

**The Ministry of the Environment, Energy, and Telecommunications
National Technical Environmental Secretariat**

SETENA
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P.O. Box 5298-1000 San José

Ruling Number 839-2011-SETENA

THE MINISTRY OF THE ENVIRONMENT AND ENERGY, THE NATIONAL TECHNICAL ENVIRONMENTAL SECRETARIAT, AT 8:40 A.M. ON APRIL 13, 2011.

**LAS OLAS HORIZONTAL RESIDENTIAL CONDOMINIUM PROJECT
ADMINISTRATIVE FILE NO. D1-1362-2007-SETENA**

The Plenary Commission of this Secretary heard the activity stoppage ordered by the Auditing and Environmental Monitoring Department for the Las Olas Horizontal Residential Condominium Project, Administrative File number D1-1362-2007-SETENA.

WHEREAS

1: The project is described below

Project Name	Las Olas Horizontal Residential Condominium	
Administrative File Number	D1-1362-2007-SETENA	
Date of Environmental Feasibility Permit	June 2, 2008 Ruling No. 1597-2008-SETENA	
Location:	Province:	Puntarenas
	Canton:	Parrita
	District	Parrita
	Cartographic Sheet:	Herradura
	Coordinates:	386.850-387.500 N 407.800-408.600 E

"The activity to be developed consists of creating lots under the condominium regimen for primary individualized affiliate properties. According to the design, there will be 300 properties. Streets will be built; there will be portable water systems, rainwater drainage systems, and electricity and telephone services. To dispose of waste water, an anaerobic treatment plant will be built, whose capacity and type have been approved by the Ministry of Health. Its location is indicated in the site design. Solid waste collection, transportation and final disposal services will be provided by a private company. Attached is a note about availability of this service. The final disposal must be at an authorized site. The electrical system will be underground, tri- and mono-phase of 19.9/34.5 Kw with secondary underground lines of 120/240 V, pedestal style transformers, and public lighting. The electrical and telephone infrastructure will be public; the final owner will be the ICE. The location of the pipes will be under the sidewalks and the green area at a depth that ranges between 70 and 120 centimeters. The pipes will have the same location and depth as the electrical pipes and run parallel to them."

2: By means of Ruling number 1597-2008-SETENA dated June 2, 2008, the Environment Feasibility Permit was issued to the Las Olas Horizontal Residential Condominium Project, Administrative File number D1-1362-2007-SETENA.

3: By means of Official Document number SINAC-DE-1786, Ms. Guiselle Méndez Vega, the Executive Director of the National Conservation Area System, asked that the Environmental Feasibility Permit for the Las Olas Horizontal Residential Condominium Project be suspended because the SINAC Report used to grant the permit is false.

4: By means of Official Document number SG-ASA-041-2011 dated January 17, 2001, Mr. David Aven, passport number 017182813, the legal representative of the INVERSIONES COSTCO S.A. company was asked to submit the original and a copy authenticated by a Notary Public of the report, SINAC 67389RNV-2008.

5: By means of Official Document number SG-ASA-042-2011 dated January 17, 2001, Ms. Guiselle Méndez Vega, the Director of the National Conservation Area System, was asked if in her judgment report SINAC 67389RNV-2008 was an official report or not.

6: On January 23, 2011, this Secretary received Official Document number SINAC-DE-075 by means of which Ms. Guiselle Méndez Vega, the Director of the National Conservation Area System, reported that actually report SINAC 67389RNV-2008 was not an official report.

7: On February 9, 2011, this Secretary received a note signed by Mr. David Aven, passport number 017132813, the legal representative for the Inversiones COSTCO S.A. company, that argues that he had no relation with report SINAC 67389RNV-2008, submitted to this Secretary on April 3, 2008, and that the report was not requested by SETENA.

WHEREAS:

1: Article 19 of the Constitutional Law of the Environment, number 7554, stipulates:
"The rulings by the National Technical Environmental Secretariat must be well founded and reasonable. They are mandatory for both individuals and public entities and organizations."

2: This Secretary has been monitoring this project in accordance with the contents of Article 26 of Executive Decree number 31849-MINAE-SALUD-MOPT-MAG-MEIC and the General Bylaws for the Environmental Impact Assessment (EIA) Procedures dated June 28, 2004.

3: According to Article 11 of the Biodiversity Law, number 7788, dated May 27, 1998, "indubio pro natura" is established according to which when there is any hazard or threat of severe, imminent damages to the part of biodiversity and the knowledge associated therewith, the absence of scientific certainty should not be used as a reason to postpone the adoption of effective protection measures.

This means that, if a human activity may come to cause environmental damages that are impossible or difficult to repair, the State should agree to the corrective measures needed to prevent or mitigate the negative environment effects.

4: According to Article 45 of the Biodiversity Law, number 7788, dated May 27, 1998, the letter of the law establishes the following: "Responsibility for National Safety. The State has the obligation to avoid any risk or hazard that threatens the permanency of eco-systems. It must also prevent, mitigate, or restore environmental damages that threaten life or deteriorate its quality."

5: The Constitutional Court has spoken broadly about the right set forth in Article 50 of the Constitution, which is the right to a sound, ecologically balanced environment for everybody as well as the obligation that the State possesses to uphold said right. In that regard, ruling number 2004-05934 issued at 11:40 a.m. on May 28, 2004, indicates the following as pertinent:

"IV. Obligations of the State Related to the Environment. Derived from cited Article 50 of the Constitution related to the capacity as guarantor that the State has to conserve a sound, ecologically balanced environment, this obligation implies that, under the terms of ruling number 2001-13295 dated 12:06 p.m. on December 21, 2001:

"...the State must take all the technical measures possible to ensure that any activity that it approves will not cause damages to the environment. Although any pronouncement by a state body in charge is, in and of itself, a technical matter, the duty to issue a pronouncement and the demand for rigor is a legal matter. In general terms, the state's duty to guarantee the right to a sound environment is not reduced to satisfying a simple marginal requirement within the bidding process. The Constitution does not just require compliance with certain formalities; instead, as was said previously, it must use all the means that are legally and tactically possible to preserve the environment." (see, in that same sense, ruling number 05906-99 issued at 4:15 p.m. on July 28, 1999).

This duty, as is recognized in that same ruling, falls more specifically to the National Environmental Technical Secretary, being appealed:

"The environmental concern of the Ministry of the Environment and Energy is practically reduced to environmental impact assessments, whose approval lies in the hands of the SETENA. In other words, SETENA holds the State's full duty to guarantee a sound, ecologically balanced environment, as indicated by Article 59 of the Constitution. Faced with such an important responsibility, it would be reasonable to expect that the body in charge would have technical and administrative strength.

In that sense, in environmental matters, any conduct whose result is a decline in the environmental conditions is especially serious.

6: Official Document number SINAC-DE-075 dated January 23, 2011, signed by Ms. Guiselle Méndez Vega, the Executive Director of the National Conservation Area System, reported to this Secretary that report 67389RNV-2008 is not an official report prepared by her office.

On the other hand, this document was requested by the Institutional Management Department by means of Official Document S.G.P.-D.G.I-098-2008 on February 13, 2008 and was submitted by Mr. Edgardo Madrigal Mora, the architect for the Inversiones Costco S.A. company on April 3, 2008, so Mr. David Aven, the legal representative of Inversiones Costco S.A., argues that it is not true.

7: The INVERSIONES COSTCO S.A. company, corporate identification number 3-101-289111, is current in its employer payments to the CCSS according to a query made on January 17, 2011, on its web page www.ccss.sa.cr. This is in accordance with the duty to apply Article 74 of the Constitutional Law of the Costa Rican Social Security Fund, reformed by the Employee Protection Law, which establishes, as a requirement to engage in diverse administrative tasks, being current with payments to the Costa Rican Social Security Fund.

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

In regular meeting number 033-2011 of this Secretary, held on April 12, 2001, in Article number 10, it passed the following motion:

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

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

3. Send a copy of thie Ruling to the Agricultural Environmental Prosecutor's Office so it may be attached to Prosecution File number 11-000009-0611-PE and the Administrative File, number D1-1362-20G7-SETENA, for the Las Olas Horizontal Residential Condominium Project.

4: Within three days after the date of service of notification, any regular motions to dismiss must be filed with the SETENA, as well as any appeal to the Ministry of the Environment, Energy, and Telecommunications in line with Articles 342 and thereafter of the General Public Administration Law, number 6227, and Article 87 of the Constitutional Environmental Law, number 7554.

5: Any documentation that may be submitted to the SETENA should clearly indicate the file number, the ruling number, the full project name, a fax number for accepting service of notifications or ratify that it is contained in the administrative file.

Ruling 839-2011-SETENA

Sincerely,

**ENGINEER ANDREI BOÛRROUET VARGAS
SECRETARY GENERAL A.I.
IN REPRESENTATION OF THE PLENARY COMMISSION**

The office of the National Environmental Technical Secretary accepted service of a copy of Ruling number 838-2011-SETENA at 8:40 a.m. on April 13, 2011.

NOTIFICATION TO BE SERVED:

David Aven Esteban Bermúdez Rodríguez

Municipality of Parrita Fax 2779-9965

Legal Representative

Environmental Manager

Fax: 2588-1829

Fax: 2289-3433

Guiselle Mendez Vega
Executive Director
National Conservation Area System
Fax: 2246-2451

Jorge / Illegible /
Director
Wetland Program
Fax: 2257-9722

Luis Gerardo Martinez Zuñiga
Agricultural Environmenta Prosecutor
Fax: 2295-3541

Signature _____ ID _____
At 10:30 a.m. on April 26, 2011

Server: Sonia Phillips