RESETTLEMENT POLICY FRAMEWORK
AND PROCESS FRAMEWORK FOR C.A.P.E.

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Other Executing Agency/Agencies: National Botanical Institute of South Africa

Prepared for the C.A.P.E Program
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TABLE OF CONTENTS

EXECUTIVE SUMMARY ........................................................................................................ i

1 PROJECT DESCRIPTION ................................................................................................ 1
1.1 Introduction .................................................................................................................. 1
1.2 Institutional Arrangements ............................................................................................ 2
1.3 Program Development Objectives and Components ...................................................... 3

2 WORLD BANK INVOLUNARY RESETTLEMENT/LOSS OF ACCESS POLICY ............... 5
2.1 World Bank Involuntary resettlement/Loss of Access Policy Requirements .................. 5
2.2 South Africa laws and policies affecting resettlement and rights of access to
natural resources .................................................................................................................. 11

3 C.A.P.E. Program activities that could trigger safeguard OP4.12 .................................... 17
3.1 Social and economic context ......................................................................................... 17
3.2 Identified interventions that could have impacts ......................................................... 18

4 The RPF and PF processes that will apply to the C.A.P.E. Program ............................... 35
4.1 Why RAPs and Plans of Action cannot be prepared now ............................................. 35
4.2 RPF ............................................................................................................................... 35
4.3 RAP preparation ............................................................................................................ 41
4.4 Process Framework ........................................................................................................ 45

5 Implementation arrangements for RPF and PF .............................................................. 49
5.1 Grievance redress mechanisms .................................................................................... 49
5.2 Organisational elements, institutional capacity and commitments ............................ 51
5.3 Monitoring, evaluation and reporting ......................................................................... 52
5.4 Funding arrangements ................................................................................................. 54
5.5 Public consultation and disclosure to date ................................................................. 56
5.6 Implementation of the RPF and PF ............................................................................ 57

6 REFERENCES .................................................................................................................. 59

ANNEX A: C.A.P.E. RPF AND PF SUMMARY
ANNEX B: MAPS ILLUSTRATING THE AREAS ASSOCIATED WITH PROPOSED C.A.P.E. ACTIVITIES
ANNEX C: BIODIVERSITY VALUE OF THE AREA
EXECUTIVE SUMMARY

C.A.P.E. is a large-scale biodiversity conservation Program for the Cape Floral Kingdom, whose implementation is to be supported by the Global Environment Facility. A significant portion of this support will be administered through the World Bank, and therefore World Bank safeguard policies and procedures will apply to the Program. This report addresses implementation of the Bank's Involuntary Resettlement Operational Policy (known as OP4.12), which safeguards against the impoverishment risks of involuntary resettlement/loss of access in development projects. It defines involuntary resettlement as follows:

"Any project which displaces people from land or productive resources, and which results in relocation, the loss of shelter, the loss of assets or access to assets important to production, the loss of income sources or means of livelihoods, or the loss of access to locations that provide higher incomes or lower expenditure to businesses or persons, whether or not the affected people must move to another location."

The policy objectives of OP4.12 are as follows:

- Avoid involuntary resettlement/loss of access where feasible (viable alternatives should be explored in this regard);
- Ensure that, where it is unavoidable, involuntary resettlement/loss of access occurs as part of a sustainable development program that provides investment resources to those who are affected;
- Ensure that those who are affected are meaningfully consulted and have opportunities to plan and implement their resettlement; and,
- Ensure that those affected are assisted to at least restore their livelihoods/standards to the same levels as at the time of displacement.

There are four main instruments that are set out in OP4.12. These are a (1) Resettlement Policy Framework (RPF), which is followed by a (2) Resettlement Action Plan (RAP); and (3) Process Framework (PF), followed by a (4) Plan of Action (POA). The RPF and PF must be prepared for the Bank before an investment that could result in involuntary resettlement/loss of access can be approved. A RAP and POA are required where specific activities that may result in involuntary resettlement/loss of access are proposed.

The C.A.P.E. Environmental and Social Management Framework (ESMF) sets out a process for screening proposed C.A.P.E. activities in order to determine whether World Bank safeguard policies, including the Involuntary Resettlement Safeguard, OP4.12, will be triggered. The C.A.P.E. Program has seven components. Of these, it has been concluded at this stage that only Component 5 has the potential to trigger OP4.12. This component includes the expansion and

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1 Quoted from Terms of Reference for a Resettlement Policy Framework and see point 3 of OP4.12
consolidation of protected areas. However, it is possible that other C.A.P.E. activities could be found to trigger OP4.12 as the C.A.P.E. Program develops.

It is not possible to determine the possible extent or zone of impact of the various sub-projects or sub-components at this stage because C.A.P.E. is in an early planning stage. In consequence, and in terms of paragraph 26 of OP4.12, the World Bank has indicated that an RPF will suffice, and that RAPs and POAs are not needed at this stage of the Program.

This document sets out a Resettlement Policy Framework (RPF) for the C.A.P.E Program, and Process Framework (PF), in accordance with World Bank Safeguard OP4.12. Preparing both RPF and PF at once and combining the two into one document provides guidance for the implementation of the C.A.P.E. program, as it provides both a policy framework and procedural safeguards, binding diverse executing agencies and ensuring compliance with OP4.12. This will take place in the context of in-country capacity, backed up by supporting laws and regulations. This document therefore sets out:

- An overview of South African legislation relating to OP4.12;
- An account of the C.A.P.E. activities that could result in OP4.12 being triggered;
- The categories of people who may qualify for compensation, if affected by involuntary resettlement/loss of access resulting from activities associated with the C.A.P.E. Program;
- A summary of the proposed C.A.P.E. RPF and associated RAPs, and PF and associated Plans of Action (POAs) that will be prepared by relevant Executing Agencies; and
- A description of the implementation and institutional arrangements applicable to the RPF and PF.

The RPF is premised on the following principles:

- Avoid or minimise triggering this safeguard;
- Comply with both letter and spirit of the law;
- Ensure genuine consultation and participation take place;
- Undertake baseline socio-economic survey/s and integrate RAPS into existing planning processes;
- Apply the RPF to all contractual arrangements that could have social impacts;
- Develop resettlement options that place affected people in at least an equivalent, but preferably better situation than they were in prior to involuntary resettlement/loss of access;
- Develop options in conjunction with the affected households and then allow them to choose between options. Empower affected people to actively participate in both the development of options and negotiations around their choice;
- Uphold principles of fairness and reasonableness;
- Determine budgets as an upfront project cost; and
- Cater for vulnerable populations.
1 PROJECT DESCRIPTION

1.1 Introduction

The C.A.P.E. Program is a large-scale, multi-stakeholder, multi-faceted 20-year Program that seeks to conserve biodiversity in the Cape Floral Region, while at the same time delivering economic benefits.

The Cape Floristic Region (CFR) covers 90,000 square kilometres, comprises one of the six floral kingdoms worldwide and is exceptionally rich in species diversity, being listed as a centre of plant diversity and endemism. This rich biodiversity is under serious threat due to conversion of natural habitat to permanent agriculture and rangelands, inappropriate fire management, rapid and insensitive infrastructural development, over-exploitation of marine resources and wild flowers and infestation by alien species. See Annex D.

The basis for the C.A.P.E. Program intervention was laid by GEF support in September 2000 that resulted in the C.A.P.E. 2000 Strategy. It identified the key ecological patterns and processes which need to be conserved in the CFR, and the key threats and root causes of biodiversity losses that need to be addressed in order to conserve the biodiversity of the CFR. This resulted in a spatial plan identifying the areas that need to be conserved and a series of broad Program activities that need to be undertaken over a 20-year period.

Implementation over the next 20 years is divided into three phases:

- Phase 1 (6 years) involves a Global Environmental Facility (GEF) Grant of $11m, with Executing Agencies and other donor funding contributing $74.5 million. This phase will result in gains in expanding the area under conservation by 4,800 square kilometres, removing barriers causing biodiversity loss and laying the basis for the "conservation economy".
- Phase 2 (6 years) will be characterised by significant expansion of capacity to conserve the CFR with most key areas secured under conservation management and bring an additional 7,600 square kilometres into the conservation estate.
- Phase 3 (8 years) – by this time markets are expected to play a key role in conserving and even restoring the ecological capital of the CFR with a further 7,600 square kilometres added under conservation management.
The expected cost of the C.A.P.E. Program over these 20 years is given in the table below:

<table>
<thead>
<tr>
<th>Phase</th>
<th>Domestic sources</th>
<th>GEF, Agulhas Plain</th>
<th>CEPF</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1</td>
<td>$44</td>
<td>$15.5</td>
<td></td>
<td>$59.5</td>
</tr>
<tr>
<td>Phase 2</td>
<td>$55</td>
<td>$10</td>
<td></td>
<td>$65</td>
</tr>
<tr>
<td>Phase 3</td>
<td>$70</td>
<td>$0</td>
<td></td>
<td>$70</td>
</tr>
<tr>
<td>Total</td>
<td>$169</td>
<td>$25.5</td>
<td></td>
<td>$194.5</td>
</tr>
</tbody>
</table>

The C.A.P.E. Program is in an exponential growth phase. The scope, scale and ambitions of the Program are huge.

1.2 Institutional Arrangements

The institutional framework for the implementation of the C.A.P.E. Program and the broad relationship between various institutions are specifically mentioned because they are one of the key innovations of the Program. These arrangements are relevant to the RPF and PF because several institutions will need to commit themselves to the implementation of these frameworks.

The role of the C.A.P.E. Program is to work in partnership with existing well-established institutions whose mandates affect environment and/or conservation to develop a co-ordinated and co-operative approach to implementation.

It is well documented in South Africa that one of the key reasons for the failure of government to attain its developmental and poverty alleviation objectives is the fragmented and competitive nature of state institutions who answer to their narrow output requirements as opposed to working collectively to achieve outcomes.

The C.A.P.E. Program’s institutional arrangements are a first in South Africa, and require skilled management because they are complex and lack the traditional lines of management and accountability that most South African institutions are familiar with. Implementation is also taking place in a context, where established institutions face organisational transformation and a high level of involvement by politicians.

Two Memoranda of Understanding (MOU) set out the institutional arrangements of the C.A.P.E. Program. The principal MOU, signed in September 2001, is between the National Ministries of Environment and Tourism, and of Water Affairs and Forestry, and Members of the Executive Councils of the Western Cape and Eastern Cape responsible for Environmental Affairs creating a mechanism through which the C.A.P.E. strategy is to be implemented. The parties agree that a coordinated approach is desirable and establishes the C.A.P.E. Coordination Committee (CCC) with the overall function of coordinating the long-term implementation of the C.A.P.E. strategy.
Decision-making is by consensus unless this is not possible, in which case a majority of votes carries the day.

The principal MOU also establishes the C.A.P.E. Implementation Committee (CIC) to represent government departments, municipalities, statutory bodies and accredited NGOs that will implement the Program. It says that the members of the CIC will enter into a MOU for the implementation of the C.A.P.E. Strategy. This is the second MOU which has the same title as the first but which was signed by 16 institutions in September 2001. Its says that the function of the CIC is to coordinate the long term implementation of the C.A.P.E. strategy by the principal implementing agencies and to advance and represent the common interests of the Parties concerning management of the CFK. The CIC has an Executive Committee to attend to business between meetings and to provide guidance to the C.A.P.E. Coordination Unit (CCU) on a day-to-day basis.

The Government of South Africa has appointed the National Botanical Institute (NBI) as the Program manager for the C.A.P.E. Program, and for the GEF investment. South African National Parks (SANParks), provincial conservation agencies and larger local authorities in conjunction with the private sector will mainly execute the protected areas component 5 of the Program.

1.3 Program Development Objectives and Components

The overall goal of the C.A.P.E. Program is that the natural environment of the CFR and adjacent marine environment will be effectively conserved, restored wherever appropriate and will deliver significant benefits to the people in a way that is embraced by local communities, endorsed by government and recognized internationally.

The C.A.P.E. Program has two Program Development Objectives:

- **Program Development Objective 1:** Capable institutions co-operate to develop a foundation for mainstreaming biodiversity in the Cape Floristic Region into economic activities\(^3\).
- **Program Development Objective 2:** Conservation of the Cape Floristic Region is enhanced through piloting and adapting site-based models for sustainable, effective management.

The above objectives are broken down into 7 components, the first 4 relating to objective 1 and the remaining 3 relating to objective 2.

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\(^3\) Mainstreaming in this context concerns the integration of biodiversity concerns into relevant sectoral or cross-sectoral plans, programs and policies, resulting in situations where there is a simultaneous achievement of gains in biodiversity and gains in an economic sector (the "win-win" scenario) (Pierce, et al., 2002).
# Table 2: Components of the C.A.P.E. Program

<table>
<thead>
<tr>
<th>Component</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Institutional strengthening ($1.2m)</td>
<td>Enhanced strategic alignment of conservation activities and increased capacity of relevant institutions for integrated bioregional conservation management in the CFR supported by comprehensive performance management and information management</td>
</tr>
<tr>
<td>2. Conservation education</td>
<td>Increased environmental awareness and committed action of people in the CFR contributes to biodiversity conservation</td>
</tr>
<tr>
<td>3. Establishing the foundations of the biodiversity economy</td>
<td>Market-based mechanisms for conservation management are designed and micro enterprise opportunities for conservation related businesses established</td>
</tr>
<tr>
<td>4. Program co-ordination, management and monitoring</td>
<td>Enhanced management capacity, effective communication and efficient adaptive management result in the integrated development and implementation of the Program as a whole</td>
</tr>
<tr>
<td>5. Unleashing the potential of protected areas</td>
<td>Protected areas contributing to priority targets for conservation of the biodiversity of the CFR are consolidated or established; cost-effective management is sustained; tourism development plans are implemented; and stakeholders derive direct and indirect benefits</td>
</tr>
<tr>
<td>6. Identifying and securing biodiversity in key sites</td>
<td>Biodiversity in five to six priority remnant patches in fragmented landscapes identified and secured in conjunction with civil society</td>
</tr>
<tr>
<td>7. Integrating biodiversity concerns into watershed management</td>
<td>Biodiversity concerns are integrated into 5 watershed management agencies</td>
</tr>
</tbody>
</table>
2 WORLD BANK INVOLUNTARY RESETTLEMENT/LOSS OF ACCESS POLICY

2.1 World Bank Involuntary resettlement/Loss of Access Policy Requirements

The World Bank has an Operational Policy (known as OP4.12) to safeguard against the impoverishment risks of involuntary resettlement/loss of access in development projects. A summary of this policy and its requirements is given below.

2.1.1 Definition of involuntary resettlement/loss of access
The World Bank definition of involuntary resettlement/loss of access is:

"Involuntary resettlement refers to any project which **displaces people from land or productive resources**, and which **results in relocation**, the **loss of shelter**, the **loss of assets or access to assets important to production**, the **loss of income sources or means of livelihoods**, or the **loss of access to locations** that provide higher incomes or lower expenditure to businesses or persons, whether or not the affected people must move to another location\(^4\)."

Involuntary vs. voluntary resettlement
"Involuntary" means actions that may be taken without the displaced person’s informed consent or power of choice. Resettlement is only voluntary when the affected people have the option to refuse resettlement, and they nevertheless resettle based on informed consent. This free choice needs to be determined by a process of independent verification, and when it can’t be confirmed, resettlement would be treated as involuntary\(^5\).

It has been argued that any resettlement that might occur in the C.A.P.E. Program is **voluntary** because any displacement from land or productive resources will NOT result in relocation, loss of shelter, loss of assets or access to assets, loss of income sources or means of livelihood or loss of access to locations that provide higher incomes because in all cases the aim of the project is to benefit people. Real examples on the ground of situations where jobs have increased in number and quality as a result of land conversion to conservation are given to show that the C.A.P.E. Program is about creating benefits and not involuntary resettlement/loss of access. Implicitly the issue being raised is whether this policy applies at all to the C.A.P.E. Program.

OP4.12 is one of the Bank’s safeguard policies because their experience has shown that involuntary resettlement/loss of access under development projects, if unmitigated, often lead to severe economic, social and environmental risks. Clearly it is not possible, until the specifics of a case have been investigated (the zone and nature of impact determined, the socio-economic data collected, viable options developed, people consulted and consent obtained etc), to know exactly what the impact of displacement from land or productive resources will be, positive or negative. As

\(^4\) Quoted from Terms of Reference for a Resettlement Policy Framework and see point 3 of OP4.12
\(^5\) OP4.12 footnote 7 and Bank document on FAQ dated May 2002
the zone of impact and associated details such as the estimated population that may be affected, is presently unknown in most of the C.A.P.E. Program, it would be premature to conclude whether any displacement of people from land or productive resources will be involuntary or voluntary. All activities that trigger the OP4.12 safeguard need to either a) provide proof of independent verification that the resettlement is voluntary, or b) follow the procedures set out in Figure 2.

This document does not question the C.A.P.E. Programs' explicit intention to benefit people, but builds on this by providing a policy framework and mechanisms to ensure that involuntary resettlement/loss of access either doesn't occur or if it does occur, is mitigated. Thus if displacement actually improves the lives of the affected people who have been involved in the process and provided informed consent, this is the first prize. In such cases it can be argued that the resettlement is not "involuntary" but "voluntary". This does not really matter, because this safeguard and C.A.P.E. objectives would have been met.

2.1.2 Who the resettlement policy covers

The policy covers all person losing assets, use of resources, or access to resources as a direct result of the project. The policy is not restricted to people who have formal legal rights to the land or resources. It applies to people who currently occupy or use the land or natural resources, no matter whether they have formal rights to do so, and it includes people with valid claims to the resources.\(^6\)

It thus includes landowners (who are in any case required by South African law to be provided with market-based compensation and are thus not the focus on this RPF), farm workers and occupiers (who also have certain rights in terms of the Extension of Security of Tenure Act), people with communal/traditional rights such as residents in the former "coloured reserves" and on mission land, restitution claimants and people with established occupation and use rights in term of the Interim Protection of Informal Rights to Land Act, as well as "those who have no recognizable legal right or claim to the land they are occupying".\(^7\) This later group will only be provided with resettlement assistance and not compensation for the land they occupy.

It does NOT include persons opportunistically invading a site after disclosure of the project (In South African law the Prevention of Illegal and Unlawful Occupation Act provides for the eviction of such people). It also would not protect criminal activity\(^8\) such as the poaching experienced in some of the marine areas\(^9\).

\(^6\) OP4.12, Para 15
\(^7\) OP4.12, Para 15
\(^8\) The distinction between unlawful and criminal should be understood. Established patterns of occupation and use that are not necessarily lawful would fall within the scope of the safeguard. However the safeguard includes a test of reasonableness, and it cannot reasonably be expected to protect criminal activities. Where the distinction is relevant in a particular project the RAPs and POA should include a discussion of the circumstances, and explain why certain users have been treated differently.
\(^9\) World Bank, Involuntary Resettlement, Key Concepts, as applied to C.A.P.E.
In addition, the policy states that particular attention should be paid to the needs of vulnerable groups among those displaced - especially those below the poverty line; the landless, the elderly, women and children, indigenous groups and ethnic minorities or other displaced persons who may not be protected through South African law.

The Bank safeguard Policy OP 4.12 applies to all components under the project, whether or not the Bank directly funds them in whole or in part.

2.1.3 Policy objectives of OP4.12
The policy objectives of OP4.12 are as follows:
Avert involuntary resettlement/loss of access where feasible (viable alternatives should be explored in this regard);
1. Ensure that, where it is unavoidable, involuntary resettlement/loss of access occurs as part of a sustainable development Program that provides investment resources to those who are affected;
2. Ensure that those who are affected are meaningfully consulted and have opportunities to plan and implement their resettlement; and,
3. Ensure that those affected are assisted to at least restore their livelihoods/standards to the same levels as at the time of displacement.

Restoration of the incomes of all affected persons is one of the key objectives of the Bank's resettlement policy. It requires that after resettlement, all of the affected persons should have incomes, which are at least equivalent to their pre-project income levels.

Restoration of incomes, the standards of living and the productivity levels of the affected persons constitute the core of the Bank's resettlement policy. Though resettlement programs should be designed to help improve the standards of living and income levels of the affected population, they must, at least, be restored to previous levels. Resettlement planning is one of the main mechanisms through which the Bank and the Borrower work towards ensuring that the incomes of all categories of affected persons are restored after resettlement.

2.1.4 Instruments - RPF, PF, RAP and POA
There are four main instruments that are set out in OP4.12. These are a (1) Resettlement Policy Framework (RPF), which is followed by a (2) Resettlement Action Plan (RAP); and (3) Process Framework (PF), followed by a (4) Plan of Action (POA). The key intention of these instruments is to provide a policy framework and binding procedural safeguards.

These instruments are described in Table 3.
Table 3: Instruments set out in OP4.12

<table>
<thead>
<tr>
<th>Resettlement Policy Framework (RPF) and Resettlement Action Plan (RAP)</th>
<th>Process Framework (PF) and Plan of Action (POA)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RPFs</strong></td>
<td><strong>PFs</strong></td>
</tr>
</tbody>
</table>
| An RPF is required for Bank-assisted projects with multiple sub-projects or for sector investment operations that may involve involuntary taking of land resulting in:  
  - Relocation or loss of shelter,  
  - Loss of assets or access to assets, or  
  - Loss of income sources or means of livelihood, whether or not the affected persons must move to another location  
  - Loss of access to resources. | A PF is prepared when Bank-supported projects may cause restrictions in access to natural resources in legally designated parks and protected areas. This includes marine and terrestrial protected areas. |
| An RPF is a statement of policy, principles, institutional arrangements and procedures that Executing Agencies will in each sub-project/component that could involve involuntary resettlement/loss of access. | A PF sets out a process by which members of potentially affected communities can participate in the design of project components and the determination of measures to mitigate adverse impacts. |
| The RPF must be prepared, accepted and disclosed publicly before the Bank will appraise the project. | POAs |
| **RAPs** | A POA is a detailed action plan that sets out how restrictions on access to resources will be treated, including how affected people will be involved in the process and how they will be compensated. |
| Where an RPF is in place, a RAP is a detailed action plan for treating a specific situation. It identifies the precise impacts that may be associated with involuntary resettlement/loss of access and the associated compensation. | A Plan of Action (POA) must be submitted to, and approved by the Bank before the enforcement of restrictions on access to protected areas. |
| A RAP must be submitted to and approved by the Bank before any involuntary resettlement/loss of access activities are carried out. | An A POA must comply with the process set out in the PF. |
| A RAP must comply with the policy, principles and procedures that are set out in the project or Program's RPF. The key outcome of a RAP should be a situation where affected people are in an equivalent situation as before, but preferably in a better situation. | The key outcome of a POA is that those who are affected by restrictions on their access to resources participate in determining the nature of the access restrictions, and the process to mitigate any negative impacts. |
| Affected people will not necessarily be in an equivalent situation than prior to the intervention. | While efforts should be made to place the poor in at least an equivalent situation than prior to an intervention, in terms of the Process Framework, this is not an explicit requirement of OP4.12. |

The RPF and PF are not site specific and can be prepared when it is not clear what the exact zone of impact will be. The RAP and POA are site-specific tools and can only be prepared once the exact zone of impact is known.
The RPF and PF must be prepared for the Bank before an investment that could result in involuntary resettlement/loss of access can be approved. A RAP and POA are required where specific activities that may result in involuntary resettlement/loss of access are proposed.

2.1.5 Contents of a RPF
In terms of OP4.12, a RPF should contain:

a) A brief description of the project and components for which land acquisition and resettlement are required, and an explanation of why a RAP cannot be prepared by project appraisal. (See section 1 of this document for project description, section 4 for components for which land acquisition and resettlement may be required, and section 5.2.2 for why a RAP cannot be prepared now);
b) Principles and objectives (See section 5.2.2);
c) A description of the process for preparing and approving RAPs (See section 5.2.1);
d) Estimated population displacement and likely categories of displaced persons, to the extent feasible (See section 4);
e) Eligibility criteria for defining various categories of displaced persons (See section 5.2.1);
f) A legal framework reviewing the fit between borrower laws and regulations and Bank policy requirements and measures proposed to bridge any gaps between them (See sections 2 & 3);
g) Methods of valuing affected assets (See section 5.2.3);
h) Organisational procedures (See section 5.4.2);
i) A description of the implementation process (See sections 5.4 & 6);
j) A description of grievance redress mechanism (See section 5.4.1);
k) A description of the arrangements for funding resettlement (See section 5.4.4);
l) A description of mechanisms for consultations with, and participation of, displaced persons in planning, implementation, and monitoring (See section 5.2.3); and,
m) Arrangements for monitoring (See section 5.4.3).

2.1.6 Contents of a Process Framework
The World Bank's Involuntary Resettlement Policy differentiates between situations, which involve the "involuntary taking of land", and the "involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the displaced persons".

Different, less onerous provisions are required for restrictions on access to protected areas, than those required for situations involving the taking of land. Instead of an RPF, a Process Framework is required initially. Just as specific Resettlement Action Plans (RAPs) are required before the implementation of any project entailing resettlement, so are Bank approved Plans of Action (POA) required at the implementation stage of each project, before enforcing the envisaged restriction of

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10 OP4.12 Annex A
11 Section 3(a) of OP4.12
12 Section 3(b) of OP4.12
access. These Plans of Action must set out the specific measures taken to assist people deprived of access to parks or protected areas, and implementation arrangements.  

The policy requires that the nature of the restrictions on access, as well as the type of measures necessary to mitigate adverse impacts is determined, with the participation of the displaced persons during the design and implementation of the project.  

The Process Framework must describe the participatory process whereby

a) Specific components of the project will be prepared and implemented
b) The criteria for eligibility of displaced persons will be determined
c) Measures to assist the displaced persons in their efforts to improve their livelihoods, or at least to restore them, in real terms, while maintaining the sustainability of the park or protected area, will be identified; and
d) Potential conflicts involving displaced people will be resolved.
e) It must also set out implementation and monitoring arrangements.

A process framework, and plans of action are required for processes that create new Protected Areas.

They may also be required for projects and processes designed to more effectively enforce restrictions in existing Protected Areas: It is a common problem that Protected Areas may have been declared, but are not adequately policed or enforced. Where the Bank supports projects that entail the enforcement of restrictions, it requires that its resettlement requirements be met to mitigate the effects of restrictions on groups that qualify in terms of its criteria.

Preparing both RPF and PF at once and combining the two into one document provides guidance for the implementation of the C.A.P.E. program, as it provides both a policy framework and procedural safeguards, binding diverse executing agencies and ensuring compliance with OP4.12. This will take place in the context of in-country capacity, backed up by supporting laws and regulations.

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13 Section 31 of OP 4.12
14 Section 7 of OP 4.12
Legal framework – South African policy and law relating to resettlement

2.2 South Africa laws and policies affecting resettlement and rights of access to natural resources

2.2.1 The Constitution of the Republic of South Africa Act 108 of 1996
The property clause in section 25 of the constitution permits the regulation of property rights by law. Where the regulation amounts to the expropriation of property, then compensation must be paid. Whether any particular conservation regulation amounts to an expropriation of property (and therefore would require compensation) is an issue that may be contested, and if so, would have to be decided by the courts. Each instance would have to be decided on its merits, which will differ according to the nature of the rights at issue, and the extent of the “loss” created by the law. Where the holder of the property right agrees to the restriction on his or her rights, the matter can be resolved amicably by agreement outside the court process. Property rights are not restricted to land ownership, and various types of interests in land or natural resources, for example the occupation rights of farm workers under ESTA (see below) are also property rights. The Expropriation Act 63 of 1975 is the law most commonly used for expropriation. Various bodies have the right to expropriate land, including the Ministers of Public Works and Land Affairs, and local government.

2.2.2 Laws regulating rights to land
a) Extension of Security of Tenure Act 62 of 1997 (ESTA)
This Act regulates the circumstances under which poor people occupying rural land (typically farm land) can be evicted. The Act applies to people who have permission (tacit or explicit) to live on rural land belonging to someone else. The Act addresses the legacy of past discriminatory laws such as the 1913 Land Act, which prohibited black ownership or tenancy of over 80% of rural land.

The Act:
- Limits the circumstances under which eviction may take place.
- Generally requires that people who have occupied land since before 1997 can be evicted only if “suitable alternative accommodation” is available (some exceptions apply)
- Provides additional protection for long terms occupiers (people over 60 years old who have lived on the land for over 10 years) such that their occupation rights can be terminated only under very limited circumstances
- Provides that the rights of occupiers survive changes of ownership (new owners inherit the ESTA obligations of the previous owner)
- Provides for state support (subsidies) to enable occupiers to acquire independent rights to land in either “on-farm” or “off-farm” settlements.

In effect the Act provides people over 60 of age with lifetime tenure security on land they have occupied for over ten years, and requires that, in most other instances, owners cannot evict people who are not “at fault”, unless suitable alternative accommodation is available. Suitable alternative accommodation cannot be less favourable than the current accommodation of the occupier. The
Act provides that landowners who evict occupiers illegally can be arrested and serve prison sentences. It also provides that people who are illegally evicted can be re-instated at the cost of the landowner.

However illegal evictions do take place, especially under circumstances where occupiers are isolated, do not know their rights, and do not know where to turn for assistance. Anecdotal evidence from the Rural Legal Trust, established to provide legal support for farm workers throughout South Africa, indicates that changes of land use and ownership associated with conservation projects are a source of current illegal evictions in certain cases. A key trigger for illegal evictions is “vacant possession” clauses in land purchase agreements, where the purchaser makes it a condition of sale that the land must be vacant of occupiers before transfer takes place.

The World Bank has indicated in relation to the Greater Addo Elephant National Park that for conservation bodies to insist on vacant-possession clauses in land purchase agreements is in breach of OP 4.12, as it simply transfers the responsibility for dealing with the resettlement consequences of conservation projects onto other parties who may then try to get away with illegal evictions, to the detriment of the rights of the occupiers.

b) Land Reform (Labour Tenants) Act 30 of 1996
The Labour Tenants Act applies to fewer people than ESTA and provides stronger tenure rights than ESTA. It applies to people who have occupied farms over generations, and who are paid for their labour, at least partially, through access to land. It was introduced to protect a particular historical class of rural dwellers, who have occupied farms over generations, and who historically did not receive wages for the labour they provided, but were paid by the right to occupy and use a portion of the farm. Labour tenancy survives mainly in parts of Mpumalanga and KwaZulu-Natal, but occurs on a limited scale in other provinces.

Labour tenants are granted strong tenure rights by the Act (protection from eviction) and also the right to acquire the portion of land they occupy. The mechanism is an application process that results in the Department of Land Affairs providing successful applicants with a subsidy that is used to purchase land.

c) Interim protection of Informal Land Rights Act (31 of 1996) IPILRA
This is a very short piece of legislation that was designed to provide temporary protection of certain informal land rights pending the introduction of comprehensive tenure legislation. It was designed to lapse at the end of 1997 but has been extended every year because comprehensive tenure legislation has still not been enacted for communal areas and people who have been the undisputed occupants of land since 1992.

It does not apply to people who are tenants, workers, or people who have permission to occupy land (subservient or contractual rights). Instead it applies to people who occupy land “as if they were the owner”. It was introduced to protect people who occupy land on an established,
undisputed basis, but nevertheless do not have legal or formal rights because of the legacy of racial laws.

The Act provides that people cannot be deprived of informal rights except with their consent, or by expropriation. In other words, informal land rights acquire the status of property rights in that people cannot be deprived of them except by expropriation (which requires compensation) or by consent.

Customary land allocations in communal areas and the ex-homeland areas qualify as informal rights, as do allocations in the Coloured reserves (land held in trust by government). Informal rights also exist throughout South Africa in situations where people have lived on land without permission and "as if they were the owner of the land" since 1992.

d) Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE)
This Act replaces the Illegal Squatting Act that previously governed various categories of eviction from land. The Act governs the eviction of unlawful occupiers of land - in other words people who do not have rights in terms of ESTA, IPILRA, other laws, contractual arrangements with the owners, or any other consent to be on land. It sets out the procedures for eviction and says that eviction will be ordered when it is "just and equitable" to do so. When the occupier has been in occupation for more than six months, the availability of alternative accommodation is one of the factors the court must consider in deciding whether eviction is just and equitable. This does not mean that there can be no eviction unless there is alternative accommodation. Nor does it put an onus on the landowner to provide alternative accommodation, as ESTA does under certain circumstances.

e) Restitution of Land Rights Act 22 of 1994
This Act provides for the restitution of land or rights in land for people who were deprived of land rights as a result of racially discriminatory laws or practices after 1913. All claims had to be lodged by 31 December 1998. Thus it is possible to establish whether a claim has been lodged in respect of any particular piece of land.

In summary the body of land laws introduced after 1994 has a similar focus to the Bank's OP 4.12. It protects the security of tenure (whether formal or informal) of vulnerable and poor sections of the population and attempts to put in place procedural protections that ensure that where people do lose access to land, they are consulted and compensated. ESTA, the Labour Tenants Act and IPILRA all recognise different forms of established occupation of, and vested interests in land that previously had no formal recognition because of racial prohibitions on black contractual rights to land. In general, interventions that comply with OP 4.12 will also comply with the provisions of these laws.

2.2.3 Laws regulating rights to the sea and marine resources
The South African legal regime governing the sea and access to marine resources is very different from that governing land rights. This stems from the fact that the sea and all marine resources are owned by the state. Various laws such as the Marine Living Resources Act (68 of 2000) have created a system in terms of which no one may harvest marine resources except if granted the right
to do so by a permit. The Act provides that the Minister must have particular regard to the needs of people from "historically disadvantaged sectors of society" in granting rights. It also sets out special procedures to enable "subsistence" fishers to be recognised and granted non-transferable rights in specifically established zones or areas. The Marine Living Resources Act also provides for the establishment of Marine Protected Areas.

The current legal framework does not provide for compensation for the loss of previous access or use of marine resources. Instead it attempts to deal with issues of poverty, past exclusion and patterns of subsistence use by taking these factors into account in the allocation process. The adequacy of this approach is controversial. So far no subsistence fishing rights have been granted, partly because of problems concerning the definition of subsistence users.

The Bank’s requirements concerning the treatment of people whose livelihoods may be affected by the enforcement of restrictions in Marine Protected Areas, are stronger than those set out in the Marine Living Resources Act. This is because OP 4.12 requires that all Protected Areas be designed in a way that minimises negative impacts on local communities, and that the process of establishing Protected Areas must include measures to mitigate any possible negative impact on local communities caused by restrictions on access. The Marine Living Resources Act does not explicitly require that existing informal users must be consulted prior to the establishment of Marine Protected Areas, nor does it require measures to mitigate the possible negative impact on livelihoods of restrictions on access.

However, the Promotion of Administrative Justice Act (see below), which requires that all new laws be advertised for public comment, is routinely applied. In practice, this has meant that consultation exercises with stakeholders are undertaken.

**The Promotion of Administrative Justice Act (PAJA)**

The Promotion of Administrative Justice Act (PAJA) requires that organs of state follow fair administrative procedures in their dealings with the public. These procedures focus on the right to make representation as opposed to the right to be consulted. The Act is applicable generally, not only to marine situations, and creates a default position where a specific law does not have any such provisions. There is a debate as to whether PAJA’s administrative procedures apply only to decisions that affect rights (noting that the Marine Act does not include rights) or more broadly to interests.

Thus the Bank’s safeguards and Process Framework can build on and complement existing practice with regard to Marine Protected Areas and put in place a binding procedural safeguard. The Bank’s safeguards will also ensure that C.A.P.E’s Marine Protected Areas conform to the requirements of International instruments signed and ratified by South Africa such as the Biodiversity Convention and the Ramsar Convention that require that local communities participate in the management and sustainable utilisation of conservation assets.
2.2.4 Laws regulating labour relations

The Labour Relations Act 1995 (LRA) provides the legal framework for labour law, especially when it comes to termination of service, transfer of staff from one legal person to another and what is considered to be fair labour practices.

Section 189 and 189A of this Act apply when an employer contemplates dismissing one or more employees for reasons based on the employer’s operational requirements. In terms of these provisions the employer must engage employees in a meaningful joint consensus-seeking process and attempt to reach consensus in the manner as prescribed. The aims of the engagement is to craft appropriate measures to avoid the dismissals, to minimise the number of dismissals, to change the timing of the dismissals, to mitigate the adverse effects of the dismissals. It must also address the method for selecting the employees to be dismissed and the severance pay for dismissed employees. If the employer employs more than 50 employees and proposes to retrench between 5 and 20% of the workforce (depending on the size of the workforce), or has retrenched this number of employees within one year, more elaborate engagement and consultation is required, including facilitation of negotiations by a facilitator of the Commission for Conciliation, Mediation and Arbitration.

Section 197 and 197A of the LRA applies when a business is transferred as a going concern. These provisions are important where Executing Agencies take over existing concerns (such as transfer of forestry workers) and where concessions are entered into and the project wants to ensure the worker's jobs are protected. The new employer is automatically substituted in the place of the old employer in respect of all contracts of employment in existence immediately before the date of transfer. These provisions also apply to the transfer of a business in a context where the old employer has gone insolvent if a scheme of arrangement is being entered into to avoid winding-up or sequestration for reasons of insolvency, but not the provisions referred to immediately hereafter. The new employer must offer terms and conditions that are on the whole not less favourable to the employees than those on which the old employer employed them. For a period of 12 months after the date of the transfer, the old employer is jointly and severally liable with the new employer regarding an employee's dismissal for a reason relating to the employer's operational requirements or the employer's liquidation or sequestration.

Sectoral Determinations issued by the Minister of Labour for a specific sector in terms of the Basic Conditions of Employment Act 1997, set minimum wages and conditions of service for that sector. A sectoral determination has, for example, been issued for the agricultural sector and one for the forestry sector is being drafted.

In terms of the Unemployment Insurance Act, when an employee resigns or is dismissed he or she is entitled to a payment of 45% of his or her wages for up to six months from the Unemployment Insurance Fund. Certain member of the next of kin of a deceased employee can also claim this benefit.

The Skills Development Act has been put in place with the intention of:
• Providing for learnerships and other training Programs that lead to registered qualifications;
• Promoting high quality education and training by a system that is cost-effective, accountable and meets training needs;
• Providing for the financing of skills development by means of a levy-grant scheme.

It should be possible at least partially to fund a well-designed training Program relating to changed employment needs due to declaration of protected areas with funds collected through the skills levy.
3 C.A.P.E. Program activities that could trigger safeguard OP4.12

The C.A.P.E. ESMF sets out a process for screening proposed C.A.P.E. activities in order to determine whether World Bank safeguard policies, including the Involuntary Resettlement Safeguard, OP4.12, will be triggered. This RPF should therefore be read in conjunction with the ESMF for C.A.P.E.

The information contained in this section is based on:
- Information contained within various reports used to develop the C.A.P.E. Program (listed under References);
- Limited discussions held with representatives of the Executing Agencies;
- Demographic information providing by Statistics South Africa; and,
- An assessment of possible impacts based on an understanding of OP4.12 applied within a South African context.

3.1 Social and economic context
The CFR spans the Western and Eastern Cape with an estimated population of about 5.2 million people of whom 20 – 30% live in rural areas. These areas harbour the greatest biodiversity in the CFR. South Africa is characterised by marked socio-economic disparities, high unemployment, a debilitating HIV/AIDS epidemic and poverty. Unemployment in the Eastern Cape is estimated at 49%, while in the Western Cape it is 25%. The population of the Western Cape enjoys a greater degree of human, economic and social development and has considerably more resources at its disposal that the Eastern Cape. The Western Cape contains 10% of South Africa's population but contributes 14% to the GDP, while the Eastern Cape has 16% of the population and only contributes 7.5% to the GDP.

Due to this, the Western Cape experiences in-migration from the Eastern Cape. The Western Cape has a net population growth of about 2.3% or 100 000 per annum. The Cape Metropolitan Council (CMC) commissioned a study on migration patterns in the Cape Metropolitan Area (CMA) in 1998. This revealed that while in the past, migration between the Western Cape and Eastern Cape occurred in both directions, it is now largely one-way into the CMA. The Eastern Cape provincial government's administrative capacity is weak, mainly because it had to amalgamate two former homeland governments and a former white administration system. Many poorer rural communities are dependent upon wild resources, particularly marine and medicinal plants, for subsistence and income generation.

There are a number of different tenure forms in the CFR, including private (small holdings to larger commercial farms), state (national, provincial and local government) and a small amount of communal.
3.2 Identified interventions that could have impacts

3.2.1 Component 5 – Protected Areas

The C.A.P.E. Program has identified the consolidation and expansion of several large protected areas that, together with a representative sample of smaller protected areas widely distributed across the landscape, will achieve conservation targets in the CFR. In this regard, the proposed GEF investment will contribute to the establishment of three land based initiatives, including two 'mega-reserves', and two clusters of marine protected areas (MPAs). The proposed activities associated with these protected areas could potentially have involuntary resettlement/loss of access impacts.

Component 5 of the Program – unleashing the potential of protected areas, that describes the activities associated with these five protected areas, is summarised in the table below.

Table 4: Summary of Component 5: Unleashing the Potential of Protected Areas

<table>
<thead>
<tr>
<th>Problem statement</th>
<th>Component output</th>
<th>3.2.1.1 Sub-components and activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>The current protected area system is inadequate to achieve global conservation</td>
<td>Protected areas contributing to priority targets for conservation of biodiversity of the CFR are consolidated or established; cost-effective management is sustained; tourism development plans are implemented; and stakeholders derive direct and indirect benefits</td>
<td>1. Establish &amp; consolidate key protected areas</td>
</tr>
<tr>
<td>targets for biodiversity in the CFR. Many of the existing large protected</td>
<td></td>
<td>- Three prioritised protected areas: Baviaanskloof, Garden Route, Cederberg</td>
</tr>
<tr>
<td>areas include land under a variety of protection designations and managed by</td>
<td></td>
<td>- Two priority freshwater &amp; estuarine systems</td>
</tr>
<tr>
<td>several authorities. Large quantities of living marine resources are harvested</td>
<td></td>
<td>- Two clusters of priority marine protected areas: Garden Route (including Robberg, Tsitsikamma and Goukamma) &amp; Kogelberg</td>
</tr>
<tr>
<td>unsustainably with over exploitation in near shore areas by artisanal and</td>
<td></td>
<td>2. Develop sustainable management effectiveness</td>
</tr>
<tr>
<td>subsistence fishers. It is necessary and possible to establish several large</td>
<td></td>
<td>- Test a strategic PMS for priority protected areas</td>
</tr>
<tr>
<td>protected areas that, together with a representative sample of smaller protected</td>
<td></td>
<td>- Establish an information management system</td>
</tr>
<tr>
<td>areas widely distributed across the landscape will achieve conservation targets</td>
<td></td>
<td>- Plans for responsible tourism &amp; visitor impact</td>
</tr>
<tr>
<td>in the CFR. There is a need to develop new &amp; diversified tourism products as a</td>
<td></td>
<td>- Facilitate development of tourism infrastructure &amp; facilities</td>
</tr>
<tr>
<td>means to ensure appropriate use/appreciation of globally significant biodiversity,</td>
<td></td>
<td>- Develop plans for responsible tourism and visitor impact mitigation in four target protected areas</td>
</tr>
<tr>
<td>and to inject economic growth. The planning and development of large protected</td>
<td></td>
<td>- Implement priority management actions: done in a way as to simulate SMME development</td>
</tr>
<tr>
<td>areas provides an ideal means to involve/include local communities in the design</td>
<td></td>
<td>- Undertake capacity-building for protected area management</td>
</tr>
<tr>
<td>and expansion of these areas, and in the business and employment opportunities</td>
<td></td>
<td></td>
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<tr>
<td>that result.</td>
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</tbody>
</table>
3.2.2 Impact of Baviaanskloof Megareserve and Surrounds

a.) Description of area

Located inland from Port Elizabeth, the area within the Baviaanskloof Planning Domain is relatively sparsely populated due to its location, vegetation and climate. The main economic activity is farming, which is mainly marginal. Three distinctly different units of land management and population density occur within the planning domain, namely:

- Sparsely populated marginal mountain land where small stock and cattle farming occurs, e.g. the southern Kouga slopes and northern Baviaanskloof slopes. Population density varies from 1 person per 1,000ha to 15/1,000ha.
- More densely populated areas with irrigation land on which citrus and vegetable seed farming takes place, e.g. Baviaanskloof, Cambria and Gamtoos River. Population density is the highest here at 30/1,000ha.
- Uninhabited mountain areas on private land as well as conservation areas

Different communities in the area are:

- Baviaanskloof farming community (70 white, 1,000 mostly coloured)
- Steytlerville/Willowmore farming community (800)
- Cambria farming community (400)
- Gamtoos River farming community (3,000)
- Southern Kouga Mountain farming community (1,500)
- Langkloof farming community (8,000)

b.) Proposed activities

The model for the development of the megareserve is to try and encourage voluntary land use change and multi-owner contractual reserve system. The Baviaanskloof megareserve project’s vision is a biologically economically and socially sustainable conservation area. Multi owner / contractual models are being pursued in the majority of the planning domain. There are three main types of inclusion in the reserve and each has different potential impacts. They are:

1. Promoting ecologically sustainable land management without changing land use from agriculture to conservation. This could have minor impacts on job and tenure security for rural population, including positive job creation impacts;

2. Contractual reserves based on agreements with conservancies or groups of farms in which title is retained but land use changes to conservation. This could have impacts on jobs and tenure security, which should be generally positive impacts because of the opening of a whole suite of new tourism and hospitality related jobs opportunities; and,

3. Land purchase in a selected few priority areas, in which the provincial conservation authority would become the managing party - the people working and living on these properties will participate in deciding how to address physical relocation if this should be unavoidable.
The project has four key areas of intervention that could have resettlement impacts:

1. Possible physical relocation of people for megareserve consolidation;
2. Acquisition of land for key sites;
3. Change of land use resulting in job and accommodation impacts; and,
4. Restriction of access to natural resources.

The Wilderness Foundation (WF) has indicated that, where relocation is proposed, this will only be done in a consensual and voluntary manner. The project has no intention to be involved in involuntary resettlements. It will provide independent verification that resettlement has been voluntary as required by OP4.12. and will follow the procedures set out in this document.

See Figure 1 and 2 in Annexure B for maps showing the Baviaanskloof Megareserve planning domain and footprint for expansion and consolidating, and estimated rural population in various zones.

c.) Possible Impacts  
  i) Possible physical relocation of people

In the central western kloof of the Baviaanskloof megareserve planning domain, an area of some 52 000ha (about 10% of the planning domain), about 1 100 people live scattered along the road and river. The land is used for farming, about 500ha is arable mainly along the rivers and this is where the bulk of people are employed. The rest of the land is used for small stock. There are the following settlements in this area:

- Studtis - (also know as Bosdorp) land owned by Nature Conservation with at least 1 person per household working for Nature Conservation. One suggestion is to encourage the development of this settlement to accommodate some of the peoples from Coleskeplaas and other farms.
- Zaaimanshoek - church owned land with a combination of pensioners, unemployed and employed (on farms) peoples.
- Sewefontein - communally owned (small) farm, 75 stakeholders from the region bought shares in the property with government housing grants. The limited number of houses means that not all the shareholders live in the settlement (some live at Coleskeplaas).
- Coleskeplaas - farm bought by Nature Conservation some years ago, envisaged to be a western gateway to the reserve housing some staff as well as tourist accommodation in an additional farm house. Currently it has a community of unemployed people living there many of whom moved there recently- one person from each household has been working under a temporary contract (financed by poverty alleviation and working in the conservation area on various labour projects) some of these people have shares in, but no house at, Sewefontein, and will agree to move if housing is provided there. For those without shares in Sewefontein the current offer by the Eastern Cape Department of Nature Conservation is to accommodate
them at Bosdorp (necessitating deproclaiming the area and giving the people ownership of new homes that would have to be built —funding options are being investigated).

- Sandvlakte - recent portion of farmer Piet Kruger's land sold to a group of labourers because their church is there. These shareholder labourers continue to work and live on Piet Kruger's land, not at Sandvlakte.

Some farm workers and unemployed landless people may need to be relocated in this area but these relocations would not be out of the megareserve, but WF rather envisages a rationalization of the current settlements. Two existing settlement areas have been earmarked for expansion to accommodate currently unemployed and employed people from various farms. It is important to note that none of the settlements in the region have adequate municipal services due to their extreme isolation. Any relocation or resettlement will be done in consultation with the affected peoples. To date, in discussion with the WF's Project Management Unit, people in the area have indicated that they would like to stay where they are, but that as their main need is for jobs, they would consider moving if these could be secured.

The Baviaanskloof Initiative's motivation for possible physical relocation is that the present scattered settlement patterns could run contrary to the vision of creating a wilderness eco-tourism experience that is a key tourism draw card. To achieve this wilderness experience it may be appropriate for people scattered throughout the area to move into the two or three rural villages. The intention is to discuss the need to consolidate and rationalise settlement in this area with the affected people and have a bottom up process of consultation through which agreements are reached about how this can be achieved. The RPF and RAP can assist to achieve this.

ii) Acquisition of land for key sites
The project is currently compiling a "catalogue" of priority sites, based on biological attributes (biodiversity pattern and process), management objectives (consolidation/rationalization of boundaries) and holder willingness, economic considerations (tourism potential) and social implications (resettlement implications). They will identify small areas of land, which they hope to buy. If this land needs to be cleared of people, it will have involuntary resettlement impacts.

iii) Change of land use resulting in job and accommodation impacts
One of the main objectives of the project is to actively promote land use change from agriculture to conservation and tourism. In many of the areas in the planning domain small stock farming has lead to severe degradation of the land (especially subtropical thicket vegetation). In some of these areas the project will encourage a shift to indigenous game and related industries (hunting and ecotourism) that more closely relate to nature conservation goals. To this end they have recently facilitated the initiation of a CEPF funded study on the economic implications and possibilities in conversion from small stock to game industry in the northern area of the planning domain. Because of the nature of the land, arid conditions and low numbers of people it is feasible that any jobs lost due to a change of land use will be replaced with jobs in conservation/tourism. Much of employment type will mirror existing employment, e.g. manual labour, but there are also opportunities for better paying types of jobs in the tourism sector.
iv) Restriction on access to natural resources
Currently there are low levels of resource use by people. The users can be divided into two groups – those who have traditionally used resources and more recent users who are economically driven, such as people harvesting honeybush tea. The current resource use is not heavy, as in other parts of South Africa. The main problem with the recent users is that harvesting is informal, unregulated and harvesting is not done in a sustainable manner. A potential difficulty is that some believe that a wilderness experience means that resource use should be totally excluded. The formalisation of resource use will result in the institution of rules and could lead to some restriction of present access. It is not known what the value of veld products is for people in this area.

v) Categories of potentially affected people
The following categories of landowners, occupiers and users are found:

- Landowners
  - Mainly white landowners with three farmers owning the majority of the land
  - One land reform project where the owners are black and hold land in shares (Sewefontein)
  - Group of black owners of small portion of land with church on (Sandvlakte)
  - Church land (Zaaimanshoek)
  - Land owned by Nature Conservation (Studtis/Bosdorp)
- Farm occupiers living on private and state land that can be divided into
  - Employed on the farms or by Nature Conservation
  - Unemployed (80%)
  - Land users: people who have stock and harvest indigenous plants

3.2.3 Impact of Cederberg Megareserve and Surrounds
a.) Description of area
Located in the West Coast region inland, the area is one of the most impoverished parts of the Western Cape with a 15% unemployment rate with most of the labour force being manual and unskilled. The bulk of the population was classified “coloured” (76%) with low education levels. Agriculture is marginal, except in the adjacent Citrusdal/Clanwilliam valley that has high value citrus. This wilderness area receives low economic benefits from tourism.

b.) Proposed activities
According to the Western Cape Nature Conservation Board (WCNCB), the Cederberg Megareserve intends achieving the goal of biodiversity conservation through supporting the process of sustainability. The project aims to be environmentally, economically and socially sound and supported by stakeholders, roleplayers and landowners through a participative and capacitated process. The Cederberg project is currently in a planning process to identify the most appropriate strategy for achieving its objectives in consultation with the local stakeholders, roleplayers and occupiers.

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15 The value of veld products in the Agulhas Initiative is estimated to be R10million.
landowner under the auspices of the Cederberg Megareserve Steering Committee. Presently the thinking is that there will be a matrix of different land-uses, forming a corridor between formal conservation areas, with the goal of sustainable living conditions for all the people through biodiversity conservation.

A map showing the planning domain is attached in Annexure B.

c.) Possible impacts
The Cederberg Project Management Unit, housed within the Western Cape Nature Conservation Board, is responsible for establishing a management and business plan for the Cederberg Megareserve in close collaboration with the Cederberg Megareserve Steering Committee. They plan to consolidate all information and inputs from local stakeholders and roleplayers into the strategic management and business plan to ensure a representative, transparent public participation process.

A fine-scale planning exercise is to be initiated within the next month to identify land/water of high biodiversity value, but it will also be sensitive to and incorporate social/economic aspects. This will also be a participative process with input from all stakeholders and role players. Strategies will be discussed with local stakeholders on the best ways to protect key sites – and may include contract nature reserves, conservation agreements, best practice implementation or conservancies. Implementation will be through negotiation, involvement and empowerment of local landowners. The preferred option is for private landowners to protect and take ownership of priority areas on their lands through for example stewardship Programs, rather than following a land acquisition approach.

The Cederberg project is not able to identify the nature or possible zones of impact due to the stage they are at in their Megareserve Process. The project could have the following impacts, but it is also possible that negative impacts will not arise:
1. Loss of jobs, tenure security & accommodation – the main driver of this could be change of land use, but it is rather likely that a change of land use will result in better opportunities for local people
2. Restriction of land use and/or access – harvesting of natural resources is already very limited, thus not expected to have a significant impact on livelihoods
3. Physical relocation – is possible where key sites are acquired but is unlikely at this stage

3.2.4 Impact of the Garden Route Initiative
a.) Description of area
Located along the coast between Plettenberg Bay and George and stretching inland the area is heavily populated with about half a million people resident and many more visiting the area as a popular holiday destination. There are high rates of unemployment in some of the urban informal and rural settlements. The main economic activity is agriculture, based on soft deciduous fruits and dairy products. This is strongly supported by tourism with the Garden Route being the 5th most popular tourist destination in South Africa. However the unstructured nature of tourism allows significant leakage. The area has a number of fragile ecosystems under developmental pressure.
There are a large number of well established settlements ranging from urban towns, holiday coastal resorts, sprawling lower income coloured settlements, rural forestry/agricultural settlements, and farming communities to very poor sprawling informal settlements.

A map showing the planning domain is attached in Annexure B.

b.) Proposed activities
According to SANParks, this Initiative is not at a stage where they can identify any areas where there could be physical relocation or land acquisition of key sites that could have involuntary resettlement impacts. They cannot indicate whether this may be required in future or not. No potential restrictions of existing land use and access rights have been identified.

c.) Possible impacts
The bulk of earmarked land in this Initiative is state land. About 50% of the land is owned by the state but this is fragmented between different departments and agencies. Elements of this project involve the transfer of land containing mountain catchment areas from the Department of Water Affairs and Forestry (DWAF) and select commercial plantations from SAFCOL, who is privatising these state assets, to conservation authorities. This includes the transfer of staff, assets and liabilities.

The intention with these transfers and the subsequent change in land use from forestry to conservation is to unlock the tourism potential to create jobs rather than lose them. The majority of forest villages are on the edge of the protected area, although there is at least one within a protected area. The plan is that these areas would be excised from the protected areas and the local authorities would provide the services and become the responsible authority. There is a detailed plan that has been drawn up by SAFCOL regarding their exit strategy from these non-commercially viable state forests. SANParks does not intend to take on responsibility for these forest worker settlements, but rather to excise them from protected areas.

People currently working for DWAF will be transferred lock, stock and barrel to SANParks. Their work and accommodation will not change status – they will do similar jobs and continue living in the same conditions. This is addressed in the transfer agreement between SANParks and DWAF and the provisions of ESTA have been included in the agreement. This is an area that could potentially have had involuntary resettlement impacts but as it is already covered by the agreement between DWAF and SANParks it is excluded from this policy.

Although no specific areas have been identified it is possible that the following areas of intervention could have involuntary resettlement/loss of access impacts:
1. Lose of jobs, tenure security & accommodation – particularly state land changing from forestry to conservation
2. Restriction of land use and/or access – no potential zones of impact identified
3. Physical relocation – no potential sites identified at this stage, and is unlikely
3.2.5 Impact of the Marine Protected Areas (MPAs) – Kogelberg & Garden Route

a) Description of area
Three MPAs along the Garden Route, including Goukamma, Tsitsikamma and Robberg and the Kogelberg Biosphere Reserve MPA. The Garden Route MPAs have been in existence for between 15 and 39 years. The Kogelberg MPA has not been established.

A map indicating the proposed marine protected areas is attached in Annexure B.

b.) Proposed activities
Some of the MPAs that form the focus of the proposed GEF intervention have already been declared – notably the cluster of Garden Route MPAs. For these, one of the key aims of the initiative is to ensure improved management and enforcement of restrictions on access.

The Kogelberg MPA has not been proclaimed and there is still fluidity with regard to boundaries and exact areas that will be included.

i) Tsitsikamma, Goukamma and Robberg Marine Protected Area
GEF money is requested to improve the management of these MPAs, which have been in existence unchanged for between 15 and 39 years. A recent survey (WWF – sponsored) of the state of MPA management in South Africa has highlighted the need to apply more modern principles of management in the MPAs of the Eastern and Western Cape. In particular, the guidelines recently formulated under the IUCN initiative termed 'management effectiveness' are what will be applied to these existing areas. This will involve a switch from a reactive to a pro-active form of enforcement, involving a high-profile presence of field rangers and a range of communication material to enlighten visitors. Most important, an effective monitoring Program will be introduced which will enable management to adapt continuously to ensure that its objectives are met. The development of eco-tourism opportunities in these MPAs, e.g. whale-watching and Scuba diving, is another objective that could increase the potential for raising revenue to ensure that the MPAs are financially sustainable. Managing these extra activities will require staff training and the development of facilities. No fundamental change in law is anticipated for these MPAs.

ii) The proposed Kogelberg Marine Protected Area
The Kogelberg MPA has not been proclaimed, although a substantial amount of survey work and consultation has already gone into its planning. The project was shelved due to the lack of a sponsor to fund a marine park directorate. Further consultation is envisaged, and will form part of the duties of the directorate, whose function it will be to develop the MPA into a self-sustaining marine conservation area. A business plan has been drafted.

The directorate will be responsible for enforcement, monitoring, permit issue and communication. Although legislative responsibility will be retained at central government level, the directorate will
form a critical important advisory body. Ongoing consultation and the handling of grievances will be undertaken by the directorate.

The directorate will be housed by WCNCB and will be governed by a steering structure comprising key institutions, including MCM and the Kogelberg Biosphere Reserve Company.

c) Possible impacts

MPAs apply only to the sea, from the high water mark, thus the issue of relocation, and taking of land does not arise. However the issue of the denial of access rights to marine resources is relevant as the purpose of a Marine Protected Area is to deny access to all marine resources within the specified area in order to protect marine resources, enable damaged resources to regenerate and thereby restore marine resources for the benefit of all, including future users.

There are poor communities with a history of utilising marine resources in both Kogelberg and along the Garden Route who will be affected. In Kogelberg a new MPA will be established, and along the Garden Route existing MPAs will be better enforced...

Along the Garden Route there are poor communities that historically accessed the sea as a means of livelihood. Several of these communities were affected by forced removals in terms of the Group Areas Act and other laws. Poor people have also been steadily displaced by the high value of coastal land, and land purchases for holiday homes and tourism. Thus there are communities who have had to move away from sites adjacent to the coast, to locations on the inward side of the N2 highway. Not enough is known about the location of such communities and the extent and role of marine resources in their livelihoods.

In this regard, it may be informative to undertake a preliminary study of current poor users along the Garden Route during the inception phase of the project to screen and assess the potential impacts of the C.A.P.E. Program on poor user groups, and to evaluate the relevance of OP4.12 and associated implications accordingly. Such a study should precede a full scale PF for this area.

It is not always easy to differentiate between subsistence users who have an established history and pattern of utilising marine resources and new users, some of whom may have turned to fishing because of poverty, and some of whom work with poachers and syndicates engaged in the large scale and illegal stripping of valuable resources such as abalone and rock lobster.

It is acknowledged that poor communities are likely to be affected by the declaration of MPAs, and the enforcement of restrictions within MPAs. The challenge will be how to differentiate between legitimate current and historical users whose interests must be accommodated, and people 16 The possibility for exemptions is created in the Marine Living Resources Act of 1998, and according to Colin Attwood of Marine and Coastal Management various types of exemptions apply in about half the MPAs in South Africa.
engaged in the illegal stripping of marine resources. The high value of some of the marine resources in the Cape, together with the nature of the market, makes this a more pressing issue than in other provinces.

Nevertheless, in terms of OP4.12 and for projects that are World Bank financed, local fisher communities are protected by the World banks safeguard process, which requires that they be consulted prior to the declaration of MPAs and the enforcement of MPA restrictions.

As part of the process of legitimising MPAs it is critical that such communities are identified and included in the consultation process around the boundaries and terms of MPAs.

One of the key tools for mitigating the impact of MPAs on local users is by negotiating the boundary of the MPA to enable users to maintain access to key resources. Another route is by exemptions for certain categories of users or certain resources within the MPA. Exemptions can only be granted by the Minister of Environmental Affairs, and only after consultation with the statutory Consultative Advisory Forum. Whilst exemptions have been granted in various MPAs, it has been argued that they create difficulties for enforcement, and also difficulties in terms perceived fairness, which may lead to those who do not enjoy exemptions challenging the validity of the MPA restrictions.

The other obvious way of mitigating losses for local communities is by the creation of alternative benefits and sources of income through tourism and other conservation related activities. It is however often difficult to ensure that the people who benefit from these opportunities are the same people who suffer from loss of access to marine resources.

3.2.6 Summary of possible impacts of protected area interventions

The main protected area impacts are summarised in the table below.
Table 5: Summary of protected area interventions and their potential impact

<table>
<thead>
<tr>
<th>Intervention site</th>
<th>Key biodiversity to be protected</th>
<th>Key institutions</th>
<th>Socio-economic &amp; demographic factors</th>
<th>Potential involuntary resettlement/loss of access impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Baviaanskloof Megareserve &amp; surrounds</td>
<td>Major transition zone in the eastern part of the CFR, including afro-montane forest, karoo shrublands, fynbos shrublands, cape transitional shrublands &amp; sub-tropical thicket biomes</td>
<td>Lead - Wilderness Foundation&lt;br&gt;Partnering agencies&lt;br&gt;- TERU&lt;br&gt;- Local Authorities&lt;br&gt;- EC Dept of Economic Affairs, Environment &amp; Tourism (DEAET): has delegated to WF&lt;br&gt;- Provincial Departments of Agriculture &amp; Public Works, Land Affairs, Local Government and Housing&lt;br&gt;-National Department of Environmental Affairs and Tourism&lt;br&gt;- DWAF/water catchment agencies&lt;br&gt;-ECTB</td>
<td>Population numbers(^{17})&lt;br&gt;- 135 453&lt;br&gt;Rural economic activity, employment and income&lt;br&gt;- Mostly marginal farming activity with small amount of high value citrus&lt;br&gt;- Total employed: 33 977 Settlement types&lt;br&gt;- Small numbers live on large farms, larger nos. live on small no. of arable high value farms, &amp; there are a no. of rural villages Access issues&lt;br&gt;- Limited harvesting of indigenous plants (honeybush) &amp; access to land for stock&lt;br&gt;- Access to wood for cooking &amp; heating is important for many poor people in the area</td>
<td>The project has four key areas of intervention that could have impacts:&lt;br&gt;1. Possible physical relocation of people&lt;br&gt;2. Acquisition of land for key sites&lt;br&gt;3. Change of land use resulting in job/accommodation impacts&lt;br&gt;4. Restriction of access to natural resources&lt;br&gt;The possible impacts can be summarised as follows:&lt;br&gt;1. Lose of jobs, tenure security &amp; accommodation&lt;br&gt;2. Restriction of land use and/or access&lt;br&gt;3. Physical relocation</td>
</tr>
<tr>
<td>2. Cederberg Megareserve &amp; fynbos</td>
<td>Largely intact mountain fynbos</td>
<td>Lead - WCNCB</td>
<td>Population numbers&lt;br&gt;- 32 227</td>
<td>Similar to Baviaanskloof the project could have the following</td>
</tr>
</tbody>
</table>

\(^{17}\) Figures provided by StatsSA exclude urban areas
<table>
<thead>
<tr>
<th>Intervention site</th>
<th>Key biodiversity to be protected</th>
<th>Key institutions</th>
<th>Socio-economic &amp; demographic factors</th>
<th>Potential involuntary resettlement/loss of access impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>surrounds</td>
<td>- Lies in transition zone linking elements of mountain &amp; arid fynbos with flora of Succulent Karoo - Mountain streams a hotspot for endemism &amp; diversity of freshwater fish</td>
<td>Partnering agencies</td>
<td>Economic activity, employment and income - Mountainous land has poor agricultural value while adjacent valley has high value citrus agriculture - Total employed: 13 767</td>
<td>1. Lose of jobs, tenure security &amp; accommodation – the main driver of this would be change of land use and intention is to have positive impacts 2. Restriction of land use and/or access – harvesting of natural resources is already very limited, thus not expected to have a significant impact on livelihoods 3. Physical relocation – is possible where limited land of key sites is acquired but is unlikely at this stage</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Local authorities</td>
<td>Settlement types</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Botsoc</td>
<td>- Scattered settlement on farms</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>- A number of former &quot;coloured&quot; reserves &amp; missions within area</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>- Elandskloof restitution community within area</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Access issues</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Limited harvesting of natural resources</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>– Access to wood for cooking &amp; heating is important for many poor people in the area</td>
<td></td>
</tr>
<tr>
<td>3. Garden Route Initiative &amp; surrounds</td>
<td>- Highly impacted south coast renosterveld &amp; afromontane habitats, endemic rich wetlands - More than 1 800</td>
<td>Lead - SANParks</td>
<td>Population numbers - 217 097</td>
<td>Although no specific areas have been identified the following impacts are possible: 1. Lose of jobs, tenure security &amp; accommodation – particularly</td>
</tr>
<tr>
<td>This runs from the</td>
<td></td>
<td>Partnering agencies</td>
<td>Economic activity, employment and income</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>- CPU (WCNCB)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intervention site</td>
<td>Key biodiversity to be protected</td>
<td>Key institutions</td>
<td>Socio-economic &amp; demographic factors</td>
<td>Potential involuntary resettlement/loss of access impact</td>
</tr>
<tr>
<td>-------------------</td>
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<td>-----------------------------------------------------</td>
</tr>
<tr>
<td>Touws River catchment in the west to the Groot River in the east and from coast to crest, but including adjacent conservation areas</td>
<td>indigenous species, including Red data Book species &amp; endemic species - Coastline supports rich marine &amp; inter-tidal life with breeding sites of endangered &amp; rare birds - Environmental gradient from inland to coast includes transition zones of importance to mitigating climate change</td>
<td>- DA - DEADP - Local Authorities - Botsoc - Mountain to Ocean</td>
<td>- Economy is high value agricultural &amp; tourism - Garden Route is the 5th most popular tourism destination in South Africa, thus under high pressure for tourism development - Total employed: 68 967 Settlement types - Large number of settlements range from urban towns, holiday resorts, lower income coloured settlements, rural hamlets, farming communities to poor sprawling informal settlements. Access issues - Harvesting of natural resources - Access to wood for cooking &amp; heating is important for many poor people in the area</td>
<td>state land changing from forestry to conservation, but intention is to have positive impacts 2. Restriction of land use and/or access – no potential zones of impact identified 3. Physical relocation – no potential sites identified at this stage &amp; unlikely</td>
</tr>
</tbody>
</table>

4. Marine protected area adjacent to Garden Route Initiative

<table>
<thead>
<tr>
<th>Lead</th>
<th>Partnering agencies</th>
<th>Potential loss of access to marine resource by poor fishing communities in adjacent areas.</th>
</tr>
</thead>
<tbody>
<tr>
<td>- SANParks</td>
<td>- WCNCB - Local Authorities</td>
<td></td>
</tr>
<tr>
<td>Intervention site</td>
<td>Key biodiversity to be protected</td>
<td>Key institutions</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>5. Marine protected area adjacent to Kogelberg Biosphere Reserve</td>
<td>Marine resources under severe threat</td>
<td>Lead - WCNCB</td>
</tr>
</tbody>
</table>

6. Other potential areas could include:
- Watershed management. As over abstraction of water is a problem in the CFR it is possible that measures could be introduced to limit this, which could impact on existing access and/or use rights. If this should occur impacts could be similar to those described for the marine areas and a pro-poor participatory process set out in the Water Act will be followed. This process is similar to the PF and application thereof will be easily to align with the Water Act requirements.
- The establishment of two priority freshwater and estuarine systems. They are not expected to have impacts, but if they do this would be along the lines of restriction access and then they should be treated in the same way as proposed for the marine protected areas.
3.2.7 Discussion of potential impacts and associated mitigation measures and opportunities per component

The potential impacts of the various GEF supported components and how these could be mitigated is reflected below:

Table 6: Impact and mitigation per component

<table>
<thead>
<tr>
<th>Component and GEF US$ allocation</th>
<th>Relevance of OP4.12 and related opportunities.</th>
</tr>
</thead>
</table>
| 1. Institutional strengthening ($1.2m) | This component is not expected to have any impact that could trigger this safeguard. **Potential Opportunities:**  
- Inform, educate & increase the capacity of the implementing agencies to deal with the issue of resettlement and the creation of benefits.  
- Identify employment and migration trends and patterns in areas falling in and adjacent to the protected areas to monitor potential unintended consequences of the Program (positive and negative). |
| 2. Conservation education ($0.6m) | This component is not expected to have any impact that could trigger this safeguard. **Potential Opportunity:**  
- Inform, educate & increase the capacity of the implementing agencies to deal with social impacts and the creation of benefits. |
| 3. Establishing the foundations of the biodiversity economy ($0.65m) | This component is not expected to have any impact that could trigger this safeguard. **Potential Opportunity:**  
- Benefits to local communities as a result of eco-tourism development & markets for environmental services. |
| 4. Program co-ordination, management and monitoring ($0.85) | This component is not expected to have any impact that could trigger this safeguard. **Potential Opportunity:**  
- Monitor and review this safeguard. |
| 5. Unleashing the potential of protected areas ($4.3m) | This component could have impacts that could trigger this safeguard, particular activities involving the establishment of the following five protected areas: Bavianskloof Megareserve, Cederberg Megareserve, Garden Route Initiative; Garden Route Marine Protected Areas and Kogelberg Marine Protected Area. These impacts could include:  
1. Loss of jobs, tenure security & accommodation  
2. Restriction of land use and/or access  
3. Physical relocation  

The establishment of two priority freshwater and estuarine systems is not expected to have impacts that trigger this safeguard. If the safeguard is triggered, this would be along the lines of restriction access, and they should be treated in the same way as is proposed for the marine protected areas.  

Where these impacts do occur, either the RPF or PF would apply. |
6. Identifying and securing biodiversity in key sites ($1.8m)

This component is not expected to have any impacts that could trigger this safeguard as land acquisition and restrictions on resource use are not involved.

Potential Opportunity:
- Create a baseline of information regarding the possible impact on people.
- Monitor landowner buy-in to the safeguards, as part of the sub-component that aims to increase landowner commitment to conservation.

7. Integrating biodiversity concerns into watershed management ($1.6m)

This component is not expected to have any impacts that could trigger this safeguard.

However, should existing water access and/or use rights be affected, the safeguard would be triggered and the Process Framework would apply.

### 3.2.8 Summary of potential impacts

In summary, of the seven components that form the proposed C.A.P.E. Program, it has been concluded at this stage that only Component 5 has the potential to trigger OP4.12. This component includes the expansion and consolidation of protected areas. Additional activities could be found to trigger OP4.12 as the C.A.P.E. Program develops.

C.A.P.E.'s strategy for the expansion of protected areas encourages voluntary land use change and multi-owner contractual reserve systems. As such, the expansion and consolidation Program will focus on the re-allocation of state land to conservation, and contractual agreements with private owners without transfer of ownership. In terms of its stated objectives, the C.A.P.E. Program does not intend to displace people from land and/or to remove ESTA rights. This will only happen in exceptional circumstances.

Three mechanisms whereby land could be included in protected areas are described in the C.A.P.E. Program documents. These are mentioned below, and the associated impacts on job and tenure security, and access to resources, in relation to the potential of this activity to trigger OP4.12 are described.

While changes of land use may affect current economic activities on the land (e.g. jobs or livelihood strategies based on natural resources), the C.A.P.E. Programs' intention is that this results in socio-economic benefits through new opportunities that are created (e.g. tourism, conservation related jobs).

The Executing Agencies have embarked on an extensive concessioning Program for eco-tourism facilities and services in protected areas of the CFR. One of the key sources of benefits for the local population is the opportunity that arises from these concessions. It is a challenge to ensure an equitable balance between revenue generation and ensuring direct involvement and beneficiation by local communities. The content of concession agreements will include provision for them to address possible resettlement impacts.
Table 7: Summary of land use changes that could be associated with C.A.P.E. and potential impacts in terms of OP4.12

<table>
<thead>
<tr>
<th>Type of land use change</th>
<th>Potential to trigger OP4.12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promotion of ecologically sustainable land management without changing land use from agriculture to conservation.</td>
<td>Potential impacts on job and tenure security/accommodation, and access issues for rural population.</td>
</tr>
<tr>
<td>Creation of contractual reserves based on agreements with conservancies or groups of farms in which title is retained but land use changes to conservation.</td>
<td>Potential impacts on jobs and tenure security/accommodation. These could be positive due to new tourism and hospitality related opportunities.</td>
</tr>
<tr>
<td>Land purchase in which a conservation authority or managing agent would become the managing party, and land use changes to conservation.</td>
<td>Potential impacts on jobs, tenure security/accommodation, and possibly physical relocation</td>
</tr>
</tbody>
</table>

3.2.9 Summary of possible opportunities

In summary, the C.A.P.E. Program could provide for the following key opportunities in terms of OP4.12:

- Education around this safeguard can be spread across a wide range of institutions. Baseline protections (as required by WB OP4.12 and South African laws) and best practice can be achieved.
- It creates a forum for all parties to agree on this policy that is linked to the realisation of the C.A.P.E. Programs' key objective of involving and benefiting people. This links to C.A.P.E.'s consultation strategy.
- Can build on monitoring and evaluation function to monitor compliance and to ensure good practice.
- Creates the possibility for capacity building of key institutions at local level.
- A link can be made to the C.A.P.E. Programs' incentives approach where best practice should be rewarded and possibly priority access to government Programs such as the housing and land subsidies can be realised.
4 The RPF and PF processes that will apply to the C.A.P.E. Program

4.1 Why RAPs and Plans of Action cannot be prepared now

The C.A.P.E. Program is a large and complex intervention containing many sub-components and projects. The purpose of the C.A.P.E. RPF and PF is to provide a policy framework and procedural safeguards that bind C.A.P.E executing agencies and ensure compliance with OP4.12. in implementing the Program.

It is not possible to determine the possible extent or zone of impact of the various sub-projects or sub-components at this stage because the C.A.P.E. Program is in an early planning stage. It is only possible to indicate very broad areas (for example the megareserve areas) where cases of involuntary resettlement/loss of access may occur. Because it is not possible presently to identify the specific areas where involuntary resettlement/loss of access may occur, it is not feasible to undertake a census or to estimate the total population that may be affected. It is also not appropriate at this stage to discuss the possibility of loss of income sources or means of livelihoods with potentially affected people when the exact area where this may occur is not clear. It could in fact cause considerable confusion and stress if people, who may well not be affected, are interviewed as part of a census process or consulted on the broad policy framework.

Due to the above and in terms of paragraph 26 of OP4.12, the World Bank has indicated that an RPF will suffice and that RAPs and POAs are not needed at this stage of the Program.

The Executing Agencies who are responsible for the implementation of the C.A.P.E. Program are committed to undertaking detailed RAPs and POAs as and when they are required.

When it is clear where involuntary resettlement/loss of access will occur, consultation with affected people will be undertaken as part of the RAP process. The process and procedures for doing this are set out in this document.

4.2 RPF

In terms of the requirements of OP4.12, this RPF for the C.A.P.E. Program sets out for the following:
- Eligibility criteria for defining categories of potentially affected people;
- Policy Principles;
- Methods of valuing affected assets and developing viable options; and,
- RAP preparation process and contents, including both abbreviated and full RAPs.

These aspects are discussed below.
Proposed grievance procedures, institutional and implementation arrangements, budgetary provision and monitoring and evaluation procedures are discussed later in the document.

4.2.1 Eligibility criteria for defining categories of potentially affected people

The Bank’s OP4.12 suggests the following three criteria for eligibility:

- Those who have formal rights to land (landowners, access and use rights defined by some legally recognised process, contractual obligations, ESTA rights). They are eligible for resettlement compensation for loss of assets and land.
- Those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets provided that such claims are recognized under the laws of South Africa (land claims). They are eligible for resettlement compensation for loss of assets and land.
- Those who have no recognizable legal right or claim to the land they are occupying, using or getting their livelihood from. They are eligible for resettlement compensation for loss of assets only, not for land.

Where involuntary resettlement/loss of access results from activities associated with the C.A.P.E. Program in terms of the RPF, the following categories of potentially affected people may qualify for resettlement compensation:

- Landowners, including private individuals, corporates, institutions and the State
- Farm occupiers living on private and state land, including the employed, the unemployed and those with different types of ESTA rights;
- Land users, including people who use land or resources they don’t own such as those with stock or those who harvest indigenous plants. This does NOT include someone opportunistically invading a site after disclosure of the project (In South African law the Prevention of Illegal and Unlawful Occupation Act provides for the eviction of such people). It also would not protect criminal activity such as the poaching experienced in some of the marine areas;
- Restitution claimants;
- Users of marine resources; and,
- Individuals and companies providing support services to commercial forestry.

The following categories of population are potentially affected but are not specifically eligible for compensation:

a) Seasonal workers are not specifically eligible as they are only partially affected, being mobile and selling labour in the wider area. Furthermore, it is almost impossible to

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18 The distinction between unlawful and criminal should be understood. Established patterns of occupation and use that are not necessarily lawful would fall within the scope of the safeguard. However the safeguard includes a test of reasonableness, and it cannot reasonably be expected to protect criminal activities. Where the distinction is relevant in a particular project the RAPs and POA should include a discussion of the circumstances, and explain why certain users have been treated differently.

19 World Bank, Involuntary Resettlement, Key Concepts, as applied to C.A.P.E.
accurately trace seasonal workers and to measure their losses with any degree of confidence.

b) People living in the broader area where the C.A.P.E. Program operates that rely on the current socio-economic configuration around agriculture for their livelihood. It is not possible to quantify potential losses and it is anticipated that the conversion from farming to agriculture will create substantial advantages.

c) Host towns which may receive ex-farm workers.

4.2.2 Policy Principles
The following principles will guide the process and all RAPs will comply with these principles.

Principle 1: Avoid or minimise triggering this safeguard through encouraging landowner and occupier willingness
The C.A.P.E. Program and all responsible Executing Agencies (from here on referred to as the responsible institution) will attempt to avoid triggering this safeguard where feasible, exploring viable alternative options. Attainment of the project objectives will be driven by landowner and occupier willingness. When the safeguard cannot be avoided, the responsible institution will explain why the proposed activities are critical to the attainment of the C.A.P.E. objectives. All trade-offs and alternatives will be considered before decisions are taken.

Principle 2: Compliance with both letter and spirit of the law
The C.A.P.E. Program and all responsible institutions will comply with all legal requirements and OP4.12. No vacant possession sale clauses (as explained in section 3) will be included in any land acquisition agreements or contractual arrangements.

Principle 3: Genuine consultation and participation must take place
Genuine consultation, participation and negotiation will take place with all potentially affected people and all other relevant stakeholders, including local authorities. This means that the final outcome of a RAP is not given at the outset and that all interests will be taken seriously.

Consultation and participation will take place during project planning and implementation and as a part of project monitoring. The affected people will be offered a range of options and will be empowered to engage in the process and make an informed choice. In cases of voluntary resettlement, independent verification of free choice will be done. As the C.A.P.E. Program already has existing consultative methods and structures, where feasible and appropriate, these will be utilised, noting that the emphasis in this process will be on dealing directly with the affected people, particularly the poor and vulnerable.

Principle 4: Undertake baseline socio-economic survey/s and integrate RAPs into existing planning processes
When the OP4.12 safeguard is triggered, a preliminary boundary determination of the affected area will be undertaken, followed by a baseline survey will be conducted that provides a census of all potentially affected people and assets and of their socio-economic conditions. OP4.12 will
apply in all cases where social and economic impacts that could be negative are identified. It is not possible to discern whether a resettlement will be voluntary or involuntary unless an investigation/survey has been conducted. For this reasons the process set out in Figure 2 will be followed in all cases.

The baseline survey is essential because

- It forms the basis for identifying the various kinds of impacts
- It is a vital guide to planning and designing resettlement Programs
- It provides the baseline against which the incomes and livelihoods of affected people are measured

RAPs will be integrated with existing planning process so as to avoid duplication and link into the existing consultative process already being undertaken in these projects.

**Principle 5: RPF applicable to all contractual arrangements to avoid/minimise/mitigate involuntary resettlement/loss of access**

This policy will be made applicable to all contractual arrangements with other institutions, concessionaires and private landowners so as to ensure that this involuntary settlement is avoided or minimised or mitigated

The protected area expansion Program on private landholdings will primarily (if not wholly in most cases) involve some form of contractual inclusion into the conservation estate rather than outright acquisition. The contracts may range from formal long-term legally binding contracts to loose voluntary associations. If it is a contractual arrangement, details of how the people living and/or working on the land will benefit from this will be specified. If it is a concessionaire type agreement then a Labour Relations Act section 197 transfer will be included to ensure transfer of the labourers to the concessionaire. If the landowner or concessionaire is not willing to comply with the RPF then no contract will be entered into with them.

**Principle 6: Equivalence or better off test**

Where involuntary resettlement/loss of access cannot be avoided, those affected will be placed in at least an equivalent position, and preferably are better off than before, and in a manner which is sustainable. The responsible institution will ensure that this safeguard is treated as an integral part of land acquisition/re-allocation/contractual agreement from the earliest stages of land transactions. A suite of options will be developed for discussion with those affected who will be provided with the necessary assistance to make an informed choice. In the unlikely case of physical relocation, replacing housing and/or arable land at the level enjoyed before resettlement amounts in theory to the restoration of the status quo. In practice, such 'mathematical' restoration can leave people worse-off if they are cut off from their resource base. The suite of options could include a combination of the following as relevant to the particular circumstances:
Employment within the institution, in associated development projects or other forms of employment in close proximity to the affected area (this must be done as a collaborative effort with other responsible public and private organisations)

- LRA section 197 labour transfer in applicable cases involving concessionaires
- Equivalent or better accommodation and levels of tenure security. Any physical relocation must comply with ESTA's "suitable alternative accommodation" requirement
- Measures to guarantee that livelihoods and standards of living do not decline and if possible are improved over time
- Training opportunities to affected persons to enhance their prospects of future employment
- Where feasible, priority access with approved budgets to other government Programs such as the housing, land reform and job creation Programs

The positive impact of resettlement will be publicised to show that the C.A.P.E. Program is delivering benefits to people while conserving biodiversity.

**Principle 7: Fairness and reasonableness**
In developing options and negotiating decisions around choices all parties are encouraged to be fair and reasonable. All executing agencies commit themselves to acting in a fair and reasonable manner in the execution of C.A.P.E. projects.

**Principle 8: Budget as an upfront project cost**
Experience across the world shows that unless resettlement is built in as an upfront project cost, it tends to be under budgeted, that money gets whittled away from the resettlement budget to 'more pressing' project needs, and that it tends to be seen as peripheral to the overall project. The Executing Agency will be responsible for the budget.

**Principle 9: Cater for vulnerable population**
Vulnerable groups, as defined in OP4.12, merit particular support in a number of ways. Members of vulnerable groups are often not able to make their voice heard effectively and account should be taken of this in the consultation and planning processes, as well as in establishing grievance procedures. They are often physically weaker and may need special help in the relocation phase, as well as additional rations, assistance and medical attention in settling on to new properties. Physically or socially weaker people are often short on strength and skills. They tend to get sidelined in the competition for jobs or benefits. Their special needs will be identified and catered for in a fair and reasonable manner.

### 4.2.3 Methods of valuing affected assets and developing viable options

OP4.12 requires that methods of valuing affected assets be specified in the RPF. The Bank's policies require that all affected assets (land and structures) be compensated at their replacement cost. Replacement cost of an affected asset is equivalent to the amount required to replace the asset in its existing condition. Where there are not markets in old housing that
function well, the replacement cost of structures will be equal to the cost of constructing/purchasing a new structure to equivalent or better standard, without making any deductions for depreciation.

The approach taken in this project is to develop resettlement options that will place the affected people in an equivalent or better situation than they are presently in. These options will be developed in conjunction with the affected households and instead of a mathematical application of standard compensation packages based on valuation of assets, an approach will be used where practical and implementable options that improve the position that people presently live in, are developed for the whole affected project. Each affected household will then be allowed to choose between options. These options will contain various elements, all of which will be at least equivalent to the affected person’s existing situation, but cumulatively will place the people in a better situation. This approach fits into the benefits orientation of the C.A.P.E. Program.

To be able to develop viable options that are at least equivalent to the existing situation, it will be necessary to develop, in the socio-economic survey, a database of assets, a description of the nature of those assets and how people make a livelihood, as well as a full description of people’s ESTA rights. This then provides the baseline against which the option can be assessed. This information will be gathered in the socio-economic survey. Actual valuation of assets by an accredited valuer will only occur where cash compensation is involved or there is a dispute between the Executing Agency and the affected people about the nature of the options and a verification of the value of the options as compared to the affected people’s existing situation is needed.

It is very important in developing options that a situation be avoided where outsider’s perceptions of what is “better” take precedent over the views of the affected people themselves. In all cases all parties, including the affected people, should comply with the principle of reasonableness and fairness.

The affected people will be informed of other instances where this issue has been addressed and potential long-term impacts of their choice. They will be empowered to actively participate in both the development of options and negotiations around their choice. In exercising their choice they should be encouraged to act in accordance with the principle of reasonableness and fairness so that win-win solutions can be found.

It is important, in developing options, to include consideration of all aspects that might have an adverse impact. An example of an option that can place people in a precarious situation is that of placement in housing in a rural township, village or town, if ability to pay rates and services charges is not taken into consideration. These services are generally free or heavily subsidized on farms. Urban residents need a regular cash income to maintain monthly payments, or there is a danger that they will fall into arrears with their rates and service charges, leading to their losing their housing.
4.3 RAP preparation

4.3.1 Preparation of RAPs and planning processes
A RAP is done for each sub-project/component where the safeguard is triggered when it is clear where the zone of impact will be. At this stage the Executing Agency should prepare a RAP that is consistent with this RPF. This should be submitted to the Executing Agency, CCU and World Bank for approval before any land acquisition, resettlement, loss, denial of, and restriction of access to economic resources or any other impact on livelihood occurs. The Bank may decide over time, once a few RAPs have been successfully undertaken, that its approval of each RAP is not required.

All C.A.P.E. Programs follow a consultative planning process and are in different stages of existing processes. It is important not to duplicate planning or confuse stakeholders with multiple processes. It is thus proposed that the RAPs are integrated into these existing planning processes and that these processes are adapted to accommodate the contents that are required in a RAP.

It should be possible to draw some of the information required for a RAP from other sources. This will require that management of each of the protected areas indicate where and how RAPs will occur within their planned processes. Service providers experienced with resettlement issues could be contracted to develop the RAP in extensive and/or complex cases.

Due to the iterative nature of the C.A.P.E. Program, RAPs will also be done on an iterative basis. Presently the only potential zone of impact that is sufficiently identified where a RAP may be required during project inception is the central Bavianskloof valley where physical relocation is a possibility.

The process to be followed in implementing this safeguard policy, both RAPs and a Plan of Action is described in section 8.

4.3.2 Contents of extensive RAP
The final contents of a RAP will depend on the nature of the issue, its scale and scope. Presented below is a generic contents page for an extensive RAP with some suggested accompanying tables. Not all RAPs need to be so comprehensive. The World Bank defines an abbreviated RAP (ARAP) as one where the impacts on the entire displaced population are minor (i.e. if affected people are not physically displaced and less than 10% of their productive assets are lost) or fewer than 200 people are displaced.

A RAP should contain the following elements, as relevant to the specific project:
1. Description of project

20 OP4.12 Annex A as applied to the C.A.P.E. Program
2. Potential impacts – detailed identification of where and what

3. Objectives of the RAP

4. Baseline socio-economic survey studies to include a census that covers:
   - Current occupants of the affected area to establish a basis for the design of the resettlement Program
   - Standard characteristics of displaced households, including a description of production systems, labour, and household organization; and baseline information on livelihoods and standards of living
   - The magnitude of the expected loss—total or partial—of assets, and the extent of displacement, physical or economic
   - Information on vulnerable groups for whom special provisions may have to be made
   - Provisions to update information on the displaced people's livelihoods and standards of living at regular intervals so that the latest information is available at the time of their displacement
   - Land tenure and transfer systems, including an inventory of common property natural resources from which people derive their livelihoods and sustenance, non-title-based usufruct systems (including fishing, grazing, or use of forest areas) governed by local recognized land allocation mechanisms, and any issues raised by different tenure systems in the project area
   - Public infrastructure and social services that will be affected
   - Social and cultural characteristics of displaced communities, including a description of formal and informal institutions

5. Legal framework - the scope of the power of eminent domain and the nature of compensation associated with it, in terms of both the valuation methodology and the timing of payment; the applicable legal and administrative procedures; relevant law; and any legal steps necessary to ensure the effective implementation of resettlement activities

6. Institutional framework - the identification of agencies responsible for resettlement activities and assessment of their capacity

7. Eligibility - definition of displaced persons and criteria for determining their eligibility for compensation and other resettlement assistance, including relevant cut-off dates

8. Valuation of and compensation for losses - the methodology to be used in valuing losses to determine their replacement cost; and a description of the proposed types and levels of compensation if applicable (see (i) below)

9. Resettlement options – These options should be developed in conjunction with the affected households and instead of a mathematical application of standard compensation packages, an approach should be used where practical and implementable options that improve the position that people presently live in, are developed for the whole affected project. Each affected household should then be allowed to choose between options. If physical relocation address site selection, site preparation and relocation; housing, infrastructure and social services
10. Environmental protection and management – how any environmental impacts caused by relocation will be addressed
11. Community consultation and participation - a description of the strategy for consultation with and participation of affected people during the resettlement process; summary of views; a review of the resettlement options presented and the choices made by displaced persons regarding options available to them; if physical relation deal with integration with host population
12. Grievance procedures
13. Organisational responsibilities – organisational responsibility for implementing resettlement
14. Implementation schedule
15. Costs and budget - Tables showing itemized cost estimates for all resettlement options and activities, including allowances for inflation, population growth, and other contingencies; timetables for expenditures; sources of funds; and arrangements for timely flow of funds, and funding for resettlement, if any, in areas outside the jurisdiction of the implementing agencies
16. Monitoring and evaluation

The chosen resettlement option should be summarised in such a table:

<table>
<thead>
<tr>
<th>Area/farm</th>
<th>Affected household details</th>
<th>Resettlement Option Chosen</th>
<th>Notes</th>
</tr>
</thead>
</table>

The following generic clauses/forms could be designed by the CCU and supplied to Executing Agency for use:

- Clauses for use in contractual agreements between the Executing Agency and private owners and/or concessionaires stipulating that the contractor agrees to comply with the RPF, stating how the RPF will be complied with, giving details of the potentially affected households (information that is summarised from a socio-economic survey) and setting out reporting and monitoring requirements
- Generic form signed by an affected household (both main male and female members of household) indicating which resettlement option they have chosen and that they agree with it.
- Generic form for independent verification that affected households have had the option to refuse resettlement, and they nevertheless have resettled based on prior informed consent.
- In application cases, generic contract between the owner and the occupier that confirms the continuation of the occupier’s previous ESTA rights, in cases where ESTA rights holder agree to move to another farm on condition that they do not lose their ESTA rights. (ESTA rights strengthen with length of occupation, and are stronger on land occupied from before1997. Landowners may contract out of some of their ESTA obligation on land occupied after 1997.)
4.3.3 Consultation with affected people during RAP process

To address the impacts under this policy, OP4.12 requires that RAPs should include measures to ensure that the displaced persons are:

- Informed about their options and rights pertaining to resettlement;
- Consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives;
- Provided prompt and effective compensation at full replacement cost for losses of assets and access attributable to the project;
- Enabled to restore and preferably improve their living standards compared to pre-project ones.

Public consultation and participation are essential because they afford potential affected people the opportunity to contribute to both the design and implementation of the project activities and reduce the likelihood for conflicts between and among them and the responsible institution. The C.A.P.E. Programs' public participation framework and South African legislation and policy require a thorough process of consultation. A description of this is set out in the document entitled "Participatory Approach" by David Shandler, dated April 2003.

Public consultation will take place at the inception of the planning process when the potential land areas are being considered. The participation strategy would evolve around the provision of opportunities for full involvement. Therefore, as a matter of strategy, public consultation would be an on-going activity taking place throughout the entire project cycle.

Public participation and consultation could take place through one-on-one direct engagement with affected people; community meetings; local radio (dependent on extent of issue & cost); request for written proposals/comments, filling in of questionnaires/forms; explanations of project ideas and requirements; making public documents available at the local and household levels at suitable locations like the offices of the local authority, local offices of provincial authorities and conservation agencies, the church, through NGOs or advice offices. These measures would take into account the low literacy levels prevalent in rural communities as well as the language preference by allowing enough time for responses and feedback.

For the purposes of providing verification of the prior informed consent of affected people, the following will be provided:

- A process that allows for the development of resettlement options and negotiations with affected people to finalise option choice;
- A document signed by each affected household indicating their resettlement option choice; and,
- A document providing independent verification of free choice.
4.4 Process Framework

The Process Framework is applicable where access to resources may be restricted in both Marine Protected Areas (MPAs) and Terrestrial Protected Areas.

4.4.1 Introduction

This section draws on the process used in the establishment of the Cape Peninsula National Park as described by Barry Clark and includes steps and procedures required by the Bank's OP 4.12 (sections 3(b), 7 and 31).

The Process Framework set out below will be followed in all Marine Protected Areas and Terrestrial Protected Areas where activities associated with the C.A.P.E. Program could cause restriction of access rights to resources.

The PF will generate the resettlement components of the plans of action required by the Bank prior to the enforcement of protected area restrictions.\textsuperscript{21}

These procedures would apply when new protected areas are declared. They could also apply when restrictions in existing areas are enforced.

4.4.2 Proposed process

The following activities shall be undertaken during the preparation of a site specific PF and POA.

- Identification of stakeholders and enquiry to establish patterns of past and current use resources within the proposed protected area;
- Determination of eligibility criteria;
- Participation process with affected people;
- Reporting;
- Establishment of grievance procedure for the PF;
- Monitoring and Evaluation for the PF; and,
- Plan of Action.

These are described below.

\textit{a). Identification of stakeholders and enquiry to establish patterns of past and current use resources within the proposed protected area}

The implementing agency will undertake a study to identify patterns of past and current use of, and access to, resources in the envisaged protected area.

This study will include interviews with identified users, and will target use and access by local communities living around the MPA area, with special emphasis on categories cited by OP 4.12

\textsuperscript{21} See section 31 of OP 4.12
as vulnerable i.e. those below the poverty line, the landless, the elderly, women and children, indigenous persons or other displaced persons who are not protected through national legislation.

The study will investigate the history of current patterns of use/access to marine resources and set out how long they have been in operation. It will also investigate the extent that marine resources are used for subsistence or basic livelihoods purposes, and what other livelihood options and alternatives are available to users. The study will also comment on the extent to which established patterns of use/access are environmentally sustainable, differentiating between types of use patterns that exist.

The study will be used to identify stakeholders who must be consulted in relation to the boundaries, terms, and distribution of benefits from the proposed MPA. In this regard, based on the study, the implementing agency will propose criteria for eligibility, and insofar as it may be advisable to treat different categories of users differently, the implementing agency may also propose categories of eligibility (i.e. degree of interest/need). The eligibility criteria will take into account balancing the need for conservation with the nature of the interests of different users and also the extent to which they are reliant on access to marine resources for their livelihoods.

b). Determination of eligibility criteria
The categories of eligibility developed may include, among others, poor people whose means of livelihood are to some extent dependent on established patterns of access to marine resources, and may be detrimentally affected by prohibitions on access to marine resources.

The study and the eligibility criteria developed by the implementing agency will be submitted to the CCU as components of the Plans of Action for MPAs.

c). Participation process with affected people
The implementation agency will convene a process of consultation with all stakeholders affected by the establishment of the protected area. The process shall be designed to ensure that all people who qualify in terms of the eligibility criteria cited above have the opportunity to participate effectively.

The consultation process will address the following issues, amongst others:
- The boundaries of the protected area;
- The terms of the protected area.

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22 In any event public consultation is required by the Promotion of Administrative Justice Act
23 For example the Marine Living Resources Act of 1998 enables the Minister, after consultation with the Consultative Advisory Forum, to make exemptions for classes of people, or particular activities within an MPA.
• Measures to off-set or mitigate any possible negative impact created by the declaration or enforcement of a protected area on the livelihoods of people who qualify in terms of the eligibility criteria established in terms of section 4.1; and,
• An account of how these measures will be funded, who will be responsible for implementing them, who will qualify for assistance, and how the effectiveness of these measures will be monitored and adapted over time.

d). Reporting
The implementing agency will submit a report of the outcome of the consultative process and its recommendations to the CCU of as a component of the Plan of Action of the MPA. This report will address the basic requirements of OP 4.12, in that it will set out whether and to what extent, the MPA creates adverse impacts on the livelihoods of current users, how users have been consulted and involved in the design of the MPA, and the measures adopted to mitigate any possible adverse impacts of the MPA on local livelihoods. It will also set out the budgetary implications of any mitigation activities, and how these will be met within the budget of the project and the MPA.

e). Establishment of grievance procedure for the PF
The Executing Agency shall, when advertising the establishment of the proposed MPA, and convening the consultation process, make copies of the Process Framework available, and inform stakeholders of their rights to lodge complaints, if, in their view, the terms of the Process Framework are breached, they have been unfairly excluded in terms of the eligibility criteria, or they assert that the terms and benefits proposed do not adequately mitigate negative effects on their livelihoods created by the MPA.

A broad grievance framework for the RPF set out in section 6 will apply to the Process Framework as well. Essentially this framework proposes that the first port of call for addressing grievances will be the Executing Agency. If they cannot be resolved at this level outside assistance will be sort, which could result in the grievance being resolved through facilitation, mediation or arbitration. This will be accommodated under component 4 of the Program. When this is done issues that affect the workability of this grievance framework will be addressed. Such issues include - how the institutions and all parties will be bound by arbitration (if they are not bound the Arbitration Act does not apply); how to establish a small core group (2 or 3) of mediators/arbitrators so as to ensure that these outsiders are people who understand the project and can reach decisions quickly; and how to ensure that grievances aren't misused by those engaging in illegal activities (such as poaching in MPA) will be addressed. Unresolved grievances will be included in the Plan of Action report submitted to the World Bank for each MPA.

Stakeholders shall also be informed about procedures for lodging grievances concerning the ongoing implementation of projects aimed at generating alternative sources of income for people negatively affected by the MPA, after the establishment of the MPA. The C.A.P.E. CCU will include a report of grievances that is provided by the relevant Executing Agency, together
with a report on measures adopted to address them, in its 6 monthly progress reports to the Bank. The Executing Agency will copy all complaints to the Monitoring and Evaluation component of the C.A.P.E. Program.

**f). Monitoring and Evaluation for the PF**

The Executing Agencies will be responsible for monitoring and evaluation of activities set out in the RPF, PF, RAP and POA as well as end of project assessment taking into account baseline conditions and resettlement monitoring. The Bank is responsible for supervision\(^{24}\). The arrangements for monitoring will be incorporated into the overall monitoring and reporting system for the C.A.P.E. Program. M&E proposals are set out in section 9 below.

**g). Plan of Action**

Section 31 of OP 4.12 requires that a Plan of Action be submitted to the Bank for each PA during project implementation before the proposed restriction on access to protected areas is enforced.

This Plan of Action should include:

- A study of pre-existing patterns of use and access to resources in the protected area, set out in a) above;
- A report on the consultative process around the boundaries, terms and benefits of the PA, set out in section c) above;
- A report on grievances received and attempts to resolve them, as set out in e) above; and
- An account of the measures to assist “displaced persons” and the arrangements for their implementation.

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\(^{24}\) OP4.12, section 24
5 Implementation arrangements for RPF and PF

This section sets out the following as they apply to the RPF and PF processes for the C.A.P.E. Program:

- Grievance procedures;
- Organisational elements, institutional capacity and commitments;
- Monitoring, evaluation and reporting; and,
- Funding arrangements.

5.1 Grievance redress mechanisms

Where affected people have grievances about either the process or decisions taken that affect them, they need some mechanism through which this can be heard, processed and a decision taken to resolve the problem. The grievance mechanism needs to be able to make a distinction between different types of grievances and how they get addressed, be fair, speedy and cost efficient. The normal grievance mechanisms used in labour for staff disputes, where there is a gradual escalation of the dispute through layers of management to a final decision by a court is not seen as appropriate as it will be both costly, time consuming and difficult for the aggrieved community party to access in terms of their time and resources.

If a dispute cannot be resolved amongst the parties it may be necessary to bring in an external facilitator/mediator to assist with dispute resolution. An alternative approach would be to involve the relevant Project Steering Committee or the CCU. These options are not favoured. Committees often don’t have the necessary time to address such issues as they are comprised of people with a myriad of other responsibilities and committees bring their own dynamics to bear. There is no line management accountability between the Program Management Units (PMU) of the various Executing Agencies and the CCU. Referring disputes not resolved by the PMU to the CCU would thus be inappropriate. The CCU’s role should be linked to their monitoring role, so that dispute trends can be picked up and preventative interventions (such as task team investigation & recommendation) made.

Experience in South Africa with development projects is that poor, marginalized and under-resourced rural communities that don’t have strong community organisations can experience many intra-community conflicts. These can have a debilitating effect stalling project progress. In such cases it may also be wise to bring in an external facilitator to assist with dispute resolution.

A broad grievance framework for the RPF is set out in Fig 1. below. Essentially this framework proposes that the first port of call for addressing grievances will be the Executing Agency. If they cannot be resolved at this level outside assistance will be sought, which could result in the grievance being resolved through facilitation, mediation or arbitration. To ensure that the grievance mechanism is pragmatic and efficient it will be further developed by C.A.P.E. This will be accommodated under component 4 of the Program. When this is done issues that affect the
workability of this grievance framework will be addressed. Such issues include - how the institutions and all parties will be bound by arbitration; creation of a panel (2 or 3) of preferred mediators/arbitrators who become familiar with the Program, thus facilitating speedy decision making; and how to ensure that the grievance procedure is not misused by those engaging in illegal activities (such as poaching in MPA).
5.2 Organisational elements, institutional capacity and commitments

Ultimate responsibility for ensuring that this safeguard is applied where necessary rests with the Executing Agencies. Operational responsibility also rests with the Executing Agency, and in particular the relevant Project Management Unit (PMU) who will assign responsibilities to relevant staff as necessary. The CCU could assist with procedures, liaison, coordination and support.

All the institutions involved in the C.A.P.E. Program that are recipients of the GEF grant have committed themselves to the implementation of this RPF and Process Framework. As the extent of possible resettlement is presently unknown it is not appropriate to undertake an organisational capacity assessment or to make recommendations regarding the need for additional capacity. It has been noted elsewhere in this document that the contracting of service
providers to support the process such as for developing RAPs, for monitoring and for addressing specific grievances may be required.

The process of undertaking RAPs/Plans of Action and deciding on them will be undertaken by existing structures so as to align as closely as possible with the existing institutional set-up within the C.A.P.E. Program. The responsibilities of the various institutions are provided below:

Table 7: Responsibility for implementing this safeguard policy

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>Proposed structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Inclusion of RAP/Plan of Action into existing planning process, with particular attention to the baseline socio-economic survey</td>
<td>Executing Agency&lt;br&gt;CCU to advise</td>
</tr>
<tr>
<td>2. Identification of whether a RAP/Plan of Action is needed or not and decision to undertake it. If a voluntary resettlement issue arises then independent verification of free choice is needed.</td>
<td>Executing Agency&lt;br&gt;Executing Agency to inform CCU and World Bank of RAP/Plan of Action at project inception.&lt;br&gt;CCU and World Bank to advise on development of RAPs</td>
</tr>
<tr>
<td>3. Development of RAP/Plan of Action, ensuring proper consultation with affected people</td>
<td>Executing Agency</td>
</tr>
<tr>
<td>4. Approval of RAP/Plan of Action or approval of evidence showing free choice in voluntary resettlement projects</td>
<td>Executing Agency&lt;br&gt;World Bank&lt;br&gt;CCU to approve &amp; document as part of ongoing monitoring function</td>
</tr>
<tr>
<td>5. Routine project implementation management and monitoring of RAP/Plan of Action</td>
<td>Executing Agency</td>
</tr>
<tr>
<td>6. High level review of compliance with RPF and Process Framework</td>
<td>World Bank&lt;br&gt;CCU</td>
</tr>
<tr>
<td>7. Funding arrangements &amp; budget</td>
<td>Executing Agency</td>
</tr>
<tr>
<td>8. Ultimate responsibility</td>
<td>C.A.P.E. CCC</td>
</tr>
</tbody>
</table>

5.3 Monitoring, evaluation and reporting

The Executing Agencies and CCU are responsible for monitoring and evaluation of activities set out in the RPF, Process Framework and RAP/POA as well as end of project assessment taking into account baseline conditions and resettlement monitoring, while the Bank is responsible for supervision. It is difficult to assess risk because it is not possible now to assess the extent of resettlement that could occur within the C.A.P.E. Program and how the many institutions involved will act during implementation. C.A.P.E.'s existing commitment to benefiting people and their specific commitment to this RPF, and in fact to addressing any resettlement issues (voluntary or involuntary) to the benefit of the affected people, lowers the risk considerably.

25 OP4.12, section 24
The arrangements for monitoring will be incorporated into the overall monitoring and reporting system for the C.A.P.E. Program. Component 4 deals with Program Co-ordination, Management and Monitoring. On monitoring and evaluation the project document says "Monitoring and evaluation of Program activities and impacts will be undertaken by the CCU, and will be subject to periodic review by the Bank and by key stakeholders of the C.A.P.E. Program. The CCU will establish Program management, monitoring and evaluation procedures acceptable to the Bank, and will furnish the Bank with biannual Program progress reports, together with work Programs inclusive of detailed monitoring indicators for the following six-month period. Key performance indicators proposed for monitoring are in Annex 1 (Logical Framework). Arrangements for monitoring will be detailed and agreed upon during appraisal and recorded in the minutes of negotiation. In addition, a mid-term evaluation will be prepared at the end of the third year of the Program. Lessons learned from implementation of Program activities will be recorded in a report prepared by the NBI with the assistance of the CCU"(p.14).

Clearly reporting on, monitoring and evaluating resettlement should be incorporated into this system. Although the details of this still need to be designed, the following will be considered for incorporation into this system:

1. The **reporting system** should be able to:
   - Alert Executing Agency and the CCU to issues that might trigger this safeguard;
   - Provide timely information about the RAP/POA, negotiation process and implementation;
   - Report any grievances that require resolution;
   - Document timely completion of project resettlement obligations; and,
   - Report on the implementation of any resettlement aspects that form part of contractual agreements with concessionaires and private landowners.

2. Three **general indicators** that can be used to evaluate the success of resettlement plans are:
   - Affected individuals, households, and communities have benefited, and at the very least have maintained their pre-project standard of living;
   - The local communities remain supportive of the project; and,
   - The absence or prevalence of conflicts.

3. For the above to be possible a comprehensive **database** of the baseline socio-economic information collected for the purposes of developing a RAP/POA will be essential so that there is something to measure against

In addition to the above measures the C.A.P.E. CCU will review compliance with the RPF and Process Framework, and implementation of RAPs/POA, as part of World Bank's bi-annual World Bank supervision missions.
The independent report will be presented to the CCU and Executing Agencies for comment and adaptation before being presented by the service providers to the CCC. Hereafter the report will be released into the public domain being sent out to relevant stakeholders on the C.A.P.E. Programs' database and posting on the C.A.P.E. website. None of C.A.P.E.'s structures will have the right to either alter the service provider's findings or withhold the report from the public. The intention of this is to allow for scrutiny independent of any of the interest groups within the C.A.P.E. Program.

5.4 Funding arrangements

OP4.12 requires that the RPF and Process Framework provide a description for funding resettlement, including the preparation and review of cost estimates, flow of funds and contingency arrangements.

Executing Agencies will recognise costs associated with RAPs and POAs as a part of their core responsibilities.

Overall costs of resettlement cannot be determined at this stage as it is not possible to estimate the likely number of people who may be affected since the details of the zone of impact have not yet been identified. The budget should be determined early during the RAP/POA stage when the socio-economic study is being undertaken. This should happen when the zone of impact is known, and after the conclusion of the site-specific socio-economic study, information on specific impacts, individual and household incomes and numbers of affected people and other demographic data would be available, thus facilitating the preparation of a detailed and accurate budget.

The Executing Agencies are responsible for raising the finance and preparing the budget. A commitment to this effect will be incorporated into the grant agreement. GEF funds will not be used for developing RAPs/POA or monitoring or implementing.

An indication of the kind of items that could need to be budgeted for (not all items will be applicable in all cases) is provided in the table below.
Table 8: Budget Items

<table>
<thead>
<tr>
<th>Item</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Screening of social issues to determine if safeguard is triggered</td>
<td>Cost should be able to be accommodated within existing planning processes that are already budgeted for.</td>
</tr>
<tr>
<td>2. Preparation of RAP/POA</td>
<td>Could be undertaken by existing staff or may involve contracting of service provider. The socio-economic survey, involving direct interaction and consultation with each affected household &amp; the subsequent negotiation of resettlement options is probably the most time consuming aspect</td>
</tr>
<tr>
<td>3. Cost of resettlement options, could include:</td>
<td>This is likely to be the bulk of the budget. Some of this could be accessed from other government Programs such as the housing or land subsidy or from poverty alleviation funds. It must be cautioned that commitment of budget from other government departments is always subject to their own procedures and indications of support from officials should not be interpreted as budgets being available. This would be assisted by Memoranda of Understanding being signed with the relevant departments. Written decisions by the relevant decision-making bodies is required as evidence of commitment. Procedures for transfer of funds must also be secured.</td>
</tr>
<tr>
<td>- Cost of providing suitable alternative accommodation: could be on same farm or elsewhere</td>
<td></td>
</tr>
<tr>
<td>- Cost of replacing jobs</td>
<td></td>
</tr>
<tr>
<td>- Cost of restoration of income/livelihoods</td>
<td></td>
</tr>
<tr>
<td>- If physical relation is required then could involve the cost of relocation expenses (transport, settling in time etc)</td>
<td></td>
</tr>
<tr>
<td>- Compensation for loss of assets that can’t be accommodated within a resettlement option (such as 10 year old orchard)</td>
<td></td>
</tr>
<tr>
<td>4. Land acquisition cost</td>
<td>Likely to be the most costly item, and is usually determined by market value (although some conservation agencies have a policy of paying above market value as a way of incentivising landowners).</td>
</tr>
<tr>
<td>5. Compensation for loss of access to marine or terrestrial resources</td>
<td>This aspect will need to be agreed between executing agencies and the world Bank on a site specific basis once the process framework is triggered by a particular activity.</td>
</tr>
<tr>
<td>6. Training, capacity building costs and SME support Program</td>
<td>These costs are associated with empowering affected people to take up the economic opportunities that should arise from the project. It should not be assumed that one or two once-off training courses will be sufficient for affected people to establish SMEs, but rather a Program of support over a number of years will be required. There are already budgets in place for training and capacity building that may well be able to accommodate this item.</td>
</tr>
<tr>
<td>7. Communication costs</td>
<td>Often lack of effective communication is the cause of conflicts. It may be possible to accommodate this cost within existing allocations for communications.</td>
</tr>
<tr>
<td>8. Monitoring costs</td>
<td>It may be possible to accommodate this cost within the existing allocation for monitoring.</td>
</tr>
<tr>
<td>9. Grievance mechanism costs</td>
<td>These are costs associated with addressing grievances.</td>
</tr>
</tbody>
</table>
5.5 Public consultation and disclosure to date

Public consultation and disclosure is an important component of the development of the RPF and Process Framework. The ESMF and RPF will be released for public input simultaneously.

The disclosure/public participation process has comprised the following activities:

- Distribution of the pre-draft document to representatives of key executing agencies including SANParks, WCNCB, MCM, DEA&DP, Wilderness Foundation and DWAF. These are all of the agencies who could be responsible for implementing the RPF;
- A workshop with representatives of key executing agencies to assess appropriateness of and buy in to the RPF and PF (30 September 2003);
- Circulation of the revised pre draft documents (30 September – 21 October 2003);
- Adjustments of pre draft documents (21 – 29 October 2003); and,
- Disclosure to the World Bank (30 October 2003).

These activities will be followed by:

- Placement of the draft RPF and ESMF, that have been cleared in principle by the World Bank, in libraries across the CFR, and in electronic format on the C.A.P.E. website;
- Notification to C.A.P.E. stakeholders of the availability of the draft ESMF and RPF/PF, and inviting them to comment;
- Provision of a minimum period of two weeks for comment;
- Collation of comments and revision of the draft RPF as appropriate;
- Submission to World Bank for final approval; and,
- Release into public domain.

A list of individuals and institutions consulted during this process and comments received from them are available from the CCU.
5.6 Implementation of the RPF and PF

The purpose of the C.A.P.E. RPF and PF is to provide a policy framework and procedural safeguards that bind Executing Agencies and ensure compliance with OP4.12.

Subproject RAPs (that are consistent with the RPF), and POAs (that are consistent with the PF) cannot be prepared for the C.A.P.E. Program at this stage as specific planning information is not available and the nature and zone of potential impact has not been identified. This has been agreed by the World Bank.

However, should OP4.12 be triggered as part of the implementation of the C.A.P.E. Program, these documents will be submitted to the Bank for approval. In this regard, the principles, organisational arrangements, design criteria and processes that are set out here will be applied by the Executing Agencies to all subprojects that are prepared during Program implementation.

Wherever possible, and without altering the fact that they are procedural safeguards, these will be integrated with existing planning processes of the Executing Agencies.

The process for the implementation of OP4.12 within the context of the C.A.P.E. Program is set out in Figure 2.
C.A.P.E. ACTIVITY INITIATED

SCREENING OF SOCIAL ISSUES

SAFEGUARD NOT TRIGGERED OR SUFFICIENT ACTION TAKEN TO AVOID TRIGGERING

SAFEGUARD TRIGGERED
Where negative social impact identified that could impact on:
  a) livelihoods, b) income,
  c) tenure security & accommodation

IN VOLUNTARY TAKING
OF LAND (OP4.12 3a)
RPF applies

ACCESS ISSUES
(OP4.12 3b)
PF applies

No physical relocation involved, or few people affected, or significant impacts not anticipated

ABBREVIATED RAP PREPARED
(as integrated into project planning processes)

Many people affected or impacts anticipated to be significant

FULL SCALE RAP PREPARED
(as integrated into project planning processes)

POA PREPARED
(as integrated into project planning processes)

RAP/POA APPROVED

RAP IMPLEMENTED OUTCOME:
Affected people participate, options identified and in at least equivalent situation

POA IMPLEMENTED OUTCOME:
Affected people participate & efforts made to mitigate.
6 REFERENCES

- C.A.P.E., Biodiversity Conservation and Sustainable Development in the CFR Ecoregion
- C.A.P.E., January 2003, Unleashing the potential of protected areas by James Jackelman
- C.A.P.E., 7 February 2003, Project Concept Document
- C.A.P.E., February 2003, Land Use Planning & Decision Support by Chris Clarke
- C.A.P.E., March 2003, Marine and Coastal by Clark, Atkinson, Attwood and Bacela
- C.A.P.E., March 2003, Freshwater and Watersheds by Ian MacDonald & others
- C.A.P.E., April 2003, Lowlands by Mandy Barnett
- C.A.P.E., April 2003, Participatory Approach by David Shandler
- Kingdom of Swaziland, September 2003, Energising Rural Transformation Project Resettlement Policy Framework
- SANParks, August 2003, Resettlement Policy Framework and associated Resettlement Action Plans for year 1 of implementation of the Greater Addo Elephant National Park Project
- World Bank, January 1999, OP 4.01 Environmental Assessments
- World Bank, January 1999, BP 4.01 Environmental Assessments
- World Bank, December 2001, OP 4.12 Annex A
ANNEXES

ANNEX A: C.A.P.E. RESETTLEMENT POLICY FRAMEWORK AND PROCESS FRAMEWORK: SUMMARY

This Annexure summarises the C.A.P.E. RPF and PF, which provide a policy framework and procedural safeguards that bind executing agencies and ensure compliance with OP4.12. It is not possible to determine the possible extent or zone of impact of the various sub-projects or sub-components at this stage. In terms of OP4.12, the World Bank has indicated that an RPF will suffice and that RAPs and POAs are not needed at this stage of the Program.

Resettlement Policy Framework (RPF)

In terms of the requirements of OP4.12, the RPF for C.A.P.E. sets out the following:
- Eligibility criteria for defining categories of potentially affected people;
- Policy Principles;
- Methods of valuing affected assets and developing viable options; and
- RAP preparation process and contents, including both abbreviated and full RAPs.

a) Eligibility criteria
Where involuntary resettlement/loss of access results from activities associated with the C.A.P.E. Program in terms of the RPF, the following categories of potentially affected people may qualify for resettlement compensation:
- Landowners, including private individuals, corporates, institutions and the State
- Farm occupiers living on private and state land, including the employed, the unemployed and those with different types of ESTA rights;
- Land users, including people who use land or resources they don't own such as those with stock or those who harvest indigenous plants. This does NOT include someone opportunistically invading a site after disclosure of the project (in SA law the Prevention of Illegal and Unlawful Occupation Act provides for the eviction of such people). It also would not protect criminal activity such as the poaching experienced in some of the marine areas; Restitution claimants;
- Users of marine resources; and,
- Individuals and companies providing support services to commercial forestry.

b) RPF Policy Principles
The RPF is premised on the following principles, which all C.A.P.E. executing agencies will commit to implementing:
- Avoid or minimise triggering this safeguard through encouraging landowner and occupier willingness;
- Comply with both letter and spirit of the law;

26 The distinction between unlawful and criminal should be understood. Established patterns of occupation and use that are not necessarily lawful would fall within the scope of the safeguard. However the safeguard includes a test of reasonableness, and it cannot reasonably be expected to protect criminal activities. Where the distinction is relevant in a particular project the RAPs and POA should include a discussion of the circumstances, and explain why certain users have been treated differently.
27 World Bank, Involuntary Resettlement, Key Concepts, as applied to C.A.P.E.
• Ensure genuine consultation and participation take place;
• Undertake baseline socio-economic survey/s and integrate RAPS into existing planning processes;
• Apply the RPF to all contractual arrangements that could have social impacts;
• Develop resettlement options that place affected people in at least an equivalent but preferably better situation than they were in prior to involuntary resettlement/loss of access;
• Develop options in conjunction with the affected households and then allow them to choose between options. Empower affected people to actively participate in both the development of options and negotiations around their choice. In this regard, inform them of other instances where this issue has been addressed and the potential long-term impacts of their choices;
• Uphold principles of fairness and reasonableness. Encourage affected people to act reasonably so that win-win-win solutions can be found;
• Determine budgets as an upfront project cost; and
• Cater for vulnerable populations.

c) Asset valuation and option development
Options will be developed in conjunction with the affected households and, instead of a mathematical application of standard compensation packages based on a valuation of assets, an approach will be used where practical and implementable options that improve the position that people presently live in, are developed for the whole project. These options will contain various elements, all of which will be at least equivalent to the affected person’s existing situation, but cumulatively will attempt to place people in a better situation. The method of valuing assets is set out in the RPF.

d) RAP preparation: Proposed process

The key components of a full/extensive RAP are as follows:
1. Description of project & impacts;
2. Extensive socio-economic survey/s;
3. Legal framework;
4. Institutional framework;
5. Eligibility criteria;
6. Resettlement options & choices made by the affected;
7. Valuation & compensation;
8. Participation process with affected people;
9. Grievance mechanisms;
10. Implementation arrangements: who responsible, timetable, and schedule;
11. Budget; and,
12. Monitoring & evaluation mechanisms.

Where the impacts associated with the C.A.P.E. Program activities that trigger OP4.12 are expected to be minor (i.e. few people are involved and/ or impacts are not predicted to be significant), an abbreviated RAP must be prepared in accordance with C.A.P.E.’s RPF.

The key components of an abbreviated RAP are as follows (note that points 3,4,6 and 7 above are omitted in this process):
• Description of project & impacts;
• Socio-economic survey;
• Eligibility criteria;
• Participation process with affected people;
• Grievance mechanisms;
• Resettlement options & choices made by the affected;
• Implementation arrangements: who responsible, timetable;
• Budget; and
• Monitoring & evaluation mechanisms.

**Process Framework (PF) and Plan of Action (POA)**

The Process Framework set out below will be followed in all Marine Protected Areas and Terrestrial Protected Areas where activities associated with the C.A.P.E. Program could cause restriction of access rights to resources. The PF will generate the resettlement components of the plans of action required by the Bank prior to the enforcement of protected area restrictions.

**a) Proposed process for a site specific PF, including a POA**

The PF and POA process is triggered once it is clear in a specific case that the PF applies and a plan of how to deal with the details of the matter is needed. It is always a requirement where access will be restricted (see Figure 2).

In order to comply with OP4.12, a site-specific PF should contain the following elements:

- Identification of stakeholders;
- Establishment of patterns of past and current use of resources within the protected area that is in question, notably an MPA;
- Determination of eligibility criteria;
- Consultation with stakeholders;
- Grievance Procedures;
- A monitoring and evaluation process.

In addition, a POA that sets out the findings of the above and explains efforts undertaken regarding mitigation must be prepared. Note that compensation is not a requirement of the PF/POA process.

**Implementation arrangements for RPF and Process Framework**

This section sets out the following as they apply to the RPF and PF processes for C.A.P.E.:

- Organisational elements, institutional capacity and commitments;
- Grievance Procedures;
- Monitoring, evaluation and reporting; and,
- Funding arrangements.

**Organisational elements, institutional capacity and commitment**

All executing agencies receiving funds from the GEF as part of the GEF investment to C.A.P.E. have committed themselves to the implementation of the RPF and Process Framework.
Ultimate responsibility for ensuring that this safeguard is applied where necessary rests with the Executing Agencies. Operational responsibility also rests with each Executing Agency, and in particular the relevant Project Management Unit (PMU) who will assign responsibilities to relevant staff as necessary.

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>Proposed structure</th>
</tr>
</thead>
</table>
| 1. Inclusion of RAP/Plan of Action into existing planning process, with particular attention to the baseline socio-economic survey | Executing Agency  
CCU to advise |
| 2. Identification of whether a RAP/Plan of Action is needed or not and decision to undertake it. If a voluntary resettlement issue arises then independent verification of free choice is needed. | Executing Agency  
Executing Agency to inform CCU and World Bank of RAP/Plan of Action at project inception.  
CCU and World Bank to advise on development of RAPs |
| 3. Development of RAP/Plan of Action, ensuring proper consultation with affected people | Executing Agency |
| 4. Approval of RAP/Plan of Action or approval of evidence showing free choice in voluntary resettlement projects | Executing Agency  
World Bank  
CCU to approve & document as part of ongoing monitoring function |
| 5. Routine project implementation management and monitoring of RAP/Plan of Action | Executing Agency |
CCU |
| 7. Funding arrangements & budget | Executing Agency |
| 8. Ultimate responsibility | C.A.P.E. CCC |

**Grievance redress mechanism**

All grievances relating to the RPF and RAPs, and PF and POAs should initially be addressed to the relevant Executing Agency. A clear process for this should be established and communicated to affected stakeholders. If grievances cannot be resolved at this level, outside assistance may be sought by any party with an interest in the matter. This could result in the grievance being resolved through facilitation, mediation or arbitration. The procedure to be followed in addressing any grievance is summarised in Fig 1 below.
Figure 1: Grievance Framework

Grievance lodged with head of PMU of Executing Agency who involves appropriate staff. Informs CCU monitoring officer. Decide if it is an internal community dispute then external facilitator is used. Otherwise resolve internally. Time periods for resolution set & agreed.

Grievance not resolved

External person sifts disputes into a) not caused by project, b) requires mediation, c) requires arbitration. Obtain agreement of parties for mediation or arbitration that they will be bound to outcome. Appoint mediator/arbitrator.

Grievance & resolution reported as part of monitoring system to CCU

Grievance resolved

Grievance & resolution reported as part of monitoring system to CCU

No Further action

Grievance resolved through a) mediation, or b) arbitration

Monitoring and reporting for the RPF and the Process Framework

The Executing Agencies and the CCU will be responsible for the monitoring and evaluation of activities set out in the RPF, PF, RAP and POA, as well as end of project assessment. This should take into account baseline conditions and resettlement monitoring. The Bank will be responsible for supervision.

The arrangements for monitoring compliance with the RPF/ PF will be incorporated into the overall monitoring and reporting system for C.A.P.E., which will comply with that of the UNDP and World Bank, as per the conditions of the grant agreement. As part of this process, compliance with the RPF and PF and associated RAPS and POAs should be verified through independent review at least on a bi-annual basis.

OP4.12, section 24
**Funding arrangements**

The overall potential costs of resettlement cannot be determined at this stage of the Program as the details of the zone of impact have not yet been identified, and it is therefore not possible to estimate the number of people who may be affected.

It follows that budget for resettlement should be determined early during the RAP/POA stage when the results of the socio-economic study are known, and information on specific impacts, individual and household incomes and numbers of affected people and other demographic data is available.

The Executing Agencies will be responsible for raising the finance and preparing the budgets necessary for producing and implementing RAPS and POAs. A commitment to this effect will be incorporated into the grant agreement. GEF funds will not be used for developing RAPs/POA or monitoring or implementing.

**Implementation of OP4.12**

The purpose of the C.A.P.E. RPF and PF is to provide a policy framework and procedural safeguards that bind executing agencies and ensure compliance with OP4.12. As indicated earlier, sub-project RAPs (consistent with the RPF), and POAs (consistent with the PF), cannot be prepared for C.A.P.E. at this stage. However, should OP4.12 be triggered as part of the implementation of C.A.P.E., relevant sub-project RAPs and POAs will be submitted to the Bank for approval.

In this regard, the principles, organisational arrangements, design criteria and processes set out here will be applied by C.A.P.E. executing agencies to all sub-projects prepared during Program implementation.

Wherever possible, and without altering the fact that they are procedural safeguards, these will be integrated with existing planning processes of the executing agencies.

The process for the implementation of OP4.12 within the context of C.A.P.E. is set out in Figure 2 below.
Figure 2: PROCESS FOR IMPLEMENTATION OF WB SAFEGUARD POLICY OP4.12

C.A.P.E. ACTIVITY INITIATED

SCREENING OF SOCIAL ISSUES

SAFEGUARD NOT TRIGGERED OR SUFFICIENT ACTION TAKEN TO AVOID TRIGGERING

SAFEGUARD TRIGGERED
Where negative social impact identified that could impact on:
  a) livelihoods, b) income,
  c) tenure security & accommodation

IN VOLUNTARY TAKING OF LAND (OP4.12 3a)
RPF applies

No physical relocation involved, or few people affected, or significant impacts not anticipated

ABBREVIATED RAP PREPARED
(as integrated into project planning processes)

FULL SCALE RAP PREPARED
(as integrated into project planning processes)

ACCESS ISSUES (OP4.12 3b)
PF applies

Many people affected or impacts anticipated to be significant

POA PREPARED
(as integrated into project planning processes)

RAP/POA APPROVED

RAP IMPLEMENTED
OUTCOME: Affected people participate, options identified and in at least equivalent situation

POA IMPLEMENTED
OUTCOME: Affected people participate & efforts made to mitigate.
ANNEX B
MAPS ILLUSTRATING THE AREAS ASSOCIATED WITH PROPOSED C.A.P.E. ACTIVITIES
Identifying and Securing Terrestrial Biodiversity in Key Sites - Component 5

Legend

- Bavianskloof Mega-Reserve
- Cederberg Mega-Reserve
- Fine-Scale Planning Initiatives
- West Coast Biosphere Reserve

Scale: 1:3,348,902

Legend: Baviaanskloof Mega-Reserve, Cederberg Mega-Reserve, Fine-Scale Planning Initiatives, West Coast Biosphere Reserve.
ANNEX C

BIODIVERSITY VALUE OF THE AREA

The Cape Floristic Region (CFR). It is the smallest (ninety thousand square kilometers) of the world six floral kingdom (1,9 % of all the world plants), one of the twenty five biodiversity hotspots (where exceptional concentrations of endemic species are undergoing exceptional loss of habitat) for conservation priority and among those hotspots, one where the endemic species are concentrated in exceptionally small areas (31,6 endemic plants per 100 Km² of hotspots).

Nature of the CFR’s biodiversity. The rich biodiversity of the CFR is due to an extensive and complex array of habitat types derived from topographical and climatic diversity in the region’s rugged mountains, fertile lowlands, semi-arid shrublands and coastal dunes. The dominant vegetation of the CFR is fynbos (Afrikaans for “fine bush”). This fire-prone, sclerophyllous scrubland covers just over 80 % of the land area and accounts for more than 7,000 of the 8 200 plants species identified in the CFR. In the lowlands, fynbos is replaced by renosterveld (Afrikaans for “rhinoceros scrubs”), an Ericod scrubland, and coastal dunes and thickets that sustain an extremely high density of plants and animals threatened to extinction.

Distribution of the CFR’s biodiversity. From a biodiversity point of view, the CFR is divided into a hundred Broad Habitats Units (BHU). It is also unusual in that many of the processes that sustain rare and endemic flora can occur in very small patches of remnant vegetation: It has been determined that many localized fynbos endemic persist in patches of 4-15 hectares. This land use planning work has been undertaken by the Institute for Plant Conservation of the University of Cape Town (UCT) during the first two years of the Cape Strategy and Action Plan. However, an analysis conducted at a finer scale (cadastral unit) in the Agulhas Plain (southern-most portion of CFR covering an area of two thousand square kilometers) revealed that conservation site selection requires fine scale information at the level of vegetation and conservation units.

Biodiversity conservation status. Approximately, 20% of the region enjoys some form of conservation status and nearly half of this area is protected in official nature reserves and national parks. The majority of statutory conservation areas are protected under provincial legislation in the Western and Eastern Cape provinces. Despite its extent and for the reasons mentioned above, the protected area network does not adequately protect biodiversity or natural processes in the CFR. Approximately 95% of all protected land is mountain habitats: only 4,5 % of the original lowland fynbos and only 0,6% of renosterveld is protected (31 % of the lowlands BHU have already been transformed by agriculture, forestry and coastal urbanization) : Each of the units need to be partially conserved because biodiversity is irreplaceable. Furthermore, parcels of smaller than 10 square kilometers or less account for approximately 25% of all protected land; while these reserves are important, they do not sustain the ecological and evolutionary processes essential to the long-term persistence of the CFR’ diverse
plant population (eg. Functional riparian ecosystems, migration corridors, natural fire cycles, sand movements, and viable populations of herbivores).

**Threats typology.** From a threat point of view, the hundred BHU's can be divided into two categories of lands: the uplands that are threatened by alien invasive vegetation (woody invader species) and fire and the lowlands that are threatened by agriculture and coastal urbanisation expansion. In the first case, the threats diminish in-site biodiversity and reduce off-site fresh water supply to downstream users (wild flower industry, deciduous fruit industry, potable water consumers). In the second case, the threat diminish on-site biodiversity and may be reduce off site pollination service to fruit farmers, when part of the land is still covered with fynbos vegetation, traditional habitat for bees and other pollination insect