



MANAGING THE PHILIPPINE FORESHORE: A GUIDE FOR LOCAL GOVERNMENTS

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EcoGovernance



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ACRONYMS

BFAR	- Bureau of Fisheries and Aquatic Resources
CRMP	- Coastal Resource Management Project
CBFMA	- Community-Based Forest Management Agreement
CBFMSA	- Community-Based Forest Management Special Account
CENRO	- Community Environment and Natural Resources Officer
CRMF	- Community Resources Management Framework
CDMP	- Comprehensive Development and Management Plan
CDA	- Cooperative Development Authority
DA	- Department of Agriculture
DENR	- Department of Environment and Natural Resources
DAO	- Department of Environment and Natural Resources Administrative Order
DILG	- Department of the Interior and Local Government
DPWH	- Department of Public Works and Highways
DOT	- Department of Tourism
ECC	- Environmental Compliance Certificate
EcoGov	- Philippine Environmental Governance Project
EIS	- Environmental Impact Statement
EO	- Executive Order
FLA	- Fishpond Lease Agreements
FLC	- Foreshore Lease Contract
FLAg	- Forest Land use Agreement
FLAgT	- Forest Land use Agreement for Tourism Purposes
FLUP	- Forest Land use Plan
HLURB	- Housing and Land Use Regulatory Board
IEE	- Initial Environmental Examination
JMC	- Joint Memorandum Circular
LGU	- Local Government Unit
MOA	- Memorandum of Agreement
NGO	- Non-Governmental Organization
PO	- People's Organization
PPA	- Philippine Ports Authority
PTA	- Philippine Tourism Authority
PD	- Presidential Decree
PAMB	- Protected Area Management Board
PENRO	- Provincial Environment and Natural Resources Officer
PEA	- Public Estates Authority
RED	- Regional Executive Director
RTD	- Regional Technical Director
RA	- Republic Act
SEC	- Securities and Exchange Commission
SMP	- Site Management Plan
USAID	- United States Agency for International Development

MANAGING THE PHILIPPINE FORESHORE: A GUIDE FOR LOCAL GOVERNMENTS¹

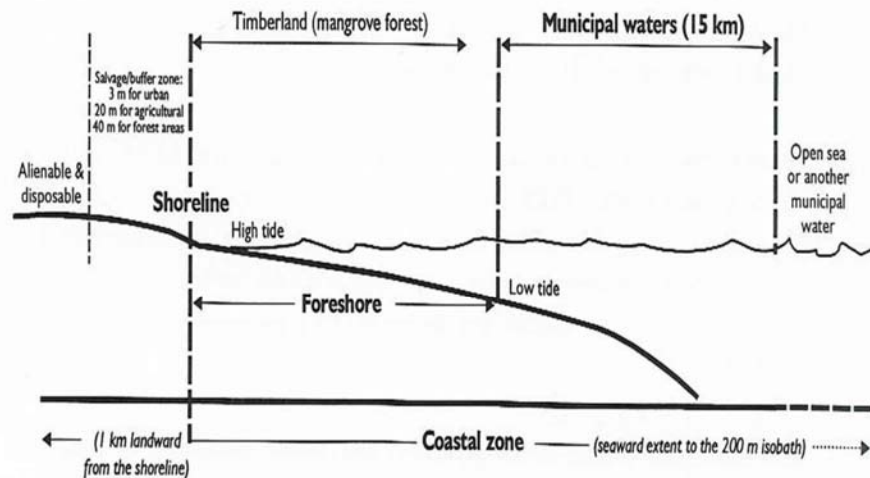
INTRODUCTION

WHAT IS “FORESHORE”?

The Philippine Fisheries Code of 1998 defines the term “foreshore” as a “string of land margining a body of water; the part of a seashore between the low water line usually as the seaward margin of a low tide terrace and the upper limit of wave wash at high tide usually marked by a beach scarp or berm.”

In The Law on Public Land Conflicts in the Philippines by Alfonso S. Borja, “foreshore” was defined as “that part of the land adjacent to the sea, which is alternately covered and left dry by the ordinary flow of the tides.” Department Order No. 34², issued by the Department of Environment and Natural Resources (DENR) in 1999 appears to give a simpler definition; it says “foreshore” refers to that “part of the shore which is alternately covered and uncovered by the ebb and flow of the tide.”

In a paper commissioned by the Coastal Resource Management Project (CRMP) entitled “A Crowded Shoreline: Review of the Philippines’ Foreshore and Shoreland Management Policies,”³ author Atty. Jay L. Batongbakal, CRMP legal consultant, says, “the foreshore is a part of the coast; it divides the land and the sea.” The term “foreshore”, he added, “is a legally-accepted term under Philippine law denoting the strip of land that is covered and uncovered by the movement of the tides of the sea.”



A diagrammatic representation of the foreshore area and other features in the coastal zone
(Source: Land Management Bureau).

Perhaps this illustration could provide a better understanding of the term “foreshore”.

¹ Prepared by Ferdinand Esguerra and Wilman Pollisco with inputs from Annette Meñez.

² Rules and regulations governing the administration, management and development of foreshore areas, marshy lands and other lands bordering bodies of water

³ This paper may be downloaded from the CRMP website (oneocean.org)

WHY IS IT IMPORTANT TO MANAGE THE FORESHORE?

The Philippines has a coastline measuring about 17,462 km long (based on this, one may be able to approximate how long the Philippine foreshore area is). Sixty percent of Filipinos (estimated population: 84 million in 2004) reside in the coastal zone, where 60 percent of municipalities are located.⁴

It is in the foreshore lands where mangroves are found; mangroves are important coastal habitats that nurture marine life. It is also in the foreshore where wharves, piers, ports, dockyards and fish

The foreshore provides livelihood to millions of Filipinos; it is also a source of revenue for local and national governments.

canneries are established. Beach resorts, including hotels, rest houses and restaurants are also found in the foreshore lands. This area is also converted into fishponds or reclaimed to give way to residential, commercial and industrial uses. The foreshore provides sand and gravel for construction and offers a place for fishermen to dry their fish and for farmers to dry their copra.

In other words, aside from providing aesthetic value and contributing its share to the coastal ecosystem, the foreshore is a source of livelihood for millions of Filipinos; it is also a source of revenue for local and national governments.

With so much at stake and with so many people affected, how can one not consider managing the foreshore area properly?

WHO IS REALLY IN-CHARGE?

The Philippine foreshore is one area where rapid development is taking place. The sprouting of beach resorts and hotels along coastlines to attract local and foreign tourists, the establishment of wharves and ports to facilitate transport of people and goods from one place to another and the reclamation projects in many parts of the country to accommodate residential, commercial and industrial estates are among the many activities now going on in the Philippine foreshore areas.

With progress, come the various problems: environmental pollution, conversion of mangroves into other uses, illegal reclamation, squatting, and many more. What makes matters worse is not that there is no agency responsible and accountable for overseeing the development in the foreshore area but that there are so many who exercise authority over the foreshore areas.

There are several government agencies which have jurisdiction over the foreshore. In addition to the national laws and local ordinances promulgated to govern foreshore development, these agencies issue their own orders, requirements, permits and tenure instruments.

WHY SHOULD LOCAL GOVERNMENT UNITS (LGUS) TAKE AN ACTIVE ROLE IN FORESHORE MANAGEMENT?

It is in the LGUs' interest to ensure that the foreshore lands falling within their territorial jurisdiction are placed under effective management. The foreshore provides livelihood to their constituents and generates income for the LGUs. By taking care of the foreshore, LGUs also take care of the mangroves and other natural resources that are very important in maintaining the balance of the coastal ecosystem.

⁴ Based on a material presented by the Bureau of Fisheries and Aquatic Resources (BFAR) during the "Assessment on Foreshore and Shore Land Management in Central Visayas" held in Bohol in November 2003.

Coordinating with various national agencies involved in foreshore management is one big task which the LGUs have to perform. This mandate is clearly spelled out under Section 3 (i) of Republic Act 7160 (The Local Government Code of 1991), which states that the *“LGUs shall share with the national government the responsibility in the management and maintenance of ecological balance within their territorial jurisdiction subject to the provisions of this code and national policies.”*

LGUs do have the power and authority to influence, if not regulate, foreshore management and development. For instance, Joint Memorandum Circulars 98-01⁵ and 2003-01⁶, signed by DENR and the Department of the Interior and Local Government (DILG), state that the LGUs shall be consulted before any tenure instrument involving forest lands (mangrove areas included) is issued by the DENR.

Republic Act (RA) 7160, otherwise known as the Local Government Code of 1991, devolved a number of functions to LGUs, including the power to enact comprehensive land use plans and regulate the use of property and business activities (through issuance of permits, etc.). Section 447 (a)(2)(vii) of the Code says the municipality, through its Sanggunian, has the power to *“adopt a comprehensive land use plan: Provided, that the formulation, adoption, or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan..”* The municipality, under Section 447 (a)(2)(viii) may also reclassify land within its jurisdiction and under Section 447 (a)(2)(ix) enact integrated zoning ordinances. The cities have similar powers under Section 458(2)(vii), (viii) and (ix).

This pamphlet aims at helping LGUs improve local implementation of foreshore lands management by briefly discussing issues in the foreshore, providing suggestions on how these problems could be addressed, and citing major tenure instruments and permits issued for these areas.

Primarily intended for LGU officials and their staff, this publication may also be of use to Non-Governmental Organizations (NGOs), people’s organizations, the private sector and field staff of national agencies involved in foreshore management and development.

⁵ Manual of Procedures for DENR-DILG-LGU Partnership on Devolved and other Forest Management Functions, 1998.

⁶ Strengthening and Institutionalizing the DENR-DILG-LGU Partnership on Devolved and Other Forest Management Functions, 2003.

COMMON ISSUES AND PROBLEMS AFFECTING THE FORESHORE AREAS (AND SOME OF THE POSSIBLE ACTIONS THE LGUS CAN TAKE)

Many of the existing rules and regulations governing the management and development of the foreshore areas were based on the Public Land Act (Commonwealth Act No. 141) that was enacted in 1936. More than 60 years have passed since then, yet, according to legal pundits, no significant law or amendment to this Act, particularly pertaining to the management of the foreshore, has ever been enacted, prompting policy observers to refer to the country's regulations concerning foreshore as "Jurassic."⁷

INCOMPATIBLE POLICY INSTRUMENTS, INSTITUTIONAL CONFLICTS

Local governments, being in the forefront of resource management -- as they are where the resource is -- are in a better position to effectively coordinate management and development of the foreshore areas.

In his paper entitled "Anatomy of Conflicts Over Complex Resource Regimes", Dr. Ben S. Malayang III, a senior consultant of the Philippine Environmental Governance Project, stressed the need to update the age-old policies governing foreshore lands. In addition, he lamented the fact that many policy instruments issued by national government institutions and agencies tend to be incompatible with each other, as one agency's mandate may be different from the other.

For Foreshore Lease Contracts (FLCs) and mangrove management, one has to go to the DENR. For designation of foreshore lands as reservations for fish sanctuaries and as mangrove cultivation areas, one has to go to the Department of Agriculture (DA)/Bureau of Fisheries and Aquatic Resources (BFAR). BFAR is also the agency responsible for issuance of Fishpond Lease Agreements (FLAs). Zoning of foreshore lands is within the authority of the LGUs, but they have to secure the approval of the Housing and Land Use Regulatory Board (HLURB). The Philippine Ports Authority (PPA) is the agency in charge of management and development of port zones. Then there is the Public Estates Authority (PEA) in charge of reclamation projects, the Department of Public Works and Highways (DPWH) that issues permits for the structures in the foreshore areas, and the department of Tourism and Philippine Tourism Authority (PTA) and so on and so forth.

Foreshore regulatory bodies

DENR – for mangrove management, issuance of FLCs, special use permits, other instruments
DA/BFAR – designates foreshore lands as reservations for fish sanctuaries, as mangrove cultivation areas
LGUs – zoning of foreshore lands within their territories; abatement of nuisance
HLURB – approves the land use plans/zoning ordinances of LGUs
DPWH – approval of construction of permanent improvements
PPA – management and development of port zones
DOT/PTA – management of tourism zones
PEA – for reclamation projects
Courts – judicial abatement of nuisance

Possible recourse: In addition to coming up with updated policies (which may take some time) that meet the requirements of the times, policy observers suggest that issuance of these instruments be harmonized to avoid confusion, improve foreshore management and ensure that real foreshore development takes place.

It was pointed out that the LGUs, being the front liners in resource management – as they are where the foreshore is – are in a better position to coordinate effective foreshore

⁷ Page 13, Proceedings of the Workshop on Assessment of Foreshore and Shore land Management in Central Visayas, 2003.

management and development, including the issuance of instruments covering foreshore areas within their respective jurisdictions, with concerned government agencies. LGUs may also resort to their local legislative powers to regulate foreshore use.

In the same paper, Malayang said procedures for enforcement of policies and instruments are often unclear and the basis of valuation of foreshore and adjoining areas (used as basis for computing fees and taxes) are also somewhat vague, if not outdated.

Possible recourse: As LGUs are required to be consulted before permits or agreements are granted, LGUs should assert their right and see to it that they play a key and very clear role in the enforcement strategy and, through their respective leagues, participate actively in the discussion on standardization of valuation techniques involving foreshore lands.

OTHER MAJOR ISSUES

Experts meeting during the “*Assessment of Foreshore and Shore Land Management in Central Visayas*” held in Bohol in November 2003 discussed other major issues afflicting the management and development of foreshore areas. Some of these issues and possible actions LGUs can do to address them include⁸:

DIFFICULTIES IN CLASSIFYING FORESHORE LANDS

This issue arises where relative positions of the foreshore (e.g., when land on shoreline ends abruptly in a cliff), adjacent shore lands and presence of public forests (e.g., mangroves) or infrastructure (e.g., coastal roads) make it hard to classify the land area, resulting in difficulty to determine the legal requirements that have to apply.

Land classification determines what agency is responsible and what regulatory measures or tenure instruments are applicable. For instance, in foreshore areas with mangroves, the DENR is the responsible national government agency. Mangrove areas are considered part of the forest that is why in this case, regulations governing forest lands—not those applicable to foreshore areas—should be used.

Classification issues involving foreshore areas may be resolved by enacting a comprehensive LGU land use plan and zoning ordinances.

Possible recourse: As mentioned earlier, the LGU may enact a comprehensive land use plan and integrated zoning ordinances that include the foreshore land. It can also reclassify land within its jurisdiction. Even agricultural lands (which may include foreshore areas previously planted to coconut trees or nipa) may be reclassified by LGUs, under Section 20⁹ of the Local Government Code of 1991.

LIMITED ACCESS

Everyone has the right to have access to the shore. Yet, in many areas, such access is often denied the public because of permanent structures (either private, such as walls or fences constructed by owners of adjacent lands, or public, such as wharves, seawall, causeways).

⁸ These issues, including possible LGU actions, are discussed comprehensively in the paper “*A Crowded Shoreline: Review of the Philippines’ Foreshore and Shore Land Management Policies*,” _____.

⁹ (a) A city or municipality, may, through an ordinance passed by the sanggunian after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition xxx.”

Article 51 of Presidential Decree (PD) No. 1067, otherwise known as The Water Code of the Philippines¹⁰, states that *“the banks or rivers and streams and the shores of the seas and lakes xxxxx, are subject to the easement of public use xxxxx. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, frottage, fishing or salvage or to build structures of any kind.”*

Unauthorized obstruction of the seashore is punishable by fine or imprisonment or both.

Article 91 of the same decree penalizes *“unauthorized obstruction of a river or waterway, or occupancy of a river bank or seashore without permission”* with a fine exceeding ₱3,000 but not more than ₱6,000 or imprisonment exceeding three years but not more than six years or both fine and imprisonment.

Possible recourse: In a paper presented during the “Assessment of Foreshore and Shore Land Management in Central Visayas,” held in Bohol in 2003, Atty. Rose-Liza Eisma-Osorio, Executive Director of the Coastal Conservation and Education Foundation, Inc., suggested that LGUs regulate the construction and maintenance of residences, buildings and other structures, both public and private, within and adjacent to the foreshore and shore lands to ensure public access and safety. She also suggested that LGUs, through its local legislative powers, supplement setback zones with additional safety zones and building restrictions as may be required.

In addition, the LGU, in cases of foreshore areas covered by lease agreements with national agencies, may invoke the provision automatically included in such agreements that the lease “is subject to the easements reserved by law of waters” now in force in the Philippines. The LGU may also have these structures, hindering access to the shore, be declared by the court as “nuisance” and have them abated or removed.

ENSURING PUBLIC SAFETY

Related to the “access” issue is the need to ensure public safety in foreshore lands. It must be noted that this access issue is brought about by structures that impede the public’s right to access the shore. Squatting is a pervasive problem in foreshore areas. Such practice presents a clear hazard to squatters themselves, especially during typhoon season when the possibility of their shanties being washed away is great. Shanties that block waterways increase the danger of flooding which affects a lot of people.

There are also problems involving private and public structures, such as seawalls, that present a danger of collapsing as they are located in the foreshore area which may not be so stable. These structures may also hasten the erosion of the coastline.

Possible recourse: LGUs may invoke the provisions of PD 1096 issued in 1977, entitled “Adopting a National Building Code of the Philippines Thereby Revising Republic Act No. 6541,” which requires structures to be constructed at a safe distance from the sea or other bodies of water.

Article 51 of the Water Code of the Philippines identifies certain areas from the foreshore as salvage/buffer zone that are subject to the easement of public use and, thus, no permanent structure shall be allowed that will result in public endangerment. Again, pursuant to the Local Government Code, the LGUs may use its legislative powers to regulate the use of these areas.

¹⁰ Issued in 1976, this is a decree instituting a water code in the country, which revised and consolidated the laws governing the ownership, appropriation, utilization, exploitation, development conservation and protection of the Philippine water resources.

INDISCRIMINATE USE OF THE RESOURCE

Another issue is the indiscriminate extraction of sand and gravel from beaches and foreshore areas which accelerates the rate of coastal erosion. Under Section 138 of the Local Government Code, it is the provincial governor, pursuant to the ordinance of the Sangguniang Panlalawigan, who has the exclusive authority to issue the permit to “extract sand, gravel and other quarry resources” from public lands or from beds of seas, lakes, rivers, streams, creeks and other public waters within its territorial jurisdiction.

In addition to quarrying projects, activities in the foreshore areas include extraction of mangrove products and development projects that require the conversion of mangrove areas into fishponds, many of which are later abandoned.

In a lot of cases, this issue has resulted in so much destruction in the coastal area that far outweighs the economic benefits (in terms of shares from taxes and fees) that LGUs get.

LGUs have to be consulted before any project or program, that may have an impact on the natural resources falling under their jurisdiction, is implemented.

Possible recourse: Conversion of mangrove areas is no longer allowed under Section 94 of the Fisheries Code of 1998, which explicitly says, “It shall be unlawful for any person to convert mangroves into fishponds or for any other purposes.”

LGUs should assert their right to be consulted as provided for in Section 27 of the Local Government Code which states, “No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 (of this Code) are complied with xxxx.”

Section 2 (c) requires “all national agencies and offices to conduct periodic consultations with appropriate local government units xxxx before any project or program is implemented in their jurisdictions.” Section 26, meanwhile, says, “It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources xxxxx to consult with the local government units xxxx and explain the goals and objectives of the project or program, its impact upon the ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.”

An LGU may also invoke its constituents’ right to be part of the environmental impact assessment process. Section 12 of the Fisheries Code of 1998 states that “all government agencies as well as private corporations, firms and entities who intend to undertake activities or projects which will affect the quality of the environment shall be required to prepare a detailed Environmental Impact Statement (IES) xxx.” pursuant to the provisions of PD 1586 (1978) that established the EIS system. Under Article IV of DENR Administrative Order (DAO) No. 37, Series of 1996 (revising DAO 21, Series of 1992, to strengthen the EIS system), the public shall be informed of the project (Section 2) and be consulted (Section 3).

REGULATING ACTIVITIES OF RIPARIAN OWNERS

The doctrine of riparian rights says that owners of lands adjacent to a body of water (such as a stream) have the right to use the water. In the Philippines, ‘riparian owners’ also have preferential rights to use the foreshore adjacent to their property. Paragraph 4 of Lands Administrative Order No. 8-3, Series of 1936 (as amended) says that “The (riparian) owner of the property adjoining shore or marshy lands, or lands covered with water bordering upon the shores or banks of

navigable lakes or rivers, shall be given preference to apply for such lands adjoining his property as may not be needed for the public service xxxx.”

The problem arises from the unregulated practice of many riparian owners in exercising their right to be in charge of, or gain control over, the area adjacent to their property only to lease the newly possessed area to other persons. Policy observers say there is a dearth of policies or regulations that could effectively address the relationship between the tenure instrument granting agency (such as the DENR) and the sub-lessee.

Possible recourse: Local governments can still regulate the activities of the lessees, even the sub-lessees, in accordance with existing laws and ordinances, and subject to the ordinance-making powers of the LGU. In addition, an LGU may invoke Section 18 of DENR Administrative Order No. 34 (DAO 99-34) issued in 1999, which specifically says that *“the lessee shall not assign, encumber or sublet his rights of the lease without prior consent issued by the Provincial Environment and Natural Resources Officer (PENRO), the DENR Regional Executive Director (RED) or the DENR Secretary and violation hereof shall void the contract xxxx.”*

COMMONLY ISSUED TENURE INSTRUMENTS INVOLVING THE FORESHORE AREAS¹¹

COMMUNITY-BASED FOREST MANAGEMENT AGREEMENT (CBFMA)

Governing policies: Executive Order (EO) No. 263 of 1995 (Adopting community-based forest management as the national strategy to ensure the sustainable development of the country's forestlands resources and providing mechanisms for its implementation); **DAO 96-29** issued in 1996 (EO 263 Implementing Rules and Regulations); **EO 318** issued in 2004 (Promoting Sustainable Forest Management in the Philippines); **DAO 30 issued in 1994** (Implementing guidelines for NGO-assisted community-based mangrove forest management for the DENR); **DAO 15** issued in 1990 (Regulations governing the utilization, development and management of mangrove resources); **Section 17 (2)(ii) and (3)(iii) of the Local Government Code**; and **DAO 98- 10** issued in 1998 (Guidelines on the establishment and management of community-based forest management projects within mangrove areas).

What is a CBFMA?

It is a production sharing agreement entered into by and between the government (DENR) and a community, for the latter to develop, utilize, manage, and conserve, a specific portion of the forest lands, consistent with the principles of sustainable development and pursuant to a Community Resources Management Framework (CRMF)

What is the validity of CBFMA?

- The CBFMA has a validity of 25 years renewable for another 25 years.

Who are qualified to apply for a CBFMA?

- The local communities as represented by their organizations, herein referred to as peoples' organizations (POs), must have the following qualifications:
 - Members shall be Filipino citizens
 - Members shall either be:
 1. Actually tilling portions of the area;
 2. Traditionally utilizing the resource as their primary source of livelihood;
 3. Actually residing within or adjacent to the areas covered by the CBFMA application

In case of married members, the names of both spouses should be listed.

Who shall endorse the CBFMA?

- All CBFMAs shall be endorsed by the concerned legislative councils of the barangay, municipal and/or provincial LGUs, depending on the jurisdiction and coverage of the area.

Who approves a CBFM agreement?

- PENRO, for areas up to 5,000 ha
 - RED, for areas more than 5,000 has. up to 15,000 ha

¹¹ In addition to the different laws, rules and regulations, the following publications were also used as references: "DENR Guidebook on Permits and Licenses for Investors," DENR Region 7, 2002; "Legal and Jurisdictional Framework for Coastal Management," CRMP, 2001.

- USEC for Operations, for areas more than 15,000 ha up to 30,000 ha
- The DENR Secretary, for areas more than 30,000 ha

What are the requirements?

- Letter of intent of PO
- Certificate of PO registration
- List of officers
- List of members and addresses, including names of spouses
- Resolution from the members authorizing the officers of the community organization to file the application
- Endorsements of barangay and municipal councils (and provincial, if needed)

What's the procedure?

- Submit all documents to the Community Environment and Natural Resources Officer (CENRO)
- CENRO reviews all documents and prepares the corresponding map of the area at 1:50,000 scale
- If found complete and in order, CENRO endorses all documents to the RED through the PENRO
- A Review Committee composed of representatives of the Regional Technical Director (RTD) for Forestry, CENRO, PENRO, barangay, municipal, and provincial councils and the Protected Area Management Board (PAMB), if within a protected area, shall convene and discuss with the PO the terms and conditions to be included in the CBFMA
- Approved CBFMA will be transmitted to the PO concerned (copy furnished to the Regional Office, PENRO, and CENRO)
- PO prepares their comprehensive CRMF plan using the map as basis for spatial planning.

What are some of the duties/responsibilities specified in the CBFMA?

- **Tenure holder** – Prepare/implement plans for the development, management, utilization, conservation and protection of the area, including resource use plans; promote transparent and participatory management; pay forest charges (for timber/non-timber products harvested from areas outside the plantations).
- **LGU and DENR** – Monitor implementation in the area; provide technical and other assistance to the tenure holder.

What does the EO 263 specify?

- The DENR, through the CENRO, in coordination with LGUs and the DILG shall take into account the needs and aspirations of local communities whose livelihood depends on forestlands.

What are EO 263's mandates to DENR?

- Work with local governments, POs, NGOs, religious groups, business and industry, and other concerned organizations to ensure that communities are empowered to initiate and achieve the objectives of this order
- Allot adequate funds to effectively accomplish CBFM targets and shall seek supplementary funding from local and forest supporting agencies and organizations. DENR shall also ensure the inclusion of budgetary allocation for CBFM in the annual General Appropriations Act, pending the passage of the revised Forestry Code.

- Establish a Community-based Forest Management Special Account (CBFMSA) to support the implementation of the strategy and provide financial and professional incentive system for deserving communities and government personnel.
- Source local and international grants and donations for the establishment of the CBFMSA
- Support and set up jointly with relevant colleges and universities, private and public organizations, arrangements for a community forestry training program for members of participating units such as POs, NGOs, LGUs, and other government personnel.
- In consultation with government financial institutions, effect the creation of favorable financing mechanisms for access by communities and organizations in pursuit of the CBFM strategy and its sub-strategies such as community training and empowerment, enterprise development, agro-forestry development, tree plantations, and other non-forest-based alternative livelihood systems

FORESHORE LEASE CONTRACT (FLC)

Governing Policies: Chapter 9 of the Public Land Act (Commonwealth Act No. 141) as amended; **DAO No. 99-34**, issued in 1999 (Rules and regulations governing the administration, management and development of foreshore areas, marshy lands and other lands bordering bodies of water); RA 2694 issued in 1960 (Amends certain provisions of CA No. 141; provides for schedule of rentals for foreshore land); **DAO 98-24** issued in 1998 (Schedule of approving authority for foreshore lease); **DENR Memo Circular No. 12 issued in 1991** (Policy on the issuances of licenses, leases, and permits, covering islands with areas less than 50,000 ha); **Lands General Circular No. 58 issued in 1979** (directs Direct Land Officers to collect occupation fees on foreshore, marshy, reclaimed, and other government lands occupied by any person without authority or permit); **DAO 82** issued in 1992 (Guidelines for the issuance of permits for pebble picking along beaches).

What is a foreshore lease application?

- A type of application covering foreshore lands, marshy lands and other lands bordering bodies of water for commercial, industrial, or other productive purposes other than agricultural and leased through public bidding.

What is the maximum area granted to an applicant?

- Any person, corporation, association or partnership may lease not more than 144 ha.

What is the validity of an FLC?

- The lease contract shall be valid for 25 years renewable for another 25 years

Who may apply for an FLC?

- Filipino citizens of legal age
- Corporations, partnerships, or associations that are duly constituted under Philippine laws and at least 60 per cent of the capital of which is owned by Filipino citizens

Who are authorized to sign FLC?

- Per Memorandum of the DENR Secretary dated March 12, 2003, the following officials are authorized to sign FLC:
 - The Regional Executive Director, if the area is less than 5 ha

- The DENR Secretary, if the land area is more than 5 ha

What are the requirements?

- Section 14 of DAO 99-34 lists the following requirements in the preparation and execution of a lease contract:
 - Original copy of the Official Receipt of the Application Fee;
 - Approved plan and technical description of the land applied for;
 - Consent of the spouse, if married;
 - Articles of Incorporation and Certificate of Registration from the Securities and Exchange Commission, if a corporation;
 - Certification that the land applied for is not needed for public use from the heads of the following agencies/offices:
 - Provincial Tourism Office
 - Philippine Ports Authority
 - Municipal/District/City Engineer's Office with concurrence of the Regional Director of Public Works and Highways
 - Feasibility study stating among others the financial and technical capability to undertake the project; and
 - Environmental Compliance Certificate (ECC).

How much is the application fee?

- Application fee, according to DAO 99-34, is P100 plus the cost of the documentary stamp.

What's the procedure?

- DAO 99-34 lists the following steps:
 - Filing of application at the CENRO;
 - Preliminary investigation and appraisal of the land applied for;
 - Survey of the land;
 - Recommendation to the official concerned for the approval of the appraisal and request for authority to lease the land through bidding;
 - Approval of appraisal and grant of authority to lease the land through bidding by the official concerned;
 - Payment of publication expenses if the appraised value of the land is more than ₱240.00;
 - Publication of the notice of right to lease the land applied for in the Official Gazette and/or two newspapers of general circulation (one in English and the other in the local dialect) once a week for six consecutive weeks and posting of the notice for six weeks at the bulletin boards of the following:
 - CENRO
 - Municipal/City Halls
 - Barangay Hall
 - On the land itself
 - Public auction and submission of report of bidding, proofs of payment of at least three months user's fee, publication and posting of the notice;
 - Order of Award;
 - Preparation of the Lease Contract upon payment of one user's fee;
 - Letter to the applicant enclosing the lease contract for his/her signature and that of two credible witnesses and for notarization;

- o Letter forwarding the lease contract to the official concerned for his approval and for notarization;
- o Letter to the applicant transmitting the approved Lease Contract.

What are some of the duties/responsibilities specified in the FLC?

- Based on the pro-forma FLC provided as Annex “J” in the publication “Allocation and Tenure Instruments on Forest Lands: A Source Book,” which includes a discussion on Foreshore Lease Contracts, the following are some of the specified roles and duties of the contracting parties:
 - o **Tenure holder** – Pay rent; construct improvements appropriate only to the FLC’s purpose; use the land only in accordance with the purpose specified in the FLC; shall not sublet the area covered by the FLC; guarantee the general public free access to the beach and nearby coastal water.
 - o **DENR** – While not expressly provided in the FLC, the DENR, as the issuing authority of the FLC, has the right and responsibility to monitor the activities being undertaken by the tenure holder to ensure that the provisions of the FLC are not violated.
 - o **LGU** – As the FLC is an agreement solely between the DENR and the lessee, the FLC does not provide for the roles or functions of the concerned LGU. However, LGUs play a role prior to the execution of the FLC, specifically in the issuance of the required certification from the municipal or city engineer’s office and in the ECC requirement. Additionally, under later policy issuances, particularly DENR-DILG Joint Memorandum Circular (JMC) 2003-01, it is mandatory for pertinent DENR offices to submit for comments by the LGUs any application for tenurial instruments, including resource extraction permits, before said instruments or permits are issued.

SPECIAL FOREST LANDUSE AGREEMENT FOR TOURISM PURPOSES (FLAgT)

Governing Policy: DAO No. 2004-28, issued in August 2004 (Rules and regulations governing the use of forestlands for tourism purposes)

What is a FLAgT?

- A FLAgT is a contract between the DENR and a natural or juridical person, authorizing the latter to occupy, manage and develop, subject to government share, any forestland of the public domain for tourism purposes and to undertake any authorized activity therein.

What are the different FLAgT and allowable maximum area?

<u>Kind</u>	<u>Max. area in hectares</u>
Bathing establishment - - - - -	24
Camp Site - - - - -	5
Ecotourism - - - - -	24
Hotel Site (inclusive of related resort facilities) - - - - -	10
Other Tourism Purposes - - - - -	6

Who approves the FLAgT?

- The FLAgT is approved by the concerned Regional Executive Director (RED) of the DENR.

Can the FLaGt cover an area larger than the allowable maximum area?

- Yes. Should it be necessary for a tourism project to cover a larger area than the maximum areas allowed to take into consideration the landscape features required of such projects, such areas shall be approved by the DENR Secretary.

Who are qualified to apply for a FLaGt?

- A Filipino citizen of legal age;
- An association, corporation, cooperative, partnership or a juridical person at least sixty percent (60%) of the capital of which is owned by Filipino citizens, duly created and/or registered under Philippine laws, and are financially capable of developing the area for tourism purposes.

What is the duration of a FLaGt?

- A FLaGt shall have a maximum duration of twenty five (25) years renewable for the same period.

What is the mode of award of FLaGt areas?

- Areas suitable for FLaGt shall be awarded through competitive bidding

What are the requirements for FLaGt application?

- Duly accomplished application form
- If applicant is:
 - a. An individual
 - Certified copy of birth certificate, or if applicant is a naturalized Filipino citizen, a certified copy of his/her Certificate of Naturalization
 - b. Corporation/Association/Partnership
 - Certified copy of Securities and Exchange Commission (SEC) registration certificate and Articles of Incorporation/Partnership
 - Resolution of the corporate governing body designating the authorized representative of said corporation
 - c. Association or Partnership
 - Certified copy of registration from the appropriate registering agency
 - d. Cooperative
 - Certified copy of certificate of registration with the Cooperative Development Authority (CDA)
- An indicative development plan
- For areas covered by specific laws or by co-management scheme, clearance/authorization from the appropriate governing body/authority

What is the Minimum Entry Fee for bidders?

<u>Area</u>	<u>Minimum Entry Fee</u>
0.5 ha and below -----	₱ 25,000.00
0.51 ha to 0.99 ha -----	₱ 50,000.00
1.0 ha to 5.0 has -----	₱ 100,000.00
over 5.0 has -----	₱ 150,000.00

Can an existing Special Land Use Permit be converted to FLAgT?

- Existing Special Land Use Permits may be converted to FLAgT, provided that the holder thereof has shown satisfactory performance based on DENR’s monitoring and evaluation system and has complied with all the terms and conditions of the permit.

What are some of the roles and responsibilities of the tenure holder, the DENR and LGUs?

- Tenure holder – Delineate and mark on the ground the boundaries of the FLAgT area; submit a site management plan (SMP); submit annual reports on its compliance with the approved SMP; secure the required ECC and other necessary permits prior to the conduct of any activity in the area; utilize the area only for the purpose for which the FLAgT is granted; adopt ecological solid waste management and abide with the provisions of the Clean Water Act; protect all biodiversity in the area; Pay the government share.
- DENR – Identify areas suitable and available for FLAgT sites; establish a registry of FLAgT areas; conduct of bidding and award of an area; conduct annual monitoring and evaluation of the development of the awarded area.
- LGU – Participate in the identification and validation of areas for FLAgT sites; endorsement by the concerned LGU Sanggunian (barangay, municipality, city or province) of the area as a FLAgT area.

SPECIAL FOREST LANDUSE AGREEMENT (FLAg)

Governing Policy: DAO No. 2004-59, issued in August 2004 (Rules and regulations governing the special use of forestlands)

What is a FLAg?

- A FLAg is a contract between the DENR and a natural or juridical person, authorizing the latter to temporarily occupy, manage and develop, in consideration of a government share, any forestland of the public domain for specific use defined in DAO 2004-59.

What are the different FLAg and allowable maximum area?

<u>Kind</u>	<u>Max. area in hectares</u>
Bodega/Warehouse site - - - - -	5
Drydock site/shipbuilding/ship breaking site - - - - -	24
Industrial Processing site - - - - -	24
Herbal/medicinal plantation - - - - -	10
Nipa Plantation - - - - -	10
Fish drying site - - - - -	5
Other Lawful Purposes - - - - -	10
Communication Station site - - - - -	3
Landing site (airstrip) - - - - -	as recommended by the DOTC-ATO
Log Pond / Log Depot site - - - - -	5
Lumberyard - - - - -	5
Mineral storage and/or crushing site - - - - -	subject to the joint recommendation of RTD-FMS and RD-MGB concerned

Mining Waste Disposal site - - - - -	subject to the joint recommendation of RTD-FMS and RD-MGB concerned
Motor pool site - - - - -	5
Plant nursery site - - - - -	3
Power station site - - - - -	5
Right of Way (including transmission line and communication) -	subject to the joint recommendation of RED/s and Regional Head/s of Agency/ies concerned
School site - - - - -	5
Water reservoir or impounding dam - - - - -	subject to the joint recommendation of RTD-FMS and Regional Head/s of Agency/ies concerned

Who approves the FLAg?

- The FLAg is approved by the concerned RED of the DENR.

Can the FLAg cover an area larger than the allowable maximum area?

- Yes. Should it be necessary for a project to cover a larger area than the maximum areas allowed, such agreements shall be approved by the DENR Secretary.

Who are qualified to apply for a FLAg?

- A Filipino citizen of legal age;
- An association, corporation, cooperative, partnership or a juridical person at least sixty percent (60%) of the capital of which is owned by Filipino citizens, duly created and/or registered under Philippine laws, which is financially capable or has the capability to mobilize finances to develop the area applied for FLAg.

What is the duration of a FLAg?

- A FLAg shall have a maximum duration of twenty five (25) years renewable for the same period.

What is the mode of award of FLAg areas?

- Areas suitable for FLAg shall be awarded through competitive bidding, except in the following cases:
 - a. Where the area applied for FLAg only serves as an ancillary to an existing bigger project already covered by FLAg or a tenurial instrument or agreement;
 - b. Where the area applied for falls within the adjoining forestland under Special Land Use Permit/Lease of the permittee/lessee concerned. The permittee/lessee shall be given preferential right to apply within 60 days upon receipt of “notice of preferential rights” for such land adjoining his/her existing lease/permit area; and
 - c. Where there are existing permanent improvements introduced by the applicant who had applied for Special Land Use Permit/Lease prior to the moratorium on the use of small islands.

What are the requirements for FLAg application?

- Duly accomplished application form
- If applicant is:

- a. An individual
 - o Certified copy of birth certificate, or if applicant is a naturalized Filipino citizen, a certified copy of his/her Certificate of Naturalization
- b. Corporation/Association/Partnership
 - o Certified copy of SEC registration certificate and Articles of Incorporation/Partnership
 - o Resolution of the corporate governing body designating the authorized representative of said corporation, association or partnership
- c. Cooperative
 - o Certified copy of certificate of registration with the CDA
- An indicative management plan
- For areas covered by specific laws or by co-management scheme, clearance/ authorization from the appropriate governing body/authority

What is the Minimum Entry Fee for bidders?

- The FLAg Screening and Awards Committee shall determine the reasonable minimum entry fee advantageous to the government for each type of forestland use, which should not be lower than 5% of the zonal value of the area.

Is a FLAg area subject to the EIA requirement?

- Yes. After the approval of the FLAg, the area subject of the FLAg and any improvements introduced/found therein shall be subject to the EIA requirement. The FLAg holder shall prepare an Environmental Impact Statement/Initial Environmental Examination (EIS/IEE) for submission to the Environmental Management Bureau, which shall be the basis for the issuance of an ECC.

Can an existing Special Land Use Permit be converted to FLAg?

- Existing Special Land Use Permits may be converted to FLAg, provided that the holder thereof has shown satisfactory performance based on DENR's monitoring and evaluation system and has complied with all the terms and conditions of the permit.

What are some of the roles and responsibilities of the tenure holder, the DENR and LGUs?

- **Tenure holder** – Delineate and mark on the ground the boundaries of the FLAg area; submit a comprehensive development and management plan (CDMP); submit annual reports on its compliance with the approved CDMP; secure the required ECC and other necessary permits prior to the conduct of any activity in the area; utilize the area only for the purpose for which the FLAg is granted; adopt ecological solid waste management and abide with the provisions of the Clean Water Act; protect and conserve unique, rare and endangered flora and fauna; Pay the government share.
- **DENR** – Identify areas suitable and available for FLAg sites; establish a registry of FLAg areas; conduct of bidding and award of an area; conduct annual monitoring and evaluation of the development of the awarded area.
- **LGU** – Participate in the identification and validation of areas for FLAg sites; endorsement by the concerned LGU Sanggunian (barangay, municipality, city or province) of the area as a FLAg area.

FISHPOND LEASE AGREEMENT (FLA)

Governing Policies: RA 8550 (The Fisheries Code of 1998); **FAO 125 issued in 1979:** Rules and regulations governing conversion of ordinary fishpond permits and 10 year fishpond lease agreements into 25 year fishpond lease agreements and other related matters; **FAO 197** issued in 2000 (Rules and regulations governing the lease of public lands for fishpond development); **MNRAO NO. 3** issued in 1982 (Lands suitable for fishponds to be placed under the administration of the BFAR); **DAR-DA JOINT AO No. 18** issued in 1991 (Rules and regulations governing the distribution of cancelled or expired Fishpond Lease Agreements (under EO 407, as amended by EO 448); and **DA-DENR Joint General Memorandum Order No. 3 issued in 1991** (Guidelines on the reversion of underutilized, undeveloped, abandoned fishponds to mangroves).

What is an FLA?

- It is an agreement entered into by and between the Secretary of Agriculture and a qualified **fishpond** applicant for the use of public land for fishpond development purposes.

What is the maximum area granted to a fishpond lease application?

- Areas leased for fishpond purposes shall be no more than 50 ha for individuals, and 250 hectares for corporation or fisher folk organizations.
- Any branch of the government, person or association who will engage in fishpond development for scientific research or educational purposes may be granted an area not exceeding 10 ha through a gratuitous permit.

What is the validity of the agreement?

- The lease shall be for a period of 25 years and renewable for another 25 years.

Who are qualified to apply for a lease agreement?

- Filipino citizens who are at least twenty one (21) years of age
- Corporations duly incorporated and registered under Philippine laws at least 60 percent of the capital stock or interest of which belongs to Filipino citizens
- Fisherfolk cooperatives/associations and small and medium enterprises duly organized or registered under the laws of the Philippines.

How much are the fees?

- A non-refundable application fee of P1,000.00 shall be paid. The lease rates for the fishpond areas shall be determined by the Department of Agriculture. All fees collected shall be remitted to the National Fisheries Research and Development Institute and other qualified research institutions to be used for aquaculture research development.

What are the general roles and responsibilities of the lessee? Lessor? LGU?

- Lessee: Develop the fishpond and produce on a commercial scale within three years from the approval of the lease contract; undertake reforestation for river banks, bays, streams and seashore fronting the dike of the fishpond; provide facilities that will minimize environmental pollution; register the fishpond with the LGU; annually report to

- the Department of Agriculture the type of species and volume of production in areas devoted to aquaculture; pay the annual rentals.
- Lessor: Conduct monitoring and evaluation of the development of the awarded area; Inspect and validate all the records required in the operations of the fishpond.
 - LGU: The existing guidelines do not expressly provide for the role of LGUs in the issuance of FLAs. However, inasmuch as an ECC from the DENR is required for the issuance of an FLA, the participation of the LGUs will be in the consultations that will be conducted for the issuance of the ECC.

CO-MANAGEMENT AGREEMENT

A Co-Management Agreement is a relatively new mechanism whereby the responsibility for the management, development, protection and utilization of a specified area of forest land, including mangroves, and its forest resources within the geographic jurisdiction of the LGU or cluster of LGUs is shared between the DENR and the LGU or cluster of LGUs.

Governing policies: RA 7160; DENR-DILG JMC 2003-01, DENR-DILG JMC 98-01

What is the period of the agreement?

- 25 years, subject for renewal

Who can participate?

- Individual LGU, or cluster of LGUs

What are the general application requirements?

- LGUs interested should signify their interest in co-managing forests and forests lands to the DENR CENRO. Once everything has been agreed upon, a Memorandum of Agreement (MOA) shall be executed by the DENR and the LGU and witnessed by a DILG representative.

Who is the issuing authority?

- CENRO – forest areas up to 1,000 ha; PENRO – more than 1,000 up to 5,000 ha; RED – more than 5,000 up to 15,000 ha; U/Sec for Field Operations – more than 15,000 up to 30,000 ha; and Secretary – more than 30,000 ha.

What are the rights and privileges of the tenure holder?

- The MOA defines the tenure holder's rights/privileges; they may include developing, managing, protecting and utilizing a specified area of forest land and its forest resource; harvest, sell and use planted trees and crops consistent with the principle of sustainable development.

What are the allowable activities?

- Allowable activities are specified in the MOA, which may include reforestation, forest protection, harvesting of non-timber and timber products, agro-forestry

What are the roles and responsibilities of the parties in general?

- The MOA between the DENR and the LGU specifies each other's roles and responsibilities. The following are some of the LGU's and the DENR's roles under JMC 2003-01:
 - ***LGU:*** Provide the necessary funds to make the devolution, partnership and co-management work; approve and enact as ordinance the LGU's forest land use plan (FLUP); inform DENR of the action taken by the LGU within 15 days from the date of receipt of document from DENR regarding any tenure application within its jurisdiction.
 - ***DENR:*** Initiate coordination meetings with the DILG and the LGU, provide technical assistance to the LGU, approve LGU's FLUPs; deputize LGU officials as environmental and natural resources officers.