Republic of the Philippines
Supreme Court
Manila

EN BANC

BORACAY FOUNDATION, INC.,
Petitioner,

- *versus* -

THE PROVINCE OF AKLAN, REPRESENTED BY GOVERNOR CARLITO S. MARQUEZ, THE PHILIPPINE RECLAMATION AUTHORITY, AND THE DENR-EMB (REGION VI),
Respondents.

G.R. No. 196870

Present:

CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,[*]
SERENO,
REYES, and
PERLAS-BERNABE, *JJ.*

Promulgated:

June 26, 2012

x - x

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In resolving this controversy, the Court took into consideration that all the parties involved share common goals in pursuit of certain primordial State policies and principles

that are enshrined in the Constitution and pertinent laws, such as the protection of the environment, the empowerment of the local government units, the promotion of tourism, and the encouragement of the participation of the private sector. The Court seeks to reconcile the respective roles, duties and responsibilities of the petitioner and respondents in achieving these shared goals within the context of our Constitution, laws and regulations.

Nature of the Case

This is an original petition for the issuance of an Environmental Protection Order in the nature of a continuing *mandamus* under A.M. No. 09-6-8-SC, otherwise known as the Rules of Procedure for Environmental Cases, promulgated on April 29, 2010.

The Parties

Petitioner Boracay Foundation, Inc. (petitioner) is a duly registered, non-stock domestic corporation. Its primary purpose is "to foster a united, concerted and environment-conscious development of Boracay Island, thereby preserving and maintaining its culture, natural beauty and ecological balance, marking the island as the crown jewel of Philippine tourism, a prime tourist destination in Asia and the whole world."[1] It counts among its members at least sixty (60) owners and representatives of resorts, hotels, restaurants, and similar institutions; at least five community organizations; and several environmentally-conscious residents and advocates.[2]

Respondent Province of Aklan (respondent Province) is a political subdivision of the government created pursuant to Republic Act No. 1414, represented by Honorable Carlito S. Marquez, the Provincial Governor (Governor Marquez).

Respondent Philippine Reclamation Authority (respondent PRA), formerly called the Public Estates Authority (PEA), is a government entity created by Presidential Decree No. 1084,[3] which states that one of the purposes for which respondent PRA was created

was to reclaim land, including foreshore and submerged areas. PEA eventually became the lead agency primarily responsible for all reclamation projects in the country under Executive Order No. 525, series of 1979. In June 2006, the President of the Philippines issued Executive Order No. 543, delegating the power "to approve reclamation projects to PRA through its governing Board, subject to compliance with existing laws and rules and further subject to the condition that reclamation contracts to be executed with any person or entity (must) go through public bidding."[4]

Respondent Department of Environment and Natural Resources – Environmental Management Bureau (DENR-EMB), Regional Office VI (respondent DENR-EMB RVI), is the government agency in the Western Visayas Region authorized to issue environmental compliance certificates regarding projects that require the environment's protection and management in the region.[5]

Summary of Antecedent Facts

Boracay Island (Boracay), a tropical paradise located in the Western Visayas region of the Philippines and one of the country's most popular tourist destinations, was declared a tourist zone and marine reserve in 1973 under Presidential Proclamation No. 1801.[6] The island comprises the *barangays* of Manoc-manoc, Balabag, and Yapak, all within the municipality of Malay, in the province of Aklan.[7]

Petitioner describes Boracay as follows:

> Boracay is well-known for its distinctive powdery white-sand beaches which are the product of the unique ecosystem dynamics of the area. The island itself is known to come from the uplifted remnants of an ancient reef platform. Its beaches, the sandy land strip between the water and the area currently occupied by numerous establishments, is the primary draw for domestic and international tourists for its color, texture and other unique characteristics. Needless to state, it is the premier domestic and international tourist destination in the Philippines.[8]

More than a decade ago, respondent Province built the Caticlan Jetty Port and Passenger Terminal at Barangay Caticlan to be the main gateway to Boracay. It also built the corresponding Cagban Jetty Port and Passenger Terminal to be the receiving end for tourists in Boracay. Respondent Province operates both

ports "to provide structural facilities suited for locals, tourists and guests and to provide safety and security measures."[9]

In 2005, Boracay 2010 Summit was held and participated in by representatives from national government agencies, local government units (LGUs), and the private sector. Petitioner was one of the organizers and participants thereto. The Summit aimed "to re-establish a common vision of all stakeholders to ensure the conservation, restoration, and preservation of Boracay Island" and "to develop an action plan that [would allow] all sectors to work in concert among and with each other for the long term benefit and sustainability of the island and the community."[10] The Summit yielded a Terminal Report[11] stating that the participants had shared their dream of having world-class land, water and air infrastructure, as well as given their observations that government support was lacking, infrastructure was poor, and, more importantly, the influx of tourists to Boracay was increasing. The Report showed that there was a need to expand the port facilities at Caticlan due to congestion in the holding area of the existing port, caused by inadequate facilities, thus tourists suffered long queues while waiting for the boat ride going to the island.[12]

Respondent Province claimed that tourist arrivals to Boracay reached approximately 649,559 in 2009 and 779,666 in 2010, and this was expected to reach a record of 1 million tourist arrivals in the years to come. Thus, respondent Province conceptualized the expansion of the port facilities at Barangay Caticlan.[13]

The *Sangguniang Barangay* of Caticlan, Malay Municipality, issued **Resolution No. 13, s. 2008**[14] on April 25, 2008 stating that it had learned that respondent Province had filed an application with the DENR for a foreshore lease of areas along the shorelines of Barangay Caticlan, and manifesting its strong opposition to said application, as the proposed foreshore lease practically covered almost all the coastlines of said *barangay*, thereby technically diminishing its territorial jurisdiction, once granted, and depriving its constituents of their statutory right of preference in the development and utilization of the natural resources within its jurisdiction. The resolution further stated that respondent Province did not conduct any consultations with the *Sangguniang Barangay* of Caticlan regarding the proposed foreshore lease, which failure the *Sanggunian* considered as an act of bad faith on the part of respondent Province.[15]

On November 20, 2008, the *Sangguniang Panlalawigan* of respondent Province approved **Resolution No. 2008-369**,[16] formally authorizing Governor Marquez to enter into negotiations towards the possibility of effecting self-liquidating and income-producing development and livelihood projects to be financed through bonds, debentures, securities, collaterals, notes or other obligations as provided under Section 299 of the Local Government Code, with the following priority projects: (a) renovation/rehabilitation of the Caticlan/Cagban Passenger Terminal Buildings and Jetty Ports; and (b) reclamation of a portion of Caticlan foreshore for commercial purposes.[17] This step was taken as respondent Province's existing jetty port and passenger terminal was funded through bond flotation, which was successfully redeemed and paid ahead of the target date. This was allegedly cited as one of the LGU's Best Practices wherein respondent Province was given the appropriate commendation.[18]

Respondent Province included the proposed expansion of the port facilities at Barangay Caticlan in its 2009 Annual Investment Plan,[19] envisioned as its project site the area adjacent to the existing jetty port, and identified additional areas along the coastline of Barangay Caticlan as the site for future project expansion.[20]

Governor Marquez sent a letter to respondent PRA on March 12, 2009[21] expressing the interest of respondent Province to reclaim about **2.64 hectares** of land along the foreshores of Barangay Caticlan, Municipality of Malay, Province of Aklan.

Sometime in April 2009, respondent Province entered into an agreement with the Financial Advisor/Consultant that won in the bidding process held a month before, to conduct the necessary feasibility study of the proposed project for the Renovation/Rehabilitation of the Caticlan Passenger Terminal Building and Jetty Port, Enhancement and Recovery of Old Caticlan Coastline, and Reclamation of a Portion of Foreshore for Commercial Purposes (**the Marina Project**), in Malay, Aklan.[22]

Subsequently, on May 7, 2009, the *Sangguniang Panlalawigan* of respondent Province issued **Resolution No. 2009–110**,[23] which **authorized Governor Marquez to file an application to reclaim the 2.64 hectares of foreshore area in Caticlan, Malay, Aklan with respondent PRA**.

Sometime in July 2009, the Financial Advisor/Consultant came up with a feasibility study which focused on the land reclamation of 2.64 hectares by way of beach enhancement and recovery of the old Caticlan coastline for the rehabilitation and expansion of the existing jetty port, and for its future plans – the construction of commercial building and wellness center. The financial component of the said study was Two Hundred Sixty Million Pesos (₱260,000,000.00). Its suggested financing scheme was bond flotation.[24]

Meanwhile, the *Sangguniang Bayan* of the Municipality of Malay expressed its strong opposition to the intended foreshore lease application, through **Resolution No. 044**, [25] approved on July 22, 2009, manifesting therein that respondent Province's foreshore lease application was for business enterprise purposes for its benefit, at the expense of the local government of Malay, which by statutory provisions was the rightful entity "to develop, utilize and reap benefits from the natural resources found within its jurisdiction."[26]

In August 2009, a Preliminary Geohazard Assessment[27] for the enhancement/expansion of the existing Caticlan Jetty Port and Passenger Terminal through beach zone restoration and Protective Marina Developments in Caticlan, Malay, Aklan was completed.

Thereafter, Governor Marquez submitted an **Environmental Performance Report and Monitoring Program (EPRMP)**[28] to DENR-EMB RVI, which he had attached to

his letter[29] dated September 19, 2009, as an initial step for securing an Environmental Compliance Certificate (ECC). The letter reads in part:

> **With the project expected to start its construction implementation next month**, the province hereby assures your good office that it will give preferential attention to and shall comply with whatever comments that you may have on this EPRMP.[30] (Emphasis added.)

Respondent Province was then authorized to issue "Caticlan Super Marina Bonds" for the purpose of funding the renovation of the Caticlan Jetty Port and Passenger Terminal Building, and the reclamation of a portion of the foreshore lease area for commercial purposes in Malay, Aklan through **Provincial Ordinance No. 2009-013**, approved on September 10, 2009. The said ordinance authorized Governor Marquez to negotiate, sign and execute agreements in relation to the issuance of the Caticlan Super Marina Bonds in the amount not exceeding ₱260,000,000.00.[31]

Subsequently, the *Sangguniang Panlalawigan* of the Province of Aklan issued **Provincial Ordinance No. 2009-015**[32] on October 1, 2009, amending Provincial Ordinance No. 2009-013, authorizing the bond flotation of the Province of Aklan through Governor Marquez to fund the Marina Project and appropriate the entire proceeds of said bonds for the project, and further authorizing Governor Marquez to negotiate, sign and execute contracts or agreements pertinent to the transaction.[33]

Within the same month of October 2009, respondent Province deliberated on the possible expansion from its original proposed reclamation area of 2.64 hectares to forty (40) hectares in order to maximize the utilization of its resources and as a response to the findings of the Preliminary Geohazard Assessment study which showed that the recession and retreat of the shoreline caused by coastal erosion and scouring should be the first major concern in the project site and nearby coastal area. The study likewise indicated the vulnerability of the coastal zone within the proposed project site and the nearby coastal area due to the effects of sea level rise and climate change which will greatly affect the social, economic, and environmental situation of Caticlan and nearby Malay coastal communities.[34]

In his letter dated October 22, 2009 addressed to respondent PRA, Governor

Marquez wrote:

> With our substantial compliance with the requirements under Administrative Order No. 2007-2 relative to our request to PRA for approval of the reclamation of the [proposed Beach Zone Restoration and Protection Marine Development in Barangays Caticlan and Manoc-Manoc] and as a result of our discussion during the [meeting with the respondent PRA on October 12, 2009], may we respectfully submit a **revised Reclamation Project Description embodying certain revisions/changes in the size and location of the areas to be reclaimed.** x x x.
>
> On another note, we are pleased to inform your Office that the bond flotation we have secured with the Local Government Unit Guarantee Corporation (LGUGC) has been finally approved last October 14, 2009. This will pave the way for the implementation of said project. Briefly, the Province has been recognized by the Bureau of Local Government Finance (BLGF) for its capability to meet its loan obligations. x x x.
>
> With the continued increase of tourists coming to Boracay through Caticlan, the Province is venturing into such development project with the end in view of protection and/or restoring certain segments of the shoreline in Barangays Caticlan (Caticlan side) and Manoc-manoc (Boracay side) which, as reported by experts, has been experiencing tremendous coastal erosion.
>
> For the project to be self-liquidating, however, we will be developing the reclaimed land for commercial and tourism-related facilities and for other complementary uses.[35] (Emphasis ours.)

Then, on November 19, 2009, the *Sangguniang Panlalawigan* enacted **Resolution No. 2009-299**[36] authorizing Governor Marquez to enter into a Memorandum of Agreement (MOA) with respondent PRA in the implementation of the Beach Zone Restoration and Protection Marina Development Project, **which shall reclaim a total of 40 hectares** in the areas adjacent to the jetty ports at Barangay Caticlan and Barangay Manoc-manoc. The *Sangguniang Panlalawigan* approved the terms and conditions of the necessary agreements for the implementation of the bond flotation of respondent Province to fund the renovation/rehabilitation of the existing jetty port by way of enhancement and recovery of the Old Caticlan shoreline through reclamation of an area of **2.64 hectares** in the amount of ₱260,000,000.00 on December 1, 2009.[37]

Respondent Province gave an initial presentation of the project with consultation to the *Sangguniang Bayan* of Malay[38] on December 9, 2009.

Respondent PRA approved the reclamation project on April 20, 2010 in its Resolution No. 4094 and authorized its General Manager/Chief Executive Officer (CEO) to enter into a MOA with

respondent Province for the implementation of the reclamation project.[39]

On April 27, 2010, DENR-EMB RVI issued to respondent Province **ECC-R6-1003-096-7100** (the questioned ECC) for Phase 1 of the Reclamation Project to the extent of **2.64 hectares** to be done along the Caticlan side beside the existing jetty port.[40]

On May 17, 2010, respondent Province entered into a MOA[41] with respondent PRA. Under Article III, the Project was described therein as follows:

> The proposed **Aklan Beach Zone Restoration and Protection Marina Development Project** involves the reclamation and development of approximately **forty (40) hectares** of foreshore and offshore areas of the Municipality of Malay x x x.
>
> The land use development of the reclamation project shall be for commercial, recreational and institutional and other applicable uses.[42] (Emphases supplied.)

It was at this point that respondent Province deemed it necessary to conduct a series of what it calls "information-education campaigns," which provided the venue for interaction and dialogue with the public, particularly the *Barangay* and Municipal officials of the Municipality of Malay, the residents of Barangay Caticlan and Boracay, the stakeholders, and the non-governmental organizations (NGOs). The details of the campaign are summarized as follows[43]:

a. June 17, 2010 at Casa Pilar Beach Resort, Boracay Island, Malay, Aklan;[44]

b. July 28, 2010 at Caticlan Jetty Port and Passenger Terminal;[45]

c. July 31, 2010 at Barangay Caticlan Plaza;[46]

d. September 15, 2010 at the Office of the Provincial Governor with Municipal Mayor of Malay – Mayor John P. Yap;[47]

e. October 12, 2010 at the Office of the Provincial Governor with the Provincial Development Council Executive Committee;[48] and

f. October 29, 2010 at the Office of the Provincial Governor with Officials of LGU-Malay and Petitioner.[49]

Petitioner claims that during the "public consultation meeting" belatedly called by respondent

Province on June 17, 2010, respondent Province presented the Reclamation Project and only then detailed the actions that it had already undertaken, particularly: the issuance of the Caticlan Super Marina Bonds; the execution of the MOA with respondent PRA; the alleged conduct of an Environmental Impact Assessment (EIA) study for the reclamation project; and the **expansion of the project** to **forty (40) hectares** from **2.64 hectares**.[50]

In **Resolution No. 046**, Series of 2010, adopted on June 23, 2010, the Malay Municipality reiterated its strong opposition to respondent Province's project and **denied** its request for a favorable endorsement of the Marina Project.[51]

The Malay Municipality subsequently issued **Resolution No. 016,** Series of 2010, adopted on August 3, 2010, to request respondent PRA "not to grant reclamation permit and notice to proceed to the Marina Project of the [respondent] Provincial Government of Aklan located at Caticlan, Malay, Aklan."[52]

In a letter[53] dated October 12, 2010, petitioner informed respondent PRA of its opposition to the reclamation project, primarily for the reason that, based on the opinion of Dr. Porfirio M. Aliño, an expert from the University of the Philippines Marine Science Institute (UPMSI), which he rendered based on the documents submitted by respondent Province to obtain the ECC, a full EIA study is required to assess the reclamation project's likelihood of rendering critical and lasting effect on Boracay considering the proximity in distance, geographical location, current and wind direction, and many other environmental considerations in the area. Petitioner noted that said documents had failed to deal with coastal erosion concerns in Boracay. It also noted that respondent Province failed to comply with certain mandatory provisions of the Local Government Code, particularly, those requiring the project proponent to conduct consultations with stakeholders.

Petitioner likewise transmitted its **Resolution No. 001, Series of 2010**, registering its opposition to the reclamation project to respondent Province, respondent PRA, respondent DENR-EMB, the National Economic Development Authority Region VI, the Malay Municipality, and other concerned entities.[54]

Petitioner alleges that despite the Malay Municipality's denial of respondent Province's request for a favorable endorsement, as well as the strong opposition manifested both by Barangay Caticlan and petitioner as an NGO, respondent Province still continued with the implementation of the Reclamation

Project.[55]

On July 26, 2010, the *Sangguniang Panlalawigan* of respondent Province **set aside Resolution No. 046, s. 2010, of the Municipality of Malay** and manifested its support for the implementation of the aforesaid project through its **Resolution No. 2010-022**.[56]

On July 27, 2010, the MOA was confirmed by respondent PRA Board of Directors under its **Resolution No. 4130**. Respondent PRA wrote to respondent Province on October 19, 2010, informing the latter to **proceed with the reclamation and development of phase 1 of site 1 of its proposed project**. Respondent PRA attached to said letter its Evaluation Report dated October 18, 2010.[57]

Petitioner likewise received a copy of respondent PRA's letter dated October 19, 2010, which authorized respondent Province to proceed with phase 1 of the reclamation project, subject to compliance with the requirements of its Evaluation Report. The reclamation project was described as:

> "[A] seafront development involving reclamation of an aggregate area of more or less, **forty (40) hectares** in two (2) separate sites both in Malay Municipality, Aklan Province. **Site 1 is in Brgy. Caticlan with a total area of 36.82 hectares and Site 2 in Brgy. Manoc-Manoc, Boracay Island with a total area of 3.18 hectares.** Sites 1 and 2 are on the opposite sides of Tabon Strait, about 1,200 meters apart. x x x." [58] (Emphases added.)

The *Sangguniang Panlalawigan* of Aklan, through **Resolution No. 2010-034**,[59] addressed the apprehensions of petitioner embodied in its Resolution No. 001, s. 2010, and supported the implementation of the project. Said resolution stated that the apprehensions of petitioner with regard to the economic, social and political negative impacts of the projects were mere perceptions and generalities and were not anchored on definite scientific, social and political studies.

In the meantime, a study was commissioned by the Philippine Chamber of Commerce and Industry-Boracay (PCCI-Boracay), funded by the **Department of Tourism (DOT)** with the assistance of, among others, petitioner. The study was conducted in November 2010 by several marine biologists/experts from the Marine Environmental Resources Foundation (MERF) of the UPMSI. The study was intended to determine the potential impact of a reclamation project in the hydrodynamics of the strait and on the coastal erosion patterns in the southern coast of Boracay Island and along the coast of Caticlan.[60]

After noting the objections of the respective LGUs of Caticlan and Malay, as well as the apprehensions of petitioner, respondent Province issued a notice to the contractor on December 1, 2010 to commence with the construction of the project.[61]

On April 4, 2011, the *Sangguniang Panlalawigan* of Aklan, through its Committee on Cooperatives, Food, Agriculture, and Environmental Protection and the Committee on Tourism, Trade, Industry and Commerce, conducted a joint committee hearing wherein the study undertaken by the MERF-UPMSI was discussed.[62] In attendance were Mr. Ariel Abriam, President of PCCI-Boracay, representatives from the Provincial Government, and Dr. Cesar Villanoy, a professor from the UPMSI. Dr. Villanoy said that the subject project, consisting of **2.64 hectares,** would only have *insignificant* effect on the hydrodynamics of the strait traversing the coastline of Barangay Caticlan and Boracay, hence, there was a *distant possibility* that it would affect the Boracay coastline, which includes the famous white-sand beach of the island.[63]

Thus, on April 6, 2011, the *Sangguniang Panlalawigan* of Aklan enacted **Resolution No. 2011-065**[64] noting the report on the survey of the channel between Caticlan and Boracay conducted by the UPMSI in relation to the effects of the ongoing reclamation to Boracay beaches, and stating that Dr. Villanoy had admitted that nowhere in their study was it pointed out that there would be an adverse effect on the white-sand beach of Boracay.

During the First Quarter Regular Meeting of the Regional Development Council, Region VI (RDC-VI) on April 16, 2011, it approved and supported the subject project (covering 2.64 hectares) through **RDC-VI Resolution No. VI-26, series of 2011**.[65]

Subsequently, Mr. Abriam sent a letter to Governor Marquez dated April 25, 2011 stating that the study conducted by the UPMSI confirms that the water flow across the Caticlan-Boracay channel is primarily tide-driven, therefore, the marine scientists believe that the 2.64-hectare project of respondent Province would not significantly affect the flow in the channel and would unlikely impact the Boracay beaches. Based on this, PCCI-Boracay stated that it was not opposing the 2.64-hectare Caticlan reclamation project on environmental grounds.[66]

On June 1, 2011, petitioner filed the instant Petition for Environmental Protection Order/Issuance of the Writ of Continuing *Mandamus*. On June 7, 2011, this Court issued a **Temporary Environmental Protection Order (TEPO)** and ordered the respondents to file their respective comments to the petition.[67]

After receiving a copy of the TEPO on June 9, 2011, respondent Province immediately issued an order to the Provincial Engineering Office and the concerned contractor to cease and desist from conducting any construction activities until further orders from this Court.

The petition is premised on the following grounds:

I.

THE RESPONDENT PROVINCE, PROPONENT OF THE RECLAMATION PROJECT, FAILED TO COMPLY WITH RELEVANT RULES AND REGULATIONS IN THE ACQUISITION OF AN ECC.

A. THE RECLAMATION PROJECT IS CO-LOCATED WITHIN ENVIRONMENTALLY CRITICAL AREAS REQUIRING THE PERFORMANCE OF A FULL, OR PROGRAMMATIC, ENVIRONMENTAL IMPACT ASSESSMENT.

B. RESPONDENT PROVINCE FAILED TO OBTAIN THE FAVORABLE ENDORSEMENT OF THE LGU CONCERNED.

C. RESPONDENT PROVINCE FAILED TO CONDUCT THE REQUIRED CONSULTATION PROCEDURES AS REQUIRED BY THE LOCAL GOVERNMENT CODE.

D. RESPONDENT PROVINCE FAILED TO PERFORM A FULL ENVIRONMENTAL IMPACT ASSESSMENT AS REQUIRED BY LAW AND RELEVANT REGULATIONS.

II.

THE RECLAMATION OF LAND BORDERING THE STRAIT BETWEEN CATICLAN AND BORACAY SHALL ADVERSELY AFFECT THE FRAIL ECOLOGICAL BALANCE OF THE AREA.[68]

Petitioner objects to respondent Province's classification of the reclamation project as single instead of co-located, as "non-environmentally critical," and as a mere "rehabilitation" of the existing jetty port. Petitioner points out that the reclamation project is on two sites (which are situated on the opposite sides of Tabon Strait, about 1,200 meters apart):

- 36.82 hectares – Site 1, in Bgy. Caticlan

- 3.18 hectares – Site 2, in Manoc-manoc, Boracay Island[69]

Phase 1, which was started in December 2010 without the necessary permits,[70] is located on the Caticlan side of a narrow strait separating mainland Aklan from Boracay. In the implementation of the project, respondent Province obtained only an ECC to conduct Phase 1, instead of an ECC on the entire 40 hectares. Thus, petitioner argues that respondent Province abused and exploited the **Revised Procedural Manual** for **DENR Administrative Order No. 30, Series of 2003 (DENR DAO 2003-30)**[71] relating to the acquisition of an ECC by:

1. Declaring the reclamation project under "**Group II Projects-Non-ECP (environmentally critical project) in ECA (environmentally critical area) based on the type and size of the area**," and

2. Failing to declare the reclamation project as a co-located project application which would have required the Province to submit a **Programmatic Environmental Impact Statement (PEIS)**[72] or **Programmatic Environmental [Performance] Report Management Plan (PE[P]RMP)**.[73] (Emphases ours.)

Petitioner further alleges that the Revised Procedural Manual (on which the classification above is based, which merely requires an Environmental Impact Statement [EIS] for Group II projects) is patently *ultra vires*, and respondent DENR-EMB RVI committed grave abuse of discretion because the laws on EIS, namely, Presidential Decree Nos. 1151 and 1586, as well as Presidential Proclamation No. 2146, clearly indicate that projects in environmentally critical areas are to be immediately considered environmentally critical. **Petitioner complains that respondent Province applied for an ECC only for Phase 1; hence, unlawfully evading the requirement that co-located projects**[74] **within Environmentally Critical Areas (ECAs) must submit a PEIS and/or a PEPRMP**.

Petitioner argues that respondent Province fraudulently classified and misrepresented the project as a Non-ECP in an ECA, and as a single project instead of a co-located one. The impact assessment allegedly performed gives a patently erroneous and wrongly-premised appraisal of the possible environmental impact of the reclamation project. Petitioner contends that respondent Province's choice of classification was designed to avoid a comprehensive impact assessment of the reclamation project.

Petitioner further contends that respondent DENR-EMB RVI willfully and deliberately disregarded its duty to ensure that the environment is protected from harmful developmental projects because it

allegedly performed only a cursory and superficial review of the documents submitted by the respondent Province for an ECC, failing to note that all the information and data used by respondent Province in its application for the ECC were all dated and not current, as data was gathered in the late 1990s for the ECC issued in 1999 for the first jetty port. Thus, petitioner alleges that respondent DENR-EMB RVI ignored the environmental impact to Boracay, which involves changes in the structure of the coastline that could contribute to the changes in the characteristics of the sand in the beaches of both Caticlan and Boracay.

Petitioner insists that reclamation of land at the Caticlan side will unavoidably adversely affect the Boracay side and notes that the declared objective of the reclamation project is for the exploitation of Boracay's tourist trade, since the project is intended to enhance support services thereto. But, petitioner argues, the primary reason for Boracay's popularity is its white-sand beaches which will be negatively affected by the project.

Petitioner alleges that respondent PRA had required respondent Province to obtain the favorable endorsement of the LGUs of Barangay Caticlan and Malay Municipality pursuant to the consultation procedures as required by the Local Government Code.[75] Petitioner asserts that the reclamation project is in violation not only of laws on EIS but also of the Local Government Code as respondent Province failed to enter into proper consultations with the concerned LGUs. In fact, the *Liga ng mga Barangay*-Malay Chapter also expressed strong opposition against the project.[76]

Petitioner cites Sections 26 and 27 of the Local Government Code, which require consultations if the project or program may cause pollution, climactic change, depletion of non-renewable resources, *etc*. According to petitioner, respondent Province ignored the LGUs' opposition expressed as early as 2008. Not only that, respondent Province belatedly called for public "consultation meetings" on June 17 and July 28, 2010, after an ECC had already been issued and the MOA between respondents PRA and Province had already been executed. As the petitioner saw it, these were not consultations but mere "project presentations."

Petitioner claims that respondent Province, aided and abetted by respondents PRA and DENR-EMB, ignored the spirit and letter of the Revised Procedural Manual, intended to implement the various regulations governing the Environmental Impact Assessments (EIAs) to ensure that developmental projects are in line with sustainable development of natural resources. The project was conceptualized without considering alternatives.

Further, as to its allegation that respondent Province failed to perform a full EIA, petitioner argues that while it is true that as of now, only the Caticlan side has been issued an ECC, the entire project involves the Boracay side, which should have been considered a co-located project. **Petitioner claims that**

any project involving Boracay requires a full EIA since it is an ECA. Phase 1 of the project will affect Boracay and Caticlan as they are separated only by a narrow strait; thus, it should be considered an ECP. Therefore, the ECC and permit issued must be invalidated and cancelled.

Petitioner contends that a study shows that the flow of the water through a narrower channel due to the reclamation project will likely divert sand transport off the southwest part of Boracay, whereas the characteristic coast of the Caticlan side of the strait indicate stronger sediment transport.[77] The white-sand beaches of Boracay and its surrounding marine environment depend upon the natural flow of the adjacent waters.

Regarding its claim that the reclamation of land bordering the strait between Caticlan and Boracay shall adversely affect the frail ecological balance of the area, petitioner submits that while the study conducted by the MERF-UPMSI only considers the impact of the reclamation project on the land, it is undeniable that it will also adversely affect the already frail ecological balance of the area. The effect of the project would have been properly assessed if the proper EIA had been performed prior to any implementation of the project.

According to petitioner, respondent Province's intended purposes do not prevail over its duty and obligation to protect the environment. Petitioner believes that rehabilitation of the Jetty Port may be done through other means.

In its **Comment**[78] dated June 21, 2011, respondent Province claimed that application for reclamation of **40 hectares** is advantageous to the Provincial Government considering that its filing fee would only cost Php20,000.00 plus Value Added Tax (VAT) which is also the minimum fee as prescribed under Section 4.2 of Administrative Order No. 2007-2.[79]

Respondent Province considers the instant petition to be premature; thus, it must necessarily fail for lack of cause of action due to the failure of petitioner to fully exhaust the available administrative remedies even before seeking judicial relief. According to respondent Province, the petition primarily assailed the decision of respondent DENR-EMB RVI in granting the ECC for the subject project consisting of **2.64 hectares** and sought the cancellation of the ECC for alleged failure of respondent Province to submit proper documentation as required for its issuance. Hence, the grounds relied upon by petitioner can be addressed within the confines of administrative processes provided by law.

Respondent Province believes that under Section 5.4.3 of DENR Administrative Order No. 2003-30 (DAO 2003-30),[80] the issuance of an ECC[81] is an official decision of DENR-EMB RVI on the

application of a project proponent.[82] It cites **Section 6 of DENR DAO 2003-30**, which provides for a remedy available to the party aggrieved by the final decision on the proponent's ECC applications.

Respondent Province argues that the instant petition is anchored on a wrong premise that results to petitioner's unfounded fears and baseless apprehensions. It is respondent Province's contention that its 2.64-hectare reclamation project is considered as a "stand alone project," separate and independent from the approved area of 40 hectares. Thus, petitioner should have observed the difference between the "future development plan" of respondent Province from its "actual project" being undertaken.[83]

Respondent Province clearly does not dispute the fact that it revised its original application to respondent PRA from 2.64 hectares to 40 hectares. However, it claims that such revision is part of its **future plan**, and implementation thereof is "still subject to availability of funds, independent scientific environmental study, separate application of ECC and notice to proceed to be issued by respondent PRA."[84]

Respondent Province goes on to claim that "[p]etitioner's version of the Caticlan jetty port expansion project is a bigger project which is still at the conceptualization stage. Although this project was described in the **Notice to Proceed** issued by respondent PRA to have two phases, 36.82 hectares in Caticlan and 3.18 hectares in Boracay [Island,] it is totally different from the [ongoing] Caticlan jetty port expansion project."[85]

Respondent Province says that the Accomplishment Report[86] of its Engineering Office would attest that the actual project consists of 2.64 hectares only, as originally planned and conceptualized, which was even reduced to 2.2 hectares due to some construction and design modifications.

Thus, respondent Province alleges that from its standpoint, its capability to reclaim is limited to 2.64 hectares only, based on respondent PRA's Evaluation Report[87] dated October 18, 2010, which was in turn the basis of the issuance of the Notice to Proceed dated October 19, 2010, because the project's financial component is ₱260,000,000.00 only. Said Evaluation Report indicates that the implementation of the other phases of the project including site 2, which consists of the other portions of the 40-hectare area that includes a portion in Boracay, is still within the 10-year period and will depend largely on the availability of funds of respondent Province.[88]

So, even if respondent PRA approved an area that would total up to 40 hectares, it was divided into

phases in order to determine the period of its implementation. Each phase was separate and independent because the source of funds was also separate. The required documents and requirements were also specific for each phase. The entire approved area of 40 hectares could be implemented within a period of 10 years but this would depend solely on the availability of funds.[89]

As far as respondent Province understands it, additional reclamations not covered by the ECC, which only approved 2.64 hectares, should undergo another EIA. If respondent Province intends to commence the construction on the other component of the 40 hectares, then it agrees that it is mandated to secure a new ECC.[90]

Respondent Province admits that it dreamt of a 40-hectare project, even if it had originally planned and was at present only financially equipped and legally compliant to undertake 2.64 hectares of the project, and only as an expansion of its old jetty port.[91]

Respondent Province claims that it has complied with all the necessary requirements for securing an ECC. On the issue that the reclamation project is within an ECA requiring the performance of a full or programmatic EIA, respondent Province reiterates that the idea of expanding the area to 40 hectares is only a future plan. It only secured an ECC for 2.64 hectares, based on the limits of its funding and authority. From the beginning, its intention was to rehabilitate and expand the existing jetty port terminal to accommodate an increasing projected traffic. The subject project is specifically classified under DENR DAO 2003-30 on its Project Grouping Matrix for Determination of EIA Report Type considered as Minor Reclamation Projects falling under Group II – Non ECP in an ECA. Whether 2.64 or 40 hectares in area, the subject project falls within this classification.

Consequently, respondent Province claims that petitioner erred in considering the ongoing reclamation project at Caticlan, Malay, Aklan, as co-located within an ECA.

Respondent Province, likewise argues that the 2.64-hectare project is not a component of the approved 40-hectare area as it is originally planned for the expansion site of the existing Caticlan jetty port. At present, it has no definite conceptual construction plan of the said portion in Boracay and it has no financial allocation to initiate any project on the said Boracay portion.

Furthermore, respondent Province contends that the present project is located in Caticlan while the alleged component that falls within an ECA is in Boracay. Considering its geographical location, the two sites cannot be considered as a contiguous area for the reason that it is separated by a body of water – a strait that traverses between the mainland Panay wherein Caticlan is located and Boracay. Hence, it is erroneous to consider the two sites as a co-located project within an ECA. Being a “stand alone project”

and an expansion of the existing jetty port, respondent DENR-EMB RVI had required respondent Province to perform an EPRMP to secure an ECC as sanctioned by Item No. 8(b), page 7 of DENR DAO 2003-30.

Respondent Province contends that even if, granting for the sake of argument, it had erroneously categorized its project as Non-ECP in an ECA, this was not a final determination. Respondent DENR-EMB RVI, which was the administrator of the EIS system, had the final decision on this matter. Under DENR DAO 2003-30, an application for ECC, even for a Category B2 project where an EPRMP is conducted, shall be subjected to a review process. Respondent DENR-EMB RVI had the authority to deny said application. Its Regional Director could either issue an ECC for the project or deny the application. He may also require a more comprehensive EIA study. The Regional Director issued the ECC based on the EPRMP submitted by respondent Province and after the same went through the EIA review process.

Thus, respondent Province concludes that petitioner's allegation of this being a "co-located project" is premature if not baseless as the bigger reclamation project is still on the conceptualization stage. Both respondents PRA and Province are yet to complete studies and feasibility studies to embark on another project.

Respondent Province claims that an ocular survey of the reclamation project revealed that it had worked within the limits of the ECC.[92]

With regard to petitioner's allegation that respondent Province failed to get the favorable endorsement of the concerned LGUs in violation of the Local Government Code, respondent Province contends that consultation *vis-à-vis* the favorable endorsement from the concerned LGUs as contemplated under the Local Government Code are merely tools to seek advice and not a power clothed upon the LGUs to unilaterally approve or disapprove any government projects. Furthermore, such endorsement is not necessary for projects falling under Category B2 unless required by the DENR-EMB RVI, under Section 5.3 of DENR DAO 2003-30.

Moreover, **DENR Memorandum Circular No. 08-2007** no longer requires the issuance of permits and certifications as a pre-requisite for the issuance of an ECC. Respondent Province claims to have conducted consultative activities with LGUs in connection with Sections 26 and 27 of the Local Government Code. The vehement and staunch objections of both the *Sangguniang Barangay* of Caticlan and the *Sangguniang Bayan* of Malay, according to respondent Province, were not rooted on its perceived impact upon the people and the community in terms of environmental or ecological balance, but due to an alleged conflict with their "principal position to develop, utilize and reap benefits from the natural resources found within its jurisdiction."[93] Respondent Province argues that these concerns are not within the purview of the Local Government Code. Furthermore, the Preliminary Geohazard Assessment

Report and EPRMP as well as *Sangguniang Panlalawigan* Resolution Nos. 2010-022 and 2010-034 should address any environmental issue they may raise.

Respondent Province posits that the spirit and intent of Sections 26 and 27 of the Local Government Code is to create an avenue for parties, the proponent and the LGU concerned, to come up with a tool in harmonizing its views and concerns about the project. The duty to consult does not automatically require adherence to the opinions during the consultation process. It is allegedly not within the provisions to give the full authority to the LGU concerned to unilaterally approve or disapprove the project in the guise of requiring the proponent of securing its favorable endorsement. In this case, petitioner is calling a halt to the project without providing an alternative resolution to harmonize its position and that of respondent Province.

Respondent Province claims that the EPRMP[94] would reveal that:

> [T]he area fronting the project site is practically composed of sand. Dead coral communities may be found along the vicinity. Thus, fish life at the project site is quite scarce due to the absence of marine support systems like the sea grass beds and coral reefs.
>
> x x x [T]here is no coral cover at the existing Caticlan jetty port. [From] the deepest point of jetty to the shallowest point, there was no more coral patch and the substrate is sandy. It is of public knowledge that the said foreshore area is being utilized by the residents ever since as berthing or anchorage site of their motorized banca. There will be no possibility of any coral development therein because of its continuous utilization. Likewise, the activity of the strait that traverses between the main land Caticlan and Boracay Island would also be a factor of the coral development. Corals [may] only be formed within the area if there is scientific human intervention, which is absent up to the present.
>
> In light of the foregoing premise, it casts serious doubt on petitioner's allegations pertaining to the environmental effects of Respondent-LGU's 2.64 hectares reclamation project. The alleged environmental impact of the subject project to the beaches of Boracay Island remains unconfirmed. Petitioner had unsuccessfully proven that the project would cause imminent, grave and irreparable injury to the community.[95]

Respondent Province prayed for the dissolution of the TEPO, claiming that the rules provide that 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. Respondent Province contends that the TEPO would cause irreparable damage in two aspects:

a. Financial dislocation and probable bankruptcy; and
b. Grave and imminent danger to safety and health of inhabitants of immediate area, including

tourists and passengers serviced by the jetty port, brought about by the abrupt cessation of development works.

As regards financial dislocation, the arguments of respondent Province are summarized below:

1. This project is financed by bonds which the respondent Province had issued to its creditors as the financing scheme in funding the present project is by way of credit financing through bond flotation.

2. The funds are financed by a Guarantee Bank – getting payment from bonds, being sold to investors, which in turn would be paid by the income that the project would realize or incur upon its completion.

3. While the project is under construction, respondent Province is appropriating a portion of its Internal Revenue Allotment (IRA) budget from the 20% development fund to defray the interest and principal amortization due to the Guarantee Bank.

4. The respondent Province's IRA, regular income, and/or such other revenues or funds, as may be permitted by law, are being used as security for the payment of the said loan used for the project's construction.

5. The inability of the subject project to earn revenues as projected upon completion will compel the Province to shoulder the full amount of the obligation, starting from year 2012.

6. Respondent province is mandated to assign its IRA, regular income and/or such other revenues or funds as permitted by law; if project is stopped, detriment of the public welfare and its constituents.[96]

As to the second ground for the dissolution of the TEPO, respondent Province argues:

1. Non-compliance with the guidelines of the ECC may result to environmental hazards most especially that reclaimed land if not properly secured may be eroded into the sea.

2. The construction has accomplished 65.26 percent of the project. The embankment that was deposited on the project has no proper concrete wave protection that might be washed out in the event that a strong typhoon or big waves may occur affecting the strait and the properties along the project site. It is already the rainy season and there is a big possibility of typhoon occurrence.

3. If said incident occurs, the aggregates of the embankment that had been washed out might be transferred to the adjoining properties which could affect its natural environmental state.

4. It might result to the total alteration of the physical landscape of the area attributing to environmental disturbance.

5. The lack of proper concrete wave protection or revetment would cause the total erosion of the embankment that has been dumped on the accomplished area.[97]

Respondent Province claims that petitioner will not stand to suffer immediate, grave and irreparable injury or damage from the ongoing project. The petitioner's perceived fear of environmental destruction brought about by its erroneous appreciation of available data is unfounded and does not translate into a matter of extreme urgency. Thus, under the Rules of Procedure on Environmental Cases, the TEPO may be dissolved.

Respondent PRA filed its **Comment**[98] on June 22, 2011. It alleges that on June 24, 2006, Executive Order No. 543 delegated the power "to approve reclamation projects to respondent PRA through its governing Board, subject to compliance with existing laws and rules and further subject to the condition that reclamation contracts to be executed with any person or entity (must) go through public bidding."

Section 4 of respondent PRA's Administrative Order No. 2007-2 provides for the approval process and procedures for various reclamation projects to be undertaken. Respondent PRA prepared an Evaluation Report on November 5, 2009[99] regarding Aklan's proposal to increase its project to 40 hectares.

Respondent PRA contends that it was only after respondent Province had complied with the requirements under the law that respondent PRA, through its Board of Directors, approved the proposed project under its **Board Resolution No. 4094**.[100] In the same Resolution, respondent PRA Board authorized the General Manager/CEO to execute a MOA with the Aklan provincial government to implement the reclamation project under certain conditions.

The issue for respondent PRA was whether or not it approved the respondent Province's 2.64-hectare reclamation project proposal in willful disregard of alleged "numerous irregularities" as claimed by petitioner.[101]

Respondent PRA claims that its approval of the Aklan Reclamation Project was in accordance with law and its rules. Indeed, it issued the notice to proceed only after Aklan had complied with all the requirements imposed by existing laws and regulations. It further contends that the 40 hectares involved in this project remains a plan insofar as respondent PRA is concerned. **What has been approved for reclamation by respondent PRA thus far is only the 2.64-hectare reclamation project**. Respondent

PRA reiterates that it approved this reclamation project after extensively reviewing the legal, technical, financial, environmental, and operational aspects of the proposed reclamation.[102]

One of the conditions that respondent PRA Board imposed before approving the Aklan project was that no reclamation work could be started until respondent PRA has approved the detailed engineering plans/methodology, design and specifications of the reclamation. Part of the required submissions to respondent PRA includes the drainage design as approved by the Public Works Department and the ECC as issued by the DENR, all of which the Aklan government must submit to respondent PRA before starting any reclamation works.[103] Under Article IV(B)(3) of the MOA between respondent PRA and Aklan, the latter is required to submit, apart from the ECC, the following requirements for respondent PRA's review and approval, as basis for the issuance of a Notice to Proceed (NTP) for Reclamation Works:

(a) Land-form plan with technical description of the metes and bounds of the same land-form;

(b) Final master development and land use plan for the project;

(c) Detailed engineering studies, detailed engineering design, plans and specification for reclamation works, reclamation plans and methodology, plans for the sources of fill materials;

(d) Drainage plan *vis-a-vis* the land-form approved by DPWH Regional Office to include a cost effective and efficient drainage system as may be required based on the results of the studies;

(e) Detailed project cost estimates and quantity take-off per items of work of the rawland reclamation components, e.g. reclamation containment structures and soil consolidation;

(f) Organizational chart of the construction arm, manning table, equipment schedule for the project; and,

(g) Project timetable (PERT/CPM) for the entire project construction period.[104]

In fact, respondent PRA further required respondent Province under Article IV (B) (24) of the MOA to strictly comply with all conditions of the DENR-EMB-issued ECC "*and/or comply with pertinent local and international commitments of the Republic of the Philippines to ensure environmental protection*."[105]

In its August 11, 2010 letter,[106] respondent PRA referred for respondent Province's appropriate action petitioner's Resolution 001, series of 2010 and Resolution 46, series of 2010, of the *Sangguniang Bayan* of Malay. Governor Marquez wrote respondent PRA[107] on September 16, 2010 informing it that respondent Province had already met with the different officials of Malay, furnishing respondent PRA with the copies of the minutes of such meetings/presentations. Governor Marquez also assured respondent PRA that it had complied with the consultation requirements as far as Malay was concerned.

Respondent PRA claims that in evaluating respondent Province's project and in issuing the necessary NTP for Phase 1 of Site 1 (2.64 hectares) of the Caticlan Jetty Port expansion and modernization, respondent PRA gave considerable weight to all pertinent issuances, especially the ECC issued by DENR-EMB RVI.[108] Respondent PRA stresses that its earlier approval of the 40-hectare reclamation project under its Resolution No. 4094, series of 2010, still requires a second level of compliance requirements from the proponent. Respondent Province could not possibly begin its reclamation works since respondent PRA had yet to issue an NTP in its favor.

Respondent PRA alleges that prior to the issuance of the NTP to respondent Province for Phase 1 of Site 1, it required the submission of the following pre-construction documents:

(a) Land-Form Plan (with technical description);

(b) Site Development Plan/Land Use Plan including,

(i) sewer and drainage systems and

(ii) waste water treatment;

(c) Engineering Studies and Engineering Design;

(d) Reclamation Methodology;

(e) Sources of Fill Materials, and,

(f) The ECC.[109]

Respondent PRA claims that it was only after the evaluation of the above submissions that it issued to respondent Province the NTP, limited to the 2.64-hectare reclamation project. Respondent PRA even emphasized in its evaluation report that should respondent Province pursue the other phases of its project, it would still require the submission of an ECC for each succeeding phases before the start of any reclamation works.[110]

Respondent PRA, being the national government's arm in regulating and coordinating all reclamation projects in the Philippines – a mandate conferred by law – manifests that it is incumbent upon it, in the exercise of its regulatory functions, to diligently evaluate, based on its technical competencies, all reclamation projects submitted to it for approval. Once the reclamation project's requirements set forth by law and related rules have been complied with, respondent PRA is mandated to approve the same. Respondent PRA claims, "[w]ith all the foregoing rigorous and detailed requirements submitted and complied with by Aklan, and the attendant careful and meticulous technical and legal evaluation by respondent PRA, it cannot be argued that the reclamation permit it issued to Aklan is 'founded upon numerous irregularities;' as recklessly and baselessly imputed by BFI."[111]

In its **Comment**[112] dated July 1, 2011, respondent DENR-EMB RVI asserts that its act of issuing the ECC certifies that the project had undergone the proper EIA process by assessing, among others, the direct and indirect impact of the project on the biophysical and human environment and ensuring that these impacts are addressed by appropriate environmental protection and enhancement measures, pursuant to Presidential Decree No. 1586, the Revised Procedural Manual for DENR DAO 2003-30, and the existing rules and regulations.[113]

Respondent DENR-EMB RVI stresses that the declaration in 1978 of several

islands, which includes Boracay as tourist zone and marine reserve under Proclamation No. 1801, has no relevance to the expansion project of Caticlan Jetty Port and Passenger Terminal for the very reason that the project is not located in the Island of Boracay, being located in Barangay Caticlan, Malay, which is not a part of mainland Panay. It admits that the site of the subject jetty port falls within the ECA under Proclamation No. 2146 (1981), being within the category of a water body. This was why respondent Province had faithfully secured an ECC pursuant to the Revised Procedural Manual for DENR DAO 2003-30 by submitting the necessary documents as contained in the EPRMP on March 19, 2010, which were the bases in granting ECC No. R6-1003-096-7100 (amended) on April 27, 2010 for the expansion of Caticlan Jetty Port and Passenger Terminal, covering 2.64 hectares.[114]

Respondent DENR-EMB RVI claims that the issues raised by the LGUs of Caticlan and Malay had been considered by the DENR-Provincial Environment and Natural Resources Office (PENRO), Aklan in the issuance of the **Order**[115] dated January 26, 2010, disregarding the claim of the Municipality of Malay, Aklan of a portion of the foreshore land in Caticlan covered by the application of the Province of Aklan; and another Order of Rejection dated February 5, 2010 of the two foreshore applications, namely FLA No. 060412-43A and FLA No. 060412-43B, of the Province of Aklan.[116]

Respondent DENR-EMB RVI contends that the supporting documents attached to the EPRMP for the issuance of an ECC were merely for the expansion and modernization of the old jetty port in Barangay Caticlan covering 2.64 hectares, and not the 40-hectare reclamation project in Barangay Caticlan and Boracay. The previous letter of respondent Province dated October 14, 2009 addressed to DENR-EMB RVI Regional Executive Director, would show that the reclamation project will cover approximately 2.6 hectares.[117] This application for ECC was not officially accepted due to lack of requirements or documents.

Although petitioner insists that the project involves 40 hectares in two sites, respondent DENR-EMB RVI looked at the documents submitted by respondent Province

and saw that the subject area covered by the ECC application and subsequently granted with ECC-R6-1003-096-7100 consists only of 2.64 hectares; hence, respondent DENR-EMB RVI could not comment on the excess area.[118]

Respondent DENR-EMB RVI admits that as regards the classification of the 2.64-hectare reclamation project under "Non ECP in ECA," this does not fall within the definition of a co-located project because the subject project is merely an expansion of the old Caticlan Jetty Port, which had a previously issued ECC (ECC No. 0699-1012-171 on October 12, 1999). Thus, only an EPRMP, not a PEIS or PEPRMP, is required.[119]

Respondent Province submitted to respondent DENR-EMB RVI the following documents contained in the EPRMP:

a. The Observations on the Floor Bottom and its Marine Resources at the Proposed Jetty Ports at Caticlan and Manok-manok, Boracay, Aklan, conducted in 1999 by the Bureau of Fisheries Aquatic Resources (BFAR) Central Office, particularly in Caticlan site, and

b. The Study conducted by Dr. Ricarte S. Javelosa, Ph. D, Mines and Geosciences Bureau (MGB), Central Office and Engr. Roger Esto, Provincial Planning and Development Office (PPDO), Aklan in 2009 entitled "Preliminary Geo-hazard Assessment for the Enhancement of the Existing Caticlan Jetty Port Terminal through Beach Zone Restoration and Protective Marina Development in Malay, Aklan."

Respondent DENR-EMB RVI claims that the above two scientific studies were enough for it to arrive at a best professional judgment to issue an amended ECC for the Aklan Marina Project covering 2.64 hectares.[120] Furthermore, to confirm that the 2.64-hectare reclamation has no significant negative impact with the surrounding environment particularly in Boracay, a more recent study was conducted, and respondent DENR-EMB RVI alleges that "[i]t is very important to highlight that the input data in the [MERF- UPMSI] study utilized the [40-hectare] reclamation and [200-meter] width seaward using the tidal and wave modelling."[121] The study showed that the reclamation of 2.64 hectares had no effect to the hydrodynamics of the strait between Barangay Caticlan and Boracay.

Respondent DENR-EMB RVI affirms that no permits and/or clearances from National Government Agencies (NGAs) and LGUs are required pursuant to the DENR Memorandum Circular No. 2007-08, entitled "Simplifying the Requirements of ECC or CNC Applications;" that the EPRMP was evaluated and processed based on the Revised Procedural Manual for DENR DAO 2003-30 which resulted to the issuance of ECC-R6-1003-096-7100; and that the ECC is not a permit *per se* but a planning tool for LGUs to

consider in its decision whether or not to issue a local permit.[122]

Respondent DENR-EMB RVI concludes that in filing this case, petitioner had bypassed and deprived the DENR Secretary of the opportunity to review and/or reverse the decision of his subordinate office, EMB RVI pursuant to the Revised Procedural Manual for DENR DAO 2003-30. There is no "extreme urgency that necessitates the granting of Mandamus or issuance of TEPO that put to balance between the life and death of the petitioner or present grave or irreparable damage to environment."[123]

After receiving the above Comments from all the respondents, the Court set the case for oral arguments on September 13, 2011.

Meanwhile, on September 8, 2011, respondent Province filed a **Manifestation and Motion**[124] praying for the dismissal of the petition, as the province was no longer pursuing the implementation of the succeeding phases of the project due to its inability to comply with Article IV B.2(3) of the MOA; hence, the issues and fears expressed by petitioner had become moot. Respondent Province alleges that the petition is "premised on a serious misappreciation of the real extent of the contested reclamation project" as certainly the ECC covered only a total of 2,691 square meters located in Barangay Caticlan, Malay, Aklan; and although the MOA spoke of 40 hectares, respondent Province's submission of documents to respondent PRA pertaining to said area was but the first of a two-step process of approval. Respondent Province claims that its failure to comply with the documentary requirements of respondent PRA within the period provided, or 120 working days from the effectivity of the MOA, indicated its waiver to pursue the remainder of the project.[125] Respondent Province further manifested:

> Confirming this in a letter dated 12 August 2011,[126] Governor Marquez informed respondent PRA that the Province of Aklan is no longer "pursuing the implementation of the succeeding phases of the project with a total area of 37.4 hectares for our inability to comply with Article IV B.2 (3) of the MOA; hence, the existing MOA will cover only the project area of 2.64 hectares."
>
> **In his reply-letter dated August 22, 2011,**[127] **[respondent] PRA General Manager informed Governor Marquez that the [respondent] PRA Board of Directors has given [respondent] PRA the authority to confirm the position of the Province of Aklan that the "Aklan Beach Zone Restoration and Protection Marine Development Project will now be confined to the reclamation and development of the 2.64 hectares, more or less.**
>
> It is undisputed from the start that the coverage of the Project is in fact limited to 2.64 hectares, as evidenced by the NTP issued by respondent PRA. The recent exchange of correspondence between respondents Province of Aklan and [respondent] PRA further

> confirms the intent of the parties all along. Hence, the Project subject of the petition, without doubt, covers only 2.64 and not 40 hectares as feared. This completely changes the extent of the Project and, consequently, moots the issues and fears expressed by the petitioner.[128] (Emphasis supplied.)

Based on the above contentions, respondent Province prays that the petition be dismissed as no further justiciable controversy exists since the feared adverse effect to Boracay Island's ecology had become academic all together.[129]

The Court heard the parties' oral arguments on September 13, 2011 and gave the latter twenty (20) days thereafter to file their respective memoranda.

Respondent Province filed another **Manifestation and Motion**,[130] which the Court received on April 2, 2012 stating that:

1. it had submitted the required documents and studies to respondent DENR-EMB RVI before an ECC was issued in its favor;
2. it had substantially complied with the requirements provided under PRA Administrative Order 2007-2, which compliance caused respondent PRA's Board to approve the reclamation project; and
3. it had conducted a series of "consultative [presentations]" relative to the reclamation project before the LGU of Malay Municipality, the Barangay Officials of Caticlan, and stakeholders of Boracay Island.

Respondent Province further manifested that the **Barangay Council of Caticlan**, Malay, Aklan enacted on February 13, 2012 **Resolution No. 003**, series of 2012, entitled "Resolution Favorably Endorsing the 2.6 Hectares Reclamation/MARINA Project of the Aklan Provincial Government at Caticlan Coastline"[131] and that the ***Sangguniang Bayan* of the Municipality of Malay**, Aklan enacted **Resolution No. 020**, series of 2012, entitled "Resolution Endorsing the 2.6 Hectares Reclamation Project of the Provincial Government of Aklan Located at Barangay Caticlan, Malay, Aklan."[132]

Respondent Province claims that its compliance with the requirements of respondents DENR-EMB RVI and PRA that led to the approval of the reclamation project by the said government agencies, as well as the recent enactments of the Barangay Council of Caticlan and the *Sangguniang Bayan* of the Municipality of Malay favorably endorsing the said project, had "categorically addressed all the issues raised by the Petitioner in its Petition dated June 1, 2011." Respondent Province prays as follows:

> WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that after due proceedings, the following be rendered:
>
> 1. The Temporary Environmental Protection Order (TEPO) it issued on June 7, 2011 **be lifted/dissolved.**
> 2. The instant petition **be dismissed for being moot and academic.**
> 3. Respondent Province of Aklan prays for such other reliefs that are just and equitable under the premises. (Emphases in the original.)

ISSUES

The Court will now resolve the following issues:

I. Whether or not the petition should be dismissed for having been rendered moot and academic

II. Whether or not the petition is premature because petitioner failed to exhaust administrative remedies before filing this case

III. Whether or not respondent Province failed to perform a full EIA as required by laws and regulations based on the scope and classification of the project

IV. Whether or not respondent Province complied with all the requirements under the pertinent laws and regulations

V. Whether or not there was proper, timely, and sufficient public consultation for the project

DISCUSSION

On the issue of whether or not the Petition should be dismissed for having been rendered moot and academic

Respondent Province claims in its Manifestation and Motion filed on April 2, 2012

that with the alleged favorable endorsement of the reclamation project by the *Sangguniang Barangay* of Caticlan and the *Sangguniang Bayan* of the Municipality of Malay, all the issues raised by petitioner had already been addressed, and this petition should be dismissed for being moot and academic.

On the contrary, a close reading of the two LGUs' respective resolutions would reveal that they are not sufficient to render the petition moot and academic, as there are explicit conditions imposed that must be complied with by respondent Province. In Resolution No. 003, series of 2012, of the *Sangguniang Barangay* of Caticlan it is stated that "any vertical structures to be constructed shall be subject for *barangay* endorsement."[133] Clearly, what the *barangay* endorsed was the reclamation only, and not the entire project that includes the construction of a commercial building and wellness center, and other tourism-related facilities. Petitioner's objections, as may be recalled, pertain not only to the reclamation *per se*, but also to the building to be constructed and the entire project's perceived ill effects to the surrounding environment.

Resolution No. 020, series of 2012, of the *Sangguniang Bayan* of Malay[134] is even more specific. It reads in part:

> ***WHEREAS***, noble it seems the reclamation project to the effect that it will generate scores of benefits for the Local Government of Malay in terms of income and employment for its constituents, but the fact cannot be denied that **the project will take its toll on the environment especially on the nearby fragile island of Boracay and the fact also remains that the project will eventually displace the local transportation operators/cooperatives**;
>
> ***WHEREAS***, considering the sensitivity of the project, this Honorable Body through the Committee where this matter was referred conducted several consultations/committee hearings with concerned departments and the private sector specifically Boracay Foundation, Inc. and they are **one in its belief that this Local Government Unit has never been against development so long as compliance with the law and proper procedures have been observed and that paramount consideration have been given to the environment lest we disturb the balance of nature to the end that progress will be brought to naught***;*
>
> ***WHEREAS,*** time and again, to ensure a healthy intergovernmental relations, this August Body requires no less than transparency and faithful commitment from the Provincial Government of Aklan in the process of going through these improvements in the Municipality because it once fell prey to infidelities in matters of governance;
>
> ***WHEREAS,* as a condition for the grant of this endorsement and to address all**

issues and concerns, this Honorable Council necessitates a sincere commitment from the Provincial Government of Aklan to the end that:

1. To allocate an office space to LGU-Malay within the building in the reclaimed area;

2. To convene the Cagban and Caticlan Jetty Port Management Board before the resumption of the reclamation project;

3. That the reclamation project shall be limited only to 2.6 hectares in Barangay Caticlan and not beyond;

4. That the local transportation operators/cooperatives will not be displaced; and

5. **The Provincial Government of Aklan conduct a simultaneous comprehensive study on the environmental impact of the reclamation project especially during Habagat and Amihan seasons and put in place as early as possible mitigating measures on the effect of the project to the environment.**

WHEREAS, having presented these stipulations, **failure to comply herewith will leave this August Body no choice but to revoke this endorsement, hence faithful compliance of the commitment of the Provincial Government is highly appealed for[.]** [135] (Emphases added.)

The *Sangguniang Bayan* of Malay obviously imposed explicit conditions for respondent Province to comply with on pain of revocation of its endorsement of the project, including the need to conduct a comprehensive study on the environmental impact of the reclamation project, which is the heart of the petition before us. Therefore, the contents of the two resolutions submitted by respondent Province do not support its conclusion that the subsequent favorable endorsement of the LGUs had already addressed all the issues raised and rendered the instant petition moot and academic.

On the issue of failure to exhaust administrative remedies

Respondents, in essence, argue that the present petition should be dismissed for petitioner's failure to exhaust administrative remedies and even to observe the hierarchy of courts. Furthermore, as the petition questions the issuance of the ECC and the NTP, this involves factual and technical verification, which are more properly within the expertise of the concerned government agencies.

Respondents anchor their argument on Section 6, Article II of DENR DAO 2003-

30, which provides:

> **Section 6. Appeal**
>
> **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:
>
> | **Deciding Authority** | **Where to file the appeal** |
> |---|---|
> | EMB Regional Office Director | Office of the EMB Director |
> | EMB Central Office Director | Office of the DENR Secretary |
> | DENR Secretary | Office of the President |
>
> (Emphases supplied.)

Respondents argue that since there is an administrative appeal provided for, then petitioner is duty bound to observe the same and may not be granted recourse to the regular courts for its failure to do so.

We do not agree with respondents' appreciation of the applicability of the rule on exhaustion of administrative remedies in this case. We are reminded of our ruling in *Pagara v. Court of Appeals*,[136] which summarized our earlier decisions on the procedural requirement of exhaustion of administrative remedies, to wit:

> **The rule regarding exhaustion of administrative remedies is not a hard and fast rule. It is not applicable** (1) where the question in dispute is purely a legal one, or (2) where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction; or (3) where the respondent is a department secretary, whose acts as an alter ego of the President bear the implied or assumed approval of the latter, unless actually disapproved by him, or **(4) where there are circumstances indicating the urgency of judicial intervention**, - Gonzales *vs.* Hechanova, L-21897, October 22, 1963, 9 SCRA 230; Abaya *vs.* Villegas, L-25641, December 17, 1966, 18 SCRA; Mitra *vs.* Subido, L-21691, September 15, 1967, 21 SCRA 127.
>
> **Said principle may also be disregarded when it does not provide a plain, speedy and adequate remedy**, (Cipriano *vs.* Marcelino, 43 SCRA 291), when there is no due

process observed (Villanos *vs.* Subido, 45 SCRA 299), **or where the protestant has no other recourse** (Sta. Maria *vs.* Lopez, 31 SCRA 637).[137] (Emphases supplied.)

As petitioner correctly pointed out, the appeal provided for under Section 6 of DENR DAO 2003-30 is only applicable, based on the first sentence thereof, if the person or entity charged with the duty to exhaust the administrative remedy of appeal to the appropriate government agency has been a party or has been made a party in the proceedings wherein the decision to be appealed was rendered. **It has been established by the facts that petitioner was never made a party to the proceedings before respondent DENR-EMB RVI**. Petitioner was only informed that the project had already been approved after the ECC was already granted.[138] Not being a party to the said proceedings, it does not appear that petitioner was officially furnished a copy of the decision, from which the 15-day period to appeal should be reckoned, and which would warrant the application of Section 6, Article II of DENR DAO 2003-30.

Although petitioner was not a party to the proceedings where the decision to issue an ECC was rendered, it stands to be aggrieved by the decision,[139] because it claims that the reclamation of land on the Caticlan side would unavoidably adversely affect the Boracay side, where petitioner's members own establishments engaged in the tourism trade. As noted earlier, petitioner contends that the declared objective of the reclamation project is to exploit Boracay's tourism trade because the project is intended to enhance support services thereto; however, this objective would not be achieved since the white-sand beaches for which Boracay is famous might be negatively affected by the project. Petitioner's conclusion is that respondent Province, aided and abetted by respondents PRA and DENR-EMB RVI, ignored the spirit and letter of our environmental laws, and should thus be compelled to perform their duties under said laws.

The new Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, provides a relief for petitioner under the writ of continuing *mandamus*, which is a special civil action that may be availed of "to compel the performance of an act specifically enjoined by law"[140] and which provides for the issuance of a TEPO "as an auxiliary

remedy prior to the issuance of the writ itself."[141] The Rationale of the said Rules explains the writ in this wise:

> Environmental law highlights the shift in the focal-point from the initiation of regulation by Congress to the implementation of regulatory programs by the appropriate government agencies.
>
> **Thus, a government agency's inaction, if any, has serious implications on the future of environmental law enforcement. Private individuals, to the extent that they seek to change the scope of the regulatory process, will have to rely on such agencies to take the initial incentives, which may require a judicial component. Accordingly, questions regarding the propriety of an agency's action or inaction will need to be analyzed.**
>
> This point is emphasized in the availability of the remedy of the writ of *mandamus*, which allows for the enforcement of the conduct of the tasks to which the writ pertains: **the performance of a legal duty**.[142] (Emphases added.)

The writ of continuing *mandamus* "permits the court to retain jurisdiction after judgment in order to ensure the successful implementation of the reliefs mandated under the court's decision" and, in order to do this, "the court may compel the submission of compliance reports from the respondent government agencies as well as avail of other means to monitor compliance with its decision."[143]

According to petitioner, respondent Province acted pursuant to a MOA with respondent PRA that was conditioned upon, among others, a properly-secured ECC from respondent DENR-EMB RVI. For this reason, petitioner seeks to compel respondent Province to comply with certain environmental laws, rules, and procedures that it claims were either circumvented or ignored. Hence, we find that the petition was appropriately filed with this Court under Rule 8, Section 1, A.M. No. 09-6-8-SC, which reads:

> SECTION 1. *Petition for continuing mandamus*.—When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay

> damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.
>
> SECTION 2. *Where to file the petition.*—The petition shall be filed with the Regional Trial Court exercising jurisdiction over the territory where the actionable neglect or omission occurred or with the Court of Appeals or the Supreme Court.

Petitioner had three options where to file this case under the rule: the Regional Trial Court exercising jurisdiction over the territory where the actionable neglect or omission occurred, the Court of Appeals, or this Court.

Petitioner had no other plain, speedy, or adequate remedy in the ordinary course of law to determine the questions of unique national and local importance raised here that pertain to laws and rules for environmental protection, thus it was justified in coming to this Court.

Having resolved the procedural issue, we now move to the substantive issues.

On the issues of whether, based on the scope and classification of the project, a full EIA is required by laws and regulations, and whether respondent Province complied with all the requirements under the pertinent laws and regulations

Petitioner's arguments on this issue hinges upon its claim that the reclamation project is misclassified as a single project when in fact it is co-located. Petitioner also questions the classification made by respondent Province that the reclamation project is merely an expansion of the existing jetty port, when the project descriptions embodied in the different documents filed by respondent Province describe commercial establishments to be built, among others, to raise revenues for the LGU; thus, it should have been classified as a new project. Petitioner likewise cries foul to the manner by which respondent Province allegedly circumvented the documentary requirements of the DENR-EMB RVI by the act of connecting the reclamation project with its previous project in 1999 and claiming that the new project is a mere expansion of the previous one.

As previously discussed, respondent Province filed a Manifestation and Motion

stating that the ECC issued by respondent DENR-EMB RVI covered an area of 2,691 square meters in Caticlan, and its application for reclamation of 40 hectares with respondent PRA was conditioned on its submission of specific documents within 120 days. Respondent Province claims that its failure to comply with said condition indicated its waiver to pursue the succeeding phases of the reclamation project and that the subject matter of this case had thus been limited to 2.64 hectares. Respondent PRA, for its part, declared through its General Manager that the "Aklan Beach Zone Restoration and Protection Marine Development Project will now be confined to the reclamation and development of the 2.64 hectares, more or less."[144]

The Court notes such manifestation of respondent Province. Assuming, however, that the area involved in the subject reclamation project has been limited to 2.64 hectares, this case has not become moot and academic, as alleged by respondents, because the Court still has to check whether respondents had complied with all applicable environmental laws, rules, and regulations pertaining to the actual reclamation project.

We recognize at this point that the DENR is the government agency vested with delegated powers to review and evaluate all EIA reports, and to grant or deny ECCs to project proponents.[145] It is the DENR that has the duty to implement the EIS system. It appears, however, that respondent DENR-EMB RVI's evaluation of this reclamation project was problematic, based on the valid questions raised by petitioner.

Being the administrator of the EIS System, respondent DENR-EMB RVI's submissions bear great weight in this case. However, the following are the issues that put in question the wisdom of respondent DENR-EMB RVI in issuing the ECC:

1. Its approval of respondent Province's classification of the project as a mere expansion of the existing jetty port in Caticlan, instead of classifying it as a **new project**;
2. Its classification of the reclamation project as a **single** instead of a **co-located** project;

3. The lack of *prior* public consultations and approval of local government agencies; and
4. The lack of comprehensive studies regarding the impact of the reclamation project to the environment.

The above issues as raised put in question the sufficiency of the evaluation of the project by respondent DENR-EMB RVI.

Nature of the project

The first question must be answered by respondent DENR-EMB RVI as the agency with the expertise and authority to state whether this is a new project, subject to the more rigorous environmental impact study requested by petitioner, or it is a mere expansion of the existing jetty port facility.

The second issue refers to the classification of the project by respondent Province, approved by respondent DENR-EMB RVI, as single instead of co-located. Under the Revised Procedural Manual, the **"Summary List of Additional Non-Environmentally-Critical Project (NECP) Types in ECAs Classified under Group II" (Table I-2)** lists "buildings, storage facilities and other structures" as a separate item from "transport terminal facilities." This creates the question of whether this project should be considered as consisting of more than one type of activity, and should more properly be classified as "co-located," under the following definition from the same Manual, which reads:

> f) **Group IV (Co-located Projects in either ECA or NECA)**: **A co-located project is a group of single projects, under one or more proponents/locators, which are located in a contiguous area and managed by one administrator, who is also the ECC applicant**. The co-located project may be an economic zone or industrial park, or a mix of projects within a catchment, watershed or river basin, or any other geographical, political or economic unit of area. Since the location or threshold of specific projects within the contiguous area will yet be derived from the EIA process based on the carrying capacity of the project environment, the nature of the project is called "programmatic." (Emphasis added.)

Respondent DENR-EMB RVI should conduct a thorough and detailed evaluation of the project to address the question of whether this could be deemed as a group of single projects (transport terminal facility, building, *etc.*) in a contiguous area managed by respondent Province, or as a single project.

The third item in the above enumeration will be discussed as a separate issue.

The answer to the fourth question depends on the final classification of the project under items 1 and 3 above because the type of EIA study required under the Revised Procedural Manual depends on such classification.

The very definition of an EIA points to what was most likely neglected by respondent Province as project proponent, and what was in turn overlooked by respondent DENR-EMB RVI, for it is defined as follows:

> An [EIA] 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.[146] (Emphases supplied.)

Thus, the EIA process must have been able to **predict** the likely impact of the reclamation project to the environment and to **prevent** any harm that may otherwise be caused.

The project now before us involves reclamation of land that is **more than five times the size of the original** reclaimed land. Furthermore, the area prior to construction merely contained a jetty port, whereas the proposed expansion, as described in the EPRMP submitted by respondent Province to respondent DENR-EMB RVI involves so much more, and we quote:

> The expansion project will be constructed at the north side of the existing jetty port and terminal that will have a total area of 2.64 hectares, more or less, after reclamation. The

Phase 1 of the project construction costing around ₱260 million includes the following:

1. **Reclamation - 3,000 sq m (expansion of jetty port)**
2. **Reclamation - 13,500 sq m (buildable area)**
3. **Terminal annex building - 250 sq m**
4. **2-storey commercial building – 2,500 sq m (1,750 sq m of leasable space)**
5. **Health and wellness center**
6. **Access road - 12 m (wide)**
7. **Parking, perimeter fences, lighting and water treatment sewerage system**
8. **Rehabilitation of existing jetty port and terminal**

x x x x

> The succeeding phases of the project will consist of [further] reclamation, completion of the commercial center building, bay walk commercial strip, staff building, ferry terminal, a cable car system and wharf marina. This will entail an additional estimated cost of ₱785 million bringing the total investment requirement to about ₱1.0 billion.[147] (Emphases added.)

As may be gleaned from the breakdown of the 2.64 hectares as described by respondent Province above, a significant portion of the reclaimed area would be devoted to the construction of a commercial building, and the area to be utilized for the expansion of the jetty port consists of a mere 3,000 square meters (sq. m). To be true to its definition, the EIA report submitted by respondent Province should at the very least predict the impact that the construction of the new buildings on the reclaimed land would have on the surrounding environment. These new constructions and their environmental effects were not covered by the old studies that respondent Province previously submitted for the construction of the original jetty port in 1999, and which it re-submitted in its application for ECC in this alleged expansion, instead of conducting updated and more comprehensive studies.

Any impact on the Boracay side cannot be totally ignored, as Caticlan and Boracay are separated only by a narrow strait. This becomes more imperative because of the significant contributions of Boracay's white-sand beach to the country's tourism trade,

which requires respondent Province to **proceed with utmost caution** in implementing projects within its vicinity.

We had occasion to emphasize the duty of local government units to ensure the quality of the environment under Presidential Decree No. 1586 in *Republic of the Philippines v. The City of Davao*,[148] wherein we held:

> Section 15 of Republic Act 7160, otherwise known as the Local Government Code, defines a local government unit as a body politic and corporate endowed with powers to be exercised by it in conformity with law. As such, it performs dual functions, governmental and proprietary. Governmental functions are those that concern the health, safety and the advancement of the public good or welfare as affecting the public generally. Proprietary functions are those that seek to obtain special corporate benefits or earn pecuniary profit and intended for private advantage and benefit. When exercising governmental powers and performing governmental duties, an LGU is an agency of the national government. When engaged in corporate activities, it acts as an agent of the community in the administration of local affairs.
>
> **Found in Section 16 of the Local Government Code is the duty of the LGUs to promote the people's right to a balanced ecology.** Pursuant to this, an LGU, like the City of Davao, can not claim exemption from the coverage of PD 1586. As a body politic endowed with governmental functions, an LGU has the duty to ensure the quality of the environment, which is the very same objective of PD 1586.
>
> x x x x
>
> Section 4 of PD 1586 clearly states 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." The Civil Code defines a person as either natural or juridical. **The state and its political subdivisions, i.e., the local government units are juridical persons. Undoubtedly therefore, local government units are not excluded from the coverage of PD 1586.**
>
> Lastly, very clear in Section 1 of PD 1586 that said law intends to implement the policy of the state to achieve a balance between socio-economic development and environmental protection, which are the twin goals of sustainable development. The above-quoted first paragraph of the Whereas clause stresses that **this can only be possible if we adopt a comprehensive and integrated environmental protection program where all the sectors of the community are involved, *i.e.*, the government and the private sectors. The local government units, as part of the machinery of the government, cannot therefore be deemed as outside the scope of the EIS system**.[149] (Emphases supplied.)

The Court chooses to remand these matters to respondent DENR-EMB RVI for it to

make a proper study, and if it should find necessary, to require respondent Province to address these environmental issues raised by petitioner and submit the correct EIA report as required by the project's specifications. The Court requires respondent DENR-EMB RVI to complete its study and submit a report within a non-extendible period of three months. Respondent DENR-EMB RVI should establish to the Court in said report why the ECC it issued for the subject project should not be canceled.

Lack of prior public consultation

The Local Government Code establishes the duties of **national** government agencies in the maintenance of ecological balance, and requires them to secure *prior public consultation and approval* of **local** government units for the projects described therein.

In the case before us, the national agency involved is respondent PRA. Even if the project proponent is the local government of Aklan, it is respondent PRA which authorized the reclamation, being the exclusive agency of the government to undertake reclamation nationwide. Hence, it was necessary for respondent Province to go through respondent PRA and to execute a MOA, wherein respondent PRA's authority to reclaim was delegated to respondent Province. Respondent DENR-EMB RVI, regional office of the DENR, is also a national government institution which is tasked with the issuance of the ECC that is a prerequisite to projects covered by environmental laws such as the one at bar.

This project can be classified as a national project that affects the environmental and ecological balance of local communities, and is covered by the requirements found in the Local Government Code provisions that are quoted below:

> **Section 26.** ***Duty of National Government Agencies in the Maintenance of Ecological Balance.*** - It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its

impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

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

In *Lina, Jr. v. Paño*,[150] we held that Section 27 of the Local Government Code applies only to "national programs and/or projects which are to be implemented in a particular local community"[151] and that it should be read in conjunction with Section 26. We held further in this manner:

> Thus, the projects and programs mentioned in Section 27 should be interpreted to mean projects and programs whose effects are among those enumerated in Section 26 and 27, to wit, those that: (1) **may cause pollution**; (2) may bring about climatic change; (3) may cause the depletion of non-renewable resources; (4) may result in loss of crop land, range-land, or forest cover; (5) may eradicate certain animal or plant species from the face of the planet; and (6) other projects or programs that may call for the eviction of a particular group of people residing in the locality where these will be implemented. Obviously, none of these effects will be produced by the introduction of lotto in the province of Laguna.[152] (Emphasis added.)

During the oral arguments held on September 13, 2011, it was established that this project as described above falls under Section 26 because the commercial establishments to be built on phase 1, as described in the EPRMP quoted above, could cause pollution as it could generate garbage, sewage, and possible toxic fuel discharge.[153]

Our ruling in *Province of Rizal v. Executive Secretary*[154] is instructive:

> We reiterated this doctrine in the recent case of *Bangus Fry Fisherfolk v. Lanzanas*, where we held that there was no statutory requirement for the *sangguniang bayan* of Puerto Galera to approve the construction of a mooring facility, as Sections 26 and 27 are inapplicable to projects which are not environmentally critical.

Moreover, Section 447, which enumerates the powers, duties and functions of the municipality, grants the *sangguniang bayan* the power to, among other things, "enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of th(e) Code." These include:

(1) Approving ordinances and passing resolutions to protect the environment and impose appropriate penalties for acts which endanger the environment, such as dynamite fishing and other forms of destructive fishing, illegal logging and smuggling of logs, smuggling of natural resources products and of endangered species of flora and fauna, slash and burn farming, and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance; [Section 447 (1)(vi)]

(2) Prescribing reasonable limits and restraints on the use of property within the jurisdiction of the municipality, adopting a comprehensive land use plan for the municipality, reclassifying land within the jurisdiction of the city, subject to the pertinent provisions of this Code, enacting integrated zoning ordinances in consonance with the approved comprehensive land use plan, subject to existing laws, rules and regulations; establishing fire limits or zones, particularly in populous centers; and regulating the construction, repair or modification of buildings within said fire limits or zones in accordance with the provisions of this Code; [Section 447 (2)(vi-ix)]

(3) Approving ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for under Section 17 of this Code, and in addition to said services and facilities, …providing for the establishment, maintenance, protection, and conservation of communal forests and watersheds, tree parks, greenbelts, mangroves, and other similar forest development projects …and, subject to existing laws, establishing and providing for the maintenance, repair and operation of an efficient waterworks system to supply water for the inhabitants and purifying the source of the water supply; regulating the construction, maintenance, repair and use of hydrants, pumps, cisterns and reservoirs; protecting the purity and quantity of the water supply of the municipality and, for this purpose, extending the coverage of appropriate ordinances over all territory within the drainage area of said water supply and within one hundred (100) meters of the reservoir, conduit, canal, aqueduct, pumping station, or watershed used in connection with the water service; and regulating the consumption, use or wastage of water." [Section 447 (5)(i) & (vii)]

Under the Local Government Code, therefore, two requisites must be met before a national project that affects the environmental and ecological balance of local communities can be implemented: prior *consultation* with the affected local communities, and prior *approval* of the project by the appropriate *sanggunian*. Absent either of these mandatory requirements, the project's implementation is illegal.[155] (Emphasis added.)

Based on the above, therefore, *prior* consultations and *prior* approval are

required by law to have been conducted and secured by the respondent Province. Accordingly, the information dissemination conducted months after the ECC had already been issued was insufficient to comply with this requirement under the Local Government Code. Had they been conducted properly, the prior public consultation should have considered the ecological or environmental concerns of the stakeholders and studied measures alternative to the project, to avoid or minimize adverse environmental impact or damage. In fact, respondent Province once tried to obtain the favorable endorsement of the *Sangguniang Bayan* of Malay, but this was denied by the latter.

Moreover, DENR DAO 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. (Emphasis supplied.)

In essence, the above-quoted rule shows that in cases requiring public consultations, the same should be initiated early so that concerns of stakeholders could be taken into consideration in the EIA study. In this case, respondent Province had already filed its ECC application before it met with the local government units of Malay and Caticlan.

The claim of respondent DENR-EMB RVI is that no permits and/or clearances from National Government Agencies (NGAs) and LGUs are required pursuant to the DENR Memorandum Circular No. 2007-08. However, we still find that the LGC requirements of consultation and approval apply in this case. This is because a Memorandum Circular cannot prevail over the Local Government Code, which is a statute and which enjoys greater weight under our hierarchy of laws.

Subsequent to the information campaign of respondent Province, the Municipality of Malay and the *Liga ng mga Barangay*-Malay Chapter still opposed the project. Thus, when respondent Province commenced the implementation project, it violated Section 27 of the LGC, which clearly enunciates that "[no] project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2(c) and 26 hereof are complied with, and prior approval of the *sanggunian* concerned is obtained."

The lack of ***prior*** public consultation and approval is not corrected by the subsequent endorsement of the reclamation project by the *Sangguniang Barangay* of Caticlan on **February 13, 2012,** and the *Sangguniang Bayan* of the Municipality of Malay on **February 28, 2012**, which were both undoubtedly achieved at the urging and insistence of respondent Province. As we have established above, the respective resolutions issued by the LGUs concerned did not render this petition moot and academic.

It is clear that both petitioner and respondent Province are interested in the promotion of tourism in Boracay and the protection of the environment, lest they kill the proverbial hen that lays the golden egg. At the beginning of this decision, we mentioned that there are common goals of national significance that are very apparent from both the petitioner's and the respondents' respective pleadings and memoranda.

The parties are evidently in accord in seeking to uphold the mandate found in Article II, Declaration of Principles and State Policies, of the 1987 Constitution, which we quote below:

> 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.
>
> x x x x
>
> SECTION 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

The protection of the environment in accordance with the aforesaid constitutional mandate is the aim, among others, of Presidential Decree No. 1586, "Establishing an Environmental Impact Statement System, Including Other Environmental Management

Related Measures and For Other Purposes," which declared in its first Section that it is "**the policy of the State to attain and maintain a rational and orderly balance between socio-economic growth and environmental protection**."

The parties undoubtedly too agree as to the importance of promoting tourism, pursuant to Section 2 of Republic Act No. 9593, or "The Tourism Act of 2009," which reads:

> SECTION 2. *Declaration of Policy*. – **The State declares tourism as an indispensable element of the national economy and an industry of national interest and importance**, which must be harnessed as an engine of socioeconomic growth and cultural affirmation to generate investment, foreign exchange and employment, and to continue to mold an enhanced sense of national pride for all Filipinos. (Emphasis ours.)

The primordial role of local government units under the Constitution and the Local Government Code of 1991 in the subject matter of this case is also unquestionable. The Local Government Code of 1991 (Republic Act No. 7160) pertinently provides:

> Section 2. *Declaration of Policy*. - (a) **It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals.** Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby **local government units shall be given more powers, authority, responsibilities, and resources.** The process of decentralization shall proceed from the national government to the local government units.[156] (Emphases ours.)

As shown by the above provisions of our laws and rules, the speedy and smooth resolution of these issues would benefit all the parties. Thus, respondent Province's cooperation with respondent DENR-EMB RVI in the Court-mandated review of the proper classification and environmental impact of the reclamation project is of utmost importance.

WHEREFORE, premises considered, the petition is hereby **PARTIALLY GRANTED**. **The TEPO issued by this Court is hereby converted into a writ of continuing *mandamus* specifically as follows:**

1. **Respondent Department of Environment and Natural Resources-Environmental Management Bureau Regional Office VI shall revisit and review the following matters:**

   a. **its classification of the reclamation project as a single instead of a co-located project;**

   b. **its approval of respondent Province's classification of the project as a mere expansion of the existing jetty port in Caticlan, instead of classifying it as a new project; and**

   c. **the impact of the reclamation project to the environment based on new, updated, and comprehensive studies, which should forthwith be ordered by respondent DENR-EMB RVI.**

2. **Respondent Province of Aklan shall perform the following:**

   a. **fully cooperate with respondent DENR-EMB RVI in its review of the reclamation project proposal and submit to the latter the appropriate report and study; and**

   b. **secure approvals from local government units and hold proper consultations with non-governmental organizations and other stakeholders and sectors concerned as required by Section 27 in relation to Section 26 of the Local Government Code.**

3. **Respondent Philippine Reclamation Authority shall closely monitor the submission by respondent Province of the requirements to be issued by respondent DENR-EMB RVI in connection to the environmental concerns raised by petitioner, and shall coordinate with respondent Province in modifying the MOA, if necessary, based on the findings of respondent DENR-EMB RVI.**

4. **The petitioner Boracay Foundation, Inc. and the respondents The Province of Aklan, represented by Governor Carlito S. Marquez, The Philippine Reclamation Authority, and The DENR-EMB (Region VI) are mandated to submit their respective reports to this Court regarding their compliance with the requirements set forth in this Decision no later than three (3) months from the date of promulgation of this Decision.**

5. **In the meantime, the respondents, their concerned contractor/s, and/or their agents, representatives or persons acting in their place or stead, shall immediately cease and desist from continuing the implementation of the project covered by ECC-R6-1003-096-7100 until further orders from this Court. For this purpose, the respondents shall report within five (5) days to this Court the status of the project as of their receipt of this Decision, copy furnished the petitioner.**

This Decision is immediately executory.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

On leave
JOSE CATRAL MENDOZA
Associate Justice

MARIA LOURDES P. A. SERENO
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

C E R T I F I C A T I O N

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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)

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[*] On leave.

[1] *Rollo,* p. 1032.

[2] Id. at 1032-1033.

[3] Id. at 1114.

[4] Id. at 238-239.

[5] Id.

[6] Id. at 4.

[7] Excerpt from http://www.boracayisland.org/aboutboracay.php, last accessed on January 12, 2012.

[8] *Rollo*, p. 5.

[9] Id. at 400.

[10] Id. at 400-401.

[11] Id. at 444-467.

[12] Id. at 401.

[13] Id.

[14] Id. at 45.

[15] Id.

[16] Id. at 43-44.

[17] Id. at 44.

[18] Id. at 402.

[19] Id. at 468-525.

[20] Id. at 402.

[21] Id. at 528.

[22] Id. at 403.

[23] Id. at 529-530.

[24] Id. at 403.

[25] Id. at 46-47.

[26] Id.

[27] Id. at 531-561.

[28] Id. at 49-140.

[29] Id. at 48.

[30] Id.

[31] Id. at 8.

[32] Id. at 562-567.

[33] Id. at 404-405.

[34] Id. at 405.

[35] Id. at 568-569.

[36] Id. at 576-577.

[37] Id. at 406-407.

[38] Id. at 578-587.

[39] Id. at 156.

[40] Id. at 169-174.

[41] Id. at 594-604.

[42] Id. at 596.

[43] Id. at 407-408.

[44] Id. at 605-609.

[45] Id. at 610-614.

[46] Id. at 615-621.

[47] Id. at 622-623.

[48] Id. at 624-626.

[49] Id. at 627-629.

[50] Id. at 9-10.

[51] Id. at 175.

[52] Id. at 176.

[53] Id. at 178-182.

[54] Id. at 183-185.

[55] Id. at 11.

[56] Id. at 630-631.

[57] Id. at 155-156.

[58] Id. at 156.

[59] Id. at 632-634.

[60] Id. at 186-202.

[61] Id. at 409.

[62] Id. at 635-652.

[63] Id. at 409-410.

[64] Id. at 656-658.

[65] Id. at 660-661.

[66] Id. at 653-654.

[67] Id. at 222-223.

[68] Id. at 13.

[69] Id. at 12.

[70] Id.

[71] The Implementing Rules and Regulations of Presidential Decree No. 1586, which established The Philippine Environment Impact Statement System (PEISS).

[72] Programmatic Environmental Impact Statement (PEIS) - documentation of comprehensive studies on environmental baseline conditions of a contiguous area. It also includes an assessment of the carrying capacity of the area to absorb impacts from co-located projects such as those in industrial estates or economic zones (ecozones). (DENR DAO 2003-30, Section 3[v].)

[73] *Rollo*, p. 15; Programmatic Environmental Performance Report and Management Plan (PEPRMP) - documentation of actual cumulative environmental impacts of co-located projects with proposals for expansion. The PEPRMP should also describe the effectiveness of current environmental mitigation measures and plans for performance improvement. (DENR DAO 2003-30, Section 3[w].)

[74] Projects or series of similar projects or a project subdivided to several phases and/or stages by the same proponent located in contiguous areas. (DENR DAO 2003-30, Section 3[b].)

[75] *Rollo*, pp. 167-168.

[76] Id. at 25.

[77] Id. at 30.

[78] Id. at 396-443.

[79] IRR of E.O. No. 532 dated June 24, 2006, entitled "Delegating to the [respondent PRA] the Power to Approve Reclamation Projects."

[80] Implementing Rules and Regulations for the Philippine Environmental Impact Statement System.

[81] An ECC shall contain the scope and limitations of the approved activities, as well as conditions to ensure compliance with the Environmental Management Plan.

[82] *Rollo*, pp. 414-415.

[83] Id. at 418.

[84] Id.

[85] Id.

[86] Id. at 662-682.

[87] Id. at 156-165.

[88] Id. at 419.

[89] Id.

[90] Id. at 420.

[91] Id.

[92] Id. at 683-688.

[93] Id. at 430.

[94] The EPRMP was based on the study conducted by the Bureau of Fisheries and Aquatic Resources (BFAR) dated **August 27, 1999** (The Observations on the Floor Bottom and its Marine Resources at the Proposed Jetty Ports at Caticlan and Manok-manok, Boracay, Aklan). (*Rollo*, pp. 433-434.)

[95] *Rollo*, pp. 433-434.

[96] Id. at 436-437.

[97] Id. at 438.

[98] Id. at 237-252.

[99] Id. at 285-294.

[100] Id. at 295-296.

[101] Id. at 243.

[102] Id. at 243-244.

[103] Id. at 244.

[104] Id. at 245.

[105] Id. Emphasis in the original.

[106] Id. at 328-329.

[107] Id. at 330-331.

[108] Id. at 247.

[109] Id.

[110] Id.

[111] Id. at 248.

[112] Id. at 731-746.

[113] Id. at 732.

[114] Id.

[115] Id. at 845.

[116] Id. at 846.

[117] Id. at 847.

[118] Id. at 737.

[119] Id.

[120] Id. at 739.

[121] Id. at 739-740.

[122] Id. at 742.

[123] Id. at 744-745.

[124] Id. at 999-1004.

[125] Id. at 999-1001.

[126] Id. at 1008. Attached as Annex "1" is the following letter dated August 12, 2011 from Governor Marquez to Peter Anthony A. Abaya, General Manager and CEO of respondent PRA:

> This refers to our [MOA] dated May 17, 2010 which, among others, required the Province of Aklan to submit requirements within [120] days from effectivity of the said MOA for review and approval by the [respondent] PRA as basis for the issuance of [NTP] for reclamation works pertaining to the remaining phases of the project consisting of about 37.4 hectares, more or less.
>
> In this connection, please be informed that we are no longer pursuing the implementation of the succeeding phases of the project with a total area of 37.4 hectares for our inability to comply with Article IV B.2 (3) of the MOA; hence, our existing MOA will cover only the project area of 2.64 hectares.

[127] Id. at 1009. Annex 2: letter from Abaya dated August 22, 2011, quoted below:

> Based on our regular monitoring of the Project, the [respondent] PRA has likewise noted that the Province has not complied with the requirements for the other phases of the Project within the period provided under the MOA. Considering that the period within which to comply with the said provision of the MOA had already lapsed and that you acknowledged your inability to comply with the same, kindly be informed that the Aklan Beach Zone Restoration and Protection Marina Development Project will now be confined to the reclamation and development of the 2.64 hectares, more or less. Our Board of Directors, in its meeting of August 18, 2011, has given us authority to confirm your position.

[128] Id. at 1002-1004.

[129] Id. at 1004.

[130] *Rollo*, pp. 1295-1304.

[131] Id. at 1299.

[132] Id. at 1301-1302.

[133] Id. at 1299.

[134] Id. at 1301-1302.

[135] Id.

[136] 325 Phil. 66 (1996).

[137] Id. at 81.

[138] *Rollo,* pp. 1058-1059.

[139] Id. at 1056-1057.

[140] Annotation to the Rules of Procedure for Environmental Cases, p. 45.

[141] Id.

[142] Rationale to the Rules of Procedure for Environmental Cases, p. 76.

[143] Annotation to the Rules of Procedure for Environmental Cases, p. 45.

[144] *Rollo,* p. 1009.

[145] REVISED PROCEDURAL MANUAL for DAO 2003-30, Sec. 1.9, p. 8.

[146] Id., Sec. 1.2, p. 1.

[147] *Rollo*, pp. 57-58.

[148] 437 Phil. 525 (2002).

[149] Id. at 531-533.

[150] 416 Phil. 438 (2001).

[151] Id. at 449.

[152] Id. at 450.

[153] TSN, September 13, 2011, p. 109. *See* pp. 109-133.

[154] 513 Phil. 557 (2005).

[155] Id. at 590-592.

[156] Book I, Title One.