

A copy of ruling number **2850-2011-SETENA** was served in the offices of the National Technical Environmental Secretariat at 1:40 p.m. on November 15, 2011.

**NOTIFICATION TO BE SERVED ON:**

**Developer:** Inversiones Cotsco C&T SA  
General Proxy, David Richard Aven

**Fax: 22-28-54-19**

Guiselle Méndez Vega, Executive Director, **FAX.** 2248-2451

Jorge Gamboa, Director, Wetland Program, **FAX.** 2257-9722

Municipality of Parrita **FAX:** 27-79-99-65

Luis Gerardo Martínez Zúñiga, Agricultural Environmental Prosecutor, **FAX.** 22- 95- 35- 41

Signature: \_\_\_\_\_ ID: \_\_\_\_\_.

At 9:40 a.m. on December 21, 2011

Served by: Sonia Phillips

**The Ministry of the Environment And Energy  
The National Technical Environmental Secretariat  
SETENA**

Telephone: 2234-3367-2234-3368 Fax: 2225-8862  
P.O. Box 5298-1000 San José

**Ruling No. 2850-2011-SETENA**

THE MINISTRY OF THE ENVIRONMENT AND ENERGY, THE NATIONAL TECHNICAL ENVIRONMENTAL SECRETARIAT, AT 1:40 P.M. ON NOVEMBER 15, 2011.

**LAS OLAS HORIZONTAL RESIDENTIAL CONDOMINIUM PROJECT  
ADMINISTRATIVE FILE D1-1362-2007-SETENA**

This Secretary heard the motion for revocation with subsidiary appeal and the motion for invalidation filed by David Richard Aven in his capacity as the bearer of a general power of attorney for "Inversiones Cotsco C&T S.A." on April 29, 2011, against Ruling number 839-2011-SETENA dated 8:40 a.m., April 13, 2011.

**WHEREAS**

**1:** By means of Ruling number 1597-2008-SETENA, dated June 2, 2008, the Environmental Viability permit was issued for the Las Olas Horizontal Residential Condominium Project.

**2:** On April 13, 2011, Ruling number 839-2011-SETENAde was issued at 8:40 a.m., and notification was served on April 26, 2001, which says in the first section of the Recitals:

**"1:** *In conformity with the contents of the recitals section of this ruling, injunctive relief is hereby provided to stop any work or activity begun on the Las Olas Horizontal Residential Condominium Project, Administrative File No. D1-1362-2007-SETENA.*

**2:** *Based on the Principle of Public Administration Coordination and on the Constitutional Law of the Environment, specifically Article 28, the Municipality of Parrita is hereby requested to enforce the injunctive relief ruled in this technical report until such as time as the Secretary informs you that it has been lifted. Likewise, the Municipality of Parrita is urged to not grant any sort of construction permit in the project's area until this Secretary lifts the injunctive relief.*

**3.** *Send a copy of the Ruling to the Agricultural Environmental Prosecutor's Office so it may be attached to Prosecution File number 11-000009-0611-PE and the Administrative File, number D1-1362-2007-SETENA for the Las Olas Horizontal Residential Condominium Project.*

3: On April 29, 2011, this Secretariat received the Motion for Revocation with Subsidiary Appeal and the Motion for Invalidation from file 1362-2007 for the Las Olas Horizontal Residential Condominium Project on behalf of Inversiones Cotsco C&T S.A., which petitioned the following:

"Uphold this MOTION FOR REVOCATION and, as a consequence, ORDER THE REVOCATION AND SUSPENSION OF THE EFFECTS OF THE RULING THAT IS BEING APPEALED, ITS SERVICE OF NOTIFICATION AND ALL ASSOCIATED ACTIONS THAT ARE DERIVED FROM IT OR THAT ARE CONNECTED TO IT, ASSOCIATED WITH IT OR DIRECTLY OR INDIRECTLY RELATED TO IT THAT HAVE SURVIVED DUE TO BEING LEGALLY NULL AND VOID, ILLEGAL, AND LACKING IN STANDING, AND THAT WERE ISSUED BY AN INCOMPETENT EMPLOYEE."

4: Page 441 shows proof to better rule as certified by the Adjunct Agricultural Environmental Prosecutor as provided by the developer.

5: Page 438 contains Official Document SG-AJ-1041-2011-SETENA dated September 23, 2011, which requests a certification of whether Official Document ACOPAC-OSRAP-00282-08 was actually issued by the Sub-regional Office in Aguirre and Parrita. On September 29, 2011, a fax was received that confirms that it was issued by that office. See pages 444 and 443.

#### WHEREAS

1: Mr. David Richard Aven has been held to be legitimate to appeal Ruling number 839-20111-SETENA on behalf of the Inversiones Cotsco C&T S.A. development company.

2: Article 19 of the Constitutional Law of the Environment indicates that:

***"The rulings by the National Technical Environmental Secretariat must be well founded and reasonable. They are mandatory for both individuals and public entities and organizations."*** (Emphasis added.)

3: The following is stated based on the appellant's allegations and the administrative file:

1- According to the ruling appealed in section 3 of the Recitals, the project was stopped because Ms. Guiselle Méndez Vega, the Executive Director of the National Conservation Area System, requested, in Official Document SINAC-DE-1786 dated November 30, 2010, at page 358, the suspension of the Environmental Viability permit based on the questioning related to the supposed forgery of Official Document SINAC 67389RNVS-2008, which was used as input to issue the Environmental Viability permit for the project in question.

2- It was verified that page 272 of Ruling number 1597-2008-SETENA issuing the Environmental Viability permit, in the third paragraph of the Recitals, mentions that information is received on April 3, 2008 that includes pronouncement ACOPAC-MINAE requested by this Secretary in Official Document S.G.P.-D.G.I. 098-2008.

3- Page 259 contains Official Document ACOPAC-OSRAP-00282-08, dated April 2, 2008, addressed to architect Edgardo Madrigal Mora, Inversiones Cotsco C&T S.A., where it indicates that the project located in West Esterillos, the Parrita District, the Canton of

Parrita, Puntarenas Province, plan number P-1244761-2007, is not in a protected area.

**4-** In Official Document SG-ASA-041-2011, dated January 17, 2011, page 363, Mr. David Aven, the legal representative, is informed to submit the original of official report SINAC 67389RNVS-2008, or an authenticated copy.

**5-** In Official Document SG-ASA-042-2011 dated January 17, 2011, Ms. Guiselle Méndez Vega is asked to issue a ruling on the accuracy of report SINAC 67389RNVS-2008.

**6-** The response by Ms. Guiselle Méndez is on page 369 of Official Document SINAC-DE-075, stating that Official Document SINAC 67389RNVS-2008 is not an official report due to the reasons indicated in Official Document SINAC-DE-1786, which states: **a)** The original signature does not match Mr. Vargas Brenes' signature, **b)** There is no SINAC Subregional Office called West Esterillos Regional Office, **c)** The document numbering does not match the SINAC numbering system.

**7-** On page 388 of Ruling 839 in the Recitals, point 7, dated February 9, 2011, the answer from Mr. David Aven is received. It indicates that he has no relationship with report SINAC 67389RNVS-2008, submitted on April 3, 2008.

**8-** In relation to Official Document ACOPAC-OSRAP-00282-08 dated April 2, 2008, mentioned in this ruling in point **3**, Official Document SG-AJ-1041-2011 dated September 23, 2011, requests notification for Engineer Cristian Bogantes Sánchez, the Head of the Aguirre - Parrita Sub-regional office, page 438, that indicates whether the official document in question was issued by the office he heads. Pages 444 and 443 contain Official Document ACOPAC-OSRAP-708-11 dated September 26, 2011, received via fax on September 29, 2011, showing that Official Document ACOPAC-OSRAP-708-11 dated April 2, 2008, actually was issued by the Aguirre - Parrita Sub-regional Office (OSRAP), which at the time was supervised by Gerardo Chavarria Amador, Esq.

**9-** Proof is provided for a better ruling on page 441-440, certified by the Adjunct Agricultural Environmental Prosecutor. There is a legend that is part of Official Document SINAC 67389RNVS-2008 that says: appear at the SETENA in the Archives Department on May 28, 2003, with 4 pages and several photos.

**4:** According to the above, after analyzing Official Document SINAC 67389RNVS-2008 which is being questioned, as indicated in Paragraph 3 of the Recitals, point 1, of this ruling about a supposed forgery, it considers: That Official Document SINAC 67389RNVS-2008 has no date issued or received. We were told that, according to point 9 of this Official Document, the legend about the proof to better rule provided by the developer was provided on May 28, 2008, and received in the SETENA file. This is not the department that takes care of this sort of process and, as overwhelming proof, there is point 6 where the Director of the competent institution for the case (SINAC) indicates that it is not an official report due to the reasons previously established in point 6; therefore, it will not be a binding document in the SETENA Administrative file.

**5:** Page 259 of Official Document ACOPAC-OSRAP-00282-08, mentioned in point 3 and also provided by the developer as proof in his motion, which is dated April 2, 2008, states that, according to the contents of point 8 of the third paragraph of the Recitals, it was actually issued in the Aguirre - Parrita Sub-regional Office (OSRAP), which is also the office that issues the pronouncement

based on the project's locations (Puntarenas, Parrita, West Esterillos) while the head was Gerardo Chavarria Amador, Esq., as proven in the same document.

**RECOMMENDATIONS:** Revoke Ruling 839-2011-SETENA issued at 8:40 a.m. on April 13, 2011, in full according to all of the above and the proof requested to better issue a ruling as the Administrative File since there is no reason or defect of nullity in the Environmental Viability permit that was issued. Based on Article 153 of the General Public Administration Law.

*"ARTICLE 153: 1. The revocation may be founded on the appearance of new de facto circumstances that were not in existence or not known when the original document was issued.*

*2. It may also be founded on a different assessment of the same de facto circumstances that underlie the document or the public interest that was affected.*

**NOW, THEREFORE  
THE PLENARY COMMISSION RULES AS FOLLOWS:**

In regular meeting number **0120-2011** of this Secretary, held on **November 15, 2011**, in Article number **10**, the Plenary Commission passed the following motion:

**1:** The Motion for Revocation with Subsidiary Appeal and the Motion for Invalidation submitted by David Richard Aven, the bearer of a general power of attorney for the development company, Inversiones Cotsco C&T S.A. against Ruling number 839-2011-SETENA dated 8:40 a.m. on April 13, 2001, IS HEREBY UPHELD and said Ruling will be revoked in full taking into account the different sections of this Ruling.

**Sincerely,**

**ENGINEER URIEL JUAREZ BALDODANO  
SECRETARY GENERAL  
IN REPRESENTATION OF THE PLENARY COMMISSION**