1. BACKGROUND AND CONTEXT

The Farm Tierkloof 789, Portion 2, Worcester, located approximately 8km south-west of Worcester, was purchased in 2007 by CACE (Pty) Ltd., a Black Economic Empowerment (BEE) company. CACE (Pty) Ltd consists of 111 farm workers from Pierre van der Merwe Boerdery and has the expressed purpose of improving income potential for the historically disadvantaged farm workers through agricultural development. Portion 2 and 3 of Farm 789 were consolidated as Portion 4 in July 2009 (herein referred to as Farm 4/789 or the Subject Land). The company CACE (Pty) Ltd, has to date planted extensive vineyards in the ‘footprint’ previously cultivated by citrus trees.

Figure 1: Locality map showing the Tierkloof, Farm 789 Portion 4 (after 1:250 000 scale topo-cadastral map 3319 – not to scale).
In July 2008, abnormally high rainfall in the region almost resulted in flood damage to vineyards on the Farm Tierkloof. The owners, as a precautionary measure, decided to redirect the man-made channel of the Grootkloof River away from the vineyards.

In November 2008, the central and southern parts of the Western Cape Province experienced a Cut-off Low Pressure, which produced high levels of precipitation that in turn resulted in widespread flooding, rock-falls and landslides. The high volumes of water flowing in the newly dug channel resulted in extensive erosion and deposition of sand onto the neighbouring farm Eensgevonden (Farm 6/432).

Diversions of the Grootkloof River prior to CACE (Pty) Ltd purchase of Tierkloof Farm 4/789, Worcester

According to information provided by the original owner, Mr W. Viljoen, the natural river channel (see Figure 3 and Table 1) was altered from its original course (Point 1) in 1984 when that area of the farm was cultivated under citrus. At this time the channel was diverted (Point 2), for a distance of 280m, straight down the slope in a north-westerly direction, towards the neighbouring Farm Eensgevonden Farm 6/432, Worcester. Here (Point 3) the man-made channel was diverted, at a 90 degree bend, to flow for a further 220 m in a north-easterly direction along the boundary of Tierkloof / Eensgevonden. The man-made channel then re-entered the natural river channel (Point 4) crossing the neighbouring farm Eensgevonden (Farm 6/432) for 55 m and then exited back into the Farm Tierkloof (Point 5). The water flow from here followed the original natural water course, flowing north-north-easterly in a broad arc for a further 575 m up to a culvert crossing under the Brandvlei Prison Road (Point 6). The last section of the watercourse meandered within a 50 m wide, natural veld corridor, consisting of endangered Breede Sand Fynbos.

<table>
<thead>
<tr>
<th>No.</th>
<th>Description of point</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>End of natural Grootkloof watercourse &amp; position of pipe culvert under farm track.</td>
<td>33°42’29.81”S</td>
<td>19°22’48.78”E</td>
</tr>
<tr>
<td>2</td>
<td>First diversion point related to the original man-made channel (1984)</td>
<td>33°42’29.49”S</td>
<td>19°22’48.61”E</td>
</tr>
<tr>
<td>3</td>
<td>Second point of diversion of original man-made channel at boundary with Eensgevonden</td>
<td>33°42’22.25”S</td>
<td>19°22’42.73”E</td>
</tr>
</tbody>
</table>
After heavy rainfall in July 2008, the new landowners, (CACE (Pty) Ltd., noticed that water had overtopped the existing man-made channel and flowed in a northerly direction, through the newly established vineyards. To avoid future damage to the vineyards, the landowner decided to divert the drainage channel further westward (see Figure 4 and Table 2). A new channel was dug from the pipe culvert (Point 1) to intersect with an unnamed ephemeral watercourse (hereafter referred to as ‘River B’) close to the boundary of the property with Eensgevonden (Farm 6/432) (Point 7). This new channel was approximately 310 metres long. The abandoned channel was blocked off by the landowner with loose stone and sand.
In November 2008, shortly after the new diversion channel was dug, the Boland and Overberg regions experienced extremely heavy rainfall, with some areas recorded more than 100mm of precipitation within 24 hours (See Appendix A). The rainfall event caused numerous rockfalls, landslides and erosion, resulting in extensive damage to the environment and infrastructure.

On Tierkloof, the November 2008 downpour resulted in the Grootkloof River flowing into the new drainage channel. Since there was no vegetation cover to line the channel floor or walls, this combined with the sandy, highly-erosive nature of the soil, caused extensive erosion of the new channel. The water washed soil down the channel into River B and then flowed northwards along River B’s channel onto the neighbouring Eensgevonden Farm 6/432. Both rivers (Grootkloof and River B) flowing down River B’s channel resulted in the deposition of large amounts of sand and silt in and around River B’s channel on Farm 6/432. This deposition occurred over an area of 0.55 hectares of endangered Breede Sand Fynbos (Figure 5).

Table 2: Coordinates and descriptions of way-points related to the new man-made channel (2008) diverting watercourse of the Grootkloof River on the Farm Tierkloof (Farm 4/789) prior to the ownership transferring to CACE (Pty) Ltd

<table>
<thead>
<tr>
<th>Way-point</th>
<th>Description</th>
<th>Coordinates</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>The terminus of the newly dug diversion channel at the boundary between Tierkloof (Farm 4/789) and Eensgevonden (Farm 6/432)</td>
<td>33°42'26.97&quot;S 19°22'36.90&quot;E</td>
</tr>
<tr>
<td>8</td>
<td>The approximate terminus of the sand deposition on the neighbouring Farm (Eensgevonden Farm 6/432)</td>
<td>33°42'24.94&quot;S 19°22'35.46&quot;E</td>
</tr>
</tbody>
</table>

Note the signs of earlier erosion along the middle reaches of River B (yellow circle).

Point 8 is the terminus of the deposited sand and is approximately 80m from Point 7 as measured along the River B. Date of imagery is May 2006 sourced from Google Earth.
Figure 5. Plan showing the eroded areas (light blue) on Farm 4/789, ‘Tierkloof’, Worcester, and areas where sand has been deposited (green) on Farm 6/432, Worcester.

From this survey it was calculated that volume of approximately 1 580 m$^3$ was removed from an area of 0.32 ha on Tierkloof and deposited over an area of 0.55 ha on Eensgevonden.

The plan also shows the triangular area (0.13ha) of natural fynbos on Eengevonden (arrow). The vegetation in this area was damaged when Tierkl oof removed their drainage pipes crossing Eensgevonden.

Map prepared by JV Joubert of Bergrivier Besproeieing.

Since neither an environmental impact assessment nor an application for environmental authorization, as specified in Sections 24 and 24D of the National Environmental Management Act (NEMA Act 107 of 1998), had been granted prior to these activities taking place, the activities described above were unlawful.

An environmental process has thus commenced to apply for rectification of listed activities in terms of Section 24G of NEMA, specifically for the unlawful dredging, infilling and construction of a channel in order to divert the flow of the Grootkloof River on Farm 789/4, Tierkloof, Worcester, as well as for the resulting transformation of indigenous vegetation (endangered Breede Sand Fynbos) on the Farm Eengevonden Farm 6/432, Worcester.
2. PURPOSE OF THIS BACKGROUND INFORMATION DOCUMENT

The purpose of this Background Information Document (“BID”) is to:

- Provide Interested and Affected Parties (“I&APs”) with information;
- Explain why the Section 24G process is being undertaken;
- Outline the Section 24G process;
- Provide I&APs with an opportunity to raise issues and concerns with regards to the proposed rectification and authorisation.

3. APPLICABLE LEGISLATION

This Section 24G process is being undertaken in terms of the following applicable legislation:

- The National Environmental Management Act (Act no. 107 of 1998 – “NEMA”), as amended (Acts no. 46 of 2003 and no. 8 of 2004);
- the Environmental Impact Assessment Regulations of 2006 (GN R. 385 and 386 – “NEMA Regulations”) which were passed in terms of NEMA.

The following activities listed in terms of Regulation R386 (2006) which may not have been undertaken without environmental authorization from the competent authority, were triggered by the diversion of the Grootkloof River:

Activity 1(m): The construction of facilities or infrastructure, including associated structures or infrastructure for any purpose in the one in ten year flood line of the river or stream, or within 32 meters from the river bank of a river or stream where the flood line is unknown, excluding purposes associated with existing residential use, but including –

- Canals;
- Channels;
- Bridges;
- Dams; and
- Weirs

Activity 4: The dredging, excavation, infilling, removal or moving of soil, sand or rock exceeding 5 cubic meters from a river, tidal lagoon, tidal river, lake, in-stream dam, floodplain or wetland.

Activity 12: The transformation and removal of indigenous vegetation of 3 hectares or more or of any size where the transformation or removal would occur within a critically endangered or an endangered ecosystem listed in terms of section 52 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).

The competent authority, in this case, is the Western Cape Department of Environmental Affairs and Development Planning (“DEA&DP”).

Commenting authorities included in this process are the National Department of Water Affairs, the Provincial Department of Agriculture, CapeNature, as well as the District and Local Municipalities.

4. THE SECTION 24G PROCESS AND TIMEFRAME

The Department of Environmental Affairs and Development Planning (DEA&DP) received a report on suspected unauthorized activities and non-compliance with NEMA (Act 107 of 1998) duty of care, dated the 25th November 2008.

In response to this report and after a site inspection, DEA&DP issued CACE Pty Ltd a notice of their intention to issue a compliance notice in terms of Section 31L of NEMA on the 4 February 2009.
BolandEnviro CC was appointed in February 2009, by CACE Pty Ltd, as an independent Environmental Impact Assessment Practitioner (EAP) tasked with assessing the nature, extent and timing of unlawful activities in terms of legislation.

A preliminary Environmental Report compiled by BolandEnviro CC was submitted to the Department of Environmental Affairs and Development Planning (DEA&DP) in April 2009, which scoped the extent and severity of the impacts of the diversion of the Grootkloof River.

The DEA&DP issued a compliance notice in terms of Section 31L and a directive in terms of Section 28(4) of NEMA (Act 107 of 1998) to CACE Pty Ltd on the 24 August 2009. The notice related to the unlawful dredging, infilling and construction of a channel in order to divert the flow of the Grootkloof river, as well as undertaking of unauthorized listed activities in terms of items 1(m), 4 and 12 of GN R386 of 21 April 2006.

The DEA&DP issued a compliance notice in terms of Section 31L and a directive in terms of Section 28(4) of NEMA to CACE Pty Ltd on the 24 August 2009. The notice related to the unlawful dredging, infilling and construction of a channel in order to divert the flow of the Grootkloof river, as well as undertaking of unauthorized listed activities in terms of items 1(m), 4 and 12 of GN R386 of 21 April 2006.

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The owners (CACE Pty Ltd) were directed by the DEA&DP to:

1. Immediate cease all further construction on the property until such time as environmental authorization in terms of Section 24G of NEMA has been obtained from the Department.
2. Re-identify, and re-establish the original pathway of the watercourse at its original width and depth as the original watercourse.
3. Ensure that the banks of the “re-introduced” water course are moderate to slight to prevent erosion and allow vegetation to establish itself.
4. Put a 5m buffer zone in place between the edge of the watercourse and the first row of vineyards.
5. Fill in the entire diversion and associated erosion as soon as possible (preferably in October after the winter rainfall) to the same level as the banks, using on-site soil (which excludes the deposited soil found on the neighbouring farm).
6. Allow indigenous vegetation to re-establish itself on the deposited soil on the neighbouring farm; and
7. Furnish a plan of works to the DEA&DP and CapeNature within 30 calendar days of receipt of the compliance notice for approval, prior to any physical work being undertaken. The entire rehabilitation process must be completed before March 2010.

BolandEnviro submitted a plan of works with a set of mitigation measures to prevent immediate future damage to DEA&DP on the 5 October 2009. After reviewing this Plan of Works document, the DEA&DP accepted the implementation of the mitigation measures recommended and informed the EAP’s on the 13th of October 2009.

CACE Pty Ltd, completed the infilling of the diversion and associated erosion during the last two weeks of October 2009, in compliance with the approved plan of works and with the oversight of an independent Environmental Control Officer (Nature Conservation Corporation).

An application for rectification was made to the DEA&DP on Form A: Section 24G-ECA Contraventions on the 16 October 2009. DEA&DP approved the process to submit an application for rectification of the unlawful diversion of the Grootkloof River on Farm 4/789, Tierkloof, in terms of Section 24G of NEMA on the 30 October 2009.
## Timeframe of Section 24G process:

<table>
<thead>
<tr>
<th>Step</th>
<th>Approximate Date</th>
<th>Comment</th>
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</thead>
<tbody>
<tr>
<td>Submission of Section 24G Application Form</td>
<td>Submitted 16 October 2009</td>
<td>DEA&amp;DP reference number: E12/2/3/5-B2/33-BJ0045/09</td>
</tr>
<tr>
<td>Public Participation Process commences with notices places in local newspaper</td>
<td>4 February 2010</td>
<td>Worcester Standard (notices in English and Afrikaans)</td>
</tr>
<tr>
<td>Erecting site notices on the terrain where the unlawful activities took place</td>
<td>5 February 2010</td>
<td>A Notice in English and Afrikaans</td>
</tr>
<tr>
<td>Posting of registered letters to landowners and persons living within 100 m of the proposed development</td>
<td>5 February 2010</td>
<td></td>
</tr>
<tr>
<td>Distribution of the BID (i.e. this document)</td>
<td>5 February 2010</td>
<td>Circulated to neighbours and relevant authorities, available on request from BolandEnviro and at <a href="http://www.BolandEnviro.co.za">www.BolandEnviro.co.za</a></td>
</tr>
<tr>
<td>Appointment of specialists to provide input and recommendations regarding the mitigation of impacts</td>
<td>October 2009 – March 2010</td>
<td>Agricultural Surveyor, Hydraulic engineer, Botanical Ecologist</td>
</tr>
<tr>
<td>Public Meeting</td>
<td>18 February 2010</td>
<td>Mervida Crèche, Rawsonville, 17:30.</td>
</tr>
<tr>
<td>Comment Period</td>
<td>4 February 2010 – 16 March 2010</td>
<td>40 Days - Public and school holidays are excluded.</td>
</tr>
<tr>
<td>Draft Environmental Impact Report and Environmental Management Programme Report circulated to registered interested and affected parties (I&amp;APs) and commenting authorities</td>
<td>Late March 2010</td>
<td>30 Days - Public and school holidays are excluded.</td>
</tr>
<tr>
<td>Submit Final Reports and Application to DEA&amp;DP for consideration.</td>
<td>Late April 2010</td>
<td>Should there be significant changes to the draft EIR and EMP reports, the final versions will be released for a further commenting period.</td>
</tr>
<tr>
<td>DEA&amp;DP Decision</td>
<td>Unspecified</td>
<td>The authorization will be distributed to registered I&amp;APs via preferred communication method.</td>
</tr>
</tbody>
</table>

### 6. SPECIALIST STUDIES

The following specialists have or are in the process of being appointed:

**Agricultural surveyor** (appointed) to determine the extent of area damaged by the erosion and deposited sand.

**Botanical ecologist** (BolandEnviro staff specialist) to assess the damage of the erosion, deposition, flooding and transformation of the indigenous Breede Sand Fynbos on Eensgevonden (Farm 6/432). To recommend mitigation measures to prevent further soil erosion and facilitate the re-establishment of the natural vegetation.
Agricultural engineer (appointed) to draw up a preliminary report identifying the original watercourse, calculate the catchment runoff and determine the volumes of water associated with 1:10, 1:50 and 1:100 flood events.

Professional hydraulic engineer (to be appointed) to confirm the original Grootkloof watercourse, confirm the size of the catchment, calculate flood volumes (1:10, 1:50 and 1:100 year floods), determine velocities at different gradients along the re-identified natural water course, to recommend suitable designs for the waterway and suitable lining to prevent erosion, and to recommend standards to be included in the Construction and Operational Environmental Management Programmes and to sign-off the completed waterway.

The specialist reports will be made available as Appendices to the draft EIR.

7. GETTING INVOLVED

Public participation is a crucial part of any environmental process, it is however critically important when activities have been triggered illegally and application for rectification and continuation is being considered. Public participation provides you – as stakeholder or interested member of the public - with the opportunity to find out more about what is being proposed, and/ or to raise any issues or concerns which you may have.

Please note that updates on the project will only be distributed to registered I&APs. In order to become a registered I&AP, you must either request that your name be added to the register, submit comments regarding the project in writing or digital format, or attend the Public meeting.

If you or your organization would like to register as an I&AP or comment on the proposed project and/ or know of any other persons or organizations interested in or affected by the project, please submit the attached form by faxed or mail to BolandEnviro (see contact details below). Alternatively, you can send your details by e-mail to BolandEnviro to the e-mail address provided below. Only comments submitted in writing or in digital format will be considered for inclusion in the EIR Reports.

All comments must be submitted to BolandEnviro as well as to the Department of Environmental Affairs and Development Planning (DEA&DP), see addresses below. The closing date for comments is 16 March 2010.

Should you have any questions regarding the project, please contact Nik Wullschleger of BolandEnviro at the contact numbers provided below.

Boland Environmental Consultants
Attention: Nik Wullschleger
P.O. Box 250, Worcester, 6849
Tel: (023) 347 0336 Fax: (023) 347 0336
Email: Tierkloof@Bolandenviro.co.za

The Head of Department
Department of Environmental Affairs and Development Planning
Private Bag X9086, CAPE TOWN, 8000
Tel: (021) 483 2803 / 5113 Fax: (021) 483 3633
Should you wish to register as an Interested and Affected Party (“I&AP”), or to raise any issues and concerns with regard to the project, please complete this form and return it to Boland Environmental Consultants, PO Box 250, Worcester, 6849 or Tierkloof@BolandEnviro.co.za on or before 16 March 2010.

1. PLEASE PROVIDE YOUR CONTACT DETAILS IN THE BOX BELOW:

<table>
<thead>
<tr>
<th>TITLE AND NAME</th>
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<tbody>
<tr>
<td>CAPACITY</td>
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<tr>
<td>POSTAL ADDRESS</td>
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| TEL NO. (INDICATE HOME OR WORK) |  |
| FAX NO. (INDICATE HOME OR WORK) |  |
| CELL NO. |  |
| E-MAIL ADDRESS |  |

Please indicate your preferred method for receiving information / notifications:

- [ ] email
- [ ] post
- [ ] fax

2. PLEASE PROVIDE THE CONTACT DETAILS OF ANY OTHER PERSONS/ ORGANISATIONS YOU WOULD LIKE TO REGISTER AS AN I&AP

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| CELL NO. |  |
| E-MAIL ADDRESS |  |

3. IN THE INTEREST OF AN OPEN AND JUST PROCESS, PLEASE DECLARE ANY INTEREST IN THIS MATTER, PLEASE NOTE THAT FAILURE TO DECLARE AN INTEREST MAY NULLIFY YOUR COMMENT OR EVEN LEAD TO LEGAL ACTION:

________________________________________________________________________

________________________________________________________________________

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4. PLEASE COMMENT, LIST ISSUES OR CONCERNS IN THE SPACE PROVIDED BELOW (YOU ARE WELCOME TO CONTINUE OVERLEAF, ATTACH ADDITIONAL PAGES OR SUPPORTING DOCUMENTATION (PLEASE NUMBER PAGES OR PROVIDE AN INDEX OF DOCUMENTS)):

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Signature: Date: