REPUBLIC OF THE PHILIPPINES
NATIONAL CAPITAL JUDICIAL REGION
REGIONAL TRIAL COURT
Quezon City, Branch ____

CHAMBER OF REAL ESTATE AND BUILDERS ASSOCIATIONS, INC. (CREBA),

Petitioner,

- versus -

G.R. No. _____
For: Petition for Certiorari and Prohibition, with application for TRO and preliminary injunction.

HON. NASSER C. PANGANDAMAN, in his capacity as the Secretary of the Department of Agrarian Reform,

Respondent.
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PETITION FOR CERTIORARI AND PROHIBITION
WITH APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION

Petitioner CHAMBER OF REAL ESTATE AND BUILDERS ASSOCIATIONS, INC. (CREBA), by counsel, unto this Honorable Court, respectfully states:

PREFATORY STATEMENT

1. This is a classic case of two competing rights that collide: the rights of ownership over private agricultural lands versus the government's right to infringe on it. In a nutshell, the specific question of law raised in this Petition is: May the Secretary of Agrarian Reform validly promulgate and implement rules and regulations such as the DAR Administrative Order No. 01, series of 2002, as amended, (hereinafter

referred to as the "DAR AO No. 01-02", "DAR Conversion Rules", or "Rules") which prohibit or otherwise restrict the use of agricultural lands in a manner that deviate from, expand, amend, or subvert the applicable laws on the matter and the Constitution?

NATURE OF PETITION

2. This Petition is a special civil action for Certiorari and Prohibition filed under Rule 65 of the 1997 Rules Civil Procedure. It seeks to annul and prohibit certain oppressive, unconstitutional and illegal provisions of the DAR Conversion Rules issued by the Secretary of Agrarian Reform in excess of or without jurisdiction or with grave abuse of discretion.

3. There is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law to annul or prohibit the enforcement of the illegal and unconstitutional DAR Conversion Rules, hence, this Petition.

THE PARTIES

4. Petitioner is a corporation duly organized and existing under Philippine law, represented herein by its President, Mr. Reghis M. Romero II, of legal age, with principal office located at the 3/F CREBA Building, Don Antonio Roces Avenue, Quezon City. It is the umbrella organization, and is hereby acting in behalf, of some 3,500 private corporations, partnerships, single proprietorships and individuals all

engaged directly or indirectly in land and housing development, building and infrastructure construction, materials production and supply, and services in the various related fields of engineering, architecture, community planning, and development financing. They are filing this Petition through the CREBA because of the direct injury they have sustained and continue to suffer under the Administrative Orders issued by the Department of Agrarian Reform that are herein sought to be annulled and prohibited.

5. Respondent is of legal age and is the duly appointed Secretary of Agrarian Reform, with principal office located at Elliptical Road, Diliman, Quezon City, where he may be served with the processes of this Honorable Court.

STATEMENT OF FACTS

6. On October 29, 1997, the Secretary of Agrarian Reform promulgated DAR Administrative Order No. 07, Series of 1997 ("DAR AO No. 07-97"), entitled *"Omnibus Rules and Procedures Governing Conversion of Agricultural Lands to Non-Agricultural Uses,"* consolidating all existing implementing guidelines issued by the DAR related to land use conversion. A certified true copy of DAR AO No. 07-97 is attached hereto as **ANNEX "A"**.

7. On March 30, 1999, the Secretary of Agrarian Reform issued DAR Administrative Order No. 01, series of 1999 (DAR AO No. 01-99), entitled *"Revised Rules and Regulations on the Conversion of Agricultural*

Lands to Non-Agricultural Uses," updating the rules on land use conversion and repealing all issuances inconsistent with it. A certified true copy of DAR AO No. 01-99 is attached hereto as **ANNEX "B"**.

8. On February 28, 2002, the Secretary of Agrarian Reform issued DAR Administrative Order No. 1, series of 2002 (DAR AO No. 01-02), entitled "*2002 Comprehensive Rules on Land Use Conversion*," further updating the rules on land use conversion and repealing all issuances inconsistent with it. A certified true copy of DAR AO No. 01-02 is attached hereto as **ANNEX "C".**

9. On August 2, 2007, the Secretary of Agrarian Reform issued DAR Administrative Order No. 5, series of 2007 [DAR AO No. 05-07), amending certain sections of DAR AO No. 01-02. A certified true copy of DAR AO No. 05-07 is attached hereto as **ANNEX "D".**

10. On April 15, 2008, respondent, as the Secretary of Agrarian Reform, issued a Memorandum temporarily suspended the processing and approval of all land use conversion applications effective immediately. A copy of this Memorandum, dated April 15, 2008, is attached hereto as **ANNEX "E"**.

11. DAR AO No. 01-02, as amended by DAR AO No. 05-07, replaced its predecessors, DAR AO No. 07-97 and DAR AO No. 01-99. Discussion shall therefore be confined to the former, it being understood that "Conversion Rules" or simply "Rules" refer to DAR AO No. 01-02, as amended.

GROUNDS FOR THE ALLOWANCE OF THIS PETITION

I.

THE SECRETARY OF AGRARIAN REFORM ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN HE PROMULGATED DAR ADMINISTRATIVE ORDER NO. 1, SERIES OF 2002, AS AMENDED.

II.

THE OFFENSIVE PROVISIONS OF DAR ADMINISTRATIVE ORDER NO. 1, SERIES OF 2002, AS AMENDED, ARE CONTRARY TO LAW AND THE CONSTITUTION.

ARGUMENTS

12. As the foregoing grounds are essentially intertwined, these shall be discussed jointly.

13. Before delving into details, petitioner wishes to present a shortlist of respondent's illegal and unconstitutional acts. By mere administrative fiat, the respondent DAR Secretary has:

A. ***Expanded the coverage of the Comprehensive Agrarian Reform Program*** ("CARP") to include lands that are specifically exempt or excluded therefrom under Republic Act No. ("RA") 6657;

B. ***Expanded the scope of its conversion authority to cover practically all lands***, beyond the

restrictive limits set by Congress under the law, specifically Section 65 of RA 6657;

C. ***Disregarded and dispensed with the criteria and conditions prescribed by Congress for conversion***, and promulgated its own prohibitive set of conditions that virtually precludes the non-agricultural use of land;

D. ***Imposed a total ban on the conversion and reclassification*** of irrigated and irrigable lands;

E. ***Restricted the conversion*** and reclassification ***of all other lands*** that are not covered by its conversion ban;

F. Declared that only those lands reclassified prior to the effectivity of RA 6657 are CARP-exempt, but nonetheless ***includes these lands within the scope of the conversion ban and restrictions***[2] even as it requires that exemption clearance still be secured for these exempt lands under conditions that negate the exemption granted by the law itself;

G. ***Instituted and pursued administrative and criminal actions*** against any development activity undertaken without its approval or clearance; and

H. ***Temporarily suspended the processing and approval of all land use conversion applications.***

14. Petitioner shall now dwell on the above points at length.

I.

THERE IS A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND AN ARROGATION OF LEGISLATIVE POWER IN VIOLATION OF THE PRINCIPLE OF SEPARATION OF POWERS, FOR, BY PROMULGATING AND ENFORCING CONVERSION RULES THAT GO BEYOND THE LIMITS SET FORTH UNDER THE LAW, THE DAR SECRETARY HAS EXERCISED POWERS BEYOND THOSE CONFERRED BY LAW AND POWERS THAT APPERTAIN TO THE LEGISLATURE.

DAR's Conversion Rules unlawfully enlarged the legal signification of "agricultural lands".

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15. Basic is the rule as laid down in Article 7 of the Civil Code, that: "*Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.*"[1] Administrative regulations derive their validity from the statute that they were intended to implement.[2]

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[1] Art 8, Civil Code of the Philippines.
[2] *GMCR, Inc. vs. Bell Telecommunications Phil., Inc.*, 271 SCRA 790.

16. RA 6657, also known as the "Comprehensive Land Reform Act of 1998" (CARL), defines "agricultural land" as referring "*to land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial, or industrial land.*"[3] A similar definition is contained in Section 4 of Republic Act No. 8435[4], also known as the "Agriculture and Fisheries Modernization Act of 1997."

17. The DAR's Conversion Rules, however, enlarged the legal signification of "agricultural lands" to include lands *"not classified by law as mineral land, forest or timber, or national park, nor reclassified as residential, commercial, industrial or other non-agricultural uses before June 15, 1988."*[5] In effect, lands reclassified by law or by LGU ordinance after the effectivity of CARL on June 15, 1988 remain as agricultural lands and continue to be subject to DAR's jurisdiction.

18. The DAR Secretary has no statutory authority to reconfigure the meaning of "agricultural lands" or assume authority over lands that had ceased to be agricultural. In fact, the Supreme Court, in *Natalia Realty vs. DAR,*[6] decreed that DAR has no jurisdiction with respect to reclassified agricultural lands.

> *" As to what constitutes 'agricultural land', it is referred to as 'lands devoted to agricultural*

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[3] Sec. 3c, Republic Act No. 6657.
[4] Sec. 4 of Republic Act No. 8435 defines "Agricultural Lands" as "*lands devoted to or suitable for the cultivation of the soil, planting of crops, growing of trees, raising of livestock, poultry, fish or aquaculture production, including the harvesting of such farm products, and other farm activities and practices performed in conjunction with such farming operations by persons whether natural or juridical and not classified by law as mineral land, forest land, residential land, commercial land, or industrial land.*"
[5] Sec. 2, DAR AO 01-22.
[6] 225 SCRA 278.

> *activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land.' The deliberations of the Constitutional Commission confirm this limitation. 'Agricultural lands' ...xxx... do not include commercial, industrial and residential lands. ...xxx... They ceased to be agricultural lands upon their inclusion in the Lungsod Silangan Reservation. ...xxx... having been reserved for townsite purposes 'to be developed as human settlements' ...xxx... are not deemed agricultural lands within the meaning and intent of Section 3(c) of RA 6657.* ***Not being deemed 'agricultural lands', they are outside the coverage of the CARL.***" (*Emphasis supplied.*)

19. It is elementary that decisions of the Supreme Court applying or interpreting the laws or the Constitution form part of the legal system;[7] hence, they are entitled to respect and obeisance by all concerned.[8] In *Natalia*, the DAR was an active participant and cannot thereby claim to be ignorant of the restraint imposed by the Court upon its jurisdiction over lands that had ceased to be agricultural.

Not all agricultural lands are covered by agrarian land reform

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20. Under the Constitution, all lands not classified as mineral land, timber lands or national parks are agricultural lands. However, not all these agricultural lands are covered by the agrarian reform program.

21. To fall within the coverage of the CARL, the land should be "agricultural" within the purview of the Constitution and Section 3(c) of RA 6657. This means that the land must conform to two requisites: (a) it

must be devoted to agricultural activity as defined in the Act; and (b) it must not be classified as mineral, forest, residential, commercial or industrial land. Lands that do not fulfill these requisites are not covered by the CARL and are beyond the ambit of the DAR's jurisdiction or regulatory powers, whether for purposes of redistribution, conversion, or otherwise.

22. The exclusion of reclassified lands from the definition of agricultural lands and, consequently, from the coverage of both RA 6657 and RA 8435, is absolute and unqualified by any limitation as to the time of reclassification, or any distinction as to whether or not the land is tenanted, awarded, irrigated, irrigable, prime or environmentally critical.

23. In addition to those specifically exempted under Section 10 of RA 6657, excluded lands are those that have been reclassified or prescribed for uses other than agricultural, whether or not devoted to or suitable for agricultural activity, such as:

A. All private striplands, and all public striplands which prior to the effectivity of RA 6657 and RA 8435 have already been set aside for non-agricultural uses through the local land use plans and zoning ordinances approved by the HLURB; [9]

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[7] Art. 8, Civil Code of the Philippines
[8] *The Phil. Veterans Affairs Office vs. Segundo*, 164 SCRA, 366, 370
[9] Presidential Decree No. 399.

B. All lands in all cities and municipalities that meet the population density requirement, and which are defined as urban lands covered by the urban development and housing program; [10]

C. All lands in areas identified as Ecozone sites; [11]

D. All lands in areas set aside for tourism development;[12] and

E. All lands in areas zoned or reclassified by LGUs for non-agricultural uses.[13]

24. These lands ceased to be agricultural upon their reclassification, having been reserved or destined by law for non-agricultural uses and purposes. Hence, they are beyond the ambit of the DAR's jurisdiction or regulatory powers, whether for purposes of redistribution, conversion, or otherwise.

25. That these lands are beyond the coverage of CARL finds further support in the constitutional mandate that the agrarian reform program shall "*take into account ecological, developmental or equity considerations.*"[14]

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[10] Republic Act No. 7279, also known as the "*Urban Development and Housing Act.*"
[11] Republic Act No. 7916, also known as the "*Ecozone Act of Feb. 1995.*"
[12] See Republic Act No. 7357 and Republic Act No. 7668
[13] Republic Act No. 7160, also known as the "*Local Government Code of 1991.*"
[14] Section 4, Article XIII, 1987 Philippine Constitution.

DAR's conversions rules illegally cover non-awarded lands.

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26. The DAR's Conversion Rules provide that it shall apply to all applications for conversion, from agricultural to non-agricultural uses or to another agricultural use, such as the "*conversion of agricultural lands or areas that have been reclassified by the LGU or by way of Presidential Proclamation, to residential, commercial, industrial, or other non-agricultural uses on or after the effectivity of RA 6657 on Jun 15, 1988.*"[15]

27. This assailed provision is illegal because it violates Section 65 of RA 6657, the provision of law from which the DAR's conversion authority emanates, thus:

> *"Conversion of Lands. ----- After the lapse of five (5) years* **from its award,** *when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR,* ***upon application of the beneficiary*** *or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition; Provided, That the beneficiary shall have fully paid his obligation." (Underscoring supplied)*

28. It is plain that nothing in Section 65 of RA 6657, or any other provision of law, confers to the DAR the jurisdiction or authority to require that non-awarded lands, or non-agricultural (reclassified) lands, be submitted to its conversion authority.

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[15] Section 3.4, DAR AO No. 01-02.

29. It is also clear that, while for purposes of redistribution the DAR's jurisdiction embraces all agricultural lands as defined under Section 3(c) of said Act and not otherwise excluded under Section 10 thereof, its conversion authority is, however, **limited only** to agricultural lands that have actually been **redistributed** or **awarded** under the program.

30. As the Honorable Supreme Court ruled in *Province of Camarines Sur vs. CA*:[16]

> *"The closest provision of law that the Court of Appeals could cite to justify the intervention of the Department of Agrarian Reform ...xxx.... is Section 65 of the Comprehensive Agrarian Reform Law, ...xxx.... The* ***opening, adverbial phrase of the provision sends signals that it applies to lands previously placed under the agrarian reform program*** *as it speaks of "the lapse of five (5) years from its award."*

31. Most importantly, no land, whether awarded or not, may be subjected to the DAR's conversion authority without an application for conversion. Section 65 of RA 6657 clearly provides that a voluntary private initiative on the part of the landowner (or awardee) is necessary before the conversion authority may become operative. It is this initiative that sets in motion the process of determining what the principles of rule-making term as the *"existence of a state of facts*"[17] that would lead to conversion approval or disapproval. Only through this voluntary act of the landowner filing a conversion application may the DAR acquire jurisdiction to exercise its conversion authority. And such *acquired*

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[16] *Province of Camarines Sur vs CA*, GR 103125, 17 May 1993
[17] The Constitution of the Philippines, 1974, pp. 157-165, by Enrique M. Fernando

jurisdiction necessarily embraces only the particular piece of land that is subject of the conversion application.

32. To cite again *Province of Camarines Sur vs. CA*:

> *"While those rules vest on the Department of Agrarian Reform the exclusive authority to approve or disapprove conversions of agricultural lands for residential, commercial or industrial uses**, such authority is limited to the application** for reclassification **submitted by the landowners or tenant beneficiaries.**"* (Emphasis supplied.)

33. This, therefore, is the limited coverage of the DAR's conversion authority: awarded agricultural lands that have been applied for conversion.

34. It is further emphasized that the term *"awarded land"* is strictly limited to lands actually *titled* in the name of the awardee in accordance with the applicable laws. As held by the Supreme Court in *Vinzons-Magana v. Estrella*:[18]

> "*It is only compliance with the prescribed conditions which entitles the farmer/grantee to an emancipation patent by which he acquires the vested right of absolute ownership in the landholding ~ a right which has become fixed and established and is no longer open to doubt or controversy."*

DAR's conversion rules illegally prescribe conversion criteria and conditions.

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[18] 201 SCRA 536

35. Under Section 65 of RA 6657, the criteria for conversion are: (a) the land must have been awarded; (b) conversion must be applied for; (c) five years must have lapsed since the award; (d) the land would have greater value for non-agricultural use; (e) due notice is served on affected parties; and (f) the beneficiary has fully paid his obligations.

36. However, Section 8 of the DAR's Conversion Rules deviated or varied from the criteria set forth by the law by providing a different set of conditions, to wit: (a) conversion may be allowed if the land subject of application is not among those considered non-negotiable for conversion; (b) conversion may be allowed when the land has ceased to be economically feasible and sound for agricultural purposes or the locality has become urbanized; (c) conversion of SAFDZ lands shall take into account factors such as consistency with local land use plan, non-impairment of irrigation in nearby farmlands, and payment of "sufficient" disturbance compensation; and (d) conversion may be allowed if environmental impact assessment shows that it will not affect air/water quality and ecological stability.

37. The Rules further specify the lands that are *non-negotiable* for conversion, among them: (1) agricultural lands within the DENR's identified protected areas; (2) all irrigated lands; and (3) all irrigable lands with funding commitments for irrigation.[19] Also specified are the areas that are *highly restricted* from conversion, such as (1) irrigable lands without irrigation funding commitments; (2) agro-industrial

croplands; (3) highlands; (4) lands over which DAR has issued its various notices of CARP coverage; and (5) environmentally critical areas.[20]

38. As evident from Sections 4 and 5 of the Rules, practically *all* lands, as long as they fall under any of the categories enumerated in said Sections --- whether or not reclassified at any time, whether or not excluded from the CARP, whether or not under the jurisdiction of other agencies --- are made subject to the DAR's authority for purposes of effecting either (1) the conversion ban under Section 4, or (2) the conversion restrictions under Section 5.

39. These provisions were neither envisioned nor contemplated in the law since, in effect, they nullify the "exclusion" of reclassified lands from the definition of "agricultural" lands under RA 6657. It is therefore evident that they have been issued in excess of DAR's rule-making powers under the CARL.

40. The doctrine on rule-making has been laid down by the Honorable Supreme Court in a series of cases, thus:

> *"It may not, by its rules and regulations, amend, alter, modify, supplant, enlarge, or limit the terms of a legislative enactment."*[21]

> *"The rule or regulation should be within the scope of the statutory authority granted by the legislature to the administrative agency... Administrative regulations adopted under*

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[19] DAR AO 01-02, Section 4
[20] Section 5, supra
[21] 73 CJS 413-414, 416-417; *Toledo v. Civil Service Commission*, 202 SCRA 507; *Luzon Polymers Corporation v. Clave*, 209 SCRA 711; *Comm. of Internal Revenue v. Court of Appeals,* 240 SCRA 368

> *legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its provisions.. The rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned."* [22]

41. What is the scope of the DAR's statutory authority on conversion and what are the legislative standards or terms of legislative enactment within which such conversion rule-making authority may be exercised? As aforesaid, there is nothing in Section 65, or any other provision of law, that authorizes the DAR to declare that lands are either non-negotiable for or highly restricted from conversion. Any set of criteria promulgated beyond the confines of the law that go farther than its intent, as in this case, is a patent usurpation of legislative authority.

42. Parenthetically, the exercise of conversion authority under Section 65 is totally dependent on the *"existence of a state of facts"*, and the DAR's discretion therefore lies solely in determining whether or not such "state of facts" does exist. If the simultaneous and concurrent fulfillment of all the six conditions set forth under Section 65 of RA 6657 do not exist, then the conversion authority becomes inoperative. This is

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[22] *People vs. Maceren*, 79 SCRA 451, citing *Victorias Milling Co. Inc vs. Social Security Commission*, 114 Phil 555, and *University of Santo Tomas vs. Board of Tax Appeals*, 93 Phil. 376, 382, citing 12 C.J. 845-46. As to invalid regulations, see *Collector of Internal Revenue vs. Villaflor*, 69 Phil. 319; *Wise & Co. vs. Meer*, 78 Phil. 655, 676; *Del Mar vs. Phil. Veterans Administration*, L-27299, June 27, 1973, 51 SCRA 340, 349; *Metropolitan Traffic Command vs. Gonong*, 187 SCRA 432; *Bautista vs. Juinio*, 127 SCRA 329; *Luzon Polymers Corp. vs. Clave*, 208 SCRA 711; *Cena vs. Civil Service Commission*, 211 SCRA 179

true, for instance, when a land is awarded but less than 5 years have elapsed after such award; or even if 5 years have elapsed, the awardee's obligations have yet to be fully paid; and so on.

43. In *Grego vs. Commission on Elections*,[23] the Supreme Court emphatically ruled that *"administrative rules and regulations are intended to carry out, not supplant or modify, the law."*

DAR's reliance on certain laws as source of its conversion authority is misplaced.

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44. Sections 4(j) and 5(l) of Executive Order No. 129-A which DAR invokes as sources of its conversion authority, cannot be given effect because it does not carry with it any standard or parameter to govern the exercise of the delegated conversion authority. Moreover, these provisions of EO 129-A are no longer applicable, having been amended by a later law, that is, Section 65 of RA 6657, which now contains such restricting parameters.

45. Furthermore, RA 8435 which the DAR similarly invokes does not provide for any new conferment of conversion authority that would justify inclusion of other than awarded lands covered by the conversion rules. On the contrary, Section 9 of RA 8435 affirms the applicability of Section 65 of RA 6657, thus:

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[23] 274 SCRA 481.

> *"Sec. 9. Delineation of Strategic Agricultural and Fisheries Development Zones. ~ ...xxx... All irrigated lands, irrigable lands already covered by irrigation projects with firm funding commitments, and lands with existing or having the potential for growing high-value crops so delineated and included within the SAFDZ shall not be converted for a period of five (5) years from the effectivity of this Act; Provided, however, that not more than five percent (5%) of the said lands located within the SAFDZ may be converted* ***upon compliance with existing laws****, rules, regulations, executive orders and issuances, and administrative orders relating to land use conversion." (Emphasis supplied).*

46. Section 9 of RA 8435 clearly provides that conversion shall be in accordance with existing laws on conversion. And the existing law on conversion is Section 65 of RA 6657.

47. A fair interpretation of Section 9 of RA 8435 in conjunction with Section 65 of RA 6657 and the definition of agricultural lands under both Acts, would simply mean that conversion of non-reclassified awarded lands may be authorized by the DAR *only when the conditions of Section 65 of RA 6657 are met*. Should these awarded lands be categorized as either irrigated, irrigable or high-value crop lands that have been included in duly established SAFDZ, their conversion is subject to the additional conditions of Section 9 of RA 8435, to wit: (a) that conversion shall not be effected within 5 years from effectivity of RA 8435; (b) that not more than 5 % of these SAFDZ lands may be converted; and (c) that in case of conversion, the government shall be reimbursed for its investment costs on the land.

By determining national land use policy, DAR has illegally usurped legislative powers in violation of the separation of powers.

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48. The DAR's conversion rules are not justified by Section 49 of RA 6657 which DAR invokes, as the rule-making authority it confers is meant to *"carry out the objects and purposes of this Act"*.[24] Legislative intent is the real source of DAR's rule making authority and none other.

49. The object and purpose of RA 6657 as set forth in Section 2 thereof, is merely the *"redistribution of lands"* and the "*establishment of owner-cultivatorship of family-sized farms"*. As can be gleaned from Section 3 of RA 6657, this is principally what agrarian reform means, and this is what the DAR is authorized to implement. As held by the Supreme Court in *CMB vs. DARAB*:[25]

> *"Under Section 4 and Section 10 of RA 6657 it is crystal clear that the* ***jurisdiction*** *of the DARAB is* ***limited only to matters involving the implementation of the CARP****. More specifically, it is* ***restricted*** *to agrarian cases and controversies involving* ***lands falling within the coverage of the aforementioned program****."* [*Emphasis supplied.*)

50. In promulgating conversion rules that include within its scope practically all lands, whether or not covered by agrarian reform, the DAR acts not only to implement agrarian reform, but also to determine and implement national land use policy. Nowhere in the laws

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[24] RA 6657, Section 49
[25] 215 SCRA 87

is it provided that the DAR was created, or is authorized, to promulgate or implement national land use policy.

51. Under the provisions of the Constitution, only Congress has the authority to classify agricultural lands[26]. At the local level, land-use policy-making or "reclassification" is also a legislative function of local sanggunians in the exercise of the police power under the general welfare clause and as specifically conferred by an act of Congress.[27]

52. Otherwise put, the agrarian reform program is not the national land use program, but a mere component thereof. The national land use program is the entire compendium of land use laws, of which the CARL is but one. These land-use laws have been enacted pursuant to the Article XII, Section 3 of the Constitution and consistent with socio-economic goals set forth in the Constitution itself. The implementation of all these land use laws is not entirely or solely lodged with the DAR, such as would give it jurisdiction over all other lands not covered by agrarian reform.

53. Thus, when the DAR provides under Section 2.19 of its Rules that:

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[26] Article XII Section 3, which provides that *"agricultural lands may be further classified by law according to the uses to which they may be devoted." (underscoring supplied)*
[27] Section 20, RA 7160, Local government Code of 1991

> "*Reclassification of Agricultural Land refers to the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion, undertaken by a Local Government Unit (LGU) in accordance with Section 20 of RA 7160 and Joint Housing and Land Use Regulatory Board (HLURB), DAR, DA, and Department of Interior and Local Government (DILG) MC-54-1995. It also includes the reversion of non-agricultural lands to agricultural use."*

and requires its conversion approval or clearance for any change in the use of practically any land even outside of those covered by agrarian reform, it foists upon the nation the legal abomination of the executive encroaching on the legislative, in *violation of the principle of separation of powers*. The promulgation of these Rules is "*equivalent to legislating on the matter, a power which has not been and cannot be delegated to him ..."* an act that *"constitutes not only an excess of regulatory powers conferred upon the Secretary but also an exercise of a legislative power which he does not have."* [28]

54. Thus, there can be no other conclusion than that these Rules must be struck down. As the Honorable Supreme Court has declared:

> *"Where the legislature has delegated to executive or administrative officers and boards authority to promulgate rules to carry out an express legislative purpose,* ***the rules*** *... xxx ...* ***which have the effect of extending, or which conflict with the authority-granting statue, do not represent a valid exercise of the rule-***

[28] *People vs. Maceren*, 79 SCRA 461, citing *People vs. Santos*, 63 Phil 300

> ***making power*** *but constitute an attempt by an administrative body to legislate."*[29]

II.

THERE IS A VIOLATION NOT ONLY OF THE LAW BUT ALSO OF THE CONSTITUTIONAL MANDATE UNDER ART. II SEC. 25 THAT "THE STATE SHALL ENSURE THE AUTONOMY OF LOCAL GOVERNMENTS" AND UNDER ART. X SEC. 2 THAT "THE TERRITORIAL AND POLITICAL SUBDIVISIONS SHALL ENJOY LOCAL AUTONOMY."

The provisions of DAR AO 01-02 violate the Local Government Code and the constitutional provisions on local autonomy.

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55. Section 2.19 of the DAR's Conversion Rules provides that the reclassification of agricultural land is *"subject to the requirements and procedure for land use conversion."*

56. This is patently **illegal** as it violates Section 20 of RA 7160[30], which provides thus:

> *"Sec. 20. Reclassification of Lands. --- (a) A city or municipality may, through an ordinance passed by the sanggunian ...xxx...* ***authorize the reclassification of agricultural lands*** *...xxx... (c). The local government units shall, in conformity with existing laws,* ***continue to prepare their respective comprehensive land use plans enacted through zoning ordinances which shall be the primary and dominant basis for the future use of land resources****; provided, that the requirements for*

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[29] supra, (citing Sate vs. Miles, 5 Was. 2nd 322; 105 Pac. 2nd 51)
[30] Local Government Code of 1991

> *food production, human settlements and industrial expansion shall be taken into consideration in the preparation of such plans." (underscoring supplied)*

57. Nowhere is it provided in this section that reclassification by LGUs shall be subject to conversion procedures or requirements, or that DAR's approval or clearance must be secured to effect reclassification. On the contrary, Section 20(c) of RA 7160 emphasizes that local land use plans *"shall be the primary and dominant basis for the future use of land"*.

58. To argue that the DAR has the final authority to determine how lands in the LGUs' territorial jurisdictions shall be used to promote the general welfare of local constituencies, is to admit that the LGUs' power to reclassify is completely inutile, even as it would also contravene Section 5 of RA 7160, which provides:

> *"In the interpretation of the provisions of this Code, the following rules shall apply: (a)* ***Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers*** *...xxx... Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned; ...xxx... (c) The general welfare provisions in this Code shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community." (Underscoring supplied.)*

and the ***constitutional mandate*** on local autonomy under Article II Section 25 and Article X Section 2 of the Constitution that "*the State*

shall ensure the autonomy of local governments," and *"the territorial and political subdivisions shall enjoy local autonomy." (underscoring supplied)*

59. In circumscribing the power of both local and national legislative bodies to reclassify agricultural lands, the DAR completes its illegal hold and control over the country's lands, closing all avenues to the legitimate non-agricultural use of land to the utter prejudice not only of Petitioner and the persons it represents, but also of the entire nation.

III.

THERE IS A DEPRIVATION OF LIBERTY AND PROPERTY WITHOUT DUE PROCESS OF LAW WHEN, UNDER THE DAR'S RULES, LANDS THAT ARE NOT WITHIN ITS JURISDICTION ARE UNJUSTLY, ARBITRARILY AND OPPRESSIVELY PROHIBITED OR RESTRICTED FROM LEGITIMATE USE ON PAIN OF ADMINISTRATIVE AND CRIMINAL PENALTIES.

The promulgation and enforcement of DAR AO 01-02 constitutes deprivation of liberty and property without due process of law.

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60. Our Constitution provides that ***"no person shall be deprived of life, liberty or property without due process of law***".[31]

61. The laws passed by Congress for urban development and housing, in line with the constitutional mandate, have reserved certain lands for utilization by individual owners, usually with the assistance of

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[31] Section 1, Article III, 1987 Constitution.

land developers, building contractors and other participants in the real estate and housing industry majority of whom are members of the herein petitioner CREBA.

62. The assailed Conversion Rules have denied owners the use of such lands as authorized by law. Use of property is one of the essential attributes of ownership. Because the DAR has arrogated jurisdiction over such lands although they are clearly beyond the scope of the CARL, land owners have been deprived of their property without due process of law.

63. Furthermore, DAR violated the constitutional due process clause when it provided administrative sanctions and criminal penalties, under Section 52, 61, and 63 of the Conversion Rules, against legitimate development activities that it declares to be "illegal" or "premature" conversion as defined under Sections 2.8 and 2.15 of the Rules. Lawful use of property has been criminalized or penalized by administrative sanctions.

64. Pursuant to the said provisions, any development activity undertaken on any "agricultural" land (as defined by the Rules) without DAR's clearance or approval will constitute either "illegal" or "premature" conversion subject to either administrative or criminal penalties.

65. This would be true even for lands that have been reclassified for non-agricultural uses, whether by law or local ordinance effected, whether prior to or after effectivity of RA 6657 on June 15, 1988, as long as these lands fall under any of the categories enumerated in Sections 4

and 5 of the Rules (i.e. irrigated, irrigable, covered by DAR's various instruments for CARP coverage, etc.)

66. All of these assailed provisions taken together, being arbitrary, unjust, unreasonable and oppressive, are in grave abuse of discretion and unconstitutional.

IV.

THERE IS DISCRIMINATION AND A VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION BECAUSE THE DAR'S RULES ARE PATENTLY BIASED IN FAVOR OF THE PEASANTRY AT THE EXPENSE OF ALL OTHER SECTORS OF SOCIETY, EVEN AS THEY CONTRAVENE THE SOCIAL JUSTICE AND ECONOMIC MANDATES OF OUR CONSTITUTION FOR: (A) "A MORE EQUITABLE DISTRIBUTION OF OPPORTUNITIES, INCOME, AND WEALTH, A SUSTAINED INCREASE IN THE AMOUNT OF GOODS AND SERVICES PRODUCED BY THE NATION, AN EXPANDING PRODUCTIVITY AS THE KEY TO RAISING THE QUALITY OF LIFE FOR ALL, INDUSTRIALIZATION AND FULL EMPLOYMENT, AND ALL SECTORS OF THE ECONOMY AND ALL REGIONS OF THE COUNTRY SHALL BE GIVEN OPTIMUM OPPORTUNITY TO DEVELOP" (ART. XIII SEC. 1); (B) "A CONTINUING PROGRAM OF URBAN LAND REFORM AND HOUSING WHICH WILL MAKE AVAILABLE AT AFFORDABLE COST DECENT HOUSING AND BASIC SERVICES" (ART. XIII, SEC. 9); AND (C) "AN AGRARIAN REFORM PROGRAM TAKING INTO ACCOUNT ECOLOGICAL, DEVELOPMENTAL OR EQUITY CONSIDERATIONS" (ART. XIII, SEC. 4)

67. Taken together, all of the assailed provisions of the DAR's Conversion Rules either prohibit or restrict the use of lands that are outside of the DAR's jurisdiction, evidently on the premise that all these

lands are covered by the CARP and as such, must be preserved for redistribution to the peasantry.

68. In this regard, the Rules not only deny the Petitioner and the persons it represents, but also all other sectors of society, the benefits accruing from the use of the nation's lands. In particular, it denies the millions of underprivileged landless and homeless families nationwide the opportunity to acquire land and decent shelter, an opportunity that the State is mandated to provide under Article XIII Section 9 of the Constitution.

69. It should be noted that every 3-hectare piece of land that the DAR claims under its Rules to satisfy the tenurial aspirations of a single tenant-farmer's family, could instead provide homelots for some 600 urban poor families if used for urban land reform or turned into an industrial estate that could provide jobs for thousands of unemployed citizens.

70. Petitioner recognizes that the plight of the nation's peasantry is of grave concern. Nonetheless, it is respectfully submitted that the peasantry is not the entire nation. This country has only some 3 million farmers, as against the total population of about90 million. Forty eight percent (48%) of this population live in urban areas, some 10% are un-employed, more than 7 million families are landless and homeless, and more than 3.5 million households live in the squalor of urban slums.

71. Our Constitution looks upon all the underprivileged among us with equal favor. Surely, our framers did not intend that the needs of the peasantry must first be fully satisfied before attending to the needs of the equally downtrodden urban poor. Neither could they have willed that in apportioning the nation's scarce land resources, agrarian reform would enjoy preferential treatment to the exclusion of all other socio-economic development programs.

72. In the words of this Honorable Court, *"favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person."*[32]

URGENT PRAYER FOR ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND WRIT OF PRELIMINARY INJUNCTION AND JUSTIFICATION THEREFOR

73. As discussed earlier, respondent committed grave abuse of discretion in excess of his jurisdiction and/or committed serious errors of fact and law when he promulgated and implemented the challenged DAR Conversion Rules.

74. Petitioner respectfully submits that the implementation of the DAR Conversion Rules and the Memorandum dated April 15, 2008 have caused and will further cause grave and irreparable damage and injury to petitioner and its members.

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[32] Bautista vs. Juinio, 127 SCRA 339

75. The foregoing discussion (i.e. the coverage of the CARP; the coverage and extent of the DAR's conversion authority under Section 65 of RA 6657; the extent of the DAR's mandate, jurisdiction and rule-making power under the law and jurisprudence; and the implications of the DAR's Conversion Rules in the light of legal and constitutional provisions, principles and guarantees on civil liberties) makes plainly evident the fact that the DAR grossly overstepped the bounds of its authority when it promulgated and enforced conversion rules that (a) include in their scope or applicability non-awarded lands, and lands that are excluded from the CARP and DAR's jurisdiction (i.e. lands reclassified by Congress and LGUs); (b) impose conversion criteria, conditions and requirements outside of what is provided in Section 65 of RA 6657; (c) impose administrative and criminal penalties for development activities undertaken without its approval on lands that are outside of its jurisdiction; and (d) make the act of reclassification by Congress and LGUs subject to its conversion authority.

76. Making matters worse, on April 15, 2008, respondent issued a Memorandum temporarily suspending the processing and approval of all land use conversion applications. This act has resulted in a substantial slow down of housing projects which, in turn, has aggravated the problem of housing shortage, unemployment, and illegal squatting, to the substantial prejudice not only of petitioner and its members but the whole nation itself.

77. A sufficient and valid cause of action undeniably exists. Grave and irreparable injury, all incapable of pecuniary estimation, is being caused petitioner and the country in the form of violation of private rights, undue restrictions on legitimate development activities, and overall socio-economic stagnation inimical to the welfare not only of the unemployed and downtrodden but of the entire nation as well.

78. As can be seen from the foregoing allegations, the petitioner is entitled to the relief demanded, and the whole or part of such relief consists in restraining the implementation of the challenged DAR Conversion Rules. Petitioner's rights are clear and unmistakable. On the other hand, the invasion of petitioner's rights is material and substantial and there is an urgent and paramount necessity for the writ of preliminary mandatory and prohibitory injunction to prevent serious miscarriage of justice and damages.

79. The writ of preliminary mandatory injunction applied for should order the respondent to allow developers, in the meantime that a decision on this case pending, to obtain land development permits, individual titles and HLURB registration and License to Sell even without a conversion approval or certificate of CARP-exemption from the DAR, in cases of lands covered by PD 399, RA 7279, RA 7916 and lands reclassified by LGUs pursuant to law. There is paramount necessity for this writ to enable the government to meet and realize its production target of 350,000 socialized and low-cost housing packages every year

starting year 2000. This mandatory injunctive relief is being sought for the following reasons:

A. The suspension of housing construction while the case is pending would seriously obstruct and impede the government's socialized and low-cost housing program;

B. It will aggravate the already acute housing shortage which now stands at 5,000,000 units compounded by an annual increase of households at 280,000 a year;

C. A complete stoppage of non-agricultural development projects (i.e. residential, commercial, industrial, recreational, etc.), would aggravate unemployment and government's perennial fiscal deficits; and

D. It would not prejudice the DAR or any other party because any tenant and/or farmer who shall be displaced by any of the aforementioned developmental activities shall be paid disturbance compensation in accordance with RA 3844 as amended. Moreover, in cases where the land to be developed is irrigated, government may require full reimbursement of the cost of irrigation facility. In both cases, payment of the disturbance compensation and reimbursement of the cost of irrigation facility may be imposed by the local government units as pre-conditions to the issuance of development permits.

80. The commission or continuance of the acts complained of during the pendency of this petition would certainly work injustice to the

petitioner. The respondent is clearly doing, threatening, or is procuring or suffering to be done, the above illegal and unconstitutional acts in violation of petitioner's rights, which, if unrestrained, will render the judgment ineffectual.

81. Because great or irreparable injury would result to petitioner before the matter can be heard on notice, a temporary restraining order should, in the meantime, be issued, enjoining respondent or those acting in his behalf, from implementing the challenged DAR Conversion Rules.

82. The petitioner is willing to post a bond executed to the party enjoined, in an amount to be fixed by this Honorable Court, to the effect that the petitioner will pay to such party all damages which respondent or the government may sustain by reason of the injunction if this Honorable Court should finally decide that the petitioner was not entitled thereto.

RELIEF

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court to:

1. Give due course to this Petition;

2. Issue a temporary restraining order, before the matter can be heard on notice, enjoining the respondent or anybody acting under his instruction or command from enforcing DAR Administrative Order No.

01-02 and its predecessors, DAR Administrative Order No. 01-99 and DAR Administrative Order No. 07-97 as well as the Memorandum dated April 15, 2008.

3. After proper hearing, issue a **writ of preliminary prohibitory injunction,** enjoining the respondent or anybody acting under his instruction or command, from committing the above-mentioned acts and a **writ of preliminary mandatory injunction** ordering the respondent to allow petitioner and its member-developers, during the pendency of this case, to obtain land development permits, individual titles and HLURB registration and License to Sell even without a conversion approval or certificate of CARP-exemption from the DAR, in cases of lands covered by PD 399, RA 7279, RA 7916 and lands reclassified by LGUs pursuant to law.

4. Make the above preliminary injunction permanent after trial;

5. Annul and declare as unconstitutional the challenged DAR Conversion Rules Orders and prohibit respondent from implementing them.

Other just and equitable reliefs are likewise prayed for.

Makati City for Quezon City; May 19, 2008.

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COPY FURNISHED:
(By registered mail)

OFFICE OF THE SOLICITOR GENERAL
OSG Building, Amorsolo St.
Legaspi Village, Makati City

EXPLANATION
(Pursuant to Sec. 11, Rule 13 of
1997 Rules of Civil Procedure)

The foregoing Petition is being served upon the Office of the Solicitor General by registered mail, personal service not being practicable due to the distance, time and messengerial constraints or limitations.

JOSEF O. CALIDA

VERIFICATION / CERTIFICATION

I, **REGHIS M. ROMERO II**, of legal age, hereby state under oath that:

1. I am the President of petitioner CREBA in above-entitled case and I have caused the preparation of the foregoing Petition;

2. I have read the said Petition and the allegations therein are true of my knowledge and belief and based on authentic records;

3. I certify further that (a) I have not commenced any other action or proceeding involving the same issues in the Supreme Court, Court of Appeals, or any other tribunal or agency (b) to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, Court of Appeals, or any other tribunal or agency; and if I should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, I undertake to report that fact within five (5) days therefrom to this Honorable Court.

IN WITNESS WHEREOF, I have affixed my signature hereinbelow.

REGHIS M. ROMERO II
Affiant

SUBSCRIBED AND SWORN to before me in the City of Makati, this __th day of _____ 2008, by REGHIS M. ROMERO II, who has satisfactorily proven to me his identity through his Passport No. 0314806 issued at Angeles City, October 29, 2004 that he is the same person who personally signed before me the foregoing verification and certification and acknowledged that he executed the same.

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Series of 2008.

REPUBLIC OF THE PHILIPPINES)
MAKATI CITY, METRO MANILA) S.S.

SECRETARY'S CERTIFICATE

I, MICHAEL O. UY, of legal age and the duly elected and existing Corporate Secretary of the Chamber of Real Estate and Builders Associations Inc. (CREBA) a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 3/F CREBA Building, Don Antonio Roces Avenue, Quezon City, do hereby certify that at the Special Meeting of the Board of Directors held on _____, the following resolution was passed and carried to wit:

> "BE IT RESOLVED, as it is hereby resolved, that Corporate Secretary of the Chamber of Real Estate and Builders Associations Inc. (the "Corporation"), hereby authorizes and directs the filing of the foregoing complaint for injunction and damages against the Hon. Nasser C. Pangandaman, in his capacity as the Secretary of the Department of Agrarian Reform before the proper courts of Quezon City. In this regard, the Corporation's President, Reghis M. Romero II, is hereby authorized and directed to do and perform any and all actions necessary and proper to give effect to this resolution, including but not limited to the execution of the proper pleadings, motions, affidavits, verification and certification of non forum shopping, and other papers. Lastly, J. CALIDA & ASSOCIATES LAW FIRM is hereby engaged, authorized and directed, as it is hereby engaged, authorized and directed, to assist the Corporation in the filing of the abovementioned complaint."

IN WITNESS WHEREOF, I have hereunto affixed my hand this ___ day of _____ 2008 at the City of Makati, Philippines.

_____
MICHAEL O. UY
Corporate Secretary

SUBSCRIBED AND SWORN to before me in the City of Makati City, this __th day of _____ 2008 by Michael O. Uy, who has satisfactorily proven to me his identity through his _____ that he is the same person who personally signed before me the foregoing Secretary's Certificate and acknowledged that he executed the same.

Doc. No. ___
Page No. ___
Book No. ___
Series of 2008.

CREBA vs. Secretary of Agrarian Reform

CREBA's Counterarguments to Respondent's Comment

Petitioner CREBA has constantly assailed the Rules and related executive issuances over the years.

Respondent contends that Petitioner does not question or has never questioned the legality or constitutionality of DAR A.O. No. 97-07, RA 6657, Section 4(i) of E.O. 129-A, Section 50 of E.O. 129-A, and Sec. 4 of the Office of the President's Memorandum Circular No. 54 (P. 3, Par. No. 2; P. 4, Par. No. 6 of the Comment)

Respondent misleads. Respondent need only scour its own records to know that on numerous occasions ever since the institution of the CARP under the Aquino administration and all through the successive Administrations up to the present, petitioner was unrelenting in its representations with the DAR and the Office of the President towards revision of the Rules in order for these to conform with provisions of law and Constitution.

If petitioner's recourse to the courts had been delayed, it was only due to petitioner's adherence to the doctrine of "exhaustion of administrative remedies" and the promises of successive DAR dispensations to "rationalize" the Rules per Petitioner's recommendations – promises which have now proven empty..

The redefinition of the term "agricultural lands" under the Rules has no basis in law; the issuances invoked by respondent are inapplicable.

Respondent, on one hand, contends that the assailed Rules adopt the definition of agricultural lands as laid down in RA 6657 and RA 8435; and on the other, admits that it includes "lands classified for residential, commercial, industrial or other non-agricultural uses before 15 June 1988, or agricultural lands converted prior to the promulgation of RA 6657 and RA 8435 but after the promulgation of Presidential Decree No. 27." (P. 8, Par. No. 12 of the Comment)

Respondent argues that this reformulation is pursuant to provisions of several laws namely RA 6657, EO 129, EO 129-A, PD 27 and RA 8435, and pursuant to its powers under RA 6657 and EO 129-A, as clarified in DOJ Opinion No. 44 Series of 1990. (P. 11, Par. No. 17 of Comment).

However:

1. Invoking PD 27 in the instant case is misplaced. PD 27 provides no definition of "agricultural lands", even as its scope is limited only to "private agricultural lands primarily devoted to rice and corn". That said, under Sec. 75 of RA 6657, PD 27's applicability is only suppletory, limited to instances where its provisions are not inconsistent with RA 6657 – a later and more comprehensive law.

2. RA 6657 & RA 8435 exempt reclassified lands from CARP coverage, regardless of the time when reclassification was effected.

The Rules withdraw this exemption, and thus expand CARP coverage, by rephrasing the definition of agricultural lands thus "…xxx… "nor reclassified as residential, commercial, industrial or other non-agricultural uses before June 15, 1988."

Nowhere in these laws is respondent authorized to promulgate the Rules that limit the exemptions granted by Congress.

3. EO 129 has been completely superseded by EO 129-A. With respect to EO 129-A which reorganized the DAR, indeed this executive fiat confers upon the DAR the exclusive authority to approve conversion of agricultural lands into non-agricultural uses.

   However, this conversion authority is not unlimited. Sec. 4 of EO 129-A is crystal clear that the DAR's responsibility as an administrative agency is merely to implement the CARP. Its jurisdiction is therefore limited only to the lands covered by RA 6657 which is the CARP Law, and the exercise of its powers and authorities are circumscribed by the parameters laid down under RA 6657.

4. What are the lands covered by CARP and thus embraced by DAR's jurisdiction as CARP implementor? These are "agricultural lands" as defined under Sec. 3 of RA 6657, excluding lands classified as mineral, forest, residential, commercial or industrial land and those lands specifically excluded under Sec. 10 of RA 6657 and special laws.

   Under RA 6657, to be covered by CARP and DAR's jurisdiction, the following criteria must concur:

   a) The land must be devoted to agricultural activity as defined in RA 6657

   b) The land must not be classified as mineral, forest, residential, commercial or industrial land

   c) The land must not fall under the specific exclusions provided in Sec. 10 of RA 6657 and special laws.

   To quote the Supreme Court in <u>*Natalia Realty vs. DAR*</u>: *"…xxx…The deliberations of the Constitutional Commission confirm this limitation. 'Agricultural lands'…xxx…do not include commercial, industrial and residential lands …xxx…"*

   And this is true whether the land was classified prior to or after effectivity of RA 6657.

5. What are the parameters or conditions for the exercise of DAR's conversion authority under RA RA 6657 and Ra 8435? These are provided under Section 65 of RA 6657, to wit:

   a) The land must have been awarded;

   b) Conversion must be applied for;

   c) 5 years must have lapsed since the award;

   d) The land would have greater value for non-agricultural use;

   e) Due notice is served to affected parties; and

   f) The beneficiary has fully paid his obligations.

In the light of the clarity of Sec. 65 of RA 6657, respondent' obfuscates by arguing that "the definition provided in Sec. 2.1 of AO 02-01 merely refers to the category of agricultural land that may be subject for conversion to non-agricultural uses" (p. 8, par. no. 14 of Comment).

To cite *Province of Camarines Sur vs. CA*:

> *"...xxx.... The opening, adverbial phrase of the provision sends signals that it applies to lands previously placed under the agrarian reform program as it speaks of "the lapse of five (5) years from its award." …xxx… "While those rules vest on the Department of Agrarian Reform the exclusive authority to approve or disapprove conversions of agricultural lands for residential, commercial or industrial uses, such authority is limited to the application for reclassification submitted by the landowners or tenant beneficiaries."*

6. EO 129-A was promulgated by then President Corazon Aquino in July 1987, while RA 6657 took effect June 1988.

   Clearly, whatever illusory power or authority may have been enjoyed by the DAR under EO 129-A was already withdrawn by Congress under RA 6657.

7. With respect to DOJ Opinion No. 44, a mere opinion of the DOJ cannot supplant any provision of law. In *Republic vs. Court of Appeals*, 299 SCRA 199, the Supreme Court declared:

> *"Opinions of the Secretary of Justice are unavailing to supplant or rectify any mistake or omission in the law."*

That said, the very portion of this Opinion quoted by respondent vitiates its claim of authority, thus:

> *"…xxx… EO 129-A did not provide a new source of power to DAR with respect to conversion but it merely recognized and reaffirmed the existence of such powers as granted under existing laws."*

True, various agrarian reform laws and fiats enacted or promulgated prior to EO 129-A endowed the DAR with conversion authority in one form or another. The fact remains, however, that all these laws and fiats as mentioned by respondent, having agrarian reform as their subject, cover only agricultural lands specifically allocated for agrarian reform purposes.

These laws and fiats did not cover all agricultural lands as respondent would like to believe. More importantly, all these laws and fiats were superseded by RA 6657 of June 1988, a later law.

To reiterate, any efficacy that these prior laws or fiats may have at present is merely suppletory, their applicability governed by the clause in Sec. 75 of RA 6657, to wit: "not inconsistent with this Act".

Clearly, any provision of these prior laws or fiats or administrative orders that embrace lands not covered by RA 6657, or expands the scope of the DAR's conversion authority beyond the limits

set forth in Sec. 65 of RA 6657, are inconsistent with this later law and thus, cannot be given application.

Natalia is applicable to the instant case.

Natalia is the Supreme Court's interpretation of the Constitution as far as CARP coverage is concerned,

Respondent contends that Natalia "merely declared that the subject lands were 'outside the coverage of the CARL' or RA 6657 but not outside the coverage of the powers of respondent on land conversion." (p. 13, par. no. 19 of Comment).

Respondent appears unmindful that whatever powers and authorities it may have as implementor of a law are limited only to matters covered by that law.

Otherwise put, DAR's conversion authority derives from Sec. 65 of RA 6657 or the CARL. How, then, can it have conversion authority over lands outside of CARL coverage?

Surprisingly, respondent is silent on the limits of its conversion authority as the Supreme Court succinctly pointed out in *Province of Camarines Sur vs. CA*.

The DAR's conversion authority does not circumscribe the LGUs' power to reclassify lands.

The LGUs' power to reclassify agricultural lands is embodied in Section 20 of RA 7160 otherwise known as the Local Government Code.

Respondent contends that this power is limited by, among others, "DAR's determination of the propriety of the conversion". In support of this contention, respondent invokes DAR Memorandum Circular No. 54-93 which provides that "actions on applications for land use conversions on individual landholdings shall remain as the responsibility of the DAR …xxx…"(pp. 13-15, pars. no. 20-22)

This is as if to suggest that a law can be amended by a mere Memorandum of an administrative or executive body.

Nowhere in the Local Government Code or RA 6657 or in any other law is there a provision that requires an LGU to obtain DAR's imprimatur or conversion approval in order to effect land reclassification. In fact, Section 20(c) of RA 7160 emphasizes that local land use plans "shall be the primary and dominant basis for the future use of land".

To claim that the DAR has the final authority to determine how lands in the LGUs' territorial jurisdictions shall be used to promote the general welfare of local constituencies, is to suggest that the LGUs' power to reclassify is completely inutile, even as it contravenes Section 5 of RA 7160, which provides thus:

> *Sec. 5. Rules of Interpretation. – In the interpretation of the provisions of this Code, the following rules shall apply: (a) Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers ...xxx... Any fair and reasonable doubt as to the*

> *existence of the power shall be interpreted in favor of the local government unit concerned; ...xxx... (c) The general welfare provisions in this Code shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community.*

and the constitutional mandate on local autonomy under Article II Section 25 and Article X Section 2 of the Constitution that "the State shall ensure the autonomy of local governments," and "the territorial and political subdivisions shall enjoy local autonomy."

The closest provision of RA 7160 that relates to the DAR's conversion authority is Sec. 20(a)(3), applicable to 4th to 6th-class municipalities, which contains the phrase:

> *"…xxx…agricultural lands distributed to agrarian reform beneficiaries pursuant to RA 6657 otherwise known as the Comprehensive Agrarian Reform Law shall not be affected by said reclassification and the conversion of such lands into other purposes shall be governed by Section 65 of said Act."*

Under this subsection only, by Congressional dictate, may DAR's conversion authority prevail over the LGU's power to reclassify, such that any CARP-awarded land found within the areas to be reclassified shall remain agricultural and may not be used for non-agricultural purposes unless so approved by the DAR pursuant to the conditions of Section 65 of RA 6657.

The Rules violate due process.

Respondent contends that the penalties provided under the Rules do not violate due process since these penalties are provided in RA 6657 for offenses such as "conversion by any landowner of his agricultural land into non-agricultural use with intent to avoid application of this Act", and the Rules merely incorporate the same. (pp. 15-16, par. nos. 23-25)

Indeed, RA 6657 provides such penalties, but the issue is whether or not conversion of an agricultural land that is outside the ambit of this law may be subjected to such penalties.

The lawful use of property that is not covered by CARP has been criminalized or penalized by administrative sanctions for legitimate development activities that DAR declares to be "illegal" or "premature" conversion.

Clearly, this is arrogation of power and arbitrariness not allowed under the due process clause.

The Rules violate equal protection.

Respondent contends that the "issuance and implementation of the subject law and rules was a proper exercise of the government's police power" and does not violate "equal protection. (pp. 17-18, par nos. 29-30)

Petitioner does not question the noble intents and purposes of RA 6657. It is clearly meant to benefit the peasantry, just as other laws n enacted by Congress are clearly meant to benefit the other sectors of the economy and society pursuant to the Constitutional mandates for the State to "undertake a continuing land reform and housing program for the benefit of underprivileged land less and homeless citizens", "provide all sectors of the economy and all regions of the country the optimum opportunity to develop", and "promote adequate employment opportunities", "a more equitable distribution of opportunities, income and wealth"; "a sustained increase in the amount of goods and services produced by the nation"; "industrialization and full employment"; and so on.

What Petitioner challenges are the Rules prescribed by Respondent which are contrary to the Constitution and the very law it is tasked to implement.

All the laws dealing with land use ~ RA 6657, RA 7160, RA 7279 or the Urban Development and Housing Act, RA 7916 or the Ecozone Law, PD 199 or the Striplands Law, and various Tourism development laws ~ taken together, serve to equalize opportunities by carving out the country's land pie and allocating lands for various uses by the various sectors.

The definition of "agricultural lands" that are to be covered by agrarian reform under RA 6657 and agricultural modernization under RA 8435 was so crafted by Congress such as to limit the coverage of these laws, undoubtedly to provide equitable access to land for the other equally vital development programs, and pursuant to the Constitutional mandate that the agrarian reform program shall "take into account ecological, developmental or equity considerations."

By expanding the coverage of RA 6657 and placing virtually all of the country's lands under the DAR's jurisdiction through the mere act of redefining "agricultural lands", Respondent in effect creates the peasant sector into a very special unique class to whom all the benefits of all lands would accrue and, conversely, deprives all the non-peasant sectors of the economy the beneficial use of land.

In so doing, it violates the "equal protection" doctrine that permeates all the aforecited laws and Constitutional provisions upon which these laws are based.

Memorandum No. 88 is not a valid exercise of delegated power.

Respondent maintains that its Memorandum No. 88, "being pursuant to the clear directive of the President", is an "exercise of power validly delegated pursuant to EO 129-A", again invoking conversion powers under EO 129-A and the clause "such other powers and functions as may be provided by law or directed by the President." (p. 17, par. nos. 27-28)

The inapplicability of EO 129-A has earlier been discussed. There is no "power validly delegated" because no such power was conferred by the law purportedly being implemented.

Memorandum No. 88 is not a valid exercise of police power.

Respondent invokes police power and the primacy of the general welfare, contending that Memorandum No. 88 was "to address the worsening rice shortage in the country by ensuring that there are enough agricultural lands on which rice cultivation and production may be carried out,"

There is, however, no showing how said Memorandum and the Rules will promote the ”greater good of the greatest number” or how, if at all, these would alleviate rice shortage.

It is a matter of public record that to date, out of the country’s total acreage, only three percent (3%) has been devoted to non-agricultural uses. Despite the huge acreage available for agriculture, the country has lost its previous status as a rice exporter which it had enjoyed for decades prior to the institution of the CARP, and overall agricultural productivity has plummeted since then.

Clearly, acreage has little to do with increased agricultural productivity. Israel is a case in point: with a total land area no bigger than Paranaque City but with a population of more than seven million, it is self-sufficient in food and is even an exporter of agricultural products.

Parenthetically, addressing the problem of rice shortages and declining agricultural production is, under the law, a responsibility of the Department of Agriculture, not the DAR.

Lawful subject and lawful means – these are the requisites that must concur in the exercise of police power, if private rights are to be subordinated to the interest of the greater number. “Indispensably, the two criteria must be strictly complied with lest their disregard debase the police power into an unwarranted intrusion into individual liberty and property rights or, worse, a bludgeon for oppression.”

Memorandum No. 88 and the Rules fail these tests. For, while “addressing the rice shortage” may be a lawful subject, the means – a total ban on the use of lands for all other purposes – find no basis in law or the Constitution.

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

SECOND DIVISION

CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATIONS, INC., (CREBA),
Petitioner,

- versus -

G.R. No. 183409

THE SECRETARY OF AGRARIAN REFORM (SAR),
Respondent.
x - x

COMMENT

Public respondent **SECRETARY OF AGRARIAN REFORM ("SAR")**, by counsel, most respectfully states:

PREFATORY STATEMENT

In 2008, the Philippines experienced an unanticipated rice shortage. As demand for the country's staple food increased to unprecedented levels, the government took remedial measures and implemented a rice subsidy program. In line with this corrective measure, the government confirmed that one of the factors that caused the dwindling of rice supply is the unabated conversion of agricultural land, particularly riceland, into

subdivisions and golf courses.[1] Due to this disturbing fact, the Secretary of Agrarian Reform, issued *Memorandum No. 88* dated 15 April 2008,[2] suspending the conversion of prime agricultural land to real estate. This *Memorandum* displeased the real estate developers who initiated, through the petitioner Chamber of Real Estate and Builders Associations, Inc. ("CREBA"), a *Petition for Certiorari and Prohibition* to enjoin the enforcement of the aforesaid *Memorandum* and *Department of Agrarian Reform ("DAR") Administrative Order Nos. 01-99 and 07-97.*

STATEMENT OF THE CASE

1. Before this Honorable Court is a *Petition for Certiorari and Prohibition (With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction)* dated 9 July 2008 under Rule 65 of the 1997 Revised Rules of Civil Procedure, filed by petitioner CREBA. The *Petition* seeks to nullify Department of Agrarian Reform (DAR) Administrative Order Nos. 01-02, 01-99 and 07-97 as well as Memorandum No. 88[3], and challenges the legality and constitutionality of DAR Administrative Order No. 1, series of 2002, as amended.

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1 TJ Burgonio. *"Builders Group: Ban on Land Conversion may derail housing program"*. http://newsinfo.inquirer.net/breakingnews/nation/view/20080503-134355/Ban-on-land-conversion-may-derail-housing-program. Last accessed on 9 November 2008.

2 Annex "E", Petition.

3 15 April 2008

FACTUAL ANTECEDENT

2. On **29 October 1997**, the DAR issued Administrative Order No. 07, Series 1997 (DAR AO No. 97-07)[4], entitled "*Omnibus Rules and Procedures Governing Conversion of Agricultural Land to Non-Agricultural Land.*" DAR's authority to promulgate said rules on land conversion is derived from the following: (i) Republic Act No. 6657, otherwise known "*Comprehensive Agrarian Reform Law*"; (ii) Section 4(i) of Executive Order No. 129-A, series of 1997; (iii) Section 50 of Executive Order No. 129-A, series of 1997; and (iv) Section 4 of the Office of the President's Memorandum Circular No. 54, Series of 1993. It is emphasized that the law and the aforecited orders and circulars are not being questioned by the petitioner.

3. On **30 March 1999**, DAR issued Administrative Order No. 01, series of 1999 (DAR AO No. 01-99)[5], amending and updating the previous rule on land conversion. DAR AO No. 01-99 was issued on the foregoing government policies:

(i) **The State shall preserve prime agricultural lands to ensure food security, including sufficiency in our staple food, namely rice and corn;**

(ii) The State shall ensure that all sectors of the economy and all regions of the country are given optimum opportunity to develop through the rational and sustainable use of resources

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4 Annex "A", Petition.
5 Annex "B", Petition.

peculiar to each area in order to maximize agricultural productivity, promote efficiency and equity, and accelerate the modernization of the agriculture and fisheries sectors of the country; and,

(iii) Conversion of agricultural lands to non-agricultural uses shall be strictly regulated and may be allowed only when the conditions prescribed under R.A. 6657 and or R.A. 8435 are present.[6]

4. On 28 February 2002, DAR issued Administrative Order No. 1, series of 2002 (DAR AO No. 01-02), otherwise known as the "*2002 Comprehensive Rules on Land Use Conversion*" which further amended DAR AO Nos. 07-97 and 01-99. It must be noted that petitioner failed to attach said AO to its Petition as it erroneously attached DAR AO No. 02-02 as Annex "C" to its Petition. Nevertheless, a copy of A.O. No. 01-02 is attached hereto as Annex "1".

5. On 2 August 2007, DAR issued Administrative Order No. 5, series of 2007 (DAR AO No. 05-07)[7], amending certain provisions of DAR AO No. 01-02, which particularly addressed **land conversion in time of exigencies and calamities**.

6. While the legality and constitutionality of DAR orders and circulars on land conversion were never questioned in the past by the petitioner and the group it purportedly represents, DAR issued

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6 Section 1, DAR AO No. 99-01, Annex "B", Petition.
7 Annex "D", Petition.

Memorandum No. 88, on 15 April 2008, suspending the processing and approval of land use conversion applications. The Memorandum states:

> In view of the Presidential pronouncement/instruction for the review/study of conversion guidelines with the Department of Agriculture and Department of Environment and Natural Resources to address the **unabated conversion of prime agricultural lands for real estate development, you are hereby advised to temporarily suspend the processing and approval of all LUC applications.**
>
> This moratorium on land conversion shall take effect immediately and shall remain in force until further notice.

7. As a result, petitioner claims that "*there is an actual slow down of housing projects which, in turn, has aggravated the problem of housing shortage, unemployment, and illegal squatting, to the substantial prejudice not only of petitioner and its members but the whole nation itself.*"[8] This, according to petitioner, warrants the nullification of DAR AO Nos. 01-02, 01-99 and 07-97, and Memorandum No. 88. Petitioner argues, ***in esse,*** that:

(i) DAR AO No. 01-02 is unconstitutional as it expands the definition of "agricultural land" as defined under R.A. 6657;

(ii) DAR Conversion Rules (i.e. DAR AO Nos. Nos. 01-02, 01-99 and 07-97) are unconstitutional as they encroached upon the power of local government units pursuant to the Local Government Code;

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[8] Paragarph 75, Petition.

(iii) DAR Conversion Rules (i.e. DAR AO Nos. Nos. 01-02, 01-99 and 07-97) are unconstitutional as they violate due process by imposing administrative and criminal penalties;

(iv) Memorandum No. 88 is unconstitutional because it suspended land conversion without any basis; and,

(v) DAR Conversion Rules (i.e. DAR AO Nos. Nos. 01-02, 01-99 and 07-97) and Memorandum No. 88 are unconstitutional as they violate the *equal protection clause.*

ARGUMENT

8. Contrary to petitioner's asseverations, public respondent SAR maintains that:

> DAR AO NOS. 01-02, 01-99 AND 07-97, INCLUDING MEMORANDUM NO. 88 DATED 15 APRIL 2008 ARE CONSTITUTIONAL AND ARE IN ACCORD WITH THE LAWS THEY SEEK TO IMPLEMENT.

DISCUSSION

DAR AO Nos. 01-02, 01-99 AND 07-97, ARE CONSTITUTIONAL AND ARE IN ACCORD WITH THE LAWS THEY SEEK TO IMPLEMENT.

9. In its *Petition*, petitioner CREBA contends that the authority of respondent SAR to land conversion is limited only to *agricultural land* as defined under *R.A. 6657* and *R.A. 8435*. According to petitioner, respondent SAR exceeded his authority when he issued the assailed DAR AOs which cover *agricultural land* as defined under the aforestated *Republic Acts*.

10. Section 3(c) in relation to Section 3(b) of RA 6657 defines agricultural land as "*land devoted to the cultivation of the soil, planting of crops, growing of fruit trees, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical and not classified as mineral, forest, residential, commercial or industrial land.*"

11. Likewise, Section 4, RA 8435 defines agricultural lands as "*lands devoted to or suitable for the cultivation of the soil, planting of crops, growing of trees, raising of livestock, poultry, fish or aquiculture production, including the harvesting of such farm products, and other farm activities and practices performed in conjunction with such farming operations by persons whether natural or juridical and not classified by the law as mineral land, forest land, residential land, commercial land, or industrial land*"

12. On the other hand, **Section 2.1, DAR AO 01-02** adopted the definition laid down by RA 6657 and RA 8437. The aforementioned DAR AO, however, included in its definition of agricultural lands "***lands classified for residential, commercial, industrial or other non-agricultural uses before 15 June 1988,"*** or agricultural lands converted prior to the promulgation of RA 6657 and RA 8437 but after the promulgation of Presidential Decree No. 27.

13. Clearly, DAR AO 01-02 pertains to the rules that shall govern the **conversion of agricultural lands to other agricultural uses or non-agricultural uses pursuant to pertinent provisions** of several laws namely: (i) RA 6657, (ii) EO 129, (iii) E.O. 129-A, (iv) P.D. 27 and (v) RA 8435. Thus, it is from this perspective that the definition of "agricultural land" as provided by Section 2.1 of A.O. No. 02-01 must be considered.

14. In other words, contrary to petitioner's assertion, the definition provided by Section 2.1 of A.O. No. 02-01 merely refers to the *category* of agricultural lands that may be subject for conversion to non-agricultural uses, and is not confined to "agricultural lands" in the context of land redistribution as provided under R.A. 6657.

15. Executive Order No. 129-A, which outlines the respondent's mandate clearly state that:

SECTION 4. Mandate. — The Department shall be responsible for implementing the Comprehensive Agrarian Reform Program and, for such purpose, it is authorized to:

a) Acquire, determine the value of, subdivide into family-size farms or organize into collective of cooperative farms and develop private agricultural lands for distribution to qualified tillers, actual occupants, and displaced urban poor;

b) Administer and dispose all cultivable portions of the public domain declared as alienable and disposable for agricultural purposes transferred to it by the Department of Environment and Natural Resources;

c) Acquire, by purchase or grant, real estate properties suited for agriculture that have been foreclosed by the national government;

d) Undertake land consolidation, land reclamation, land forming, and conservation in areas subject to agrarian reform;

e) Facilitate the compensation of landowners covered by agrarian reform;

f) Issue emancipation patents to farmers and farmworkers who have been given lands under the agrarian reform program as may be provided for by law;

g) Provide free legal services to agrarian reform beneficiaries and resolve agrarian conflicts and land tenure problems;

h) Develop and implement alternative land tenure systems such as cooperative farming and agro-industrial estates, among others;

i) Undertake land use management and land development studies and projects in agrarian reform areas;

j) Approve or disapprove the conversion, restructuring or readjustment of agricultural lands into non-agricultural uses;

k) Monitor and evaluate the progress of agrarian reform implementation;

l) Assist the Office of the Solicitor General in providing evidence for the reversion proceedings to be filed with respect to lands of the public domain,

> occupied by private individuals and their tenants or farmworkers which are subject to land reform, and real rights connected therewith which have been acquired in violation of the Constitution or the public land laws or through corrupt practices;
>
> m) Submit progress reports to the Office of the President, to Congress, and to the people at the end of each year and at all times make available to the general public information on the current status of its programs.

16. To pursue its mandate, E.O. 129-A grants the respondent the following powers and functions:

> SECTION 5. Powers and Functions. — Pursuant to the mandate the Department, and in order to ensure the successful implementation of the Comprehensive Agrarian Reform Program, the department is hereby authorized to:
>
> a) Advise the President and the Presidential Agrarian Reform Council on the promulgation of executive/administrative orders, other regulative issuances and legislative proposals designed to strengthen agrarian reform and protect the interests of the beneficiaries thereof;
>
> **b) Implement all agrarian laws, and for this purpose, punish for contempt and issue subpoena, subpoena duces tecum, writs of execution of its decisions, and other legal processes to ensure successful and expeditious program implementation; the decisions of the Department may in proper cases, be appealed to the Regional Trial Courts but shall be immediately executory notwithstanding such appeal;**
>
> **c) Establish and promulgate operational policies, rules and regulations and priorities for agrarian reform implementation;**
>
> d) Coordinate program implementation with the Land Bank of the Philippines and other relevant civilian and military government agencies mandated to support the agrarian reform program;
>
> **e) Acquire, administer, distribute, and develop agricultural lands for agrarian reform purposes;**

f) Undertake surveys of lands covered by *agrarian reform*;

g) Issue emancipation patents to farmers and farmworkers covered by agrarian reform for both private and public lands and when necessary, make administrative corrections of the same;

h) Provide free legal services to agrarian reform beneficiaries and resolve agrarian conflicts and land-tenure related problems as may be provided for by law;

i) Promote the organization and development of cooperatives and other associations of agrarian reform beneficiaries;

j) Conduct continuing education and promotion programs on agrarian reform for beneficiaries, landowners, government personnel, and the general public;

k) Institutionalize the participation of farmers, farmworkers, other beneficiaries, and agrarian reform advocates in agrarian reform policy formulation, *program implementation, and evaluation*;

l) Have exclusive authority to approve or disapprove conversion of agricultural lands for residential, commercial, industrial, and other land uses as may be provided for by law;

m) Call upon any government agency, including the Armed Forces of the Philippines, and non-governmental organizations (NGOs) to extend full support and cooperation to program implementation;

n) Exercise such other powers and functions as may be provided for by law or directed by the President, to promote efficiency and effectiveness in the delivery of public services.

17. Simply put, respondent has the authority to define *agricultural land* to include those "*not classified by law as mineral land, forest or timber, or national park, nor reclassified as residential, commercial, industrial or other non-agricultural uses before June 15, 1988*" pursuant to its powers not only under R.A. 6657 but also under E.O. 129-A. The authority of respondent to

include those "*not classified by law as mineral land, forest or timber, or national park, nor reclassified as residential, commercial, industrial or other non-agricultural uses before June 15, 1988*" in its definition of agricultural lands was clarified in *Department of Justice Opinion No. 44, Series of 1990 dated 16 March 1990*,[9] which states:

> "With respect to your observation that E.O. No. 129-A also empowered the DAR to approve or disapprove conversions of agricultural lands into non-agricultural uses as of July 22, 1987, it is our view that E.O. No. 129-A likewise did not provide a new source of power to DAR with respect to conversion but it merely **recognized and reaffirmed the existence of such power as granted under existing laws.**"

18. The aforequoted DOJ Opinion then cited several laws, which were effective as early as 1963, such as: (i) R.A. 3844, as amended (also known as the "Agricultural Land Reform Code"); (ii) Presidential Decree Nos. 27, 583, 648, 815 and 946; and, (iii) Letter of Instructions No. 729. All of these laws were still effective and existing when the assailed AOs were issued. **Clearly, this negates the assertion of petitioner that R.A. 6657 is the only existing law that grants authority of land conversion to respondent.**

19. Petitioner then cites this Honorable Court's decision in *Natalia Realty v. DAR*[10] to support its argument that respondent exceeded his authority to land conversion. *Natalia,* however, merely declared that

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9 A copy of which is attached hereto as Annex "2"
10 225 SCRA 278

the subject lands were "*outside the coverage of CARL*" or R.A. 6657 but not outside the coverage of the powers of respondent on land conversion as granted by *existing laws*. Truth to tell, there is nothing in the cited doctrine that touches, even remotely, on conversion of "agricultural" land to other "non-agricultural" uses.

DAR AO Nos. 01-02, 01-99 AND 07-97, DID NOT SUPPLANT THE LGU'S POWER

20. Petitioner then attempts to mislead this Honorable Court by selectively quoting Section 20 of the Local Government Code. In its entirety, Section 20 provides:

> Section 20. *Reclassification of Lands.* -
>
> (a) A city or municipality may, through an ordinance passed by the sanggunian after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes **as determined by the Department of Agriculture** or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the sanggunian concerned: Provided, That such *reclassification shall be limited to the following* percentage of the total agricultural land area at the time of the passage of the ordinance:
>
> (1) For highly urbanized and independent component cities, fifteen percent (15%);
>
> (2) For component cities and first to the third class municipalities, *ten percent (10%); and*
>
> (3) For fourth to sixth class municipalities, five percent (5%): Provided, further, That agricultural lands distributed to agrarian reform beneficiaries

> pursuant to Republic Act Numbered Sixty-six hundred fifty-seven (R.A. No. 6657), otherwise known as "The Comprehensive Agrarian Reform Law", shall not be affected by the said reclassification and the conversion of such lands into other purposes shall be governed by Section 65 of said Act.
>
> (b) The President may, when public interest so requires and upon recommendation of the National Economic and Development Authority, authorize a city or municipality to reclassify lands in excess of the limits set in the next preceding paragraph.
>
> (c) The **local government units shall, in conformity with existing laws, continue to prepare their respective comprehensive land use plans enacted through zoning ordinances which shall be the primary and dominant bases for the future use of land resources: Provided. That the requirements for food production, human settlements, and industrial expansion shall be taken into consideration in the preparation of such plans.**
>
> (d) **Where approval by a national agency is required for reclassification, such approval shall not be unreasonably withheld.** Failure to act on a proper and complete application for reclassification within three (3) months from receipt of the same shall be deemed as approval thereof.
>
> (e) **Nothing in this Section shall be construed as repealing, amending, or modifying in any manner the provisions of R.A. No. 6657.**

21. While Section 20 of the Local Government Code grants to a local government unit the power to reclassify agricultural land, said power is not absolute. The power to re-classify agricultural land is in fact limited by the following: (i) DAR's determination of the propriety of the conversion; (ii) only to a certain percentage of the area of the local government unit; (iii) existing land conversion laws; and (iv) R.A. 6657.

22. In fact, Section 4 of DAR Memorandum Circular No. 54-93[11], governing land classification of LGUs, provides that "*actions on applications for land use conversions on individual landholdings shall remain as the responsibility of DAR*" taking into consideration the LGU's comprehensive land use plans and accompanying ordinance as the primary reference documents.

ADMINISTRATIVE AND CRIMINAL PENALTIES PROVIDED UNDER DAR AO NOS. 01-02, 01-99 AND 07-97, ARE MERELY AN IMPLEMENTATION OF EXISTING LAND CONVERSION LAWS, INCLUDING R.A. 6657.

23. According to petitioner, the assailed rules violated its constitutionally protected right of due process when the rules imposed administrative sanctions and criminal penalties under Sections 51, 61, and 63.

24. To be clear, the aforesaid sanctions and penalties are provided in R.A. 6657 and other existing land conversion laws. The assailed rules merely implement said provisions of law. Section 74 of R.A. 6657 prescribes certain penalties for the commission or omission of certain acts, including "*the conversion by any landowner of his agricultural land*

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11 A copy of which is attached hereto as Annex "V".

into non-agricultural use with intent to avoid the application of this Act to his landholdings and to dispossess his tenant farmers or the land tilled by them:"

> SEC. 74 . Penalties . —Any person who knowingly or willfully violates the provisions of this Act shall be punished by imprisonment of not less than one (1) month to not more than three (3) years or a fine of not less than (P 1,000.00) and not more than fifteen thousand pesos (P 15,000.00), or both, at the discretion of the court.
>
> If the offender is a corporation or association, the officer responsible therefor shall be **criminally liable**.

25. In other words, respondent, in incorporating under the rules specific penalties for certain violations, acted within the bounds of his authority by merely implementing what was already provided under existing land conversion laws including R.A. 6657.

MEMORANDUM NO. 88 DATED 15 APRIL 2008 IS CONSTITUTIONAL.

26. As oft repeated, the power of respondent on land conversion is not limited to those granted under R.A. 6657. Its power to approve or disapprove land conversion was vested as early as 1963. In particular, E.O. 129-A mandates the DAR to "*approve or disapprove the conversion, restructuring or readjustment of agricultural lands into non-agricultural use.*" E.O. 129-A, further grants the DAR "*such other powers and functions as may be*

provided for by law or directed by the President, to promote efficiency and effectiveness in the delivery of public services".

27. It bears stressing that Memorandum No. 88, *supra,* was issued by respondent pursuant to the clear directive of the President. It is an exercise of a power validly delegated pursuant to E.O. 129-A.

28. Moreover, the aim of Memorandum No. 88 was to address the worsening rice shortage in the country by ensuring that there are enough agricultural lands on which rice cultivation and production may be carried out. This undoubtedly involves the general welfare of the public. Basic is the rule that when conditions so demand, as determined by the legislature, property rights must bow to the primacy of police power. Property rights, though sheltered by due process, must yield to the general welfare.

DAR AO NOS. 01-02, 01-99 AND 07-97, ARE CONSTITUTIONAL AND DO NOT VIOLATE THE DOCTRINE OF EQUAL PROTECTION UNDER THE LAW.

29. The equal protection clause does not guarantee that the law will apply equally to everyone. Instead, it requires that the law should operate uniformly on all persons under similar circumstances or that all persons are treated in the same manner. The fundamental right of equal

protection is not absolute; it is subject to **reasonable classification.** If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another.[12]

30. The issuance and implementation of the subject law and rules was a proper exercise of the government's police power. To assure that the general welfare is promoted, the government is entitled to regulate the rights to liberty and property. Those adversely affected may, under certain circumstances, invoke the equal protection clause only **if they can show that the assailed governmental act, far from being inspired by the attainment of the common wealth, was prompted by the spirit of hostility or at the very least, discrimination, that finds no support in reason.** It suffices then that the laws operate equally and uniformly on all persons under similar circumstances or that **all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities imposed.** Favoritism and undue preference cannot be allowed. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group should be equally binding on the rest.

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12 G.R. No. 142030. April 21, 2005.

PRAYER

WHEREFORE, it is most respectfully prayed that the instant petition be ***DENIED*** outright for lack of merit.

Other reliefs just and equitable under the circumstances are likewise prayed for.

Makati City for Manila, 2 December 2008.

*///...signatories next page.../// *

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EXPLANATION
(Pursuant to Section 11, Rule 13 of the 1997
Rules of Civil Procedure)

The foregoing *Comment* is being served by registered mail due lack of personnel in the Office of the Solicitor General to effect personal service.

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