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SUPPLEMENTAL GUIDELINES IN THE ISSUANCE OF NCIP CERTIFICATION PRECONDITION AND FREE AND PRIOR INFORMED CONSENT IN CONNECTION WITH APPLICATIONS FOR LEASE, PERMIT, LICENSE, CONTRA...

NCIP ADMINISTRATIVE ORDER NO. 03, October 13, 1998

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Pursuant to Section 3 of Rule XIII of National Commission on Indigenous Peoples (NCIP) Administrative Order No. 1, Series of 1998, the Rules and Regulations Implementing R.A. No. 8371, otherwise known as the "The Indigenous Peoples' Rights Act of 1997" (the Act), the following supplemental guidelines in the issuance of Free and Prior Informed Consent (FPIC) in connection with applications for lease, permit, license, contract and other forms of concession in Ancestral Domain are hereby promulgated.

SECTION 1. Scope — This Order covers:

- Policies on the status of pending applications for lease, permit, license, contract and other forms of concession in Ancestral Domains;

- Issuance of NCIP Certification Precondition prior to the issuance or renewal of any lease, permit, license, contract or other forms of concession in Ancestral Domains; and

- Issuance of FPIC and execution of Memorandum of Agreement (MOA) in areas within certified or claimed Ancestral Domains.

SECTION 2. Definition of Terms — Consistent with the pertinent provisions of the Act and NCIP Administrative Order No. 1, Series of 1998 the following terms shall mean:

- Certified Ancestral Land/Domain — areas covered by Certificates of Ancestral Land Title (CALTs/Certificates of Ancestral Domain Title (CALTs);

- Claimed Ancestral Land/Domain — areas covered by Certificates of Ancestral Land Claim (CALCs), Certificates of Ancestral Domain Claim (CADCs) and/or pending applications for CALT/CADT or actually occupied by Indigenous Cultural Communities (ICCs)/Indigenous Peoples (IPs) in the concept of Ancestral Land/Domain.

SECTION 3. Recognition of Existing/Vested Rights and Pending Applications for Lease, Permit, License, Contract and Other Forms of Concession —

- All leases, permits, licenses, contracts and other forms of concession within Ancestral Domains already existing and/or vested upon the effectivity of NCIP Administrative Order No. 1, Series of 1998 shall be recognized and respected. As such, the concerned lessees/permittees/licenses/contractors/concessionaires are not covered by the provisions of the Act on FPIC and NCIP Certification Precondition.

- New and renewal applications filed Prior to the Effectivity of NCIP Administrative Order No. 1, Series of 1998, shall have priority in securing the NCIP Certification Precondition and FPIC, if applicable, upon endorsement of the concerned government agency.

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- Any formal written agreement and/or ICCs/IPs resolution issued by the concerned ICCs/IPs prior to the effectivity of NCIP Administrative Order No. 1, Series of 1998, shall be deemed as consent.

- New and renewal Applications Filed During the Effectivity of NCIP Administrative Order No. 1, Series of 1998, shall have priority in securing the NCIP Certification Precondition and FPIC, if applicable, upon endorsement of the concerned government agency.

SECTION 4. Issuance of NCIP Certification Precondition for Non-ICC/IP Areas —

- Requests for NCIP Certification Precondition shall be filed with the concerned NCIP Regional Office. The cost of actual expenses in the conduct of the required field-based investigation, to be undertaken by the concerned NCIP Regional Office, shall be borne by the applicant. The pertinent field-based investigation report including recommendation shall be submitted to the NCIP main office within 30 days from receipt of the request. The NCIP shall act on request for NCIP Certification Precondition only upon endorsement of the concerned government agency.

- If the area applied for does not overlap any Certified or Claimed Ancestral Land/Domain, the Certification to that effect shall be issued by the NCIP within 7 days upon receipt of the pertinent field-based investigation report.

- If the areas applied for overlaps any Certified or Claimed Ancestral Land/Domain Claim, the Certification to that effect shall be issued in accordance with Section 5 hereof.

SECTION 5. Issuance of Free and Prior Informed Consent — The issuance of an FPIC or rejection of the request therefor by the concerned ICCs/IPs shall be in accordance with the following procedure:

- Within 15 days upon the completion of the pertinent field-based investigation report, the NCIP Main Office shall officially notify in writing the applicant of such overlap and the need to secure the FPIC, furnishing the concerned NCIP regional office and endorsing government agency with copies of such notification.

- Thereafter, the following steps shall be observed:

b.1 Within 30 days upon being notified the applicant shall submit its Action Plan to secure FPIC to the concerned NCIP Regional Office.

b.ii Within 30 days upon its receipt, the Action Plan shall be approved or disapproved by the concerned NCIP Regional Office; Provided, That the applicant shall be accorded the opportunity to revise and resubmit the same within 30 days upon receipt of the notice of approval.

b.iii Within 7 days upon receipt of the approved Action Plan, the same shall be implemented by the applicant.

b.iv Within 30 days upon the issuance of the FPIC or rejection of the request therefor, the concerned NCIP Regional Office shall issue the Certification and endorse the same to the concerned government agencies, copy furnished the applicant.

- In cases of conflicting Ancestral Land/Domain claims, the concerned NCIP Regional Office shall issue accordingly an Interim Clearance to the applicant within 30 days after the notification referred to in 5a hereof, with the condition that it poses no objection to the application; Provided, That in the event that the conflict is resolved, the applicant must secure the FPIC as provided herein.

- In the determination of benefits due the host ICCs/IPs to be embodied in the MOA, all benefits already provided under existing laws, administrative orders, rules and regulations covering particular resource utilization extraction, or development projects/activities shall apply, without prejudice to additional benefits as may be negotiated between the parties on an "ex-gratia" basis. In case where existing laws, administrative orders and rules

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and regulations do not provide for benefits, such benefits due to host ICCs/IPs shall be negotiated between the parties.

- Upon issuance of a favorable FPIC to an application therefore and the corresponding approval thereof by the concerned government agency, the existing laws, administrative orders, rules and regulations governing the activities authorized under such approved application shall be followed and complied with.

SECTION 6. 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.

SECTION 7. Repealing Clause — All orders and circulars or parts thereof inconsistent with or contrary to the provisions of these guidelines are hereby repealed, amended or modified accordingly.

SECTION 8. Effectivity — This Order shall take effect fifteen (15) days upon its publication in two (2) newspapers of general circulation.

Adopted: 13 Oct. 1998

(SGD.) ERLINDA M. DOLANDOLAN
Commissioner

(SGD.) VICTORINO L. SAWAY
Commissioner

(SGD.) CESAR B. SULONG
Commissioner

(SGD.) CASTILLO B. TIDANG, JR.
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(SGD.) MAI T. TUAN
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(SGD. DAVID A. DAOAS
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