



Republic of the Philippines
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Visayas Avenue, Diliman, Quezon City

Tel. No. 929-6626 to 29; 929-6633 to 35
926-7041 to 43; 929-6252; 929-1669

Website: <https://www.denr.gov.ph> / Email: web@denr.gov.ph

DENR - MARAROPA RECORDS SECTION	
RECEIVED	
JUN 01 2022	
INCOMING	OUTGOING
DATE NO.	

JUN 01 2022

MR. TEODORO G. BERNARDINO

Officer-In-Charge

Marcopper Mining Corporation

4th floor, 2283 Manila Memorial Park Building

Pasong Tamo Extension, Makati City

**RE: FINAL NOTICE TO VACATE OVER BALOGO PORT, BRGY.
BALOGO, STA. CRUZ, MARINDUQUE**

Mr. Bernardino:

This is in relation to the Other Lawful Purposes Lease Agreement (OLPLA) No. 02 entered into by and between the Department of Environment and Natural Resources (DENR) for and in behalf of the Republic of the Philippines, and the Marcopper Mining Corporation (MMC) covering 17.655 hectares of public forest land for Bodega and Port Facilities purposes which is situated in Barangay Balogo, Sta. Cruz, Marinduque.

Based on available records, you are currently occupying the subject land on the basis of OLPLA No. 02, which was issued in 1969 and expired on 30 June 1994, and never renewed.

Pursuant to Item XV of OLPLA No. 02, upon expiration or cancellation of the lease agreement, MMC may at the discretion of the Director of Forestry or the Secretary of Agriculture and Natural Resources, be allowed to hold the land for a period not exceeding 90 days only for the purpose of removing temporary improvements and putting the land to its original condition. After the lapse of the said 90 day period, MMC has not removed the improvements.

Further, the Department, through the OIC, Provincial Environment and Natural Resources (PENR) Officer of the Province of Marinduque issued a Notice to Vacate and received by your Office in August 2021, which was unheeded by your company.

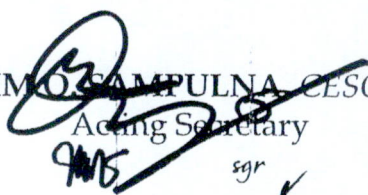
There being no existing tenurial instruments over the area, or any provisional permits given to your Corporation, your occupation of the subject property has been rendered illegal. As such, **the DENR demands with finality that you vacate the premises previously covered by OLPLA No. 02 within a non-extendible period of FIFTEEN (15) DAYS from the date of your receipt of this notice. This is the final notice from this Department.** Otherwise, the DENR will not hesitate to take over the property pursuant to the provisions of the DENR Administrative Order (DAO)

2020-09, "Guidelines on the Management of Cancelled or Terminated, Expiring, and Expired Tenurial Instruments."

It should be noted that under the said DAO, the Asset Management Team, which was correspondingly created through RSO-387, is empowered to "initiate the take-over of the area/s and improvements covered by cancelled or terminated, and expired tenurial instruments by putting signage/s stating that it is a DENR property, and conducting related activities with the end in view of securing the area."

The Department strongly suggests that you give this matter preferential attention to avoid going through any more inconvenience or costly litigation.

Very truly yours,


JIM O. CAMPULNA, CESO I
Acting Secretary
sgr

Copy furnished:

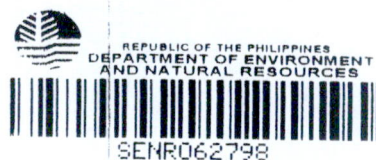
Hon. Presbitero Jose J. Velasco Jr.
Governor
Province of Marinduque
Provincial Capitol, Boac, Marinduque

The Director
Forest Management Bureau
Visayas Avenue, Diliman, Q.C.

The Regional Executive Director
DENR MIMAROPA Region
DENR by the Bay Bldg., 1515 Roxas Boulevard
Ermita, Manila
mimaroparegion@denr.gov.ph

The PENR Officer
PENRO Marinduque
Capitol Compound., Brgy. Bangbangalon
Boac, Marinduque, 4900
penromarinduque@denr.gov.ph

Atty. Clifford E. Chua
Counsel for Marcopper Mining Corporation
Chua Lim & Associates
Unit 304, The Orient Square Building,
F. Ortigas Jr. Road, Ortigas Center, Pasig City





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MAY 26 2022

MEMORANDUM FOR THE SECRETARY

THRU : **The Undersecretary**
Legal, Administration, Human Resources and Legislative
Affairs

The Assistant Secretary
Legal Affairs

FROM : **The Director**
Legal Affairs Service

SUBJECT : **ISSUANCE OF FINAL NOTICE TO VACATE AGAINST
MARCOPPER MINING CORPORATION FOLLOWING
THE EXPIRATION OF OLPLA 02 ON THE BALOGO PORT
SITUATED IN BARANGAY BALOGO, STA. CRUZ,
MARINDUQUE**

This concerns the suggested Administrative Action the DENR would pursue against the Marcopper Mining Corporation (MMC) regarding its continued unlawful possession of the Balogo Port located at Barangay Balogo, Sta. Cruz, Marinduque following the expiration of its lease agreement with the government, through the Department.

To firm up the Department's action, an internal hybrid meeting was held on 11 April 2022 presided by Undersecretary Ernesto D. Adobo Jr., Assistant Secretary Michelle Angelica D. Go, Mines and Geosciences Bureau (MGB) Director Wilfredo Moncano, DENR Mimaropa Regional Executive Director (RED) Lormelyn Claudio, Marinduque PENR Officer Imelda Diaz, and the undersigned, among others.

In this regard, this Office is respectfully submitting this report which details the matters discussed during the said meeting.

BACKGROUND

Based on available documents submitted, the subject land currently being occupied by the MMC is covered by Other Lawful Purpose Lease Agreement (OLPLA) 02, which was issued in 1969 and expired on 30 June 1994.

MMC applied for renewal on 09 September 1993 for the approval of then Secretary Victor O. Ramos. However, the Forest Management Bureau (FMB) is bereft of any record of its approval, hence, presumed disapproved.

Assuming for the sake of argument that said application for renewal was approved, the extension period of 25 more years to complete the maximum 50 years allowed by the Constitution shall have already lapsed by December 2020. Meanwhile, it is also worthy to note that the FMB has record on file that MMC made rental payments up to 1997 in the amount of P454,419.85.

ACTIONS TAKEN

In order to assess the situation of the bodega and port facilities, staff of PENRO Marinduque together with representatives from the Provincial Government of Marinduque and MGB proceeded to the area in June 2021. It was observed that the majority of the facilities inside the port are old and dilapidated. However, the visit was cut short and the assessment was not thoroughly conducted due to the prohibition imposed by the security guard of MMC residing in the area.

In July 2021, PENRO Marinduque requested for the creation of an Asset Management Team (AMT) pursuant to the recently issued DENR Administrative Order 2020-09, which provides for the guidelines on the management of cancelled or terminated, expiring, and expired tenurial instruments.

PENRO Marinduque then issued to MMC a Notice to Vacate dated 06 August 2021 which was served and received by the corporation's security guard. According to Atty. Gandhi Flores, Legal Division Chief of DENR MIMAROPA Region, the subject Notice to Vacate stated that the DENR can send an AMT based on DAO 2022-09. PENRO Diaz, however, raised during the 11 April 2022 meeting that when she issued the Notice to Vacate, which gave MMC 30 days to leave the Balogo Port premises, a Special Order creating the AMT was not yet issued. It was only on 09 September 2021 that the AMT was created through RSO-387.

WAYFORWARD

This Office agrees with the actions taken by the DENR MIMAROPA Region. Considering MMC's continued occupation and possession of the Balogo Port up to the present time, it is recommended for the DENR to resort to an administrative action to eject the corporation from the premises of the subject property. This can be achieved by issuing a Final Notice to Vacate, which may be signed by the PENR Officer, however, this Office suggests that the Secretary may instead issue the same, citing the AMT formed in accordance with DAO 2020-09.

The Secretary's authority to issue the demand for a Final Notice to Vacate is stemmed from Section 7 of Executive Order (EO) 192, Series of 1987 which enumerates the functions of the Office of the Secretary, to wit:

SECTION 7. Secretary of Environment and Natural Resources.

The authority and responsibility for the exercise of the mandate of the Department, the accomplishment of its objectives and the discharge of its powers and functions shall be vested in the Secretary of Environment and Natural

Resources, hereinafter referred to as Secretary, who shall supervise the Department and shall be appointed by the President. For such purposes, the Secretary shall have the following functions:

xxx

(c) Promulgate rules, regulations and other issuances necessary in carrying out the Department's mandate, objectives, policies, plans, programs and projects;

(d) Exercise supervision over all functions and activities of the Department;

The Department, per EO 192 is also exercise supervision and control over forest lands;¹ and regulate the development, disposition, extraction, exploration and use of the country's forest.²

The Notice shall give MMC a period of 15 days from receipt thereof to leave the Balogo Port. Otherwise, the DENR will take-over the subject property pursuant to Section 5 of the DAO, which states that the AMT "shall initiate the take-over of the area/s and improvements covered by cancelled or terminated, and expired tenurial instruments by putting signage/s stating that it is a DENR property, and conducting related activities with the end in view of securing the area." Under Section 7.3, only the immovable/permanent properties within the subject area will be taken-over by the government.

In line with this, it was agreed upon that Certifications should be issued by the DENR Central Office, FMB, DENR MIMAROPA, and PENRO Marinduque stating that there are no tenurial instruments over the area. It is crucial and critical to verify with certainty that there are no provisional permits and/or pending applications over the Balogo Port area before issuing the Final Notice of Vacate and the implementation of the take-over later on.

Nonetheless, it is also worth mentioning that the DENR MIMAROPA has coordinated with the Office of the Solicitor General for the filing of an unlawful detainer case against MMC. In fact, a complaint³ relative to the case "Department of Environment and Natural Resources (DENR) - MIMAROPA Region, represented by RED Lormelyn E. Claudio, Plaintiff, vs. Marcopper Mining Corporation, Defendant" has already been drafted. Despite this, resorting to a civil action in court may no longer be needed should the administrative action suggested above be sufficient to eject the MMC within the premises.

With regard to the proposal of the Provincial Government of Marinduque represented by Gov. Presbitero Jose J. Velasco Jr. to include the Balogo Port area and the adjacent parcels of land claimed by MMC identified as Lots 5143 and 5836 in the

¹ Section 5 (d), EO 192, S. 1987.

² Section 5 (j), EO 192, S. 1987.

³ Copy attached as **Annex "A"**.

establishment of Marinduque Economic Zone (MAREZ), RED Claudio said the Office of the Governor applied for an Environmental Compliance Certificate (ECC) for the development and rehabilitation of the same. However, since the Office of the Governor still lacks a tenurial instrument, the DENR Regional Office would just assist the former in meeting and completing the requirements for obtaining such through the PENRO concerned.

Considering the foregoing discussions, should the Secretary agree with the proposed wayforward, **this Office opines that the DENR MIMAROPA Region submit the report recommending the final demand / Final Notice to Vacate** to be served to the MMC before the DENR resorts to an actual take-over of Balogo Port.

The foregoing discussions with the recommended actions were presented by the undersigned, together with the Regional Executive Director, DENR MIMAROPA Region and PENR Officer of Province of Marinduque in the Executive Committee last 18 April 2022.

Should the Secretary agree, this Office prepared a draft **Final Notice to Vacate**.

For your information, record and further instructions, sir.


NORLITO A. ENERAN, A.L.M., CESO III

Copy furnished:

The Undersecretary
Field Operations - Luzon and Visayas, and Environment

The Director
Forest Management Bureau
Visayas Avenue, Diliman, Q.C.

✓ **The Regional Executive Director**
DENR MIMAROPA
1515 L&S Building, Roxas Boulevard, Ermita Manila
mimaroparegion@denr.gov.ph

The PENR Officer
PENRO Marinduque
Capitol Compound, Barangay Bangbangalon
Boac, Marinduque
penromarinduque@denr.gov.ph