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Department of Environment and Natural Resources

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ADMINISTRATIVE ORDER  
No. 2003- 38

**Subject : Guidelines for the Implementation of Proclamation No. 297 – “Excluding a Certain Area from the Operation of Proclamation No. 369 dated February 27, 1931, and Declaring the Same as Mineral Reservation and as Environmentally Critical Area”**

Pursuant to Proclamation No. 297 dated November 25, 2002, “*Excluding a Certain Area from the Operation of Proclamation No. 369 dated February 27, 1931, and Declaring the same as Mineral Reservation and as Environmentally Critical Area,*” and in accordance with the pertinent provisions of the 1987 Philippine Constitution and Republic Act (R.A.) No. 7942, otherwise known as the Philippine Mining Act of 1995, the following Guidelines are hereby promulgated:

**Section 1. Title.** This Administrative Order shall be known as the “*Guidelines for the Implementation of Proclamation No. 297 - “Excluding a Certain Area from the Operation of Proclamation No. 369 dated February 27, 1931, and Declaring the Same as Mineral Reservation and as Environmentally Critical Area.”*”

**Section 2. Policies.** The following policies govern these Guidelines:

- a. Article XII, Section 3 of the 1987 Philippine Constitution and Section 4 of R.A. No. 7942 provides that mineral resources are owned by the State, that the exploration, development and utilization thereof shall be under its full control and supervision and that it may directly undertake such activities or pursue the same through agreements with qualified contractors;
- b. Executive Order (E.O.) No. 192 mandates the Department of Environment and Natural Resources (DENR) as the primary agency of Government responsible for the conservation, management, development and proper use of the country's environment and natural resources, as well as the licensing and regulation of all natural resources as may be provided by law to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos;
- c. Section 8 of R.A. No. 7942 provides that the DENR shall be the primary agency of Government responsible for the conservation, management, development and proper use of the State's mineral resources, including those in reservations, watershed areas and lands of the public domain, and that the DENR Secretary shall have the authority to promulgate rules and regulations as may be necessary to implement the intent and provisions of R.A. No. 7942;
- d. Section 5 of R.A. No. 7942 provides that mining operation in a mineral reservation, which includes mineral processing operation, may be undertaken either directly by the DENR or through a contractor.



- e. Section 23 of R.A. No. 7076 provides that small-scale miners who have been in actual operation of mineral lands on or before August 1, 1987 shall not be dispossessed, ejected or removed from said areas provided that they comply with the provisions of the Act.

**Section 3. Objectives.** In view of the peace and order problems in the Diwalwal mining areas, on top of the environmental, health and safety problems and unresolved conflicting claims on mining rights pending with the courts which have led to a continuing critical and emergency situation needing immediate intervention by Government, the objectives of this Administrative Order shall be:

- a. To rationalize the mining and mineral processing operations in the Mineral Reservation for greater efficiency and to provide for adequate environmental protection and mine rehabilitation measures.
- b. To adequately address the health and safety concerns of the miners, mineral processors and residents.
- c. To uplift the social and economic well-being of the underprivileged sectors that are directly and indirectly involved in the mining and mineral processing operations.
- d. To help stabilize the peace and order situation.
- e. To provide for an equitable sharing scheme for the benefits derived from the utilization of the mineral resources.
- f. To ensure that the benefits derived from mining and mineral processing operations shall accrue to the communities, Government, both local and national, and other legitimate stakeholders.
- g. To ensure that the rights of small-scale miners who are already occupying and actively mining in the Diwalwal mining areas on or before August 1, 1987 are protected, pursuant to R.A. No. 7076.

**Section 4. Scope.** This Administrative Order covers the management, administration and regulation of all mining and mineral processing operations and related activities within the Diwalwal Mineral Reservation declared under Proclamation No. 297 dated November 25, 2002.

**Section 5. Definition of Terms.** As used in and for the purposes of these Guidelines, the following terms shall be defined accordingly:

- a. "Diwalwal Mineral Reservation" refers to the area of 8,100 hectares, more or less, declared as Mineral Reservation and as Environmentally Critical Area pursuant to Proclamation No. 297 dated November 25, 2002, particularly bounded by the following geographical coordinates:

Corner	Longitude	Latitude
1	126°08'	7°46'
2	126°08'	7°51'
3	126°13'	7°51'
4	126°13'	7°46'

- b. "Mill Tailings" means materials, whether solid, liquid or both, segregated from the ores as a result of mineral processing operations, which may or may not have economic values.



- c. "Mine Waste" means soil and/or rock materials from surface or underground mining operations with no present economic value to the generator of the same.
- d. "Mineral Processing" means the milling, beneficiation, leaching, smelting, cyanidation, calcination and/or upgrading of ores, minerals, rocks, mill tailings, mine wastes and/or other metallurgical by-products or by similar means to convert the same into marketable products.
- e. "Natural Resources Development Corporation" refers to the government corporation of that name established as a corporate arm of the DENR pursuant to Executive Order No. 786 dated March 19, 1982.
- f. "Ore Transport Permit" refers to the permit that may be granted to transport minerals/mineral products.
- g. "Operator" means a person or entity who is occupying and actively mining in the Diwalwal mining areas on or before August 1, 1997 as determined by the Provincial Mining Regulatory Board concerned, and who enters into an operating agreement with the DENR or NRDC.

**Section 6. Identification and Delineation of Mining and Mineral Processing Areas.** The NRDC shall identify and delineate mining and mineral processing areas within the Diwalwal Mineral Reservation, where mining for gold and its associated minerals may be allowed. It shall mainly take into account the trends, dimensions and sites of the ore veins and vein systems, access to the veins and working areas, buffer zones, and other development works in delineating such areas.

Thereafter, the NRDC shall endeavor to confine all mining and mineral processing operations to such areas.

**Section 7. Direct State Utilization as Mode of Mineral Resources Development.** Pursuant to the pertinent provisions of Proclamation No. 297 dated November 25, 2002 and consistent with the pertinent provisions of R.A. No. 7942, the DENR shall directly undertake mining and mineral processing operations in certain identified areas in the Diwalwal Mineral Reservation through the NRDC, or the entity designated by the Secretary in accordance with Section 22 of this Administrative Order, with the assistance of the MGB and other sectors of the DENR, subject to payment of just compensation that may be due the legitimate and existing claimants.

For this purpose, the DENR and the NRDC shall enter into a Memorandum of Agreement that shall embody the pertinent terms and conditions.

**Section 8. Responsibilities of the NRDC.** As the implementing arm of the DENR in undertaking mining and mineral processing in the Diwalwal Mineral Reservation, the NRDC shall have the following responsibilities:

- a. Formulate and implement an exploration work program and mine management plan for the cost-effective, environmentally sound and socially responsible mining and mineral processing operations in the Diwalwal Mineral Reservation.





- b. Secure the necessary permits and licenses and comply with all requirements pertinent to the conduct of mining and mineral processing operations.
- c. Avail of services of competent professional group(s) to undertake the necessary planning, design and implementation works.
- d. Construct and operate mineral processing plant(s) and mill tailings disposal system in the Mabatás Area.
- e. At its option, provide services to the mining and mineral processing operations, such as ventilation and power supply, blasting and assaying, among others.
- f. Pay the share of Government, such as excise tax and royalty, from the utilization of the mineral resources in the Diwalwal Mineral Reservation.
- g. Establish the environmental and social fund as required under Proclamation No. 297.
- h. Initiate the environmental clean-up of the Diwalwal mining areas, Naboc River and other affected areas.
- i. Coordinate and or avail of the services of the MGB, the Environmental Management Bureau (EMB) and other agencies/instrumentalities of the DENR and Government in the implementation of the exploration work program and mine management plan.

**Section 9. Operating Agreements.** The DENR Secretary or the NRDC may enter into operating agreements with various qualified mining groups/cooperatives for the purpose of mining and/or processing of the ores therefrom.

In line with the above, the mining areas shall be allocated by underground levels/working areas in accordance with Section 6 hereof: Provided, That any operating agreement for mining purpose shall be confined to the limits and immediate vicinity of the Diwalwal mining areas of 729 hectares, more or less, as follows:

Corner	Longitude	Latitude
1	126°10'30"	7°48'30"
2	126°10'30"	7°50'00"
3	126°12'00"	7°50'00"
4	126°12'00"	7°48'30"

**Section 10. Multisectoral Evaluation Committee.** The Multisectoral Evaluation Committee (MEC) shall be tasked with the initial evaluation of applications for operating agreement and indorsement of said applications to the MGB Regional Office concerned. It shall be composed of the following:

- Chairperson : Representative, NRDC
- Members : Representative, mining groups/cooperatives  
 Representative, Local Government Unit – Mt. Diwata  
 Representative, Indigenous Cultural Community (ies) concerned  
 Representative, Non-Government Organization concerned  
 Representative, MGB Regional Office concerned



**Section 11. Small-Scale Mining Area.** In accordance with the pertinent provisions of Section 5 of R.A. No. 7942 pertaining to small-scale mining, the MGB, upon recommendation of NRDC, shall allocate a maximum of twenty-five per cent (25%) of the Diwalwal Mineral Reservation for small-scale mining cooperatives covered by R.A. No. 7076, or the *People's Small-Scale Mining Act of 1991*.

**Section 12. Transport of Ores.** The transportation of minerals and/or mineral product(s), including tailings that still contain the valuable metals in economic quantity, from the Diwalwal Mineral Reservation shall be covered by an Ore Transport Permit (OTP). The absence of an OTP shall be sufficient ground for the materials being transported to be apprehended/confiscated in favor of the Government, and disposed of in accordance with existing laws, rules and regulations. An OTP shall be issued by the MGB Regional Office concerned only to operators upon the recommendation of NRDC, in accordance with the pertinent provisions of DAO No. 96-40, as amended.

**Section 13. Mine Wastes and Mill Tailings Disposal Management.** Mine wastes and mill tailings produced as a result of the mining and mineral processing operations contemplated herein shall be managed in a technically, financially, socially, culturally and environmentally acceptable manner and in a way that effectively safeguards the environment and protects the rights of the concerned communities.

Management of mine wastes and mill tailings must be guided by current best practices committed to ensure control over their impacts and efficiently protect the environment. It shall be undertaken with due and equal emphasis on the economic and environmental considerations, as well as safety, health, social, and cultural concerns.

The above principles shall be implemented through the specific provisions of DENR Memorandum Order No. 99-32, otherwise known as the Policy Guidelines and Standards for Mine Waste and Mill Tailings Management.

In line with the foregoing, all mineral processing operations shall no longer be allowed in the Diwalwal mining areas. Instead, the Mabatás Area shall be made available as relocation site of the mineral processing plants of Diwalwal, as well as area for a common tailings disposal system that features engineered tailings dam(s).

**Section 14. Environmental Protection and Social/Community Development.** The NRDC shall submit for approval and implement a programmatic Environmental Protection and Enhancement Program (EPEP) for the mining and mineral processing operations. This EPEP shall be guided by Chapter XVI – *Environmental Protection* of DAO No. 96-40, as amended. All other requirements of law, including the conduct of a programmatic Environmental Impact Assessment (EIA) and the issuance of appropriate Environmental Clearance Certificates (ECCs) by the DENR, shall also be strictly complied with.

The NRDC shall also submit a Social Development and Management Program (SDMP) for the mining and mineral processing operations. This SDMP shall be guided by DAO No. 2000 - 99 the Rules and Regulations on "



## Implementation of the Social Development and Management Programs for Mining Projects.

**Section 15. Use of Explosives and Chemicals.** Where appropriate, only NRDC is authorized to secure the appropriate licenses to possess, transport and use explosives, blasting accessories and chemicals for the mining and mineral processing operations in accordance with the provisions of the pertinent laws and implementing rules and regulations.

**Section 16. Mine Rehabilitation.** The NRDC shall technically and biologically rehabilitate the excavated, mined-out, tailings-covered and/or disturbed areas, as provided for in Chapter XVIII of DAO No. 96-40, as amended.

A Mine Rehabilitation Fund shall be established by NRDC based on the approved work program, and shall be deposited as a trust fund in a government depository bank. It shall be used for the physical and social rehabilitation of areas and communities affected by the mining and mineral processing operations and for research on the social, technical and preventive aspects of mine rehabilitation.

**Section 17. Confiscation/Seizure of Illegally Sourced Ores and Mill Tailings and Apprehension of Violators.** The DENR/MGB and its deputies are empowered to confiscate, seize and dispose in accordance with existing rules and regulations illegally sourced ores and mill tailings, apprehend the violators in accordance with existing laws, and rules and regulations and file the appropriate charges in the proper court, if warranted.

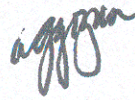
**Section 18. Sale of Gold.** All gold produced from the Diwalwal Mineral Reservation shall be sold to the Bangko Sentral ng Pilipinas or its duly authorized representatives, at prices competitive with those prevailing in the world market regardless of volume or weight.

**Section 19. Share of Government.** The NRDC shall pay the appropriate share of Government such as the excise tax and royalty due the government from a mineral reservation, among others, based on the gross value of the gold ore and other minerals produced by it and/or its operators.

NRDC shall likewise ensure that the royalty due the Indigenous Peoples concerned, as provided by law, is duly set aside and appropriated. It is also authorized to impose management and service fees to provide for the social and environmental fund, payment for loans, capitalized expenditures, and adequate share of profits and incomes, among others.

NRDC may also collect other fees to recover its capital investment and sustain funds for its operations.

**Section 20. Multipartite Monitoring Team.** A Diwalwal Multipartite Monitoring Team (MMT) shall be created primarily for the purpose of determining the level of compliance with the terms and conditions of operating agreements and with existing mining and environmental laws, rules and regulations.





**Section 21. Reportorial Requirements and Fines.** NRDC is required to submit the necessary monthly, quarterly, semi-annual, and annual reports, particularly production and sales, in accordance with Sections 270 and 271 of DAO No. 96-40, as amended.

**Section 22. Designation of Another Implementing Arm of the DENR.** The DENR Secretary may designate or appoint a new government-owned or – controlled corporation attached to the DENR, which shall act as the implementing arm of the DENR in undertaking mining and mineral processing operations in the Diwalwal Mineral Reservation. Once designated, the new government corporation shall have all the same responsibilities of the NRDC as provided herein.

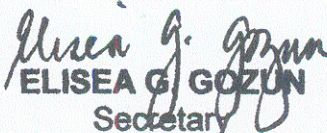
**Section 23. Settlement of Boundary Conflicts.** Parties concerned in any boundary conflicts within authorized areas in the Diwalwal Mineral Reservation are encouraged to settle such conflicts through the alternative dispute resolution approach.

**Section 24. Transitory Provision.** All existing Service Contractors operating in the Diwalwal mining areas pursuant to the pertinent provisions of DAO No. 2002-18 shall immediately comply with the provisions of this Administrative Order. Mineral processing plants and related facilities and structures situated in the Diwalwal mining areas, which are compliant with the existing requirements of law, may still be utilized by the Service Contractors until such time that the Mabatás Area becomes operational.

**Section 25. Separability Clause.** If any part or section of this Order is declared unconstitutional or invalid by a competent court, such declaration shall not affect the other parts or Sections of this Order.

**Section 26. Repealing Clause.** DAO Nos. 2002-18 and 2002-35 and all other orders, rules and regulations inconsistent with this Order are deemed repealed or modified accordingly.

**Section 27. Effectivity.** This Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation and registration in the Office of the National Administrative Register

  
ELISEA G. GOZUN  
Secretary

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TODAY