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Department of Environment and Natural Resources

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JAN 07 2020

DENR ADMINISTRATIVE ORDER NO. 01 S. 2020

SUBJECT : **RATIONALIZING DREDGING ACTIVITIES IN THE HEAVILY-SILTED RIVER CHANNELS WITHIN THE PROVINCE OF NEGROS OCCIDENTAL PURSUANT TO THE DENR-DPWH-DILG-DOTR JOINT MEMORANDUM CIRCULAR NO. 1 SERIES OF 2019**

Pursuant to Section 2, Article XII of the 1987 Constitution, the Department's mandate under Executive Order No. 292 or the Administrative Code of the Philippines, and Section 5.4 of DENR-DPWH-DILG-DOTR Joint Memorandum Circular No. 2019-01, in order to protect and properly manage the disposition of sand as well as restore the natural state and water flow of the heavily-silted river channels in the Province of Negros Occidental, the following guidelines are hereby prescribed:

I.

GENERAL PROVISIONS

Section 1. Coverage. This Order shall cover the implementation of the DENR River Restoration thru Dredging Activities as embodied in Section 5.4 of the DENR-DPWH-DILG-DOTR Joint Memorandum Circular No. 2019-01 in the heavily-silted river channels within the Province of Negros Occidental.

Section 2. Scope of Operations. In order to open up the heavily-silted river channels of Negros Occidental, areas starting from the coastline of river deltas extending all the way upstream, as may be determined by the Provincial Government in accordance with the DPWH Dredging Master Plan, are hereby declared exclusive River Dredging Zones (RDZ). Only dredging activities shall be allowed within the RDZ, quarrying is strictly prohibited.

Section 3. Rationale and Objectives

- a) The flow of materials and sediment from the upland that flank down the major river channels thereby causing its aggradation became the long-term direct culprit of massive flooding in the various barangays and municipalities of the province of Negros Occidental.
- b) It is necessary to protect and properly manage the utilization of the sand and gravel in the heavily-silted river channels within the Province of Negros Occidental, to improve the water flow, ensure the integrity of the various protective dikes and infrastructures, thereby reduce risks to lives and properties.
- c) In order to restore the natural state and water flow of the heavily-silted river channels and improve its hydraulic capacity thereby eliminate flooding, large-scale dredging and desilting operations, based on a comprehensive dredging plan, must be implemented.

Section 4. Declaration of Policies

- a) The exclusive authority of the province to issue permit to extract sand, gravel and other quarry resources, pursuant to the ordinance of the Sangguniang Panlalawigan, under Republic Act No. 7160 is covered by Section 5.1 of JMC 2019-01 or the Dredging with Commercial Utilization of Dredged Materials in favor of a mining permit holder under the

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Industrial Sand and Gravel (ISAG) or Commercial Sand and Gravel (CSAG) quarry permit.

- b) River Restoration through Dredging Activities under Section 5.4 of JMC 2019-01 does not cover an ISAG or CSAG regime since the activity to be undertaken is dredging and not quarrying. This will not preclude, however, the entitlement of the Province of Negros Occidental to the share from the commercial disposal of the dredged material in addition to the undertaking of the permit holder to restore the river thru dredging.
- c) Local Government Units are entitled to their equitable share derived from the utilization and development of the national wealth within their respective areas under Section 138 of the Local Government Code of 1991.
- d) The State is allowed by the Constitution to enter into agreements with private sector entities to bolster the national economy through the sustainable utilization of minerals.
- e) Disposal of dredged or extracted materials under this Order shall be governed by the principle according to which the government expects a reasonable return for its utilization, while holders of dredging clearance expect a reasonable return for its dredging operations while restoring the river to its original state.

Section 5. No Funding from the Government. No funding from the government shall be made for the conduct of dredging activities by the private sector. Holders of Dredging Clearance shall provide the financing, technology, management and personnel necessary to implement dredging activities within the exclusive RDZ.

II.

QUALIFICATIONS OF LARGE-SCALE DREDGING OPERATORS

Section 1. Who May Apply. Any citizen of the Philippines or a SEC-registered corporation, partnership, or association established to engage in construction, and development and/or dredging operations, with technical and financial capability to undertake large-scale flood control dredging and desilting operation in the Province of Negros Occidental, may apply for a dredging clearance with the Department of Public Works and Highways (DPWH). To implement efficient and cost-effective large-scale dredging operations, individual corporations may pool their resources, organize themselves and apply as a consortium.

Section 2. Financial Capacity. Applicants must possess the following:

- a) Individual applicants must possess the financial capacity by showing proof of not less than P250,000,000.00 in asset value through the submission of an Audited Financial Statement, credit lines and/or income tax returns for the preceding three (3) years and other documents that may be required by the concerned DENR agency;
- b) For a corporation, partnership, association or a consortium, its capital must be at least sixty per centum (60%) owned by citizens of the Philippines. A minimum authorized capital of One Billion Pesos (P1,000,000,000.00) shall be required, twenty-five percent (25%) of which shall be subscribed and paid up. In no case shall the paid-up capital be less than P250,000,000.00. For consortiums, one of its members must possess these qualifications.

Section 3. Technical Competence. In addition to the above requirements, only applicants capable of implementing large-scale dredging activities for flood mitigation or prevention purposes in the heavily-silted river channels within the Province of Negros Occidental, based on their technical knowledge and verifiable previous track record conducting such activities, as properly vetted, duly certified and approved by the appropriate DENR and DPWH offices, are qualified to apply for a dredging clearance.

Section 4. Other requirements. In addition to the above-stated requirements, the proponent shall:

- a) Deploy all their equipment within 30 days from the Notice to Proceed (NTP) to be issued by the Provincial Government and the equipment shall be under the name of the company, either chartered or leased, and capable of undertaking large scale dredging activity.
- b) Post a Cash Bond in the amount of Twenty Million Pesos (P 20,000,000.00), to be held in an account of the Province of Negros Occidental, to ensure compliance with this Order and other applicable environmental laws, rules and regulations.
- c) Secure the required clearances from the appropriate government office including a certification of no pending case relating to compliance with existing environmental laws, rules and regulations, and an undertaking that it will never be involved in such.
- d) Undertake protection of the rivers banks from erosion and provide necessary engineering intervention to support the vital infrastructures along the river, pursuant to the dredging clearance approved by the DPWH.
- e) Secure the necessary permit from the Provincial Government and pay the required National and Local Tax as required by law.

III.

DENR RIVER RESTORATION THROUGH DREDGING ACTIVITIES

Section 1. Prior Determination of Mineral Contents. Upon determination of the RDZ, the Mines and Geosciences Bureau (MGB) shall conduct a survey of the non-metallic and metallic resources on the RDZ. Once a prior determination of the metallic and other valuable materials in economic quantities is established, the proponent shall, in addition to the payment of taxes, pay the corresponding fees prescribed by the MGB.

Section 2. Application for Issuance of Dredging Clearance. The application for the issuance of Dredging Clearance must be accompanied by the endorsement of the Governor and shall be governed by this Order and other applicable DENR laws, rules and issuances.

Section 3. Prescribed Extraction Method. Holders of dredging clearance under this Order shall adopt the sequence and mode of extraction approved by the DPWH and implement the same in accordance with the duly approved work program in order to ensure a systematic and responsible extraction/utilization/disposition of sand and gravel from river channels.

Section 4. Prescribed Dredging Method. In order to restore the natural state and flow of the river and taking into consideration the essential role played by constant sand replenishment, all dredging activities shall be initially conducted at the deltas of heavily-silted river channels of Negros Occidental, for a period of six (6) months, with the objective of creating navigational channel and providing more depth for passage of dredging vessel/s to implement true flood control measures within the RDZ.

IV.

ENVIRONMENTAL MANAGEMENT

Section 1. Environmental Compliance. All holders of dredging clearance shall comply with the pertinent laws, rules and regulations on environmental protection, the allocation of funds for environment-related expenditures, environmental impact assessment, and setting up of the contingent liability and rehabilitation fund, among others.

Section 2. Programmatic Environmental Impact Assessment or Strategic Environmental Assessment per River Channel. In view of the required issuance of ECC on the one (1) Master Dredging Plan per river channel to be issued/approved by the DPWH for the heavily-silted river channels in Negros Occidental, the EMB RO-VI shall conduct the Programmatic EIA or SEA for each river system in coordination with MGB, DPWH and the Provincial Government. The Provincial Government may be the proponent for the Programmatic EIA and SEA.

Section 3. Application for Issuance of ECC. Upon endorsement of the Provincial Governor, all ECG applications for large-scale dredging in heavily-silted river channels in Negros Occidental shall be filed with the EMB RO-VI.

Section 4. Extraction Limit. In view of the large-scale river dredging operations involving the heavily-silted river channels in Negros Occidental within the RDZ from the river delta extending all the way upstream and its high replenishment rate/s, the issuance of ECC per river channel shall not be subject to any extraction limit, provided that:

- a) The extraction activities conform with the approved work program in accordance with the DPWH Dredging Master Plan;
- b) Assessment of the river systems shall be done by the team composed of representatives from PENRO, CENRO and the MGB every two (2) years; and
- c) The maximum allowable extraction conforms to the designated mitigating measures based on the environmental impact assessment.

V.

MEMORANDUM OF AGREEMENT WITH DENR

Section 1. Authority to Dispose. A holder of an approved Dredging Clearance shall enter into a Memorandum of Agreement (MOA) with the DENR - Regional Office (RO) VI wherein the holder is granted the authority to dispose materials extracted from the RDZ.

Section 2. Accreditation as Trader. All holders of dredging clearance issued by the DPWH or entities duly authorized or contracted by holders of dredging clearance to market and/or commercially dispose dredged or extracted materials should be accredited as traders/retailers/dealers. The Certificate of Accreditation shall be issued by the DENR through the MGB RO-VI.

Section 3. Transport Permit. Ore Transport Permit (OTP) and/or Mineral Ore Export Permit (MOEP) shall be included in the MOA executed between the DENR RO-VI and the holder of the dredging clearance who has been accredited as a trader. *Provided*, that a written notice prior to shipment or transport of dredged and/or extracted suitable materials shall be furnished to the MGB RO-VI for the purpose of monitoring dredging activities in the RDZ.

Section 4. Excise Tax. The excise tax on locally extracted or produced non-metallic minerals and quarry resources will be based on the actual market value of the gross output thereof at the time of removal. The Excise Tax shall be timely and completely paid to the nearest Bureau of Internal Revenue Office in the province concerned.

Section 5. Work Deviation. Any deviation of more than 15% from the approved work program in any of the activities involved, without the prior concurrence of the DPWH in coordination with the DENR through the MGB RO-VI shall be sufficient ground for the suspension/cancellation of pertinent permits and clearances.

VI.

OPERATIONS PERMIT WITH THE LOCAL GOVERNMENT

Section 1. *Operations Permit.* No Operations Permit, Notice of Award and Notice to Proceed shall be issued by the Provincial Government pursuant to this Order, unless the applicant has a valid MOA with DENR RO-VI, has been duly accredited as a trader, and has secured a dredging clearance for flood control dredging and desilting activities in the RDZ from the Secretary of the DPWH or its authorized representative based on DPWH-issued one river-specific Dredging Master Plan.

Section 2. *Monitoring and Supervision Fee.* A monitoring and supervision fee which shall not be less than five percent (5%) of the market value of the gross output of the materials extracted from the covered area within the RDZ, exclusive of all other taxes, shall be paid to the provincial government for purposes of monitoring and ensuring compliance with this Order and other related issuances.

Section 3. *Extraction Fee.* Suitable materials for commercial disposition shall be subject to extraction fee, to be collected by the Provincial Government of Negros Occidental in accordance with the Local Government Code.

VII.

MONITORING AND ENFORCEMENT

Section 1. *Creation of Inter-Agency Committee.* An inter-agency committee shall be created, composed of the following:

- a) Governor of the Province of Negros Occidental as Chairperson;
- b) DENR Regional Executive Director VI as Vice-Chairperson;
- c) DPWH Regional Director VI as Member;
- d) MGB Regional Director VI as Member; and
- e) EMB Regional Director VI as Member.

Section 2. *Powers and Functions of the Inter-Agency Committee.* The inter-agency committee shall have the following powers and functions:

- a) Serve as oversight for the implementation of this Administrative Order and monitoring of the dredging operations;
- b) Shall recommend the suspension and/or cancellation of permits and/or clearances; and
- c) Shall propose policies and programs to rationalize the dredging operations.

VIII.

FINAL PROVISIONS

Section 1. *Subjectivity to Other Laws.* This Order shall be subject to the Constitution, and all pertinent laws, guidelines and issuances.

Section 2. *Repealing Clause.* All Orders, issuances, rules and regulations, or parts thereof which are inconsistent with this Order are hereby repealed or modified accordingly.

Section 3. *Separability.* The provisions of this Order are hereby declared to be separable. If any part or provision of this Order shall be declared invalid, the remaining portions or provisions shall not be affected thereby and shall be construed as if it did not contain the particular invalid term or provision.

Section 4. *Suppletory Clause.* In case of violation and/or non-compliance with the provisions of this Administrative Order, the pertinent penal provisions under R.A. 7942, Presidential Decree No. 1586 and other applicable laws, rules and regulation shall be applied suppletory hereto.

Section 5. *Effectivity.* This Administrative Order shall take effect fifteen (15) days following its complete publication in a newspaper of general circulation and registration with the Office of the Administrative Register.

Issued on JAN 07 2020, in Quezon City.


ROY A. CIMATU
Secretary *RC*



PUBLICATION: DAILY TRIBUNE
December 16, 2020
ACKNOWLEDGEMENT: U.P LAW CENTER
January 4, 2021