



**IN RE : ILLEGAL CONSTRUCTION OF CAUSEWAY AND OTHER RELATIVE
ACTIVITIES OF ALTAI PHILIPPINE MINING CORPORATION (APMC)**

RESOLUTION

This resolves the Motion For Reconsideration dated February 22, 2023 submitted by APMC thru its counsel, Atty. Mary Jane F. Balagtas on the Joint Order dated February 06, 2023, the dispositive portion of which states:

"WHEREFORE, this Office hereby ORDERS the following:

1. For APMC to **CEASE AND DESIST** from the construction and operation of its causeway in Sitio Bato, Brgy. España, San Fernando, Romblon as a precautionary measure against potential irreparable damage to the environment;
2. Ore Transport Permit No. OTP-APMC-162-001-2022-MIMAROPA issued to APMC is **TEMPORARILY SUSPENDED** by virtue of Item No. 1 hereof;
3. APMC to **STOP** transporting ore from the contract site to the causeway;
4. APMC's application for Miscellaneous Lease Agreement is **DENIED** for its violations of Commonwealth Act 141, otherwise known as the Public Land Act, as amended, and its related issuances;
5. PENRO Romblon to **FILE** appropriate legal actions, if warranted, on the reported cutting of trees without permit; and,
6. PENRO Romblon to **CONDUCT** investigation on the potentially damaged sea grass and other marine resources.

This Order is immediately executory upon receipt."

Records show that the Joint Order was received on February 07, 2023 by APMC representatives during the Technical Conference at the EMB-MIMAROPA Regional Office.

APMC moves for reconsideration of the Joint Order dated 06 February 2023 on the following grounds:

1. It is not supported by any evidence that warranted the issuance and immediate execution thereof.
2. It was issued in gross deprivation of APMC's constitutional right to due process of law.
3. The first, second, and third Orders contained in the Joint Order have been mooted by APMC's voluntary stoppage of exploration and related activities as of 06 February 2023, even prior to the receipt of the subject Joint Order.

Said Motion also prays for the lifting of the Cease and Desist Order, directing that a Joint Technical Conference by EMB, MGB, and DENR Regional Officers be scheduled allowing APMC to be heard and to present evidence on its behalf; and directing that all ground validations and inspections by DENR-PENRO Romblon be deferred to give way to a joint investigation by the EMB, MGB and DENR Regional Offices with the participation of APMC and independent environmental experts, and reconsidering and recalling all other orders issued by the Joint Order dated February 06, 2023.

Further, APMC submitted an Omnibus Joint Motion dated June 14, 2023, wherein it prayed for the following:

1. *APMC's Motion for Reconsideration of the Joint Order dated February 6, 2023 be resolved with dispatch;*

2. *the attached Geospatial Assessment of the Bato Port be admitted and duly considered;*
3. *the Cease and Desist Order be lifted permanently;*
4. *the Temporary Suspension of the Ore Permits issued by MGB be lifted;*
5. *the order to "stop transporting ore from the contract site to the causeway" be recalled;*
6. *the denial of APMC's application for a Miscellaneous Lease Agreement be reconsidered and another Order be issued approving the same;*
7. *all other adverse orders contained in the Joint Order dated 06 February 2023 be recalled*
8. *the PENRO be directed to furnish APMC copies of its investigation report relative to the alleged cutting of trees without permit that it did not attach to the Notice of Violation that it issued, including the result of its investigation on the potentially damaged sea grass and other marine resources at APMC's Bato Port.*

We resolve to deny the Motions.

Pursuant to Item 11.1, Section XI of Mineral Production Sharing Agreement (MPSA) No. 304-2009-IVB, one of the obligations of the Contractor is:

e. To secure all permits necessary or desirable for the purpose of Mining Operations.

Further, Mining Operations is defined under Item 2.28, Section 2 thereof as:

2.28. Mining Operations means mining activities involving exploration, feasibility study, environmental impact assessment, development, utilization, mineral processing and mine rehabilitation.

Item No. 15.2, Section XV of the said MPSA also provides that:

15.2. This Agreement terminates or may be terminated for the following causes: (a) xxx; (b) xxx; (c) violation by the Contractor of the Agreement's terms and conditions; (d) xxx; (e) xxx; and (f) any other cause or reason provided under the Act and its implementing rules and regulations, or any other relevant laws and regulations.

Per Memorandum dated May 24, 2023 of undersigned Environmental Management Bureau (EMB) Regional Director, APMC has violated Section 4 of Presidential Decree (PD) 1586 (*Philippine Environmental Impact Assessment Statement System*):

Section 4 of PD 1586 provides that government and private entities are required to secure an Environmental Compliance Certificate (ECC) before starting a project falling under the system.

Item No. 3.5.3 of EMB Memorandum Circular No. 2014-005 provides that causeway projects which involves a reclamation component is required to secure an ECC prior to project implementation.

Proclamation 2146 classifies Resource Extractive Industries such as major mining and quarrying projects as Environmentally Critical Projects and as such is required to secure an ECC prior to project implementation.

A Certificate of Non-Coverage was issued for the proposed APMC Bato Causeway Project (*Reference No. CNC-OL-R4B-2022-10-01928*) on October 25, 2022, located at Sitio Bato, Brgy. España, San Fernando Romblon. However, during the time of inspection, the causeway project is already constructed and operational. It must also be emphasized that the causeway project is a critical component of the entire project as it cannot transport the extracted samples or materials without the causeway.

Considering the nature of the causeway project in relation to the entire operations of APMC, it is evident that an ECC must be secured prior to implementation of the project.



An Order¹ dated April 26, 2023 was issued to Altai wherein it was stated among others, that:

"It was acknowledged by the Respondent in their Position Paper that the project has already undergone the public scoping process as part of its ECC application. Hence, Respondent cannot avoid the fact that while an ECC is a planning tool, it is a prerequisite prior to project implementation.

In addition, the causeway project is a critical component of the entire project as it cannot transport the extracted samples or materials without the causeway.

Moreover, the act of subsequently securing a CNC for the Proposed Bato Causeway Project is a blatant act of contravening the process of securing an ECC in order to facilitate the immediate implementation of a critical component of the project.

The Revised Procedural Manual for DENR Administrative Order No. 2003-30, IRR of P.D. 1586 (DAO 2003-30) states that a Proponent which has secured a Certificate of Non-Coverage is not covered by the EIS System and is not required to secure an ECC.

Thus, the contradicting acts of the Respondent in securing a CNC while its ECC application remains ongoing clearly shows the absence of good faith."

Per Memorandum dated May 19, 2023 of the OIC, Assistant Regional Director for Technical Services, APMC has no approved tree cutting permits or Miscellaneous Lease Application. Further, Section 68, PD No. 705 as amended, provides that:

"Sec. 68. Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License. Any person who shall cut, gather, collect, removed timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation. xxx"

APMC claimed that the construction and use of its causeway did not cause, or had potential to cause irreparable damage to the environment specifically, as to seagrass and marine resources, and that it commissioned a geospatial assessment of the Bato Port by a team of experts from the University of the Philippines utilizing modern spatial engineering methods i.e. remote sensing, artificial intelligence, geoinformatics and filed techniques to analyze satellite images before, during and after the construction of causeway at Bato Port and the access roads.

However, it should be pointed out that APMC introduced improvements in the area **prior to approval** of its Miscellaneous Lease Application which is in violation of existing laws, rules and regulations.

It is settled that in administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.² The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.³ Procedural due process is met when one is given notice and the opportunity to be heard and explain their side. It gives a party the chance to seek reconsideration of an action or ruling unfavorable to them.⁴

In view of the foregoing, APMC's allegations that the Joint Order is not supported by any evidence that warranted the issuance and immediate execution thereof, and that it was issued in gross deprivation of its constitutional right to due process of law, are bereft of merit.

¹ EMB-MIMAROPA Case No. ROM-059-23 entitled "In the Matter of Environmental Impact Assessment Law vs. Altai Philippines Mining Corporation, Respondent" for Violation of P.D. 1586 and its Implementing Rules and Regulations

² Department of Agrarian Reform v. Samson, G.R. NOS. 161910 and 161930, June 17, 2008, 554 SCRA 500, 509


³ Casimiro v. Tandog, G.R. No. 146137, June 8, 2005, 459 SCRA 624, 631

⁴ Raoul C. Villarete, v. Commission On Audit, G.R. No. 243818, April 26, 2022 citing Vivo v. Philippine Amusement and Gaming Corporation, 721 Phil. 34, 39 (2013)


WHEREFORE, premises considered, the instant Motion for Reconsideration, and Joint Omnibus Motion are **DENIED**.

SO ORDERED.

City of Manila, Philippines. _____.



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