

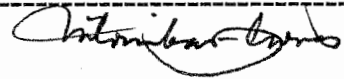
EN BANC

G.R. No. 208702 – 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) RESIDENTS OF LAS PIÑAS CITY], *Petitioner*, v. ALLTECH CONTRACTORS, INC., PHILIPPINE RECLAMATION AUTHORITY, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, ENVIRONMENTAL MANAGEMENT BUREAU, and CITIES OF LAS PIÑAS, PARAÑAQUE, AND BACOR, *Respondents*.

Promulgated:

May 11, 2021

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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.<sup>1</sup>

<sup>1</sup> Ponencia, p. 2.



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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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 flooding to the residents in the area.<sup>5</sup>

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.<sup>6</sup>

On April 26, 2013, the Court of Appeals rendered a Decision<sup>7</sup> 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

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<sup>2</sup> Id. at 2-3.

<sup>3</sup> Id. at 3.

<sup>4</sup> Id.

<sup>5</sup> Id. at 5.

<sup>6</sup> Id.

<sup>7</sup> *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 Court) of the Third Division, Court of Appeals, Manila.

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.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup> (Citations omitted)

<sup>8</sup> Id. at 189-190.

<sup>9</sup> Ponencia, pp. 7-10.

<sup>10</sup> Id. at 13-17.

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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.<sup>11</sup>

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<sup>12</sup> requires an environmental impact statement under an Environmental Impact Statement System to be established by the Department of Environment and Natural Resources.<sup>13</sup> 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.”<sup>14</sup>

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.”<sup>15</sup>

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.

<sup>11</sup> Id.

<sup>12</sup> “ESTABLISHING AN ENVIRONMENTAL IMPACT STATEMENT SYSTEM, INCLUDING OTHER ENVIRONMENTAL MANAGEMENT RELATED MEASURES AND FOR OTHER PURPOSES,” June 11, 1978.

<sup>13</sup> Presidential Decree No. 1586 (1978), sec. 2.

<sup>14</sup> Revised Procedural Manual for Department Administrative Order No. 2003-30, sec. 1.0(1)(a).

<sup>15</sup> Revised Procedural Manual for Department Administrative Order No. 2003-30, sec. 1.0(2).

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 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 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.<sup>16</sup>

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 of 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

<sup>16</sup> Revised Procedural Manual for Department Administrative Order No. 2003-30, sec. 1.0(8).

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.<sup>17</sup>

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*.<sup>18</sup> 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.<sup>19</sup> (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 recognized that no 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 Paranaque and Las Pi[ñ]as 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

<sup>17</sup> Rollo, p. 106.

<sup>18</sup> *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002) [Per J. Carpio, En Banc].

<sup>19</sup> Rollo, p. 84.

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[.]”<sup>20</sup>

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.<sup>21</sup>

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.<sup>22</sup>

The Environmental Impact Assessment Review Committee’s Comments and Chairman’s Report<sup>23</sup> 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,

<sup>20</sup> Ponencia, p. 19, Environmental Performance Report and Management Plan.

<sup>21</sup> Id. at 19–20 citing *rollo*, p. 619.

<sup>22</sup> *Rollo*, p. 84.

<sup>23</sup> Id. at 1004–1015.

	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.

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In *Cordillera Global Network v. Paje*,<sup>24</sup> 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.

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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

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<sup>24</sup> G.R. No. 215988, April 10, 2019, 901 SCRA 261 [Per J. Leonen, En Banc].

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 m<sup>3</sup>/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[.]<sup>25</sup> (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.<sup>26</sup>

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

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<sup>25</sup> Id. at 305–310.

<sup>26</sup> Id. at 312.

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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.<sup>27</sup>

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,<sup>28</sup> 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.”<sup>29</sup> Presidential Proclamation No. 1412-A<sup>30</sup> 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[.]”<sup>31</sup>

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

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,<sup>35</sup> the law explicitly protects these areas against any project that would tend to destroy

<sup>27</sup> *Rollo*, p. 84.

<sup>28</sup> Entitled “ESTABLISHING A CRITICAL HABITAT AND ECOTOURISM AREA WITHIN THE COASTAL LAGOON OF LAS PIÑAS AND PARAÑAQUE.”

<sup>29</sup> Presidential Proclamation No. 1412 (2007), Fifth Whereas Clause.

<sup>30</sup> 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.

<sup>31</sup> Presidential Proclamation No. 1412-A (2008), sec. 2.

<sup>32</sup> Entitled “Expanded National Integrated Protected Areas System Act of 2018.”

<sup>33</sup> Republic Act No. 11038 (2018), sec. 4.

<sup>34</sup> Republic Act No. 11038 (2018), sec. 3(bb).

<sup>35</sup> Ponencia, p. 29.

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.<sup>36</sup> (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.<sup>37</sup> (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

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<sup>36</sup> Rollo, p. 96.

<sup>37</sup> Ponencia, pp. 25-26.

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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.”<sup>38</sup> 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.<sup>39</sup>

In line with this, this Court promulgated the Rules of Procedure for Environmental Cases,<sup>40</sup> which provides for the issuance of the extraordinary writ of *kalikasan*.<sup>41</sup> 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

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<sup>38</sup> Id. at 29.

<sup>39</sup> CONST., art. XI, sec. 16.

<sup>40</sup> A.M. No. 09-6-8-SC (2010).

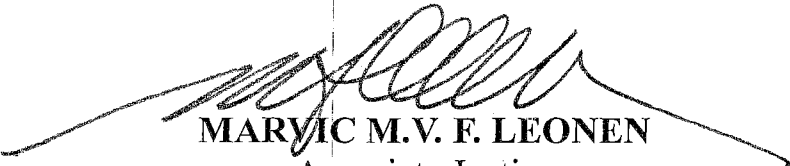
<sup>41</sup> A.M. No. 09-6-8-SC (2010), Rule 7.

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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<sup>42</sup> 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-Paranaque 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.



MARYIC M.V. F. LEONEN  
Associate Justice

<sup>42</sup> 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.