

Republic of the Philippines
Province of Davao Oriental
OFFICE OF THE SANGGUNIANG PANLALAWIGAN
SP Complex, Government Center, Dahican
CITY OF MATI



EXCERPTS FROM THE MINUTES OF THE 77TH REGULAR SESSION OF THE 17TH SANGGUNIANG PANLALAWIGAN OF DAVAO ORIENTAL HELD ON WEDNESDAY, DECEMBER 20, 2023 AT THE CITY OF MATI, THIS PROVINCE.

PRESENT:

Hon. Daud V. Linsag

SP Member, District II – Temporary
Presiding Officer

Regular Members:

District I

Hon. Anna Cheryl N. Castro
Hon. Art Benjie C. Bulaong
Hon. Andy A. Monday

District II

Hon. Harold A. Montes
Hon. Rotchie M. Ravelo
Hon. Stephen Paul L. Uy

Ex-Officio Members:

Hon. Eleuterio C. Manaytay

Indigenous Peoples Mandatory
Representative (IPMR)

Hon. Shanine C. Lintogonan

Sangguniang Kabataan Provincial
Federation President (SKPFP)

ABSENT:

Hon. Nelson R. Dayanghirang, Jr.
Hon. Shella Marie S. Go

Vice Governor – Sick Leave
SP Member, District II -Special Privilege
Leave

Hon. Marietta D. Palmera
Hon. Joselito B. Villademoso

SP Member, District I – Forced Leave
President, Philippine Councilors League
(PCL) - Davao Oriental Chapter

PROVINCIAL ORDINANCE NO. 17-28-12-2023

Author : Hon. Eleuterio C. Manaytay

Sponsor : Hon. Eleuterio C. Manaytay

AN ORDINANCE REQUIRING ALL NEW APPLICANTS AND/OR FOR RENEWAL OF INDUSTRIAL SAND AND GRAVEL (ISAG), OR COMMERCIAL SAND AND GRAVEL (CSAG) TO SECURE FREE AND PRIOR INFORMED CONSENT (FPIC) FROM THE RESPECTIVE MUNICIPAL / CITY TRIBAL COUNCIL WHERE THE SUBJECT FOR EXTRACTION IS BEING APPLIED FOR AND REQUESTING FURTHER THE OFFICE OF THE ENVIRONMENT AND NATURAL RESOURCES FOR INCLUSION OF THE SAME AS THE PRE-REQUISITE IN GRANTING PERMIT TO OPERATE WITHIN THE ANCESTRAL DOMAINS OF DAVAO ORIENTAL.

WHEREAS, Chapter III, Section 7(b) of the Republic Act 8371 otherwise known as "The Indigenous Peoples Rights Act of 1997" provides the rights of the Indigenous Peoples to develop land and natural resources which includes the right to develop, control and use lands and territories traditionally occupied, owned or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of natural resources found therein; the right to negotiate terms and conditions for the

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exploration of natural resources fund therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which may sustain as a result of the project;

WHEREAS, Republic Act 8371, otherwise known as “The Indigenous Peoples Rights Act of 1997” was enacted to recognize and promote all the rights of the Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) within the framework of the 1987 constitution;

WHEREAS, Section 3(g) of RA 8371 states that free and prior informed consent means consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community;

Be it ordained by the 17th Sangguniang Panlalawigan of Davao Oriental, in session duly assembled that:

Section 1. Title - *This Ordinance shall be known as “IP Certification on Free and Prior Informed Consent Requirements in securing Industrial or Commercial Sand and Gravel Permits” within the Ancestral Domains of the Province of Davao Oriental.*

Section 2. Declaration of Principles and Policies- *it is the policy of the state to recognize and promote all the rights of the ICCs/IPs within the framework of the constitution;*

- a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;
- b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural wellbeing and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;
- c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve, and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;
- d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;
- e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and

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- f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICCs/IPs participation in the direction of education, health, as well as other services of the ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

SECTION 3. *Definition of Terms* – when used in this ordinance, the following shall be defined as follows:

- a) **Indigenous Cultural Communities (ICCs)/ Indigenous Peoples (IPs)** shall refer to the group of people who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs and traditions, in the context of the Province of Davao Oriental shall specifically refer to Mandaya, Kagan and Manobo;
- b) **ISAG**- Industrial Sand and Gravel
- c) **CSAG**- Commercial Sand and Gravel
- d) **Ancestral Domain** refers to all areas generally belonging to ICCs/IPs which comprise lands, inland waters, coastal areas, and all natural resources therein, held under the claim of ownership, occupied and possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually owned since time immemorial up to the present. It includes ancestral lands, forests, agricultural, residential and other lands situated within, whether alienable and disposable or otherwise such as: hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to, for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators.
- e) **FPIC**- Free and Prior Informed Consent, means consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community;
- f) **CADT**- Certificate of Ancestral Domain Title, this refers to a proof of ownership issued to the tribe by the Philippine Government thru the office of the National Commission on Indigenous Peoples.
- g) **IPS**- Indigenous Political Structure shall refer to the autonomous governing body of the ICCs/IPs also known as the Barangay / Municipal / City / Provincial Tribal Council, which is composed of Tribal Chieftains, IP Women Federated President and IP Youth Federated President
- h) **MOA**- Memorandum of Agreement is a written document describing a cooperative relation between two parties wishing to work together on a project, or to meet an agreed-upon objective.

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SECTION 4. Scope/Coverage-This Ordinance shall cover all applicants (be it new application or renewal of permit), operators of Industrial Sand and Gravel and/or Commercial Sand and Gravel within the ancestral domains of Davao Oriental.

SECTION 5. Mode of Implementation- It is unlawful to any person, entity and/or corporation to operate without Free and Prior Informed Consent from the ICCs/IPs if the subject of extraction is within the Ancestral Domain. The following steps listed hereunder in securing IP certification to wit:

1. The applicant shall inform the Tribal Council thru the Ama na Matadong or Tribal Chieftain and signify to apply for said certification;
2. The Municipal / City Tribal Chieftain shall immediately endorse the same to the Indigenous Political Structure (IPS) or Municipal / City Tribal Council.
3. The IPS shall call the attention of the Applicant with the presence of NCIP Office personnel whenever possible, for the assessment and/or the necessity of formulation of Memorandum of Agreement (MOA) to ensure its share on the operation.
4. After the execution of MOA, the Municipal / City Tribal Council shall formulate a resolution certifying that the Applicant already did the Free and Prior Informed Consent as a pre requisite in securing permit to operate from the concerned agency.

Section 6. Administrative Sanctions – The following sanctions for violation of any of the provisions, to wit:

1. The issuing officer granting ISAG and/or CSAG permit without the Free and Prior Informed Consent from the respective Municipal /City Tribal Council, shall be held liable to the charges that shall be imposed by the concerned Indigenous Cultural Community without prejudice of filing administrative charges against entity, corporation or the like in the proper court;
2. The grantees found not following the provisions of this ordinance, the IPS by all means cause the cessation of the operation until after the strict compliance have been in place without prejudice of filing appropriate case by the IPS for intrusion and/or trespassing within the Ancestral Domains in accordance with RA 8371 and other pertinent and existing environmental laws.

Section 7. Repealing Clause.- If in any case a provision or any portion of this ordinance is inconsistent with the existing laws, rules and regulations, the said section or provision is automatically repealed of and or amended accordingly.

Section 8. Separability Clause- Should any part of this ordinance declared invalid or unconstitutional by the competent court, the remaining part or parts thereof shall remain in full force.

Section 9. Effectivity- This ordinance shall automatically take effect upon its approval.

ENACTED: DECEMBER 20, 2023

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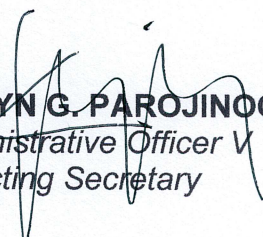
CARRIED, by eight (8) affirmative votes of SP Members Anna Cheryl N. Castro, Harold A. Montes, Rotchie M. Ravelo, Art Benjie C. Bulaong, Stephen Paul L. Uy, Andy A. Monday, Eleuterio C. Manaytay, and Shanine C. Lintogonan; negative votes – none; and abstention - none.

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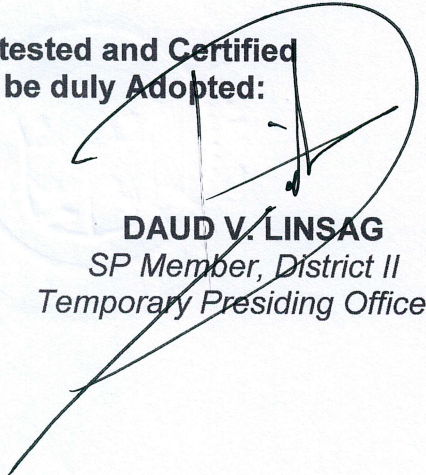
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**I hereby Certify to the Correctness
of the foregoing Resolution.**


GENELYN G. PAROJINOG
*Administrative Officer V
Acting Secretary*

**Attested and Certified
to be duly Adopted:**


DAUD V. LINSAG
*SP Member, District II
Temporary Presiding Officer*

APPROVED:


NIÑO SOTERO L. UY, JR.
Governor

Date approved
and signed **DEC 27 2023**