

Republic of the Philippines  
Department of Environment and Natural Resources  
MIMAROPA Region  
PROVINCIAL ENVIRONMENT AND NATURAL  
RESOURCES OFFICE  
Brgy. Sta. Monica, Puerto Princesa City, Palawan

IN RE: CANCELLATION OF  
KATIBAYAN NG ORIHINAL NA  
TITULO (KOT) BLG. 2015000225  
IN THE NAME OF BABERLYN D.  
GOMEZ, KOT BLG. 2015000222  
AND KOT BLG. 2015000223,  
BOTH IN THE NAME OF NOEL  
TAMPE, ALL LOCATED AT  
CADLAO ISLAND, BARANGAY  
BUENA SUERTE, EL NIDO,  
PALAWAN

DENR                      CASE                      NO.

X ----- X

POSITION PAPER

Complainant **Ten Knots Philippines, Inc.** ("TKPI"), by counsel,  
in compliance with this Honorable Office's *Order* dated 7 March 2023,  
respectfully states:<sup>1</sup>

STATEMENT OF FACTS

*TKPI's Forest Land Use Agreement for  
Tourism Purposes in Cadlao Island,  
Bacuit Bay, El Nido, covering around  
three hectares of forest land*

1. On 6 November 1998, this Honorable Office, through its  
Provincial Environmental and Natural Resources Office ("PENRO") in  
Palawan, issued a Special Use Permit ("SUP") to TKPI covering 5.0  
hectares of public forest land in Cadlao Island, Barangay Buena Suerte,  
El Nido, Palawan.<sup>2</sup> The SUP granted TKPI the privilege to use the area  
as a bathing establishment.<sup>3</sup>

<sup>1</sup> On 8 March 2023, TKPI received this Honorable Office's *Order* dated 7 March 2023 directing it to submit a Position Paper within fifteen (15) days from receipt, or until 23 March 2023. Hence, this Position Paper is timely filed.

<sup>2</sup> A copy of TKPI's Special Use Permit dated 6 November 1998 is attached hereto as Annex "A" and made an integral part hereof.

<sup>3</sup> See Annex "A".

2. On 25 August 2004, this Honorable Office issued Administrative Order No. 2004-28 ("AO No. 2004-28"), otherwise known as *Rules and Regulations Governing the Use of Forestlands for Tourism Purposes*. AO No. 2004-28, to allow qualified persons to occupy, develop, utilize, and sustainably manage forestlands for tourism purposes.<sup>4</sup>

3. Through AO No. 2004-28, a Forest Landuse Agreement for Tourism Purposes ("FLAg-T") may be executed with this Honorable Office to authorize qualified persons to occupy, manage, and develop any forestland of the public domain for tourism purposes and to undertake authorized activities therein, which shall include special forest land uses such as a bathing establishment, camp site, ecotourism destination, hotel site, and other tourism purposes.<sup>5</sup>

4. Section 13 of AO No. 2004-28 permits the conversion of existing special land use permits to a FLAg-T:

"Section 13. Conversion of Existing Special Land Use Permits to FLAg-T. Existing Special Land Use Permits may be converted to FLAg-T. Provided, that the holder thereof has shown satisfactory performance based on DENR's monitoring and evaluation system and has complied with all the terms and conditions of the permit."

5. TKPI applied to convert its SUP into a FLAg-T pursuant to Section 13 of AO No. 2004-28.

6. On 27 December 2005, the Honorable Office granted TKPI a FLAg-T over 3.2 hectares of land in Cadlao Island, Barangay Buena Suerte, El Nido, Palawan, with a validity of twenty-five (25) years or until December 2030 for the purpose of using the same as a Bathing Establishment.<sup>6</sup> The FLAg-T covers the area found in the description and boundaries shown in the sketch/map attached to the FLAg-T:

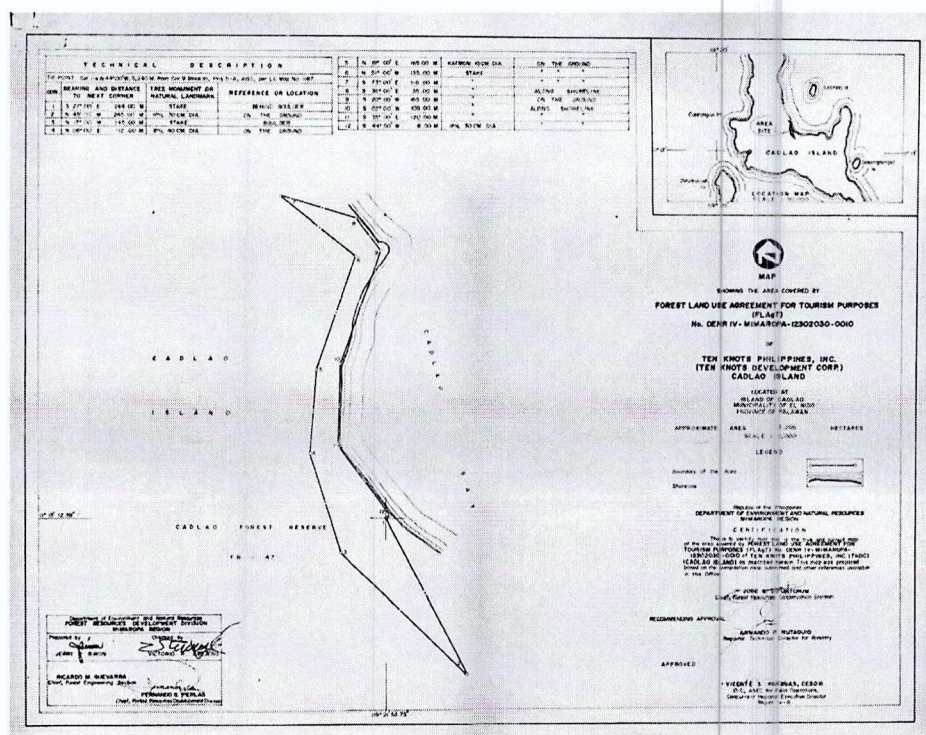
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<sup>4</sup> DENR Admin. Order No. 2004-28, Sec. 1.1.

<sup>5</sup> DENR Admin. Order No. 2004-28, Sec. 2.11.

<sup>6</sup> A copy of TKPI's FLAg-T No. DENR IC-MIMAROPA-12302030-0010 dated 27 December 2005 is attached hereto as Annex "B" and made an integral part hereof.





7. Through the years, this Honorable Office continually recognized TKPI's FLAG-T as evidenced by the regular inspections conducted therein and the collection of the government's share on the said property,<sup>7</sup> pursuant to AO No. 2004-28.

8. As grantee of the FLAG-T over the 3.2 hectare of land in Cadlao Island, Barangay Buena Suerte, El Nido, Palawan, TKPI has the right to occupy and to utilize the same for the purpose for which the FLAG-T was granted (as a bathing establishment) which shall be respected for the duration of the FLAG-T, or until December 2030, so long as TKPI is compliant with the terms and conditions enumerated therein. Absent any ground for suspension and/or cancellation of the FLAG-T, TKPI is entitled to occupy the property covered under the said instrument.

### *Issuance of the Suspicious Original Certificate of Titles ("OCTs") of Baberlyn D. Gomez ("Gomez") and Noel Tampe ("Noel Tampe")*

9. In 2017, TKPI discovered that on 27 April 2015, the Registry of Deeds of Palawan issued Original Certificate of Titles ("OCT") in the names of Baberlyn Gomez ("Gomez") and Noel Tampe ("Tampe") with a total area of 10.6 hectares, purportedly pursuant to agricultural

<sup>7</sup> Copies of the official receipts showing TKPI's payment of the government's share in the FLAG-T are attached hereto as Annexes "C" to "C-11" and made integral parts hereof.



Free Patent Applications. Tampe, who obtained two OCTs, was awarded a total of 6.8259 hectares of land, while Gomez was awarded a total of 3.7791 hectares.<sup>8</sup> The OCTs commonly state that the lots were surveyed by Geodetic Engineer Emmanuel N. Ortile on 6 and 7 January 2015. These surveys, which were the basis for titling of the lots, were approved on 2 February 2015.

10. The technical descriptions of the awarded lands indicate that the lands are identical to those already delineated through a cadastral survey, particularly Cad 1037-D. The technical descriptions uniformly indicate that all corners of each parcel of land were “marked on the ground by P.S. cylindrical concrete monuments, 15 x 60 centimeters”. The Free Patent Applications were granted on 23 April 2015 through Provincial Environment and Natural Resources Office of Palawan (“PENRO”) officer Juan C. Dela Cruz, and the OCTs were registered with the Registry of Deeds of Palawan on 27 April 2015.<sup>9</sup>

11. As will be shown below, a portion of the land covered by these OCTs overlap with the area covered by TKPI’s FLAg-T as evidenced by the results of the actual ground survey conducted on 27 October 2021 by Engineer Nestor D. Veneracion (“Engr. Veneracion”). Said overlap was confirmed by the results of another survey conducted on 2 March 2022, and was confirmed by the DENR in a meeting held on 8 December 2022.

12. To stress, the area covered by the FLAg-T are not alienable and disposable lands of the public domain. As such, the issuance of the OCTs contradicts the previous survey made by the CENRO insofar as the 3.2-hectare forest land is concerned.

13. On 2 July 2020, Spouses Israel and Baberlyn Gomez (“Spouses Gomez”), through counsel, demanded TKPI to (a) vacate the area covered by the FLAg-T; (b) recall the security personnel detailed in the area; and (c) remove all existing structures thereat.<sup>10</sup>

14. Spouses Gomez asserted their purported right over the lot by entering the area with armed security personnel and workers who were contracted by them to build structures thereon. To maintain the

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<sup>8</sup> Katibayan ng Orihinal na Titulo (“KOT”) Blg. 2015000225, KOT Blg. 2015000222 and KOT Blg. 2015000223 are attached hereto as Annexes “D” to “F”, respectively, and made integral parts hereof.

<sup>9</sup> *Ibid.*

<sup>10</sup> A copy of the letter dated 2 July 2020 of Spouses Gomez is attached hereto as Annex “G” and made an integral part hereof.



peace, TKPI did not forcefully prevent their entry but recorded Spouses Gomez's construction activities onsite.

15. On 26 July 2021, the CENRO wrote TKPI to facilitate the conduct of an actual ground survey to determine the metes and bounds of the area covered by its FLAg-T, pursuant to a 19 May 2021 Memorandum from the Regional Executive Director.<sup>11</sup>

16. On 8 September 2021, TKPI's counsel responded to Spouses Gomez's letter dated 2 July 2020, stating that it cannot heed the demands as it is merely exercising its rights to occupy and utilize the forest land covered by its duly issued FLAg-T.<sup>12</sup>

17. Unbeknownst to TKPI, Tampe sold his property to Significa Vista Ventures, Inc. through a *Deed of Absolute Sale* dated 8 September 2021. Significa Vista Ventures, Inc. owns and operates Lihim Resorts.

***Notice of Violation and Order to Vacate  
("NTV") against TKPI and Spouses  
Gomez***

18. TKPI received *Notices of Violation and Order to Vacate* ("NTV"), which were also addressed to Spouses Gomez.<sup>13</sup> In the NTV, TKPI was ordered to remove its guard house and perimeter fence, which were within the 40-meter easement area. Allegedly, the structures violated Presidential Decree 1067, or the Water Code of the Philippines, and Republic Act No. 7568, as amended by Republic Act No. 11038, or the Extended National Integrated Protected Areas System ("NIPAS") Act of 2018, which provide for a forty (40)-meter easement. The NTV alleged violation of the rules implementing the National Building Code by citing the absence of building and occupancy permits.<sup>14</sup>

19. TKPI complied although the easement area is covered by its FLAg-T. Under protest and without prejudice to its rights under the FLAg-T, TKPI removed the guard post, despite its firm legal position that it is exempted from the building permit requirement under Rule III, Section 301, item 3 of the Revised Implementing Rules and Regulations of PD 1096 or the National Building Code of the

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<sup>11</sup> A copy of the CENRO's letter to TKPI dated 26 July 2021 is attached hereto as Annex "H" and made an integral part hereof.

<sup>12</sup> A copy of TKPI's letter 8 September 2021 is attached hereto as Annex "I" and made an integral part hereof.

<sup>13</sup> A copy of CENRO's letter dated 6 August 2021 is attached hereto as Annex "J" and made an integral part hereof.

<sup>14</sup> *Ibid.*



Philippines.<sup>15</sup> In stark contrast, Spouses Gomez continued to aggressively unload construction materials and perform construction activities in blatant disregard, and a continuing violation, of the NTV.<sup>16</sup>

20. To give light to the ongoing issues, TKPI sought the aid of various government instrumentalities in the implementation and enforcement of its duly issued FLaG-T<sup>17</sup>

*Correspondence, technical conference, and surveys conducted to resolve the overlap between TKPI's FLaG-T and the OCTs in the names of Gomez and Tampe.*

21. To resolve the seeming overlap between TKPI's FLaG-T and the OCTs in the names of Gomez and Tampe, the CENRO coordinated with TKPI to facilitate the conduct of an actual ground survey to determine the metes and bounds of the area covered by the FLaG-T,<sup>18</sup> which TKPI insisted to conduct over the disputed properties.<sup>19</sup>

22. TKPI's counsel sought guidance from the DENR Region IV-MIMAROPA and CENRO on the implementation of its FLaG-T in light of the issuance of OCTs overlapping with its FLaG-T.<sup>20</sup> TKPI also sought the assistance of the Land Management Bureau ("LMB"), the Land Registration Authority ("LRA") and the Office of the Register of Deeds to give light on the irregular issuance of the questioned OCTs.<sup>21</sup>

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<sup>15</sup> A copy of TKPI's letter to CENRO dated 23 August 2021 is attached hereto as Annex "K" and made an integral part hereof. A copy of TKPI's letter to this Honorable Office and CENRO dated 16 November 2021 is attached hereto as Annex "L" and made an integral part hereof. A copy of TKPI's letter to OBO dated 16 November 2021 is attached hereto as Annex "M" and made an integral part hereof.

<sup>16</sup> Copies of TKPI's letters to the OBO both dated 4 October 2021 are attached hereto as Annexes "N" and "N-1" and made integral parts hereof.; A copy of TKPI's demand letter to Villaroman Law as counsel for Spouses Gomez dated 16 November 2021 is attached hereto as Annex "O" and made an integral part hereof.

<sup>17</sup> Copies of TKPI's letters to the OBO dated 2 September 2021, to the Office of the Mayor ("Mayor") dated 21 August 2021 and 2 September 2021, to the Office of the Katarungang Barangay ("Barangay") dated 16 November 2021, are attached hereto as Annexes "P" to "S" and made integral parts hereof. Copies of the Mayor's letter to TKPI dated 6 September 2021 and to CENRO dated 6 September 2021, are attached hereto as Annexes "T" and "U" and made integral parts hereof.

<sup>18</sup> See Annex "H", CENRO's letter to TKPI dated 26 July 2021.

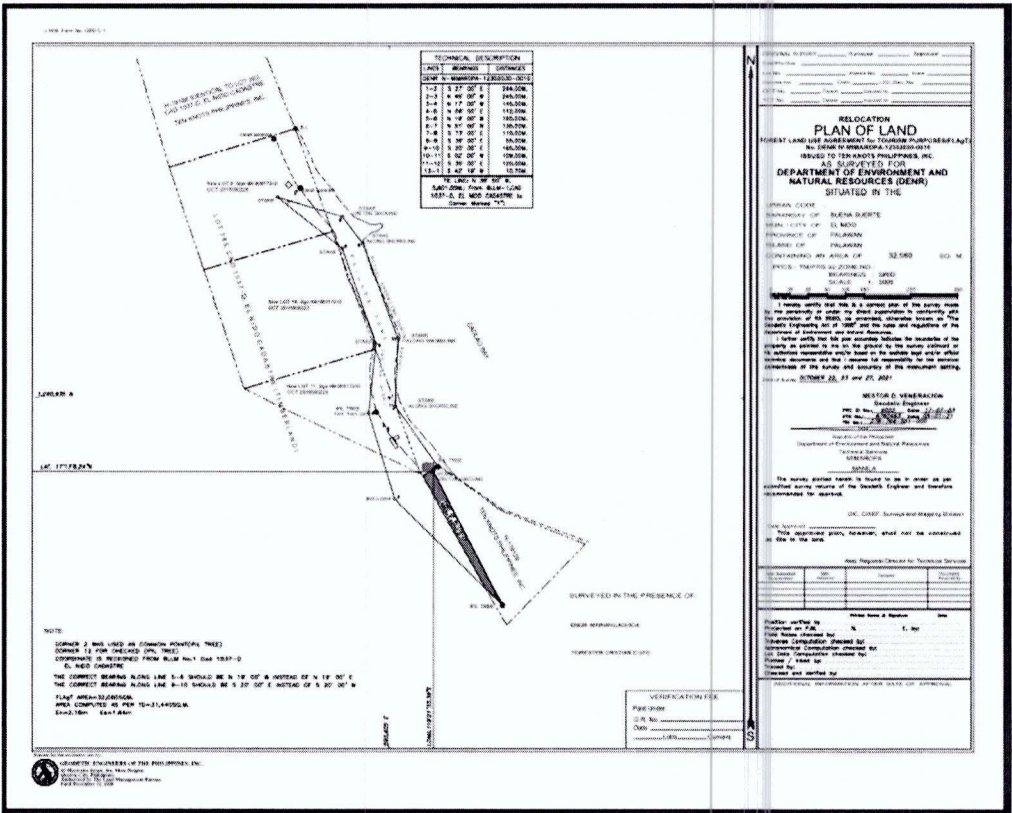
<sup>19</sup> A copy of TKPI's letter to CENRO dated 17 August 2021 is attached hereto as Annex "V" and made an integral part hereof. See also: Annex "K", Letter to the CENRO dated 23 August 2021.

<sup>20</sup> A copy of TKPI's letter to CENRO and this Honorable Office dated 8 September 2021 is attached hereto as Annex "W" and made an integral part hereof.

<sup>21</sup> Copies of TKPI's letters to the LMB and to the LRA and Register of Deeds, both dated 8 September 2021, are attached hereto as Annexes "X" and "X-1", respectively, and made integral parts hereof. A copy of TKPI's letter to the LMB dated 16 November 2021 is attached hereto as Annex "Y" and made an integral part hereof.



23. Upon the parties' agreement, an actual ground survey was conducted on 27 October 2021 by Engr. Veneracion for and on behalf of the DENR, as overseen by DENR's Engr. Marian Lachica, and in the presence of representatives of TKPI and Spouses Gomez and the barangay officials of Brgy. Buena Suerte, El Nido, Palawan, to confirm the metes and bounds of the area covered by TKPI's FLAg-T:<sup>22</sup>



24. In other words, the survey confirmed that the areas claimed by Spouses Gomez overlapped with TKPI's FLAg-T. The survey also confirmed that the OCTs cover timberland, which are not alienable and disposable land of the public domain susceptible of private acquisition through a free patent application.

25. On 13 January 2022, a technical conference was held between DENR Region IV-MIMAROPA, CENRO, and TKPI. During that conference, DENR Region IV-MIMAROPA again confirmed that the overlapping areas are timberland. Among the issues identified during that meeting was the erroneous, if not irregular, titling of areas that are timberland and covered by TKPI's FLAg-T. To address the issue, DENR Region IV-MIMAROPA explained that a final survey will be

<sup>22</sup> A copy of the Barangay's letter to TKPI dated 14 October 2021 is attached hereto as Annex "Z" and made an integral part hereof. A copy of TKPI's letter to the Barangay dated 19 October 2021 is attached hereto as Annex "AA" and made an integral part hereof. A copy of the NBMB Security Agency's report dated 27 October 2021 is attached hereto as Annex "BB" and made an integral part hereof. A copy of the relocation map based on the 27 October 2021 survey conducted is attached hereto as Annex "CC" and made an integral part hereof.

conducted and the titles covering timberland will be cancelled. DENR Region IV-MIMAROPA likewise committed that a reversion case will be filed to reclaim the timberland mistakenly covered by the OCTs.

26. To resolve the overlap between TKPI's FLAg-T and the OCTs of Tampe and Gomez, a team composed of personnel from the DENR Region IV-MIMAROPA, CENRO, the DENR's geodetic engineer and the Protected Area Officer of El Nido conducted a survey on 2 March 2022. TKPI representatives and Gomez were present when the survey was conducted.

27. The survey focused on the survey points of TKPI's FLAg-T, but unfortunately left out the areas that overlapped with the OCTs issued in the names of Gomez and Tampe.

*Issuance of Order of Investigation dated 8 September 2022 by this Honorable Office.*

28. Despite the conduct of the survey, TKPI was not immediately furnished with the report of the 2 March 2022 survey prompting TKPI to follow up thereon thru a series of correspondence with this Honorable Office.<sup>23</sup>

29. On 25 October 2022, TKPI's counsel received an *Order of Investigation* dated 8 September 2022 ("Order of Investigation") from this Honorable Office, directing, among other matters, the PENRO of Palawan to assign a Land Investigation Officer ("LIO") to act on the matter in accordance with DENR Administrative Order No. 2016-31 and to submit a corresponding investigation report thereon.<sup>24</sup>

30. On 7 November 2022, the undersigned entered its appearance as counsel for TKPI before this Honorable Office.

31. On 13 November 2022, despite the issuance of the Order of Investigation, several representatives of Lihim Resorts, ten (10) of which were armed, entered the Cadlao forestland subject of TKPI's FLAg-T and demanded the latter's security guards, under NBMD Security Agency ("NBMD"), to vacate the property because they intended to fence the area. TKPI's security guards attempted to

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<sup>23</sup> Copies of TKPI's letters to this Honorable Office dated 26 April 2022, 28 June 2022 and 28 July 2022 are attached hereto as Annexes "DD" to "FF", respectively, and made integral parts hereof.

<sup>24</sup> Order of Investigation dated 8 September 2022.



prevent their entry but were threatened with bodily harm if they continued to resist.<sup>25</sup>

32. To the surprise of TKPI's security guards who were on duty, the armed men of Lihim Resorts demolished their guard post and installed a barbed wire fence around the property. TKPI's security guards were ordered to vacate the property.<sup>26</sup>

33. This incident prompted this Honorable Office to conduct a meeting wherein it invited TKPI, Gomez, and the representative of Lihim Resorts, which is operated by Significo Vista Ventures, Inc. Likewise present were various officers of DENR MIMAROPA.

34. During that meeting, the parties were informed of the results of the 2 March 2022 survey, which clearly and unequivocally show that the OCTs under the names of Gomez and Tampe overlap with TKPI's FLAg-T. The results of the 2 March 2022 survey revealed that Significo Vista Ventures, Inc.'s properties are located on forestland.

35. In the same meeting, it was affirmed that Gomez and Lihim Resorts violated the NTV. They were instructed once again to remove and relocate their structures to comply with the Water Code of the Philippines and the NIPAS Act. It was also agreed that they will not be allowed to operate or use the structures until such time that they have complied with the Protected Area Management Board ("PAMB") Clearance and Environment Compliance Certificate ("ECC").

36. To date, Gomez and Significo Vista Ventures, Inc., through Lihim Resorts, continue to violate the NTV and have even introduced new constructions on the forty (40)-meter easement, in blatant defiance of the DENR's orders, and even use the same for commercial purposes.<sup>27</sup> This is evident from the 1 February 2023 and 1 March 2023 ocular inspections conducted by this Honorable Office.<sup>28</sup>

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<sup>25</sup> A copy of the Extract from Police Blotter dated 17 November 2022 is attached hereto as Annex "GG" and made an integral part hereof.

<sup>26</sup> *Ibid.*

<sup>27</sup> See Annex "DD", letter to this Honorable Office dated 26 April 2022. A copy of TKPI's security personnel's logbook containing entries on several dates between 13 November 2022 to 20 March 2023 is attached hereto as Annex "HH". A copy of Lihim Resorts' promotional material for its event at its Hayag Beach Club posted on social media is attached hereto as Annex "I". A CD containing a video clip taken from Lihim Resorts' social media account is attached hereto as Annex "II-1." A compilation of photographs showing Lihim Resorts' guests' continued use of the properties covered by the forty (40)-meter easement is attached as Annex "II-2" and made an integral part hereof.

<sup>28</sup> A compilation of photographs taken during the 1 February 2023 ocular inspection conducted by this Honorable Office is attached hereto as Annex "JJ," and made an integral part hereof. A compilation of photographs taken during the 1 March 2023 ocular inspection conducted by this Honorable Office is attached hereto as Annex "JJ-1," and made an integral part hereof.

37. On 8 March 2023, TKPI received this Honorable Office's Order dated 7 March 2023 directing it to submit a Position Paper within fifteen (15) days from receipt.

## DISCUSSION

*A. TKPI should be allowed to rightfully and peacefully enjoy its FLAg-T, which TKPI has been unlawfully deprived of for several years.*

38. Under Section 2.11 of DENR AO No. 2004-28,<sup>29</sup> a FLAg-T is a contract between the DENR and a natural or juridical person, involving forestland, as follows:

"2.11 Forest Landuse Agreement for Tourism Purposes (FLAgT) - is a contract between the DENR and a natural or juridical person authorizing the latter to occupy, manage, and develop, subject to the government's share, any **forestland** of the public domain for tourism purposes and to undertake any authorized activity therein for a period of 25 years and renewable for the same period upon mutual agreement by both parties. It shall include special forest landuses such as Bathing Establishment, Camp Site, Ecotourism Destination, Hotel Site (inclusive of related resort facilities) and Other Tourism Purposes."<sup>30</sup>

39. In *Vallarta v. Intermediate Appellate Court*,<sup>31</sup> the Supreme Court categorically held that forestlands are lands of the public domain, thus:

"It is elementary in the law governing natural resources that **forest land cannot be owned by private persons. It is not registerable.** The adverse possession which can be the basis of a grant of title in confirmation of imperfect title cases cannot commence until after the forest land has been declared alienable and disposable. Possession of forest land, no matter how long cannot convert it into private property."<sup>32</sup>

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<sup>29</sup> Rules and Regulations Governing the Use of Forestlands for Tourism Purposes, dated 25 August 2004.

<sup>30</sup> Emphasis and underscoring supplied.

<sup>31</sup> G.R. No. L-32266, 27 February 1989.

<sup>32</sup> *Ibid*; Emphasis and underscoring supplied.



40. Therefore, as the DENR is the primary agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources, especially forestlands, it is also cloaked with the authority to enter into contracts with qualified persons to occupy, develop, utilize and sustainably manage said lands for tourism purposes.

41. The results of the 2 March 2002 Survey only confirm TKPI's assertions over the property covered by its FLaG-T. As forestland, it is well within TKPI's rights to occupy, manage, and develop the same, pursuant to its validly issued FLaG-T.

42. TKPI has been in actual possession and use of the 3.2-hectare land subject of its FLaG-T since 1998 when it was first granted its SUP. TKPI has been in the open, continuous, exclusive, and peaceful possession of the said land for a period of almost twenty-five (25) years.

43. As early as 2005, TKPI's FLaG-T has already been in the records of the DENR Region IV-MIMAROPA, Palawan PENRO, and El Nido CENRO. Notably, the sketch/map attached to the FLaG-T reflects the signatures of officers from this Honorable Office at that time. Clearly, this Honorable Office has approved the scope of TKPI's FLaG-T as reflected in the sketch/map attached to the said lease contract. Thus, this Honorable Office must continue to respect and enforce TKPI's FLaG-T, which it delineated pursuant to its own internal rules and regulations. Hence, the veracity and scope of TKPI's FLaG-T is undeniable.

44. TKPI's rights and obligations, as grantee of the FLaG-T, have been recognized by and enforced by the government thru the various correspondences to TKPI as such grantee; and the collection of the government's share for TKPI's use of the area covered by the FLaG-T.<sup>33</sup>

45. To date, the TKPI's FLaG-T remains valid and existing, and is yet to expire in 2030.

46. There is no question over the existence and the validity of TKPI's FLaG-T, as well as the rights which TKPI enjoy as the grantee of the FLaG-T.

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<sup>33</sup> See Annexes C to C-11.

***B. The OCTs issued in the names of Gomez and Tampe, which cover forestlands, are void and should not operate to disturb the rights of TKPI under the FLaG-T.***

47. The OCTs issued in the name of Gomez and Tampe should not operate to disturb the rights granted to TKPI under the FLaG-T. There are indicia that would show that the OCTs of Gomez and Tampe are suspiciously obtained, if not altogether void.

48. First, the 3.2 hectares of land covered by TKPI's FLaG-T, upon which the OCTs overlap, are classified as forestlands and, as such, not alienable and disposable land of the public domain that are susceptible of private acquisition through a free patent application. Section 55 of the Public Land Act states that any forest or timber land are not suitable for commercial, industrial, or other productive purposes, other than agricultural purposes, to wit:

"Section 55. Any tract of land of the public domain which, being neither timber nor mineral land, shall be classified as suitable for residential purposes or for commercial, industrial, or other productive purposes other than agricultural purposes, and shall be open to disposition or concession, shall be disposed of under the provisions of this chapter, and not otherwise."

49. In the recent case of *Federation of Coron v. DENR Secretary*,<sup>34</sup> the Supreme Court states that forest or timber lands are not subject to private ownership unless they are first reclassified as agricultural lands, to wit:

"Lands of the public domain are classified under three main categories, namely: Mineral, Forest and Disposable or Alienable Lands. Under the Commonwealth Constitution, only agricultural lands were allowed to be alienated. Their disposition was provided for under [C.A.] Act No. 141 (Secs. 6-7), which states that it is only the President, upon the recommendation of the proper department head, who has the authority to classify the lands of the public domain into alienable or disposable, timber and mineral lands. **Mineral and Timber or forest lands are not subject to private ownership unless they are**

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<sup>34</sup> G.R. No. 247866, 15 September 2020.



**first reclassified as agricultural lands and so released for alienation.** xxx

This is in consonance with the Regalian Doctrine that all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony. Under the Regalian Doctrine, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Hence, **a positive act of the government is needed to declassify a forest land into alienable or disposable land for agricultural or other purposes.**<sup>35</sup>

50. In this regard, it has been held that the burden of proof in overcoming the presumption of state ownership of the lands of the public domain is on the person challenging the same.<sup>36</sup> However, in this case, neither Gomez nor Significa Vista Ventures, Inc. have presented any evidence proving that the government, through this Honorable Office, has changed the classification of their respective properties into alienable and disposable lands for agricultural purposes.

51. In *Heirs of Venturanza v. Republic of the Philippines*,<sup>37</sup> the Supreme Court categorically ruled that certificates of title covering inalienable lands of the public domain, i.e. timber and forest lands, are void, to wit:

“A certificate of title covering inalienable lands of the public domain is void and can be cancelled in whosever hand said title may be found. Thus, we have ruled that **a certificate of title is void when it covers property of the public domain classified as forest or timber and mineral lands.** And any title issued on non-disposable lands even if in the hands of alleged innocent purchaser for value, shall be cancelled.

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<sup>35</sup> Emphasis and underscoring supplied.

<sup>36</sup> *Ibid.*

<sup>37</sup> G.R. No. 1491122, 27 July 2007.

<sup>38</sup> Emphasis and underscoring supplied.



52. *Second*, given that the lands in question are forestland, they are unsuitable to be the subject of agricultural free patent applications, much less a grant.

53. Section 44 of the Public Land Act, as amended by Republic Act No. 6940,<sup>39</sup> which is the law applicable at the time Gomez and Tampe applied for their agricultural free patents in 2015, reads as follows:

“Section 44. Any natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who, for at least thirty (30) years prior to the effectivity of this amendatory Act, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest a tract or tracts of **agricultural public lands subject to disposition**, who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares.”<sup>40</sup>

54. In other words, agricultural free patents are land grants awarded to natural-born Filipino citizens in actual occupation and cultivation of alienable and disposable lands not more than 12 hectares for at least thirty (30) years. Additionally, applicants must have paid the corresponding real property taxes on lands subject of their applications.

55. Clearly then, lands subject of applications for agricultural free patents must be alienable and disposable. To reiterate, lands of the public domain are classified under three main categories, namely: Mineral, Forest and Disposable or Alienable Lands.<sup>41</sup>

56. In this case, at the time Gomez and Tampe submitted their respective applications for agricultural free patents in 2015, the lands subject thereof had already been classified as forestlands. As held in *Federation of Coron v. DENR Secretary*,<sup>42</sup> forest lands are not subject to private ownership unless they are first reclassified as agricultural lands and so released for alienation. As noted above, a positive act of

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<sup>39</sup> An Act Granting A Period Ending On December 31, 2000 For Filing Applications For Free Patent And Judicial Confirmation Of Imperfect Title To Alienable And Disposable Lands Of The Public Domain Under Chapters VII and VIII Of The Public Land Act (CA 141, As Amended), dated 28 March 1990.

<sup>40</sup> Emphasis and underscoring supplied.

<sup>41</sup> *Federation of Coron v. DENR Secretary*, G.R. No. 247866, 15 September 2020.

<sup>42</sup> G.R. No. 247866, 15 September 2020.



the government is needed before such reclassification may take place.<sup>43</sup> Therefore, Gomez and Tampe's applications for agricultural free patents must have been denied outright.

57. Moreover, neither Gomez nor Tampe has shown any proof that they have possessed or cultivated their lands for at least thirty (30) years prior to the submission of their applications in 2015. On this note, it must be reiterated that TKPI has been in possession of the land covered by its FLaG-T since 1998 and none of its personnel have ever seen Gomez and Tampe prior to the suspicious issuance of their OCTs.

58. Besides, the Free Patent Applications granted to Gomez and Tampe were granted only on 23 April 2015, and the OCTs were registered with the Registry of Deeds of Palawan on 27 April 2015. The said OCTs were issued erroneously to properties already covered by a FLaG-T awarded to TKPI ten (10) years prior. To reiterate, the lots covered by the purported OCTs of Gomez and Tampe were not classified as agricultural lands prior to its issuance.

59. *Lastly*, TKPI should have been officially notified of the free patent application considering the overlap with its FLaG-T. TKPI should and would have been aware of any free patent application because of the posting requirement thereof.

60. According to the Citizen's Charter No. RO-L-03 on Applications for Free Patent, issued by this Honorable Office,<sup>44</sup> the Land Management Inspector or Deputized Public Land Inspector shall post notices in the barangay, municipal or provincial hall where the property is situated and simultaneously conduct a survey or investigation on the land being applied for.

61. The surveys done for the free patent applications would also not have escaped the attention of TKPI. Conversely, had such surveys actually taken place, Tampe and Gomez would have been apprised that TKPI was presently occupying the area pursuant to a FLaG-T issued by this Honorable Office.

62. It is evident that the OCTs of Gomez and Tampe were wrongfully obtained to cover forest/timberlands which are inalienable lands of the public domain. Following the pronouncement in *Heirs of Venturanza*, the OCTs must be cancelled through a complaint for reversion, considering that these OCTs were unlawfully issued to cover inalienable lands of the public domain coupled with serious

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<sup>43</sup> *Ibid.*

<sup>44</sup> A copy of Citizen's Charter No. RO-L-03 issued by this Honorable Office is attached hereto as Annex "KK", and made an integral part hereof.



questions of fraud and misrepresentation in their issuance. This Honorable Office must seek the return of the properties covered by these OCTs to the public domain.

63. TKPI should be allowed to occupy rightfully and peacefully what has been denied it for several years. This includes TKPI's right to introduce improvements as provided for in its lease contract with the government. TKPI should be allowed to utilize the remaining years of its FLaG-T and exercise its right to its renewal.

*C. In any case, this Honorable Office should strictly enforce the easement, by ensuring the removal of the structures built thereon by Lihim Resort.*

64. As early as 6 August 2021, the parties were already directed to remove structures that were within the 40-meter easement area<sup>45</sup> supposedly pursuant to Presidential Decree 1067, or the Water Code of the Philippines, and Republic Act No. 7568, as amended by Republic Act No. 11038, or the Extended NIPAS Act of 2018.

65. As mentioned, under protest, TKPI complied with despite its firm legal position that the easement area is covered by its FLaG-T.<sup>46</sup> Meanwhile, Spouses Gomez, in stark contrast, continued to aggressively unload construction materials and perform construction activities in blatant disregard, and a continuing violation, of the NTV.<sup>47</sup>

66. Gomez and Lihim Resorts were likewise informed of their violation of the NTV during 8 December 2022 Meeting, among others. As a consequence, they were instructed to remove and relocate their structures to comply with the Water Code of the Philippines and the NIPAS Act. Further, it was agreed that they will not be allowed to operate or use the structures until such time that they have complied with the PAMB Clearance and ECC.

67. Despite such instructions from this Honorable Office, Spouses Gomez and the operators of Lihim Resorts refused to remove

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<sup>45</sup> See Annex "J", CENRO's letter dated 6 August 2021.

<sup>46</sup> See Annex "K", TKPI's letter to CENRO dated 23 August 2021. See also Annexes "L" and "M", TKPI's letter to this Honorable Office and CENRO dated 16 November 2021 and TKPI's letter to OBO dated 16 November 2021.

<sup>47</sup> See Annexes "N" and "N-1", TKPI's letters to the OBO both dated 4 October 2021. See also Annex "O", TKPI's demand letter to Villaroman Law as counsel for Spouses Gomezes dated 16 November 2021.

the structures, and even introduced new ones thereon, in blatant defiance to the DENR's orders.

68. Hence, it is paramount that this Honorable Office ensure their compliance with NTV, as well as the other applicable regulations, and to impose sanctions for their ongoing insubordination.

69. Section 51 of Presidential Decree No. ("PD") 1067 or the Water Code of the Philippines provides that:

"Article 51. The banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest areas, along their margins, are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, floatage, fishing or salvage or to build structures of any kind."

70. Further, Section 24 of RA No. 7586 or the NIPAS Act of 1992, as amended, states that:

"Section 24. *Existing Facilities Within the Protected Area.*

[x x x]

Existing facilities allowed to remain within the protected area shall be charged a reasonable fee by the PAMB based on existing guidelines. **Structures found within the forty (40)-meter easement shall be demolished** unless proven necessary to protect the shoreline and mitigate habitat destruction. The PAMB shall levy a reasonable fee for the use of such easement for their continued operations. Wharves shall be kept accessible to the public."<sup>48</sup>

71. There is no dispute that the structures of Lihim Resort, specifically its Hayag Beach Club, including its stairs, and other

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<sup>48</sup> Emphasis and underscoring supplied.



associated structures, were built on the forty (40)-meter easement without the requisite tenurial instruments.<sup>49</sup>

72. Applying the foregoing, the same shall be demolished. They are likewise liable to pay fees for occupying the same all these years. It is only right that the same laws invoked against TKPI be equally enforced against Gomez and Lihim Resorts.

73. Furthermore, despite the clear directive of the DENR during the 8 December 2022 meeting that they will not be allowed to operate or use the structures until such time that they have complied with the PAMB Clearance and ECC, which Spouses Gomez and the representative of Lihim Resort agreed to, and contrary to their representations in said meeting that only the owners' relatives enjoy the property, they have continued using their clubhouse for commercial use, without the necessary PAMB clearance and ECC, as revealed by the logbook entries on the property as well as publicly available photos and videos taken in the premises of Lihim Resorts.<sup>50</sup> In fact, just a day after the 8 December 2022 meeting, Lihim Resorts conducted an event in their premises, where several guests attended.<sup>51</sup> Surely, their blatant defiance to the DENR's lawful order should warrant this Honorable Office's attention and immediate action.

74. All things considered, TKPI respectfully submits that it should be allowed to rightfully and peacefully enjoy the privileges granted under the FLaG-T.

## PRAYER

WHEREFORE, Ten Knots Philippines, Inc. respectfully prays that this Honorable Office:

1. **DECLARE** that Ten Knots Philippines, Inc. may exercise its privileges granted under its FLaG-T over the property covered by the same;
2. **INITIATE** reversion proceedings against the properties covered by Significo Vista Ventures, Inc.'s, and Baberlyn Gomez's titles; and

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<sup>49</sup> See Annex "J", Notice to Vacate. See also Annex "JJ", a compilation of photographs taken during the 1 February 2023 ocular inspection conducted by this Honorable Office. See also Annex "JJ-1", a compilation of photographs taken during the 1 March 2023 ocular inspection conducted by this Honorable Office.

<sup>50</sup> See Annex "DD", TKPI's security personnel's logbook entries on several dates between 13 November 2022 to 20 March 2023.

<sup>51</sup> See Annex "II", Lihim Resorts' promotional material for its event at its Hayag Beach Club posted on social media.

3. **DIRECT** Significo Vista Ventures, Inc. and Baberlyn Gomez to remove their structures within the forty (40) meter easement.

Ten Knots Philippines, Inc. likewise prays for other relief in law and equity.

Taguig for Puerto Princesa City, 23 March 2023.

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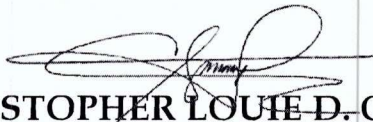
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