

REPUBLIC ACT NO. 9494 [H. No. 5838 & S. No 2616] - AN ACT DECLARING THE MIMBILISAN WATERSHED LOCATED IN THE MUNICIPALITIES OF BALINGOAN AND TALISAYAN, PROVINCE OF MISAMIS ORIENTAL AS A PROTECTED AREA UNDER THE CATEGORY OF PROTECTED LANDSCAPE, PROVIDING FOR ITS MANAGEMENT AND FOR OTHER PURPOSES

Begun and held in Metro Manila, on Monday, the twenty-fourth day of July, two thousand six.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Title. - This Act shall be known and cited as “The Mimbilisan Protected Landscape Act”.

Sec. 2. Declaration of Policy. - It is the policy of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. For this purpose, the State shall secure for the present and future generations of Filipinos the perpetual existence of all native plants and animals within the Mimbilisan Watershed in the municipalities of Balingoan and Talisayan, Province of Misamis Oriental, through its establishment as a component of the National Integrated Protected Areas System (NIPAS) under the category of protected landscape. The State shall likewise promote the participation of local communities in the management of the Mimbilisan Watershed and protect the way of life of the people living in and around the protected area.

Sec. 3. Scope. - The boundaries of the Mimbilisan Protected Landscape are as follows: Tie Line: Point. 1 or Corner 1 on the map is S 37° W, approximately six thousand two hundred meters (6,200 m.) from the MBM of the Municipality of Talisayan, Misamis Oriental.

LINE	BEARING	DISTANCE
1 - 2	S 55° 00'E	310.00 meters
2 - 3	N 73° 00'E	200.00 meters
3 - 4	S 52° 00'E	200.00 meters
4 - 5	S 08° 20'E	633.00 meters
5 - 6	S 55° 60'W	200.00 meters
6 - 7	S 60° 60'W	190.00 meters
7 - 8	N 68° 60'W	220.00 meters
8 - 9	S 68° 60'W	150.00 meters
9 - 10	N 09° 60'W	390.00 meters
10 - 11	N 09° 60'E	260.00 meters
11 - 12	N 34° 00'E	110.00 meters
12 - 13	N 62° 60'W	220.00 meters
13 - 14	N 19° 60'W	170.00 meters
14 - 15	N 70° 00'E	190.00 meters
15 - 1	S 86° 00'E	110.00 meters

The total land area of the Mimbilisan Protected Landscape is six hundred sixty thousand square meters (660,000 sq.m.) or sixty-six hectares (66 has.), more or less, located within the territory of Barangay Mapua, Municipality of Balingoan, Province of Misamis Oriental.

Sec. 4. Definition of Terms. - For purposes of this Act, the following terms shall be defined as follows:

(a) “Biological diversity” or “biodiversity” shall refer to the wealth of life forms found on earth, the millions of different plants, animals and microorganisms, the genes they contain and the intricate ecosystem they form.

(b) “Buffer zones” shall refer to identified areas outside the boundaries of and immediately adjacent to designated protected areas that need special development control in order to avoid or minimize harm to the protected area.

(c) “General management plan” shall refer to the basic long-term framework plan for the management of the protected area and shall serve as guide in the preparation of the annual operations plan and budget.

(d) “General Management Planning Strategy (GMPS)” shall refer to a guide in the formulation of site specific management plans, including buffer zones.

(e) “Indigenous peoples” shall refer to people sharing common bonds of language, customs, traditions and other distinctive cultural traits and who have since time immemorial occupied, possessed and utilized a territory.

(f) “Integrated Protected Areas Fund (IPAF)” shall refer to a trust fund established for purposes of financing projects within a protected area.

(g) “Management manual” shall refer to the individual management plan containing basic background information, field inventory of the resources, assessment of assets and limitations, regional interrelationships, particular objectives for managing the area, appropriate division into management zones, review of the boundaries and design of the management programs of the area.

(h) “National Integrated Protected Areas System (NIPAS)” shall refer to the classification and administration of all designated protected areas established pursuant to Republic Act No. 7586 to maintain essential ecological processes and life-support systems, to preserve genetic diversity, to ensure sustainable use of resources and to maintain the natural conditions to the greatest extent possible.

(i) “Protected Area (PA)” shall refer to identified portions of land and water set aside by reasons of their unique physical and biological significance, managed to enhance biological diversity and protected against destructive human exploitation.

(j) “Protected Area Management Board (PAMB)” shall refer to the site-based decision-making body responsible in the planning, resource protection and general administration of the area in accordance with the approved management plan.

(k) “Protected landscape” shall refer to an area of national significance which is characterized by the harmonious interaction of man and land while providing opportunities for public enjoyment through recreation and tourism within the normal lifestyle and economic activity of the area.

(l) “Protected Area Superintendent (PASu)” shall refer to the chief operating officer of the Department of Environment and Natural Resources (DENR) for the Mimbilisan Protected Landscape.

(m) “Secretary” shall refer to the Secretary of the DENR.

(n) “Tenured migrants” shall refer to any person who has actually and continuously occupied an area for five years prior to the designation of the same as a PA in accordance with the provisions of Republic Act No. 7586 or the NIPAS Act and are solely dependent therein for subsistence.

Sec. 5. Management of the Mimbilisan Protected Landscape. - The management of the Mimbilisan Protected Landscape shall be vested in the PAMB as herein provided, which shall serve as the highest policy-making body for the PA. Through the PAMB, the management structure for the PA shall

promote partnership, participation, cooperation and coordination with local communities and civil society organizations.

Sec. 6. The Protected Area Management Board (PAMB). - The PAMB for the Mimbilisan Protected Landscape shall be composed of:

- (a) The regional executive director (RED) of the DENR Region X, as chairman;
- (b) The mayors of the municipalities of Balingoan and Talisayan, Province of Misamis Oriental or their authorized representatives;
- (c) The barangay captains with territory inside and adjacent to the PA or their authorized representatives;
- (d) The regional director of the Department of Agriculture (DA)-Region X or his authorized representative;
- (e) The Provincial Environment and Natural Resources Officer (PENRO) of Misamis Oriental;
- (f) The Community Environment and Natural Resources Officer (CENRO) of Gingoog City;
- (g) Two non-government organization/people's organization (NGO/PO) representatives concerned with PA management, chosen from among the two municipalities with territory inside the PA and duly accredited with the municipality being represented; and
- (h) The Provincial Planning and Development Officer (PPDO) of Misamis Oriental, sitting as ex-officio member, to be endorsed by the provincial governor.

Each member of the PAMB shall serve for a term of five years and shall be considered to represent and carry the vote of his/her sector in all matters. The members who represent government officials or agencies shall serve according to the term of office of their principal, unless sooner terminated by such officials.

Sec. 7. Powers and Functions of the PAMB. - The PAMB for the Mimbilisan Protected Landscape shall exercise the following powers and functions:

- (a) Issue rules and regulations to implement the provisions of this Act and promote the policy declaration herein set forth;
- (b) Establish criteria and set fees for the issuance of permits for the activities regulated by this Act or the approved management plan;
- (c) Identify the buffer zone for the PA;
- (d) Adopt rules of procedure for the conduct of business, including the creation of committees to whom its powers may be delegated;
- (e) Approve the management plan and oversee the office of the PASu;
- (f) Deputize interested individuals for the enforcement of the laws, rules and regulations adopted pursuant to this Act;

- (g) Accept donations, approve proposals for funding and budget allocation and exercise accountability over all funds that may accrue to the PA;
- (h) Coordinate with appropriate agencies for the regulation of flight patterns of aircraft going over the area to set acceptable latitudinal limits and emissions; and
- (i) Retain legal counsel, either on a permanent or temporary basis, to provide legal assistance to the PAMB and the PASu staff whenever they are sued in connection with the performance of their duties under this Act.

The Secretary shall exercise authority over the PAMB to ensure that it exercises its authority within the scope of its powers and functions. In case of conflict between administrative orders of national application issued by the DENR pursuant to the NIPAS Act and the rules and regulations issued by the PAMB, the PAMB shall notify the Secretary who shall resolve such conflict.

The local government units (LGUs) of the municipalities of Balingoan and Talisayan shall participate in the management of the PA through representation in the PAMB as provided under Section 6 hereof. The LGUs shall retain their power to adopt ordinances over the territory covered under this Act giving due consideration, however, to PA management objectives. If a conflict between LGU and PA management objectives remain unresolved within the PAMB, the Secretary shall resolve such issue with the concerned LG U.

Sec. 8. The Mimbilisan Protected Landscape Superintendent Office. - There is hereby established a Protected Area Superintendent's Office in charge of the management, protection and administration of the PA. The PASu shall be supported by the existing personnel of the DENR. The head of office shall be the chief operating officer of the Mimbilisan Protected Landscape or the PA and shall be accountable to the RED of the DENR-Region X and the PAMB.

The PASu shall have the following powers and functions:

- (a) Prepare the management and successor plans as herein provided;
- (b) Provide a secretariat for the PAMB to supply the latter with all information necessary to make appropriate decisions;
- (c) Hire and supervise the necessary personnel to support operations as the budget made available by the PAMB may allow;
- (d) Establish a productive partnership with the local community, including groups interested in the achievement of the goals and objectives of the PA and in the planning, protection and management thereof;
- (e) Develop and implement a park information, education and visitor program;
- (f) Enforce the laws, rules and regulations relevant to the PA and assist in the prosecution of offenses thereof;
- (g) Monitor all activities within the PA for conformity with the management plan; and
- (h) Perform such other functions as the PAMB may assign.

The PASu shall prepare a management plan in coordination with the appropriate offices of the DENR, the LGUs, the local communities and experts on tribal communities who have experience in the particular cultures in the area. The management plan shall be reviewed approved and adopted by the PAMB and certified to by the Secretary so that it conforms to all laws, rules and regulations of national application. In no case shall the management plan be revised or modified without prior consultation with the PAMB.

Within one year from the effectivity of this Act, the management plan shall be put into effect in accordance with the NIPAS Act and the procedure herein set forth. It shall contain, among others, the following:

- (i) Period of applicability of the plan;
- (ii) Key management issues;
- (iii) Goals and objectives of management;
- (iv) Site management strategy;
- (v) Major management activities such as, but not limited to, enforcement of laws, habitat and wildlife management, sustainable use management, infrastructure development and maintenance, fire and pest control, etc.;
- (vi) Zoning; and
- (vii) Visitor management programs.

The PASu shall prepare all successor plans two years before the expiration of the existing plans and shall cause the publication of notices for comments and suggestions on the next successor plan in a newspaper of local circulation and the posting of such notices in the provincial, municipal and barangay halls and in three other areas frequented by the public. Public consultations may be conducted on the successor plan upon the written request of any interested party. The proposed plan shall be made available to the public during the period for comment and the final version shall be made available for public perusal at the office of the PASu.

The zoning of the PA shall give primary consideration to cultural, economic and social practices consistent with sustainable management principles by tenured migrants and nearby communities for an appreciable length of time unless such uses are deemed detrimental to biodiversity conservation and the protection of the natural characteristics of the PA.

The management plan shall be prepared in a language understandable in the area, plainly written and available for perusal anytime to the general public at the PASu Office.

Sec. 9. Existing Facilities Within the PA. - Existing facilities allowed to remain within the PA may be charged a reasonable fee by the PAMB, which shall be embodied in a memorandum of agreement to be entered into with the owner of the facility. All incomes derived from such fees shall accrue to the Mimbilisan Protected Area Fund established pursuant to this Act.

In setting the user fees on man-made facilities managed by private entities, the rates shall be determined by the private entity but shall be comparable to the fees charged for similar facilities in a PA. For all other facilities, the user fees therein shall be determined in consultation with the PAMB.

Sec. 10. Utilization of Non-renewable Resources. - Any exploration for and exploitation or utilization of non-renewable resources within the PA shall not be allowed. Energy projects, renewable or otherwise, shall be permitted only through an act of Congress: Provided, That exploitation of renewable energy up to three megawatts capacity shall be exempt from such requirement.

Sec. 11. Prohibited Acts. - (a) The penalties prescribed for theft under Articles 309 and 310 of the Revised Penal Code shall be imposed upon any person found guilty of:

(i) Hunting, destroying, trapping, disturbing or possessing anywhere within the PA of any wild plant or animal or products derived therefrom without a permit from the PAMB: Provided, That such permit shall only be given for scientific purposes necessary to promote PA management;

(ii) Cutting, gathering, collecting or removing timber or forest products without permit: Provided, That such permit shall only be given for scientific purposes necessary for PA management;

(iii) Possessing outside the PA any wild plant or animal or products derived therefrom which came from the PA;

(iv) Mineral exploration or extraction, drilling or prospecting for minerals within the PA;

(v) Constructing or maintaining any kind of road, structure, fence or enclosure without permit from the PAMB: Provided, That structures within ancestral domains used by indigenous cultural communities shall not need a permit from the PAMB; and

(vi) Altering, mutilating, excavating, removing, destroying or defacing boundaries, marks or signs, natural formation, burial grounds, religious sites, artifacts, objects belonging to indigenous cultural communities and other objects of natural and scenic value or affixing marks or signs on trees.

(b) A fine of not less than One hundred thousand pesos (P100,000.00) nor more than Five hundred thousand pesos (P500,000.00) and/or imprisonment of not less than one year and not more than five years shall be imposed upon:

(i) Any person or persons found guilty of grazing and/or causing livestock to graze or raising poultry within the PA without a permit from the PAMB; and

(ii) Any public officer or officer of the law, who, in dereliction of the duties of his office, shall maliciously refrain from instituting acts necessary to prosecute the violators of this Act or shall tolerate the commission of offences herein provided. Conviction for this offence shall also carry the penalty of perpetual disqualification from public office.

(c) A fine of not less than one hundred thousand pesos (P100,000.00) but not more than Five hundred thousand pesos (P500,000.00) and/or imprisonment of not less than one year and not more than five years and the restoration and rehabilitation of the damage shall be imposed upon any person who commits the following acts:

(i) Violating any rules and regulations in the management plan or by the PAMB or agreements reached before the PAMB in the exercise of its adjudicative functions;

(ii) Dumping, burning or disposing of any waste products, vegetation or materials within the PA to the detriment of the inhabitants, plants or animals therein;

(iii) Use of motorized equipment without a permit except motorized vehicles within the national highway, provincial road or other public thoroughfare traversing the park: Provided, That such thoroughfares were legally constructed;

(iv) Occupying any portion of land inside the PA without a permit from the PAMB: Provided, That such occupation shall be of such a nature as to last more than ten (10) days in the particular portion of the PA; and

(v) Entering the PA without a permit from the PAMB. Any person who shall induce or conspire with another person to commit any of the acts prohibited in this section or cause his workers to commit any of such acts shall be liable in the same manner as the one actually performing the act. The valuation of the damage resulting from any of the acts prohibited herein shall take into account biodiversity and conservation consideration as well as aesthetic and scenic values. Conviction for any of these acts shall likewise carry the penalty of eviction from the PA and forfeiture in favor of the government of transportation facilities, structures, building materials, equipment, devices and weapons used in the commission of the offence.

The LGU responsible for the arrest of a violator and the confiscation of materials used in the commission of the offense shall have a fifty percent (50%) share from the proceeds in the disposition of confiscated materials. The other fifty percent (50%) shall accrue to the Mimbilisan Protected Area Fund.

The above prohibitions shall not include activities identified in the management plans and such other measures as are necessary for protection, preservation and PA management, which shall be undertaken by the PASu or other persons deputized by the PAMB. The certified customs and traditional practices of indigenous cultural communities are also allowable activities over which the above prohibitions shall not apply.

Sec. 12. Special Prosecutors. - Within thirty (30) days from the effectivity of this Act, the Department of Justice (DOJ) shall designate a special prosecutor to whom all cases of violation of laws, rules and regulations in the PA shall be assigned. Such special prosecutor shall coordinate with the PAMB and the PASu in the performance of his/her duties and assist in the training of wardens and rangers in arresting and prosecuting violators of this Act. The PAMB may appoint a special private prosecutor on a case-to-case basis to assist the public prosecutor.

Sec. 13. The Mimbilisan Protected Area Fund. - There is hereby established a trust fund to be known as the Mimbilisan Protected Area Fund for purposes of financing projects for the PA. All income generated from the operation of the PA or the management of wild flora and fauna in the PA shall accrue to the fund. These income shall be derived from visitors/tourists fee, fees from permitted sale and export of flora and fauna and other resources from the PA, proceeds from registration and lease of multiple-use areas, including tourism concessions, contributions from industries and facilities directly benefiting from the PA; and such other fees and income derived from the operation of the PA.

The fund may be augmented by grants, donations, endowment from various sources, domestic or foreign, for purposes related to their functions: Provided, That the fund shall be deposited as a special account in the National Treasury and disbursements therefrom shall be made solely for the protection, maintenance, administration and management of the system, and duly approved projects endorsed by the PAMB in accordance with existing accounting and budgeting rules and regulations: Provided, further, That the fund shall not be used to cover personal services expenditures.

The LGUs shall continue to impose and collect all other fees not enumerated herein which they have traditionally collected, such as business permits, property tax and rentals of LGU facilities. Furthermore, LGUs may charge add-ons to fees imposed by the PAMB: Provided, That such add-ons

shall be determined based on the contribution of the LGUs in the maintenance and protection of the PA.

Sec. 14. Appropriations. - The Secretary of the DENR shall immediately include in the Department's program the implementation of this Act, the funding of which shall be included in the annual General Appropriations Act.

Sec. 15. Construction. - The provisions of this Act shall be construed liberally in favor of the protection and rehabilitation of the Mimbilisan watershed and water resources and the conservation and restoration of biological diversity, taking into account the needs and interests of qualified tenured migrants, for present and future Filipino generations. The NIPAS Act shall have supplementary effect in the implementation of this Act.

This Act shall not be deemed to resolve or used as basis for the resolution of any existing boundary conflict between the municipalities of Balingoan and Talisayan.

Sec. 16. Transitory Provision. - In order to ensure the sustainability and integrity of the watershed and water resources, the recovery and restoration of biological diversity and to develop sustainable livelihood opportunities for tenured migrants, the DENR shall henceforth cease to issue concessions, licenses, permits, clearances, compliance documents or any other instrument that allows exploitation and utilization of resources within the PA until the management plan shall have been put into effect.

Sec. 17. Separability Clause. - If any part or section of this Act is declared by the courts as unconstitutional, such declaration shall not affect the other parts or sections hereof.

Sec. 18. Repealing Clause. - All laws, rules and regulations inconsistent herewith are modified accordingly.

Sec. 19. Effectivity Clause. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation readily available in and around the scope specified herein. It shall likewise be posted in a conspicuous place in the provincial, municipal and barangay halls within the area as well as in three other places frequented by the public.

Approved:

(SGD.) MANNY VILLAR  
President of the Senate

(SGD.) JOSE DE VENECIA, JR.  
Speaker of the House of Representatives

This Act which is a consolidation of House Bill No. 5838 and Senate Bill No. 2616 was finally passed by the House of Representatives and the Senate on November 14, 2006 and June 6, 2007, respectively.

(SGD.) OSCAR G. YABES  
Secretary of the Senate

(SGD.) ROBERTO P. NAZARENO  
Secretary General  
House of Representatives

Approved: August 22, 2007

(SGD.) GLORIA MACAPAGAL ARROYO  
President of the Republic of the Philippines