



Republic of the Philippines
Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City 1116
Tel Nos. 9296626 to 29 ; 9296633 to 35
Website <http://www.denr.gov.ph/> Emailweb@denrgov.ph

MEMORANDUM

TO : **REGIONAL EXECUTIVE DIRECTORS**
NCR, CAR, 1, 4A, 5, 7, 10, 11, 12

FROM : **THE UNDERSECRETARY**
Field Operations Luzon, Visayas and Environment
Field Operations Mindanao

SUBJECT : **BMB RESPONSE ON CONSOLIDATED REGIONAL ISSUES
AND CONCERNS**

DATE : **MAY 19 2023**

With reference to the abovementioned subject, we would like to provide your Offices with a copy of the BMB response on the consolidated regional issues and concerns that were raised during the 1st National Field Operations Management Conference last 17-18 April 2023 in Clark, Pampanga.

For information and compliance.


ATTY. JUAN MIGUEL T. CUNA, *CESO I*


JOSELIN MARCUS E. FRAGADA, *CESO III*

MEMO NO. 2023 - 446

BMB Response on the Consolidated Regional Issues and Concerns

BMB BPKMD <bpkmd@bmb.gov.ph>

Thu, May 18, 2023 at 2:39 PM

To: usec.fom@denr.gov.ph, officeofuseccuna@denr.gov.ph

Cc: Winnievir Balilia <winnievir.balilia@bmb.gov.ph>, Nancy Corpuz <nancycorpuz@yahoo.com>, Rowena Bolinas <rowena.bolinas@bmb.gov.ph>, gcgonzales@denr.gov.ph, Gilbert Gonzales <asecfosl.denr@yahoo.com>, Od Pps <odpps@yahoo.com>, ppd pps <ppdpps@yahoo.com>, PSD Document <psddivision@gmail.com>

Dear Sir/Madam,

Greetings from the Biodiversity Management Bureau!

Kindly see the attached Memorandum for the Undersecretary FO-LVE and Undersecretary FO-Mindanao re: BMB Response on the Consolidated Regional Issues and Concerns.

Thank you and best regards,

Biodiversity Policy and Knowledge Management Division

Biodiversity Management Bureau

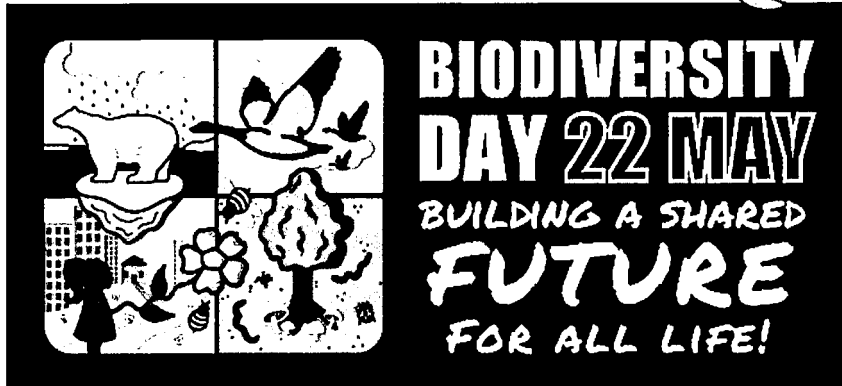
Department of Environment and Natural Resources

Ninoy Aquino Parks and Wildlife Center

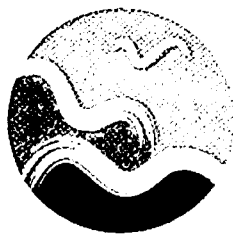
1100 Diliman Quezon City, Philippines

Telephone: +(63 2) 8924 6031 locals 210, 211 and 212

Email: bpkmd@bmb.gov.ph



 **P23-191 BMB Response on the Consolidated Regional Issues and Concerns.pdf**
4279K



Republic of the Philippines
Department of Environment and Natural Resources
BIODIVERSITY MANAGEMENT BUREAU
Ninoy Aquino Parks and Wildlife Center, Quezon Avenue, Diliman, 1100 Quezon City
Tel. Nos.: (632) 8924-6031 to 35 | Fax: (632) 8924-0109, (632) 8920-4417
Website: <https://bmb.gov.ph> | E-mail Address: bmb@bmb.gov.ph

MAY 17 2023

MEMORANDUM

FOR : **The Undersecretary**
Field Operations – Luzon, Visayas and Environment
Field Operations – Mindanao

FROM : **The Director**
In concurrent capacity as the Assistant Secretary for Policy,
Planning, and Foreign-Assisted and Special Projects

SUBJECT : **BMB RESPONSE ON THE CONSOLIDATED
REGIONAL ISSUES AND CONCERNS**

Respectfully submitting the BMB comments and responses on the consolidated issues and concerns from Regional Offices raised during the 1st National Field Operations Management Conference held last 17-18 April, 1st Quarter Luzon and Visayas Cluster Meeting held on 28 March 2023, meeting with DENR Region 11 on 10 March 2023 and the 2nd Mindanao Management Conference held on 29 November 2022, for your information and consideration.

MARCIAL C. AMARO, JR.



Republic of the Philippines
Department of Environment and Natural Resources
BIODIVERSITY MANAGEMENT BUREAU



BMB202302482

cc: *Assistant Secretary for Field Operations – Luzon and Visayas
and Director, Environmental Management Bureau*

OIC Director for Policy and Planning Service



UNITED NATIONS DECADE ON
**ECOSYSTEM
RESTORATION**
2021-2030

CONSOLIDATED ISSUES AND CONCERNS FROM ALL REGIONS

Region	BMB
NCR	<p>Reclamation projects -Along Manila Bayt vis-à-vis ongoing Manila Bay Rehabilitation Program -Adjacent within the vicinities of Las Pinas Paranaque Wetland Park</p> <p>Comments/Response The House of Representatives, House Bill No. 6577 or An Act expanding the boundaries of Las Pinas Paranaque Wetland Park and its vicinities as Protected Area and for other purposes is “Pending with the Committee on Natural Resources since Dec. 13, 2022. The counterpart Bill in the Senate, SBN 1536, is also pending in the Committee. The BMB submitted a draft position paper on expanding the boundaries of Las Pinas Paranaque Wetland Park for signature by the Undersecretary for Legal and Administration on 16 March 2023 supporting the enactment of HBN 6577.</p>
Region I	<p>Computation of SAPA Fee based on the coverage area of the project: Bountiful Future Farms Inc. – SAPA fee amounts to Php1,309,505.60 at 56,400 sq.m.; A.I.P. Aquafarming SAPA fee amounts to Php907,773.60 at 39,900 sq.m.</p> <p>Comments/Response: The computation of SAPA fee is already clarified in Section 25 of the NIPAS Act, as amended, and in Rules 25.3 and 25.5 of its IRR, to wit:</p> <p>“The PAMB may recommend the issuance of tenurial instrument subject to compliance to ECC and payment of corresponding user fee equivalent to five percent (5%) of the zonal value of commercial land within the nearest barangay or municipality where the project is located multiplied by the area of development plus one percent (1%) value of improvement as premium: Provided, That the activity shall not be detrimental to ecosystem functions and biodiversity, and cultural practices and traditions.” (Section 25, RA 7586, as amended by RA 11038)</p> <p>“The annual Development Fee for areas covered by SAPA shall be based on the fixed percentage of the zonal value of the land and improvements which is equivalent to five percent (5%) of the most recent zonal value of the commercial zone in the nearest barangay or municipality where the project area is located, multiplied by the size of the area for development and one percent (1%) of the value of improvement, as premium to the protected area. The annual SAPA fee based on this computation shall be paid upon issuance of the SAPA.</p> <p>For water supply and renewable energy projects of national significance, the proponent shall be subjected to a one-time payment of the Development fee as computed above and an annual fee equivalent to Php7,200.00 per hectare, or a fraction thereof, and to be increased cumulatively by ten percent (10%) every year.</p>

CONSOLIDATED ISSUES AND CONCERNS FROM ALL REGIONS

Region	BMB
Region 4A	<p>Kaliwa Dam Clearance</p> <p>Comments/Response: The SAPA application of Metropolitan Waterworks and Sewerage Systems (MWSS) for the Kaliwa Dam Project is currently under review by the BMB. This application covers the project area located within Kaliwa Watershed Forest Reserve. For the project area located within the Unnamed National Park, Wildlife Sanctuary and Game Preserve (PP 1636), the SAPA application is still being processed at the field level. The Undersecretary Legal and Administration recommended to reject the proposal to execute a Memorandum of Agreement between the DENR and MWSS, being contrary to the provisions of the NIPAS Act, as amended, and the DENR's policy as provided under RA 11038, recognizing Special Use Agreement in Protected Areas (SAPA) as the binding instrument governing special uses within protected areas.</p>
	<p>Masungi Georeserve</p> <p>Comments/Response: The BMB concurred with the recommendation of the Regional Office of DENR CALABARZON to cancel the 2017 Memorandum of Agreement between the DENR and Masungi Georeserve Foundation, Inc. (MGFI). DENR CALABARZON cited the following grounds for the recommended cancellation:</p> <ol style="list-style-type: none"> 1. A MOA is not among the arrangements contemplated by the 1987 Philippine Constitution in the exploration, development and utilization of natural resources. The Special Use Agreement in Protected Areas is the binding instrument under the NIPAS Act, as amended. 2. The Constitution limits the term of agreements for the use of natural resources to 25 years, renewable for another 25 years. Hence, the perpetual land trust granted to MGFI by the 2017 MOA is a direct contravention to Section 2, Article 12 of the 1987 Philippine Constitution. 3. A Certificate Precondition was not secured by the MGFI from the National Commission on Indigenous Peoples, which contradicts RA 8371 or the Indigenous Peoples Rights Act. 4. Development plans of MGFI were not harmonized with the Management Plan and management zones of the Upper Marikina River Basin Protected Landscape, causing conflict in the supervision and management of the area by both the Protected Area Management Board and the MGFI. 5. The contract is disadvantageous to the government as no share of the profits from development projects of MGFI is paid to the government. This contravenes Section 25 of the NIPAS Act, as amended. <p>The position paper of the BMB concurring with the recommended cancellation of the MOA was submitted to the Undersecretary for Legal and Administration and the Undersecretary for Field Operations for Luzon and Visayas and Environment on 20 May 2023.</p>

CONSOLIDATED ISSUES AND CONCERNS FROM ALL REGIONS

Region	BMB
Region 5	<p>Inclusion of land based areas within the coverage of Ticao-Burias Pass Protected Seascape (TBPPS)</p> <p>Comments/Response: The TBPPS had already been legislated by Congress. Should it be necessary to modify the boundaries of the PA, such modification shall be through an Act of Congress pursuant to Sections 5 and 7 of the NIPAS Act, as amended, and their corresponding rules and regulations. The Regional Office may also designate such areas as bufferzone following Section 8 of the NIPAS Act, as amended</p>
Region 7	<p>Request for the reduction of Annual User's Fee of SAPA pursuant to Sec. 25 of RA 11038 (Rule 25.5, DAO 2019-05) (e.g. Tsuneishi Heavy Industries Cebu Inc. (THICI): from PhP3,236,145.00 (MOA) to PhP129,445,800.00 (FLAg)</p> <p>Comment/Response: Please note that the computation of SAPA Fee is provided in RA 11038, hence, the request for reduction of the fee may not be feasible.</p> <p>Requirement for a new endorsement from LGUs in the conversion of MOA to SAPA (prone to political intervention).</p> <p>Comments/Response: LGU endorsement is not among the requirements of SAPA application based on DAO 2007-17.</p> <p>Inadequate care and maintenance activity for captive animals in Dreamland Nature and Adventure Park, Amlan Negros Oriental</p> <p>Comments/Response: The BMB sent a Memorandum dated 27 March 2023 to DENR Region 7 requesting for updates/ status of the Adventure Park in respond to the numerous emails from concerned citizens seeking assistance from DENR. No updates received from Region 7.</p>

CONSOLIDATED ISSUES AND CONCERNS FROM ALL REGIONS

Region	BMB
Region 10	<p>Absence of policy for the registration of <i>Aquilaria malaccensis</i> (Lapnisan) using local source</p> <p>Comments/Response: The draft DAO providing the Guidelines for the Commercial propagation and Trade of Aquilaria Species and its By-Products and Derivatives includes registration of <i>Aquilaria malaccensis</i> farming that will use locally-sourced planting materials. Below are the relevant proposed Sections for the purpose:</p> <p>Section 5. Inventory of <i>Aquilaria</i> Species. The Regional Offices and its PENROs and CENROs thru the technical assistance of the Forest Management Bureau (FMB) and Ecosystems and Research Development Bureau (ERDB) shall conduct field survey to identify and assess the population and map the distribution of the <i>Aquilaria</i> species in the country within a year after the issuance of this Order.</p> <p>Section 6. Collection of Seeds and Wildlings of <i>Aquilaria</i> species in Forest Lands. Collection of seeds and wildlings of <i>Aquilaria</i> species in forest lands of the country shall be allowed by the DENR upon proper evaluation of available information or scientific data that such collection is not detrimental to the survival of the species based on Section 5 hereof and shall be accompanied by Wildlife Collector's Permit pursuant to Section 7 hereof. Collected seeds and wildlings shall not be directly traded and will only be used as planting materials and mother plants. Provided that, ten percent (10%) of the collected plants shall be retained as the mother plants.</p> <p>Section 7. Commercial Propagation of <i>Aquilaria</i> Species. An Filipino citizen, or corporation, partnership, asociatyion, cooperative, at least 60% of the capital of which is owned by Filipino citizens shall be allowed to commercially propagate <i>Aquilaria</i> species for agarwood production and/or nursery seedlings for trade. The commercial propagation shall be subject to the issuance of Wildlife Culture Permit (WCuP) by the Regional Executive Director with a validity period of five (5) years and renewable for the same duration. In case of existing <i>Aquilaria</i> species in a private land, trade of seeds, seedlings and agardwood shall likewise require a WCuP.</p>

CONSOLIDATED ISSUES AND CONCERNS FROM ALL REGIONS

Region	BMB
	<p>Clarification on the implementation of DMO 2023-01. "Additional Guidelines for Projects Applying for an ECC which are within or with close proximity to Protected Areas and/or Ramsar Sites. as to whether the mandatory requirement for a resource person in the EIARC will be coming from Central Office FMB/BMB or the regional counterpart.</p> <p>Comment/Response: The BMB transmitted the Memorandum dated 27 March 2023 to all Regional offices and EMB in compliance with the DMO 2023-01. stating that the Bureau will provide personnel as Resource Person/s for review of ECC applications within or with close proximity to Protected Areas and/or Ramsar Sites. In cases wherein the BMB personnel cannot participate, representative/s from concerned field office/s are requested to attend EIA processes such as: scoping, public hearings and EIARC meetings.</p>
Region 11	<p>Mining Tenements overlapping with the proposed Mt. Hamiguitan Range Wildlife Sanctuary expansion area and its buffer zone</p> <p>Comments/Response: The proposed area for expansion is home to a number of globally threatened, endemic and economically important flora and fauna species, hence, the establishment of proposed expansion of the protected area will help conserve and protect threatened species.</p>
	<p>Proposed Pantaron Range as PA. There are areas already with established structures (highland resorts). These resorts are already applying for Certificate of Actual Land Occupancy (CALOM) and Certificate of Ancestral Domain Land Allocation (ADLA) with the NCIP. Pantaron Range is already declared as CADT. This effort is supported by the NCIP Regions 11 and 10, except 13. Thus, the proposal only included areas under NCIP 11 and 10</p> <p>Comments/Response: A Joint National and Regional meeting with NCIP CARAGA was conducted on March 13, 2023 regarding CADTs within Pantaron Range. As agreed during the meeting, DENR CARAGA will facilitate discussion with the CADT holders.</p> <p>The proposed extent of the Pantaron Range on PA will cover only Regions 10 and 11.</p>
Region 11	<p>Request for plantilla positions for the Protected Areas Management Office (PAMO)</p> <p>Comments/Response: The BMB re-endorsed the request for PAMO plantilla positions thru Memorandum dated September 12, 2022 addressed to the Secretary thru the Undersecretary for Legal, and Administration. As of April 3, 2023, the Memorandum is still in the office of the Undersecretary for Organizational Transformation and Human Resources.</p>

CONSOLIDATED ISSUES AND CONCERNS FROM ALL REGIONS

Region	BMB
Region 11	<p>BMB to review documents re: SAPA Applications which were submitted DENR - XI last June 2022 relative to the subject matter.</p> <p>Comments/Response: Documents already reviewed. One SAPA Application has been approved while others were returned to Region XI for further compliance.</p> <p>Please see attached matrix for SAPA updates in Region XI</p>
Region 12	<p>Creation of Plantilla positions for the PAMO managing the Protected Areas.</p> <p>Updates/Status: As of May 8, 2023, the proposal to the DBM has already been re-endorsed by the HRDS. Usec Teh and Usec Delapeña for Secretary's signature.</p> <hr/> <p>Provisional/Conditional Special Use Agreement in Protected Areas (SAPA)</p> <p>Updates/Status: The BMB has already completed 3 clusters of consultations for the draft policies on Provisional SAPA. Amendment of SAPA guidelines including guidelines on MOA. Inputs during the said consultations are being consolidated and processed by the Bureau before endorsing to the PTWG.</p>

CONSOLIDATED ISSUES AND CONCERNS FROM ALL REGIONS

Region	BMB
CAR	<p>DMC 2007-02 which prescribes "Guidelines on the establishment & management of Critical Habitat (CH)" does not include the Free and Prior Informed Consent (FPIC) process on the establishment of CH. However, the FPIC from the concerned IPs was required for the establishment of the proposed Critical Habitats in CAR within Ancestral Domain prior to its declaration.</p> <p>Comments/Response: One of the activities identified in the procedure for the establishment of an area as a Critical Habitat is a conduct of "Community Consultation". As stipulated in Section 4 Item 4.1.c of the DMC 2007-2, "the DENR Field Office shall conduct community consultation with the local stakeholders and concerned LGUs on the results of the assessment and ensure their support in case the area is found suitable for establishment as critical habitat. In case of private lands, community consultation may be waived, and written consent from the land owner will suffice".</p> <p>Yes, the issuance of FPIC is not specifically stipulated in the guidelines of CH establishment. What is written in the guidelines is the conduct of community consultation with all concerned local stakeholders. Thus, if the proposed area to be declared as CH is an IP area or an ancestral land/domain, the IPs living in the proposed CH are the local stakeholders or even the private land owners that the DENR has to consult to ensure their support or consent is secured. It just so happened that the basis of the IPs in giving their support is through the issuance of an FPIC based on the IPRA law.</p> <p>There is a need to discuss with the NCIP the process of FPIC issuance if the area is identified for conservation by the government. We can seek the opinion of the DENR Legal on this, considering that there is an ongoing amendment of the NCIP Administrative Order No. 3 Series of 2012 (The Revised Guidelines on Free and Prior Informed Consent [FPIC] and Related Processes of 2012).</p>

CONSOLIDATED ISSUES AND CONCERNS FROM ALL REGIONS

Region	BMB
CAR	<p>The BMB through a Memorandum dated 19 January 2023 addressed to the Director of Legal Affairs Service, requested legal opinion on the issuance of Certificate of Non-Coverage for projects within PAs.</p> <p>The Undersecretary Legal and Administration replied through a Memorandum dated 14 February 2023, provided a legal opinion on the issuance of Certificates of Non-Coverage for projects within protected areas. An excerpt from the legal opinion reads:</p> <p><i>“IV. Protected areas are environmentally critical areas</i></p> <p><i>Presidential Proclamation No. 2146 brings under the scope of the Environmental Impact System [sic] all areas declared by law as national parks, watershed reserves, wildlife preserves and sanctuaries. As such, protected areas are environmentally critical areas.</i></p> <p><i>Non-environmentally critical projects within environmentally critical areas fall under Category B of DMC No. 2014-05 and require the issuance of ECC's.</i></p> <p><i>As such, even projects that would ordinarily fall under Category D (not covered) would fall under Category B, if they are located within a protected area.”</i></p>

CONSOLIDATED UPDATES ON THE INSTRUCTIONS AND AGREEMENTS DURING THE 2ND MINDANAO MANAGEMENT CONFERENCE

Status Reference:

Progressive - Updates on current actions taken have been provided by concerned offices and further actions/developments are still expected. Regular updates on the concern are recommended.

Resolved/Progressive - Updates were provided and/or action has been taken in compliance with the instruction given and seemingly no further actions are required. However, there may be further developments/inquiries in the future.

Unresolved - No updates and/or actions taken by concerned offices.

Instructions and Agreements	Status (Unresolved or Resolved/Progressive)	Current Status/Updates from the Bureau	Summary of Concerns/Updates from the Regions
BIODIVERSITY MANAGEMENT BUREAU			
BMB reported that administrative adjudication guidelines are targeted to be approved for 2023. Updates on the said guidelines is being requested.	Progressive	<ul style="list-style-type: none"> • Formulation of the guideline is already underway as one of the deliverables under the SIBOL Project • The conduct of the National Consultation Workshop on the draft Guidelines on the Imposition of Administrative Fines and Penalties, including the Assessment of Damages in Protected Areas, and the draft Rules of Procedures on Administrative Adjudication in Protected Areas is scheduled on 5-7 June 2023 	No submitted concerns/updates from the regions.

Instructions and Agreements	Status (Unresolved or Resolved/Progressive)	Current Status/Updates from the Bureau	Summary of Concerns/Updates from the Regions
To fast-track the approval of SAPAs through policy development on the issuance of Provisional SAPA.	Progressive	<ul style="list-style-type: none"> • The draft guideline was already deliberated at the PTWG level. It was remanded back to the BMB for further consultation as required under the recently issued Enhanced DENR Policy Development System (DAO 2021-15) • The BMB has already completed three (3) clusters of consultations for the draft policies on Provisional SAPA. Amendment of SAPA guidelines including guidelines on MOA. Inputs from the consultations are being consolidated and processed by the Bureau before endorsing to the PTWG. 	No submitted concerns/updates from the regions.
BMB to review documents re: SAPA Applications which were submitted DENR - XI last June 2022 relative to the subject matter.	Progressive/Resolved	<p>Documents were already reviewed. One SAPA Application has been approved while the rest were returned to Region XI for further compliance.</p> <p>Please find attached matrix for SAPA updates in Region XI</p>	The submitted SAPA of Region 11 for Cuambog Industrial Development Corporation in Mabini Protected Landscape and Seascape in the province of Davao de Oro has already been approved last January 06, 2023, under MPLS SAPA No. 2022-01
BMB to collaborate with FMB on the policy development with	Progressive	The draft policy is currently being revised based on the comments of the DENR PIWG. Nevertheless, as	No submitted concerns/updates from the regions.

Instructions and Agreements	Status (Unresolved or Resolved/Progressive)	Current Status/Updates from the Bureau	Summary of Concerns/Updates from the Regions
regard to harvesting and utilization of Agarwood.		instructed the revised draft will be forwarded to the FMB for further comments/inputs.	
BMB to collaborate with FMB and Legal Affairs Service in harmonizing the necessary implementation/enforcement of laws based on PD 705 and RA 11038 with regards to the cutting of trees/threatened species within Protected Areas.	Progressive	<p>As far as policy is concerned, the cutting of trees in protected areas is governed by the NIPAS Act and its IRR, the Wildlife Act, and the revised manual of approval on technical matters.</p> <p>Cutting of trees is prohibited in protected areas with exception of culling of exotic species in accordance with the IPs/ICCs subsistence purposes</p>	No submitted concerns/updates from the regions.