Republic of the Philippines
REGIONAL TRIAL COURT
FIRST JUDICIAL REGION
BAGUIO CITY
Branch 5

CORDILLERA GLOBAL NETWORK REPRESENTED BY ITS PRESIDENT GLORIA ABAEO, ET AL.,
Plaintiffs,

- versus - **Civil Case No. 7595-R**

SEC. RAMON J.P. PAJE, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, ET AL.,
Defendants.

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JUDY LYN C. ADAJAR, ET AL.,
Plaintiffs,

- versus - **Civil Case No. 7629-R**

SEC. RAMON J.P. PAJE, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, ET AL.,
Defendants.

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CORDILLERA GLOBAL NETWORK REP. BY ITS PRESIDENT GLORIA ABAEO,

Plaintiffs,

-versus- **Civil Case No. 7626-R**

SM INVESTMENTS CORP., ET AL.,
Defendants.

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DECISION

Section 15, Article II of the 1987 Constitution provides that "**The State shall protect and promote the right to health of the people and instill health consciousness among them.**" Likewise, Section 16, of the same Article provides that "**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.**" These provisions categorically embody the mandate of the fundamental law of the land to guaranty the right of the people to a healthy environment. In accordance with this mandate, the Honorable Supreme Court, on April 14, 2010, promulgated **A.M. NO. 09-6-8-SC**, the **RULES OF PROCEDURE FOR ENVIRONMENTAL CASES**, the first of its kind in the world. Said Rules took effect on April 29, 2010. Furthermore, in consonance with this mandate, the High Court designated a number of special environmental courts or the "**GREEN COURTS**" to handle, with dispatch, all environmental cases. Acting as a **"GREEN COURT",** this tribunal is now confronted with an important and a novel issue in the above-captioned cases.

THE FACTS

These cases find history on the plan of SM City Baguio to undertake an expansion of its existing mall at the Luneta Hill, Baguio City. As said project necessarily entails the earth-balling or cutting of 182 pine and alnus trees, Plaintiffs filed 2 environmental cases **(Civil Case Nos. 7595-R and 7629-R** and hereafter referred to as **"ENVIRONMENTAL CASES")** that seek to annul the **TREE CUTTING AND EARTH-BALLING PERMIT**, the **BUILDING PERMIT** and the **AMENDED ENVIRONMENTAL COMPLIANCE CERTIFICATE ("AMENDED ECC")** issued by the Public Respondents to Private Defendants that are necessary to the Expansion Project.

The first Environmental Case **(Civil Case 7595-R)** was initiated by the Plaintiffs against SM Investment Corporation, Secretary Ramon JP Paje of the Department of Environment and Natural Resources **[DENR]**, Attorney Juan Miguel Cuna as Director of the Environmental Management Bureau of the Department of Environment and Natural Resources **[EMB]**, and Secretary Rogelio L. Singson of the Department of Public Works and Highways **[DPWH]** in a Complaint dated February 23, 2012. Said action sought the annulment of the Tree Cutting and Earth-Balling Permit issued by the Department of Environment And Natural Resources and the Building Permit issued by the City Building and Architecture Office, all in favor of **SMIC**. The action, likewise, sought to enjoin **SMIC** from conducting cutting and/or earth-balling of 182 pine and alnus trees within the vicinity of the Luneta Hill, Baguio City. Ancillary to the main cause of action, Plaintiffs prayed for the issuance of a **TEMPORARY ENVIRONMENTAL PROTECTION ORDER [TEPO]** in order to enjoin **SMIC** from conducting tree cutting or earth-balling activities within the project site. Having received the summons, **SMIC** filed its Answer dated March 12, 2012 and claimed that a separate entity is pursuing the development of its property at Luneta Hill. In the meantime, this Court, in

view of the significance and novelty of the issues raised in the application for the issuance of a **TEPO**, conducted several hearings. Plaintiffs and **SMIC** presented witnesses to support their respective positions with respect to the immediacy of issuing a **TEPO**.

Pending resolution of the prayer for the issuance of a **TEPO**, Plaintiffs on April 10, 2012 filed an Urgent Motion for the Issuance of TEPO with a Prayer for the Conduct of an Ocular Inspection. In an Order issued on the same day, this Court, thru its pairing judge, issued a **TEPO** effective for 72 hours upon receipt of the Order to prevent the cutting and/or earth-balling of trees covered by the Expansion Project. The Court reasoned that not issuing so will render the case moot, being one that seeks an injunction to prevent the removal of the trees. An Ex Parte Very Urgent Motion to Extend **TEPO** Issued on April 10, 2012 with Very Urgent Motion to Resolve was filed by Plaintiffs on April 13, 2012. Thereafter, this Court issued an Order dated April 13, 2012 which extended the **TEPO** while the case pends. An Urgent Petition to Cite Respondent For Contempt **(Civil Case No. 7626-R)** was filed by one of the Plaintiffs against SMIC and its representatives for allegedly violating the **TEPO** despite receipt thereof.

Meanwhile, a second complaint dated April 13, 2012 was filed containing very similar allegations to the first Environmental Case but this time against SM Supermalls **(SM SUPERMALLS)** and SM Prime Holdings **(SMPH).** In addition, Plaintiffs impleaded Director Clarence Baguilat of the DENR-Cordillera Administrative Region **(DENR-CAR)** and Baguio City Mayor Mauricio Domogan. An Answer dated May 23, 2012 was filed by Shopping Center Management Corporation **(SCMC or SM Supermalls)** and SM Prime Holdings, Inc. **(SMPH)** containing details of the corporations' compliance with laws and procedure for the issuance of the Permits. Public Defendants filed their respective Answers on April 30, 2012 and June 15, 2012 to the Environmental Cases. The environmental cases were consolidated, while **SMIC** filed its Comment to the Contempt Petition. The requisite Pre-trial Conference was, thereafter, conducted and trial on the merits ensued.

THE PARTIES' RESPECTIVE CLAIMS AND DEFENSES

Plaintiffs Cordillera Global Network, Cordillera Peoples Alliance, Cordillera Indigenous Peoples Legal Center and Cordillera Ecological Pine Tree Center are claimed to be non-government organizations duly existing under the laws of the Philippines and are represented in this suit by their respective Executive Directors. The other Plaintiffs allege that they have initiated the Environmental Cases as concerned residents of Baguio City.

They maintain that the cutting and/or earth-balling of the 182 trees within the vicinity of Luneta Hill, Baguio City will adversely affect the environment and will result to irreparable damage. It is argued that the cutting and/or earth-balling of said trees will exacerbate the aerial situation in Session Road and will be detrimental to the health of the residents of the City of Baguio. Plaintiffs further assail the regularity of the procedure in the issuance of the Tree Cutting and Earth-balling Permits to the Private Defendants. While Plaintiffs admit the issuance of

the Tree Cutting and Earth-balling Permit and the amended ECC by the DENR as well as the Building Permit by the CBAO, they assail the regularity of their issuance. They argue that the Expansion Project is in violation of City Ordinance No. 051, Series of 2001 or the Zoning Ordinance of Baguio City. Plaintiffs, likewise, claim that the Permits were issued in violation of the Local Government Code, existing City Ordinances, and pertinent environmental laws of the Philippines.

Private Defendants, on the other hand, assert that the Permits were issued based on strict compliance with applicable rules and regulations. In compliance with the conditions in the Tree Cutting and Earth-balling Permit, **SMPH** and **SCMC** conducted public consultations. Various measures in addition to future ones have already been done to mitigate any probable impact of the removal of the affected trees from Luneta Hill. One such measure is the reforestation efforts conducted by SMPH and SCMC within SM City Baguio's premises, Baguio City, Benguet and even in other parts of the country. Private Defendants maintain that the benefits of the Expansion Project far outweigh any likely impact that the removal of the affected trees will bring to the environment in line with their advocacy for environmental protection and sustainable development.

It is maintained that the Expansion Project is an amendment of the earlier SM Pines Resort Project and is intended to improve the facilities of the current mall by adding commercial and parking spaces as well as public transportation bays **(Exhibits 43-SMPH and 48-SMPH)**. Several environmental friendly features were incorporated in the design of the Expansion Project. It has an improved sewerage treatment plant, an underground rain water collection system, and a sky garden **(Exhibits 43-SMPH and 48-SMPH).** The expansion project was designed to solve top-soil erosion **(Exhibit 48-SMPH).** Finally, Private Defendants emphasized that they will suffer irreparable damage if the mall expansion is not allowed to proceed.

Public Defendants adopted the statement of facts as narrated by the Private Defendants. In addition they assert that during the initial earth-balling activity of **SMPH** and **SCMC**, the **DENR**, through its Regional Office, created a supervising and monitoring team to oversee the operations. Reports on these earth-balling activities were accomplished and submitted to the appropriate authorities. Upon receipt of the **TEPO** that was issued by this Court, the **DENR-CAR** immediately complied. Thereafter, Private Defendants were advised to pursue remedial measures over the trees affected, which were in fact undertaken and which were properly reported to the Court.

THE ISSUES

The relevant issues that were submitted by the parties at the Pre-trial Conference are as follows:

1. Whether or not the legal and procedural requirements for the issuance of the Tree Cutting and Earth-balling Permit to

the Private Defendants were duly complied with.

2. Whether or not the legal and procedural requirements for the issuance of an ECC and the amendment thereto were complied with by the Private Defendants and enforced by the Public Defendants

3. Whether or not the legal and procedural requirements for the issuance of a Building Permit were complied with by the Private Defendants and enforced

4. Whether or not the cutting and earth-balling of trees at the Luneta Hill, Baguio City will cause irreparable damage and detrimental effect to the residents of Baguio city, the Plaintiffs and the environment.

5. Whether or not the proposed site is validly owned by SMIC, limited for the purpose of proving the alleged irregularity in the issuance of the subject permits, amendments and certificates.

6. Whether or not SM complied with the Zoning Ordinance of the City of Baguio.

7. Whether or not the Private Defendants will suffer irreparable damage in the event that the proposed expansion of the mall will not be allowed.

8. Whether the Plaintiffs are barred from instituting the above-captioned cases for the failure to exhaust administrative remedies under DAO 9637 and DAO 2003-30.

9. Whether or not Cordillera Global Network and the other Plaintiffs have the legal personality to institute the above-captioned cases.

THE RULINGS OF THE COURT

Before the Court shall resolve the merits of these cases, the Court deems it proper to first discuss the last two procedural issues as non-compliance with the requirements on legal personality and exhaustion of

administrative remedies will render the ruling on the substantive issues inutile.

Whether or not Cordillera Global Network and the other Plaintiffs have the legal personality to institute the above-captioned cases.

The personality of the Plaintiffs was initially assailed by the Defendants. It is argued that the Plaintiffs, in the First Environmental Case, were not able to allege any material interest in the issues raised in their Complaint in order to qualify them as real parties-in-interest under the Environmental Rules in relation to Section 2, Rule 3 of the Rules of Court. The Court, on this point, resolves to relax the rules on ***locus standi***.

Plaintiffs, in these Environmental Cases have alleged a fundamental and public right, their right to a balanced and healthful ecology that may be adversely affected by the removal of 182 trees at the Luneta Hill, Baguio City. In a number of cases, the Honorable Supreme Court adopted a rule that even where the Plaintiffs fail to show direct injury, they may be allowed to sue under the principle of ***"transcendental importance"*** **(David v. Macapagal-Arroyo, G.R. No. 171396, May 3, 2006, 489 SCRA 160)**. Citing the case of Oposa vs. Factoran **[G.R. No. 101083, July 30, 1993, 224 SCRA 792]**, the Supreme Court categorized in the case of **Metro Manila Development Authority vs. Concerned Residents of Manila Bay [G.R. Nos. 171947-48, December 18, 2008, 574 SCRA 661]** the right to a balanced and healthful ecology an issue of transcendental importance with intergenerational implications. On the basis of this pronouncement, this Court, deems it prudent to relax the rule on standing as the issues raised hereunder are matters of transcendental importance. This Court, hence, rules that the Plaintiffs have the personality to sue under the principle of **"transcendental importance"**.

Whether the Plaintiffs are barred from instituting the above-captioned cases for the failure to exhaust administrative remedies under DAO 9637 and DAO 2003-30.

Defendants are unanimous in maintaining that the Plaintiffs failed to comply with the afore-cited requirement. A perusal of the record would bear it out that the Plaintiffs, despite allegations of infirmities in the issuances of the Amended ECC, Building Permit, and Tree Cutting and Earth-Balling Permit, failed to comply with the requirement despite the existence of remedies available to address the issue.

The Plaintiffs, as stakeholders, did not assail the issuance of the **Amended ECC** by way of an appeal with the Secretary of the DENR in accordance with the provisions as stated under **Section 6 of DAO 2003-30**. Alleged irregularities in the issuance of the Tree Cutting and Earth-Balling Permit to the Private Defendants were not, likewise, questioned by the Plaintiffs with the Secretary of the DENR or the Office of the President pursuant to the provisions of **Section 1 of DENR DAO 1990-87.** Lastly, the alleged infirmities in the issuance of the Building Permit to the Private Defendants were not raised on appeal to the Secretary of the DPWH as provided for under **Section 307 of the National Building Code**.

It is to be stressed that a case filed without the exhaustion of available administrative remedies renders a cause of action premature. Consequently, and as held in the case of **Bangus Fry Fisherfolk vs. Honorable Lanzanas [G.R. 131442, July 10, 2003, 405 SCRA 550],** resort to courts prior to the availing of this administrative remedy makes the cases dismissible. Undoubtedly, this pronouncement applies to these Environmental Cases.

Another ground that would, likewise, warrant the dismissal of these cases is the doctrine of primary jurisdiction, one that is equally related to the doctrine of exhaustion of administrative remedies. This doctrine prevents Courts from taking cognizance of a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. (Emphasis supplied) **[Republic of the Philippines vs. Carlito Lacap, G.R. No. 158253, March 2, 2007, 517 SCRA 255]**

In the same case, the High Court cited numerous exceptions to the application of the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction. Some of these are: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the Courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in quo warranto proceedings.

Here, there was clearly no invocation of any exception to the exhaustion rule by the Plaintiffs at any stage of the proceedings. Further, they have not shown any administrative act to show that the issuance of the Permits was patently illegal. They have not shown proof of any delay

correspondence whatsoever was shown by Plaintiffs to prove that they had given Public Defendants a chance to remedy whatever they alleged was improperly performed by them. There was no showing of any impracticability or oppressiveness in applying the doctrine.

The issues in the Environmental Cases are not purely legal, as in fact, detailed determinations of fact are needed to prove compliance or non-compliance with the legal and procedural requirements leading to the issuance of the Permits. They have not shown that the administrative agencies may not be able to remedy any of the acts alleged to be prejudicial to Plaintiffs as to make judicial intervention necessary.

They have not shown that resorting to administrative procedure will cause great and irreparable damage. They have not shown any violation of due process. They have not shown that exhausting administrative remedies will be moot and academic. They have not shown that no other plain, speedy and adequate remedy is available. They have not shown that there is strong public interest to justify a direct invocation of the Court's intervention as opposed to the availment of administrative remedies.

It is clear then that Plaintiffs have not demonstrated in the entire course of the trial of these cases that there is basis to seek the Court's intervention directly and involve the Court in matters that are properly within the office and expertise of these specialized agencies and that involve administrative procedures and guidelines that these agencies are required by law to implement. Pursuant to the rule on primary administrative jurisdiction, the Court admits that the scientific proof presented and compliance with procedural guidelines under DAO 2003-30 and other laws are better determined by those who are well-versed in these respective fields and regulations.

Undoubtedly, on the basis of these principles, the Environmental Cases ought to fail. Given, however, the importance of these cases, the Court will not leave the other issues unresolved as the substantive issues therein contained deserve to be addressed once and for all, given their importance to the constituents of the City of Baguio, the Filipino People, as a whole, and the novelty and susceptibility to their being raised again in the future. The Court shall then proceed to discuss the substantial issues herein raised.

Whether or not the cutting and earth-balling of trees at the Luneta Hill, Baguio City will cause irreparable damage and detrimental effect to the residents of Baguio City, the Plaintiffs and the environment

In the main, the issue raised in these Environmental Cases is the

environment, its effect on the health of the constituents of Baguio City, and the existence of an irreparable injury. Associated thereto are issues related to the issuance of the Tree Cutting & Earth-Balling Permit, Building Permit, and the amendment of the Environmental Compliance Certificate that were issued to the private defendants. Taking into account, however, the very nature of these cases, the Court deems it paramount to resolve before hand, the issue as afore-stated, as it is the most significant issue hereunder raised.

Plaintiffs presented six witnesses to testify on this particular issue. However, only one, in the person of Dr. Michael A. Bengwayan, was competent to testify on the alleged irreparable damage and deleterious effects of cutting and/or earth-balling trees to the Plaintiffs and to the environment.

Dr. Bengwayan was presented on March 15, 2012 and July 16, 2012. On the first occasion, he was presented as an expert witness to prove Plaintiffs' entitlement to the issuance of a **TEPO**. He testified that the removal of the 182 trees will be destructive to the environment and the ecosystem as trees provide potential help to the environment, in terms of being a carbon sink **(TSN, March 15, 2012, p. 18)**. He also testified that cutting the trees will result in the loss of the potential increase in ground water level and the potential contribution of the trees in oxygen production **(TSN, March 15, 2012, P. 20)**. He further testified that earth-balling the subject trees will be worse than cutting them **(TSN, March 15, 2012, p. 21)**. It will not only kill the trees but it will also cause topsoil erosion, which eventually will result in water run-off and flooding **(TSN, March 15, 2012, p. 22)**. Plaintiffs adopted his earlier testimony when they presented him as witness on July 16, 2012 **(TSN, July 26, 27, 2012, pp. 18-19)**. The witness further testified on the effects of the loss of a single tree, which are, the loss of its absorption capacity in the amount of 40 to 45 pounds of Carbon in a year; the loss of the capacity of each tree to produce Oxygen in an amount equivalent to the needs of 66 individuals within the same period; and the loss of its capacity to bring up ground water level to an elevation of 200 feet.

Dr. Bengwayan readily quantified the effects of removing the trees in such manner but admitted, on cross examination, that his conclusions on the effect of cutting and/or earth-balling a tree is dependent on different factors such as the age, kind, size, and health thereof as well as the location and surface area of the place where it is planted **(TSN, July 26, 2012, p. 24)**. The Court notes, however, that the testimony of the witness is not generally based on his personal knowledge **(TSN, 26 July 2012, p. 37)** but on mere predictions **(TSN, July 26, 2012, p. 25)**. Verily, Dr. Bengwayan's testimony appears to be mere conclusions of fact devoid of any scientific basis or proper attribution and consequently failed to prove, by the quantum of evidence required, that the cutting and earth-balling of the 182 trees at the Luneta Hill, Baguio City will cause detrimental effects to the environment, the residents of the City of Baguio, and will eventually result to irreparable damage.

In contrast, while admitting that the cutting or earth-balling of said trees will indeed have a negative effect on the environment, the evidence

irreparable injury to the environment and detrimental effects to the residents of the City of Baguio.

It is worth to note that parts of the testimony of the Plaintiffs' witness, Dr. Palijon, were substantially lifted from scientific literatures. In fact, he studied the actual health of the subject trees, and assessed the mitigating measures based on the **EPRMP** as approved by the proper regulatory agency **(TSN, 28 March 2011)**. The witness was consulted by **SMPH** to study the Benguet pine and alnus trees in Luneta Hill and has examined 82 of the subject trees around two months prior March 28, 2012 **(TSN, March 28, 2012, p. 11)**. The witness, a duly qualified tree expert **(TSN, March 28, 2012 p 5)**, admitted that there will, indeed be a reduction in the trees' beneficial contributions to the environment, if removed. He qualified, however that it is not substantial and that the removal of the trees will not, in fact, create any irreparable injury to the environment **(TSN, March 28, 2012, p. 55)**. He testified that there will be no hazardous effect on the health of the people of Baguio City if the subject trees are taken out of the particular area where SM City Baguio is located. This is because the removal will be compensated by the green building that will be constructed, the 2,000 trees already planted in Busol Watershed and 30,000 more trees that will be planted within the next three years **(TSN, March 28, 2012, pp. 14-15)**. Based on an article written by Nowak and Crane on oxygen production by urban trees in the United States published in the Arboriculture and Urban Forestry Journal **(Exhibit 2)**, the witness testified that the diminution of Oxygen will not be substantial because of the removal of the 182 trees **(TSN, March 28, 2012, p. 18)**.

Another witness for the defendants proved, likewise, that the effect of the Expansion Project, as a whole, will not cause irreparable injury to the Plaintiffs. Engr. Rivera, an Environmental Engineer and member of the team who conducted an exhaustive Environmental Impact Assessment on the Expansion Project testified that the effect of the project on the environment, including the removal of trees, will be minimal, provided that the mitigation measures under the **EPRMP** will be implemented properly **(TSN, 4 October 2012)**.

Moreover, one of the factors that militates against the claim of the Plaintiffs is the issuance of the Amended Environmental Compliance Certificate to the Private Defendants. It is worth to stress that the process of issuing an Environmental Compliance Certificate **(ECC)** for a certain project is governed by strict and detailed rules under **DAO 2003-30** for a reason. An **EIA** is conducted to evaluate the likely impact 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. Several documentary requirements are submitted. Thereafter, an **ECC** is issued if after a positive review of an **ECC** application, it is determined that the proposed project or undertaking will not cause significant negative environmental impact. The **ECC** itself contains specific measures and conditions that the project proponent has to undertake before and during the operation of a project, and in some

environmental impacts. **(DENR Department Administrative Order No. (DAO) 2003-30, Art. I, Sec. 3)**.

What is obvious is that Plaintiffs invoked general welfare considerations more than the Expansion Project's effect on the environment. Plaintiffs' Memorandum emphasized that pine trees are part of the history and the future of the City **(Plaintiffs' Memorandum, p. 4)**. However, the issue of whether the Expansion Project will be beneficial or disadvantageous to general welfare being part of its heritage is not for the Court to decide in accordance with the doctrine of separation of powers. Police power is the plenary power vested in the legislature to make statutes and ordinances to promote the health, morals, peace, education, good order or safety and general welfare of the people. The Court may not exercise police power by virtue of Plaintiffs' Complaints.

From the afore-stated discussions, the Court accordingly rules that the cutting or earth-balling of the 182 trees within the vicinity of the Luneta Hill, Baguio City will NOT cause irreparable injury to the environment or the constituents of the City of Baguio.

In their attempt to prevent the cutting and earth-balling of the 182 trees at Luneta Hill, the Plaintiffs, other than raising environmental issues, assailed the legal and procedural requirements in the issuance of the Permits granted to the Private Defendants, namely the Tree Cutting and Earth-balling Permit, the Amended ECC and the Building Permit. First and foremost, the Tree Cutting and Earth-balling Permit, the Amended ECC, and the Building Permit enjoy the legal presumption that these were issued in accordance with the pertinent law, procedure, or regulation. **Section 3(m) of Rule 131** of the **Rules of Court** accords the Permits (the issuances of which were official acts of different government agencies) a presumption of regularity that may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. **[Bustillo vs. People of the Philippines, G.R. No. 160718, May 12, 2010, 620 SCRA 483]**. After a scrutiny of the evidence herein adduced by the parties, the Court rules that the Plaintiffs failed to show any proof that the issuance of the Permits were irregular or that any law, procedure or condition for their issuance was violated in pursuit of the Expansion Project. The Court shall now proceed to elaborate on these issues.

Whether or not the legal and procedural requirements for the issuance of the Tree Cutting and Earth-balling Permit to the Private Defendants were duly complied with.

Plaintiffs attempt to overcome the presumption of regularity in the issuance of the Tree Cutting and Earth-Balling Permit by arguing that this was issued in violation of Executive No. 23. The Court is aware of the

total log ban. An exception thereto is **Memorandum 2005-19** but it only authorizes the Regional Executive Director of the DENR to issue cutting permits to a maximum of 30 trees.

Other than citing the provisions of EO 23 and Memorandum 2005-19, Plaintiffs, however, failed to adduce a single piece of evidence to show that the 182 trees subject of these cases are part of a national and residual forest. Likewise, the admission that the Expansion Project is classified as a commercial zone negates the claim that the site forms part of the area explicitly described under EO 23 **(TSN, 23 August 2012; Exhibit 1-SMPH)**. Furthermore, it must be noted that the limitation of 30 trees as specified under Memorandum 2005-19 applies to cutting permits issued by the Regional Executive Director of the DENR-CAR and does not apply to cutting permits with the imprimatur of the Secretary of the DENR, as in these cases. Defendants likewise presented proof of public consultation as a requirement under the Tree Cutting and Earth-balling Permit **(TSN, September 25, 2012)**.

In connection with the Tree Cutting and Earth-balling Permit issued to the Private Defendants, the Plaintiffs, invoking the provisions of the Local Government Code, assail the City Mayor's endorsement of the Expansion Project to the DENR Secretary and the DENR's lack of prior consultation with the City Government regarding the Expansion Project.

However, there was no showing that the endorsement by the City Mayor violated any law or procedure or that the **DENR** is required under the Local Government Code to consult the City Government including the City Council prior to its issuance of the **ECC** or the Tree-Cutting and Earth-Balling Permit. The section invoked by Plaintiffs under **Article I (National Government and Local Government Units), Chapter III (Intergovernmental Relations)** of the law, does not, however, find any application to these Environmental Cases.

Section 27 of said law explicitly provides that:

> "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." [Emphasis supplied]

A reading of the above-cited provision of law is clear, Section 27 does not apply to the Expansion Project, as it is pursued by a private corporation and not by the National Government. It is worth to stress that the **DENR** is not implementing the Expansion Project so as to require

prior consultations with the local government. Its role is only to assess and grant, if appropriate, a private entity's application for an **ECC** or for a Tree Cutting and Earth-balling Permit. The requirements for these applications are governed by different administrative regulations, which were shown to have been complied with by the Expansion Project.

Private Defendants were, likewise, able to present proof of compliance with the requirements for the issuance of the Tree Cutting and Earth-balling Permit from the application, to the correspondence between SM City Baguio and the **DENR**, to the satisfaction of conditions and procedure for approval of the application **(TSN, September 25 and October 3-4, 2012)**.

Whether or not the legal and procedural requirements for the issuance of an ECC and the amendment thereto were complied with by the Private Defendants and enforced by the Public Defendants

In assailing the regularity in the issuance of the Amended ECC, Plaintiffs harped on social acceptability as a requirement for the issuance thereof. On this issue, Plaintiffs presented Mr. Altomonte who testified on the existence of an online petition and the protests staged against the Expansion Project. Likewise, they presented Bishop Carlito Cenzon who attested to the prayer rallies and the withholding of masses at SM City Baguio as indicative of the sentiments of the residents.

Contrary to the insistence of the Plaintiffs, it must be emphasized that social acceptability is not a requirement in the issuance or amendment of an **ECC**. Nowhere in **DAO 2003-30** is it stated that a project has to be socially acceptable for it to be issued an ECC. At best, what is required under **Section 5 of DAO 2003-30 (Requirements for Securing Environmental Compliance Certificate and Certificate of Non-Coverage)** is public consultation. **Section 5.3** states that **"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 addition, the Expansion Project is not an environmentally critical project that would require the conduct of a public consultation **(TSN, August 31, 2012)**. Plaintiffs' own witness, Atty. Cuna, Director of the **Environmental Management Bureau of the DENR (EMB-DENR)**, categorically stated that the only requirement for the amendment of the

consultation such as a social perception survey, key informant interviews, and certifications of endorsement or acceptability from the host barangay **(TSN, August 31, 2012, p. 16)**. The evidence herein adduced shows that the Plaintiffs complied with the requirement.

Granting arguendo that social acceptability is a requirement to amend the **ECC** (which it is not), the testimonies of Bishop Cenzon and Mr. Altomonte are not sufficient to disregard the presumption of regularity in the issuance of the amended **ECC**. At best Bishop Cenzon's and Mr. Altomonte's testimonies are their personal convictions and opinions **(TSN, July 27 and 31, 2012)**. Moreover, their testimonies cannot be given more credence than the preponderance of evidence of social acceptability provided by the Defendants during trial. The submission of the Environmental Performance Report and Management Plan **(EPRMP)** and the Environmental Impact Statement **(EIS)** by the Private Defendants is deemed a substantial compliance with the requirement as the **EPRMP** and **EIS** includes proof of social acceptability including Resolutions and Certifications from different Barangays of Baguio City **(Exhibits 141-SMPH to 148-SMPH)**.

Plaintiffs, thru Professor Cecilia M. Austria, further attempted to question the regularity of the issuance of the **Amended ECC** by assailing the reliability of the **EPRMP**. It is argued that the **EPRMP** was merely based on secondary data and that it does not present the comprehensive effects of pursuing the expansion project and the **EIS** did not include primary data peculiar to Baguio City such as the project's impact on Baguio City's climate; Luneta Hill's volume of rainfall and run-off water and its immediate vicinity; and the composition and volume of air pollutants as a result of increased vehicle flow and a study of the air current pattern instrumental in the dispersion of these pollutants. The witness recommended that the revocation of the **ECC** granted to **SMIC** as the **EPRMP** failed to include the afore-cited data and that it did not present the comprehensive long-term effects of the Expansion Project **(Exhibit OO & TSN, August 14, 2012)**.

It is noted, however, that the field of expertise of the witness is in on zoology and not environmental science **(TSN, August 14, 2012)**. She is not a competent who may determine lapses in the **EIA**. Contrary to the claim of irregularities in the issuance of the **Amended ECC**, it is clear from the evidence adduced by the Private Defendants that the requirements for the issuance of the **Amended ECC** were complied with. Under **Section 5.2.5 of DAO No. 2003-30**, these are:

a. Project Description;
b. Baseline conditions for critical environmental parameters;
c. Documentation of the environmental performance based on the current/past environmental management measures implemented;
d. Detailed comparative description of the proposed project expansion and/or process modification with corresponding material and energy balances in the case of process industries, and

e. EMP (Environmental Management Plan) based on an environmental management system framework and standard set by EMB.

These requirements were duly satisfied, and are evident in the **EPRMP (Exhibit 43-SMPH)**. Director Cuna attested to the fact that all the requirements in applying for an amendment of the **ECC** were submitted for the Expansion Project **(TSN, August 31, 2012, p. 20)**. Private Defendants, in the person of Engineer Cherry B. Rivera, duly established that the environmental impacts of the Expansion Project were identified and that mitigating measures were recommended in the **EPRM (TSN, October 4, 2012)**. The testimony of Prof. Austria, who pointed out alleged irregularities in the **EPRMP** is, therefore, not sufficient to rebut the presumption accorded to the **ECC** against the clear testimony of witnesses who attested that the proper procedure was followed.

Plaintiffs aver that the amended **ECC** is invalid because of a change in the project's location. This is not correct. The **EIS** for the original ECC speaks of is the same location as the **EPRMP** for amended ECC. Both refer to the 8.5 hectare SM Pines Resort complex with a provision for an open buffer zone. Plaintiffs never showed this court that there was a change in location. Again, Plaintiffs cannot keep harping on irregularities without proof thereon and expect the court to look for evidence on their behalf. The truth is, Plaintiffs even cited portions of documents presented during trial that will show that the project covers the same area. Plaintiffs should have read these documents at length and should not have selected only those that they may use for their cause so as not to mislead this court in their various conclusions. There was no showing whatsoever that any rule, law or procedure was breached in the amendment of the **ECC**. **ECCs** are issued by the **DENR** as a project-specific document **(Procedural Manual for DAO 2003-30, 4.9.B (Procedural Guidelines for ECC Amendments)**.

As regards the alleged irregularities in the **Amended ECC**, i.e., that the Amended ECC was granted in favor of a different entity, Atty. Cuna, Director of DENR-EMB, testified that the project proponent remains the same in the original and amended ECC **(TSN, 31 August 2012)**. Engr. Mateo testified that Defendant SMPH acted as attorney-in-fact of the original project proponent of the SM Pines Resort Project, which is Defendant SMIC, and Mr. Hans Sy merely served as the contact person for Defendant SMIC. The amendment of the original ECC only required the submission of an **EPRMP**, which was complied with **(Exhibit 43-SMPH)**.

Without Plaintiffs having specified any irregularity in the issuance of the **ECC** as to negate the presumption of regularity accorded to it, there is nothing that will show that the Expansion Project will indeed cause irreparable environmental damage that will affect Plaintiffs' right to a balanced and healthful ecology.

Whether or not SM complied with the Zoning Ordinance of the City of Baguio AND

procedural requirements for the issuance of a Building Permit were complied with by the Private Defendants and enforced

It is the assertion of the Plaintiffs that the Building Permit issued to the Private Defendants is null and void as it is in violation of the Zoning Ordinance of the City of Baguio and the National Building Code. Plaintiffs maintain that the existing SM City Baguio Mall is a regional or large commercial structure that should have been constructed only within a High Density Commercial Zone. In view of the classification of the site as a Low-Density Commercial Zone, Plaintiffs argue that the construction of the existing SM City Baguio Mall is in violation of the Zoning Ordinance of the City. Likewise, with the inclusion of a 5-storey parking lot in the Expansion Project, Plaintiffs, in the alternative, argue that said project may only be implemented in a Medium Density Commercial Zone and not 2at the proposed site (being a Low-Density Commercial Zone). Finally, Plaintiffs maintain that the Expansion Project will be violative of the Zoning Ordinance at it appears that the Expansion Project exceeds the 6 storey limit set thereunder. On these bases, it is the assertion of the Plaintiffs that the implementation of the Expansion Project is, likewise, in violation of the Zoning Ordinance and the National Building Code.

The Court is not inclined to agree. However, aside from their claim that SM City Baguio's expansion will violate the city's Zoning Ordinance because it is a regional mall **(Plaintiffs' Memorandum, p. 12)** they have not shown proof thereon except for conclusions of fact that they failed to support. What makes Plaintiffs' claim difficult is that their own witness, Engr. Cayat, Zoning Officer of the CPDO, testified that the CPDO, contrary to Plaintiffs' allegations, even gave clearance to the Expansion Project **(Exhibit 120-SMP)**. This means that the Expansion Project, after evaluation, was found to conform with the Comprehensive Land Use Plan of Baguio City. Engr. Cayat herself, whose office has the competence to evaluate projects based on project documents, confirmed that the expansion project is not a regional shopping mall **(TSN, August 23, 2012, p. 20)**. Engr. Cayat's credibility or competence was not assailed. This Court will give more weight to the presumption of regularity of the zoning clearance **(Exhibit 1-SMPH)** than the conclusions of fact made by Plaintiffs which are not supported by even a single witness. This Court will not claim to have more expertise than the CPDO, whose office was created to implement the zoning ordinance.

Relative to the issuance of the Building Permit, it is evident from the record that one was issued in favor of the Private Defendants by the appropriate governmental agency in accordance with the provisions of the National Building Code. Engr. Oscar V. Flores, the City Building Official for Baguio City, unconditionally stated in Court that Defendant **SMPH** was issued **Building Permit No. 20120009 dated January 12, 2012 (Exhibit 150-SMPH)** after it submitted and complied with all the requirements for its issuance **(Exhibit 150-SMPH)**. The witness testified on the submission of documentary requirements for the Expansion Project

application **(TSN, 27 September 2012)**. Engr. Flores explained that the Expansion Project is part of the existing SM City Baguio Mall which has four (4) storeys from the ground level while the Expansion Project will have five (5) storeys of parking spaces. As the EPRMP will show, these storeys will not be placed on top of each other because what is proposed is a horizontal expansion. Therefore, the six (6) – storey limit for the buildings is not violated. Engr. Flores, confirmed this.

Whether or not the trees are part of the heritage of Baguio City and whether or not the Expansion Project falls within minor fault lines

In their bid to prevent the expansion program of SM and the cutting and earth-balling of the subject trees, Plaintiffs further allege that the trees are protected by Republic Act No. 10066 or the National Cultural Heritage Law and that the site falls within minor fault lines.

Plaintiffs, however, failed to show any single piece of evidence that the trees are part of the heritage of Baguio City other than their bare conclusions. On the other hand, SMIC presented listings from the Registry of the National Historical Commission of the Philippines **(Exhibits 4 to 4-B)** that the land covered by the expansion is not a cultural site, monument, shrine or landmark as to require prior approval of the National Commission of Culture and the Arts to have it developed.

Again, Plaintiffs failed to present any proof to sustain their claim that the Mall Expansion site falls within minor fault lines. On the contrary, Engr. Federizon, a geologist, testified that no fault line directly passes through within or near the Mall Expansion area **(Exhibit 97-SMPH).** The witness' assertion is based on the documents from PAGASA, National Mapping and Resources Information Authority, and PHILVOLCS, and a Memorandum Report from the DENR-MGB-CAR Chief Geologist. The latter, thus, found that the Expansion Project was possible and that it is suitable for land development **(Exhibit 97-SMPH)**.

All told, despite allegations of irregularities in the issuance of the Tree & Earth-Balling Permit, Building Permit, and Amended ECC, as stated in their complaints, Plaintiffs failed to establish any of them. Verily, their allegations remain speculative. Plaintiffs have not overcome the presumption of regularity accorded to the Permits, the issuances of which were official acts of the agencies involved. Moreover, Defendants, even without the need to do so, presented clear and convincing evidence that the proper procedures were followed and there were no acts and omissions committed by Defendants that will invalidate these Permits.

Whether or not the Private Defendants will suffer irreparable damage in the event that the proposed

expansion of the mall will not be allowed.

Citing Social Security Commission vs. Bayona **(G.R. No. L-13555, May 30, 1962, 115 Phil. 105)**, the Supreme Court in **Power Sites and Signs vs. United Neon (G.R. No. 163406, November 24, 2009, 605 SCRA 196)** defined irreparable damage relative to the issuance of injunction as that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement. In the same case, the High Court ruled that an irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof.

Engr. Mateo testified that expenses had already been incurred for the Expansion Project and that losses continue to accumulate in terms of lost business while the **TEPO** subsists. There is no reason, however, to prevent the Expansion Project further, after evaluation of the evidence presented. Plaintiffs while alleging deleterious effects to themselves and the environment, were not able to demonstrate irreparable damage or injury to make the **TEPO** permanent. It is to be recalled that the **TEPO** was issued at the first instance because not issuing so will render the whole case moot and academic. However, after trial, it appears that the preponderance of evidence favors the dissolution of the **TEPO** in as much as Plaintiffs were not able to demonstrate any significant effect of the cutting and/or earth-balling of trees with respect to the environment that the **EPRMP** and the design of the Expansion Project cannot address. This Court is, thus, left with no alternative but to dissolve the **TEPO**.

On the basis of the above-cited discussions, this Court, finds that there is no reason to prevent the Private Defendants from pursuing the Expansion Projects. As discussed, the Plaintiffs failed to adduce the quantum of evidence required in order to sustain their claim. On the contrary, their own witnesses, Atty. Juan Miguel T. Cuna, Director of the Environmental Management Bureau of the DENR and Engr. Evelyn B. Cayat of the Planning and Development Office of the City of Baguio, Plaintiffs' own witnesses, testified to negate their claim. On the other hand, the Defendants adduced the required quantum of evidence to sustain their positions.

The Rules provide for the application of the **"precautionary principle"** when there is sufficient showing that human activities **may lead to threats of serious and irreversible damage** to the environment that is scientifically plausible but uncertain. However, the Court finds no basis for its application in these Environmental Cases for the simple reason that the Plaintiffs failed to substantiate damage to the environment that is so serious that it cannot be remedied.

Section 1 of Rule 20 of the Environmental Rules states that the principle may only be applied if there is no scientific certainty in establishing a causal link between human activity and environmental

effect. In these cases, several witnesses and the **EPRMP** prove that the Expansion Project properly adresses potential negative consequences that may arise therefrom. The **EPRMP** provides an environmental plan that addresses risks with respect to land, water, air, traffic and contains environmental initiatives, which are not even required.

As to the validity of the validity of SMIC's title over the property, the Court deems it prudent not to delve on the issue in view of the pendency of a case related thereto with another branch of this Court.

As a final note, the undersigned, as the presiding judge of this Court, deems it fair to state that he joins the sentiments of the Plaintiffs. The City of Baguio has been the residence of the undersigned for almost 20 years. Its people, the way of life in the City, and its environment, including its trees (which has become synonymous to the name of the City), have become a part his life. However, the undersigned could not give priority considerations to these factors as he is bound by a legal duty to apply the applicable laws on the basis of the attendant facts, circumstances, and evidence. Hence, the above rulings of the Court.

Having addressed the procedural and substantial issues raised in the Environmental Cases, the Court, shall now proceed to resolve the issue raised in Civil Case No. 7626-R.

Whether or not SMIC committed acts in disregard of the Temporary Environmental Protection Order issued by this Court

Relative to the afore-captioned Environmental Cases, this Court, on April 10, 2012, issued a Temporary Environmental Protection Order effective for a period of 72 hours. Said Order was served upon **SMIC** at its Office at the SM City Baguio. However, attempts to serve the same upon **SMIC** failed as the latter's authorized officers were allegedly in Manila. In the meantime, SMIC proceeded with earth-balling activities within the Expansion Project site. Plaintiffs, thus, initiated this action praying that officers, directors, agents, representatives, and persons acting under the control and supervision of **SMIC** who the acts complained of be cited in contempt of court.

The Court rules that there was no contemptible act on the part of **SMIC** or its representatives. The records would bare it out that the Order dated April 10, 2012 was not effectively served upon **SMIC**. There is no proof that **SMIC** received the Order thru an authorized representative in Baguio City. Accordingly, the only time that the **TEPO** became effective was on April 11, 2012 when a copy of the Order was obtained by an SMIC representatives from the Court. All activities relating to earth-balling within the site preceded SMIC's valid receipt of the **TEPO** and were not intentionally done in disregard to the lawful orders of the Court.

WHEREFORE, judgment is hereby rendered **DISMISSING** the Complaints dated February 23, 2012 and April 13, 2012 and the Amended Urgent Petition to Cite Defendant for Contempt dated April 20, 2012.

The **Temporary Environmental Protection Order dated April 10, 2012** is hereby **LIFTED**.

No costs.

SO ORDERED.

3RD day of December 2012 in the City of Baguio, Philippines.

Antonio M. Esteves
Presiding Judge