REPUBLIC OF THE PHILIPPINES REGIONAL TRIAL COURT FOURTH JUDICIAL REGION ROXAS, ORIENTAL MINDORO BRANCH 43

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NOYAD **ABNAY** LAPAD, **BONGBONG POYPOY** GUARDIAN, LORENA **ABNAY** POYPOY. DANNY **ABNAY** POYPOY, PIPIN PURMA LAPAD, **POYPOY** GUARDIAN, SALOME POYPOY GUARDIAN, PINKY ABNAY POYPOY, LILOY PURMA, NANETTE **PURMA** MALIGALIG, BENJAMIN PURMA INLANGAN, HULYAN AWANG, MAHANAY ABNAY BUSAW AND ALL OTHER HEIRS OF ABNAY MASID AND ALL **HANUNUO-MANGYAN** OCCUPANTS OF SITIO KULASI. BRGY. CABALWA, MANSALAY, ORIENTAL MINDORO AND ALL PERSONS **CLAIMING RIGHTS** UNDER THEM,

Plaintiffs,

- versus -

ALFONSO CUSI and/or PATRICIA C. RAMOS and/or JACOB S. CUSI and/or MARLON C. ESTRELLA AND ALL OTHER PERSONS ACTING FOR AND IN BEHALF OF THE NAMED **DEFENDANTS, Doing Business** Under the Name and Style "STARLITE HOLDINGS, INC.", PAZ G. PANOPIO DE VILLA, THE REGISTRAR OF DEEDS FOR THE PROVINCE OF ORIENTAL MINDORO, THE OFFICER-IN-CHARGE OF THE DEPARTMENT

Civil Case No. C-707 For: Confirmation of **Native** Title, Reconveyance and Cancellation of Title pursuant to Section 8 (b) of Republic Act 8371, otherwise known "The **Indigenous** as Rights Peoples Act", **Damages** Arising from Violation of Section 7 (a), (b), (c) and Section 10 of R.A. 8371 and Presidential Decree (PD) 1586, Establishing No. an Environmental **Impact** Statement System Including Other Environmental Management Related Measures and for Other Purposes, with Prayer for **Temporary Environmental Protection** Order (TEPO), **Temporary** Restraining Order (TRO) and Writ of **Preliminary** Injunction

OF ENVIRONMENT AND NATURAL RESOURCES - ENVIRONMENTAL MANAGEMENT BUREAU, REGION IV-B,

Defendants. x-----x

VERIFIED ANSWER

DEFENDANT **DEPARTMENT OF ENVIRONMENT AND**NATURAL RESOURCES - ENVIRONMENTAL
MANAGEMENT BUREAU REGION IV-B (DENR-EMB
MIMAROPA), by counsel, respectfully states:

- 1. Defendant DENR-EMB MIMAROPA specifically denies the allegations in item I of the Complaint (Jurisdictional Allegations) for lack of knowledge sufficient to form a reasonable belief as to the truth thereof.
- 2. Defendant DENR-EMB MIMAROPA denies all the allegations in item II of the Complaint (Parties), except subparagraph II.2.8, for lack of knowledge sufficient to form a reasonable belief as to the truth thereof.
- 3. Defendant DENR-EMB MIMIROPA admits the allegation in paragraph II.2.8 of the Complaint stating that DENR-EMB is a government officer responsible for the enforcement of P.D. 1586. The defendant is represented by its statutory counsel, the Office of the Solicitor General, with office address at 134 Amorsolo Street, Legaspi Village, Makati City, where it may be served with the writs, orders, and processes of this Honorable Court.
- 4. Defendant DENR-EMB MIMAROPA specifically denies all the allegations in item III of the Complaint (Allegations Common to All Causes of Action) except paragraph 3.50 line 3 of the Complaint for lack of knowledge sufficient to form a reasonable belief as to the truth thereof.
- 5. Defendant DENR-EMB MIMAROPA admits the allegations in paragraph 3.50 line 3 only insofar as to the existence of Annex "NNN" and "OOO" indicated therein.

And by way of -

SPECIAL AND AFFIRMATIVE DEFENSES

6. Defendant DENR-EMB MIMAROPA re-pleads and incorporates herein by reference the allegations contained in the preceding paragraphs hereof and pleads the following Special and Affirmative Defenses:

I.

THE COMPLAINT SHOULD BE DISMISSED FOR BEING VIOLATIVE OF THE RULE AGAINST FORUM-SHOPPING.

II.

THE COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION.

III.

P.D. 1586 AND THE PHILIPPINE ENVIRONMENTAL IMPACT STATEMENT SYSTEM DOES NOT COVER STARLITE HOLDING INC. PROPERTY.

DISCUSSION

- I. The Complaint should be dismissed for being violative of the rule against forum-shopping.
- 7. Section 5, Rule 7 of the Rules on Civil Procedure provides:

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Section 5. Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) calendar days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or noncompliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

8. Forum shopping is committed by a party who institutes two or more suits involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action. It is an act of malpractice that is prohibited and condemned because it

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trifles with the courts, abuses their processes, degrades the administration of justice, and adds to the already congested court dockets.¹

- To determine whether a party violated the rule against forum shopping, the most important factor is whether the elements of litis pendentia are present, or whether a final judgment in one case will amount to res judicata in another. Otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought. Hence, forum shopping can be committed in several ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is litis pendentia); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is res judicata); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either litis pendentia or res judicata).2
- 10. To recall, in Sections 3.10-3.11 of the Complaint, plaintiffs alleged that:
 - 3.10. Sitio Kulasi is identified as one of the ancestral settlements of the Hanunuo-Mangyans which has been applied for issuance of Certificate of Ancestral Land Domain/ Title pursuant to the Application for Ancestral Land by the occupants as shown by the Map Showing The Ancestral Domain of the Hanunuo Tribe and the Mapa Na Nagpapakita ng Lupaing Ninuno ng Sityo Kulasi, attached hereto as Annexes "I" and "J", respectively.
 - 3.11. In February 2007, the Sitio Leader of Sitio Kulasi, Bilog Guardian, one of the descendants of Magari, Abnay and Masid, applied for the issuance of a Certificate of Ancestral Land Domain as evidenced by the Petition for Identification, Delineation and Recognition of Ancestral Domain Claim and For the

 2 Id.

¹ Heirs of Mampo v. Morada, G.R. No. 214526, November 03, 2020.

Issuance of Certificate of Ancestral Domain
Title attached hereto as Annex "K".
The application remains unacted by the
National Commission for Indigenous
Peoples until now. (Emphasis supplied)

11. Meanwhile in their Joint Verification and Certification, the plaintiffs alleged that:

XXX

- 3. We have not heretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein; and if we should thereafter learn that the same or similar action or claim has been filed or is pending, we shall report that fact within five (5) calendar days therefrom to the court wherein any such aforesaid complaint or initiatory pleading has been filed.
- 12. By the plaintiffs' own admission, there is a pending application before the NCIP for the issuance of a Certificate of Ancestral Land Domain/Title over the subject property, albeit, it remains unacted until now. A CALT/CADT is defined under Section 3 of Republic Act No. 8371, otherwise known as the Indigenous Peoples' Rights Act of 1997 (IPRA), as:
 - c) Certificate of Ancestral Domain Title
 refers to a title formally recognizing the
 rights of possession and ownership of
 ICCs/IPs over their ancestral domains
 identified and delineated in accordance with this
 law;
 - d) Certificate of Ancestral Lands Title
 refers to a title formally recognizing the rights of ICCs/IPs over their ancestral lands;
- 13. Although the plaintiffs couched one of the reliefs sought from this Honorable Court as "Confirmation of Native Title," the ultimate goal is similar to the plaintiffs' pending application before the NCIP which likewise pray for the recognition of the plaintiffs' possession and ownership of the subject land. The act of the plaintiffs or of their counsel in

initiating the subject Complaint despite the pendency of their application for CADT/CALT before the NCIP clearly constitute willful and deliberate forum shopping, thus, the Complaint should be summarily dismissed.

- 14. In **Begnaen v. Caligtan**, the Supreme Court held that the evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, the Court adheres to the rules against forum shopping, and a breach of these rules results in the dismissal of the case.³
- 15. In the **Begnaen** case, the Supreme Court noted that Begnaen's Verification and Forum Shopping failed to mention a case previously filed before the NCIP and adjudged him guilty of forum shopping. It held:

A perusal of the Complaint filed by petitionerappellant before the MCTC, four months after the NCIP-RHO had dismissed his case without prejudice, reveals no mention whatsoever of the initial NCIP-RHO proceedings. Indeed, the pertinent Verification and Certification of the said pleading reads:

> 4. That I hereby certify that I have not commenced any other action or proceeding involving the issues in the Supreme Court, Court Appeals, or any other tribunal or agency and that no other action pending before the Supreme Court, Court of Appeals, or any other tribunal or agency, and should I learn thereafter that a similar action or proceeding had been filed or is pending before the Supreme Court, Court of Appeals, or any tribunal or agency, undertake to report the same within 5 days to the Honorable Court;

³ Begnaen v. Caligtan, G.R. 189852, 17 August 2016.

Clearly, the non-disclosure of the commencement of the case for "Land Dispute and Enforcement of Rights" previously filed before the NCIP-RHO, constitutes a violation of Section 5, Rule 7 of the Revised Rules of Court

16. Applying the foregoing to the case at bar, with more reason should the plaintiffs' Complaint be dismissed for violation of the rules against non-forum shopping for their failure to disclose a **pending** case before the NCIP.

II. The Complaint should be dismissed for failure to state a cause of action.

against forum shopping.

- 17. Assuming arguendo that the Complaint is not dismissible for being violative of the rules against forum shopping, the Complaint is still dismissible for failure to state a cause of action.
- 18. A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely:
 - the legal right of the plaintiff;
 - ii) the correlative obligation of the defendant;
 - iii) the act or omission of the defendant in violation of said legal right.

If the allegations in the complaint do not aver the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.⁴

19. In the case at bar, a reading of the allegations in the instant Complaint would reveal that plaintiffs do not have a legal right over the property.

⁴ Colmenar v. Colmenar, G.R. No. 252467, June 21, 2021

- 20. As the plaintiffs have admitted, they have a pending application for the issuance of a CADT/CALT before the NCIP. Thus, what they merely have is an unresolved application for the recognition of their ownership over the subject property. This application, however, will not translate to a legal right that would entitle them to protection from this Honorable Court. Without a definitive ruling from the NCIP the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs, the plaintiffs' claim is not yet susceptible for judicial resolution.
- 21. Furthermore, the plaintiffs have admitted that the subject property is already a **titled land** which is covered by OCT No. V-29503. Thus, the present Complaint is a collateral attack on a titled property.
- 22. Section 48 of P.D. No. 1529 clearly states that "a certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law." An attack on the validity of the title is considered to be a collateral attack when, in an action to obtain a different relief and as an incident of the said action, an attack is made against the judgment granting the title.⁵
- 23. The foregoing provision gains significance in light of Section 56 of the IPRA law which provides:

SECTION 56. Existing Property Rights Regimes. — Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

- 24. To recall, the IPRA law was enacted on 29 October 1997 and made effective on 22 November 1997.
- 25. Here, the parcel of land subject of this Complaint was registered under Original Certificate of Title No. V-29503 on 9 November 1956 or 41 years prior to the effectivity of the IPRA. Given that property rights already existed within the

⁵ Cagatao v. Almonte, G.R. No. 174004, October 9, 2013.

contested ancestral domain, said property rights should be recognized and respected. Hence, the Complaint for Confirmation of Native Title, which has as an incident the reconveyance and cancellation of title is not the proper remedy to assail the validity of OCT No. V-29503.

III. P.D. 1586 and the Philippine Environmental Impact Statement System does not cover Starlite Holding Inc. property.

- 26. Presidential Decree No. 1151 set the tone for the Philippine Environment Policy, which recognized the right of the people to a healthful environment. Pursuant thereto, in every action, project or undertaking, which significantly affects the quality of the environment, all agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations, firms, and entities were required to prepare, file and include a statement (i.e., Environmental Impact Statement or EIS) containing:
 - (a) the environmental impact of the proposed action, project or undertaking;
 - (b) any adverse environmental effect which cannot be avoided should the proposal be implemented;
 - (c) alternative to the proposed action;
 - (d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and
 - (e) whenever a proposal involves the use of depletable or non-renewable resources, a

⁶ Section 3, PD 1151 provides: SECTION 3. Right to a Healthy Environment. — In furtherance of these goals and policies, the Government recognizes the right of the people to a healthful environment. It shall be the duty and responsibility of each individual to contribute to the preservation and enhancement of the Philippine environment.

finding must be made that such use and commitment are warranted.⁷

27. To further strengthen and develop the EIS, Presidential Decree No. 1586 (P.D. 1586) was promulgated, which established the Philippine Environmental Impact Statement System (PEISS). The PEISS is "a systems-oriented and integrated approach to the EIS system to ensure a rational balance between socio-economic development and environmental protection for the benefit of present and future generations." The ECC requirement is mandated under Section 4 thereof:

SECTION 4. Presidential Proclamation of Environmentally Critical Areas and Projects. The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country environmentally critical. No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. xxx

- 28. The PEISS consists of the Environmental Impact Assessment (EIA) process, which is mandatory for private or public projects that may significantly affect the quality of the environment. It involves evaluating and predicting the likely impacts of the project on the environment, designing appropriate preventive, mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare.⁹
- 29. P.D. 1586 was implemented by DENR Administrative Order No. 2003-30 (DAO 2003-30) which, in turn, set up a system or procedure to determine when a project is required to secure an ECC. When an ECC is not required, the project proponent procures a Certificate of Non-Coverage (CNC).¹⁰

⁷ Section 4, PD1151.

⁸ Section 1, Article 1, DAO No. 2003-30.

⁹ Section 3(h), Article 1, DAO No. 2003-30.

¹⁰ Under Section 3(a), Article I of DAO 2003-30, a CNC is "a certification issued by the EMB certifying that, based on the submitted project description, the project is not covered by the EIS System and is not required to secure an ECC."

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As part of the EIA process, the project proponent is required to submit certain studies or reports (i.e., EIA document type) to the DENR-EMB, which will be used in the review process in assessing the environmental impact of the project and the adequacy of the corresponding environmental impact. This will then be part of the bases to grant or deny the application for an ECC or CNC, as the case may be.

- 30. Table 1-4 of the Revised Procedural Manual for DAO 2003-30 summarizes the required EIA document type for each project category. It classifies a project as belonging to Group I, II, III, IV or V, where:
 - I. Environmentally Critical Projects (ECPs) in either Environmentally Critical Area (ECA) or Non-Environmentally Critical Area (NECA),
 - II. Non-Environmentally Critical Projects (NECPs) in ECA,
 - III. NECPs in NECA,
 - IV. Co-located Projects, and
 - V. Unclassified Projects.
- 31. The aforesaid table then further classifies a project, as pertinent to this case, as belonging to Category A, B or C, where:
 - A. new;
 - B. existing projects for modification or re-start up; and
 - C. operating projects without an ECC.

32. Finally, the aforesaid table considers whether the project is single or co-located; after which, it states the appropriate EIA document type needed for the application of an ECC or CNC, as the case may be.

- 33. The appropriate EIA document type *vis-à-vis* a particular project depends on the potential significant environmental impact of the project. At the highest level would be an ECP. The hierarchy of EIA document type, based on comprehensiveness and detail of the study or report contained therein, insofar as single projects are concerned, are as follows:
 - Environmental Impact Statement (EIS),¹²
 - Initial Environmental Examination (IEE) Report,¹³
 - 3. Initial Environmental Examination (IEE) Checklist Report,¹⁴
 - Environmental Performance Report and Management Plan (EPRMP),¹⁵ and
 - 5. Project Description (PD) or Project Description Report (PDR).¹⁶

¹¹ As distinguished from single projects, co-located projects/undertakings are defined under Section 3(b), Article I of DAO 2003-30 as "projects, or series of similar projects or a project subdivided to several phases and/or stages by the same proponent, located in contiguous areas."

¹³ Section 3(s), Article I of DAO 2003-30 defines an IEE as a "document similar to an EIS, but with reduced details and depth of assessment and discussion."

¹⁵ Section 3(p), Article I of DAO 2003-30 defines an EPRMP as a "documentation of the actual cumulative environmental impacts and effectiveness of current measures for single projects that are already operating but without ECC's, i.e., Category A-3. For Category B-3 projects, a checklist form of the EPRMP would suffice."

¹² Section 3(k), Article I of DAO 2003-30 defines an EIS as a "document, prepared and submitted by the project proponent and/or EIA Consultant that serves as an application for an ECC. It is a comprehensive study of the significant impacts of a project on the environment. It includes an Environmental Management Plan/ Program that the proponent will fund and implement to protect the environment."

¹⁴ Section 3(t), Article I of DAO 2003-30 defines an IEE Checklist Report as a "simplified checklist version of an IEE Report, prescribed by the DENR, to be filled up by a proponent to identify and assess a project's environmental impacts and the mitigation/enhancement measures to address such impacts."

¹⁶ Section 3(x), Article I of DAO 2003-30 defines a PD as a "document, which may also be a chapter in an EIS, that describes the nature, configuration, use of raw materials and natural resources, production system, waste or pollution generation and control and the activities of a proposed project. It includes a description of the use of human resources as well as activity timelines, during the pre-construction, construction, operation and abandonment phases. It is to be used for reviewing co-located and single projects under Category C, as well as for Category D projects."

Civil Case No. C-707

34. In this case, the *Remarks and Recommendations* of the Validation and Inspection Report conducted by DENR-EMB-MIMAROPA of the site development constructed by Starlite Holdings Inc. located in Barangay Cabalwa in Mansalay, Oriental Mindoro, states:¹⁷

Review of relevant documents and inspection revealed that the project development made by Starlite Holdings Inc. at Barangay Cabalwa in Mansalay, Oriental Mindoro was constructed as a private rest house. Under the DENR Memorandum Circular No. 2014-005 or the Revised Guidelines for Coverage Screening and Standardized Requirement, such projects are not covered by Philippine Environmental **Impact** Statement System. (Emphasis supplied)

35. Thus, based on the above recommendation, it can be gleaned that the construction of a private rest house by Starlite Holdings Inc. is not covered by Philippine Environmental Impact Statement System. Also attached is a certification from DENR EMB-MIMAROPA that no ECC was issued in favor of Starlite Holdings Inc. as of this writing.¹⁸

OPPOSITION TO THE ISSUANCE OF A TEMPORARY ENVIRONMENT PROTECTION ORDER (TEPO)

36. Plaintiffs pray for the issuance of a TEPO pursuant to A.M. No. 09-6-8-SC, otherwise known as Rules of Procedure for Environmental Cases, alleging that the matter is of extreme urgency as the plaintiffs will suffer grave injustice and irreparable injury, it being very clear that the construction will cause the destruction of the environment wherein the plaintiffs live and their ancestors have lived since time immemorial.¹⁹

¹⁷ Annex "1." Inspection Report on the Site Development Conducted by Starlite Holdings Inc. dated January 24, 2023.

¹⁸ Annex "2".

¹⁹ Complaint, p. 32.

Civil Case No. C-707

- 37. Petitioners are not entitled to the issuance of a TEPO.
 - 38. Section 8, Rule 2 of the RPEC provides:

Section 8. Issuance of Temporary Environmental Protection Order (TEPO). - If it appears from the verified complaint with a prayer for the issuance of an Environmental Protection Order (EPO) that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of the multiple-sala court before raffle or the presiding judge of a singlesala court as the case may be, may issue ex parte a TEPO effective for only seventy-two (72) hours from date of the receipt of the TEPO by the party or person enjoined. Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case.

The court where the case is assigned, shall periodically monitor the existence of acts that are the subject matter of the TEPO even if issued by the executive judge, and may lift the same at any time as circumstances may warrant.

The applicant shall be exempted from the posting of a bond for the issuance of a TEPO.

- 39. For a TEPO to be issued, petitioners must show that (a) the matter is of extreme urgency and (b) the applicant will suffer grave injustice and irreparable injury. The same must also be connected to the alleged environmental damage to be caused by the acts of respondents.
- 40. Here, plaintiffs' general, vague, and unfounded allegations cannot support the issuance of the TEPO prayed for. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.²⁰

²⁰ GSIS v. Prudential Guarantee and Assurance, Inc., et al., G.R. No. 165585, November 20, 2013.

41. Furthermore, as earlier discussed, the Validation and Inspection Report conducted by DENR-EMB-MIMAROPA

revealed that the construction being undertaken was that of a private rest house, which is not covered by Philippine

Environmental Impact Statement System.

42. Therefore, a TEPO should not be issued in this case.

OPPOSITION TO THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER (TRO) AND A WRIT OF PRELIMINARY INJUNCTION (WPI)

- 43. Under Section 3, Rule 58 of the Rules of Court, as amended, an injunctive writ may be issued if the following grounds are established:
 - a. That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
 - b. That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
 - c. That a party, court, agency, or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.
- 44. The requisites for the issuance of the injunctive writ are: (a) the right of the complainant is clear and unmistakable; (b) the invasion of the right sought to be

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protected is material and substantial; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.²¹

- 45. To be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. A writ of preliminary injunction may be issued <u>only upon clear showing of an actual existing right to be protected during the pendency of the principal action</u>. When the complainant's right or title is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is not proper.²²
- 46. At the outset, it must be stressed that preliminary injunction is not a proper remedy to take property out of the possession and control of one party and to deliver the same to the other party where such right is being disputed.²³ After all, a writ of preliminary injunction is issued to preserve the *status quo* or the last actual, peaceable, and uncontested situation which precedes a controversy.²⁴
- 47. Preliminary injunction is a preservative remedy. Therefore, it should not create new relations between the parties, but must only maintain the *status quo* until the merits of the case is fully heard.²⁵
- 48. At the center of the instant controversy is the plaintiffs' claim over a land covered by OCT No. V-29503. To recall, in the instant Complaint, among the reliefs sought by the plaintiffs are the following:
 - Declaring the plaintiffs to have acquired a native title over the property they occupy and as identified in the Ancestral Land Map submitted to this Honorable Court;
 - b. Reconveying the land to the plaintiffs, declaring Original Certificate of Title No.

²¹ International Exchange Bank v. CA, et.al, G.R. No. 165403, February 27, 2006; Equitable PCI Bank. v. Fernandez, et.al, G.R. No. 163117, December 18, 2009.

²² Sps. Plaza v. Lustiva, G.R. No. 172909, March 5, 2014.

²³ Almeida v. CA, GR 159124, January 17, 2005; Raspado v. CA, G.R. No. 104782, March 30, 1993, 220 SCRA 650, 653; and Merville Park Homeowners Association, Inc. v. Velez, GR 82985, April 22, 1991)

 ²⁴ Cortez-Estrada v. Heirs of Samut, GR 154407, February 14, 2005.
 ²⁵ Los Banos Rural Bank, Inc. v. Africa, GR 143994, July 11, 2002.

V-29503 issued in the name of Paz G. Panopio as null and void;

- Declaring the Confirmation of Sale dated 06
 October 2008 allegedly executed by Paz G.
 Panopio de Villa as null and void;
- Ordering the restitution of the exclusive possession of the land subject of the dispute, to the plaintiffs, and enjoining defendants Alfonso R. Cusi, Patricia C. Ramos, Jacob I, Cusi, Marion Estrella and all other persons working under them or any person claiming rights from Starlite Holdings, Inc., their officers, employees, and/or contractors and the contractor's employees to permanently cease and desist from incursing, intruding and fencing plaintiffs' ancestral land and, destroying plaintiffs' homes, doing land developments and exercising rights of dominion or possession over the land occupied by the plaintiffs.
- 49. Succinctly put, this Honorable Court is tasked to resolve the issue of which between the plaintiffs and the private defendants has the better right over the property.
- 50. Considering the foregoing, no injunctive writ could be issued pending a final determination of petitioner's actual and existing right over the property. The grant of an injunctive writ could operate as a prejudgment of the main case.²⁶

PRAYER

WHEREFORE, Defendant DENR – EMB MIMAROPA consequently prays that the Honorable Court **DISMISS** the Complaint.

It also prays for such further or other relief that this Honorable Court may deem just and equitable under the premises.

Makati City for Roxas, Oriental Mindoro, April 7, 2023.

²⁶ Evy Construction and Development Corporation v. Valiant Roll Forming Sales Corporation, G.R. No. 207938, 11 October 2017.

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VERIFIED ANSWER

Lapad v. Cusi, DENR-EMB REGION IV-B Civil Case No. C-707

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elps.law.offices18@gmail.com

DENR Region IV-B MIMAROPA

PENRO Compound, Brgy. Suqui Calapan City, Oriental Mindoro Satellite Office 6th Floor DENR by the Bay Bldg. Roxas Blvd., Ermita, Manila

PROVINCIAL ENVIRONMENTAL AND NATURAL RESOURCES OFFICE

Suqui, Calapan City, Oriental Mindoro

NATIONAL COMMISSION ON INDIGENOUS PEOPLES

Oriental Mindoro Provincial Office Bulalacao Service Center #31 Cabrera St., Paclasan, Roxas, Oriental Mindoro



Department of Environment and Natural Resources Environmental Management Bureau MIMAROPA Region

MEMORANDUM

FOR

THE REGIONAL DIRECTOR

EMB MIMAROPA Region

THRU

THE CHIEF

PEMU-Oriental Mindoro

FROM

OIC, EMS

Roxas, Oriental Mindoro

SUBJECT:

:

VALIDATION / INSPECTION REPORT ON THE SITE DEVELOPMENT CONDUCTED BY STARLITE HOLDINGS

INC. LOCATED AT BRGY. CABALWA IN MANSALAY,

ORIENTAL MINDORO

DATE

24 January 2023

BACKGROUND INFORMATION:

This is with reference to the Memorandum dated 20 January 2023 from the Chief-PEMU Oriental instructing the undersigned to conduct validation/inspection on the site development made by Starlite Holdings Inc. located at Brgy. Cabalwa, Mansalay, Oriental Mindoro.

Please be informed that on 23 January 2023, the undersigned conducted inspection / monitoring on the above cited subject. Shown below is the result of the said investigation.

FINDINGS AND OBSERVATION:

- Before heading to the project site, the undersigned coordinated with Starlite Holdings Inc. representative Mr. Marlon Estrella of the Starlite Holdings Inc. to discuss the purpose of the validation/inspection.
- Mr. Estrella asked for legal document/s pertaining to the said activity. The undersigned
 presented the memorandum from the Chief-PEMU Oriental
 conduct of validation and inspection to the property.
- Mr. Estrella then showed the undersigned a Special Power of Attorney (*please see SPA as Annex A*) issued by Starlite Holdings Inc. through Mr. Jacob S. Cusi, granting Mr. Estrella as their representative.
- Mr. Estrella assisted the undersigned during the inspection.



- The project is located at 12.4542664N, 121.4240225E in Brgy Cabalwa, Mansalay, Oriental Mindoro.
- Interview with Mr. Estrella revealed that the property is a titled lot with an area of 129, 353 square meters under OCT No. RP-196 (P-1932). Starlite Holdings Inc. acquired the said property from Ms. Paz Panopio Devilla (please see attached Original Certificate of Title as Annex B and Confirmation of Sale as Annex C).
- During inspection, the undersigned observed a single storey building with a swimming pool with an approximate area of 1200 square meters. The undersigned then asked Mr. Estrella on the purpose of building the said structures. Mr. Estrella said the project was built as a private rest house and is not intended for commercial use.
- Mr. Estrella showed the approved zoning clearance from the Mansalay Municipal Planning and Development Office (MPDO) stating that the project is indeed a rest house (please see Zoning Clearance as Annex D).
- The undersigned also observed an access road with a length of approximately two hundred meters leading from the entrance gate of the property towards the rest house. Mr. Estrella showed a Certificate of Non-Coverage (CNC) with reference no. OL-R4B-2021-05-00853 issued on 19 May 2021 for the road construction (please see attached CNC as Annex E).

REMARKS AND RECOMMENDATIONS:

 Review of relevant documents and inspection revealed that the project development made by Starlite Holdings Inc. located at Brgy. Cabalwa in Mansalay, Oriental Mindoro was constructed as a private rest house. Under the DENR Memorandum Circular No. 2014-005 or the Revised Guidelines for Coverage Screening and Standardized Requirement, such projects are not covered by the Philippine Environmental Impact Statement System.

For information, record, and reference.

Submitted by:

ENGR. MARVIN FETALCO

OIC-EMS

Noted by:

EDERLITA U. LABRE

Chief, PEMU



Department of Environment and Natural Resources Environmental Management Bureau MIMAROPA Region

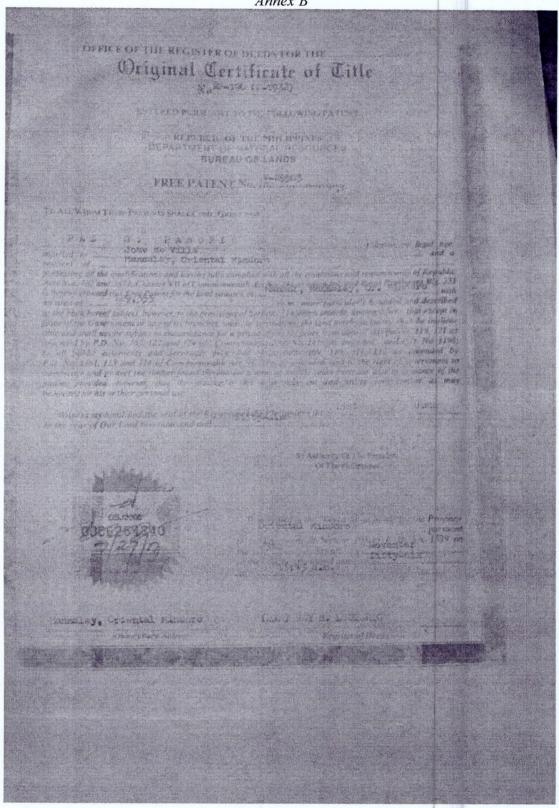
ANNEX A

SPECIAL POWER OF ATTORNEY KNOW ALL MEN BY THESE PRESENTS That We STARLITE HOLDINGS INC., represented by JACOB'S CUST of legal age. Filipino citizen single and postal address at Room 301 Gesmill Towel Cendominism 5 Annapolis St. Greannils, San Juan City Metro Mania, do nereby regnie repoint and constitute MARLON A. ESTRELLA likewise of legal age. Flapino and residing at Brgy. San Mariano. Roxas. Criental Mindoro as our true and lawful attorney in-fact, to act on our behalf and in our name to perform as or any of the following acts, deeds, maiters and things, in connection with the WHOLE PARCEL OF LAND described and covered by OCT No. P1-982 sibjated in MANAOL, MANSALAY, DRIENTAL MINDORO to wit 1. To represent the corporation to any forums, inquiries, disputes and/or directives from any local government and agencies, private individuals, lewful indigenous enthes and/or organization in regards to the existence of the property 2.) To receive for and in perial of the corporation any deed or abcoments reliative to the property To tacktate and manage the ongoing and/or upcoming construction removation repairs and projects within the jurisdiction of the property. HEREBY GIVING and GRANTING unto said attorney material full powers and authority to do and perform all and every act requisite or necessary to carry into effect the foregoing powers, as fully to all interns and purposes as a might or could lewfully do if personally present, with full power of substitution and revocation, and hereby rantying and confirming all that my said attorney shall lawfully no or course to be done by virtue hereof IN WITNESS VINEREDE THE THOROTO RETRUITED WITNESS ON SIGNATURE THE STARLITE HOLDINGS INC. Conformed Recycles (Idd by The Track MARICON A ESTRELLA JACOS STOUST Ahomoy-m-fact Signed in the presence of



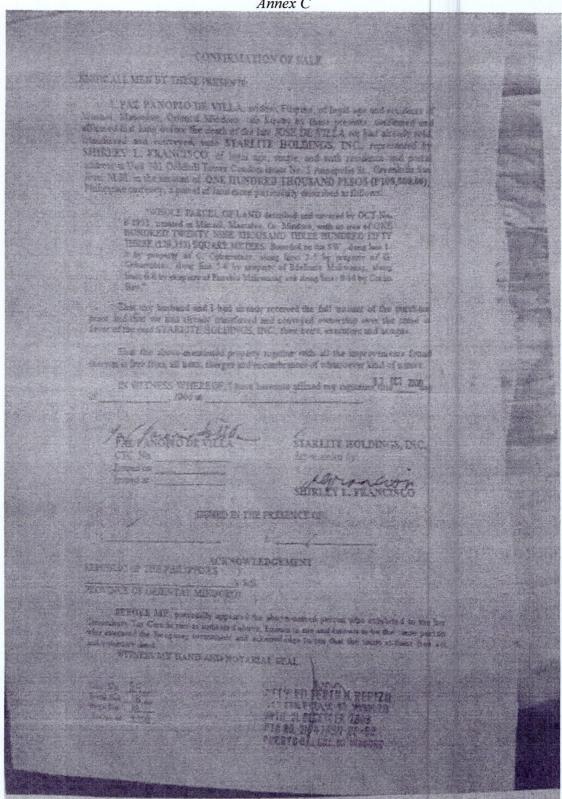
Department of Environment and Natural Resources Environmental Management Bureau MIMAROPA Region

Annex B





Annex C



PENRO Compound, Brgy. Suqui, Calapan City, Oriental Mindoro Satellite Office, 6th Floor DENR by the Bay Bldg., 1515 Roxas Blvd., Ermita, Manila Regional Director's Office (02) 536-9786; Administrative and Finance Division Telefax No. (02) 400-5960 Environmental Monitoring and Enforcement Division (02) 521-8904, Clearance and Permitting Division Telefax. (02) 400-5960 e-mail address: embmimaropa@emb.gov.ph website: www.mimaropa.emb.gov.ph



Department of Environment and Natural Resources Environmental Management Bureau MIMAROPA Region

ANNEX D



Republic of the Philippines Province of Oriental Mindoro MUNICIPALITY OF MANSALAY



MUNICIPAL PLANNING & DEVELOPMENT OFFICE

ZONING CLEARANCE

Application No. Date of Receipt : April 19, 2021

Date of Issue : April 19, 2021 Date of Expiration of TUP :

NAME OF CORPORATION

APPLICANT:

STARLITE HOLDINGS INC.

ADDRESS:

DECISION:

ADDRESS;

SAN JUAN, METRO MANILA

AREA AND LOCATION:

PROPOSED CONSTRUCTION OF

341.05 sq.m /Bara Oriental Mindorp

FOUR (4) BEDROOM RESTHOUSE

GROUNDS FOR DENIED APPLICATIONS.

APPROVED

CONDITIONS

All condition stipulated herein form part of this decision are subject to monitoring.

Non-compliance therewith shall be a cause for cancellation or legal action.

The applicable requirements for government agencies and applicable provisions of existing laws shall be complied with.

No activity other than that applied for shall be conducted within the project site.

No major expansion, alternation and for improvement shall be introduced without prior clearance from this office. 1x1

This decision, shall not be constructed as a certification of PSRC as to ownership by the application of the parcel of land subject of this decision.

Any misrepresentation, false statement or allegations material to the issuance of this decision shall be sufficient cause for its revocation.

Additional Conditions:/x/ Provisions as to setbacks, yard requirements, bulk, easement, area, height and other restrictions shall strictly conform with the requirements of the National Building

Code and other related laws.
This decision shall consider automatically

revoked if project is not commended within one (1) year from the date of issue of this decision.

*For project Granted Temporary Use Permit (TUP): Applicant hereof shall terminate project activities on the date of expiration as above indicated, this office holds no assurance that any application for permit renewal may be granted.

"You shall not start development or construction without first securing an Environmental Compliance Certificate from the DENR or the EMB, nor shall you construct the issuance of this permit, clearance or license as an exemption from the other requirements of existing laws.

PMO No. OR No.

Date Issue

: 1941085 A : April 19, 2021 : Php 5,820.00

Amount Paid

Recommending Approval:

ENGR. ALREY C. MANING MPDC/Deputized Z

Approved by:

HON, FERDINAND M. MALIWANAS

PENRO Compound, Brgy. Suqui, Calapan City, Oriental Mindoro Satellite Office, 6th Floor DENR by the Bay Bldg., 1515 Roxas Blvd., Ermita, Manila Regional Director's Office (02) 536-9786; Administrative and Finance Division Telefax No. (02) 400-5960 Environmental Monitoring and Enforcement Division (02) 521-8904; Clearance and Permitting Division Telefax. (02) 400-5960 e-mail address: embmimaropa@emb.gov.pln website: www.mimaropa.emb.gov.ph



Department of Environment and Natural Resources Environmental Management Bureau MIMAROPA Region

ANNEX E



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

IN ACCORDANCE WITH THE REVISED PROCEDURAL MANUAL FOR DENR ADMINISTRATIVE ORDER NO. 30, SERIES OF 2003 OF PRESIDENTIAL DECREE NO. 1586, THIS

> CERTIFICATE OF NON-COVERAGE (CNC-OL-R4B-2021-05-00853)

> > Issued to

MARLON ESTRELLA

On

May 19, 2021

For its

MARLON ESTRELLA PRIVATE ROAD Sitio Culasi, Brgy, Cabalwa mansalay, Mindoro Oriental, R4B

Classified as

ITEM 3.4.1 INFRASTRUCTURE PROJECTS/ROADS AND BRIDGES ROADS. NEW CONSTRUCTION/PROVINCIAL ROAD OR OTHER TYPES OF ROADS (Declared Project Size: 0.7 Kilo meter Length with no critical slope)

THE ISSUANCE OF THIS CERTIFICATE SHALL NOT EXEMPT THE GRANTEE FROM COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS, RULES AND REGULATIONS INCLUDING THE PERMITTING REQUIREMENTS OF OTHER GOVERNMENT AGENCIES NEITHER CREATE ANY RIGHT NOR BE USED AS AN AUTHORIZATION TO IMPLEMENT THE PROJECT, YOU MAY PROCEED WITH THE IMPLEMENTATION ONLY AFTER SECURING ALL THE NECESSARY AND RELEVANT PERMITS FROM OTHER PERTINENT GOVERNMENT AGENCIES.

MOREOVER, ANY EXPANSION AND/OR MODIFICATION OTHER THAN SPECIFIED ABOVE SHALL BE CONSIDERED AS A VIOLATION OF P.D. 1586 (EIA SYSTEM) AND SHALL BE SUBJECTED TO IMPOSITION OF PINES/PENALTIES AMOUNTING TO PHP 50,000.00.

ENGIC WILLIAM P. CUNADO

Receipt No. 1215141/PRp 1240.00/May 19, 2021 ARN: fad21921-9207-4778-9-858-478-81430970

>>>>>>>>> This is a computer generalad document which can be validated through https://cncording.emb.gov.ph/cncord

PENRO Compound, Brgy. Suqui, Calapan City, Oriental Mindoro
Satellite Office, 6th Floor DENR by the Bay Bldg., 1515 Roxas Blvd., Ermita, Manila
Regional Director's Office (02) 536-9786; Administrative and Finance Division Telefax No. (02) 400-5960
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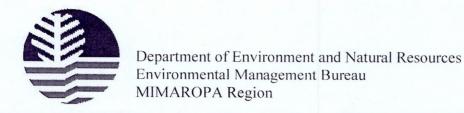


PHOTO DOCUMENTATION





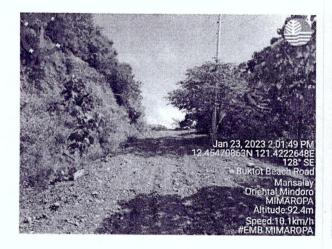














CERTIFICATION

This is to certify that STARLITE HOLDINGS, INC. project located at Brgy. Cabalwa, Mansalay, Oriental Mindoro is not covered by Presidential Decree 1586 otherwise known as the "Philippine Environmental Impact Statement System". Based on the investigation report dated January 23, 2023, the said project is not a commercial project. Hence, the said project is not required to secure, nor do they have applications for the following clearances and permits from this Office, to wit:

- > Environment Compliance Certificate (ECC)
- ➤ Certificate of Non-Coverage (CNC)
- > Permit to Operate (PTO) for Air Pollution Source Emission Equipment
- Discharge Permit (DP) for wastewater discharges
- ➤ Hazardous Generator's ID (HWID)
- > Pollution Control Officer Accreditation

This certification is issued upon the request by the Office of the Solicitor General for whatever legal purpose it may serve them best.

Given this <u>05 April 2023</u> at 6th Floor, DENR by the Bay Bldg., 1515 Roxas Blvd., Ermita, Manila.

JOE AMILM. SALINO
Regional Director

Digitally signed by Environmental Management Bureau-MIMAROPA Region

Region Date: 2023.04.05



R4B-2023-006594

PENRO Compound, Brgy. Suqui, Calapan City, Oriental Mindoro
Regional Satellite Office: 6th Floor DENR by the Bay Bldg., 1515 Roxas Blvd., Ermita, Manila
Office of the Regional Director: (02) 8536 9786; Finance and Administrative Division: (02) 8536 9786;
Environmental Management and Enforcement Division: (02) 8633 2587;
Clearance and Permitting Division: (02) 8633 2587; and

Records Management Unit: (02) 8633 8900 E-mail Address: embmimaropa@emb.gov.ph Website: www.mimaropa.emb.gov.ph

OATH / VERIFICATION/CERTIFICATION

- I, **JOE AMIL M. SALINO**, in my official capacity as Regional Director of DENR EMB REGION IV-B, with office address at EMB Region IV-MIMAROPA, 6th Foor, 1515 DENR By the Bay Building, Roxas Boulevard, Ermita, Manila, after having been duly sworn to in accordance with law, hereby, depose and say:
 - 1. That I am one of the public respondent in the instant case, being the Regional Director of DENR EmB Region IV-B,
- 2. I have caused the preparation of the foregoing Answer I have read and understood the contents thereof.
- 3. The allegations contained therein are true and correct of my own personal knowledge and belief and based on authentic records.
- 4. The pleading is filed not to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
- 5. The factual allegations therein have evidentiary support or, if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
- 6. I have not commenced any action of proceeding involving the same issue in the Supreme Court, the Court of Appeals or any other tribunal or agency; that to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals or any tribunal or agency, and that, if I should learn thereafter that a similar action or proceeding has been filed or is pending before these courts of tribunal or agency, I undertake to report that the fact to the Court within five (5) days therefrom.

report that the fact to the Court within five (5) days therefrom.
	11 APR 2023
IN WITNESS WHEREOF, I have hereunt	to set my hand this
day of	
\sim	
JOE AMILM. SALINO	
Af il ant	
	11 APR 2023
SUBSCRIBED AND SWORN to before me thi	
2023 at the <u>City of Manila</u> . Affiant e	exhibited to me his I.D with
number EMB-B-102 the above stated number	as competent proof of his
identity.	OTA DV DUDUC
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