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THARAKA NITHI COUNTY ACTS, 2021

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**THE THARAKA NITHI ROAD ASSET MANAGEMENT
ACT, 2021**

No. 5 of 2021

Date of Assent: 9th August, 2021

Date of Commencement: 24th January, 2023

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**THARAKA NITHI COUNTY ROAD ASSET MANAGEMENT ACT,
2021**

AN ACT of the County Assembly of Tharaka Nithi to provide for maintenance, and management of public roads and other matters incidental to the proper management of county road network system.

ENACTED by the County Assembly of Tharaka Nithi, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Tharaka Nithi County Road Asset Management Act, 2021.

Interpretation

2. In this Act —

“Directorate” means the Tharaka Nithi County Roads Directorate established in accordance with this Act;

“County Executive Committee Member” means the member of the Executive Committee responsible for matters relating to roads;

“class” in relation to a road, means the categorization assigned to it under national legislation;

“construction” means supervision, inspection, building, and includes locating, surveying, mapping and eliminating road hazards;

“county road” means a county road classified as such under national legislation;

“public road” means a bridge, culvert, drain, retaining wall, embankment or other structures providing lateral or other support for a road; and also has the same meaning as assigned to it under section 2 of the Public Roads and Roads of Access Act.

Inventory of county roads

3. (1) The Directorate shall cause to be maintained and kept an up-to-date inventory of the roads under its management, in such form and with such detail, including categorization and identity details, as prescribed by the County Executive Committee Member.

(2) The County Executive Committee Member may at least once in every 3 years publish the inventory under subsection (1) in the *Gazette*.

PART II—ADMINISTRATION**The County Roads Directorate**

4. (1) There is established a Directorate to be known as the Tharaka Nithi County Roads Directorate with responsibility for the Construction, management, development, rehabilitation and maintenance of county roads.

Composition of the Directorate

5. (1) The Tharaka Nithi County Roads Directorate shall be composed of—

- (a) the County Executive Committee Member responsible for matters relating to roads who shall be the chairperson;
- (b) the Chief Officer in the county department responsible for matters relating to roads who shall be the secretary;
- (c) the Director in the county department responsible for matters relating to roads;
- (d) County road engineers and inspectors; and
- (e) any other three persons co-opted into the Directorate by the County Executive Committee Member.

Functions of the Directorate

6. The Directorate shall have the following functions and duties—

- (a) enforce all necessary rules and orders for the construction and maintenance of county roads;
- (b) acquire, hire, lease the equipment needed to construct and maintain county roads;
- (c) procure services and materials for construction, rehabilitation and maintenance of county roads;
- (d) use any necessary material most appropriate to build, repair, or maintain county roads;
- (e) constructing, upgrading, rehabilitating and maintaining roads and bridges under its control;
- (f) controlling county roads and road reserves and access to roadside developments;
- (g) implementing road policies in relation to county roads;

- (h) ensuring adherence to the axle load limits in accordance to the relevant legislations.
- (i) ensuring that the quality of road works is in accordance with such standards as prescribed;
- (j) collecting and collating all such data related to the use of county roads as may be necessary for efficient forward planning under this Act;
- (k) monitoring and evaluating the use of county roads;
- (l) planning the development and maintenance of county roads;
- (m) preparing the road works programs for all county roads;
- (n) liaising and co-coordinating with other road authorities in planning and on operations in respect of roads; and
- (o) performing such other functions related to the implementation of this Act as may be directed.

PART III—CLASSIFICATION AND MAINTENANCE OF COUNTY ROADS

Classification of roads

7. (1) The directorate shall in consultation with the relevant National Authority responsible for classification of roads, classify each public road.

(2) The Directorate shall ensure width of all classes of county roads are maintained as per the prescribed standards.

(3) The Directorate may maintain other roads (National trunk roads) within the county that fall under the jurisdiction of the national trunk road in consultation with the relevant authority responsible for that road.

Roads Maintenance Team

8. (1) There is established Road Maintenance Team in every Location Unit within the County.

(2) The Road Maintenance Team shall be enlisted on voluntary basis by the Directorate.

(3) While enlisting the volunteers the Road Maintenance Team preference shall be given to persons ordinarily resident within the respective Sub-Location Unit, with priority being given to youths.

(4) The Road Maintenance Team shall work under the guidance, direction and supervision of qualified officers assigned by the Directorate from the Department Responsible for Roads.

(5) The Directorate shall determine the manner of and remuneration of the Roads Maintenance Team.

Declaration of public road

9. (1) The Executive Committee Member may in consultation with the Department in charge of Physical Planning by order—

- (a) Declare any road over which a public right of way exists to be a public road, and every such road shall be deemed to be a public road and responsibility for its maintenance shall lie on the Directorate.
- (b) where the County Executive Committee Member proposes to declare a road to be a public road the member shall—
 - (i) satisfy that the road is at general public utility;
 - (ii) satisfy that the road is not private land, but if on private land the owner of the private land shall be compensated;
 - (iii) consider the financial implication for the Directorate as a result of the proposed declaration;
 - (iv) put up public notice in the area where the proposed roads is located indicating the time (which shall not be less than one month);
 - (v) state in notice that objection or representations may be made in writing to the directorate in relation to such declaration before a specified date (the notice shall not be less than two weeks after the end of the period for notice);

(2) The consideration of the objection or representations and the making of an order under sub-section (1) shall be a review committee comprising of five members appointed by the County Executive Committee Member.

(3) The review committee established under subsection (2) shall consist of —

- (a) an advocate of the High Court of Kenya with not less than 5 year experience;
- (b) a Land Surveyor with not less than 5 year experience;

- (c) a valuer with not less than 5 year experience; and
- (d) two representatives from the area in which land is to be declared a public road.

(4) The County Executive Committee Member may prescribe criteria for the declaration of roads to be public road and the Directorate shall comply with any such prescribed criteria when exercising its functions under this section.

Power to divert roads

10. (1) The Directorate may, for its purposes, temporarily close or divert a public road and similarly close or divert a county road permanently.

(2) It shall be lawful for the Directorate or its authorized representative, for the purpose of preventing damage being caused to any road or for the purpose of carrying out any works which it may consider necessary or desirable in connection with the maintenance or improvement of a road, to close the whole or any part of such road to all vehicles or any particular type of vehicles at any time for any period it may deem fit.

(3) It shall be unlawful for the driver or person in charge of any vehicle to drive or haul the vehicle or cause it to be driven or hauled over any portion of a road which is closed to traffic and where a conspicuous notice is displayed to the effect that the road is closed, unless the driver or person in charge of the vehicle has received permission, from the Directorate or any relevant Authority.

Certain powers relating to inter-county roads

11. (1) The Directorate shall have power to require the owner of any land to remove, lower or trim to the satisfaction of the Directorate any tree, shrub or hedge overhanging or interfering in any way with the traffic on any road or with any wires or works within the road.

(2) In this section—

“Inter-county road” includes a bridge, drain and other services associated with a road and that crosses or runs along the boundaries of more than one county government.

(3) The Directorate, may where a county road crosses or runs along the boundaries of another county, enter into an agreement in accordance with a national legislation and this Act.

Temporary structures on County road

12. (1) If a person without authority or the consent of the Directorate erects, places or retains a temporary structure on any type of the road, such a structure shall be deemed as an illegal structure.

(2) An authorized person may remove a temporary structure from a county road.

(3) An authorized person may store or procure the storage of a temporary structure removed by him under sub section (2).

(4) Where the name and address of the owner of a temporary structure removed and stored under this section can be ascertained by reasonable inquiry, the Directorate shall serve notice upon the owner informing him of the removal and damage and the storage and of the address of the place where the temporary structure may be, claim and recover it within one month of the date of the service of the notice and informing him of the statutory consequences of his failure to do so.

(5) A temporary structure removed and stored under this section may be given to a person claiming the temporary structure if he makes a declaration in writing that such person is the owner or is authorized by its owner to claim it.

(6) The Directorate may dispose, or procure the disposal of a temporary structure removed and stored under this section if —

(a) the owner of the temporary structure fails to claim it and remove it from the place where it is stored within one month of the date on which a notice was served under sub section (4) ; or

(b) the name and address of the owner of the temporary structure cannot be ascertained by reasonable inquiry.

(7) A temporary structure shall not be disposed of under this section within thirty days of the date of its removal under this section.

(8) The provisions of this section are without prejudice to the functions of public authority or any other applicable law.

Dangerous structures and trees

13. (1) The owner of any structure or anything introduced to the land which is situated adjacent to the public road shall take reasonable steps to ensure that—

(a) the structure or the use of the land thereof is not a hazard or a potential hazard to road users; or

(b) does not interfere with the use or maintenance of the public road.

(2) Any person who contravenes the provisions of sub section (1) commits an offence and is liable on conviction to a term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings or both.

(3) where the Directorate considers a structure or the use of such a structure, tree, shrub, hedge or other vegetation present an immediate and serious hazard to a person using public road it may take immediate action to reduce or remove the hazard.

Protection of Public Roads

14. (1) A person who, without approval of the Directorate—

- (a) erects an illegal structure or amenity on public road;
- (b) defaces a public road by writing or other means;
- (c) damages a public road;
- (d) excavates a public road; or
- (e) undertakes unauthorized works on public roads
- (f) does any other thing that is a hazard or potential a hazard to persons using the road or obstructs or interferes with safe use of a public road or the maintenance a public road.

shall be guilty of an offence and is liable to a term of imprisonment not exceeding one year or a fine not exceeding two hundred thousand shillings or both.

(2) Where a person does anything in contravention of sub section (1) the Directorate may remove the defacing or repair any damage, fill in any excavations, remove any material thing or obstruction which interferes with use of public road.

(3) Consent under sub section (1) may be given by the Directorate subject to such conditions, it deems fit and any person who fails to comply with such conditions or requirements shall be guilty of an offence.

Drainage

15. (1) The Directorate may construct and maintain drains in, on, under through or to any land for the purpose of draining water from or preventing water from flowing into a public road.

(2) Before entering on any land to perform a function under sub section (1) the directorate shall—

- (a) at least within a reasonable time before the date upon which it proposes to enter on the land, serve a notice on the owner or occupier of the land—
 - (i) stating that it proposes to enter on the land;
 - (ii) specifying the function that it proposes to perform thereon;
 - (iii) stating that objection or representations maybe made in writing to the Directorate in relation to the proposed performance of the function before a specified date of service of the notice; and
 - (iv) informing the owner of their rights to restoration of his property;
- (b) consider any objections or representation made under paragraph (a).

Management of storm water and other materials

16. (1) The owner or occupier of any land adjacent to public road shall take all reasonable steps to ensure that the storm water, soil or other materials is prevented from flowing on to the public road from his land.

(2) The Directorate may serve a notice in writing on the owner or occupier of any land adjacent to the public road requiring him to carry out specified measures or take specified measures to prevent water, soil or other materials from flowing or falling on to a public road from his land.

(3) A person on whom a notice under subsection (2) has been served may within fourteen days from the date of service, appeal against the notice to Review Committee established in this Act on any of the following grounds—

- (a) that he is not the owner or the occupier of that land;
- (b) that the water, soil or other materials was not and is not flowing or falling into a public road from his land;
- (c) that compliance with the requirements of the notice would involve unreasonable expenses;
- (d) that the notice specified an unreasonably short time for complying with requirements; or
- (e) any of them.

(4) An owner or occupier who fails to comply with a notice under this section shall be guilty of an offence and is liable to a term of imprisonment not exceeding six months or a fine not exceeding fifty thousand shillings or both.

(5) Where an owner or occupier fails to comply with a notice under this section, the Directorate may take the action specified in the notice or such other action prescribed by the law.

Interference with public road

17. (1) A person who, without the consent of the Directorate —

- (a) within five meters of the public road measured from its nearest edge, scours, deepens, widens or fills any existing drain or excavates any new drain; or
- (b) interferes with, or carries out any works which interferes with, a bridge, culvert, drain, retaining wall, embankment, carriageway or other structures providing lateral or other support for public road;

shall be guilty of an offence and is liable to a term of imprisonment not exceeding six months or a fine not exceeding fifty thousand shillings or both.

(2) A consent under sub section (1) may be given by the directorate subject to conditions, restrictions or other requirements as it deems fit, and any person who fails to comply with such conditions, restrictions or requirements shall be guilty of an offence.

(3) where the Directorate considers that carrying out, with or without its consent of an activity referred to in sub section (1) has damaged, is damaging or will damage public road, it may serve a notice in writing on the person carrying out such activity, requiring that the activity ceases forthwith and a person who fails to comply with a notice served on him shall be guilty of an offence.

Emergencies responses

18. (1) Where as a result of flooding, landslides, or other emergency there is an immediate and serious hazard to persons using public road or serious damage has been, is being or will be caused to public road, the Directorate may take immediate action to remove or reduce the hazard or prevent or reduce the damage or any further damage.

(2) In exercise of its functions under subsection (1) the Directorate may enter any land and carry out any works or do anything which it considers necessary for purposes of sub section (1).

PART IV—MISCELLANEOUS PROVISIONS

Road users duty of care

19. (1) A person using a public road shall take reasonable care of his own safety and for that of other persons using the public road.

(2) A person using a public road shall take all reasonable measures to avoid —

- (a) injury to himself or to any other person using the public road; or
- (b) damage to property owned or used by him or by any other person using the public road.

Building lines

20. Any person constructing a permanent structure in plots or land abutting a classified or unclassified road shall observe a setback distance of —

- (a) between 3m and 6m road with the building line shall not be less than 3m;
- (b) between 6m and 18m road width the building line shall be not less than 6m; and
- (c) any road greater than 18m in width, the building line shall be not less than 9m.

Road reserve width

21. All roads in Tharaka Nithi County shall have a minimum of road reserve width of 9m for the greatest lengths of the roads except where the width of the road reserve is restricted.

General penalties

22. Any Person contriving any provisions of this Act, for which no other punishment is provided for is liable on conviction to a fine not exceeding one hundred thousand or a term of imprisonment not exceeding one year or both.

Regulations

23. The County Executive Committee Member may make regulations for the purposes of giving full effect to this Act.