The following are the Claimants three Pleadings, the NOI, NOA and Claimants Memorial.

As you will see the audio bribery recording is mentioned in the NOI and NOA prepared by King and Spalding. The Claimants Memorial came out on November 27, 2015 and in that memorial, which was another pleading, there is extensive talk about a number of bribes attempted on David Aven the Claimant. Specifically in paragraphs our memorial goes into great detail about the Bribe that I recorded and describes it with the benefit of having the VE attorneys having heard the bribe, but they don't say they have an audio of the bribe. Not only that, but as you will see below, VE talks a lot about bribery being the reason the project was shut down, but they absolutely failed to provide any proof of their allegations.

However, what is even worse is that I responded to an email from Louise Woods on November 16, 2015 and had the following exchange with her:

2. **Woods: The Bribery audio recording**

As previously mentioned, we cannot exhibit the recording as evidence without exposing your criminal lawyer to a risk of criminal prosecution and other professional ramifications. We also cannot allow you to say under oath that you took the recording when that is not the case. In the circumstances, for the time being at least, all references to the recording must be omitted from our filings in the arbitration. In the absence of the recording, we need you to describe in more detail what happened at, and who attended, that meeting.

Aven: I must insist that we produce this as evidence in my case. This is too powerful not to use. I did the recording and my attorney, Gavridge Perez did not know I was recording the meeting. He was doing the interpreting for me. I really don't care about what problems it causes for him since he caused me a number of problems and I really not in a good dream of mind to be mister nice guy to people in Costa Rica, I am sure you can understand that. The people at the meeting were myself, Gavridge Perez and a guy name Ovideo, who was the city manager. This will also give us support for our allegation that we were asked for a bribe by Christian Bogantes. Further, we have Fernando's Zumbado statement who has said that he heard the audio that I played it for him and in fact he called the president's brother about it and told him, but nothing was ever done. So there's no way were not going to use this as evidence.

This was a direct instruction from the client to put the audio into evidence. Their Memorial came out 11 days later on November 27, 2015. They had two choices, (1) follow the clients direct instruction or (2)

Audio Bribery Mentioned in NOI, NOA, CLAIMANTS MEMORIAL

September 17, 2013

FedEx

Dirección de Aplicación de Acuerdos Comerciales Internacionales Ministerio de Comercio Exterior San Jose, Costa Rica

Re: Notice of Intent to Submit a Claim to Arbitration under DR-CAFTA Chapter 10

Dear Sir or Madam:

In accordance with Article 10.16(2) of the Central America-Dominican Republic-United States Free Trade Agreement (" DR-CAFTA"), the investors listed in Section 1 below hereby give written notice of their intent to submit to arbitration a claim against the Government of Costa Rica (" Costa Rica").

September 17, 2013 Page 9

The Environmental Prosecutor also ignored Mr. Aven's statements regarding the bribery solicited by Mr. Bogantes of the MINAE office in Quepos. Although extortion and bribery are serious criminal offenses, the Prosecutor (i) failed to investigate Mr. Aven's claim, (ii) maintained the investigation against the Las Olas Project, and (iii) decided to call Mr. Bogantes to testify against Mr. Aven.

Notice of Intent to Submit a Claim to Arbitration September 17, 2013 Page 12

C. Basis for the Claim

In addition, Costa Rica violated DR-CAFTA Article 10.7 by indirectly expropriating the Investors' right to the value of their investment without compensation. By enjoining the Las Olas Project, soliciting bribes, bringing a criminal claim against the project representative, Mr. Aven, and ultimately creating a situation in which Mr. Aven cannot return to Costa Rica, the government of Costa Rica has effectively deprived the Investors of their right to develop the Project, and to enjoy the profits from their investments. What was meant to be a beautiful and profitable real estate project is now empty land with no reasonable prospect of development certainly not by the Investors, given the reputational harm from the criminal proceedings, and the fact that Mr. Aven, their representative, would be risking li.is life by returning to Costa Rica.

Notice of intent to Submit a Claim to Arbitration September 17, 2013 Page 7

But MINAE reversed course shortly thereafter-following an unsuccessful bribery attempt. While visiting the Las Olas Project site, Mr. Christian Bogantes, the director of the MINAE office

in Quepas, told Mr. Aven that things would go a lot easier if Mr. Aven contributed to their retirement funds. This was the second bribery attempt by Costa Rican government officials. The Municipality of Parrita had previously solicited a $200,000 bribe for continuation of the Las Olas Project. The Investors have in their possession a tape recording of the solicitation of this bribe.

Mr. Aven- an Investor and the Las Olas Project representative-flatly refused to pay either bribe. In fact, Mr. Aven flied a criminal complaint about the bribe solicitation, which the local Prosecutor's Office in Quepos ignored. lndeed, when Mr. Aven checked the status of his complaint over a year later, there was nothing in the file.

Notice of intent to Submit a Claim to Arbitration September 17, 2013 Page 8

The Environmental Prosecutor also ignored Mr. Aven's statements regarding the bribery solicited by Mr. Bogantes of the MINAE office in Quepos. Although extortion and bribery are serious criminal offenses, the Prosecutor (i) failed to investigate Mr. Aven's claim, (ii) (' maintained the investigation against the Las Olas Project, and (iii) decided to call Mr. Bogantes to testify against Mr. Aven.

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NOA filed January 24, 2014

40. The Environmental Prosecutor also ignored Mr. Aven's statements regarding the bribe solicited by Mr. Bogantes of MINAE. Although extortion and bribery are serious criminal offenses, the Prosecutor (i) failed to investigate Mr. Aven's claim, (ii) maintained the investigation against the Las Olas Project, and (iii) decided to call Mr. Bogantes to testify against Mr. Aven.

45. As indicated above, the Government also called as a witness Mr. Bogantes, whom Mr. . Aven had accused of soliciting a bribe and whose testimony contradicted his own written reports. Mr. Bogantes first testified that MINAE had found wetlands in two reports from January and February 2010. The judge admonished him, however, noting that the January and February 2010 reports simply concluded that the body of water identified in the property existed only as a result of rainwater runoff, and was not a wetland. The judge also read Mr. Bogantes the July 16, 2010 MINAE report fmding that no wetlands existed on the property. When asked to explain the contradiction between his testimony and the written reports, Mr. Bogantes perjured himself by testifying that he had nothing to do with the July 16, 2010 report. But the judge immediately pointed out that this report mentioned Mr. Bogantes by name. Mr. Bogantes again lied, alleging that he had no involvement in the report and merely drove its author, Mr. Jose Rolando Manfredi Abarca of MINAE, to the property. This was belied by Mr. Bogantes' acknowledgement in writing that both he and Mr. Manfredi conducted the investigation that led to the July 16,2010 report. 24
60. By enjoining the Las Olas Project, soliciting bribes, bringing a criminal claim against the project representative, Mr. Aven, and ultimately creating a situation in which Mr. Aven cannot

return to Costa Rica, the government of Costa Rica has effectively deprived the Investors of their right to develop the Project, and to enjoy the profits from tl1eir investments. What was meant to be a beautiful and profitable real estate project is now empty land with no reasonable prospect of development--certainly not by the Investors, given the reputational harm from the criminal proceedings, and the fact that Mr. Aven, their representative, would be risking his life by returning to Costa Rica.

86. Then Costa Rica began to engage in a series of international wrongs. After an unsuccessful bribery attempt, MINAE suddenly determined-without any scientific support-that there were wetlands on the Las Olas Project land. On February 14, 2011, MINAE notified Mr. Aven of an administrative injunction placed on the property, which prevented any further construction or development. Based on certain MINAE allegations, in April 20 II SETENA shut down the Las Olas project, but lifted the injunction and reinstated the Environmental Viability on November 15, 2011. By then, however, the TAA had placed an injunction on the entire Las Olas Project.

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

Between:

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)

v

THE REPUBLIC OF COSTA RICA (Respondent)

____

CLAIMANTS' FIRST MEMORIAL Respectfully Submitted on this 27th day of November 2015

169. Sometime later, on September 16, 2011, Mr. Aven filed a formal criminal complaint against Mr. Bogantes in respect of his bribery attempt. Needless to say, Mr. Aven was never again contacted about this complaint. In December 2012, Mr. Aven attended the prosecutor's office for an update, only to be told that there was nothing on the file for him to see.

175. Mr. Aven also discussed Mr. Bogantes's bribery attempt at the meeting, and requested that Mr. Martínez investigate this crime. 138 As explained above, a few months later, in September of 2011, Mr. Aven filed a formal complaint against Mr. Bogantes in which he

described the bribery attempt in detail. 139 Mr. Aven listed Mr. Damjanac as a witness in the complaint, as Mr. Damjanac was present during the bribery attempt and could corroborate Mr. Aven's description of the events. 1

206. Then, on April 15, 2013, Mr. Aven and Mr. Shioleno were the victims of a shooting incident, whilst driving back to San José and from a trip to the courthouse in Quepos and the Las Olas project site. Five shots were fired into their car at close range by a motorcycle with two passengers on it. As Mr. Aven describes, after the shots had been discharged, the motorcycle sped off into the distance. Mr. Aven immediately contacted his attorneys, Mr. Ventura and Mr. Morera, and as Mr. Ventura recalls in his witness statement, together they attended the police station where a police report of the incident was filed. A forensics team examined the car, as Mr. Aven's photographs demonstrate and the rental company to which the car belonged was contacted. However, like the Bogantes bribery allegation, nothing further ever came of this police report. 211

240. Their project ran smoothly until early 2011, when certain government agencies launched a sustained attack on the Las Olas development and Mr. Aven and Mr. Damjanac personally. Bogus claims of wetlands and forged documents started flying around, certain government officials tried to extract bribes from the two men and when they were rebuffed in their attempts, they turned on Las Olas and did everything in their power to halt the development - conducting inspection after inspection and writing report after report, until at last they succeeded in running the project into the ground. All of this was done without the slightest notice to the Claimants, who in good faith continued to pour money and resources into the project.

247. These objectives are accompanied by the preambular text of the Agreement, which demonstrates the purposes intended for the rights held, and relief sought, by the Claimants in this case. In relevant part, the DR-CAFTA preamble provides:

The Government of the Republic of Costa Rica, the Government of the Dominican Republic, the Government of the Republic of El Salvador, the Government of the Republic of Guatemala, the Government of the Republic of Honduras, the Government of the Republic of Nicaragua, and the Government of the United States of America, resolved to:

ENSURE a predictable commercial framework for business planning and investment;

PROMOTE transparency and eliminate bribery and corruption international trade and investment;

CREATE new opportunities for economic and social development in the region;

292. The foreign investor thus enjoys the absolute right to be free from demands for illegal payments by host State officials – on the threat of withholding or revoking the permits required for the investment to succeed. And he is most certainly entitled to expect that, should a bribe

ever be solicited from him, his complaint to the host State about the crime will be immediately and thoroughly investigated, in good faith, and that neither he nor his investment will suffer any retribution for having reported it to the proper authorities.

297. The modern rationale for protecting foreign investors from arbitrary results is also not unlike that which Thomas Wälde supplied for the vindication of legitimate expectations. As explained by the Tribunal in Lemire v. Ukraine:

It was not until a substantial capital investment has been made that the governor made his first demand to the investor, for the payment of a bribe.

310 As confirmed by the Tribunal in EDF v. Romania, a request for a bribe by a State official constitutes a manifest violation of the host State's FET obligation, "as well as a violation of international public policy" and "a fundamental breach of transparency and legitimate expectations."

311 Article 18.8: Anti-Corruption Measures 1. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:

Each Party shall endeavor to adopt or maintain appropriate measures to protect persons who, in good faith, report acts of bribery or corruption described in paragraph 1.

312. Indeed, the above-cited provision does more than merely providing confirmation that Article 10.5 is breached when a Costa Rican official who exercises discretionary authority that – if wielded abusively – could eviscerate the value of an investment. It goes further to demonstrate why Article 10.5 is also breached in the event that the proper authorities in a host State fail to either maintain appropriate procedures for the prosecution of the crime of bribery or they fail to maintain appropriate measures to protect persons – obviously including foreign investors – who have reported the occurrence of such crimes to the host State. In drafting and agreeing to the terms of Article 18.8, Costa Rica and the other DR-CAFTA Parties have committed themselves to serious obligations upon which legitimate expectations of future behavior can obviously be based.

340. Although it postdated the DR-CAFTA, the 2003 United Nations Convention Against Corruption (the "UNCAC") also binds the Respondent. Under the UNCAC, the Respondent committed itself to various standards in relation to fighting corruption. These include obligations to apply suitable codes of conduct "for the correct, honorable and proper performance of public functions" by public officials 363 and to establish enforcement systems in order "to maximize the effectiveness of law enforcement measures in respect of [offences of corruption]". 364 Given its binding nature at the international law level, foreign investors have a legitimate expectation that the Respondent will perform its UNCAC obligations and will pursue the battle against corruption. The evidence in this case suggests a rank failure by the Respondent in this regard, with multiple reports of bribe solicitation attempts by its officials

being ignored. At best, the Respondent's reaction to the reports of corruption by various public officials can be characterized as being blasé. Such a relaxed approach to a topic as serious as corruption is not only intolerable, it constitutes a breach of legal obligations binding the Respondent and a failure to meet foreign investors' legitimate expectations.

347. The Claimants note, however that Mr. Bogantes had started looking into Las Olas at the end of August 2010, immediately after having had his second bribery demand rebuffed by Mr. Aven. 373 The addressee of his letter was one Ms. Hazel Diaz Melendez, the local Ombudsperson.

365. As if to flaunt the fact that he enjoyed complete immunity from the strictures of due process, Mr. Bogantes also chose to include a copy of the report that he and Mr. Manfredi had prepared on July 16, 2010. Up until that day, Mr. Aven had not even known of its existence, nor was he aware that the same official who had just orchestrated the shuttering of the Investors' project had actually stated, for the record on July 16, 2010, that it was his opinion that there were never any wetlands on the Las Olas project site. But that was before Mr. Aven refused to pay the bribe demanded of him by Mr. Bogantes, who was obviously only too pleased to demonstrate, in the same correspondence, that he had since changed his mind – with the fate of Las Olas in the balance.

368. The Claimants submit that no excuse is sufficient to justify the unfair and inequitable treatment they received at the hands of one set of officials, particularly as they were apparently lulled into a false – but entirely reasonable and justified – sense of security about the progress and prospects for their investment. Whether SINAC and Municipal officials were either complicit or totally ignorant of these goings on does not matter. Neither is it necessary for the Claimants to prove that the ultimate root of this systemic betrayal of their good faith lay in the vengeance of a corrupt official whose solicitation of a bribe had been rightfully declined. The rank unfairness of the result suffices to demonstrate the fact that the Respondent utterly failed to accord treatment in accordance with the customary international law minimum standard of treatment and the standard of fair and equitable treatment, both as informed by the general international law principle of due process.

370. The record indicates that, if Mr. Martínez has any capacity to perform his role in an objective manner, it was not engaged with respect to the charges laid against Mr. Aven. This is a prosecutor who displayed absolutely no interest in either investigating the allegations of attempted bribery involving the very official who was responsible for making his case, or in identifying who was responsible for effectively attempting to frame Mr. Aven for the serious crime of proffering a false document to government officials for personal benefit.

383. At the very least, the fact that the Parties resolved to devote an entire section of Chapter 18 to the subject, rather than a single provision, points to the Parties consensus belief that corruption in government administration is so fundamental a malfeasance that it violates l'ordre public. Article 18.7 could hardly be clearer: "The Parties affirm their resolve to eliminate bribery and corruption in international trade and investment." The section commits the Parties

to establish municipal anticorruption regimes and to cooperate internationally on its elimination. The section even includes a solemn commitment to "endeavor to adopt or maintain appropriate measures to protect persons who, in good faith, report acts of bribery or corruption." Given the deplorably disingenuous manner in which the Prosecutor's Office quietly disposed of Mr. Aven's report of Mr. Bogantes' corruption, it appears that Costa Rica simply does not take its obligations under Article 18.8 seriously.

385. Mr. Aven was confronted not once, but twice, with demands for the payment of substantial bribes, from two individuals who exercised the sovereign authority of Costa Rica. One of them, Ovideo, held office in the Municipal government entitled to grant, or withhold, the construction permits that were obviously essential for the success of the investment. That his attempt to extort payment in exchange for refraining from exercising his authority against the interests of the Claimants occurred is beyond doubt. Mr. Aven's evidence is unequivocal on this point. This man, Ovideo, was prepared to exercise his public authority in a manner diametrically opposed to his constitutional responsibilities, and to international public policy.

386. When Mr. Ovideo solicited a bribe from Mr. Aven, he placed him in an almost untenable position. There was never any doubt that Mr. Aven would refuse, but in so doing he was necessarily taking a calculated risk, over which the fate of his, and the other investors,' multi-million-dollar investment lay in the balance. Maybe Ovideo was just bluffing, to see if he could extract a rent from a wide-eyed Gringo. That would have been just as bad as the alternative, from the standpoint of international law, but if it was just a bluff, it only made sense for a foreigner to decide against pressing any claim, in favor of getting on with his business. But there was also the potential for retribution, in which case the Investors would ultimately need to report the incident and rely upon the good faith of Costa Rican authorities to remove the offender from office.

387. The same dilemma confronted the Investors on the two occasions that Mr. Bogantes attempted to extort an equally large sum for himself, in exchange for his promise to simply exercise the authority of his Federal office in good faith. Obviously anybody willing to forsake the public trust placed in him as an environmental regulator is not the sort of person who should be expected to keep his promises in the best of circumstances. Be that as it may, Mr. Aven's incredulous reaction to, and firm rejection of, this second bribe demand, demonstrate that he was, again, being placed in a virtually untenable position. He knew that, by doing everything by the book, he would obtain all the necessary approvals from SETENA, so as to be ultimately entitled to receive the appropriate construction permits from the Municipality. He also knew that both SINAC and SETENA had already signed off on the matters that pertained to their responsibilities under Costa Rica's regulatory regime.

388. What Mr. Aven did not know, outrageously, was that there were officials who were not just capable of derailing the progress of his investment, but who were already actively engaged in achieving that very end. At the moment that Mr. Bogantes appeared in his office in late August 2010, Mr. Aven had no way of knowing that Las Olas had just survived concerted attacks

by two officials, Ms. Diaz and Ms. Vargas, whose efforts had only just been stymied, respectively, by SETENA and the Mayor.

391. No doubt intending to make a particular point of how he had triumphed over the Investors, it was also on March 18, 2011 that Mr. Bogantes decided to deliver to Mr. Aven a copy of the July 2010 SINAC Report that he and Mr. Manfredi had completed the previous year. This was the first indication that any of the Investors would have had that an investigation had even taken place. Mr. Aven would have likely been expected to mark the date of that report, which found that there were no wetlands on the Project site. It was dated July 16, 2010, little more than a month before Mr. Bogantes's bribery demands were made. Accompanying that Report was the newer SINAC report, which had also been prepared without any notice to the Investors, and which disingenuously provided the opposite result. It appears manifest that Mr. Bogantes was sending a not-so-subtle message to Mr. Aven and the other Investors: that they would have been better off, financially, had they just played ball with Mr. Bogantes.

392. In abusing his discretion, so as to visit retribution upon the Investors who had spurned his bribery demands, and upon Mr. Aven in particular, Mr. Bogantes's conduct represented the epitome of high-handedness.

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)

v

THE REPUBLIC OF COSTA RICA (Respondent)

SECOND WITNESS STATEMENT

OF DAVID RICHARD AVEN

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11. It was the first time I lived in a foreign country, the first time I invested in a foreign country, the first time I did business with a Government, the first time Government officials tried to solicit bribes from me, the first time my office was broken into and all my business and personal files were stolen, the first time I was falsely charged with a crime, with no evidence, by a criminal prosecutor and admitted the same in his witness statement, the first time anyone tried to assassinate me and the first time I was reported to INTERPOL

12. . It was the first time I lived in a foreign country, the first time I invested in a foreign country, the first time I did business with a Government, the first time Government officials tried to solicit bribes from me, the first time my office was broken into and all my business and personal files were stolen, the first time I was falsely charged with a crime, with no evidence, by a criminal prosecutor and admitted the same in his witness statement, the first time anyone tried to assassinate me and the first time I was reported to INTERPOL

23. in an attempt to distract from their illegal shut down of the Las Olas project, their filing of false criminal charges against me, their bribery attempts, and they're unjustifiably reporting me to INTERPOL to serve a three year sentence.

59. The Respondent now wishes to distract this Tribunal from its breaches of the DR-CAFTA by questioning the legal permits that were issued by its own agencies, and which were never challenged before I refused to pay a bribe in August 2010.

IX. The Bribery Complaints

95. In the Memorial, the Claimants had detailed in full Mr. Bogantes's first bribery solicitation in July to mid-August 2010 from Mr. Damjanac, as well as a second bribery attempt in the Las Olas site office in August 2010.

96. The first bribery attempt occurred as Mr. Damjanac and Mr. Bogantes were walking around the project site, and Mr. Bogantes told Mr. Damjanac that the developers would have to give him lots of money in order to keep the project running.

97. The second bribery attempt occurred in the Las Olas office in late August of 2010, in the presence of Mr. Damjanac. Mr. Bogantes asserted there was a wetland and a forest, and insisted that the developers contributed to his "retirement or pension plan" in order to solve the problems and ensure the project advanced smoothly. I rejected the offer and told him that it was a crime in both Costa Rica and the United States to pay Government officials a bribe and I was not going to risk going to jail in either country.

98. The Respondent has noted the timeline of the bribery attempts, pointing out that the complaint concerning Mr. Bogantes's second bribery attempt was not filed until about a year after it took place. I handled the second bribery attempt in the same way as I handled a prior bribery attempt with the Municipality in 2009, in the most diplomatic way I could without causing retaliation against me or the project by the Government.

99. Once MINAE started asserting that the project had wetlands, shortly thereafter I refused to pay the second bribery attempt, Mr. Martinez started his criminal prosecution against me. At that time it became very apparent to me that it was retaliation against me personally for my failure to pay the bribe. In addition, once I realized that Mr. Martinez refused

to investigate my bribery complaint against Mr. Bogantes, then and only then, did I decide to file a formal criminal complaint with the prosecutor in Quepos, where Mr. Bogantes's MINAE office is located.

100. On the advice of my Costa Rican criminal law attorney, I did not bring up the bribery if we conducted that line of questioning because "Mr. Bogantes was not on trial."

113. he did not conduct an investigation of a bribery attempt

123. Mr. Martinez continues with his false and distorted statements:
On the other hand, it's also worth noting in the accusation that Mr. Aven renders in his witness statement, that during the meeting of March 2011, he had stated to me that he received an alleged request for a bribe from Mr. Christian Bogantes and that I did not investigate it. It's worth clarifying many points about that affirmation.

(Aven) Actually the date of that meeting was May 6, 2011, not March 2011. Other than that error, the above statement is true, and what I told him was because I refused to pay a bribe to Mr. Bogantes (the MINAE director in Quepos), SINAC decided to illegally use their power, do a 180 degree turn and after two years of saying there were no wetlands, all of a sudden they found a wetland at Las Olas.

124. Mr. Martinez goes on to say: "In the first place, that complaint was filed with another prosecutor, not with the Deputy Environmental Agrarian Prosecutor, so it was not up to me to investigate it."

(Aven) The above statement is not true. At the time, on May 6, 2011, I told Mr. Martinez about Mr. Bogantes asking me for a bribe. I brought it to Mr. Martinez because he was conduction a criminal investigation and I was reporting a crime to him that was committed by Mr. Bogantes that I actually thought that he would investigate, but to my shock and surprise he did not. It was only after Mr. Martinez refused to conduct an investigation that I decided to file a formal criminal complaint against Mr. Bogantes with the Criminal Prosecutor in Quepos, which is where Mr. Bogantes's MINAE office was located.

125. Mr. Martinez also states: "In the second place, the complaint was made a year after the date of the supposed act, when there were already many charges filed against the project for violations of environmental legislation. In fact, Mr. Aven's report against Mr. Bogantes, for the supposed crime of requesting a bribe, was presented when the criminal process against Mr. Aven and Mr. Damjanac was underway and was known to them."

(Aven) Again, this is a false statement. At the time I gave my statement on May 6, 2011, there were no charges filed against me and Mr. Martinez was only conducting a criminal investigation. Further, I was trying to deal with the attempted bribery in the most diplomatic way that I could since it was not my desire to cause trouble for Government functionaries. So I dealt with it like I dealt with the other bribery attempt in the spring of 2009 when the city

manager of Parrita asked me for a $200,000 bribe. In that case my diplomatic efforts worked and I was successful, but in the Bogantes case my efforts were not successful and they took revenge action against me and shut the project

127. Mr. Martinez continues: "If what the claimants suggest were right, that the accusations regarding environmental damage are all based on Mr. Bogantes' anger, because Mr. Aven had refused to pay him a bribe in July-August of 2010, it really is incomprehensible what would be the logic that the only document on which they base their defense is a document that was the result of that visit from Mr. Bogantes in July of 2010."

128. (Aven) This is another very interesting statement that Mr. Martinez makes. First, the MINAE report Mr. Martinez it talking about is the July 16, 2010 report with number 371-2010, which concluded that there were no wetlands on the Las Olas site. That report was dated one month before I refused to pay Mr. Bogantes a bribe. Further, the report of July 16, 2010, is the one that Mr. Bogantes and Mr. Piccado, attempted to bury and keep from me. I only was able to get a copy of that report by accident when Esteban Bermudez, our environmental regent, became aware of it and told me to go down to Quepos and get it. I thought it would not be a problem if I went there by myself. However, Mr. Bogantes got very upset and started yelling at me telling me that he did not have that report. I was only able to get a copy by causing such a stir that Mr. Bogantes was forced to call a MINAE attorney by the name of Laura Chaves, who spoke good English, and she ordered him to give me a copy of the report. Since January 2011, Mr. Martinez was conducting a criminal investigation into environmental crimes he was asserting I committed. This document was an important piece of exculpatory evidence, because it was saying that there were no wetlands on the project site. Mr. Martinez had to get this letter from the MINAE file, which Mr. Martinez said in his witness statement that he did get copies of. Yet this July 2010 report was never provided to us by either MINAE or Mr. Martinez. This was an ongoing criminal investigation and a very important piece of exculpatory evidence that was being withheld from us. I do not think that this type of conduct is permitted in any country which adheres to "democratic principles. This is just another example of where Mr. Martinez played fast and loose with the law and refused to follow proper legal protocol.

129. Mr. Martinez continues with his remarkable statements: " Moreover, Mr. Bogantes was a witness during the trial and Aven's defense had the opportunity to interrogate him at length. There was not a single question or reference to the alleged bribery solicitation. If that fact were allegedly connected to the charges against Mr. Aven for environmental damage, this would have been the correct instance to prove it. Although, as I have said before, this was never even alleged by Mr. Aven's defense. When Mr. Bogantes attended the hearing of the criminal trial in which he was called as a witness, the accused's counsel, Mr. Nestor Morera, having the opportunity to question the witness (who was under oath) on the alleged bribe, did not do so."

(Aven) This is another totally amazingly ridiculous statement. First, I objected to having Mr. Bogantes testify against me, because he attempted to bribe me and therefore was a biased and hostile witness. He proved to be such a witness by giving perjured testimony at my criminal

trial. However, Mr. Bogantes was not on trial, I was. My attorney advised that we should not bring up the bribe solicitations since it could very well upset the Judge and work against us, so that is why this was never brought up at trial.

130. Mr. Martinez continues: "To pretend that the fact that those professionals work under the scope of MINAE, like engineer Bogantes, is enough to consider them biased, without any indication whatsoever that those gentlemen had knowledge of or participated in the supposed attempt to solicit a bribe by engineer Bogantes, is simply far-fetched."

(Aven) 131. Why is it far-fetched to investigate an alleged crime committed by a Costa Rican, but not far-fetched to investigate an alleged crime committed by a foreigner who had a fully permitted project? Further, it is well-known that corruption in Costa Rica is very prevalent. Former Presidents of the country have been put on trial for corruption. There have been many public officials indicted for corruption. I told Mr. Martinez that Mr. Bogantes asked me for a bribe and Mr. Damjanac was a witness. However, Mr. Martinez never investigated it and then says it is far-fetched. I believe it's far-fetched, unconscionable and a human rights violation to be criminally charged by a criminal prosecutor with environmental crimes, forgery, and failing to obey a Government order, having not one shred of evidence and after having been issued Government permits granting us permission to operate under the authority of those permits. Then once we started the construction, another Government agency comes along and charges us for environmental crimes. So for him to say this kind of conduct is far-fetched is a false and ridiculous statement. Mr. Martinez simply does not understand that what he did was way beyond being far-fetched and another example of playing fast and loose with the law and refusing to follow proper legal protocol.

(Aven) This is yet another false statement. I had commissioned three professional forestry studies done by independent forestry engineers. They all concluded Las Olas was not a forest as defined by Costa Rican law. Mr. Martinez did not have one forestry study done, other than by MINAE who asked me for a bribe and was therefore biased against the project. However, once again, there were SETENA resolutions in force and Mr. Martinez was required to comply with them, but he refused and continued his vendetta against me and the project.

141. Mr. Martinez continues: "Of all the witnesses heard, the most relevant and illustrative to the court in regards to the wetlands matter was Lic. Jorge Gamboa Elizondo, so it stands out to me that neither Lic. Morera Viquez or Mr. Aven or Mr. Damjanac mentioned that statement in their witness statements in this arbitration."

This is yet more nonsense. Mr. Gamboa works for MINAE and Mr. Martinez chose him to do a wetland land study after I refused to pay a bribe to MINAE. Both Mr. Gamboa and Mr. Martinez refused to comply with the SETENA resolution, a Government order, that determined that there were no wetlands on the project site. Rather, these government functionaries just ignored it and started doing their own investigation. Mr. Martinez knows that I informed him that Mr. Bogantes, the MINAE Director in Quepos, asked me for a bribe. However, instead of investigating Mr. Bogantes, he called him to testify against me and then called on Mr. Gamboa

to declare there were wetlands on the Las Olas site. Not only is that an inherent conflict of interest and represented a 180 degree turn after MINAE had been saying for years that there were no wetlands, but all three of the above individuals refused to comply with a number of SETENA resolutions.

142. Mr. Martinez continues: "Likewise, Lic. Gamboa Elizondo explained that during the visit he made to the site on 16 March 2011, he observed that heavy machinery was working in the wetland zone, tractors to move dirt, and a canal was being built. He mentioned he could see that the palustrine wetland area was clearly affected by that work and that it had been backfilled and drained. He also explained why it's so important to preserve the wetlands, and how affecting them modifies the natural conditions, eliminating the ecosystem."

(Aven) Now we have a date, March 16, 2011. Yes, infrastructure construction was going on at the Las Olas site under the authority of the construction permits that were issued. The construction permits for the easements were issued on July 16, 2010 and the construction permit for the condominium section was issued on September 7, 2010. At that time, we had lawful permits that included four (4) different SETENA resolutions and 9 construction permits and were in the process of building the infrastructure. Both Mr. Gamboa and Mr. Martinez were required by law to comply with the lawful SETENA resolutions and the construction permits. They refused to do that and instead were working together to undermine the authority of the legally issued Government permits. Therefore, both were in violation of Costa Rican law and there should be consequences for not following that law. But notice what Mr. Gamboa says, "he observed that heavy machinery was working in the wetland zone, tractors to move dirt, and a canal was being built. He mentioned he could see that the palustrine wetland". This is in conflict with the MINAE report of July 16, 2010 and the two other MINAE reports done in January and February of 2010, referenced in the July 16, 2010 report. It is also in conflict with the SETENA study done in August of 2010 and the SETENA resolution written on September 1, 2010 that rejected Mr. Bucelato's complaint that there were wetlands on the project site. It is also in conflict with the INTA report that determined there were no wetlands on the project site. However, Mr. Martinez does not mention any of that. He just refers to the one report that he ordered from MINAE whom I refused to pay a bribe to. It is also in conflict with our expert report by Mr. Barboza, who worked for MINAE for 30 years and offered the following conclusion in his expert report. "In my expert opinion there is no palustrine wetland on the site indicated within the "Las Olas" project area. For the same reason, the SINAC authorities did not technically substantiate the type of ecosystem in the study area". Mr. Martinez and all the other Government functionaries who refused to follow the law seem to not understand this one salient fact.

The next Document to look at is David Aven Second Witness Statement dated August 4, 2016. Please take note how many times the word Bribe or Bribery is mentioned in this statement, my first Witness statement, the NOI and NOA, and Claimants memorial. However, VE refused to put into evidence the cornerstone piece of our case the audio bribery recording. Even though I gave them direct instructions to do so. What is really astounding although they refused to put

the audio recording of the bribe into evidence, they make the bribery a large part of our case. Then they don't provide any evidence at the hearing/trial to prove their case. I gave VE direct instruction in my email of November 16, 2015, to put the audio recording into evidence. Here was the exchange between me and Louise Woods from VE:

2. **The Bribery audio recording**

(Woods VE) As previously mentioned, we cannot exhibit the recording as evidence without exposing your criminal lawyer to a risk of criminal prosecution and other professional ramifications. We also cannot allow you to say under oath that you took the recording when that is not the case. In the circumstances, for the time being at least, all references to the recording must be omitted from our filings in the arbitration. In the absence of the recording, we need you to describe in more detail what happened at, and who attended, that meeting.

(Aven) I must insist that we produce this as evidence in my case. This is too powerful not to use. I did the recording and my attorney, Gavridge perez did not know I was recording the meeting. He was doing the interpreting for me. I really don't care about what problems it causes for him since he caused me a number of problems and I really not in a good dream of mind to be mister nice guy to people in Costa Rica, I am sure you can understand that. The people at the meeting were myself, Gavridge Perez and a guy name Ovideo, who was the city manager. This will also give us support for our allegation that we were asked for a bribe by Christian Bogantes. Further, we have Fernando's Zumbado statement who has said that he heard the audio that I played it for him and in fact he called the president's brother about it and told him, but nothing was ever done. So there's no way were not going to use this as evidence.

Do words have meaning? Is that a clear message of instruction? As you will see with the string of emails, I was clear about getting that into three documents; (1) VE's Memorial/pleadings, (2) my witness statement, (3) Fernando Zumbado's witness statement. As you will see from October 30, 2015, to November 26, 2015, all of my witness statements and Fernando Zumbado's witness statement said we had the audio recording and I gave VE a direct instruction to put it in our memorial. There were no emails up to the time they filed our memorial/pleading on November 27, 2015. I signed the copy page on my first witness statement at the VE office in the UK on the 27th and was expecting the truth to be put into all three documents. VE surreptitiously deleted all mention of the audio from all three statements against my direct instructions. When they received my November 16 email they have two choices, follow my instruction and if they didn't want to do that the withdraw from the case. They didn't have an option to just ignored my instruction and do whatever the hell they wanted to do. They actually conspired to withhold a cornerstone piece of our case and that was the kill shot to our case. Although they had bribery as a big part of their Memorials/pleadings and both of my witness statements, they never provided any proof of the alleged bribery at the hearing. Here are the few places that any talk of bribery was engage in and as you will see it was spoken

of more by the Respondent that our VE Attorneys. This is incredibly telling when you look at the about of time VE attorney's spoke about this in their memorials and then presenting on evidence to support what they were saying and then inexplicably refusing to put in the one powerful piece of evidence we did have that audio recording of the bribery. Fernando Zumbado heard the audio. I called him after the bribery attempt and he came over and listened to it. But the competent and grossly negligent VE attorney's didn't use it or produce any evidence to back up their bribery allegations charges. HERE IT IS AND IT SPEAKS LOUD AND CLEAR ABOUT OUR INCOMPETENT ATTORNEYS. I WILL INDICATE THE SECTIONAL REMARKS BY OUR SIDE (CLAIMANTS) AND THE OTHER SIDE THE (RESPONDENTS)

Following are the number of places in the 6-day hearing where the word bribery or bride appeared with the section number. There were 11 mentions of bribe or bribery, 7 times by the Respondent and 4 times by the Claimants. Respondent attorneys spoke 916 words and the Claimant spoke 276 words and the words spoken were weak and made no sense and proved no points. However, the respondents' arguments were powerful. How can you possibly win a case with this kind of weak and ill-effective presentation? The answer, you can't. So VE attorneys strip the only key piece of evidence on bribery we have, make allegations in their memorial that there was bribery and corruption and then don't provide any evidence to prove it. Does that sound like a plan for disaster and road map to a hell of a loss?

(CLAIMNATS) 25: You will also not hear from Christian Bogantes, the MINAE officer who sought bribes from Mr. Aven and from Mr. Damjanac, and who also, by the way, did testify in the criminal proceedings as well.

(CLAIMNATS) 91. I also note that at Paragraphs 975 and 976 11 of the Rejoinder, there seems to be a tentative reference to English laws as well, suggesting that it may be useful to--or applicable in some way with regard to the burden of proof for establishing allegations of bad faith or bribery; and needless to say, English law is, again, not relevant in this proceeding as a matter of substantive law, which brings me to the Respondent's principles defense.

(CLAIMNATS) 115. So, the Respondent says that the bribery allegations lack any relevance with regard to the development. So, they're saying that we haven't established some sort of causal relationship.
Well, we would just submit that even if that were accurate, and we don't think it is, I think--we think that the Respondent does still have to recognize that if the Treaty does determine that any one official did engage in some sort of bad-faith effort like soliciting a bribe, that the act in and of itself would be worthy of sanctions and moral damages would

(RESPONDENTS) 203. They are, first, the early decisions regarding the wetlands; second, the allegations of bribery; third, Mr. Bucelato; fourth, the forged document; and fifth, this grand conspiracy of the 14 State against Mr. Aven.

(RESPONDENTS) 206, 207, 208, and 209 Bribery allegations. This is the second distraction that is the cornerstone of Claimants' case, which is utterly unproven. And that is this allegation of

bribery. No credible evidence whatsoever exists to suggest any bribery occurred. All we have is the testimony of Mr. Damjanac, who says he was approached by Mr. Cristian Bogantes. That's it. Nothing else. No witness; no corroboration. Halfheartedly, they refer 8 to other alleged bribery attempts, but this would not qualify as evidence in any country. It certainly does 10 not under Costa Rican law. Claimants revel in a peculiar way that Mr. Bogantes is not here this week or that we do not submit a witness statement on his behalf. They should not be so surprised. We reject the idea that this should be the forum for the Republic of Costa Rica to engage in a he-said/she-said battle with criminal repercussions. If there is an allegation that rises to a level of a legitimate complaint of bribery, it can be raised in Costa Rica, where any police power will effectively ensure testimony is properly heard and tested. The Costa Rican criminal courts can also enforce perjury laws which are not in play in these proceedings. The Claimants had an opportunity to bring a timely formal complaint against Mr. Bogantes, but neither Mr. Damjanac nor Mr. Aven properly seized the moment. The lack of timeliness was fatal to the delayed complaint Mr. Aven ultimately commenced. This is not an insignificant omission given 9 how much they now want to rely on the allegation in 10 these proceedings. Above all, the allegation of bribery is not relevant to the issues in dispute in this Arbitration. The bribery complaint raised by Mr. Aven was rejected in accordance with Costa Rican criminal law and procedure. It is not central in any way to this Tribunal's determination of the issues. It has no bearing on expropriation or FET claims. But let's go a level deeper and really analyze what the Claimants are asking you to believe when they raise this bribery allegation. The allegation of a disgruntled official not getting a purported bribe could be feasible if it were the case that there were no wetlands. For example, one could imagine, in theory at least, that an official might originally write up a report saying there was a wetland, even though there was not. At that point, an official could ask for a bribe in order to correct the record. And if he or she were rejected, they might then refuse to correct the record. But here's the flaw. There are and always have been wetlands on the property. This is fundamentally important. Why? Because it means the most natural motivation for bribery that I just described does not function. What could Bogantes have threatened when he supposedly was refused payment? To reveal the truth, having previously fostered a lie? That doesn't make sense. The evidence is clear, there are wetlands in existence. And this also means one of two things: First, in this case, it might be that a genuine error was committed in the earlier reviews of the land and the wetlands that we know exist were somehow overlooked. And just pausing here for a moment, even if that happened, it does not--it does not prevent the State or authorities from revisiting this finding if there were later investigations into the wetlands, 4 which is exactly what happened in accordance with Costa Rican law.

(RESPONDENTS) 263. By August 2010, we come to the point that 10 Mr. Bogantes is accused of soliciting a bribe. No credible evidence exists to support this. Certainly, 12 under Costa Rican law, no criminality could be 13 established. Claimants allege that they had a tape recording of the solicitation of this alleged bribe. They make that in page of their Notice of Intent to Submit a Claim to Arbitration on the CAFTA back in 18 2013.

(RESPONDENTS) 264. Claimants say they had a tape recording of this alleged bribery incident. They said this in 2013 at the time King & Spalding were representing them. As of today there is no recording. Such a cornerstone 1of their entire case is inexplicably missing.

. **(RESPONDENTS)** 267, First, this finding was founded on the 7 March 2008 forged document. Second, we've heard a lot 8 from the Claimants about the broad campaign against them, starting with the supposed animosity shown by the entire operators of the State instigated by Mr. Bogantes whose bribe was refused. But yet here in September, the first official act after the moment Mr. Bogantes' bribe was apparently rejected, we find a decision favorable to the Claimants.

(RESPONDENTS) Section 293 and 284 On the 6th of May, Mr. Aven 20 voluntarily testified in the criminal investigation. He makes a big deal of this day because he says he informed Mr. Martínez of the alleged bribe from Mr. Bogantes. The fact Mr. Martínez did not commence 2 an investigation into Mr. Bogantes is, according to 3 Mr. Aven, evidence of arbitrariness.

(RESPONDENTS) 286. In May 2013--we're now in 2013--the ethics prosecutor is trying to reach Mr. Aven to inquire into his complaint about Mr. Bogantes. We're trying to respond to his complaint about this bribery.

(CLAIMNATS) 978. Question So, if bribery were allowed to go, for example, that would pose a serious risk and threat to a transparent and predictable environment? Answer: Yes. Bribery is a crime. It is a crime and, as such, it has to be punished. And, of course, it has to be denounced.

The above is just pathetic, we had evidence we could have used, but didn't lift a finger to use it. What did the Aribrators think about this matter. Here is their directly words from their ruling.

THE ARBITRATION RULING BY 635: Regarding the alleged inaction on the part of the prosecutor's office to take action on the filing of a criminal complaint against the alleged bribes solicited by Mr. Bogantes, the Tribunal also finds that there are no merits to the allegations on "abuse of authority" expressed by Claimants. Although the solicitation of bribes is indeed a punishable crime in Costa Rica, and should not be tolerated under any jurisdiction, there is no corroborating evidence to the fact that there was such a solicitation except for the statement made by Mr. Damjanac. Even though in their Notice of Arbitration, Claimants stated that "The Investors have in their possession a tape recording of the solicitation of this bribe" 601 , such supposed tape recording was never produced as evidence during the arbitration. There is also no evidence that there was retributory action against Claimants for having failed to comply and pay the bribe.

There you have it in a nutshell and Weiler nailed it. VE Attorney's failure to carry out the two prime directives and we lost. The evidence was there, but it wasn't used. But not using is the arbitrators tagged me as a liar and cheat. As you saw above, I gave them direct instruction to put the audio into evidence numerous times and specifically just before the did three key

submissions. (1) My first Witness Statement, (2) Fernando Zumbado's witness statement and (3) our Memorial/pleading. They were instructed to put the fact that we had the audio into evidence in all three above submissions and surreptitiously excluded that cornerstone piece from being put into evidence. In reading the following words of the arbitrators you will see how much dislike they had for David Aven and went out of the way "to find a way for us to lose. Below are the arbitrators' comments in their ruling and my comments in blue. The above comment by the arbitrators is exactly right since the VE attorneys mentioned bribery to an extensive number of times, but threw the cornerstone piece of our case into a black hole and didn't present any evidence of the bribery they alleged. Any competent attorney would find that hard to believe, but here is the evidence in black and white. Here is the key reasons we lost this case and ironically it came from the words of one of our attorney's Todd Weiler boiled our loss correctly down to the following, which resulted in my own attorneys making me out to be a liar and a cheat in the eyes of the arbitrators, and liars and cheats who are not only not liked by hated by judges and juries, won't win in court. As you read their decision you will see their decision is permeated with disdain for words about the Claimants and specifically David Aven. What's astonishing is that Todd Weiler stated what had to be done to get a win and or a loss and here it is in his following emails to me:

Todd Weiler todd@treatylaw.com to David Aven

Tue, Apr 19, 2016, 5:47 PM

We win by making sure that the Tribunal keeps its eye on the permitting process; the fact that you did everything right in how you went about making the investment; and the fact that there just weren't any so-called wetlands on site anyway. We potentially get into trouble if we allow the Respondent to make this case either about whether you (and the other Claimants) broke CR law,

T.J. Weiler tgw@naftaclaims.com to David Aven Thu, Nov 10, 2016, 9:34 AM

The surprise result in Spence does hold a lesson for us here. No matter how justified the claimants and their lawyers may believe their case to be, the only opinions that matter are those of the three arbitrators. If they 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 one that has to be learned by almost all pollsters in the wake of the US election: second-guess what you think is obvious, because it might not be obvious to the people who actually do the voting (here: the three arbitrators).

There you have it in a nutshell and Weiler nailed it. VE Attorney's failure to carry out the two prime directives and we lost. The evidence was there, but it wasn't used. But not using is the arbitrators tagged me as a liar and cheat. As you saw above, I gave them direct instruction to put the audio into evidence numerous times and specifically just before the did three key submissions. (1) My first Witness Statement, (2) Fernando Zumbado's witness statement and (3) our Memorial/pleading. They were instructed to put the fact that we had the audio into evidence in all three above submissions and surreptitiously excluded that cornerstone piece from being put into evidence. In reading the following words of the arbitrators you will see how much dislike they had for David Aven and went out of the way "to find a way for us to lose. Below are the arbitrators' comments in their ruling and my comments in blue.

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

between

DAVID AVEN ET EI Claimants, and THE REPUBLIC OF COSTA RICA Respondent Case No. UNCT/15/3

FINAL AWARD

Members of the Tribunal

Eduardo Siqueiros T., Presiding Arbitrator C. Mark Baker, Arbitrator Pedro Nikken, Arbitrator

Secretary of the Tribunal

Francisco Grob, ICSID

September 18, 2018

Keep in mind, this entire report is shaded by the fact that the Judges thought I was a liar because we didn't produce the audio bribery tape we said we had. Remember Dr. Weiler's prophetic statement in his email to me: "If they 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.** We need to blow that up for the Jury in our opening statement.

The Protti Report. The Defense had to come up with reason, why after all legal permits were issued including the construction permits, why the project was shut down with a claim of wetlands. The State fabricated a preposterous lie that I had duped SETENA. They came up with an obscure report called the Protti report and was first mentioned in the ruling in P 110 on page 40 and said the following:

110. In July 2007, Mussio Madrigal engaged another firm, Tecnocontrol, S.A., to undertake several of the studies, among them a hydrogeological study 45 . Tecnocontrol, S.A. in turn requested the study from Geotest, S.A. Geólogos Consultores. This study was undertaken, and a report prepared by Mr. Roberto Protti 46 (the "Protti Report"). For reasons that are in dispute in this arbitration, the Protti report was not considered for the environmental viability application, nor attached to the D1 Application subsequently submitted. However, the Protti Report was later filed with SINAC in 2011, three years after the Claimants obtained the EV for the Condo Site.

Notice, how the panel initially fails to mention SETENA. First incompetent act, the VE attorneys failed to make clear that Tenocontrol was engaged by MUSSIO Mardrigal to do soil studies for the road infrastructure in the master site plan. It wasn't a report that was required by SETENA. There was no evidence produced why is allegedly was filed with SINAC in 2011. It was also not alleged that it was filed for any kind of permissions, which it was not. His sole purpose was to have technocontol to do soil studies for the roads. Something which the attorneys failed to

clearly explain. It wasn't attached to the D1 because it wasn't a required document and wasn't a part of SETENA's check the box.

Respondent has placed much relevance on this fact because it says the Protti Report noted and mapped the existence of a central zone in the property that presented "swamp-type flooded areas" (areas anegadas de tipo pantanoso) with poor draining. Had SETENA been informed of the findings in the Protti Report, Respondent adds, Claimants would have been required to go through a much more demanding environmental impact process to obtain the necessary permits for the development and would have been required to make extensive arrangements to protect the ecosystems in the Project Site.

The above statement is totally speculative and unproven. First, the D1 EV is the most demanding. Secondly, SETENA did their own inspection and is the only capable and legal agency to make wetlands determinations which after made becomes a law that requires compliance from all public and private persons and organizations. Further, the panel completely ignores the fact that one of the required SETENA documents a MINAE clearance letter stating

there is no wetlands, no Forest, no Lakes and lagoons and no wildlife Preserve.

DE : OSRAP-ACOPAC NO. DE TEL : 7775354 02 ABR. 2008 01:04PM P1

(3)

MINISTERIO DE AMBIENTE Y ENERGÍA
SISTEMA NACIONAL DE ÁREAS DE CONSERVACIÓN
ÁREA DE CONSERVACIÓN PACÍFICO CENTRAL
SUBREGION AGUIRRE PARRITA

02 de Abril de 2008
ACOPAC-OSRAP-00282-08

Arquitecto.
Edgardo Madrigal Mora
Inversiones Cotsco C & T S.A.

Estimado señor:

En respuesta a su nota recibida en esta oficina por fax, el día 25 de Marzo del 2008, debo manifestarle que la propiedad ubicada en Esterillos Oeste, Distrito Parrita, Cantón Parrita, Provincia Puntarenas, descrita con el plano catastrado número P-1244761-2007, no esta dentro de ninguna área silvestre protegida.

Atentamente,

Lic. Gerardo Chavarría Amador
Jefe Oficina Subregional Aguirre Parrita

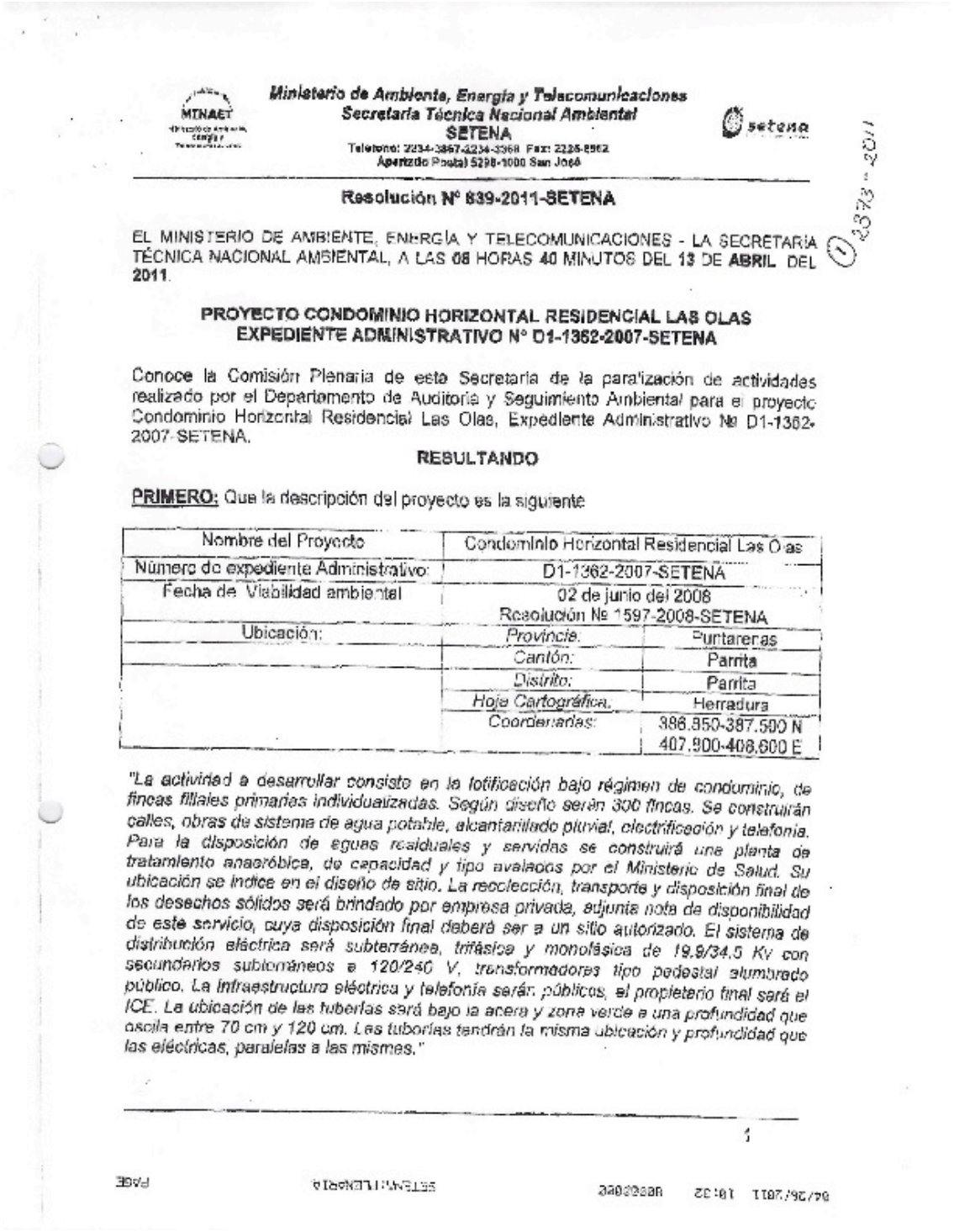
Ministerio del Ambiente y Energía
SINAC
Sub-Regional
Aguirre-Parrita
Área de Conservación Pacífico Central

Cc Consecutivo

ÁREA DE CONSERVACIÓN PACÍFICO CENTRAL
☎ 777-5343, 777,5351 FAX: 777-0644
"Produce una inmensa tristeza pensar que la naturaleza habla mientras el genero humano no escucha"

04/02/2008 10:54 PAG. 1

The Above report was a required report that SETENA needed or they wouldn't issue the EV permit. It's important for our LMPT (Legal Malpractice TEA) to know that MINAE and the Prosecutor knowingly filed the alleged forged document with SETENA and falsely claimed it was the one that they relied upon. SETENA didn't check and they thought it was the above document that MINAE and the prosecutor said was forged. Based upon that false premise they issued a shutdown notice. Here it is:



Ministerio de Ambiente, Energía y Telecomunicaciones
Secretaría Técnica Nacional Ambiental
SETENA
Teléfono: 2234-3867-2234-3368 Fax: 2225-8962
Apartado Postal 5298-1000 San José

setena

Resolución Nº 839-2011-SETENA

EL MINISTERIO DE AMBIENTE, ENERGÍA Y TELECOMUNICACIONES - LA SECRETARÍA TÉCNICA NACIONAL AMBIENTAL, A LAS **08** HORAS **40** MINUTOS DEL **13** DE **ABRIL** DEL **2011**.

PROYECTO CONDOMINIO HORIZONTAL RESIDENCIAL LAS OLAS
EXPEDIENTE ADMINISTRATIVO Nº D1-1362-2007-SETENA

Conoce la Comisión Plenaria de esta Secretaría de la paralización de actividades realizado por el Departamento de Auditoría y Seguimiento Ambiental para el proyecto Condominio Horizontal Residencial Las Olas, Expediente Administrativo Nº D1-1362-2007-SETENA.

RESULTANDO

PRIMERO: Que la descripción del proyecto es la siguiente

Nombre del Proyecto	Condominio Horizontal Residencial Las Olas	
Número de expediente Administrativo:	D1-1362-2007-SETENA	
Fecha de Viabilidad ambiental	02 de junio del 2008 Resolución Nº 1597-2008-SETENA	
Ubicación:	*Provincia:*	Puntarenas
	Cantón:	Parrita
	Distrito:	Parrita
	Hoja Cartográfica:	Herradura
	Coordenadas:	386.850-387.500 N 407.900-408.600 E

"La actividad a desarrollar consiste en la lotificación bajo régimen de condominio, de fincas filiales primarias individualizadas. Según diseño serán 300 fincas. Se construirán calles, obras de sistema de agua potable, alcantarillado pluvial, electrificación y telefonía. Para la disposición de aguas residuales y servidas se construirá una planta de tratamiento anaeróbica, de capacidad y tipo avalados por el Ministerio de Salud. Su ubicación se indica en el diseño de sitio. La recolección, transporte y disposición final de los desechos sólidos será brindado por empresa privada, adjunta nota de disponibilidad de este servicio, cuya disposición final deberá ser a un sitio autorizado. El sistema de distribución eléctrica será subterránea, trifásica y monofásica de 19.9/34.5 Kv con secundarios subterráneos a 120/240 V, transformadores tipo pedestal alumbrado público. La infraestructura eléctrica y telefonía serán públicos, el propietario final será el ICE. La ubicación de las tuberías será bajo la acera y zona verde a una profundidad que oscila entre 70 cm y 120 cm. Las tuberías tendrán la misma ubicación y profundidad que las eléctricas, paralelas a las mismas."

1

We filed an appeal stating that the document that MINAE filed was wrong and sent SETENA the correct one, which is the one below. When they confirmed what I was telling them was true, they corrected their mistake and issued another resolution rescinding their shut down notice and reconfirming out the permit.

MINAET
Ministerio de Ambiente, Energía y Telecomunicaciones

Ministerio de Ambiente, Energía y Telecomunicaciones
Secretaría Técnica Nacional Ambiental
SETENA
Teléfono: 2234-3387-2234-3388 Fax: 2225-8862
Apartado Postal 6298-1000 San José

setena

Resolución Nº 2850-2011-SETENA

EL MINISTERIO DE AMBIENTE, ENERGÍA Y TELECOMUNICACIONES - LA SECRETARÍA TÉCNICA NACIONAL AMBIENTAL, A LAS **13** HORAS **40** MINUTOS DEL **15** DE NOVIEMBRE DEL **2011**.

PROYECTO CONDOMINIO HORIZONTAL RESIDENCIAL LAS OLAS
EXPEDIENTE ADMINISTRATIVO No. D1-1362-2007-SETENA

Conoce esta Secretaría del recurso de revocatoria con apelación en subsidio e Incidente de Nulidad interpuesto por David Richard Aven en calidad de Apoderado Generalísimo de "Inversiones Cotsco C&T S.A.", el 29 de abril del 2011 contra la Resolución número 839-2011-SETENA de las 08 horas 40 minutos del 13 de abril del 2011.

RESULTANDO

PRIMERO: Mediante resolución Nº 1597-2008-SETENA, del 02 de junio del 2008 se le otorga la Viabilidad Ambiental al proyecto Condominio Horizontal Residencial Las Olas.

SEGUNDO: El 13 de abril del 2011, se emitió la resolución número 839-2011-SETENA de las 08 horas 40 minutos, notificada el 26 de abril del 2011, que dice en su Por Tanto:

*"**PRIMERO:** De conformidad con lo expuesto en los considerandos de esta resolución, se establece como **Medida Cautelar la paralización de cualquier obra o actividad iniciada** en el proyecto Condominio Horizontal Residencial Las Olas, Expediente Administrativo Nº D1-1362-2007-SETENA.*

***SEGUNDO:** Con base en el Principio de Coordinación de la Administración Pública y con la Ley Orgánica del Ambiente específicamente el artículo 28, se le solicita a la Municipalidad de Parrita, velar por el cumplimiento de la medida cautelar dictada en el presente informe técnico, hasta el momento que esta Secretaría le informe de su levantamiento. Así mismo se les insta a no otorgar ningún tipo de permiso de construcción en el área del proyecto, hasta tanto esta Secretaría no proceda con el levantamiento de la medida cautelar.*

***TERCERO:** Remitir copia de la presente Resolución a la Fiscalía Agrario Ambiental, para que sea adjuntada al Expediente de la Fiscalía número 11-000009-0611-PE y al Expediente Administrativo Nº D1-1362-2007-SETENA del proyecto Condominio Residencial Horizontal Las Olas."*

Also for the LPMT, I was never accused of having anything to do with that forged document and although the criminal prosecutor stated he had no idea who filed that document with SETENA. When our Costa Rica Attorneys got a copy of that document from the criminal court. low and behold it said it was filed by Steve Buculato. VE did question the Criminal Prosecutor (CP) but of course, that is not mentioned in the ruling. So why do you think that was. bribery tape we said we had. Remember Dr. Weiler's prophetic statement in his email to me: "If they 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. (Dr. Todd Weiler)**

113. As part of the ordinary process of the D1 Application, SETENA made an inspection visit to the Condo Section of the Las Olas project on January 10, 2008 51 . SETENA then requested in February 2008 follow-up information from Mr. Aven regarding the D1 Application including: (i) a vegetation coverage map, (ii) the property's registration certificate, (iii) a statement by ACOPAC-MINAE confirming the main use of the soil, (iv) confirmation as to the presence of forest areas, (v) a photographic record of the project area, and (vi) a sworn statement by the developer not to commence works without having received the Environmental Viability.

They failed to state that at the Inspection, SETENA confirmed there were no wetlands and all of the conditions that SETENA asked us to do were completed.

114. In response to the information request, and specifically in respect of (iv) of the prior paragraph, Mussio Madrigal declared in a letter dated March 14, 2008 that there were no forest areas at the Condo Section of the project despite the aerial photograph maps showing them in the records of SETENA 52 . The firm separately requested confirmation from SINAC that the site was not located within a Wildlife Protected Area (area Silvestre protegida). On April 2, 2008, SINAC responded through a communiqué (ACOPACOSRAP-00282-08) to the effect that Condo Section was not within a WPA 53 . The relevance of this determination is disputed among Claimants and Respondent.

The Sat aerial photos we had clearly shows the Area did not have a forest. We had to forestry studies done and they both stated the area was not a forest as defined by Costa Rica law. Said lost stated that he would have to be of industrial value. The trees that were in the project site hey no project value and were trees they generally grew in pasture land.

116. On March 27, 2008, just days before the aforementioned SINAC communiqué was issued confirming that the Condo Section was not within a WPA, a SINAC Report No. 67389RNVS-2008 was submitted to SETENA as part of the Las Olas Project file 54 which has been referred to during the proceedings as the "Forged Document". Both Claimants and Respondent have distanced themselves from its origin, and many discussions among themselves have arisen as to who had motivation to create and submit it, but it is still unclear to the Tribunal who actually produced it. This document, purportedly signed by Gabriel Quesada Avendaño (a biologist from SINAC) and Ronald Vargas (Director of SINAC) stating that the criteria followed by the Las Olas Project for environmental protection met SINAC's requirements, concluded that the project "constituted no evident threat to the biological area of Esterillos Oeste, nor affects in any way

the biodiversity in the Local National Wildlife Refuge". This document was confirmed to be a forgery – but not until November 2010. In the meantime, it appears as though SETENA relied on the document.

There was nothing for us to distance ourselves from. The report in question said nothing different than all the other report said that there were no wetlands. It wasn't a report that was required from any permitting agency and we suspected that the report was forged by Bucelato and used by MINAE and the Prosecutor to get SETENA to shut down the project. Why because they knew that once a resolution was issued it becomes a law that required MINAE, Bucelato, the Prosecutor and Judges to comply with.

117. On April 2, 2008, the Central Pacific Conservation Area of SINAC issued a confirmation letter to Mauricio Mussio, one of the principals at Claimants' architectural firm, confirming that a certain property was not within a wildlife protected area (area silvestre protegida) 55 . This letter identifies property number P-1244761-2007, but this does not appear to cover all of the properties, including the Easements Section of the Las Olas Project 56 .

The above paragraph is redundant to paragraph 114.

119. Finally, on June 2, 2008, SETENA issued the Environmental Viability Permit (Resolution No. 1597-2008-SETENA) for the Condo Section . Among the conditions established in the permit were (i) that in the event that the cutting of any tree was to happen, a permit ought to be requested from the MINAE, and (ii) the need to notify SETENA one month in advance of the beginning of construction at the property.

Just to show the LMPT how the shade of the arbitrators is all over their report. They omit to state that now that SETENA issued their resolution, it became a law that requires everyone public and private to comply with, including MINAE, TAA, Judges and Prosecutors. Instead whatever they say, (i) that in the event that the cutting of any tree was to happen, a permit ought to be requested from the MINAE. That is just flat out wrong according to law. There's a number of trees that are permitted to be cut with no permit, those are trees planted in a fence row, any treatments planted in the land like fruit trees or palm trees, and any trees less than 16 cm. So again it's shaded by this is shaded by "If they 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. (Dr. Weiler)**

Here's 1st page of Resolution in English below, notice last paragraph where it becomes binding on all individuals, Public entities and agencies according to Organic "LAW" 19 Do words have meaning??? Of course, it would have been nice for someone from SETENA to say I duped them, and they affirm everything the Costa Rica State, their attorneys, and the arbitrators are saying in their stead, but they were never called for either a statement or testimony. So everything that was said in their stead was hearsay testimony.

[hw:] 4

Ministry of Environment and Energy
National Environmental Technical Secretariat
(SETENA)
Phone: 2234-3367-2234-3368 Fax: 2225-8862
Apartado Postal 5298-1000, San José

Resolution No. 1597-2008-SETENA

THE MINISTRY OF ENVIRONMENT AND ENERGY, THE NATIONAL ENVIRONMENTAL TECHNICAL SECRETARIAT,
AT **9:15** A.M. ON **JUNE 2, 2008.**

PROYECTO CONDOMINIO HORIZONTAL RESIDENCIAL LAS OLAS
[LAS OLAS RESIDENTIAL HORIZONTAL CONDOMINIUM PROJECT]
ADMINISTRATIVE FILE No. D1-1362-2007-SETENA

The Plenary Commission of this Secretariat has reviewed the Environmental Assessment Document (D-1), the Environmental Management Forecast-Plan and the Environmental Commitments Affidavit for the project: **Condominio Horizontal Residencial Las Olas [Las Olas Residential Horizontal Condominium],** under the name of the company Inversiones Cotsco C&T S.A., represented by Mr. David Aven, **file number D1-1362-2007-SETENA.**

IN VIEW OF

ONE: On November 8, 2007, this Secretariat received the Environmental Assessment Document (D-1) and the Environmental Management Forecast-Plan for the Project: Condominio Horizontal Residencial Las Olas [Las Olas Residential Horizontal Condominium], under the name of the company Inversiones Cotsco C&T S.A., represented by Mr. David Aven, file number D1-1362-2007-SETENA.

TWO: On January 10, 2008, Mr. Eduardo Segnini Zamora, member of the Department of Institutional Management, and company officials of the developer conducted a field inspection on the project area.

THREE: On April 3, 2008, the information was received that was requested in official letter SGP-DGI 098 – 2008 dated February 23, 2008, requesting the developer submit: updated vegetation cover map, registry certification of the property, determination from ACOPAC-MINAE, affidavit of non-initiation of works without an environmental viability permit (VLA), three georeferenced points and a photographic record of the project area (PA).

WHEREAS

ONE: Mr. David Aven is acknowledged as having the capacity to request the environmental assessment on behalf of the company Oceánico País Sociedad Anónima.

TWO: Article 19 of the Organic Law on the Environment states "The resolutions of the National Environmental Technical Secretariat must be well founded and reasoned. They will be binding on both individuals and public entities and agencies."

120. After receiving the Environmental Viability Permit from SETENA for the Condo Section, Claimants applied for construction permits from the Municipality of Parrita. In the month of August 2008, the Municipality issued construction permits for a hotel, cabins and a pool at the Concession Site (Permit 165-08) 59 . Although a construction permit was also applied for in respect of the Condo Section at a later date, the Municipality rejected the application on July 19, 2010 for several reasons; amongst them, the fact that the Environmental Viability Permit issued for the Condo Site in 2008 had lapsed 60 . The municipal permit was finally granted on September 7, 2010.

Again the shaded since ruling failed to State that the project was shut down during a financial crisis in August 2008 and not reopened again until January 2010. Of course, there will remedial things we had to do to get everything back on track. From July 19 to September 7, 2010, is only three weeks and wouldn't be mentioned if not for the Scarlet letter the developers were wearing because we were made out to be liars by our own attorneys.

122. In March 2009, certain neighbors in the Esterillos Oeste community filed a formal complaint with the Municipality 62 , alleging that in the Las Olas Project site there had always been wetlands as evidenced by that area's flooding during the rainy season and the existence of fauna typical of a wetland. The neighbors accused Claimants of filling in the lagoon, felling trees and building paved roads 63.

We were totally shut down from August of 2008 to January of 2010. There was no work going on and there was no direct testimony from anyone that said I or anyone that worked for us did what they said we were doing. Also, we had signatures in 2010 from close to 200 people in the town, "the Neighbors" who said they were fully behind the project. However, VE Attorneys failed to show that to anyone.

130. On July 8, 2010, Mr. Bogantes—Chief of SINAC's Regional Office in Quepos—and Mr. Manfredi—also of SINAC—visited the Condo Section along with representatives from SETENA 76 . SINAC (through the Central Pacific Conservation Area) issued a Report (ACOPAC-OSRAP-371-2010) on July 16, 2010 finding that it was not able to ascertain the existence of wetlands, but it confirmed the felling of trees 77 . In this report, SINAC set forth the elements that it considered necessary to determine its existence of wetlands and concluded that it was not able to confirm these.

Look how shaded the above is. They didn't visit the site, MINAE did an Inspection and they determined there were not wetlands, lakes of lagoons. It also failed to state that in April 2008, SINAC/MINAE letter (shown above) determined there were no wetlands. Nothing is said about the SETENA Resolutions that were issued in the past that legally determined there were no wetlands. VE attorneys never stressed that in the hearing at all. Search the transcript you won't find any hard push back. It states that confirmed. Also says they confirmed the felling of trees, what trees? Does say they were illegally cut, were they in a fence row, or palm trees, fruit trees or under 15 centimeters. Again shaded to make us look like we were breaking the law and to play down this inspection found no wetlands. Talks about more neighbors complaining, but

again VE attorneys never showed the signatures we got from neighbors and I have those in my possession and they were sent back with the boxes I sent to you.
133. Based on the neighbors' complaints regarding the damage to Wetlands, and flooding, SETENA made another visit to the Las Olas Project on August 18, 2010 and issued an internal report, confirming that there was no evidence of "land movements" or "bodies of water (lakes)" in the Condo Section 83 . Consequently, SETENA issued a report the following day (ASA-1216-2010-SETENA) recommending that the neighbors' complaints be rejected insofar as there were no wetlands or bodies of water (lakes) in the site 84 .

134. SINAC then responded on August 27, 2010 through Mr. Christian Bogantes (head of the Subregional Office for Aguirre and Parrita) to the Defensoría de los Habitantes advising that, based on the different reports carried out, including the visit carried out by Mr. Rolando Manfredi on July 8, 2010, there were neither wetlands nor bodies of water (lakes) in the property 85 .

135. On September 1, 2010 SETENA issued a Resolution (No. 2086-2010-SETENA) citing the inspections and reports mentioned in the preceding paragraphs, and determined that the complaints submitted by Mr. Bucelato should be rejected, insofar as there was no evidence of earth movements, bodies of water (lakes) or wetlands in the site 86 . SETENA ordered Claimants to file within thirty business days an environmental management plan for the Condo Section of the Las Olas Project.

136. On September 7, 2010 the Municipality of La Parrita issued Permit No. 130-10 to carry out constructions in an area comprising 3,573 mts. in the Condo Section 87 . Earlier, in 2008—as previously described—and then in July 2010, the Municipality had issued several constructions permits for the Easement Section 88 . Despite granting these construction permits, the Municipality subsequently noted in a communiqué dated September 13, 2010 that some information was still missing for these to be lawfully issued 89 .

Take a look at the above 3 paragraphs. No land movement, MINAE report showed no wetlands, no bodies of water, and SETENA Resolution rejecting Bucelato's complaint and reconfirmed the permit. Another law for all to comply with. Here is the law that's like a cross in the face of the devil, "**Two: article 1903 Organic Law on the environment states. "The resolutions of the national environmental technical Secretariat must be well-founded and reasoned. They will be "BINDING" unbolt individuals in public entities and agencies"**

And construction permits were issued. Do words have meaning??? With all of these reports saying there were no wetlands how In the HELL could I have an intent to commit a crime???
138. The neighbors to the Las Olas Project then identified the existence of the Forged Document 91 allegedly issued by SINAC that had been submitted into the SETENA file back in 2008 and, in a new complaint dated November 18, 2010 — but submitted to SINAC on November 23, 2010 — these neighbors challenged the reliance by SETENA and other authorities on the Forged Document 92 . Immediately thereafter, the Defensoría de los Habitantes advised SINAC of the filing of this complaint 93 . On November 25, 2010, SINAC

issued an internal communication 94 requesting that the criminal charges filed by the Municipality, along with other information, be taken into account in the preparation of a report. On the same date, SINAC confirmed that the document was indeed a forgery 95 . On January 17, 2011, SETENA requested 96 that Claimants present the original copy of the Forged Document or, in the alternative, a certified copy authenticated by public notary. Claimants replied to this request on February 9, 2011, denying any connection to the Forged Document and also denying having submitted it to SETENA. Claimants – through Mr. Aven–alleged that they would file another criminal complaint against Mr. Bucelato, as he "had been seen with an original of the questionable document" . However, no such complaint was subsequently filed, nor was evidence submitted in this proceeding to support Mr. Bucelato's possession of the original Forged Document.

No strong push back on any of this by VE attorneys on any of the above, and look how quickly they pivot back to the fake dossier and mantra of wetlands, wetlands, wetlands and to the forged document. They skip by two strong reports of no wetlands by MINAE and SETENA. Take note that they don't say that note on the back of the forged document was written at the SETENA office that it was submitted by Steve Bucelato 1 day after it was issued. Sound like a real Houdini trick and what's going on with that. No mention why another MINAE report was done in December of 2010 around the Christmas holidays and issued right after New Years that had an opposite finding that the one done in July of 2010. Let's see, that August, September, October, November, December…four months later and now there's a wetland. Didn't they find that strange? No not at all because the Weiler principal was hard at work… If they 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. (Dr. Weiler)**

Injunctions Suspending Works, the Environmental Prosecutor's Investigation and Criminal Charges

142. Following the issuance of the SINAC January 2011 Report, SINAC requested the Environmental Prosecutor's Office in Aguirre on January 28, 2011, to make a site visit to verify the (i) refilling of wetlands, (ii) illegal felling of trees, and to issue an order to suspend all work that could affect the ecosystem until such time as it was confirmed whether Claimants had all permits and wetlands did not exist .

More piling on with shaded findings because they thought we were liars and cheats because we didn't produce the audio recording and had no defense whatsoever for the bribery allegations made in our Memorial. The Prosecutor started his criminal investigation in January of 2011 and I wasn't charged until November of 2010. But they don't say that since they are finding ways for us to lose since liars and criminal don' win in court. Nobody was following the law. What Law the Organic Law 19 requiring all to comply. MAINE, TAA, Municipality, Bucelato, Criminal prosecutor none of them were following the law flowing from the issuance of the SETENA Resolutions, but nobody is paying any attention to the Elephant in the room. Read the letter that Manuel Ventura wrote to SETENA. What they're asking for above was already ruled on by SETENA's in four previous resolutions and a number of inspections by MINAE.

145. Shortly after SINAC made its request for an official determination of whether or not there were wetlands at the Las Olas Project site, it issued Resolution ACOPAC-CP-032-11 dated February 14, 2011 109 , containing an injunction (medida cautelar administrativa) suspending all works and provided notice thereof to Mr. Aven on February 18, 2011.

According to SETENA, no one has the authority, but the courts, to annul a SETENA Resolution. Nobody is talking about SETENA Elephant, it's their permit and responsibility. The Judges say that SINAC issued at Resolution. Wrong. MINAE issued reports that don't have the force of law behind them. Only SETENA has the authority of the government and courts to issue legally binding resolutions that become law once issued.

147. Mr. Bucelato then appeared before the Municipality on March 6, 2011, with an attorney, to present the SINAC January 2011, Report 113 and requested that an injunction be issued to stop construction on the Las Olas Project. This complaint was memorialized by an internal report issued on March 7, 2011 by Mr. Marvin Mora Chinchilla, Head of the Terrestrial Maritime Zone of the Municipality of Parrita at the time, addressed to the Municipal Council.

Bucelato is flagrantly in violation of the law since he was filing the same report with other agencies after his complaint was rejected via a legally binding resolution by SETENA and he was required by law to comply with those findings. Jorge Becinio told the MUNI that they were breaking the law in doing what they were doing, but they ignored him. It begs the question, Christian Boganestes the director of MINAE office in Quepos asked us for a bribe in July of 2010. We didn't pay it. Shortly thereafter there are allegations of a wetland. MINAE hid the July report from us and we didn't learn about it until March of 2011. Bogantes committed perjury at our criminal trial and lied about having the report when I went down to pick it up in March of 2011. Look at my 90-minute declaration. I talk about what happened at trial and with that report.

155. On May 18, 2011 SINAC issued another report (SINAC-GASP 143-11) 125 also addressed to the Prosecutor (the "SINAC May 2011 Report") based on a site visit on May 13, 2011, concluding that a wetland area of approximately 1.35 hectares existed on the Las Olas Project; that the site's topography had been directly affected by a drainage channel and sewage system; and that the palustrine wetland had been completely refilled by Claimants. Further, SINAC recommended requesting from Claimants a restoration plan in respect to the damage caused to the ecosystem 126.

Just one minor problem with the above. Two weeks before INTA came with their report that stated there were no wetlands on the project site. Martinez told me and Jovan that he didn't believe that report. Since when does a criminal prosecutor have the right not to believe objective evidence. I said that at the hearing but again, they weren't listening to a liar. Also, MINAE wrote the MUNICIPALITY IN 2012 and was told that MINAE did not have the competence to demarcate wetlands, for that they had to call IGN. But VE attorneys did have the presence of mind to show that document to show if MINAE didn't have the competence, do

they think David Aven would have the competence to know what a wetland was. INTA also clearly said it's not up to the developer to know what a wetland is. VE attorneys never showed any of those documents to any state witness. Also notice that they only identified 1.35 hectares so for that they shut down a 100 acre project??

156. SETENA subsequently upheld the injunction it had issued on April 13, 2011, through Resolution 1190-2011-SETENA of May 31, 2011 127 , taking note that such injunction had not been complied with by Claimants. It also ordered Claimants to submit a mitigation plan to avoid erosion of land, and a notice was ordered to be given to the environmental prosecutor (Fiscalía Agrario Ambiental) in light of the fact that Mr. Aven was deemed to be in contempt of the earlier order.

Again this is wrong, we didn't get the notification until the end of April and then we stopped. It also was an illegally shutdown since the basis of the shutdown was flawed and not true. SETENA corrected that in due course. MINAE intentionally lied to SETENA to get them to shut us down. VE just didn't push back on that to prove we acted legally. However, it didn't matter since we were branded liars and liars don't win in court. Again the Weiler principle … "If they 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." (Dr. Weiler)**

160. Following these reports, the Environmental Prosecutor, Mr. Luis Gerardo Martínez, charged Mr. Aven on October 21, 2011, with the crimes of (i) ordering the draining and drying of wetlands in violation of Article 98 of the Wildlife Conservation Law, and (ii) invading a conservation area in violation of Article 58 of the Costa Rican Forestry Law. Mr. Damjanac was also charged but in this case with illegal exploitation of a forest in violation of Article 61 of the Costa Rican Forestry Law 132 .

161. Contemporaneously, on October 14, 2011, the Prosecutor requested 133 that the Criminal Court of Quepos, Costa Rica, issue a judicial injunction against the continuance of works at the Las Olas Project site. This injunction was granted on November 30, 2011, 134 , ordering Claimants to stop all work where there may be a wetland or forest on the site, and to stop all water damage from the wetland, it also ordered both Mr. Aven and Mr. Damjanac to stop from taking any other works affecting the environment. The Municipality was ordered not to issue any construction permits on the lots identified in the order. This 2011 Injunction remains in effect to this date.

162. In a surprising turn of events, on November 15, 2011, SETENA issued Resolution 28502011-SETENA, whereby it "revoked the injunction that SETENA itself had issued on April 13, 2011, because it found "… no grounds or defects justifying annulment …" of the Environmental Viability Permit for the Condo Section since there was insufficient evidence to prove that Claimants were responsible for the Forged Document. In essence, SETENA confirmed the Environmental Viability Permit for the Condominium Section.

This is just flat out wrong and another example of VE attorneys not explaining anything correctly at the hearing. SETNEA determined that the forged document that MINAE said they relied upon to issue their permit wasn't the one they in fact relied upon. Based on that they rescinded their permit and issued another resolution reconfirming once again, not wetlands, no forest and no lakes of lagoons. It wasn't about trying to prove if the document was forged or not, it was all about the document MINAE said they relied upon was just wrong since it wasn't. In other words, SETENA found out that they had been lied to by MINAE and the prosecutor knew that it wasn't the reliance document they sent SETENA in the first place since that document was in their file. But notice when they talk about all the infractions that the state does we're the bad guy, but when it goes against the state it's a "SURPRISE". Two things. (1) VE just didn't provide any proof about anything and (2) everything was shaded because we didn't produce the bribery tape we said we had.

163. The Attorney General's Office, on behalf of the Republic of Costa Rica, then filed a civil claim against Claimants on November 17, 2011, seeking damages for the environmental damage caused to the ecosystems.

This is automatic when a criminal charge is filed. However, what the Judges don't say is the damages they were seeking. It was $6,000.00. I offered to pay that, but they wouldn't take it. So for $6,000 dollars, they shut down a multi-million dollar project. This wasn't about righting a wrong, this was about bankrupting Gringos who wouldn't pay a bribe.

Despite SETENA's revocation of its own suspension order, by this time there were three separate injunctions issued against the continuance of works at the Las Olas Project site: (a) the SINAC Injunction of February 14, 2011 138 ; (b) the TAA Injunction of April 13, 2011 139 ; and (c) the Criminal Court of Quepos' injunction of November 30, 2011.

Exactly, all the other agencies were piling on. Just one small problem it was SETENA's permit that said there were no wetlands and they were sticking by it. Again, read the transcripts and watch the videos. Absolutely no push back by VE. No case strategy to prove up our case in Chief. No proper use of the evidence as laid out in their own words and by the legal opinion that provided the basis for Vannin and VE to both put up money on our case. I really think this will be the most incompetent crew you will ever have the displeasure/pleasure in going after. There were no seasoned attorneys they were all young trainees led by two incompetents, Burn and Loftis. All of above, agencies who piled on were in violation of Costa Rica law by not complying with SETENA Determination Resolutions. Another small problem was that no one from SETENA, MINAE, SINCA, TAA, MUNICIPALITY or INTA were called to give witness statements or for direct testimony. Why did Costa Rica hide the above key agencies from the proceedings? Because they would have told the truth and ruined their case. Therefore, they excluded them and instead provided lawyer testimony by the state that was not strongly objected to. Silence is acceptance and with no objection by VE attorneys it was accepted as truth by the Tribunal. But yet, the Judges accepted hearsay testimony and once again here's why: "If they 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." (Dr. Weiler)**

171. The record shows that the complaints alleging the existence and damages to the wetlands were investigated by the proper Municipal authorities, which then triggered further investigations from SINAC, SETENA and the TAA. These have been commented above. Indeed, Ms. Mónica Vargas, who was the Environmental Manager at the Municipality, inspected the Las Olas Project site after the first complaint received relating to an alleged refilling of a wetland in March 2009, and subsequently in January and May 2010, producing reports 146 and filing of complaints to MINAE and the TAA 147 . In turn, these reports and complaint provoked action on the part of Defensoría de los Habitantes directing the Municipality of Parrita, the Major, as well as the TAA and SETENA 148 to take action. When a complaint relating to the Forged Document was sent by Mr. Bucelato directly to Defensoría de los Habitantes, the latter passed on the complaint to SINAC which entrusted an inspection visit in December 2010, and thereafter issued its injunction in February 2011

Again, no direct testimony from any of the above agencies so everything presented was hearsay. VE attorneys never raised that disturbing issue with the Judges. This is what Burn said, "We hope the tribunal will take note the State didn't call any of these state agencies.

177. The new trial was set for December 2013, and counsel to Mr. Aven advised that his client would not be attending the hearing scheduled for December 20, 2013, because of fear for his life, and requested the possibility of conducting the trial through video conference 152 . Since the Costa Rican criminal system does not recognize judgments in the absence of the accused, the court rejected the petition and scheduled a trial hearing on January 13, 2014. Since Mr. Aven did not appear to face trial because he had left Costa Rica based on the fact that he alleged to have received anonymous threatening emails and was the victim of a shooting incident while driving in a Costa Rican highway 153 , the court then issued the so-called INTERPOL Red Notice.

181. As is evident from the above description of events, a myriad of issues arise from the confused and complicated facts and what appears to be the contradictory and/or inconsistent reports, resolutions and actions taken by the Costa Rican authorities, which shall be addressed below by the Tribunal. Among other issues that need to be examined are: Were there wetlands and forests on the Las Olas Project site? Which is the agency that is entrusted with determining the existence of wetlands? Is the agency a different one for forests? Which is the agency that is responsible for issuing an environmental viability permit? What are the rights of the investor once such a permit is received? Who has the authority to revoke? Finally, what is the relationship among the municipal and the central government when it comes to issuing permits for the development of property?

My goodness, this is just outrageous. Just to show you the depth of incompetence. We spend years on this case and millions of dollars and at the end, the arbitrators have to ask the following questions:

1. Were there wetlands and forests on the Las Olas Project site?

No, since the appropriate agencies stated before we did anything on the project site that there were not wetlands or forest.

2. Which is the agency that is entrusted with determining the existence of wetlands?

SETENA since they are the ones that have been given the authority by the Government and the courts to make wetland determinations. This is only done after a thorough study and input from other agencies, those determinations become a law. Once made by the issuance of a SETENA Resolution, it becomes a law requiring all to comply. The problem was no one followed the law.

3. Is the agency a different one for forests?

No, SETENA makes a determination on everything environmental

4. Which is the agency that is responsible for issuing an environmental viability permit?

Brother, again it's SETENA

5. What are the rights of the investor once such a permit is received?

The rights of the investors once a SETENA permit is issued the developer has the right to move forward to acquiring the construction permits. Once the construction permits are issued the developer has a right to begin construction per the master site plan that was approved. All of that was done legally and properly. SETENA confirmed that over and over again by issuing SETENAD Resolutions that reconfirmed there were no wetlands on the project site. That determination required compliance by all. However, the people working at the Costa Rica agencies refused to comply with that Costa Rica law.

6. Who has the authority to revoke?

Only SETENA or a court can revoke or annul a SETENA permit under an annulment proceeding.

7. Finally, what is the relationship between the municipal and the central government when it comes to issuing permits for the development of property?

This is quite unbelievable. SETENA Issues an EV environmental permits that clear the land of all environmental problems, or identifies environmental problems and have them mitigated. This is only done after input from a number of Government agencies, MINAE is one of them. The water and electric company have to approve the site for utilities. The highway department has to approve the site for proper entrances into the site. SETENA has a number of check the boxes but all of these agencies. Once the boxes are checked, then they the EV permit. Once EV permit is issued the developer moves on towards the ultimate goal of getting the construction permits. This was explained thoroughly to the VE attorneys in a detailed legal opinion that was written by the Batalla law firm in Costa Rica, who worked on the case with VE.

If the arbitrators didn't know answers to these basic questions it just shows the dismal failure of our attorneys in not explaining all of these vital points in a clear enough way so the arbitrators were understanding these questions. I told Mr. Burn and Mr. Loftis, when Estes questions the answers I provided above, but instead of listening to me they said the most important agency was MINAE and that's wrong. The most important Agency is SETENA since their determinations are backed by law, none of the other agencies are.

The Above laid out the basis for the Claim, the following is the specific claims for finding on liability and damages.

VII. THE PARTIES' CLAIMS AND REQUESTS FOR RELIEF

182. As expressed in their respective submissions the Parties seek the following relief:

Claimants

183. Claimants seek the following relief

(1) A DECLARATION that the Tribunal has jurisdiction over the claims presented by the Claimants;

(2) A DECLARATION that the Respondent, for the reasons set out herein or any of them, breached Article 10.5 of the DR-CAFTA;

(3) A DECLARATION that the Respondent, for the reasons set out herein or any of them, breached Article 10.7 of the DR-CAFTA;

(4) A DECLARATION that the Respondent, by reason of any breach or breaches of Articles 10.5 and 10.7 of the DR-CAFTA found by the Tribunal, damaged the Claimants and caused them to suffer loss;

(5) AN ORDER that the Respondent pay to the Claimants damages in the sum of US$ 69,100,000, plus interest up to the date of the award calculated by Dr. Abdala to make a total of US$ 97,400,000 at today's date or, in the alternative, AN ORDER that the Respondent pay to the Claimants damages in the sum of US$ 92,000,000 [as at the date of filing of their Reply Memorial], or such other sum as the Tribunal may find owing in respect of the value of the Las Olas project;

(6) AN ORDER that the Respondent pay to Mr. David Aven moral damages in the sum of US$ 5,000,000, or such other sum as the Tribunal may find owing;

(7) AN ORDER that the Respondent shall immediately and permanently terminate, and forever desist from instituting in respect of the subject-matter of this dispute, any criminal proceedings against Mr. David Aven and steps aimed at his extradition to Costa Rica;

(8) AN ORDER that the Respondent pay interest on any and all sums awarded to the Claimants, at the WACC calculated by Dr. Abdala, from the date of any award until payment is received by the Claimants or, in the alternative, interest at such rate and compounded at such steps as the Tribunal may find to be appropriate;

(9) AN ORDER that the Respondent pay all of the Claimants' costs and expenses of this arbitration, including all expenses that the Claimants have incurred or shall incur in respect of the fees and expenses of the Tribunal, ICSID, legal counsel, expert witnesses and consultants; and

(10) Such other relief as the Tribunal may consider appropriate.

184. In their Post-Hearing Brief, the Claimants adjusted the following paragraphs:

a. in respect of paragraph (5) of the request for relief contained in the Reply Memorial, the Claimants respectfully request that the Respondent be ordered to pay damages in the sum of US$66,500,000, plus interest (and less sales revenue after May 2011) up to the date of the award calculated by Dr. Abdala to make a total of US$ 95,400,000 at February 7, 2017, or such other sum as the Tribunal may find owing in respect of the value of the Las Olas Project.

b. in respect of paragraph (8) of the request for relief contained in the Reply Memorial, the Claimants note that the request for interest should (i) include a request for such interest from February 8, 2017 until the date of the Award; and (ii) be based on the combined land and WACC rate calculated by Dr. Abdala, rather than simply the WACC.

B. Respondent

185. Respondent, on the other hand, seeks the following relief

1. Declare that Mr. Aven's lack of standing on the grounds of nationality precludes the Tribunal from seizing jurisdiction of this arbitration vis-à-vis Mr. Aven and thereby prevent Mr. Aven from seeking redress under the Treaty; **FOR CLAIMANTS**

2. Declare that the Tribunal lacks jurisdiction to hear any claims relating to Mr. Raguso and Mr. Shioleno on the grounds that they do not hold a covered investment under DR-CAFTA; **FOR CLAIMANTS**

3. Declare that the Tribunal has no jurisdiction over the properties that Claimants do not own on the basis that they do not qualify as a covered investment under DR-CAFTA; **FOR CLAMAINTS**

4. Declare that the Tribunal has no jurisdiction over the Concession or the Concession site and any claims relating to La Canícula; **FOR CLAIMANTS**

5. Declare that the Tribunal has no jurisdiction to hear any late submitted claims regarding the purported violation of the full protection and security standard contained in Article 10.5(2)(b), due to Claimants' failure to seek leave to amend its claim; **FOR RESPONDENT, MORE INCOMPETENCE** **346. The Tribunal finds that even though there were limited mentions in Claimants' Memorial and Reply to breaches on the part of Respondent to the standard of full**

protection and security, Article 10.16.2 DR-CAFTA requires more from a Claimant. The "Notice to submit a claim to arbitration" must specify not only the specific provision of the Treaty alleged to have been breached, but the 'legal and factual basis for each claim'. Similar provisions are found in UNCITRAL Arbitration Rules Article 20. The need to timely and properly submit a claim is evident: to allow a respondent State to prepare and argue its defense. Therefore, since Claimants failed to timely plead a claim for breach of full protection and security, it declares this claim as inadmissible in limine. The Tribunal nonetheless expressly states that this does not prejudice the rest of the claims timely presented by Claimants, and these will be examined below.

6. Declare that Claimants' claims are inadmissible on the basis of the illegalities enunciated herein and thereby prevents Claimants from seeking redress under the Treaty; **FOR CLAIMANTS**

In the alternative,

7. Dismiss all the claims in their entirety and declare that there is no basis of liability accruing to Respondent as a result of: 5.1. Any claim of violation by Costa Rica of DR-CAFTA Articles 10.5 and 10.7; 5.2. Any claim that Claimants suffered losses for which Costa Rica could be liable; or 5.3. Any claim for the Tribunal's interference with Mr. Aven's ongoing criminal trial before the courts in Costa Rica;

8. Furthermore, declare that Claimants have caused environmental harm to Costa Rica;

9. Order Claimants to pay Respondent damages in lieu of the reparation of the environmental damage Claimants caused to the Las Olas Ecosystem;

10. Order that Claimants pay Respondent all costs associated with these proceedings, including arbitration costs and all professional fees and disbursements, as well as the fees of the arbitral tribunal; and **FOR RESPONDENT ORDER CLAIMANTS TO PAY 1,000,000 FOR COSTA RICA'S ARBITRATION COST**

In the alternative, and where appropriate,

11. Reject as inflated and unsupported, Claimants' valuation of their alleged losses, as well as Claimants' methodology as to the interest rate that would apply to any monetary award that might be issued by this Tribunal; and

12. Grant such relief that the Tribunal may deem just and appropriate.

ALLEGED LIABILITY UNDER DR-CAFTA

A. The Submissions of the Parties

1. The Claimants' Submissions

(a) Article 10.5 DR-CAFTA and Annex 10-B as the Legal Basis for the Claims.

374. Therefore, Claimants submit that: (1) if an official cannot produce convincing evidence that contemporaneous consideration of the factors mentioned in Article 18.8 DR-CAFTA actually did occur, and (2) the decisions actually taken by that official appear to have been out-of-proportion, or otherwise not in accord with the principle of due process, then a prima facie breach of Article 10.5 DR-CAFTA shall exist 305

382. In their Post-Hearing Brief Claimants did not strongly argue the indirect expropriation claim, and primarily made reference to their prior allegations in their Memorial of Claims 314 , and certain actions that in their view constitute a separate prima facie breach of Article 10.7 DR-CAFTA, which they referred to as expropriatory measures: (i) the ongoing Municipal permit suspension; (ii) the TAA injunction; and (iii) the criminal proceedings injunction, for which Respondent refuses to pay prompt, adequate and effective compensation 315 .

B. The Tribunal's Approach

406. The Arbitral Tribunal is faced with the need to determine whether the protection afforded under Chapter Ten DR-CAFTA to investors is subordinate to the laws enacted by the Parties to the Treaty seeking the protection of the environment, and under which circumstances can a State that is party to DR-CAFTA establish laws, policies and/or adopt measures to that end.

415. MORE INCOMPETENCE Claimants do not argue that the laws enacted by Respondent are in breach of the Treaty, or that it has lowered its standards to attract trade or investment. During the Opening Statement made by Claimants' counsel during the December Hearing, counsel stated that they did not challenge the validity of any law or regulation, but added that the case was one about enforcement of such laws 359 . Hence, the Arbitral Tribunal does not need to examine whether the laws enacted by Costa Rica are compliant with the Treaty and customary international law. What the Tribunal needs to decide, however, is whether the manner in which such laws were applied as regards the Claimants is compliant with the DR-CAFTA and customary international law.

C. Costa Rica's Environmental Law and Authorities

424. The government agencies entrusted with the enforcement of the above environmental legislation as it applies to this claim are:

(a). Ministry of Environment and Energy (Ministerio de Ambiente y Energía "MINAE");
From 2004 to 2011 issued numerous reports all saying there was no wetlands on the project site.

(b). National System of Conservation Areas (Sistema Nacional de Areas de Conservación - "SINAC"); Also Issued reports stating there were no wetlands on project site.

(c). National Technical Environmental Secretariat (Secretaría Técnica Nacional Ambiental – "SETENA");
Issued four different SETENA Resolutions, having legal requirements to comply with their determination on the Las Olas project site.

(d). National Wetland Program (Programa Nacional de Humedales or "PNH")

(e). National Institute for Agricultural Innovation and Technology Transfer (Instituto Nacional de Investigación e Innovación en Transferencia de Tecnología Agropecuaria - "INTA"), an agency of the Ministry of Agriculture; and INTA did a wetland study on project site, ordered by prosecutor, and found no wetlands. Report also clearly stated that it was not up to the developer to know what wetlands are.

(f). Departments of Environmental Management (Departamento de Gestión Ambiental) in each of the Municipalities.

Tribunal got it wrong here. See the following Letter from SINAC. I retyped it to make it easier to read, but the ACOPAC no is correct and I have a copy of the original letter from SINAC.

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

TO:
Monica Vargas
Luis Mario
Melson Masis
Alejandor Montiel
Enviornmental 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. (IGN) 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

The reason the Judges got it wrong and left out a very important wetland agency IGN, was because VE failed to make it clear by producing this letter and strongly pointing out the power and authority of SETENA Resolutions. All of the above agencies were required to comply with the SETENA the findings of the SETENA Resolution codified by Costa Rica Law. Also, this communication from SINAC/MINAE seems to call into question whether they have the competence to demarcate wetlands. Although this document was in evidence, it wasn't used by VE attorneys to show how was David Aven to know what a wetland was if SINAC was competent to point one out. VE failed to make it clear that SETENA is the top wetland authority because their resolutions are final acts that carry the force of law. Instead, they let the state sell the false narrative that there were not final acts because they don't issue permits. However, before the Municipality will issue their permit, you need a SETENA resolution clearing the land from all environmental problems. Therefore, within the scope of the agency who has the authority and competency to make that determination, it's clearly SETENA.

At this point, I want to regress just a bit to show you an email that I received from VE's Louise Woods after we got the ruling. As you will see it was sent to Jim Loftis as well. Here it is

Woods, Louise <lwoods@velaw.com> Sep 18, 2018, 12:52 PM ☆
to Todd, James, Alex, me

David

Please see attached. Let's discuss in a day or two once we've all had an opportunity to digest.

Kind regards
Louise

Now please think about this. No one from VE ever got back to discuss the ruling as promised. Just more of the same lies and untruthfulness on display. I had to get back to them to go over what it meant. We had 30 days to decide If we wanted to file a motion for an annulment. They finally arranged a have a conference call between Jim Loftis, Louise Woods, Todd Weiler and myself on October 15th or 16th. When I pointed out that everyone thought we would win, the attorneys who wrote the legal opinion, Vannin Capital, who put up $3,400,000 and VE who put millions on the table and ended up writing off 3 million. So I asked each one of them why we lost. They all said this. Because they thought you were at fault or something like that. I said I totally agree, but why did they reach that conclusion? Because my attorneys failed to use the facts and evidence in the right way to prove otherwise and we were out-lawyered.

Also, don't you think they should have provided me with an overview of the ruling after charging millions of dollars on this case? That occurred to me as I was reading it and trying to figure out what the HELL they were saying in their ruling. But I got nothing from them. Not a bit of fiduciary duty to their clients and that was the way it was throughout our entire experience.

434. The Environmental Prosecutor's Office is a specialized agency within the Attorney General's Office of Costa Rica that focuses exclusively on the prosecution of criminal offenses against the environment. Its prosecutors have a duty to investigate every complaint filed with the institution. These complaints can be filed by any individual or may even be filed anonymously 389 . Upon receipt of a complaint, the prosecutor can request the issuance of precautionary measures to prevent any damage or further impact on the environment.

That's true in all cases where you don't have a SETENA permit and Construction permits and the developers are nine months into infrastructure construction. The prosecutor even judges are supposed to comply with SETENA resolution. There is a huge gold-mining case involving Canadian investors who were issued a SETENA permit, they got all their construction permits, started their gold mining operations and was stopped after the courts went through a legal process and annulled the SETENA permits. A court order was sent to SETENA and they then annulled their EV permit.

In our case, the prosecutor never spoke to SETENA. In the boxes of documents I sent you are certified copies of the SETENA file. You won't find one letter from the Prosecutor to SETENA

about the permit that they issued. When Manuel Ventura and I had a meeting with Eusa Chavez the director of SETENA in December of 2012, I asked him a direct question. Do you think it's right that after getting a permit from SETENA that cleared the land environmentally and acting on your EV permits, that I am now being charged with environmental crimes? He asked me, did you sign the permit and I said of course not SETENA did. He said, so why should you be responsible for our permit. That's it in another nutshell, but our VE attorneys' just failed to drive that point home. Just again at what Costa Rica Leathey's said and then what the arbitrators said in the ruling.

Leathey's Statement:

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1 Defensoria, could we take a break--small break?
2 MR. LEATHLEY: Absolutely, sir.
3 PRESIDENT SIQUEIROS: Thank you.
4 MR. LEATHLEY: Let me just take one step 5 back.
6 PRESIDENT SIQUEIROS: Sorry for my interruption.
8 MR. LEATHLEY: No. Of course, sir.
9 Claimants say they had a tape recording of 10 this alleged bribery incident. They said this in 2013 11 at the time King & Spalding were representing them. As of today there is no recording. Such a cornerstone of their entire case is inexplicably missing.

THE ARBITRATION RULING BY 635: Regarding the alleged inaction on the part of the prosecutor's office to take action on the filing of a criminal complaint against the alleged bribes solicited by Mr. Bogantes, the Tribunal also finds that there are no merits to the allegations on "abuse of authority" expressed by Claimants. Although the solicitation of bribes is indeed a punishable crime in Costa Rica, and should not be tolerated under any jurisdiction, there is no corroborating evidence to the fact that there was such a solicitation except for the statement made by Mr. Damjanac. Even though in their Notice of Arbitration, Claimants stated that "The Investors have in their possession a tape recording of the solicitation of this bribe" 601 , such supposed tape recording was never produced as evidence during the arbitration. There is also no evidence that there was retributory action against Claimants for having failed to comply and pay the bribe.

Take note of this. I also said in my witness statement a number of times that I was a witness to that bribery attempt, but the panel just totally disregarding it and didn't even mention that. Why? Because they already viewed me as a liar and didn't want to spread my lies in their ruling about a central part of the case, bribery!

However, once again, all of this is subordinate to the fact that the bribery audio wasn't produced and therefore I was a liar and criminal and no Judge or Jury likes a liar. So it really didn't matter what our attorneys said or produced the die was cast when they simply rejected my instruction to put the bribery audio into evidence. Here it is again and I am repeating this over and over again so it's ingrained your memories because it's exactly correct...and we need to do the same for the Judge and Jury. "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." (Dr. Weiler** However, even if we would have produced the audio, we still may have lost given VE incompetence and grossly negligent manner in which they failed to use evidence in out case to prove up their case in chief, Just look at their memorial and all their allegations about bribery, and then simply failing to provide any evidence or convicing arguments about bribery and corruption.

I am on page 137 and I'm going to stop here because it will be more of the same. I will continue you if the LMPT wants me to, but I think you get the point. Let me end with this.