

GAZETTE NOTICE No. 7700

THE NATIONAL LAND COMMISSION

(No. 5 of 2012)

PRACTICE GUIDELINES FOR COUNTY LAND MANAGEMENT BOARDS ON PROCESSING OF DEVELOPMENT APPLICATIONS

FOREWORD

County Land Management Boards are fundamental devolved units of the National Land Commission purposed by policy and law to undertake important land management functions at the county level. These guidelines provide important instruments to:

- To clarify the roles of County Land Management Boards with respect to management of public land as per Section 18 (1) of the National Land Commission Act, 2012.
- To standardize processes and procedures of the operations of the County Land Management Boards.
- To guide the County Land Management Boards on the criteria for decision making on the various development applications.

By adhering to these practice guidelines which have derived from the relevant legislation governing management of land in the country, the County Land Management Boards will carry out their mandates in a very professional, transparent and rational manner. The expected outcome is that land developers, investors and citizens of this country will benefit from efficiency and fairness in matters relating to management of public land. Certainly this will impact positively and immensely on optimizing the use of land and the consequent economic prosperity that is the desire of every Kenyan.

The County Land Management Board members, of necessity, are required to familiarize themselves with these guidelines and apply them to their routines in discharging their mandates.

MUHAMMAD SWAZURI,
Chairman National Land Commission.

ACKNOWLEDGEMENT

The preparation of these guidelines has been accomplished through team work and dedication by the both the Commission staff together with other experts drawn from practitioners and the academia. I wish to acknowledge specifically the efforts of Commissioner Dr. Rose Musyoka; Dr. Herbert Musoga (Director Land Use Planning –Team Leader); Mrs. Rose Kitur and Mr. Charles O. K'onyango (Deputy Directors of the Land Use Planning); Ms. Naomi Mogoria (Lecturer Jaramogi Oginga Odinga University, and Secretaries of CLMBS, namely: Mr. Stephen Ngari, Ms. Domtila Gati, and Mr. Josephat Wasua, Mr. Job Ng'etich the County Physical Planner, Kakamega County, Ms. Juliana Mutua (Senior Assistant Director, Directorate of Nairobi Metropolitan Development) and Mr. Sospeter Ohanya, (Survey, Adjudication and Settlement Directorate). Without their dedication, sacrifice and selfless commitment, it would not have been possible to prepare these guidelines within the time line. The CLMB guidelines shall direct County Land Management Boards (CLMBs) in the processing of development applications and management of public land in accordance with the National Land Commission Act, 2012 and other relevant laws.

I wish to thank all Commissioners and staff of the Commission who gave their comments to enable the finalization of these guidelines. The importance of these guidelines in the realization of the commission's constitutional and legal mandate on land reforms cannot be overstated.

TOM AZIZ CHAVANGI,
Secretary/Chief Executive Officer.

PART I—INTRODUCTION

1.0 Introduction

1.1 Preamble

These guidelines shall direct County Land Management Boards (CLMBs) in the processing of development applications and management of public land in accordance with National Land Commission Act, 2012 and other relevant laws. The CLMBs are established under section 18 of the National Land Commission Act, 2012 to manage land. The function of the board as stipulated in section 9 (a) of the National Land Commission Act, 2012 is to process applications for:

- Allocation of public land.
- Change and extension of user.
- subdivision of public land.
- renewal of leases.
- perform any other function assigned by the Commission or any other written law.

For the purpose of these guidelines, land management is defined as the process of planning, mapping, organizing, regulating and administering land resource to attain optimal and sustainable use.

1.2 Target Users of the Guidelines

These guidelines are targeted at the following:

- County Governments.
- County Land Management Boards.
- Land use Planners, Surveyors, land administrators and other practitioners in land and built environment sector,
- Developers/investors.
- Stakeholders in land and the built environment.

1.3 Objectives of the Guidelines

The objectives of the guidelines are:

- To clarify the roles of County Land Management Boards with respect to management of public land as per section 18 (1) of the National Land Commission Act, 2012.
- To standardize processes and procedures of the operations of the County Land Management Boards.
- To guide practitioners in the land sector on the format of presenting development applications to the County Land Management Boards.
- To guide the County Land Management Boards on the criteria for decision making on the various development applications.

1.4 Methodology Used in Preparing the Guidelines

The methodology used in preparing the guidelines entailed the following steps:

- Review of the Constitution and relevant pieces of legislation and Government policy documents.
- Review of literature and benchmarking for best practices.
- Brainstorming on the expert practice experiences.
- Formulation of Draft Guidelines.
- Test – casing the Draft Guidelines on the target users through presentation and review.
- Revision of the Draft Guidelines in line with comments received.
- Review and adoption by the Commission.
- Publication and Gazettement.
- Dissemination to the target users.

1.5 Organization of the Guidelines

The guidelines are divided into four parts:

- Part I—Provides a background to the guidelines, a statement of the objectives, and the methodology used, as well as the context of development applications.
- Part II—Presents the types of development applications and criteria for decision-making.
- Part III—Details the procedures for processing development applications and communicating decisions.
- Part IV—Presents the procedure for conducting County Land Management Boards meetings.

2.0 Context of Development Applications

2.1 Constitutional Principles, Values and Expectations

- (a) The Constitution of Kenya, 2010 recognizes and upholds the sovereignty of the people of Kenya;
- (b) Article 66 (1) provides for State regulation of 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;
- (c) Article 60 of the Constitution of Kenya, 2010 inter alia requires:
 - Equitable access to land;
 - Sustainable and productive management of land resources;
 - Transparent and cost effective administration of land;
 - Sound conservation and protection of ecologically sensitive areas;
 - Elimination of gender discrimination in law, customs and practices related to land and property in land; and
 - Encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution in assessing development applications the constitutional principles, values and expectations shall be observed.

2.2 Vision 2030

Kenya Vision 2030 is the country's development blueprint covering the period 2008 to 2030. It aims to transform Kenya into a newly industrializing, *"middle-income country providing a high quality life to all its citizens by the year 2030"*. It recognizes land as a critical resource for socio-economic and political development, and respect for property rights, whether owned by communities or individuals as an important driver for economic transformation.

2.3 National Land Policy

The National Land Policy provides the basis on which most of the matters relating to land use management issues shall be dispensed with. It sets out goals and direction for the present and future management of land. The policy contains measures and guidelines which shall be used to guide decision making in processing of development applications.

That Land is:

- An economic resource that needs to be managed productively.
- A significant resource to which members of Society should have equitable access.
- A finite resource that should be utilized sustainably.
- A cultural heritage which should be conserved for future generations.

The National Land Policy requires establishment of development control standards, processes and procedures that are efficient, transparent and accountable and shall also take into account local circumstances and community values on land use.

2.4 Draft Urban Development Policy (2011)

The Draft National Urban Development Policy (NUDP) provides a framework for sustainable urban development in the country. The policy highlights the problems and challenges facing urban planning development and recommends measures to address them and which relate to development control as follows:

- Develop guidelines on urban renewal and economic regeneration as a basis for enabling urban areas and cities to realize global and local competitiveness.
- Promote urban regeneration programmes to increase intensification of prime land use in cities.
- Maintain neighborhood infrastructure.
- Convert land within urban areas to leasehold tenure to facilitate development control.
- Re-design and develop infrastructure in support of high growth sectors in urban centers.
- Promote the formation of neighborhood associations to foster a sense of ownership of urban centers by urban residents.
- Identify and classify urban heritage sites based on clearly defined criteria.
- Mainstream urban heritage conservation in the urban planning and development agenda.
- Develop an integrated urban heritage conservation strategy.

Processing of development applications should take cognizance of the proposals made under this policy to ensure coordinated implementation of Government policies which cut across various sectors. To secure effective public participation the NUDP recommends:

- Development and institutionalization of guidelines on public participation.
- Mainstreaming public participation in urban development activities.
- Dissemination of planning information in a language that is easy to understand.
- Education and sensitization of the members of the public on the value of urban planning.
- Fostering public-private partnerships in monitoring and evaluation of planning activities.
- Ensuring regular monitoring and evaluation of public participation in urban planning.

2.5 Sectoral Policies

2.5.1 Industrialization Policy (2010)

The Draft National Industrialization Policy provides for industrial development in areas of existing and high potential industrial development. Planning, demarcation, zoning and acquisition of land for industrial development in every County are envisaged too.

2.5.2 National Housing Policy

The Sessional Paper No. 3 of 2004 on National Housing Policy makes provisions for:

- Enabling the poor to access housing and basic services and infrastructure necessary for a healthy living environment especially in urban areas.
- Encouraging integrated, participatory approaches to slum upgrading, including income-generating activities that effectively combat poverty.
- Facilitating increased investment by the formal and informal private sector, in the production of housing for low and middle-income urban dwellers among other provisions.

This calls for special attention to the subdivisions, amalgamations, consolidations and building plans, that emanate from this sector and submitted as development applications to be guided come up with sustainable human settlements.

2.5.3 Energy Policy (2014)

This policy makes provision for the right of access to survey and use of land for energy infrastructure development, prospecting for petroleum, gas and coal; storage transmission, laying of petroleum pipeline and electricity supply infrastructure, dams and geothermal development. It also provides for land rehabilitation when energy infrastructure and ancillary are removed and in default the owner of the land may carry out the restoration and the cost thereof.

2.5.4 Draft National Water Policy (2012)

The policy appreciates water as a national, social and economic good. It recognizes that fresh water is a finite and vulnerable resource which is essential to sustain life and development. Processing of development applications that relate to this sector should ensure they facilitate:

- Treatment of effluents.
- Disaster preparedness.
- Protection of ecological systems and biodiversity in strategic water catchment areas.
- Enhancement of storm water management and rain water harvesting.
- Enhancement of pollution control.
- Sustainable ground water resources for present and future generations.
- Conservation of green water and rain water harvesting for storage development.
- Use of innovative efficient affordable technologies for rainwater harvesting, storage distribution and dispensing.

2.5.5 Draft National Tourism Policy (2012)

The policy aims at ensuring that the tourism sector retains its position as the leading export-oriented sector and become a major vehicle for job creation, poverty reduction and wealth creation.

It recommends integrated environmental management in the development of land resources for tourism and supports measures to enhance the effective use of scientific resource assessment information in the regional plans as well as environmental auditing and impact assessment by the **National Environmental Management Authority**. Development applications should, therefore, be subjected to the relevant integrated environmental management plans to guide approval.

2.5.6 Agriculture Policy (2000)

The Agriculture Policy aims at increasing productivity and income growth especially for small holders, enhancing food security and equity, emphasizes on irrigation to introduce stability in agricultural output, commercialization and intensification of production; and environmental sustainability.

Processing of development applications should be guided by the need to harmonize different development activities that can foster optimal land-use and control of environmental degradation.

2.5.7 Sessional Paper No. 8 of 2012 on National Policy for the Sustainable Development of Northern Kenya and other Arid Lands

This policy identifies development concerns of the region and provides advice on the best use of its resources. It urges the development of cost effective housing strategies for ASALS, encouragement of urbanization, infrastructure investment that is alive to climate needs, minimization of human-wildlife conflicts and the recognition of pastoralism as a legitimate form of land use and management. Consequently development applications from the ASALS should be informed by this broad approach in processing approvals to ensure integrated development.

2.5.8 Sessional Paper No. 2 of 2008 on National Livestock Policy

The policy addresses the challenges in the livestock sub-sector in the context of livestock breeding, nutrition, feeding, disease control and value addition. It recognizes land as a key asset and the basis for development in the sector including the livestock industry. It recommends the need to guard against uneconomical land subdivisions and subject livestock based industries to environmental impact assessment to for sustainable development.

2.6 Legislative Framework

The preparation and processing of development applications should take cognizance of the provisions of the following:

- Approved Spatial development/land use plan of the area.
- County Government Act, 2012 sections 102 to 115.
- The physical planning Act, Cap. 286.
- Urban Areas and Cities Act, 2011.
- Environmental Management and Co-ordination Act, 1999.
- Public Health Act, Cap. 242.
- Building Code, 1968.
- The Land Act, 2012.
- The land registration Act, 2012.
- The Survey Act.
- Land and Environment Court, Act.
- Section Properties Act, 1997.
- Trust Lands Act Cap. 288.
- Any other relevant Acts.

2.7 Socio-Cultural and other Constraints

Culture entails a system of art, thought, customs, beliefs and all other products of human thought made by a people at a particular time. Culture is important for promoting the image and conserving the identities of urban areas for local economic development and governance. However limitations may arise where socio-cultural issues are not integrated in the planning process. Socio-cultural concerns may inform the content of development applications as they are a response to activities that are conducted in an area and which inform a people's livelihood. In processing of development applications socio-cultural attributes should be recognized, among them:

- **Role of religion in use of land:** Religion influences how various communities appreciate and utilize space. Decisions on development application ought to take due cognizance of special religious needs.
- **Squatter and informal Settlements:** These are special planning areas which may require affirmative interventions such as settlement upgrading and regularization.
- **Gender:** Cultures, customs and practices should not inhibit or discriminate against access to land or be used to dispossess.
- **Language:** Language is an important tool for advancing land use interests and raising awareness for public participation and decisions making.
- **Traditional Architecture:** Depending on specific regions, traditional building designs should be identified planned, conserved and promoted.

2.8 County Specific Needs and Realities

Geographical features and natural resources are among the major contributing factors to uniqueness of places. These unique features may be in one or more Counties and may include development taking place in close proximity to protected areas or conservation and preservation such as wetlands, forests, coastal mangroves areas designated tourism areas, wild life migratory routes among others, and hence processing of development applications should take into account county specific contexts.

PART II—TYPES OF DEVELOPMENT APPLICATIONS AND CRITERIA FOR DECISION-MAKING

3.0 Types of Development Applications and Criteria for Decision Making

3.1 Introduction

This section focuses on various types of development applications which will form the core business of the CLMBs. These are subdivisions, amalgamation, change of user, extension of user, land reclamation, land alienation, conversion of land, land banking, easements and covenants.

3.1.2 Development Defined

Development has the meaning conferred by section 2 of the Land Act, 2012 as to include: subdivision, amalgamation and re-adjustment of land, change of user, extension/renewal of lease, extension of user, land reclamation, land alienation, land conversion, land banking, easements and covenants.

3.1.2 Development Application

This is a request for permission to undertake a development activity. The application may be in form of change of user, extension of user, extension/renewal of lease, sub-division and amalgamation proposals, processing of easements, way-leaves for provision of utility service infrastructure, advertisements and any other development that involves material change on land.

3.1.3 General Principles for Determining Development Applications

The grounds for determining development applications include, among others:

- The implications of the proposals.
- Development conditions to be imposed. mitigation measures to be undertaken for the preservation or conservation of the land and the built environment.
- Encouraging optimal utilization of the land resource.
- Promote convenience and separation of incompatible users.

The elements of public interest which are considered in determining development applications include:

- Public health and safety.
- Convenience and efficiency.
- Conservation and environmental quality.
- Accessibility.
- Social equity, choice and public welfare.
- Provision of services and other amenities
- Aesthetic appeal.

3.2 Types of Development Applications

The following are some of the applications that will be dealt with by the County Land Management Boards:

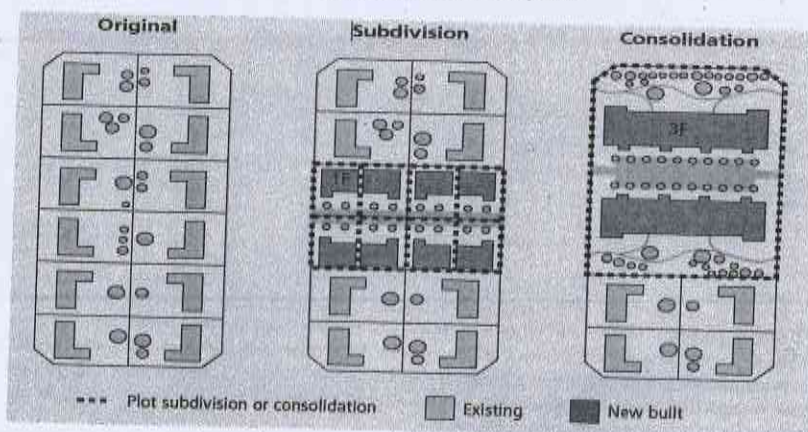
3.2.1 Land Subdivision

This is the process of dividing land into two or more parcels in order to obtain a higher density of use. This should be presented in form of a scheme plan and accompanied by a planning brief.

The form and structure of a subdivision scheme may be as illustrated as in figure 3.1 below:

Figure 3.1: Structure of Land Subdivision and Consolidation

Source: UN HABITAT, 2013



3.2.2 Change of User

The process for change of user involves conversion of use of land by 50 per cent or more besides that which has been approved, zoned or designated for the area.

3.3.3 Extension of User

This involves adding to or expanding the already permitted development rights to allow further changes in the use of land. Prior approval is required for such developments to proceed. (Permitted development rights may be amended or extended). The extension of use may involve increment in density, extension of developed area of land, and development of excess building units, among others.

3.3.4 Extension/Renewal of Lease

In Kenya leasehold interest is granted for a period ranging from 33 to 99 years after which the lease term expires. The property may revert back to the lessor if not extended. One may apply for extension or renewal provided he/she has complied with the terms of lease.

3.3.5 Land Reclamation

Land reclamation involves, planning, rebuilding and managing disturbed or damaged ecosystems on the one hand or getting new lands from coastal areas, rivers and lakes, swamps or wetlands. The purpose of reclamation is to make land available for agriculture, settlement, irrigation and other planned uses.

3.3.6 Land Amalgamation

Amalgamation is the process of combining two or more adjacent parcels of land into one. Amalgamation is an important tool for planning and re-development of an area.

3.3.7 Alienation of Public Land

Alienation of Public Land is the planning, surveying and transfer of ownership of the land. Such transfer may be to public or private entities. The CLMBs will perform this function as conferred by section 18.9 (a) of the NLC Act.

3.3.8 Conversion of Land

This is the process through which the ownership of land may change from either public to private or vice versa. This may be by way of allocation or compulsory acquisition, reversion of leasehold interest, transfers or surrenders.

Conversion of land may be done on the following considerations:

- Public needs, or in the interest of defense, public safety, public order, public morality, and public health.
- Land use planning.
- Ecologically sensitive land that has been endangered or endemic species of flora and fauna, or critical habitats.
- Management of erosion, floods, earth slips or water logging.
- Protection of forest and wildlife reserves, mangroves and wetlands, buffer zones of such reserves or environmentally sensitive areas.
- Protection of watersheds, rivers catchments areas public water reservoirs, lakes, beaches, fish landing areas, riparian and territorial sea.
- National, cultural and historical features of exceptional value.
- Investment land benefitting the people.
- Allocation of land on the basis of Vienna Convention of 1961 on Diplomatic relations.

3.3.9 Easements

Easement has the meaning conferred by section 2 of the Land Act, 2012 and is a non-possessory interest in another's land that allows for the use of the land to a particular extent, requires the proprietor to use the land in a particular manner, and shall not include a profit. Such easements are for example one that allows the underground services (water, drainage, gas, electricity, telephone and cables, etc.) to pass beneath the land of one or more neighboring properties.

3.3.10 Restrictive Covenants

These are provisions meant for restriction on use of land so that the value and enjoyment of adjoining land is preserved. They limit what the owner of the land may do with the land in relation to the neighborhood and may specify the exact user standards to be honored. They are perpetual and run with the land. Restrictive covenants are typically used in land development to establish minimum sizes for dwelling units, setback lines, and aesthetic requirements that enhance the neighborhood.

3.3.11 Land Banking

Land banking is the process of acquiring land and property at strategic sites for future public use. It also refers to the establishment of an inventory of surplus land by governmental institutions, county or municipal authorities for purposes of future development. The banking may be through acquisition, purchase, donation, and surrender, among others.

4.0 Criteria for Making Decisions on Development Applications

4.1 Introduction

In considering the applications for development permission, CLMBs will depend on planning standards, guidelines and other land management regulations. The criteria may be divided into two categories: (1) general guidelines applicable to all development applications and (2) specific guidelines applicable to particular development applications.

4.2 General Criteria

The following criteria generally apply to development applications.

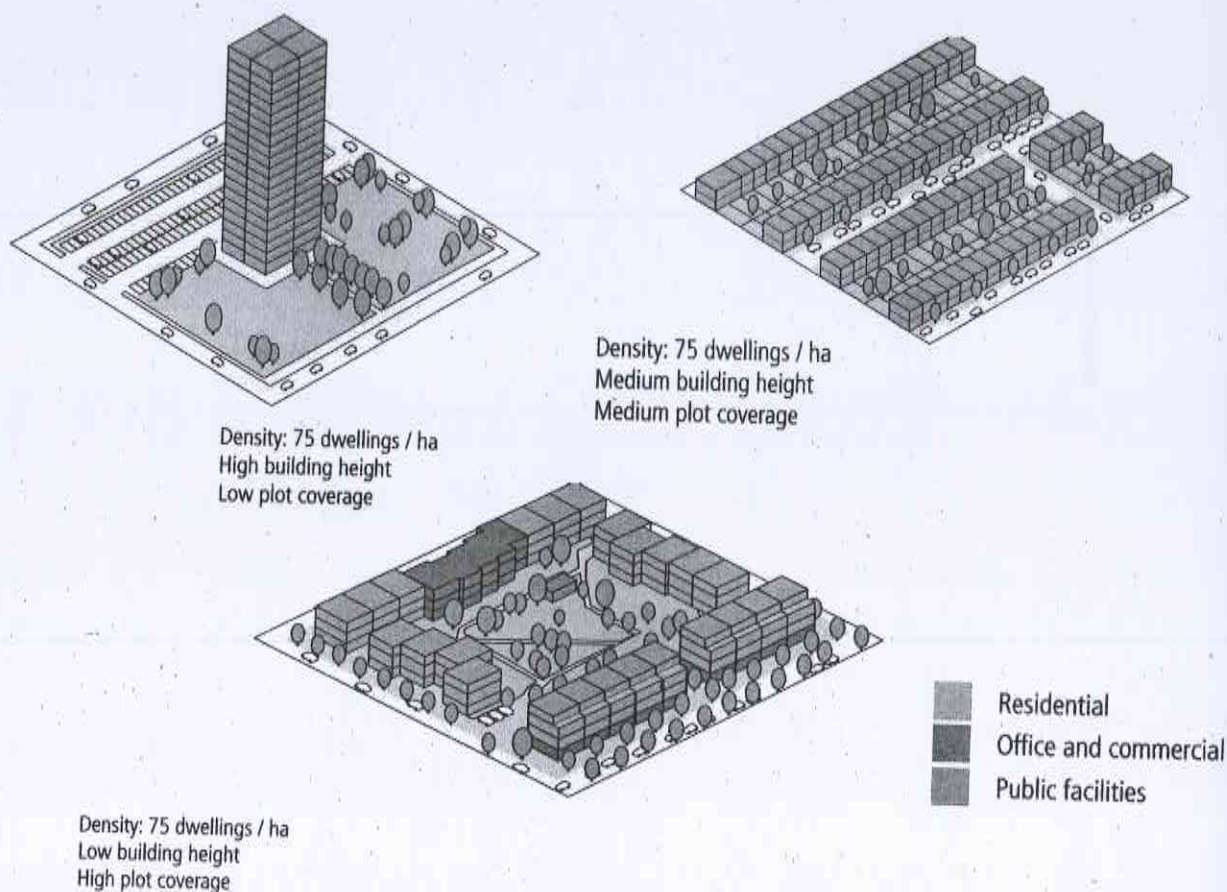
4.2.1 Planning Standards

These are important in guiding the scale, location and site requirements of various land uses to avoid conflicts and ensure comfort, safety and compliance with zoning prescriptions.

4.2.2 Density Control

This is the intensity of use of land expressed in terms of the number of persons, dwelling units or a combination of the two, per unit area of land. The main function of density control is to achieve reasonable minimum requirements for comfort, public health, safety convenience, access and space for other public utilities within the proposed layout.

Illustration 4.1 Density configurations on one hectare.



Source: Javier Mazas, Aurora Fernández Per (2006), *Density: New Collective Housing*

4.2.3 Plot Ratio

This is the relationship between a building and its site and is expressed as a ratio between total floor areas of a building divided by the total site area or as a percentage of the total floor area to the total site area. Plot ratio is an important measurement to determine the maximum density to the development or how much can be built on the site.

Plot area ratio = (Total covered area on all floors of all buildings on a plot) / (Area of the plot).

4.2.4 Traffic and Parking Considerations

In any land subdivision, amalgamation or easements, roads should be wide enough for two wide vehicles to pass each other or as shall be prescribed by the planning handbook. The normal rules for road widths in ordinary schemes should allow for adequate parking and for traffic to be accommodated without congestion. A requirement for off-street parking space and pedestrian walkways is also mandatory.

4.2.5 Zoning

This is a form of land use regulation relied upon to control development according to the present and potential uses of the land. When applying zoning regulations to a development application, the following factors will be considered:

- Density of the population.
- The site and physical attributes of the land involved.
- Traffic and transportation.
- The suitability of the land for the permitted use.
- The character of neighborhoods in the community.
- The existing uses and zoning of neighboring property.
- The effect of the permitted use on land in the surrounding area.
- Any potential decrease in property values.

4.3 Specific Considerations

The following are the considerations for specific development applications:

4.3.1 Considerations for Subdivisions

- Existing boundaries and the dimensions.
- Proposed subplots and their dimensions in meters.
- Proposed subplot areas in hectares.
- Proposed roads and footpaths to indicate respective width.
- Relationship to existing roads, abutting and neighboring parcels.
- Easement and rights of way (way leaves for power lines sewer mains, railway lines, water/fuel pipe lines etc).
- Public utility parcels.
- Topography/terrain by way of contours.
- Proposed population density vis a vis available services, e.g. water, sewer, roads and drainage. Convenience, circulation, and safety.
- Public participation.
- The shape of each sub plot.
- The layout and orientation of the plan of the area under consideration.
- Linkages with the resultant subplots.

Any comprehensive subdivision of more than 5.0 ha. will have to surrender 4 per cent of the total area, excluding the roads for public utilities. The surrender will be to the NLC.

4.3.2 Considerations for Change of user

- Location and setting.
- Infrastructure services and scope of future developments.
- Traffic generation and management.
- Prevailing development trends and compatibility with proposed user.
- Justification and efficacy of the proposal.
- Environmental considerations (Note that an Environmental Impact Assessment (EIA) report may also be required).
- Land ownership and tenure.

4.3.3 Considerations for Extension Lease

- Compliance with the leasehold conditions Proposed land use in the area.
- Whether the land is required for public purposes.
- Whether the area has been rezoned.
- Current development trends in the area.
- Assessment of level of infrastructure provision in the area.
- Assessment of level of utilization of the land.

4.3.4 Considerations for Extension of User

- Permitted user of the area.
- Defined location and size of the land.
- Current user of the land and compatibility.
- Proposed/intended user.
- Area zoning regulations.
- Proposed new development not exceeding 50 per cent.

4.3.5 Considerations for Amalgamation

- Accessibility of the subplots.
- population density in relation to available services, e.g. water, sewer, roads and drainage.
- impact on planning of the area.
- compatibility with surrounding users.
- Preservation of aesthetic beauty of the area.
- Environmental quality.
- Convenience, circulation, and safety.
- The layout and orientation of the plan of the area.
- Linkages with the resultant subplots.

4.3.6 Considerations for Land Reclamation

To ensure sustainability of reclaimed land, the following considerations will apply:

- Neighborhood characteristics.
- Cultural and heritage issues.
- Sustainable management of the land resource.
- Technology.
- Impact on planning of the area.

- Preservation of area aesthetics.
- Land use suitability.
- Anticipated development needs of an area.
- Environmental and social considerations.

4.3.7 Considerations for Land Banking

- Size location and dimensions of the land.
- Current development status of the land.
- Topography.
- Neighborhood character.
- Availability of infrastructure services and utilities such as water, electricity, sewerage, etc.
- Easements, covenants/restrictions, encumbrances.
- Anticipated use for the land.

PART III—PROCEDURES & COMMUNICATION

5.0 Sources of Information to Support Decision Making

5.1 Introduction

Sources of information are important in making decisions in land management. An information source is anything that might inform the board about facts or provide knowledge about the issues they will be handling. The various decisions that County Land Management Board will make shall be based on different sources of information.

5.2 Primary Sources

The CLMBs in their day to day operations will have to rely on primary sources of information which are the key sources of reference in guiding decisions. Primary sources of information are those sources that have legislative mandates and policy implications. These sources are:

- The Constitution, which is the supreme law provides for management of public land in Article 67.
- The National Land Commission Act, 2012—section 9, spells out the functions of the County Land Management Boards.
- The Land Act, 2012 section 8-20 provides for management of public land, guidance on management of public land, allocation of public land.
- The Land Use Planning Law in operation-provides general guidelines on land use.
- County Government Act, 2012, (section 110)-provides guidelines for preparation of county spatial plans.
- Urban Areas and Cities Act, 2011, (section 36-42)-provides guidelines for preparation of urban integrated development plans.
- The Environmental Management and Co-ordination Act No. 8 of 1999—provides for the establishment of an appropriate legal and institutional framework for the management of Environment and related matters.

5.3 Secondary sources

The secondary sources of information shall be supplementary, to give supportive guidance on the decision to be made. These sources include:

- The County Spatial Development Plans; which are ten year plans that sets out basic guidelines for a land use management system in the county taking into account any guidelines, regulations or laws as provided for under Article 67 (2) (h) of the Constitution.
- Urban Integrated Development Plans;-these are long term plans which are prepared for the purposes of providing a spatial framework for guiding development in urban areas.
- Records of previous deliberations/decisions on the specific applications- provide history of the case at hand.
- Judicial records where applicable to give an indication of judicial decisions and consideration that may have a direct bearing on the direction the CLMB decisions will take.
- Public opinion: The public opinion may either be oral or written submissions to the CLMB arising from the respective matter at hand. This is to ensure the constitutional principle of public participation is met, to give an opportunity to all concerned stakeholders to participate in decision making.

The type of information the CLMB will source will be determined by its functions and the type of application being handled.

5.4 Subdivision/ Amalgamation, Changer of User, Extension of User, and Extension of Lease

The decisions for these applications will be based on:

- Approved Development plans.
- Zoning regulations.
- level of infrastructure services provision.
- Land ownership documents.

5.5 Alienation of Public Land /Transfer of County Land to Public Institutions

The decisions will be based on functions bestowed upon the Commission as provided for under Article 12(1) of the constitution and section 12 (a-e) of the Land Act, 2012.

Sources of information:

- Approved Development Plans.
- Authenticated Survey plan/PID/ RIM Valuation report.
- Advertisement Notices; For purposes of public participation.
- Development proposal or business plan.
- Memorandum of transfer from the County Governments in the case of transfer from County Government.

5.6 Review of Grants subject to Article 68 (c) (v) of the constitution

Sources of information:

- Land ownership documents: The land title/letter of allotment held. Rates Clearance certificate.

Authenticated survey plan Any other relevant documents.

5.7 Conversion of Private Land to Public Land/Acquisition, Surrender, Gifts (Section 107(1-8 of The Land Act), Article 40(3a-b)

- Request for acquisition of land by either National Government or County Government.
- Public notice; Intention to acquire land by the Commission.

- Gazette Notice.
- Relevant Land registry records- Official search for the property.
- Authenticated survey plan.
- Valuation Report.
- Land Ownership Documents (land title).
- Contractual agreements between the concerned parties (land owner and government).
- Compensation payment records.

5.8 Dispute Resolution (Constitution Article) 67 (f)

- Written or oral submissions by concerned parties.
- Verification of land ownership documents-Ground report.
- Approved development plans.

6.0 Procedure for Dealing with Development Applications

6.1 Definition of Procedure

Procedure is an established way of doing something and involves a series of actions conducted in a particular order. Procedures in development applications are instrumental in providing clear steps to be followed in processing development applications. They also help to make a follow-up and monitor the stages of the application. The aim of procedures in development application is to ensure that development takes place in an orderly and rational way for the achievement of sustainable land use.

6.2 Procedure for Development Application

- The applicant shall make a submission of the application to the respective County Land Management Board in the prescribed forms.
- The applicant shall attach relevant documents to the application.
- The application shall be registered and payment of prescribed fees made.
- The respective County Land Management Board shall give at least 7 days' notice for convening of meeting.
- The respective County Land Management Board shall deliberate on the matters brought before it and within seven days and communicate its decision to the parties concerned.
- The Board shall communicate its decision in writing to the respective County Government and to the National Land Commission.
- The applicant or any other person aggrieved by the decision of the Board may make an appeal to the County Planning Tribunal.

6.3 Procedure for Alienation of Public Land

Alienating public land requires preparation of a part development plan. The purpose of the PDP is for allocation of public land as per section 9(a) of the National Land Commission Act, 2012. The procedure for processing of PDP for alienating public land is:

- County Government to initiate the preparation of PDP after consultation with NLC or respective CLMB.
- Preparation and Circulation of the PDP by the County Government to other technical and relevant authorities.
- Notices of the PDP to be displayed in strategic places of the neighborhood, within respective sub-county headquarters and county headquarter for a period of 21 days.
- Any PDP prepared for alienation of land for a project that may have a significant impact on contiguous land uses shall be advertised and Gazetted for 30 days.
- If there are no objections, the PDP shall be certified by the CEC member in-charge of spatial planning after consultation with the County Assembly and forwarded to the respective CLMB.
- The CLMB shall either approve/reject / defer the Plan and shall generate minutes to that effect and communicate its decision to the respective County Government and National Land Commission.
- Upon approval of the PDP by the CLMB, the applicant(s) will be granted allocation of the land by the CLMB as per Land Regulations, 2014 Part 11 on management and conversion of public land into private land.

PART IV—CONDUCTING CLMB MEETINGS

7.0 Conducting County Land Management Board Meetings

7.1 Convening a Meeting

- The Chairperson in collaboration with the Secretary of the CLMB may at any time on reasonable grounds convene a meeting of the County Land Management Board on a date that he/she determines.
- The first meeting of the Board shall prepare a schedule of the meetings of the Board.
- The Secretary shall notify Members in writing of meeting to be held as per schedule fourteen days in advance.
- Despite 1 above, the Chairperson shall upon a written request by at least five Members, convene a meeting of the Board within fourteen days.
- In the absence of the Chairman the members present at meeting of the CLMB may elect another member to preside as the Chairperson of that meeting.
- The Secretary shall prepare the Agenda for and circulate minutes of every meeting.
- The minutes of the Board meetings shall be official evidence of the resolutions of the matters discussed by the Board.
- The minutes of the Board meeting shall be kept and filed as Board files in the office of the Secretary and copy sent to each member as soon as possible.
- Board minutes may be inspected upon making an application.

7.2 Procedure at Meetings

- Members shall observe punctuality in attending meetings.
- Board meetings shall only be held when being attended by more than two thirds of the total number of Members including the Chairperson or the presiding person and attendance shall be in person.
- A decision of the Board shall be by consensus or by voting.
- Voting method shall be by secret ballot.
- A decision of the majority of the members present at any meeting shall constitute a decision of the Board.
- In the event of a deadlock the Chairperson or the member presiding as the Chairperson has a casting vote in addition to his or her deliberate vote.
- The Board shall meet at least twice a month or as the need may arise.
- The proceedings of the Board shall not be invalidated by reason of a vacancy within its membership.
- No member of the Board shall take part in a deliberation where he or she is directly interested or concerned without declaring the interest first.

- The disclosure of interest shall be recorded in the minutes.
- Any Member who contravenes section 9 shall commit an offence.

7.3 Delegation of Functions

- When found necessary for the proper performance of its functions, the CLMB may form a subcommittee to perform one or several tasks and report back to the Board.
- Delegation or instructions to the subcommittee shall be in writing by the Secretary to the Board on behalf of the chairman.
- The subcommittee shall report to the Board expeditiously.

7.4 Technical Support

- The Board may in the performance of its duties co-opt the services of technical Advisers to assist it in its deliberations.
- The Adviser contemplated is not a member and has no voting right.
- Advisers shall be remunerated in accordance with the Salaries and Remuneration Commission guidelines.

7.5 Jurisdiction

The Board has jurisdiction throughout the County.

8.0 Communicating the Decisions of the County Land Management Board

This is the final step in dealing with development applications or matters handled by the CLMBs.

All communications to and from the respective County Land Management Board shall be through the secretary to the Board.

All decisions will be communicated to the respective county governments, the applicants and the secretary National Land Commission through the prescribed forms.

8.1 Relevant National Land Commission Development Application Forms

1. **Development Application form (FORM NLC 01):** The form is filled by applicants who have applied for development permission.
2. **Approval form (FORM NLC 02):** To be filled by the Board after approving a development application.
3. **Deferment form (FORM NLC 03):** To be filled by the Board after postponing an approval or a decision until certain conditions are met.
4. **Rejection form (FORM NLC 04):** To be filled by the Board after refusing to approve a development application that has not met the expected conditions.
5. **Complaints form (FORM NLC 05):** To be filled by a complainant over a unsatisfactory decision by the board in respect to land, property or development.
6. **Summon form (FORM NLC 06):** To be filled by the Board requiring the concerned parties appear before the board.
7. **Conflict Resolution form (FORM NLC 07):** To be filled by the board on a disputed matter tabled before it.

REFERENCES

- Government of Australia (2005) Board membership: A guide for members of Northern Territory Government, Boards, Committees and Statutory Bodies, Darwin.
- Kunzmann, K.R. (2004) Culture, Creativity and Spatial Planning <http://www.scholars-on-bilbao.info>
- Chapin Stuart F, and Kaiser Edward J. (1979): Urban Land Use Planning, Urbana, University of Illinois Press.
- Ogundele F.O. (2011): 'Challenges and Prospects of Physical Development Control; A Case Study of Festac Town, Lagos Nigeria' in African Journal of Political Science and International Relations Vol. 5 (4), pp 174-178.
- www.academicjournals.org/ajpsir
- Faludi Andreas (1973): A Reader in Planning Theory, Pergamon Press, Oxford.
- Philip E (2007): Urban Planning and Development Control Regulations; Case study Kerala, ITPI Journal 4,13-16 www.itpi.org.in
- Levy John M. (1988): Contemporary Urban Planning, New Jersey. Prentice Hall.
- Lewis Keeble, (1985): Fighting Planning Appeals. Construction Press. London, New York.
- UN Habitat, (2013): Urban Planning for City Leaders, UN Habitat Nairobi.
- Republic of Kenya (2010) Constitution of Kenya, 2010 National Council for Law Reporting.
- Republic of Kenya (2011) Draft National Urban Development Policy, Office of the Deputy Prime Minister and Ministry of Local Government.
- Republic of Kenya (2012) Land Act, 2012 National Council for Law Reporting.
- Republic of Kenya (1996) Laws of Kenya, Physical Planning Act Cap. 286, Government Printer.
- Republic of Kenya (2012) National Land Commission Act, 2012 National Council for Law Reporting.
- Republic of Kenya (2004) Sessional Paper No. 3 of 2004 National Housing Policy for Kenya.
- Republic of Kenya (2004) Sessional Paper No. 2 of 2008 National Livestock Policy for Kenya.
- Republic of South Africa 'Guidelines for the Development of Municipal Spatial Development Frameworks. Rural Development and Land Reform'
- Republic of South Africa (2010) Rules of procedure for the Board of Yara International ASA.
- Republic of Kenya (2012). The County Government Act, 2012, Government Printers, Nairobi.
- Republic of Kenya (2010). Kenya Constitution 2010, Government Printers, Nairobi.
- Republic of Kenya (2007). Kenya Vision 2030, Government Printer, Nairobi.
- Republic of Kenya (2012). The Land Act, 2012, Government Printers, Nairobi.
- Republic of Kenya (2012). The Land Registration 2012, Government Printers, Nairobi.
- Republic of Kenya (2012). The National Land Commission 2012, Government Printers, Nairobi.
- Republic of Kenya (2011). The Urban areas and Cities Act, 2011, Government Printers, Nairobi.

APPENDICES

Appendix 9.1: Forms for executions of functions of the CLMB

FORM N.L.C. 01

THE NATIONAL LAND COMMISSION ACT, 2012

(s.9 (18a-b))

Ref. No.....
Date:

DEVELOPMENT APPLICATION FORM

*Allocation of land/Change of User/Extension of User/Extension of Lease/Subdivision of Land/ Amalgamation of Land/Reclamation of land**(To be submitted in QUADRIPLICATE in respect of each transaction and sent to or left at appropriate office of the NLC)*To the.....
I/We here by apply for.....*(Insert Name and address of the respective CLMB)*Date.....*(State purpose of application)*

Name of Applicant/Contact person.....

Signature of Applicant or Contact Person

SECTION A—GENERAL INFORMATION

Name of Applicant:

ID/Passport Number/ Certificate of Registration Number (if applicable):

PIN Number (if applicable):

Postal Address:

Telephone Number(s):

Email address (if any):

Contact Person (in case the applicant is not an individual):

Particulars of the Property (where registered)

Please complete the following particulars of the:

Land Reference Number/Title Number:

Title Registration Number: e.g. I.R. No./C.R. No./I.R.N. No./Vol. No. Folio GLA File No.

Locality:

Deed Plan Number/RIM (If known):

Land Reference Number/Parcel Number:

Letter of Allotment: Reference No(where title has not been issued)

Date:

Temporary Occupation License (TOL, where no allotment has been issued) Number.....

Date

Locality:

Acreage (if known):

Deed Plan Number (if applicable):

Term of the lease (if known):

SECTION B—SUBDIVISION/AMALGAMATION

6. Describe briefly:

(a) Proposed number and size of resultant sub-plots.....

(b) The existing use

(c) The proposed use.....

(d) User of the abutting land

(e) Proposed size of access roads

(f) For big scheme, state the type public utility and acreage of land set aside

State method of:

Water supply.....

Sewerage disposal.....

Surface water disposal.....

Refuse disposal.....

Give details of any relevant easements affecting the proposed subdivision (way leaves for power lines, sewer mains, railway lines, water/fuel pipe lines etc)

SECTION C—EXTENSION OF LEASE OR USER/CHANGE OF USER/LAND RECLAMATION

6. Describe briefly:

- (a) Proposed size of land to be changed /reclaimed.....
- (b) The existing use
- (c) The proposed use
- (d) User of the abutting land
- (e) Proposed size of access roads (if applicable)
- (f) For big scheme, state the type public utility and acreage of land set aside

7. State type of services available:

- (a) Water supply
- (b) Liquid waste disposal method
- (c) Surface water disposal.....
- (d) Refuse disposal.....
- (e) Power supply.....

Give detail so if any relevant easements affecting the proposed subdivision (way leaves for power lines, sewer mains, railway lines, water/fuel pipe lines etc.)

State the:

Area /percentage of land affected by the new use.....

Area covered by buildings.....

Percentage of site covered (i) by existing buildings.....

(ii) by proposed buildings.....

(Attach relevant accompanying documents)

THE NATIONAL LAND COMMISSION ACT, 2012 (s. 18 (a-b) AND THE LAND ACT, 2012 (s.12 (1))
FORM N.L.C. 02

Ref. No.....

Date:

NOTIFICATION OF APPROVAL OF ALLOCATION OF LAND/CHANGE OF USER/EXTENSION OF USER/EXTENSION OF LEASE/SUBDIVISION OF LAND/AMALGAMATION OF LAND/RECLAMATION OF LAND

(To be submitted in QUADRIPLICATE in respect of each transaction and sent to or left at appropriate office of the N.L.C.)

To:.....
(Insert Name of applicant)

SECTION A—GENERAL INFORMATION

ID/Passport Number/ Certificate of Registration Number (if applicable):.....

PIN Number (if applicable):

Postal Address:

Telephone Number(s):

Email address (if any):

Contact Person

SECTION B—APPROVAL

Your application numberas submitted on.....for allocation
of land/ permission to.....on L.R. No..... Situated in.....(town)
along(road)

Was APPROVED on..... (Date) by theCLMB, Minute Number
.....subject to the following conditions:

Dated..... Signed.....
for: CLMB

C.C

1. The National Land Commission
2. The County Government

THE NATIONAL LAND COMMISSION ACT, 2012 (s. 18 (a-b) AND THE LAND ACT, 2012 (s.12 (1))

FORM N.L.C. 03

Ref. No.

Date:

NOTIFICATION OF DEFERMENT OF ALLOCATION OF LAND/CHANGE OF USER/EXTENSION OF USER/EXTENSION OF LEASE/SUBDIVISION OF LAND/AMALGAMATION OF LAND/RECLAMATION OF LAND*(To be submitted in QUADRIPLICATE in respect of each transaction and sent to or left at appropriate office of the NLC)*To.....
(Insert Name of applicant)**SECTION A—GENERAL INFORMATION**

ID/Passport Number/ Certificate of Registration Number (if applicable):

PIN Number (if applicable):

Postal Address:

Telephone Number(s):

Email address (if any):

Contact Person

SECTION B—DEFERMENTYour application number..... as submitted on..... for allocation of land/ permission to
..... on L.R. No..... Situated in..... (town) along
..... (road)Has been **DEFERRED** (Date) by the CLMB, Minute Number Subject to the
following conditions
.....
.....Dated..... Signed
for: CLMB

C.C

1. The National Land Commission.
2. The County Government.

THE NATIONAL LAND COMMISSION ACT, 2012 (s. 18 (a-b) AND THE LAND ACT, 2012 (s.12 (1))

FORM N.L.C. 04

Ref. No.....

Date:

NOTIFICATION OF REJECTION OF ALLOCATION OF LAND/CHANGE OF USER/EXTENSION OF USER/EXTENSION OF LEASE/SUBDIVISION OF LAND/AMALGAMATION OF LAND/RECLAMATION OF LAND*(To be submitted in QUADRIPLICATE in respect of each transaction and sent to or left at appropriate office of the NLC)*To.....
(Insert Name of applicant)**SECTION A—GENERAL INFORMATION**

ID/Passport Number/ Certificate of Registration Number (if applicable):

PIN Number (if applicable):

Postal Address:

Telephone Number(s):

Email address (if any):

Contact Person

SECTION B—REJECTIONYour application number..... as submitted on..... for allocation of land/ permission
to..... on L.R. No..... Situated in..... (town)
along..... (road) has been **REJECTED** (Date) by the CLMB,
Minute Number subject to the following conditions:
.....
.....

Dated..... Signed
 C.C. for CLMB

1. The National Land Commission.
2. The County Government.

THE NATIONAL LAND COMMISSION ACT, 2012 (s. 14 & 15) AND THE LAND ACT, 2012 (s.12 (1))

FORM N.L.C. 05

THE NATIONAL LAND COMMISSION COMPLAINTS FORM

Ref. No.....

Date:

(To be filled in duplicate)

Section One — Personal Details of Complainant

Name of Complainant:
 ID/Passport Number/ Certificate of Registration Number (if applicable):
 PIN Number (if applicable):
 Postal Address:
 Telephone Number(s):
 Email address (if any):
 Contact Person

Section Two — Particulars of the Property (where registered)

Please complete the following particulars of the property you wish to complain about:

Land Reference Number/Title Number:
 Title Registration Number: e.g. I.R. No./C.R. No./I.R.N. No./Vol. No. Folio GLA File No.
 Locality:
 Deed Plan Number/RIM (If known):

Section Three — Particulars of the Property (where unregistered)

Please complete the following particulars of the property you wish to complain about:

Land Reference Number/Parcel Number:
 Letter of Allotment: Reference No. Date:
 Temporary Occupation License Number..... Date:
 Locality:
 Acreage (if known):
 Deed Plan Number (if applicable):
 Term of the lease (if known):

Section Four — Nature of Complaint

Please indicate the nature of the complaint and attach relevant documents to support your claim.

Section Five

Please indicate the special interest of the complainant in relation to the property and attach documents if any.

(If we need more information, we may contact you).

Section Six — Your proposed remedy

Please indicate what you would like the Commission to do.

Date.....

Signature/Thumb Print of the Complainant or the Duly Authorized Representative

TO BE SENT TO:

The Secretary,
 National Land Commission,
 P.O. Box 44417,
 NAIROBI.