

**REPUBLIC OF PERU****Resolution of the General Directorate**

Lima, December 9, 2014

**HAVING SEEN:**

Report No. 0953-14-MINAGRI-DVDIAR-DGAAA/DGAA/ENLT-114912-13 of September 23, 2014, and Report No. 1206-2014-MINAGRI-DVDIAR-DGAAA/DGAA/REA-114912-13 of December 5, 2014, and unnumbered minutes of September 9 and 11, as well as November 13, 2014, respectively, related to the actions of Special Environmental Inspection and Supervision done of the company **CACAO DEL PERÚ NORTE S.A.C.**, identified with the Single Taxpayer No. 20528401393; and,

**CONSIDERING:**

That Article 2(22) of the Constitution of Peru establishes that the fundamental right of every person to enjoy a balanced and adequate environment for the development of his or her life presupposes a varied array of rights and responsibilities that includes the preservation of nature, the control of harmful substances, and the protection of public and private health;

That, in addition, Article 66 of said Constitution indicates that natural resources, renewable and non-renewable, are the property of the Nation, with the State being sovereign in their exploitation, consistent with Article 69, which establishes that the State promotes the sustainable development of the Amazon region with adequate legislation;

That along those lines, Article 3(b) of Law No. 26821, the Organic Law for the Sustainable Use of Natural Resources, defines that natural resources are considered to be every component of nature susceptible to use by human beings to satisfy their needs and that have a present or potential value in the market, such as the soil, subsoil, and lands based on their best land use capacity: crop-farming, animal husbandry, forestry, and protection. In addition, Article 8 of that organic law indicates that the State watches out for the sustainable use of natural resources, and that this be done in harmony with the interest of the Nation, the common good, and within the limits and principles established in that statute, in special statutes, and in the regulations on the matter;

That from September 9 to 11, 2014, an inspection was carried out of the fields of crops of the company CACAO DEL PERÚ NORTE S.A.C. (hereinafter, CACAO DEL PERÚ NORTE), on the property called Fundo Tamshiyacu situated in the district of Fernando Lores, province of Maynas, department of Loreto, at kilometer 11 of the road called Tamshiyacu-Mirin (hereinafter, Tamshiyacu property), with the aim of verifying whether agricultural activities were being carried out; and to determine the possible

environmental impacts resulting from such activities. As a result of that inspection, Report No. 0953-2014-MINAGRI-DVDIAR-DGAAA-DGAA/ENLT-114912-13, from which it appears that CACAO DEL PERÚ NORTE has been having the following impacts: (i) impact on the plant cover due to the clearing and cleaning of the landholdings (elimination of cover); (ii) inadequate final disposal of non-hazardous solid waste; (iii) negative impacts on the soil due to removal of earth; (iv) soil erosion due to lack of plant cover as a result of the runoff; (v) impact of the soil of being compacted by the movement of heavy machinery; and (vi) inadequate safety conditions in the use of herbicides and other chemicals.

That, as a necessary antecedent, it should be noted that the company CACAO DEL PERÚ NORTE, as appears in approximately 60 registry entries of the Property Registry Office of Iquitos, is the owner of approximately 3,097.41 hectares, corresponding to the property known as Fundo Tamshiyacu, which was transferred by private farmers in the area, it being valid to infer, given the timing of its entry in the registry, that said company began its activities after February 25, 2013.

That Article 64 of the Regulation on Organization and Functions of the Ministry of Agriculture and Irrigation (hereinafter ROF-MINAGRI), approved by Supreme Decree No. 008-2014-MINAGRI, indicates that the General Directorate of Agricultural Environmental Affairs (hereinafter, the DGAAA) is the line agency in the Ministry of Agriculture and Irrigation that is in charge of implementing actions in the context of the National System for Environmental Management for the conservation and sustainable use of the renewable natural resources under its authority, in keeping with the guidelines of the National Agrarian and Environmental Policies; as well as promoting efficient soil management for agrarian use.

That according to Article 65 of the ROF-MINAGRI, the DGAAA evaluates and, if appropriate, approves the environmental certificates of environmental management instruments in the agrarian sector. In addition, it conducts the supervision, oversight, and environmental audit of the projects or activities under way under the authority of that sector. In addition, it also proposes, conducts, and supervises the classification of lands by their best land use capacity in the agrarian context nationally;

That Article 3 of Law No. 27446, the Law on the National System of Environmental Impact Assessment (hereinafter the SEIA Law), amended by Legislative Decree No. 1078, indicates that the implementation of services and commercial projects and activities may not begin if they do not first have the environmental certification approved by the competent authority. In addition, that provision establishes that no national, sectoral, regional, or local authority may approve, authorize, permit, grant, or authorize the implementation of services and commercial projects and activities if they do not have that certification;

That in addition Article 15 of the Regulation of the SEIA Law, approved by Supreme Decree No. 019-2009-MINAM, indicates that every natural or juridical person at public law or private law, national or foreign, who intends to carry out an investment project that may have significant negative environmental impacts must seek an environmental certification from the competent authority;

That in keeping with Article 9 of the Regulation on Environmental Management of the Agrarian Sector, approved by Supreme Decree No. 019-2012-AG, investment projects and activities under the competence of the Agrarian Sector that began to carry out their activities as of November 15, 2012 (date of the entry into force of the provision) are under an obligation to submit the environmental management instrument in order to obtain the corresponding environmental certification;

That by virtue of what is indicated in Report No. 0953-2014-MINAGRI-DVDIAR-DGAAA-DGAA/ENLT-114912-13 and the many reports received of breach of the environmental laws and regulations by the company CACAO DEL PERÚ NORTE, dated November 13, 2014, a special supervision was performed to verify whether the company was continuing to pursue agriculture activities on the Tamshiyacu property. That Special Supervision was effectuated in the framework of the performance of environmental oversight conferred in Law No. 29325, the Law of the National System of Environmental Evaluation and Oversight, amended by Law No. 30011 (hereinafter the SINEFA Law) and Article 3 of the Regulation on Supervision of Environmental Oversight Institutions, approved by Directing Council Regulation No. 016-2014-OEFA/CD, defines Environmental Oversight Institutions (hereinafter, EFA) as the public institutions at the national, regional, or local level to which are attributed some or all of the functions of environmental oversight, which in the case of the MINAGRI are performed by the DGAAA, pursuant to Article 65 of ROF-MINAGRI, which is obligated to apply, on a supplemental basis, the environmental oversight provisions approved by the Environmental Evaluation and Oversight Agency, in observance of article 5 of the Common Regime of Environmental Enforcement, approved by Ministerial Resolution No. 247-2013-MINAM;

That as a result of the Special Supervision, Report (no number) of November 13, 2013, was issued, in which it was found that the company CACAO DEL PERÚ NORTE continues carrying out agricultural activities within the confines of the Tamshiyacu property, it being found that it does not have an environmental certification;

That by Report No. 1206-2014-MINAGRI-DVDIAR-DGAAA/DGAA/REA-114912-13 of December 5, 2014, the Directorate for Agricultural Environmental Management of the DGAAA indicates:

#### ***“V. VERIFICATION OF ENVIRONMENTAL CERTIFICATION***

*The regulated party does not have an Environmental Management Instrument and consequently does not have the environmental certification issued by the General Directorate of Agricultural Environmental Affairs of the Ministry of Agriculture and Irrigation.*

#### ***VI. ON THE DOCUMENT REVIEW (as relevant)***

##### ***6.1 Time-series Analysis of Satellite Images with respect to deforestation***

*Prior to entering the facilities of the company CACAO DEL PERÚ NORTE S.A.C., the owner of 3,097.41 hectares corresponding to the Tamshiyacu property, a time-series analysis was done of satellite*

images to verify the year as of which deforestation began to plant cacao (a crop developed intensively) and to quantify the loss of forest cover. The result is described in the following table:

<b>Year/day</b>	<b>Year 2011</b>	<b>Year 2012</b>	<b>Year 2013</b>	<b>Year 2014</b>	<b>Year 2014</b>
	<b>8/31/2011</b>	<b>9/18/2012</b>	<b>8/28/2013</b>	<b>7/14/2014</b>	<b>8/31/2014</b>
<b>Area deforested (ha)</b>	3.15	5.15	1,054.56	1,853.28	1,949.36
<b>Percentage (%)</b>	0.1%	0.2%	34%	60%	63%

Source: Analysis of satellite images.

Prepared by: DGAAA.

As can be noted, the deforestation activities to establish the cacao crop began with intensity in late 2012; by August 31, 2014, approximately 1,949.35 hectares had been deforested, accounting for 63% of the total area, as illustrated in the images in Annex 6.

## 6.2 With respect to the Best Land Use Capacity of Lands in Loreto

If we analyze the map of best use land capacity (drawn up by the CTAR Loreto in 2000) by way of reference, one can see that the sum of lands suitable for rotating crops, associations of lands suitable for rotating crops and permanent ones, the associations of lands suitable for pasture and permanent crops, and the association of lands suitable for pasture, that is those lands with forest cover where theoretically there could be a change in soil use, comes to 1.53% (564,343.49 hectares) of the total area of the region (36,886,194.00 ha). In this regard, it is possible that the activities are being carried out in protected zones and forest zones, considered to be the forest patrimony of the State. The specifics are described in the following table:

### **Best Land Use Capacity of Lands in Loreto**

<b>DESCRIPTION</b>	<b>AREA (ha)</b>	<b>%</b>
<i>Lands suitable for rotating crops</i>	11,065.56	0.03
<i>Associations of lands suitable for rotating and permanent crops</i>	136,475.23	0.37
<i>Associations of lands suitable for pasture and permanent crops</i>	390,983.06	1.06
<i>Associations of lands suitable for pasture</i>	25,819.64	0.07
<i>Lands suitable for forestry production</i>	23,916,387.80	64.84
<i>Associations of lands suitable for forestry production and protection</i>	4,356,141.47	12.28
<i>Lands for forestry production</i>	3,087,290.78	8.37

<i>Lands suitable for protection</i>	1,349,998.12	3.66
<i>Associations of lands for protection and forestry production</i>	2,910,241.83	7.89
<i>Bodies of water</i>	627,021.00	16.68
<b>Total</b>	<b>36,886,194.00</b>	<b>100.00</b>

Source: Map of Land Use Capacity, Loreto Region, CTAR Loreto. 2000.

**6.3 With respect to the Negative Impacts entailed in establishing the cacao crop**

*The establishment of the cacao crop of high intensity and extent has been having significant negative impacts on the environment due to the fact that they have been planted, without any soil study supporting that their best use capacity is for that purpose; in addition, without having the criteria of sustainability and socio-environmental standards, allowing deforestation, whose environmental impacts are: deforestation, soil degradation due to the poor planning and/or inappropriate use of machinery, contamination of soils and water due to the use of pesticides, herbicides, and chemical fertilizer, loss of biodiversity, and fragmentation of habitats and impact on the population and on hydro-biological resources, bringing with it socio-environmental problems.*

*In addition, maintaining the cacao crop in large areas requires intensive agronomical practices (tilling, fertilizer, pruning, harvesting, aerial spraying, use of agro-chemicals), and control of environmental conditions (water, light, nutrients, etc.) for which human intervention is required, generating significant negative impacts for the environment such as: air, soil, and water.*

*In addition, it has the following environmental impacts:*

- *It contributes to increasing greenhouse gas (GHG) emissions, based on the loss of the carbon stored in the biomass, and above and below the soil, when the forest cover is eliminated.*
- *Establishing cacao crops in areas where it replaces the forest contributes substantially to greenhouse gas emissions and, therefore, to climate change.*
- *The opportunity cost of the loss of environmental services provided by the forest, such as carbon sequestration.*
- *Cacao crops are poor substitutes for native tropical forest systems.*
- *They have a detrimental impact on the biodiversity of adjacent habitat due to fragmentation.*

...

**VIII. CONCLUSIONS**

8.1 *The company CACAO DEL PERÚ NORTE S.A.C. is performing agricultural activities for the production of cacao plants on the Tamshiyacu property, situated in the district of Fernando Lores, province of Maynas, department of Loreto, without having the corresponding Environmental Certification, violating*

*what has been established in Article 3 of Law 27446, the Law on the National Environmental Impact System, which indicates that “the implementation of services and commercial projects and activities may not begin if they do not first have the environmental certification approved by the competent authority, nor may any national, sectoral, regional, or local authority approve, authorize, permit, grant, or authorize the implementation of services and commercial projects and activities if they do not have that certification,” in keeping with Article 9 of Supreme Decree No. 019-2012-AG.*

*8.2 The company CACAO DEL PERÚ NORTE S.A.C. has been causing negative environmental impacts as a result of the deforestation for establishing the cacao crop, such as: (i) impact on the plant cover due to the clearing and cleaning of the lands (elimination of cover); (ii) inadequate final disposal of non-hazardous solid waste, (iii) negative impacts on the soil due to the digging up of lands; (iv) soil erosion due to lack of plant cover as a result of runoff; and (v) impact on the soil due to compacting as a result of the movement of heavy machinery, as evidenced in the photographic panel.*

*8.3 As a result of the time-series analysis of satellite images information has been obtained regarding the percentage of deforestation with respect to the total area of the Tamshiyacu property of the company CACAO DEL PERÚ NORTE S.A.C. (3,097.41 hectares), it being evident that in order to establish the cacao crop they began deforestation with intensity in late 2012, such that by August 31, 2014, deforestation had extended to approximately 1,949.36 hectares, which represents 63% of the total area.*

*8.4 Given the absence of the soil study supporting Classification of Land by its best use capacity, it is likely that the company CACAO DEL PERÚ DEL NORTE S.A.C. is engaged in agricultural activities in protected areas and/or forest areas.*

*The situation described in the preceding paragraph could have, as a consequence of deforestation for establishing single-crop agriculture, a negative impact on the forest patrimony of the nation, whose environmental impacts are: degradation of soil erosion due to poor staging and/or inappropriate use of machinery, loss of biodiversity, and fragmentation of habitats and impact on the population, opportunity cost of the loss of the environmental services provided by the forest such as carbon sequestration, contributing substantially to greenhouse gas emissions, and, therefore, to climate change.”*

That, in keeping with what is indicated in Report No. 1206-2014-MINAGRI-DVDIAR-DGAAA/DGAA/REA-114912-13 of December 5, 2014, it has been duly shown that CACAO DEL PERÚ NORTE does not have an environmental certification approved by the DGAAA, as of the date of issue of this Directorate Resolution. In addition, the high probability of a significant impact of degradation of the soil has been shown due to the development of the operations of said company on the property, as approximately 1,944.21 hectares have been deforested, and also mindful that no Land Classification approved by the competent authority exists that determines that the lands where that company operates are or are not suitable for crops, it is necessary to take administrative measures that make it possible, immediately, to prevent continued harm to the soil, or at any rate to keep it from expanding;

That number 2.1 of article 2 of Law No. 27308, the Forestry and Wildlife Law, determines that forest resources encompass natural forests, forest plantations, and lands whose best capacity use is forestry production and protection and all other wild components of the emerging terrestrial and aquatic flora, wherever they may be in the national territory;

That Article 50 of the Regulations of the Forestry and Wildlife Law, approved by Supreme Decree No. 014-2001-AG, establishes that it is compulsory to have land use on the property based on the classification of the lands by their best use capacity to determine the permitted uses. In addition, it prescribes that in the case of lands with forest cover assigned to uses that imply conversion of the forest ecosystem, the land use classification of the property is the only technical and legal reference for determining the uses allowed; noting that in no case may lands whose best use capacity is forestry or protection be changed to uses of crop farming or animal husbandry;

That in addition, Article 283 of the Regulation referred to in the previous paragraph indicates that the lands said to be suitable for agriculture in the jungle and in the edge of the jungle, with or without forest cover, are those which due to their best use capacity can be earmarked for agricultural activity in accordance with the provisions that ensure the sustainability of the respective ecosystem;

That according to Article 2 of the ROF-MINAGRI, the Ministry of Agriculture and Irrigation exercises its competence at the national level, in respect of lands for crop farming and pasture, forestry lands, and wastelands suitable for crop farming;

That, in addition, Article 8(b) of the Regulation on Classification of Lands by their Best Use Capacity, approved by Supreme Decree No. 017-2009-G, defines that classification as an eminently technical-interpretative system whose sole objective is to assign each soil unit its most appropriate use and management by interpreting the corresponding soil study;

That, according to Article 13 of the Regulation mentioned in the previous considering paragraph, consistent with Ministerial Resolution No. 847-2009-G, all Classification of Lands by Best Use Capacity done by other public sector agencies or private entities must necessarily be subject to the provisions established by that Regulation and be approved by the DGAAA;

That Article VI of the Preliminary Title of Law No. 28611, General Law on the Environment, develops the principle of prevention, indicating that environmental management has as its priority objectives preventing, monitoring, and avoiding environmental degradation;

That Article 22-A of the SINEFA Law specifies that preventive measures may contain mandates to take action or not take action. That measure is ordered only when there is evidence of an imminent danger or high risk of grave harm to the environment, the natural resources, or, stemming therefrom, to human health; as well as to mitigate the causes that give rise to environmental degradation or harm. The preventive measure continues in effect until compliance with it has been verified or the conditions giving rise to it have disappeared;

That Article 18 of the Regulation on Environmental Infractions and Sanctions of the Agrarian Sector, approved by Supreme Decree No. 017-2012-AG, indicates that the preventive measures issued by the DGAAA, like precautionary measures, corrective measures, and other provisions issued in the performance of its attributions, are not considered sanctions;

That, consequently, in view of the seriousness of the conduct verified in the supervisions done and in the satellite images described above, and mindful of the impact that is sought to be avoided, constituted by the apparent greater degradation of the soil, a preventive measure should be issued to bring to a temporary halt of all of the agricultural activities related to the growing of cacao by said company, since one notes an imminent danger or high risk of grave harm to the environment and natural resources; and to order that a particular mandate be carried out, that helps ensure the efficacy of environmental oversight, ordering that it be carried out in a reasonable period, so as to determine in this second measure whether CACAO DEL PERÚ NORTE has or has not been engaged in business activities in a forest zone; in both cases until said situation is reversed and until it submits to the DGAAA the documentation containing the environmental certification and other relevant technical studies that show such effect; and,

In keeping with what is established in Law No. 28611, the General Law on the Environment; Law No. 28245, the Framework Law of the National System for Environmental Management; Law No. 29325, the Law on the National System for Environmental Evaluation and Oversight, amended by Law No. 30011; the Regulation on Direct Supervision of the Agency for Environmental Evaluation and Oversight approved by the Directing Council Resolution No. 007-2013-OEFA/CD; the Common Regime of Environmental Oversight, approved by Ministerial Resolution No. 247-2013-MINAM; the Regulation on Environmental Infractions and Sanctions of the Agrarian Sector approved by Supreme Decree No. 017-2012-AG; the Regulation on Environmental Management of the Agrarian Sector approved by Supreme Decree No. 019-2012-AG; Legislative Decree No. 997, Legislative Decree that approves the Law on Organization and Functions of the Ministry of Agriculture, amended by Law No. 30,048, its Regulation on Organization and Functions approved by Supreme Decree No. 008-2014-MINAGRI; and Law No. 27444, Law on General Administrative Procedure;

**BE IT RESOLVED:**

**Article 1.** To order, as a preventive measure, that the company **CACAO DEL PERÚ NORTE S.A.C.** bring its agricultural activities to a halt, activities which it has been carrying out on the Tamshiyacu property, situated in the district of Fernando Lores, province of Maynas, department of Loreto, at kilometer 11 of what is known as the Tamshiyacu-Mirín road, until it submits to this General Directorate the Classification of Lands by their Best Use Capacity, corresponding to the area where said property is located.

**Article 2.** To order as an individual mandate that the company **CACAO DEL PERÚ NORTE S.A.C.**, within ninety (90) working days, counted as of the notice of this Resolution, submit the Classification of



Lands by their Best Use Capacity to the General Directorate for Agricultural Environmental Affairs of the Ministry of Agriculture and Irrigation. To that end, within the first five (5) days of the term granted, the company should submit the respective Timetable for Work that spells out the actions they will take to carry out the mandate ordered in this article.

**Article 3.** To give notice to the company **CACAO DEL PERÚ NORTE S.A.C.** of this Resolution so that it may proceed to carry out, immediately and strictly, what is ordered in Articles 1 and 2 foregoing.

**May it be registered and communicated**

[signature]

**Katherine Riquero Antúnez**

Director General

General Directorate of Agricultural Environmental Affairs

Ministry of Agriculture and Irrigation