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**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**EN BANC**

**CYNTHIA A. VILLAR, FORMER G.R. No. 208702**  
**MEMBER, HOUSE OF**  
**REPRESENTATIVES, LONE Present:**  
**DISTRICT OF LAS PIÑAS CITY**  
**[supported by THREE HUNDRED GESMUNDO, C.J.,**  
**FIFTEEN THOUSAND EIGHT PERLAS-BERNABE,**  
**HUNDRED FORTY-NINE (315,849) LEONEN,**  
**RESIDENTS OF LAS PIÑAS CITY], CAGUIOA,**

Petitioners,

HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
DELOS SANTOS,  
GAERLAN,\*  
ROSARIO,  
LOPEZ, J., JJ.

- versus -

**ALLTECH CONTRACTORS, INC.,**  
**PHILIPPINE RECLAMATION**  
**AUTHORITY, DEPARTMENT OF**  
**ENVIRONMENT and NATURAL**  
**RESOURCES, ENVIRONMENTAL**  
**MANAGEMENT BUREAU and**  
**CITIES OF LAS PIÑAS, Promulgated:**  
**PARAÑAQUE, AND BACOR, Respondents.**

May 11, 2021

*Christina B. Torres*

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

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**DECISION****CARANDANG, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court (Rules) assailing the Decision<sup>2</sup> dated April 26, 2013 and the Resolution<sup>3</sup> 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.<sup>4</sup> Consequently, the city councils of Las Piñas and Parañaque issued the corresponding resolutions<sup>5</sup> 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.<sup>6</sup> The cities of Las Piñas and Parañaque eventually accepted Alltech's proposal and the parties executed their respective JVAs.<sup>7</sup>

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<sup>8</sup> and Resolution No. 4091, Series of 2010.<sup>9</sup> The approval is subject to full compliance with existing laws, rules, and regulations in relation to the environment.<sup>10</sup>

In March 2010, the PRA entered into separate Memoranda of Agreement (MOA) with the cities of Las Piñas and Parañaque.<sup>11</sup> 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).<sup>12</sup>

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<sup>1</sup> *Rollo*, Vol. I, pp. 61-154.

<sup>2</sup> Penned by Associate Justice Apolinario D. Bruselas, Jr., with the concurrence of Associate Justices Rebecca De Guia-Salvador and Samuel H. Gaerlan (now a Member of the Court); *id.* at 9-55.

<sup>3</sup> *Id.* at 56-59.

<sup>4</sup> *Id.* at 161-162.

<sup>5</sup> *Rollo*, Vol. II, pp. 1569-1583.

<sup>6</sup> *Rollo*, Vol. I, p. 162.

<sup>7</sup> *Id.* at 772-806, 866-881.

<sup>8</sup> *Id.* at 810.

<sup>9</sup> *Id.* at 811.

<sup>10</sup> *Id.* at 810-811.

<sup>11</sup> *Id.* at 977-989, 990-1003.

<sup>12</sup> *Id.* at 162-163.



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.<sup>13</sup>

In December 2010, Alltech submitted its final EPRMP<sup>14</sup> which now involved the reclamation of an estimated 203.43 hectares along the coast of Paranaque and 431.71 hectares along the coast of Las Pinas. 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.<sup>15</sup>

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<sup>16</sup> 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

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<sup>13</sup> Id. at 163.

<sup>14</sup> Id. at 547-669.

<sup>15</sup> Id. at 163, 562.

<sup>16</sup> Id. at 1019-1023.

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**

6. 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.
  7. 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;
  8. 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-à-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.<sup>17</sup>

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 Pinas, Parañaque, and Bacoor. On June 19, 2012, the Court remanded the case to the

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<sup>17</sup> Id. at 1021-1022.

CA to accept the return of the writ, and to conduct the necessary hearing, reception of evidence, and rendition of judgment.<sup>18</sup>

### **Ruling of the Court of Appeals**

On April 26, 2013, the CA rendered its Decision,<sup>19</sup> the dispositive portion of which states:

WHEREFORE, the petition is DENIED for lack of merit.

**IT IS SO ORDERED.**<sup>20</sup> (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<sup>21</sup> and that the submission of the EPRMP was proper and lawful.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

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.

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<sup>18</sup> Id. at 159.

<sup>19</sup> Supra note 2.

<sup>20</sup> *Rollo*, Vol. I, p. 55.

<sup>21</sup> Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes.

<sup>22</sup> *Rollo*, Vol. I, p. 42.

<sup>23</sup> Id. at 39.

<sup>24</sup> Id.

<sup>25</sup> Id. at 39-40.

<sup>26</sup> Id. at 40.

<sup>27</sup> Id.

(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.<sup>28</sup>

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 Bacoor for lack of sufficient basis.<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup>

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.<sup>32</sup> Thus, the CA was not convinced that sufficient ground exists to grant the privilege of the writ of *kalikasan*.<sup>33</sup>

In a Resolution<sup>34</sup> dated August 14, 2013, the CA denied the Motion for Reconsideration Villar filed.<sup>35</sup>

In the present petition,<sup>36</sup> 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;<sup>37</sup> (2) the meeting that was conducted supposedly as public consultation failed to satisfy the strict requirements of the law;<sup>38</sup> (3) public hearings are mandatory for the proposed

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<sup>28</sup> Id. at 48.  
<sup>29</sup> Id. at 45.  
<sup>30</sup> Id.  
<sup>31</sup> Id. at 46-47.  
<sup>32</sup> Id. at 53.  
<sup>33</sup> Id. at 54.  
<sup>34</sup> Supra note 3.  
<sup>35</sup> *Rollo*, Vol. I, p. 59.  
<sup>36</sup> Supra note 1.  
<sup>37</sup> *Rollo*, Vol. I, pp. 102-114.  
<sup>38</sup> Id. at 116-119.

project;<sup>39</sup> (4) a detailed statement of project alternative to the proposed reclamation project is a requirement under the law;<sup>40</sup> 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.<sup>41</sup>

Villar insists that the proposed project impinges on the viability and sustainability of the Las Piñas-Parañaque Critical Habitat and Ecotourism Area (LPPCHEA).<sup>42</sup> 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;<sup>43</sup> (2) the mitigation measures will impede the ecological functions of the LPPCHEA as these will require giving up 4.35 hectares of the LPPCHEA;<sup>44</sup> and (3) the claim that reclamation *per se* may be pursued for its supposed positive impact and restorative qualities lacks basis.<sup>45</sup>

In their Comment,<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup>

The PRA manifested that it is adopting the Comment of Alltech.<sup>49</sup>

The DENR-EMB, in its Comment,<sup>50</sup> 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.<sup>51</sup>

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

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<sup>39</sup> Id. at 119-123.

<sup>40</sup> Id. at 123-127.

<sup>41</sup> Id. at 127-129.

<sup>42</sup> Id. at 129-138.

<sup>43</sup> Id. at 138-141.

<sup>44</sup> Id. at 141-144.

<sup>45</sup> Id. at 144-147.

<sup>46</sup> *Rollo*, Vol. II, pp. 1245-1328.

<sup>47</sup> Id. at 1263-1273.

<sup>48</sup> Id. at 1273-1275.

<sup>49</sup> *Rollo*, Vol. IV, pp. 2781-2782.

<sup>50</sup> Id. at 2795-2833.

<sup>51</sup> Id. at 2814-2821.

<sup>52</sup> *Rollo*, Vol. IV, pp. 2739-2750.

<sup>53</sup> Id. at 2745-2746.



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,<sup>54</sup> 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.<sup>55</sup> 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 LLPCHEA as a “Wetland of National Importance.”<sup>56</sup>

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;<sup>57</sup> (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;<sup>58</sup> (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;<sup>59</sup> and (4) not only can the project co-exist with the LPPCHEA, it can even assist in enhancing or improving it.<sup>60</sup>

In their Motion for Leave to File Incorporated Rejoinder,<sup>61</sup> 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.<sup>62</sup> 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.<sup>63</sup>

### Issues

The issues to be resolved in this case are:

1. 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;

<sup>54</sup> 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.

<sup>55</sup> Temporary *rollo*, pp. 1-2.

<sup>56</sup> Id. at 2.

<sup>57</sup> Id. at 3-4.

<sup>58</sup> Id. at 4-7

<sup>59</sup> Id. at 7.

<sup>60</sup> Id. at 7-10.

<sup>61</sup> Id. at 1-7.

<sup>62</sup> Id. at 4.

<sup>63</sup> Id. at 4-5.

2. 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
3. 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<sup>64</sup> (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.<sup>65</sup>

A petition for writ of *kalikasan* is an extraordinary remedy classified as a special civil action under the Rules of Procedure for Environmental Cases<sup>66</sup> (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

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<sup>64</sup> P.D. No. 1586, Section 4.

<sup>65</sup> Id., Section 1.

<sup>66</sup> Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC.



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.<sup>67</sup>

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:

- a. Grave abuse of discretion on the part of the deciding authority, or
- b. 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:

<b>Deciding Authority</b>	<b>Where to file Appeal</b>
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

<sup>67</sup> *Segovia v. The Climate Change Commission*, 806 Phil. 1019, 1034 (2017).

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*,<sup>68</sup> 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.<sup>69</sup> (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).

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<sup>68</sup> 752 Phil. 498 (2015).

<sup>69</sup> Id. at 542.



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."<sup>70</sup> 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."<sup>71</sup> 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:

1. 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);
2. Operating but without ECCs;
3. Operating projects with previous ECCs but planning or applying for clearance to modify/expand or re-start operations; and
4. Existing projects for modification or re-start up.

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

<sup>70</sup> Glossary, DAO No. 2003-30.

<sup>71</sup> Id.

<sup>72</sup> Supra note 65.

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<sup>73</sup>) 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.<sup>74</sup> 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.<sup>75</sup>

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.**<sup>76</sup> 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*,<sup>77</sup> 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 EPRMP 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.

<sup>73</sup> *Rollo*, Vol. I, pp. 1019-1023.

<sup>74</sup> *Rollo*, Vol. IV, p. 2804.

<sup>75</sup> *Id.* at 2804, 2861.

<sup>76</sup> *Chavez v. Public Estates Authority*, 433 Phil. 506, 560 (2002).

<sup>77</sup> *Supra* note 65.



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.<sup>78</sup> (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

<sup>78</sup> Supra note 65 at 611-616.





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.<sup>79</sup> (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.<sup>80</sup> 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.<sup>81</sup>

<sup>79</sup> DAO No. 2003-30, Section 5.3.

<sup>80</sup> *Rollo*, Vol. I, pp. 1016-1018.

<sup>81</sup> *Id.* at 130.



**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.<sup>82</sup>

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

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<sup>82</sup> DAO No. 2003-30, Section 3(d).



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.<sup>83</sup>

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.”<sup>84</sup> 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 Bacoor, lacked sufficient basis.<sup>85</sup>

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 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;*”<sup>86</sup> (Italics in the original; emphases and underscoring supplied)

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<sup>83</sup> Rollo, Vol. I, p. 48.

<sup>84</sup> Id. at 283.

<sup>85</sup> Id. at 45.

<sup>86</sup> Id. at 608.



Based on the Conceptual Drainage System Plan shown in Figure 3.4 of the EPRMP,<sup>87</sup> no stream or river volumetric flows are affected since the outflow is Manila Bay.<sup>88</sup> The drainage outfall of treated water is Manila Bay itself.<sup>89</sup> 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.<sup>90</sup>

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.<sup>91</sup> In the Flood Studies and Design Parameters<sup>92</sup> submitted by Peter Suchianco, Project Director of Alltech, the constructional features of the river channel improvement measures proposed were tabulated<sup>93</sup> 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

<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Id. at 609.

<sup>90</sup> Id. at 619.

<sup>91</sup> Id. at 843-844.

<sup>92</sup> Id. at 839-854.

<sup>93</sup> Id. at 844.

On the other hand, the constructional features of the proposed improvement works on drainage are as follows:<sup>94</sup>

Proposed Structure	Quantity	Dimension
Pump Station	2 sites	19.8 cm
Control Gate	8 sites	195 tons
Channel Improvement	4,800 m	15 m – 8.7 m widening
Open Channel Construction	150 m	20 m in width
Cut-off Channel	500m	30 m 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.<sup>95</sup>

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.<sup>96</sup> 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.<sup>97</sup> (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

<sup>94</sup>

Id.

<sup>95</sup>

Id. at 856.

<sup>96</sup>

Id. at 46-47.

<sup>97</sup>

Id. at 228-229.

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 1-2 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."<sup>98</sup> (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.

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<sup>98</sup> *Rollo*, Vol. I, pp. 26-32.



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.<sup>99</sup> (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.<sup>100</sup> It has

<sup>99</sup> Id. at 22-23.

<sup>100</sup> *Rollo*, Vol. III, p. 1997.

undertaken various reclamation and coastal development projects worldwide, including the Tanjong Rhu and the East Coast reclamation projects in Singapore.<sup>101</sup>

In its Closing Report,<sup>102</sup> 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.<sup>103</sup> 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.<sup>104</sup> Surbana recommended conducting a flood and flushing study<sup>105</sup> 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.<sup>106</sup>

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.<sup>107</sup> 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.<sup>108</sup>

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*,<sup>109</sup> 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

<sup>101</sup> Id. at 1997-1999.

<sup>102</sup> Id. at 1993-2026.

<sup>103</sup> Id. at 2005.

<sup>104</sup> Id. at 2007.

<sup>105</sup> Id. at 2026.

<sup>106</sup> Id.

<sup>107</sup> Id. at 2241.

<sup>108</sup> Id. at 2245, 2258, 2263.

<sup>109</sup> *Supra* note 65.

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.<sup>110</sup> (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.<sup>111</sup>

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.<sup>112</sup>

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<sup>110</sup> Id. at 714.

<sup>111</sup> Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, supra note 63.

<sup>112</sup> *Rollo*, Vol. I, p. 53.



**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.<sup>113</sup> Thereafter, the Congress enacted the ENIPAS<sup>114</sup> 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."<sup>115</sup> 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<sup>116</sup> submitted by Alltech and its consultants. Even the Tricore report Villar commissioned acknowledged that LPPCHEA was located adjacent to the project site.<sup>117</sup> 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.

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<sup>113</sup> Republic Act No. 7586.  
<sup>114</sup> Republic Act No. 11038.  
<sup>115</sup> Id., Section 3.  
<sup>116</sup> *Rollo*, Vol. I, pp. 585, 635.  
<sup>117</sup> Id. at 266.



**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<sup>118</sup> 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.<sup>119</sup>

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.**

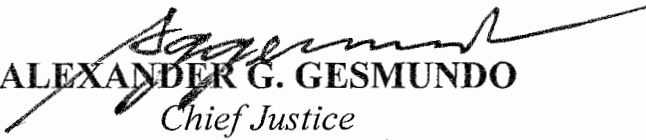
  
**ROSMARI D. CARANDANG**  
*Associate Justice*

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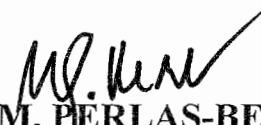
<sup>118</sup> Convention on Wetlands of International Importance Especially Waterfowl Habitat, July 13, 1994. <[https://www.ramsar.org/sites/default/files/documents/library/current\\_convention\\_text\\_e.pdf](https://www.ramsar.org/sites/default/files/documents/library/current_convention_text_e.pdf)>, visited on February 4, 2021.

<sup>119</sup> Id.

**WE CONCUR:**

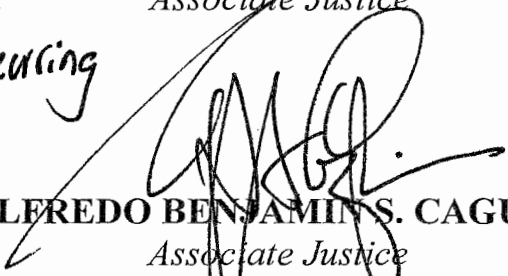
  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

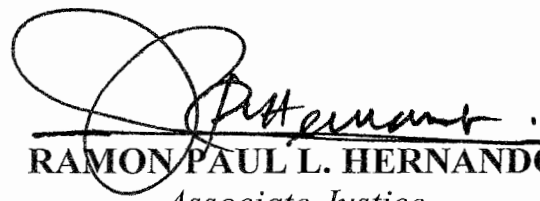
*I dissent. see separate opinion*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**MARVIC MARIO VICTOR F. LEONEN**  
*Associate Justice*

*See Concurring Opinion*

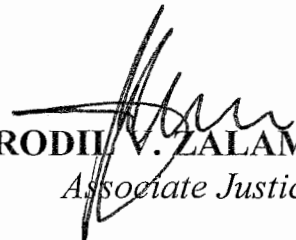
  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*


*Pls. see my Dissenting Opinion*

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

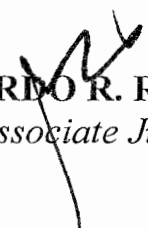
  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

  
**RODIL V. ZALAMEDA**  
*Associate Justice*

  
**MARION LOPEZ**  
*Associate Justice*

  
**EDGARDO L. DELOS SANTOS**  
*Associate Justice*

(no part)  
**SAMUEL H. GAERLAN**  
*Associate Justice*


  
**RICARDO R. ROSARIO**  
*Associate Justice*

  
**JHOSEP Y. LOPEZ**  
*Associate Justice*



**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**ALEXANDER G. GESMUNDO**  
*Chief Justice*