



biowatch
SOUTH AFRICA

biodiversity | food sovereignty | agroecology | social justice

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The Director-General
Department of Forestry, Fisheries and the Environment
Attention: Ms Pamela Kershaw
By email: pkershaw@dffe.gov.za

**Biowatch SA Comments on the
'National Biodiversity Offset Guideline' to the National Environmental Act, 1988
(Act No. 107 of 1988) gazetted for comment on the 25 March 2022**

Thank you for the opportunity to provide input on the National Biodiversity Offset Guideline.

Our submission follows below and consists of:

1. Introduction to Biowatch South Africa
2. Comments on the National Biodiversity Offset Guideline.

Yours sincerely

Rose Williams
Director

1. Biowatch South Africa

Biowatch is a non-governmental organisation established in 1999, which strives for social and environmental justice within the context of food sovereignty. Biowatch works to challenge unsustainable agricultural practices and to advocate for agroecology as an ecologically viable alternative that safeguards people and land. This includes supporting smallholder farmers; working with civil society to create joint understanding and action; and constructively engaging with government in implementing policies and practices that promote, facilitate, and actively support agroecology and farmers' rights. We have a long track record of working on policy issues concerning agriculture, biodiversity, and indigenous knowledge systems.

2. Comments on the 'National Biodiversity Offset Guideline' to the National Environmental Act, 1988

Biowatch supports the overall intention of the guideline to prevent the further loss and degradation of our biodiversity and functioning ecosystems.

We have the following specific comments and concerns:

Section 2. Background (Page 12)

We generally agree with and support the 'Desired outcome of biodiversity offsets' outlined in the points under 4.1 which in summary seek to ensure that our biodiversity is secured in the long term; that the protected area network is expanded in priority areas and linked together; that ecological infrastructure is maintained and restored; and that no development causes irreparable loss or damage to ecosystems or species.

We also support that biodiversity offsets may not be used as a reason to grant approval to a development (4.2 Principles, page 16), and the clarification that general socio-economic benefit does not equate to 'reasons for over-riding public interest' (page 17). However, it would be useful to further elaborate who would decide the "truly exceptional" circumstances that would allow a fatally flawed development from a biodiversity perspective to go ahead, and what process would be followed in weighing up conflicting interests in making this decision.

This is all the more a concern given the potential for intersecting crises, which necessitate a more cautious and risk averse approach. The events we have witnessed in KwaZulu-Natal are an excellent example of such intersecting crises where the Umhlanga River and lagoon ecosystem will bear the long-term impacts of pesticide poisoning as a consequence of the July 2021 burning of the UPL agrichemical warehouse in Cornubia followed by extreme rain and flooding in April 2022 which caused a waste containment dam left on the site to overflow, once again releasing toxic pollutants.

We request that the principles more specifically include the involvement of traditional and indigenous communities living in the area in the decision-making process. The livelihoods, cultural and spiritual practices of traditional and indigenous communities may be intimately intertwined with the ecosystem and biodiversity of that place, and thus a biodiversity offset may compromise their access to and co-management of the biodiversity in question.

This section frames biodiversity entirely in the context of human well-being and its economic value in terms of ecosystem services and biodiversity related economic activity. We contest these human-

centric values and request that the 'rights of nature' and other species to exist and thrive are also acknowledged, included, and brought to bear on decision-making on developments. It is this balance of rights and respect for all life that will ensure functional biodiverse ecosystems that enable our own rights to life, health, and sustainable livelihoods.

6. When are biodiversity offsets required

Flow Diagram (page 29) and descriptions on page 33 indicate that offsets may not be required even when there are medium to very high residual impacts - what compelling reasons would there be for not having biodiversity offsets? The text on page 33 refers to paragraphs 'below' but it is not clear which paragraphs are referred to.

6.2 Impact significance

Provision is made for the CA (the MEC or Minister) to require an independent specialist review of a biodiversity offset report where the significance of an impact is contested and the CA lacks expertise to assess the case. What process is there for affected parties to call for such intervention if the CA doesn't require this, and who is the final arbiter of the need for offsets if developments are approved that compromise biodiversity without adequate offsets or where the biodiversity is perceived to be irreplaceable or cannot be moved (as in the case of particular species) if the CA doesn't require this?

The potential for reversibility of impacts over a longer term (such as up to thirty years as proposed on page 31) needs also to be considered against other concurrent processes causing biodiversity loss such as deforestation, gradual human pressure on habitats or changing climate.

We also have general concerns around the assessment of on-site remediation potential versus the need for offsets. The assessment process should also evaluate the extent to which the remediation proposed by a developer on site after the development is really adequate. An example of this is the rehabilitation of dunes following dune mining (for example the mining of titanium in the Richards Bay area) where it is known that the remediation of the dunes by the company did not re-institute the natural dune forest.

An individual development being considered in an assessment might contribute to a cumulative impact on biodiversity when added to other already existing developments – how is this considered in the assessment of impact and offsets required? It is vital that this cumulative impact is not ignored.

7.6.1 Managing the biodiversity offset

In the case of a conservation servitude the EA holder is given the responsibility for managing the biodiversity offset, although this can be delegated to a third party. In the event that the EA holder is a foreign company that ceases operations in South Africa or that the EA becomes bankrupt how will the continued management of the offset be ensured if funds for management will be paid yearly? It is therefore preferable that lumpsums are paid even where the activity given authorisation is envisaged to continue for 30 years or more. There are many examples throughout South Africa of operations extracting resources and then dereliction in clean-up and other operations on their sites. How much less likely are they to maintain off-site biodiversity offsets?

Once the 30-year offset management period has expired, how will the managing entity continue to fund and therefore conserve the offset especially in the case of conservation servitudes on private

land, and what oversight will there be of Trusts set up to receive and manage these funds to ensure they remain viable and accountable entities?

12. Implementing, monitoring, and auditing

What process will be put in place to ensure that monitoring reports commissioned by the holder of the EA are a true reflection of the status of the biodiversity offset?

We have the following general concerns:

Neutrality of Environmental assessment practitioners (EAPs) and specialists employed by the applicants remains a problem throughout the EIA processes. This guideline is highly dependent on their oversight and the independence and thoroughness of their work.

Offsets in the form of conservation servitudes are dependent on the compliance of private landowners, enforcement of which often devolves to already overstretched municipal authorities.

What sanction is there for developers that wilfully destroy vulnerable ecosystems before the decision-making and offset process is concluded?

Given that land and rivers and the biodiversity within these are finite resources, any development is reducing this available ecosystem resource – so offsets are sanctioning one piece of land/ ecosystem on condition that another one must not be developed by agreement in perpetuity. But as we can see from the numerous applications for mining and other developments in protected areas even proclamation as a conservation area is not protection in perpetuity. Certain critically threatened ecosystems are therefore already reaching development saturation.

An EA holder is only obligated to maintain a biodiversity offset for the duration of the authorised activity, however, many developments like mining alter our environment in perpetuity with impacts that last long after the activity ceases. This is inequitable and only serves to impoverish society and the environment that life depends on.