



agriculture,
forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

DRAFT POLICY DOCUMENT ON THE PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND

**DRAFT POLICY DOCUMENT ON THE
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AGRICULTURAL LAND**

FINAL DRAFT

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ACRONYMS

AGIS	Agricultural Geo-referenced Information System
AIA	Agricultural Impact Assessment
ARC	Agricultural Research Council
ASP	Agricultural Sector Plan
CAADP	Comprehensive Africa Agriculture Development Programme
CARA	Conservation of Agricultural Resources Act 43 of 1983
DAFF	Department of Agriculture, Forestry and Fisheries
DBSA	Development Bank of Southern Africa
DEA	Department of Environmental Affairs
DFA	Development Facilitation Act 67 of 1995
DMR	Department of Mineral Resources
DRDLR	Department of Rural Development and Land Reform
DTI	Department of Trade and Industry
DWA	Department of Water Affairs
FAO	Food and Agriculture Organisation
GDP	Gross Domestic Product
GIS	Geographic Information System
IDP	Integrated Development Plan
IGR	Intergovernmental Relations
LED	Local Economic Development
LUMS	Land Use Management System
MACPDAL	Municipal Advisory Committee on the Preservation and Development of Agricultural Land
M&E	Monitoring and Evaluation
MEC	Member of the Executive Council
MINMEC	Minister and Members of Executive Council Committee
MINTEC	Ministerial Technical Committee
MPS	Municipal Planning Strategy
NACPDAL	National Advisory Commission on the Preservation and Development of Agricultural Land
NALR	National Agricultural Land Register
NDP	National Development Plan
NEMA	National Environmental Act 107 of 1998
NEPAD	New Partnership for Africa's Development
PACPDAL	Provincial Advisory Commission on the Preservation and Development of Agricultural Land
PDA	Provincial Department responsible for Agriculture
PDALFA	Preservation and Development of Agricultural Land Framework Act
SACNASP	South African Council for Natural Scientific Professions
SALA	Subdivision of Agricultural Land Act 70 of 1970
SDF	Spatial Development Framework
SDP	Spatial Development Plan
SPLUMB	Spatial Planning and Land Use Management Bill, 2012
TBVC	Transkei, Bophuthatswana, Venda and Ciskei
TRANCRAA	Transformation of Certain Rural Areas Act 94 of 1998

DEFINITIONS/GLOSSARY OF TERMS

“agricultural enterprises” means an institutional unit in its capacity as a producer of agricultural goods and services with autonomy in respect of financial and investment decision making, as well as authority and responsibility for allocating resources for the production of agricultural goods and services. The three major divisions of agricultural enterprises are:

- Crop and animal production;
- Forestry and logging; and
- Fishing and aquaculture.

“agricultural land” means any land which is or may be used for the production of biomass that provides food, fodder, fibre, fuel, timber and other biotic material for human use, either directly or through animal husbandry including aquaculture and inland and coastal fisheries or any other agricultural purpose, excluding land which the Minister, after consultation with other relevant Ministers and MEC’s concerned, excludes by means of a notice in the Gazette.

“agro-ecosystem” means a dynamic association of crops, pastures, livestock, game, other fauna and flora, atmosphere, soils, and water. Agro-ecosystems are contained within larger landscapes that include uncultivated land, drainage networks and rural communities.

“Protected Agricultural Area” means an agricultural land use zone, the Protected Agricultural Area, protected for purposes of food production in which any change to the status quo must receive the approval of the Intergovernmental Committee. Protected Agricultural Areas will consist of two main categories – cropping land and grazing land.

“agricultural potential” is a measure of possible productivity per unit area and unit time achieved with specified management inputs. For a given crop and level of management, agricultural potential is largely determined by the interaction of climate, soil and terrain.

“agricultural purposes” means purposes normally or otherwise reasonably associated with the use of land for agricultural activities, including the use of land for structures, buildings and dwelling units reasonably necessary for, or related to, the use of the land for agricultural activities.

“agricultural specialist” means a person appropriately qualified, experienced and registered with the South African Council for Natural Scientific Professions (SACNASP) to undertake Agricultural Impact Assessments and to evaluate applications submitted in terms of the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA).

“arable land” means land capable of being cultivated and suitable for the production of crops. It includes land under temporary crops and pastures, permanent crops and pastures as well as land temporarily fallow (less than ten years).

“beneficiaries of land reform schemes” means the participants in land reform schemes who acquire land (restitution and redistribution) as individuals or as a group through the intervention of the national land reform programmes and in terms of certain statutory undertakings.

“best available agricultural land” means agricultural land with the highest agricultural potential from a local municipal perspective, excluding high value agricultural land.

“commercial farming” means the large-scale and/or intensive production of crops and livestock primarily for national food security and the market. The main objective of commercial farming is to achieve higher profits through economies of scale, specialisation, introduction of capital-intensive farming techniques, labour-saving technologies and the maximisation of crop and plant yields per hectare in a sustainable manner.

“communal farming” means types of agricultural production in which the holdings of several farmers are run as a joint enterprise, normally associated with an agricultural cooperative in which member-owners or lessees engage jointly in farming activities.

“communal land tenure” means a group of people who hold secure and exclusive collective rights to own, manage, lease and/or use land and natural resources, referred to as common pool resources, including agricultural land, grazing lands, forests, trees, fisheries, wetlands or irrigation waters.

“DAFF Internal Technical Committee” means the DAFF Internal Technical Preservation and Development of Agricultural Land Framework Act Committee established in terms of the Preservation and Development of Agricultural Land Framework Act (PDALFA).

“dryland farming” means a system of producing crops without the use of irrigation, also referred to as rainfed crop production

“ecotourism-related game farming” means game farming for purposes of tourism, without the primary objective of harvesting meat and meat by-products for food production.

“farming system” means an assemblage of components which are united by some form of interaction and interdependence and which operate within a prescribed boundary to achieve a specified agricultural objective on behalf of the beneficiaries of the system.

“food” means any substance consumed to provide nutritional support to the body. It is usually of plant or animal origin, and contains essential nutrients, such as carbohydrates, fats, proteins, vitamins, or minerals. The substance is ingested by an organism and assimilated by the organism's cells to produce energy, maintain life, or stimulate growth.

“food security” means that all people at all times have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life. The four dimensions of food security are; adequate availability, access to food (i.e. affordable food), utilisation, and stability of food supply.

“grazing land” means all agricultural land having plant material harvestable by grazing and/or browsing (livestock and game) without reference to land tenure, other land uses, management, or treatment practices.

“high value agricultural land” means the best agricultural land, primarily from the national perspective, but with allowance for provincial and local perspectives; land best suited to, and capable of, consistently producing acceptable levels of goods and services for a wide range of agricultural

enterprises, taking into consideration expenditure of energy and economic resources and minimal damage to the environment. High value agricultural land includes:

- Land capability classes I, II and III land;
- Unique agricultural land; and
- Irrigated land.

“Intergovernmental Committee” means the Intergovernmental Committee on the Preservation and Development of Agricultural Land.

“irrigated land” means areas artificially provided with water, other than rain, for improving pasture or crop production.

“irrigable soil” means the capability and quality of a specific soil to produce crops by supplementing rain water with acceptable quality water by means of a suitable irrigation system without causing soil and environmental degradation.

“land capability” means the most intensive long-term use of land for rainfed farming purposes, determined by the interaction of climate, soil and terrain.

“land cover” means the observed physical cover, as seen from the ground or through remote sensing, including the vegetation (natural or planted) and human constructions (buildings, roads, etc.) which covers the earth’s surface.

“land use” means human activities (a series of activities undertaken to produce one or more goods and services) which are directly related to the land, making use of its resources, or having an impact on it.

“medium value agricultural land” means all land available for agricultural production purposes, excluding high value agricultural land. Medium value agricultural land includes land capability classes IV, V, VI, VII and VIII.

“Minister” means the Minister responsible for agriculture unless stated otherwise.

“Municipal Advisory Committee” means a Municipal Advisory Committee on the Preservation and Development of Agricultural Land (MACPDAL) established in terms of the Preservation and Development of Agricultural Land Framework Act (PDALFA), or in terms of applicable provincial legislation.

“Municipal Internal Technical Committee” means the Municipal Internal Technical Preservation and Development of Agricultural Land Framework Act Committee established in terms of the Preservation and Development of Agricultural Land Framework Act (PDALFA), or in terms of applicable provincial legislation.

“National Advisory Commission” means the National Advisory Commission on the Preservation and Development of Agricultural Land (NACPDAL) established in terms of the Preservation and Development of Agricultural Land Framework Act (PDALFA).

“natural agricultural resources” means the natural resource base upon which the agricultural economy depends including the soil, water resources and vegetation occurring on agricultural land excluding invasive alien plants, weeds and bush encroachers.

“optimal use” means the maximum productivity per unit area and unit time achievable by the best suited/adapted farming enterprise in a sustainable manner with the least possible negative impacts on the natural agricultural resources.

“Provincial Advisory Commission” means a Provincial Advisory Commission on the Preservation and Development of Agricultural Land (PACPDAL) established in terms of the Preservation and Development of Agricultural Land Framework Act (PDALFA), or in terms of applicable provincial legislation.

“Provincial Internal Technical Committee” means the Provincial Internal Technical Preservation and Development of Agricultural Land Framework Act Committee established in terms of the Preservation and Development of Agricultural Land Framework Act (PDALFA), or in terms of applicable provincial legislation.

“rainfed farming” means agricultural practice relying exclusively on rainfall as its source of water.

“scheduled land use purposes” specified in respect of applications for the change in land use (rezoning) of agricultural land includes, according to Schedule 2 of the Spatial Planning and Land Use Management Bill, 2012, the following:

- (a) Agricultural purposes (which may be further sub-specified);
- (b) Business purposes;
- (c) Commercial purposes;
- (d) Community purposes;
- (e) Conservation purposes;
- (f) Educational purposes;
- (g) Government purposes;
- (h) Industrial purposes;
- (i) Institutional purposes;
- (j) Mining purposes;
- (k) Public purposes;
- (l) Recreational purposes;
- (m) Residential purposes;
- (n) Transport purposes; and
- (o) Any other purpose as may be prescribed.

“smallholder farming” means an independent small farming unit managed by a farmer or farmers with a higher level of technical knowledge and better receptivity to improved technology than subsistence farmers. They tend to specialise in a specific agricultural enterprise and tend to market their production surplus.

“South African land capability classification system” means:¹

¹ According to the Southern African Agricultural Geo-referenced Information System (AGIS), “the classic eight-class land capability system (Klingebiel & Montgomery, 1961) was adapted for use with GIS in South Africa, taking data

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Class	Concepts
I	Land in Class I has few permanent limitations that restrict its use and has very high potential for intensive crop production; the land is nearly level and the soils are deep; moisture supply capacity is particularly favourable; soils are easily worked, and are either fairly well supplied with plant nutrients or are highly responsive to inputs of fertilizer; when used for crops, the soils need ordinary management practices to maintain productivity; the local climate is favourable for growing many of the common field crops.
II	Land in Class II has some permanent limitations that reduce the degree or intensity of crop production but is nevertheless of high potential; require moderate conservation practices; this land provides slightly less latitude in the choice of crops or management practices than Class I; the limitations are few and the practices are easy to apply.
III	Land in Class III has severe permanent limitations that restricts the choice of alternative uses and the intensity of crop production and is of moderate potential; the land is suitable for cropping, pasture, afforestation and other less intensive uses; when used for cultivated crops, the conservation practices are usually more difficult to apply and to maintain; the number of practical alternatives for average farmers is less than that for soils in Class II.
IV	Land in Class IV has very severe permanent limitations that greatly restrict the choice of alternative uses and the potential for crop production; require very careful management; it may be used for cultivated crops, but more careful management is required than for Class III and conservation practices are more difficult to apply and maintain; restrictions to land use are greater than those in Class III and the choice of plants is more limited.
V	Land in Class V is unsuitable for the cultivation of annual crops, but has very slight erosion hazard under natural veld, established pastures, forestry or special crops that provides adequate cover; land may be sloping but is tillable for the establishment of pastures, forestry or special crops or nearly level with limitations impractical to remove such as stoniness, rockiness, wetness or frequently flooded; have climatic limitations, or have some combination of these limitations.
VI	Land in Class VI has permanent limitations that make it generally unsuited to cultivation and limit its use largely to natural grazing, veld re-inforcement, afforestation and game farming; continuing limitations that cannot be corrected include steep slope, severe erosion hazard, effects of past erosion, stoniness, shallow rooting zone, excessive wetness or flooding, low water-holding capacity; salinity or sodicity and severe climate.
VII	Land in Class VII has very severe permanent limitations that make it unsuited to cultivation and that restrict its use largely to natural grazing, afforestation or game farming; restrictions are more severe than those for Class VI because of one or more continuing limitations that cannot be corrected, such as very steep slopes, erosion, shallow soil, stones, wet soil, salts or sodicity and unfavourable climate.
VIII	Land in Class VIII has permanent limitations that preclude its use for commercial agricultural production and restrict its use to recreation, wildlife, water supply or aesthetic purposes; limitations that cannot be corrected may result from past erosion or a severe erosion hazard, severe climate, wet soil, stones, low water-holding capacity, salinity or sodicity.

“**subsistence farming**” means a farming system where the food and goods produced are predominantly consumed by the farm family and there is little surplus for sale.

“**sustainable agriculture**” means farming practices that conserve land, water, plant and animal genetic resources, is environmentally non-degrading, technically appropriate, economically viable, and socially acceptable. It is an integrated system of plant and animal production practices in the agriculture, forestry and fisheries sectors having an agro-ecosystem site-specific application that complements ecological and biodiversity conservation and meets present needs without compromising the ability to meet future needs to:

- Satisfy human food and fibre needs;
- Enhance environmental quality and the natural resource base upon which the agriculture economy depends;
- Make the most efficient use of non-renewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls;
- Sustain the viability of a farming unit; and
- Enhance the quality of life for farmers and society as a whole.

availability into account.” BFAP. 2011. *The Contribution of the Agro-Industrial Complex to Employment in South Africa*. Bureau for Food and Agricultural Policy. Pg. 4-5.

“urban agriculture” means the practice of cultivating, processing, and distributing food in or around a village, town, or city. Urban agriculture can also involve animal husbandry, aquaculture, agroforestry, and horticulture. These activities can also occur in peri-urban areas as well.

“unique agricultural land” means land other than land capability classes I, II and III land that is important to agriculture and used for specific high value agricultural enterprises. It has the special combination of location, terrain forms, climate and soil properties to economically produce sustained high quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods.

“viable farming unit” means an area where sustainable agriculture is practiced, that is economically viable and generates sufficient revenue from its sustainable agricultural production operations to cover all variable and fixed costs of production, all appropriate family living expenses, and capital replacement costs.

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1. INTRODUCTION

The preservation, development and sustainable use of agricultural land are of vital importance to ensure long-term food security. On a global level, food security is closely linked to Goal 1 of the Millennium Development Goals, namely to eradicate extreme poverty and hunger by, amongst others, halving, between 1990 and 2015, the proportion of people who suffer from hunger. In addition, Goal 7 aims to ensure environmental sustainability by, amongst others, integrating the principles of sustainable development into country policies and programmes and reversing the loss of environmental resources. This would include the loss of agricultural land to other developments. Agenda 21, adopted by the United Nations in 1992, urges governments to assess the impacts of current policies on, amongst others, food and agricultural sector performance, food security and rural welfare. The major thrust of food security referred to here is to bring about a significant and sustainable increase in agricultural production. In this regard it is necessary to formulate, introduce and monitor policies, laws and regulations leading to sustainable agricultural development.

On a continental level, one of the New Partnership for Africa's Development's (NEPAD) core themes is Agriculture and Food Security, which is driven through NEPAD's Comprehensive Africa Agriculture Development Programme (CAADP). CAADP's objective is to raise agricultural productivity in Africa to at least 6% annually to contribute to poverty alleviation and elimination of hunger in Africa. According to CAADP, feeding a growing population will require more food, while the scope for expansion in cropped or irrigated area remains limited. Consequently, sustainable land management practices are vital for sustaining agricultural productivity.

On a country level, one of the core focus areas of the National Planning Commission's National Development Plan (NDP) is on an integrated and inclusive rural economy. In this regard, the NDP states that the national food security goal for South Africa is to maintain a positive trade balance for primary and processed agricultural products, while job creation and agricultural productivity is needed to address food insecurity at household and individual level in rural areas.

The 2009-2014 Medium Term Strategic Framework (Together Doing More and Better – Medium Term Strategic Framework: A Framework to guide Government's Programme in the Electoral Mandate Period) lists "rural development, food security and land reform" together as one of ten priority areas to give effect to Government's strategic objectives. The Department of Agriculture, Forestry and Fisheries' (DAFF) mandate, as custodian of natural agricultural resources in South Africa, includes issues relating to food security and agrarian transformation. In her Budget Vote Speech on 3 May 2012, the Minister of Agriculture, Forestry and Fisheries (the DAFF Minister), Ms Tina Joemat-Pettersson, reiterated the Department's commitment to food security, stating that:

Our struggle icon and the father of our nation, Nelson Mandela, once said that: 'We do not want freedom without bread, nor do we want bread without freedom. We must provide for all the fundamental rights and freedoms associated with a democratic society.' This means that we can neither divorce freedom from food, nor food from freedom. I thus implore all of us to re-commit ourselves to 'Working together for food security'.

In light of increasing pressures to have agricultural land subdivided and/or to have such land's use changed, DAFF has developed the Draft Policy Document on the Preservation and Development of Agricultural Land. The aims of the Draft Policy Document are to protect and preserve agricultural land and its productive use in order to ensure national and household food security, ensure that agricultural land remains available and viable for agricultural development, ensure sustainable development of the agricultural sector, maintain and increase rural employment, ensure a reduction in poverty levels and a sustained improvement in quality of life, and increase agricultural production and the contribution of agriculture to the Gross Domestic Product (GDP).

2. POLICY AREAS / MANDATE OF DEPARTMENT

The main policy areas concerning DAFF are clustered around the inherent needs of those engaged in agricultural activities, namely:

- (a) Access to, and sustainable utilisation of, natural agricultural resources including soil, water, terrain (landscape) and terrestrial biodiversity (flora and fauna);
- (b) Capacity to optimally utilise natural agricultural resources dependent on infrastructure, finance, technology, services and skills development;
- (c) Competitiveness of the individual enterprises and the entire sector relative to that of similarly endowed or competing economies to be addressed through improved efficiency and productivity, free and fair markets and innovation;
- (d) Confidence and stability brought about by objective and effective regulation, by risk alleviation measures, sound customer relations and effective governance of the sector; and
- (e) Responsibility underpinned by the sector's strategic role as society's basic food provider, employer of the skilled and less-skilled, rural livelihoods and as social safety net for rural society.

DAFF's vision is "a leading, dynamic, united, prosperous and people-centred sector", and it aims to achieve this vision by:

"developing and sustaining a sector that contributes and embraces:

- (a) Economic growth (and development)*
- (b) Job creation*
- (c) Rural development*
- (d) Sustainable use of natural resources*
- (e) Food security".*

Six strategic goals have been identified in this regard, namely increased profitable production of food, feed, fibre, and timber products by all categories of producers (subsistence, smallholder and commercial); sustained management of natural resources; effective national regulatory services and risk management systems; a transformed and united sector; increased contribution of the sector to economic growth and development; and effective and efficient governance.

3. PROBLEM STATEMENT

A number of issues necessitate the implementation of a policy to preserve agricultural land; regulate change in land use; and the further subdivision of agricultural land:

- (a) South Africa has a limited supply of high value agricultural land. Like any limited and non-renewable resource, it is important to conserve agricultural land. The scope for expanding

- cropping and / or irrigated areas is severely limited due to the unavailability of additional suitable land and water for these purposes.
- (b) Non-agricultural developments on high and medium value agricultural land are increasing. In this regard, pressures associated with mining, urban, infrastructure and residential development in respect of high value agricultural land are currently major contributors to the alienation and reduced availability of agricultural land for agricultural production.
- (c) A significant portion of land suitable for crop production has already been irrevocably transformed to non-agricultural land uses and is no longer available to provide the food, feed, fodder and fibre that is necessary for the continued welfare of the people of South Africa.
- (d) The change in land use from agriculture to other forms of (unrelated) development (including urban expansion, mining, tourism, infrastructure and other new developments that are in conflict with established or proposed Protected Agricultural Areas) are often not compatible with agricultural land uses.
- Conflicts may arise due to issues such as the redirection of water flows, transport routes near dwellings, odour, dust, noise, pollution from, and the use of chemicals in, farming practices.
 - In addition, such developments and subdivisions often result in land and/or environmental degradation (i.e. land degradation such as erosion, contamination of surface and ground water and the destruction of biodiversity).
 - Other uses can also lead to increased property values in rural areas, increasing pressure to develop the land for urban purposes, making it more attractive for the farmer to sell, or casting doubts about the advisability of new farm investments.
 - Land use changes undermine the economic base of rural municipalities as agriculture is the main economic activity in most of these areas and long-term food security. It also poses a threat to the sustainable use of natural resources and biodiversity.
 - In addition, competing land uses, e.g. power generation, renewable energy projects (i.e. solar and wind energy), communication and transport networks and industrial expansion pose a risk to agricultural land.
- (e) The non-utilisation of agricultural land for agricultural purposes, or the fact that some agricultural land is not used to its optimal potential or overused, impacts negatively on the agricultural production of the country.
- (f) Subdivision and non-viable development patterns lead to the fragmentation of farms and farming areas (including the fragmentation of ownership tenure) into unsustainable and non-economical units, and results in farming units becoming unviable and unsustainable, which, in turn, leads to reduced agricultural production. Subdivision of rural lots may mean loss of prime agricultural opportunities and the 'economies of scale' that sustain some forms of agricultural production (e.g. sugar cane).
- (g) The loss of agricultural land poses a direct threat to national (and household) food security, increases rural unemployment, results in the declining contribution of agriculture to the GDP, diminishes the positive link between agriculture and rural development, and impacts negatively on the potential of affected areas for agricultural development and thus undermines the economic development potential of these areas. This goes hand in hand with the loss of other high value and unique agricultural resources and agricultural land values.
- (h) There is a lack of protection of the right to farm (i.e. the protection of farmers against local government laws and non-agricultural policies or programme initiatives which would

interfere with normal farming practices and promote change in land use). The current *status quo* is evidence of the weak rights of farmers to protect and manage agricultural land and a lack of accountability for land use decisions that affect the availability and viability of agricultural land.

The above issues are exacerbated by the following:

- (a) The lack of a dedicated country-wide framework for the protection and preservation of agricultural land. Existing policy and legislative frameworks overlap, leading to uncertainty regarding the respective roles of national, provincial and local government with respect to their jurisdictions relating to agricultural land.
- (b) The lack of a uniform, coordinated, cross-cutting national framework and national norms and standards for the submission, consideration and approval/rejection of applications for the subdivision and/or change in use (rezoning) of agricultural land. This leads to uncoordinated intergovernmental actions, and, as a result, conflicting decisions are often taken by different departments.
- (c) Insufficient capacity at all three levels of government with regard to the consideration and execution of rezoning applications.
- (d) The lack of a comprehensive and integrated national geo-referenced information system demarcating different categories (zones) of agricultural land, land capability, land suitability, current land use and land administration functionalities. suitable for use from farm to national level.
- (e) There is a lack of uniform policy guidelines.
- (f) Applications relating to communal agricultural land are assessed differently from applications relating to commercial agricultural land.
- (g) The absence of regulations issued in terms of the Subdivision of Agricultural Land Act 70 of 1970 (SALA).
- (h) The reactive approach towards informal settlements and lack of security of property rights on communal land and in TRANCRAA areas.
- (i) Access to water is curtailed by linking water rights to individuals; transfer of agricultural land should be accompanied by transfer of water rights to the new owner of such land to be used for agricultural production.

4. OVERVIEW AND BACKGROUND

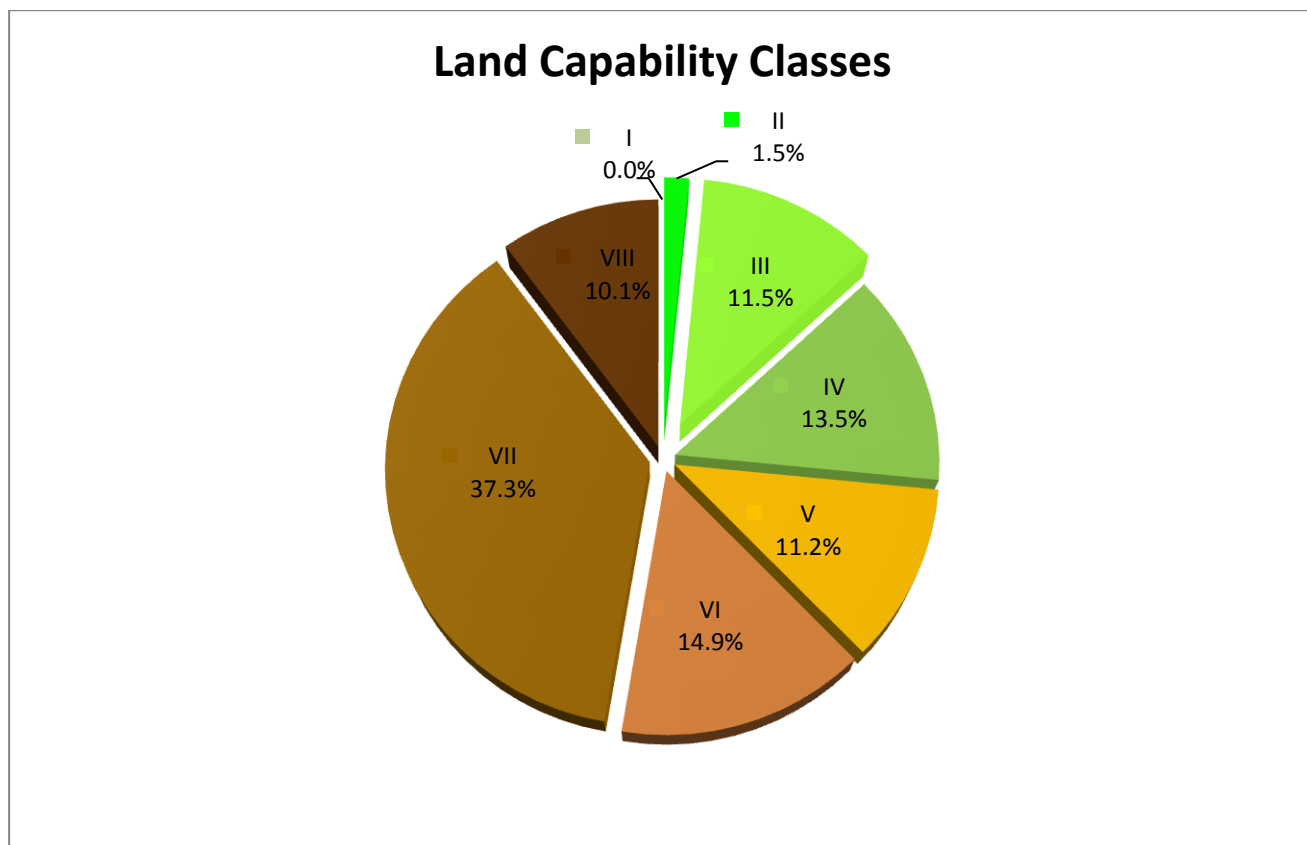
It is expected that the world's population of approximately 7 billion will increase to 9 billion by 2050, resulting in the need to annually produce another 1 billion tonnes of cereals and 200 million extra tonnes of livestock products by that year. Currently, almost 1 billion people are undernourished (of which 239 million are in Sub-Saharan Africa), and even if agricultural production doubles by 2050 (as will be necessary in developing countries), one person in twenty still risks being undernourished in developing countries. It is therefore clear that "future agricultural production will have to rise faster than population growth", most notably on existing agricultural land. The effective use and preservation of agricultural land is of utmost importance.² It is estimated that, by 2030, an additional

² FAO. 2011. The State of The World's Land and Water Resources for Food and Agriculture – Managing Systems at Risk. Summary Report. See also Deininger, K & Byerlee, D. 2011. Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits? World Bank: Washington D.C WB Pg. 13-14; Greenberg, S. 2010. Contesting the Food System in South Africa: Issues and Opportunities. Research Report No. 42. Cape Town: PLAAS. Pg. 2.

120 million ha³ of land will be required in order to support the growth in food requirements.⁴ This estimation does not take into account the compensation required for losses resulting from unsustainable forms of agricultural production.⁵

South Africa consists of 122 million ha of land, of which approximately 13% is potentially arable (land capability classes I, II & III). Approximately 100 million ha (82.3% of land in South Africa) is classified as “farm land”, with around 12.75 million ha currently being used for arable agricultural purposes.

The following graph gives an overview of the distribution of agricultural land capability classes I – VIII in South Africa.⁶



A spatial statistical analysis undertaken by DAFF in 2011 indicated that the **surface area of arable agricultural land that had been converted to non-agricultural uses through urban and mining developments** equals the size of the Kruger National Park. The following statistics emerged from this spatial evaluation (which was based on spatial information for the three periods ranging from 1994 to 2005):^{7,8}

³ 120 million ha is an area twice the size of France.
⁴ The Global Agro-ecological Assessment suggests that most of the world’s reserve agricultural land (up to 80%) is located in Latin America and Africa.
⁵ De Schutter, O. 2009. Large-scale Acquisition and Leases: A Set of Core Principles and Measures to Address the Human Rights Challenge. United Nations: New York. Pg. 3.
⁶ This data analysis was done based on existing national spatial data sets (where applicable, the date of the dataset is indicated in the description). Data limitations are indicated in brackets, and a disclaimer of use exists in respect of the data.
⁷ The methodology applied in the Land Cover change project used 500m x 500m cells that equal an area of 25 ha per cell and the dominant land use (>50%) per cell. This implies that all irrevocably transformed areas smaller than 13 ha were excluded in the results. Permanently transformed areas smaller than 13 ha include features such as roads, rural

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ASSESSMENT: PERMANENTLY TRANSFORMED AREAS (2005 DATA)			
Land Capability Class	Total (ha)	Transformed	Remainder
I	2 733	99	2 634
II	1 878 597	158 091	1 720 506
III	14 003 339	1 031 922	12 971 417
IV	16 447 446	788 505	15 658 941
V	13 609 335	254 809	13 354 526
VI	18 114 793	538 692	17 576 101
VII	45 343 216	281 774	45 061 442
VIII	12 279 370	85 398	12 193 972
Water	246 052	-	-
TOTAL	121 924 881	3 385 343	118 539 538
I-III	15 884 669	1 190 112	14 694 557
I-IV	32 332 115	1 978 617	30 353 498
V-VII	77 067 344	1 075 276	75 992 068
V-VIII	89 346 714	1 160 674	88 186 040

The relationship population vs. available arable land for three specific years (1996, 2001 and 2005) is indicated below and clearly indicates the declining trend of arable land available for food production over the period to an area of 0.31 ha per person per annum in 2005. It is estimated that the current area available per person is less than 0.25 ha.

ARABLE LAND (CAPABILITY CLASS I-III) HA/CAPITA				
Year	Transformed	Available	Population	ha/capita
1996	537 974	15 346 695	40 584 000	0.38
2000	806 146	15 078 523	44 820 000	0.34
2005	1 190 112	14 694 557	46 888 000	0.31

8 dwellings, open cast mining, small residential and industrial developments which will increase the irrevocably transformed area significantly. Further studies to quantify the extent of these areas are needed. The land capability assessment interprets soil, terrain and agro-climatic data to provide an indication of the dry-land agricultural potential for a specific area. The assessment was based on the Land Type data and is therefore only suitable for national level assessments. Land capability order A (Classes I and II) is suitable for intensive crop production, order B has a moderate (Class III) to marginal (Class IV) potential for crop production, order C (Classes V-VII) is suitable for grazing and forestry while order D normally includes very steep areas that are not suitable for agricultural purposes. A follow-up study for the period 2006 to 2012 needs to be undertaken on an urgent basis, which study should also focus on the de facto decrease in the optimal and sub-optimal use of agricultural land in cases where prospecting and mining rights are utilised by prospectors and miners respectively. The same applies to energy prospecting and extraction.

The following table provides a general description of the various land capability classes and land uses per province:⁹

PROVINCE / LAND USE IN HECTARE		EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA TOT
Total area (based on national Land Capability)		16 882 162	12 980 148	1 817 826	9 322 929	12 573 636	7 646 428	37 279 987	10 486 312	12 935 453	121 924 881
Former homelands and TBVC States		4 936 807	236 619	36 260	3 181 374	3 361 196	875 087	1 024 336	2 674 868	0	16 326 547
Inland water bodies		36 996	73 611	3 228	69 413	5 748	6 011	10 340	17 175	23 530	246 052
Major irrevocably transformed areas		436 776	215 136	445 721	414 020	572 637	368 615	219 354	266 399	200 632	3 139 291
Formally protected areas		320 850	154 627	36 279	489 058	1 235 705	1 211 002	1 402 742	142 663	617 574	5 610 500
Forestry plantations		140 039	12 266	21 119	615 050	73 211	606 655	808	4 599	58 654	1 532 401
Cultivation		1 619 331	3 771 112	363 954	975 687	1 266 846	1 409 448	261 565	2 238 552	1 985 466	13 891 961
Rangeland		14 328 170	8 753 396	947 525	6 759 701	9 419 489	4 044 697	35 385 178	7 816 924	10 049 597	97 504 676
LAND CAPABILITY AND LAND USE PER PROVINCE											
Class I Land	Percentage	1.62%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.002%
	Total: Area	2 733	0	0	0	0	0	0	0	0	2 733
	Former homelands & TBVC States	2 733	0	0	0	0	0	0	0	0	2 733
	Total: Permanently transformed	99	0	0	0	0	0	0	0	0	99
	Total: Forestry plantations	4	0	0	0	0	0	0	0	0	4
	Total: Protected areas	0	0	0	0	0	0	0	0	0	0
Total: Cultivation	879	0	0	0	0	0	0	0	0	0	879
Class II Land	Percentage	0.47%	0.10%	21.42%	4.36%	0.77%	11.40%	0.00%	0.21%	0.00%	1.54%
	Total: Area	78 787	12 701	389 310	406 931	96 921	872 007	0	21 940	0	1 878 597
	Former homelands & TBVC States	67 084	0	0	81 394	73 267	33 062	0	0	0	254 807
	Total: Permanently transformed	4 371	341	76 190	22 389	14 547	40 035	0	217	0	158 091
	Total: Forestry plantations	14 270	26	6 912	69 828	5 036	89 776	0	378	0	186 226

⁹ The following datasets were used in the spatial evaluation of the land uses that have resulted in the permanent transformation of agricultural land per land capability class per province:

- National Land capability classification derived from the 1:250 000 land type data set - 2002
- Former homelands and TBVC states – spatial demarcation
- Protected areas - national and provincial as derived by the Department of Environmental Affairs - 2009
- Cultivation – National Field crop boundaries, KZN Landcover 2009 and Inkomati Catchment Management Area Landcover 2010
- Forestry plantations – DAFF 2010; Landcover 2000
- Permanently transformed areas – SPOT Building Count (ESKOM) 2009; Roads 2006; Landcover 2010.

Appendix 1 contains a more detailed version of the table as well as a description of the terminology used.

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PROVINCE / LAND USE IN HECTARE		EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA TOT
	Total: Protected areas	832	0	1 383	2 349	615	6 047	0	0	0	11 226
	Total: Cultivation	15 416	8 634	134 609	83 730	24 995	354 745	0	10 816	0	632 945
Class III Land	Percentage	7.06%	17.27%	38.76%	28.86%	19.39%	27.28%	0.00%	16.74%	6.93%	11.49%
	Total: Area	1 191 729	2 241 476	704 594	2 690 673	2 437 993	2 085 727	0	1 755 340	895 807	14 003 339
	Former homelands & TBVC States	986 102	27 884	33 300	780 572	509 168	269 290	0	452 707	0	3 059 023
	Total: Permanently transformed	103 855	40 357	221 474	140 617	184 420	159 291	0	93 754	88 154	1 031 922
	Total: Forestry plantations	24 734	5 099	7 947	248 200	10 599	179 155	0	1 821	4 104	481 659
	Total: Protected areas	2 147	3 656	7 621	76 453	22 877	89 650	0	19 198	35 772	257 374
	Total: Cultivation	418 762	1 088 651	157 725	427 052	563 135	536 521	0	656 402	427 488	4 275 736
Class IV Land	Percentage	10.85%	41.18%	6.77%	12.40%	21.80%	20.88%	0.00%	26.74%	6.58%	13.49%
	Total: Area	1 830 877	5 345 077	123 144	1 155 649	2 741 093	1 596 612	0	2 803 769	851 225	16 447 446
	Former homelands & TBVC States	980 135	132 607	0	286 444	1 171 304	220 286	0	1 001 465	0	3 792 241
	Total: Permanently transformed	115 834	116 358	62 224	77 218	194 814	96 572	0	95 069	30 416	788 505
	Total: Forestry plantations	28 642	4 050	1 220	111 935	16 137	80 482	0	818	2 895	246 179
	Total: Protected areas	8 465	53 386	2 328	65 018	67 684	151 789	0	9 983	13 540	372 193
	Total: Cultivation	393 450	1 973 285	14 263	180 701	379 602	387 451	0	964 317	448 879	4 741 948
Class V Land	Percentage	10.24%	27.17%	4.40%	2.89%	26.85%	5.01%	3.76%	22.10%	4.07%	11.16%
	Total: Area	1 728 574	3 526 137	80 009	268 985	3 376 027	383 457	1 401 641	2 317 629	526 876	13 609 335
	Former homelands & TBVC States	95 060	758	1 336	87 340	403 164	16 191	344 681	365 446	0	1 313 976
	Total: Permanently transformed	35 894	37 445	20 163	8 556	50 861	6 167	42 195	42 594	10 933	254 809
	Total: Forestry plantations	524	1 738	361	11 620	0	41 187	627	375	2 181	58 613
	Total: Protected areas	25 372	35 017	537	18 510	810 574	167 755	6 596	8 778	19 767	1 092 906
Total: Cultivation	125 779	590 280	8 269	41 237	155 908	18 590	55 714	450 441	192 608	1 638 826	
Class VI Land	Percentage	27.34%	6.33%	19.00%	31.59%	16.13%	25.84%	3.99%	15.74%	17.36%	14.86%
	Total: Area	4 616 284	821 540	345 419	2 944 989	2 028 252	1 975 899	1 486 378	1 650 476	2 245 556	18 114 793
	Former homelands & TBVC States	1 484 774	47 521	1 229	1 168 595	656 677	203 873	44 142	200 432	0	3 807 243
	Total: Permanently transformed	119 217	15 897	43 467	138 974	91 203	55 690	12 291	21 367	40 586	538 692
	Total: Forestry plantations	27 675	525	2 778	130 338	31 072	167 567	59	1 190	38 627	399 831
	Total: Protected areas	127 469	47 686	5 611	95 802	217 559	655 902	4 537	7 805	84 647	1 247 018
Total: Cultivation	448 674	63 208	42 278	227 608	124 489	101 771	9 995	103 095	692 513	1 813 631	
SS VII Land	Percentage	28.20%	4.49%	0.00%	13.99%	4.46%	4.45%	82.68%	15.35%	41.46%	37.19%

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PROVINCE / LAND USE IN HECTARE		EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA TOT
	Total: Area	4 761 380	582 211	0	1 303 968	560 401	340 298	30 822 406	1 609 927	5 362 625	45 343 216
	Former homelands & TBVC States	1 082 151	4 697	0	507 605	49 441	66 083	590 512	514 907	0	2 815 396
	Total: Permanently transformed	52 286	3 657	0	22 211	5 833	5 756	159 729	6 634	25 669	281 774
	Total: Forestry plantations	28 861	808	0	40 290	7 005	44 341	116	0	4 402	125 823
	Total: Protected areas	97 147	1 280	0	179 953	52 239	79 848	1 177 008	24 074	104 328	1 715 877
	Total: Cultivation	198 510	37 973	0	12 435	9 616	3 241	183 838	47 663	196 366	689 642
Class VIII Land	Percentage	15.61%	2.91%	9.47%	5.17%	10.56%	5.05%	9.55%	2.96%	23.42%	10.07%
	Total: Area	2 634 802	377 395	172 122	482 321	1 327 201	386 417	3 559 222	310 056	3 029 834	12 279 370
	Former homelands & TBVC States	238 768	23 152	395	269 424	498 175	66 302	45 001	139 911	0	1 281 128
	Total: Permanently transformed	5 220	1 081	22 201	4 056	30 957	5 104	5 140	6 764	4 874	85 398
	Total: Forestry plantations	15 329	20	1 901	2 839	3 362	4 147	6	17	6 445	34 066
	Total: Protected areas	59 418	13 602	18 799	50 973	64 157	60 011	214 601	72 825	359 520	913 906
Total: Cultivation	17 861	9 081	6 810	2 924	9 101	7 129	12 018	5 818	27 612	98 354	

FINAL DRAFT

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Historical data on the number of farms in South Africa reveal that in 1930 there were 96 640 farms, which increased to 116 848 in 1950, and decreased to 64 810 in 1986.¹⁰ The three major drivers for the decrease in the number of farms were the enactment of the Subdivision of Agricultural Land Act (Act 70 of 1970) which prevented the further fragmentation of farms into non-viable units, changes in land use from agriculture to other purposes (mainly urban, commercial, mining, infrastructure development and industrial) and economic pressures.

The number of farming units in South Africa has rapidly declined since 1996, from 60 938 to 39 966 in 2007 mainly due to the same reasons as stated above as well as the land reform programme.¹¹

FARM UNITS	EC	FS	GP	KZN	LIM	MPU	NC	NW	WC	RSA
No. of units	4 006	7 473	1 773	3 574	2 934	3 523	5 128	4 902	6 653	39 966
Average size (ha)	737.6	439.1	747.5	828.9	478.5	983.1	906.9	858.6	057.5	305.2

Various factors are responsible for this trend. These include loss of farming enterprises due to economic pressures (rising interest rates, variable commodity prices, increasing input costs); security-related issues (personal safety, stock theft and crop losses in certain areas); and competition for agricultural land from industrial and mining sources.¹² The above factors are exacerbated by variable climatic conditions (leading to increased risk) as well as competition from imported agricultural products from elsewhere in the world, due to higher levels of government subsidy in such areas, compared to no subsidies in South Africa.

The number of commercial farmers was estimated at between 50 000 and 60 000 in the early 2000s¹³ while the number of small-scale farmers was estimated at 240 000.¹⁴ The estimates of commercial and subsistence farmers in South Africa in 2009 are as follows:¹⁵

PRODUCTION UNIT	LAND OWNERSHIP AND MANAGEMENT	NUMBER
Large commercial on private property	Family owned but incorporated multiple farms. Rent in land, professional management.	5 400
Medium commercial on private property	Family owned, could be incorporated. Some rent of land, family management.	17 000
Small commercial on private property	Family owned, generally part time. Some lifestyle farming (game ranches, weekend farms).	24 000
Emerging commercial in communal areas	>20 Hectares: Communal ownership, small farmers in development project, Private ownership.	35 000
Total number of commercial farmers		81 400
Subsistence farmer in communal areas	<20 Hectares:	1 256 000
Allotments	Communal ownership	
Market gardens	Private ownership, little formal market participation	
Total number of subsistence farmers		1 256 000

Although the figures above suggest that the number of both commercial and subsistence farmers has increased significantly since the early 2000s, it should be noted that in the above

¹⁰ Agricultural Census

¹¹ DAFF. 2009. Agricultural Statistics.

¹² The BFAP Baseline Report for 2011 estimates that a further 80 000 ha of agricultural land will be lost to mining in the next five years.

¹³ Vink, N. and Kirsten, J. 2003. Agriculture in the National Economy. In Niewoudt, L. & Groenewald J. (Eds). The Challenge of Change: Agriculture, Land and the South African Economy. Pietermaritzburg: University of Natal Press; National Department of Agriculture. 2001. The Strategic Plan for South African Agriculture.

¹⁴ National Department of Agriculture. 2001. The Strategic Plan for South African Agriculture.

¹⁵ Vink, N. and Van Rooyen, J. 2009. The Economic Performance of Agriculture in South Africa since 1994: Implications for Food Security. Development Planning Division Working Paper Series No.17, DBSA: Midrand.

table commercial farmers include a category of farmers called “emerging commercial farmers on communal land” numbering 35 000. These farmers were not included in the early 2000s from the computation of the number of commercial farmers. Taking this into account, the number of commercial farmers as defined in the early 2000s has actually declined to about 46 400 in 2009. Also, the difference between the number of subsistence farmers in the early 2000s and 2009 may be attributed to how subsistence farmers were defined - the 2009 figure for subsistence farmers includes those cultivating crops/vegetables in small gardens and these were not included in the figure for the early 2000s.¹⁶

According to a report by the Institute for Poverty, Land and Agrarian Studies, it is estimated that 6 million people in South Africa depend on agriculture for their livelihoods.¹⁷ The number of people employed (farm employees and domestic workers (excluding casual employment)) on farms has also decreased, from 9,2 million in 1994 to 6,3 million in 2005.¹⁸ In addition, there has been a decline in the overall contribution of the agricultural sector to the GDP (7.1% in 1965 to 3% in 2009), as well as the overall area under food production (a 30% decline in the period between 1994/95 and 2008/09).¹⁹ The main reasons are a shift in policies that created a bias against agriculture and disincentives for agricultural investment and production, relative to other sectors, a shift towards tangible gains over the short term, that agriculture cannot compete with commerce and industry who generate significantly more jobs per hectare, more rates and taxes per hectare, and more multipliers and GDP contribution per hectare. It must however be noted that investing in agriculture is still one of the most effective strategies for reducing poverty and hunger and promoting long-term sustainability.

Studies have indicated that since 1900, South Africa has lost as much as 25% of its top soil. Furthermore the ratio of moderate and high potential agricultural land per person has decreased from 0.86 ha in 1970 to 0.5 ha in 1980. It is estimated that this will further decrease to 0.2 ha by 2020. Other pressures on agricultural land include a variety of competing land uses, including power generation, communication and transport networks and industrial and residential expansion. It is therefore clear that agricultural land is a scarce, irreplaceable and non-renewable resource.

The global trend of urbanisation strongly manifests itself in South Africa, where the constant flow of rural population to urban areas (both from parts of South Africa and beyond) in search of work, housing and a better life in general, places pressure on the relevant authorities to find land for this increasing population, often at the cost of the adjacent agricultural areas. According to the National Development Plan, South Africa is slightly more urban than the global average with an urbanised population of approximately 60%. This is expected to increase to around 70% by 2030.²⁰ Rapid urbanisation and urban growth have been accompanied by the growth of areas that are neither urban nor rural, encompassing aspects of both urban and rural life, usually on the edge or close by large cities, with a focus on subsistence agriculture and informal sector trade. These areas are generally characterised by a lack of urban infrastructure (including transport infrastructure) or services, and local government is often ill equipped to deal with the issues confronting it. Such urban expansion (especially in Gauteng and the Western Cape, where space for urban development is often

¹⁶ Machete, C. and Moyo, T. 2011. 2011 Country Annual Trends and Outlook Report. Regional Strategic and Knowledge Support System for Southern Africa (ReSAKKS – SA).

¹⁷ StatsSA & Labour Force Survey of StatsSA.

¹⁸ DAFF 2009.

¹⁹ DAFF 2009.

²⁰ National Planning Commission. 2011. National Development Plan: Vision 2030.

more highly valued than agricultural land) and increased mining activities have a negative effect on agricultural land and resources. However, the long-term costs associated with the loss of agricultural land are much higher than the gains of mining and other developments on such land.

The hunger index developed from the National Food Consumption Survey of 2005²¹ showed that at national level, 51.6% of households experienced hunger, approximately 28.2% were at risk of hunger and only 20.2% appeared to be food secure. StatsSA²² reported in 2010 that about 23.9% of the South African population still experience inadequate to severely inadequate access to food. Currently, 32% of South African children are hungry or are at risk of hunger. In addition, South Africa is currently a net importer of food, and therefore strictly speaking already food insecure.

Two of the factors responsible for food insecurity are the loss and/or degradation of agricultural land. The main threats relating to the loss and/or degradation of South Africa's limited agricultural land can be summarised as follows:²³

The loss of this land, with specific reference to high value agricultural land can represent a threat to national level food security of the nation as well as household food security in rural areas. Secondly, unplanned, uncoordinated and illegal developments resulting in the fragmentation of agricultural land, at the urban fringes as well as within rural areas adds an additional burden on the available financial as well as technical resources of local municipalities to develop and maintain infrastructure. Thirdly, agricultural land that is improperly converted is likely to contribute to environmental degradation including soil erosion, contamination of surface and ground water and the destruction of biodiversity.

Additional pressures that are experienced with regard to agricultural land and agricultural production emanate from climate change. These result, amongst others, in the concomitant change in the production of cash crops. Environmental degradation and unsustainable exploitation of natural resources threaten to reduce the future productivity of agricultural land and its related natural resources. In addition, the non-usage of agricultural land for active agricultural production leads to the effective loss of such land for agricultural purposes.

The **fragmentation (subdivision) of agricultural land** into unsustainable and non-economical units [including the fragmentation of ownership tenure (i.e. registration of long-term leases, sectional titles, undivided shares or share block schemes, etc.)] results in the reduced production and potential productivity from agricultural land, with many small farming units not being economically viable and production not sustainable. Subdivision of rural lots may lead to the loss of prime agricultural opportunities and the 'economies of scale' that sustain some forms of agricultural production (e.g. sugarcane). In addition, agricultural land lost to residential and the majority of other non-agricultural developments cannot be restored.

Table indicating subdivision applications per province for the period 2006 to 2011.²⁴

Province	Approved	Approved with conditions	Refused	Total
Eastern Cape	256	168	351	775
Free State	149	187	142	478
Gauteng	201	56	539	796

²¹ DAFF 2012. Food Security Policy for the Republic of South Africa.

²² StatsSA 2010.

²³ DAFF 2011 (1).

²⁴ A more detailed breakdown is provided in Appendix 1.

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KwaZulu-Natal	291	194	562	1047
Limpopo	447	262	515	1224
Mpumalanga	332	161	411	904
Northern Cape	115	118	228	461
North West	259	266	471	996
Western Cape	357	622	514	1493
Total	2407	2034	3733	8174

The land reform process, in its current form, is dividing many large farms into smaller, less viable and less efficient units to meet land claims, and thus reduces agricultural output and poses a challenge to the availability of food. It also reduces the significance of the emerging agricultural sector, which is then characterised by low productivity and a lack of access to markets due to inadequate infrastructure. In addition, the failure of a number of land reform projects due to insufficient knowledge, mentorship and support or without the aptitude to farm, is leading to increased land degradation and continued food insecurity and poverty and, as such, there is a need to ensure that land reform land is agriculturally sustainable and viable. The availability of suitable agricultural land is also an imperative for the successful implementation of broad-based black economic empowerment in the agricultural sector (AgriBEE).²⁵ Lastly, new owners (land reform beneficiaries) of agricultural land need to be aware of the regulations and limitations regarding such land, and the role of agriculture in conserving agricultural land and water, as well as biodiversity, must be highlighted.

Internationally, land consolidation and other readjustment approaches are recommended. Agenda 21, adopted in 1992, calls on governments to develop multisectoral plans, programmes and policies to enhance sustainable food production and food security. Within this framework it advocates the implementation of policies that recognise ecosystem and enterprise-based minimum sizes of land holdings required to maintain and increase food production and to limit further fragmentation. The FAO's *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*²⁶ proposes, in appropriate circumstances, land consolidation, exchanges or other voluntary approaches for the readjustment of land parcels or holdings in order to improve both the layout and use of such parcels or holdings. This may, in turn, promote food security and rural development in a sustainable manner. In addition, the *Voluntary Guidelines* suggest the establishment of land banks (a) as a part of land consolidation programmes in order to acquire and temporarily hold land parcels until these are allocated to beneficiaries; (b) together with the encouragement and facilitation of land consolidation, in environmental protection and infrastructure projects in order to facilitate the acquisition of private land for public projects, and to provide affected parties with land in compensation that will allow them to continue, and even increase, production; and (c) together with consolidation where fragmentation of smallholder family farms into smaller parcels increases production costs, in order to improve the structure of those farms. The *Voluntary Guidelines* recommend the development of measures to protect the investment of land consolidation by restricting the future subdivision of the consolidated parcels.

Within the context of the importance of, and need for, the full implementation of South Africa's land reform programme (focusing on enhancing equitable access to all agricultural land in the case of, especially, those communities and individuals who were excluded in the

²⁵ In accordance with the AgriBEE Charter and AgriBEE sector code.

²⁶ FAO 2012.

past), care should be taken that consolidations and conversion to non-agricultural uses do not impact negatively on the execution of specifically the agricultural land redistribution programme.

Another major risk to agricultural land relates to **the conversion of agricultural land to non-agricultural uses**. From 2006 to 2011, over 20 900 Act 70 related applications were received. In excess of 5 000 of these applications were for changes in land use, mostly for rezoning and township establishment.

The following table summarises **land use change (rezoning) applications** during this period:²⁷

Province	Approved	Approved with conditions	Refused	Total
Eastern Cape	97	18	158	273
Free State	63	10	43	116
Gauteng	103	1	161	265
KwaZulu-Natal	84	10	239	333
Limpopo	42	5	57	104
Mpumalanga	102	12	109	223
Northern Cape	47	17	50	114
North West	85	5	121	184
Western Cape	609	72	610	1291
Total	1205	50	1548	2903

Non-agricultural land uses (i.e. residential, mining, tourism, infrastructure, etc.) are most often not compatible with agricultural land uses. Conflicts may arise due to the issues such as the redirection of water flows, transport routes near dwellings, as well as odour, dust, noise and pollution (so-called nuisance complaints and conflicts) from, and the use of chemicals in farming practices. The provision is that farming activities do not threaten health or safety. Such other uses can also lead to increased property values in rural areas, increasing pressures to develop the land for urban purposes, making it more attractive for the farmer to sell, or casting doubts about the advisability of new farm investments.

One of the key drivers for the process of conversion is the absence of a country-wide framework for the protection and preservation of agricultural land and a concomitant uniform framework for the submission, consideration and approval (or rejection) of applications for the subdivision and/or the change in use (rezoning) of agricultural land. This has had the effect that various other governmental entities at national, provincial and local level (without any involvement of, or approval by, DAFF) are issuing authorisations for various forms of development, which results in the *de facto* subdivision, and, especially, the irrevocable change in use category of land, which is categorised as agricultural land. These misguided administrative practices have been strengthened by the mistaken view that the system of wall to wall municipalities (introduced on 5 December 2000) has extinguished the separate category of agricultural land, and that decisions relating to all land within the jurisdictional area of a particular municipality are within the exclusive domain of the municipality concerned and other role players at provincial and national level.

²⁷ A more detailed breakdown is provided in Appendix 1.

The Subdivision of Agricultural Land Act 70 of 1970 (SALA), which established a compulsory framework for the approval or rejection of applications relating to the subdivision and/or change in use of agricultural land, has, since its commencement, never applied to land in the former homelands (the so-called TBVC countries and the self-governing territories), the former South African Development Trust (SADT) areas, state land and municipal land which formed part of the jurisdictional areas of all pre-5 December 2000 municipalities. In 2009, the Constitutional Court in *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another* 2009 (1) 337 CC²⁸ (*Wary*) found that agricultural land as a separate category had not been extinguished by the introduction of the final phase of local government, and, consequently, that the legislation relating to the preservation of agricultural land had not been repealed. It would appear that, notwithstanding the *Wary* decision, in many instances national, provincial and local government entities continue to issue development-oriented authorisations without complying with SALA and without reference to DAFF.²⁹

As the custodian of natural agricultural resources in South Africa, DAFF is primarily responsible for the preservation of agricultural land and the beneficial use thereof, and, in this regard, to develop and implement policies to conserve and protect agricultural land. It is important that agricultural development on agricultural land should not be unreasonably confined or restrained by other land uses. There are at least three major constraints that limit DAFF's ability to protect agricultural land effectively against other developments and fragmentation namely:

- (a) The Subdivision of Agricultural Land Act 70 of 1970 (SALA), as the national Act dealing with the protection of agricultural land, does not fully conform to the Constitution of the Republic of South Africa, 1996;
- (b) SALA is only applicable to privately owned land; and
- (c) The effectiveness of SALA is limited by recent policies and legislation related to land reform, land use, land use planning, the environment and mining.

In addition, SALA is not a suitable mechanism to effectively protect agricultural land from other forms of development and/or fragmentation as a result of the following:

- (a) SALA does not provide for the allocation of legislative and executive powers between national and provincial government;
- (b) SALA does not address intergovernmental relations;
- (c) SALA does not address cooperative government principles;
- (d) SALA is not applicable to national, provincial or local state land; irrespective of whether the said land is used for agricultural purposes;
- (e) Any organ of state (including state departments and public enterprises) that acquires agricultural land can subdivide the land and/or change the land use without consent;
- (f) The areas of the former homelands and TBVC States are excluded from SALA's mandate;
- (g) Certain other legislative instruments override SALA (e.g. the Development Facilitation Act 67 of 1995);

²⁸ Olivier, N.J.J & Williams, C. 2010. *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd & Another (Trustees of the Hoogekraal Highlands Trust & SAFAMCO Enterprises (Pty) Ltd (amicus curiae); Minister of Agriculture & Land Affairs (intervening)* [2008] JOL 22099 (CC) (99-128). Journal for Juridical Science, 35(2): 1999-128.

²⁹ See ARC 2012. In addition, certain provinces (e.g. the Eastern Cape) apply the Land Reform: Provision of Land and Assistance Act 126 of 1993 instead of SALA when considering subdivision applications.

- (h) Certain government departments are of the opinion that they are not bound by the provisions of SALA, to such an extent that this has now become administrative practice (e.g. the Department of Mineral Resources);³⁰
- (i) Municipalities increasingly consent to the development on and subdivision of agricultural land without approval at national government level; and
- (j) The enactment of the February 2012 version of the proposed Spatial Planning and Land Use Management Bill, in its current form, will vest a strong override in the Minister responsible for Rural Development and Land Reform. It is suggested that both the final version of this proposed planning legislation and the to be drafted DAFF Bill on the Protection, Subdivision and Rezoning of Agricultural Land (the *Preservation and Development of Agricultural Land Framework Bill*) should contain explicit provisions on how matters relating to the subdivision and change in land use of agricultural land should be dealt with within the Chapter 3 (1996 Constitution) framework for cooperative government, and the Schedule 1 Part A (1996 Constitution) inclusion of agriculture as a functional area of concurrent national and provincial legislative competence. Within this context, in order to prevent legal and administrative uncertainties, it may be advisable for the two Departments to determine a common approach as to how matters relating to the subdivision and change in land use of agricultural land will be dealt with in future.

Government already has certain programmes in place that relate to food security, e.g. the Zero Hunger Programme, which has the following vision: to attain universal physical, social and economic access to sufficient, safe and nutritious food by all South Africans at all times to meet their dietary and food preferences for an active and healthy life. The policy envisaged in this Draft Policy Document will complement existing government programmes aimed at ensuring food security as well as the Food Security Policy.

As indicated above, the preservation of agricultural land and the optimal use thereof is of vital importance to ensure long-term food security and job creation (especially in rural areas in order to prevent rural-urban migration) in South Africa. In this regard, a national, uniform policy and regulatory approach is urgently needed. The policy envisaged in this Draft Policy Document and the proposed legislation will be binding on national, provincial and local government, each with its own responsibilities, roles, duties and functions.

The policy envisaged in this Draft Policy Document on the Preservation and Development of Agricultural Land provides the political mandate to DAFF for the development of a new Act (the Preservation and Development of Agricultural Land Framework Act (PDALFA)) and regulations that will (a) apply to the whole of South Africa, (b) minimise conflict between different land use requirements; and (c) ensure that agricultural land is effectively protected. The policy envisaged in this Draft Document Policy also provides a concomitant uniform framework for the submission, consideration and approval (or rejection) of applications for the subdivision and/or the change in use (rezoning) of agricultural land, and will benefit all South Africans.

5. PROCESS LEADING UP TO THE DRAFT POLICY DOCUMENT

³⁰ *Maccsand (Pty) Ltd v City of Cape Town and Others* (CCT 103/11) [2012] ZACC 7.

5.1 DRAFT POLICY DOCUMENT FORMULATION PROCESS

The Agricultural Research Council (ARC) was appointed by DAFF to conduct a policy study and design a draft policy and implementation strategy for the protection of agricultural land in South Africa in partnership with DAFF and PDAs. The objectives of the study included the following:

1. *To conduct an in-depth policy study and compile a policy paper on the protection of agricultural land including fragmentation of farming areas and the sub-division / consolidation of farms in South Africa in order to understand / define the problem and inform the policy-making process.*
2. *To develop a communication strategy and consult with the relevant national, provincial and local level government institutions, organised agriculture, traditional authorities as well as other affected parties in order to obtain their input.*
3. *To conduct a policy analysis, based on the policy paper and the inputs received during the consultation and assist DAFF to compile a draft Agricultural Land Protection Policy for South Africa in order to conserve and protect agricultural land so that it remains available for agricultural development, to minimize the conflict with or interference from other land uses and to ensure long-term viable farming units with special reference but not limited to prime, high potential, irrigated and unique agricultural land.*
4. *To assist DAFF with the development of an implementation strategy for the policy.*

The ARC appointed a Service Provider to assist in the compilation of an integrated *status quo* report on:

- (a) The constitutional, policy, legal and administrative framework;
- (b) A technical overview of agricultural land and current usage patterns, and
- (c) A comparative overview of lessons to be learned from foreign jurisdictions.

Subsequent to the drafting of the integrated *status quo* report, a number of workshops with DAFF and its provincial counterparts as Reference Group were held in order to discuss the *status quo* report. This process was followed by the drafting of a Discussion Document, for purposes of consultation with key stakeholders, an implementation framework, as well as the Preservation and Development of Agricultural Land Framework Bill.

5.2 SUMMARY OF STAKEHOLDER CONSULTATIONS:

Stakeholder inputs were obtained during the following consultations and workshops:

- (a) Stakeholder consultations up to 2007.
- (b) Reference Group provincial workshop (March 2012).
- (c) Reference Group provincial workshop (17 April 2012).
- (d) Reference Group workshop with all Provincial Departments responsible for Agriculture (PDAs) (16-17 May 2012).
- (e) Reference Group workshop with all PDAs (14-15 August 2012).
- (f) Stakeholder consultations (30 October – 1 November 2012) with:
 - Organised agriculture and financial institutions;
 - Traditional leaders;
 - Other national departments and provincial departments responsible for agriculture;
 - Local government;
 - Civil society; and
 - Academic institutions and research councils.
- (g) Stakeholder consultations (22 January 2013) with:
 - Organised agriculture and financial institutions;
 - Traditional leaders;

- Other national departments and provincial departments responsible for agriculture;
- Local government;
- Civil society; and
- Research councils.

The Draft Policy Document will be discussed with various other government departments, as well as MINTEC and MINMEC. In addition, consultations will also be held with other statutory institutions and other non-public sector stakeholders.

6. DRAFT POLICY DOCUMENT AIMS AND OBJECTIVES

This Draft Policy Document has the following aims:

- (a) Ensure sustained long-term national and household food security (in terms of both production and access);
- (b) Promote a balanced approach to the use of agricultural land;
- (c) Ensure the sustainable development of the agricultural sector;
- (d) Maintain and increase rural employment and income;
- (e) Ensure a reduction in poverty levels and a sustained improvement in quality of life;
- (f) Increase agricultural production and the contribution of agriculture to the GDP;
- (g) Ensure that agricultural land remains available for agricultural production and development;
- (h) Ensure that agricultural land is actively used to its optimal potential for maximum productivity and long-term food security;
- (i) Promote and encourage the maintenance of the economic value of agricultural land so as to ensure the sustainable and continued agricultural production and/or utilisation of land parcels;
- (j) Promote and ensure the maintenance, upgrading and development of agricultural infrastructure and services.

In order to achieve these aims, this Draft Policy Document has the following objectives:

- (a) To implement a country-wide policy and regulatory framework for the preservation and development of agricultural land, which:
 - Encourages farming on agricultural land in collaboration with other role players;
 - Encourages provincial and local government to enable and promote the use of agricultural land for farming purposes and compatible uses in their policies, legislation, Integrated Development Plans (IDPs), Spatial Development Frameworks and other relevant administrative frameworks and procedures;
 - Discourages and/or prohibits land uses unrelated to agriculture from taking place on agricultural land (including urban and other non-agricultural developments that are likely to create conflict with established or proposed Protected Agricultural Areas);
 - Discourages and/or prohibits subdivision and fragmentation of agricultural land that results in fragmentation of agricultural land, reduced agricultural productivity, and/or land degradation;
 - Encourages, where permanent impacts do arise from the approved development, mitigation to address the lost productive capacity of the land.

Mitigation is intended to be a final resort after all attempts to reasonably avoid the impacts of the development have been exhausted; and

- Promotes and encourages viable farming units from an economic, environmental and social perspective over the long term.
- (b) To implement a uniform, coordinated, cross-cutting national framework (including national norms and standards) for the submission, consideration and approval or rejection of applications for the subdivision and/or change in use (rezoning) of agricultural land to ensure coordinated, intergovernmental relations.
- (c) To build capacity in all three levels of government with regard to the consideration and execution of rezoning applications.
- (d) To ensure the sustainable use of the natural agricultural resources and maintain the agricultural landscape through the prohibition and/or discouragement of land use changes from agriculture to other forms of development.
- (e) To establish a framework that, in appropriate cases, would facilitate concurrent land uses on agricultural land, e.g. renewable energy projects (i.e. solar and wind energy) without jeopardising long-term food security.
- (f) To protect the right to farm (which provides protection to farmers against local government laws which would interfere with their normal farming practices – i.e. to protect farmers from nuisance complaints from other land users) and to strengthen the rights of farmers to protect and manage agricultural land;
- (g) To establish formal structures at local, provincial and national levels to provide a basis for participation and to ensure transparency in and accountability for land use decisions that affect the availability and sustainable use of agricultural land.
- (h) To ensure that a minimum threshold of high value agricultural land available for agricultural production purposes is determined by DAFF so as to maintain and increase food production and the potential productivity of the land concerned;
- (i) To demarcate Protected Agricultural Areas to ensure that high value and best available agricultural land is protected against non-agricultural land uses in order to promote long-term agricultural production; and to establish intergovernmental dispute resolution mechanisms; and
- (j) To establish an incentive-based regulatory regime that goes hand in hand with enforcement, in order to actively promote the preservation and optimal use of agricultural land for purposes of agricultural production.

7. DRAFT POLICY DOCUMENT PRINCIPLES

The following overarching principles underlie this Draft Policy Document:

- (a) Human dignity: Recognising the inherent dignity and the equal and inalienable human rights of all South Africans.
- (b) Protection of the environment: Safeguarding the right to have the environment protected for the benefit of present and future generations, through measures that prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural agricultural resources while promoting justifiable economic and social development.
- (c) Food security: Recognising the right of everyone to access sufficient food and water.
- (d) Holistic and sustainable approach: Recognising that agricultural land and its uses are interconnected, and adopting an integrated and sustainable approach to its preservation and protection.

- (e) Rule of law: Adopting a rules-based approach through legislation that is widely publicised, applicable to all, equally enforced and independently adjudicated, and that is consistent with South Africa's existing obligations under national and international law, with due regard to voluntary commitments under applicable regional and international instruments.
- (f) Transparency: Clearly defining and widely publicising policies, laws, procedures, and decisions in formats accessible to all; and ensuring that such information is provided timeously and is accurate.
- (g) Just administrative action: Ensuring lawfulness, reasonableness and procedural fairness (and impartiality) with regard to all decisions impacting on agricultural land.
- (h) Cooperative government: Ensuring effective, transparent, accountable coherent government with regard to all issues impacting on agricultural land.
- (i) Efficient use of resources: Promoting the economic and effective use of resources relating to agricultural land.
- (j) Accountability: Holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law.
- (k) Continuous improvement: Continuously improving mechanisms for the monitoring and analysis of issues relating to agricultural land in order to develop evidence-based programmes and secure on-going improvements.
- (l) Consistency of administrative processes and decisions.

In addition to the above core principles, the following premises underlie this Draft Policy Document:

- (a) Rights recognition: For local people to benefit from investments, but also for investors to enjoy a level of tenure security that encourages them to make the needed long-term investments, rights to land and associated natural resources need to be recognised, clearly defined on the ground, and enforceable at low cost. This includes both ownership and user rights to land that is managed in common areas, state lands, and protected areas.
- (b) Voluntary transfers: Transfers of land rights should be based on users' voluntary and informed agreement, provide them with a fair level of proceeds, not involve expropriation for private purposes, and not jeopardise long-term food security.
- (c) Technical and economic viability: For investments to provide local benefits, ways to ensure technical and economic viability need to be in place, consistency with local land use plans and taxation regimes must be ensured, and effective ways to transfer assets of non-performing projects must be available.
- (d) Open and impartial processes: Information on prices, contracts, rights, and ideally land use plans should be publicly available, with parties fully aware of and able to enforce any agreements they entered and with public agencies performing their functions effectively.
- (e) Environmental and social sustainability: To prevent investments from generating negative externalities, areas suitable for agricultural expansion need to be properly protected from encroachment, environmental policies clearly defined and adhered to, and social safeguards (including provisions on gender and worker welfare) defined and implemented.

Specific principles relating to the protection and development of agricultural land include the following:

- (a) **Protection:** Protection of agricultural land is primary in the application of this Draft Policy Document and in achieving its purposes. This principle ensures that the value of agricultural land as a finite and irreplaceable resource is not outweighed by shorter term values associated with development, particularly economic values. In pursuit of this principle, developments on high value agricultural land that will have permanent impacts will not be able to proceed unless exceptional circumstances can be demonstrated.
- (b) **Avoidance:** Developments proposed to be located on agricultural land must take all reasonable steps to ensure that the development footprint avoids agricultural land to the greatest extent reasonably practical. This principle will also support decisions to impose conditions on a development.
- (c) **Minimisation:** Where developments cannot avoid agricultural land, possible impacts of the development on such land must be minimised. This could include reconfiguring the development footprint to lessen the area of agricultural land that will be affected or adopting alternative development methods. Adopting development practices or methods that allow for the land to be restored to its pre-development condition will also be considered to be consistent with the minimisation principle.
- (d) **Mitigation:** Where permanent impacts do arise from the approved development, mitigation is required to address the lost productive capacity of the land. Mitigation is intended to be a final resort after all attempts to reasonably avoid and minimise the impacts of the development have been exhausted.
- (e) **Productivity:** This principle aims to ensure that any dealings involving agricultural land and mitigation measures in particular, provide for the endurance of the resource for future generations. This is the principle that underpins the application of this Draft Policy Document in ensuring the purposes are achieved while balancing competing land needs.

8. CURRENT FRAMEWORK

8.1 CONSTITUTIONAL FRAMEWORK

The current framework pertaining to the recognition and preservation of agricultural land is determined by the provisions of the Constitution of the Republic of South Africa, 1996 (1996 Constitution), the transitional arrangements relating to the continued existence of state actions undertaken in accordance with the repealed interim Constitution of the Republic of South Africa 200 of 1993, the continued existence of pre-27 April 1994 legislation, the policy and statutory framework, recent court cases, as well as the prevailing administrative framework.

Within the context of the constitutionally defined powers relating to the preservation and protection of agricultural land (including subdivision and changes in land use), the current situation in respect of the roles, powers and functions of the three spheres of government is as follows: The national sphere is responsible for the formulation of framework policies and the enactment and implementation of framework legislation. The provincial sphere is responsible for the formulation of detailed provincial policies (aligned to the national framework policies), the enactment and implementation of detailed and province-specific legislation (aligned to the national framework legislation), as well as the implementation of national framework legislation. The local sphere is responsible for making (and implementing) by-laws relating to agriculture if national or provincial legislation specifically assigns such legislative power to a Municipal Council, and administering national and

provincial agricultural legislation if the administration thereof has been assigned to a municipality. Chapter 3 of the 1996 Constitution provides the framework for co-operative government and intergovernmental relations.

Parliament is empowered to pass legislation, amongst others, with regard to matters within the functional areas listed in Schedule 4 (Part A), which relate to matters in respect of which Parliament and the provincial legislatures have concurrent legislative powers. In this respect, Schedule 4 (Part A) lists, amongst others, the following functional domains which relate to natural resources: agriculture, the environment, regional planning and development, soil conservation, and urban and rural development. The concurrent legislative powers imply that, in respect of Schedule 4, national Parliament is empowered to pass framework legislation, and provincial legislatures are empowered to pass detailed legislation that must be aligned to the framework legislation, and which may contain detailed, as well as province-specific, measures. Within this context, section 146 provides a framework for the management of conflicts between national and provincial legislation. In principle, according to section 146(5), provincial legislation in respect of a Schedule 4 (Part A) functional domain prevails over national legislation, except when the overriding national legislation complies with the requirements as set out in sections 146(2) and (3).³¹ The Provincial Executive Council is responsible for, amongst others, the implementation of national agricultural legislation, as well as of provincial agricultural legislation, and the formulation and implementation of provincial agricultural policies.

The final phase of local government commenced on 5 December 2000 with the establishment of wall-to-wall municipalities. It provided for the establishment of three categories of municipalities:³² Category A: Metropolitan municipalities, Category B: Local municipalities and Category C: District municipalities (the jurisdictional area of which consists of a number of local municipalities). Both the executive and legislative authority of a municipality vests in its Municipal Council.³³ As regards the powers and functions of

³¹ Section 146(2) and (3) of the Constitution provides as follows:

(2) National legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if any of the following conditions is met:

(a) The national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually.

(b) The national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing-

(i) norms and standards;

(ii) frameworks; or

(iii) national policies.

(c) The national legislation is necessary for-

(i) the maintenance of national security;

(ii) the maintenance of economic unity;

(iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;

(iv) the promotion of economic activities across provincial boundaries;

(v) the promotion of equal opportunity or equal access to government services; or

(vi) the protection of the environment.

(3) National legislation prevails over provincial legislation if the national legislation is aimed at preventing unreasonable action by a province that-

(a) is prejudicial to the economic, health or security interests of another province or the country as a whole; or

(b) impedes the implementation of national economic policy.

³² Section 155(1).

³³ Section 151(2).

municipalities, section 156(1) determines that a municipality has the executive authority in respect of, and the right to administer:

- (a) *the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and*
- (b) *any other matter assigned to it by national or provincial legislation.*

In addition, a Municipal Council has legislative powers to make by-laws in respect of the above section 156(1)(a) and (b) matters and to administer same. The powers of municipalities to be involved in matters relating to agriculture can be said to be of an indirect nature. As indicated above, national and provincial legislation may assign to a municipality executive authority and the right to administer any matter except the functional domains listed in Schedule 4 (Part B) and Schedule 5 (Part B).³⁴ In addition, section 156(4) provides that the national government and provincial governments must assign to a municipality (by agreement and subject to any conditions) the administration of a matter relating to a functional domain listed in Schedule 4 (Part A) and Schedule 5 (Part A), which necessarily relates to local government (e.g. in respect of agricultural holdings). This assignment may only be done if the matter concerned would most effectively be administered locally, and if the municipality concerned has the capacity to administer it.

Schedule 6 (Item 2) of the 1996 Constitution provides for the continuation of both old order legislation (i.e. legislation enacted prior to 27 April 1994) and legislation enacted during the validity of the 1993 Constitution.³⁵ The old order legislation does not have a wider application (territorially or otherwise) compared to what it had prior to 27 April 1994, except in those cases where it had been amended post-27 April 1994 to have a wider application. In addition, those authorities who, on the date of commencement of the 1996 Constitution, were responsible for the administration of old order legislation remain responsible for the administration thereof.³⁶ This provides the legal basis for the continued administration of SALA by DAFF. Schedule 6 also provides for the post-4 February 1997 assignment of old order legislation relating to a subject matter (e.g. agriculture) listed in Schedule 4 or 5 in cases where such old order legislation had not been previously (in terms of section 235(8) of the 1993 (interim) Constitution) assigned to the provincial Premiers concerned.

8.2 POLICY FRAMEWORK

A number of national policies and other documents refer to the categorisation of land as agricultural land, the use thereof as well as the change in use thereof. These include:

- (a) White Paper on Agriculture (Department of Agriculture) (1995);
- (b) Agricultural Policy in South Africa – A Policy Document (Ministry of Agriculture and Land Affairs) (1998);
- (c) White Paper on Spatial Planning and Land Use Management (Ministry of Agriculture and Land Affairs) (2001);
- (d) Administration Manual for State Agricultural Land (Department of Agriculture) (2001);
- (e) Land Redistribution for Agricultural Development (LRAD) (Department of Agriculture) (2001);
- (f) Environmental Implementation Plan (Department of Agriculture) (2001);
- (g) Policy on Agriculture in Sustainable Development – A Discussion Document (Department of Agriculture) (2002);

³⁴ Section 156(1)(b).

³⁵ 27 April 1994 to 3 February 1997 (both inclusive).

³⁶ Schedule 6, Item 2(b).

- (h) National Policy on the Preservation of Agricultural Land (Draft for Discussion Purposes) (Department of Agriculture) (2007);
- (i) Policy Principles and Guidelines for Control of Development Affecting Natural Forests (DAFF) 2007;
- (j) The Determination, Protection and Management of High Potential Agricultural Land in South Africa with Special Reference to Gauteng. Chapter 9: Conclusions and Recommendations (2008);
- (k) Renewable Energy Guidelines: Regulations for the Evaluation and Review of Applications Pertaining to Wind Farming on Agricultural Land (DAFF) 2010;
- (l) Regulations for the Evaluation and Review of Applications for Renewable Energy on Agricultural Land (DAFF) 2011;
- (m) Annual Report 2010/2011 (DAFF);
- (n) Natural Resource Management (NRM) Strategy for Agriculture (Annexure C) (DAFF) 2011; and
- (o) Strategic Plan 2011/2012 – 2014/2015 (DAFF).

8.3 REGULATORY FRAMEWORK

A number of Acts deals with subdivisions, changes in land use and agricultural land, resulting in a duplication of legislation and duplication and overlapping of departmental actions, responsibilities and consents. The following (national and provincial) government departments are involved in land use management: national DAFF (and the PDAs); national and provincial departments of environmental affairs; and the national Department of Rural Development and Land Reform (DRDLR). In addition, other departments, such as the Department of Mineral Resources, as well as municipalities are also involved in aspects relating to land use management.

8.3.1 SUBDIVISION OF AGRICULTURAL LAND ACT 70 OF 1970 (SALA)

SALA was enacted as a measure by which the Legislature, in the national interest, seeks to prevent the fragmentation of agricultural land into small uneconomic units, by (a) curtailing the common law right of landowners to subdivide their agricultural property; and (b) imposing the requirement to obtain the written consent of the DAFF Minister prior to any subdivision of agricultural land (which may be refused by the Minister if such subdivision will result in the uneconomic fragmentation of agricultural land). SALA also prohibits, amongst others, the change in land use of agricultural land (from use for agricultural purposes to use for any other purpose) without the prior written recommendation of the DAFF Minister.

DAFF, as well as its provincial counterparts (the PDAs) have an important mandate to prevent the fragmentation of agricultural land. DAFF is responsible for the administration of SALA. It was specifically assigned by the President in terms of section 235(9) of the 1993 Constitution to the national sphere of government by means of Proclamation R102 in GG 15781 of 3 June 1994. In the absence of a delegation, agency agreement, or similar statutory instrument that would empower provincial departments to administer (parts of) SALA, the competent authority is DAFF. SALA was not assigned to any province in accordance with section 235(8) during the existence of the 1993 (interim) Constitution (27 April 1994 to 3 February 1997). Schedule 6 (item 2) of the 1996 Constitution provides for the continuation of both old order legislation (i.e. legislation enacted prior to 27 April 1994) and legislation enacted during the validity of the 1993 (interim) Constitution.³⁷ The old order legislation does not have a wider application (territorially or otherwise) compared to what it

³⁷ 27 April 1994 to 3 February 1997 (both inclusive).

had prior to 27 April 1994, except in those cases where it had been amended post-27 April 1994 to have a wider application. In addition, those authorities who, on the date of commencement of the 1996 Constitution, were responsible for the administration of old order legislation remain responsible for the administration thereof.³⁸ This provides the legal basis for the continued administration of SALA by DAFF. Schedule 6 also provides for the post-4 February 1997 assignment of old order legislation relating to a subject matter (e.g. agriculture) listed in Schedule 4 or 5 in cases where such old order legislation had not been previously (in terms of section 235(8) of the 1993 Constitution) assigned to the provincial Premiers concerned.

Section 1 of SALA defines agricultural land as follows:

“agricultural land” means any land, except –

- (a) *land situated in the area of jurisdiction of a municipal council, city council, town council, village council, village management board, village management council, local board, health board or health committee, and land forming part of, in the province of the Cape of Good Hope, a local area established under section 6(1)(i) of the Divisional Councils Ordinance, 1952 (Ordinance No. 15 of 1952 of that province), and, in the province of Natal, a development area as defined in section 1 of the Development and Services Board Ordinance, 1941 (Ordinance No. 20 of 1941 of the last-mentioned province), and in the province of the Transvaal, an area in respect of which a local area committee has been established under section 21(1) of the Transvaal Board for the Development of Peri-Urban Areas Ordinance, 1943 (Ordinance No. 20 of 1943 of the Transvaal), but excluding any such land declared by the Minister after consultation with the executive committee concerned and by notice in the Gazette to be agricultural land for the purposes of this Act;*
- (b) *land –*
 - (i) *which forms part of any area subdivided in terms of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act No. 22 of 1919); or*
 - (ii) *which is a township as defined in section 102(1) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), but excluding a private township as defined in section 1 of the Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949 of Natal), not situated in an area of jurisdiction or a development area referred to in paragraph (a);*
- (c) *land of which the State is the owner or which is held in trust by the State or a Minister for any person;*
- (d) *.....*
- (e) *.....*
- (f) *land which the Minister after consultation with the executive committee concerned and by notice in the Gazette excludes from the provisions of this Act;*

*Provided that land situated in the area of jurisdiction of a transitional council as defined in section 1 of the Local Government Transition Act, 1993 (Act No. 209 of 1993), which immediately prior to the first election of the members of such transitional council was classified as agricultural land, shall remain classified as such.*³⁹

³⁸ Schedule 6, Item 2(b).

³⁹ This proviso was added by means of Proclamation R100 in GG 16785 of 31 October 1995 by the President in terms of section 235(9) of the 1993 Constitution. The purpose of the proviso was to ensure that land categorised as agricultural land prior to the implementation of the interim phase of local government (i.e. the establishment of transitional councils in terms of the Local Government Transition Act 209 of 1993) would retain its status for purposes of the application of SALA.

Section 2 of SALA lists a number of actions which are excluded from its application. In addition to excluding certain activities that have taken place prior to the commencement of SALA, the Act is not applicable to the subdivision of land, the transfer of an undivided share in land, or the sale or grant of any right to any portion of agricultural land in order to transfer such portion, undivided share or right to the State or a statutory body. Section 2 is also regarded as one of the loopholes of the Act, as it allows a municipality to subdivide agricultural land purchased by it – in such a case, no input or consent under SALA is required. The same applies to organs of state (e.g. Eskom and Transnet) which have purchased agricultural land and then change the use thereof – no input or consent under SALA is required. SALA has, since its commencement, never applied to land in the former homelands (the so-called TBVC countries (Transkei, Bophuthatswana, Venda and Ciskei) and the self-governing territories)), the former South African Development Trust areas, state land and municipal land which formed part of the jurisdictional areas of all pre-5 December 2000 municipalities.

As regards land use and changes in land use, section 3 of SALA prohibits certain actions regarding agricultural land without the prior written consent of the DAFF Minister. Section 4 prescribes the format of any section 3 application, and empowers the DAFF Minister to (a) refuse an application; (b) impose conditions when granting the application; and (c) if satisfied that the land is not to be used for agricultural purposes, and after consultation with the MEC concerned (on conditions determined by the MEC regarding the purpose for or manner in which such land may be used) grant any such application. In cases where conditions are imposed by the Minister [(b) above], the provincial government concerned may enforce any such conditions. The Minister is empowered to vary or cancel any condition imposed by him or her. In cases where the MEC has determined the conditions [(c) above], the conditions may be varied or cancelled by him or her. Section 6 makes it clear that the written authorisation of the Minister is required in respect of any subsequent surveying and/or registration of deeds, and that all conditions imposed by the Minister must be endorsed on the title deed of the land concerned.

Section 3 of SALA requires the Minister's written consent before:

- (a) Any lease agreement of 10 years or longer is entered into in respect of a portion of agricultural land. In addition, such written consent is also required if the lease agreement is for the natural life of the lessee or any other person mentioned in the lease, or if the agreement is renewable from time to time at the will of the lessee [either by the continuation of the original lease (extension) or by entering into a new lease], indefinitely or for periods totalling not less than 10 years;
- (b) Any portion of agricultural land, whether surveyed or not, is sold or advertised for sale (except for the purposes of a mine as defined in section 1 of the Mines and Works Act 27 of 1956);
- (c) A right to a portion of agricultural land is sold or granted for a period exceeding 10 years or for the natural life of any person or to the same person for periods totalling more than 10 years (or advertised for sale or with a view to any such granting) (except for the purposes of a mine as defined in section 1 of the Mines and Works Act 27 of 1956); and/or
- (d) Any area of jurisdiction, local area, development area, peri-urban area or any other area referred to in paragraph (a) or (b) of the definition of "agricultural land" in section 1 of SALA, is established on, or enlarged to include, agricultural land.

As regards the administration of SALA, the different SALA processes are linked to the various types of applications: subdivision; division of undivided share; long-term lease;

registration of servitude; registration of usufruct; sectional title, share block or timeshare schemes; right of *habitatio*; township establishment or enlargement of area of jurisdiction of local authority; and change in land use.

SALA has, in the past, erroneously been identified as an obstacle to land reform. However, neither SALA nor any legislation relating to township establishment has post-1994 had (or should have had) an impact on the implementation of policy and/or operational decisions relating to subdivision, rezoning and township establishment in respect of land acquired by land reform beneficiaries and/or the state for land reform purposes. The Provision of Land and Assistance Act 126 of 1993, the Restitution of Land Rights Act 22 of 1994, the Communal Property Associations Act 28 of 1996, and the Rural Areas Act (House of Representatives) 9 of 1987⁴⁰ were all promulgated after the enactment of SALA in 1970.

The **Subdivision of Agricultural Land Act Repeal Act 64 of 1998** was assented to on 16 September 1998 to repeal SALA *in toto*, but its date of commencement has, however, not been proclaimed. It is alleged that the reason for the Repeal Act was the view that SALA did not achieve its objectives relating to the conservation of agricultural land and ensuring maximum productivity. Large portions of land were still underutilised, and unsuitable agricultural practices continued. In addition, the view was expressed that the protection of environmentally sensitive areas (e.g. wetlands) and the conservation of land were more important than protecting prime agricultural land for farming activities only. Linked to this was the view that eco-tourism would result in better resource management and increased contribution to sustained biodiversity than agricultural use, creating more jobs.

The following summary is indicative of the current legal position and possible future scenarios relating to SALA:

- (a) SALA remains valid and enforceable.
- (b) SALA continues to be administered by the national DAFF (in accordance with Proclamation R102 of 3 June 1994).⁴¹
- (c) The proviso relating to the definition of agricultural land (as inserted by Proclamation R100 of 31 October 1995⁴²) remains valid.
- (d) DAFF has not assigned or delegated SALA (or parts thereof) to any of the provinces.
- (e) Any SALA-based activities undertaken by PDAs do not have any binding legal effect, and should be deemed to be only advisory in nature.
- (f) There is a need to review the provisions of SALA in order to ensure that the national DAFF Minister has the final decision as regards subdivision and possible changes in the use of agricultural land, at least as far as land capability classes I, II and III, irrigated and unique agricultural land are concerned. Proposed national legislation must, amongst others:
 - Determine norms and standards;
 - Specifically (and explicitly) require the issuing of rezoning and/or subdivision authorisations (in the case of agricultural land) by the DAFF Minister in all cases of subdivisions and land use changes of agricultural land (including instances where an organ of state acquires agricultural land, as well as state agricultural land);

⁴⁰ Not yet repealed, thus still valid and used in accordance with section 10(2)(a) of the Transformation of Certain Rural Areas Act 94 of 1998.

⁴¹ GG 15781 of 1994-06-03.

⁴² GG 16785 of 1995-10-31.

- In terms of such national legislation, provide for an appropriately delegated (or assigned) power to the provincial MECs concerned to issue such authorisations in respect of land capability classes (the delegation of class IV to provinces will be considered after a period of 5 years from the time of promulgation), V, VI, VII and VIII to the extent that the specific agricultural land parcel is not classified as high value agricultural land (in compliance with the procedure as set out in this Draft Policy Document, including, amongst others, a positive recommendation by the municipality concerned (with a right to submit an application for review to the DAFF Minister – against whose decision no further review will be available, with, in appropriate cases, an application to a competent court being the only potential remedy)); and/or,
- Provide for a supervisory, monitoring and evaluation role for the DAFF Minister in respect of provincial compliance with the national framework as contained in the envisaged national legislation.

8.3.2 OTHER LEGISLATION

A number of national statutes deal with land use in general. The aim of the **Removal of Restrictions Act 84 of 1967** is, amongst others, to empower the relevant Premier of a province to alter, suspend, or remove certain restrictions and obligations in respect of land in the province. The aim of the **Physical Planning Act 88 of 1967** is to promote coordinated environment planning and the utilisation of the Republic's resources, and for those purposes to provide, amongst others, for the control of the zoning and subdivision of land for industrial purposes, the reservation of land for use for specific purposes, the establishment of controlled areas, restrictions upon the subdivision and use of land in controlled areas, and restrictions upon the use of land for certain purposes unless reserved for use for such purposes. The Act has been repealed by the Physical Planning Act 125 of 1991, except for the sections mentioned in Schedules 1 to 4 thereof. An analysis of section 36 of the Physical Planning Act 125 of 1991 would seem to indicate that certain sections of the 1967 Act have not yet been repealed. The aim of **Development Facilitation Act 67 of 1995** is, amongst others, to introduce extraordinary measures to facilitate and expedite the implementation of the Reconstruction and Development Programmes and projects in relation to land and to lay down general principles governing land development. The Act also aims to facilitate the formulation and implementation of land development objectives (relating specifically to local government bodies), and provides for nationally uniform procedures for the subdivision and development of land in urban and rural areas "*so as to promote the speedy provision and development of land for residential, small-scale farming or other needs and uses*". The **Conservation of Agricultural Resources Act 43 of 1983** aims at controlling the utilisation of natural agricultural resources in order to ensure that soil, water sources and vegetation are conserved, and that alien and invasive plants are combatted. The Act aims to prevent agricultural practices that contribute to the degradation of the environment.

The **National Environmental Act 107 of 1998** (NEMA) establishes, amongst others, principles for decision-making on matters affecting the environment. NEMA does not adequately ensure the protection of high value agricultural land as its focus is on biodiversity and environmental conservation rather than on agriculture. The instruments and assessments required in terms of NEMA do not include the submission of detailed agricultural land and agricultural potential information (Agricultural Impact Assessments) by applicants applying for a change in use of agricultural land. The aim of the **Abolition of Certain Title Conditions Act 43 of 1999** is to provide for the abolition of certain conditions

in terms of which the consent or permission of the holder of a certain office is required for the alienation or transfer of immovable property from one person to another. DRDLR is responsible for the administration of the Act. The Act does not contain any specific information with regard to agricultural land and change in land use, but provides a framework for the cancellation of various categories of title conditions. The **Sustainable Utilization and Protection of Agricultural Resources Bill, 2006** was drafted in an attempt to consolidate SALA and the Conservation of Agricultural Resources Act 43 of 1983. As far as can be ascertained, since 2006, no further work has been done in respect of this Bill. The **Intergovernmental Relations Framework Act 13 of 2005** provides for a framework for national, provincial and local governments to promote and facilitate intergovernmental relations; as well as for mechanisms and procedures to facilitate the settlement of intergovernmental disputes. Through the principle of cooperative government, the Act provides a framework to facilitate coordination in the implementation of policy and legislation, including coherent government, effective provision of services, monitoring implementation of policy and legislation, and the realisation of national priorities. Taking into account that agriculture is a concurrent functional domain the Act has relevance for the development of a policy relating to agricultural land.

The February 2012 version of the **Spatial Planning and Land Use Management Bill, 2012** (SPLUMB) aims at providing the framework for spatial planning and land use in the Republic; specifying the relationship between the spatial planning and the land use management system, as well as other kinds of planning; providing a framework for intergovernmental relations, monitoring, co-ordination and review; authorising policies, principles, norms and standards for spatial development planning and land use management; and promoting greater consistency and uniformity in the application procedures and decision making by authorities responsible for land use decisions and development applications. In a presentation to the DBSA-SIMS Working Group, DRDLR identified a number of issues relating to the Draft Spatial Planning and Land Use Management Bill,⁴³ including municipalities taking on new responsibilities; planning on communal land; Land Use Schemes over agricultural land; the alignment of other legislation, multiple jurisdiction over spatial planning and/or land use management; and parallel processes and the regulation of agricultural land (with specific reference to functional competence, jurisdictional overlap and municipal powers and functions). The Bill, once enacted, will, in its current form, vest a strong override in the Minister of Rural Development and Land Reform. It is suggested that both the final version of this proposed planning legislation and the to be drafted DAFF Bill (*Preservation and Sustainable Utilisation of Agricultural Land Framework Bill*) should contain explicit provisions on how matters relating to the subdivision and change in land use of agricultural land should be dealt with within the Chapter 3 (1996 Constitution) framework for cooperative government, and the Schedule 1 Part A (1996 Constitution) inclusion of agriculture as a functional area of concurrent national and provincial legislative competence. Within this context, in order to prevent legal and administrative uncertainties, it may be advisable for the two Departments to determine a common approach as to how matters relating to the subdivision and change in land use of agricultural land will be dealt with in future. Taking into account the draft Spatial Planning and Land Use Management Bill (SPLUMB) (which was referred by the NCOP for further consultation and appropriate amendments), the South African government is of the opinion that agricultural matters relating to the use of agricultural land for agricultural purposes and possible rezoning or subdivision, is a matter that vests in the national sphere of government.

⁴³ 30 November 2011.

Another **38 national Acts** deal with, and/or impact on, various aspects of agriculture and/or agricultural land. No **provincial legislation** dealing specifically with agricultural land, its use, zoning, rezoning and subdivision has been enacted since 1994. It is, however, worth mentioning that the Western Cape Land Use Planning Ordinance 15 of 1985 (LUPO) was amended to include consent use for renewable energy projects on agricultural land. The zoning of the land remains “agricultural”, but consent is given for a particular land use. The Ordinance is managed by the Provincial Department responsible for Planning.

9. COMPARATIVE OVERVIEW

9.1 LESSONS LEARNED FROM VARIOUS JURISDICTIONS

9.1.1 BOTSWANA

The existing Botswana framework provides for the (a) identification of all fertile arable land to protect it from indiscriminate encroachment by settlements, livestock, wildlife, industry, forestry and the extraction of construction materials, and (b) subsequent management and appropriate zoning of land for optimal and sustainable use. A variety of (often overlapping) national, sub-national and local land use plans facilitate and regulate development. One district could be covered by up to three land use plans simultaneously, leading to the possibility that proposals for developing specific pieces of land may be contradictory or inconsistent. Higher level institutions often exercise undue control and power on lower level agencies, and sub-national agencies report to different ministries resulting in poor co-ordination and undue delays in planning. The land use planning process is not streamlined, and is characterised by a lack of proper coordination and overlaps between national and sub-national institutions. According to a report prepared for the Department of Lands, land use plans should be prepared for all land in Botswana, all change in use should require planning permission, and planning regions should be declared for all critical areas. National and regional plans should be prepared before district and village plans. Future zoning regulations should be based on national norms, which should be monitored and enforced at national and district level by the appropriate government structures (depending on their scale).⁴⁴

9.1.2 NAMIBIA

The national Ministry of Lands and Resettlement (MLR) is responsible for land use planning, as stated in its 2006-2010 strategic plan, namely: “As custodian of the national land policy, MLR should primarily facilitate the effective allocation of land and create conditions, through dialogue, policies and legislation, for optimal land use in agriculture, shelter, conservancies, reserves and for the creation of strategic linkages and infrastructures that will enhance Namibia’s industrial, commercial, and tourism potential and add meaningful options for the social and economic advancement and livelihood of Namibian citizens”. It would seem as if Namibia’s policy framework with regard to agricultural land is mostly focused on land reform, increased productivity and sustainability, the acquisition of additional agricultural land, and the protection of soil and the environment. Agricultural land is protected by the (South African) SALA.

The absence of a structured planning system for the country, together with conflicting and unclear policies, regulations and responsibilities, results in existing plans not being integrated

⁴⁴ Natural Resource Services. 2002. Botswana National Land Policy: Issues Report. Ministry of Lands, Housing and Environment: Department of Lands. Pg. 35.

(and in certain cases even conflicting with each other). This has had the effect of leaving the development of the country to sector-related land use decisions and concepts. The integration of all relevant plans, the establishment of structures to implement and monitor land use plans, and binding commitments from the responsible stakeholders are lacking. There is a need to establish effective institutional linkages between planning on the one hand, and implementation and enforcement on the other.

9.1.3 KENYA

In Kenya, legislation and institutions are sectoral and neither functionally integrated nor administratively coordinated. Land and, therefore, land use have different meanings to different sectors. Kenya's Environmental Management and Coordination Act (EMCA) of 1999, for example, envisaged an institutional framework but the Act was passed without instituting such a framework. As a result, coordinated environmental management therefore remains only a vision. Kenya's Agriculture Act of 1999 (CAP 318) is one of the most authoritative legislative instruments on land use, and makes provision for regulating the planting of cash crops such as tea and coffee. However, these crops can neither be planted nor exported without a permit. The framework of the Act is built around commands and controls which, in turn, is a major disincentive for agricultural production and efficient land use.

9.1.4 UNITED STATES OF AMERICA

The American Planning Association (APA) published a number of key points in 1999 as part of the Policy Guide on Agricultural Land Preservation. Even though more US agricultural land is available than necessary to meet market demands, there is a need to protect the remaining finite amount of good agricultural land from, amongst others, the effects of population growth. In the USA, as in many other countries, agricultural land is steadily being lost through both non-farm development and land degradation (such as soil erosion). Recent land use trends have shown an increase in land development, resulting in sprawling residential, commercial and industrial development, mostly on agricultural land. In addition, farm laws, purchase and transfer of development rights, urban growth boundaries and urban service areas are conflicting and controversial and not conducive to the preservation of agricultural land. Urban development on "good/important agricultural land" as defined in the Farmland Preservation Policy Act of 1981 (i.e. prime, unique, or other agricultural land that is of state-wide or local importance or wetlands) is an on-going problem. The aim of the Farmland Preservation Act is to prevent the construction of infrastructure and urban development that would lead to irreversible conversion of "Important Agricultural Land" to non-farm uses. Non-farm uses could be accommodated on land of significantly lower agricultural productivity.

There are about 97 million hectares of prime agricultural land in the US and roughly one-quarter of this land is located within metropolitan areas. Scattered development in the vicinity of metropolitan areas is often on "Important Agricultural Land" (with its physical characteristics generally being excellent for building/construction). Scattered development in farming areas removes agricultural land from production and causes a general rise in land values and therefore higher property taxes. On a more positive note, all states have recognised the need to preserve good agricultural land and have provided tax and other incentives for farmers to continue farming. However, only a few states, for example Wisconsin, have linked the incentives to controls preventing development. The federal government and most states (Oregon is the exception) have inconsistent land use and infrastructure policies generating development pressures on good agricultural land and in farming areas.

Certain aspects of the US Policy Guide on Agricultural Land Preservation⁴⁵ could be considered for the South African policy to preserve agricultural land for agricultural production. It is important that agricultural land be protected in large and contiguous blocks in order to maintain a 'critical mass' of farms and agricultural land – such critical mass will enable farm support businesses to remain profitable and sustain local and regional agricultural economies. Agricultural land preservation must be distinguished from open space reservation and must be viewed as protecting commercially viable farms and productive agricultural land which *incidentally* provides open space amenities. Environmental stewardship must be an integral part of effective agricultural land preservation programmes, plans and policies (i.e. erosion management, ground water protection, buffering etc.). Taxation strategies should be developed to discourage the conversion of agricultural land to other uses. This was partially achieved in 2006 by Section 1206 of the Pension Protection Act in California, creating a new tax provision which caps farmers and ranchers at 100% of donor income compared to 50% of donor income by other individuals who donate their property for conservation purposes. These land donations, called conservation easements, allow farmers and ranchers to continue using the land, while protecting the land from future development and preventing urban development from destroying farmlands and harming the environment.

9.1.5 TURKEY

The lessons learned from Turkey make it clear that subsidies are not effective policy instruments to support sustainable agriculture and are not conducive to farmland conservation. Turkey uses an annual direct support payment to cushion the losses associated with the removal of administered prices and input subsidies on a per hectare basis to all farmers registered with the national Farmer Registration System at a flat rate, but the Turkish Agriculture Act does not promote sustainable land use practices or the preservation of farmland. The lack of coordinated action by government agencies makes legislation difficult, if not impossible, to enforce.

The land use approach underpins the fragmentation and policy-mix problem experienced as land uses are matched through a multiple goal analysis and assessment of the intrinsic value of various environmental and natural resources of a land unit. Legal and institutional regulations and monitoring systems are the appropriate tools to prevent land use change. Legal and policy regulations, as well as agri-environmental policies are required for the appropriate and sustainable use of agricultural and rural land. These should be incorporated into one national, holistic and overriding legislative procedure and policy, adhered to and enforced by all land use planning institutions and agencies.

9.1.6 CZECH REPUBLIC

Lessons learned from the Czech Republic include the fact that alternative land use systems should be facilitated by government, taking into account ecological potential and socio-economic considerations when small land lots, often as the result of land restitution, are not economically viable for crop production. This should prevent the degradation and/or abandonment of agricultural land where land is not consolidated. Land consolidation should be considered to ensure contiguous agricultural land areas. In this regard, the principles of

⁴⁵ American Planning Association (APA). 1999. Federal Policy Guide on Agricultural Land Preservation. Internet: www.planning.org/policy/guides/adopted/agricultural.htm. Accessed: 1 March 2012.

the EU Land Administration Framework are exemplary. In addition, detailed regulations accompanying a policy to retain agricultural land for agricultural production are essential.

9.1.7 AUSTRALIA: TASMANIA AND QUEENSLAND

It is clear from the *status quo* in Tasmania that a balance should be maintained between (a) biodiversity conservation objectives aimed at returning land to a state of wilderness by retiring agricultural land, and (b) sustainable agricultural production which strongly complements ecological and biodiversity conservation. Biodiversity conservation objectives were influenced and inspired by, amongst others, the UN Convention on Biological Diversity⁴⁶ and the World Conservation Union⁴⁷ which suggested that 10% of the land in each bioregion be set aside as conservation reserves. The 1995 Cities for the 21st Century in Australia, for example, recognised the importance of prime agricultural land, but strategically integrated agricultural resources into environmental planning. However, it hardly recognised modern intensive agriculture, agricultural characteristics requiring special consideration and potential separation from natural environments.

The Commonwealth's involvement in land management issues has increasingly been in response to broad-scale political and community concern and direct representation by States. Commonwealth financial packages are aimed at major overriding environmental issues, largely ignoring the importance of food security and the preservation of agricultural land. In 2003, only 3% of the Australian workforce was employed in agriculture and income from agricultural products export declined by 15% over 15 years. It should be noted that Australia is currently experiencing limited population pressure and there is a relatively low domestic demand for food and fibre. However, it is unlikely that the country will continue to enjoy this luxury in view of unavoidable population growth. Governance of land, and therefore of the objective of the conservation and the preservation of agricultural land, is disjointed as it is governed state-wide by the Commonwealth, while farmland and metropolitan growth management policies are delegated to each of the six Australian States (and largely delegated for administration and implementation to a myriad of local government authorities). The Commonwealth's legislative framework (the Soil and Land Conservation Act, 1995) is directed towards controlling soil and land degradation and not towards the protection of agricultural land for agricultural purposes, i.e. land use change to non-agricultural enterprises. As a result, Australian States compiled state-specific policies, principles and agricultural land use frameworks to protect both prime and non-prime agricultural land, to limit land use changes and to minimise the amount of agricultural land alienated.

The retention of productive agricultural land on metropolitan fringes fulfils a number of essential lifestyle support and aesthetic roles such as green wedges, rather than protecting farmland. Brisbane and the Gold Coast (Queensland State), accounting for 14% of the State's farm production and the hub of Queensland's agricultural processing industry, is the exception to the rule by directing metropolitan growth away from productive agricultural land. The South East Queensland Plan⁴⁸ states that without strong State government intervention the likely result of continuing consumer preferences and market forces would see urban development consume most of the undeveloped coastal and landscape areas now supporting agricultural production.

⁴⁶ 1993.

⁴⁷ 1996.

⁴⁸ 2004.

9.1.8 CANADA: HURON COUNTY, ONTARIO

In Canada, specifically at county-level, the cumulative effect of many small, scattered, rural residential lots is a threat to agricultural land. Tax incentives to retain agricultural land as zoned, but without enforcing the use of agricultural land for active agricultural food and fibre production, could result in hobby farms. This is referred to as rurbanisation (urban development in rural areas under the pretence of farming and exotic animal farming (e.g. with horses and lamas)), as experienced in British Columbia. Most hobby farmers simply want a rural lifestyle benefiting from low tax rates and with no intention to farm. Tax incentives for farming, notably when zoning is the instrument to protect agricultural land, also created the incentive for landowners in British Columbia to lobby for variances enabling land transfer from lower-valued agricultural uses to more valuable ones, notably on the urban fringe.

Agricultural Land Policies should be detailed and clear in not permitting non-agriculture uses in prime agricultural land areas.

9.2 RECOMMENDATIONS DERIVED FROM THE COMPARATIVE OVERVIEW

Based on the comparative overview, a distinction is to be made between general recommendations and specific recommendations (related to (a) land use planning, (b) integrated and coordinated plans, policies, legislation and best practice guidelines, (c) incentives and taxation, and (d) the strengthening of the agricultural economy):

9.2.1 GENERAL RECOMMENDATIONS

The following general recommendations are made:

- (a) The preservation and protection of agricultural land must not be politicised.
- (b) There must be a clear focus on public participation by local communities in order to ensure local commitment to the preservation of agricultural land.
- (c) All high value agricultural land must be identified and ring-fenced in order to protect it from the indiscriminate encroachment by settlements, industries, etc.
- (d) It is important that a balance be maintained between biodiversity conservation objectives aimed at returning land to a state of wilderness by retiring agricultural land, and sustainable agricultural production which strongly complements ecological and biodiversity conservation.

9.2.2 SPECIFIC RECOMMENDATIONS

9.2.2.1 LAND USE PLANS

In respect of land use plans, the following recommendations are made:

- (a) Land use planning must be a systematic and interactive procedure carried out in order to create an enabling environment for the sustainable development of land resources which meets peoples' needs and demands. It must assess the physical, socio-economic, institutional and legal potentials and constraints with respect to the optimal and sustainable use of (agricultural) land resources. To start with, land uses should be defined accurately.
- (b) Agriculture includes support infrastructure, service centres and rural communities. These have to be considered in agriculture-related land use planning.
- (c) The land use planning process must be structured and streamlined, and in this regard, coordination between different role players must be improved. Overlaps

- between the responsibilities and activities of national, provincial and local institutions as well as at intergovernmental level must be minimised.
- (d) Effective institutional linkages must be established between planning on the one hand, and implementation and enforcement on the other. Structures must be established to implement and monitor land use plans.
 - (e) The preparation of national plans must precede provincial and local plans. All relevant plans must be integrated.
 - (f) Land use plans must be implemented for all land in the country, and planning regions must be declared for all critical areas.
 - (g) All changes in land use must require planning permission, and an independent tribunal is recommended for land use disputes.
 - (h) It is recommended that land use planning and related activities be decentralised (within a coherent national and provincial framework) in order to foster efficiency, transparency and accountability.
 - (i) There must be binding commitments from the responsible stakeholders, especially in the public sector, to implement land use plans.
 - (j) It is suggested that right-to-farm provisions or protections must be included in agricultural land preservation programmes, plans and policies.
 - (k) Agricultural land must be protected in large and contiguous blocks in order to maintain a 'critical mass' of agricultural land. The critical mass will enable agricultural support businesses to remain profitable and sustain agricultural economies. Land consolidation should be considered as a possible option to ensure contiguous agricultural land areas.
 - (l) Alternative agricultural land use systems must be facilitated by government in instances where small land lots are not economically viable for crop production. These systems must take the land's ecological potential into account, as well as socio-economic considerations, and will prevent the degradation and/or abandonment of agricultural land where land is not consolidated.

9.2.2.2 INTEGRATED AND COORDINATED PLANS, POLICIES, LEGISLATION, AND BEST PRACTICE GUIDELINES

In respect of integrated and coordinated plans, policies, legislation and best practice guidelines, the following recommendations are made:

- (a) It is important to ensure that land legislation is not multiplied and policies disjointed. Policies, legislation, regulations and responsibilities must be streamlined, clear, consistent, and not contradictory and in conflict with each other. In addition, best practice guidelines should be drafted.
- (b) The policy framework must enable holistic and integrated strategies and actions.
- (c) The legislative framework requires an institutional framework to facilitate implementation. Although legislation must be comprehensive and regulated, it should also be realistic and applicable in practice.
- (d) Legal and political regulations, as well as agri-environmental policies should be encompassed in one national, holistic and overriding legislative measure and policy adhered to and enforced by all land use planning institutions and agencies.
- (e) Land use policy and infrastructure location must be consistent with each other.
- (f) The governance of land, and therefore of the objective of the conservation and the preservation of agricultural land, must not be disjointed between the different spheres of government. Government and other institutions have to be functionally integrated and administratively coordinated.

- (g) Future zoning regulations should be based on national norms, which are monitored and enforced at all levels of government by the appropriate government structures.
- (h) Environmental stewardship must be an integral part of effective agricultural land preservation programmes, plans and policies (i.e. erosion management, ground water protection, buffering etc.). The protection of existing agricultural land for agricultural use and water allocations for purposes of irrigation must also be addressed.
- (i) It is recommended that agricultural land preservation programmes, projects and policies be implemented at local (project) level, with technical and financial support from provincial and national sources. However, this must be subject to full compliance with national norms and standards as set out by national and provincial government. Reporting must be done by municipalities, and national and provincial government must play a supervisory role, ensure compliance with the above-mentioned national and provincial norms and standards, and implement an appropriate Monitoring and Evaluation (M&E) system, as well as, if necessary, implement interventions and remedial steps. In addition, as regards high value agricultural land, national government should have the final say in consultation with provincial government. A legal and jurisdictional framework between municipalities and provinces should form the basis of municipal planning, with the provincial legislation overriding.

9.2.2.3 INCENTIVES AND TAXATION

In respect of incentives and taxation, the following recommendations are made:

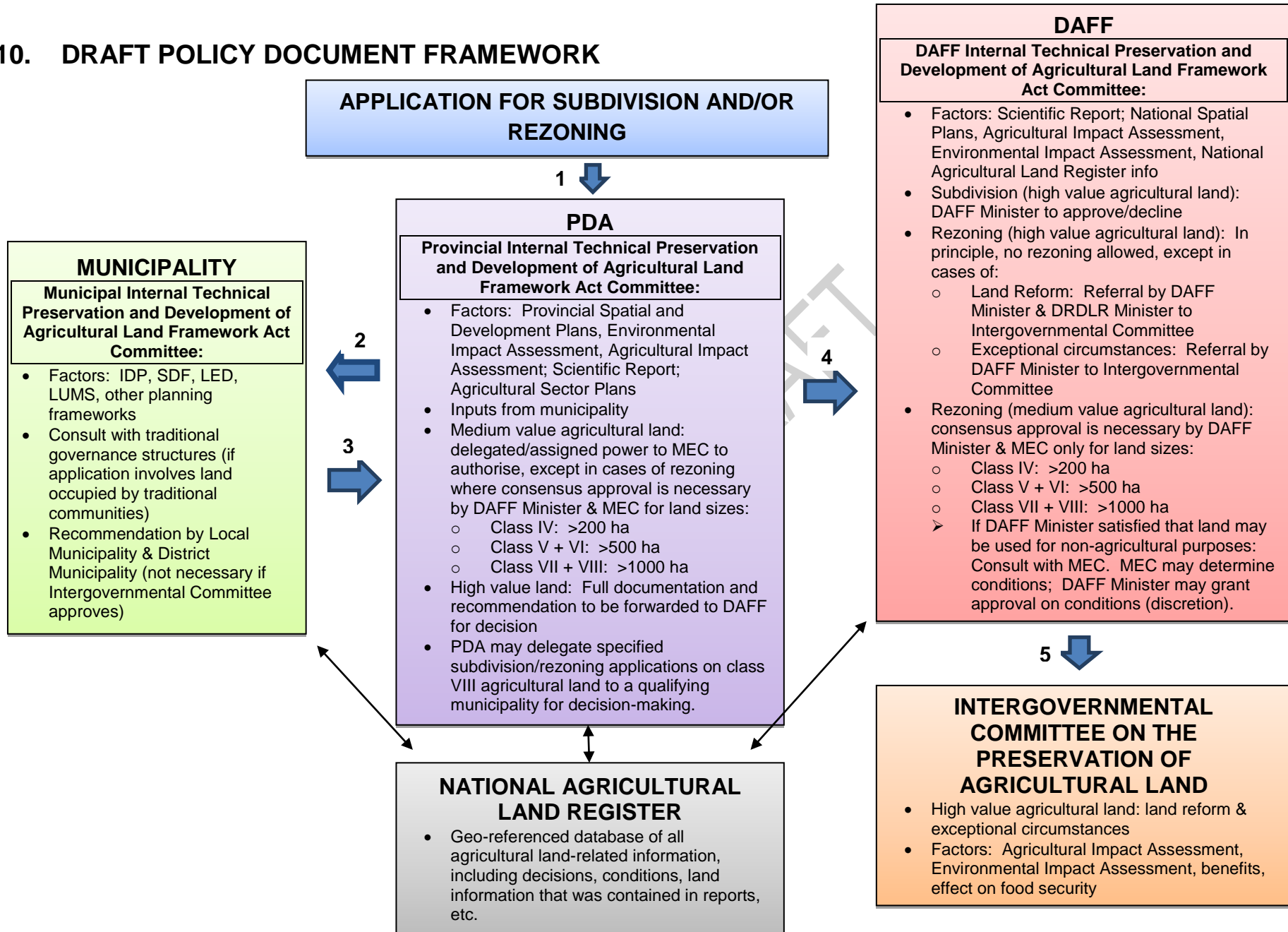
- (a) Incentives must be linked to controls preventing development. Tax incentives to retain agricultural land as zoned, must go hand in hand with enforcing the use of agricultural land for active agricultural production.
- (b) Taxation strategies must be developed to discourage the conversion of agricultural land to other uses.

9.2.2.4 STRENGTHENING OF AGRICULTURAL ECONOMY

In respect of the strengthening of the agricultural economy, the following recommendations are made:

- (a) The viability of the local economy, especially a strong commercial 'core' is essential to the long-term preservation of agricultural lands. The agricultural economy has to be strengthened, as the preservation of agricultural land and farming is dependent thereon.
- (b) Government must ensure that agricultural production is a viable economic activity.

10. DRAFT POLICY DOCUMENT FRAMEWORK



10.1 POLICY OPTIONS CONSIDERED

There are two broad approaches relating to the policy options available to DAFF and the provinces:

A. Policy options relating to subdivision

The following five policy options are available to DAFF and the provinces:

1. Maintaining the *status quo*. This will, however, result in the continued deterioration of agricultural land (i.e. its fragmentation, changes in its use and degradation) and consequently lead to a (further) loss of agricultural land and a decrease in agricultural production and therefore in long-term food, feed, fibre, fodder and timber security.
2. Amending SALA to align it with the constitutional provisions relating to the three spheres of government. The geographical areas that are currently excluded from SALA will remain excluded (e.g. State land). This approach does not take into account the role of legislation administered by other departments and envisaged legislation, such as the Spatial Planning and Land Use Management Bill. In addition, the role of district and local municipalities is not factored in.
3. Amending SALA to apply to all land in South Africa. However, there are currently no structures in place to administer the amended SALA on a country-wide basis. This option will not address current legislative and implementation issues, including the fact that other current SALA exclusions will not be addressed (e.g. state land and private land acquired by organs of state).
4. Amending SALA to address (2) and (3) above. This will result in a continued lack of certainty in relation to other land-based legislation administered by government departments (e.g. Department of Mineral Resources, DRDLR, Department of Water Affairs, and Department of Environmental Affairs). There will also be a lack of synchronisation, alignment and cooperative government.
5. Developing a new policy, legislative and implementation framework as well as regulations for the subdivision, change in land use, and protection of agricultural land in South Africa.

B. Policy options relating to zoning

As regards zoning, there are various approaches that may be considered for implementation. These approaches, which are not mutually exclusive, include, amongst others, the following:

- (a) Zoning based on land capability;
- (b) Zoning based on land suitability;
- (c) Zoning based on agricultural areas;
- (d) Zoning based on farming systems; and
- (e) Zoning protecting the right to farm.

In light of the above, it is clear that a new policy, legislative and implementation framework for the subdivision, change in land use, and protection and preservation of agricultural land must be developed, in order to, amongst others:

- (a) Address the issues referred to above;
- (b) Determine the role of the State, the private sector and individual owners, occupiers and users in respect of agricultural land;
- (c) Allocate certain powers, functions and duties to the DAFF Minister;
- (d) Allocate certain powers, functions and duties to the provincial MECs;
- (e) Allocate certain powers, functions and duties to the municipalities;
- (f) Provide for an intergovernmental relations (IGR) framework; and

- (g) Provide for minimum norms and standards at national level, which should be particularised at provincial level.

The proposed national legislation [an Act (the Preservation and Development of Agricultural Land Framework Act (PDALFA)) and Regulations] will be in the form of national framework legislation. Zoning will be considered, and in appropriate cases, regulated on the grounds of capability, scale and intensity of use. Norms and standards for zoning also need to be developed, as well as a geo-referenced data management system.

Zoning and rezoning (i.e. changes in land use) of agricultural land may only be approved for scheduled land uses.

The following incentives will be incorporated into the new framework:

- (a) Property tax reductions;
- (b) The provision of financial support (especially with regard to the retention of skills); and
- (c) The provision of support during and subsequent to droughts and other natural disasters, as well in view of the effects of climate change on agricultural land and water and on food security.

The new framework will also spell out the responsibilities of owners, occupiers and users of agricultural land, such as compulsory participation in existing and future programmes, which will include the Agricultural Production Stewardship programme.

The new framework will apply to all agricultural land and farming systems, including commercial, smallholder and subsistence farmers.

It is realised that, in addition to minimum transversal norms and standards that are applicable in equal measure to commercial, smallholder and subsistence farmers, specific norms and standards applicable to each of these three forms of farming need to apply. These category-specific norms and standards will also relate to matters such as targets, geographical areas where the agricultural land concerned is situated, agro-ecosystems, minimum productive use size and other related matters.

The proposed framework Act, the Preservation and Development of Agricultural Land Framework Act (PDALFA), will ensure that the optimal levels of efficiency and effectiveness are incorporated in the new statutory framework, which will also, in a coherent way, mainstream key drivers such as well-functioning intergovernmental relations, social effects, impact on the agricultural environment, as well as technical feasibility. Within this context, the appropriate institutional mechanisms for implementation, supervision and monitoring and evaluation (M&E) will be provided for by means of legislation.

10.2 NATIONAL AGRICULTURAL LAND REGISTER

An electronic-based geo-referenced register of all agricultural land (both public and private, as well as in the former homelands), the National Agricultural Land Register (NALR), will be established. The NALR will be established by DAFF in consultation with the PDAs and updated on a continuous basis. It will serve as an important audit tool to track the protection, depletion and use of agricultural land in South Africa.

The NALR will contain information on all agricultural land, indicate ownership, categories of agricultural land (including also, amongst others, land cover, land capability and land suitability classes), as well as current agricultural and other land uses (e.g. mining), environmental encumbrances, water licenses and other natural resource-related information. It will also incorporate relevant information such as key production and socio-economic information. Spatial data will form the backbone of the NALR, and the final refined Land Capability Spatial Layer will be included as well as all the derived agricultural land use zones.

DAFF will be the custodian of the NALR. Until the establishment of the NALR (which will be fully operational on 1 January 2014), all datasets and other information relating to agricultural land potential in the former homelands (which is currently held by, amongst others, DBSA) should be made accessible to DAFF to be incorporated in the new Register. In addition to the National Agricultural Land Register, methods of assessing and evaluating ecosystem services, including land and water audits, will be developed to provide the tools that are needed to consider development options and assist in making informed decisions. A comprehensive online application, tracking and reporting system will be established, and this will be linked to the National Agricultural Land Register. The system will provide for the following categories of integrated and geo-referenced information:

- (a) Ownership & tenure data
- (b) Cadastral and orientation data
- (c) Land capability for agricultural purposes
- (d) Land suitability for agricultural purposes
- (e) Agricultural land-use zones and Protected Agricultural Areas
- (f) Agricultural spatial development plans
- (g) Current land use and land use systems on agricultural land
- (h) Applicable policies, legislation and regulations
- (i) Forms, procedures, guidelines and technical / scientific reports

The data relating to the four land audit pilots recently completed as well as the envisaged national land audit, to be conducted by DRDLR, will be incorporated in the National Agricultural Land Register. Current and planned data collection processes will also be incorporated.

PDA's will cooperate in the establishment of the NALR, by, amongst others, providing information on datasets and scale availability, as well as how much land has been lost to mining rights without a rezoning of agricultural land application having either been submitted or approved. In addition, the PDA's will be responsible for obtaining integrated datasets of different sources, including both municipal and farm level. Data on protected areas or areas earmarked as protected areas will also be provided and incorporated into the NALR.

Deeds Registry

The detailed categorisation of agricultural land (including its agricultural value/potential and land capability class) will in future be noted at deed level within the Deeds Registry which will be linked to the NALR.

10.3 INTERGOVERNMENTAL RELATIONS

The **Intergovernmental Committee on the Preservation of Agricultural Land** will be established in terms of the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA). The Intergovernmental Committee may consider subdivision and rezoning applications on high value agricultural land in exceptional circumstances (see 10.5 below). Any deviations from the general rule

(that no applications for rezoning to non-agricultural land uses will be considered for high value agricultural land) authorised by the Intergovernmental Committee on the Preservation of Agricultural Land, must be supported by a well-motivated, clear and logical exposition of the factors considered and the reasons for the decision. With regard to subdivision and rezoning for land reform purposes in respect of high value agricultural land, the Intergovernmental Committee must consider the application for subdivision or rezoning, subject to both the DAFF and DRDLR Ministers recommending the application to the Committee. This Committee will be established and function in accordance with the provisions of the Intergovernmental Relations Framework Act 13 of 2005.

National norms and standards for the approval of subdivision and change in use applications are necessary in order to ensure coordinated, intergovernmental relations. These norms and standards will be applicable to government on all three levels, and will ensure that the same factors be considered, minimising the possibility of conflicting decisions. This will also ensure administrative justice.

10.4 ROLE OF GOVERNMENT IN PLANNING RELATING TO AGRICULTURAL LAND

National, provincial and local spatial plans must be coordinated. DAFF will ensure that PDAs are empowered to implement a coherent approach to coordinated planning and development relating to agricultural land and its optimal use in each province, and to establish systems:

- (a) Of agricultural land use planning and regulations;
- (b) Of land use zoning for agricultural land;
- (c) To regulate agricultural land conversions;
- (d) To provide for input by farmers; and
- (e) To ensure, as far as possible, that:
 - Land that had been used for agricultural purposes from 1970 onwards, but has since then been used for other non-agricultural purposes, is, as far as possible, restored to its former agricultural use state when it becomes available on the open market; and
 - Purchase prices of agricultural land reflect the agricultural value of the land, the agricultural-related improvements on the land concerned (in other words factors such as potential higher prices related to residential, non-agricultural businesses and other non-agricultural uses should not be taken into consideration).

Resolution of conflicts between agricultural uses and zoning legislation and decisions

DAFF will establish the necessary mechanisms at national and, in cooperation with PDAs, at provincial level to deal with and resolve all actual or potential conflicts between current agricultural uses on the one hand, and planning (zoning) legislation and zoning decisions or intended land use change such as prospecting and landowners or property developers assembling land parcels for non-agricultural development or purposes, on the other hand. Where a planning scheme does not contain adequate agricultural land conservation provisions, Government will be guided by the principles set out in this Draft Policy Document when considering applications for the approval of planning schemes, rezoning and other scheme amendments.

Municipal involvement

Municipalities are responsible for the continuous alignment and integration of all agricultural land in the Municipal Spatial Development Plans (SDPs) as part of their Integrated Development Plan (IDP)

processes, and should consult the PDA concerned in this regard. In this regard, land must be earmarked for agricultural production. In addition, municipalities must ensure that the classification of agricultural land and demarcated Protected Agricultural Areas, as formulated by DAFF, are incorporated into all municipal spatial, land use and planning documents, strategies and programmes.

National and provincial government have the duty to raise general awareness in municipalities of the significance of protecting agricultural land, and must share geo-referenced data on high value agricultural land on a continuous basis. National and provincial government must also ensure that data is refined to a scale suitable for use at a municipal, and where applicable, farm level. In addition, national, provincial and local spatial plans must be coordinated.

Protected Agricultural Areas, and their delineation, have to be integrated into the planning frameworks of all the municipalities concerned. All land identified as high value agricultural land located outside formally proclaimed Protected Agricultural Areas are subjected to the same norms and standards applicable to high value agricultural land within formally proclaimed Protected Agricultural Areas.

In cases where the local municipality concerned lacks sufficient capacity to fulfil its functions as provided for in the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA), such functions will be executed by the provincial government concerned in consultation with the municipal manager, after which the Municipal Council must still make a recommendation to the provincial government. However, if no decision is forthcoming from the municipality after intervention by the provincial government, record will be kept thereof and the application will proceed. This will avoid unnecessary delays and ensure service delivery.

Provincial involvement

The preparation of provincial strategic plans should include an evaluation of alternative forms of development, and significant weight should be given to those strategies which minimise the impacts on high value agricultural land, such as the maintenance and development of agricultural production and processing close to the main population centres. For this reason, the protection of agricultural land within the urban edge and the promotion of urban agriculture must receive increased attention.⁴⁹ PDAs have the responsibility to not only consider applications for change in land use or intentions to change land use, but also to make suggestions to municipalities and other stakeholders regarding assistance in order to ensure the proactive utilisation of the land concerned.

Provincial government is obliged to adopt annual provincial agricultural spatial planning frameworks which will be binding on all relevant parties and will be aimed at the protection of agricultural land. In addition, provinces must draft and implement medium-term strategies on the protection of high value agricultural land. These strategies must focus in particular on the proactive use of high value agricultural land in the Protected Agricultural Areas (if any) in order to ensure food security. Provincial Monitoring and Evaluation Frameworks will play a significant role in tracking progress of the achievement of the results of protecting high value agricultural land. Provincial government must also facilitate processes to ensure that such land is utilised for active agricultural production and agricultural development purposes. The proactive facilitation of the utilisation of high value agricultural land for agricultural production and agricultural development purposes is very important.

⁴⁹ McIntosh Xaba & Associates. 2009. Sustainable Utilization: Guidelines to Manage Urban Growth. Documentation Review. Prepared for the Provincial Planning & Development Commission, KwaZulu-Natal Provincial Government.

Provinces must also develop a provincial statutory planning framework in respect of high value agricultural land, comprising at least two key elements namely:

- (a) The integration of the protection of high value agricultural land as well as Protected Agricultural Areas within the provincial Spatial Development Plan concerned. This approach will encourage the use of such land for active agricultural production and agricultural development and ensure long-term food security of the province and the country at large. A layer of the agricultural spatial plan will be linked to the provincial Spatial Development Plan as it is revised; and
- (b) A requirement that municipalities incorporate into their five year and annual Integrated Development Plans sections on provincial agricultural growth and development strategies, agricultural spatial planning, high value agricultural land, Protected Agricultural Areas, and classification of agricultural land as outlined in their Spatial Development Plans (SDPs). This will be in line with the Food Security Policy, which recommends that local government, through SALGA, must ensure that every spatial development plan has provision for land earmarked for agricultural production activities. In this regard the best available agricultural land (even if it is only class VII) should, where practicable, be protected by municipalities.

10.5 CONSIDERATION OF APPLICATIONS BY DAFF: HIGH VALUE AGRICULTURAL LAND

In general, all applications relating to high value agricultural land will be considered and finalised by DAFF, taking into account the recommendation of, and accompanying documentation provided by, the province concerned.

10.5.1 SUBDIVISION AND CHANGE IN LAND USE (REZONING) APPLICATIONS **Process relating to both Subdivision and Change in Land Use (Rezoning) Applications**

The current and proposed national level consideration and approval process consists of a number of sequential steps. Except where otherwise indicated, the same process is, and will in future be, followed when subdivision and rezoning applications are received.

After receipt of the application submitted by the province concerned to the DAFF land use official allocated to the said province, the current DAFF process has the following eight steps to be implemented:

1. Data capturing (AgriLand System) and notice of receipt (official);⁵⁰
2. Request and manage outstanding documentation (official);
3. Request and manage technical reports (official);
4. Compile submission with recommendation (official);
5. Evaluate application and make decision (Committee) and capture electronically on database;
6. Compile and verify notice of decision (official) and checking by supervisor;
7. Signing of decision letter (Minister's delegate); and
8. File (record) and mail decision letter to applicant (supervisor).

⁵⁰ When DAFF receives a subdivision or change in land use application and recommendation, the application is registered on the DAFF AgriLand System (an enhanced version of the AgriLand System will be integrated into the NALR) by Registry and allocated a reference number, indicating the year and month in which the application was received, as well as the number of the application received in that particular month (e.g. 2012_07_0010). An acknowledgement letter is sent to the applicant indicating the above reference number.

In future, the process will consist of the following steps:

1. Data capturing and sending of a notice of receipt to the applicant by the departmental land use official;
2. Requesting and management of all documentation, reports and assessments by the departmental land use official, including the Agricultural Impact Assessment, the Scientific Report, information contained in the National Agricultural Land Register, inputs received from the Municipal Council concerned (taking into account a recommendation by the Municipal Internal Technical Committee), and the impact of the proposed application on adjacent land;
3. Compilation of the submission to the Provincial Internal Technical Committee by the departmental land use official;
4. Evaluation of the application and the making of a recommendation by the Provincial Internal Technical Committee;
5. Compilation of the submission to the National Internal Technical Committee by the departmental land use official;
6. Evaluation of the application and the making of a recommendation by the National Internal Technical Committee;
7. Approval or rejection of the application for subdivision or change in land use, and the electronic capturing thereof by the departmental land use official;
8. Compilation and verification of the notice of decision by the departmental land use official, and checking by his or her supervisor;
9. Signing of decision letter by the Secretary/Chairperson of the National Internal Technical Committee, the departmental land use official, departmental land use official's supervisor, and Minister's delegate;
10. Filing and recording of the decision, reasons and documentation on the electronic database;
11. Submission of copies of the documents listed in (9) above to the PDA concerned; and
12. Sending of the decision letter to the applicant and the PDA concerned by the supervisor.

The administrative process will be enhanced by including, amongst others, the decision and reasons on the electronic database, and the provision of copies thereof to the province concerned. In addition, the enhanced process will also generate information in respect of the typology of applications, refusals, unconditional approvals and approvals with conditions, and related matters, including the area (ha) involved. Furthermore, the system will generate information on trends and be sufficiently specific to indicate the impact on the various land capability classes on district, provincial and national level. Finally, all approvals and the related conditions (if any) will be registered against the title deed of the land concerned.

Currently, an expedited process is followed for all applications submitted in accordance with the Development Facilitation Act 67 of 1995. In future, all applications for the subdivision or change in land use of agricultural land, whether submitted in terms of the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA), the Development Facilitation Act 67 of 1995 or any other legislation, will also have to comply with the enhanced process.

An applicant needs to submit an Agricultural Impact Assessment, compiled by a registered SACNASP agricultural scientist, which comprises (a) a general area description; and (b) a natural agricultural resources assessment.⁵¹

Subdivision Applications in respect of High Value Agricultural Land

All subdivision applications involving high value agricultural land have to be reviewed and considered by the DAFF Internal Technical Committee, which will make a recommendation to the DAFF Minister, who has to make the final decision. As is the case of change in land use applications, the Minister or his/her delegate must sign off on all decisions.

Food Crops on High Value Agricultural Land

High value agricultural land should, in principle, be used for food crops, and not for any other agricultural production. In this regard, the conversion of high value agricultural land to ecotourism-related game farming or other agricultural production initiatives (e.g. essential oils), will not be allowed where such conversion will not bring about the production of food crops, or a loss in production of food crops.

Change in Land Use (Rezoning) Applications in respect of High Value Agricultural Land

Currently, change in land use (rezoning) applications made in terms of SALA, only require a recommendation by the Minister. Taking into account the recent Constitutional Court decision in *Maccsand (Pty) Ltd v City of Cape Town and Others*,⁵² and as provided for in this Draft Policy Document and the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA), the Minister and the Intergovernmental Committee on the Preservation of Agricultural Land, will have to give written approval for all rezoning applications on high value agricultural land.

In principle, the change in land use (rezoning) of **high value agricultural land** (as well as land of Capability Class IV for an interim period of 5 years) will not be allowed, with the exception of cases of land reform and in certain exceptional circumstances. Such applications have to be reviewed and considered by the DAFF Internal Technical Committee which will make a recommendation to the DAFF Minister and the Intergovernmental Committee. The Intergovernmental Committee has final jurisdiction and adjudication with regard to such applications. The Intergovernmental Committee on the Preservation of Agricultural Land may consider such an application, contingent on a number of factors:

- (a) It is in the highest national interest;
- (b) That there are no other alternatives available; and
- (c) The applicant being able to prove that the subdivision or rezoning:
 - Will not negatively affect food security; and
 - Will generate more long-term economic and social benefits for the municipality, province and country as a whole than those that would be generated by agricultural activities on the affected (undivided or unchanged, as the case may be) land.

Any deviations from the general rule, authorised by the Intergovernmental Committee on the Preservation of Agricultural Land, must be supported by a well-motivated, clear and logical exposition

⁵¹ Which includes soil, terrain, vegetation, water and agro-climate at a scale of 1:10 000 for high value agricultural land and at a scale of 1:50 000 for the remainder.

⁵² *Maccsand (Pty) Ltd v City of Cape Town and Others* CCT 103/11 [2012] ZACC 7

of the factors considered, the reasons for the decision and the possible implications for the PDALFA objectives.

In respect of applications involving **land reform on high value agricultural land** (as well as land of Capability Class IV for an interim period of 5 years) the Intergovernmental Committee must consider the application for subdivision or rezoning, subject to both the DRDLR and DAFF Minister recommending the application to the Committee.

Change in Land Use (Rezoning) Applications in respect of Medium Value Agricultural Land

For change in land use (rezoning) applications relating to **medium value agricultural land**, consensus approval is necessary by the DAFF Minister (acting on the recommendation of the DAFF Internal Technical Committee) and the MEC responsible for Agriculture (acting on the recommendation of the Provincial Internal Technical Committee concerned) only where the application for rezoning involves:

- Class IV agricultural land: >200 ha
 - Any subsequent applications in respect of values less than this will be cumulative and as soon as the total area reaches the stipulated value, this rule will apply for a cumulative total area >200 ha.
- Class V + VI agricultural land: >500 ha
 - Any subsequent applications in respect of values less than this will be cumulative and as soon as the total area reaches the stipulated value, this rule will apply for a cumulative total area >500 ha.
- Class VII + VIII agricultural land: >1000 ha
 - Any subsequent applications in respect of values less than this will be cumulative and as soon as the total area reaches the stipulated value, this rule will apply for a cumulative total area >1000 ha.

In the event that the DAFF Minister is satisfied that such medium value agricultural land may be rezoned and used for non-agricultural purposes, the MEC responsible for Agriculture must be consulted, and he/she may determine conditions relating to the purpose for/manner in which land may be used. The DAFF Minister may, at his/her discretion, grant the application for change in land use (rezoning) on such conditions. As is the case of subdivision applications, the Minister or his/her delegate must sign off on all decisions.

10.5.2 OTHER APPLICATIONS TO BE CONSIDERED BY DAFF

The Minister's written consent (acting on a recommendation of the DAFF Internal Technical Committee) is required before:

- (a) Any lease agreement of 10 years or longer is entered into on high value agricultural land;
- (b) If the lease agreement in respect of high value agricultural land is entered into for the duration of the natural life of the lessee or any other person mentioned in the lease, or if the agreement is renewable from time to time at the will of the lessee (either by the continuation of the original lease (extension) or by entering into a new lease), indefinitely or for periods totalling not less than 10 years;
- (c) Any portion of high value agricultural land, whether surveyed or not, is sold or advertised for sale;

- (d) A right to a portion of high value agricultural land is sold or granted for a period exceeding 10 years or for the natural life of any person or to the same person for periods totalling more than 10 years (or advertised for sale or with a view to any such granting);
- (e) Any share block scheme, sectional title scheme or fractional title scheme on high value agricultural land is established;
- (f) Any undivided shares in high value agricultural land may be registered; and
- (g) The registration of *habitat* in respect of high value agricultural land.

In addition, the Minister's written consent (acting on a recommendation of the DAFF Internal Technical Committee) is required for the acquisition and registration of any agricultural land (both high and medium value) by any person who is not a South African citizen or who does not have a valid permanent residence permit. This is also applicable to trusts and other legal entities where the majority shareholding is held by persons who are not South African citizens or who do not have valid permanent residence permits.

Furthermore, the Minister's written consent (acting on a recommendation of the DAFF Internal Technical Committee) is required for any consolidation of agricultural land, both high and medium value.

In all these cases, the Minister or his/her delegate must sign off on all decisions.

10.6 CONSIDERATION OF APPLICATIONS BY PROVINCES: MEDIUM VALUE AGRICULTURAL LAND

In general, all applications relating to medium value agricultural land will be considered and finalised by the province concerned. All applications relating to high value agricultural land will be processed by the PDA, and forwarded to DAFF.

As regards cooperation between DAFF and the PDAs, the PDAs will establish a policy (or at least a set of policy guidelines) for the subdivision and change in use of agricultural land within each province, which must be aligned to national guidelines. The absence of such a framework has the potential to yield subjective adjudication of the submissions, which could seriously defeat the objectives of offering protection to agricultural land. Provincial policies will assist in establishing province-specific norms and standards for the subdivision and change in use of agricultural land, with a view to strengthen the protection afforded by the proposed legislation. However, in the absence of a provincial policy, guidelines and/or norms and standards, the policy envisaged in this Draft Policy Document has to be adhered to as a minimum standard. Provincial policies, guidelines and norms and standards have to be coherent with, and aligned to the policy envisaged in this Draft Policy Document, but may contain detailed, province-specific information.⁵³

PDAs will also be required to develop and maintain Agricultural Sector Plans (ASPs), which consist of Municipal level Wide Area Spatial Agricultural Plans and the Provincial Agricultural Growth Strategy concerned.

10.6.1 SUBDIVISION AND CHANGE IN LAND USE (REZONING) APPLICATIONS Procedure

⁵³ See in this regard the minimum guidelines and procedures for provinces, Annexure A.

A **Provincial Internal Technical Committee** will be established within each PDA to evaluate applications for subdivision and/or change in land use and the accompanying reports. All applications must be accompanied by an Agricultural Impact Assessment (AIA), which should conform to all the requirements and must contain all the necessary and prescribed information. Deficient and/or suspect reports will be referred to a SACNASP registered Natural Scientist in the relevant field of practice who will be requested to conduct an independent AIA.

PDAs have to compile a Scientific Report for each application. These reports are based on AIAs, site visits (if applicable) and inputs from other bodies (e.g. municipalities), and should be prepared in order to ensure that all factors are taken into account before a final decision/recommendation (as the case may be) is made.

At the provincial level, a number of factors must be taken into account when assessing an application for development or an activity that may result in the transformation of agricultural land.⁵⁴ Existing developments in a particular area will not be viewed as a precedent, but will rather indicate the stricter implementation of the national and provincial policy in order to protect the resource base in the area.

Subdivision and Change in Land Use (Rezoning) Applications in respect of Medium Value Agricultural Land

Any application for the subdivision or rezoning of medium value agricultural land (excluding land of Capability Class IV for an interim period of 5 years) is subject to, amongst others, a successful Agricultural Impact Assessment, and has to be considered and approved by the Provincial Internal Technical Committee, taking into account the recommendation of the local and district municipalities concerned, or the metropolitan municipality concerned, as the case may be. All decisions have to be signed off by the MEC responsible for Agriculture. Additional consensus approval by the DAFF Minister (acting on the recommendation of the DAFF Internal Technical Committee) and relevant MEC responsible for Agriculture (acting on the recommendation of the Provincial Internal Technical Committee concerned) is necessary where the application for rezoning involves:

- Class IV agricultural land: >200 ha
 - Any subsequent applications in respect of values less than this will be cumulative and as soon as the total area reaches the stipulated value, this rule will apply for a cumulative total area >200 ha.
- Class V + VI agricultural land: >500 ha
 - Any subsequent applications in respect of values less than this will be cumulative and as soon as the total area reaches the stipulated value, this rule will apply for a cumulative total area >500 ha.
- Class VII + VIII agricultural land: >1000 ha.
 - Any subsequent applications in respect of values less than this will be cumulative and as soon as the total area reaches the stipulated value, this rule will apply for a cumulative total area >1000 ha.

In respect of applications involving **land reform on medium value agricultural land** (excluding land of Capability Class IV for an interim period of 5 years), an application in the normal format must be submitted to the PDA concerned. Any such subdivision or rezoning application must be approved by

⁵⁴ See in this regard the minimum guidelines and procedures for provinces, Annexure A.

the MEC responsible for Agriculture (acting on the recommendation of the Provincial Internal Technical Committee concerned).

The same arrangements relating to mitigation and trade-offs as discussed below⁵⁵ apply to the consideration of applications and the recommendation submitted to the DAFF Minister, or, in appropriate cases, decision-making by the provincial MEC, as the case may be.

Medium Value Agricultural Land in Protected Agricultural Areas

As a general rule, provincial government may recommend the use of **medium value agricultural land** in Protected Agricultural Areas in a way that is compatible with the strategic objectives of the Protected Agricultural Areas or for the rational development of agricultural infrastructure. Applications for activities affecting medium value agricultural land in Protected Agricultural Areas have to be accompanied by an Agricultural Impact Assessment that addresses the relevant issues raised in this Draft Policy Document and Provincial Minimum Guidelines in addition to any other requirements in law. The Provincial Internal Technical Committee may recommend the subdivision and/or change in use of such land for non-agricultural purposes provided that it will contribute, in a sustainable manner, to the viability of the affected agricultural enterprise, and will not:

- (a) Impact negatively on surrounding agricultural land use;
- (b) Have a negative agricultural opportunity cost with respect to the land concerned and/or surrounding land; and
- (c) Have negative social, socio-economic and other environmental impacts that outweigh the benefits to be obtained through the development. This includes impacts arising from the development of infrastructure to serve the activity and the risk of future development pressure as a result of such an activity.

The DAFF Minister, acting in consultation with the PDA concerned, may consider to encourage the consolidation of such land if it would serve the interests of economies of scale and significantly increase production.

Land located Within, Bisected by, or in Close Proximity to Urban Areas

With regard to **high value (or adjacent) agricultural land** located within, bisected by, or in close proximity to urban areas, provincial government must consider urban agriculture as an appropriate entry point for new entrants to farming as well as an important additional component of food security. As a result, PDAs must oppose applications for the development on high value agricultural land that is located within, bisected by or in close proximity to the Urban Edge if such development applications do not support or promote urban agriculture. Urban agricultural zones for intensive food production practices will be considered, but subject to stringent conditions to ensure optimal productivity and to ensure that such practices are not used as a stepping stone for other forms of development.

PDAs may recommend the development of **medium value agricultural land** within, bisected by or in close proximity to the Urban Edge, if such development does not reduce the agricultural potential of adjacent agricultural land. All the above-mentioned applications have to be accompanied by Agricultural Impact Assessments in addition to any other requirements in law. The Agricultural Impact Assessments must specify any factors that may prevent the land from being used for agricultural

⁵⁵ See 10.7 below.

purposes [and clarify why these cannot be mitigated through changes in management and other measures (such as the strengthening of safety and security) or the choice of crops grown].

Urban and Industrial Development within Provincial Growth and Development Corridors

PDA's may consider urban and industrial development of **medium value agricultural land** within Provincial Growth and Development Corridors, as long as such developments do not:

- Take place on land situated in Protected Agricultural Areas; and/or
- Reduce the agricultural potential of adjacent agricultural land, and/or
- Impact negatively on agricultural activities on adjacent agricultural land.

All applications have to be accompanied by Agricultural Impact Assessments in addition to any other requirements by law.

Agricultural Land within Formally Proclaimed Protected Areas

Provincial government will, in principle, not oppose development proposals affecting high value agricultural land within formally proclaimed protected areas (or conservation areas), provided that such proposals do not involve changing the conservation status of the land. In the event that such proposals involve changing the conservation status of the land (in keeping with the National Environmental Management: Protected Areas Act 57 of 2003), one of the possible options, amongst the range of possible options to be considered by the province concerned, is that the proposal must be assessed as if it concerned high value agricultural land without conservation status.

Construction and Expansion of Roads

With regard to the construction and expansion of roads, Agricultural Impact Assessments will be required for:

- (a) Route determinations of national and provincial roads;
- (b) The design, construction and rehabilitation of associated infrastructure and facilities; and
- (c) The construction of and/or expansion of roads;

in Protected Agricultural Areas as well as on high value agricultural land outside these Protected Agricultural Areas.

As a general rule, PDA's may:

- (a) Not recommend route determinations and/or other applications that will lead to increased thoroughfare and the further fragmentation and inappropriate development of the relevant Protected Agricultural Area; and
- (b) Recommend applications that are designed to improve agricultural infrastructure, provided this does not lead to increased thoroughfare and the further fragmentation and inappropriate development of the relevant Protected Agricultural Area.

The Intergovernmental Committee's prior approval will have to be obtained in instances where planned national roads will traverse high value agricultural land or Protected Agricultural Areas.

Delegation of Land Capability Class VIII Applications to Municipalities

A PDA may, subject to:

- (a) National transversal norms and standards;
- (b) Consultation with other relevant provincial departments;
- (c) The land concerned having been classified as land capability class VIII land;

- (d) Conditions imposed by the MEC concerned relating to norms and standards, reporting mechanisms etc.; and
 - (e) The municipality concerned having sufficient technical and financial capacity;
- delegate subdivision and change in land use (rezoning) applications on land capability class VIII land to a municipality for decision-making. Such delegation will only be valid in respect of subdivision and rezoning applications involving proposed residential, recreational, commercial or industrial development on land capability class VIII land; and should provide for consultation with other relevant departments (e.g. departments responsible for environmental affairs). PDAs will be responsible for inspection and monitoring of delegations and enforcement of related conditions.

10.6.2 OTHER APPLICATIONS TO BE CONSIDERED BY PROVINCES

The relevant MEC's written consent (acting on the recommendation of the Provincial Internal Technical Committee concerned) is required before:

- (a) Any lease agreement of 10 years or longer is entered into on medium value agricultural land;
- (b) If the lease agreement in respect of medium value agricultural land is entered into for the duration of the natural life of the lessee or any other person mentioned in the lease, or if the agreement is renewable from time to time at the will of the lessee (either by the continuation of the original lease (extension) or by entering into a new lease), indefinitely or for periods totalling not less than 10 years;
- (c) Any portion of medium value agricultural land, whether surveyed or not, is sold or advertised for sale;
- (d) A right to a portion of medium value agricultural land is sold or granted for a period exceeding 10 years or for the natural life of any person or to the same person for periods totalling more than 10 years (or advertised for sale or with a view to any such granting);
- (e) Any share block scheme, sectional title scheme or fractional title scheme on medium value agricultural land is established;
- (f) Any undivided shares in medium value agricultural land may be registered; and
- (g) The registration of *habitatio* in respect of medium value agricultural land.

In addition, the Minister's written consent (acting on the recommendation of the DAFF Internal Technical Committee) is required for the acquisition and registration of any agricultural land (both high and medium value) by any person who is not a South African citizen or who does not have a valid permanent residence permit. This is also applicable to trusts and other legal entities where the majority shareholding is held by persons who are not South African citizens or who do not have valid permanent residence permits.

Furthermore, the Minister's written consent (acting on the recommendation of the DAFF Internal Technical Committee) is required for any consolidation of agricultural land, both high and medium value.

10.7 CONSIDERATIONS APPLICABLE TO BOTH HIGH AND MEDIUM VALUE AGRICULTURAL LAND

Applications

Any application for the subdivision or rezoning of agricultural land must be submitted in the prescribed format to the PDA. Any application submitted to a municipality for the establishment of a township, or the extension thereof, zoning or rezoning, or intended land use change, which involves, partly

involves and/or may potentially impact on agricultural land, must also be submitted to the PDA in the prescribed format for processing and the making of recommendations.

Deviation from the General Approach Relating to the Subdivision or Change in Land Use of Agricultural Land

Possible reasons for deviation from the general approach relating to the subdivision or change in land use of agricultural land as contained in this Draft Policy Document, include the following:

- (a) A positive Agricultural Impact Assessment;
- (b) Agricultural Impact Assessments prove that the site does not have high value agricultural land and that the approval of the application will not impact negatively on surrounding agricultural activities (as well as for land of Capability Class IV for an interim period of 5 years);
- (c) Such subdivision or change in land use will increase agricultural production, provided that the remainder of the land concerned can still be optimally used for agricultural purposes. Within this context, conflicts with planning legislation and or planning decisions need to be resolved in the manner discussed in 10.4 above;
- (d) Specific benefits associated with the subdivision or change in land use outweigh the loss of agricultural land (only valid under rare circumstances);
- (e) With regard to rezoning applications, the change constitutes a change in land use within agriculture, compared to other developments unrelated to agriculture; and
- (f) Trade-offs are required between conflicting policies and policy objectives. However, the consideration of such trade-offs is subject to the following:
 - Short-term policy objectives with short-term benefits should generally not be permitted to override long-term policy objectives with long-term benefits; and
 - Where this cannot be avoided, the opportunity cost of the decision should be made explicit and factored into the decision.

The willingness to be flexible in the implementation of the policy should not detract from the primary purpose of the policy envisaged by this Draft Policy Document, which is to ensure the protection of agricultural land for current and future use, whilst ensuring short-term, medium-term and long-term food security.

Categorisation and Information Required

Clear categorisation of areas and clear information is required. In addition, documentation and baseline information on adjacent land parcels need to be submitted with all applications in order to enable DAFF or the PDA concerned (as the case may be) to obtain a holistic overview over the area and to take all relevant factors into consideration.

Protected Agricultural Areas

The National Advisory Commission will advise the DAFF Minister on the demarcation and designation of specific agricultural land as Protected Agricultural Areas, after consultation with DAFF and the PDAs concerned. Such Protected Agricultural Areas will ensure that high value and best available agricultural land are protected against non-agricultural land uses in order to promote long-term agricultural production. Any change to the existing agricultural use to a non-agricultural use must receive the approval of the Intergovernmental Committee. Protected Agricultural Areas will consist of two main categories – cropping land and grazing land. The protection of specified areas for specific purposes is not a novel notion, and a variety of areas are already protected in terms of legislation. These include:

- Environmental areas (in terms of the National Environmental Management: Protected Areas Act 57 of 2003; the Environment Conservation Act 73 of 1989; and the National Parks Act 57 of 1976);
- Heritage sites (in terms of the National Environmental Management: Protected Areas Act 57 of 2003 and the National Heritage Resources Act 25 of 1999);
- Marine protected areas (in terms of the National Environmental Management: Protected Areas Act 57 of 2003 and the Marine Living Resources Act 18 of 1998);
- Forest areas (in terms of the National Environmental Management: Protected Areas Act 57 of 2003 and the National Forests Act 84 of 1998);
- Mountain catchment areas (in terms of the National Environmental Management: Protected Areas Act 57 of 2003 and the Mountain Catchment Areas Act 63 of 1970);
- Water areas (in terms of the National Water Act 36 of 1998); and
- National key points (in terms of the National Key Points Act 102 of 1980).

Any change in land use in respect of any of these above-mentioned protected areas must be pre-approved by the functionary responsible for the administration of the specific legislation concerned.

The procedure for declaring Protected Agricultural Areas and provisions regarding the inviolability of Protected Agricultural Areas will be specified in the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA) and/or its regulations.

Farm-Related Activities and Intensive Agricultural Enterprises Economic Viability and the Possible Appropriateness of the Economies of Scale

The consideration of economic viability and the possible appropriateness of the economies of scale perspective is one of the key factors to be taken account of in exercising the discretion whether the subdivision or rezoning application or intended land use change should be granted. Urban agricultural zones for intensive food production practices may be considered, subject to stringent conditions. Subdivision for farm-related industries may be considered, but such subdivisions will also be subject to stringent conditions. In respect of intensive agricultural enterprises (e.g. feedlots and hydroponics), subdivision may only be considered in respect of medium value agricultural land, provided that the remainder of the land concerned can still be optimally used for agricultural purposes. Land should, however, remain agricultural land and no non-agricultural uses will be permitted.

Water Licenses

In instances where the application for subdivision or rezoning is granted, agricultural water licenses should be retained. The de-coupling of water licences from land, by Department of Water Affairs (DWA, has serious implications on the viability and sustainability of farming units and also has the potential to lead to serious degradation of the natural agricultural resources, especially in low rainfall areas. Any changes and/or reallocations should be done by the Minister responsible for water (Department of Water Affairs) in consultation with the DAFF Minister or provincial MEC responsible for Agriculture (depending on whether it is high value agricultural land or not). DAFF will engage with DWA in respect of an amendment of the National Water Act 36 of 1998 in order to ensure that, in the event that agricultural land is transferred to a new owner, who will continue to use the land concerned for agricultural purposes, the water license concerned is transferred to the new owner.

Every applicant must indicate, by means of accompanying documentation, whether a water license in respect of the land concerned has been issued, and if so, whether an application for the reallocation

of the water license to the person(s) who will own the land if the application is approved, has been submitted to DWA. The proposed Preservation and Development of Agricultural Land Framework Act (PDALFA) will determine that a potential positive outcome in respect of an application is subject to formal confirmation by DWA that the water license will be allocated to such owner(s) and the condition that the water license so allocated must be used for agricultural purposes. The necessary monitoring to ensure the utilisation of such water license will be undertaken by the PDA concerned. Non-compliance with this requirement may result in the cancellation of the approval concerned.

Intended Land Use Change

In order to close all potential loopholes, it is imperative that intended future land use changes are disclosed at the time of application for acquisition or rezoning of agricultural land. These include actions such as prospecting (with an intended future land use change to mining), or landowners/property developers assembling land parcels for future non-agricultural developments.

Trade-Offs and Mitigation of Loss of Agricultural Land

Where permanent impacts do arise from the approved development of agricultural land, mitigation is required to address the lost productive capacity of the land. Mitigation is intended to be a final resort after all attempts to reasonably avoid the impacts of the development have been exhausted. The effects of agricultural land lost due to successful land use change and/or subdivision applications must be mitigated by means of enabling agricultural production in other areas. In this regard the introduction of irrigation could be considered should soils be irrigable, should water of acceptable quality be available, should the land users be trained in irrigated agricultural production management, should infrastructure be available or funded, and should the required water rights be available and approved. Such measures should only be introduced if the production potential of the area concerned would be increased. The trade-off where the situation arises will be evaluated against a set of criteria in terms of production potential, locality, applicable area and size, marketing and accessibility of produce to the community. However, as already stated, the loss of agricultural land should be avoided, by, amongst others, encouraging high intensity residential development and brownfield development.

Prospecting, Mining, Energy Sources and Renewable Energy on Agricultural Land

As prospecting may have, and mining and energy sources [including hydraulic fracturing (fracking)] and renewable energy sources have, an impact on the use of agricultural land, such applications will only be considered in respect of medium value agricultural land in instances where there will be no or a very limited impact on existing agricultural activities. Agricultural Impact Assessments must be conducted in order to indicate what the effect of the proposed prospecting, mining, energy sources and renewable energy sources will be on the land, as well as on the surrounding area that will not be mined [including the effect on the current and future (potential) agricultural use]. Offsite impacts include, amongst others, acid mine water and acid rain. The Agricultural Impact Assessment must also show what the effect will be on both the surface water, the subterranean water and on soil-water hydrology from an agricultural perspective. Within this context, the effectiveness of the rehabilitation plan submitted by the mining company must also be evaluated in order to determine whether the land could revert to productive agricultural use after mining operations have ceased. A negative Agricultural Impact Assessment should, in principle, result in the non-utilisation of any prospecting or mining right issued by the Department of Mineral Resources. Similar considerations will apply in respect of renewable energy sources, such as hydro, wind and solar energy. Applications will only be considered in respect of medium value agricultural land, subject to stringent conditions to ensure that the remainder of the land concerned can still be used optimally for food production purposes.

Land Consolidation

The Minister's written consent (acting on the recommendation of the DAFF Internal Technical Committee) is required for any consolidation of agricultural land, both high and medium value.

Corridor Development

In the event that corridor developments are considered (whether from a national, provincial or local perspective), both DAFF and the PDA concerned must be consulted; their approval is a prerequisite for the implementation of any corridor development plan that affects agricultural land.

The Intergovernmental Committee's prior approval will have to be obtained in instances where planned corridor development will traverse high value agricultural land or Protected Agricultural Areas.

Traditional Communities

In instances where applications involve agricultural land occupied by traditional communities, the officially recognised traditional governance structures (kings, principal traditional leaders, senior traditional leaders and traditional councils) must be consulted.

Verification/Reclassification of Agricultural Potential of Land

For verification purposes, and in instances where scale issues result in the inaccurate classification of tracts of land, such land can be reclassified on the basis of approved Agricultural Impact Assessments (AIA) to be submitted with the application for subdivision or rezoning and concomitant development. Such studies must provide data, in the format as prescribed by DAFF, on the following:

- (a) The topography and hydrology of the site;
- (b) The type and characteristics of the soil;
- (c) Water availability: The quantity and quality of water for purposes of irrigation.
- (d) Size: Tracts of high value agricultural land are considered to be agriculturally viable regardless of their size. Applications for the development of such land need to be accompanied by ASA reports that demonstrate that the extent of the land concerned renders the land agriculturally non-viable from a practical and/or economic perspective and that land consolidation is not feasible; and
- (e) Classification of neighbouring land use: Tracts of high value agricultural land adjacent to tracts of land with a different classification land use are considered agriculturally viable, unless demonstrated otherwise through the ASA.

Qualified Staff

At national level, the directorates and sub-directorates concerned will be fully staffed by the required number of appropriately qualified, SACNASP registered officials and the necessary technical and administrative support staff.

10.8 OPTIMAL LAND USE, UNPRODUCTIVE LAND USE AND NON-USAGE

From the perspective of the preservation and sustainable optimal use of agricultural land (in order to further short-term, medium-term and long-term food security), all agricultural land should be actively used to optimal agricultural potential. Agricultural land must also be protected from non-sustainable agricultural activities as well as non-agricultural activities that lead to contamination of soil and water sources.

This means that in instances where:

- (a) Agricultural land is not used for active agricultural production on a continuous basis over a period of at least three years and used far below the land's optimal production potential for the practiced farming enterprise(s) (taking into consideration prevailing climatic conditions, sustainable land management, rehabilitation and restoration practices);
- (b) Any activity on the agricultural land concerned results in or may result in significant degradation; or
- (c) Agricultural land is not used at all for agricultural purposes for three (3) consecutive years; this agricultural land concerned could be considered for expropriation at a lower value than would be paid for a similar farm in the same area which is used optimally for agricultural purposes. This is subject to a due process compliant with the constitutional, statutory and common law norms pertaining to notice and expropriation.

In addition to the land management responsibilities that farmers currently have in terms of the Conservation of Agricultural Resources Act 43 of 1983 (CARA), they are obliged to ensure that the agricultural land is developed and used optimally, with due recognition of the farming enterprise of choice. Any activity by a farmer that is intended to circumvent (or lead to the circumvention) of this obligation in order to obtain approval for subdivision or change in land use (e.g. the deliberate overstocking of prime grazing land in order to degrade the land) will be criminalised in terms of the proposed successor to CARA, and will result in the refusal of any application for subdivision and/or change in land use of the agricultural land concerned.

Guidelines for the best and/or optimal agricultural use of agricultural land will be formulated by DAFF in consultation with the PDAs.

Government will, within its means and taking into account its available resources, contribute to agricultural infrastructure in order to assist farmers to optimally use their agricultural land.

10.9 ENSURING COMPLIANCE WITH DEVELOPMENT PLAN AND CONDITIONS IMPOSED IN RESPECT OF A SUCCESSFUL APPLICATION

DAFF will implement an enhanced monitoring and evaluation system which will also provide for reporting and the timeous implementation of corrective steps.

The monitoring and evaluation system will ensure that approved applications (whether for subdivision or change in land use of agricultural land) are cancelled if conditions imposed by the DAFF Preservation and Development of Agricultural Land Framework Act Committee are not complied with.⁵⁶ The proposed Preservation and Development of Agricultural Land Framework Act (PDALFA) will ensure that DAFF and the PDAs are empowered to implement all appropriate steps relating to monitoring and evaluation and the implementation of remedial steps (which may include the cancellation of the approval).

⁵⁶ In Ethiopia, the government is entitled to cancel a concession if it is not implemented within six months. In the Democratic Republic of Congo, the concession must be occupied within six months of the contract's signing, and the land must be put to productive use within 18 months of signing. In Mozambique, an investor has 120 days after project authorization to start implementing the project and, according to the law, the provisional state land use right (DUAT) granted for investment purposes is nullified if the investment's business plan is not implemented after two years. Mechanisms for implementation will therefore need to be incentive-compatible, monitored at low cost, and subject to dispute resolution. See Deininger, K & Byerlee, D. 2011. Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits? World Bank: Washington D.C. 118.

11. PROVINCIAL MINIMUM GUIDELINES AND PROCEDURES FOR PROVINCIAL ASSESSMENTS OF APPLICATIONS FOR SUBDIVISION AND CHANGE IN LAND USE

As stated above,⁵⁷ provincial policies will assist in establishing provincial norms and standards for the subdivision and change in use of agricultural land, with a view to strengthen the protection afforded by the proposed legislation. Provincial policies, guidelines and norms and standards have to be coherent with, and aligned, to the policy envisaged in this Draft Policy Document, but may contain detailed, province-specific information. The absence of provincial frameworks has the potential to yield subjective adjudication of the submissions, which could seriously defeat the objectives of offering protection to agricultural land. However, in the absence of a provincial policy, guidelines and/or norms and standards, the policy envisaged in this Draft Policy Document has to be adhered to as a minimum standard.

Within this context, Annexure A contains a structured overview of the Provincial Minimum Guidelines and Procedures.

12. MANAGEMENT/INSTITUTIONAL FRAMEWORK

12.1 NATIONAL LEVEL

A **National Advisory Commission on the Preservation and Development of Agricultural Land** (NACPDAL) will be established at national level in terms of the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA). The National Advisory Commission will consist of individuals who are knowledgeable in matters relating to the preservation, development and sustainable use of agricultural land. The National Advisory Commission will be responsible for the evaluation of policies and strategies regarding the preservation, development and sustainable use of agricultural land to provide the Minister with recommendations in this regard. Secondly, the National Advisory Commission will advise the DAFF Minister on the demarcation and designation of specific agricultural land as Protected Agricultural Areas, after consultation with DAFF and the PDAs concerned, as well as on changes to such Protected Agricultural Areas. Thirdly, the National Advisory Commission will be responsible to handle appeals.

The (national) **Intergovernmental Committee on the Preservation of Agricultural Land** will be established in terms of the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA). The Committee will consist of the National Planning Commission (chair), DAFF, Department of Trade and Industry (DTI), Department of Water Affairs (DWA), Department of Environmental Affairs (DEA) and Department of Rural Development and Land Reform and Department of Mineral Resources (DMR), and DRDLR (only in cases involving land reform). This Committee may consider subdivision and rezoning applications on high value agricultural land (as well as land of Capability Class IV for an interim period of 5 years) in exceptional circumstances.⁵⁸ Any deviations from the general rule (that no applications for subdivision or rezoning will be considered for high value agricultural land (as well as land of Capability Class IV for an interim period

⁵⁷ See 10.6 above.

⁵⁸ See 10.5.1 above.

of 5 years)) authorised by the Intergovernmental Committee, must be supported by a well-motivated, clear and logical exposition of the factors considered, the reasons for the decision and the possible implications for the policy objectives. With regard to subdivision and rezoning for land reform purposes in respect of high value agricultural land (as well as land of Capability Class IV for an interim period of 5 years), the Intergovernmental Committee must consider the application for subdivision or rezoning, subject to both the DRDLR and DAFF Minister recommending the application to the Committee.

The **DAFF Internal Technical Preservation and Development of Agricultural Land Framework Act Committee**, consisting of appropriately trained and experienced DAFF officials who must be SACNASP registered, will be responsible for evaluating and deciding on applications, and may impose conditions when granting an application for subdivision or change in land use of agricultural land. The decision of the DAFF Internal Technical Committee must be confirmed and signed off by the Minister's delegate in order to be binding and enforceable.

At national level, a land use official is allocated by DAFF to each province. The PDA concerned must submit the subdivision or change in land use application, documentation and recommendation to the relevant DAFF official, who then takes responsibility for the consideration of the application and related documentation at national level.

With regard to authorisations in respect of medium value agricultural land (excluding land of Capability Class IV for an interim period of 5 years), the proposed legislation will provide for an appropriately delegated (or assigned) power to the **provincial MEC** concerned to issue such authorisations (with a right to submit an application for review to the DAFF Minister – against whose decision no further review will be available, with, in appropriate cases, an application to a competent court being the only potential remedy).

Monitoring mechanisms will be established to ensure that the management/institutional framework at national level functions effectively and efficiently, and that the relevant commissions and committees meet on a regular basis.

12.2 PROVINCIAL LEVEL

A **Provincial Advisory Commission on the Preservation and Development of Agricultural Land** (PACPDAL) will be established by every province in terms of the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA). Every Provincial Advisory Commission will consist of individuals who are knowledgeable in matters relating to the preservation, development and sustainable use of agricultural land in the province concerned. Every Provincial Advisory Commission will be responsible for the evaluation of policies and strategies regarding the preservation, development and sustainable use of agricultural land to provide the MEC concerned with recommendations in this regard.

The **Provincial Internal Technical Preservation and Development of Agricultural Land Framework Act Committees**, consisting of appropriately trained and experienced PDA officials who must be SACNASP registered, will be responsible for evaluating and deciding on applications, and may impose conditions when granting an application for subdivision or change in land use of agricultural land. Deficient reports must be referred to a SACNASP registered external agricultural scientist for comments and/or inputs. The decision of the Provincial Internal Technical Committee must be confirmed and signed off by the MEC's delegate in order to be binding and enforceable.

Every application for the subdivision or rezoning of medium value agricultural land (excluding land of Capability Class IV for an interim period of 5 years) is subject to a successful Agricultural Impact Assessment, and has to be considered and approved by the local municipality, district municipality and the provincial MEC responsible for Agriculture. With regard to authorisations in respect of medium value agricultural land (excluding land of Capability Class IV for an interim period of 5 years), the proposed legislation will provide for an appropriately delegated (or assigned) power to the provincial MECs concerned to issue such authorisations (with a right to submit an application for review to the DAFF Minister – against whose decision no further review will be available, with, in appropriate cases, an application to a competent court being the only potential remedy).

Additional consensus approval by the DAFF Minister and relevant MEC responsible for Agriculture is necessary where the application for rezoning involves:

- Class IV agricultural land: >200 ha
 - Any subsequent applications in respect of values less than this will be cumulative and as soon as the total area reaches the stipulated value, this rule will apply for a cumulative total area >200 ha.
- Class V + VI agricultural land: >500 ha
 - Any subsequent applications in respect of values less than this will be cumulative and as soon as the total area reaches the stipulated value, this rule will apply for a cumulative total area >500 ha.
- Class VII + VIII agricultural land: >1000 ha.
 - Any subsequent applications in respect of values less than this will be cumulative and as soon as the total area reaches the stipulated value, this rule will apply for a cumulative total area >1000 ha.

In instances where the application for subdivision or rezoning is granted, agricultural water license rights should be retained for agricultural production purposes and in future be linked and registered against the title deed of the land concerned (and not the land user in his/her personal capacity). Any changes and/or reallocations should be done by the Minister responsible for Water Affairs in consultation with the DAFF Minister or provincial MEC responsible for Agriculture (depending on the capability class of the land concerned).

Monitoring mechanisms will be established to ensure that the management/institutional framework at provincial level functions effectively and efficiently, and that the relevant commissions and committees meet on a regular basis.

12.3 MUNICIPAL LEVEL

A **Municipal Advisory Committee on the Preservation and Development of Agricultural Land** (MACPDAL) will be established by every municipality in terms of the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA). Every Municipal Advisory Committee will consist of individuals who are knowledgeable in matters relating to the preservation, development and sustainable use of agricultural land in the province concerned. Every Municipal Advisory Committee will be responsible for the evaluation of policies and strategies regarding the preservation, development and sustainable use of agricultural land and to provide the municipality concerned with recommendations in this regard.

Every application for the subdivision or change in land use (rezoning) of agricultural land received by a municipality from the PDA concerned, must be considered, where after a recommendation (accompanied by the relevant documentation) must be submitted to the PDA. Within this context, every municipality must establish a **Municipal Internal Technical Preservation and Development of Agricultural Land Framework Act Committee**, consisting of appropriately trained and experienced municipal officials who must be SACNASP registered. The Municipal Internal Technical Committee will be responsible for evaluating and deciding on applications, and may impose conditions when granting an application for subdivision or change in land use of agricultural land. The decision of the Municipal Internal Technical Committee must be confirmed and signed off by the Municipal Manager delegate prior to it being forwarded to the PDA concerned.

The Municipal Internal Technical Committee must, when considering the application, take into account all relevant information including the IDP, SDF, LED, LUMS and other planning frameworks as well as the views of the Municipal Advisory Committee.

Monitoring mechanisms will be established to ensure that the management/institutional framework at municipal level functions effectively and efficiently, and that the relevant committees meet on a regular basis.

In cases where the local municipality concerned lacks sufficient capacity to fulfil its functions as provided for in the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA), such functions will be executed by the provincial government concerned in consultation with the municipal manager, after which the Municipal Council must still make a recommendation to the provincial government. However, if no decision is forthcoming from the municipality after intervention by the provincial government, record will be kept thereof and the application will proceed. This will avoid unnecessary delays and ensure service delivery.

13. OFFENCES AND PENALTIES

The proposed Preservation and Development of Agricultural Land Framework Act (PDALFA) will provide for the identification of a number of activities that are performed either contrary to, or in circumvention of, the core principles of the Draft Policy Document (which will also be detailed in the legislation). Such activities will be criminalised, and appropriate penalties will be determined in the proposed legislation.

14. KEY IMPLICATIONS FOR SOUTH AFRICA

The successful implementation of the policy envisaged in this Draft Policy Document and the proposed legislation, as well as of the concomitant institutional and systems frameworks and effective and efficient M&E system, will result in a cohesive approach to the preservation and development of agricultural land in South Africa. Within this context, the following three overarching and interconnected policy objectives will be realised:

- (a) The preservation and sustainable development of agricultural land as a natural resource;
- (b) The sustainable use of agricultural land resulting in sustained and increased food production and the retention of an experienced farm labour force; and
- (c) Increased and improved long-term food security for the people of South Africa.

15. KEY IMPLICATIONS FOR GOVERNMENT

15.1 LEGISLATIVE AND REGULATORY IMPLICATIONS

New national framework legislation (the Preservation and Development of Agricultural Land Framework Bill) will be drafted (taking into account that agriculture is, in terms of Schedule 4 (Part A) of the 1996 Constitution, a functional area of concurrent national and provincial competence). The framework legislation will provide for a number of institutions at national and provincial level, compulsory minimum norms and standards, appropriate management and administrative systems, an effective M&E system, as well as a supervisory role for DAFF. Detailed Regulations will be drafted and published in order to ensure the effective and efficient implementation of the legislation. Certain current legislative instruments will be replaced by the new statutory framework.

It is envisaged that the proposed policy outlined in this Draft Policy Document and the proposed legislation (the Preservation and Development of Agricultural Land Framework Act (PDALFA) as well as the concomitant Regulations) will be implemented on 1 April 2014. Provincial governments will be enabled, by means of an explicit provision in the proposed national framework legislation, to issue province-specific regulations that would enable provinces to fully apply and implement those parts of the policy envisaged in this Draft Policy Document and the proposed national framework legislation until such time as they have approved their own province-specific policies and enacted province-specific legislation (both of which will be aligned to the national framework, but simultaneously address province-specific issues).

It is highly recommended that provincial legislation be discussed with national government to ensure that the minimum national norms and standards and the national decision-making process are sufficiently integrated in the various provincial Acts.

15.2 GOVERNANCE IMPLICATIONS

At national level, the policy envisaged in this Draft Policy Document and the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA) will be administered by the DAFF Chief Directorate responsible for the Preservation and Development of Agricultural Land Framework Act (PDALFA) and CARA, and, specifically by the Directorate responsible for the Preservation and Development of Agricultural Land Framework Act (PDALFA). At provincial level, each PDA shall designate a Directorate that will be responsible (a) for the administration of either the Preservation and Development of Agricultural Land Framework Act (PDALFA) and CARA or (b) exclusively for the Preservation and Development of Agricultural Land Framework Act (PDALFA).

At both national and provincial level, the necessary information technology (IT), geographic information system (GIS) and administrative systems will be established and operational on the commencement date of the Act and its concomitant national Regulations.

15.3 ORGANISATIONAL/ADMINISTRATIVE/INSTITUTIONAL IMPLICATIONS

A synchronised process for cooperation between national and provincial government departments will be developed. At national level, a new (dedicated) Chief Directorate will be established for the management and administration of the new policy and legislation. This Preservation and Development of Agricultural Land Framework Act (PDALFA) Directorate with its two sub-directorates (one for implementation and another for monitoring and evaluation, as well as review) will report to the Chief Directorate. Dedicated, multi-disciplinary directorates will also be established at provincial level

(with one sub-directorate for the implementation of the Preservation and Development of Agricultural Land Framework Act (PDALFA), and one sub-directorate for the implementation of CARA). Systems will be implemented (at both national and provincial level) to ensure effective cooperation between these directorates (or sub-directorates, as the case may be); and within this context, the establishment of an intra-departmental formal structure that would ensure the establishment and realisation of a common approach to decision-making is envisaged.

The (national) Intergovernmental Committee on the Preservation of Agricultural Land will be established to ensure cooperation and consensus between different national departments in respect of applications impacting on agricultural land. A National Agricultural Land Register will be established.

There is an urgent need for capacity building in all three levels of Government. Training shall be provided on decision-making processes. A sufficient number of additional, appropriately qualified, staff⁵⁹ shall be appointed in order to deal with subdivision and rezoning applications in terms of this Draft Policy Document and the proposed legislation. At national and provincial level, the directorates and sub-directorates concerned must be fully staffed by the required number of appropriately qualified, SACNASP registered officials and the necessary technical and administrative support staff. In addition, the necessary infrastructural and financial resources will be made available by DAFF at national level and by the PDAs at provincial level.

To ensure cooperation, as well as coherent policy and regulatory implementation, a Standing Committee (the Preservation and Development of Agricultural Land Framework Act Committee) will be established consisting of the DAFF Chief Director and the Preservation and Development of Agricultural Land Framework Act (PDALFA) Director and the provincial directors responsible for the administration of Preservation and Development of Agricultural Land Framework Act (PDALFA). Within this context, a suitably legally qualified and experienced official will participate in the bi-monthly meetings of this Standing Committee.

15.4 FINANCIAL IMPLICATIONS

Financial implications relating to the establishment of a Chief Directorate at national level and directorates (and sub-directorates) at provincial level include:

- (a) Expenses relating to the appointment and training of personnel;
- (b) Direct expenses; and
- (c) Costs of establishing and maintaining an agricultural land database.

⁵⁹ At national level, scientific knowledge is needed, specifically in agriculturally-related sciences such as soil, water, vegetation, field crops and livestock. In this regard, scientific technical expertise (experts with a minimum of 10 years infield experience) has to be appointed. These experts need to have a broad spectrum of practical experience in all agriculture-related aspects (i.e. farming practices, pastures management, natural grass identification, crop production (agronomy), soil science, soil survey methodologies, practical experience in soil surveying, knowledge of restrictive layers (e.g. mechanical, natural, etc.), as well as environmental issues and impacts, animal sciences and agriculture economics). In addition, experts must have GIS knowledge and functionality, report writing skills, experience in the interpretation of agricultural information and insight into possible outcomes. Knowledge on national, provincial and local development plans e.g. development corridors, town development plans of municipalities and districts are also important.

A review of the cost implications at all levels relating to the administration of the policy envisaged in this Draft Policy Document and the implementation of the Preservation and Development of Agricultural Land Framework Act (PDALFA) will be undertaken by DAFF in collaboration with the PDAs. In addition, a cost review of financial and other incentives is to be made available to farmers and other agricultural land users in order to provide support for ensuring compliance with the Preservation and Development of Agricultural Land Framework Act (PDALFA) and its objectives, specifically the preservation and sustainable utilisation of agricultural land.

DAFF will engage the Department of Public Service and Administration as well as National Treasury to ensure the availability of required human and financial resources.

15.5 ENFORCEMENT IMPLICATIONS

The Preservation and Development of Agricultural Land Framework Act (PDALFA) will provide for an incentive-based regulatory regime that goes hand in hand with enforcement to actively promote the preservation and optimal agricultural use of agricultural land for purposes of agricultural production which will criminalise conduct that is contrary to, or intended to circumvent, the provisions of the Act. Enforcement will be effected by DAFF and provincial officials, who will, amongst others, be empowered to access and inspect, and in appropriate cases, to attach specimens for testing and to issue compliance notices. Compliance with conditions attached to every approved application for subdivision or change in land use of agricultural land will be strictly enforced.

Underutilised and unused agricultural land will be taxed at a higher rate, and compliance notices will be issued to commence farming activities. Non-implementation of these compliance notices will result in a final notice of intention to expropriate at less than market value. If appropriate steps are not taken timeously by the owner of the land concerned, expropriation in accordance with section 25 of the Constitution will be effected.

15.6 SECURITY IMPLICATIONS

Appropriate steps will be taken by DAFF to ensure and protect the integrity of the National Agricultural Land Register, as well as of all documentation received from provinces and related documentation generated at national level by DAFF, both in physical and electronic format. Similar steps will be implemented at provincial level by the PDAs.

15.7 RISK MITIGATION

For the policy envisaged in this Draft Policy Document to succeed, a number of challenges and constraints have to be confronted and overcome. These include entrenched vested interests; insufficient coordination and integration of processes and resources among DAFF and the PDAs; and insufficient capacity in these two spheres of government to implement the Act and its regulations. With specific reference to implementation issues, avoidance and non-compliance by some applicants (including developers), as well as farm owners and other agricultural land users, have been identified as issues that could affect the implementation of the policy envisaged in this Draft Policy Document. These matters will also be addressed in the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA). Measures will be included in the envisaged legislation in order to deal with these problems, which will also include various sanctions.

15.8 COMMUNICATION IMPLICATIONS

Steps will be implemented by government to ensure that the following communication initiatives, amongst others, are undertaken prior to and after the commencement of the Preservation and Development of Agricultural Land Framework Act (PDALFA):

- (a) Press releases and general information sessions; and
- (b) Training sessions for, amongst others:
 - Government departments at national and provincial level, as well as at district and local municipal level;
 - The public at large;
 - Organised agriculture;
 - Organs of state, e.g. the Land Bank and the ARC; and
 - Private entities, e.g. the Chamber of Mines.

Within this context, a detailed communication plan will be prepared by DAFF in collaboration with the PDAs.

15.9 REVIEW AND APPEAL IMPLICATIONS

As indicated above, appropriate mechanisms and systems providing for the review of decisions taken by the DAFF Minister and the Intergovernmental Committee (in respect of high value agricultural land (as well as land of Capability Class IV for an interim period of 5 years)) or an MEC (in respect of medium value agricultural land (excluding land of Capability Class IV for an interim period of 5 years)) will be established. In addition, the constitutionally-enshrined right to access a court of law is not affected by the policy envisaged in this Draft Policy Document and the proposed Preservation and Development of Agricultural Land Framework Act (PDALFA).

16. MONITORING & EVALUATION AND PERFORMANCE INDICATORS

In order to be effective, a customised outcomes-based monitoring and evaluation (M&E) system will be developed at national and provincial level to assist DAFF and the PDAs in evaluating their performance and identifying the factors which contribute to their service delivery outcomes relating to the policy envisaged in this Draft Policy Document and the Preservation and Development of Agricultural Land Framework Act (PDALFA). A key component of this M&E system at both national and provincial level is the focus on impact. The establishment and operationalization of these M&E systems will produce credible and accurate information on an on-going basis. M&E findings will inform policy and operational planning, budget formulation and execution as well as reporting, and where necessary, the implementation of corrective steps.

Performance indicators will be developed by the relevant line functionaries of both DAFF and the PDAs, in consultation with the departmental M&E units concerned.

PDAs shall develop, finalise and implement province-specific, internal M&E mechanisms (consisting of appropriate structures and systems) in order to monitor and evaluate on a regular basis all the activities undertaken in terms of the policy envisaged in this Draft Policy Document, as well as the provincial policy, guidelines and norms and standards (if applicable), at both:

- (a) Programme level [in order to determine adherence to and compliance with the relevant policies, guidelines, norms and standards, and processes by the entities bound by them. Monitoring and evaluation must also include quantitatively indicating the rate, scale and

- categories of transformed agricultural land and their significance to the sector with the aid of appropriate tools and techniques (e.g. GIS and mapping)]; and
- (b) Project level (in order to determine adherence to and compliance with the relevant policies, guidelines, norms and standards, and processes by the entities bound by them, in respect of each individual approved application. In addition, municipalities must be monitored and evaluated with regard to their monitoring of the conditions imposed by the MEC and contained in the DAFF decision).

Monitoring mechanisms will also be established to ensure that the management/institutional framework at national, provincial and municipal level function effectively and efficiently, and that the relevant commissions and committees meet on a regular basis.

17. IMPLEMENTATION RESPONSIBILITIES AND TIME-FRAME

The finalised policy envisaged in this Draft Policy Document will be submitted as a Draft White Paper to Cabinet in December 2013. This will be accompanied by the draft Preservation and Development of Agricultural Land Framework Bill.

The drafting and finalisation of Regulations will be completed by June 2014. It is envisaged that this to-be-enacted Bill and Regulations will commence in September 2014.

The communication and training of stakeholders will be implemented during the period June to August 2014, including:

- (a) Training for national and provincial levels of government will be undertaken;
- (b) National and provincial spheres will be responsible for the training of other stakeholders; and
- (c) National and provincial spheres will be responsible for support and monitoring of the policy, regulatory and implementation frameworks, as well as of programmes and projects.

An electronic database will be developed by DAFF to ensure that the new system is administered effectively, efficiently and timeously. This will also allow for the identification of trends to enable the implementation of remedial steps, where and when required.

18. ENVISAGED POLICY REVIEW

The policy envisaged in the approved Policy will be reviewed every three years from its implementation date to determine its effectiveness and appropriateness. The policy envisaged in this Draft Policy Document may be assessed at an earlier date and at more frequent intervals if and when necessary to reflect substantial organisational changes or any change required by law.

19. REFERENCE DOCUMENTS

Reference documents include:

- (a) Relevant legislation;
- (b) Court cases;
- (c) Other documentation as specified in the:

- *Status Quo* Report on the Constitutional, Policy, Legal and Administrative Framework; and
 - Technical Report on South African Agricultural Land Use Patterns and Trends; and
- (d) Documentation and other inputs provided by the PDAs.

20. DRAFT POLICY DOCUMENT OWNER

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21. DOCUMENT INFORMATION

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FINAL DRAFT

APPENDIX 1: DETAILED TABLES

FINAL DRAFT

1. TABLE INDICATING LAND CAPABILITY, LAND USE AND LAND TRANSFORMED PER PROVINCE:

PROVINCE/LAND USE IN HA	EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA TOT	
Total area (based on national Land Capability)	16 882 162	12 980 148	1 817 826	9 322 929	12 573 636	7 646 428	37 279 987	10 486 312	12 935 453	121 924 881	
Former homelands and TBVC States	4 936 807	236 619	36 260	3 181 374	3 361 196	875 087	1 024 336	2 674 868	0	16 326 547	
Inland water bodies	36 996	73 611	3 228	69 413	5 748	6 011	10 340	17 175	23 530	246 052	
Major irrevocably transformed areas	436 776	215 136	445 721	414 020	572 637	368 615	219 354	266 399	200 632	3 139 291	
Formally protected areas	320 850	154 627	36 279	489 058	1 235 705	1 211 002	1 402 742	142 663	617 574	5 610 500	
Forestry plantations	140 039	12 266	21 119	615 050	73 211	606 655	808	4 599	58 654	1 532 401	
Cultivation	1 619 331	3 771 112	363 954	975 687	1 266 846	1 409 448	261 565	2 238 552	1 985 466	13 891 961	
Rangeland	14 328 170	8 753 396	947 525	6 759 701	9 419 489	4 044 697	35 385 178	7 816 924	10 049 597	97 504 676	
LAND CAPABILITY AND LAND USE PER PROVINCE											
Class I Land	Percentage	1.62%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.002%
	Total: Area	2 733	0	0	0	0	0	0	0	0	2 733
	Former homelands & TBVC States	2 733	0	0	0	0	0	0	0	0	2 733
	Transformed: Mining	0	0	0	0	0	0	0	0	0	0
	Applications: Mining and prospecting	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0
	Transformed: LCC Urban areas	95	0	0	0	0	0	0	0	0	95
	Transformed: SBC (number of points)	380	0	0	0	0	0	0	0	0	380
	Transformed: SBC ha (0.01 ha per point)	4	0	0	0	0	0	0	0	0	4
	Transformed: Total urban areas	99	0	0	0	0	0	0	0	0	99
	Transformed: Primary & secondary roads	0	0	0	0	0	0	0	0	0	
	Total: Permanently transformed	99	0	0	0	0	0	0	0	0	99
	Forestry: Plantations - state owned	0	0	0	0	0	0	0	0	0	0
	Forestry: Plantations - private	4	0	0	0	0	0	0	0	0	4
	Total: Forestry plantations	4	0	0	0	0	0	0	0	0	4
	Indigenous forests outside protected areas	0	0	0	0	0	0	0	0	0	0
National Protected areas	0	0	0	0	0	0	0	0	0	0	

DRAFT POLICY DOCUMENT ON THE PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND

PROVINCE/LAND USE IN HA		EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA TOT
	Provincial Protected areas	0	0	0	0	0	0	0	0	0	0
	Total: Protected areas	0	0	0	0	0	0	0	0	0	0
	Cultivated fields (number)	19	0	0	0	0	0	0	0	0	19
	Cultivated fields (ha)	879	0	0	0	0	0	0	0	0	879
	Irrigated fields (number)	0	0	0	0	0	0	0	0	0	0
	Irrigated fields (ha)	0	0	0	0	0	0	0	0	0	0
	Sugarcane (ha)	0	0	0	0	0	0	0	0	0	0
	Total: Cultivation	879	0	0	0	0	0	0	0	0	0
Class II Land	Percentage	0.47%	0.10%	21.42%	4.36%	0.77%	11.40%	0.00%	0.21%	0.00%	1.54%
	Total: Area	78 787	12 701	389 310	406 931	96 921	872 007	0	21 940	0	1 878 597
	Former homelands & TBVC States	67 084	0	0	81 394	73 267	33 062	0	0	0	254 807
	Transformed: Mining	52	0	5 248	56	0	18 373	0	0	0	23 729
	Applications: Mining and prospecting	n/a	n/a	n/a	n/a	n/a	751 362	n/a	n/a	n/a	751 362
	Transformed: LCC Urban areas	4 036	175	66 869	19 495	13 936	14 193	0	0	0	118 704
	Transformed: SBC (number of points)	8 345	705	46 935	12 966	8 137	36 304	0	1 260	0	114 652
	Transformed: SBC ha (0.01 ha per point)	83	7	469	130	81	363	0	13	0	1 147
	Transformed: Total urban areas	4 119	182	67 338	19 625	14 017	14 556	0	13	0	119 851
	Transformed: Primary & secondary roads	200	159	3 604	2 708	530	7 106	0	204	0	14 511
	Total: Permanently transformed	4 371	341	76 190	22 389	14 547	40 035	0	217	0	158 091
	Forestry: Plantations - state owned	12 899	0	0	8 253	737	8 699	0	0	0	30 588
	Forestry: Plantations - private	1 371	26	6 912	61 575	4 299	81 077	0	378	0	155 638
	Total: Forestry plantations	14 270	26	6 912	69 828	5 036	89 776	0	378	0	186 226
	Indigenous forests outside protected areas	2 890	0	0	1 933	1	155	0	0	0	4 979
	National Protected areas	0	0	0	0	0	0	0	0	0	0
	Provincial Protected areas	832	0	1 383	2 349	615	6 047	0	0	0	11 226
	Total: Protected areas	832	0	1 383	2 349	615	6 047	0	0	0	11 226
Cultivated fields (number)	2 339	750	17 155	4 828	513	28 333	0	831	0	54 749	

DRAFT POLICY DOCUMENT ON THE PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND

PROVINCE/LAND USE IN HA		EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA TOT
	Cultivated fields (ha)	15 416	8 634	134 609	50 055	24 995	354 745	0	10 816	0	599 270
	Irrigated fields (number)	139	31	437	2 155	173	1 200	0	257	0	4 392
	Irrigated fields (ha)	755	797	9 535	21 301	5 156	19 273	0	4 000	0	60 817
	Sugarcane	0	0	0	33 675	0	0	0	0	0	33 675
	Total: Cultivation	15 416	8 634	134 609	83 730	24 995	354 745	0	10 816	0	632 945
Class III Land	Percentage	7.06%	17.27%	38.76%	28.86%	19.39%	27.28%	0.00%	16.74%	6.93%	11.49%
	Total: Area	1 191 729	2 241 476	704 594	2 690 673	2 437 993	2 085 727	0	1 755 340	895 807	14 003 339
	Former homelands & TBVC States	986 102	27 884	33 300	780 572	509 168	269 290	0	452 707	0	3 059 023
	Transformed: Mining	38	3 467	12 613	1 554	5 275	34 865	0	7 569	867	66 248
	Applications: Mining and prospecting	n/a	n/a	n/a	n/a	n/a	1 404 224	n/a	n/a	n/a	1 404 224
	Transformed: LCC Urban areas	96 676	17 748	201 676	121 664	163 702	109 085	0	71 547	81 464	863 562
	Transformed: SBC (number of points)	156 908	53 428	92 680	223 278	112 848	108 594	0	134 734	53 551	936 021
	Transformed: SBC ha (0.01 ha per point)	1 569	534	927	2 233	1 128	1 086	0	1 347	536	9 360
	Transformed: Total urban areas	98 245	18 282	202 603	123 897	164 830	110 171	0	72 894	82 000	872 922
	Transformed: Primary & secondary roads	5 572	18 608	6 258	15 166	14 315	14 255	0	13 291	5 287	92 752
	Total: Permanently transformed	103 855	40 357	221 474	140 617	184 420	159 291	0	93 754	88 154	1 031 922
	Forestry: Plantations - state owned	17 523	0	0	57 411	3 509	29 849	0	0	1 380	109 672
	Forestry: Plantations - private	7 211	5 099	7 947	190 789	7 090	149 306	0	1 821	2 724	371 987
	Total: Forestry plantations	24 734	5 099	7 947	248 200	10 599	179 155	0	1 821	4 104	481 659
	Indigenous forests outside protected areas	16 491	0	0	44 305	640	434	0	0	1 601	63 471
	National Protected areas	729	1 026	0	0	9 548	38 247	0	0	22 137	71 687
	Provincial Protected areas	1 418	2 630	7 621	76 453	13 329	51 403	0	19 198	13 635	185 687
	Total: Protected areas	2 147	3 656	7 621	76 453	22 877	89 650	0	19 198	35 772	257 374
	Cultivated fields (number)	11 707	70 967	29 699	21 158	28 216	44 367	0	40 992	28 932	276 038
	Cultivated fields (ha)	418 762	1 088 651	157 725	299 246	563 135	516 162	0	656 402	427 488	4 127 571
Irrigated fields (number)	1 948	2 212	846	4 823	7 171	2 063	0	5 486	7 558	32 107	
Irrigated fields (ha)	16 542	49 477	14 518	68 474	106 273	29 578	0	66 319	54 433	405 614	

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PROVINCE/LAND USE IN HA		EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA TOT
	Sugarcane	0	0	0	127 806	0	20 359	0	0	0	148 165
	Total: Cultivation	418 762	1 088 651	157 725	427 052	563 135	536 521	0	656 402	427 488	4 275 736
Class IV Land	Percentage	10.85%	41.18%	6.77%	12.40%	21.80%	20.88%	0.00%	26.74%	6.58%	13.49%
	Total: Area	1 830 877	5 345 077	123 144	1 155 649	2 741 093	1 596 612	0	2 803 769	851 225	16 447 446
	Former homelands & TBVC States	980 135	132 607	0	286 444	1 171 304	220 286	0	1 001 465	0	3 792 241
	Transformed: Mining	253	11 339	890	1 525	7 182	10 225	0	5 687	921	38 022
	Applications: Mining and prospecting	n/a	n/a	n/a	n/a	n/a	958 659	n/a	n/a	n/a	958 659
	Transformed: LCC Urban areas	103 049	68 562	60 299	69 590	175 229	76 338	0	73 621	23 342	650 030
	Transformed: SBC (number of points)	211 801	107 464	16 909	105 332	112 733	55 128	0	103 094	40 480	752 941
	Transformed: SBC ha (0.01 ha per point)	2 118	1 075	169	1 053	1 127	551	0	1 031	405	7 529
	Transformed: Total urban areas	105 167	69 637	60 468	70 643	176 356	76 889	0	74 652	23 747	657 559
	Transformed: Primary & secondary roads	10 414	35 382	866	5 050	11 276	9 458	0	14 730	5 748	92 924
	Total: Permanently transformed	115 834	116 358	62 224	77 218	194 814	96 572	0	95 069	30 416	788 505
	Forestry: Plantations - state owned	16 069	0	0	19 305	7 296	47 674	0	0	46	90 390
	Forestry: Plantations - private	12 573	4 050	1 220	92 630	8 841	32 808	0	818	2 849	155 789
	Total: Forestry plantations	28 642	4 050	1 220	111 935	16 137	80 482	0	818	2 895	246 179
	Indigenous forests outside protected areas	27 563	0	0	17 629	2 837	2 361	0	0	1 086	51 476
	National Protected areas	2 344	2 531	0	0	46 334	126 156	0	0	3 692	181 057
	Provincial Protected areas	6 121	50 855	2 328	65 018	21 350	25 633	0	9 983	9 848	191 136
	Total: Protected areas	8 465	53 386	2 328	65 018	67 684	151 789	0	9 983	13 540	372 193
	Cultivated fields (number)	22 785	114 815	2 938	6 795	14 684	30 695	0	34 826	39 558	267 096
	Cultivated fields (ha)	393 450	1 973 285	14 263	89 327	379 602	349 531	0	964 317	448 879	4 612 654
	Irrigated fields (number)	2 016	5 674	65	2 278	4 377	1 585	0	1 369	12 023	29 387
	Irrigated fields	15 256	1 255 872	1 289	23 463	67 074	24 833	0	22 955	86 356	1 497 098
	Sugarcane	0	0	0	91 374	0	37 920	0	0	0	129 294
Total: Cultivation	393 450	1 973 285	14 263	180 701	379 602	387 451	0	964 317	448 879	4 741 948	
> 5	Percentage	10.24%	27.17%	4.40%	2.89%	26.85%	5.01%	3.76%	22.10%	4.07%	11.16%

DRAFT POLICY DOCUMENT ON THE PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND

PROVINCE/LAND USE IN HA		EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA TOT
	Total: Area	1 728 574	3 526 137	80 009	268 985	3 376 027	383 457	1 401 641	2 317 629	526 876	13 609 335
	Former homelands & TBVC States	95 060	758	1 336	87 340	403 164	16 191	344 681	365 446	0	1 313 976
	Transformed: Mining	416	2 123	1 034	54	3 288	265	9 163	4 885	314	21 542
	Applications: Mining and prospecting	n/a	n/a	n/a	n/a	n/a	150 146	n/a	n/a	n/a	150 146
	Transformed: LCC Urban areas	24 679	15 514	18 520	7 086	36 739	4 388	27 811	28 002	7 304	170 043
	Transformed: SBC (number of points)	52 908	41 556	8 440	16 386	43 444	7 725	25 798	53 322	15 518	265 097
	Transformed: SBC ha (0.01 ha per point)	529	416	84	164	434	77	258	533	155	2 651
	Transformed: Total urban areas	25 208	15 930	18 604	7 250	37 173	4 465	28 069	28 535	7 459	172 694
	Transformed: Primary & secondary roads	10 270	19 392	525	1 252	10 400	1 437	4 963	9 174	3 160	60 573
	Total: Permanently transformed	35 894	37 445	20 163	8 556	50 861	6 167	42 195	42 594	10 933	254 809
	Forestry: Plantations - state owned	3	0	0	599	0	2 478	0	0	508	3 588
	Forestry: Plantations - private	521	1 738	361	11 021	0	38 709	627	375	1 673	55 025
	Total: Forestry plantations	524	1 738	361	11 620	0	41 187	627	375	2 181	58 613
	Indigenous forests outside protected areas	1 181	0	0	2 864	138	0	0	0	709	4 892
	National Protected areas	7 764	0	0	0	775 686	166 419	4 979	0	7 766	962 614
	Provincial Protected areas	17 608	35 017	537	18 510	34 888	1 336	1 617	8 778	12 001	130 292
	Total: Protected areas	25 372	35 017	537	18 510	810 574	167 755	6 596	8 778	19 767	1 092 906
	Cultivated fields (number)	19 889	39 492	2 267	2 295	10 408	2 534	8 078	17 860	16 197	119 020
	Cultivated fields (ha)	125 779	590 280	8 269	32 047	155 908	18 590	55 714	450 441	192 608	1 629 636
	Irrigated fields (number)	9 258	4 995	20	561	3 013	44	9 330	1 096	4 958	33 275
	Irrigated fields	50 379	103 045	221	6 917	33 517	637	50 398	18 760	40 679	304 553
Sugarcane	0	0	0	9 190	0	0	0	0	0	9 190	
Total: Cultivation	125 779	590 280	8 269	41 237	155 908	18 590	55 714	450 441	192 608	1 638 826	
Class VI Land	Percentage	27.34%	6.33%	19.00%	31.59%	16.13%	25.84%	3.99%	15.74%	17.36%	14.86%
	Total: Area	4 616 284	821 540	345 419	2 944 989	2 028 252	1 975 899	1 486 378	1 650 476	2 245 556	18 114 793
	Former homelands & TBVC States	1 484 774	47 521	1 229	1 168 595	656 677	203 873	44 142	200 432	0	3 807 243
	Transformed: Mining	506	224	3 686	321	3 417	935	2 131	6 040	668	17 928

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PROVINCE/LAND USE IN HA		EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA TOT
	Applications: Mining and prospecting	n/a	n/a	n/a	n/a	n/a	700 997	n/a	n/a	n/a	700 997
	Transformed: LCC Urban areas	96 541	11 802	36 891	126 939	81 192	48 301	5 881	7 684	27 797	443 028
	Transformed: SBC (number of points)	255 320	10 813	39 043	269 072	55 385	42 754	10 711	39 244	63 002	785 344
	Transformed: SBC ha (0.01 ha per point)	2 553	108	390	2 691	554	428	107	392	630	7 853
	Transformed: Total urban areas	99 094	11 910	37 281	129 630	81 746	48 729	5 988	8 076	28 427	450 881
	Transformed: Primary & secondary roads	19 617	3 763	2 500	9 023	6 040	6 026	4 172	7 251	11 491	69 883
	Total: Permanently transformed	119 217	15 897	43 467	138 974	91 203	55 690	12 291	21 367	40 586	538 692
	Forestry: Plantations - state owned	16 629	0	0	16 768	14 418	54 967	0	0	23 573	126 355
	Forestry: Plantations - private	11 046	525	2 778	113 570	16 654	112 600	59	1 190	15 054	273 476
	Total: Forestry plantations	27 675	525	2 778	130 338	31 072	167 567	59	1 190	38 627	399 831
	Indigenous forests outside protected areas	43 253	0	0	27 008	5 575	7 382	0	0	15 843	99 061
	National Protected areas	37 114	22 709	0	0	167 489	585 561	0	0	59 033	871 906
	Provincial Protected areas	90 355	24 977	5 611	95 802	50 070	70 341	4 537	7 805	25 614	375 112
	Total: Protected areas	127 469	47 686	5 611	95 802	217 559	655 902	4 537	7 805	84 647	1 247 018
	Cultivated fields (number)	34 905	7 081	7 189	7 939	8 917	11 406	1 510	10 443	61 138	150 528
	Cultivated fields (ha)	448 674	63 208	42 278	110 379	124 489	100 226	9 995	103 095	692 513	1 694 857
	Irrigated fields (number)	7 097	431	304	1 121	2 920	409	477	830	12 683	26 272
	Irrigated fields	39 752	6 359	5 269	10 013	31 222	5 096	3 534	11 048	80 876	193 169
	Sugarcane	0	0	0	117 229	0	1 545	0	0	0	118 774
	Total: Cultivation	448 674	63 208	42 278	227 608	124 489	101 771	9 995	103 095	692 513	1 813 631
Class VII Land	Percentage	28.20%	4.49%	0.00%	13.99%	4.46%	4.45%	82.68%	15.35%	41.46%	37.19%
	Total: Area	4 761 380	582 211	0	1 303 968	560 401	340 298	30 822 406	1 609 927	5 362 625	45 343 216
	Former homelands & TBVC States	1 082 151	4 697	0	507 605	49 441	66 083	590 512	514 907	0	2 815 396
	Transformed: Mining	28	590	0	205	374	35	38 905	112	3 210	43 459
	Applications: Mining and prospecting	n/a	n/a	n/a	n/a	n/a	161 274	n/a	n/a	n/a	161 274
Transformed: LCC Urban areas	35 464	732	0	19 442	3 567	5 194	52 252	3 330	7 829	127 810	

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PROVINCE/LAND USE IN HA		EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA TOT
	Transformed: SBC (number of points)	130 956	4 892	0	60 213	7 241	4 565	92 962	9 866	27 920	338 615
	Transformed: SBC ha (0.01 ha per point)	1 310	49	0	602	72	46	930	99	279	3 386
	Transformed: Total urban areas	36 774	781	0	20 044	3 639	5 240	53 182	3 429	8 108	131 196
	Transformed: Primary & secondary roads	15 484	2 286	0	1 962	1 820	481	67 642	3 093	14 351	107 119
	Total: Permanently transformed	52 286	3 657	0	22 211	5 833	5 756	159 729	6 634	25 669	281 774
	Forestry: Plantations - state owned	25 766	0	0	5 384	2 612	7 890	0	0	2 199	43 851
	Forestry: Plantations - private	3 095	808	0	34 906	4 393	36 451	116	0	2 203	81 972
	Total: Forestry plantations	28 861	808	0	40 290	7 005	44 341	116	0	4 402	125 823
	Indigenous forests outside protected areas	75 892	0	0	22 544	5 305	5 969	0	0	3 340	113 050
	National Protected areas	75 208	0	0	0	27 699	14 617	1 158 817	0	66 311	1 342 652
	Provincial Protected areas	21 939	1 280	0	179 953	24 540	65 231	18 191	24 074	38 017	373 225
	Total: Protected areas	97 147	1 280	0	179 953	52 239	79 848	1 177 008	24 074	104 328	1 715 877
	Cultivated fields (number)	16 636	3 864	0	1 202	1 509	1 138	30 187	1 971	23 604	80 111
	Cultivated fields (ha)	198 510	37 973	0	5 807	9 616	3 237	183 838	47 663	196 366	683 010
	Irrigated fields (number)	5 209	1 399	0	167	647	103	18 408	139	10 130	36 202
	Irrigated fields	33 581	24 135	0	602	4 088	384	114 273	1 980	53 519	232 562
	Sugarcane	0	0	0	6 628	0	4	0	0	0	6 632
Total: Cultivation	198 510	37 973	0	12 435	9 616	3 241	183 838	47 663	196 366	689 642	
Class VIII Land	Percentage	15.61%	2.91%	9.47%	5.17%	10.56%	5.05%	9.55%	2.96%	23.42%	10.07%
	Total: Area	2 634 802	377 395	172 122	482 321	1 327 201	386 417	3 559 222	310 056	3 029 834	12 279 370
	Former homelands & TBVC States	238 768	23 152	395	269 424	498 175	66 302	45 001	139 911	0	1 281 128
	Transformed: Mining	4	21	351	10	2 081	689	1 167	381	159	4 863
	Applications: Mining and prospecting	n/a	n/a	n/a	n/a	n/a	247 578	n/a	n/a	n/a	247 578
	Transformed: LCC Urban areas	2 564	306	20 893	2 740	27 299	3 577	975	5 450	1 702	65 506
	Transformed: SBC (number of points)	12 613	3 027	15 044	19 597	18 746	4 948	5 553	11 390	7 323	98 241
	Transformed: SBC ha (0.01 ha per point)	126	30	150	196	187	49	56	114	73	982

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PROVINCE/LAND USE IN HA	EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA TOT
Transformed: Total urban areas	2 690	336	21 043	2 936	27 486	3 626	1 031	5 564	1 775	66 488
Transformed: Primary & secondary roads	2 526	724	807	1 110	1 390	789	2 942	819	2 940	14 047
Total: Permanently transformed	5 220	1 081	22 201	4 056	30 957	5 104	5 140	6 764	4 874	85 398
Forestry: Plantations - state owned	13 097	0	0	145	1 280	228	0	0	4 017	18 767
Forestry: Plantations - private	2 232	20	1 901	2 694	2 082	3 919	6	17	2 428	15 299
Total: Forestry plantations	15 329	20	1 901	2 839	3 362	4 147	6	17	6 445	34 066
Indigenous forests outside protected areas	24 547	0	0	7 756	1 360	598	0	0	4 261	38 522
National Protected areas	24 014	8 507	6	0	30 665	0	182 886	0	97 930	344 008
Provincial Protected areas	35 404	5 095	18 793	50 973	33 492	60 011	31 715	72 825	261 590	569 898
Total: Protected areas	59 418	13 602	18 799	50 973	64 157	60 011	214 601	72 825	359 520	913 906
Cultivated fields (number)	4 352	2 064	2 375	538	1 388	1 517	2 777	1 305	7 849	24 165
Cultivated fields (ha)	17 861	9 081	6 810	2 781	9 101	6 837	12 018	5 818	27 612	97 919
Irrigated fields (number)	1 133	24	39	13	215	93	703	50	2 897	5 167
Irrigated fields	2 639	167	489	14	929	346	2 219	102	8 455	15 360
Sugarcane	0	0	0	143	0	292	0	0	0	435
Total: Cultivation	17 861	9 081	6 810	2 924	9 101	7 129	12 018	5 818	27 612	98 354

The following terminology is used for purposes of the calculations in the table above:

- Total area (ha): total area of the province described in ha.
- Total area (km²): total area of the province described in km².
- Homelands area (ha): total area of all former homelands within the relevant province described in ha.
- Total irrigated fields (ha): total irrigated fields/lands found within the province described in ha. (Data was derived through the amalgamation of the field crop boundary data sets developed from the SPOT images of 2006 - presently merged with the 2000 LandCover data set on a 1:50 000 scale to determine irrigated areas. It excludes sugarcane production areas).
- Total irrigated fields (number): as per above but described as number of fields.
- Rangeland available for grazing: was determined through a calculation of available land after subtracting permanently transformed areas (mining included) and cultivated areas – excluding sugarcane - from the total provincial land surface. The available rangeland area does not take into consideration the veld condition or current land use.
- Data per land capability class I - IV (land capability data is on a 1:250 000 scale):
 - % of province: percentage of the land capability class per province.

- Area (ha): area of the land capability class per province described in ha
- Former homelands & TBVC States (ha): area of the relevant land capability class that were found within the former homelands per province described in ha.
- Permanently transformed areas (ha) - mining included: areas that are permanently transformed, described in ha, including mining areas that are no longer available for agricultural purposes (calculation was based on the 2009 SPOT Building Count point data and calculated based on the assumption of each point equals to an average development footprint area of 100m² - see mining calculations below).
- Mining (ha): areas transformed due to mining activities and therefore no longer available for agricultural production purposes (calculations done from the 2005 LandCover change data set on a grid size of 50 X 50m and based on majority land cover per each grid).
- Cultivated fields (number): number of cultivated fields per land capability class per province (data derived from the field crop boundaries developed from 2006 to present on a 1:50 000 scale. Data exclude areas under sugarcane production).
- Cultivated fields (ha): number of cultivated fields, described in ha, per land capability class per province (data derived from the field crop boundaries developed from 2006 to present on a 1:50 000 scale. Data exclude areas under sugarcane production).
- Irrigated fields (ha): total irrigated fields/lands found per land capability class, within the province described in ha (data was derived through the amalgamation of the field crop boundary data sets developed from the SPOT images from 2006 - present merged with the 2000 LandCover data set on a 1:50 000 scale to determine irrigated areas. Data exclude areas under sugarcane production).
- Irrigated fields (number): as per above but described as number of fields.

The following datasets were used in the spatial evaluation of the land uses that have resulted in the permanent transformation of agricultural land per land capability class per province:

- National Land capability classification derived from the 1:250 000 land type data set - 2002
- Former homelands and TBVC states – spatial demarcation
- Protected areas - national and provincial as derived by the Department of Environmental Affairs - 2009
- Cultivation – National Field crop boundaries, KZN LandCover 2009 and Inkomati Catchment Management Area LandCover 2010
- Forestry plantations – DAFF 2010; LandCover 2000
- Permanently transformed areas – SPOT Building Count (ESKOM) 2009; Roads 2006; LandCover 2010.

2. TABLE INDICATING CHANGE IN LAND USE / REZONING APPLICATIONS LODGED IN TERMS OF THE SUBDIVISION OF AGRICULTURAL LAND ACT 70 OF 1970: 2006-2011

Applications per Province	2006				2007				2008				2009				2010				2011				TOTALS			
	1	2	3	T	1	2	3	T	1	2	3	T	1	2	3	T	1	2	3	T	1	2	3	T	1	2	3	T
Eastern Cape	15	5	21	41	20	2	25	47	31	4	39	74	16	1	36	53	3	2	22	27	12	4	15	31	97	18	158	273
Free State	3	0	6	9	16	2	12	30	28	7	7	42	14	0	4	18	0	0	6	6	2	1	8	11	63	10	43	116
Gauteng	11	0	21	32	24	0	16	40	12	0	11	23	29	0	65	94	3	0	25	28	24	1	23	48	103	1	161	265
Kwazulu-Natal	6	1	6	13	13	2	26	41	24	1	42	67	18	4	67	89	11	0	67	78	12	2	31	45	84	10	239	333
Limpopo	11	2	6	19	5	0	7	12	6	1	5	12	11	0	8	19	1	0	7	8	8	2	24	34	42	5	57	104
Mpumalanga	9	1	10	20	33	2	13	48	29	2	27	58	19	4	22	45	6	0	24	30	6	3	13	22	102	12	109	223
North West	19	1	11	31	18	0	15	33	3	2	2	7	13	0	43	56	3	0	44	47	2	2	6	10	58	5	121	184
Northern Cape	2	0	3	5	3	1	2	6	3	1	0	4	3	1	5	9	2	1	5	8	34	13	35	82	47	17	50	114
Western Cape	128	17	72	217	121	12	59	192	106	12	136	254	149	14	122	285	44	9	145	198	61	8	76	145	609	72	610	1291
National	204	27	156	387	253	21	175	449	242	30	269	541	272	24	372	668	73	12	345	430	161	36	231	428	1205	150	1548	2903

TABLE KEY:

- 1: Approved
- 2: Approved with conditions
- 3: Not approved
- T: Total number of applications

3. TABLE INDICATING SUBDIVISION APPLICATIONS LODGED IN TERMS OF THE SUBDIVISION OF AGRICULTURAL LAND ACT 70 OF 1970: 2006-2011

Applications per Province	2006				2007				2008				2009				2010				2011				TOTALS			
	1	2	3	T	1	2	3	T	1	2	3	T	1	2	3	T	1	2	3	T	1	2	3	T	1	2	3	T
Eastern Cape	46	11	66	123	61	29	62	152	41	44	55	140	42	45	65	152	51	17	39	107	15	22	64	101	256	168	351	775
Free State	14	14	20	48	22	29	23	74	36	42	19	97	18	46	26	90	25	19	28	72	34	37	26	97	149	187	142	478
Gauteng	20	2	101	123	26	7	159	192	66	19	103	188	22	10	77	109	37	6	46	89	30	12	53	95	201	56	539	796
Kwazulu-Natal	40	26	57	123	73	40	110	223	62	43	121	226	44	43	127	214	44	18	70	132	28	24	77	129	291	194	562	1047
Limpopo	70	23	49	142	110	34	102	246	88	61	95	244	67	55	86	208	52	45	89	186	60	44	94	198	447	262	515	1224
Mpumalanga	67	22	37	126	95	23	80	198	48	36	76	160	38	28	67	133	48	14	67	129	36	38	84	158	332	161	411	904
North West	55	15	56	126	52	36	109	197	50	68	90	208	26	61	89	176	48	33	71	152	28	53	56	137	259	266	471	996
Northern Cape	17	5	16	38	25	22	37	84	35	37	59	131	9	24	35	68	21	15	44	80	8	15	37	60	115	118	228	461
Western Cape	102	43	86	231	76	116	102	294	45	174	102	321	27	128	78	233	61	64	89	214	46	97	57	200	357	622	514	1493
National	431	161	488	1080	540	336	784	1660	471	524	720	1715	293	440	650	1383	387	231	543	1161	285	342	548	1175	2407	2034	3733	8174

TABLE KEY:

- 1: Approved
- 2: Approved with conditions
- 3: Not approved
- T: Total number of applications

4. TABLE INDICATING TOWNSHIP ESTABLISHMENT (INCLUDING ENLARGEMENT) APPLICATIONS LODGED IN TERMS OF THE SUBDIVISION OF AGRICULTURAL LAND ACT 70 OF 1970: 2006-2011

Applications per Province	2006				2007				2008				2009				2010				2011				TOTALS			
	1	2	3	T	1	2	3	T	1	2	3	T	1	2	3	T	1	2	3	T	1	2	3	T	1	2	3	T
Eastern Cape	3	1	2	6	3	1	3	7	2	0	6	8	2	0	7	9	1	0	3	4	0	0	3	3	11	2	24	37
Free State	1	0	4	5	1	0	1	2	6	1	7	14	2	2	4	8	4	0	10	14	0	0	12	12	14	3	38	55
Gauteng	36	1	69	106	37	0	129	166	33	1	56	90	34	0	50	84	6	1	41	48	17	0	10	27	163	3	355	521
Kwazulu-Natal	6	0	10	16	10	0	3	13	4	0	4	8	3	0	13	16	1	0	14	15	5	0	14	19	29	0	58	87
Limpopo	15	0	11	26	29	1	31	61	45	1	24	70	18	0	22	40	8	0	41	49	8	1	36	45	123	3	165	291
Mpumalanga	23	2	19	44	61	1	41	103	33	0	34	67	33	2	46	81	4	1	52	57	8	2	15	25	162	8	207	377
North West	70	2	33	105	74	2	84	160	27	3	55	85	17	0	37	54	8	0	30	38	24	1	14	39	220	8	253	481
Northern Cape	0	0	2	2	2	0	0	2	6	0	2	8	0	0	2	2	1	0	0	1	0	0	0	0	9	0	6	15
Western Cape	4	0	2	6	6	0	1	7	8	0	8	16	16	0	23	39	4	1	25	30	10	1	9	20	48	2	68	118
National	158	6	152	316	223	5	293	521	164	6	196	366	125	4	204	333	37	3	216	256	72	5	113	190	779	29	1174	1982

TABLE KEY:

- 1: Approved
- 2: Approved with conditions
- 3: Not approved
- T: Total number of applications