

[**PCSD RESOLUTION NO. 10-396, January 23, 2010**]

RESOLUTION FURTHER AMENDING THE REVISED RULES OF PROCEDURE IN THE ADJUDICATION OF ADMINISTRATIVE CASES FILED BEFORE THE PAB

WHEREAS, R.A. 7611, otherwise known as the Strategic Environmental Plan (SEP) for Palawan, took effect on 19 June 1992, section 6 of which provides that the SEP shall serve as the framework to guide the government agencies concerned in the formulation of plans, programs and projects affecting the environment and natural resources of Palawan;

WHEREAS, Section 2 thereof declares the policy of the State to protect, develop and conserve its natural resources towards which, it shall assist and support the implementation of plans, programs and projects formulated to preserve and enhance the environment, and at the same time pursue the socioeconomic development goals of the country; that it shall support and promote the sustainable development goals for the provinces through proper conservation, utilization and development of natural resources to provide optimum yields on a continuing basis;

WHEREAS, this same law provides that the SEP shall have, as its general philosophy, the sustainable development of Palawan, which is the improvement in the quality of life of its people in the present and future generations through the use of complementary activities of development and conservation that protect life-support ecosystems and rehabilitate exploited areas to allow upcoming generations to sustain development growth;

WHEREAS, Section 7 of the same provides that the SEP shall establish, as its main strategy, a graded system of protection and development control over the whole of Palawan, including its tribal lands, forests, mines, agricultural areas, settlement areas, small islands, mangroves, coral reefs, seagrass beds and the surrounding sea, known as the Environmentally Critical Areas Network (ECAN), and which shall ensure the following: forest conservation and protection; protection of watersheds; preservation of biological diversity; protection of tribal people and the preservation of their culture; maintenance of maximum sustainable yield; protection of the rare and endangered species and their habitat; provision of areas for environmental and ecological research, education and training; and provision of areas for tourist and recreation;

WHEREAS, Section 16 thereof provides that the governance, implementation and policy direction of the SEP shall be exercised by the Palawan Council for Sustainable Development (PCSD);

WHEREAS, Section 19 of this act provides that the PCSD shall (8) adopt, amend and rescind such rules and regulations and impose penalties for the effective implementation of the SEP law, (9) enforce the provisions of this Act and other

existing laws, rules and regulations similar to or complementary with this Act; (10) perform related functions which shall promote the development, conservation, management, protection, and utilization of the natural resources of Palawan; and (11) perform such other powers and functions as may be necessary in carrying out its functions, powers, and the provisions of this Act;

WHEREAS, the Council is vested with the power to promulgate the rules and regulations governing the exploration, development, conservation extraction, disposition, use of natural resources and such other commercial activities related thereto in the province of Palawan;

WHEREAS, on July 3, 2001, Republic Act No. 9147, otherwise known as the Wildlife Resources Conservation and Protection Act, was passed into law to carry out the declared policy of the State to "conserve the country's wildlife resources and their habitats for sustainability"; pursuant to Section 4 of R.A. 9147, which provides that the Council shall be the lead implementing agency in the Province of Palawan pursuant to Republic Act No. 7611 or the Strategic Environmental Plan for Palawan, the Joint DENR-DA-PCSD Administrative Order No. 01, otherwise known as the Implementing Rules and Regulations (IRR) of Republic Act 9147 was promulgated to prescribe the procedures and guidelines for the implementation of the Wildlife Resources Conservation and Protection Act;

WHEREAS, to provide for a system that will ensure the sustainability of live reef food fish industry by setting up a quota mechanism, to eliminate use of cyanide and other noxious substances and their derivatives/forms in the live reef food fish industry and to regulate resource extraction to a sustainable level, the PCSD promulgated **PCSD Administrative Order No. 05**;

WHEREAS, to ensure the attainment of the ends of ECAN, the PCSD, on February 25, 2000, promulgated **Administrative Order No. 06**, otherwise known as the "Revised Guidelines in the Implementation of SEP Clearance System, as amended", through which all projects of the proponents are evaluated based on ECAN Zoning of Palawan, as above-mentioned, as well as based on their ecological sustainability, social acceptability and economic viability, which Administrative Order was amended in 2002 and further revised on February 29, 2008;

WHEREAS, on November 7, 2002, Republic Act No. 9175, otherwise known as the Chainsaw Act of 2002, was passed into law to carry out the declared policy of the State to conserve, develop and protect the forest resources under the sustainable forest management by pursuing an aggressive forest protection program geared towards eliminating illegal logging and other forms of forest destruction which are being facilitated with the use of chainsaws; pursuant to Section 9 of R.A. 9175, which provides that the Council shall be the lead implementing agency in the Province of Palawan pursuant to Republic Act No.7611 or the Strategic Environmental Plan for Palawan, the PCSD promulgated **PCSD Administrative Order No. 07**;

WHEREAS, on April 8, 2001, Republic Act No. 9072, otherwise known as the Caves and Cave Resources Management and Protection Act, was passed into law to carry out the declared policy of the State to "conserve, protect and manage caves and cave resources as part of the country's natural wealth; pursuant to Section 4 of the said Act, which provides that the Council shall be the lead implementing agency in the Province of Palawan pursuant to Republic Act No. 7611 or the Strategic

Environmental Plan for Palawan, the PCSD promulgated **PCSD Administrative Order No. 08**;

WHEREAS, pursuant to PCSD Resolution No. 98-118-A through which the PCSD adopted Republic Act No. 8550, otherwise known as the "Philippine Fisheries Code of 1998" to carry out the declared policy of the state of "ensuring the conservation, protection and sustained management of the country's fishery and aquatic resources", PCSD Resolution No. 00-166, which declared the act of mangrove debarking illegal and the mere possession of tanbark as "illegal per se" in the province of Palawan and PCSD Resolution No. 05-251, authorizing the Executive Director of PCSDS to take immediate action to dismantle/remove any structure which obstructs the natural flow of tide in mangrove forests and to ensure the conservation and protection of mangroves, the PCSD **promulgated Administrative Order No. 11**, otherwise known as the "Rules and Regulations Governing the Conservation and Protection of Mangrove Areas";

WHEREAS, the Council, through Resolution No. 03-207, reconstituted the PCSD Legal Committee and delegated thereto the quasi-judicial power to adjudicate violations of the above-mentioned PCSD Administrative Orders;

WHEREAS, to further the ends of and to provide for a more expeditious, fair and orderly administration of administrative justice, there is a need to provide for a revised rules of procedure in the adjudication of cases before the PCSD Adjudication Board (PAB);

WHEREFORE, for and in consideration of the above premises, upon motion, duly seconded, be it RESOLVED, as it is hereby RESOLVED, TO ADOPT, as it is hereby adopted, THE FOLLOWING REVISIONS TO PAB RULES OF PROCEDURE, to wit;

PART I -TITLE AND PRELIMINARY MATTERS

Section 1. Title. - These Rules shall be known as the Revised PAB Rules of Procedure.

Section 2. Composition of the PCSD Adjudication Board. - The PCSD Adjudication Board (PAB) shall be composed of the following:

- a. Chairperson: The most senior lawyer-member of the PCSD;
- b. Vice-Chairperson: Any member of the PCSD, preferably a lawyer;
- c. Members:
 - i. The PCSDS Executive Director;
 - ii. The Provincial Prosecutor; and
 - iii. The NGO Representative in the PCSD.

In the absence of any lawyer-member in the PCSD, the Council shall designate any member of good standing and reputation as Chairman of the Adjudication Board. In the same manner, in the event that the membership of the other Board members in the Council expires, vacated or otherwise incapacitated, the Board Chairman is hereby authorized to designate any member of good standing and reputation as members of the Adjudication Board, until such time that their successors are duly admitted as Council members.

Section 3. Quorum. - The majority of members shall constitute a quorum for the Board to do business.

Section 4. Coverage. - These Rules shall apply to administrative cases or proceedings for violations of Administrative Orders duly adopted by the PCSD, such as, but not limited to, the following: Joint DENR-DA-PCSD Administrative Order No. 01 (Wildlife), PCSD Administrative Order No. 05, as amended (Live Fish), PCSD Administrative Order No. 06, as amended (SEP Clearance System), PCSD Administrative Order No. 07, as amended (Chainsaw), PCSD Administrative Order No. 08 (Caves) and PCSD Administrative Order No. 11 (Mangrove).

Section 5. Construction. - These rules shall be liberally construed to carry out the objectives of PCSD Administrative Orders. In implementing these rules, the PAB shall observe proper flexibility and avoid undue technicality with the end in view of bringing forth the truth and meting out justice as fairly and expeditiously as possible.

Section 6. Suppletory Application of the Rules of Court. - The Rules of Court shall apply in a suppletory character to these rules in the interest of justice and whenever practicable and convenient.

Section 7. Prohibited Motions. - No motion to dismiss or motion to quash, motion for bill of particulars, motion for new trial or reopening of trial and such other dilatory motions shall be allowed in the cases covered by these rules.

PART II- PROCEDURE BEFORE THE PCSD ADJUDICATION BOARD

RULE I

Appearances and Filing of the Complaint

Section 8. Appearances. - In all proceedings before the PAB, it is preferred that the parties be represented by a counsel who is a member of the Bar. Provided however, that a party may appear without the assistance of a counsel if he so desires. Provided further, that any confession or admission of guilt of a party made without the presence and assistance of counsel may not be used against such party in any criminal action.

Section. 9. Complaint. - A complaint shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. No anonymous complaint shall be entertained.

Section. 10. Contents of the Complaint. - The complaint shall contain the ultimate facts of the case and shall include:

- a. full name and address of the complainant;
- b. full name and address of the person complained of;
- c. specification of the charges;
- d. statement of the material facts;
- e. certification or statement of non-forum shopping.

In the absence of any one of the aforementioned requirements, the complaint shall be dismissed. However, if the respondent cannot be identified by his name, an assumed name may be used together with the practical description respondent's physical appearance such as but not limited to gender, approximate age, weight, height, color of hair, and other distinguishing physical appearance. A respondent identified by an assumed name shall be required to provide his true name in order

for him to participate in the proceedings and the complaint shall be considered as amended accordingly.

The complaint shall include copies of documents and affidavits of witnesses, if any, in support of the complaint.

Section 11. Who may File. - Any person who has personal knowledge of facts and circumstances constituting violation(s) of any administrative orders of the PCSD may file a complaint against any person(s) involved in such violation(s).

Section. 12. Where to File. - The complaint shall be filed through the PCSDS EC AN Zones Management and Enforcement Division or EZMED (Legal Division).

Section 13. Number of Copies. - The complaints and their supporting documents must be filed in seven (7) copies. Additional copies equivalent to the number of respondents shall be required when the number of respondents, as indicated in the complaint, is more than one.

Section 14. Docketing of Complaints. - All complaints filed through the EZMED shall be assigned a docket number for reference purposes.

RULE II

Preliminary Evaluation and Preliminary Investigation

Section. 15. Conduct of Preliminary Evaluation. Upon receipt by the EZMED of the complaint, it shall evaluate the same and cause it to proceed with the conduct of the administrative adjudication in accordance with the subsequent rules, such as issuance of summons, if the complaint presents substantial evidence to warrant a prima facie case against the respondent(s); Provided, that the complaint is sufficient in form and substance; Provided, further, that if the complaint is not under oath, the EZMED shall first require the complainant to subscribe it under oath.

Otherwise, the EZMED shall submit, on the immediately upcoming PAB meeting, an evaluation report, which shall contain, among others, the following:

1. A statement as to the form and substance of the complaint;
2. A recommendation to dismiss the complaint outright for lack of a prima facie case against the respondent(s), that is, that the complaint, on its face, presents no substantial evidence.

Section 16. Action on the Evaluation Report. - If the PAB agrees and approves the recommendation for outright dismissal for lack of a prima facie case, it (PAB) shall issue the corresponding Decision.

Section 17. Summons. - The PCSDS EZMED shall issue the corresponding summons to the respondent(s), attaching therewith copy of the complaint and other supporting documents, if there are any. The summons shall serve as notice of violation and shall therefore state the names of the parties to the action, the specific alleged violation(s)/the specific provision of the rules/order allegedly violated, including the applicable penalty and a direction that the respondent(s) must answer within the time fixed by these rules and that failure to answer would constitute a waiver of the right to refute the allegations in the complaint and the preliminary investigation shall proceed based only on the documents submitted by the complainant.