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SUPERIOR COURT  
OF GUAM

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22 SAMSUNG E&C AMERICA, INC.

23 **IN THE SUPERIOR COURT OF GUAM**

24 THE GOVERNMENT OF GUAM,

25 Plaintiff,

26 vs.

27 KEPCO MANGILAO SOLAR, LLC and  
28 SAMSUNG E&C AMERICA, INC.,

Defendants.

) CIVIL CASE NO. CV0597-21

)  
) DECLARATION OF COUNSEL FOR  
) DEFENDANT SAMSUNG E&C  
) AMERICA, INC. RE: MOTION FOR  
) JUDGMENT ON THE PLEADINGS



# Exhibit “1”



GUAM ENVIRONMENTAL PROTECTION AGENCY • *AHENSIAN PRUTEKSIÓN LINA'LA' GUÁHAN*

LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA F. TENORIO • LIEUTENANT GOVERNOR OF GUAM  
WALTER S. LEON GUERRERO • ADMINISTRATOR | MICHELLE C. R. LASTIMOZA • DEPUTY ADMINISTRATOR

**JUL 29 2021**

Samsung E & C America, Inc.  
(Respondent)  
Mr. ByungHyup Kim, Project Manager  
Mangilao Solar Project  
P.O. Box 218008  
Barrigada, Guam 96921  
Contact # 689-1790

**Subject: Notice of Violation / Compliance Order / Penalty Order**


The stated purpose of the Guam Soil Erosion and Sediment Control Regulations (GSESCR), 22 GAR Chapter 10, as implemented by Public Law 25-152, is “to control accelerated soil erosion, thereby preventing the pollution of Guam’s waters from fertilizers, pesticides, sediments and other polluting substances carried by sediment, and to protect property and to promote the public health, safety and welfare by regulating grading, clearing, grubbing and stockpiling, and by setting minimum standards for erosion and sedimentation control for the island of Guam.” Samsung E & C America, Inc. (“Respondent”) has violated the GSESCR and is ordered to undertake remedial action(s) and pay a penalty as stated herein.

### **BACKGROUND**

Respondent is actively engaged in earth moving operations as a part of the Mangilao Solar Project located at Lot 1 – R3 Tract 1541 in the Marbo area, Mangilao, Guam. The project was previously permitted through DPW under several different building permits, all of which were reviewed and approved by GEPA. Work on the project has been ongoing since at least July 20, 2020, according to GEPA staff observations and email correspondence from Respondent’s engineer. On the morning of July 23, 2021, GEPA received a forwarded complaint alleging discharges of runoff and sediment from Respondent’s site. The complaints included photos taken off-site showing accumulations of sediment and water on off-site properties, and one photo showing a large sediment plume in the ocean, alleged to have been caused by Respondent’s activities. In response, GEPA conducted a site inspection on July 23 between approximately 11:30 a.m. and 12:30 p.m. and observed evidence of significant off-site discharge and sedimentation from at least two locations along the site perimeter. GEPA staff further observed, and Respondent staff confirmed, that the approved erosion and sediment control (E&SC) measures had not been fully installed, and that other E&SC measures were still in the process of being installed, despite construction being at an advanced stage. In addition, GEPA staff observed that despite construction of the solar facility being nearly completed, active soil stabilization through re-vegetation had not yet begun, and evidence of mass soil erosion was observed throughout the entire site.

GEPA conducted follow-up inspections on July 28 to document evidence of discharge from the “Pond 5” location and Marbo Cave (located off-site), and observed evidence of significant

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discharge of runoff and sediment from Respondent's project site into the cave, resulting in extensive erosion damage and sedimentation in the cave pools.

See attached reports for additional details and photographs.

## NOTICE OF VIOLATION

Based on the facts described above, GEPA finds that Respondent violated the following provisions of the Guam Soil Erosion and Sediment Control Regulations, 22 GAR Chapter 10, as implemented by Public Law 25-152:

1. 22 GAR §10104(C)(1) Erosion and Sediment Control Plans: Compliance. *All clearing, grading, embankment or filling, excavating and other earth moving operations, except those otherwise exempted from these regulations by the Administrator, must proceed in accordance with a duly approved Erosion and Sediment Control Plan.*

Respondent failed to implement erosion and sediment control best management practices (BMPs) in accordance with the approved Erosion and Sediment Control Plan.

2. 22 GAR §10105(A)(1) Erosion and Sediment Control Plans and Measures: General policies for Erosion and Sediment Control. *All earth-moving operations on Guam shall be conducted in a manner that prevents accelerated land erosion, transportation of sediment to and along highways, or siltation of rivers, estuaries and marine waters.*

Respondent failed to conduct the earth moving activities undertaken at the site in a manner that prevents accelerated land erosion and siltation of marine waters. Specifically, the earth-moving activities were being conducted without the proper installation or use of erosion and sediment control best management practices (BMPs), and without implementing measures such as revegetation to stabilize previously disturbed areas, leaving the entire site vulnerable to erosion.

3. 22 GAR §10105(A)(5) Erosion and Sediment Control Plans: Compliance. *No person shall perform any earth-moving operation so as to cause falling rocks, soil or debris in any form to fall, slide or flow onto adjoining properties or waters of Guam.*

Respondent's earth-moving operations were conducted in such a way that allowed soil (sediment) to be carried in runoff which flowed onto adjoining properties, including Marbo Cave, and into waters of Guam.

4. 22 GAR §10105(B)(5)(e) Storm Water Drainage System and Control of Site Water Runoff. *Structural measures such as berms, dikes, traps, basins, shall be installed prior to any other grading, clearing, or disturbance of the existing surface of the site.*

Respondent failed to install structural erosion and sediment control measures in accordance with the approved Erosion and Sediment Control Plan, prior to all other grading, clearing, and construction activities which resulted in disturbance of the entire existing surface of the site.

5. 22 GAR §10105(B)(10)(a) & (e) Stabilization of Affected Areas. *(a) Stabilization of slopes, channels, ditches, berms, diversions, silt dams, or any disturbed areas shall begin as soon as possible and no later than thirty (30) calendar days after the final grade or final earth-moving activities has been completed; & (e) Any disturbed area not paved, sodded or built shall be seeded and mulched with vegetative cover appropriate to the soil type, as recommended by an engineer, or the condition of the area based on soil test analysis done by a laboratory. This condition does not prohibit the use of matting, gabion, armor coating on erodible surfaces or other type of vegetative cover that will minimize erosion.*

Respondent failed to stabilize disturbed areas with appropriate vegetative cover within 30 days after final grade had been achieved throughout a majority of the site area.

#### COMPLIANCE ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, Respondent is HEREBY ORDERED to undertake the following remedial actions (all compliance dates shall be computed using calendar days):

1. **Within seven (7) days of receipt of this order:** Complete installation of interim measures intended to partially capture runoff and sediment prior to off-site discharge from the location of: (a) Pond 4 and (b) Pond 5. Coordinate approval of the scope and nature of such interim measures with GEPA and then contact GEPA for site inspection upon completion.
2. **Within fourteen (14) days of receipt of this order:**
  - a. Submit to GEPA a revised design which includes an armored overflow weir from Pond 1, similar to that provided for Pond 3, to prevent the failure of the pond embankment in the event of an overtopping storm event.
  - b. Complete the installation of the overflow weir at Pond 3, in accordance with the approved E&SC plan.
  - c. Complete active soil stabilization/revegetation measures as called for in the approved E&SC plans.
3. **Within thirty (30) days of receipt of this order:**
  - a. Complete installation of Ponds 2, 4, and 5 in accordance with the approved E&SC plan.
  - b. Complete the installation of the armored overflow weir for Pond 1.

**Stand by to receive and implement additional order items** directed toward the clean-up and restoration of off-site properties and resources damaged by discharges of runoff and sediment from the project site. Such order items will be provided to Respondent in writing and may include requirements to coordinate and conduct work in cooperation with relevant Government of Guam agencies and private landowners.

### PROPOSED PENALTY ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, GEPA hereby notifies Respondent of the Administrator's decision to issue a penalty order pursuant to 22 GAR §10114(b), which authorizes a civil penalty of no more than Ten Thousand Dollars (\$10,000) per day per violation, up to a maximum civil penalty of One Hundred Twenty-five Thousand Dollars (\$125,000).

GEPA is proposing a total civil penalty amount of Ten Thousand dollars (\$10,000) per violation, per day. In accordance with 22 GAR §10114(b)(2), this penalty is proposed based on the extent and gravity of the violation, and the following factors considered by GEPA: 1) the violation resulted in a significant, direct impact to neighboring properties, resources of cultural and recreational significance, and waters of Guam; 2) Respondent is a large and experienced company and yet knowingly deviated from the approved E&SC plans, permit conditions, and regulations of Guam; and 3) Respondent realized an economic benefit by using the space allotted for E&SC measures for office, staging, and stockpiling areas.

The time period over which GEPA is assessing the proposed \$10,000 penalty is for a period of three hundred sixty eight (368) days, from July 20, 2020, to July 23, 2021. For five (5) total violations over a period of three hundred sixty five (368) days, this amounts to a total of Eighteen Million, Four Hundred Thousand dollars (\$18,400,000). However, the total penalty that may be assessed by GEPA is limited by 22 GAR §10114(b) to \$125,000. **Therefore the total penalty amount is One Hundred Twenty-five Thousand Dollars (\$125,000).**

This order does not prevent GEPA from taking additional actions including the issuance of penalties under 22 GAR §10114(A)(a) or (b). Please also note that if you fail to take the remedial actions listed above within the required timeframe(s), additional violations, remedial actions, and penalties may be assessed by Guam EPA.

### RIGHT TO APPEAL:

You may file within thirty days of the date of your receipt of this Notice of Violation/Compliance Order/Penalty Order, a Notice of Intent to Appeal also known as a Notice of Defense with the Guam EPA's Board of Directors. A copy of the Notice of Intent to Appeal/Notice of Defense is attached for your convenience.

Unless a written request for a hearing signed by or on behalf of the person, agency or business entity named above in this Notice of Violation/Compliance Order/Penalty Order is hand delivered or mailed to GEPA within thirty days after the Notice of Violation/Compliance Order/Penalty Order was personally served on you or mailed to you, GEPA may proceed upon the Notice of Violation/Compliance Order/Penalty Order without a hearing. A request for hearing may be made by delivering the enclosed form entitled "Notice of Intent to Appeal also known as A Notice of Defense", or by delivering a notice of defense as provided in 5 GCA §9205, to the following address:

Guam Environmental Protection Agency Board of Directors  
C/o Administrator Guam Environmental Protection Agency  
Building 17-3304 Mariner Avenue  
Tiyán Barrigada, Guam 96913

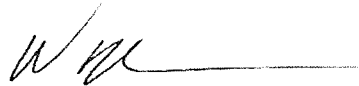
If you file a Notice of Intent to Appeal/Notice of Defense, the GEPA's Board of Directors shall hold a public hearing, at which time you may appear and present evidence in person or through counsel in support of this petition.

Failure to file a Notice of Intent to Appeal within the period specified above will constitute a waiver of your right to a hearing. If you waive your rights to a hearing the Notice of Violation/Compliance Order/Penalty Order will become final, and GEPA may proceed upon the Order without a hearing and without further notice to you.

Should you have any questions or need additional information, please do not hesitate to contact me and my staff at Water Pollution Control Program or Water Division Chief Engineer, CAPT Brian Bearden, P.E., BCEE at 300-4786 and 300-4779, respectively.

*Dangkolu na si Yu'us ma'åse'.*

*Senseramente,*



WALTER S. LEON GUERRERO  
Administrator

Attachments: Notice of Defense Form  
Chief Eng. Inspection Report dated July 23 & 28, 2021  
EMAS Inspection Report dated July 28, 2021

cc: GEPA Legal Counsel







Guam Environmental Protection Agency  
P.O. Box 22439, GMF,  
Barrigada, Guam 96921



## NOTICE OF INTENT TO APPEAL (AKA NOTICE OF DEFENSE)

I, \_\_\_\_\_, have received your Notice of Violation, Order of Compliance and/or Administrative Penalty Order dated \_\_\_\_\_, charging me for violations and/or imposing penalties and/or other orders, and I wish to:

(Please check appropriate sections)

- A. Request for a hearing and**
  - 1. Object to the accusation on the ground that it does not state acts or omissions upon which the Agency can proceed.
  - 2. Object to the form of the accusation on the ground that it is so indefinite or ambiguous that I cannot identify the infraction or prepare my defense.
  - 3. Wish to prepare new matter in my defense.
  - 4. Admit to the accusation in part.
- B. Admit to the accusation in whole.**

My mailing address is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**DATE**

GUAM EPA CASE NO.: \_\_\_\_\_





GUAM ENVIRONMENTAL PROTECTION AGENCY • *AHENSIAŃ PRUTEKSIÓN LINA'LA' GUÁHAN*  
LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA F. TENORIO • LIEUTENANT GOVERNOR OF GUAM  
WALTER S. LEON GUERRERO • ADMINISTRATOR | MICHELLE C. R. LASTIMOZA • DEPUTY ADMINISTRATOR

**July 23, 2021**

(revised July 26 to add additional images of approved plans; and July 28 to address Pond 5 inspection)

TO: FILE

FROM: Chief Engineer, Guam Environmental Protection Agency

SUBJECT: Site Inspections at Samsung Mangilao Solar Project Site, July 23 and 18, 2021


I inspected to subject site on Friday, July 23, 2021 between about 11:30 a.m. and 12:30 a.m. with Water Pollution Control Manager Johnny Abedania, in response to complaints that had been forwarded by email earlier that same morning, and by social media earlier in the week. Upon arrival at the site we were met by the site safety officer and brought to the front entrance to meet the Samsung project management team. Mr. ByungHyup Kim was introduced as the project manager for Samsun E&C America, Inc. Once they greeted us, I explained that we were there in response to a complaint and that we wanted to start at their field office with a review of the site plans, and then proceed from there to verify whether the approved erosion and sediment control (E&SC) measures had been installed as per the approved plans.

We followed them to the site office and the site plans were brought to us, in addition to a series of aerial photos of the project site taken by drone. The most recent aerials were labeled July 22, 2021, and we confirmed with the project manager and support staff that the photos were taken on that day. See following pages for photos of site plans and drone aerial images, with notes.

From the aerial images I noted that the location of Pond 4 appeared to coincide with the location of the project offices. Mr. Kim and staff confirmed that Pond 4 had not been constructed yet, and that the project offices were indeed located in the same spot. I also noted that construction of Ponds 1 and 3 appeared to still be underway. This was also confirmed by Mr. Kim and others that were present.

We then set out to inspect the area of Ponds 4 and 2 by foot. Pond 4 had not been constructed, but the beginnings of the earthworks berm that would form the lower portions of the ponds were present, but not complete. I observed evidence of a large discharge of runoff from the area toward the fence, and a single line of silt fence that had been buried by accumulated sediment. The Samsung staff present confirmed that this was the location of the complaint from the neighbors. This discharge was located in the area where Pond 4 was supposed to have been built, and I pointed out that if it had been built as per the plan, the discharge to the neighbor's property would likely not have happened. We then walked further down slope to Pond 2, which had been built and was full of water and sediment, although the surrounding berm did not look finished and I did not get an affirmative answer if the pond was final or still in progress.

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We then drove through the project site to visit Ponds 1 and 3. On the way I stopped and took pictures of an area where evidence of a large discharge of runoff was present. This area does not appear to be served by a sedimentation basin (pond) in the approved E&SC plans, and is directly upstream of Marbo Cave according to the site plans. On the way between Ponds 3 and 1, I observed that the perimeter swale had a large number of ironwood saplings growing in it, as well as a lot of sediment that was obstructing the cross section of the swale. (See addendum below – Pond 5 was added to the site E&SC plans and approved by GEPA on January 4, 2021. I inspected with Johnny Abedania on July 28, 2021 to further investigate).

Pond 3 was mostly in place but according to Mr. Kim it was not yet finished; the stone overflow structure still needed to be built. We observed that runoff had only filled Pond 3 about a foot or two. Pond 1 was complete, according to Mr. Kim. We observed that runoff had filled Pond 3 almost to the point of overflowing, by evidence of a clearly visible high water mark. However Mr. Kim stated that it had not overflowed. We observed that there were several stockpiles of material in Pond 1 that served to reduce its capacity to hold runoff. We also observed that a large amount of sediment had accumulated in Pond 3, and discussed the need for maintenance to remove it periodically, and completely once the site was stabilized with vegetation, to ensure that the pond worked as an infiltration basin post-construction.

I held a brief discussion at this point to summarize our findings. The summary consisted of the following:

- Sedimentation basins (ponds) had not been constructed prior to the start of clearing and construction operations, and that this sequence of operations was required by Guam's regulations and was also spelled out in the approved plans that we reviewed at the office. I noted that Samsung is a very large company and should have known the proper sequence of installing E&SC measures.
- There was evidence of discharge of runoff off-site, and also evidence submitted to us electronically that sediment-laden runoff had discharged to the ocean.
- I strongly recommended that Samsung begin construction of Pond 4, at the very least the lower sections of the pond where the office is not located, to prevent further discharge.
- I recommended that Samsung take active steps to begin re-vegetating the site to stabilize the soils, which will reduce both runoff volume and the quantity of sediment that accumulates in the ponds.
- I recommended that the ironwood saplings seen growing in the perimeter swales be removed as soon as possible, otherwise they would block the flow of water and potentially cause discharge of runoff off-site, instead of to the approved ponds.

I concluded by informing Mr. Kim that I would provide my findings to the GEPA Administrator and USEPA NPDES Construction General Permits program, and that a determination of whether to pursue enforcement action would be made by them.

ADDENDUM (July 28, 2021)

Upon review of revisions to the E&SC plan approved by GEPA on January 4, 2021, which added Pond 5, I conducted a second inspection at the site to further investigate the area that we had observed which appeared to have discharged off-site toward Marbo Cave.

In addition, on the morning of July 28, 2021, Samsung (via Mr. Kim) submitted an update email describing work to maintain Pond 5, which stated "Pond 5 Cleaning: Cleaning continues while simultaneously trimming the rough edges to create a smooth slope to tiered bench levels. "

I conducted the inspection with Helen Gumataotao, Environmental Inspector I, between approximately 11:00 a.m. and 11:30 a.m. on July 28, 2021. We were met at the front gate by Mr. Kim and other representatives of Samsung. I explained that we were there to inspect the location of Pond 5, which we had missed during the previous inspection on July 23. We were led into the site and to the location of Pond 5. We saw that active construction was underway, and Mr. Kim confirmed that Pond 5 had not been fully installed yet. We saw that the excavation for Pond 5A had been partially completed, which we were told happened in June, but we also observed and confirmed that the perimeter swale was not connected to the Pond 5A excavation.

We observed that the perimeter swale had discharged to the open ground near the fence, and along with the surface runoff from the surround project area, had left a very large alluvial/delta formation of sediments, up to and including rocks around 1 to 2 feet in diameter. The deposited sediments could be seen extending into the forest far past the site boundaries, toward the Marbo Cave area.

Pond 5B installation had only just begun, following our July 23 inspection. Mr. Kim explained that a temporary pond had been created using the available earth fill material, as shown in the photos. The permanent pond will be formed by the embankment downhill from the temporary embankment, but placement and compaction of fill for the permanent embankment had not yet begun. I expressed my concern to Mr. Kim that the temporary pond berm might be easily washed out by another large storm event because it appeared to have not been compacted in lifts, and was constructed of a topsoil-like material that did not appear to meet the typical requirements for embankment fill.

Other contractors (Ian Corporation) were seen on site installing a new line of silt fence along the property boundary, downslope of the Pond 5 area.

We observed extensive scouring and erosion of almost the entire upland project area above the Pond 5 area, with the ground surface beneath the solar panels visibly scoured down to bare limestone, with only thin deposits of sand and other sediments showing the direction that runoff had taken during the heavy rains the week before.

Upon return to the office I informed Jesse Cruz of the Environmental Monitoring and Surveillance Division of the possibility that sediment and runoff had reached Marbo Cave, and suggested that he inspect. He conducted an inspection the same afternoon and found evidence of significant

damage from runoff and sedimentation inside and around Marbo Cave. His findings will be detailed in a separate report.

See attached photos.



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BEARDEN.BRIAN.GAINES.1405922793  
DN: c=US, o=U.S. Government, ou=DoD,  
ou=PKI, ou=USPHS,  
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Date: 2021.07.28 16:12:30 +1000'

BRIAN G BEARDEN  
CAPT, U.S. Public Health Service  
Chief Engineer, Guam EPA

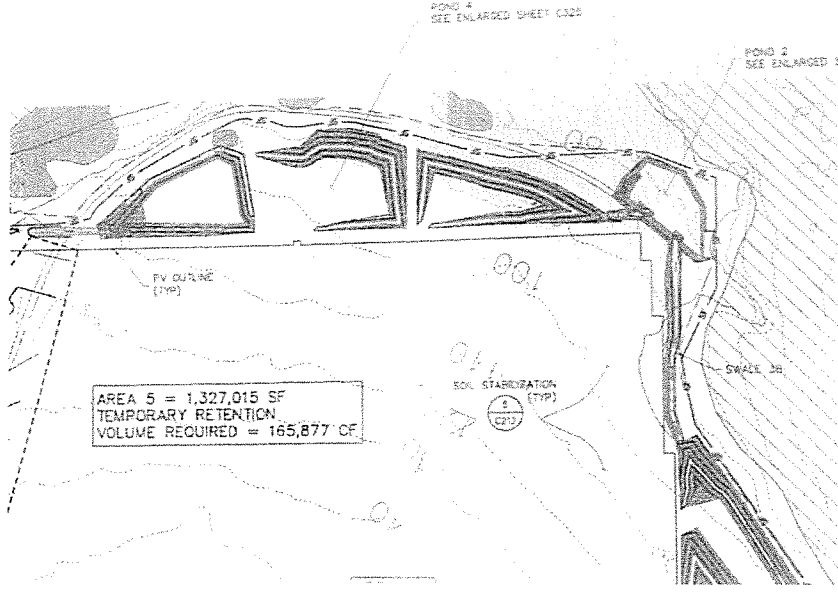
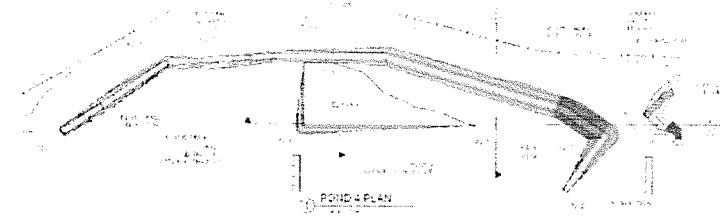




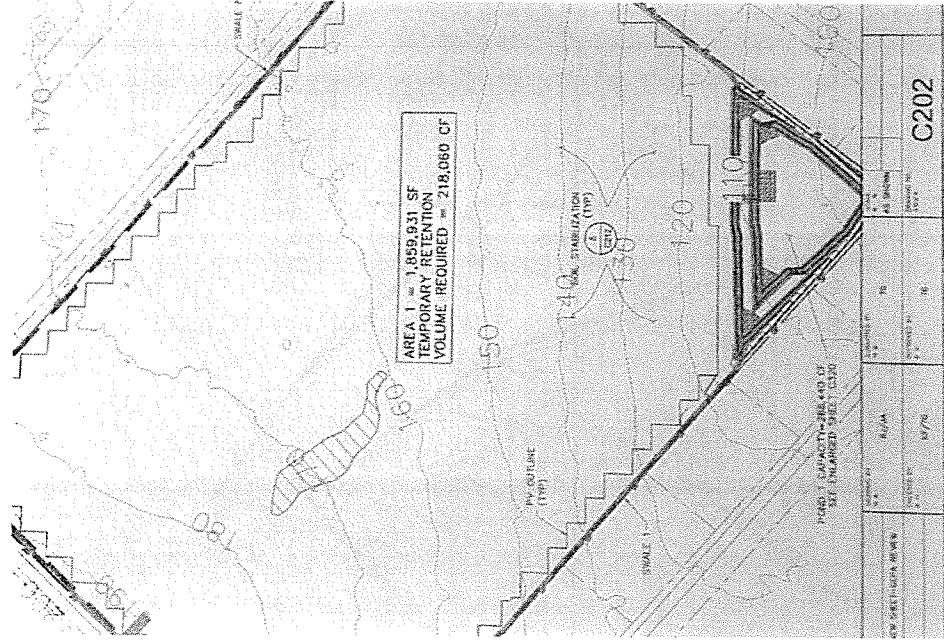




Site aerial image taken July 22, compared to approved E&SC plans (revised plan approved July 2020 in center), showing location of office at Pond 4 site (July 23, 2021)







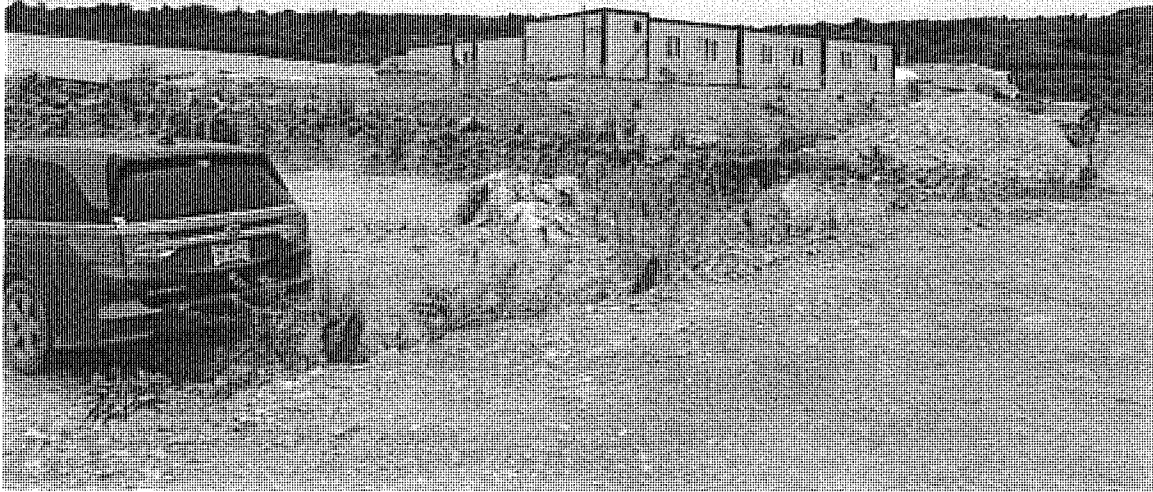
View looking from site office to area where start of Pond 4 berm and swale should be located.  
(July 23, 2021)



View looking downslope where Pond 4 berm construction has begun, and toward Pond 2 in distance. (July 23, 2021)



Looking back upslope toward Project Site Office, showing start of (revised) Pond 4 excavation (July 23, 2021)



Location of discharge from Pond 4 area to off-site. This is reportedly the location of the complaint. See next page for close up. (July 23, 2021)



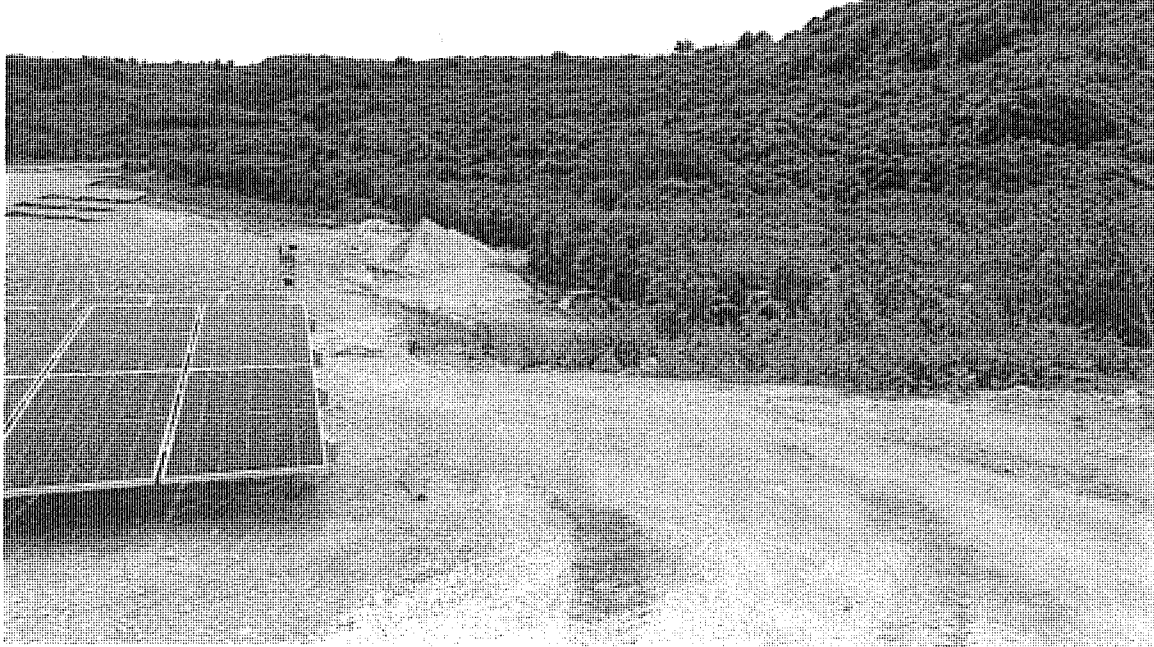
Close up of Pond 4 discharge location. Note accumulated sediment in delta-pattern, and overwhelmed silt fence. (July 23, 2021)



Pond 2, with accumulated runoff and sediment from storm. This pond does not appear to be finished. (July 23, 2021)



Location of apparent discharge toward Marbo Cave. See next photo for close-up. (July 23, 2021)



Close-up of area that appears to be a large, unprotected off-site discharge toward Marbo Cave area. Note large delta-type formation of sediments, indicating long-term history of discharge. (July 23, 2021)





Pond 3. Overflow weir in distance is not yet finished – still requires stone riprap. (July 23, 2021)



Perimeter berm which conveys runoff to Pond 3. Ironwood saplings and a large amount of accumulated sediment obstruct the flow. (July 23, 2021)



Pond 1. Note stockpiles of earth material, which reduce pond capacity. Also note high water mark from the previous storms. (July 23, 2021)



Close up of Pond 1 rim, showing high water mark indicating near-overtopping from prior storm. (July 23, 2021)



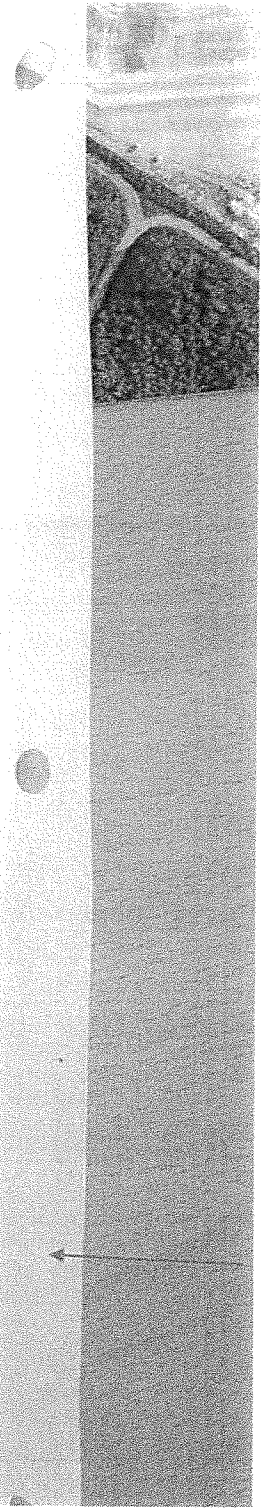
Images received over social media with original complaint. Bottom image purports to show sediment plume in ocean, originating from Samsung Mangilao Solar Project. (July 23, 2021)



Notes section from approved E&SC plan as obtained from Samsung during inspection. (July 23, 2021)

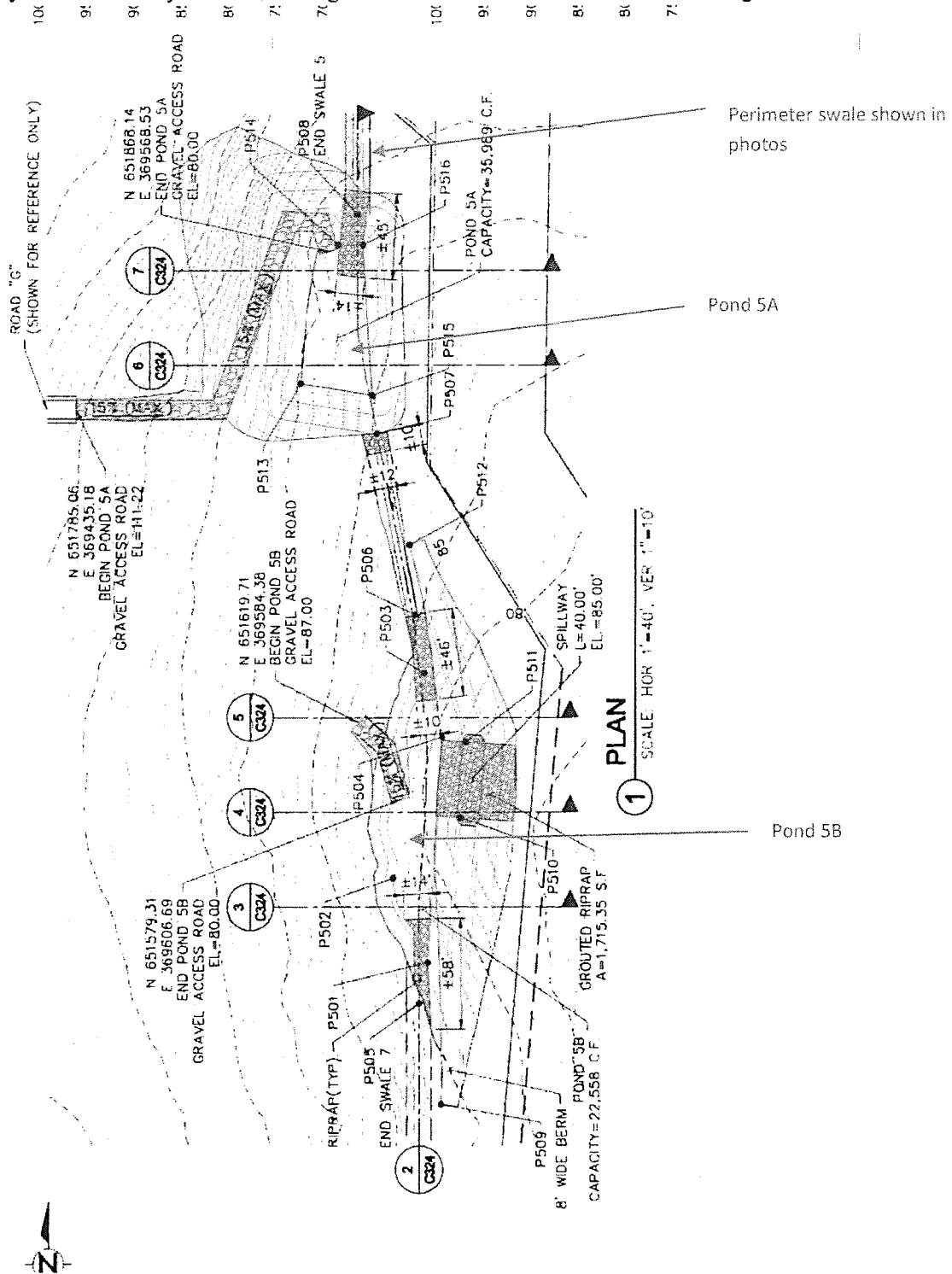
**TEMPORARY EROSION SEDIMENT CONTROL (TESC):**

1. THE INTENT OF THE EROSION CONTROL PLAN IS TO MINIMIZE EROSION AND MAXIMIZE SEDIMENT RETENTION ON-SITE THROUGHOUT THE CONSTRUCTION PROCESS. FIVE (5) TESC PHASES HAVE BEEN DEVELOPED TO LIMIT GROUND DISTURBANCE TO A MANAGEABLE AND CONTROLLED AREA. IT IS RECOGNIZED THAT PHASE OVERLAP, WILL OCCUR AND ACTIVITIES WITHIN EACH PHASE CAN BE CONCURRENT. IT IS THE CONTRACTOR'S RESPONSIBILITY TO IMPLEMENT THE PLAN AND MANAGE AND CONTROL THE SITE TO MEET THE INTENT OF THE PLAN.
2. THE ENTIRE PERIMETER OF THE PROJECT WHICH SLOPES TOWARD OFFSITE WILL RECEIVE PROTECTION USING SILT FENCE, SWALES, CHECK DAMS, PONDING BASINS, AND OTHER BMPs AS REQUIRED.
3. SILT FENCE SHALL BE INSTALLED ALONG GROUND CONTOURS, CURVE ENDS UPGRADE TO PREVENT WATER FROM RUNNING AROUND ENDS. SILT FENCE SPACING RECOMMENDATION ACCORDING TO THE SLOPE OF THE GROUND:
  - <2% SLOPE, USE 60-FT SPACING
  - 2% - 8% SLOPE, USE 25-FT SPACING
  - >8% SLOPE, USE 10-FT SPACING
4. SEE SHEET C001 FOR COORDINATE DATA OF THE PROPERTY BOUNDARY AND THE CONSTRUCTION LIMIT.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR FINAL LAYOUT INSTALLATION, AND MAINTENANCE OF THE EROSION CONTROL BMPs TO MEET GUAM EPA SOIL EROSION AND SEDIMENT CONTROL REGULATIONS. THE CONTRACTOR SHALL CONDUCT PERIODIC INSPECTION OF THE EROSION CONTROL BMPs, ESPECIALLY FOLLOWING STORM EVENT, REPAIRING AND REMOVING AND DISPOSING OF SEDIMENT MATERIALS.
6. SHOULD EROSION OF EXPOSED CLEARED AND CRUBBED AREAS BE OBSERVED, THESE AREAS SHALL BE REGRADED TO MATCH ADJACENT CONTOURS AND COVERED WITH MULCHING, OR PLACEMENT OF LEAFY VEGETATION OR WOOD CHIP TO ARREST THE EROSION PROCESS.
7. THE CONTRACTOR SHALL USE THE PONDS AS TEMPORARY EROSION AND SEDIMENT CONTROL BMP TO CONTROL THE WATER RUNOFF DURING CONSTRUCTION. FOLLOWING FINAL GRADING, THE CONTRACTOR SHALL EXCAVATE AND REMOVE ALL SEDIMENTS AND DEBRIS ACCUMULATION IN THE POND(S) TO THE LIMITS SHOWN IN THE PONDING BASIN PLANS.
8. INSTALL SAND BAGS OR OTHER APPROVED BMP TO INTERCEPT PAVEMENT RUNOFF AND DIVERT AROUND WORK AREA AND INTO SEDIMENT TRAPPING AND SETTLING DEVICES.
9. WASHING SHALL BE DONE ON AN AREA STABILIZED WITH STONE AND DRAINS TO AN APPROVED SEDIMENT TRAPPING DEVICE.
10. THE CONTRACTOR SHALL INSTALL THE PERIMETER EROSION CONTROL BMP'S AND PONDING BASINS PRIOR TO ANY CRUBBING OR EARTHWORK ACTIVITIES.
11. AS SOON AS POSSIBLE FOLLOWING COMPLETION OF FINAL GRADES, THE CONTRACTOR SHALL IMMEDIATELY INSTALL SOILS PREPARATION ITEMS AS DETAILED TO PROTECT THE GRADED AREAS FROM EROSION.

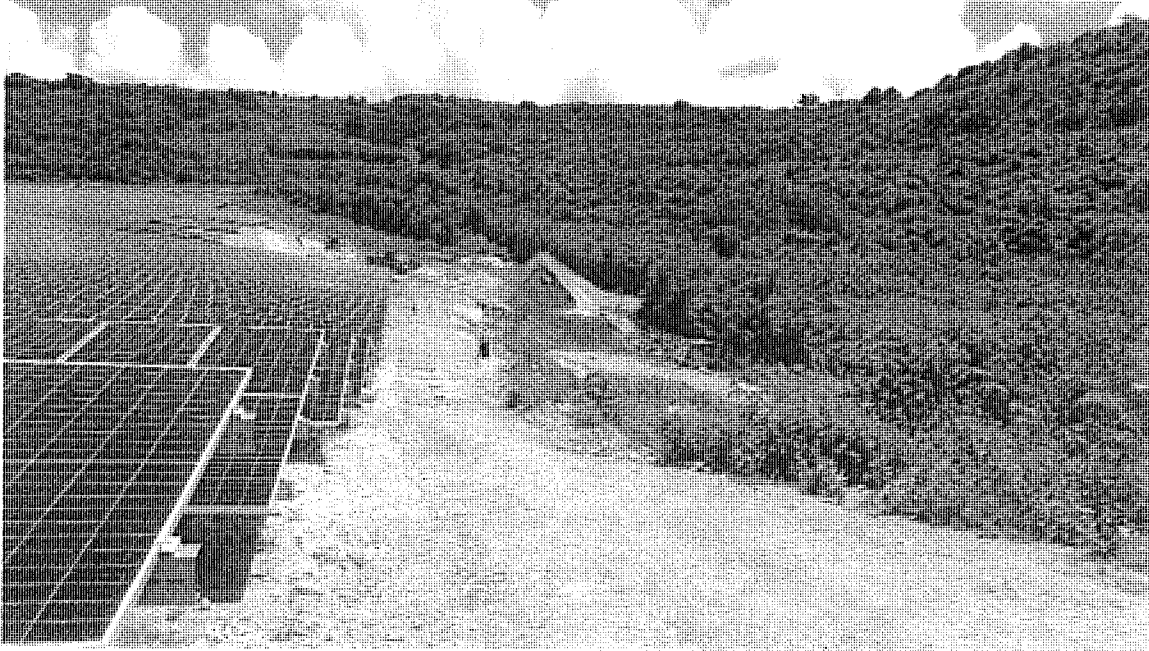


Note concerning required sequence of construction

ADDENDUM: Inspection of Pond 5, July 28, 2021. Excerpt from revised E&SC plans approved by GEPA January 4, 2021, adding Pond 5 to the area which would discharge toward Marbo Cave:



The location of the Marbo Cave discharge and Pond 5, showing activity underway to install E&SC measures on July 28, 2021:



The beginning of construction work for Pond 5B. The soil embankment is to delineate a temporary storage pond, while the permanent embankment is installed just beyond (to the right). Base preparation for the permanent embankment has begun, but emplacement and compaction of embankment fill had not yet begun (July 28, 2021):



Pond 5A excavation, which according to Samsung site personnel was begun in June. However the excavation is not yet connected to the site swale, so mass runoff is unable to enter the basin. Sedimentation pictured is from incidental runoff that the excavation collected due to its location (July 28, 2021):



The perimeter swale which would discharge to Pond 5, but at the time of inspection it was not connected and sedimentation patterns showed that runoff discharged off-site (July 28, 2021)





This is the area where the perimeter swale currently discharges. A large delta-type (alluvial) formation of sediment is evident, showing that a large volume of runoff discharged off-site during the recent rainfall events (July 28, 2021).



A view of the sediment discharged off-site during the recent rainfall events. The size of the deposited rocks demonstrates that flow volumes and velocities were very high. The top of the perimeter silt fence can be seen, where it was knocked down and overtopped. (July 28, 2021)



Another view of the sediment plume/delta formation resulting from the off-site discharge during the rain events the week of July 19. This photo is looking toward the off-site properties, headed downhill roughly in the direction of Marbo Cave. (July 28, 2021)



View toward Pond 5B location. The graded area to the right of the earthen embankment is the base of the permanent pond embankment, which Samsung had not yet begun to install. (July 28, 2021)



A partial view of the uphill project area which contributed to the discharge of runoff the week of July 19. Soil and fill material has been scoured from an area several hundred feet wide, leaving bare limestone bedrock in much of the area covered by the solar panels. (July 28, 2019)





AHENSIAN PRUTEKSION LINA'LA GUÁHAN  
 LOURDES A. LEON GUERRERO, GOVERNOR OF GUAM • JOSHUA F. TENORIO, LIEUTENANT GOVERNOR OF GUAM  
 WALTER S. LEON GUERRERO, ADMINISTRATOR

### EMAS Report Form

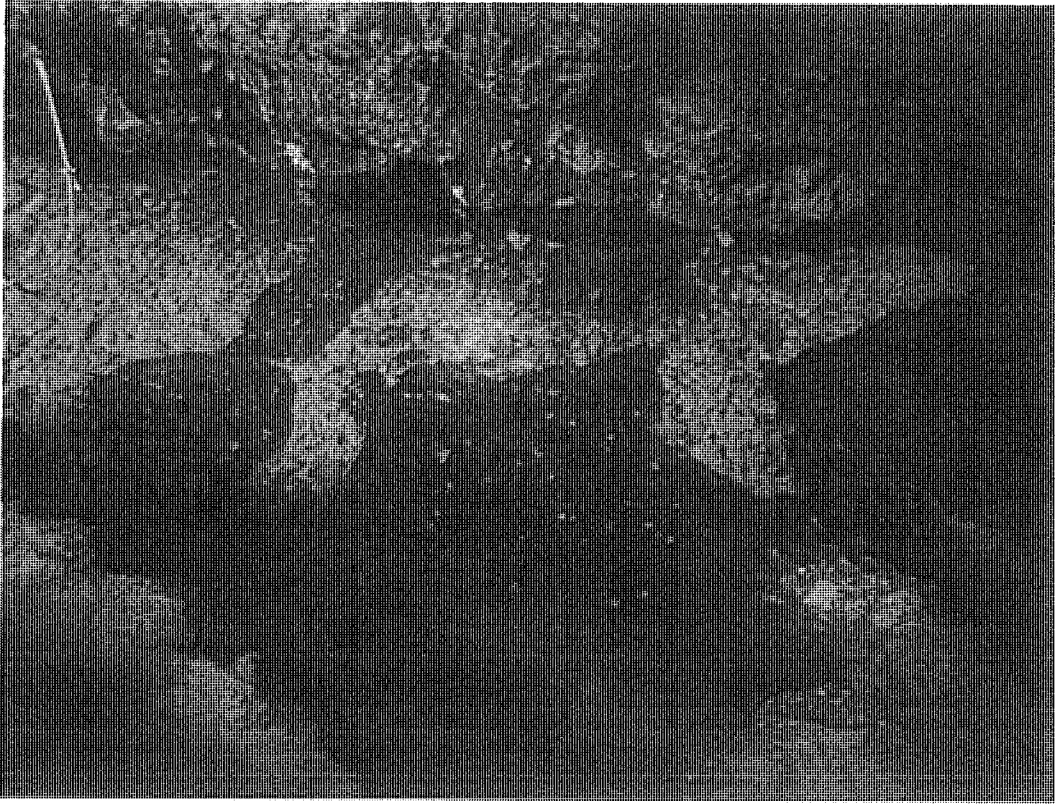
<b>Report #:</b>	MP002	<b>EMAS FY</b> 21	<b>Date:</b> 7/28/2021										
<b>Inspector(s):</b>	Jesse T. Cruz and Bob Salas												
<b>Complainant:</b>	Assigned by Chief Engineer		<b>Time:</b> 1400hrs										
<b>Type of Inspection:</b>	Erosion Control												
<b>Land/Business Owner:</b>	private property												
<b>(Address/Phone)</b>	Marbo Cave, Mangilao												
<b>Location:</b>	Marbo Cave, Mangilao												
		<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="2" style="text-align: center;">Existing Land Use</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Undeveloped Land</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Residential</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Commercial</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Industrial</td> </tr> </tbody> </table>		Existing Land Use		<input checked="" type="checkbox"/>	Undeveloped Land	<input type="checkbox"/>	Residential	<input type="checkbox"/>	Commercial	<input type="checkbox"/>	Industrial
Existing Land Use													
<input checked="" type="checkbox"/>	Undeveloped Land												
<input type="checkbox"/>	Residential												
<input type="checkbox"/>	Commercial												
<input type="checkbox"/>	Industrial												
<b>Inspection Findings:</b>	<p>Additional erosion control violation inspection (Samsung Manilao Solar Project)</p> <p>Large erosion plumes of material present at the top of the opening into cave. Evidence of large volumes of water entering opening of cave. Steps down to lower platform of cave eroded away. Sediment and debris covering platform, over one inch thick. Water surface of all pools covered with sediment film, debris and trash. Evidence of new sediment deposits on bottom of pools.</p> <p>Two large groups (5+ individuals) were present at the time of inspection, informed them that cave was closed due to erosion and sedimentation. See attached photographs from an inspection on July 1, 2021, and today.</p>												
<b>Corrective Action:</b>	None. Follow-up inspection scheduled for Thursday, July 29, 2021, to follow erosion scars to source. Recommend that Parks and Rec close Marbo Cave to visitors, as it is unsafe.												
<b>Acknowledge:</b>	<b>Inspector's Signature:</b>												



Photograph 1. Opening to Marbo Cave, 070121.



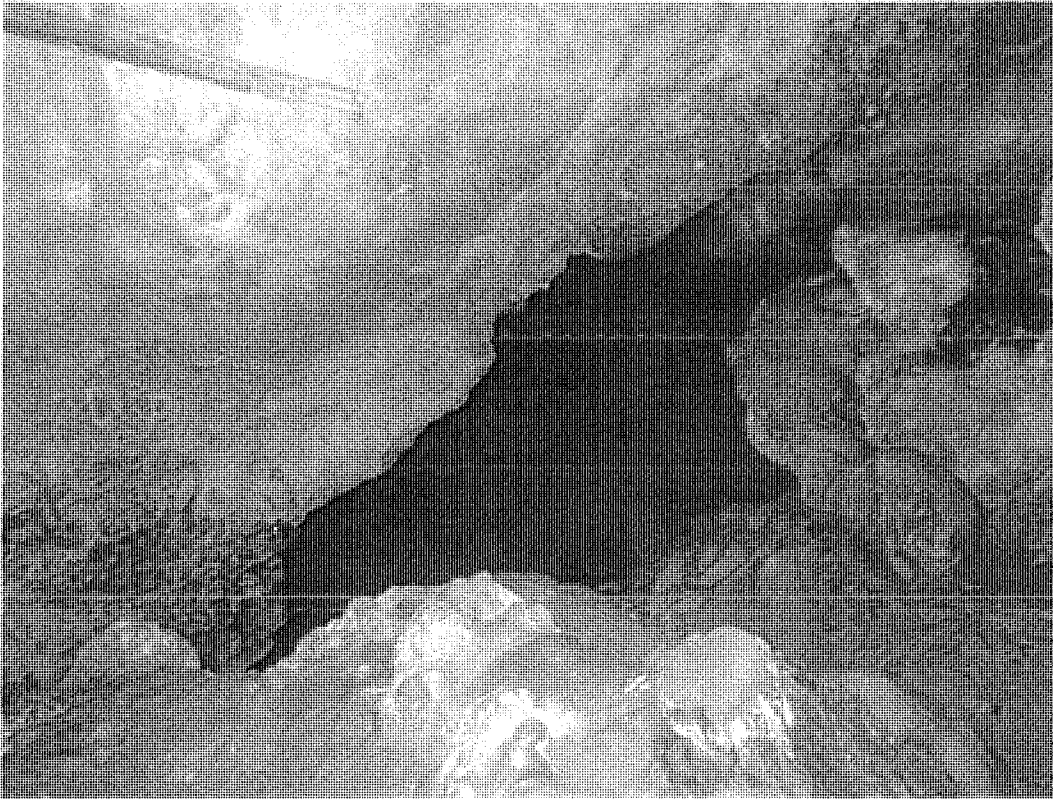
Photograph 2. Opening to Marbo Cave, 072821.



Photograph 3. Marbo Cave center pool, 070121.



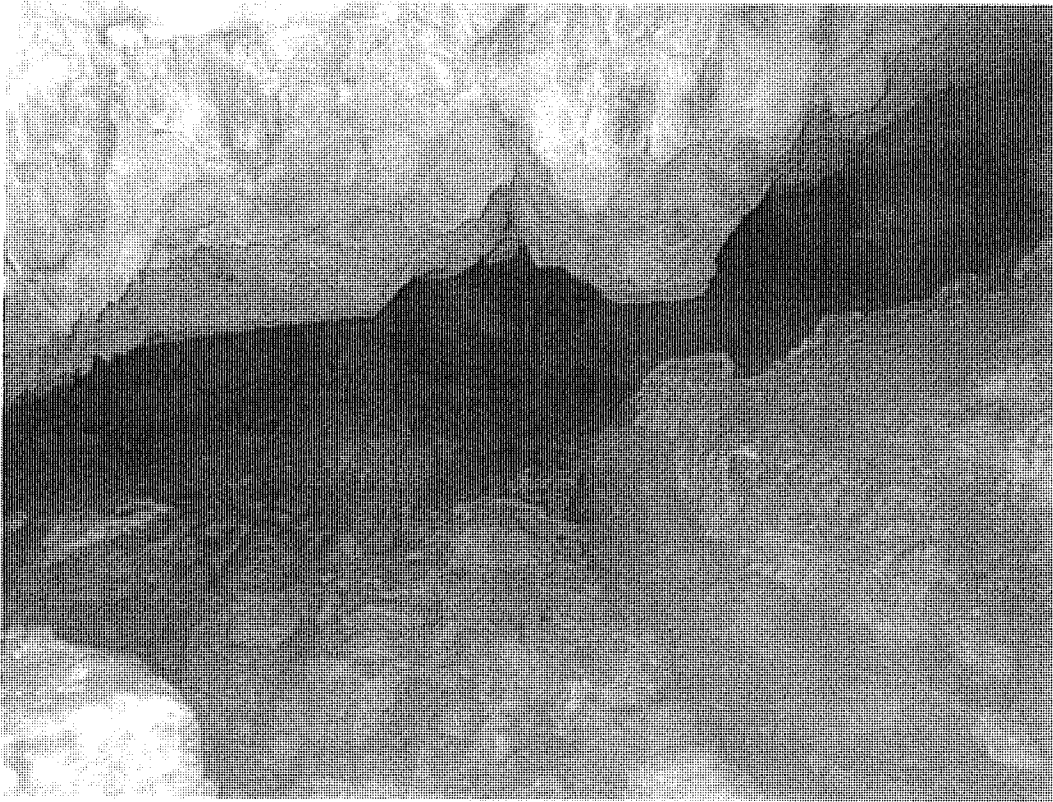
Photograph 4. Marbo Cave center pool, 072821.



Photograph 5. Marbo Cave far left pool, 070121.



Photograph 6. Marbo Cave far left pool, 072821.

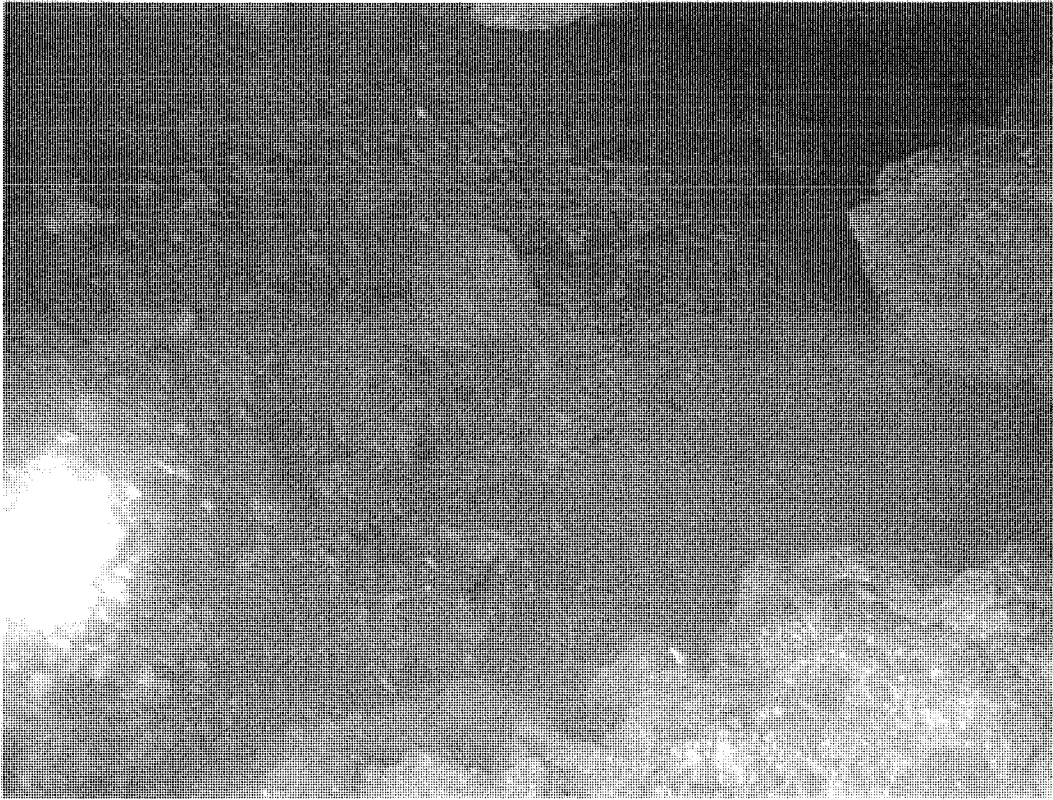


Photograph 7. Marbo Cave right center pool, 070121.



Photograph 8. Marbo Cave right center pool, 072821.

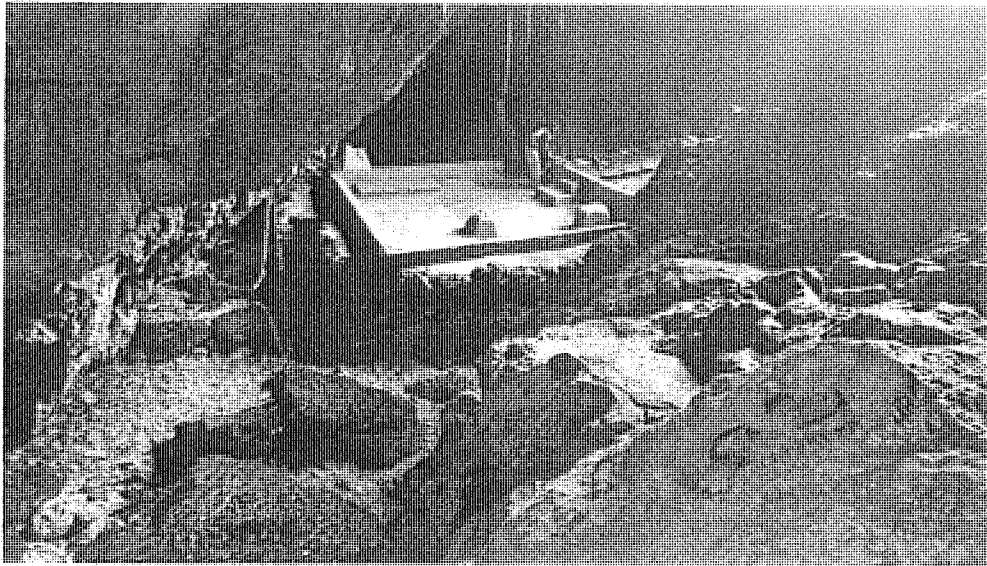




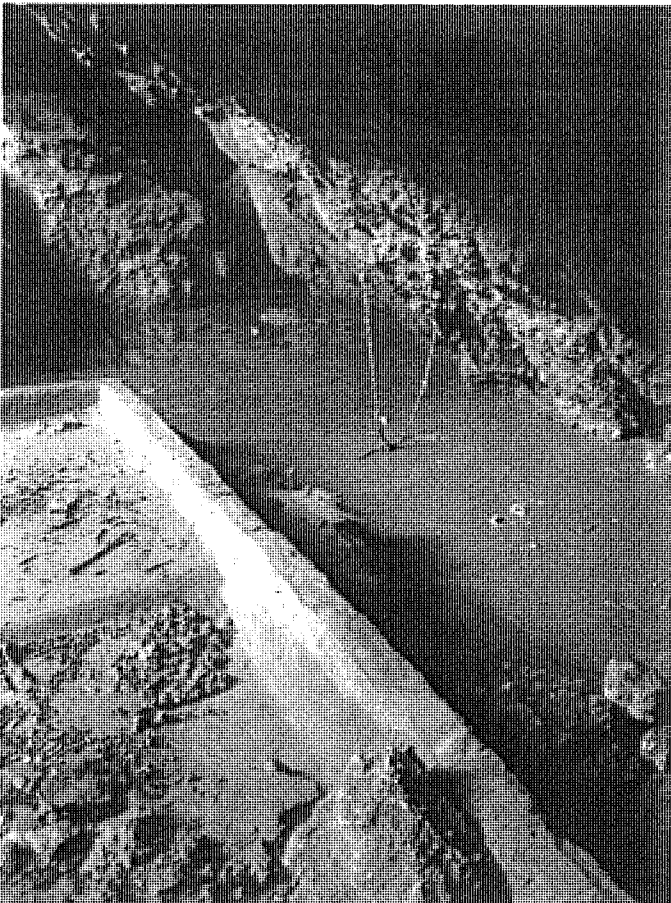
Photograph 9. Marbo Cave far right pool, 070121.



Photograph 10. Marbo Cave far right pool, 072821l.



Photograph 11. Marbo Cave platform, Guam Post 082718.



Photograph 12. Marbo Cave platform and center pool, 072821.



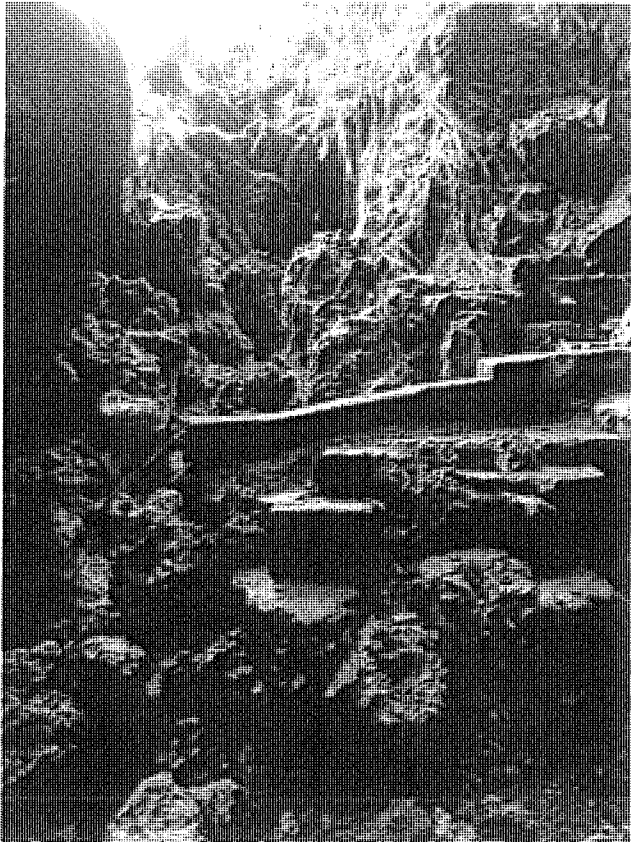
Photograph 13. Marbo Cave sediment and debris on platform, 072821.



Photograph 14. Marbo Cave stair pieces, 072821.



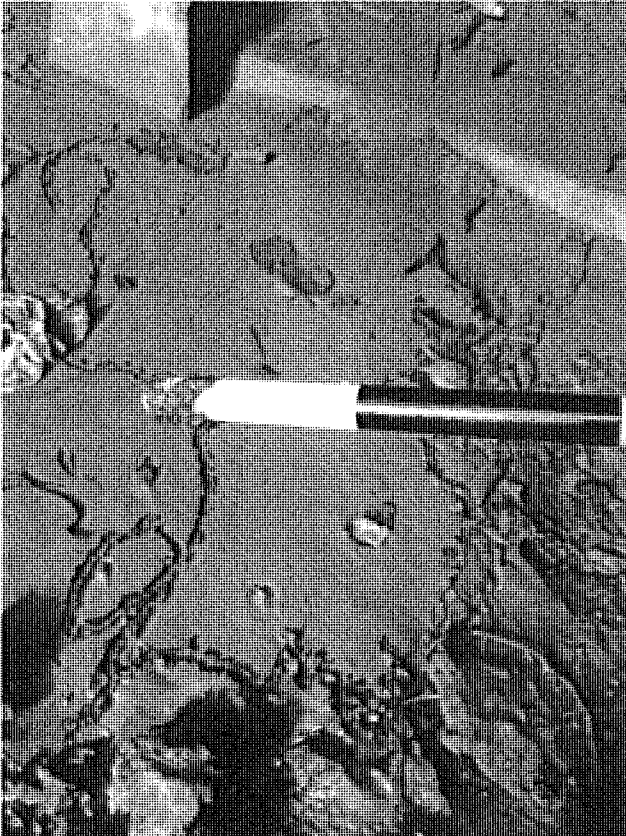
Photograph 15. Marbo Cave eroded steps looking down from entrance, 072821.



Photograph 16. Marbo Cave eroded steps looking up to entrance, 072821.



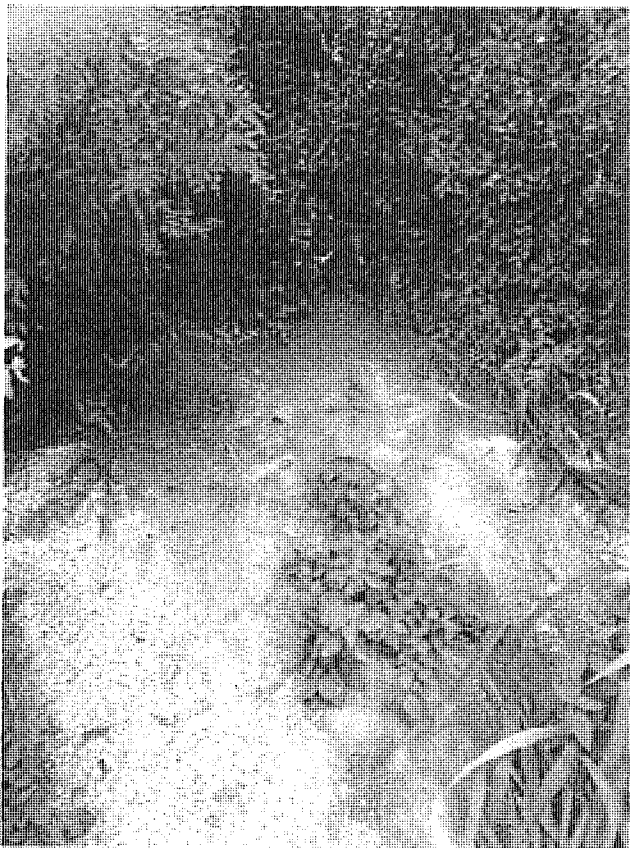
Photograph 17. Marbo Cave platform close-up w/ sediment and debris, 072821.



Photograph 18. Marbo Cave platform close-up approximate depth of sediment, 072821.



Photograph 19. Marbo Cave erosion area near opening, 072821.



Photograph 20. Marbo Cave erosion area 1 close-up near opening, 072821.



Photograph 21. Marbo Cave erosion area 2 near opening, 072821.



Photograph 22. Marbo Cave erosion area 3 near opening, 072821.

# Exhibit “2”





**CONTRACTORS LICENSE BOARD  
GOVERNMENT OF GUAM**

542 NORTH MARINE CORPS DRIVE - A  
TAMUNING, GUAM 96911  
TEL. NOS. 649-2211/9676 FAX NO. 649-2210

**BEFORE THE CONTRACTORS LICENSE BOARD  
GOVERNMENT OF GUAM**

IN THE CASE OF: )

The Contractors License Board )

vs. )

Samsung E & C America, Inc. )

License No. CLB 19-1558 )

P.O. Box 218008 )

GMF, Guam 96921 )

) **Accusation and Statement of Charges**  
) **Case # 2021-08-01**

---

**ACCUSATION AND STATEMENT OF CHARGES**

**YOU ARE HEREBY NOTIFIED** that the **Contractors License Board ("CLB")**  
proposes to take disciplinary action against you for the following grounds:

Your action to date appears to be in violation of **21 GCA Real Property**  
**Chapter 70 Contractors (Public Law 30-11), §70116 (a) (5), (12).**



**21 GCA, Chapter 70, §70116. Revocation, Suspension and Renewal of**

**Licenses. Subsection (a)**, which states:

The Contractors License Board may revoke any license issued hereunder, *or* suspend the right of licensee to use such licenses, *or* refuse to renew any such license for any of the following causes:

- (5) Willful departure from *or* willful disregard of plans *or* specifications in any material respect without consent of the owner *or* his duly authorized representative, which is prejudicial to a person entitled to have the construction project *or* operation in accordance with such plans and specifications;
- (12) Willful failure in any material respect to comply with this Chapter or the Rules and regulations promulgated pursuant thereto.

**INVESTIGATION DETAILS**

On or About July 23, 2021, the CLB was placed on notice of Contractor's alleged illegal discharges of run off and sediment from its Project operation as a part of the Mangilao Solar Project located at Lot No.1 – R# Tract 1541 in the Marbo area, Magilao, Guam.

The CLB subsequently received a copy of the **Notice of Violation/Compliance/Penalty Order** ("NOV") issued by Walter S. Leon Guerrero, Administrator, **Guam Environmental Protection Agency** ("GEPA"). GEPA's NOV, a copy of which is attached hereto as Exhibit 1 and incorporated herein by this reference, alleges numerous violations by Contractor of Guam's Soil Erosion and Sediment Control Regulations, 22 GAR, Chapter 10, as implemented by Public Law 25-152.

On or about August 2, 2021, the CLB's Marcus G. Finona, Aaron Aragon, Andrew Mesa conducted an independent investigation of the Marbo Cave Illegal Discharge. The CLB conducted a follow-up meeting on August 10, 2021 with **Contractor's Responsible Management Employee** ("RME"), **Mr. Ian Chong**. Attached hereto and incorporated herein by reference as Exhibit 2, is a copy of the CLB's Investigative Report dated August 2, 2021. The results of the CLB Investigative Meetings are as follows:

- Contractor illegally discharged runoff and sediment from the Project on or about July 23, 2021, in willful violation of the Project's Permit and Guam's Soil Erosion and Sediment Control Regulations, 22 GAR, Chapter 10, as implemented by Public Law 25-152.
- Section 10 of the Project's Site Erosion Control Plan, a copy of which is attached as Exhibit 3 and incorporated herein by this reference, provides as follows:

*"The Contractor shall install the perimeter erosion control BMP's and ponding basin prior to any grubbing or earthwork activities."*

- Contractor willfully departed from the Project plans without the consent of the Project Owner or Representative. See, 21 GCA70 §70116 (a) (5).
- Contractor willfully failed to comply with the CLB's rules and regulations by failing to comply with the Project's authorized plans.
- Contractor's RME admitted that the Contractor failed to implement the approved erosion and sediment control plan. See, Exhibit 4, attached hereto and incorporated herein by this reference.

This action violates **CLB 21 GCA, Chapter 70, §70116. Revocation, Suspension and Renewal of Licenses. (a), (5), (12)** Further, **21 GCA, Chapter 70, §70121. Violation, Penalty, provides:**

Any person who violates *or* omits to comply with any of the provisions of this Chapter *shall* be fined an amount *no less than* Two Hundred Dollars (\$200) but *not to exceed* fifty percent (50%) of the value of the project. (Emphasis in the original).

You are entitled to a hearing to answer the above complaints by filing a **Notice of Defense** with the Contractors License Board *within fifteen (15) days of service of this Accusation and Statement of Charges*. Unless written request of a hearing signed by you or on behalf of you is delivered or mailed to the Contractors License Board at **542 Marine Corps Drive –A Tamuning, Guam** within **fifteen (15)** days after the Accusation and Statement of Charges has been served on you, the Contractor License Board may proceed upon the accusation without hearing. The request for a hearing may be made by marking the appropriate box (es) and by delivering or mailing enclosed form “Notice of Defense”, as provided in 5. G.C.A. §9205.

If you request a hearing: (a) you will be given full opportunity to present your position on these matters and may present any relevant evidence; (b) you are entitled to issuance of subpoenas to compel the attendance of witnesses and the production of books, documents, or other tangible evidence by applying to the CLB (you must pay applicable witness fees); (c) you are entitled to be represented by legal counsel at said hearing and (d) the hearing in this matter shall follow the procedural guidelines of the Administrative Adjudication Law found in 5. G.C.A. §9100 et seq.

Dated this 17th of November 2021.

GUAM CONTRACTORS LICENSE BOARD

By :

  
Cecil L. Orsini  
CLB Executive Director



RECEIVED BY: B. H. Kim  
DATE: Jul 29, 2021 2:33pm

GUAM ENVIRONMENTAL PROTECTION AGENCY • AHENSIAŊ PRUTEKSIÓN LINA'LA' GUÁHAN  
LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA F. TENORIO • LIEUTENANT GOVERNOR OF GUAM  
WALTER S. LEON GUERRERO • ADMINISTRATOR | MICHELLE C. R. LASTIMOZA • DEPUTY ADMINISTRATOR

JUL 29 2021

Samsung E & C America, Inc.  
(Respondent)  
Mr. ByungHyup Kim, Project Manager  
Mangilao Solar Project  
P.O. Box 218008  
Barrigada, Guam 96921  
Contact # 689-1790

EXHIBIT #1

COPY

**Subject:** Notice of Violation / Compliance Order / Penalty Order

The stated purpose of the Guam Soil Erosion and Sediment Control Regulations (GSESCR), 22 GAR Chapter 10, as implemented by Public Law 25-152, is "to control accelerated soil erosion, thereby preventing the pollution of Guam's waters from fertilizers, pesticides, sediments and other polluting substances carried by sediment, and to protect property and to promote the public health, safety and welfare by regulating grading, clearing, grubbing and stockpiling, and by setting minimum standards for erosion and sedimentation control for the island of Guam." Samsung E & C America, Inc. ("Respondent") has violated the GSESCR and is ordered to undertake remedial action(s) and pay a penalty as stated herein.

### BACKGROUND

Respondent is actively engaged in earth moving operations as a part of the Mangilao Solar Project located at Lot 1 – R3 Tract 1541 in the Marbo area, Mangilao, Guam. The project was previously permitted through DPW under several different building permits, all of which were reviewed and approved by GEPA. Work on the project has been ongoing since at least July 20, 2020, according to GEPA staff observations and email correspondence from Respondent's engineer. On the morning of July 23, 2021, GEPA received a forwarded complaint alleging discharges of runoff and sediment from Respondent's site. The complaints included photos taken off-site showing accumulations of sediment and water on off-site properties, and one photo showing a large sediment plume in the ocean, alleged to have been caused by Respondent's activities. In response, GEPA conducted a site inspection on July 23 between approximately 11:30 a.m. and 12:30 p.m. and observed evidence of significant off-site discharge and sedimentation from at least two locations along the site perimeter. GEPA staff further observed, and Respondent staff confirmed, that the approved erosion and sediment control (E&SC) measures had not been fully installed, and that other E&SC measures were still in the process of being installed, despite construction being at an advanced stage. In addition, GEPA staff observed that despite construction of the solar facility being nearly completed, active soil stabilization through re-vegetation had not yet begun, and evidence of mass soil erosion was observed throughout the entire site.

GEPA conducted follow-up inspections on July 28 to document evidence of discharge from the "Pond 5" location and Marbo Cave (located off-site), and observed evidence of significant

discharge of runoff and sediment from Respondent's project site into the cave, resulting in extensive erosion damage and sedimentation in the cave pools.

See attached reports for additional details and photographs.

### NOTICE OF VIOLATION

Based on the facts described above, GEPA finds that Respondent violated the following provisions of the Guam Soil Erosion and Sediment Control Regulations, 22 GAR Chapter 10, as implemented by Public Law 25-152:

- EXHIBIT #1
1. 22 GAR §10104(C)(1) Erosion and Sediment Control Plans: Compliance. *All clearing, grading, embankment or filling, excavating and other earth moving operations, except those otherwise exempted from these regulations by the Administrator, must proceed in accordance with a duly approved Erosion and Sediment Control Plan.*

Respondent failed to implement erosion and sediment control best management practices (BMPs) in accordance with the approved Erosion and Sediment Control Plan.

2. 22 GAR §10105(A)(1) Erosion and Sediment Control Plans and Measures: General policies for Erosion and Sediment Control. *All earth-moving operations on Guam shall be conducted in a manner that prevents accelerated land erosion, transportation of sediment to and along highways, or siltation of rivers, estuaries and marine waters.*

Respondent failed to conduct the earth moving activities undertaken at the site in a manner that prevents accelerated land erosion and siltation of marine waters. Specifically, the earth-moving activities were being conducted without the proper installation or use of erosion and sediment control best management practices (BMPs), and without implementing measures such as revegetation to stabilize previously disturbed areas, leaving the entire site vulnerable to erosion.

3. 22 GAR §10105(A)(5) Erosion and Sediment Control Plans: Compliance. *No person shall perform any earth-moving operation so as to cause falling rocks, soil or debris in any form to fall, slide or flow onto adjoining properties or waters of Guam.*

Respondent's earth-moving operations were conducted in such a way that allowed soil (sediment) to be carried in runoff which flowed onto adjoining properties, including Marbo Cave, and into waters of Guam.

4. 22 GAR §10105(B)(5)(e) Storm Water Drainage System and Control of Site Water Runoff. *Structural measures such as berms, dikes, traps, basins, shall be installed prior to any other grading, clearing, or disturbance of the existing surface of the site.*

Respondent failed to install structural erosion and sediment control measures in accordance with the approved Erosion and Sediment Control Plan, prior to all other grading, clearing, and construction activities which resulted in disturbance of the entire existing surface of the site.

EXHIBIT #1

5. 22 GAR §10105(B)(10)(a) & (e) Stabilization of Affected Areas. (a) *Stabilization of slopes, channels, ditches, berms, diversions, silt dams, or any disturbed areas shall begin as soon as possible and no later than thirty (30) calendar days after the final grade or final earth-moving activities has been completed; & (e) Any disturbed area not paved, sodded or built shall be seeded and mulched with vegetative cover appropriate to the soil type, as recommended by an engineer, or the condition of the area based on soil test analysis done by a laboratory. This condition does not prohibit the use of matting, gabion, armor coating on erodible surfaces or other type of vegetative cover that will minimize erosion.*

Respondent failed to stabilize disturbed areas with appropriate vegetative cover within 30 days after final grade had been achieved throughout a majority of the site area.

#### COMPLIANCE ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, Respondent is **HEREBY ORDERED** to undertake the following remedial actions (all compliance dates shall be computed using calendar days):

1. **Within seven (7) days of receipt of this order:** Complete installation of interim measures intended to partially capture runoff and sediment prior to off-site discharge from the location of: (a) Pond 4 and (b) Pond 5. Coordinate approval of the scope and nature of such interim measures with GEPA and then contact GEPA for site inspection upon completion.
2. **Within fourteen (14) days of receipt of this order:**
  - a. Submit to GEPA a revised design which includes an armored overflow weir from Pond 1, similar to that provided for Pond 3, to prevent the failure of the pond embankment in the event of an overtopping storm event.
  - b. Complete the installation of the overflow weir at Pond 3, in accordance with the approved E&SC plan.
  - c. Complete active soil stabilization/revegetation measures as called for in the approved E&SC plans.
3. **Within thirty (30) days of receipt of this order:**
  - a. Complete installation of Ponds 2, 4, and 5 in accordance with the approved E&SC plan.
  - b. Complete the installation of the armored overflow weir for Pond 1.

**Stand by to receive and implement additional order items** directed toward the clean-up and restoration of off-site properties and resources damaged by discharges of runoff and sediment from the project site. Such order items will be provided to Respondent in writing and may include requirements to coordinate and conduct work in cooperation with relevant Government of Guam agencies and private landowners.

### PROPOSED PENALTY ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, GEPA hereby notifies Respondent of the Administrator's decision to issue a penalty order pursuant to 22 GAR §10114(b), which authorizes a civil penalty of no more than Ten Thousand Dollars (\$10,000) per day per violation, up to a maximum civil penalty of One Hundred Twenty-five Thousand Dollars (\$125,000).

GEPA is proposing a total civil penalty amount of Ten Thousand dollars (\$10,000) per violation, per day. In accordance with 22 GAR §10114(b)(2), this penalty is proposed based on the extent and gravity of the violation, and the following factors considered by GEPA: 1) the violation resulted in a significant, direct impact to neighboring properties, resources of cultural and recreational significance, and waters of Guam; 2) Respondent is a large and experienced company and yet knowingly deviated from the approved E&SC plans, permit conditions, and regulations of Guam; and 3) Respondent realized an economic benefit by using the space allotted for E&SC measures for office, staging, and stockpiling areas.

The time period over which GEPA is assessing the proposed \$10,000 penalty is for a period of three hundred sixty eight (368) days, from July 20, 2020, to July 23, 2021. For five (5) total violations over a period of three hundred sixty five (368) days, this amounts to a total of Eighteen Million, Four Hundred Thousand dollars (\$18,400,000). However, the total penalty that may be assessed by GEPA is limited by 22 GAR §10114(b) to \$125,000. **Therefore the total penalty amount is One Hundred Twenty-five Thousand Dollars (\$125,000).**

This order does not prevent GEPA from taking additional actions including the issuance of penalties under 22 GAR §10114(A)(a) or (b). Please also note that if you fail to take the remedial actions listed above within the required timeframe(s), additional violations, remedial actions, and penalties may be assessed by Guam EPA.

### RIGHT TO APPEAL:

You may file within thirty days of the date of your receipt of this Notice of Violation/Compliance Order/Penalty Order, a Notice of Intent to Appeal also known as a Notice of Defense with the Guam EPA's Board of Directors. A copy of the Notice of Intent to Appeal/Notice of Defense is attached for your convenience.

Unless a written request for a hearing signed by or on behalf of the person, agency or business entity named above in this Notice of Violation/Compliance Order/Penalty Order is hand delivered or mailed to GEPA within thirty days after the Notice of Violation/Compliance Order/Penalty Order was personally served on you or mailed to you, GEPA may proceed upon the Notice of Violation/Compliance Order/Penalty Order without a hearing. A request for hearing may be made by delivering the enclosed form entitled "Notice of Intent to Appeal also known as A Notice of Defense", or by delivering a notice of defense as provided in 5 GCA §9205, to the following address:



EXHIBIT #1

Guam Environmental Protection Agency Board of Directors  
C/o Administrator Guam Environmental Protection Agency  
Building 17-3304 Mariner Avenue  
Tiyan Barrigada, Guam 96913

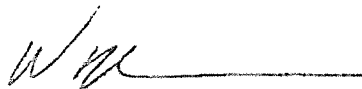
If you file a Notice of Intent to Appeal/Notice of Defense, the GEPA's Board of Directors shall hold a public hearing, at which time you may appear and present evidence in person or through counsel in support of this petition.

Failure to file a Notice of Intent to Appeal within the period specified above will constitute a waiver of your right to a hearing. If you waive your rights to a hearing the Notice of Violation/Compliance Order/Penalty Order will become final, and GEPA may proceed upon the Order without a hearing and without further notice to you.

Should you have any questions or need additional information, please do not hesitate to contact me and my staff at Water Pollution Control Program or Water Division Chief Engineer, CAPT Brian Bearden, P.E., BCEE at 300-4786 and 300-4779, respectively.

*Dangkolu na si Yu'us ma'åse'.*

*Senseramente,*



WALTER S. LEON GUERRERO  
Administrator

Attachments: Notice of Defense Form  
Chief Eng. Inspection Report dated July 23 & 28, 2021  
EMAS Inspection Report dated July 28, 2021

cc: GEPA Legal Counsel



# CONTRACTORS LICENSE BOARD

*Inetnon Malisensiyen Kontratista*  
542 North Marine Corps Drive A. - Tamuning, Guam 96913  
649-2211, 649-9676, 649-2210 (Fax)  
Website: www.clb.guam.gov



LOURDES A. LEON GUERRERO  
Maga'håga

CECIL "BUDDY" L. ORSINI  
Direktor Eksekutibu

JOSHUA F. TENORIO  
Sigundo Maga'håhi

Case # 2021-08-01  
CLB VS. SAMSUNG E & C AMERICA , INC./IAN CHONG (R.M.E.)

EXHIBIT #2

## INVESTIGATION REPORT:

Upon receipt of the Notice of Violation/Compliance Order/Penalty Order from EPA Administrator Walter S. Leon Guerrero, on July 31, 2021, the CLB Investigation Unit conducted their investigation. (Attachment # 1)

On August 2, 2021 between 9:00 to 12:00 CLB Investigation Unit (Director Cecil Orsini, Marcus Finona, Aaron Aragon & Andrew Mesa) proceeded to the Solar Farm Project located in the Marbo Cave area in Mangilao to conduct field investigation.

As we entered the site, we were met by the safety officer of Samsung E & C America, Inc., Manjo Quintanilla. Director Orsini introduced the team and the purpose of the visit. We were brought to the conference room and met Byung Hyup Kim (Project Manager, Samsung E&C America, Inc.) and Berry Lim (Contract Manager, Samsung E&C America, Inc.). We asked them if we could see their Building Permit and other documents pertaining to the construction of the Solar Farm Project. We had verified that the project has an approved plan permit from DPW. We then proceeded to the field and conducted visual investigation and took several photographs. Samsung's employee informed us that the failure was from Ponding basin # 5. We also observed several areas wherein there were soil erosion & sedimentation, damaged Silt Fences and ponding basins that are still under construction. Investigators also witnessed large amounts of damage at both the project site as well as the neighboring land. (Attachment # 2)

A Notice to Appear (NTA) was sent and received by Samsung E&C America on August 4<sup>th</sup>. A meeting was conducted on August 6, 2021 @ 9:00 a.m. @ the CLB office. Discussed during the meeting was the blatant disregard of its obligation to install the required erosion control before any grubbing or earthwork activities. Samsung submitted to CLB their Work Schedule for Mangilao solar Project & copy of re-design Notice of ponding basin # 5 and the corresponding contract price. (Attachment # 3)

Page 2

Case # 2021-08-01

CLB vs Samsung E&C America, Inc. / Ian Chong (R.M.E.)

EXHIBIT #2

A follow up meeting was conducted on August 10, 2021 @ 2:00 p.m. with the Mr. Ian Chong, R.M.E. of Samsung E & C America, Inc. During the meeting Ian Chong admitted that Samsung E&C America, Inc. failed to implement the approved erosion and sediment control plan. He was notified that a Citation /Penalty will be assessed for the violation of the Public law & Rules and Regulations of the contractors licensed board. (Attachment # 4)

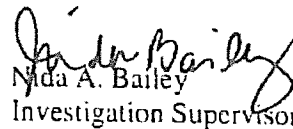
*"Ms. Bailey stated that based on EPA's finding, you failed to implement the erosion and sediment control best management practices in accordance with the approved plan. She asked, "Do you agree with this? You failed, Samsung failed to implement this". Mr. Chong responded "Yeah, Yes". "(Attachment # 4)*

CLB requested Mr. Ian Chong/ Samsung E&C America, Inc. to submit detailed cost for the erosion control work for the Mangilao solar farm. (Attachment # 5)

Based on the facts we gathered, we found that Samsung E&C America, Inc. / Ian Chong did not follow the Erosion Sediment Control Plan as required by Guam's regulation that was spelled out in the approved plans reviewed by GEPA. As referenced by GEPA's report dated July 29, 2021: "22GAR § 10104(C) (1) Erosion and Sediment Control Plans: Compliance. All clearing, grading, embankment or filling, excavating and other earthmoving moving operations, except those otherwise exempted from these regulations by the Administrator, must proceed in accordance with a duly approved Erosion and Sediment Control Plan. Respondent failed to implement erosion and sediment control best management practices (BMPs) in accordance with the approved Erosion and Sediment Control Plan." (Attachment # 6)



Marcus G. Finona  
Lead Investigator



Nida A. Bailey  
Investigation Supervisor



RECEIVED BY: D. H. Kim  
DATE: Jul 29, 2021 2:33pm

GUAM ENVIRONMENTAL PROTECTION AGENCY • AHENSIAN PRUTEKSION LINALA' GUAHAN  
LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA F. TENORIO • LIEUTENANT GOVERNOR OF GUAM  
WALTER S. LEON GUERRERO • ADMINISTRATOR | MICHELLE C. R. LASTIMOZA • DEPUTY ADMINISTRATOR

JUL 29 2021

Samsung E & C America, Inc.  
(Respondent)  
Mr. ByungHyup Kim, Project Manager  
Mangilao Solar Project  
P.O. Box 218008  
Barrigada, Guam 96921  
Contact # 689-1790

ATTACHMENT #1

Subject: Notice of Violation / Compliance Order / Penalty Order

The stated purpose of the Guam Soil Erosion and Sediment Control Regulations (GSESCR), 22 GAR Chapter 10, as implemented by Public Law 25-152, is "to control accelerated soil erosion, thereby preventing the pollution of Guam's waters from fertilizers, pesticides, sediments and other polluting substances carried by sediment, and to protect property and to promote the public health, safety and welfare by regulating grading, clearing, grubbing and stockpiling, and by setting minimum standards for erosion and sedimentation control for the island of Guam." Samsung E & C America, Inc. ("Respondent") has violated the GSESCR and is ordered to undertake remedial action(s) and pay a penalty as stated herein.

**BACKGROUND**

Respondent is actively engaged in earth moving operations as a part of the Mangilao Solar Project located at Lot 1 – R3 Tract 1541 in the Marbo area, Mangilao, Guam. The project was previously permitted through DPW under several different building permits, all of which were reviewed and approved by GEPA. Work on the project has been ongoing since at least July 20, 2020, according to GEPA staff observations and email correspondence from Respondent's engineer. On the morning of July 23, 2021, GEPA received a forwarded complaint alleging discharges of runoff and sediment from Respondent's site. The complaints included photos taken off-site showing accumulations of sediment and water on off-site properties, and one photo showing a large sediment plume in the ocean, alleged to have been caused by Respondent's activities. In response, GEPA conducted a site inspection on July 23 between approximately 11:30 a.m. and 12:30 p.m. and observed evidence of significant off-site discharge and sedimentation from at least two locations along the site perimeter. GEPA staff further observed, and Respondent staff confirmed, that the approved erosion and sediment control (E&SC) measures had not been fully installed, and that other E&SC measures were still in the process of being installed, despite construction being at an advanced stage. In addition, GEPA staff observed that despite construction of the solar facility being nearly completed, active soil stabilization through re-vegetation had not yet begun, and evidence of mass soil erosion was observed throughout the entire site.

GEPA conducted follow-up inspections on July 28 to document evidence of discharge from the "Pond 5" location and Marbo Cave (located off-site), and observed evidence of significant

discharge of runoff and sediment from Respondent's project site into the cave, resulting in extensive erosion damage and sedimentation in the cave pools.

See attached reports for additional details and photographs.

### NOTICE OF VIOLATION

Based on the facts described above, GEPA finds that Respondent violated the following provisions of the Guam Soil Erosion and Sediment Control Regulations, 22 GAR Chapter 10, as implemented by Public Law 25-152:

- ATTACHMENT  
#1
1. 22 GAR §10104(C)(1) Erosion and Sediment Control Plans: Compliance. *All clearing, grading, embankment or filling, excavating and other earth moving operations, except those otherwise exempted from these regulations by the Administrator, must proceed in accordance with a duly approved Erosion and Sediment Control Plan.*

Respondent failed to implement erosion and sediment control best management practices (BMPs) in accordance with the approved Erosion and Sediment Control Plan.

2. 22 GAR §10105(A)(1) Erosion and Sediment Control Plans and Measures: General policies for Erosion and Sediment Control. *All earth-moving operations on Guam shall be conducted in a manner that prevents accelerated land erosion, transportation of sediment to and along highways, or siltation of rivers, estuaries and marine waters.*

Respondent failed to conduct the earth moving activities undertaken at the site in a manner that prevents accelerated land erosion and siltation of marine waters. Specifically, the earth-moving activities were being conducted without the proper installation or use of erosion and sediment control best management practices (BMPs), and without implementing measures such as revegetation to stabilize previously disturbed areas, leaving the entire site vulnerable to erosion.

3. 22 GAR §10105(A)(5) Erosion and Sediment Control Plans: Compliance. *No person shall perform any earth-moving operation so as to cause falling rocks, soil or debris in any form to fall, slide or flow onto adjoining properties or waters of Guam.*

Respondent's earth-moving operations were conducted in such a way that allowed soil (sediment) to be carried in runoff which flowed onto adjoining properties, including Marbo Cave, and into waters of Guam.

4. 22 GAR §10105(B)(5)(e) Storm Water Drainage System and Control of Site Water Runoff. *Structural measures such as berms, dikes, traps, basins, shall be installed prior to any other grading, clearing, or disturbance of the existing surface of the site.*

Respondent failed to install structural erosion and sediment control measures in accordance with the approved Erosion and Sediment Control Plan, prior to all other grading, clearing, and construction activities which resulted in disturbance of the entire existing surface of the site.

ATTACHMENT  
#1

5. 22 GAR §10105(B)(10)(a) & (e) Stabilization of Affected Areas. (a) Stabilization of slopes, channels, ditches, berms, diversions, silt dams, or any disturbed areas shall begin as soon as possible and no later than thirty (30) calendar days after the final grade or final earth-moving activities has been completed; & (e) Any disturbed area not paved, sollded or built shall be seeded and mulched with vegetative cover appropriate to the soil type, as recommended by an engineer, or the condition of the area based on soil test analysis done by a laboratory. This condition does not prohibit the use of matting, gabion, armor coating on erodible surfaces or other type of vegetative cover that will minimize erosion.

Respondent failed to stabilize disturbed areas with appropriate vegetative cover within 30 days after final grade had been achieved throughout a majority of the site area.

#### COMPLIANCE ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, Respondent is HEREBY ORDERED to undertake the following remedial actions (all compliance dates shall be computed using calendar days):

1. **Within seven (7) days of receipt of this order:** Complete installation of interim measures intended to partially capture runoff and sediment prior to off-site discharge from the location of: (a) Pond 4 and (b) Pond 5. Coordinate approval of the scope and nature of such interim measures with GEPA and then contact GEPA for site inspection upon completion.
2. **Within fourteen (14) days of receipt of this order:**
  - a. Submit to GEPA a revised design which includes an armored overflow weir from Pond 1, similar to that provided for Pond 3, to prevent the failure of the pond embankment in the event of an overtopping storm event.
  - b. Complete the installation of the overflow weir at Pond 3, in accordance with the approved E&SC plan.
  - c. Complete active soil stabilization/revegetation measures as called for in the approved E&SC plans.
3. **Within thirty (30) days of receipt of this order:**
  - a. Complete installation of Ponds 2, 4, and 5 in accordance with the approved E&SC plan.
  - b. Complete the installation of the armored overflow weir for Pond 1.

Stand by to receive and implement additional order items directed toward the clean-up and restoration of off-site properties and resources damaged by discharges of runoff and sediment from the project site. Such order items will be provided to Respondent in writing and may include requirements to coordinate and conduct work in cooperation with relevant Government of Guam agencies and private landowners.

### PROPOSED PENALTY ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, GEPA hereby notifies Respondent of the Administrator's decision to issue a penalty order pursuant to 22 GAR §10114(b), which authorizes a civil penalty of no more than Ten Thousand Dollars (\$10,000) per day per violation, up to a maximum civil penalty of One Hundred Twenty-five Thousand Dollars (\$125,000).

GEPA is proposing a total civil penalty amount of Ten Thousand dollars (\$10,000) per violation, per day. In accordance with 22 GAR §10114(b)(2), this penalty is proposed based on the extent and gravity of the violation, and the following factors considered by GEPA: 1) the violation resulted in a significant, direct impact to neighboring properties, resources of cultural and recreational significance, and waters of Guam; 2) Respondent is a large and experienced company and yet knowingly deviated from the approved E&SC plans, permit conditions, and regulations of Guam; and 3) Respondent realized an economic benefit by using the space allotted for E&SC measures for office, staging, and stockpiling areas.

The time period over which GEPA is assessing the proposed \$10,000 penalty is for a period of three hundred sixty eight (368) days, from July 20, 2020, to July 23, 2021. For five (5) total violations over a period of three hundred sixty five (368) days, this amounts to a total of Eighteen Million, Four Hundred Thousand dollars (\$18,400,000). However, the total penalty that may be assessed by GEPA is limited by 22 GAR §10114(b) to \$125,000. **Therefore the total penalty amount is One Hundred Twenty-five Thousand Dollars (\$125,000).**

This order does not prevent GEPA from taking additional actions including the issuance of penalties under 22 GAR §10114(A)(a) or (b). Please also note that if you fail to take the remedial actions listed above within the required timeframe(s), additional violations, remedial actions, and penalties may be assessed by Guam EPA.

### RIGHT TO APPEAL:

You may file within thirty days of the date of your receipt of this Notice of Violation/Compliance Order/Penalty Order, a Notice of Intent to Appeal also known as a Notice of Defense with the Guam EPA's Board of Directors. A copy of the Notice of Intent to Appeal/Notice of Defense is attached for your convenience.

Unless a written request for a hearing signed by or on behalf of the person, agency or business entity named above in this Notice of Violation/Compliance Order/Penalty Order is hand delivered or mailed to GEPA within thirty days after the Notice of Violation/Compliance Order/Penalty Order was personally served on you or mailed to you, GEPA may proceed upon the Notice of Violation/Compliance Order/Penalty Order without a hearing. A request for hearing may be made by delivering the enclosed form entitled "Notice of Intent to Appeal also known as A Notice of Defense", or by delivering a notice of defense as provided in 5 GCA §9205, to the following address:

Guam Environmental Protection Agency Board of Directors  
C/o Administrator Guam Environmental Protection Agency  
Building 17-3304 Mariner Avenue  
Tiyan Barrigada, Guam 96913


If you file a Notice of Intent to Appeal/Notice of Defense, the GEPA's Board of Directors shall hold a public hearing, at which time you may appear and present evidence in person or through counsel in support of this petition.

Failure to file a Notice of Intent to Appeal within the period specified above will constitute a waiver of your right to a hearing. If you waive your rights to a hearing the Notice of Violation/Compliance Order/Penalty Order will become final, and GEPA may proceed upon the Order without a hearing and without further notice to you.

Should you have any questions or need additional information, please do not hesitate to contact me and my staff at Water Pollution Control Program or Water Division Chief Engineer, CAPT Brian Bearden, P.E., BCEE at 300-4786 and 300-4779, respectively.

*Dangkolu na si Yu'us ma'äse'.*

*Senseramente,*

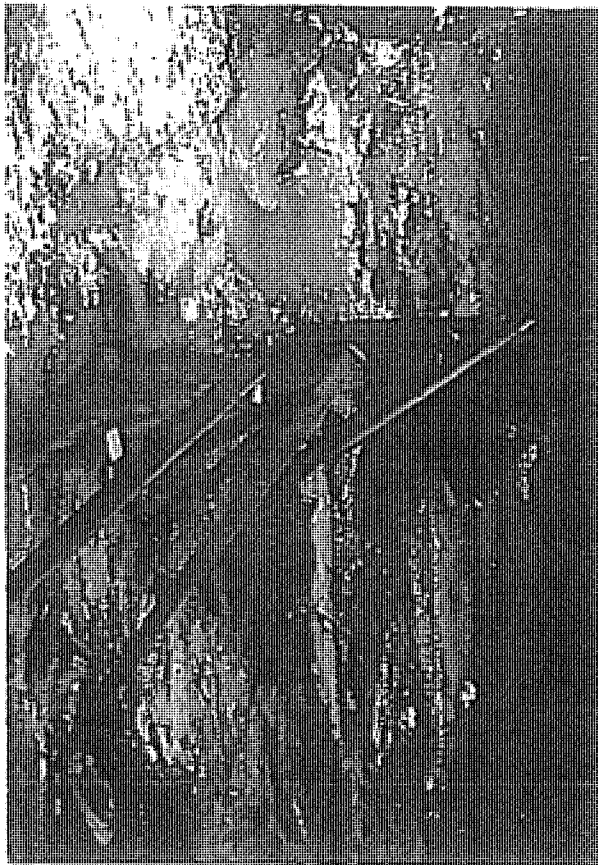
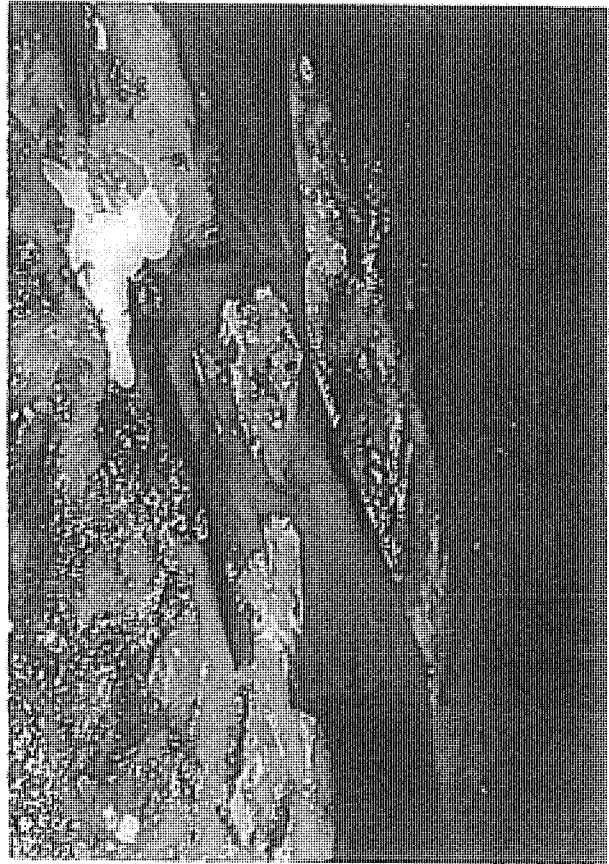
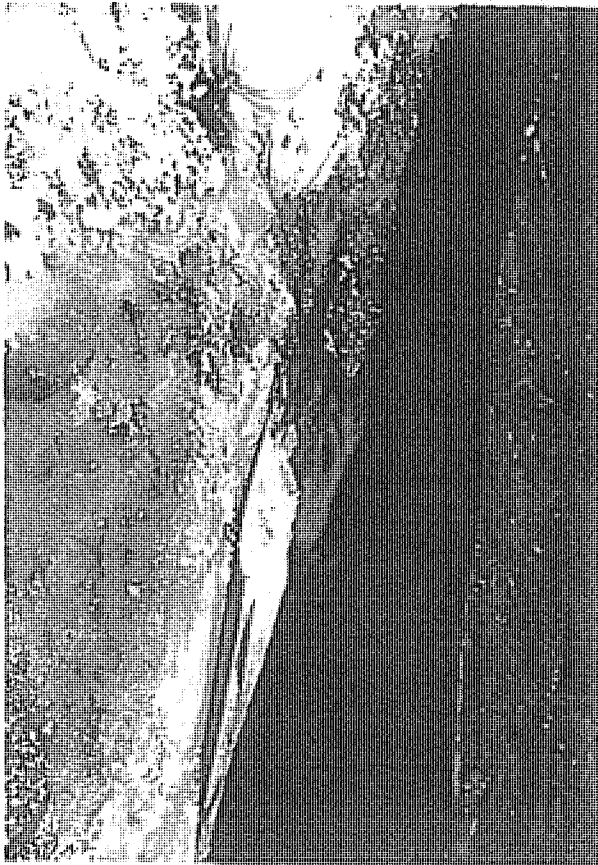


WALTER S. LEON GUERRERO  
Administrator

Attachments: Notice of Defense Form  
Chief Eng. Inspection Report dated July 23 & 28, 2021  
EMAS Inspection Report dated July 28, 2021

cc: GEPA Legal Counsel

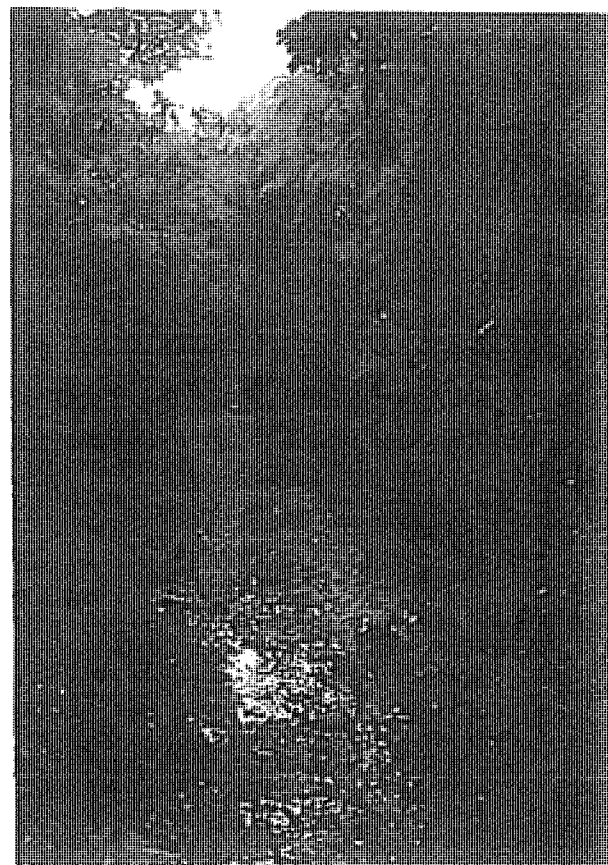
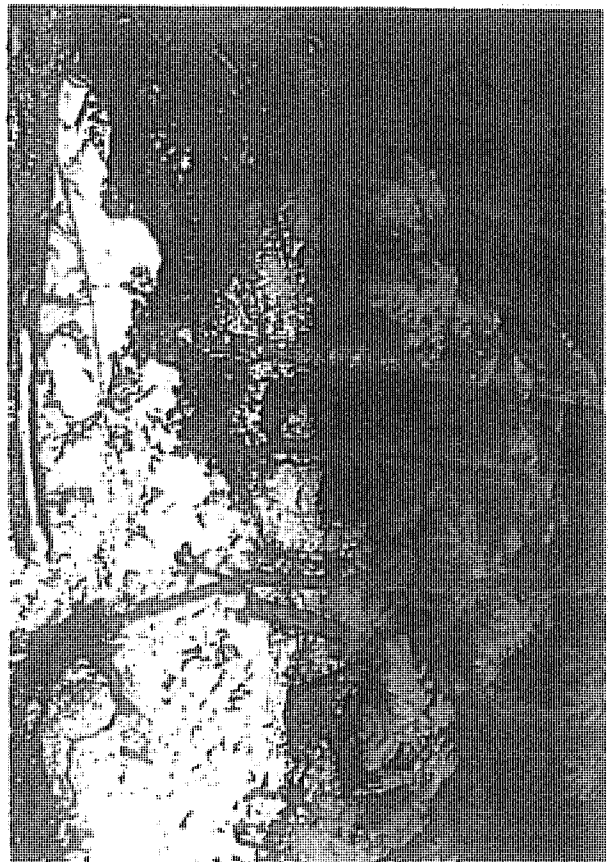




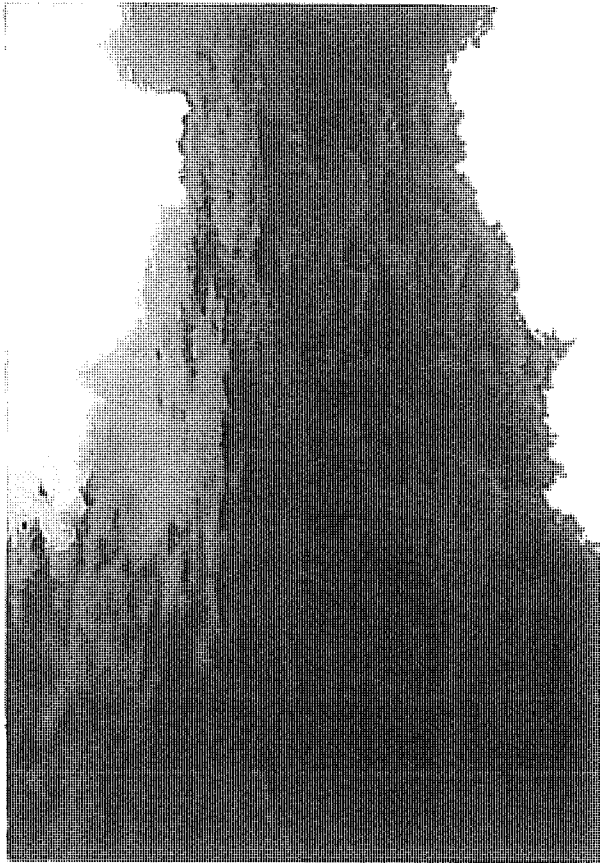
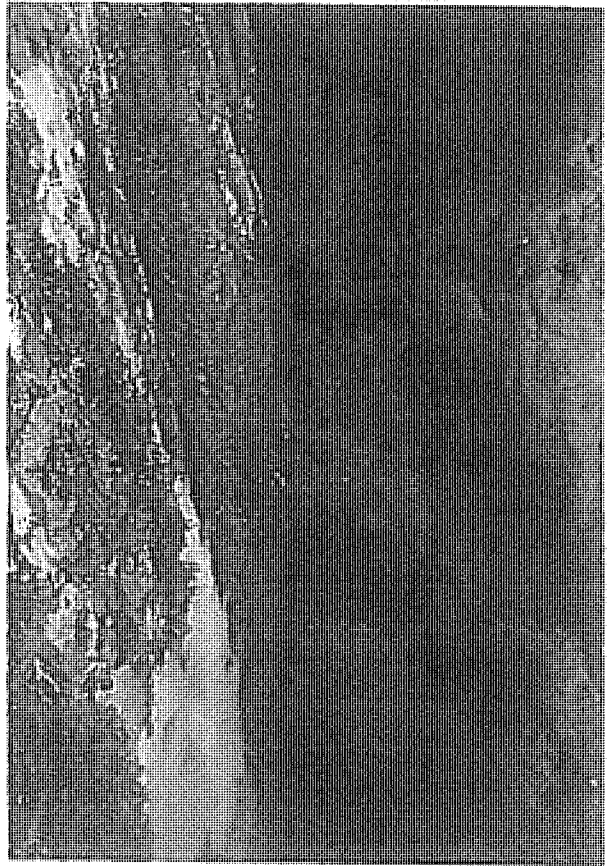
(08/02/2021) Silt Fences damaged by Soil Erosion



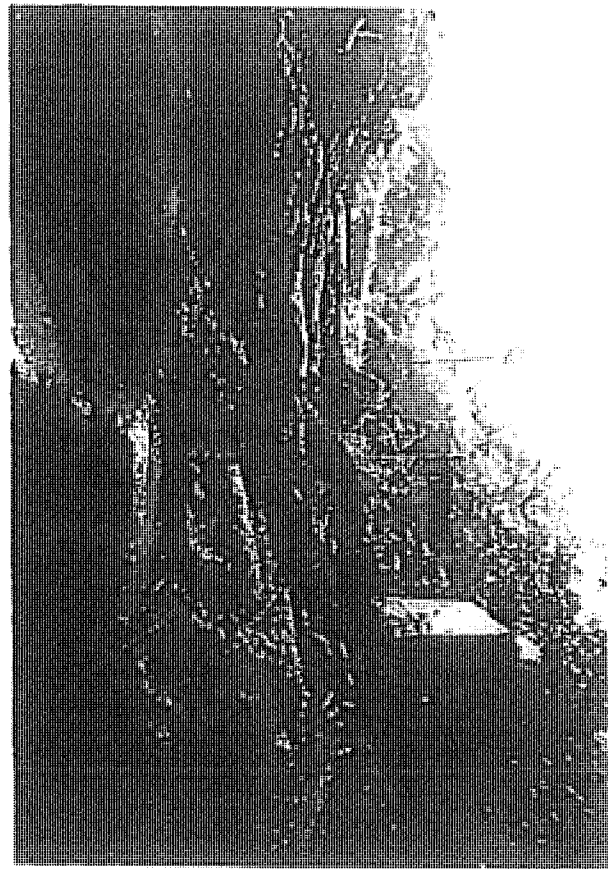
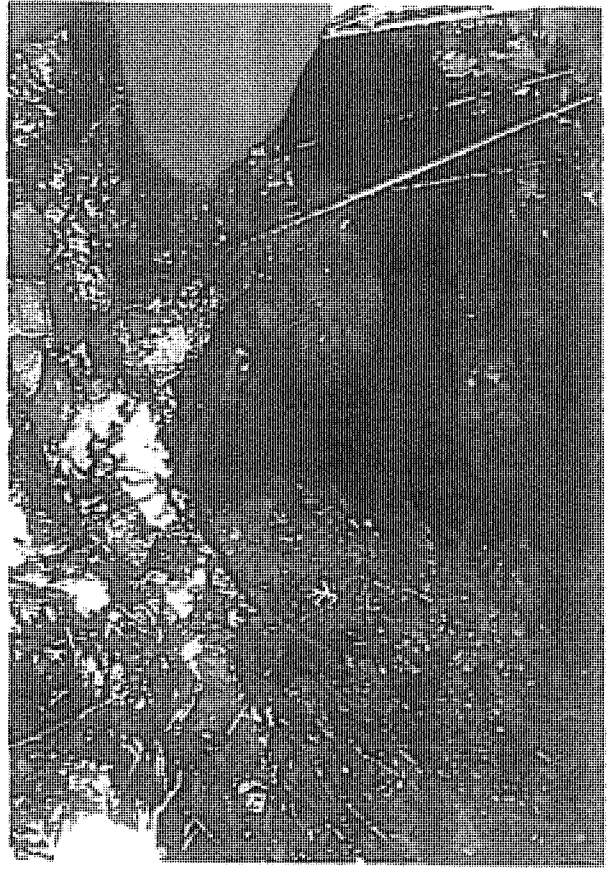
(08/02/2021) Neighboring areas that were damaged by the soil erosion leading down to Marbo Cave



(08/02/2021) Neighboring areas that were damaged by the soil erosion leading down to Marbo Cave



(08/02/2021) Topside area of the entrance into Marbo Cave damaged by the soil erosion



(08/02/2021) Marbo Cave damaged by soil erosion



# CONTRACTORS LICENSE BOARD

*Inetnon Malisensiayen Kontratista*  
542 North Marine Corp Drive A. - Tamuning, Guam 96911  
649-2211, 9676, 2212, 647-2965 649-2210(Fax)



LOURDES A. LEON GUERRERO  
GOVERNOR

CECIL "Buddy" L. ORSINI  
EXECUTIVE DIRECTOR

JOSHUA F. TENORIO  
LI. GOVERNOR

## NOTICE TO APPEAR

COPY

Date: August 4, 2021

To: SAMSUNG E & C AMERICA, INC,  
Mr. Byung Hyup Kim, Director/Project Manager  
Mr. Ian J. Chong (R.M.E.)  
388 South Marine Corps Drive  
Suite 102  
Tamuning, Guam 96913

ATTACHMENT  
# 3-A

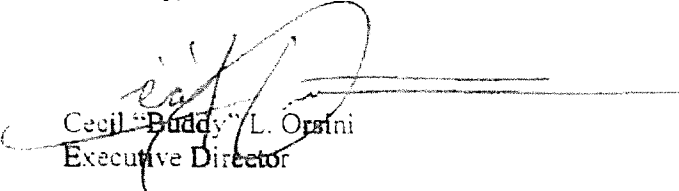
Subject: NOTICE OF VIOLATION  
Case# 2021-08-01  
CLB VS. SAMSUNG E & C AMERICA, INC.

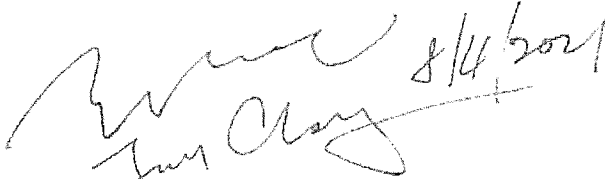
Dear Kim & Mr. Chong,

You are hereby given a notice to appear before the Contractors License Board (CLB) Investigation Unit on August 6, 2021 @ 9:00 a.m. regarding a Notice Of Violation against your company. The location for this meeting is at the Contractors License Board Conference Room, Department of Public Works Compound, 542 North Marine Drive, Tamuning, Guam.

Upon receipt of this notice, you are instructed to contact the Guam Contractors License Board Investigation Unit at 649-2213 to confirm your appointment.

Sincerely,

  
Cecil "Buddy" L. Orsini  
Executive Director

  
Ian Chong 8/4/2021

Cc: Board Chairman

COPY

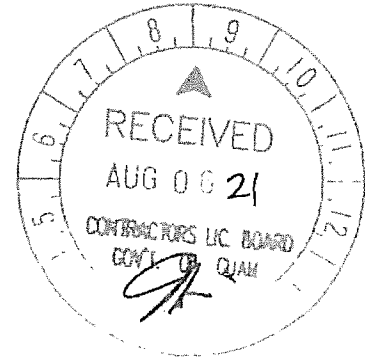
MANGILAO SOLAR PROJECT

Activity/Item	Original Duration	Start	Finish	2020	2021	2022
<b>Soil Investigation</b>						
Contract - Soil Investigation Subcontract	146	01-Jan-2020	25-May-2020			
GPVCPW0010	20	01-Jan-2020	20-Jun-2020			
GPVCPW0020	44	26-Jun-2020	09-Mar-2021			
GPVCPW0030	33	10-Mar-2021	11-Apr-2021			
GPVCPW0040	20	12-Apr-2021	01-May-2021			
GPVCPW0050	44	12-Apr-2021	25-May-2021			
GPVCPW0060	446	07-May-2021	26-Jun-2021			
<b>Preliminary Works</b>						
Common						
GPVCPW0001	117	07-May-2020	31-Aug-2020			
GPVCPW0010	25	07-May-2020	31-Aug-2020			
GPVCPW0020	10	07-May-2020	18-May-2020			
GPVCPW0030	25	07-May-2020	31-May-2020			
GPVCPW0040	72	07-May-2020	17-Jul-2020			
GPVCPW0050	30	11-Jun-2020	10-Jul-2020			
GPVCPW0060	20	11-Jul-2020	30-Jul-2020			
GPVCPW0070	62	01-Aug-2020	31-Aug-2020			
GPVCPW0080	32	31-Jul-2020	31-Aug-2020			
GPVCPW0090	152	01-Jul-2020	29-Nov-2020			
GPVCPW0100	57	04-Oct-2020	28-Nov-2020			
GPVCPW0110	90	01-Sep-2020	29-Nov-2020			
GPVCPW0120	78	01-Jul-2020	16-Sep-2020			
GPVCPW0130	119	30-Mar-2021	26-Jun-2021			
GPVCPW0140	119	30-Mar-2021	26-Jun-2021			
GPVCPW0150	91	20-Apr-2021	19-Jul-2021			
GPVCPW0160	60	30-Mar-2021	28-May-2021			
GPVCPW0170	42	08-Jun-2021	19-Jul-2021			
GPVCPW0180	14	13-Jul-2021	26-Jul-2021			
GPVCPW0190	14	13-Jul-2021	26-Jul-2021			
GPVCPW0200	101	30-Mar-2021	08-Jul-2021			
GPVCPW0210	03	17-Apr-2021	08-Jul-2021			
GPVCPW0220	77	09-Apr-2021	24-Jun-2021			
GPVCPW0230	60	30-Mar-2021	28-May-2021			
GPVCPW0240	77	09-Apr-2021	24-Jun-2021			
GPVCPW0250	15	29-May-2021	12-Jun-2021			
GPVCPW0260	183	14-Jul-2020	12-Jun-2021			
GPVCPW0270	155	14-Jul-2020	15-Dec-2020			
GPVCPW0280	4	14-Jul-2020	17-Jul-2020			
GPVCPW0290	14	16-Dec-2020	29-Dec-2020			
GPVCPW0300	14	30-Dec-2020	12-Jan-2021			
GPVCPW0310	28	16-Dec-2020	12-Jan-2021			
GPVCPW0320	7	16-Dec-2020	21-Dec-2020			
GPVCPW0330	7	23-Dec-2020	29-Dec-2020			
GPVCPW0340	7	30-Dec-2020	05-Jan-2021			
GPVCPW0350	7	06-Jan-2021	12-Jan-2021			
<b>Drainage</b>						
GPVCPW0001						
GPVCPW0020						
GPVCPW0030						
GPVCPW0040						
GPVCPW0050						
GPVCPW0060						
GPVCPW0070						
GPVCPW0080						
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GPVCPW1730						
GPVCPW1740						

COPY

## Re-Design Notice Re New Pond 5 G20000024 Mangilao Solar PV/ESS Project

작성자 Kin Flores (2021-01-21 13:34:09)  
 수신인 Peter S. Trinidad <peter.trinidad@dpw.guam.gov>  
 참조인 임상룡 <berry@samsung.com>  
 윤철응 Yoon <cu7817.yoon@samsung.com>  
 '김홍복' <heungbok.kim@samsung.com>  
 Jeff Miller <jeffm@tg-engr.com>  
 Simon Camacho <simonc@tg-engr.com>  
 Jack Edward <jacke@tg-engr.com>  
 Janessa Pinaula <janessap@tg-engr.com>



Buenas Yan Hafa Adai Peter,

I am submitting a written record for the Mangilao Solar PV/ESS project design change for a new retention pond for stormwater control and management. Please refer to my letter attached above. This letter also memorializes your phone call with Mr. Simon Camacho on January 20, 2021 relative to this subject matter.

Please let me know if you have any questions.

Your continual support and assistance is very much appreciated.

Si Yu'us Ma'ase

Kin Flores, P.E.  
 Director of Energy Projects

**TG ENGINEERS, PC**

1000 ...  
 2000 ...

1. Re: Mangilao Solar Farm - Stockpile Area Clarification and New Pond 5.eml
2. Mangilao Solar Farm - Pond 5.pdf
3. Mangilao Solar Farm - Overall grading and drainage.pdf
4. Catchment Areas.pdf
5. Pond Calculations 20201202.pdf
6. Letter Re Pond 5 Re-Design Notice to DPW 01-19-21.pdf

ATTACHMENT  
#3-C



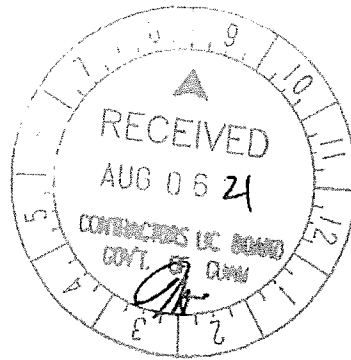
COPY

Contract Price for Ponding Basin #5A, 5B

Guam Mangilao Solar PV Project

(as of Aug 6, 2021) *[Signature]*

No.	Item	Amount
		(USD)
1	Cutting	51,493
	Silt Fence	830
	<b>Sub-Total</b>	<b>52,323</b>
2	Cutting	12,873
	Embankment	12,611
	Spill way	8,662
	Silt Fence	830
	<b>Sub-Total</b>	<b>34,976</b>
<b>Total</b>		<b>87,299</b>



ATTACHMENT  
#3-D



# CONTRACTORS LICENSE BOARD

*Inetnon Malisensiayen Kontratista*  
542 North Marine Corps Drive A. - Tamuning, Guam 96913  
649-2211, 649-9676, 649-2210 (Fax)  
Website: www.clb.guam.gov



LOURDES A. LEON GUERRERO  
Maga'lahi

JOSHUA F. TENORIO  
Siguanto Maga'lahi

CECIL "BUDDY" L. ORSINI  
Direktor Eksekutibu

---

Date: August 10, 2021  
Time: 2:00 PM  
Location: CLB Conference room  
Regarding: Meeting with Ian Chong: RME for Samsung E&C  
In attendance: Ian Chong – RME for Samsung E&C  
Cecil "Buddy" L. Orsini – Executive Director of CLB  
Nida A. Bailey – Investigator Supervisor of CLB  
Marcus Finona – Investigator  
Andrew Mesa – Investigator  
Aaron Aragon – Investigator  
Geraldynn T. Stanley – Private Secretary

ATTACHMENT #4

Nida Bailey started by notifying Mr. Chong that the purpose of the meeting, is to follow up on the meeting held on Friday 8/6/2021 about the proposed violation on the solar farm project that affected Guam Landmark, Marbo Cave with Samsung as the contractor.

Nida verified and acknowledged the documents that were submitted at the last meeting with Samsung:

- Geo-Engineering & Testing Inc. – Lab Test Report (4 Pages)
- Contract Price for Ponding Basin #5A & #5B
- Email Transmission – Re: Design notice renew Pond 5 G20000024 Mangilao Solar PV/ESS Project
- Projected Work Schedule – Mangilao Solar Project

Ms. Bailey stated that the CLB wanted to clarify with Mr. Chong that the reason why this problem with the erosion that happened and affected Marbo Cave is because there is not enough efficient erosion measures on the site and Samsung did not follow the construction plans reviewed by EPA. She asked Mr. Chong if she is correct on stating that fact. Mr. Chong replied "Actually they not follow the requirement from EPA, actually the ponding basin #5 is the new design update to us". He continued to explain that their original contract only went up to ponding basin 4. Ms. Bailey acknowledged that those statements are true and reflect on the documents submitted, however we are focusing our investigation on the failure of erosion control, because that is the main problem that happened there. Ms. Bailey asked Mr. Chong if the four original ponding basins were completed on time. He responded yes. Ms. Bailey then asked "so then why

CLB meeting with Samsung E&C America Inc. RME: Ian Chong

was there a failure on your erosion control". Mr. Chong stated that ponding basins 1 to 4 doesn't have any effect to the problem, it was ponding basin 5. Ms. Baily asked "So meaning to say the ponding basin 5 is not yet constructed". Mr. Chong replied "We did a portion of it, but it's not yet complete". Ms. Bailey asked when it would be complete. Mr. Chong stated that they are about 90-95% done. Ms. Bailey asked "Would you say the main reason for all this erosion all the way to the cave is because the ponding basin 5 is not there". Mr. Chong stated that the basin 5 was there, but there was overflow because there has been so much heavy rain. Ms. Bailey stated that based on EPA's finding, you failed to implement the erosion and sediment control best management practices in accordance with the approved plan. She asked "Do you agree with this, you failed, Samsung failed to implement this". Mr. Chong responded "Yeah, Yes".

Ms. Bailey stated that since there is full agreement and Mr. Chong acknowledges the failure on Samsungs side to follow the plans recommended by EPA, there is a violation on the rules and regulations under public law as a contractor under 21 GCA Real Property chapter 70 contractors' public law 30-11.

Ms. Bailey acknowledged receiving the Contract Price for Ponding Basin #5, however stated that it is informal. She requested from Mr. Chong to resubmit this document with a formal letterhead. She also requested that Mr. Chong provide CLB with the total contract amount of the erosion control measures that was not followed. Mr. Chong acknowledged and will provide CLB with a breakdown of the amount by Friday 8/13/21.

ATTACHMENT #4



**DIRECT COST FOR EROSION CONTROL & DRAINAGE WORK**

Guam Mangilao Solar Project

Unit : USD

Work s Code	Description	Unit	Qty	Contract		Remark
				Unit Price	Amount	
J5201	Site Preparation & Formation Works					
	Temporary Erosion Control					
	Temporary Erosion Control (Silt Fence, Sand Bag, etc.)	lot	1	99,539.10	99,539	
	Pond Formation					
1 Pond1	Cutting	yd3	23,543	13.86	326,306	
	Embankment	yd3	713	11.31	8,064	
2 Pond2	Cutting	yd3	3,735	13.86	51,767	
	Embankment	yd3	58	11.31	656	
3 Pond3	Cutting	yd3	15,341	13.86	212,626	
	Embankment	yd3	12,798	11.30	144,617	
4 Pond4	Cutting	yd3	680	13.86	9,425	
	Embankment	yd3	6,190	11.31	70,009	
5 Pond5	Cutting	yd3	4,644	13.86	64,366	
	Embankment	yd3	1,115	11.31	12,611	
6 RipRap		yd2	817	53.01	43,309	
7 Gravel Protection		yd2	2,022	8.61	17,413	
J6605	Drainage					
	Swale	yd	3,237	23.84	77,172	
	Total				1,137,881	

ATTACHMENT  
#5-A



Nida Bailey <nida.bailey@clb.guam.gov>

[IAN Corporation] Cost Breakdown for Erosion Control & Drainage Work

2 messages

Junhyoung Park <junpark@ianconstruction.com>  
To: "nida.bailey@clb.guam.gov" <nida.bailey@clb.guam.gov>  
Cc: Ian Chong <ian@ianconstruction.com>

Fri, Aug 13, 2021 at 11:48 AM

Hello Ms. Bailey,

This is Jun Park with IAN Corporation.

As you requested to Mr. Chong, here is the cost breakdown for Erosion Control & Drainage Work.

Please acknowledge upon receipt of this.

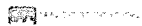
If you have any concerns or questions, please do not hesitate to contact me.

ATTACHMENT  
#5-B

Thank you

Very respectfully

Junhyoung Park



www.ianconstructionguam.com

Mailing: P.O. Box 26764 GMF Barrigada, GU 96921

Physical: 210 E. Route 8 Barrigada, GU 96913

Office: (671) 734-3939

Fax: (671) 734-7762

Cell: (671) 668-2910

e-mail: junpark@ianconstruction.com

CONFIDENTIALITY NOTICE: This message is from IAN Corporation. The information, attachments and/or documents contained in this e-mail message may be confidential and/or proprietary and is intended only for the sole use of the identified recipient(s). Any unauthorized review, use, copying, disclosure, or distribution is prohibited. If you have received this transmission in error, please notify the sender by return email and destroy immediately.



# Mangilao Solar Project



SAMSUNG E&C AMERICA, INC.

P.O. Box 218008, GMF (Guam Main Facility)  
Barrigada, Guam 96921

Date: August 13, 2021

Document Number: MSP-SEC-CLB-G-0001-NRR

Contractors License Board  
Investigation Unit  
542 North Marine Corp Drive A,  
Tamuning, Guam, 96911

ATTACHMENT  
#5-D

Attn: Mr. Cecil "Buddy" L. Orsini / Executive Director  
Cc : Ms. Nida A. Bailey / Investigation Supervisor

Subject: Information submission for Notice of Violation Case#2021-08-01

Dear Sir,

In regards to your request dated August 10, 2021, we hereby provided additional information for the caption subject. The cost breakdown for erosion control which is situated in vicinity of Marbo Cave is \$87,299. Whereas the overall amount for the erosion control of the Mangilao Solar Project is \$1,137,881. Please find the attachment titled "Cost Breakdown for Erosion Control" for further details.

We are providing hard copies of the information submitted on August 6, 2021 again for your official record. This letter and the attachments are confidential property of Samsung E&C America, Inc. ("Samsung") and they contain sensitive information such as quantity and unit price etc. Please note disclosure of such information could prejudice Samsung's interest. Your kind attention and extra care on information management will be highly appreciated.

Should you need further information, please let us know.

Best regards,

---

Kim, Byung Hyup  
Project Manager  
Mangilao Solar Project

Attachments:

1. Cost Breakdown for Erosion Control (as of August 13, 2021)
2. Information submitted on August 6, 2021: ① DPW Permit confirmation for Pond #5, ② Contract Price for Ponding Basin #5A, 5B, ③ Planned Schedule, ④ Laboratory Test Report

ATTACHMENT  
#5-E

Cost Breakdown for Erosion Control

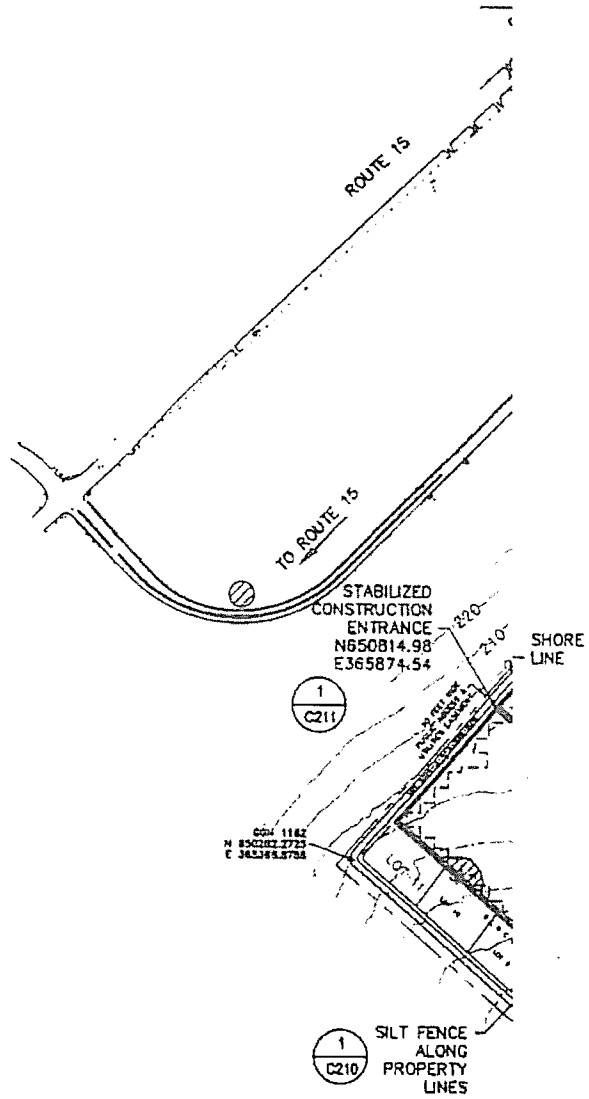
Mangilao Solar Project, Guam

As of August 13, 2021

No.	Item		Amount			
			Unit	Q'ty	U/price	(USD)
1	Pond #5A	Cutting	CY	3,715	13.86	51,493
		Temp. Erosion Control (Silt Fence, Sand bag, etc.)	ft	150	5.53	830
		<b>Sub-Total</b>				<b>52,323</b>
2	Pond #5B	Cutting	CY	929	13.86	12,873
		Embankment	CY	1,115	11.31	12,611
		Rip Rap (incl. Spill way)	yd2	163	53.01	8,662
		Temp. Erosion Control (Silt Fence, Sand bag, etc.)	ft	150	5.53	830
	<b>Sub-Total</b>				<b>34,976</b>	
<b>Total (#5A/B)</b>						<b>87,299</b>
3	Pond #1	Cutting	CY	23,543	13.86	326,306
		Embankment	CY	713	11.31	8,064
		Rip Rap	yd2	204	53.01	10,827
		Temp. Erosion Control (Silt Fence, Sand bag, etc.)	ft	1,000	5.53	5,530
	<b>Sub-Total</b>				<b>350,727</b>	
4	Pond #2	Cutting	CY	3,735	13.86	51,767
		Embankment	CY	58	11.31	656
		Rip Rap (incl. Spill way)	yd2	82	53.01	4,331
		Temp. Erosion Control (Silt Fence, Sand bag, etc.)	ft	600	5.53	3,318
	<b>Sub-Total</b>				<b>60,072</b>	
5	Pond #3	Cutting	CY	15,341	13.86	212,626
		Embankment	CY	12,798	11.30	144,617
		Rip Rap (incl. Spill way)	yd2	204	53.01	10,827
		Temp. Erosion Control (Silt Fence, Sand bag, etc.)	ft	1,800	5.53	9,954
	<b>Sub-Total</b>				<b>378,024</b>	
6	Pond #4	Cutting	CY	680	13.86	9,425
		Embankment	CY	6,190	11.31	70,009
		Rip Rap (incl. Spill way)	yd2	163	53.01	8,662
		Temp. Erosion Control (Silt Fence, Sand bag, etc.)	ft	800	5.53	4,424
	<b>Sub-Total</b>				<b>92,520</b>	
7	All	Gravel Protection	yd2	2,022	8.61	17,413
<b>Total (#1-4)</b>						<b>898,756</b>
8	Temp. Erosion Control (Silt Fence, Sand bag, etc.) - Rest of Area		ft	13,500	5.53	74,654
9	Swale	Entire Area	yd	3,237	23.84	77,172
<b>Grand Total</b>						<b>1,137,881</b>



# ATTACHMENT #6



## TEMPORARY EROSION SEDIMENT CONTROL (TESC):

1. THE INTENT OF THE EROSION CONTROL PLAN IS TO MINIMIZE EROSION AND MAXIMIZE SEDIMENT RETENTION ON-SITE THROUGHOUT THE CONSTRUCTION PROCESS. FIVE (5) TESC PHASES HAVE BEEN DEVELOPED TO LIMIT GROUND DISTURBANCE TO A MANAGEABLE AND CONTROLLED AREA. IT IS RECOGNIZED THAT PHASE OVERLAP, WILL OCCUR AND ACTIVITIES WITHIN EACH PHASE CAN BE CONCURRENT. IT IS THE CONTRACTOR'S RESPONSIBILITY TO IMPLEMENT THE PLAN AND MANAGE AND CONTROL THE SITE TO MEET THE INTENT OF THE PLAN.
2. THE ENTIRE PERIMETER OF THE PROJECT WHICH SLOPES TOWARD OFFSITE WILL RECEIVE PROTECTION USING SILT FENCE, SWALES, CHECK DAMS, PONDING BASINS, AND OTHER BMPs AS REQUIRED.
3. SILT FENCE SHALL BE INSTALLED ALONG GROUND CONTOURS. CURVE ENDS UPGRADE TO PREVENT WATER FROM RUNNING AROUND ENDS. SILT FENCE SPACING RECOMMENDATION ACCORDING TO THE SLOPE OF THE GROUND:
  - <2% SLOPE, USE 50-FT SPACING
  - 2% - 8% SLOPE, USE 25-FT SPACING
  - >8% SLOPE, USE 10-FT SPACING
4. SEE SHEET C001 FOR COORDINATE DATA OF THE PROPERTY BOUNDARY AND THE CONSTRUCTION LIMIT.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR FINAL LAYOUT INSTALLATION, AND MAINTENANCE OF THE EROSION CONTROL BMPs TO MEET GUAM EPA SOIL EROSION AND SEDIMENT CONTROL REGULATIONS. THE CONTRACTOR SHALL CONDUCT PERIODIC INSPECTION OF THE EROSION CONTROL BMPs, ESPECIALLY FOLLOWING STORM EVENT, REPAIRING AND REMOVING AND DISPOSING OF SEDIMENT MATERIALS.
6. SHOULD EROSION OF EXPOSED CLEARED AND GRUBBED AREAS BE OBSERVED, THESE AREAS SHALL BE REGRADED TO MATCH ADJACENT CONTOURS AND COVERED WITH MULCHING, OR PLACEMENT OF LEAFY VEGETATION OR WOOD CHIP TO ARREST THE EROSION PROCESS.
7. THE CONTRACTOR SHALL USE THE PONDS AS TEMPORARY EROSION AND SEDIMENT CONTROL BMP TO CONTROL THE WATER RUNOFF DURING CONSTRUCTION. FOLLOWING FINAL GRADING, THE CONTRACTOR SHALL EXCAVATE AND REMOVE ALL SEDIMENTS AND DEBRIS ACCUMULATION IN THE POND(S) TO THE LIMITS SHOWN IN THE PONDING BASIN PLANS
8. INSTALL SAND BAGS OR OTHER APPROVED BMP TO INTERCEPT PAVEMENT RUNOFF AND DIVERT AROUND WORK AREA AND INTO SEDIMENT TRAPPING AND SETTLING DEVICES.
9. WASHING SHALL BE DONE ON AN AREA STABILIZED WITH STONE AND DRAINS TO AN APPROVED SEDIMENT TRAPPING DEVICE.
10. THE CONTRACTOR SHALL INSTALL THE PERIMETER EROSION CONTROL BMP'S AND PONDING BASINS PRIOR TO ANY GRUBBING OR EARTHWORK ACTIVITIES.
11. AS SOON AS POSSIBLE FOLLOWING COMPLETION OF FINAL GRADES, THE CONTRACTOR SHALL IMMEDIATELY INSTALL SOILS PREPARATION ITEMS AS DETAILED TO PROTECT THE GRADED AREAS FROM EROSION.

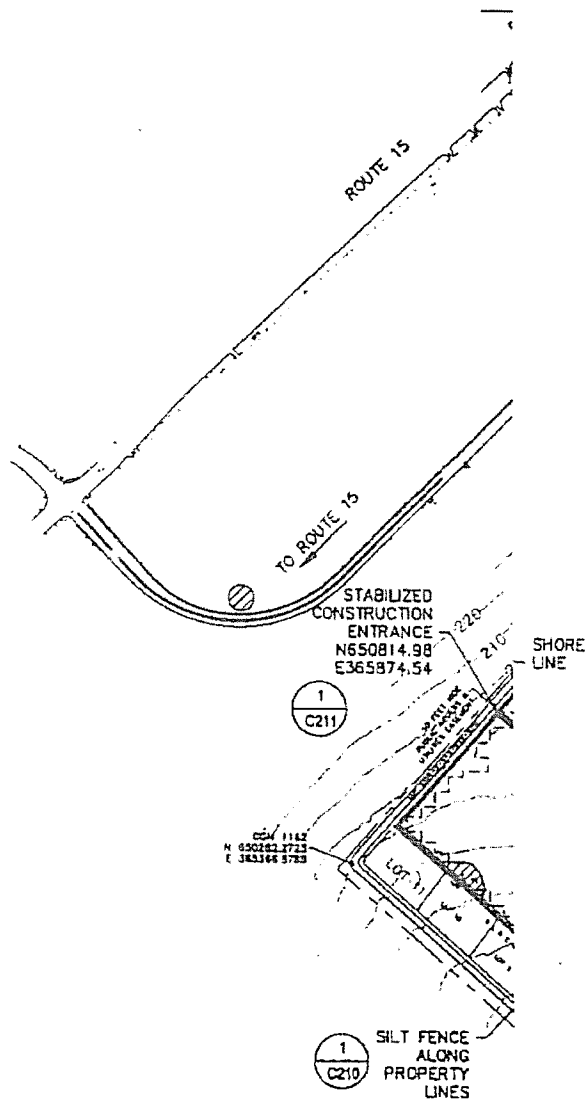
PROJECT TITLE	LOT 1 - R3 TRACT 1541 CLEARING AND ROUGH GRADING
DRAWING TITLE	SITE EROSION CONTROL PLAN

**TG ENGINEERS, PC**

Engineer

This work was prepared by me  
or under my responsible control

# EXHIBIT #3



## TEMPORARY EROSION SEDIMENT CONTROL (TESC):

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PROJECT TITLE	LOT 1 - R3 TRACT 1541 CLEARING AND ROUGH GRADING
DRAWING TITLE	SITE EROSION CONTROL PLAN

**TG ENGINEERS, PC**

Engineer:

The work was prepared by me or under my responsible control



# CONTRACTORS LICENSE BOARD

*Inetnon Malisensiayen Kontratista*

542 North Marine Corps Drive A. - Tamuning, Guam 96913

649-2211, 649-9676, 649-2210 (Fax)

Website: [www.clb.guam.gov](http://www.clb.guam.gov)



LOURDES A. LEON GUERRERO  
Maga'hága

JOSHUA F. TENORIO  
Sigundo Maga'tahu

CECIL "BUDDY" L. ORSINI  
Direktor Eksekutibu

---

Date: August 10, 2021  
Time: 2:00 PM  
Location: CLB Conference room  
Regarding: Meeting with Ian Chong; RME for Samsung E&C  
In attendance: Ian Chong – RME for Samsung E&C  
Cecil "Buddy" L. Orsini – Executive Director of CLB  
Nida A. Bailey – Investigator Supervisor of CLB  
Marcus Finona – Investigator  
Andrew Mesa – Investigator  
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CLB meeting with Samsung E&C America Inc. RME: Ian Chong

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EXHIBIT #4



**CONTRACTORS LICENSE BOARD  
GOVERNMENT OF GUAM**  
542 N. Marine Corps Drive – A  
Tamuning, Guam 96913

**THE CONTRACTORS LICENSE BOARD,** )  
 )  
 )  
 Agency, )  
 )  
 vs. )  
 )  
 SamSung E & C America, Inc. )  
 License # CLB 19-1558 )  
 P.O. Box 218008 )  
 G.M.F. , Guam 96921 )  
 )  
 Respondent.

**NOTICE OF DEFENSE**

Please fill out and return this NOTICE OF DEFENSE to the Chairman, Contractor's License Board, 542 North Marine Corps Drive – A, Tamuning, Guam, 96911, within fifteen (15) days after the Accusation and Statement of Charges are served upon you. A failure to submit shall be deemed a waiver of a right to a hearing.

Indicate whether you request a hearing by placing an "X" in the appropriate box:

- YES, I do request for a hearing.
- NO, I do not request for a hearing.

Indicate which of the following objections, if any, you wish to make concerning the accusations against you by placing an "X" in the appropriate box:

- The accusation does not state acts or grounds upon which the Contractors License Board may proceed.

The form of the accusation is so indefinite or uncertain that I cannot identify the nature of the alleged acts committed to adequately prepare my defense.

I submit the following defense not previously specified herein (please specify):

---

---

---

Place an "X" in any of the following boxes, if appropriate:

I admit to the accusation in its entirety.

I admit to the following parts of the accusation:

---

---

---

\_\_\_\_\_  
Name  
Respondent

\_\_\_\_\_  
Date

# Exhibit “3”



GUAM ENVIRONMENTAL PROTECTION AGENCY • *AHENSIAŃ PRUTEKSIÓN LINA LA' GUÁHAN*

LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA F. TENORIO • LIEUTENANT GOVERNOR OF GUAM  
WALTER S. LEON GUERRERO • ADMINISTRATOR | MICHELLE C. R. LASTIMOZA • DEPUTY ADMINISTRATOR

**AUG 16 2021**

Samsung E & C America, Inc.  
(Respondent)  
Mr. ByungHyup Kim, Project Manager  
Mangilao Solar Project  
P.O. Box 218008  
Barrigada, Guam 96921  
Contact # 689-1790

**Subject: Amended Compliance Order: Amendment No. 1**

On the basis of additional information obtained through subsequent inspections, communications from Samsung E & C America, Inc. ("Respondent"), and other information following the issuance of the Notice of Violation / Compliance Order / Penalty Order ("Order") on July 29, 2021, the Guam Environmental Protection Agency ("GEPA") hereby amends the Compliance Order section of the order as follows. This Amended Compliance Order does not change the previous Notice of Violation or Penalty Order, and all previous Compliance Order Items remain in effect unless modified in writing by GEPA.

### COMPLIANCE ORDER:

Based on the Violations described in the July 29, 2021 Order, and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, Respondent is **HEREBY ORDERED** to undertake the following remedial actions (all compliance dates shall be computed using calendar days).

4. **Within seven (7) days of receipt of this Amendment:**  
Submit a detailed cleanup and restoration plan for the Marbo Cave area for GEPA review. Cleanup and restoration measures must accomplish, at a minimum:
  - a. the removal of sediment from inside the cave and its pools;
  - b. the removal of sediment from the area immediately adjacent to the cave entrance;
  - c. the stabilization of the soil surface adjacent to the cave entrance following sediment removal; and
  - d. the restoration of steps and other private property damaged by the flow of water and sediment.

The plan must include a full description of the methods, equipment, and personnel needed to accomplish the proposed cleanup and restoration work, and a schedule detailing the time

GUAM EPA | 17720, Mangilao, Guam | P.O. Box 218008, Barrigada, Guam 96921 | Tel: (671) 246-7500 | Fax: (671) 246-7501 | Email: ge@gepa.guam.gov  
A L I P N S C O R D I N A T I O N R E G I S T R A R I O N I D O C U M E N T A T I O N

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required to accomplish the proposed cleanup and restoration work. Respondent shall be responsible for obtaining all necessary permissions from the property owner for access, cleanup, and restoration activities.

GEPA will coordinate review of Respondent's cleanup and restoration plan with stakeholders including, but not limited to the property owner, the Guam Department of Agriculture, the Guam Department of Parks and Recreation, and the Guam Department of Public Works. Respondent must respond promptly to requests for additional information and revisions to the cleanup and restoration plan during the review process. GEPA will provide additional, written instructions upon the conclusion of the review process. Respondent shall not commence any cleanup and restoration activities until receiving written instruction from GEPA to do so.

**5. Within fourteen (14) days of receipt of this Amendment:**

Submit to GEPA an engineering evaluation of the overall flow and distribution of stormwater runoff within Respondent's site. The evaluation must address, but is not limited to the following:

- a. Verification based on as-built grades that the amount of runoff conveyed to each sediment basin (pond) is less than or equal to the design capacity of the pond. If the amount of runoff conveyed to any single pond exceeds the original design capacity of the pond, the engineering evaluation must contain recommendations for mitigation to correct the problem to ensure that pond capacity will not be exceeded.
- b. An evaluation of off-site runoff that may be entering the site, and how this can be mitigated if it was not a part of the originally approved site design

**6. Within fourteen (14) days of receipt of this Amendment:**

Submit to GEPA an erosion and sediment control (E&SC) plan for the area of the project site that lies outside the swales that serve Pond 3. This plan needs to address the prevention of discharges to neighboring properties of sediment and runoff in excess of pre-development conditions. In addition, the plan must address prevention of erosion from the discharge of Pond 3, which currently spills onto a fill slope high above the property boundary.

**7. Within fourteen (14) days of receipt of this Amendment:**

Submit to GEPA a soil stabilization and revegetation plan detailing the proposed methods and timeline to stabilize site soils and achieve successful stabilization, which shall be defined as all bare soil areas covered at least 70% with established plants.

**RIGHT TO APPEAL:**

You may file within thirty days of the date of your receipt of this Amended Compliance Order, a Notice of Intent to Appeal also known as a Notice of Defense with the Guam EPA's Board of Directors. A copy of the Notice of Intent to Appeal/Notice of Defense is attached for your convenience.

Unless a written request for a hearing signed by or on behalf of the person, agency or business entity named above in this Amended Compliance Order is hand delivered or mailed to GEPA

within thirty days after the Amended Compliance Order was personally served on you or mailed to you, GEPA may proceed upon the Amended Compliance Order without a hearing. A request for hearing may be made by delivering the enclosed form entitled "Notice of Intent to Appeal also known as A Notice of Defense", or by delivering a notice of defense as provided in 5 GCA §9205, to the following address:

Guam Environmental Protection Agency Board of Directors  
C/o Administrator Guam Environmental Protection Agency  
Building 17-3304 Mariner Avenue  
Tiyán Barrigada, Guam 96913


If you file a Notice of Intent to Appeal/Notice of Defense, the GEPA's Board of Directors shall hold a public hearing, at which time you may appear and present evidence in person or through counsel in support of this petition.

Failure to file a Notice of Intent to Appeal within the period specified above will constitute a waiver of your right to a hearing. If you waive your rights to a hearing the Amended Compliance Order will become final, and GEPA may proceed upon the Order without a hearing and without further notice to you.

Should you have any questions or need additional information, please do not hesitate to contact me and my staff at Water Pollution Control Program or Water Division Chief Engineer, CAPT Brian Bearden, P.E., BCEE at 300-4786 and 300-4779, respectively.

*Dangkolu na si Yu'us ma'ãse'.*

*Senseramente,*

  
WALTER S. LEON GUERRERO  
Administrator

Attachments: Notice of Defense Form

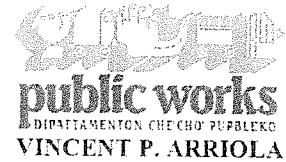
cc: GEPA Legal Counsel

# Exhibit “4”



*The Honorable*  
**LOURDES A. LEON GUERRERO**  
*Maga' Håga · Governor*

*The Honorable*  
**JOSHUA F. TENORIO**  
*Sigundo Maga' Lähi · Lieutenant Governor*



**VINCENT P. ARRIOLA**  
*Director*  
**LINDA J. IBANEZ**  
*Deputy Director*

## STOP WORK ORDER

20 AUG 2021

**OWNER:** KEPCO-LG CNS Mangilao Solar LLC (KEPCO)  
 718 North Marine Corps Drive, Bldg. D, Suite 301  
 Upper Tumon, Guam 96913

**CONTRACTOR:** Samsung E&C America, Inc. (Samsung)  
 Mr. Byung Hyup Kim, Project Manager  
 P.O. Box 218008  
 Guam Main Facility  
 Barrigada, Guam 96921

### IN REGARDS TO:

**Project Name and Number** KEPCO Mangilao Solar Plant– Project No. B18000866 (KEPCO Project)

**Project Location** Lot 1-R3 Tract 1541 in the Marbo area, Sasajyan, Mangilao, Guam

**Project Description** B18000866 **Civil and Structural to include erosion control, storm water Management, Road & Embankment construction, PV Backing support & foundation**  
 B20000369 Revision to Civil and Structural Ref: B18000866

**TAKE NOTICE THAT YOU ARE HEREBY DIRECTED TO STOP WORK AS PROVIDED HEREIN BELOW.**

All work and operations on the KEPCO Project, other than to comply with the Guam Environmental Protection Agency (GEPA) Notice of Violation/Compliance Order/Penalty Order issued on July 29, 2021 to Samsung (NOV) for violations of the Guam Soil Erosion and Sediment Control Regulations (GSESCR) on the KEPCO Project, as may be amended, are hereby ordered to be **SUSPENDED AND CEASED**, effective on the date below.

**Suspension Date** August 21, 2021



**This Stop Work Order is used for the following reasons:**

Samsung's construction is not consistent with the plans submitted and approved for Building Permit No. B18000866, dated January 21, 2020, as modified on June 30, 2020 (Building Permit). Contractor's intentional and purposeful disregard of its obligations under the approved plans and Building Permit and violation of the law resulted in large discharges of storm water, sediment, soil and other materials from the KEPCO Project onto adjoining properties and the ocean, including Marbo Cave and its freshwater pools, causing and continuing to cause substantial damage. It has been close to a month since such run-off, and Samsung and KEPCO have yet to remediate or repair the damages they caused.

Work on the KEPCO Project has been on-going since at least July 20, 2020.

Since as early as July 23, 2021 GEPA and the Government of Guam have received reports of significant discharges of runoff and sediment from the KEPCO Project into the ocean and neighboring properties, including Marbo Cave and its freshwater pools.

Subsequent site inspections confirmed substantial discharges of runoff and sediment into Marbo Cave from the KEPCO Project, resulting in extensive erosion damage and sedimentation onto the adjoining properties, including Marbo Cave and the waters of Guam. In addition to the damages to the adjoining lands, Guam waters and the environment, such runoff has created hazardous, damaged, and dangerous conditions at the Marbo Cave property.

On July 29, 2021 GEPA issued the NOV to Samsung. GEPA found that Samsung knowingly deviated from the approved erosion and sediment control (E&SC) measures it was required by law and the Building Permit to follow.

On August 11, 2021, DPW and GEPA conducted further site inspections of the KEPCO Project and the adjoining lands, including Marbo Cave. At such inspections it was apparent that neither KEPCO nor Samsung have done any remediation or repair of the substantial damages they caused, particularly to Marbo Cave, the freshwater pools and surrounding areas.

On August 16, 2021 GEPA issued an Amended Compliance Order: Amendment No.1 to its NOV.

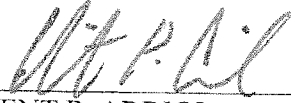
It is apparent that Samsung and KEPCO have not attended to the gravity and seriousness of their violations of the law and the Building Permit, or the damages they have caused and the continuing impact such damages have on the environment.

Accordingly, DPW issues this STOP WORK ORDER on the KEPCO Project other than specifically to comply with GEPA's NOV, as amended.

DPW will re-inspect the KEPCO Project when Samsung has fully complied with GEPA's NOV, as may be amended.

This **STOP WORK ORDER** shall remain in effect until the DPW Director issues an order rescinding it.

This **STOP WORK ORDER** is issued by:



\_\_\_\_\_  
VINCENT P. ARRIOLA  
Director  
Department of Public Works

20 AUG 2021

# Exhibit “5”



*The Honorable*  
**LOURDES A. LEON GUERRERO**  
*Maga' Håga - Governor*

*The Honorable*  
**JOSHUA F. TENORIO**  
*Sigundo Maga' Låhi - Lieutenant Governor*



**VINCENT P. ARRIOLA**  
*Director*  
**LINDA J. IBANEZ**  
*Deputy Director*

**September 27, 2021**

**To: SAMSUNG E&C AMERICA, INC**  
 Mr. Jung Wook Kim (JW Kim), Vice President  
 P.O. Box 218008  
 Guam Main Facility  
 Barrigada, Guam 96921  
 Attn: Mr. Byung Hyup Kim, Project Manager

**KEPCO-LG CNS Mangilao Solar LLC (KEPCO)**  
 718 North Marine Corps Drive, Suite 301  
 Upper Tumon, Guam 96913

**Re: KEPCO Mangilao Solar Plant Project Stop Work Order**

**Ref: Stop Work Order issued August 20, 2021 for Building Permit Nos. B180000866/B200000369**

Dear Mr. Kim,

This letter serves notice of the Department of Public Works receipt of your letter dated September 22, 2021 requesting a lift for Stop Work Order issued to Samsung E&C America, Inc and KEPCO-LG CNS Mangilao Solar LLC on August 20, 2021. Based on your letter and the continued compliance, remediation and restoration efforts to the Notice of Violation (NOV) issued by Guam Environmental Protection Agency, the Department of Public Works officially **rescinds the Stop Work Order effective September 27, 2021**. You are hereby authorized to proceed with the following non-negotiable conditions;

1. Provide DPW the Remediation and Restoration plans as developed, and prepared by Exponent and Duenas Camacho and Associates within 90 days from the date of this correspondence;
2. Continue compliance progress with remediation and restoration work identified in Guam EPA's Notice of Violation as amended.
3. Update all building/grading permits affected by design revisions.
4. Provide DPW monthly project compliance status reports.

I expect full compliance with the above-mentioned conditions along with any conditions put forth by Guam EPA and other Government Regulatory Agencies having jurisdiction.

Please contact me if you have any questions or concerns.

Sincerely,

\_\_\_\_\_  
**VINCENT P. ARRIOLA**  
 Director

542 North Marine Corps Drive, Tamuning, Guam 96913 • (671) 646-3131 / 647-5055 • Fax (671)649-6178

