

THE REPUBLIC OF KENYA

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THE PHYSICAL AND LAND USE PLANNING (DEVELOPMENT CONTROL FOR STRATEGIC NATIONAL PROJECTS) REGULATIONS

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Physical and Land Use Planning Act

Physical and Land Use Planning (Development Control for Strategic National Projects) Regulations

Legislation as at 31 December 2022

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Physical and Land Use Planning (Development Control for Strategic National Projects) Regulations (Legal Notice 246 of 2021)

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PHYSICAL AND LAND USE PLANNING ACT

PHYSICAL AND LAND USE PLANNING (DEVELOPMENT CONTROL FOR STRATEGIC NATIONAL PROJECTS) REGULATIONS

LEGAL NOTICE 246 OF 2021

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1. Citation

These Regulations may be cited as the Physical and Land Use Planning (Development Control for Strategic National Projects) Regulations.

2. Interpretation

In these Regulations, unless the content otherwise requires—

"Certificate of Compliance" is a certificate issued by the Director-General with the approval of the Cabinet Secretary confirming a development's adherence to approved development permission conditions and approved plans;

"Certificate of Occupancy" means a certificate issued by the State Department responsible for public works confirming a building's compliance with applicable building codes and other laws, and indicating it to be in conditions suitable for occupancy;

"Commission" means National Land Commission established under Article 67 of the Constitution;

"Court" means the Environment and Land Court established under section 4 of the Environment and Land Court Act (Cap. 8D);

"developer" means a ministry, department, agency or state corporation, county government; or private entity;

"electronic" has the meaning assigned to it under section 2 of the Kenya Information and Communications Act (Cap. 411A);

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

"National Liaison Committee" means the National Physical and Land Use Planning Liaison Committee established under section 73 of the Act;

"strategic installation" means any installation that is—

(a) classified as a strategic installation under the Act;

(b) declared to be a strategic installation by the Cabinet Secretary under these Regulations; or

(c) developed in a strategic national project; and

"strategic national project" means a project identified as a strategic national project by the national or a county government under the Act, the Intergovernmental Relations Act (Cap. 265F), and any other relevant written law.

3. Object of the Regulations

The object of these Regulations is to provide procedures for the processing of development applications for strategic national projects under section 69 (4).

4. Reservation of land for strategic national or intercounty projects

(1) Where public land is required for a strategic national project, the relevant ministry, department, state corporation or county governments shall apply to the Commission for reservation of the land.

(2) The Cabinet Secretary and County Executive Committee Member may consider reserving public land for strategic national projects before, during or after the preparation of a national physical land use development plan or county physical land use development plan.

(3) The Commission shall register all public land reserved for a strategic national project under this regulation in accordance with the Land Registration Act (Cap. 300), and publish in the *Gazette* a list of the reserved land.

(4) Public land reserved for a strategic national project shall not be used for any other purpose other than the purpose for which it was reserved.

(5) Any person aggrieved by a decision to reserve public land for a strategic national project may lodge an appeal in writing against the reservation with the National Liaison Committee within fourteen days.

5. Plans may specify land to be acquired for strategic national projects

In addition to the matters specified in the First and Second Schedules to the Act, the National Physical and Land Use Development Plan, an Inter-County Physical and Land Use Development Plan, a County Physical and Land Use Development Plan, a Local Physical and Land Use Development Plan and a Special Area Physical and Land Use Development Plan may indicate land that may be acquired for a strategic national project.

6. Preliminary conceptual application

(1) Where a public institution intends to undertake a strategic national project, the institution shall submit a concept paper and preliminary plans to the Cabinet Secretary for consideration and input.

(2) The Cabinet Secretary shall within thirty days upon receipt of the application, issue an advisory or refer it to the National Physical and Land Use Planning Consultative Forum for further consultations.

(3) The Forum may consider and adopt the concept paper within thirty days.

7. Application for development permission

(1) Where an advisory has been issued under regulation 6, the applicant may submit a detailed application in electronic form to the Cabinet Secretary.

(2) Within seven days of submission in electronic form, the applicant shall submit hard copies of the application and relevant documents to the Cabinet Secretary in Form PLUPA DC-13 as set out in the First Schedule.

(3) The application shall be submitted in the following format—

(a) each document shall be paginated;

(b) all plans shall be Geo-referenced; and

(c) any digital plans shall—

(i) have an electronic signature of the author of the plans;

(ii) be in PDF format;

(iii) not be password protected;

(iv) be capable of being reproduced in A4 paper size while retaining sufficient accuracy and detail for the purposes of these Regulations;

(v) be limited to 25 Mb per file except geo-database or shapefile and

(vi) have images with a resolution of not less than 1200 printer dots per inch.

(4) Upon receipt of the application and within fourteen days, the Cabinet Secretary shall cause the Director-General to circulate the application to the following authorities for comments—

(a) the County Executive Committee Member responsible for Physical and Land Use Planning in the respective County;

(b) the Chief Architect responsible for National Public Works;

(c) the Chief Engineer responsible for National Public Works;

(d) the Chairperson of the National Land Commission;

(e) the Director-General of the National Environment Management Authority;

(f) the Director-General of Medical Services;

(g) the Director-General of the relevant roads' authority established under the Kenya Roads Board Act (Cap. 408A);

(h) the Managing Director of the Kenya Railways Corporation;

(i) the Director-General of the Kenya Civil Aviation Authority;

(j) the Managing Director of the Kenya Airports Authority;

(k) the National Director of Surveys;

(l) the National Director of Land Administration;

(m) the chairperson of the Community Land Management Committee in the relevant county; and

(n) any other relevant authority.

(5) The authorities shall submit their comments to the Director-General within thirty days of receipt of the application in regulation 4.

(6) The Director-General shall publish in the *Gazette* and in at least two newspapers of national circulation and electronic media a notice informing the public of the intention to undertake a strategic national project and comments thereon within thirty days of the date of the notice.

(7) In consultation with the respective County Executive Committee Member, the Director-General shall convene public hearings to consider the strategic national project and receive comments within thirty days of publishing a notice in the *Gazette* under paragraph (6)

(8) The Director-General shall convene a technical committee to consider the input received under paragraph (6) and submit comments which shall include persons who are—

(a) knowledgeable about the strategic operational nature of Strategic National Project;

(b) understand the economic value and importance of National Strategic National Project; and

(c) in possession of an appropriate qualification and relevant experience in the field of expertise.

(9) Upon receipt of comments from the technical committee under paragraph (8), the Director-General shall prepare a technical advisory report and submit to the Cabinet Secretary within thirty days.

8. Determination of applications for development permission

(1) Upon receipt of the technical advisory report from the Director-General under regulation 7 (9), the Cabinet Secretary shall with reasons consider and—

(a) approve the application;

(b) defer the application; or

(c) reject the application.

(2) The applicant shall be notified in form PLUPA DC-17 the decision within seven days.

(3) Within seven days of making the decision to approve or reject the application under regulation 8 (1) the Cabinet Secretary shall publish a notice of approval or rejection in the *Gazette* and in at least two newspapers of national circulation informing the public of the decision and specify the reasons thereof.

(4) The Cabinet Secretary shall notify in writing the relevant institutions and agencies including the respective County Executive Committee Member of the approval or rejection.

9. Appeals

Any party aggrieved with the decision by the Cabinet Secretary for development permission under these regulations may appeal within fourteen days to National Liaison Committee in writing.

10. Exemptions

These Regulations shall not apply to developments specified under section 70 of the Act.

11. Certificate of compliance

The Director-General, with the approval of the Cabinet Secretary, shall issue a certificate of compliance in Form PLUPA/DC/18 to the developer where—

(a) an approved development has been completed; and

(b) the development has adhered to the approval conditions and the approved Physical and Land Use Development plans.

12. Certificate of occupancy

The State Department responsible for public works may, subject to issuance of certificate of compliance under regulation 11, issue a certificate of occupancy to the developer confirming that a building is suitable for occupation.

13. Monitoring

(1) A developer that receives development permission for a strategic national project shall, at least three months before the end of the financial year, prepare and submit a status report on its implementation in line with the approved development plan to the Cabinet Secretary and the Commission.

(2) Where development permission relates to development of a strategic national project within the jurisdiction of any County, a copy of the status report shall be deposited with the respective County Executive Committee Member by the Commission

14. Enforcement notices

(1) The Cabinet Secretary shall serve a developer of a strategic national project with an enforcement notice where—

(a) a developer commences development of a strategic national project after the commencement of this Act without the required development permission having been obtained; or

(b) any condition of a development permission granted under this Act has not been complied with.

(2) A copy of the enforcement notice shall be given to the relevant County Executive Committee member.

(3) An enforcement notice shall—

(a) specify the development that is alleged to have been carried out without development permission;

(b) specify the conditions of the development permission that are alleged to have been contravened;

(c) specify the measures the developer shall undertake, the date on which the notice shall take effect, the period within which the measures shall be complied; and

(d) require compliance by the developer within thirty days from the date the enforcement notice takes effect.

15. Appeals

(1) Any developer aggrieved by the issuance of an enforcement notice under these Regulations may appeal to the National Liaison Committee within fourteen days of being served with the notice.

(2) The National Liaison committee shall hear and determine the appeal within thirty days of the appeal being filed.

(3) Any developer aggrieved with the determination of the National Liaison Committee may appeal within thirty days to the Environment and Land Court.

(4) Where a developer has been served with an enforcement notice and fails to comply with the notice the Director-General may, through the Cabinet Secretary refer the matter to the Forum for consideration and further direction.

16. Public participation

(1) The developer undertaking the strategic national project shall consult, publish, consider national security and hold stakeholders' meetings before and during the development of the project.

(2) Development permission shall not be granted under these Regulations without taking into consideration the comments of relevant authorities, agencies including the respective County Executive Committee Member.

(3) The Director-General shall keep and maintain a depository of all plans and projects approved under these Regulations.

(4) The information contained in the depository above shall be accessed in accordance with the provisions of the Access to Information Act (Cap. 7M).

FIRST SCHEDULE

FORMS

FORM PLUPA/DC -13 r 7(2)



APPLICATION FOR DEVELOPMENT PERMISSION OF A STRATEGIC NATIONAL PROJECT

To the Cabinet Secretary

1. 0 Name of Applicant .....

1. 1 Contacts

(a) Physical Address .....

(b) Telephone .....

(c) E-mail .....

(d) Permanent Postal Address .....

2.0 Location of Project

(a) County(s) .....

(b) Sub County(s) .....

(c) Ward(s) .....

(d) Road .....

3.0 Status of Land

(a) Land Tenure (Public/Private/Community) .....

(b) Acreage (Hectares) .....

4.0 Nature of the Project .....

.....

5.0 (1.) Indicate type of development permission sought

.....

.....

.....

.....

(2) Indicate the national sectoral policy framework the project will operate under

.....

.....

.....

(3) Indicate the national sectoral legislation the project will operate under

.....

.....

(Attach a planning brief, a cadastral plan, architectural designs, civil drawings, structural drawings, Environmental Impact Assessment, Environmental and Social Impact Assessment and Strategic Environmental Assessment reports and any other relevant documents)

FORM PLUPA/DC -17 (r.8)



NOTIFICATION OF APPROVAL/REFUSAL/DEFERMENT OF DEVELOPMENT PERMISSION FORM

Section .....

Registered Number of Application.....

To: .....

.....

Your application number as above, submitted on

.....

for permission to .....

on L.R. /Parcel No. .....

situated in .....

(*County/Sub County/Ward*)

along/off..... Road has been ..... (*approved/rejected/deferred*) on (date)

.....

for the following reasons/subject to the following conditions:

(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

Date ..... Signed .....

Cabinet Secretary, Ministry of Lands and Physical Planning

Cc: Director-General, Physical and Land Use Planning

County Executive Committee Member - Responsible for Physical and Land Use Planning for respective County Government

National Land Commission

Director of Surveys

Director, Land Administration

Chief Land Registrar

FORM PLUPA/DC -18 r 11

THE PHYSICAL AND LAND USE PLANNING ACT (*Cap.* 303)

Registered Number of Application .....

CERTIFICATE OF COMPLIANCE

Certificate No. .....

Name and Address of Applicant .....

.....

Type of Development (Industrial, Commercial, etc.) .....

On L.R./Parcel No. ..... with coordinates .....situated in .....
Road ..... locality (City, Municipality, Township, etc.)

Received from .....(County Government) by Ref. No. .....
of .....

This is to certify that the application above is in compliance with:

(a) Approved Development Plan No.

(b) Approved Subdivision Plan/Advisory Plan No.

(c) Special conditions specified in the Notification of Approval Form PLUPA .....
dated ..... day of ..... 20..... with respect to Registered Application No. .....

Issued by .....

(Name of Officer)

.....

Sign

Director-General

For: Cabinet Secretary

Ministry's Seal