



Republic of the Philippines
Department of Environment and Natural Resources
FOREST MANAGEMENT BUREAU

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MEMORANDUM

FOR : **The Regional Executive Director**
DENR MIMAROPA Region
1515 L&S Building, Roxas Boulevard, Ermita, Manila

FROM : The Assistant Secretary for Policy, Planning, and Foreign Assisted and
Special Projects, and Director, in concurrent capacity

SUBJECT : **REQUEST FOR CLARIFICATION ON PROVISIONS OF DENR
ADMINISTRATIVE ORDER NO. 2004-28 RE: RULES AND
REGULATIONS GOVERNING THE USE OF FOREST LANDS
FOR TOURISM PURPOSES**

DATE : **JUL 19 2021**

This has reference to your Memorandum dated 11 February 2021 requesting for clarification on certain provisions of DAO 2004-28 entitled "Rules and Regulations Governing the Use of Forest Lands for Tourism Purposes."

In this regard, please be informed that we have noted your observations and concerns regarding some lacking bidding provisions of the said DAO. Rest assured that the Bureau is already drafting a policy proposal to address the issue immediately for the consideration and consequent approval of the Secretary.

FOR YOUR INFORMATION, PLEASE.


MARCIAL C. AMARO, JR., CESO III



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region

MEMORANDUM

FEB 11 2021

FOR : **THE DIRECTOR**
Forest Management Bureau

FROM : **THE REGIONAL EXECUTIVE DIRECTOR**

SUBJECT : **REQUEST FOR CLARIFICATION ON PROVISIONS OF DENR
ADMINISTRATIVE ORDER (DAO) 2004- 28 RE RULES AND
REGULATIONS GOVERNING THE USE OF FORESTLANDS FOR
TOURISM PURPOSES**

May we respectfully inform you that this office has been preparing to conduct an actual bidding of forest land for tourism purposes located in Capayas Island, Bataraza, Palawan. However, upon reviewing the guidelines for the purpose of bidding procedures, it was observed that there were missing in the subject DAO.

In this regard, may we request for clarification on provisions of DAO 2004-28 specifically item number 12.7 *Decision of Award* as it mentioned a certain "Sec. 12.11" which is not found on the said DAO. Also, it mentioned a certain "Bidder's bond" with no basis of amount. Bidder's bond amount however appears on DAO 2004-59 item 12.5 but not on DAO 2004-28.

In view hereof, may we be clarified on the abovementioned provisions for our guidance and reference in the conduct of said bidding.

FOR INFORMATION AND CLARIFICATION


MARIA LOURDES G. FERRER, CESO III

Department of Environment
and Natural Resources
MIMAROPA Region



Doc ID: 41927

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AUG 25 2004

DENR Administrative Order
No. 2004- 28

SUBJECT : Rules And Regulations Governing The Use Of
Forestlands For Tourism Purposes.

Pursuant to the provisions of Section 2, Article XII of the 1987 Philippine Constitution, Executive Order No. 192 of 1987, Executive Order No. 278 of 1987, Act 3820, Presidential Decree No. 705, as amended; Republic Act Nos. 7160 and 7161, and Presidential Decree 1586, the following rules and regulations governing the special uses of forestlands for tourism purposes are hereby promulgated.

CHAPTER I
POLICIES, OBJECTIVES AND DEFINITION OF TERMS

Section 1. Policy and Objectives.

1.1 Basic Policy:

It is the policy of the State to promote, encourage, and develop tourism as a major national activity in which private sector investment, effort and initiative are fostered and supported.

In line with the policy of the State on sustainable development and to provide equitable access to forestlands and resources, the government shall allow qualified persons to occupy, develop, utilize and sustainably manage forestlands for tourism purposes.

1.2 Coverage:

These Rules shall apply to the use of forestlands for tourism purposes. While Community-Based Ecotourism is encouraged, use of forestland for such purpose will be covered by separate guidelines.

1.3 Objectives :

1.3.1 To develop the country's forestlands into productive uses consistent with the concept of sustainable development;

1.3.2 To provide economic opportunities to local communities and other stakeholders;

1.3.3 To ensure equitable share for the government on the use of forestlands; and

1.3.4 To optimize the use of forestlands through sustainable management and to assure the continuous beneficial uses and services of

Section 2: Definition of Terms. For the purpose of this Order, the following terms shall be used in, and understood to mean, as follows:

- 2.1 **Bathing Establishment** – areas of high recreational value through the use of water bodies where swimming, surfing, snorkeling and similar recreational activities could be allowed.
- 2.2 **Campsite** – an area of forestland which can be used for camping and other outdoor recreation activities.
- 2.3 **Ecotourism** – Is a form of sustainable tourism within a natural landscape and cultural heritage area where community participation, protection and management of natural resources, culture and indigenous knowledge and practices, environmental education and ethics as well as economic benefits are fostered and pursued for the enrichment of host communities
- 2.4 **Entry Fee** - the amount offered to be paid by the a bidder for the privilege of entering into a Forest Land Use Agreement for Tourism.
- 2.5 **Environmental Compliance Certificate (ECC)** – the document issued by the DENR/Environmental Management Bureau (EMB) certifying that based on the representations of the proponent and the preparers, as reviewed and validated by the EIA Review Committee, the proposed project or undertaking will not cause a significant negative environmental impact; that the proponent has complied with the requirements of the EIA System and that the proponent is committed to implement its approved Environmental Management Plan in the Environmental Impact Statement or mitigation measures in the Initial Environmental Examination.
- 2.6 **Forestlands** – lands of the public domain comprising of the public forest, the permanent forest or forest reserves, and forest reservations.
- 2.7 **Government share** -The amount to be paid by a forestland user as the share of the government in the use of the forestland.
- 2.8 **Initial Environmental Examination (IEE)** – the document required of proponents describing the environmental impact of, and mitigation and enhancement measures for, projects or undertakings located in an Environmentally Critical Area.
- 2.9 **Other Tourism Purposes (OTP)** – Leisure or recreational uses of forestland other than those types enumerated on Sec. 4.1 to 4.4
- 2.10 **Protected Areas** – refer to identified portions of land and water set aside under the NIPAS Act by reason of their unique physical and biological significance, managed to enhance biological diversity and protected against destructive human exploitation.
- 2.11 **Forest Landuse Agreement for Tourism Purposes (FLAgT)** – is a contract between the DENR and a natural or juridical person, authorizing the latter to occupy, manage and develop, subject to government share, any forestland of the public domain for tourism purposes and to undertake any authorized activity therein for a period of 25 years and renewable for the same period upon mutual agreement by both parties. It shall include special forest landuses such as Bathing Establishment, Camp Site,



Ecotourism Destination, Hotel Site (inclusive of related resort facilities) and Other Tourism Purposes.

- 2.12 Zonal value – the value of a piece the land as determined by the Department of Finance/Bureau of Internal Revenue (BIR).

CHAPTER II SCOPE AND COVERAGE

Section 3. Areas available for Special Forest Landuse Agreement for Tourism Purposes (FLAgT). FLAgT may cover all forest lands which are found suitable and available for FLAgT pursuant to Section. 9 of this order, subject to vested rights, licenses/leases, permits or other tenurial instruments, if there be any. *Provided*, that areas with vested rights, licenses/permits or other tenurial instruments may be made available for FLAgT upon issuance of a waiver of right by the holder of such vested rights, existing permits/instruments; if the area is covered by a Certificate of Ancestral Domain/Land Claim/Title (CADC/CALC/CADT/CALT), the grant of free and prior informed consent (FPIC) and certification of precondition; and for areas covered by the National Integrated Protected Areas System (NIPAS), upon the fulfillment of appropriate requirements and conformity with policies on protected areas.

Section 4. Forest Landuse Agreements (FLAgT) and Allowable Areas – The following are the Forest Landuse Agreements for Tourism Purposes to be approved by the RED concerned, for which the areas shall not to exceed:

		(has)
4.1	Bathing Establishment	24
4.2	Camp site	5
4.3	Ecotourism	24
4.4	Hotel Site (inclusive of related resort facilities)	10
4.5	Other Tourism Purposes	10

Should it be necessary for a tourism project to cover a larger area than the above maximum areas to take into consideration the landscape features required of such projects, such areas shall be approved by the Secretary.

Section 5. Duration of FLAgT. The FLAgT shall have a maximum duration of twenty five (25) years renewable for the same period.

Section 6. Qualified Applicants. The following are qualified to apply for FLAgT:

- 6.1 A Filipino citizen of legal age.
- 6.2 An association, corporation, cooperative, partnership or a juridical person at least sixty percent (60%) of the capital of which is owned by Filipino citizens, whether private or public, duly created and/or registered under Philippine laws, who are financially capable to develop the applied area for tourism purposes.

Section 7. Mode of Award of FLAgT Areas. Areas suitable for FLAgT shall be awarded thru competitive bidding. The conversion of existing special use permits in forestlands to FLAgT shall be governed by Sec. 13 of this Order.

Section 8. Application Requirements. The following requirements shall be submitted by the applicant together with the duly accomplished application form available at the DENR field offices:

- 8.1 The pertinent documents to show proof that the applicant is a legitimate entity qualified to be the holder of a forestland tenurial instrument, as follows:
 - 8.1.1 For an individual applicant, certified copy of birth certificate or, if applicant is a naturalized Filipino citizen, a certified copy of his/her Certificate of Naturalization;
 - 8.1.2 For a corporation, association or partnership, certified copy of SEC registration certificate and Articles of Incorporation/Partnership, and a resolution of the corporate governing body (Board of Directors, Board of Trustees, etc.) designating the authorized representative of the said corporation;
 - 8.1.3 For an association or partnership, certified copy of registration from the appropriate registering agency;
 - 8.1.4 For a cooperative, certified copy of certificate of registration with the Cooperative Development Authority;
- 8.2 An Indicative Development Plan describing how the area will be developed for tourism purposes, including the strategies, schemes or plans to generate the necessary development financing;
- 8.3 For areas covered by specific laws, such as Palawan, or by co-management scheme, clearance/authorization from the appropriate governing body/authority

CHAPTER III

IDENTIFICATION AND DELIMITATION OF FOREST LANDS FOR TOURISM PURPOSES

Section 9. Identification and Delineation of Areas for Tourism purposes.

- 9.1 CENROs shall identify areas suitable and available for FLAgT sites within their respective areas of responsibility using DENR control maps, Comprehensive Land Use Plans of LGU(s) concerned, and other relevant secondary references. The CENRO should verify that the areas so identified are not covered by pending applications for, or covered by, existing forestry tenurial and/or forest use instruments.
- 9.2 The technical description and the preliminary map of the identified site(s) shall be forwarded to the RED, who shall then organize a composite team from representatives of the Regional Office, PENRO, CENRO, the Regional Office of the Department of Tourism, and the LGU(s) concerned. The composite team shall validate on the ground the suitability of the area in terms of biophysical characteristics, the presence or absence of socio-economic considerations that may impede or promote the full development of the area(s) under FLAgT, including the determination of the presence or absence of valid land claims and forest occupants. The team shall also undertake consultations with adjoining communities. The final output of the work of the composite team is the final determination of: (1) the metes and bounds of the FLAgT area, defined by the technical description and final map at a scale of 1:20,000 and geo-referenced to the Philippine Reference

System (PRS 92); (2) request for indorsement by the LGU(s) Sanggunian(s) concerned, and; (3) indorsement to the RED for approval of the FLAgT area.

- 9.3 For purposes of LGU indorsement, where the area falls within one barangay, the Sangguniang Barangay shall indorse; where an area falls across more than one barangay, the indorsement shall be from the Sangguniang Bayan/Sangguniang Panglunsod or all the Sangguniang Barangays concerned; and where the area falls across more than one municipality/city, the indorsement shall be from the Sangguniang Panlalawigan or all the Sangguniang Bayan concerned.
- 9.4 After the approval of the site by the RED, copies of the map with the technical description of the area shall be furnished the Forest Management Bureau, the PENRO concerned, and the CENRO concerned, for purposes of recording such site in the FLAgT Registry which shall be maintained at the Forest Management Bureau, the DENR Regional Office, the PENRO and the CENRO concerned. The LGU(s) concerned and the Regional Office of the Department of Tourism shall likewise be furnished the same map and technical description.

Section 10. Registry of Areas. A registry of FLAgT areas shall be established by DENR. It shall include the following information: map, together with technical description, characterization of the area, documentation of the process involved in the determination and delineation of the areas, and, if available zonal value of the land. The registry shall be made available through the DENR and DOT websites, public notices posted at the DENR Regional, PENR and CENR Offices and at the Provincial, City, Municipal, Barangay Offices and DOT offices concerned.

CHAPTER IV PREQUALIFICATION, BIDDING AND AWARD

Section 11. Creation of Bids and Awards Committee

The Regional Executive Director (RED) shall create a FLAgT Bids and Awards Committee (FLAgTC) which shall be primarily responsible for the proper receipt, recording, safekeeping and evaluation of prequalification and bid proposals pertaining to the potential FLAgT areas. It shall also be responsible for the conduct of bidding and in recommending the award of an area into FLAgT in accordance with these regulations.

The members of the FLAgTC shall be designated by the RED and shall be composed of the Regional Technical Director for Forest Management Services (RTD-FMS) as Chairman, Regional Technical Director for Protected Area, Wildlife and Coastal Zone Services (RTD-PAWCZS) as Vice-Chairman, and the Regional Administrative Officer, the Legal Officer and two (2) representatives from the DENR Forest Management Services as members, and a Commission on Audit representative as observer.

The FLAgTC shall create a Secretariat to serve as technical support and assist them in the proper receipt and documentation of the bidding process.

Section 12. Bidding Procedures.

12.1 Invitation to Pre-qualify to Bid.



Prospective bidders over available areas for FLAgT identified in Sec. 9 hereof shall be invited to pre-qualify to bid over the area through public announcement by way of public invitation/publication in two (2) newspapers of general circulation for two (2) consecutive weeks and through the DENR and DOT websites. Copy of the Notice shall be posted at the DENR Regional, Provincial and Community Offices including DOT Offices concerned. **Provided**, that the notice shall specify, among others, the location and technical description of the area.

12.2 Submission of documents/proponent requirements.

All requirements stated in Sec. 8 shall be submitted in five (5) copies at the DENR RED concerned not later than the time and date specified in the invitation to prequalify.

12.3 Evaluation of Application Requirements.

The FLAgTC shall, upon receipt of a prospective bidder's application documents and supporting papers, immediately number the pages of the submitted documents and record the same and the date and time of receipt, including the number of pages. The FLAgTC shall, within 10 working days from the deadline for submission of prequalification applications, evaluate the documents taking into account the completeness of requirements as specified in Sec. 8 and the Indicative Development Plan *cum* financing as provided for under Section 8.2. The prospective bidder should show proof of available capital to undertake developmental activities provided in the Indicative Plan. This shall be supplemented by proofs of available credit line together with a certificate of undertaking stating among others that said amount shall be used only in the development of the subject area.

12.4 Action on Application Documents.


If, upon evaluation, the prospective bidder meets all the requirements, the application shall be stamped "PREQUALIFIED". Subsequently, the Committee shall inform the concerned parties within five (5) days after approval that they have been prequalified and be required to submit their bid proposal on the date and place specified therein.

On the other hand, applications of prospective bidders who do not meet the requirements shall be stamped "DISQUALIFIED". Applicants shall be informed in writing within five (5) days that they have been disqualified, stating the grounds for disqualification.

12.5 Receiving and Opening of Bids.

Bid proposals, in the form of the entry fee offered, shall be submitted to the FLAgTC within the specified period and in accordance with these regulations and shall be stamped by the record officer of the Secretariat indicating the date and time of receipt thereof.

The Chairman shall open the sealed bids publicly at the place, time, and date stated in the notice which shall be attended by the bidders or their duly authorized representatives. Every page of the bid proposal, including the documents attached thereto, shall be numbered consecutively and initialed by the FLAgTC members.



After the opening and the numbering of the pages of the bid proposals have been completed, the corresponding abstract of bids shall be prepared and signed by the committee members and the resident auditor or his representative, attaching supporting papers/documents and the proceedings of the bidding.

12.6 Basis of Award.

The area subject of bid shall be awarded to one who has the highest entry fee offer which is prescribed by the rules. **Provided**, that if there are two or more equal bids, another sealed bidding shall be conducted between or among those who submitted equal bids.

12.7 Decision of Award.

The RED shall issue a Notice of Award to the winning bidder. **Provided**, that should the awardee refuse or fail to comply with the requirements called for in the Notice of Award within the period prescribed in **Sec. 12.11** hereof, the award shall be nullified and the **Bidder's bond** submitted shall be forfeited in favor of the Government; **Provided further**, that in such an eventuality, the second highest complying bidder shall be considered provided that his offer is at least 75% of the highest bidder offer but not lower than the minimum entry fee. **Provided furthermore**, that these rules shall apply to the third highest bidder in case of refusal on the part of the second highest bidder, and so on subject to the same provision.

This is only number 12.1

12.8 Minimum Entry Fee

a)	0.5 ha. and below	-	P 25,000.00
b)	0.51 ha. to 0.99 ha.	-	50,000.00
c)	1.0 ha. to 5.0 has.	-	100,000.00
d)	over 5.0 has.	-	150,000.00

all bidders on
provided by law
for specific bond
along with BAC

12.9 Notice of Award

The Notice of award shall be given to the winning bidder within three (3) working days after bidding. Likewise, the losing bidder(s) shall be informed accordingly within the same period.

12.10 Preparation and Issuance of FLAgT.


Within fifteen (15) days after the payment of the entry fee, a FLAgT together with final map of the area, shall be prepared in the Regional Office and approved by the Regional Executive Director concerned.

Section 13. Conversion of Existing Special Land Use Permits to FLAgT. Existing Special Land Use Permits may be converted to FLAgT. **Provided**, that the holder thereof has shown satisfactory performance based on DENR's monitoring and evaluation system and has complied with all the terms and conditions of the permit.

CHAPTER V

TERMS AND CONDITIONS OF FLAgT

Section 14. Terms and Conditions of the FLAgT. The FLAgT issued in consonance with this regulations shall be subject to the following minimum provisions:

- 14.1 Within six (6) months from the issuance of the FLaGT, the holder shall delineate and mark on the ground the boundaries of the FLaGT area and its zones, subject to verification by DENR, and shall preserve the monuments and other land marks indicating corners and outlines along the boundaries and within the confines of the area covered by the FLaGT.
- 14.2 The holder shall submit within three (3) months from the issuance of the FLaGT, a Site Management Plan (SMP) for the protection of the environment and conservation of natural resources in the area. The SMP shall be accompanied with a performance bond determined based on procedures for special forest land uses.
- 14.3 The holder shall immediately secure the required Environmental Compliance Certificate (ECC) and other necessary permits prior to conduct of any activity in the area.
- 14.4 The holder shall utilize the area only for the purpose for which the FLaGT is granted. In the event that the area will be utilized for other purpose/s other than what is approved, said use is subject to the prior approval of the Secretary or his/her duly authorized representative.
- 14.4 In all instances, cutting of trees within the FLaGT area shall be subject to prior clearance by the DENR in accordance with existing rules and regulations.
- 14.5 The holder shall strictly adopt ecological solid waste management and abide with the provisions of the Clean Water Act.
- 14.6 The FLaGT holder shall protect all biodiversity in the area, especially those unique, rare and endangered flora and fauna identified as such under existing laws, rules and regulations.
- 14.7 To inform the RED or his duly authorized representative on any changes in the management, ownership or capital stock of the company or corporation or transfer of a majority of the stock or shares of the company or corporation as provided for in PD 705, as amended.
- 14.8 To surrender to the RED or his duly authorized representative the agreement if not to be renewed on the date of expiration, or if the holder is no longer interested in the area, or in case of cancellation, immediately after the effectivity of its cancellation.
- 14.9 In case of death of individual FLaGT holder, the heir may apply for the transfer of FLaGT within ninety (90) days upon his death.
- 14.10 Non-Obstruction to Navigation - This FLaGT shall not be construed as permit for the holder to obstruct the free navigation of any stream, creek or river or marine coastal area adjoining or flowing through the area, or to prohibit or interfere with the passage of people along such streams, creeks or rivers or the banks thereof, or to impede the flow and ebb of the tide to and from the interior of the swamps.
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CHAPTER VI
MONITORING AND EVALUATION, AND PAYMENT OF GOVERNMENT SHARE

Section 15. Monitoring and Evaluation. To ensure compliance of the FLAgT holder to the terms and conditions of the FLAgT and its approved Site Management Plan the following activities shall be undertaken:

- 15.1 The RED shall provide the PENRO and CENRO including the FMB with the copies of the approved FLAgT including maps and Site Management Plan of all FLAgTs issued.
- 15.2 The FLAgT holder shall submit its annual report as to its compliance with approved Site Management Plan.
- 15.3 The Regional Composite Team composed of representative from the PENRO, CENRO, RTD for Forestry, RTD for PAWCZM and the RD-EMB shall conduct annual monitoring and evaluation of the development and submit monitoring report to the Regional Executive Director and the FMB Director. The FMB shall then submit an annual report to the Secretary.
- 15.4 The DENR Central Office may validate the annual accomplishment report submitted by the FLAgT holder, validated by the Regional Composite Team concerned, if warranted.

Section 16. Payment of Government Share and surcharges for late payment
The government share shall be five percent (5%) of the most recent zonal value of the commercial zone within the barangay, or the nearest and adjacent barangay within the municipality. A revaluation shall be undertaken every five (5) thereafter.

The government share shall be paid within thirty (30) days upon issuance of the FLAgT and annually thereafter within the same month that the FLAgT was issued. Failure to pay within the prescribed period shall be subject to surcharges of 8.33% monthly for late payment or 100% for one (1) year.

CHAPTER VII
GROUND FORSUSPENSION AND CANCELLATION OF FLAgT

Section 17. Grounds for Suspension or Cancellation. The FLAgT may be suspended or cancelled by the RED for violation of the terms and conditions stipulated in the management agreement and/or any of the following causes:

17.1 For Suspension:

17.1.1 Failure of the FLAgT holder to settle administrative dues including government share after three (3) consecutives notices, after they become due and demandable.

17.1.2 Failure of the FLAgT holder to provide the necessary protection of the area.

17.1.3 Occupation by FLAgT holder of an area greater or other than that covered by the management agreement.

17.1.5 For allowing unauthorized person/s to use the area or any portion thereof; or for using the area or any portion thereof for purposes other than what is specified in the management agreement.

17.2 For Cancellation:

17.2.1 If the privilege was obtained through fraud, misrepresentation or omission of material facts existing at the time of filing of the application.

17.2.2 Abandonment of the area or failure to exercise the privilege granted within the prescribed period of six (6) months from the issuance of the FLaGT without justifiable cause.

17.2.3 Failure to introduce improvement/development within the prescribed period as indicated in the comprehensive development/management plan.

17.2.4 Repeated violations of the provisions of Section 17.1

CHAPTER VIII MISCELLANEOUS PROVISIONS

Section 18. Transfer. As provided in PD 705, as amended a FLaGT Holder may transfer, exchange, sell or convey the FLaGT or any rights therein or any assets used therewith, if authorized by the Secretary, and if:

18.1 The FLaGT has been in existence for at least three (3) years;

18.2 The FLaGT Holder has been faithfully complying with all the terms and conditions of the FLaGT including implementation of SMP;

18.3 The transferee has all the qualifications and none of the disqualifications to hold a FLaGT area;

18.4 The transferee shall assume all the obligations and responsibilities of the transferor specified in FLaGT, SMP and ECC; and

Section 19. Transitory Provisions.

19.1 Exempted from bidding, provided they pay the other incidental fees (i.e., application fee, cash performance bond and government share), are the following:

19.1.1 Those holding existing Special Land Use Permits/Leases who opt to have their permits converted to FLaGT.

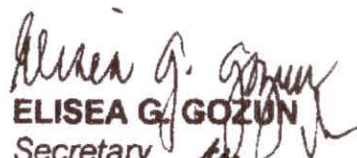
19.1.2 Those with pending applications for a DENR permit/lease for tourism-related special land uses at the time of effectivity of this Order.

19.1.3 Those existing permittees/lessees applying for the expansion of existing projects;

Section 20. Repealing Clause. All existing rules, regulations, circulars, instructions, memoranda or portion/s thereof which are inconsistent herewith are hereby repealed or amended accordingly.

Section 21. Separability Clause. In case any portion or provision of this Order is declared unconstitutional or invalid, the other portions or provisions hereof which are not affected shall continue in full force and effect.

Section 25. Effectivity. This Order shall take effect thirty (30) days after its publication in a newspaper of national circulation.


ELISEA G. GOZUN
Secretary

PUBLISHED: MALAYA

AUGUST 27, 2004