

[DENR ADMINISTRATIVE ORDER NO. 2018-14, August 14, 2018]

GUIDELINES ON THE ISSUANCE OF AREA CLEARANCE FOR RECLAMATION PROJECTS AND PROCLAMATION / SPECIAL PATENTS OVER RECLAIMED LANDS

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Pursuant to the provisions of the Administrative Code of 1987, Executive Order (EO) No. 192 dated June 10, 1987 or the Reorganization Act of the DENR, EO No. 672 dated October 9, 2007 entitled "Defining and Clarifying the Responsibilities of the Department of Environment and Natural Resources and the Philippine Reclamation Authority in the Approval and Implementation of Reclamation Projects Nationwide," EO No. 146 dated November 13, 2013 entitled "Delegating to the National Economic and Development Authority (NEDA) Board the Power of the President to Approve Reclamation Projects," and the ruling of the Supreme Court in the case of "Francisco Chavez vs. Public Estates Authority and Amari Coastal Bay Development Corporation" (384 SCRA 152; July 9, 2002), that the DENR, "as manager, conservator and overseer of the natural resources of the State, exercises exclusive jurisdiction on the management and disposition of all lands of the public domain", and hence, "the DENR decides whether areas under water should be reclaimed or not" and, subject to the approval of the President, "whether reclaimed lands should be classified as alienable under Sections 6 and 7 of Commonwealth Act No. 141," the following guidelines on the issuance of Area Clearance over reclamation projects, as well as of proclamation and special patent over reclaimed lands, are hereby issued for the guidance and compliance of all concerned.

CHAPTER I - COMMON PROVISIONS

SECTION 1. Declaration of Policy. It is the policy of the State to ensure that development activities shall not compromise the right of the people to an ecologically balanced environment. As such, the State shall ensure that environmental safeguards are in place whenever development projects are undertaken, particularly in activities pertaining to reclamation of foreshore, submerged, and the coastal areas in general.

SECTION 2. Scope and Coverage. These guidelines shall govern all applications for reclamation over portions of foreshore and submerged areas that are found suitable and available for reclamation and issuance of special patents, subject to existing DENR rules and regulations. It shall also cover reclaimed lands already existing prior to the effectivity of this Administrative Order. In no case shall Protected Areas be subjected to reclamation.

SECTION 3. Objective. The objective of these guidelines is to prescribe and ensure rational procedures and requirements in the issuance of Area Clearance over proposed reclamation projects, and of proclamation and special patents over reclaimed lands, without compromising the interests of environmental protection and biodiversity conservation, consistent with the principle of sustainable development.

SECTION 4. Definition of Terms. As used in this Order, the following terms shall be construed to mean as follows:

4.1 Area Clearance - a document issued by the DENR Secretary declaring an area suitable for reclamation as defined under this Order.

4.2 Environmental Compliance Certificate (ECC) - the document issued by the DENR/EMB certifying that based on the representations of the proponent, the proposed project or undertaking will not cause significant environmental impact. The ECC also certifies that the proponent has complied with all the requirements of the EIA System and has committed to implement its approved Environmental Management Plan. The ECC contains specific measures and conditions that the project proponent has to undertake before and during the operation of a project, and in some cases, during the project's abandonment phase to mitigate identified environmental impacts.

4.3 Environmental Impact Assessment (EIA) - a process that involves evaluating and predicting the likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation and abandonment. It also includes designing appropriate preventive, mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare.

4.4 Foreshore - the part of the shore which is alternately covered and uncovered by the ebb and flow of the tide.

4.5 Geohazard Identification Report (GIR) - a report prepared by the Mines and Geosciences Bureau (MOB) indicating possible present geohazard in the project site after the conduct of a geohazard identification survey (GIS).

4.6 Land classification - the process of demarcating, segregating, delimiting and establishing the best category, kind, and uses of public lands. Article XII, Section 3 of the 1987 Constitution of the Philippines provides that lands of the public domain are to be classified into agricultural, forest or timber, mineral lands, and national parks.

4.7 Multipartite Monitoring Team (MMT) - an independent entity whose membership represents primarily the stakeholders / public that is intended to assist the DENR in monitoring environmental impacts and compliance with the Philippine EIS System requirements and other environmental laws as a third party entity. The MMT scheme is intended to enhance participation and transparency at the post-ECC issuance stage

of the EIS process.

4.8 Prequalification - as defined under this Order, it shall refer to the evaluation of the status of the area such as whether it is covered by existing tenurial contracts or agreements or whether the approval of the application will violate existing laws, proclamations, regulations or local ordinances.

4.9 Proclamation - the official issuance of the President publicly declaring a parcel of reclaimed land as alienable and disposable and open to disposition.

4.10 Protected Areas - identified portions of land and water set aside under the NIPAS system that are closed to reclamation.

4.11 Project Description - the document submitted by the project proponent substantially describing the proposed project particularly those aspects of the project which will likely cause environmental impact.

4.12 Reclamation - the process of conversion by filling, dredging, or other artificial means of foreshore land or submerged areas into land suitable for use as habitation or for cultivation.

4.13 Site Development Plan - a conceptual or architectural/engineering design lay-out of a proposed reclamation project showing the immediate vicinity and boundaries of the project-site, approximate dimensions of lot/block areas, types of structures to be built, indicative land uses, access roads, coastal protection barriers and other facilities. In case when sourcing of reclamation fill materials shall be from the sea, the indicative site of the borrow/dredgefill pit and its dimensions shall also be part of the Site Development Plan.

4.14 Sketch Plan - a standard plan showing the area, location, configuration, technical description including the metes and bounds of the area being applied for.

4.15 Special Patent - a public instrument issued by the Government confirming the grant by the State of a parcel of public land in favor of the grantee.

4.16 Submerged areas - areas located offshore or inside navigable lakes or rivers that are, at all times, under water.

4.17 Suitability - as defined in this Order, it shall refer to the qualification of the area for reclamation after determining its status, appropriate use, and potential environmental impact including mitigation and enhancement measures.

SECTION 5. Clearance Prior to Conduct of Reclamation Projects. No reclamation project shall be allowed unless an Area Clearance is first secured from the DENR. This clearance, which already includes/covers the ECC or any potential impact to the environment as one of its requirements, shall be effective for five (5)

years, and reclamation projects must be implemented or must commence within that period. Otherwise, the permittee must secure an extension of the clearance subject to validation and necessary supporting documents. This is to ensure that the clearance is used for the purpose for which it was issued.

SECTION 6. Qualified Applicants. The following are qualified to apply for an Area Clearance in foreshore and submerged areas, or for issuance of Proclamation and Special Patents over existing reclaimed lands:

6.1 Philippine Reclamation Authority (PRA), formerly Public Estates Authority, created under Presidential Decree No. 1084, as amended; 6.2 Cities, provinces, and other local government units (LGUs) that are authorized under the law to undertake reclamation projects; and 6.3 Other government entities or instrumentalities authorized by law to conduct reclamation activities.

Any applicant falling under 6.2 and 6.3 above shall secure prior clearance or favorable indorsement from PRA before applying with DENR.

SECTION 7. Creation and Functions of the Composite Team. Within fifteen (15) days from the approval of this Order, the Regional Executive Director (RED) shall create a Composite Team and its Technical Secretariat through a Regional Special Order (RSO). The Composite Team shall be composed of a representative each from the Licenses, Patents and Deeds Division (LPDD), Conservation and Development Division (CDD), Surveys and Mapping Division (SMD), Enforcement Division, Legal Division, technical representatives from the Regional Offices of the Mines and Geosciences Bureau (MGB) and Environmental Management Bureau (EMB) and concerned PENR and CENR Offices, as members. The Assistant Regional Director (ARD) for Technical Services shall serve as the Team Leader. In case of unavailability of the ARD, the members shall choose from among themselves the Team Leader. A representative from the NAMRIA, LLDA, and other DENR units/offices, as the case may be, may also be tapped by the Region to join the Composite Team. In the case of DENR-NCR, membership from the MGB shall come from MGB- Region IV-A (CALABARZON).

In case the reclamation project will be located in an area which falls under the jurisdiction of two (2) or more DENR Regional Offices, the DENR Regional Office that has jurisdiction over majority of the project area will be the Lead Office in evaluating and recommending for the approval of the Area Clearance application. The Composite Team shall consist of representation from both the Regional Offices concerned.

The Composite Team has the following tasks:

7.1 To evaluate, review and validate proposed and existing reclamation projects in their respective jurisdiction;

7.2 To conduct field investigation and inspection to ascertain the suitability of the area proposed for reclamation and the appropriate land use of the reclaimed land; and,

7.3 To prepare and submit a report to the RED recommending the issuance or non-issuance of Area Clearance for proposed reclamation

projects and proclamation of reclaimed areas.

7.4 To evaluate, review and validate proposed extension of validity of Area Clearance.

The Technical Secretariat shall be provided by the LPDD.

CHAPTER II - RULES AND PROCEDURES ON THE ISSUANCE OF AREA CLEARANCE FOR PROPOSED RECLAMATION PROJECTS AND THE ISSUANCE OF PROCLAMATION AND SPECIAL PATENT THEREON

A. Rules and Procedures on the Issuance of Area Clearance

SECTION 8. Application Requirements. The following documents shall accompany and be attached to the application for an Area Clearance:

8.1 Project Description, to include the following:

- a. Sketch plan;
- b. Indicative site development plan to state the usage/purpose of the area, including buffer zone, mini-park development, road side tree-planting or conceptual development plan and land use plan including site of identified sources at appropriate scale indicating relative distance to project;
- c. Description of the reclamation site - Average depth, boundaries, immediate vicinity, distance from shoreline, existing road/access/egress and ingress, available infrastructure facilities, utilities, e.g., source of power, water and telecommunication, 5-year LGU infrastructure program which will enhance viability of proposed reclamation;
- d. Valid sources of fill materials;
- e. Reclamation methodology - the procedure/technique in undertaking the activity to include the estimate volume of fill materials, type of materials and sources, containment/retention wall and consolidation of materials;
- f. Estimated cost of reclamation and land development including supporting data (i.e., existing labor force, structure and average cost and available equipment and average cost/rental rates);
- g. Proposed funding/financing of the project;
- h. Proposed project timetable - reclamation, land development and other related activities;
- i. Prevailing market land values of types/uses similar to the proposed land use/s within immediate vicinity duly certified by the local assessor/s and based on Bureau of Internal Revenue (BIR) zonal valuations; and