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ANNEX: A "37"

Date: 10 9 2026 MAR



Republic of the Philippines
OFFICE OF THE OMBUDSMAN
Sen. Miriam P. Defensor-Santiago Avenue (formerly Agham Road)
Brgy. Bagong Pag-asa, Quezon City 1105

HENRY I. ENCARNACION

Complainant,

- versus -

OMB-C-A-NOV-23-0113
(Administrative Case)

For: Conduct Prejudicial to the
Best Interest of the Service,
Grave Misconduct and Serious
Dishonesty

RAMON CHU OÑATE (SG 27)

Municipal Mayor
Municipality of Palompon, Leyte

Respondent.

x-----x

DECISION

This resolves the administrative aspect of the *Complaint* filed on 18 October 2023¹ by Henry I. Encarnacion (complainant) against respondents Municipal Mayor Ramon Chu Oñate (Oñate), former Municipal Planning and Development Coordinator Isagani Arboleda Jaena (Jaena), former Municipal Environment and Natural Resource Officer Raoul Toting Bacalla (Bacalla) and Forest Ranger Terence Seco Osmeña (Osmeña), all of the Municipality of Palompon, Leyte. Complainant seeks to hold respondents liable for initiating the passing of a defective Comprehensive Land Use Plan (CLUP) and for partiality towards DBSN Farms Agriventure Corporation (DBSN Farms), a business owned by respondent Oñate.

Among the respondents named in the Complaint, only respondent Oñate is administratively charged with Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service.

¹ Records, Administrative Case Folder, pp. 2-52.

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OMB-Proper 26 SEP 2024

Complainant's Allegations

Oñate served as Mayor from 2010 until 2019 and was reelected again in 2022 up to the present. Sometime in 2017, he acquired Lot 5143 located in Brgy. San Joaquin, Palompon, Leyte, which at that time was classified as agricultural land. Complainant claims that since 1927, the 22-hectare lot has been primarily classified as timberland, with only about seven hectares designated as alienable and disposable land. Based on the 2009-2013 CLUP of the Municipality of Palompon, Leyte, the land use of Barangays Rizal, Taberna, Lat-osan, Cambacbac, including Brgy. San Joaquin, was timberland, consistent with the 1927 Land Classification Map of the Department of Environment and Natural Resources (DENR). Moreover, the lot in question originally formed part of the Palompon Watershed Forest Reserve (PWFR) under the 2001 CLUP.²

A Municipal Technical Working Group (MTWG) was tasked by Oñate to formulate the updated CLUP and Zoning Ordinance (ZO). On 08 December 2017, a public hearing was held for the purpose of presenting the draft CLUP where Jaena explained the municipality's data on natural environment and other information relative thereto.

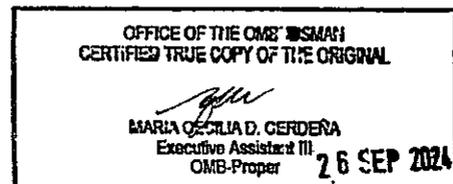
In 2018, Oñate, as Chairman of the Municipal Development Council (MDC), approved the updated CLUP and endorsed the same to the Sangguniang Bayan of Palompon, Leyte, for its adoption even though the Forest Land Use Plan (FLUP) has not yet been approved. Thereafter, the Sangguniang Bayan of Palompon, Leyte passed Municipal Resolution No. 386-070518 approving the CLUP 2018-2027.³

The Provincial Land Use Committee (PLUC) reviewed the CLUP and, in Resolution No. 2018-01,⁴ Series 2018, unanimously approved the same.

² Proclamation No. 212.

³ Records, Administrative Case Folder, pp. 63-93.

⁴ Records, Administrative Case Folder, pp. 377-379.



The PLUC then endorsed the CLUP and ZO of the Municipality of Palompon, Leyte, for calendar years 2018-2027 to the Sangguniang Panlalawigan for approval.

In its Resolution No. 2018-403 dated 27 July 2018, the Sangguniang Panlalawigan approved the subject CLUP and the ZO.⁵

Sometime in 2018, the ownership of Lot 5143 was transferred to DBSN Farms. The property was subdivided into two parcels of land and was issued new Tax Declarations with high valuations. On 19 July 2018, Environment Compliance Certificate (ECC) No. ECC-OL-R08-2018-0098⁶ was issued to DBSN Farms for the construction of Layers (Breeder Hen) Farm. However, at the time DBSN Farms applied for an ECC, the land use classification of Lot 5143 is agricultural. A *Certification*⁷ from the Department of Agriculture (DA) Region 8 shows that DBSN Farms failed to secure a Certification for Land Use Reclassification.

In 2019, DBSN Breeder Farm started introducing improvements on the property and have carried out excavation and quarrying activities that rendered the land suitable for industrial and not agricultural purposes. Complainant asserts that premature conversion of agriculture land is punishable under Republic Act (R.A.) No. 6657,⁸ as amended by R.A. 9700,⁹ and likewise under Section 11 of R.A. 8435.¹⁰ In particular, complainant underscores the provision of the law stating that any development activity that alters or modifies the characteristics of agricultural lands without an approved order of conversion from the DAR constitutes premature conversion.¹¹ Also, complainant stresses that reclassification is different from conversion, and that mere reclassification of agricultural land does not automatically allow a

⁵ Records, Administrative Case Folder, pp. 381-382.

⁶ Records, Administrative Case Folder, pp. 113-119.

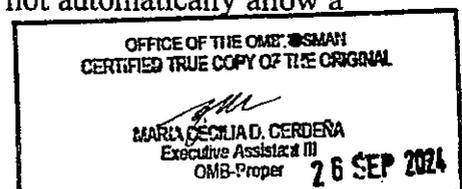
⁷ Records, Administrative Case Folder, p 120.

⁸ Comprehensive Agrarian Reform Law of 1998.

⁹ An Act Strengthening the Comprehensive Agrarian Reform Program (CARP)

¹⁰ Agriculture and Fisheries Modernization Act of 1997.

¹¹ Section 4, R.A. 8435.



landowner to change its use as there is a need to undergo the process of conversion.

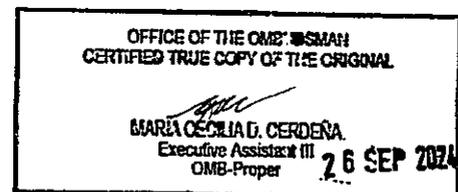
Complainant alleges that Oñate, using his position as Local Chief Executive and conspiring with his co-respondents, initiated, through the Municipal Planning Development Office (MPDO), the updating of the 2018-2027 CLUP despite the lack of the required FLUP. To favor Oñate's business interests at Lot 5143, the land use of Barangay San Joaquin was conveniently and erroneously classified as industrial zone. The said barangay should not have been rezoned, instead, it should have retained its original classification as timberland. Additionally, there were alterations to the maps, including the PWFR. The altered map erroneously included some communities and excluded certain barangays, such as San Joaquin, from the coverage of the PWFR under 2018-2027 CLUP. Consequently, areas in Brgy. San Joaquin and other barangays that were originally part of the PWFR were excluded from its coverage under the 2018-2027 CLUP and were declared as industrial zone.

It was further stated that on 3 April 2017, the Office of the Sangguniang Barangay of Barangay Tinag-an, Albuera, Leyte, endorsed a "Petition"¹² to DENR Action Center calling for concrete action against DBSN Farms for discharging waste into the river, and for the foul smell emanating from it which caused nausea to the residents and posed significant threat to their health and livelihood. On 02 March 2022, the DENR-Pollution Adjudication Board (PAB), in DENR-PAB Case No. 08-F01043-18 directed DBSN Farms to pay a fine of Php749,000.00 for violation of R.A. No. 9275.¹³

On 30 August 2022, the Environmental Management Bureau (EMB) issued a Notice of Violation to DBSN Farms for violating environmental

¹² Records, Administrative Case Folder, pp. 138-142.

¹³ Records, Administrative Case Folder, pp. 145-148.



laws.¹⁴ DBSN Farms paid Php108,579.48 to EMB-R8 as penalty for its violations.¹⁵

In January 2023, the EMB Region 8 likewise issued four Notices of Violation¹⁶ against Zachary Farms,¹⁷ and in a Decision dated 21 February 2023, the EMB ordered Zachary Farms to pay a fine totaling Php385,000.00 for violating environmental laws.¹⁸

Finally, complainant asseverates that Oñate should be charged for violating Section 78 of Presidential Decree (P.D.) No. 705¹⁹ and the NIPAS Law for the construction of DBSN Breeder Soil Conditioner Containment Area and the Eco-Village on Lot 5150, a forest land that is also situated within the PWFR. Any structure erected within the portion of Lot 5150 which is still classified as forest land, without authority under a license agreement, lease, license or permit granted by the DENR, is unlawful and makes the owner criminally liable. Complainant adds that Oñate also obstructed investigations from the DENR and EMB Region 8 to suppress the transgressions of DBSN Farms.

Hence, this Complaint.

By Order²⁰ of this Office dated 08 January 2024, respondent Oñate was directed to file his Counter-Affidavit in the above captioned case.

Prefatorily, it bears noting that only one complaint was filed against all the respondents, but complainant prayed²¹ for the imposition of administrative penalties solely against respondent Oñate. As such, the instant administrative case (OMB-C-A-NOV-23-0113) was docketed only against Oñate. However,

¹⁴ Records, Administrative Case Folder, pp. 153-156.

¹⁵ Records, Administrative Case Folder, pp. 157-158.

¹⁶ Records, Administrative Case Folder, pp. 163-168.

¹⁷ Also owned by respondent Oñate.

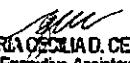
¹⁸ Records, Administrative Case Folder, pp. 169-180.

¹⁹ Forestry Reform Code of the Philippines, <https://www.officialgazette.gov.ph/1975/05/19/presidential-decree-no-705-s-1975/>

²⁰ Records, Administrative Case Folder, pp. 215-216.

²¹ See item no. 1 of the Prayer.

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26 SEP 2024

for a more complete appreciation of the issues raised in the complaint, the Counter-Affidavits submitted by Oñate's co-respondents in the counterpart criminal docket (OMB-C-C-NOV-23-0110) will be referenced in the discussion below.

Respondents' Defenses

Oñate, in his Counter-Affidavit²² and Position Paper²³, alleges that complainant, a former member of the Sangguniang Bayan of Palompon, Leyte, resorted to filing a series of administrative and criminal cases²⁴ against the current elected officials of the Local Government Unit (LGU) of Palompon after losing in the May 2022 elections. The said cases were eventually dismissed.²⁵ Oñate claims that the complainant is using this Office to advance his political agenda by filing frivolous cases against him.

Oñate avers that the subject CLUP underwent "The 12-step Process to Comprehensive Land Use Plan Preparation" spearheaded by the Municipal Technical Working Group (MTWG), in constant consultations with the Housing and Land Use Regulatory Board (HLURB), Philippine Statistics Authority (PSA), Provincial Government of Leyte, Bureau of Water and Soil Resources of the DA and other agencies.

The Chairperson of the Provincial Land Use Committee (PLUC) issued a *Certification*²⁶ dated 16 April 2018, stating that the MTWG has satisfactorily complied with all the comments and recommendations of the PLUC for the preparation of the 2018-2027 CLUP and its Zoning Ordinance (ZO). It was further certified that the PLUC endorsed the same to the Sangguniang Bayan for adoption of the said CLUP and enactment of the ZO.

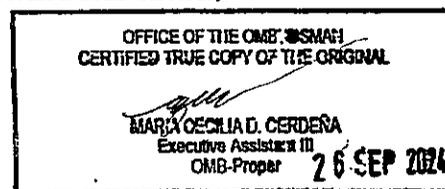
²² Records, Administrative Case Folder, pp. 228-254.

²³ Records, Administrative Case Folder, pp. 582-593.

²⁴ OMB-V-C-22-0166 and OMB-V-A-22-0181; OMB-V-C-22-0062 and OMB-V-A-21-0068.

²⁵ Joint Resolution dated 27 February 2023 and Joint Order dated 2 December 2022. Records, Administrative Case Folder, pp. 255-275.

²⁶ Records, Administrative Case Folder, p. 380.



In Municipal Resolution No. 386-070518, the Sangguniang Bayan approved the CLUP 2018-2027. Thereafter, the PLUC endorsed for approval the CLUP and ZO for calendar years 2018-2027 to the Sangguniang Panlalawigan of Leyte, which was unanimously approved in its Resolution No. 2018-403.²⁷

Anent the issue on the lack of Forest Land Use Plan (FLUP), Oñate attaches a letter²⁸ dated 25 January 2024 from the Department of Human Settlements and Urban Development (DHSUD), confirming that an approved FLUP is not a prerequisite to the passage of a CLUP.

Oñate asserts that he did not alter the PWFR map. He maintains that the map used by the LGU in drafting the CLUP is the same as the one published in geoportal PH and finds its origin from the DENR and Mines and Geosciences Bureau (MGB). Finally, he submits that the Municipality of Palompon is empowered to reclassify lands as provided under Section 20 of the Local Government Code (LGC).²⁹ Based on the approved CLUP and ZO of the Municipality of Palompon, Lot 5143 in Brgy. San Joaquin is indeed situated in an Industrial Zone.

Jaena³⁰ states that he currently works as a consultant for the Office of the Municipal Planning and Development Council of the LGU of Palompon, Leyte. At the time material to the case, he served as the MPDC and was included in the CLUP Technical Working Group.

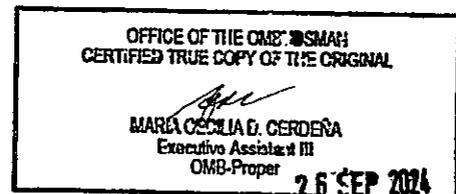
Jaena echoes Oñate's defenses and insists that the CLUP underwent the "The 12-step Process to Comprehensive Land Use Plan Preparation". Every plan, activity, and projection stipulated in the CLUP was carefully deliberated in a series of workshops while following a very strict protocol imposed by

²⁷ Records, Administrative Case Folder, pp. 381-382.

²⁸ Records, Administrative Case Folder, pp. 700-701.

²⁹ R.A. 7160.

³⁰ Records, Criminal Case Folder, pp. 557-568.



HLURB. The CLUP was reviewed and approved by the PLUC and eventually by the Sangguniang Panlalawigan of Leyte.³¹

Jaena submits that he had no authority to alter the PWFR geographic position. The Technical Description under Presidential Proclamation No. 212 issued on 02 January 1988, when plotted, resulted in an open polygon and it is located in sea near the province of Cebu. Also, he insists that the map used by the LGU in the drafting of its CLUP was sourced from the DENR and MGB. The rezoning of a portion of land within Brgy. San Joaquin and Cambacbac finds its basis in Section 20 of the Local Government Code.

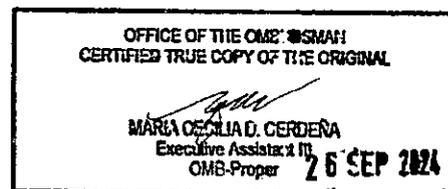
Regarding his role as a project engineer in the construction of Oñate's DBSN Farms, Jaena requested and received clearance to practice his profession as a Civil Engineer from Mayor Oñate, and from Mayor Arevalo back in 2019. He asserts that there was no conflict of interest in issuing locational clearance for DBSN Farms as the same was dated 01 February 2019, which is after the Sangguniang Panlalawigan of Leyte had already approved the CLUP 2018-2027 and the ZO on 27 July 2018.

Bacalla³² interposed the same defenses as that of his co-respondents, adding that he currently works as a consultant for the Municipal Environment and Natural Resource Office. Prior to serving as a consultant, he was appointed as the MENRO before he was unfairly dismissed from the service.

The Palompon Forest Land Use Plan (FLUP) was formulated with the help of DENR in 2013, but was not officially approved by the Sangguniang Bayan. During the drafting and approval process of the CLUP, the HLURB did not mention that the FLUP is a prerequisite for its approval. Recently, with the assistance of the Provincial Environment and Natural Resources Office (PENRO), the FLUP was updated, presented and approved by the

³¹ Resolution No. 2018-403.

³² Records, Criminal Case Folder, pp. 612-621.



DENR Regional Technical Review Team, and a Municipal Resolution was passed to support the said FLUP.

Contrary to complainant's assertions, Bacalla was not designated as member of the TWG but he participated in the sectoral planning of the 2018 CLUP drafting. He claims that he had no involvement in the technicalities of the CLUP's passage, and he has no expertise to manipulate maps. He notes that constant consultations with national agencies occurred during the CLUP drafting.

Lastly, Bacalla stresses that he was exonerated by the Civil Service Commission (CSC) in the administrative case filed against him for the alleged illegal dumping of DBSN Farms' waste.³³

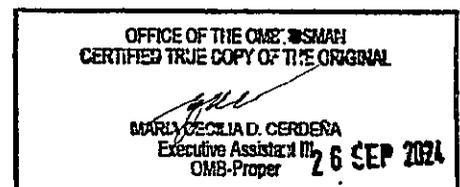
Osmeña,³⁴ for his part, alleges that he currently works as a consultant for the Human Resource Management Section of the LGU of Palompon. He asserts that he was unfairly dismissed by former Mayor Arevalo, and such dismissal is still pending appeal with the CSC.

As a Forest Ranger, Osmeña's main duties included processing documents related to tree cutting, chainsaw regulations and receiving forest protection complaints. During the drafting of the CLUP, he attended a seminar conducted by the HLURB, now DHSUD. He denies being a member of the MTWG and claims that he was merely a member of the Secretariat for the MTWG. In his role as Forest Ranger for the Municipality, he was able to contribute to the sectoral planning specifically in the drafting of write-ups and descriptions on biodiversity, flora and fauna and other marine organisms.

Osmeña states that Zachary Farms and DBSN Farms are both located on titled lots. Zachary farm existed even prior to his employment as a Forest Ranger. When the title to the property where Zachary Farm is located was

³³ Records, Criminal Case Folder, pp. 727-736.

³⁴ Records, Criminal Case Folder, pp. 738-745.



issued in 2005, he was only about twelve (12) years old. His name was mentioned only in the Acknowledgement section of the CLUP as one of the contributors. He argues that it would be absurd to equate being mentioned in the acknowledgement of a document with having exhibited manifest partiality toward a particular entity.

In a Clarificatory Hearing held on 27 May 2024 at 2:00 in the afternoon,³⁵ only the respondents appeared.

ISSUE

Whether there is substantial evidence to hold Oñate administratively liable for the acts complained of.

RULING

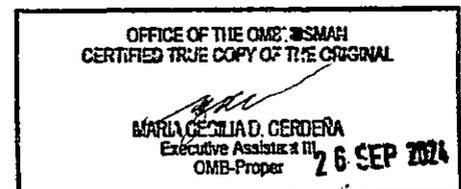
I.

Complainant seeks to hold Oñate liable for approving and updating the CLUP, and eventually endorsing it to the Sanggunian for adoption, despite the FLUP not being approved.

While it is true that Oñate and his co-respondents initiated the updating of the CLUP, the new CLUP requires approval from both the Sangguniang Bayan of Palompon, Leyte, and Sangguniang Panlalawigan of Leyte to be valid and effective. The Sangguniang Bayan approved the new CLUP through Municipal Resolution No. 386-070518, and the Sangguniang Panlalawigan unanimously approved it in Resolution No. 2018-403.³⁶ It is presumed that both Sanggunians thoroughly reviewed the CLUP and approved the same only after being convinced that the CLUP has complied with all the requirements under the pertinent regulations. This is especially so in light of the presumption of regularity, which herein ought to prevail in

³⁵ Transcript, Records, Administrative Case Folder, pp. 828-832.

³⁶ Records, Administrative Case Folder, pp. 381-382.



the absence of any clear and convincing evidence to the contrary. Records show that none of the respondents are members of the Sangguniang Bayan of Palompon or Sangguniang Panlalawigan of Leyte. The complainant has not shown any proof that the respondents unduly influenced the Sangguniang Bayan and Sangguniang Panlalawigan to approve the CLUP.

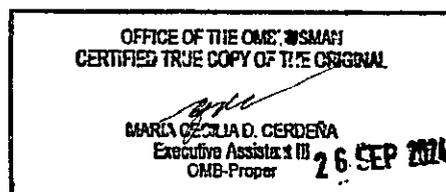
Furthermore, the complainant's contention that the lack of a FLUP rendered the CLUP defective is unfounded. In a letter³⁷ dated 25 January 2024, the DHSUD clearly stated that an approved FLUP is not a prerequisite for passing a CLUP.

Complainant's allegation that the reclassification of Brgy. San Joaquin from agricultural zone to industrial zone is highly irregular lacks evidentiary foundation. The Municipality of Palompon is empowered to reclassify lands, and such power finds basis in Section 20 of the Local Government Code. The approved CLUP and ZO of Palompon indicate that Lot 5143 in Brgy. San Joaquin is indeed situated in an industrial zone.

Also, there is no convincing proof that the PWFR map was altered by the respondents. On the contrary, there is a *Certification*³⁸ from the Forest Management Bureau stating "that the boundary of PWFR published in the geoportal PH on 14 March 2017 is a georeferenced map of W.R.-67 Map of PWFR, set aside under Section 18 of P.D. 705, as certified correct by then Director Cirilo B. Serna of the Bureau of Forest Development, Ministry of Natural Resources dated November 1986". As previously discussed, it was the Sangguniang Bayan and Sangguniang Panlalawigan who approved the CLUP. These collegial components of the LGU are accorded the presumption of regularity in the performance of their functions, and it is presumed that they evaluated the documents submitted to them before approving the 2018-2027 CLUP. The rule is well-settled that he who alleges a fact has the burden of

³⁷ Records, Administrative Case Folder, pp. 576-577.

³⁸ Records, Administrative Case Folder, pp. 579.



proving it and a mere allegation is not evidence.³⁹ Verily, complainant's allegations pertaining to alteration of the PWFR map are unsubstantiated.

II.

There is evidence on record showing that DBSN Farms, which is owned by Oñate, built structures and improvements on agricultural land that has not been lawfully converted to non-agricultural use. As stated in Oñate's Counter-Affidavit, Lot 5143 was obtained from Enriqueta O. Gaspan, Ranulfo O. Gaspan, Socorro G. Cubillo and Virgilio O. Gaspan. Prior to DBSN Farms' acquisition of Lot 5143, Tax Declaration No. 08-31038-00121 under the names of the previous owners shows that Lot 5143 is classified as agricultural land.⁴⁰

In his defense, Oñate argues that Lot 5143 is now located within an industrial zone per approved CLUP and Zoning Ordinance of the Municipality of Palompon. He insists that Lot 5143 is within alienable and disposable area, and he cites as basis Section 20 of the Local Government Code which empowers a municipality to reclassify lands.

Oñate misses the point.

In the landmark case of *CREBA v. The Secretary of Agrarian Reform*⁴¹ ("*CREBA*"), it was held that a mere reclassification of an agricultural land does not automatically allow a landowner to change its use. He has to undergo the process of conversion before he is permitted to use the agricultural land for other purposes⁴², viz:

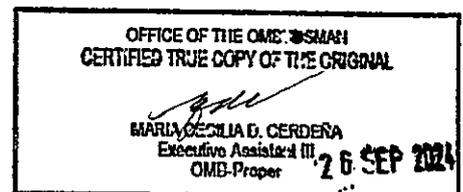
This Court held in *Alarcon v. Court of Appeals* that reclassification of lands does not suffice. Conversion and reclassification differ from each other. Conversion is the act of changing the current use of a piece of agricultural land into some other use as approved by the DAR while reclassification is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, and

³⁹ *Luxuria Homes, Inc. v. CA*, G.R. No. 125986, January 28, 1999.

⁴⁰ Records, Administrative Case Folder, p. 53.

⁴¹ G.R. No. 183409, June 18, 2010.

⁴² *Id.*



commercial, as embodied in the land use plan, subject to the requirements and procedures for land use conversion.

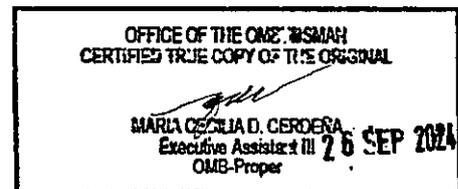
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It is of no moment whether the reclassification of agricultural lands to residential, commercial, industrial or other non-agricultural uses was done by the LGUs or by way of Presidential Proclamations because either way they must still undergo conversion process. It bears stressing that the act of reclassifying agricultural lands to non-agricultural uses simply specifies how agricultural lands shall be utilized for non-agricultural uses and **does not automatically convert agricultural lands to non-agricultural uses or for other purposes.** (emphasis supplied)

Thus, even assuming that there was a valid reclassification through a zoning ordinance passed by the LGU, there is still a need to secure a Conversion Order from the DAR before Lot 5143 can be utilized for non-agricultural purposes. The records show that poultry farms and other improvements were constructed on Lot 5143. As pointed out by complainant, there is a *Certification*⁴³ from the DAR, dated 24 August 2023, stating that DBSN Farms did not apply for land use conversion with respect to Lot 5143.

Section 52.3 of DAR Administrative Order No. 01-02, otherwise known as the *2002 Comprehensive Rules on Land Use Conversion*, provides that there is premature conversion when an undertaking of any development activity results in the modification or alteration of the physical characteristics of the agricultural lands to render them suitable for non-agricultural purposes without an approved Conversion Order from the DAR. Here, there is no gainsaying that Lot 5143 is agricultural land. Following the doctrine laid down by the Supreme Court in *CREBA*, mere enactment of a zoning ordinance that reclassifies agricultural lands into industrial zones will not suffice to permit spontaneous utilization of the land for non-agricultural uses. A Conversion Order is *sine qua non*. The evidence on record shows that DBSN Farms erected structures and farms and utilized Lot 5143 for non-agricultural purposes without first securing a Conversion Order from the

⁴³ Records, Administrative Case Folder, p. 120.



DAR. Clearly, this is an act of premature conversion proscribed under Section 4 of R.A. 8435.

III.

While there is no convincing proof that the PWFR map was altered by Oñate and his co-respondents, evidence on record tends to establish that Lot 5150, where DBSN Breeder Soil Conditioner Containment Area and the Eco-Village were constructed, is situated on timberland.

Oñate contends that Lot 5150 is alienable and disposable since it is covered by a transfer certificate of title (TCT).⁴⁴ He states that the construction of the DBSN Breeder Soil Conditioner Containment Area or the Eco-Village did not violate Section 78 of P.D. 705, for the reason that Lot 5150 is a registered private property.

It is already a settled rule that forest lands or forest reserves are not capable of private appropriation and possession thereof, however long, or convert them into private property unless such lands are reclassified and considered disposable and alienable.⁴⁵

In *Director of Land Management v. Court of Appeals*,⁴⁶ the Supreme Court held that land within the Central Cordillera Forest Reserve cannot be the subject of titling or land registration proceeds, viz:

There can be no imperfect title to be confirmed over lands not yet classified as disposable or alienable. Declassification of forest land is an express and positive act of Government. It cannot be presumed. Neither should it be ignored nor deemed waived.

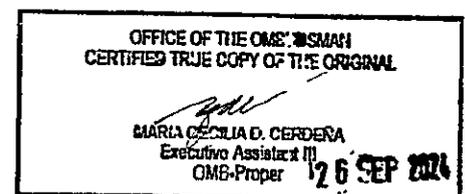
Also, in *Republic v. Heirs of Ignacio Daquer ("Daquer")*,⁴⁷ the Supreme Court was categorical in reiterating that there must be a positive act

⁴⁴ Records, Administrative Case Folder, pp 442-443.

⁴⁵ *Republic v. CA and Carantes*, G.R. No. L-56948, September 30, 1987.

⁴⁶ G.R. No. 81961, April 18, 1989.

⁴⁷ G.R. No. 193657, September 4, 2018.



from the government declaring lands of the public domain open for alienation and disposition:

At the outset, it must be emphasized that in classifying lands of the public domain as alienable and disposable, there must be a positive act from the government declaring them as open for alienation and disposition. In *Secretary of the Department of Environment and Natural Resources v. Yap*:

A positive act declaring land as alienable and disposable is required. In keeping with the presumption of State ownership, the Court has time and again emphasized that there must be a positive act of the government, such as an official proclamation, declassifying inalienable public land into disposable land for agricultural or other purposes. . . (Emphasis in the original, citations omitted)

A positive act is an act which clearly and positively manifests the intention to declassify lands of the public domain into alienable and disposable

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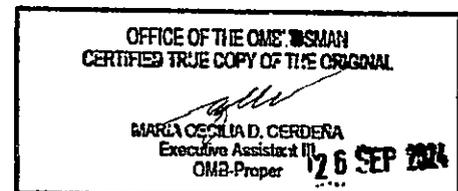
The State cannot be estopped by the omission, mistake, or error of its officials or agents. It may revert the land at any time, where the concession or disposition is void *ab initio*.

As indicated in the 26 June 2023 *Memorandum*⁴⁸ of the CENR Officer, a substantial portion of Lot 5150, *i.e.* 209,834 m² out of 271,058 m², is classified as timberland. Also, there is a DENR *Certification*⁴⁹ stating that a portion of Lot 5150 is within alienable and disposable area, and the remaining portion is within timberland area.

Section 78 of P.D. 705 states that *Unlawful Occupation* is committed when a person enters and occupies or possesses forest land without authority under a license agreement, lease, license or permit. Indeed, DBSN Farms' structures were built on forest land which is prohibited by law. Nevertheless, this Office is inclined to give credence to Oñate's explanation that Lot 5150 is covered by a TCT, which negates the element that occupation of a forest land is without authority under a license agreement, lease, license or permit.

⁴⁸ Records, Administrative Case Folder, p. 187.

⁴⁹ Records, Administrative Case Folder, p. 191.



Perforce, this Office cannot fault Oñate for relying on the belief that Lot 5150 is alienable and disposable given that there is a TCT covering the land.⁵⁰

The case of *Daquer* teaches that the State has the right to institute an action for the reversion of an inalienable land of the public domain erroneously awarded by its officials and agents.⁵¹ But as Oñate points out, reversion proceedings have yet to be initiated by the State. Thus, while the evidence on record indicates that Lot 5150 is partly situated on timberland, the charge for unlawful occupation cannot prosper on account of the existence of “TCT No. T-4478” which has yet to be cancelled in an appropriate proceeding. Besides, there is insufficient evidence to show that Oñate knew of the fact that Lot 5150 was situated on timberland at the time when the DBSN Breeder Soil Conditioner Containment Area and the Eco Village were constructed.

Elementary is the principle of law that for areas not being capable of registration such as public lands, their inclusion in a certificate of title does not convert the same into properties of private ownership or confer title on the registrant.⁵² Be that as it may, this Office is bereft of authority to declare invalid the TCT covering Lot 5150 so as to hold Oñate liable for occupying a forest land. A titleholder is entitled to all the attributes of ownership of the property, including possession.⁵³ Hence, without any evidence that Oñate had foreknowledge that DBSN Farms was possessing and building on forest land, the charge for *Unlawful Occupation* against him would have no leg to stand.

IV.

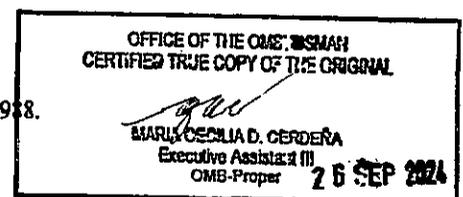
Similar to Lot 5150, there is evidence that Lot 6580, where Zachary Farms was built, is also situated inside timberland area. Just the same however, Lot 6580 is also covered by a Free Patent Title issued in favor of

⁵⁰ Records, Administrative Case Folder, pp 442-443.

⁵¹ G.R. No. 193657, September 4, 2018.

⁵² See *Republic v. Hon. De Los Angeles*, G.R. No. L-30240, March 25, 1988.

⁵³ See *Vda. De Aguilar v. Sps. Alfaro*, G.R. No. 164402, July 5, 2010.



Oñate on 14 September 2005 under Patent No. 083740-03990, duly registered with the Register of Deeds of Leyte under OCT No. P-50882.⁵⁴

Considering that there is also a certificate of title issued over Lot 6580, Oñate cannot be held liable for the improvements built thereon absent evidence that he had prior knowledge of its classification as forest land. On this score, this Office notes the following statement in DENR's *Consolidated Comments* to House Resolution No. 788 submitted to Hon. Elpidio F. Barzaga, Jr.⁵⁵, to wit: "This lot will be subjected to reversion back to its original state as Forest/Timberland by filing appropriate case in court to include the cancellation of the issued Free Patent Title."⁵⁶

V.

Records shows that back in April 2017, the Sangguniang Barangay of Tinag-an, Albuera, Leyte, endorsed a "Petition"⁵⁷ to the DENR Action Center concerning the foul odor and waste coming from DBSN Farms. The Petition stated that respondent Oñate was invited to sit during the council's session to provide clarification as to why the canal of their drainages was constructed towards Kanselok Brook which is connected to the seashore. According to Oñate, the waste from the canal shall be purified and may even be good for washing and drinking.

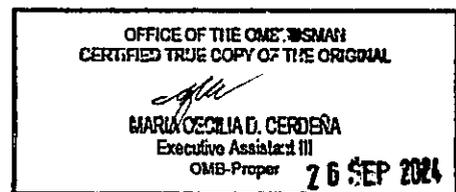
The Petition went on to state that a couple of weeks after the plant's operations, dead fishes floated in the river and in the seashore, and the number of fish in the locality had diminished. The Petition likewise decried the excessive discharge of foul order coming from the plant especially at night which can cause respiratory diseases to children and old people. It also cited an instance when foul odor reeked during a graduation ceremony of the Tinag-

⁵⁴ Records, Criminal Case Folder, pp 761-765.

⁵⁵ Records, Administrative Case Folder, pp. 383-398.

⁵⁶ *Id.* at 387.

⁵⁷ Records, Administrative Case Folder, pp. 137-142.



an, Mahayag Antipolo Farmers Association that was attended by the Provincial Governor, Hon. Leopoldo Dominico L. Petilla.

Records further reveal that the DENR-PAB, in an Order⁵⁸ dated 04 March 2022, directed DBSN Farms to pay a fine amounting to Php749,000.00 for violating R.A. 9275⁵⁹ consequent to the discharge of effluents from its Wastewater Treatment Facility. Meanwhile, in another Order⁶⁰ from DENR-PAB dated 16 November 2022, DBSN Farms was fined Php23,579.48 for operating without a Wastewater Discharge Permit.

In addition to the above mentioned DENR-PAB Orders, EMB Region 8 issued several *Notices of Violation*⁶¹ against Zachary farm, citing violations of R.A. 9275, R.A. 8749,⁶² P.D. 1586⁶³ and R.A. 6969.⁶⁴ In its Decision⁶⁵ dated 21 February 2023, the DENR-EMB directed the cancelation of Zachary Farm's ECC and the imposition of fines totaling Php385,000.00 arising from violations of ECC conditions relating to generation of pollution and improper wastewater disposal.

VI.

Based on the foregoing findings, there is substantial evidence to hold Oñate liable for Conduct Prejudicial to the Best Interest of the Service and Simple Neglect of Duty.

Conduct Prejudicial to the Best Interest of the Service

As earlier discussed, the evidence on record supports the conclusion that Lot 5143 was utilized for non-agricultural purposes without first securing a conversion order from the DAR. The case of *CREBA* is unequivocal in

⁵⁸ Records, Administrative Case Folder, pp. 145-148.

⁵⁹ Philippine Clean Water Act of 2004.

⁶⁰ Records, Administrative Case Folder, pp. 159-162.

⁶¹ Records, Administrative Case Folder, pp. 163-168.

⁶² Philippine Clean Air Act of 1999.

⁶³ Philippine Environmental Impact Statement System.

⁶⁴ Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990.

⁶⁵ Records, Administrative Case Folder, pp. 169-180.

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26 SEP 2024

holding that conversion of agricultural lands requires clearance from the DAR. Section 9 of DAR Administrative Order No. 03, s. 2021⁶⁶ further emphasizes that reclassification is different from conversion as the latter involves the act of changing the actual use of the agricultural land into uses as approved by the DAR. Section 13.2 of DAR Administrative Order No. 03, s. 2021 likewise clarifies that to constitute illegal conversion, it is sufficient that there is an attempt or an actual change in the use of the land from agricultural to a residential, commercial, or industrial, and other non-agricultural activity without a conversion grant or clearance based on the requirements under Section 65 of R.A. 6557, as amended.⁶⁷

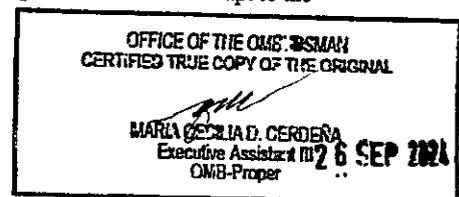
There is no denying that DBSN Farms' structures were constructed on Lot 5143 which was originally classified as agricultural land. The records reveal that no approved conversion order from the DAR has been issued for Lot 5143 to authorize its use for non-agricultural purposes. Verily, this Office cannot give credence to respondent Oñate explanation's that Lot 5143 is now within an industrial zone pursuant to an approved zoning ordinance. The law, jurisprudence and relevant regulations are clear and consistent in stating that a conversion order is required before an agricultural land, such as Lot 5143, can be utilized for non-agricultural purposes.

There being no conversion order, it follows that DBSN Farms has engaged in premature or illegal conversion as defined under Section 4 of R.A. 8435 and DAR Administrative Order No. 03, s. 2021.

Respondent Oñate contends that DBSN Farms is vested with a separate judicial personality and as such, he could not be made liable for violations of the law imputable to DBSN Farms' corporate acts. He insists that since DBSN

⁶⁶ Amending Certain Provisions of the Comprehensive Rules on Land Use Conversion Under DAR Administrative Order No. 1, Series of 2002 and Certain Provisions on DAR Administrative Order No. 1 Series of 2019 and DAR Administrative Order No. 6, Series of 2019 to Update the Rules to Adapt to the New Normal.

⁶⁷ *Id.*



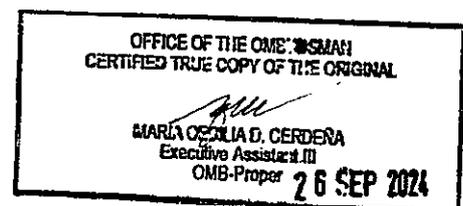
Farms is clothed with a personality separate and distinct from its owners, he cannot be made to answer for violation of R.A. 8435.

In *Villanueva v. Reodique*,⁶⁸ the Supreme Court had the occasion to rule that:

Under the Civil Service law and rules, there is no concrete description of what specific acts constitute the grave offense of conduct prejudicial to the best interest of the service. However, jurisprudence is instructive on this point that for an act to constitute such an administrative offense, the act need not be related to or connected with the public officer's official functions. As long as the questioned conduct tarnishes the image and integrity of his or her public office, the corresponding penalty may be meted on the erring public officer or employee.

Here, Oñate never denied owning DBSN Farms and being involved in its operations. Granting that DBSN has a separate corporate personality, still, it cannot be gainsaid that Oñate exercises control over DBSN Farms as owner thereof. The records are replete with documents demonstrating Oñate's ownership and close association with DBSN Farms. DBSN Farms violated the law by constructing improvements and structures on Lot 5143 and utilizing it for non-agricultural purposes sans clearance or authorization from the DAR. The illegal conversion and multiple environmental violations committed by a corporation owned by none other than the Municipal Mayor sends the wrong impression that public officials can flout the law in furtherance of personal interests.⁶⁹

The repeated environmental violations and disregard for land conversion rules perpetrated by Oñate's business enterprise have undeniably tainted the image and integrity of his office as Mayor.⁷⁰ On this score, this Office deems it proper to hold him liable for Conduct Prejudicial to the Best Interest of the Service.



⁶⁸ G.R. No. 221647, November 27, 2018.

⁶⁹ See *Office of the Ombudsman v. Castro*, G.R. No. 172637, April 22, 2015.

⁷⁰ See *Gaité v. Bismonte and Ombudsman*, G.R. No. 250344 (Notice), April 28, 2021.

Neglect of Duty

In *Office of the Ombudsman v. De Leon*,⁷¹ the Supreme Court held that a public official may be held guilty of gross neglect of duty if he fails to act upon a complaint about a violation of law that he is enforcing. He may be suspended or dismissed from office for his first office.⁷²

Records show that as early as 2017, respondent Oñate was already apprised of the issues as regards the air and water pollution caused by DBSN Farms as evinced by the Petition⁷³ endorsed by the Sangguniang Barangay of Tinag-an to the DENR. The said Petition was signed by more than 500 community members bewailing the foul order emanating from DBSN Farms. On 01 October 2019, the same Petition was reindorsed by the new punong barangay to the Sangguniang Bayan of Albuera.⁷⁴

As noted above, the DENR-PAB subsequently found DBSN Farms liable for violation of R.A. 9275 regarding the discharge of effluents from its Wastewater Treatment Facility. Again, in another Order from DENR-PAB dated 16 November 2022, DBSN Farms was fined for operating without a Wastewater Discharge Permit. In addition to these Orders, Zachary Farms, which is also owned by Oñate, was issued several Notices of Violation, ultimately leading to cancellation of its ECC for breach of conditions related to pollution and waste water discharge.

Under Chapter III, Article I, Section 444 (b)(3)(vii) of the Local Government Code, the municipal mayor is duty-bound to:

(vii.) Adopt adequate measures to safeguard and conserve land, mineral, marine, forest, and other resources of the municipality; provide efficient and effective property and supply management in the municipality; and protect the funds, credits, rights and other properties of the municipality; and

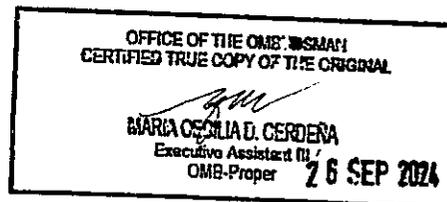
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⁷¹ G.R. No. 154083, February 27, 2013.

⁷² *Id.*

⁷³ Records, Administrative Case Folder, pp. 137-142.

⁷⁴ Records, Administrative Case Folder, pp. 143.



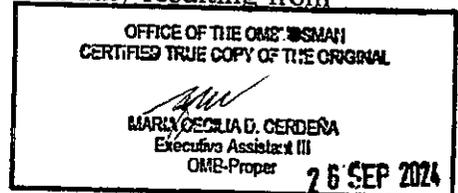
The Petition calling out DBSN Farms for pollution issues dating back to 2017, leading all the way to the numerous Orders finding DBSN liable for causing pollution, indubitably demonstrate that Oñate has, for several years as mayor, neglected his duty under the Local Government Code to safeguard and conserve the land, marine and forest resources of the municipality. This series of events portray a pattern of conscious indifference to his mandate to preserve the municipality's environment.

Not only did Oñate fail to address the environmental concerns raised by the affected residents of Brgy. Tinag-an, but more importantly, DBSN's violations happened under Oñate's watch, nay, in his own backyard so to speak. As mayor, he should have taken decisive actions and proactive steps to deal with DBSN's long standing and publicly known issues with regard to pollution and waste water discharge. Regrettably, Oñate, in his capacity as mayor, did nothing to address or even mitigate the environmental damages caused by DBSN Farms, a business entity that he owns.

Indeed, this Office cannot turn a blind eye towards Oñate's constant disregard of the infractions committed by DBSN Farms. Consequently, this Office finds and so holds that Oñate is guilty of Simple Neglect of Duty, defined as the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."⁷⁵

VII.

Turning now to the appropriate penalty, under the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS), Simple Neglect of Duty is a less grave offense punishable by suspension for one (1) month and one (1) day to six (6) months for the first infraction.⁷⁶



⁷⁵ *Office of the Ombudsman v. PS/Supt. Espina*, G.R. No. 213500, March 15, 2017.

⁷⁶ See *Monteroso v. Special Panel No. 13-01-IAB*, G.R. No. 235274-74, October 13, 2021.

Conduct Prejudicial to the Best Interest of the Service, on the other hand, is a grave offense, for which, the penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense, should be imposed.⁷⁷

Under Section 55 of the 2017 RACCS, if the respondent is found guilty of two (2) or more different offenses, the penalty to be imposed should be that corresponding to the most serious offense and the rest shall be considered as aggravating circumstances.⁷⁸

Conduct Prejudicial to the Best Interest of the Service is more serious than Simple Neglect of Duty. Consequently, the penalty for Conduct Prejudicial to the Best Interest of the Service shall be imposed, with Simple Neglect of Duty as an aggravating circumstance.⁷⁹ In other words, the appropriate penalty is the maximum of the penalty for Conduct Prejudicial to the Best Interest of the Service which is one year suspension without pay.

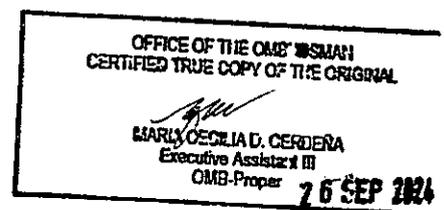
WHEREFORE, this Office finds respondent Ramon Chu Oñate **GUILTY of Conduct Prejudicial to the Best Interest of the Service and Simple Neglect of Duty** and imposes upon him the penalty of **SUSPENSION FOR ONE (1) YEAR WITHOUT PAY**.

In the event that the penalty of Suspension can no longer be enforced due to respondent's separation from government service, the penalty shall be converted into a Fine in the amount equivalent to respondent's salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits, or any receivable from his office.

SO ORDERED.

Quezon City, Philippines, 12 September 2024.

⁷⁷ *Id.*
⁷⁸ *Id.*
⁷⁹ *Id.*



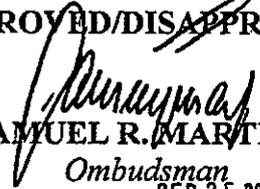

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Graft Investigation and Prosecution Officer III

RECOMMENDING APPROVAL:


PILARITA T. LAPITAN
Assistant Ombudsman, OMB Proper

APPROVED/DISAPPROVED:⁸⁰




SAMUEL R. MARTIRES

Ombudsman
SEP 25 2024

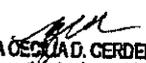


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26 SEP 2024

⁸⁰ The dispositive portion reads:

WHEREFORE, this Office finds respondent Ramon Chu Oñate GUILTY of Conduct Prejudicial to the Best Interest of the Service and Simple Neglect of Duty and imposes upon him the penalty of SUSPENSION FOR ONE (1) YEAR WITHOUT PAY.

In the event that the penalty of Suspension can no longer be enforced due to respondent's separation from government service, the penalty shall be converted into a Fine in the amount equivalent to respondent's salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits, or any receivable from his office.

SO ORDERED.