NATIONAL ADMINISTRATIVE REGISTER · FEBRUARY 29, 2008

“A RESOLUTION ADOPTING THE REVISED GUIDELINES IN THE IMPLEMENTATION OF THE SEP CLEARANCE SYSTEM, FURTHER AMENDING PCSD ADMINISTRATIVE ORDER NO. 6, SERIES OF 2000, AND PCSD RESOL...

PCSD RESOLUTION NO. 08-352, February 29, 2008

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WHEREAS, Section 16 of Republic Act 7611 or the Strategic Environmental Plan (SEP) for Palawan Act provides that the governance, implementation and policy direction of the SEP shall be exercised by the herein created Palawan Council for Sustainable Development (PCSD), hereinafter referred to as the Council;

WHEREAS, Section 6 of the said Act provides that the SEP shall serve as the framework to guide the government agencies concerned in the formulation and implementation of plans, programs and projects affecting the environment and natural resources of Palawan;

WHEREAS, Section 19 of the same Act empowers the Council to formulate plans and policies as may be necessary to carry out the provisions of the SEP, as well as to adopt, and rescind such rules and regulations and impose penalties therefore, for the effective implementation thereof and to perform such other powers and functions as may be necessary in carrying out its functions, powers, and the provisions of the SEP law

WHEREAS, the Council, on the 25tb riay of February 2000, promulgated PCSh Administrative Order No. 6, providing thereof the procedures in securing clearance from PCSD in relation to proposed projects and undertaking to be implemented in Palawan-

WHEREAS, said Order was subsequently amended on January 23, 2003 by PCSD Resolution No. 02-238 providing thereto the penalty provisions as well as requiring research activities to secure an SEP Clearance;

WHEREAS, in order to effectively and efficiently implement the provision of the SEP law, the PCSD recommended amendment to the existing guidelines on the issuances of SEP Clearance;

WHEREAS, the PCSD Legal Committee/Adjudication Board, thru PAB Resolution 08-03, recommended the approval of the proposed revisions on PCSD Administrative Order No. 06, Series of 2000 and PCSD Resolution No. 03-208;

NOW, THEREFORE, for and in consideration of the above premises and on motion duly seconded, be it RESOLVED as it is hereby RESOLVED to adopt, as it is hereby adopted, the revised PCSD Administrative Order No. 6 providing forthe "Revised Guidelines in the Implementation of the SEP Clearance System", copy of which is hereto attached as Annex "A".

RESOLVED FINALLY, that copies of this Resolution be published in newspaper of general circulation and in the National Administrative Register at the UP Law Center;

Adopted; 29 Feb. 2008

(SGD.) ROMEO B. DORADO

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Secretary

APPROVED:

(SGD.) JOEL T. REYES
Chairman

"ANNEX A"

PCSD Administrative Order No. 6, As Amended, S. of 2008

Revised Guidelines in the Implementation of the SEP Clearance System, Amending PCSD Administrative Order No. 6, Series of 2000 and PCSD Resolution No. 03-208
Pursuant to Section 19 of Republic Act No. 7611 and with reference to Rule IV, particularly Section 20 of the Amended Rules and Regulations Implementing the Strategic Environment Plan (SEP) for Palawan Act, Presidential Decree 1586 and its Implementing Rules and Regulations embodied in DENR Administrative Order No. 30, series of 2003, the Memorandum of Agreement entered into by and between DENR and PCSD on December 29, 1994, and other pertinent laws, the procedures in securing clearance from PCSD in relation to proposed projects and undertaking for implementation in Palawan is hereby revised.

SECTION 1. Scope of Application. These guidelines shall apply to all projects and undertakings being or intended to be implemented in Palawan and shall serve as guide for all government instrumentalities mandated to issue permits, licenses, contracts, or agreements and other similar instruments.

SECTION 2. Definition of Terms. For the purpose of these guidelines, the following words and phrases shall have the following meaning.

- Allowable ECAN Zone - refers to the zone where a certain project or undertaking may be allowed based on the ECAN zoning or the approved ECAN zones map. The allowable activities for each ECAN zone are stipulated in Section 10, Title 1, Chapter II and Section 12, Title 2, Chapter II all of PCSD Resolution No. 05-250 or the Revised ECAN Guidelines.

- Certificate of Accreditation - a certificate issued by the PCSD to catcher, trader or carrier of live fish or to a fish cage operator upon the latter's compliance to the requirements enumerated in Section 3 of PCSD Administrative Order No. 05, as amended.

- Certificate of Non-Coverage - refers to the document issued by DENR stating that the proposed project is not covered by the Philippine Environmental Impact Statement System, therefore, the proponent is not required to secure an ECC prior to commencement of operation.

- Compliance Monitoring - refers to the activity identified to gauge the proponent's level of !; compliance with the conditions stipulated in the SEP Clearance or Certificate of I Accreditation issued by PCSD and the submitted EIS or lEE.

- DENR DAO 2003-30 - refers to the Implementing Rules and Regulations of Presidential Decree No. 1586, Establishing the Philippine Environmental Impact System, revising DENR DAO Nos. 21, series of 1992 and 37, series of 1996.

- DENR - refers to the Department of Environment and Natural Resources under Executive Order 192, series of 1987.

- ECAN - refers to the Environmentally Critical Areas Network under Republic Act No. 7611 and PCSD

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Resolution No. 05-250.

- ECAN Board - a local multi-sectoral body created under PCSD Resolution No. 05-250 or the Revised ECAN Guidelines and defined under PCSD Admin Order No. 10, series of 2005.

- Environmental Compliance Certificate (ECC) - refers to the document issued by the DENR Secretary or the Regional Executive Director as defined under DENR AO No. 2003-30.

- Environmentally Cntical Area (ECA) - refers to an area that is environmentally sensitive and is listed under Presidential Proclamation No. 2146 Series of 1981, as well as other areas which the President of the Philippines may proclaim environmentally critical accordance with Section 4 of PD1586.

- Environmentally Critical Project - refers to a project that has a high potential for significa negative environmental impact and is listed as such under Presidential Proclamati No. 2146 series of 1981, Presidential Proclamation No. 803, series of 1996, as well an other projects which the President may proclaim as environmentally critical i accordance with Section 4 of PD 1586.

- Environmental Impact Assessment (EIA) - refers to the process of predicting the likelv environmental consequences of implementing projector undertaking, and designatinq appropriate preventive, mitigating and enhancement measures.

- Environmental Impact Statement/Study (EIS) - refers to the document required to be submitted by the project proponent whose proposed project or undertaking is classified as an Environmentally Critical Project (ECP). The contents of the EIS shall conform to the requirements of Section 5.2.1. Article II of DENR AO NO. 2003-30.

- Environmental Impact Statement (EIS) System - refers to the entire process of organization, administration and procedures institutionalized for the purpose of assessing the effects of any project or undertaking on the quality of the physical, biological and socio-economic environment, and designing appropriate preventive, mitigating and enhancement measures pursuant to Presidential Decree 1586.

- Initial Environmental Examination (IEE) - refers to the document generally required to be submitted by the proponent whose project or undertaking is located within an ECA. The contents of the IEE should conform to the requirements of Section 5.2.2 Article II of DENRAO No. 2003-30.

- Initial Environmental Examination (IEE) Checklist Report - refers to a simplified form developed by the DENR to assist proponent/s of small project/s in complying with the EIS System. The Report, to be accomplished and submitted before undertaking a project, consist of a series of questions that deals with issues and concerns under the EIS System.

- Non-government Organization (NGO) - a private, non-profit voluntarily organization that has been organized primarily for the delivery of various services to the communities and has an established tract record for effectiveness and acceptability in the community where it is serving.

- PCSD - refers to the Palawan Council for Sustainable Development created under Section 16 of RA 7611.

- PCSDS - refers to the PCSD Staff converted under Section 20 of RA 7611.

- PCSD Administrative Order No. 00-05 - an administrative order issued by PCSD entitled "Revised Guidelines for the Accreditation, Regulation and Monitoring of Live Fish Catching, Culture, Transport, Storage/Warehousing and Trading in Palawan, as amended by PCSD Resolution Nos. 209 and 211.

- Peoples Organization (PO) - a bonafide association of citizens with demonstrated capacity to promote the public interest and with identified leadership, membership and structure. Its members belong to a sector/s who

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voluntarily band themselves together to work by themselves for their own upliftment, development and greater good.

- Permitting Agency (PA) - refers to any agency or instrumentality of the Government, such as (Bureau of Fisheries and Aquatic Resources, DENR, LGU, etc.) which is mandated or authorized to issue ECC, permit, license or enter into iease agreement, stewardship contracts or other similar instruments for the development, exploitation, management and monitoring of Palawan's natural resources.

- Project- refers to activities, including actions, programs, policy or undertaking, regardless of scale or magnitude, which may have significant impact on the environment.

- Project Proponent - refers to any entity, private or government organizations, persons, natural or juridical, or owners/agents, planning or intending to undertake a project.

- Public Hearing/Public Consultation - refers to the activity undertaken by PCSD to gather facts and thresh out all issues, concerns and apprehensions and at the same time provide the project proponent with the opportunity to present the project to the affected community.

- SEP Clearance - refers to the document issued by the PCSD certifying that based on the representations of the proponent and the preparer as reviewed, evaluated and validated by PCSDS technical staff, the proposed project or undertaking is in accordance with the SEP for Palawan Act; that the proponent has complied with all the requirements of the SEP Clearance System and that the proponent is committed to institute all mitigating measures as provided in the EIS or IEE and to comply with the terms and conditions stipulated in this document.

SECTION 3. Screening Process- The proponent who intends to implement a project or carry out an undertaking in Palawan shall secure a clearance from the PCSD in the form of an SEP Clearance or Certificate of Accreditation. The proponent shall submit a project location map and fill up the SEP Clearance application form (Attachment A) which contains the following general description of the proposed project site (i.e. vegetation, topography, landmarks, biophysical characteristics):

a. Type/nature of project (i.e. beach resort, mining, gasoline station, infra, PLTP, etc.)

b. Purpose of project

c. Magnitude of project (i.e project area, volume of production, service area, areal extent, floor area, number of units, bed capacity, etc.)

d. Project cost (i.e. investment cost, operations cost)

e. Processes and activities to be undertaken under the project (i.e. if structure- - size, if cutting permit-volume).

Based on the accomplished application form, the PCSDS shall determine whether or not the project is within the allowable ECAN zone. If the project is located within the allowable ECAN zone, the necessary documents shall be required from the proponents for the processing of the application. However, if the project is located outside the allowable ECAN zone, the proponent shall be notified in writing requiring the proponent to relocate and revise the map or denying the application. The certification issued under this screening process shall serve as the area clearance required under PCSD Resolution No. 343

SECTION 4. Evaluation Procedure. Upon receipt of the required documents the PCSDS shall review the contents thereof in terms of data sufficiency and accuracy |n cases where the documents are complete and the information contained therein are adequate, field validation shall be undertaken accordingly. However, in cases where the data embodied in the documents are substantially inadequate, the proponent shall be required to submit additional

information before field evaluation shall be undertaken.

SECTION 5. Evaluation Criteria. PCSDS' Evaluation shall be based on the ECAN Zoning of Palawan and of the ecological sustainability, social acceptability and economic viability of the project or undertaking.

SECTION 6. Public Consultation/Hearing and Conflict Resolution. For projects or undertakings requiring an EIS, the PCSDS may conduct public consultation or public hearing if deemed necessary in order to ascertain the acceptability of the project in the community and to ensure that the interests of all stakeholders are considered. Whenever any or all of the following circumstances are present, public consultation/hearing is necessary:

i. The magnitude of the project is such that a great number of people are affected;

ii. There is mounting public opposition against the proposed project, or

iii. There is written request for the conduct of such public hearing from any of the stakeholders.

In case of conflicts, no project shall be elevated to'PCSD for its action unless all measures were exhausted to address the issues at hand.

SECTION 7. Report Preparation. After the field validation, the PCSDS shall prepare an evaluation report which shail contain the results of the evaluation process and the recommendations regarding possible endorsement or denial of the proposed project. The report shall be submitted to the PCSD for action.

SECTION 8. Further Evaluation. In cases where further evaluation is necessary as determined by PCSD, it may refer the project to any concerned PCSD committees. The recommendation of said committee shall be submitted to the PCSD for its action.

SECTION 9. Independent Evaluation by DENR. The evaluation undertaken by PCSD shall not in any way prejudice the independent evaluation that the DENR may undertake of the project. The PCSDS evaluation shall become a support mechanism that shall be integrated with the DENR procedures in the implementation of the Philippine EIS System in Palawan.

SECTION 10. Review of PCSD. The PCSD during meetings shall judiciously review the evaluation report and the recommendation and subsequently come up with a decision on the project.

SECTION 11. issuance of Clearance by the PCSD- Subject to the final review of the pCSD, the recommendation of the PCSDS may be affirmed or controverted- If affirmed, the PCSD through its Chairman shall issue an SEP Clearance or Certificate of Accreditation, as the case may be. No SEP Clearance or Certificate of Accreditation shall be released without the notarised conformity of the proponent or his representative duly authorized in writing. If the project is denied, a letter of denial shall be sent to the proponent informing him of the reason for denial. The proponent may submit to PCSD a written appeal for reconsideration, if the appeal is reversed, the PCSD shall issue the aforementioned clearance or certificate, as the case may be. The decision of the PCSD on appeal shall be considered final and executory.

SECTION 12. Transferability The SEP Clearance may be transferred to another only after the following requisites are complied with: (a) an application for transfer duly filed by the proponent-grantee or the proponent-transferee; (b) an evaluation of the PCSDS and the said transfer is favorably recommended for approval; and (c) the approval by the pCSD. In such case the PCSD shall issue a new SEP Clearance in the name of the proponent-transferee.

SECTION 13. Issuance of Permit, Licenses, ECC Lease Agreements and Other Similar Instruments. The DENR shall not issue an ECC, CNC, license, permit and similar instruments without the SEP Clearance issued by PCSD in accordance with the Memorandum of Agreement between DENR and PCSD dated December 29, 1994 and

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DOJ Opinion Nos. 90 and 136, series of 1994. Other concerned entities are likewise enjoined to require the proponents to secure an SEP Clearance or Certificate of Accreditation, as the case may be, from PCSD prior to the issuance of permits, licenses and other similar instruments. Renewal of ECC, CNC, licenses, permits and similar instruments shall be subject to the SEP Clearance system.

SECTION 14. Copies of ECC, CNC, Permit, License and Other Similar Instruments. The proponents shall furnish PCSD with copies of the ECC, CNC, permits, licenses, or other similar instruments issued thereto by the concerned agencies or entities.

SECTION 15. Creation and Composition of Monitoring Team. In every municipality or city, a SEP Monitoring Team (SMT) shall be organized by the PCSDS, with the assistance of the LGU. The SMT shall be composed of representatives from PCSDS and the Municipal or City ECAN Boards or similar bodies. In areas where the ECAN Board or similar bodies have been organized, such group shall be strengthened to perform the functions of the SMT

SECTION 16. Functions of SMT. The SMT shall monitor compliance of project proponents to the terms and conditions of the SEP Clearance for Certificate of Accreditation issued by the PCSD. Likewise, the SMT may monitor compliance of the proponent with the mitigating measures embodied in the submitted EIS or IEE. The SMT shall operate underthe supervision of the PCSDS.

SECTION 17. Responsibility of SMT. Aside from conducting monitonng activities in accordance with the preceding section of this Order, the SMT shall prepare and submit to PCSDS regular monitoring reports regarding the outcome of its monitoring activities, which will be the bases of the latter's recommendation to the PCSD.

SECTION 18. SEP Monitoring Fund (SMF). An SEP Monitoring Fund shall b established from monitoring fees of proponents who were issued SEP Clearance Thk Fund does not cover or is distinct from the Monitoring Fund provided for under DENR Administrative Order 2003-30 and the Implementing Rules and Regulations of RA 7942 (the Mining Act of 1995). The SMF shall be utilized in monitoring compliance to the terms and conditions embodied in the SEP Clearance including the mitigating measures provided in the submitted EIS or IEE and should be replenished annually. The initial fees shall be at least one percent f 1 %) of the proponent's capital investment. Thereafter, the succeedinq annual fees shall be at least one percent (1 %) of the proponent's annual operations cost The establishment of this fund shall form part of the terms and conditions of the SEP Clearance or PCSD Certificate of Accreditation, as the case may be. Projects already issued with SEP Clearance or PCSD Certificate of Accreditation that are not yet operational shall be required to pay both the initial and annual SEP monitoring fees while those projects that are currently operational shall be required to pay only the annual fees.

SECTION 19. Administration of SEP Monitoring Fund. The administration of the SEP monitoring fund shall be subject to a Memorandum of Agreement (MOA) between and among the concerned project proponent, PCSDS and the concerned municipal/city LGU.

SECTION 20. Creation of SEP Monitoring Fund Committee (SMFC). For every municipality or city, an SEP Monitoring Fund Committee shali be created to administer the SEP Monitoring Fund. This committee is composed of the Chairperson of the ECAN Board or similar body, concerned PCSDS-DMO Manager and an NGO representative who is a member of the ECAN Board or similar body.

SECTION 21. Period of Evaluation and Review. The period of evaluation and review of the proposed project under this guidelines, shall not exceed 45 days, for projects requiring an IEE, or 75 days, for projects requiring EIS, from receipt of the complete set of required documents containing sufficient information necessary for evaluation, as determined by PCSDS. Proposals with insufficient requirements shall not be accepted.

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SECTION 22. Period of Council's Action. The period of Council'saction on the proposed projects shall be within 45 days upon Council's receipt of the evaluation report/documents.

SECTION 23. Prohibited Acts. The following acts are prohibited under this Order:

23.1 Non-compliance or violation of any of the terms and conditions of the SEP Clearance or PCSD Certificate of Accreditation.

23.2 Construction of any structure or conduct of any activity without the required SEP Clearance or PCSD Accreditation in an area which such activity may be allowed under the ECAN.

23.3 Construction of any structure or conduct of any activity without the required SEP Clearance or PCSD Accreditation in an area which such activity may not be allowed under the ECAN.

23.4 Construction of any structure or conduct of any activity without the required SEP Clearance or PCSD Accreditation in an area which such activity may not be allowed under the ECAN.

23.5 Operating any project or undertaking without the required SEP Clearance or Certificate of Accreditation.

SECTION 24. Penalty. The PCSD shall impose the following penalties when after due notice and hearing a project proponent is found to have committed any of the acts prohibited under Section 22 hereof.

24.1 Suspension of Project Operation. For committing any of the prohibited acts defined under Section 22, the PCSD may call the attention of the permitting agency to suspend the operation of the project, or in case of inaction by the permitting agency the PCSD may file the appropriate legal action against the former.

24.2 Cancellation of Permit. For committing any of the prohibited acts defined under Section 22, the PCSD may call the attention of the permitting agency to cancel the permit issued to the project, or in case of inaction by the permitting agency, the PCSD may file the appropriate legal action against the former.

24.3 Termination of Project Operation. For violation of Section 23.3 the PCSD shall immediately terminate the project operation.

24.4 Cancellation of SEP Clearance. For committing the prohibited act under Section 23.1 the PCSD may cancel the SEP Clearance.

24.5 Fine. In addition to the penalties under Sections 23.1 to 23.4, the PCSD shall impose the penalty of fine in the amount not less than FIFTY THOUSAND PESOS (P50,000) for every violation.

SECTION 25. Adjudication of Cases for Violation of this Order. Cases involving violations of this Order shall be filed before the PCSD Adjudication Board (PAB) for the determination of liabilities of the respondent-proponent and the imposition of the appropriate penalties as herein provided. The adjudication of such cases shall follow the existing procedures under PCSD Resolution No. 207, as amended by Resolution No. 238; Provided that for purposes of initiating an administrative complaint before the PAB, the monitoring report of the SMT, duly sworn to in accordance with law, may be taken as the complaint. Provided further that the PAB may immediately issue an Order directing the respondent-proponent to stop operation or cease and desist from further activity pending the adjudication of the case. Provided finaly, that such interlocutory Order of the PAB shall remain valid until the case is finally resolved or until such time that an SEP Clearance or Certificate of Accreditation shall have been issued thereof by the PCSD.

SECTION 26. Repealing Clause. This administrative order supersedes all rules and regulations inconsistent herewith.

SECTION 27. Effectivity, This Order shall take effect fifteen (15) days after publication.

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SO ORDERED.

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