

Memorandum Order
No. 98 - 03
January 30, 1998

SUBJECT : Guidelines in the Issuance of Area Status and Clearance or Consent for Mining Applications.

Pursuant to Section 8 of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995 (the “Act”) and Section 6 of DENR Administrative Order No. 96-40, the Revised Implementing Rules and Regulations of the Act (“DAO 96-40”), the following guidelines in the issuance of Area Status and Clearance or Consent for Mining Applications are hereby promulgated.

Section 1. Rationale

- a. It is the declared policy that all mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of the Government and private sector in order to enhance national growth in a way that effectively safeguards the environment and protects the rights of affected communities pursuant to the Act and DAO 96-40.
- b. DAO 96-40 provides for Area Status and Clearance or Consent as one of the requirements for processing of Mining Applications, in recognition of existing and subsisting land/surface/or occupation rights, emanating from the Bureau, concerned DENR Sectors and/or concerned Government Office(s).

- c. It is imperative that a standard policy be adopted for the issuance of Area Status and Clearance or Consent, harmonizing existing policies to achieve complementation and coordination among concerned offices in view of the need to facilitate processing of Mining Applications. Such policy shall recognize and protect valid and subsisting land/surface or occupation rights granted by the Concerned Government Offices.

Sec. 2 Objectives

- a. To rationalize existing policies and provide specific procedures in the issuance of Area Status and Clearance or Consent as required under DAO 96-40; and
- b. To recognize and protect existing and subsisting tenurial, land, surface or occupation rights granted and/or authorized by the Concerned Government Office(s), in the course of processing Mining Applications.

Sec. 3 Definition of Terms

For the purpose of this Order, the following terms are accordingly defined:

- a. **Area Clearance** - refers to the document(s) issued by the concerned DENR Sectors, Concerned Government Offices, or the Office of the Undersecretary for Field Operations in cases falling under Section 11 hereof, indicating that the area(s) covered thereby are free and open for the grant of a Mining Application;
- b. **Area Consent** - refers to the document(s) indicating that the concerned or affected private entities, as provided in Section 6 hereof, have given their permission or consent to the grant of a Mining Application.

- c. **Area Status** - refers to the classification of the area covered by a Mining Application, that is, whether it is alienable and disposable land, agricultural land, timber or forest land, public or private land as issued by the concerned DENR Sector(s) or Concerned Government Office(s), and whether or not such lands are covered by valid/existing/expired/abandoned/ cancelled mining rights or claims, as issued by the MGB.
- d. **Bureau** - refers to the Mines and Geosciences Bureau Central Office.
- e. **Concerned Government Office(s)** - refers to government office(s) having obtained legal authority and/or jurisdiction over reservations or certain specified areas.
- f. **DENR Project Areas** - refers to specific portions of land covered by an existing project of the Department such as, but not limited to, Industrial Forest Management Agreement (IFMA) and Community-Based Forest Management Agreement (CBFMA).
- g. **DENR Sectors** - refers to the Forest Management Service, Lands Management Service and Environmental Management and Protected Areas Service.
- h. **MGB** - refers to the Mines and Geosciences Bureau.
- i. **Mining Application** - means any application for mining rights for which Area Status and Clearance or Consent are required under Sections 20,37,54,75,83 and 90 of DAO 96-40;
- j. **Regional Office** - refers to the concerned Regional Office(s) of the Mines and Geosciences Bureau.

Other terms used in this Order shall have their meaning as defined in the Act and DAO 96-40.

Sec. 4 Scope and Limitation

Where applicable, as determined by the succeeding sections, an Area Status and Clearance or Consent shall be issued with respect to areas covered by Mining Applications in order to determine whether or not such areas are open or clear for the same.

The issuance or grant of an Area Status and Clearance or Consent shall not be construed as approval or grant of the Mining Application in relation to which it is issued, but is merely one (1) procedural requirement in the processing and evaluation of such application. Said Mining Application shall still be subject to further processing and evaluation, and if granted, it shall be subject to such other and further requirements under the Act, DAO 96-40 and pertinent laws, rules and regulations such as, but not limited to, the requirement to obtain an Environmental Compliance Certificate prior to development and utilization.

Sec. 5 Areas Closed to Mining Applications

Mining Applications shall not be accepted in the following areas:

1. Areas covered by valid and existing mining rights and Mining Applications subject to the pertinent condition/s stated in Section 6 hereof;
2. Old growth or virgin forests, proclaimed watershed forest reserves, wilderness areas, mangrove forests, mossy forests, national parks, provincial/municipal forests, tree parks, greenbelts, game refuge, bird sanctuaries and areas proclaimed as marine reserves/marine parks and tourist zones as defined by law and identified initial components of the National Integrated Protected Areas System (NIPAS) pursuant to R.A. No. 7586 and such areas expressly prohibited thereunder, as well as under Department Administrative Order No. 25, Series of 1992, and other laws;
3. Areas which the DENR Secretary may exclude based, *inter alia*, on proper assessment of their environmental impacts and

implications on sustainable land uses, such as built-up areas and critical watersheds with appropriate Barangay/Municipal/City/Provincial Sanggunian ordinance specifying therein the location and specific boundary of the concerned area; and

4. Areas expressly prohibited by law.

Mining Applications which may have been accepted over the foregoing areas shall be reviewed and, after due process, such areas may be denied Area Status and Clearance and excluded from said applications.

Sec. 6 Areas Open to Mining Applications but Subject to Area Consent from Private Entities.

Mining Applications shall be accepted over the following areas the approval of which is subject to the conditions set forth hereunder:

- a. In areas covered by an application for a Financial or Technical Assistance Agreement (“FTAA”), the acceptance of a mining application for quarry resources, except sand and gravel applications, shall require the consent of the FTAA Applicant.
- b. In areas covered by Small-Scale Mining Contracts under R.A. 7076 and Small-Scale Mining Permits under Presidential Decree No. 1899, the prior written consent of the small-scale miners, together with an agreement on a royalty payment upon utilization of the minerals to be placed in a Trust Fund for the socio-economic development of the concerned community, pursuant to Section 15(b) of DAO 96-40.
- c. In areas occupied/claimed by Indigenous Cultural Communities, the prior informed consent of the concerned Communities, pursuant to Sections 16 and 17 of the Act and Section 16 of DAO 96-40, and without prejudice to further rules and procedural requirements that may hereafter be

promulgated to implement Republic Act No. 8371, otherwise known as the Indigenous People's Right Act ("IPRA").

Provided, that in the case of Quarry, Sand and Gravel, Gemstone Gathering or Guano Permit applications, the written permission of affected landowner(s) or surface owner(s) shall also be required as a mandatory requirement in the acceptance of such applications.

Provided, further, that in the case of overlapping of claims, conflicts or complaints from landowners, non-government organizations and other concerned stakeholders, the Regional Director, or the Provincial Governor/City Mayor in the case of quarry resources mining applications, shall exert all efforts to resolve the same.

Sec. 7 Areas Open to Mining Applications but Subject to Area Status Clearance.

Mining Applications may be granted over the following areas subject to Area Status and Clearance from the concerned Department Sectors or Concerned Government Office(s) having jurisdiction over the same:

- a. Public and private lands not covered by valid and existing mining rights and Mining Applications;
- b. Lands covered by expired, abandoned or canceled mining rights and Mining Applications;
- c. Mineral reservations;
- d. Timber or forest lands as defined in existing laws, excluding those covered by NIPAS areas;
- e. Military and other Government Reservations outside of the jurisdiction of the DENR, provided that these may only be opened initially for Exploration Permits, pursuant to Section 11 of DAO 96-40;

- f. Areas near or under public or private buildings, cemeteries, archaeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams or other infrastructure projects, public or private works; including plantations or valuable crops, subject to technical evaluation and validation by the Bureau;
- g. Areas falling under the jurisdiction of DENR which shall consist of the following:
 - 1. Forest reservations;
 - 2. Forest reserves other than critical watershed forest reserves; and
 - 3. Existing DENR Projects Areas within timber or forest lands, reservations and reserves.

Provided, that DENR proposed project and/or protected areas that fall within forest reservations, forest reserve other than critical watershed forest reserves, timber or forest lands and other areas listed under Section 7 hereof are considered open to Mining Application.

Sec. 8 Procedure in Applying for Area Status and Clearance from Concerned Department Sectors.

- a. Requirements - The application for Area Status and Clearance shall be accompanied by two (2) supporting documents, namely:
 - 1. the Transmittal Notice (Annex “A”) with a copy of the location map/sketch plan of the area applied for; and
 - 2. a copy of the pertinent environmental measures such as Environmental Work Program (EWP), Environmental Compliance Certificate (ECC) or Environmental Protection and Enhancement Program (EPEP), as the case may be, for applications for Exploration Permits, Mineral Agreements or FTAAAs, or any report/program that shows

the proposed environmental protection measures in the case of Quarry, Sand and Gravel, Guano or Gemstone Gathering Permit application.

b. Commencement of Process

1. Applications for Exploration Permits, Mineral Agreements or FTAAAs - Within fifteen (15) working days from receipt of the application, the concerned Regional Office(s) shall issue the Transmittal Notice with a copy of the location map/sketch plan of the applied area and the EWP, ECC or EPEP, as the case may be, to the pertinent Department Sectors for Area Status and Clearance, copy furnished the concerned municipalities, cities and other relevant offices or agencies of the Government for their information.
 2. Applications for Quarry, Sand and Gravel, Guano or Gemstone Gathering Permits - Within fifteen (15) working days from receipt of the application, the concerned Provincial/City Mining Regulatory Board ("P/CMRB") shall issue the Transmittal Notice with a copy of the location map/sketch plan of the area applied for and environmental protection report/program to the concerned Regional Office(s) and Department Sectors for Area Status and Clearance, copy furnished the concerned municipalities, cities and other relevant offices or agencies of the Government for their information.
 2. If the area subject of an application falls within the administration of two (2) or more Regional Offices or PCMRBs, as the case may be, the Regional Office or P/CMRB with jurisdiction over the smaller area shall follow the same procedure directed to the concerned Regional Office(s), Department Sectors, municipalities, cities and other relevant offices or agencies of the Government in the region/s covered by the remaining area.
- c. Responsibility of the Applicant - Upon notification of the applicant by the Regional Office or P/CMRB, as the case may

be, as to the dispatch of the Transmittal Notice with the accompanying location map/sketch plan and other documents, to the concerned offices and agencies, it shall now be the responsibility of the applicant to secure the necessary Area Status and Clearance from the same.

- d. Responsibility of the Concerned Regional Offices and Department Sectors - The concerned sectors and offices shall issue an official response to all request(s) for Area Status and Clearance within thirty (30) working days from receipt of the notice requesting for the same. Failure of said sectors and offices to issue such official response within that prescribed period shall be construed that no objection is being interposed to the request for Area Status and Clearance.

Sec. 9 Issuance of Area Status and Clearance.

If the subject area is found to be open to Mining Applications, the concerned sectors or offices shall approve and issue the corresponding Area Status and Clearance (Annex "B") in the immediately preceding section. Within fifteen (15) days of receipt of such Area Status and Clearance, the Bureau, concerned Regional Office(s) or P/CMRB, as the case may be, shall then issue to the applicant, the following:

- a. Written notice to pay the corresponding clearance fee (pursuant to DAO 97-10) to the concerned Bureau/Regional Office(s); and
- b. Notice of Application for publication, posting and radio announcement.

Sec. 10. Denial of Area Status and Clearance

Denial of Area Status and Clearance by concerned Regional Offices, Department Sectors and Government Offices shall mean that the area subject thereof is closed to Mining Applications.

Any such denial shall be formally issued in writing and clearly supported by legal or technical basis.

In such cases, the concerned Regional Office shall, within fifteen (15) working days from receipt of the denial of Area Clearance, exclude the same from the coverage of the concerned Mining Application, except in cases provided for by the next succeeding section.

Sec. 11 Appeal from Denial of Area Status and Clearance

The denial of Area Status and Clearance by the DENR Sector(s)/Regional Office(s) may be appealable to the Undersecretary for Field Operations within fifteen (15) calendar days from receipt of such denial.

In such cases, the applicant shall file a Notice of Appeal, with the disputed Denial of Area Clearance attached thereto, with the Office of the Undersecretary for Field Operations, copy furnished the concerned Regional Office/s. Exclusion of area/s covered by the disputed Area Status and Clearance shall be held in abeyance pending the decision on the appeal. The concerned Regional Office/s shall forward pertinent records and such other documents to the Office of the Undersecretary thru the MGB Director within five (5) days from receipt of the Order requiring any such records and other documents.

The Office of the Undersecretary for Field Operations shall then issue the final order either affirming or reversing the denial of the concerned Regional Office/s. In the event the denial is affirmed, the concerned Regional Office/s shall exclude the areas covered by said denial from the pertinent Mining Applications within five (5) days from receipt of the final order. In the event the denial is reversed, the Office of the Undersecretary for Field Operations

shall issue the Area Status and Clearance to the applicant, copy furnished the concerned Regional Office/s.

Sec. 12 Institutional Support

The Bureau shall establish a “One-Stop Shop” (OSS) for Mining Applications in its Central and Regional Offices which shall facilitate application processing, provide status update on Mining Applications and coordinate with other offices/agencies with regards to the processing of Mining Applications. In view thereof, all concerned DENR Sectors shall provide the necessary support including personnel to be assigned on a part-time basis to the OSS.

Sec. 13 Separability Clause

Should any provision of this Order or any part thereof be held or declared invalid by a competent court, the other provisions shall remain in full force and effect.

Sec. 14 Repealing and Amending Clause

All Memorandum Orders inconsistent with or contrary to the provisions of these guidelines are hereby repealed or modified accordingly.

Sec. 15 Effectivity

This Order shall take effect immediately.

(Sgd.) VICTOR O. RAMOS
Secretary