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Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
1515 DENR By the Bay Building
Roxas Boulevard, Ermita, Manila

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

ALTAI PHILIPPINES MINING
CORPORATION,
Respondent.

X -----X

Ms. LORMELYN E. CLAUDIO, CESO IV
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OMNIBUS MOTION

1. TO RESOLVE MOTION FOR RECONSIDERATION
OF JOINT ORDER DATED 06 FEBRUARY 2023
WITH REITERATIVE PRAYER TO LIFT CEASE
AND DESIST ORDER; and

2. TO ADMIT GEOSPATIAL ASSESSMENT OF THE BATO PORT

Respondent **ALTAI PHILIPPINES MINING CORPORATION** ("APMC", for brevity), through the undersigned counsel, unto this Honorable Office, respectfully states: THAT –

1. On 22 February 2023, APMC timely submitted its Motion For Reconsideration of the Joint Order dated 06 February 2023 that was jointly signed by the above-named Regional Directors of the Office of the Regional Executive Director, the Office of the Regional Director of MGB-Region 4B MIMAROPA, and the Office of the Regional Director of EMB-Region 4B MIMAROPA (collectively, the "Regional Offices-Region 4B MIMAROPA").

2. The dispositive portion of the subject Joint Order reads:

"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 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 other 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.

SO ORDERED."

The Cease and Desist Order (CDO) as contained in the Joint Order must be lifted permanently for being devoid of factual and scientific basis.

3. As worded, the Cease and Desist Order (CDO) against APMC anent the construction and operation of APMC's causeway in Sitio Bato, Brgy. España, San Fernando, Romblon was issued by the Honorable Office as a **"precautionary measure"** against **"potential"** irreparable damage to the environment. It must be underscored, however, that the invocation of precautionary principle, or "precautionary measure" as used in the Joint Order, still requires scientific basis or scientific certainty if so ordered to prevent harm to the environment.

4. APMC respectfully directs the attention of the Honorable Office and to the Regional Offices-Region 4B MIMAROPA to the following ruling of the Supreme Court in the *En Banc* case of *"Wilfredo Masqueda, et al., vs. Pilipino Banana Growers and Exporters Association, Inc., et al., G.R. No. 189185/City Government of Davao vs. Court of Appeals, et al."*,¹ which is instructive on the use of a CDO as precautionary measure:

"The principle of precaution appearing in the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC) involves the matters of evidence in cases where there is lack of full scientific certainty in establishing a causal link between human activity and environmental effect.² xxxxx

It is notable, therefore, that the precautionary principle shall only be relevant if there is concurrence of three elements, namely: uncertainty, threat of environmental damage and serious or irreversible harm. In situations where the threat is relatively certain, or that that causal link between an action and environmental damage can be established, or the probability of occurrence can be calculated, only preventive, not precautionary measures, may be taken. Neither will the precautionary principle apply

¹ G.R. No. 189305, August 16, 2016.

² Section 1, Rule 20, Part V, Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC)

Based on drone shots, bed sampling and underwater videos taken on 21 April 2023 covering selected points and immediate vicinity --- there is no visual evidence of existing seagrass and hard corals nor visual confirmation of previous presence. Sampling yielded either sand or small rocks.¹⁰ (Emphasis supplied)

8. The foregoing findings prove that the construction and use of APMC's causeway at Bato Port cannot be said to have caused potential or actual irreparable damage to the environment. To begin with, there is **no visual presence of seagrass, seagrass bed, and hard corals nor visual confirmation of their presence.** How can the principle of precautionary measure be used on the basis of "potential" irreparable damage to the environment when seagrass and other marine resources which the CDO sought to protect turns out inexistent?

9. The continuing imposition of the CDO, therefore, defeats its very purpose. On the contrary, the continuing CDO without basis is indicative of abuse of discretion on the part of the Honorable Office and the Regional Offices-Region 4B MIMAROPA considering that the same is indeed bereft of any factual and scientific basis, and thus, must be forthwith permanently lifted.

10. APMC believes that only a carefully collated empirical data and scientific analysis, not some nebulous claims, can determine the propriety of the continuing imposition of the CDO. The matter cannot be simply left indefinitely to the bar of public opinion on social media where propaganda by anti-mining advocates, community agitators, and other interest groups against APMC unfairly reign over intelligent discourse. APMC and the public in general deserve no less from the Honorable Office and the Regional Offices-Region 4B MIMAROPA.

The inordinate delay in the resolution of APMC's timely Motion for Reconsideration of the Joint Order constitutes grave abuse of authority and is tantamount to denial of its Constitutional right to speedy disposition of case.

11. The records will bear out that APMC timely filed its Motion for Reconsideration of the Joint Order on **22 February**

¹⁰ Page 15, Geospatial Assessment of Bato Port.

2023. To this date or after a lapse of **more than ninety (90) days**, the Honorable Office has not yet resolved the same despite extreme urgency. The underlying economic impact of the CDO to APMC's hundreds of site workers and the financial injury that APMC shall continue to suffer should be enough to impel the Honorable Office to resolve the Motion with dispatch.

12. The inordinate delay of the Honorable Office in resolving APMC's Motion for Reconsideration constitutes a violation of its right to speedy disposition of its case. The right to the speedy disposition of cases is enshrined in Article III of the Constitution, which declares:

"Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."

13. **The constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial.**¹¹ In this accord, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.¹² This right, however, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays.¹³

14. The delay in the resolution of APMC's Motion for Reconsideration has become undoubtedly vexatious, capricious, and oppressive not only to APMC but to its currently jobless site workers with families who depend on their income from APMC for their daily sustenance and education of their children.

15. The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.¹⁴ Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.¹⁵

¹¹ *People v. Sandiganbayan*, 5th Div., et al., 791 Phil. 37, 52, citing *Cadalin v. Philippine Overseas Employment Administration's Administrator*, 308 Phil. 728, 772 (1994).

¹² *Capt. Roquero v. The Chancellor of UP-Manila*, et al., 628 Phil. 628, 639 (2010).

¹³ *Dela Pena v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

¹⁴ *Binay v. Sandiganbayan*, 374 Phil. 413, 447 (1999).

¹⁵ *Alvizo v. Sandiganbayan*, 292-A Phil. 144, 155 (1993); *Dansal v. Judge Fernandez, Sr.*, 383 Phil. 897, 906 (2000); and *Blanco v. Sandiganbayan*, 399 Phil. 674, 682 (2000).

16. The Rules on Pleading, Practice and Procedure before the Panel of Arbitrators (POA) and the Mines Adjudication Board (MAB) which were approved on May 22, 1997 can be applied suppletorily to this case. Section 7, Rule 5 of The Rules on Pleading, Practice and Procedure before the POA and MAB reads:

“SEC. 7. Technical Rules Not Binding – The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and it is the spirit and intention of these Rules that the [MAB] shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process.” (Emphasis supplied)

17. A period of ninety (90) days is more than sufficient for the Honorable Office to use all reasonable means to ascertain the facts speedily and objectively to determine the propriety of continuous imposition of the CDO; for PENRO Romblon to ascertain if there are **facts and evidence** that will support the filing of appropriate legal actions on the reported cutting of trees without permit; and for PENRO Romblon to conduct investigation on the potentially damaged sea grass and other marine resources. The Honorable Office along with the Regional Offices-Region 4B MIMAROPA were quick to the draw, so to speak, when they issued the Joint Order, yet, unreasonably slow in resolving the same despite the timely filed Motion For Reconsideration.

18. It is worth reiterating that by virtue of a valid and subsisting MPSA, APMC invested heavily in its exploration and related activities with all stakeholders in mind. It cannot be denied that residents of impact communities and the entire Sibuyan Island as a whole stand to reap from economic benefits and development that APMC's full commercial operation will bring to the residents of San Fernando, Romblon in due time. The State through the DENR and APMC are supposed to be partners under the MPSA. The immediate actions of the State on pending issues being faced by its partner, herein APMC, are crucial. But this is not happening. With due deference to this Honorable Office, the DENR and its Regional Offices, on the contrary, seem more inclined to let a valuable investment go to waste as it continues to remain unmoved by the efforts of APMC to bring the present issues to a reasonable and fair conclusion.

19. The issues raised against APMC are serious in character but APMC discussed each of them squarely in its Motion for Reconsideration of the Joint Order. The pendency in the resolution of said Motion meant continuing imposition of the CDO. This adversely impacts the sustainability of APMC's investment at San Fernando, Romblon where it is acknowledged as the biggest employer of residents. For this alone, the Honorable Office should have considered to resolve the Joint Order speedily and objectively.

20. APMC temporarily laid-off its more than 200 local workers who are residents of Barangay España and Barangay Taclobo as a direct consequence of the Joint Order. The source of livelihood of these local workers abruptly closed and the sufferings that they continue to experience as a result thereof cannot be quantified. APMC cannot allow the economic well-being of its site workers to be perpetually compromised, and its investment locked in oblivion because of the unjustified failure of the Honorable Office to resolve the Motion for Reconsideration.

20. The inordinate delay of this Honorable Office in resolving APMC's Motion for Reconsideration brought severe financial injury to APMC. Thus, APMC reserves the right to seek redress at the proper forum against certain officials within the bureaucracy who are responsible for the delay and who seem unmindful of the provisions of:

(a) **Sec. 3 (e) of Rep. Act No. 3019 or the Anti-Graft and Corrupt Practices Act** which provides that:

"Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are **hereby declared to be unlawful:**

XXXX

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or **gross inexcusable negligence.** This provision shall apply to officers and employees of offices or government corporations charged with the grant of

licenses or permits or other concessions.
(Highlights are supplied for emphasis.) xxxx”

(b) **Sec. 4 (c) of Rep. Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees** which provides that:

“**Section 4. Norms of Conduct of Public Officials and Employees.** - (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

“xxxx

(c) Justness and sincerity. - Public officials and employees shall remain true to the people at all times. **They must act with justness** and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. **They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest.** They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.
xxxxx” (Highlights are supplied for emphasis.)

And (c) **Sec. 11 of Rep. Act No. 9485 or the “Anti-Red Tape of 2007”**, which penalizes government offices, agencies, and their representatives for the following violations:

“**SEC. 11. Violations.**- After compliance with the substantive and procedural due process, the following shall constitute violations of this Act together with their corresponding penalties:

a. Light Offense

1. Refusal to accept application and/or request within the prescribed period or any document being submitted by a client;

2. **Failure to act on an application and/or request** or failure to refer back to the client a

request which cannot be acted upon due to lack of requirement/s within the prescribed period;

3. Failure to attend to clients who are within the premises of the office or agency concerned prior to the end of official working hours and during lunch

4. **Failure to render frontline services within the prescribed period on any application and/or request without due cause;**

5. **Failure to give the client a written notice on the disapproval of an application or request;** and

Imposition of additional irrelevant requirements other than those listed in the first notice." *(Highlights are supplied for emphasis.)*

WHEREFORE, premises considered, it is respectfully prayed: THAT –

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;** and

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.

Pasig City for Manila; 14 June 2023.


MARY JANE F. BALAGTAS

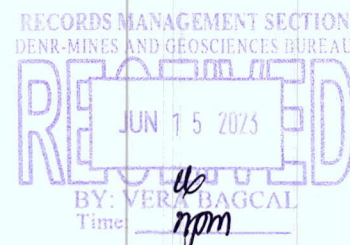
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IBP O.R. No. 200795/01.28.23/RSM
PTR O.R. No. 222275/01.17.23/PASIG CITY
ROLL NO. 42280

MCLE Compliance Report No. VII-0027646/4.4.2023
Valid Until 14 April 2025

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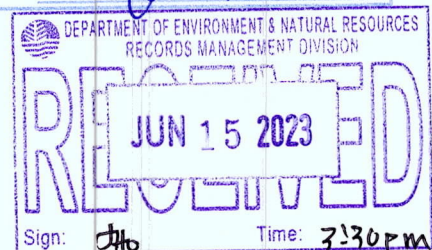
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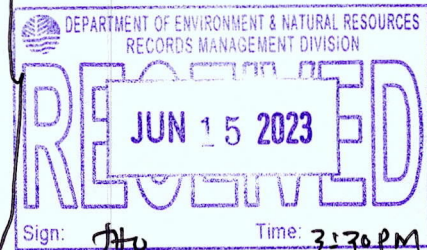


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NOTIFICATION

The Clerk
DENR-MIMAROPA Region
DENR By the Bay Building
1515 Roxas Blvd., Ermita, Manila 1000

Greetings:

Immediately upon receipt hereof, please submit the foregoing Motion for the consideration and approval by the Honorable Office without further argument.


MARY JANE F. BALAGTAS

Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
1515 DENR By the Bay Building
Roxas Boulevard, Ermita, Manila

ANNEX " 1 "

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

ALTAI PHILIPPINES MINING
CORPORATION,

Respondent.

X -----X

MOTION FOR RECONSIDERATION
(of Joint Order dated 06 February 2023)

Respondent **ALTAI PHILIPPINES MINING CORPORATION** ("APMC", for brevity), through the undersigned counsel, to this Honorable Office, respectfully states: THAT –

1. On 07 February 2023, during the scheduled Technical Conference at the EMB-MIMAROPA Office at Ermita, Manila, a copy of the subject **Joint Order** dated 06 February 2023 was served upon the representatives of APMC by Atty. Joseph Delos Santos of DENR-Region IVB MIMAROPA. The Joint Order was issued by Engr. Glenn Marcelo C. Noble, Mines and Geoscience Bureau (MGB) Regional Director – MIMAROPA; Joe Amil M. Salino, Environmental Management Bureau (EMB) Regional Director – MIMAROPA; and Lormelyn E. Claudio, CESO IV, Department of Environment and Natural Resources (DENR) Regional Executive Director – MIMAROPA. The dispositive portion thereof reads:

"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 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 other 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.

SO ORDERED."

2. APMC moves for the reconsideration of the subject 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.

A. Background of APMC's Exploration and Related Activities and Events Leading to the Issuance of the Joint Order:

1. APMC secured relevant permits, clearances, authorizations, and Certificates of Non-Coverage; and duly filed its applications for Miscellaneous Lease Agreement (MLA), Environmental Compliance Certificate (ECC), and Tree Cutting Permit (TCP).

1.a APMC's Exploration Permit and Certificates of Non-Coverage

1.a.1 APMC is a holder of a Mineral Production Sharing Agreement ("MPSA") denominated as **MPSA No. 304-2009-IVB** dated December 23, 2009.¹ As this Honorable Office knows, it is still under exploration stage with a **renewed Exploration Permit** issued by the DENR-MGB on July 12, 2022² and **Exploration Work Program ("ExWP") without bulk sampling** approved on July 12, 2022³ and **ExWP with bulk sampling** that was likewise approved on December 21, 2022.⁴

1.a.2 Pursuant to the Revised Procedural Manual for DENR Administrative Order No. 30 Series of 2003 (DAO 2003-30) or the Implementing Rules and Regulations of Presidential Decree No. 1586, Establishing the Philippine Environmental Impact Statement System, **the DENR-EMB issued to APMC Certificates of Non-Coverage for its Construction of Exploration Access Road 3⁵, Exploration Access Road Construction⁶, Construction of Laboratory Facilities⁷, Exploration Base Camp⁸, Proposed APMC Bato Causeway⁹, APMC Pier Yard¹⁰, and Exploration Perimeter Access Road.¹¹**

¹ Annex "1" – APMC's MPSA No. 304-2009-IVB dated December 23, 2009.

² Annex "2" – APMC's Renewed Exploration Permit dated July 12, 2022.

³ Annex "3" – APMC's Exploration Program without bulk sampling approved on July 12, 2022.

⁴ Annex "4" – APMC's Exploration Program without bulk sampling approved on December 9, 2022.

⁵ Annex "5" – CNC for Construction Exploration Access Road 3 dated July 4, 2022.

⁶ Annex "6" – CNC for Exploration Access Road Construction dated August 16, 2022.

⁷ Annex "7" – CNC for Construction of Laboratory Facilities dated August 24, 2022.

⁸ Annex "8" – CNC for APMC Exploration Base Camp dated September 12, 2022.

⁹ Annex "9" – CNC for Proposed APMC Bato Causeway dated October 25, 2022.

¹⁰ Annex "10" – CNC for APMC Pier Yard dated November 8, 2022.

¹¹ Annex 11" – CNC for APMC Exploration Perimeter Access Road dated December 15, 2022.

1.b Application for Environmental Compliance Certificate (ECC)

1.b.1 APMC's proposed causeway project was designed as an integral component of the Sibuyan Nickel Project for its approved MPSA. It is located at Sitio Bato, Brgy. España, Sibuyan Island, San Fernando, Romblon. The project area is within APMC's privately owned land with target commencement of port construction in December 2022. The causeway facility with an estimated loading capacity of 3,000,000 wet metric tons (WMT) for direct shipment per year is intended to exclusively serve the shipment activities of APMC's nickel mining operation. It shall be operated as a private non-commercial port specifically designed to accommodate up to six (6) barges loading two (2) vessels at a time to achieve its target annual production.

1.b.2 APMC filed an online application for ECC at EMB Central Office for its mine site which included the causeway project at Sitio Bato, Barangay Espana, San Fernando, Romblon. **This online application was duly acknowledged by EMB Central Office through a letter dated June 14, 2022.**¹² Accordingly, APMC through a letter dated June 20, 2022¹³ submitted to EMB Central Office its Draft Environmental Impact Statement (EIS) Report for review and evaluation and the same was received by EMB Central Office on June 21, 2022.

1.b.3 APMC's application for the ECC of its mine site is still undergoing the EIA process which has six (6) stages under DAO 2003-30 such as: (1) Screening; (2) Scoping; (3) EIA Study and Report Preparation; (4) EIA Review and Evaluation; (5) Decision-Making; and (6) Post-ECC Monitoring, Validation and Evaluation/Audit Stage. APMC already passed through the necessary Screening Stage with the issuance of corresponding Notice of Public Scoping¹⁴ by EMB Central Office. APMC's application for the ECC of its mine site is still under the second stage which is Scoping. Notices of Public Scoping were issued accordingly to the participants and the same was conducted by APMC with the assistance of EMB-MIMAROPA on January 19, 2023 in San Fernando, Sibuyan Island, Romblon. APMC is in the process of preparing a scoping report for submission to EMB

¹² Annex "12" – EMB Central Acknowledgement Receipt of APMC's online application dated June 14, 2022.

¹³ Annex "13" – APMC's letter to EMB Central Office date June 20, 2022.

¹⁴ Annex "14" - Notice of Public Scoping from EMB Central Office.

Central Office for review and approval so that Technical Scoping can be conducted as well in due time.

1.b.4 The processing of APMC's ECC application is currently saddled with an issue as to whether or not a separate ECC for the causeway—as differentiated from the ECC for mine site, (which although required, is not yet currently necessary until the mining phase is started)—must be secured. A separate ECC for APMC's causeway is being taken into consideration since APMC has to undergo bulk metallurgical sampling of nickel ores for testing to a capable laboratory abroad. This activity is part of APMC's approved ExWP that will necessarily entail the use of the causeway at its Bato Port. This matter was openly broached and discussed with DENR for the first time only during the Technical Conference, or after the related Notice of Violation was issued.

1.b.5 APMC's representatives attended the Technical Conference last February 7, 2023 at EMB-MIMAROPA Office. During said Technical Conference the Notice of Violation for an alleged violation of P.D. 1586 for constructing a causeway without ECC was discussed. It is settled that the causeway is a component of APMC's Mine Site for which the ECC is being applied for. According to EMB-MIMAROPA, should a separate ECC for the causeway need to be secured, the same can be processed at the **Regional Office** but since APMC's ECC application is pending at **EMB Central Office**, APMC need to make a written inquiry from EMB Central Office about the matter and await its reply. APMC committed to follow the February 7, 2023 advice of EMB-MIMAROPA and the latter assured of their prompt assistance in the event that the separate ECC for the causeway has to be processed at the Regional Office.

1.c Application for Miscellaneous Lease Agreement (MLA)

1.c.1 It is APMC's position that the shipment of its bulk metallurgical sample is a one-time activity and as such, it is part and parcel of its approved ExWP. Moreover, APMC was issued a CNC for its Port Bato Causeway (**Annex "9", hereof**). Thus, without prejudice to the pending application for its filed ECC application for the mine site, APMC sought to secure a tenorial instrument for this one-time activity by way of a Miscellaneous Lease Agreement/Contract ("MLA"), which APMC applied for on

September 12, 2022 under MLA No. 045913-3¹⁵ at DENR-PENRO MIMAROPA Region (Romblon).

1.c.2 The following is the timeline of APMC's MLA application for the appreciation of this Honorable Office:

(1) On September 12, 2022, APMC filed its MLA and submitted to DENR-PENRO MIMAROPA all documentary requirements. **APMC filed this precisely in compliance with Article 51 of the Water Code or P.D. 1607.**

(2) Sometime in October 2022 following the initial evaluation of its MLA, APMC was required to amend all submitted supporting documents and to submit lacking requirements. This includes evidence of competent identity, Articles of Incorporation, copy of title of adjacent lot and feasibility study. Accordingly, APMC resubmitted the amended supporting documents and submitted the said lacking documents on the same month.

(3) Thereafter, APMC came to know that staff work anent its MLA which included an ocular inspection in the vicinity of the area applied for has been completed with at least two (2) significant findings, to wit:

3.1 Letters addressed to different offices and agencies such as DPWH, PPA, Office of the Municipal Engineer, and Office of Municipal Planning Officer have already been sent out and there were **no opposition** signified by any of the agencies and offices as of the month of October, 2022.

3.2 APMC has **satisfied all the requirements** needed for the approval of its MLA.

(4) It has come to APMC's knowledge as well that its MLA has been endorsed by DENR-PENRO Romblon to the Regional

¹⁵ Annex "15" - MLA No. 045913-3 dated September 12, 2022.

Executive Director as of December 2022. Given the above favorable findings and there appears to be no other compliance issue, APMC reasonably anticipated the immediate release of its MLA. But this has not happened for reasons both unknown and beyond its control. It is unclear what exactly was done by DENR-PENRO Romblon and the Office of the Regional Executive Director with APMC's MLA from the time the above-mentioned staff work was completed with favorable findings. Neither was APMC apprised of its status by way of a formal correspondence.

(5) APMC learned for the first time on February 7, 2023 that its MLA was denied when its representatives were served with a copy of the aforesaid Joint Order during the Technical Conference.

1.d Applications filed before the Philippine Ports Authority (PPA) and Permits from PPA and BOC

1.d.1 Pending the approval and release of its MLA, APMC applied in good faith on January 24, 2023 at the PPA for an **Application to Develop and Construct (PDC) a Non-Commercial Port ("APMC-Bato Causeway")** and **requested for consideration a Temporary Use of APMC-Bato Port at Sitio Bato, Barangay Espana, San Fernando, Sibuyan Island, Romblon¹⁶**, pursuant to Section 19 in relation to Sections 17 (a) and 18, of PPA Administrative Order No. 5-2022 dated June 29, 2022 or the Revised Policy on the Development, Construction, Operations and Maintenance of Private Ports ("2022 Revised Policy of Private Ports"). APMC filed this application in an honest belief and understanding that a **permit from PPA along with its CNC for its Proposed Bato Causeway shall suffice for its intended one-time shipment of bulk metallurgical sample for testing.**

1.d.2 Subsequently, the PPA issued to APMC a letter dated January 25, 2023¹⁷ allowing APMC to temporarily use its causeway for the loading of export cargo/laterite nickel ore on the vessel subject to conditions stated therein. In addition, APMC likewise secured from the PPA the following in support of the

¹⁶ Annex "16" – Letter dated January 21, 2023, APMC's application for PDC with Request for Temporary Use of APMC Bato Causeway.

¹⁷ Annex "17" – Letter dated January 25, 2023 from PPA stating that APMC's request may be granted subject to compliance with stated requirements.

intended one-time shipment of bulk metallurgical sample for testing:

(1) **Authority To Transact¹⁸** (per Philippine Ports Authority Memorandum Circular No. 06-2021) – issued by the PPA to APMC's nominated provider of **Cargo Handling Services**, North Coast Shipping – NCS Corporation for a one-time transaction like this bulk sampling shipment. This is valid from January 26, 2023 to February 24, 2023.

(2) **Authority To Transact¹⁹** (per Philippine Ports Authority Memorandum Circular No. 06-2021) – issued by the PPA to APMC's nominated provider of **Lighterage/Barging Services**, North Coast Shipping – NCS Corporation for one-time transaction like this bulk sampling shipment. This is valid from January 26, 2023 to February 24, 2023.

1.d.3 APMC likewise secured the following from the Bureau of Customs (BOC):

(1) **Authority To Load²⁰ after payment of excise taxes²¹** pursuant to BOC Memorandum Order {CMO} No. 04-2020) or The Implementing Customs Administrative Order (CAO) 15-2019 in relation to Sections 1418-1421, R.A. 10863 or Customs Modernization and Tariff Act (CMTA) – the permission given by customs personnel at the office of destination to load the Goods For Outright Exportation like nickel ores.

(2) **Shipside Permit No. 042-23** dated January 30, 2023²² for LCT 208 (25,000 MT).

¹⁸ Annex "18" – Authority To Transact issued by the PPA to APMC's nominated provider of **Cargo Handling Services**, North Coast Shipping – NCS Corporation.

¹⁹ Annex "19" – Authority To Transact issued by the PPA to APMC's nominated provider of **Lighterage/Barging Services**, North Coast Shipping – NCS Corporation.

²⁰ Annex "20" – Authority To Load issued by the BOC.

²¹ Annex "21" – Excise Tax Return dated December 28, 2022.

²² Annex "22" – BOC Shipside Permit No. 042-23 dated January 30, 2023.

(3) **Shipside Permit No. 042-23** dated January 30, 2023²³ for LCT 98 (25,000 MT).

1.e Ore Transport Permit and Mineral Ore Export Permit

1.e.1 APMC applied for, and was issued by MGB Region IVB-MIMAROPA **Ore Transport Permit (OTP-APMC-162-001-2022-MIMAROPA)** on December 28, 2022 which was valid until January 27, 2023²⁴ pursuant to DENR Administrative Order No. 2010-21 or The Implementing Rules and Regulations of R.A. No. 7942 that gave authority to APMC to haul and transport extracted sample ores from source alongside the area of the existing old road in the tenement or the extraction site to the port. This OTP was renewed and/or Amended on January 25, 2023²⁵ for another period of thirty (30) days or until February 27, 2023.

1.e.2 For the shipment of its bulk metallurgical sample for testing, APMC likewise applied for, and was issued by the MGB Central Office a **Mineral Ore Export Permit (MOEP No. DENR-MGB-22-08)** on December 29, 2022²⁶ which was valid until January 28, 2023 pursuant to the same DENR Administrative Order No. 2010-21. This MOEP gave authority to APMC to ship out or export ore samples, subject to payment of all taxes and fees imposed by the Bureau of Customs (BOC).

1.e.3 APMC applied for the extension of its MOEP through a letter dated January 17, 2023 and the same was answered by then MGB Director Atty. Wilfredo G. Moncano through a letter dated January 19, 2023²⁷ wherein he referred APMC's application for MOEP extension to MGB Regional Office pursuant to Section 5 of DMO N0. 2010-07. Thus, in a letter dated January 26, 2023²⁸, APMC formally brought to the attention of MGB Regional Office 4B its application for renewal of MOEP which was expiring on January 28, 2023. But in its letter dated January 27, 2023²⁹ which was signed by Chief of Geosciences Division of MGB Region 4B and not by the MGB Regional Director, MGB Region 4B refused to give due course to

²³ Annex "23" - BOC Shipside Permit No. 043-23 dated January 30, 2023.

²⁴ Annex "24" - Ore Transport Permit issued on December 28, 2022.

²⁵ Annex "25" - Amended/Renewed Ore Transport Permit issued on January 25, 2023.

²⁶ Annex "26" - Mineral Ore Transport Permit issued on December 29, 2022.

²⁷ Annex "27" - Letter dated January 19, 2023 from MGB Director Moncano to APMC.

²⁸ Annex "28" - Letter dated January 26, 2023 from APMC to MGB Regional Director Noble.

²⁹ Annex "29" - Letter dated January 27, 2023 from the MGB Regional Director to APMC.

APMC's request on the ground that the issuance of MOEP that is intended for bulk testing is outside the Regional Office's jurisdiction.

1.e.4 The above apparent tossing of responsibility anent APMC's request for MOEP extension between MGB Central Office and MGB Regional Office-MIMAROPA was further aggravated when its resolution was overtaken by the transfer of former MGB Director Atty. Moncano to another post which left the Office of the MGB Director vacant. APMC's application for MOEP renewal is thus left hanging and continues to be at the mercy of these offices.

1.f Application for Tree Cutting Permit (TCP)

1.f.1 Before APMC applied for a Tree Cutting Permit (TCP), APMC requested for the conduct of Tree Inventory over the 20-hectare Exploration Area and Proposed Access Road as early as **11 April 2022³⁰** since a Tree Inventory is necessary before one may apply for a TCP. **This request of APMC was acted upon only in October 2022 and the Report was transmitted to APMC only on 11 November 2022 or seven (7) months after its request was made.** Thereafter on November 22, 2022³¹, APMC submitted its request for TCP but the same remains unacted upon.

1.f.2 APMC's request for Tree Inventory and TCP can be summarized as follows for the appreciation of the Honorable office:

- (1) On 11 April 2022 (**Annex "30", hereof**), APMC requested for a Tree Inventory over the 20-hectare Exploration Area and Proposed Access Roads;
- (2) On 15 August 2022³², APMC requested for an Inspection and Tree Inventory of the 20-hectare land, Binayaan Exploration Area and the proposed one-hectare Nursery Area;

³⁰ **Annex "30"** – APMC's letter request to PENRO for Tree Inventory dated April 11, 2022.

³¹ **Annex "31"** – APMC's letter request to PENRO for TCP dated November 22, 2022.

³² **Annex "32"** – APMC's letter request for inspection and Tree Inventory dated August 15, 2022.

- (3) On 07 September 2022³³, DENR MIMAROPA issued an Invitation for a Technical Conference;
- (4) On 11 November 2022³⁴, DENR PENRO issued its Inspection Report on the Inspection and Tree Inventory requested by APMC over the 20-hectare area. In the Memorandum dated October 26, 2022³⁵ attached to the said Inspection Report, the following recommendations are worth noting:

“Considering the above findings and observations, the undersigned found that the **applicant complied with the requirements of existing laws, rules and regulations of the DENR**. It is therefore **recommended** for the issuance of **Cutting Permit** in favor of **ALTAI Philippines Mining Corporation** in Sitio Binayaan, Brgy. Espana, San Fernando, Romblon.”
(*Emphasis supplied*)

- (5) On November 22, 2022 (**Annex “31”, hereof**), APMC submitted its request for TCP **but this remains unacted upon by DENR-PENRO Romblon**.

To this date, APMC has not received any formal communication from the DENR-PENRO Romblon about the status of its TCP application.

2. APMC conducted its exploration and related activities with covering permits and authorizations from the national government.

2.1 APMC commenced the hauling and transport of bulk metallurgical sample on January 26, 2023 with a duly issued

³³ Annex “33” – DENR MIMAROPA Invitation for Technical Conference dated September 7, 2022.

³⁴ Annex “34” - DENR PENRO Inspection Report dated November 11, 2022.

³⁵ Annex “35” - DENR MIMAROPA Memorandum dated October 26, 2022.

OTP from the national government acting through MGB-Region IVB-MIMAROPA.

2.2 During the entire hauling and transport activities from the tenement to the port, there was a designated/assigned personnel from the DENR- MGB of Region IV-B MIMAROPA who observed the transport activities and submitted real time reports to the Regional Office. All the times material, APMC was practically being watched by the government thru the MGB.

2.3 As regards the exploration activity in the mine site, the extraction of ore samples was limited along the sides of the old exploration access. The clearing that was done, if any, was limited to shrubs that were less than 150 mm in diameter and tall grass. APMC did not cut any fully grown and duly inventoried trees.

3. APMC's permitted transport of its bulk metallurgical sample from the extraction site to the port was prevented by unruly anti-mining residents of Barangay Espana which gained undue media attention and followed by issuance of series of Notices of Violation from the Office.

3.1 With the above-enumerated permits, APMC expected a timely and orderly conduct of the shipment activities at its port. But beginning January 22, 2023 when APMC was yet to commence the transport of bulk metallurgical sample from extraction site to the port, some residents of Barangay Espana began congregating at a vacant lot across the port entrance. Since then, anti-mining residents continued to flock at the area.

3.3 On January 26, 2023 when APMC commenced the transport of bulk metallurgical sample from extraction site to the port, anti-mining residents began to block the port's entrance with motorcycles and tricycles and some of them barricaded the area. For good measure, APMC sought police assistance from PNP San Fernando to ensure maintenance of peace and order due to the presence of such blockades that intensified in the next days.

3.3 Anti-mining residents who do not appear to constitute the majority of Sibuyan Island residents were led by certain barangay officials of Barangay Espana and known anti-mining advocates who began flooding the social media with misinformation and unfair accusations against APMC. They

prevented APMC from conducting a lawful activity even in the presence of PNP personnel who exercised maximum tolerance albeit the assembly of these anti-mining residents who rallied and threw invectives at the personnel of APMC was not permitted by the local government of San Fernando. They caused substantial delays in the transportation and targeted shipment schedules of APMC that resulted to serious financial damage and unquantifiable disturbance to its lawful extraction activities.

3.4 The anti-mining residents of Barangay Espana were led, agitated, and instigated by anti-mining activists and certain barangay officials with clear intent of stopping at all cost the duly permitted transport by APMC of bulk metallurgical sample from the exploration site to the port. They refused to recognize the copies of permits showed to them, rudely engaged the representatives of APMC, and posted on social media their encounters with government authorities and representatives of APMC with malicious innuendos. The concerted efforts to prevent APMC from performing a legal act became very obvious and easily comprehensible because of parallel mainstream and social media attacks that were launched against APMC's exploration activities. Certainly, the Honorable Office is aware of these.

3.5 All the times material, a team of PNP personnel were posted at the area to maintain peace and order. The tires of APMC's dump trucks that were parked at the vicinity of the port were flattened and their oil tanks were also damaged. By all indications, these were done by anti-mining forces at the area which even the PNP personnel were not able to prevent.

3.6 Because the illegal assembly and blockade by anti-mining residents, activists, and barangay officials should no longer be prolonged to APMC's prejudice, the rallyists were eventually dispersed on February 3, 2023 by the PNP. It was not violent contrary to what the anti-mining residents and their supporters continue to portray in mainstream and social media. In truth, they were the ones who were unruly as they threatened both the police and APMC personnel with bodily harm. They had to be stopped from unlawfully blocking the entry of APMC's trucks to the port but given the intense resistance that they have shown, physical contacts became inevitable.



It is unfortunate that in the midst of these, the sides of APMC and the PNP were sparingly accommodated on mainstream media and only the sides of anti-mining activists, whose pronouncements border on sheer propaganda, were highlighted.

3.7 While APMC was doing its best to manage the situation at its port and to address issues raised against the permits that it secured from the government, the following series of Notices of Violation (NOVs) were issued by the Honorable Office on succeeding dates, copies of which received by APMC on February 4, 2023, to wit:

(1) Notice of Violation dated January 27, 2023 (Annex "36") - issued by OIC-PENR Officer For. Arnoldo A. Blaza, Jr. ordering APMC to submit a notarized position paper within ten (10) days upon receipt thereof why it should not be held liable to pay a fine of Php23,579.48 pursuant to Section 28 of R.A. 9275, as amended by Pollution Adjudication Board (PAB) Resolution No. 1, Series of 2019 and PAB Resolution No. 5, Series of 2021, and for the alleged violation by APMC of DENR EMB MC 2014-05 of the "Revised Guidelines for Screening and Standard Requirements under the Philippine EIS System or PD 1586" arising from construction of Sea Port with reclamation activities.

(2) Notice of Violation dated February 1, 2023 (Annex "37") - issued by OIC-PENR Officer For. Arnoldo A. Blaza, Jr. for the alleged violation by APMC of Article 51 of Presidential Decree (PD) No. 1067 or the Water Code of the Philippines and violation of Section 2 (c) and Section 2 (f) of DAO 2004-24. APMC was ordered to stop from further developing the area, avoid unnecessary activities that would worsen the situation in the area, and to abide by existing Environmental Laws and Rules and Regulations.

(3) Notice of Violation dated February 2, 2023 (Annex "38") - issued by EMB Regional Director Joe Amil M. Salino ordering APMC to submit a notarized position paper within ten (10) days upon receipt why no penalties amounting to

Php50,000.00 should be imposed against APMC for violation of Section 9, P.D. 1586 and Section 6 (b), Article IV of DENR Administrative Order No. 2003-30. APMC was further directed to suspend any further developments relative to the construction and operation of its causeway project effective immediately until and unless an Environmental Compliance Certificate (ECC) is secured. APMC was finally ordered to attend an in-person Technical Conference on February 7, 2023 at 2:00 PM at the office of the EMB Regional Director-MIMAROPA.

(4) Notice of Violation dated February 3, 2023 (Annex "39") – issued by OIC PENR Officer For. Arnoldo A. Blaza, Jr. for the alleged violation by APMC of Section 77 of the Revised Forestry Code of the Philippines or P.D. 705, as amended. APMC was directed to stop cutting/clearing activities and submit to DENR-PENRO, Romblon the copy of Special Tree Cutting Permit within 15 days.

APMC submitted its replies and Position Papers to the above-mentioned Notices of Violation on February 13, 2023, copies of which are attached as **Annexes "40", "41", "42", and "43"**, respectively, to form part of its Motion.

3.8 As of **February 6, 2023** APMC voluntarily halted all exploration and related activities in order to address all regulatory and compliance issues that have been raised and more importantly, to ensure peace and order at the port as well as the safety of its site personnel who were being harassed by the anti-mining residents, and to preserve its properties thereat.

Premised on the foregoing background, APMC hereby avers the following in support of its Motion, to wit:

- 1. The Joint Order is not supported by substantial evidence that warranted the issuance and immediate execution thereof.**

1.1 In the above NOV's, APMC was given set periods of time to reply. It must be stressed that when APMC was served a

copy of the Joint Order on February 7, 2023 during the Technical Conference called by the EMB-MIMAROPA anent NOV dated February 2, 2023 (**Annex "38" hereof**), APMC was yet to submit its replies and Position Papers to the previously issued NOVs. A close perusal of the Joint Order reveals that it contains **the same alleged violations of APMC that are not supported by relevant Official Reports and/or Findings** and as such, it cannot be considered as founded on substantial evidence.

1.2 Substantial evidence is defined under Section 6, Rule 133 of the 2019 Amendments to the 1989 Revised Rules on Evidence as *"that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."* The quantum of proof in administrative proceedings necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.

1.3 The standard of substantial evidence is satisfied when there is a reasonable ground to believe, based on the evidence presented, that the respondent is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case, or evidence beyond reasonable doubt, as is required in a criminal case, **but the evidence must be enough for a reasonable mind to support a conclusion** (*Office of the Ombudsman v. Manalastas*, 791 Phil. 557 [2016]; *Aldecoa-Delorino v. Abellanosa*, A.M. No. P-08-2472, October 19, 2010, 633 SCRA 448, 462).

1.4 Substantial evidence, which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, would suffice to hold one administratively liable (*Tapiador v. Office of the Ombudsman*, 429 Phil. 47, 54 [2002]; *Audion Electric Co., Inc. v. National Labor Relations Commission*, G.R. No. 106648, 17 June 1999, 308 SCRA 340, 351; *Association of Independent Unions in the Phils. v. National Labor Relations Commission*, G.R. No. 120505, 25 March 1999, 305 SCRA 219, 231; *Gonzales v. National Labor Relations Commission*, G.R. No. 125735, 26 August 1999, 313 SCRA 169, 174).

The basic rule is that reliance on mere allegations, conjectures and suppositions will leave an administrative

complaint with no leg to stand on (*Elisa Zara v. Atty. Vicente Joyas, A.C. No. 10994, 10 June 2019*). Charges based on mere suspicion and speculation cannot be given credence (*supra. note 33*).

1.5 The Joint Order prominently stated under the second (2nd), third (3rd), and fourth (4th) WHEREAS Clauses thereof, the previous issuance of Cease and Desist Order (CDO) to APMC by MGB Central Office on September 19, 2011; that APMC filed a Motion To Recall the Appeal and to lift the CDO with the DENR Office on December 13, 2020; and that the DENR lifted the CDO on September 9, 2021. These premises have no relation whatsoever to the alleged violations of APMC that are stated in the NOV's. There is no cogent reason why they should even be included in the Joint Order when they are long-terminated matters, and as such, are now moot and academic.

1.6 With due respect to this Honorable Office, the foregoing are inappropriately stated in the Joint Order since they were laid down in such manner that tends to create an undue impression of recidivism on the part of APMC when the factual backdrop that led to the issuance of the previous CDO starkly differs from the present one. They cannot constitute that as evidence against APMC that warranted the issuance of the Joint Order. If anything, the lifting of the CDO should be construed in favor of APMC since it shows that there is no longer a hindrance for APMC to continue its operations.

1.7 The eleventh (11th) WHEREAS Clause of the Joint Order alluded to an investigation conducted by the Investigating Team of PENRO Romblon on January 17, 2023 confirming an ongoing construction of causeway and flattening of the proposed roadway. It further mentioned a **"Report"** that there was a reclamation activity that allegedly started on January 13, 2023. Suffice it to say that, **up until this time, PENRO Romblon has not furnished APMC with any copy of the said Report** that would have reasonably apprised APMC of the extent of the investigation made and the findings that provided the basis for the issuance of the Joint Order. Likewise, absolutely no evidence has been presented to show that this supposed reclamation activity even took place.

1.8 The CEASE AND DESIST Order issued against APMC from the construction and operation of its causeway in

Sitio Bato, Brgy. Espana, San Fernando, Romblon as **precautionary measure against potential** irreparable damage to the environment is **bereft of any evidentiary support**. The use of the terms "precautionary measure" and "potential" in the Joint Order clearly indicates the absence of actual, clear, and present danger that the supposed construction and operation of its causeway pose against the environment. There is nothing in the Joint Order that distinctly points to any real or actual environmental damage that APMC has caused.

1.9 There was no construction of APMC's port on the date when the Joint Order was issued on February 6, 2023. Moreover, there was no more operation to speak of because as of February 6, 2023, APMC voluntarily stopped all its exploration and related activities. APMC duly informed the DENR, MGB, and EMB anent such voluntary stoppage through a letter dated February 14, 2023.³⁶

1.10 Had the Honorable Office provided an Official Report about the investigation that was purportedly conducted by PENRO Romblon on January 17, 2023, APMC could have readily contested the accuracy of such Report because the construction of its causeway for temporary use due to the intended one-time shipment of bulk metallurgical sample for testing was already terminated as of January 15, 2023.

1.11 It must be highlighted that the NOV's and the Joint Order do not incorporate any Official Findings or Reports that the construction of APMC's causeway has allegedly caused, will cause or is already causing damage to the environment, specifically, to the sea grass and marine resources. In the Joint Order, PENRO Romblon was ordered to conduct investigation on the potentially damaged sea grass and other marine resources. This indicates that the CDO lacks factual basis, and that there is still a need to determine if there was any actual damage at all. The conduct of investigation on the potentially damaged sea grass and other marine resources, including the investigation on the "reported" cutting of trees without permit, AFTER the CDO was already issued is like putting the cart before the horse.

³⁶ Annex "44" – APMC's Notice of Voluntary Stoppage of Extraction and Related Activities as of February 6, 2023, dated February 14, 2023.

1.12 The Joint Order is wanting of any evidence. The Joint Order did not present any of the following: (a) any scientific data on the damage inflicted, or that the damage is imminent on sea grass and marine resources; (b) Affidavits of witnesses; (c) baseline data showing the condition of the receiving body of water and the presence of siltation, corals, sea grass and other marine life before and after the construction of causeway; (d) Tree Inventory Report before and after the extraction activity, (e) sediment flux study; (f) Investigation Reports; (g) corroborative data from the Bureau of Fisheries or the Department of Agriculture as to any damage to farmlands and fishponds, and other relevant agencies of the government, and (h) any similar evidence that are sufficient to support a conclusion of APMC's culpability. In short, the Joint Order is based purely on conjecture and hypothetical situations.

1.13 Verily, there is lack of full scientific certainty in establishing a causal link between APMC's causeway construction and its effect on the environment that would warrant the issuance of the CDO. There is not even a scintilla of proof consisting of scientific or baseline data that APMC's causeway is actually causing damage or has potential to cause damage to the environment.

1.14 Under DAO 2003-30, the EMB-RD may issue a CDO based on violations under the Philippine EIS System "to prevent grave or irreparable damage to the environment." But despite the clear terms thereof, the Joint Order even encompasses an alleged violation of PD 1586, PD 705, and the Public Land Act, as amended, because the CDO does not make any distinction at all. Be that as it may, APMC submits that such authority is coupled with responsibility on the part of the EMB, MGB and DENR in seeing to it that the issuance of the CDO is based on some credible proof or factual basis. It should not be based on pure conjecture or suppositions. There must be some evidence on record.

1.15 Tested against the aforementioned evidentiary rules and jurisprudence, the premises stated in the Joint Order do not constitute substantial evidence of APMC's administrative culpability for violation of PD 1586, PD 705, and the Public Land Act, as amended.

1.16 Within the field of administrative law, while strict rules of evidence are not applicable to quasi-judicial proceedings, nevertheless, in adducing evidence constitutive of substantial evidence, the basic rule that mere allegation is not evidence cannot be disregarded (*Narazo v. Employees' Compensation Commission*, G.R. No. 80157, 6 February 1990, 181 SCRA 874, 877; *Government Service Insurance System v. Court of Appeals*, 357 Phil. 511, 529 [1998]).

2. APMC was deprived of its constitutional right to due process of law.

2.1 It is well-settled that the essence of due process in administrative proceedings is the opportunity to explain one's side or a chance to seek reconsideration of the action or ruling complained of (*Enrique A. Arboleda vs. NLRC et al.*, G.R. No. 119509, February 11, 1999.)

2.2 The Due Process Clause of the Constitution is a limitation on governmental powers. This is plain from Art. III, Section 1 of the 1987 Philippine Constitution, that: "No person shall be deprived of life, liberty, or property without due process of law." The reason is simple: Only the State has authority to take the life, liberty, or property of the individual. The purpose of the Due Process Clause is to ensure that the exercise of this power is consistent with what are considered civilized methods (*Ruben Serrano vs. NLRC, et al., En Banc*, G.R. No. 117040, January 27, 2000).

2.3 As applied to the instant case of APMC, it is respectfully submitted that the privilege granted to it by the State under MPSA No. 304-2009-IVB and the various permits, CNCs, and authorizations that it secured in valid exercise of its rights under the same MPSA had already ripened into a property right. This right should thus be protected under the due process clause of the Constitution.

2.4 With due respect to this Honorable Office, APMC's property right was violated: (1) when the CDO was issued against it; (2) when its OTP was temporarily suspended by virtue of the CDO; (3) when it was ordered to stop transporting ore from the contract site to the causeway; (4) when its application for

MLA was denied for alleged violation of the Public Land Act, as amended and its related issuances; (5) when PENRO Romblon was ordered to file appropriate legal actions if warranted on the reported cutting of trees without permit; and (6) when PENRO Romblon was ordered to conduct investigation on the potentially damaged sea grass and other marine resources ----- **without notice and hearing prior to the issuance of such Joint Order.**

2.5 In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process.³⁷

2.6 While this Honorable Office may conduct investigations on its own instance, however, it does not mean that it can entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character. **There are primary rights, which must be respected even in proceedings of this character.**³⁸

2.7 Under DAO 2003-30, an EIA is a process that involves predicting and evaluating the likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation and abandonment. It also includes designing appropriate preventive, mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare.

2.8 Thus, the EIA process must have been able to predict the likely impact of the project to the environment reclamation and to prevent any harm that may otherwise be caused. As averred, the application of APMC for the ECC of its mine site is under Scoping stage and this being the case, it is premature for this Office to presume the potential damage and irreparable damage that the construction of APMC's causeway has caused or may cause to the environment particularly to sea grass and marine resources.

2.9 A Certificate of Non-Coverage is given to projects that do not fall under the EIA System. The CNC is a certification issued by the EMB certifying that a project is not covered by the Environmental Impact Statement System (EIS System) and that

³⁷ *Cayago vs. Lina*, G.R. No. 149539, January 19, 2005; 449 SCRA 29.

³⁸ *Ang Tibay, represented by Toribio Teodoro, Manager and Proprietor, and National Workers Brotherhood vs. The Court of Industrial Relations and National Labor Union, Inc.*; GR. No. L-46496; February 27, 1940.

the project proponent is not required to secure an ECC (*Special People Inc. Foundation vs. Nestor M. Canda, et al., G.R. No. 160932, January 14, 2013*). As averred above, APMC was issued Certificate of Non-Coverage (CNC) by the EMB Central Office for its Proposed Bato Causeway and thus, exempted from the requirement of the Environmental Compliance Certificate (ECC) under Section 4 of Presidential Decree No. 1586.

2.10 In reference to the causeway, the Office should have granted an opportunity to APMC to explain why it constructed the causeway without ECC before issuing the Joint Order. There are reasons therefor as averred above but APMC was unable to ventilate its side to this Office. Instead of giving the benefit of notice and hearing or a Technical Conference to determine the plausibility of APMC's technical and legal justifications, this Office proceeded with haste in issuing the Joint Order.

2.11 It is noteworthy that the ExWP of APMC with bulk sampling was approved only last December 21, 2022. Any previous activities on the ground, including the alleged clearing and tree-cutting, should reference all previous baseline studies and reports so that any observed activities can be attributed to the actual performer, whether APMC, previous mining applicants, locals, or other entities. Any finding which is basis for any Notice of Violation should also be specific. If trees were illegally cut, who, what, when, and where, are the basic questions APMC is entitled to under the basic concept of due process.

2.12 The directives contained in the Joint Order are unjustified because as stated above, APMC secured all relevant permits in good faith and with the understanding in good faith that they will suffice for the shipment of bulk metallurgical sample for testing. APMC relied on the efficacy of the CNC for its Proposed Causeway (**Annex "9" hereof**) that was issued by EMB Central Office. Although APMC constructed its causeway with attendant reclamation *sans* ECC, it must be emphasized that such activity was not permanent as it was only for the specific purpose of completing the one-time shipment of bulk metallurgical sample for testing. Owing to its temporary nature, it is not a permanent causeway with equally permanent reclamation in such magnitude that would require an ECC as is constantly demanded from APMC by the opposing parties.

As a show of good faith and intention to comply with regulatory requirements since it has no intention to violate PD 1586, APMC committed during the Technical Conference at the EMB Regional Office-MIMAROPA on February 7, 2023 to clarify the issue concerning the issuance of a separate ECC for its causeway from the EMB Central Office.

2.13 The issuance of the CDO against APMC without notice and hearing was tantamount to a deprivation of property right that has ripened as discussed above without due process of law because it effectively prevented APMC from shipping out its bulk metallurgical sample for testing. To reiterate, APMC needs to proceed with the shipment of its bulk metallurgical sample for testing, the result of which shall thereafter be included in APMC's Final Exploration Report in accordance with its duly approved ExWP. The Final exploration Report shall be included in the Declaration of Mining Project Feasibility ("DMPF") Study for approval by the DENR. The approval of DENR shall be the basis for the issuance of a Notice to Proceed ("NTP") for APMC to commence mine development, production, and utilization in accordance with MPSA 304-2009-IVB.

2.14 The fundamental and essential right of due process cannot be dispensed with. Notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative proceedings but an indispensable ingredient of due process.³⁹

2.15 In this case, the Joint Order was issued even before AMPC had the opportunity to file its REPLIES to the Notices of Violation, be confronted with the evidence against it and be truly heard before the Technical Conference.

2.16 Due process is comprised of two components — substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal (*Cruz, Constitutional Law, 1993 Ed., pp. 102-106*).

³⁹ *Pablo Borbon Memorial Institute of Technology vs. Albistor Vda. De Bool*, GR. No. 156057, August 25, 2005, 468 SCRA 128.

2.17 True to the mandate of the due process clause, the basic rights of notice and hearing pervade not only in criminal and civil proceedings, but in administrative proceedings as well. **Non-observance of these rights will invalidate the proceedings.** Individuals are entitled to be notified of any pending case affecting their interests, and upon notice, they may claim the right to appear therein and present their side and to refute the position of the opposing parties (*Cruz, Phil. Administrative Law, 1996 ed., p. 64*).

It is worth to inquire whether or not there is tentativeness of administrative action taken by the Honorable Office when it issued the Joint Order. It may be asked: is APMC precluded from enjoying the right to notice and hearing at a later time without prejudice to it? The answer is in the affirmative, in that, the CDO outrightly prevented APMC from transporting its bulk metallurgical sample for testing as the CDO covers operation of its causeway without having been given any opportunity to be heard. That operation readily pertains to then ongoing transport with duly issued OTP whereby the use of the causeway is essential to this one-time activity. APMC was already prejudiced to that extent.

2.19 Moreover, the Joint Order was issued at the time when APMC was heavily attacked on mainstream and social media. It is public knowledge that opponents of APMC's exploration and related activities also questioned the Honorable Office. APMC could not veer away from the thought that the timing of issuance of the Joint Order was highly suspect considering the heightened pressure from the public, politicians, and environmental activists that could have prompted the same.

2.20 In administrative law, a quasi-judicial proceeding involves: (a) taking and evaluation of evidence; (b) determining facts based upon the evidence presented; and (c) rendering an order or decision supported by the facts proved (*Secretary of Justice vs. Hon. Ralph C. Lantion, et, al., En Banc, G.R. No. 139465, January 18, 2000 citing De Leon, Administrative Law: Text and Cases, 1993 ed., p. 198, citing Morgan vs. United States, 304 U.S. 1*). **APMC maintains that none of these were observed by this Office before it issued the Joint Order. The content thereof, which is bereft of any evidence, reveals that**

it is utterly remiss in according due process to APMC. The prejudice that the Joint Order caused to APMC is blatant and manifest.

Plainly, the notice and hearing requirements of administrative due process such as the one obtaining in the case of APMC cannot be dispensed with and shelved aside.

2.21 In this instance, APMC indeed face a clear and present danger of loss of property right that has ripened as discussed above. The convergence of the unfavorable action of the Honorable Office that acted through the Regional Executive Director of the DENR, the EMB Regional Director, and the MGB Regional Director on the reported violation of APMC of PD 1586, PD 1508, and the Public Land Act as amended, and the deprivation of APMC's right to due process is easily comprehensible.

2.22 Indeed, the propriety of the action or inaction of DENR- PENRO Romblon, DENR Regional Office, EMB Central and Regional Offices need to be seriously considered insofar as APMC's denied MLA application, the pending application for TCP, and the confusion as to the processing of separate ECC for APMC's causeway, are concerned.

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 prior to its receipt of the Joint Order.**

3.1 As averred above, APMC voluntarily stopped its exploration and related activities as of **February 6, 2023** in order to address all regulatory and compliance issues that have been raised against it and to ensure the safety of its employees at the site and its properties. APMC has formally notified the MGB Central Office of its voluntary stoppage in a letter dated February 14, 2023 (**Annex "44", hereof**).

3.2 The subject of the CDO is the construction and operation of APMC's causeway, the suspension of the OTP and stoppage of transporting ore from the contract site to the causeway. Since APMC voluntarily stopped its exploration and

related activities as of February 6, 2023 that coincided with the date of the Joint Order, **there is nothing more to restrain or to cease.** The CDO, therefore, has been mooted by APMC's voluntary stoppage of exploration and related activities.

4. APMC considers itself as a partner of the State in the development and utilization of mineral resources pursuant to the MPSA that it faithfully executed. What APMC has been going through at the exploration stage of the MPSA is a disincentive to business considering the huge amount of investment that it has already poured in the exploration activities. It certainly goes against the present administration's avowed objective to attract local and foreign investments that will bring socio-economic development in the countryside. Be that as it may, APMC remains resolute in pursuing exploration activities. APMC is desirous to bring them to a logical conclusion that will be mutually beneficial and will serve as precursor to inclusive socio-economic growth in the host and nearby communities where it intends to showcase its capabilities as responsible miner.

5. Notwithstanding the current challenges that APMC is facing in its exploration and related activities, it reiterates its commitment to comply with environmental laws, rules and regulations. It shall continue to cooperate with the Honorable Office and seek guidance, if necessary, to ensure continuing compliance.

WHEREFORE, premises considered, it is respectfully prayed that the Joint Order dated February 6, 2023 be reconsidered and set aside and a new one be issued:

- (1) LIFTING the Cease and Desist Order;
- (2) Directing that a Joint Technical Conference by the EMB, MGB, and DENR Regional Offices be scheduled allowing APMC to be heard and to present evidence on its behalf;
- (3) 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

- (4) Reconsidering and recalling ALL OTHER ORDERS issued by the Joint Order dated February 6, 2023.

RESPECTFULLY SUBMITTED.

Pasig City for Manila; February 22, 2023.


MARY JANE F. BALAGTAS

Counsel for APMC
1901 Tycoon Center
Pearl Drive, San Antonio
Ortigas Center, 1605 Pasig City
mjf.balagtas@gmail.com/0917-8552181/7958-3533
IBP O.R. No. 200795/01.28.23/RSM
PTR O.R. No. 222275/01.17.23/PASIG CITY
ROLL NO. 42280
MCLE Compliance Report No. VI-0011956/8.22.2018

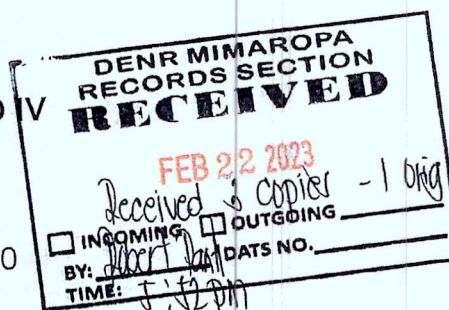
Copy furnished (By Courier Service):

Ms. LORMELYN E. CLAUDIO, CESO IV

Regional Executive Director
DENR-MIMAROPA Region
DENR By the Bay Building
1515 Roxas Blvd., Ermita, Manila 1000

Mr. JOE AMIL M. SALINO

Regional Director
Environmental Management Bureau (EMB) – MIMAROPA
Region 4B
6th Floor DENR By the Bay Building
1515 Roxas Blvd., Ermita, Manila



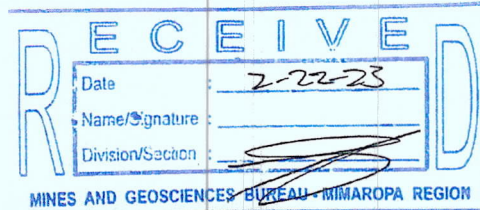
Engr. GLENN MARCELO C. NOBLE

Regional Director

Mines and Geosciences Bureau (MGB) - MIMAROPA Region 4B

7th Floor DENR By the Bay Building

1515 Roxas Blvd., Ermita, Manila



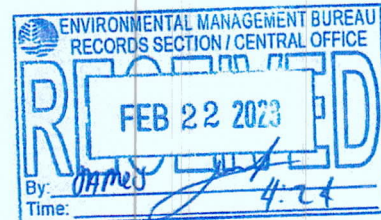
Engr. GILBERT C. GONZALES

Director

Environment and Management Bureau (EMB)

DENR Compound, Visayas Avenue

Diliman, 1101 Quezon City



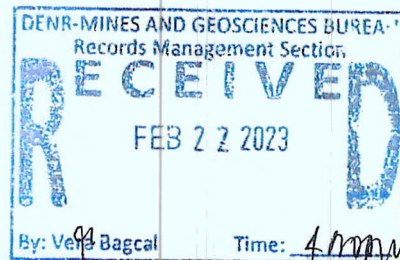
Atty. DANILO U. UYKIENG

OIC Director

Mines and Geosciences Bureau (MGB)

MGB Compound, North Avenue

Diliman, 1101 Quezon City



Ms. MARIA ANTONIO YULO-LOYZAGA

Office of the Secretary

Department of Environment and Natural Resources

DENR Compound, Visayas Avenue

Diliman, 1101 Quezon City



NOTIFICATION

The Clerk

DENR-MIMAROPA Region

DENR By the Bay Building

1515 Roxas Blvd., Ermita, Manila 1000

Greetings:

Immediately upon receipt hereof, please submit the foregoing Motion for the consideration and approval by the Honorable Office without further argument.


MARY JANE F. BALAGTAS

VERIFICATION

I, HANNIEL T. NGO, of legal age, with office address at 1901 Tycoon Center, Pearl Drive, San Antonio, Ortigas Center, 1605 Pasig City, under oath, depose and state: THAT -

I am the President and duly authorized representative of Altai Philippines Mining Corporation ("APMC"), the respondent in the foregoing Motion For Reconsideration, as evidenced by Secretary's Certificate attached hereto.

I have caused the preparation of the foregoing Motion For Reconsideration; I have read its contents and the same are true and correct based on my personal knowledge and authentic documents in the possession of APMC.

IN WITNESS WHEREOF, I have signed this Verification on
FEB 22 2023 at Pasig City.


HANNIEL T. NGO
Affiant

SUBSCRIBED AND SWORN TO before me this
FEB 22 2023 at Pasig City, Affiant exhibiting to me one (1) competent evidence of his identity, to wit: PRC ID No. 0023640, issued by the Philippine Regulation Commission and valid until 28 November 2025.

Doc. No. 171 ;
Page No. 30 ;
Book No. 91 ;
Series of 2023.

FERDINAND Z. AYAHAO
Notary Public
For Pasig City, Patros and San Juan City
Appointment No. 108 (2022-2023) valid until 12/31/2023
MCLE Exemption No. VII-BEP003719 valid until 04/14/25
Roll No. 46377; IBP LRN 02459; OR 535886; 06/21/2001
TIN 123-011-785; PTR 0161665; 01/06/23; Pasig City
Unit 5, West Tower PSB, Exchange Road
Ortigas Center, Pasig City Tel. +632-86314090

REPUBLIC OF THE PHILIPPINES)
CITY OF PASIG) S.S.

SECRETARY'S CERTIFICATE

I, **LAURINE F. SAN ROQUE**, of legal age, Filipino, with office address at 1901 Tycoon Center, Pearl Drive, San Antonio, Ortigas Center, Pasig City, after having been duly sworn to in accordance with law, depose and say as follows:

1. I am the duly elected Corporate Secretary of **ALTAI PHILIPPINES MINING CORPORATION** (the "Corporation"), a corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at 1901 Tycoon Center, Pearl Drive, San Antonio, Ortigas Center, Pasig City.

2. That at a Special Meeting of the Board of Directors of the Corporation on February 16, 2023, at which meeting a quorum was present and acted throughout, the following resolutions were unanimously passed and approved:

"RESOLVED, as it is hereby RESOLVED, that the Board of Directors designates, appoints and authorizes its President, **ARCH. HANNIEL T. NGO**, as the Corporation's authorized representative and signatory in all pleadings and documents necessary for the filing of a Motion for Reconsideration before the Department of Environment and Natural Resources (DENR) MIMAROPA Region in relation to the DENR MIMAROPA Region Joint Order dated February 6, 2023, Re: Illegal Construction of Causeway and Other Relative Activities of Altai Philippine Mining Corporation (APMC) and/or in any proceedings related thereto, with full and special power and authority to do and perform on behalf of the Corporation whatever act he may deem necessary, including but not limited to causing the preparation and filing of pleadings, motions and other papers, verifying the allegations therein, executing the affidavits or sworn statements, giving testimonies, and making certifications against forum shopping;"

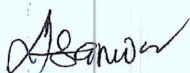
RESOLVED, FURTHER, that **ATTY. MARY JANE F. BALAGTAS**, with office address at 1901 Tycoon Center, Pearl Drive, San Antonio, Ortigas Center, Pasig City, be as it is hereby engaged as counsel of the Corporation, and named, and constituted and appointed as Attorney-in-Fact of this Corporation at all stages of the proceedings, with full power to compromise and/or settle or dismiss the case either totally or partially and also for the purpose of considering any and all of the following matters:

- a. the possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
- b. the simplification of the issues, the necessity or desirability of amendments to the pleadings, the possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof and the limitation of the number of witnesses;
- c. the advisability of a preliminary conference of issues to a commissioner, the propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefore be found to exist and the advisability or necessity of suspending the proceedings;
- d. to sign and execute any and all documents and/or papers necessary to give effect to the foregoing; and
- e. such other matters as may aid in the prompt disposition of the action.

"**HEREBY GIVING AND GRANTING** unto its said attorneys-in-fact full power and authority whatsoever requisite of proper to be done in or about the premises, as fully to all intents and purposes the Corporation might or could lawfully do if personally present, and hereby ratifying and confirming all that its attorneys-in-fact shall do or cause to be done under and by virtue of this appointment."

3. The foregoing resolutions are in full force and effect and have neither been amended or modified nor rescinded by subsequent resolutions.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 20th day of February 2023, at Pasig City.


LAURAIN F. SAN ROQUE
 Corporate Secretary

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES}
PASIG CITY } S.S.

SUBSCRIBED AND SWORN to before me this FEB 20 2023 in
PASIG CITY. Affiant exhibiting to me her Government Issued SSS
 ID No. 03-8859566-4.

Doc No: 258 ;
 Page No: 3 ;
 Book No: 64 ;
 Series of 2023.

FERDINAND D. AYAHAO
 Notary Public
 For Pasig City, Pateros and San Juan City
 Appointment No. 108 (2022-2024) valid until 12/31/2023
 MCLE Exemption No. VII-482960, approved until 04/14/25
 Roll No. 46377; IBP LRN 02108; OR 34496; 46211/2001
 TIN 123-011-785; PTR 0161425, Pasig City
 Unit 5, West Tower PSE, Exchange Road
 Ortigas Center, Pasig City Tel: +632-86314090

EXECUTIVE SUMMARY

This study is designed to provide evidence-based approaches to assess the environmental effects of the mining exploration operations of Altai Philippines Mining Corporation (APMC) using geospatial methods. Remote sensing, artificial intelligence, geoinformatics and field techniques were used to analyze satellite images before, during and after the construction of the port and the access roads. This report is for the Bato Port.

This preliminary study aimed to answer two questions:

1. Were there existing seagrass beds and hard corals within the vicinity of the port before construction?
2. Are there existing seagrass beds and hard corals within the vicinity of the port?

The 2015 National Mapping and Resource Information Authority (NAMRIA) Land Cover Map (LCM) is based on digital and visual interpretation of 47 scenes of Landsat-8 satellite imagery taken from 2014 to 2016. The 2020 LCM was generated using digital interpretation of Sentinel-2 satellite imagery from 2016 to 2018 from the European Space Agency (ESA) and other available high-resolution satellite imagery.

The 2020 NAMRIA Coastal Resource Map (CRM) of the Philippines was produced from a digital interpretation of the 2017 to 2021 Sentinel-2 imagery and other high-resolution satellite imagery. The 2016 CRM (from digital/visual classification of Landsat-8 satellite images and other available high resolution satellite images) shows seagrass/seaweed areas about 2 km away from the Bato port. Though the 2020 CRM does not show that the seagrass area still exists. Based on NAMRIA data from digital classification/interpretation of Landsat-8 Data and other images (2013-2016), Sentinel-2 Data and other images (2017-2021) and ground validation surveys done within the timeframes of the CRM generation, there are no seagrass beds or hard corals detected within a buffer of 2 km from the future location of the Bato Port.

The team relied on drone footage, bed sampling and spot shots around the vicinity of the causeway last 21 April 2023 to determine existence of seagrass and hard corals in the immediate vicinity. The footage was taken at noontime, with minimal water turbidity. From the footage, there is no visual evidence of seagrass and hard corals from the drone shots. Bed sampling and trudging undertaken at 5 points some distance (~200-350 m) away from the causeway, yielded either sand or small rocks. From the data on hand and the fieldwork conducted, the causeway did not seem to cause changes on coastal resources (mangrove, hard corals, seagrass) in the vicinity. There is also no physical evidence or indicators found of past presence of these resources on the construction site based on the methods applied in this assessment. Supervised classification for satellite images over the water bodies yielded unproductive results.



Czar Jakiri S. Sarmiento, Ph.D.

<https://bit.ly/CV-CJSS>

<https://upcgrd.wixsite.com/cgrd>

BACKGROUND

Modern geospatial engineering in impact assessment has successfully transitioned from being experimental to operational in the last couple of years, and information gathered through these technologies can facilitate water resource procedures. Configurations from remotely sensed imagery can be translated into a deterministic distribution of input data over a wide area on a pixel-by-pixel basis.

Remote sensing involves the collection of data about the Earth's surface from sensors located on satellites, aircraft, or ground-based platforms. The data collected through remote sensing includes images, spectral data, and other measurements.



Figure 1. Planetscope Image of the Bato Port (18 April 2023).

This study aims to see changes and potential impact of the development (Figure 1— digitized features from APMC).

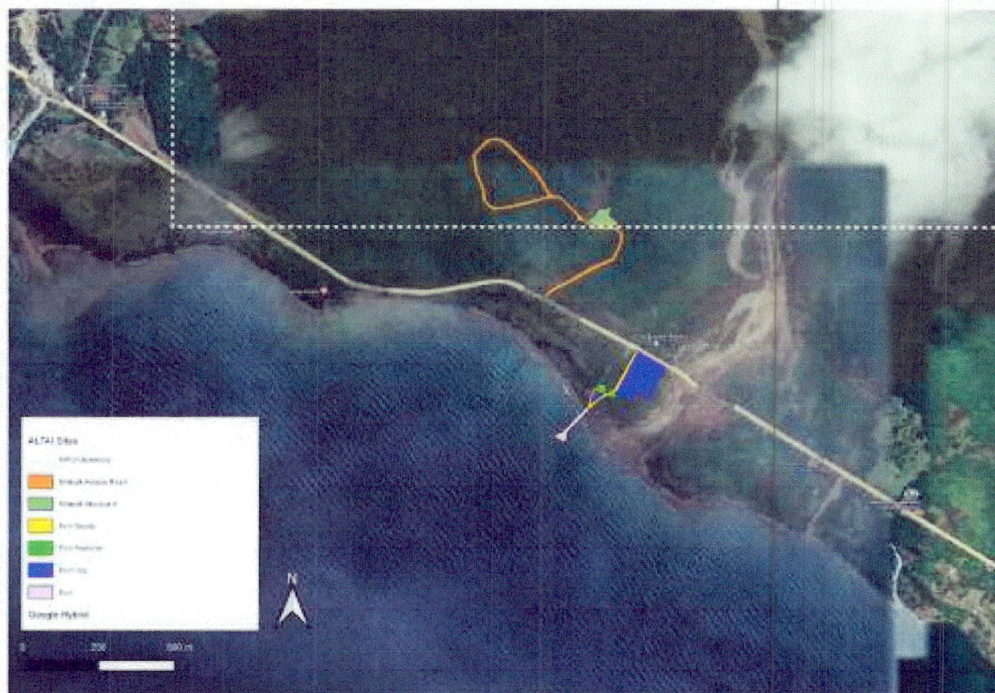


Figure 2. Bato Port and Access Roads.

DETERMINATION OF PAST PRESENCE OF SEAGRASSES AND CORALS IN THE VICINITY USING OVERLAY AND PROXIMITY ANALYSIS FROM EXISTING AUTHORITATIVE DATA

The Mineral Production Sharing Agreement (MPSA) Areas are overlaid over base land cover maps from NAMRIA (2015-Figure 3 and 2020-Figure 4). Note that the change is due to factors such as differences in source data, vegetation growth and classification methodology. The primary objective of the NAMRIA Land Cover Map (LCM) project is to generate detailed and updated nationwide land cover data by province through the application of satellite-based remote sensing and Geographic Information System (GIS), complemented by a ground validation survey. The data serves as a vital input in the planning and management of the country's land resources for sustainable development.

The 2015 NAMRIA LCM (Figure 3) is based on digital and visual interpretation of 47 scenes of Landsat8 (30-meter resolution) taken from 2014 to 2016. These images are classified according to 12 aggregated categories. Coordinate system used: Universal Transverse Mercator (UTM) Zone 50N; Spheroid: Clark 1866; Horizontal Datum: World Geodetic System (WGS) 1984; Vertical Datum: Mean Sea Level. The coastline was generated from Landsat-8 imagery taken from 2014-2016.

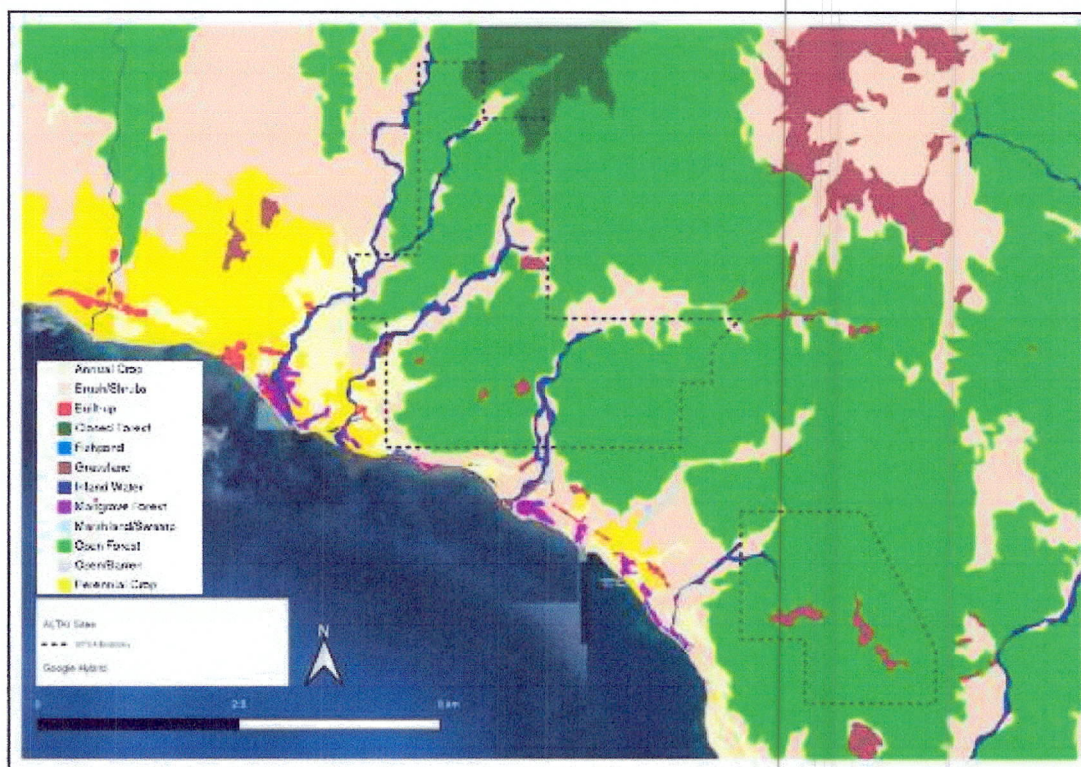


Figure 3. 2015 NAMRIA Land Cover Map. Land Resource Data Analysis Division (LRDAD), Resource Data Analysis Branch (RDAB), National Mapping and Resource Information Authority (NAMRIA)

The 2020 LCM of MIMAROPA Region (excluding Palawan Province) was produced by the National Mapping and Resource Information Authority (NAMRIA) through its Land Cover Mapping project (Area extent on Figure 4). It was generated from digital interpretation of the 2016 to 2018 Sentinel-2 satellite imagery from the European Space Agency (ESA) with 10-meter resolution and other available high resolution satellite imagery (Sentinel-2 imagery with 10-meter resolution from ESA accessed via Copernicus Open Access Hub (<https://scihub.copernicus.eu/>) and the Earth Observing System land viewer website (<https://eos.com/landviewer/>)).

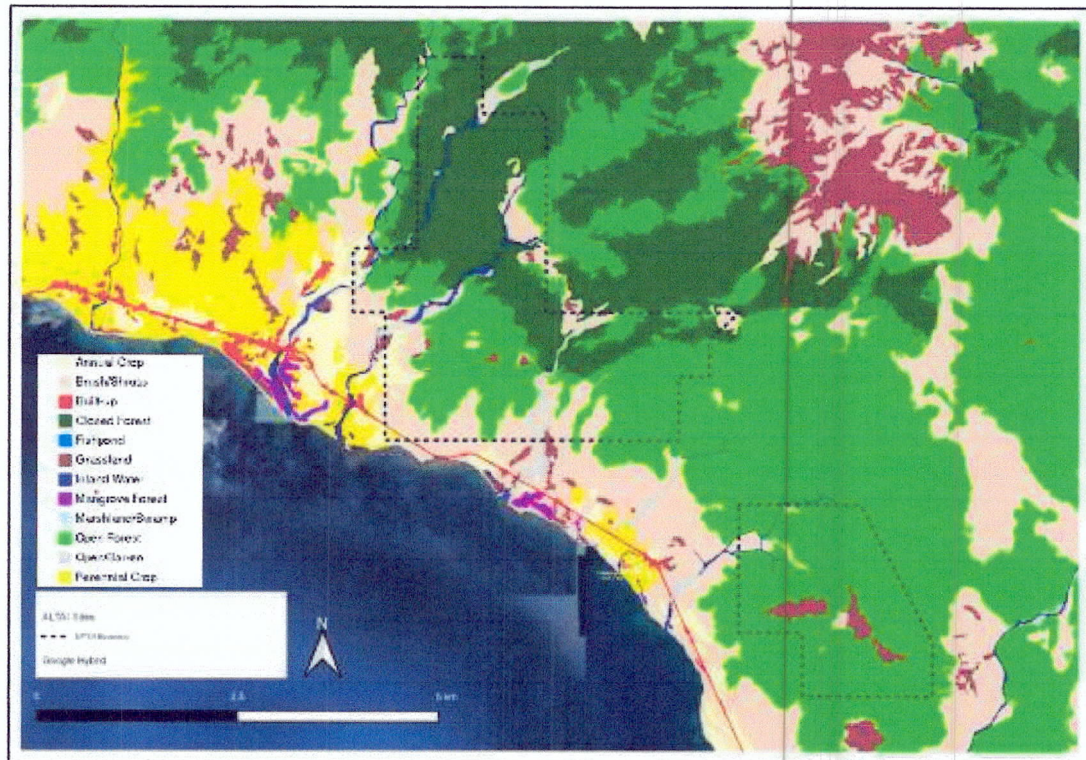


Figure 4. 2020 NAMRIA Land Cover Map. Land Resource Data Analysis Division (LRDAD), Resource Data Analysis Branch (RDAB), National Mapping and Resource Information Authority (NAMRIA)

The Sentinel-2 data was processed based on the 12 land cover categories, namely: Closed Forest, Open Forest, Mangrove Forest, Brush/Shrubs, Grassland, Perennial Crop, Annual Crop, Open/Barren, Built-up, Marshland/Swamp, Fishpond and Inland Water. These categories are consistent with the 2015 Land Cover Map classification scheme.

Forest Plantations depending on age and height may have been classified under Closed/Open Forest or other categories. This data is ideal for data overlay/analysis at maximum scale of 1:50,000. Boundaries are approximate. The data for the APMC sites were provided by APMC.

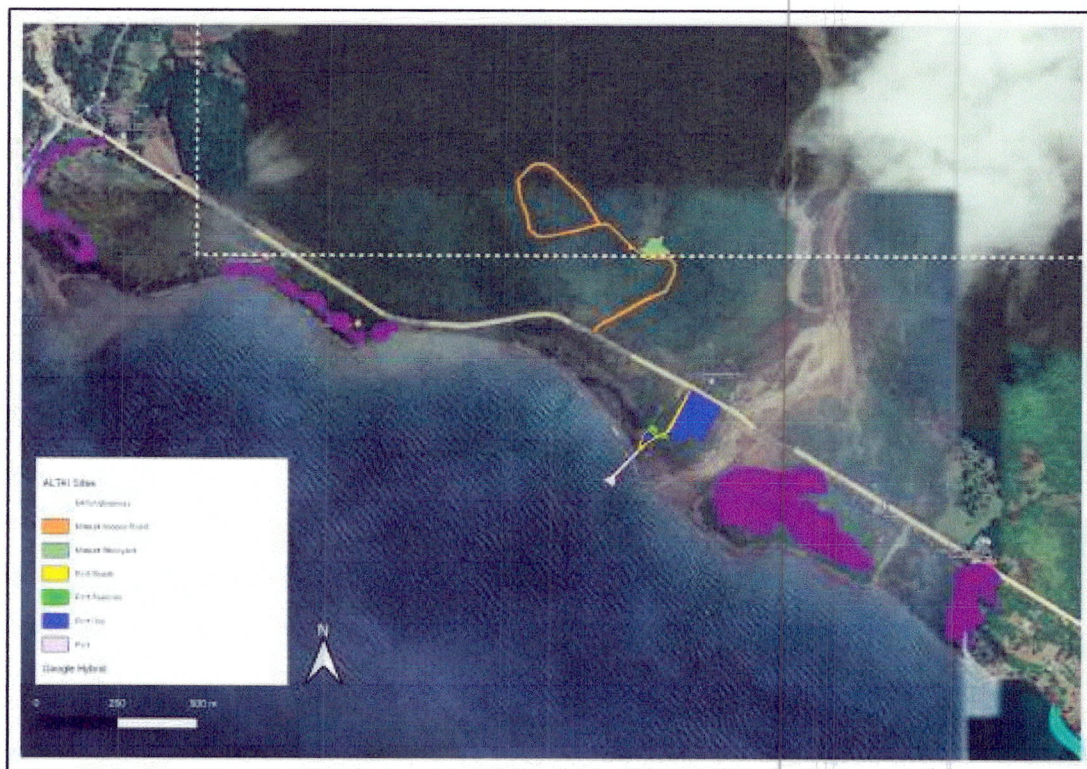


Figure 5. The Bato Port and Access Roads and nearby Mangrove Areas. Physiography and Coastal Resource Division (PCRD), Resource Data Analysis Branch (RDAB), National Mapping and Resource Information Authority (NAMRIA)

The 2020 Coastal Resource Map (CRM) of the Philippines was produced by the NAMRIA through its Coastal Resource Mapping and Assessment Project. The primary objective is to generate detailed and updated nationwide provincial Coastal Resource Maps through the application of satellite-based remote sensing and Geographic Information System (GIS), complemented by ground validation surveys. The data is used by policy makers for planning and management of the country's coastal and marine resources. The project also supports the Department of Environment and Natural Resources (DENR) on its mandate through programs and action plans for the protection, conservation and proper management of the country's remaining environment and natural resources.

This dataset contains the spatial location, and extent of coastal resources, specifically corals, seagrass/seaweeds, and mangrove forests. The data was generated from digital interpretation of the 2017 - 2021 Sentinel-2 imagery from the European Space Agency (ESA) with a 10-meter resolution and other high-resolution satellite imagery.

Field validation was conducted except for the target provinces from 2020 to 2021 due to travel restrictions imposed during the Covid-19 pandemic, namely: Isabela, Guimaras, Palawan, Bohol, Leyte, Zamboanga City, Zamboanga del Sur, Zamboanga Sibugay, Lanao del Norte, Lanao del Sur, Misamis Occidental, Camiguin, Davao de Oro, Davao Oriental, Davao Occidental, Sultan Kudarat, Basilan, Tawi-tawi, and Sulu, instead, image validation was adapted. Boundaries are approximate.

In Figure 6, it appears that hard coral areas (pink) are about 2.5 kilometers away from the Bato Port.

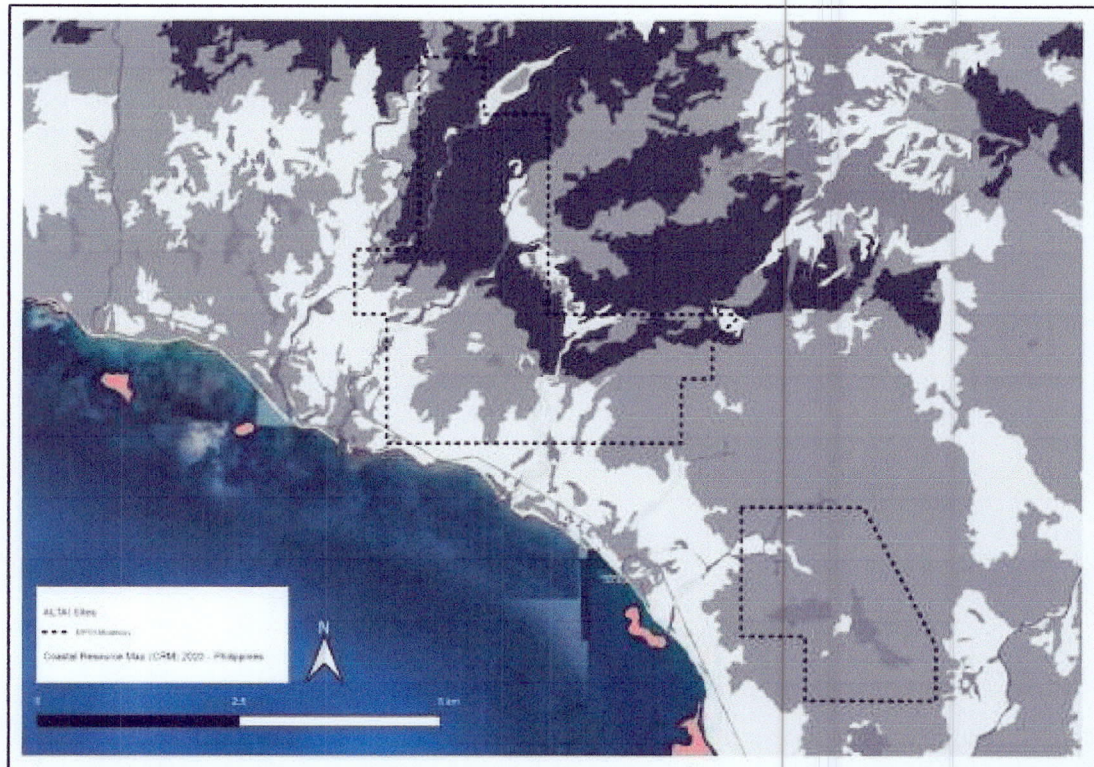


Figure 6. Coastal Resource Map 2020. Physiography and Coastal Resource Division (PCRD), Resource Data Analysis Branch (RDAB), National Mapping and Resource Information Authority (NAMRIA)

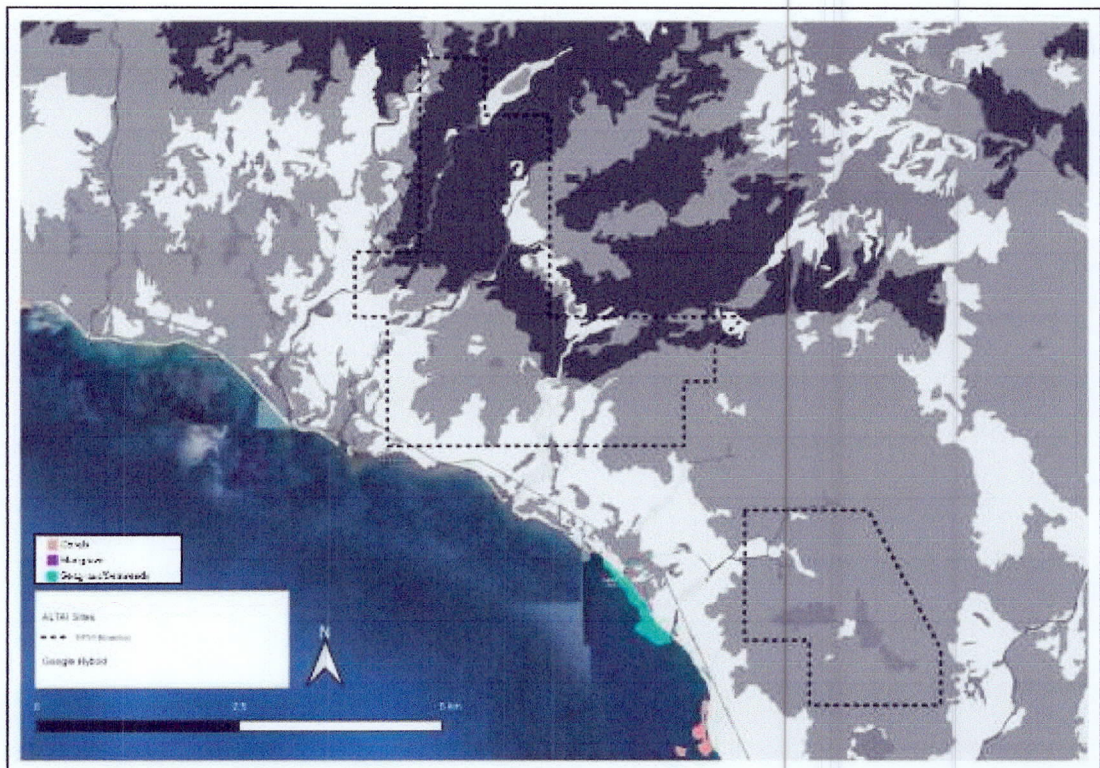


Figure 7. Coastal Resource Map 2016. Physiography and Coastal Resource Division (PCRD), Resource Data Analysis Branch (RDAB), National Mapping and Resource Information Authority (NAMRIA)

The 2016 dataset contains spatial extent of coastal resources, specifically mangroves, corals, and seagrasses/seaweeds in the coastal provinces of Luzon, Philippines (excluding Palawan). The data was generated from digital/visual classification of Landsat 8 satellite images with 30 meters resolution and other

available high resolution satellite imageries using remote sensing and GIS tools, complemented by ground validation surveys conducted from 2013 to 2016.

Based on NAMRIA data from digital classification/interpretation of Landsat-8 Data and other images (2013-2016), Sentinel-2 Data and other images (2017-2021) and ground validation surveys done within the timeframes of the CRM generation, there are no seagrass beds or hard corals detected within a buffer of 2 km from the future location of the Bato Port.

VERIFICATION OF THE CURRENT EXISTENCE OF SEAGRASSES AND CORALS IN THE VICINITY USING DRONES AND BED SAMPLING

Seagrasses are aquatic flowering plants (angiosperms) with a high degree of uniformity in vegetative appearance. These are normally found in areas where light can easily penetrate (shallow, clear, and calm waters) enabling photosynthesis to occur. Many seagrass species live in depths of 3 to 9 feet (1 to 3 meters), but the deepest growing seagrass (*Halophila decipiens*) has been found at depths of 190 feet (58 meters) (BFAR). In particular, the team looked for the existence of the following:

1. *Cymodocea rotundata* (CR)
2. *Cymodocea serrulata* (CS)
3. *Enhalus acoroides* (EA)
4. *Halophila capricorni* (HC)
5. *Halophila decipiens* (HD)
6. *Halophila minor* (HM)
7. *Halophila ovalis* (HO)
8. *Halodule pinifolia* (HP)
9. *Halophila spinulosa* (HS)
10. *Halophila tricostata* (HT)
11. *Halodule univervis* (HU)

For the purpose of this exercise, we qualify seagrass beds as a minimum area of 5 m x 5 m with at least 5% cover of seagrass based on international norms.

Area size	Water depth	In situ methods			Remote sensing methods		
		Diver	Grab	Video*	Aerial photo	Scanner**	Satellite
Fine/micro-scale: <1 ha (1:100)	Intertidal	X	X		X		
	Shallow subtidal (<10 m)	X	X	X	X"		
	Deep water (>10 m)	X	X	X			
Meso-scale: 1 ha-1 km ² (1:10,000)	Intertidal	X	X		X	X	
	Shallow subtidal (<10 m)	X	X	X	X"	X	
	Deep water (>10 m)	X	X	X			
Macro-scale: 1-100 km ² (1:250,000)	Intertidal				X	X	X
	Shallow subtidal (<10 m)			X	X"	X	X
	Deep water (>10 m)			X			
Broad-scale: >100 km ² (1:1000,000)	Intertidal				X	X	X
	Shallow subtidal (<10 m)			(X)	X"	X	X
	Deep water (>10 m)			(X)			

Table 1. Mapping methods depending on the size and the water depth of the area to be mapped (Modified from Short and Coles 2001). In-situ methods are mentioned in the table only when they can stand alone. It is implicit that remote sensing methods always require ground truth observations. Meaning of symbols: *Video': real-time towed video camera; ***Scanner': digital airborne scanner; ': The depth intervals are only indicative as the ability of remote sensing methods to distinguish seagrasses depends on water clarity rather than absolute water depth; ": Digital aerial photos have higher sensitivity than ordinary film and is recommended when water clarity is low. (Krause-Jensen, 2023)

The team relied on drone footage, spot shots, underwater footage and geotagged bed sampling around the vicinity of the causeway last 21 April 2023 to determine existence of seagrass and hard corals in the immediate vicinity (Table 1. Methodological basis. Table 2. Locational information). The footage was taken at noontime, with minimal water turbidity (Figure 8).

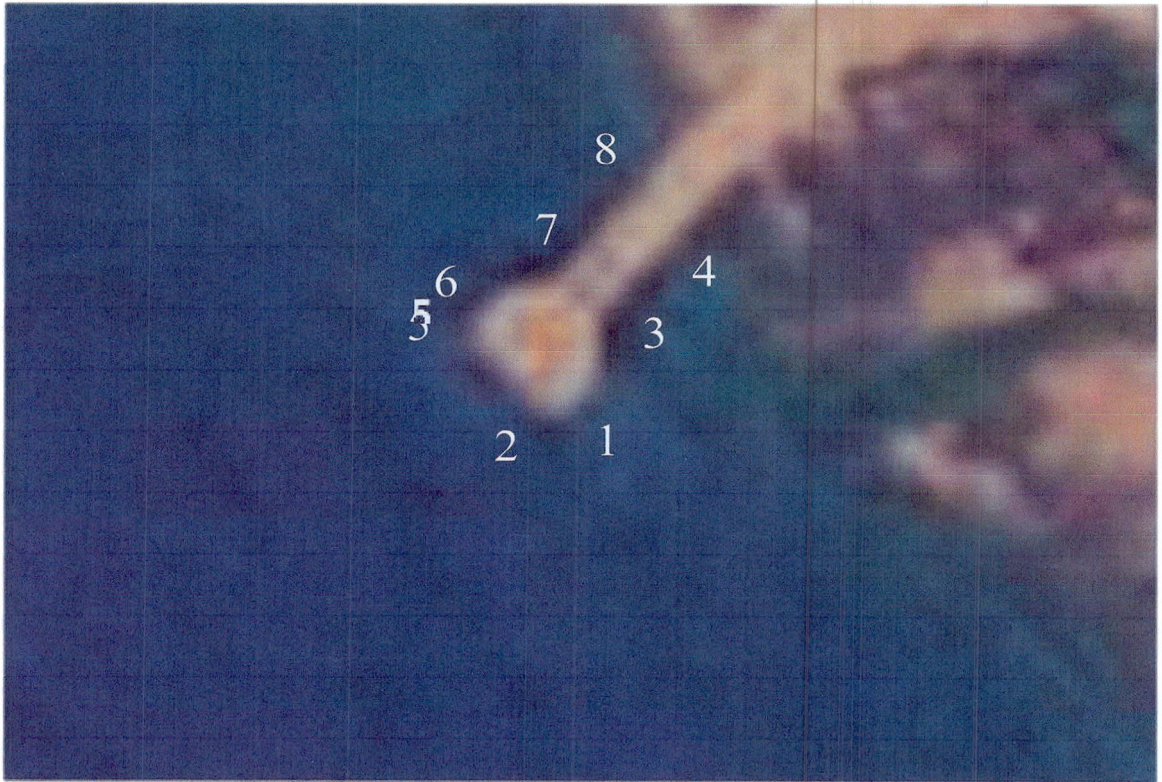


Figure 8. Spot shot locations over the latest Planetscope image.

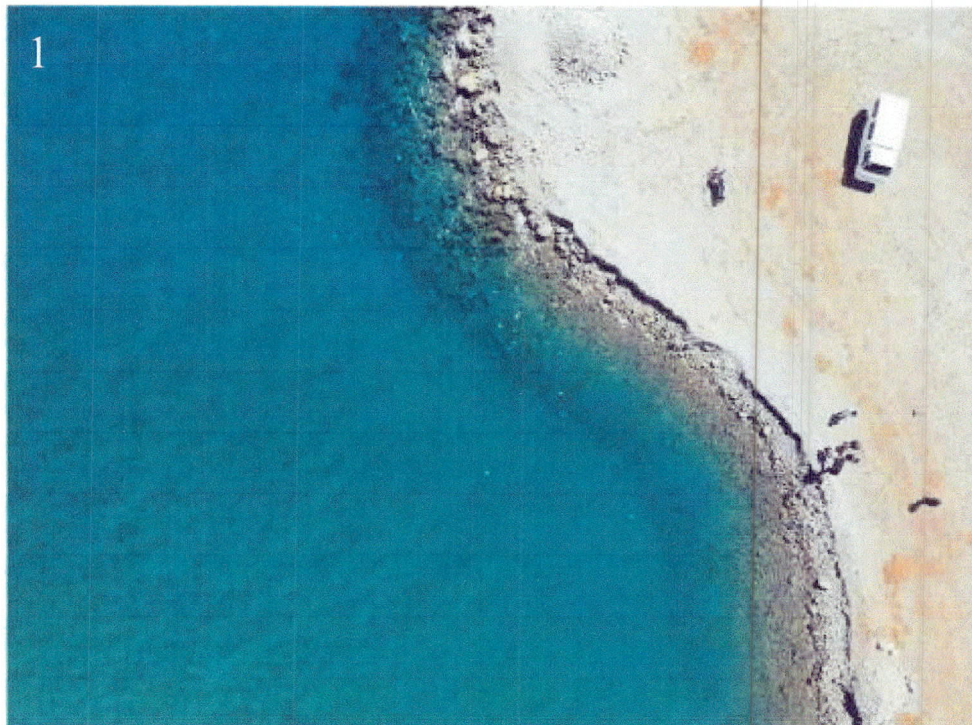


Figure 9. Drone shot over causeway.



Figure 10. Drone shot over causeway.

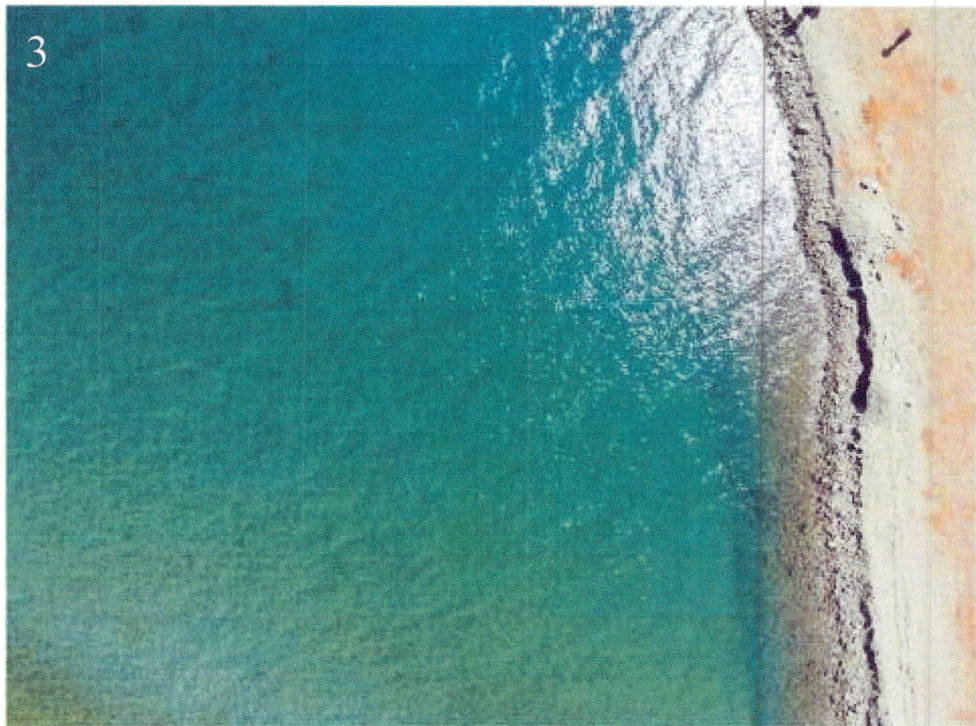


Figure 11. Drone shot over causeway.



Figure 12. Drone shot over causeway.

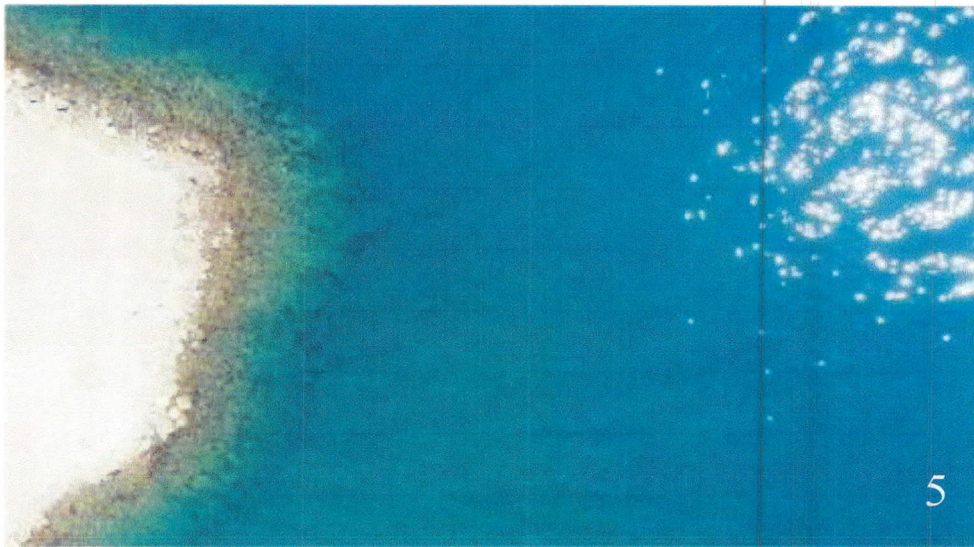


Figure 13. Drone shot over causeway.

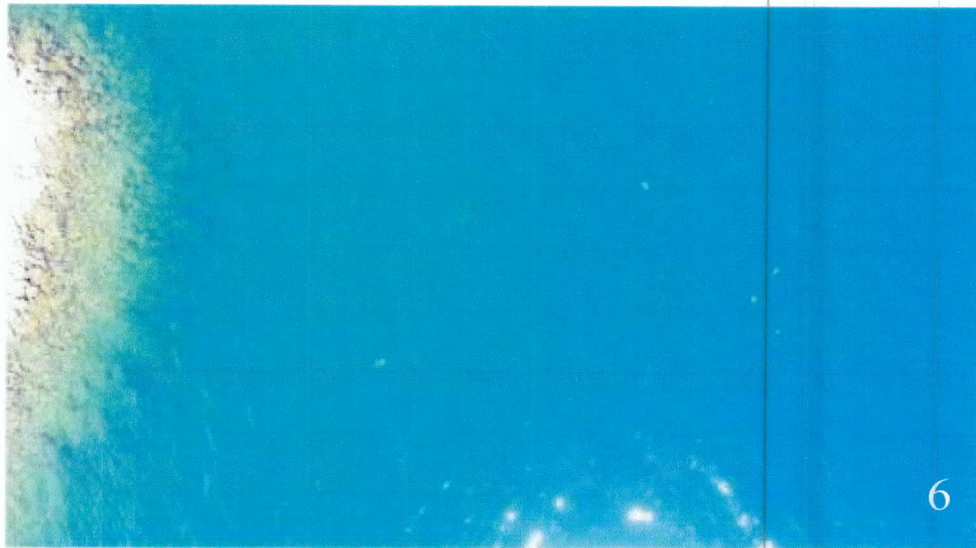


Figure 14. Drone shot over causeway.



Figure 15. Drone shot over causeway.

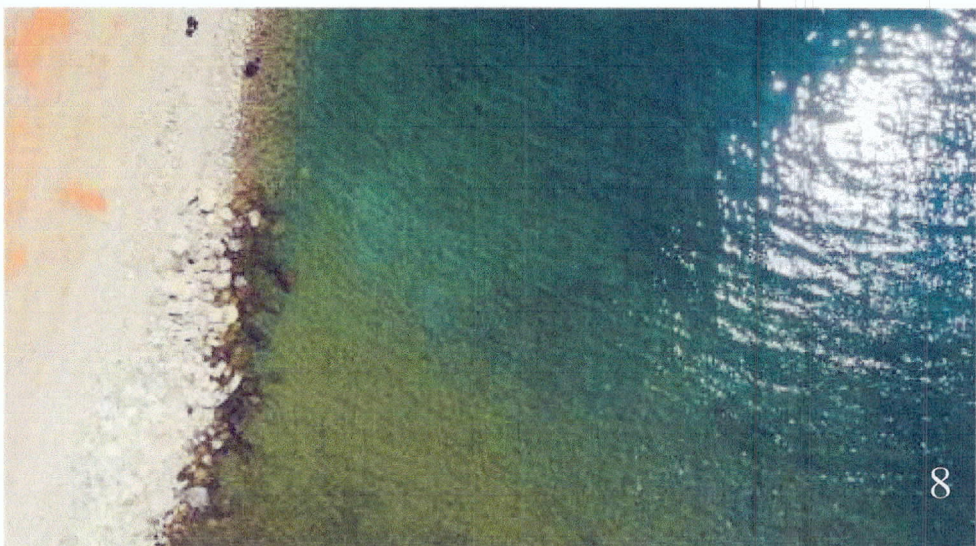


Figure 16. Drone shot over causeway.

Bed sampling and truthing (Figures 18-20) was undertaken at 5 points some distance away from the causeway last 21 April 2023 (Figure 17). Drone footage was also taken to correlate visual appearance with bed cover. An underwater camera is also used to document the bed cover.

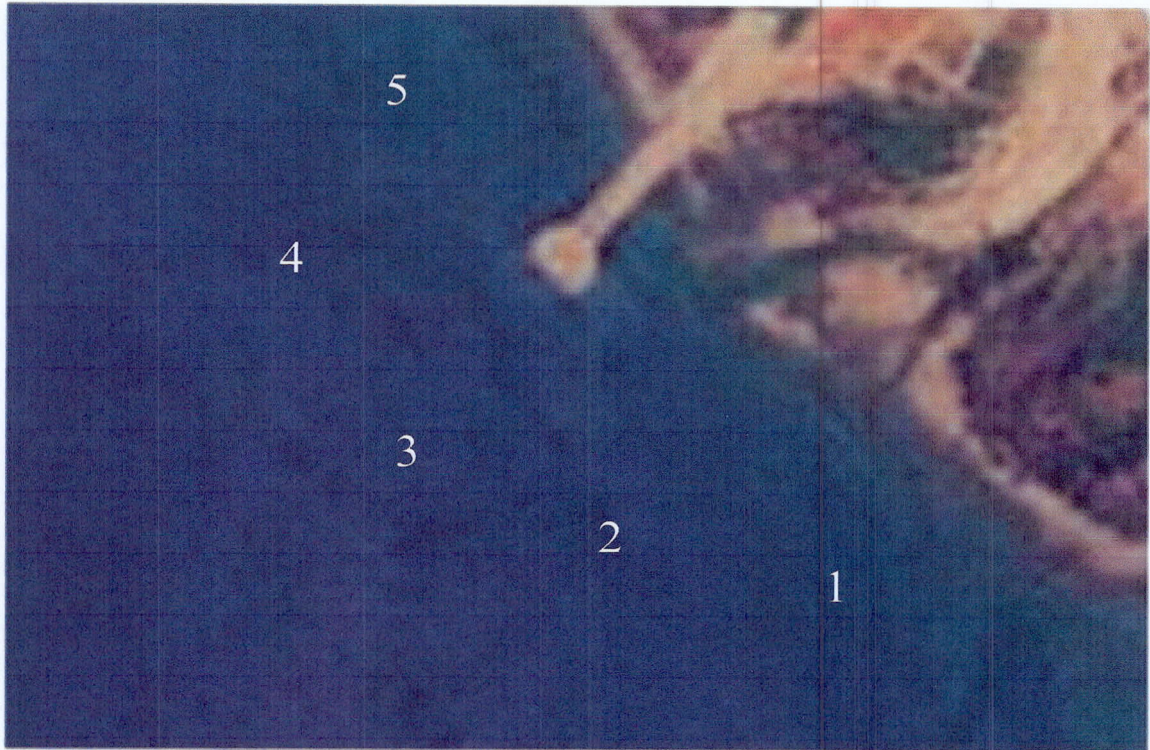


Figure 17. Spot locations for sampling over the latest Planetscope image.

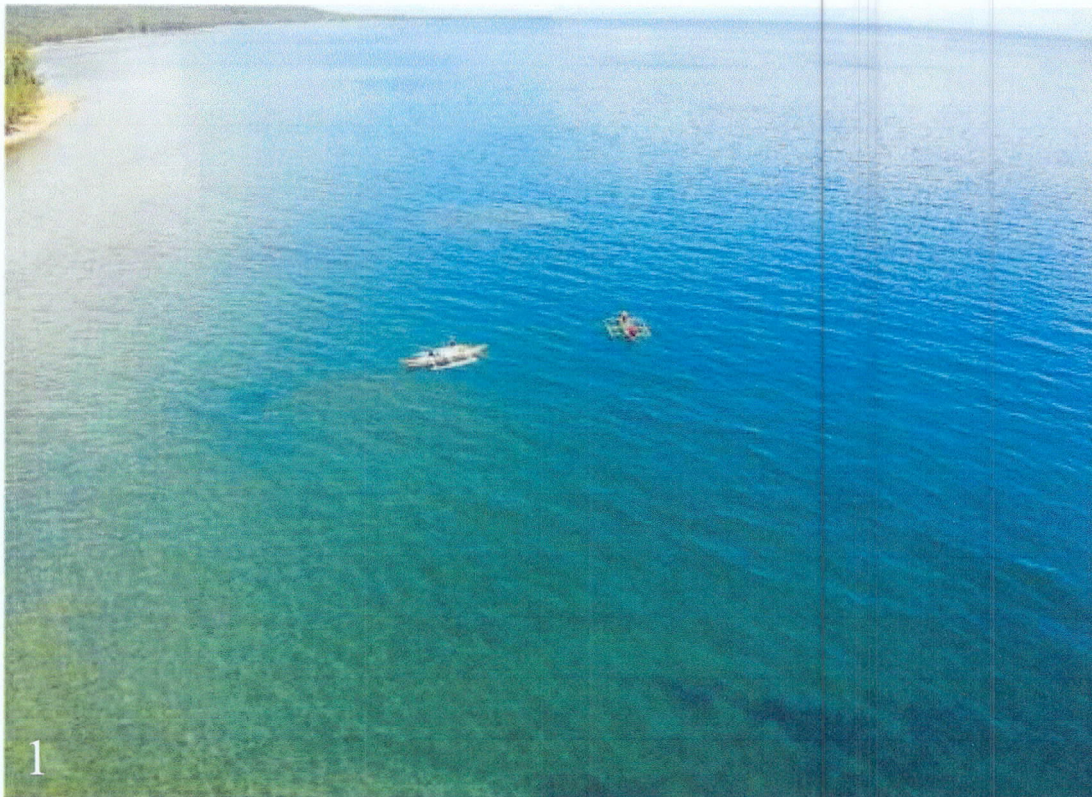
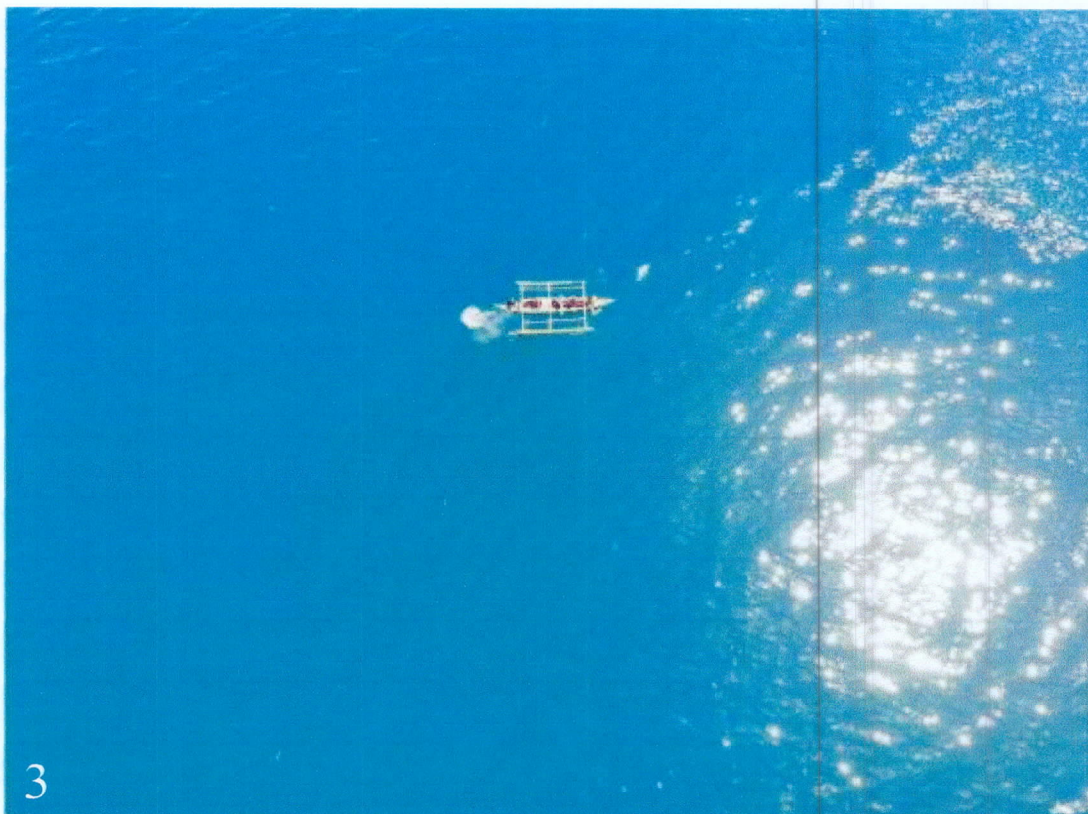


Figure 18. Drone shot over sampling location.



3

Figure 19. Drone shot over sampling location. Image is oblique due to the limited flying range of the drone.



5

Figure 20. Drone shot over sampling location.

Table 2. Sea bed truthing points (21 April 2023). Geotagging involved the use of single frequency receivers with ~1 to 5 meters horizontal accuracy.

Point	Latitude	Longitude	Bed Material
1	12.36554	122.53120	Sand and Small Rocks
2	12.36555	122.52988	Sand
3	12.36614	122.52828	Sand
4	12.36736	122.52732	Sand
5	12.36871	122.52799	Sand and Small Rocks



Figure 21. An area with small rocks and sand taken by an underwater camera in the study area.

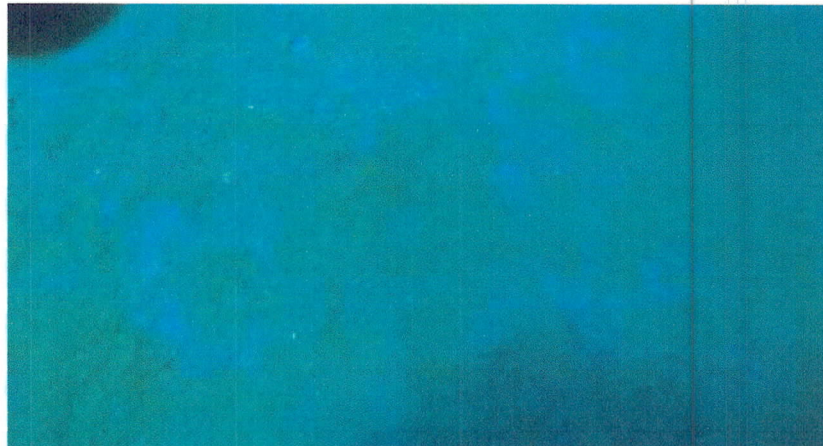


Figure 22. An area with sand taken by an underwater camera in the study area.

Seaweed or marine macroalgae are present at the shores of the island (Figure 12, Clemente et al. 2017. <http://www.bioflux.com.ro/docs/2017.983-1000.pdf>). Acquired drone data can be used for mapping areas where seaweed is present.

Based on drone shots, bed sampling and underwater videos taken on 21 April 2023, for the selected points (and immediate vicinity), there is no visual evidence of existing seagrass beds and hard corals nor visual confirmation of previous presence. Sampling yielded either sand or small rocks.

ANNEX

Table A.1 summarizes publicly available, useful open-source data.

Table A.1. Available open-source datasets covering areas of interest.

Site	Data Available	Type of Data	Downloadable?	Link	Notes
NOAA	Coastal DEMs	GIS File	Y	https://maps.ngdc.noaa.gov/viewers/bathymetry/	
	Topo-Bathy/Bathy Lidar Datasets	GIS File			
nauticalchartsonline.com	Bathymetric Chart	Map Layer only	N	https://www.nauticalchartsonline.com/chart/zoom?chart=91005	Only has data on central to southern Luzon and Visayas region
NAVIONICS	Bathymetry and other marine obstructions	Map Layer only	N	https://www.navionics.com/usa/	Click Chart Viewer to access interactive web map
Global Wind Atlas	Wind Speed Potential	GIS File & Map	Y	https://globalwindatlas.info/area/Philippines/	Platform automatically generates pdf files of map in a selected geometry
	Power Density Potential	GIS File & Map	Y		
	Terrain Surface Layers	Map Layer only	N		
UN WCMC	Coral Reef	GIS File	Y	https://data.unep-wcmc.org/datasets/1	
	Seagrass	GIS File		https://data.unep-wcmc.org/datasets/7	
	Cold-water Coral Reef	GIS File		https://data.unep-wcmc.org/datasets/3	
	Mangroves	GIS File		https://data.unep-wcmc.org/datasets/45	
Global Fishing Watch	Global Anchor Age Sites	GIS File	Y	https://globalfishingwatch.org/datasets-and-code/	Need sign up to download data
Philippines Marine Protection	Local Marine Protected Area (MPA)	Map Layer only	N	http://database.mpasupportnetwork.org/#mpa-list	Has data on legislation on corresponding MPA

Marine Protection Atlas	Marine Protected Area (MPA)	Map Layer only	N	https://mpatlas.org/countries/PHL/map			
Protected Planet	Terrestrial and Marine MPA	GIS File	Y	https://www.protectedplanet.net/en/thematic-areas			
submarine cable.map	Existing Submarine Cables	Json & GeoJson	Y	https://github.com/telegeography/www.submarinecablemap.com	Data can be saved and converted to csv		
Petroleum Economist	Existing Oil and Gas Pipeline	Map Layer only	N	https://gulfpub-gis.stg.esriemcs.com/pe_chevron/			
BWSM	Soil Map	Map	Y	http://www.bswm.maps.da.gov.ph/maps-library			
	Slope Map						
	Land Use (Vegetation Map)						
BFAR	Fishing Ground	Map	Y	https://www.bfar.da.gov.ph/	Divided by region of surrounding waters (i.e. Pacific Ocean, South China Sea, Straits etc.)		
Hazard Hunter	Flood Susceptibility Maps	Map	Y	https://hazardhunter.georisk.gov.ph/map	Hazard reports can be generated by entering lat- lon coordinates		
	Liquefaction						
	Ground Shaking / Rupture						
	Active Fault Lines						
	Tsunami						
	Nearby Volcano (50,75, 100km)						
Landslide Susceptibility Map							
Geoportal PH	Mangrove Forest - NAMRIA	GIS File & Map (Screenshot)	Y	https://geoportal.gov.ph/	There are other more data on the site that are not enumerated in this row.		
	Mining Sites -				Connect in QGIS through: https://geoportal.gov.ph/resources/HowtoConsumePhilippineGeoportalLayersinQGIS.pdf		

	NAMRI A					
	Watershed - FMB					
	NIPAS - BMB					
	Shoal Obstruction - NAMRI A					
	Fish port & sanctuary - DA					
	Wrecks - NAMRI A					
	Climate Type - PAGASA					
	Base Ports and Terminal Ports -PPA					
	Nautical Port - DOTC					
	Reclamation Projects - PRA					
	Tourism Sites - DOT					
PhilGIS	Administrative Boundaries	GIS File	Y	http://philgis.org/download		
	Geology					
MGB	Mineral Map (Mineral Statistics)	Map	Y	https://mgb.gov.ph/	Availability of data may depend per region	
	Mineral Tenement Map			https://mgb.gov.ph/2015-05-13-01-44-56/2015-05-13-01-46-18/2015-05-13-02-17-43		
Silent Gardens	Philippine Sea Ports	Map Layer Only	N	http://www.silent-gardens.com/sea-ports.php	Not complete on data	
NEDA	Regional	PDF	Y	https://www.neda.gov.ph/	Some maps can be found on RDPs.	

	Develo pmet Plans						
Landsat (GEE)	2000 Global Mangro ves	GIS File & Map	Y	https://developers.google.com/earth-engine/datasets/catalog/LANDSAT_MANGROVE_FORESTS	GIS File can be exported to several files. See https://developers.google.com/earth-engine/guides/exporting#:~:text=To%20download%20a%20KML%20file,'Export%20as%20KML%20file' .		
MVI Mapper (Baloloy et al, 2019)	Philippi ne Mangro ves using MVI	Map Layer Only	N	https://raasdafsa.users.earthengine.app/view/mvi-mapper-current?fbclid=IwAR24cLnH_JG3tsrIRU5NY-wHX9pL99eP1_L4JPCPrDtt3Gqd22aGly8I5IE			
The Blue Carbon Project	Philippi ne Mangro ve Extent Layer (2019)	GIS File	Y	https://sites.google.com/up.edu.ph/thebluecarbonproject/data	Based on the Mangrove Vegetation Index (Baloloy et al., 2020), mangrove extents in the Philippines were mapped using Sentinel-2 images.		
National Geospatial- Intelligence Agency	Anchor age Sites	PDF	Y	https://msi.nga.mil/api/publications/download?key=16694491/SFH00000/Pub162bk.pdf	Approximate locations of anchorage sites		
data.world	Philippi nes - Land Cover	GIS File	Y	https://data.world/ochaphilippines/29a3760f-3170-4555-b5d7-1fbd6cfb5a69	Need user to create an account on the website to access data		
Global Wetlands	Tropical & Subtrop ical Wetlan ds	GIS File & Map Layer	Y	https://www2.cifor.org/global-wetlands/	Need user to give email and purpose of download but to save time, gdrive link is provided - https://drive.google.com/drive/folders/1o10A8YJS7fC_5MsQfcOC-qMMv9Eg4GvQ?usp=sharing		
marineregion s.org	Philippi ne Exclusi ve Econo mic Zone (EEZ)	GIS File & Map Layer	Y	https://www.marineregions.org/gazetteer.php?p=details&id=8322			
Biodiversity Management Bureau	Atlas of Philippi ne Inland Wetlan ds and Classifi ed Caves First Edition 2016	PDF	Y	https://bmb.gov.ph/index.php/e-library/publications/references?start=20	Maps need to be georeferenced.		
NOAA-NCEI	Global Ocean Current Databa se (GOCD)	Map Layer	N	https://www.ncei.noaa.gov/access/data/global-ocean-currents-database/cmportal.html			