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NCIP Administrative Order No. 3, Series of 2002

REVISED GUIDELINES FOR THE ISSUANCE OF CERTIFICATION PRECONDITION AND THE FREE AND PRIOR INFORMED CONSENT IN CONNECTION WITH APPLICATIONS FOR LICENSE, PERMIT, AGREEMENT OR CONCESSION TO IMPLEMENT AND OR OPERATE PROGRAMS/ PROJECTS/ PLANS/ BUSINESS OR INVESTMENTS INCLUDING OTHER SIMILAR OR ANALOGOUS ACTIVITIES OR UNDERTAKING THAT DO NOT INVOLVE ISSUANCE OF LICENSE, PERMIT, AGREEMENT OR CONCESSION BUT REQUIRES THE FREE AND PRIOR INFORMED CONSENT OF ICC/IP COMMUNITY IN ANCESTRAL DOMAIN AREAS IN ACCORDANCE WITH R.A. 8371

Pursuant to Sections 44 (m), 46(a), 57, 58, 59, and 7 (b) and (c) of R.A. 8371, otherwise known as the Indigenous Peoples Rights Act of 1997, and other related provisions, the following guidelines are hereby promulgated revising NCIP Administrative Order No. 03, Series of 1998, as follows:

I. PRELIMINARY PROVISIONS

Section 1. Title. These rules shall be known as the Revised Guidelines for FPIC and issuance of Certificate Precondition.

Section 2. Objective. These guidelines aim to:

- a) Ensure community participation in the decision making process in obtaining the Free and Prior Informed Consent of concerned ICCs/IPs;
- b) Protect the primary rights of ICCs/IPs in the implementation of development projects, programs, activities and other business or profit oriented investments within their ancestral domains to ensure their economic, social and cultural well-being;
- c) Provide the procedure and the standards in the conduct of field-based investigation, charges of fees, compensation for damages and imposition of administrative sanctions for intentional commission of prohibited acts as hereinafter provided; and
- d) When FPIC is given, ensure just partnership and equity in the environmental management, land use, development, utilization and exploitation of resources within ancestral domains, between and among the concerned ICC/IP community and the prospective investor, government agency, LGUs, NGOs and other entities desiring to collaborate in such undertaking.

Section 3. Declaration of Policy.

Inroads into the ancestral domains of ICCs/IPs resulted more often to their disenfranchisement and marginalization. Policies, plans, development programs and projects which may have been prejudicial to the rights and interest of ICCs/IPs, and certain harmful or detrimental undertakings or activities have been adopted and implemented within ancestral domains without the consent of concerned ICC/IP communities. Free and prior informed consent, as an instrument of empowerment, enables ICCs/IPs to exercise their right to self-determination. In order to uphold the clear intent and purpose of the law in requiring the precondition of free and prior informed consent of the ICCs/IPs in connection with applications for lease, license, permit, agreement and/or concession to

implement and/or operate programs/projects/activities in ancestral domains, it is the policy of the NCIP that the process of securing the FPIC of ICCs/IPs and the corresponding issuance of Certificate of Precondition shall be had with utmost regard to the overriding right of the ICC/IP to the management, development, use and utilization of their own land and resources within their ancestral domains and lands as recognized by the State. It shall institute and establish protective mechanism to enforce and guarantee the realization of that bundle of rights, within the framework of national unity and development. Corollary to this, the NCIP shall exercise its visitorial powers and may take appropriate action to safeguard the rights of the ICCs/IPs under resource utilization contracts. All concerned department and other government agencies are therefore strictly enjoined not to issue, renew, or grant any concession, license or lease, or enter into any production-sharing agreement, without the certification precondition issued by the NCIP of the concomitant compliance with the requirement of free, prior and informed consent obtained from the ICC/IP community.

Section 4. Operating Principles. In the implementation of these guidelines, the following principles shall be observed:

- a) **Consensus and Decision-Making Process.** The ICC/IPs shall participate in the decision-making processes primarily through their indigenous socio-political structures and they shall likewise affirm the decisions of their representations.
 - b) **Peace-Building.** In resolving conflicts or disputes affecting or pertaining to indigenous peoples, any determination or decision thereon shall be reached through dialogue and consensus.
 - c) **Primary of Cultural Integrity.** Within ancestral domains/lands, the holistic and integrated adherence of indigenous peoples to their respective customs, beliefs, traditions, indigenous knowledge systems and practices, and the assertion of their character and identity as peoples shall be assume
- an important consideration in the decision-making processes required for the issuance of the certification as a precondition to applications for lease, license, permit, agreement and/or concession to implement or operate programs/projects/activities in ancestral domains to ensure that the culture and tradition of the concerned ICC/IPs are applied or utilized in the process.
- d) **Right to Manage Own Land and Resource as Basis.** The right of the ICCs/IPs to manage their own land and resources within their ancestral domains and lands as embodied in their respective land for the sustainable development and protection of ancestral domains shall be the basis for their decisions to give or not give consent to proposed programs/projects/activities in ancestral domains and/or affecting their rights as a community and as people.
 - e) **Primacy of Customary Law.** The conduct of field-based investigation and the process of securing the free and prior informed consent shall take into consideration the primacy of customary processes of consensus building.
 - f) **Priority in the Development of the Ancestral Domain.** The ICC/IPs are given utmost priority in the management and pursuit of development programs/ projects/ activities in ancestral domains. In all instances, the ICC/IPs shall have priority in the development, extraction, utilization and exploitation of natural resources within ancestral domains.
 - g) **Sustainable Development and Protection.** The FPIC, whenever given, shall not have the effect of undermining the requisite of sustainable development and protection of ancestral domains, to ensure the welfare of not only the present but as well as that of the future generations.
 - h) **Transparency and Clarity.** The process of conducting the field-based investigation, consensus-building and

the issuance of the certification precondition (CP) and the free and prior informed consent (FPIC) shall be characterized by transparency not only on the part of the Commission but also on the part of the ICC/IP concerned. It is required therefore, that all issuances, orders, decisions of the Commission relative thereto must be made known to all parties concerned.

- (i) **Inter-agency/LGUs and NGO Collaboration and Community Support.** The collaboration of other government agencies, local government units, and the involvement and participation of the ICCs/IPs in the process shall be greatly encouraged and vigorously pursued. NGOs who have actively assisted a particular ICC/IP in the processing of their claim is given preference over any other NGOs desiring to collaborate, subject to the written consent of the ICC/IP through their recognized elders/leaders for this particular undertaking.

Section 5. Definition of Terms. The terms defined in the Indigenous Peoples Rights Act and its Implementing Rules and Regulations are hereby adopted, including the terms defined herein below:

- a. **ADSDPP** – refers to the Ancestral Domain Sustainable Development Protection Plan drawn and adopted by the ICC/IP community to govern the exercise of their sustainable traditional resource use rights within their ancestral domain areas, their framework of development and value systems.
- b. **Customary Laws** – refers to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICC/IPs. Customs and practices refer to norms of conduct and patterns of relationship or usage of a community over time that is accepted and binding on all members.
- c. **Certification Precondition** – refers to the certification issued by the NCIP that the site covered and affected by any application for concession, license or lease, or production-sharing agreement does not overlap with any ancestral domain area of any indigenous cultural community or indigenous peoples, or if the site is found to be within an ancestral domain area, that the required FPIC was properly obtained from the ICC/IP community concerned in accordance with the provisions of these guidelines.
- d. **Free and Prior Informed Consent** – this is the consensus of all members of the ICC/IPs which is determined in accordance with their respective customary laws and practices that is free from any external manipulation, interference and coercion and obtained after fully disclosing the intent and scope of the program/project/activity, in a language and process understandable to the community. The Free and Prior Informed Consent is given by the concerned ICCs/IPs upon the signing of the Memorandum of Agreement containing the conditions/requirement, benefits as well as penalties of agreeing parties as basis for the consent.
- e. **Field-based Investigation** – refers to the on-site inspection and investigation to ascertain the presence or absence of ICC/IPs and/or ancestral domains in the areas covered by application for certification precondition to any concession, license or lease, or enter into any production-sharing agreement.
- f. **Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs)** - refer to a group of people or homogenous societies identified by self ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied possessed, and utilized such territories, sharing common bonds of language, customs, traditions and

- other distinctive cultural traits, or who have through resistance to political, social, and cultural inroads of colonization, non-indigenous religions and cultures or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.
- g. **Indigenous Knowledge Systems and Practices** – refer to the systems, institutions, mechanisms, technologies, comprising a unique body of knowledge evolved through time that embody patterns of relationship between and among peoples, their lands and their environment, including such spheres of relationships which may include social, political, cultural, economic and religious that are direct outcomes of the indigenous peoples' response to certain needs consisting of adoptive mechanism which have allowed indigenous peoples to survive and thrive within their given socio-cultural and biophysical conditions.
- h. **Elders** – are individuals IPs or members of ICCs with a certain degree of esteem, Dignity, respect, and integrity who could be relied upon as sources of information, act as counsels of community concerns, and knowledgeable and practicing customs and traditions.
- i. **Self-Determination/Governance** - the exercise of the right of ICC/IPs to pursue their economic, social, and cultural development; promote and protect the integrity of their values, practices, indigenous knowledge and institutions; determine, use and control their own organizational and community leadership systems, institutions, relationships, patterns and processes for decision-making and participation.
- j. **Sustainable Traditional Resource Use Rights** – means the right of ICCs/IPs to use, manage, protect and conserve; a) land, air, water and mineral, b) plants, animals and other organisms, c) collecting, fishing and hunting grounds, d) sacred sites, and e) all areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices.
- Section 6. Coverage.** The ICCs/IPs shall, within their communities, determine for themselves, policies, development programs, projects and plan to meet their identified priority needs and concerns. The ICCs/IPs shall have the right to accept or reject a certain development, activity or undertaking in their particular communities. The acceptance or rejection of proposed policy, program or plan shall be assessed in accordance with the following IPs development framework and value systems for the conservation and protection of:
- a) Ancestral domains/lands as the ICCs/IPs fundamental source of life;
 - b) Traditional support system of kinship, friendship, neighborhood clusters, tribal and inter-tribal relations rooted in cooperation, sharing and caring;
 - c) Sustainable and traditional agricultural cycles, community life, village economy and livelihood activities such as swidden farming, communal forest, hunting grounds, watersheds, irrigation systems and other indigenous management systems and practices; and
 - d) Houses, properties, sacred and burial grounds.
- These guidelines shall cover the following programs/projects/activities:
- a) Exploration, development, exploitation and utilization of natural resources for commercial purposes within ancestral domains/lands, by IPs and non-IPs alike;
 - b) Research on indigenous systems, knowledge and practices related to agriculture, forestry, watershed and resource management systems and technologies, medical and scientific concerns, bio-diversity and bio-processing, including the gathering of biological and genetic resources;
 - c) Archeological exploration, diggings, excavations and access to religious and cultural sites;
 - d) Activities that would impinge on their spiritual and religious traditions,

- customs and ceremonies, including ceremonial objects;
- e) Programs, projects and activities that would lead to the displacement and/or relocation of indigenous peoples;
 - f) Entry of migrants and other entities who intend to do business or engage in development activities inside the ancestral domains;
 - g) Management of protected and environmentally critical areas, and other joint undertakings within ancestral domains;
 - h) Implementation of government reforestation and infrastructure projects;
 - i) Activities that may adversely affect the airspace, bodies of water and lands of the ancestral domains;
 - j) Policies affecting the general welfare and the rights of ICCs/IPs;
 - k) Occupation of military or paramilitary forces or establishment of temporary or permanent military facilities within the domains; Military operations traversing ancestral domain areas may be allowed without the required FPIC only when the same is made in connection with hot pursuit operations and the duration is not exceed the period of seven (7) days;
 - l) Other activities or undertaking similar or analogous to the foregoing.

II. PROCEDURE AND PROCESS REQUIREMENTS FOR THE ISSUANCE OF CERTIFICATION PRECONDITION AND THE FREE AND PRIOR INFORMED CONSENT

Section 7. Endorsement of Concerned Agency. The application for lease, license, permit, agreement and/or concession to implement or operate programs/ projects/activities in ancestral domains is directly filed by the proponent to the concerned government agency for compliance of the agency's applicable regulatory requirement, who in turn, endorses it to NCIP for certification precondition as required by the IPRA. The endorsement is to be addressed to the NCIP Chairperson through the Ancestral Domains Office. Request for certification preconditions coming through directly from the proponents will not be acted upon. If the undertaking is proposed to be had by the ICC/IP community themselves, NCIP shall only

verify if the same is in accordance with their own ADSDPP. If the undertaking is proposed to be had in their own ancestral domain area by an IP or group of IPs who are members thereof, NCIP shall verify if the same is in accordance with the community's own ADSDPP and compliance with the requirement of FPIC. For verification purposes, NCIP field office shall always be informed by the proponent IP or group of IPs of any undertaking that requires the FPIC of the ICC/IP community to which they are members as provided in these guidelines. In the absence of such ADSDPP. Collaboration of accredited NGOs in this undertaking will be recognized. In case of an IP or group of IP proponents who are members of the same community where the undertaking is proposed to be had, NCIP shall make sure that the proponent/s is or are not made to appear as such under any scheme or arrangement by any person or entity who has the intention of circumventing the law requirement on certification precondition and the FPIC. If the undertaking is proposed to be had by an IP individual or group of IPs who is or who are not members of the ICC/IP community, the proponent/s shall have to file it before the appropriate government agency regulating the conduct of the proposed undertaking for compliance of the agency's applicable regulatory requirements, and upon endorsement by the concerned agency to the NCIP, the application shall undergo the required activities for certification precondition.

Section 8. Requirements form the Endorsing Agency. The endorsement letter should enclose the report on the nature and extent of the proposal and the indicative map of the applied site including the outlying impact or affected areas.

Section 9. Conduct of Field-based Investigation. The field-based investigation is the first step in the process required for the issuance of certification precondition. It is done to ascertain whether or not the site applied for falls within, contains the whole, or overlaps a portion of an ancestral domain area, whose boundaries on the ground may have already been predetermined and secured by an

existing recognized tenurial instrument, or in its absence, is recognized as traditionally belonging to a particular ICC/IP as part of their ancestral domain as defined under Section 3 (s) of the IPRA. For this purpose, it is assumed that the site applied for issuance of certificate precondition fall within, contains the whole, or overlaps a portion of an ancestral domain of ICCs/IPs until proven otherwise. It is the duty of the team conducting the field-based investigation to locate the IP community nearest to the site applied for the issuance of certification precondition to determine whether or not the sites falls within, contains the whole, or overlaps a portion of an ancestral domain of ICCs/IPs. The detailed steps in the conduct of the field-based investigation are as follows:

- a) Within five (5) working days from receipt of the endorsement from the endorsing agency, the Chairman, through ADO directs the concerned Regional Director to constitute the field-based investigation (FBI) team and designates a team leader. Members of the FBI team shall not be less than five (5), two shall come from the Regional Office and the other three shall come from the concerned Provincial Office or the Community Service Center; The FBI Team shall be issued with a Work Order by the Regional Director for the purpose of conducting the field-based investigation;
- b) The FBI team first conducts assessment of secondary sources of data before they proceed to inspect the actual project site and the outlying impact areas within fifteen working days from receipt of the Work Order;
- c) Within Fifteen (15) working days after the conduct of the field-based investigation, the FBI team prepares report with recommendation to the Regional Director for assessment and proper action;
- d) Within Ten (10) working days from receipt of report from the FBI, the Regional Director shall forward the report with appropriate recommendations to the ADO;

- e) The ADO, after proper evaluation of the reports and endorsement of the concerned Regional Director shall cause the issuance of the Certification Precondition. However, ADO shall not act on recommendations irregularly evaluated and endorsed by the Regional Director;
- f) Within seven (7) working days from receipt of the report/endorsement, the ADO Director issues the certification precondition or appropriate document to the requesting agency.

Section 10. Contents of the Field-Based Investigation and Assessment Report.

The field-based investigation and assessment report shall reflect both the assessment of relevant secondary data and the results of the actual site inspection. The report duly signed by the FBI team leader and properly endorsed by the Regional Director shall contain the following minimum information:

- a) Date of report;
- b) Assessment of relevant secondary data, indicating source of data;
- c) Dates of field-based investigation;
- d) Location or site of field-based investigation;
- e) Names and designation of authorized FBI Team;
- f) Specific objective or purpose of the field-based investigation;
- g) Specific names of places actually visited;
- h) Names of persons interviewed, indicating their positions in the community;
- i) Statement of actual observations and/or comments gathered;
- j) If the report indicates an overlap to an ancestral domain, the estimated population of indigenous peoples in the area should be indicated. It shall also include preliminary documentation of the existing indigenous consensus-building/decision-making processes, including the identification of the authentic tribal/community leaders, and to determine initial estimate of ICC/IP population in the affected areas;

- k) Assessment of observations and/or comments;
- l) If FPIC is found to be a requisite, estimate of cost to be deposited by the proponent as fees to answer for the expenses needed in conducting the required FPIC proceedings;
- m) Recommended action and endorsement to the ADO.

Section 11. Attachments to the Field-Based Investigation and Assessment Report.

Pertinent documents showing proof of the field-based investigation and assessment report shall include, but not limited to the following:

- a) Endorsement letter of appropriate agency and the required attachments;
- b) Copy of secondary data, if applicable, such as the certification from the concerned Provincial/Municipal Statistics Office on the ethnic grouping of the population within the applied and impact area;
- c) Approved itinerary of travel;
- d) Certificate of appearance from the LGU, Barangay Captain, recognized Elders/Leaders of the ICCs/IPs whenever applicable;
- e) Certification from the recognized ICC/IP leadership as determined under Section 14 (b) of this guidelines, in the concerned province or municipality on the existence, or otherwise, of ancestral domains/lands in the area subject to investigation.

Section 12. Submission of the Applicant's Operation Plan.

If the field-based investigation report requires the free and prior informed consent (FPIC) of affected ICC/IPs, the concerned Regional Director shall notify, in writing, the applicant to submit the operation plan of the project as provided in their proposal within fifteen (15) working days from receipt of the FBI team recommendation. The concerned Director notifies directly the proponent in writing to submit the project operation action plan. A copy of the notice is furnished to the requesting agency and the ADO; The notice shall also contain information that the applicant may now proceed with the conduct of the FPIC.

Section 13. Payment and deposit of Fees for Applications for Certification

Precondition and the Certification for FPIC; Basis of Determining the Amount of Fee. The FBI Fee and FPIC Fee shall be paid or deposited in the manner provided as follows:

- a) The applicant or proponent is required to pay the fixed amount of Five Thousand (P 5,000.00) pesos as Field-based Investigation Fee for the conduct of field-based investigation to be paid at NCIP regional office concerned. The deposit shall be properly documented;
- b) If the result of the field-based investigation reveals the necessity of securing the FPIC of the community concerned, the applicant or proponent is required to deposit before the concerned NCIP regional office the FPIC Fee in the amount as estimated by the said office and as contained in the FBI report submitted by the region. The NCIP regional office shall make the estimate on the basis of the data gathered during the conduct of the field-based investigation, taking into account the cost of transportation, food allowance and other necessary expenditures needed for the conduct of FPIC proceedings in the community viz-a-viz the number of days and the number of participants;
- c) Remaining unspent amount collected as FPIC Fee shall be duly accounted for and shall be returned to the applicant or proponent at the end of the FPIC proceedings;
- d) Collection of FPIC Fee on cost estimates made without sufficient basis shall be considered as an act of illegal exaction of money and shall be preceded in accordance with law.

Section 14. Mandatory Activities in the Conduct of FPIC Process.

The ADO through the Regional Office shall ensure that the FPIC process include among others, the following:

- a) **Notices.** Posting of Notices in conspicuous places in and around the area of the concerned ICC/IP community by NCIP that a preliminary consultative meeting will be had. Said notices shall indicate the date and venue of the meeting,

the objectives and the nature and scope of the project and identity of the project proponent. Aside from the posting of notices, personal service of notices by NCIP to the concerned Council of Elders/Leaders is required, which must be served at least five (5) days before the intended date of the preliminary consultative meeting and that their presence is required.

- b) *Validation of the List of Elders/Leaders.* Aside from the list of elders/leaders as appearing in the records of NCIP representing a particular ICC/IP community, the FBI Team shall conduct a random listing of elders/leaders from the community as identified by name by the members thereof. NCIP shall facilitate the convention of these elders/leaders for the purpose of validating the authenticity of the names of elders/leaders as appearing in the list. In that convention, the participants will be asked to identify who among themselves are the recognized leaders of the community and who are not. It is a qualification process in which those who presented themselves as leaders/elders will be discerned by the rest of them in accordance with their customary laws. The purpose is to secure genuine representations for the community in the negotiations that will be had between the proponent and the community. It is a process in which each of them will present himself before the rest for confirmation as a recognized elder/leader of the community.
- c) *Preliminary Consultative Meeting.* Within fifteen working (15) days from the submission of the applicant's operations plan, a preliminary consultative meeting shall be conducted within the host community. The participants to the preliminary consultative meeting are: the identified council of elders or leaders, the representatives from the proponent, the NCIP, the representatives from collaborating NGOs and the civil society operating in the concerned area. The proponent will be given time in the presentation and clarification of their
- project proposal in the said preliminary consultative meeting. The Operation Plan and the scope and extend of the proposal shall then be presented to the elders/leaders by the proponent for understanding, and shall give them the needed information supporting their proposal, including but not limited to: the cost and benefits of the proposal to the ICC/IP and their ancestral domains; presentation of perceived disadvantages or adverse effects to the community and the measures adopted by the proponent to mitigate these; and, a statement of commitment to post performance bond to answer for consequential damages to the community. In the discussion to follow the other representatives will be given their turn in presenting their views to the proposal. The opposition to the proposal, if there are any, shall likewise be given equal time in the said meeting in the presentation of the basis and reason of their opposition thereto for the appreciation of the council of elders/leaders. NCIP's presence in the meeting is mandatory for the purpose of facilitation the conduct of the meeting and to provide the participant's education and information on IPRA particularly on the FPIC and the rights and privileges of the ICCs/IPs. The mechanics of the meeting shall be set by the NCIP representative after due consultation from all parties concerned. The council of elders/leaders shall decide whether another meeting is necessary to complete the process.
- d) *Consensus Building.* Within a period of fifteen (15) days after the termination of the last and final preliminary consultative meeting/s, the Elders/Leaders shall complete the conduct of their own consultative meetings with their members in complete the conduct of their own consultation meetings with their members in the community employing their own traditional consensus building processes in order to further discern the merits and demerits of the proposal as presented in the preliminary consultative meeting, except the

NCIP representative, will be allowed to stay in the community. NCIP's role in the community for the duration of the period is to document the community proceedings that is being had. At the end of this process, the elders/leaders may, at their option, call again for another meeting before the conduct of the required community assembly is finally had, like when there negotiation points that they wanted to present that requires further discussions with the applicant.

- e) **Community Assembly.** Within fifteen (15) days after the lapse of the period provided for community consensus building conducted by the ICC/IP Elders/Leaders, NCIP shall causes the conduct of Assembly of all the members of the community as presented by the household heads. It is on this occasion that the decision of the ICC/IP with respect to the proposal will be made known. NCIP will determine by raising of hands the number of those who would vote for or against the proposal. The leaders or elders will be required to explain the vote had, and if the decision is for the proposal, the terms and conditions of the giving of their consent thereto. The decision as explained shall be properly documented, and the terms and conditions of the giving of their consent thereto. The decision as explained shall be properly documented, and the terms and conditions approving the proposals shall be translated in the form of a MOA to be signed by both parties with NCIP, represented by the Chairman, signing as the third party. The person to sign representing the community shall be chosen by the council of elders/leaders among themselves, duly authorized by them. A Translation of the MOA to the dialect of the ICC/IP shall then be prepared.

Section 16. Who Shall Give their Free and Prior Informed Consent. The scope of the ICCs/IPs whose free and prior informed consent is required shall depend upon the impact area of the proposed policy, program, projects, plans, activity or undertaking, such that:

- a) When the policy, program, project, plan, activity or undertaking affects only a particular community within the ancestral domain, only such community shall give their FPIC. But the Council of Elders/Leaders representing the whole ancestral domain shall be the one to determine whether or not a given policy, program, projects, plans, activity or undertaking affects the whole of the ancestral domain or only a portion of it; The determination of the scope by the council, may be challenged by way of a petition filed before the Regional Hearing Officer. The Petition must be duly signed by a majority of the members of the whole ancestral domain area with the allegation that the Council have not reconsidered their determination of the scope despite their opposition thereto;
- b) When the policy, program, project, plan, activity or undertaking affects the entire ancestral domain, the consent of the concerned ICCs/IPs within the ancestral domain, the consent of the concerned ICCs/IPs within the ancestral domain shall be secured; and
- c) When the policy, program, project, plan, activity or undertaking affects a whole range of territories covering two or more ancestral domains, the consent of all affected ICCs/IPs communities shall be secured.

Section 17. Non-transferability of Free and Prior Informed Consent. The FPIC for a particular proposal shall not be transferable to any other party, except in case of merger, reorganization, transfer of rights, acquisition by another entity, or joint venture. Provided, that there will be no changes in the original plan and the same shall not prejudice the interest, rights and welfare of the concerned IP community.

Section 18. Endorsement of the FPIC Certification to the Ancestral Domains Office. The Regional Director shall endorse the FPIC Certification to the Ancestral Domains Office for proper evaluation and subsequent issuance of certification precondition. The endorsement shall enclose copies of the following:

- a) Notices of every meeting for purposes of securing the FPIC written in English or Filipino and the IP language as authorized by the community elders/leaders;
- b) Minutes of all meetings and proceedings where the proponent had presented, submitted and discussed all the necessary information on the proposed program / project, policy or plan to be conducted/implemented in a process and language understood by the ICC/IPs concerned. (The minutes must be written in English or Filipino and in the ICC/IPs concerned.) The minutes must be written in English or Filipino and in the appropriate IP language, as validated by those who attended the meeting or assembly;
- c) Minutes of consultation meetings with all members of the ICC/IP communities affected by the request for certification precondition;
- d) Minutes of negotiation meetings on the terms and conditions for granting the FPIC;
- e) Minutes of the validation of the decisions of the authorized ICC/IP negotiators by all members concerned;
- f) Sketch map of project impact area;
- g) Documentation of customary practice on consensus building; and
- h) Census of population of the host ICC/IP community.

Section 19. Process Requirement for the Issuance of Certification Precondition.

If the applied and impact areas are non-ICC/IP area and/or does not overlap with an ancestral domain based on the field-based investigation, the appropriate certification precondition is issued immediately by the Commission through the concerned Regional Director where the area is situated. On the other hand, if the field-based investigation report indicates the presence of ICC/IPs in the applied and impact areas or an overlap to an ancestral domain/land, the free and prior informed consent through the customary consensus-building process of the concerned ICC/IPs is required before the issuance of the certification precondition.

Section 20 Issuance of the Certification Precondition. The appropriate certification precondition shall be issued within Fifteen (15) working days from receipt of the pertinent recommendation or endorsement

of the concerned Director. ADO shall endorse it for approval of the Commission. Attached in the issuance is the MOA and FPIC certification by the concerned host ICC/IP.

Section 21. Non-Consent by the concerned ICC/IP.

The concerned ICC/IPs, in case of non-consent or unfavorable decision, shall state in writing the specific reasons for non-consent. The non-consent in writing shall be signed/thumb marked by the authorized leaders/elders in every page of the paper and submit it to the Regional Director. In turn, shall submit it to the ADO within Five (5) working days from receipt of the non-consent. The ADO, within Five (5) working days from receipt of the non-consent shall prepare the report and endorsement of the Order of Denial to the Commission. Within Ten (10) working days thereof, the Commission shall issue appropriate action to be transmitted to the applicant and the endorsing agency through the ADO.

III. MEMORANDUM OF AGREEMENT

Section 22. The Memorandum of Agreement.

If the result of the FPIC process is favorable to the proposal, the agreements and conditions discussed in the said process are embodied in a Memorandum of Agreement (MOA) between/among the ICC/IPs, the proponent and the NCIP and any other party equally involved and witnessed by their respective members. In case of change of proponent personalities in the future, the terms and conditions of the MOA shall bind the new proponent without necessarily executing another MOA. The Agreement must be written in English or Tagalog and in the appropriate IP language. The parties executing the MOA shall acknowledge the terms, contents and due execution thereto before a notary public or persons authorized by law to administer oath.

Section 23. Contents of the Memorandum of Agreement. The MOA shall stipulate among others, the following.

- a) The detailed premises of the agreement;
- b) All parties involved;
- c) Inclusive dates/duration of agreement;
- d) The benefits to be derived by the host ICC/IPs indicating the type of

benefits, specific target beneficiaries as to sector and number, the period covered, and other pertinent information that could guide the future monitoring and evaluation of the MOA;

- e) Use of all funds to be received by the host ICC/IP communities, ensuring that a portion of such funds shall be allocated for the development projects, social services and/or infrastructure in accordance with their development framework;
- f) Detailed measure to protect IP rights and value systems;
- g) Detailed measures to conserve/protect any affected portion of the ancestral domain critical for watersheds, mangroves, wildlife sanctuaries, forest cover, and the like;
- h) Responsible of the proponent as well as the host IP community;
- i) The MOA monitoring and evaluation schemes; and
- j) Penalties for non-compliance or violation of the terms and conditions.

Section 24. Signatories to the Memorandum of Agreement. The signatories of the MOA shall be:

- a) For the ICC/IP community, all authorized community elders / traditional leaders identified and recognized by the community
- b) For corporations, partnerships or single proprietorship entities, the authorized officers, representatives, or partners as per Board resolution; and
- c) For the NCIP as third party, the Regional Director by authority of the Commission.

Section 25. Hearing of Complaints on the Memorandum of Agreement. In case of any complaint on the MOA implementation, this shall be filed at the NCIP Regional Hearing Office for appropriate action. The decision of the Regional Hearing Officer maybe appealed to the Commission en Banc. The decision of the Commission en Banc is appealable to the Court of Appeals. The NCIP Regional Hearing Office shall acquire jurisdiction over such complaints only upon written certification from the Council of Elders/Leaders that the same not been resolved in accordance with their traditional

conflict resolutions institutions applying their customary laws and practices.

Section 26. Applicability of Customary Laws and Imposition of Sanction/s for Violation of the Terms of the MOA. Any person/party who willfully violates or fails to comply with his duty or obligation under the provisions of the Memorandum of Agreement may be proceeded in accordance with the customary laws and practices of the host or concerned ICC/IPs and sanctions may be imposed in accordance therewith, provided it is not cruel and humanly degrading. Its applicability shall be without prejudice to the Commission's exercise of its visitorial and injunction powers. Such customary law or practice shall form part of the documents supporting the Memorandum of Agreement between the concerned parties.

Section 27. Action of the Commission. The action of the Commission on the petition shall be embodied in a resolution, a copy of which shall be forwarded to the Ancestral Domains Office.

IV. ROLE/RESPONSIBILITIES OF ALL CONCERNED PARTIES CONCERNED IN THE PROCESSES OF THE CERTIFICATION PRECONDITION

Section 28. Role/Responsibilities of the Proponent. At the minimum, the proponent is obliged to comply with the following to ensure the success of the field based investigation and/or the consensus building process:

- a) Prepares and submits proposal of the project;
- b) Present and submits in writing to the IP community and the NCIP in language understandable to the concerned community, the details of all the possible impact of the proposed policy, program, project or activity upon the ecological, economic, social-cultural aspect of the community as a whole. Such document shall clearly indicate how adverse impact can be avoided or mitigated
- c) Payment of the Field-based Investigation fee for the conduct of the Field-based investigation. If the result of the FBI requires the need to

secure the FPIC of the community, submit the required Operation Plan and deposits of the FPIC fee to answer the expenses for the conduct of the FPIC process in the amount as determined in the manner provided in these guidelines;

Section 29. Role/Responsibilities of the ICC/IPs concerned. On its part, the affected ICCs/IPs shall comply with the following to ensure the success of the consensus building process.

- a) Determine the customary practice of consensus building to be followed in the conduct of FPIC process. This shall be made in writing in their own dialect and shall be translated into the major dialect of the community and shall be ratified by the all heads of the families and clans or their authorized representatives;
- b) Identify in writing their Elders/Leaders or representatives of their family or clan who can sign on their behalf;
- c) The Council of Elders/Leaders shall be registered with the NCIP for record and recognition purposes. In no case shall an FPIC signatories be represented by heads of coalitions or organizations who lives outside of the concerned ICC;
- d) Keeps the original copy of the MOA

Section 30. Role/Responsibilities of the NCIP. The different offices of the NCIP at various levels shall be responsible as follows:

- a) The Regional Office
 1. Collects and Issues official receipt to the proponent for the inspection fee for the conduct of FBI;
 2. Conducts the census or genealogical survey of the ICCs/IPs concerned;
 3. Documents the customary practices on consensus building among the affected ICCs/IPs;
 4. Evaluates and coordinates the FPIC Action Plan;
 5. Facilitate registration of the authentic IPOs, Elders, Leaders and representatives of the families and clan;

6. Facilitate the execution of the MOA and endorse to the Commission, through the Director of the Legal Affairs Office of the NCIP, for review and authority to sign as third party;
7. Monitors the compliance of the terms and conditions stipulated in the MOA; and
8. Keeps certified true copy of the MOA

b) The ADO

1. Evaluates and validates, if necessary, the FBI and the conduct of the FPIC process;
2. Monitors the FBI/FPIC process;
3. Keeps duplicate copy of the MOA.

V. PROHIBITED ACTS AND SANCTIONS

Section 31. Prohibited Acts. After the filing of the application and during the period that the application is pending, any of the following acts or omissions are hereby declared either acts prejudicial to the interest of the IP community in the attainment of their consent or is an circumvention of the intent of the law in requiring the free, prior and informed consent of ICC/IP community and are therefore prohibited:

a) *By the applicant*

1. Employment or use of force, threat, coercion, intimidation, at any degree or in any manner, including those done by individuals or group of persons acting for the applicant;
2. Bringing of firearm/s in the community during visits by the applicant or group of persons acting for the applicant. When needed, armed security shall be obtained from local police authorities or the AFP a requested by NCIP;
3. Bribery or promise of money, privilege, benefit or reward other than what is presented by the applicant/proponent during the preliminary consultative meeting with the Council of Elders;
4. Clandestine or surreptitious negotiations with IP individuals or members of the community concerned done without the knowledge of the council of leaders or elders;

5. Delivery to the community or to any of its members of destinations of any kind;

b) By NCIP Officer or Employee

1. Acceptance or receiving of gifts or money from the applicant;
2. Consorting with the applicant or with any person connected to or mediating for the latter;
3. Deliberate failure to act appropriately on complaints coming from the community concerning prohibited acts committed by the applicant or any of its representatives;
4. Gross negligence or deliberate omission to perform his duty required of him by these guidelines in connection with his function and within his authority to perform;
5. Acting on or performing his duty in consideration of future reward, promise of money, privilege or benefit from the applicant;

c) By the IP Community or Member

1. Solicitation of any kind from the applicant;
2. Acceptance or receiving of gifts or money from the applicant;
3. Consorting with the applicant or with any person connected to or mediating for the latter;
4. Giving or promising to give his consent in consideration of future reward, promise of money, privilege or benefit from the applicant other than what has been provided for or explained by the applicant to the Council of Elders or Leaders during the consultation meeting;

d) Other Prohibited Acts by GAs/LGUs/NGOs/ & other groups

Undue influence to the community, either to the members or their representatives, exerted by representatives of non-government organizations or representatives of government agencies or local government instrumentalities, including barangay officials and their functionaries, and those made by other entities or groups with religious affiliations, except those made during the consultation proceedings or meetings conducted in accordance with the manner and

procedures as provided for in these guidelines;

Section 32. Sanctions. Administrative sanctions shall be imposed by the Commission only after due notice and the parties are given the opportunity to be heard, as follows:

a) For the Applicant

Commission of any of the prohibited acts by or attribute to the applicant, shall be sufficient ground for the non-issuance of the certificate precondition by the NCIP, or if already issued, a ground for its revocation. The Commission may proceed against the applicant *motu proprio* or upon complaint. In addition, serious violations shall be a ground for disqualification for future applications for certificate precondition within ancestral domain areas, without prejudice to filing of appropriate criminal action against the offender under IPRA or the Revised Penal Code and other special laws. The violation is considered grave when the commission of the prohibited act is intentional and have resulted to loss of life or serious damage to property of an IP member of the community, committed by means of, but not limited to employment or use force, threat, coercion, intimidation, violence, including those done by individuals or group of persons acting for the applicant. The imposition of disqualification can be lifted only upon petition by the individual or entity upon whom the disqualification was imposed, stating the grounds why the disqualification should be lifted. No such petition shall be entertained by the Commission without the favorable recommendation of the IP community concerned whose rights were seriously violated.

b) For the IP Community

The Commission shall formally call the attention of the Council of Elders/leaders concerned for him to be proceeded against in accordance with their own customary laws. If the extend of the commission of the prohibited act would unjustly affect the outcome of the community consent proceedings, the said proceedings shall be suspended by the Commission until after the Council has shown to the Commission in accordance with their customary laws.

c) *For NCIP Officer or Employee*

Prohibited acts committed by any officer or employee shall, upon finding of prima facie evidence, immediately divest him of his authority to be part of the proceedings upon order of the Chairperson of the Commission, and he/she will proceeding against administratively in accordance with the Civil Service Rules and Regulations on discipline, without prejudice to the filing of appropriate criminal charges;

d) *For GAs/LGUs/NGOs and other groups or individuals*

Prohibited acts committed by any officer or employee of any GAs/LGUs or those committed by members of NGOs and other groups or individuals shall be censured applying the Commission's subpoena and contempt powers.

Section 33. Complaint To Censure the Person or Entity responsible for Commission of Prohibited Acts; Order of Suspension.

Complaint filed by any aggrieved party in the proceedings for the censure of the person, group of persons or entity alleging commission of any of the prohibited acts provided above, shall not suspend the proceedings had, except those acts complained of, if proven, would substantially affect the credibility and integrity of the outcome of the proceedings as determined by the Commission. The complaint shall be filed before the NCIP representative heading the field based investigation and authorized by these guidelines to facilitate the proceedings. It is the duty of the NCIP representative receiving the complaints to look into the sufficiency of the complaint by requiring the complainant to substantiate his complaint by supplying all the data and information needed for the appreciation of his complaint. His findings shall be endorsed to the Commission en banc through the Regional Director. The Commission en banc, after receipt of the endorsement shall immediately determined whether the act/s complained about would substantially affect the credibility or integrity of the proceedings had. If so, the Chairperson shall immediately order the suspension of the proceedings still had with notice to all parties concerned of the reasons for the suspension, and order the Regional Director to ask the complainant to formally file a petition, in which case, the petition shall be resolved by the Commission in the manner provided for in the succeeding

paragraph. Otherwise, no suspension of the proceedings shall be declared but the person or entity complained about shall be asked to explain in writing within fifteen (15) days from receipt thereof why he should not be censured for the prohibited acts committed.

Section 34. Petition for Nullification of Certificate of FPIC, its Proceeding or Non-Issuance of Certification Precondition.

The issuance of Certificate Precondition by the NCIP in Connection with any FPIC obtained or denied by the Community can be withheld only upon determination on the grounds raised in a petition duly filed by any party contesting the issuance thereof. The petition for non-issuance of the certificate precondition can be given due course only when the same is raised on the ground of commission of any of the prohibited acts as declared above or on ground of irregularity in the procedure as provided in these guidelines that substantially affects the interest of the parties involved. The petition shall be filed within the period of ten (10) days from the date of the decision of the community in the assembly as provided in these guidelines and before the execution of the MOA as required. The petition shall be resolved by the Commission within the period of thirty (30) days from the date of filing. The procedure for the resolution of the petition shall be governed by the special rules that this Commission shall provide for. The Commission may either declared the proceedings had as a nullity and determine the appropriateness of holding another proceedings or declared the proceedings as already done, and/or impose the administrative sanctions herein provided for the commission of any of the prohibited acts.

Section 35. Waiver of Right to FPIC; Injunction for Acts Circumventing the Purpose of FPIC Process.

Programs, projects, plans, activities or any development assistance or intervention that do not involve issuance of a license, permit, agreement, authority or concession from any government agency, regulatory body or local government units, solicited by the ICC/IP community themselves from whatever sources and in any form, made through their council of elders/leaders, do not require anymore compliance of the FPIC requirement as provided in these guidelines, provided the solicitation is signed by the majority members of the community. The

ICC/IP community is deemed to have waived their right to FPIC by that unilateral act of solicitation. However, in order to ensure that this exemption is not utilized as a mode of circumventing the law requirement on FPIC, NCIP shall validate the purpose of the solicitation by determining whether or not the solicitation made bears the approval of the majority of the council members and determine whether or not the same was made in accordance with the ICC/IP community's ADSDPP. If the solicitation is found to be unauthorized or if the solicitation is found to be contrary to the community's ADSDPP, NCIP shall require the Council of Elders/Leaders to undergo the process of FPIC of the community members as provided in these guidelines. Otherwise, the Commission shall exercise its injunction powers upon written complaint of a majority of the members of the community to enjoin the conduct or continued implementation of the program, project, plan or any development assistance or intervention until the solicitors have complied with the requirement of FPIC process in order to safeguard the rights of the other members of the community and protect their interest. The complaint, which is required to be signed by a majority of the members of the community, shall be filed before the Regional Hearing Officer of the NCIP in the region. Its decision is appealable to Commission en banc. The appeal shall be perfected within the period of ten (10) days from receipt of the decision.

VI. FINAL PROVISIONS

Section 36. Applicability to Pending Applications. This guidelines shall apply to all pending applications for issuance of certification Precondition and Issuance of certificate of Free, Prior and Informed Consent by the IP/ICC.

Section 37. Separability Clause. In case any clause, section, sentence, or provision of this Administrative Order or any portion hereof is held or declared unconstitutional or invalid by a competent Court, the other sections or portions hereof which are not affected thereby shall continue to be in full force and effect.

Section 38. Repealing Clause. This Administrative Order repeals NCIP AO-03 Series of 1998. The provisions of other Circulars, Memoranda, Administrative Orders, issued by this Commission,

inconsistent herewith or contrary to the provisions hereof are hereby repealed or modified accordingly.

Section 39. Effectivity. This Administrative Order shall take effect fifteen (15) days from its registration in the Office of the National Administration Register, U.P. Law Center, Diliman, Quezon City, Philippines.

**APPROVED. FEBRUARY 19, 2002,
AT QUEZON CITY, PHILIPPINES.**

(Sgd) **CORAZON M. ESPINO**
Commissioner

(Sgd) **NORMA MAPANSA-GONOS**
Commissioner

(Sgd) **LAGTUM A. PASAG**
Commissioner

(Sgd) **EDTAMI P. MANSAYAGAN**
Commissioner

(Sgd) **REUBEN D.A. LINGATING**
Commissioner

(Sgd) **PABLO SANTOS**
Commissioner

(Sgd) **EVELYN S. DUNUAN**
Chairperson