IN AN ARBITRATION UNDER CHAPTER TEN OF THE DR-CAFTA AND THE UNCITRAL ARBITRATION RULES (2010)

between

DAVID AVEN ET AL.

Claimants

and

THE REPUBLIC OF COSTA RICA

Respondent

Case No. UNCT/15/3

FINAL AWARD

September 18, 2019

AVEN Analysis Part 2

Part 2 is also filled with obvious bias against David Aven being made to look like a liar by his Attorneys refusal, after direct instructions, to put the audio into evidence and inform the tribunal of its existence in our Memorial Statement, David Aven witness statement and Fernando Zumbado witness statement. Again I will quote Dr. Weiler:

"If they (the Judges) have a gut feeling that the claimants are really to blame for their own situation, or if they just don't like the claimants' personality, **they will find a way to have them lose. The lesson, accordingly, is to make sure they like us. The second lesson is the same…" (Dr. Weiler**

Whether Respondent has breached Article 10.5 (FET) or Article 10.7 (Unlawful Expropriation) of the DR-CAFTA

447. The position of Claimants and the defense of Respondent in respect to allegations on frustration of their legitimate expectations and expropriation are essentially dependent, first, as to whether (a) there were wetlands and forests in the Las Olas Project site during the relevant periods when the government actions took place, and (b) whether these were adversely impacted.

So the above is what the Judges are looking at. From 2006 from the first SETENA Resolution until September 1, 2010, all SETENA Resolutions and MINAE Inspection reports said there were not wetlands or forest. There were two forestry reports by well-known forestry engineers, both saying there was no Forest. However, VE failed to grill the state's witness on those documents and instead made David Aven out to be a liar. Therefore, the Judges adopted the states false narrative that I was to blame for my own situation as evidence in their following statement.

451. An unfortunate situation in the case of this investment is that, even though it appears that Mr. Aven was closely involved in the day-to-day issues involving the project, it also appears that when the issues dealt with regulatory matters he relied on the advice and action taken by his subordinates or third parties who were engaged to assist. Despite his interest in Costa Rica, and the years living there, he did not learn to speak, read or write in Spanish. Mr. Aven was quite clear on his language limitations during the December Hearing. He openly disclosed, "So, I was relying on these professionals. I never actually was involved in any of that. And I relied totally on the professionals. As you said, I don't speak Spanish, I don't read Spanish, I don't write Spanish. And so, I relied totally on the professionals that I had employed".

I didn't know it was a requirement to learn to speak Spanish to do Business in Costa Rica. Never was told that before we invested millions in the project. Thousands of business people from all over the world do business in countries where they don't speak the language and building all kinds of real estate projects. What those businessmen do is to seek out professional that speak their language, and also knows the countries laws, and work in the interest in the developer from buying the property, to acquiring the necessary permits and finally to the building the project. However, they seem to be holding it against me because I didn't speak the Spanish language and instead had to hire local professionals.

450. The Arbitral Tribunal believes that despite the efforts and good faith actions of Claimants which they have expressed in their submissions, it does not appear they sought and received proper advice to develop the Las Olas Project, and if they did, they chose to ignore it.

I put 450 and 451 for better context. Think about the above statement. The Tribunal "believes" we didn't get proper advice and if we did, chose to ignore it. Don't remember any evidence presented to prove that at all. Again, it just shows that their belief system was shaded by the fact that they believed I was a liar and cheat. The arbitrators adopted the complete line of the State's attorney's that not only I duped SETENA, but also failed to get proper advice or ignored good advice.

463. All this becomes relevant not only in respect to the alleged illegality in securing the Environmental Viability but also in respect to the appropriateness of criminal charges brought against Messrs. Aven and Damjanac for presumably draining and filling wetlands. The same issue applies in respect of forests, and the alleged illegal felling of trees.

The Judges refer to the alleged illegality in securing the Environmental Viability permit and ties it to the appropriateness of criminal charges and draining the wetlands. The fact that the Judges have to question this is simply because (1) the audio recording was put into evidence and (2) VE failed to produce the facts and evidence in an organized and clear way to compelling show all the permits were legally acquired.

470. Despite such minor differences, it is relevant to mention that both Parties in the case have relied on the MINAE Executive Decree as to the determination of what are the characteristics of a wetland.

This is again a major blunder of VE, I specifically told George that it was SETENA not MINAE that made the determination on wetlands. In fact, MINAE stated they were not competent to demarcate wetlands. Here is their statement once again the incompetent didn't listen to me to state the SETENA was the key Agency since their resolution became a law.

SINAC
October 30th of 2010
ACOPAC-D-736-2012

TO:
Monica Vargas
Luis Mario
Nelson Masis
Alejandro Montiel
Environmental Management
Parrita Municipality.

SUBJECT: Wetland's demarcation request, Las Olas Project.
ACOPAC understands your interest of the protection of the wetland located in Las Olas Project, but the demarcation request is competence of the National Geographic Institute. Reason why this request is out of our reach. I recommend that the local government should redirect the request to this entity in attention to the Lic. Max Lobo Hernandez.

SIGNED BY ALFONSO DUARTE MARIN. ACPOPAC

How do you reconcile the above statement by MINAE and the tribunals statement in Para 470? VE never showed this statement to prove that MINAE was not the top wetland agency by their own admission and clearly tell the Municipality to contact IGN, a company that doesn't appear on Environmental list. VE had this document, but failed to use it.

485. Claimants state that the final authority for the determination of wetlands and issues related to wetlands is SINAC, in accordance with Executive Decree 35803-MINAE, which in turn specifies that Executive Decree 23214-MAG-MIRENEM be applied for the determination of hydric soils 442 , but add that delimitation of that wetland must be carried out by Executive Decree, which did not occur in the Las Olas Project 443.

Another VE blunder. Again, I specifically told VE attorney Burn that it was SETENA was the final authority because their determination resolution becomes law. Nothing that MINAE or SINAC wrote had an effect of a Costa Rica Law

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490. Although Respondent has identified through the Expert Witness Reports of KECE prepared by Mr. Kevin Erwin that a total of eight wetlands on the site of the Las Olas Project were found, Claimants originally rejected the existence of any wetlands on the site during the arbitration proceedings. However, in their Post-Hearing Brief Claimants did not dispute the existence of wetlands in the studies and reports carried out in 2016, but argued that there is no proof that those conditions existed during the relevant time (2007-2011), and that neither Mr. Erwin or the Green Roots experts were present when SETENA issued the Condo Section Environmental Viability in 2008, nor were they present when INTA found no hydric soils in 2011.

Another VE incompetent blunder. I told Burn not to get into the battle of the experts since there was no upside and only downside. However, Burn wouldn't listen and was actually screaming me at me about getting in the an after the fact wetland battle of the experts. What I predicted could happen, happened, our own expert found that there were wet areas. which we had set aside as 30 percent of the area we had to set aside for green areas, So instead of relying on the pre-existing SETENA Resolutions, the MINAE reports, and the INTA report, and put those front and center, we had to get down in the mud and to the battle of the experts. Listen to his pathetic closing statement to the panel at the end of day 6 where he admits that he made a mistake in engaging in the battle of the wetlands. My jaw dropped as I listened to him since that exactly what I told him in 2015, Here it is:

Section 2012 sheet 106. "MR. BURN: And I think I have one minute to can capitalize on Dr. Weiler's very eloquent observations. And just to bear that out, much of this hearing--most of this hearing--has been taken up with hearing evidence relating to the arguments put by the Respondent that--and you'll recall I said this in opening--is irrelevant--strictly speaking is irrelevant. And we could have refused to engage with it. Now, tactically maybe we made a mistake by engaging with it because it presents it to you on the basis that there is somehow something that is relevant. It is no less irrelevant than it was last Monday.

The environmental issues/the Costa Rican law 3 issues are irrelevant. Why are they irrelevant? Because it's ex post facto. This is a reworking of what happened. This case, as I said at the outset, is about permits that were applied for, that were issued, and that were relied upon. And after the event, the Respondent seeks to unpick all of that with hindsight trying to say--make all sorts of arguments about noncompliance that were not reflected at the time. There were all sorts of opportunities that the various agencies had at the time to do things. And, in fact, they did look at things at the time and right through to 2011, everything was fine. All complaints that were-- being introduced by reason--for reasons of a vendetta were dismissed. So, it's only in early 2011 in the chronology that you really see things start to change. 7th March, 2011, Bucelato meets with the Municipality. Suddenly the next day the Municipality, on the basis of one meeting with three people, issues a freeze order on-- the construction permits. A little while later material is filed with SETENA. SETENA, an agency we have always respected and said "This is the 4 agency that should be in charge here," should--is one that issues the EVs that understands, that 6 interrogates these things. They said in April 2011, 7 "Stop. We need to investigate."

The Investors didn't like that fact. They didn't think there was good reason for that. But they respected it. They respected the stop--the allegations of doing works during that time are completely without merit and no evidence before you to bear them out. It took seven months for SETENA to get to the conclusion that the Investors were right. There was nothing to worry about. There was no breach. And on the 15th of November, 2011, that is the crucial 18 moment in respect of this claim. If the Respondent had accepted what SETENA said at that moment, and had just--had said, okay, this has been looked at, it's been examined, and no problem has been found, we wouldn't be here today. There wouldn't be an… PRESIDENT SIQUEIROS: 30 seconds. MR. BURN: The--and at that point Martínez commissioned an injunction--a criminal injunction which remains to this day, and there are all sorts of other acts at that point in time, and that's when the Project was destroyed. That's

when the Respondent exposed itself to these claims. I'm going to stop there, but there is much more to be said, of course."

Please notice how he rushes through thing at this late hour. Yes there was much more to be said and he should have used his time wisely to say them all before the end of day 6, Please take time to watch the videos at some point in time. If you want I can come down and watch them with you for real time commentary. It may be time well spent.

492. Respondent countered and stated that if wetlands exist now, then they almost certainly existed at the time Claimants acquired the land 446 .

Conversely if there were no wetlands reported by SETENA in their 2004 resolution, 2006 resolution, in there 2008 resolution, and three separate MINAE clearance letters for each of the SETENA resolutions, all stating there were no wetlands; in SETENA's 2010 and 2011 reconfirmation resolution, in the MINAE's Report In January, February in July 2010 all saying there were no wetlands, and INTA report saying there were no wetlands, and the only single report saying there were wetlands was in a nine report in 2011 after I refused to pay Bribe. Why was there no wetlands found in the above 11 cases which were not talked about instead there were extensive talks about the after the battle wetlands reports in 2015. However, VE attorneys failed to drive that point home at the hearing. So again conversely, no wetlands in 11 reports, it wetlands in one report which causes a fully permitted project to be shut down and criminal charges to be found against a developer for violating wetlands. This makes no sense but VE attorneys did not drive that point home at the trial in December 2016. Just one more incompetent act. Were they advocating for their clients over Costa Rica, we should be a good question ask.

493. As addressed below, KECE identified in their report various sites where wetland were found within the Las Olas Project Site, and numbered these from 1 to 7. Claimants have alleged that Mr. Erwin failed to meaningfully consider soil data in alleged wetlands 2-7; that his assertion of soils in wetland 8 is not credible; and that the hydrophilic vegetation found is not the species to be found in wetlands 447 . Claimants appear not to dispute the existence of the wetland referred to as "Wetland 1" in the area of easements 8 and 9, but they nonetheless disputed that the determination by Green Roots was based on a "fundamental misapplication of the USDA Keys to Soil Taxonomy" used for this classification.

Another blunder by VE attorney's in apparently not disputing wetland findings in easement nine and 10. This is exactly the easement where INTA conducted their wetlands soil test, so why the hell didn't the VE attorneys clearly point that out during hearing and in closing statements. Once again who have again for their clients or Costa Rica However, notice how extensively the arbitrators get buried in the after-the-fact wetland studies, that I strongly and aggressively told the VE Attorneys not to engage in. From paragraph 493 through paragraph 505 all the arbitrators talk about is the after the battle wetland studies. And look what they determined in paragraph 506

506. In light of the above analysis, the Tribunal concludes that there were wetlands in at least one location: that referred to was "Wetland # 1" in the easements 8 and 9. And this is sufficient in the determination for purposes of the analysis.

This is exactly what I was talking about when I told the incompetent VE attorneys to avoid. Do not get into an after-the-fact wetland battle. The Costa Rica expert knew full well what Costa Rica expected him to find in his report and that was wetlands. He was being paid tens of thousands of dollars to find wetlands. This was not an object report this is an expert that was in the pocket of Costa Rica who was expected fine wetlands for the tens of thousands of dollars and he was being paid. I told VE not to engage in this battle and instead to stand on the no wetland objective reports that were done by the appropriate Costa Rica environmental agencies between 2004 into thousand 11 I'll saying there were no wetlands. But no the brilliant VE fools wanted to get into that battle because it would generate funds for the firm. So they damaged our case to get more money into the coffers of their law firm.

512. Respondent argued that Claimants caused environmental damage to the Las Olas ecosystem, because they cut down trees with no permits to do so. It added that under Costa Rican law it is not only a crime impacting a forest but merely cutting a tree with no permits 470 , and that Mr. Damjanac was charged with this particular crime. Respondent also recalls the definition of a "forestry tree" under the laws of Costa Rica mentioned in earlier paragraph, but clarified that no distinction is made as to the diameter or height of the tree, but in general, all trees are protected from felling without legal permits, adding that during their development of the Las Olas Project, Claimants never obtained one sole permit for the cutting of trees 471 .

We didn't need any permits to cut trees because there were no trees we needed to cut down that required permits. There was not a shred of evidence that any trees were cut illegally, again these are all allegations. There were no citations ever issued for illegal tree cutting, there were no arrests made for illegal tree cutting, all of this were just allegations with no proof. Again the VE attorneys failed to drive that point home at the hearing. All of these findings by the three judges were shaded because we were made out to be liars by our attorneys by not producing the bribery audio that we said we had. Further, Mr. Minor, our forestry expert testified at the hearing that there was no forest. However, Costa Rica did not get a witness statement from the MINAE expert witness, so he was not able to be called by our attorneys. They just provided the Report he did in 2011 after we refused to pay a bribe and there was no hard push back for not getting a statement from him so he could be called for direct testimony. However, again Costa Rica depended on their hired gun tree expert to give them the report they wanted to there was a forest. Again to state that Costa Rica did not get witness statements from SETENA, MINAE, TAA, SINAC, the MUNI all key agencies involved in our case.

517. In turn, KECE critiques the reports from Mr. Arce because these reports ignore the fact that logging activities were undertaken on site, and that Mr. Arce's 2012 report was mainly addressed to critique the 2011 MINAET study that reported unpermitted logging. KECE concludes that the majority of the Las Olas Project site ecosystem can be considered as forested, albeit with different percentages of canopy closure.

This is an unbelievably false statement. There were no records of any logging activity whatsoever going on the project site. There were no trees to log, all of them were trees that grew normally in a pasture field. Let me explain this so you get it, when cattle are raised in pasture land, when they defecate it produces seedlings for trees to grow. Why? It's nature's way to provide shade for the cattle. Pretty cool right. There were hundreds of these trees if not thousands on the project site. They

normally lived from 6 to 7 years and then died, they were worthless. junk trees. I explained this to be incompetent VE Attorneys, but they never explained it at the hearing. Logging is done when you cut commercially valuable hardwood or pine trees, there were no such trees on our site. Again, there was never ever a citation issued for illegally cutting trees from the project site.

518. Based on the KECE Expert Report findings, the Tribunal concludes that the conditions in the Las Olas Project site in the period of question allow for a determination that a "forest" existed within the definition of the Forestry Law.

So because there were no strong arguments about the truth of only junk trees and a lot of palm trees, and they thought I was a liar, they consistent bought into the fabricated storyline of Costa Rica.

519. In their Memorial, Claimants acknowledged that in order to commence development of a real estate project in Costa Rica, it was necessary to apply to several different ministries and government authorities for a number of different permits 477 , and submitted a list of the permits required and the agencies that administer them 478 . As would be expected in any jurisdiction, the number of procedures and permits is extensive; in this case, the permits exceeded thirty. The permits range from drinking water availability to fire management approval.

Here they acknowledge that we acquired about 30 different permits. But they mean nothing to the Judges because they think I'm a liar. But they don't say that with every permit issued there had to be confirmation that everything was in order to issue that permit.

520. Of concern in this arbitration, the most important of the permits that the Claimants identified, is the Environmental Viability Permit issued by SETENA. Respondent agreed.

So think about the above statement, they admit that the most important permit was the SETENA EV permit. But it just wasn't a permit, they were resolutions that have the force of law behind them that everyone was required to comply with. The VE attorneys never drove that Home hard at the hearing. It's all on video please watch it and you will see that for yourself. Further, it wasn't A "permit" it was a number of permits. SETENA Issued seven different resolutions in 2004, 2006, 2008, 2010, 2011 for the condo site and two more for the Concession site. So did I dupe SETENA all 7 times. You won't find that on any trial videos because the brilliant VE legal team never asked that question to any state witnesses. Again, another VE blunder by not listening to me and stating that it was SETENA that was the most important environmental agency.

524. There is no conflict among the Parties that the support documents that should have accompanied the D1 Application by Claimants were submitted. Respondent confirmed that an application was submitted to SETENA by the firm of Mussio Madrigal on November 8, 2007 for the Condo Section, and the following information/ documents were made part of the application:

Great, they agree that all the support documents were properly generated and filed, but then they say the following which is the crux of the fabricated false narrative..

525. Where there is dispute among the Parties is that Respondent alleges that Claimants failed to: (i) identify the ecosystems the land held (i.e. the presence of wetlands and forests); (ii) conduct a biological survey to identify the great number of species that lived in those ecosystems; and (iii) propose measures to protect those species from the impacts of the development. According to Respondent, this omission was an undeniable failure on the part of Claimants – on whom the responsibility rested, in accordance with Costa Rican law 484 . Respondent has alleged that the Claimants should have disclosed information that had been gathered during the process of carrying out the studies that would be attached to the D1 Application.

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The above is a very key statement that the panel adopted hook, line and sinker because they thought I was a liar. The STATE had to come up with a fabricated false narrative that I duped SETENA since that was their only way out to nullify the validity issued SETENA permits. If I duped SETENA, then they were fraudulent. So they had to use a ruse and use a fourth party "PROTTI" report ordered by a third party "Technocontrol" who was hired to do studies for the infrastructure and had nothing to do with wetlands. So they cobbled a feeble fabrication story from the fourth party PROTTI report saying it said there were wetlands. The PROTTI report said no such thing. Protti and Technocotrol are Costa Rica companies, and Costa Rica could have gotten clear statements from them to say what the State was asserting they were saying. The reason they didn't get a statement from either company because they knew they wouldn't lie under oath. So they never got one statement from either company. Rather, they made up a false narrative so they could say I duped SETENA. They never called SETENA to say that, but VE attorneys never pushed back hard on this legal scam. I had a discussion with the VE attorneys early on and told them they should after them hard on their scam, but they never made a strong argument about this Protti fabrication, and it was the cornerstone piece of the State case. Just like every other damn thing in this entire case, VE attorneys could have attacked the state on many fronts, but never did.

533. During the process of getting the D1 Application together, Tecnocontrol entrusted the firm Geotest, S.A. to prepare a geological and hydrogeological report on the property to be developed. This report was prepared by Mr. Roberto Protti Q., and delivered to Tecnocontrol in July of 2007. In his report, Mr. Protti identified that the land where the development was to be undertaken showed good drainage conditions but in the central portion of the land there were "swamp-type flooded areas" (areas anegadas de tipo pantanoso) with poor draining 493 . Respondent placed significance on this report, which has been referred to by Respondent as the "Protti Report" 494 . And the interest in the report is because it contains, according to Respondent, findings on the existence of potential wetlands. The statement on the swamp type flooded areas with poor drainage was a clear indication in respect to the existence or potential existence of wetlands in the property. However, neither this so-called "Protti Report" nor its findings were made a part of the D1 Application that was eventually submitted to SETENA. Years later, it was subsequently submitted by Mr. Aven, long after the Environmental Viability had been issued, as will be examined below.

I testified at the hearing that the report was submitted by my attorney Sebastian Vargas in response to the MINAE shut down notice and it was in Spanish. The area the Protti Report was talking about was part of the 30% of the land we had to put aside for green areas. That area was never going to be developed. Again, VE attorneys failed to point that out to anyone during cross-examinations.

534. The question arises, what is or was the relevance of this so-called Protti Report? Was there a deliberate omission in keeping it from SETENA? Respondent has alleged that even though it had not been evident to them during their examination of the property that wetlands existed, the findings in such report should have given Claimants sufficient knowledge from an expert as to the potential existence of wetlands in the area, but that Claimants decided to ignore such information and intentionally omitted disclosure to SETENA. The Tribunal agrees with the allegation that Claimants should have at least examined the situation in more detail.

Facts and evidence don's show a deliberate omission. I didn't even see that report until much later, so I didn't even know it existed since it wasn't a required document for SETENA and I testified to that at the hearing. So there was no why Claimants. Further, here's the statement from MINAE where they said they didn't have competence to know what wetlands were:

SINAC/MINA October 30 h of 2012 ACOPAC-D-736-2012

TO:

Monica Vargas Luis Mario Melson Masis Alejandor Montiel
Environmental Management Parrita Municipality

SUBJECT: Wetlands demarcation request. Las Olas Project ACOPAC understands your request of the protection of the wetland located In Las Olas Project, but the demarcation request is competency of the National Geographic Institute. Reason why this request is out of our competency. I recommend that the local government should redirect the request to this entity in attention to Lic, Max Lobo Hernandez.

SIGNED BY ALFONSO DUARTE MARIN ACOPAC`

So here's the question that the VE attorneys didn't ask. If SINAC/MINAE are not competent to determine wetlands. What makes them think David Aven would know what a wetland would be? What isn't IGN mentioned as an agency is competent to determine what a wetland is. Why didn't Martinez call on IGN to do the wetland study rather than INTA? Questions never asked by the Incompetent VE Attorneys. Look at the next paragraphs from 535 to 559. Either SETENA, D1 Application, EV permit or something related to SETENA is mentioned 58 times. Take a look and then see my comments after PARA 559

535. As indicated above, in his Witness Statement, Mr. Mussio clearly identified that internal procedures in his architectural firm directed that they should contract a suitable professional to prepare a concluding report on the subject to determine whether wetlands existed, and if so, the governmental authorities must be informed. But neither were additional studies undertaken nor appropriate authorities informed. On the contrary, the D1 Application was submitted without reference as to whether wetlands or potential wetlands existed, even though the purpose of such an application is precisely to assess the environmental impact based on the information and documentation attached.

536. Respondent's position regarding the legal burden on the applicant of a permit to evidence, among others, that no harm will be done to the environment derives from article 109 of the Biodiversity Law. It was surprising to the Tribunal to listen to Mr. Mussio acknowledge during the December Hearing that he was not familiar with the provision because, even though his firm is primarily of architectural discipline, they act as project coordinators, including of environmental specialists, and they signed several of the statements and reports in the D1 Application. Naturally, even if they are not to be expected to be specialists in Costa Rican law, if they have the overall responsibility for the project, they cannot be unaware of the terms of this provision. Even if his firm did not actually make the ministerial filings to SETENA, they were the coordinators; arranged specialists, prepared their own reports and delivered the package to Mr. Aven.

537. This is especially surprising in light of the affirmation in his witness statement transcribed above in respect to his firm's internal procedures of engaging a suitable professional to prepare a concluding report "… in cases in which we have identified an area that might be classified as a wetland or any other protected wildlife zone , as well as acknowledging his unawareness as to whether the D1 Application that was submitted to SETENA for Las Olas Project for the Condo Section identified or not the sensitive areas.

538. Respondent has supported its position not only with the testimony of Dr. Jurado, but also that of Mr. Ortíz, Claimants' witness on local law; Mr. Gerardo Barboza Jimenéz 499 , Claimants' wetlands expert, and Mr. Bermúdez 500 , the environmental regent for the project, all of whom accepted the application of this principle.

539. Mr. Esteban Bermúdez, the Environmental Regent designated by Claimants for the Condo Section of the Las Olas Project, acknowledged during cross-examination at the December Hearing that the responsibility to submit all necessary studies is shared by the developer and the environmental consultant to prove the absence of pollution, unauthorized degradation or impact, and that this was in line with the "precautionary principle" embodied in Article 109 of the Biodiversity Law. He even acknowledged that such principle applies even if there is no scientific certainty; it would still be necessary even if one had only had reason to suspect the existence of a wetland. Likewise, Mr. Barboza stated that if the existence of a possible wetland was known during the preparation of a D1 Application, a precise, qualitative and quantitative site visit would be merited prior to filing.

540. But in any case, Respondent added that the D1 Application itself contains language to the effect that the applicant is submitting information that is current and truthful, as a "sworn affidavit". Indeed the form reads "… Based on the data provided, SETENA could make decisions regarding the Environmental Viability of the activity, work or project proposed, so in the event that false or erroneous information is provided, the signatories will not only be responsible for this offense, but also for the consequences of the decisions that SETENA has incurred in when relying on that data".

541. Respondent complements that the duty of "transparency and good faith" also supports the need to place the burden on the applicant 502 .

542. Accordingly, there was a burden on Claimants (like any other D1 applicant) to ensure that information was not only accurate 503 but also not misleading.

543. Although Claimants accept that a developer has the obligation to submit complete and accurate information when filing a D1 Application to secure an Environmental Viability, they add that the failure to do so may give rise to an action by MINAE or SETENA to annul an Environment Viability previously issued through the "lesividad" administrative process 504 . But, they argue, there has been no annulment proceeding has been initiated by Respondent in this case.

544. After the D1 Application is filed with SETENA, along with the required documents, SETENA may determine whether there is additional information that is required and, if so, request same from applicant.

545. This gives rise to another area of controversy among Claimants and Respondent which relates as to whether, once a D1 Application has been filed, SETENA has the duty to inspect the site or whether it simply has the option to carry out such inspection.

546. Claimants have argued the obligation of SETENA to duly review and examine the information submitted by a D1 applicant, and to control for its accuracy and that, to do so, SETENA cannot decline the exercise of the powers nor can delegate them to someone else. This entails the duty to inspect the site for which the Environmental Viability is requested. They cite in support of this position the testimony of Mr. Ortíz, their witness on Costa Rican law, and Mr. Bermudez, the Environmental Regent. SETENA, they add, has the responsibility to review and assess the information submitted and identify and request any missing documents; if it fails to make an inspection, this should not affect the developer.

547. Respondent rejects the position taken by Claimants, and argues that the inspection by SETENA is an option, and therefore the failure to carry out such inspection should not trigger any consequence as suggested by Claimants.

548. During the cross examination of Dr. Jurado during the December Hearing, he was quite clear to the effect that there is no legal obligation on SETENA to conduct such an inspection, stating that it would be "absurd" to expect the authority to conduct an inspection to the site for each application submitted. Under the relevant law, he added this constitutes an option on the part of SETENA, rather than an obligation. The system, "... has been organized so that the developer provides information, biological studies, hydrological studies; all studies required are provided by the developer, and the ... Administration accepts them under a relationship of trust. Now, if they think there is some information that's not true, then they would make an inspection" .

549. It would appear that the above issue is moot, because SETENA did carry out an inspection to the Condo Section of the Las Olas project on January 10, 2008 prior to issuing the Environmental Viability on June 2, 2008 (Resolution No. 1597-2008 SETENA). It is not moot, however, insofar as the implications of the argument in this case go further. If there was an obligation to carry out the inspection, the conclusion could be that any information deficiently reported or described by applicant would be cured. The Tribunal shall examine this issue below.

550. The Tribunal notes the terms of article 84 of the Organic Law on the Environment which provides the competencies of SETENA, and within those there is section (d) which states that SETENA has as a junction to "carry out the corresponding in situ inspections before issuing its resolutions" 508 . The Claimants have argued that the words "funciones" which is included in said provision reflect the "duties" of SETENA, and these include the obligation to perform visits after a D1 Application is submitted. Respondent claims, on the other hand, that it describes the competencies; in other words, that SETENA may carry out the various activities, but is not bound to do so.

551. Respondent acknowledges that SETENA and other competent authorities may have overlooked the existence of wetlands, or determined that none existed when they did carry out an inspection. But, it adds, this is incidental to the conclusions reached by its agencies, because the permits were obtained unlawfully, since Claimants were responsible to search for, identify, and disclose the existence (or even the "possible existence") of wetlands 509 .

552. The Tribunal sides with Respondent and finds a duty on an applicant for an Environmental Viability to advise the competent authority in matters that affect any impact to the environment, and that this duty arises under the Biodiversity Law and is confirmed under the precise terms of the statement made as an oath in the D-1 Application. The reading of the provision imposes the duty on those "requesting a permit" or those "accused of having caused an environmental harm". Hence, even though Claimants are correct in stating that Article 109 of the Biodiversity Law 510 applies in a formal adversarial legal proceeding involving environmental protection, where they are wrong is that this is not exclusive. It applies also in respect of those who request an approval or, permits, or request access to biodiversity.

553. Thus, this duty transfers the burden of proof to the applicant of a permit. And the burden is to evidence the "absence of non-permitted pollution, degradation or affectation", all of which the Tribunal acknowledge are broad concepts. Thus, at the time the Claimants filed their D1 Application, the burden was on Claimants to evidence that no such adverse impact on the Las Olas Project site was to occur as a consequence of the development. The duty evidently carries a strong component of conducting oneself in good faith which, in turn, implies not only the duty to disclose existing conditions known to, or suspected by the applicant, but also the same duty as was expressed by Mr. Mussio in his witness statement as a "protocol" of his firm in situations similar to those of this project. Faced with the potential existence of wetlands, the duty is to entrust those additional studies as may be required to ascertain whether or not such wetlands exist and, regardless of whether there is a report affirming the existence of wetlands or not, disclose the information that is relevant to the authority (SETENA, in this case) so that

the authority can carry out further studies it deems appropriate before issuing the Environmental Viability to the relevant project.

554. This duty cannot be relieved, as Claimant intends, by shifting the burden to Respondent's agencies to verify the accuracy of the information disclosed by Claimants in the D1 Application. The application not only relies on the burden of proof that is incorporated into Costa Rican law, but also involves the general principle of good faith because it presupposes that the applicant himself will be acting in good faith and does not withhold any information that may be relevant.

555. This responsibility is further strengthened by the language incorporated into the D1 Application, which the Tribunal translates from the Spanish original:

The undersigned represent under oath that all of the information supplied and is included in this application is accurate and current and is provided in accordance with the technical knowledge available. The foregoing [representation is made] under the penalties established under law for the crimes of perjury and false statements and aware of the following Environmental Liability Clause".

The environmental consultant and the developer who sign the D-1 Application shall be directly liable for the technical scientific information that they supply therein. Therefore, the National Environmental Technical Secretary (SETENA), as environmental authority of the Costa Rican State, shall review that this document has met with the technical guidelines established for the completion, and if these are satisfactory will accept the information presented as accurate and truthful, as a sworn statement. Based on the data provided, SETENA could make decisions regarding the Environmental Viability of the activity, work or project proposed, so in the event that false or erroneous information is provided, the signatories will not only be responsible for this offense, but also for the consequences of the decisions that SETENA has incurred in when relying on that data. (Emphasis added)

556. Accordingly, there was a burden on Claimants (like any other D1 applicant) to ensure that information was accurate 512 . Applicant represents to SETENA (and this is what Claimants did) that it may rely on the information supplied, which information is represented to be "accurate and current". When the form stated that liability leads to decisions to be made in reliance to the information, the Tribunal is clear that a further duty underlies: to act in good faith and to not be misleading.

557. This language in the D1 Application in the form of a "sworn affidavit" leaves no doubt as to the duty of an applicant to submit information that is both current and truthful. Considering this, there is little doubt that SETENA is empowered to rely on the information as "accurate and current" in order to carry out its "desktop examination" of the information without being required to verify the accuracy thereof on site, as is suggested by Claimants. If one were to construe the terms of Article 84 of the Organic Law on the Environment to mean that SETENA is obligated to perform a site visit to the project site this would render the representations made under oath by the applicant useless. Although Claimants have argued that SETENA has the

shared obligation to make an examination and verify the information submitted by the developer, and failure to carry out such inspection should not affect the developer, the Tribunal takes the opposite position. The Tribunal believes that it is an option of SETENA to perform site visits after an application is submitted, and not an obligation, and that under the limited financial and human resources of SETENA its efforts need to be concentrated in those cases where risks to the environment have been expressed in an application.

558. If Claimants had submitted in their D1 Application the information relating to the existence of potential wetlands as described in the so-called Protti Report, it is more likely than not that SETENA would have exercised its powers and verify the conditions on site prior to issuing the Environmental Viability and perhaps SETENA would have subject the Las Olas Project to some limitations in its development to protect the potential wetlands identified. In such instance, the real estate development would likely have proceeded to conclusion, albeit with some additional costs, but the Parties would not be involved in this case.

559. Since Claimants had the duty to advice SETENA at the time they filed their D1 Application of the existence of the "swamp-type flooded areas with poor draining" or potential wetlands, and Claimants failed to do so, they thus cannot now attempt to shield their omission on the alleged failure of SETENA to inspect the property to verify the existence of wetlands.

So did you get all that? From paragraphs 535, through 559, SETENA, DI or EV is mentioned 58b times, WOW. What elephant in the room that is missing here? OF COURSE, IT'S SETENA. There is not witness statements from SETENA. They were not called by the Government to give a witness statement to state all the things that were said on their behalf in this entire ruling. DO YOU ALL UNDERSTAND HOW BAD, BIAS AND JUST PLAIN ILLEGAL THAT IS? Keep this in mind, the state is accusing me of duping SETENA. That's a crime, yet it's okay to hide SETENA from appearing and instead the state can give hearsay and proxy testimony about what their policies are, what they would have said and how they run things at that agency. The accused has a right to face his accuser, but in this case, that never happened.

KNOW WHAT IT'S LIKE FOR AN INNOCENT PERSON TO BE SENT TO PRISON FOR A CRIME THEY NEVER COMMITTED. THIS WRONG HAS TO BE MADE RIGHT. I hope you all got the above???

NOTICE WHAT CONTRADICTING STATEMENTS THE JUDGES MAKE ABOUT INSPECTIONS.
My incompetent attorneys should have been screaming and have precedent cases to quote, but this totally improper way the STATE was presenting their evidence or should I say non-evidence. My attorneys should have been screaming that the state had every opportunity to call SETENA for a witness statement. Since that didn't they cannot now testify on their behalf. Since the State failed to act in the correct legal way, the State is now prohibited from proferring hearsay and proxy statement on behalf of SETENA. But not a peep from the VE legal corner about this total lack of justice under the law. Where was our right to equal justice in this trial and to be confronted by our accusers? Look at the videos or read the transcript of the 6 days hearing and discover that truth for yourselves. YOU ALL NEED TO WATCH THE PATHETIC PERFORMANCE BY VE AT OUR TRIAL. The Incompetent VE attorneys never made a big deal about any of the above although I was complaining about it every day. In fact, I

insisted that Mr. Burn give me an opportunity to respond to the duping accusation before my cross-examination started so I could deny that ever DUPED anyone. Since VE did not object to that when the state made those false allegations with no direct testimony from SETENA.

State to pull off this legal scam with the complicity of our VE attorneys. THAT IS JUST WRONG AND WOULD NOT BE ACCEPTED IN ANY LEGITIMATE COURT IN THE WORLD AN IT'S NOT SUPPOSED TO BE TOLERATED IN THIS COURT EITHER. The VE attorneys should have strongly objected to is a miscarriage of justice, and insisted since the state failed to call SETENA for their witness statement and direct testimony, the EV Resolution/EV Permits shall speak for themselves in their determinations that there are that say there are no wetlands or forest on the project site. Any hearsay testimony must be stricken from the record and disregarded, The SETENA Resolutions must be accepted as laws that that are and everyone must comply with and then and that includes the judges themselves. SETENA EV permits have never been annulled and in fact, have been verified and confirmed by inspections in 2010 and 2011. WE NOW MUST MAKE THAT CLEAR STATEMENT IN OUR COMPLAINT SO MY NAME IS CLEARED OF BEING A CRIMINAL AND WE SHOW THE JURY THE TRAVESTY OF WHAT HAPPENED.

549. It would appear that the above issue is moot, because SETENA did carry out an inspection

Then look what they say in 558: If Claimants had submitted in their D1 Application the information relating to the existence of potential wetlands as described in the so-called Protti Report, it is more likely than not that SETENA would have exercised its powers and verify the conditions on site prior to issuing the Environmental Viability and perhaps SETENA would have subject the Las Olas Project to some limitations in its development to protect the potential wetlands identified. In such instance, the real estate development would likely have proceeded to conclusion, albeit with some additional costs, but the Parties would not be involved in this case.

You see they contradict themselves. Since VE did not push back on any of this nonsense, the Judges had free rein to say whatever they wanted to since they thought I was a liar. This following statement should be put up on a huge display and shown during the opening statement:

"If they (the Judges) have a gut feeling that the claimants are really to blame for their own situation, or if they just don't like the claimants' personality, **they will find a way to have them lose. The lesson, accordingly, is to make sure they like us. The second lesson is the same…" (Dr. Weiler**

Are you all getting upset about what these incompetent attorneys did to their clients? They were by their actions advocates for the state. They should be asked this question, did you or anyone you know at VE take money, or any other consideration, to throw this case to Costa Rica and you know you are under oath so answer truthfully? I hope you're are thinking about punitive damages on top of material damages to seek against these VE incompetents. I like the number the Washington Post was sued for. $250,000,000. We all know everything is bigger and better in Texas, now Is our time to prove it!!!!! I HOPE YOU ALL ARE GETTING MAD ABOUT THIS.

NEXT IT THE FRAGMENTATIONS FALSE ALLEGATION

(f)

Fragmentation

560. Fragmentation of land through the use of easements is permitted in Costa Rica 513 , and this is precisely what Claimants allege they carried out, completing all of the process and allowed the Municipality to take into account a consultative process to verify and issue a land use certification based on the Municipality's regulatory plan. Claimants have further argued that these permits are "final acts" which have inherent effects on third parties and grant lasting rights and obligations upon which the Claimants could rely. Claimants have indicated that they secured these even before they obtained an Environmental Viability for the condominium section of the Las Olas Project.

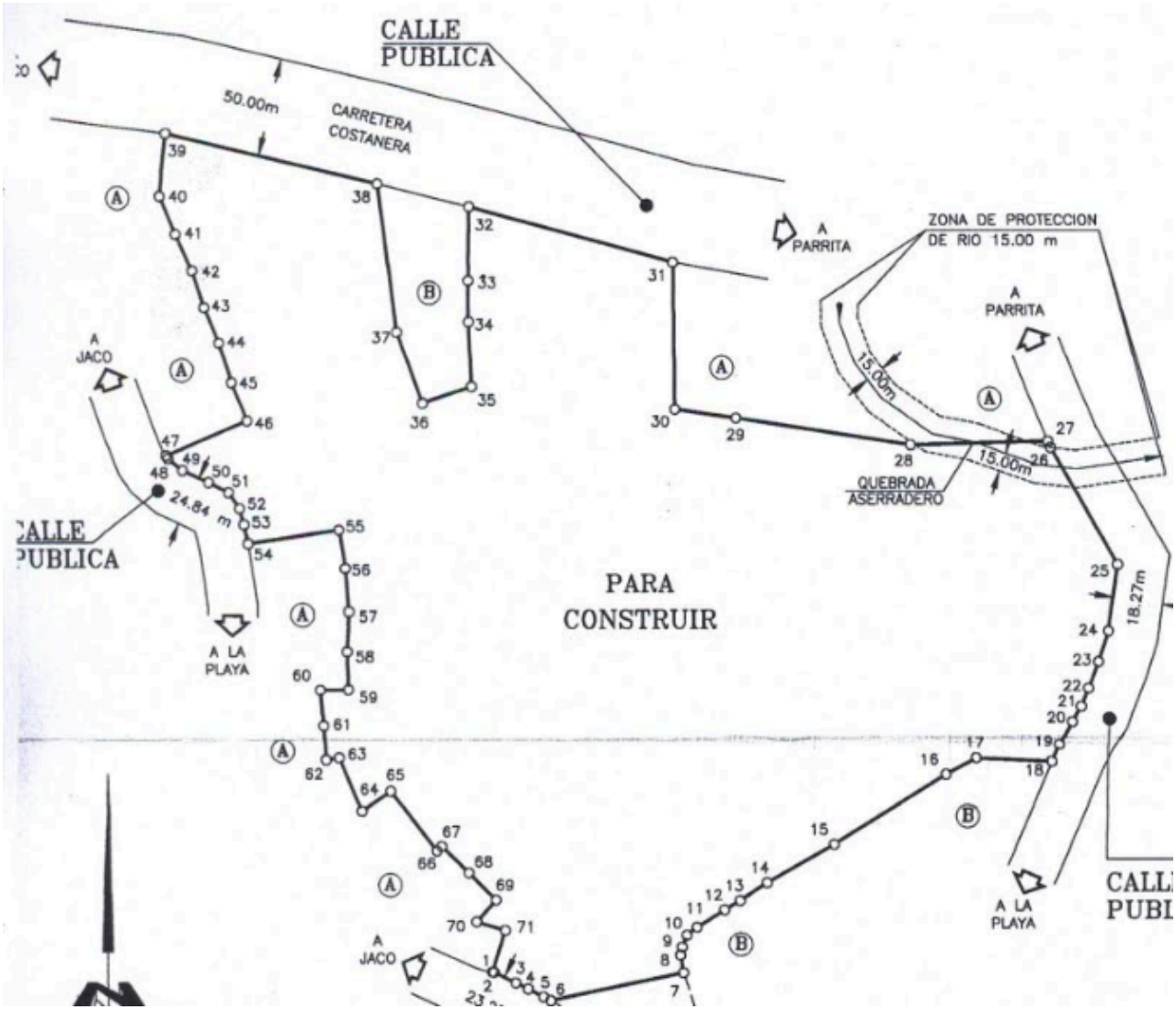
So far so good, the above is true and absolute correct. However, they failed to state it was fragmented or subdivide with advice of Costa Rica counsel.

563. Costa Rica has indicated further that Mr. Bermúdez, the Environmental Regent appointed by Claimants, informed the Municipality of Parrita, as part of a report that was required to be submitted before construction could commence in the area, that an EV had already been issued for the overall project that covered the Easements Section as well, misrepresenting the authority 519 . Mr. Bermudez admitted during his examination at the December Hearing that he never corrected this report 520 , and therefore the Municipality had been misinformed all along.

564. The record shows that the Las Olas Project - the investment carried out by Claimants was originally conceived as a single project, albeit composed of several stages and uses (such as the beach concession, the condominium site and the commercial zone). It was not until years later that the easement section was devised as a separate unit of development. Therefore, the Tribunal deems that the same should follow in respect of the permits and approvals. Permits should have been requested as if the project was one, without distinctions as to sections– whether easements or others.

This is entirely wrong. If you look at the master site plan that I sent to you in one of those bundles, you will see what was approved by SETENA EV. The easements were carved out before we applied for our EV SETENA permit. This is what happens when the VE attorneys don't show the evidence. PLEASE WATCH MY DECLARATION AND THE TRIAL VIDEOS BEFORE YOU DIG INTO ANYTHING ELSE AFTER READING THIS AWARD. The Judges didn't understand what the truth was because it wasn't presented to them correctly by my incompetent VE attorneys. In one those round shrink-wrapped bundles, you will see the master site plan that was approved by SETENA and that was carved out of the property that we purchased in 2002 before we made application for the EV permit in 2007. Here is what the site plan looked like that we submitted to SETENA. See if you can find this in one of those bundles. SEE the screenshot below, in the master site plan only what was in white was in the EV approval, nothing else. We showed it all together in our graphic presentation, but the subdivision was done in 2006 and we applied for the EV with SETENA with a site plan of only what you see it white. So their statement above is false and again, I shipped all of the master site plans to VE, but they never brought them to the trial and never showed a master site plan to the Judges.

So just the area in white is what was what submitted to SETENA for the EV. Below is what appears on our tax plan for the property that has the EV permit.



The above master site plane is what was presented to SETENA and there should be a map that looks just like this in the SETENA Master site plan for what they approved.

Also below is the statement from my attorney that stated that he handled the entire subdivision for me according to the law. The property owned by the US Investors was composed of six different properties in different corporations with the condo section being the largest in the middle and the other 5 pieces were along the roads. I explained during my testimony that Costa Rica law stated that if you owned property along the public road they could be subdivided by putting a 60-meter easement into the property and putting 4 lots on each side of the easement. Lots along a public road are not required to get EV permits. So that's what we did. Below is a letter from my then attorney who did the subdivision. Although it was in evidence, again, this wasn't produced by the VE attorneys during

the trial and explained. Below is the letter from the attorney that subdivided the property.

L E X P E R T S

ABOGADOS - NOTARIOS

www.lexperts.net
San José, Costa Rica

Tel: (506) 291 - 4951
Fax: (506) 291- 4952

San José, October 13th, 2007.-

TO WHOM IT MAY CONCERN:

I am the direct attorney for Las Olas Beach Community and am handling all the legal work for the company including the follow up for the registration of the 70 titled lots that Las Olas is selling. I have been the attorney of record for the company since they decided to develop the property for their lot sales program and I am familiar with all aspect of the lot project. The company requested that I write a brief report to be given out to prospective buyers to inform them of the legal status of the first 70 titled lots that are being sold.

The initial lots for later subdivision have been surveyed by the topographer Gustavo Porras Gutierrez College Id Number 7711, and are as of this moment in the process of being registered by myself at the Public Register of Costa Rica. This will be promptly registered. Also the surveyor will be staking out next week the subdivision of 70 lots on the site and will include the square meters of each lot. I will review the drafts of the lots with the surveyor and will attest that the square meters and positioning of the lots are accurate. Once the initial division of lots is registered I will proceed with subdivision and registration of the 70 lots.

I have advised Las Olas that they can commence pre-selling the lots with an initial down payment toward the purchase. The money will be held in the Land America escrow account and will not be released until the lots are properly registered, at which point you will be notified that Las Olas is ready to close on the property. At that time the initial deposit will be released by Land America to Las Olas or their assign. It is my anticipation that, if the surveyor, can get his work done this week weather permitting, the registration process will be completed by the end of November or the first part of December. I assure you that I will diligently work to speed up the process as much as possible.

I will also be handling the closing of said lots, after they are registered. You have a choice of putting the lots in your name, or having them put into a corporate name. In Costa Rica a great percentage of all property are put into corporate names. This facilitates other transfers, and sales, of your property since you can sell all the stock of the company and there will not be any costs involved that is normally incurred when you sale a property directly. I am also in the process of registering corporations that the lots will be placed in and can attest that the corporations will be new and will have no commercial activity in them, and that the books and the shares in my possession at all times. So if you wish to have the property put into a corporation please get in touch with me directly and I can help you with that. We have people of trust that are the initial officers and directors and all that needs to be done is to substitute those names for your name, or the names of people you want to be the new officers or directors. If you have any question please feel free to call me at any time.

Regards,

Lic. Gavridge Pérez Porras

The following statement is quite remarkable since developers often subdivide commercial property into different corporations and develop them depending on the access to roads size and shape and available utilities. What's important is that you develop according to the law and this was done by Costa Rica Attorneys then knew the law and I have a right to act on the advice of counsel. As you can read the attorney was handling everything. SETENA and MINAE knew full well what they were approving was the master site plan in number 2 image. Of course for marketing purposes, we were presenting the collective properties at Las Olas, but they were registered according to the law and were down by a Costa Rica attorney according to Costa Rica law. In fact, the Judges say the following in Paragraph 572.

572. When asked during the December Hearing on the business rationale of the fragmentation of the Easements Section, Mr. Aven indicated that it was his attorney, Juan Carlos Gavridge Pérez, who suggested that these be developed because the properties could be developed fairly quickly without need of going through an extensive permitting process "…and you don't

have to be concerned with the EV because it is along the main road . Mr. Aven acknowledged this was his motivation, based upon legal advice from his attorney.

So here you have the panel restating what I testified to in the trial and it's correct. So since when is getting legal advice from an attorney wrong when you follow that advice? Does that make any sense? See what the Judges said in para 573

573. The Tribunal believes that a project that was to be built in stages, as Claimants also acknowledged in the Memorial of Claims, cannot be then fragmented so as to avoid securing the environmental viability. But this is precisely what Claimants did.

Are Judges supposed to Judge the law or rely upon a belief system? If businessmen make business decisions based on the law and it derives a better economic return, then that is their fiduciary duty to their shares holders, I don't think Judges should be trying to make decisions based upon what they think should be done. It's a court of law not a court of one's personal beliefs. Again, VE attorneys failed to effectively argue any of this and they never pushed back on anything. But here you have real evidence that judges are making decisions because they just didn't like me because they thought I was a liar and criminal. Therefore they hated me for being a liar and attributed all of my actions as dishonest. In doing that they fulfilled Dr. Weiler prophecy, here it is again:

"If they (the Judges) have a gut feeling that the claimants are really to blame for their own situation, or if they just don't like the claimants' personality, **they will find a way to have them lose. The lesson, accordingly, is to make sure they like us. The second lesson is the same…" (Dr. Weiler**

The attorney had the right idea in saying . The lesson, accordingly, is to make sure they like us. They correctly stated what they needed to do, but they failed to do that by making me out to be a liar and you see that in everything the Judges are saying in their ruling.

577. Claimants have stated that permits were received but were lost by the Municipality of Parrita. The Tribunal finds it hard to believe that permits presumably issued both in 2008 and 2009 were lost in the "Alma" storm, as alleged by Claimants. Especially since the storm occurred in May of 2008.

The above statement is wrong. it wasn't the Claimants that said we received them then lost them, we said it was what Mauricio Mussio that built the easements for us at the same time he built the office in the summer of 2007. The office was open in the fall of 2007 and we had a person in the office selling lots. So I don't know where they got that the permits were issued in 2008 and 2009, but the timing is wrong, Those easements were built in the summer of 2007 by Mussio at the same time he was building the office. I know that for sure because we also had an office opened in San Jose at the same time and we were selling out of both offices in the summer of 2007 until the fall of 2008 when we shut down during the financial crisis. Here's the exchange between Mussio and Leathley.

Let's go to R-521.
PRESIDENT SIQUEIROS: Perhaps
Mr. Leathley--can you just repeat the number of the paragraph.
MR. LEATHLEY: Yes. This is--I'm now in an exhibit. This is--I'm sorry. I give the Tribunal my back. My

apologies.

This is R-521. And, yes, it was what was previously known as C-295. This is a document that has two letters. The first is a request for construction permits.

BY MR. LEATHLEY:

Q Have you seen this document before? A No. No, sir.

Q So this is a request from Claimants' Costa Rican lawyers making requests for construction permits for the easements. And then the response from the municipality says--and let me read it into the record because I don't think we have a translation. "In response to your request to certify

11:53:55 they can do so.
2 Let's go to R-521.
3 PRESIDENT SIQUEIROS: Perhaps
4 Mr. Leathley--can you just repeat the number of the
5 paragraph.
6 MR. LEATHLEY: Yes. This is--I'm now in an
7 exhibit. This is--I'm sorry. I give the Tribunal my
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11 has two letters. The first is a request for
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13 BY MR. LEATHLEY:
14 Q Have you seen this document before?
15 A No. No, sir.
16 Q So this is a request from Claimants' Costa
17 Rican lawyers making requests for construction permits
18 for the easements. And then the response from the
19 municipality says--and let me read it into the record
20 because I don't think we have a translation.
21 "In response to your request to certify
22 construction permits granted to conduct work on the

A The permits are very old. Ten years old practically.

Q Sir, I appreciate that. Please answer my question.

Do you in your possession or does Mussio Madigral have those construction permits?

A We have what we obtained from the Association of Engineers and Architects. They gave us the permit. And this is the process that I explained. First the association and then the municipality.

Q Yes. The municipality permits that were requested--the municipality issues the permits.

A Correct.

Q You were asked in the days before--I will ask you to take a note of the date of this letter, 9th of November 2016. That's barely three weeks ago.

They ask for construction permits for 2008 and 2009. And the response is that none were ever approved.

A Correct.

Q Are you contesting the response of a municipality? Are you saying they're wrong?

yes. Because they even lost documents--a significant number of documents due to the flooding after the Alma Hurricane. And I was in the area at the time. And I'm sure that they lost many documents.

Unfortunately, I don't have the permit per se. I said that we looked at the historical documents, and we did find the permits that we presented to the Association of Engineers and Architects.

Q So of all of these documents in the entire arbitration, we have everything except for two permits from 2008 and 2009 which you say were lost in a flood; is that right, sir? Is that your testimony before this Tribunal?

A As far as I understand it, yes. That's what I am stating, yes.

Q Okay. Let's go to C-295. We'd like to go to the Claimants' C-295. This is the document that was submitted onto the record this morning.

PRESIDENT SIQUEIROS: Just a question of procedure. How long would you estimate your explanation to continue? Otherwise perhaps we could consider a short break at this moment. I don't want to interrupt if--

MR. LEATHLEY: If I can just finish this immediate line of questions, and then I'll find an actual break.

PRESIDENT SIQUEIROS: That's fine. Thank you.

MR. LEATHLEY: C-295. And I wonder if we could request Claimants' counsel to deliver to the witness a copy of C-295 from their files, please.

BY MR. LEATHLEY:

Q This is a request again from Claimants' counsel--Costa Rican counsel--sorry. This is a response to a request. It's addressed to Claimants' Costa Rican counsel. It's from the municipality, and it follows up on the 29th of November, 2016. This is days ago. And it refers to the hurricane that you're referring to; is that right, sir?

A I haven't read it. Q Are you ready, sir? A Yes.made, weren't you, sir?

A This?

Q Yes, sir.

A No, sir.

Q You didn't phone or approach Kattia Castro Hernandez after the receipt of this document I previously showed you, which was R-521?

A I don't know Ms. Kattia. I have never spoken to her.

Q So if we were to get a witness statement from Ms. Kattia Castro testifying that after the delivery of this letter of the 14th of November, 2016, you or someone from your firm requested a more general reference to construction permits, you--you wouldn't anticipate that testimony to be correct?

A We--by refreshing my memory regarding the documents we found. We had ten binders such as this one of the Las Olas process. Unfortunately, we only recovered four. One second, please. We only recovered four.

And we did try--as a matter of fact and very possibly, my partner called the municipality. But not only that, we also obtained a certification from the Federated Association of Architects and Engineers of all projects from 2004, 2005, until that date just to refresh our memories because, basically, ten years have gone by. It's a long time.

Q Thank you, sir.

And so Mussio Madigral approached Kattia Castro Hernandez after the 4th of November which said that there were no construction permits because you weren't happy with the answer, and so you asked for the files; correct?

A What might--what may have been requested or asked was if they did have that information. That's what we asked, if they had that information.

Q Although they had said very clearly that those permits--the construction permits for the easements had not been approved in 2008 and 2009. That's what they were telling you. But you went back.

And then let's look at this document, C-295.

And here it refers to the hurricane. This is presumably the same Hurricane Alma that you were And you were aware

of this request being?

A Just a technical clarification. It wasn't a hurricane. It was a tropical storm. That's it.

And as--with regard to these two documents, I don't know them. I don't--I also don't know when the request was made as far as we're concerned.

Now, what I don't understand, and with all due respect--what I don't understand how--in this first document of November 14th it says that there are no permits, but then in this document it says that everything was taken by the floods.

So, obviously--and that's why I'm repeating my position that we did get the construction permits. My firm is one which, as you yourself said, minimizes risk.

Q Thank you, sir.

So let's look at the C-295 document where it refers to the Permissions of Construction, Number 154 of 2007. And it's that file that they say was lost in the flood. And 154-2007 is actually the Concession, isn't it, sir? It's not--it's not the easements.

A You're asking . .

looking at, the last paragraph where it says the file had been damaged or lost in the flood, that construction permit relates to the Concession. It's an entirely different plot of land to the easements?

A Yes, totally different.

Q And so it's quite possible that the construction permit for the Concession was lost, and the affirmation from the municipality that there were no construction permits approved for the easements is also true. These two letters can perfectly coexist without contradicting one another; correct?

A I wouldn't be able to tell. I don't know what the internal processes are of how they control the process having to do with municipality permits.

But what I can recall--because that had a large impact, not only in Las Olas but also in other projects that we had in that area. And that was something major as far as floods are concerned in the Tarcoles part. It was also very bad in the Parritas part too. So much so that as far as I know, the-- whole information of construction permits, computers, municipality.

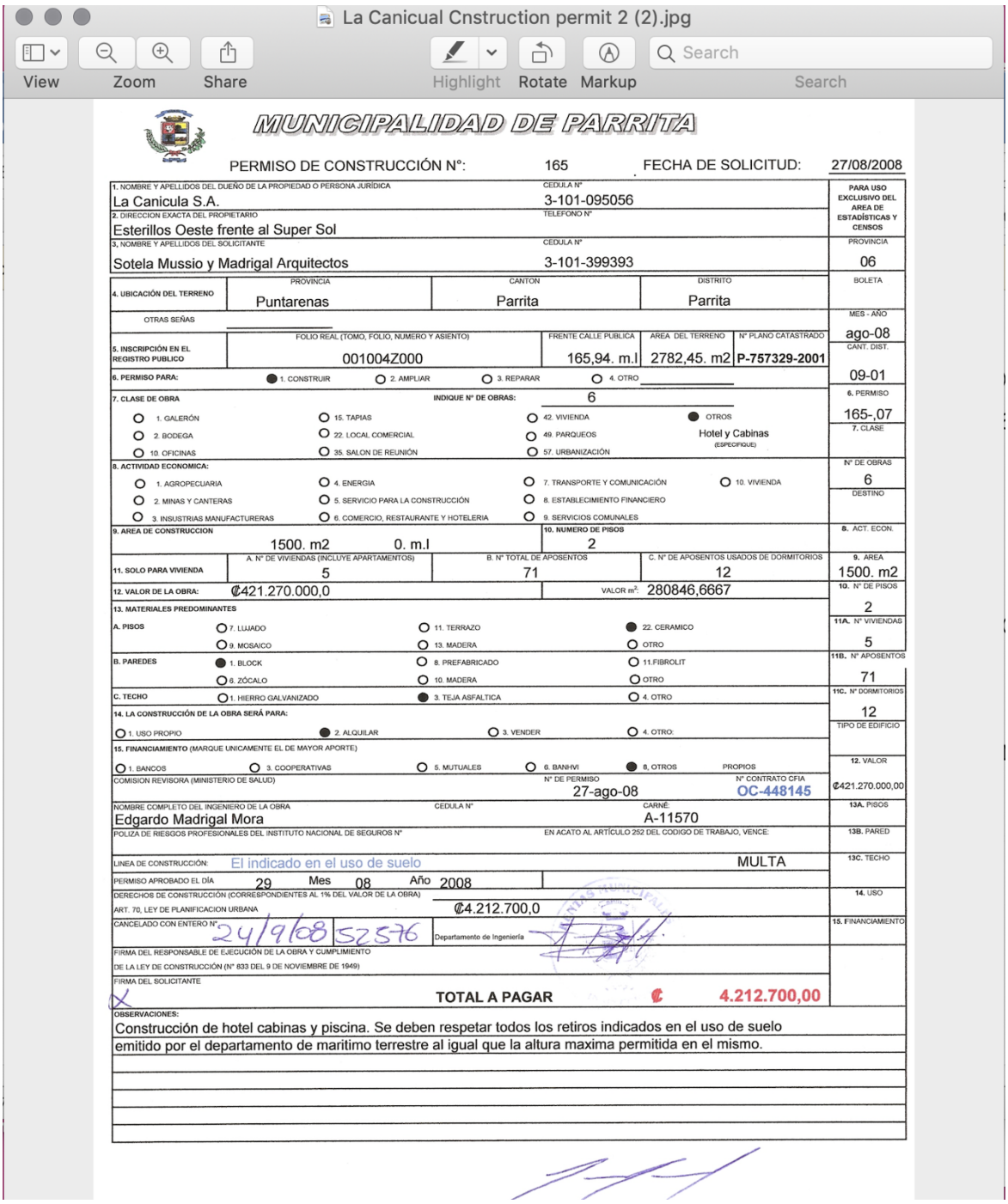
Q And-- that flooded the depository that stored the construction permits for the Maritime zones, but it didn't for the easement section? You don't know?

A No, I don't.

MR. LEATHLEY: Thank you. Maybe this is a good point for a break, sir. I'll try to then clarify how much time I have left.

If we could perhaps just ask the--respectfully, the Tribunal to remind the witness not to converse with others during this break.

Okay, I have been doing some research in real time. We didn't have a construction permit for the concession in 2007. We didn't get the construction permit for the concession until 2008. See the permit below. If you notice that number is 165 so the construction permit issued in 2007 was not for the concession, it was for the easements. The MUNI either intentionally or accidentally got their wires crossed. Below is the 2008 Construction permit for the La Canicula concession and as you will see it's dated in 2008 not in 2007. So the 2007 permits were for the two easements just a Mussio said. The arbitrator's things everyone on our side is a liar.



La Canicual Cnstruction permit 2 (2).jpg

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MUNICIPALIDAD DE PARRITA

PERMISO DE CONSTRUCCIÓN N°: 165 FECHA DE SOLICITUD: 27/08/2008

1. NOMBRE Y APELLIDOS DEL DUEÑO DE LA PROPIEDAD O PERSONA JURÍDICA: La Canicula S.A. — CEDULA N°: 3-101-095056
2. DIRECCION EXACTA DEL PROPIETARIO: Esterillos Oeste frente al Super Sol — TELEFONO N°:
3. NOMBRE Y APELLIDOS DEL SOLICITANTE: Sotela Mussio y Madrigal Arquitectos — CEDULA N°: 3-101-399393

PARA USO EXCLUSIVO DEL AREA DE ESTADÍSTICAS Y CENSOS

PROVINCIA: 06

4. UBICACIÓN DEL TERRENO: PROVINCIA: Puntarenas — CANTON: Parrita — DISTRITO: Parrita
OTRAS SEÑAS:

BOLETA

MES - AÑO: ago-08

5. INSCRIPCIÓN EN EL REGISTRO PUBLICO: FOLIO REAL (TOMO, FOLIO, NUMERO Y ASIENTO): 001004Z000 — FRENTE CALLE PUBLICA: 165,94. m.l — AREA DEL TERRENO: 2782,45. m2 — N° PLANO CATASTRADO: P-757329-2001

CANT. DIST.: 09-01

6. PERMISO PARA: (●) 1. CONSTRUIR ( ) 2. AMPLIAR ( ) 3. REPARAR ( ) 4. OTRO

6. PERMISO: 165-,07

7. CLASE DE OBRA — INDIQUE N° DE OBRAS: 6
( ) 1. GALERÓN ( ) 15. TAPIAS ( ) 42. VIVIENDA (●) OTROS
( ) 2. BODEGA ( ) 22. LOCAL COMERCIAL ( ) 49. PARQUEOS Hotel y Cabinas (ESPECIFIQUE)
( ) 10. OFICINAS ( ) 35. SALON DE REUNIÓN ( ) 57. URBANIZACIÓN

7. CLASE:

8. ACTIVIDAD ECONOMICA:
( ) 1. AGROPECUARIA ( ) 4. ENERGIA ( ) 7. TRANSPORTE Y COMUNICACIÓN ( ) 10. VIVIENDA
( ) 2. MINAS Y CANTERAS ( ) 5. SERVICIO PARA LA CONSTRUCCIÓN ( ) 8. ESTABLECIMIENTO FINANCIERO
( ) 3. INSUSTRIAS MANUFACTURERAS ( ) 6. COMERCIO, RESTAURANTE Y HOTELERIA ( ) 9. SERVICIOS COMUNALES

N° DE OBRAS: 6

DESTINO:

9. AREA DE CONSTRUCCION: 1500. m2 0. m.l — 10. NUMERO DE PISOS: 2

8. ACT. ECON.:

11. SOLO PARA VIVIENDA: A. N° DE VIVIENDAS (INCLUYE APARTAMENTOS): 5 — B. N° TOTAL DE APOSENTOS: 71 — C. N° DE APOSENTOS USADOS DE DORMITORIOS: 12

9. AREA: 1500. m2

12. VALOR DE LA OBRA: ₡421.270.000,0 — VALOR m²: 280846,6667

10. N° DE PISOS: 2

13. MATERIALES PREDOMINANTES

A. PISOS: ( ) 7. LUJADO ( ) 11. TERRAZO (●) 22. CERAMICO ( ) 9. MOSAICO ( ) 13. MADERA ( ) OTRO

11A. N° VIVIENDAS: 5

B. PAREDES: (●) 1. BLOCK ( ) 8. PREFABRICADO ( ) 11.FIBROLIT ( ) 6. ZÓCALO ( ) 10. MADERA ( ) OTRO

11B. N° APOSENTOS: 71

C. TECHO: ( ) 1. HIERRO GALVANIZADO (●) 3. TEJA ASFALTICA ( ) 4. OTRO

11C. N° DORMITORIOS: 12

14. LA CONSTRUCCIÓN DE LA OBRA SERÁ PARA: ( ) 1. USO PROPIO (●) 2. ALQUILAR ( ) 3. VENDER ( ) 4. OTRO:

TIPO DE EDIFICIO:

15. FINANCIAMIENTO (MARQUE UNICAMENTE EL DE MAYOR APORTE)
( ) 1. BANCOS ( ) 3. COOPERATIVAS ( ) 5. MUTUALES ( ) 6. BANHVI (●) 8. OTROS PROPIOS

12. VALOR: ₡421.270.000,00

COMISION REVISORA (MINISTERIO DE SALUD) — N° DE PERMISO: 27-ago-08 — N° CONTRATO CFIA: OC-448145

NOMBRE COMPLETO DEL INGENIERO DE LA OBRA: Edgardo Madrigal Mora — CEDULA N°: — CARNÉ: A-11570

13A. PISOS:

POLIZA DE RIESGOS PROFESIONALES DEL INSTITUTO NACIONAL DE SEGUROS N° — EN ACATO AL ARTÍCULO 252 DEL CODIGO DE TRABAJO, VENCE:

13B. PARED:

LINEA DE CONSTRUCCIÓN: El indicado en el uso de suelo — MULTA

13C. TECHO:

PERMISO APROBADO EL DÍA 29 Mes 08 Año 2008

DERECHOS DE CONSTRUCCIÓN (CORRESPONDIENTES AL 1% DEL VALOR DE LA OBRA) ART. 70, LEY DE PLANIFICACION URBANA: ₡4.212.700,0

14. USO:

CANCELADO CON ENTERO N°: 24/9/08 52576 — Departamento de Ingeniería

15. FINANCIAMIENTO:

FIRMA DEL RESPONSABLE DE EJECUCIÓN DE LA OBRA Y CUMPLIMIENTO DE LA LEY DE CONSTRUCCIÓN (N° 833 DEL 9 DE NOVIEMBRE DE 1949)

FIRMA DEL SOLICITANTE

TOTAL A PAGAR ₡ 4.212.700,00

OBSERVACIONES:
Construcción de hotel cabinas y piscina. Se deben respetar todos los retiros indicados en el uso de suelo emitido por el departamento de maritimo terrestre al igual que la altura maxima permitida en el mismo.

As you see the date is August of 2008, the office and easements were built one year earlier so the arbitrators got the dates wrong. I don't remember this exchange at the hearing, but I researched it in real time as I was writing this.

579. From the foregoing analysis, the Tribunal concludes that the fragmentation made by Claimants did not have a business purpose in and for itself, and that by doing so Claimants evaded improperly the need to secure an EV precisely in the area were a wetland has been confirmed to have existed. Since the Las Olas Project was deemed to be a single development project, Easement Section should have been part of the D1 Application as well

Again, everything the Judges are coming up with goes against us for no reason other than they are trying to find things to rule against us on because they think I'm a liar. Look how weak this is. We didn't have a business purpose. I testified about this at the hearing that the business purpose was to sell lots along the road since you didn't have to go through the long process of getting an EV permit. We weren't operating under David Aven rules, we were operating under the laws of Costa Rica, so I don't get what they're saying at all. We didn't evade anything improperly since my Costa Rica attorney did everything according to Costa Rica Law, so how was that improper. Again this pattern plays on throughout the entire ruling and Todd Weiler saying was exactly right and it continues into the part 3

"If they (the Judges) have a gut feeling that the claimants are really to blame for their own situation, or if they just don't like the claimants' personality, **they will find a way to have them lose. The lesson, accordingly, is to make sure they like us. The second lesson is the same…" (Dr. Weiler**

END OF PART 2, WILL WORK ON PART 3 TOMORROW AND WILL START ON PAGE 181 ON MY WAY TO PAGE 250. WILL START HERE TOMORROW.

(g) Were Wetlands and Forests Damaged at the Las Olas Project Site

580. There have been allegations and expert reports submitted by Respondent as to the existence of wetlands in other sites of the Las Olas Project, but also strong allegations to the contrary on the part of Claimants.