

SPECIAL ISSUE

Kenya Gazette Supplement No. 5 (Machakos County Acts No. 4)



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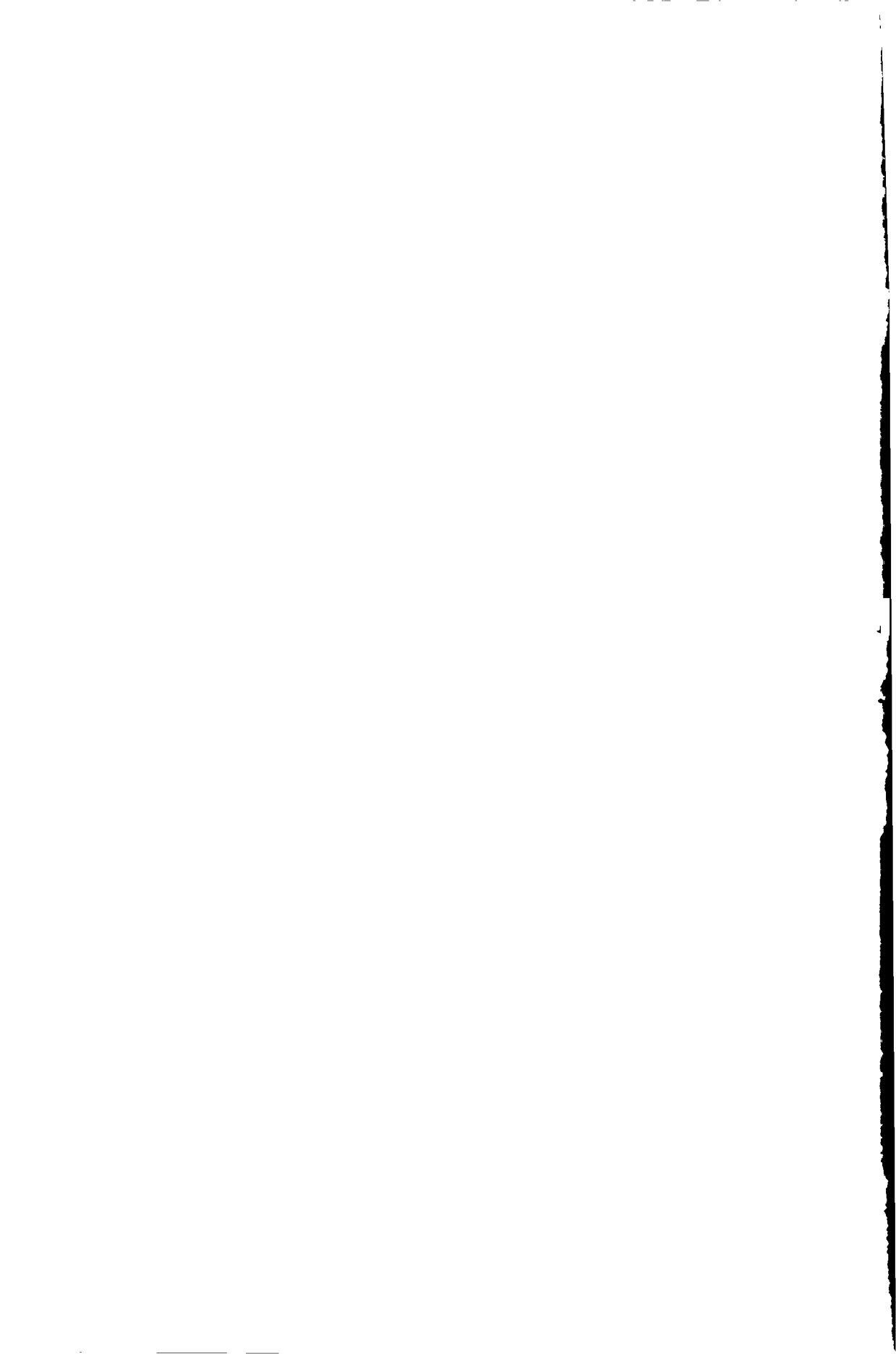
KENYA GAZETTE SUPPLEMENT

MACHAKOS COUNTY ACTS, 2016

NAIROBI, 12th April, 2017

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**THE MACHAKOS COUNTY MANAGEMENT OF QUARRYING
ACTIVITIES ACT, 2016**

No. 4 of 2016

Date of Assent: 22nd November, 2016

Date of Commencement: 26th April, 2017

ARRANGEMENT OF SECTIONS

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**THE MACHAKOS COUNTY MANAGEMENT OF QUARRYING
ACTIVITIES ACT, 2016**

AN ACT of the County Assembly of Machakos to regulate quarrying activities; to ensure sustainable exploitation and utilization of quarries; to provide for raising of revenue from quarrying activities; to provide for equitable sharing of the accruing benefits; and for connected purposes.

ENACTED by the County Assembly of Machakos as follows—

PART I—PRELIMINARY

Short Title

1. This Act may be cited as the Machakos County Management of Quarrying Activities Act, 2016.

Interpretation

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

“authorized officer” has the assigned in section 2 of the County Governments Act (No. 17 of 2012);

“director” means the Director responsible for matters relating to natural resources;

“executive committee member” means the County Executive Committee member responsible for matters relating to natural resources;

“permit” means a quarry permit issued under this Act;

“quarry” means a place where quarry materials are excavated; and

“quarry material” means substance used in its natural form for civil construction or agricultural purposes and includes clay, sand, gravel, rock, soil, peat, slag, marble, granite, similar stone used as dimension stone, aggregate slate, shingle, brine, diatomite, kaolin, ornamental stone, sodium, murrum, riprap, lime and potassium compound and surface stones excavated from the ground.

Object of the Act

3. The object and purpose of this Act is to provide for a legislative framework for regulating quarrying activities and in particular to—

- (a) designate quarrying exploitation areas and timelines for undertaking quarrying and related activities;
- (b) provide for the institutional framework for management and regulation of quarrying activities;

- (c) provide for the protection of the environment from harmful effects of quarrying activities and related activities;
- (d) provide for rehabilitation of quarrying sites;
- (e) provide for benefit-sharing and investing back to the community part of the revenue collected from quarrying activities; and
- (f) provide for public participation in the management of quarrying activities.

PART II—QUARRYING

Management

- 4.** (1) The Director shall oversee the implementation of this Act.
- (2) In performing the duties under subsection (1), the Director shall—
- (a) be responsible for the day to day administration, management and control of matters relating to quarrying;
 - (b) issue quarrying permit in accordance with this Act;
 - (c) collaborate with relevant government institutions for effective management of quarrying activities in the county;
 - (d) ensure citizen participation in matters relating to quarrying;
 - (e) advise the county executive committee on matters relating to quarrying;
 - (f) enforce the provisions of this Act; and
 - (g) perform any other function as may be necessary for the implementation of this Act.

Prohibited Quarry Activities

5. No person shall carry out, conduct any quarry operations or activities unless issued with a permit by the Director.

Application for a Permit

- 6.** (1) A person intending to carry out quarry activities shall make an application in the prescribed form to the Director.
- (2) An application under subsection (1) shall contain—
- (a) the site plan of the quarry;
 - (b) an environmental impact assessment report;
 - (c) clearance from National Environment Management Authority;

- (d) rehabilitation plan for the quarry site;
- (e) proof of adequate insurance;
- (f) the prescribed fee; and
- (g) such other information as the Director may deem fit.

Public Participation

7. (1) Before the issuance of a permit, the Director shall invite the public to express their views.

(2) The Director shall take into consideration the views and recommendations made by members of the public.

Objection

8. (1) Any person may object to the grant of a permit.

(2) Every objection to an application shall be made in writing to the Director.

(3) The Director may take notice of any matter or thing which, in the opinion of the Director, constitutes an objection to an application for a permit whether or not any objection has been otherwise lodged.

Review

9. (1) Any person aggrieved by the decision of the Director may apply for a review of the decision within fourteen days of the decision to the Executive Committee Member.

(2) The Executive Committee Member shall determine the application for review within thirty days after the lodge of the application.

Grant of a Permit

10. (1) After considering an application, the Director shall in writing grant or refuse to grant a permit.

(2) The Director may with reasons refuse to issue a permit and shall notify the applicant accordingly within thirty days of the decision.

Duration

11. A permit issued under in this Act shall expire on the 31st December in the year in respect of which it is used.

Cancellation

12. The Director may cancel a permit if—

- (a) the application form contains any material misrepresentation or false statement;

- (b) the licensee carries on a prohibited activity;
- (c) a condition imposed is breached;
- (d) causes danger to public health or to public safety;
- (e) has adverse effect on the environment or ecology; or
- (f) interferes with public structures including communication facilities, roads and buildings.

Fee

13. Every permit holder shall pay such fee in respect of every load removed from a quarry as may be prescribed by the Executive Committee Member.

Provision of Amenities to Workers at a Quarrying Site

14. Every permit holder shall—

- (a) provide and maintain for the persons working at the quarry—
 - (i) housing;
 - (ii) water supply; and
 - (iii) toilets of the type, quality and size in a condition approved by Director responsible for matters relating to public health in the County;
- (b) maintain the land on which the quarrying operations is being carried in a condition not detrimental to public health or safety;
- (c) fill or drain all holes or excavations as and when required by the Director responsible for matters relating to public health in the County;
- (d) securely fence holes or excavations within the quarry sites; and
- (e) comply with any further conditions specified in the permit.

Environment

15. The Director shall ensure that all quarrying activities are in compliance with the relevant environmental protection laws.

Transportation Hours and Roads

16. (1) A person shall not undertake quarrying activities or transport quarry materials between the hours 6.00 pm and 6.00 am.

(2) The transportation of quarry materials shall only be done through designated roads.

(3) A permit holder who fails to comply with the provision of this section commits an offence.

Tonnage

17. (1) The Director shall prescribe the tonnage per load of quarrying materials that may be transported within the county.

(2) A permit holder shall only transport quarrying materials as per prescribed tonnage per load.

(3) A permit holder who fails to comply with the provision of this section commits an offence.

Entry and Inspection

18. The Director may—

- (a) enter and inspect a quarrying site for purposes of enforcing the provisions of this Act;
- (b) execute work that may be necessary to remedy any breach or failure to comply with the provisions of this Act or any of the conditions under which a permit has been issued; or
- (c) recover the expenses incurred in carrying out the work in paragraph (b) from the owner of the premises.

Closure of a Quarry

19. (1) The Director may order a permit-holder to stop quarrying activities and close the quarry if it poses danger to the public health and safety.

(2) An order made under sub-section (1) shall remain in force until the permit holder complies with the prescribed safety standards.

Conditions before leaving a Quarry Site

20. (1) Every permit holder shall—

- (a) six months before the intended closure of a quarry submit to the Director a rehabilitation plan for the quarry; and
- (b) upon completion of quarrying activities, fill or drain all the holes and excavation.

Fees

21. (1) Every permit holder shall pay such fee in respect of every load removed from a quarry as may be prescribed by the Executive Committee Member.

PART III—ADMINISTRATION

Association

22. Permit holders may form self-help groups or community based association to advocate for their welfare.

Penalty

23. A person who—

- (a) undertakes quarrying activities without a permit;
- (b) conducts quarrying activities outside permitted quarry site;
- (c) fails to comply with the conditions of the quarrying license;
- (d) transports quarry materials outside the designated roads; or
- (e) obstructs any authorized officer from conducting their functions under this Act;

commits an offence and shall upon conviction be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment term not exceeding one year or both.

General Penalty

24. A person who contravenes any provisions of this Act, for which no penalty is provided shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or to an imprisonment term not exceeding two years or to both.

Regulations

25. (1) The Executive Committee Member shall make Regulations generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of Subsection (1), Regulations shall provide for—

- (a) designated quarrying sites;
- (b) measures for the rehabilitation quarrying sites;
- (c) the prescribed fees payable under the Act;
- (d) manner of public participation;
- (e) application, notices, licences and other documents for use under the Act;
- (f) the mode of revenue collection prescribed under this Act;
- (g) all guidelines for quarrying and related activities;

- (h) the terms and conditions of all classes of permits issued under this Act;
- (i) conditions applicable to different types of quarrying activities;
- (j) loading requirements depending on tonnage;
- (k) rehabilitation of closed sites;
- (l) designation of sale yards for quarry material;
- (m) pricing per lorry load based on tonnage;
- (n) the formation of association or self-help groups under this Act;
and
- (o) such other matters as may be necessary for the implementation of this Act.

