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DEPARTMENT OF ENVIRONMENT

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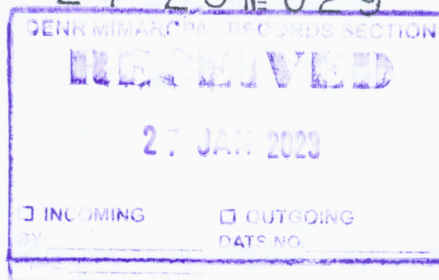
Legal Opinion 01-24-23 No. 029

MEMORANDUM

FOR : The Director
Legislative Liaison Office

FROM : The Director
Legal Affairs Service

SUBJECT : COMMENTS ON SEVERAL DRAFT HOUSE BILLS FROM
HOUSE OF REPRESENTATIVES COMMITTEE ON NA
RESOURCES



This is with regard to the Memorandum¹ dated 11 January 2023 from you requesting the undersigned's comments on several House Bills. It was received in the Office on 16 January 2023.

The request for comment is on the following House Bills:

A. Reverting Unutilized Fishponds

1. House Bill No. 157, entitled "An Act Reverting Fishponds Which Have Been Unutilized Or Abandoned For A Period Of Three (3) Years To Forest Lands, Amending For The Purpose Section 43 of Presidential Decree No. 705 Otherwise Known As The "Revised Forestry Code Of the Philippines", authored by Rep. Alfelito "Alfel" M. Bascug and Rep. Eddiebong G. Plaza; and
2. House Bill No. 5279, entitled "An Act Reverting Fish Ponds Which Have Been Unutilized Or Abandoned For A Period Of Three (3) Years To Forestlands, Amending For The Purpose Section 43 Of Presidential Decree NO. 705, Otherwise Known As The Revised Forestry Reform Code Of The Philippines", authored by Rep. Linabelle Ruth R. Villarica.

B. Simplifying the Procedure in the Disposition of Public Agricultural Lands

1. House Bill No. 579, entitled "An Act Simplifying The Procedure in the Disposition of Public Agricultural Lands, Amending for the Purpose Section 23 of Commonwealth Act No. 141, Otherwise known as the "Public Land Act", by Rep. Jurdin Jesus M. Romualdo;
2. House Bill No. 2019, entitled "An Act Simplifying The Procedure In The Disposition of Public Agricultural Lands, Amending For The Purpose Section 24 Of Commonwealth Act No. 141, Otherwise Known As "The Public Land Act", by Rep. Alfelito "Alfel" M. Bascug, Eddiebong G. Plaza; and
3. House Bill No. 4108, entitled "An Act Simplifying The Procedure In The Disposition of Public Agricultural Lands, Amending For The Purpose Section 24 Of Commonwealth Act No. 141, Otherwise Known As "The Public Land Act", by Rep. Joseph Stephen "Caraps" S. Paduano.

C. Land Reclassification and Protected Area Bills

1. House Bill No. 4889, entitled "An Act Reclassifying Certain Parcels of Land Of the Public Domain Located In Barangays Iraan, Sagpangan, Isaub, Magbabadil And Cabigaan, All In the Municipality of Aborlan In The Third District of the Province of Palawan, As Alienable and Disposable Land Open To Disposition of Agricultural, Residential, Commercial, Industrial And Other Purposes", by Rep. Edward S. Hagedorn; and

¹ Copy attached as "Annex A"

2. House Bill No. 6373, entitled "*An Act Declaring The Three (3) Nautical Miles Surrounding The Kalayaan Island Group and Scarborough Shoal in the West Philippine Sea as Marine Protected Area Under Republic Act No. 7586 Or the National Integrated Protected Areas System Act of 1992, as amended by Republic Act No. 11038, or the Expanded National Integrated Protected Areas System Act of 2018*" by Rep. Edward S. Hagedorn.

This Office would like to put forward the following comments:

A. Reverting Unutilized Fishponds: House Bill No. 5279 and House Bill No. 157

Aside from a few matters of merely aesthetic importance, there is no significant difference between HBs 5279 and 157 put forward by Rep. Villarica, and Reps. Bascug and Plaza respectively.

Both HBs intend to amend Section 43² of Presidential Decree No. 705³. As such, this Office puts forward its comments on them jointly.

The HB introduced by Rep. Villarica, perhaps because it is of a more recent vintage, is more streamlined and is easier to comprehend.

Both bills submit an amendment that intends to shorten the period by which an abandoned fishpond area shall revert to forest land from five to three years. In addition, they would require immediate rehabilitation and reforestation of the fishpond area after the reversion.

This Office interposes no objection with the proposed amendment to shorten the period of abandonment. It would be advantageous for the State to quickly recommit such abandoned areas to carbon sequestration, mangrove fish nurseries and other ecosystem services especially in light of climate change and our threatened fisheries sector.

As to the continuation of that provision reverting the category of abandoned fishpond areas to forest land, this Office submits that there is no change of classification when the State enters into an agreement with any private entity for the exploration, development and utilization of natural resources under Article XII, Section 2 of the 1987 Constitution⁴.

² SECTION 43. Swamplands and Mangrove Forests. - Strips of mangrove forest bordering numerous islands which protect the shoreline, the shoreline roads, and even coastal communities from the destructive force of the sea during high winds and typhoons, shall be maintained and shall not be alienated. Such strips must be kept free from artificial obstruction so that flood water will flow unimpeded to the sea to avoid flooding or inundation of cultivated areas in the upstream.

All mangrove swamps set aside for coast-protection purposes shall not be subject to clear-cutting operation.

Mangrove and other swamps released to the Bureau of Fisheries and Aquatic Resources for fishpond purposes which are not utilized, or which have been abandoned for five (5) years from the date of such release shall revert to the category of forest land.

³ The Revised Forestry Reform Code. 19 May 1975;

⁴ SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. **With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such**

This Office posits that the whole phrase suggesting that the swampland brought under lease for fishpond purposes has changed from the category of forest land to any other is a misnomer. When a Fisheries License Agreement or a Fishpond Lease Agreement is approved, there occurs no reclassification. The application of a mere lease, a species of production-sharing agreement pursuant to Article XII, Section 2 of the Constitution does not result in alienation.

After all, the provision categorically states that aside from agricultural lands, all other natural resources are inalienable. The Revised Forestry Code affirms this by explicitly providing that swamps and mangrove forests shall not be alienated by the State.

This important distinction must be underscored because in legal parlance as applied to natural resources law, the word reversion is a technical term that refers to an action to revert erroneously alienated public land to the public domain. Commonwealth Act No. 141⁵ is explicit on this:

SECTION 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor-General or the officer acting in his stead, in the proper courts, in the name of the Commonwealth of the Philippines.

This Office submits that it would greatly benefit the State and ecology if the proposed amendment requiring immediate rehabilitation and reforestation be applied not only to abandoned fishpond leases but also to expired leases.

In the context of climate change, this would complement state efforts to curb carbon emissions given the widely recognized ability of mangrove trees to sequester carbon relative to other flora. In this regard, this Office submits that the jurisdiction over these previously released areas to the BFAR be returned to the DENR.

To reflect these comments, it is thus recommended that the whole phrase [revert to the category of forestland] be removed. With the Committee's leave, it is proposed the provision be revised⁶ and instead state that:

SECTION 43. Swamplands and mangrove forests

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Lease agreements under which mangroves and other swamps have been released to the Bureau of Fisheries and Aquatic Resources for fishpond purposes which are not utilized, or which have been abandoned for [five] THREE years from the date of such release shall be cancelled.

citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant. The 1987 Constitution. February 2, 1987.

⁵ The Public Land Act. November 7, 1936.

⁶ Proposed revisions are underlined and bold.

Once the lease agreement has expired or otherwise been cancelled for abandonment or any other cause, such mangroves and other swamps shall be immediately rehabilitated and reforested. The Department of Environment and Natural Resources, and the Department of Agriculture shall jointly establish the guidelines for the rehabilitation and reforestation of cancelled or expired lease agreements over mangroves or other swamps previously released to the Bureau of Fisheries and Aquatic Resources, and jurisdiction thereof shall return to the Department of Environment and Natural Resources.

B. Simplifying the Procedure in the Disposition of Public Agricultural Lands: House Bill No. 4108 and House Bill No. 579

Similar to the first set of House Bills referred to us for comment, this Office finds that there is no significant difference between HBs 4108 and 579 put forward by Rep. Paduano, and Rep. Romualdo respectively.

Both HBs were introduced to amend Section 24⁷ of the previously referred CA No. 141 .

They propose that instead of the Director of Lands (now Director of the Land Management Bureau), the DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES would announce the sale of land.

The amendments would reduce the period of publication from once a week for [six consecutive weeks] to only TWO CONSECUTIVE WEEKS. Instead of Manila, METRO MANILA is to be the option for circulation of the relevant newspaper, and posting on bulletin boards of the CENTRAL OFFICE OF THIS DEPARTMENT instead of the Bureau of Lands (now LMB).

Lastly, the amendments would allow the omission of publication for lands whose value do not exceed FIFTY THOUSAND PESOS from the previous [two hundred and forty].

This Office concurs with the first proposed amendment, with modification. Section 24 of CA No. 141 provides that it is the Director of Lands who shall announce the sale. Replacing the Official with an Office such as the DENR seems incongruous. As such, this Office proposes the following amendment:

SECTION 24. Lands sold under the provisions of this chapter must be appraised in accordance with section one

⁷ SECTION 24. Lands sold under the provisions of this chapter must be appraised in accordance with section one hundred and sixteen of this Act. The Director of Lands shall announce the sale thereof by publishing the proper notice once a week for six consecutive weeks in the Official Gazette, and in two newspapers one published in Manila and the other published in the municipality or in the province where the lands are located, or in a neighboring province, and the same notice shall be posted on the bulletin board of the Bureau of Lands in Manila, and in the most conspicuous place in the provincial building and the municipal building of the province and municipality, respectively, where the land is located, and, if practicable, on the land itself; but if the value of the land does not exceed two hundred and forty pesos, the publication in the Official Gazette and newspapers may be omitted. The notices shall be published one in English and the other in Spanish or in the local dialect, and shall fix a date not earlier than sixty days after the date of the notice upon which the land will be awarded to the highest bidder, or public bids will be called for, or other action will be taken as provided in this chapter.

hundred and sixteen of this Act. The Secretary of the Department of Environment and Natural Resources, or their authorized representative, shall announce the sale thereof by publishing the proper notice once a week for
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Executive Order No. 192⁸ provides for the powers of the Secretary of Environment and Natural Resources:

SECTION 7. Secretary of Environment and Natural Resources. — The authority and responsibility for the exercise of the mandate of the Department, the accomplishment of its objectives and the discharge of its powers and functions shall be vested in the Secretary of Environment and Natural Resources, hereinafter referred to as Secretary, who shall supervise the Department and shall be appointed by the President. For such purposes, the Secretary shall have the following functions:

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(c) Promulgate rules, regulations and other issuances necessary in carrying out the Department's mandate, objectives, policies, plans, programs and projects;

(d) Exercise supervision over all functions and activities of the Department;

(e) Delegate authority for the performance of any administrative or substantive function to subordinate officials of the Department;

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It is apparent from the DENR Secretary's powers under EO No. 192 that they are authorized to promulgate issuances necessary to carry out the agency's mandate, such as a publication of a sale of public land. Furthermore, they are authorized to delegate their authority to subordinate officials of this Department.

This Office deems all the other proposed amendments previously mentioned as advantageous to the State. The last one, increasing the threshold value to fifty thousand pesos from the prevailing two hundred and forty would allow the procedure to adapt to the prevailing market rates and the Rules of Court.

C. Land Reclassification and Protected Area Bills

1. Declaring certain parcels of forest land in the Municipality of Aborlan, Province of Palawan alienable and disposable: House Bill No. 4889

House Bill No. 4889 proposes an enactment that would declare certain parcels of forest lands in the Municipality of Aborlan, Province of Palawan open for disposition for agricultural and other purposes.

⁸ Providing for the Reorganization of the Department of Environment, Energy And Natural Resources, Renaming it as the Department of Environment and Natural Resources, and for Other Purposes. 10 June 1987;

Section 1 of the proposed law declares the areas described in the subsequent paragraphs as alienable and disposable:

SECTION 1. The herein described parcels of land of the public domain containing a total land area of Two Thousand Five Hundred Ninety Six and 50/100 (2, 596.50) hectares, encompassing the territorial jurisdictions of Barangays Iraan, Sagpangan, Isaub, Magbabadil and Cabigaan, all in the Municipality of Aborlan, Province of Palawan, are hereby declared agricultural land open to disposition for agricultural, commercial, residential, industrial and other productive purposes:

This Office would like to refer to the case of *Heirs of Malabanan v. Republic*⁹. In that case, the Supreme Court held that the mere declaration that public agricultural land is alienable and open for disposition is inadequate to remove it from public dominion and subject it to acquisitive prescription:

Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State". It is this provision that controls how public dominion property may be converted into patrimonial property susceptible to acquisition by prescription. After all, **Article 420 (2) makes clear that those property "which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth" are public dominion property. For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion if when * it is "intended for some public service or for the development of the national wealth".**

Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420 (2), and thus incapable of acquisition by prescription. **It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.**

The Supreme Court is clear that the State must make a categorical and express declaration that an agricultural land of the public domain is no longer intended for public use, public service or the development of the national wealth, over and above its declaration that such land is alienable and disposable. Only

⁹ GR No. 179987. 29 April 2009

after both these requirements have been complied with can such property be removed from the public domain and converted to patrimonial property susceptible to private ownership.

As such, this Office recommends that Section 1 and Section 2 of HB No. 4889 be amended as follows:

SECTION 1. The herein described parcels of land of the public domain containing a total area of Two Thousand Five Hundred Ninety Six and 50/100 (2,596.50 ha), encompassing the territorial jurisdictions of

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are hereby declared no longer intended for public use, public service, or the development of the national wealth.

SECTION 2. That considering the preceding section, the herein described parcels of land are hereby declared agricultural land open to disposition for agricultural, residential, commercial, industrial or other productive purposes:

As to the other provisions of HB No. 4889, this Office proffers no objection. However, it would like to call attention to the period of occupation that would qualify an occupant to apply for a free patent with the DENR to formalize ownership.

While the discretion of Congress to amend its own acts is well-recognized, it is worth pointing out that RA No. 11573¹⁰ to CA No. 141 has already reduced the required period of occupation from 30 to 20 years, viz:

SECTION 2. Section 44 of Commonwealth Act No. 141, as amended by Republic Act No. 6940, is hereby further amended to read as follows:

"SEC. 44. Any natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares of land, and who, for at least twenty (20) years prior to the filing of an application for agricultural free patent, has continuously occupied and cultivated, either personally or through a predecessor-in-interest, a tract or tracts of alienable and disposable agricultural public lands subject to disposition, and who shall have paid the real estate tax thereon shall be entitled, under the provisions of this Chapter, to have a free patent issued for such tract or tracts of such land not to exceed twelve (12) hectares."

¹⁰ An Act Improving the Confirmation Process for Imperfect Land Titles, Amending CA No. 141 (The Public Land Act) and PD No. 1529 (Property Registration Decree). July 16, 2021

As such, this Office submits that the further reduction of such a period to three years is drastic and unreasonable; and would invite a flagrant violation of the equal protection clause if applied only in one municipality.

Furthermore, the same statute specifically provides that the free patent application shall be made with the Community Environment and Natural Resources Office (CENR Office) of the DENR, to wit:

SECTION 3. Section 45 of Commonwealth Act No. 141, as amended, is hereby further amended to read as follows:

"SEC. 45. All applications for agricultural free patents shall be filed before the Community Environment and Natural Resources Office (CENRO) of the Department of Environment and Natural Resources (DENR). For provinces with no CENRO, the application shall be filed with the Provincial Environment and Natural Resources Office (PENRO).

"The CENRO or the PENRO, as the case may be, is mandated to process the application within one hundred and twenty (120) days from filing, including compliance with the required notices and other legal requirements. The CENRO shall thereafter forward its recommendation to the PENRO if the area of the land is below five (5) hectares; to the DENR Regional Director if the area of the land is at least five (5) up to ten (10) hectares; and to the Secretary of the DENR if the area of the land is more than ten (10) up to twelve (12) hectares.

"Upon receipt of the recommendation from the CENRO, or upon the completion of the processing of the application within the reglementary period, the PENRO, DENR Regional Director, or the Secretary of the DENR, as the case may be, shall approve or disapprove the application for agricultural free patent within five (5) days. In case of approval, the agricultural free patent shall forthwith be issued.

"In case of conflicting claims among different claimants, the parties may seek the proper administrative and judicial remedies."

2. Declaring The Three (3) Nautical Miles Surrounding The Kalayaan Island Group and Scarborough Shoal in the West Philippine Sea as Marine Protected Area: House Bill No. 6373

This Office proffers no objections to the provisions of HB No. 6373 as introduced by Rep. Edward S. Hagedorn. However, it notes that the declaration of the Kalayaan Island Group and Scarborough Shoal as protected areas requires

the regulation of activities to be conducted therein, especially given that certain areas would be considered strict protection zones under Section 5 thereof:

Section 5. Declaration of Protected Area and Strict Protection Zone - It is hereby declared that the area covering the KIGSS-MPA as specifically identified in the preceding section is hereby declared as a protected area and shall enjoy the benefits and protection afforded by R.A. No. 7586, as amended: Provided, That the Secretary of the Department of Environment and Natural Resources (DENR Secretary), upon the recommendation of the Protected Area Management Board (PAMB), shall designate Strict Protection Zones (SPZs) within the KIGSS-MPA in areas with significant biodiversity values or habitats of threatened species, based on a comprehensive biodiversity inventory and assessments: Provided, further, That any and all international treaties or rulings, Philippine laws, rules, and regulations involving the protection, conservation of KIGSS-MPA shall be strictly observed and implemented.

As a matter of policy and practical considerations, it must be pointed out that this Department alone does not have the technical capacity nor the manpower to address any excursions - even mere commercial type activities like fishing, much less naval vessels - in the contested territories of the West Philippine Sea, such as the proposed protected areas.

Thus, it would be prudent that the comments of the Department of Foreign Affairs (DFA) and Department of National Defense (DND) be sought and their representatives be considered in the membership of the relevant Management Boards. Their input and commitments would be indispensable in crafting the required management plans under the House Bill and to accomplish its purpose of protecting the KIG and Scarborough Shoal.

In addition, while it is the power of the Congress to enact a law declaring an area as part of the National Integrated Protected Areas System per RA 7586¹¹, as amended by RA 11038¹², this Office underscores that the DENR recommends the protected areas, *viz*:

SECTION 4. Section 5 of Republic Act No. 7586 is hereby amended to read as follows:

"SEC. 5. Establishment and Extent of System. - The establishment and operationalization of the System shall involve the following:

"(a) All areas or islands in the Philippines proclaimed, designated or set aside, pursuant to a law, presidential decree, presidential proclamation or executive order as national park, game refuge, bird and wildlife sanctuary, wilderness area, strict nature reserve, watershed, mangrove reserve, fish sanctuary, natural and historical landmark, protected and managed landscape/seascape as well as old growth forests identified before the effectivity

¹¹ National Integrated Protected Areas System Act of 1992, Republic Act No. 7586, [01 June 1992])

¹² Expanded National Integrated Protected Areas System Act of 2018, Republic Act No. 11038, [22 June 2018]

of this Act or still to be identified, are hereby designated as initial components of the System. The initial components of the System shall be governed by existing laws, rules and regulations, not inconsistent with this Act.

"(a.1.) Establishment as Protected Areas. — Aside from the areas already declared as protected areas through acts of Congress, the following parcels of land and/or bodies of water are hereby established as protected areas within the classification of national park pursuant to the Philippine Constitution:

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"The boundaries and technical descriptions of each protected area as described in the attached Annex, which are duly certified accurate on every page thereof by the National Mapping and Resource Information Authority (NAMRIA) are hereby adopted and made an integral part hereof.

"The DENR, with the assistance of other government agencies, if necessary, shall delineate and demarcate on the ground the boundaries of each protected area which shall not be modified except by an act of Congress.

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"(b) All DENR records pertaining to said protected areas, including maps and technical descriptions or natural boundaries, copies of rules and regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications shall be made available to the public. These legal documents pertaining to protected areas shall also be available to the public in the respective DENR Regional Offices, Provincial Environment, and Natural Resources Offices (PENROs) and Community Environment and Natural Resources Offices (CENROs) and Protected Area Management Offices (PAMOs) where protected areas are located;

"(c) **The DENR shall conduct a suitability assessment for each of the proposed protected area.** If found suitable for inclusion in the System according to the categories established in Section 3 hereof, a report containing the following items shall be submitted to the president as soon as the study is completed, to wit:

- "(1) A protected area occupants survey;
- "(2) An ethnographic study;
- "(3) A protected area resource profile;
- "(4) Land and water use plans; and
- "(5) Other background studies.

"(d) In the conduct of public consultation, the DENR shall:

- "(1) Notify the public of proposed action through publication in a newspaper of general circulation and such other means including notices to the stakeholders that will likely be affected within the respective localities, thirty (30) days prior to the public consultation;
- "(2) Conduct public consultation at locations near the proposed protected area;
- "(3) Invite all local government units (LGUs) in the affected areas, national agencies concerned, people's organizations

(POs) and nongovernment organizations (NGOs) and request for corresponding position papers; and
"(4) Prepare recommendations based on the views and comments gathered from the public consultation.

"(e) Upon receipt of the recommendations of the DENR, the President shall issue a proclamation establishing the proposed protected areas and providing for measures for their protection until the time when Congress shall have enacted a law finally declaring the recommended areas as part of the System; and

"(f) Upon completion of the appropriate review, the President shall recommend to the Senate and the House of Representatives the designations of protected areas or reclassification of each area."

SECTION 5. Section 6 of Republic Act No. 7586 is hereby amended to read as follows:

"SEC. 6. *Additional Areas to be Included into the System.* — Upon the recommendation of the DENR, additional areas with unique physical features, anthropological significance and high biological diversity may be proposed for inclusion as part of the System. Such areas shall undergo the same procedure as the remaining initial components for legislative enactment." (Emphasis added)

From the foregoing, this Office notes that the DENR has the duty to conduct a suitability assessment for inclusion in the protected areas system. Per DENR Administrative Order (DAO) 2019-05¹³, the conduct of this assessment is called Protected Area Suitability Assessment (PASA). The said DAO also discusses the procedure to undertake and characteristics of the area to be considered, *viz*:

RULE 4.1 As used in this Order, the following terms are defined as follows: xxx

i. *Protected Area Suitability Assessment (PASA)* refers to a rapid screening and evaluation of protected areas, to determine their suitability for retention, establishment, or disestablishment as protected areas, the modification of their boundaries, or the inclusion of proposed additional areas in the System;

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RULE 5.6 The rich biodiversity of the area shall be the main consideration in the determination of areas for inclusion in the NIPAS. These areas must have the following characteristics:

1. Irreplaceability (presence of restricted range and congregatory species);
2. Vulnerability (presence of globally threatened and endemic species);

¹³ Implementing Rules and Regulations of Republic Act No. 7586, or the National Integrated Protected Areas System (NIPAS) Act of 1992, as Amended by Republic Act No. 11038, or the Expanded National Integrated Protected Areas System (ENIPAS) Act of 2018, DENR Administrative Order No. 2019-05, [May 30, 2019]

3. Naturalness of the area (intact natural cover such as forest, mangroves, seagrass beds and corals, etc.);
4. Abundance and diversity of species of flora and fauna (high concentration of species of flora and fauna);
5. Unique or outstanding cultural, geological and aesthetic features that support biodiversity and sustain ecological processes and functions; and
6. Value of ecosystem services (value in terms of recreational, educational, traditional use, heritage and other sustainable uses).

RULE 5.7 If found suitable for retention or inclusion in the System, according to the categories established in Section 3 of the NIPAS Act, as amended, the DENR Regional Office shall prepare a report which includes:

1. A protected area occupants survey;
2. An ethnographic study;
3. Protected area resource profile;
4. Land and water use plans; and
5. Other background studies

RULE 5.8 The DENR Regional Office shall, through the BMB, submit the PASA Report with the recommended appropriate category to the Secretary. This report shall form part of the supporting documents for proclamation by the President or establishment by Congress of the protected area, as the case may be. Provided, that any modification of the category of the protected area shall be based on the results of the PASA and shall require amendment of the Presidential Proclamation or Congressional legislation, as the case may be.

RULE 5.9 All PASA undertaken before the effectivity of the ENIPAS Act and this Order shall be updated based on the requirements provided herein and the guidelines issued by the DENR.

In view of the foregoing laws and DAO on protected areas, this Office suggests that the proposed area for establishment as part of the Expanded National Integrated Protected Areas System also undergo PASA to determine its suitability as such.

This Office further notes that comments from the Regional and Field Offices concerned, i.e. DENR MIMAROPA Region, and Provincial Environment and Natural Resource Office Palawan should be secured. This Office observes that the Memorandum requesting for comment did not include the said field offices. The said Field Offices would have a better understanding on the ground, as well as determine propriety of reclassifying the areas identified in the foregoing House Bills into agricultural land, and Protected Area.

This concludes our comments on the above mentioned House Bills.

It is understood that these comments are based on documents referred to this Office for review. Nevertheless, this Office defers to the Committee's wisdom in the relevant policy matters covered.

For your information and consideration.


NORLITO A. ENERAN, L.L.M., CESO III

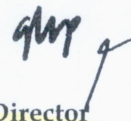
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