The Proposed National Land Use & Management Act (NLUA)

A Critique & Counter-Proposal
The Proposed National Land Use & Management Act
(HB 6545 & SB 3091)


2. Fast-tracked & approved on Third Reading in both House of Reps and the Senate, with inadequate public consultation and no legislative debate.

2. Given precedence over long-awaited bill on the proposed Department of Housing and Urban Development, and other urgent bills.
Salient Features of the NLUA

- It defines Land Use as the manner of allocation, utilization, management and development of land.

- It mandates the standardization of the classification of land use for purposes of planning and implementation into the following areas: Protection Land Use; Production Land Use; Settlements Development; and Infrastructure Development.
• It mandates the completion and updating of existing cadastral surveys.

• It provides for the creation of a National Spatial Database Information and Mapping System with a National Spatial Data Information and Mapping Inter-Agency Support System headed by the National Mapping and Resource Information Authority (NAMRIA).

• It seeks to determine the scope and nature of responsibilities of national government agencies, and address the long-overdue task of determining and delineating the country’s permanent forest line.
It mandates the institutionalization of land use and physical planning as a mechanism for identifying, determining and evaluating appropriate land use and allocation patterns that promote and ensure, among others, the:

- Maintenance and preservation of environmental integrity and stability; Disaster-risk reduction and climate risk-based planning;

- Protection of prime agricultural lands for food security in basic food commodities;
It provides for the creation of the National Land Use Policy Council (NLUPC) as the highest policy-making body on all matters pertaining to land use and management.

Instead of a full-fledged line agency, the NLUPC, as proposed, is practically the NEDA itself, to be headed by the NEDA secretary. It will operate virtually as one of various committees under the NEDA umbrella, with a secretariat to attend to its day-to-day functions.
Characterization of the Proposed NLUA by Land Use Industry Planners & Practitioners
1. A veiled Omnibus Bill on Land Use which appears redundant, over-reaching, and ignorant of the real issues on the ground relative to land use planning and management.

2. Product of ivory-tower academics and left-of-center ideology, pandering to populist political groups and grassroots organizations.
3. Sends the wrong signals to investors in land development and imperils the current growth trends of the national economy.

4. Betrays a lack of appreciation of the technical and budgetary issues behind the current problems bedeviling land use in the country.
5. Ignores substantive legislation and important policies that have gone before it, i.e., various specific laws which entrusted specific land uses to the care of specific agencies to implement.
6. By assigning land use and management responsibilities to the NEDA as one of its adjunct operating units with a mere secretariat to support its functions, the NLUA unwittingly trivializes the importance and complexity of national land use and management.
SOME OF THE SECTORAL CONCERNS addressed by NLUMA:

4.1 Environmental Integrity
4.2 Disaster Risk Reduction and Climate-Risk Planning
4.3 Food Security
4.4 Water Resources
4.5 Energy Self-Sufficiency
4.6 Affordable Housing
4.7 Rights of Indigenous Peoples
4.8 Conservation of the Country’s Natural Heritage
4.9 Permanent Forests
4.10 Critical Watersheds
4.11 Biodiversity
4.12 Others
A quick review of Philippine legislation will show that such concerns are already addressed by the Philippine Constitution and a variety of specific laws on Land Use for specific sectors.
• The Constitution upholds the *Principle of Equitable Land Access* for all sectors.

• Congress has passed various laws that specify *which lands may be used for which purposes*, and *at the same time identify which government instrumentalities are conferred jurisdiction over which lands*. 
Principal Laws on Land Use

- **RA 6657**, or the Comprehensive Agrarian Reform Law of 1987, specifies the lands which are to be used for *agrarian reform purposes*, and confers upon the Department of Agrarian Reform (DAR) jurisdiction over the same; and

- **RA 9700** – Extension of the CARP

- **RA 8435**, or Agriculture & Fisheries Modernization Act of 1997, specifies the lands which are set aside for *agricultural development*, and confers jurisdiction upon the Department of Agriculture (DA);
• RA 7279, or the Urban Development & Housing Act of 1992, and PD 399 specify the lands set aside for urban development, housing and human settlements, and place these lands under the jurisdiction of housing agencies and local governments;

• RA 7916, or the PEZA Law, specifies the areas set aside for mixed development purposes under the Ecozone program, and confers upon the President, through the PEZA, jurisdiction over the same
• RA 7160 - The Local Government Code of 1991 confers upon the LGUs the primary authority and responsibility to determine land use in their respective localities, through their comprehensive planning and zoning powers;

• The charter of the Department of Environment and Natural Resources (DENR) and various laws confer upon this agency exclusive jurisdiction over lands of the public domain and endow it with authority to implement laws intended for environmental protection; and

• Certain laws designate certain specific lands or areas for tourism development and confer upon the Department of Tourism jurisdiction over the same.
Other Existing Laws & Policies Related to Land Use

- Public Land Act (CA 141) of 1936 – first (public) land use management policy
- PD705 - Revised Forestry Code (1976)
- RA 7076 - People’s Small Scale Mining Act of 1991
- RA 7942 - Mining Act of 1995
• RA 8435 – Agriculture & Fisheries Modernization Act of 1997
• RA 8550 - Revised Fisheries Code of 1997
• PD 1067 - Water Code of the Philippines
• PD 1084 - Creation of Public Estates Authority (PEA)
• CA 452 - Pasture Land Act
• RA 9729 - Climate Change Act of 2009
• RA 9275 - Clean Water Act of 2009
• RA 10121 - Disaster Risk Reduction and Management Act of 2010
• RA 7161 - Banning of cutting of mangroves/forest charges
• RA 10066 - National Cultural Heritage Act of 2009
• EO 263 - Adoption of CBFM as country’s sustainable forest policy
• EO 72 & MC 54 (1993); EO 204 (2000); Eo 841 (2009) – on Compliance with CLUPs by LGUs
To repeat, there are already laws that address the above-listed sectoral concerns.

There are also specific agencies to which such concerns have been assigned by appropriate laws.
What are some of the more specific OBJECTIONS to the NLUA?
1st Objection: **NLUA appears to be merely an elaborate camouflage to perpetuate the CARP. Under its provisions:**

- “Protection” land use prevails over “production” land use (Sec. 5).

- Agricultural lands are protected areas (Sec. 4fff).

- Agricultural land is any land suitable to agriculture (Sec. 4a). [Note: Any land can be now made suitable to agriculture with appropriate use of technology.]
• DAR has the exclusive authority to approve conversion of all agricultural lands (Sec. 4b, 4bb, Sec. 13).

• DAR has the over-arching authority to approve reclassifications by LGUs (Secs. 4jjj & 4iii).
Since all agricultural lands are defined as “protected” under Sec. 4fff, they must be included as such in the LGU zoning ordinance. In other words, the LGUs cannot reclassify them as non-agricultural (Sec. 4iii).

The reclassification power of LGUs under the Local Government Code is, thus, virtually abrogated (Sec. 99).
QUESTION:

What happens if an LGU or NGA deems the land critical for infrastructure or other non-agricultural socio-economic development purposes, but the DAR thinks otherwise?
2nd Objection:

Only two (2) representatives in the NLUPC are allowed to the private land sector, i.e., landowners, developers, investors, and professionals), as opposed to the eight (8) representatives assigned to the basic sectors (i.e., the urban poor, fisherfolk, peasants, and indigenous peoples) (Sec. 56)
HB 6545 provides “...two (2) representatives each from the four (4) basic sectors directly involved in land use, namely: the urban poor, the peasants, the fisherfolk and the indigenous peoples who shall be appointed by the respective National Anti-Poverty Commission (NAPC) sectoral councils.”

SB 3901 allows only two (2) developers to represent the entire private land sector. What about the other major players in the sector who are also directly involved in land use, i.e., owners, investors, and professionals?

Why only two representatives for the entire sector?
3rd Objection:

LGU powers over the proper planning and management of its land use have been significantly diluted or virtually abrogated.
NLUA takes away the Power of Re-Classification of converted land from the LGUs (notwithstanding RA 7160, or the Local Government Autonomy Code).

To add insult to injury, Land Use Planning and Management Boards under the NLUPC are created in LGUs, while the LGUs’ Planning and Development Offices are mandated to provide Secretariat support (presumably at the expense of the LGU (Sec. 54).
4th Objection:

**NLUMA pretends to promote an equitable allocation of land resources; but since all “agricultural” lands are defined as “Protected Areas” (Sec. 4fff), placed under the DAR’s jurisdiction and protected from conversion, practically nothing is left of the land pie to allocate to settlements, infrastructure and other non-agricultural development – notwithstanding the provisions that make it appear otherwise.**
5th Objection:

NLUA is class legislation that violates the Constitution’s “equal protection” and “non-impairment” clauses:

- Agricultural lands are banned from conversion while they are in the hands of landowners, but may be converted once they are awarded to ARBs Sec. 13).
• The NLUA imposes hefty penalties on landowners and/or designated developers or duly authorized representatives who or which fail/s to commence and/or complete the development plan defined in the DAR’s conversion order.

• They shall be jointly and severally penalized. (Article Two, Sec. 82)
Fines based on the zonal value of the land at the time the fine shall be imposed include the following:

For failure to commence within one (1) year from the date of the conversion order:

- Six percent (6%) for the first three (3) hectares;
- Fifteen percent (15%) for the next three (3) hectares;
- Thirty percent (30%) for the remaining area.
In such case, the order of conversion shall be revoked by operation of law.

The land shall revert to its original use as agricultural land shall be covered by the DAR through compulsory acquisition for distribution to qualified beneficiaries.
• Failure to complete sixty percent (60%) of the approved conversion plan within a specified time frame shall result to the automatic revocation by the DAR of the conversion plan on the undeveloped portion.

• The land shall be reverted to its original use as agricultural land and shall be covered under the CARP for land distribution.
Persons and/or entities initiating, causing, inducing or abetting illegal conversion (under this law) shall be punished with imprisonment or fines including:

- **Dismissal** from service (for public officials),
- **Forfeiture** of all benefits and entitlements and
- **Perpetual disqualification** to run or apply for any public office (Sec. 83).
For juridical persons (corporations and institutions), the penalty of imprisonment shall be imposed on the president, chief executive officer, manager, chairperson and all the members of the Board, and other responsible officers thereof.
• Imposable fine = equivalent to the zonal value of the land or forty percent (40%) of the shareholders equity, whichever is higher.

• Furthermore, the land shall be forfeited in favor of the State and sold through public auction.

• The proceeds of the sale shall automatically accrue to the Agrarian Reform Fund.
6th Objection:

The non-impairment clause is made applicable only to marginalized sectors (Sec. 100).
The NLUA may be barking up the wrong tree!
• The Problem is not the lack of another Law, or an Omnibus Law, on Land Use.

• The Problem is Poor & Ineffective Enforcement of already existing laws.
As an example, consider the importance of Technical Issues that have to be addressed effectively in order to solve, or minimize, many land issues in the country.

One key issue is the fundamental determination of:

1. *Exactly where are the geographic and jurisdictional boundaries* of the lands allocated by law for this or that purpose?
2. *Exactly what are the specific attributes* of those lands that make them suitable for one purpose as against another? and
3. *Exactly who owns or is entitled to which lands?*
1. No government agency can pinpoint on the ground exactly where the boundaries of “prime agricultural lands” or “irrigable lands” or “lands suitable for agriculture” are, and exactly what parameters or criteria were used, if any, in identifying these lands as such.
On the mere say-so of a DAR functionary in a town or province, lands have been placed under CARP coverage, denied conversion, and locked against reclassification by LGUs for non-agricultural use.

2. No government agency can pinpoint exactly where the territorial boundaries of each LGUs are.
3. *No government agency can pinpoint exactly* where the marked boundaries of all forest or timber lands, mineral lands, natural parks, wildlife preserves, watersheds, waters of the public domain, ancestral domains, public lands, and environmentally critical areas are.

*This gives rise to arbitrary application of regulatory restrictions on developmental activities.*
4. The government has no land information system worthy of the name. To each his own, and one agency’s information is inconsistent with the rest.

Consider the following situation:

4.1 *The country’s topographic maps under the custody of NAMRIA are outdated* – prepared in the 1950s and 1960s – even as legal boundaries are not demarcated;
4.2 The SAFDZ maps prepared by the DA – delineating the so-called National Protected Areas for Agriculture and Agro-industrial Development (NPAAAD) and Strategic Agriculture and Fisheries Development Zones (SAFDZ) – are also outdated, having been prepared almost 20 years ago;

4.3 About 40% of the country has not yet been subjected to cadastral survey to determine legal boundaries and rights to land parcels;
4.4 *Many LGUs have not complied* with the mandate for *Comprehensive Land Use Planning and updating* – principally because of lack of funds, technical capability and assistance by the National Government; and

4.5 *Many land titles and tenurial instruments* churned out by the agencies concerned *are inaccurate as to the covered lands* – in many instances these cannot even be located on the ground.
DAR itself cannot even identify exactly which parcels of land throughout the country have already been issued CLOAs (CARP instruments), or which have been programmed for acquisition and redistribution.
RA 9700, which extended the lifespan of the CARP for a several more years, mandated the DAR to complete an official comprehensive list of CLOAs issued since the beginning of CARP and release it to the public within a year from the passage of the law.

To date, the DAR has not been able to complete, much less release, such a list.
Without such a prior definitive determination, the issue of land allocation and land use is reduced to nothing more than a battle for turf among government agencies; and land use regulation is left entirely to administrative discretion.
The proposed NLUA neither harmonizes nor justly allocates the country’s lands, but is so crafted as to promote principally the interest of the peasantry – possibly at the expense of the rest of the nation.
Evidences of the NLUA Bias Vs. Other Sectors Outside of Agriculture and Agrarian Reform

1st Evidence:

The Declaration of Policies mandates that land use and physical planning shall ensure protection of agricultural lands and “highest priority to the completion of the CARP”.

Question:

Why is CARP implementation singled out and accorded highest priority?
2nd Evidence: “Priority areas for agricultural development are the CARP, CARPable areas and the NPAAAD”.

Under the DAR’s rules and procedures, practically all lands are CARPable, even as the NPAAAD covers virtually all lands.
As any land can be made suitable for agriculture (with the application of technology), any land can be embraced by the NPAAAD.

Thus, in effect, other than timber lands, mineral lands or natural parks, practically all of the country’s lands will be reserved for agricultural development.
What is covered by the NPAAD?

1) All irrigated areas;
2) All irrigable lands already covered by irrigation projects with firm funding commitments;
3) All alluvial plains;
4) Lands highly suitable for agriculture whether irrigated or not;
5) Agro-industrial croplands or lands planted to industrial crops that support the validity of existing agricultural infrastructure and agro-based enterprises;
6) Highlands or areas located at an elevation of five hundred (500) meters or above and have the potential for growing semi-temperate and high value crops;
7) All agricultural lands that are ecologically fragile the conversion of which will result in serious environmental degradation; and
8) All mangrove areas and fish sanctuaries
3rd Evidence:

Agricultural lands may be reclassified by LGUs for non-agricultural uses “through the local planning and zoning process”, but “subject to the requirements and procedures for conversion”.
QUESTION: If the NLUA is truly meant to “harmonize” interests in land, why is the DAR – an administrative agency whose mandate is solely to promote the interest of the peasantry through the CARP – being made the final arbiter of land allocation and planning by LGUs which are, in contrast to the DAR, mandated to promote the interests of not just the peasantry but the entire local citizenry?
4th Evidence:

In “spatial allocation for different land uses, the LGUs shall first exclude areas under protection land use, national parks, energy resource lands, and prime agricultural lands”, the latter having the same definition as the NPAAAD.

**QUESTION:** If all these lands are to be excluded in land use allocation by LGUs, what lands will remain available or allowed for residential, commercial, institutional and other non-agricultural development?
5th Evidence: As far as housing and residential use is concerned, the proposed law allocates merely those “agricultural lands as designated in the CLUP which are no longer economically feasible for agricultural use”.

QUESTIONS: (a) exactly when does an agricultural land become no longer feasible for agricultural use; (b) given the population growth rate and demographic trends and needs, exactly how much and at what rate can lands be released for the various needs; and (c) what about non-residential use?
6th Evidence: NPAAAD lands are protected from conversion; irrigated and irrigable lands as well as lands with potential for high value crops are given full protection from conversion; and all lands subject to CARP are protected from conversion pending installation of agrarian reform beneficiaries, but thereafter may be converted subject to Section 65 of RA 6657.
In other words, practically all lands cannot be allowed for conversion or development for non-agricultural uses – including priority infrastructure projects – except when already in the hands of agrarian reform beneficiaries.

**WHY?**
QUESTION:
Where is equity or justice in a provision that obviously favors the peasantry while denying the rest of the citizenry the right to the beneficial use of land?

Out of the country’s population of close to 100 million only some 5.7 million are farmers and fisherfolk.
The other 23.8 million live in slums; 40 million subsist below the poverty line.
All these citizens need homes and amenities, as well as jobs and livelihood in factories, offices, and commercial and industrial establishments. Where will all these structures be put up?
7th Evidence: The proposed NLUA concedes that no national mapping program exists to date. Therefore, one of the immediate tasks still to be done is to complete and then integrate all the maps in the national framework for physical planning. Without accurate maps, land use cannot be planned correctly, rationally, and equitably.

So, WHY is a blanket conversion ban or moratorium already to take effect upon effectivity of the law?
QUESTION:
Exactly how will a judicious and impartial determination be made as to whether or not the conversion ban is applicable to a particular piece of land, when there is yet no credible land information system that identifies, locates, demarcates and accurately determines the attributes of all the lands which are supposed to be “protected from conversion”? 
The proposed NLUA – if allowed to pass at this time - poses a grave threat & major disincentive to the continuing flow of investments in key sectors of the Philippine economy.
The proposed NLUA sends very disturbing signals to investors, funds managers, industrialists, and business managers – both foreign and local.

- Not only does it disregard and violate the letter and spirit of the Philippine Constitution.

- Its contains provisions that appear backward, parochial, and exclusivist.
The NLUA could negatively affect:

1. Philippine global competitiveness;

2. The sustained real estate and housing boom;

3. The dynamic growth of the BPO industry;
4. The confidence that sustains the continuing inflow of OFW remittances;

5. The resurgence of tourism and agribusiness, along with their upstream and downstream industrial linkages; and

6. Many other enterprises that are contributing to the vibrancy of our national economy.
A NATIONAL LAND USE ACT -

- Must be guided by the best and most reliable information and knowledge that science and technology can make available.

- Must also heed the sectors that have invested heavily and made it their business to become familiar with what science and technology have to offer regarding the use of Land.
The Private Land Sector Deserves to Be Heard!

- Beyond ideological and partisan considerations, a NLUA must be based on an objective assessment of the situation on the ground and an open mind towards solutions offered to us by science, technology, and modern management.
REJECTION OR COMPROMISE?
Is a compromise possible between the proponents of the NLUA and the Private Land Sector?

Can the proposed NLUA be revised in order to:
- Uphold and comply with the constitutional principles of equity and fairness (Art. III, Sec. 1); and
- Apply the positive lessons gained from our own national experience and the best practices and successes of other progressive nations?
Key Conditions for any workable compromise:

1st Condition.

Whether or not the land is tenanted, irrigated, irrigable or suitable for crops, the prior review, approval or any clearance by the DAR shall not be required in the reclassification or conversion or development of agricultural lands that are located:
• (a) within all cities and all first-class municipalities, (cf. RA 7279)

• (b) within all areas reclassified and zoned by local government units for non-agricultural uses prior to June 15, 1988; (cf. RA 7160) provided, that in case the land to be developed is identified as environmentally critical, an Environmental Clearance Certificate shall be obtained from the DENR.
WHY?

- Under the Constitution, all lands not classified as timber, mineral or natural parks are generically termed “agricultural” lands.

Thus, necessarily, lands to be used for residential, commercial, industrial and other non-agricultural purposes have to be carved out of the “agricultural” lands pie through reclassification by law (Congress) or local ordinance (LGUs).
(c) within a strip of one thousand (1,000) meters along existing national highways and provincial roads, (cf. PD 399) and

(d) within areas identified by Provincial Land Use Councils for priority infrastructure development projects (cf. RA 7160);

provided, that in case the land to be developed is identified as environmentally critical, an Environmental Clearance Certificate shall be obtained from the DENR.
Said lands are hereby reserved for settlements and urban development purposes under RA 7279, and are excluded from all provisions of the Comprehensive Agrarian Reform Law as amended.

Any CARP Notice of Coverage or Notice of Acquisition already issued by the DAR covering these lands are hereby revoked; provided, that in case a land to be developed for non-agricultural use is irrigated, the project proponent shall reimburse the government for the irrigation facility;
provided further, that in case development of the land will result in displacement of legitimate agricultural tenants, the project proponent shall pay disturbance compensation equivalent to five (5) times the average of the gross harvests on the landholding during the last five (5) preceding calendar years;

provided finally, that if the land is already covered by a duly issued emancipation patent or CLOA issued by the DAR prior to effectivity of this Act, development or conversion shall be subject to Section 65 of RA 6657 as amended.
In other words, out of the county’s total land area of 30 Million hectares, only some 28.6% is being recommended to be categorically reserved for residential, commercial, industrial, institutional and all other non-agricultural uses for the entire country.

Surely, the remaining agricultural lands of the country, with the application of appropriate technology to maximize agricultural productivity, as in the case of tiny Israel, would be more than sufficient to meet the requirements of food security for generations.
To reiterate -

- *What we need now, and urgently, is not another law, particularly when it appears to suffer from the constitutional infirmity of class legislation.*
There are more than enough existing laws on land use that have already been passed by the Congress of the Philippines.

The real challenge is how to implement these laws more reliably, scientifically, systematically, consistently, and equitably.

What we need is political will to make our laws work and stick.
Top priority must be given to a centralized national geographic information system equipped with state-of-the-art technology, professional competence and skills, and adequate budgetary support so that decisions and actions on land use concerns are based on correct, validated, reliable, and consistent information.
We need a full-fledged and dedicated agency to oversee and manage land use planning and management throughout the country.

- This could be the beefed-up, fully capacitated Housing and Land Use Regulatory Board that has the competence to provide overall coordinative technical planning support for all the LGUs in the land.
The Urgency of the Moment: the CLUPS

- In the meantime, the urgency of the moment is to empower and assist our local government units to complete their respective Comprehensive Land Use Plans, or update these regularly.

The CLUPs are needed to provide solid and scientific basis for the development programs and projects that LGUs will consider and approve in their respective jurisdictions, for the benefit of all their citizens and irrespective of the specific sector to which each citizen belongs.
To address this urgent concern, an appropriate Executive Order would be sufficient.

If new legislation is at all called for, it should give the highest importance to the GIS backbone for effective land use planning and implementation and the appropriate administrative structure for this purpose.
CREBA has long proposed beefing up the Housing and Land Use Regulatory Board (HLURB) with increased competent professional staff, state-of-the-art technology, and adequate budgetary support.

CREBA envisions the HLURB as the Central Physical Planning Agency that will support the proposed Department of Housing and Urban Development as well as other national agencies and LGUs in planning the best use, allocation, and management of land and other physical resources for national and local development.
YES to Responsible and Equitable Land Use Planning and Management!

• NO to the Proposed National Land Use Act (NLUA)!
THANK YOU!