

**DENR Administrative Order
No. 2001 – 35
December 20, 2002**

SUBJECT : Guidelines in the Declaration and Establishment of Communal Extraction Area for Sand, Gravel, Ordinary Earth and/or Related Materials in Each Province or Highly Urbanized Independent Component City for Housing And/Or Other Personal Construction Needs.

Pursuant to Article XII of the Philippine Constitution, Section 8 of Republic Act (RA) No. 7942, otherwise known as the “*Philippine Mining Act of 1995*”, Section 138 of RA NO. 7160, otherwise known as the “*Local Government Code of 1991*,” and the policy of the Department of Environment and Natural Resources (DENR) for equitable sharing of mineral resources, the following guidelines in the declaration and establishment of communal extraction areas for sand, gravel, ordinary earth and/or related materials in each province or highly urbanized independent component city for housing and/or other personal construction needs of the local people are hereby issued.

SECTION 1. BASIC POLICY AND OBJECTIVES

It is the policy of the Government to alleviate poverty for the enhancement of the quality of life. The Government recognizes that one way of attaining this policy is by providing the basic raw materials for concrete housing and/or other personal construction needs to local people.

The following are the objectives of this Order:

- a. To provide equitable access to raw materials for concrete housing and/or other personal construction needs;

- b. To outline the mechanism in the declaration and establishment of communal extraction areas for sand, gravel, ordinary earth and/or related materials in each province or highly urbanized independent component city;
- c. To ensure the sustainable use of sand, gravel, ordinary earth and/or related materials; and
- d. To encourage the use of housing materials other than wood/wood products.

SEC. 2 DEFINITION OF TERMS

For the purpose of this Order, the following terms whether in singular or plural shall mean:

- a. Boulders – rock fragments larger than 256-milimeter diameter.
- b. Board – refers to the Provincial/City Mining Regulatory Board.
- c. Cobbles – rock fragments ranging in size from 64 millimeters to 256 millimeters.
- d. Communal Sand, Gravel, Ordinary Earth and/or Related Materials Extraction Area – an area declared and established by the Board as technically viable for the extraction of sand, gravel, ordinary earth and/or related materials for housing and/or other personal construction needs.
- e. Extraction – the act or process of taking, excavating or removing sand, gravel, ordinary earth and/or related materials.
- f. Gravel – mixture of loose and unconsolidated rock fragments whose particle sizes range from 2 millimeters to 256 millimeters.
- g. Ordinary earth – refers to ordinary soil.
- h. Pebbles – rock fragments ranging in diameter from 2 millimeters to less than 64 millimeters.
- i. Permit Holder – any individual Filipino citizen who engages, under the terms and conditions of the permit, in the communal extraction of sand, gravel, ordinary earth and/or related materials.
- j. Related Materials – collective name for boulders, cobbles and pebbles.

- k. Sand – loose and unconsolidated particles of rocks ranging in diameter from 0.0625 millimeter to less than 2 millimeters.
- l. Secretary – refers to the Secretary of the Department of Environment and Natural Resources.
- m. Unified Environmental Compliance Certificate – refers to the document issued by the Environmental Management Bureau Regional Office certifying that based on the representation of the Provincial/City Government concerned, the proposed Communal Extraction Area will not cause any significant negative environmental impact and that the concerned Local Government Unit is committed to implement all the mitigating measures stated in the approved Project Description.

SEC. 3 DECLARATION OF COMMUNAL EXTRACTION AREA FOR SAND, GRAVEL, ORDINARY EARTH AND/OR RELATED MATERIALS

The Provincial/City Mining Regulatory Board (Board) created under RA No. 7076 shall have the authority to declare and set aside suitable Communal Extraction Area for Sand, Gravel, Ordinary Earth and/or Related Materials (Communal Extraction Area) with the endorsement of the Provincial Governor/City Mayor concerned for approval by the Secretary in any of the following areas:

- a. Public lands, subject to consent of any existing right holder;
- b. Private lands, subject to consent of landowners;
- c. Ancestral lands/domains, with free and prior informed consent from the indigenous cultural communities concerned; and/or
- d. Areas covered by existing mining permits, contracts or leases, or mining right applications, which do not include sand, gravel and/or alluvial gold in the minerals applied for extraction, subject to prior notification of the parties concerned: *Provided*, That areas covered by existing mining permits, contracts or leases, or mining right applications where minerals to be extracted include sand, gravel and/or alluvial gold shall be subject to prior consent of the parties concerned.

The maximum Communal Extraction Area that the Board may declare at any one time shall not be more than five (5) hectares in any one municipality/city; *Provided*, That a larger Communal Extraction Area in any municipality/city may be allowed, subject to the approval of the Secretary.

SEC. 4 PROCEDURE IN THE DECLARATION OF COMMUNAL EXTRACTION AREA

The following procedure shall be observed in the declaration of a Communal Extraction Area:

- a. Filing of Petition/Request from the Local Government Unit (LGU) concerned or any interested parties for declaration of a Communal Extraction Area, to the concerned Board. The Petition/Request shall be accompanied by a sketch plan/map of the proposed area showing its corresponding technical descriptions and boundaries, and private lots, if any;
- b. Evaluation of the area as to its technical viability by a team composed of representatives from concerned Mines and Geosciences Bureau (MGB) Regional Office, Environmental Management Bureau (EMB) Regional Office and LGU. Where necessary, other areas technically viable as Communal Extraction Area may be identified by the team;
- c. Issuance of Notice of Petition for Declaration of Communal Extraction Area by the Board to permittees, permit holders, operators, contractors landowners, MGB and concerned government agencies, indigenous cultural communities and other stakeholders, for clearance or consent, as the case may be. The Board shall be responsible for securing the said clearance or consent;
- d. Posting of the Notices on the concerned Provincial Hall, City/Municipal Hall, Barangay Hall, and bulletin boards of the MGB Regional Office, DENR Provincial Environment and Natural Resources (PENRO), and DENR Community Environment and Natural Resources Office (CENRO) for a period of two (2) consecutive weeks, after which the concerned agency/entity shall issue the corresponding certification as to

- the completion of posting of the Notices. Expenses for posting shall be shouldered by the concerned Province/City;
- e. Issuance of a certification by the concerned Board as to any adverse claim, protest or opposition lodged before it;
 - f. Declaration of Communal Extraction Area by the Board;
 - g. Approval of the Declaration of Communal Extraction Area by the Secretary upon endorsement by the Provincial Governor/City Mayor concerned; and
 - h. Survey and monumenting/marketing of the Communal Extraction Area by a licensed Geodetic Engineer, and approval of the pertinent Survey Plan by the Board.

SEC. 5 PROCEDURE IN CASE OF OPPOSITION/PROTEST

Any adverse claim, protest or opposition to the Petition/Request that an area be declared as Communal Extraction Area shall be filed with the Board within fifteen (15) days after the last date of posting of the Notices.

The Board shall act on the adverse claim, protest or opposition within thirty (30) days after it is submitted for resolution. The decision of the Board may be appealed within fifteen (15) days from receipt thereof to the Secretary whose decision, in turn, is final and executory. No adverse claim/protest/opposition or appeal shall be accepted by the Board or the Office of the Secretary, respectively, unless a docketing fee is paid.

SEC. 6 ENVIRONMENTAL COMPLIANCE CERTIFICATE REQUIREMENTS

Extraction and related activities in the Communal Extraction Area shall be covered by the Environmental Compliance Certificate (ECC) requirements.

For the above purpose, the concerned Provincial/City Government may, prior to the declaration of Communal Extraction

Area, file an application together with the Project Description and other requirements for a unified ECC covering the Communal Extraction Area with the concerned EMB Regional Office.

SEC. 7 QUALIFICATION REQUIREMENTS

A Communal Extraction Permit for the extraction of sand, gravel, ordinary earth and/or related materials within the declared Communal Extraction Area shall be issued by the concerned Provincial Governor/City Mayor only upon recommendation of the Board, to any individual Filipino citizen who is a bonafide resident of his/her province/city in need of such materials not exceeding fifty (50) cubic meters for housing and/or other personal construction needs.

Applications shall be filed with the Board concerned through the Environment and Natural Resource Office (ENRO) of the concerned Province/City together with the following documents:

- a. Duly accomplished application form (Annex A);
- b. Barangay Certificate that the applicant is a bonafide resident of the barangay concerned for a period of at least six (6) months and in need of sand, gravel, ordinary earth and/or related materials for housing construction/improvement/repair purposes and that such construction/improvement/repair had been cleared or given clearance by the concerned barangay or the Municipal Engineer's Office; and
- c. Proof of payment of application fee from the concerned Province/City.

SEC. 8 TERMS AND CONDITIONS OF THE COMMUNAL EXTRACTION PERMIT

The following terms and conditions shall be incorporated in the Communal Extraction Permit:

- a. The extraction of sand, gravel, ordinary earth and/or related materials shall be conducted within the limits of the permit area as determined by the Board;
- b. The permit shall be for the permit holder's exclusive use and shall be non-transferable;
- c. The materials authorized to be removed shall be strictly for the permit holder's housing and other personal construction needs and in no case shall the same be disposed of commercially, otherwise persons responsible thereof shall be liable for prosecution under appropriate law;
- d. The permit shall be for a non-renewable period of sixty (60) days or until such time that the total volume specified therein have been extracted, whichever comes first;
- e. No extraction, removal or disposition of sand, gravel, ordinary earth and/or related materials shall be allowed within a distance of one (1) kilometer from the boundaries of reservoirs and of any public/private structures, unless prior clearance of the agency/entity concerned is obtained. No extraction, removal or disposition of materials shall likewise be allowed in offshore areas within one thousand five hundred (1,500) meters from the mean low tide level and two hundred (200) meters from the same mean low tide level along the beach;
- f. Prior to the transport of sand, gravel, ordinary earth and/or related materials, the permit holder shall pay the Government, through the concerned Provincial/City Treasurer, an extraction fee/tax that may be imposed by the province/city through an ordinance;
- g. The permit holder shall, at all times, provide the transporter or truck driver engaged in hauling of the materials extracted a certified true/xerox copy of the permit, delivery receipt and proof of payment of extraction fee/tax as deemed applicable, for inspection purposes. Any such materials transported and disposed of not accompanied by the corresponding permit, delivery receipt and proof of payment of extraction fee/tax as deemed applicable, shall be confiscated, including the tools, equipment and conveyance used, in favor of the Government;

- h. The permit holder shall keep a record indicating therein the date of extraction, quantity/volume and value of materials extracted from the permit area, as well as the corresponding amount of fees/taxes paid, if any;
- i. The permit holder, upon expiration of his/her permit, shall submit to the Board or its duly authorized representative sworn report stating the total quantity and value of materials extracted and amount of fees/taxes paid, if any;
- j. The permit holder shall immediately stop extracting materials the moment artifacts are found. He/she shall notify the Director of National Museum of such findings, in which case, the extraction activities shall be placed under the supervision of the National Museum until said artifacts are recovered;
- k. The statements made in the application form and pertinent documents or those made later in support thereof shall be considered as conditions and essential parts of the permit and any misrepresentation contained therein shall be a cause for the suspension/revocation of the permit;
- l. The permit holder shall assume full responsibility and shall be liable for damages to properties that may be occasioned by his/her extraction activities under the permit;
- m. The permit holder shall be liable or responsible for any violation of the terms and conditions of the ECC within the permit area;
- n. The permit may be suspended or revoked at anytime by the Provincial Governor/City Mayor concerned upon recommendation of the Board when public interest so requires or for ecological reasons or upon failure of the permit holder to comply with the terms and conditions stipulated under the permit and the ECC;
- o. The extraction of materials outside the permit area and disposing of the same shall be a ground for filing a case for theft of materials; and
- p. The permit holder shall comply with the other conditions as the Provincial Governor/City Mayor concerned may impose upon recommendation of the Board.

SEC. 9 MONITORING OF EXTRACTION ACTIVITIES

The ENRO concerned shall be responsible for the proper implementation of this Order. Upon request of the concerned Provincial Governor/City Mayor, the MGB and/or EMB Regional Office(s) may extend the necessary assistance to effectively implement this Order.

The ENRO concerned shall monitor strictly the permit holder's compliance with the terms and conditions of the permit and shall ensure that the extraction and transport of materials shall be properly covered by pertinent documents pursuant to the provisions of this Order. It shall likewise require the permit holder to regularly submit a report on the volume and value of materials extracted and transported. Supported with documentary evidence, and provide a copy thereof to the concerned MGB Regional Office.

SEC. 10 REVERSION OF COMMUNAL EXTRACTION AREA

The Secretary, upon recommendation of the Board, shall withdraw the Declaration of the Communal Extraction Area when it can no longer be technically viable for operation or when the safety, health and environmental conditions warrant.

SEC. 11 PENAL PROVISION

Violation of any provision of this Order shall be penalized in accordance with the penalties imposed herein or under the existing applicable laws.

SEC. 12 REPEALING CLAUSE

This Order amends and/or revokes other Orders, rules and regulations inconsistent herewith.

SEC. 13 EFFECTIVITY

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

(Sgd.) HEHERSON T. ALVAREZ
Secretary

Publication:

Manila Standard – Dec. 23, 2001