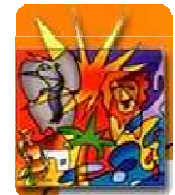


Enforcement actions for illegal clearing of thicket: Addo case study

Div de Villiers
02-11-2011

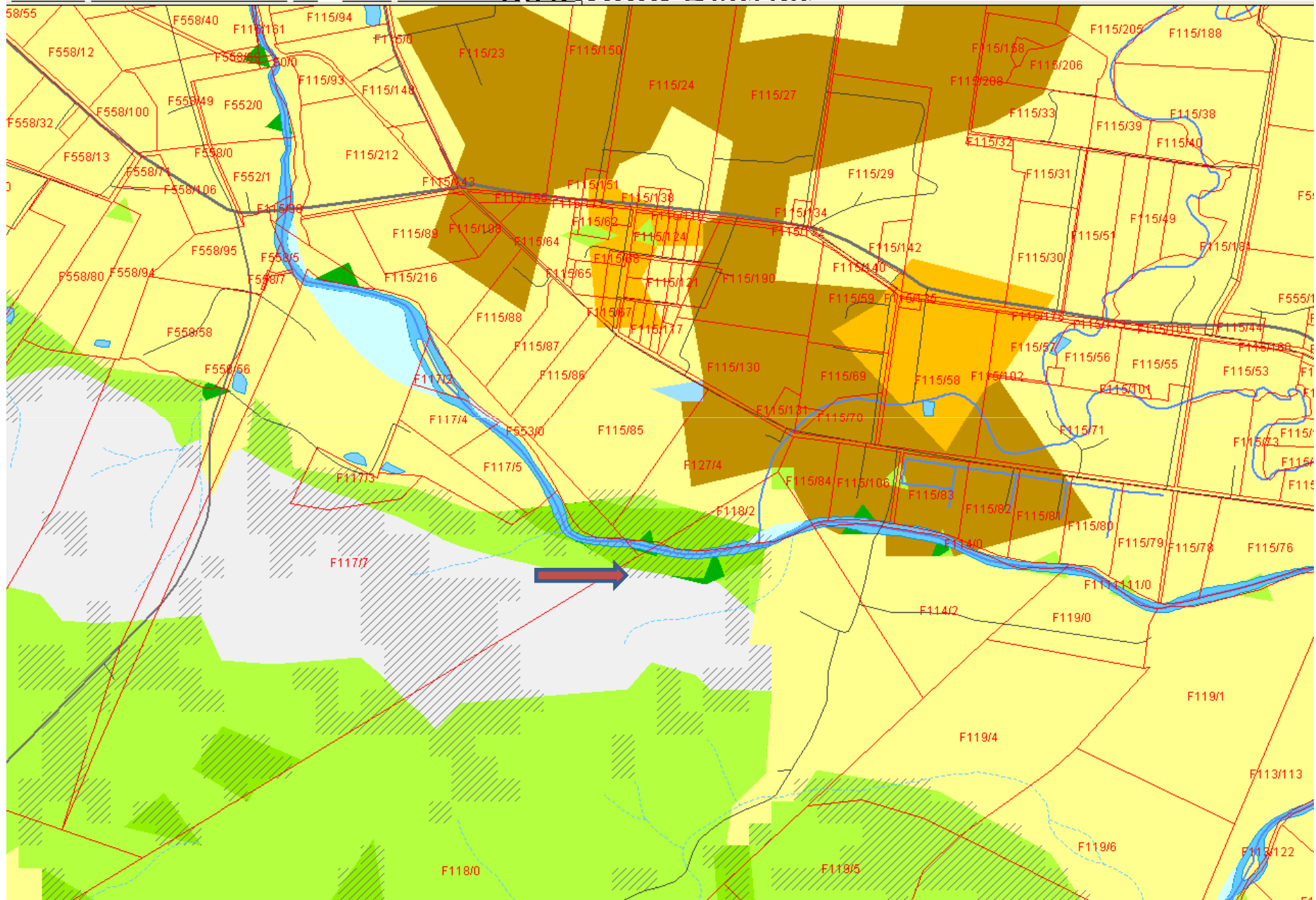


DEDEAT: Compliance and Enforcement Unit

- Eastern Cape Ord 19/1974, Transkei Dec 9/92, Ciskei NC Act 10/87: Biodiversity conservation focus
- NEMA 107/98: Only EMIs can enforce
- October 2007: EC C&E Unit launched (3 members)
- Air Quality (NEMAQA)
- Pollution and Waste (NEMWA)
- Illegal development (especially Wild Coast) (NEMA)
- Impact Management (NEMA; Regs 2006 – listing notices) – includes clearing of indigenous vegetation
- Biodiversity (NEMBA, NEMPA, Provincial Ord)
- 2011, 30 officers: > 1000 cases



Eastern Cape Biodiversity and Conservation Plan: Hitgeheim Farm Kirkwood District



Thicket clearing on Hitgeheim



Melville Case: Addo

- Warnings: August, September and October 2008: Clearing indigenous vegetation for citrus orchards
- Ignored warnings
- Administrative action: Contr. NEMA listed activity: Transformation or removal of >3ha indigenous vegetation (25ha)
- Pre compliance notice issued in Oct 2008
- Compliance Notice: NEMA S31L: Feb 2009

Section 24G

- S24G application for rectification submitted April 2009
- R275 500 administrative fine issued: February 2010
- Fine appealed
- Appeal rejected by MEC: June 2010.
- Appeal to MEC Department of Agriculture rejected: June 2010
- Fine paid in full: June 2010

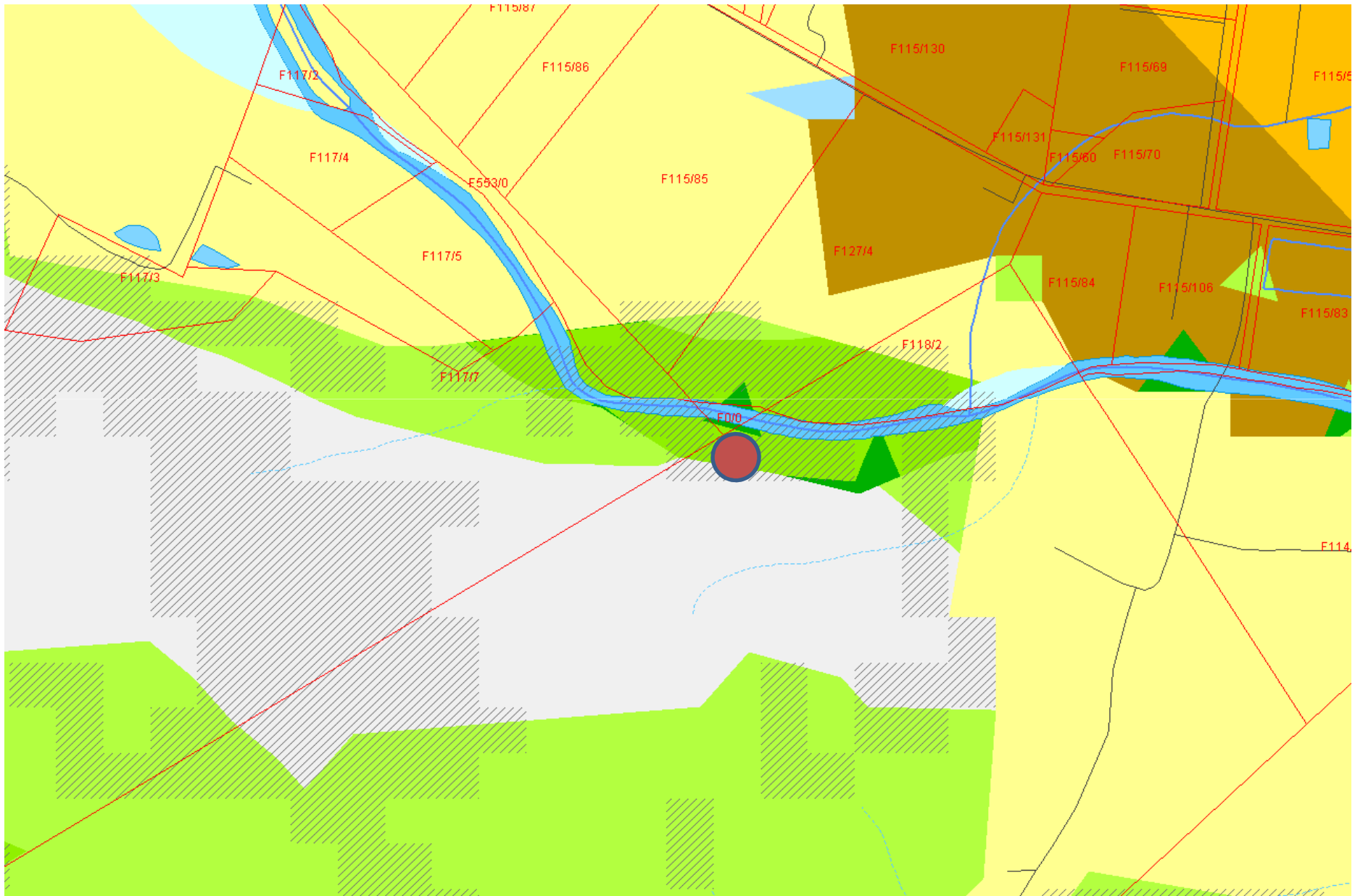
Hitgeheim 2010



C Melville



Thicket clearing shown in red



Criminal Case

- March/April bulldozers of Addo Earth Movers clearing more thicket
- Open criminal case: April
- EC Environmental cases to DPP coordinator.
- Adv Martin le Roux assigned to case
- Count 1: Contr. S24F: commenced with a listed activity without authorisation
- Counts 2-4: Contr. S31N: failed to comply with a compliance notice

Case Registered

- June 2010 – Charles Hume again bulldozing thicket for Melville on Hitgeheim Farm
- Tried impounding bulldozers, seized keys
- Case in court, Defense requests plea bargain

S105A Plea Bargain November 2010

- Count One:
- Eighteen months imprisonment suspended for a period of five years on condition that the accused is not convicted of the contravention of Section 24F(1) (a) and or (b) of the National Environmental Management Act [NEMA] Act 107 of 1998 committed during the period of suspension and on the further conditions that;
- The accused at his cost and within two weeks from the date of sentence appoint an Environmental Assessment Practitioner (EAP) to compile an environmental assessment report that, as a minimum, adheres to the requirements of Section 24(4) and Section 24G of the National Environmental Management
- The accused at his cost and within two weeks from the date of sentence, appoint Dr E. Campbell or Mr. M. Powell or Mr. J. Vlok as the restoration ecologist to compile a restoration/rehabilitation plan. Such restoration/rehabilitation plan to be implemented by the accused at his cost.

S105A Continued

- Count Two to Four (ignoring compliance notice) were taken together for the purpose of sentence.
- R30, 000-00 or six months imprisonment of which R10, 000 or two months imprisonment suspended for a period of five years on condition that the accused is not convicted of the contravention of 31 N (1) during the period of suspension.

Conclusion

- Compliance achieved, Cacadu EIM unit to decide on authorisation
- Precedent setting case
- Law has teeth if applied
- Department Agriculture in Cacadu now consult with DEDEAT prior to issuing land clearing permits
- New NEMA listing notice 3 even stricter for clearing indigenous vegetation in critical biodiversity areas (includes thicket) – cannot clear > 1ha without authorisation

