



Republic of the Philippines
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MEMORANDUM

FOR / TO : The Assistant Director
Biodiversity Management Bureau
Ecosystems Research and Development Bureau
Environmental Management Bureau
Forest Management Bureau
Land Management Bureau
Mines and Geosciences Bureau

Representative, Office of the Head Executive Assistant
Representative, Office of the Undersecretary for Legal,
Administration, Human Resources and Legislative Affairs
Representative, Office of the Undersecretary for Finance, Information
Systems and Climate Change
Representative, Office of the Undersecretary Policy, Planning and
International Affairs
Representative, Office of the Undersecretary for Field Operations (FO)
- Luzon, Visayas and Environment
Representative, Office of the Undersecretary for FO - Mindanao
Representative, Office of the Undersecretary for Enforcement, Solid
Waste Management, Local Government Units Concerns and
Attached Agencies
Representative, Office of the Undersecretary for Special Concerns,
Muslim Affairs and BARMM
Representative, Office of the Assistant Secretary for Policy, Planning
and
Foreign-Assisted and Special Projects
Representative, Office of the Assistant Secretary for Enforcement,
Solid Waste Management and Local Government Units Concerns
Representative, Office of the Assistant Secretary for Legal Affairs
Representative, Office of the Assistant Secretary for FO - Luzon and
Visayas
Representative, Office of the Assistant Secretary for FO - Eastern
Mindanao
Representative, Office of the Assistant Secretary for FO - Western
Mindanao
Representative, Office of the Assistant Secretary for Finance,
Information Systems and Mining Concerns
Representative, Office of the Assistant Secretary for Human
Resources, Strategic Communication and Sectoral Initiatives
Representative, Office of the Assistant Secretary for Administration
and Legislative Affairs

Representative, Office of the Assistant Secretary for Indigenous Peoples Affairs
Representative, Office of the Assistant Secretary for Special Concerns-Mindanao
Representative, Legal Affairs Service
Representative, Climate Change Service
Representative, Strategic Communication and Initiatives Service
Representative, Foreign-Assisted and Special Projects Service
Representative, River Basin Control Office

FROM : The OIC Director
Policy and Planning Service

SUBJECT : **HIGHLIGHTS OF THE POLICY TECHNICAL WORKING GROUP (PTWG) MEETING NO. 2022-05 HELD ON MAY 18, 2022, 9:00 AM THROUGH IN-PERSON AND ZOOM PLATFORM**

DATE : 31 MAY 2022

Furnished herewith is the approved Highlights of the Policy Technical Working Group (PTWG) Meeting No. 2022-05 held on May 18, 2022, 9:00 AM through in-person and Zoom platform, which tackled the draft DENR Administrative Order (DAO) re Issuance of Provisional Agreement for Special Uses in Protected Areas. Also attached are copies of the revised draft policy and the Annexes, for your further comments/inputs, if any. The revisions are highlighted in yellow.

For your information and/or appropriate action.


GLENN MARCELO C. NOBLE



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DENR-POLICY TECHNICAL WORKING GROUP

Minutes of Meeting No. 2022-05

May 18, 2022, 9:00 AM

5/F Conference Room, DENR Central Office, Visayas Ave., Diliman, Quezon City

I. Attendees

1. Dir. Glenn Marcelo C. Noble, PPS
 2. Asst. Dir. Mayumi Q. Natividad, ERDB
 3. Asst. Dir. Amelita Ortiz, BMB
 4. Ms. Meriden Maranan, BMB
 5. Mr. Reneo Vicente, BMB
 6. Mr. Jobert Bandol, BMB
 7. For. Rachell Abenir, BMB
 8. Mr. Paul Michael Negrillo, BMB
 9. Mr. Gino Sison, BMB
 10. For. Dianne Lanugan, FMB
 11. Ms. Jo Aileen Ortega, LMB
 12. For. Ivy Nicole Angeles, OSEC/OHEA
 13. Ms. Encarmila Panganiban, OULAHRLA
 14. Ms. Maria Magnolia Danganan, OUPPIA
 15. Ms. Heartleen R. Albajera, OUFOM
 16. Ms. Merianne Kate Vargas, OUESWMLGCAA
 17. Mr. Dave Daguro, OASSC
 18. Ms. Ma. Laila A. Taoingan, OASLA
 19. For. Flordelino Rey, OASPPFASP
 20. Ms. Catherine C. Pagkatipunan, OASALA (LLO)
 21. Ms. Erlynne Carla Lucero, OASMIA
 22. Mr. Isagani Manalili, OASFOLV
 23. Ms. Jean U. Ocampo, OASFOWM
 24. Ms. Aira Valenzuela, OASFOEM
 25. Engr. Reina Frances Requieron, OASFISMIC
 26. Ms. Julie Ibulan, SCIS
 27. Engr. Ernestina Jose, SCIS
 28. Atty. Jessiee Bañas, LAS
 29. Ms. Imelda Matubis, CCS
 30. Ms. Jea Robelo, RBCO
 31. For. Llarina S. Mojica, PSD
- Secretariat (PPS-PSD)
33. Mr. Nehemiah Leo Carlo B. Salvador
 34. Ms. Anna Michelle I. Lim
 35. For. Amisol B. Talaria
 36. Ms. Nim Hydee Eusebio
 37. Ms. Mary Lou Retos
 38. Ms. Maria Theresa Enriquez
 39. For. Emma Liwliwa B. Medina
 40. Ms. Zayrelle Ann Suello
 41. For. Hazel Jasmine Donato
 42. Ms. Cherry Winsom Holgado

II. Highlights of the Meeting

The meeting commenced at 9:20 AM and was presided over by Dir. Glenn C. Noble (PPS). For. Llarina Mojica (PPS-PSD) called the roll of the attendees. Thereafter, Dir. Noble called the meeting to order and stated the agenda.

19
20 **1. Draft DENR Administrative Order (DAO) re Issuance of Provisional Agreement**
21 **for Special Uses in Protected Areas**
22

23 *Presentation and Discussions:*
24

- 25 ● Dir. Noble informed that the draft DAO was an offshoot of the meeting with the
26 Secretary during one of the Execom meetings. There was a clamour for the
27 devolution of the issuance of Special Use Agreement in Protected Areas (SAPA) to
28 the Regional Office level, through a Provisional Permit. The initial draft DAO was
29 forwarded to the PPS, where a meeting was conducted on April 6, 2022 with the
30 proponent (BMB). He remarked that the current process for reviewing a policy is
31 this: before a full PTWG deliberation is conducted, a meeting will be held with the
32 proponent to level-off, refine the format, substance, and other considerations such as
33 the possible conflicting provisions with other Bureaus. Another objective is to look
34 into the implications for the proposed policy. He added that during the meeting
35 although it was already reviewed, there are still some issues that need to be
36 addressed.
37
- 38 ● Mr. Jobert John B. Bandol (BMB) provided the background of the proposed policy,
39 the salient features of the SAPA, technical definition thereof, exclusions such as
40 Alienable and Disposable (A&D) areas within PAs, etc. According to him, all
41 activities should conform to the PA Management Plan and should pass through the
42 Protected Area Management Board (PAMB). As for the SAPA application
43 requirements, he informed that generally, there are a total of eleven (11)
44 requirements, depending on the personality of the applicant, such as in the case of
45 the Indigenous People (IP) applicants. The Rehabilitation Plan should be submitted
46 within six (6) months of issuance of the Provisional Agreement and the CP will be
47 submitted within the two-year period of the Provisional Agreement.
48
- 49 ● Dir. Noble remarked that this is the proposal of BMB and has not yet been
50 implemented. We are now saying that the requirement nos. 8 and 10 may be set aside
51 for the issuance of the provisional permit. Mr. Bandol proceeded to present the other
52 salient points and features of the proposed policy such as the proposed definition of
53 the Provisional Agreement for Special Uses in Protected Areas (PASUPA). Under
54 the PASUPA, the proponent may be allowed to make temporary improvements,
55 ground survey and markings.
56
- 57 ● Dir. Noble inquired about what happens to the application if the additional
58 requirements are not secured. According to him, this is one of the questions raised
59 during the initial discussion. The issuance of the Certificate Precondition (CP) from
60 the National Commission on Indigenous Peoples (NCIP) will be the problem. There
61 will be no issue with regard to the Rehabilitation Plan. He asked about until which
62 level/up to what stage in the CP issuance process will be allowed before issuance of
63 the Provisional Permit. He mentioned the possible execution of a Memorandum of
64 Agreement (MOA) with the IPs and NCIP prior to issuance of the CP. With the
65 execution of a MOA, the issuance of the CP is assured. The only step lacking is the
66 Resolution of the Commission En Banc of the NCIP, which will issue the CP. He
67 also mentioned Section 59 of the Indigenous Peoples Rights Act (IPRA). In the
68 Mines Sector, the MOA is already tantamount to consent by the IPs. It is the consent

69 from the IPs, which is the basis of the decision of the Commission En Banc of the
70 NCIP.
71

- 72 ● For. Diane Lanugan (FMB) informed that the FMB has a similar policy regarding
73 the issuance of Provisional Agreement, (i.e. DAO No. 2021-27) that may be
74 considered by the BMB. In case clearance from the NCIP is not yet obtained, a
75 provision states that the PASUPA may be extended if no CP or Certificate of Non-
76 Overlap (CNO) is issued within the period or until the application therefore has been
77 finally approved by the NCIP. Dir. Noble concurred and stated that the rest of the
78 provisions are procedural and internal for the DENR to be addressed. He added that
79 the focus should be on the requirements that are beyond the control of the DENR.
80
- 81 ● Atty. Jessie Bañas (LAS) asked if the period covered by the MOA will be included
82 in the duration of the SAPA. In reply, Mr. Bandol informed that the period covered
83 by the MOA is excluded and that the application is considered as a new application.
84 Atty. Bañas cautioned that the 1987 Constitution may be circumvented with regard
85 to the 25 years plus 25 years constitutional limitation.
86
- 87 ● Dir. Noble also asked for the legal basis or the policy which provides that the period
88 covered by the MOA for conversion to SAPA is not part of the 25 years period of
89 the latter. He added that they just flagged it for consideration.
90
- 91 ● For. Flordelino Rey (OASPPFASP) raised his concern regarding having the MOA
92 instead of issuing it into the SAPA. Mr. Bandol narrated that the issuance of MOA
93 was previously suspended in 2011 due to the absence of standard rates. The
94 moratorium on the issuance of SAPA was lifted in 2018, when the addendum
95 providing for the SAPA rates was issued. With the determination of the standard
96 rates, the BMB proceeded with the issuance of the SAPA. The government incurred
97 losses with the moratorium on issuance of SAPA.
98
- 99 ● Dir. Noble clarified that the question of For. Rey pertains to the continued existence
100 of MOAs considering the pronouncement that these be converted into SAPA.
101 According to him, there should be transitory provision regarding the conversion of
102 these instruments. However, he raised a point on whether we really want to convert
103 all MOAs to SAPA. The MOA may have different terms and conditions compared
104 to that of the SAPA. He asked BMB whether the Bureau has a strategic plan or plan
105 to convert all MOAs to SAPA.
106
- 107 ● For. Mojica mentioned that there was such an instruction to convert the MOAs to
108 SAPA. Asst. Dir. Amelita Ortiz (BMB) added that the addendum, DAO No. 2018-
109 05 was issued by former Secretary Roy A. Cimatu mandating the conversion of all
110 existing MOAs to SAPA. As for the issue raised regarding the duration of the MOA,
111 the same is not mentioned/ provided in this instrument. It is a dilemma of the Bureau
112 that there are holders of MOAs who are not agreeable to the conversion of their
113 instruments to SAPA as they will be forced to pay higher fees; the MOA is more
114 advantageous to them.
115
- 116 ● On the term/period covered by the MOA, Dir. Noble noted that this could be
117 continuous and bilateral, i.e. agreement between the government and other parties.
118 He asked about the usual template or content of the MOA with regard to period

119 covered/term. Mr. Reneo Vicente (BMB) replied that there are no guidelines for the
120 issuance of the MOA.
121

- 122 ● Dir. Noble asked for the total number of MOAs issued in the entire country for future
123 policy discussions. He also inquired about the equivalent income with the conversion
124 of MOAs to SAPA and the lost income if MOAs are not converted to SAPA.
125 Anything that is disadvantageous to the government will be questionable. The DENR
126 can use this as a rallying point to convert the existing MOAs to SAPA, but this will
127 entail political will. It will be unfair if MOAs with big companies are not converted
128 into SAPA. He asked the BMB to come up with an inventory of MOAs for
129 conversion to SAPA. Asst. Dir. Ortiz informed that the National Parks Division
130 (NPD) has an existing inventory of these instruments. Dir. Noble stressed the
131 importance of revenue collection and generation by the Government.
132
- 133 ● For. Ivy Nicole Angeles (OCOS/OHEA) raised the issue of the MOA on Masungi
134 Georeserve. She asked about the implication of the proposed policy if the
135 management of Masungi applies for a SAPA, considering that it is also a holder of a
136 MOA. Atty. Bañas informed that a MOA was executed with Blue Star Corporation
137 covering 1000 hectares of the georeserve, and that a certain area was granted to it
138 perpetually. The Legal Affairs Service recommended the cancellation of the MOA
139 for being violative of the constitutional limitation of 25 years plus 25 years. He added
140 that as a consequence, the reputation of the Regional Office is being attacked. He is
141 not sure how the proposed draft policy will affect the MOA involving the Masungi.
142 There are also Certificates of Ancestral Domain Titles (CADTs) issued in the area,
143 and the IPs have expressed dissent against the MOA. He also asked about the
144 maximum area of Protected Area (PA) that may be applied for by a proponent, the
145 categories for applying, and the limits to an aggregate area of PAs that a company
146 may acquire. He raised the possibility that a single large company may apply for vast
147 tracts of areas within several PAs. Mr. Vicente replied that there is no limit, for as
148 long as the area applied for is within the Multiple Use Zone (MUZ) of the PA.
149
- 150 ● Dir. Noble summarized the question raised by Atty. Bañas. On the absence of limits
151 to areas that may be applied for, he remarked that there is a possibility for companies
152 to monopolize the SAPA. The policy should provide for the limits of areas that may
153 be applied for. There should be limits with regard to juridical entities that may apply
154 within the PAs. This is a question of distribution of wealth, equity of benefit-sharing,
155 and the possibility of doing business. This should be flagged with the BMB since
156 these are special uses within the PAs. Atty. Bañas remarked that the reason for
157 raising the issue is that there are big corporations who were issued with Integrated
158 Forest Management Agreements covering at least hundreds of thousands of hectares
159 or with aggregate area of millions of hectares throughout the country. Almost half
160 of timberland areas in the country are applied for by these large corporations.
161
- 162 ● For. Rey clarified that the SAPA only covers MUZ. He mentioned Masungi as an
163 example and asked if its rock formation is in the MUZ or in the Strict Protection
164 Zone. Dir. Noble also asked whether MUZs within PAs are clearly defined and
165 delineated. If these are not clearly defined, there will be a problem. Ms. Meriden
166 Maranan (BMB) replied that this is taken into consideration in the Protected Area
167 Management Plan (PAMP), specifically the management zoning, and the allowable
168 uses within the PAs. This is an important component of the PAMP. In the case of

- 169 the Masungi, the entire Department is already addressing this matter. A team was
170 dispatched to delineate the zones in the georeserve. However, this will have to be
171 clarified with the team that the Masungi area is within the MUZ.
172
- 173 ● For. Rey followed up with a question regarding the Masungi Georeserve. Dir. Noble
174 said that these issues are beyond the agenda for the meeting and steered the
175 discussion back to the Provisional Agreement.
176
 - 177 ● Asst. Dir. Mayumi Quintos-Natividad (ERDB) stated that she is expecting that the
178 focus of discussion is on the Provisional Agreement. On the MOAs, there may be a
179 need to include the statement that MOAs will no longer be issued since issuance
180 thereof incurs losses to the government. For the existing MOAs, she suggested the
181 inclusion of grace period for terminating the same, and the conversion thereof to
182 SAPA. She stressed the inclusion of a period/term. She suggested revisiting the
183 existing guidelines on SAPA, such as the limit to corporations. However, she
184 acknowledged that the current PTWG meeting is not the proper venue to discuss the
185 matter.
186
 - 187 ● Ms. Julie G. Ibulan (SCIS) reiterated that anything disadvantageous to the
188 government must be cut as mentioned earlier by Dir. Noble. She seconded the
189 comment of Asst. Dir. Natividad. The instruments to be issued should also be time-
190 bound. The agriculture, forestry, mining are economic activities with diminishing
191 returns but the tenurial instruments are not congruent. If the Department is smart
192 enough with the tenurial instruments issued, it can somehow safeguard the resources.
193
 - 194 ● Dir. Noble informed that when the proposed policy was initially discussed, they did
195 not know whether to go straight to the issuance of the SAPA. The draft guidelines
196 are a segue to the established DAO No. 2007-17. The draft DAO adds another option
197 or provision that would allow the applicant to be issued a provisional or temporary
198 permit. Thus, it will have to take off from DAO No. 2007-17. Relatedly, Asst. Dir.
199 Natividad proposed having an addendum to DAO No. 2007-17.
200
 - 201 ● On the prefatory statement, Dir. Noble asked about the order in which the laws and
202 policies were cited. Mr. Bandol said these were stated according to their relevance.
203 Dir. Noble asked the purpose of citing the different laws in reference to the SAPA,
204 particularly the Energy Virtual One Stop Shop Act (EVOSS). Mr. Vicente answered
205 that the law on EVOSS directs agencies to fast-track relevant permits such as the
206 SAPA. This is the intent of the provisional agreement which is to fast-track the
207 issuance. Dir. Noble remarked that the purpose for asking is if this will impinge on
208 the proposed policy, such as the Renewable Energy Act.
209
 - 210 ● On Section 2, Dir. Noble suggested revising the same as: *“to fast-track the*
211 *implementation of special use development projects, and provide immediate*
212 *economic opportunities, as well as generate sources of sustainable financing for the*
213 *conservation and management of protected areas.”* Ms. Imelda Matubis (CCS)
214 commented that our primary objective is to issue guidelines on the Provisional
215 Agreement for Special Uses in Protected Areas under the NIPAS, while our specific
216 objective is to fast-track development projects, provide immediate economic
217 opportunities, and generate sources of sustainable financing. She suggested

218 separating it further. Dir. Noble said it is a matter of styling and left it up to the
219 proponent whether they want to do this.
220

- 221 ● On Section 3, Engr. Ernestina Jose (SCIS) asked if all SAPA will need a Provisional
222 Agreement. Dir. Noble stated that the coverage of the policy should be clear. He
223 asked the BMB if there are unapproved SAPA at present. He suggested a
224 reformulation of the provision, to wit: *“it shall cover all applications for SAPA and*
225 *existing MOAs for conversion into SAPA”*.
226
- 227 ● On Section 4, Dir. Noble suggested lifting the definitions from its source in toto. Mr.
228 Bandol informed that the definitions under sub-sections 4.1. to 4.3. were taken from
229 the IPRA law.
230
- 231 ● Dir. Noble instructed the proponent to observe consistency in the use of *“refers to”*
232 or the format of the definition of terms.
233
- 234 ● On sub-section 4.5., Dir. Noble asked the source of the definition. BMB replied that
235 it is their own formulation. On the phrase *“temporary development”*, Dir. Noble
236 commented that the word *“temporary”* may be changed to initial or preliminary.
237 For. Lanugan shared that the BMB may mean *“temporary improvement.”* Dir. Noble
238 agreed. He asked about the meaning of the proposed temporary use. Asst. Dir
239 Natividad noted that a definition of temporary improvement is provided under sub-
240 section 4.8.
241
- 242 ● Dir. Noble asked as to when the Provisional SAPA should be issued. For. Lanugan
243 informed that in the case of the FMB, the provisional agreement is issued by the
244 RED fifteen (15) days after the NCIP has received the endorsement or request for
245 NCIP clearance.
246
- 247 ● Dir. Noble stated that in case an area has no IPs, the only requirement is the CNO.
248 Definitively, the CNO will be issued. The applicant will never have any concerns
249 considering that there are no IPs to contend with. The second scenario is in case there
250 are IPs in the area. A Provisional Agreement cannot be issued without IP consent.
251 There is a possibility that the IPs will not agree. Asst. Dir. Ortiz lamented about the
252 damage to the environment since a lot can happen in two years.
253
- 254 ● Dir. Noble stressed the importance of executing a MOA with the IPs in order to fast-
255 track the issuance of the provisional agreement.
256
- 257 ● Asst. Dir. Natividad suggested simplifying the definition of the Provisional
258 Agreement as: *“refers to a two-year agreement granted by the State to a natural or*
259 *judicial person who applied for SAPA pending the approval of the SAPA*
260 *application.”* In section 5, she suggested defining the activities allowed within under
261 the Provisional Agreement so there is limitation. Dir. Noble said the allowed
262 activities may be in the terms and conditions of the Provisional Agreement.
263
- 264 ● On sub-section 4.6. It was suggested that this be reformulated as: *“refers to a*
265 *document prepared and submitted by the project proponent, together with its*
266 *financial plan that provides activities to ensure that all disturbed/damaged areas*
267 *will be restored, as near, as possible to its original state or to a pre-agreed*

268 *condition.*” Dir. Noble asked BMB regarding the pre-agreed condition. Mr. Vicente
269 replied that the definition was culled out from the MGB definition of Rehabilitation
270 Plan. Engr. Jose asked in which document we can find the pre-agreed conditions.
271 Mr. Bandol replied that it is in the Terms and Conditions under the
272 SAPA/Provisional Agreement. The PAMB can also add additional conditions for the
273 final land use.
274

- 275 ● On sub-section 4.7., Dir. Noble asked for the reference of special uses. Mr. Bandol
276 replied that this was taken from the ENIPAS and its Implementing Rules and
277 Regulations (IRR) or DAO No. 2019-05 and was cited in toto.
278
- 279 ● On sub-section 4.8., Dir. Noble asked for the reference of the Temporary
280 improvement. Mr. Bandol informed that this was taken from FMB’s policy on
281 Provisional Agreements in DAO No. 2021-27.
282
- 283 ● On Section 5.1., Engr. Jose suggested that the NCIP documents should be mentioned
284 first rather than on providing ample time for the submission of the rehabilitation
285 plan. Ms. Matubis recommended changing “*All proposed special uses*” to “*all*
286 *applications for special uses.*” Moreover, there are applicants that already have
287 existing MOA and these applicants already have a CNO. There should be separate
288 procedures for applicants with CNO and those with contentious MOA. Mr. Bandol
289 clarified that all MOA with applications for conversion are treated as new
290 applications. The application should be a complete package. Ms. Matubis said that
291 MOAs with CNO might be able to be fast-tracked compared to those without.
292
- 293 ● Dir. Noble commented that the proponent should refer to DAO No. 2007-17. He
294 reiterated his earlier point that it appears that there is a separate process for the
295 Provisional Agreement, when in fact, it is connected to the process for the SAPA.
296 Thus, this should be an addendum. All applicants for SAPA as provided for under
297 DAO No. 2007-17 may be file/request/be issued a Provisional Agreement, subject
298 to the following conditions. Dir. Noble asked why we are not requiring a
299 Rehabilitation Plan, upon filing of application. Dir. Noble said the way it is crafted
300 implies that the proponent has not submitted a Rehabilitation Plan. Atty. Bañas
301 observed that the DAO is more of a supplemental guidelines or amendatory to DAO
302 2007-17.
303
- 304 ● Asst. Dir. Natividad asked about the advantages for the applicant of having a
305 Provisional Agreement vs a full-fledged SAPA. Dir. Noble reiterated what are the
306 activities allowable under a Provisional Agreement compared to a full SAPA. Ms.
307 Maranan answered that the proponent can buy time to complete the requirements. In
308 the Regional Offices, they accept applications with incomplete requirements.
309
- 310 ● Dir. Noble inquired on the advantage of having a Provisional SAPA. He asked if the
311 provisional permit can be used to secure a loan. Engr. Jose opined that the proponent
312 may not want to put any improvements at all until their application matures into a
313 full SAPA because in the event that their CP is denied, the improvements will have
314 been wasted. Asst. Dir. Ortiz added that in the same manner, there is already damage
315 to the environment.
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- On the delayed processing of SAPA applications, Ms. Maranan replied that the cause of delays in the region is the lacking requirements and not on the process itself.
 - For. Rey said that the guidelines can be an addendum or supplemental to DAO 2007-17. He also clarified whether we need to secure any document from NCIP outside of Ancestral Domains. The members answered that the CNO is issued by NCIP for areas outside Ancestral Domains. For. Rey explained that for the failure of the applicant to comply with these two requirements, our option is a provisional agreement. We want to assure from the NCIP that they cannot issue the CP within such period of time. He suggested that the Provisional Agreement be issued only in case there will be a delay in the issuance of CP. For. Rey said that in the provisional agreements for forestry, their only problem is the CP. Ms. Meriden said that for the SAPA the applicants usually avoids Ancestral Lands. For. Rey said in reality, even if an area is not within an ancestral domain, if the land is developed and the tenure is for renewal, IPs will then apply for a CADT over the developed area. Dir. Noble recalled that in discussions with NCIP, they explained that there is a possibility that when the CNO was issued, the IPs in the area was not mapped completely.
 - Dir. Noble asked FMB on their provisional agreement and how it was crafted. For. Lanugan stated that DAO 2021-27 was three pages long. Their DAO covers multiple tenures under the forestry sector while for the draft DAO is particular to SAPA.
 - Atty. Bañas commented that there was a case wherein we issued a provisional permit and the IPs were excluded in the area. There was a violent reaction which resulted to the deaths of five people. For. Rey also shared his experience on the application for Forest Land Use Agreement for Tourism in Marinduque. In Marinduque, it is known that there is no IP there but the NCIP in Region 4B did not issue a Certificate of Non-Overlap because the area being applied for is one of the routes used by Mangyans from Mindoro.
 - Dir. Noble noted that DAO 2021-27 does not mention the guidelines it is amending. It also does have a definition of terms. He asked if the conditions in Section 4.1 of DAO 2021-27 are the same in the draft DAO. He pointed out that BMB did not copy the third bullet under Section 4.1.2. For. Rey replied that unlike the Forestry Sector, the BMB does not have a previous permit issued. Dir. Noble said that since this is a renewal, there should be a previous permit. In addition, the policy also anticipates that in the future there may be SAPA up for renewal. The members reviewed which conditions under Section 4.1 of DAO 2021-27 were applicable to the draft DAO. Sections 4.1.1, bullet nos. 1-3 of 4.1.2 were deemed to be applicable.
 - Atty. Banas also raised his concern in 5.1.1.2 on unlawful entry. Dir. Noble asked if it is within a CADT, would the IPs entry be considered as unlawful entry. For. Rey said sometimes, they use the term illegal occupation. He said ancestral domain includes the nomadic routes taken by the IPs. Dir. Noble said this is why our minimum requirements for a provisional agreement should be a MOA. Otherwise, we will violate the provisions of the IPRA. Atty. Bañas said for all intents and purposes, the land is the property of the IPs and we should not prevent entry into their own lands. In his opinion a Free and Prior Informed Consent (FPIC) is really needed.

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- Dir. Noble suggested the following reformulation: *“All applicants for SAPA may be issued with a Provisional Agreement if all mandatory requirements have been complied with except for an affirmed Rehabilitation Plan, and the Certification Precondition from the NCIP. Provided, that in the case of IP Areas, a MOA has been entered into between the applicant and the IP, or in the case of Non-IP areas a field-based investigation has been conducted by the NCIP. The Provisional Agreement may be issued by the RED and shall have a validity of two (2) years in order to allow the proponent to have immediate access over the area subject to the following conditions:”* He explained that we will know if there are any IPs in the area if there has already been field-based investigation and we will know that there is consent if there is a MOA executed with them.
 - Asst. Dir. Ortiz said the usual excuse of the NCIP is that they lack personnel to conduct field base investigation due to the volume of work. Dir. Noble said the applicant is the one who usually funds the field-based investigation. Asst. Dir. Ortiz asked about the experience of MGB. Dir. Noble said they never issued a permit without the investigation and the MOA. Upon endorsement by the MGB of the application to NCIP, that is the time that they will coordinate with NCIP.
 - On Section 5.2, Dir. Noble asked about the development fee to be paid. The proponent explained that this is the SAPA development fee, as provided under the ENIPAS Act.
 - Ms. Matubis asked about Section 5.4 on the termination of the Provisional Agreement. She asked if this is all-encompassing and all the provisions therein are terminated. In the second sentence, the two-years used by the agreement shall form part of the tenure period of the SAPA. Dir. Noble answered that the Provisional Agreement is not the SAPA. Ms. Matubis pointed out that using the word *“terminated”* may imply that everything in the previous agreement was terminated and cannot be continued to another agreement. Dir. Noble said this was the term used in DAO 2021-27. Ms. Matubis proposed using another term such as *“graduated.”* Other suggestions from members include *“elevated,”* and *“converted.”* Dir. Noble said that absent of the rightful term, let it be there for the moment.
 - Ms. Maranan said conversion is not automatic as issuance is subject to compliance, depending on their performance. For. Rey asked if there are instances where the MOA may not be converted into SAPA. Ms. Maranan said this will happen due to the proponent’s poor performance or non-compliance with conditions in their MOA. For. Rey asked if there are blacklisted companies for SAPA. Ms. Maranan said the SAPA is relatively new and thus there are no blacklisted companies.
 - Atty. Bañas asked if there are blacklisted applicants under forestry tenures. For. Lanugan added that if a permit holder violates the terms and conditions of their tenure, they will not be allowed to apply again. However, there is no actual list of companies.
 - For. Angeles asked if there is another official who will issue the Provisional Agreement as the wording is *“may issue.”* Dir. Noble clarified that it means that the

416 Provisional Agreement may or may not be issued and if we use “shall” the issuance
417 will be compulsory.
418

- 419 ● Engr. Jose clarified if the proponent will resubmit rehabilitation plans and other
420 requirements for new applications. Ms. Maranan affirmed this as there were no
421 requirements submitted for MOAs.
422
- 423 ● Asst. Dir. Natividad asked what will happen if after two years, the SAPA has not
424 been issued yet. Dir. Noble said that in Section 4.2 of DAO 2021-27 states that if the
425 CP is not issued, the RED may extend the Provisional Agreement provided that there
426 is no violation of existing laws, rules, or regulations. He said this can be adopted in
427 the draft policy.
428
- 429 ● For. Rey suggested differentiating the MOA for the IPs and the MOA for Special
430 Uses. He asked if this should be included in the Definition of Terms. Dir. Noble
431 agreed.
432
- 433 ● Dir. Noble asked if Section 5.5 of the draft DAO is still applicable given that they
434 already have a MOA with the IPs. Is there a chance that the CP will not be approved
435 even with a MOA. The FPIC is a process and the final document is the CP, but the
436 initial document is the MOA. Atty. Bañas countered that there are cases wherein IPs
437 still rejected the FPIC they gave with the approval of the NCIP on the grounds that
438 the proponent violated the terms and conditions. Dir. Noble replied that this is a
439 different story. For. Rey raised that if there is a retraction on the part of the IPs, the
440 provisional agreement should be terminated and the two-year period for the
441 provisional agreement should not be followed. Dir. Noble cited that in the guidelines
442 for SAPA, there are already grounds for cancellation. This may be restated in the
443 policy. Dir. Noble said Section 5.5 should be revised accordingly and to also put the
444 order to vacate the area and dismantle improvements within a certain no. of days.
445
- 446 ● Dir. Noble said the application process under Section 6 may be removed but the
447 responsibilities of the permit holder under Section 5.1 of DAO 2021-27 should be
448 incorporated in the draft DAO. There is no need to incorporate Section 5.2 as it
449 should be the responsibility of the applicant.
450
- 451 ● On Section 5.3, Atty. Bañas said to add the phrase, “*subject to existing laws rules*
452 *and regulations*”
453
- 454 ● Ms. Anna Michelle Lim (PPS-PSD) asked if the development fee will be refunded
455 to the applicant if their SAPA is cancelled. For. Rey said that this will be forfeited
456 in favor of the Government. Dir. Noble agreed especially since the payment of the
457 SAPA development fee is annual.
458
- 459 ● Mr. Vicente asked whether the term of the MOA for Special Use would be counted
460 in the terms of the SAPA, if it is converted. Atty. Bañas said that there was a case
461 elevated up to the Supreme Court which ruled that though the name of the
462 tenure/license is different, the period of the old license is still counted in the new
463 license so as to not violate the 50-year limit under the Constitution. Dir. Noble said
464 that this should be a topic for discussion of management. For. Rey said that

465 conversion from MOA to SAPA means that it is continuing. Thus, if the MOA was
466 held for three years, the SAPA term will be for 22 years.

467
468
469 **Agreements:**

- 470
471 1. BMB to submit an inventory of MOAs to PPS for future policy discussions.
472
473 2. Section 2 was restated as follows: *"This Order sets forth the guidelines for the*
474 *issuance of Provisional Agreement for Special Uses in Protected Areas under the*
475 *NIPAS to fasttrack the implementation of special use development projects, and*
476 *provide immediate economic opportunities to stakeholders as well as generate*
477 *sustainable financing for the conservation and management of protected areas."*

478
479 Whether the proponent would like to separate this into general and specific
480 objectives is up to the proponent.

- 481
482 3. On Section 4
483 - The definitions of Certificate of Non-Overlap, Certificate of Precondition, and
484 Free and Prior Informed Consent, should be taken from existing NCIP policies
485 or the IPRA.
486 - Observe consistency in the use of "refers to."
487 - Section 4.5 was restated as follows: *"refers to a two-year agreement granted by*
488 *the State to a natural or judicial person who applied for SAPA pending the*
489 *approval of the SAPA application."*
490 - Differentiate MOA for Special Uses and MOA with IPs. Include these in the
491 Definition of Terms.
492
493 4. MOA with IPs should be executed prior to issuance of the Provisional Agreement.
494
495 5. On Section 5
496 - Section 5.1 to be reformulated as: *"All applicants for SAPA may be issued with*
497 *a Provisional Agreement if all mandatory requirements have been complied*
498 *with except for an affirmed Rehabilitation Plan, and the corresponding*
499 *Certification Precondition from the NCIP. Provided, that in the case of IP*
500 *Areas, a MOA has been entered into between the applicant and the IP, or in the*
501 *case of Non-IP areas a field-based investigation has been conducted by the*
502 *NCIP. The Provisional Agreement may be issued by the RED and shall have a*
503 *validity of two (2) years in order to allow the proponent to have immediate*
504 *access over the area subject to the following conditions:"*
505 - Section 5.2 to be reformulated as follows: *"The above activities shall only be*
506 *allowed if payment of development fee as provided under NIPAS Act as*
507 *amended, has been made, and other required permits and clearances have been*
508 *secured."*
509 - Section 5.3 was reformulated as follows: *"Existing MOA for special uses that*
510 *are being converted into SAPA shall be treated as new application for SAPA*
511 *subject to existing laws rules and regulations."*
512 - Section 5.5 was reformulated as follows: *"The Provisional SAPA may be*
513 *cancelled pursuant to the pertinent provisions of DAO Nos. 2007-17 and 2019-*
514 *05. The RED shall issue an Order cancelling the provisional agreement with*

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the notification to the PA holder to vacate the area and dismantle introduced temporary improvements within fifteen (15) days, upon the receipt of the Order.”

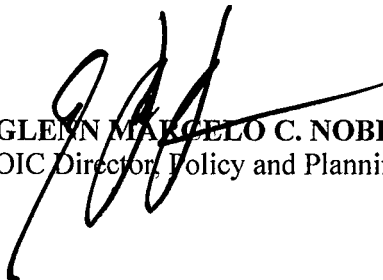
- Another sub-section was included to incorporate the provisions of Section 5.1 of DAO 2021-27.

6. The guidelines are supplemental to DAO 2007-17.
7. Include provision that if the SAPA is not issued within two (2) years, the RED may opt to extend the Provisional Agreement.
8. Remove Section 6 completely.
9. BMB to submit the revised DAO next week.

There having no other matters to discuss, the meeting was adjourned at 12:30 PM.

Prepared by the Secretariat

Noted by:



GLENN MARCELO C. NOBLE
OIC Director, Policy and Planning Service