

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 443

Introduced by HON. FLORENCIO C. GARAY

EXPLANATORY NOTE

This bill seeks to declare the Tinuy An Falls and its surrounding watershed areas in the City of Bislig, Province of Surigao del Sur as a protected landscape under Republic Act No. 7586, otherwise known as the National Integrated Protected Areas System (NIPAS) Act of 1992.

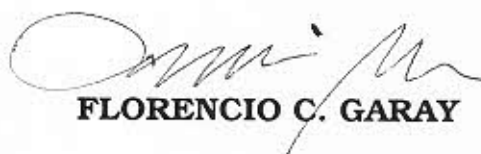
Located 195 kilometers north of Davao and 160 kilometers south of Butuan City, Tinuy-An Falls is a veritable paradise, with its three-tiered waterfall cascading down a multi-layered riverbed of stones. A rainbow formation greets early morning visitors, in a serene atmosphere surrounded by dipterocarp trees, ferns, orchids and vines.

Tinuy-An Falls and its watersheds belong to the South Diwata Range, one of the key biodiversity areas within the Eastern Mindanao Biodiversity Corridor, and is noted for being the last remaining lowland dipterocarp forest in Mindanao. It is home to one hundred forty-four (144) species of flora, thirty-three of which belong to species considered to be nearing extinction. Its forest and waters serve as habitat to ninety-one (91) species of fauna consisting of birds, mammals, amphibians, reptiles, freshwater fishes and crustaceans, of which thirty-five are categorized as "threatened", including the endangered Philippine Eagle (*pithecophaga jefferyi*).

The majestic beauty of Tinuy-An Falls has proven its tourism potential by being featured in the pages of the national Geographic, as

well as capturing the attention of the global network CNN. However, its fabled beauty needs to be protected from indiscriminate and destructive human exploitation, and its rich wildlife resources preserved for the benefit of its future generations. The declaration of Tinuy-An Falls and Watersheds as a Protected Landscape will therefore enhance its biological diversity while ensuring its protection and sustainable development.

In view of its national and local significance, the approval of this bill is earnestly sought.



FLORENCIO C. GARAY

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**AN ACT DECLARING THE TINUY-AN FALLS AND ITS WATERSHED AREAS
LOCATED IN THE CITY OF BISLIG, PROVINCE OF SURIGAO DEL SUR, AS
A PROTECTED AREA AND FOR OTHER PURPOSES**

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

**SEC. 1. *Title of the Act.* – This Act shall be known as the “Tinuy-An Falls
Protected Landscape (TFPL) Act of 2010.”**

SEC. 2. *Declaration of Policy.* - It is the policy of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. Towards this end, the State shall ensure the protection and conservation of the scenic, cultural and historical features of Tinuy-An Falls, its watershed areas and diverse terrestrial ecosystem, for the benefit of its people, both of the present and future generations. The State shall maintain the high level of biodiversity in the area through sustainable and participatory development; regulate the utilization of wildlife resources, both flora and fauna, and other natural habitats found therein and respect and protect the customs and interests of its legitimate inhabitants, migrants and indigenous people.

SEC. 3. *Declaration of Protected Area and Category.* – The Tinuy-An Falls and its watershed and terrestrial ecosystem are hereby constituted as a protected area, under the category of protected landscape, and as a permanent component of the National Integrated Protected Areas System established pursuant to Republic Act No. 7586, otherwise known as the National Integrated Protected Areas Act of 1992.

Sec. 4. **Scope of Boundaries.-** The Tinuy-An Falls Protected Landscape occupies certain areas of Bislig City, particularly in Barangay Burboanan and Barangay San Roque. The boundaries of TFPL are more particularly described as follows:

*“Beginning at Tie Point BLLM 1 PLS 480-D located at Bislig City with the **coordinates of East 30,000 North 30, 000 with a distance of 9.765 meters** to a point designated as corner 1,*

CORNER	EASTING	NORTHING
1	195,180	905,345
2	195,150	904,500
3	195,125	903,000
4	192,719	902,642
5	188,036	904,988
6	187,025	905,570
7	186,023	906,047
8	185,623	906,326
9	184,991	906,900
10	183,445.72	908,632.96
11	185,450	910,279
12	187,025	909,010
13	187,400	908,720
14	188,090	908,800
15	188,675	907,770
16	189,675	907,975
17	190,800	908,000
18	190,880	907,727
19	191,285	906,412
20	191,725	906,305

The foregoing boundaries cover an approximate area of Three Thousand Nine Hundred Eleven (3,911) hectares, which shall be verified through a ground survey to be conducted by the Department of Environment and Natural Resources (DENR) within ninety (90) days after the effectivity of this Act.

For the purposes of this Act, the area whose boundaries are defined herein is hereby excised and excluded from the concession area under Timber License Agreement No. 43 of PICOP Resources, Inc., and shall henceforth be administered and managed in accordance with the provisions of this Act.

Any modification of the boundaries due to changing ecological situations, new scientific or archeological findings, or discovery of traditional boundaries shall be made through an Act of Congress, after full consultation with the affected public and concerned government agencies.

Sec. 5. **Land Classification.** – All lands comprising the TFPL shall fall under the classification of national park as provided for in the Philippine Constitution.

Sec. 6. **Definition of Terms.** – For purposes of this Act:

a. **Biological Diversity** refers to the variety and variability among living organisms and the ecological complexes in which said organisms occur;

b. **Biological Resources** refer to living natural resources, including microorganisms, plants and animals, plus the environmental resources to which the species contribute;

c. **Buffer zones** refer to identified areas outside the boundaries of and immediately adjacent to designated protected areas pursuant to Section 8 of the NIPAS Act of 1992 that need special development and control in order to provide an extra layer around the protected area where restrictions may apply and be managed according to the management plan and applicable rules and regulations as provided for in this Act and related statutes;

d. **Ecosystem** refers to the community of plants and animals, their physical environment, and the interaction between them;

e. **Endangered Species** refers to species and subspecies of wildlife whose populations are in danger of extinction and whose survival is unlikely if the causal factors continue to operate;

f. **General Management Plan** refers to the basic long-term framework plan for the management of the protected area, which shall serve as guide in the preparation of the annual operational plans and budget;

g. **General Management Planning Strategy** refers to the national guide in the formulation of site specific management plans, including buffer zones;

h. **Indigenous People** refers to people sharing common bonds of language, customs, traditions and other distinctive cultural traits, and who have since time immemorial occupied, possessed and utilized a territory;

i. **Integrated Protected Area Fund (IPAF)** refers to a trust fund established for the purpose of financing the projects of the system;

j. **Management Manual** refers to an individual management plan, basic background information, field inventory of the resources within the area, an assessment of assets and limitations, regional interrelationships,

particular objectives for managing the area, appropriate division of the area into management zones, a review of the boundaries of the area, and a design of the management programs.

k. **Non-Governmental Organization (NGO)** refers to any civil development or philanthropic organization which is multi-sectoral in character;

l. **People's Organization (PO)** refers to a group of people or an association, cooperative, federation, or aggregation of individuals or groups with an identifiable structure of decision-making and accountability, established to undertake collective action to address community concerns and needs in relation to the protected area;

m. **Protected Area** refers to identifiable portions of land and water set aside by reason of their unique physical and biological significance, managed to enhance their biological diversity and protected against destructive human exploitation;

n. **Protected Area Management Board (PAMB)** refers to the site-based decision making body responsible for the planning, resource protection and general administration of the area in accordance with the approved management plan;

o. **Protected Area Superintendent (PASu)** refers to the Chief Operating Officer of the Department of Environment and Natural Resources (DENR) at the protected area;

p. **Protected landscape** refers to an area of national significance, which is characterized by the harmonious interaction of man and land while providing opportunities for public enjoyment through recreation and tourism within the normal lifestyle and economic activity of the area;

q. **Sustainability or Sustainable** refers to the environmental management principle of using components of biological diversity in a way and at a rate that does not lead to the decline of the species used, thereby maintaining its potential to meet the needs and aspirations of the present and future generation;

r. **Secretary** refers to the Secretary of the Department of environment and Natural Resources (DENR);

s. **Tenured Migrant** refers to any person who has actually and continuously occupied an area for five (5) years prior to the designation of the same as a protected area in accordance with the NIPAS Act and who is solely dependent therein for subsistence;

Sec. 7. **Management Mechanism.** – A Protected Area Management Board (PAMB) for the TFPL is hereby established, which shall have the sole jurisdiction, power and authority over the protected area, such as but is not limited to policy-making and permit granting for all matters that may affect biodiversity conservation, protection and sustainable development. It shall be composed of:

- 1.The Regional Executive Director (RED) of DENR Region XIII, as Chairman;
- 2.The Mayor of Bislig City, as co-Chair
- 3.The Provincial Planning and Development Officer of Surigao del Sur or his duly designated representative, as Member;
- 4.The Provincial Environment and Natural Resources Officer or an Officer of the Provincial Environment and Natural Resources Office, as Member;
- 5.The Barangay Captains of Barangays Burboanan and San Roque, as Members;
6. One (1) representative from each tribal community, as Members;
- 7.Maximum of three (3) representatives from people's and non-governmental organizations, as Members;
- 8.The City Tourism Officer of Bislig City, as Member;
- 9.Representatives from government agencies involved in the protected area management, as Members;
- 10.The Protected Area Superintendent, as Ex-Officio Member;
- 11.A representative from the Bislig Water District, as Member;
- 12.A Member of the House of Representatives representing the LGUs concerned, or his/her representative, as Ex-Officio Advisor.

Every member of the PAMB shall serve for a term of three (3) years; *Provided*, That he/she remains a member of the sector or employee of the office being represented.

Members of the PAMB shall represent their sectors and shall be deemed to carry the vote of their principals unless challenged in writing within five (5) days after the decision being challenged is made known in writing to the members of the sector being represented;

In the selection of the representatives of people's (POs) and non-government organizations (NGOs), preference shall be accorded to those organizations that are involved in the conservation, protection and development of the protected area. Representation shall be by institution and shall take into account geographic location.

The representatives from the local government units (LGUs) and national agencies in the PAMB shall include among their duties the task of informing their respective constituents, office or sector, to ensure that the provisions of this Act

is consistent with the Local Government Code, other relevant statutes and ordinances, and local and national development plans and projects. Failure to comply with the foregoing shall subject the representative to disciplinary action as the PAMB may provide.

Sec. 8. *Powers and Functions of the Protected Area Management Board (PAMB).* - The PAMB of the Tinuy-An Falls Protected Landscape shall have the following powers and functions:

- a. Issue rules and regulations to prohibit certain acts that may be prejudicial to the protected area or subvert the policy declaration herein set forth;
- b. Issue rules and regulations for the resolution of conflicts through appropriate and effective means;
- c. Adopt rules and procedures in the conduct of business, including the creation of committees to which its powers may be delegated;
- d. Approve the management plan and oversee the office of the Protected Area Superintendent (PASu);
- e. Establish criteria and set fees for the issuance of permits for activities regulated by this Act or the management plan;
- f. Deputize appropriate individuals for the enforcement of the laws, rules and regulations; and
- g. Approve proposals for funding and budget allocations and exercise responsibility over all funds that may accrue to the Tinuy-An Falls Protected Landscape.

The DENR, through the Regional Executive Director (RED) for Region XIII, shall oversee the PAMB to ensure that it is acting within the scope of its powers and functions. In case of conflict between administrative orders issued by DENR pursuant to the NIPAS Act and other laws, decisions and resolutions issued by the PAMB, such conflict shall be referred by the PAMB to the Secretary of the DENR, who shall decide whether to apply the rule or withdraw its application in the TFPL. The decision of the DENR Secretary may be appealed to the Regional Trial Court that has jurisdiction over the protected area.

Sec. 9. *The Tinuy-An Protected Landscape Management Plan.* – Within one (1) year from the effectivity of this Act and in accordance with the NIPAS general management planning strategy, a management plan shall be prepared by the Protected Area Superintendent (PASu), in consultation with the appropriate offices of the DENR, local government units, local communities, indigenous people, non-government and people's organizations, and people who possess socio-economic, anthropological and ecological expertise. Such management plan shall contain, among others, the following:

- a. category of the protected area;
- b. period of applicability of the plan;

- c. key management issues;
- d. goals and objectives of management in support of Section 2 hereof;
- e. site management strategy;
- f. major management activities such as, but not limited to, enforcement of laws, biodiversity conservation, habitat and wildlife management, sustainable use management, infrastructure development and maintenance and fire and pest control;
- g. zoning, of which primary consideration shall be accorded the traditional zones that have proven sustainable and consonant with the biodiversity and protection of the natural characteristics of the area;
- h. visitor management programs.

The management plan shall be reviewed, approved and adopted by the PAMB and certified by the Secretary, which shall be mandatory, and shall declare that the management plan conforms to all laws, rules and regulations issued by the DENR. The DENR shall refrain from revising or modifying the management plan without consulting the PAMB.

The PASu, in coordination with all concerned offices, shall prepare all successor plans. One (1) year before the expiration of the management plan, the PASu shall cause the publication of notices inviting comment and suggestions on the proposed successor plan in a newspaper of general circulation and the posting of such notices in the city, provincial, municipal and barangay halls, as well as in three (3) other areas frequented by the public. Public hearings may be conducted on the successor plan upon the written request of any interested party.

The finalized management plan shall be written in a language understood within the area and made available for comment of the general public at the PASu Office.

Sec. 10. *Protected Area Superintendent (PASu) Office.*- There is hereby established a Protected Area Superintendent's Office in charge of the management, protection and administration of the TFPL. The PASu shall be assisted by the existing personnel of the DENR. The head of office shall be the chief operating officer of the TFPL and shall be accountable to the RED of the DENR-CARAGA and the PAMB. The PASu shall have the following powers and functions:

1. Prepare the management and successor plans;
2. Provide a secretariat for the PAMB, which shall supply the PAMB with timely and necessary information for appropriate action;
3. Establish a productive partnership with the local community, involving groups interested in the fulfillment of the goals and

- objectives of the protected area, and in the planning, protection and management thereof;
4. Develop and implement a park information, education and visitor program;
 5. Enforce laws, rules and regulation in the protected area, institute and file legal actions independently or in collaboration with other government agencies or organizations and assist in the prosecution of offenses committed in violation of this Act.
 6. Monitor all activities within the protected area to ensure their conformity with the management plan;
 7. Issue protected area permits based on terms, conditions and criteria established by the PAMB; and
 8. Perform such other functions as the PAMB may delegate.

SEC. 11. *Tinuy-An Falls Protected Landscape Fund.* - There is hereby established a trust fund to be known as the TFPL Fund for the purpose of financing projects of the system. All income generated from the operation of the system or the management of the wild flora and fauna in the TFPL shall accrue to the Fund. These income shall be derived from the visitor's/tourists' fees, fees from permitted sale and export of flora and fauna and other resources from the protected areas, proceeds from registration and lease of multiple-use areas, including tourism concessions, contributions from industries and facilities directly benefiting from the protected area, and such other fees and income derived from the operation of the protected area.

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

The LGUs shall continue to impose and collect all other fees not enumerated herein which they have traditionally collected, such as business permits, property tax and rentals of local government unit facilities. Furthermore, local government units may charge add-ons to fees imposed by the PAMB, provided that such add-ons shall be determined based on the contribution of the local government units in the maintenance and protection of the protected area.

Sec. 12. *Tenured Migrants and Private Rights.*- Tenured migrants shall be eligible to become stewards of portions of land within the allowed and designated zones. The PAMB shall identify, verify and review all tenure instruments, land claims and issuances of permits for resource use within the TFPL and

recommend the issuance of the appropriate tenure instrument consistent with the land classification, proper and allowed use of the resources found therein and zoning provided in the management plan.

Nothing herein shall be construed to mean any diminution of accrued rights earned by tenured migrants. Should areas occupied by tenured migrants be designated as zones in which no occupation or other activities are allowed pursuant to the attainment of sustainable development, provision for the transfer of said tenured migrants to multiple use zones or buffer zones shall be accomplished through just and humane means.

In the event of termination of a tenure instrument for cause or by voluntary surrender of rights, the PASu shall take immediate steps to rehabilitate the area in order to return it to its approximate natural state prior to the cultivation or other act by the tenured migrant.

All private rights within the TFPL shall be protected in accordance with existing law.

Sec. 13. ***Indigenous People's Rights.***- The rights of the indigenous communities to their ancestral domains and other customary rights and interest within the TFPL shall be accorded due recognition. The preservation of ancestral domains and customary rights shall be considered as one of the management objectives.

The PASu Office shall identify the location of indigenous cultural communities within or near the site, which is identifiable by the tribal leaders.

The evaluation of ancestral domain claims within the TFPL shall be conducted by the National Commission on Indigenous Peoples (NCIP) pursuant to the provisions of Republic Act No. 8371, otherwise known as "The Indigenous Peoples Right Act of 1997" or the IPRA Law, and its implementing rules and regulations, in coordination with the PAMB.

Sec. 14. ***Existing Facilities Within the Protected Area.***- Within sixty (60) days from the effectivity of this Act, major existing facilities such as roads, buildings, water systems, transmission lines, communication facilities, heavy equipment and irrigation facilities existing within the boundaries of the protected area shall submit a project description to the PAMB through the PASu.

The PAMB, with the assistance of the DENR, shall determine whether the existence of any facility and its future plan and operations will be detrimental to the protected area and whether conditions for its continued operation shall be imposed. If any such conditions are violated, the owner of the facility shall be liable to pay a fine of Five Thousand Pesos (P5,000.00) for every violation. Upon reaching a total fine of Five Hundred Thousand Pesos (P500,000.00), the PAMB,

through the PASu and deputizing other government entities, shall cause the cessation and demolition of the facility at the cost of the owner.

Existing facilities allowed to remain within the TFPL may be charged a reasonable royalty by the PAMB. All income from such royalty shall accrue to the TFPL Integrated Protected Area Fund (IPAF).

Sec. 15. *Utilization of Non-Renewable Resources.*- Any exploitation and utilization of non-renewable resources within the TFPL shall be allowed only through the approval of the PAMB and said activities shall be subjected to the Environmental Impact Assessment System (EIAS).

Sec. 16. *Special Prosecutor.*- Within thirty (30) days from the effectivity of this Act, the Department of Justice (DOJ) shall appoint a Special Prosecutor to whom all cases of violation of laws, rules and regulations in the TFPL shall be assigned. The Special Prosecutor shall coordinate with the PAMB and the PASu in the performance of his/her duties and assist in the training of wardens and rangers in the implementation of arrests and in the observance of criminal procedures.

Sec. 17. *Prohibited Acts.*- The following prohibitions and penalties shall be applicable to the protected area:

1. The penalties and qualifications prescribed in Articles 309 and 310 of the Revised Penal Code, depending on the value of the resources involved, shall be imposed upon any person who:

a. Hunts, takes, destroys, disturbs or possesses any wild terrestrial or aquatic plants, animals, flora, fauna or products derived therefrom, within particularly identified, regulated or prohibited zones in the protected area, including private lands, without the necessary protected area permit, authorization or exemption, as issued or promulgated by the PAMB;

b. Cuts, gathers, removes or collects timber or any forest product within particularly identified, regulated or prohibited areas or zones in the protected area, including private lands, without the necessary protected area permit, authorization or exemption, as issued or promulgated by the PAMB;

c. Possesses outside the protected area any timber, forest product, wild terrestrial or aquatic plants, animals, flora or fauna so prohibited by the PAMB, or products derived therefrom which is ascertained to have been taken from the protected area. It shall be presumed to have been taken from the protected area if the subject plants, animals, flora or fauna is found in the possession of the person or in conveyances that have traveled to the protected area within the past seventy-two (72) hours;

d. Engages in mineral exploration or extraction, in whatever scale, within the protected area without the necessary protected area permit or authorization from the PAMB;

e. Engages in quarrying of sand, gravel, guano, limestone or any material within the protected area without an environmental clearance certificate duly issued by the DENR and authenticated by the PAMB; and

f. Hunts, collects, removes or destroys endangered or protected species, except when the collection or removal is for the purpose of scientific research and when exempted from the prohibition by the PAMB.

2. A fine of not less than Five Thousand Pesos (P5,000.00) but not more than Two Hundred Fifty Thousand Pesos (P250,000.00) and/or imprisonment of not less than one (1) year nor more than five (5) years plus the restoration and the rehabilitation of damages shall be imposed upon any person who destroys or defaces for no useful purpose any natural formation within the protected area; *Provided*, That the useful purpose is so defined or provided for in the management plan or is approved as such by the PAMB prior to the commission of the act;

3. A fine of not less than Five Thousand Pesos (P5,000.00) but not more than Two Hundred Fifty Thousand Pesos (P250,000.00) and/or imprisonment of not less than one (1) year nor more than five (5) years shall be imposed upon any public officer, prosecutor or officer of the law who, in dereliction of the duties of his office shall, without legal justification, refrain from initiating prosecutions for the punishments of the violators of the law or shall tolerate the commission of offenses. Conviction of this offense shall also carry the penalty of perpetual disqualification from public office.

Valuation of the damage resulting from any violation of this Act shall take into account biodiversity and conservation considerations as well as aesthetic and scenic values. Valuation assessed by the DENR or concerned government agency shall be presumed correct unless proven otherwise by preponderant evidence.

Any person who shall induce another or conspire to commit any of the acts prohibited in this Act, or suffer their workers to commit any of the same, shall be liable in the same manner as the one actually performing the deed.

All conveyances, vessels, equipments, paraphernalia, implements, gear, tools and similar devices shall be subjected to immediate and administrative confiscation, independent of the judicial proceedings conducted by the PASu Office, subject, however, to due process and substantial evidence requirements. However, when legal action is filed before the regular courts, the said

conveyances, vessels, equipments, paraphernalia, implements, gear, tools and similar devices shall not be released until after judgment has been rendered. Proceeds of the sale of all objects administratively or judicially confiscated pursuant hereto shall accrue to the IPAF for the TFPL. The procedure for the sale hereof shall be promulgated by the PAMB.

Sec. 18. **Reporting Responsibility.**- The PASu, through the PAMB, shall submit an annual accomplishment report to the Secretary, detailing therein the activities undertaken in the TFPL.

Sec. 19. **Appropriations.**- The Secretary of the Department of the Environment and Natural Resources shall immediately include in the Department's program the implementation of this Act, the funding of which shall be included in the annual General Appropriations Act.

Sec. 20. **Implementing Rules and Regulations.**- Ninety (90) days after the effectivity of this Act, the DENR through the PAMB shall promulgate the necessary rules and regulations to effectively implement the provisions of this Act.

Sec. 21. **Separability Clause.**- If any part or section of this Act is declared by the courts as unconstitutional, such declaration shall not affect the other parts or sections hereof.

Sec. 22. **Repealing Clause.**- For the purpose of this Act, the provisions of the NIPAS Act are hereby modified in accordance with the provisions herein. All other laws, proclamations, rules and regulations inconsistent with this Act are hereby repealed or modified accordingly.

Sec. 23. **Effectivity Clause.**- Copies of this Act shall be posted in a conspicuous place in the provincial, municipal and barangay halls of the area, as well as in three (3) other places frequented by the public. This Act shall take effect fifteen (15) days after its complete publication in a newspaper of general circulation.

Approved,