IN THE MATTER OF AN ARBITRATION UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT, SIGNED ON AUGUST 5, 2004 ("CAFTA-DR")

AND

UNDER THE UNCITRAL ARBITRATION RULES
(AS ADOPTED IN 2013)
(the "UNCITRAL Rules")

In the Matter of Arbitration Between:

MICHAEL BALLANTINE, LISA BALLANTINE, :
PAC Case No. 2016-17
Claimants,

and

THE DOMINICAN REPUBLIC, :
Respondent.

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ORAL HEARING
Tuesday, September 4, 2018
The World Bank
1818 H Street, N.W.
MC Building
Conference Room 4-800
Washington, D.C.

The hearing in the above-entitled matter came on, pursuant to notice, at 9:13 a.m. (EDT) & before:

PROFESSOR RICARDO RAMÍREZ HERNÁNDEZ,
Presiding Arbitrator

MS. MARNEY L. CHEEK, Co-Arbitrator

PROFESSOR RAÚL EMILIO VINUESA, Co-Arbitrator

APPEARANCES:
Attending on behalf of the Claimants:

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MR. MATTHEW ALLISON
MS. LARISSA DIAZ
MS. SHAILA URMI
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MR. MICHAEL BALLANTINE

ALSO PRESENT:

MR. JULIAN BORDAÇAHAR
Secretary to the Tribunal

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APPEARANCES (Continued)

Attending on behalf of the Respondent:

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MS. LEIDYLIN CONTRERAS
MS. RAQUEL DE LA ROSA
Dirección de Administración de Acuerdos y Tratados Comerciales Internacionales, Ministerio de Industria y Comercio

MS. PATRICIA ABREU
MR. ENMANUEL ROSARIO
MS. ROSA OTERO
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Ministerio de Medio Ambiente y Recursos Naturales

MR. PAOLO DI ROSA
MR. RAÚL R. HERNERA
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Of Counsel:

MR. JOSÉ ANTONIO RIVAS CAMPO
Q. And can you tell the Tribunal what those knowledge?

A. With two modifications, but yes.

Q. And can you tell the Tribunal what those modifications are?

A. One of them states that my oldest son, Joshua, left the Dominican Republic in 2010. That was, actually, 2007. And the second one, it said—I forgot which number—but that I had all the titles in 2009.

In theory—in technicality, I did. But I had what was called a Carta de Constancia, which was a government document assuring that I owned the property, but then the subdivision had to be done. So, I had the title, but then I had to make the subdivision. So, the final titles actually came out in August of 2010 as opposed to 2009.

Q. And Mr. Ballantine, did you submit a Witness Statement that concerned the issue of your dual nationality for this proceeding?

A. Yes.

Q. And do you stand by all the statements you made in that document?

A. Yes.

Q. And why did you obtain dual nationality?

A. I obtained dual nationality because I was concerned about our family and the investment. And in case of my demise or Lisa’s, I felt like that would be a better process to leave with my children in terms of probate. And I had faced discriminatory treatment prior to that and some people wouldn’t buy because I was an American, and I
Q. And did your attainment of dual nationalization reduce any of those biases?

A. No.

Q. And why is that?

A. Because that was the habit, and that’s how I was referred to.

Q. When did you take the citizenship oath?

A. February of 2010.

Q. And at that time, how many of your children lived with you in Jarabacoa?

A. At that time, my youngest children—I have four children. My youngest children, Josiah and Tobi, lived there at that time.

Q. And where were your other two children?

A. Rachel was in Canada. I think she had just gotten married. And my oldest son, Joshua, was at Florida National University.

Q. And when did your two youngest children move back to the United States?

A. Never.

Q. And then what happened in October of that year?

A. October of 2010, I—my wife and I, we rented a townhouse in Elk Grove Village, Illinois.

Q. And why did you rent a home in Illinois in 2010?

A. By that time, my company was established, and we wanted to spend much more time with our family and friends and our social network.

Q. And how many times did you return to the United States between 2010 and 2014?

A. 30 times or more.

Q. Yesterday we learned there was some confusion with respect to some of the words you used in your communications with the Respondent.

A. Because that was the habit, and that’s how I was referred to.

Q. And why is that?

A. No.

Q. Did any of the MMA rejection letters specifically refer to the permitted margin?

A. Never.

Q. And Phase 2 is on the bottom, even though it’s at the top of the mountain?

A. That is correct.

Q. Could you have avoided areas with 60-degree—60 percent slopes in your development of Phase 2?

A. Absolutely. And that is indicative by Phase 1, in which we accomplished that. And Phase 1 is steeper than Phase 2.

Q. And could you have built a safe road up to the top of the mountain?

A. Yes.

Q. And what were you communicating here?

A. I was communicating that I understood that there was a law regarding 60. I subsequently—you know, I understood it was 60 degrees. I wrote that at that time.

But I was clearly demonstrating that there was a ratio that we were significantly under, but I used the term “degree” as opposed to “percentage.”

Q. And that was a mistake?

A. That was an innocent mistake, yes.

MR. ALLISON: Can we pull up Demonstrative Exhibit 17.
A. No.  They suggested I move the project.  
Q. And were you willing to revise your development plans if necessary?
A. I would have done anything possible to continue the development.  
Q. And did you continue that willingness to the Dominican Republic?  
A. I think we communicated that in most every communication.  

MR. ALLISON: Thank you, Mr. Ballantine.  

PRESIDENT RAMÍREZ HERNÁNDEZ: Respondent.  

MR. DI ROSA: Thank you, Mr. Chairman.  Good morning to you and Members of the Tribunal.  Good morning to everybody.  

CROSS-EXAMINATION  

BY MR. DI ROSA:

Q. Mr. Ballantine, good morning.  
A. Good morning.  
Q. I’m going to be asking you a few questions.  We will periodically refer to different documents that you will have in your—in the binder that’s being handed to you and other documents that will be handed to you from time to time or put up on the screen as necessary.  

Before we start, I wanted to mention a couple of things.  First of all, the cross-examination is being transcribed by a stenographer, and it’s also being translated.  So the one thing we can’t do is overlap in our speech.  

So, you know, you have to finish—-you have to wait until I finish my questions and I have to wait until you finish your answer; otherwise, that creates a problem for the stenographers and the interpreters.  So, we’ll—it’s a good thing to forget that.  We’ll try to be mindful of that.  I’ll do the same.  

Also, if you at any point don’t understand a question or just want me to repeat it for whatever reason, feel free to ask me that.  And if you ever want to take a break, also feel free to ask me.  

So let me start by asking you a couple of questions about the attestations that you gave in the three Witness Statements that you just mentioned along with your

counsel.  I notice that in two of those declarations, you said, “I attest that this is correct,” and then in the third one you said, “I affirm that this is correct.”  

I just want to ask you:  In your mind, was there a difference—-is there a reason that you used the word "affirm" in the third one but "attest" in the previous two?  
A. I looked at those as synonyms, I would say.  I don’t think I was trying to manipulate anything.  
Q. No, I'm not saying you were just—manipulating anything.  I just asked if there was a difference in your mind since you used a different word.  Maybe your lawyers used a different word.  I’m not sure.  
A. No.  I wrote my testimonies.  
Q. You did.  Okay.  All right.  

In any event, you know, since there conceivably could be a difference between affirming something and attesting to something and saying the whole truth and nothing but the truth, as you did this morning with respect to your testimony today, can I just ask you, did you tell the truth, the whole truth, and nothing but the truth in the three Witness Statements?  
A. I believe I did to the best of my ability.  
Q. Okay.  Good.  

We understand that you did not provide a CV or bio with any of your submissions in this proceeding.  So I wanted to ask you a few questions about your background.  

First of all, did you obtain a university degree?  
A. No, I did not, but I’m four classes short of having a bachelor’s degree.  
Q. Okay.  So you did go to college for a while and then stopped?  Or you took classes later in life?  Or how did that work?  
A. I did both.  But in college, my wife and I, we ended up having our first child, and I committed myself to my family.  
Q. Okay.  So after high school, can you just tell me what your professional trajectory was, you know, what your first job was and successively what you did professionally.  
A. Yes.  Being a new family and having a child, I got a job as a production coordinator in a printing company.  
Subsequent to that, I went to another printing company and I saw that the people—that I was doing all the work.  I learned the business, but the people making the money were the salespeople.  And I felt like I had a personality to sell, I knew the product, and so I got into sales.  

I did quite well in sales at the company I represented.  And then I realized that they were limited in what they could offer my clients.  I had a very strong client base, and so I decided to branch off on my own.  And I became a broker and developed a print brokerage company,
which became one of the more successful ones in Chicago. It was a brokerage one. We didn't--I had a decision to buy machinery and go that route, but I felt like that would require a lot of overhead, and so I managed my accounts and did it that way.

Q. Okay. So your first job was in the printing industry?
A. That's all I ever worked prior to coming to Jamaica de Dios.

Q. Oh, okay. So that--so you had a whole career exclusively in the printing industry?
A. Yes, sir.

Q. And these first few jobs that you mentioned, how long were you in each one of those?
A. The first two were two years, and then--and then I became a salesman and a broker. And I did invest in what became one of the largest advertising agencies in Boston as a silent partner.

Q. Okay. And then at some point did you form your own company? Is that what you--
A. Yes, it was my own brokerage company. It was called Reconciled Images, and I was a 100-percent shareholder.

Q. Okay. And all of these jobs were in the United States; correct?

A. No. But I would like to just simply say I'm 53 years old now. And when somebody becomes 53, they recognize what they're good at and not so good. Everyone has strengths and weaknesses. And I'm a pretty good entrepreneur, and I'm very good at connecting people and leadership and providing vision and getting people to participate in that.

Q. Okay. So no experience building hotels. But, you know, you--I hear your answer.

How about apartment buildings? Any experience with those--
A. No.

Q. --building those? No. And same with restaurants?
A. No, that was the first venture.

Q. Did you have any experience in construction at all, of any sort?
A. No.

Q. So you hadn't built anything at all for commercial purposes or otherwise prior to your investment in the Dominican Republic; is that right?
A. Yes, sir.

Q. How about operation as opposed to construction? Did you have experience operating a hotel?
A. That is correct.

Q. And you said Boston. Was it exclusively in Boston or in other cities as well?
A. No, I was just an investor. There's three partners, and I was part of that.

Q. But all in Boston. So, basically, your whole professional career was in Boston or--
A. No, it was all in Chicago, but the operations of the advertising agency was in Boston.

Q. Okay. Got it.

Prior to your business venture in the Dominican Republic, then, you didn't have any experience doing business in any foreign country?
A. Never. No, this was the first experience.

Q. And prior to your business venture in the Dominican Republic, you didn't have any experience building homes for commercial purposes, did you?
A. No, sir.

Q. And you also had no experience building roads; is that right?
A. That is correct.

Q. And the same is true of building mountain lodges. You had no experience with that?
A. That's correct.

Q. How about building hotels?
Q. So to your mind, by age 38, you had already completed a successful career in the printing industry; is that right?
A. Yes. I had earned a substantial amount of money, but I realized there was more important things in life, and I felt bored, actually.

Q. Okay. I can relate to that.
A. You indicated in 2000 that you and your wife decided to have a sabbatical and move to Jarabacoa in the Dominican Republic with your children; is that right?
A. Yes, sir.

Q. And how did you happen to pick the Dominican Republic?
A. At that time, I noticed within my children--and it was primarily for them--that they just had a singular mindset of America. And I recognized it was a big world. I wanted them to learn another language, and I wanted them to experience a bigger world.

Q. Right. But before that visit--
A. But the answer to that question--forgive me, a friend of mine, we went down to the Dominican Republic to Jarabacoa specifically because we felt like that would be a baby step in terms of living internationally, very close to Miami, and our closest friends were the Pauls--Lynn and Larry Paul. And Lynn had actually served in Jarabacoa years prior--previous to that.

And there was a very large established expat community of Americans, so we felt like that would be a good place to go.

Q. Okay. Before that visit to the Dominican Republic, had you been to any other Latin-American country?
A. Mexico.

Q. Okay.
A. And I don't remember if I was in any other country.

Q. But you had never established residence in any other country?

Q. Once you arrived in the Dominican Republic, you indicated that you started doing missionary work; is that correct?
A. Yes, I did.

Q. But when you first arrived for your missionary work, you did not have any plan yet to invest in the Dominican Republic, did you?
A. I did not have any plans, but I saw what I thought were many opportunities. But I did not act on any of that because I felt like I was singular in the focus of what we were doing.

Q. Okay. On behalf of what church did you do missionary work?
A. Being an entrepreneur, we started our own group.

Q. You started your own church? Is that--when you say "group"--
A. Well, we started a United States-based 501(c)(3) with many friends and a board of directors and others. But I was the director of it.

Q. Right. In your Amended Statement of Claim, you said at Paragraph 18 that it was a ministry that you had founded. Is that what you're referring to?
A. A ministry to reach out to people. Yeah, to help minister to the needs of the community and people. Yes, sir.

Q. I see.
A. And you indicated in your written testimony that you put up a large blue and white tent in the middle of Jarabacoa. Is that correct?
A. That was over the evolution of time. Yes, sir, that is correct.

Q. And what was the purpose of that blue and white tent?
A. To--the purpose of the blue and white tent was to gather people together from the community in order to reach out to them and encourage them and--

Q. Would you characterize these as religious services?
or not?
A. Yes. It was Christian and faith-based, yes, sir.
Q. I see.

So were you giving sermons or conducting services at these events?
A. Oftentimes. But there was a team, and there was a native Spanish-speaking person who carried a bunch of that burden, but then I would do that with a translator.
Q. You weren't ordained as a pastor anywhere, though, were you?
A. I--no.
Q. Okay. So you mentioned this non-profit that you formed. Is that the Jesus For All Nations--
A. Yes, sir.
Q. --organization? Okay. And one of the purposes of that organization was to promote your religion; correct?
A. Well, I wouldn't say "my religion." I feel like there's a universal religion of Christianity, and I was part of that.
Q. What do you mean by "universal"? There are other religions.
A. When you define "religion"--I'm not trying to be argumentative nor parse words--there's different sects.
There's different groups. There's different institutions.
And ours was more, I would say, organic, providing hope and love and encouraging people. But it was definitely Christian and faith-based, but it wasn't institutionalized like sometimes religions are.
Q. I see.

Q. All right. So then you said after 14 months of this sabbatical in the Dominican Republic, you returned to the United States to your day-to-day business routine. Do you remember saying that?
A. Yes, sir.
Q. And do you remember what year that was in that you returned?
A. That was in 2001.
Q. And what was the day-to-day routine that you returned to?
A. It was--the day-to-day return was I had an established a company, I had production managers, I had an office staff. And then what my job was, was to do client management and account management and a lot of entertaining and just being out with people securing business for my company.
Q. This is still the printing company?
A. This is a print brokerage company.
Q. Print brokerage. Correct.

And you just mentioned that when you went to the Dominican Republic, you said you saw a lot of business opportunities; right?
A. Yes. Being an entrepreneur, I can see those kinds of things.
Q. And you also mentioned that in 2003, a friend of yours showed you some property, a large tract of mountain land in Jarabacoa with spectacular views; right?
A. Yes, sir.
Q. And you also indicated in your written testimony that you and your wife agreed that this would make for an excellent spot for a luxury gated community development; correct?
A. That is correct. There--we felt like it was a good investment, but the vision took--it wasn't like today we're going to do this. It took a little bit of time to mature, the vision. But yes, sir.
Q. But you just told us that--you just told us that you had no experience in residential real estate or in construction or in doing business in a foreign country.

So, on what basis did you make this assessment that a luxury gated community development in that particular spot would be a good investment or a very successful one, as you put it?
A. In my life, I have never had experience in a lot of endeavors that I created things from out of nothing in terms of entrepreneurship. So I felt confident. I felt peace in my heart that this could be achieved.

Also, I recognized that in the City of Jarabacoa itself, there was very high price points in the community itself. And at that time, the mountain, which didn't have any access--I felt if I could get a road and I could develop it, the views are spectacular, and the price points would be subsequently higher than what they are in the city.
Q. I see. So if I understand correctly, you had no business doing--had no experience doing business in any of these fields that you would need to put up a residential community.

It's a foreign country. You go there. You see the mountain. You have this vision. You just used that word. We'll come back to that because it's a term that you and your lawyers used a lot.

So you saw this mountain. You just had a vision that there--it would be a great spot for a residential community; correct? I mean, is that essentially what happened?
A. That is exactly what happened, yeah.

A. And I saw something. And I actually got lucky.
Because Dominicans knew that that area was very violent, and there was a lot of social problems in that community.
And because I had no local knowledge or custom there, I just saw the beauty of it and the potential, whereby people that were in that culture were more afraid of that. So in my being a little bit naïve, I got lucky.

Q. And at this point in 2003, had you ever heard of a community project—a residential project of this nature being built on a mountain in the Dominican Republic?

A. At that time, what I saw was individual homes going up throughout the mountains. And those required individual roads, electric, security for the homes, as well as all those aspects. And so I don't remember anything like the concept that I conceptualized. I had traveled extensively, and I had seen these types of concepts in other areas, and I felt that that was a prime location for something like that.

Q. Okay. So you just said that, you know, it had pretty views and that you—based on your experience as an entrepreneur, generally, you thought that this would be a good opportunity?

A. Yes, sir.

Q. But you also said that you were aware that it was a violent area; right?

A. No.

Q. You said—

A. I was unaware.

Q. You were unaware.

A. And local knowledge was that it was. I was naïve. As a matter of fact, I remember I was on another mountain, and I was talking to a family there, and they were telling me what their price points were.

And I’m, like, “Well, I just bought that mountain cheaper.” And they said, “You should know better. That’s a dangerous town.”

I'm, like, "Well, I just thought it was beautiful."

Q. I mean, did it concern you at all that, you know, you had no experience at all? You didn’t really speak the language. You just said you had no local knowledge of the local customs and so forth or local culture.

Did it worry you at all to just decide, like, I’m going to buy this mountain? You know, I mean, I admire your courage. I would never go to some country that I had never been to before really, or that I had only lived briefly in, and, you know, just do it on an impulse like this.

A. Impulse, that word—I wouldn’t use that word. "Impulse" implies perhaps immaturity and impetuousness. There was an abiding peace and a vision. And being an entrepreneur, I felt confident that we could do this. And so I felt peace about it. I felt like let’s go for it. It's going to be a new adventure, and it's something totally different and it would shake up my world view and stimulate me in a way that the printing industry had become boring.

Q. Okay. So you just—you went for it and you bought land; is that—

A. Yes, sir.

Q. At that point you’re still living in the U.S., though?

A. That is correct.

Q. But you were visiting the Dominican Republic periodically?

A. That is correct. We had set up some churches and there was pastors, and we were part of a group that we had founded, and we were just providing support and friendship.

Q. So in 2003, when you bought this land on the mountain, you hadn’t commissioned any engineering studies concerning a potential real estate project on the building, had you?

A. No, sir.

Q. And at that point when you bought the land, you also had not commissioned any ecological or environmental studies concerning a potential real estate project on the mountain; right?
A. That was after I bought the land. And I felt even if we didn’t develop it, with the boom-up that was going on in Jarabacoa, even if I just land bank it through the appreciation, it would be a good investment.

Q. Sure.

So you just—you just referred to it as "the Wild West." I mean, what do you mean by that? Was it your understanding that there were no laws or regulations, for example, in the environmental space?

A. I have found in the Dominican Republic there are laws and regulations; however, they’re arbitrarily applied. So I recognized that this was happening in the Dominican Republic as well at that time.

Q. Okay. So there were laws and regulations; you just feel that they weren’t applied properly. Is that it?

A. Yes. And nobody, as far as I know, ever had an environmental permit at that time. I think the first one in the history of Jarabacoa was Paso Alto in 2006, and I think we were the second one to even go through that process even though the law was on the books from 64-00 in the year 2000.

Q. So when you went—when you first had this vision, did you—were you able to perceive that the area seemed violent or not?

A. Yes, I did not.

During the year 2000, there was no access to the mountain. There was no electricity in that town. It was a very poor area.

Q. So didn’t you ask anybody about the area or—

A. No, I did not.

Q. So it was all about the mountain and the views and the beauty of it; is that right?

A. Yes.

Q. You also said in your First Witness Statement at Paragraph 18, "I had heard from people that the Dominican Republic can be a difficult place to do business and a risky place to invest."

A. Yes.

Q. Do you remember saying that?

A. Sure, it worried me.

Q. But you didn’t—-you didn’t—-I mean, you didn’t care? I mean, didn’t—

A. "Didn’t care" is not the right word. I tried to manage my risk. But I felt like it was the right thing to do. I felt a vision. I felt an awakening within my spirit. And I felt like it was the right thing to do.

And a man in his life needs to follow the leading that is put in his soul. And so I did exactly what was going on internally.

Q. Okay. Who was it who had given you this warning that it was a difficult place to do business and a risky place to invest? Do you remember that?

A. No, sir. That was so long ago. But it was a genuine—people had expressed to me that, but I don’t know who specifically. We’re talking 14 years ago. But there was an undertone about some of the risks involved.

Q. So you said that you didn’t quite apprehend the violence. But did you perceive that it was an economically depressed area?

A. Oh, it was. There was no electricity in that town until the year 2000. There was no access to the mountain.

It was a very poor area.

Q. I see.

And that didn’t worry you either in connection with your investment?

A. No. It did not worry me.
community, and they never--nobody thought it would work. And I was warned, "Don't do it because it's going to fail," and I went ahead anyway.

And this was not government people. These are just local people from Jarabacoa.

Q. So when do you first became aware that it was, you know, sort of a violent area?

A. When I came home and heard that somebody was stabbed right outside our gates. When I heard other people were killed. When I heard--

Q. When was that in relation to your purchase of the land?

A. Perhaps 2008, I would guess, somewhere around there. After we lived in Jarabacoa.

Q. So you bought land in 2003 and you didn't realize until five years later that it was a violent area?

A. That's when I knew firsthand about the violence.

Q. When do you think you heard about it? At what point did you--at any point did you sort of worry, okay, shoot, I bought this land, but it turns out it's kind of a risky area?

A. No, I wasn't worried about that, because we were building a gated community. We were intending to have security.

Q. You mentioned that you--a lot of people told you that I wouldn't work, but I believed it would, and that's what I endeavored to do. And that's the nature of being a pioneer and an entrepreneur. You push forward. And I saw a vision, and it didn't bother me that local people didn't see what I saw. I was--my target market were not people from Jarabacoa. They were people from the capital primarily. And I went forward.

If the business model was so clear and so clean and black and white, we would have seen what Jamaica de Dios was all over the place. That only sprung up after.

Q. Okay. In her First Witness Statement at Paragraph 4, your wife, Lisa, made the following comment. She said, "When we began, it seemed that most of the government and community--literally from the ground."

And this was not government people. These are just local people from Jarabacoa. They were people from the capital primarily. And I went forward.

Q. Okay. In her First Witness Statement at Paragraph 4, your wife, Lisa, made the following comment. She said, "When we began, it seemed that most of the government and community just thought we were crazy."

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Q. Before we move on, I just want to probe this vision issue. That's something that gets repeated over and over. You know, your wife said that, you know, it was a perfect location for our vision of a luxury residential community.

It said a lot in the pleadings. The Notice of Arbitration said "They had a vision for a residential project. The Ballantines' vision was to develop a mountain residential project," you know, on and on and on in Paragraphs 30, 31, 38 has one too. 34--44. Sorry. And then the pleadings continue.

And most recently, in the Rejoinder on Jurisdiction, the Ballantines went to the Dominican Republic to pursue Michael's vision of creating a beautiful mountain resort or--sorry--mountain residential community--literally from the ground.

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And most recently, in the Rejoinder on Jurisdiction, the Ballantines went to the Dominican Republic to pursue Michael's vision of creating a beautiful mountain resort or--sorry--mountain residential community--literally from the ground.
Q. And so what point did you actually acquire title?

A. Well, I owned it in the sense that I bought ownership rights. So that person that had an ownership right to me.

Q. I'm sorry, say that again?

A. I would add, we did not have titles to this property.

Q. You didn't have titles?

A. I just had a letter of ownership rights, and we had to do a process on parcel 1541 called "saneamiento4" to determine who actually owned what and—so, yeah, it does seem absurd, but that's exactly what happened.

Q. And so what point did you actually acquire title?

A. Well, there's a—and I'm sure the Dominican lawyers here would know much better what I'm talking about, that there's a letter called a "Carta de Constancia," and parcels 1541 and 1542 were assigned back in probably the '40s that this person owned a certain amount. He would pass away and then leave that to his children or his wife, and they would pass away. So 1541 or 1542, which are large parcels, would be portioned off and given to children.

But the land process was quite antiquated. Ownership rights were not real clear. And then there was a land reform in 2009 which—which really helped the Dominican Republic in terms of making sure the titles had GPS coordinates and helped to modernize that process.

Q. But you don't remember exactly when you actually owned the land, when you first acquired title to it? Or do you?

A. Well, I owned it in the sense that I bought ownership rights. So that person that had an ownership right that was registered by the government had transferred that ownership right to me.

And another thing that was a real obstacle for sales in the beginning, some of the difficulties, is was an American doing business there, on land that I technically didn't have a title to, and I would not sell to anybody who would come in unless they came in and they committed to start construction in two years, which was a huge obstacle that I'm expecting somebody to not only pay...
I saw was most Dominican developers would just take a road to the one that you were planning to construct? correct, and that's what exists today.

Q. Okay. Let me return to this subject of the road. So in your Witness Statement, you emphasize that—and you said, for example, in Paragraph 11 of your First Witness Statement, "I knew the primary thing I needed to do was build a great road."

Is that correct?

A. Yes, sir.

Q. And then same in Paragraph 12 of the First Witness Statement, "I was very conscious that the key to success for Jamaca de Dios was the road."

What you had in mind was not just a narrow mountain path, but a fairly big road up the mountain; correct?

Q. And you actually emphasized that in your Witness Statement at Paragraph 15. The first one, you said, "I do not believe that the type of mountain road we were creating was unprecedented in the Dominican Republic; correct? There was no similar road to the one that you were planning to construct?"

A. I would say for a private road, yes. Because what I saw was most Dominican developers would just take a

---

And so in the beginning, people loved just the gravel road. But then we decided to—through the homeowner association to—everybody chip in and do this next stage which is a lower stage than asphalt. Not as durable. Don't last as long.

Q. Right. And you just mentioned, then, you emphasized also in your Witness Statement that it had to be wide enough for two large trucks to pass each other in both directions at all points.

That's how you phrased it in Paragraph 11 of your Witness Statement; is that right?

A. Yes, because I anticipated a lot of construction with the homes, and for trucks—they'll pass each other as opposed to having to stop and wait for one guy to come by, but then they could both comfortably drive by. That road actually, in reality, that was my goal. But there are a couple of areas where it's a little bit thinner and, you know—narrower. I'm sorry. But in general, that is correct, and that's what exists today.

Q. And you believed at the time that the mountain road that you were planning to construct was unprecedented in the Dominican Republic; correct? There was no similar road to the one that you were planning to construct?

A. I would say for a private road, yes. Because what I saw was most Dominican developers would just take a
by a private party as opposed to the government or what?

You said "private road."

A. No. It was energizing. It was fun. It was something I really wanted to do.

Q. I understand that, but I'm asking you about this--

A. You asked me if I was worried, and I was not worried.

Q. No. Let's back up a little bit. Let me probe first this word "private" that you used. You said, you know--here earlier you said that it was a private--you know, the largest private road of this sort that you had--that you were aware of.

And you said the same thing in your Witness Statement. You said the type of mountain road we were creating had--"I don't believe that the type of mountain road we were creating had ever been attempted by a private enterprise in the Dominican Republic."

Is that a distinction you're drawing between a private individual or a company as opposed to the government or as opposed to what?

A. Yes. I'm referring to--there's companies such as Falcondo. There's companies such as Barrick Gold. These are large multinational corporations, and they have significantly more capital at their disposal to build a wider road in the mountains.

Q. But they did not have a wider road? I mean, you're saying--

A. No. I'm saying--I specifically said "a private road."

Q. Right.

A. And so what I mean by "private road" is a private individual versus a corporation.

Q. I see.

A. I don't know exactly--I didn't do all the demographics and the studies of the multinational corporations that had built mountain roads. I was referring specifically to one family building a road.

Q. I see. And the reason that you needed a road that was big enough to have two trucks going back and forth was because you were planning to build a real estate development on the mountain; right?

A. That is correct, sir.

Q. And your goal was to build a road that avoided significant steepness while still gaining altitude? That was the goal, the objective; correct?

A. Yes, because a steep road is unsafe, and therefore, I felt it would be an obstacle to sales.

Q. So even though the mountain itself was steep, the road that you had to construct had to be not too steep, right?

A. Yes.

Q. And tropical islands are subject to hurricanes and huge storms, as we just saw with the Puerto Rico and the storms a couple years ago. Did that aspect of it trouble you at all?

I mean, you have this mountain. You're not really aware of one accident or incident as a result of the safeness and the security of that road.

Q. So to turn the road into a relatively flat road on a steep mountain, you needed to cut into the mountain quite a bit, in other words, to excavate a certain amount of earth, because you essentially needed to carve the road out of the side of the mountain; correct?

A. In some places, yes. In many places, no. But being a mountain, the angle or the slope, whatever term you use, varies. And so in some areas there's more; in some areas there's less.

Q. But when you're carving a road into the mountain, you necessarily have to dig out earth and excavate trees and vegetation and strip off soil from the surface of the mountain; correct?

A. That is correct. In every single development, there is some level of human intervention into the--in the nature.

Q. So that means that necessarily, if you're constructing a paved two-lane road, you're inevitably altering the face of the mountain to some extent; correct?

A. That's the case of every mountain development on the planet.

Q. Right. Let me just ask you a few other questions about this vision. I'm still troubled by the vision thing.

So you were obviously aware that it was a tropical island; correct?

A. Yes.

Q. And tropical islands are subject to hurricanes and huge storms, as we just saw with the Puerto Rico and the storms a couple years ago. Did that aspect of it trouble you at all?

I mean, you have this mountain. You're not really aware of a project of this sort that you are envisioning. You hadn't really consulted with anybody. It's a new country. It's a tropical country. And you just have this vision for a big residential project on a mountain, but it's--you know, it's a hurricane-prone area.

Did that aspect of it worry you?

A. It was a concern. But knowing that we were in the mountains and a Category 5 hurricane that would possibly pass maybe once every 20 years, or a Category 4 maybe every 15 years is significantly broken down by the mountain ranges, most people--you know, as we've heard about the hurricanes in the past 10 years, as they hit landfall they significantly reduce their velocities.

But there were never--I think it would be nearly
Q. And were you aware that Jarabacoa in particular is one of the rainiest, if not the rainiest, part of the Dominican Republic?
A. At the time, I did not--I was not aware. And actually--I mean, what I’ve learned and I did not know at the time, that it’s not the hurricanes that do the damage. It’s when there’s a tropical depression that parks over the island and provokes a lot of rain. But at that time I was not aware.

Q. And when it rains, the earth gets soaked; right?
A. Right.
Q. And unstable soil is more susceptible to landslides; correct?
A. Correct.

Q. In your First Witness Statement, you stated the mountain range.
A. That is fair to say.
Q. In your First Witness Statement, you stated the following in respect to the road. You said, “I believed that it needed to be no more than an 8-degree slope.” That’s at Witness Statement Number 1, Paragraph 11.
A. That is correct.

Q. And what troubles me about that Statement is you just told us that you don’t have any of that--you didn’t and don’t have--well now you do, you say.
A. But back then you didn’t have any background in engineering or construction or road construction, specifically. And no real formal education in any of the fields that I mentioned to you. So how did you--how did you decide that it had to be precisely 8 degrees slope?

Q. I see. So when you say you hired him to advise you on certain things, what it takes to build a road.
A. Yeah. That’s right.
Q. And unstable soil is more susceptible to landslides; correct?
A. Correct.

Q. Okay. And you hired him to advise you on certain things, what it takes to build a road.
A. Yes. What I needed to do in terms of the permitting process. And I talked to him about what I would like to do, and I--because I didn’t know what I needed to do. And he’s a very well-respected lawyer in Jarabacoa and he’s an environmentalist, and he has a lot of experience with forestry and forestry roads.

Q. Okay. So you didn’t know what you--you said you didn’t know what I needed to do with respect to computer models and analytics to choose the safest route and the one that was the least invasive. And I probably spent at least $50,000 throwing plans in the garbage in order to choose the one that we chose. But that is not a hard exercise.
Q. What’s not a hard exercise?
A. To determine that an 8 percent grade is appropriate and--
Q. Really?
A. No, it’s not.
Q. And even--I mean, doesn’t it depend on the actual topography? I mean, you know, a road in Kansas where it’s super flat would be different than a road on a steep mountain; is it not?
A. That is correct. But if you refer to Mr. Navarro’s statement, he says, “It’s 7 percent grade, maximum 15 percent grade.”

Q. And what about--leaving aside the big storms, the hurricanes and such, were you aware--I mean, it’s a tropical island, so it rains a lot; correct?
A. Yes.
Q. And you hired him to advise you on certain things, what it takes to build a road.
A. At the time, I did not--I was not aware. And actually--I mean, what I’ve learned and I did not know at the time, that it’s not the hurricanes that do the damage. It’s when there’s a tropical depression that parks over the island and provokes a lot of rain. But at that time I was not aware.

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Q. Okay. And you hired him to advise you on certain things, what it takes to build a road.
A. Yeah. That’s right.
Q. And unstable soil is more susceptible to landslides; correct?
A. Correct.
environmental regulation, but you did know about the road
construction? Is that it? How did you decide--
A. I don't know about the timing of that. I
just--when I learned. I just don't know the correct answer
to that. But I know that I solicited with--to Mr. González
on what would be the process. How do I do this?
Q. You said earlier that nobody really had permits
and it was sort of the Wild West. Why did you feel that
you had to get a permit if nobody else really had permits?
A. Because I wanted to do things correctly, and I
didn't want to be exposed to future problems.
Q. So with respect to the legal aspects, you felt
that you needed informed or professional advice but not
with respect to the construction of the road at the
beginning; is that--
A. No, that's not what I'm saying. I said that I
got to a lawyer and I solicited from him what I needed to
do from a legal perspective.
Q. And I'm saying--right. But, you know, I'm saying
on the legal stuff you felt that you were on sort of shaky
ground on your own so you needed professional advice but
not with respect to, you know, the road, at least at the
beginning of the construction of the road?
A. Yeah. At that point there was a
Dominican-certified engineer. His name is Rafeal Peralta.

In Phase 1. By then we had acquired a ton of knowledge at
ARK, and I thought it would be the same simple process for
Phase 2.
Q. Okay. Let's go back to your lawyer, Freddy
González.
A. Yes, sir.
Q. So you hired him after you had already purchased a
significant amount of land; correct?
A. Yes, sir.
Q. And this lawyer, Mr. González, advised you on the
permit application process for the construction of the
lower mountain road; right?
A. Of the permitting process. Not the construction.
Q. Did I say construction? I'm sorry. Yeah,
permitting process.
The lower mountain road was the first stage of the
development of your project; is that correct?
A. Yes, sir.
Q. And your lawyer, Mr. González, specifically told
you, and I'm quoting from his First Witness Statement--from
your First Witness Statement at Paragraph 14--that your
lawyer told you that "the road would have the biggest
environmental impact."
Do you remember that?
A. Yes, that is what he told me.

And he's got a CODIA certificate, which is a Dominican--I
forgot what it's called. It's recognized. It's a code for
topographers and engineers. I don't know the exact wording
of that.
So he was a licensed engineer to oversee the
production or the work. And there was also a man named
Marito who had a lot of firsthand experience in building
roads. And then there was also an American engineer, his
name was Chad Wallace, who was living in Jarabacoa at the
time. And so I felt confident between this team we
could--and my topographer, who did all the computer models,
that we could execute the road properly.
Q. I mean, there were all these people, but had you
hired them? Were they--had you hired them?
A. I hired them subsequent to getting the permission to
do that.
Q. I see. So kind of further down the road, so to
speak. So later in time. But when you first started
constructing the road, at that point you were just basing
stuff on your own research. Is that what you said?
A. No, I didn't say that. I said that we had done a
lot of computer models. I had studied. I had spoken with
them. It was all staked out. And then I hired them for
the execution.
And just a step ahead, that was the process we did
provide a subsidy to participate in the cost.

A. Yeah. They were really promoting reforestation, so people that

Q. So you entered into a contract with PROCARYN to

A. That is correct. I specifically remember that I
did not personally have any contact. But that was from my

Q. All right. And this project for the planting of

A. I don’t remember the time limit, but that might

Q. That sounds about right to you?

A. That seems reasonable, yes, sir.

Q. So it was only after you entered into this

contract with PROCARYN that you approached the Ministry of

Environment or Forestry, whatever government authority it

is that you first resorted to. And do you remember what

told them about your project and what they said?

A. I do not remember. But that was from my

Q. Okay. And I understand that.

But the vision was that the trees was supposed to complete—to be completed within

the span of a year; is that right?

A. I don’t remember the time limit, but that might

have been. I don’t—"I’m sorry.

Q. Sounds about right to you?

A. That seems reasonable, yes, sir.

Q. So it was only after you entered into this

contract with PROCARYN that you approached the Ministry of the

Environment in connection with the road; is that right?

A. That is correct. Well, not—"I don’t know if I

was—I don’t know if I remember—I don’t know if I

approached the Ministry of Environment for a permit for the road because the road was built, but I did approach them

specifically for the permit for subdividing some homes and build homes. But I might be—‘I might be off on that. I
don’t have the records in front of me.

Q. Okay. So you just said, “I don’t know if I

approached the Ministry of Environment for a permit for the road because the road was built.” What do you mean?

A. We received permission from Forestry—"I think it

was Forestry—to build the road and to do the reforestation project in accordance with the German foundation, which the

Dominican government was appreciative that the German foundation was doing this throughout the country.
And from what I recall, I was granted permission

to build the road along with doing the reforestation
project.

This process was specifically related to the steps
that my--being new to the country, that my environmental
lawyer told me I should undertake at the time.

Q. Right. But you also just said that your
environmental lawyer warned you that building the road
would have the biggest environmental impact. But you
didn't seek a permit from the Ministry of Environment
despite that?

A. I don't remember if I sought a permit from the
Ministry of Environment. He was managing that. I think it
was through the Ministry of Forestry which at that time,
from what I remember--and I might be wrong. From what I
remember, they were independent, and they had the authority
to grant the cutting of a road in conjunction with
reforestation.

Q. In conjunction with reforestation, did you tell
the Ministry--I mean the Forestry Ministry--is it for a
ministry or Forestry Department?

A. Yeah.

Q. The forestry authorities, did you inform them that
you were planning on building a real estate development?

A. I do not believe we did.

The road we built was--as a matter of fact, I do
think the Ministry of Environment came out and inspected
what we were doing, and there was never any obstacle,
either directly or indirectly, to the work that we had--we
were doing.

Q. All right. But you didn't tell the forestry
officials that you were planning on building a two-lane
road--I mean a road that was wide enough to have two trucks
pass each other?

A. It's not necessarily a very wide road. It's
6 meters, and that accomplishes the exact same goal.

Q. Okay. But my question is, did you tell them that
you were going to build a 6-meter road, if that's what
you're saying is--

A. I don't believe I did.

Q. All right. Let me go back to the environmental
lawyer. So aside from the lawyer, did you have any
environmental consultants advising you at the time of
this--you know, the first road and the first permit
application to the Ministry of Environment? At what point
did you first involve--

A. Well, I started with Freddy. Freddy González.

Q. Who's a lawyer.
there was a Ministry of Environment at that time. I was working with my lawyer, and he guided me through the process to get the permit and the road. I don’t recall exactly. This is 13, 14 years ago, so I’m sorry. Q. So you didn’t even know there was a Ministry of the Environment? A. I don’t recall. I was doing exactly what I was told to do by my lawyer. Maybe I was aware, I just don’t recall that. I’m sorry.

Q. All right. Okay. A. But the forestry area—and that might have been the part of the Ministry of Environment at the time. But they were authorized—they were the government institution authorized to allow me to build the road. Q. And you mentioned an environmental consultant that your lawyer had a relationship with called—you said something like an Antilles or some such. A. Yes. And I would have to check the documents to see if they were involved at that time. I do not recall the time sequence at that time.

Q. You hired them at some point directly, did you not? A. I did, yes, through the recommendation of Freddy González, a lawyer, who had relationships with them, to do the environmental impact study for the approval for Phase 1.

Q. But you don’t remember their actual name? A. Antillia or Antilles or Antilas. It’s something like that.

Q. Yeah. It’s Antilla.

A. Oh, Antilla.

Q. Just a reminder.

A. I think I only worked with them for that permit and then decided to move to Empaca Redes, who we’ve worked with for ten years now.

Q. When you say “that permit,” which permit? A. For the— the permit to subdivide through our resort.

Q. Just to be clear, for the permit authorization for the construction of the first road, the lower mountain road, you did not have an environmental consultant involved?

A. I might have. I don’t remember. If I could review the documents if they’re here, that would answer that question. I do not remember specifically on that, but I do know that my lawyer worked with the Forestry Department. But I don’t if that was in conjunction with the environmental company as well. I just do not remember.

Q. And you mentioned an environmental consultant that your lawyer had a relationship with called—you said something like an Antilles or some such. A. Yes. And I would have to check the documents to see if they were involved at that time. I do not recall the time sequence at that time.

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Q. But it wouldn’t surprise you if I told you that there’s nothing in the record—

A. No, that would not surprise me. That would not surprise me.

Do you have the dates in terms of my engagement with Antilles or Antilla?

Q. We might get to that.

A. Okay.

Q. I’m not sure if we have a specific date, but we will talk about Antilla in a second.

A. Okay.

Q. So, sorry to insist on this, but I’m still troubled by this a little bit.

So you had a lawyer who told you that the road is the big deal in these environmental—I mean on a mountain, the road is the big environmental impact thing. And you didn’t have an environmental consultant.

Did you have an engineer involved in the construction of the first road, the reforestation road?

A. Yes. I’ve already said that. A man named Rafael Peralta who is the—who is a licensed engineer recognized by the Dominican Republic, I also had a man named Merito who has— although not an engineer, he has tremendous amount of experience in mountain roads. And I worked with an American engineer whose name is Chad Wallace, who had been living there at the time who is also a certified engineer from Texas A&M University. So they were the ones that built the road.

Q. Is there a reason that you didn’t mention any of these people in your Witness Statements or anywhere?

A. Because we’re discussing the issues of Phase 2, I didn’t—

Q. I mean, we talk a lot about Phase 1 as well, do we not, in your Witness Statement and this whole business of, you know, the first road and the lower mountain project and the environmental impact assessment and so forth. It’s all—that’s all Phase 1; is it not?

A. Well, I feel like you’re trying to say something I’m not trying to say. There was a lot of history in Phase 1. This is a lot of development. And so the fact that I don’t mention that in the Witness Statement does not imply that there’s any deception on any level.

Q. No, I’m not suggesting deception. I’m just asking you why that wasn’t mentioned. You just didn’t think it was relevant to this proceeding?

A. That’s exactly right. Yeah.

Q. So that’s also why none of these people are witnesses in this proceeding?

A. No, I just didn’t think it was relevant, important
and--I mentioned Eric Kay because he had significantly more experience. And some of my problem areas he fixed and gave me good advice. And he was the one that was planning Phase 2 along with the development of Paso Alto. And so I felt at this proceeding Eric Kay would be more appropriate, especially in light of the fact that there was no obstacle whatsoever from either Forestry nor the Ministry of Environment on what we had done on Phase 1 at all.

Q. All right. So let's go back to the lower mountain road and the forestry authorization.

So you said you--(a) you did not have an environmental consultant at that point and (b) you had not checked with the Ministry of the Environment. In fact, you are not even sure you knew of the existence of the Ministry of the Environment.

So when you built this road, were you just kind of hoping for the best in terms of the environmental impact of the road even though your lawyer had told you that the road has the biggest environmental impact, or you were confident from your research that it would be okay?

A. The mountain at that point was largely deforested, and that was the reason why PROCARYN agreed to subsidize the reforestation. There was slash-and-burn agriculture throughout the mountain through the former farmers. And I also felt very confident in the engineers and the design to make a minimal environmental impact while preserving the commercial values of the property as well as building a safe road.

So we were juggling all those aspects at one time while avoiding steep slopes, which are indicated by both experts in the mapping.

Q. You know, when you say--yeah, you said you were confident that the design was going to have a minimal environmental impact. How would you know that if you didn't have an environmental consultant and you weren't consulting with the Ministry of the Environment?

A. I was consulting with my environmental lawyer who is probably--I would--I don't want to overstate it, but one of the--one of the most respected lawyers in Jarabacoa, which is a large forestry area, and he was consulting me and guiding me along the way.

Q. But he's an environmental lawyer, though. I mean, what does he know about slopes and soils and such like? I mean, he doesn't know about those, does he?

A. I'm sure he does.

Q. Really? Like about the technical things? So he's not just a lawyer but like, you know, a biodiversity expert, for example, or a soil expert?

A. I can't speak for him on his knowledge. But there are different lawyers. There's international arbitration lawyers, there's divorce lawyers, there's civil claims lawyers, and they all have their specialty. And being a forestry expert, I'm sure his knowledge is very broad.

Q. Right. But, you know, there are lawyers who specialize in medical malpractice, but they're not doctors, you know.

A. Yes, sir, you're correct.

Q. Is there a reason that your lawyer didn't provide a witness testimony in this proceeding? He comes up a lot on your Witness Statements.

A. We brought forth 20 witnesses, and I felt if we brought forth 100, maybe we wouldn't have an efficient process. There was no reason--there's no reason why I didn't--

Q. But you thought the headmaster of the school where your children went was the more relevant witness than your environmental lawyer, the only environmental counsel you had in connection with the first part of the project?

A. The Respondent had brought forth a jurisdictional argument requesting bifurcation, and we felt that it was very important to address that, the first question.

Q. All right. So you said that your environmental lawyer was one of the most respected, et cetera. And I don't have a basis to doubt that.

But if--you know, you would expect a prudent environmental lawyer to tell you--if he's telling you that the road has the biggest environmental impact, you would expect him to say, "So if you're going to put up a road, maybe you should hire an environmental consultant and/or maybe you should consult with the Ministry of the Environment since it's an environmental thing."

Did he not do that?

A. I don't think he did. The results speak for themselves. The Ministry of Environment approved fully Phase 1, and we have done 18 environmental reports since then. The only company in Jarabacoa to do that. And not one time was anything mentioned about our road and the execution of it.

MR. DI ROSA: All right. Mr. Chairman, I'm about to move to another subject. I don't know if you want to take a break now.

PRESIDENT RAMÍREZ HERNÁNDEZ: I think it's good to take a break. I will advise the witness that--to refrain from discussing anything with counsel, please.

THE WITNESS: Oh, okay.

PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you.

(Brief recess.)

MR. DI ROSA: Thank you, Mr. Chairman.

BY MR. DI ROSA
Q. Mr. Ballantine, before we move on from the subject of the reforestation road, I just wanted to ask you a couple questions about--about that--the formal process for that. And let me take you, if I can, to a document in your binder, which is C-034. It's also on the screen if that helps you, but you would have to blow it up.

(Comments off microphone.)

BY MR. DI ROSA:

Q. Do you see that document?

MR. BALDWIN: Do you have an English version?

THE WITNESS: I do have an English version, yes.

BY MR. DI ROSA:

Q. All right. So this is your request for authorization to build the reforestation road; is that right? I mean, this person who signs this letter, Pablo Pérez Abreu, was acting on your behalf; correct?

A. I don't see the signature page, but I'm assuming, yes.

Q. Okay. Well, you see the name at the bottom. If you want to look at the Spanish and--

A. Oh, Pablo. I see that, yes, sir.

Q. Okay. And he was your representative or adviser?

A. He was a man from Jarabacoa that was--while I was living in the States, he--you know, he kind of oversaw things when we didn't have any--

BY MR. DI ROSA:

THE WITNESS: I do have an English version, yes.

BY MR. BALDWIN: Do you have an English version?

THE WITNESS: After finalizing the reforestation agreement, the Forestry Department granted us the permission to build a 3-kilometer private main road plus an additional 1-kilometer public road to access the property.

Q. So do you--and in your First Witness Statement, you said that "After finalizing"--I'm quoting here again. "After finalizing the reforestation agreement, the Forestry Department granted us the permission to build a 3-kilometer private main road plus an additional 1-kilometer public road to access the property."

A. Yes, sir.

Q. And then in the second paragraph it says, "It is necessary to state that this"--and I'm quoting. "It is necessary to state that this farm is being reforested in a large part of its area, and that in order to carry out this work, it is necessary to build the aforementioned access road."

A. Correct? Do you see that?

Q. So you were--and in your First Witness Statement, you said that "After finalizing"--I'm quoting here again. "After finalizing the reforestation agreement, the Forestry Department granted us the permission to build a 3-kilometer private main road plus an additional 1-kilometer public road to access the property."

A. Yes.

Q. Yes, sir.

Q. All right. But when he writes this letter he's acting on behalf of your project, right, Jamaica?

A. Yes.

Q. All right. And so here what they're saying is--or what you're saying was that you were requesting a road of a length of 2200 meters. Do you see that in the first paragraph?

A. Yes, sir.

Q. And then in the second paragraph it says, "It is necessary to state that this"--and I'm quoting. "It is necessary to state that this farm is being reforested in a large part of its area, and that in order to carry out this work, it is necessary to build the aforementioned access road."

A. Correct? Do you see that?

Q. So you were--and in your First Witness Statement, you said that "After finalizing"--I'm quoting here again. "After finalizing the reforestation agreement, the Forestry Department granted us the permission to build a 3-kilometer private main road plus an additional 1-kilometer public road to access the property."

A. Yes.

Q. Yes, sir.

Q. All right. But you--I mean, is--none of those things when we didn't have any--
documents that you're mentioning are in the record, are
they? I mean, is that because also you didn't think they
were relevant or what?
A. These--well, they are in the record. They're the
Claimant documents that you're citing here.
Q. Oh, so you're referring just to these?
A. I thought that's what you were--I'm sorry.
Q. I mean, you made reference to other--other things
in the Statement that you just made. You know, like Pablo
got through the Ministry of Public Works and then
solicited permission from the landowners, et cetera. I
mean, those were presumably written permissions, were they
not?
A. No, I don't believe they were.
Q. Oh, I see. Okay.
A. I think they were just happy they were going to
get a road built and they took down the barbed wire, and we
built the road.
Q. All right.
A. So I don't think there was anything formally
written, but that might have been. I don't have those.
Q. So you're not sure what the--accounts for this
difference between what you say here about the 3-kilometer
road and the additional 1-kilometer road as compared to
what was actually requested and authorized; is that right?
A. That's correct. Are you asking--I solicited to
build the road a second time?
Q. No, no, no. I'm saying--I guess what I'm saying
is, the Ministry of Environment never authorized that road
that you built. It was the forestry officials; correct?
A. I believe so. I was out of the country, and I'm
just making a guess because I remember them talking about
forestry.
Q. And was that--I mean, your Witness Statement also
referred to your lawyer, Freddy González, advising you that
the way to do this would be kind of in two phases; right?
You would have the reforestation project, shall we call it,
and a road for that, and then after that to apply for the
housing lot subdivision.
Do you remember saying that?
A. Yes, that's what he advised me.
Q. And so that's pretty much what happened; right?
You applied for the reforestation road for a project that
was just to plant trees, essentially. You got that permit
to build that road. And then you--you know, you put up the
road that you put up. And then when you applied to the
Ministry of the Environment for the first housing project,
the road was already there. It was a fait accompli; right?
A. It was what complete?
Q. Sorry. It was already there?
development from the Ministry of the Environment; correct?

A. Yes, for Phase 1.

Q. And so when you presented this permit application
for the housing development, you received what's called
"Terms of Reference" from the Ministry; correct?

A. Yes, sir.

Q. All right. So let's take a look at that document
which is C-036 in your binder. And this is a letter that's
dated 18 August 2006 from the Ministry of the Environment
and--which at that time was called the Secretariat of State
of the Environment as well as--

And this is the letter through which they
transmitted to you the terms of reference for the lower
mountain housing project. Is that a fair characterization?

A. I'm on C-36. Is that what I'm looking at?

Q. Yeah, C-036. Correct?

A. Those are the reference terms?

Q. No, it's just the cover letter for the reference
terms.

A. Okay. Yes. It seems like that's what it is.

Q. All right. And in the second paragraph, the first
sentence says, "According to the documentation deposited,
the project consists of the development of division into
lots where cabins will be constructed oriented towards

A. Yes, sir. Uh-huh.

Q. All right. And in the second paragraph, the first
sentence says, "According to the documentation deposited,
the project consists of the development of division into
lots where cabins will be constructed oriented towards

A. Yes, sir. Uh-huh.

Q. And that's because you had told the Ministry that
the project would consist of mountain cabins; correct?

A. Yes, sir.

Q. All right. So after you received the terms of
reference, you prepared an Environmental Impact Assessment;
correct?

Q. The precise date is not important. But you do
remember that there was a first EIA submitted that was a
short five-pager?

A. I do not remember that.

Q. You don't remember that? Okay. All right. I'm
going to represent--we don't need to go there because I
don't want to ask you about that one. But I'm going to
represent to you that there was this document and that
it--there's a cover letter for it in the--in the record at
C-037.

So--but, you know, that--you know, that was an

Q. Now, when it says--

A. Meters, but yes.

Q. Sorry. Square meters, correct.

A. I do not remember what the documentation deposited," that would have been deposited by
you or by Jamaca; correct? That's what they're referring
to?

A. Yes, I believe that we solicited the reference
terms in order for--to provoke the Ministry to analyze the
site and then determine the magnitude of the study, what we
needed to undertake to ultimately obtain permission. This
is what it's referring to.

Q. So here the Ministry is expressing the
understanding that what you were going to construct there
were cabins. In Spanish, that's "cabañas"; right?

A. Yes, sir. "Cabañas".

Q. And so Jamaca first submitted to the Ministry a
dueable EIA in February--on February 14th of 2007. Do
you recall that?

A. Yes, sir.

Q. I do not remember that it was rejected. My
environmental company was handling all aspects of that, and
I was not aware it was rejected. So if it was, they were
still managing it internally between the company and the
Ministry of Environment.

Q. All right. I'm just going to read from the
rejection letter to your first EIA from the Ministry, which
is in the record at R-064. It says, "You are hereby
informed that the final review of your EIA for Jamaca de
Glos has yielded the determination that it has omissions
and defects--and relevant defects impeding a decision from
being made for the processing of the corresponding
environmental permit. In this sense, we are returning the
study that was given that some fundamental aspects of the
assessment process must be improved such as"--and it
includes a long list of things that needed to be addressed
in the Environmental Impact Assessment.

A. Excuse me. I heard you say C-064, and that
appears to be a different document.

Q. It's R-064.

A. Oh, R. Okay. Is that in this binder?
Q. Yeah. Feel free to take a look at that.
A. I just have C documents, I think.
Q. Underneath there's a binder with the R.
A. Oh, this other binder. I'm sorry.
Yes, sir.
Q. And so in this letter--does this refresh your recollection about the first Environmental Impact Assessment that you submitted?
A. No, it does not.
Q. Do you remember this letter, though?
A. I do not remember this letter.
Q. Okay. So, in this letter, though, they said that the Environmental Impact Assessment that you submitted the first time, in February 2007—which is the one that I'm representing to you was a five-pager which we have, but it's not in the record so I'm not going to refer to it—had certain deficiencies, and this letter does refer to those deficiencies.
And they say you have to improve the EIA by addressing issues such as description and calculations for the wastewater treatment plant, drinking water, construction and operational activities, the environmental monitoring program, including monitoring parameters,

Q. (English Audio: Day 2 at 02:04:27)
A. I was not.
Q. And this letter was addressed to you personally, in addition to Mr. Pérez, but you don't recall it?
A. It appears to me that it was signed for by the environmental company. And so I do not recall the specific letter. But I do believe there's a high likelihood since they were managing it. They went to the Ministry of Environment and they received it. They realized there were deficiencies. They were under contract with us to complete and do what was necessary to obtain the environmental permit.

So it is plausible that they realized that there were some deficiencies, they themselves, and then they worked directly with the Ministry of Environment to get into compliance.
Q. Okay. So you—okay, fair enough. So you just weren't involved really with this. I mean, you were--
A. I was not.

Q. All right. So after this was rejected due to the lack of detail, you then had to present a new Environmental Impact Assessment. And for that project--for that assessment, you hired this company that you were referring to earlier called Antilia. Do you remember that?
A. I don't know—I thought I hired them for the whole thing.
Q. But for this one as well? So you mean the first one was prepared by Antilia as well?
A. Yes. From what I recall, they were my environmental company. I entered into a contract with them, and they were preparing the Environmental Impact Study, and then they brought it to completion. And they were the ones that actually delivered to us the license.
Q. Okay. All right. So they did the five-pager. They got this letter. They said, "Okay. We're going to have to redo this thing." And they prepared a revised Environmental Impact Assessment that was then submitted in August of 2007. And my question to you is, were you involved at all in the preparation of the Environmental Impact Assessment that was submitted in August, the revised one?
A. I don't think I was involved on any level whatsoever in that process. I might have been. I don't recall. From what I remember, I hired that company, and they brought it through to the end. They managed the entire thing, from what I recall.
Q. Okay. So they prepared this document, the new EIA, which we'll—might as well go to it. It's Exhibit 8-103 in your binder.
A. Yes.
Q. Okay. So this is a— the revised EIA, and it's 119 pages long, at least in the Spanish version.
Q. So your environmental impact—your environmental consultants went from presenting a five-page EIA to 119-page EIA.
A. It appears to be. I do remember seeing the Environmental Impact Study. So from—yes, this seems like the one that was approved.
Q. So this EIA, like the one before that was rejected, related to your application for a permit for the lower mountain housing project; correct? Including the restaurant.
A. I thought that this was the one that was approved. Maybe it was rejected and they continued to get it right. I'm not sure.
Q. This one was approved. The one you're looking
Q. Primarily a wood structure. Yeah. Most English
A. Well, I think in English, a cabin might refer to
of a general understanding of what a mountain cabin is? Or
think of like a rustic wooden structure surrounded by
trees. Is that--I mean, am I wrong about that being kind
know, when most people think of a mountain cabin, they
of a general understanding of what a mountain cabin is? Or
can it just be any kind of house?  
A. Well, I think in English, a cabin might refer to
primarily a wood structure. Yeah. Most English
Q. And then--and, you know, earlier--and the part that we saw on the preceding page in the--under the subheading "Type of Project" that we just saw, there was something similar. In fact, that one said--and you can refer back to the previous page if you want.

The second paragraph says, "The architectural guidelines for construction are intimately associated with the environment, with wood and other lightweight materials prevailing as the structural and construction elements."

And then it says, "Colors and forms are also adapted to the environment, in order to create a harmonic, integrated whole."

So here you are telling the Ministry that basically it's going to be, you know, kind of wooden mountain cabins type thing or lightweight materials anyway. Were you not?

Q. And that's consistent with this sort of composite that I made of the dictionary definitions of a cabin; correct?

A. Yes.

Q. And it's sort of consistent with what I initially told you was the--my understanding of the general conception of a mountain cabin; correct?

A. Yes.

Q. And it's sort of consistent with what I initially told you was the--my understanding of the general conception of a mountain cabin; correct?

A. Correct.

Q. All right. So let's take a look at R-2. We'll project it on the screen as well. Oh, yeah, it's not in the binder. Are you at R-2? You're not on R-2 because it's not in the binder.

A. It's here. I was just handed it.

Q. So--and just--you know--by the way, there were several references to the term--the term "cabin" in the Environmental Impact Assessment, including--sorry; I'm losing my voice--including at Page 7, Point 14; at Page 32 Point 1.1.1, the first paragraph, and on Page 54, 1.5.2 in the second paragraph. These are all references to the EIA that we were looking at, which is our R-103.

So with respect to R-2, let me ask you first--I mean, based on what you said here in the EIA, the Ministry reasonably believed or interpreted that you were planning to build mountain cabins made of wood and other lightweight materials; correct?

A. Yes.

Q. And the Ministry, in fact, granted you a permit for this project; correct?

A. Correct.

Q. So let's take a look at that permit. And that's what's at R-2. This permit was granted on December 7, 2007. That appears on the bottom of Page 2.

And it says here on Page 1, "The Ministry of Environment and Natural Resources grants this environmental permit for the construction of the project Jamaca de Dios."

Do you see that?

A. Yes.

Q. But then immediately below it says, and it cautions, "with the following specifications."

Do you see that?

A. Yes.

Q. And after that, it describes the specific location of the project followed by a section entitled, "Characteristics." Are you there where it says "Characteristics"?

A. Is that in the same paragraph, "Pursuant to Article 45"?

Q. It's right--right, you know, on the second paragraph. It's highlighted on the screen, if that helps you.

A. Okay. Yes.

Q. All right. And there the permit says--under the heading "Characteristics," it says, "The project has as its objective the construction of buildings of a mountain cabin type with two levels."

Do you see that?
began the process of developing the lower mountain project; correct?
A. Correct.
Q. So you sold a bunch of lots then, and houses were built on them; correct?
A. Yes.
Q. Would you characterize the houses that were built on them as mountain cabins?
A. I would characterize the first ones were more like that, and then there were others that were not subsequent.
Q. So some of them were and some of them weren't; is that it?
A. Yes, sir.
Q. Do you think it's something that was in your discretion to decide, okay, the Ministry authorized me to make--to construct mountain cabins, but some of them could be and some of them couldn't be? Did you feel that you had that discretion?
A. No.
Q. So it's basically illegal to disregard a condition that's imposed on one of these permits; is it not?
A. When I received my environmental permit, I believed it allowed me to build the houses that I was requesting. I wasn't parsing the word "villa" or "cabin." I wasn't thinking at that time that that was the

BY MR. DI ROSA:
Q. How about this one. Mountain cabin?
A. A big mountain cabin. No.
Q. This is a mountain cabin?
A. I would--I would say no.
Q. No. Okay.
A. So we have two.
Q. We have two, neither of which is a mountain cabin.
A. Yes.
Q. I mean, most of them really are like this, are they not? I mean, we can--we don't have to go back through them. I think the Tribunal can look at the pictures that were shown in the openings.
But the bottom line is a lot of these houses are not wooden structures. They're not lightweight structures. I mean, would you say this blends naturally into the environment, into the surrounding area?
A. Kind of, yeah. It's beautiful. It's nature.
Q. I agree with you that the views from the house must be beautiful. But does the structure itself blend nicely into the surrounding--for somebody--say you're like a naturalist, a person who really loves the outdoors and loves nature and natural beauty, and they sort of come up. Do you think that they would think of this as blending into the natural surroundings? I mean, do you think this is part of nature?
A. I would not say that that would qualify as a mountain cabin, according to my understanding of mountain cabin.
Q. Well, we agreed on that earlier. But I'm asking you now if it blends into the surroundings, and you said sort of because of the beauty and so forth.
And I'm just saying, it's not a--it's not a piece of nature. I mean, you said--yeah, you said, "It's beautiful. It's nature."
But this structure is not nature, though, is it?
A. Yeah, I would agree with you.
Q. Okay. Now, in your First Witness Statement at Paragraph 62, you said, "Juan José Domínguez was destroying the mountain."
And I wanted to show the Tribunal exactly what it is that Juan José Domínguez did.
A. Yes, sir.
Q. The one that's right next--adjacent to your project; correct?
Q. But he did get his permit denied, though, did he not?
   A. That was subsequent to many institutions bringing much pressure on the Ministry of Environment.
   Q. Right. But his permit was denied?
   A. There was no choice.
   Q. It was denied?
   A. It was denied in 2017 or '18, it appears.
   Q. My assistant here says that it's December 2013.
   A. It was denied in December 2013.
   Q. He asked for reconsideration and then the project—the application was not closed until 2017. But the permit itself was denied in December 2013. I mean, does that surprise you?
   A. No. I think there was no other choice for the Ministry but to formally close his file or deny his permit.
   Q. Right. So, basically, he applied, got his permit denied. He asked for reconsideration. That was too denied, just like you. And they closed his file, just like you, except you got an extra two reconsiderations.
   A. I don't know how many reconsiderations he has. But, yes, I did get three reconsiderations.
   Q. Right. And he had at least one, is what I'm representing to you.
   A. At least one, yes, sir.

Q. Do you call this "destroying the mountain"?
   A. The access road that was cut up through 18 switchbacks through the soils absolutely destroyed the mountain. When the rains came, you could see nothing but brown flowing into the creeks and rivers, and it was seen from everywhere in the area.
   Q. So, yes, there was a great amount of environmental destruction on the road cut.
   A. But brown—at least brown is still part of nature; right? I mean, do you think that some people could reasonably say that you destroyed the mountain more than Mr. Domínguez here, based on those photos we just saw?
   A. At the top of the mountain. But I think what he has done is fine. I'm saying the roads that he built going up the mountain created a huge environmental impact.
   Q. Sedimentation arose in affected waterways, yes.
   A. But you were denied the permit for the top of the mountain also; right? This is the top of the mountain that's adjacent, and they too got their permit denied. But, you know—well, how many houses were constructed on your lower mountain project in the end? How many are there?
   A. They're not done being constructed. I think there's probably about 65 that are completed, maybe a

Q. Right. And he had at least one, is what I'm referring to. It's the Aloma property.
   A. I mean, is that factually correct?
   Q. Right. And would it surprise you if the other structures are not actually houses as such?
   A. I think there's a--like a clubhouse, and I do believe there's two other houses, but I might be wrong because I haven't been on that property for several years.
   Q. Would it surprise you if I told you there's Mr. Domínguez's house, and then there's a clubhouse and a gazebo?
   A. Do you know what a gazebo is?
   Q. I mean what a gazebo is, yes. That would surprise me, because I'm pretty sure when I was up there, I saw two or three houses. But I might be wrong.
   A. I would not characterize it as that. I would characterize it as he has a failed commercial project because he built a horrible road.

Q. They have lots. How many houses do they actually have? You must know.
   A. I believe there's three houses.
   Q. Three houses. And one of them is owned by Dominguez; right?
   A. Yes, sir, from what I understand.
   Q. Right. And would it surprise you if the other structures are not actually houses as such?
   A. I think there's a--like a clubhouse, and I do believe there's two other houses, but I might be wrong because I haven't been on that property for several years.
   Q. Would it surprise you if I told you there's Mr. Domínguez's house, and then there's a clubhouse and a gazebo?
   A. Do you know what a gazebo is?
   Q. I mean what a gazebo is, yes. That would surprise me, because I'm pretty sure when I was up there, I saw two or three houses. But I might be wrong.
   A. I would not characterize it as that. I would characterize it as he has a failed commercial project because he built a horrible road.

Q. So they have a dirt road, other dirt roads. You know, that's--this is Aloma, is it not?
   A. Yes.
   Q. And do you see any housing structures of the sort that you had?
   A. I do not.
   Q. Do you see a road there that's comparable to your road?
   A. No.

Q. Do you see any housing project on this mountain?
   A. There is a housing project on the mountain.
   Q. Or, really? Is it not--is it a commercial real estate project?
   A. To my understanding, it is. There is years of attempted sales without success.

BY MR. Di ROSA:

MR. Di ROSA: Okay. So let's go with this video here.

(Video played.)

BY MR. Di ROSA:

Q. So they have a dirt road, other dirt roads. You know, that's--this is Aloma, is it not?
   A. Yes.
   Q. And do you see any housing structures of the sort that you had?
   A. I do not.
   Q. Do you see a road there that's comparable to your road?
   A. No.

Q. Do you see any housing project on this mountain?
   A. There is a housing project on the mountain.
   Q. Or, really? Is it not--is it a commercial real estate project?
   A. To my understanding, it is. There is years of attempted sales without success.
couple more in different degrees of construction, but that would be an estimate.

Q. 65? Is that what you said?
A. Maybe 60, 65, 67. I don't have--I haven't been there very much in the last several years.

Q. So, that's a lot of houses on the mountain, is it not? I mean, certainly more than two or three, whatever it is that--structures that Domínguez has.
A. Yes. There is more in Jamaca de Dios.
Q. And you said that the roads that Mr. Domínguez had constructed were generating a lot of erosion; is that right?
A. It was a massive environmental impact seen from everywhere.

Q. Including erosion?
A. Massive erosion.
Q. Massive erosion because of the roads?
A. Because of the horrible road and design, yes, sir.
Q. All right. Because that's--that's what was causing the erosion, in your view, is the badly constructed roads; right?
A. Without any environmental consideration whatsoever, yes, sir.
Q. All right. Now, let me take you now to Page 2 of the permit. And we're still talking about the permit for...

Do you recall signing this document, the EIA, yourself? I mean, you said that your environmental consultants prepared it, but do you remember signing it?
A. I don't remember signing it. But if my signature is there, then it's mine and I did sign it. But I don't remember specifically signing it.

Q. Right. Let me--it's at Exhibit C-4 on Page 3. So it's being explained to me that it's the same document at Exhibit C-4. The version that your counsel submitted included the signature page which appears on the screen here. It's at the end of C-4.
A. Yes. This is my signature.
Q. Do you see that?
A. Yes, sir.
Q. All right. So what this document says is, "I, Michael Ballantine"--and I'm just free-translating here. But "I, Michael Ballantine," and then it goes on to say--"me comprometo en nombre del mismo a dar fiel cumplimiento a los requisitos establecidos en el permiso ambiental" (in Spanish)."

MR. DI ROSA: Do you have that?
(Comments off microphone.)
BY MR. DI ROSA:

16 English Audio Day 2 at 02:36:35

Q. All right. So what this says--and you can correct me if I'm wrong. It says: "I commit on behalf of del mismo"--which is the project--"on behalf of the same"--which is the Jamaca de Dios project--"to give faithful compliance to the requirements established in this permit."
A. Yes, sir.
Q. And then you go on to say at the end, "which I have read and understood" is part--I mean, you see that part that says "I have read and understood it?"
A. Yes.
Q. All right. And you say that that--those requirements are an integral part of the approval of the permit; is that right?
A. Yes.
Q. Let me direct your attention now to Page 26 of 126 on this EIA document. Again, that's the reference to the lower right-hand number.
And this is still R-103, for the benefit of the Tribunal.
A. Are you there?
Q. 26 of 126.
Q. All right. Now, at the end of this document--sorry.
articulating your own understanding of what the environmental impacts would be of your lower mountain project; correct?

Q. Yeah, the hierarchy of impacts.

A. Okay. Yes, this appears to be correct. Yes, sir.

Q. Okay. So this is your own environmental consultants and your assessment, because you signed this thing, of what would be the different kinds of impacts.

And they're classified in high significance, medium significance, and low significance.


High significance impact is how it's translated in the English.

So let's focus on the high--the high significance impact in the construction phase. It's divided into construction phase and operation phase.

In the construction phase, there are six impacts that you--environmental impacts that you classified as high significance that are listed here. Do you see that?

A. Yes, sir.

Q. And two of those are described as negative. Do you see that?

A. Yes.

Q. All right. And the two negative ones are change in landscape while the construction work is taking place. Is that correct?

A. That is correct.

Q. So these are all risks to the environment that you--that you and your environmental consultants identified in connection with the proposed lower mountain property; right?

A. Yes, sir.

Q. So this didn't relate at all to the potential impact on the upper mountain. This is just the lower mountain; correct?

A. Yes.

Q. And as it happened, in the end, you never actually presented an environmental assessment for the upper mountain project because you didn't get that far in the permitting process for that project; is that correct?

A. Yes.

Q. All right. Let me take you now--and still in the same document here--to Page 61 of 119.

Sorry. 62, I guess, in the English.

Do you see at the bottom of the page there it says "Construction Phase"?

A. Which page?

Q. Sorry. 62 of 126 in the English.

Right? Do you see that? Are you there?

A. Yep.

Q. So the heading there two-thirds of the way down the page is "Construction Phase."

And then it says "Construction"--the subheading--"Construction of the project's access roads and internal roads."

Do you see that?

A. Yes.

Q. All right. So, let's just take a quick look at...
BY MR. DI ROSA:

Q. So, basically, this chapter, this plan, is a plan that the project promoter—in this case you—prepares to mitigate the adverse environmental impacts of the project that are identified in the Environmental Impact Assessment; right?

A. Yes, I got that. I'm assuming what you're saying is true. Yes.

Q. So you don't know what purpose of—

A. I'm sorry. I've got the Spanish version again. I didn't—

Q. So you don't remember this plan, in any event? Could you tell us what it is?

A. I don't remember the plan.

Q. The English is behind your blue sheet there, if you wanted to—

A. Yeah. And it's R—

Q. On the Spanish version, it's Page 78.
A. Okay. I just have the Spanish version. I don't have that one. I'm sorry.
Q. All right. Well, we'll figure it out here.
A. Oh, there it is. Yes, sir. Page 80.
Q. All right. So, it starts at Page 80. And the general objective that's identified at the top of this plan is, "To protect the soil from pollution and deterioration of its physical-chemical properties."
And then it also says, "To contain and prevent erosion by applying effective measures."
That's--sorry. That's at Page 95. So you're going to have to skip ahead a little bit.
A. I'm on Page 95. Yes, sir.
Q. So, at the top it says "General Objective"--and this is the General Objective of the Environmental Management Program, they call it here. In Spanish, it's "Plan."
And it says, "To protect the soil from pollution and deterioration of its physical-chemical properties; to contain and prevent erosion by applying effective measures."
Right?

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A. Yes.
Q. So the purpose of this plan here is essentially to mitigate or contain the adverse impacts that you identify elsewhere in this Environmental Impact Assessment; is that right?
A. That is correct.
Q. All right. In fact, below that--immediately below it says "Environmental Impacts"--that's the heading--"Environmental Impacts to be Mitigated."
A. Yes.
Q. And below that it focuses specifically on the impacts on the construction phase--in the construction phase on--and the measures that--it summarizes the actual impacts that you expect in that regard. And then it identifies certain measures that are going to be taken to mitigate those impacts; right?
A. Yes.
Q. So, you know, it says with respect to the two negative impacts that you have to mitigate under this plan, the first one is change in land use. The second one is increased risk of erosion caused by vertical land cutting for construction of the highway; right?
A. Yes.
Q. All right. And then there's a third one, increased consumption of aggregates. So that implies more extraction; right?
A. Yes, it does.
Q. Then you have the actual measures that you propose for mitigating these impacts; right? Immediately below that. Do you see that?
A. Yes, I do.
Q. "Measures proposed."
And it says for the first one, there are no possible measures. That's it. You're stuck with the change in land use; right?
A. Is that as a result of the assumption that the road has already been built? Is that what that's referring to? I'm just trying to understand it.
Q. I mean, I don't know. I'm asking you. This is your document; right?
A. I'm assuming it's because the road was already built. But that's just a guess. I don't know, though.
Q. This is the whole project, not just the road; right?
But in any event, then you have "Development of a pilot plan for containing erosion, with installation of living barriers made from plants installed in a laddered arrangement."
Right?
A. Yes.
which says “artículo 122 se prohíbe dar...” (in Spanish.)

"Article 122: Using mountains land with slopes
equal to or greater than 60 percent for intensive plowing,
tilling, removal, or any other work that increases the
erosion and/or sterilization thereof is prohibited. Only
the establishment of permanent plantings of fruit bushes
and timber-yielding trees is permitted."

Do you see that?
A. I see that.
Q. All right. And are you generally familiar with this law?
A. Quite specifically.
Q. Right.

And at what point did you—as early this morning you told us that you weren’t really familiar with the regulations and laws. And so at what point did you kind of become seized of the law? Do you remember roughly in connection with what phase of development of your project?
A. September 12th, 2011.
Q. All right. 2011?
A. Yes, sir.

In respect to the slope. That’s the context—that’s what you’re referring to and that’s what you’re asking me.

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Q. No. I was asking you generally when you became aware of this law.
A. This particular article, on that date, yes, sir.
Q. And so you bought this land—you started buying this land in 2003, and you didn’t become aware of the environmental law until 2008—eight years later, until 2011?
A. No. I knew there was an environmental law. I didn’t know when. Look, I’m sorry. The context was Article 122 I was responding to. Maybe I misunderstood you.
Q. But, yes, I did—I was aware there was environmental law.
A. That is correct. I had never at any point read the entire law.
Q. But this particular article you essentially just became familiar with or more aware of when the permit was denied in September 2011; is that—
A. That is correct. I had never at any point read the entire law.
Q. And this clause, it focuses on intensive plowing, tilling, removal, or any other work that increases the erosion of the land; is that right?
A. That is correct.
Q. So, that’s—I mean, that’s a key part of the concern here that the legislator was expressing as we want to protect the land from intensive tilling, plowing, removal, because of the erosion; right?
A. That is correct.
Q. All right. After receiving the permit that we just looked at a moment ago from the Ministry for your lower mountain housing project, what we call Project 2, what other government approvals did you obtain?
A. I obtained a letter of no objection from the City.
I obtained the land use permit from the City of Jarabacoa.
I subsequently received a permit from the Ministry of Tourism.

Could I—-you moved away from that law. Could I say anything on that?
Q. Sure. Absolutely.
A. Okay. I’m passing.
Q. Sorry?
A. No, thank you. I’m done.
Q. You don’t want to comment on the law?
Sorry. I’m confused.
A. No, I’m not going to comment on the law.
Q. You wanted to;--
A. I changed my mind. I’m not a lawyer.
Q. Some would say you’re fortunate.
Okay. After you received—all right. So, you said you received a number of permits or authorizations, I should say, after the initial Ministry of Environment permit. And then—and then at that point you were able to move forward with your mountain housing project; right?
A. Yes.
Q. So, you sold the lots and the houses were built on those lots on the lower mountain; right?
A. Yes.
Q. And you said that between 60 and 65 houses were built in the end; right?
A. Well, there’s projected more. But I think currently as of today, that’s about where we’re at.
Q. And you also built the Aroma Restaurant; right?
A. Yes, sir.
Q. And once the houses on the lower mountain were built and once you had—I see you’re getting tired. We’ll stop.
A. No. No. Keep going.
Q. Let me just ask this--
A. Just nervous.
Q. Let me just ask this last question and then maybe I’ll propose a lunch break.

So you constructed the houses on the lower lots—I mean on the lower mountain lots, or you sold them and houses were constructed. Then you built the Aroma Restaurant. And that completed what you call Phase 1; right?
A. Yes. Yes, sir.

Q. And in our nomenclature--

A. Excuse me. That--that completed what I was authorized to do. For me, there were two condo projects planned as well in Phase 1.

Q. And in our nomenclature that means--that refers to the completion of Projects 1 and 2, the road and the lower mountain housing development, right?

A. (No audible response.)

MR. DI ROSA: So, I think, maybe with this, we can stop. Mr. Chairman, and take a lunch break.

PRESIDENT RAMÍREZ HERNÁNDEZ: I guess it will be an early lunch.

THE WITNESS: We can keep going.

MR. DI ROSA: It's 12:15. We can keep going. He looked a little tired, but if--

THE WITNESS: No, I'm good.

PRESIDENT RAMÍREZ HERNÁNDEZ: But you tell us.

MR. DI ROSA: Okay. Then we'll keep forging ahead.

BY MR DI ROSA:

Q. So, you know, we're going to start on the topic of the permit process for Project 3, what we call Phase 2, the upper mountain road.

So, you know, once were your lower mountain project was up and running, you began to focus on the upper mountain project; right?

Q. Phase 2.

A. Yes, sir.

Q. So, let's start with your permit application for the upper mountain housing development. This was a development that included internal roads; right?

A. Yes.

Q. All right.

A. Is there a particular document or are we just--

Q. Not yet.

A. Okay.

Q. I'm just asking you general questions. I mean, we'll go to a document.

So, you're--well, let's just go to it, then. Exhibit R-106 is your permit application for the--what we call Project 3.

Do you see that?

Q. All right. And it's a document dated 30 November 2010, Exhibit R-106.

And you submitted that to the Ministry of the Environment; correct?

A. That is correct.

Q. And was Freddy González still your lawyer when--

25 English Audio Day 2 at 01:01:47

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Q. All right.  Now, let me take you now to another
A. Yes, sir.
Q. And the technical team completed an inspection
form and produced a site visit report.
Are you aware of that?
A. I have only become aware of any internal document
as a result of this arbitration.
Q. All right. Fair enough.
Let me direct your attention to the site visit
report. Well, actually, this is a different--this is a
form that was filled out by the site inspection team,
R-108.
So let's take a quick look at these different
factors. If you could scroll down a little bit. It says
there are--this is filled out by the--you know, the site
visit inspection team--the technical team from the
Ministry. And basically, they're kind of marching through

Q. So--and then skipping down to Point 5, it talks
about earth removal to be carried out in the
construction phase. So this is the site inspection team
saying that the earth removal that would have to be carried
out in the construction of this project would be very
large. See that, Point D. Over 500 cubic meters. And
then in Point 6--
Q. Could we just look at Point 4 as well.
A. Yes, sir, I see it.
Q. Sure. Point 4. "Bodies of water inside the land
project, none observed." Right. Then six says, "Location
of the place where the earth"--"removed earth will be
disposed of." And then it says "inside the project area."
All right. So going down to nine, it says
"magnitude of the impacts of the construction and
facility," and it says "high." Are you there? Are you
following me?
A. Yes, sir, I see that.
Q. And then Number 10 says, "Does the project
contaminate the soil and subsoil?"
And they say, "Yes, significantly," Point D. Do
you see that?
A. Yes, sir.
Q. All right. Now, let me take you now to another
technical--this is a checklist, I guess, that they went

Q. On Page 2. You're there; right?
A. Yes.
Q. In this report, the technical team identifies a
number of problems with the site that you were proposing
for the upper mountain project. And they say--let's go to
the conclusions and recommendations at the end on Page 2.
It says, "Because of the area's environmental
susceptibility and natural risk, the topography of the
slopes, which, in a large part of the area, are greater
than 60 percent, the geomorphology, the natural torrents,
the existing vegetation, the characteristics of the
buildings being constructed in the project area," and it says,"and possible infringement of Article 122 of Law
64-00."
This English version has a grammatical flaw that
I'm trying to determine if the Spanish one has. No, it
looks like the Spanish one also is, as far as I can tell,
grammaratically incorrect. But it does identify all
these--all these problems with the project; is that
correct?
A. Yes.
Q. All right. And see, it says, "The characteristics

Q. None of your environmental consultants, either
Empec Redes people or Antilia people, are among the 20
witnesses that you presented; right?
A. No.
Q. So once you submitted this request to the Ministry
of Environment, the Ministry sent out a technical team to
conduct a site visit; right?
A. Yes.
Q. And the technical team completed an inspection
form and produced a site visit report.

And they say, "Yes, significantly," Point D. Do
contaminate the soil and subsoil?"
A. Yes, sir, I see that.
And we'll come back to this topic, obviously. But
then it says--you know, the soil it characterizes as
moderate.
MR. Di ROSA: I'm not sure. Is there an English
version?
BY MR. Di ROSA:
Q. And then it says, you know, the land is clay--clay
and sand-ish; is that right? Clayey and sand-ish.
Sorry. Let me get--calcareaous and sandy clay, I
guess, is the translation.
Do you see that? Do you see that?
A. Are you asking me?
Q. Yeah.
So let's focus on the road first. Is that what everybody agreed would make sense?

A. Yes, that was the recommendation. That's what we did in Phase 1 as well.

Q. Right.

A. And we felt like that was logical.

Q. And that's because the road has the biggest environmental impact, I suppose, right?

A. It was—no, that's a false characterization.

Q. That's what your lawyer said. Remember that?

Freddy González.

A. That. But in terms of what my conversation was, was I didn't know exactly how the lots would be laid out.

By then, we had a different technology. We had a different engineer. And we were ready to create various options at the top of the mountain.

But for esthetics and land usage. And would it be 70 home sites, 64, 82? You know, we just didn't know, esthetically, what the best lay out and what we would be specifically requesting at that point. Because by then we had different technologies in place.

Q. Right.

A. But I'm not denying there would be an environmental impact, if that's the thought behind the question.
A. Yes, because we did environmental compliance

Q. So, the question is (a) were you under the understanding that the Ministry had to keep you--was there a legal requirement for the Ministry to keep you informed step by step of what they were analyzing? Was that your understanding of what the legal regime required?

A. That's what he's suggesting here.

Q. And it says, "This zone of high environmental fragility and of high natural risk should not be inhabited by humans given that it is unstable and highly dangerous."

No work was observed on the land for the protection of the access roads of the villas in a zone of high natural risks where the layers of sedimentary rock and volcanic rock that lie on the surface do not have a high degree of cementation and their resistance to breakage has been diminished by natural phenomenon which alter the region's safety factor, increasing the power of driving forces and weakening resistant pull."

And then it says, "The alteration of these natural parameters causes landslides resulting in damages, loss of life and properties. Driving forces and resisting pull are also interrelated with variables such as: slope and topography, climate, vegetation, water and time."

And then it goes on to say, "Environmental Violations: The project owners violated Article 122 of Law 64-00."

"Conclusion: Institutional weakness in the veracity of economic interests combine to deliver a heavy blow to nature in the Municipality of Jarabacoa, and currently plans are in place to construct a similar project to the one under construction, without having completed the one for which a permit was granted in an environmentally fragile zone. It is not necessary to be a genius in environmental sciences to see this. This zone of high environmental fragility and of high natural risk should not be inhabited by humans given that it is unstable and highly dangerous. The zone has large natural watercourses, which have been intervened, and a water deposit has been constructed in the foothill measuring 2 meters in height and 10 meters in width with tubing comprised of a 4-inch inlet and a 2-inch outlet."

So they're saying you haven't completed yet--so the project for Phase 1 was still kind of ongoing in the sense that all the villas--all the houses weren't built yet. But at that point, you're moving to Phase 2.

And what these inspection technicians said is, you know, you were granted a permit for the lower mountain construction in an environmentally fragile zone. And it sounds like the person who wrote--or the people who wrote this thought you shouldn't have even gotten--received a permit for the lower mountain project; right? Is that what that suggests?
correspondence on any level whatsoever other than the rejection letters that were CEI-RD.
Q. Right. And that's what I'm asking you about. Is it your understanding that the Ministry had a legal obligation to kind of send you interim reports, so to speak, to keep you apprised of what they were thinking on a technical level?
A. I don't know about a legal, but I think ethical and I think they demonstrated that with other projects.
Q. Ethical obligation?
A. Yeah, because environment and business need to work together, you know, and look for a way forward for both objectives to be met in a symbiotic relationship. The developer completing with the environmental objectives along with the developer, you know, to provide the economy and jobs for people, and you come together and you work on a plan. This you can do. This you can't do.
There was no communication or transparency on any level whatsoever. I never saw a document until now.
Q. Right. So you're not aware of any legal requirement that the Ministry had to kind of keep you abreast of what they were thinking about, you know?
A. I am not aware of anything legally, but it's obvious by the documents with every other project that--
Q. Right. But, see, what troubles me is that we

had--maybe you were under that impression when you first received this denial, that it was all about the steepness. Although we showed in the opening, it wasn't only about the steepness because they had identified three different factors; right? The steepness of the slopes and really the focus on erosion, and then they had also said environmental fragility which is what they were talking about in this report. And they said safety, which what they're talking about in this report.

But what troubles me is you say, well, you know, I didn't know that and now I'm seeing these reports. But we submitted these reports into evidence before your last one or two submissions--you know, your last one or two pleadings in this arbitration, and yet you're still saying this even as late as the opening.

And so my question to you is: Looking at this now, do you agree that it was a mistake to say that the Ministry was only thinking about the steepness of the slopes, that that was the only issue, so to speak?
A. Yes, sir. Because in the same document that you referred to, my second and third denials where you laboriously indicate that I indicate angle versus percent, you--in the first of--the Respondent in the first denial mentions slopes and environmental fragility.
Q. Right.
Q. And you're still--I mean, you never received the waiting for the Phase 2 approvals."

Q. So let's focus on this letter then, the previous letter for the upper mountain project permit that we're looking at; is that right?

Q. Yes. It would not have made sense. I was--at that point, there was increasing government pressure on many different levels, and I felt that with the treatment of Jamaca de Dios, with the increasing mistreatment that I've received from the government, that although Paso Alto was permitted, that I was not secure that this kind of ongoing mistreatment would not continue.

Q. Right. Okay. So let's focus on this letter then, the previous paragraph. This is still C-8, which is the permit denial letter; right?

A. Right. Okay. So basically, it was a business decision not to pursue the Paso Alto. You could have done it, but you know, you didn't because the permit for your own project had been denied; right? Or had not been granted at that point?

Q. Yes. I'm sorry--"Paso Alto as a stand-alone development. I knew that my ability to turn Paso Alto into a success was contingent upon my ability to expand my own project further up the mountain, and I could not justify buying it without our Phase 2 permission. I decided not to execute the final sale and stock transfer while still waiting for the Phase 2 approvals." Correct? That's what you said?

A. Yes, that's correct.

Q. And you're still--I mean, you never received the Phase 2 approval so--
corresponding assessment."

So in this final paragraph, they're saying to you, "look, you can't do it in this particular place. You have to do it in another place."

I mean, it happened that you didn't have land anywhere else and that was unfortunate, but, you know, you could have bought land somewhere else, could you not have?

A. At that time, Jamaca de Dios represented by far the largest FDI in the history of the area. When you multiply the value of the infrastructure and all the investment dollars in the area, it was by far the largest investment in the history of Jarabacoa and still is to this day. It didn't make sense. I was not going to bring the mountain to Mohammed. That's where we were.

Q. So you just wanted to do it on the mountain regardless?

A. No.

Q. And that was--

A. Yes, I wanted to do it on the mountain that we had worked so hard to develop, did something beautiful, became a landmark in the country. Incredibly impacted and transformed the local economy. And, yes, I wanted to continue in that area while complying with all the environmental laws and regulations and was willing to adjust on any level whatsoever to complete in order to continue. And I communicated that several times to the Ministry as well.

Q. Right. But what if you can't--you know, what if it just can't be done on the upper mountain because it's too steep and too environmentally fragile and too unsafe?

You know, in those circumstances, it just can't be done and you're saying, well, they had to find a way just because it's the biggest investment in the area?

A. No, I'm not saying that. But in the area for development, according to both Navarro's maps--Witness Navarro, as well as the cave slope maps, there's one little part up in the northwest quadrant that has slopes over 60 percent. Your own witnesses provided maps, the northeast side and going up to the little hotel. It wasn't some big Hyatt. We were doing little tiny cabins, ecofriendly. That's what the hotel plan was.

And all that area, none of it has 60 percent. All usable, all developable, and it was all thrown in the garbage.

Q. That's fine. But, you know, I mean, that would make sense--I suppose if you could--if you could bring, you know, a bunch of houses on a helicopter and just deposit them on the mountain, you know, maybe that would work. But you have to build a road; right?

So if the road necessarily has to go through...
because it's physically impossible to construct a road
going up the top of the mountain without carving into areas
that are steeper than 60-percent slopes, then you have a
problem that affects all the houses; right? You know, you
can’t have the houses without the roads--I mean, without
the road. And the road, you know, is--I mean, there's only
so many ways you can take it up there.

A. 85 percent of it is developable. The first part
is 100 percent developable and would not pass through any
slopes. That's indicated in the imagery produced by both
witnesses from both Parties.

Q. We're going to have --
A. So there would not be any slopes at all
whatever.

Q. We’ll have the technical people testifying this
week.

A. Yes, sir.

Q. So we'll hear what they have to say about that.
But, you know, what I hear you saying is--I mean, earlier
today you said, you know, "I saw this mountain. I had a
vision. I didn't check with any government authorities or
with any environmental consultants or with any
environmental lawyers. I didn't do due diligence. I
didn't do engineering studies. I didn't do anything. I
had a vision. I had an instinct. I'm an entrepreneur, and

I just knew that I could do this."

And then you discover that, you know, you were
able to do the lower mountain. And we saw this person at
least had a doubt about whether you should have even gotten
that. But then they told you, "You just can't do it in the
upper mountain because it's too dangerous."

But you say, "Well, it's the biggest investment,
and I had a vision." And--

A. I was responding to moving the project. That's
what I was responding to.

Q. Well, right. I mean, so, you know, there are
people, including--my understanding is that one of the very
witnesses who is going to testify this week, who had a
similar situation where he--who had a project that he was
proposing to the Ministry of the Investment--of
Environment, and he got denied initially. He was told
pretty much this.

They said, you know, "If you can come back with
another place, fine, we'll take another look at it." And
he did that.

And it happened that his property did have, you
know, because of its topography --

PRESIDENT RAMÍREZ HERNÁNDEZ: Counsel, could you
try to focus on questions regarding the testimony?

MR. ALLISON: Thank you. This is argument from
counsel, not questioning.

MR. DI ROSA: All right. Fair enough. You know,
I'm just getting him to interpret some of these terms--

PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.

MR. DI ROSA: --and how he understood them and,
you know, why he thinks that he was entitled. Despite this
specific invitation to submit a different place, that he
insisted on his mountain.

So--but, you know, we can--let's move on to the
reconsideration process.

BY MR. DI ROSA:

Q. You have this denial. You have this invitation to
submit another place. You say, "I don't have another
place. I want to do it on the upper mountain the way that
I proposed it."

And so instead of submitting a new place as they
had asked you to do in this letter, you submitted a
reconsideration request.

PRESIDENT RAMÍREZ HERNÁNDEZ: Sorry, Counsel. Are
you moving to another--

MR. DI ROSA: To the reconsideration process.

PRESIDENT RAMÍREZ HERNÁNDEZ: Yeah.

MR. DI ROSA: And maybe this would be a good time
to take a break.

PRESIDENT RAMÍREZ HERNÁNDEZ: Yeah, that's what I
MR. DI ROSA: C-010, yes.

Q. So, then you know, we were talking before the break about the reconsideration process. And as we were discussing at the end of the previous session, the Ministry had invited you to submit an alternative proposal, but you did not do that. Is that right?

A. Yes, sir.

Q. Yes, you did not do that?

A. Wait. No, I did not--I did not submit an alternative site proposal.

Q. Thank you. Instead, you submitted a request for reconsideration of the permit denial; correct?

A. Yes, sir.

Q. All right. So, let's take a look at your first reconsideration request, and that's Exhibit C-10 in your binder.

I should note for the record that we're using the Dominican Republic's translation of this document because the Ballantines did not submit an English version.

MR. DI ROSA: C-010, yes.

MR. DI ROSA: Thank you, Mr. Chairman. And good afternoon, Mr. Ballantine.

Q. So, this is the first reconsideration request that was submitted on behalf of Jamaca de Dios. Do you remember who did this letter? Did you do it yourself or--it's signed by you.

A. Yes, I believe I drafted this letter myself. I think so. Yes, sir.

Q. All right. And in this letter, you did not offer to the Ministry any change in your original proposal, did you?

A. I did not because I thought the basis was a mistake.

Q. So, instead, you simply insisted on the original project and emphasizing the mistake which related to, in your view, the steepness of the slopes on the part of the property that you were proposing for the project; right?

A. Yes, sir.

Q. All right. And then specifically, you said that there was an error in the slope because--and I'm quoting here, "Development is not permitted in areas where the slope is greater than 60 degrees, and this is correct.

However, the slope where we were trying to create a simple access road is only 34 degrees and is, therefore, within the permitted margin."

Do you see that?

A. I do.

Q. And you have explained that that was a mistake. You confused the degrees with the percent, and Ms. Cheek did that yesterday, and I've done it, you know, a hundred times in the course of the last few months, as my team will attest. So, that part I understand.

A. Yes, sir.

Q. The part that I'm struggling with a little more is--so you got this permit denial, and you wrote this letter, and you say you wrote it yourself.

Did it occur to you to run it by an environmental consultant or environmental lawyer? I mean, were the Empaca Redes consultants still under your employment?

A. Well, sir, at this point, I just had the perception and the feeling that the previous Minister was not being fair to me in a lot of ways, and it's expressed in the second paragraph.

And he left, and then there was a new Minister, and I thought I'd get a better evaluation. And so there was no--I calculated the slopes. I didn't know exactly what they're referring to. And according to the top of Phase 1 to the top of Phase 2, it is a 34 or a 32 percent.

And so I didn't know if they were talking about a certain area or the whole thing. And so I'm saying the overall area is not that. Because that's all I had to go on.

And so that's what I was responding to. Could you please appeal, could you please review this because I think there's an error in the math.

Q. Right. But at this point you no longer had an environmental consultant that you were discussing this stuff with; is that right?

A. At this point--well, yeah, I was working with Empaca Redes. They were in the process. I had an agreement with them that they would do the steps necessary to get to the place of an approval. So, I don't think they wrote this. I thought this was just me because I felt like it was a mathematical error and . . .

Q. So, when you say, then, "I measured," do you literally mean you measured it? Did you--you personally measured it, the slopes?

A. Yes. It's a simple function on Google imagery where you just take the one point to the next, and then you--it has a distance, and then it has an elevation gain, and it simply shows what it is.

And that does bear out. That is a reality, that the average slope--and I think Mr. Navarro responds to that, that's just not the way they do it in the Ministry, so--
Q. Doesn’t it depend on variations in the topography on different part of the mountain?
A. I was --
Q. I mean, you said like you took an average. So, if you have, you know, part of the mountain that’s flat and then the mountain--I mean, I’m not saying this is the case, just hypothetically.
A. Right.
Q. Say it’s -- you know, you’ve got a flat part and then a really steep part. The average will be, you know, say, whatever, 34 degrees. But if your road is going to go from here to the top--
A. 34 percent.
Q. Yeah. If it’s going to go from here to the top, though, that might be--that part might be steeper there, right? I mean, it’s not the average that counts?
A. I did not know what they were looking for at the time. I just calculated it because I thought they were talking about the entire area was that. And so I was just demonstrating that it wasn’t that.
Q. Did you have an environmental lawyer employed at this time?
A. I did not.
Q. Okay. So, you did have Empaca Redes. Why didn’t you ask them to do the calculations of the slope?

Q. So, the time that you used Google Earth is the one referring to the first denial, I did use Google Earth.
A. Yes, sir.
Q. Let me just stop you there.
A. Yes, sir.
Q. So--sorry.
A. Yes, sir.

Regarding what was expressed in the communication--
Q. So--sorry.
A. Yes, sir.
Q. Let me just stop you there.
A. Yes. It’s a device to measure slopes.
Q. Right. But you said you used Google Earth to measure the slopes; right?
A. In the first one, yes. But subsequent to that, we used many different calculations. And that particular one, referring to the first denial, I did use Google Earth.

Q. So, the time that you used Google Earth is the one that yielded the 34 degrees that really is 34 percent--
A. Yes, sir.
Q. -- right?
A. Okay.
Q. But we did many subsequent studies because of the urgency and the pressure we were feeling of being denied.
A. Yes.
Q. -- agreed?

- Q. -- agreed?
- And were you there when the Ministry’s technical team did its site visit?
A. I remember I was there for the first two. I don’t recall on the third one. I’d have to look at the notes on that and see if I recognize a name. I don’t know.

- Q. All right.
- A. I might have been out of the country at that time, I don’t know.
- Q. Do you recall that the technical team was composed—that was sent by the Ministry was composed of an entirely new group of technicians from the Ministry’s national office, none of whom had been involved in the previous site visit?
A. I don’t recall who was involved.

The list shows that only overlapping member of the site visit team was the Director of the Province Office. So, everybody who came from Capital was a different person, a different technician.
The technical team that visited the site visit after your first reconsideration request produced a site visit report that I want to take you to, which is Exhibit R-105.
If you go to Page 3 of R-105, and if I could ask you to read the first paragraph because my voice is failing me. If you don’t mind, Mr. Ballantine.
A. Under “Brief Introduction”?
Q. No. So, where it says--sorry. Where it says “In the field visit,” starting where it says “Field Evaluation,” the heading “Field Evaluation,” and then it says “In the field visit.”
A. Is it on the first page?
A. Oh, I’m sorry.

“In the field visit, using a clinometer, we could verify that the slopes in the project area were of various ranges, with slopes between 20 and 37 degrees, which, in percentage terms, would be 36 percent and 75 percent respectively.

Q. So--sorry.
A. Yes, sir.
Q. Let me just stop you there.
A. Yes. It’s a device to measure slopes.
Q. Right. But you said you used Google Earth to measure the slopes; right?
A. In the first one, yes. But subsequent to that, we used many different calculations. And that particular one, referring to the first denial, I did use Google Earth.
Q. So, the time that you used Google Earth is the one that yielded the 34 degrees that really is 34 percent--
A. Yes, sir.
Q. -- right?
A. Okay.
Q. But we did many subsequent studies because of the urgency and the pressure we were feeling of being denied.
A. Yes.
Q. -- agreed?
you did not use a clinometer that first time but, rather,
Google Earth, that your measurement was inaccurate?
A. No, it's not possible.
Q. Not possible?
A. No. Because we subsequently confirmed what I was
saying in my letters using a clinometer, amongst other
measuring devices.
Q. Let's skip ahead to Page 6. There's a section
there called "Comments."
Can you read that section into the record for me,
Mr. Ballantine? Thank you.
A. "After carrying"--
Q. Yeah. Sorry, go ahead.
A. "After carrying out the field visit to the Jamaca
de Dios Expansion project, we were able to verify that
slopes are, for the most part, very steep, and that the
construction of the road entails a great deal of movement
of soil in a fragile area where we would observe landslides
in some areas."
Should I continue?
Q. Yes.
A. "Moreover, the type of construction proposed by
the developer is not appropriate for the location. The
number of stories is very exaggerated, proposing villas of
up to three stories, and most of the materials being used
are"--it should be "not suitable for this area."
Q. Right.
A. "Moreover, the type of construction proposed by
the developer is not appropriate for the location."
Q. Thank you for reading that, Mr. Ballantine.
So, this is a new technical team from the Ministry
reaching the same conclusion that the previous team did.
And this team is saying that they observed landslides in
some of the areas, and they also observed that the type of
construction was not appropriate for the location.
I mean, was there--was the plan essentially to
build houses in the upper mountain similar to the lower
mountain ones? I mean, did you have any limitations on the
type of construction you would have up at the--in the upper
mountain?
A. We would have done anything that the Ministry of
Environment would have allowed us to do. The intention was
to continue the successful Phase 1 for the extension of
Phase 1. But if they would have said, "No, you can't do
that, you can do this," then we'd have gladly accepted
that. But there was never, at any point, any communication

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or options given.

Nor did we propose any specific houses in Phase 2.
And according to this, they're saying what I'm proposing
for Phase 2 doesn't qualify. I never proposed villas of up
to three stories. And as a matter of fact, the one slide
you saw was a two-story house. There was a basement--a
walk-out basement. So, that's not three stories,
technically.
Q. All right. After this technical visit, the site
visit from the technical team, the Ministry sent you a
letter denying the reconsideration request.
Do you remember that?
A. This is a second denial letter, correct, or the
first one? Well, they sent me--this is my appeal, yeah,
January. Yes. And then I think in March I received my
second denial letter, and that's--
Q. Right.
A. --where they outline the charge.
Q. So, the first was the permit denial itself, and
the subsequent letter is--the one that we're about to talk
about is the first reconsideration. Denial shall we call
it?
A. Yes, sir.
Q. All right. Now, earlier you were asked--at the
beginning of this session today, you were asked by your
lawyers on direct examination, "Did any of the MMA
rejection letters specifically identify the road as the
reason why your permit was being denied?"
And you answered, "Never."
Q. Do you remember that?
A. Yeah, I might have made a mistake. I thought I
didn't talk about the road. Did I misremember?
Q. Well, that was--I mean, I'm looking at the
transcript 263:19-22. And the question was: "Did any of
the MMA rejection letters specifically identify the road as
the reason why your permit was being denied?"
And your answer was, "Never."
A. I thought--
Q. Is that a mistake?
A. I might have made a mistake. If you have evidence
that the rejection letter is due, then it did, and I was
wrong. I don't remember that, though. I thought, you
know, that it never mentioned the road.
Q. When he asked you that, you didn't say, "I don't
remember." You said, "Never."
A. From what I--at the time--yes, I--yeah. I
answered that thinking that it never did. If I
contradicted myself just now, then perhaps--I wasn't trying
to be deceptive.
Q. No, I'm not--
A. Does the rejection letter say that? I haven't seen that.
Q. Well, we'll take a look at it, but let me just understand first. Did you not read these letters, the, you know, various reconsideration denials and so forth, in preparation for this hearing?
A. Yes, but not in the last week or two. I didn't read those specifically.
Q. All right. Let's go to Exhibit C-11. This is the letter that the Ministry sent.

ARBITRATOR CHEEK: Mr. Di Rosa, I'm very sorry to interrupt. Is the Tribunal only supposed to have one binder? There's just a lot of documents you refer to that aren't in our binder. So, are we supposed to have two binders or one?
MR. DI ROSA: Let me ask about that because I don't know.

MR. DI ROSA: Yeah. I apologize, Ms. Cheek. It appears that a few of these documents were not in the binder, so we're showing them to the witness from the binders of the record, which means that you would have to rely on what's on the screen or pull it up if you have the ability to do that. I apologize.

ARBITRATOR CHEEK: Okay. Thank you.

But the context is--I was worried more about the--you know, the build. But you were right.
Q. All right. Now, in this letter, the Ministry reiterated to you the problems with your proposed site; is that right?
A. I believe this was the first time they mentioned anything about--besides the slope law, to me, they defined what they meant by "environmentally fragile," and they named some specific laws.
And so on the basis of these specific laws--because the four rejections were the only communication whatsoever we ever received from the Ministry, we began to respond to what was written here and the only thing we received.
So, in my perspective, they amplified the slope law and then they defined what they meant by "environmentally fragile."
Q. Right. So, basically what they were doing is they were saying you--your proposed site still has the same problems, but let us explain in a little more detail why it's a problem. Is that fair?
A. That's the way I interpret it, yes, sir.
Q. Yeah, okay.
So, let me see. So, on Page 1 they have an enumeration of the reasons that the project is not viable.

BY MR. DI ROSA:
Q. So, Exhibit C-11 is where we are. This is the first reconsideration denial. And, you know, if you could look at Page 2, Mr. Ballantine, the last bullet point--sorry. Is it Page 1?
Yeah, Page 2, the last bullet point at the top of the page there.
A. Do you want me to read that?
Q. Yeah, if you could read into--
A. "The cuts and leveling of lots required to establish the path requested in the constructions would have a great pressure over the mountain ecosystems proposed to be executed."
Q. Right. And in the Spanish, the term that's used is "camino"; right?
A. I don't--
Q. Oh, you don't know, but let me represent to you that's what the Spanish says there. So, that's a reference to the road, though, is it not?
A. Well, I read this to be the creation of the lots for the homesite. But on closer reading, yes, sir. But that was not intentional on my part.
Q. All right. So, they did mention the road to you?
A. Reading closely into this particular sentence, yes, I would say that it does refer to the path requested.
So, in the preceding tick, though, they're talking about the condition of the soil; right? That's their explanation of the--one of the issues that they found.

And in passing, they mention that some of the buildings that were constructed were not constructed in accordance with the authorization that was issued by the Ministry in the permit for Phase 1; right?

A. Yes, sir.

Q. All right. So, the Ministry basically rejects your proposal again, but despite that, you didn't make any changes to your proposal. Instead, you simply submitted a new reconsideration request, a second reconsideration request; is that right?

A. Yes, we did ask for that.

Q. And let me take you--let's look at the second reconsideration request, which is at C-12. If you look at it on the screen, it's a letter sent from Jamaca de Dios to the Minister at the time, Mr. Ernesto Reyna. And in the third paragraph--so if you can scroll up--


BY MR. DI ROSA:

Q. All right. In the third paragraph you say, "We understand there are parameters established, and we are not asking you to question in any way, we are just saying that the extension of our current project is located in a zone with a pitch of 32, and not 60."

Now, earlier, in the previous letter, you had said, you know, 34 degrees, and here you're saying 32 degrees. So, is that because you remeasured; is that it?

A. That could have been. I might have taken like from one part or the next. But either way, it's about half under the requirement of the law. So, my assumption is--I double-checked, and depending on the measurement, it was that.

Q. So, you did the measurement yourself; right?

A. At this point, yes, because I didn't understand what they meant or where they were talking about, and in this meeting in particular, it was a meeting that I attended with the Mayor of Jarabacoa. She said that--she implied that she would talk to Ernesto Reyna, who--they were in the same family.

She said that she was going to push forward the approval of Mirador del Pino because he had donated an ambulance to the city and that she would put in a good word on my behalf.

And she had arranged the meeting where I could sit down and talk with him and explain what Jamaca was, and he was very positive and he said, "Michael, just send me a letter, and that will start the process."

And so it was more of an informal way that--through relationships, I guess, which is common in the Dominican Republic.

Q. So, you just assumed that the problem could be resolved politically, so to speak?

A. I thought being the grandmother of the biological children of the President, that that might be some influence. She had demonstrated that she had a lot of power and influence before. And it was the same family.

And I thought that might help, you know.

And so it was, "Could you please"--and he said, "Please give me a formal letter and we'll take a look at this." And so that was--there was more of a context than just black-and-white letters so--

Q. Right. But the part that I find confusing still is--so this is the second letter in which--I mean, you got a second denial, which was the first reconsideration denial, which told you that, you know, you had this error of the degrees.

And at that point you are on notice that the slope is an issue, in particular the steepness of the slope, but you still didn't run this by an environmental consultant?

Right? Instead, you decided to go the political route, and
Paragraph 2 of your Third Witness Statement, that "It's
And you say in your Witness Statement, in
used by counsel a lot.
Q. So, the term "silly" there is one that has been
BY MR. Di ROSA:
MR. Di ROSA: No, no. I'm leading to it. It's
just a question about drafting and terminology.
MR. ALLISON: Is that just a coincidence, your use of the word
"silly" and the use of the word "silly" in the Claimants' pleadings?
MR. ALLISON: I'm going to object to this line of
questioning as trying to equate Claimants' pleadings to
Claimants' Witness Statements. We heard Mr. Di Rosa,
ten minutes ago, say "degrees" instead of "percent." We
spent enough time on this issue. Can we move on?
MR. Di ROSA: That's--I'm just trying to
determine--you know, I'm testing the veracity of his
assertion that he drafted his Witness Statements,
Mr. Chairman. I think it's perfectly legitimate.

A. I did.
Q. And did you have a hand in drafting the pleadings
as well, or was that done by your lawyers?
MR. ALLISON: I'm going to object to the extent it
calls for attorney-client privilege.
Please don't answer that question.
MR. Di ROSA: I withdraw the question.
BY MR. Di ROSA:
Q. In Reply Paragraph 365, the pleading, you know,
your pleading, the lawyer's pleading, whoever's pleading it
was, it says, "It defies credulity that had the Ballantines
been told that they had to consider a revised plan, that
they would not have done so."
And then it says--period--"How silly is that?"
And that's close quote.
MR. Di ROSA: Is there a question there, or is
Mr. Di Rosa doing his summation as part of his testimony?
MR. Di ROSA: No, no. I'm leading to it. It's
just a question about drafting and terminology.
BY MR. Di ROSA:
Q. So, the term "silly" there is one that has been
used by counsel a lot.
And you say in your Witness Statement, in
Paragraph 2 of your Third Witness Statement, that "It's
silly that anybody would have understood that you meant
he could have said "Okay, this area you can develop; this
area, no."
There was none of that dialogue, none of that
collaboration.
Q. All right. I mean, I--you know, I'm not
questioning you for getting the terminology wrong.
A. Yes, sir.
Q. I'm just questioning the fact that you got it
wrong after you had been specifically told that that
was the error.
A. To me, it wasn't that clear. It wasn't like,
"Michael, you got this wrong, this is what it's saying."
I didn't read that.
Q. But it said--it said it's not viable in the
selected place--
A. Yes.
Q. --because the slopes are between 27 and 37 degrees
but then in percentage terms means 36 and 75. So, I mean,
essentially they were saying, "Look, you know, you--
A. I see that.
Q. --if you think about it in percentages, it's--you
know, you were wrong. So, it was a mistake, in any event,
that you repeated.
Now, did you--so you told us earlier that you
drafted your Witness Statements; right?
Q. In the--in the pleadings, there was a statement in the Reply at Paragraph 201 that says, "Valerio has damned [sic] the natural spring."

A. Remember that I was aware that there was a park that affected part of my property from my environmental consultants.

Q. But my question was--

A. I became aware that there was a park that affected part of my property from my environmental consultants.

Q. Correct. Right. And that's my question, though.

A. I see it.

Q. So this is an email dated 22 September 2010, which is roughly what you had indicated that you remember from around there.

A. All right. And that--you learned about the creation of the park from an email that you received from your environmental consultant; is that correct?

Q. And this environmental consultant is Miriam Arcia; correct?

A. The company is Empaca Redes, and she's an employee.

Q. All right. Because I could see the word "silly" being a coincidence, although it's not usually used in formal documents. But "damned" with an N when you mean--

A. It's spelled d-a-m-n-e-d, which is sending them to hell; right? I mean to the erection of a dam; right? I mean to the creation of the park.

Q. In your Witness Statement, you say--in your Third Witness Statement at Paragraph 64, you say, "Valerio has damned (sic) the natural spring," and you have the same error, damned, d-a-m-n-e-d. Is that a coincidence or does that mean that Mr. Allison drafted that part of your Statement?

A. I wrote my Witness Statement. I think if you look at the context of all the Witness Statements, they're authentic and genuine voice. I wrote my Witness Statements, period.

Q. All right. Because I could see the word "silly" being a coincidence, although it's not usually used in formal documents. But "damned" with an N when you mean--

A. I mean, you are free to point this out about this coincidence.

Q. All right.
is notifying you that this park was created, the Baiguate
National Park, and that part of your property falls within
the limits of the park; right?
A. Yes.
Q. And she tells you that because the park is a
category II park, it is subject to certain use constraints;
correct?
A. Yes.
Q. And she tells you that the part of your property
that falls within the park can only be used for ecotourism
purposes; right?
A. There’s several things mentioned, but ecotourism
is emphasized by them. That red is from them.
Q. So the red is in the original?
A. In the original by them. It was not something--
Q. So they were emphasizing that henceforth—I mean,
that part of the property that you—that fell within the
park limits was going to be limited to ecotourism. Is that
a fair characterization?
A. We didn’t know for sure. They didn’t know. They
said the best thing to do was to just submit it to the
Ministry of Environment, which we did.
Q. So, you know, despite this warning, you went ahead
with your plans to develop the upper mountain project in
the way that you had originally envisioned; is that right?
A. I didn’t know the amount. Maybe 25 percent of the
Phase 2 land.
Q. Okay. 25 percent. And you also went ahead and
made plans to buy excavators to use on that land; is that
right? Do you remember that?
A. We were doing Phase 1 development as well, and an
excavator was a perfect machine for the work that we were
doing in Phase 1. It would have been perfect for Phase 2
as well as the future acquisition of Paso Alto. But we
used that machinery significantly in Phase 1 as well. That
was approved.
Q. And you were planning on using it for Phase 2
also?
A. Yes, that would be logical.
Q. All right. And you also at this point engaged
consultants to formulate a road engineering design; is that
right?
A. Yes, I was talking to Eric Kay, who is a witness
here, about creating a nice road up to the top that would
be a good one that would work.
Q. Okay. And in January 2011, you requested a permit
to construct a project on the upper mountain--upper part of
the mountain; right?
A. Yes. And—yes, sir.
Q. So this new project proposed the creation of 70
lots; is that right?
A. Yes, sir.
Q. And you just told us earlier today that on the
lower mountain, you had about 60 to 65 houses; right?
A. Well, no. Currently, that's how many are built.
But it's been approved for development for 90, but not all
the homes have been built yet.
that were approved for development, no park restrictions, and it was just going to be a change of plans.

Q. All right. So in this email, you were told in September 2010 that your--part of your property was inside the park. Did you ever ask the Dominican authorities about the implications of the fact that part of your property was inside the park?

A. What happened--no.

Q. So you never brought it up yourself? You were just hoping that the issue would kind of not be an issue essentially?

A. That's a false characterization. I did not bring it up. It was a very, very important meeting that I had with Minister Jaime David. And present in the meeting were--I waited in his office for a couple of hours. I was with Omar Rodriguez. I was with--you know, in that meeting were the Vice Minister in charge of protected areas as well as the Vice Minister in charge of management.

I knew that ecotourism was allowed. It was a stressful meeting in the sense that there was this question about the fine on the table, that the Minister would not meet with me until I paid the fine.

And we were in the position of acquiring Paso Alto at the same time. And it was a very brief meeting, and there was maybe seven Vice Ministers there. And Omar spoke

A. There was no legislation regarding ecotourism. And I didn't see why not. My neighbor was building. Rancho Guarracú, I knew, was ecotourism. They were building big houses. There was many projects going on in the protected areas. And so I was waiting for the Ministry to come back and let me know if there would be any restrictions. They were silent.

Q. Okay. So you were just waiting for them to bring it up or make an issue of it? Is that it?

A. My environmental company said it's the Ministry of Environment that decides. And their recommendation was to submit the project to them and ask for reference terms, and I did exactly what they asked me to do.

Q. Okay. And so around this time in June of 2013, the government renewed your permit for the lower mountain housing development for another five years; is that right?

A. Yeah, that seems about right.

Q. So if the government had been conspiring against you as you have alleged in this arbitration, wouldn't it have been more logical for the government to have just denied you the permits for Phase 1?

A. They would have had a huge problem facing very powerful Dominicans, very politically influential, if they would have not renewed that permit because they would have had no basis to not renew it. So they wouldn't have the problem with me. They would have had the problem with their own citizens.

Q. We just saw a document where one of the inspection technicians said that there were irregularities in the construction of the houses due to the material that was used. Do you remember that?

A. Yes. If they would have communicated to me exactly what they wanted from Day 1, 18 environmental reports, more inspections than I--than you can even imagine. Never once do they specify, "Michael, you need to use more wood. You've got to change something."

We would have done whatever they said.

Q. Right. But if they were inclined to conspire against you, wouldn't that be the first thing they would have brought up? You know, we saw earlier how each of the applications that you filed said mountain cabin and mountain this and that, and wood and lightweight materials and blending into the environment and so forth. And they consistently granted you authorization from the forestry officials, you know, to build the path to the reforestation project. And then the first permit to--from the Ministry of Environment to construct the lower mountain.

And they all said, "Okay. Well, you know, we grant you authorization to do these mountain cabins."

So wouldn't it have been more logical if they had,
In fact, a conspiratorial bent to just tell you, "Hey, you know, your permit is revoked" or "We're not renewing your permit because look at these, you know, McMansions that you've built on the mountain as opposed to mountain cabins").

A. They would have had big problems with the powerful Dominicans who own in Jacama. And at that time, with the acquisition of Paso Alto as well as Jacama de Dios, my neighbor was in checkmate. He had no hope at all whatsoever. And I had a plan where I had absolute control over the entire mountain ridge and all of the mountains of Jarabacoa.

And so I feel that I was treated unfairly by not allowing me to continue.

Q. Right. But they--maybe they treated you more fairly than you deserved to when they didn't, you know, decline to renew your permit because of the type of construction that you had made; right?

A. I feel if that would have happened, that would have been quite arbitrary and would not have been fair without giving me a warning or saying, "Hey, Michael, you guys are not doing this right. You're violating your permit."

They were more than content to give me a big fine for things that were already approved in my permit, and they were absolutely silent on this issue. And so they would have had big problems if they would have--and not from me, but from their own citizens.

Q. You have stated in your pleadings and perhaps in your Witness Statements that the owner of the property that was adjacent to yours, Aloma, Mr. Domínguez, was sort of part of the conspiracy; right? Or at least that he was one of the people who stood to benefit from you not doing well. Is that fair?

A. Yes. Absolutely.

Q. Fair characterization?

A. I would say that.

Q. And so Aloma was the project that we showed on the screen that had the dirt roads, and we talked about the fact that they had three structures on it but no housing development as such. Domínguez is also the person who is the--at the time, you know, was the son of the mayor of Jarabacoa; is that correct?

A. Yes, sir.

Q. And you characterize him as the son-in-law of President Fernández?

A. No, I characterize him as the ex-brother-in-law.

Q. Ex-brother-in-law. Okay. So in any event, fairly influential; right?

A. Yes, he controls Jarabacoa. He did at the time.

Q. Right. And his property was also inside the National Park; is that correct?

A. Yes, he is inside the National Park.

Q. And his property had a permit denied; is that correct? We established that earlier today. But do you remember that?

A. Yes, sir.

Q. So if there is a conspiracy and you have this influential person who is literally next door to your--to your mountain and your project, how do you explain the fact that his permit was denied and that he didn't have his property carved out of the park and so forth, all these allegations that you've made? Isn't that kind of inconsistent with your theory?

A. He worked with impunity for years. And what began to happen, after he led the revolt on the town and tore down our gates, I reached out to many different institutions outside of the Ministry of Environment. I did not at any point do a negative campaign against the country. I was contacted by Nuria. Nuria Piera is one of the most respected journalists in all of Ibero-America. She contacted me, and then she did a report and about a week after he applied for his permit.

(English Audio Day 2 at 04:46:03)

Concurrent with that, there was a lot of pressure being brought to bear on the Ministry by the United States Embassy, by the Center of Export and Import who also wrote the president at the time, the American Chamber of Commerce.

And so the Ministry of Environment was really getting a lot of pressure. Not only that, the Zeta, which is the program The Government of the Morning. There was a lot of external pressure.

They took no action against Domínguez until massive pressure came to bear on the Ministry of Environment for their inequitable treatment.

Q. But this is in 2013, though, that he got --

A. This is all in 2013. Everything I stated. It's all on the record.

Q. Yeah. But his permit was denied in 2013.

A. They had no choice.

Q. Now, you--there was--the Minister at the time that you filled your permit application was Jaime David Fernández; right?

A. That is correct.

Q. And then by the time that your last reconsideration request was denied a couple years later, there was a different Minister; right?

A. Yes. Bautista Gomez Rojas was the Minister. And
Q. Right. And between the two of them, there was a third Minister, Ernesto Reyna; is that right?
A. Yes. There was--there was five different site visits.
Q. All right. And they kept doing these things even though nothing was changing in your application, basically?
A. You know, they were--
Q. That is not correct. Between the third and fourth, we drafted a very well thought out, very well-organized letter. We submitted that with the Empaca Redes report along with the slope maps. The Empaca Redes report, my environmental company, laid out as well as the latter, all the plans, what we had done, what we're gonna do.
A. Yes, sir, according to what I understand. I didn't know them, but that's my understanding.
A. I'm testifying--
Q. Yeah, we saw that. Yeah.
A. Yes, exactly. The restaurant, it's--primarily the business is on the weekends. And the people from the higher society, government officials, they come up. And so my conversations included many high-ranking officials, extremely powerful people. For example, Rafael Selman who is one of the most respected architects in the country, his father, Eduardo Selman, is on the Central Committee of the PLD.
He said, "Michael, you have no hope. This is political."
A. Yes, sir, there are three different Ministers throughout the span. And, you know, your position is that all three of these Ministers were essentially conspiring against you; is that it?
A. Yes. There was no way I wasn't in checkmate. It was verified by many different sources. And that's when I knew I was in checkmate and I was done.
Q. All right. And is it your position also--I mean, you know, the Ministry has this policy of sending out a different technical team to do inspections for reconsideration requests. And in your case, they didn't do just one. They didn't do just two. They didn't--you know, they did three different reconsiderations, a total of five site visits, and a total of 21 different people--different technical people from the Ministry went to do site visits.
Is it your position that all 21 of those people were also in on the conspiracy?
A. That would require speculation. I can speak to what I know.
Q. Right. In the end the Ministry conducted five different site inspections; is that correct? I mean, do you know that?
A. Yes. There was--there was five different site visits.
Q. All right. And they kept doing these things even though nothing was changing in your application, basically?
You know, they were--
A. That is not correct. Between the third and fourth, we drafted a very well thought out, very well-organized letter. We submitted that with the Empaca Redes report along with the slope maps. The Empaca Redes report, my environmental company, laid out as well as the latter, all the plans, what we had done, what we're gonna do.
And in that letter, we said we will do anything possible to make Jamaica de Dios a great ecotourism offer for the country. So the concept of ecotourism and Jamaica de Dios is long term standing.
Q. All right. So you have five site inspections, and the last one is conducted by the full Technical Evaluation Committee; is that correct?
A. Yes, sir, according to what I understand. I didn't know them, but that's my understanding.
Q. And have you ever heard of the Technical Committee ever going out and personally doing an inspection either before or since?
A. I don't know who goes to inspect projects. It was a first time for us that it happened, yes, sir.
Q. All right. And this happened after the U.S. Embassy called on your behalf; is that right?
A. And they met. And then they were ignored and they followed up. And then there was a letter from Jean-Alain Rodriguez, who is now the Attorney General of the country, who is the Minister of the Center for Export and Import, with a copy of the letter to the president at the time.
Q. All right.
A. The person that arranged that meeting for me was Victor Pacheco, the grandson of Dr. Mendes Capellan, who is very well aware of our situation because Dominguez was in the middle of our properties. He saw the whole thing and he went to bat for us because he saw the mistreatment and how we were being treated.
Q. All right. So going back to the conspiracy of the three ministers, you said, you know, it came from different sources. But, you know, these are just things that you heard basically; right?
A. You need to understand the context of what Jamaica de Dios is. It's a very highly visible project. The upper
MR. ALLISON: Paolo--
MR. DI ROSA: Yeah.
MR. ALLISON: --you can make your legal arguments
at the end of the case.

MR. DI ROSA: No. I'm asking him a question.
Like, you know, do you have any evidence about that other
than what you say you heard.

MR. ALLISON: What we presented in the case, which
you say is not evidence and not proof and we say is.

MR. DI ROSA: And he's just saying--he's saying
that as a fact--

MR. ALLISON: And is this a memory test where he
has to remember all of the exhibits that we've submitted
that support that?

MR. DI ROSA: You know what, Mr. Allison--
MR. ALLISON: We can argue this at the end of the
case.

PRESIDENT RAMÍREZ HERNÁNDEZ: Counsel.

MR. DI ROSA: He's making a very serious
allegation, Mr. Allison. He's making a very serious
allegation against three ministers and impugning the whole,
you know, reputation of the government. And he's just
making these allegations without any proof is what we're
saying.

MR. ALLISON: Well, you've asked for the proof,
and he's described the conversations that he's had, and you
don't like that proof.

MR. DI ROSA: No.
Q. My question was, do you have any evidence other
than what you're saying? And I gather the answer is no; is
that correct?

MR. ALLISON: You can answer the question,
Mr. Ballantine.
A. We presented the proof we had in black-and-white
writing.

BY MR. DI ROSA:
Q. All right. Okay. So let's go back to the issue
of the creation of the park. In Paragraph 1 of your third
statement, you mentioned that you had known--if you had
known that the creation of the park would be used as a
justification to deny the expansion of your project, you
never would have become a Dominican citizen; is that right?

Do you remember saying that?
A. Yes, that is the case.
Q. Now, the creation of the park--the park issue did
not become a basis invoked for the denial of your permit
until the very last reconsideration letter; right? The
fourth denial; is that correct?
A. That's correct.

Q. So the first--the original permit denial invoked
three other grounds; is that correct?
A. Yes.
Q. Not the national park. And the first--so the
first three consideration requests did not mention the
National Park at all; right?
A. That's correct.
Q. So if you had never requested a reconsideration,
the National Park would not have become an issue at all;
right?
A. If I could rephrase that. If I would have known
that my expansion permit would have been denied on any
basis, I would have never become a Dominican citizen. And
the only reason why I became a Dominican citizen is because
I was concerned about our asset protection for our family.
And I became a citizen in February of 2010 as I
was gearing up to expand. And we were highly concerned in
case of the demise of Lisa and myself, what would happen
with Dominican probate? What would happen to our children?
Q. Right. And so I'm not asking so much about--
A. So the park or the land.
Q. I'm not so much asking about the naturalization
aspect as kind of your understanding of the basis on which
your permit was denied.

So I asked you, you know, in the original permit
denial, there was no reference to the National Park, but
the permit was denied. So your project was dead at that
point; right?
A. I didn't believe it was dead, but I had become a
citizen prior to that. I thought you were referring--
Q. Let's leave aside the citizenship. I'm just
asking your understanding of the basis on which your permit
was denied because the Claimants--I mean, your counsel
confirmed yesterday that, you know, the creation of the
park as a grounds for denial is still part of their claim
even though they've abandoned the claims that are related
directly to the creation of the park.
And--
MR. ALLISON: I would simply ask Mr. Di Rosa to
quit characterizing what the legal arguments are in
testimony before he asks a question.
MR. DI ROSA: All right. Fair enough.
MR. ALLISON: Is that fair?
MR. DI ROSA: This one is fair, Mr. Allison. I'll
withdraw that one.
BY MR. DI ROSA:
Q. But let me ask you this: You--your permit was
denied. So at that point your project is, in fact, dead, is
it not?
MR. ALLISON: Asked and answered.
MR. ALLISON: They will be here, and you can question them about their expertise and their independence.

MR. DI ROSA: Yeah, but I can ask Mr. Ballantine.

PRESIDENT RAMÍREZ HERNÁNDEZ: But Mr. Ballantine is appearing here as a fact witness regarding what he has stated. So please refer to that.

MR. DI ROSA: He's here to testify about what he knows, Mr. Chairman.

PRESIDENT RAMÍREZ HERNÁNDEZ: Yeah.

MR. DI ROSA: And so he knows whether he's paying these experts or not, and I want to ask him that.

BY MR. DI ROSA:

Q. Are you paying these experts?

MR. ALLISON: Mr. Ballantine is a claimant represented by counsel. If he wants to ask the question whether or not he's paying his experts, he can do so. But this insinuation and questioning about what decisions you made and who did what with respect to the arbitration are inappropriate, respectfully.

PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.

MR. DI ROSA: Mr. Ballantine has also approached some of the Dominican Republic's witnesses to offer them compensation. And I think that's a perfectly valid line of questions, Mr. Chairman.

PRESIDENT RAMÍREZ HERNÁNDEZ: Please proceed.

BY MR. DI ROSA:

Q. Mr. Ballantine, did you approach Ms. Francis Santana, the former director of the Jarabacoa Municipal Office of the Ministry of the Environment in connection with this arbitration?

A. I personally did not.

Q. You personally. But somebody on your behalf did?

A. I asked Mr. Peña if he would talk to Ms. Santana and if she would be willing to put in a report what she had orally stated to me prior.

Q. And Mr. Peña was a consultant of yours at that point, was he not?

A. I asked you, Mr. Peña was a consultant of yours, was he not? Did you answer that or--

A. Well, I got interrupted. I'm sorry. A consultant or--

Q. Well, you know, was he--were you paying him to do anything?

A. Very, very nominally. He was spending a lot of time and research, and he's an expert on environmental law in the Dominican Republic.

Q. So you were paying him at least something?

A. Nominally. And I was living out of the country.

Q. Now, Mr. Peña approached Ms. Santana, who is now a witness for the Dominican Republic, and he offered her a...
consultant job if she would testify on your behalf in this proceeding; is that right?
A. I am unaware of any conversation that he had with her directly. I wasn't part of that.
Q. I see. So he just went out and did this on his own?
A. I asked him if he would speak with her, because they Were both former local directors of Jarabacoa. She had told me several things that I thought would be relevant to this hearing. And I asked him if he would confirm that she would be willing to make a declaration on our behalf.
Q. Did you know that Mr. Peña sent her a draft Witness Statement?
A. Yes, I've heard about that. Mr.-hum.
Q. Did you see the draft Witness Statement before it was sent to her?
A. It wasn't a draft Witness Statement. It was something along those lines. But she would have to write whatever she wanted to write. It was something--those were the facts as she told me, but then she would have to do her own research if she was willing to do that. She had orally communicated to Mr. Peña that she will do anything she can to support Michael, according to what Mr. Peña told me. And there was nothing nefarious about

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BY MR. Di ROSA:  It's Di Rosa.
Q. She was a former government official when you approached her, but you approached her because she was a government official at the time of the relevant events, is it not?
A. Yes, because she was involved.
BY MR. Di ROSA:  What do you mean?
Q. You don't think there's anything irregular about approaching a government official and asking him or her to testify on your behalf and send a draft Witness Statement?
A. I--is she a government employee? I don't know.
Q. Well, you know, you're asking--
A. I don't know--I don't know if she's a government employee.
Q. Well, she was. She was in connection with your project. She was a municipal Ministry of Environment person. She was--I mean, that's why you're asking her to testify on your behalf, because she was involved and--
A. Yes, because she was involved.
BY MR. Di ROSA:  MR. BALMIN: Mr. President, can we have clarification if counsel is stating that she was a government official during this time, because counsel stated you approached a government official to ask for something, and I would like some clarification.

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MR. ALLISON:  Is that a question or is that testimony from Mr. Di Paolo [sic] again?
MR. Di ROSA:  Well, you say typically you don't pay fact witnesses and then stop and then you continue on with something else. You can make your arguments, Mr. Di Paolo--
MR. Di ROSA:  It's Di Rosa.
MR. ALLISON:  Mr. Di Rosa. I apologize.
BY MR. Di ROSA:  BY MR. Di ROSA
Q. So, you know, you did mention that there were two or three of these people that were in the municipal office. Did you--you know, did you ask someone on your behalf or did someone on your behalf approach all of them or just Ms. Santana?
A. Ms. Escarraman is somebody that I know from Jarabacoa. I know him from my time there. So I spoke with him directly. He is no longer in the capacity of a government employee. He's independent. And Mr. Peña no longer works with the Ministry, as well as--I don't remember who else it might have been. But I understand the burden of proof of this is on me, and I'm living in Chicago. The people that have communicated things to me, I just simply asked if they would be willing to put that in writing.
Q. All right. You know, you--both you and Mr. Eleuterio Martínez, who is a witness for the Dominican Republic, refer in your respective Witness Statements to a meeting that you just had--that you had with him.
A. Yes, that meeting.
Q. And he says that you said that you were confident that you would win this arbitration, essentially; is that correct?
MR. ALLISON: Can you point him to the Witness Statement--the paragraph so that you don't mischaracterize it and we can see exactly what you're referring to?
MR. DI ROSA: Paragraph 22 of Mr. Martínez's First Witness Statement.
MR. ALLISON: So you're referring to what Mr. Martínez said. Can you put that up so he can review what Mr. Martínez said?
ARBITRATOR CHEEK: I'm sorry. Is this in Mr. Ballantine's Witness Statement?
MR. DI ROSA: No. It's what Mr. Martínez is saying about the meeting that Mr.--that Mr. Ballantine also testified about.
ARBITRATOR CHEEK: Okay. Can you give the Tribunal a moment to pull up this other Witness Statement?
MR. DI ROSA: Sure. It's Paragraph 22 of Mr. Martínez's First Witness Statement.

And so I did mention to him that I did feel confident that we would win; otherwise I wouldn't have taken these steps to be here or waste anybody's time.

Q. All right. Fair enough. Let's move on to a different subject, if we can.
A. Yes, sir.
Q. So you moved to the Dominican Republic in 2000; is that right? Do I remember that correctly?
A. It was a short-term time, yes.
Q. And then you returned after--to the United States after 14 months; right?
A. Yes, sir.
Q. That's the time when you became dissatisfied and we had that discussion.
A. And when you moved to the Dominican Republic to live there was 2006; correct?
A. Yes, sir.
Q. And your wife, Lisa, moved there as well; correct?
A. Yes. We're very close.
Q. And your children moved there as well?
A. My two oldest children moved there for one year. It was a gap year out of high school. And then my two younger children stayed with us for a few years.
Q. In 2006, you also chose to become a permanent resident in the Dominican Republic; right?
A. Actually, that's not the case. I know the documents have been submitted. In 2006 I was a temporary resident, but in 2008 I became a permanent resident.
Q. So, Exhibit R-25--
A. I know that. I know that document, but it's just not the case. I've got my temporary sello28(in Spanish) from 2007, which was presented.
Q. Is it your position that the document is wrong?
A. Yes. My position is--and I can show you 2007 temporary sello29(in Spanish). But, yes, that's irrespective of this. I was a permanent resident in 2008.
Q. All right.
A. You don't become a permanent resident when you first move to a country in the Dominican Republic.
Q. And your wife, Lisa, also chose to become a permanent Dominican resident; correct?
A. That is correct.
Q. And so in 2008, you were both--
A. Yes, sir. That is correct.
Q. --permanent residents?
A. And then after that, you decided to become a Dominican citizen; is that correct?
A. Yes, sir.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90
Q. And Lisa also chose to become a Dominican citizen?
A. Reluctantly, but she did.
Q. And you naturalized in the hope that Dominicans would see that you were making a commitment to the Dominican Republic; is that fair?
A. Yes, because we had--from a commercial standpoint, there is--we had already endured a lot of discrimination, a lot of nationality-based discrimination, and it was strictly for commercial purposes.

There was many people--even though we had an excellent product, they were insecure about buying from an American. It was a very simple process. I paid $2,000 and I bought a passport. And I used it just strictly for business. And I wanted to protect my family’s inheritance, because--

PRESIDENT RAMÍREZ HERNÁNDEZ: Can I interrupt there?
THE WITNESS: Sure.

PRESIDENT RAMÍREZ HERNÁNDEZ: Because I wanted to ask you something on that, Mr. Ballantine.
THE WITNESS: Yes, sir.

PRESIDENT RAMÍREZ HERNÁNDEZ: And getting a naturalization, it’s for many people maybe a big step. It’s like having another flag. It has a lot of emotional--aside from--I understand your economic point, but it also entails an important decision, I think. Because one thing is you become a resident, you live in one country. But another one is to become a national of a country.

So I was--I was--as I was going through your statement and the pleadings, I wanted to understand exactly why you took that decision and together with your wife to make this step to become a national of any country.

I mean, just--I’m just trying to understand that part.

It’s something that I had since I’ve been reading the case. So, please.

THE WITNESS: Yes. Primarily, at that time I thought that I owned a very valuable piece of property in the mountains of the Dominican Republic. And I felt very insecure, in case of my demise or my wife’s, what would happen through an arbitrary court ruling or my children having to pick up the pieces, and I thought that it might help protect our estate.

Secondly, I felt like it was important for a business decision in order--for the commercial aspects. There were oftentimes people that wouldn’t buy from me, for example, because they didn’t think that I was committed and they were afraid to buy from a gringo and they would feel more comfortable. And so I lost sales.

It was just like a gift to them because they were

Q. So you’re saying you had your two children acquire the nationality of a different country so they could get a passport as a souvenir?
A. Yes. We saved $10. You’re correct.

Q. But that is traveling with a Dominican passport, is it not?
A. Yes. We saved $10. You’re correct.

Q. So--
A. Domestically.

Q. So you’re saying you had your two children acquire the nationality of a different country so they could get a passport as a souvenir?
A. Yes.  

Q. Are you really saying that?
A. Yes, sir.

Q. So it wasn’t because of the business or anything else?
A. It was just like a gift to them because they were leaving the country. Like, "Hey, you guys want a passport too?"
I'll get you one." That was the extent of it.

Q. All right. And you said that you acquired it because of the asset-protection aspect. Is there anything that you contributed by way of documentary evidence supporting that, whether norms that you thought were relevant that would protect you somehow if you were--protect your assets somehow if you were Dominican?

I mean, did you show any--you know, any emails or whatever that showed that, yeah, you were worried about your asset protection and that's why you became a Dominican national?

A. I don't have documentation, but it is well-known that there's a tendency for the judicial branch to be not independent. There was a huge case recently where a man was found to have a lot of money. It was clean. United States Government responded--

Q. I'm not asking you about that, Mr. Ballantine.

A. Well, that's an important aspect because I was afraid of what would happen to our assets. I had a judicial branch that may not treat my family fairly.

Q. All right. Let's go to Exhibit R-17. This is the cover letter to your naturalization application. We'll put it up on the screen.

All right. So, this is a letter submitted by a lawyer on your behalf to the government, requesting naturalization; is that right?

PRESIDENT RAMÍREZ HERNÁNDEZ: On admissibility and jurisdiction.

MR. Di ROSA: Right.

BY MR. Di ROSA:

Q. So in the Rejoinder, you said--quote, in Paragraph 2, Rejoinder on Jurisdiction, "The Ballantines attained Dominican nationality not because of any enduring cultural bond with that country."

MR. BALDWIN: Where is that from, Mr. Di Rosa?

MR. Di ROSA: Rejoinder on Jurisdiction, Paragraph 2.

MR. BALDWIN: But you said "You said that." That's in the Rejoinder on Jurisdiction.

MR. Di ROSA: He's the Claimant, Mr. Chairman.
Q. And you go on to identify certain addresses, mainly in residence and sometimes two residences in the United States; is that correct?

A. Yes, sir.

Q. In Paragraph 4 of the Rejoinder on Jurisdiction, you refer to your home not being a “Dominican home,” and you identify. I was very proud of being an American, and I always acted like an American. I run my company like an American. And everybody knew that. Everybody here knows that. And I stand by what was written in the Rejoinder on Jurisdiction, because there’s nothing enduring. It’s been broken.

BY MR. DI ROSA:

There are so many differences in terms of business operation and political relationships. And nobody perceived me as Dominican, and I didn’t even intend to become Dominican or identify. I was very proud of being an American, and I always acted like an American. I run my company like an American. And everybody knew that. Everybody. Everybody here knows that.

Q. In Paragraph 45 of the Rejoinder on Jurisdiction, you also refer to your home not being a “Dominican home,” and you actually used those quotation marks yourself. What, in your conception, is a Dominican home as opposed to—

A. Dominican homes are often designed where there is a separation, where there’s a maid and a servants’ area. And ours is a big American open floor plan. We spoke English. We made American food. We entertained like Americans. And so there’s cultural differences in the way the home runs.

And we lived completely as Americans in the Dominican Republic, the food we ate, the way we entertained. Our home was totally Americanized, and it was an obstacle to sell it because Dominicans didn’t like that American style of home.

Q. You said in Paragraph 8 of your Second Witness Statement that you “continuously maintained at least one residence and sometimes two residences in the United States”;

correct?

A. Yes, sir.

Q. And you go on to identify certain addresses, mainly in Illinois; is that correct?

A. Which one?

Q. You say—-you identify certain addresses for those residences and they’re in Illinois primarily; is that correct?

A. Yes. I had four or five residences during the period.

Q. And when you say “residences,” do you mean houses or what?

A. Houses or—-I did rent a townhouse as well, and a condominium I purchased.

Q. All right. But, you know, the place of residence is the place where your permanent home is, is it not? Where your permanent home is?

A. Well, like the Florida house, I was there frequently, but my kids lived there. I said that in my Witness Statement. I bought it and they—they lived there. Going back to Chicago, we would stop in Florida and then come back and stop in Florida. I owned it. We sold that, but it was still a residence. My kids lived there.

Q. Well, right. But, you know, you only have one—-you were a permanent resident of the Dominican Republic, were you not?

A. I was a permanent resident of the Dominican Republic and a citizen of the United States of America.

Q. Okay. So, you’re not saying that you actually lived in Illinois in 2010; is that right?
Q. Well, I mean, you didn't live there in the sense of being a permanent resident at that time; right?

A. Yes, sir.

Q. And at the time that you hired him, did you give him Jamaca's financial statements or other financial records?

A. Yes, sir.

Q. When you hired him, you gave him those?

A. I believe I did.

Q. Are you aware that Mr. Farrell did not attach any financial documents, whether statements or otherwise, to either of his expert reports?

A. I'm not aware of that. I knew that he used and didn't.

Q. Okay. We'll ask him.

Did you also, at the time that you hired him, give him Jamaca's contracts for the lot sales for the lower mountain project?

A. Yes. Well, I'm not sure. I submitted them in the discovery and to--yeah, I'm pretty sure I did. I'm not sure, though.
submitted a couple years later, dated January 4th, 2017, at
Paragraphs 275 and 276, you ask for 37.5 million in damages
plus 4 million in moral damages, for a total of
41 million--41.5 million.

Q. Is that about right? Is that consistent with your
understanding?
A. Yes, sir.

Q. So the amount that you claimed in the Amended
Statement of Claim is more than double the original
Statement of Claim damages amount. And my question is:
What changed in the interim?

MR. ALLISON: I'd like to make an objection that
that mischaracterizes the testimony--or the--not the
testimony, but the document that states more than
$20 million. And then the later one defines that,
And just so it's clear, it's not 20 and 37.

PRESIDENT RAMÍREZ HERNÁNDEZ: More than that, I
think we will hear from the damages expert. Isn't that a
question for the damages expert?

MR. DI ROSA: Okay. We can ask him as well.

BY MR. DI ROSA: Okay. We can ask him as well.

Q. Now, you know, referring--let's go back, then, to
the issue of the tax versus what you've called "the real
contracts."

A. Yes, sir.

Q. And the ones that were done for tax purposes had
the lower price of each pair right? So same lot, tax
document is lower price, and the real document is a higher
price. Is that--
A. Yes, sir. That's a fair, accurate assessment.

Q. And this was--and the reason that a lower amount
contract was submitted to the tax authority was essentially
to try to limit the amount of the transfer tax; is that
right? And that's why people do it?
A. Yes, sir.

Q. And so your lawyers have said in this arbitration
that the real figures of the Phase 1 lot sales were not the
ones reflected in the tax contracts, but rather the higher
prices reflected in the parallel set of contracts, what you
were calling "the real contracts."

So that's consistent with what you're saying here;
correct?
A. Yes, sir.

Q. Now, the actual revenues from Lot 1 sales counted
as income to Jamaica; correct?
A. That would be income, yes, sir.

Q. Right.

And so those--the actual revenues are the revenues
that should have been reported by Jamaica as income to the
Dominican tax authorities; is that right?
A. We reported the--the assessed value of the
properties to the tax authorities.

Q. I see. But income tax refers to actual income,
not to assessed. That's not income. The assessed value is
not--in other words, you got a certain amount that was
income, and what you're supposed to report to the tax
authorities is the actual income; right? Or is that not
your understanding?
A. That's not my understanding and that was not my
decision unilaterally. That was advised to me by my
Dominican accountant who is also a government employee, as
well as an attorney.

Q. All right. So you were advised by your Dominican
advisers, lawyers, et cetera, tax accountants, that you
could submit to the Dominican tax authorities an income tax
return that reflected not actual revenues, not--in other
words, not the real price, but lower revenues. Is that
what you said?
A. Yes. And I specifically used the word "custom."

Q. And is that your understanding of the custom in
the United States as well?
A. Absolutely not.

Q. Not. Okay.

So, are you saying that the revenues that were
based on the amounts in the tax contracts were not the ones
that you reported to the U.S. income tax authorities?
A. That--you must be referring to the Form 5471 which
is the foreign corporation.

Q. I'm not referring to any particular form. I'm
just asking you whether you reported to the U.S. tax
authorities the actual revenues that you got from the sale
of the lots.
A. I did not receive those revenues. With the United States tax authorities, I declared all of my income. Over half of the transactions were done in U.S. Dollars in the United States banking system. They were reflected either as loan repayment, loan back, or interest income, accurately.

Q. All right. But, so, in your income tax returns in the U.S., when you have income from a foreign company that you own--in your case, Jamaca was 100 percent owned by you, right? Or you and Lisa; is that--

A. Yes, sir. We're 50/50 shareholders.

Q. Right. So the two of you combined had 100 percent of Jamaca, and there's a special schedule in the U.S. income tax return that you have to fill out when you've had income from a foreign company that you own; correct?

A. That reports the activity of the corporation. It does not become a taxable event until I take that money out and I personally receive that money or the economic benefit, which were--was declared appropriately on my United States tax returns.

Q. So when you actually got the income from these sales, you would have at that point reported them to the U.S. tax authorities? I mean, you know--

A. Yes, on a personal level, but it was within the corporation.

Mr. Chairman, that the amounts that were submitted to the U.S. income tax authorities were not, in fact, the amounts of the actual sales.

PRESIDENT RAMÍREZ HERNÁNDEZ: And what is the relevance for this arbitration?

MR. Di ROSA: Just that he was being--you know, it's highly relevant to the damages issue, Mr. Chairman, because if he's saying that the--you know, the amounts that were reported to the tax authorities were one amount and the real amount were a different amount, then we have to kind of get to the bottom of that right now.

PRESIDENT RAMÍREZ HERNÁNDEZ: And I think we all understood, and it was stated by counsel, Claimants' counsel, on the first day, yesterday, that they use for the damages purposes what they call "the real contracts" for purposes of damages.

MR. Di ROSA: All right.

PRESIDENT RAMÍREZ HERNÁNDEZ: But I'm trying to see what is the relevance, whether--if you would allow me to finish.

MR. Di ROSA: Sure.

PRESIDENT RAMÍREZ HERNÁNDEZ: I'm trying to understand the relevance of the line of questions of those.

So I will ask you to go to another line of questioning, please.

MR. Di ROSA: All right, Mr. Chairman. I think I sense that we're all getting tired.

BY MR. Di ROSA:

Q. So let me just ask Mr. Ballantine one final question, which is the following: Mr. Ballantine, do you have any type of external financing or third-party funding for this arbitration?

A. Do I need to answer that question?

PRESIDENT RAMÍREZ HERNÁNDEZ: (Nodded.)

A. Yes, sir.

Q. Since when have you had that funding in place?

A. I just want to--I have a contractual obligation, and I just don't know if I'm violating the terms of that by getting into this.

So, I'm happy to do that under the order of the President. I'm happy to answer any questions. But the third-party funder and I have an agreement, and I don't know what my limitations are, if I'm violating that. We could have a private discussion or something, but--

PRESIDENT RAMÍREZ HERNÁNDEZ: I think we will need...
President Ramírez Hernández: So, I guess that we

Mr. Chairman.

Mr. Di Rosa: They relate exclusively to that,

Mr. Chairman.

President Ramírez Hernández: So, I guess that we

continues after eliminated text. English Audio Day 2 at 06:08:00
MR. ALLISON: I have just a few questions for Mr. Ballantine.

PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you, Mr. Ballantine.

MR. ALLISON: And I think that’s it, Mr. Chairman.

PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. Claimant.

MR. ALLISON: I’d be happy to debate now the relevancy of those questions, but would you like to see the contract first and then have us discuss it, or are you going to consider whether you think those are appropriate questions?

PRESIDENT RAMÍREZ HERNÁNDEZ: Let’s hear your--

MR. ALLISON: As to the third one--

PRESIDENT RAMÍREZ HERNÁNDEZ: --arguments--

MR. ALLISON: As to the third question, which is the reason why the funding was not disclosed earlier, I don’t think that’s a relevant question. I’m unaware of any duty that requires a Claimant to disclose that, attorney-client privilege issues related to that.

The question as to the switch in counsel, I don’t understand what the relevance of that question is and how a disclosure and the duty to disclose, I mean, I think it’s fairly well established in arbitration these days that if you have a third-party funder, you have to disclose it in order to ensure that there’s no conflict of interest with any of the Tribunal members or the Parties.

And, secondly, you know, we think that the issue of the change of counsel and the timing is relevant to the question that I was posing to Mr. Ballantine about the increase in the amount of damages, and the question that I’d like the Tribunal to consider is whether the amount of damages doubled between the time that they filed their Statement of Claim originally and the time that they got their third-party funding.

And in that regard on the disclosure issue, I would refer the Tribunal to the IBA Guidelines on Conflict of Interest, General Standard Number 6. You know, my understanding is that third-party funders have a certain minimum amount that they are willing to fund. And that’s why the--you know, the relevance--that’s the relevance of the question relating to when the damages increased. Thank you, Mr. Chairman.

PRESIDENT RAMÍREZ HERNÁNDEZ: Any last comments?

MR. ALLISON: Yes. Again, I debate the notion that the damages increased. I think it’s a mischaracterization of the pleadings to say that.

Questions about what damage amounts are included and aren’t included in the claim are at the heart of the attorney-client privilege issues related to that.

PRESIDENT RAMÍREZ HERNÁNDEZ: We’ll take this under advisement, and we will see the contract and make a call on these three requests that I see--three questions that were posed.

Do you have any more questions for Mr. Ballantine?

MR. DI ROSA: I do not, Mr. Chairman.

Thank you, Mr. Ballantine.

PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you.

Mr. Ballantine.

MR. ALLISON: I have just a few questions for redirect. I’m sorry, Michael.

REDIRECT EXAMINATION

BY MR. ALLISON:

Q. We spoke at some length this morning—you spoke with Mr. Di Rosa this morning about the request for the permit for the road, and then the request for the permit for the subdivision.

Do you recall that testimony?

A. Yes.

Q. And can we put up what we saw earlier, which is C-33, which is your application for the road.

And there was some confusion, or you expressed some confusion as to whether you had applied to the Ministry of Environment, to the Ministry of Forestry.

I just want to look at the address line here. If you can blow up to whom that was written.

It’s to a Mr. Ernesto Reina, Deputy Secretary of Ground and Water, Subsecretariat of Ground and Water, Santo Domingo National District.

Is that the same Ernesto Reyna who was later the director of the MNA?

A. I assume so, but that would be speculation. But I think so.

Q. And you don’t know whether the Subsecretariat of Ground and Water was in the Forestry Department or the...
BY MR. ALLISON: I've refrained as best I can from direct he should not be doing leading questions. "wasn't it" is a leading question, and on redirect or questions. Every question that ends in "is it not" or this, but, you know, he keeps asking the witness leading questions. Every question that ends in "is it not" or "wasn't it" is a leading question, and on redirect or direct he should not be doing leading questions.

MR. ALLISON: I've refrained as best I can from objections to the form of questions. I'm trying to be quick to get through these as quickly as we can. I will attempt to ask non-leading questions, but they're direct points that counter the issues that were raised earlier this morning by Mr. Di Rosa, who tried to insinuate the MMA didn't know there was a road in Phase 1. So, I'll be guided by your instruction.

BY MR. ALLISON: Q. We had a lot of debate earlier today about saying you have to present an Environmental Impact Statement; is that right?

A. Yes, sir.

Q. And it describes the project. And it says down at the bottom that you were going to construct relaxation and recreation areas. And it says, "At the same time, will have asphalted road."

Do you see that?

A. Yes, I see that.

Q. So, the MMA knew you'd have a road; right?

MR. DI ROSA: Mr. Chairman, I've been patient with this, but, you know, he keeps asking the witness leading questions. Every question that ends in "is it not" or "wasn't it" is a leading question, and on redirect or direct he should not be doing leading questions.

MR. ALLISON: I've refrained as best I can from objections to the form of questions. I'm trying to be quick to get through these as quickly as we can. I will attempt to ask non-leading questions, but they're direct points that counter the issues that were raised earlier this morning by Mr. Di Rosa, who tried to insinuate the MMA didn't know there was a road in Phase 1. So, I'll be guided by your instruction.

BY MR. ALLISON: A. Some of the curbs are a little wider, but the road itself is 6.

Q. And then let's look at the permit that was granted, which is the next exhibit, C-34.

And let's look at who the permit letter came from. It's signed by Ernesto Reyna, and the stamp is from--if I'm reading it correctly--is that Medio Ambiente?

I see that.

And is that the Ministry of the Environment?

A. Yes, it is.

MR. ALLISON: And could we go up to the top of the letter and see the heading? Keep going. Yeah.

BY MR. ALLISON: Q. It's on the letterhead of the MMA, is it not?

A. Yes, it is.

Q. So, the MMA knew about your road, didn't it?

A. It appears that way, yes, sir.

Q. So, then, let's look at your--at Exhibit C-36, which I believe is the--and if we can blow up the first two paragraphs, this was the response to your request for--could you go to the English version. My Spanish is a little bad. Page 1, please, of the English version.

All right. If you could blow up the first two paragraphs.

We saw this earlier. This is MMA's response to the entire video. But I just want it to be

A. I do not know. I think Rafael could speak to that.

MR. ALLISON: Okay. If you would blow up the first paragraph.

Q. Mr. Di Rosa read a part of this. The length of the 200 meters. Do you see how wide you requested the road to be?

A. Do I see it? I see it.

Q. Yeah. Can you read how much--how wide a road you wanted?

A. 6 meters.

Q. And so there was a lot of debate this morning about a two-lane road and the like. But you indicated that you intended to build a 6-meter road; correct?

A. The second phase would be a 5-meter wide road with 1 meter for gutters. But yes, it would be 6 meters in total.

Q. And did you build a 6-meter road in the first phase?

A. Is this Phase 1?

Q. This is Phase 1.

A. Yes.

Q. Okay.
MR. ALLISON: I'll try. Thank you. I'll withdraw that question.

BY MR. ALLISON:

Q. Were you fulsome in describing the impacts that Jamaca de Dios would have on the environment in that document?

A. Yes. We identified both strengths and weaknesses.

Q. And after the MMA reviewed that document, what happened?

A. Well, it was reminded to me today that it was incomplete, and then my environmental company went back and made a more robust study, and that was approved.

Q. Well, I think we heard about an unintroduced impact statement that was repeatedly described by Mr. Di Rosa but isn’t in the record.

But after this more fulsome Environmental Impact Statement, was your project approved?

A. Without modification, yes.

Q. And I just want to look at one page of this. We were there earlier today, and it's Page 26, I think.

Although it may be 25. We’ll see.

PRESIDENT RAMÍREZ HERNÁNDEZ: What exhibit were you referring to, Counsel?

MR. ALLISON: This is Exhibit R-103. I’m sorry.

BY MR. ALLISON:

Q. And if we go to Page 26. This is what we saw earlier. This is the hierarchy of impacts; correct?

Could you go to the next page? And could you blow up the second paragraph.

This is some of the impacts of the operation phase of Jamaca de Dios, is it not?

A. Yes.

Q. Can you describe the fourth—could you read what the fourth impact of Jamaca de Dios was going to be?

A. Yes. We clearly state it was for ecotourism.

MR. DI ROSA: Mr. Chairman, he's not asking questions of the witness. As you know, he criticized me a lot for arguing, and he's just sort of walking the Tribunal through evidence. It's not questions to the witness.

MR. ALLISON: I object to that. He put up a ton of documents, asked him to read them. I'm asking him questions about these documents just as Mr. Di Rosa was.

MR. DI ROSA: Yes, but I was cross-examining him, Mr. Allison. You're doing redirect. There's a difference. I can ask leading questions, I can show him whatever I want, and you can't argue through the witness.

MR. ALLISON: Well, Mr. Di Rosa, if you show an incomplete version of a document—

MR. DI ROSA: You can—

MR. ALLISON: --and don't show everything that's in there. I'm allowed to show more.

MR. DI ROSA: You can show him the document. You can say--

PRESIDENT RAMÍREZ HERNÁNDEZ: Counsel, again, if you could direct to the Tribunal.

MR. ALLISON: I think it's appropriate for me to show him the same document that Mr. Di Rosa showed him earlier to walk through the hierarchy of impacts in order to try to show how impactful Jamaca de Dios was going to be for the environment.

I'm entitled to show other impacts that relate to one of the key issues of the case as to whether or not this was an ecotourism project and what knowledge the MMA had of that and when.

PRESIDENT RAMÍREZ HERNÁNDEZ: Respondent.

MR. DI ROSA: Mr. Chairman, he's entitled to show the witness a document and to say—for example, to ask the witness, "What else was important here?" or something like that, as opposed to, "Can you go to Point 4 and read that." It means, that's not a question. That's, you know, essentially, a leading question in a different format.

PRESIDENT RAMÍREZ HERNÁNDEZ: Want to move forward, Claimant. Could you try.

MR. ALLISON: One last time.

BY MR. ALLISON:
Q. Did you disclose to the MMA, in connection with your Environmental Impact Statement, that Jamaca de Dios was an ecotourism project?

A. Yes.

Q. Now, Mr. Peña, I understand you have a PowerPoint presentation that Ms. Gil is going to run.

A. That is correct.

Q. Okay. And are there any corrections that you would like to make to either of those reports?

A. No corrections.

Q. Mr. Peña, you have in your binder there a document that contains your First Report and your Second Report in this case. Do you see that?

A. Yes.

Q. And can you confirm that what are in those reports are your observations and opinions regarding this matter?

A. Yes.

Q. Is the translation working now, Mr. Peña?

A. Yes.

Q. Would you please read the statement you have in front of you. That is the Witness Declaration.

THE WITNESS: "I solemnly declare upon my honor and conscience that I will say the truth, the whole truth and nothing but the truth, and my statement will be in accordance with my sincere belief."

documents that were provided by the Ministry of the environment I observed that some documents were missing, some data was missing, such as part of the technical evaluation reports and also the environmental declarations for the projects, as well as environmental compliance. These are only some of the documents that are missing.

I also reviewed the decree that created the National Baiguate Park. This decree shows that the process did not comply with the various steps necessary for the creation of the Park. The Dominican legal measures were not observed to protect the landowners and also violating the property right.

In addition, the process was poorly managed since the Ministry of the Environment did not conduct--did not get involved with the affected Parties prior to the creation of the Park. They issued the management plan five years after it was created by decree.

The rationale for the creation of the Park and the establishment of this Park in the decree were not taken--was not taken into account when defining the boundaries because there are criteria such as the type of vegetation, the watershed to be protected that are mentioned in the decree but that were not actually protected.

I reviewed that decree, and that's the reason why.
I list the rationale.

I reviewed the data on the Quintas del Bosque project as part of my investigation, and I was able to determine that it has some critical water sources that are flowing towards the Yaque del Norte River, and they also have more significant slopes with a higher percentage as compared to Jamaca de Dios.

I also visited La Montaña project for the preparation of my Second Report, and there I was able to see that the percentages of the slopes are also higher as compared to the second phase of Jamaca de Dios. The vegetation is quite vast, and there is a considerable portion of natural forest.

They also have, within the mountain terrain, an important hydrological watershed for Jarabacoa because they provide water to some of the residents of the city that is used as drinking water, and also for agricultural production.

As to Jarabacoa Mountain Garden, I visited the project, the Jarabacoa Mountain Garden project, and I understand that this project would create greater impact on the environment than the second phase of Jamaca de Dios because the project has an active river that comes from the Baiguate River. It is the La Artemis stream.

And also, the percentage of the slope is higher than the one we have in the second phase of Jamaca de Dios.

Also, the amount of vegetation that would need to be removed for the development of this project is higher as compared to the Jamaca de Dios percentage, and this includes the removal of trees or the—such as pines, western pines and yagurmo.

The earth movement required for Jarabacoa Mountain Garden would lead to greater impact as compared to the earth movement needed for Jamaca de Dios Phase 2.

In the case of Monte Bonito, I visited that project. And this project does not have the environmental permits, but this project has also built several houses and roads on slopes that have—those are greater than 60 percent.

To conclude, all of these projects hereby listed and also listed in my reports would have negative-negative impacts that would be more significant than the impact of the second phase of Jamaca de Dios in terms of the affection or the impairment of water sources, soil erosion, loss of vegetation, impact on biodiversity.

However, the permits of these project were not denied, and others have been working without a permit while Jamaca de Dios was denied the permit.

If we verify this chart, where we can see aspects such as percentage of the slope, altitude above sea level, the condition of cloud forest and also active water source, as well as the soil classification, we could state that the permit should have been granted to everyone or no permit should have been granted.

MR. BALDWIN: Thank you, Mr. Peña.

We pass Mr. Peña to Respondent.

PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you.

MS. TAVERAS: Thank you.

CROSS-EXAMINATION

BY MS. TAVERAS:

Q. Good afternoon, Mr. Peña.

A. Good afternoon.

Q. My name is Claudia Taveras. I will be in charge of asking you some questions this afternoon.

Someone has already given you or will be giving you a binder with your Statements and also with some exhibits that are also included in this record of the case.

And I will be occasionally referring to some of these exhibits.

And feel free to look at them if you so wish.

And, also, if we are referring to a specific exhibit and if you are interested in reading it, please feel free to do so.

MS. TAVERAS: We’ll be here—does the Tribunal have the binder? How about the other Party? Do you have the material?

BY MS. TAVERAS:

Q. Then we will be discussing, this afternoon, these topics. And if at some point you’d like to have a break, please let us know, and there shouldn’t be any problems.

And we will continue with the questions after your break.

Then, Mr. Peña, you submitted two reports in this arbitration; is that correct?

A. Yes.

Q. In the first one, you explain that the owners of Jamaca de Dios asked you to submit a report indicating your knowledge of the facts that led to this arbitration. Is this correct?

A. Yes.

Q. This implies that, at least partially, you’re here as a fact witness; is that correct?
A. Yes, it is.
Q. The Ballantines also asked you to express your opinion as an expert on the issues in this arbitration; is that correct?
A. Yes.
Q. When you said, in your First Statement, that you are an expert on the issues of this arbitration, what were you specifically referring to?
A. I was referring to the issues that have to do with the type of project management, the development of this type of project, and also in connection with management plans for the environment in this kind of project and also the type of documents that are presented before the Ministry of the Environment for the approval of this type of project.
Q. So, in practice, in the--if you--could you please clarify this?
A. Yes. This was in connection with the drafting of the plans and also the granting of the permits.
Q. But you're also an attorney; correct?
A. Yes, I am.
Q. Do you think that your role in this arbitration is the role of an independent expert?
A. It could be considered like that in part.
Q. Could you please elaborate?

A. No, I did not.
Q. You just knew that she was going to get paid?
A. Well, it is just logical that if you devote your time to developing a piece of work, you are compensated for that.
Q. Do you think that presenting or submitting your statement is the same as working?
A. Well, I was not the one to define the terms.
Q. So, that would be as a consulting job?
A. Well, if you accept, I am going to provide you with Mr. Ballantine's number, and then you agree on the terms.
Q. And did you send Ms. Santana a draft of what you suggested she would declare in this arbitration?
A. No, that was not a proposal. She asked me, "What are the ideas that should be considered in this case?"
I said, "Well, I can give you some guidelines as to what I considered for the drafting of my first document, and from that point onwards you can decide whether you accept it or not, and you can work along these guidelines or accept new ones or adopt new ones."
Q. So, when you had that conversation with Ms. Santana, you were acting as an agent for Mr. Ballantine? You were not acting on your behalf but on his behalf?
A. Well, I was asked to contact her because she was witness to the facts of the case.
Q. So, you were representing Mrs. Santana--rather, you were representing Mr. Ballantine and acting as his agent to contact Ms. Santana?
A. Yes, that is correct.
Q. Are we talking--now we're talking about the statement that she sent you. Do you confirm that you drafted her statement?
A. No, I did not. I did not draft her Statement. When we met in the Agora Mall in Santo Domingo, she asked me about the ideas for that Statement.
I said, "I can give you a draft of some concepts that you may use as a guideline."
But this is just a sample of some ideas. But this is not what she should have said, just guidelines to be used as a model.
(Comments off microphone.)

Mr. Ballantine? You were not acting on your behalf but on his behalf?
A. Well, I was asked to contact her because she was witness to the facts of the case.
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(Comments off microphone.)

Realtime Stenographer Worldwide Reporting, LLP
Margie Dauster, RMR-CRR info@wwreporting.com
Q. In the role as an expert, you worked with the
expert from the Dominican Republic in the visit that took
place in 2017 for the area in which the expansion would
have taken place; correct?
A. Yes.
Q. So, as part of the presentation of the statements
in this proceeding—so in addition to assisting the
Ballantines with the location and the identification of the
experts and also assisting in the visits of the experts,
your scope—what else was included in your scope as an
expert?
A. I was asked to conduct an assessment of the
documents that had been presented, and also a field
assessment of some aspects that had to be determined and
assessed in the situation. And this was part of the work
that was conducted.
Q. The Ballantines, are they paying you for your
testimony in this arbitration?
A. The Ballantines are paying me for consulting work
I performed.
Q. What does that work consist of?

A. Field information, collection, research, assessment of documents submitted by the Parties, confirmation that the information included in those documents correspond with reality.
Q. And those consulting activities, do they have to do with this case?
A. Yes, with this case.
Q. They only have to do with this case; right?
A. Yes, only with this case.
Q. Are you providing services to the Ballantines that
you’re being compensated of in any other capacity?
A. No.
Q. Have you provided services to them in the past?
A. No.
Q. In your First Statement, you explain that you were
the Municipal Director of the Environment starting in 2010
and then until 2013; correct?
A. Yes.
Q. And this is a position within the structure of the
Minister of the Environment; correct?
A. Yes.
Q. But physically, this is located in the
Municipality of Jarabacoa. That is why you’re called the
Municipal Director?
A. Yes.

Q. You were in that position uninterruptedly between
2010 and 2013?
A. No. In 2011, between June and October, I was out
of that position.
Q. At Paragraph 10 of your First Statement, and you
have it in your binder, you say the following: “I have
reviewed the four MMA letters to the Ballantines rejecting
their expansion permit,” and then it describes the letters,
“Three of these letters were sent during the time I was
the local director of the MMA for Jarabacoa.”
But just yet said to us that you were not at the
Ministry between June and October 2011. That means that in
spite of the fact that in your Statement you indicated
this, you were not the Municipal Director in Jarabacoa at
this date, 12 September 2011, when the expansion permit was
rejected for JDD; correct?
A. Yes. But I must clarify that I was suspended
because of an administrative proceeding, but under the law,
I had to be reinstated. So, the three months that
was—that I was out of my position are legally valid for
the application of the administrative procedure in the D.R.
Q. We’re talking about facts, Mr. Peña. You said
that you were the Municipal Director—

A. Yes, that’s right.
Q. --between 2011 and 2013, and that you were the
Municipal Director at the time of the rejections.
But right now you’re saying that you were not the
Municipal Director when the first letter was sent?
A. Yes, that’s right.
Q. So, you’re saying that there is an error in your
Statement?
A. Well, there may be an error in that case.
Q. In your Witness Statement, you indicated that a
large number of projects in Jarabacoa did not have the
corresponding environmental licenses; is that correct?
A. Yes.
Q. You also indicated that during your tenure, you
did everything possible to ensure that all projects had the
relevant licenses but that that was not possible; is that
right?
A. Yes, that’s right.
Q. When you were Municipal Director, how many
technicians for oversight purposes had the Ministry sent to
the Jarabacoa division?
A. 11.
Q. Did you consider 11 technicians was not enough?
A. No, that was not enough.
Q. Mr. Peña, we were talking about your suspension.
Q. That assessment had to do with something related to the Ballantines' case?
A. Yes.

Q. Are you talking about the one in 2011?
A. Yes.

Q. The one in 2011 had to do with a permit for forest exploitation. And at the time, the Ministry thought that that permit was ill-grounded. But when the action was assessed, it was shown that it was justified, so they had to go back on their decision to suspend.

Q. Was there any other suspension that we are not aware of?
A. No. That wasn’t.

Q. Well, I’m asking you because we did not have any knowledge of this suspension of 2011, so it’s a fair question.

By the way, if there is a project that may impact the environment, the law establishes that a promoter, before starting the project, must obtain the relevant environmental license; is that correct?

A. Yes, that’s correct.

Q. That environmental permit can only be issued if there has been an environmental assessment study—
A. Yes.

Q. --the Ministry states that it’s valid.

40 Original in Spanish: “Nivar”.
41 English Audio Day 2 at 07:00:56

Q. In Paragraph 26 of your First Report, you say that the assessment took place; is that true?
A. Yes, that’s correct.

Q. You said this because you understand that a correct assessment of the basics of a project must be based on technical and scientific measures and also on assessments; is that correct?

A. Yes.

Q. Did you read the First Witness Statement of Zacarías Navarro?
A. I think so.

Q. Mr. Navarro explains in his statement that when the Ministry assesses mountain projects, it has to take into account several factors: altitude, slope, the amount of rainfall, the kind of soil, and water issues. At Paragraph 6 of your second statement—

MR. BALDWIN: I’m sorry, Mr. President. I hate to object, but she’s talking about—she’s—Ms. Taveras is talking about what’s in the Navarro report. We haven’t been pointed to it. The witness hasn’t seen it. She’s just testifying as to her characterization of what’s in it. Could we look at it as it is we’re talking about it or allow the witness to. If the witness is going to be asked a question about it, I think the witness should be allowed to see that portion of Mr. Navarro’s report.

PRESIDENT RAMÍREZ HERNÁNDEZ: The way I understand it, Ms. Taveras was taking the witness through the paragraphs. So I don’t see anything—maybe if you can go slower.

MS. TAVERAS: Yeah, I could go slower.

PRESIDENT RAMÍREZ HERNÁNDEZ: I think you were taking—
Q. Okay. I was saying that Mr. Navarro explained in his statement that when the Ministry assesses mountain projects, it has to take into account several factors: altitude, the slope, rain, etcetera.

A. Can I read it? “I have read the statements of the D.R., that they considered things like altitude and other factors when deciding whether to grant a permit for land that has slopes. Seeing that in the Statement of Defense was the first time I have ever heard of that. I never heard before these alleged considerations.

I have not seen any documents that advised and inspectors and technical persons to consider all these additional elements while examining the slope issue.”

What I was explaining in that case is that the issue of the slope and altitude has never been considered.

Q. This is a form from the municipal office of Jarabacoa; correct?
A. Yes.

Q. This is a printed form that is to be completed by hand, correct?
A. Yes.

Q. And this form shows the findings of the technicians that were part of visits when requests could affect soils and waters were put forth; correct?
A. Yes.

Q. Had you seen this report before?
A. I designed this form.

Q. Here we have a date, 1 March 2011. And this is the date on which the municipal office received this document; correct?
A. Yes.

Q. And the inspection date 6 April 2011 is the date on which the visit was done—made by the technicians; correct?
A. Yes.

Q. You were the technical director of Jarabacoa on both dates; correct?
A. Yes.

Q. This form would be presented to you so that you could determine whether an authorization is to be granted or not?
A. Yes. That form was used to collect field data when submitting this form and then on the basis of the findings, you would decide whether the authorization was to be granted or not.

Q. Yes, other factors are considered.

Q. Please go to Tab R-236.

MS. TAVERAS: Can we show it on the screen, please. Rather, it’s R-326.

BY MS. TAVERAS:

42 Original in Spanish: “70”.

Q. But Mr. Navarro was not talking about only two factors. But you say here yourself, you said, “Altitude and other factors”; right?
A. Yes, other factors are considered.

Q. But you just said that it’s important to assess the altitude, soil, slope characteristics and to consider the impacts on soil, flora and fauna, water bodies. So your answer seems inconsistent. Because we’re not talking about assessing slopes here. We’re talking here about assessing projects; right?
A. My answer is not inconsistent. I can have a piece of land with a 7%-percent slope at 300 meters over sea level, and I can have a land at 900 meters over the sea level with a 20-percent slope. And those two factors, the relation between those two factors are not necessarily the ones that are going to be used to determine the approval or not of a project.

Q. But you say that JDD is a land that has slopes of over 60 percent; correct?
A. Yes.

Q. Okay. I was saying that Mr. Navarro explained in his statement that when the Ministry assesses mountain projects, it has to take into account several factors: altitude, the slope, rain, etcetera.

BY MS. TAVERAS:

Kaila, can you please—thank you.

MS. TAVERAS: He can look at the Report. But he did say he read it, so this is not unknown to him.

Kaila, can you please—thank you.
Q. If you look at six, you’re going to see that it refers to general description of the area, and it looks at the soil and climate factors taken into account when requesting a permit. 6.1.1, height. 6.1.2, annual rainfall. 6.1.3, annual mean temperature. 6.1.4, hold ridge life zone. 6.1.5, type of soil. 6.1.6, topography. 6.1.7, water sources. Would you agree with me that in order to assess lands with slopes, such as JDDs, the factors I have just cited are important to sign this form?

A. Yes, they are important.

Q. I would like to understand how involved you were in the JDD evaluation process. You were not part of the technical visit to assess the expansion project in February 2011?

A. No.

Q. You were not involved in the visit that took place on 17th March 2011; correct?

A. I did not.

Q. You were not involved in the third technical visit on 11 January 2012; correct?

1. Yes.

Q. The Field visit on 11 January 2012?

A. Yes.

Q. 13 January 2012, you say?

A. Yes.

Q. I do not recall, no.

A. We can show the field visit report and your name is not there.

Q. You were not involved in the fourth and fifth visit by the Ministry in August and September 2013; correct?

A. Well, I had been suspended.

Q. You had been suspended for a second time?

A. Yes, that’s right.

Q. Two different ministers; right?

A. Two different ministers. That’s correct.

Q. So you were not involved in any of the technical visits made by the Ministry to assess the JDD expansion project; correct?

A. I was not.

ARBITRATOR VINUESA: When he says no, was he there? Was he not there?

THE WITNESS: No, I was not there.

BY MS. TAVERAS:

Q. Okay. You were not present in any of the visits?

A. Yes.

Q. You were not present in any of the visits. You say it, please. For the record, please.

A. I was not present in any of the visits.

Q. You were not present in the Technical Evaluation Committee in 2011—May 2011?

A. Yes, I was.

Q. Would you like to look at your First Statement when you say that you were not present during the meeting of the Technical Evaluation Committee of 18 May 2011?

A. Oh, yes, yes, yes. You’re right. I was not there because the provincial director was at the meeting.

Mr. Franklin Bautista.

Q. And you would agree with me, now that you’re saying this to me, that the provincial director is the one that goes to the Technical Evaluation Committee visits?

A. Yes, I agree. But the MMA, when it deemed pertinent, and I don’t know why it would deem it pertinent, they called on the municipal director or the provincial director.

Q. But the regulations at the time only talk about the provincial director; correct?

A. Yes. But that was a decision by the Ministry to call on one or the other of these two officials.

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Q. But the regulations at the time only talk about the provincial director; correct?

A. Yes. But that was a decision by the Ministry to call on one or the other of these two officials.
President Ramírez Hernández: Was there any legal basis for this; that is, what the lawyer was asking? This was essentially an issue of practice by the Ministry?

The Witness: Yes, this was just a matter of practice by the Ministry.

BY MS. TAVERAS:

Q. You were not called to attend the meeting of 18 May 2011, but you were called to participate at the meeting in February 2012?

A. Yes. I think that's right.

Q. So it's not that you were not being allowed to be part of the meetings of the committee. But in May, the provincial director went, and then in the next year in February, you attended the meeting; is that correct?

A. Well, that depends on when—what you mean by that.

Q. In your statement, you say that "contrary to our rules, the Ministry excluded local personnel from this meeting."

You answered that the provisional director was included in the first meeting. When you're saying here "excluded," it suggests that they didn't want you to be present. But you were present at one of the committee meetings where discussions were had in connection with the projects?

A. Yes, but not in connection with the assessment of the fieldwork.

Q. In your First Witness Statement, you said that at those meetings—

A. What paragraph?

Q. Paragraph 11. We're talking about the TEC meeting of February 2012. You said that no technical issues were discussed at that meeting.

A. You're making reference to that right now? At that meeting, the opinion was asked of the person coordinating the field commission and no discussion was had of the information. A decision was made in connection with what he said. That's what I'm making reference to there.

Q. In your First Statement, you said that the opinion of Zacarias Navarro was the only opinion that was asked; correct?

A. Yes, that's correct.

Q. And that statement was denied by Mr. Navarro.

A. In his First Statement. And Mr. Navarro also explained at Paragraph 15 of his First Statement, when he made reference to the documents, including the files of the Ministry related to JDD.

And if you look at Mr. Navarro's statement before you, Paragraph 15 says that "the minutes of the meeting on February 22nd, 2012, Mr. Peña said that he participated in that meeting. And he confirms that in addition to the reports presented, the decisions made in connection with the reservation request had to do with the opinions of the provincial director, D.P."

He was represented by Mr. Peña, according to his statements and his statements of Ramon Villaman, who was then a technician from the Vice Ministry of Soils and Water, and Mr. Mateo, the Director of Biodiversity of the Ministry of Protected Areas and Biodiversity.

In your Second Witness Statement, you said that perhaps you were wrong in connection with the participation of Mr. Navarro at that meeting.

Is it possible that you're also misremembering the discussions held there?

A. I am sure about the discussions held there. Perhaps I was wrong in connection with the participation of Mr. Navarro. Because at that date, many members of the personnel of the MMA had changed positions. We had new staff members coming in. Some people have moved to other offices. And since we didn't have any idea as to the fact that we were to come to a proceeding such as this, we weren't really taking down each one of the events in a situation like that because we thought that everything was done correctly.

Perhaps I made a mistake when I said that Mr. Navarro was there. But not as to what happened at the meeting.

Q. So, you're saying, then, when the minutes were drawn up and they make reference to comments made by D.P.,

Mr. Navarro said that perhaps it's you representing the provincial director. This does not make reference to comments that you made?

A. No.

Q. In your First Statement, you indicated that Aloma Mountain is between—

President Ramírez Hernández: What paragraph are you referring to?

MS. TAVERAS: I am referring to Paragraph 8.

BY MS. TAVERAS:

Q. In your First Witness Statement, you are saying that Aloma Mountain is between the projects that are developed and that are being operated—or one of the projects that are being operated and developed in Jarabacoa without the permits. When you are saying that the project
Q. Then are you stating now that the Aloma Mountain project is operating and it has already been developed?

A. In our opinion, operation and development is every single activity that takes place from the very beginning with the movement of the first stone up to the completion of the construction. And in Aloma Mountain, roads were built, the power grid posts were laid out, installed, and also there was subdivision taking place, and there were movements inside.

Q. So that is--so you're not referring to the commercial operation, are you?

A. Well, there was a proposal to sell. So that is a commercial operation.

Q. But you just said that you are referring to the--any sort of involvement with the environment; isn't that correct?

A. Yes.

Q. You just stated that you--that the streets had been laid out and the subdivision had taken place. But the document in your binder labeled R-340 shows some

Q. Could we please look at R-48 in your binder. Page 5

A. Yes, it is.

Q. This is stated at Paragraph 2. And this is a road that was built by Jamaca de Dios after their permit had been denied towards the south of the property, that is to say in the upper portion of the mountain?

A. That is correct.

Q. So contrary to the position that your technicians put forward, who said that it was an intentional or voluntary violation when they sent this to the Vice Minister, you consider some sort of--you're requesting some sort of consideration for Jamaca when imposing--at the time of the fine. And even though a street that was about 700 meters long and that had a--and that it was about 5 to 7 meters wide, a fine of only 51,000 pesos was determined established for Jamaca, is that correct?

A. Yes.

Q. That would have been $2,500 back then; correct?

A. Yes, about that.

Q. So is the municipal director charged with the responsibility to act on behalf of local individuals so that reductions be assessed to the fines imposed due to a violation of the environmental law?
A. No, it’s not part of his responsibilities.
B. You indicated that Jarabacoa Mountain Garden was approved because of political connections; is that correct?
A. Yes, it is.
C. You said that this was communicated to you by Edwin Mejía, who started to work with the Ministry in obtaining the approval?
A. That is correct.
C. You communicated with Mr. Mejía did you contact Mr. Mejía to be a witness in this case?
A. No, I did not.
C. So you did not contact Mr. Mejía because you thought that he would not be corroborating your story; correct?
A. No. I did not ask him to participate because I understood that Mr. Mejía, because of his political ties, would not accept to confirm that version that is not favorable for him.
C. But this is a very serious accusation. You are saying that the Ministry technicians approved a project that they knew was not feasible because of political favor. Don’t you think that given the seriousness of the accusation, it was important to verify it?
A. It is a serious, severe accusation, and I am ratifying this because of my experience due to that problem. But I did not ask Mr. Mejía to participate because I am certain that to protect his own interests and the interests of his own political fellows, he would have not accepted to participate in this process.
D. President Ramírez Hernández: If you allow me. I would like to go back to the violation. And I would like to understand the criteria used when a violation of this type occurs. Because you received a report indicating there was a violation. Is it your whole discretion to determine the violation or what are the criteria used to impose the fine? Or to follow a manual, a guideline?
E. The Witness: Those violations are not decided at the level of the local directorate, but they are decided at the headquarters of the Ministry. Then we sent the report and the Ministry decided to impose that fine.
D. President Ramírez Hernández: But to be clear, you recommended that fine?
E. The Witness: No, we do not make recommendations of that sort.
D. President Ramírez Hernández: In this case?
E. The Witness: We do not recommend in this case or in any other case. The local director does not recommend any fines. We submit the reports, and the national

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A. But you did decide to send that violation report as a violation by Mr. Ballantine rather than a violation by Jamaca de Dios; is that correct?
A. I do not recall why we established that difference.
C. Wouldn’t it be because there is a formula under the law that applies violations based on the equity that the companies have, and that would have been much higher than the fine that Mr. Ballantine had to pay as a physical person?
A. I do not believe that was the case because I don’t think there was such a differentiation back then. But I don’t know. I cannot be specific why we decided not to do it with Jamaca or to impose it to Michael.
D. President Ramírez Hernández: What law are you referring to?
E. Ms. Taiveras: I am referring to Article 167 of the
directorate, the Ministry at headquarters, is the one that decides on the fine.
I did not decide on 51,000 pesos to be imposed to Michael or whether it was going to be a million pesos. It was not my decision. It was the decision of the technicians with the Ministry based on the reports they received.

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Q. So let’s go back to your criticism of Mr. Nivar.
A. That was R-4, the one we were referring to before. That was R-4, the one we were referring to before.
Q. In your First Witness Statement, you made two specific comments/criticisms that I would like to explore.
A. At Paragraph 32 of your First Statement, you say, “In connection with the report by Mr. Nivar”—and I am going to read it, and you can look for it in your own statement.
I. The Report indicates that— the Report points out that there was a violation report because there were any landslides or no protection of the work was been nor the access roads or at the villas, which, according to the report, will lead to landslides.
A. And later on the paragraph ends with the statement, “That there has been a clumsy distortion of reality, because those conditions do not exist at the Jamaca de Dios project.”
Q. What are you referring to? Are you denying that there were any landslides, or are you denying that there was evidence, or are you stating that there was no evidence of any landslides?
A. What I am stating at that paragraph is that

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***"Original in Spanish: "Nosotros venimos el informe."
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**English Audio Day 2 at 07:35:44**

**English Audio Day 2 at 07:37:08**
Mr. Nivas said that there was no evidence of protection.

But there was evidence of protection with vegetal cover, and there is also the row of culverts for the protection from the runoff. And there was--there were elements, but he said that none--no protection was implemented. And that is what I am referring to.

Q. But even with that protection, you would admit there were landslides in Jamaca de Dios?

A. All of the mountain projects have those problems. So that's the reason why there is a management--an environmental management program that includes protections as well as mitigation of that type of event.

Q. At Paragraph 31 of your First Statement, you state that the report--and this is in connection with the Report at R-458. The report states that "the project is constructed with inadequate material and some of the buildings have up to three levels made of concrete blocks and cement."

And later on you indicated that the Report does not provide any specific evidence of any of these claims.

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were submitted to the Tribunal. Could you explain why?

A. No, because I was not in charge of handling those reports or--I don't know why all the exhibits were not attached when they were submitted, but they did include exhibits.

Some reports also indicate Exhibit X. Exhibit X because, for example, they were part of those reports.

Q. Would you please state where in your First Report you are referring to an exhibit.

A. (Reviewing documents.)

The answer is no.

Q. Then you confirm that in your First Report, you're not referring to any exhibit to support the statements in your report?

A. Yes, that is correct.

Mr. TAVERAS: I have no further questions for you, Mr. Peña. Thank you very much for the time.

But I would like to refer you to C-7, Page 3. That is the exhibit that shows the fine imposed to Jamaca de Dios in 2009, and that fine applies Article 167 of Law 64-00.

Thank you.

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MR. BALDWIN: We have no questions, Mr. President.

PRESIDENT RAMÍREZ HERNÁNDEZ: Very well. Thank you very much, Mr. Peña.

THE WITNESS: Thank you.

PRESIDENT RAMÍREZ HERNÁNDEZ: I'm looking at the next person is Eric Kay who, likewise, has a report--or a report that has to do with the loan, with the agricultural bank, and also your observations and the topographical features of a dozen projects. And today, we saw how in your presentation you referred to projects such as La Montaña, Jarabacoa Mountain Garden, and other projects.

My question to you is whether you presented any exhibit or attachment to those reports?

A. Yes, I did include exhibits.

Q. But those exhibits were not included when they were submitted to the Tribunal. Could you explain why?

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PRESIDENT RAMÍREZ HERNÁNDEZ: Redirect?

MR. BALDWIN: I'm sorry. I would like to--the next person is Eric Kay who, likewise, has a report--or a presentation, and I expect that will take about 20 minutes. So that might take us to the end of 6:30.
Just with that part of that process. So I'd say it's up to Respondent whether they want that started.

MR. DI ROSA: That's fine. Maybe then he presents and we end there. I don't know that it would make sense to start the cross-examination immediately after.

PRESIDENT RAMÍREZ HERNÁNDEZ: I would rather have it in one go, the presentation as well as the questions. So would the Parties be agreeable to waking up a little bit earlier? Maybe we could start—certainly, the Tribunal is. I'm looking to Mr. Di Rosa.

MR. DI ROSA: I think counsel agreed that we would not do that.

PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. So maybe we can start earlier, and my proposal will be 8:30.

MR. DI ROSA: Okay.

PRESIDENT RAMÍREZ HERNÁNDEZ: Well, let's be early risers. I teach at 7:00, so don't complain. Okay. So we meet 8:30 tomorrow.

MR. BALDWIN: Yes. Thank you, Mr. Chairman.

MR. DI ROSA: Thank you, Mr. President.

(Whereupon, at 5:54 p.m., the Hearing was adjourned until 8:30 a.m. the following day.)