



In the matter of Environmental
Impact Statement (EIS) System
Violation Case

DENR-EMB Case No. 03-0074

-versus-

For: Violation of PD 1586 and
its Implementing Rules
and Regulations

City of Cagayan de Oro,
Represented by City Mayor Vicente Y.
Emano, and UKC Builders, Inc.
Respondents

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RESOLUTION

WHEREAS, Respondent's project construction of South Diversion Road and Cargo Bridge connecting barangays Lumbia and Taguanao, Cagayan de Oro City, being covered by an Environmental Compliance Certificate bearing ECC No. 10 (43) 02 04-22 2038-50200, has allegedly caused damage and desecration of Huluga Open Site and Cave Site without due regard to the existing laws and the prevailing rules and regulations involving management, preservation and protection of said Heritage Sites.

WHEREAS, investigation conducted by this office and a Special Investigating Team at the project construction site revealed that, indeed, Respondent failed to organize a team in coordination with the National Museum, Research Institute for Mindanao Culture (RIMCU) and the Department of Tourism to preserve and conserve the resources of Huluga Caves and vicinity and also failed to post appropriate markers such as billboards and notices at conspicuous places in the vicinity for information to the general public in violation of ECC Condition No. 3.

WHEREAS, in view of said violation, Respondent was afforded due process to present its defense why it should not be penalized for violating ECC Condition No.3.

WHEREAS, after due deliberation of the instant case, this office promulgated an Order dated August 15, 2003 ordering Respondent:

1. To pay the Government upon receipt of the Order the amount of Fifty Thousand Pesos (Php 50,000.00) as fine for violating ECC condition No. 3 pursuant to Section 4 of PD 1586 and its Implementing Rules and Regulations;
2. To immediately organize a team specifically required under ECC condition No. 3 to preserve and conserve the resources of Huluga caves and vicinity and shall implement a control management system to regulate entry, exploration and/or use of the cave in coordination with the National Museum, Research Institute for Mindanao Culture (RIMCU) and the Department of Tourism;
3. To install appropriate markers such as billboards and other signages at conspicuous places in the vicinity for information of the general public fifteen (15) days from receipt of the Order;
4. To initiate the formation of a team to be commissioned by the National Museum to conduct an archeological reconnaissance and assessment at the area where the South Diversion Road passes through within fifteen (15) days and to submit results to this office upon completion. The assessment shall include, among others, delineation of the extent of coverage of Huluga Open Site in order to come up with the comprehensive archeological and geological workstudy to include photo documentation and retrieval of artifactual material in accordance to standard archeological procedures, detailed geological study through lithofacies characterization and correlation also be conducted to delineate/locate continuity of important archeological sites that have to be preserved and protected from future development within the confines of the Huluga Site Complex. Other potential sites for archeological study shall include the promontory that is above the Huluga Cave facing east, as well as near the Obsidian hill;
5. To immediately cease and desist from further earth movement and other activities in both sides of the road pavement within the stretch reckoning from the bridge abutment towards the Obsidian Hill and its vicinity. All filling materials should be secured from outside legitimate sources.

WHEREAS, On August 27, 2003 this office was in receipt of Respondent's Motion for Reconsideration on the Order issued against it controverting that:

2

1. The inclusion of the term "Obsidian Hill" was nowhere found or mentioned in the ECC or in the initiatory pleading/petition or other pleading that have been submitted by the Petitioners. It further argued that under the factual and legal milieu, to penalize Respondent over something it has not been accused of, i.e. by restraining it from undertaking activities on both sides of the road "towards the Obsidian Hill", is most unfair, unwarranted and unjust and constitutes a gross deprivation and violation of its right to due process of law; and
2. Imposition of penalty of Fifty Thousand Pesos (P50,000.00) against it be reconsidered as it finds the penalty to be unwarranted, unfair, unjust, harsh and not commensurate with the alleged violation it had committed on the grounds that:
 - a) It had not been remiss of its obligation to initiate and undertake measures aimed at preserving and conserving the Huluga Cave and its immediate vicinity through the passage of Resolution No. 4433-99 as early as 28 September 1999;
 - b) It had long organized a team for this purpose but its efforts to comply with Condition No. 3 of the ECC are being hampered and made difficult by certain factual realities already made known earlier to this office; and
 - c) It was not accorded a reasonable period of time within which to undertake remedial measures for the purpose of complying with ECC Condition No. 3.

WHEREAS, in view of the Order issued by this office against Respondent, Petitioners, thru Counsel, submitted a "Motion to Amend Order" on August 26, 2003 and respectfully moved for minor amendments to ensure the implementation of said Order taking into cognizance of the formal letter of the Director of National Museum addressed to herein Respondent stating, among others:

"It is therefore our recommendation that the rest of the undisturbed area be subject to a Rescue Archaeological excavation, wherein qualified archaeologists will systematically and extensively excavate the area; conduct an extensive exploration along the banks of Cagayan River; build a site museum where the materials that will be excavated from the Huluga Open Site, and other archaeological sites will be exhibited and opened to the public for viewing. Appropriate signages explaining the importance of the archaeological site and the need to protect and preserve them will also be put on the site. As the

3

National Museum has no allocated funds for the rescue archaeological activities, we request that local government of Cagayan de Oro appropriate funds for this very important effort."

WHEREAS, Petitioners behoved upon this office to refrain from any declaration of the extent of a Cease and Desist Order until a delineation of the extent of Huluga Open Site had been determined as provided for in No. 4 of the dispositive portion of the Order;

WHEREAS, on September 3, 2003, this office was in receipt of Petitioners' suppletory Opposition to the Motion for Reconsideration of herein Respondent stating, among others:

1. That said motion is a mere cleverly attempt to disregard the Order;
2. That the Motion did not state any new matters which could sway or convince this office to amend or reverse the Order;
3. That, at most, the Motion only shows again and again, that Respondent is not conversant of the provisions contained in P.D. 1586 and its Implementing Rules and Regulations, and
4. That the Motion for Reconsideration filed by Respondent be denied and that the Motion to Amend Order by Petitioners be given merit.

WHEREAS, on September 5, 2003, Respondent submitted its Opposition to the Motion to Amend Order of Petitioners on the ground:

1. That the alleged letter from the Director of National Museum should not be taken into consideration by this Honorable Office for being immaterial and irrelevant to the issue raised before this Office;
2. That the said letter is contrary to the conviction of the defendant that the City Government neither destroy nor damaged the Huluga Open Site when the Bridge Project was constructed; and
3. That the Motion to Amend Order of Petitioners be denied for lack of merit.

WHEREAS, in view of the arguments and contention of both Respondent and Petitioners on the Order issued by this office against the former on August 15, 2003, this office hereby resolves the following:

4

1. The term "Obsidian Hill" which Respondent controverted for inclusion in the Order is the technical term used by members of the special investigating team composed of multi-disciplinary experts who conducted their own investigation and thorough assessment at the area in question which this office takes cognizance as said members are experts themselves. Besides, this is the area where, according to Dr. Erlinda M. Burton of RIMCU, some artifacts(material culture) will spill over from the open site;
2. Respondent's arguments and contentions are mere reiteration of what had already been decided. Its contention that it was not accorded a grace period within which to comply its violation is not a reason for this office to condone its liability as it is very clear that non-compliance to any terms and conditions of ECC issued to it, shall be sufficient cause for payment of fine in an amount not to exceed Fifty Thousand Pesos (P50,000.00) for every violation thereof and/or cancellation or suspension of the ECC pursuant to Section 9 of PD 1586 and its Implementing Rules and Regulations. The remedial measures it is seeking is actually what it is supposed to undertake in view of the violation it has committed;
3. Respondents' prayer to lift the Cease and Desist Order indicated under paragraph 5 of the Order dated August 15, 2003 cannot be granted for the reason that the area in question is subject for Archeological Impact Assessment;
4. Contrary to Petitioner's prayer behoving upon this office to refrain from any declaration on the extent of Huluga Open Site until a delineation has been made, this office upheld the findings of the special investigating team and concluded that the area subject to Cease and Desist Order shall reckon from the bridge abutment towards the "Obsidian Hill" and its vicinity covering a distance of 300 meters long where the box culvert bridge serving as boundary while project development of areas outside the area in question may continue;
5. Instructing Respondent to build a site museum where the materials that will be excavated from the Huluga Open Site and other archeological sites be exhibited and opened to the public for viewing is not within the mandate of this office but requires Respondent to place and implement an environmental

5

monitoring plan and a comprehensive environmental management plan to include, among others, mitigating and enhancement measures.

6. Petitioners' opposition to the Motion for Reconsideration filed by herein Respondent be denied is upheld.

WHEREFORE, premises considered and upon due deliberation on the instant case, this office resolves, as it hereby resolved, denying Respondent's Motion for Reconsideration and petition to Amend Order by petitioners and uphold its previous decision with the following clarificatory statements:

1. That the distance covering between the bridge abutment and the Obsidian Hill is approximately 300 meters long and the specific boundary of said Obsidian Hill is the box culvert bridge.
2. That requiring Respondent to establish a site museum where the materials that will be excavated from the Huluga Open Site and other archaeological sites will be exhibited and opened to the public for viewing is beyond the mandate of this office but under the discretion of herein Respondent City Government to forge an agreement with the National Museum.

SO ORDERED.

Done this 15th day of September 2003, Cagayan de Oro City.

SABDULLAH C. ABUBAGAR, DM.
OIC, Regional Director