

CYNTHIA A. VILLAR, FORMER MEMBER, HOUSE OF REPRESENTATIVES, LONE DISTRICT OF LAS PIÑAS CITY [SUPPORTED BY THREE HUNDRED FIFTEEN THOUSAND EIGHT HUNDRED FORTY-NINE (315,849) RESID...

G.R. No. 208702. May 11, 2021

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court (Rules) assailing the Decision[2] dated April 26, 2013 and the Resolution[3] dated August 14, 2013 of the Court of Appeals (CA) in CA-G.R. SP. No. 00014 filed by petitioner Cynthia A. Villar (Villar).

Antecedents

In 2009, respondent Alltech Contractors, Inc. (Alltech) submitted unsolicited proposals to respondent cities of Las Piñas and Parañaque for the development, financing, engineering, design, and reclamation of 381.26 hectares of land in Las Piñas and 174.88 hectares of land in Parañaque, which were both along the coast of Manila Bay.[4] Consequently, the city councils of Las Piñas and Parañaque issued the corresponding resolutions[5] authorizing their respective city mayors to explore the proposal under a Joint Venture Agreement (JVA), and to negotiate with the appropriate government agencies and other local government units.[6] The cities of Las Piñas and Parañaque eventually accepted Alltech's proposal and the parties executed their respective JVAs.[7]

Thereafter, respondent Philippine Reclamation Authority (PRA), the agency authorized to approve reclamation projects in the country, approved the Las Piñas and Parañaque Coastal Bay Project (proposed project) through Resolution No. 4088, Series of 2010[8] and Resolution No. 4091, Series of 2010.[9] The approval is subject to full compliance with existing laws, rules, and regulations in relation to the environment.[10]

In March 2010, the PRA entered into separate Memoranda of Agreement (MOA) with the cities of Las Piñas and Parañaque.[11] On the other hand, Alltech, as directed by respondent Environmental Management Bureau (EMB), submitted an Environmental Performance Report Management Plan (EPRMP), for the proposed reclamation project to the Department of Environment and Natural Resources (DENR).[12]

In October 2010, the Environmental Impact Assessment Review Committee (EIARC), composed of Agerico de Villa, Benjamin Francisco, and Renato Cruz of the DENR-EMB, met for a preliminary review of the EPRMP submitted. This meeting was also attended by Alltech representatives, consultants of Mediatrix Business Consultancy who were commissioned by Alltech to prepare its EPRMP, EMB case handlers, and resource persons from the PRA.[13]

In December 2010, Alltech submitted its final EPRMP[14] which now involved the reclamation of an estimated 203.43 hectares along the coast of Parañaque and 431.71 hectares along the coast of Las Piñas. The proposed project area lies within the 750-hectare project site known as the Amari Coastal Bay Development Corporation

(Amari) and covered by Environmental Compliance Certificate (ECC) No. CO-9602-002-208C which the Public Estates Authority (PEA; now PRA) initially issued in September 1996.[15]

After reviewing the biophysical, social, and economic impact of the proposed project, the EIARC recommended the issuance of the ECC. On March 24, 2011, the EMB issued ECC No. CO-1101-0001[16] stating the following conditions:

I. CONDITIONS

ENVIRONMENTAL MANAGEMENT

All commitments, mitigating measures and monitoring requirements, especially those contained in the EPRMP, particularly in the Environmental Management and Monitoring Plans (EMMoPs), including all their modifications and additional information as approved by the EMB, shall be instituted to minimize any adverse impact of the project to the environment throughout its implementation, including the following:

1. Implementation of a Coastal Ecosystem Management Plan/Program;
2. Undertake an effective and continuing Information, Education and Communication (IEC) Program to inform and educate all stakeholders, especially its local residents on the project's mitigating measures embodied in the EPRMP and the conditions stipulated in this certificate;
3. Implementation of a Social Development and Management Program;
4. The Proponent needs to align the Environmental Management Plan with the Manila Bay Coastal Strategy and submit the said revised plan within sixty (60) days from the receipt of this Certificate; and
5. The Proponent, to address flooding issues, shall undertake the consultation with the Local Government Units of Parañaque and Las Piñas in the preparation of the Revised Environmental Management Plan that shall include:
 - 5.1 Flood Monitoring Plan
 - 5.2 Necessary Baseline Data
 - 5.3 Mitigating Plan; and
 - 5.4 IEC corresponding flooding issues

The above requirements, together with the PRA Guidelines for Reclamation Works should be submitted Ninety (90) days upon the receipt of this Certificate.

GENERAL CONDITIONS

- The project operations shall conform with the provisions of R.A. No. 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990), R.A. No. 9003 (Ecological Solid Waste Act of 2000), R.A. No. 9275 (Philippine Clean Water Act of 2004), and R.A. No. 8749 (Philippine Clean Air Act of 1999) and other relevant environmental laws and regulations.

- Proper storm drainage system, concrete culverts, and other flood and erosion control measures needs, noise and air pollution control measures shall be provided to adequately protect the receiving water body from siltation, physico-chemical/marine pollution, etc. and the surrounding communities from environmental degradation;

- The proponent shall set up the following:

8.1 A readily available Environmental Guarantee Fund (EGF) which can be replenished anytime to cover the following: a) Expenses for further environmental assessments[,] b) compensation, indemnification for whatever damages to life and property that may be caused by the project[,] c) rehabilitation and/ or restoration of areas affected by the project's implementation;

8.2 A Multi-partite Monitoring Team (MMT) composed of representative(s) from the proponent, EMB, a local environmental Non-Government Organization (NGO), a representative from each barangay in the primary impact area, the LGUs where the project is situated, and other concerned government agencies shall be

organized. The MMT should primarily oversee the compliance of the proponent with the Environmental Management and Monitoring Plan (EMMP), other commitments and mitigation measures that are contained in the Project EPRMP documents and the ECC conditions; and

8.3 A replenishable Environmental Monitoring Fund (EMF) to cover all costs attendant to the operation and monitoring activities of the MMT including but not limited to capability building, training, actual sampling and laboratory analysis. Said provisions must be consistent with the DAO 2003-30.

The amount and mechanics of the EGF, EMF, and the establishment of the MMT shall be determined by EMB and the proponent in consultation with EMB, through an integrated Memorandum of Agreement (MOA) which shall be submitted to the EMB Central Office within sixty (60) days upon receipt of this Certificate;

9. An Environmental Unit (EU) shall be established completely handle the environment related aspects of the project in addition to the monitoring requirements as specified in the Environmental Management Plan (EMP)/Environmental Monitoring Plan (EMoP). The EU shall:

9.1 Monitor actual project impacts [vis-a-vis] the predicted impacts and management measures in the EIS;

9.2 Ensure that Monitoring and submission of reports to EMB (Central Office and NCR) are carried out as required;

9.3 Submit an Abandonment Plan one year prior to abandonment. It shall include rehabilitation measures/clean-up. Remediation of areas possibly contaminated with toxic substances and presentation of options on proposed alternative projects in the area; and

9.4 Submit the Geographical coordinates of the Project prior to project construction.

10. Ensure that its contractors and subcontractors properly comply with the relevant conditions of this Certificate including those regulations covering the entire activity of the project.

11. The proponent prior to project implementation shall coordinate with the Manila Bay Critical Habitat Management Council and PAWB to tackle impacts of the project to Las Piñas-Parañaque Critical Habitat and Ecotourism Area (LPPCHEA) and implement the recommendations of the said council.

II. RESTRICTIONS

12. No other activities should be undertaken other than what was stipulated in the EPRMP document. Expansion of the project/construction of other structures or any change in the activity beyond those stated in the EPRMP shall be subject to a new Environmental Impact Assessment; and

13. Transfer of Ownership of this project carries these same conditions and restrictions for which written notification must be made by herein grantee to EMB within fifteen (15) days from such transfer. [17]

Fearing that the proposed project will impede the flow of rivers of Las Piñas-Zapote and Parañaque which may expose several adjacent barangays to flooding and endanger its residents, then Representative Villar, now Senator, conducted an information drive regarding the proposed project and gathered 315,849 signatures of Las Piñas residents opposing the proposed project. On March 16, 2012, Villar, representing the 315,849 Las Piñas residents opposing the proposed project, filed a petition for the issuance of a writ of kalikasan before the Court. In asking the Court to enjoin the implementation of the proposed project, Villar invoked her constituents' right to a balanced and healthful ecology.

On April 24, 2012, the Court rendered a Resolution issuing the writ against respondents Alltech, PRA, DENR-EMB, and the cities of Las Piñas, Parañaque, and Bacoor. On June 19, 2012, the Court remanded the case to the CA to accept the return of the writ, and to conduct the necessary hearing, reception of evidence, and rendition of judgment.[18]

Ruling of the Court of Appeals

On April 26, 2013, the CA rendered its Decision,[19] the dispositive portion of which states:

WHEREFORE, the petition is DENIED for lack of merit.

IT IS SO ORDERED.[20] (Emphasis in the original)

In denying the petition for the issuance of a writ of kalikasan, the CA declared that the totality of the evidence proved that the proposed reclamation project underwent the required EIA review process in compliance with the requirements of Presidential Decree (P.D.) No. 1586[21] and that the submission of the EPRMP was proper and lawful.[22] The CA found the claim of Villar that Alltech did not undergo the proper EIA review inaccurate because it submitted its EPRMP, a recognized form of EIA study.[23] The CA held that Alltech's submission of its EPRMP was proper as it belongs to the project category that requires such kind of EIA study. The CA added that it was the DENR-EMB which instructed the submission of an EPRMP.[24] The CA pointed out that in requiring an EPRMP, Alltech was even required to meet a higher standard. This standard was to preserve the environmental condition in the vicinity of the proposed project using as basis the higher quality of environment in 1990.[25]

The CA also ruled that a public consultation was conducted on November 25, 2010 between representatives of Alltech, the cities of Las Piñas and Parañaque, the PRA, the EIA consultant and other identified stakeholders in the direct and indirect impact areas of the proposed project.[26] The CA also clarified that the nature of the proposed project does not require conducting a public hearing. It is mandatory only in projects falling under Category A-1 (new environmentally critical projects) pursuant to DENR Administrative Order (DAO) No. 2003-30.[27]

The CA ruled that Villar, though motivated by good faith, failed to support her claim by any competent, credible, and reliable evidence that the proposed reclamation project will expose Las Piñas and Parañaque residents to catastrophic environmental damage. For the CA, Tricore Solutions, Inc. (Tricore) and Center for Environmental Concerns-Philippines (CEC-P), the companies commissioned by Villar, failed to conduct a comprehensive and objective assessment of the proposed project and lacked the expertise necessary in the field of hydrology and hydraulics to competently conclude that the proposed project will cause environmental damage.[28]

The CA did not give credence to Tricore's report wherein it was concluded that the proposed project would cause an increase in flood depth and inundate two-thirds of Las Piñas, Parañaque, and Bacoar for lack of sufficient basis.[29] For the CA, the findings in Tricore's report were refuted by Alltech who was able to establish that measures were designed to mitigate the dreaded negative impacts of the proposed project.[30]

The CA also did not give credence to CEC-P's study. The CA noted that CEC-P already had a conclusion in mind when it conducted its study at Villar's behest as it deliberately ignored the ECC and the studies conducted by DCCD Engineering Corp. (DCCD), Surbana International Consultants PTE Ltd. (Surbana), and DHI Water & Environment (S) Pte. Ltd. (DHI). The CA also noted that CEC-P relied on the EPRMP submitted in August 2010 and not the final EPRMP Alltech submitted in December 2010, making its findings inaccurate and unreliable.[31]

The CA also held that the precautionary principle, which shifts the burden of proof to the project proponent to prove that the threat to the environment does not exist, cannot be favorably applied to Villar's cause. The CA explained that the threat was not established and that the volumes of data generated by objective and expert analyses ruled out the scientific uncertainty of the nature and scope of the anticipated threat.[32] Thus, the CA was not convinced that sufficient ground exists to grant the privilege of the writ of kalikasan.[33]

In a Resolution[34] dated August 14, 2013, the CA denied the Motion for Reconsideration Villar filed.[35]

In the present petition,[36] Villar argued that the issuance of an ECC for the proposed coastal bay project is illegal and unlawful because: (1) Alltech did not prepare the appropriate EIA study;[37] (2) the meeting that was conducted supposedly as public consultation failed to satisfy the strict requirements of the law;[38] (3) public hearings are mandatory for the proposed project;[39] (4) a detailed statement of project alternative to the proposed reclamation project is a requirement under the law;[40] and (5) questions relating to financial and technical capabilities of a proponent are relevant and material to the issue relating to its ability to implement the proposed project.[41]

Villar insists that the proposed project impinges on the viability and sustainability of the Las Piñas-Parañaque Critical Habitat and Ecotourism Area (LPPCHEA).[42] Villar also maintains that the proposed project will cause environmental damage so as to prejudice the life, health or property of Las Piñas and Parañaque residents because: (1) it will aggravate flooding;[43] (2) the mitigation measures will impede the ecological functions of the LPPCHEA as these will require giving up 4.35 hectares of the LPPCHEA;[44] and (3) the claim that reclamation per se may be pursued for its supposed positive impact and restorative qualities lacks basis.[45]

In their Comment,[46] Alltech countered that the proposed project underwent the required EIA process for environmentally critical projects and that they submitted a detailed and exhaustive EPRMP for the Environmental Impact Statement (EIS) study.[47] It also maintained that an EPRMP, and not an EIS, was the appropriate report for the proposed project pursuant to DAO No. 2003-30. Since it is an EPRMP that is the proper form of study for the proposed project, Alltech posited that public hearing and project alternative are not required to secure an ECC.[48]

The PRA manifested that it is adopting the Comment of Alltech.[49]

The DENR-EMB, in its Comment,[50] explained that the EPRMP is the proper EIA report pursuant to DAO No. 2003-30 and that the absence of a public hearing and project alternative is of no consequence as it is not required in an EPRMP. Moreover, the DENR-EMB emphasized that the ECC, as a planning tool, did not trigger the actual implementation of the proposed project.[51]

In their Comment, the cities of Las Piñas[52] and Parañaque insisted that the subject ECC was lawfully issued in accordance with the applicable laws and rules.[53]

In her Manifestation and Motion filed on September 7, 2020, Villar urged the Court to take judicial notice of Republic Act No. (R.A.) 11038,[54] otherwise known as the "Expanded National Integrated Protected Areas System Act of 2018" (ENIPAS). Section 4 of the ENIPAS lists among the protected areas under its coverage the LPPCHEA.[55] Villar also asked the Court to take judicial notice of the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Convention on Wetlands), an international treaty for the conservation and sustainable use of wetland where the Philippines is a signatory. On March 15, 2013, the Convention on Wetlands certified LPPCHEA as a "Wetland of National Importance." [56]

Thereafter, Alltech filed a Motion for Leave to File Motion to Strike Out Petitioner's Manifestation and Motion with Counter-Manifestation Ad Cautelam. Alltech clarified that: (1) LPPCHEA is outside the scope of the proposed project;[57] (2) R.A. No. 11038 and the Convention on Wetlands do not prohibit reclamation on works in the periphery or surrounding areas of the LPPCHEA;[58] (3) mitigating measures are designed to ensure that the proposed project will have no negative impact on the LPPCHEA during the construction and operation stages;[59] and (4) not only can the project co-exist with the LPPCHEA, it can even assist in enhancing or improving it.[60]

In their Motion for Leave to File Incorporated Rejoinder,[61] Villar argued inter alia that the ECC issued in favor

of Alltech is already functus officio as it had already been more than five years from the date of its issuance without the proposed project being implemented. Villar claimed that the baseline characteristics have significantly changed to the extent that the impact assessment is no longer appropriate.[62] Villar also added that the concepts of Buffer Zone and Demarcation in the ENIPAS finds application as around 4.35 hectares of the LPPCHEA will have to be given up if the uniform 160-meter channel width of the Parañaque River will be built.[63]

Issues

The issues to be resolved in this case are:

- Whether the extraordinary remedy of filing a petition for writ of kalikasan is proper to assail the issuance of ECC No. CO-1101-0001 for Alltech's proposed project;
- Whether the proposed project will cause environmental damage of such magnitude so as to prejudice the life, health, or property of residents of the cities of Las Piñas and Parañaque; and
- Whether the proposed project impinges on the viability and sustainability of the LPPCHEA.

Ruling of the Court

The petition is not meritorious.

Villar failed to establish the causal link between the alleged irregularities in the issuance of Alltech's ECC to justify resorting to the extraordinary remedy of filing a petition for a writ of kalikasan.

To promote the government's environmental protection programs, P.D. No. 1586 was enacted declaring inter alia that:

No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. x x x[64] (Emphasis supplied)

In the current structure of the government, it is the DENR-EMB, under the authority of the DENR Secretary, that is authorized to issue ECCs.

DAO No. 2003-30 delineates the rules and regulations to obtain an ECC under the Philippine EIS System (EIS System) established in P.D. No. 1586. Through the EIS System, it is the government's objective to achieve a rational balance between the exigencies of socio-economic development and the requirements of environment protection for the benefit of present and future generations.[65]

A petition for writ of kalikasan is an extraordinary remedy classified as a special civil action under the Rules of Procedure for Environmental Cases[66] (RPEC). Under Section 1, Rule 7 of the RPEC:

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.

The essential requisites for the issuance of a writ of kalikasan are: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or

threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. As a rule, the party claiming the privilege bears the onus of proving the requisites listed above.[67]

In filing a petition for writ of *kalikasan*, Villar argued at length the alleged irregularities in the issuance by the EMB of the ECC for the proposed project. However, it must be clarified that in assailing the issuance of an ECC, the proper remedy is to file an appeal. Section 6 of DAO No. 2003-30 provides:

Any party aggrieved by the final decision on the ECC/CNC applications may, within 15 days from receipt of such decision, file an appeal on the following grounds:

- Grave abuse of discretion on the part of the deciding authority, or
- Serious errors in the review findings.

The DENR may adopt alternative conflict/dispute resolution procedures as a means to settle grievances between proponents and aggrieved parties to avert unnecessary legal action. Frivolous appeals shall not be countenanced.

The proponent or any stakeholder may file an appeal to the following:

Deciding Authority

Where to file Appeal

EMB Regional Office Director Office of the EMB Director

EMB General Office Director Office of the DENR Secretary

DENR Secretary Office of the President

Therefore, as a rule, any of the perceived irregularities in the issuance of the proposed project's ECC should be the subject of an appeal to the proper reviewing authority instead of a petition for writ of *kalikasan*. Any alleged irregularity in the process undertaken to obtain the ECC should be threshed out in the proper forum before the appropriate reviewing authorities.

Nevertheless, in *Paje v. Casiño*,^[68] the Court already recognized that the validity of an ECC may be challenged via a writ of *kalikasan*. The Court, speaking through the ponencia of former Associate Justice Mariano C. Del Castillo, explained that:

The writ of *kalikasan* is principally predicated on an actual or threatened violation of the constitutional right to a balanced and healthful ecology, which involves environmental damage of a magnitude that transcends political and territorial boundaries. A party, therefore, who invokes the writ based on alleged defects or irregularities in the issuance of an ECC must not only allege and prove such defects or irregularities, but must also provide a causal link or, at least, a reasonable connection between the defects or irregularities in the issuance of an ECC and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules. Otherwise, the petition should be dismissed outright and the action re-filed before the proper forum with due regard to the doctrine of exhaustion of administrative remedies. Otherwise, the petition should be dismissed outright and the action re-filed before the proper forum with due regard to the doctrine of exhaustion of administrative remedies. This must be so if we are to preserve the noble and laudable purposes of the writ against those who seek to abuse it.^[69] (Emphasis and underscoring supplied; italics in the original)

Unfortunately, while petitioners raised alleged irregularities in the issuance of the ECC (i.e., the use of an

improper form of assessment study, lack of public hearing and consultation, and absence of a project alternative), these are not material and necessary due to the nature of the proposed project. Therefore, no compelling reason was presented to warrant the intervention of the Court.

Alltech submitted the proper form of study required for the proposed project.

In securing an ECC, the proponent is required to submit a form of study depending on the classification of the proposed project under the EIS System. These reports include: (1) EIS; (2) Programmatic EIS; (3) Initial Environmental Examination Report; (4) Initial Environmental Examination Checklist; (5) Project Description Report (PDR); (6) EPRMP; and (7) Programmatic EPRMP (PEPRMP).

In Alltech's application, the DENR-EMB required an EPRMP which refers to a "documentation of the actual cumulative environmental impacts and effectiveness of current measures for single projects that are already operating but without ECCs." [70] On the other hand, EIS pertains to a "document, prepared and submitted by the project proponent and/or EIA Consultant that serves as an application for an ECC. It is a comprehensive study of the significant impacts of a project on the environment. It includes an Environmental Management Plan/Program that the Proponent will fund and implement to protect the environment." [71] Based on this definition, an EIS is wider in scope than an EPRMP. However, it does not automatically mean that an EIS is the appropriate EIA report to be submitted in all projects. DAO No. 2003-30 provides for the conditions to consider in requiring the submission of a specific EIA report.

In paragraph (b), subsection 8, Section 1 of the Revised Procedural Manual for DAO No. 2003-30, the project contemplated for the use of EPRMP was explained as follows:

b) For operating projects with previous ECCs but planning or applying for clearance to modify/expand or re-start operations, or for projects operating without an ECC but applying to secure one to comply with PD 1586 regulations, the appropriate document is not an EIS but an EIA Report incorporating the project's environmental performance and its current Environmental Management Plan. This report is either an (6) Environmental Performance Report and Management Plan (EPRMP) for single project applications[.] x x x (Emphasis supplied; italics and underscoring in the original)

Table 1-4, DAO No. 2003-30, states that an EPRMP is required for "Item I-B: Existing Projects for Modification or Re-start up (subject to conditions in Annex 2-1c) and I-C: Operating without ECC." From these definitions and tables, an EPRMP is the required EIA document type for an ECP-single project which is:

- Existing and to be expanded (including undertakings that have stopped operations for more than 5 years and plan to re-start with or without expansion);
- Operating but without ECCs;
- Operating projects with previous ECCs but planning or applying for clearance to modify/expand or re-start operations; and
- Existing projects for modification or re-start up.

In *Paje v. Casiño*, [72] the Court noted that DAO No. 2003-30 and the Revised Manual appear to use the terms "operating" and "existing" interchangeably.

In the present case, the EPRMP that Alltech submitted was the proper form of study. As pointed out by the DENR-EMB, the proposed project is premised on the existence of a reclamation project covered by an ECC previously issued to the PEA, now PRA, and Amari (ECC No. CO-9602-002-208C) issued in September 1996. In

the ECC issued to Alltech (ECC No. CO-1101-0001[73]) on March 24, 2011, it is clearly written that:

SUBJECT to the conditions and restrictions set out herein labeled as Annex A and Annex B. This Certificate supersedes/cancels ECC CO-9602-002-208C issued on September 16, 1996 by this Office. (Emphasis supplied)

The statement accentuated above is a recognition of an existing ECC superseded by the ECC issued in favor of Alltech. This also bolsters the view that operations are intended to be restarted as contemplated in paragraph (b), subsection 8, section 1 of the Revised Procedural Manual DAO 03-30. Under the Revised Procedural Manual for DAO No. 2003-30, the type of EIA report for a project which had previously operated or existing with previous ECCs intended to be modified, expanded or restart operations is not an EIS but an EPRMP or PEPRMP.[74] As explained by the DENR-EMB, the entire area of the proposed project was within the area of the previous ECC issued in favor of the PEA and Amari on September 16, 1996 covering 750 hectares.[75]

It is worthy to add that although the ECC in the PEA-Amari project failed to be completed, at the time the JVA between PEA and Amari was nullified by the Court, 157.84 hectares of the 750-hectare project (which now comprises the Freedom Islands) had already been reclaimed.[76] Considering that partial operations had been conducted under the superseded ECC of the PEA-Amari project, the submission of the EPRMP by the project proponent who took over and replaced the original project was proper.

In *Paje v. Casiño*,[77] the Court ruled that the enumeration in DAO No. 2003-30 of what projects may be required to submit an EPRMP is not an exclusive list. In *Paje*, the Court upheld the EPRMP despite the seeming contradiction of the proposed coal fire plant of RP Energy to the definition of what projects may be covered by an EPRMP. The Court explained that:

x x x The definitions in DAO 2003-30 and the Revised Manual, stating that the EPM1P is applicable to (1) operating/existing projects with a previous ECC but planning or applying for modification or expansion, or (2) operating projects but without an ECC, were not an exclusive list.

The afore-discussed provisions of Figure 2-4, in relation to Annex 2-1c, plainly show that the EPRMP can, likewise, be used as an appropriate EIA document type for a single, non-implemented project applying for a major amendment to its ECC, involving an increase in capacity or auxiliary component, which will exceed PDR (non-covered project) thresholds, or result in the inability of the EMP and ERA to address the impacts and risks arising from the modification, such as the subject project.

That the proposed modifications in the subject project fall under this class or type of amendment was a determination made by the DENR-EMB and, absent a showing of grave abuse of discretion, the DENR-EMB's findings are entitled to great respect because it is the administrative agency with the special competence or expertise to administer or implement the EIS System.

The apparent confusion of the *Casiño* Group and the appellate court is understandable. They had approached the issue with a legal training mindset or background. As a general proposition, the definition of terms in a statute or rule is controlling as to its nature and scope within the context of legal or judicial proceedings. Thus, since the procedure adopted by the DENR-EMB seemed to contradict or go beyond the definition of terms in the relevant issuances, the *Casiño* Group and the appellate court concluded that the procedure was infirm.

However, a holistic reading of DAO 2003-30 and the Revised Manual will show that such a legalistic approach in its interpretation and application is unwarranted. This is primarily because the EIA process is a system, not a set of rigid rules and definitions. In the EIA process, there is much room for flexibility in the determination and use of the appropriate EIA document type as the foregoing discussion has shown. To our mind, what should be controlling is the guiding principle set in DAO 2003-30 in the evaluation of applications for amendments to ECCs, as stated in Section 8.3 thereof: "[r]equirements for processing ECC amendments shall depend on the

nature of the request but shall be focused on the information necessary to assess the environmental impact of such changes."

This brings us to the next logical question, did the EPRMP provide the necessary information in order for the DENR-EMB to assess the environmental impact of RP Energy's request relative to the first amendment?

We answer in the affirmative.

x x x x

At any rate, we have examined the contents of the voluminous EPRMP submitted by RP Energy and we find therein substantial sections explaining the proposed changes as well as the adjustments that will be made in the environmental management plan in order to address the potential environmental impacts of the proposed modifications to the original project design. These are summarized in the "Project Fact Sheet" of the EPRMP and extensively discussed in Section 4 thereof. Absent any claim or proof to the contrary, we have no bases to conclude that these data were insufficient to assess the environmental impact of the proposed modifications. In accordance with the presumption of regularity in the performance of official duties, the DENR-EMB must be deemed to have adequately assessed the environmental impact of the proposed changes, before granting the request under the first amendment to the subject ECC.

In sum, the Revised Manual permits the use of an EPRMP, as the appropriate EIA document type, for major amendments to an ECC, even for an unimplemented or non-implemented project with a previous ECC, such as the subject project. Consequently, we find that the procedure adopted by the DENR, in requiring RP Energy to submit an EPRMP in order to undertake the environmental impact assessment of the planned modifications to the original project design, relative to the first amendment to the ECC, suffers from no infirmity.

We apply the same framework of analysis in determining the propriety of a PDR, as the appropriate EIA document type, relative to the second amendment to the subject ECC.[78] (Emphasis in the original; citations omitted; underscoring supplied)

In the present case, no grave abuse of discretion was proven to be attributed to the DENR-EMB in instructing the project proponent to file an EPRMP. Hence, it enjoys the presumption of regularity in the performance of its official duties. Based on its technical expertise, it found that the information provided in an EPRMP sufficiently addressed the environmental concerns of the government.

It is within the DENR-EMB's function and expertise to determine the category or classification of a proposed project as it is equipped with the knowledge and competence to resolve issues involving the highly technical field of EIS System. Alltech merely complied with the instruction of the DENR-EMB to submit an EPRMP. The project proponent should not be faulted for this as it is not in the position to substitute the assessment or technical opinion of the DENR-EMB with its own judgment. It is within the sphere of the technical knowledge and expertise of the DENR-EMB, and not the Court nor the project proponent, to determine the appropriate EIA report to submit for a particular project.

Moreover, the original PEA-Amari project and the current proposed project are similar in nature. Both projects involve reclamation and horizontal development of the project site intended for commercial, industrial and residential use in the future. It would have been different if the project proponent proposed to develop reclamation works and infrastructure intended for a totally foreign or different purpose from the superseded of PEA-Amari project such as a nuclear power plant or an airport. Here, the proposed project remained consistent with the objective of the superseded PEA-Amari project.

As correctly determined by the CA, the EPRMP Alltech submitted is a technical EIS due to its comprehensiveness. The EIARC took into consideration important issues such as flooding, the critical habitat, and

the plight of fisherfolk who are residents within the project site itself.

A public hearing is not mandatory for the proposed project.

Section 5.3 of DAO No. 2003-30 provides:

5.3 Public Hearing / Consultation Requirements

For projects under Category A-1, the conduct of public hearing as part of the EIS review is mandatory unless otherwise determined by EMB. For all other undertakings, a public hearing is not mandatory unless specifically required by EMB.

Proponents should initiate public consultations early in order to ensure that environmentally relevant concerns of stakeholders are taken into consideration in the EIA study and the formulation of the management plan. All public consultations and public hearings conducted during the EIA process are to be documented. The public hearing/ consultation Process report shall be validated by the EMB/EMB RD and shall constitute part of the records of the EIA process.[79] (Emphasis supplied)

In this case, the records disclosed that despite not being mandated to conduct a public hearing, Alltech held a consultation on November 25, 2010 with representatives of concerned sectors such as the cities of Parañaque and Las Piñas, PRA, the EIA consultants, the EIA case handler and Review Committee.[80] Identified stakeholders in the direct and indirect impact areas of the proposed project such as the Department of Tourism, the Partnerships for the Environmental Management of the Sea of Asia, and the United Cooperative Association of the Bulungan Fish Landing Site/Fisherman's Wharf likewise participated during the public consultation.[81]

The CA determined that there is no actual or imminent threat that can be attributed to the proposed project that would prejudice the life, health, or property of residents of the cities of Las Piñas and Parañaque.

It must be understood that an ECC is not a permit to implement a project. Paragraph (d), Section 3 of the DAO No. 2003-30 defined ECC as:

d. Environmental Compliance Certificate (ECC)-document issued by the DENR/EMB after a positive review of an ECC application, certifying that based on the representations of the proponent, the proposed project or undertaking will not cause significant negative environmental impact. The ECC also certifies that the proponent has complied with all the requirements of the EIS System and has committed to implement its approved Environmental Management Plan. The ECC contains specific measures and conditions that the project proponent has to undertake before and during the operation of a project, and in some cases, during the project's abandonment phase to mitigate identified environmental impacts.[82]

Clearly, an ECC does not authorize the implementation of the proposed project. It is a planning tool that imposes restrictions that the proponent must diligently observe and duties that it must undertake to ensure that the right to a balanced and healthful ecology is protected. The proponent is expected to secure the pertinent permits and clearances from all concerned government agencies, such as those listed in Annex "B" of the ECC issued to Alltech, prior to the implementation of the project. The proponent will have to ensure compliance with all the conditions and requirements outlined in the ECC before it may commence the implementation of the proposed project.

Noticeably, the conditions in the ECC issued to Alltech require securing other permits and clearances that cannot be obtained without the participation of other stakeholders such as the cities of Parañaque and Las Piñas and PRA.

The concurrence of the listed government agencies in Annex "B" of the ECC such as the Department of Health, Department of Labor and Employment, Department of Public Works and Highways, Department of Agriculture, Bureau of Fisheries and Aquatic Resources, and Department of Social Welfare and Development must also be obtained. Considering that the proposed project still has to meet the conditions listed in its ECC before commencing construction, there is no actual or imminent threat of danger demonstrable at this stage of the proposed project. Thus, the petition of Villar is premature.

Furthermore, the perceived dangers posed by the proposed project were not established by Villar who bears the onus of proving her case. As properly determined by the CA, the companies commissioned by Villar, CEC-P and Tricore, failed to conduct a comprehensive and objective assessment of the proposed project and lacked the expertise necessary in the field of hydrology and hydraulics to competently conclude that the proposed project will cause environmental damage.[83]

In referring the petition to the CA for hearing and reception of evidence, the CA made an exhaustive evaluation of the evidence presented, particularly the reports submitted reflecting the studies conducted to determine the impact of the project to the flooding conditions in the affected areas and its effect to LPPCHEA. We accord weight to the factual findings of the CA in identifying that no actual or imminent threat can be attributed to the proposed project that would prejudice the life, health, or property of residents of the cities of Las Piñas and Parañaque.

According to the Tricore report, "the construction for the reclamation project will change the hydrodynamic characteristics of Manila bay that includes current wave actions, tidal fluctuations, and transport of sediments along the coasts that would restrict circulation of coastal water resulting to degradation of its water quality and environmental ecosystems." [84] However, the Tricore report, which concluded that the proposed reclamation project would cause an increase in flood depth and inundate two-thirds of Las Piñas, Parañaque and Bacoar, lacked sufficient basis.[85]

The claim that the proposed project will cause flooding in the cities of Las Piñas and Parañaque was already addressed in Alltech's EPRMP, the pertinent portion of which states:

As discussed during the Public Consultation, floodings are attributable to impairment in the flow of the Parañaque and Las Piñas rivers due to cloggings from garbage. There are no aspects of the construction and operations that would affect the rivers. Discharge channels are sufficiently provided to serve as the drainage outfalls, as indicated in Figures 2.1 and 2.6. The ECC specifically contains the following conditions which are being integrated in the [ongoing] engineering works, "8. The construction of two outlet channels for the Paranaque River Basin and Las Piñas, Zapote River basin shall be implemented and maintained to improve drainage of the said rivers. Inland channel separating the reclamation and the mainland shall also be constructed and maintained to serve as reservoir and drainage of flood waters and high/low tide from the two rivers; "[86] (*Italics in the original; emphases and underscoring supplied*)

Based on the Conceptual Drainage System Plan shown in Figure 3.4 of the EPRMP,[87] no stream or river volumetric flows are affected since the outflow is Manila Bay.[88] The drainage outfall of treated water is Manila Bay itself.[89] Flooding will not be caused by the proposed project because:

Major impacts from reclamation activities would arise if a river system or a drainage system would be restricted or blocked. This is not the case with this particular project. As may be seen from Project Development Plan Map in Figure 2.4, pages 2-10, the final outflow Parañaque River to Manila Bay all remain unimpeded due to the provision of a River outlet fall while that of Las Piñas River will be unobstructed. Further the drainage outfalls of the project will be the Manila Bay and away from these Rivers.

Also since only 635.14 hectares of the bay, portion of which had been previously reclaimed will be reclaimed out of a total 180,000 hectares of Manila Bay surface area (or 0.3%) the impacts are minimal. The incremental

impact arising from the reduction of the reclamation area further reduces flooding concerns arising from the project.[90]

In addition, the findings in Tricore's report were refuted by the measures that Alltech intends to adopt in order to avoid or reduce potential adverse impact of the proposed project. Among the engineering interventions proposed by Alltech are river flood control and drainage improvement works. These measures have been designed to anticipate a fully-urbanized Parañaque and Las Piñas in year 2020.[91] In the Flood Studies and Design Parameters[92] submitted by Peter Suchianco, Project Director of Alltech, the constructional tabulated[93] as follows:

River Stretch

Design Discharge (c.u/sec)

Length (Meter)

Width (Meter)

Cross-Section

Proposed Structures

Las Piñas River

250-220

6.395

50-30

Single Trapezoidal

Revertment Parapet Wall Embankment

South Parañaque
(including Dongalo River)

630-200

6,500

70-30

Single Trapezoidal

Revertment Parapet Wall Embankment

On the other hand, the constructional features of the proposed improvement works on drainage are as follows:[94]

Proposed Structure

Quantity

Dimension

Pump Station

2 sites

19.8 cm

Control Gate

8 sites

195 tons

Channel Improvement

4,800m

15m-8.7m widening

Open Channel Construction

150m

20m in width

Cut-off Channel

500m

30m in width

Bulkhead structures will also be installed. In order to prevent excessive underground water pressure from storm run-off, a drainage system will be installed behind the bulkhead walls. This measure will eliminate underground water pressure.[95]

We agree with the observation of the CA that the study of CEC-P is inaccurate and unreliable as it depended on the EPRMP submitted in August 2010 and not the final EPRMP that the Alltech submitted in December 2010.[96] This fact was revealed in the Judicial Affidavit of Frances Q. Quimpo, Executive Director of CEC-P, the pertinent portion of which is reproduced below:

QUESTION#14: Of the documents you spoke of a while ago, which of these did you use to form the basis for saying that the project proceeds from inadequate study?

ANSWER#14: The main document scrutinized in the course of this study is the Environmental Performance Report Management Plan (EPRMP) submitted by Alltech to the DENR on (sic) August 2010.

QUESTION#15: Why base your study on Alltech's EPRMP?

ANSWER#15: There were other materials that we relied on as data for our study. However, as the final report on Alltech's proposed management of the environmental impacts before the granting of the March 2011 ECC, the EPRMP is the source document on how the proponent expects its project to affect the landscape and ecology of the project site and what measures it has taken or will take to minimize the adverse effects that may be brought by this change.[97] (Underscoring supplied; emphasis in the original)

It must be clarified that the Final EPRMP of Alltech was submitted in December 2010, and not in August 2010. Therefore, the study of CEC-P, that was based on wrong and inaccurate data, cannot be considered a reliable reference in concluding that the proposed project lacked clear scientific study on the flooding hazards of reclamation and the appropriate mitigation measures to be adopted by the project proponent.

In the determination of potential adverse effects of the proposed project on flooding and flushing, the CA heard and received evidence reflecting the Flooding Impact Assessment and Flushing Impact Assessment conducted. Various circumstances, including the potential worst-case scenarios, were simulated and recreated by experts contracted to identify possible flooding and flushing issues and to recommend mitigating measures to address

these. The technical findings of the CA, which We reproduced below, explain the data-gathering method employed and the results of the hydraulics studies the DHI conducted:

The Flooding Impact Assessment looked at how the proposed reclamation would affect the existing flooding risks in the Parañaque, Las Piñas and Zapote areas. In conducting the Flooding Impact Assessment, the following main factors of flooding were used: (a) rainfall runoff, or flooding caused by heavy rains running off into low-lying areas and rivers; and (b) coastal flooding, or flooding caused by storm surges. The water levels at the river mouth were compared between the predevelopment (baseline) and post-development (reclamation) situation. The differences in water levels between the two scenarios were considered to be the incremental impact caused by the proposed reclamation. If the proposed reclamation does not cause any rise in the downstream water level during flood compared to the existing situation, there would not be any increased flooding further upstream. Computer models reflecting the present condition of the entire Manila Bay, including the site for the proposed reclamation, were set-up to establish the baseline condition. DHI used the available data on the frequency and maximum level of flooding in the area, as well as the data on rainfall levels. The effects of the proposed reclamation were evaluated using a computer model simulating the extreme rainfall runoff and extreme storm surge scenarios. A 3-dimensional hydrodynamic model of the entire Manila Bay was setup. Bathymetry information was taken from the electronic navigation chart with reference to the Philippines Chart Datum at Mean Low Low Water ("MLLW"). In order to establish the maximum water level conditions for the baseline situation, DHI obtained historical rainfall data for the Las Piñas-Parañaque area from the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA). DHI also used the data obtained by DCCD from the flood assessment survey it conducted in August 2011 regarding the frequency and maximum flood levels within a 1-km radius from the mouths of the Parañaque, Las Piñas, and Zapote Rivers. Secondary data from the local governments of Parañaque and Las Piñas were also incorporated in the DCCD data. Given that the Study was concerned with continuous simulation of the rainfall runoff response, it was necessary to generate rainfall time-series data. Rather than simply calculating peak discharge values as DCCD had done, DHI used a full rainfall-runoff time-series. The flood risk assessments were simulated using the worst case scenarios, i.e. with the highest astronomical tide coupled with an extreme storm surge or rainfall runoff event.

The results of the assessment showed that for each of the rivers, the proposed reclamation, without any mitigating measure, would result in increases in the maximum water levels at the river mouths, particularly the Las Piñas-Zapote rivers, which would increase the risk of flooding during the heavy rainfall runoff event. In terms of flood risk during a storm surge, the proposed reclamation would act as a storm surge barrier for the Parañaque area. However, it has a funneling effect in the Las Piñas and Zapote areas, resulting in higher water levels in the northern end of the southern lagoon. Based on the results of the modeling, DHI proposed mitigation measures to avoid increasing the water levels or backwater impact between the predevelopment and post-development conditions at the river mouths. Various combinations of the following mitigation measures were simulated in order to test their effectiveness:

- "1) Removal of the sandbar at the confluence of the Las Piñas and Zapote Rivers;
- 2) Dredging of the channel in front of Parañaque River to -6 meters MLLW;
- 3) Dredging the area between the Las Piñas and Zapote Rivers to -4 meters MLLW;
- 4) Building a flood or sluice gate at the Parañaque causeway joining the islands; and
- 5) Building a 100-meter buffer zone and lagoon infill."

Based on the results of the computer simulations of the effects of the proposed reclamation and of the possible mitigation measures, it was found that if the following mitigation measures were implemented, all the negative impacts are removed:

- "Maintaining a minimum width of 160 meters in the Parañaque River extension, and dredging to deepen it by an average of 2 to 3 meters in order to improve drainage of the Parañaque River;
- Dredging to deepen the entrance to the southern lagoon by an average of 1 meters, and removing the sandbar

immediately offshore from the mouth of the Las Piñas River in order to improve the drainage of the Las Piñas and Zapote Rivers; and
Installation of a sluice gate, approximately 35 meters wide, in the causeway separating the two lagoons, in order to allow improved drainage and flushing of the lagoons."

According to DHI, if all the foregoing mitigation measures were implemented, including the removal of the sandbar, deepening and widening of the Parañaque river extension and the entrance to the southern lagoon, the proposed reclamation would significantly improve the drainage in the rivers, and remove all the potential negative impact of the proposed reclamation. The modeling simulations predicted that if all the mitigation measures were taken, there would be a positive impact for Parañaque and Zapote and no impact at Las Piñas in case of heavy rainfall. The positive impact indicates that the river mouth discharge condition would be improved, potentially reducing upstream flood risk. In the case of storm surges, the mitigating measures would have a positive effect on the Parañaque area, with reduced surge effects. While there would still be a small residual increase in water level at Las Piñas and Zapote areas, this would not be measurable in the field, resulting in zero impact, particularly since the Las Piñas/Zapote area is protected by the elevated Manila-Cavite expressway, which also acts as a storm surge flood barrier. The reclamation would also have a positive impact in protecting the western side of the lagoon which is presently eroding.

In conclusion, the flooding impact assessment indicates that the proposed reclamation, with the recommended mitigation measures implemented, has negligible to positive impact for the Parañaque, Las Piñas and Zapote areas. The proposed reclamation, with the recommended mitigation measures, can bring positive impact to the river mouth passage conditions, and potentially reduce the risk of upstream flooding. During storm surge, the reclamation has a positive impact at the Parañaque area, protecting it and reducing the surge effects. At the Las Piñas site, the model showed the storm surge to increase the water level by 2 to 3 cm. However, this would not be detectable in the field and has zero impact towards coastal flooding as the area is protected by the elevated Manila-Cavite expressway. In addition, the reclamation will have positive impact in terms of protecting the western side of the lagoon which is presently eroding.

The DHI Flushing Impact Assessment looked into the potential changes to the flushing of the lagoons as a result of the proposed reclamation. Flushing time is a measure of water mass retention within the defined boundary, and provides a description of mass balance and transport dynamics in the lagoons. This is a good indicator of conditions in the lagoon, especially with regard to variations to salinity, suspended sediments, and contaminant transport. In other words flushing can be used to evaluate changes in water quality, such as salinity, nutrients, and even sediment exchange in the lagoons. The Flushing Impact Assessment was conducted to determine whether the proposed reclamation would have any negative impact on the residence or flushing time or water exchange rate in the lagoon system which may adversely affect the habitat, specifically the mangroves. Considering that the flushing is very sensitive to rainfall as well as to tidal conditions, two flushing scenarios were studied: (a) the wet season during the monsoon, with peak river runoffs; and (b) the dry season during the non-monsoon, with no discharges from the rivers. After the assessment, it was found that under the present conditions, during the dry season, both the lagoons are currently, poorly flushed due to the relatively weak tidal regime and shallow inter-tidal area. Under the present conditions, during the wet season, flushing is improved due to stronger tidal forcing and additional discharge into the lagoon from the rivers.

Based on the flushing model, the following mitigation measures were recommended to remove the negative impacts of the proposed reclamation, and to improve the current flushing condition in the lagoons:

- a. Dredging and maintaining the extension of the Parañaque river to a depth of -6 meters;
- b. Dredging and maintaining the Las Piñas/Zapote river mouths to a depth of -4meters;

- c. Removal of the sand bar at the Las Piñas mouth; and
- d. Provision of a 35-meter wide sluice gate and operational procedure for the causeway.

During the dry season, if the suggested mitigating measure of installing a sluice gate is taken and it is kept open at all times, there is a slight negative impact in the lagoon due to the generally poor flushing during the dry season. However, if the suggested sluice gate is operated only during flood events or during optimal tide conditions and kept closed during the rest of the time, a positive effect could be achieved. During the wet season, the addition of the sluice gate significantly improves the flushing during the wet season. Provided the sluice gate and other mitigating measures are implemented, a positive overall impact on flushing can be expected from the proposed reclamation. The sluice gate can be operated to improve the flushing beyond the present day environmental condition of the lagoons.

In conclusion, DHI's hydraulic studies show that, at worst, the proposed reclamation will have no flooding and flushing impacts provided the recommended mitigation measures are implemented. On the other hand, the proposed reclamation can improve the existing situation provided the recommended mitigation measures are taken. The DHI documented their study by preparing a Final Report on the Model Setups, Results, and Impacts Assessment of the Flooding and Flushing Study, entitled "Manila Bay Coastal 21 Flooding and Flushing Study Model Setups, Results and Impacts Assessment." [98] (Emphasis supplied)

DHI presented a comprehensive analysis of the consequences of the implementation of the proposed project. The findings of DHI is supported by the Flooding Impact Assessment and a Flushing Impact Assessment conducted that adds credibility and persuasive value to the proposed project.

DCCD also presented its flood assessment survey entitled Coastal 21 Hydrologic and Flood Study, wherein it was determined that the current flooding problems in the Las Piñas/Parañaque areas were largely due to the fact that the existing drainage system cannot adequately drain the low lying areas. DCCD explained that:

[I]n case of extreme events, no significant difference in flood levels between the scenario with the reclamation and the existing conditions is expected, if the uniform width of 160 meters up to the existing bridge for the Parañaque channel will be implemented adjacent to the reclamation project. The construction of the uniform 160-meter channel, however, entails giving up around 4.35 hectares of the Critical Habitat. The widening of the existing channel will actually prevent flooding. This is because the bird sanctuary/critical habitat constricts the channel flow from the Parañaque River. However, even by excluding entirely the Critical Habitat from the reclamation project, the local flooding being experienced can still be alleviated by freeing the rivers of garbage, debris, silt, informal settlers along the banks and other obstructions in the rivers. The street drainage system also needs to be improved especially in the low-lying areas where ponding occur. A major factor to the local flooding is the Manila Coastal Road, which is a road on reclaimed land along the coast and acts as a dike preventing the runoff from freely draining towards the bay. The adequacy of the culverts and widths of the existing bridges to the bay need to be evaluated as well. Forecasts on water elevations at the outlets of the Las Piñas-Zapote rivers were generated in case of extreme events. [99] (Emphasis and underscoring supplied)

Based on the foregoing, it is clear that the proposed project will not aggravate flooding as DCCD had already identified the factors that cause flooding in the areas affected. It is worthy to point out that a major factor to the local flooding is the Manila Coastal Road, which is a road on reclaimed land along the coast and acts as a dike preventing the runoff from freely draining towards Manila Bay. Poor drainage system, obstructions in rivers, and the geographical layout of the Manila Coastal Road are the identified contributing factors in the flooding problems in Las Piñas and Parañaque. With the implementation of the proposed project, and adopting the mitigating measures included in the proposed project. The communities will actually benefit as engineering interventions will be introduced to address the flooding issues.

Between the study conducted by CEC-P and those produced by DCCD, Surbana, and DHI, We are inclined to give more weight to the studies commissioned by Alltech which appear to be duly supported by scientific research. Unlike CEC-P, Surbana has amassed over 45 years of experience in planning and managing land reclamation and coastal development.[100] It has undertaken various reclamation and coastal development projects worldwide, including the Tanjong Rhu and the East Coast reclamation projects in Singapore.[101]

In its Closing Report,[102] Surbana highlighted its reclamation project next to the Kota Kinabalu City Bird Sanctuary, the only remaining patch of mangrove forest found in Kota Kinabalu, Malaysia. Surbana opined that the success of this project proves that a bird sanctuary can coexist alongside a land reclamation project.[103] Surbana also mentioned the Pulau Ular Reclamation Project in Singapore which was developed approximately 200 meters from a critical habitat, Singapore's only public access recreational dive area with good quality coral reefs, seagrass beds, and mangrove habitats.[104] Surbana recommended conducting a flood and flushing study[105] and made the following conclusion:

The development of the Project, with a commitment to minimizing negative physical, biological and social environmental impacts at the design stage, and a well-considered EMMP during construction and operation can be expected to improve the environmental status of the LPPCHEA area when benchmarked against experience from similar international sites.[106]

As have been already discussed, following the recommendation of Surbana, Alltech engaged the services of DHI to carry out hydrologic and hydrodynamic study to evaluate the potential flooding and flushing impacts of the proposed project.[107] The flood risk assessments made by DHI were simulated using projected worst-case scenarios; i.e., with the highest astronomical tide coupled with an extreme storm surge or rainfall runoff event, extreme wind conditions, and climate change.[108]

While Villar's intention in taking a proactive role in advancing her constituents' right to a balanced and healthful ecology is laudable, the Court cannot simply apply the extraordinary remedy of a Writ of Kalikasan to all environmental issues elevated to Us. In *Paje v. Casiño*,[109] the Court clarified that:

The function of the extraordinary and equitable remedy of a Writ of Kalikasan should not supplant other available remedies and the nature of the forums that they provide. The Writ of Kalikasan is a highly prerogative writ that issues only when there is a showing of actual or imminent threat and when there is such inaction on the part of the relevant administrative bodies that will make an environmental catastrophe inevitable. It is not a remedy that is availing when there is no actual threat or when imminence of danger is not demonstrable. The Writ of Kalikasan thus is not an excuse to invoke judicial remedies when there still remain administrative forums to properly address the common concern to protect and advance ecological rights. After all, we cannot presume that only the Supreme Court can conscientiously fulfill the ecological duties required of the entire state.[110] (Emphases supplied)

The writ of kalikasan is not a remedy that may be availed when there is no actual threat or when the imminence of danger is not apparent to justify judicial intervention. To Our mind, the writ of kalikasan should only be availed in extraordinary circumstances that require the immediate attention of the Court and cannot be arbitrarily invoked when remedies are available in administrative agencies to properly address and resolve concerns involving protection of ecological rights.

The precautionary principle is not applicable to the present case.

The precautionary principle is one of the key features introduced in the RPEC wherein the burden of proof is shifted to the proponent of a project to dispel concerns regarding potential harmful impacts of a project to the

environment. Section 1, Rule 20 of the RPEC states:

Section 1. Applicability. - When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it.

The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.[111]

It is not meant to apply to all environmental cases. Essential to the application of the precautionary principle is the presence of scientific uncertainty.

In the present case, We find no reason to apply the precautionary principle to favor Villar as the proponent had sought the assistance of experts to allay the concerns of stakeholders who will be affected by the implementation of the proposed project. As explained by the CA, the threat was not established and the volumes of data generated by objective and expert analyses ruled out the scientific uncertainty of the nature and scope of the anticipated threat.[112]

There is no sufficient basis to hold that the proposed project will impinge on the viability and sustainability of LPPCHEA.

The State's primary framework for biodiversity conservation is found in the National Integrated Protected Areas System (NIPAS) Act of 1992.[113] Thereafter, the Congress enacted the ENIPAS[114] to enlarge the scope of the original list of identified protected areas in NIPAS and add 94 more critical habitats nationwide. Section 4 of R.A. No. 11038 establishes LPPCHEA as a "protected area" or a portion of land and/or water set aside by reason of its "unique physical and biological significance, manages to enhance biological diversity and protected against destructive human exploitation." [115] Nevertheless, this development does not substantially alter Our decision to affirm the ruling of the CA denying Villar's petition for the issuance of a writ of kalikasan due to the reasons discussed above. It must be clarified that the classification of LPPCHEA as a "protected area" under the ENIPAS does not automatically result to a prohibition of reclamation activities within the area, or alongside it. There is nothing in the NIPAS and ENIPAS expressly declaring that reclamation activities within or alongside a critical habitat is an incompatible activity that is not allowed.

Moreover, the metes and bounds of the LPPCHEA remain intact. No portion of the LPPCHEA will be utilized for the proposed project, as shown in the geographical illustrations[116] submitted by Alltech and its consultants. Even the Tricore report Villar commissioned acknowledged that LPPCHEA was located adjacent to the project site.[117] This recognition is critical in validating the assertion of Alltech that no portion of the proposed project will traverse the LPPCHEA.

Out of the 175-hectare area of LPPCHEA, the alleged 4.3 hectares of the critical habitat mentioned by DHI that would be utilized in the event that the Parañaque river channel with a width of 160 meters is developed is not final and remains a proposal and will still be subject to the approval of the government through the appropriate agencies. Even assuming that the 4.3 hectares of the critical habitat will be utilized, reclamation activities within or alongside a critical habitat is not prohibited under the NIPAS and ENIPAS. Therefore, the perceived negative impact of the proposed project to LPPCHEA's viability and sustainability remains unsubstantiated.

ECC No. CO-1101-0001 is not rendered functus officio despite the lapse of five years from its issuance.

With regard to the validity and expiry of Alltech's ECC, paragraph (d), item no. 10, chapter 1.0 of the Revised Procedural Manual for DAO No. 2003-30 provides that:

d) ECC Validity and Expiry: Once a project is implemented, the ECC remains valid and active for the lifetime of the project. ECC conditions and commitments are permanently relieved from compliance by the Proponent only upon validation by the EMB of the successful implementation of the environmental aspects/component of the Proponent's Abandonment/ Rehabilitation/ Decommissioning Plan. This pre-condition for ECC validity applies to all projects including those wherein ECC expiry dates have been specified in the ECC. However, the ECC automatically expires if a project has not been implemented within five (5) years from ECC issuance, or if the ECC was not requested for extension within three (3) months from the expiration of its validity. If the baseline characteristics have significantly changed to the extent that the impact assessment as embodied in the Environmental Management Plan (EMP) is no longer appropriate, the EMB office concerned shall require the Proponent to submit a new application. The EIA Report on the new application shall focus only on the assessment of the environmental component which significantly changed. (Emphasis in the original, underscoring supplied)

In the present case, the ECC of Alltech is not automatically rendered *functus officio* simply because the proposed project was not executed within five years from March 24, 2011, the date the EMB issued ECC No. CO-1101-0001. It must be highlighted that the project proponent was not the reason that the immediate implementation of the proposed project was forestalled. It was the filing of the petition for writ of *kalikasan* that led to the delay in carrying out the proposed project. Any revision to the ECC because of the lapse of time is for the DENR-EMB to decide.

Participation of the country as a contracting party in the Convention on Wetlands does not proscribe the proposed project.

Lastly, while the Court acknowledges the international responsibilities of the Philippines, as a Contracting Party of the Convention on Wetlands, for the wise use of all designated wetlands of international importance in the country, this does not mean that a reclamation project alongside or adjacent a designated wetland is absolutely prohibited. Paragraph 3, Article 2 of the Convention on Wetlands of International Importance especially Waterfowl Habitat[118] states:

3. The inclusion of a wetland in the List does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is situated.[119]

It is clear that the classification of an area as a wetland of international importance does not diminish the control the government exercises over the wetlands and adjacent areas within its territory. The government may continue to utilize these areas as it may deem beneficial for all its stakeholders. Here, the government, through the DENR, found Alltech's proposal and studies conducted sufficient to allay the concerns of the stakeholders.

WHEREFORE, the petition is DENIED. The Decision dated April 26, 2013 and the Resolution dated August 14, 2013 of the Court of Appeals in CA-G.R. SP. No. 00014, which denied the petition for writ of *kalikasan*, are AFFIRMED.

SO ORDERED.

Gesmundo, C. J., Perlas-Bernabe, Hernando, Inting, Zalameda, M. Lopez, Delos Santos, Rosario, and J. Lopez, JJ., concur.

Leonen, J., I dissent. See separate opinion.

Caguioa, J., See Concurring Opinion.

Lazaro-Javier, J., Please see my Dissenting Opinion.

Gaerlan,[*] J., no part.

[*] No part, in view of prior participation in the assailed Decision and Resolution of the Court of Appeals.

[1] Rollo, Vol. I, pp. 61-154.

[2] Penned by Associate Justice Apolinario D. Bruselas, Jr., with the concurrence of Associate Justices Rebecca De Quia-Salvador and Samuel H. Gaerlan (now a Member of the Court); id. at 9-55.

[3] Id. at 56-59.

[4] Id. at 161-162.

[5] Rollo, Vol. II, pp. 1569-1583.

[6] Rollo, Vol. I, p. 162.

[7] Id. at 772-806, 866-881.

[8] Id. at 810.

[9] Id. at 811.

[10] Id. at 810-811.

[11] Id. at 977-989, 990-1003.

[12] Id. at 162-163.

[13] Id. at 163.

[14] Id. at 547-669.

[15] Id. at 163, 562.

[16] Id. at 1019-1023.

[17] Id. at 1021-1022.

[18] Id. at 159.

[19] Supra note 2.

[20] Rollo, Vol. I, p. 55.

[21] Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes.

[22] Rollo, Vol. I, p. 42.

[23] Id. at 39.

[24] Id.

[25] Id. at 39-40.

[26] Id. at 40.

[27] Id.

[28] Id. at 48.

[29] Id. at 45.

[30] Id.

[31] Id. at 46-47.

[32] Id. at 53.

[33] Id. at 54.

[34] Supra note 3.

[35] Rollo, Vol. I, p. 59.

[36] Supra note 1.

[37] Rollo, Vol. I, pp. 102-114.

[38] Id. at 116-119.

[39] Id. at 119-123.

[40] Id. at 123-127.

[41] Id. at 127-129.

[42] Id. at 129-138.

[43] Id. at 138-141.

[44] Id. at 141-144.

[45] Id. at 144-147.

[46] Rollo, Vol. II, pp. 1245-1328.

[47] Id. at 1263-1273.

[48] Id. at 1273-1275.

[49] Rollo, Vol. IV, pp. 2781-2782.

[50] Id. at 2795-2833.

[51] Id. at 2814-2821.

[52] Rollo, Vol. IV, pp. 2739-2750.

[53] Id. at 2745-2746.

[54] An Act Declaring Protected Areas and Providing for their Management, Amending for this Purpose Republic Act No. 7586, otherwise known as the "National Integrated Protected Areas System (NIPAS) Act of 1992," and for Other Purposes.

- [55] Temporary rollo, pp. 1-2.
- [56] Id. at 2.
- [57] Id. at 3-4.
- [58] Id. at 4-7.
- [59] Id. at 7.
- [60] Id. at 7-10.
- [61] Id. at 1-7.
- [62] Id. at 4.
- [63] Id. at 4-5.
- [64] P.D. No. 1586, Section 4.
- [65] Id., Section 1.
- [66] Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC.
- [67] *Segovia v. The Climate Change Commission*, 806 Phil. 1019, 1034 (2017).
- [68] 752 Phil. 498 (2015).
- [69] Id. at 542.
- [70] Glossary, DAO No. 2003-30.
- [71] Id.
- [72] Supra note 65.
- [73] Rollo, Vol. I, pp. 1019-1023.
- [74] Rollo, Vol. IV, p. 2804.
- [75] Id. at 2804, 2861.
- [76] *Chavez v. Public Estates Authority*, 433 Phil. 506, 560 (2002).
- [77] Supra note 65.
- [78] Supra note 65 at 611-616.
- [79] DAO No. 2003-30, Section 5.3.
- [80] Rollo, Vol. I, pp. 1016-1018.
- [81] Id. at 130.
- [82] DAO No. 2003-30, Section 3(d).
- [83] Rollo, Vol. I, p. 48.
- [84] Id. at 283.
- [85] Id. at 45.

- [86] Id. at 608.
- [87] Id.
- [88] Id.
- [89] Id. at 609.
- [90] Id. at 619.
- [91] Id. at 843-844.
- [92] Id. at 839-854.
- [93] Id. at 844.
- [94] Id.
- [95] Id. at 856.
- [96] Id. at 46-47.
- [97] Id. at 228-229.
- [98] Rollo, Vol. I, pp. 26-32.
- [99] Id. at 22-23.
- [100] Rollo, Vol. III, p. 1997.
- [101] Id. at 1997-1999.
- [102] Id. at 1993-2026.
- [103] Id. at 2005.
- [104] Id. at 2007.
- [105] Id. at 2026.
- [106] Id.
- [107] Id. at 2241.
- [108] Id. at 2245, 2258, 2263.
- [109] Supra note 65.
- [110] Id. at 714.
- [111] Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, supra note 63.
- [112] Rollo, Vol. I, p. 53.
- [113] Republic Act No. 7586.
- [114] Republic Act No. 11038.
- [115] Id., Section 3.
- [116] Rollo, Vol. I, pp. 585, 635.

[117] Id. at 266.

[118] Convention on Wetlands of International Importance Especially Waterfowl Habitat, July 13, 1994, , visited on February 4, 2021.

[119] Id.

DISSENTING OPINION

LEONEN, J.:

Regretfully but with great respect to the majority, I dissent.

The Department of Environment and Natural Resources should have required the proponent to submit an environmental impact statement, and not merely the Environmental Performance Report and Management Plan, as part of the Environmental Impact Assessment. The Court of Appeals should not have merely relied on the Department's findings to conclude that an environmental impact statement was not required. It should always take a harder look at the parties' submissions.

This case involves a reclamation project near a protected bird sanctuary and mangrove forest. Nearby residents have expressed concerns that the reclamation project may cause flooding in their neighborhoods. This must be weighed in a petition for the issuance of a writ of kalikasan.

In 2009, Alltech Contractors, Inc. (Alltech) submitted unsolicited proposals to Las Piñas and Parañaque for the development, financing, engineering, design, and reclamation of 381.26 hectares of land in Las Piñas and 174.88 hectares of land for Parañaque, both along the coast of the Manila Bay. Each city's Sangguniang Panlungsod later issued a resolution authorizing its mayor to explore the proposal under a Joint Venture Agreement. Later on, Las Piñas and Parañaque accepted the proposal and executed their respective Joint Venture Agreements.[1]

In 2010, the Philippine Reclamation Authority approved the Las Piñas and Parañaque Coastal Bay Project, subject to full compliance with laws, rules, and regulations. Alltech was then directed to submit an environmental performance report management plan, instead of an environmental impact statement, as basis for the issuance of an environmental compliance certificate.[2]

In December 2010, Alltech submitted its final Environmental Performance Report Management Plan, which involved the reclamation of around 203.43 hectares along the coast of Parañaque and 431.171 hectares along the coast of Las Piñas. This area was also within the 750-hectare site known as the Amari Coastal Bay Development Corporation, covered by ECC No. CO-9602-002-208C.[3]

On March 24, 2011, the Department of Environment and Natural Resources-Environmental Management Bureau issued ECC No. CO-1101-0001 covering the Las Piñas and Parañaque Coastal Bay Project.[4]

On March 16, 2012, then Las Piñas Representative Cynthia A. Villar (Villar), representing 315,849 residents, filed a Petition for a writ of kalikasan before this Court. She prayed that the project be enjoined as it will, among others, cause massive Hooding to the residents in the area.[5]

On April 24, 2012, this Court issued the writ against Alltech, Philippine Reclamation Authority, Environmental Management Bureau, and the cities of Las Piñas, Parañaque, and Bacoor, Cavite. The case was remanded to the Court of Appeals for the necessary hearings, reception of evidence, and rendition of judgment.[6]

On April 26, 2013, the Court of Appeals rendered a Decision[7] denying the Petition for lack of merit. It found

that the Environmental Performance Report Management Plan was also a form of environmental impact assessment and that an environmental impact statement was required only for new projects. Since the current reclamation project was already within the Amari Coastal Bay Development Project, the Court of Appeals found that the statement was unnecessary. It likewise noted that the submission of the Environmental Performance Report Management Plan, in lieu of an environmental impact statement, was the Environmental Management Bureau's decision, and not Alltech's. It pointed out that baseline data gathered in 1996 as basis for the Environmental Performance Report Management Plan did not make the data inaccurate or outdated, but instead required Alltech to meet a higher standard, since the basis would be the better quality of environment in 1990.[8]

After her Motion for Reconsideration had been denied, Villar filed this Petition. She argues, among others, that the issuance of the Environment Compliance Certificate for Las Piñas and Parañaque Coastal Bay Project was illegal since respondent Alltech did not submit the appropriate Environment Impact Assessment study. She likewise contends that the project impinges on the viability and sustainability of the Las Piñas-Parañaque Critical Habitat and Ecotourism Area, which was certified as a Wetland of National Importance in 2013.[9]

The majority, however, upheld the Court of Appeals Decision, finding:

In the present case, the EPRMP Alltech submitted was the proper form of study. As pointed out by the DENR-EMB, the proposed project is premised on the existence of a reclamation project covered by an ECC previously issued to the Philippine Estates Authority (PEA), now PRA, and Amari (ECC No. CO-9602-002-208C) issued in September 1996....

....

... Under the Revised Procedural Manual for DAO No. 2003-30, the type of EIA report for a project which had previously operated or existing with previous ECCs intended to be modified, expanded or re-start operations is not an EIS but an EPRMP or PEPRMP. As explained by the DENR-EMB, the entire area of the proposed project was within the area of the previous ECC issued in favor of the PEA and Amari on September 16, 1996 covering 750 hectares.

....

It is within the DENR-EMB's function and expertise to determine the category or classification of a proposed project as it is equipped with the knowledge and competence to resolve issues involving the highly technical field of EIS system....

....

As correctly determined by the CA, the EPRMP Alltech submitted is a technical EIS due to its comprehensiveness. The EIARC took into consideration important issues such as flooding, the critical habitat, and the plight of fisherfolk who are residents within the project site itself.[10] (Citations omitted)

The majority likewise found that the classification of the Las Piñas-Parañaque Critical Habitat and Ecotourism Area as a "protected area" did not result in the prohibition of reclamation activities since there was nothing in the law that expressly disallowed it.[11]

I disagree.

Respondent Alltech should have been ordered to submit an environmental impact statement. This is the appropriate environmental impact assessment study necessary to issue an environmental compliance certificate for the Coastal Bay Project.

I

For every project or undertaking that may significantly affect the environment's quality, Presidential Decree No. 1586[12] requires an environmental impact statement under an Environmental Impact Statement System to be established by the Department of Environment and Natural Resources.[13] This 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." [14]

An environmental impact assessment, meanwhile, is a "process that involves predicting and evaluating the likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation and abandonment. It also includes designing appropriate preventive, mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare." [15]

Under the Revised Manual for Department of Environment and Natural Resources Administrative Order No. 2003-30:

There are seven (7) major EIA Report types for which preparation and application procedures have been provided in this Manual. Table 1-4 presents the report type per project sub-group.

a) For new projects: EIA-covered projects in Groups I, II and IV are required either an (1) Environmental Impact Statement (EIS), (2) Programmatic EIS (PEIS), (3) Initial Environmental Examination Report (IEER) or (4), IEE Checklist (IEEC), depending on project type, location, magnitude of potential impacts and project threshold. For non-covered projects in Groups II and III, a (5) Project Description Report (PDR) is the appropriate document to secure a decision from DENR/EMB. The PDR is a "must" requirement for environmental enhancement and mitigation projects in both ECAs (Group II) and NECAs (Group III) to allow EMB to confirm the benign nature of proposed operations for eventual issuance of a Certificate of Non-Coverage (CNC). All other Group III (non-covered) projects do not need to submit PDRs - application is at the option of the Proponent should it need a CNC for its own purposes, e.g. financing prerequisite. For Group V projects, a PDR is required to ensure new processes/technologies or any new unlisted project does not pose harm to the environment. The Group V PDR is a basis for either issuance of a CNC or classification of the project into its proper project group.

b) For operating projects with previous ECCs but planning for applying for clearance to modify/expand or re-start operations, or for projects operating without an ECC but applying to secure one to comply with PD 1586 regulations, the appropriate document is not an EIS but an EIA Report incorporating the project's environmental performance and its current Environmental Management Plan. This report is either an (6) Environmental Performance Report and Management Plan (EPRMP) for single project applications or a (7) Programmatic EPRMP (PEPRMP) for co-located project applications. However, for small project modifications, an updating of the project description or the Environmental Management Plan with the use of the proponent's historical performance and monitoring records may suffice.[16]

Under these regulations, an environmental impact statement is required for new projects. For "operating projects with previous ECCs but planning or applying for clearance to modify/expand or re-start operations, or for projects operating without an ECC but applying to secure one to comply with PD 1586 regulations," an environmental performance report and management plan will be submitted.

The difference is obvious: An environmental impact statement is a new and in-depth environmental impact assessment study on a specific project site, while an environmental performance report and management plan is a mere update a prior environmental impact assessment study already made on the same site. As petitioner correctly pointed out:

138. The rationale behind requiring only an EPRMP for projects that have operated initially is to dispense with needless submissions of new studies as there presumably exists a number of useful data about the actual environmental impacts of a project as observed. Of course, there is no need to duplicate the tedious processes of an Environmental Impact Statement when the effects of a project have been recorded upon its implementation and where historical environmental performance and status of the project and its management plan are already known.

139. Given a project that had operated but stopped for a period of more than five (5) years, what is required is an environmental impact report on how well the mitigation and enhancement measures worked, using its environmental management plan ("EMP") as a yardstick. The convenience of preparing an EPRMP leaves the proponent to focus on ways to enact improvements on a project that has been implemented and has operated with plans for modification, expansion or a restart. This shortcut allows the proponent to suggest modifications and changes in the original plan to augment environmental performance without the costly distraction of undertaking a comprehensive environmental impact statement study.[17]

The Court of Appeals found that the Environmental Performance Report and Management Plan's submission was appropriate since a prior Environmental Compliance Certificate had already been issued for Amari Coastal Bay Project in 1996.

This Project, however, was never implemented.[18] Thus, there would be no basis for any historical environmental impact data. There would be no viable report or update on the effect of prior mitigation measures and environmental plans already implemented. Amari Coastal Bay Project's ECC No. CO-9602-002-208C required, among others:

8. The construction of two outlet channels for the Parañaque River Basin and Las Piñas, Zapote River Basin shall be implemented and maintained to improve drainage of the said rivers. Inland channel separating the reclamation and the mainland shall also be constructed and maintained to serve as reservoir and drainage of flood waters and high/low tide from the two rivers.[19] (Citation omitted)

No evidence was presented showing that these two outlet channels had already been constructed, and that these continue to improve drainage among the identified rivers. In contrast, respondent Alltech appears to have tacitly recognizing that such outlet channels were ever implemented, since the outlet channels were part of their proposed engineering works:

As discussed during the Public Consultation, floodings are attributable to impairment in the flow of the Parañaque and Las Piñas rivers due to cloggings from garbage. There are no aspects of the construction and operations that would affect the rivers. Discharge channels are sufficiently provided to serve as the drainage outfalls, as indicated in Figures 2.1 and 2.6. The EC specifically contains the following conditions which are being integrated in the ongoing engineering works, "8. The construction of two outlet channels for the Parañaque River Basin and Las Piñas, Zapote River basin shall be implemented and maintained to improve drainage of the said rivers. Inland channel separating the reclamation and the mainland shall also be constructed and maintained to serve as reservoir and drainage of flood waters and high/low tide from the two rivers[.]"[20]

The proposed construction, based on their Conceptual Drainage System Plan, appears to also expand or modify the requirement of an inland channel separating the reclamation and the mainland:

Major impact from reclamation activities would arise if a river system or a drainage system would be restricted or block[ed]. This is not the case with this particular project. As may be seen from Project Development Plan Map in Figure 2.4, page 2-10, the final outflow Paranaque River to Manila Bay all remain unimpeded due to the provision of a River outlet fall while that of Las Piñas River will be unobstructed. Further the drainage outfalls of the project will be the Manila Bay and away from these rivers.

Also since only 635.14 hectares of the bay, portion of which had been previously reclaimed will be reclaimed out of a total 180,000 hectares of Manila Bay surface area (or 0.3%) the impacts are minimal. The incremental impact arising from the reduction of the reclamation area further reduces flooding concerns arising from the project.[21]

Amari Coastal Bay Project's ECC No. CO-9602-002-208C, however, provides:

20. Any expansion or modification of the original plans not identified in the approved EIS shall undergo the EIS process.[22]

The Environmental Impact Assessment Review Committee's Comments and Chairman's Report[23] should have also placed the Court of Appeals on guard as to the scope of review undertaken. In particular, it states the following unresolved issues:

Issues, Concerns, Problems

Response or Remarks

1. Nature of the ECC being applied for, whether it is for expansion of coverage of the old ECC earlier issued or application for a new one

Has not been resolved. The committee at the onset has been appraised both by the accounts of the EIS, the proponents, and the case handler that the ECC being applied for is an expansion of coverage of the earlier ECC earlier [sic] issued by the EMB; this was during the first meeting. The new case handler who has taken over the work of the earlier case handler, however, has said that the ECC being applied for is being treated as a new one.

2. Need for new data

Has only been resolved partly. All the members of the committee have noted that almost all of the data included in the draft EIS involve secondary material from the earlier EIS submitted; there has been explicit recommendation from Mr. Ben Francisco, member of the Rev Com and a fisheries expert, that data on the municipal fisheries be updated to at least 5 years or later.

3. Sea level rise due to climate change effect on the project

Has not been resolved. It has been noted by at least two member of the Rev Com that sea level rise due to climate change is expected; it has been noted that it would be unfair for project proponents not to consider this at the onset of the project and at the same time to rely on the local government units involved to mitigate the effects later when these are already significantly affecting prospective locators. The proponents have been required to do a modeling on the matter but have only responded with the assurance that the Public Estates Authority is now preparing a master plan for all such projects in the entire Philippines with precisely this issue in view.

The experts tasked to assess the environmental impact of respondent Alltech's Project noted that it was unclear whether the coverage of ECC No. CO-9602-002-208C would be expanded. They also acknowledged that all prior data may be outdated and would not accurately reflect the expected environmental impact of the Project. Despite the presence of these important, but unresolved, issues, the Environmental Management Bureau issued the Environmental Compliance Certificate. It is baffling how the Court of Appeals failed to address these unresolved issues.

Admittedly, environmental cases are highly technical in nature. Courts, not having the required expertise, place great weight on the assessments of the administrative agencies tasked to assess these issues.

The highly technical nature of the case, however, is no excuse for the Court of Appeals to be remiss in its duty to review all the evidence presented in a case for the issuance of a writ of kalikasan and merely rely on the Department of Environment and Natural Resources' findings.

In *Cordillera Global Network v. Paje*,^[24] this Court had encountered a similar issue. There, the proponent submitted an Environmental Performance Report and Management Plan, claiming that its prior Environmental Impact Statement had already contemplated its tree-cutting proposal:

Private respondents do not deny that they did not apply for a new environmental compliance certificate prior to cutting or earth-balling the affected trees. Nonetheless, they argue that a separate environmental compliance certificate was not needed because their amended Environmental Compliance Certificate already covered the planned tree-cutting and earth-balling. What was required, they claim, was a tree-cutting and/or earth-balling permit, which they secured prior to the operations.

Private respondents are mistaken.

In the Environmental Impact Statement, submitted to support private respondents' application for an environmental compliance certificate for the SM Pines Resort Project, the project's construction phase saw the removal "of about 112 trees or 16.54% of the total number of major trees" from the proposed building site. Private respondents admitted that the removal of these trees will have "[m]edium, negative[,] and long term" impact and proposed the following mitigation measures[.]

....

On April 5, 2011, in relation to the application for an amended environmental compliance certificate, the Environmental Management Bureau-Cordillera Administrative Region requested additional information on the trees that would be affected by the Expansion Project[.]

....

Private respondent SM Investments Corporation complied by submitting a revised Environmental Performance Report and Management Plan. However, while the document contained a detailed inventory of the trees that would be affected by the Expansion Project, it did not provide relevant information as to whether the trees were planted or naturally grown.

The missing information is crucial to determine if the affected trees were part of a natural and residual forest, which means it was "composed of indigenous trees, not planted by man[.]" putting them under the coverage of Executive Order No. 23, series of 2011.

....

The necessity of a separate environmental compliance certificate is evident as the original Environmental Compliance Certificate only contemplated the removal of 112 trees for the entire SM Pines Resort Project. Meanwhile, the amended Environmental Compliance Certificate issued for the Expansion Project considered the environmental impact of the "additional parking levels, retail shops[,] and restaurants; and construction of a new 1,200 m³/day capacity Sewage Treatment Plant" but did not account for removing an additional 182 Benguet pine and *Alnus* trees.

Notably, the plan on the affected trees in the revised Environmental Performance Report and Management Plan, in support of the application for an amended environmental compliance certificate, seemed to be a mere afterthought, as shown by the lack of a solid strategy in place[.][25] (Citations omitted)

Despite glaring omissions in the proponent's application, this Court in *Cordillera* noted that both the trial court and the Court of Appeals had failed to notice that a separate Environmental Compliance Certificate was

necessary, having merely relied on the technical reports submitted by the proponent and the Department of Environment and Natural Resources' findings on the matter:

It does not escape this Court's attention that both the Regional Trial Court and the Court of Appeals missed private respondents' application for the cutting of 182 trees - in addition to 112 already allowed in the earlier Environmental Compliance Certificate - merely through an amended Environmental Compliance Certificate and almost nine (9) years after the original had been used. This Court also notes the lower court's nonchalant attitude when it failed to notice the Department of Environment and Natural Resources failure to distinguish indigenous long-standing pine trees from those recently planted when it issued the amended Environmental Compliance Certificate despite the existence of Executive Order No. 23.[26]

In this case, the Environmental Impact Assessment Review Committee reported that there were unresolved issues, particularly in the data submitted or in the data further required. These alone should have alerted the Court of Appeals that despite the barrage of technical reports by both parties, the matter required further thoughtful assessment, rather than a mere reliance on the Department's recommendation.

II

An environmental impact statement was also necessary because there were factors that would not have been addressed in the assessment of the Amari Coastal Bay Project. Amari Coastal Bay Project's ECC No. CO-9602-002-208C provided:

3. The eight-hectare mangrove plantation/research project area by the Ecosystems and Research Development Bureau (ERDB) shall be maintained and protected as stipulated under the Memorandum of Agreement (MOA) between the DENR and the Public Estates Authority (PEA) dated December 19, 1991. The reclamation project shall not impede its ecological function as breeding place for marine life including wildlife. It shall enhance the goal of the Livelihood Plan to ensure food security and self-sufficiency.[27]

This Environmental Compliance Certificate has already recognized parts of what would be the Las Piñas-Parañaque Critical Habitat and Ecotourism Area. However, certain environmental protection areas had not yet been established in 1996, when the Certificate was issued.

The Las Piñas-Parañaque Critical Habitat and Ecotourism Area was established on April 22, 2007 through Presidential Proclamation No. 1412,[28] which required that a biodiversity impact assessment of such critical habitats "be integrated into the Environmental Impact Assessment and the Environmental Risk Assessment Processes, taking into consideration guidelines adopted under the United Nations Convention on Biological Diversity." [29] Presidential Proclamation No. 1412-A[30] further required that "any reclamation in the periphery of the Las Piñas-Parañaque Critical Habitat and Ecotourism Area shall not impede the ecological function of the lagoon and its small Islands' mangroves, salt marshes and tidal areas as breeding, feeding and roosting place for marine and terrestrial wildlife; [and] that "all reclamation in nearby areas [must be undertaken] in a way that would help restore and ensure shellfish and fish productivity[.]"[31]

Republic Act No. 11038[32] established the Las Piñas-Parañaque Critical Habitat and Ecotourism Area as a protected area,[33] or which means "land and/or water set aside by reason of their unique physical and biological diversity and protected against destructive human exploitation[.]"[34]

The key phrase here is protection against "destructive human exploitation." Thus, while the majority correctly states that nothing in the law prohibits reclamation projects adjacent to protected areas,[35] the law explicitly protects these areas against any project that would tend to destroy or exploit them.

DCCD Engineering Corporation (DCCD), a local engineering service consultant contracted by respondent

Alltech, explicitly stated in its report that for the reclamation project to prevent flooding, 4.35 hectares of the protected habitat be will have to be reclaimed:

If the uniform width of 160 m up to the existing bridge for the Parañaque Channel will be implemented adjacent to the reclamation project, no increase in flood levels from the current situation is expected. This is consistent with the parameters discussed in Boulevard 2000. However, if the Habitat will remain thereby constricting the channel flow from Parañaque River, the flood levels will expect to rise from 0.23 m to 0.27 m near the river mouth. There may be corresponding increase in the inland flooding which may be established by further studies. Around 4.35 ha of the Habitat Area will have to be given up if the uniform 160 m channel width will be built as planned in Boulevard 2000.[36] (Citation omitted)

DCCD did propose another alternative later on, in that if the habitat would not be reclaimed, garbage from the Manila Coastal Road should instead be cleared:

[I]n case of extreme events, no significant difference in flood levels between the scenario with the reclamation and the existing conditions is expected, if the uniform width of 160 meters up to the existing bridge for the Parañaque channel will be implemented adjacent to the reclamation project. The construction of the uniform 160-meter channel, however, entails giving up around 4.35 hectares of the Critical Habitat. The widening of the existing channel will actually prevent flooding. This is because the bird sanctuary/critical habitat constricts the channel flow from the Parañaque River. However, even by excluding entirely the Critical Habitat from the reclamation project, the local flooding being experienced can still be alleviated by freeing the rivers of garbage, debris, silt, informal settlers along the banks and other obstructions in the rivers. The street drainage system also needs to be improved especially in the low-lying areas where ponding occur. A major factor to the local flooding is the Manila Coastal Road, which is a road on reclaimed land along the coast and acts as a dike preventing the runoff from freely draining towards the bay. The adequacy of the culverts and widths of the existing bridges to the bay need to be evaluated as well. Forecasts on water elevations at the outlets of the Las Piñas-Zapote rivers were generated in case of extreme events.[37] (Citation omitted)

While it is admirable that an alternative was suggested, it was alarming for respondent Alltech's own consultants to conclude that "the bird sanctuary/critical habitat constrict[ed] the channel flow from the Parañaque River" and would be problematic for respondent Alltech's Project.

From these recommendations, it appears that respondent Alltech was being given a choice: either undertake the relatively simple task of destroying 4.35 hectares of a critical habitat, or the relatively difficult task of permanently clearing the Manila Coastal Road of garbage, debris, silt, and informal settlers.

The majority insists that this recommendation "is not final and remains a proposal and will still be subject to the approval of the government through the appropriate agencies." [38] That the proposal was even considered should have already notified the Court of Appeals that the Department of Environment and Natural Resources may not have exercised the proper diligence in issuing the Environmental Compliance Certificate.

In any case, if this proposal is not undertaken, flood levels will be expected to rise from 0.23 meters to 0.27 meters once the reclamation project begins, as the DCCD reported. This was precisely the situation that petitioner contemplated. Once the Las Piñas and Parañaque Coastal Bay Project starts; the reclamation will either destroy 4.35 hectares of a protected bird sanctuary or cause flooding to the cities' residents, unless respondent Alltech finds a way to permanently clean up Manila Coastal Road before construction begins.

Thus, whether or not Republic Act No. 11038 prohibits reclamation activities adjacent to or near protected areas, being near the protected area should be enough reason to assess their possible effect to that protected area.

Courts have always been in a unique position with regard to environmental protection. Our Constitution mandates:

SECTION 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.[39]

In line with this, this Court promulgated the Rules of Procedure for Environmental Cases,[40] which provides for the issuance of the extraordinary writ of kalikasan.[41] However, as the majority pointed out, the Las Piñas and Parañaque Coastal Bay Project has not yet begun construction. The Environmental Compliance Certificate's issuance does not mean approval to begin the reclamation project. There is, therefore, no evidence yet of imminent environmental damage that may be the subject of a writ of kalikasan.

There are, however, features of the Project that may need further study and approval. Thus, I recommend that this Court instead issue a temporary environmental protection order[42] to enjoin any act that may cause grave and irreparable injury to the protected area and to the residents of Las Piñas and Parañaque, and to monitor any such acts once the Project has been commenced.

ACCORDINGLY, I vote: (1) to ISSUE a Temporary Environmental Protection Order enjoining respondents from doing any act that may cause grave and irreparable injury to the Las Piñas-Parañaque Critical Habitat and Ecotourism Area and to the residents of Las Piñas and Parañaque; and (2) to REMAND this case to the Department of Environment and Natural Resources for the proper conduct of an environmental impact assessment to be completed within six months.

[1] Ponencia, p. 2.

[2] Id. at 2-3.

[3] Id. at 3.

[4] Id.

[5] Id. at 5.

[6] Id.

[7] Rollo, pp. 158-205. The Decision was penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Rebecca De Guia-Salvador and Samuel H. Gaerlan (now an Associate Justice of this of the Third Division, Court of Appeals, Manila).

[8] Id. at 89-190.

[9] Ponencia, pp. 7-10.

[10] Id. at 13-17.

[11] Id.

[12] "ESTABLISHING AN ENVIRONMENTAL IMPACT STATEMENT SYSTEM, INCLUDING OTHER ENVIRONMENTAL MANAGEMENT RELATED MEASURES AND FOR OTHER PURPOSES," June 11, 1978.

[13] Presidential Decree No. 1586 (1978), sec. 2.

[14] Revised Procedural Manual for Department Administrative Order No. 2003-30, sec. 1.0(1)(a).

[15] Revised Procedural Manual for Department Administrative Order No. 2003-30, sec. 1.0(2).

- [16] Revised Procedural Manual for Department Administrative Order No. 2003-30, sec. 1.0(8).
- [17] Rollo, p. 106.
- [18] Chavez v. Public Estates Authority, 433 Phil. 506 (2002) [Per J. Carpio, En Banc].
- [19] Rollo, p. 84.
- [20] Ponencia, p. 19, Environmental Performance Report and Management Plan.
- [21] Id. at 19-20 citing rollo, p. 619.
- [22] Rollo, p. 84.
- [23] Id. at 1004-1015.
- [24] G.R. No. 215988, April 10, 2019, 901 SCRA 261 [Per J. Leonen, En Banc].
- [25] Id. at 305-310.
- [26] Id. at 312.
- [27] Rollo, p. 84.
- [28] Entitled "ESTABLISHING A CRITICAL HABITAT AND ECOTOURISM AREA WITHIN THE COASTAL LAGOON OF LAS PIÑAS AND PARAÑAQUE."
- [29] Presidential Proclamation No. 1412 (2007), Fifth Whereas Clause.
- [30] Entitled "AMENDING PROCLAMATION NO. 1412 DATED 22 APRIL 2007, ENTITLED "ESTABLISHING A CRITICAL HABITAT AND ECOTOURISM AREA WITHIN THE COASTAL LAGOON OF LAS PIÑAS AND PARAÑAQUE," January 31, 2008.
- [31] Presidential Proclamation No. 1412-A (2008), sec. 2.
- [32] Entitled "Expanded National Integrated Protected Areas System Act of 2018."
- [33] Republic Act No. 11038 (2018), sec. 4.
- [34] Republic Act No. 11038 (2018), sec. 3(bb).
- [35] Ponencia, p. 29.
- [36] Rollo, p. 96.
- [37] Ponencia, pp. 25-26.
- [38] Id. at 29.
- [39] CONST., art. XI, sec. 16.
- [40] A.M. No. 09-6-8-SC (2010).
- [41] A.M. No. 09-6-8-SC (2010), Rule 7.
- [42] A.M. No. 09-6-8-SC (2010), Rule 2, sec. 8 states:

SECTION 8. Issuance of Temporary Environmental Protection Order (TEPO). - If it appears from the verified complaint with a prayer for the issuance of an Environmental Protection Order (EPO) that the matter is of extreme

urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of the multiple-sala court before raffle or the presiding judge of a single-sala court as the case may be, may issue ex parte a TEPO effective for only seventy-two (72) hours from date of the receipt of the TEPO by the party or person enjoined. Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case.

The court where the case is assigned, shall periodically monitor the existence of acts that are the subject matter of the TEPO even if issued by the executive judge, and may lift the same at any time as circumstances may warrant.

The applicant shall be exempted from the posting of a bond for the issuance of a TEPO.

Section 9. Action on motion for dissolution of TEPO. - The grounds for motion to dissolve a TEPO shall be supported by affidavits of the party or person enjoined which the applicant may oppose, also by affidavits.

The TEPO may be dissolved if it appears after hearing that its issuance or continuance would cause irreparable damage to the party or person enjoined while the applicant may be fully compensated for such damages as he may suffer and subject to the posting of a sufficient bond by the party or person enjoined.

CONCURRING OPINION

CAGUIOA, J.:

The ponencia dismisses the petition for review on certiorari (the petition) filed by petitioner Cynthia Villar (petitioner) and affirms the Decision and Resolution of the Court of Appeals (CA), which denied the issuance of the privilege of the writ of *kalikasan* against the implementation of the Las Piñas and Parañaque Coastal Bay Project (proposed project) by respondent Alltech Contractors, Inc. (Alltech).

I concur with the ponencia. I write this Opinion to further elucidate on certain points raised by petitioner as well as by my esteemed colleagues.

Preliminary matters on the writ of *kalikasan*

The writ of *kalikasan* is categorized as a special civil action and conceptualized as an extraordinary remedy. It covers environmental damage of such magnitude that will prejudice the life, health, or property of inhabitants in two or more cities or provinces, and is available against an unlawful act or omission of a public official or employee, or private individual or entity.[1] Thus, to successfully avail of this remedy, the following requisites must be present: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.[2] Petitioner bears the burden of substantiating these elements.

In the instant case, petitioner harps on the alleged irregularities in the process of the issuance by the Department of Environment and Natural Resources - Environmental Management Bureau (DENR-EMB) of the Environmental Compliance Certificate (ECC) for the proposed project on the basis of an Environmental Performance Report Management Plan (EPRMP). According to petitioner, the correct mode of Environmental Impact Assessment (EIA) for the proposed project is an Environmental Impact Statement (EIS), not an EPRMP.

In this regard, the ponencia correctly points out that, as a rule, any of the perceived irregularities in the issuance of the proposed project's ECC should be the subject of an appeal to the proper reviewing authority instead of a petition for writ of kalikasan. Indeed, a writ of kalikasan cannot be used as a substitute for other remedies that are available to the parties, whether legal, administrative, or political. Mere concern for the environment is not an excuse to invoke this Court's jurisdiction in cases where other remedies are available.[3]

Nevertheless, the Court, in *Paje v. Casiño*[4] (*Paje*), recognized that a party who invokes the writ based on alleged defects or irregularities in the issuance of an ECC may do so, provided that such party not only alleges and proves such defects or irregularities, but also provides a causal link or, at least, a reasonable connection between the defects or irregularities in the issuance of the ECC and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules of Procedure for Environmental Cases (the Rules). Failing in this regard, the petition should be dismissed outright so that it may be filed before the proper forum in accord with the doctrine of exhaustion of administrative remedies. Such course of action is necessitated by the need to preserve the noble and laudable purposes of the writ against those who seek to abuse it.[5]

According to *Paje*, an example of a defect or an irregularity in the issuance of an ECC which could conceivably warrant the granting of the extraordinary remedy of the writ of kalikasan is

a case where there are serious and substantial misrepresentations or fraud in the application for the ECC, which, if not immediately nullified, would cause actual negative environmental impacts of the magnitude contemplated under the Rules, because the government agencies and LGUs, with the final authority to implement the project, may subsequently rely on such substantially defective or fraudulent ECC in approving the implementation of the project.[6]

The Court, in *Paje*, also liberally applied this principle and considered the allegation that there was no EIA conducted relative to the amendments of the ECC therein as one that can be reasonably connected to an environmental damage of the magnitude contemplated under the Rules.

The circumstances in *Paje* are absent in the instant case. Petitioner miserably failed to show a causal link, or at least a reasonable connection, between the alleged defects or irregularities in the issuance of the ECC here in question and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules. For this reason alone, the petition should have already been dismissed for failure to exhaust administrative remedies. Nevertheless, even if the Court were to disregard this procedural infirmity, the petition should still be denied.

On the proper form of Environmental Impact Assessment for the proposed project

The ponencia comprehensively discusses how Alltech submitted the proper form of EIA required for the proposed project. In sum, when the DENR-EMB required an EPRMP for the proposed project, it took into consideration the fact that the application was premised on the 1996 ECC of the discontinued Philippine Estates Authority (PEA) - Amari Coastal Bay Development Corporation (Amari) project. This is in full accord with DENR Administrative Order No. 30, Series of 2003 (DAO 03-30) and its Revised Procedural Manual, which provides that an EPRMP is the required EIA document type "for operating projects with previous ECCs but planning or applying for clearance to modify/expand or re-start operations x x x."

Associate Justices Marvic M.V.F. Leonen (Justice Leonen) and Amy C. Lazaro-Javier (Justice Javier) echo the argument of petitioner that the EPRMP is not the proper form of EIA for the proposed project considering that the

PEA-Amari project covered by the 1996 ECC was never implemented. They opine that Alltech should have submitted an EIS, which is the applicable EIA form for new environmentally critical projects. This has already been sufficiently rebutted by the ponencia. Specifically, the ponencia notes that the PEA-Amari project was partially implemented, with 157.84 hectares of the 750-hectare project already reclaimed. As explained by the DENR:

The subject coastal bay project cannot be simply considered as an entirely new project since the latter logically presuppose[s] the absence of any kind of existing environmental data at all. In other words, the above engineering and associated works already undertaken in the area generate cumulative environmental data which can serve as basis for the submission of an EPRMP. x x x

The PEA-Amari project had already been implemented and began operations as shown by the earth moving activities undertaken thereon. The activities conducted under the old ECC have actual cumulative environmental impact and data which can be used as basis in determining the effectiveness of the applicable measures implemented under the old ECC, in relation to the current coastal bay project.[7] (Emphasis supplied)

Thus, considering that the PEA-Amari project which was covered by the 1996 ECC had already been implemented and the entire area of the proposed project of Alltech falls within the area of the previous ECC issued in favor of Amari, then the EPRMP was the correct form of EIA report applied in acquiring the ECC.

Justice Leonen underscores that the ECC was issued despite the fact that certain issues, concerns, and problems raised in the Comments and Chairman's Report (Report) of the EIA Review Committee (EIARC) were allegedly unresolved. Said Report noted that it was unclear whether the coverage of the ECC issued in favor of Amari would be expanded, and it also acknowledged that prior data may be outdated and would not accurately reflect the expected environmental impact of the proposed project. According to Justice Leonen, these unresolved issues should have placed the CA on guard as to the scope of review undertaken.[8]

With due respect, I disagree. A careful examination of the records would show that these issues were all already resolved. As explained by the DENR:

x x x The statement in the Chairman's Report that there is an "issue as to whether the application [is] for an expansion coverage of the earlier ECC or for a new ECC" was only made to point out that this matter was among those considered by the EIARC and the EMB during the initial stages of the EIA process, and which were eventually resolved upon the issuance by the EMB of the EPRMP checklist. Thus, in the same paragraph, [the EIARC Chair] stated that all the shortcomings and issues are capable of being resolved and that the EIARC recommends the issuance of the ECC with conditions to be specified.[9] (Emphasis and underscoring supplied)

On the propriety of an EPRMP, petitioner claims that an EPRMP is stripped of the critical and essential features of a full-fledged EIS such as: the scoping of the technical, environmental, and social issues that must be addressed; gathering of baseline environmental conditions; impact assessment focused on significant environmental impacts taking into account cumulative impacts; proof of consultation with stakeholders; and mandatory public hearings.[10] According to petitioner, the EPRMP looks backward and is heavily reliant on secondary sets of data which are more than a decade old and thus irrelevant and unresponsive to present realities. Petitioner claims that "[i]nstead of scoping forward for possible important issues based on present and projected realities through an EIS, a diluted and conservative version of the EIA study via an EPRMP was submitted and used as basis for the issuance of a new ECC." [11]

Petitioner's attempt to downplay the effectiveness and comprehensiveness of an EPRMP - as compared to an EIS - is erroneous and inaccurate. In Paje, the Court explained that the EIA process is a system, not a set of rigid rules

and definitions - there is much room for flexibility in the determination and use of the appropriate EIA document type.[12] Hence, the Court ruled that what should be controlling is the guiding principle set in DAO 03-30 in the evaluation of applications for amendments to ECCs, as stated in Section 8.3 thereof: "[r]equirements for processing ECC amendments shall depend on the nature of the request but shall be focused on the information necessary to assess the environmental impact of such changes." [13] Consequently, as applied herein, the next logical question is: Did the EPRMP provide the necessary information in order for the DENR-EMB to assess the environmental impact of the proposed project of Alltech? The answer is in the affirmative.

The EIA process conducted by the EMB should not be characterized as an incomplete or limited study by the mere reasoning that an EPRMP was used. Professor Agerico M. De Villa (Prof. De Villa), Chairman of the EIARC, explained that by the submission of an EPRMP, it does not necessarily follow that the EIARC may no longer impose additional requirements for the ECC application. Thus, the EIARC may deem it necessary to add more parameters on top of the old, technical EIS to be incorporated to the EPRMP. Here, according to Prof. De Villa, the EIARC actually imposed a more thorough and in-depth environmental analysis which yielded an even more comprehensive study compared to the previous PEA-Amari EIS, as evidenced by the volume of data incorporated in the final EPRMP, while focusing on the more important issues such as flooding, the critical habitat, and the fisherfolk. In fact, Prof. De Villa testified that the EIARC actually treated the subject ECC application as if it were a technical EIS:

Q

My question: since it was an EPRMP checklist and you just explained to us that it is more simplified as to focus, my question is x x x: how can you say that any review that you would conduct based on this is sufficient in support [of] the issuance of an ECC by the review committee?

A

One, if you are using an EPRMP, it does not necessarily follow that you cannot add requirements to it, except for the requirement of social impact assessment. In other words, if the review committee deems it necessary to add more parameters coming from the old, technical EIS to be added to the EPRMP, we can do that, which we have done. In fact, in this case[,] because we have done that, if you will notice the EPRMP is much more thicker than the original EIS and there is no limit as to what we will require so long as we do not require public consultation or public hearing, so in our case so far as we are concerned, being the chair, I actually treated it as if it were a technical EIS.

Q

Why do you say so?

A

(1) because we were able to add considerations that would have been part only of the technical EIS but now we required them of the EPRMP; (2) I have been able to convince the proponent x x x to have at least public consultation x x x.

Q

You mentioned you took into consideration [matters that are] appropriate only for a technical EIS. What are those matters that you took into consideration?

A

Well, for example, when you have EPRMP, that means you have to focus more on what you think are the most

important issues of the project; and given our assessment, we focused on, for example: flooding, for example: the critical habitat, for example: the plight of the fisherfolk who were the residents within the site itself x x x and focusing on these for example in the case of flooding we required more data, but they furnished data from [PAGASA], which did not satisfy us, because you cannot make predictions on micro term even the data they have submitted to us. So we require[d from] them additional information rather than waiting for all the statistics involved, we simply presumed that flooding would be [very important and vital for the project and therefore,] focusing on it[,] we required [that the] management plan must be compatible with Manila Bay guidelines [on] critical habitat management plan [and] with Boulevard 2000 plan - all of which also have to be compatible with the R.A.s [involved,] for example [C]lean [A]ir [Act, [C]lean [W]ater [A]ct, and the [B]uilding [C]ode. And so on and so forth.[14] (Emphasis supplied)

Additionally, as pointed out by the CA, Alltech was even required to meet a higher standard through the EPRMP, which is to preserve the environmental condition in the vicinity of the proposed project using as basis the higher quality of environment in 1990.[15] In explaining his preference for the EPRMP over the EIS, Prof. De Villa testified that:

[i]n 1990 compared to fairly recently, the environmental quality of the cited vicinity was better, and therefore if that would be the basis for the management of the environment, then, that means you have a higher quality of environment that the proponent have (sic) to keep. In other words, through time, whether we like it or not, our environment degrades, so what I am saying precisely because EPRMP is used, therefore the proponents have to keep their promise to keep the quality of environment x x x as of 1990 x x x.[16] (Emphasis supplied)

Thus, contrary to the claim of petitioner that the EPRMP "looks backward"[17] and is "not responsive to present realities,"[18] the EPRMP actually ensures that the proponent will protect the environment according to the optimum standard. As assured by the DENR, the proponents are not only required to maintain the contemporary environmental conditions during the implementation of the project, they are likewise bound to improve the same consistent with the standards in 1996.[19]

Evidently, the foregoing considerations show that not only was the EPRMP the correct form of EIA study required based on the nature of the proposed project, it was also sufficient in assessing the environmental impact of the proposed project.

On the DENR's determination of the proper EIA form for the proposed project

It should be emphasized that it was the DENR-EMB that instructed Alltech to submit an EPRMP.[20] In this regard, the ponencia states:

In the present case, no grave abuse of discretion was proven to be attributed to the DENR-EMB in instructing the project proponent to file an EPRMP. Hence, it enjoys the presumption of regularity in the performance of its official duties. Based on its technical expertise, it found that the information provided in an EPRMP sufficiently addressed the environmental concerns of the government.

It is within the DENR-EMB's function and expertise to determine the category or classification of a proposed project as it is equipped with the knowledge and competence to resolve issues involving the highly technical field of EIS system. Alltech merely complied with the instruction of the DENR-EMB to submit an EPRMP. The project proponent should not be faulted for this as it is not in the position to substitute the assessment or technical opinion of the DENR-EMB with its own judgment. It is within the sphere of technical knowledge and expertise of the DENR-EMB, and not the Court nor the project proponent, to determine the appropriate EIA report to submit for a particular project.[21]

I agree with the foregoing pronouncements. The adamant insistence on the "correct" type of EIA study, in the

absence of any allegation of grave abuse of discretion on the part of the DENR-EMB, and without any technical and scientific expertise to support such claim, simply cannot be countenanced. As the administrative agency entrusted with the determination as to which EIA document type applies to a particular application for ECC, falling as it does within its particular technical expertise, it is the DENR's determination, especially in the absence of a showing of grave abuse of discretion or patent irregularity, that should be accorded great respect by the Court. Indeed, this is the demand of the doctrine of separation of powers, which behooves the Court from interfering in matters addressed to the sound discretion of executive agencies with special competence unless there is a showing of grave abuse of discretion in the performance of their duties.

On the recommendation for the issuance of a Temporary Environmental Protection Order

For his part, Justice Leonen votes to issue a Temporary Environmental Protection Order (TEPO) to enjoin respondents from doing any act that may cause grave and irreparable injury to the Las Piñas-Parañaque Critical Habitat and Ecotourism Area (LPPCHEA). He explains:

[T]his Court promulgated the Rules of Procedure for Environmental Cases, which provides for the issuance of the extraordinary writ of kalikasan. However, as the majority pointed out, the Las Piñas and Parañaque Coastal Bay Project has not yet begun construction. The Environmental Compliance Certificate's issuance does not mean approval to begin the reclamation project. There is, therefore, no evidence yet of imminent environmental damage that may be the subject of a writ of kalikasan.

There are, however, features of the Project which may need further study and approval. Thus, I recommend that this Court instead issue a [T]emporary [E]nvironmental [P]rotection [O]rder to enjoin any act that may cause grave and irreparable injury to the protected area and to the residents of Las Piñas and Parañaque, and to monitor any such acts once the Project has been commenced.[22]

With due respect to my colleague, I believe that a TEPO may be unnecessary or superfluous.

Lest it be forgotten, the ECC is a planning tool - its mere issuance does not automatically signal the actual implementation of the proposed project. It is still necessary that the requirements and conditions imposed therein are complied with. The following averments from the DENR are thus compelling:

x x x [T]he release of the ECC only allows the project to proceed to the next stage of project planning, which is the acquisition of approvals from other government agencies and LGUs. Aside from the acquisition of these approvals, the proponents must also comply with the conditions and undertakings in the ECC and EPRMP. To name a few, these include the implementation of a Coastal Ecosystem Management Plan/Program, Information, Education and Communication Program, Flood Monitoring Plan, and alignment of the Environmental Management Plan with the Manila Bay Coastal Strategy. x x x

x x x x

Moreover, the ECC demands compliance with the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990, Ecological Solid Waste Management Program Act of 2000, the Philippine Clean Water Act of 2004, and the Philippine Clean Air Act of 1999, among other environmental laws and regulations. Further, the ECC requires proper storm drainage system, concrete culverts, and other flood and erosion control [measures], noise and air pollution control measures to prevent environmental degradation.

Without any doubt, the absence of compliance with the above conditions and undertakings, aside from those contained in the EPRMP, prevent the actual implementation of the coastal bay project. Also, the absence of the above plans and programs which are intended to direct the course of the project implementation renders the contention of petitioner as absurd. As a planning tool, the ECC cannot embody the "specific details" for the

implementation of the project, inasmuch as the post-conditions thereto, that will form part of the specific commitments of the proponents, are yet to be formulated by the concerned government agencies and institutions.

x x x x

For the critical habitat alone [or the LPPCHEA], the proponents are mandated to coordinate with the Manila Bay Critical Habitat Management Council and the Protected Areas and Wildlife Bureau (PAWB) to tackle impacts of the project on the critical habitat, and implement the recommendations of the said council. Thus, the project implementation cannot proceed without said recommendations.

Parenthetically, the recommendation of both the Manila Bay Critical Habitat Management Council and the PAWB must be implemented before any work or construction activities may be made, especially those affecting the critical habitat. Again, this condition seems to have been ignored by petitioner in claiming that the adoption of the Boulevard 2000 Framework Plan would destroy the ecosystems found in the critical habitat. Considering the ECC-required recommendations from the Manila Bay Critical Habitat Management Council and the PAWB, observance of the Boulevard 2000 Framework Plan cannot be made in its totality without endangering the critical habitat.[23] (Emphasis supplied)

It is evident therefore that before the proposed project can be implemented, Alltech must show compliance not only with the conditions in the EPRMP and ECC, but also with a plethora of environmental laws and regulations, and obtain the necessary permits from various government agencies tasked with protecting the environment. Thus, the prevention of grave and irreparable injury to the LPPCHEA and the residents of Las Piñas and Parañaque may already be covered by these requirements prior to implementation. This therefore negates any need to issue a TEPO.

At this juncture, I wish to emphasize that respondents have shown that mitigating measures will be undertaken in particular regard to the LPPCHEA. Notably, unlike in the PEA-Amari project which included the LPPCHEA itself, Alltech's proposed project actually excludes the LPPCHEA from its coverage to ensure that it is not adversely impacted.[24] Despite the fact that the LPPCHEA area is already outside of the proposed project, the respondents have nonetheless recognized the vulnerability of the LPPCHEA and have vowed to undertake mitigating measures to ensure that the proposed project will not have any negative impact on the LPPCHEA. Indeed, respondents have considered measures that not only preserve the LPPCHEA, but improve its condition:

78. To recall, the DENR Vulnerability Report, which Petitioner cites in her Petition, states that an estimated 572.76 kilos of garbage are being thrown in the LPPCHEA everyday.

79. The LPPCHEA is expected to deteriorate further if no active intervention is put in place to improve the current situation. As adequately shown by ALLTECH during trial, the mitigation measures adopted by the Project proponents, not to mention the onerous conditions stated in the ECC, ensure that the Project will move towards the direction of environmental protection. Given all these, Petitioner's insistence to leave LPPCHEA as it is and let it further degrade is certainly absurd and irrational.

80. All told, the project masterplan has been formulated to allow the development works to co-exist with the LPPCHEA, with the latter serving as an eco-park/eco-tourism area. A vibrant and well-preserved LPPCHEA is, therefore, integral to the success of the Project.[25] (Emphasis supplied)

On the nature of a reclamation project and its effects on the environment

As regards the effects of the proposed project on the environment, Justice Javier opines:

Verily, the question is not "whether actual environmental damage will occur" anymore, but how much more damage will it cause, for it has consistently been found and proven that reclamation had actually and already caused environmental damage. In fact, it is not only the aforementioned areas that will be exposed to flooding and inundation, but also the very reclaimed lands themselves.

For another, the reclamation projects x x x and the eventual construction of road networks and bridges will more likely than not cause direct negative impacts upon the [LPPCHEA]. x x x

x x x x

Hence, even respondents' evidence confirmed the conclusion of the Court of Appeals that "the threat of flooding as a consequence of land reclamation is conceded and thus the causal link between the human activity of reclamation and environmental threat of flooding is established."

Worse, respondents' position rests on the premise that the recommended mitigating measures being in place would purportedly prevent or "would not aggravate" the flooding situations and "even reduce the level of flooding." [Geological expert Kelvin S. Rodolfo], however, remains unconvinced and unimpressed by such measures for being historically ineffective and even aggravating x x x.

x x x x

Clearly, respondents' confidence is misplaced. Short of any certainty, the promise of safety is but ideal and theoretical. In effect, respondents, again, have clearly acknowledged, nay, admitted that the proposed reclamation would cause environmental impacts.[26] (Emphasis omitted)

I disagree. With due respect, these statements do not paint the entire picture.

The need for extreme caution in examining the possible negative effects of reclamation projects on the environment is understandable and laudable. Nonetheless, the Court should not operate on the premise that reclamation in itself is harmful to the environment. Notably, reclamation is not prohibited by our environmental laws. Rather, what the laws provide are ways to regulate reclamation projects in such a way as to mitigate or prevent altogether any negative impact these may have on the environment.

Thus, while reclamation activities may have negative impacts on the environment, the same will only arise if mitigating measures are not put in place to address these possible effects. On this note, the Court cannot simply brush aside the proposed mitigating measures of the experts and prematurely claim that these would not be met. The Court does not rule on surmises, speculations, and generalizations. Otherwise, to base our ruling on mere suppositions would stymie any reclamation project that would be proposed, regardless of its compliance with the requirements of law. This would be tantamount to saying, in simple terms, that all reclamation projects are bad for the environment. As for the credence of such belief, it is not for the Court to determine. What the Court is called to do is to ensure compliance with the laws. On this note, the following averments of the DENR are enlightening:

The process of reclamation per se does not result to flooding or significant environmental damage contrary to petitioner's baseless conclusions.

Petitioner's assertion that "aggravated flooding as a direct result of a reclamation project is conceded fact, rendering any discussion thereon unnecessary" is literally taken out of context. To be clear, the Court of Appeals' declaration that "the threat of flooding as a consequence of land reclamation is conceded" has been qualified by the conclusion that "the extent and magnitude of this threat have been scientifically determined and quantified and they do not amount at all to any such massive flooding nor to any such destruction of the critical habitat LPPCHEA asserted by the petitioner." x x x

x x x x

Indeed, the mere introduction of works upon the environment, by themselves, cannot cause significant threat, damage or destruction thereon. Activities which may affect the environment such as mining, cutting of trees, land development and urban expansion (which may aggravate global warming) are not proscribed provided that scientific studies or environmental assessments have been made to identify the potential risks and measures which may be taken to address the same.

These include reclamation activities which do not necessarily result to massive flooding or significant environmental damage as long as scientific studies have been conducted and the needed measures to address the potential risks are observed during the implementation of the project. The recurring floods in Metro Manila are not caused by reclamation activities; instead, these are caused by the proliferation of garbage, human recklessness and poor engineering, among others.

On the other hand, the vast portions of the Coastal Bay Area, along the stretch of Roxas Boulevard, are reclaimed lands which, by themselves, do not bring about flooding to the nearby areas. Well[-]designed and properly executed reclamation projects will not cause flooding. In fact, these projects can prevent flooding by providing added protection such as sea barriers to mitigate the effects of accelerated rising sea levels caused by global warming.[27] (Emphasis and underscoring supplied)

The Court, which clearly has no expertise in these matters, should give credence and defer to these findings by the DENR. While the Court has jurisdiction and power to decide cases, it clearly oversteps its boundaries by not giving proper respect to the findings and recommendations of the administrative agency on questions that demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact.[28]

In sum, considering that the laws do not categorically prohibit reclamation activities, it becomes a matter of evidence whether such activities would cause damage to the environment of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces so as to enable the issuance of the privilege of the writ of *kalikasan*. However, as found by the CA after an exhaustive study of the evidence presented before it, which is affirmed by the ponencia, petitioner simply failed to present credible, competent, and reliable evidence to support her allegations. Moreover, petitioner's apprehensions on the negative impacts of the proposed project on the environment have been disproved by objective, expert, and scientific studies of reputable entities with vast international experience.

Final Note

The DAO 03-30 lays down the basic policy and operating principles of the government in evaluating the impacts of proposed projects on the environment. It provides that consistent with the principles of sustainable development, the policy of the State in environmental impact assessments is to "ensure a rational balance between socio-economic development and environmental protection for the benefit of present and future generations"[29] and to "[assess] the direct and indirect impacts of a project on the biophysical and human environment and [ensure] that these impacts are addressed by appropriate environmental protection and enhancement."[30]

Thus, it is important to strike a delicate balance between protecting the environment and promoting socio-economic development, both of which are for the benefit of present and future generations. This balancing act is reflected in the following statement of the City of Las Piñas as contained in its Comment, which was adopted by the City of Parañaque:

27. Essentially, local revenue multipliers will arise from tourism that would be expected with the improvement of conditions in the LPPCHEA and expansion of residential and commercial establishments after completion. These sprang from the common knowledge that Las [Piñas] City is the fourth most populated but has the fifth lowest income in the National Capital Region. The City should not be restrained from pursuing a legitimate

project that aims to spur its socio-economic development.

28. But more importantly, on top of it all, Respondent City of Las [Piñas] will certainly not allow to be the cause of environmental damage and dangerous flooding. In pursuing the project, it has directed the adoption of concrete measures to protect the LPPCHEA and improve Hooding conditions. The City of Las [Piñas] has insisted on thorough research and studies to avoid any tragedy that may befall its environment and citizenry. Given the foregoing, it would be a dangerous precedent to allow the instant Petition supported merely by bare allegation and suspicion. To do so would be the real tragedy in that sense.[31] (Emphasis supplied)

The writ of kalikasan is among the mechanisms by which the Court takes a proactive role in ensuring that the constitutional right of the people to a balanced and healthful ecology may be advanced and protected.[32] However, being proactive does not mean that the Court may arrogate unto itself the determination of intricacies that are far beyond its capacity by insisting on generalized and incomplete assumptions and specious speculations when there is strong scientific evidence to the contrary. In the absence of grave abuse of discretion on the part of the DENR, the Court must avoid the urge to supplant its own perceived superiority over administrative agencies which are not only given the specific task and competence by the law, but are also far more knowledgeable on the technicalities involving environmental matters.

Parties who seek the issuance of the writ of kalikasan, whether on their own or on others' behalf, carry the burden of substantiating the writ's elements.[33] In this case, petitioner failed to satisfy the burden to prove her claims. Based on a careful and meticulous weighing of the evidence presented by the parties, the CA gave more weight to respondent's evidence:

Petitioner Villar may have been motivated by good faith x x x. Unfortunately, the ones that she commissioned failed to conduct a thorough, rigorous and objective study on the possible impacts of the proposed reclamation project. The studies made by Tricore and CEC-P were not comprehensive and the methodologies applied were inappropriate. There was also lack of expertise on the part of Tricore and CEC-P in the areas of hydrology and hydraulics, which areas are pertinent in the conduct of their respective studies. Thus, petitioner Villar failed to support her claim by any competent, credible and reliable evidence that the proposed reclamation project will expose her and the Las Piñas and Parañaque residents and their properties to catastrophic environmental damage.

On the other hand, Alltech and the other respondents were able to establish the scientific and expert studies [that] assessed the potential flooding and flushing impact that may arise from the coastal bay project. The expert, objective studies conducted by DCCD, Surbana and DHI, revealed that if all the recommended mitigating measures were to be implemented, the [c]oastal bay project would not aggravate the flooding situation in the river mouths of Parañaque, Las Piñas-Zapote Rivers, and it may even reduce the level of flooding.[34] (Emphasis supplied)

To reiterate, petitioner failed to present credible, competent, and reliable evidence to support her allegations. Moreover, petitioner's apprehensions on the negative impacts of the proposed project on the environment have been disproved by objective, expert, and scientific studies of reputable entities with vast international experience. Consequently, petitioner failed to prove her entitlement to the privilege of the writ of kalikasan.

ACCORDINGLY, I vote to DENY the petition.

[1] LNL Archipelago Minerals, Inc. v. Agham Party List, 784 Phil. 456, 470 (2016).

[2] Id.

[3] Abogado v. Department of Environment and Natural Resources, G.R. No. 246209, September 3, 2019,

accessed at .

[4] 752 Phil. 498 (2015).

[5] Id. at 542.

[6] Id.

[7] Rollo, pp. 2807-2808.

[8] Dissenting Opinion of Justice Leonen, pp. 7-8.

[9] Rollo, p. 2812.

[10] Id. at 90-91.

[11] Id. at 91.

[12] Paje v. Casiño, supra note 4, at 611-612.

[13] Id. at 612. Emphasis supplied.

[14] Rollo, pp. 2809-2810.

[15] Ponencia, p. 6.

[16] Rollo, pp. 1270-1271.

[17] Id. at 91.

[18] Id.

[19] Id. at 2814.

[20] Ponencia, p. 6.

[21] Id. at 16.

[22] Dissenting Opinion of Justice Leonen, pp. 13-14.

[23] Rollo, pp. 2819-2821.

[24] Id. at 1276.

[25] Id. at 1284.

[26] Dissenting Opinion of Justice Javier, pp. 5-9.

[27] Rollo, pp. 2822-2823.

[28] Osmeña v. Garganera, 828 Phil. 560, 573 (2018).

[29] DAO 03-30, Art. 1, Sec. 1; DAO 03-30 Revised Procedural Manual 1.0(1).

[30] DAO 03-30, Art. 1, Sec. 1(a); DAO 03-30 Revised Procedural Manual 1.0(1)(a).

[31] Rollo, pp. 2748-2749.

[32] See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. 09-6-8-SC (2010), Rule 1, Sec. 3 and Rule 7, Sec. 1.

[33] *Abogado v. Department of Environment and Natural Resources*, supra note 3.

[34] *Rollo*, pp. 48-49.

DISSENTING OPINION

LAZARO-JAVIER, J.:

I respectfully dissent and vote to partially grant the petition.

Paje v. Casiño[1] has held that a petition for the privilege of the writ of *kalikasan* addresses (i) whether the alleged defects or irregularities in the issuance of an environmental compliance certificate have a causal link or at least a reasonable connection to the actual or threatened grave violation of the constitutional right to a balanced and healthful ecology in terms of the territorial scope of such damage; and (ii) whether actual environmental damage will occur if the project is implemented.

Whether the defects or irregularities in the issuance of an environmental compliance certificate have a causal link or at least a reasonable connection to the actual or threatened grave violation of the constitutional right to a balanced and healthful ecology in terms of the territorial scope of such damage

Paje has recognized that the use of a wrong environmental impact assessment document type is a defect or irregularity in the issuance of an environmental compliance certificate that has a causal link or at least a reasonable connection to the environmental damage of a magnitude that transcends political and territorial boundaries. This is because a wrong document type results in an erroneous environmental impact assessment and flawed environmental compliance certificate, which government agencies and local governments, with final authority to implement the project, in turn, incorrectly rely upon in approving the implementation of the project.

Here, respondents used the wrong environmental impact assessment document type. According to *Paje*, an Environmental Performance Report and Management Plan (EPRMP) is used in the following instances:

- Expansion of existing projects (including undertakings that have stopped operations for more than 5 years and plan to re-start with or without expansion);
- Operating projects without ECCs;
- Operating projects with previous ECCs but planning or applying for clearance to modify/expand or re-start operations;
- Existing projects for modification or re-start up; and,
- Single, non-implemented project applying for a major amendment of its ECC.

The Las Piñas Coastal Bay Project and the Parañaque Coastal Bay Project are new projects. Hence, as held in *Paje*, each of these projects requires an environmental impact statement. These projects cannot use an EPRMP because neither of them is an operating or existing project.

They cannot be tacked with the PEA-Amari Coastal Bay project because this project never took off as its ECC expired five (5) years from the date of its issuance. This was because the governing legal structure for the projects, the Amended Joint Venture Agreement between the Public Estates Authority (PEA) and the Amari Coastal Bay Development Corporation, was nullified by the Court in 2002.

The Las Piñas Coastal Bay Project and the Parañaque Coastal Bay Project are not non-implemented projects applying for major amendments of their ECCs.

Indeed, it is counterintuitive to insist upon an EPRMP as the environmental impact assessment document type for the Las Piñas Coastal Bay Project and the Parañaque Coastal Bay Project when there is no ongoing or existing project, and the PEA-Amari Coastal Bay project they seek to ride on was based on environmental assessment and data dating back to 1996. The EPRMP is appropriate for ongoing and existing projects or non-implemented projects seeking to amend substantially their ECCs because, as clearly explained by petitioner:

138. The rationale behind requiring only an EPRMP for projects that have operated initially is to dispense with needless submissions of new studies as there presumably exists a number of useful data about the actual environmental impacts of a project as observed. Of course, there is no need to duplicate the tedious processes of an Environmental Impact Statement when the effects of a project have been recorded upon its implementation and where historical environmental performance and status of the project and its management plan are already known.

139. Given a project that had operated but stopped for a period of more than five (5) years, what is required is an environmental impact report on how well the mitigation and enhancement measures worked, using its environmental management plan ("EMP") as a yardstick. The convenience of preparing an EPRMP leaves the proponent to focus on ways to enact improvements on a project that has been implemented and has operated with plans for modification, expansion or a restart. This shortcut allows the proponent to suggest modifications and changes in the original plan to augment environmental performance without the costly distraction of undertaking a comprehensive environmental impact statement study.[2]

140. Being a documentation of the actual cumulative environmental impacts and effectiveness of current measure for single projects, basic logic dictates that there has to be a project that had physically come onto fruition and had actually become operational. For, otherwise, there is no source from which a report can be made on such a single project.[3]

One must not confuse an EPRMP with an Environmental Impact Statement, or conflate one with the other. The reason, according to Paje, is that:

The appropriate EIA document type vis-a-vis a particular project depends on the potential significant environmental impact of the project. At the highest level would be an ECP, such as the subject project. The hierarchy of EIA document type, based on comprehensiveness and detail of the study or report contained therein, insofar as single projects are concerned, is as follows:

1. Environmental Impact Statement (EIS),
2. Initial Environmental Examination (IEE) Report,
3. Initial Environmental Examination (IEE) Checklist Report,
4. Environmental Performance Report and Management Plan (EPRMP), and
5. Project Description 170 (PD) or Project Description Report (PDR).[4]

It was therefore speculative for the Court of Appeals to have based the environmental soundness of the Las Piñas Coastal Bay Project and the Parañaque Coastal Bay Project upon an EPRMP and to have concluded that conducting an EPRMP would not have made any difference from an environmental impact assessment, since these environmental assessment document types are distinct varieties of studies in both processes, requirements, and in all likelihood, findings. Otherwise, the wise bureaucrats in charge of environmental protection in the country would not have required an EPRMP in distinct circumstances and an environmental impact assessment in others.

To be clear, I am not saying that the ECC is an outright permit to operate, but it is, nonetheless, a necessary step

in the process of acquiring such permit. Here, since Alltech did not submit the correct environmental impact assessment document type, the ECC issued to it is incipiently and irreparably defective, hence, should be revoked at once. For government agencies and local governments should not be misled into approving the implementation of Alltech's projects based thereon.

Whether actual environmental damage will occur if the project is implemented

For one, aggravated flooding in the Cities of Las Piñas and Parañaque is conceded to happen as a result of the Las Piñas Coastal Bay Project and the Parañaque Coastal Bay Project. Even the Court of Appeals has admitted this when it said "the threat of flooding as a consequence of land reclamation is conceded and thus the causal link between the human activity of reclamation and environmental threat of flooding is established." The assailed Decision summarized petitioner's evidence on this allegation of environmental damage:

Petitioner Villar also commissioned Tricore Solutions, Inc., an engineering consultant, to evaluate and assess the impact of the proposed reclamation project. Tricore came up with a report entitled "Flood Assessment and Evaluation for Las Piñas City, Parañaque City and Bacoor, Cavite." In order to determine the existing flood extent along the vicinity of Las Piñas City, Parañaque City and Bacoor, Cavite, the following scenarios were considered in the said report: 1) highest rainfall magnitude (as recorded) without reclamation; 2) highest rainfall magnitude (as recorded) with reclamation; 3) maximum rainfall magnitude and maximum high tide with reclamation; 4) highest rainfall magnitude (as recorded) with the highest storm surge, maximum high tide and sea water rise brought about by climate change with reclamation, 5) highest rainfall magnitude, highest storm surge and maximum high tide, sea water rise- again due to climate change with reclamation; and 6) highest rainfall magnitude, highest storm surge and maximum high tide, sea water rise- again due to climate change with reclamation and another reclamation in Bacoor, Cavite. According to Engineer Carvajal, who is the President, head hydrologist, sanitary, geo-technical, structural and coastal engineer of Tricore, based on their hydrologic and hydraulic calculations, in a worst case scenario, taking into account Alltech's reclamation project and recorded maximum rainfall brought about by Typhoon Ondoy and strong winds experienced during Typhoon Pedring and other factors such as a maximum high tide of 1.44 meters and a one-meter rise above Mean Sea Level as may be occasioned by climate change, no less than 37 barangays in the Municipality of Bacoor, 17 barangays in Las Piñas City and 11 barangays in Parañaque City, will be totally submerged under 0.15 meters to 5.12 meters of floodwater. In other words, almost two-thirds of the entire areas of the cities of Las Piñas, Parañaque and Bacoor will be practically submerged or inundated when reclamation takes place.[5]

Geological expert Kelvin S. Rodolfo, PhD[6] cites four (4) reasons why reclamation of nearshore Manila Bay is "a very bad idea"[7]:

1.

Rapid subsidence of coastal lands is enhancing the risk of flooding and high tides.

2.

Among the reasons for this rapid subsidence, says Rodolfo, is rapid loss of groundwater due to decades of uncontrolled pumping. Loss of groundwater has also caused the ground level to fall, leaving these areas vulnerable to flooding.[8]

3.

Storm surges are an ever-worsening threat, due in part to subsidence, but also because climate change is increasing the frequency of the strongest typhoons.

4.

Reclaimed coastal areas are very susceptible to liquefaction and enhanced ground-shaking during earthquakes.

5.

These risks are enhanced by DPWH's and JICA's ignoring or minimizing the phenomena in their projects.

This scientific claim does not stand alone, as other studies, too, have noted the negative impact of reclamation, specifically of Manila Bay, viz.:

Manila Bay was once a productive fishing area; destructive fishing practices, massive pollution, and unabated land conversion of wetlands and coastal areas have contributed to the marine ecosystem's deterioration. The destruction of Manila Bay's marine ecosystem threatens the food supply stability of surrounding communities.

Coastal communities around Manila Bay are already exposed to numerous natural hazards, particularly those related to earthquakes (e.g. liquefaction, tsunamis) and hydro-meteorological events (e.g., floods, storm surges). The effects of these hazards are exacerbated by accelerated land subsidence due to over-extraction of groundwater.

x x x x

The Philippine government has a clear directive to rehabilitate and preserve Manila Bay through the writ of continuing mandamus issued by the Philippine Supreme Court. Land reclamation directly contradicts that mandate. Furthermore, scientific evidence clearly shows the negative socio-economic effects of reclamation in Manila Bay. More reclamation project proposals continue to be entertained, nonetheless.[9]

Verily, the question is not "whether actual environmental damage will occur" anymore, but how much more damage will it cause, for it has consistently been found and proven that reclamation had actually and already caused environmental damage. In fact, it is not only the aforementioned areas that will be exposed to flooding and inundation, but also the very reclaimed lands themselves.

For another, these reclamation projects and the eventual construction of road networks and bridges will more likely than not cause direct negative impacts upon the Las Piñas-Parañaque Critical Habitat and Ecotourism Area (LPPCHEA). The Court of Appeals summed up petitioner's evidence on this claim:

The Center for Environmental Concerns-Philippines (CEC-P) was also engaged by petitioner Villar to conduct a technical assessment of the Las Piñas-Parañaque Coastal Bay Project. The study made by CEC-P involved the identification of plausible impacts of the Las Piñas-Parañaque Coastal Bay Project on biodiversity and the critical habitat, on flooding and on the socio-economic situation of the residents in the cities of Las Piñas and Parañaque. It did not assess the whole development plan as described in the proponent's EPRMP. The main document scrutinized by CEC-P in the study was the EPRMP submitted by Alltech to the DENR in August 2010 because it considered the same to be the final report on the proponent's proposed management of the environmental impacts before the issuance of the March 2011 ECC. The said EPRMP was the source document of CEC-P on how the proponent expects its project to affect the landscape and ecology of the project site, and what measures it has taken or will take to minimize the adverse effects that may be brought by this change. The CEC-P concluded that as a large scale project that will change the landscape of the area, the reclamation can be considered a looming danger to the habitat. The CEC-P findings are as follows: 1) As to the biophysical resources, the large-scale project will change the landscape of the area; development activities that will be undertaken in Manila Bay would likely impact the natural ecosystems and its ecological functions and services; 2) The expansion of the reclamation area will deposit and spread additional sediments to the Las Piñas-Parañaque Critical Habitat Environment Area (LPPCHEA) which will further destroy habitats of existing biodiversity; 3) With respect to the mangrove ecosystem situated in relation to the Coastal Bay Project, the coastal construction for the reclamation project will change the shoreline by altering the hydrodynamic characteristics of the Bay that include current, wave actions, tidal fluctuations and transport of

sediments along the coasts, which would restrict circulation of coastal water bodies resulting to degradation of its water quality and environmental ecosystems; the mangrove ecosystem is also poised to undergo fundamental alterations and changes since the planned reclamation, which will begin from the coasts of the LPPCHEA facing the south China Sea, is likely to threaten and impede the continuous flow of seawater into the lagoon; 4) With regard to the biodiversity, the EPRMP, provides little or no information on the ecological functions of the mangroves, birds, and other living things which may be found in the reclamation area which suggests a haphazard study of the natural resources and the particular ecosystem that will be subject to the reclamation activity; 5) As to the marine life in the areas, construction activities such as dredging and filling would cause water turbidity and sedimentation that would result to decline in water quality, loss of species and toxic contamination of ecosystems; and 6) As to the socio-economic and cultural effects of the proposed Coastal Bay Project, one of the foreseen effects on the people would be diminished aquaculture production as the habitat and breeding ground of marine life will be destroyed.

According to Frances Quimpo, the Executive Director of the CEC-P, the study made by CEC-P had established firm bases to conclude that the LP-P Coastal bay project has not truly addressed the identified threats of flooding to surrounding areas, threats on biodiversity loss, as well as the threat of displacement of local livelihood; and that it lacks a clear scientific study on the flooding hazards of the reclamation, appropriate mitigation measures to counter the dangers of reclamation to the LPPCHEA, as well as the potential economic displacement of the fisher-folks in the area with the destruction of the bottom organisms that replenish marine life. She further asserted that the absence of an Environmental Impact Statement (EIS) was but redundant evidence that the Coastal Bay Project has not undertaken the de rigueur of a full-fledged environmental study in order to impart scientific confidence that the proposed reclamation project will not devastate the surrounding environment, whether human or wildlife, to within a manageable and acceptable margin. She finally recommended that the reclamation project be halted until competent, comprehensive, deeper research and study are conducted to ensure that lives, human or otherwise, are not unduly and unnecessarily put at the risk of irreparable harm and damage.

Another member of CEC-P, Giovanni A. Tapang, who is an Associate Professor in Physics in the National Institute of Physics, also noted that the coastal bay project lacks complete, multi-faceted blueprint for addressing the problem of flow of seawater; that Alltech's EPRMP did not specify measures for the maintenance of the brackish waters, and engineering interventions that would utilize the access road from Roxas Boulevard to facilitate sea water flow to the lagoon; and that the bold claim by Alltech that if the mitigation measures are implemented, the reclamation might even improve the flooding situation in the two cities, was not supported by data presented in Alltech's EPRMP.[10]

The Court of Appeals also examined the evidence for respondents. Their pieces of evidence point to this conclusion:

On the other hand, Alltech and the other respondents were able to establish that scientific and expert studies assessed the potential flooding and flushing impact that may arise from the coastal bay project. The expert, objective studies conducted by DCCD, Surbana and DHI, revealed that if all the recommended mitigating measures were to be implemented, the Coastal bay project would not aggravate the flooding situation in the river mouths of Parañaque, Las Piñas-Zapote Rivers, and it may even reduce the level of flooding.[11]

Hence, even respondents' evidence confirmed the conclusion of the Court of Appeals that "the threat of flooding as a consequence of land reclamation is conceded and thus the causal link between the human activity of reclamation and environmental threat of flooding is established."

Worse, respondents' position rests on the premise that the recommended mitigating measures being in place would purportedly prevent or "would not aggravate" the flooding situations and "even reduce the level of flooding." Rodolfo, however, remains unconvinced and unimpressed by such measures for being historically

ineffective and even aggravating,[12] viz.:

History of ignoring science while building projects that fail

1980s: Flimsy lahar dikes built at Mayan Volcano despite my scientific objections. Dike building continued until Super Typhoon Reming breached them all in 2006, killing 1,266 people who had sought safety by living behind them (Paguican et al. 2009).

1990s: Same lahar-dike builders' mistakes on a much larger scale at Pinatubo despite scientists' objections. October 1995: Tropical Storm Mameng lahars breached Gugu dike, totally destroyed Bgy Cabalantian in Bacolor, Pampanga. Hundreds of people killed.

2000s-present: DPWH builds numerous costly, ineffective flood-control structures in Central Luzon and KAMANAVA. Academician Siringan's and my objections made no difference. Year after year, they fail, and more money is spent on cosmetic repairs.

x x x x

KAMANAVA Flood Control Project

2003: P3-billion contract to Nishimatsu to be completed in June 2007.

x x x x

2008: Nishimatsu contract expired. Only 88% completed.

February 2009: DPWH awards local contractor BMWAD Joint Ventures P996 million to complete the remaining works.

October 2009: 94% of the project completed.

July 2010: DPWH: "resumes full blast operations, project will be completed by mid-September." P5.18 billion already spent.

2011: project director Macaria Bartolo says project 99.5% complete.

August 2012: Polder dike overtopped by habagat floods, has to be raised another meter.

August 19, 2013: Malabon residents evacuated as floods rise.

July 16, 2014: Typhoon 'Glenda' floods force 1.000+ Malabon evacuation.

September 23, 2014: Tropical storm "Mario", southwest monsoon and high tide force Malabon evacuations.

July 6, 2015: CAMANAVA flooded.

July 29, 2015: MMDA lists 12 most flooded areas in Malabon City.

October 11, 2015: DPWH-NCR office gives additional 931 million to Camanava from the P351-billion Flood Management Master Plan for Metro Manila and Surrounding Areas.

December 15, 2015: Typhoon Nona floods Malabon. ...

And so it goes...

Clearly, respondents' confidence is misplaced. Short of any certainty, the promise of safety is but ideal and theoretical. In effect, respondents, again, have clearly acknowledged, nay, admitted that the proposed reclamation would cause devastating environmental impacts.

I personally commend the Court of Appeals for examining the evidence painstakingly on this claim of petitioner. But I most respectfully submit that the conclusion to dismiss the instant petition outright disregards the rationale for the writ of *kalikasan*. This writ is a protective remedy, one where the usual balancing of the probative value of evidence is outweighed by the inclination to be cautious about activities that could probably wreak havoc on the environment.

Rule 20 of the Rules of Procedure for Environmental Cases recognizes this principle as a rule of law in assessing the evidence in environmental cases:

RULE 20
PRECAUTIONARY PRINCIPLE

Section 1. Applicability. - When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it.

The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

Section 2. Standards for application. - In applying the precautionary principle, the following factors, among others, may be considered: (1) threats to human life or health; (2) inequity to present or future generations; or (3) prejudice to the environment without legal consideration of the environmental rights of those affected.

Here, everyone seems to concede that flood will come as a result of the Las Piñas Coastal Bay Project and the Parañaque Coastal Bay Project. There will also be direct negative environmental impacts on the LPPCHEA as a result of the reclamation and related construction works. The Court of Appeals believes respondents' claim that only complete mitigation measures could foil the environmental degradations that the projects will bring about.

But is there certainty that the mitigation measures will come to pass, and if they do, will they produce what respondents hope they would? I do not think that respondents' pieces of evidence preponderantly resolve these questions in their favor. There are lots of variables in the projections ventured by respondents' evidence.

Worse, the Court of Appeals was made to decide the environmental impact of the projects as if from scratch simply because the government agency used the wrong document type in issuing the environmental compliance certificate. Had there been proper compliance from the start with the process of adducing the necessary variables in making the environmental assessment through, among others, the use of the appropriate document type, then we can state, indeed, that more likely than not, all environmental damages wrought by the projects will not come to pass.

Petitioner's burden of proof is not proof beyond a reasonable doubt. All she has to prove is that more likely than not, if the reclamations do take place, damage to the environment will happen. I believe she has done that. Respondents merely claim in response that mitigation measures can offset this environmental damage. Their claim is not that there is no link between the projects and the harm; rather their claim is that their proposed mitigation measures might thwart the harm from taking place.

Clearly, as things stand, the totality of the evidence shows the causal link between the projects and the environmental damage. The mitigation measures may prevent harm from happening, but that is conditional upon the mitigation measures being funded and done properly and later working properly as believed. At their best, thus, respondents' pieces of evidence prove and stand for an uncertainty in the context of a lack of full scientific certainty in establishing a causal link between human activity and environmental effect.

In this light, the Court is in the right to apply the precautionary principle in resolving the present case because (i)

threats to human life or health as a result of the projects will occur if the mitigation measures do not work, and there is no certainty that they in fact will; (ii) inequity to present or future generations will be the costs of the uncertainties that the mitigation endeavours can only bring about; and (iii) prejudice to the environment without legal consideration of the environmental rights of those affected will be the price to pay as the environmental agency in charge of the environmental assessment failed to consult and obtain the consent of the residents to be greatly impacted by the projects.

Taking all things into consideration, the balancing of the evidence adduced by petitioner and respondents calls for a conclusion that the constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt. This means indulging the present case a second hard look at what the evidence presents us - an uncertainty that the Court can remedy by sending back the projects for environmental impact assessment using the Environmental Impact Statement as the document type and involving the residents in a genuine, not fake, consultation and consent-seeking foras. Thereafter, when the environmental people and the stakeholders have done all these and the conclusion is acceptable as it is reasonable and both rights- and evidence-based, if this matter ever reaches the Court of Appeals and the Court again, the justices will no longer be hard-pressed to choose between competing evidence, and in the process, to speculate about WHAT IFs and WHAT NOTs.

Whether the actual environmental damage that has been assessed is fatally speculative

The world we live in is not fraught with environmental disasters and dangers because tree-huggers simply want to scare people from achieving development. These disasters have come and gone. They are a reality. We have all been witnesses to them. The lockdown caused by CoVID-19 has clear environmental aspects to it. And yet, here we go again trying to ignore the integrity and truthfulness of the science of patience and due diligence in our development endeavours.

What are we going to lose from seeking another and perhaps last round of weighing and determining the enormous environmental impact of respondents' large scale reclamation projects?

The only projected losses, if losses they really are, simply equate to the delayed profits and more profits for respondents and their investors. In contrast, if the Court were to allow post-haste the reclamations to go on without first settling the environmental issues, when history beckons, the Court will be the real proximate cause of the disaster that will be done to the lives and properties of millions of already impoverished Filipinos. As it is, the Court and petitioner in her role as a well-respected Senator are the only last bulwark of reason to stop this impending environmental pillage.

Senator Villar is no ordinary petitioner. She carries with her the weight of the Philippine Senate as one of its outstanding leaders. She bears the burden of her constituents who stand to be severely affected by the adverse consequences of respondents' reclamations. She has put her reputation, if not her political career, into the cross-hairs of the causes, especially the present one, she tirelessly advocates. If the Court would not even care to hear her, who else will the Court listen to?

The issues involved in this case are literally transcendently important. The environmental impact will adversely affect Las Piñas and Parañaque initially and thereafter transcend to contiguous territories and thereafter engulfing the entire country. It will initially impact the residents of these localities and thereafter transcend to swallow communities in the metropolis. The conversation that this case entails should not stop here and now. Lots are uncertain but can be clarified by further proceedings below. Massive floodings and other adverse environmental impacts of the reclamations are not our only choice, certainly not my only choice. I am still afraid to live in a raft.

Whether an environmentally critical project should be allowed to proceed only in the clearest of cases

The precautionary principle mentioned above should compel the Court to hold that an environmentally critical project should be allowed to proceed in the clearest of cases. Hence, whenever there is doubt about a project's environmental impact, the project must be re-evaluated to investigate, weigh, mitigate, address, assess and resolve the oppositions to it.

The precautionary principle is very crucial especially when the President himself has vigorously espoused a policy against reclamation projects. The President has been recorded to have enunciated this policy in the most colourful and emphatic language clearly for editorial impact. He said:

Not during my time. I will only allow maybe plans of whatever reclamation if it is in connection with a government project. I will not allow massive reclamation for the private sector. Not now. Because if I - if you approve one, you approve all. Ganun 'yan eh.

x x x x

The entire Manila City would be environmentally at peril. So pag-aralan ninyong mabuti 'yan. For the next administration, whoever gets to be the president of this country, study it very carefully. Because that Manila there, that old City is an old city and it will decay if you add so many things in front of Manila Bay.

x x x x

No - no reclamation. You wait until the next president who would be - they would look - they might look at it kindly at a different lens.[13]

Independent expert studies also confirm the adverse environmental impact of reclamations. I have quoted them below in the interest of full disclosure:

Reclaimed lands are also to blame for the rise of the water level on the bay which causes massive flooding and storm surges. They badly affect not just the lives of the residents but also may shut down local economic activities particularly those in low-lying cities. These disasters actually intensify the vulnerability of our cities.[14]

Reclamation activities changed the environment such as coastal morphology, hydro-oceanography, mangrove and coral reefs deterioration. Other effects are the hill-cutting and tree-cutting of the surrounding area to get filling materials for the reclamation project. Among the consequences observed and recorded were flooding, erosions, sedimentations, and adverse influences on the seawater quality, sea biota, local depletion of several kinds of fishes such as snappers, groupers, and shrimps. These have reduced the income of the fishermen, forcing them to switch to other professions such as becoming tradesmen, laborers, and farmers.[15]

BIOLOGICAL IMPACTS

The process of coastal land reclamation starts off with sand mining and dredging operation carried out offshore, followed by backfilling. The activities carried out during reclamation have direct impacts towards the coastal ecosystem. The impacts include:

Loss of marine benthic ecosystem

Reclamation activities affect the composition of biodiversity through the destruction of ecosystems such as coral reefs, sea grass meadows and mudflats. This will lead to a net decline in faunal biomass and abundance or a shift in species composition. Once the ecosystem is disturbed, it will take some time for it to recover to its original state, depending on the ecosystem's resilience.

x x x x Modification of the ocean floor by reclamation works causes destruction to habitat of the benthic organisms. The disturbance to bottom sediment from dredging works and placement of fill materials will bury and smother bottom dwellers and cause permanent loss of habitat of benthos. Marine sediment extraction causes disturbance and removal of benthic in fauna and epifauna (Yasser, 2011).

Alteration of sediment composition caused by dredging and backfilling is another contributing factor to loss of marine benthic ecosystem. Sediment composition is a key factor in determining benthos distribution. Long-term recovery of benthic ecosystem can occur only where original sediment composition is being restored.

Destruction of buffer zone

Coastal reclamation is often associated with the loss of coastal ecosystems such as mangroves, seagrasses and mudflats. These ecosystem acts as natural buffers against wave energy and minimising the impacts of wave on coastal areas, thus protecting the coastal area from being flooded and eroded due to wave action.

Removal of the ecosystems will leave the coastal communities vulnerable to flooding and natural disaster such as tsunami. As widely reported since 2004 when the worst tsunami in record hit South East Asia, extensive areas of mangroves can reduce the loss of life and damage caused by tsunamis by taking the first brunt of the impact and by dissipating the energy of the wave as it passes through the mangrove area.

The survival of the fisherfolks at Pulau Betong, south-west of Penang Island, was attributed to the mangroves growing there. The mangrove forests had helped to buffer the impact of the tsunami heading inland as compared to other places that received a direct hit (Penang Economic Report, Jan. 2005, Vol. 7, Issue 1).

Disruption of food chain

Coastal developments directly disturb the substrates and microenvironments that benthic macro invertebrates depend on to survive. x x x x

Mangroves also serve to reduce coastal erosion and is a habitat for many species of marine life. They serve as a transit place for more than 30 species of migratory birds, and house mudskippers, fish, crustaceans, and a whole ecosystem of its own. They are a home to all kinds of fish, snails, cockles, shrimps and crabs, reptiles like snakes and monitor lizards, migratory and local birds, insects and mammals such as monkeys, wild boars and otters. Birds seek these places as their sanctuary and feeding place during their migratory season from October to March.

It is proven that land reclamation does cause disjunctions in the consistency of suitable habitats for these organisms which we predict will affect organisms higher in the food chain (Chee & Sim, 2016; Chee et al., 2017). The stress tolerant species will become dominant and replace other species as they are able to stand the changes.

Collapsed ecosystems cannot sustain marine organisms that are dependent on it for survival. Shoreline modification and reclamation works will affect the existing biotic and abiotic factors that are linked in food chains. Any changes or disruption to the close relations between certain species will affect the ecosystem's balance. Removal of primary producers such as mangrove and seagrasses will affect the rest of the food chain as they serve as a base where every other organism depends on directly or indirectly for survival.

Coastal water pollution

Pollution can be controlled to some extent, but ecological and environmental impacts of reclamation cannot be restored. Suspension of organics, heavy metals and other pollutants into sea through dredging activities will cause disturbance to bottom sediments. Land filling with dredged materials may release contaminants which will have impacts on marine life. Eventually, low water quality will affect the sea biotas around the area, and negatively affect the lives of the fishes and coral reef (Priyandes & Majid, 2009).

Corals that are stressed by siltation, mechanical damage, or pollution have a greater likelihood of being subjected to diseases (Clark 1996). As coral reefs are well known as spawning ground, feeding ground, and nursery ground for enormous number of marine life, its destruction will cause breakdown in the ecosystem.

Other than that, sea grass leaves improve[d] water quality by absorbing nutrients in runoff from the land and slowing the velocity of water, capturing sand, dirt and silt particles. When the bottom sediments are disturbed during reclamation projects, it causes the release of toxic chemicals including heavy metals and polychlorinated biphenyls (PCB) into water column which was trapped by sea grass earlier. The release of toxic compounds will degrade the water quality and affect the aquatic life.

Increase in siltation and turbidity

Dredging and extraction of aggregates from the benthic zone or the seabed is a form of disturbance that leads to increase of suspended particles in the water column. Dredged material may cause suspended solids during dredging as a result of substratum disturbance and during transport to the surface, overflow from barges or leakage from pipelines during transport between dredged and disposal sites (Yasser, 2011).

Aggregate particles that are too fine to be used are rejected by dredging boats, releasing vast dust plumes and change the water turbidity, resulting in major changes to aquatic habitats over a large area. The ecosystems that will be greatly affected by siltation are the coral reefs and sea grasses. Siltation kills corals by shading and smothering them and reduces recruitment of juvenile corals (DENR 2001).

Smothered sea grasses will not be able to take up the sunlight efficiently to carry out photosynthesis. In addition, increased turbidity will increase the scattering of light penetrating the water, causing difficulties to photosynthetic benthic organism to absorb the sunlight. x x x x

SOCIO-ECONOMIC IMPACTS

Livelihood and fisheries

Coastline changes in the coastal areas due to reclamation will impact the local community in that area. Local fishers whose livelihood and source of income depended on the fishing industry are adversely impacted due to land reclamation. x x x x

Other adverse impact includes the reduction of daily fish catch by the fishermen, forcing them to either double their efforts in catching fish or totally abandon their age-old profession to try other jobs (Priyandes & Majid, 2009). However, without experience and knowledge, it will be difficult for them to adjust to their new way of life. x x x x

PHYSICAL IMPACTS

(A) Saltwater intrusion and alteration of groundwater system

Land reclamation activities in coastal areas causes changes on local groundwater systems (Guo & Jiao, 2007). This is because the removal of crucial ecosystems such as mangrove and mudflats maximises the impacts of wave on coastal areas, causing seawater intrusion into groundwater. This will affect nearby agriculture land as the pH of the soil is altered thus making it unsuitable for plant growth, especially species that are sensitive to salinity changes. x x x x

OTHER IMPACTS

Temporary increase in noise pollution and air quality is likely to occur at the site, caused by construction and reclamation processes. Dust and particulate generation due to movement into and off the site like scrapers, bulldozers, and loaders and due to excavated soil is the negative impact of temporary workforce (Yasser, 2011). This gives a negative psychological and physical impact to the people around the area. x x x x

The stress level of the residents might increase due to traffic congestion as many routes will be inaccessible for reclamation development. Therefore, the residents were left with no choice but to take alternative routes, causing inconveniences due to the restrictive access.[16]

Contrary to the ponencia's dismissive attitude towards the foregoing studies, these studies show that the precautionary principle apply in this case. The Court cannot ignore these studies because they are cited precisely to justify the plausibility of the project's adverse environmental impact. The proper forum for considering these and other studies is of course the Department of Environment and Natural Resources. However, by affirming the assailed Decision of the Court of Appeals, and approving the commencement of the project, the Court is thereby foreclosing any further deliberate studies on the real adverse impact of the project. This could prove to be disastrous for the communities near the project site.

Notably, the Rules on Evidence allows the Court to take judicial notice of certain facts, such as the laws of nature. In *MMDA v. Concerned Citizens of Manila Bay*,[17] the Court took judicial notice of the environmental pollution as a cause of climate change, its ill effects including but not limited to the destruction of forests, and other critical habitat, oil spills, and the unabated improper disposal of garbage in Manila Bay.[18] So too, can we take judicial notice not only of the independent expert studies which either confirm or dispel the adverse environmental impact of reclamations. It is our bounden duty to leave no stone unturned when it comes to the safety and protection of our environment.

ACCORDINGLY, I vote to grant the petition in part, to revoke the environmental compliance certificate issued for the Las Piñas Coastal Bay Project and the Parañaque Coastal Bay Project, and to refer these projects back to the Department of Environment and Natural Resources for the proper conduct of the environmental impact assessment using as document type the Environmental Impact Statement.

[1] 732 Phil. 498 (2015).

[2] Reflections of J. Marvic M.V.F. Leonen dated April 26, 2021, pp. 5-6.

[3] Rollo, p. 106.

[4] Supra note 1 at 599-600.

[5] Id. at 19-19A.

[6] PhD in Geological Sciences, University of Southern California, 1967 MS in Geological Sciences, University of Southern California, 1964 BS in Geology, University of the Philippines, 1958; Fellow, American Association for the Advancement of Science; Fellow, Geological Society of America; American Geophysical Union; Geological Society of the Philippines; Society of Sedimentary Geologists (SEPM).

[7] Dangerous Aspects of Reclamation Along Manila Bay and Laguna de Bay: NAST Policy Discussion on the Hazards, Risks and Profits of Reclamation, February 15, 2016, Kelvin S. Rodolfo.

[8] Rina Jimenez-David, <https://opinion.inquirer.net/93493/why-reclamation-is-a-very-bad-idea>, posted 12:20 AM March 06, 2016; Last Accessed March 9, 2021 14:43.

[9] Eco, R.C., Manila Bay reclamation and its impacts on the people and environment, https://ui.adsabs.harvard.edu/abs/2018AGUFMPA43E138x_5E/abstract, last accessed March 9, 2021, 15:08.

[10] Rollo, (Vol. 1), pp. 19-A-22.

[11] Id. at 49.

[12] Dangerous Aspects of Reclamation Along Manila Bay and Laguna de Bay: NAST Policy Discussion on the Hazards, Risks and Profits of Reclamation, February 15, 2016, Kelvin S. Rodolfo.

[13] SPEECH OF PRESIDENT RODRIGO ROA DUTERTE DURING THE INAUGURATION OF THE SANGLEY AIRPORT DEVELOPMENT PROJECT AND PRESENTATION OF THE SANGLEY POINT INTERNATIONAL AIRPORT PROJECT
(<https://pcoo.gov.ph/wp-content/uploads/2020/02/20200215-Speech-of-President-Rodrigo-Roa-Duterte-during-the-Inauguration-of-the-Sangley-Airport-Development-Project-and-Presentation-of-the-Sangley-Point-International-Airport-Project-converted.pdf>).

[14]

<https://www.smartcitiesdive.com/ex/sustainablecitiescollective/unsustainable-truth-about-land-reclamation-worsening-impacts-manila-bay-r/1271899/>

[15] http://eprints.utm.my/id/eprint/2066/1/MRafeeMajid2009_ImpactReclamationActivities.pdf

[16] Impacts of Coastal Reclamation in Malaysia, published by Sahabat Alam Malaysia (Friends of the Earth Malaysia), accessed at https://foe-malaysia.org/wpcontent/uploads/2020/12/190226_Impacts_of_Coastal_Reclamation_in_Malaysia-compressed.pdf

[17] 595 Phil. 305, 320 (2008).

[18] Id. at 320.

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