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[G.R. No. 223076. September 13, 2016]

PILAR CAÑEDA BRAGA, PETER TIU LAVINA, ANTONIO H. VERGARA, BENJIE T. BADAL, DIOSDADO ANGELO A. MAHIPUS, AND SAMAL CITY RESORT OWNERS ASSOCIATION, INC. (SCROA), PETITIONERS, VS. HON. JOSEPH EMILIO A. ABAYA, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), PRE-QUALIFICATION, BIDS AND AWARDS COMMITTEE (PBAC) AND PHILIPPINE PORTS AUTHORITY (PPA), RESPONDENTS.

DECISION

BRION, J.:

This is an *Urgent Petition for a Writ of Continuing Mandamus and/or Writ of Kalikasan* with a prayer for the issuance of a temporary environmental protection order (*TEPO*). The petition is directed against the Department of Transportation and Communications (*DOTC*) and the Philippine Ports Authority's (*PPA*) modernization project: the Davao Sasa Wharf (*the project*), a 30-year concession to develop, operate, and manage the port under the Public-Private Partnership (*PPP*) scheme.

The project is allegedly being carried out without the necessary Environmental Compliance Certificate (*ECC*) or Environmental Impact Statements required under Presidential Decree No. (*P.D.*) 1586^[1] and P.D. 1151.^[2] The project also allegedly failed to conduct local consultation and to secure prior *sanggunian* approval as required by the Local Government Code.^[3]

The Facts

The Port of Davao is a seaport located in Mindanao. It is composed of several ports, all within the gulf of Davao, but its base port is the Sasa Wharf located at Barangay Sasa, Davao City.

In 2011, the Sasa Wharf was pegged for privatization under the PPP scheme.

In 2012, the PPA commissioned a feasibility study (PPA study) on the current condition of the Sasa Wharf and its potential new targets in volume increase expansion. The study, which was completed in 2012, was conducted by Science & Vision For Technology, Inc.

The PPA study estimated that the modernization project would cost an estimated 3.5 Billion pesos for the purchase of new equipment and the installation of new facilities.^[4]

However, the **DOTC** commissioned another firm, Hamburg port Consultants, to conduct a second feasibility study (*DOTC study*) which was concluded in 2013. The DOTC study has a projected cost of 18 billion pesos and requires the expansion of Sasa Wharf by 27.9 hectares.^[5]

The DOTC study served as one of the primary considerations for current Sasa Wharf expansion project.

On December 21, 2014, the Regional Development Council for Region XI (*the Council*) endorsed the project through **Resolution No. 118** subject to the following conditions that must be met before its implementation:^[6]

1. The DOTC shall immediately secure the acquisition of 6.4 hectares of right of way, per recommendation of the National Economic and Development Authority - Investment Coordination Committee (*NEDA-ICC*);
2. The DOTC shall ensure that appropriate compensation is paid to the owners of the properties to be acquired as additional right of way;
3. The DOTC shall ensure the proper relocation/resettlement of the informal settlers affected by the project; and
4. The DOTC shall ensure the project will also benefit the port users and the people of Davao by providing better, more affordable service, and generating sustainable employment opportunities.^[7]

On April 10, 2015, the DOTC published an invitation to pre-qualify and bid for the Project.^[8]

On March 15, 2016, the petitioners - all stakeholders from Davao City and Samal, Davao del Norte - filed this *Urgent Petition for a Writ of Continuing Mandamus and/or Writ of Kalikasan*.

The Petition

The petitioners allege: (1) that the DOTC issued the notice of public bidding despite noncompliance with Resolution No. 118; (2) that the DOTC did not conduct prior consultation and public hearings nor secure the approval of the *sanggunian* concerned as required under Sections 26 and 27 of the LGC; (3) that the Davao City *sanggunian* had passed a resolution objecting to the project for its noncompliance with the LGC; and (4) that the DOTC has not yet obtained an Environmental Compliance Certificate (ECC) as required under P.D. 1586.

They argue that the DOTC's implementation of the project - one that as a significant impact on the environment - without preparing an Environmental Impact Statement, securing an ECC, or consulting the affected stakeholders, violates their constitutional right to a healthy and balanced ecology.

The petitioners seek to restrain the implementation of the Project - including its bidding and award - until the respondents secure an ECC and comply with the LGC.

The Counter-arguments

The respondents, through the Office of the Solicitor General (OSG), invoke the prematurity of the petition. They argue that the Project is still in the bidding process; thus, there is still no proponent to implement it.

The proponent — *not the respondents* — has the duty to initiate the Environmental Impact Assessment (EIA) process and to apply for the issuance of the ECC.^[9] Until the bidding process is concluded, the EIA process cannot be undertaken and it would be premature to impute noncompliance with the Environmental Impact Statement System.^[10]

Moreover, consultation with the stakeholders and the local government is premature and speculative at this point because the proponent has not yet identified the actual details of the project's implementation. Again, compliance with the consultation requirements of the LGC remains premature pending the award of the contract.

They further argue that the allegations do not warrant the issuance of a writ of *kalikasan* because the petitioners failed to prove the threat of environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.^[11]

Our Ruling

The petition is premature.

To better understand our judgment, we must first delve into the relevant laws and their progression over time.

On June 6, 1977, President Ferdinand Marcos enacted P.D. 1151, the Philippine Environmental Policy. It required all agencies and instrumentalities of the national government, including government-owned or -controlled corporations (GOCCs), as well as private corporations, firms, and entities to prepare a detailed **Environmental Impact Statement (EIS)** for every project or undertaking that significantly affects the quality of the environment.^[12]

A year later on June 11, 1978, President Marcos issued P.D. 1586 which expounded on P.D. 1151 to institutionalized a more comprehensive EIS System.^[13] It introduced the ECC, a certificate issued by the President his representative) to environmentally critical projects that have sufficient safeguards to protect and preserve the environment. It also penalized th who violate the Environmental Impact System, its implementing rules, or the conditions of their ECC.^[14]

P.D. 1586 tasked the National Environmental Protection Council (*the Council*) to issue its implementing rules and regulations (*IRR*). Environmental Management Bureau (*EMB*), a bureau under the Department of Environment and Natural Resources (*DENR*), absorbed these powers later on after the council was abolished.^[15]

In 1991, Congress enacted the LGC which promoted public participation by requiring national government agencies to consult stakeholders before undertaking programs with significant ecological impact.

In 1996, President Fidel V. Ramos mandated the continuous Strengthening of DENR's Environmental Impact Assessment Capability.^[16] He also required project proponents to conduct the environmental impact study and the feasibility study of proposed projects simultaneously in order to maximize the use of resources.^[17]

In an effort to further rationalize the EIS System and streamline the CC application process, President Gloria Macapagal-Arroyo directed the DENR Secretary to issue new guidelines in 2002.^[18]

Consequently, the DENR issued Administrative Order (DAO) No. 2003-30, the current IRR for the EIS System.

Impact Assessment and the EIS System

Environmental Impact Assessment (EIA) is the process of evaluating and predicting the likely impacts - including cumulative impacts - of an undertaking on the environment.^[19] Its goal is to prevent or mitigate potential harm to the environment and to protect the welfare of the affected community. To this end, the process requires proponents to truthfully and responsibly disclose all relevant information on the project through the EIS. This facilitates meaningful and informed public participation that ensures the project's social acceptability to the community.

The following are the key operating principles of the EIS System:

- a. The EIS System is concerned primarily with assessing the direct and indirect impacts of a project on the biophysical and human environment and ensuring that these impacts are addressed by appropriate environmental protection and enhancement measures.
- b. The EIS System aids proponents in incorporating environmental considerations in planning their projects as well as in determining the environment's impact on their project.
- c. **Project proponents are responsible for determining and disclosing all relevant information necessary for a methodical assessment of the environmental impacts of their projects;**
- d. The review of the EIS by EMB shall be guided by three general criteria: (1) that environmental considerations are integrated into the overall project planning, (2) that the assessment is technically sound and proposed environmental mitigation measures are effective, and (3) that, social acceptability is based on informed public participation;
- e. **Effective regulatory review of the EIS depends largely on timely, full, and accurate disclosure of relevant information by project proponents and other stakeholders in the EIA process;**
- f. The social acceptability of a project is a result of meaningful public participation, which shall be assessed as part of the Environmental Compliance Certificate (ECC) application, based on concerns related to the project's environmental impacts;

- g. The timelines prescribed by this Order, within which an Environmental Compliance Certificate must be issued, or denied, apply only to processes and actions within the Environmental Management Bureau's (EMB) control and do not include actions or activities that are the responsibility of the proponent.^[20]

Projects or undertakings that pose a potential significant impact to the environment are required to undergo impact assessment in order to secure ECCs.^[21] The proponent initiates the application process by filing a comprehensive EIS with the EMB. The EIS should at least have the following:

- a. EIS Executive Summary;
- b. **Project Description;**
- c. Matrix of the scoping agreement identifying critical issues and concerns, as validated by EMB;
- d. Baseline environmental conditions focusing on the sectors (and resources) most significantly affected by the proposed action;
- e. Impact assessment focused on significant environmental impacts (in relation to project construction/commissioning, operation and decommissioning), taking into account cumulative impacts;
- f. Environmental Risk Assessment if determined by EMB as necessary during scoping;
- g. **Environmental Management Program/Plan;**
- h. **Supporting documents;** including technical/socio-economic data used/generated; certificate of zoning viability and municipal land use plan; and proof of consultation with stakeholders;
- i. Proposals for Environmental Monitoring and Guarantee Funds including justification of amount, when required;
- j. Accountability statement of EIA consultants and the project proponent; and
- k. Other clearances and documents that may be determined and agreed upon during scoping.^[22]

The EIS contains a *detailed* project description of the nature, configuration, the raw materials/natural resources to be used, production system, waste generation and control, timelines, and all other related activities of the proposed project.^[23] It also includes an

Environmental Management Plan (*EMP*) detailing the proponent's preventive, mitigating, compensatory, and contingent measures to enhance the project's positive impacts and minimize ecological risks.^[24]

Projects with potentially significant negative environmental impacts are further required to conduct public consultations so that the environmental concerns of stakeholders are addressed in formulating the *EMP*.^[25]

The impact assessment concludes with EMB's approval (in the form of an *ECC*) or rejection (in the form of a denial letter).^[26] The *ECC* signifies that the proposed project will not cause significant *negative* impact on the environment based on the proponent's representation. It also certifies that the proponent has complied with the *EIS* System and has committed to implement its approved *EMP*. Accordingly, the *ECC* contains the *specific measures* and *conditions* that the proponent must undertake to mitigate the identified environmental impacts.

The duty to comply with the EIS System rests on the proponent.

The Sasa Wharf Modernization Project has the potential to significantly affect the quality of the environment, putting it within the purview of the *EIS* System. However, (1) who is responsible for preparing and filing the *EIS* and (2) when does this duty arise?

P.D. 1151 and P.D. 1586 requires *all* agencies and instrumentalities of national government, including *GOCCs*, and private corporations, firms, and entities to file the *EIS* for every proposed project or undertaking that significantly affects the quality of the environment.^[27] Section 4 of P.D. 1151 reads:

Section 4. Environmental Impact Statements. Pursuant to the above enunciated policies and goals, **all agencies and instrumentalities of the national government, including government-owned or -controlled corporations, as well as private corporations, firms, and entities shall prepare, file, and include** in every action, project, or undertaking which significantly affects the quality of the environment, a detailed statement on:

- (a) the environmental impact of the proposed action, project or undertaking;
- (b) any adverse environmental effect which cannot be avoided should the proposal be implemented;
- (c) alternative to the proposed action;

- a determination that the short-term uses of the resources of the environment
- (d) are consistent with the maintenance and enhancement of the long-term productivity of the same; and
 - whenever a proposal involve the use of depletable or nonrenewable
 - (e) resources, a finding must be made that such use and commitment are warranted.

Before an environmental impact statement is issued by a lead agency, all agencies having jurisdiction over, or special expertise on the subject matter involved shall comment on the draft environmental impact statement made by the lead agency within thirty (30) days from receipt of the same.^[28]

On the other hand, P.D. 1586 states:

Section 2. Environmental Impact Statement System. There is hereby established an Environmental Impact Statement System founded and based on the environmental impact statement required, under Section 4 of Presidential Decree No. 1151, of all agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations, firms and entities, for every proposed project and undertaking which significantly affect the quality of the environment.^[29]

These provisions demonstrate the expansive scope of the EIS System. Unfortunately, they are also *ambiguous* when it comes to identifying with particularity the responsible party in multilateral and collaborative projects.

The IRR of the EIS System simply designates the responsible party as *the proponent*. Ordinarily, the proponent is easy to identify - it is the natural or juridical person intending to implement the project.^[30] But who are the proponents in PPP Projects which are a collaborative effort between the government and the private sector?

Republic Act No. 6957^[31] as amended by R.A. 7718, commonly known as the *Build-Operate-Transfer (BOT) Law*, identifies the proponent in a PPP project as "*the **private sector entity** which shall have **contractual** responsibility for the project*"^[32] Accordingly, there is yet no project proponent responsible for the EIS and the ECC until the bidding process has concluded and the contract has been awarded.

Considering that the Project is still in the bidding stage, the petition or continuing mandamus to compel the respondents to submit an EIS and secure an ECC is **premature**. It is also *misplaced* because the public respondents DO NOT have the duty to submit the EIS or secure an ECC.

The LGC requires the lead agency to conduct local consultation and secure the approval of the concerned sanggunian prior to the implementation of the project.

The issuance of the ECC does not exempt the project from compliance with other relevant laws. The LGC, in particular, requires the government agency authorizing the project to conduct local consultation and secure prior consent for ecologically impactful projects:

Section 26. Duty of National Government Agencies in the Maintenance of Ecological Balance. - It shall be the duty of **every national agency or government-owned or -controlled corporation authorizing or involved in the planning and implementation of any project or program** that may cause pollution, climatic change, depletion of nonrenewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, **to consult with the local government units, nongovernmental organizations, and other sectors concerned** and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

Section 27. Prior Consultations Required. - **No project or program shall be implemented by government authorities** unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and **prior approval of the sanggunian concerned is obtained**: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.^[33]

The duty to consult the concerned local government units and the stakeholders belongs to the national government agency or GOCC *authorizing or involved in the planning and implementation of the project - not the private sector proponent*. In this case, this refers to the DOTC.

The LGC does not prohibit the agency from acting through a medium such as the project proponent.^[34] In fact, the required consultation under the LGC may overlap with the consultation prescribed under the EIS System. Both are intended to measure a project's social acceptability and secure the community's approval before the project's implementation.

However, the agency is responsible for ensuring that: (1) the concerned LGUs and stakeholders have been thoroughly and truthfully informed of the objectives of the program and its ecological impact on the community; so that (2) the community, through their *sanggunian*, can intelligently give their approval to socially acceptable projects and reject the unacceptable ones. These requirements must be complied with before the project is *implemented*.

But when does implementation begin?

The BOT Law defines the proponent as the private sector entity *with the **contractual responsibility*** over the project.^[35] The contract to a project is executed between the concerned agency and the winning bidder within seven (7) days from the latter's receipt of the notice from the agency that all conditions stated in the Notice of Award have been complied with.^[36]

Upon the signing of the contract, the winning bidder becomes the project proponent. Within another 7 days from the date of approval or signing of the contract by the head of the Agency, the agency will issue a "*Notice to Commence Implementation*" to the proponent.^[37] Interestingly enough, even this does not signal the start of the implementation stage.

Upon receipt of the *Notice*, the proponent is required to prepare detailed engineering designs and plans based on the prescribed minimum design and performance standards and specifications in the bid/tender documents.^[38] The agency shall review the detailed engineering designs in terms of its compliance with the prescribed standards and specification the designs are found acceptable, the agency shall approve them incorporation in the contract to be signed by the proponent and the agency.^[39]

The proponent shall construct the project based on the design and performance standards and specifications in the detailed engineering design.^[40] The signing of the finalized contract incorporating the detailed engineering design is the reckoning point when implementation can begin. This is the start of the Construction Stage.

The Sasa Wharf Modernization Project has not yet reached the construction stage. The bidding process had not even been concluded when the present petition was filed. On this account, the petition is also premature for the purpose of compelling the respondents to comply with Sections 26 and 27 of the LGC.

The purpose of a writ of continuing mandamus is to compel the respondent to perform his duties under the law. This remedy is available when any government agency, instrumentality, or officer **unlawfully neglects a Specific legal duty in connection with the enforcement or violation of an environmental law, rule, or regulation**, or a right therein, unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law.^[41]

The writ cannot be resorted to when the respondent is not the person obliged to perform the duty under the law (as is the case under the EIS System) or when the period for the respondent to perform its legal duty has not yet expired (as is the case with the consultation requirements of the LGC). Accordingly, we cannot issue a writ of continuing mandamus.

The petition does not warrant a writ of Kalikasan.

Likewise, the Court cannot issue a writ of *kalikasan* based on the petition. The writ is a remedy to anyone whose constitutional right to a balanced and healthful ecology is violated or threatened with violation by an unlawful act or omission. However, the violation must involve **environmental damage of such magnitude** as to prejudice the life, health, or property of inhabitants **in two or more cities or provinces** in order to warrant the issuance of the writ.^[42]

The petitioners allege that the respondents have begun the process of transgressing their right to health and a balanced ecology through the bidding process.^[43] They cite *The Competitiveness of Global Port-Cities: Synthesis Report*^[44] to identify the four major negative impacts related to port operations: 1) environmental impacts, 2) land use impacts, 3) traffic impacts, and 4) other impacts. The synthesis report claims that most of these impacts affect the surrounding localities.

They claim that the environmental impacts of port operations “are within the field of air emissions, water quality, soil, waste, biodiversity, noise and other impacts. These environmental impacts can have consequences for the health of the population of the port city, especially the poorer parts of port cities.”^[45]

The petitioners also cite *Managing Impacts of Development in Coastal Zone*, a joint publication of the DENR, the Bureau of Fisheries Aquatic Resources (BFAR), the Department of the Interior and Government (DILG), and the DENR Coastal Resource Management Project (CRMP) that identified the effects of coastal construction and reclam including ports and offshore moorings.^[46] The petition alleges that:

26. According to *Managing Impacts*, “Coastal construction has been the most widespread of activities affecting coastal resources” since “Any construction that modifies the shoreline will invariably change currents, wave action, tidal fluctuations, and the transport of sediments along the coast” while “Coastal construction that restricts the circulation of coastal water bodies can also degrade water quali[t]y and coastal ecosystems.”^[47]

However, these allegations are insufficient to warrant a writ of *kalikasan*.

First, the petition failed to identify the particular threats from the Project itself. All it does is cite the negative impacts of operating a port inside a city based on the Synthesis Report. However, these impacts already exist because the Port of Davao **has been operating since 1900**. The Project is not for the creation of a new port but the modernization of an existing one. At best, the allegations in support of the application for the writ of *kalikasan* are hazy and speculative.

Second, the joint publication is titled *Managing Impacts of Development in the Coastal Zone* for a reason; it identifies the potential environmental impacts and proposes mitigation measures to protect the environment. The petition is misleading because it only identified the risks but neglected to mention the existence and availability of mitigating measures.^[48]

Moreover, this Court does not have the technical competence to assess the Project, identify the environmental threats, and weigh the sufficiency or insufficiency of any proposed mitigation measures. This specialized competence is lodged in the DENR, who acts through the EMB in the EIA process. As we have already established, the application of the EIS System is premature until a proponent is selected.

Further, we fail to see an environmental risk that threatens to prejudice the inhabitants of two or more cities or municipalities if we do not restrain the conduct of the *bidding* process. The bidding process is not equivalent to the implementation of the project. The bidding process itself ‘annot conceivably cause any environmental damage.

Finally, it is premature to conclude that the respondents violated the conditions of Resolution No. 118 issued by the Regional Development Council of Region XI. Notably, the Resolution requires compliance before the *implementation* of the project. Again, the project has not yet reached the implementation stage.

WHEREFORE, we **DENY** the petition for its prematurity and lack of merit.

SO ORDERED.

Sereno, C. J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and Caguioa, JJ., concur.
Bersamin,, J., on official leave.*

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on September 13, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 22, 2016 at 4:45 p.m.

Very truly yours,
(SGD)
FELIPA G.
BORLONGAN-ANAMA
Clerk of Court

* On official leave, per Special Order No. 2373 dated August 30, 2016.

^[1] P.D. 1151, *Philippine Environmental Policy* (1978).

^[2] P.D. 1586, *An Act Establishing an Environmental Impact Statement System, Including Environmental Management-Related Measures and for Other Purposes* (1978).

^[3] Sec. 27, Republic Act No. 7160, *An Act Providing for the Local Government Code of 1991*, [LOCAL GOVERNMENT CODE] (1991).

^[4] *Rollo*, p. 8.

^[5] Id. at 8-9.

^[6] Id. at 9.

^[7] Id.

^[8] Id. at 263.

^[9] Id. at 272.

^[10] Id. at 273.

^[11] Id. at 275.

^[12] Section 4, P.D. 1151.

^[13] Section 2, P.D. 1586.

^[14] Section 9, P.D. 1586.

^[15] Book IV, Title XIV, Chap. 3, Section 17, Executive Order (E.O.) No. 292 [Administrative Code] (1987).

^[16] *Improving the Environmental Impact Statement System*, E.O. 291, series of 1996.

^[17] Section 2, E.O. 291, series of 1996.

^[18] *Rationalizing the Implementation of the Philippine Environmental Impact Statement (EIS) System and Giving Authority, in Addition to the Secretary of the Department of Environment and Natural Resources, to the Director and Regional Directors of the Environmental Management Bureau to Grant or Deny the Issuance of Environmental Compliance Certificates*, Administrative Order No. 42, series of 2002.

^[19] Article I, Sec. 3(h), *Implementing Rules and Regulations for the Philippine Environmental Impact Statement System*, DENR Administrative Order No. (DAO) 30-2003, signed June 30, 2003.

^[20] Article I, Sec. 1, DAO 30-2003.

^[21] Article II, Sec. 4.1 and 4.4. DAO 30-2003.

[22] Article II, Sec. 5.2.1, DAO 30-2003.

[23] Article I, Sec. 3(x) and Article II, Sec. 5.2.6, DAO 30-2003.

[24] Article I, Sec. 3(1), DAO 30-2003.

[25] Article II, Sec. 5.3, DAO 30-2003.

[26] Article II, Sec. 5.4.3, DAO 30-2003.

[27] Sec. 4, P.D. 1151; Sec. 2, P.D. 1586.

[28] Sections P.D. 1151.

[29] Sec. 2, P.D. 1586.

[30] Article I, Sec. 3(z), DAO 30-2003.

[31] R.A. 6957, *An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes*, [BOT LAW] (1990).

[32] Section 2(l), R.A. 6957 as amended by R.A. 7718.

[33] Sec. 26 and 27, LOCAL GOVERNMENT CODE.

[34] See Rule 12, Sec. 12.2, *Revised Implementing Rules and Regulations of R.A. No. 6957, "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector and for Other Purposes" as Amended by R.A. No. 7718*, [BOT LAW IRR], published March 29, 2006.

[35] Section 2(a), R.A. 6957 as amended by R.A. 7718.

[36] Rule 12, Sec. 12.1, BOT LAW IRR.

[37] Rule 12, Sec. 12.5, BOT Law IRR.

[38] Rule 12, Sec. 12.6 in relation to Rule 4, Sec. 4.1(b), 4.3, and Rule 7, Sec. 7.1, BOT LAW IRR.

[39] Rule 12, Sec. 12.6, BOT LAW IRR.

^[40] Rule 12, Sec. 12.7, BOT Law IRR.

^[41] **A.M. No. 09-6-8-SC, Rule 8, Section 1.** *Petition for continuing mandamus.* - When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

^[42] **A.M. No. 09-6-8-SC, Rule 7, Section 1.** *Nature of the writ.* - The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life; health or property of inhabitants in two or more cities or provinces.

^[43] *Rollo*, p. 12.

^[44] *Id.*

^[45] *Id.* at 13.

^[46] *Id.* at 14.

^[47] *Id.*

^[48] *Managing Impacts of Development in the Coastal Zone*, p. 45, available at <http://faspelib.dens.gov.ph/sites/default/files/publication%20files/crmgubook7.pdf>

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