

**ENVIRONMENTAL PUBLIC PROSECUTION OFFICE  
ATTORNEY'S GENERAL OFFICE - JUDICIAL BRANCH  
REPUBLIC OF COSTA RICA**

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FILE: 11-000009-0611-PE

DEFENDANT: DAVID RICHARD AVEN AND OTHER

CRIME: OFFENCE TO THE WILDLIFE CONSERVATION LAW (WETLANDS' DRAINING) AND OTHERS

PLAINTIFF: THE NATURAL RESOURCES

Mr. (Mrs.) Criminal Judge of the Intermediate Procedure

Criminal Court of Aguirre and Parrita

Second Judicial Circuit of Puntarenas

The undersigned, Luis Gerardo Martínez Zúñiga, in my condition of Auxiliary Environmental Prosecutor of the Environmental Public Prosecution Office, I respectfully formally file the present case and **REQUEST FOR ACCUSATION**, after being analyzed according to Articles 303 and 304 of the Criminal Procedure Code, and I request to pronounce an **ORDER FOR OPENING A TRIAL** against the defendants **DAVID RICHARD AVEN AND JOVAN DUSHAN DAMJANAC** for committing the crimes of **OFFENCE TO THE WILDLIFE CONSERVATION LAW IN THE FORM OF WETLANDS' DRAINING AND FILLING, AND OFFENCE AGAINST THE FOREST LAW IN THE FORM OF INVASION OF CONSERVATION AREAS AND ILLEGAL USE OF FOREST RESOURCES**, to the detriment of **THE NATURAL RESOURCES**, based on the following:

**PERSONAL INFORMATION OF DEFENDANTS**

**DAVID RICHARD AVEN**, of age, business administrator, bearer of resident card number 135-350422, son of Samuel Aven qdDg and Louise Aven qdDg, born in Pennsylvania, United States in June 20, 1942, resident of Escazú, 700 meters West of the Banco Nacional, Los Balcones Condominium, House Number 5, telephones 22882452 and 8885-8112.

**JOVAN DUSHAN DAMJANAC**, of age, single, real estate agent, passport number 420165922, son of Dushan Damjanac and Antonette Damjanac, born in the United States in December 24, 1958, resident of Esterillos West, Las Olas Project, telephone 2778-7035 and 8338-9315.

**RELATION OF FACTS:**

**FIRST:** In November eighth of two thousand and seven, the defendant **DAVID RICHARD AVEN**, resident card number 135-350422, in representation of the company Inversiones Cotsco, S.A., corporate number 3-101-289111, requested before the National Technical Environmental Secretariat (SETENA), the environmental feasibility to develop a project called *Condominio Horizontal Residencial Las Olas* to the west of Esterillos, at Parrita, Puntarenas.

**SECOND:** Since the beginning, the defendant **DAVID RICHARD AVEN** presented the development of the project *Condominio Horizontal Residencial Las Olas*, in what at that time was the property registered at the Public Registry of the Property Section under *Folio Real* number 6-142646-000, cadastral map number P-1244761-2007, with an area of 280.185.77 square meters, located at the West of Esterillos, Parrita. Said project was filed by the defendant **DAVID RICHARD AVEN** to be

segregated into lots under the condominium property regime into 300 individualized and primary lots, apart from the common areas for access, playgrounds, green zones, and others. SETENA assigned to the project, the file number D1-1362-2007. The project was presented by defendant **DAVID RICHARD AVEN** to be developed in the totality of the property mentioned before, even if in the area there were at least 2 wetlands and an area of forest of approximately 75.150 square meters.

**THIRD:** By resolution number 1597-2008-SETENA, of June 2, 2008, the SETENA granted the environmental viability of the *Condominio Horizontal Residencial Las Olas* project, which allowed defendant, **DAVID RICHARD AVEN**, to segregate the property indicated herein in the first fact, and created property 6-2881-M-000 (under the name of *Condominio Horizontal Residencial Las Olas* with individualized lots, and corporate identity number 3-109-589316) and 288 lots instead of the 300 initially proposed number of lots (under the name of Trío Internacional Inc., corporate number 3-101-554011, company also represented by the defendant **DAVID RICHARD AVEN**), lots which correspond consecutively to properties 6-79209-F-000 thru 6-79496-F-000, which up to date are all owned by the company Trío Internacional, Inc., except for properties number 6-79303-F-000 to 6-79305-F-000, property 6-79344-F-000 and 6-79363-F-000.

**FOURTH:** Previous to subjecting the property indicated above in the first fact to the horizontal property, the defendant **DAVID RICHARD AVEN**, segregated it into a total of 15 lots, which are properties 6-156477-000, 6-156478-000, 6-156479-000, (which further created properties which start from 6-162394-000 thru 6-162400-000), 6-156480-000 (which at the same time created properties number 6-159930-000 thru 6-159937-000), 6-156481-000 (which further created properties 6-162480-000 thru 6-162487-000), 6-156482-000 (which further created properties 6-159552-000 thru 6-159559-000), 6-156483-000 (which further created properties 6-159795-000 thru 6-159802-000), property 6-156484-000 (which further created properties 6-159607-000 thru 6-159612-000), property 6-156485-000 (which further created properties 6-159847-000 thru 6-159854), property 6-156486-000 (which further created properties 6-158408-000 thru 6-158415-000), 6-156487-000 (which further created properties 6-158360-000 thru 6-158367-000), 6-156488-000, and 6-156489-000, 6-156490-000, and 6-156491-000. One of the existing wetlands in the development was located in the area occupied by at least the properties from 6-156482-000 thru 6-156489-000 and its segregations, located to the West side of what today is the *Condominio Horizontal Residencial Las Olas* project.

**FIFTH:** Without precisating an exact date, but definitively since the month of April 2009, the defendant **DAVID RICHARD AVEN**, in benefit of the *Condominio Horizontal Residencial Las Olas* project and of the owners of lots previously segregated from property 6-142646-000 indicated in fact four, he ordered the gradual filling of the wetland located to the West of the project, increasing such actions between the months of November 2010 to February 2011, dates in which he hired a group of workers, among them were Francisco Iglesias Caldera and Gabriel Alberto Montero Arce, to whom he ordered to make a canal for drainage at the West part of the Project, specifically at the boundaries of the lots of the *Condominio Horizontal Residencial Las Olas* project, and sewers were placed, which caused draining a marshy wetland of approximately 13.500 square meters located between geographical coordinates 1054150-444340 Northwest; 1054150-444580 Northeast; 1053950-444580 Southeast; 1053950-444340 Southwest. Continuing with his criminal action, the defendant **DAVID RICHARD AVEN** ordered the workers herein indicated, who made the filling of the space occupied by the wetland drained, by placing a large amount of soil and the construction of paved streets and the placement of lighting services, invading such conservation

area. All of the abovementioned was made without having the permits of the National Conservation Areas System.

**SIXTH:** Without precisin an exact date, but definitively between the month of November and December 2010, the defendant **JOVAN DUSHAN DAMJANAC** in benefit of the *Condominio Horizontal Residencial Las Olas* project, he hired a group of agricultural workers, among them was Mr. Melvin José González Benavides, to whom he ordered to cut and eliminate from the lower and medium stratum of an area of forest (approximately 400 trees of diameters ranging from 5 to 25 centimeters of diameter of timber yielding species like *guácimo*, *hombre grande*, *espavel*, *madroño*, *cedro*, *lagartillo* and *gallinazo*), affecting an area of approximately 75.150 square meters of forest located at the Southeast sector of the project mentioned, specifically between coordinates 9°32' North Latitude/84°30 '10" Longitude West and 9°32' North Latitude / 84°29' 50" Longitude West. All of the above without having the permits of the Forest State Administration and with the only purpose of benefitting the development of the *Condominio Horizontal Residencial Las Olas* project.

**SEVENTH:** Without precisin an exact date, but definitively between the month of September and the first days of October 2011, the defendant **JOVAN DUSHAN DAMJANAC** in benefit of the *Condominio Horizontal Residencial Las Olas* project, he hired a group of agricultural workers, among them was Mr. Melvin José González Benavides and Antonio Gutiérrez Méndez, to whom he ordered to cut the lower and medium stratus of an area of forest (using the method of clear cutting of at least 29 individuals of different wood species, extraction of tree stumps, and the QUEMA of residues) affecting again an area of 20.600 square meters located and immersed within the area of nearly 75.150 square meters of forest located at the Southeast of the project mentioned, specifically between coordinates 9°31'50" Latitude North/ 84°29'50" Longitude west and 9°31 '50" Latitude North/ 84°30' 10" Longitude West. All of the above without having the permits of the Forest State Administration and with the only purpose of benefitting the development of the *Condominio Horizontal Residencial Las Olas* project. In the same way, in September 9, 2011, the defendant **JOVAN DAMJANAC** ordered the workers the cutting of a ficus tree -"*higuerón*", timber yielding tree which was inside the boundaries of the project mentioned, without having the permits of the Forest State Administration and with the only purpose of benefitting the development of the *Condominio Horizontal Residencial Las Olas* project.

#### **LEGAL QUALIFICATION OF THE FACTS**

According to the criteria of this representation, the facts described above constitute the following crimes:

In the case of the defendant **DAVID RICHARD AVEN** a crime of an **OFFENCE TO THE WILDLIFE CONSERVATION LAW IN THE FORM OF DRAINING AND DRYING A WETLAND**, regulated and sanctioned by Article 98 of the Wildlife Conservation Law, committed in detriment of the Natural Resources, in ideal concurrence of crimes with the **OFFENCE AGAINST THE FOREST LAW IN THE FORM OF INVASION OF CONSERVATION AREAS** regulated and sanctioned by Article 58 clause a) of the Forest Law in relation with number 32 of the Environmental Organic Law in detriment of the Natural Resources.

In the case of the defendant **JOVAN DUSHAN DAMJANAC**, three crimes of **OFFENCE AGAINST THE FOREST LAW IN THE FORM OF ILLEGAL USE OF FOREST RESOURCES** in a material concurrence, regulated in Article 61 clause a), in relation with number 3, both of the Forest Law, committed in detriment of the Natural Resources.

### **SUBMISSION OF EVIDENCE**

- 1- **JOSÉ ROLANDO MANFREDI ABARCA**, of age, biologist, bearer of identity card number 1-444-470, reachable at the Sub-Regional Office of Aguirre and Parrita of the the Central Pacific Conservation Area, the National System of Conservation Areas, phone 2777-0644 or 2777-5351, who knows the site of the facts, and may give judgment on the inspections that he performed, which ruled out the existence of marshy wetlands in the place where the Condominio Horizontal Residencial las Olas project is developed, and did not not rule out the existence of marshy wetlands and will testify on that.
- 2- **JORGE ARTURO GAMBOA ELIZONDO**, of age, bearer of identity card number 1-710-112, reachable at the Management of Protected Wildlife Areas of the Executive Directorate, the National System of Conservation Areas, phone: 2256-0917, fax 2248-2451, who may refer to the existence of marshy wetlands on the property where the Condominio Horizontal las Olas project is developed, and to the damage caused by workers hired by the defendant David Aven, among other aspects.
- 3- **LUIS PICADO CUBILLO**, of age, bearer of identity card number 1-555-398, reachable at the Sub-Regional Office of Puriscal of the Central Pacific Conservation Area of the National System of Conservation Areas, phone 2416-7068, fax 2416-5017, who may refer to the existence of forest in the southeast sector of the property where the project Condominio Horizontal de las Olas project is developed, and to the damage caused by workers hired by the defendant Jovan Damjanac, among other aspects. Similarly, he may refer to the existence of a wetland in the west of the project and the damage it suffered in recent months.
- 4- **FULVIA ALEJANDRA WOHL JIMÉNEZ**, of age, bearer of identity card number 1-1179-145, reachable at the Sub-Regional Office of Puriscal of the Central Pacific Conservation Area of the National System of Conservation Areas, phone 2416-7068, fax 2416-5017, who may refer to the extension of the forest affected by the action ordered by the defendant Jovan Damjanac, and to the area occupied by the wetland damaged by the action of the defendant David Aven, among other aspects.
- 5- **MÓNICA ISABEL VARGAS QUESADA**, of age, bearer of identity card number 1-1113-140, reachable at the Department of Environmental Management of the Municipality of Parrita, telefax 2779-5454, who may refer during the debate to the physical location of the wetland drained and filled as a result of the order of defendant David Aven, and will refer to the dates from which she heard of the damage to the wetland, among other aspects of interest.
- 6- **CARLOS ALBERTO MORA SOLANO**, bearer of identity card number 1-871-507, neighbor of Esterillos west, Parrita, from the Sirena Hotel, 100 meters north, who in debate shall refer to the actions carried out at the wetland located at the West side of the Condominio Horizontal de las Olas project, among other aspects of interest.
- 7- **SONIA MARÍA SOLANO JIMÉNEZ**, bearer of identity card number 6-257-510, neighbor of Esterillos west of Parrita, from the school 150 meters north, phone 8959-7572, who in debate can refer to actions carried out in the forest area located at the East side of the Condominio Horizontal de las Olas project, among other aspects of interest.
- 8- **CELIA ROSA VENEGAS JIMÉNEZ**, bearer of identity card number 1-489-204, neighbor of Esterillos west, who during the debate can refer to actions that have taken place in the wetland located to the west side of the Condominio Horizontal de las Olas project, and to the damage to the forest area, among other aspects of interest.

- 9- **Cristian Bogantes Sánchez**, of age, engineer, identity card number 1-1034-495, reachable at the Sub-Regional Office Aguirre and Parrita of the Central Pacific Conservation Area of the National Conservation Area System, phone 2777-0644 or 2777-5351, who in a timely manner will refer to inspections ordered and carried out at the site of the events, particularly those relating to the area where the damaged wetland is located.
- 10- **MELVIN JOSÉ GONZÁLEZ BENAVIDES**, bearer of identity card number C-1216138, neighbor of Esterillos west of Parrita, in front of Sol supermarket, who in debate shall refer to the orders that the defendant Jovan Damjanac gave to him to carry out the clearing of the forest lower stratum located on the east side of the Condominio Horizontal de las Olas project, among other aspects of interest.
- 11- **ANTONIO GUTIÉRREZ MÉNDEZ**, no ID, neighbor of Esterillos west of Parrita, in cabins located near the gas station Estrella del Sur, who in debate shall refer to the works of cutting of trees, carried out in his condition of agricultural worker in the months of September and October 2011 in the forest located at the southeast side of the Condominio Horizontal las Olas project, among other aspects of interest.
- 12- **DIONEL BURGOS GONZÁLEZ**, of age, engineer, bearer of identity card number 1-400-840, reachable at the Sub-Regional Office of Aguirre and Parrita of the Central Pacific Conservation Area of the National System of Conservation Areas, phone 2777-0644 or 2777-5351, who, during the debate, may refer to the works of cutting trees discovered in the months of September and October 2011 in the forest located on the side east of the Condominio Horizontal las Olas project, among other aspects of interest.
- 13- **FRANCISCO VICENTE IGLESIAS CALDERA**, bearer of identity card number 155800239719, neighbor of Alajuela, El Llano, from Pollos el Este 325 meters East, phone 86019480, who in debate shall refer to the orders given by defendant David Aven to make a drainage channel to drain a wetland located in the segregated properties of the Condominio Horizontal las Olas project, among other things of interest.
- 14- **GABRIEL ALBERTO MONTERO ARCE**, bearer of identity card number 4-121-003, neighbor of Desamparados, Alajuela, from the entrance of Mondovi 200 meters west, phone 8969-2712 and 2260-4069, who in debate shall refer to the orders that the defendant David Aven gave him to make the placement of sand and pieces of broken stone in the canal built by witness Iglesias Caldera in order to drain the wetland located on the site of the events and also to put pavers on a street built on the drained and filled site, among other aspects of interest.
- 15- **JORGE LUIS MONTERO ARCE**, bearer of identity card number 4-095-286, neighbor of San Rafael, Heredia, from the school Manuel Camacho 100 meters South and 100 meters West, phone 2261-0354, who in debate may refer to the construction of a canal to drain the wetland located on the site and fill the same, among other things of interest.
- 16- **SEBASTIAN DAVID VARGAS ROLDAN**, bearer of identity card number 1-1105-475, neighbor of San Rafael, Escazú, Trejos Montealegre neighborhood, Jacaranda avenue, Durazno street, house number 7, phone 2588-1630 and 8812-8542, e-mail sebastian@lexcr.com, who in the debate may refer to the functions that the defendants, David Aven and Jovan Danjanac, have in the *Condominio Horizontal las Olas* project, and will refer to the location of the disputed area as a wetland within the properties that were segregated from property 6-142646-000, the location of the disputed area as forest within the project area, the presence of stumps in the area which was supposedly cut down, among other aspects of interest.
- 17- **WALTER GONZÁLEZ FALLAS**, bearer of identity card number 6-214-350, reachable at the Regional Delegation of Aguirre and Parrita from the Judicial Investigation Organ

(*Organismo de Investigación Judicial*), phone 2777-1511, who in debate shall refer to the investigation on this case, in particular to the location of witnesses linking the defendant Jovan Damjanac to the cutting at a forest area occurred in the months of November and December 2010, among other things of interest.

- 18- **JORGE BARRANTES VILLA**, bearer of identity card number 1-1312-601, reachable at the Regional Delegation of Aguirre and Parrita from the Judicial Investigation Organ (*Organismo de Investigación Judicial*), phone 2777-1511, who in debate shall refer to the investigation on this case, in particular the location of evidence on illegal cutting occurred at the site of the events in the months of September and October 2011, among other aspects of interest.
- 19- **STEVE BUCELATO**, resident card number 184000102328, neighbor of Esterillos West, phone 2778-7097, who during the debate may refer to the existence of a wetland and a forest on the site, and to the relation of the defendants David Aven and Jovan Damjanac with the project, particularly supervising some works to the detriment of the environment.

#### **DOCUMENTARY:**

- 1) Claim dated February 2, 2011, which informed this Prosecution Office about the facts herein accused, particularly the damage to a wetland inside the *Condominio Horizontal Residencial Las Olas* project. Pages 1 to 27.
- 2) Certificate of Good Standing of the company Inversiones Cotsco C&T, S.A., corporate number 3-101-289111, to prove that the defendant David Aven is its representative and under such condition, he requested the environmental feasibility before SETENA for the development of the *Condominio Horizontal Residencial Las Olas* project. Pages 28 and 29.
- 3) Simple study of the National Public Registry page of property 6-142646-000, which will prove that such property where the *Condominio Horizontal Residencial Las Olas* project was planned, was transferred to the Horizontal Property Regime and created the property 6-2881-M-000, which corresponds today to the common areas of the project. Page 70.
- 4) Simple study of the National Public Registry page of property 6-2882-M-000 and the 288 lots which compose the *Condominio Horizontal Residencial Las Olas* project, to prove which lots form part of such project and the location of the place where the accused facts were committed against the defendant Jovan Damjanac. Pages 71 to 77 and 163 to 174.
- 5) Order of confiscation issued by the Environmental Agrarian Prosecution Office of 11:45 hours of February 8, 2011, in order to prove that this Prosecution Office ordered the confiscation of the SETENA file number D1-1362-2007-SETENA. Page 93.
- 6) Confiscation record number 459848 of February 23, 2011, to prove that the Section for Various Crimes of the Judicial Investigation Organ (*Organismo de Investigación Judicial*), confiscated file number D1-1362-2007.SETENA, at SETENA, so that its inclusion into the investigation was carried out in compliance with the regulations. Page 99.
- 7) Report 60-DVDM-2011 made by the investigator, Lorenzo González Martínez, which informed about the confiscation of the file at SETENA number D1-1362-2007-SETENA. Page 100.
- 8) Report number ACOPAC-CP-015-11-DEN of January 28, 2011, in which Luis Picado Cubillo informed to the Attorney General Office about the damage to an area of forest and a wetland inside the *Condominio Horizontal Residencial Las Olas* project, in order to prove the detail of such facts taken place until the month of January 2011. Pages 105 to 109.
- 9) Official Communication SINAC-GASP-121 of March 26, 2011, signed by Jorge Gamboa Elizondo of the National Wetlands Program, in order to prove that Mr. Gamboa send report GASP-093-11 to this Prosecution Office. Page 129.

- 10) Official Communication SINAC-GASP-093-11, of March 18, 2011, signed by Jorge Gamboa Elizondo, Coordinator of the National Wetlands Program, to prove that in his opinion and as expert witness in the subject matter, there is a severely damaged marshy wetland located at the properties which at some moment were represented by cadastral map P-1244761-2007, which today corresponds to the area of the *Condominio Horizontal Residencial Las Olas* project and some other properties segregated from such original property.
- 11) Copy of the official communication DEGA-091-2009, of June 16, 2010, signed by the witness Mónica Vargas Quesada, of the Environmental Administration Department of the Municipality of Parrita, to prove that in the current properties 6-156482-000 and 6-156489-000 existed an ecosystem which deserved to be categorized by MINAET, as since April 2009, it was known that it was a wetland being filled, among other things. Pages 151 thru 154.
- 12) Copy of a note signed by neighbors of the locality of Esterillos West, addressed to the Municipality of Parrita, in order to prove the preoccupation of the citizens due to the damage of a place considered by them as a wetland, inside the *Condominio Horizontal Residencial Las Olas* project. Such note was signed by Sonia Solano Jiménez, among others. Pages 155 thru 158.
- 13) Copy of the master plan of the *Condominio Horizontal Residencial Las Olas* project, in order to prove that since the beginning of the request for permits by defendant David Aven and his partner, defendant Jovan Damjanac, they had planned the development of the totality of the area represented by property 6-142646-000, cadastral map P-1244761-2007, with an area of 280.185.77 square meters, including not only the wetlands' area, but also the forest areas, among other aspects of interest. The purpose of this is to emphasize that they included as non developable areas due to protection of creeks only 2288.40 square meters, without detailing forest areas or wetlands. Page 162.
- 14) Report on the visit carried out in July 16, 2010, signed by witness José Rolando Manfredi Abarca, intended to prove that during the inspection of July 8, 2010, the presence of lakes in the site was dismissed (marshy wetlands), but didn't assess that related to marshy wetlands as the one located in the property. Furthermore, with said document the date of the inspection can be proven, which justifies the conclusions, as it was carried out when the place was really altered due to the works ordered by defendant David Aven. Pages 198 thru 201.
- 15) Copy of the inspection document recorded at the site by SETENA officials in August 18, 2010, in order to prove that defendant Jovan Damjanac identified himself as legal representative of the *Condominio Horizontal Residencial Las Olas* project.
- 16) Copy of the official communication ACOPAC-OSRAP-468-10 of August 27, 2010, signed by Engineer Christian Bogantes Sánchez, Chief Officer of the Subregional Office of Aguirre and Parrita, used in order to prove that since October 1<sup>st</sup>, 2008, the possibility of the existence of two wetlands at the development site of the *Condominio Horizontal Residencial Las Olas* project was mentioned, but that the Wetlands Department of SINAC was in charge of issuing a technical criteria. This document was filed by the defendant himself, so he knew such a circumstance. Furthermore, with such communication it will be proven that in the site no permits are granted for cutting trees. Pages 205 and 206.
- 17) Copy of the official communication ACOPAC-OSRAP-171-11 of March 18, 2011, signed by Engineer Christian Bogantes Sánchez, Chief Officer of the Subregional Office of Aguirre and Parrita, addressed to defendant David Aven and filed by him to the case file, which will be used to prove that starting from the date indicated above that he knew about the

existence and contents of report ACOPAC-OSRAP-371-10, elaborated by Rolando Manfredi Abarca, so that by the date he ordered the drainage and filling of the wetland, he did not know of such technical criteria in relation to the opinion of Mr. Manfredi about the non existence of lakes or lagoons at the site. Page 217.

- 18) Copy of the note of March 22, 2011, signed by biologist Esteban Bermúdez Rodríguez, environmental advisor of the project, in order to prove that until March 22, 2011, date in which the advisors of the defendant use report ACOPAC-OSRAP-371-10 for the first time, report made by Rolando Manfredi Abarca; in other words, 3 days after having delivered it to defendant David Aven, and long time after he started the works for draining and filling the wetland area. Pages 218 thru 221.
- 19) Official communication DE-INTA-255-2011 of May 5, 2011, signed by Engineer José Rafael Corrales Arias, attached to the technical criteria of the Technical Services Department of INTA in relation to the types of soils existent in the area indicated as wetland, as with the latest, the type of soil is determined which is compatible with the existence of a wetland in the place. Pages 226 thru 237.
- 20) Certificate of Good Standing of the company Trío Internacional Inc., S.A., corporate number 3-101-554011, owner of the lots of the *Condominio Horizontal Residencial Las Olas* project, in order to prove that the defendant David Aven is the legal representative of such company. Pages 257 and 258.
- 21) Official communication SINAC-GASP-143-11 dated March 18, 2011, signed by Jorge Gamboa Elizondo, Luis Picado Cubillo, Engineer Fluvia Wolf Jiménez, to prove that the marshy wetland described in Report SINAC-GASP-093-11 was completely filled in and that it measures 1.35 hectares; other than illustrating with photographs the current status of the same, among other aspects. Pages 262 thru 277.
- 22) Report ACOPAC-CP-081-11 of May 16, 2011, signed by Luis Picado Cubillo, Engineer Fluvia Wolf Jiménez and Técnico Dionel Burgos, to illustrate the existence of a wetland in the place mentioned, demonstrate and illustrate the area of forest damaged (75150 square meters) in the months of November and December of 2010 due to the actions ordered by defendant Jovan Damjanac, among others. Pages 278 thru 288.
- 23) Official communication SINAC-GASP-154-11 of May 23, 2011, signed by Jorge Gamboa Elizondo and Engineer Fluvia Wolf Jiménez, which pretends to prove the location of geographical coordinates of the marshy wetland found on the site. Pages 292 thru 295.
- 24) Official communication ACOPAC-CP-099-11 dated July 7, 2011, signed by Luis Picado Cubillo, Coordinator for Control and Protection of the SINAC-ACOPAC, to prove that in the place of the facts accused against defendant Jovan Damjanac, a random sampling was made across the parcels, resulting that in the place mentioned there is forest according to the definition of the Forest Law. Pages 335 thru 342.
- 25) Official communication number 152-DM-11, of July 13, 2011, signed by judicial investigator Walter González Fallas, to prove that according to the in situ investigations carried out by the Judicial Investigation Organ (*Organismo de Investigación Judicial*), it was possible to contact a person who carried out cleaning works in the project, who pointed out that 6 months back he carried out works which included cutting trees of a diameter of less diameter, ordered by the administrator named Giovanni and that such witness said he knew that the owner of the project was the defendant David Aven. Pages 343 thru 344.
- 26) Extension of official communication 152-DM-11 of August 4, 2011, signed by judicial investigator Walter González Fallas, to prove that the person identified as responsible of carrying out the cutting of trees is Mr. Melvin José González Benavides, and that the person who gave him the orders was defendant Jovan Damjanac. Page 345.



- 27) Report ACOPAC-CP-129-11 of October 3, 2011, signed by Luis Picado Cubillo, to prove and illustrate the new damage due to the illegal cutting of an area of forest carried out in the month of September 2011 to the persons located at the place (Melvin José González Benavides and Antonio Gutiérrez Méndez) and the reference given by them about the actions executed by them, but ordered by defendant Jovan Damjanac, among other aspects of interest. Pages 348 thru 353.
- 28) Copy of electronic mail send to the undersigned Public Prosecutor by public officer Dionel Burgos González, dated October 5, 2011, to prove the exact location of the area of forest damaged in September 2011 due to the actions of defendant Jovan Damjanac. Pages 359 thru 361.
- 29) Photographic wall of pages 362 thru 366, which corresponds to photographs taken by witness Steve Bucelato, to prove that defendant David Aven manages the works inside the *Condominio Horizontal Residencial Las Olas* project, even driving heavy machinery, as well as illustrating the presence of witness Francisco Iglesias Caldera in the site and the cutting of an “*higuerón*” tree, as ordered by defendant Jovan Damjanac in September 9, 2011, among other aspects. Pages 362 thru 366.
- 30) Copy of the police observation record dated September 9, 2011, to prove that in such a date the members of the *fuera pública* (police) observed an “*higuerón*” tree cut down at the boundary of the *Condominio Horizontal Residencial Las Olas* project. Page 369.
- 31) Simple study of the Public Registry website in relation to 15 lots segregated from property 6-142646-000, being these properties number 6-156477-000, property 6-156478-000, property 6-156479-000 (which at the same time generated properties ranging from 6-162394-000 thru 6-162400-000); property 6-156480-000 (which generated itself properties 6-159930-000 thru 6-159937-000), property 6-156481-000 (which generated properties from 6-162480-000 thru 6-162487-000), property 6-156482-000 (which furthermore generated properties from 6-159552-000 thru 6-159559-000), property 6-156483-000 (which generated properties ranging from 6-159795-000 thru 6-159802-000), property 6-156484-000 (which generated properties ranging from 6-159607-000 thru 6-159612-000), property 6-156485-000 (which generated properties 6-159487-000 thru 6-159854-000), property 6-156486-000 (which generated properties 6-158408 thru 6-1584415-000), property 6- 156487-000 (which generated properties ranging from 6-158360 thru 6-158367-000), property 6-156488-000, and property 6-156489-000, property 6-156490-000, and property 6-156491-000, to prove that all of these properties were born from the property which originated the project (6-142646-000), which were part of it, and that defendant David Aven had interest and compromises to deliver such properties in constructive conditions which motivated him to drain and fill in the wetland located in the area occupied by these. Pages 238 thru 255 and 373 thru 406.
- 32) Official communication 221-DM-11 of October 6, 2011, inspection record and photographic wall, to prove that by the actions carried out and ordered by defendant Jovan Damjanac in the month of September 2011, at least 29 trees were damaged in the forest area, among other things. Pages 407 thru 416.
- 33) Administrative file number 1362-2007, related to D1 and Environmental Management Plan of the *Condominio Horizontal Residencial Las Olas* project, which was confiscated at the National Technical Environmental Secretariat (SETENA), to prove among many other things, that since 2007 defendant David Aven filed at SETENA the development of an urban project in the totality of the area occupied by property 6-142646-000, without including the protection of the wetlands and the forest located therein, according to master plan at page 1. Furthermore, the intention with such documentation is to prove

the dimensions and location of the abovementioned property, the cadastral map related to it, among other relevant aspects. It is composed of 375 pages duly numbered (the first 370 pages numbered at the moment of confiscation of the file and the last 5 by this Prosecution when it incorporated the resolution sent by SETENA with the express instructions to be added to such file) and a compact disc.

- 34) Official communication ACOPAC-D-114-11 of February 11, 2011 and 83 pages attached to it, which correspond to copies of the administrative file that the Central Pacific Conservation Area has about the *Condominio Horizontal Residencial Las Olas* project, in order to prove that since 2008, the ACOPAC had documented the existence of 2 wetlands in the area of the project and, furthermore, the existence of regenerated areas in the area, among aspects. It has 84 pages in the file titled as evidence file.
- 35) A compact disc titled "Proyecto Las Olas Esterillos Oeste", which has photographs and videos to prove the conditions of the wetland existent at the site and the cutting of the undergrowth made.
- 36) A compact disc titled Las Olas 11-oct-2011, with photographs to prove the cutting of undergrowth and an *higuerón* tree carried out by *Condominio Horizontal Residencial Las Olas* project in the month of September 2011, other than the mechanics used by the workers hired by Jovan Damjanac to disappear the evidence of its criminal actions, with the purpose to eliminate the forest coverage and to facilitate the change of use soil.
- 37) A compact disc titled inspection 11/2/11, file 11-9-611-PE which corresponds to the inspection of the prosecution carried out in February 11, 2011 at the area of the facts, in order to prove that for such a date, draining and filling works of the wetland were carried out, as well as the presence of machinery at the site and the workers hired by defendant David Aven.
- 38) Compact disc titled 11-000009-611-PE, 13/5/11, which corresponds to the inspection of the prosecution carried out in May 13, 2011 at the place of the facts, to prove that in such a date construction works were carried out in relation to a house in the area where the wetland is located, and that in such date the area of the wetland was marked and the area of clear cutting of the lower forest stratum which took place in the months of November and December 2010.

### **SUBSTANTIATION OF THE REQUEST**

The undersigned considers that the defendants **DAVID RICHARD AVEN** and **JOVAN DUSHAN DAMJANAC** must appear at an oral and public trial, because the convincing elements obtained from the prosecution's investigation evidence there were enough facts to consider the criminal actions in relation to the facts described as probable and attributable to them.

From a detailed study of the evidence, which up to date are part of the file, we can obtain some initial conclusions which oblige the undersigned to make the request herein filed.

Even if the defendants have not carried out personally the acts accused of, they have caused them by means of persons hired for such purposes, which is what the doctrine has called "*autoría mediata del hecho punible*" (*indirect action*); in other words, we consider that the defendants have had the control of the development and execution of such actions; and have had the functional control of said actions.

In relation to the responsibility of a crime (*autoría*), the Criminal Code in Article 45 states that:

**“A person responsible of committing a punishable act classified as such is the person who carries out the act personally or using others;** and other additional persons co-responsible of committing crimes (co-autores) are those who carry out the action jointly with the person responsible of committing the crime” (the bold is ours).

In relation to the “indirect committal of a crime” (*autoría mediata*) (indirect action), The High Criminal Appeal Court stated in judgment 909-97 of 8:40 hours of November 7, 1997, that:

*“The indirect committal of a criminal act does not oblige its perpetrator to carry out the criminal action, personally and materially. The concept of “responsible of committing a crime” refers to the control of the action and not to its material execution, as the objecting plaintiff erroneously points out. The person responsible of committing a crime is not only the person who directly executes the action, but also the person who does not carry it out directly, but does control its development and execution. Under these conditions, the theory of the dominion of the facts could be applied, which defines as “responsible of committing a crime”, the person who has the control over the perpetration of an act. This definition is applicable according to Article 45 of the Criminal Code, because when this article states that the person responsible of committing a crime is the person who carries it out personally, it refers, without a doubt, to the person that without executing directly the material action defined by the illicit, does control its execution. The control of the action, according to Maurach, is in the hands of the person who is able, according to its will,” to impede or achieve the end of the realization of the whole result, knowingly (...).”*

According to the abovementioned, the criteria of the undersigned is that the indirect committal of a crime of the co-defendants has been proven in the present cause of action, because even if they did not carry out materially the draining and filling of the wetland, as well as the cutting of the lower stratum of the forest, what is true is that they used their position of subordination with their employees to order them to carry out the conduct.

IN RELATION TO THE CRIMINAL PARTICIPATION OF CODEFENDANT DAVID RICHARD AVEN WE CAN ADD THE FOLLOWING:

As indicated in the fact-related theory described herein, the participation of the defendant in the facts investigated relates to the damage by draining, filling and

invading a wetland ecosystem located in the area of the *Condominio Horizontal Residencial Las Olas* project.

Under this point of view and with the purpose of describing the legal position sustained here, it is necessary to make a recount of the different norms which regulate the wetland's ecosystems in the Costa Rican legislation.

Law 7224 of April 9, 1991, published in the Gazette number 86 of May 8, 1991, and ratification of the Convention on Wetlands of International Importance especially as Waterfowl Habitat, in its Article 1, states that:

*"To approve the ratification by the Government of Costa Rica of the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat, signed in Ramsar in February 2, 1971.*

"CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE ESPECIALLY AS WATERFOWL HABITAT", "RAMSAR CONVENTION" (February 2, 1971).

THE CONTRACTING PARTIES, recognizing the interdependence of humans with the environment, CONSIDERING

1. That the fundamental ecological functions of wetlands in their condition of regulators of the hydrological regimes and as habitats of a characteristic *fauna* and *flora*, and particularly of waterfowl habitats.
2. That convinced that wetlands constitute a resource of great economic, cultural, scientific and recreational value, loss which would eventually be irreparable.
3. That willing to put a stop, currently and in the future, on the progressive intrusions over these humid areas, preventing their loss.
4. That recognizing that waterfowl in their seasonal migrations can cross the boundaries, and as a result, must be considered as an international resource.
5. That persuaded that the conservation of wetlands, their flora and fauna, can be assured by combining national politics which foresee a coordinated international action.

THEY ALL AGREE,

*Article 1.- For the purpose of this Convention wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters. For the purpose of this Convention waterfowl are birds ecologically dependent on wetlands."*

On the other side, Law 7554, Organic Environmental Law, of October 4, 1995, published in the Gazette number 215, of November 13, 1995, in Article 40, states that:

*"Definition of Wetlands. Wetlands are ecosystems dependent on water regimes, natural or artificial, permanent or temporary, lentic or lotic, fresh water, brackish or salty, including marine extensions until the back limit of marine phanerogams or coral reefs or in their absence, until six meters deep at low tide."*

That same Law in article 41 states:

*"Public Interest. Wetlands and their conservation are declared of public interest, as they are of multiple use, being or not protected by the laws regulating this matter."*

The article mentioned in number 45 states that:

*"Prohibition. Activities oriented to interrupt the natural cycles of the wetlands' ecosystems are prohibited, such as the construction of dams which prevent the flow of marine or continental waters, drainages, drying, filling or any other alteration provoking the deterioration and elimination of such ecosystems."*

On the other hand, Law 7317, Wildlife Conservation Law of October 30, 1992, published in the Gazette number 235 of December 7, 1992, in its article 7, refers to:

*"The General Wildlife Directorate of the (\*) Ministry of Environment, Energy and Telecommunications has the following functions in the exercise of its competence:*

*(\*) (Modified its name by article 48 of the law for the strengthening and modernization of Public Entities in the Telecommunications Sector, Number 8660 of August 8, 2008.)*

*(...)h) Administer, supervise and protect the wetlands*

*The (creation and)\* delimitation of wetlands will be carried out by executive decree, according to technical criteria.\* (Annulled what has been marked in parenthesis in the previous paragraph, by means of resolution of the Constitutional High Chamber (Sala Constitucional) N° 14288 of September 09, 2009, which at the same time was cleared by resolution N°16979 of October 13, 2010.)\**

In the same way, Law 7317 in its article 98 states that:

*“It will be sanctioned with prison from one (1) to three (3) years, the person who, without a previous authorization from the National Conservation Area System, drains, dries, fills in, or eliminates lakes, non artificial lagoons, and other wetlands, declared or not as such.”*

*Furthermore, the offender will be obliged to reinstate things the way they were before starting the works which damaged the wetland; for such a purpose, the National Conservation Area System is allowed to carry out the corresponding works, at the offender’s expense (Modified as such by article 1 of Law 8689 of December 4, 2008). The bold is ours.*

In this order of ideas, Executive Decree number 35803 of January 7, 2010, published in the Gazette number 73 of April 16, 2010, in article 1 states that:

*“General Considerations. The wetlands’ ecosystems, created or not by decree or law, and independently of who their owner is, must be protected and conserved by the MINAET through the National Conservation Area System, and under the protection of the national and international laws, must take care of their conservation. However, only wetlands within the Natural Patrimony of the State must be administered by SINAC. The bold is ours.*

The decree mentioned in article 7 states that:

*Wetlands' Classification System. It will be the Wetlands Classification Type System proposed by the Ramsar Convention, approved by Recommendation 4.7, amended by Resolutions VI. 5 and VII of the Contracting Parties Conference, described as follows:*

*Types of wetlands are classified in the following systems:*

*(...) e. Marshy System: includes all non tidal wetlands with the following characteristics: 1) can have plant coverage or not, the vegetation can be represented by the dominance of trees, shrubs, shrubby vegetation, emerging vegetation, moss and lichen. 2) The levels of depth in the depressions do not exceed the two meters. 3) The salinity values derived from ocean salts do not exceed 0.5% (loyillals, fresh water forests, swamps)."*

We must also indicate that the Forest Law in its article 58, clause a) states that:

*"Prison of three months to three years will be imposed to the person who:*

*a) Invades a conservation or protection area, with any management category or other forest areas or lands subject to forest regime, notwithstanding the area being occupied; independently if the lands are private lands, State lands or of other Public Administration organs, or lands of particular domain. The authors or participants of the action will not have right to any compensation due to construction or works carried out in the invaded lands."*

This criminal norm must be complemented with article 32 of the Organic Environmental Law, which states that:

*"Classification of wildlife protected areas: The Executive Branch, by means of the Ministry of Environment and Energy, can establish protected wildlife areas at any of the management categories established and in those pointed out as follows:*

*(...)*

f) Wetlands.

(...)

*Thos management categories and those to be created in the future will be administered by the Ministry of Environment and Energy, except those established in article 33 of this law. The municipalities must collaborate in the preservation of these areas.”*

We must indicate that in the file, there is true evidence in relation to codefendant DAVID AVEN filed before SETENA, as part of file D1-1362-07, the development of the *Condominio Horizontal Las Olas project*, in which he explained the Master Plan filed, and that the development was going to be carried out in its totality in the area represented by property 6-142646-000, cadastral map number P-1244761-2007, with an area of 280.185.77 square meters, including not only the wetlands area, but also the forest areas. It is worth pointing out that in the project file before SETENA, the codefendant David Aven established as non developable areas as a result of being areas of protection of creeks only 2288.40 square meters, without emphasizing the forest area or wetlands (see page 162 of the main file).

In the same way, the file evidences that codefendant David Aven not only planned such project in said terms, but he also carried out the segregation of the whole property, first segregating 15 lots, which generated 70 more properties, and the rest of the property was subjected to the condominium regime, generating 288 lots and a property of common areas, as his plan was intended since 2007 to the use of the total area of the property, without having the minimum care for the wetlands located therein or the forest covered area of the place.

By means of report ACOPAC-SD-87-08 of October 1, 2008, Mr. Mauricio Salazar Gamboa, officer at the Subregional Office of Aguirre and Parrita of the Central Pacific Conservation Area, indicated that in the place where las Olas project was intended to be developed, 2 possible wetlands were located (pages 21 to 23 of the evidence file of the administrative case at Sinac).

The official communication DEGA-91-2009 of June 16, 2010 (pages 151 thru 154), signed by Mónica Vargas Quesada of the Environmental Management Department of the Municipality of Parrita, points out that since the month of April of 2009 follow up has been provided to the damage carried out in an area considered as wetland. This



official communication allows to clear up that the wetland's ecosystem is located in an area occupied by properties 6-156482-000 to property 6-156489-000, which come from property 6-142646-000, property used by defendant David Aven to present the *Condominio Horizontal Residencial las Olas* project before SETENA (pages 238 to 255 and 373 to 406 of the main file, 202 to 221 and 232 to 239 of the file at SETENA D1-1362-07). One of the properties segregated where the wetland is located, corresponds to the place where a house is in process of construction (pointed out as model house in the report SINAC-GASP-93-11) according to inspection of May 13, 2011, property represented by cadastral map P-1223331-2007, *folio real* number 6-158366-000.

Even having knowledge of the existence of two wetlands in the place, the codefendant DAVID AVEN started the filling and draining of the one of them, without authorization from the National Wetlands Program to carry out such actions or at least for them to issue their criteria, ruling out the existence of the ecosystem mentioned.

It is important to point out that the possibility that defendant David Aven had found grounds to carry out the works in the wetland area based on the criteria issued by biologist Rolando Manfredi Abarca in official communication ACOPAC-OSRAP-371-2010, has to be ruled out, because the works that damage the ecosystem mentioned started since April 2009, increased in year 2010 and beginning of 2011, while the official communication mentioned is of July 16, 2010, and was known by the defendant after March 18, 2011, date in which Engineer Christian Bogantes Sánchez informed him about it by official communication ACOPAC-OSRAP-171-11.

In the file there is enough documentary evidence which points out the existence of a wetland area severely affected in the place where defendant David Aven is carrying out the development of the *Condominio Horizontal Residencial Las Olas*, in representation of Inversiones Cotsco S.A. and Trio Internacional Inc. S.A.

We must emphasize that official communication ACOPAC-CP-15-11-DEN of January 28, 2011, visible at pages 105 to 109, in which it was accused that at the moment of attending a complaint in relation to the facts occurred in the *Condominio Horizontal Residencial Las Olas*, they were able to talk to neighbors who pointed out the existence of a wetland in the northeastern section of the property, which was gradually filled in and that up to the report's date, the removal of soil was being carried out and the construction of a condominium. They emphasized that in the date of a second visit in December 21, 2010, they could observe the presence of an important volume of water which was being drained out of the property by means of piping. They pointed out also that they observed *flora* and *fauna* related to a wetland.

Report SINAC-GASP-91-11 of March 18, 2011 signed by Jorge Gamboa Elizondo, Coordinator of the National Program for Wetlands of the Management of Wildlife

Protected Areas, pages 130 to 150, is of relevant importance as it corresponds to the technical criteria of the office at a national level which is competent to define if a place is a wetland or not.

The report in its conclusions pointed out:

*“In the property correspondent to cadastral map P-1244761-2007, located in the district of Parrita, county of Parrita, province of Puntarenas, with an area according to the map of 280185.77 m<sup>2</sup>, in the west section at the area of the construction of the model house, **a marshy, non tidal, provisional wetland** is located with a phreatic, superficial level due to the hydromorphic soil present in the zone, with the dominance of gramineas, palms and some shrubs. The wetland is located in a plain on the foot of hills that surround it, and topography of concave plan determines its existence, due to rain and runoff waters, at the moment of the inspection no source of superficial waters were detected.”*

**The marshy wetland described is being directly affected by the construction of a draining canal, sewer system, which connects with a sewer system out of the inspection area in public zone and which drains in the boundaries of the wetland Estero Aserradero at approximately 450 meters of the place of inspection.**

*At the moment of the inspection, there was machinery carrying out earth moving works and placement of sewers (sic) on the draining canal of the wetland. The canalization works, construction of access roads, and filling have damaged the natural dynamics of the wetland. (...)”* The bold is ours.

As it can be observed, not only the presence of a wetland is described in the area represented by cadastral map of the mother-original property, but it also allows to located it at the West side of the properties that David Aven segregated, previous to the subjection of the original property to the condominium regime. Furthermore, the report mentioned is convincing at pointing out the damages to the referred ecosystem.

In the same sense, report SINAC-GASP-143-11 (pages 262 to 277) signed by Jorge Gamboa Elizondo and other officers, which describes the area occupied by the wetland and its exact location.

Furthermore, there is testimonial evidence which allows affirming with the required degree of probability at this phase of the process that the draining and filling works and the invasion of the marshy wetland pointed out, were ordered by codefendant David Aven.

In this sense, there is testimonial evidence from Mr. Carlos Mora Solano, Celia Rosa Venegas Jiménez, Christian Bogantes Sánchez, Francisco Vicente Iglesias Caldera, Gabriel Alberto Montero Arce, José Luis Montero Arce y Steve Bucelato.

In the same way, there is the testimonial of Rolando Manfredi Abarca, Jorge Gamboa Elizondo and Mónica Vargas Quesada who know the place where the facts happened and who will testify on its characteristics.

**IN RELATION TO THE CRIMES COMMITTED BY DEFENDANT JOVAN DUSHAN JAMJANAC:**

As fulcrum of the development of our case-theory in relation to the crimes committed by defendant JOVAN DAMJANAC, we must analyze the requirements included in the Forest Law to consider an area as forest.

In that sense, Law 7575 of February 13, 1996, published in Gazette number 72 of April 16, 1996, Forest Law, points out in Article 3, clause d), as follows:

**“ARTICLE 3.-**

**Definitions**

For the effects of this law, it is considered (...)

*d) Forest: A native ecosystem, intervened or not, regenerated by natural succession or other forestry techniques, which covers an area of two or more hectares, characterized by the presence of mature trees of different ages, species, and varied appearances, with one or more canopies covering more than seventy per cent (70%) of this area and where more than sixty trees exist per hectare of fifteen or more centimeters of diameter measured at breast height (DAP)”.*

In summary, for an area of land to be considered as forest, it must be a place where it is possible to verify the presence of mature trees of different ages, species, and appearance, with one or more canopies or stratum covering more than 70% of this area, with more than 60 trees per hectare of 15 centimeters or more in diameter, measured at breast height (1.30 centimeters from the ground), all of it in an area of more than two hectares with such conditions.

It is then appropriate to analyze if the place had the legally required characteristics at the date of the facts.

In that sense, we must point out that in the southeastern sector of what was in the past property 6-142646-000, today *Condominio Horizontal Residencial Las Olas*, there is a space of at least 75.150 square meters catalogued as forest according to the definition included in Article 3, clause d) of the Forest Law.

To determine such circumstance, it is necessary to consider, among other things, the complaint contained in official communication ACOPAC-CP-015-11-DEN of January 28,

2011 (pages 105 to 109), and particularly technical report number ACOPAC-CP-099-11 of July 7, 2011 (pages 335 to 342).

The last report corresponds to the result of a study of the questioned area, by means of the results of a survey of 3 lots as samples which allowed concluding the following:

*“In conclusion it can be confirmed that we are in front of a forest, which complies with the definition established in the Forest Law 7575, article 3, clause d).*

*The abovementioned because it is an area greater than or equal to 02 hectares, which has been regenerating naturally, it has mature trees of different ages, species, and varied appearances, with one or more canopies, covering more than seventy per cent (70%) of the area and also the sampling of the 03 lots carried out exceeds the 60 trees per hectare.”*

It can be repeated, that in order to reach such conclusion, the evaluating person carried out an *in situ* study in 3 lots of 300 square meters each, in which he counted in the first one a total of 16 trees of 15 or more centimeters in diameter, at 1.30 meters from the ground level, and of 8 different species (achotillo tree, white corteza, *manteco*, *higuerón* tree, trumpetwood (*guarumo*), royal palm, *guácimo* and *ceibo* trees), which provide an estimate of 533 trees per hectare; in the second lot, 20 trees of 15 or more centimeters in diameter were counted, of 1.30 meters from the ground of 4 different species (white corteza, trumpetwood (*guarumo*), *guácimo*, and (*espavel tree*) which gives an estimate of 666 trees per hectare; and in the third it totaled 13 trees of 15 or more centimeters in diameter measured at 1.30 meters from the ground level of 4 different species (white corteza, trumpetwood (*guarumo*), *Guanacaste* and *guácimo*) which gives an estimate of 433 trees per hectare, which exceeds the legal requirement to have at least 60 trees per hectare of 15 centimeters in diameter or more, measured at breast height.

It is important to emphasize that, in the same way, since October of year 2008, Mr. Mauricio Salazar Gamboa reported through report ACOPAC-SD-87-08 of October 1, 2008 that in the area of the project certain type of natural regeneration could be observed (page 22 of the evidence file, administrative Sinac file).

Testimonial evidence offered will allow proving in the debate that the damage to the site by means of its illegal use happened due to orders given by defendant Jovan Damjanac, and that also that zone is forest and corresponds to the area characterized as such according to report ACOPAC-CP-99-11 previously cited. In that sense, the testimony of Luis Picado Cubillo, Fulvia Wolh Jiménez, Sonia Solano Jiménez, Christian Bogantes Sánchez, Melvin José González Benavides, Antonio Gutiérrez Méndez, Dionel Burgos González, Walter González Fallas and Steve Bucelato.

In the same way, compact discs offered as evidence allow visualizing with photographs and video the damages to the area of forest produced as a result of orders given by

defendant JOVAN DAMJANAC, the first of them in the months of November and December of 2010, and the second one in the months of September and October of 2011.

The compact discs mentioned above will allow the Tribunal to observe the kind of work carried out, illegal cutting, cutting of stumps (tree trunks) at ground level, “*aterramiento*”, burning of remains, all of which momentarily has as objective the disappearance of evidence and on the long term to disappear the forest coverage existing in the area, and to carry out the change of use of soil proposed by the developer, the codefendant David Aven, because the area where the forest is located is part of its proposal of developing a condominium in lots.

In that sense, it is important to point out that the cutting of the lower and medium forest stratum, as in this case, causes a serious impact to the natural succession of forest resources, due to the elimination of young individuals that as a consequence of the laws of life must succeed those adult individuals and old ones which by diverse circumstances are disappearing.

Reports ACOPAC-CP-81-11 of May 16, 2011 (pages 278 to 288) and ACOPAC-CP-129-2011-DEN of October 3, 2011 (pages 348 to 353 and 359 to 361) allow to conclude, without a doubt, that the area where the facts occur correspond to the area defined as forest according to the technical report number ACOPAC-CP-099-11 of July 7, 2011 (pages 335 to 342).

Even if it is related to the cutting of trees of lower diameters, its use in the forest area results illegal according to number 61 clause a) of the Forest Law which states:

*“Prison of one month to three years will be imposed to the person that:*

- a) Uses one or various forest products in private property, without the permission of the State Forest Administration, or to whom does not adjusts to what has been authorized (...)”*

Such number is complemented with the content of article 3, clause a) of the Forest Law, which defines the use of wood as:

*“The action of cutting, elimination of standing and timber-yielding trees or the use of fallen trees, carried out in private lands, not included in article 1 of this law, which generates or can generate some advantage, benefit, use, or gain, for the person who carries it out or for the person representing him.”*

Of course that all of the trees are timber-yielding and the purpose of using them in this case is achieving the disappearance of the forest coverage to obtain the change of use of soil and materialize the use of the lots located in the site by the developer.

In this sense, it is adequate to reiterate that since the presentation of the project before the National Technical Environmental Secretariat (SETENA) by codefendant David Aven, he indicated in the Master Plan filed that the development will be carried out in the totality of the area which at that time was represented by property 6-142646-000, cadastral map number P-1244761-2007, with an area of 280.185.77 square meters, including not only the areas of wetland but also the areas of forest. It is worth emphasizing that in the project filed before SETENA, the developer determined only 2288.40 square meters as non developable areas as they were protection of creeks areas, without emphasizing forest area or wetlands (see page 162 of the main case file).

**The evidence obtained allows affirming with the required degree of probability that codefendant JOVAN DAMJANAC** used several forest products in the area of the project where he works, in benefit of the project and without having permission from the State forestry administration.

Witness Sebastian Vargas Roldán will allow to confirm during the debate the benefit or advantage that the disappearance of the area of forest means for the *Condominio Horizontal Residencial Las Olas*.

#### **AS A CONSEQUENCE,**

Based on the stated facts and based on Article 321 of the Criminal Procedure Code, I request that the present complaint be admitted and to issue the corresponding **SUMMONS FOR OPENING TRIAL** against defendants **DAVID RICHARD AVEN AND JOVAN DUSHAN DAMJANAC**, for committing the crimes of **OFFENCE TO THE WILDLIFE CONSERVATION LAW IN THE FORM OF WETLANDS' DRAINING AND FILLING, AND OFFENCE AGAINST THE FOREST LAW IN THE FORM OF INVASION OF CONSERVATION AREAS AND ILLEGAL USE OF FOREST RESOURCES**, to the detriment of **THE NATURAL RESOURCES**.

**Notices:** Fax 2295-3541. Please indicate the name of the undersigned.

San José, October 21, 2011.

(ILEGIBLE SIGNATURE)

Lic. Luis Gerardo Martínez Zúñiga  
Auxiliary Prosecutor  
Environmental Agrarian Public Prosecution Office

Vo. Bo. MSc. Luis Diego Hernández Araya.  
Prosecution Office Coordinator.  
Environmental Agrarian Public Prosecution Office

