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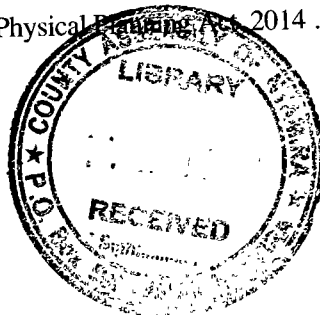
NYAMIRA COUNTY GAZETTE SUPPLEMENT

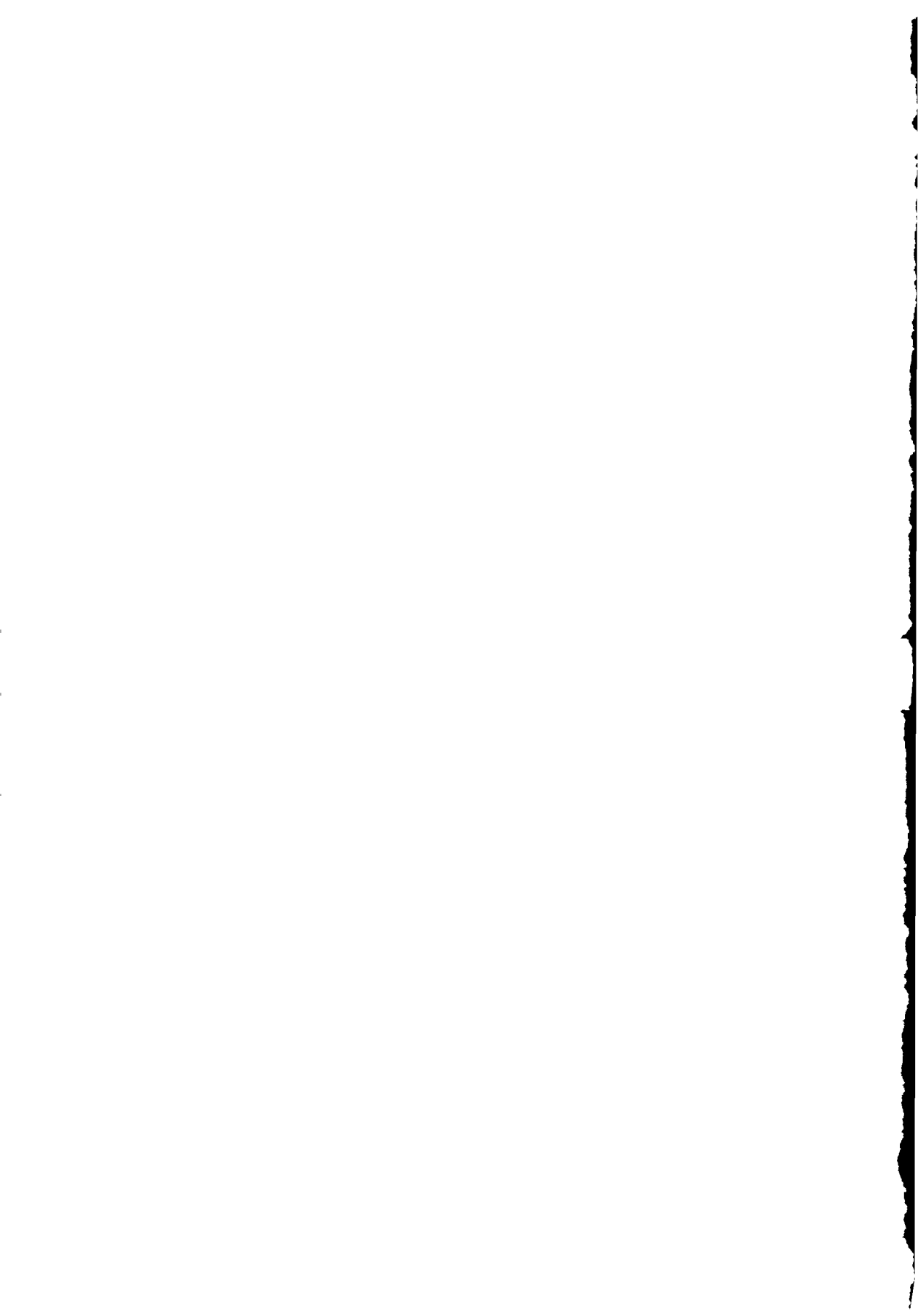
ACTS, 2014

NAIROBI, 8th May, 2015

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THE NYAMIRA COUNTY PHYSICAL PLANNING ACT, 2015

AN ACT of Parliament to provide a framework for spatial planning; to specify the relationship between the spatial planning and the land use management system and other kinds of planning; to provide for the inclusive, developmental, equitable and efficient spatial planning at the different spheres of government; to provide for the monitoring, coordination and review of the spatial planning system; to provide a framework for policies, principles, and standards for spatial development planning; to promote greater consistency and uniformity in the application procedures and decision-making by authorities responsible for spatial planning and development applications; to provide for the establishment, functions and operations of spatial planning agencies; to provide for the facilitation and enforcement of land use and development measures; and for connected purposes

ENACTED by the County Assembly of Nyamira as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Nyamira County Physical Planning Act, 2014.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“Board” refers to the County Public Service Board

“Council” means the County Physical Planning Council established in accordance with Section 11 of this Act;

“County Executive Committee” county Executive Committee as established under the County Government Act, 2012;

“County Executive Committee member” unless specified will refer to the County Executive Member in Charge of Physical Planning;

“County Land Management Board” refers to the Nyamira County Land Management as established under the land Commission Act;

“County Planning Authority” refers to the Ministry in charge of Physical planning;

“Development” will be interpreted according to the meaning ascribed under Section 51 of this Act;

“Development Control” means the process of managing or regulation development on, in, above or over land;

“Development Approval Committee” means a committee as established under section 19(1) of this Act;

“Director” means County Director of Physical Planning;

“Unauthorised Development” means: development that contravenes development plan, development without development permission or contrary to development permission, development where planning permission has been disapproved, development that is inconsistent with the approved alterations or amendments, development whose development permission period has lapsed;

“Secretary” means the Secretary to the County Development Approval Committee.

Objects of the Act

3. The objects of this Act are to—

- (a) provide a uniform, effective and comprehensive system of spatial planning and land use management;
- (b) ensure that the system of spatial planning and land use management promotes social and economic inclusion;
- (c) provide for development principles and standards;
- (d) provide for the sustainable and efficient use of land;
- (e) provide for a systematic development application and approval process
- (f) provide for cooperative government and intergovernmental relations amongst the national, county and other spheres of government; and
- (g) ensure that there is equity in the application of spatial development planning and land use management systems.

Spatial Planning System

4. The spatial planning system consists of—

- (a) spatial development plans and policies to be prepared and adopted by the county government;
- (b) development principles and standards that shall guide spatial planning, land use management and land development;
- (c) the management and facilitation of land use through the use of spatial application of development principles;

- (d) procedures and processes for the preparation, submission and consideration of land development applications and related processes; and
- (e) implementation, monitoring and evaluation of spatial plans.

PART II—DEVELOPMENT PRINCIPLES AND STANDARDS

Application of Development Principles

5. The general principles set out in this part shall apply to the Billions of all organs of state, and other authorities responsible for the implementation of legislation regulating land use and development, and shall guide the

- (a) preparation, adoption and implementation of any Spatial Development Framework, policy or by-law concerning spatial planning and the development or use of land;
- (b) compilation, implementation and administration of any Land Use Scheme or other regulatory mechanism for to the management or control of the use of land;
- (c) use and development of land;
- (d) consideration by a competent authority of any application that impacts or may impact upon the use and development of land; and
- (e) performance of any function in terms of this Act or any other law regulating spatial planning and Land Use Management.

Development Principles

6. The following principles apply to spatial planning, land use management and land development—

- (a) spatial sustainability, in order to:
 - (i) promote land development that is within the county's fiscal, institutional and administrative means;
 - (ii) ensure protection of agricultural land, the environment and other protected lands and the safe utilization of land;
 - (iii) promote and stimulate the effective and equitable functioning of land markets; and
 - (iv) promote land development in locations that are sustainable and limit urban sprawl.

- (b) Public participation that ensures transparent decision-making in which citizens —
- (i) are educated and made aware of the reasoning behind decisions;
 - (ii) have access to information about development proposals, plans and policies, as well as to the officers and committees which make such decisions;
 - (iii) are involved in decision making;
 - (iv) provide information to facilitate Spatial Planning.
- (c) Efficiency whereby;
- (i) land development optimizes the use of existing resources and infrastructure;
 - (ii) decision-making procedures are designed with a view to minimizing negative financial, social, economic or environmental impacts; and
 - (iii) development application procedures are efficient and streamlined and time frames are adhered to by all parties.
- (d) Spatial resilience whereby flexibility in spatial plans, policies and land use management systems is accommodated to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks;
- (e) Good administration whereby —
- (i) all spheres of government ensure an integrated approach to land use and land development that is guided by the Constitution, this Act and any other written law;
 - (ii) the preparation and amendment of spatial plans, policies, land use schemes as well as procedures for development applications, include transparent processes of citizen participation; and
 - (iii) policies, legislation and procedures are clearly set out and citizens informed.
- (f) Integration whereby spatial planning facilitates policy coherence and integration through spatial plans fostering integration between levels of government and help to create complementary and mutually reinforcing policies and billions; and

- (g) recognition of the needs of people with disabilities and other marginalized groups.

Prescribed Standards

7. (1) The County Executive Committee Member shall in consultation with relevant stakeholders, prescribe standards for land use management and land development.

(2) The standards must—

(a) reflect the county and national government development policy, policy priorities and programmes relating to land use management and land development;

(b) promote social inclusion, spatial equity, desirable settlement patterns, rural revitalization, urban regeneration, and sustainable development;

(c) include:

(i) a report on and an analysis of existing land use patterns; (ii) a framework for desired land use patterns;

(iii) existing and future land use plans, programmes and projects relative to key sectors of the economy; or

(iv) mechanisms for identifying strategically located vacant or underutilized land and for providing access to and the use of such land;

(d) standardize the compilation of all maps and diagrams at an appropriate scale;

(e) differentiate between geographic areas, types of land use and development needs;

(f) provide for the effective monitoring and evaluation of compliance with this Act.

(3) The County Executive Committee Member may in consultation with or at the request of the Governor or another County Executive responsible for a related land use or land development function prescribe standards to guide the related sectoral land use or land development.

PART III – INTER-GOVERNMENTAL SUPPORT

National Monetary and Technical Support

8. (1) The Cabinet Secretary shall—

- (a) provide support and assistance to the County government, towns and urban centres in the performance of their Spatial Planning, land use management functions and related obligations;
- (b) monitor:
 - (i) compliance with the development principles and compulsory norms and standards; and
 - (ii) progress made by planning authorities with the adoption or amendment of Spatial Plans.

(2) The Cabinet Secretary shall develop mechanisms to provide monetary and technical support to strengthen the capacity of planning authorities to adopt and implement an effective land use management system.

(3) The Cabinet Secretary shall in the performance of these functions in this section consult with the County Executive Committee.

County Support and Monitoring

9. (1) County legislation may provide for matters of county interest not specifically provided in this Act.

(2) The Governor may, subject to the Constitution and any other law regulating county supervision of towns and urban centres in the county—

- (a) assist a city or municipality with the preparation, adoption or revision of its spatial plans;
- (b) facilitate the co-ordination and alignment of the land use management;
 - (i) systems of different cities and municipalities;
 - (ii) system of a city, town and municipality with the structure plans, development strategies and programmes of national and county organs of the state.

(3) The Governor may, by notice in the Kenya Gazette or County Gazette, identify matters of county interest in respect of which County policies, frameworks, and standards must apply.

(4) The County government shall develop mechanisms to support and strengthen the capacity of cities, towns and municipalities to adopt

and implement an effective system of land use management in accordance with this Act.

PART IV — ADMINISTRATION AND COORDINATION OF PLANNING

Government Responsibility

10. (1) Spatial Planning is a shared responsibility between National and County Governments and the functions shall be exercised in accordance with the Constitution.

(2) The National Government is responsible for broad principles of land-use planning and coordination of planning by Counties.

Obligation to Plan

11. The County Government shall have an obligation to plan for all its citizens for purposes of;

- (a) spatial order;
- (b) public safety and security;
- (c) providing a clean and healthy environment;
- (d) provision of basic infrastructure including; roads of access, water, sewer, electricity, gas and solid waste disposal;
- (e) provision of social amenities including recreation parks and open space;
- (f) disaster preparedness and management;
- (e) county special development projects.

Establishment of the Directorate of physical Planning

12. (1) There shall be a Directorate of Physical Planning to be headed by a Director.

(2) The Director together with the staff, shall be public officers appointed by the County Public Service Board, as may be deemed necessary for purposes of this Act.

Qualifications for the Director

13. (1) A person is qualified for appointment as a County Director of Physical Planning if the person:

- (a) has a graduate degree in Urban Planning or any other relevant field;
- (b) has served for at least of five years working in the relevant field;

- (c) is a registered Physical Planner by the Physical Planning Registration Board; and
- (d) meets the requirements of chapter six of the constitution.

Functions for the Director

14. (1) The Director shall be the Chief Government adviser on all matters relating to physical planning and shall be the Secretary to the County Development Approval Committee.

(2) The principal office of the Director shall be at Nyamira town but there may be established such other offices at Sub-County and town level as the Director may from time to time determine.

(3) (1) The Director shall—

- (a) Prepare a 10 year County Spatial Development Plan;
- (b) formulate county physical development strategies, policies, guidelines and land use regulations;
- (c) be responsible for the preparation of;
 - (i) physical development plans for local and urban centres;
 - (ii) county special area plans;
 - (iii) urban integrated plans;
 - (iv) plans for slum and informal settlement upgrading;
 - (v) rural land use plans and village settlement plans.
- (d) formulate land use standards, zoning schemes and ordinances for all urban settlements in the county;
- (e) advise the National Land Commission through the County Land Management Board on land reservation, alienation & acquisition for county specific projects;
- (f) undertake control of development and ensure compliance to development to approved development plans;
- (g) in partnership with other County development agencies ensure implementation of all approved physical development plans;
- (h) from time to time initiate, undertake, direct studies and research on matters concerning physical planning;

- (i) prepare annual reports to the Governor and the County Assembly on the state of County Physical Planning;
 - (j) be responsible for authorizing the approval of all development applications;
 - (k) responsible for implementation of physical planning standards.
- (4) The Director may delegate in writing any of his functions under this act, either generally or specially to any officer appointed under section 13(1) and may at any time revoke or vary such delegation: Provided that no such delegation shall be deemed to have divested the Director of all or any of his/her functions, and he/she may, if he/she thinks fit, perform such functions notwithstanding that he/she had delegated those functions.

Removal of Director

15. (1) The Director may be removed from office by the Board, in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty;
- (d) Bankruptcy; or
- (e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the Director is removed under subsection (1), he or she must be given an opportunity to defend himself or herself against any allegations.

Indemnity of the Director and Officers

16. The Director or any other officer appointed under section 13(1) shall not be personally liable for any Billion or other proceeding for or in respect of any Act done or omitted to be done without negligence and in good faith in the exercise or purported exercise of any of the functions conferred by or under this Act.

Establishment and Composition of the County Physical Planning Council

17. (1) There shall be established a County Physical Planning Council consisting of:

- (a) the Executive Committee Member in charge of physical planning who shall be the Chairperson;
- (b) the Chief Officer In Charge of Physical Planning;
- (d) Chief Officer In Charge of Agriculture, Livestock and Fisheries;
- (e) Chief Officer In Charge of Water Sanitation and Irrigation;
- (f) Chief Officer In Charge of Environment Energy and Mining;
- (g) Representative of Chamber of Commerce;
- (h) Chief Officer of Health Services;
- (i) Chief Officer In Charge of Trade and Cooperatives;
- (j) Chief Officer In charge of Roads and Transport;
- (k) County Director of Physical Planning who shall be the Secretary;
- (l) County Secretary in the Land Management Board;
- (m) Representative of the legal fraternity practising within the County.

Functions of the County Physical Planning Council

18. (1) The functions of the County Physical Planning Council shall be to—

- (a) hear and determine appeals lodged by a person, institution or body aggrieved by the decision of a development approval committee;
- (b) determine and resolve physical planning matters referred to it by a development approval committee;
- (c) promote Spatial Planning as an effective and efficient instrument for the improvement of the physical environment towards the achievement of sustainable development in the County;
- (d) promote integration of spatial, economic, environmental and other sectoral planning;
- (e) promote inter county planning initiatives through initiation of transboundary spatial planning;

- (f) advance the County's national and global competitiveness through spatial planning;
 - (g) require the Director to prepare reports on matters concerning the use of spatial planning in the conservation, use and development of lands in the county territory and any amendments desirable to any law affecting spatial planning for appropriate action and direction;
 - (h) require the National Land Commission through the County Land Management Board to undertake actions including alienation of public land for purposes of county special development projects;
 - (i) establish and maintain liaison, co-operation and capacity building with national government, towns, urban centres Boards and Town Committees with respect to spatial planning; and
 - (j) undertake Monitoring and evaluation of implementation of physical development plans.
- (2) The quorum for the transaction of the business of the Council shall be a two thirds of the total number of members; and all Acts, matters or things authorized or required to be done by the Council, shall be effected by a resolution passed by a majority of the members present and voting.
- (3) The Council shall meet at least once every quarter but may do so as per need.
- (4) The Chairperson shall preside at every meeting of the Council, at which he is present, but in his absence the Deputy Chairperson shall preside, and in his absence, the members present shall elect one of their members who shall, with respect to that meeting and the business transBilled thereat have all the powers of the Chairman.
- (5) Unless a unanimous decision is reached, a decision on any matter before the Council shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairman or person presiding shall have a casting vote.
- (6) An appeal shall be heard and determined in 30 days and the fee for lodging an appeal shall be Kenya Shillings Twenty Thousand.

Establishment and Composition of Development Approval Committees

19. (1) There shall be established a Development Approval Committee which shall be responsible for receiving, processing and subsequent approval or refusal of all development applications.

(2) The Committee shall be made up of the following members who shall be public officers appointed by the Executive Committee Member In Charge of Physical Planning—

- (a) The Director In Charge of Physical Planning;
 - (b) Director of Land Survey and Mapping;
 - (c) County Engineer;
 - (d) County Director of Environment;
 - (e) County Public health officer;
 - (f) Representation from NEMA;
 - (g) County Architect;
 - (h) two co-opted members appointed by the County Executive Committee Member;
- (3) fees as to be provided in the regulations.

Decisions of Committee

20. (1) Decisions of the Committee shall be based on professional analysis, county development policies, approved development plans and sustainable use of county resources.

(2) Unless a unanimous decision is reached during a Committee meeting, a decision on any matter before the Committee shall be by a majority of votes of the members present and in the case of an equality of votes, the Secretary shall have a casting vote.

(3) A decision made by the Committee shall be binding and may only be overturned by a unanimous vote of the Council.

Meetings of the Committees

21. (1) The Committee shall sit at least once every month.

(2) During such meetings members shall be legible for a sitting allowance equivalent to lunch allowance as set by the County Public Service Board.

(3) A member co-opted by the Committee to assist in determining a development Application shall be legible for the same amount as paid to the committee members.

Sub-county Development Approval Sub-Committees

22. (1) The County Executive may require the Director to establish sub-committees to Process the approval of development applications at the Sub-county level.

Membership of Sub-County Development Approval Sub-Committees

23. The sub committees established under Section (1) above shall comprise of—

- (i) Sub-County administrator who shall be the Chair;
- (ii) County Physical Planner who shall be the secretary;
- (iii) Town Administrator;
- (iv) Land Administrative Officer from the ministry responsible for lands;
- (v) County Engineer;
- (vi) County Public Health Officer;
- (vii) County Surveyor;
- (viii) Representative from NEMA;
- (ix) One member appointed by the County Land Management Board.

Referral of Applications to the County Development Application Committee

24. A sub-committee may refer a development application to be processed by the County Development Approval Committee.

Appeals to County Development Application Committee

25. A person aggrieved by a decision made by a sub-committee may appeal such a decision to the County Development Application Committee.

Establishment of a County Planning Compliance and Enforcement Division

26. (1) The Director shall establish a Compliance and Enforcement division under the Directorate of Physical Planning.

(2) The Division shall be headed by a public officer equivalent to a Deputy Director of Physical Planning appointed by the County Public Service Board.

Qualifications of the Head of the Compliance and Enforcement Division

27. (1) A person appointed as Head of Compliance and Enforcement Division shall be an experienced lawyer preferably in Environmental Law.

(2) The Board may appoint other officers as may be deemed necessary by the Director to undertake functions of the Division.

Functions of the County Planning compliance and enforcement Division

28. The functions of the County Planning Compliance and Enforcement Division shall be—

- (a) to enforce physical planning standards within the county;
- (b) to ensure that all developments are undertaken in accordance to set regulations and guidelines;
- (c) to ensure that all persons, bodies or authorities develop according to the conditions attached with development approvals;
- (d) to ensure that no development shall commence without a development permission issued by the county planning authorities;

Powers of the County Planning Compliance and Enforcement

29. The Division shall exercise the following powers in discharge of its functions—

- (a) arrest and charge any person, body or authority in the Environment and Land Court for breach of development conditions, standards, guidelines or regulations;
- (b) advise the Registrar to refuse to register a document relating to a development on land whose;
- (c) serve an enforcement notice to an owner, occupier or developer who has;
 - (i) developed without development permission;
 - (ii) failed to comply with the conditions of approval of a development application;
- (d) require an owner, occupier or developer who has;
 - (i) developed without development permission;

- (ii) failed to comply with the conditions of approval of a development application;
- (iii) failed to comply with development standards, guidelines and regulations at their own cost;
- (iv) to restore land to its original conditions;
- (v) to demolish or alter any building or works or discontinue to use any land or construction of any building or carry out any other activities on land.

PART V – SPATIAL PLANS

A – COUNTY SPATIAL PLAN

County Spatial Development Plan

30. (1) The Director shall prepare a ten (10) year County Spatial Development Plan for the County.

(2) The County Spatial Plan must be aligned with the National Spatial Planning Policy.

(3) The County Spatial Development Plans shall be prepared for the whole or part of the area covered by the county.

Purpose and Objects of the County Spatial Development Plan

31. (1) The County Spatial Plan shall formulate strategic policies for the purpose of determining the general directions and trends of the physical development of the County.

- (2) The County Spatial Plan shall—
 - (a) be accompanied by such indicative plans as may be required to clarify the strategic policies;
 - (b) be the basis for investment and utilization of natural resources taking local land use policies into account;
 - (c) be the basis of coordinating and integrating County Spatial Development Plan;
 - (d) provide for implementation of cluster settlement for easier provision of infrastructure;
 - (e) identify and map areas which are prone to natural calamities such as floods landslides and droughts for natural disaster preparedness;
 - (f) take into account the principle of effective usage of land, equity, efficiency, sustainability; and

- (g) Contain such other matters as may be prescribed or as the Council may in any particular case specify.
- (3) The object of the County spatial plan shall be-
 - (a) to improve the land and providing for the proper growth, physical development and use of such land;
 - (b) to provide measures for the improvement of the physical living environment;
 - (c) to improve communications and transportation;
 - (d) for public purposes, utilities and services;
 - (e) to improve the socio-economic well-being and the promotion of economic growth, and
 - (f) to facilitate sustainable development.

Preparation and approval of the County Spatial Development Plan

32. (1) The County Director shall prepare and submit to the County Executive Committee member a draft County Spatial Development Plan for approval by the County Assembly.

(2) Prior to submitting to the County Executive Committee a draft spatial development plan for its approval, the County Director shall submit a report of survey pertaining to the area being planned to the County Executive Committee for adoption.

Contents of the Survey Report

33. The survey report referred to under Section 39 shall provide for;
- (a) matters that may be expected to affect development or the planning of the development of the County;
 - (b) the principal physical, economic, environmental, and social characteristics;
 - (c) the principal land uses of the County;
 - (d) expected effects of the principal land uses on County development;
 - (e) principal economic, social, physical and environmental management and conservation policies of the County;
 - (f) the size, composition, and distribution of the population of the County whether resident or not;