



DENR ADMINISTRATIVE ORDER
NO. 2022 - _____

SUBJECT : SUPPLEMENTAL GUIDELINES TO DENR ADMINISTRATIVE ORDER (DAO) NO. 2007-17 OR THE RULES AND REGULATIONS GOVERNING SPECIAL USES WITHIN PROTECTED AREAS ON THE ISSUANCE OF PROVISIONAL AGREEMENT

Pursuant to the provisions of Section 10 (a) of Republic Act (RA) No. 7586 or the National Integrated Protected Areas System (NIPAS) Act, as amended by RA No. 11038 or the Expanded National Integrated Protected Areas System Act, and its Implementing Rules and Regulations (IRR), relevant provisions of Executive Order No. 30, s. of 2017 or Creating the Energy Investment Coordinating Council in Order to Streamline the Regulatory Procedures Affecting Energy Projects, RA No. 11234 or the Energy Virtual One-Stop Shop Act, RA No. 11032 or the Ease of Doing Business and Efficient Government Service Delivery Act of 2018, RA No. 9513 or the Renewable Energy Act of 2008, the following guidelines is hereby issued and promulgated to fast track the implementation of special use development projects in protected areas through the issuance of Provisional Agreements.

SECTION 1. Basic Policy. It is the policy of the state to conserve the country's biodiversity and sustainably manage protected areas to maintain essential ecological processes and life-support systems.

SECTION 2. Objectives. This Order sets forth the guidelines for the issuance of Provisional Agreement for Special Uses in Protected Areas under the NIPAS to fasttrack the implementation of special use development projects, and provide immediate economic opportunities to stakeholders as well as generate sustainable financing for the conservation and management of protected areas.

SECTION 3. Scope and Coverage. This Order shall apply to all development projects that are considered as special uses in protected areas pursuant to the NIPAS Act, as amended, and DENR Administrative Order (DAO) No. 2007-17 or the Rules and Regulations Governing Special Uses within Protected Areas. It shall cover all applications for Special Use Agreements in Protected Areas (SAPA), and existing Memorandum of Agreement (MOA) for Special Use within protected areas for conversion into SAPA.

SECTION 4. Definition of Terms. For purposes of this Order, the following terms shall mean as follows:

- 4.1. Certificate of Non-Overlap (CNO) – refers to the Certificate issued by the National Commission on Indigenous Peoples (NCIP) attesting to the fact that the area where the plan, program, project or activity to be done does not overlap with, or affect, any ancestral domain.
- 4.2. Certification Precondition (CP) – refers to the Certificate issued by the NCIP, signed by the Chairperson or authorized representative, attesting to the grant of Free and Prior and Informed Consent (FPIC) by the concerned Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs).

- 4.3. Free and Prior Informed Consent (FPIC) – refers to the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.
- 4.4. Memorandum of Agreement (MOA) for Special Use – refers to agreements executed between the project proponent and the DENR as recommended by the Protected Area Management Board (PAMB) for activities and/or development interventions that may be allowed in designated portions of protected areas in lieu of the SAPA.
- 4.5. Project Description (PD) – refers to a document that describes the nature, configuration, use of raw materials and natural resources, production system, waste or pollution generation and control and the activities of a proposed project. It includes a description of the use of human resources as well as activity timelines, during the preconstruction, construction, operation and abandonment phases¹.
- 4.6. Provisional Agreement for Special Uses in Protected Areas – refers to an optional two-year agreement granted by the State to a natural or juridical person pending the approval of its SAPA application.
- 4.7. Rehabilitation Plan – refers to a document prepared and submitted by the project proponent, together with its financial plan that provide activities to ensure that all disturbed/damaged areas will be restored, as near, as possible to its original state or to a pre-agreed condition.
- 4.8. Special Uses – refers to activities and/or development interventions that may be allowed in designated portions of protected areas subject to the payment of user fee. This may include but not limited to: hotels, resorts and other tourism facilities, communication facilities and transmission lines, large scale power generation projects, and large scale agriculture and aquaculture projects. Excluded from the coverage are activities and development interventions in titled properties, areas already covered by foreshore and miscellaneous leases as well as Forest Land Use Agreements/Forest Land Use Agreements for Tourism issued by the DENR, and other regular uses of protected areas as indicated in the protected area management plan.
- 4.9 Temporary Improvement – refers to improvement introduced to the land or water under contract/agreement which can be removed without causing any damage therefrom.

SECTION 5. Provisional Agreement for Special Uses in Protected Areas.

- 5.1 All applicants for SAPA may be issued with a Provisional Agreement by the Regional Executive Director (RED) if all the mandatory requirements have been complied with except for the Certification Precondition from the NCIP, and a PAMB-affirmed Rehabilitation Plan. Provided, that in the case of IP areas, a MOA between the applicant and the IPs has been entered into, and a copy of the MOA is submitted, or in the case of Non-IP areas a field-based investigation has been conducted by the NCIP, and a copy of the report is submitted. The Provisional Agreement may be extended by the RED, upon the endorsement of the PAMB, if the CP or CNO is not issued within the term of the Provisional Agreement. Provided further, that in case the CP or CNO is denied, the Provisional Agreement shall be cancelled immediately. Attached as Annex A is the template for the Provisional Agreement.

¹DENR Administrative Order No. 2003-30 or the “Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS) System”

The Provisional Agreement shall have a validity of two (2) years in order to allow the proponent to have immediate access over the area subject to the payment of development fee as provided under the NIPAS Act, as amended, and the following conditions:

5.1.1 For new application

5.1.1.1 The proponent may proceed with the ground survey, delineation and marking on the ground of the boundaries of the area to be covered by the SAPA under the supervision of the Protected Area Superintendent (PASu);

5.1.1.2 The proponent shall protect the area from destructive activities including forest fires, illegal fishing, unlawful entry, and unauthorized gathering of resources, among others; and

5.1.1.3 The proponent may be allowed to introduce temporary improvements in the area.

5.1.2 For renewal, including conversion of MOA for Special Use into SAPA

5.1.2.1 The proponent shall continue managing and protecting the area against any form of unlawful activities; and

5.1.2.2 The proponent shall not introduce additional permanent improvements in the area.

5.2 The Provisional Agreement shall automatically cease to be effective upon the issuance of a SAPA. The validity period of the Provisional Agreement shall form part of the twenty-five (25)-year term of the SAPA in accordance with the fifty (50)-year limitation on the utilization, development, and conservation of natural resources as provided under the 1987 Philippine Constitution.

5.3 In the same manner, the validity period of MOAs for Special Use that are being converted into SAPA shall form part of the twenty-five (25)-year term of the SAPA to be issued. For MOAs for Special Use that were already issued with full twenty-five years of SAPA, the consumed term of the MOA for Special Use shall be deducted from the term of renewal.

5.4 The Provisional SAPA may be cancelled by the RED for violations of the agreement and the pertinent provisions of DAO Nos. 2007-17 and 2019-05. The Cancellation Order shall carry a notification to the holder of the Provisional Agreement to vacate the area and dismantle introduced improvements within fifteen (15) days upon the receipt of the Order. Undismantled improvements shall be forfeited in favor of the government.

5.5 The Provisional Agreement holder shall ensure compliance with the terms and conditions of the agreement and shall exert due diligence in securing the corresponding NCIP Certificate within the two (2)-year period.

5.6 The above activities shall only be allowed if other required permits and clearances have been secured.

SECTION 6. Separability Clause. If any provision of this Order shall be held invalid or unconstitutional, the other portions hereof which are not affected shall continue in full force and effect.

SECTION 7. Repealing Clause. Rule 25 of the IRR of the NIPAS Act, as amended, DAO 2007-17, and all other orders, circulars, memoranda and other issuances, or parts thereof, inconsistent with the provisions of this Order are hereby amended or modified accordingly.

SECTION 8. Effectivity Clause. This Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation and upon acknowledgment of receipt of a copy thereof by the Office of the National Administration Registrar, University of the Philippines Law Center.

MARIA ANTONIA YULO LOYZAGA
Secretary



Republic of the Philippines
Department of Environment and Natural Resources
Region _____
Address and Contact Numbers

DENR Region __, (Acronym of PA) Provisional Agreement No. 20__ - __

PROVISIONAL AGREEMENT FOR SPECIAL USES IN PROTECTED AREAS

(Name of Protected Area)

(Name of Holder)

(Address of Holder)

Pursuant to Republic Act No. 7586 (NIPAS Act), as amended by Republic Act No. 11038 (Expanded NIPAS Act) and Its Implementing Rules and Regulations (DENR Administrative Order No. 2019-05), DENR Administrative Order No. 2018-05, DENR Administrative Order No. 2007-17, and DENR Administrative Order No. _____ and other existing laws, rules and regulations, a Provisional Agreement is hereby granted to _____ (Name of the Proponent) of legal age, for _____ (Name of the Project) located at _____ (Barangay, Municipality, and Province). This Provisional Agreement allows the proponent to temporarily occupy and manage ____ hectares of _____ (Name of PA) with boundary and description of which are shown in the attached map which form part of this Provisional Agreement.

This Provisional Agreement is subject to all existing laws, rules and regulations as well as those which may hereafter be promulgated, and the following terms and conditions:

1. The proponent may proceed with the ground survey, delineation and marking on the ground the boundaries of the area to be covered by the SAPA under the supervision of the PASu;
2. The proponent shall protect the area from destructive activities including forest fires, illegal fishing, unlawful entry, and unauthorized gathering of resources, among others;
3. The proponent may be allowed to introduce temporary improvements in the area;
4. The boundary of the land and/or water covered by this Provisional Agreement is not yet final and subject to change as may be deemed necessary in the course of the issuance of the Special Use Agreement in Protected Area (SAPA);
5. Within six months upon approval of the Provisional Agreement, the proponent shall submit the Rehabilitation Plan and CP for subsequent review/evaluation and processing of the SAPA. Should the CP be not secured within the six-month period, the proponent may still comply within the two-year validity period of the Provisional Agreement;
6. The proponent shall ensure compliance with the herein terms and conditions of the Provisional Agreement and shall exert due diligence in securing the corresponding NCIP Certification within the 2-year period.

This Provisional Agreement shall expire on _____ (end of two-year period). It shall automatically be terminated upon the issuance of a SAPA. The two-year validity period of the Provisional Agreement shall form part of the 25-year term of the SAPA. Should a resolution of Non-Consent be issued by the concerned ICCs/IPs, and the application is finally denied and returned by the concerned NCIP Regional Director, a notice shall be immediately issued by the concerned DENR Regional Executive Director to the applicant to vacate the area and dismantle

introduced temporary improvements within fifteen (15) days, at the expense of the proponent. Further, the Provisional Agreement shall be deemed terminated.

Issued on _____ at _____.

REGIONAL EXECUTIVE DIRECTOR

Copy furnished:

- 1. PENRO, _____
- 2. CENRO, _____
- 3. Director, BMB, Diliman, Quezon City
- 4. Supervising Undersecretary for BMB, Diliman, Quezon City