

COUNTY GOVERNMENT OF TAITA TAVETA



COUNTY ASSEMBLY OF TAITA TAVETA
OFFICE OF THE CLERK

P.O. Box 1142-80304

Wundanyi

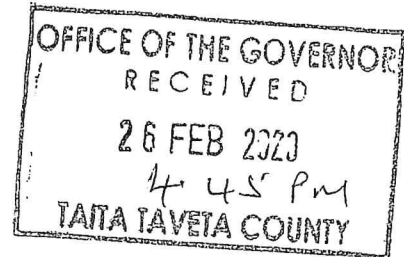
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TTCA/LEG/4/1(a)/ (13)

26th February, 2020

H.E THE GOVERNOR
COUNTY GOVERNMENT OF TAITA TAVETA
P.O. BOX 1066-80304
WUNDANYI




RE: COUNTY ASSEMBLY RESOLUTION ON THE APPROVAL OF THE
TAITA TAVETA COUNTY SAND HARVESTING (AMENDMENT) BILL,
2020

The Taita Taveta County Assembly Standing Order No. 137(1) provides that, *The Speaker shall, within fourteen days, forward a Bill passed by the County Assembly to the Governor.*

This is to bring to your attention the approval of the Taita Taveta County Sand Harvesting (Amendment) Bill, 2020 with amendments, during a morning Plenary Sitting held on 26th February, 2020.

Please find attached 3 copies of the approved bill for your consideration and assent pursuant to Standing Order No. 137 (2). *One copy should be returned to the County Assembly upon assent for record purposes.*

Kindly take necessary action.


HON. MESHACK M. MAGANGA
SPEAKER TO THE COUNTY ASSEMBLY

THE TAITA TAVETA COUNTY GOVERNMENT

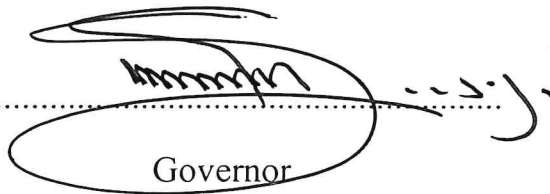
HIS EXCELLENCY THE GOVERNOR

GRANTON GRAHAM SAMBOJA

I assent

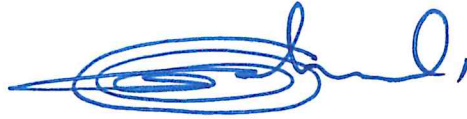
27/02/2020

Date


Governor

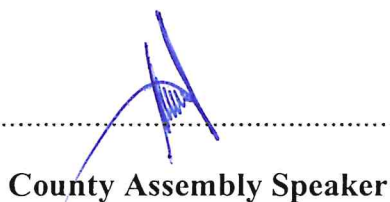
An Act of the County Assembly of Taita Taveta to amend the Taita Taveta Sand Harvesting Act, 2016 and for connected purposes.

I certify that this printed impression is a true copy of the Bill passed by the County Assembly on the 26TH (date) FEBRUARY (month), 2020



.....
Clerk of the County Assembly

Presented for assent in accordance with the provision of the Constitution of Kenya and County Governments Act on the 26TH
(date) FEBRUARY, 2020 at THE COUNTY ASSEMBLY the
WEDNESDAY hour of 1042 HRS



.....
County Assembly Speaker

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

THE TAITA TAVETA COUNTY SAND HARVESTING (AMENDMENT) ACT, 2020
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1— Short title.
- 2— Interpretation.
- 3— Objects and purpose of the Act.

PART II—ADMINISTRATION

- 4— Establishment of the County Sand Harvesting and Management Committee.
- 5— Functions of the Committee.
- 6— Sand harvesting associations.
- 7— Considerations by the Committee and associations.

PART III—SAND HARVESTING REQUIREMENTS

- 8— Sand harvesting sites.
- 9— On-farm and lakeshore sand harvesting.
- 10— Riverbed harvesting.
- 11— Hours of harvesting and transportation.
- 12— Sale of sand.

PART IV—LICENSING PROVISIONS

- 13— Licensing of sand harvesters.
- 14— Licensing of sand dealers.
- 15— Licensing officer.
- 16— Application for license.
- 17— Discretion of a licensing officer.
- 18— Conditions for the issue of a license.
- 19— License fees.
- 20— Form of license.
- 21— Transfer of license.
- 22— Alteration of a license.
- 23— Cancellation of license.
- 24— Reviews.
- 25— Production of license.
- 26— Quarrying.

PART V—GENERAL PROVISIONS

27— Collection of revenue by the county government.

28—Road barriers.

29—Power to order closure of site.

30—Power of entry.

31—Protection from personal liability.

32—Dispute resolution.

33—Offences and penalty.

34—General penalty.

35—Regulations.

TAITA TAVETA COUNTY SAND HARVESTING (AMENDMENT) ACT, 2020

A Bill for

An Act of the County Assembly of Taita Taveta to amend the Taita Taveta Sand Harvesting Act, 2016 and for connected purposes.

ENACTED by the County Assembly of Taita Taveta, as follows—

PART I - PRELIMINARY

1. This Act may be cited as the Taita Taveta County Sand Harvesting (Amendment) Act, 2020.
2. In this Act, unless the context otherwise requires—

“Association” means the sand harvesting associations established under section 6;

“Authorized officer” includes County Environment Officers, Senior County Enforcement Officers, Gazetted Environmental Inspectors, Sub County Public Health Officers, Senior Revenue officers and Mining Inspectors;

“Committee” means the County Sand Harvesting and Management Committee established under section 4;

“County executive committee member” means the county executive committee member for the time being responsible for matters relating to sand harvesting, conservation and utilization;

“Dealer” means the person who buys and sells common minerals;

“Designated area” means any area designated as a sand harvesting area pursuant to section;

“harvester” means a person or the person’s agent who gathers or collects sand from any of designated area of for the purpose of sale or own use;

“License” means a permit issued by the county government to engage in sand dealing;

“License holder” means a person to whom a permit has been granted under this Act;

“Person” includes a company, association or other body of persons whether incorporated or unincorporated;

“quarry” means a place from which building demission stone, rock, construction aggregate, murrum, riprap, gravel, lime, sand, slate, shingle, brine, diatomite, kaolin, ornamental stone, sodium and potassium compounds and surface stone is excavated from the ground;

“Riparian land owner” means a person who owns or occupies land which is adjacent to a river;

“Sand” means sedimentary material finer than gravel and coarser than silt with grains between 0.06mm and 2mm in diameter and includes stones, coral, earth and turf but does not include silica sand;

“Sand harvesting”, means the removal, extraction, harvesting or scooping of sand from designated areas;

“sand dealer” means any person(s) approved to harvest, remove, extract, scoop, transport or sell sand as provided for under Clause 6 of these Bill so long as such quantity of sand exceeds 2 tonnes;

"Secretary" means the secretary of the committee or subcommittee;

"Sub county committee" means the county sand harvesting utilization and conservation committee established under section 5A;

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

- (a) require the registration of sand dealers;
- (b) designate sand harvesting areas, sand harvesting hours and sand transportation methods;
- (c) provide for the institutional framework for management and regulation of sand harvesting;
- (d) provide for the rehabilitation and protection of the environment from harmful effects of sand harvesting and related activities;
- (e) provide for benefit-sharing and investing back to the community part of the revenue collected from sand harvesting; and
- (f) enable communities to participate in the management of sand harvesting.

PART II – ADMINISTRATION

4. (1) There is established the Taita Taveta County Sand Harvesting and Management Committee consisting of the following members appointed by the County Executive Member;
- (a) the chief officer for the time being responsible for matters relating to sand harvesting, conservation and utilization who shall be the chairperson;
 - (b) the chief officer responsible for matters relating to finance, who shall be the vice-chairperson;
 - (c) the County Commissioner or a representative nominated in writing;
 - (d) the County Director of enforcement or a representative nominated in writing;
 - (e) the County Director of mining or a representative nominated in writing;
 - (f) the County Director of environment who shall be the Secretary;
 - (g) one County Land Surveyor;
 - (h) a representative of National Environment Management Authority at the County level;
 - (i) a representative of Water Resource Management Authority at the County level; and
 - (j) one representative of the association involved in sand harvesting, conservation and utilization from each sub county.
- (2) The quorum for the committee meetings shall be seven members.
- (3) A member appointed under paragraph (j) shall hold office for a term of three years and may be eligible for reappointment for a single further term.
- (4) The members appointed under paragraph (a) and (b) may in writing, designate a senior officer within their respective department to be the alternate chairperson or vice chairperson of the committee

5. (1) The Committee shall

- (a) maintain a register of all sand dealers;
- (b) advise the county executive committee member on the structure and operations of sand harvesting and related activities;
- (c) ensure that sand harvesting activities are compliant with this Act and any national norms and standards;

- (d) ensure sustainable exploitation and utilization of sand resource and other excavated material;
- (e) collaborate with other environmental agencies in management of environment;
- (f) formulate environmental conservancy programmes in relation to sand harvesting;
- (g) recommend to the county executive committee member designated sand harvesting areas for gazettelement;
- (h) handle complaints and conflicts on matters related to sand harvesting, utilization and conservation; and
- (i) perform any other function assigned by the county executive committee member.

(2) In the performance of its functions under this Act, the Committee shall, subject to any other law allow the participation of the people who may be affected by its decisions in making decisions of those decisions.

5A. (1) There is established for each sub county, the sub county sand harvesting, utilization and conservation committee consisting of the following members appointed by the County Executive Member;

- (a) the area sub county administrator who shall be the chairperson to the committee;
- (b) the sub county environment officer who shall be the secretary of the committee;
- (c) the sub county revenue officer;
- (d) the sub county mining officer or a representative nominated in writing;
- (e) a representative of the National Environment Management Authority at the County level;
- (f) the Deputy County Commissioner or a representative nominated in writing;
- (g) a representative of Water Resource Management Authority; and
- (h) two representatives of the association involved in sand harvesting, utilization and conservation at the sub county.

(2) The county executive committee member shall take into account gender composition of the Committee while appointing members under paragraph 1(h).

- (3) A member appointed under paragraph (g), shall hold office for a term of three years and may be eligible for reappointment for a single further term.
- (4) Members shall in their first meeting elect a person of the opposite gender from the chairperson to be the vice chairperson.
- (5) The quorum for the committee meetings shall be five members.
- (6) A member appointed under paragraph 1(a) may in writing, designate a senior public officer within the respective county department, to be the alternate chairperson of the committee.

5B. (1) The sub county committee shall be responsible for the sustainable management of sand harvesting within their respective area of jurisdiction

- (2) Without prejudice to the generalities of sub section (1), each sub county committee shall be responsible for—
 - (a) the review of all applications for sand harvesting and transportation and make recommendations before forwarding the recommendations to the licensing officer;
 - (b) the coordination and supervision of the construction of sand dams and gabions in designated conservation and utilization sites;
 - (c) the monitoring and coordination of lorries transporting sand;
 - (d) the monitoring of the designated sand harvesting sites and advise accordingly on those that require immediate repair;
 - (e) the determination on whether the requirements of an Environmental Impact Assessment and Environmental Audit pursuant to the Environmental Management and Co-ordination Act No. 8 Cap 387 of 2015 have been fulfilled before sand utilization is allowed;
 - (f) the coordination and supervision of the sand harvesting associations within the sub county in respect of which it is constituted in the process of conservation and utilization of sand resources;

- (g) the identification and making of recommendations to the County Committee sites for utilization and conservation; and
- (h) performance of any other functions as may be assigned by the county executive committee member from time to time.

6. In discharging its mandate under this Act, the county and sub-county committees shall establish a stakeholder engagement plan involving stakeholders and Associations within the county to ensure sustainable conservation and utilization of sand.

7. The Committee and the associations shall be guided by the following considerations in discharging their mandate—

- (a) sand dams and gabions shall be constructed in designated sand harvesting sites and there shall be at least two hundred meters between one gabion and another;
- (b) all vehicles transporting sand shall use designated access roads only to sand harvesting sites;
- (c) upon closure of a designated sand harvesting site, the site shall be rehabilitated appropriately by the Association and approved dealer under the supervision of the Committee;
- (d) sand harvesting or scooping shall be restricted to the riverbeds and no such harvesting or scooping shall be allowed on riverbanks;
- (e) only persons who have attained the age of eighteen years and residing within the local community shall be employed as sand loaders;
- (f) licensed sand dealers shall pay a negotiated and agreed wage to sand loaders subject to the prescribed minimum wage approved by the executive committee member; and
- (g) sand loaders may organize themselves into organized groups with a chairperson and shall be under the direction and control of the Association.

PART III – SAND HARVESTING REQUIREMENTS

8.(1)The Committee shall, on the advice of the sub county committee, designate and document sand harvesting sites from time to time

- (2) Every sand harvesting area shall be clearly demarcated and documented by the Committee in consultation with the sub county committee

(3) A person shall not harvest sand from any area not designated as a sand harvesting site by Committee.

(4) Each designated sand harvesting site shall have an environmental management plan to guide in the rehabilitation of the sites.

9. On-farm sand harvesting shall be carried out subject to fulfilling the following conditions—

- (a) sand harvesting or scooping of sand shall not exceed six feet in depth;
- (b) a sand harvesting sites shall be at least fifty metres from the nearest riverbanks or dykes for on-farm sand harvesting;
- (c) sand harvesting or scooping shall be done concurrently with restoration of areas previously harvested; and
- (d) on-farm sand harvesting shall only be undertaken by open-cast harvesting method and no underground tunneling or extraction of sand shall be undertaken.

10.(1) Sand harvesting from any riverbed shall be undertaken in a manner that allows adequate reserve of the sand is retained to ensure water retention.

(2) Sand harvesting shall not be undertaken on any riverbank.

(3) Loading of sand shall be done in the designated harvesting sites through controlled access points.

(4) No sand harvesting shall take place within one hundred metres of either side of any physical infrastructure including but not limited to bridges, roads, railway lines and dykes.

11. (1) A person shall not harvest, extract or scoop sand, or transport sand between the hours of six o'clock in the evening and six o'clock in the morning.

(2) The transport of sand within the county shall only be done through roads designated for such transportation.

(3) A person who contravenes the provisions of this section commits an offence and is liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

12.(1)The Committee shall in consultation with county executive committee member, taking into consideration the requirements of the Trade Descriptions Act, the County Public Finance Management Act and the market forces of the day, provide for a minimum pricing guidelines for sale of sand within the county.

(2) Any person who sells sand shall be required to issue a receipt to the purchaser and keep records of such for periodic inspection by the relevant authorities.

PART IV – LICENSING PROVISIONS

13. (1) No person shall use, cause or permit to remove sand from any river, farm, ranch or other land for the purposes of sale unless with a valid license issued under this Act for such trade or business.

(2) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

14.(1) No person or agent shall transport sand from any part of the county, unless a valid license for such business has been issued by the county government.

(2) No person shall carry on or engage in any trade occupation or business of sand harvesting unless the person is licensed to carry on such trade, occupation or business by the county government.

(3) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

15. (1.) The county executive committee member shall appoint a licensing officer responsible for the issuance of licenses under this Act

(2) The county executive committee member may, in writing, delegate any one or all the powers under this Act to any one or more authorized officers.

(3) Every license shall contain conditions for ensuring sustainable sand harvesting including —

- (a) the requirement for sand harvesters to furnish the licensing officer with an environmental impact assessment relating to the site for which a license is sought;
- (b) the requirement for rehabilitation of sites upon closure; and
- (c) any other condition as may be prescribed by the county executive committee member under this Act.

16. A person who intends to harvest sand for commercial purposes shall make an application for a license in the prescribed form accompanied by such fees as may be determined by the county executive committee member, to the sub county committee.

17.(1) The sub county committee shall consider each application made under section 16 and make recommendations to the licensing officer to issue a licence to the applicant within thirty days of receipt of such recommendations.

- (2) Where the sub county committee is not satisfied with the application under sub section (1), the sub county committee shall reject the application, and inform the applicant of its decision within fourteen days.
- (3) An applicant whose application has been rejected by the sub county committee, may within thirty days of receipt of the decision of the sub county committee, re submit his or her application to the sub county committee for further consideration.
- (4) A license issued under sub section (1) shall be in such form as may be prescribed.

18. A license shall be issued subject to the following conditions—

- (a) an obligation to rehabilitate the site and surrounding areas upon closure;
- (b) for the category or categories of business activity specified in the license; and
- (c) compliance with the regulations and any other conditions provided in the license.

19. (1) An applicant for a license shall pay such application fees as may be prescribed by the county executive committee member under this Act.

(2) The county executive committee member may waive the whole or part of any fee prescribed under subsection (1).

20. (1) A license shall be in such form as the county executive committee member may from time to time determine and shall be signed by the county executive committee member or a person authorized in that behalf.

(2). The licensing officer may issue different classes of licenses for different purpose as may be provided for in the Regulations

21. Except as otherwise provided in this Act, the sub county committee may recommend for the renewal, transfer or revocation of a license granted pursuant to the provisions of this Act.

22. (1) A licensee shall only engage in the type of sand dealing as authorised under the license.

(2) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

23. A licensing officer may cancel a license if in his or her opinion—

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

(b) any information given in the application for the business was materially incorrect so as to create a false impression of the ownership of the business or the nature of its business activity;

(c) the license holder carries on a prohibited activity;

(d) a condition imposed is breached; or

(e) the license holder is convicted of an offence under this Act.

24. (1) Any person aggrieved by the decision of a licensing officer may apply for review of the decision before a committee.

(2) All applications for review shall be filed within fourteen days of the decision.

(3) Before applying for a review under this section, an aggrieved person has the right to petition the county executive committee member.

25. (1) The licensing officer, any police officer or an authorized officer who has reason to believe that a person is required to hold a business license for any of the purposes of sand harvesting may demand such person to produce a license.

(2) A person who fails to produce a license when required to do so under subsection (1) commits an offence and is liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

26. The provisions of this Act relating to sand harvesting shall be applicable with the necessary modifications to any form of quarrying.

PART V – GENERAL PROVISIONS

27. The Committee shall—

- (a) facilitate the collection of revenue from sand dealers in designated sand harvesting sites or along access roads;
- (b) ensure that at least ten per cent of the revenue collected is allocated to the Committee and the Associations to facilitate their operations;
- (c) ensure that part of the revenue collected is allocated for community projects; and
- (d) ensure rehabilitation of closed sand harvesting sites and access roads within the sand harvesting area.

28. (1) For purposes of section 27, the county government may mount barriers on access roads leading to sand harvesting sites in accordance with the provisions of the Traffic Act.

- (2) The barriers shall be supervised by authorized officers and revenue collectors.
- (3) A trader transporting sand shall stop at such barrier and pay the prescribed fees and charges to the authorized officer.
- (4) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or to both.
- (5) In addition to the penalty imposed under subsection (4), any vehicle that does not stop at the barriers for purposes of payment of revenue may be impounded.

29. (1) A licensing officer, authorised officer or police officer may order a license holder to stop any sand harvesting or quarrying activities and close the site if it appears that the site is in a condition dangerous to human life or detrimental to public health or safety.

- (2) The order issued under subsection (1) shall remain in force until the licensing officer is satisfied that the conditions warranting the closure have been satisfactorily improved.
- (3) Any person who contravenes an order issued under this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

30. (1) A licensing officer, authorized officer or a police officer may at any reasonable time—

- (a) enter upon premise, farm, ranch or vehicle and carry out any inspection for the purposes of enforcement of this Act; or
- (b) undertake any 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 license is issued, and recover the expenses incurred in carrying out such work.

(2) A person who obstructs an officer referred to in subsection (1) from undertaking their functions commits an offence and is liable on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding three months or to both.

(3) A police officer or authorized officer may detain any vehicle and confiscate any goods where it is proven that the goods were obtained in contravention of this Act.

(4) The detained or impounded vehicles referred to in subsection (3) shall not be released to the owner until authorised by a court or until the owner pays the prescribed penalty charges.

(5) Any authorized officer or a police officer shall, before undertaking any inspection activities under this Act, produce to the relevant person proper identification documents.

31. No matter or thing done by a licensing officer or officer, employee or agent shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the office, render such officer, employee or agent personally liable for any action, claim or demand.

32. (1) If any dispute is referred to the Committee, the chairperson of the Committee shall convene a meeting between the complainant and the person against whom the complaint is made to deliberate on the grievances and make an appropriate resolution.

(2) Any person aggrieved by the resolution of the Committee under subsection (1), may within fourteen days from the date of the resolution appeal to the county committee executive member.

33. (1) The Sub county committee shall monitor the rehabilitation of all designated sand harvesting sites and their adjacent environment including access roads, riverbanks and catchment areas to ensure environmental sustainability.

(2) The Sub county committee shall require every license holder to prepare and submit to it a management plan for every designated sand harvesting area.

34. A person who—

- (a) carries out sand harvesting outside designated sites;
- (b) overloads sand to a vehicle for transportation contrary to prescribed requirements;
- (c) collects fees or charges and is not authorized to do so under any law;
- (d) obstructs any authorized person from conducting their functions under this Act; or
- (e) establishes a separate entity in a designated site without lawful authority under this Act;

commits an offence and shall, on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

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

36. (1) The county executive committee member may make regulations generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for—

- (a) guidelines for sand harvesting and related activities;
- (b) criteria for determining the number of associations approved under this Act;
- (c) the terms and conditions of all classes of licenses issued under this Act;
- (d) conditions applicable to different types of sand harvesting;
- (e) loading requirements depending on tonnage;
- (f) forms required under this Act;
- (g) rehabilitation of closed sites;
- (h) designation of sand sale yards;
- (i) pricing per lorry load based on tonnage;

- (j) grading, packaging and value addition of sand;
- (k) disputes resolution mechanisms; and
- (l) such other matters as may be necessary for full implementation of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Taita Taveta County Sand Harvesting Act, 2016. Clause 2 of the Bills amends the principal Act by deleting and providing new definitions for authorized officer and County Executive Committee member and by further providing for the following new definitions, riparian land owner, Sub County Committee and Secretary.

Clause 3 seek to delete section 4 of the principal Act and substitute with a new section. Clause 5 introduces a new clause, 5A and B.

Further, the Bill seeks to amend sections 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 20, 21, 22, 24, 32, 33 and 34 of the principal Act

HON. ABRAHAM JUMA

Chairperson, Environment, Natural Resources, Forestry and Mining Committee