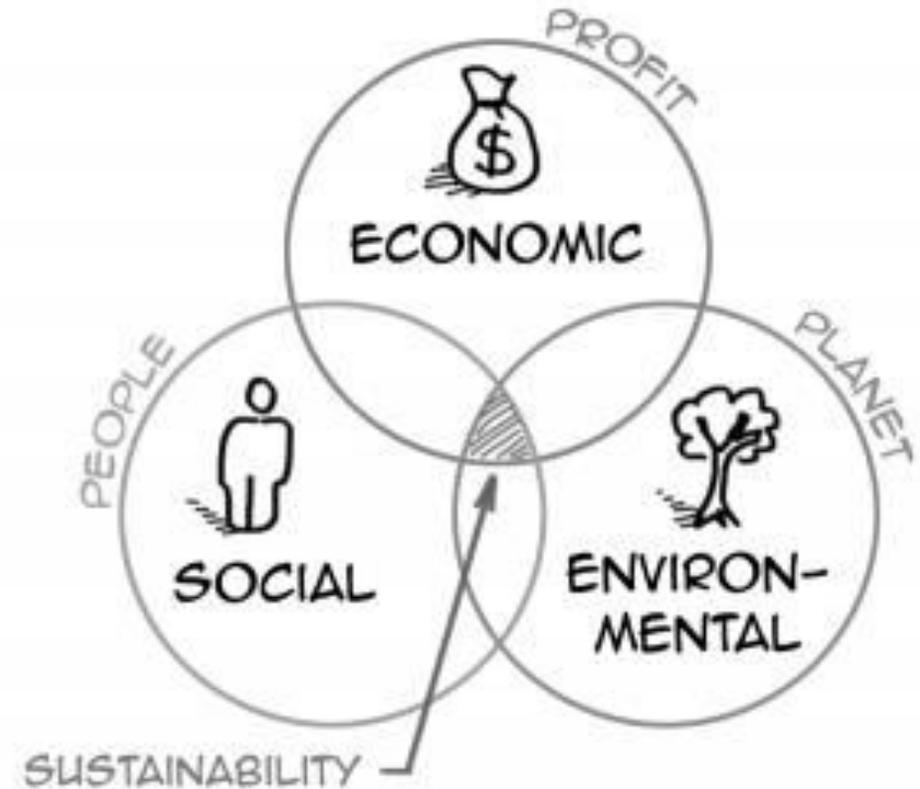
- Screening takes place in the planning and design phase of the project – done by consultant and developer
- It is used to determine the level of assessment
- The applicable listing notices.
- The existence of fatal flaws to the process.
- The alternatives available.
- The gaps of information that needs to be attended to.
- Since 2020 the EIA screening tool is mandatory - <https://screening.environment.gov.za/>



Above - Map showing critical biodiversity areas (cba) in WC - source Cape Farm Mapper

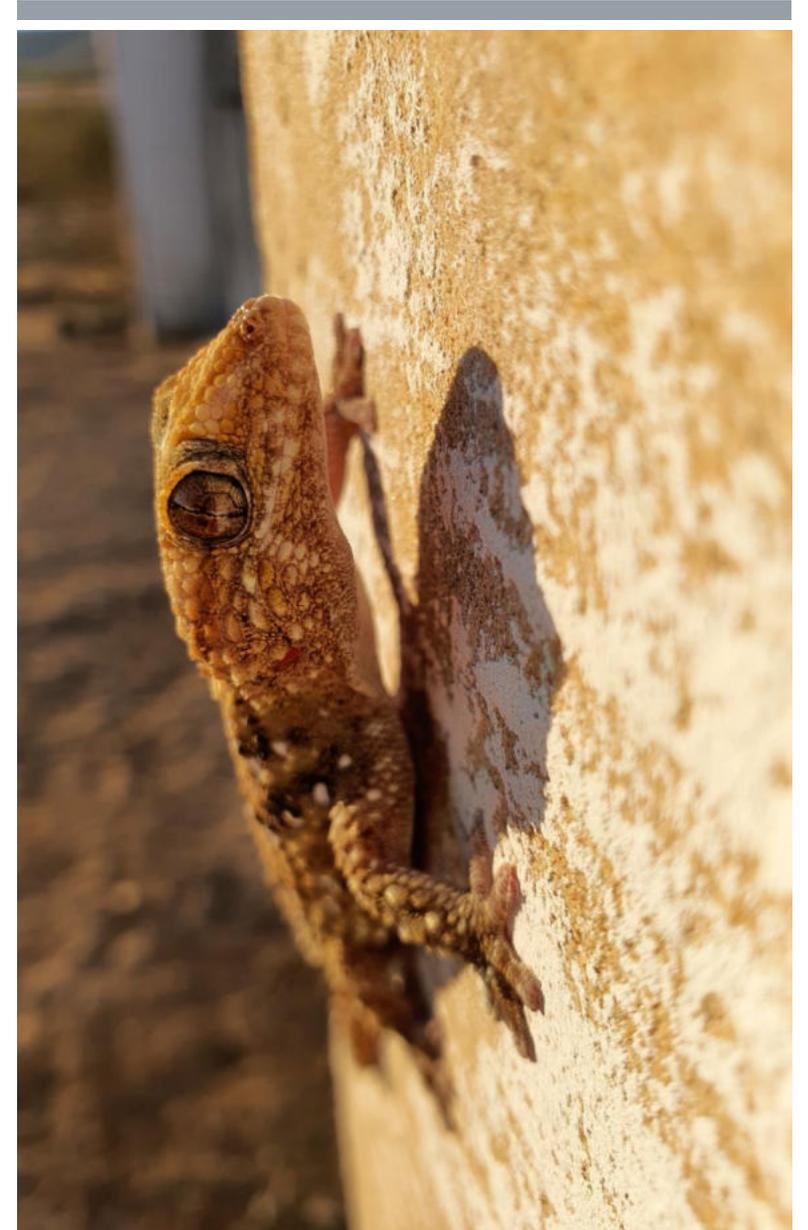
6. SCOPING REPORT

- Prepared by the EAP
- Demonstrate clear understanding of key issues
- Contain I& AP comments
- A key issue is defined as an unresolved question or concern about the potential social, economic or ecological consequences of the development proposal or an issue that will have an influence on the decision.
- Describe how to avoid negative impacts
- Describe how to mitigate impacts
- Explore offsetting if required



6 ENVIRONMENTAL IMPACT REPORT (EIR)

- EIR is a written document which forms the basis of the **EIA decision-making** process.
- It Outlines the environmental consequences of approving a project.
- All tasks set out in the Plan of Study for an EIA must be detailed in an Environmental Impact Assessment Report (EIR).
- The EIR also **assists I&APs** in understanding what the impacts of the proposed development are likely to be and also helps the applicant to manage these impacts.
- The EIR provides the basis for the preparation of an EMPR



6. SPECIALIST STUDIES

- In certain instances where impacts on the environment are poorly understood it is necessary to conduct specialist studies.
- Specialist studies are a key component of EIAs and provide valuable information which assists the CA to make a decision on whether the proposed development may proceed or not.
- Specialist studies are conducted by a specialist in a particular field e.g., hydrology / ornithology.
- It is important to note that specialist studies may also delay the timeframes of a project as sampling may need to be undertaken at specific times of the year. For example, it may only be possible to sample vegetation during the flowering season. It is therefore important that the applicant discuss the potential need for specialist input at the outset of the project to ensure that adequate time is built into the planning process.



6. ENVIRONMENTAL MANAGEMENT PROGRAMME (EMPR)



THE EMPR SETS OUT A PLAN OR PROGRAMME TO MITIGATE, MANAGE AND MONITOR ENVIRONMENTAL IMPACTS ASSOCIATED WITH A PROPOSED PROJECT.



FOR EXAMPLE, IF THERE IS AN IMPACT WHICH CAN BE MITIGATED, THE EMPR MUST INDICATE AN APPROPRIATE MITIGATION MEASURE AS WELL AS HOW IT WILL BE REPORTED THAT THE MITIGATION MEASURE HAS BEEN IMPLEMENTED.

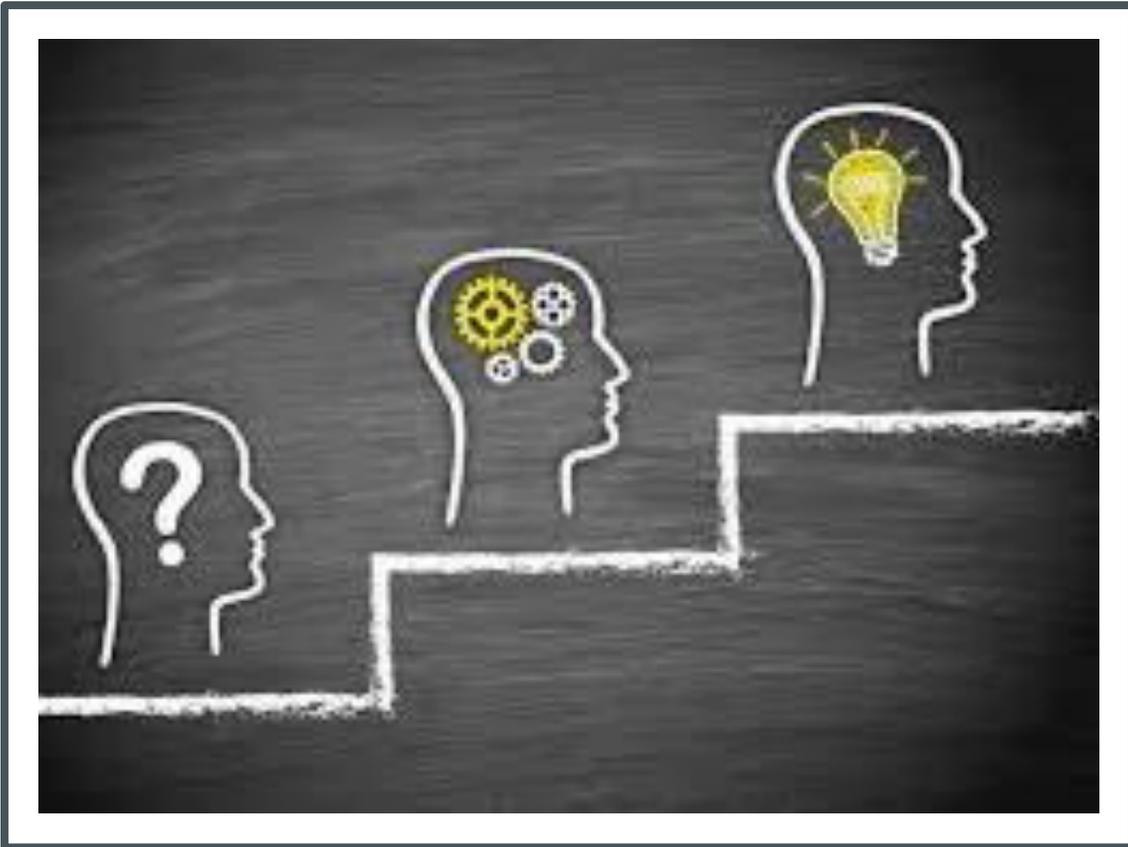


THE RECOMMENDATIONS OF THE EMPR IS OFTEN INCORPORATED AS CONDITIONS IN THE ENVIRONMENTAL AUTHORIZATION / RECORD OF DECISION



OFTEN CARE IS NOT TAKEN TO ENSURE THAT THE ISSUES IN THE EMPR AS MADE INTO ENFORCEABLE CONDITIONS. **THIS CAN HAVE A MAJOR IMPACT ON THE DEVELOPMENT AND ON THE DECISIONS THAT WERE TAKEN.**

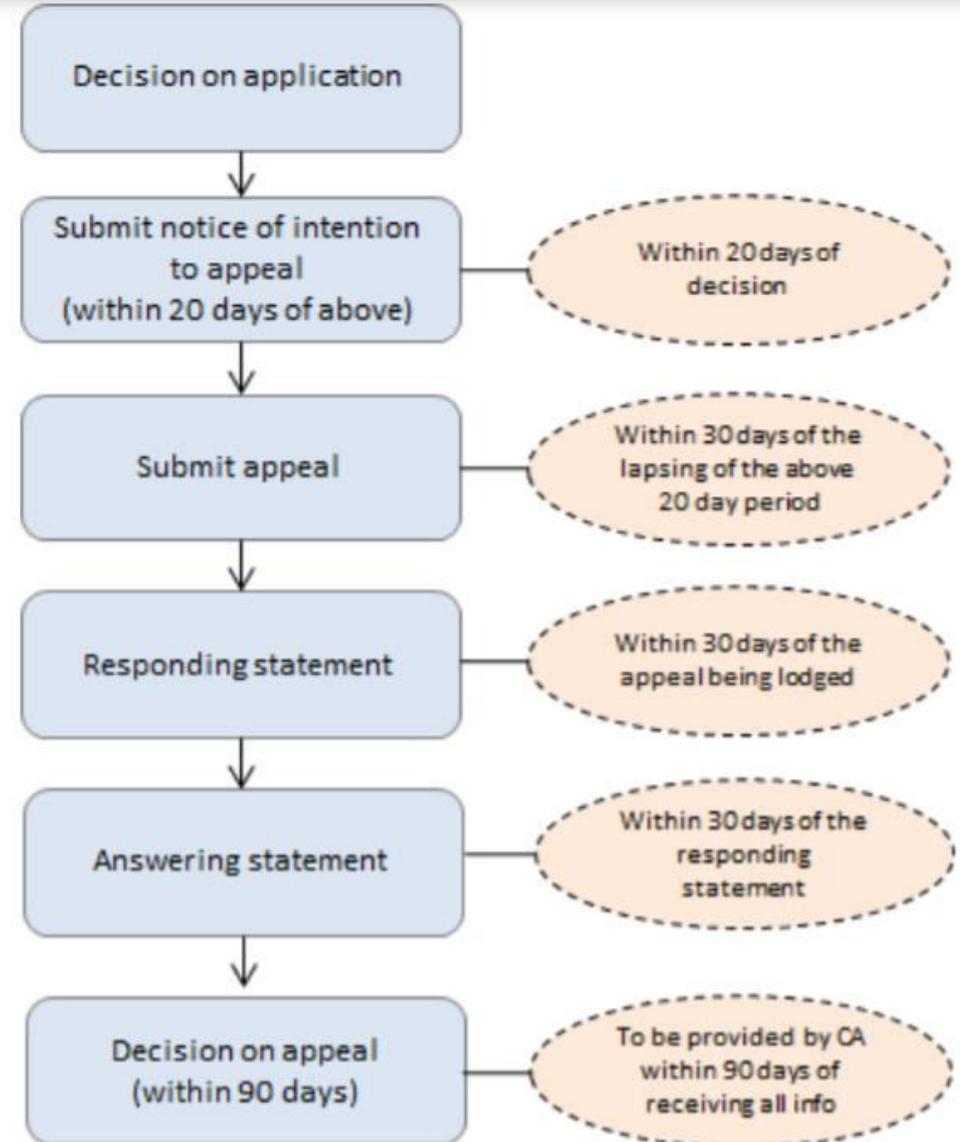
7. RECORD OF DECISION (ROD)



- Also referred to as an Environmental Authorisation (EA)

8. APPEAL

- Timeframes
 - Factual omission or failure to address issues
 - Appeal can be taken to court
-
- Make sure that you have all of the relevant information.
 - Carefully read through the environmental authorisation, the conditions and the reasons.
 - Arrange a meeting of the steering committee (or directors) of your organisation and sign a resolution authorising one member to submit an appeal.
 - Obtain the appeal from the appeal administrator and prepare a statement.
 - Set out clear grounds of appeal.



8. THE APPEAL

- Attach any relevant documents.
- Put the following declaration at the end of your statement: “The appellant confirms that the provisions of Regulation 4(1) of the National Appeal Regulations, 2014 have been complied with.”
- Ask the appeal administrator to acknowledge receipt of your appeal, and send a copy to the EAP
- Request the appeal administrator to appoint an appeal panel or independent expert.
- Request the appeal administrator to notify you of the outcome of the appeal as soon as possible after the appeal authority has decided on the appeal.
- **If your appeal is unsuccessful?**
Approach a law clinic as soon as possible to advise you on the possibility of submitting a review application in court

The skeleton of an appeal statement...

Appeal statement

Appeal statement: the decision to grant environmental authorisation for the proposed Anti-Eagle Development on portion 2 of the Farm Eyrie in Soaring Mountain

Introduction

Grounds of appeal:

- A. The Anti-Eagle Development will result in the poisoning of thousands of Eagles in the Soaring Mountain area
- B. The Anti-Eagle Development will result in unacceptable pollution of water resources
- C. The EAP did not follow the correct procedure
- D. The Anti-Eagle Development will result in the loss of jobs in tourism
- E. The Soaring Mountain community has a different vision for its future development

We therefore request that the decision to grant environmental authorisation for the proposed Anti-Eagle Development is set aside on appeal.

The appellant confirms that the provisions of Regulation 4(1) of the National Appeal Regulations, 2014 have been complied with.

Signed at Soaring Mountain on 25 January 2017

MARTIAL EAGLE
Chairperson of FEEA
Tel: 123 4567 8910
Email: tawny@eagle.co.za

DEVELOPER TACTICS

- Over stating the development size - so that they are seen to be responsive
- Overstating the employment benefit
- Multiple developments at the same time - stakeholder fatigue
- Understating the environmental impact or not quantifying it appropriately.
- Overstating the developer's expertise.
- Cut and past applications by EAP s





REMEMBER - WHAT YOU SHOULD LOOK OUT FOR

- Full transparency
- EAP
- your concerns must be acknowledged and addressed.
- water use licence,
- Mitigation hierarchy
- Be watchful for false promises of jobs and other benefits..
- Make sure that your cultural heritage, including grave sites, sites of cultural significance and sacred sites have been taken into consideration.
- Think about what will be left

CASE STUDIES



Q AND A





WHO CAN HELP ME?

- South African Human Rights Commission

Website: www.sahrc.org.za

Email: info@sahrc.org.za

Tel: 011 877 3600

- Centre for Environmental Rights

Website: www.cer.org.za

Email: info@cer.org.za

Tel: 021 4471647

- Lawyers for Human Rights

Website: www.lhr.org.za Email: durban@lhr.org.za Tel: 011
339 1960

- Legal Resources Centre

Website: www.lrc.org.za

Email: info@lrc.org.za

Tel: 011 836 9831

WHO CAN HELP ME?

- **Action Aid**

Website: south-africa.actionaid.org

Email: info.za@actionaid.org

Tel: 011 731 4560

- **Centre for Applied Legal Studies**

Website: www.wits.ac.za/cals/

Email: Duduzile.Mlambo@wits.ac.za

Tel: 011 717 8600

- **GroundWork-Environmental Justice Action**

Website: www.groundwork.org.za

Email: team@groundwork.org.za

Tel: 033 342 5662

- **Department of Environment, Forestry & Fisheries**

Email: callcentre@environment.gov.za

Tel: 086 111 2468

Violations Hotline: 0800 205 005

EWT'S EIA TOOLKIT

www.eia.org.za



A Guide to the Environmental Impact Assessment (EIA) Process

[THE PROCESS](#) ▾

[ROLE PLAYERS](#) ▾

[COMPLIANCE](#) ▾

[LEGISLATION](#) ▾

[FAQ](#)

[CONTACT](#)



THANK YOU

This work is proudly brought to you by the Endangered Wildlife Trust supported by Rand Merchant bank
www.ewt.org.za and www.eia.org.za

