

Chiang Mai Administrative Court
April 22, 2020

Jet Sri-Ngeon, *et al.*, Plaintiffs

v.

Minister of Industry, Defendant 1
Department of Primary Industries and Mines, Defendant 2
Lampang Provincial Office of Industry, Defendant 3
Ban Haeng Subdistrict Headman, Defendant 4
National Environmental Board, Expert Committee on Mines, Smelting and Mineral Processing,
Defendant 5
Office of Natural Resources and Environmental Policy and Planning, Defendant 6
Ban Haeng Subdistrict Administration Organization, Defendant 7
and Kiew Luang Co. Ltd., Defendant 8

Re: Dispute about unlawful acts by administrative agencies or government officials

The 386 plaintiffs allege that they reside and work in Village 1 and Village 7 of Ban Haeng subdistrict, Ngao district, Lampang province. They have formed a collective called Ban Haeng Conservation Group (“Rak Ban Haeng Group”). The purpose of this collective is to manage, protect, conserve, and restore local wisdom and community use of natural resources and the environment. Plaintiffs allege that they were harmed or injured from the issuance of Mining Permit No. 30485/16138 on August 10, 2015 by Defendant 1. The permit allows Defendant 8 to operate a lignite coal mine in Ban Haeng subdistrict, over a total area of 86.87 acres (219.71 rai), for the duration of 10 years, from August 10, 2015 to August 9, 2025. The 386 plaintiffs believe that the mining permit violates the Constitution and other relevant laws, and also violates international treaties which Thailand has ratified. Plaintiffs cite the lack of information sufficiently provided to the public during the permit review process and the lack of opportunity for the public to provide input and participate in the decision-making process over the proposed mining project, in violation of Articles 56, 57, and 87 of the 2017 Constitution of Thailand in conjunction with Articles 4 and 5 of the 2014 Temporary Constitution of Thailand.

Plaintiffs allege that the mining permit was issued without written permission from the people who possess and use the land proposed for mining, in violation of Articles 41 and 42 of the 2017 Constitution of Thailand in conjunction with Articles 4 and 5 of the 2014 Temporary Constitution of Thailand, and in violation of Sections 48 and 50 of the 1967 Minerals Act.

Plaintiffs allege that information contained in the investigation report for Mining Permit Application No. 6/2015 was false, and such information was relied on in issuing the mining permit. For example, there was incomplete information about waterways and public lands on the proposed mining site.

Plaintiffs allege that Defendant 8 organized an information session on the mining project on September 25, 2010 at North Ban Haeng School Meeting Hall in Ban Haeng subdistrict, Ngao district, Lampang province, which was neither a public hearing nor a voting forum for local residents. Plaintiffs also questioned the authenticity of some meeting participants' signatures. Thus, the meeting minutes contained incorrect information. When the Council of Defendant 7 used the meeting minutes in its review and approval of the mining project proposed by Defendant 8, the resolution on September 28, 2010 approving the project was therefore unlawful. This is in line with the results of the Ombudsman's investigation and opinion, following a visit by the Ombudsman to investigate local residents' complaints.

Plaintiffs allege that Lampang Provincial Governor, as authorized by the Minister of Natural Resources and the Environment, issued Permission Letters for Defendant 8 to use forest land for mining, despite opposition from local residents. Plaintiffs allege that these Permission Letters and all related orders violate the 2005 Forestry Department Regulation on Permitting Uses or Residency in National Reserved Forests. In addition, plaintiffs allege that the environmental impact assessment report for the project as approved by Defendants 5 and 6 lacked public participation and relied on incorrect information, and thus lacks credibility. Moreover, the investigation report on local opposition in the proposed mining area authored by Defendant 4 and dated July 10, 2015 contains false information. At the time the investigation report was issued, all defendants were aware that the 386 plaintiffs and Ban Haeng Conservation Group members filed a lawsuit at Chiang Mai Administrative Court, to revoke the investigation report of the proposed mining area issued by Defendant 3, in Undecided Case No. Sor 2/2556 (2013). Plaintiffs also filed suit to revoke the Permission Letters to Use Forest Land, the meeting minutes about the project proposal by Defendant 8 dated September 24, 2010, and the Council Resolution of Defendant 7 at the September 28, 2010 meeting in Undecided Case No. Sor 7/2557 (2014). These are lawsuits demanded that the court revoke part of the mining permit approval process. Thus, if the court issued revocations as requested, the mining permit approval process would also become unlawful. These are the plaintiff's claims.

Plaintiffs request the following ruling or injunction:

1. Revoke Mining Permit No. 30485/16138 dated August 10, 2015 issued to Defendant 8;
2. Revoke the investigation report that accompanied the mining permit application for Mining Permit No. 30485/16138, with retroactive effect to the date the report was issued;
3. Revoke the meeting minutes of the meeting held at North Ban Haeng School Meeting Hall in Ban Haeng subdistrict, Ngao district, Lampang province on September 24, 2010, which the Chief Administrator of Ban Haeng Subdistrict Administration Organization, the Village 1 Headman, and the Village 7 Headman of Ban Haeng subdistrict signed and authenticated;
4. Revoke the Resolution of the Defendant 7 Council issued on September 28, 2010, which authorized the use of the meeting minutes from the September 24, 2010 meeting held at North Ban Haeng School Meeting Hall in Ban Haeng subdistrict, Ngao district, Lampang province as part of the approval process for Mining Permit No. 30485/16138, with retroactive effect to the date the resolution was issued;

5. Revoke the environmental impact assessment report approved by Defendants 5 and 6 on the coal mining project proposed by Defendant 8 in Mining Permit Application No. 4/2553 (2010), which is the same project proposed in Mining Permit Applications No. 5/2553, 6/2553, 7/2553, and 8/2553;
6. Declare unlawful the Permission Letters to use or reside in a national reserved forest for the purpose of operating a lignite coal mine as per Mining Permit Applications No. 5-7/2553, which was used to issue the Mining Permit No. 30485/16138 for Defendant 8, and also declare unlawful the Permission Order for forest clearing as per Mining Permit Applications No. 5/2553 and 6/2553;
7. Revoke the investigation report on local opposition in the proposed mining area dated July 20, 2015 and issued by Defendant 4; and
8. Order Defendants 1-7 to act in accordance with the Constitution and laws by providing the public with advance notice, appropriate and genuine dissemination of information, arrange for sufficient and meaningful public hearings, and implement environmental and health impact assessments with public input before taking any official action on issuing the mining permit.

Because the Court found that any ruling in this case could affect the interests of Kiew Luang Co. Ltd., the Court ordered the company to be joined as Defendant 8.

The 386 plaintiffs filed their complaint on December 16, 2015, with a request for preliminary injunction. Plaintiffs asked the court to temporarily delay any actions related to the mining operation as permitted in the Mining Permit in dispute. The court reviewed the preliminary injunction request and issued a dismissal on January 26, 2016.

According to Defendants 1, 2, and 3, Defendant 8 submitted an application to operate a coal mine on 5 plots in Ban Haeng subdistrict, Ngao district, Lampang province. Defendant 3 received the application numbered 4/2553-8/2553 on January 20, 2010 for a total area of 488 acres (1,235.3975 rai). The area where Defendant 8 requested permission to mine was originally designated for mineral exploration, experiment, and academic study or research, under the Ministry of Industry's Ministerial Notice on Partial Designation of Land in Nan, Payao, Phrae, Lampang, Songkhla, and Pattani Provinces as Mineral Exploration, Experiment, and Academic Study or Research Zone dated November 25, 1988. However, the Ministry of Natural Resources and the Environment later issued a Ministerial Notice Revoking the Ministry of Industry's Ministerial Notice on Mineral Exploration, Experiment, and Academic Study or Research Zones dated June 20, 2008. In effect, 198 square kilometers (48,927 acres) in Ngao District lost its status as a Mineral Exploration, Experiment, and Academic Study or Research Zone. Therefore, a private entity could apply to operate a coal mine in this area.

The area in dispute was originally the site of underground coal exploration by the Department of Mineral Resources, the Electricity Generating Authority of Thailand, and the National Energy Authority. On January 20, 2010, Defendant 8 submitted Mining Permit Application No. 6/2663 to a Lampang Provincial Officer of Minerals for mining coal in an area of 87.5 acres (221.205 rai) in Ban Haeng

subdistrict. Later, a representative of Defendant 8, Mr. Pradit Wangkamfu, led officers to inspect the site of Mining Permit Application No. 6/2553.

Officers measured site boundaries and completed Form 1 Site Inspection Report (the site inspection report that accompanied the mining permit application), dated April 20, 2010. The site inspection report can be summarized as follows:

The site topography is a plain, not within 50 meters of any highway. The site is located about 5 kilometers northeast of the Lampang-Payao Highway at Ngao district intersection. The site is located on Mae Jon Creek, which is a dry creek about 2 meters wide, about 450 meters long within the site, and 20 centimeters deep. Mae Jon Creek is dry except for rainy season and cannot be used for transportation. Residents use the creek only when it is not dry. In rainy season, the creek measures about 3 meters wide and 1 meter deep. The applicant seeks permission to obstruct the waterway due to an intersecting vein of mineral deposits. Water flow is used for irrigating approximately 79 acres (200 rai) of rice paddies and farmland located south and about 1 kilometer away from the site. The creek is not used for other industrial uses. The creek originates from mountains in the north and eventually flows into Ngao River. The proposed mining operation will not use water from this creek. The site has never been used for mining. The site overlaps in some parts with land that is without title but has been in possession of local residents for about 30 years. The mining permit applicant requested for site boundary measurements first and will negotiate agreements with landowners later. Land in possession by local residents could not be measured because landowners were not available to indicate boundary lines. The site overlaps with a public road connecting North Ban Haeng to Khun Haeng Village. The public road is approximately 5 meters wide and 400 meters long within the site. The site overlaps mixed deciduous forest land in deteriorated state, currently used as farmland by local residents without land title. The applicant requests permission to operate an open-pit mine, in conjunction with Mining Permit Applications No. 4/2553, 5/2553, 7/2553, and 8/2553, with Mining Boundary Posts No. 30483, 30484, 30486, and 30487, respectively. The applicant will indicate the distance between the mining operation and waterways and highways in a project site map, to be submitted at later date. After inspection, officers concluded that waterways and public roads can be moved due to the plain topography, which is suitable for open-pit mining and the type of mineral to be mined.

Officers conducted additional investigation, according to the supplemental investigation report that accompanied the mining permit application. The investigation report can be summarized as follows:

The proposed mining site abuts the site of Mining Permit Application No. 5/2553 at Mining Boundary Post No. 30484 on the north and Mining Permit Application No. 7/2553 at Mining Boundary Post No. 30486 on the south, both belonging to Defendant 8. The proposed mining site is also adjacent to a community forest. Small animals such as birds and reptiles reside on the project site and nearby. Mae Jon Creek is located on the site. Surrounding land uses are agricultural and livestock production, which existed before the mining permit application was submitted. There are no temples, religious institutions, schools, government offices, or archaeological sites located around the proposed mining site. The mining operation will be clearly visible from the public road. The air quality is currently normal at the proposed project site and nearby areas. Mining may result in damages to local land uses, such as agriculture, foraging, and livestock production, but the impact will be minimal. The site is located in Watershed Zone 5.

Later, officers surveyed boundaries of farmland and land in possession of local residents to exclude from the area in Mining Permit Application No. 6/2553. Officers conducted the boundary survey on February 15-19, 2012 and issued a supplemental investigation report for Mining Permit Application No. 6/2553 dated February 19, 2012, which can be summarized as follows:

The site topography is a plain, not within 50 meters of any highway. The site is located about 5 kilometers northeast of the Lampang-Payao Highway at Ngao district intersection. The site is located on Mae Jon Creek, which is a dry creek about 2 meters wide, about 450 meters long within the site, and 20 centimeters deep. Mae Jon Creek is dry except for rainy season and cannot be used for transportation. Residents use the creek only when it is not dry. In rainy season, the creek measures about 3 meters wide and 1 meter deep. The applicant seeks permission to obstruct the waterway due to an intersecting vein of mineral deposits. Water flow is used for irrigating approximately 79 acres (200 rai) of rice paddies and farmland located south and about 1 kilometer away from the site. The creek is not used for other industrial uses. The creek originates from mountains in the north and eventually flows into Ngao River. The proposed mining operation will not use water from this creek. The site has never been used for mining. The site overlaps forest land and public land reallocated for agricultural use. The site overlaps with a public road connecting North Ban Haeng to Khun Haeng Village. The public road is approximately 5 meters wide and 620 meters long within the site. The site overlaps mixed deciduous forest land in deteriorated state, currently used as farmland by local residents without land title. The applicant requests permission to operate an open-pit mine, in conjunction with Mining Permit Applications No. 4/2553, 5/2553, 7/2553, and 8/2553. The applicant will indicate the distance between the mining operation and waterways and highways in a project site map, to be submitted at later date. Inspection officers concluded that waterways and public roads can be moved due to the plain topography, which is suitable for open-pit mining and the type of mineral to be mined.

Officers conducted additional investigation and noted additional information on site topography, in Section 1 of the above investigation report. The information is summarized as follows:

The proposed mining site abuts the site of Mining Permit Application No. 5/2553 on the north and Mining Permit Application No. 7/2553 on the south, both belonging to the applicant. The proposed mining site also abuts a community forest on the south. In the east and west, the site abuts land belonging to the applicant. Small animals such as birds and reptiles reside on the project site and nearby. Mae Jon Creek is located on the site. Surrounding land uses are agricultural and residential. But residential land is located over 100 meters from the project site, numbering about 80 households. Before the mining permit application was submitted, land uses were agricultural and livestock production. Surrounding the proposed mining site are Ban Haeng Temple, located 1,950 meters from the site and North Ban Haeng School, located 1,500 meters from the site. There are government offices or archaeological sites located around the proposed mining site. The mining operation will be clearly visible from the public road. The air quality is currently normal at the proposed project site and nearby areas. Mining may result in damages to local land uses, such as agriculture, foraging, and livestock production, but the impact will be minimal. The site is located in Watershed Zone 5.

Later, Defendant 8 requested to exclude 0.602 acres (1 rai 2 ngan 2 tarang wah) because the land overlapped with public land reallocated for agricultural use. The remaining site of 87.884 acres (219 rai 2 ngan 84 tarang wah) comprises 15 acres (40 rai 56 tarang wah) of forest land according to Section 4 of

the 1941 Forestry Act, 33 acres (82 rai 66 tarang wah) of permanent forests according to the Cabinet Order, and 38 acres (98 rai 3 ngan 64 tarang wah) of Mae Ngao Left National Reserved Forest. According to the Department of Forestry Letter No. Tor Sor 1602.3/787 dated January 17, 2014, the Department of Forestry granted permission to use the Cabinet Order forest zone and the national reserved forest land, and did not dispute the proposed use of forest land. In addition, Lampang Provincial Office permitted Defendant 8 to enter and use the aforementioned forests. Defendant 8 hired consultants to conduct an environmental impact assessment (EIA) according to the Enhancement and Conservation of National Environmental Quality Act. Defendant 5 approved the environmental impact assessment report for this mining permit application, according to Office of Natural Resources and Environmental Policy and Planning Letter No. Tor Sor 1009.2/13669, dated November 15, 2013 and Mining Permit Application No. 6/2553 (2010).

On September 24, 2010, Defendant 8 held a public meeting in Village 1 and Village 7 of Ban Haeng subdistrict, which are located in the proposed mining site, to provide information on the project and answer any questions from residents. On September 28, 2010, the Council for Defendant 7 voted on a resolution, approving Mining Permit Applications No. 4-8/2553 submitted by Defendant 8. Lampang Provincial Office of Industry posted a notice for any landowners or relevant parties to submit petitions and corresponding evidence to the Lampang Provincial Office of Industry within 20 days.

The 7th Regional Office of Fine Arts in Nan conducted an archaeological survey. The Office issued Letter No. Wor Tor 0421/2061 dated December 28, 2010 that no archaeological remains were found on the proposed project site. However, a historic moat was found in a nearby area, 400 meters south of the site of Mining Permit Application No. 6/2553. According to recommended practices of the Department of Fine Arts, the mining site should be adjusted to preserve the nation's cultural heritage. If additional archeological remains are found in the future within the project site, the 7th Regional Office of Fine Arts in Nan requested to be notified, for the purpose of conducting additional surveys and preserving national heritage. Lampang Provincial Office of Industry forwarded the letter to Defendant 8. Defendant 8 then issued Letter No. 1/2554 dated February 16, 2011. Defendant 8 indicated that the company will implement the recommendations of the 7th Regional Office of Fine Arts in Nan by adjusting the project site and assigning a zone not permitted for mining or any mining operation, to be shown on the project site map. Defendant 8 also indicated that the company will allocate a Green Zone for planting trees, to match the surrounding land use of the community forest, and also to serve as a buffer for dust, noise and other impacts. The company would implement these measures as soon as the Mining Permit was issued.

Lampang Provincial Office of Industry issued a letter to the 7th Regional Office of Fine Arts in Nan that the project site map would be required to locate the mining area at least 500 meters away from the historic moat. The 7th Regional Office of Fine Arts in Nan issued a response in Letter No. Wor Tor 0421/698 dated April 25, 2011, that the Office inspected the area and found that the buffer has been placed. Thus, the 7th Regional Office of Fine Arts in Nan would not oppose the issuance of a mining permit to Defendant 8.

Defendant 3 presented the mining permit application to the Lampang Provincial Governor. The Governor presented the application for Defendant 2 to review and present for further review to the Minerals Act Committee, which approved and presented the application to Defendant 1. Later,

Defendant 1 approved Mining Permit Application No. 6/2553 for Permit No. 30485/16138, granted to Defendant 8 for a duration of 10 years from August 10, 2015 to August 9, 2025.

On the issue of local opposition and complaints about the project from local residents, there are local residents who support and oppose the project. Residents oppose the project on two grounds: (1) The project site overlaps with farmland used by local residents. On this issue, Lampang Provincial Office issued Order No. 2561/2555 dated September 28, 2012 to establish a committee to investigate the issue. Although the area in Mining Permit Application No. 6/2553 and Permit No. 30485/16138 is forest land, Defendant 8 has paid compensation to local residents who encroached on the forest area and used it for farming. (2) The location of public roads and waterways on the project site. The Court looks to official surveys of the project site, as well as inquiries with local government leaders and maps issued by the Royal Thai Survey Department of the Armed Forces, which government agencies rely on for accuracy. In Mining Permit Application No. 6/2553, the site overlaps with a public road connecting North Ban Haeng to Ban Kun Haeng Village, and overlaps Mae Jon Creek. However, the mining project site map and the environmental impact assessment (EIA) report have designated a no-mining zone for the public road connecting North Ban Haeng to Ban Kun Haeng Village and for Mae Jon Creek, including a buffer of 50 meters on each side of the creek, for a total width of 100 meters all along the creek. Thus, there will be no impact on public roads and waterways.

As for the meeting minutes from September 24, 2013 and the certified report of the meeting dated July 10, 2013, they were only used to collect public opinion as part of the permit review process by Defendant 7. The meeting was not a public hearing. The Council of Defendant 7 issued a resolution approving the project on September 28, 2013. The approval followed procedures according to Section 14(3) of the 2008 (4th Revision) of the 2004 Department of Primary Industries and Mines Regulations on Mining Permit Applications, Permit Issuances, Permit Renewals and Permit Transfers. The area in Mining Permit Application No. 6/2553 is entirely forest land. Defendant 8 followed procedures to obtain lawful use of the land. According to Section 8(5) of the 2005 Forestry Department Regulation on Permitting Uses or Residency in National Reserved Forests, the applicant must obtain approval from a Subdistrict Administration Organization Council or Subdistrict Administration Organization where the forest is located. Once the Council of Defendant 7 voted to approve forest use by Defendant 8 for the purpose of mining, Lampang Provincial Governor could then permit Defendant 8 to enter and use the forest area for mining.

According to the 2007 Constitution of the Kingdom of Thailand, persons have the right to receive information, an explanation and rationale from government agencies before agencies may permit or implement any project or activity that may impact environmental quality, health, quality of life, or any other significant interests belonging to the person or the local community. However, the investigation report is a process to define land boundaries of a mining permit application and to obtain preliminary facts about the area proposed for mining. This investigation is the beginning, not the final step in the permit review process by Defendant 1.

As for public hearing procedures and public participation, they must meet specific legal requirements for mining permit issuances. (1) Post notice for stakeholders to contest, according to Section 49 of the 1967 Minerals Act. Here, Lampang Provincial Office of Industry posted notice of the mining permit application for landowners or relevant parties to petition the Lampang Provincial Office of Industry within 20 days

along with corresponding evidence. (2) Organize a public hearing to gather and use public input in the review process by the local government. Here, a public meeting was organized to explain the project and answer questions on September 24, 2010 at the area of the mining permit application, in Village 1 and Village 7 of Ban Haeng subdistrict. (3) Request approval from the local government where the mining permit application is located. Here, Defendant 7 reviewed and voted to approve Mining Permit Application No. 6/2553 on September 28, 2010. When the mining permit approval was issued, the 2007 Constitution of the Kingdom of Thailand was revoked and no longer in effect. Thus, the mining permit review process is deemed to have met public participation and public input requirements according to law.

The land area in the mining permit application is forest land, which belongs to the state and thus not subject to any person's claim of ownership or possessory rights. To enter the area for use or residence, one must receive permission according to the Forestry Act. Citizens who claim possessory rights based on the Constitution or international treaties also have the duty to obey relevant laws. It was lawful for officers to enter and survey boundaries of the land in Mining Permit Applications No. 4-8/2553 as submitted by Defendant 8, even though prior to entering the land the officers did not notify citizens who claim land rights in the area. The officers' entry was lawful because these citizens held the status of trespassers and acted unlawfully. If officers issued prior notice, it would have been equivalent to granting rights to those who violate the law. The mining operation by Defendant 8 is subject to monitoring and control according to laws, including the Minerals Act, the Enhancement and Conservation of National Environmental Quality Act, and other relevant laws. Moreover, mining operations must also meet the criteria, procedures and conditions set forth in the project plan, as well as environmental protection and mitigation measures in the environmental impact assessment (EIA) report.

Defendant 4 claims that this complaint has the same content and demands for relief as other cases under review by Chiang Mai Administrative Court: Undecided Case No. Sor 2/2556 between Miss Waewrin Buangoen as Plaintiff 1 and 445 other plaintiffs vs. the Department of Primary Industries and Mines as Defendant 1 and 4 other defendants, and Undecided Case No. Sor 13/2557 between Ms. Sommai Harntecha as Plaintiff 1 and 439 other plaintiffs v. Director General of the Forestry Department as Defendant 1 and 8 other defendants. Defendant 4 claims that this complaint is barred as a duplicate complaint. In addition, Defendant 4 claims the mining operation in the disputed permit has not begun and therefore has not caused any impact. In addition, Defendant 4 claims that the 386 plaintiffs have filed this complaint in bad faith because of continued negotiations for unlawful gains and the use of violence. Thus, Defendant 4 claims that plaintiffs lack the right to sue.

As Ban Haeng Subdistrict Headman, Defendant 4 claims he has acted according to his legal duties in truthfully verifying information and providing information about the land conditions of the permit application. As for the permit approval granted to Defendant 8, that is the discretion of Defendant 1. The area in the mining permit application is mountainous and deteriorated from encroachments by people who practice slash and burn agriculture. Deforestation and manmade forest fires have created drought conditions, not suitable for farming. As for the meeting photographs as attached to the complaint in documents and material evidence, they were not produced through the meeting which lasted more than 3 hours. The photographs were edited to misrepresent the facts, and should be excluded as false evidence.

Defendants 5 and 6 claim that Defendant 8 submitted the environmental impact assessment report for the coal mining project according to Mining Permit Application No. 4/2553, which shares the same project plan as Mining Permit Application No. 5/2553, No. 6/2553, No. 7/2553, and No. 8/2553. A.B.E.N. Engineering Consultants Co. Ltd. produced the report for Defendant 6 to review on June 19, 2513.

Defendant 5 assigned an expert environmental officer, an employee of Defendant 6, to inspect the project site on August 15, 2013. The officer found that most of the land is deteriorated forest with basin topography. Mae Haeng Creek is located approximately 0.5 kilometers west of the mining permit site boundary. Mae Jon Creek flows through the center of the project site. Mae Muang Creek and Mae Muang Reservoir are located southeast and east of the project site. Based on visual observation, the soil condition is sandy loam. The project site is located in Mae Ngao Left National Reserved Forest, according to Ministerial Order No. 518 (1972), issued under the 1964 National Reserved Forests Act. The Forestry Department had excluded some areas and transferred them to the Agricultural Land Reform Office (ALRO) to allocate for farm use, according to the 1997 Decree Designating Land in Wang Kaew Subdistrict, Toong Hua Subdistrict, Wang Nuea Subdistrict, Wua Tong Subdistrict, Wang Sai Kam Subdistrict, Wang Tai Subdistrict and Rong Koh Subdistrict in Wang Nuea District, Pong Tao Subdistrict, Na Gae Subdistrict, Ban Haeng Subdistrict, Ban On Subdistrict, Luang Nuea Subdistrict, Luang Tai Subdistrict and Ban Pong Subdistrict in Ngao District, and Ban Sadej Subdistrict in Muang Lampang District, Lampang Province as Land Reform Zones, and according to the 2009 Decree Designating Land in Ban Rong Subdistrict, Pong Tao Subdistrict, Ban Haeng Subdistrict, Na Gae Subdistrict, Luang Nuea Subdistrict, Luang Tai Subdistrict and Mae Teep Subdistrict in Ngao District, Lampang Province as Land Reform Zones. The project site is located between 0.5-1.5 kilometers away from the community. So far, there is not one resident who can provide proof of residency or possession with land use prior to the national reserved forest declaration of the project site. In addition, according to the 1997 Capacity Survey Report of Coal Minerals in Ngao Basin, Lampang Province by the Department of Mineral Resources, the report clearly indicates that the project site is a healthy forest only in the location where the Forestry Department planted a plot of teak trees in 1977. Other economically-valuable trees and the surrounding tropical rain forest have almost all disappeared. Thus, the encroachment of national reserved forest was not a consequence of coal exploration. Rather, the forest encroachment originated from people's trespass.

The public participation process in environmental impact assessment is different than the public participation process in permitting uses of national reserved forests according to the 2005 Forestry Department Regulation on Permitting Uses or Residency in National Reserved Forests and the public participation process in mining permit reviews according to 2008 (4th Revision) of the 2004 Department of Primary Industries and Mines Regulations on Mining Permit Applications, Permit Issuances, Permit Renewals and Permit Transfers. The purpose of public participation in environmental impact assessment is to enable the environmental impact analyst and the proposed project owner to consider the potential impact on the public. Public opinion is used in determining environmental protection and mitigation measures. Public opinion is also used in determining environmental impact monitoring measures, to control and prevent impacts from the project and other activities, to achieve minimal adverse impacts within an acceptable limit. However, as stakeholders, the general public includes both those who reside within the project location and those who reside further away from the project. Thus, stakeholders are categorized to prioritize those who live within the project location because they receive direct impact. When the number of stakeholders exceed 100 people and public opinion is required on many subjects,

the environmental impact analyst may rely on the opinion from a sample group instead of directly collecting input from the public at large, which tends to be problematic in many ways. For example: finding a location, the diversity of opinions, the length of the public meeting to provide everyone with the opportunity to fully express their views, which may prevent the meeting from achieving a resolution. The environmental impact analyst may rely on sampling as a method to collect public opinion. Namely, conducting individual interviews; inviting public opinion by mail, by phone or fax, by information technology networks; providing the public the opportunity to receive information from and provide input to the government agency in charge of the project; engaging in conversations or consultations including public hearings, public debate, information exchange, workshops, or focus group meetings with relevant parties or stakeholders.

Defendant 6 issued guidelines for public participation and the evaluation of social aspects in environmental impact assessment, both for the initial environmental examination (IEE) and the general environmental impact assessment (EIA). The analyst must collect public opinion at least 2 times: once when the project begins and another time during the preparation of environmental protection and mitigation measures. The analyst must review public opinion from the second hearing together with public opinion from the first hearing.

Plaintiffs allege that Defendant 6 did not provide the public or the 386 plaintiffs with the opportunity to participate in the project's environmental impact assessment. But in fact, officials of Defendant 6 inspected the project location on August 15, 2013 and presented an initial evaluation for Defendant 5 to review at meeting no. 21/2556 on August 20, 2013. In addition, Defendant 6 acted within its legal duty, and the actions were only internal administrative procedures before Defendant 5 issued an administrative order with an opinion on the project in dispute. Defendant 6 did not act in any way that can be characterized as an administrative act.

In line with the Supreme Administrative Court order no. 97/2554 (2011) and the Supreme Administrative Court decision in Decided Case No. Or 37/2553 (2010), the 386 plaintiffs do not fall within the meaning of persons who are injured or face the threat of unavoidable injury from the actions or omissions of Defendant 6, according to Section 42 Paragraph 1 of the 1999 Act on Establishment of Administrative Courts and Administrative Court Procedures. Defendant 6 did not neglect its legal duty and did not have the authority to approve the environmental impact assessment report of the project in dispute. Furthermore, the Court does not have the authority to invalidate the approval by Defendant 8 of the environmental impact assessment report, as the 386 plaintiffs requested, according to Section 72 of the Act.

Twice, Defendant 6 presented the environmental impact assessment report of the disputed project to Defendant 5 for review. First, at meeting no. 21/2556 on August 20, 2013, during which Defendant 5 reviewed and voted to deny approval and requested Defendant 8 to revise the report on 15 specific issues. Second, at meeting no. 28/2556 on October 22, 2013, during which Defendant 5 approved the report based on additional revisions in response to the earlier input from Defendant 5.

During the project's preparation phase, Defendant 5 approved the following environmental protection and mitigation measures on air quality and noise in residential areas near the project:

- (1) Improve surface quality of the mineral transport route and maintain it as a tight-packed gravel road. Also, improve road surface quality before the mining operation begins, maintain road surface quality in good condition for the duration of the mining permit, and spray water on the transport route within the project site 2-3 times daily.
- (2) Limit maximum driving speed of vehicles within the project site to 30 kilometers per hour for the duration of project preparation phase.
- (3) All vehicles, machinery, and equipment releasing exhaust or dust must undergo appropriate vehicle, machinery or equipment inspection at least once per month, for the duration of the project preparation phase.
- (4) Set up a permanent 24-hour air quality monitoring station and a display board showing the air quality monitoring results, namely: total suspended particulate, PM 10, sulfur dioxide, and nitrogen dioxide. The display board will be located at Village 7 Headman's Office in Ban Haeng subdistrict, or in another location approved by the Public Relations Committee. The display board must be set up before the mining operation begins and must be maintained in good condition for the duration of the mining permit.
- (5) From project preparation phase to project operation phase, plant additional fast-growing trees, such as Pradipat Pines. The height of tree saplings to be planted must be at least 2 meters high. Trees must be planted around the topsoil piling site in 2 concentric rows, and the distance between trees must be 2 x 2 meters apart.
- (6) Install a thermometer at the coal storage pile and arrange for an employee to record the temperature to prevent coals from spontaneous combustion. The installation must be completed before the mining operation begins and must be maintained in good working condition for the duration of the mining permit.
- (7) Limit the driving speed of vehicles carrying construction equipment, vehicles transporting workers and vehicles used in mining preparations in areas where the vehicles pass through residential areas located in the south, namely, South Ban Haeng Village and North Ban Haeng Village. The maximum speed limit shall be 30 kilometers per hour for the duration of mining preparations.
- (8) Conduct activities during the mining preparation phase between 08:00 and 18:00 hours only. Refrain from causing noise at nighttime, and refrain from transport activities for the duration of the mining preparation phase.

During the project's implementation phase, Defendant 5 approved the following measures:

- (1) Coal storage piles may not last longer than 7 days, to prevent excessive exposure of coal to open air and to reduce the spontaneous combustion rate.

- (2) The surface of coal storage piles must be crushed and packed tight. If spontaneous combustion occurs, employees with firefighting expertise and training must extinguish the fire immediately, for the duration of the project's implementation and for the duration of the mining permit.
- (3) Dumping of soil from surface mining is prohibited. Topsoil from the old mining site reconditioning shall be stored at a topsoil storage area to prevent natural occurrence of dust for the duration of the mining operation and the duration of the mining permit.
- (4) Mineral transport through residential areas in the south is prohibited. Mineral transport must use the northwestern transport route for the duration of the mining operation.
- (5) Activities that cause dust dispersal must stop whenever high winds occur on the mining surface, for the duration of the mining operation.
- (6) Repair mineral transport routes within the project site to maintain conditions of a packed dirt road. Maintain mineral transport routes within the project site in good condition for the duration of the mining operation and the duration of the mining permit.
- (7) Conduct monthly engine inspections of vehicles, machinery and mining equipment that release exhaust or dust, appropriate to each vehicle, machinery and equipment, for the duration of the mining operation and the duration of the mining permit.
- (8) Spray water at least 3-4 times daily, or as appropriate according to weather conditions, on the mining surface, on roads within the project site, and on mineral transport routes before merging with Highway No. 1 at the project entrance-exit, for the duration of the mining permit.
- (9) Limit the maximum weight of cargo and maximum speed of vehicles transporting minerals according to government regulations. On roads within the project site and on northwestern roads outside the project site before merging with Highway No. 1, the maximum speed limit shall be 30 kilometers per hour and mineral transporting vehicles must have secure tarp covering, for the duration of the mining permit.
- (10) Install cover for the mineral storage tank and mineral crusher at the mineral processing plant, and install a water spraying system around the location of dust dispersal, for the duration of the mining operation and for the duration of the permit. Another method may be used as appropriate to control dust dispersal, if it is able to control dust dispersal from the mineral processing plant within the standard.
- (11) Conduct regular monthly inspections of the air quality monitoring station and the display board for the duration of the mining permit, to ensure that they are in good working condition.
- (12) Prevent spontaneous combustion of coals in the storage pile or in dirt that is excavated and reburied, for the duration of the mining operation and the duration of the mining permit. The mining surface must not be contaminated with coal. If spontaneous combustion occurs, water must be sprayed to extinguish the fire with haste. In areas where coal surfaces but has not yet

been excavated, dirt must be used to cover the coal surface to prevent exposure to oxygen in the atmosphere.

- (13) The coal storage pile must be turned regularly to release heat which may cause spontaneous combustion, and tarp shall be used to cover the coal storage pile to reduce dust dispersal and air exposure, for the duration of the mining operation and the duration of the mining permit.
- (14) Conduct monthly inspection of the thermometer at the coal storage area, to ensure that it is in good working condition, for the duration of the mining operation and the duration of the mining permit.
- (15) Conduct mining activities between 08:00 and 18:00 hours. For the duration of the mining operation and the duration of the mining permit, mineral transport activities and noisy activities are prohibited at night, which is the time when local residents rest.
- (16) Inspect machinery equipment of the mineral processing plant and always maintain them in good working condition to reduce noise problems, for the duration of the mining operation and the duration of the mining permit.
- (17) Open the mine according to the map indicated in the project site plan, to reduce rapid topographical changes that may affect the visual landscape of the project area. Designate a buffer zone, including a zone where no mining activity will occur, and plant trees in the buffer zone, for the duration of the mining operation and the duration of the mining permit.
- (18) Remove all built structures all equipment from the project site when the mining permit expires. Fill pits with dirt and readjust the area to blend in with its surroundings, including planting grass as ground cover. On the stepped mining surface, fill with topsoil and plant grass and small vegetation as ground cover, to expedite the adaptation process and return to natural conditions. In addition, plant trees to replace lost species when the mining permit expires and for the duration of the rehabilitation period.

The following air and noise quality monitoring measures were also approved:

- (1) Install a temporary air quality monitoring station to detect levels of total suspended particles (TSP), PM10, sulfur dioxide (SO₂) and nitrogen dioxide (NO₂) at the project office, Ban Haeng Temple, North Ban Haeng Village, and South Ban Haeng School. Also, install a temporary noise and wind speed monitoring station at the project site. Twice each year, measure the maximum sound level (L_{max}) and the 24-hour average sound level (Leq) at the project office, Ban Haeng Temple, North Ban Haeng Village, and South Ban Haeng School.
- (2) Install a permanent air quality monitoring station to detect continuous 24-hour levels of total suspended particles (TSP), PM10, sulfur dioxide (SO₂) and nitrogen dioxide (NO₂) at North Ban Haeng Village.

On hydrological, surface water and groundwater conditions, the authorized environmental impact analyst conducted a study of natural waterways that are located near the project site and of significance

to the local community. A field survey was conducted of 4 nearby waterways: Mae Jon Creek, Mae Muang Creek, Mae Haeng Creek, and Mae Muang Reservoir. The survey found:

- (1) Mae Jon Creek comprises 3 tributaries that merge in the middle of the project site. The creek is about 0.5-1.0 meter wide, about 0.5 meter deep and flows from northeast to southwest. The creek merges with Mae Haeng Creek. Water level is high only in rainy season. In drought season, the creek is so shallow that the creek bottom is visible in certain parts. People use the creek only for agriculture.
- (2) Mae Muang Creek is 1.5 meters wide, about 1.0 meter deep and flows from east to southwest. Water level is high only in rainy season. In drought season, the creek is so shallow that the creek bottom is visible in certain parts.
- (3) Mae Haeng Creek is about 0.5-1.0 meter wide, about 0.5 meter deep, and is located about 0.5 kilometers west of the mining permit boundary. This creek flows from north to south, with intermittent flow throughout the year. In periods without rain, the creek will dry up in certain parts. People use the creek for agriculture.
- (4) Mae Muang Reservoir was built by the Department of Irrigation to store water for people to use in rice farming and freshwater aquaculture. The reservoir area is about 118.6 acres (300 rai). The floodgate is located at the bottom of the reservoir.

Defendant 5 approved the following environmental quality protection and mitigation measures for the project preparation phase:

- (1) Designate an area for topographical readjustment as appropriate to accommodate activities according to the mining site plan. Designate a no-mining zone of 15 meters around the project area, and a buffer zone of 50 meters around the no-mining zone measuring from Mae Jon Creek which flows across the middle of the project site and from the road that cuts through the project site as designated. These measures must be complete before beginning the mining operation.
- (2) Maintain the original landscape in areas where there are no mining or related activities, in the no-mining zone of 15 meters around the project area, and in the buffer zone of 50 meters around the no-mining zone measuring from Mae Jon Creek which flows across the middle of the project site and from the road that cuts through the project site. In particular, maintain the original landscape in the no-mining zone to the south and east of the project site. In addition, plant additional trees to establish the buffer zone. These measures must be implemented when the mining operation begins and for the duration of the mining permit.
- (3) Set up a sign to indicate the project boundaries and boundaries of the mining activity, for displaying project boundaries and for easy inspection. This sign must be set up before the mining operation begins, and must be inspected and maintained in good condition for the duration of the mining permit.

- (4) Create a sign to display information about the project, namely: mining permit number, area, duration of mining activities, and main responsible person. This sign must be located at the front of the project site or in an area that is visible by the general public. This must be completed before the mining operation begins and must be inspected, repaired and maintained in good condition for the duration of the mining permit.
- (5) Build sedimentation ponds. Ponds 1-4 must be 0.4 acre (1 rai) each and 6 meters deep. Ponds 5-7 must be 2 acres (5 rai) each and 6 meters deep. Ponds must be built before the mining operation begins and must be maintained in good condition for the duration of the mining permit.
- (6) Set up groundwater monitoring stations and a display board showing groundwater quality monitoring results in pH value, total suspended solids, total dissolved solids, hardness and opacity. The display board must be located at the office of Village 7 Headman in Ban Haeng subdistrict, or the office of another official as approved by the Public Relations Committee. This must be completed before the mining operation begins and must be maintained in good condition for the duration of the mining permit.
- (7) Dig drainage trenches and build retaining walls around the project, around the no-mining zone at 50 meters from the road that cuts through the project and from Mae Jon Creek, around built structures, around the mineral storage area, around the mining area, and around the dirt storage area. In addition, sedimentation ponds must be of sufficient capacity and must be dredge and maintained in good condition and must be able to receive sediment effectively for the duration of the mining permit. Water from sedimentation ponds may be used to spray mineral transport routes and within the mineral processing plant. These measures must be completed before the mining operation begins and must be maintained in good condition for the duration of the mining permit.
- (8) Set up an automatic water quality monitoring station to detect pH levels at the sump. This must be completed before the mining operation begins and must be maintained in good condition for the duration of the mining permit.
- (9) Set up an underground drainage pipe while taking into consideration the width and depth of Mae Jon Creek. The drainage pipe placement must reference guidance from the Department of Rural Highways. In addition, a buffer on either side of the bridge must be built and maintained in good condition for the duration of the mining permit. If found to be in disrepair, mineral transport must halt until the bridge is repaired to original working conditions. This must be completed before the mining operation begins and must be maintained in good condition for the duration of the mining permit.
- (10) Dig groundwater monitoring wells to monitor groundwater contamination around the project site. This must be completed before the mining operation begins and must be maintained in good condition for the duration of the mining permit.

- (11) Set up a stockpiling area for topsoil, which must be packed down every 2 meters in height. This must be completed before the mining operation begins and must be maintained in good condition for the duration of the mining permit.
- (12) Set up a mineral storage area of 3 acres (8 rai) and no more than 5 meters high. This must be completed before the mining operation begins and must be maintained in good condition for the duration of the mining permit.
- (13) Plant ground cover and fast-growing trees on the retaining walls around the project site. Planting must be in 1 row with 2 meters in between each tree, to prevent erosion. This must be completed before the mining operation begins and must be maintained in good condition for the duration of the mining permit.
- (14) Use topsoil excavated from the project preparation phase to build retaining walls around the project, to improve mineral transport routes, and to rehabilitate the landscape. This must be completed before the mining operation begins and must be maintained in good condition for the duration of the mining permit.
- (15) For the duration of the project preparation phase and the duration of the mining permit, topsoil and waste dirt or sand may not be brought outside the project site to prevent impacts from heavy metals such as mercury, arsenic, etc.
- (16) Use high density polyethylene (HDPE) as lining for the topsoil storage area and storage areas to prevent acidic contamination in the soil and groundwater. This must be completed before the mining operation begins and must be maintained in good condition for the duration of the mining permit.
- (17) Before laying down high density polyethylene (HDPE), a drainage pipe system must be installed to collect drainage that may result from leachate from the topsoil storage pile or leaks in the HDPE. Drainage must be channeled to and collected at the sump. This must be completed before the mining operation begins and must be maintained in good condition for the duration of the mining permit.
- (18) Monitor levels of heavy metals such as arsenic, mercury, cadmium and lead in the soil layer and rock layers in the project area and nearby areas before the mining operation begins. This must be completed before the mining operation begins.

For the project implementation phase, the following environmental quality protection and mitigation measures were approved:

- (1) In areas where there are no mining or relevant activities, maintain the original landscape and plant additional trees to establish a buffer zone for the duration of the mining operation and the duration of the mining permit.

- (2) When opening the surface, adhere strictly to the project site plan and maintain stepped sides as indicated, or according to the mining plan as approved by the Department of Primary Industries and Mines, for the duration of the mining operation and the duration of the mining permit.
- (3) When expanding the mining surface, adhere to the production limits of each mining phase to reduce rapid changes in the landscape, for the duration of the mining operation and the duration of the mining permit.
- (4) Rehabilitate the project site after mining according to the plans presented in the Environmental Impact Assessment Report. Present annual progress reports to Defendant 6 and the Department of Primary Industries and Mines, beginning with the next project phase, for the duration of the mining operation and the duration of the mining permit.
- (5) Dig a drainage trench for safe drainage to the sump, located in front of the mine in an area where runoff is found, to prevent erosion of the mining surface, for the duration of the mining operation and the duration of the mining permit, or if it is found that sediments comprise 1/3 of the sedimentation pond.
- (6) A project engineer shall inspect the mining surface daily to check for fractures and shall record findings as part of a report on landscape changes. When a fracture is found, it must be recorded so that caution will be exercised when mining. These measures shall be implemented for the duration of the mining operation and the duration of the mining permit.
- (7) An extensometer shall be used to inspect the extent of fractures found, and weekly reports shall be submitted to the Lampang Provincial Office of Industry once a month, for the duration of the mining operation and the duration of the mining permit.
- (8) The project's drainage trenches and sedimentation ponds shall be dredged regularly, or whenever sediment is found to comprise 1/3 of the sedimentation pond or drainage trench, and sedimentation ponds and drainage trenches shall always be maintained in good condition, for the duration of the mining operation and the duration of the mining permit. In addition, runoff collected from the drainage trenches shall be reused within the project site.
- (9) Sediment collected from dredging shall be used to repair retaining walls or used in rehabilitating previously mined areas to plant trees, for the duration of the mining operation and the duration of the mining permit.
- (10) Regularly inspect the stability of retaining walls around the project site, particularly the retaining wall that is parallel to Mae Jon Creek, to prevent runoff from leaving the project site, for the duration of the mining operation and the duration of the mining permit.
- (11) Before using runoff in the mining pit for agriculture, water and sediment quality testing must be conducted. The following must be tested for water quality: pH, total suspended solids, total dissolved solids, hardness, opacity, iron, mercury, arsenic, sulfate, manganese, and zinc. The following must be tested for sediment quality: lead, cadmium, arsenic, and mercury. If any is

found to exceed standard limits, a sign shall be posted in the last year of the mining operation, warning people to refrain from using the water.

- (12) Once a month, inspect groundwater monitoring stations and maintain the display board to be in good working condition, for the duration of the mining permit.
- (13) Once a month, inspect the groundwater monitoring station near the sump to ensure that it is in good working condition, for the duration of the mining permit.
- (14) For contaminated groundwater, pump from monitoring wells to the sump for treatment, for the duration of the mining permit.
- (15) Excavated topsoil shall be used to fill mining pits, repair transport routes, build retaining walls, and rehabilitate the landscape to reduce impact to soil conditions and soil erosion, for the duration of the mining operation and the duration of the mining permit.
- (16) Plant ground cover and fast-growing trees on the retaining walls around the project to reduce soil erosion, in one row with a distance between each tree of 2 meters, for the duration of the mining operation and the duration of the mining permit.
- (17) In areas with no mining or relevant activities, maintain the original landscape for the duration of the mining operation and the duration of the mining permit.
- (18) Any excavated topsoil and waste dirt and sand from mining that remains after being used to repair the landscape and transport routes within the mine shall be stored in designated storage piles for soil for each layer. Ground cover and trees shall be planted on retaining walls around the storage pile immediately. The distance between each tree shall be 2 by 2 meters, for the duration of the mining operation and the duration of the mining permit.
- (19) Excavated topsoil and waste dirt and sand shall not be removed from the project site, to prevent impacts from heavy metals such as mercury, arsenic, for the duration of the mining operation and the duration of the mining permit.
- (20) Build sedimentation ponds to collect runoff from soil storage piles to prevent runoff from leaving the project site, for the duration of the mining operation and the duration of the mining permit.
- (21) Two areas will be designated for topsoil stockpiling for the project, and storage will be according to designated procedures.
- (22) Backhoe trucks and workers will collect any topsoil that falls into Mae Jon Creek, for the duration of the mining permit.
- (23) An emergency response plan shall be established in the case that topsoil mixed with coal falls into Mae Jon Creek, and emergency response training shall be conducted once a year as determined, for the duration of the mining permit.

(24) High-density polyethylene (HDPE) shall be maintained in good working condition. If HDPE is damaged, repair must be done quickly to maintain good working condition, for the duration of the mining operation and the duration of the mining permit.

(25) The use of topsoil to fill in mining pits shall be according to assigned procedures.

The following environmental impact monitoring measures were assigned:

- (1) Establish temporary monitoring stations to detect levels of pH, total suspended solids, total dissolved solids, hardness, opacity, iron, mercury, arsenic, sulfate, manganese, and zinc at the following locations: Mae Muang Reservoir, Mae Muang Creek where it flows close to the project site, Mae Jon Creek before entering the project site, Mae Jon Creek where it merges with Mae Haeng Creek, Mae Haeng Creek before flowing near the project site, the project's mining pit, the sump. Monitoring shall be done twice a year, and for three continuous years after the mining permit expires. Also, establish a permanent monitoring station for pH levels at the sump, for daily inspection and daily recording of monitoring results.
- (2) Establish temporary monitoring stations to detect levels of pH, total suspended solids, total dissolved solids, hardness, opacity, iron, mercury, arsenic, and sulfate at the groundwater wells of North Ban Haeng Village Number 1 (Moo 1) and North Ban Haeng Village Number 7 (Moo 7). Monitoring shall be done twice a year. Also, establish permanent monitoring stations to detect pH levels at the monitoring wells within the project site and in North Ban Haeng Village, for daily inspection and daily recording of monitoring results.
- (3) Test for lead, cadmium, arsenic, and mercury levels at the mining pit in the last year of the mining operation.

On the issue of biological resources, the authorized environmental impact analyst reviewed results of the Forest Survey (Por Sor 22) and conducted a field survey. They found that most of the project area contains deteriorated forest conditions according to Department of Forestry criteria. Nearby forests are naturally mixed deciduous forests with imperfect reproduction and stunted growths. Because forests have been cleared for agricultural use, the land lacked fertility, causing the forest ecology to change completely. No remaining condition of a national reserved forest could be seen. In the surveyed area, there was very little biological diversity of wildlife, insufficient to provide a habitat or sustenance for larger species of wildlife such as gaur, banteng, and sambar deer; mid-sized species of wildlife such as muntjac and wild boar; rare species; threatened species; or native wildlife species. Therefore, the impact of project development activities is low, both in the preparation and the implementation phases. Although project activities will impact the habitat and feeding grounds of some wildlife species such as birds, reptiles and amphibians, these animals are able to either survive in the changed environment or adapt well to the disturbed conditions.

On the issue of land use, the authorized environmental impact analyst conducted a field survey in April 2013. Information analysis was also based on 1:50,000-scale topographic maps by the Royal Thai Survey Department of the Armed Forces and satellite images from Google Earth (April 2013). Land use analysis

was conducted at 1-kilometer radius and 3-kilometer radius around the project site, with the following findings:

- (1) At 1-kilometer radius around the project site, land use is mostly agricultural, such as tapioca and corn fields. Deteriorated forests and abandoned land are staggered among agricultural fields. Local transportation routes were also found, namely the road that links Ban Khun Haeng Village with North Ban Haeng Village and the road between Mae Muang Reservoir and North Ban Haeng Village.

In addition, within the 1-kilometer radius, Mae Haeng Creek was observed approximately 0.5 kilometer west of the project site. Also, Mae Jon Creek flows through the middle of the project site, and a Yao ethnic minority community is located approximately 0.5 kilometer southeast of the project site. North Ban Haeng Village is located approximately 1 kilometer south of the project site.

Within the 1-kilometer radius, land use can be categorized as follows:

- (a) Forest land, about 558 acres (1,412 rai)
- (b) Agricultural and abandoned land, about 1,216 acres (3,075 rai)
- (c) Mining area within the project, about 353 acres (892 rai)
- (d) Residential area, about 7 acres (18 rai)
- (e) Other land uses, about 194 acres (490 rai)

- (2) Within the 3-kilometer radius, land use can be categorized as follows:

- (a) Forest land, about 1,810 acres (4,578 rai)
- (b) Agricultural and abandoned land, about 3,900 acres (9,863 rai)
- (c) No mining area within the 3-kilometer radius other than the project
- (d) Residential area is the location of South Ban Haeng Village, located about 1.5 kilometers from the project site, in an area of about 278 acres (703 rai)
- (e) Other land use is the location of Mae Muang Reservoir, located about 2 kilometers east of the project site, in an area of about 661 acres (1,672 rai)

Defendant 5 approved the following general measures for environmental protection and mitigation:

- (1) Assign a focal point for receiving public complaints arising from mining and relevant activities. The mining permit holder must provide fair resolution and assistance. A Public Relations Committee shall conduct inspections from the mine's opening until the mining permit expires.

- (2) When nearby residents file complaints about nuisance from the project or damage to public property, and after the Department of Primary Industries and Mines or Defendant 6 finds that the mining permit holder has not followed the indicated environmental protection and mitigation measures, the mining permit holder must cease mining operations and finish resolving the cause of the nuisance before the mining operation can resume. This shall apply from the mine's opening until the mining permit expires.
- (3) Rehabilitate mined areas and areas no longer in use within the project site according to the work plan. An annual progress report shall be filed to Defendant 6 and the Department of Primary Industries and Mines every year, from the mine's opening until the mining permit expires.
- (4) Upon receipt of the mining permit, a one-time detailed mineral exploration shall be conducted, to provide information necessary to plan the mining operation. The mining plan must receive approval from the Department of Primary Industries and Mines and Defendant 6. In addition, after receiving the mining permit, an additional soil analysis shall be conducted on groundwater permeability within the project site, to provide information for surface compaction work in the mining pit and on the topsoil storage pile within the project site.
- (5) During mining, if any ancient object or archaeological evidence is found, it must be reported to the Department of Fine Arts to request a field survey. The mining operation must cease during the field survey. If evidence proves that a historically-significant archaeological site exists, the mining permit holder must follow procedures issued by the relevant government agencies without objection, from the mine's opening until the mining permit expires.
- (6) A progress report on the implementation of environmental protection and mitigation measures shall be submitted to Defendant 6 and the Department of Primary Industries and Mines at least twice a year, from the mine's opening until the mining permit expires.

On the issue of transportation routes within the project site, entry into the mining permit area begins at Highway No. 1 (Lampang-Ngao), which is a paved four-lane road (bidirectional traffic, two lanes each). The route continues to the 788 Kilometer Post, where one turns right onto Road No. 1154 until one reaches the Luang Nuea Temple. Three hundred meters past the temple, one can find a traffic intersection in the north, with Ban Luang Nuea Withitanukul School on the righthand side. Continue straight on the paved road until a four-way intersection. Turn right (where the Pracharat Thammakun School is located on the left), and follow the paved road for about 8 kilometers past Don Chai Wittaya School. About 200 meters past the Im Jai Village gas station, turn left and continue straight past North Ban Haeng Village and South Ban Haeng Village. Continue north for about 2 kilometers and one will arrive at the project site. In this area, there are two routes that local residents use to travel between the two villages. One continues from North Ban Haeng Village northward and enters the national reserved forest. This is a gravel road about 10 meters wide and about 1 kilometer long. Another is in the east, past North Ban Haeng Village towards forest land and Mae Muang Reservoir. This is a gravel road, about 10 meters wide and about 1.5 kilometers long.

In the mining preparation phase, the transport of machinery and equipment will use the same routes as the routes that the local communities normally use for transportation. Machinery and equipment transport will occur in short periods of time, so the impact is low.

In the mining operation phase, the project has an annual production capacity of about 1 million metric tons, with an average daily production capacity of about 3,300 metric tons based on an 8-hour work day and 300 work days per year. The mineral processing plant within the project site has a production capacity of 1,760 metric tons per day. If rear loader trucks with a 25-ton capacity per trip are used, approximately 70 trips per day will be necessary to transport coal out of the project site. To prevent impact to existing transportation routes and to prevent dust and noise from mineral transport on North Ban Haeng Village and South Ban Haeng Village which are located south of the project, the authorized environmental impact analyst assigned 2 new transportation routes for transporting coal outside the project site:

- (a) Mineral transport route 1 (near PT Gas Station), located northwest of the project site. This is a grave road, about 2-3 meters wide, about 7.7 kilometers long before the merge point with Highway No. 1. For approximately 1 kilometer between Highway No. 1 and the gravel road, the road will be steel-reinforced concrete. The total distance from the project site to Highway No. 1 is about 8.7 kilometers. The road that continues past the steel-reinforced concrete section is the route used to enter forest land and agricultural areas.
- (b) Mineral transport route 2 (near entry of Sopa Curry Shop), located northwest of the project site. This is a grave road, about 2-3 meters wide. Most of the road passes through forest land and agricultural land. Adjacent to the road are 1 home and 2 temporary shelters belong to farmers. The total distance is 7.8 kilometers.

Defendant 5 approved the following environmental protection and mitigation measures in the mining preparation phase:

- (1) Improve two public roads that cut through Mae Ngao Left National Reserved Forest, which will be used to transport minerals before merging with Highway No. 1. Namely, mineral transport route 1 near the PT Gas Station located northwest of the project site, about 10 kilometers long and mineral transport route 2 near the restaurant entrance, located northwest of the project site, about 8 kilometers long. The road improvements must be completed before the mining operation begins and the roads must be maintained in good condition for the duration of the mining permit.
- (2) Post road safety signs to warn people of truck traffic, and post speed limit signs on the mineral transport routes for 500 meters before merging with Highway No. 1. The distance between speed limit signs must be 50, 100 and 200 meters. This must be completed before mining begins and must be maintained in good condition for the duration of the mining permit.
- (3) Post warning signs at the entry-exit of truck traffic and post speed limit signs in areas that intersect the two routes within the project site, to warn people using the roads of truck traffic

and to warn employees to abide by speed limits. This must be completed before mining begins and must be maintained in good condition for the duration of the mining permit.

The following environmental protection and mitigation measures were approved for the mining operation phase:

- (1) Transport minerals out of the project site using Highway No. 1 by way of the northwestern roads. Mineral transport through residential areas in the south is prohibited for the duration of the mining operation and the duration of the mining permit.
- (2) Every load of minerals, topsoil and waste rock must be covered completely with tarp during transport. Also, the side and back covers of trucks must be properly closed. This is to prevent spillage of mineral or dust dispersal. Mineral transport trucks belonging to the project must display the project name and a phone number in a clear and visible manner so that other road users can file complaints, for the duration of the mining operation and the duration of the mining permit.
- (3) Roads must always be maintained in good working condition. Repair of road damage must occur promptly. Truck load weight limits and speed limits must be in accordance with government regulations, particularly for the sections of the road that cut into the project site. Roads outside the project to the northwest before entering Highway No. 1 must have a maximum speed limit of 30 kilometers per hour. This is to prevent damage to road conditions. Employees must also be told to take extra caution to prevent dust dispersal and road accidents, for the duration of the mining operation and the duration of the mining permit.
- (4) Inspect mineral transport trucks, such as brakes, electrical systems, motor engines, gears, etc. Maintain in safe and good working condition with inspections at least once a month, for the duration of the mining operation and the duration of the mining permit.
- (5) Maintain warning signs in good condition and repair promptly if damaged, for the duration of the mining operation and the duration of the mining permit.

On the issue of economic and social conditions, Ban Haeng subdistrict has an area of about 153.56 square kilometers (37,946 acres), divided into 8 villages. In 2013, the total population is 6,719 persons and 2,067 households. Most of the population earns an income from agriculture, followed by hired labor, sales, and government employment, in that order. The subdistrict has 1 elementary school (South Ban Haeng Village School at Village 2); 1 middle school (Ban Bor Hor School at Village 4); 3 childcare centers (South Ban Haeng, Ban Mae Ngon, and Ban Bor Hor villages); 5 Buddhist temples (Village 1-4 and Village 6); 1 monks' quarters (Village 8); and 2 Health Promotion Hospitals (Village 2 and Village 4).

Two roads provide entry into Ban Haeng subdistrict: the asphalt road from Village 6 of Luang Nuea subdistrict (Ban Toong Poe) through Ban Bor Hor (Moo 4), and the asphalt road from Ban Don Chai Village (Moo 4) of Luang Nuea subdistrict through Ban Haeng Villages 1, 3, 7, and 8. Within a 3-kilometer radius of the project are 3 communities: North Ban Haeng Village 1 and Village 7, South Ban Haeng Village 2, and Yao ethnic minority community Village 1.

The coal mining operation may change the structure of employment in the area. In particular, those who are already in the hired labor sector will have an opportunity to work with the project. They will no longer need to migrate into the capitol for work and will earn a steady income. This will also provide capacity building and develop skilled labor, which can be adapted for further use in other jobs. In addition, the local government will earn increased revenue from 316,957,402 baht in mining royalties (about 10,565,247 USD), and the national government will receive over 50 million baht (about 1.6 million USD) in special revenue. Ban Haeng Subdistrict Administration Organization will earn revenue from mining royalties of 57,052,332 baht (USD) and from the project's income tax as estimated in the Revenue Code, which will be submitted as national revenue and, in turn, stimulate growth in consumer spending for the locality and for the overall national economy.

As for potential negative impacts, the project may cause people to worry about changing environmental conditions and health problems. Therefore, Defendant 5 approved the following environmental protection and mitigation measures for the project preparation phase:

- (1) Coordinate with the Department of Primary Industries and Mines and the Lampang Provincial Office to establish a multi-party Conflicts Review and Resolution Committee, consisting of Ngao District Chief as committee president, project representatives, leaders or representatives of local agencies in the project area, and representatives of those who oppose the project. The committee shall report to Defendant 6 once a year. This committee shall be established before the mine begins operation, and will remain in place for the duration of the mining permit.
- (2) Nominate representatives from the project, government agencies, and nearby communities to serve on the Public Relations Committee. This committee will be responsible for creating positive community relationships, publicizing the project, reviewing complaints, coordinating with local media, community leaders and residents around the project site, monitoring environmental impacts, and presenting an annual progress report to relevant agencies. This committee shall be established before the mine begins operation, and will remain in place for the duration of the mining permit.
- (3) Create a public relations plan and provide community assistance as indicated before the mine begins operation. The plan shall remain in place for the duration of the mining permit.
- (4) Create a communications plan about the mining project and report to the Village Headmen and Subdistrict Chief of Ban Haeng subdistrict. Reporting of the communications plan may be in the form of brochures at least twice a year, or a report to the community according to implementation timeframes. Information that must be communicated are:
 - (a) Beginning date of the mine's operation
 - (b) Details of the project
 - (c) Human resource needs
 - (d) Benefits to the community

- (e) Impacts to the environment and environmental protection and mitigation measures
- (f) Environmental impact monitoring measures

Communications on items 4(a)-(f) must be completed before the mine begins operation, and shall remain in place for the duration of the mining permit.

- (5) Set up comment boxes to collect public opinion about the project before the mine begins operation. Comment boxes shall remain in place for the duration of the mining permit.
- (6) Establish a community development fund after the mining permit is approved. This must be completed before the mine begins operation, and must remain in place for the duration of the mining permit.
- (7) Consider hiring mostly local labor. This must be completed before the mine begins operation, and must remain in place for the duration of the mining permit.
- (8) Establish a fund for rehabilitation of mined land. This must be completed before the mine begins operation, and must remain in place for the duration of the mining permit.
- (9) Establish an insurance fund for environmental risks and community life quality improvement, after the mining permit is approved. This must be completed before the mine begins operation, and must remain in place for the duration of the mining permit.
- (10) Establish a ten-year fund for monitoring health conditions, from the mine's opening until the mining permit expires.

The following measures were approved for the project operation phase:

- (1) Follow the public relations plan by communicating with the public through the Village Headmen and Subdistrict Chief in Ban Haeng Subdistrict Administration Organization. Produce project communication brochures at least twice a year, or submit a report on public relations about the mining project to the community for public communications according to strict criteria and timeline, for the duration of the mining operation and the duration of the mining permit.
- (2) For the duration of the mining operation and the duration of the mining permit, support activities that are implemented jointly with the community to develop positive relationships with people living in communities near the project.
- (3) Publish environmental quality monitoring results and maintain public communications boards about environmental quality, located in communities around the project, so that nearby communities are informed, for the duration of the mining operation and the duration of the mining permit.
- (4) If damage to nearby homes occurs from mining activities, the project must promptly resolve problems and provide appropriate and fair compensation, for the duration of the mining operation and the duration of the mining permit.

- (5) Set up comment boxes to collect public opinion about the project. The comment boxes shall be at the offices of village headmen for Village 1, Village 7 of North Ban Haeng Village and at the project office, for the duration of the mining operation and the duration of the mining permit.
- (6) For the duration of the mining operation and the duration of the mining permit, strictly adhere to environmental protection and mitigation measures and environmental monitoring measures, to reduce public concern about environmental impacts that may occur after the mining operation begins.
- (7) For the duration of the mining operation and the duration of the mining permit, strictly adhere to requirements of the fund for rehabilitation of mined land, the fund for health monitoring, the community development fund, and the insurance fund for environmental risks and community life quality improvement.
- (8) Welcome public opinion in various forms during village meetings or meetings at Ban Haeng Subdistrict Administration Organization, to be informed of problems that arise from mining, for the duration of the mining operation and the duration of the mining permit.
- (9) Establish positive relationships with local government officials and people in the community through regular visits with local agencies and local residents. Be ready to resolve problems or nuisances that may arise from the project, for the duration of the mining operation and the duration of the mining permit.
- (10) Publish a telephone number and address where people can contact about the project. Hire public relations officers in sufficient numbers for every village, to create a communication channel that will establish trust and positive relationships between the project and nearby communities, for the duration of the mining operation and the duration of the mining permit.
- (11) If community members raise concerns about the project's operation, the project must resolve those issues promptly, for the duration of the mining operation and the duration of the mining permit.
- (12) Increase public understanding among nearby residents, such as organizing public visits to the project site, for the duration of the mining operation and the duration of the mining permit.
- (13) Publish the project's progress through local media (community radio / community broadcast / public announcement towers), for the duration of the mining operation and the duration of the mining permit.
- (14) Provide information to the community, the subdistrict Health Promotion Hospitals, and the Provincial Office of Public Health at least twice a year, for the duration of the mining operation and the duration of the mining permit. Information shall consist of environmental impact monitoring results, and progress reports on environmental protection and mitigation measures that may affect the health of local residents.

- (15) Support health promotion activities and health monitoring activities of local residents, for the duration of the mining operation and the duration of the mining permit.
- (16) Survey public opinion twice a year about the project, problems arising from the project, and public concerns about mining, for the duration of the mining operation and the duration of the mining permit.

On the issue of public input in the environmental impact assessment process, Defendant 5 reviewed procedures for categorizing stakeholders in public opinion surveys and the implementation plan for organizing public hearings. Defendant 5 claims that the criteria and procedures set by Defendant 6 were met. The target population was designated as heads of households, married couples, or household members of ages 18 and older who have lived in the survey area for at least 1 year. Based on 2012 data collected from South Ban Haeng Health Promotion Hospital, the number of households in Village 1, Village 7, and Village 2 were 348, 247, and 196, respectively. The authorized environmental impact analyst used this data as the basis for conducting a sample population survey, determining the sampling methodology, and categorizing the sample survey population, as follows:

- (1) Purposive sampling of community leaders, choosing to survey Phra Kru Poonyarak, Head Monk of Ngao District, Abbot of Boon Yuen Temple, Village Headman of Village 7 Mr. Kriengsak Soikam, Assistant Village Headman of Village 2 Mr. Sanguan Yangkruea, Council Member of Defendant 7 Mr. Tongin Tongbai, and Council Member of Defendant 7 Mr. Kriengkrai Soikam.
- (2) A sample population within a 0.5-kilometer radius around the project site. According to criteria set by Defendant 6, if there are fewer than 50 households within 0.5 kilometer of the project, the survey shall be of the entire population. For the project in dispute, only 13 households were located within the 0.5-kilometer radius.
- (3) A sample population within a 3-kilometer radius around the project site, using purposive sampling. The proportional sample size was calculated according to methodology by Taro Yamane (1973). In Village 1, the sample survey size was 116 households. In Village 7, the sample survey size was 83 households. And in Village 2, the sample survey size was 66 households. The survey also included 5 community leaders and all 3 households that are located along the roads to be used for transporting minerals from the project site.

Before the first public opinion survey was conducted, Defendant 8 sent employees to communicate with the public and increase public understanding in the survey area twice in 2012. During the first public communication, information was provided about the scope of the survey, preliminary details about the project location, potential positive and negative impacts from the project, the project's objective, and benefits that the local community will receive. During the second public communication, information was provided about environmental quality monitoring results, namely air quality, noise, hydrology and water quality, transportation, economics, social conditions, public health, and occupational health and safety.

However, by that time, the Ban Haeng Conservation Group was established to oppose the project and block outsiders from entering the community to conduct public opinion surveys. For that reason, the

authorized environmental impact analyst assigned representatives to conduct the survey in their place. The first public opinion survey was conducted on July 25-27, 2012. They interviewed a sample population size of 273 people. Results of the public opinion survey are as follows:

According to the sample group, the scope of the study should prioritize natural resources and the environment, namely air quality, noise disturbance, transportation, forest resources, historical sites and archaeological remains as most important. The sample group was concerned about impacts from mining, namely dust, noise disturbance, potential contamination of natural waterways, and potential damage of community transportation routes from mining.

The second public opinion survey was conducted on March 14-16, 2013. The authorized environmental impact analyst increased the survey population size from the first survey to 290 people, to match the small increase in the total population of the second survey area. Of the sample group, 140 people came from Village 1, 91 people came from Village 7, and 71 people came from Village 2. The survey group was categorized the same way as the first survey, except that there was an increase in the survey group of community leaders from 5 to 9 people. The additional survey population were Mr. Jessada Buangoen, Chief Executive of the Subdistrict Administration Organization Mr. Watcharin Chatachoti, Subdistrict Administration Organization Council Member Mr. Boosanong Thepa, and Chief Administrator of the Subdistrict Administration Organization Mr. Wicharn Lamjuan. The total sample size for the second public opinion survey was 302 people. Results of the second public opinion survey closely resembled results of the first survey.

When the authorized environmental impact analyst completed the draft report, another public opinion survey was conducted. This time, the sample population size was increased from the second survey to 300 samples, to collect more comprehensive data. Of the sample population, 130 samples came from Village 1, 95 samples came from Village 7, and 75 samples came from Village 2. The sample population was categorized the same way as the second survey. However, the sample group for community leaders was increased from original 9 samples to 10 samples. The additional sample population was Mrs. Saengduan Ampoot, a teacher at Bang Haeng South School. The total sample population size for the third public opinion survey was 313 samples. According to the survey results, most people agreed with the environmental protection and mitigation measures set to address various issues.

However, because Defendant 5 issued a resolution from meeting no. 21/2556 on August 20, 2013, denying approval of the project report by Defendant 8. The resolution cited results in the report showing that people in the area had ideological conflicts. Defendant 5 requested the authorized environmental impact analyst to review the procedures used to collect public opinion. Defendant 5 asked that someone with an education background in social science conduct an in-depth study of the sample population who refused to participate in the public opinion survey, to find out their reasons and use those objections as a basis for determining appropriate measures for public participation in the environmental impact assessment process by Defendant 6.

The authorized environmental impact analyst assigned a freelance academic with expertise in social science to review those issues. It was found that the sample population who refused to participate consisted of 73 households in Village 1, 66 households in Village 7, and 33 households in Village 2, or a total of 172 households in the 3 villages. Of those households, 33 were leaders of the opposition, and 4

households were community leaders. The authorized environmental impact analyst then conducted an in-depth study of the people who refused to participate in the first and later public opinion surveys. The methodology used was in-depth social science analysis. The study was conducted between September 10, 2013 and October 10, 2013. The study divided the survey population into 3 groups: 4 households that were community leaders, 29 households that were leaders of the project's opposition, and 149 households from the general population who did not participate in previous surveys. The study results can be summarized as follows:

- (a) Among the surveyed community leaders surveyed, the main reason for refusing to collaborate with the survey is fear. They fear that the project may cause health impacts similar to the coal mine in Mae Moh district. They perceived that the project was not honest in community outreach. At first, people were told that the area would be used to plant trees to produce paper pulp. For these reasons, they opposed the mining permit.
- (b) Among the surveyed leaders of the project's opposition, most declined to give their opinion. Only 10 sample households provided their reasons for opposing the project. Of the 10 samples, 5 expressed concern that the project would cause health and environmental impacts, same as the coal mine in Mae Moh district. They feared that they would have to relocate and find new farmland. They worried that the compensation for their land would not be a fair price. In addition, all members of the sample households opposed the mining permit.
- (c) Among the surveyed general population (c) who did not participate in previous surveys, 72 of the 149 sample households gave interviews. They feared that the project would cause health and environmental impacts, same as the coal mine in Mae Moh district. They also feared that they would have to relocate and find new farmland. Of those who were interviewed, 44 of 149 samples worried about unfair compensation for their land value. Of those who were interviewed, 33 of 149 samples claimed that unfair land sales occurred. And 124 of 149 samples expressed clear opposition against mining. 25 of 149 samples expressed no opinion, citing fear of danger and declined to align themselves with either side of the ongoing conflict.

The 386 plaintiffs claim that there are more transportation routes than indicated in the report – routes that local residents use to reach farmland and the forest to forage for household consumption and income generation. The fact is that the area had been subject to trespass and forest clearing, to the point of becoming deteriorated forests. In addition, the 386 plaintiffs could not cite any evidence. The additional transportation routes that plaintiffs claim may have been unauthorized walking paths or seasonal paths to transport agricultural harvests back to local communities. These paths never received explicit grants of use by those who have rights to possession and rights to land use in the area. Nor have these paths been implicitly converted into public land. Thus, these transportation routes are not public property belonging to the people, as defined by Section 1304(2) of the Civil and Commercial Code, as suggested by Supreme Court Decisions No. 2647-2648/2531 (1988).

As for the claim that the environmental impact assessment report of the disputed project contains false data, this is what the 386 plaintiffs feel and believe. It is only an empty claim, without weight and without credibility. Plaintiffs also claim that the project in dispute is a project or activity that may cause severe impact to the community and is therefore subject to Article 66 and Article 67 Paragraph 2 of the 2007 Constitution. According to Appendix 2.3 of the 2010 Ministry of Natural Resources and Environmental Notification on the Type, Size, and Procedures for Projects or Activities that May Cause Severe Environmental, Natural Resources, or Health Impact to Communities which Government Agencies, State Enterprises, or Private Parties Must Conduct an Environmental Impact Assessment, dated August 31, 2013, the only coal mining projects that fall within the intent of Article 67 Paragraph 2 of the 2007 Constitution are coal mining projects that use motor vehicles to transport at least 200,000 tons/month or 2,400,000 tons/year of coal out of the project site. The project in dispute has a mineral processing plant on-site within the mining permit area, which can process approximately 1,760 metric tons/day of coal. The processed coal will be transported out of the project site by 25-ton trucks, about 70 trips per day. Considering that there are 30 days per month, the total amount of coal being transported by motor vehicle out of the project site is only 52,500 metric tons/month. Thus, this project is not required to conduct an environmental impact assessment report on potentially severe impacts to the community.

Furthermore, Plaintiffs 43, 183, 280, 297, and 336 already received compensation from the fact that Defendant 8 requested permission from the Agricultural Land Reform Office to use the land that these plaintiffs were granted permission to use. Thus, Plaintiffs 43, 183, 280, 297, and 336 are not injured parties or facing unavoidable harm or injury, within the definition of Section 42 Paragraph 1 of the 1999 Act on Establishment of Administrative Courts and Administrative Court Procedures. These plaintiffs are also not permitted to request the Court to issue an injunction compelling Defendant 5 to revoke the environmental impact assessment report of the disputed project, according to Section 72 Paragraph 1(1) of the same Act.

Defendant 7 did not submit a timely reply to the Court.

According to the reply submitted by **Defendant 8**, Defendant 8 originally received permission from the Department of Forestry to enter and use land in a national reserved forest to implement an integrated agriculture project (forest farming) since 2008. Defendant 8 implemented the project in 3 plots at Ban Haeng subdistrict, Ngao district, Lampang province. The area for plot 1 was 148 acres (375 rai), plot 2 was 73 acres (185 rai), and plot 3 was 229 acres (580 rai). The total area was 450 acres (1,140 rai). The project duration is from 2008 to 2023. Defendant 8 planted fast-growing trees, native forest species, eucalyptus trees (paper trees), and rubber trees for the whole area, interspersed with crop species, household vegetables, and other plants, rotating species by the season continuously up until today. Originally, the area was a deteriorated forest without any large trees (barren mountain). Later, Defendant 8 learned that the Department of Mineral Fuels, Ministry of Energy had conducted a mineral exploration and survey of the Ngao basin and found three coal deposits in North Ban Haeng, South Ban Haeng, and Ban Bor Hor villages. As a result, on January 20, 2010, Defendant 8 submitted mining permit applications for 5 plots in Ban Haeng subdistrict, as indicated in mining permit applications no. 4/2553, 5/2553, 6/2553, 7/2553, and 8/2553. After reviewing mineral and geological conditions, the Region 3, Chiang Mai Office of Primary Industries and Mines found that the mining permit applications fall within the area determined to have capacity as coal deposits. Thus, Defendant 3 accepted the mining permit

applications and proceeded according to the 1967 Minerals Act. According to Defendant 8, the complaint filed by the 386 plaintiffs is a lawsuit filed in bad faith, exercising legal rights in a way that damages Defendant 8.

On April 26, 2016, the 386 plaintiffs filed request for a preliminary injunction, to halt any activity related to the dispute mining permit. The Court reviewed the request and dismissed the request on June 6, 2016.

On August 15, 2017, the 386 plaintiffs filed a petition to provide information. Contents of the petition are essentially identical to this complaint.

The 386 plaintiffs denied the claims of Defendants 1-6 and Defendant 8. According to the plaintiffs, even though the status was revoked as an area for mineral exploration, experiment, and academic study or research in Ngao district, Lampang province, Defendant 8 could not use that opportunity as justification for a coal mining permit application that is in violation of legally required procedures. Defendant 8 must arrange for public hearings and collaborative management between the project owner and Ban Haeng residents, who are directly impacted by the project. Defendant 8 brought government officials and Defendant 3 to conduct an inspection for the mining permit application without informing residents and allow them to participate in the inspection. Facts show that Mae Jon Creek is not the only creek that exists in the mining permit application area. There are various other creeks – such as Sai King Creek, Lam Moo Cree, Huay Hoong Creek, Lom Ton Creek, Hong Creek, Pong Creek, and Kam Kia Creek – that merge into Mae Haeng Creek and Mae Jon Creek providing water for residents to use in agriculture and livestock production. Jon Creek is not a dry creek because it has continuous flow during rainy season.

As for the alleged deteriorated forest, local residents actually rely on that land consistently for farming rice and other crops. The trees are not stunted. Many plant species thrive in the area, including trees, vegetables and fruit species that grow in between various areas and are clearly visible, for example, bamboo and mushroom. In addition, wildlife in these forests are not limited to only small animals or reptiles. There have been sightings of gaurs in the deeper parts of the forest, daily sightings of wild boars, and occasional sightings of sambar deer. In 2015, there were sightings of rare wildlife species such as muntjac, Schomburgk's deer, and serows. In addition, a large flock of about 30 peacocks come feed near the residential areas of Ban Haeng community. On surrounding farmland, it is also common to spot herons, woodpeckers, mynas, bats, gibbons, moles, palm civets, mountain crabs, and rabbits.

North Ban Haeng School is located in area surrounding the mining permit application location. The school has been converted into North Ban Haeng Childcare Center, providing preschool education. There is also a Yao ethnic minority village less than 0.5 kilometer away from Mining Permit Application No. 8/2553. The residential area of Ban Haeng community is about 7 acres (18 rai), consisting of Village 1 and Village 7 with as many as over 500 households. Moreover, there is Ban Haeng Temple, one spirit tower, Bong Creek Cave, and an ancient mound.

Plaintiffs allege that the Forestry Department reviewed only one side of the story, in its consideration and approval for Defendant 8 to use the national reserved forest. The Forestry Department did not conduct an inquiry with local residents. The 386 plaintiffs and other residents in the area also contested the meeting minutes of the information meeting on the mining permit application by Defendant 8,

according to the photographic and audio recording evidence from the public hearing on September 24, 2010. Plaintiffs claim that this evidence is more credible than the documentary evidence used in the mining permit application.

As for the meeting of Defendant 7 Council on September 28, 2010, plaintiffs claim that the minutes were unlawfully used as part of the approval for Defendant 8 to use the national reserved forest for mining. Later, Defendant 7 issued a resolution on May 30, 2016 to revoke the September 28, 2010 resolution.

On the issue of compensation, plaintiffs claim that it was not issued with continuity or regularity. Only people who supported the project received compensation. Many people who opposed the project did not receive any compensation. In addition, programs promoting income generation in the community were discontinued.

On the issue of farming in forest areas, plaintiffs claim that it was not trespass. Plaintiffs claim that it was public land that belonged to Ban Haeng community.

If the mining operation were to occur, various environmental impacts would certainly ensue. Defendant 1 indicated that no mining activity will occur on the public road from North Ban Haeng Village to Ban Khun Haeng Village and in Mae Jon Creek, with a buffer zone of 50 meters on either side or a total of 100 meters. However, Mae Jon Creek flows through the vein of mineral deposits. No government agency will be able to enter the area and determine for sure whether Defendant 8 has refrained from excavating in the no-mining areas. Moreover, mining causes impact to waterways, noise pollution, air pollution, and increases the risk of accidents on the transportation routes.

Plaintiffs claim that the cause of action arose when the 2007 Constitution was in effect and, therefore, must rely on the 2007 Constitution in the court's ruling.

Ban Haeng Conservation Group was established to manage, protect, conserve, restore and promote local community wisdom, art and culture. The group has no intent to cause any violence.

The first and second meetings by Defendant 5 were limited in time and provided the opportunity for only Defendant 8 to speak. Thus, the meeting did not result in complete review of the facts. Plaintiffs produced a document to contest the inspection report that Defendant 8 submitted along with the mining permit application. Plaintiffs' document was a chart contesting the information on topography and land conditions of the proposed mining area, both in the national reserved forest and the agricultural land reform zone.

On the issue of land designated for agricultural land reform, the Supreme Administrative Court had issued a decision in Decided Case No. Or 331/2560 (2007) that land uses in the agricultural land reform zone must follow the intent of the Agricultural Land Reform Act, even when the land may have capacity for other uses beyond agriculture. The Agricultural Land Reform Office does not have the authority to grant permission for other uses. Thus, it is clear that Defendant 8 does not have the authority to operate a mine on land designated for agricultural land reform.

The 386 plaintiffs filed a petition on September 4, 2017 to submit a book excerpt entitled Rights and Liberties under the 1997 Constitution. The Court included the excerpt as part of the case files, and sent copies to Defendants 1-6 and Defendant 8.

In the supplemental briefs by Defendants 1, 2, and 3, they claim that the inspection report for the mining permit application is an internal administrative procedure, without any requirement to provide for participation from the public or other parties. In addition, the mining permit in dispute requires Defendant 8 to operate the mine according to the Minerals Act, which includes strict requirements on operations control and severe penalties. Defendant 8 must also adhere to the various measures indicated in the environmental impact assessment report, which has already set comprehensive control measures to address the various impacts of concern for the 386 plaintiffs. Furthermore, many government agencies will be monitoring the mining operation of Defendant 8 to ensure compliance. Here, the facts of the mining permit review process indicate that Defendant 8 received authorization from relevant government agencies to use the land according to Section 50 of the 1967 Minerals Act. Therefore, the approval of the mining permit for Defendant 8 was lawful according to relevant laws and regulations.

Defendant 4 did not provide a timely supplemental brief.

In the supplemental briefs by Defendants 5 and 6, they claim that environmental impact assessment reports according to the Enhancement and Conservation of National Environmental Quality Act must be conducted by authorized analysts and must meet requirements in procedure and form. The assessment must also be reviewed and must receive initial approval from qualified experts employed by Defendant 6. In practice, the committee of Defendant 5 is only responsible for topics within their field of expertise, thus limiting the scope of review by the committee of Defendant 5. The length of time for each review process cannot be used as an indicator of the level of thoroughness in each review process. When the 386 plaintiffs filed their petition to revoke the approval of the environmental impact assessment report of the disputed project, the review process had already concluded. Therefore, it was not within the authority of Defendant 5 to summon the 386 plaintiffs to provide testimony or additional input.

As for the Supreme Administrative Court decision in Undecided Case No. Or 33/2557 and Decided Case No. Or 331/2560 which revoked the 1998 Agricultural Land Reform Committee's Regulation on Permitting Natural Resource Use in Agricultural Land Reform Zones for Uses According to Other Laws, facts show that the court decision had been published in the Royal Thai Government Gazette on August 4, 2017. Thus, the court decision had no effect on the permission to use land in the agricultural land reform zone and the report approval by Defendant 5, which occurred before the Supreme Administrative Court's decision.

As for the allegation by the 386 plaintiffs that Council of Defendant 7 issued a resolution on May 30, 2016 to revoke a prior resolution from September 28, 2010 which approved the mining operation for Defendant 8, facts show that members of the Council of Defendant 7 had a conflict of interest in voting for this resolution. It is claimed that this is such a severe violation of the impartiality principle that the meeting to issue this resolution must be voided, as if it never occurred. And even if the meeting resolution were valid, the resolution could have no retroactive effect. At the time when Defendant 5 reviewed and approved the environmental impact assessment report of the project in dispute, the

Orders issued by the Forestry Department and the Agricultural Land Reform Office permitting Defendant 8 to use forest land and agricultural reform land were still in effect. Moreover, the review process by Defendant 5 is an exercise of administrative discretion, under rule of law. In addition, Defendant 5 conducted a comprehensive review of the project report by Defendant 8 and, therefore, did not act unlawfully.

Defendant 8 provided a supplemental brief, essentially stating that the company applied for the mining permit according to legally required procedures. As for public concerns that the coal mine would cause problems similar to the coal mine in Mae Moh district, Defendant 8 had a more advanced set of prevention plans and procedures. Defendant 8 risked legal consequences for noncompliance, which would not be economically beneficial to Defendant 8.

On January 9, 2019, the 386 plaintiffs submitted a written testimony to the court, which was essentially identical to the complaint, the reply brief, and other documents that plaintiffs had already submitted to the court.

The Court heard this case by reviewing the factual summary by the judge in charge of this case, written and oral testimony by the 386 plaintiffs, written testimony by Defendants 5 and 6, and the statement by the judge rapporteur.

The Court reviewed all documents in this case, as well as relevant laws and regulations.

The Court admits the following facts: Defendant 8 originally received permission to use Mae Ngao Left National Reserved Forest located in Ban Haeng subdistrict, Ngao district, Lampang province, for integrated agriculture (forest farming). Later, on January 20, 2010, Defendant 8 submitted a mining permit application to mine 5 plots of this forest area for lignite coal. Defendant 3 reviewed the application and, after finding supporting evidence that the area has capacity for lignite coal mining, Defendant 3 accepted mining permit applications no. 4/2553-8/2553. On April 20, 2010, representatives of Defendant 8 brought government officials and local government leaders to jointly inspect the land boundaries and issue an inspection report for mining permit applications no. 4/2553-8/2553, including maps showing the proposed project site and nearby mines. Later, on May 26, 2010, Defendant 3 posted a notice of the mining permit application by Defendant 8 along with a map of the application areas, for landowners and stakeholders to contest within 20 days from the date of the notice. The notice was posted at the Lampang Provincial Office of Industry, Ngao District Office, Ban Haeng Subdistrict Chief's Office, and Ban Haeng Subdistrict Administrative Organization. After the notice, residents of Village 1 and Village 7 filed documents in opposition. The Ngao District Chief organized a public hearing to provide information on the mining permit application by Defendant 8 on September 24, 2010 at North Ban Haeng School Meeting Hall. Residents of Village 1 and Village 7 of Ban Haeng subdistrict, representatives of relevant agencies, and representatives of Defendant 8 attended the meeting. Later, the Council of Defendant 7 met for the first time in Term 4 on September 28, 2010 and reviewed the report of this public hearing and other information. The Council issued a resolution approving mining permit applications no. 4/2553-8/2553 by Defendant 8. As for Mining Permit Application No. 6/2553, the original area was 118 acres (295 rai 2 ngan 2 tarang wah). On February 15-19, 2012, Defendant 8 requested to conduct boundary surveys to exclude farmland or land currently in possession by others from the mining permit application. The remaining area of this mining permit application was reduced

to 88.5 acres (221 rai 86 tarang wah). On February 19, 2012, representatives of Defendant 8 brought government officials and local government leaders to conduct the boundary survey.

An inspection report of the boundary survey was included with the mining permit application, which can be summarized as follows: The site topography is a plain, not within 50 meters of any highway. The site is located about 5 kilometers northeast of the Lampang-Payao Highway at Ngao district intersection. The site is located on Mae Jon Creek, which is a dry creek about 2 meters wide, about 450 meters long within the site, and 20 centimeters deep. Mae Jon Creek is dry except for rainy season and cannot be used for transportation. Residents use the creek only when it is not dry. In rainy season, the creek measures about 3 meters wide and 1 meter deep. The applicant seeks permission to obstruct the waterway due to an intersecting vein of mineral deposits. Water flow is used for irrigating approximately 79 acres (200 rai) of rice paddies and farmland located south and about 1 kilometer away from the site. The creek is not used for other industrial uses. The creek originates from mountains in the north and eventually flows into Ngao River. The proposed mining operation will not use water from this creek. The site has never been used for mining. The site overlaps with land designed for agricultural land reform and forest land. The site also overlaps with the public road connecting North Ban Haeng village to Khun Haeng village, which is about 5 meters wide and 620 meters long within the project site. The site overlaps mixed deciduous forest land in deteriorated state, currently used as farmland by local residents without land title. The applicant requests permission to operate an open-pit mine, in conjunction with Mining Permit Applications No. 4/2553, 5/2553, 7/2553, and 8/2553. The applicant will indicate the distance between the mining operation and waterways and highways in a project site map, to be submitted at later date. After inspection, officers concluded that waterways and public roads can be moved due to the plain topography, which is suitable for open-pit mining and the type of mineral to be mined.

In addition, section 1 of the inspection report that was submitted with the mining permit application recorded additional information about the topography, as follows: In the north, the site of the mining permit application abuts Mining Permit Application No. 5/2553 belonging to the same applicant. In the south, the site abuts Mining Permit Application No. 7/2553 belonging to the same applicant and a community forest. In the east and west, the site abuts land in the applicant's possession. Small animals such as birds and reptiles reside on the project site and nearby. Mae Jon Creek is located on the site. Land use around the project site and its surroundings is agricultural. There are also residences surrounding the project site, but further than 100 meters away, about 80 households. Before the mining permit application was submitted, land uses in the area were agricultural and livestock production. Located around the proposed project site are Ban Haeng Temple about 1,950 meters away and North Ban Haeng School about 1,500 meters away. No government offices or archaeological sites are located around the proposed mining site. The mining operation will be clearly visible from the public road. The air quality is currently normal at the proposed project site and nearby areas. Mining may result in damages to local land uses, such as agriculture, foraging, and livestock production, but the impact will be minimal. The site is located in Watershed Zone 5.

Defendant 8 later submitted a request to remove an area of 0.602 acres (1 rai 2 ngan 2 tarang wah) the mining permit application, due to overlap with land designed for agricultural land reform. The remaining area of this mining application is 87.884 acres (219 rai 2 ngan 84 tarang wah), of which 15 acres (40 rai 56 tarang wah) are located in forest land as defined by Section 4 of the 1941 Forestry Act; 33 acres (82

rai 66 tarang wah) are located in permanent forests as defined by the Cabinet Order; and 38 acres (98 rai 3 ngan 64 tarang wah) are located in Mae Ngao Left National Reserved Forest. Defendant 8 appointed A.B.E.N. Engineering Consultants Co. Ltd. to conduct an environmental impact assessment of this coal mining project, according to Mining Permit Application No. 4/2553 which is part of the same mining project plan as Mining Permit Applications No. 5/2553, 6/2553, 7/2553, and 8/2553. The environmental impact assessment report was submitted to Defendant 6 for review on June 19, 2011. Expert environmental officers and employees under Defendant 6, as authorized by Defendant 5, surveyed the project site on August 15, 2013. Defendant 6 issued an initial assessment and submitted a report to Defendant 5 for review. Defendant 5 held Meeting No. 21/2556 on August 20, 2013 and resolved not to approve the permit application due to several deficiencies that needed to be corrected. Defendant 5 requested Defendant 8 to make changes on 15 enumerated issues. After Defendant 8 made the changes according to the resolution, Defendant 6 presented the environmental impact assessment report by Defendant 8 to Defendant 5 for a second review in Meeting No. 28/2556 on October 22, 2013. Defendant 5 reviewed and deemed the changes complete, and thus resolved to approve the report, with the condition that Defendant 8 adhere closely to environmental protection, mitigation and monitoring measures and present additional information before the final version of the report.

Defendant 3 then reviewed Mining Permit Application No. 6/2553 by Defendant 8 and found that the Forestry Department had issued Letter No. Tor Sor 1602.3/787 dated January 17, 2014, notifying the Lampang Provincial Governor to issue a letter granting Defendant 8 permission to use land and a letter granting permission for forest clearing in the area of the mining permit application. The Lampang Provincial Governor acted accordingly. Furthermore, the 7th Regional Office of Fine Arts in Nan conducted an archaeological survey and found no archaeological remains on the site. However, a historic moat was found in a nearby area, 400 meters south of the mining permit application site. Defendant 8 agreed to keep the mining area at least 500 meters away from this moat, by designating a buffer zone, to be indicated in a project site map. As a result, the 7th Regional Office of Fine Arts in Nan issued Letter No. Wor Tor 0421/698 dated April 25, 2011, informing Defendant 3 that the Office would not oppose the issuance of a mining permit to Defendant 8.

In addition, Defendant 5 reviewed and approved the environmental impact assessment report for this mining permit application, according to Office of Natural Resources and Environmental Policy and Planning Letter No. Tor Sor 1009.2/13669, dated November 15, 2013. Defendant 3 thus presented the mining permit application to the Lampang Provincial Governor. The Provincial Governor would later present the application for Defendant 2 to review and present for further review to the Minerals Act Committee, which approved and presented the permit application to Defendant 1. Defendant 1 approved Mining Permit Application No. 6/2553 for Permit No. 30485/16138, granted to Defendant 8 for a duration of 10 years from August 10, 2015 to August 9, 2025.

The 386 plaintiffs reside and work in Village 1 and Village 7 of Ban Haeng subdistrict. Plaintiffs believe that the mining permit violates the Constitution and other relevant laws, due to insufficient public notice, public input, and public participation in the decision-making process. Plaintiffs allege that the mining permit was issued without written permission from the people who possess and use the land proposed for mining. Plaintiffs allege that information contained in the investigation report for Mining Permit Application No. 6/2015 was false. The information session about the mining project by Defendant 8 organized on September 24, 2010 was not a lawful public hearing or a lawful vote by local

residents. When the Council of Defendant 7 relied on the minutes from this meeting to review and approve the mining project proposal by Defendant 8 on September 28, 2010, the resolution was thus also unlawful. The Lampang Provincial Governor, as authorized by the Minister of Natural Resources and the Environment, issued Permission Letters allowing Defendant 8 to enter and use forest land for mining, despite opposition by local residents. Plaintiffs allege that these Permission Letters and all related orders were issued in violation of the 2005 Forestry Department Regulation on Permitting Uses or Residency in National Reserved Forests.

On March 4, 2020, the Chiang Mai Administrative Court issued a decision on Undecided Case No. Sor 13/2557 and Decided Case No. Sor 1/2563. The Court revoked the Permission Letters Authorizing Entry or Residency in National Reserved Forests, which the Director General of the Forestry Department granted to Defendant 8 to enter the Mae Ngao Left National Reserved Forest in Village 1 and Village 7 of Ban Haeng subdistrict, Ngao district, Lampang province, for the purpose of lignite coal mining according to Mining Permit Applications No. 5/2553, 6/2553, and 7/2553. The Court also revoked the Forest Clearing Permits which the Lampang Provincial Governor issued to Defendant 8, permitting forest clearing in Ban Haeng subdistrict, Ngao district, Lampang province, for the purpose of lignite coal mining according to Mining Permit Applications No. 5/2553 and 6/2553, with retroactive effect to the date of issuance. Plaintiffs allege that the environmental impact assessment report which Defendants 5 and 6 approved lacked public participation from relevant parties and relied on incorrect and unreliable information. In addition, Defendant 4 issued the investigation report on local opposition to the mining permit application dated July 10, 2015 which relied on false information.

Thus, plaintiffs filed this complaint, asking the Court to revoke Mining Permit No. 30485/16138 and all procedures related to the mining permit application. They also asked the Court to compel Defendants 1 to 7 to act according to the Constitution and laws, provide advance notice to the public, inform the public with appropriate and honest information, organize sufficient and genuine public hearings, and evaluate the environmental and health impacts with public input before taking any official action to issue the mining permit.

The question in this case is whether Defendant 1 lawfully issued Mining Permit No. 30485/16135 dated August 10, 2013 to Defendant 8.

First, we must determine whether the court has jurisdiction to review this complaint. According to Section 9 Paragraph 1 of the 1999 Act on Establishment of Administrative Courts and Administrative Court Procedures, the administrative court has the authority to adjudicate or issue orders in the following matters: (1) disputes involving an unlawful action by an administrative agency or a government official, including the issuance of rules, orders, or any other acts Section 42 Paragraph 1 states that any person who is injured or faces unavoidable injury or harm as a consequence of an act or omission by an administrative agency or a government official, or any person who has a dispute involving an administrative contract or any other circumstance falling within the Administrative Court's jurisdiction under Section 9, may file a complaint with the administrative court, provided that the redress or alleviation of such injury or the termination of such dispute requires a decree as specified in Section 72. Paragraph 2 states that if the law provides specific procedures for the redress of any grievance or injury, judicial review may be sought only after following those specific procedures and

after an order has been issued under such law or after no order has been issued within a reasonable period of time or within such time as prescribed by law.

Section 49 states that subject to other specific laws, to seek judicial review, the complaint must be filed within 90 days from the day that the plaintiff knew or should have known of the cause of action, or within 90 days from the day that the plaintiff submitted a petition to the government agency or the government official to act according to their legal duty and the plaintiff did not receive a written explanation from the administrative agency or the government official, or the plaintiff received the explanation but believes it to be unreasonable. Section 72 Paragraph 1 states that in adjudication, the administrative court has the authority to issue a decree for any of the following: (1) order the revocation of a rule or an order, or order an administrative agency or a government official to refrain in part or in whole from an alleged unlawful act according to Section 1 Paragraph 1. ... Section 36 of the 2000 Supreme Administrative Court Judicial Conference Regulation on Administrative Procedure states that the case is pending review from the day that the complaint is filed. As a result, (1) plaintiffs may not submit the same complaint to the same court or other courts ... Section 96 states that when the court issues a decision or a final ruling on any legal issue within the case, it is prohibited to pursue another hearing in the same court for the same case or on the same issues for which the court has issued a final ruling. ... Section 97 states that when a decision or court order is final, the same parties may not sue one another on the decided legal issues based on the same cause of action.

Here, the 386 plaintiffs allege that Defendant 1 unlawfully issued Mining Permit No. 30485/16135 dated August 10, 2015 for Defendant 8 to operate a coal mine in Village 1 and Village 7 of Ban Haeng subdistrict, Ngao district, Lampang province. Because this mining permit is a legal act by Defendant 1 according to the Minerals Act, it established legal relations between parties which may result in establishing legal rights for the permit applicant. Thus, the permit is an administrative order within the definition under Section 5 of the 1996 Administrative Procedures Act. When the 386 plaintiffs filed their complaint requesting a revocation of the permit, the dispute involves an unlawful action by an administrative agency or a government official according to Section 9 Paragraph 1(1) of the 1999 Act on Establishment of Administrative Courts and Administrative Court Procedures. All 386 plaintiffs reside and work in Village 1 and Village 7 of Ban Haeng subdistrict, Ngao district, Lampang province, which is the location of the mining permit in dispute. Thus, plaintiffs have the right to participate in the balanced and sustainable protection, promotion and enhancement of environmental quality and biological diversity in the area. The purpose of this constitutional protection is to provide for normal and continuous livelihood in an environmental that will not cause harm to their health, welfare, or quality of life. In addition, the 386 plaintiffs are stakeholders who are directly impacted, more than the general public, from the mining operation in the disputed permit. Even though the mine has not begun operating at the time the complaint was filed, the 386 plaintiffs are persons who may be unavoidably injured or harm by the issuance of the mining permit by Defendant 1. In addition, the 386 plaintiffs petitioned the court to revoke the mining permit in dispute, which is a relief that the court is authorized to issue according to Section 72 Paragraph 1(1) of the Act. Thus, all 386 plaintiffs have the right to sue in administrative court, according to Section 42 Paragraph 1 of the 1999 Act on Establishment of Administrative Courts and Administrative Court Procedures. Because plaintiffs are not opposing parties in the administrative order, they are not required to appeal the order before filling the complaint in court and may directly seek judicial review.

Here, Defendant 1 issued the disputed mining permit to Defendant 8 on August 10, 2015. Thus, the 386 plaintiffs knew or should have known of the cause of action not before August 10, 2015. All 386 plaintiffs filed the complaint on October 22, 2015. Thus, the complaint was filed within the 90-day requirement beginning from the day that the cause of action was known or should have been known, according to Section 49 of the 1999 Act on Establishment of Administrative Courts and Administrative Court Procedures.

This case contains facts about the mining permit application that are similar or close to the facts of Undecided Case No. Sor 2/2556 and Undecided Case No. Sor 13/2557 pending review by the Chiang Mai Administrative Court. However, the demand in this case is to revoke the mining permit that Defendant 1 issued to Defendant 8. This demand is different from the ones in Undecided Case No. Sor 2/2556 and Undecided Case No. Sor 13/2557. Therefore, the complaints are distinct pleadings containing distinct arguments. This is neither a duplicate complaint, a repetitive hearing, nor a repetitive complaint according to Sections 36(1), 96, or 97 of the 2000 Supreme Administrative Court Judicial Conference Regulation on Administrative Procedure.

Defendants 4 and 8 allege that all 386 plaintiffs should not have the right to sue because they filed this complaint in bad faith. They allege that plaintiffs have always been negotiating for personal gain and rely on violence. They also allege that plaintiffs are exercising their rights to cause harm for Defendant 8. In the court's view, the right to sue in administrative court must be defined by legal criteria and conditions. Here, all 386 plaintiffs have the right to sue according to legal criteria and conditions. There is no clear evidence to verify the alleged bad faith among the 386 plaintiffs, as Defendants 4 and 8 argued. Thus, the allegations are dismissed for lacking credibility.

Defendants 5 and 6 allege that some plaintiffs are not injured parties because they already received compensation for land use from Defendant 8. In the court's view, the injury or harm that plaintiffs allege to receive from the mining permit, which is the cause of action, is not limited only to land use. The alleged injury includes many environmental and health impacts that arise from coal mining. Receiving compensation from Defendant 8 does not eliminate all potential injury or harm. These plaintiffs still have the right to sue in administrative court. These allegations by Defendants 5 and 6 are dismissed, according to the aforementioned reasoning. Therefore, this complaint meets the criteria for judicial review and falls within this court's jurisdiction to adjudicate or issue an order.

Next, we just determine whether the mining permit review process for Defendant 8 was conducted lawfully, according to essential procedural requirements under law. Here, Section 44 Paragraph 1 of the 1967 Minerals Act states that whoever wishes to submit a mining permit application shall submit the application to the local Mineral Industry Officer, along with credible evidence that minerals have been found or that the desired mineral exists within the site of the permit application. Section 47 Paragraph 1 states that upon receipt of the mining permit application, the Officer shall designate the mining permit area by a boundary survey or any other method that meets the requirements of a ministerial rule. According to Section 8 of the 2004 Department of Primary Industries and Mines Regulations on Mining Permit Applications, Permit Issuances, Permit Renewals and Permit Transfers, the local Mineral Industry Officer upon recording the permit application shall do the following ... (5) If the permit application area is forest land or is under the jurisdiction of another government agency, the Officer shall send a letter detailing the mining permit application, along with a map and location of the site to the local Office of

Forestry or the government agency that oversees the area. ... Section 9 Paragraph 1 states that the Officer shall inform the permit applicant as follows ... (5) If the permit application area is forest land, the Officer shall inform the applicant to file a request for permission to use or reside in a forest area. ... Section 8 of the 2005 Forestry Department Regulation on Permitting Uses or Residency in National Reserved Forests states that forests eligible for permitting use or residency must meet the following criteria: ... (5) No conflict with people on-site or in nearby areas, and approval must be received from the Subdistrict Council or the Subdistrict Administrative Organization Council where the forest is located. ... Based on these legal provisions, it is clear that the mining permit review process is related to land uses, particularly of public lands. Mining permit applicants who seek to use public land must seek land use permission directly from the government agencies that oversee the land. The review process for land use approval differs for each type of public land, according to specific regulations beyond the Minerals Act. Thus, the mining permit application and government agencies involved in the mining permit review process must strictly adhere to the essential procedural requirements under law and must follow every legal step. Otherwise, the permitted land use becomes an unlawful act, affecting the issuance of the mining permit by the authorized party, and rendering the mining permit an unlawful act as well.

Here, the Chiang Mai Administrative Court ruled in Undecided Case No. Sor 13/2557 and Decided Case No. Sor 1/2563 dated March 4, 2020 between Ms. Sommai Harntecha as Plaintiff 1 and 439 other plaintiffs v. Director General of the Forestry Department as Defendant 1 and 8 other defendants. According to the ruling, Kiew Luang Co. Ltd. (Defendant 8 in the current case) filed a mining permit application for a national reserved forest, which still was a subject of conflict with the people on-site and in nearby areas. Section 8 of the 2005 Forestry Department Regulation on Permitting Uses or Residency in National Reserved Forests is an essential procedural requirement under law. Thus, the Permission Letters to Use or Reside in a National Reserved Forest Volume 16, No. 96, No. 97, and No. 98 dated March 24, 2014 issued by the Director General of the Forestry Department to Kiew Luang Co. Ltd. (Defendant 8 in the current case) to enter Mae Ngao Left National Reserved Forest in Village 1 and Village 7 of Ban Haeng subdistrict, Ngao district, Lampang province for the purpose of operating a lignite coal mine according to Mining Permit Applications No. 5/2553, 6/2553, and 7/2553 and the Forest Clearing Permits Volume 1233 No. 4 and No. 5 dated March 24, 2014 issued by the Lampang Provincial Governor permitting to Kiew Luang Co. Ltd. to clear forests in Ban Haeng subdistrict, Ngao district, Lampang province for the purpose of operating a lignite coal mine according to Mining Permit Applications No. 5/2553 and 6/2553 were unlawful acts. The Court revokes the above Permission Letters and Forest Clearing Permits, with retroactive effect to the date of issuance. In effect, the forest areas in this mining permit application have not yet received lawful permission for land use, according to requirements of Section 9 Paragraph 1(5) of the 2004 Department of Primary Industries and Mines Regulations on Mining Permit Applications, Permit Issuances, Permit Renewals and Permit Transfers, which is an essential procedural requirement in the mining permit review process.

Although Defendant 8 completed an environmental impact assessment (EIA) report which Defendant 5 approved, it is still necessary for the relevant government agencies to consider whether the mining permit application (of Defendant 8) followed legally required procedures. Here, as the Chiang Mai Administrative Court ruled in Undecided Case No. Sor 13/2557 and Decided Case No. Sor 1/2563 dated March 4, 2020, the Permission Letter to Use or Reside in Mae Ngao Left National Reserved Forest in Village 1 and Village 7 of Ban Haeng subdistrict, Ngao district, Lampang province issued by the Director General of the Forestry Department to Defendant 8 and the Forest Clearing Permit issued by the

Lampang Provincial Governor permitting Defendant 8 to clear forests in the area are unlawful orders. Thus, the mining permit review process by Defendant 1 failed to follow essential procedural requirements under law. It is unnecessary to decide whether the approval by Defendant 5 of the environmental impact assessment (EIA) report of the coal mining project by Defendant 8 was a lawful or an unlawful act, because a decision would not change the outcome of this case. The issuance of Mining Permit No. 30485/16138 dated August 10, 2015 by Defendant 1 for Defendant 8 was unlawful.

As for the parts of the complaint filed against Defendants 2, 3, 4, 6, and 7, the legal authority to issue mining permits according to the Minerals Act lies solely within Defendant 1, not Defendants 2, 3, 4 or 7. In addition, the legal authority to approve environmental impact assessment reports according to the Enhancement and Conservation of National Environmental Quality Act belongs to Defendant 5, not Defendant 6. Therefore, actions by Defendants 2, 3, 4, 6, and 7 were merely preparations and implementations to facilitate an administrative act. Their internal administrative review did not establish legal rights or responsibilities in any person. The 386 plaintiffs were not injured and did not face unavoidable injury, and thus lacked the right to sue Defendants 2, 3, 4, 6, or 7 according to Section 42 Paragraph 1 of the 1999 Act on Establishment of Administrative Courts and Administrative Court Procedures.

The 386 plaintiffs allege that the investigation report on local opposition in the mining permit area dated July 10, 2015 was issued unlawfully. Plaintiffs asked the court to revoke the report, as indicated in complaint demand number 7. In this court's view, the report was merely part of the factfinding process by Defendant 1. It was in no way binding on the exercise of discretion by Defendant 1. Therefore, the 386 plaintiffs were not injured and did not face unavoidable injury, and thus lacked the right to sue for such relief, according to Section 42 Paragraph 1 of the 1999 Act on Establishment of Administrative Courts and Administrative Court Procedures.

The 386 plaintiffs asked the court to compel Defendants 1 to 7 to act according to the Constitution and laws, provide advance notice to the public, inform the public with appropriate and honest information, organize sufficient and genuine public hearings, and evaluate the environmental and health impacts with public input before taking any official action to issue the mining permit, as indicated in complaint demand number 8. In this court's view, Defendants 1-7 are administrative agencies or government officials who are required to act according to the Constitution and laws. As to how to act lawfully or appropriately, it is within the discretion of Defendants 1-7. The court may not interfere with the exercise of discretion by Defendants 1-7. Therefore, this demand is not a relief than the court can grant according to Section 72 of the 1999 Act on Establishment of Administrative Courts and Administrative Court Procedures.

The 386 plaintiffs asked the court to revoke the inspection report that accompanied the application for Mining Permit No. 30485/16138, as indicated in complaint demand number 2; revoke the public hearing meeting minutes dated September 24, 2010, as indicated in complaint demand number 3; revoke the resolution by Council of Defendant 7 dated September 28, 2010, as indicated in complaint demand number 4; and declare unlawful the Permission Letters to use or reside in a national reserved forest to operate a lignite coal mine according to Mining Permit Applications No. 5-7/2553, which were used in issuing Mining Permit No. 30485/16138 for Defendant 8, and the Permit for Forest Clearing according to Mining Permit Applications No. 5/2553 and 6/2553, as indicated in complaint demand number 6. Here,

the requests for relief are identical to those in Undecided Case No. Sor 2/2556 and Undecided Case No. Sor 13/2557 pending review by the Chiang Mai Administrative Court. Therefore, this falls within the definition of a duplicate complaint, barred by Section 36(1) of the 2000 Supreme Administrative Court Judicial Conference Regulation on Administrative Procedure. This court may not review these requests.

Ruled: Revoke Mining Permit No. 30485/16135 dated August 10, 2015 issued by Defendant 1, with retroactive effect to the date of issuance. Other demands are dismissed.

Signed:

Miss Anchisa Intrasalee, Judge in Charge
Judge, Chiang Mai Administrative Court

Mr. Wuttichai Saengsamran
Judicial Committee Chair, Chiang Mai Administrative Court

Mr. Watcharachai Aryarongroj
Judge, Chiang Mai Administrative Court

Judge Rapporteur: Mr. Wichai Pojanapota