

BEFORE THE NATIONAL GREEN TRIBUNAL

SITTING AT PUNE

APPEAL NO. 20 OF 2022

Paul Lobo and Ors

).... Appellants

Versus

Goa Coastal Zone Management Authority and Ors

)...Respondents

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ADDITIONAL AFFIDAVIT IN REJOINDER ON

BEHALF OF THE APPELLANTS



1. I, Antonio Vital Luis, s/o Joao Minguel Luis, R/o House No. 687/3, Zalor, Carmona, Salcete, Goa, Appellant No.4 above named herein, do hereby state on solemn affirmation.

2. I say that I have read the present Appeal No 20 of 2022 and am therefore conversant with its contents. I have also read the affidavit on the behalf of the Respondent No. 2 dated 27.05.2024 and am conversant with the contents of the said Affidavit. Thus, I am competent to depose by way of the present

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affidavit on behalf of the Appellants in the said matter.

3. At the outset, I deny each and every averment, contention, allegation and/or submission made by the Respondent in the said Affidavit in Reply. I say nothing should be deemed to have been admitted by me for lack of specific denial unless the same is specifically admitted by me hereinafter. I say that this affidavit is being filed as a brief rejoinder to the Affidavit of the Respondent No. 2.



ALLEGATIONS AGAINST THE APPELLANTS

6. At the outset, I say that the Respondent No. 2 has made some baseless and untrue allegations against the Respondents at paras 6, 20, 21 of its Affidavit. I say that I deny the said allegations categorically and wish to put on record the following:

- a. All Appellants are local residents from indigenous fishing and farming communities,

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fully committed to defending the environment for the future generations. The Appellants live about one km or more distance from the project site and possess community knowledge about the said lands, the coast, and the natural processes and dangers faced by their coast. Since the past 50 years, the Appellants have personally ploughed fields adjoining the land on which the hotel project is proposed, grazed cattle on the sand dunes and in the low-lying fields, faced storms and floods, and have watched and protected fish breeding and biodiversity in the low-lying areas all their lives. The Appellants have faced multiple threats from climate change in the past, and have first-hand knowledge of the importance of sand dunes and low-lying areas to prevent floods and destruction due to storms. The Appellants sole interest is to protect the environment, especially in view of rising sea levels and other dire threats they can foresee.



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b. The Appellant No 1 is a traditional fisherman who fishes with traditional methods on the coast. He also operates a modest and simple homestay at his residence. Appellant No 2 is a retired man who is a farmer and occasionally provides homestay at his residence. It is denied that the Appellants are “not good relators” or have filed the Appeal with oblique motives or that the Appellants have raised “false and motivated claims”. None of the Appellants’ homestays can be considered to be catering to the sort of clientele the Respondent No. 2 would attract as a large hotel. The Appellants have no motivation beyond environmental preservation in filing the present Appeal and have been trying to protect the land upon which the hotel of the Respondent No. 2 is to be constructed. The Appellant No 3 is a daily wage worker, who also rents bikes for his sustenance. The Appellant No. 4 is a retired rig worker, who has nothing to do with tourism activities at all, and is fully committed to social



and environmental development causes. Photographs of Appellant No 1's homestay and Appellant No 3's residence, where he rents a few bikes, are attached to this Affidavit as **Annexure A-1**.

- c. With regards to the comments made at para 20 of the Affidavit, I say that the wife of the Appellant No 1 is a first time panch member, elected from their ward which was reserved for women. She is not conversant with reading plans and technical papers, and was under the impression that the hotel project proponent had given assurances not to interfere with sand dunes, low-lying areas, and flood drainage, and to restore the sand dunes cut earlier. The Appellants are before this Tribunal on purely environmental grounds and have not challenged the construction license, as the license is based on, and subject to, the decision of GCZMA and this Tribunal. I say that it is unbecoming of the Respondent No. 2 to raise



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ad-hominem comments about the family members of the Appellants.

7. I say that Para 24 of the Affidavit of the Respondent falsely states that the revised plan is superimposed on the plan prepared by the authority identifying sand dunes in Annexure C of the Affidavit of the Respondent No 2. The CZMP has not been superimposed by the Respondent at all. The superimposed CZMP attached to this submission clearly shows that the ongoing and proposed constructions are on sand dunes.



ALLEGED "CONTRADICTION" IN PRAYERS OF THE APPEAL

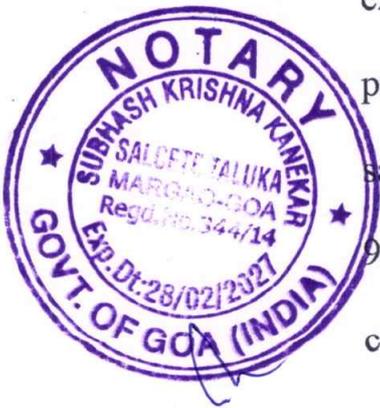
8. I say that I have already explained the context behind which the Appellants have stated they wished to wait to see compliance of the impugned directions of the Respondent No. 1 by the Respondent No. 2 in my additional affidavit in rejoinder dated 09.01.2023. I say that at para 7 of the Affidavit of

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9. the Respondent GCZMA dated 22.11.2022 it is evident that the Respondent GCZMA has affirmed that it had directed the Respondent No. 2 to “*restore sand dunes to their original condition*”. I say that if the sand dunes were restored to their original condition by the Respondent No.2, the present access road, the compound walls and the structure constructed would have to be removed and, by extension of the reasoning, all other constructions proposed on the sand dunes would not be possible. I say that at Annexure A- 2 of my affidavit dated 09.01.2023, I had annexed photographs of the condition on the site of the construction of the hotel property of the Respondent no. 2, along with a satellite image showing the demarcation of the plot. I say that these constructions have not been removed, and hence the Appellants remain aggrieved by the fact that sand dunes have not been restored. I say that the said affidavit of 09.01.2023 has been duly served on all Respondents on 09.01.2023 itself.



10. The Respondent No. 1 has seemingly asked the Respondent No. 2 to remove the MS sheets only, without considering that the compound walls, structure and access road are admittedly on the sand dunes and that the sand dunes cannot be restored unless they are demolished. I say that the Respondent GCZMA has grossly erred in its conclusion that constructions as per the approved plans are valid even if they violate the CRZ laws, because the Respondent 1 has failed to consider special conditions 1, 2, 3, 11, 12, 16 and 20 laid down in the permissions granted.



11. I say that the collusion and mala fides of the Respondent No. 1 in how it is has dealt with the complaints of the Appellants and has wrongfully permitted the project of the Respondent No. 2 to proceed on sand dunes and low lying CRZ land is evident in the submissions of the Respondent MoEFCC of its affidavit dated 10.10.2023, where the Respondent MoEFCC had made it clear at paras 8, 9 and 10 that the present project should have been referred to it for the sake of a CRZ clearance, but

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inexplicably had not been referred to it. I say that the Respondent GCZMA has illegally granted a CRZ clearance to the present project, when in reality the clearance is required to be granted by the MoEFCC. I say that on this count alone, the project of the Respondent cannot proceed. I therefore deny the contentions of para 28 of the Affidavit of the Respondent, as it is admittedly false that the CRZ clearance has been granted in consonance with the law and the CRZ Notifications. I say that the Respondent No. 1 and Respondent No. 2 have curiously not responded to the Affidavit of the Respondent MoEFCC.



12. I further deny that the contents at para 29 that the access road to the project hotel was an existing road and have adequately dealt with that in my affidavit dated 09.01.2023.

**ANNEXURES TO THE AFFIDAVIT OF THE
RESPONDENT NO. 2**

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13. I say that at Para 24 of its Affidavit the Respondent No. 2 has falsely stated that the revised plan is superimposed on the plan prepared by the authority identifying sand dunes in Annexure C of the Affidavit. The CZMP has not been superimposed by the Respondent at all. The superimposed images of the revised project plan on CZMP and Google earth images attached to this Affidavit as **Annexure A-2** clearly shows that the ongoing and proposed constructions are on sand dunes, as detailed in paragraphs 13, 14 and 15 hereinbelow.



14. I say that a perusal of the revised map and the superimposed CZMP attached to this Affidavit as Annexure A-2 makes it evident entire parking (at the western end of the approved plan) is proposed on a high sand dune at the western end of the project. I say that the road to the parking (at the western end of the project site) is also proposed on the sand dune. The entire road on the eastern side, which is the only access to the hotel project, is constructed by destroying 1,100 sq mts of sand dune, as admitted by

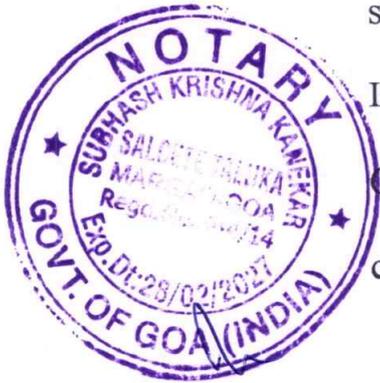
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the Respondent GCZMA experts in their Inspection Report dated 17/11/2021. This sand dune must be restored, which would then make the project site totally inaccessible.

15. I say that at least 3 structures on the western end of the project are proposed partially or fully on sand dunes. At least 4 structures on the eastern end of the project are proposed partially or fully on sand dunes. The low-lying area in the middle of the construction site (as identified at page 113, photo 5 of the Inspection Report dated 17/11/2021 prepared by GCZMA experts) has been filled up and is being constructed upon.



16. I say that the security cabin, office, and compound walls constructed on the eastern end of the project site are built on a sand dune demarcated on CZMP 2011, and must be demolished for restoration of the sand dune.

WATER RESOURCES DEPARTMENT

17. I say that it is pertinent to note that the Respondent No. 3 has conceded in paragraph 4 of its Affidavit dated 23.11.2022 that it has based its understanding of the region on survey maps and google earth images. As survey maps do not demarcate low-lying areas, I say that the Respondent No. 3 could have relied upon only google earth images to verify the submissions of the Appellant that low-lying areas and flood prevention infrastructure are present in the project site.



7. I say that the Respondent No.3 has failed to consider, and has conspicuously not denied in its Affidavit, the google earth images attached by appellant on page 158A of the Memo of Appeal, which shows that the entire low-lying area within sy no 134/3, Cavlossim village is only 2 m above sea level, which makes it extremely low-lying and a critical flooding basin. Further, the entire flood water from the large sand dune complexes to the south, west and east of this

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low-lying area pass through this low-lying area making it a critical drainage channel also. I say that the site inspection report dated 17/11/2021 annexed to the memo of this Appeal on page 113 as 'photo 5' shows this drainage through the low-lying parts of the project site. As can be seen from this image and the google earth images at page 158A of the Memo of Appeal, the flood waters from the sand dunes collect in the large low-lying area to the south of sy no 134/3, Cavelossim village and then drain through the low-lying area within the project site to adjoining lands on the northern side to eventually empty into the sea to the west.



8. I say that it is pertinent to note that the site inspection report dated 17.11.2021, which, albeit severely flawed, mentions at Sr. No. 1 of the table on page 107, "*No filling of low-lying area with sand extracted from dunes was noted. The spot indicated by the complainants was filled with construction debris.*" I therefore say that it is clear that the inspection report, despite numerous other flaws and errors, records the

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filling of low-lying areas. It is further submitted that the construction debris has been used by the Respondent No. 2 to cover the sand extracted from the sand dunes that was dumped earlier and that this was pointed out to the experts from GCZMA during the inspection, but the expert members did not record this submission, nor did they investigate the same.

18. Accordingly, I say that the prayers sought by the Appellants in Appeal 20/2022 deserve to be allowed and made absolute.



Solemnly Affirmed at Margao, Goa)

Dated this 29th day of May 2024)

Deponent



Solemnly affirmed before me by
Shri/Smt. Antonio Vital Luis
Who is identified to me by Vide
Aykhaa 6493 2599 8127
Shri/Smt.
Who is personally known to me
this 29th day of May 2024
Reg. No. 867/2024

SUBHASH KRISHNA KANEKAR
NOTARY
SALCETE TALUKA
STATE OF GOA (INDIA)

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ANNEXURE A-1

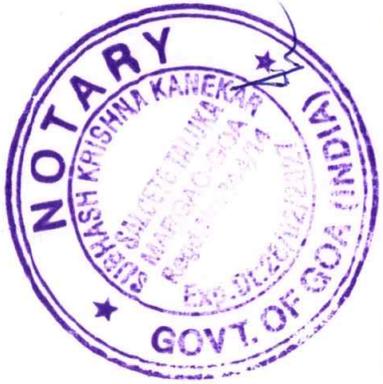


Appellant No 1's homestay

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Appellant No 3's residence, where he rents a few bikes

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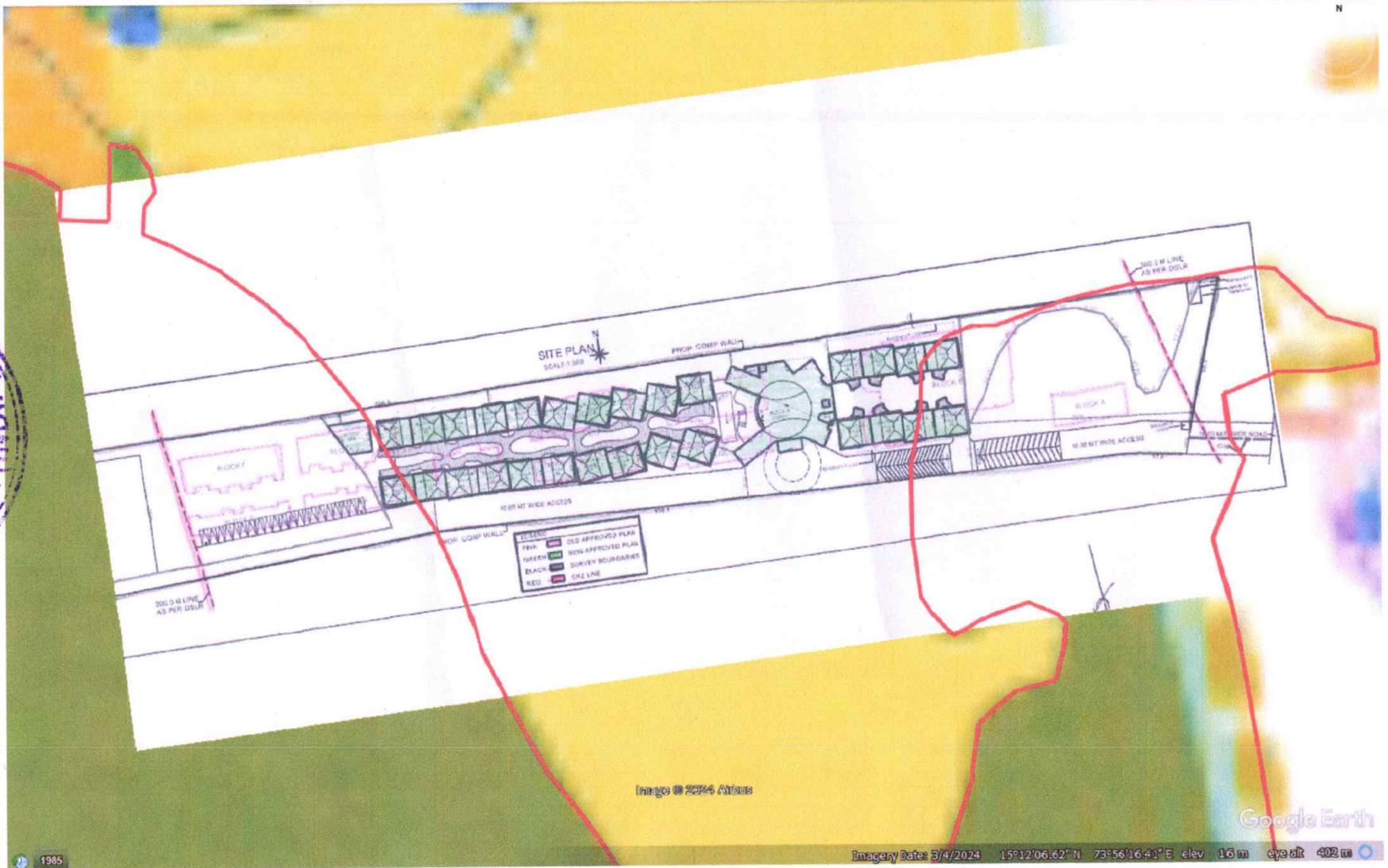
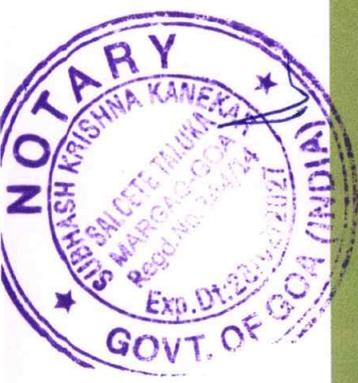
ANNEXURE A-2



CZMP 2011 is overlaid on Google Earth image and Sand dunes identified and demarcated on CZMP 2011 (in olive green) are marked with red lines

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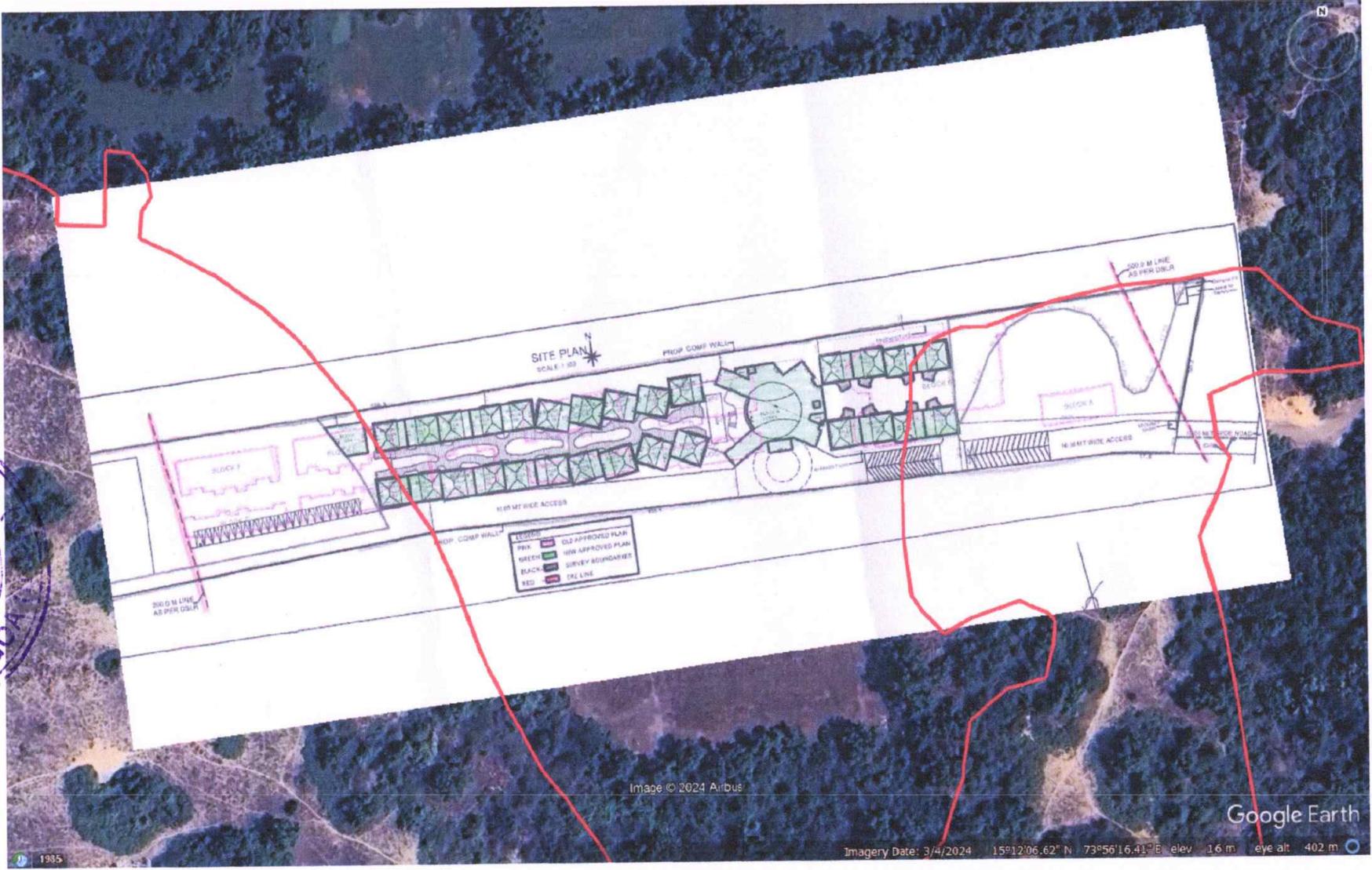
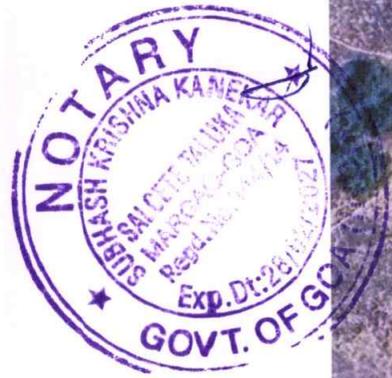


CZMP 2011 is overlaid on Nova final plan, and Sand dunes identified and demarcated on CZMP 2011 are marked with red lines

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Nova final plan overlaid on Google Earth image clearly shows gross violations of CZMP 2011 have taken place/are proposed as detailed in paragraphs 13, 14 and 15 of the affidavit in rejoinder

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NOTARY
SUBHASH KRISHNA KANEKAR
SALCETE TALUKA
MANGALGOUDA
Regd. No. 12719
Exp. Date: 31/03/2025
GOVT.

Red lines demarcating sand dunes identified by CZMP 2011 overlaid on Google Earth image clearly show that fresh CRZ-I violations have already taken place

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Versus

Goa Coastal Zone Management

Authority and Ors)... Respondents

**ADDITIONAL AFFIDAVIT
IN REJOINDER**



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Janmabhoomi Marg, Fort

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Advocate Code No. I20386