



agriculture,  
forestry & fisheries

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Agriculture, Forestry and Fisheries  
REPUBLIC OF SOUTH AFRICA

# **DRAFT POLICY ON THE PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND**

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## ACRONYMS

ASP	Agricultural Sector Plan
DAFF	Department of Agriculture, Forestry and Fisheries
FAO	Food and Agriculture Organization
GDP	Gross Domestic Product
GIS	Geographic Information System
IDP	Integrated Development Plan
LED	Local Economic Development
LUMS	Land Use Management System
M&E	Monitoring and Evaluation
MEC	Member of the Executive Council
NALR	National Agricultural Land Register
NDP	National Development Plan
NEPAD	New Partnership for Africa's Development
PDA	Provincial Department responsible for Agriculture
PD-ALB	Preservation and Development of Agricultural Land Bill
SACNASP	South African Council for Natural Scientific Professions
SALA	Subdivision of Agricultural Land Act 70 of 1970
SDP	Spatial Development Plan

## DEFINITIONS/GLOSSARY OF TERMS

**“agriculture”** means the science, art, practice or occupation concerned with the active production of useful plants, fungi or animals for –

- (a) food;
- (b) fibre;
- (c) fuel; or
- (d) other,

production with the primary purpose to sustain life, and in varying degrees the preparation and marketing of the resulting products;

**“agricultural enterprise”** means an institutional unit in its capacity as a producer of agricultural goods and services with –

- (a) autonomy in respect of financial and investment decision-making; and
- (b) authority and responsibility for allocating resources for the production of agricultural goods and services,

with the following divisions:

- (i) crop and rangeland production;
- (ii) animal production;
- (iii) forestry and logging; and
- (iv) fishing and aquaculture;

**“agricultural land”** means all land in the jurisdiction of the Republic, excluding land –

- (a) in a proclaimed township;
- (b) with regard to which an application for declaration as a township had been submitted in accordance with applicable township establishment legislation prior to the date of commencement of the proposed Bill, provided that such application is approved;
- (c) which, immediately prior to the date of commencement of the proposed Bill, was formally zoned for non-agricultural purposes by any sphere of government or any public entity but subjected to specified conditions at the time of the rezoning; or
- (d) which the Minister, after consultation with other relevant Ministers and MECs concerned, within the provisions established in the proposed Bill, excludes by means of a notice in the Gazette;

**“agricultural potential”** –

- (a) is a measure of potential productivity per unit area and unit time achieved with specified management inputs; and
- (b) for a given crop or veld type and level of management, is largely determined by the interaction of climate, soil and terrain;

**“agricultural purposes”** means purposes normally or otherwise reasonably associated with the use of land for agricultural activities, including the use of land for structures,

buildings and dwelling units reasonably necessary for, or related to, the use of the land for agriculture;

**“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 that is 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 municipality;

**“building”** means any structure erected or used for any purpose whatsoever, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, so erected or used in terms of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);

**“classification”** with regard to land means the evaluation and classification of land on the grounds of agricultural potential, agricultural capability, agricultural suitability, conservation status, use and geographic location;

**“commercial”** with regard to farming means the large-scale or intensive production of crops and livestock primarily for national food security and the market, the main objective of which is to achieve higher profits through –

- (a) economies of scale;
- (b) specialisation;
- (c) introduction of capital-intensive farming techniques;
- (d) labour-saving technologies;
- (e) maximisation of crop and livestock yields in a sustainable manner; and
- (f) a high level of technical knowledge and management inputs;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996;

**“Deeds Registries Act”** means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

**“Department”** means the national Department responsible for agriculture and **“departmental”** has a corresponding meaning;

**“farmer”** means a person or entity who uses agricultural land for agricultural purposes, but does not include a farm worker;

**“farming system”** means a collection of components which –

- (a) are united by some form of interaction and interdependence; and
  - (b) operate within a prescribed boundary,
- to achieve a specified agricultural objective on behalf of the beneficiaries of the system;

**“food”** means any substance –

- (a) consumed to provide nutritional support to the body; and
- (b) usually of plant or animal origin, containing essential nutrients, such as carbohydrates, fats, proteins, vitamins, or minerals in order to produce energy, maintain life, or stimulate growth;

**“food security”** means physical, social and economic access by all people, at all times, to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life, and has the following four dimensions:

- (a) adequate availability of;
  - (b) access to;
  - (c) utilisation of; and
  - (d) stability of,
- an affordable food supply;

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

**“Gazette”** means the Government Gazette;

**“high value agricultural 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;

**“Integrated Development Plan”** means the plan contemplated in section 25 of the Municipal Systems Act (Act No. 32 of 2000);

**“land”** means immovable, corporeal or incorporeal, land, and includes shares, rights, title or an interest in land;

**“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;

**“land cover”** means the observed physical cover, as seen from the ground or through remote sensing, including the –

- (a) vegetation, whether natural or planted;

- (b) human constructions, including buildings and roads; and
  - (c) water bodies,
- which occurs on the earth's surface;

**“landowner”** means the person in whose name land or a right in, or to, land is registered in accordance with the Deeds Registries Act, 1937 (Act No. 47 of 1937);

**“land use”** means a series of human activities which are directly related to the land, making use of its resources, or having an impact on it and “land user” has a corresponding meaning;

**“livestock”** means any population or breed of domesticated, semi-domesticated or captive wild animals raised in an agricultural setting to produce commodities;

**“MEC”** means a Member of the Executive Council of a Province responsible for agriculture;

**“medium value agricultural land”** means all land available for agricultural production purposes but which excludes high value agricultural land;

**“Minister”** means the Minister responsible for agriculture, unless stated otherwise;

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**“municipality”** when referred to as –

- (a) an entity, means a municipality as described in section 2 of the Municipal Systems Act; and
- (b) a geographical area, means a municipal area determined in the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998), and includes the Municipal Council;

**“natural agricultural resources”** means the natural resource base upon which the agricultural economy depends –

- (a) including the soil, water resources, agro-climate, and natural vegetation occurring on agricultural land;

**“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 minimum negative impacts on the natural agricultural resources;

**“Protected Agricultural Area”** –

- (a) means an agricultural land use zone, protected for purposes of –
  - (i) food production; and

- (ii) ensuring that high value agricultural land are protected against non-agricultural land uses in order to promote long-term agricultural production and food security;
- (b) includes all areas demarcated as such ; and
- (c) may include high value agricultural land and medium value agricultural land;

**“provincial Department”** means the provincial department responsible for agriculture;

**“rainfed farming”** means agricultural practices relying exclusively on rainfall as its source of water;

**“Registrar”** means the Registrar of the Agricultural Land Registry, appointed as contemplated in section 46;

**“Republic”** means the Republic of South Africa;

**“rezoning”** means a change in land use from the scheduled land use purpose to another scheduled land use purpose;

**“right”** in relation to agricultural land, does not include any right to minerals or a prospecting or mining right as contemplated in the Minerals and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

**“right to farm”** means the –

- (a) entitlement of farmers to farm with an agricultural enterprise of their choice; and
- (b) protection of farmers against adjacent land use decisions and local government laws that would unreasonably interfere with their regular farming practices;

**“SACNASP”** means the South African Council for Natural Scientific Professions, established in accordance with section 2 of the Natural Scientific Professions Act, 2003 (Act No. 27 of 2003);

**“Scientific Report”** means a scientific or technical report that shall include, but not limited to the –

- (a) potential;
- (b) capability;
- (c) suitability;
- (d) state; and
- (e) use,

of the natural agricultural resources, as compiled by an agricultural scientist registered with SACNASP;

**“smallholder”** with regard to farming means an independent small farming unit managed by a farmer or farmers, as the case may be –



- (a) with a higher level of technical knowledge and better receptivity to improved technology than subsistence farmers; and
- (b) who tend to –
  - (i) specialise in a specific agricultural enterprise; and
  - (ii) market their production surplus;

“spatial development frameworks” – means the spatial development frameworks contemplated in chapter 4 of the Spatial Planning and Land Use Management Act (Act No. 16 of 2013);

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

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

“**subsistence**” with regard to farming means a farming system where the food and goods produced are predominantly consumed by the farm family and there is little or no surplus for sale;

“**sustainable agriculture**” means –

- (a) farming practices that –
  - (i) conserve land, water, plant and animal genetic resources; and
  - (ii) are environmentally non-degrading, technically appropriate, economically viable, and socially acceptable; and
- (b) an integrated system of plant and animal production practices 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 –
  - (i) satisfy human food and fibre needs;
  - (ii) enhance environmental quality and the natural resource base upon which the agricultural economy depends;
  - (iii) make the most efficient use of non-renewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls;
  - (iv) sustain the viability of a farming unit; and
  - (v) enhance the quality of life for farmers and society as a whole;

“**veld type**” means a unit of vegetation of which the range of variation is small enough to permit the whole of it to have the same farming potentialities;

# DRAFT POLICY 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*.

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). The 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 2014-2019 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 former 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 Agriculture Organization 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 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 8 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 hectares 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. The 2010 report by Stats SA indicates 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 subdivision of agricultural land. This preservation and regulation comes as a result of the following situations:

- (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 or irrigated areas is severely limited due to the unavailability of additional suitable land and water for these purposes.
- (b) Non-agricultural developments on high and medium 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.

AGRICULTURAL LAND PERMANENTLY CONVERTED TO NON-AGRICULTURAL PURPOSES AREAS			
Land Capability Class	Total (ha)	Permanently Converted	Remainder
I	2 733	99	2 634
II	1 878 597	158 091	1 720 506
III	14 003 339	1 031 922	12 971 417
IV	16 447 446	788 505	15 658 941
V	13 609 335	254 809	13 354 526
VI	18 114 793	538 692	17 576 101
VII	45 343 216	281 774	45 061 442
VIII	12 279 370	85 398	12 193 972
Water	246 052	-	-
<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.

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

- (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;
- (b) Promote a balanced approach to the use of agricultural land;
- (c) Ensure the sustainable development of the agricultural sector;
- (d) Ensure a reduction in poverty levels and a sustained improvement in quality of life;
- (e) Increase agricultural production and the contribution of agriculture to the GDP;
- (f) Ensure that agricultural land remains available for agricultural production and development;
- (g) 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;
- (h) Promote and ensure the 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, especially Protected Agricultural Areas and best available agricultural land);
  - iv. Discourages and/or prohibits subdivision and rezoning of agricultural land that results in fragmentation, 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
- (b) To establish a framework that, in appropriate cases, would facilitate concurrent land uses on agricultural land, without jeopardising long-term food security;
- (c) 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.
- (d) 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
- (e) The preservation and sustainable development of agricultural land as a natural resource;
- (f) 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
- (g) Increased and improved long-term food security for the people of South Africa.

The following principles underlie this draft policy:

- (a) Specific principles relating to the protection and development of agricultural land include the following:
  - i. **Preservation:** Preservation 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.
- (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. **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.
- vi. **Just administrative action:** Ensuring lawfulness, reasonableness and procedural fairness (and impartiality) with regard to all decisions impacting on agricultural land.
- vii. **Cooperative government:** Ensuring effective, transparent, accountable coherent government with regard to all issues impacting on agricultural land.
- viii. **Efficient use of resources:** Promoting the economic and effective use of resources relating to agricultural land.
- ix. **Accountability:** Holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law.
- x. **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.
- xi. **Consistency** of administrative processes and decisions.

## 5. SCOPE OF THE POLICY

### 5.1 Preserver of Agricultural Land

Agricultural land is the common heritage of all the people of South Africa and the Minister is the preserver 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 preserver of the nation's agricultural land, the Department may support or not support, administer and manage any conversion or subdivision of agricultural land.

The Minister may appoint a person as a competent authority to administer the preservation and development of agricultural land.

### 5.2 Inter-governmental Relations and Planning

**National norms and standards** for the approval of subdivision and change in use applications are necessary in order to ensure coordinated and 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;

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 preservation of high value agricultural land. These strategies must focus in particular on the proactive use of high value agricultural land in the Protected Agricultural Areas (if any) in order to ensure food security. Provincial Monitoring and Evaluation Frameworks will play a significant role in tracking progress of the achievement of the results of protecting high value agricultural land. Provincial government must also facilitate processes to ensure that such land is utilised for active agricultural production and agricultural development purposes.

The preparation of provincial strategic plans should include an evaluation of alternative forms of development, and significant weight should be given to those strategies which minimise the impacts on high value agricultural land, such as the maintenance and development of agricultural production and processing close to the main population centres. For this reason, the preservation 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.

Province must integrate the preservation of high value agricultural land as well as Protected Agricultural Areas within the provincial Spatial Development Plan concerned. This approach will encourage the use of such land for active agricultural production and agricultural development and ensure long-term food security of the province and the country at large. A layer of the agricultural spatial plan will be linked to the provincial Spatial Development Plan as it is revised; and

**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 DAFF 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 preserving agricultural land, and must share geo-referenced data on high value agricultural land on a continuous basis. National and provincial government must also ensure that data is refined to a scale suitable for use at a municipal, and where applicable, farm level. In addition, national, provincial and local spatial plans must be coordinated.

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

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

### **5.3 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.

The national, provincial and local spatial plans must be coordinated and aligned. DAFF has the responsibility to evaluate and amend the provincial Agricultural Sector Plans, where needed, 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.

#### **5.4 Protected Agricultural Areas**

The DAFF will demarcate and designate specific agricultural land as Protected Agricultural Areas, after consultation with 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.

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 Act (PD-ALB) and/or its regulations.

#### **5.5 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 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, including ownership, categories of agricultural land (land cover, land capability and, grazing capacity classes, etc.), as well as other natural resource-related information.

#### **5.6 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.

#### **5.7 Authorisations on agricultural land**

South Africa consists of 122 million ha of land, of which approximately 13% is regarded as high value agricultural land. Due to the limited extent, high value agricultural land should, in principle, be used for food crops, and not for any other agricultural production. In this regard, the conversion of high value agricultural land to ecotourism-related game farming or other agricultural production initiatives 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 value agricultural land will not be allowed, with the exception of cases of land reform and in certain exceptional circumstances. The Draft Policy encourages urban agriculture where intensive food production practices will be considered.

All subdivision and or consolidation applications involving high value agricultural land have to be reviewed and considered by the DAFF. 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 is required before:

- (a) Any agricultural land, whether surveyed or not, is sold or advertised for sale for non-agricultural land uses;
- (b) Any subdivision or change in land use
- (c) Any share block scheme, sectional title scheme or fractional title scheme on agricultural land is established;
- (d) Any undivided shares in agricultural land may be registered; and
- (e) The registration of *habitat* in respect of agricultural land.

## **6. KEY IMPLICATIONS FOR GOVERNMENT**

### **6.1 Legislative and Regulatory Implications**

A new national legislation (the Preservation and Development of Agricultural Land 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 Act (PD-ALA) as well as the concomitant Regulations] will be implemented. Provincial governments will be enabled, by means of an explicit provision in the proposed national legislation, to issue regulations that would enable provinces to fully apply and implement those parts of the policy envisaged in this Draft Policy and the proposed national legislation.

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.

### **6.2 Governance Implications**

At national level, the policy envisaged in this Draft Policy and the proposed Preservation and Development of Agricultural Land Act (PD-ALA) will be administered by the DAFF Chief Directorate responsible for the Preservation and Development of Agricultural Land Act (PD-ALA). 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-ALA) and CARA or (b) exclusively for the Preservation and Development of Agricultural Land Framework Act (PD-ALA).

### **6.3 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. 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.

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.

#### **6.4 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 Act (PD-ALA) 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 Act (PD-ALA) and its objectives.

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.

#### **6.5 Enforcement Implications**

The Preservation and Development of Agricultural Land Act (PD-ALA) 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 consent for subdivision or change in land use of agricultural land will be strictly enforced.

The Minister, in consultation with the Minister responsible for finance, must develop taxation strategies with the objective to –

- (a) discourage the conversion of agricultural land to other non-agricultural uses;
- (b) encourage the optimal utilisation of agricultural land for agricultural purposes; and
- (c) establish a trust fund to be utilised for promoting agricultural production

#### **6.6 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.

## **6.7 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, 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 Act (PD-ALA). Measures will be included in the envisaged legislation in order to deal with these problems, which will also include various sanctions.

## **7. 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.

## **8. CONCLUDING REMARKS**

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 preservation of agricultural land for current and future use, whilst ensuring short-term, medium-term and long-term food security.

## **9. DRAFT POLICY DOCUMENT OWNER**

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## **10. DOCUMENT INFORMATION**

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