Policy Brief
SENATE ECONOMIC PLANNING OFFICE

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Breaking New Ground: Enacting a National Land Use Policy

With only a total land area of 30 million hectares and a population of 92.3 million growing at an average rate of 2.12 percent, how should the Philippines allocate a very scarce and important resource—land—to meet the various needs of Filipinos? The Senate proposes a national land use policy to address this fundamental issue.

1. Introduction

One of the priority legislative measures in the current 15th Congress is the proposed National Land Use Act (NaLUA). It is meant to optimize the use of land based on best uses and the need to balance economic, environmental and social development objectives. Basically, it tries to address the issue of how the Philippines as a society allocates a very scarce and important resource –land – to meet the requirements of Filipinos for food, housing, employment, and the need to protect the environment in general in view of the requirements of future generations.

The first bill on NaLUA was filed in late 1995 during the 10th Congress. However, the bill did not prosper further and was not passed. In the current Congress, 12 versions of the bill were filed—eight bills in the House of Representatives and five in the Senate. After extensive discussions and consultations with stakeholders, the Senate Committee on Environment and Natural Resources joint with the Committees on Urban Planning, Housing and Resettlement, and Finance, filed on 16 January 2012, Senate Bill (SB) 3091 which consolidated the chamber's various bills on NaLUA. Having gone through the periods of debate and committee amendments in the plenary, SB 3091 is now awaiting approval on second reading, subject to individual amendments.[1] On the other hand, House Bill (HB) 6545, the substitute bill on NaLUA which was endorsed by the House Special Committee on Land Use, has already been approved on third and final reading by the House of Representatives.

To better appreciate the policy decision-making process on the proposed NaLUA, this paper will (1) revisit existing land use policies, policy gaps, and responsibilities of policy actors and institutions; (2) analyze the salient features of SB 3091 and suggest policy options that may enhance it in addressing the land use policy gaps; and (3) conclude with policy tradeoffs and considerations.

The SEPO Policy Brief, a publication of the Senate Economic Planning Office, provides analysis and discussion on important socio-economic issues as inputs to the work of Senators and Senate Officials. The SEPO Policy Brief is also available at www.senate.gov.ph.

[1] Parliamentary status of SB 3091 as of January 17, 2013.

2. Land Use Policy Gaps

Table 1. Land Classification by Region: 2009 ('000 hectares)

REGION	Total Area	Certified A&D	Forest land
Philippines	30,000.00	14,194.68	15,805.33
NCR	63.60	48.23	15.37
CAR	1,829.37	342.35	1,487.02
I	1,284.02	810.92	473.10
II	2,687.52	972.82	1,714.70
III	2,147.04	1,204.65	942.39
IV-A	1,622.86	1,051.95	570.91
IV-B	2,745.60	998.56	1,747.04
V	1,763.25	1,222.06	541.19
VI	2,022.31	1,417.98	604.33
VII	1,489.08	964.17	524.91
VIII	2,143.17	1,024.96	1,118.21
IX	1,599.73	762.46	837.27
X	1,714.80	817.67	897.13
XI	1,967.18	737.63	1,229.55
XII	1,874.95	730.55	1,144.40
CARAGA	1,884.70	544.90	1,339.80
ARMM	1,160.83	542.83	618.00

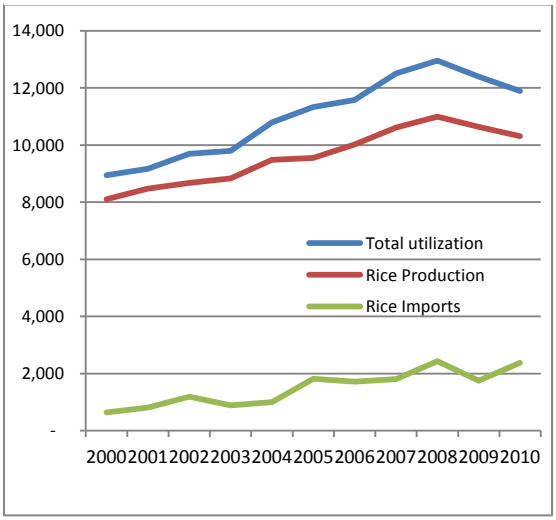
Source: Status of Land Classification by Province (2009), NAMRIA

The Philippines has a total land area of 30 million hectares, 15.8 million of which are classified as forestlands and 14.2 million are alienable and disposable lands (Table 1). Given the limited supply of land and increasing population growth, land use conflicts have been increasing and are expected to intensify (NEDA, 2011). While currently, there are various land use policies in the Philippines, these policies are contained in separate national laws, and their coverage is limited to specific sectors such as agriculture, housing, environmental protection and several others. Since these sectors oftentimes have conflicting interests (i.e., they compete for a limited supply of land, among other resources), as well as differing views on current land use policies, the sector-specific laws do not address cross-cutting land use issues that usually crop up during policy implementation.

The adoption of a national land use policy is thus necessary to address policy gaps, harmonize existing land use policies, and address competing uses of limited land resources. This section will briefly discuss the major policy gaps or inconsistent land use policies, and their implications on policy implementation. It will mainly focus on the land use policy provisions under major Republic Acts (RA) and executive issuances relating to the following areas of concern: (1) food security and rice self-sufficiency; (2) housing and urban development; and (3) environmental protection and natural resource development.

2.1. Food Security and Rice Self-Sufficiency

Chart 1. Rice Supply and Utilization, ('000 MT)



Source: BAS

Food is the most basic commodity and food production is one of the primary uses of land. Rice, in particular, is considered as the "single most politically important commodity" in the Philippines and its production covers about 4 million hectares or approximately one-third of the country's total crop land of 13 million hectares (Piadozo 2012, 1).

Land use policies affecting food security and rice self-sufficiency are those involving the conversion and reclassification of agricultural lands to non-agricultural use (i.e. residential, commercial and industrial). Under RA 8435 or the Agricultural and Fisheries Modernization Act (AFMA) of 1997, it is government's policy to promote food security, including sufficiency in staple food, particularly rice. In terms of land use, AFMA provides for the protection or non-conversion of all irrigated or irrigable agricultural lands,[2] at least, among the network of protected areas for agricultural and agro-industrial development (NPAAAD) that was supposed to be identified by the Department of Agriculture (DA).

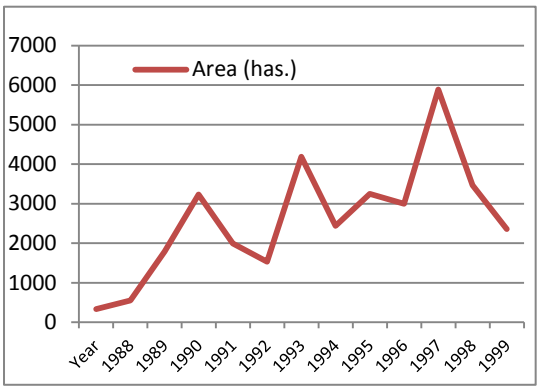
[2] Specifically referring to "all irrigated lands, irrigable lands already covered by irrigation projects with firm funding commitments, and lands with existing or having the potential for growing high-value crops delineated and included within the Strategic Agriculture and Fisheries Development Zones".

Table 2. Summary of Land Use Conversion Applications as of June 2011

REGION	Total Area (in hectares)	
	Approved	Disapproved
Philippines	63,536	9,358
NCR	114	2
CAR	280	101
I	2,174	29
II	361	-
III	9,571	1,127
IV-A	29,046	3,784
IV-B	723	150
V	3,333	419
VI	3,791	795
VII	1,007	558
VIII	1,175	617
IX	128	23
X	3,270	277
XI	5,433	1,061
XII	2,788	256
CARAGA	343	158

Source: CLUPPI Secretariat Report (as of June 2011) and MIS Report (as of December 2010), DAR

Chart 2. Land Use Conversion, 1990s



Source: CLUPPI, DAR In SEPO 2005

However, the non-conversion of the irrigated and irrigable lands was only limited for a period of five years from the effectivity of AFMA, or for the period starting 10 February 1998 to 9 February 2003. In addition, the said law does not provide for the non-conversion of the other agricultural lands under the NPAAAD. The conversion of irrigated and irrigable agricultural lands was allowed on a case-to-case basis, subject to existing laws and issuances governing land use conversion; and in case of conversion, the land owners or developers were required to compensate the government for the expenditure it has made on the land (e.g., cost of irrigation projects).

Similarly, RA 6657 or the Comprehensive Agrarian Reform Law (CARL) of 1988 allows the conversion or reclassification of agricultural lands that were distributed to agrarian reform beneficiaries (ARBs). After the lapse of five years from its award, lands may be converted or reclassified if (1) the land has ceased to be economically feasible and sound for agricultural purposes; or (2) the land will have substantially greater economic value for residential, commercial or industrial purposes as determined by the local legislative body concerned.

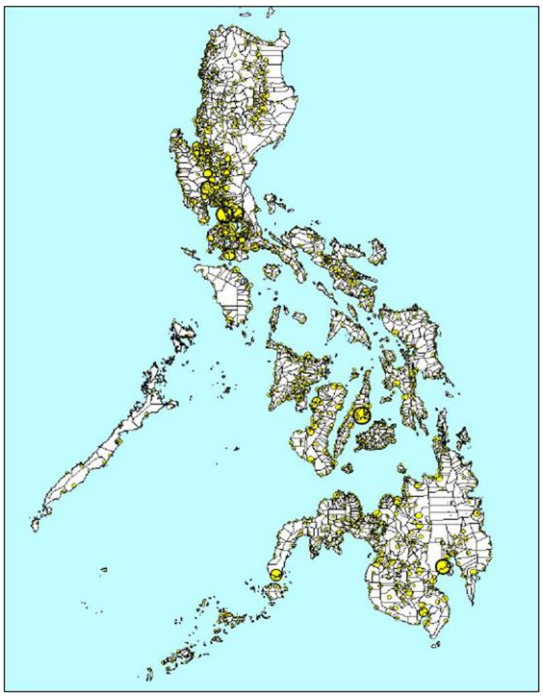
Then again, industrial and housing developments are generally perceived as more viable investments than agriculture, thus most landowners or local government units (LGUs) expecting higher returns would rather use land for non-agricultural purposes (Placino 2010, 7). Furthermore, all lands that were already reclassified by LGUs as commercial, industrial or residential before the effectivity of the CARL (15 June 1988) did not need any conversion clearance from the Department of Agrarian Reform (DAR).[3] Personal or local preferences not in favor of agriculture or agrarian reform contributed to the massive conversion of agricultural lands during the 1990s.

Lands must first be reclassified before land conversion from agricultural to other uses can take place. Section 20 of RA 7160 or the Local Government Code (LGC) of 1991 provides that LGUs, through the passage of an ordinance, may reclassify agricultural lands using the same criteria set under CARL. Reclassification is only limited to a certain percentage[4] of the total agricultural land of a city or municipality at the time of the passage of the ordinance.

[3] Department of Justice (DOJ) Opinion No. 44 Series of 1990.

[4] Highly urbanized and independent component cities may reclassify fifteen percent (15%); component cities and first to third class municipalities may reclassify ten percent (10%); and fourth to sixth class municipalities may reclassify five percent (5%).

Figure 1. Urban Centers in the Philippines, 2007



Source: Cariño and Corpuz 2009

Though the LGC was enacted before the AFMA, food security and rice self-sufficiency were already of national interest at that time and thus executive issuances[5] were issued to exclude irrigated and irrigable lands from LGU reclassification. After AFMA's five-year moratorium on land use conversion, executive issuances were also issued to protect irrigated and irrigable lands, the latest of which was Presidential Administrative Order No. 226-A issued on 14 July 2008. This suspended for two years the processing and approval of all land conversion applications which would affect prime agricultural rice lands.

With RA 9700 or the Comprehensive Agrarian Reform Program Extension with Reform (CARPER) Law of 2009, the importance of irrigated and irrigable lands in achieving food security and self-sufficiency was once more recognized by excluding such lands from land use conversion. Before this however, various issuances relating to an unfavorable reclassification or conversion of agricultural lands have been questioned or challenged by various sectors, particularly those involved in housing and urban development.

2.2. Housing and Urban Development

Among the main types of land use, housing or shelter purposes is the more recognizable requirement. Although food is absolutely necessary, most people do not have to use land to personally produce food and may even avail of those not produced locally. Majority, however, are in need of housing, preferably near locations where there is access to better employment opportunities, specifically in urban areas and centers where most jobs are generated.

In the Philippines, rapid urbanization brought about by a continuously growing population and rural-urban migration has worsened the housing problem. Largely an urban phenomenon, the housing problem is clearly manifested with the proliferation of informal settlements, which are often found in unsafe areas and characterized by unsanitary conditions, congestion, and limited access to basic services, e.g., health centers, schools, waste disposal, safe water supply (HUDCC and PIDS 2009, 27). In Metro Manila, many informal settlers reside in waterways easements and in right-of-way areas of government facilities. This situation poses a risk to public safety and hampers the implementation of infrastructure projects.

Providing socialized or affordable housing remains to be a big challenge for the government. By 2016, it is estimated that the

[5] Presidential Administrative Order Nos. 20 and 363, Memorandum Circular No. 54, and Executive Order No. 124.

Table 3. Housing Need per Region, 2011-2016

REGION	Annual Average	Total
Philippines	955,409	5,732,454
NCR	289,507	1,737,039
CAR	6,945	41,669
I	33,442	200,653
II	20,473	122,834
III	77,978	467,865
IV-A	109,845	659,071
IV-B	19,167	115,003
V	45,888	275,329
VI	62,362	374,171
VII	54,627	327,761
VIII	30,976	185,854
IX	20,899	125,396
X	37,680	226,078
XI	46,998	281,989
XII	32,728	196,368
CARAGA	26,315	157,893
ARMM	39,579	237,476

Source: HUDCC In PDP 2011-2016

total housing need, which includes housing backlog and housing for new households, will reach about 5.7 million (Table 3). Metro Manila alone will require 1.7 million housing units. This figure would translate to roughly about 10,000 hectares of land for detached housing units (HUDCC and PIDS 2009, 25; Cariño and Corpuz 2009, 14).

Aside from the policies that would restrict built-up or urban areas from encroaching in protected areas, including selected agricultural areas discussed in the previous subsection, policies affecting land use on housing and urban development are generally provided by RA 7279 or the Urban Development and Housing Act (UDHA) of 1992. Under the UDHA, it is government's policy to "uplift the conditions of the underprivileged and homeless citizens in urban areas and in resettlement areas by making available to them decent housing at affordable cost, basic services, and employment opportunities". The urban development and housing program under UDHA covers all lands in urban and urbanizable areas, including areas that may be identified by the LGUs as suitable for socialized housing.

Since UDHA was enacted in 1992, it only exempted agrarian reform lands and did not specifically exclude from its coverage the lands that were protected under AFMA, i.e., irrigated and irrigable lands. Public socialized housing projects and urban development in general have thus been dispersed in the regions (Ramos 2000, 6), particularly those which were predominantly agricultural areas around Metro Manila and similar urban centers. On one hand, this may reflect the policy rhetoric of government on urban dispersal, deconcentration and decongestion. On the other hand, it has increasingly led to the process of suburbanization which allows the proliferation of housing subdivisions or the expansion of low-density development in general on the fringes of major cities; and this mainly characterizes urban sprawl, which consumes much more land and simply does not maximize the use and productivity of a very scarce resource.

A higher density housing and urban development strategy is needed to effectively address the housing deficit and provide better access to employment without compromising national food security and environmental integrity. Overall, it is necessary to promote pro-urban strategies that recognizes the role of a city as a prime generator of wealth and acknowledges the fact that a city can more efficiently function as such through the concentration of people, capital, infrastructure and other resources (Ramos 2000, 6). This would contain urban development patterns from encroaching into protected areas.

Table 4. Forestland and Forest Cover by Region (in '000 Hectare)

REGION	Classified Forestland	Unclassified Forestland	Forestland With Forest Cover
Philippines	15,050.32	755.01	6,431.63
NCR	0.63	14.74	2.06
CAR	1,478.48	8.55	639.40
I	442.83	30.27	155.49
II	1,669.59	45.11	1,054.78
III	915.12	27.27	512.88
IV-A	549.88	21.03	224.63
IV-B	1,691.90	55.14	1,068.42
V	511.32	29.87	110.42
VI	602.81	1.52	214.29
VII	459.27	65.64	51.60
VIII	1,076.44	41.77	481.15
IX	810.61	26.66	168.03
X	844.53	52.60	313.69
XI	1,215.17	14.38	416.30
XII	926.40	218.00	329.58
CARAGA	1,332.01	7.79	479.83
ARMM	523.33	94.67	209.09

Source: Status of Land Classification by Province (2009), NAMRIA and Forest Cover of the Philippines (2003), FMB.
Note: Total Classified Forestlands comprise of forest reserves (22%), timberland (67%), and national parks (9%), among others

Approximately, 9 million hectares of land have high mineral potential and 12.66 percent of these are covered by mining tenements as of January 2012.

2.3. Environmental Protection and Natural Resource Development

Policies on land use also recognize the need to protect the environment and its natural resources in view of the requirements of future generations. These are generally provided by (1) Presidential Decree 705 or the Revised Forestry Code of the Philippines (RFCP);[6] and (2) RA 7586 or the National Integrated Protected Areas System (NIPAS) Act of 1992. The RFCP generally provides for the protection, rehabilitation and development of forestlands. Similarly, the NIPAS Law seeks the establishment of a comprehensive system of integrated protected areas (i.e., biologically important public lands including forest areas) ranging from large natural parks, to landscapes and seascapes, to wildlife sanctuaries and small watersheds, among others (Senga 2001, 56).

The increasing demand for human settlement and other non-agricultural purposes has led to the indiscriminate conversion of productive agricultural lands and this, in turn, resulted in the opening of ecologically fragile lands or protected areas. Farmers, for example, encroach into vulnerable and marginal upland areas, including forestlands, for subsistence farming among others in order to augment the demand for food supply and increase income.

Among the factors that affect the sustainable management of forest resources is the absence of forest boundaries, which serve as the starting point towards the resolution of many land use conflicts. While the RFCP already provides for the establishment of forestland boundaries, such delineation and demarcation have not been fully completed. With the various competing land uses, the incomplete delineation of forest boundaries has made the unwarranted encroachment of forestlands inevitable.

Apart from agricultural use, these forestlands and protected areas are also subject to land use for other productive purposes, particularly for the development of a very important natural resource—minerals.

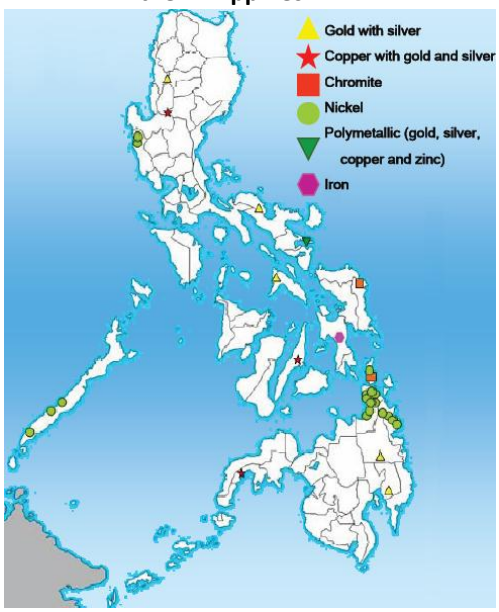
The Philippines is a mineral-rich country with 30 percent of the country's total land area having high mineral potential. The government identifies mining as one of the priority sectors that can contribute to inducing economic growth, attracting investments, and reducing poverty in rural areas. RA 7942 or the

[6] Presidential Decree No. 705, as amended by PD No. 1559, PD No. 865, PD No. 1775, Batas Pambansa (BP) Blg. 701, BP Blg. 83, RA No. 7161, Executive Order No. 277 and 83, O.G. No. 31.

Philippine Mining Act of 1995 provides the legal framework on the use of mineral lands and promotes the rational exploration, development, utilization of mineral resources.

The Mining Act identifies the areas that are open to mining operations, which includes timber or forest lands, among others. Since it was enacted in 1995, it recognizes some areas that are closed to mining, particularly those expressly prohibited under the NIPAS Law. However, under the NIPAS Law, a particular area can only be considered a protected area if it has been declared by Congress or at least initially designated by the President as such. The Mining Act, on the other hand, provides a self-executing provision that does not need any further act of Congress by basically stating that "all mineral resources in public or private lands, including timber or forestlands" are open to mining operations (DENR 2011, 38). This, however, may be resolved internally within the Department of Environment and Natural Resources (DENR), the lead government agency in implementing both the NIPAS Law and the Mining Act. Unlike in the case of prioritizing land for either food security or settlements development which involves various policy actors, the DENR has the sole authority to promulgate rules and regulations to implement the intent of both the NIPAS Law and the Mining Act. Moreover, the DENR issues the necessary permits and clearances for mining operations and should be able to exempt areas it is also mandated to protect.

Figure 2. Location Map of Operating Mines in the Philippines



Source: MGB

3. Changing the Status Quo: Salient Features of SB 3091

To change the status quo, SB 3091 should bridge the major land use policy gaps.

Given the major policy gaps or inconsistent land use policies, the government finds itself in a "policy bind" (Llanto and Ballesteros 2003, 6), wherein government, for example, supports sectors that prefer agricultural use over urban use at some instances; and on other times, favor those sectors that need land for housing, business and other non-agricultural uses. The adoption of a national land use policy is thus necessary to harmonize existing land use policies and guide the resolution of land use conflicts.

This section analyzes the salient features of SB 3091 and suggests other options that may further enhance the bill in effecting a change in the status quo, i.e., bridging the major land use policy gaps discussed in the previous section. Specifically, SB 3091 may do this by (1) striking a balance between allocating sufficient land for food production and maximize space for settlement areas; (2) addressing poor land use in urban areas which is manifested by informal settlements, urban sprawl, traffic congestion, and pollution; and (3) promoting the proper management of land use conflicts within protected areas.

3.1. Protecting Prime Agricultural Lands

To address food security and rice self-sufficiency, Sections 31 and 32 of SB 3091 respectively prohibit the conversion and reclassification of all prime agricultural lands and those covered by CARL pending redistribution. Though not originally used in AFMA, prime agricultural land is defined under SB 3091 as those lands basically covered under the NPAAAD as defined in AFMA. In addition, while the AFMA and the CARPER Law provided the non-conversion of irrigated and irrigable lands, SB 3091 fully protects all prime agricultural lands, which include irrigated and irrigable lands, from conversion. Further, agricultural lands are deemed converted only upon approval of the DAR.

In the case of other agricultural lands, SB 3091 mainly specifies that Section 22 of the CARPER Law will apply as conditions when conversion is allowed, since all other agricultural lands are basically covered by CARPER. Pending the expiration of the CARPER Law by 2014 however, SB 3091 may include a provision reiterating the conditions for conversion, that is, (1) when the land ceases to be economically feasible and sound for agricultural purposes; or (2) when the locality has become urbanized and the land will have a greater economic value for other purposes.

Further firming up of the said conditions may be necessary considering the implications of the following: (1) urban areas under UDHA refer to all cities, and municipalities with a population density of at least 500 persons per square kilometre; (2) the LGC adopts a criteria for cityhood that tends to increase the number of localities considered as cities; (3) land will naturally have a greater economic value for non-agricultural purposes; and (4) the program of providing land for the tillers is based on concepts of welfare and social justice and not on overall economic benefits that may be derived from the utilization of such land.

On the reclassification of agricultural lands by LGUs, SB 3091 may include a provision specifically stating that the DA shall first certify that agricultural lands to be reclassified into non-agricultural uses are not prime agricultural lands and therefore, eligible for reclassification.

Lastly, SB 3091 may also make clearer the definition of prime agricultural lands and exclude or modify the phrase “all rain-fed areas planted to rice and other crops” as it basically refers to all agricultural lands and defeats the purpose of distinguishing prime agricultural lands from other agricultural lands.

3.2 Improving Settlements Development

Chapter 7 of SB 3091 provides for the zoning of settlement areas guided by urban zoning standards designed to maximize existing urban spaces. It limits the establishment of settlement areas on alienable and disposable lands in order to avoid further degradation of forestlands. It also allows settlements in geo-hazard areas subject to the implementation of mitigation measures; and provides for the designation of socialized housing zones, sanitary landfill, and urban forest or green space in each city or municipality. Section 46 of SB 3091 essentially reinforces the provisions of UDHA (Section 8) on socialized housing while in Section 45 the provisions of RA 9003 or the Ecological Solid Waste Management Act of 2000 are primarily reiterated.

Aside from limiting settlement areas in alienable and disposable (A&D) lands, SB 3091 may comprehensively provide criteria for identifying settlement areas. Typically, areas that may be considered suitable for human settlement are those that are: (1) within A&D lands but not in environmentally-critical, geo-hazard or other protection areas; (2) along established urban growth directions; (3) with or can be provided with basic services and utilities; (4) ideally within the zero to eight percent (0-8%) slope range; and (5) reasonably accessible from existing built-up areas and other employment centers through existing or proposed roads and other transportation facilities (NEDA 2007,98).

Furthermore, SB 3091’s proposal to exempt housing projects within residential zones from securing Environmental Compliance Certificate (ECC) and Engineering Geological and Geo-hazard Assessment Report (EGGAR) should be reconsidered. Since the

bill allows new housing projects or new developments in general within geo-hazard areas, it should still require the submission of the ECC and the EGGAR regardless if such area has been designated as residential zones in land use plans. It may also include a provision that promotes sustainable communities that are transit-oriented, pedestrian-biased, multiple use, and with systems and practices that promote water use efficiency, energy efficiency, waste segregation and recycling.

To maximize existing urban spaces and contain urban development patterns from encroaching into protected areas, SB 3091 may include a specific provision that will (1) discourage urban sprawl; (2) encourage higher density housing or built-up areas before expanding to new settlement areas; and (3) acknowledge the economic efficiency of concentrating people, capital, and resources in key urban centers or cities.

To accommodate the concentration of people in denser urban centers, SB 3091 may likewise include provisions for the establishment of strategic multimodal transport network and other infrastructure facilities. This will also influence a more rational pattern of development and will enhance the physical connectivity among rural areas, urban centers, key cities and municipalities, production hubs, and distribution centers and markets.

3.3 Protecting Critical Areas through Sustainable Development

Sections 32 to 34 of SB 3091 provide for the reversion of alienable and disposable lands to forestlands; the identification and delineation of critical watershed areas; and the formulation and implementation of integrated watershed management plans. While SB 3091 also enumerates key prerequisites necessary for the rational allocation of these lands (e.g., implementation of a National Base Mapping Program in Sections 25), it does not provide for the delineation of forestland boundaries which is the first step in the management of the forest areas. Pursuant to the RFCP, SB 3091 may reiterate that the DENR complete the delineation of forestland boundaries on the ground, within a reasonable period or at least within five years from the effectivity of the NaLUA. Boundary surveys once completed and ready for legislation will essentially set the specific areas where no other land use may prevail.

In addition, SB 3091 may also include a provision on the establishment and management of national parks, which shall include all areas under the NIPAS. This would practically proclaim as protected areas those that were already designated by the President as such pending Congressional proclamation, and those identified as initial component of the NIPAS.

On sustainable mining, Sections 39 and 40 of SB 3091 provide the criteria for the utilization and allocation of land for mining purposes and the reversion of mineral lands, respectively. SB 3091 reiterates in Section 39 that protected forestlands and agricultural lands are exempted from any mining activities. This basically reiterates the major points of the Mining Act in relation to land use.

SB 3091 also has provisions for other areas such as industrial development areas (Sec. 48) and tourism and heritage areas (Sec. 49). The latter was made consistent with the provisions of recently passed laws: that (1) Tourism Enterprise Zones shall be established in line with RA 9593 or the Tourism Act of 2009; and that (2) Heritage zones shall be established to protect the historical and cultural integrity of an area in line with RA 10066 or the National Cultural Heritage Act of 2009.

3.4 Imposing Stricter Sanctions and Penalties

SB 3091 provides for stricter sanctions and penalties, the most notable of which are as follows:

(1) Imposition of fines ranging from 6 to 50 percent of the zonal value of the subject land and full or partial revocation of conversion order for failure to commence development after one year upon issuance of approved Conversion Order or complete development within a specified time frame;

(2) Forfeiture of salaries and allowances and suspension for LGU officials or employees responsible for the failure of formulating/updating,

enforcing, and/or implementing the Comprehensive Land Use Plan (CLUP);

(3) Imprisonment of 7 to 12 years or a fine not lower than PhP100,000.00, or both, at the discretion of the court, for illegal or premature conversion of agricultural lands. If the offender is a public official or employee, the penalty shall include dismissal through permanent separation from the service and forfeiture of all benefits and entitlements accruing to the public position and perpetual disqualification to run or apply for any elective or appointive public office. If the offender is a juridical person, imprisonment shall be imposed on all board members and officers and the fine shall be equivalent to the zonal value of the land or 40 percent of the stockholders' or partners' equity.

3.5 Institutionalizing Planning and Implementing Mechanisms

Aside from imposing stricter penalties, SB 3091 goes through great lengths of ensuring its proper implementation by emphasizing the importance of planning. It reiterates the hierarchy of land use and physical framework plans[7] currently prepared by development councils at the national, regional, and local level (i.e., the National Economic and Development Authority Board, and the Regional/Local Development Councils). This recognizes that the issue on the allocation of land to various uses is both location-specific and sector-specific and therefore should be addressed by LGUs and national government agencies (NGAs) through an iterative process of a combined bottom-up and top-down approach in planning.

Planning in such context, however, emanates from overall state policy and thus a part of policy implementation, not formulation. Since a national land use policy will harmonize existing land use policies, there is not so much need to include in SB 3091 the vast elaboration of planning considerations, plan document descriptions, planning body responsibilities, and plan implementation strategies, all of which are already institutionalized and/or highly recognized. Again, the problem is not so much on planning per se but rather on (1) the capacity of the planning bodies, particularly at the local level; (2) the inadequacy of national government agencies in providing a unified long-term strategic direction; and (3) the difficulty of translating land use policies that are "unclear and inconsistent" into coherent plans and programs.

Nonetheless, SB 3091 in Chapter 5 reiterates a familiar structure and mechanism that would facilitate the implementation of the national land use policy primarily through the preparation of land use and physical framework plans indicated in Chapter 3. For the most part, SB 3091 in Sections 20 and 21 utilize existing government structures particularly the development councils or planning bodies at the local level in accordance with the LGC.

At the national level however, Section 14 of SB 3091 creates under the Office of the President a National Land Use Commission (OP-NLUC). It will be chaired by the President, with the NEDA Director General and the DENR Secretary as the Vice Chairpersons, and will be comprised of concerned Cabinet Secretaries and selected sectoral representatives as members. Among its major functions are on (1) planning, i.e., to formulate the National Physical Framework Plan (NPFP); and (2) conflict resolution, i.e., to resolve land use policy conflicts between or among agencies, branches, or levels of government.

While the intention of creating a Commission under the Office of the President is to ensure policy and plan implementation and guarantee the highest degree of accountability, a closer analysis of the related provisions may reveal some inherent problems on the creation of the proposed Commission vis-à-vis the current government system on policy coordination and planning.

First, is on the existence of an institution with similar composition and function—the NEDA Board. The NEDA Board, also headed by the President and composed of most Cabinet Secretaries as members, has a Constitutional mandate to act as the country's premier social, and economic development planning and policy coordinating body. The NEDA Board is

[7] i.e., National Physical Framework Plan (NPFP), Regional Physical Framework Plans (RPFP), Provincial Development and Physical Framework Plans (PDPFP), Comprehensive Land Use Plans (CLUPs).

primarily responsible for "formulating continuing, coordinated and fully integrated social and economic policies, plans and programs". This is why it is tasked to prepare plans such as the Medium-Term Philippine Development Plan (MTPDP) in coordination with all concerned government agencies. Given that the National Physical Framework Plan (NPFP) is a spatial integration of social and economic development objectives of all development sectors, it is practically a long-term Philippine Development Plan (PDP) and thus rightfully under the mandate of the NEDA Board.

The NEDA Board itself, not just a committee or even a council under it, should have the primary responsibility and accountability for the NPFP, much like how it is responsible and accountable for the MTPDP (i.e., currently the PDP 2011-2016). Similarly, other development councils (i.e., regional and local) should be responsible and accountable for their respective physical framework or land use plans.

Second, the concept of a functional or viable secretariat support for OP-NLUC is not provided. Per SB 3091, the OP-NLUC Technical Secretariat will only be composed of representatives of member agencies with a rank not lower than Director level. While the Policy and Planning Unit of HLURB is assigned as the core secretariat, it is not clear whether this would be on a permanent basis given that HLURB has other functions pursuant to its mandate. This arrangement might also present a conflict of interest since HLURB is a sectoral agency.

Lastly, it is unclear why or how the OP-NLUC will (1) resolve land use policy conflicts between or among *branches* of government, much like a Supreme Court; and (2) act as the "highest policy making body on land use", much like Congress.

To avoid the unnecessary duplication of agency functions and responsibilities, SB 3091 may recognize that the overall land use and physical planning function is properly lodged under the NEDA Board, which has at its disposal the entire NEDA Secretariat for research and technical support in the preparation of an NPFP.

4. Conclusion: Deciding on the NaLUA

Land use conflicts are unavoidable, and are likely to intensify as population increases. The issue of how to allocate land to competing uses goes beyond enforcing existing policies. The land use policy and implementation gaps reflect the lack of a common appreciation by various policy actors and sector stakeholders on the trade-offs involved in the current policy thrusts (Corpuz 2011, 6). There is a need to understand, for example, that implementing food self-sufficiency and corresponding prohibitions on agricultural land conversion may have consequences on economic growth and employment generation, given that this affect the expansion of urban areas where most jobs are generated. In the same respect, not containing urban development patterns may also have consequences on poverty reduction, given that this leads to continued agricultural land conversion that will affect the lives of most of the poor which rely on agriculture for their livelihood.

In resolving land use conflicts, policymakers should decide to enact a national land use policy that will address policy gaps and harmonize existing land use policies. Greater consideration should, however, be given to policies on the (1) protection or sustainability of key production areas or employment activities particularly those in the rural areas which would greatly contribute to achieving poverty reduction, social welfare, social justice and inclusive growth; (2) promotion of denser, integrated and connected urban areas, with affordable higher density housing, and conducive to commercial and industrial activities; and (3) protection of critical areas and other vital natural resources.

This Policy Brief was principally prepared by Mr. Paolo Neil S. Navata with inputs from Microeconomics Sector Head Peter Anthony S. Turingan under the supervision of SEPO Directors and the overall guidance of its Director General.

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