



LEGAL NOTICE NO.

THE PHYSICAL AND LAND USE PLANNING ACT, 2019
(No. 13 of 2019)

**THE PHYSICAL AND LAND USE PLANNING (DEVELOPMENT CONTROL
AROUND STRATEGIC INSTALLATIONS) REGULATIONS, 2020**

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THE PHYSICAL AND LAND USE PLANNING ACT, 2019

(No. 13 of 2019)

IN EXERCISE of the powers conferred by section 90 of the Physical and Land Use Planning Act, 2019, the Cabinet Secretary makes the following Regulations—

THE PHYSICAL AND LAND USE PLANNING (DEVELOPMENT CONTROL AROUND STRATEGIC INSTALLATIONS) REGULATIONS, 2020

Citation. **1.** These Regulations may be cited as the Physical and Land Use Planning (Development Control Around Strategic Installations) Regulations, 2020.

Interpretation. **2.** In these Regulations, unless the content otherwise requires—

“advisory” means an opinion whether a concept note or preliminary plan is compatible with permitted development around a strategic installation;

“buffer” means an area of land that separates two incompatible land uses within which development may not take place;

“County Executive Committee Member” has the meaning assigned to it under section 2 of the Act;

“Director General” means the Director General of Physical and Land Use Planning appointed under section 11 of the Act;

“electronic” has the meaning assigned to it under section 2 of the Kenya Information and Communications Act Cap 401A

“Forum” means the National Physical and Land Use Forum established under section 6 of the Act;

“georeference” has the meaning assigned to it in section 2 of the Land Act, 2012

“strategic installation” means an installation that is—

- (a) classified as such under the Act;
- (b) declared to be a strategic installation by the Cabinet Secretary after a risk assessment report prepared under these Regulations; or
- (c) developed within a strategic national project.

Declaration of strategic installations.

3. (1) The Cabinet Secretary may, on the Cabinet Secretary’s own motion or on application by a state organ, upon consideration of a risk assessment report, declare an installation not classified as a strategic installation under the Act to be a strategic installation.

(2) The Cabinet Secretary shall constitute a committee of the Forum under section 8 (3) as read with 7(d) of the Act to consider applications for a declaration under paragraph (1) and the preparation of a risk assessment report on the installation.

(3) The members of the committee constituted under paragraph (2) shall—

- (a) be knowledgeable about the strategic operational nature of strategic installations including national security operations ;
- (b) understand the economic value and importance of strategic installations; and
- (c) be in possession of relevant qualifications and experience in their fields of expertise.

(4) The committee constituted under paragraph (2) shall, in the preparation of the risk assessment report, consider the following matters—

- (a) the safety and security of the installation;
- (b) the effect loss, damage, disruption or immobilisation of the installation may have on general administration or provision of essential services;
- (c) whether or not the loss of the installation may disadvantage Kenya; and
- (d) how the safety and security of the installation impacts the delivery of essential services.

(5) The Cabinet Secretary shall, on the recommendation of the committee, declare an installation as a strategic installation by notice in the *Gazette*.

(6) The Cabinet Secretary shall, after the publication of the notice under paragraph (5), request the relevant county government to declare the area adjoining strategic installation to be a special planning area in accordance with section 52 of the Act.

Preliminary applications.

4. (1) A person shall submit an application for development in the area adjoining a strategic installation in paper or electronic formats in to the County Executive Committee Member for policy guidance and advice and the application shall include a concept note and preliminary plans.

(2) The County Executive Committee Member shall, within fourteen days after receiving the application under paragraph (1), issue a written advisory or refer it to the Director General for verification of compatibility with the development plan of the strategic installation.

(3) The County Executive Committee Member shall transmit a copy of the application to the head of the relevant ministry, department or agency responsible for the strategic installation.

(4) Where an applicant has not received an advisory under paragraph (2) within seven days after submitting the application to the County Executive Member, the applicant shall submit the application for development permission in accordance with Part IV of the Act.

Application for
development
permission.

5. (1) Where the County Executive Committee member issues advisory under regulation 4 (2), the applicant may submit the detailed application to the County Executive Committee Member for consideration and pay the prescribed fees.

(2) The application under paragraph (1) shall be submitted in the following format—

- (a) each document contained in the application shall be paginated;
- (b) each document sent in electronic form shall—
 - (i) be in PDF format;
 - (ii) not be password protected
 - (iii) not have hyperlinks
 - (iv) be capable of being reproduced in A4 size paper without losing accuracy;
 - (v) be limited to 25 Mb per file except GIS layer; and
 - (vi) have images of with a resolution of at least 1,200 printer dots per square inch; and
- (c) each plan contained in the application shall be georeferenced.

(3) Each digital plan contained in the application shall embed an electronic signature or a manual signature on a document that is scanned for electronic submission by the author.

(4) For purposes of computation of time, the deadline for electronic submission of documents including the county executive committee member issuing an advisory, on development applications lodged electronically shall be 23:59:59 hours Kenyan time.

(5) Where due to a reasonable cause that may include a system prolonged down time, resulting in the author's inability to submit an application electronically, the author may submit a hard copy application to the county executive committee member and give reasons

(6) Upon receipt of the application, the County Executive Committee Member shall invite comments from relevant authorities and agencies including the Director General.

(7) The comments sought under paragraph (3) shall be submitted to the County Executive Committee Member within fourteen days after the request by the County Executive Committee Member.

(8) After receiving a copy of the application under regulation 4 (3), the Director General shall request comments from the head of the ministry, department or agency responsible for the strategic installation and the committee constituted under section 8 (3) of the Act to consider and comment on the application.

(9) The Director General shall submit his or her comments on the request under paragraph (3), which shall take into consideration the comments of the head of the ministry, department or agency responsible for the strategic installation and the committee constituted under section 8 (3) of the Act, within the period specified in paragraph (4) to the County Executive Committee Member.

(10) When considering an application for development permission, a County Executive Committee Member shall also take into consideration the comments sought under paragraph (3) before granting development permission.

(11) A person shall not undertake any development in the area adjacent to a strategic installation without development permission from the relevant County Executive Committee Member.

(12) Where a service provider receives a request for connection to a development around a strategic installation, the service provider shall confirm that development permission has been granted before making the connection.

Determination
of application
for development
permission.

6. (1) After receiving the comments requested under regulation 5 (5), the County Executive Committee Member shall consider the application for development permission under regulation 5 (1) and—

- (a) approve the application with or without conditions;
- (b) reject the application; or
- (c) defer an application

(2) The County Executive Committee Member shall within fourteen days of receiving comments received under regulation 5 (3) notify the applicant of the decision made on the development application in writing including reasons for making the decision .

(3) The County Executive Committee Member shall transmit a copy of the decision under paragraph (2) to the Director General and the head of the ministry, department or agency responsible for the strategic installation.

Appeals.

7. Any person aggrieved by a decision of the County Executive Committee Member with respect to an application for development permission under these Regulations may appeal in writing to the County Physical and Land Use Planning Liaison Committee within fourteen days after the decision.

Monitoring.

8. (1) The County Executive Committee Member shall monitor the implementation of approved developments in areas adjacent to strategic installations to ensure that they comply with the conditions of development permissions and prepare status reports thereon.

(2) The County Executive Committee Member shall transmit copies of the status reports prepared under paragraph (1) to the Director General.

(3) The Director General may, on his or her own motion, or on request from the head of the ministry, department or agency responsible for the strategic installation, or on the basis of the status report transmitted under paragraph (2), convene a meeting with the respective County Executive Committee Member, a representative from the ministry, department or agency and the developer if—

- (a) a developer commences development without development permission; or
- (b) the development does not comply with the conditions of the development permission.

(4) Where a developer commences development in an area adjacent to a strategic installation without development permission or does not comply with the conditions of the development permission, the County Executive Committee Member may, by notice in writing—

- (a) direct that the developer shall cease all operations until the developer has complied with the provisions of these Regulations;
- (b) specify the measures the developer shall be required to take in order to comply with the conditions of the development permission with a period to be specified by the County Executive

Committee Member;

- (c) specify the measures the developer shall take to regularise the development and the period within which the regularisation shall take place; or
- (d) require the demolition or alteration of the development or works or the discontinuance of any use of the subject land or the carrying out of any other activities within a period to be specified by the County Executive Committee Member.

(5) The determination of the County Executive Committee Member made under paragraph (4) shall be transmitted to the Director General and the head of the ministry, department or agency responsible for the strategic installation.

Register.

9. The County Executive Committee Member shall maintain a register of all development applications received and development permissions granted under these Regulations.

Made on the, 2020.

FARIDA KARONEY,
Cabinet Secretary for Lands and Physical Planning.