

**ARBITRATION UNDER THE ARBITRATION REGULATIONS OF THE UNITED
NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL 2010)**

AND

**UNDER THE FREE TRADE AGREEMENT BETWEEN CENTRAL AMERICA,
DOMINICAN REPUBLIC AND UNITED STATES**

BETWEEN:

**DAVID R. AVEN, SAMUEL D. AVEN, CAROLYN J. PARK, ERIC A. PARK,
JEFFREY S. SHIOLENO, DAVID A. JANNEY, AND ROGER RAGUSO**

Claimants

– and –

THE REPUBLIC OF COSTA RICA

Defendant

**WITNESS STATEMENT BY MÓNICA
VARGAS QUESADA**

April 8, 2016

1. I, **Mónica Vargas Quesada**, residing in Esterillos Oeste, Parrita, declare that:
2. This is the first statement that I give in the arbitration between David R. Aven, Samuel D. Aven, Carolyn J. Park, Eric A. Park, Jeffrey S. Shioleno, David A. Janney, and Roger Raguso against the Republic of Costa Rica, conducted under the Arbitration Rules of the UNCITRAL and the Free Trade Agreement between Central America, the Dominican Republic and the United States (the “Arbitration”).
3. I have been asked to participate in the aforementioned Arbitration in order to explain my knowledge of the procedures carried out by the Municipality of Parrita (the “Municipality”) in relation to allegations of violations of environmental legislation by the developers of the residential project “Las Olas” and to respond to certain allegations made by the claimants in the Arbitration regarding me.
4. I confirm that I have no direct or indirect interest in this Arbitration and make this declaration on my own and in my capacity as Environmental Manager of the Municipality of Parrita.
5. Except in cases where I so indicate to the contrary, the facts and statements contained in this testimony come from my own knowledge and are true to my best knowledge and understanding. In cases where the facts and statements contained herein do not come from my own knowledge, I have identified the sources of information on which I have based them or the source of the information to which I refer to in this testimony.
6. In preparing this witness statement, I have been assisted by the attorneys from Herbert Smith Freehills, but I confirm that each and every one of the affirmations and statements contained herein represent my knowledge of the facts. Furthermore, for the preparation of this declaration, I have reviewed documents from the investigation of the Municipality to help me refresh my memory about the events that occurred several years ago.

1. BACKGROUND

7. I am a professional in the Management and Protection of Natural Resources with a degree from the UNED [Universidad Nacional de Educación a Distancia], Technician in Project Management of the TEC [Tecnológico de Costa Rica]. Since 2008 I have been working as Environmental Manager in the Municipality. I have previously worked as head of the Department of Environmental Education, in the *Proteccion Nacional de Animales* [National Association for the Protection of Animals], as laboratory assistant at the UNED and high school teacher at the La Julieta Night School.

8. The function of the Department of Environmental Management (“DeGA”) of the Municipality is to act ex officio or in response to complaints in cases where there is a suspicion that the environment is being damaged. The DeGA serves as an entry point for the protection of the environment prior to the intervention of the competent institutions to determine whether there are violations of environmental legislation or not. The role of the DeGA is limited to reporting to the competent institutions about the alleged environmental damage and then follow up on cases until the competent bodies reach a decision.

2. MY ROLE REGARDING THE LAS OLAS PROJECT AND KNOWLEDGE THEREOF

9. As follows I will give a chronological account of my participation and knowledge of the Las Olas project as I can remember the facts.

10. I first learned of the possible existence of environmental damage at the Las Olas project site in March 2009 through a complaint from the community of Esterillos Oeste in relation to the landfill of a potential wetland.¹

11. In relation to this complaint, dated April 26, 2009,² I performed an inspection in the reported area. Because Municipality officials do not have police powers, I was not able to access the property without the permission of the owners. Therefore, except in cases where I went accompanied by inspectors of the Ministry of Environment and Energy (“MINAE”), my site inspections were limited to a visual check from the property boundary. On that visit I was able to observe that there were two paved streets and the reported land was in a low area that was characterized by soil that could be flooded and possibly saturated during the rainy season. I also observed that in the area where the alleged wetland was located, there was sedimentation and compaction: trees visibly burned in controlled burning as well as cutting down trees; the species that were located on the land could not be observed, mainly due to the burning of trees.

12. In my capacity as Environmental Manager of the Municipality, I have no jurisdiction to determine the existence of a wetland or otherwise. This function corresponds to the National Program for Wetlands of the Central Pacific Conservation Area (“ACOPAC”), a department under the National System of Conservation Areas (“SINAC”) of the MINAE.

13. After the first visit to the Las Olas project area, I issued a report in which I gave an account of what I had observed and requested that the competent authorities conduct the

¹ R-23, Report of the Community; R-36, Complaints by residents of Esterillos Oeste to the Municipality.

² R-26, Official Letter DeGA-049-2009.

respective inspection in the reported area in order to determine the existence of a wetland or otherwise and whether the activities carried out were at that time breaking the Wildlife Conservation Law (Law 7317). In that report, I attached photographs of the area where the alleged wetland was located that had been given to me by neighbors both from 2007 and from 2009, in which a stretch of water, fauna characteristic of wetland areas and burning of trees can be observed.³

14. Subsequently, on January 20, 2010 and May 21, 2010 I revisited the site, following new claims that there were works being carried out on the site. During those visits, I observed that the cutting and burning of trees had continued. According to what the neighbors told me, this practice took place during the weekends, given that public officials do not work during those days; we cannot state exactly when the practice was occurring. During those visits, as well as the two paved roads, I observed that two poles had been put up. Based on these visits, on May 31, 2010 I issued three reports:
 - a) Report DeGA 090-2010, sent to the building department of the Municipality mentioning that there was a complaint by the residents of the area about the existence of a wetland at the Las Olas project, without the presence of any certificate that accredits the place as a wetland and requesting information on the project file.⁴
 - b) Report DeGA 091-2009, also including details of the visits conducted and requesting that the competent authorities conduct the respective inspection in order to determine whether Article 50 of the Constitution of Costa Rica and Article 103 of the Wildlife Conservation Law (No. 7317) were being infringed, and to notify me of classification of the area.⁵
 - c) Report DeGA 092-2010, sent to the patent department of the Municipality requesting information on the existence of permits for the execution of the project.⁶
15. On June 14, 2010, I received a reply from the Department of Urban and Social Development of the Municipality by Note OIM No. 113-2010 reporting that *“the Las Olas S.A. project, located in Esterillos Oeste, does not have any permit before this department for the execution of Earthworks or for the construction of Private Streets*

³ Ibid.

⁴ R-29, Official Letter No. DeGA-090-2010.

⁵ C-67.

⁶ R-30, Official Letter No. 092-2010.

*with electrification. The lots are not broken down into lots for Urban Development and as is clearly said in official letter DeGA-091-2009, the master plans are covered by the taxation in the water impact law, and for this reason the municipality cannot divide the property into lots, if due process is not complied with by conducting the proceedings before the relevant governmental entities, in order to be able to process the permit, as a residential project, which it currently does not have.”*⁷

16. On that same day, the Department of Urban and Social Development gave notice to Mr. David Aven that he did not have the necessary permits for the execution of earthworks and private streets conducted in Las Olas and asked him to immediately begin the respective proceedings before the National Institute of Housing and Urban Development (“INVU”) given that such permits are essential so that the Municipality can grant building permits.⁸
17. On June 15, 2010, I sent a request to the Administrative Environmental Court (“TAA”) for an inspection of the area.⁹ The following day, June 16, 2010, I sent an official letter to the ACOPAC describing the visits conducted to the site and requesting again the classification of the reported area.¹⁰
18. On July 5, 2010 in the Municipality, we received a new complaint from the residents of the community of Esterillos Oeste in connection with alleged environmental damages carried out on the Las Olas project site and the specific complaint that in light of the works performed there, the homes in the area had been flooded.¹¹
19. On July 8, 2010, I sent information to the MINAE on the consultations in the National Registry of Property and the Las Olas project plans and by attaching Note OIM No. 113-2010 of the Municipal Engineering Department which reported that the Las Olas project did not have any permits for the execution of Earthworks or for the construction of Private Streets with electrificación.¹²
20. On August 11, 2010, the Mayor received an official letter from the Director of Quality of Life of the Ombudsman of August 7 reporting the existence of an allegation of wetlands impact and deforestation in the Las Olas project area that had caused the flooding of the town.¹³ This official letter requested that within five days, the Municipality report (i) whether it was aware of the complaint; (ii) whether the Las Olas residential project

⁷ R-34, Official Letter No. OIM 113-2010.

⁸ R-35, Official Letter No. 114-2010.

⁹ C-69.

¹⁰ C-70.

¹¹ R-36, Complaints by residents of Esterillos Oeste to the Municipality.

¹² R-38, DeGA-0117-2010.

¹³ R-44, Official Letter 08947-2010-DHR - Request for Intervention

had the appropriate building permits; (iii) whether wetlands were located in the area; (iv) whether the project was consistent with the land use of the area; and (v) on the existence of additional information for investigating the complaint.¹⁴

21. On August 18, 2010, the Mayor remitted the official letter from the Ombudsman to the DeGA in order to prepare a report on the actions of the Municipality in response to a request from the Ombudsman's office, which I did on that same day and it was approved by the Mayor.¹⁵ In that official letter, we chronologically listed all the events so far, from whence it arose that (i) a complaint about it had been received in 2009; (ii) that the Las Olas project did not have the appropriate building permits from the Municipality; (iii) that visits and follow up on the matter had gone forward with requests for a decision to the authorities of the MINAET [*Ministerio de Medio Ambiente, Energía y Tecnología*; Ministry of Environment, Energy and Technology] and to the TAA; (iv) that *"Mr. David Aven [had] delivered to us a document prepared by the SINAC 67389RNVS-2008, signed by Eng. Ronald Vargas Brenes, the SINAC director, indicating that the Las Olas project does not represent a clear threat in the Esterillos Oeste biological corridor nor does it undermine in any way the biodiversity of the local National Wildlife Refuge. However this Municipality does not have the copy of the environmental impact study that should have been legally delivered to the municipality;"*¹⁶ (v) that the environmental feasibility study granted by the SETENA was expired; and (vi) that the residential project was consistent with land use as long as there was no statement to the contrary.
22. On August 27, 2010 at the service platform, the tour report was received dated July 16, 2010 ACOPAC-OSRAP 371-2010, where it was mentioned that on the property of Las Olas project there were no wetland areas and that during the visit trees and bushes were being burned; for this reason, the owner was asked to (i) *"not continue clearing or cutting the grass and shrub vegetation that is in recovery on a wooded patch;"* (ii) *"apply for any cutting permit in the Aguirre-Parrita Subregion office;"* and *"to observe current environmental laws at the time of building any infrastructure or construction."*¹⁷
23. On August 29, 2010, I reported to the Mayor¹⁸ and to the TAA¹⁹ on that report from the ACOPAC, based on which I recommended requesting from the developers the environmental feasibility study from the SETENA (given that that study was expired) in order to proceed with the approval of the construction of Las Olas project.

¹⁴ Ibid.

¹⁵ R-49, Official Letter No. 200-2010.

¹⁶ Ibid., p. 2; see C-47.

¹⁷ C-72.

¹⁸ R-52, Official Letter DeGA-0122-2010.

¹⁹ C-81.

24. On September 6, 2010, the Municipality received notification of Resolution No. 2086-2010-SETENA of September 1, 2010, in which the SETENA had dismissed a complaint filed by a neighbor.²⁰
25. On September 7, 2010, the attorney for Mr. David Aven, Sebastian Vargas, appeared in the offices of the Municipality to append certain documents requested for obtaining a building permit for Inversiones Costco. At that time, the DeGA office was in the same physical location as the Department of Urban and Social Development. Upon noting that Mr. Sebastián Vargas Roldán was there on behalf of the developers of the Las Olas project, I mentioned to him that it was very important that the Environmental Specialist take up the environmental matter, as there had been several complaints that a possible wetland was being impacted and trees were being cut without a permit; for this reason, I asked him please to tell the Specialist to get in touch with me. I made this recommendation to him, given the situation, in light of the fact that the community was very concerned about of that project, there could be more complaints, and the Environmental Specialist could solve them more easily. Engineer Kattia Castro, who was working in the Department of Urban and Social Development, was there during this conversation.
26. On September 9, 2010 the Municipal Engineering Department reported to the Mayor (i) that the property was being impacted by four areas of the regulatory plan and by a protective area with respect to the Quebrada El Aserradero; (ii) that the submission was pending regarding the construction and house numbering permit from the INVU, of the Ministry of Public Works and Transport (“MOPT”); and (iii) the Association of Engineers and Architects of Costa Rica (“CFIA”) had reported that the project did not have a professional in charge in the technical department.²¹
27. On March 7, 2011, Mr. Steve Bucelato, Alfonso Jiménez and Franklin Carmiol appeared in the offices of the Municipality, appended documentation for Marvin Chinchilla and Nelson Masis Mora Campos, and requested, pursuant to such documentation, the suspension of the permits granted to the Las Olas project. Steve Bucelato, Alfonso Jiménez and Franklin Carmiol delivered at that time a report from the ACOPAC of January 3, 2011 (ACOPAC-CP-03-11)²² in which it is stated that the ACOPAC officials had made the inspections on the land where the Las Olas project was located during December 6, 10, 17 and 21, 2010 and concluded that:

²⁰ C-83.

²¹ R-56, Official Letter No. ADU 012-10; R-55, Certification of lack of Professional Responsibility.

²² C-101.

1. On the site more than 400 trees of the understory of different species had been cut, so that the filing of a criminal and administrative complaint was recommended.²³
 2. According to interviews with people who had lived in the place for 30 and up to 50 years, on the northwest part of the property was a wetland where land clearance and the beginning of infrastructure of Las Olas project were being executed. The interviewees noted that on the site it was easy to see water birds, amphibians and reptiles and that the existing vegetation on the banks of the wetland was cleared and even burned. When inspecting the area, the ACOPAC professionals noticed a semi-covered culvert with a considerable flow from the upper part of the property that flows to a sewage system built in previous months, which will drain into a mangrove swamp located about 450 m. to the southwest. Furthermore, in the location for digging trenches to construct the building, they had easily noticed the appearance of water with a yellowish coloring characteristic of wetlands and they mentioned that sand had been thrown in the trenches built so as to continue filling them in. They also observed plants and birds associated with wetlands and heard the croaking of a lot of amphibians.²⁴ For this reason, the National Wetlands Program was asked to conduct a site inspection in order to determine whether or not the wetland reported by civil society existed.²⁵
 3. We were told about the existence of a false document prepared with the forged signatures of the executive director of the SINAC in 2008, Eng. Ronald Vargas Brenes and the Project Executor Biologist Gabriel Quesada Avendaño, PhD in Science, where it is indicated that the Las Olas project did not represent a clear threat to the Esterillos Oeste biological corridor, nor was it undermining in any way the biodiversity of the local National Wildlife Refuge.²⁶ The ACOPAC recommended the suspension of the works until the real truth of the alleged facts is clarified.²⁷
28. The following day, in other words March 8, 2011, the Municipal Council agreed to ask the Mayor to send instructions to the Department of Urban and Social Development in order to suspend the permits granted until the complaints are clarified.²⁸ This document was delivered to me by the Department of Urban and Social Development.

²³ Ibid., pp. 1 and 3.

²⁴ Ibid., pp. 2 and 3.

²⁵ Ibid., p. 3.

²⁶ Ibid., p. 3.

²⁷ Ibid., p. 4.

²⁸ R-75, Official Letter No. SM-2011-0172.

29. On April 4, 2011, the Mayor sent a communication to the SINAC,²⁹ to the ACOPAC³⁰ and to the MINAE³¹ requesting that they report on the status of the complaint about irregularities in the Las Olas project since the stay order by the Municipality depended on the outcome of such investigation.
30. The ACOPAC responded to that communication on April 7, 2011 giving notice of the steps that they had taken: (i) a complaint had been filed with the Public Prosecutor's Office of Aguirre; (ii) the National Wetlands Program had conducted a visit to the site on March 26, 2011 to determine whether a wetland was located in the area, and the outcome thereof is pending; (iii) the National Institute for Innovation and Transfer in Agricultural Technology ("INTA") was asked for a land use study.³²
31. On April 27, 2011, the Deputy Minister of the Environment responded to the Mayor with the technical report ASSA-590-2011, reporting that the suspension of all construction activities of the Las Olas project had been ordered.³³
32. On May 4, 2011, the Municipal Secretary informed the Department of Urban and Social Development through note SM-2011-301 that an official letter by the SETENA had been received on Resolution No. 839-2011-SETENA dated April 13, 2011.³⁴ In that resolution, the SETENA had issued an injunction to halt any work or activity initiated in the Las Olas project and it had asked the Municipality to ensure compliance thereof until it was lifted.³⁵ This document was delivered to the DeGA by the Department of Urban and Social Development.
33. On May 5, 2011, by verbal request of the new Mayor (who had begun his term for 2011-2016), I prepared a report where the chronology of environmental matters regarding the Las Olas project was outlined and I requested the enforcement of the injunction ordered by the SETENA.³⁶ At the request of the Mayor, I prepared a copy of this document addressed to the Department of Urban and Social Development on May 9, 2016.³⁷

²⁹ R-81, Notice of the Mayor to the SINAC, April 4, 2011.

³⁰ R-80, Notice of the Mayor to the ACOPAC, April 4, 2011.

³¹ R-79, Notice of the Mayor to the MINAE, April 4, 2011.

³² R-83, Note ACOPAC-D-308-2011, April 7, 2011.

³³ R-86, DVM-117-2011.

³⁴ R-87, SM-2011-0301, May 4, 2011.

³⁵ C-20.

³⁶ R-88 DEGA-061-2011.

³⁷ R-89, DeGA-064-2011.

34. On May 11, 2011, by Note OIM No. 119-2011, the Manager of Urban and Social Development of the Municipality notified the Las Olas project regarding Resolution No. 839-2011-SETENA requesting the suspension of the works.³⁸
35. On May 12, 2011, I reported to the SETENA on the refusal of the representatives of the Las Olas project to receive notification of the injunction and contempt thereof, given the site is still carrying out building activities.³⁹
36. On June 16, 2011, I received a police observation report dated June 9, 2011 recording evidence of the continuing work at the Las Olas project site.⁴⁰ I gave notice on that same day about this matter to the Municipality Environmental Commission.⁴¹
37. On June 24, 2011, the Head of Control and Protection of the ACOPAC appeared in the DeGA and consulted with me about whether the Municipality had notified the Las Olas project developers regarding the work stoppage order. I mentioned to him that we had done so but that the developers had refused to receive the notice.
38. On June 27, 2011 at the Municipality Offices we received two reports of police observation dated June 22 and 27, 2011 that reported that in the Las Olas project area they were continuing the works.⁴² On June 28, 2011, I notified the SETENA, the MINAE and the Municipal Council on these reports so that they indicate or recommend how to proceed.⁴³
39. On June 28, 2011, I received a fax with official letters ACOPAC-CP097-11 and ACOPAC-D-413-11, which I gave notice of to the Municipal Council on July 7, 2011.⁴⁴ In official letter ACOPAC-D-413-11 of May 11, 2010, the director of the ACOPAC asked the Head of Control and Protection to coordinate with the Municipality the actions required to enforce the work stoppage on the Las Olas project.⁴⁵ In turn, in official letter ACOPAC-CP-097-11 the Head of Control and Protection of the ACOPAC requested from the Department Urban and Social Development of the Municipality copies of the notifications to the developers of Las Olas regarding the injunction from the SETENA and the stop work order issued by the ACOPAC.⁴⁶

³⁸ R-92, Official Letter No. OIM-119-2011.

³⁹ R-93, Official Letter No. DeGA-072-2011 of May 12, 2011.

⁴⁰ R-102. Observation Report.

⁴¹ C-131.

⁴² R-108, DeGA-0111-2011.

⁴³ Ibid.

⁴⁴ R-109, DeGA-0112-2011.

⁴⁵ R-91, Official Letter No. ACOPAC-D-413-11.

⁴⁶ R-107, ACOPAC-CP-097-11.

40. Subsequently, Fulvia Wohl of the SINAC informed the Municipality on September 20, 2012, that on March 18, 2011, the SINAC had issued report GASP-093-11, which indicated that in the western sector of the construction area of a demonstration house of the Las Olas project, there was a palustrine wetland that was being directly impacted by the construction of a drainage and sewage culvert.⁴⁷ The report also mentioned that at the time of the inspection, machinery was found performing earthmoving and culvert placement work on the drainage culvert in the wetland. Also in that report the SINAC concluded that the culvert work, construction of access roads and landfills had impacted the natural dynamics of the wetland in breach of the provisions in Article 45 of the Basic Law of the Environment. Therefore, the SINAC requested immediate protective measures applying the principle *in dubio pro natura*, such as the suspension of works that impact the wetland ecosystem through the culverts and sewage system, in order to prevent possible damage to natural resources and the environment in accordance with Article 11, paragraph 2 of Biodiversity Law No. 7788.⁴⁸
41. Subsequently, in the Municipality we received report ACOPAC-CP-129-2011-DEN where professionals of the ACOPAC stated that during a visit to the Las Olas project site on October 1, 2011, they found four people conducting illegal tree cutting activities, destruction and removal, burning and covering up with soil the resulting waste material.⁴⁹
42. On July 24, 2012 in the Municipality, we received report ACOPAC-CP-064-12 where it was mentioned that on May 13, 2011, a visual inspection of the site of the tree cutting and the wetland was conducted at the request of Public Prosecutor Luis Gerardo Martínez Zúñiga from the Environmental Agrarian Public Prosecutor's Office with the presence of the defendant along with his lawyer and the environmental specialist and several officials of the SINAC (pursuant to the inspection reports GASP-143-11 and ACOPAC-CP-081-11). The report also stated that in that visit, the impact on a wetland had been detected on an area of 1.35 hectares.⁵⁰
43. On August 20, 2012, the Manager of Urban and Social Development of the Municipality replied to a request for information from Mr. Sebastián Vargas Roldán (the attorney for Mr. David Aven) informing him that there were restrictions on construction activity under an investigation opened before the TAA which he should be aware of and that in accordance with official letter ACOPAC-CP-03-11 (i) the National Wetlands Program had been asked

⁴⁷ R-76, Inspection Report GASP-093-11.

⁴⁸ Ibid., p. 20.

⁴⁹ C-141.

⁵⁰ R-89, ACOPAC-CP-064-12.

to conduct an inspection of the site of the events; and (ii) the suspension of all works had been decided until the real truth of the facts is clarified.⁵¹

44. On October 10, 2012, I prepared a report for the Environmental Commission of the Municipality on all environmental background of the Las Olas project which the DeGA had, in which I concluded that due to the diversity of criteria, in accordance with the principle *in dubio pro natura*, Article 50 of the Constitution of Costa Rica, the Basic Law of the Environment (7554), the Wildlife Conservation Law (7317), and the Biodiversity Law (7788), among others, I recommended “*requesting from the Management of Wildlands that they demarcate in-situ the area classified as a palustrine wetland, in the company of this department and the Department of Urban Development, whereby we will make decisions in order to prevent any damage to the natural heritage and in turn determine the status of the project so that they can continue their work.*”⁵²
45. On October 17, 2012, we requested that the ACOPAC demarcate the wetland and declare that “*our purpose [was] to prevent any damage to the natural heritage and in turn decide the status of the project so that they can continue their work*”.⁵³ On October 30, 2012, the ACOPAC replied that it was not competent to carry out the demarcation of the wetland in the Las Olas project since that task is the responsibility of the National Geographic Institute (“IGN”).⁵⁴
46. On November 6, 2012, the Municipal Council decided to accept the request to lift the closure of the project based on the decision by the SETENA in Resolution No. 2850-2011 and formally inform Mr. David Aven that the Municipal Council agreed that the Las Olas project could continue, as long as it complies with prevailing legislation on the matter, pursuant to the central issue of the presence of a wetland, whose demarcation efforts were ongoing, without this being an obstacle to the development of the project in the rest of the territory.⁵⁵
47. On November 19, 2012, I prepared an environmental status report on the Las Olas project for the Mayor and the Department of Urban and Social Development of the Municipality in which I listed all the chronology of events that arose from the DeGA investigation.⁵⁶
48. On November 22, 2012, I received at the DeGA the order from the Criminal Court of Aguirre and Parrita dated January 26, 2012 addressed to the Mayor to not grant building permits

⁵¹ R-125, OIM-558-2012.

⁵² R-126, Official Letter DeGA-328-2012.

⁵³ R-127, Notice to the ACOPAC, October 17, 2012.

⁵⁴ R-128, ACOPAC-D-736-2012.

⁵⁵ R-129, SM-2012-802.

⁵⁶ R-132, Official Letter No. DeGA-359-2012.

under penalty of being punished for the crime of disobeying authority.⁵⁷

49. In late 2012, I was contacted by the agrarian environmental public prosecutor, Mr. Luis Gerardo Martínez Zúñiga, to appear as a witness during the criminal trial for environmental complaints in the Las Olas project. Days before I was to appear to testify, Mr. Jovan Dushan Damjanac and Mr. Sebastián Vargas Roldán came to my office and in a somewhat menacing tone, asked me what I was going to say at the trial. I just answered them that I was going to tell the truth as I remembered it, which was the same as what was recorded in the investigation of the Municipality. Then I appeared to testify at the trial on December 5, 2012.
50. On September 30, 2013, a fax arrived at the Municipality with the order of the Criminal Court of Aguirre and Parrita of September 26, 2013 to extend the protective measures until the matter was resolved by judgment of the trial court.⁵⁸
51. Then I did not hear anything more about the project or the developers until October 2015, when the Municipality received a verbal complaint from a neighbor of Esterillos Oeste that the land of the Las Olas project site had been invaded by squatters.
52. In order to address that complaint, the Municipality formed an inter-institutional Commission which was formed by law enforcement forces, the Ministry of Health, PANI [*Patronato Nacional de la Infancia*; National Children's Trust] and various departments of the Municipality such as Urban and Social Development, Women's Bureau, Terrestrial Maritime Region, etc. On October 26, 2015, the commission held a working meeting in the Municipality.⁵⁹ This meeting was attended by Mr. Jovan Dushan Damjanac who at that time once again turned to me aggressively accusing me of being at fault for what was going on.
53. During the meeting, the Department of Urban and Social Development stated that it had conducted a site visit on October 23, 2015, which was also attended by the Mayor, and wherein 25 dwellings had been shut down.⁶⁰ Furthermore, Mr. Jovan Dushan Damjanac was told that the Municipality had no jurisdiction to order an eviction but because this is private property, the eviction proceedings had to be lodged by the owner of the property with a formal complaint to the Ministry of Law Enforcement.⁶¹ The Mayor spoke personally with Mr. Jovan Dushan Damjanac and with his

⁵⁷ R-134, Order of the Court of Aguirre and Parrita.

⁵⁸ R-143, Extension of Protective Measures.

⁵⁹ R-156, DeGA-0273-2015.

⁶⁰ R-156, DeGA-0273-2015; R-155, DIDU-028-2015.

⁶¹ R-156, DeGA-0273-2015.

attorney, Mr. Manuel Ventura, to request that they urgently file the appropriate complaints to request the evacuation of the squatters.

54. Subsequently, the land owners filed a handwritten note addressed to the police that expressed their total disinterest in the issue since it did not meet the minimum requirements to be considered as a formal complaint. For this reason, the Municipality requested that Ms. Paula Helena Murillo Alpizar (the legal representative of Mr. David Aven) please make a proper and formal complaint as this was a serious issue about which the community was very concerned.
55. On November 16, 2015, Mr. Manuel Ventura informed Mayor Freddy Garro that David Aven had submitted a request to the Ministry of Law Enforcement.⁶² On November 25, 2015, the Municipality conducted a second visit to the area and again shut down the dwellings for not having building permits.⁶³
56. The last activity of the investigation was on January 8, 2016 when the TAA notified me of Resolution No. 10-16-TAA whereby the TAA requested from the ACOPAC (i) a certification of the understory permits in the Las Olas project area; (ii) the establishment of a commission of professionals with expertise in the field of evaluations to draw up a report on the economic valuation of environmental damage on the site. In addition, the TAA requested that the Department of Water of the MINAE conduct an “in situ” inspection of the property in order to verify and certify the condition, nature and current status of the alleged water bodies reported, as well as indicate whether there was any environmental damage to these resources with the relevant economic assessment report thereof.⁶⁴

3. ON THE ALLEGATIONS OF THE CLAIMANTS

57. I have read the Memorial submitted by the Claimants in the Arbitration on November 27, 2015 (the “Memorial”) and would like to make my defense with respect to certain accusations made there about my person, which are totally and absolutely false.

3.1 On the alleged “serious violation of the rights of due process accorded the Claimants”

58. In paragraph 344 of the Memorial, the Claimants make a series of serious accusations against my person which are completely unfounded:

⁶² R-157, Request for eviction.

⁶³ R-158, DIDU-032-2015.

⁶⁴ R-159, 10-16-TAA.

“344. **Mónica Vargas Quesada**, an official working in the Municipality’s Environmental Management Department, exemplifies the idea of a bureaucrat who had only peripheral involvement in the smooth-functioning approval process, but **whose meddling constituted a gross violation of the Claimants’ due process rights**. Ms. Vargas was called as a witness in Mr. Aven’s criminal trial, where she admitted that she had never actually set foot on the grounds of the Las Olas project. Nevertheless, the record includes **‘reports’ drafted by Ms. Vargas that appear simply to repeat the unsubstantiated complaints of individuals such as Mr. Bucelato, against the Las Olas project, as though they were proven facts**. She did not stop there, however. **Ms. Vargas also instigated investigations, both by SINAC/MINAE and the TAA, again based upon the unsubstantiated complaints of Mr. Bucelato**. In fact, **Ms. Vargas went so far as to fabricate a claim that the Municipality had never permitted any construction activity at the Las Olas site. At no time** during over a year of these activities did Ms. Vargas **notify the Investors** that she was conducting any sort of investigation into work taking place on the Las Olas site. They were thus unable to comment on the incorrect conclusions she had drawn, because they were not even aware of her activities.” (Emphasis added)

59. In the transcribed paragraph I am accused of having seriously infringed the rights of due process of the Claimants allegedly because:

1. My reports have repeated complaints from people like Mr. Bucelato as if they were proven facts;
2. I had instigated investigations by the SINAC and the TAA based on unsubstantiated complaints by Mr. Bucelato;
3. I had invented a claim by arguing that the Municipality had never allowed any building activity at the Las Olas site; and
4. The investors had not been notified of the investigation that was being conducted.

60. Each and every one of these accusations are completely false and as follows, I will explain why.

3.1.1 In regards that my reports had repeated complaints from people like Mr. Bucelato as if they were proven facts

61. The Claimants complain that my reports of April 26, 2009⁶⁵ and June 16, 2010⁶⁶ (cited in footnote 366 of the Memorial) repeated complaints by Mr. Bucelato as if they were proven facts.

⁶⁵ R-26, Official Letter DeGA-049-2009.

⁶⁶ C-70.

62. That is incorrect. It is enough to review the content of those reports to realize that they detail what was observed during the visits and that they refer the corresponding investigation to the competent authorities. At no point do these reports mention that the existence of a wetland or of a forest is a proven fact. If that were the case, then the request for an investigation that was made to the competent authorities would have lacked any sense. For the information of the Court, the complete content of these reports is copied below:

[coat of arms]

Municipality of Parrita
Department of Environmental Management
DeGA-049-2009

[stamp:] 00007

General information of the visited area

Inspection date: April 26, 2009	Reason for inspection: possible area of wetland landfill
Reported person(s):	Identity Card No.:
Location of land: N 09.52896° W 084.50439°	Construction area:
Telephone No.:	Cell phone:
E-mail:	Fax:

[stamp:] [illegible]

Therefore

1. An inspection was conducted on April 26, 2009 in the locality of Esterillos Oeste, due to a complaint lodged by residents of the community, given that apparently a wetlands area is being filled in.
2. On the site, two paved streets, with an east-west layout, and a landfill, can be observed.

Whereas, Regarding the facts

One. Pursuant to the visits conducted, the land is located in a low area, is characterized by soil that can be flooded and possibly saturated during the rainy season.

Two. That, according to statements by residents of the area, in the rainy season this lot becomes like a pond, and fauna characteristic of wetlands is observed.

Three. That, on the site not only is the sedimentation of the pond seen but also cutting and burning of trees; for this reason, the species that are located on the land could not be determined.

Regarding legal issues

1. The Political Constitution of Costa Rica clearly states in Article 50 that all individuals are entitled to a healthy and ecologically balanced environment. Therefore, all individuals have the right to file complaints due to acts that infringe that right and to file claims for remedy of the damages caused.

The Government shall ensure, defend and protect that right.

2. The Wildlife Conservation Law (7317), Article 103, amended on December 4, 2008: Anyone shall be sanctioned by jail sentence from one to three years who, without prior authorization of the National System of Conservation Areas, drains, dries, fills in, and eliminates lakes, non-artificial ponds and any other wetlands, whether or not declared as such.

Consequently

One. Request that authorities conduct the respective investigation in order to determine if such laws are being infringed.

Two. Request that the Department of Environmental Management of the Municipality of Parrita be notified regarding that report.

AS DOCUMENTARY PROOF of the enumerated facts, a photographic logbook is provided, for the purpose of proceeding in accordance with the law.

Sincerely: _____ [stamp:] [illegible]

Mónica Vargas Quesada
Department of Environmental Management
Municipality of Parrita.

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Municipality of Parrita
Department of Environmental Management
DeGA-091-2009

[stamp:] [illegible]

DATE: June 16, 2010
TO: Eng. Carlos Vinicio Cordero, Director, ACOPAC
FROM: MaReNa [Masters in Natural Resources]. Mónica Vargas Q., Department of Environmental Management, Municipality of Parrita
FAX: 2416-5017.
REASON: Request for classification of area and report of lack of actions by the MINAET.

PARTICULARS			
Date of preparation: May 31, 2010		Reason for inspection: <i>In dubio pro natura</i> There is no classification of the area.	
Owner	License	Plan Number	Registration
Noches de Esterillos SA	3-101-511419	1233420-2007	156482
Cerros de Esterillos del Oeste	3-101-509725	1223330-2007	156483
Lomas de Esterillos SA	3-101-509680	1223337-2007	156484
Atardeceres Cálidos de Esterillos Oeste SA	3-101-513831	1223334-2007	156485
Jardines de Esterillos SA	3-101-510434	1223333-2007	156486
Paisajes de Esterillos SA	3-101-510013	1223331-2007	156487
31014779152 SA	3-101-479152	1244756-2007	156488
3-101-567250 SA	3-101-567250	1244755-2007	156489
Location of the land: N. 09.52934° W 084.50479°		Address: Esterillos Oeste Las Olas Project.	

Therefore

[stamp:] [illegible]

1. On April 26, 2009, an inspection was conducted by the Municipality and MINAET-ACOPAC in the locality of Esterillos Oeste, due to a complaint lodged by residents of the community, given that, apparently, an area of wetlands is being filled in; official letter No. DeGA-049-2009 dated April 26 was sent.
2. On the site, two paved streets with at east-west layout can be observed.
3. The area has wetland characteristics, however there is no certification of this status.
4. On January 20, 2010, a second inspection was conducted along with an official of the ACOPAC-MINAET, due to machinery working on the site.
5. No report is in hand for that inspection by the MINAET.
6. This past May 21, 2010, a third inspection was supposed to be conducted, due to the fact that works are continuing on the site.
7. It was observed that the company SELECTRICA SA headed by Mr. Jairo Guadamuz, Identification No. 1-580-127, a private company authorized by the ICE, put up two electrical poles in the inspected area.
8. ACOPAC-MINAET have not decided on the classification of the inspected place.

Whereas, Regarding the facts

One. The observed area is characterized by being terrain with soil that can be flooded and runoff of rainwater.

Two. According to statements by residents of the area, this lot, in the rainy season, behaves like a pond, and fauna characteristic of wetlands can be observed.

Three. On the site, compaction of the land, and the cutting and burning of trees can be observed during different periods of the year, exclusively on weekends.

Four. There is no certification of the classification of the area, by the MINAET.

Five. According to a consultation of the National Registry, the lots corresponding to the affected property are of a type devoted to access and rainwater runoff easements, whose taxation is in accordance with the Water Law and the Roads Law.

Six. The Municipality of Parrita has not granted any kind of building permit to the owners of these locations.

Seven. There already exist internal streets on the site, and poles had been put up for electricity.

Regarding legal issues

1. The Political Constitution of Costa Rica clearly states in Article 50 that all individuals are entitled to a healthy and ecologically balanced environment. Therefore, all individuals have the right to file complaints due to acts that infringe that right and to file claims for remedy of the damages caused.

The Government shall ensure, defend and protect that right.

2. The Wildlife Conservation Law (7317), Article 103, amended on December 4, 2008: Anyone shall be sanctioned by jail sentence from one to three years who, without prior authorization of the National System of Conservation Areas, drains, dries, fills in, or eliminates lakes, non-artificial ponds and any other wetlands, whether or not declared as such.

Consequently

One. Request that authorities conduct the respective investigation in order to determine if such laws are being infringed.

Two. Request the certification of the classification of the area.

Three. That the Department of Environmental Management of the Municipality of Parrita be notified regarding that report.

AS DOCUMENTARY PROOF of the enumerated facts, a photographic logbook is provided, for the purpose of proceeding in accordance with the law.

For more information, contact the Department of Environmental Management of the Municipality of Parrita at: telephone 2779-5454 extension 133.

[stamp:] MUNICIPALITY OF PARRITA
DEPT. OF ENVIRONMENTAL MANAGEMENT
[coat of arms]

[signature]

Mónica Vargas Quesada

Department of Environmental Management

Municipality of Parrita.

63. It can be seen clearly that both visit reports are professional documents, written with complete objectivity, where the situation is described, without regarding any fact reported as proven and the intervention by the competent institution is requested. It is really demeaning as a professional to have to see that the claimants refer to my work in such a pejorative fashion, disqualifying it by putting the term reports in quotation marks (“reports”) and arguing that those reports state something that they do not state.

3.1.2 On promoting the investigations by the SINAC and the TAA based on Mr. Bucelato's unsubstantiated complaints

64. The claimants allege that I have seriously violated their right to due process by having promoted investigation at the SINAC and TAA. Similarly, in paragraph 346 of the Memorial, they argue that.

“346. Ms. Vargas’s involvement was not harmless, by any means. Having been fed scurrilous information by Mr. Bucelato, **she was the one who instigated the TAA’s initial investigations into the Las Olas site**, with a complaint dated June 15, 2010. Thanks to the apparent intervention of the better-informed Mayor William Carajal Campos, Ms. Vargas was forced to inform the TAA, only two months later, that, in fact, all of the Las Olas site permits were in order.” (Emphasis added)

65. The truth is that my role as Environmental Manager of the Municipality is precisely to promote investigations with the competent authorities in cases where there is the possibility of damage to the environment. It is impossible to imagine how I could perform my duties if whenever I requested that the competent institutions investigate an alleged environmental damage, by the mere fact of promoting such investigations, I would be seriously violating the due process rights of the developers of a project.

66. As to whether Mr. Bucelato’s complaints were unfounded or not, the respective decision is not within my duties as Environmental Manager of the Municipality, but rather for the competent authorities, reason precisely why the intervention of the SINAC and of the TAA was more than justified.

67. Furthermore, it is totally false that “Thanks to the apparent intervention of the better-informed Mayor William Carajal Campos,” I have been “forced” to admit that “in fact, all of the Las Olas site permits were in order.” A similar argument can be found in paragraph 349 of the Memorial:

“349. It was Ms. Díaz’s instigation of the **Mayor** that triggered his apparent **involvement in setting his employee, Ms. Vargas, straight**, as evidenced by the letter sent by Ms. Díaz, and Mayor Carajal, to Ms. Vargas on August 18, 2010, in which the former **was forced to admit that the Las Olas site actually had all of its permits in order.**” (Emphasis added)

68. The allegations of the claimants collapse under their own weight, because first, Mr. William Carvajal Campos was not mayor at that time. I do not even know Mr. Carvajal Campos; all that I know is that he was mayor of Parrita in the 1994-2002 period.

69. Second, there is absolutely no letter of which I am aware that has been sent to me “by Ms. Díaz, and Mayor Carajal, to Ms. Vargas on August 18, 2010,” where I have been “forced to admit that the Las Olas site actually had all of its permits in order,” as falsely claimed by the claimants.
70. The truth is that by the date on which I gave notice of the environmental complaint to the TAA (June 15, 2010), the Las Olas project did not have absolutely any permit:
1. The Environmental Feasibility Study which had been issued by the SETENA on June 2, 2008 was expired (2-year term to begin construction),⁶⁷
 2. The Municipality had not granted absolutely any building permit (the access easement permits were granted on July 16, 2010 and the building permit on September 7, 2010);⁶⁸
 3. The claimants had not even applied for the respective permits before the SINAC to be able to cut down trees.
71. Much to the contrary of what the claimants claim, what happened two months later was not that the Mayor has forced me to admit that there were permits, but that on August 27, 2010, at the service platform of the Municipality the tour report dated July 16, 2010 ACOPAC-OSRAP-371-2010 was received, in which it was mentioned that on the property of the Las Olas project there were no wetland areas.⁶⁹ Based on that document, I myself recommended, on August 29, 2010, that the Mayor⁷⁰ and the TAA⁷¹ request from the developers the environmental feasibility study from the SETENA (since it was expired) before being able to proceed with the approval of the construction of the Las Olas Project.
72. That is, in the note to the TAA, far from admitting that all permits for the Las Olas project were in order, as claimed by the Claimants, what I said was that it was necessary that the developers submit the renewal of the Environmental Feasibility Study obtained before the SETENA in order to then be able to continue the proceedings for obtaining the building permits before the Municipality.

⁶⁷ C-13; C-52.

⁶⁸ R-54, Building Permit 130-10.

⁶⁹ C-72.

⁷⁰ R-52, Official Letter DeGA-0122-2010.

⁷¹ C-81.

3.1.3 Regarding the alleged fabrication of a claim arguing that the Municipality had never permitted any building activity on the Las Olas site

73. The claimants allege that I had invented a claim arguing that the Municipality had never permitted any building activity on the Las Olas site. In making this claim, they refer (in footnote 368 of the Memorial) again to the tour report dated June 16, 2011, the contents of which I have previously transcribed in their entirety. Again, the Claimants disregard the truth, given the fact that days before issuing the report, I requested that the Department of Urban and Social Development of the Municipality inform me whether the building permits had been granted in relation to the Las Olas project site, and the response that I received was negative. As is stated in Note OIM No. 113-2010 which I copy below:

Parrita, June 14, 2010

Ms. Mónica Vargas
Department of Environmental Management

[stamp:] Municipality of
Parrita, COPY, OFFICE
OF ENGINEERING, [coat
of arms]

[stamp:] Municipality of
Parrita, COPY, OFFICE
OF ENGINEERING, [coat
of arms]

Dear Ms. Vargas,

According to Official Letter DeGA-091-2010, granted by you, I herein make an explanatory observation regarding the status of this project of Las Olas S.A., located in Esterillos Oeste. It does not have any permit before this department for the execution of Earthworks nor for the construction of Private Streets with electrification. The lots are not broken down into lots for Urban Development and as is clearly said in official letter DeGA-091-2009, the master plans are covered by the taxation in the water impact law, and for this reason the municipality cannot divide the property into lots, if due process is not complied with by conducting the proceedings before the relevant governmental entities, in order to be able to process the permit, as a residential project, which it currently does not have.

Furthermore, the only thing that this entity has processed before this Municipality on behalf of La Canícula S.A. is in the Concessionable portion of Hotel Cabinas y Piscinas, where SETENA submitted the building requirements to date, but the works were not completed in their entirety by the owner, allowing the building permits to expire as well as the extension from the SETENA, and therefore they cannot start to build on that part.

And the studies of the Concessionable portion are not valid for exempting the other properties from the proceedings, like the sale of lots.

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74. But aside from that, the Claimants were fully aware that they lacked building permits from the Municipality. On June 14, 2010, the Department of Urban and Social Development notified Mr. David Aven that he did not have the necessary permits for the execution of earthworks and private streets conducted in Las Olas and requested that he immediately begin to process them before the National Institute of Housing and Urban Development (“INVU”), given

⁷² R-34, Official Letter No. OIM 113-2010.

that such permits were indispensable for the Municipality to be able to grant building permits.

[coat of arms]

**Municipality of Parrita
Municipal Engineering Department**

OIM No. 114-2010

[stamp:] [illegible]

Parrita, June 14, 2010

Mr. David Aven
La Canícula S.A.

[stamp:] Municipality of
Parrita, COPY, OFFICE OF
ENGINEERING
[coat of arms]

Dear Sir,

With this letter, we are notifying you that the Earthworks and Private Streets with electrification that are being carried out in due course in the part of Esterillos Oeste called Las Olas Beach Community S.A. do not have their respective building permits before this Municipality of Parrita. Therefore, we request that you begin to process all the permits in the governmental entities (SETENA, INVU and their respective studies), because otherwise, the building permits for private streets cannot be granted, without a ruling by the INVU stating for the record that this is a type of Condominium, Urban Development, Subdivision, or Country Manor. This means that regarding the Municipality, it will also be impossible to process any cadastral map as it does not have the approval for the Private Streets before the INVU.

Before this department, it is requested that you immediately begin to process as soon as possible all necessary matters related to the construction; if not, we shall be required to Close Off the streets and take action in the courts.

Without any further ado,

[stamp:] MUNICIPALITY OF PARRITA
ENGINEERING DEPARTMENT
[coat of arms]

[signature]

Eng. Shelem Castro Vásquez
Department of Urban Development
Municipality of Parrita

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75. So it is clear that I have not “invented” the fact that as of June 2011, the Las Olas project developers lacked construction permits from the Municipality, but rather that this was not only accurate, but furthermore the claimants have received full notice thereof.
76. In this regard, I would like to note that as stated in numerous inspections at the project site, the developers began to build without authorization from

⁷³ R-35, Official Letter No. 114-2010.

the Municipality and they never met the requirements requested by the Municipality to proceed with the construction.

77. Let's remember that the building permit for Inversiones Costco was granted on September 21, 2010.⁷⁴ Well, a year and a half before that happened, on April 26, 2009 when I made my first visit to the Las Olas project site, I saw that two streets had already been paved and there was landfill on the site.⁷⁵ Furthermore, during the visits dated January 20 and May 21, 2010, I saw that besides the paved streets, electrical poles had been placed.⁷⁶
78. But, in addition, the project developers not only built without the relevant permit from the Municipality, but they also failed to comply with the protective injunction of the SETENA and work stay orders from the ACOPAC and the Municipality. The developers were notified of this work stay order as of May 11, 2011.⁷⁷ However, as recorded in the police records of June 9, 22 and 27, i.e., more than a month after notification of the injunction, the developers continued carrying out works on the Las Olas project site.⁷⁸
79. The Claimants accuse me of having reported such violation to the SETENA.⁷⁹ However, that was my responsibility. As evidenced by Resolution No. 839-2011-SETENA dated April 13, 2011, the SETENA ordered the Municipality to ensure compliance with the protective injunction until it was lifted.⁸⁰ Furthermore, by official letter ACOPAC-D-413-11 of May 11, 2010, the director of the ACOPAC requested that the Municipality take the measures that prove necessary to enforce the stoppage of work on the Las Olas project.⁸¹ Therefore, if the work stay order was not being enforced, what was due was for the Municipality to give notice of that fact to the competent authorities.
80. Now, the claimants claim that they were not contravening the work stoppage orders, given that, even though the Municipality had revoked the building permit, "*it had continued granting permits lawfully for the construction*

⁷⁴ R-54, Building Permit 130-10.

⁷⁵ R-26, Official Letter No. DeGA-049-2009.

⁷⁶ C-67

⁷⁷ R-92, Official Letter No. OIM-119-2011; C-125

⁷⁸ R-102, Observation Report; R -108, DeGA-0111-2011.

⁷⁹ C-13, C-132, C-133.

⁸⁰ C-20.

⁸¹ R-91, Official Letter No. ACOPAC-D-413-11.

on the site unaffected by the order of the SETENA.”⁸² Once again, this is false. The stay order from the SETENA affected the entire Las Olas project site:

**THEREFORE
THE PLENARY COMMISSION HEREBY RESOLVES:**

In ordinary meeting No. 033-2011 of this Secretariat, held on April 12, 2011, in Article No. 10, it accords:

ONE: Pursuant to the provisions in the whereases of this resolution, **the suspension of any work or activity initiated** on the *Proyecto Condominio Horizontal Las Olas* [Las Olas Residential Horizontal Condominium Project], Administrative Investigation No. D1-1362-2007-SETENA, is established as a **Protective Injunction**.

81. Therefore, there was no “site unaffected by the order of the SETENA” as the Claimants falsely argue, nor did other permits exist that the Municipality has “continued granting... for the construction on the site unaffected by the order of the SETENA.” The Claimants do not append any evidence in this regards, because there just isn’t any such evidence. All building permits issued for the execution of the Las Olas project were suspended, and the developers had been duly notified thereof on May 11, 2011:

⁸² Memorial, paragraph 345.

⁸³ C-20.

[coat of arms]

Municipality of Parrita
Department of Urban and Social Development

[stamp:] 0000336

OIM No. 119-011

Parrita, May 11, 2011

[handwritten:] 5/11/2011 / 10:50
a.m. The documents were left at the
site with Mr. Juan in the presence
of the law enforcement officials.

[stamp:] Municipality of
Parrita, COPY, [illegible]
[coat of arms]

[stamp:] Municipality of
Parrita, COPY, [illegible]
[coat of arms]

Dear Sirs,

PROYECTO CONDOMINIO HORIZONTAL LAS OLAS.

Dear Sirs,

Resolution No. 839-2011-SETENA regarding the Proyecto Condominio Horizontal Las Olas so resolves, among other issues, the following:

ONE: Establishes as protective injunction the suspension of any work or activity on the Proyecto Condominio Horizontal Las Olas, Administrative Investigation No. D1-1362-2007 SETENA.

TWO: Based on the principle of Coordination of the Public Administration and with the Basic Law of the Environment, specifically Article 28, it is requested that the Municipality of Parrita ensure the enforcement of the protective injunction rendered in this technical report, until the time when this Secretariat informs thereto that it has been lifted. Furthermore, they are called on to no grant any kind of building permit in the project area, as long as this secretariat does not proceed to lift the protective injunction.

Therefore, they are instructed that they should, under the terms set forth in Resolution No. 839-2011-SETENA, abide by all matters regarding the provision to suspend all building work within the boundaries of the project covered by the aforementioned resolution.

A copy of the resolution issued by the SETENA is appended.

[handwritten:] Note: Original
filed in official letters sent
2011.

[stamp:] MUNICIPALITY OF
PARRITA, INSPECTORATE
[coat of arms]

Sincerely,

[signature]
Eng. Jorge Álvarez Mondragón
Manager of Urban and Social Development of the Municipality of Parrita
Municipality of Parrita

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3.1.4 The investors had not have been notified of the investigation

82. Finally, the Claimants accuse me of not notifying the developers about the investigation that was being conducted. They make similar statements in other parts of the Memorial:

“354. Essentially the polar opposite of their relationship with the government officials who were putatively responsible for regulation of their activities, this one was marked by dysfunction and distrust. Indeed, the relationship was so bad that the government officials leading it **had either decided against even informing the Investors that it existed, or they were simply indifferent as to what the Investors might have to think or say about their intrigues...**” (Emphasis added)

⁸⁴ R-92, Official Letter No. OIM-119-2011.

“413. (i) ... But [sic: had it not been] for the **decisions repeatedly taken, by officials such as Vargas and Díaz, and of [by] organizations such as [the] SINAC and the TAA, to hide their investigations from the Investors, and to not permit them to either learn of, or reply to, [sic: to prevent them from hearing, or responding to] the accusations made against them,** the falsity or [of] those allegations could have been proved long before any interruption to the Project would have occurred.” (Emphasis added) [Translation source: 2015.11.27 Aven et al v Costa Rica - Claimants_ Memorial]

83. First, I have to clarify that the procedure followed by the Municipality to coordinate investigations of alleged environmental damage with the competent institutions, does not include the notification or the participation of the developers, who will of course have an opportunity to be heard in the relevant instances should there be sufficient elements in the investigation regarding the existence of an infringement to environmental legislation that merits the initiation of administrative or judicial proceedings.
84. On the other hand, it is the responsibility of the developers, through their Environmental Regent, to appear before the Municipality’s Environmental Management Office to report on the permits obtained before the competent institutions should the intention be to cut down trees or affect a wetland in the area of construction (for which permits from SINAC are required). Neither the developers nor their Environmental Regent ever came to the Municipality’s Environmental Management Office to submit permits, obtain advice or for any other issue, which denotes a complete disregard in the environmental issue.
85. But in any case, it is absolutely false that the developers were not aware of the proceedings pending before the Municipality. On the contrary, they were informed on numerous occasions and in every case they decided to ignore the notifications and even refused to receive them.
 1. On September 7, 2010, when the attorney of Mr. David Aven, Sebastián Vargas, was in the Municipality to submit the necessary documents for obtaining the building permit for Inversiones Costco, I informed him personally that it was very important that the Environmental Specialist deal with the environmental issue as there had been several complaints that a possible wetland was being affected and trees were being cut down without a permit; for this reason, he was asked to please tell the Specialist to contact me.
 2. On September 13, 2010, the Department of Urban and Social Development of the Municipality notified the persons in charge of the Las Olas project that: (i) the property was affected by an area of mangroves; (ii) the submission of the street numbering paperwork of the INVU, under the Ministry of Public Works and Transport (“MOPT”) was pending; (iii) the Association of Engineers and Architects of Costa Rica (“CFIA”) had reported that the project did not have a professional

in charge of the technical direction; and (iv) with respect to Land Use, a more detailed assessment would be conducted to verify the affected areas.⁸⁵

3. On May 11, 2011, by Note OIM No. 119-2011, the Manager of Urban and Social Development of the Municipality notified the Las Olas project regarding Resolution No. 839-2011-SETENA, requesting the cessation of work, and that Mr. Jovan Dushan Damjanac refused to receive it, and therefore it was necessary to request police presence.⁸⁶
4. On August 10, 2011, the Municipality notified Messrs. David Aven and Jovan Dushan Damjanac that the collapse of the rainwater pipeline flowing from the Las Olas project site had caused flooding in the town and that the building details presented in the plans before the Municipality did not correspond to what had been built. So they were asked to submit certain relevant technical information as soon as possible. However, once again, Mr. Jovan Dushan Damjanac refused to sign acknowledging receipt and his attorney, Mr. Sebastián Vargas, instructed that they should not sign the acknowledgment of receipt but also that the developers should not provide the documentation required by the Municipality.⁸⁷
5. On December 2, 2011, the Department of Urban and Social Development responded to a note from Mr. Jovan Dushan Damjanac, requesting information on the visits by inspectors to the Las Olas project.⁸⁸
6. On August 20, 2012, the Manager of Urban and Social Development of the Municipality replied to a request for information from Atty. Sebastián Vargas Roldán (Mr. David Aven's attorney) stating that there were restrictions on building activity under an investigation opened before the TAA which he should be aware of and that pursuant to official letter ACOPAC-CP-03-11, (i) the National Wetlands Program had been asked to conduct an inspection on the site regarding the facts; and (ii) the suspension of all works had been decided until the real truth of the facts had been clarified.⁸⁹
7. On November 20, 2012, Mr. David Aven was notified regarding the Municipal Council agreement whereby it was decided that in order to continue the work on the

⁸⁵ R-57, Official Letter ADU No. 013-10.

⁸⁶ R-92, Official Letter No. OIM-119-2011; C-125; R-93, Official Letter No. DeGA-072-2011 of May 12, 2011.

⁸⁷ R-111, Official Letter No. DI-025-2011; R-110, OIM 244-2011.

⁸⁸ R-118, OIM-456-2011.

⁸⁹ R-125, OIM-558-2012.

rest of the property, it was necessary to contract the services of the IGN for the delimitation of wetland area, for the purpose of its conservation.⁹⁰

8. On December 4, 2012, the Municipality responded to the request for information from Mr. Manuel Ventura (Mr. David Aven's attorney).⁹¹

86. Therefore, it is not true that the developers have not been notified of the proceedings pending before the Municipality. Not only were they notified, but it was they who chose to ignore and violate these notifications and never appeared in the DeGA to address the environmental issues.

87. Never was there, on my part or on the part of any other official of the Municipality, any hiding of information. On the contrary, on the few occasions where the developers requested some information from the Municipality, it was provided in full and expeditiously.⁹²

3.2 About my role in determining the existence of a wetland

88. In paragraph 193 of the Memorial, the Claimants argue:

“193. In addition, the prosecution called Mónica Vargas Quesada, an employee of the Municipality of Parrita, to testify. **On May 31, 2010, Ms. Vargas filed a complaint with the MINAE regarding the Las Olas site.** The complaint was based on a separate complaint submitted to Ms. Vargas by numerous neighbors of the Las Olas site. **Both complaints claimed that there were wetlands on the property, but Ms. Vargas's testimony at trial did nothing to prove the existence of wetlands.** Instead, she admitted that she never personally observed wetlands on the Las Olas site, because she never actually stepped foot on the property. Moreover, she conceded that her department, titled the Department for Environmental Action, is not responsible for the classification of wetlands. Notably, not a single neighbor listed in the complaint to Ms. Vargas agreed to testify at Mr. Aven's trial, with the exception of Mr. Bucelato.” (Emphasis added)

89. The Claimants are wrong to argue that on May 31, 2010, I filed a complaint with the MINAE arguing as a proven fact that there were wetlands on the property of the Las Olas project. As can be very clearly seen from reading Official Letter DeGA-091-2009 of May 31, 2010,⁹³ which I sent to the ACOPAC on June 16, 2010,⁹⁴ I only described therein what

⁹⁰ R-133, SM-2012-841.

⁹¹ R-137, Official Letter No. No. OIM 865-2012; R-136, Official Letter No. OIM No. 864-2012; R-138; Official Letter No. OIM 863-2012; R-135, [Attorney Manuel] Ventura Note.

⁹² R-118, OIM-456-2011; R-125, OIM-558-2012; R-135, [Attorney Manuel] Ventura Note; R-137, Official Letter No. OIM 865-2012; R-136, Official Letter No. OIM No. 864-2012; R-138, Official Letter No. OIM No. 863-2012.

⁹³ C-67.

⁹⁴ C-70.

I observed during the three visits that I conducted to the reported area and only requested that the competent authorities investigate the case and classify the area.

One. Request that the authorities conduct the respective investigation in order to determine if such laws are being infringed.

Two. Request the certification of the classification of the area.

Three. Request that the Department of Environmental Management of the Municipality of Parrita be notified regarding that report.

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90. Nowhere in the report did I mention that there were wetlands on the property. As I explained at the beginning of this statement, in my capacity as Environmental Manager of the Municipality I have no jurisdiction to determine the existence of a wetland, something which is the responsibility of the National Wetlands Program of the ACOPAC. If I could have determined the existence of wetlands, I would not have requested that the MINAE investigate the case and classify the area.
91. My role is to coordinate the exchange of information between various environmental protection agencies in order to be able follow up on complaints about possible environmental damage. That's exactly what I did in this case.
92. If a review of each of my involvements is done, it can be proved that in absolutely none of them did I affirm the existence of a wetland on the Las Olas project site as a proven fact, but my role was limited to the coordination of the exchange of information between institutions. In fact, my involvement in the case is limited to the preparation of reports of visits to the site pursuant to community complaints and requests that the competent authorities investigate whether in the area there was a wetland and whether the activities carried out there were contrary to environmental legislation.

3.3 About my alleged “alliance” with Mr. Steve Bucelato and official Hazel Díaz

93. In the Memorial, the Claimants attempt to portray a “conspiracy” between Mr. Steve Bucelato, official Hazel Diaz and myself. So, for example in paragraphs 327 and 354 of the Memorial, the Claimants argue the following:

“327. Just as Mr. Damjanac had been accommodating of the SETENA inspection request in mid-August 2010, SETENA officials were efficient in deciding, in August 2010, that there was no merit to **the complaints being pressed by Mr. Bucelato and his two allies in local government, Ms. Mónica Vargas Quesada and Ms. Hazel Díaz Meléndez.**” (Emphasis added)

⁹⁵ C-67; C-70.

“354. ... The key players in this one-sided relationship were initially **Ms. Díaz and Ms. Vargas**. The record suggests **that both may have been working at the behest of Mr. Bucelato**, for whom they had been able to launch a number of duplicative and unwarranted investigations into the Las Olas Project, which eventually had the cumulative effect of first threatening and ultimately stranding and frustrating any meaningful use of the Claimants’ investments.” (Emphasis added)

94. Nothing could be further from the truth. I do not know public official Hazel Díaz Meléndez personally nor have I ever talked to her by phone. My only contact with her concerning the notifications I received from the ‘Defensoría de los Habitantes’ (Ombudsman) that were signed by her. Due to the requirements of the Ombudsman, I once had contact with Ms. Alejandra Vega Hidalgo, as the notification of the Ombudsman mentioned her as the person we should contact by telephone regarding any procedure or information because she was the professional in charge of the investigation. That was my entire contact with the Ombudsman, so one could hardly say truthfully that public official Hazel Díaz Meléndez was my “ally”.
95. Regarding Mr. Bucelato, he is a neighbor from the community of Esterillos Oeste where I reside. Everybody in the town knows him for his commitment to the environment. He is an American citizen who came to the Municipality on various occasions to address the environmental issues. In my opinion, he is not an extreme ecologist but rather a person who felt helpless in the face of the environmental damage and who wanted to prevent further damage to the environment. On various occasions, Mr. Bucelato said he had been threatened and assaulted by the developers of the Las Olas project and came to the Municipality crying saying he was running away because they were following him.
96. Very much contrary to what the Claimants are inventing, Mr. Bucelato did not consider that I was his “ally” much less that I worked for him. While in the performance of my duties I processed and followed up on Mr. Bucelato’s claim in relation to the possible environmental damage, he was very angry at me because in his opinion the Municipality was not doing enough to stop the environmental damage, to the point that nowadays if he sees me, he does not even greet me.
97. The Claimants also claim falsely that I was involved in the complaint by Mr. Bucelato that, in the investigation that led to the environmental feasibility study issued by the SETENA, there was a false document. Thus in paragraph 347 of the Memorial, they allege,

“347. Ms. Vargas’s name also came up in connection with another false claim by Mr. Bucelato on November 1, 2011, this time defaming Mr. Aven by alleging

that he had procured the original findings of environmental viability [feasibility] from SETENA, in 2008, by submitting a falsified document...”

98. The claims by the Claimants are absolutely false. First, I had no involvement in Mr. Bucelato’s complaint regarding the false document. The complaint was lodged on March 7, 2011 by Mr. Steve Bucelato, Alfonso Jiménez and Franklin Carmiol before the officials of the Municipality Marvin Mora Chinchilla and Nelson Masís Campos.⁹⁶
99. I had no connection at all related to any complaint of November 1, 2011 as alleged by the Claimants. On the contrary, I learned of the existence of the false document by receiving in the investigation the report of the ACOPAC of January 3, 2011 (ACOPAC-CP-03-11).⁹⁷ Honestly, seeing the contents of the report of the ACOPAC, I was really surprised to learn that the document that had been submitted by Mr. David Aven months ago in the Municipality was false.
100. I know that the Claimants argue that Eng. Bogantes had manipulated the investigation of the SINAC in order to incriminate Mr. Aven for falsifying that document.⁹⁸ However, according to the investigation of the Municipality, in the official letter issued to the Ombudsman dated August 18, 2010, it stated that it had been Mr. David Aven himself who had delivered that false document to the Municipality:

9. In any event, Mr. David Aven, the representative of the Las Olas project, delivered to us a document prepared by the SINAC 67389RNVS-2008, signed by Eng. Ronald Vargas Brenes, the SINAC director, indicating that the Las Olas project does not represent a clear threat in the Esterillos Oeste biological corridor nor does it undermine in any way the biodiversity of the local National Wildlife Refuge. However this Municipality does not have the copy of the environmental impact study that should have been legally delivered to the municipality (see appended note from Eng. Vargas Brenes).

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101. Therefore, a year after receiving in the Municipality the SINAC report No. 67389TNVS-2008 from Mr. David Aven, I learned by reading the report from the ACOPAC on the falsity thereof. I thought that at minimum what was required was that the competent authorities investigate the matter. However, it was not necessary for me to report or take any action, as it was the Municipal Council which agreed to ask the Mayor to issue instructions to the Department of Urban and Social Development in order to suspend the permits granted so as to proceed to clarify the

⁹⁶ R-74, Official Letter No. DZMT-026-2011.

⁹⁷ C-101.

⁹⁸ Memorial, paragraph 413 (III).

⁹⁹ R-49, Official Letter No. 200-2010, p. 2.

complaints lodged.¹⁰⁰ Furthermore, the Mayor sent a communication to the SINAC,¹⁰¹ the ACOPAC¹⁰² and the MINAE,¹⁰³ asking them to advise on the status of the complaint about irregularities. While I totally agree with all these measures, none taken by me, so what is claimed by the Claimants is totally false.

3.4 On my alleged “hostility” or “malicious intentions”

102. In several paragraphs of the Memorial, the Claimants portray me as if I had something personal against the development of the Las Olas project and had acted in bad faith. Thus, this can be seen, for example, in the following sections:

“379. Second, and more importantly, given the plodding pace of Costa Rica’s courts, **victory was not necessarily going to be achieved for the enemies and opponents of the Las Olas project** once the charges against Mr. Aven had been given a fair airing, or any problems with the Las Olas site being put to rights [sic: put right] through remedial action. No, victory was achieved, for the likes of Mr. Bogantes and **Ms. Vargas, simply by ensuring that the project would be shut down for at least a year.** The reputational damage arising from the laying of criminal charges, alone, could sound the death knell for an advanced [sic: exclusive], luxury real estate project. Leaving a project in legal limbo for any longer would mean the loss of staff and available contractors, the ageing [sic: potential expiry] of time-limited permits and the physical decay [sic: deterioration] of the partially-completed project site.” (Emphasis added)

“389 ... Las Olas had just survived **concerted attacks** by two officials, **Ms. Díaz** and Ms. Vargas, whose efforts had only just been stymied, respectively, by the SETENA and the Mayor.” (Emphasis added)

“413. (i) ... But [sic: if it weren’t] for the **evident disposition** [sic: mindset], held by each of Bogantes, Díaz and **Vargas – to remain willfully blind as to the fact that Las Olas [project] was being developed in accordance with all applicable laws and regulations,** and to subvert SETENA’s exercise of supervisory authority over the Project – Bucelato’s false accusations would have not [sic: not have] been resuscitated, or found their way into [sic: the way open to initiating] a criminal investigation. As such, development of Las Olas [project] would have continued through to completion... (Emphasis completed) [Translation source: 2015.11.27 Aven et al v Costa Rica - Claimants_ Memorial]

“(iii) Mr. Bogantes’ malicious and deceitful conduct abetted the respective **crusades** upon which Ms. Díaz and Ms. **Vargas** had already embarked. His or an unknown co-conspirator’s manipulation of 2008 MINAE records allowed him to frame Mr. Aven for a falsification of documents charge, which went to the heart of [obtaining] the approvals [sic: permits] required for the development of Las Olas [Project] to proceed. His or an [sic: his] unknown co-conspirator’s circulation [sic: disclosure] of this fabrication to [Ms.] Díaz, and possibly also [to] Bucelato, reinforced the likelihood that

¹⁰⁰ R-75, Official Letter No. SM-2011-0172.

¹⁰¹ R-81, Notice from the Mayor to the SINAC, April 4, 2011.

¹⁰² R-80, Notice from the Mayor to the ACOPAC, April 4, 2011.

¹⁰³ R-79, Notice from the Mayor to the MINAE, April 4, 2011.

it [sic: they] would be used against Mr. Aven, at a safe distance from its [actual] author(s).” (Emphasis added) [Translation source: 2015.11.27 Aven et al v Costa Rica - Claimants_ Memorial.pdf]

103. All of these accusations are false and completely unjust. My intention was never to harm the Las Olas project, but rather to ensure compliance with environmental legislation on the basis of the position that I hold in the Municipality. In fact, as a neighbor of Esterillos Oeste, I always thought that the development of the project would be something positive for the community given that it would generate economic activity and more jobs. Of course what I most wanted was to take the project forward. But this does not mean that I can ignore claims regarding alleged environmental damage, without breaching my duties as Environmental Manager. What was most appropriate was that the development should be taken forward respecting environmental legislation and this was the only thing at which my interventions were directed. In this sense, the [sic: my] priority is always to behave with professional ethics and to carry out the duties that were entrusted to me as Environmental Manager. Not having done so would have made me liable to claims regarding the poor performance of my duties.
104. However, it is clear that the developers of the Las Olas project had no interest in complying with the environmental legislation of Costa Rica. Otherwise, the project could have been developed without problems since the project area, the forest and wetland areas represented only a small portion thereof. That is why the question would have been easy to solve if the developers had submitted a plan to the SINAC and obtained the relevant permits. However, neither the developers nor the Environmental Specialist demonstrated that they had any interest in this regard. In general, the developers see environmental issues as an obstacle, as a cost, and prefer to ignore them. If the developer or its Environmental Specialist had really been on the project site and had come to the respective institutions, it could have avoided in large measure the suspension of the project.
105. On my part, I find it very unfair to be accused in such a way of waging a “crusade” against the project and being an “enemy” thereof, when my actions have always been completely objective.
106. The objectivity of my actions is evident in the sense that in those instances where the institutions consulted ruled in the sense that no environmental impact was seen, my recommendation was not always that the project would continue provided it had the necessary permits. This can be seen, for example, in my notes to the Mayor¹⁰⁴ and to the TAA¹⁰⁵ of August 2010, in which, based on the information provided by the ACOPAC-OSRAP-371-2010 report, I recommended proceeding with the

¹⁰⁴ R-52, Official Letter DeGA-0122-2010.

¹⁰⁵ C-81.

approval process for the construction of the Las Olas project, as long as the developers submitted the environmental feasibility study from the SETENA (given that it was expired).

107. Furthermore, in my report to the Environmental Commission of the Municipality of October 2012, I concluded that because of the diversity of criteria, under the principle *in dubio pro natura* and Costa Rican environmental legislation, I was recommending that the demarcation of the wetland area be requested in order to prevent any damage to the natural heritage and in turn resolve the status of the project so that it might continue its works.¹⁰⁶
108. If the Claimants had carried out the demarcation of the area of the wetland as they were required to do and if they had applied for the tree cutting permits from the SINAC, as they were also told, the construction of the project could have been continued without any problems, preventing environmental damage. Therefore, if anyone is to blame for what happened with the project, clearly it is not me, but the developers themselves.
109. Environmental law is based on the principle *in dubio pro natura*, which means that faced with a question about whether an activity may or may not cause environmental damage, such activity should be suspended until there is certainty about it. According to this principle which is widely incorporated into the Costa Rican legislation, this is what my role as Environmental Manager is based on.
110. All my actions in relation to the Las Olas project had the sole intention of preventing irreparable environmental damage according to the principle *in dubio pro natura*. In the investigation there was ample evidence of the potential for environmental damage to occur at the Las Olas project, which warranted that the competent institutions investigate the matter.
111. With regard to the **impact on the forest**:
 1. During my three visits to the area where the Las Olas project is located both in 2009 and in 2010, I was able see that on the site trees were being cut down.¹⁰⁷ The claimants, aware that in order to cut trees, they needed a permit from the MINAE (which comes from its own report of the Environmental Mitigation Plan for Earthworks), they never submitted such permit to the Municipality.

¹⁰⁶ R-126, Official Letter DeGA-328-2012; R-127, Note to the ACOPAC, October 17, 2012; R-129, SM-2012-802; R- 133, SM-2012-841.

¹⁰⁷ R-26, Official Letter No. DeGA-049-2009.

2. Pursuant to the ACOPAC-OSRAP 371-2010 report of July 16, 2010, during the visit **trees and bushes were being burned**; for this reason, the owner was asked to (i) “*not continue clearing or cutting the grass and shrub vegetation that are in recovery on a wooded patch;*” (ii) “*apply for any cutting permit in the Aguirre-Parrita Subregion office;*” and “*that current environmental laws be observed at the time of conducting any infrastructure or construction.*”¹⁰⁸
 3. The ACOPAC-CP-03-11 report of January 3, 2011 stated that ACOPAC officials had conducted inspections on the land where the Las Olas project is located during several days in December 2010 and concluded that on the site the **cutting of more than 400 different understory trees** of different species had been carried out.¹⁰⁹
 4. Furthermore, the ACOPAC-CP-129-2011-DEN report also stated that during a visit to the Las Olas project site on October 1, 2011, four people were found conducting **illegal tree cutting activities, destruction and removal, burning and covering over** the resulting waste material with soil.¹¹⁰
124. [sic: 112] The same danger of environmental damage could be seen in reports related to the impact on a **wetland** which are found in the investigation of the Municipality.
1. On September 9, 2010, the Municipal Engineering Department had informed the Mayor that the property was affected by an **area of mangroves**,¹¹¹ which was immediately reported to the persons in charge of the Las Olas project.¹¹²
 2. The ACOPAC-CP-03-11¹¹³ report of January 3, 2011 stated that the ACOPAC professionals noticed a semi-covered culvert with a considerable flow from the upper part [of the property] that flows to a sewage system built in previous months which is going to be released into a mangrove swamp located about 450 meters to the southwest. Furthermore, in area of the ditching to build the foundations they had easily observed the appearance of yellowish water **which is typical of wetlands**, and they mentioned that sand had been thrown into the trenches in order to fill them in. They also observed **plants and birds associated with wetlands** and heard the croaking of a lot of amphibians.¹¹⁴ Therefore

¹⁰⁸ C-72.

¹⁰⁹ C-101, pp. 1 and 3.

¹¹⁰ C-141.

¹¹¹ R-56, Official Letter No. ADU 012-10; R-55, Certification of lack of Professional Responsibility.

¹¹² R-57, Official Letter ADU No. 013-10.

¹¹³ C-101.

¹¹⁴ Ibid., pp. 2 and 3.

the National Wetlands Program was asked to inspect the site in order to determine whether or not the wetland reported by the civil society existed.¹¹⁵

4. The GASP-093-11 report of March 18, 2011 indicated that in the western section in the area of construction of the demonstration residential dwelling of the Las Olas project, a **palustrine wetland was located that was being directly affected by the construction of a drainage culvert and sewage system.**¹¹⁶ Furthermore, the report mentioned that at the time of the inspection, machinery was found doing earthmoving and culvert placement work on the drainage culvert in the wetland. Also in that report, the SINAC found that the piping work, construction of access roads and landfills had affected the natural dynamics of the wetland, in breach of the provisions in Article 45 of the Basic Law of the Environment. Therefore, the SINAC requested immediate protective measures applying the principle *in dubio pro natura*, such as the suspension of works affecting the wetland ecosystem due to the culverts and sewage system in order to prevent potential damage to natural resources and the environment in accordance with Article 11, subsection 2 of Biodiversity Law No. 7788.¹¹⁷
 5. The ACOPAC-CP-064-12 report where it is mentioned that on May 13, 2011, a visual site inspection had been conducted and it was determined that **a wetland was affected** in an area of 1.35 hectares.¹¹⁸
125. [sic: 113] Therefore, it is clear that there were more than enough reasons to understand that based on the principle *in dubio pro natura*, it was necessary to investigate whether by building the Las Olas project, the environment was not being damaged irreparably. That's what my efforts attempted to prevent and that is exactly what my job entails as Environmental Manager, without which in any way this can be classified as "hostility" or "bad intentions" on my part towards the Las Olas project.

¹¹⁵ Ibid., p. 3.

¹¹⁶ R-76, Inspection Report SINAC-GASP 093-11.

¹¹⁷ Ibid., p. 20.

¹¹⁸ R-124, ACOPAC-CP-064-12.

4. STATEMENT OF ACCURACY

I, **Mónica Vargas Quesada**, affirm the content of this sworn declaration and declare that the content and the affirmations herein are true.

Signed,

[signature]

April 8, 2016