



COUNTY GOVERNMENT OF NYANDARUA

**THE NYANDARUA COUNTY NATURAL RESOURCES (WETLANDS AND
RIPARIAN AREAS) MANAGEMENT BILL, 2024.**

JUNE 2024

**A LEGISLATIVE PROPOSAL BY THE NYANDARUA COUNTY DEPARTMENT FOR
NATURAL RESOURCES**

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A BILL for

AN ACT of the Nyandarua County Assembly to give effect to Article 42, 69 (1) and section 10 (b) of Part 2 to the Fourth Schedule of the Constitution; to provide for sustainable natural resources management and for connected purposes.

ENACTED by the Nyandarua County Assembly, as follows—

PART I - PRELIMINARY

1. Citation.
This ACT may be cited as the Nyandarua County Natural Resources (Wetlands and Riparian Areas) Management ACT, 2024
2. Definition of terms
In this Act, unless the context otherwise requires—
“agriculture” means all farming activities including cultivation, agroforestry, beekeeping, livestock management, and aquaculture;

- “alien species” means any exotic /non-indigenous life forms originating from outside a given ecological location, accidentally or deliberately introduced to the location by human activity or by natural means;
- “authorized officer” means an officer appointed under section 9 of this bill;
- “beach” means a geological landform of loose particles often composed of rock, sand, gravel, shingle, pebbles or cobble, found at the landward margin of a lake.
- “beach front” means a strip of land facing or running along a beach
- “community” means community of people living in a defined geographical area and identified by common history, common culture or common residence in an area, and may comprise of representative members of the organized institutions in the private sector or members of the civil society;
- “conservation” means the care and management of a resource so that the resource maintains its ability to fulfill its functions and provide goods and services for present and future generations;
- “County Executive Committee Member” means the County Executive Committee Member for the time being responsible for Natural resources management;
- “drainage of wetlands” means the removal or exclusion of water from a wetland by pumping, excavation of channels, planting of fast-growing non-wetland trees or plants, abstraction of water from a river entering a wetland, channeling, or reclamation;
- “department” means department responsible for natural resources management
- “environmental inspector” means any County Government officer designated as an environmental inspector under section 9 of this Act or 117 of the EMCA 1999;
- “high water mark” means the historical recorded point of the highest level of contact between the water and the shore or bank, as the case may be;
- “hunting” includes the doing of an act immediately directed at killing, wounding, injuring or capture of any animal and the taking or willful interference with any nest, lair or other place where a dependent young animal is born, hatched, or reared;
- “invasive exotic species” means fast-growing non-wetland trees or plants including those with allelopathic effects;.....
- “lake” means a body of fresh or salt water of considerable size, completely surrounded by land, or a natural body or pool of water;
- “Lake shore” means the rising ground from the highest normal water mark, bordering or adjacent to a lake in the form of rock, mud, gravel or sand;
- “lead agency” means any County Government Department, National Government ministry, department, state corporation in which any law vests functions of control or management of any element of the environment or natural resource;
- “low water mark” means the historical recorded point of the lowest level of contact between the water and the shore or the bank as the case may be;
- “management plan” means a management plan for a wetland, riverbank or lakeshore.
- “modification” means any man-made change in the natural state of a wetland,riverbank or lake shore;
- “natural resources” include resources of the land, air, water, animals and plantsincluding their aesthetic qualities;
- “occupier” means a person in possession or control of any land in which there is awetland, riverbank, lakeshore or beach front;
- “polluter pays principle” means that the cost of cleaning up any element of theenvironment damaged by pollution, compensating victims of pollution, cost of beneficial uses lost as a result of an act

- of pollution and other costs that are connected with or incidental to the foregoing, is to be paid or borne by the person convicted of pollution under this Act or any other applicable law;
- “pre-cautionary principle” is the principle that where there are threats of damage to the environment, whether serious or irreversible, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation;
- “protected species” means any plant or animal species declared as endangered or threatened species under the Wildlife (Conservation and Management) Act (Cap. 376);
- “protected zones” means
- “endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range due to man-made or natural changes in the environment or as may be declared by the relevant national authority;
- “threatened species” means any species of plant or animal is likely to become an endangered species within the foreseeable future throughout or in a significant portion of its range or as may be declared by the relevant national authority;
- “restoration” means regeneration or putting back a wetland, riverbank or lake shore to the state it was in or near to what it was before it was modified;
- “riparian area” means land adjacent to a wetland that serve as a transition zone between fully terrestrial and fully aquatic systems;.....
- “river bank” means the rising ground from the highest normal water mark, bordering or adjacent to a river in the form of rock, mud, gravel or sand and in cases of flood plains include the point where the water surface touches the land, that land not being the bed of the river;
- “river” includes a permanent and seasonal river;
- “riverine wetlands” includes wetlands along rivers and streams;
- “soil” includes earth, sand, rock, shale, minerals and the flora and fauna in the soil and the derivatives thereof;
- “soil erosion” means, a general process whereby soil particles are worn away or removed by natural agencies;
- “sustainable use” means present use of the environment or natural resources which does not compromise the ability to use the same by future generations or degrade the carrying capacity of supporting ecosystem” means the National Environment Tribunal established under section 125 of the EMCA 1999;
- “unsustainable agricultural activities” means practice in the farms that will lead to degradation or pollution of a wetland.
- “water” includes drinking water, river, stream water course, reservoir, well, dam, canal, channel, lake, swamp, open drain or underground water;
- “wetlands” means areas permanently or seasonally flooded by water where plants and animals have become adapted; and include swamps, areas of marsh, peat land, mountain bogs, bank of rivers, vegetation, areas of impeded drainage or brackish, salt or alkaline; including areas of marine water the depth of which at low tide does not exceed 6 meters. It also incorporates riparian adjacent to the wetlands;
- “wetland products” includes fish, fibre, fruit, papyrus, grass, soil, stone, gravel, sand and such other things as the CECM may be statutory instrument declare to be wetland produce;
- “Wetland resource use permit” means a permit granted to a person, community or organization to make extractive utilization of wetlands and other non-extractive uses such as tourism and cultural activities in accordance with the grant under these Regulations or any other law

3. Objectives of Act

The Objectives of this Act are to—

- (a) provide for the conservation and sustainable management of wetlands, water catchments and riparian areas;
- (b) promote the integration of sustainable use of resources in wetlands into
- (c) the county and national management plans of natural resources for socio-economic development;
- (d) ensure the sustainable use of wetlands for ecological and aesthetic purposes for the common good of all citizens
- (e) enhance education research and related activities; and
- (f) prevent and control pollution siltation and floods.

4. General Principles

(1) The following principles shall be observed in the management of all wetlands and riparian areas in the County—

- (a) Utilization in a sustainable manner;
- (b) promotion of innovations and indigenous knowledge and practices;
- (c) collaboration in Sustainable management of wetlands and riparian areas;
- (d) public participation in the management of wetlands and riparian areas;
- (e) The polluter-pays principle;
- (f) The pre-cautionary principle; and
- (g) Public and private good.

PART II – ADMINISTRATION

Establishment of Directorate

5. (1) There is established the Directorate of Natural Resources Management.
- (2) The CECM in charge of Natural Resource Management in consultation with the County Public Service Board shall establish in the directorate units responsible for forestry, wetlands and riparian areas, and mining.
- (3) Notwithstanding the provisions of sub-section 2 above, the CECM in charge of Natural Resource Management in consultation with the County Public Service Board may establish such other administrative units as may be necessary for the effective discharge of duties and responsibilities under this Act.

Functions of the Directorate.

6. The functions of the Directorate shall be to:
- (a) Develop a legal and regulatory framework to guide the natural resources management within the County;
 - (b) Develop policies and procedures to sustainably manage natural resources;
 - (c) Conduct and keep an inventory of all the natural resources in the County;
 - (d) Develop, implement and enforce policies, laws and plan;
 - (e) Identify and set land for forest research, develop and create county forests;
 - (f) Plant trees, drive afforestation and reforestation, rehabilitate fragile areas; urban areas; schools, private and county lands; to increase tree cover;
 - (g) License, correct revenue and promote forest-based enterprises;

- (h) Restore degraded forest landscapes, riparian areas, and agricultural landscapes;
- (i) Control of alien and invasive species in water catchments, wetlands, and riparian areas;
- (j) Pilot sustainable access to water at the household level through the promotion of roof and surface runoff water harvesting;
- (k) Promote Sustainable mining and quarrying activities and rehabilitation.
- (l) Promote and provide alternative sources of energy;
- (m) Development and implement inter-departmental strategy on natural resources management and conservation;
- (n) Drive the exploration and exploitation of natural resources within the County; and
- (o) Coordinate the licensing of all the minerals and other resources exploration and exploitation
- (p) Forestry extension services.

7.Appointment of the Director.

- (1) The Directorate shall be headed by the Director of Natural Resources who shall be recruited competitively and appointed by the County Public Service Board on such terms and conditions as the board shall determine.
- (2) A person shall meet the following qualifications for appointment as a director:-
 - a. Experience of at least twelve (12) years in natural resource management or related field;
 - b. Bachelor's degree in any of the following disciplines: Climate Change and Development, Climate Change Adaptation, Climatology, Hydrology, Meteorology, Environmental Science, Environmental Conservation and Natural Resource Management, Environmental Conservation or any other relevant qualification from a recognized institution;
 - c. Master's degree in any of the following disciplines: Climate Change and Development, Climate Change Adaptation, Climatology, Hydrology, Meteorology, Environmental Science, Environmental Conservation and Natural Resource Management, Environmental Conservation or any other relevant qualification from a recognized institution.
- (3) The Director shall be responsible to the Chief Officer for the administration of the Directorate.

Functions and powers of the Director.

- 8.The director shall -
 - (a) Be the technical advisor to the Government on all matters relating to natural resources management in the County;
 - (b) Be the technical advisor to the CECM responsible for natural resources management in the County;
 - (c) Provide a technical expertise to all natural resources management components of projects, assuring technical quality control of interventions;
 - (d) Plan, organize and, control multiple responsibilities and resources to achieve objectives of the directorate effectively;
 - (e) Map all the natural resources within the County;
 - (f) Drive the exploration and exploitation of natural resources within the County;
 - (g) Conduct and lead strategic analysis for the County to understand the ecosystem and priorities for intervention;

- (h) Plan, organize, and control multiple responsibilities and resources to effectively achieve the directorate's objectives;
- (i) Coordinate the licensing of all minerals and other resources exploration and exploitation;
- (j) Collect and collate data and information related to natural resources management and advise on their sustainable use; and
- (k) Implement and evaluate strategic plans on natural resources and protection.

Appointment and gazettelement of environmental inspectors/authorized officers

9.(1) The CPSB may, on the recommendation of the Chief Officer and in consultation with the Salaries and Remuneration Commission, appoint such number of duly qualified persons to be environment inspectors as shall be necessary for better implementation of this Act.

(2) Notwithstanding the provisions of sub-section (1) above, the exercise of the roles and functions of environmental inspectors shall be subject to designation and gazettelement in accordance with section 117 of the EMCA.

(3) A gazetted environmental inspector, Natural Resources Management Officer or a Forest Officer shall be an authorized officer for purposes of enforcement of the provisions of this Act.

Powers of an authorized officer

10. An authorized officer may, for the purpose of enforcement of this Act, at any reasonable time—

(a) inspect any place, including the stratum lying below the surface of any land and water on or under any land and inspect any works, plant or equipment thereon;

(b) require a vessel to stop or to be presented for inspection at any place and time specified by the authorized officer or board any vessel or aircraft for inspection;

(c) search any vessel and seize and detain any material in respect of which there is reason to believe that an offence has been committed together with any tools, equipment, vessels or livestock used in the commission of the offence;

(d) use reasonable force to break into or open any part of or anything in or on any place or vessel but only if the authorized officer is acting—

(i) under the authority of a warrant issued by a court of competent jurisdiction; or

(ii) with the permission of the owner of the relevant land or the person apparently in charge of the vessel as the case may require;

(e) demand from any person the production of any authority or license for any act done by that person in a wetland, riparian area or natural

resource for which a license is required under this Act.

(2) The authorized officer may—

(a) take measurements including measurements of the flow of any water on or under any land or relating to any change in any aspect of a natural resource;

(b) place any markers, pegs or other items or equipment in order to assist in testing or monitoring;

(c) take samples of any substance or thing from any place including under any land or vessel;

(d) with the authority of a warrant issued by a court of competent jurisdiction, require any person to produce specified documents including a written record that reproduces in an understandable form information stored by computer, microfilm or other process;

(e) in line with section 106B of the Evidence Act Cap. 80 of the Laws of Kenya, examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information;

(f) take photographs, films, audio, video or other recordings;

(g) seize and retain anything that the authorized officer reasonably Suspect(s) has been used in or may constitute evidence of a contravention of this Act or require a person to surrender, either immediately or within a specified period and at a specified place, anything held or maintained in contravention of this Act;

(h) without limiting the operation of paragraph (g), if the authorised officer finds any animals or plants that are being held or maintained contrary to any requirement or provision of this Act, that are liable to be destroyed or controlled under this Act, or that are prohibited from being in the county under any other Act or law, seize and remove the animals or plants or take measures for their destruction or control;

(i) search any person suspected of having committed an offence under this Act or being in possession of material in respect of which an offence has been committed and arrest the person, seize and detain any baggage, package, parcel, conveyance, tent, hut or building under the control of that person or agent or servant;

(j) seize and detain any livestock found in a wetland and protected areas without valid authorisation from the department. The livestock will be released upon payment of agreed penalty fee;

(k) visit any wetland, water catchment in the county order to assess the condition thereof or to perform any such other act which the authorized officer considers necessary in the circumstance for the preservation or conservation of wetland and riparian area; and

(l) within reasonable hours enter the premises of any natural resource processing plant to inspect any produce placed or found within the premises to satisfy himself or herself that the processing plant or dealer is acting in accordance with the provisions of a license under this Act.

Obstruction of an authorized officer

11. A person who obstructs an authorized officer under section 10 from undertaking his or her functions commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment term not exceeding six months or to both.

Role of County Executive Committee Member

12.

- 1) The County Executive Committee Member shall plan and execute programs necessary for observing the County wetland protection events and other relevant national and international wetlands protection days.
- 2) The County Executive Committee Member shall be responsible for the overall administration and implementation of this Act.

PART III - MANAGEMENT OF WETLANDS

Protected Wetlands

13. (1) The County Executive Committee Member in consultation with the National Land Commission shall recommend to the Cabinet Secretary responsible for Environment to declare a wetland by Gazette notice to be a protected wetland where such area is of county or national significance due to its—

- (a) biological diversity;
- (b) ecological importance;
- (c) landscape;
- (d) natural heritage; or
- (e) aesthetic value.

(2) The process in sub-section (1) above shall be subject to consultation with other relevant stakeholders and public participation

(3) Upon declaration of an area to be a protected wetland, the following shall be the only activities be permitted to be carried out in the area—

- (a) research;
- (b) eco-tourism;
- (c) restoration or enhancement of the wetland; or

(d) any other activities identified in the Management plan.

(4) A protected wetland shall be used for theregulated activities under sub-section (3), with approval from the County Executive Committee Member.

Identification and inventory of degraded wetlands and conservation measures

14. (1) Within three years from the date of commencement of this Act, the Directorate shall, in consultation with the relevant lead agencies —

- (a) prepare and maintain an inventory of wetlands in the county
- (b) identify river banks or lake basin which are at risk from environmental degradation;
- (c) promote soil conservation measures along river banks and lake basin, including the following—
 - (i) bunding;
 - (ii) terracing;
 - (iii) mulching;
 - (iv) tree planting or agroforestry;
 - (v) grassing;
 - (vi) Soil engineering, compaction and placement of fills;
 - (vii) zoning and planning;
 - (viii) building of gabions; and
 - (ix) control of grazing.

(2) The inventory referred to in subsection (1)(a) shall contain the—

- (a) size;
- (b) location;
- (c) type;
- (d) biological diversity;
- (e) ecological or hydrological importance; and
- (f) natural and socio-cultural heritage.

(3) The wetlands shall be surveyed and the boundaries of such wetlands shall be shown on the relevant registry index maps.

(4) The directorate shall periodically inspect the wetlands to determine the necessity forrevision or correction of the inventory maintained under this section.

(5) The directorate may, in consultation with the relevant lead agency register changesin the boundaries of wetlands on maps in the inventory referred to in sub-section (3) andmake any other necessary changes in the inventory to reflect the actual situation on theground.

(6) In preparing an inventory of wetlands, the County Executive Committee Member shall consult with the County Environment Committee with a view to involving the public in determining whether a wetland should be included in the list of wetlands of county or national significance.

(7) The directorate shall, in consultation with the relevant lead agency, publish the inventory of wetlands annually, reflecting the current state of wetlands included in the inventory at the end of the financial year.

Integrated wetland management plan

15. The Directorate shall prepare a participatory Integrated Wetlands Conservation Management Plan after every ten years.

National Reserves

16. (1) The County Executive Committee Member in consultation with National Land Commission shall recommend to the Cabinet Secretary responsible for Wildlife to declare a wetland by Gazette notice to be a national reserve where the wetland is:-
- (a) rich in biodiversity and wildlife resources or contains endangered and threatened species;
 - (b) an important catchment area critical for the sustenance of a wildlife conservation area; or
 - (c) an important wildlife buffer zone, migratory route, corridor or dispersal area.
- (2) The process in sub-section (1) above shall be subject to consultation with other relevant stakeholders and public participation.
- (3) The national reserve declared under sub-section (1) shall be managed by the County Government in accordance with the provisions of this Act.

Management of National reserves

17. The County Government may after consultation with the National Land Commission, enter into a management agreement with any management agent or the Kenya Wildlife Service for the management' of a national reserve which shall clearly specify among other things: -
- (a) the duration of the agreement;
 - (b) the terms and conditions under which the management agent or the Kenya Wildlife Service shall manage the national reserve;
 - (c) management fees and charges payable to the management agent or the Kenya Wildlife Service;
 - (d) a management plan to be followed by the management agent or the Kenya Wildlife Service;
 - (e) the mechanism for settlement of disputes arising in respect of the agreement, and
 - (f) the circumstances under which the agreement may be terminated

Prohibited activities on wetlands

18. (1) No person shall carry out any of the activities listed hereunder—
- (a) erect, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, or under the river, wetland or water catchment area;
 - (b) excavate, drill, tunnel or disturb the river, wetland or water catchment area;
 - (c) introduce any animal whether alien or indigenous in a river, wetland or water catchment area;
 - (d) introduce or plant any part of a plant specimen, whether alien or indigenous, dead or alive, in any river, wetland or water catchment area likely to have adverse environmental effects on the river, wetland or water catchment area;

- (e) deposit any substance in, river, water catchment area or wetland or in, on, or under its bed, if that substance would or is likely to have adverse environmental effects on the river, wetland or water catchment area;
 - (f) direct or block any river or wetland from its natural and normal course; or
 - (g) drain any river or wetland.
- (2) A person who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding Kshs. 300,000 or imprisonment for a term not exceeding 12 months or both.

PART IV -MANAGEMENT OF RIPARIAN AREAS

Protection of riparian areas

19. (1) The Executive Committee Member in consultation with Water Resource Authority shall specify and cause the gazetting of:
- (a) Rivers traversing the County that shall have a protection zone of thirty metres measured from the highest water mark of the river.
 - (b) Lakes that shall have a protection zone of 100 metres measured from the highest water mark
 - (c) Dams that shall have a protection zone of 60 metres measured from the highest water mark
 - (d) Rivers and streams that shall have a protected zone of at least six metres width measured from the highest water mark of the river.
- (2) The protected zones provided in sub-section 1 above shall form the riparian areas.

Restricted activities on riparian areas

20. (1) No person shall carry out any of the activities listed hereunder:-
- (a) erect, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, or under the riparian area;
 - (b) excavate, drill, tunnel or disturb the riparian area;
 - (d) graze or establish livestock holding areas on or along a riparian area;
 - (e) use of agro-chemicals and unsustainable agricultural activities that are likely to have adverse environmental effects on the riparian area, river or wetland;
 - (f) introduce or plant invasive exotic species in the riparian area;
 - (e) deposit any substance in the riparian area if that substance would or is likely to have adverse environmental effects on the riparian area, river or wetland.
- (2) A person who contravenes this section commits an offence and shall be liable upon conviction to

a fine not exceeding Kshs. 100,000 or imprisonment for a term not exceeding 6 months or both.

PART V – COMMUNITY PARTICIPATION

Community Engagement in Conservation of the Wetlands and Riparian Area

21. (1) A member of the community within a radius of five kilometers to designated wetland may together with other members or persons residing in the same area register a wetland community conservation group in accordance with the Societies Act.
- (2) Functions of Wetland Community conservation group.
- a) protect, conserve and manage county wetland, riparian, and catchment area or part thereof pursuant to an approved wetland management plan;
 - (b) formulate and implement wetland programmes consistent with sustainable use criteria;
 - (c) protect riparian and protected areas;
 - (d) assist the county in enforcing the provisions of this Act and any rules and regulations made pursuant thereto, in particular in relation to illegal activities in wetlands, riparian and catchment areas;
 - (e) with the approval of the county government, enter into partnerships with other entities for the purposes of ensuring efficient and sustainable conservation and management of wetlands;
 - (f) keep the county informed of any developments, changes and occurrences within the wetland which are critical for the conservation;
 - (g) undertake continuous surveillance of the wetland, and riparian areas to support in protecting the wetland against illegal activities; and
 - (h) perform any other function necessary for efficient conservation and management of the wetlands;
- (3) The Community Conservation Group may with the approval of the directorate undertake the following permitted activities—
- (a) sustainable subsistence harvesting of papyrus, medicinal plants and reeds;
 - (b) fishing and small-scale fish farming, subject to the provisions of any relevant existing laws;
 - (c) collection of water for domestic use;
 - (d) educational research;
 - (e) hunting, subject to the provisions of the Wildlife Conservation and Management Act, 2016; and
 - (f) Boat riding and ecotourism
- (4) Notwithstanding the provision of sub-section (3) above, the permitted activities must not change

the character of the riparian area or wetlands.

PART IV – MISCELLANEOUS

Pollution

22. (1) No person shall engage in any act which directly or indirectly causes, or may cause immediate or subsequent water pollution.
- (2) Where there arises a grave and or imminent threat, danger of damage of discharge, release or escape of polluting or hazardous substances into the wetland or riparian area any person responsible for the pollutant or hazardous substances shall be liable for —
- (a) the cost of any measures reasonably taken for the purpose of preventing, minimizing or controlling any such damage; and
 - (b) any damage caused by any measures so taken.

Duty of land owners, users, occupiers

23. (1) Every owner, occupier or user of land which is adjacent to a wetland or riparian is obligated to avoid activities on his or her land that cause degradation or destruction of the wetland or riparian area.
- (2) A person who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding Kshs. 100,000 or imprisonment for a term not exceeding 6 months or both.

Restoration orders

24. County Executive Committee Member may issue wetland or riparian area restoration orders to allow a wetland or riparian area which has been degraded to regenerate and the offender shall bear the burden of regeneration.

Requirement for Environmental Impact Assessment

- 24.(1) A developer intending to undertake a project which may have a significant impact on a wetland or riparian area, shall carry out an environmental impact assessment.
- (2) The developer referred to in sub-section (1) shall carry out an environmental audit.
- (3) The Directorate to monitor such activities in sub-section (1) in accordance with this Act.

Duty of an authorized officer

25. An authorized officer within whose jurisdiction activities are likely to degrade or are degrading a wetland or riparian area taking place, shall ensure that the communities living near such areas participate in conservation activities and assist them in implementing this Act and any other law that protects the environment and natural resources.

Transition

26. Any person carrying out any activities on a wetland or riparian areas immediately before the coming into force of this Act , shall within six months from the coming into force thereof, take all necessary measures to ensure full compliance with this Act .

Improvement Notice

27. Where an environmental inspector has reasonable cause to believe that any person is violating the provisions of this Act, the inspector may—
- (a) issue against such person an improvement notice; or
 - (b) take such measures as are provided for under EMCA 1999.

Regulations

28. The Executive Member may make regulations for the proper implementation of this Act.

