

**IN THE MATTER OF AN ARBITRATION UNDER THE DOMINICAN
REPUBLIC-CENTRAL AMERICA FREE TRADE AGREEMENT AND THE
UNCITRAL RULES OF ARBITRATION (2010)**

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

(United States of America) (Claimants)

vs.

THE REPUBLIC OF COSTA RICA (Respondent)

**FIRST WITNESS STATEMENT OF
MAURICIO MARTIN MUSSIO VARGAS**

I, **MAURICIO MARTIN MUSSIO VARGAS**, of legal age, an architect, residing in Alajuela, La Garita, Calle Los Llanos, Finca Los Mangos, accessed via right of way to the last house on the right, HEREBY DECLARE the following:

1. I make this statement for the Claimants' Reply Memorial in these proceedings.
2. The matters included in this witness statement are true to the best of my knowledge. The facts and circumstances included in this statement are based on my personal knowledge or arise from information or documents provided to me by my subordinates, in which case I mention the pertaining source of information.

3. I confirm that the Claimants' attorneys, Vinson & Elkins RLLP and Batalla Abogados, have helped me prepare this statement, but I likewise confirm that its content expresses my evidence before this Tribunal in these proceedings.
4. In the preparation of this statement, I met with the Claimants' Costa Rican counsel to discuss my participation in the Las Olas project. Although I speak English, I presented my evidence in Spanish to Batalla Abogados and an English translation was obtained subsequently by Vinson & Elkins RLLP. Following my meeting, my statement was prepared in English by Vinson & Elkins RLLP, with input from Batalla Abogados, then translated into Spanish for my review and comment prior to signature.

I. Background facts

5. I graduated with a degree in Architecture in 1997 from the University of Sciences and Arts. I became a member of the College of Engineers and Architects in 1999. In 2002 I completed a postgraduate degree in Housing and Development at the University of Lund in Sweden. I am currently completing a masters' degree in Project Management focused on Construction at the Institute of Technology of Costa Rica.
6. My professional experience dates back to 1987, that is, prior to becoming a member of the College of Engineers and Architects, mostly in order to gain experience and for financial reasons. In 1998 I founded the firm Mussio Madrigal Arquitectura along with my partner Edgardo Madrigal; however, it was only in 1999 that the public limited company called Mussio Madrigal Arquitectos Asoc. Sociedad Anónima, was incorporated, in which we continue to work. (Edgardo is also a graduate architect of the University of Sciences and Arts, and we have always been equal partners in our firm). I partnered with Mr. Madrigal due to his broad experience and his thoroughness. We always carry out our work in multi-disciplinary teams, combining our skills and experience. I concentrate more on

Commented [A1]: Is this still accurate?

field work and he on the office work, but we always work together. I must also point out that in recognition of my technical capacity, in June 2013 I was appointed member of the Board of Directors of the National Institute of Housing and Urban Development.

7. Mussio Madrigal has gained a position in the market as a real estate development consulting firm. We normally act as managers of the construction process, so as well as preparing the project designs and obtaining the necessary permits to carry out the building project, an important part of our work is to create multi-disciplinary work teams to ascertain a project's environmental and urban development feasibility. We have carried out projects of different kinds and in different parts of the country, such as parcelling of agricultural land, urban developments, residential condominiums and rooms, among others.
8. Among the most representative projects carried out in the Central Pacific area of Costa Rica are: i. Project "Costa Reserva" of agricultural parcels totalling a surface area of 238 hectares, in the region of Esterillos Este; ii. Project "Costa Esterillos" consisting of an individual condominium unit (*finca filial individualizada*) with a surface area of 150 hectares, in the region of Esterillos Este; iii. Costa Montaña with a surface area of 100 hectares.
9. In my experience, it is customary for large projects to attract political attention and that of the communities in which they are being developed. This can become either a problem or an opportunity to include the project in the community. It is normal for problems to occur; however, we must distinguish the technical work that may be performed from the pressure exerted by external political, social or environmental groups, which is the most frequent.
10. The only time we have had problems with a project was in 2008 with the Costa Montaña project involving agricultural land parcelling. But in order to understand it, we must place it in the context in which it occurred. In the first place, the

Administrative Environmental Tribunal initiated a campaign of investigation and verification of real estate development permits and began what became known as “*environmental sweeps*”, consisting of a kind of review of the projects being built at that time in the Central Pacific and the commencement of disciplinary proceedings against the owners of the projects for alleged breach of environmental legislation. The Administrative Environmental Tribunal visited the Costa Montaña project and subsequently lodged a complaint against Mussio Madrigal and me personally, as head of that project, in the Federated College of Engineers and Architects. However, this complaint did not result in any decision against me. In addition, as a result of Mussio Madrigal’s good standing in the market, in spite of the international real estate crisis, we continued to work on several important projects at that time.

11. The complexity of developing a project such as Las Olas is of a multi-professional nature, and therefore it would be hard for one single professional to meet all the criteria objectively. The firm does have all such knowledge in general terms and I am able to identify and diagnose risks, opportunities, strengths and threats and have a broad knowledge acquired from my professional practice and experience to be able to manage a project at the various stages of its life, that is, planning, execution, control and completion, from start to finish. But this does not mean that I am familiar with the various regulations, rules, laws and environmental and urban development guidelines that must be fulfilled to obtain the permits. As I have already explained, Mussio Madrigal seeks the advice of experts on the subject, whenever necessary. The usual practice is that experts are subcontracted to process the permits, and we are in charge of carrying out quality control.
12. Every project is different; however, there are identical processes or protocols that are followed, irrespective of the project. The College of Engineers and Architects establishes the following professional obligations that must be met: basic and preliminary studies (which I shall discuss later). In summary form, these two

types of studies, which can be considered as two phases within the development of a project, necessarily require the performance of the following activities:

- a. Verify with government entities that are competent in environmental matters whether the project is located in an area that may be considered as Natural Patrimony of the State and, therefore, not eligible for development.
 - b. Various visits to the land, along with professionals specialising in the different areas, according to the needs and type of project, which might include: geologists, forestry experts, land surveyors, biologists, agronomists, archaeologists, hydrologists and sociologists, among others.
 - c. Several visits and coordination with government entities, with regulatory competencies in environmental and urban development matters, responsible for carrying out the legal and technical project feasibility analyses. In many cases one cannot go to a government entity if the criteria demanded by another entity have not been met. For instance, before submitting the project to the National Technical Environmental Secretariat (SETENA), one must first go to the local city council where the property is located and request use of land, rainwater discharge and wastewater discharge permits, from the Instituto de Acueductos y Alcantarilladas (entity responsible for drainage) or entity responsible for the supply of drinking water and from the Ministry of Public Works and Transport (MOPT).
13. As for my experience with wetlands, I must say it is broad. It is important to state that not all the Natural Patrimony of the State is delimited or quantified; therefore, the first thing one must do is check with the competent authorities, such as SINAC, to confirm if there is any area that is protected or classified as Natural Patrimony of the State. One must also carry out one or more visits to the property, with whatever experts are necessary, in order to determine whether or not there is

an area that might be environmentally sensitive and, in that case, the relevant governmental authorities must be informed. In our experience we have seen wetlands in various properties so, despite not being an expert, I am familiar with the characteristics of wetlands. I am able to recognise the various types of vegetation and, if I should notice that an area might be protected or environmentally sensitive, we act in accordance with our internal procedures: we contract a suitable professional to prepare a concluding report on the subject.

14. In cases in which we have identified an area that might be classified as a wetland or any other protected wildlife zone, in my capacity as consultant director, I coordinate with the technical experts that may be required to draft technical reports following the visits to the area, in order to present such reports to the various government entities seeking to obtain a definitive reply when there are any doubts on the matter. It is all carried out in a coordinated fashion and in consultation with competent government entities. Nothing is left to chance, thus minimising uncertainty and therefore reducing risk. In the case in question, I reiterate that a visit was arranged and carried out by the staff of the Central Pacific Conservation Area (ACOPAC-SINAC), in order to determine whether there was an area classified as a wetland, and their opinion was that there was no area that could technically be classified as a wetland.

II. The contractual relationship with Las Olas

15. David Aven got in touch with us because we were presented as a firm that was working in a great number of projects in the area in which the Las Olas project is located, as well as in other areas of Costa Rica, such as Manuel Antonio. In our first meeting, Mr. Aven presented a project drafted by another firm to develop the 28,0185.77 m2 of the project. After a number of meetings in which I expressed my point of view on the plans he initially presented to us, Mr. Aven elected to engage my firm in 2007.

16. Mussio Madrigal was initially engaged to design the Las Olas condominium and to obtain the environmental-development and building permits. This contract did not involve the design or any procedure whatsoever in regard to the granting of the Maritime and Terrestrial Zone (ZMT). Mussio Madrigal therefore designed a residential condominium in units (*condominio de finca filiales primaria individualizada*) and processed and obtained all environmental, urban development and building permits required to carry out the project.
17. Once engaged, we began the phase known as **basic studies**. At this time we carry out the specific studies required to determine the physical, environmental, socio-cultural and economic conditions and characteristics of a given location or area, without which the planning and development of a project cannot be carried out. This stage includes preliminary meetings with the client, drafting or verification of existing plans, ascertaining existing infrastructures, defining the objectives and expectations of the project. At this phase the following is defined: What type of project is to be developed and is it possible to develop? Therefore, a theoretical-conceptual guideline of the project management is established. This basic studies phase was carried out in relation to the Las Olas project in a satisfactory manner. In this regard, I recall that we confirmed with ACOPAC-SINAC that the zone did not include any area that could be considered a wetland.
18. Subsequently, if the basic studies are positive and the design of the project is viable, we continue with the **preliminary studies phase**. These studies must be carried out in all projects. They allow identification of available resources and demands to be met. A programme of needs is determined and the performance of necessary studies is defined and coordinated (environmental, topographic, forestry, geological, sociological, hydrological, among others). The preliminary studies also include the compilation and analysis of available information, of the conditions established by the rules and regulations in force and consultations with the State institutions involved in the project. This phase includes grounds and documents containing legal guidelines and planning and architectural conceptual

studies, and includes site visits, climate studies of the area, the drafting of the architectural development and the request for documents and legal guidelines for the future development. Therefore, one must be aware, at least at a general level, of environmental and urban development legislation. This preliminary studies phase was carried out in satisfactory way in the Las Olas project. I also recall that as a result of the studies carried out by the professionals in the various areas of expertise that we hired, the non-existence of protected areas was determined, including the absence of wetlands.

19. These two phases (basic studies and preliminary studies) require the coordination and collaboration with various entities of the Public Administration which, by law, have powers in environmental-urban development matters and are responsible for ensuring compliance with the legal regulations in force in the country. This coordination and work with these entities is a true challenge, as they require the presentation of technical studies and evaluations of a very high level to enable justification of the environmental feasibility of the project and identification of any environmental and social sensitivities requiring an environmental management plan, as well as commitments undertaken by the developer to guarantee compliance with urban development legislation. Despite the complexity of the process, in the Las Olas project, the environmental challenges were not relevant and my firm managed to obtain all environmental and urban development permits required by a real estate project in a coastal area.
20. The following phase is known as the **Preliminary Design** involving the spatial, technical and functional proposal that defines the nature and identity of a project. The Preliminary Design must meet all established criteria and all environmental and urban development regulations and legislation in force; it also includes an estimate of the cost of the project. It is drafted using all graphical and iconographical means necessary to clearly express the conceptual, technical and functional aspects of the project. This phase is the first graphical representation of the project, which includes and materialises the needs of the client in the design

and takes into account his observations, which are interpreted and transferred into the plans by the consultant. The forms of presentation of the preliminary design may vary in terms of appearance and technology.

21. The final phase is that consisting of the **drafting of the building plans** of all the infrastructure works of the Condominium. Plans are understood to mean all of the graphical and written components that clearly define the nature and purpose of a project and enable it to be built under the management of a responsible professional. The plans must include all distribution and structure items and electromechanical installations supported by their respective calculations. The technical specifications must form part of the building plans, whether within them or as an attached document. The graphical information of the project, in a legal format, with technical specifications in accordance with the statutes and laws in force and in application of the current 2002 Seismic Code and ready for processing by the various entities.
22. Once all the environmental and urban development authorisations and the building plan permits have been obtained, there are two other phases, those of inspection and construction. My firm was not engaged to carry out these two phases.
23. By way of summary, the public entities from which my firm obtained the building, environmental, urban developments and construction permits were:
 - a. Municipal Council of Parrita. The Municipal Council as the authority with local jurisdiction in the canton is in charge of drafting the ordinance plans. The ordinance plan of a canton is the main technical and legal instrument for urban development and planning in a geographical area. Any urban development project must obtain from the Municipal Council the permit of use of land, the permit of rainwater discharge, the request for waste collection and removal services and guidelines in regard to cantonal streets

to guarantee the performance of future cantonal works. It is important to mention that the use of land is one of the fundamental aspects to be obtained by a project, in order to ensure that the use of the land by the development is in accordance with the canton ordinance plan. In the case of the Las Olas project, located in Esterillos de Oeste in the Canton of Parrita, we had to adjust the design and the works to the ordinance plan issued by the Municipal Council of Parrita. The Las Olas project was perfectly adapted to this plan and met the use of land granted.

- b. Instituto Costarricense de Acueductos y Alcantarillados (AyA). This Institute is the public entity responsible for supplying drinking water as well as for creating and managing the wastewater and rainwater draining and discharge networks. In condominium projects such as that of Las Olas, the AyA inspects and authorises the mechanical plans related to rainwater and wastewater. It is responsible for determining the water easements, as well as wastewater sewerage or, when applicable, for approving water treatment plants. In regard to the supply of drinking water, there are areas in the country where AyA is not the water supplier because community resident associations build their own. These associations are known as ASADA and, in order to carry out this work, they must have reached an agreement with the AyA and be subject to their inspection. In the case of Las Olas, the existing water supply is managed by the Asociación Asada de Esterillo. The permit for availability of drinking water is one of the most important and necessary for the start of any urban development project, and it was also obtained from the ASADA. It is important to mention that the ASADA did not have the possibility of meeting the water demands of the project, and therefore the owner company of the Las Olas project donated approximately three hundred thousand dollars (USD 300,000.00) for the drilling of water wells and works for drinking water pipes both for the Las Olas project as well as other users.

- c. Instituto Costarricense de Electricidad (ICE). As the public supplier of electricity in the area, the authorisation from this entity must be obtained. It must also determine any high voltage installations affected, if any. In the case of the Las Olas project, we had to coordinate with the ICE and obtain its permission to remove the electrical lines installed a long time ago for the supply of electricity to the village of Esterrillo Oeste. All permits required from the ICE were obtained for the “Proyecto Las Olas”.
- d. Ministerio de Obras Públicas y Transporte (MOPT). From this government department, responsible for roadways and infrastructure works in the country, several permits must be obtained. The first involves the permits for acceleration and deceleration for the project, given it is located opposite the Costanera road, a national road of great importance for the central and south Pacific area. This permit, at the time of beginning our professional consulting, had already been obtained by Mr. Aven. The second is related to the alignment in regard to national roads in order to allow future road works. The third is a request for reservation of the name of the project as a condominium with the Department of Nomenclature and System of Geographical Information of the MOPT. This is a requirement that must no longer be met, but was relevant at the time that the works at Las Olas were performed.
- e. Fire Fighting Department of Costa Rica. As the institution responsible for fire-fighting in the country, it has the technical responsibility of approving the designs of any urban development project in relation to the location of hydrants and compliance with the safety regulations issued in this regard. We fulfilled this criterion in the Las Olas project.
- f. Department of Environment and Energy (MINAE). This is the state department that governs the environment and natural resources of Costa Rica. The following permits must be obtained from this department: (a) a certificate that the property is not located within a conservation or

protected area and (b) permits for tree felling when necessary. In the specific case of Las Olas, we obtained a certification from the Área de Conservación Pacífico Central del Sistema Nacional de Áreas de Conservación (SINAC) which clearly indicated that the project was not located within any protected area. We did not request any tree felling permits because we were not hired either for inspection or for construction.

- g. Secretaría Técnica Nacional del Ambiente (SETENA). This is a body that forms part of MINAE and is responsible for guaranteeing that every urban, building works or infrastructure project meets with environmental regulations and can be carried out in a manner that least affects the environment, mitigating the adverse effects on the environment that the project might generate. Obtaining environmental viability requires the participation of all the professionals in the various areas of expertise that I have mentioned in previous paragraphs, as well as obtaining all the permits previously required by other institutions and which I have already mentioned. In the case of the Las Olas project, we had to complete the so-called D1 (Preliminary Environmental Assessment Form). The D1 is a technical instrument that requires an assessment process of the activities to be carried out and the geographical area in which it will be developed. Only in exceptional cases is a developer prohibited from developing a project. In the case of Las Olas we required a D1 in advance. The developer must provide proof to SETENA of whether or not a project area is located within a protected area or else forms part of the Natural Patrimony of the State under any classification, and in the case of doubt the developer or its consultants or even the competent SINAC conservation area, which in the case of Las Olas was ACOPAC, must clarify any technical doubts it may have. It is important to state that the latter is the only governing entity that legally has the power to definitively determine, limit and list this. Any project with SETENA whose size

requires a D1 form requires, as part of the assessment, field inspections to be carried out; personnel of SETENA go as far as carrying out the field inspections to verify the information presented by the developer. SETENA is responsible for deciding that whatever is going to be done is done in the best way, in accordance with best environmental practices, with sufficient legal power to adapt any project proposals presented, otherwise the environmental viability permit will not be granted. At the end of the process, the developer must assume a number of commitments arising from the entire environmental impact assessment process previously established by SETENA. In the case of Las Olas, the environmental viability permit or licence was obtained from SETENA to carry out the project, which means that the project met with all the parameters demanded by the legal system of Costa Rica in environmental matters. It is worth pointing out that the environmental viability permit granted by SETENA is currently in force.

- h. Colegio Federado de Arquitectos e Ingenieros (CFIA). The CFIA is the body that regulates the professional work of the various architecture and engineering professionals (in their various specialties) in Costa Rica and ensures compliance with basic rules regulating their professional activity in the country. It is responsible for approving in the first instance the building plans of any construction project. In the case of the Las Olas project, the CFIA approved all the building plans of the Condominium.
- i. Instituto Nacional Vivienda Urbana (INVU): The INVU, in its various functions, acts as the public entity responsible for implementing the policies and plans in matters of territorial planning and development at a national level. One of the duties of the INVU is to grant the guidelines of the sources and outlines of waters, rivers and gullies. Its most important task takes place at the end of the process of obtaining a building permit. As such, it is the public entity that approves the construction plans in

coordination with the Department of Health and the AyA. In the Las Olas project, the building plans were duly approved and authorised by the INVU, the Department of Health and the AyA. Likewise, the INVU is responsible for establishing the guidelines regarding rivers and gullies, which were obtained in this case given the project's location close to the Aserradero gulley.

24. Against this backdrop, I note that there is a lack of coordination among the government entities involved in the obtaining of the environmental-building permits, which hinders the process, as this can result in aspects being evaluated that have already been authorized by other entities.
25. In the case of Las Olas, Mr. Aven provided us with the contours of the land and we verified them in our field inspections, and we worked on designing the plans in accordance with the topography of the land. That is, the design was carried out on the basis of the physical and topographic reality and limits of the terrain, and I must also add that the design was in line with the ordinance plan of the Municipal Council of Parrita.
26. Based on the administrative processes involved in obtaining the environmental-building permits and the verification inspections with various government entities and the field visits with the various experts, we decided to exclude some of the areas from the design, having considered them fragile in regard to flooding. One of these areas that I remember well was located in the North East corner of the project, and pertains to where the "El Aserradero" gulley is located. In this area, the non-construction and distance required by the INVU as a protected area was respected. Another area, due to being a low-land which collects the water run-off from higher ground, was left as a green area in the design of the project. Such areas, according to my experience and knowledge, do not constitute wetlands, and this was confirmed at the time by the experts hired to process the environmental permit applications, as well as by the officials of SETENA and ACOPAC who

inspected the terrain and, lastly, by the entity that governs the classification of the land: the INTA.

27. Mussio Madrigal's contractual relationship with Las Olas ended in 2009 with the successful obtaining of all environmental, development and building permits, having presented the condominium plans of the Las Olas project to the investors.
28. Lastly, in addition to the condominium project and the procedures described, the investors in the Las Olas project engaged Mussio Madrigal to process the building plans for two cabins that they were planning to develop in the ZMT and to process the creation in the National Property Register of 2 rights of way in the subdivision of 16 plots in a property adjacent to the Las Olas condominium project owned by the same company that owns the land where Las Olas is located. In order to create these rights of way, the respective permits had to be obtained from the Municipal Council of Parrita.

III. Conclusions on the professional work carried out

29. We visited the Las Olas project on several occasions, both during the wet and dry seasons. Given that at the time we were engaged to work on Las Olas we were working on other projects in the area, it was easy for us to visit the property. During our visits we sought to identify bodies of water, forested areas, risky areas, slopes, geological faults, areas that could be classified as Natural Patrimony of the State and protected areas or reserves. For this task we engaged a number of experts. We visited the Las Olas project both with the owners and independently, with our team of experts, which included construction engineers, forestry engineers, surveyors, geologists, hydrologists and personnel from the company GEOAMBIENTE S.A.¹ GEOAMBIENTE S.A. specialises in the environment, and we subcontracted with them to obtain the environmental permits from SETENA for Las Olas.

¹ Exhibit C[] Geoambiente S.A. company information

30. In our visits to the property, we determined that there were three areas to watch out for, which we could call “sensitive” from an environmental perspective, which the design of the project sought to accommodate:²

Commented [A2]: Could Mussio please look at the areas of potentially hydric soil Dr Baillie mentions in his report (pages 11 and 12) and the site plan he gave us showing these areas (both attached to the covering email) and confirm whether these are the same areas?

- a. North East of the property is the gulley “El Aserradero” (in the attached map in PDF format of the site design it is marked as number 3). This vulnerable point was not included in the design for Las Olas, in order to respect the distance of 15 metres ordered by the INVU and recommended by MINAE, who had in fact assumed the commitment to reforest the area and protect it.
- b. Another area that could be considered fragile or vulnerable is located opposite the coastal road. This area is flooded during the wet season. We managed to determine that the reasons are that the rainwater discharge was not clean and was blocked. This required works to unblock the rainwater discharge. This area, I believe, was left as a green area and outside of the zone to be developed in the Las Olas project. A park was created in this area in order to respect the natural condition of the land as well as low impact works that were necessary for the future discharge from the treatment plant.
- c. The third sensitive area is located on the western side of the property, leaving the coast road to the south towards the municipal road leading to the beach of Esterillos Oeste; the first municipal road from east to west. This area is one of the lowest sectors of the property and in the rainy season it is flooded from runoff waters. Given the slope of the terrain, a sort of basin forms in this area, where all waters collect. We also determined that the water discharge in this area was blocked. Another important aspect is the type of terrain in this area, mainly made of basalt,

² Exhibit C[] Site Plan of Las Olas showing Mussio Madrigal’s environmentally sensitive areas

which does not allow water filtration (basalt is waterproof). As a mitigation and protection measure, it was decided to leave this area as a green zone in the project, as well as carry out works to clean and ensure the proper working of the rainwater discharge.

31. None of these three sensitive zones were affected by development or building works included in the design prepared by us. From my knowledge and experience, these cannot be classified as a wetland in any event. Likewise, the environmental experts we hired and the officials of the Public Administration authorities (SETENA and ACOPAC) who inspected the Las Olas project concluded that these were not wetlands, which is why they granted the permits. During the processing of the permits and their various inspections of the property, the existence of a wetland was never noted.
32. At Las Olas there were never any environmental problems in the design, which was further confirmed by the experts who advised us and by the public officials who inspected the project.
33. As for the existence of a forest, according to my experience and as was also determined by means of the technical studies carried out by the forestry experts we hired, there was no forest. What we did find was a secondary forest; we even visited with personnel from MINAE and it was decided that no forest existed. The definition of forested area under Costa Rican law is confusing even for the government staff and entities themselves; however, the area where we planned infrastructure works according to the design and the processing of the permits did not meet the criteria to be considered a forest. Most of the property was cattle grazing land.
34. In my opinion, the Las Olas project in no way presented environmental risks. The Las Olas project, as it was designed, and given the biophysical characteristics of the site, did not pose a challenge based on our previous experience. It was a very

Commented [A3]: Could Mussio please explain what he means by a secondary forest?

straightforward project with great potential for the area in which it is located. From my experience, the investors' property could be described as a jewel, a wonderful site, a property that could truly be developed and sold blindfolded. In my opinion, the Las Olas project was the best in the area, with views and access to the beach, and low impact on the natural resources on the site. The beach of Esterillo Oeste is a beautiful beach. At Mussio Madrigal we have previous experience in the area of los Esterillos, with much more complex projects from a technical and environmental point of view, such as the project of "Costa Esterillos con 150 hectáreas" which we designed, obtained permits for and completed in only 7 months. We had even worked before being engaged by Las Olas on projects of 150 and of even 238 hectares. This is our expertise and one of our strong points in these processes is knowing what to do, how to do it, the chronology and the order of the permits. It is precisely this knowledge that allowed us to carry out the work we were hired to do by the investors of Las Olas.

Commented [A4]: Could Mussio explain what he means here? Presumably that it would sell without being seen, purely based on its excellent location?

35. Projects like this must include the communities. At Las Olas we began to work with them and repairs were made to the school, along with other donations, as well as the aid provided to the local ASADA. Nonetheless, I recall that some neighbours, such as Steven Bucelato, were upset, creating a negative view of the project. In relation to Mr. Bucelato, my impression, from the little I know of him from my participation in different projects in the area, is that he causes many problems.

Commented [A5]: What is this?

Commented [A6]: Did Mussio ever have any direct dealings with or experience of Bucelato? If so, could he please list them as we should disclose them to the Tribunal in the interests of full disclosure.

36. I became aware in 2010 of the problems that Las Olas was having with the permits. It was a surprise to me and to the rest of the team at Mussio Madrigal because the existence of wetlands or a forest was never determined at the time of our involvement. In my opinion, this came about as a result of a complete lack of coordination among the various entities of the State, as I understand it that the determination of the expert entity responsible for ascertaining whether a wetland exists from a technical point of view, MINAE, was not taken into account when issuing the orders to suspend the environmental permits. Whilst I am not an expert

on the matter and I was not involved at this time and I do consider that precautionary measures must be taken when there are very evident threats to the environment, in the case of Las Olas, all permits had been obtained, all inspections had been carried out, the best professionals were engaged and the public officials who inspected the property concluded that there was no fragile area whatsoever.

IV. Allegedly Forged Document

37. I have read Luis Martinez's First Witness Statement and I note his statement at paragraph 36 that the Allegedly Forged Document was introduced into SETENA's records by my partner, Mr. Madrigal. This is total nonsense and Mr. Martinez has no basis on which to make such a statement. I have discussed this accusation with Mr Madrigal and he confirmed to me that he had nothing to do with the allegedly forged document. In fact, neither Mr. Madrigal nor I were aware of the existence of that document until Mr. Aven gave us a copy in [X] which, according to Mr. Aven, he had obtained from the SETENA files. It is important to note that Mr. Martínez makes this claim without explaining the basis for his presumption, thus it is totally unfounded and even reckless you might say. In this regard, it is important to consider that:

- a. We submitted a request to SINAC for it to specify whether the Las Olas project was located in any protected area or not. SINAC issued an answer on April 2, 2008 by way of official note ACOPAC-OSRAP-00282-08 which was submitted to SETENA on April 3rd of that same year.
- b. The alleged forged document is dated March 28, 2008, i.e. prior to the date of issue and presentation of the official note ACOPAC-OSRAP-00282-08 to SETENA, which was handled directly by us. I could understand Mr. Martinez's suspicion of us if we had submitted this

Commented [A7]: Can Mussio recall when David gave him the allegedly forged document and what David said about it at the time?

document to SETENA along with the others presented on April 3,2008 to that department, but we did not do that.

- c. Neither Mr. Madrigal nor I submitted that document to SETENA during any other process carried out as part of the Las Olas project, since, as noted, we had no prior knowledge of its existence.
- d. If my partner or I were under suspicion, Mr. Martinez's duty was to interview us or carry out an investigation, something which he never did, suggesting that he did not genuinely have any reason to suspect that we had anything to do with it.

38. In any event, there is not a single indication in Mr. Martinez's Witness Statement that could serve as grounds for any suspicion that I or Mr. Madrigal submitted this document to SETENA. Therefore, I cannot explain the reasons why Mr. Martinez would make such an allegation. At no point did Mr. Martinez or anyone else contact either me or Mr. Madrigal about the Allegedly Forged Document.

V. The Construction Permits

39. Mussio Madrigal handled all the construction permits that were submitted to the Review Commission which is composed of INVU, the Ministry of Health, and the Costa Rican Institute for Water Supply and Sewerage (AYA in Spanish), as well as all the preliminary steps necessary to gain access to this Review Commission, such as, by way of example: land use, rain water drainage, black water treatment, availability of drinking water, national and cantonal street building permits, construction permits related to rivers or streams, construction permits related to high-voltage lines, availability of electricity etc., and after this procedure, the application was submitted to the Municipality of Parrita dated [...]. We also carried out the procedures to obtain the construction permits for easements 8 and 9 with the Municipality of Parrita.

Commented [A8]: Mussio to confirm if this was registered in the Municipality and provide the date?

40. It is important to note that from a legal-technical point of view, easements 8 and 9 are not streets *per se*, but exactly that, an “easement”, which only serves and benefits the lots or properties for which it was established. These easements are not transferred or assigned to the Municipality or other public entity, and the maintenance thereof corresponds solely to the owners of the property in favour of which they were established or otherwise.

Commented [A9]: What does Mussio mean by “or otherwise”?

41. We were contracted to design the project of the primary adjoining lots individualized as the Las Olas Condominium. In addition, we were also contracted to carry out the cadastre of two easements for the subdivision of 16 lots on a property adjacent to the Las Olas Condominium, which is owned by the same land developers.

42. In terms of the infrastructure that was built on easements 8 and 9, it is important to clarify that these works are fully permitted by national legislation. The Urban Planning Law and the Urban Subdivision Law allow land subdivision facing easements, in such a way that the Municipality of Parrita granted the respective permits, the plans were registered in the cadastre subject to the legal procedures and the resulting properties were subdivided and registered. Mussio Madrigal was contracted to carry out the design, process the cadastre of the plans for easements 8 and 9 and for the resulting 16 lots. We handled the applications for the construction permits and supervised the construction of the easements and lots. I fail to recall the name of the construction company, but Mr. Alberto Mora was the person in charge of this.

43. Contrary to the position the Costa Rican authorities seem to be taking now, we were never notified regarding any document, nor were we warned of any non-compliance or lack of permission relating to the permits and construction of easements 8 and 9. The authorities conducted inspections without any negative consequence for the works carried out on easements 8 and 9, subject to my previous clarification that these are not streets.

44. Although Mussio Madrigal was the supervisor of the activity carried out on easements 8 and 9, there was also a project engineer or “resident engineer”, that is one who is there the entire day throughout all the construction period, although, due to the small scope of the works carried out on easements 8 and 9, this position was not legally required.
45. Periodic supervision and inspections were also carried out in compliance with the requirements of the Costa Rican Association of Engineers and Architects. The purpose of these inspections and supervision is to ensure the correct development of the works, and these were carried out by the plant personnel of Mussio Madrigal with the participation of my partner Mr. Madrigal, the Civil Engineer William Torres and me.

VI. Environmental Issues

46. I have read Costa Rica’s allegation at paragraph 161 of its Counter-Memorial that the Protti report put Mr. Aven and the other investors on notice in 2007 that the Las Olas project site contained wetlands. I remember the Protti report. Mussio Madrigal contracted a company called Tecnocontrol S.A. to carry out soil studies of the Las Olas project. It is likely that Tecnocontrol subcontracted Mr. Roberto Protti, a geologist, to carry out such a study. The report is signed by Mr. Protti as a geologist. The report is addressed to Tecnocontrol and indicates that it was requested by this company. I do not recall that the project was referred to at any time as “Condominio y Villas Esterillos Oeste”. We have always known the project as “Condominio Las Olas”.
47. As to the question why the Protti Report was not submitted with the application for the Environmental Viability for the Condominium Section, it is important to recall that Mussio Madrigal contracted the professional services of the company called Geoambiente S.A., with tax identification number 3-101-097722, to

perform the technical studies and submit the D1 application before SETENA. Geoambiente did not use Mr. Protti's study because SETENA requires that the technical hydrogeology study be conducted and signed by a professional in hydrogeology, and Mr. Protti is a geologist. Geoambiente hired a professional in hydrogeology named Eduardo Hernández García, a hydrogeologist, and based on the criterion of Geoambiente and pursuant to SETENA regulations, he is duly qualified as a professional to prepare the corresponding technical report and it is his report that was submitted with the D1 application.

Commented [A10]: Is this accurate? Could Mussio please confirm?

48. At any rate, in accordance with the criteria which I have analyzed together with the Geoambiente professionals in preparing to give my Witness Statement, it is clear from a review of Mr. Protti's report that he neither concludes nor determines the existence of wetlands on the project site. It is important to point out the following two statements contained in Mr. Protti's report: (1) "The lands pertaining to this project show good drainage conditions, however, towards the central area there are swampy type flooded areas with poor drainage"; and (2) "These lands do not show conditions that could give rise to seasonal flooding since they are located outside the area of influence of any river system capable of generating these kinds of conditions, however, towards the West area there is a marshy type area which could have possibly developed due to the poor drainage conditions in this sector" (see pages 4 and 8 respectively of Mr. Protti's report). The statements made by Mr. Protti, according to Mussio Madrigal's review and analysis with the people of Geoambiente, is based on the blockage of surface water runoff from the property at an existing channel head under the West street of this sector.
49. I note that Costa Rica alleges that the Protti Report was filed with SINAC in 2011 but does not explain the basis for that assertion other than to state that the Protti Report "*rests in the files of SINAC.*" I have consulted with the Geoambiente professionals and have reviewed the files with them and, based on that review, our conclusion is that the Protti report was not used or submitted by Mussio Madrigal

or by Geoambiente to SINAC or SETENA. The report that was submitted was prepared by the hydrogeology expert, Mr. Hernández.

50. I note Costa Rica's allegation that Mr. Aven and the other investors obtained the Environmental Viability for the Condominium site unlawfully, by failing to submit a biological study with the D1 application. This is not true. Along with the D1, the requested biological study was submitted and filed with SETENA by the specified date, in accordance with the terms and requirements for the year 2007 in which it was submitted to SETENA. All the studies, analyses and requirements indicated were submitted together with the D1, and SETENA conducted its work and approved that which was submitted and provided.
51. If a review is made of the Environmental Management Plan of the Condominio Horizontal Residencial Las Olas, which was submitted along with the D1, under section 4, which is called "Description of the Natural Environment", there are two sections: Section 4.1. "Physical" and 4.2. "Biotic", in which all the biological aspects that the State says were not submitted are developed and proposed. In the circumstances, I do not agree with the assertion of the State of Costa Rica.
52. I do not understand why Costa Rica now says that the required biological study was not submitted. It was submitted under the required terms. In any event, SETENA has the obligation to issue notice and request any study, requirement and/or analysis that has not been submitted, and this did not occur in respect of this environmental viability procedure. The biological study formed part of the Environmental Management Plan, as can be verified in section 4.
53. I understand that Costa Rica mentions that the easement lots and other commercial sites were unlawfully omitted from the Environmental Viability applications. In my opinion that is not correct, given that the easements and the commercial lots were subdivided to the extent permitted and in compliance with the environmental, urban and municipal laws. These easements and commercial

lots met the requirement to be facing a public street, which meant they were not required to obtain an environmental viability. These lots with easements and facing a street were registered in the Public Registry and the National Land Registry, and are not properties that were part of the Las Olas Condominium Project; therefore they were not included in the procedures to obtain permits and the environmental viability.

54. It is important to note that the subdivision of properties facing a public street was carried out in this case, and for which easements were established to the extent allowed by legislation. For our part, Mussio Madrigal also processed the construction permits for the infrastructure that was built on easements 8 and 9, in order to facilitate the access and movement therein. That is to say, works for the roadway and gutter construction. The permit for the construction of commercial premises or buildings was not prepared or requested. This means that every future owner of the easement lots will have to comply with the obligation of applying for and obtaining the corresponding permits, as the case may be, for the construction of their accommodation units or commercial premises. Therefore it was not necessary to have an environmental viability, in view of the impact thereof.
55. I note that Costa Rica refers to the fact that the Las Olas site is only a few metres from the Aserradero River and claims that the investors hid this fact from SETENA in their environmental viability application. Again, this is nonsense. In his hydrogeology report which accompanied the D1, Mr. Hernandez expressly mentions this fact. Further, this was verified with the field inspections carried out by SINAC and SETENA at the time of the application process. This is also indicated in the cadastral map and also included in the construction permit issued by the INVU, which includes the setback required by Law and was one of the first permits requested and obtained to be able to submit the other applications for permission thereafter.

56. I further note Costa Rica's reference to a Las Olas site visit on 30 September 2008, carried out by two inspectors of SINAC and MINAE, who allegedly concluded that two separate areas of the Project site could be categorized as wetlands. As indicated, I accompanied these inspectors on their visit. However, contrary to what Costa Rica now claims, I was not made aware of the fact that they were investigating the possible presence of wetlands.
57. I remember that the officials asked to visit the project site and when they arrived we toured the perimeter of the project, mainly on the West side, along the public street. We did not enter the property on which the project was going to be developed. Two specific points were also analyzed where rainwater collects from runoff of the highlands to the lowlands of the property, and I remember clearly that I mentioned to them the technical reason for this stagnant rain water, which is due to storm water discharge pipes resulting from the construction of the coastal roadway and public streets surrounding the property.
58. At the time, I was told that the purpose of the visit was to check and verify alleged anomalies due to a complaint. I do remember and clearly understand that the purpose of the inspection was never expressed to be to verify the existence of wetlands on the property. I was never informed of or consulted about any intention to determine whether there were wetlands on the project site or not. The officials of the entities that carried out the inspection are not the required experts to determine with legal-technical criteria whether wetlands exist or not in any event.
59. After the authorities had completed their inspection, as part of my normal communications with Mr. Aven, I told him about it and explained what took place. At no point did I mention any discussion regarding the existence of wetlands, since this had not been communicated to me as the purpose of the visit and there was nothing that occurred during the visit which gave any indication that the authorities were investigating the possible existence of wetlands.

60. I have read paragraph 303 of the Counter-Memorial, in which Costa Rica alleges that Mr. Aven and the other investors deliberately divided the project site into smaller sections in order to lessen the apparent environmental impact of the project as a whole, contrary to Costa Rican law. Land subdivision of this type is permitted in Costa Rica and is used extensively throughout the length and breadth of the country. In my professional experience, I can assert that land subdivision is widely used and is permitted and contemplated by the country's urban planning legislation, and is also clearly recognized and accepted by the public authorities with competence in the matter. The main requirement specified by law is that the property must be facing a public street. In the case of the easements and the infrastructure of easements 8 and 9 that Mussio Madrigal dealt with, we complied with and followed the specified procedures and requirements and this was also determined by the authorities who accepted and authorized the same.
61. The allegations made by the State of Costa Rica in this regard are not true. Mussio Madrigal has never acted in, or been involved in an act of, bad faith. Moreover, there would not have been any need to do so, as the subdivision of the easement lots is permitted by Costa Rican law, as I have already explained.
62. In order to address Costa Rica's allegation that the boundaries of the Aserradero River system and the alleged wetlands located on the easement lots were deliberately left out of the Condominium site and that this resulted in an incomplete Environmental Viability application, in bad faith and in breach of Costa Rican law, it is necessary to make several clarifications.
63. First of all, in the area where the Aserradero River system is located there were no easements, nor was a permit requested to carry out works on easements. What was carried out in the place where the Aserradero River system is located was a legal subdivision of a lot facing a public street, and with regard to that lot, no permit was processed or requested for project construction or development. What that

means or meant was that for the future, whoever carries out any development on those lots must perform due process and request all the urban, environmental, legal permits as required by law and for the type of project or development at issue.

64. Second, for the Las Olas Condominium project, the respective construction permit (setback) was requested before the INVU for this River system, duly complying with the legal requirements.
65. Third, the easements were established on other properties located in the area opposite to where the Asseradero River system is located, i.e., the river system is located in the Northeast sector of the property on which the Las Olas Condominium Project was going to be developed and with the easements located in the West sector, thus several hills divide the river system and easements and no physical connection can exist between the two areas. The alleged wetlands, supposedly located in the easements (West sector), have no connection due to topographical issues with the Asseradero river system (Southeast sector).
66. As already indicated, the procedures Mussio Madrigal carried out for the Las Olas Condominium project respected at all times the physical and environmental conditions of the land, and it was determined by the relevant environmental institutions, that the project did not have specially fragile areas which would motivate an act based on a strategy of bad faith, as the State of Costa Rica maliciously intends to show, and again, this is something that Mussio Madrigal would not have participated in.
67. By way of summary, we did not apply for an environmental viability for the easement lots as this was not necessary. As noted above, the law that allows easements to be established was complied with. No permission was sought for the construction of commercial premises or buildings, which means that any future development on the lots located in the easements must comply with the obligation

to obtain the corresponding permits, according to each development proposal. Therefore it was not necessary for Las Olas to obtain an environmental viability, in view of the impact thereof.

VII. Construction

68. I note Costa Rica's allegation at paragraphs 325-327 of the Counter Memorial that the developers breached Costa Rican law by starting construction on the Condominium Site despite the environmental viability having lapsed. During the time Mussio Madrigal was involved in the project, no activity was carried out without permission. The contractual relationship ended in September 2009, which was during the two year period of validity of the environmental viability, although the same is capable of being extended.
69. Ms. Monica Vargas claims (at paragraph 11 of her First Witness Statement) that she visited Las Olas on April 26, 2009 to investigate complaints by neighbors of Las Olas that works were being carried out without a permit and that she saw paved roads on site. I was unaware of this visit if indeed it did occur. I must state that, as professionals responsible for the works on easements 8 and 9, we did not receive any notices from the Municipality in which allegations or charges of non-compliance were made.
70. No unauthorized work was carried out while I was involved in the Las Olas Condominium project. Neither was this the case in the easement area since everything that was done therein had a construction permit and was implemented prior to the specified dates. Once we terminated the relationship, we lost contact with the developers and with the Las Olas Condominium situation.
71. Currently I have no business or personal relationship with Mr. Aven or any of the investors. I continue to work as a director and partner in Mussio Madrigal, where we fortunately continue to work on real estate projects of great importance for national development. However, I must clarify that I did purchase two plots in the

Commented [A11]: Could Mussio please comment on whether there were paved roads on the site at this time? If so, where and when were they constructed and under what permit?

Also, the date of her alleged visit (26 April 2009) was a Sunday. In Mussio's experience working on many projects, is it likely that a municipality employee would have inspected the site on a Sunday?

area of the easements as part-payment of my professional fees, not in the Las Olas
Condominium section of the project.

I believe the facts stated in this WITNESS STATEMENT are true.

Signed:.....

Mauricio Martin Mussio Vargas

Dated:.....