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**MINISTRY OF LANDS AND PHYSICAL PLANNING**  
Office of the Cabinet Secretary

Telegraphic Address: "LANDCON"  
Telephone: Nairobi 2718050  
When replying please quote

ARDHI HOUSE  
NGONG ROAD  
P.O. Box 30450- 00100  
**NAIROBI**

Ref. No. PPD/5/42/ (74)

September 23, 2019

**Mr. Michael R. Sialai, EBS**  
Clerk of the National Assembly  
National Assembly  
Parliament Buildings  
**NAIROBI**

ML  
These are draft  
Regulations, not yet  
published in the gazette.  
26/9

Dear Mr. Sialai,

**RE: SUBMISSION OF LAND USE PLANNING (CLASSIFICATION OF STRATEGIC OR INTER-COUNTY PROJECTS) REGULATIONS, 2019**

The Ministry of Lands and Physical Planning has prepared the Physical and Land Use Planning (Classification of strategic or Inter-County Projects) Regulations, 2019, as required under Section 69 (3) of the Act. The regulations were published on Friday, September 20, 2019.

The process of formulating the regulations was participatory, interdisciplinary and consultative. Relevant ministries, departments and agencies of the Government of Kenya, county government representatives, National Land Commission, professional associations and other stakeholders were consulted during the drafting of the regulations. In addition, a consultative meeting with stakeholders was held at Jacaranda Hotel, Nairobi on Tuesday, September 17, 2019 attended by one hundred and sixty (160) stakeholders.

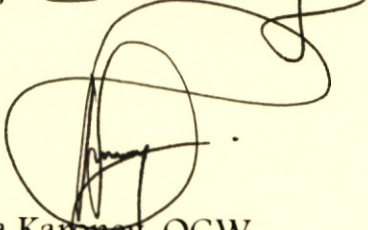
Another stakeholder engagement is scheduled for September 24 -25, 2019 at Crowne Plaza Hotel, to further enrich the draft regulations.

Attached, kindly find the following documents:

1. Physical and Land Use Planning (Classification of strategic or inter-county projects) regulations, 2019
2. An explanatory memorandum
3. Evidence of public participation

Thanking you for your continued support and cooperation.

Yours *Sincerely*



Farida Karoney, OGW  
**CABINET SECRETARY**

Encl

(Legislative Supplement No. 57)

LEGAL NOTICE NO. 156

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

IN EXERCISE of the powers conferred by section 69 (3) of the Physical and Land Use Planning Act, 2019, the Cabinet Secretary for Lands and Physical Planning makes the following Regulations—

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

1. These Regulations may be cited as the Physical and Land Use Planning (Classification of Strategic National or Inter-County Projects) Regulations, 2019. Citation.

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

“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;

“projects of strategic national importance” means projects that are conceived, designed and implemented in furtherance of the Kenya Vision 2030, the Big Four Agenda, Medium Term Plan 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; and

“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, and public housing that fall under the National Government;
- (c) public utilities for water, sewerage, electricity, gas, communication, irrigation and drainage, dams and reservoir whose implementation and management goes beyond the county governments;
- (d) public parks, playgrounds, gardens and sports facilities that fall under public land held by the National Government;

- (e) national security and defence installations,
- (f) settlement of squatters, the poor and landless, and internally displaced persons whose magnitude exceeds the capacity of county governments, and
- (g) any other similar purpose.

3. 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 or declarations

Application of  
Regulations

4. These Regulations shall apply to the following types of projects—

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) national 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

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

Strategic and  
Inter-county  
projects

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

6 For the purposes of these Regulations, the projects of strategic national or inter-county importance shall be determined in accordance with the criteria set out in the Schedule

Criteria

#### SCHEDULE

(r 6)

#### PRESCRIBED STRATEGIC NATIONAL OR INTER-COUNTY PROJECTS

##### 1. Projects for the following types of roads—

Land transport

- (a) Class A road corridors;
- (b) Class B road corridors;
- (c) Class C road corridors;
- (d) inter-county roads,
- (e) major urban roads including primary, secondary and arterial roads;
- (f) special roads serving a strategic national facility including roads serving beaches, mineral extraction areas, military camps and other security facilities, learning institutions, conservation areas and special projects roads; and
- (g) any road leading to international borders

##### 2 Projects for the entire rail transport corridor

Railway corridors

##### 3 Projects for the following types of airports—

Airports

- (a) international airports;

- (b) national airports,  
 (c) regional airports;  
 (d) special airports; and  
 (e) private airstrips
4. Projects for the following types of water transport — Water transport
- (a) harbors and ports including seaports and inland ports;  
 (b) international ports,  
 (c) national ports, and  
 (d) regional ports
5. Projects for the following types of industrial areas — Industrialization
- (a) special economic zones, industrial and technology parks, and  
 (b) export processing zones;
6. Projects undertaken at national museums and archeological Museums and archeological sites  
 sites
7. Projects for the development of national theatres and cultural Theatres and cultural exhibition centres  
 exhibition sites including projects undertaken at the —
- (a) Bomas of Kenya,  
 (b) Kenya National Theatre, and  
 (c) national heritage sites of cultural and historical significance.
8. Projects for the following types of stadia and sports Stadia and sports centres  
 centres —
- (a) national stadia;  
 (b) national arenas; and  
 (c) Jamhuri Park.
9. Projects for the following types of public educational and Education and training institutions  
 learning institutions —
- (a) universities,  
 (b) tertiary and technical training institutions;  
 (c) special education institutions,  
 (d) primary and secondary schools, and  
 (e) national libraries.
10. Projects for the following types of housing on public land Housing  
 held by the National Government —
- (a) affordable housing;  
 (b) institutional housing,

- (c) public housing, and  
 (d) emergency housing
- 11 Projects for the management of the following types of persons— Resettlement and relocation
- (a) landless people,  
 (b) internally displaced people,  
 (c) refugees and asylum seekers;  
 (d) project affected people; and  
 (e) informal settlements dwellers.
- 12 Projects for the following types of developments— Metropolitan and city development
- (a) declared metropolitan areas;  
 (b) regional transportation and commercial hubs;  
 (c) special cities;  
 (d) gateway cities; and  
 (e) border towns
13. Projects for the following types of land use programmes— Land use programmes
- (a) land banking,  
 (b) land reservation,  
 (c) land acquisition and purchases; and  
 (d) land titling.
- 14 Projects for the management of public forests in the following areas— Public forests
- (a) National Government forests, and  
 (b) gazetted water towers
- 15 Projects in the following ecologically sensitive or fragile areas— Ecologically sensitive and fragile areas
- (a) mountains;  
 (b) coastal zones,  
 (c) wetlands, and  
 (d) riparian reserves
- 16 Projects in the following types of wildlife conservation areas— Wildlife conservation areas
- (a) national parks and reserves,  
 (b) wildlife dispersal corridors;

- (c) special protected areas, and  
 (d) wildlife sanctuaries.
17. Projects in the following types of geologically unstable areas— Geologically unstable areas
- (a) areas prone to volcanic activity,  
 (b) areas prone to seismic activity, and  
 (c) areas prone to landslides
18. Projects for the following types of irrigation schemes— Irrigation schemes
- (a) large scale irrigation schemes of at least three thousand acres;  
 (b) medium scale irrigation schemes between one hundred and three thousand acres, and  
 (c) small scale irrigation schemes of not more than one hundred acres
19. Projects involving the following strategic installations— Strategic installations
- (a) State Houses and State Lodges,  
 (b) Parliament Buildings,  
 (c) installations belonging to national security organs including the Kenya Defence Forces, National Police Service, National Intelligence Service and Kenya Coast Guard Service;  
 (d) installations belonging to the Kenya Space Agency,  
 (e) foreign embassies, consulates, high commissions and the United Nations facilities,  
 (f) border control facilities;  
 (g) nuclear energy facilities;  
 (h) national broadcasting and telecommunications sites,  
 (i) oil depots and the strategic oil reserve;  
 (j) the National Youth Service;  
 (k) the Strategic Grain Reserve,  
 (l) National Cereals and Produce Board depots;  
 (m) Kenya Medical Supplies Agency depots,  
 (n) Kenya Wildlife Service facilities, and  
 (o) Kenya Forest Service facilities.
20. Projects in the blue economy and developments within coastal areas including— Blue economy
- (a) harvesting and trade of marine living resources including fisheries and aquaculture projects,



- (b) extraction and use of marine non-living resources,
- (c) use of renewable non-exhaustible natural energy; and
- (d) commerce and trade in and around the oceans including maritime transport, coastal development, tourism and recreation projects
- 21 Projects for the following types of energy— Energy
- (a) the entire electricity national grid,
- (b) energy generation stations,
- (c) electricity transmission infrastructure (all transmission lines and substations);
- (d) electricity distribution infrastructure (all distribution and service lines and substations);
- (e) national and regional control centers;
- (f) nuclear power stations;
- (g) electronic waste disposal facilities, and
- (h) nuclear waste disposal facilities.
22. Projects for the following types of telecommunications facilities— Telecommunications
- (a) base transmission stations,
- (b) telecommunication substations;
- (c) telecommunication masts; and
- (d) fibre optic cables and fibre optic cables landing sites.
23. Projects for the mining of coal, gold, iron and rare minerals, and sand harvesting including the harvesting of beach sand. Mining, quarrying and sand harvesting
- 24 Projects for the following developments in the oil and gas sector— Oil and gas
- (a) oil and gas pipelines into and out of Kenya;
- (b) underground oil and gas storage facilities; and
- (c) liquefied petroleum and natural gas reception buildings and facilities.
- 25 Projects for the following types of national or inter-county public utilities— Public utility areas
- (a) water treatment works,
- (b) sewerage treatment works;
- (c) solid waste management sites;
- (d) plastic waste disposal sites; and

- (e) bio-medical waste disposal sites
26. Projects for the development of national referral hospitals National referral hospitals
27. Projects for the development of the following types of public purpose areas — Public purpose areas
- (a) correctional facilities including prisons, borstal institutions, remand homes, reform schools and young offenders institutions;
  - (b) public parks and open spaces,
  - (c) public libraries;
  - (d) court and tribunal buildings;
  - (e) disaster management centres, and
  - (f) meteorological centres

Dated the 19th September, 2019

FARIDA KARONEY,  
*Cabinet Secretary for Lands and Physical Planning.*

## **EXPLANATORY MEMORANDUM**

### **EXPLANATORY MEMORANDUM TO THE PHYSICAL AND LAND USE PLANNING (CLASSIFICATION OF STRATEGIC NATIONAL OR INTER-COUNTY PROJECTS) REGULATIONS, 2019 No. 1**

**Name of the Statutory Instrument:** The Physical and Land Use Planning (Classification of Strategic National or Inter-County Projects) Regulations, 2019

**Name of the Parent Act:** Physical and Land Use Planning Act No. 13 of 2019

**Enacted Pursuant to:** Section 69 (3) of the Physical and Land Use Planning Act No. 13 of 2019

**Name of the Ministry/ Department:** Ministry of Lands and Physical Planning

**Gazetted on:** 20<sup>th</sup> September, 2019

**Tabled on:**

#### **1. Purpose of the Statutory instrument:**

- 1.1 To make Regulations prescribing for the projects that may be classified as a strategic national or inter-county project.

#### **2. Legislative Context:**

- 2.1 Section 69 (3) of the Physical and Land Use Planning Act No. 13 of 2019.

#### **3. Policy Background:**

- 3.1 Under section 21 of Part I of the Fourth Schedule the National Government has the responsibility of formulating general principles of land planning and coordination of planning by the counties. Parliament adopted the Sessional Paper No. 1 of 2017 on National Land Use Policy.

#### **4. Consultation outcome:**

- 4.1 The process of formulating the Regulations was participatory, interdisciplinary and consultative. The Technical Working Team comprised of membership from the following institutions:

- 1) National Land Commission
- 2) County Government of Kiambu
- 3) Ministry of Defence
- 4) Export Processing Zone Authority
- 5) County Government of Nyeri
- 6) Council of Governors
- 7) State Department of Housing and Urban Development
- 8) Kenya Maritime Authority
- 9) County Government of Kakamega
- 10) Kerio Valley Development Authority
- 11) Kenya Water Towers Agency
- 12) Kenya Power Ltd.
- 13) Communications Authority of Kenya
- 14) Institution of Surveyors of Kenya
- 15) Kenya Institute of Planners
- 16) Town and County Planners Association of Kenya
- 17) Architectural Association of Kenya
- 18) Kenya Urban Roads Authority
- 19) Kenya National Highways Authority
- 20) Urban Development Department
- 21) Ministry of Lands and Physical Planning
- 22) Tana and Athi River Development Authority
- 23) Water Resources Authority
- 24) National Construction Authority
- 25) Kenya Railways Corporation
- 26) Kenya Wildlife Services
- 27) Konza Techno City Development Authority
- 28) Lake Basin Development Authority

The Team prepared a layman's draft regulations which were submitted to the Attorney General for professional drafting. On 16<sup>th</sup> September, 2019 the Attorney General presented the draft regulations to the Ministry for comments. The Ministry uploaded the regulations on its website. Further the Ministry published a public notice on 16<sup>th</sup> September, 2019 informing members of the public that the regulations were uploaded on its website, [www.lands.go.ke](http://www.lands.go.ke) and invited stakeholders to submit comments vide email addresses, [cslandskenya@gmail.com](mailto:cslandskenya@gmail.com) and [info@ardhi.go.ke](mailto:info@ardhi.go.ke) .

On Tuesday 17<sup>th</sup> September, 2019 a stakeholder meeting was held in Jacaranda Hotel, Nairobi and was attended by one hundred and sixty (160 no.) persons from MDAs, County Governments, Council of Governors, Public Universities, Professional Bodies, National Land Commission, Communications Authority and Private Sector entities and resolved to have continuous engagement through additional meetings on 23<sup>rd</sup>, 24<sup>th</sup> and 25<sup>th</sup> of September, 2019.

**5. Guidance:** The Ministry intends to issue practising notes to professional associations, The Physical Planners Registration Board and County Governments, conduct county sensitization workshops, disseminate free copies and undertake continuous professional development training through professional bodies and through various media platforms.

## **6. Impact**

### **6.1 The impact on Fundamental Rights and Freedoms**

These Regulations support socio-economic rights provided for under Chapter 4 of the Constitution particularly the right to the highest attainable standards of health, sustainable environment, accessible and adequate housing and clean and safe water in adequate quantities.

### **6.2 The impact on the Private Sector**

The Regulations provide for fair and professional practice, accountability by the government on projects of strategic national or inter-county importance.

### **6.3 The impact on the public sector**

The Regulations ensure expeditious, efficient, lawful, reasonable and procedurally fair administration of actions by the Government in implementing projects of strategic national or inter-county importance.

## **7. Monitoring and review**

The provisions set out in this statutory instrument aim to create harmony and cohesion in the implementation of strategic national or inter-county projects by reconciling the efforts of national and county governments in achieving these goals.

## **8. Contact**

Mr. Augustine K. Masinde, EBS  
Physical Planning Department  
Ministry of Lands and Physical Planning,  
Ardhi House, 1<sup>st</sup> Ngong Avenue  
PO Box 45025-00100  
Nairobi  
Tel: 254-020-718050  
Email: [info@lands.go.ke](mailto:info@lands.go.ke).