



agriculture,  
forestry & fisheries

Department:  
Agriculture, Forestry and Fisheries  
REPUBLIC OF SOUTH AFRICA

# **DISCUSSION DOCUMENT ON THE PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND**

## **CONTENTS**

<b>ACRONYMS</b>	<b>4</b>
<b>DEFINITIONS/GLOSSARY OF TERMS</b>	<b>5</b>
<b>1. INTRODUCTION</b>	<b>8</b>
<b>2. POLICY AREA / MANDATE OF DEPARTMENT</b>	<b>9</b>
<b>3. PROBLEM STATEMENT</b>	<b>10</b>
<b>4. POLICY AIMS, OBJECTIVES AND PRINCIPLES</b>	<b>12</b>
<b>5. POLICY TO ADDRESS THE PROBLEM</b>	<b>15</b>
5.1 CUSTODIANSHIP OF AGRICULTURAL LAND	15
5.2 THE RIGHT TO FARM	16
5.3 INTERGOVERNMENTAL RELATIONS AND PLANNING	16
5.4 AGRICULTURAL SECTOR PLANS	18
5.5 PROTECTED AGRICULTURAL AREAS	19
5.6 NATIONAL AGRICULTURAL LAND REGISTER	19
5.7 AGRICULTURAL IMPACT ASSESSMENTS	20
5.8 INTENDED LAND USE CHANGES	21
5.9 HIGH POTENTIAL CROPPING LAND	21
5.10 MEDIUM POTENTIAL AGRICULTURAL LAND	23
5.11 PROSPECTING, MINING, ENERGY SOURCES AND RENEWABLE ENERGY ON AGRICULTURAL LAND	24
5.12 WATER LICENSES	25
5.13 CORRIDOR DEVELOPMENT	25
5.14 CONSTRUCTION AND EXPANSION OF ROADS	26
5.15 FARM-RELATED ACTIVITIES AND INTENSIVE AGRICULTURAL ENTERPRISES ECONOMIC VIABILITY AND THE POSSIBLE APPROPRIATENESS OF THE ECONOMIES OF SCALE	26
5.16 OPTIMAL LAND USE, UNPRODUCTIVE LAND USE AND NON-USAGE	26
5.17 VERIFICATION/RECLASSIFICATION OF AGRICULTURAL POTENTIAL OF LAND	27
5.18 TRADE-OFFS AND MITIGATION OF LOSS OF AGRICULTURAL LAND	28
5.19 DEVIATION FROM THE GENERAL APPROACH RELATING TO THE SUBDIVISION OR CHANGE IN LAND USE OF AGRICULTURAL LAND	28
5.20 PROVINCIAL MINIMUM GUIDELINES AND PROCEDURES	29

<b>6.</b>	<b>MANAGEMENT/INSTITUTIONAL FRAMEWORK</b>	<b>29</b>
6.1	NATIONAL LEVEL	29
6.2	PROVINCIAL LEVEL	30
6.3	MUNICIPAL LEVEL	30
<b>7.</b>	<b>KEY IMPLICATIONS FOR GOVERNMENT</b>	<b>31</b>
7.1	LEGISLATIVE AND REGULATORY IMPLICATIONS	31
7.2	GOVERNANCE IMPLICATIONS	31
7.3	ORGANISATIONAL/ADMINISTRATIVE/INSTITUTIONAL IMPLICATIONS	32
7.4	FINANCIAL IMPLICATIONS	32
7.5.	ENFORCEMENT IMPLICATIONS	33
7.6	SECURITY IMPLICATIONS	33
7.7	RISK MITIGATION	33
7.8	COMMUNICATION IMPLICATIONS	33
7.9	REVIEW AND APPEAL IMPLICATIONS	34
<b>8.</b>	<b>MONITORING &amp; EVALUATION AND PERFORMANCE INDICATORS</b>	<b>34</b>
<b>9.</b>	<b>IMPLEMENTATION RESPONSIBILITIES AND TIME-FRAME</b>	<b>35</b>
<b>10.</b>	<b>ENVISAGED POLICY REVIEW</b>	<b>35</b>
<b>11.</b>	<b>REFERENCE DOCUMENTS</b>	<b>35</b>
<b>12.</b>	<b>DRAFT POLICY DOCUMENT OWNER</b>	<b>35</b>
<b>13.</b>	<b>DOCUMENT INFORMATION</b>	<b>35</b>

## ACRONYMS

ASR	Agricultural Scientific Report
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
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
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
NALR	National Agricultural Land Register
NDP	National Development Plan
NEMA	National Environmental Act 107 of 1998
NEPAD	New Partnership for Africa's Development
PDA	Provincial Department responsible for Agriculture
PD-ALF	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
TBVC	Transkei, Bophuthatswana, Venda and Ciskei
TRANCRAA	Transformation of Certain Rural Areas Act 94 of 1998

## DEFINITIONS/GLOSSARY OF TERMS

**“agriculture”** means the science, art, practice or occupation concerned with the active production of useful plants, fungi or animals for food, fibre, fuels, raw material and other products with the primary purpose to sustain life, and in varying degrees the preparation and marketing of the resulting products;

**“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 MECs concerned, excludes by means of a notice in the Gazette.

**“agricultural land use zones”** means zones, based on the agricultural potential, agricultural capability, agricultural suitability, conservation status, use and location, demarcated on a map of a suitable scale;

**“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 Sector Plan”** means a formal agreement at provincial level on the social, economic and environmental goals pertaining to the sustainable development and growth of the agricultural sector, based on Spatial Agricultural Plans per local municipality and developed with the full participation of the farming community, community organisations and the general public.

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

**“best available agricultural land”** means agricultural land with the highest agricultural potential within a specific local municipal, excluding high potential cropping land;

**“fragmentation of agricultural land”** means the subdivision and/or changes in the scheduled use of agricultural land that reduce the economic, environmental, social and logistical efficiency and viability of a farming system and agro-ecosystem;

**“high potential cropping land”** means land best suited to, and capable of, consistently producing acceptable levels of goods and services for a wide range of agricultural enterprises in a sustainable manner, taking into consideration expenditure of energy and economic resources and includes –

- a) land capability class I land;
- b) land capability class II land;
- c) land capability class III land;
- d) unique agricultural land;
- e) irrigated land; and
- f) land suitable for irrigation;

**“land capability”** means the most intensive long-term use of land for purposes of rainfed farming, determined by the interaction of climate, soil and terrain and makes provision for the following eight land capability classes;

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.

“**medium potential agricultural land**” means all land available for agricultural production purposes –

- (a) excluding high potential cropping land; and
- (b) including land capability classes IV, V, VI, VII and VIII land;

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

**“natural agricultural resources assessment”** means the description and interpretation of the characteristics of and assessing the potential, capability, suitability and conservation status of the natural agricultural resources for purposes of agricultural production and development;

**“optimal agricultural use”** means the maximum productivity per unit area and unit time achievable by the best suited or adapted farming enterprise in a sustainable manner with a minimum negative impacts on the natural agricultural resources;

**“Protected Agricultural Area”** means an agricultural land use zone, protected for purposes of food production and ensuring that high potential and best available agricultural land are protected against non-agricultural land uses in order to promote long-term agricultural production and food security;

**“right to farm”** means the entitlement of farmers to farm with an agricultural enterprise of their choice, the protection of farmers against adjacent land use decisions and local government laws that would unreasonably interfere with their normal farming practices;

**“subdivision”** means the process, instance, or state of agricultural land being divided into smaller pieces, by creating a boundary, for purposes of –

- (a) a change in ownership; or
- (b) a change in land use rights;

**“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:

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

**“unique agricultural land”** means land –

- (a) other than land capability classes I, II and III land, that is important to agriculture and used for the production of specific high value agricultural enterprises; and
- (b) with the special combination of location, terrain features, climate and soil properties to economically produce sustained high quality 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 agricultural production operations to cover –

- (a) all variable and fixed costs of production;
- (b) all appropriate family living expenses; and
- (c) capital replacement costs.

# DISCUSSION DOCUMENT ON THE PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND

## 1. INTRODUCTION

The preservation, development and sustainable use of agricultural land are of vital importance to ensure long-term food security in South Africa. These principles of food security as well as an integrated, inclusive rural economy underpin the core focus areas of the National Development Plan, Vision 2030 (NDP). 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 whilst job creation and increased agricultural productivity is needed to address food insecurity at household and individual level in rural areas. The concomitant Food Security Policy for the Republic of South Africa (2013) states unambiguously that *food security is a key element of both poverty and inequality*.

The NDP endorses the 2009-2014 Medium Term Strategic Framework which lists rural development and food security as one of the ten priority areas to give effect to Government's strategic objectives.

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 aim is to raise agricultural productivity to at least 6% annually as this increase in food production is necessary to alleviate poverty and to eliminate hunger in Africa. According to CAADP, feeding the growing population will require more food, while the scope for *expansion* in cropped or irrigated areas remains *limited*.

On a global level, food security is closely linked to Goal 1 of the Millennium Development Goals, namely to eradicate extreme poverty and hunger. In addition, Goal 7 aims to ensure environmental sustainability by, amongst others, integrating the principle of sustainable development into country policies and programmes and reversing the loss of environmental resources. This includes the loss of agricultural land to non-agricultural uses. 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 is to increase agricultural production significantly and in a sustainable manner. To facilitate this increase in agricultural production, it is necessary to formulate, introduce and monitor policies, laws and regulations conducive to sustainable agricultural development. The implication is clearly that a policy, law and regulations must be formulated for South Africa to preserve agricultural land for food production.

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'.*

A recent report published by the Food and Agricultural Organisation (FAO) of the United Nations states that the availability of land and water to meet global and national demands for food and agriculture production have been put into sharp relief following the recent rise in commodity price levels (and associated volatility) and increased large-scale land acquisition. The social impacts of rapid food price inflation have hit the poorest hardest. The buffering capacity of global agricultural markets to absorb supply shocks and stabilize agricultural commodity prices is tied to the continued functioning of land and water systems. At the same time, climate change brings additional risks and further unpredictability of harvests for farmers – from warming and related aridity, shifts in rainfall patterns, and the frequency and duration of extreme events.

Investing in agriculture is still regarded as one of the most effective strategies for reducing poverty and hunger and at the same time promoting sustainability. Furthermore, demand growth for agricultural products and the risks associated with climate change will result in increasing pressure on the natural agricultural resources. In light of these increasing pressures, the demand to have agricultural land subdivided and/or to have such land's use changed, the Department of Agriculture, Forestry and Fisheries (DAFF) has developed the Draft Policy on the Preservation and Development of Agricultural Land. The aims of the Draft Policy 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

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. It is estimated that, by 2030, an additional 120 million ha of land will be required in order to support the growth in food requirements. This estimation does not take into account the compensation required for losses resulting from unsustainable forms of agricultural production.

South Africa’s hunger index developed from the National Food Consumption Survey of 2005 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. StatsSA 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.

Aforementioned as well as a number of additional 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 potential cropping land. Similar to any limited and non-renewable resource, it is important to conserve cropping land. The scope for expanding cropping and 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 potential agricultural land are increasing. In this regard, pressures associated with mining, urban, infrastructure and residential development in respect of high potential cropping land are currently major contributors to the alienation and reduced availability of agricultural land for agricultural production. 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.

<b>AGRICULTURAL LAND PERMANENTLY CONVERTED TO NON-AGRICULTURAL PURPOSES AREAS</b>			
<b>Land Capability Class</b>	<b>Total (ha)</b>	<b>Permanently Converted</b>	<b>Remainder</b>
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	-	-
<b>TOTAL</b>	<b>121 924 881</b>	<b>3 385 343</b>	<b>118 539 538</b>

- (c) A significant portion of land suitable for crop production has already been irrevocably converted 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. The relationship population vs. available high potential 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.

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

- (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. These include the following:
- i. 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.
  - ii. 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).
  - iii. 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 or continued farm investments.
  - iv. Unsustainable 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 a challenge. It also poses a threat to the sustainable use of the natural agricultural resources and biodiversity.
  - v. 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 the 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 potential and unique agricultural resources and agricultural land care 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 aforementioned 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. POLICY AIMS, OBJECTIVES AND PRINCIPLES**

This Draft Policy 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 has the following objectives:

- (a) To implement a country-wide policy and regulatory framework for the preservation and development of agricultural land, which:

- i. Encourages farming on agricultural land in collaboration with other role players;
  - ii. 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;
  - iii. 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);
  - iv. Discourages and/or prohibits subdivision and rezoning of agricultural land that results in fragmentation of agro-ecosystems, reduced agricultural productivity, and/or land degradation;
  - v. 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
  - vi. 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 potential cropping 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 potential 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.

The following principles underlie this draft policy:

- (a) Specific principles relating to the protection and development of agricultural land include the following:
  - i. **Protection:** Protection of agricultural land is primary in the application of this Draft Policy 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 potential cropping

land that will have permanent impacts will not be able to proceed unless exceptional circumstances can be demonstrated.

- ii. **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.
- iii. **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.
- iv. **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.
- v. **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 in ensuring the purposes are achieved while balancing competing land needs.

(b) The following overarching principles underlie this Draft Policy:

- i. **Human dignity:** Recognising the inherent dignity and the equal and inalienable human rights of all South Africans.
- ii. **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.
- iii. **Food security:** Recognising the right of everyone to access sufficient food and water.
- iv. **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.
- v. **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.
- vi. **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.
- vii. **Just administrative action:** Ensuring lawfulness, reasonableness and procedural fairness (and impartiality) with regard to all decisions impacting on agricultural land.
- viii. **Cooperative government:** Ensuring effective, transparent, accountable coherent government with regard to all issues impacting on agricultural land.
- ix. **Efficient use of resources:** Promoting the economic and effective use of resources relating to agricultural land.
- x. **Accountability:** Holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law.
- xi. **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.

- xii. **Consistency** of administrative processes and decisions.
- (c) In addition to the above core principles, the following premises underlie this Draft Policy:
- i. **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.
  - ii. **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.
  - iii. **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.
  - iv. **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.
  - v. **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.

## 5. POLICY TO ADDRESS THE PROBLEM

The successful implementation of the Draft Policy Proposals and the proposed legislation, as well as of the concomitant institutional and systems frameworks and effective and efficient Monitoring & Evaluation (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 experienced farmers as well as the farm labour force; and
- (c) Increased and improved long-term food security for the people of South Africa.

### 5.1 Custodianship of Agricultural Land

Agricultural land is the common heritage of all the people of South Africa and the Department is the custodian thereof for the benefit of all South Africans.

Agriculture is in terms of Schedule 4 (Part A) of the 1996 Constitution, a functional area of concurrent national and provincial competence. The Minister and MECs concerned must ensure the sustainable development and preservation of South Africa's agricultural land within a framework of national and provincial agricultural policy, norms and standards while promoting economic and social development and food security.

As the custodian of the nation's agricultural land, the Department and the provincial Departments responsible for Agriculture may approve, reject, control, administer and manage any rezoning or subdivision of agricultural land.

The Department will publish the proposed Preservation and Development of Agricultural Land Framework Act (PD-ALF) for purpose of public consultation. This 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 within six months after the enactment of the Bill in order to ensure the effective and efficient implementation of the legislation. The Subdivision of Agricultural Land Act, Act 70 of 1970, will be replaced by the new statutory framework.

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 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).

## **5.2. The Right to Farm**

Landowners as well as users of agricultural land are entitled to farm with an agricultural enterprise of their choice and to be protected against adjacent land use decisions and local government laws that would unreasonably interfere with their normal farming practices, including but not limited to the following:

- (a) Nuisance complaints about farming practices such as noise, odours, extended hours of operation, visual impact and intensive farming operations;
- (b) Crop and irrigation spraying due to urban encroachments;
- (c) Pollutants from adjacent scheduled land uses entering farm water sources, competition for water and development that will negatively impact on the recharge of groundwater;
- (d) Flooding and/or soil erosion caused by storm water runoff of adjacent scheduled land uses;
- (e) Spreading of weeds due to the lack of urban weed control;
- (f) Introduction of pests and diseases from adjacent scheduled land uses; and
- (g) Restrictions on the movement of farm vehicles and equipment due to physical barriers and urban traffic.

## **5.3 Intergovernmental Relations and Planning**

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 (PD-ALF). The Intergovernmental Committee may consider subdivision and rezoning applications on high potential cropping land in exceptional circumstances (see 10.9 below). Any deviations from the general rule (that no applications for rezoning to non-agricultural land uses will be considered for high potential cropping 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 potential cropping 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.

**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:
  - i. 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
  - ii. Purchase prices of agricultural land reflect the agricultural potential 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).

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 purposes, on the other hand. Where a planning scheme does not contain adequate agricultural land preservation provisions, Government will be guided by the principles set out in this Draft Policy when considering applications for the approval of planning schemes, rezoning and other scheme amendments.

**Provincial government is obliged to adopt provincial agricultural spatial planning frameworks** which will be binding on all relevant parties and will be aimed at the protection and sustainable use of agricultural land. In addition, provinces must draft and implement medium-term strategies on the protection of high potential cropping land. These strategies must focus in particular on the proactive use of high potential cropping 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 potential cropping 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 potential cropping land for agricultural production and agricultural development purposes is very important:

- (a) 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 potential cropping 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. 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.
- (b) Provinces must also develop a provincial statutory planning framework in respect of high potential cropping land, comprising at least two key elements namely:
  - i. The integration of the protection of high potential cropping land as well as Protected Agricultural Areas within the provincial Spatial Development Plan are 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

- ii. 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 potential cropping 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.

**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 potential cropping 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 potential cropping land located outside formally proclaimed Protected Agricultural Areas are subjected to the same norms and standards applicable to high potential cropping 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 (PD-ALF), 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.

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.

#### **5.4 Agricultural Sector Plans**

An Agricultural Sector Plan is a formal agreement at provincial level on the social, economic and environmental goals pertaining to the sustainable development and growth of the agricultural sector and will be based on Spatial Agricultural Plans per local municipality and developed with the full participation of the farming community, traditional governance structures where applicable, community organisations and the general public.

PDAs will be required to develop and maintain the Agricultural Sector Plans (ASPs) for their respective provinces as well as the Municipal level Spatial Agricultural Plans. These Agricultural Plans must be completed within 12 months after the commencement of the proposed Preservation and Development of Agricultural Land Framework Act.

The national, provincial and local spatial plans must be coordinated and aligned. DAFF has the responsibility to evaluate and amend where needed, the provincial Agricultural Sector Plans and to make recommendations to the Minister in this regard. DAFF will also 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

The provincial Departments have the responsibility to ensure that the Spatial Agricultural Plans are integrated into municipal planning frameworks and aligned with:

- (a) The Integrated Development Plan;
- (b) The Spatial Development Framework;
- (c) The Local Economic Development Plan;
- (d) The Land Use Management Scheme;
- (e) Any other planning frameworks applicable.

### **5.5 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 potential 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 (PD-ALF) and/or its regulations.

## **5.6 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 September 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; and
- (i) Forms, procedures, guidelines and technical / scientific reports.

The data relating to the 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.

PDAs 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 PDAs 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.

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

## **5.7 Agricultural Impact Assessments**

All applications submitted for the subdivision or rezoning of agricultural land should include an Agricultural Impact Assessment (AIA), performed by a SACNASP registered agricultural scientist. DAFF and or the provincial

Department may request that an additional AIA be undertaken by an independent, SACNASP registered, agricultural scientist if the AIA submitted by the applicant is of poor quality or does not provide sufficient data and information for an informed decision.

An Agricultural Impact Assessment (AIA) consists of the following elements:

- (a) Location and nature of proposed change;
- (b) Compliance/non-compliance with planning and land use frameworks;
- (c) Natural agricultural resources;
- (d) Agricultural land capability;
- (e) Agricultural land suitability;
- (f) On- and off-farm agricultural infrastructure;
- (g) Current agricultural enterprises, farming systems and uses; and
- (h) Impact assessments of the proposed change on the agro-ecosystem and farming system including:
  - i. Production services;
  - ii. Ecological services; and
  - iii. Socio-cultural services.

The procedures and detailed requirements of an AIA will be specified in the proposed Preservation and Development of Agricultural Land Framework Act (PD-ALF) and/or its regulations.

### **5.8 Intended Land Use Changes**

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.

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.

### **5.9 High potential cropping land**

South Africa consists of 122 million ha of land, of which approximately 13% is regarded as high potential cropping land. Due to the limited extent, high potential cropping land should, in principle, be used for food crops, and not for any other agricultural production. In this regard, the conversion of high potential cropping land to ecotourism-related game farming or other agricultural production initiatives will not be allowed where such conversion will not bring about the production of food crops, or a loss in production of food crops.

In principle, the change in land use (rezoning) of high potential cropping land 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:
  - i. Will not negatively affect food security; and

- ii. 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.

With regard to **high potential (or adjacent) agricultural land** located within, 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 potential cropping land that is located within, 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.

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 of the factors considered, the reasons for the decision and the possible implications for the PD-ALF objectives.

All subdivision and or consolidation applications involving high potential cropping 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.

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 potential cropping land;
- (b) A lease agreement in respect of high potential cropping 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 potential cropping land, whether surveyed or not, is sold or advertised for sale for non-agricultural land uses;
- (d) A right to a portion of high potential cropping 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 potential cropping land is established;
- (f) Any undivided shares in high potential cropping land may be registered; and
- (g) The registration of *habitat* in respect of high potential cropping 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 potential) 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.

The administrative process will be enhanced by including, amongst others, electronic application forms, decision and reasons for the decision on an electronic database, and the provision of copies thereof to the applicant and 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.

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

- 1) All applications must be submitted to the land use official of the provincial Department;
- 2) Data capturing and sending of a notice of receipt to the applicant by the land use official of the provincial department;
- 3) Requesting and management of all documentation, reports and assessments by the land use official of the provincial Department, 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;
- 4) Compilation of the submission to the Provincial Internal Technical Committee by the land use official of the provincial Department;
- 5) Evaluation of the application and the making of a recommendation by the Provincial Internal Technical Committee;
- 6) Compilation of the submission to the National Internal Technical Committee by the responsible land use official;
- 7) Evaluation of the application and the making of a recommendation by the National Internal Technical Committee;
- 8) Approval or rejection of the application for subdivision or change in land use, and the electronic capturing thereof by the departmental land use official;
- 9) Compilation and verification of the notice of decision by the departmental land use official, and checking by his or her supervisor;
- 10) Signing of decision letter by the Chairperson of the National Internal Technical Committee, the departmental land use official, departmental land use official's supervisor, and Minister's delegate;
- 11) Filing and recording of the decision, reasons and documentation on the electronic database;
- 12) Submission of copies of the documents listed in (9) above to the PDA concerned; and
- 13) Sending of the decision letter to the applicant and the provincial Department concerned by the supervisor.

#### **5.10 Medium Potential Agricultural Land**

In general, all applications relating to medium potential agricultural land will be considered and finalised by the province concerned. 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 has to be adhered to as a minimum standard. Provincial policies, guidelines and norms and standards have to be coherent with, and aligned to this Draft Policy, but may contain detailed, province-specific information.

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.

PDA's 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. 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.

Any application for the subdivision, consolidation or rezoning of medium potential agricultural land (excluding land of Capability Class IV) 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 for an interim period of 5 years.

In respect of applications involving **land reform on medium potential 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 the MEC responsible for Agriculture (acting on the recommendation of the Provincial Internal Technical Committee concerned).

PDA's may recommend the development of **medium potential 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 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].

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 potential agricultural land;
- (b) A lease agreement in respect of medium potential 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 potential agricultural land, whether surveyed or not, is sold or advertised for sale for non-agricultural purposes;
- (d) A right to a portion of medium potential 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 potential agricultural land is established;
- (f) Any undivided shares in medium potential agricultural land may be registered; and
- (g) The registration of *habitat* in respect of medium potential agricultural land.

### **5.11 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 potential agricultural land, subject to stringent conditions to ensure that the remainder of the land concerned can still be used optimally for food production purposes.

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 potential agricultural land.

### **5.12 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 potential cropping 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 (PD-ALF) 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.

### **5.13 Corridor Development**

In the event where 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 potential cropping land or Protected Agricultural Areas.

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

- (a) Take place on land situated in Protected Agricultural Areas; and/or
- (b) Reduce the agricultural potential of adjacent agricultural land, and/or
- (c) 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.

#### **5.14 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 potential cropping 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 potential cropping land or Protected Agricultural Areas.

#### **5.15 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 potential 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.

#### **5.16 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. 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.

DAFF will, with the concurrence of the Minister of Finance, establish an incentive scheme in order to promote the optimal use and preservation of agricultural land with specific reference to:

- (a) Preservation of agricultural land for purposes of food production;
- (b) Promoting a specific agricultural enterprise within a specific geographical region for purposes of food security; and
- (c) Promoting the optimal use of high potential cropping land for purposes of food production.

Agricultural land must also be protected from non-sustainable agricultural activities as well as non-agricultural activities.

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 over-stocking 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.

#### **5.17 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 potential cropping land are considered to be agriculturally viable regardless of their size. Applications for the development of such land need to be accompanied by AIA 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 potential cropping land adjacent to tracts of land with a different classification land use are considered agriculturally viable, unless demonstrated otherwise through the ASA.

#### **5.18 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.

#### **5.19 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, include the following:

- (a) A positive Agricultural Impact Assessment;
- (b) Agricultural Impact Assessments prove that the site does not have high potential cropping land as well as land of Capability Class IV for an interim period of five (5) years and that the approval of the application will not impact negatively on surrounding agricultural activities;
- (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 5.3 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:
  - i. Short-term policy objectives with short-term benefits should generally not be permitted to override long-term policy objectives with long-term benefits; and
  - ii. 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 this Draft Policy, 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.

## **5.20 Provincial Minimum Guidelines and Procedures**

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, 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 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.

## **6. MANAGEMENT/INSTITUTIONAL FRAMEWORK**

### **6.1 National Level**

An Agricultural Land (AgriLand) Advisory Commission will be established at national level in terms of the proposed Preservation and Development of Agricultural Land Framework Act (PD-ALF). 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.

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 (PD-ALF). 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), Department of Rural Development and Land Reform, and the Department of Mineral Resources (DMR). This Committee may consider subdivision and rezoning applications on high potential cropping land (as well as land of Capability Class IV for an interim period of 5 years) in exceptional circumstances. Any deviations from the general rule [that no applications for subdivision or rezoning will be considered for high potential cropping land (as well as land of Capability Class IV for an interim period 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 potential cropping 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 potential 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.

An Agricultural Land (AgriLand) Review board will be established in terms of the proposed Preservation and Development of Agricultural Land Framework Act (PD-ALF). The Review Board will be an independent body, chaired by an experienced (15 years) judge or senior advocate, which may review decisions by DAFF, the provincial Department or the Intergovernmental Committee (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.

## **6.2 Provincial Level**

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 potential 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 potential 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 AgriLand Review Board – 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.

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.

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

## **6.3 Municipal Level**

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 advised by SACNASP registered agricultural scientists. 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 (PD-ALF), 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.

## **7. KEY IMPLICATIONS FOR GOVERNMENT**

### **7.1 Legislative and Regulatory Implications**

A 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 and the proposed legislation [the Preservation and Development of Agricultural Land Framework Act (PD-ALF) 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 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.

## **7.2 Governance Implications**

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

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

## **7.3 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 (PD-ALF) 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 (PD-ALF), 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 development in all three levels of Government. Training shall be provided on decision-making processes. A sufficient number of additional, appropriately qualified, staff 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 (PD-ALF) Director and the provincial directors responsible for the administration of the Preservation and Development of Agricultural Land Framework Act (PD-ALF). Within this context, a suitably legally qualified and experienced official will participate in the bi-monthly meetings of this Standing Committee.

## **7.4 Financial Implications**

Financial implications relating to the establishment of a 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.

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 (PD-ALF) 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 (PD-ALF) 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.

### **7.5 Enforcement Implications**

The Preservation and Development of Agricultural Land Framework Act (PD-ALF) 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 collect specimens for testing and to issue directives. 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 directives will be issued to commence farming activities. Non-implementation of these directives 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.

### **7.6 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.

### **7.7 Risk Mitigation**

For the policy envisaged in this Draft Policy 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. These matters will also be addressed in the proposed Preservation and Development of Agricultural Land Framework Act (PD-ALF). Measures will be included in the envisaged legislation in order to deal with these problems, which will also include various sanctions.

## **7.8 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 (PD-ALF):

- (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.

## **7.9 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 potential cropping land as well as land of Capability Class IV for an interim period of 5 years) or an MEC (in respect of medium potential 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 (PD-ALF).

## **8. 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 and the proposed Preservation and Development of Agricultural Land Framework Act (PD-ALF). 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, 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 indicate 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.

## **9. IMPLEMENTATION RESPONSIBILITIES AND TIME-FRAME**

The finalised policy envisaged in this Draft Policy will be submitted as a Draft White Paper to Cabinet in 2019/2020. This will be accompanied by the draft Preservation and Development of Agricultural Land Framework Bill.

The drafting and finalisation of Regulations will be completed a year later after the approval of the Bill.

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

- (a) Training of national and provincial levels of government; ;
- (b) Training of other stakeholders by national and provincial spheres; and
- (c) Training of national and provincial spheres that 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.

## **10. 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.

## **11. 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;
  - Discussion Document on the Preservation of Agricultural Land (Annexure B); and
- (d) Documentation and other inputs provided by the PDAs.

## **12. DRAFT POLICY DOCUMENT OWNER**

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## **13. DOCUMENT INFORMATION**

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