



MINISTRY OF LANDS AND PHYSICAL PLANNING

REGULATORY IMPACT STATEMENT

FOR

**THE PHYSICAL AND LAND USE PLANNING REGULATIONS,
(SECTION 90), 2021**

AUGUST, 2021

This Regulatory Impact Assessment (RIA) has been prepared by the Ministry of Lands and Physical Planning pursuant to Section 6 and 7 of the Statutory Instruments Act (No. 23 of 2013)

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ABBREVIATIONS

ADR-	Alternative Disputes Resolution
CAD-	Computer Aided Design
CGA-	County Government Act, 2012
EDMS-	Electronic Document Management Systems
GIS-	Geographic Information Systems
GLA-	Governments Land Act
LGA-	Local Government Act, 1963
LPA-	Land Planning Act, 1968
PLUPA-	Physical and Land Use Planning Act, 2019
PPA-	Physical Planning Act, 1996
TPA-	Town Planning Act, 1934
UACA-	Urban Areas and Cities Act, 2011

CHAPTER 1 : INTRODUCTION AND BACKGROUND

1.1 Introduction

Section 90 of the Physical and Land Use Planning Act, 2019 mandates the Cabinet Secretary to make regulations for giving effect to the Act. These regulations made under this subsection shall provide for—

- a) procedures for preparation and approval of physical and land use plans;
- b) the norms, guidelines and standards for delivery of physical and land use planning services across the country;
- c) guidelines for operations of Inter-County Physical and Land Use Planning Committees;
- d) procedures for the conduct of Physical and Land Use Planning Liaison Committees;
- e) procedure and process of handling applications for development permission;
- f) any other matter generally required to give effect to the provisions of the Act.

Consequently, the Cabinet Secretary has formulated sixteen (16) sets of Physical and Land Use Planning Regulations to give effect to the Physical and Land Use Planning Act, 2019.

1.2 Requirements of the Statutory Instruments Act, 2013

Under Sections 6 and 7 of the Act, if a proposed statutory instrument is likely to impose significant cost in part of the community, or part of the community, the regulation making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement.

Under the Act, a regulatory impact statement shall contain;

- a) a statement of the objectives of the proposed legislation and the reasons for them;
- b) a statement explaining the effect of the proposed legislation, including in the case of a proposed legislation which is to amend an existing statutory instrument the effect on the operation of the existing statutory instrument;
- c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- e) the reasons why the other means are not appropriate;

- f) any other matters specified by the guidelines;
- g) a draft copy of the proposed statutory rule

The Ministry of Lands and Physical Planning prepared a concept paper on statutory instruments necessary to operationalize the Physical and Land Use Planning Act, 2019. The concept paper was subjected to stakeholders' comments as required by Section 5 of the Statutory Instruments Act, 2013. These comments were used to enrich the concept paper.

CHAPTER 2 : OBJECTS OF THE PHYSICAL AND LAND USE PLANNING REGULATIONS, 2021

The general objective of these regulations is to give effect to Section 90 of the Act. The specific objectives are to provide:

- a) the principles, procedures and standards for the preparation and implementation of physical and land use development plans at the national, county, urban, rural and cities level;
- b) the administration and management of physical and land use planning in Kenya;
- c) the procedures and standards for development control and the regulation of physical planning and land use;
- d) a framework for the co-ordination of physical and land use planning by county governments;
- e) a mechanism for dispute resolution with respect to physical and land use planning;
- f) the functions of and the relationship between planning authorities

CHAPTER 3 : BACKGROUND AND CONTEXT

3.1 History of Planning Legislation in Kenya

Since the colonial era, Kenya has had seven (7) legislations that have guided the planning practice. These include; Town Planning Act Cap 134, Development and Use of Land (Planning) Regulations 1961, Land Control Regulations 1963, Local Government Act Cap 265, The Land Act Cap 303, Land Planning Act Cap 302 and Governments Land Act Cap 280. The planning regimes can be classified into three namely the dual system, the unified and the devolved systems.

The dual system compartmentalized planning into rural and urban and was regulated by: the Town Planning Act Cap 134, Development and Use of Land (Planning) Regulations 1961, Land Control Regulations 1963, Local Government Act Cap 265, The Land Act Cap 303, Land Planning Act Cap 302 and Governments Land Act Cap 280. Section 2 and 53 of PPA established a unified

system for both urban and rural planning by repealing LPA and TPA. Under the devolved system, physical and land use planning is a concurrent function of the two levels of Government. The Fifth Schedule of the Constitution mandated Parliament to enact a statute to regulate land use. The Physical and Land Use Planning Act, 2019 (PLUPA) was enacted and it repealed PPA. The Act applies to all parts of Kenya.

3.2 Existing Scenario

Pursuant to Section 24 of the Interpretations and General Provisions Act, 1983 Cap 2, regulations under PPA remain in force as long as they are not inconsistent with the repealing Act; until revoked or repealed by subsidiary legislation issued under provisions of the repealing Act.

3.3 Paradigm Shift

The Physical and Land Use Planning Regulations (Section 90), 2021 seek to align physical and land use planning to the current constitutional and statutory dispensation.

Constitutional Dispensation

The promulgation of the Constitution of Kenya, 2010 established new governance structures in the form of the National Government and forty-seven County Governments. Under Article 186 (2) of the Constitution, physical and land use planning is a concurrent function of the two levels of Government. Article 67 establishes the National Land Commission and mandates it to monitor and have oversight responsibilities over land use planning throughout the country.

Statutory Dispensation

Under the Physical and Land Use Planning Act, 2019, the Cabinet Secretary is the planning authority with respect to National Government planning functions while the County Executive Committee Member is the planning authority with respect to County Government planning functions.

Section 11 of the Physical and Land Use Planning Act, 2019 establishes the office of the Director General of physical and land use planning responsible to the Cabinet Secretary. The mandate of the Director General is to advise the government on strategic physical and land use planning matters that impact the whole country and formulate national physical and land use plans, policies, guidelines and standards. On the other hand, Section 18 establishes the office the County Director of physical and land use planning who shall be responsible to the County Executive Committee

Member. The County Director advises the county government on physical and land use planning matters that impact the county and formulates county physical and land use plans, policies, guidelines and standards.

The Act also establishes the National and County Physical and Land Use Consultative Forums whose mandate is to promote effective coordination and integration of physical and land use development planning and sector planning at the two levels of government.

Section 73 establishes the National Physical and Land Use Planning Liaison Committee whose mandate is to hear appeals against decisions made by the national planning authority while Section 76 establishes a County Physical and Land Use Planning Liaison Committee for each county whose mandate is to hear and determine complaints and claims made in respect to applications submitted to the planning authority in the county.

Physical Planning Act did not provide for preparation of plans and processing of development applications in electronic form. Physical and Land Use Planning Act, 2019 provides for preparation of plans and processing of development applications in electronic form.

CHAPTER 4 : EVALUATION OF THE PROBLEM

4.1 Identified Challenges

1. Limited Implementation of Physical Development Plans

Under PPA, plan preparation was carried out by the central government and implemented by the local authorities. This led to lack of ownership of these development plans therefore limited implementation of the plans.

PLUPA mandates the National Government and County Governments to prepare and implement plans within their areas of jurisdiction. The proposed regulations will guide plan preparation, approval and implementation. This is expected to cure the problem of ownership and encourage implementation.

2. Lack of Uniformity in Processing Development Applications

Currently, there lacks uniformity across the nation with regard to processing development applications which leads to confusion and hinders ease of doing business. The proposed

regulations will provide a uniform mechanism of receiving, considering and approving development applications in a timely manner.

3. Inadequate Guidelines on the Outputs from the Technology Based Physical And Land Use Development Plans

Before the late 1990's, plan preparation and development control were analogue and paper based. The physical and land use planning institutions and professionals later embraced the use of technology namely Computer Aided Design (CAD), Geographic Information Systems (GIS) and Electronic Document Management Systems (EDMS). The outputs on the technology based physical and land use development plans are however not guided or regulated. These regulations will provide guidelines to standardize the outputs.

4. Gaps in Guiding Preparation and Development Control of Strategic National And Inter-County Projects

Previously, there were no specific guidelines for preparation of strategic national and inter-county projects, hence lack of clarity on how different physical and land use planning entities handled such projects. PLUPA has categorized strategic national and inter-county projects and the role of different authorities in the preparation, approval and implementation process. The regulations will provide clear guidelines on how to process these projects.

5. Variance in Policy and Legal Provisions for Development Control

The establishment of County Governments by the Constitution and the County Governments Act, 2012 led to the need to align planning procedures and standards for development control to the provisions of these statutory frameworks. The physical and land use planning regulations will harmonize the planning procedures and standards across the stated legislations.

CHAPTER 5 : LEGAL AND POLICY FRAMEWORK FOR THE PROPOSED PHYSICAL AND LAND USE PLANNING REGULATIONS

5.1 The Constitution of Kenya, 2010

Article 66(1) states that the state may regulate the use of any land, or any interest in or right over any land, in the interest of defense, public safety, public order, public morality, public health or land use planning.

Article 67(2)(h) mandates the National Land Commission to monitor and have oversight responsibilities over land use planning throughout the country.

Article 43 of the Constitution stipulates that every person has the right to: health, adequate housing and sanitation, education and social security among others. The regulations require incorporation of these rights in the plans.

According to article 60, land in Kenya shall be held and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles:

- i. Sustainable and productive management of land resources
- ii. Sound conservation and protection of ecologically sensitive areas
- iii. Encouragement of communities to settle land disputes through recognized local community initiatives consistent with the Constitution

The regulations give effect to Articles 43, 60, 66(1) and 67(2)(h).

Section 21 of Part 1 of the Fourth Schedule mandates the National Government to formulate general principles of land planning and coordinate planning by the counties. These regulations provide uniform coordinated processes of physical and land use planning by the counties.

Section 32 of Part 1 of the Fourth Schedule states the national government shall provide capacity building and technical assistance to the counties. The regulations form part of the resources to support county governments in the performance of the planning function.

5.2 Sessional Paper No 3 of 2009 on the National Land Policy

The vision of the policy is to “guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity”. The physical and land use planning regulations (Section 90), 2021, are in accord with the vision of the policy.

5.3 Sessional Paper No.1 of 2017 on the National Land Use Policy

The proposed regulations seek to actualize the aspirations of the Sessional Paper No. 1 of 2017 of National Land Use Policy of implementing the physical planning legislation to facilitate urban and rural planning, operationalizing physical planning structures at the National and county level to ensure their effective and efficient performance. They will also harmonize operations of other sectoral regulatory agencies.

5.4 Physical and Land Use Planning Act, 2019

The proposed regulations seek to operationalize the institutions established by the Act, provide uniformity in preparation of physical and land use plans, guide development control, enforcement and dispute resolution at the national and county levels. The regulations give effect to Section 90 of the Act.

5.5 County Governments Act, 2012

Section 104 obligates a county government to plan for the county and that no public funds shall be appropriated outside a planning framework developed by the county executive committee member and approved by the county assembly. It states that the county planning framework shall integrate economic, physical, social, environmental and spatial planning. The Act has not provided an elaborate process of plan preparation and development control. These regulations will provide an elaborate process for plan preparation and development control by the counties.

5.6 Urban areas and Cities Act, 2011 (UACA)

Section 54 of PLUPA stipulates that all plans prepared under the Urban areas and Cities Act, 2011 shall with necessary modifications, be prepared and approved in accordance with PLUPA. The regulations harmonize the preparation of plans prepared under UACA.

5.7 Community Land Act, 2016

The Community Land Act provides for the recognition, protection and registration of community land rights; management and administration of community land. It also provides for the role of county governments in relation to unregistered community land. The proposed physical and land use planning regulations, 2021 will inform the preparation of physical and land use development plans for community land as envisaged under Community Land Act in the context of PLUPA.

5.8 National Land Commission Act, 2012

This Act provides for the functions and powers of the National Land Commission with regards to Physical and Land Use Planning. It mandates the Commission to monitor and have oversight responsibilities over land use planning in the country. The regulations provide for circulation of all plans to the Commission for the purpose of monitoring plan preparation and implementation.

CHAPTER 6 : PUBLIC CONSULTATIONS

6.1 Legal Requirements Relating to Public Participation and Consultation

It is a constitutional requirement to carry out public participation whenever a state or public officer enacts any law or makes or implements a public policy. This requirement is based on Article 1 of the Constitution on the sovereignty principle which vests all sovereign power to the people of Kenya. This power entitles the people access to the process of making public decisions through their involvement. Public participation ought to be inclusive, transparent and accountable.

Article 174 gives powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them and recognize the rights of communities to manage their own affairs and to further their development.

The values and principles of public service require the involvement of the people in the process of policy making through provision of timely and accurate information to the public.

The Statutory Instruments Act obligates a regulation making authority to carry out appropriate consultations before making statutory instruments (Regulations) where the proposed regulations are likely to have a direct, or a substantial indirect effect on business or restrict competition. It further provides that in determining whether any consultation that was undertaken is appropriate, the regulation making authority shall have regard to all relevant matters, including the extent to which the consultation:

- (a) drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and
- (b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Act also states that the persons to be consulted should be notified either directly or by advertisement through representative organizations. They shall also be invited to make submissions by a specified date, which should not be lesser than 14 days or be invited to participate in public hearings concerning the proposed instrument.

6.2 Initial Participation of the Stakeholders

A technical committee was formed to formulate the Physical and Land Use Planning regulations under Section 90 in 2019. The meetings were chaired by representatives from the professional associations and the academia.

The representatives included:

1. Ministry of Lands and Physical Planning
2. Ministry of Agriculture, Livestock and Fisheries
3. Ministry of Transport, Infrastructure, Housing and Urban Development
4. Ministry of Defence
5. Ministry of Energy
6. Office of the Attorney General
7. National Land Commission
8. Kenya National Highways Authority
9. Kenya Urban Roads Authority
10. Communication Authority of Kenya
11. LAPSET Corridor Development Authority
12. Kerio Valley Development Authority (KVDA)
13. National Environmental Management Authority (NEMA)
14. Ewaso Nyiro South Development Authority (ENSDA)
15. Ewaso Nyiro North Development Authority (ENNDA)
16. Kenya Airports Authority (KAA)
17. Lake Basin Development Authority
18. National Construction Authority (NCA)
19. Kenya Wildlife Service (KWS)
20. Kenya Power and Lighting Company (KPLC)
21. Kenya Water Towers Agency
22. Kenya Railways
23. Council of Governors
24. County Governments (Tana River, Siaya, Kericho, Kisii, Kiambu, Muranga, Nakuru, Uasin Gishu)
25. Kenya Institute of Planners (KIP)

26. Architectural Association of Kenya (Town Planning and Architect’s Chapter)
27. Town and County Planners Association of Kenya
28. Institution of Surveyors of Kenya
29. University of Nairobi
30. Technical University of Kenya
31. Kenya Private Sector Alliance

6.3 Approach and Methodologies

In November 2020, Zero Draft Physical and Land Use Planning Regulations were placed in the Ministry of Lands and Physical Planning website for access by the public. In addition, a notice was issued through the Daily Nation dated 4th December 2020 inviting members of the public to visit the ministry’s website to access the zero draft physical and land use regulations and to submit their written comments to the National Director of Physical Planning. Copies of the notice in the Daily Nation were posted on notice boards in all the department within the Ministry to disseminate the information to the general public.

The stakeholders were invited to submit comments on the zero draft regulations within a specified time through letters and emails. The stakeholder consultations were intended to be undertaken during the month of February 2021. However due to the COVID-19 pandemic, the Ministry of Lands and Physical Planning held virtual stakeholder meetings between 23rd February and 5th March 2021 in line with the Government health protocols. The table below indicates the stakeholders that were invited to the virtual meeting pursuant to Section 5 of the Statutory Instruments Act:

Table 1: List of stakeholders

NO.	STAKEHOLDER	NO. OF PARTICIPANTS	DATE	TIME
Cluster 1	<ul style="list-style-type: none"> • County Assembly- Chairman, Committee for Lands, County Executive Committee Member, County Attorney, County Director of Physical and Land Use Planning from; Kwale, Taita Taveta, Mombasa, Kilifi, Tana River, Lamu, Garissa, Wajir and Mandera counties 	37	DAY 1 23 rd February, 2021	10.00 AM

NO.	STAKEHOLDER	NO. OF PARTICIPANTS	DATE	TIME
	<ul style="list-style-type: none"> • National Land Commission • LAPSSET Corridor Development Authority • Technical University of Kenya • Kenya Ports Authority • Kenya Maritime Authority • Coast Development Authority • Town County Planners Association of Kenya • The Institute for Social Accountability 			
Cluster 2	<ul style="list-style-type: none"> • County Assembly- Chairman, Committee for Lands, County Executive Committee Member, County Attorney, County Director of Physical and Land Use Planning from; Machakos, Makueni, Kitui, Embu, Tharaka-Nithi, Meru, Embu, Isiolo and Marsabit counties • Tana and Athi River Development Authority • Special Economic Zones Authority • Export Processing Zones Authority • Kenya Wildlife Service (KWS) • Kenya National Highways Authority • Ministry of Transport • National Drought Management Authority • University of Nairobi • Land Surveyors Board • Valuers Registration Board • Kenya Property Developers Association (KPDA) • Kenya Alliance of Resident Associations (KARA) 	42	DAY 2 24 th February, 2021	10.00 AM

NO.	STAKEHOLDER	NO. OF PARTICIPANTS	DATE	TIME
	<ul style="list-style-type: none"> • Kituo Cha Sheria 			
Cluster 3	<ul style="list-style-type: none"> • County Assembly- Chairman, Committee for Lands, County Executive Committee Member, County Attorney, County Director of Physical and Land Use Planning from; Nairobi, Kajiado, Narok, Kiambu, Murang'a, Nyandarua, Kirinyaga, and Nyeri counties • CEO, Council of Governors • Nairobi Metropolitan Services • State Department of Housing and Urban Department • National Environmental Management Authority (NEMA) • Kenya Forest Service (KFS) • Kenya Railways Corporation • Kenyatta University • Architectural Association of Kenya • Land Development and Governance Institute • Kenya Water Towers Authority (KWTA) • National Construction Authority • Communications Authority • Ewaso Nyiro South Development Authority • Ministry of Defence • Ministry of Environment & Forestry • State Department for Housing & Urban Dev. • Ministry of Water, Sanitation & Irrigation • State Department for Infrastructure • Kenya Power • Kenya Urban Roads Authority 	53	DAY 3 25 th February, 2021	10.00 AM

NO.	STAKEHOLDER	NO. OF PARTICIPANTS	DATE	TIME
	<ul style="list-style-type: none"> • Kenya Civil Aviation Authority • Physical Planners Registration Board • Engineers Registration Board 			
Cluster 4	<ul style="list-style-type: none"> • County Assembly- Chairman, Committee for Lands, County Executive Committee Member, County Attorney, County Director of Physical and Land Use Planning from; Nakuru, Laikipia, Kericho, Bomet, Baringo, Samburu, Uasin Gishu, Nandi, Elgeyo Marakwet, Trans Nzoia, West Pokot and Turkana counties • CEO, County Assembly Forum • Kerio Valley Development Authority • Law Society of Kenya • Kenya Airports Authority • World Wide Fund for Nature (WWF) • Kenya Land Alliance • Institution of Surveyors of Kenya • Federation of Women Lawyers (FIDA) • Centre for Minority Rights Development • Haki Jamii 	77	DAY 5 1 st March, 2021	10.00 AM
Cluster 5	<ul style="list-style-type: none"> • County Assembly-Chairman, committee for Lands, County Executive Committee Member, County Attorney, County Director of Physical and Land Use Planning from; Migori, Homa Bay, Nyamira, Kisii, Kisumu, Siaya, Vihiga, Kakamega, Busia and Bungoma counties • Kenya Rural Roads Authority 			

NO.	STAKEHOLDER	NO. OF PARTICIPANTS	DATE	TIME
	<ul style="list-style-type: none"> • Lake Basin Development Authority • Ewaso Nyiro North Development Authority • Water Resource Authority • Maseno University • Jaramogi Oginga Odinga University of Science and Technology • Kenya Institute of Planners • Institution of Engineers of Kenya • Kenya Private Sector Alliance (KEPSA) • Association of Professional Associations of East Africa (APSEA) 			

The meetings were interactive where stakeholders gave their comments with regard to the regulations as indicated in the annex. These comments were incorporated into the Draft Regulations. The Draft Regulations were submitted to the Attorney General for professional drafting.

CHAPTER 7 : AN OVERVIEW OF THE PROPOSED PHYSICAL AND LAND USE PLANNING REGULATIONS:

7.1 Proposed Regulations

The proposed regulations will bring to effect Section 90 of the Physical and Land Use Planning Act, 2019 by providing clarity on operationalization of physical and land use planning institutions, preparation of physical and land use development plans, development control and enforcement and dispute resolution mechanisms.

These regulations are as follows:

- 1) The Physical and Land Use Planning (Institutions) Regulations, 2021
- 2) The Physical and Land Use Planning (The National Physical and Land Use Development Plan) Regulations, 2021
- 3) The Physical and Land Use Planning (The Inter-County Physical and Land Use Development Plan) Regulations, 2021
- 4) The Physical and Land Use Planning (The County Physical and Land Use Development Plan) Regulations, 2021
- 5) The Physical and Land Use Planning (Local Physical and Land Use Development Plan) Regulations, 2021
- 6) The Physical and Land Use Planning (Special Planning Area) Regulations, 2021
- 7) The Physical and Land Use Planning (Development Permission and Development Control) (General) Regulations, 2021
- 8) The Physical and Land Use Planning (Development Control for Strategic National Projects) Regulations, 2021
- 9) The Physical and Land Use Planning (Development Control for Inter-County Projects) Regulations, 2021
- 10) The Physical and Land Use Planning (Development Control Around Strategic Installations) Regulations, 2021
- 11) The Physical and Land Use Planning (Advertisement) Regulations, 2021
- 12) The Physical and Land Use Planning (Planning Fees) Regulation, 2021
- 13) The Physical and Land Use Planning Development Control (Enforcement) Regulations, 2021
- 14) The National and County Physical and Land Use Planning (Liaison Committees) Regulations, 2021
- 15) The Physical and Land Use Planning (Procurement) Regulations, 2021
- 16) The Physical and Land Use Planning (Building) Regulations, 2021

CHAPTER 8 : COST-BENEFIT ANALYSIS

This section seeks to assess the changes proposed by the regulations in terms of their costs and benefits to justify the proposals pursuant to Section 7(d) of the Statutory Instruments Act.

8.1 Benefits of the Physical and Land Use Planning Regulations

The approval of the proposed regulations is deemed to have the following accruing benefits:

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1. **Improved efficiency and effectiveness of land use planning in Kenya:** Clarification of functions of the roles of the national and county planning outfits, coordinated mechanism for preparation of the various physical and land use development plans and responding to physical and land use related conflicts and disputes will result to reduction of overlaps and duplication in discharging the planning function in the country. The classification of Strategic National and Inter-county projects and elaboration of how the projects are to be implemented clarifies the role of the two levels of government around them. This will reduce conflict between the two levels of government in offering physical and land use planning services to the citizenry. In this way the regulations will ensure consistency, certainty and integrity of procedures and applicable standards in implementation of Physical and Land Use Planning decisions.
2. **Integrated approach of implementing the physical and land use planning function in the country:** identification of an elaborate and integrated institutional framework for physical and land use planning provides clarity and uniformity on the processes of undertaking various physical and land use planning activities. This rationalizes the provisions of legislations that support physical and land use planning in the country i.e. PLUPA, UACA and CGA
3. **Improved ease of doing business:** clear provisions on the various physical and land use planning undertakings, timelines, fees and charges present an opportunity provide a clear and reliable platform for implementation of the ease of doing business agenda in the built environment. Indeed the instrument seeks to provide for easier and more convenient methods of application, circulation and approval of development applications
4. **Facilitation of Fundamental Rights and Freedoms:** The proposed regulatory instruments will facilitate the full enjoyment of the right to property as stipulated

under Article 40 of the Constitution. The instruments do not limit the fundamental rights and freedoms set out under the Constitution

5. **Complementing existing legal frameworks:** The draft Physical and Land Use Planning Regulations, 2021 do not propose to have any new legislation enacted or any of the existing laws being amended. They complement other laws making their implementation more effective.

It is therefore clear that the Regulations do not conflict or have any negative effect on the existing legislation.

8.2 Financial Cost

Implementation of the proposed set of regulations will involve reorganization of offices both in terms of physical space and staff, and capacity building of personnel to take up new administrative roles. There will also be the issue of purchasing office equipment. All this is expected to be around Ksh 264,964,980.00). Since the roll out of the new structure will be phased over a number of years, this budget can be spread out and financed in piece meal. This is a cost payable by the Ministry and does not implicate the user in any manner.

CHAPTER 9 : CONSIDERATION OF ALTERNATIVES TO THE PHYSICAL AND LAND USE PLANNING REGULATIONS

The Statutory Instruments Act requires a regulator to carry out an informed evaluation of a variety of regulatory and non-regulatory policy measures by considering relevant issues such as costs, benefits, distributional effects and administrative requirements. Regulations should be the last resort in realizing policy objectives. The options considered under this part are: maintenance of the status quo, administrative measures and developing the proposed Physical and Land use Planning Regulations, 2021.

9.1 Option one: Maintenance of the Status Quo

The physical and land use planning regulations, 2021 are responsive to the current physical planning dynamics. In the absence of these regulations, emerging issues in the physical and land use planning practice will not be addressed effectively. These emerging issues include strategic national and inter-county projects, operationalization of planning institutions and harmonization of plan preparation and development control processes.

By maintaining the status quo, the legal requirements under Sections 69(3) and 90 of the Physical and Land Use Planning Act, 2019 will not be fulfilled. In addition, the challenges identified such as limited implementation of physical development plans and lack of uniformity in processing development applications among others, will persist.

9.2 Option two: Administrative Measures

Administrative measures involve issuance of directives and circulars to the various planning authorities. This is a non-regulatory measure which if applied, will depend on the good will of public officers to implement the provisions of the Physical and Land Use Planning Act, 2019. Administrative measures are subjective, not binding and may be challenged in a court of law. In addition, some administrative measures issued in the past and have not achieved the desired objectives.

9.3 Option three: Formulating the Proposed Physical and Land Use Planning Regulations, 2021

The Physical and Land Use Planning Regulations, 2021 will yield the following benefits: improved quality of plans prepared, coordinated relationship between various levels of plans, reduction in duplication of plan preparation effort thus reduced cost, transparent development control process, ease of doing business, reduced cost of processing and storing information, reduced conflict between the two levels of government among others.

The assessment of the cost and benefits in chapter 8, indicates that the benefits of formulating the regulations far outweigh the costs, therefore, option three was selected as the preferred option.

9.4 Impact Analysis of the Options

An impact analysis of the options justifies the purpose of formulating the regulations and the challenges that the regulations will address. It further justifies the selection of option three on formulating the proposed Physical and Land Use Planning Regulations, 2021 by evaluating the socio-economic, environmental and legal impact of the regulations as shown in the table below:

Table 2: Impact analysis of the three options

Impact on sectors	Option one: Maintaining the Status quo	Option two: Administrative measures	Option three: Formulating the proposed Physical and Land Use Planning Regulations, 2021
	This entails doing nothing and retaining the current state of affairs.	This entails putting in place administrative measures to ensure implementation of the Physical and Land Use Planning Act, 2019.	This entails providing forms to be used and fees to be charged under the Act; the norms, guidelines and standards for delivery of physical and land use planning services, guidelines for operations of planning institutions, development control procedure and processes, dispute resolution
Impact on public sector	<ul style="list-style-type: none"> The public sector will be accused of inaction in managing conflicts that may arise as a result of the challenges that necessitate the formulation of the regulations. 	<ul style="list-style-type: none"> It is unlikely that administrative processes without the force of law will effectively address emerging realities in physical and land use planning practice. 	<ul style="list-style-type: none"> The regulations ensure expeditious, efficient, lawful, reasonable and procedurally fair administration of actions by the government in implementing projects. By prescribing fees to be charged, the regulations will result in fairness and accountability in administration of physical and land use planning services. Reduction in duplication of effort of plan preparation thereby resulting in reduction of cost
Impact on private sector	<ul style="list-style-type: none"> The actions of the private sector will not be guided thereby resulting in conflicts. 	<ul style="list-style-type: none"> Administrative measures offer short term relief to addressing conflicts in the private sector. 	<ul style="list-style-type: none"> The regulations will provide guidelines and standards for delivery of physical and land use planning services thus providing clarity and

		<ul style="list-style-type: none"> • Administrative measures may be challenged in a court of law and result to cost implications in the private sector. 	<ul style="list-style-type: none"> • result in ease of doing business. • Development control standards will result in reduced conflict in the private sector. • The regulations provide for alternative dispute resolution mechanisms that will resolve conflicts when they arise.
Socio-economic Impact	<ul style="list-style-type: none"> • There will be no framework to ensure that socio-economic rights as provided for under Chapter 4 of the Constitution are upheld. 	<ul style="list-style-type: none"> • Administrative measures do not provide for a structure for ensuring accountability hence socio-economic rights under Chapter 4 of the Constitution may not be met. 	<ul style="list-style-type: none"> • The Regulations support socio-economic rights provided for under Chapter 4 of the Constitution including the right to the highest attainable standards of health, sustainable environment, accessible and adequate housing and clean and safe water in adequate quantities. • The proposed regulatory instruments will facilitate the full enjoyment of the right to property as stipulated under Article 40 of the Constitution. The instruments do not limit the fundamental rights and freedoms set out under the Constitution • The proposed regulatory instruments neither impose, waive nor vary any tax or fees imposed under any law in Kenya. Indeed the instrument seeks to provide for easier and more convenient

			methods of payment of land registration fees, transfer fees and stamp duty fees but not alteration of the actual fees is proposed
Impact on existing legal frameworks	<ul style="list-style-type: none"> The legal requirement under Section 90 of the Physical and Land Use Planning Act will not be met. Thus, not addressing emerging issues such as strategic national and inter-county projects. 	<ul style="list-style-type: none"> Administrative measures, without the force of law may be challenged, leading to slow delivery of physical and land use planning services. 	<ul style="list-style-type: none"> Fulfills the legal requirement under Section 90 of the Physical and Land Use Planning Act, 2019. The regulations have harmonized various legal frameworks dealing with riparian reserves and development control. The draft Physical and Land Use Planning Regulations, 2021 do not propose to have any new legislation enacted or any of the existing laws being amended. They complement other laws making their implementation more effective. The Regulations do not conflict or have any negative effect on the existing legislation.
Impact on environment	<ul style="list-style-type: none"> Conflict in development on environmentally sensitive areas such as riparian reserves due to differing legal requirements in various counties. 	<ul style="list-style-type: none"> No guarantee environmental considerations shall be taken into account. 	<ul style="list-style-type: none"> The regulations have harmonized various legal frameworks dealing with environmentally sensitive areas such as riparian reserves.

CHAPTER 10 : COMPLIANCE AND IMPLEMENTATION

10.1 Institutions

It is the duty of the regulator to assess the adequacy of the institutional framework and other incentives through which the regulation will take effect and design responsive implementation strategies that make the best use of them¹.

The implementation and enforcement of these regulations will be undertaken through the existing institutional framework at national level (Ministry of Lands and Physical Planning) and the county level (county governments).

CHAPTER 11 : CONCLUSION

Based on the analysis in this report, the Physical and Land Use Planning (Section 90) Regulations, 2021 are extremely necessary. The regulations offer socio-economic, environmental and legal benefits which include ease of doing business, reduction of conflicts, improved quality of plans among others, which far outweigh the costs of the regulations.

The regulations also provide a framework for the ensuring that the people of Kenya enjoy the socio-economic rights enshrined in the Constitution.

11.1 Recommendation

In view of the above conclusion, it is recommended that the Physical and Land Use Planning (Section 90) Regulations, 2021 be adopted.

¹ Source: OECD (1995), The 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation, Paris.

ANNEXURES

- i. The Physical and Land Use Planning Regulations**
- ii. Minutes of Virtual Stakeholder Meetings**
- iii. Stakeholder Meetings Attendance List**
- iv. Stakeholder Comments\Reports**
- v. Comprehensive Financial Implication of the Regulations**

Comprehensive Financial Implication of the Regulations

ACTIVITY	COST
Operationalization of Physical and Land Use Planning Act, 2019 institutions	33,279,360.00
Sensitization and training of County teams on the application of the Physical and Land Use Planning Act, 2019 and the Regulations.	24,095,860.00
Planning for National strategic projects and installations	39,937,900.00
Monitoring and evaluation of the implementation of NLUP, NSP and PLUPA.	40,651,860.00
Staff establishment	27,000,000.00
Equipment, vehicles and hire of office space	100,000,000.00
TOTAL	264,964,980.00