

JEREMIAH BELGICA

Chairman
4th and 5th Floor, NFA Building Compound,
Visayas Avenue,, Brgy. Vasra
Diliman, Quezon City, Philippines 1128



Dear Sir,

Pinagpalang araw po sa inyo. Sir sumulat po ako sa inyo dahil sa matagal na napanahon na wala parin ang resulta ng appeal ng aking mga kalaban sa lupa. Ako po si Merriam E. Custodio, isang senior citizen, na kasalukuyang naninirahan sa Purok Pagkakaisa, Barangay Sta. Monica, Puerto Princesa City, Palawan.

Noong May 2009, ako ay nag file ng Formal Protest laban kina Rolito Benitez at Genevieve Benitez dito sa DENR Region 4-B, MIMAROPA, Provincial Environmental and Natural Resources (PENRO), Sta. Monica, Puerto Princesa City. Ang nasabing Formal Protest ay na forward sa DENR Region 4-B, MIMAROPA na may DENR Case No. M-07-11, Lot No. 3932 at 3933 Cad.800-D, Sta Monica, Puerto Princesa City.

September 15, 2011, naglabas ng Order ang Regional Executive Director Concordio D. Zuñiga, CESO III na rejected ang Miscellaneous Sales Application (MSA) ni Rolito Benitez at Genevieve T. Benitez. (Ang order ay naka-attached as Annex "A")

November 25, 2011, ang respondent ay nag file ng Motion for Reconsideration at ang Order ng Regional Executive Director ay Denied na may pesta na February 13, 2012. (Ang order ay naka-attached as Annex "B").

March 19, 2012, nag file ng appeal si Mavie Benitez na asawa ni Rolito Benitez (attached as Annex "C") na my DENR Case No. 9190 ang naturang Appeal ay na filed out of time na dapat ay may 15 days lang sila na mag file. (Attached ang aking Appellees Memorandum na may pestang July 9, 2012 as Annex "D").

September 22, 2017, may sulat po ako na naka address kay Hon. Roy Cimat, para sa resolution ng DENR Case No. 9190. (Attached as Annex "E").

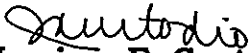
November 28, 2017, nakatanggap ako ng sulat galing kay Atty. Norlito A. Eneran, CESE, OIC Director, Legal Services at ito ay may advised na ang naturang kaso ay nasa Office of the Assistant Secretary for Legal Affairs. (Attached as Annex "F").

Merriam E. Custodio

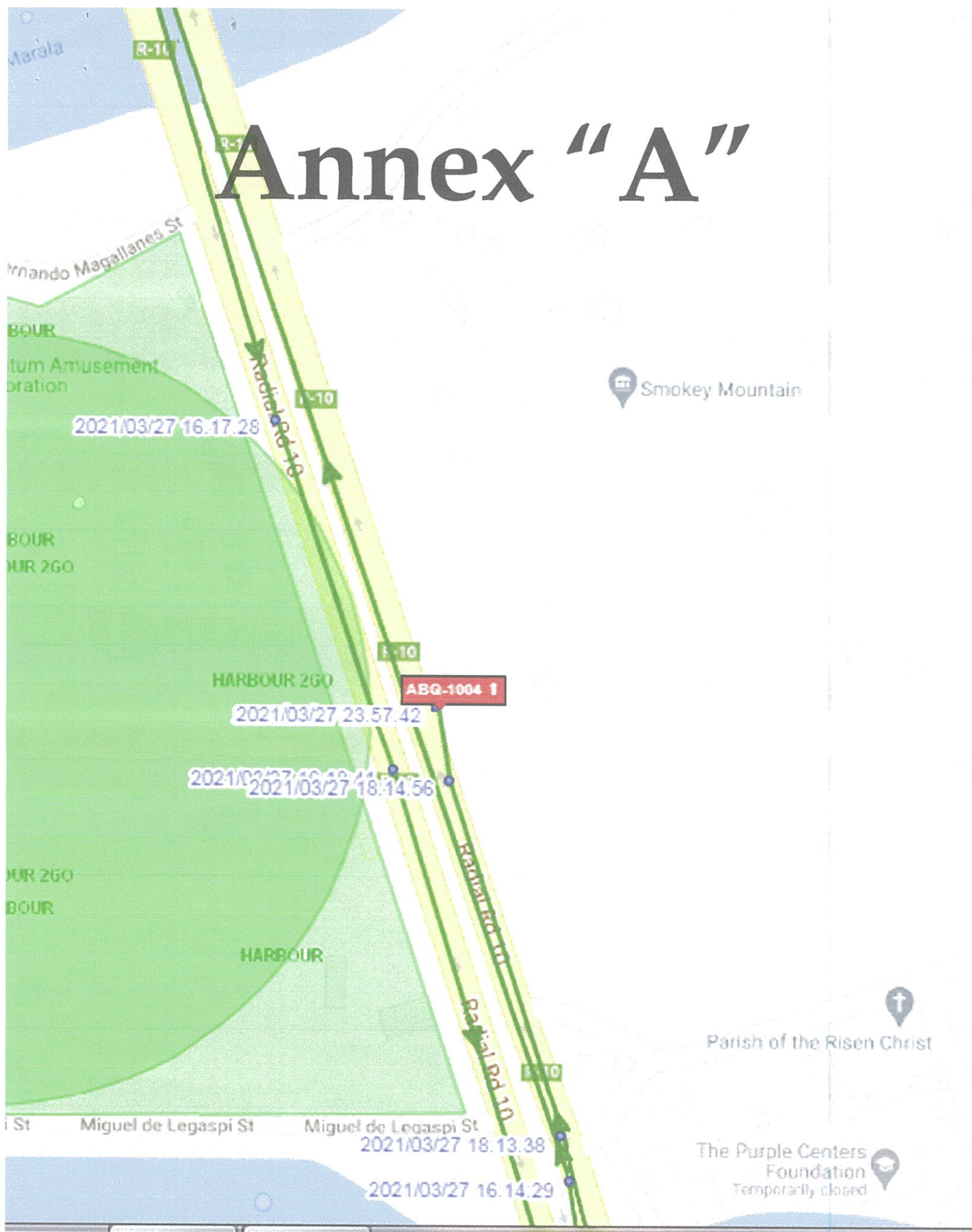
Sir humihingi po ako ng tulong sa inyong opisina na sana po ay magkaroon na ng agarang resolution ang appeal na ito, dahil taong 2012 pa ang appeal ng aking kalaban. Mahigit (9) siyam na taon na nakapending sa naturang opisina.

Maraming Salamat po. Stay safe. God bless.

Lubos na gumagalang,


Merriam E. Custodio
Purok Pagkakaisa, Barangay Sta. Monica
Puerto Princesa City, Palawan
0918-2606-282

Annex "A"



Annex "B"

In settlement of the following:	
Particulars	Amount
	8,500
Total Sales (VAT INCLUSIVE)	
Less: VAT	
Total	
Less: Withholding Tax	
Amount Due	
VARIABLE SALES	8,500
VAT-EXEMPT SALES	
ZERO-RATED SALES	
VAT AMOUNT	
TOTAL AMT. DUE	
Form of Payment:	
Cash <input type="checkbox"/>	Check <input type="checkbox"/>

METAL GEAR TOWING SERVICES

32 Sanchez St., Tinajeros District I, Malabon City

DARREL Q. DIWA - Prop.

VAT Reg. TIN: 182-792-680-001

TRAILER
ABQ 1004

No. 34300

3-28-21

OFFICIAL RECEIPT

Date

RECEIVED from ERNEST

Business Style

TIN: 3 D Four Milandia Bldg

Address: BLT Thousand FIVE

the amount of (P 8,500)

In partial/full payment for

THIS OFFICIAL RECEIPT SHALL BE VALID FOR FIVE
(5) YEARS FROM THE DATE OF ATP

By:

Cashier Authorized Representative

600 bkts. (50 x 3) 27501-57500 Date Issued 10/09/20

Valid until 10/09/25 BIR Permit No. OCN 3AUC001528675

R. A. Pallas Sector Printing Press Inc. Prop. TIN: 174-782-198-100
R. A. Pallas Sector Printing Press Inc. Prop. TIN: 174-782-198-100
Printer's Accreditation: 024MP2019000000022
Date of Accreditation: 02/22/19
Valid Until: 02/22/24

Annex “C”



CENTRAL IMPOUNDING AREA

Custody of towed vehicles and accepts payment for the release of tire-clamped vehicles

Office or Division:		TRAFFIC OPERATIONS DIVISION		
Classification:		Simple		
Type of Transaction:		G2C		
Who may avail:		Motorists		
CHECKLIST OF REQUIREMENTS		WHERE TO SECURE		
Notice of Towed or Clamped vehicles Driver's License		Client		
CLIENTS STEPS	AGENCY ACTIONS	FEES TO BE PAID	PROCESSING TIME	PERSON RESPONSIBLE
1. Present the Notice of Towed/Clamped Vehicle Driver's License	1. Verify the vehicle from the Impounding Record Book		10-20 minutes	Administrative Aide I
1.1 Pay the corresponding towing/clamping fee	1.1 Received payment & issue official receipt for releasing	Sec.146, Ord.8092 Sec. 3, Ord. 8092		Traffic Aide III
1.2 Present O.R. at the Releasing	1.2 Process the Releasing of Towed/Clamped vehicles			Traffic Aide III
TOTAL			20 minutes	

Annex "D"

Ordinance No. 3002

AN ORDINANCE REPEALING THE TRAFFIC CODE OF THE CITY OF MANILA BY AMENDING CHAPTER 121 OF THE COMPILATION OF ORDINANCES OF THE CITY OF MANILA, AND FOR OTHER PURPOSES.

Be it ordained by the City Council of Manila that

ARTICLE I - GENERAL PROVISIONS

Section 1. Title. - This Ordinance shall be known and cited as the Traffic Management Code of the City of Manila.

Sec. 2. Scope of Application. - This Ordinance provides for the traffic rules and regulations on all roads in the City, whether national or local in classification; pedestrian rules and regulations; vehicle stops and transport terminals; the use of sidewalks and alleys; road use by all motor vehicles including motorized tricycles and pedicabs, bicycles, horse-drawn rigs, pushcarts and other forms of conveyances, whether public or private; day-parking zones and night-parking zones; and in general, such other rules and regulations hereinafter promulgated in furtherance of an optimum utilization of the road network in the City of Manila, where the context applies, the rules shall also apply to public places.

Sec. 3. Declaration of Policy. - It is hereby declared the policy of the City of Manila that:

- (a) the flow of people and goods through the road network shall be as efficient, safe, unhampered and orderly as possible for the economic and social vitality and viability of the City;
- (b) urban road space is a scarce commodity, the competing use of which must be allocated for the greatest good and the greatest number through judicious, fair, participatory and informed traffic management system;
- (c) traffic problems and issues must be resolved in a rational manner, guided by facts and shaped through consultation, collaboration, and coordination with the surrounding Municipalities and Cities, with the Metropolitan Manila Development Authority, as well as national agencies like the Department of Public Works and Highways and the Department of Transportation and Communications;
- (d) the public has the right to be informed a priority, and to participate in the formulation of any measures that may affect their community and traveling habits.

Annex "D-1"

Page 47

Sec. 145. Separability Clause. – If for any reason, any section or provision of this Ordinance is declared illegal or unconstitutional, other sections or provisions hereof, which are not affected thereby shall continue to be in full force and effect.

Sec. 146. Repealing Clause. – All previous issuances, ordinances, rules and regulations or parts thereof, which are inconsistent or in conflict with the provisions of this Code are hereby repealed or modified accordingly.

Sec. 147. Effectivity Clause – This Ordinance shall take effect fifteen (15) days after its approval and publication.

Enacted by the City Council of Manila at its regular session today, December 14, 2004.


APPROVED:

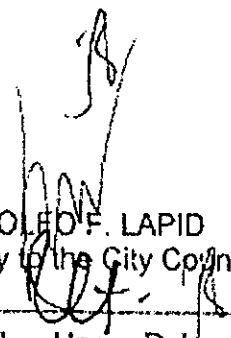
March 4, 2005


JOSE L. ATIENZA JR.
Mayor
City of Manila


CITA ASTALS
Acting Presiding Officer
City Council, Manila

ATTESTED:


EMMANUEL R. SISON
Secretary to the Mayor


RODOLFO F. LAPID
Secretary to the City Council

PRINCIPAL AUTHORS: HON. MANUEL M. ZARCAL, Hon. Ruben F. Buenaventura, Hon. Alex C. Co. Hon. Ma. Asuncion G. Fudoso, Hon.

Annex "A"



Republic of the Philippines
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
REGION IV-B, MIMAROPA
1515 L & S Bldg., Roxas Boulevard, Ermita Manila

MERRIAM E. CUSTODIO,
Protestant,

DENR Case No. M-07-11-L

-versus-

Lot 3932 and 3933,

Cad 800-D

Sta. Monica, Puerto

Princesa City, Palawan

ROLITO BENITEZ and
GENEVIEVE BENITEZ,
Respondents.

X -----X

ORDER

Under consideration is the formal protest filed by Merriam Custodio contesting the approval of Miscellaneous Sales Application (M.S.A.) No. 045316-1186 filed by Rolito O. Benitez, covering Lot 3932, Cad 800-D with an area of 345.47 square meters and M.S.A. No. 045316-1187 filed by Genevieve T. Benitez, covering Lot 3933 Cad 800-D with an area of 362 square meters, both located at Sta. Monica, Puerto Princesa City Palawan.

Protestant averred that:

A. She and her children were the lawful claimants and actual occupants of Lot Nos. 3932 and 3933, all Cad 800-D;

B. In support thereof, she narrated how they acquired actual occupation of the lots in question. According to her, Marcos Santos and Solita Santos were the original claimants and applicants of the disputed lots way back in 1973. Marcos Santos filed Sales Application No. 207 (Annex A) while Solita Santos filed Sales Application No. 208 (Annex B) both before the then Land and Fisheries Management Office;

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1267/ 9-16-11

ALAN L. AZUL
RECORDS OFFICER II
ADMINISTRATIVE III

- C. Marcos Santos subsequently transferred his claim to one Jose A. Delgado, while Solita Santos, also on the same date, December 21, 1974, transferred her claim to one Constancio A. Delgado, the Deed of Sale were attached as Annexes C and D;
- D. That few days thereafter, Constancio Delgado executed a Special Power of Attorney (Annex E) authorizing Jose Delgado to follow up his application on the lot he acquired from Solita Santos. In turn, Jose Delgado also executed another Special Power of Attorney (Annex F) authorizing their brother Atty. Hermenegildo A. Delgado to administer, sell, lease, mortgage or otherwise deal with his rights over the lot which he acquired from Marcos Santos;
- E. The protestant allegedly met Atty. Hermenegildo Delgado at the house of the Ausan family in Barangay Sta. Monica which is located adjacent to the disputed lots, where her husband was then working as family driver. Atty. Delgado is a relative of the Ausan Family. It was Atty. Delgado who subsequently authorized the protestant and her brother, Salvador Esteron, to occupy Lot Nos. 3929 and 3932 respectively and later on verbally gave them the said lots;
- F. When Atty. Delgado died in 2002, his wife Milagros Delgado transferred their rights over Lot 3933 to Maria Cristina Custodio (Waiver of Rights is marked as Annex G);
- G. That Salvador Esteron, the brother of the protestant subsequently waived his rights over Lot 3932 in favor of Eden Custodio-Ilisan (Waiver of Rights is marked as Annex H);
- H. Protestant alleged that the above narration of material facts explained how and when she and her family gained occupation, possession and claim over the subject lots which they still occupy, possess and claim up to present;
- I. That upon learning that Miscellaneous Sales Applications had been filed by the respondents covering Lot Nos. 3932 and 3933, they immediately filed this instant protest;

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Legal 9-16-11
ALAN L. AZUL
RECORDS OFFICER II
ADMINISTRATIVE III
DENR - MIMAROPA

In the joint answer of the respondents, they claimed that the protestant is a mere squatter and not a lawful claimant of the disputed lots. They asserted that:

1. In the early 80's Maning Cursod, a resident of Barangay Sta. Monica, Puerto Princesa City and an employee of the City Public Market and a Benitez family friend, informed them of the availability of public lands open for Sales Application. It was their father, Gerry Benitez who originally applied for Lot 3933 in 1985. The other members of Benitez family also filed their respective application for the other lots, Pasencia Benitez for Lot 3924 and John Benitez Lim for Lot 3936;
2. That upon filing of the applications, the Benitez Family immediately entered, occupied, possessed, cultivated and introduced improvements in the lots they applied. They cleared and clean the same, fenced it with concrete posts and barbed wire, planted with vegetables and fruit bearing trees. They also constructed a house make shift and pay the taxes thereon;
3. That unknown to them, in the late 2008, the protestant stealthily entered their fenced compound and built her house thereon. This prompted them to bring the matter to the concerned agencies;
4. That the protestant is not the proper party in interest because she was not duly authorized by her daughters whose names appeared in the Waiver of Rights pertaining to the disputed lots;
5. That the Formal Protest states no cause of action because the protestant and her children are mere squatter of the disputed area;

The issues to be resolved in this case are as follows:

1. Whether the protestant and her family are bona-fide occupant and legal claimants of the disputed lots; and
2. Who between the protestants and the respondents have a better and prior right thereto.

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Legs

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ALAN L. AZUL
RECORDS OFFICER II
ADMINISTRATIVE III
OFFICE - HONORATA

Strictly speaking, the disputed lots remains to be part of the public land and following the principle under the Regalian doctrine, neither the protestant nor the respondent acquired absolute right over the same as the disposition thereof is still with the government thru this Office.

Contrary to the respondent's claim that the protestant entered the land only in 2008, records disclosed that as early as 1991 an ocular inspection had already been conducted in the disputed lots evidenced by the ocular inspection report dated June 11, 1991 submitted by Land Inspector Edgardo N. Libiran. It was established during the ocular inspection that the claimant of Lot No. 3929 is Merriam Custodio while Lot Nos. 3932 and 3933 which were the lots subject of the M.S.A. of the respondents, are claimed by Salvador Esteron and Hermenegildo Delgado, respectively and that Pacencia Benitez, Rolito Benitez and Gary Benitez are not the actual occupants of the subject lots.

Based on the records, lot Nos. 3929, 3932 and 3933 are contiguous, and while the protestant originally claimed Lot 3929 only, she was able to submit documents proving that Salvador Esteron, brother of Merriam Custodio, waived in favor of her daughter Eden Custodio-Ilisan, Lot No. 3932. She was likewise able to prove that she was authorized way back in the year 1993 by Hermenegildo Delgado to oversee and administer Lot No. 3933 and after the death of the latter, his widow, Milagros Delgado waived her right over the said land in favor of Maria Cristina Esteron-Custodio. These pieces of evidence are proofs of their previous public adverse and notorious claim and occupation of the subject lots. Protestant also submitted the special power of attorney executed by her children, namely, Eden Custodio- Ilisan and Maria Cristina Esteron-Custodio, authorizing her to represent them in so far as the lots in question are concerned.

As to whether the respondents Rolito Benitez and Genevieve Benitez are in actual possession of the disputed lot, said respondents failed to present evidence to support their claim that they actually resided and occupied Lots 3932 and 3933. While it may be true that they have at some point asserted claim over the said lots as evidenced by the filing of the miscellaneous sales application, their claim however, of actual occupation/possession requires more than fencing and claiming of rights over the land. What the law requires in order to establish actual possession is the physical presence of the claimant. In as much as actual possession cannot be appreciated in favor of two different persons with conflicting interest, and considering that the protestant was able to

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9-16-11
ALAN L. AZUL
RECORDS OFFICER II
ADMINISTRATIVE III

establish her and her family's physical presence over Lot Number 2932 and 3933, actual possession of the land shall be appreciated in her favor and not that of the respondents.

Finally, on the issue of who between the parties should be given the right to apply for a Miscellaneous Sales Application over the disputed lots, the Supreme Court had consistently ruled that actual occupation is an essential requirement for the approval of Miscellaneous Sales Application. In the case Republic of the Philippines vs. Enrique de Guzman, et.al., G.R. No. 105630, February 23, 2000, the High Court ruled, to wit:

"De Guzman was neither in actual possession of the land, nor has made improvements thereto, as he alleged in his Sales Application. Actual possession of the land by the applicant and making improvement thereto were among the legal requirements to be complied by an applicant.

Furthermore, the fact that de Guzman was not in possession of the property disqualified him from being awarded the sales patent."

With the filing of the Miscellaneous Sales Application over the disputed lots, the Respondents are bound by the provisions of R.A. 730, the law applicable to Miscellaneous Sales Application for residential lots. Section 1 of the said law expressly provides, to wit:

"Section 1. Notwithstanding the provisions of Section Sixty One and Sixty Seven of Commonwealth Act 141, as amended by Republic Act No. Two Hundred Ninety Three, among Filipino Citizen of legal age who is not the owner of a homelot in the Municipality or City in which he resides and who has in good faith established his residence on a parcel of the public land of the Republic of the Philippines which is not needed for the public service, shall be given preference. . . . It shall be an essential condition of the sale that the occupants has constructed his house on the land and actually resided thereon."

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ALAN L. AZUL
RECORDS OFFICER II
ADMINISTRATIVE IV

It is clear from the above quoted provision of the law that it is an essential condition that the occupant has constructed his or her house on the land and actually resided thereon. This condition was not complied by the respondents consequently, they are disqualified to apply under the law.

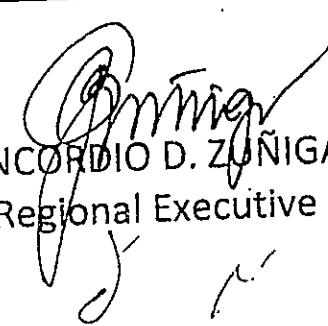
Moreover, according to the said provisions of law, preference in the grant of Sales Patent shall be given to "Any Filipino, of legal age who is not the owner of a home lot in the Municipality or City in which he resides."

In the instant case, respondents did not dispute the fact as alleged by the protestant that they own residential lot in Puerto Princesa City as evidenced by TCT No. T-14081 and TCT No. T-14040, both in the name of Rolito O. Benitez. Being owners of residential lot in Puerto Princesa City, respondents are effectively stripped of the privilege to be given preference in the Award of the disputed lots thru sales patent.

WHEREFORE, in the light of all the foregoing, Miscellaneous Sales Application (M.S.A.) No. 045316-1186 filed by Rolito O. Benitez, covering Lot 3932, Cad 800-D with an area of 345.47 square meters and M.S.A. No. 045316-1187 filed by Genevieve T. Benitez, covering Lot 3933 Cad 800-D with an area of 362 square meters, both located at Sta. Monica, Puerto Princesa City Palawan, are hereby **ORDERED REJECTED**. Whatever amount was paid on account thereof is forfeited in favor of the government. Herein Protestant is hereby **DIRECTED** to file the necessary public land application. The PENRO and CENRO concerned are hereby directed to give further due course to the applications to be filed by protestant Merriam E. Custodio.

SO ORDERED.

Manila, Philippines, this SEP 15 2011


CONCORDIO D. ZUÑIGA, CESO III
Regional Executive Director

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Legal 9-16-11
ALAN L. AZUL
RECORDS OFFICER II
ADMINISTRATIVE III
DENR - MIMAROPA

Copy furnished:

Merriam E. Custodio
Purok Pagkakaisa, Brgy. Sta. Monica,
Puerto Princesa City, Palawan

Atty. Christian Dave Libiran
Lacao St., (in front of NCCC)
Puerto Princesa City, Palawan

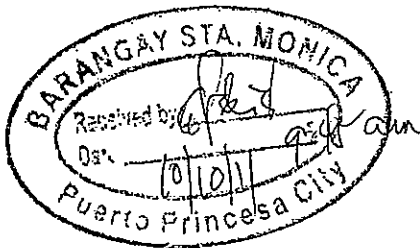
Mr. Rolito Benitez
Roxas Clothing House
Brgy. II, Roxas, Palawan

Ms. Geneveive Benitez
Puerto Clothing House
Maresca Bldg., Malvar St.,
Puerto Princesa City

Atty. Paz S. Cayetano
289 Rizal Avenue,
Puerto Princesa City, Palawan

DENRD
DENR Compound, Sta. Monica, Puerto Princesa City, Palawan

DENRD
Puerto Princesa City, Palawan
custodia vs. benitez 2



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ALAN L. AZUL
RECORDS OFFICER II
ADMINISTRATIVE III
DENR - MIMAROPA



Republic of the Philippines
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
REGION IV-B, MIMAROPA
1515 L & S Bldg., Roxas Boulevard, Ermita Manila

ANNEX "B"

MERRIAM E. CUSTODIO,
Protestant

x

DENR Case No. M-07-11-L

-versus-

Lots 3932 and 3933, Cad. 800-D
Sta. Monica, Puerto Princesa City

ROLITO BENITEZ and
GENEVIEVE BENITEZ,
Respondents

x-----x

ORDER

Before this Office is the Motion for Reconsideration dated November 21, 2011 filed by the respondents Rolito Benitez and Genevieve Benitez from the Order dated September 15, 2011 issued by this Office in the above-entitled case, the decretal portion of which is hereto quoted viz:

"WHEREFORE, in the light of all the foregoing, Miscellaneous Sales Application (M.S.A.) No. 045316-1186 filed by Rolito O. Benitez, covering Lot 3932, Cad 800-D with an area of 345.47 square meters and M.S.A. No. 045316-1187 filed by Genevieve Benitez, covering Lot 3933, Cad 800-D with an area of 362 square meters, both located at Sta. Monica, Puerto Princesa City, Palawan, are hereby ORDERED REJECTED. Whatever amount was paid on account thereof is forfeited in favor of the government. Herein Protestant is hereby DIRECTED to file the necessary public land application. The PENRO and CENRO concerned are hereby directed to give further due course to the applications to be filed by protestant Merriam E. Custodio."

Perusal of the Respondents' Motion for Reconsideration show that the issues raised therein are the very same issues, which was ruled and passed upon in the assailed order/resolution, and therefore, a mere rehash. As such, we find no ground or cogent reason to disturb and/or modify the Order of September 15, 2011. It is a settled rule that "a Motion for reconsideration which does not make out a new matter sufficiently persuasive to induce modification of judgment, will be denied (PCIB vs. Escolin, 67 SCRA 202)."

WHEREFORE, foregoing premises considered, the instant Motion for Reconsideration is hereby, as it is, **ORDERED DENIED** for lack of merit.

SO ORDERED.

DENR Region IV MIMAROPA, Manila, Philippines. FEB 13 2012

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7-17-12

cc: **ALAN L. AZUL**
REGIONAL OFFICER II
ADMINISTRATIVE III
DENR REGION IV-B MIMAROPA

CONCORDIO D. ZUNIGA, CESO III
Regional Executive Director

Merriam E. Custodio

Purok Pagkakaisa, Brgy. Sta. Monica, Puerto Princesa City

Atty. Paz Soledad B. Rodriguez-Cayetano

289 Rizal Avenue, Puerto Princesa City

Rolito Benitez

Roxas Clothing House, Brgy. II, Roxas, Palawan

Genevieve Benitez

Puerto Clothing House, Maresca Bldg., Malvar St., Puerto Princesa City

Atty. Christian Dave Libiran

Lacao St. (in front of NCCC), Puerto Princesa City

PENRO/CENRO

DENR Compound, Sta. Monica, Puerto Princesa City

Department of Environment and Natural Resources
OFFICE OF THE SECRETARY
Diliman, Quezon City

ANNEX "C"

ROLITO BENITEZ and
GENEVIEVE BENITEZ
Appellants,

- versus -

MERRIAM E. CUSTODIO,
Appellee.

X ----- X

DENR CASE NO. _____
(DENR CASE NO.
REGION IV-B) M-07-11-L)

NOTICE OF APPEAL

To the Honorable Secretary of the Department of Environment and Natural Resources, Visayas Avenue, Diliman, Quezon City, Rolito Benitez and Genevieve Benitez respectfully file this NOTICE OF APPEAL, appealing the February 13, 2012 Order of the Regional Executive Director, DENR-IV (MIMAROPA), copy of which was received of even-date, for being contrary to law and facts of the case.

Respectfully submitted, March 19, 2012, Quezon City.

Man. Jr.
FOR THE APPELLANTS
NAME BENITEZ
Brgy. II Roxas, Palawan

Copy furnished:

- 1). Merriam E. Custodio
Purok Pagkakaisa, Brgy. Sta. Monica
Puerto Princesa
- 2). CENRO, PUERTO PRINCESA CITY
Palawan
- 3). PENRO PUERTO PRINCESA CITY
Palawan
- 4). The Regional Executive Director
L & S Bldg. 1515 Roxas Blvd.

Reg. mail

Reg. mail

Reg. mail

Reg. mail

Republic of the Philippines
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
OFFICE OF THE SECRETARY
Visayas Ave., Diliman, Quezon City

ROLITO BENITEZ AND
GENEVIEVE BENITEZ,
Appellants.

DENR CASE NO. 9190

-versus-

MERRIAM CUSTODIO,
Appellee,

X-----X

ANNEX "D"

APPELLEE'S MEMORANDUM

COMES NOW, the undersigned Appellee, unto this Honorable Office, and by way of comment and opposition to the appellants' appeal memorandum, respectfully states that:

THE APPELLANT'S NOTICE OF APPEAL IS FILED OUT OF TIME

According to DENR Administrative Order No. 87, Series of 1990, appeals from the decisions of the DENR Regional offices shall be perfected within fifteen (15) days from receipt of the copy of the decision or order complained of by filing a notice of appeal. The pertinent provisions of the said administrative order are as follows:

SECTION 1. Perfection of Appeals.

(a) Unless otherwise provided by law or executive order, appeals from the decisions/orders of the DENR Regional Offices shall be perfected within fifteen (15) days after receipt of a copy of the decision/order complained of by the party adversely affected, by filing with the Regional Office which adjudicated the case a notice of appeal, serving copies thereof upon the prevailing party and the Office of the Secretary, and paying the required fees.

(b) If a motion for reconsideration of the decision/order of the Regional Office is filed and such motion for reconsideration is denied, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the aggrieved party shall have fifteen (15) days from receipt of the resolution of reversal within which to perfect his appeal.

According to the afore-quoted DENR Administrative Order, what perfects an appeal is the filing of the notice of appeal but the same must be submitted within the fifteen day period from the receipt of the decision or order sought to be reviewed. If a motion for reconsideration is filed, the period from the time of the receipt of the original decision or order until the motion for reconsideration is filed shall be deducted and the appellant may only file his or her appeal within the remaining period.

In the present case, the appellants failed to perfect their appeal on time and thus, their appeal memorandum can no longer vest the Honorable Secretary the authority to review the already final decision of the Regional Director. According to the March 19, 2012 notice of appeal sent by the appellants to the herein appellee through registered mail, they received the February 13, 2012 Order of the Regional Executive Director of DENR –IV MIMAROPA “ON EVEN DATE” implying that they received the said order on February 13, 2012 (copy of the notice of appeal is hereto attached as Annex “1”). Apparently, when the notice of appeal was filed on March 19, 2012, the fifteen day period had already lapsed and thus, appellants right to perfect an appeal had already been forfeited.

In addition to the above, it is also worth to mention that the appellant’s notice of appeal was filed before the Office of the Honorable DENR Secretary while the Rule (DENR Administrative Order No. 87) provides that the notice of appeal be filed at the DENR Regional Office which rendered the questioned order or decision. For failing to comply with the procedural requirements to perfect an appeal, appellant must now be considered to have failed to perfect his appeal.

Finally, in the appeal memorandum submitted by the appellants, they failed to indicate the specific material dates of their receipt of the original decision. Such date is very material in determining the timeliness in the filing of their notice of appeal in view of the fact that they are only allowed to do so within the remaining period left after the motion for reconsideration is filed.

**THE SIGNATORY TO THE NOTICE OF APPEAL
HAS NO LEGAL AUTHORITY TO SIGN FOR AND BEHALF OF THE APPELLANTS**

Again, according to Section 1 paragraph (a) of DENR Administrative Order No. 87, Series of 1990, the notice of appeal has to be filed by the party adversely affected. In the case at hand, the record shows that the parties adversely affected by the decision of the DENR Regional Director were Rolito and Genevieve Benitez. If we are to follow the rules, it must be them or their counsel who should have filed the notice of appeal but the record clearly shows that their purported notice of appeal was signed by a certain Mavie Benitez who is not even a party to the case. Having been signed by a person who does not have any legal representation, the notice of appeal is a mere scrap of paper and thus, it did not toll the reglementary period for perfecting an appeal.

**APPELLANTS ARE DISQUALIFIED TO ACQUIRE
THE SUBJECT LOTS THROUGH SALES PATENT**

The crucial issue involved here is whether the appellants are entitled to acquire the subject lots through sales patent. If they are qualified, they may have the personality to appeal but if they are not, there is no more point in law and procedure to further entertain their appeal.

Republic Act 730 (An act to permit the sale without public auction of public land of the Republic of the Philippines for residential purposes to qualified applicants under certain conditions) clearly provides that in order to acquire residential land through sales patent, the applicant must not an owner of a home lot in the municipality or city and must in good faith establish a residence on the public land being applied for. In the case of herein appellants, the record clearly show that Genevieve Benitez and Rolito Benitez own several residential lots in Puerto Princesa City, to wit:

A – Residential Lots of Genevieve Benitez:

1. Residential Lot in Baltan St. Bgy. San Miguel, Puerto Princesa City under TCT No. 173100 (copy of the title attached as **Annex "2"**);
2. Unregistered but tax-declared residential lots in Bgy. Bacungan (tax declarations are attached as **Annex "3" and "4"**).

B- Residential Lots of Rolito Benitez:

1. Conjugal residential lot in Bgy. Banca-Banca, Puerto Princesa City under TCT No. 171841 in the name of Mavie Bruno Benitez, wife of Rolito Benitez (copy of the titled is hereto attached as **Annex "5"**).

It is also worth to emphasize that R.A 730 provides as one of the essential condition for the grant of patent that the applicant has constructed a house on the land and actually resided therein. By the use of the conjunctive term "AND" it is understood that construction of a house over the land is not enough. The applicant must also reside in the house he or she constructed on the land. In the case of the appellants, they do not have, at the time of their application or even prior thereto, any house on the land. And even assuming for the sake of argument that they did have a house there, they never resided therein as Rolito Benitez is a permanent resident of Barangay II, Roxas, Palawan while Genevieve Benitez is a resident of Maresca Bldg., Malvar St., Puerto Princesa City. On these score alone, it is very clear that the appellants are disqualified to acquire the subject parcels of residential lots and hence, their appeal cannot be favorably granted.

To justify their application for sales patent, appellants made material misrepresentation which rendered the sales patent issued to them null and void. This material misrepresentation includes among others the execution of false affidavits attesting to the fact that they are long time residents and actual occupants of the land when the truth is they never established occupation and residency over the subject lots (Lot Nos. 3932 and 3933). For supplying false information in their public land applications, respondents are now indicted to the crime of perjury and the cases are undergoing trial before the Municipal Court of Puerto Princesa City under criminal cases numbers 19231 and 19232 (copy of the subpoenas for the scheduled hearings are hereto attached as **Annexes "6" and "7"**, respectively. For supporting the perjured public land application of the appellants, the witnesses who executed affidavits in favor of the appellants are likewise facing criminal charges for perjury. Thus, the appellants' reliance on that said witnesses to prove their entitlement to patents in their favor cannot change the fact that they are disqualified under the law to acquire the subject lots.

**THE APPELLEE HAS A BETTER RIGHT TO ACQUIRE THE
SUBJECT LOTS THROUGH PUBLIC LAND APPLICATION**

Contrary to the appellant's and her witnesses' contention that the herein appellee is a mere intruder, trespasses and squatter, suffice it to state that their allegations are self-serving and cannot prevail over the public documents submitted by the appellee proving her and her predecessor's prior claim and occupation over the land as early as the year 1973. In as much as the arguments in the appeal memorandum are just rehash of the matters raised in the appellants position paper and motion for reconsideration, the herein appellee merely reiterates the arguments and adopts her protest and position paper and adopts the documents she submitted in support of her formal protest (copy of the protest is attached as **Annex "8"**), including its annexes as well as her position paper, inclusive of its annexes (attached as **Annex "9"** hereof) as part of this memorandum.

Quintanilla

In the adopted protest and position paper, appellee herein exhaustively discussed her actual possession of the land and her superior right to acquire the same over the self-serving and perjured evidence of the appellants who are claiming that the appellee merely entered the property in the year 2008. Such claim is belied by the inspection report issued by Edgardo Libiran on June 11, 1991 (Attached as **Annex "10"**) stating that Lots 3929, 3932 and 3933 of Cad. 800-D are being claimed by Merriam Custodio, Salvador Esteron and Herminigildo Delgado. The said report likewise affirmed that Pacencia Benitez, Rolito Benitez and Gary Benitez never set foot on the subject lots and have not introduced any improvements thereon. Such fact of the appellee's actual occupation of the subject lots is further confirmed by the complaint for trespassing and illegal squatting filed by Pacencia Benitez against the herein appelle before the City Prosecution Office sometime on September 1993 (copy of the subpoena hereto attached as **Annex "11"**). The said case, for the information of the Honorable Office did not prosper because the investigating Fiscal discovered that the case was merely meant to harass the herein appellee.

**APPELLEE HAS THE PERSONALITY TO FILE HER PROTEST
TO THE APPELLANTS' MISCELLANEOUS SALES APPLICATION**

Although Lots 3932 and 3933 are being claimed by the appellee's children Maria Cristina and Eden, the subject lots are immediately adjacent to and enclosed in the same fence with that of Lot 3929 which was already registered in the name of the protestant (copy of the Title is hereto attached as **Annex "12"**). Such being the case, the herein appellee has an interest over the subject lots as the impending award thereof in favor of the appellants would significantly affect not only her daughters' ownership but also her possessory right over the subject lots.

Finally, in as much as the issue of the herein appellee's right or personality to protest was not raised at the PENRO and Regional Office level, the same cannot be raised for the first time in this appeal. Thus, such issue is already moot and academic for even without such protest, in as much as the issue here is the qualification of the appellants to acquire by way of miscellaneous sales patent the subject lots and it is proven beyond reasonable doubt that they are disqualified, the personality of the protestant is no longer material because public interest is already involved here and any person who has knowledge of their disqualification can report the same to the DENR. This is the essence of the requirement of posting and publication of public land applications.

PRAYER

WHEREFORE, foregoing premises, it is respectfully prayed unto this Honorable Office that the Appeal filed by Rolito Benitez and Genevieve Benitez be denied due course and dismissed for lack of merit.

Puerto Princesa City for Quezon City, July 9, 2012.


MERRIAM E. CUSTODIO
Appellee

File copy

ANNEX "E"

HON. ROY CIMATU

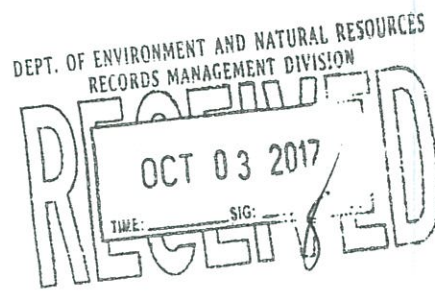
Secretary

Department of Environment and Natural Resources (DENR)

THRU: DENR Action Center

Office of the DENR Secretary

Visayas Avenue, Diliman, Quezon City



DATE: September 22, 2017

RE : REQUEST FOR RESOLUTION OF DENR CASE NO. 9190

ROLITO BENITEZ AND GENEVIEVE BENITEZ, Appellants

-versus-

MERRIAM CUSTODIO, Appellee

Sir:

Greetings!

The undersigned appellee is the protestant of the Miscellaneous Sales Application (M.S.A.) No. 045316-1186 filed by the appellant Rolito O. Benitez, covering Lot 3932, Cad 800-D with an area of 345.47 square meters as well as the M.S.A. No. 045316-1187 filed by Genevieve T. Benitez, covering Lot 3933 Cad 800-D with an area of 362 square meters, both located at Santa Monica, Puerto Princesa City, Palawan.

Pursuant to the Order issued by the Regional Executive Director, DENR Region IV-B, MIMAROPA, both M.S.A.s were "ORDERED REJECTED" and *"the PENRO and CENRO concerned are hereby directed to give further due course to the applications to be filed by protestant Meriam E. Custodio."* (Copy of the Order dated September 15, 2011 is hereto attached as Annex "A".)

A Motion for Reconsideration was filed by Rolito Benitez and Genevieve Benitez but the same was DENIED. (A copy of the Order dated February 13, 2012 is hereto attached as Annex "B".) Hence, they filed their Notice of Appeal to the Office of the Secretary of the DENR.

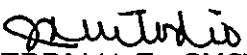
The parties were ordered to submit their respective Memoranda. (A copy of the Appellant's Memorandum is hereto attached as Annex "C" and the copy of the undersigned Appellee's Memorandum is hereto attached as Annex "D".)

Although both Memorandum were submitted in the year 2012, a resolution has not yet been issued to the pending appeal.

Thus, it is most respectfully requested that the pending appeal be given due course.

Hoping for your preferential attention on the matter, I remain,

Very truly yours,


MERRIAM E. CUSTODIO

Appellee



Republic of the Philippines
Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City, 1100
Tel. Nos. (632) 929-66-26 to 29 • (632) 929-62-52
929-66-20 • 929-66-33 to 35 • 929-70-41 to 43 • 988-3367

NOV 28 2017

ANNEX "F"

MS. MERRIAM E. CUSTODIO
Sta. Monica, Puerto Princesa
Palawan

Dear Ms. Custodio,

This pertains to your letter dated September 22, 2017 inquiring about the status of DENR Case No. 9190 entitled " Rolito Benitez and Genevieve Benitez, Appellants versus Merriam Custodio, Appellee."

Please be advised that the said case is already with the Office of the Assistant Secretary for Legal Affairs for evaluation.

We will immediately notify you as soon as the action document is finalized and released.

For more information, kindly contact no. 9296626 local 2215.

Very truly yours,

ATTY. NORLITO A. ENERAN, CESE
OIC Director, Legal Service