

(11 February 2005 - to date)

NATIONAL FORESTS ACT 84 OF 1998

(Gazette No. 19408, Notice No. 1388 dated 30 October 1998)

ASSIGNMENT OF CERTAIN PROVISIONS OF THE NATIONAL FORESTS ACT, 1998 (ACT NO. 84 OF 1998) ("THE FORESTS ACT") TO SOUTH AFRICAN NATIONAL PARKS ("SANParks")

Published under Government Notice 113 in Government Gazette 27235. Commencement date: 11 February 2005.

1. Under section 47 of the Forests Act I, Buyelwa Patience Sonjica, MP, in my capacity as Minister of Water Affairs and Forestry, hereby assign the administration of the provisions of the Forests Act referred to in *Schedule 1A and 1B hereto*, in so far as those provisions relate to the management of the State forests mentioned in *Schedule III*, to the Chief Executive of SANParks, a body established in terms of section 5 of the National Parks Act, 1976 (Act No. 57 of 1976).
2. This assignment is subject to the conditions referred to in *Schedule II* as may from time to time be amended, varied, replaced or altered in accordance with law in consultation with the Chief Executive of SANParks.
3. The management of the State forests referred to herein must be exercised in accordance with the requirements and guidelines drawn up and amended from time to time by the Department of Water Affairs and Forestry in consultation with the Chief Executive of SANParks.
4. The Chief Executive of SANParks may, after consultation with the Minister of Water Affairs and Forestry, further delegate any power or duty referred to in *Schedule 1A* hereto in terms of section 48(2) of the Forests Act.
5. I hereby withdraw any assignments and delegations in terms of this Act or any previous forest legislation affecting the State forests described in *Schedule III*.
6. This assignment is for an indefinite period, but terminating on the release of the State forests in terms of section 50(3) of the Forests Act, described in *Schedule III*.
7. This assignment comes into effect upon the execution of the Tokai and Cecilia Forestry lease agreement between the State and MTO FORESTRY (PROPRIETARY) LIMITED (Registration No. 1994/006586/07) ("MTO").

BUYELWA PATIENCESONJICA, MP
MINISTER OF WATER AFFAIRS AND FORESTRY

SCHEDULE 1A

The powers and duties vested in the Minister of Water Affairs and Forestry under the National Forests Act, 1998 (Act No. 84 of 1998) and contained in the table below are assigned to SANParks.

SECTION of the FORESTS ACT	POWER OF FUNCTION <i>(The words used herein have the meanings assigned to them in Clauses 2.1 and 2.2 of Schedule II)</i>
5(1)	Carrying out or commissioning of research
7(4)	The power to issue licences to: <ul style="list-style-type: none"> • cut, disturb, damage or destroy any indigenous, living tree in a natural forest, • possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any tree, or any forest product derived from any indigenous, living tree in a natural forest.
22(1)	The right, on behalf of the State, to: <ul style="list-style-type: none"> • the use, management, control and operation of the land, and • the forest produce in the land, • subject to compliance with the provisions of sub-paragraphs (i), (ii) and (iii) of Section 22(1).
23(1)	The power to issue licences to undertake any or all activities listed in subsection (1).
24(2)	The power to attach conditions to the granting of any licence under subsection (1).
24(3)(d)	The power to set criteria for the exemption from the payment of licence fees.
24(4)	The power to grant written consent to the transfer of a licence by the holder thereof, or to enable the holder of a licence to contract with another party to carry out the activities authorised by a licence issued under section 23(1) of the Forests Act.
24(7)	Keeping of a register for licences for the establishment and management of a plantation (issued under 23(1)(a))
25(2)	The power to amend, suspend or cancel a licence or a category of licences, if in its opinion, the circumstances contemplated in sub-sections (2)(a) or (b) of section 25(2) are applicable, subject to compliance with the provisions of sub-section (3).
26(1)	The power to grant servitudes on, under or over the land, subject to the provisions of paragraphs (a) to (f) of sub-section (1) and sub-sections (4) and (5).
26(2)	The power to impose conditions it considers appropriate contemplated in this section.
27(1)	The power to lease any part of the land, subject to compliance with paragraphs (a) to (c) of sub-section (1) and sub-section (3)
28(1)	The power to enter into an agreement to sell timber or any forest produce with any person, subject to compliance with sub-sections (2), (3) and (4).
28(5)(a) to (c)	Election to terminate agreement already in force on the date the Act commences. Fulfilling conditions under sub-section 28(5)(c).

52	Extension of time periods set in terms of the Act and condemnation of failure to comply with them
55	The power, with the prior written consent of the Minister of Finance, to: <ul style="list-style-type: none"> • issue tariffs of fees for licences issued under section 23(1), • issue tariffs of charges for forest produce or forest products derived from the land.

SCHEDULE 1B

The powers and duties vested in the Director-General of the Department of Water Affairs and Forestry under the National Forests Act, 1998 (Act No 84 of 1998) and contained in the table below are assigned to SANParks.

SECTION of the FORESTS ACT	POWER OR FUNCTION <i>(The words used herein have the meanings assigned to them in Clauses 2.1 and 2.2 of Schedule II)</i>
20(6)	The power to change areas and rules for access to State forests.
20(8)	The power to convene a meeting to address objections regarding rules and maps.
65(b)	The power to appoint suitably qualified persons in the employ of SANParks as forest officers.

SCHEDULE II

(ANNEXURE TO SCHEDULES 1A AND 1B) CONDITIONS OF THE ASSIGNMENT

The assignment made by the Minister in this document shall be exercised by SANParks subject to and in accordance with the following conditions:

1. THE CONTEXT

- 1.1 The Minister is the custodian of the natural forests of South Africa under the Forests Act and, where such natural forests are situated in State forests, the Minister is responsible for their management, control and operation.
- 1.2 The Department of Water Affairs and Forestry ("DWAF") has, under the provisions of the Forests Act, adopted certain policies which promote the sustainable use of State forests, including their use for economic, social and environmental purposes, which policies are described in, amongst other documents, the White Paper on Sustainable Forest Development in South Africa.

- 1.3 Such policies *inter alia* promote greater participation in all aspects of forestry and forest products industry by all South Africans, and, in particular, persons disadvantaged by unfair discrimination.
- 1.4 DWAF, in the furtherance of its mandate under the Forests Act, is required to ensure that the policies referred to in clauses 1.2 and 1.3 are applied to all State forests, including all natural forests on State land.
- 1.5 SANParks has competence and has the expertise required to conserve, protect and develop the State forests.
- 1.6 The assignment of powers and duties under sections 47 and 56(2) of the Forests Act and provided for in this document are made to enable SANParks to carry out the aforesaid task.
- 1.7 On release of the said State forests in terms of section 50(3) of the Forests Act, the land will be declared a national park in terms of the National Parks Act.
- 1.8 Tokai and Cecilia State forests form part of the highly threatened Cape Floral Region, a World Heritage Site and there is a need for the planned rehabilitation of the natural environment and the protection of its biodiversity.
- 1.9 In rehabilitating the natural environment and managing the land for conservation, eco-tourism and recreational purposes for use by the broader public and to create employment, SANParks will seek funding support for environmental rehabilitation projects including among others, alien vegetation clearing and footpath upgrading.

2. INTERPRETATION

- 2.1 Unless the context in which a word or phrase is used herein obviously means otherwise -
 - 2.1.1 a word in the singular will also mean that word in the plural and *vice versa*;
 - 2.1.2 a word meaning one gender will also mean the other genders; and
 - 2.1.3 a word describing a natural person will also mean a created entity, (whether corporate or incorporate) or the State , and *vice versa*.
- 2.2 All words used herein will have the meaning given them in section 2(1) of the Forests Act, unless the context in which a word or phrase is used herein obviously means otherwise:
 - 2.2.1 "assignment" means the assignment of the powers and duties made by the Minister and/or the Director-General to SANParks under this assignment provided for in section 47 of the Act;

- 2.2.2 "commencement date" means any date after the publication of this assignment in the Government Gazette on which the Forestry lease agreement is executed;
- 2.2.3 "DWAF" means the national Department of Water Affairs and Forestry, or any other Department of the national Government designated from time to time as successor to the said Department, charged with the management and administration of forestry in South Africa;
- 2.2.4 "Forests Act" means the National Forests Act, 1998 (Act No. 84 of 1998), all regulations made thereunder or in force and any policies adopted under section 46 thereof;
- 2.2.5 "the lease agreement" means the Tokai and Cecilia forestry lease agreement between the State, represented by the Department of Water Affairs and Forestry and MTO FORESTRY (PROPRIETAY) LIMITED (Registration No. 1994/006586/07) ("MTO") in terms of section 27 of the Forests Act, for a period of 20 years from the commencement date of the lease agreement during which the tenant shall be entitled to the free and undisturbed use as provided for in the Forests Act in this regard, in order to use the land for plantation forestry purposes, during which they shall clear-fell the standing timber and thereafter vacate the leased land;
- 2.2.6 "improvements" means, besides having its ordinary common law meaning and without limiting such meaning, all fixed improvements situate on the land, including, buildings, fences, gates, dams, dips, drains, roads, pathways, culverts, weirs and the like and ordinarily forming a part thereof, but shall exclude forests as defined in the Forests Act;
- 2.2.7 "land" subject to the provisions of clause 4, means the land, including the forests thereon, listed in Schedule III and included to the assignment being designated State forests;
- 2.2.8 "Minister" means the Minister in the National Government to whom responsibility for the implementation of the Forests Act or any statute adopted by Parliament in substitution (Act No. 108 of 1996);
- 2.2.9 "National Parks Act" means the National Parks Act, 1976 (Act No. 57 of 1976) and the regulations made thereunder; and

2.2.10 "SANParks" means South African National Parks, a body established in terms of the National Parks Act.

2.3 Clause headings shall not be taken into account in the interpretation of any provision of these conditions, and are included purely for descriptive purposes.

2.4 Whenever a definition in the Forests Act, or herein contains any substantive provision creating rights in favour of, or imposing obligations on, any party, then, notwithstanding that occurs in a definition, effect shall be given to it as if it were a substantive provision in the body of these conditions.

2.5 Whenever a period of days is prescribed, such period shall be calculated exclusive of the first day and inclusive of the last day, unless such last day falls on a Saturday, Sunday or formally recognized public holiday, in which case the last day will be the immediately next succeeding business day.

2.6 Any definition provided for herein will bear the same meaning in the Schedules.

2.7 This Schedule together with Schedules LA, IB and III shall be deemed to be an integral part of the assignment document, and shall be interpreted accordingly.

2.8 Whenever in these conditions a power or duty is imposed upon the Minister to undertake a defined activity, then, unless such activity may in law only be carried out by the Minister herself, such activity may be carried out by an employee of DWAF appointed for that purpose by the Director-General of DWAF.

2.9 Any reference to an enactment herein is to that enactment at the date of signature of the assignment and as amended or re-enacted from time to time.

2.10 The land is subject to the provisions of the Forests Act to the extent that the land comprises State forests.

3. THE LAND AND ITS USE

3.1 It is recorded that:

3.1.1 the land is a State forest as defined in section 2 of the Forests Act and shall remain as such until released by the Minister under section 50(3) of the Forests Act;

3.1.2 that the assigned land is described as shown on the diagrams being part of *Schedule III*; and

3.1.3 SANParks shall, with effect from the commencement date, use, manage, control and operate the forests situated on the land in accordance with the provisions of the Forests Act, acting under the powers vested in it by the assignment subject to these conditions.

- 3.2 SANParks shall, from and after the date on which it takes management responsibility of the land, also be responsible for the payment of all rates, levies, taxes or other charges, if any, levied by any local authority or other competent authority on or in respect of the land and the improvements situated thereon, notwithstanding the fact that it may not be the registered owner of the land.
- 3.3 SANParks may apply to the appropriate authority for exemption from the payment of any such rates, levies, taxes or other charges, and there shall be no obligation on the Minister to make any such application, save on the request of and at the expense of SANParks.

4. IMPROVEMENTS AND EXISTING USE ON THE LAND

- 4.1 SANParks shall ensure that all improvements on the land, including all fixtures and fittings being a part of such improvements, whether existent on the land at the date of commencement of this assignment or erected or constructed at any time thereafter, are maintained in a fit and usable state of repair.
- 4.2 The assignment is subject to all contracts and servitudes in favour of third parties, whether verbal or in writing, binding on the Minister or the State and which impose a burden or an obligation or an encumbrance on or against the land or which entitle third parties to have access to the land, to harvest forest produce or to erect and occupy or use improvements on the land.
- 4.3 It is recorded in this regard that –
- 4.3.1 the land listed in *Schedule III* is subject to a lease agreement between the State, represented by DWAF and MTO FORESTRY (PROPRIETARY) LIMITED (Registration No. 1994/006586/07) ("MTO") in terms of section 27 of the Forests Act, for a period of 20 years from the commencement date of the lease agreement during which the tenant shall be entitled to the free and undisturbed use as provided for in the Forests Act in this regard, in order to use the land for plantation forestry purposes, during which they shall clear-fell the standing timber and thereafter vacate the leased land;
- 4.3.2 MTO, as part of their existing forestry operations, owns and operates the eco-tourism business for its own account and will dispose of the co-tourism business to SANParks as and when SANParks wishes to acquire same as SANParks has indicated its intention to acquire the eco-tourism business to address the common usage of the leased land;
- 4.3.3 MTO will retain full ownership of and commercial responsibility for the eco-tourism business until the transaction described in clause 4.3.2 is finalised; and
- 4.3.4 once the eco-tourism business is transferred to SANParks, the areas on which the business operates exclusively, shall be excluded from the lease area;

- 4.4 SANParks shall administer the contracts, servitudes and rights of way or similar encumbrances and shall ensure that the party obliged to maintain the improvements referred to in the contract, servitude, rights of way or similar encumbrances does so in compliance with clause 4.1, so that the improvements on the land are at all times kept in a fit and usable state of repair; and
- 4.5 SANParks or any person authorised by it in writing shall be entitled, to erect and construct such improvements on the land as it considers necessary or desirable in the furtherance of the use, management, control and operation of the land and the forests situate thereon in accordance with the Forests Act and the assignment or to commercially or otherwise use and exploit the forests in accordance with and within the spirit and letter of the Forests Act.

5. RIGHTS OF ACCESS TO THE LAND

- 5.1 It is recorded that the Minister, acting under section 24(6) of the Forests Act, has exempted members of communities residing near or around State forests, including the land, from the obligations to obtain licences under sections 23(1)(c), (d) and (f) of that Act and SANParks shall be obliged to permit members of communities so exempted from undertaking the activities to which the exemptions apply, to undertake such activities.
- 5.2 SANParks may, within the framework of the assignment and the provisions of the Forests Act, promote and establish, either itself or by third parties, commercial ventures consistent with the nature and status of the land and in particular the natural forests situated on the land.
- 5.3 SANParks may, under the assignment, grant concessions or negotiate leases with any third party to enable the provisions of clause 5.2 to be given effect to, upon such terms and conditions as SANParks may deem desirable.
- 5.4 SANParks shall not permit any person or group of persons to enter upon and occupy any portion of the land illegally and shall adopt appropriate measures to prevent any such illegal invasion and occupation of the land.
- 5.5 SANParks shall not grant any servitude over the land to any person without first obtaining the Minister's written approval.
- 5.6 Any tariff of fees adopted by SANParks for any purpose contemplated in section 55 of the Forests Act in relation to the land shall be approved by the Minister of Finance as required by the said section 55.

6. SUSTAINABLE FOREST MANAGEMENT

- 6.1 SANParks shall, for as long as the land is designated as State forests, use and administer the land in accordance with the law applicable to such status.

- 6.2 SANParks shall comply with any principles, criteria, indicators and standards prescribed and amended from time to time by the Minister in terms of section 4(3) or (4) of the Forests Act.
- 6.3 Until the Minister has prescribed principles, criteria, indicators and standards in terms of section 4(3) or (4), SANParks shall co-operate with DWAF and engage with it in the development of systems, protocols, guidelines and criteria to enable the Minister and DWAF effectively and consistently to administer the provisions of the Forests Act in respect of the land.
- 6.4 SANParks shall:
- 6.4.1 permit the Minister or any official of DWAF or any other person duly authorised in writing for such purpose by the Minister or DWAF, reasonable and necessary access to the land and the forests thereon for the purposes of:
- 6.4.1.1 section 6(1) of the Forests Act and to conduct such monitoring activities thereon or therein as may be required to fully comply with such section;
- 6.4.1.2 any other research carried on or commissioned by the Minister under section 5(1) of the Forests Act; and
- 6.4.1.3 to enable the Minister to comply with section 6(2) and (3) of the Forests Act;
- 6.4.2 co-operate with the Minister or any official of DWAF or any other person duly authorised in writing for such purpose by the Minister or DWAF in carrying out any activity, implementing and carrying out any programme or project or gathering any data for the purposes of the proper compliance with any activity contemplated in clause 6.4.1; or
- 6.4.3 itself, at the request of the Minister or DWAF, carry out any activity, implement and carry out any programme or project or gather any data for the purposes of the proper compliance with any activity contemplated in clause 6.4.1 and provide reports thereon to the Minister or DWAF on the outcome thereof.
- 6.5 SANParks shall, in a format defined by the Minister or DWAF, as the case may be, and on the dates from time to time prescribed by them, provide the Minister or DWAF with such returns, information, records and data, as they may either jointly or individually require from SANParks in order to enable the Minister and DWAF adequately and effectively to:
- 6.5.1 administer and apply the provisions of the Forests Act;
- 6.5.2 implement any policies determined by the Minister under section 46 of that Act to give effect to the systems, protocols, guidelines and criteria; and

6.5.3 to oversee the sustainable use of the nation's State forests generally.

6.6 The conditions contained in clauses 6.5.1 to 6.5.3 are inserted to ensure that the provisions of the Forests Act and the policies made by the Minister under section 46 of that Act are complied with and to enable the Minister and DWAF to comply with their obligations under that Act.

6.7 The conditions contained in clauses 6.5.1 to 6.5.3 shall be applied by the Minister and DWAF on the one hand and complied with by SANParks on the other hand in good faith and with due regard to the requirements of each party.

6.8 SANParks shall from time to time engage with DWAF on all or any aspect of the application and implementation of the provisions of clauses 6.5.1 to 6.5.3 in order to resolve any concerns raised by either of them in regard thereto and to enable them to exchange views and to synthesize their respective requirements, policies and practices.

7. PROVISION FOR DEFAULT AND CONFLICT RESOLUTION

7.1 Nothing in these conditions shall in any way prevent or prohibit the enforcement of any provisions of the Forests Act by any appropriate authority or the imposition of any penalty under that Act.

7.2 For the purposes of this Clause, "default" shall mean –

7.2.1 a breach of any condition of the assignment;

7.2.2 without in any way limiting the provisions of clause 7.1, a breach of any provision of the Forests Act;

7.2.3 the failure to apply and/or to adhere to any policy determined by the Minister under and in terms of section 46 of the Forests Act; or

7.2.4 the undue prevention, restriction or prohibition of the exercise by any member of the public of any right lawfully vested in such person by the Forests Act or as recorded in clause 5.

7.3 If any default committed by any party to the assignment cannot be resolved by the application of any provision of the Forests Act, or if it is considered by the party alleging any default that the application or enforcement of the applicable provisions of the Forests Act is not, in the applicable circumstances, appropriate, then the provisions hereinafter set out shall apply, provided that the exercise of such discretion shall not prevent any appropriate authority at any time enforcing any provision of the Forests Act.

7.4 In the event of either party to the assignment being in default, then the following provisions shall apply, but only after the parties shall first have attempted to resolve the default at the management level in DWAF and SANParks responsible for the routine oversight and implementation of the assignments herein referred to and the conditions applicable thereto –

7.4.1 the party alleging the default shall give the other party written notice setting out the details of the alleged default and calling upon such party to rectify the default within such period of 30 days from receipt of written notice; and

7.4.2 the party receiving the notice shall, in writing, advise the party that issued such notice prior to the expiry of such period of 30 days what steps it has or will take to rectify such default.

7.5 In the event of the party in default failing or refusing to rectify such default within the aforesaid period of 30 days, or such longer period as the party alleging such default may in writing agree to, then such party alleging the default shall in writing call upon the party in default to attend a meeting of the parties, to be attended by senior management of both parties, at which meeting such senior managers shall seek to resolve the issue alleged to be a default, such meeting to be called within 30 days of the expiry of the period of 30 days referred to in clause 7.4.1.

8. ENFORCEMENT OF THE FORESTS ACT

8.1 SANParks shall diligently and efficiently, enforce the provisions of the Forests Act for and on behalf of the Minister so that the purpose and intent of that Act is fully achieved and implemented.

8.2 For that purpose, SANParks shall appoint an adequate number of forest officers contemplated in section 65 of the Forests Act and it shall equip such forest officers with the necessary requisites to enable them to adequately enforce the provisions of the Forests Act in respect of the land.

8.3 The exercise of every power or duty under this assignment document shall be undertaken subject to and with due regard for the provisions of the Forests Act.

9. RISK

The risk in and to the management of the land, including the improvements and the forests situated on the land, shall pass to and be borne by SANParks from the commencement date and shall remain with and vest in SANParks during the currency of the assignment.

SCHEDULE III DESCRIPTION OF THE STATE FOREST AFFECTED BY THIS ASSIGNMENT

TOKAI AND CECILIA STATE FORESTS

130227/98

3418CD, 3418Ab & AD

NO	PROPERTY DESCRIPTION	TITLE DEED NO	SG DIAGRAM	OWNER	AREA (ha)
1	ERF No. 124 of Constantia Township, Cape	T395/1896 GN 196/1957		RSA	4.5753
2	ERF No. 1013 of Constantia Township, Cape	T6621/1931 GN 196/1957		RSA	2.1756
3	Portion 1 of the farm CECILIA No.884, Cape	Not registered	578/1996	RSA	143.4230
4	Portion 1 of the farm BEL OMBRE No.895, Cape	T3437/1897	196-8/2/1957	RSA	52.3941
5	Portion 1 of the farm HOUT BAY FOREST RESERVE NO. 905, Cape	Not registered	11616/1995	RSA	29.6325
6	Portion 1 of the farm TOKAI No.908, Cape	Not registered	4987/1996	RSA	490.9840
7	Portion 3 of FARM No. 910, Cape	Not registered	53/1996	RSA	14.6460
8	Portion 4 of FARM No. 1130, Cape	Not registered	188/1996	RSA	2.5819
9	FARM No. 1464, Cape	Not registered	193/1996	RSA	73.0875
10	FARM No. 1465, Cape	Not registered	195/1996	RSA	193.1063
11	National / Provincial roads				4.6457
TOTAL CADASTRAL AREA					1 001.9605
TOTAL AREA ACCORDING TO GIS					1 013.8003

