

## **SUBSIDIARY LEGISLATION**

**IN EXERCISE** of the powers conferred by section 69 (3) of the Physical and Land Use Planning Act, 20019, the Cabinet Secretary for Lands and Physical Planning makes the following Regulations—

### **THE PHYSICAL AND LAND USE PLANNING (CLASSIFICATION OF STRATEGIC AND INTER-COUNTY PROJECTS) REGULATIONS, 2019**

#### **1) Short Title**

These Regulations may be cited as the Physical and Land Use Planning (Classification of Strategic and Inter-county Projects) Regulations, 2019

#### **2) Interpretation**

In these Regulations, unless the context otherwise requires—

**“Projects of strategic national importance”** means projects that are conceived, designed and implemented in furtherance of the Kenya Vision 2030, the Big Four Agenda and other national strategic objectives that arise out of the residual functions of the National Government and include programme activities or initiatives that have implications in terms of the obligatory demands on the State in terms of international conventions and treaties ratified by Kenya, inter-boundary resource use and management, law of the sea, aviation law, United Nations declarations, African Union and the Regional Economic blocks declarations and agreements;

**“inter-county projects”** means projects carried out in implementation of approved inter-county physical and land use development plans and projects for the realisation

of public purpose objectives of national significance beyond the jurisdiction of individual counties;

**“public purpose”** means the purposes of—

(a) transportation including roads, canals, highways, railways, bridges, wharves and airports;

(b) public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;

(c) public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;

(d) public parks, playgrounds, gardens, sports facilities and cemeteries;

(e) security and defence installations;

(f) settlement of squatters, the poor and landless, and the internally displaced persons; and

(g) any other similar purpose;

### **3) Application:**

These Regulations shall apply to national government ministries, departments and agencies including regional development authorities, national security organs, national road development entities, research institutes, state-owned learning institutions, state-owned sporting and cultural facilities, environmental and wildlife management authorities and private sector entities that are implementing projects of national significance under special licence;

### **Types of projects:**

These Regulations shall apply to the following types of projects—

- (a) projects for the implementation of national government functions specified in Part I of the Fourth Schedule to the Constitution;
- (b) projects for the implementation of functions not assigned to either level of government that are undertaken by the national government for the social and economic well-being of Kenyans under Article 186 (3) of the Constitution;
- (c) projects that are conceived, designed and implemented under Kenya Vision 2030;
- (d) projects implemented by the private sector in special economic zones and export processing zones;
- (e) projects undertaken by the national government in inter-coastal zones, the territorial sea, exclusive economic zones and inland lakes;
- (f) projects undertaken by the national government under international conventions, declarations or treaties ratified by Kenya.;
- (g) projects undertaken on public land that is held by the national government including on reserved public land, wetlands, riparian areas, public forests, national reserves, mountains and gazetted water towers;
- (h) projects undertaken by regional development authorities;
- (i) inter-county projects implemented by the national government in collaboration with a county government; and
- (j) any other project as may be determined by the Cabinet Secretary under the Act or any other written law.

**A project shall be deemed to be a strategic or inter-county project of national importance if—**

- (a) it is implemented on public land by the national government;

- (b) it is implemented on land held by the national government ;
- (c) it is funded by the national government;
- (d) it is for the implementation of a national government development programme;
- (e) it is for the implementation of a development programme under a special arrangement between the national government and a county government;
- (f) it is implemented by the private sector and, due to its scale, geographical area and economic effects, requires special support by the national government;
- (g) it is provided for by national legislation;
- (h) it is undertaken in a special planning area under section 52 of the Act; or
- (i) it is specified in the National Physical and Land Use Plan under section 21 of the Act.

**4) For the purposes of these Regulations, the projects specified in the Schedule hereto shall be deemed to be projects of strategic national or inter-county importance in the criteria set out therein.**

## **SCHEDULE**

(r. 4)

### PROJECTS OF STRATEGIC AND INTER-COUNTY IMPORTANCE AND THE CRITERIA FOR DETERMINATION

- i. Road Transport
- ii. Railway
- iii. Airports
- iv. Sea and Inland water ports
- v. Industrial Parks, Special Economic Zones, Export Processing Zones and Technology Parks
- vi. National Museums and Archeological Sites
- vii. National Theatres and Cultural Exhibition Centres
- viii. National Stadia and Sports centres
- ix. Education and Training Institutions

- x. Housing
- xi. Metropolitan and City Development
- xii. Land Banking, Reservation, Acquisition and Purchase
- xiii. Public Forests
- xiv. Ecologically sensitive fragile areas
- xv. Wildlife Conservation Areas
- xvi. Geologically unstable areas
- xvii. National Irrigation Schemes
- xviii. Strategic installations
- xix. Blue Economy (Development within controlled coastal land)
- xx. Energy
- xxi. Telecommunication
- xxii. Mining, quarrying and sand harvesting
- xxiii. Oil and Gas
- xxiv. National Referral Hospitals
- xxv. National and intercounty public purpose

**5) Typology of Physical and Land Use Development Plans to be prepared under section 13(c) (g) of the Act.**

- i. The Director-General of Physical and Land Use Planning shall prepare physical and land use plans with respect to projects of strategic national importance.
- ii. The types of plans to be prepared by the Director-General of Physical and Land Use Planning for projects of strategic national importance shall include the following:
  - a) Local Physical and land use development plans
  - b) Action area plans

- c) Special Area Plans
  - d) Subject Plans
  - e) Advisory plans
  - f) Zoning Plans
  - g) Marine spatial plans
  - h) Part Development Plans
- iii. The Director-General of Physical and Land Use Planning shall coordinate the preparation of Inter-county physical and land use development plans to inform implementation of intercounty strategic projects.
  - iv. Other types of physical and land use development plans envisaged in these Regulations may be prepared by commissioned registered physical planners save for Part Development Plans and plans prepared for implementation of strategic installations.
  - v. The Director-General shall be involved in the formulation of technical terms of references, supervise and certify physical and land use development plans prepared by commissioned registered physical planners before approval and implementation to ensure that plans conform to the strategic objectives of the intended projects.
  - vi. The Director General shall submit certified physical and land use plans to the Cabinet Secretary for approval.
  - vii. The National Land Commission shall monitor and oversee implementation of all approved physical and land use development plans prepared for strategic national significance.

## 6) Procedure and processes for Preparation of Physical and Land use development plans for national strategic projects (section 13 (g))

- i.** Prior to the commencement of preparation of a Physical and Land Use development Plan the Director-General shall publish a notice in the prescribed form, in the *Kenya Gazette*, in at least two newspapers of national circulation and through electronic media. ***(Statutory form to (1) communicate notice of commencement & engagement)***
- ii.** Physical and Land Use Development Plans with respect to Kenya Defence Forces and other national security installations are exempt under this Part.
- iii.** The Cabinet Secretary may by a notice in the *Gazette*, make exemptions under this Part for any entity in circumstances he or she deems fit.
- iv.** The Cabinet Secretary may refer physical and land use development plans which have proposals that may have negative impacts to preservation of national security installations to the National Physical and Land Use Planning Consultative Forum for consideration and advise.
- v.** The National Physical and Land Use Planning Consultative Forum shall submit comments within 60 days of receiving the physical and land use development plans.
- vi.** The Director-General shall circulate the plans prepared save for those in (ii) and (iii) to the following authorities for comments:
  - a) Chief Architect, Ministry of Public Works
  - b) Chairman, National Land Commission

- c) Director General National Environment Management Authority
- d) Director General Medical Services
- e) Director General of Relevant Road Authority
- f) County Executive Committee Member in Charge of Physical and Land Use Planning in Respective County Government
- g) Director General, Kenya Civil Aviation Authority
- h) Managing Director, Kenya Airports Authority
- i) Principal Secretary, Ministry of Defence
- j) Principal Secretary for the time being in charge of Ministry of Interior and Coordination of
- k) National Security Council
- l) Any other relevant authority

**vii.** The relevant authorities shall submit comments within 21 days from the date of circulation.

**viii.** The Director-General may refer the plans to the National Physical and Land use Planning Consultative Forum for consideration in the event there is no consensus in the preparation of physical and land use development plans.

**ix.** The Director-General shall on completion of the plan, publish a notice in the prescribed form in the Kenya Gazette, in at least two newspapers in English and Swahili of national circulation and through electronic media.

**x.** The Director-General shall within 7 days from the date of Gazettement deposit the plan(s) for public viewing and comments in office of the Director-General and the County Directors office of the respect county(ies) and the Ministry's website.

- xi.** The members of the public shall make comments, representation and/or objections in writing within 30 days from the date of notice.
- xii.** The Director-General shall within 14 days of receiving comments from the relevant authorities prepare a technical advisory report and certify the physical and land use development plans.
- xiii.** The Director-General shall within 7 days from the date of certification of the Plan(s) forward the physical and land use development plans to the Cabinet Secretary for approval.
- xiv.** The Director-General shall within 7 days from the date of Approval of a Physical and Land Use Development plan publish a notice of approval in the prescribed form, in the Kenya Gazette, in at least two newspapers (English and Kiswahili) of national circulation and through electronic media.
- xv.** The approved plans shall be submitted to implementing agencies, National Land Commission and respective county government(s).

## **7) Procedures and processes for handling applications for development permission for prescribed projects of strategic national importance**

### **Development Permission**

- i. The applicant shall submit to the Cabinet Secretary a duly filled statutory application form both hard and/or digital copies.
- ii. Each document must be paginated
- iii. Documents sent in electronic form should be in **PDF**
- iv.** All plans should be **Georeferenced**
- v. **Digital** plans should embed a digital certification by the person who prepares the plan.
- vi. The Cabinet Secretary shall within fourteen days of receiving an application cause the Director-General to circulate the application to the following authorities for comments:

- a) Chief Architect, Ministry of Public Works
  - b) Chairman, National Land Commission
  - c) Director General, National Environment Management Authority
  - d) Director General of Medical Services
  - e) Director General of Kenya National Highways Authority
  - f) Director General of Kenya Urban Roads Authority
  - g) County Executive Committee Member in Charge of Physical and Land Use Planning in the respective County Government(s)
  - h) Director General, Kenya Civil Aviation Authority
  - i) Managing Director, Kenya Airports Authority
  - j) Principal Secretary, Ministry of Defence
  - k) Principal Secretary, Interior and Coordination of National Government
  - l) National Security Council
  - m) Any other relevant authority
- vii. The consulted authorities shall submit comments to Director-General within (30) thirty days.
- viii. The Director-General shall, within seven (7) days of receipt of comments from relevant authorities, prepare and submit a technical report to the Cabinet Secretary recommending: approval of the application with or without conditions; deferment or rejection of the application.
- ix. The Cabinet Secretary shall, within seven (7) days of receipt of technical report approve the application with or without conditions; defer or reject the application. In the instances of deferment or rejection of an application, reasons shall be given in writing.

## **10. Matters That are Considered in the Projects of Strategic National Significance**

- i. **Land Transport**
  - Class A road corridors
  - Class B road corridors

- Class C road corridors
- Inter-county roads
- Super Highways
- Major urban roads: Primary, Secondary and Arterial Roads.
- Special roads serving a strategic national facility (beaches, mineral extraction areas, military camps and other security facilities, learning institutions, conservation areas, special projects roads)
- Special interchanges, bridges and tunnels
- Any road leading to international borders

**Applicable statutes and Policy provisions**

(Section 12 (2) (d) of the Land Act, 2012, Constitution of Kenya and Roads Act, 2007 - first schedule, part (a) and (b), Environmental Management and Coordination Act, 2011, Section 5 of the Special Economic Zone Act, No. 16 of 2016, Sessional Paper No. 10 of 2012 on Kenya Vision 2030)

**ii. Railway**

- The entire rail transport corridor

**Applicable statutes and Policy provisions**

Kenya Railways Act, 2005

**iii. Airports**

- All International Airports
- National Airports
- Regional airports (Diani, Kakamega, Lodwar, Garissa, Manda)
- Special airports Laikipia Moi airbase, Manda, Wajir
- Private airstrips (e.g. for training)

**iv. Water Transport**

- Harbors and Ports (seaports and inland ports)
- International ports (e.g. Kisumu)
- Regional ports
- National Ports

**v. Industrialization**

- Special Economic Zone declared under the Special Economic Zones Authority) SEZA

- Industrial parks
- Export Processing Zones
- Techno parks

### **Applicable statutes and Policy provisions**

(Article 62(1f) and article 186 (3 & 4) of the constitution Kenya, Vision 2030, National Spatial Plan, National Land Use Policy, National Industrial Master Plan, The National Industrialization Policy, Section 5 of the Special Economic Zones Act No. 16 of 2015, Section (6) Mining Act No 12 of 2016, Kenya Mining Policy, 2016, Mining Regulations, 2017, Export Processing Zones Act)

### **vi. National Museums and Archeological Sites**

- Museums under national government e.g ([Lamu, Fort Jesus\) Museum](#), [Mombasa, Malindi Museum](#))

### **Applicable statutes and Policy provisions**

(The National Museums and Heritage Act Cap 216 Revised Edition 2009 (2006). UNESCO World Heritage Sites Atlas)

### **vii. National Theatres and Cultural Exhibition Centres**

- Bomas of Kenya
- The Kenya National Theatre

(The National Museums and Heritage Act Cap 216 Revised Edition 2009 (2006). UNESCO World Heritage Sites Atlas)

### **viii. National Stadia and Sports centres**

- National stadia
- National Arena
- ASK Showgrounds
- Exhibition grounds

### **Applicable statutes and Policy provisions**

(Sports Act 2013)

### **ix. Education and Training Institutions**

- Public universities
- Tertiary Technical Training Institutions
- special education institutions
- Training and Research Institutions
- Secondary and primary schools
- National Libraries

### **Applicable statutes and Policy provisions**

(Part 1 of the 4<sup>th</sup> Schedule of CoK, Basic Education Act No. 14 of 2013, Science Technology and innovation act No. 28 of 2013, TIVET Act No. 29 of 2013, Universities Act No. 42 of 2012)

#### **x. Housing**

- Affordable Housing
- Social Housing
- Institutional Housing
- Public Housing
- Emergency Housing

#### **Resettlements of:**

- Landless
- Internally Displaced Persons
- Relocation (Projects Affected Persons)
- Informal settlements dwellers
- Refugees (Kakuma, Dadaab)

### **Applicable statutes and Policy provisions**

(Article 43 of the Constitution of Kenya, Land Act 2012, Land Registration Act, 2012, Urban Areas and Cities Act, 2011, Kenya Vision 2030, National housing policy, Urban Development Policy, National Slum Upgrading and Prevention Policy, National building maintenance policy, Public Health Act Cap 242, National Land Use Policy, 2017, Housing Act Cap 117, The Big Four Agenda)

#### **xi. Metropolitan and City Development**

- Declared Metropolitan areas (e.g. Nairobi Metropolitan Region)
- The Capital City of Kenya (Nairobi)
- Special planning area
- Regional transportation and commercial hubs
- Special Cities (Technopolis, Resort Cities)
- Gateway cities/border towns and ports Gateway

### **Applicable statutes and Policy provisions**

(Article 187 of the Constitution of Kenya, 2010, Kenya Vision 2030, National Spatial Plan, National Land Use Plan, Nairobi Metro 2030, Urban Areas and Cities Act, 2011, Section 30 of the Physical and Land Use Planning Act, 2019, Urban Development Policy, Draft National Transport Policy)

## **xii.Land Banking, Reservation, Acquisition and Purchase**

- Land banking
- Land reservation
- Land acquisition and purchase
- Land titling

### **Applicable statutes and Policy provisions**

(Section 3.6.1.4 of Sessional Paper No. 3 of 2009 on National Land Policy, Section 94 (e) of Sessional Paper No. 3 of 2009 on National Land Policy, Article 62(1)(c) of The Constitution of Kenya, Section 26(1) of the Community Land Act, 2016 states that a community may set aside part of their registered community land for public purposes , Section 9,12 and 13 of Land Act No.6 of 2012, Section 1.4-13 of the National Housing Policy, No.3 of 2006)

## **xiii.Public Forests**

- National Government forests (under Kenya Forest Service) both conservation and plantation
- Gazetted water towers (coordinates the activities of Kenya Wildlife Service, Kenya Forest Service, Water Resource Management Authority etc. for conservation purposes)
- Hilltops

### **Applicable statutes and Policy provisions**

(Forest Conservation and Management Act,2016 and Article 62 of the Constitution)

## **xiv.Ecologically sensitive fragile areas**

- Mountains
- Hills
- Coastal regions
- Wetlands
- Riparian reserves

### **Applicable statutes and Policy provisions**

(Article 60 (1) of the Constitution, Section 44 of Environmental Management and Coordination Act, 1999, Integrated National Land Use Guidelines, Article 191 of the Constitution)

#### **xv. Wildlife Conservation Areas**

- National parks and reserves (Terrestrial and marine)
- Government animal dispersal corridors
- Specially protected areas
- Animal sanctuaries

### **Applicable statutes and Policy provisions**

(Schedule 4 Part 1 (22) (c) of the Constitution, Section 32 and 35 of the Wildlife Conservation and Management Act)

#### **xvi. Geologically unstable areas**

- Volcanic prone areas
- Seismic prone areas
- Landslides prone areas

### **Applicable statutes and Policy provisions**

(Environmental Management and Coordination Act No. 8 of 1999, Physical and Land Use Planning Act No. 13 of 2019, Mining Act, 2016, Sessional Paper No. 1 of 2017 on National Land use Policy)

#### **xvii. National Irrigation Schemes**

- Large scale – over 3000acres
- Medium Scale – 100-3000 acres
- Small Scale – below 100acres

### **Applicable statutes and Policy provisions**

(Section (2) of the National Irrigation Act, 2019)

#### **xviii. Strategic installations**

- State houses and lodges
- Parliament
- Kenya Defence forces
- Safeguarding areas
- National security installations
- Kenya Coast Guards

- Kenya Space Agency
- Embassies, consulate and United Nations offices
- National border control projects
- Nuclear energy
- National broadcasting and telecommunication sites and facilities
- Oil terminals/strategic reserve tanks
- National youth services
- National grain storage
- Kenya wildlife service
- Kenya forest service
- Airports
- Large Termini
- Sea Ports and Inland container port
- Kenya Medical Supplies Agency

### **Applicable statutes and Policy provisions**

(Constitution of Kenya 2010- article 186 fourth schedule and article 66 ,International treaties/agreements/conventions, Protected areas Act, 2012, National Intelligence Service Act ,2012, Physical and Land Use Planning Act,2019, section 7, 69,70, Kenya Coast Guard Service Act, 2018 , Kenya Information and Communication Act,2012, Energy Act no.1 of 2019, National Youth Service Act,2018, Wildlife (conservation and management) Act Cap 376, Kenya Defence forces Act of 2012, Agriculture and Food Authority Act no.13 of 2013, National Police Service Act, 2012, Forest Conservation and management Act,2016, Kenya Airports Authority Act no.3 of 1991, Kenya Ports Authority Act Cap 391, Kenya Defence Forces Act,2012, National spatial plan, National land use policy, 2017, Vision 2030 projects, Kenya Defence Policy 2015, National Land Policy-sessional paper no.3 of 2009)

### **xix. Blue Economy (Development within controlled coastal land)**

- Harvesting and trade of marine living resources (fisheries and aquaculture)
- Extraction and use of marine nonliving resources
- Use of renewable non-exhaustible natural energy
- Commerce and trade in and around the oceans (Maritime transport, coastal development, Tourism and recreation)

### **Applicable statutes and Policy provisions**

(Kenya Maritime Authority Act 2006, Merchant Shipping Act 2009, Kenya Ports Authority Act 2012, Fisheries Management & Development Act, 2016, Blue Economy Sector Plan (2018-2022), Agriculture & Food Authority Act, Article 2, 62, 66, definition of Land under Article 260 of the Constitution of Kenya)

## **xx. Energy**

- Renewable energy
- Super high voltage lines
- Large hydro generation power plants
- Nuclear power stations
- Electronic and radioactive wastes disposal facilities
- Power step down and transfer stations

### **Applicable statutes and Policy provisions**

(Constitution of Kenya, Water Act No. 43 of 2016, Environmental Management and Coordination Act No. 8 of 1999(EMCA), Kenya Information & Telecom Act of 2015, Nuclear Act, US Nuclear energy policy, Land Act, National Construction Authority, Physical and Land Use Planning Act No. 13 of 2019, Kenya Bureau of Standards Act, Energy Act No. 1 of 2019, Public Health Act No. 1 of 2017, Wayleaves Act, Cap 292)

## **xxi. Telecommunication**

- Telecommunication substation
- Telecommunication masts
- Fibre Optic

### **Applicable statutes and Policy provisions**

(Wayleaves Act, Cap 292, Kenya Information and communication Act Cap 441A)

## **xxii. Mining, quarrying and sand harvesting**

- Coal
- Gold
- Iron
- Rare Minerals
- Sand (including beach)

### **Applicable statutes and Policy provisions**

(Article 62(1) (f) of the constitution, Article 186 (3 & 4), The Mining Act No. 12 of 2016)

## **xxiii. Oil and Gas**

- Oil and gas pipeline that transcend several counties
- Underground oil and gas storage facilities
- Liquefied petroleum and natural Gas reception buildings and facilities

### **Applicable statutes and Policy provisions**

(Land Act of 2012, Petroleum Act, 2019)

#### xxiv. **National public utility areas**

- Water treatment works
- Sewerage treatment works
- Solid waste management sites
- Sites for disposal of plastic, electronic and hazardous waste
- National hospitals medical wastes

##### **Applicable statutes and Policy provisions**

(Constitution of Kenya 2010- article 186 fourth schedule, Vision 2030, Water Act, Cap 372, Environmental Coordination and Management Act, 1999, Physical and Land Use Planning Act No. 13 of 2019, Kenya Communication Act, 1998, Energy Act, 2019, National Spatial Plan, National Energy policy , Sessional Paper No. 1 of 2017 on National Land Use Policy)

#### xxv. **National Referral Hospitals**

- Kenyatta National Hospital
- Moi Teaching and Referral Hospital
- Mathari Hospital
- spinal injury hospital
- Kenyatta University Teaching and Referral Hospital
- Defence Forces Memorial Hospital

##### **Applicable statutes and Policy provisions**

(Constitution of Kenya 2010- article 186 fourth schedule, Kenya Defence Forces Act, 2012, Health Act, 2017, Physical and Land Use Planning Act, 2019

National spatial plan, Sessional Paper No. 1 of 2017 on National land use policy

Mental Health Act cap 248)

#### xxvi. **National public purpose areas**

- Parks and open spaces
- Beaches
- Libraries
- Correctional services (Prisons training colleges, Prisons, Juvenile centers
- Courts
- Disaster Management centres

- Meteorological centers
- National events grounds

**Applicable statutes and Policy provisions**

(Constitution of Kenya 2010- article 186 fourth schedule, Kenya Prisons Act Cap 90, Physical and Land Use Planning Act,2019, National Spatial Plan, Sessional Paper No. 1 of 2017 on National Land Use Policy ,2017)