

The Magaliesberg ensuring a future: A guide to the legislative and institutional protection of the Magaliesberg protected natural environment

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- **THE NEW APPROACH**

Clearly wishing to avoid the conflict that developed around the proclamation of the area in 1977, and the directions that were published in 1986, the Division of Nature and Environmental Conservation of the TPA decided to embark upon a process to consult with land owners about the proposed new boundaries of the area. This process began as early as 1986 but was only completed in 1994, due in part to the fact that during this time, administration of the area changed from the Department of Environment Affairs to the Directorate of Nature and Environmental Conservation of the TPA. The changing constitutional structure of South Africa also hindered progress, as did difficulties in resurveying the reduced size of the area to be incorporated.

During this process of consultation, tensions which exist amongst the numerous competing and conflicting interest groups in the area began to emerge. Many of these were expressed at a facilitation meeting, initiated by the Mountain Club of South Africa and held in January 1993. The idea of the meeting flowed from the realisation that the successful conservation of the Magaliesberg requires a level of consensus amongst the various interested parties in the area. Consultation with all parties thus became central to the process of, and the demarcation of, the new boundaries for the area. The idea of the facilitation meeting was in accordance with moves in other countries to allow affected parties to participate directly in the regulatory process. The underlying belief

is that once parties have engaged in the process they have a sense of ownership over the agreement. Negotiated rule making, as this process is called, seems to be an efficient way of achieving consensus.

- THE FACILITATION PROCESS

The first step in organising a facilitation meeting is to ascertain all the interest groups in the area and the major sources of conflict or tension. Many of the sources of tension in the Magaliesberg have already been discussed in this document. There has been conflict between land owners and the authorities for various reasons, such as inadequate consultation; between land owners and the public; and between recreational groups who already have access to the mountain and the general public. As has been shown, as long ago as 1977, conflict arose between land owners and the conservation authorities over the declaration of the area as a nature Area. Some land owners felt it was unnecessary to turn the area into a Nature Area as they were already conservation minded. Others believed that the declaration was essential for the preservation of the Magaliesberg's unique features. Other land owners wanted to develop their farms to establish resorts for people who wanted access to the mountain and objected to having their activities restricted by the authorities. Conflict also arose between recreational clubs, who are either land owners in the area, or those who have secure access to the area, and the general public. These recreational clubs have an interest in limiting access of the general public so that they can enjoy their activities in peace and quiet.

A wide range of different organisations and stakeholders were invited to participate in the meetings. These included numerous land owners, the ward chairmen, the Magaliesberg Landowners Association, the Magaliesberg Protection Association, various Government departments including the Department of Agriculture, the Department of Environment Affairs, the Directorate of Nature and Environment Conservation of the TPA and the Magaliesberg Management Advisory Committee. A number of recreational groups with an interest in the conservation of the Magaliesberg, such as the Mountain Club of South Africa, the Johannesburg Hiking Club, the Wildlife Society and the Vulture Study Group, also attended. The following issues were discussed at the meeting:

Access

All the parties at the meeting recognised the right of land owners to grant, or refuse access to their properties. These rights should be respected by all recreational club members as well as the general public. Recreational clubs confirmed that they would negotiate access rights with individual landowners.

Representation

Amongst the issues discussed at the meeting was the question of landowner representation on the Magaliesberg Management Advisory Committee. Ward chairmen, while conservation-driven and active in the community, also have a vital role in ensuring a fully representative committee which will reflect the aspirations of all the landowner groups within its ward - be they conservation oriented or development-driven.

Nature Conservation

All those involved in the facilitation process expressed concern for the conservation of the area. For this reason the meeting supported the efforts of the Directorate of Nature and Environmental Conservation of the TPA in their publication of draft directions, in terms of the Environment Conservation Act of 1989, which would enhance the protection of the Magaliesberg. Support was also given to the proposed new boundaries of the protected area which excluded arable land. In terms of nature conservation, the crucial issues in the Magaliesberg were identified as being: <UL

1. the protection of the Cape Vulture;
2. the prevention of overgrazing and the proliferation of invasive plant species;
3. the protection of wetlands and natural catchments for surface and underground water;
4. the appropriate establishment and maintenance of footpaths and roads;
5. the prevention of fires, the ring-barking of trees and the stealing of plants; and
6. the conservation of genetic diversity, biodiversity and natural processes.

Education

All of the participants acknowledged the vital role of education for everyone living in or visiting the area. It was therefore decided that an educational booklet be written containing information about the area's cultural and natural heritage, and its conservation laws. This document in fact represents the outcome of this request.

THE CURRENT LEGAL STATUS OF THE MAGALIESBERG PROTECTED NATURAL ENVIRONMENT

In order to achieve the conservation objectives for the Magaliesberg mountain range, new directions for the protection of the area were published on May 4, 1994. These new directions, with supporting documents, were circulated to all landowners in the area.

The intention of the directions is not to place a ban on all development, but rather to ensure that development is undertaken with the least negative impact upon the environment. While publishing these, the Directorate of Nature and Environmental Conservation of the TPA amended the boundaries of the protected area and, in accordance with the wishes of the farmers in the area, excluded arable land. The new boundary of the area can be seen on the map in the centre of the published booklet.

THE 1994 DIRECTIONS

Building operations

According to the new regulations, any building operation which involves the expansion of existing structures or buildings, or the erection of any structure or building higher than two metres, may not proceed without the approval and the issue of a letter of approval from the Director of Nature Conservation of the Gauteng Provincial Administration as well as the Department of the Environment of the North West Province.

Roads, canals and reservoirs

Roads, canals and reservoirs may also be constructed only with approval, as these processes often disturb valuable flora and have a negative visual impact. Should landowners receive official permission to build; expert advice will be provided with regard to the replanting of original plants.

Pipelines and powerlines

Furthermore, water, fuel and mineral pipelines may not be installed without permission. The erection of power lines, cableways and structures for radio and telecommunication purposes is similarly controlled.

Excavation and waste dumps

The new directions prevent the initiation of any excavation operations. Waste dumps often lead to the pollution of underground water, hence the construction of any waste disposal site, and the dumping of any litter or waste, is prohibited unless a letter of approval has been obtained.

Hiking trails and signs

Hiking trails for outdoor recreation purposes may not be introduced other than with the approval of the authorities. When this approval is given, the authorities could assist landowners in developing routes which do not disturb the natural environment. In order to protect the aesthetic beauty of the Magaliesberg, the directions also prohibit the painting on the ground with paint or lime, any name, message or sign.

APPLICATION PROCEDURES

In case of a landowner or anyone else wishing to apply for permission to undertake any of the activities in the new directions, an application must be submitted to:

North West Province:	Gauteng:
Department of Tourism and Environmental Affairs	The Directorate of Nature Conservation
(Ms Mandy Momberg: 0142-973597)	The Department of Agriculture, Conservation and Environment
	Private Bag X209
	Pretoria
	0001
	(Ms Christa Grobler: 012-201 3689)

The application must be on a standard application form which is obtainable from the Departments.

Development applications are currently considered by the Departments acting in consultation with *inter alia* the Magaliesberg Protection Association. The Management Advisory Committees have not been appointed yet (January 1998). The respective Departments are the administrative bodies responsible for considering development applications. At this stage, the process of granting approvals generally takes approximately 3-6 months.

THE LEGAL IMPLICATIONS OF THE DIRECTIONS

While the new directions might appear to place tight constraints upon landowners, they in fact offer protection from the activities of large bodies, such as water boards, ESCOM, the SABC and petrochemical concerns. These groups must now also obtain the consent of the Directorate of Nature Conservation before embarking upon projects which might negatively affect the natural beauty of the area. Moreover, as unique natural areas become more popular in South Africa, the inclusion of landowners' property within a protected natural environment will see an increase in property value. The directors can thus be seen as protecting landowners from the threat of

degradation of their properties. Meanwhile, those landowners who wish to create resorts for recreational purposes will be encouraged to do so in harmony with the natural environment, with building developments preferably outside the boundaries of the Protected Natural Environment.

Although many land owners in the Magaliesberg feel those regulations such as these place restrictions on their ownership rights, it is important to understand that ownership is rarely unlimited in South African law. There are many statutes which limit the right of land owners to have a free hand on their land. Control of land use is not a phenomenon that arises exclusively in terms of Nature Area legislation. Various government departments also use this regulatory mechanism for other purposes and in the interests of conservation. Regulations published in terms of the Conservation of Agricultural Resources Act of 1982, for example, place restrictions on the utilisation of agricultural land. In addition to these statutes, the common law also places some restrictions on land ownership. The law of nuisance has in fact served to restrain environmentally detrimental land use practices by land owners.

THE ADMINISTRATION OF THE MAGALIESBERG PROTECTED NATURAL ENVIRONMENT

In terms of the Constitution of the RSA 1996, the Republic was divided into nine provinces with the Magaliesberg falling between the Gauteng and North West Province. Unfortunately, provincial boundaries tend to be political and generally do not coincide with physical boundaries such as catchments or even mountain ranges. This makes the possibility of holistic management of natural resources such as water catchments or the Magaliesberg mountain range very difficult.

The greater part of the MPNE falls within the North West Province and is currently managed by the Department of Tourism and Environmental Affairs of this province. The responsible officer in this Department is Ms Mandy Momberg (0142)97-3597/8. The (largely eastern) part falling within Gauteng is managed by the Directorate of Nature Conservation of the Department of Agriculture, Conservation and Environment, the responsible officer being Mrs Christa Grobler (012)201-3689.

In terms of the Environment Conservation Act 73 of 1989, management committees for the MPNE can be established in both provinces. Although nominations have been called for and submitted for both management committees, at the time of writing (January 1998) neither have been established. It is hoped that, once they have been established, they will work together to formulate and implement a common set of policies for the entire Magaliesberg Protected Environment.

TAKING CARE OF THE MAGALIESBERG

It is hoped that the new directions and the developing administrative structures will prevent the Magaliesberg mountain range, situated within a fast developing region of the country, from becoming irreparably damaged by uncontrolled development and unsustainable utilisation of resources. But it is not only the responsibility of the law and government officials to protect the Magaliesberg. The successful conservation of the range depends largely on the support and participation of land owners and the general public who need to commit themselves to its conservation - both by observing the prescribed legal guidelines and by acquainting themselves with good conservation principles. Moreover, conflicts arising between different interest groups need to be addressed in such a way as to incorporate both the resource utilisation needs of the various interest groups and inhabitants, and the conservation requirements of the range as a protected Natural Area.

The Directorates of Nature Conservation is able and willing to assist land owners in this regard in the planning of low impact development in the interests of conservation. Everyone who visits the Magaliesberg however, also has a responsibility to protect the range from degradation and to preserve the sensitive ecosystems of the area.

Here are some guidelines that everyone should observe if they intend visiting the Magaliesberg mountain range:

Fires: Fires are as a general rule discouraged in the Magaliesberg. If you do want to make a fire, ensure that it is in a place designated for braais. Under no circumstances should trees be cut down or used for firewood. Take special precautions when lighting camp fires and be sure to extinguish them properly.

Litter: All litter from hikes and picnics, including orange peels and apple cores etc. should not be left behind.

Paths: When hiking keep to the path. Walking off the path destroys plant cover and causes erosion. Watch out for first signs of soil erosion, when trails turn into gullies. Try and stop erosion by filling gullies with rocks and branches.

Streams: Do not wash with soap in the pools and streams. Soap contains detergents and phosphates which not only pollute streams but also destroy other aquatic life in the streams. Wash pots and pans away from streams and do not throw the waste water back into the stream.

Trespassing: Permission to walk on private property must always be granted by individual land owners. For this reason, people staying at resorts in the Magaliesberg must establish the precise boundaries of the resort to avoid trespassing on other landowners' property. Some resorts have established a

system of permits to obtain the permission of neighbouring land owners for limited numbers of hikers to walk on their property.

Landowners usually have no objection to organised clubs using their property so long as their activities are properly controlled, and permission has been granted. Permits to visit Mountain Club property must be gained from the Club itself.

Fauna and Flora: No wild flowers, grasses or plants should be picked and removed from the area. Never disturb bird nests in any way whatsoever and do not feed wild animals such as monkeys.

The toilet!: The mountain should certainly not be viewed as one vast ablution facility. Where possible, use existing toilet facilities. Do not go to the toilet anywhere near paths, picnic sites, climbing areas or water sources. If possible, dig a hole and cover the excrement and any toilet paper used once you have finished.

CONTACT LIST

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The Mountain Club of South Africa (Johannesburg Section)		P O Box 1641, Houghton, 2041 mcsa.tvl @pixie.co.za		
The Mountain Club of South Africa (Magaliesberg Section)		P O Box 1418, Pretoria 0001 @iafrica.com"mcsamag@iafrica.com		
The Magaliesberg Protection Association	Ann Van der Riet: Secretary	P O Box 1641, Houghton 2041	t (011) 803 3716	
Dept of Environmental Affairs and Tourism	Mr HJ Grove: Director: Natural Environment	Pvt Bag X 447, Pretoria 0001	t (012) 310 3699	f (012) 322 2692
Dept of Agriculture Directorate of Resource conservation	Mr F Van der Merwe	Pvt Bag X 250, Pretoria, 0001	t (012) 319 6000	
Vulture Study Group	Dr Verdoorn: Chairperson		t (011) 646 8617	
Wildlife Society of Southern Africa (Tvl Branch)Mr David Lindley: Director	P O Box 44344, Linden 2104	t (011) 486 3294	f (011) 486 3294	
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Notes to readers

The Mountain Forum would like to thank the Petro Grobler and the Magaliesberg Section of the Mountain Club of South Africa for permission to include this document in our On-line Mountain Library. The original document, and additional information about the Magaliesberg Section of the Mountain Club of South Africa, may be viewed at:
<http://mcsa.org.za>

This document has been endorsed by the Directorate of Nature Conservation of the Gauteng Provincial Administration, the Magaliesberg Protection Association, the Magaliesberg Management Advisory Committee, the Department of Environmental Affairs and Tourism, the Directorate of Resource Conservation of the Department of Agriculture.

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