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")

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In the Matter of Arbitration Between:

MICHAEL BALLANTINE, LISA BALLANTINE,
PCA Case No. 2016-17

and

THE DOMINICAN REPUBLIC,

Respondent.

---x Volume 4

ORAL HEARING

Thursday, September 6, 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 8:58 a.m. (EDT) before:

PROFESSOR RICARDO RAMÍREZ HERNÁNDEZ,
Presiding Arbitrator

MS. MARNEY L. CHEEK, Co-Arbitrator

PROFESSOR RAÚL EMILIO VINUESA, Co-Arbitrator

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1 English Audio Day 4 at 00:05:59

P R O C E E D I N G S

1  PRESIDENT RAMÍREZ HERNÁNDEZ: Good morning,
2   Mr. Mirabal.
3
4   THE WITNESS: Good morning.
5
6   PRESIDENT RAMÍREZ HERNÁNDEZ: Can you hear us?
7   THE WITNESS: I can hear you, yes.
8
9   PRESIDENT RAMÍREZ HERNÁNDEZ: Good morning. How
10   are you?
11   THE WITNESS: Good morning. I'm very well, thank
12   you. How are you?
13   PRESIDENT RAMÍREZ HERNÁNDEZ: I'm going to ask you
14   a very important question. How is your health?
15   THE WITNESS: Well, all things considered, I'm
16   doing well. One of my vertebrae is squished.
17   But—sometimes it's hard to walk, but I'm doing well.
18   PRESIDENT RAMÍREZ HERNÁNDEZ: All right. Very
19   well. I hope you get better soon.
20   I know that you do not have the Witness
21   Declaration there, Mr. Mirabal. But for the record, I
22   wanted you to confirm that you solemnly declare, upon your
23   honor and conscience, that you shall\textsuperscript{1} speak the truth, the
24   whole truth, and nothing but the truth.
25   THE WITNESS: I do declare upon my honor and

\textsuperscript{1} English Audio Day 4 at 00:05:59


1 conscience that I shall speak the truth, the whole truth,
2 and nothing but the truth.
3   PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you very much,
4   Mr. Mirabal.
5
6   I will now give the floor to counsel for
7   Claimants. They're going to ask you a few questions.
8   THE WITNESS: Very well, Mr. President.
9   PRESIDENT RAMÍREZ HERNÁNDEZ: Excuse me. I made a
10   mistake. It is counsel for Respondent who is going to ask
11   a few questions.
12   MR. BALDWIN: I just want to do a quick point of
13   order here, if I could, before we start the questions.
14   PRESIDENT RAMÍREZ HERNÁNDEZ: Yes.
15   MR. BALDWIN: The first is because of the video
16   conferencing and the way this room is set up, I would ask
17   that the gentleman be at least one seat away from
18   Mr. Mirabal because where he is right now, he can write
19   notes and the Minister can see. So, I would just ask if he
20   could move to another spot.
21   And secondly, I don't recognize—that document
22   seems to have a picture in front of the Minister, and I
23   don't think his Witness Statement is a picture so I'm just
24   curious as to what documents he has there.
25   PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Mirabal, could
   you tell us what document it is that you have before you?
I can’t hear you.

THE WITNESS: All right. We’re going to remove everything. These are my personal papers.

PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.

(Pause in proceedings.)

PRESIDENT RAMÍREZ HERNÁNDEZ: You are fine with the seating now?

MR. BALDWIN: Yes.

PRESIDENT RAMÍREZ HERNÁNDEZ: So, we will go right back to Respondent.

Mr. Baldwin, we’ve been told that what you saw—the picture you saw is an iPad. That is from the World Bank there. And when he turned it off, that’s where everything. So—

(COMMENTS OFF MICROPHONE.)

PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. So we are fine.

If you agree, the Parties agree, we’re going to continue as we are right now, and hopefully we’ll be able to see you later.

THE WITNESS: Honorable President, I would like to extend my greetings to you, the co-arbitrators, and to all of you there present. I would like to present my excuses because I wasn’t able to travel because of health reasons.

No can now begin.

PRESIDENT RAMÍREZ HERNÁNDEZ: We completely understand. You have nothing to apologize for. We hope you get better soon.

Please proceed.

MS. SILBERMAN: Mr. President, Members of the Tribunal, let me present you Jaime David Fernández Mirabal. He’s a psychiatrist and a doctor. He was also the Vice President of the Dominican Republic between 1996 and 2000.

He was the Ministry for the Environment and Natural Resources between ‘08 and 2011. And on 25 May 2017, he has submitted a Witness Statement in this arbitration.

JAIME DAVID FERNÁNDEZ MIRABAL, RESPONDENT’S WITNESS, CALLED

DIRECT EXAMINATION

BY MS. SILBERMAN;

Q. Can you hear us, Mr. Mirabal?

A. Yes, I can hear you.

Q. Do you have any correction that you would like to make of your Statement?

1. Original in Spanish: "y estar presente como era mi deseo".
2. Original in Spanish: "que los Ballantine entregaron después de la declaración suya.
A. I don't have any questions for you.

PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Baldwin. Just any questions.

Q. So, I'll dispense with all the typical things I would give you all the preliminaries, but you've already testified in the Corona Materials arbitration; correct?

A. Yes.

Q. So, I'll dispense with all the typical things talking to you about. So, please let me know if you have any questions.

PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Baldwin. Just for the sake, could you speak a little slower.

A. I don't have any questions for you.

BY MR. BALDWIN:

Q. You testified just a moment ago about the cement factory. When did you first learn of the Ballantines' allegations with regard to the cement factory?

A. Okay. Now you are giving me information about that matter. I thought we were going to talk about the Ballantines' issue. I didn't know that we were going to talk about Cemiento Gonzalo.

Q. Well, Mr. Minister, your lawyers just asked you about the cement factory, so you've had an opportunity to talk about it. So, I'd like an opportunity to talk about it too. And I'll be asking the questions.

So, please tell me, when did you first learn about the Ballantines' allegations about the cement factory?

A. Our lawyer just put the issue forward, and I responded. It is the first time that they put forward those questions. I had no knowledge that those matters were going to be dealt with here.

Q. When did you first learn that the Ballantines had made an allegation about the cement factory? Was it yesterday? Was it last month? Was it six months ago? A year ago?

(Comments off microphone.)

THE INTERPRETER: I'm sorry. They do need to make a pause. It's impossible for the interpreter to work if...
Q. Thank you.

A. Yes.

Q. And are you also on the Political Committee of the PLD?

A. A. I am.

Q. I don't think that was in your statement, but can you explain what the Political Committee does?

A. The Political Committee is the executive body that executes the policies put forth by the Central Committee. It follows up the political activity—the daily political activity within the organization.

Q. Thank you.

A. The Central Committee has about 600 members. They hold a Congress. They establish policies, and then the Political Committee, made up of 34 members, well, we follow up on those policies and the day-to-day political activities.

Q. Thank you.

A. And it seems that some years are missing in your description. From 2000 to 2008, what were you doing during that time?

A. From 2000 to 2008, I was dedicated to family activities. The cultivation of Kahkow and other activities, but I did not hold any public office.

Q. Thank you.

A. And currently you're on the Monetary Board for the Dominican Republic?

Q. Yes.

A. Yes.

Q. So, Mr. Minister, you were one of the founding members of the PLD; correct?

A. Well, the beginning of the party, yes. Well, I got in there in 1978. So, yes.

Q. Thank you.

A. And the PLD has held the Presidency for the Dominican Republic for 18 of the last 22 years; right?

Q. Yes.

A. Very well.

Q. And you've spoken out about reducing the red tape, so to speak, that can happen in all governments; correct?

A. The Monetary Board is the body that follows up on the monetary policy. It is made up of six permanent members and the Governor and the Ministry of the Treasury and the Superintendent of Banks. Those are ad hoc members. We are appointed members, and we follow up on the monetary policy of the D.R.

Q. So, you're basically a public figure in the Dominican Republic, having been Vice President, Ministers of several places and now on the Monetary Board; correct?

A. Yes.

Q. And you've had opportunity to speak at a lot of places. And one of the things you've spoke out about is corruption. Isn't that right?

A. Yes, issues related to corruption. Yes, I have had the opportunity to talk about that. Of course.

Q. And haven't you stated in the past that one of the issues of corruption is the discretion given to government officials?

A. Yes. Discretionality is what we talk about, yes. It is very dangerous, the discretionality of public officials. It's very dangerous for democratic stability.

Q. Thank you.
Q. Okay. And let's talk about timing for a moment.

Just generally speaking, when you were the Minister of Environment from 2008 to 2011, when an applicant was seeking an environmental license for a housing project in the mountains, how long would it take for them to obtain that license, assuming they were qualified to do so, after they had submitted their application?

A. Well, we tried to have a period of under 60 days for the projects. That was our intention. Of course, the technical teams—well, many projects were approved before that timeline, others after it, but the different teams had to agree: environmental management, protected area, forestry, maritime issues. Well, that depends on where the project was located.

Q. So do you think that, for example, if it took three years to get a license, do you think that would be too long? And let me say, an environmental license for, let’s say, a housing project in the mountains?

A. Well, three years, that would be a very, very long time. I don’t think that there are projects that have been processed for three years. So the last three years, it’s a long time. That was never the case in our administration.

Q. Thank you.

Could you turn to Paragraph 21 of your Witness Statement, which is on Page 6. Do you see that?

A. Yes, I did. I'm looking at it.

Q. Thank you. And you say that the purpose of the meeting with Mr. Michael Ballantine was to discuss the fine, right?

A. Yes, that is why they came to my office.

Q. Would it surprise you to know that when that meeting occurred, that Mr. Ballantine had already paid that fine?

A. I don’t know. I don’t know about that. They did not tell me that. If they had paid it, they did not tell me that.

They came to me to talk about two things. First, the issue of the reduction. And second, to ask why they were not allowed to build on the other site. I did not have the answers to those questions, and I told them that what I had been told at that time was that there was a problem with the slopes and that construction was not viable at that site. But they never told me that they had paid it.

Q. You testified a few moments ago that your meeting with Michael Ballantine was partly about the denial based on the slopes; correct?

A. Please repeat the question.

Q. You testified a few moments ago that your meeting with Michael Ballantine was in part to talk about the denial based on the slopes on his property.

A. No. They came to me to talk about the reconsideration of the fine. During this conversation, they asked about this, and I said I wasn’t sure, but that I had heard that this was an issue related to slopes. But the main thing they came to see me for was the reconsideration for the fine imposed because of the environmental crimes that they had committed.
Q. Okay. So, Mr. Minister, you were a Minister when
a whole set of national parks were created; right?
A. Yes.
Q. There were 32 created together?
A. 32 protected areas, yes.
Q. And this was done in connection with some
international obligations that the Dominican Republic had
to create these parks; right?
A. No. These were declared on the basis of studies
conducted by the different departments. But it was also
based, in connection with some areas, upon the
recommendation of international organizations such as
Nature Conservancy and other organizations on the basis of
the technical reports that were prepared by the Vice
Ministry of Biodiversity and Protected Areas.
Q. Now, you instructed Mr. Eleuterio Martínez to go
out and map these parks; correct?
A. No. Eleuterio Martínez had done it already. This
was not done upon our indication. They conducted all their
studies, and we asked the Vice Minister to revisit all
these areas because we needed to make sure that whatever it
is that was--that had been done was correct.
That was not only based on recommendations, but
also--the recommendation of technical teams, but they also
have the recommendations of the Vice Ministry. And that's
a correct way to do things.
Q. So, Mr. Minister, is your testimony, then, that
you didn't know that there was this information or there
was mapping done for potential parks until Mr. Martínez
came and told you that he had already mapped out these 32
parks?
A. No, that is not what I said. I said that once we
were informed of all the recommendations and all of the
studies conducted, we were also given the reports on the
considerations the technicians included. And that's when I
became aware of the 32 protected areas under the various
different categories: scientific reservations and natural
monuments, national parks. And that's when we got to see
all of the areas.
Q. But had you told Mr. Martínez to go out and gather
this information about parks? Forget that there's 32. But
had you told him to go out and gather information about
parks?
A. Well, we do not order a Vice Minister to do
something. The Vice Minister or his technicians do so as
part of their activities, and the Vice Minister presents a
report to the Minister.
Q. Thank you. When the report was presented to you,
did you ask Mr. Martínez or anyone else in the Ministry of
the Environment to take a look at whether private property
would be affected by any of these national parks?
A. No, I did not ask that question because the State
declares an area as protected based on the reconsideration
and several of them are on private sites, but that is an
agreement later on that is entered by the person and the
State to find--to determine it.
But the protected areas address a fundamental
interest of the State to protect certain areas; therefore,
we did not ask whether there were any private persons in
those areas.
Q. Okay. Can you look at Paragraph 14 of your
Witness Statement, which is Page 4?
MR. BALDWIN: Larissa, if you would put up 14,
please. No, I mean, highlight Paragraph 14.
THE WITNESS: I read it.
BY MR. BALDWIN:
Q. Okay. And it says here--the last two sentences,
it says that, "Eleuterio Martinez only shared the final
input and submitted a project to me."
And then you state in the next sentence that you
forwarded that to the President of the Republic; correct?
A. Yes. That's what I mentioned in the previous
statement. This is given to us and the Minister just
completes the step towards the president's office when we
have the trust that we have in the team that was working on
that report. In particular, Mr. Eleuterio Martinez, who is an
engineer, was really glorious in terms of the work that
he does to protect the areas in our country.
Q. So you had a very, I would say hands off, but let
me try something that might translate better.
You didn't micromanage or manage extremely closely
the--Mr. Martínez. You allowed him to do his job and then
accepted his recommendations; right?
A. Yes. Because nobody knows natural resources
better than the engineer Eleuterio Martinez. He is a
scientist. He is a technician, and he is a person who is
highly qualified.
Q. Thank you. I'm going to have Ingrid give you a
binder that I believe she has there, and we're going to
look at Exhibit C-141 in that binder.
MR. BALDWIN: I don't have binders but everyone,
it's C-141. And Larissa will put it up on the page here.
C-141.
THE WITNESS: I have it here.
BY MR. BALDWIN:
Q. Do you recognize this document?
A. Regarding what? I need to read it. Just a
second. I need to read it.
Q. Please.
MR. BALDWIN: Larissa, if you can go to the last
Q. And that's a Dominican-owned mining company; is that right?
A. The owners are Dominican.
Q. And if we look at subparagraph (f) it says what you just said, that part of the concession, more than 90 percent is outside Los Haitises National Park; right?
A. Yes.
Q. Let's look at--the Tribunal can look at this at their leisure. But let's look at paragraph (b) of this. And here the author, Mr. Mateo, is talking about the supply of water would be affected by this project; right?
A. Those are his considerations, but this was not supported by a technical report. These were his considerations.
Q. And if we look at the last paragraph, because this is the important one where he gives the conclusions, doesn't Mr. Mateo here say that this project is not viable in economic terms, and he suggests that it be denied?
A. That's his opinion. That's the opinion of one of the team members. He is one of the members of the Vice Ministry on protected areas. That's his opinion that we also respect, but that is his opinion.
Q. Okay. Well, let's take a look at your opinion.

1. Q. Good. Thank you.
2. A. The Dominican Republic has an incredible debt--with Mr. Martinez and his fight to defend natural resources.
3. Q. I would not doubt that. In here, he's trying to fight for natural resources; right? Because isn't he recommending that the cement factory not be approved in this letter?
4. A. 11 He sent me the report where Professor Mateo clearly says that more than 90 percent of the area is not within the area. This is the report by Mr. Mateo. This is not the report--this is not within the Los Haitises area. Because if you look on the next page, you're going to see that the signed the permit because that's when the professor, engineer Eleuterio Martinez had some differences--some opinions that were different from what Mr. Mateo had said.
5. Q. Let's look at paragraph (d) of this, which is on the second page of the document.
6. A. Yes.
7. Q. And it talks about the Dominican mining consortium, do you see that?
8. A. Yes.

---

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Q. This was a pretty important meeting because this
was deciding whether a huge cement factory would be built
in an area which, although more than 90 percent is outside
the park, contains area in the park; right?

A. Well, all of the Validation Committees were
important because the Validation Committee was the final
stage. I participated in that stage, and I did not
participate in very exceptional cases, but all of the
meetings were very important.

Q. Do you know, then, why Engineer Madon asked to be
excused and left for reasons of work? Do you remember? I
know it's a long time, but I was just curious if you
remember?

A. No. I don't know. But I know that Mr. Eleuterio
Martínez was there, but I do not remember that because we
had several validation meetings for several factors. I see
that he asked to be excused, but I do not recall the
reasons.

Q. And if we could look at page 3 of the document.
Now, before I ask you a question about that, I don't see
anywhere in this document where any of the concerns that
Mr. Mateo discussed in the last exhibit we looked at were
discussed.

There's certainly nothing here in the document

that says that. Do you know if his concerns in the
environmental damages were discussed in that meeting?

A. I don't know. Because I am--I just read the
document that we receive at the end for the Validation
Committee, and that is where I say saw the signature by
Mr. Eleuterio Martínez. And as I just mentioned, I fully
believe in Mr. Martínez' opinion in connection with
technical issues.

Q. And if he signed that document, I didn't ask that.

A. So in this certificate of this validation
committee, weren't you trying to find ways to basically do
public relations work for the Dominican mining consortium?
Weren't you trying to figure out ways to make this more
acceptable to the public at large?

A. I believe that you do not have a good opinion of
politicians and I do not like that. I do not like it, it's
disrespectful.

Q. Let's look at paragraph 1 of the recommendations
here on Page 3 of this document under the recommendations.

Let's pull up the first paragraph. There you go.

Now, aren't you saying here, Mr. Minister, that
the project or that, I don't know, the "they," I'm not sure
who that is, but that the project or the Ministry of
Environment or somebody should highlight the fact that
there's a benefit from this cement factory because they're
also going to plant some trees?

A. I don't understand that. I think that you
continue to insinuate aspects that in my opinion are not
proper, but I respect you as an attorney.

Q. Thank you. And I respect you in your role, too.
So thank you for that.

A. It doesn't look that way.

Q. Okay. But the recommendations don't talk about
environmental damages, they say things like-if you look at
the first paragraph, "Hey, you should specifically
highlight that there will be reforestation." And then it
basically states that it--the it tells the consortium that
they should do some resources to do that reforestation;
right?

A. Those are the recommendations by the Technical
Committee. The ones who were in charge of environmental
management presented those recommendations. Whenever we
allow, for example, a mining company to develop a work,
such as La Rosario, we present a recommendation as to how
to cure any environmental liabilities and how to recover
the soils. That is part of the Technical Committee report.

Q. Okay. In addition to issuing this, didn't you
also appear in public and defend the issuance of the
license for the cement factory? Weren't you a public
defender of it?
The witness: Thank you, Your Honor.

Arbitrator Cheek: Good morning. Thank you very much for taking the time to appear here today.

The witness: Thank you, Your Honor.

Arbitrator Cheek: I had a question about something you referred to at the beginning of your testimony. You mentioned that when designating the protected areas, they may have private property. But whether they have private property is something not considered at the time you make the environmental designation, but that later there can be agreements between the government and those private landowners. And I was wondering if you could explain to us what those types of private agreements might be.

The witness: If a protected area is declared under the supreme interest of the State and the interest of the citizens is declared as protected and there are some owners who have—who are the holders of those areas, the owners of those areas, there is a legal constitutional mechanism through which the owner resorts to the legal department to receive a compensation for the value of the lots that were declared protected.

Therefore, the new constitution, as well as the previous one, provides for a valuation of those costs—of those lots, and this is a job that is conducted by the attorney of the State, also the survey department and some private entities. We assign a value and the State has the duty to compensate for the value of those lots, those areas that were declared protected but that can no longer be used. For example, within the protected areas we have some natural monuments that can be used given some management plans.

So the right to own that area is not lost. But if we are talking about a scientific reserve area, that can
I acquired the master franchise of Mr. Movies, embarked on a personal project. And this company sold sewing machine pieces in the Free Trade area. I worked there until 1997 and then I thought about developing a project with safety and also liked to thank the co-arbitrators. So should we take a five-minute break to allow you a coffee break? We need coffee. So then we make it 10 minutes, then.

Q. Good morning, Mr. Hernández. On the table you should have a spiral-bound copy of your Witness Statement. Could you take a look at it and confirm that it is, in fact, your Witness Statement?

A. That is correct.

Q. And is this your only Witness Statement in this arbitration?

A. That is correct.

Q. Do you have any corrections to make?

A. I do not. None.

Q. And so do you ratify the contents of this Witness Statement?

A. In full.

Q. Are you an employee of the Dominican government?

A. I am not.

Q. Have you ever been an employee of the Dominican government?

A. No.

Q. Could you briefly remind the Tribunal of your professional history.

A. Well, I’m a specialist in marketing. I am a graduate of the Iberoamerican University in Santo Domingo. I am a worker, an employee--I’ve been employed since I was 13 years old. My first job was in Repeco Leasing, which was a car lease company. I wasn’t there for long. My brother and I, we obtained a representation contract, Universal Fill and Supply, a St. Louis company. And at that time, the company was booming, specifically because of the Free Trade area of the Dominican Republic. And this company sold sewing machine pieces in the Free Trade area. I worked there until 1997 and then I embarked on a personal project. I acquired the master franchise of Mr. Movies, which was a branch of Blockbusters. And I developed that business for ten years in the D.R. And I had 13 stores. That was a business that was predetermined to last only 10 years, because technology was going to have an influence on the consumption patterns of customers. And then we had to dismantle the company after a period of ten years. After I was starting to dismantle the Mr. Movies, I always visited Jarabacoa, always had the wish to live in Jarabacoa. In those years, I started a real estate business in Jarabacoa. I sold lots. I referred friends. This was almost like a weekend kind of business. And then later on, in 2005, I and a group of partners/friends thought about buying a mountain and to—we thought about developing a project with safety and also comfort for Dominicans and foreigners. And I have been involved in that business for the past 13 years.

Q. How did you go about selecting a site for a mountain residential project?

A. Well, there are many factors to consider. The market varies on the basis of the age of the individuals. Some people like to be in the mountains, for example.
BY MR. BALDWIN:

Q.   And I understand that--sorry.  I'll wait for the translation.
I understand that this is your first time being involved in a court proceeding or arbitration proceeding. Why did you agree to be a witness in this proceeding?

A.   Well, I am definitely here because a lie was told about me. It was said that there was a meeting at my home with Mr. Fernández in order for us to set limits or boundaries to the Baiguate National Park. At a dinner, it was said that those boundaries were going to be held.

I don’t know Mr. Fernández. I know that he was the vice president. That dinner never took place. Well, he was the one who signed my first license. He was the vice president; I know that. But we have never been introduced.

MR. SILBERMAN: I have no further questions at this time. So, I'm going to pass the microphone over to the Ballantines' counsel.

PRESIDENT RAMÍREZ HERNÁNDEZ: Counsel, could you just go slower just for the sake of our stenographers and interpreters.

MR. BALDWIN: Yes.

CROSS-EXAMINATION

BY MR. BALDWIN:
And we supplied sewing machine pieces in all the areas. My brother was a district manager of that area and I was the manager. I--it was from 6:00 to 6:00. I went to home at 6:00 a.m., and then I had to visit 20 to 25 customers. I--it was from 6:00 to 6:00. I went to La Romana, to other cities, and I only worked in Santo Domingo Fridays.

So it was impossible for us to take all the classes. I had to go slow, perhaps two classes, three classes, because at the time truly work was my priority to support myself and my family. At that time I was also supporting my mother.

Q. Good. Thank you.

And this job you mentioned at Universal Sewing Supply, it says St. Louis here, but you were stationed in the Dominican Republic, right?

A. Yes.

Q. And would you explain to me a little bit about what you did there? You talked about it for just a moment, but it would be helpful to hear a little bit more about what you did at Universal Sewing Supply.

A. Universal Sewing Supply was a company that we started—my brother and I started in my bedroom in my house. And we supplied sewing machine pieces in all the areas, districts, we say, or by states, by zones.

Q. When you say you've never been involved, does that mean you've never been named as a defendant or you've never brought a lawsuit? Is that what you mean by you've never been involved?

A. No. I said that I had never been present in a proceeding of that nature.

Q. Have you ever been otherwise involved in a legal proceeding?

A. Yes.

Q. What legal proceedings were those?

A. Well, sometimes employees bring lawsuits against a company. I have never been personally involved, but I've been involved as a representative of the company. But never personally.

Q. Okay. You are the--there's lots of projects that have been discussed in this case, as you may well know. But you're the only person that's going to be examined at this hearing who is involved in one of these projects other than Mr. and Mrs. Ballantine.

...
Q. What does it take? What type of qualities do you need? Do you need to be good at bringing people together? Do you need to have vision? That sort of thing.

A. To be an entrepreneur is to be the owner of a business, I imagine.

Q. What does it take? What type of qualities do you need? Do you need to be good at bringing people together? Do you need to have vision? That sort of thing.

A. I do not understand the question.

Q. I'm saying, you know, it takes certain skills to be a good--would you say that you are a good entrepreneur?

A. I wouldn't be able to tell you that. I think that the facts should speak by themselves.

Q. Okay. Good answer.

Q. I'm sorry to take you away from there for this, but I'm just wondering. You say in your Witness Statement that you're an entrepreneur. What does it mean to be an entrepreneur?

A. To be an entrepreneur is to be the owner of a business, I imagine.

Q. Are those good qualities for an entrepreneur?

A. I do not understand the question.

Q. I'm saying, you know, it takes certain skills to be a good--would you say that you are a good entrepreneur?

A. I wouldn't be able to tell you that. I think that the facts should speak by themselves.

Q. Okay. Good answer.
Isn't it that Hacienda del Bosque is the--sort of let me ask this.
Q. You have the--if you look at Annex A in that A. I did not understand the question.
this Quintas del Bosque company do?
Q. And as part of that, you review brochures, you make sure there's signs up around the community, you make sure that the information on the website is good; correct?
A. Yes.
Q. You list three things here. The first is Jarabalodge. What is Jarabalodge?
A. Jarabalodge is a company that bought some lots in Quintas del Bosque to develop houses. Because Quintas del Bosque in principle was just for the subdivision of the area.
Through experience, we realize that once we sell a lot, we are selling a problem, because the person is to find an architect, an engineer that builds the house. And in particular, foreigners do not want to be addressing all of these issues, and we saw the need to provide a finished product.
Jarabalodge is a company that bought a portion of the terrain to be able to develop a project within Quintas del Bosque with 13 cabins, and that is called Greenlodge.
And the 13 cabins have a shared area. It has a gazebo, and it has a restaurant.
Q. You have been there; right?
A. Yes. I told you that I've been there for ten years.
Q. Very nice. Your house has been there for ten years?
A. Yes.
Q. And were you the first house there in Quintas del Bosque?
A. Yes.
Q. What year did Hacienda del Bosque start?
A. Yes.
Q. And Jarabalodge is the company that executes Quinatas del Bosque; correct?
A. Jarabalodge is a company that bought a portion of the terrain to be able to develop a project within Quintas del Bosque with 13 cabins, and that is called Greenlodge.
And the 13 cabins have a shared area. It has a gazebo, and it has a restaurant.
Q. You have been there; right?
A. Yes. Yes, indeed.
Q. And you--how long have you--you live in Quintas del Bosque; correct?
A. Yes. I told you that I've been there for ten years.
Q. Very nice. Your house has been there for ten years?
A. Yes.
Q. And were you the first house there in Quintas del Bosque?
A. Yes.
Q. And the--it's a very nice house, by the way.
But I have a question. Did you build the three houses you're talking about? Did someone else build them?
A. I did not build them. Back then, I did not have experience in construction. I did like architecture, and I had a clear idea of what I wanted to do.
But a colleague from Jarabacoa, Chad Wallace, an American colleague, who was the husband of the principal where my children--my daughters went to school, I established a good friendship with him. He was an engineer, an architect, and he's the one who executed the three houses. The three houses follow the same model.
Q. So prior to starting Quintas del Bosque, you had no building experience, right? You hadn't built anything before?
A. Yes. In the area, I had no experience with the construction of cabins, but I had some experience with construction, because, for example, I participated in the layout of the construction, the offices of Mr. Movie and the 13 stores. And those were my first experiences in the area of construction.
Q. And let's talk about this second one, which is Quintas del Bosque. Since the first one, Jarabalodge, has certain properties inside Quintas del Bosque, what does this Quintas del Bosque company do?
A. I did not understand the question.
Q. You have the--if you look at Annex A in that binder in front of you, the second bullet point under "Experiencia" is Quintas del Bosque. I wonder, is that--did that--is that Quintas del Bosque meaning--well, let me ask this.
Isn't it that Hacienda del Bosque is the--sort of
A. I think it was around 2005. Yes, 2005. There was a long negotiation process. There was an intention at the very beginning that—an intent to buy. I think it finally closed in 2005. I do not recall the exact date.

Q. Was it bought in part or was it one large purchase?

A. It was bought from an estate. It was bought from the heirs of a family. They owned—they each owned a portion of that. They were co-owners. The children were co-owners with their father. They had inherited that from the mother. And we bought it in separate contracts. And then they also inherited the part from their father. We had individual and joint contracts based on the areas that were co-owned.

Q. And you said it was bought from an estate. So, obviously, there had been a person that had died who had owned it previously. The person who had died, what year did that person die?

A. I do not recall.

Q. Don’t recall.

But you were dealing with the estate and not the person; right? By the time you were buying the land, the person was already dead, and you were dealing with the estate; right?

A. The mother had died. This was a long time ago, and the negotiation of the land was not something that I handled. It was handled by—who used to be our attorney. I was focused on the marketing aspect. The purchase of the land, Conrad Wittkop [sic] is the one who managed that with the attorney.

MR. BALDWIN: And just for the transcript, it’s Conrad Wittkop. I think, W-i-t-t-k-o-p.

BY MR. BALDWIN:


A. First of all, in 2005 we obtained a permit to build the roads. And the main task was to improve a public road, La Villa de La Lomita, that is throughout the area, and we couldn’t walk this area because we had more than a whole foot of mud. And to restore that public road was a lot of work.

We also got a permit to start building the access roads. And that’s what we did.

Q. Okay. So the road that runs up the mountain, let’s say, the one that you just talked about, that—when you got the project, that was a very muddy road, right, you said?

A. Yes.
Q. Okay. And so you guys wanted to fix it up. And you said you had a permit. Was that a permit from the Ministry of the Environment or from someone else?
A. The permit from the Environment was for me to build the access road to the property that we had acquired.

To fix the outside road, we just came to agreement with the community, and they were really thankful. Because there is a community, La Lomita, beyond the project with about 25 families, and whenever it rained—and we have a lot of rain in Jarabacoa—it was impossible for those people to go up the mountain.

So we agreed with the community. We also hired some of the workers from the community. We started to remove the mud and use actual material to be able to restore that outside road that had to be restored.

Q. So when did—you stated that you fixed the road. You didn't get a permit for the road, the access road. So when did you obtain a permit to do those access roads from the Ministry of Environment?
Q. 2005.
A. And that was a permit for the building of those access roads to build houses?
A. No. It was to have access to the property. We built the houses with a permit from the municipality. We paid taxes. We requested a permit. The municipality authorized us, and we built the houses.

One of the houses is at the edge of the project based in La Lomita, and the other two are inside the project.

Q. Okay. So the permit was to build access roads. When you applied for that permit in 2005—you got the permit in 2005. When you applied for that permit, were you planning on putting houses on that—or were you planning to eventually use those access roads to put houses on the property?
A. No. To sell lots, just to sell lots. At the beginning, Quintas del Bosque was a subdivision project rather than a construction project. And that's the way it was sold. We started to offer finished houses once we offered Greenlodge.

Q. So the access roads, though, were so you could show people lots and then people would buy those lots and put a house on the lot; correct?
A. There were several purposes. At the beginning we sold the land and also to be able to walk with the architects and define the potential we had with that project.30

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30 Original in Spanish: “En ese momento en principio fue para sembrar y para con los arquitectos caminar y definir cuál era la potencialidad que teníamos con el proyecto.”
Q. Right. But does it in--sorry. We'll move on.

So in 2006 you put in the access roads. What did you do in 2007?


In 2007 we delivered the requirement for the environmental impact assessment. That is where we were requested. The Ministry paid us a visit and told us that we couldn't build anything else.

And between 2007 and up to 2009, we did nothing rather than just plant pine trees until we got the license.

Q. Okay. And let's talk about that. How many pine trees did you plant?

A. 50,000. And to date, we have planted 78,000. We have a compensation level that goes 100 to 1. For every pine tree that we had to cut down, we have planted 100.

It's a record.

Q. So the pine trees you're cutting down, those are the native pine trees that you have to cut down?

A. No. We do not cut the pines. If we are going to build a house where we have a pine, we go to the Environment—the Ministry of the Environment. They send an inspector. The inspectors look at the pine tree. They collect the tax. They—we cut the pine tree. We give it to the environment. And then we plant 100.

A. No. The governmental entity donates them, gives them away. There are reforestation programs. The seedlings are taken to schools. We conduct a talk with the children. There's a whole structure for these plants to be planted in the whole country.

Q. So you didn't pay for any of these 70,000 trees.

They were—you received them from the government as part of this program?

A. No, because not everything is in the hands of the government. There is a specific pine; it's called Araucaria pine. We have a supplier, which is Alta Gracia, that provides other plants to us. But most of the plants are under the Quisqueya Verde plant.

There is a department in the local environmental office. It's also known as the environmental school. And they themselves provide the seedlings and provide the environmental education to children, to schoolchildren. They teach them about protecting the water and the importance of reforestation.

Q. And have you ever bought any of these trees from Los Arbolitos?

A. Never. I think I went there one day to go and use the restroom, because they're on the roadway to Jarabacoa.

But I have never bought—not even one single tree from them.

ARBITRATOR VINUESA: Could I?

Just a question. When we are talking about reforesting of trees, we're talking about seedlings; correct?


ARBITRATOR VINUESA: And I was thinking if there were, you know, mature trees, how did you transport them?

THE WITNESS: No. They're very—they're very, very small.

ARBITRATOR VINUESA: Yes. I have the same problem over there where I live, and I have the same concern, so I know what you're talking about.

BY MR. BALDWIN:

Q. You stated that there was three houses that were built in Quintas del Bosque ten years ago; right?

A. Yes.

Q. How many houses are there now in Quintas del Bosque?

A. 45. And five are being built, thank God.

Q. Are you building those?

A. Not really. Construction is an issue that takes a long time. I have entered into an agreement with Franco Borrell. It's a company. They're architects of mine. And
they have construction facilities. And if a customer asks
a cabin from me, they build them. I work with them. I'm
only building the Greenlodge cabins.

Q. Your house is not in the Greenlodge; right?
A. It is not. Because at that point in time when I
built my house, we didn't even think about having the
Greenlodge construction project.

Q. How big is your house, if I may ask?
A. Are you talking about the lot or the construction?
Q. The construction, the square meters of your
constructed house.
A. My house is divided into three parts. We have the
main house first. It's about 300 meters. And then two
small adjacent constructions, a guest house, is there. My
brother is living there with me. And another small house
for the service personnel and the laundry facilities.

I just wanted to say that my house in principle
was built on the largest lot in the project because I
thought definitely I was going to go live there. But I
prepared the house and the gardens as a showroom kind of
house so that when people from Santa Domingo came and paid
a visit to me, they could more or less see the conditions
and what was it that we were selling.

Q. How many levels is your main house, the 300 square
meter, approximately, house?
A. Two levels and the mezzanine. The mezzanine is
double height.

Q. What is the biggest house, if you know, since you
were building—what's the biggest house in
Quintas del Bosque I?
A. We have a very good set of regulations. You can
only build 20 percent—on 20 percent of the size of the
lot. And this has to be built 10 meters from the border of
the lot.

That's an advantage that we have, because the
project is not a density-related project. It's not very
dense. So you can only build on 20 percent of the size of
the lot. So 3,000 meters is the average of the lots.
So we're talking about 600 meters—square meters.
I don't think we have any house that is 600 square meters.
The largest is probably 400. At least the ones that I have
built, they're no larger than 300 meters, 400 meters.
I always tell my customers, "Don't build big
lodges. They cost a lot of money. There's a lot of unused
space."

Q. And these lodges, are they constructed of concrete
or what type of material do you use to make them?
A. Well, it's a mix. It's a mix. You have wood and
concrete. And my dream, initially, I wanted them to have
log homes. I wanted to see whether I could have a
partnership with some log home company, but they cost three
times as much in the Dominican Republic.
So they are a mix, and there is concrete and wood.
We always recommend that they use local materials, the
owners. That's a recommendation we give to them in order
to make things less expensive.

Q. Good.
A. Generally speaking, of course, the base of the
house is made out of block concrete, and then the top is
made out of wood. That's why I'm saying it's a mix.
Well, engineering--this is a hybrid. That's how
it is known even here in the States by architects.
Q. Are the same-size houses planned for
Quintas del Bosque I?
A. Well, that depends on the size of the lot. The
customer has the right to use up to 20 percent of the lot
surface area. But the building footprint is about 5 or
10 percent, even though this may be a multi-level home.
One of the problems, I'd say, that perhaps reduces
the competitiveness in a market is when you want to build

33 Original in Spanish adds: "en algunos solares".
A. Yes.

Q. And you discuss—you say in here that you discuss the possibility of cooperating for the development of Jarabacoa for Jama de Dios and Quintas del Bosque I; right?

A. Michael and I had a number of meetings, and we discussed many, many things, things that had to do with many issues in connection with Jarabacoa and the projects.

Q. Okay. You said you discussed some possibilities. What were some of the possibilities you guys were thinking of doing?

A. Well, a long time has elapsed. I don’t think I could recall everything. But we talked about a number of things. He liked the fact that we planted a lot and that the area looked very forestry. He sent a number of individuals to come look at it. I always told him, “Plant, plant.”

And I do remember something. He told me that when a customer came to see his project, he said, “Well, if you’re not going to buy here in Jama de. Go to Quintas del Bosque. Quintas del Bosque is the best project after Jama.”

Q. I’m sure they’re both very good projects, but that’s nice to hear.

MR. BALDWIN: So let’s put up, if we can, Larissa, Grosso Modo, I think that, yes, that it’s correct.

Q. Are the roads that are shown on this map, do those roads exist in the project?

A. Yes.

Q. And is the depiction of those roads essentially correct? I mean, did the drawer of this map basically—as you can see, it’s wider in places, more narrow in places. Did the person who made this map do a fairly good job at capturing the roads?

A. Yes. I understand that the developer did a good job. And not only that, but before conducting a mapping exercise, you have to walk and walk and walk.

One thing is to plan something, right, to plan a road. But when you are building the road, if you, for example, find a rock that is impossible to—then, you know—cross, or a large pine tree that you can go around, well, that changes things.

When the roadway is to be built, you find the more feasible way to do it. Some places are broader. Others are not as broad. But the design of a project with a number of roads makes it so that the density is reduced and not all of the owners are going to be using the same roadways.

Q. Okay. How wide is the road? If you count all the roads, all these access roads we see going through, how wide is the widest road in Quintas del Bosque I?

A. The widest road is the La Lomita roadway, which is external to the project. By law, the roadway—and this, according to the law—it must be 6 meters wide, because 6 meters allow for two vehicles to go on the road.

Q. But I’m not talking about the access road—or the road on the side. I’m talking about—when you’re referring to that, you know, Camino de La Lomita, you’re talking about the road that runs on the left-hand side of the project; right?

A. Yes.

Q. And that’s the road that was muddy because of the rain and you had to go and fix; right?

A. Yes. It was a public roadway.

Q. Right. But I’m talking about the access roads, the roads inside the property. What is the widest of those access roads?

A. I’d say that Quebarea (phonetic), the first one—well, perhaps there are some sections of it that are up to 10 meters wide.

Q. Okay. So none of it is 10 meters. Okay.

Now, we’ll leave this up for a moment, but I want to ask you a different question.
So you built these three houses in 2008, one of which was yours, in Quintas del Bosque I; right?
A. Yes. Lot Number 30. The three houses were built on Lot 19A, 30, and 37.
Q. Thank you.
But you were continuing to develop the property in 2008; correct?
A. Well, developing. No. Building access roads, yes.
Q. In 2008 we weren't doing anything, because in '07 we got a visit from the MMA. They stopped the works. And then we didn't do anything until '09, when we obtained the permit.
A. Yes.
Q. So in '08 you weren't doing anything--by '07--it's 2008 now. You said your houses have been there ten years.
A. The work came to stop, and they told me that I couldn't do anything until '09, when we obtained the permit.
Q. I did not--I was not fined because I had a permit.
Q. And then there was a series of access roads as well; right?
A. Yes.
Q. Now, the inspectors stopped development. So, what houses were you developing in 2007 that the inspectors stopped?
A. Well, it's a little hard to read here this was the inspection document that was given to me at the time. I don't remember. I think at the time we were building the security guard little houses that we had at the entrance. But I do remember that we were building the water pipe and then after the visit everything came to a halt.
Q. So after that it wasn't just that you couldn't do the water pipe. After 2007 you were stopped from doing any construction or development activities at all; correct?
A. Yes.
Q. When you built those three houses you've discussed earlier in 2007 range, you didn't have a permit from the Ministry of the Environment for those houses, did you?
A. Well, at the time it was from the municipality.
Q. Okay. Nothing from the Ministry.
And at that time when they came for this visit in 2007 you had built some access roads. But wasn't the permission for those roads not for access roads to build houses but for access roads for other purposes?
A. Yes. But you ask the municipality, and the municipality provides a permit for you to build the house, and then it inspects the site and you pay taxes for that.
Q. Did you know when you built these houses in 2007 that you needed a permit from the Ministry of the Environment to build those houses?
A. I did not.
Q. Were you familiar when you built the houses that--of the law 64-00 that governs, let's say, for example, the slopes? Were you aware of that law when you built these houses in 2007?
A. I did. I knew of the law.
Q. Okay. When they came out and stopped your--when the MMA came out and stopped your construction and development activities, how much did they fine you for the violations that they recorded in this document, R-57? How much were you fined?
A. I did not--I was not fined because I had a permit to build the roads.
Q. But they had said that you had done--you had done things wrong. I mean, they had stopped you from continuing to develop, but your answer is, though, is that you did not get a fine?
A. The work came to stop, and they told me that I can--I could continue as soon as I had the environmental license.
Q. Did they threaten you with jail if you were to do any building until you obtained the permit?
that Quintas del Bosque received an environmental permit

Q.   Since we're here, actually, let's keep looking at

A.   For the access roads. I had them for the access

houses?

Q.   Okay. Well, I don't want you to do that. So

thank you.

A.   I cannot lie.

Q.   In fact, you were given 14 days to correct the problem right? If you look at Exhibit R-58, the handwritten 14 in there, you were given 14 days to correct the situation; right?

A.   I do not recall. Rather, I know that we had to implement some measures after to take some action after the visit, but I don't recall what it was.

Q.   Can you explain what measures you had to--you don't know what measures you had to implement?

A.   I don't know whether I had to close down the excavation, the holes. I don't remember.

Q.   Okay. But one of the things you had to do was apply to get a permit. That was the problem. No permiso. You had to apply to get a permit. So that was one of the things that you did right after this visit, was to start the process to obtain a permit. Isn't that right?

A.   No. I think that the permit had already been requested. If I recall properly, we had--we had already presented submitted the studies, the environmental impact assessment to obtain the permit.

Q.   Okay. So prior to this visit in 2007, you had already requested a Terms of Reference, received the Terms of Reference, and then submitted an Environmental Impact Study? Is that your testimony?

A.   Correct.

Q.   If we could go back to your Tab number 2. And Larissa, if you could pull up his Witness Statement, the English version is fine, at paragraph 8, which is on Page 2. Do you see paragraph 8?

A.   Mm-hum.

Q.   And this was your Witness Statement, and you put that in there because you stated that you wanted to respond to these allegations, that's why you did the Witness Statement. It says in here that the Ballantines asserted that the construction of Quintas del Bosque was initiated without environmental permission. Is that accurate?

A.   No. This is not accurate. Because I already had a permit for the construction of the access road and then a permit from the municipality for the construction of the three houses.

Q.   When you say "permit of the municipality," what is that? The City itself issued a permit?

A.   No. There is a process. All of the houses need a permit from the municipality and also the payment of taxes based on the size and also an inspection.

Q.   Is it--when you say "a permit," are you really referring to what's called "a no-objection letter" from the municipality?

A.   I don't know if it is called like that, but I think it could be called a no-objection letter. But, clearly, an approval for construction.

Q.   Okay. But you didn't have any approval from the actual MMA, the environmental authorities, of those three houses?

A.   For the access roads. I had them for the access road.

Q.   Since we're here, actually, let's keep looking at this. Your last sentence here says, "They also maintained that Quintas del Bosque received an environmental permit for development despite having slopes that are in excess of 60 percent." Do you see that?

A.   Yes.

Q.   Does Quintas del Bosque have slopes in excess of 60 percent?

A.   The issue of the slope is quite complex. We need to look into how they're measuring the slope, what is the point from which they measure and also the altitude differential against the distance. I imagine that there are some slopes that are 60 percent, and they should also have some green areas.35

Q.   Okay. So there are slopes at 60 percent on Quintas del Bosque I?

A.   I imagine there are.

Q.   And let's go to Quintas del Bosque II. It's a new project. When did you request the terms of reference for that project?

A.   The terms of reference for Quintas del Bosque II were requested in 2014, 2013 or 2014.

Q.   What about if I told you that it was made on the 25th of February 2014. Does that sound about right?

A.   I know it was in 2014. I do not know with
accuracy, but I do know that it took me almost three-and-a-half years to receive the permit.

Q. Now, you've mentioned before that, you know, we could go back on Google Earth and see from 2005 and what Quintas del Bosque I looked like. So you're aware that Google Earth, you can go to particular years and times and see images from—you can see historical images. Are you—you're aware of that, right?

A. No, I don't know. I know that there is an old picture when we started, and I have a current picture. But I don't know if you can see it—if you can see it every year.

Q. So Google Earth has a way to go back and look at historical pictures and go look back at a year, two years.

But my question is: You received the permit for Quintas del Bosque II when? When did you receive it?

A. The permit for Quintas del Bosque II, that was a titanic fight, faced several issues. Because the Ministry of the Environment was producing new regulations and new resolutions for mountain projects, and we kept sending letters, meeting with everyone to see what was going on because our permit was not issued. We were basically desperate. And we were told—we were simply told that we had to wait for the new resolution or resolution for mountain projects.

And after that, we were able to provide the terms of reference because we were told that I needed to remove the four lots from the project.

But after almost a year, the resolution was passed, but referred to developments above 1200 meters, and also the construction based on the percentage slope. And after the resolution, I received the license. Six months later, with the restriction of those lots that could not be developed, and we needed to redo our master plan and also increase the green areas by more than 10 percent.

Q. Okay. So this--I understand about the altitude over 1200 meters. What's the other law you're referring to? You said there was two. One that dealt with the concentration of slopes. What law is that?

A. There are several observations under the regulation. You cannot develop projects of up to 1200 meters. I think at the end of the day that was modified. I am not certain. Because I know that a group from everything, and etcétera, and todo lo que se me decía era que había que esperar la resolución.
Q. Yes.
A. --is Francisco Rivas?
Q. Yes.

A. Yes, I know who he is. It was not a very pleasant experience. He came to my project, I was called from security saying that he was a real estate agent. He took a lot of pictures. Then he met with me. He told me that at one point he worked at Jatunco de Dios, and then I found out that he was a person working for Michael. I called him, and I told him that I had felt bad, very bad, because he had trespassed my properties.

He also had security call me. And when I was told that it was Francisco Rivas, that he was a real estate agent and that he was coming in for some pictures, I was very naive and I let him in.

And after that I met with him, and he was asking me for information, master plan prices. He was asking me too much information, and that seemed to be a little bit suspicious. And then I found out that he was working directly with Michael. I was upset. I called him, and I told him that I needed to--I wanted to sign a Confidentiality Agreement. That the information that I told him that I needed to--I wanted to sign a Confidentiality Agreement. That the information that I gave him, that he was not going to share it. And that was it.

Q. Okay. And when did you find out that Mr. Rivas had put in a Witness Statement in this arbitration?
A. No. I'm learning of that now.
Q. So in your preparation and your discussions with the lawyers or the environmental people for Respondent, nobody ever mentioned Francisco Rivas to you?
A. I have not talked to the people from the environment, and I have not talked with the attorneys about Francisco Rivas.

BY MR. BALDWIN:
Q. Is this Francisco Rivas?
A. That's my Statement. That is not Francisco Rivas' Statement.
Q. Okay. How you're going to see here when we pull it up that he had some very nice things to say about your property. But he states in here that the drains were finished. Weren't, in fact, the drains finished when Mr. Rivas visited QDB II?
A. There couldn't be any drainage because there was only a 50-meter road. That road did have the drainage.
Q. He talked about a structure. He says in Paragraph 14 that it was at least one house constructed. Wasn't, in fact, there a house constructed then?

A. No, because that is part of Quintas del Bosque I. The entrance to Quintas del Bosque II is through the occidentalis forest. And there is a house there, but that belongs to Quintas del Bosque I, not II. Quintas del Bosque II starts right there. The entrance to Quintas del Bosque II is through Quintas del Bosque I.

Q. And so you requested these Terms of Reference in--we've agreed--in 2014. And you received those Terms of Reference in 2014, didn't you?
A. I believe that was the case.
Q. Let's look at Tab 10 of that binder that you have there. Do you recall this document?
A. No, I do not.
Q. Do you understand that this is what the Ministry would give you to start the--you know, after you submit your terms of--or you request Terms of Reference, don't you understand this is what they would give to you for the project so that you could start discussing the situation with them?
A. As I mentioned before, the person who was in charge of this is Valentin Cordero, my environmental consultant. He may have received this and analyzed it.
Q. There's no map--

BY MR. BALDWIN:
Q. There's no map in this document. There's no map--there's no drawing of where the roads are going to be or the lots are going to be in QDB II, right, if you look through this document?
A. You're talking about this document in front of me? Not clearly. There is no map.
Q. Let's go, if we can, to Tab 8. If you could go to Tab 8, please. These are letters from you to--the first one is a letter from you to the Vice Minister. Do you see that? Do you remember sending this letter?
A. Yes. Clearly, it is signed. And that letter, apparently, was submitted because of additional information. This is just part of the business as the Ministry moves on with the analysis of the permits, new documentation is requested. I don't know which letter this is referring to because it says it is related to a letter that has already been sent.
Q. Well, let's go, actually, to the third page in that same tab. So stay in that tab. Go to the third page. And that's a letter from the MMA to you, and it's dated July 31st, 2017. Do you remember getting this letter?
A. Yes.
Q. Okay. And how did you get this letter? How was
It sent to you?

A. The Ministry usually calls you and tells you that there is a piece of mail or correspondence in the—at the window, and I was never sent anything. That's the way they do it.

Q. Okay. So you went and you obtained this letter on the same date. Do you think you probably got this letter on July 31st?

A. I don’t recall when I received it. But I do recall that as part of the discussion—we discussed this letter for a year and a half.18

Q. Okay. And you get this letter, and it tells you that you have to submit a redesign, an AutoCAD redesign of the property; right?

A. Yes, that's what the letter says.

Q. And it doesn't really say much else. I mean, it just tells you, you have to do an AutoCAD redesign and it says that there's lots that you can't include, but it doesn't really tell you how to do that AutoCAD redesign; right?

A. No. It's also telling me that I need to relocate some lots because they were in the buffer zone, and I was told that the Ministry would not be destroyed by the storms. No infrastructure was built.

Q. So you don't know how many houses are permitted in one of your couple of properties?

A. I don't recall how many.

Q. So you don't know how many houses are permitted in one of your couple of properties?

A. I don't recall. 30, 25. There was one that was objected to. The physical number I do not recall.40

Q. And when you did receive the permit, it was for 25 houses; right?

A. I don’t see the relationship between the two documents, but I do recall feeling desperate to obtain that permit. And since the resolution had been issued, I understood that even with the objection for those lots that they mentioned, the permit was viable.

Q. And so you submitted this AutoCAD thing. You did that the next day. After you got it, you submitted that to the environmental authorities. But you had obviously been talking to them and they're trying to work with you here to make sure that you can get your project permitted; isn't that right?

A. That's not the way I see it. I see that they have some requirements, and they are objecting some lots in the buffer zone, and I did not agree with that.

Q. Now, the roads are in place already in your QDB II subdivision and they are reiterating that in that letter.

A. Yes. And I also tell them that a year and eight months ago I had already provided the Environmental Impact Assessment.

Q. And so you submitted this AutoCAD thing. You did that the next day. After you got it, you submitted that to the environmental authorities. But you had obviously been talking to them and they're trying to work with you here to make sure that you can get your project permitted; isn't that right?

A. That's not the way I see it. I see that they have some requirements, and they are objecting some lots in the buffer zone, and I did not agree with that.

Q. I see some limitations in that letter. Nothing to help me.

A. I don’t see the relationship between the two documents, but I do recall feeling desperate to obtain that permit. And since the resolution had been issued, I understood that even with the objection for those lots that they mentioned, the permit was viable.

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Q. So you don’t know how many houses are permitted in one of your couple of properties?

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Q. Now, the roads are in place already in your QDB II property; right?

A. No. In QDB II I asked for a local permit to build a 50-meter road, which is the continuation of the access road of QDB I. So that 50-meter road was built with a local permit. After that, with the catchments so that it wouldn't be destroyed by the storms. No infrastructure was built.

Q. No. I mean today. As you sit here today, you’ve built the roads through QDB II?

A. Yes. And I also tell them that a year and eight months ago I had already provided the Environmental Impact Assessment.

Q. And so you submitted this AutoCAD thing. You did that the next day. After you got it, you submitted that to the environmental authorities. But you had obviously been talking to them and they're trying to work with you here to make sure that you can get your project permitted; isn't that right?

A. That's not the way I see it. I see that they have some requirements, and they are objecting some lots in the buffer zone, and I did not agree with that.

Q. Nothing to help you. But there—it's not a denial. They're telling you that if you submit this redesign CAD and you eliminate several lots that, you know, and resubmit it, they'll go through and analyze it again; right?

A. Well, they're telling me that I need to introduce changes to the design. This is just normal.

Q. So it's normal for the Ministry to write and say, "Please change your design, eliminate lots." That's sort of a normal procedure; right?

A. It is not the usual procedure for the Ministry to request additional information. But it is normal for the Ministry to follow the Terms of Reference.19 The Terms of Reference were already referring to the lots, that they were in the buffer zone and that they could not be in the subdivision and they are reiterating that in that letter.

Q. So you, just a few weeks after this, when you were sending this redesign on August 23rd, you got the permit for Quintas del Bosque II; right?

A. Would you repeat the question?

Q. Sure. This—you sent the redesign CAD drawing—AutoCAD drawing on August 1st. And then just a few weeks after that is when you received your permit from the property; correct?

"Original in Spanish: "Y hay que ir a retirarla allí al Ministerio."

"Original in Spanish: "Es normal que el Ministerio pida información adicional, y es normal que el Ministerio se acerque a los TDR."
Q. Okay. In the--when you go up the road that starts to build trails so the people can use them to walk.
A. Well, the access road, the main access road that runs parallel to the Mar Abajo roadway, and that's where the main center box is;--well, perhaps after ten years of experience, as I told you, well, we wanted to upgrade it. Perhaps we wanted to raise our standards after the experience we gained. So the entryway road is more striking and larger.

Q. And how large? How wide?
A. 10 meters, I think. 10 meters wide. That one, right. The entryway road. Not all of them. The other ones are 6 meters wide.
Now, usually they are 8 meters. And then you have 2 meters for the ditches and the catchments where the waters are going to run. But the transit area, netty speaking, 6 meters.

Q. Okay. But the 10-meter road, the transit area you're talking about is 10 meters?

10 Original in Spanish: "que es donde va a estar la garita principal".

Q. Okay. But the 10-meter road, the transit area you're talking about is 10 meters?
A. In the main roadway, perhaps it's between eight and ten or eight and nine, because I think initially it had been built as a 10-meter wide one. But the catchment areas had not been built. But I think at the end, I think it was about eight. I couldn't really give you the exact number.

Q. Eight to ten. And then you have the catchment things on the side of that; right?
A. In this case, only on one of the sides. Only one of the sides.

Q. And it's only on one of the sides because the road has some natural slope to it such that the water will drain off and only into one particular side, that's why there's only one side that has a catchment; correct?
A. Yes. Usually, you--actually, what you do is you do a little slope on the road so that there is no erosion and the water drains off. And then you take the water to the ditches so that the water may run naturally its course.

Q. Okay. And can you tell me what--on QDB II, you have some very nice trees. What type of sort of native trees do you have at QDB II?
A. In QDB II, on the upper portion, we planted Pinus occidentalis, which is native from there, and then cypresses were planted down there. Also, we put cypresses in the upper portion in the division areas between the different plots. We always have this green barrier of pines so that you see the border of the property as a natural green area.

Q. And there's two roads in QDB II, one coming from the top of the mountain, one coming from the base of the mountain; right?
A. I don't understand your question.

Q. They're the main roads. Forget about the access roads for a moment. But the main roads in QDB II, there's one that goes up from the bottom of the base of the mountain and then there's one that comes from the top down; correct?
A. No, not to the top of the mountain because in the middle you have a green area. It doesn't go to the top of the mountain.
Q. Right. That's why there's two different ones. There's an entrance from the top, entrance from the bottom, and the two roads do not meet.
A. They do not meet, no. Do not meet because of the slope of the land which is very steep, and that is why we wanted to leave it there as a green area, and we were going to build trails so the people can use them to walk.
Q. Okay. In the--when you go up the road that starts at the base of the mountain and you go up to the, basically, what might be called the middle part of that property, you know, you have a nice space up there with trees that were already there on the property; right?
A. I'm not sure exactly what part of the property you're referring to. The property has a lot of trees. And the trajectory of the road has many roundabouts because we were trying to avoid cutting trees that are shade trees. All trees like mango trees and other trees, and we wanted to divert the road, and we wanted to leave those green areas for air quality purposes. I'm not entirely sure what area you're making reference to.
Q. Okay. Generally, on the higher elevations of the property, there's a good breeze that goes through. There's moss on the trees that are--that have been there. Is that a pretty good description of the property up in the higher portions?
A. Is that a question?
Q. Yes.
A. Okay. If you described the portion you're referring to--okay. Yes,62 We come to an area where you find pine trees--yes, there are pine trees over there everywhere. That is why it's called Quintas del Bosque.
Q. Understood. And there's--those pine trees have moss on them; right? Isn't that right, Mr. Hernández?

62 Original in Spanish: "O sea, que si describió bien la parte de que está hablando."
A. Yes.
Q. Okay. Now, you described heavy rainfalls in the area. What do you do to make sure that those rainfalls are managed?
A. Well, I said that this was a rainy area, Jarabacoa was. Generally, what we have is a good drainage system and good ditches to take the water to the ravines, which is the natural way for the water to come out. For example, we tried to also keep the water that comes from the roofs, and we use the water coming from the roofs, and we put the water in a reservoir or in a container and we use it for watering plants and gardening.
Q. Thank you. And with regard to--let's go back for a moment to QDB I. With regard to QDB I, you're required to submit an environmental compliance report, something called an ECA, every six months; right?
A. Yes.
Q. And have you submitted an ECA for QDB I every six months?
A. I think a number of them have been submitted, but I don't have the number. I don't know exactly.
Q. Would it surprise you to know that the number of ECAs is one that you've submitted, and 2013 was the only ECA that you submitted?
A. Perhaps in 2013, yes. But I think I've submitted

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A. Well, I do have to be involved at the very end of the process. But all the preparations and all the processing is in charge of him.
Q. Who is Francis Santana?
A. Francis Santana is an architect that started working when QDB I started out. She designed the first gate.
The architect came because she was referred to us by Mr. Domínguez. He was the first director of QDB. She's an architect. She lived in the area. And at the time, she designed a gate for us, and after that we did not work together anymore. She designed and built a gate at the base in the Bosque Cypress. Then she held a position at the HOA. Later on, we saw each other again to deal with certain matters. I do not remember what matters exactly. But I do remember that she held a high-ranking position at the HOA.
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Q. And you see in that first paragraph, it says that
the permit is--or the--you know, it's essentially the
promoter--it says that the--it mentions Hacienda del Bosque
and then it says José Roberto Hernández, promoter; right,
that's promoter; right?
A. Yes.
Q. So you're--as far as the HMA is concerned, you're
the promoter of QDB I; isn't that right?
A. Yes.
Q. And doesn't this require both Hacienda del Bosque
and you to comply with the terms of this permit?
A. Yes.
Q. And isn't one of the terms of this permit that
you--or one of the terms of this permit and requirement of
law that you submit ECAs every six months?
A. Yes.
Q. I want to go back and talk about the QDB II permit
now. I'm sorry. I don't want to talk about that.
I want to ask you: Who approached you about
giving a Witness Statement in this case?
A. Well, I received a call from the Ministry to
explain what had happened. They showed me the statement
that was given. I was being involved in this alleged
dinner where the borders of the Bagua Park were set. I
wanted to believe that. And I don't remember who called me,
given to me with the limitations that I already indicated.
Q. Okay. A war of Titans. When you're dealing with
governments, I don't know if it's a war of Titans. But I
hear you.
MR. BALDWIN: So let's pull back up again A-31,
please, Larissa.
BY MR. BALDWIN:
Q. And in your binder, Mr. Hernández, A-31 is Tab 8.
Can you pull up Tab 8?
A. MR. BALDWIN: And Larissa, please go to the third
page.
BY MR. BALDWIN:
Q. Okay. Now, if you look at the third page of this,
Mr. Hernández, do you see in the first paragraph of this,
it says the Technical Evaluation Committee met on March 8th
of this year. Do you see that?
Okay. So you had been waiting for your permit at
that point--
THE INTERPRETER: There was no answer.
MR. BALDWIN: I'm sorry.
BY MR. BALDWIN:
Q. Do you see that? Yes?
A. Those were the plots of lands that were taken from
me.
Q. Right. But the meeting they had--the Technical
The permits, no. Three years had elapsed from the first technical evaluation date. After the first technical evaluation date that was given, the ToR, and I was asked to eliminate some lots. And then we discussed for over a year.

We were discussing because we were saying that the plots of lands did not affect the buffer zone. And then after that, I could provide the EIA. And then they rejected the EIA as well.43

Q. Now, three years is a pretty long time to wait for a permit, don't you think?
A. Okay. One thing is to wait for the permit, and a different thing is the processing. You start counting the time for the permit after you filed the EIA. And to prepare the EIA, you need six to 8 months.

Ideally, from the view point of a developer, it is that--well, after the EIA is filed, then six months later at the most, you should receive your permit. In the case of QDB II, almost two years elapsed after the filing of the EIA.

And the permit came back with substantial

A. No, it wasn't three years while I was waiting for the permits, no. Three years had elapsed from the first technical evaluation date. After the first technical evaluation date that was given, the ToR, and I was asked to eliminate some lots. And then we discussed for over a year.

We were discussing because we were saying that the plots of lands did not affect the buffer zone. And then after that, I could provide the EIA. And then they rejected the EIA as well.43

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And the permit came back with substantial limitations.

Q. And isn't Mr. Ballantine to blame for that? Isn't his bringing of this CAFTA lawsuit against the Dominican Republic responsible for that three-year delay and you're getting the permit? Isn't that your view?
A. I am not to say that. I think the MMA people should answer that question.

Q. But can you agree with me that in the last, you know, three years, that the way that the MMA handles permit requests has changed?
A. Well, in the past few years, a new MMA Minister took office, Mr. Domínguez Brito. And his management had an impact at all levels, specific goals were set, some work was done in Valle Nuevo, and I understand that many things changed when it comes to permit granting.

Perhaps the question should be posed to the people of the MMA and ask them when they became more demanding. Perhaps the resolution has to do with that.

Q. You state in your Witness Statement that you do a lot of due diligence for your projects. Did you do due diligence for Quintas del Bosque I?
A. At the time, 13 years ago, as I indicated, I didn't have the experience that I have now. But due diligence was conducted substantially. Omar Domínguez, who was the person with knowledge on environmental matters, and
There is a letter from all the sellers that confirms that they sold, and they collected the money. And the Claimants’ lawyer is looking at the whole proceeding.

And before I got here on the 31st of August, the only document was filed that the judge was asking so that the heirs could be determined and the transfer could take place.

That has been the only pebble in my shoe that I’ve had in this project.

Q. Claimants won that case; right? The Claimants won the case in the appellate court? You stated that you were--the Hacienda was forced to turn back over the money. The Claimants won that case.

A. No. I said that the Claimant--well, got a judgment against me and against Conrad. Well, that wasn’t something that bothered the Claimant. $35,000 had to be provided, and they had to sell that house in an estate sale. And this takes from five to ten years.

So the owner wants the title. Our intention was to provide the title to the owner, but we’re not obligated to do something that’s impossible. We’ve been the victims of bureaucracy of a material error. And three years later, we have been able to cure that defect, and we’re going to be able to transfer the real property to the 32 owners.

This is a less than 10-percent average because only two sued.

Q. And the Claimant in this case alleged that you and Mr. Wittkop forged the signatures on the sale of that property, didn’t they?

A. The details of the claim had--rather, the claim stated that we did not have the right. We did have the right because we had bought the land and paid for the land. Now, there is a procedure that is to determine who the heirs are, and the property has to be transferred, and that had not taken place.

Ms. Silberman: Mr. Baldwin, do you have a document that you can show us?

Mr. Baldwin: No.

Ms. Silberman: Were these the documents that the Tribunal excluded prior to the hearing?

Mr. Baldwin: I don’t see why that’s relevant.

I’m asking him questions. He’s answering questions about the court case.

By Mr. Baldwin:

Q. Now--

A. I’m sorry. I did not know that this had to do with the ownership of Quintas del Bosque.

Q. I think it’s important.

PRESIDENT RAMÍREZ HERNÁNDEZ: I will ask you to just tell us, what is the relevance of this line of questioning?

Mr. Baldwin: Well, Mr. Hernández in his Witness Statement went to great lengths, and in the direct today, to talk about how much he does due diligence, how he looks at titles and makes sure everything is right. And now we have a case of where 31 titles were invalidated because the court held that Hacienda del Bosque sold property that it didn’t have right to sell because it didn’t own.

PRESIDENT RAMÍREZ HERNÁNDEZ: But I think--

Mr. Baldwin: So it goes to his due diligence.

THE WITNESS: That is completely, completely false and it has been completely mischaracterized.

Mr. Baldwin: I’m happy to move on.

PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.

Mr. Baldwin: I’m happy too.

THE WITNESS: But if you allow me, I can clarify. 32 titles were canceled because there was a material error. It had the name of the father but with the wrong last name. Instead of Benicio Tejada, it read Benicio Abreu. So we canceled the one that said “Tejada,” we issued the new ones that read “Abreu,” and we were able to issue that as the transfer of the heirs with the right last name.

There is an individual sale. There is also a ratification of the sale where they said that they charge—that they sold, and that they have no right to the properties. We were victims of a technical error. And, as you mentioned, it did help me learn about legal issues regarding land tenure in the Dominican Republic, which is a complex issue.

By Mr. Baldwin:

Q. So when you sell this property—the property that was purchased and then you sell the property to the individual landowners; correct? The people that are going to buy the lots inside Quintas del Bosque I; right?

A. I didn’t understand the question.

Q. So you’re in the business of selling lots to people that want to buy a lot and put a house on that. That’s what you do. You buy— you bought the property from the person who owned it before, and then you subdivided it and you sell lots to individual landowners; right?

A. Yes.
I'm almost done, I promise. Two more questions.

The cabin itself. Not the land, but the cabin itself.
A. I never said that. I never said that. I said
that the average is 200 meters, and that there could
be--there could be--one, one cabin that reaches 400. You
would need to look at the size of the lot. But the cabins
that we have there are not large.
Q. Okay. But, I mean, 400 square meters, that's a
nice size. I'd love to live in a 400-square-meter cabin.
A. I have never said that there is one that is 400
squares meters. Not--I haven't built any that is 400.
The largest one that I have built is 300.
Q. Okay. A 300-square-meter cabin. And these cabins
are concrete, as you mentioned. Some wood, some concrete.
But, you know, that's what the cabins are constructed of;
right?
A. It is a hybrid that comprises material from the
area. It's a cement structure, and the top is made of wood
to make it as light as possible, with same--or with a
lighter metal roof.
MR. BALDWIN: There's only one other thing that I
need to do. I should have mentioned this--apologies--and
we were sequestered up there.
I wanted to just show--I'm not going to put up on
the screen, Mr. Hernández, an attorneys'--eyes-only exhibit,
and I'm not going to ask him about what's stated in there.
It's close to—why don't we—let's just clear the room, then. Let's do that. Maybe we can have a lunch, and we can finish this up. This will be just a moment.

PRESIDENT RAMÍREZ HERNÁNDEZ: I would rather do it before lunch.

MR. BALDWIN: Okay. Well, that's what I meant. We'll finish this and the redirect and then take a lunch.

PRESIDENT RAMÍREZ HERNÁNDEZ: Yes. We are clearing the room now, just for the record.

MR. BALDWIN: I'm just going to put this up on the screen to make it easier. But, Larissa, if you could put up C-113.

And I believe Mr. Veris had this issue with the page numbers yesterday, but I believe it's Page 9, if you can go to Page 9. I'll pull it up myself.

No, keep going. More. One more? Two more? Ah, here. This is thing we saw yesterday.

BY MR. BALDWIN:

Q. Mr. Hernández, do you recognize this as the map you submitted with your application for the Terms of Reference?

A. I do not recall, but that is not the current map for the license.

Q. Okay. So that's not the current map. So the map for the license is in a different--I'm sorry.

need to flip it. We can kind of imagine.

Can you pull out--can you highlight just the map part of it, the red line that's on the left-hand side. Just the red line that's on the left.

There you go. And I didn't mean highlight. I'm sorry. I meant blow up.

PRESIDENT RAMÍREZ HERNÁNDEZ: Where does the one from the left come from, Counsel?

MR. BALDWIN: It's the map of his QDB II property.

PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.

MR. BALDWIN: And it's the drawing. We saw the QDB I earlier, and you can see the drawing.

BY MR. BALDWIN:

Q. If we look on that map, do you see—the one on the right, Mr. Hernández—do you see the black there? Some of the—some of that map is shaded in black? Do you see that?

A. Are you talking about the middle point, the one that says “green area”?

Q. It goes up to the road—you see there's a black 2 over the road. There's like a black shading. Do you see that black shading?

A. That is the green area. That is green area.

Q. It goes above the green area too. We can all see it goes above the green area. I mean, you see that; right?

The black shading also goes above the green area.

That's all right. You don't need to see it. I think everyone can see it.

But would it surprise you to know that that black shading is areas where slopes are over 60 percent?

A. Yes. Because, first of all, that was left as a green area, and what you see at the bottom—I would like to be able to point out, what you see at the bottom, those are the lots that were objected.

MR. BALDWIN: Does somebody have a pointer?

BY MR. BALDWIN:

Q. You have to sit down, Mr. Hernández, or we won't be able to hear you.

A. Sorry.

(Comments off microphone.)

A. All this is the new green area. And that was the modification that Winter used to the drawing based on the requirements under the new resolution. All of this is a green area, and this is a green area, and these are the lots that were objected.

Q. This area of black up here, this is where a road is going through this; right? Do you see this?

A. That road used to come all the way to this point. And when the lots were objected, we did not build it. We only built it up to here. It didn't make any sense to build it because those lots had already been objected.
Q. And this road is different than the road we saw in your application for the Terms of Reference; right?
A. But the first drawing could have been the first drawing that was presented as part of the first analysis, but it’s not related or it does not correspond to the one for the license.

PRESIDENT RAMÍREZ HERNÁNDEZ: Now you are about to sing.
MR. BALDWIN: Karaoke while I’m here. Please make sure to tip the waitresses.

BY MR. BALDWIN:
Q. Okay. So, here we see--this is a drawing of the roads in the project; correct?
A. But not all of them have been built. That road has not been built.

MR. BALDWIN: Thank you.

PRESIDENT RAMÍREZ HERNÁNDEZ: Anything else, Mr. Baldwin?
MR. BALDWIN: No. That’s it. Thank you.
I thank the witness.

PRESIDENT RAMÍREZ HERNÁNDEZ: Respondent.

REDIRECT EXAMINATION
BY MS. SILBERMAN:
Q. Just a couple of questions for you, Mr. Hernández. You were asked earlier about the date on which you had purchased the land for Quintas del Bosque. And I was interested in, when you buy the land for a project that would require an environmental permit, do you buy it outright, right away? Do you make the purchase contingent on getting a permit? How do you make these arrangements? What do you do?
A. Good question.
The issue of the permits is highly sensitive. I usually sign a letter of intent. As I expressed before, I sign it with the owner of the property. And that person in that letter of intent states that we are going to have the right to request a permit to clear the property, to hire a surveyor to determine the contour lines, to hire the services of an architect, to develop a preliminary project, to submit it to the Environment--to the Ministry of the Environment, to receive the Terms of Reference. And after that, we should promise to sell.45

Q. You just mentioned the words--or, I guess, the acronym for “Terms of Reference.” And the Ballantines took you to--the Ballantines’ attorney took you to Tab 10 in your binder earlier.

THE WITNESS: The Terms of Reference are a document that is provided by the Ministry of the Environment with specifications of all of the studies to be conducted to see whether you choose to have an environmental license.
This document—I don’t know whether it is part of that, but the document that we received is not this one. We received a different document.
BY MS. SILBERMAN:
Q. Do you know if you’ve ever seen this document before?
A. I have never seen this before.

Impact Study?
MS. SILBERMAN: For the record, this is Appendix A-53.
THE WITNESS: Would you please show it on the screen because I can’t find it.

PRESIDENT RAMÍREZ HERNÁNDEZ: It is at Tab 10.

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BY MS. SILBERMAN:
Q. Do you know if you’ve ever seen this document before?
A. I have never seen this before.
MS. SILBERMAN: Thank you. No further questions.

PRESIDENT RAMÍREZ HERNÁNDEZ: Ms. Cheek.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR CHEEK: Good afternoon.

THE WITNESS: Hello.

ARBITRATOR CHEEK: I do have one more question, but it’s very brief.

You mentioned that in 2017, when you were waiting to get your permit, that there was some kind of regulation that you were waiting to get passed or that the Ministry was waiting to pass.

THE WITNESS: At the point in time—and this was not only with my project. All of the mountain projects were actually frozen permit-wise because the Ministry was conducting a new resolution preparation that was adopted in January 2017. This new resolution brought about new requirements for mountain projects.

Amongst those requirements, for example, you—meant that you had to build 30 meters away from the ravine. Under Law 64, it was only dry—only wet ravines, but they didn’t include dry ravines. Now they also talk about dry ravines and also\(^{48}\) the thumbprint\(^{49}\) for construction in connection with the slope of the lot or the land.

ARBITRATOR CHEEK: Okay. Thank you.

By any chance, can Respondent’s counsel confirm that that’s R-254?

We can confirm after the lunch break. Thank you.


I wanted to remind the Claimant that—

THE WITNESS: Do I have to be here too?

PRESIDENT RAMÍREZ HERNÁNDEZ: No, you can leave. You can leave. You’re excused. You can leave, do whatever you want. You’re free to leave.

(Witness steps down.)

PRESIDENT RAMÍREZ HERNÁNDEZ: I would just remind the Claimant of the time you have left, which is less than four hours, and you have four witness experts to go. Just a reminder.

(Whereupon, at 1:04 p.m., the Hearing was adjourned until 2:20 p.m. the same day.)

\(^{48}\) Original in Spanish adds: “Hablaba de los 1.200 metros de altura”.

\(^{49}\) Original in Spanish: “huella”.

AFTERNOON SESSION

PRESIDENT RAMÍREZ HERNÁNDEZ: Good afternoon.

Mr. Eleuterio Martínez.

THE WITNESS: Welcome.

PRESIDENT RAMÍREZ HERNÁNDEZ: I’m going to ask you to please read a declaration you have right in front of you. Read it in Spanish.

Please turn your microphone on.

THE WITNESS: “Witness Declaration. I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth and nothing but the truth.”

PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you very much.

I’m going to now give the floor to counsel for the Dominican Republic.

MR. ANTONIO RIVAS: Good afternoon, Mr. President, Members of the Tribunal. Before we move on, my name is José Antonio Rivas, and I am going to conduct the direct examination, and then the new examination. And Ms. Taveras had a—an answer to the question posed by Mrs. Cheek.

MS. TAVERAS: To answer your question about the resolution to which the witness, José Roberto Hernández, referred to in his testimony, it’s actually two resolutions that are both in the record.

So, the original resolution regarding the parameters for infrastructure to be built in the mountains...
When I ended my university studies in 1980/1981, I started working in the field of protected areas. Starting in 1983, I have worked on the creation of protected area. During that period of time, I have been able to be involved in the creation of 128 real protected area now in the Dominican Republic, mostly under Decree 571-09 that creates 32 protected areas, including the Macguate National Park.

I'm also a member of the Academy of Sciences. I've been a member of it since 1993. I'm now the vice president, and I'm also a member of the Bioethics Commission of the D.R.

Q. Do you have anything to add or anything you would like to amend in connection with any of those two statements?
A. Yes. There is a small change that I wanted to make at Page 14, February 21. It talks about R-054. It talks about the guide that goes and this goes from Page 14 to 17. So, it should be 14 to 20. That's the correct page number.

Q. Okay. Thank you.
A. Briefly, could you tell us about your profession, your studies and your work history?
A. Yes. I have a master's in tropical ecology, and also in the environment, I have a postgraduate degree on environmental planning that I conducted in Venezuela.

I do have a postgraduate degree in connection with environmental management that I conduct in Brazil, and then most of my time has been devoted to my professorship.

I conduct my regular activities, and I am also, like I said, a professor. I have worked for seven of the main universities in my country. Have been also a professor invited by a different administration. From '94 to '96, I worked with one administration. From 2000 to 2004 I worked with a different administration. From '04 to '08 I worked with another administration. And then from 2011 to 2014, I worked with another administration still.

So, I was an advisor to different administrations. I have been an advisor to the Congress of the Republic in connection with the passing of Law 64-90, the Environmental Law for the D.R., and I have also been advisor to the Congress for the protected area of Law 202-04, and I'm now working on the water law and the coastal sectors law. And I have worked mainly in the field of protected areas.

When I ended my university studies in 1980/1981, I

number of international universities in Spain, Italy, Ecuador, the Philippines, and Panama mostly.

But the most experience I have has to do with working with protected areas. I have also been an advisor to the President of the Republic--of the Dominican Republic, through four different administrations. I do not have any political affiliation, so I can provide my services.

And from '93 to '96, I worked with one administration. From 2000 to 2004 I worked with a different administration. From '04 to '08 I worked with another administration. And then from 2011 to 2014, I worked with another administration still.

So, I was an advisor to different administrations. I have been an advisor to the Congress of the Republic in connection with the passing of Law 64-90, the Environmental Law for the D.R., and I have also been advisor to the Congress for the protected area of Law 202-04, and I'm now working on the water law and the coastal sectors law. And I have worked mainly in the field of protected areas.

When I ended my university studies in 1980/1981, I

1. Do you see any other statements authored by you?
2. A. Yes.
3. Q. And the second is 19 March 2018.
4. Do you see them?
5. A. Yes.
6. Q. Are those statements authored by you?
7. A. Yes.

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52 Original in Spanish adds: "Yo soy ingeniero forestal.
53 Original in Spanish: "Tengo al menos 32 años dando docencia combinada con mis actividades normales."
54 English Audio Day 4 at 04:20:38
55 English Audio Day 4 at 04:24:12
that Park, so he was interested in hiring me for my services because he was seeking to bring a lawsuit against the Dominican Republic, and he needed documentation, background documentation.

When he talked to me about the Baiguate National Park and about the project and--actually the penny dropped. Because I was involved in the creation of the Park. And I said no. Initially I said no.

And he continued to explain the difficulties he's had and the trajectory of his project during that time. And after 45 minutes of discussion, just about, he said that he was going to pay for my services.

At the time, I didn't have any other job. I was only a teacher at the University of Santo Domingo, the Autonomous University of Santo Domingo so I needed another income source.

So, I said, "Okay. I participated in the creation of this Park. I know the protected area in depth. I know that the contents of the area are critical to my country." So, in my heart of hearts I said, "Well, to do something different from what I thought would be to go against my own principles, my own beliefs."

Q. Thank you.

During that conversation, did you tell Mr. Ballantine that his project was the only project that had been denied a permit because of the slopes?

A. At no time did we make reference to slopes during our conversation, so I did not touch on that topic at all.

Q. Tell us, please, why 32 protected areas were created in the Dominican Republic under Decree 571-99?

A. By 2009, the Dominican Republic had a number of commitments vis-à-vis the international scientific community. We had been involved in the Rio Summit, and then in the 2006--CDB was approved during that meeting. This meant that all countries had to contribute to the biodiversity of the planet.

In 2002, there was a conference of parties in Malaysia. And the work program was set at that time to meet the objectives of the biodiversity convention. And in 2004, specific goals were set, and the countries had to meet those goals. By 2004, the countries had to have a national system for protected areas, areas that were efficiently managed and that represented the ecology of the country.

By 2010, we had undertaken that commitment. So, in 2009, we felt the need to meet the commitments that we had taken up.

Q. What were the criteria for the creation of the

1. Baiguate National Park?

A. For the creation of a national park, we conducted a vacuum system between '06 and '08. So, in our national territory, we were able to identify the large ecosystems that were not represented in the platform of national areas--the protected national areas.

We were able to define the environmental values related to biodiversity mainly, in connection with water systems, high mountains and specifically areas where we have the cloud forest.

That's when we realized that the central range was the area in the country that was the least covered; that is to say, there were some areas that were unprotected.

Therefore, we realized that there are some ample spaces in the middle of the range that were empty. Because to the central and western part, we had like the "national park"--Bermudez, among others, and then we had the Ebanos Vards Scientific Reserve, and that's when we discovered a mountain system that was comprised of three main parts, Alto Concerts.
Q. Are you there?

A. There is a map. Please look at Page 26 of your First Statement.

Q. In your First Statement, you referred to several original nature. Come close to to watch. There's nothing left of the surrounding, and it is placed on a slope. It is infrastructure-intensive. It looks like a luxury infrastructure "in the outdoors. So, as ecotourism, we don’t see the value of nature, something that we can come close to to watch. There's nothing left of the original nature.

Q. In your First Statement, you referred to several projects. Please look at Page 26 of your First Statement. There is a map. Are you there?

A. No, that cannot be ecotourism because there is an obstacle. There is a density of construction. There is some aggression against nature which is clear. And the obstacle. There is a density of construction. There is whatever there is there.

Q. Have the Ballantines said--they have said that they had been treated unfairly because they were not allowed to build inside Baiguate National Park. What type of construction can a national park include?

A. In addition to the necessary infrastructure for surveillance or monitoring, you just need the infrastructure offered by nature. Because this is to preserve nature. Infrastructure needs to be minimalistic and minimal so that we can adapt to the preservation of the area.

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Q. You have had the opportunity to visit Jamaca de Dios, haven’t you?

A. No. Because by 2009 when the National Park was created, we were not aware of any project. The projects did not--they were not important. They did not matter. We created, we were not aware of any project. The projects or any other project was there?

Q. When Decree 2 of 2009 was passed, you knew that any of those projects or any other--did you know that that project or any other project was there?

A. No. Because by 2009 when the National Park was created, we were not aware of any project. The projects did not--they were not important. They did not matter. We did not care. Because according to the decree, we needed to evaluate the natural resources, the nature we had there rather than a specific project. So, anything that is included inside the national park are pieces of land that are--that deserve to be protected.

Q. So, when did you learn that those lots were there?

A. Well, as part of the preparation for this statement, I became aware of some projects around the National Park in Jarabacoa.

Q. Professor, could you please tell us why the Paso Alto land is covered by the Park?

A. The location of Paso Alto is different from the El Bandera, El Mogote, and Loma La Peña.

And that space allowed us to see that we could create a bridge if we wanted to connect to the other protected areas. Because the analysis system based on this vacuum established that we needed to create biological corridors that would allow us to maintain biodiversity.

So, we saw space that would be saving the three ranges, the three mountains that are the ones that we chose to create this National Park.

Q. Professor, in your statement, you refer to law-202 of 2004. And there you refer to Category II or national park.

What are the uses of a national park?

A. A national park comprises one or several ecosystems of national or international importance. Category II based on ONCN establishes that a national park, in addition to conserving the biodiversity, should also be used for recreation, research and conservation, and

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Q. You have had the opportunity to visit Jamaca de Dios, haven’t you?

A. No, I haven’t visited that project.

Q. Have you seen videos of Jamaca de Dios for the preparation of this Witness Statement?

A. Yes. I saw a video and I saw all of the facilities.

Q. Do you think that is ecotourism?

A. No, that cannot be ecotourism because there is an obstacle. There is a density of construction. There is some aggression against nature which is clear. And the obstacle. There is a density of construction. There is whatever there is there.

Q. Have the Ballantines said--they have said that they had been treated unfairly because they were not allowed to build inside Baiguate National Park. What type of construction can a national park include?

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A. In addition to the necessary infrastructure for surveillance or monitoring, you just need the infrastructure offered by nature. Because this is to preserve nature. Infrastructure needs to be minimalistic and minimal so that we can adapt to the preservation of the area.
Mogote "system. That's the one that we identified as valuable.

Paso Alto has a specific altitude up to, I think 1600 meters above sea level, is close to a different protected area, that is, the natural monument, Salto de Jimenoa. So, it wasn't worth it to include it in the Park.\(^1\)

Q. So, why was Mountain Garden included inside the Baiguate National Park?

A. Mountain Garden is not.\(^2\) Jarabacoa Mountain Garden, based on what I had saw, is adjacent to Paso Alto but is not inside Baiguate Park. It is completely outside.\(^3\)

Q. Now, regarding the terrain to Quintas del Bosque, regarding that land, why isn't it included?\(^4\)

A. Quintas del Bosque is completely opposite to Paso Alto, but it is separated from El Mogote by means of the Cercado Stream. So, this is a separate range that was separated from El Mogote, that is what we were trying to protect.

\(^{1}\) English Audio Day 4 at 04:19:43
\(^{2}\) Original in Spanish: "Parque Nacional Baiguate".
\(^{3}\) Original in Spanish adds: "dentro".
\(^{4}\) Original in Spanish adds: "del sistema El Mogote.".
\(^{5}\) Original in Spanish adds: "por el parque Baiguate".

There is a management plan inherent to the protected area, that is, the natural monument, Salto de Jimenoa. So, it wasn't worth it to include it in the Baiguate National Park.

Q. Why did--Mirador del Pino areas were not included in the Baiguate National Park either?

A. Mirador del Pino is the one that is the furthest away. It's about 3 kilometers away from El Mogote. Even the Yaque--the Northern Yaque River, that is great river, is--the watershed goes over it,\(^6\) it doesn't make any--it didn't make any sense.

Q. Would you please explain now why the land that

\(^{6}\) Original in Spanish: "El Mogote",

have to do with Phase 2\(^2\) of Jamaca de Dios were included, were inside the Baiguate Park?

A. Jamaca de Dios 2 or Phase 2 is at a considerable altitude. It's about 800 meters above sea level up to 1200 meters above sea level. It reaches up to--up to the top of the mountain,\(^7\) and that's where we have the Cloud Forest.\(^8\)

This is an extremely interesting area as--and I observed in the expert reports, I saw that Mr. Richter says that in that area, they only saw five species out of the ten species that are--they only have five out of the ten species that are threatened in the area.\(^9\)

Q. I only have three questions, and then we will be allowing the counterpart to cross-examine the witness.

Could you please tell us why Aloma Mountain is inside the Baiguate Park?

A. Aloma Mountain has the same characteristics as Jamaca de Dios in terms of altitude and also the location, that is, Loma La Peña, and also regarding the Cloud Forest. Both are inside the Cloud Forest, and they are also in the

\(^{2}\) Original in Spanish: "System. That's the one that we identified as valuable."
\(^{3}\) Original in Spanish adds: "dentro".
\(^{4}\) Original in Spanish adds: "El sistema El Mogote.".
\(^{5}\) Original in Spanish: "Elna forma una parte de un sistema El Mogote".
\(^{6}\) Original in Spanish: "por el parque Baiguate".
\(^{7}\) English Audio Day 4 at 04:44:23
\(^{8}\) Original in Spanish: "que es el gran río, la cuenca madre de ahí, le está pasando por enfrente y lo separa totalmente del sistema El Mogote.".
\(^{9}\) Original in Spanish: "que los Ballantine llaman".
\(^{10}\) Original in Spanish adds: "de la Loma La Peña que es donde comienza el sistema El Mogote".
\(^{11}\) Original in Spanish: "Entonces era lógico, era fundamental, que esa parte quedara dentro del Parque Nacional.".
Q.   That is not exactly what I said.  I exactly said
A.   That is not exactly what I said.  I exactly said

Q.   Yes, I mean the ecological or biological corridors; correct?
A.   That is correct.

Q.   Well, I mean the ecological or biological corridors, which would be a bridge to connect
to create its national system for
protected areas.
A.   That is not exactly what I said.  I exactly said
Q.   Understood.
A.   And I think you testified that one of the desires
of the Dominican Republic was to create ecological or
1. It will always depend on the area and also the
number of professionals that need to work on it. But a
management plan is about $15- to $20,000.

MR. ANTONIO RIVAS:  That's all I have, and thank
you very much, Professor Martinez.

CROSS-EXAMINATION
BY MR. ALLISON:
Q.   Good afternoon, Professor Martinez.
A.   Good afternoon.
Q.   My name is Matt Allison, and I just wanted to ask
you a few questions today about your role in the creation
of the Baiguate National Park and the Witness Statements
you've submitted in this proceeding.

First, to confirm what I think your testimony was
with respect to your meeting with Mr. Ballantine. So I'm
clear, at no time did Mr. Ballantine offer you money to
present false testimony to the Tribunal, did he?
A.   Do you want me to answer whether he offered me
money?
Q.   No.  I want you to answer whether he offered you
money in exchange for you coming to the Tribunal and saying
things that were not true.
A.   I can tell you right now with direct knowledge
that he did not refer to a tribunal. He said that he had
the intention of suing the Dominican State because he was
not allowed to develop his project. He never referred to a
tribunal.
Q.   And did he ever ask you to lie on his behalf?
A.   I don't understand why you're asking me that
question. He asked me to present technical scientific
information, but we never talked about lies or anything of
the sort.
Q.   Thank you.
A.   I just want to confirm your employment history
that's relevant to the proceeding here today. Between 2008
and 2011, you were the Vice Minister for Protected Areas
and Biodiversity for the MMA; correct?
A.   That is correct.
Q.   And it was in that role that you were involved in
the creation of the 32 parks you were testifying to
earlier; correct?
A.   No.  What you are saying is not completely right.
The country became committed in 1992 with a convention on
diversity. If you allow me--please, let me--you asked me,
and I am answering.
I can tell you that in 1992, the country was
committed to the United Nations, in particular, the
International Convention on Biological Diversity. And in
2004, a management program was established for the
protected areas, and that management program for protected
areas established goals for 2010 that had to be covered by
the country, such as to create its national system for
protected areas.
We started to work in 1992 up to 2004, and until I
was Vice Minister to have a listing of all of the
ecosystems that had gaps in the area—in the protected
areas and all of the areas that were—that had biological
diversity and that needed to be protected.
So, during my tenure as Vice Minister, we just
prepared a list of all of the selected areas, and it
happened to be that one of those areas was the National
Baiguate Park.
Q.   Thank you, Professor Martinez.
You've discussed the gap analysis and, in your
testimony with Mr. Rivas, described how part of the gap
analysis was the intention of the MMA was to create
ecological or biological corridors; correct?
A.   That is not exactly what I said.  I exactly said
that in order to conduct the Gap Analysis, we used the Gap
methodology prepared by the Nature Conservancy between 2006
and 2008. It was TNT, the Nature Conservancy, the one that
prepared that methodology, not me.
Q.   Understood.
A.   And I think you testified that one of the desires
of the Dominican Republic was to create ecological or
93 Original in Spanish: "valores medioambientales".
92 Original in Spanish: "macroecosistemas".
Range.

And that's when we realized that in the middle of the range, that is to say, halfway when you look at Jarabacoa, that's when we realized that there was a bridge that was unprotected. And that's when we saw a mountain bridge, La Peña, El Mogote, Alto La Bandera, those three mountain systems had the characteristic that Loma La Peña—or the Cloud Forest in the Loma La Peña starts at 800 meters above sea level. The highest peak in the system is 1804 meters above sea level.

What does it mean that I had a slope of 1 vertical kilometer? Do you know the meaning of 1 vertical kilometer?

The various steps, stages where you have communities that are adapted to the different conditions and in my country where we have Baiguate, this is our Parallel 19. That is basically 2000 kilometres from the Equator, from the center of the earth.

So, when you are saying that you have a protected area a thousand meters above sea level, those thousand vertical meters do not only reach 19 degrees, but it takes us to 35, 40 degrees.

This is like as if we were coming closer to the pole. That's the reason why in Mogote peak, we have about 16, 17, 18 degrees centigrade, and that is typical of a country that is not in the tropics, but it is typical of a temperate climate. That's typical of Baiguate.\(^6\)

Q. Thank you, Professor Martínez.

Is it true that the Baiguate National Park, the borders of the Park, do not connect to the borders of any other national park?

A. No, there is no direct connection to any other national park.

Q. Thank you.

There was a presidential decree in 2009 that created the 32 protected areas you were discussing. Is that correct?

A. Yes, Decree 571-09.

Q. Okay. And if I use the short phrase "Decree 571," you'll understand what I'm talking about, right?

A. That is correct.

Q. Okay. Now, did you personally visit every proposed protected area that was going to be created?

A. Are you referring to Decree 571?

Q. Yes. 32 protected areas that were decreed in

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\(^6\) Original in Spanish: "eso es equivalente a 10, es decir."
We are seeking to protect the nature and the environmental values of that place. That merits protection. So, it doesn't matter that there was a project there or who the owner of the project was. We were not looking at that.

Q. And I didn't ask you about that. My question was:

In 2009 when you were working to develop the boundaries of Baiguate National Park, did you know that there was a project in the area called Jamaca de Dios?

A. In 2009, there was no sign--there was nothing that was indicative of the fact there was a property at that place. There was a beautiful Cloud Forest there. It was ill-treated, but I think it is still there.

Q. I'm not asking about the expansion project. I'm asking about the original project, which you described earlier had luxury homes and couldn't be ecotourism.

What I'm trying to determine is when you were in the Baiguate National Park area in 2009, whether or not you knew there was a project being developed there with an environmental permit called Jamaca de Dios. Did you or did you not?

A. You're asking whether I knew about the project or whether the project had a permit. Which of those two questions would you want me to answer?

Q. I want you to answer whether you knew about the project.

looking at the Baiguate National Park area, you didn't see the Jamaca de Dios development?

A. I'm explained that in 2009, that project was not within the National Park. That was not the focus of our attention. It was not a part of the Cloud Forest. It wasn't in El Mogote, Alto La Banderita, Loma La Peña. So, I wouldn't have been able to see it. I went into the field with a specific purpose, and that is what I saw.

Q. Did you meet with any property owners when you were in the area in 2009?

A. No one. Absolutely no one.

Q. Your Report talks about a process by which you came to determine what would be the subject of protection in each of these protected areas. And you described that one of the first things that's done is there's the gathering of information and then a visit to the field where field notes are taken; is that correct?

A. For the creation of the Baiguate National Park and the 31 areas that accompany the Park, well, a methodology was done for that purpose*. The first step, as you said, is to collect all the information that's existing. That is the first step of any investigation--rather, any research project.

* Original in Spanish: "para todas se siguio una metodologia".
to confirm that.

A. Of course. Yes. The team in the field needs to provide notes that it took. That's logical. That's elementary. That is the reason of the field visit.

Q. Understood. Where are those field notes now? If you know.

A. Kind sir, each expert—for example, the hydrologist provides a report on hydrology. The herpetologist provides a report on herpetology. The ornithologist does exactly the same thing. So, each of the experts provides a report on his or her area.

Some of these reports are handwritten. Others are typed up. Others have maps. A number of documents come to the coordinator. The responsibility of the team leader is to compile all of that information and to extract out of those notes the matters of importance. Then you prepare this essential set of documents.

Q. And this essential set of documents that you prepared for the Baiguate Park, where are those documents now?

A. At that time, everything that was prepared—well, the law requires that before the publication of the decree, well, you have to provide a detail of all that and the maps as well.

Those notes and all the information that's in

existential and the maps, after its been evaluated by a special committee—of course, they have to show that everything there is correct and that it corresponds to the protected area—all of that information was provided to the Ministry of the Environment.

I was the leader right. I was directing the team. So, I provided copies of all of that, and that's what I did.

Q. Okay. And if I wanted to see copies of all of that, would I ask the MMA for those? Do you know where they are now? Because I haven't seen any of those documents.

Are you aware that those were requested as part of this proceeding and no documents about anything prior to the creation of the Baiguate Park was produced by the Respondent. Are you aware of that?

A. I can only testify to the fact that that material was handed over. I left the Ministry, and I became one of the advisers of the President, and then I conducted my activities normally.

So, I had to discharge my duties as—that were entrusted to me.

I handed over the documentation that was essential, and these were rules under the decree. Well, in order to meet the management of the decree, I know that the

Ministry moved to a new building.

It had a central office in the Residencia El Naco, and then it moved to a different area. And it had to move all the data, all the information. I don't know what might have happened to the information. If the Ministry doesn't have it, maybe that's a problem of the Ministry. But everything that had to be handed over was duly handed over.

Q. When you left the Ministry, you gave them all the documents you had about it, and since then, you don't know what happened; correct?

A. Because I was not at the Ministry. It was impossible for me to have control of them and to know what could have happened.

Q. When you were preparing your Witness Statement here, did the Respondent ask you, "Do you still have any of those documents that define the Mogote System or describe the three-mountain system that you're writing about, because we can't find any of the documents?"

Did anyone ask you that or no?

A. When I was asked to prepare a document about everything that could have happened with that National Park, I gathered the information that I had at my disposal. And everything was fresh in my mind because I directed everything. And on the basis of that, I prepared my Witness Statement, which I have submitted to this Tribunal.

Q. Okay. You didn't give any documents to Respondent in connection with your Witness Statement? When you gathered everything that you had, you didn't have any additional documents, did you?

A. I provided my Witness Statement to them. That was what was requested of me. And that is everything that I handed over and that I was asked to provide.

Q. Thank you, Professor Martinez.

Your Report describes that you and your team chose what you define as the Mogote System as the conservation object for the Baiguate National Park. I'm curious how you came to choose what you call the Mogote System. Were you specifically involved in that selection, or was it others?

A. The selection of the El Mogote System was my responsibility mainly. The team that came with me to the field went there under my instructions. They went to El Mogote and they looked for whatever it is that I indicated them to look.

There are three fundamental mountains, Loma La Peña where the mountain ridge starts, and then Loma El Mogote. One is 1400 meters. And I have to talk about the altitude. One is 1400 meters over the sea level, Loma La Peña.

100 Original in Spanish adds: "la loma El Pinar,".
There's another mountain, which is 1521 meters over sea level. They is El Mogote.

And there is another large mountain, which is where the Rio Baiguate starts, and it is 1804 meters over sea level. Those references and that data was used for the field visits, and the technical team went to each one of the areas, and they looked at 800 meters over sea level and then 1800 meters over the sea level. All of the environmental values are to be found in there.

For example, the Cloud Forest biological diversity. You have to go from the middle of the mountain to the top of the highest mountain. So, everything that had environmental value was included there.

The technical team that conducted the field visit provided a report of everything they saw in those sites. The El Mogote System is something that I chose because I was mainly the person responsible for it.

Q. And did you define the El Mogote System as well?

A. Not exactly. I'm saying that the smallest--let me answer, please. The smallest one is La Peña. Then you have El Mogote. And then when you go to the highest point, it's Alto De La Bandera.

I do have my parameters. One defines the northern tip and the other one the southern tip. This is the area of interest of this protected area.

Q. Your Report states that "The ecosystems of Loma El Mogote and Loma La Peña are the same, largely because of their proximity"; correct?

A. No. They cannot be the same. Never. I'm saying that I have an altitude slope of 1,000 vertical meters.

So, there can never be two equal communities. These are stages. These are gradients, and there is natural ecological succession there.

Q. And so the La Peña ecosystem is different than the El Mogote ecosystem?

A. Totally.

Q. And the next mountain across the Baiguate River is Loma Barrero; correct?

A. Could you show it to me?

Q. Sure. Let's go to Page 5 of your second report.

- Original in Spanish: "recursos hídricos, zona esponja de bosque nublado, la diversidad biológica."
Q. Now, we talked a lot about the Mogote System, but I'd like to look at the text of Decree 571.

MR. ALLISON: Can you put up Exhibit C-16.

And this is in your binder, Professor, at Tab 6.

Can you go to the next page, which has--

(Comments off microphone.)

MR. ALLISON: Can you go to the next page, Larissa. And then the page after that.

BY MR. ALLISON:

Q. I think you were looking in your blue binder, but there's a white binder too that has this, and you can see it in Spanish. I apologize for the confusion, but if you can see it there, that's fine. This is in English. You can read it?

Okay. Article 14, if you can blow that up, and the paragraphs below it too, please, so we can see it in full.

MR. ANTONIO RIVAS: Mr. Allison. Professor Martinez, please look at the document in Spanish, then you can read it in Spanish.

THE WITNESS: Yes, of course. I was going to ask that.

MR. ALLISON: It's at Tab 6.

it is saying that the El Mogote system is the one that makes up the higher portion and the water production portion of the Mogote. This is also in the decree, if you look at considering 4--considering 3. And you can look at it if you want. It talks about the mandate of this decree. This is what you need to fulfill before Article 14.

It says, "Considering the commitments undertaken by the country in connection with meeting the objectives of the Millennium Development goals of the United Nations, the international agreements on biological diversity, RAMSAR..."

I'm sorry. I was reading Number 4. Excuse me. Let me read this.

Here it says--you have in front of you. It's considering number 3. "The protected areas make up the largest guarantee for the conservation of the cultural and natural heritage of the Dominican nation, the stability of its ecological system, the protection of watersheds, the production of water, the prevention of natural disasters, and the moderation of climate change, and the generation of electricity, the production of food, the health of the main human settlements."

This is letting me know that I have to protect the watershed, specifically water-production areas, as you can read here on this paragraph at Line 2.
Q. So you want to protect the falls, you want to protect the forests on either side of the falls, and you want to protect the river.

A. Yes. That's true.

Q. And if you could point out--if I understand correctly, the Baiguate Falls are approximately where? About here (indicating)?

A. Yes. That's true.

Q. So--so I'm clear, the purpose of the park was to protect the Baiguate River, the Baiguate Falls, and the wide swath of forests on either side, and yet a significant part of the Baiguate River, the falls and the wide swath of forest on either side of it is not in the Baiguate Park; correct?

A. Well, you've seen that map, and please clarify if I'm wrong, but what you see in that map is the beginning of the Baiguate River up to the middle course.

Look at the map. This is the origin of the Baiguate River that goes up to the middle course, and that is the main mandate under the decree. That is the water.

That is the catchment area of all of the water that leads to the falls.

The main area of that national park is to capture the area where we produce the water and that is the only guarantee; that is the only way to ensure the life of the fall. That means that we are complying with the mandate under the decree.

Q. So--so I'm clear, the purpose of the park was to...
borders of the park don't follow the ridgeline. They go
down the mountain and cut across, as we see in your Report
on Page 8.
A. That's correct. Because the decree is intended to
protect the origin, the source of those rivers. And that
portion has the river source for the Yaque del Norte. So
the limits are 105, behind El Mogote and Loma La Peña. That
acts like a sponge that is absorbing all of the humidity
towards Yaque del Norte, and the ones on this side drain up
to the other river, Baiguate.106
MR. ALLISON: Larissa, could you put up Page 8 of
his Second Report, please. Can you blow up that image?
BY MR. ALLISON:
Q. So these are the boundaries of the Baiguate Park
as you approach Jamaca de Dios. It's in the middle of the
ridge. And I believe your testimony was you have to drop
down the ridge because the source of the Yaque del Norte
and the source of the Baiguate River are both here.
Was that your testimony?
A. I'm telling you exactly what the map tells you,
because that is the other side. That is the--107--we saw part
of that phase. This is the other part of the phase. This
is Loma La Peña, Loma El Mogote, all of those sources, and
the topography there is perfect. You clearly see that all
of the water that is caught in that area will drain
directly to Northern Yaque. That is the one that is at the
bottom.
Q. Okay. So we're clear, the source for the Baiguate
and the Yaque del Norte do not originate on Loma La Peña or
El Mogote, do they? The source of those rivers is--we saw
the source in the previous map; right?
A. The original sources of Baiguate need to be fed
throughout the course by all of the other sources of water.
Then sources that are key, fundamental--we are talking
about rivers--are Loma, high Alto De La Bandera, that
is, the beginning of the Baiguate River.
The northern Yaque River has very--has sources
that are very far away on other mountains of the range108,
but it happens to be that the middle course of the Yaque
goes precisely in front of El Mogote; therefore, all of the
water source from that area will be going into the Mogote
River. And this is exactly--into El Mogote. That is
exactly what I am being requested under--in the decree.
Q. Okay. Well, under the decree, you're supposed to

107 Original in Spanish: “otras montañas de la Cordillera Central”.
108 Original in Spanish: “río Yaque del Norte”.  
105 Original in Spanish adds: “debajo.”.
106 Original in Spanish adds: “sobrejo.”.
104 Original in Spanish adds: “eso es la parte discontinua.”.
103 Original in Spanish: “es es la parte discontinua.”.
102 Original in Spanish: “sobrejo.”.
101 Original in Spanish: “ubehaj.”.
100 Original in Spanish: “la Peña, El Mogote, and Alto De La Bandera”.
99 Original in Spanish: “Alto De La Bandera”.
98 Original in Spanish: “De La Bandera”.
97 Original in Spanish: “el declive”.
96 Original in Spanish: “es el declive”.
95 Original in Spanish: “es la parte discontinua”.
94 Original in Spanish: “es lo que da origen al Yaque del Norte”.
93 Original in Spanish: “es el declive”.
92 Original in Spanish: “el declive”.
91 Original in Spanish: “es el declive”.
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1 Original in Spanish: “es el declive”.

It's important to protect that area because the runoff flows to the Yaque Del Norte River. And I'd like to put up the map again from Page 12 of your original report, the one that was turned sideways that I hope we can get. And there it is. I'd like to point, for the Tribunal's edification, these are the borders of the park. This is La Montaña. This is QDB. This is Jamaca de Dios and Aloma Mountain. This is Jarabacoa Mountain Garden. And this is Alta Vista. -I'm sorry, Paso Alto. And you testified that it was important to protect this area of Loma La Peña because the runoff meets the Yaque del Norte area. But your testimony was it's not important to protect QDB, but the runoff from QDB is significantly closer to the Yaque del Norte, isn't it? A. If you--if you look carefully, Quintas del Bosque is 640 meters above sea level. The explanation that I just offered is that there you do not have 800 meters. And that's why you have that biological fabric that absorbs, that condenses the humidity, that ends up in Yaque del Norte. There is even a stream--if you please look, there is a stream that is separating Quintas del Bosque from the Mogote system; that is to say, two reasons why that project is not inside the park. On the one hand, it is a different mountain range, and on the other hand, it is at 640 meters above sea level. It does not reach 800 meters above the sea level, and it doesn't have the merits to be part of this cloud forest.

Q. Thank you, Professor Martínez. I think the record reflects that QDB actually is developed up to 950 meters above sea level.

A. But we can agree, can we not, Professor Martínez, that it's on a mountain? Have you been to Quintas del Bosque? It's not flat, is it?

A. Yes, the one we just--the one before it, yes. That is the northern phase--northeastern phase of the park. That is a mountain system that goes--you see the green line? That is--that marks 800 meters above sea level--800 to 900 meters above sea level. And that is the peak of the mountain.

The cloud top that is being pushed down by the winds from the ocean run against these mountains, and the peaks, together with the canopies, create the surface that allow the clouds to move forward.

So each tree is a source of water, because each tree is condensing the humidity, and even if it doesn't rain, the plants are producing water.

Now, if we eliminate the vegetation, the clouds would move through without any problem. But that vegetation we have there is a natural trap for water which gets condensed there and then drained to the river. This is what we call horizontal rain.

Q. And your Report makes clear at several places that it's not inside the park. On the one hand, it is a different Mogote system; that is to say, two reasons why that project is not inside the park. On the one hand, it is a different

1. It's important to protect that area because the runoff flows to the Yaque Del Norte River.
2. And I'd like to put up the map again from Page 12 of your original report, the one that was turned sideways that I hope we can get. And there it is.
3. I'd like to point, for the Tribunal's edification.
4. These are the borders of the park. This is La Montaña.
5. This is QDB. This is Jamaca de Dios and Aloma Mountain.
6. This is Jarabacoa Mountain Garden. And this is Alta Vista. -I'm sorry, Paso Alto.
7. And you testified that it was important to protect this area of Loma La Peña because the runoff meets the Yaque del Norte area. But your testimony was it's not important to protect QDB, but the runoff from QDB is significantly closer to the Yaque del Norte, isn't it?
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A. I am explaining to you that all of the essential
values that we needed for the Mogote system were completely
covered within those borders that the protected area
or the national park. I do not think that there was any
significant feature that was relevant and that should have
been protected.

Q. Thank you, Professor Martinez.

Are you aware that the MMA did a survey of
Baiguate Park in 2013 and made some recommendations about
expanding it?

A. I heard that the management land decreed in the
law was developed quickly compared to other national parks
because in 2005, that is to say, six years after the park
was created, we—the development plan—the management plan
was developed and there was a need to verify the resources,
and by conducting the studies for the management plan, the
MMA was able to explore that area again.

And it is true. What you are saying is true.

There is a recommendation for zonification and everything
that has to be done within the park. And they also
suggested some expansion.

Q. Okay. So I just want to make sure that the 2013
survey that we’re about to show you at Exhibit C-138, which
you can find in your binder at Tab 8—the white binder in
front of you is Tab 8. That’s—this is not the management
plan for Baiguate Park, is it?

While you’re looking for it, the record says—or
the document reflects that it’s a brief ecological
evaluation of the biodiversity and cartography in the
Baiguate National Park.

Q. Do you see that at the top of the document?

A. That is correct.

Q. And if we go to the next page.

And for the record, this has been abbreviated for
convenience. The entire document is in the record in your
binders.

These are recommendations that were made to expand
the Baiguate National Park. Do you see that?

MR. ALLISON: Can you blow up the top part of that
map there.

THE WITNESS: Where are you?

BY MR. ALLISON:

Q. Here it is. It’s up on the screen, Professor.

Professor, on the screen?

A. Okay.

Q. Those are the borders of the Baiguate Park in
yellow, and the area in red is the area that the MMA was
recommending be expanded to be included into the
Baiguate Park.

Are you aware of that?

A. I was not aware of that, but I do know that that
area is highly valuable.

Q. Right. And you don’t disagree that the purpose of
Decree 571 would be served by expanding the park to include
the Baiguate Falls and that portion of the Baiguate River,
do you?

A. The national park perfectly complies with the
intent of the decree as it is. This would be value added,
that as the park was created, we already have this.

It already complies with the decree, because, once
again, the decree orders to protect the source, the water
source, from the Baiguate River up to the middle course,
that is to say, the water that will feed the falls.

And where is the water coming from? It’s coming
from this source and the various water sources we find
throughout its course. That is to say, the decree is
completely complied with.

PRESIDENT RAMÍREZ HERNÁNDEZ: Professor,
everything that you’re saying is being transcribed. And
the Tribunal and the attorneys, we can look at it again.
We can look at it, the Tribunal can, and the counsel also
can do that. So you don’t need to repeat it.

MR. ALLISON: Thank you. And respectfully, I may
ask your assistance to limit repetitive answers from the
witness. I certainly want him to be able to say whatever
he wants to say, but the recitation of the same things he
said several times, both in his Report and in his
testimony, I view is a run-out-the-clock strategy or fear
that I have.

BY MR. ALLISON:

Q. Let’s look at Paso Alto very briefly. If you
could put up Demonstrative—I will tell you in a second.
And I apologize.

If you will please put on the screen Demonstrative
Number 9—which, I apologize, is not in the binder. And
I’ll represent to you that Mr. Navarro—do you know
Mr. Navarro, Zacarias Navarro?

A. I do. He is an official from the MMA.

Q. Yes. And he created a series of maps, and this is
one of them that shows the boundaries of Paso Alto and the
slopes in the park.

I’m not going to ask you about those. I just want
you to help me and confirm that Paso Alto is on both sides
of the ridgeline of that mountain; correct? Do you see the
ridgeline running through the mountain?

A. I do not see any line that shows the ridge.

Q. It’s the purple line. It says “ridgeline” in
English. I apologize. But can you see it right in the
middle of the—running through the color and then out the
A. Could you please show it to me again? Show me which one it is.

PRESIDENT RAMÍREZ HERNÁNDEZ: Could you indicate where?

BY MR. ALLISON:

Q. Here (indicating). This is the ridgeline that I'm referring to. Do you see that?

A. But that is the stream of the river. This is--it's syncinal and it's not anticlinal. I don't have to opine on this because I didn't work on that map.

But that is in that natural monument and it is there to protect the course of the Jimenoa River. And the Paso Alto is on there.

Q. The Jimenoa River, do you see where that is? Do you see the Jimenoa River here?

And you've testified that the purpose of the Jimenoa Monument is to protect the Jimenoa River, and the Jimenoa River is within the boundaries of the Jimenoa Monument, but the boundaries directly abut the project Paso Alto below the ridgeline such that any runoff from this project flows down to the Río Jimenoa.

And my question to you is whether or not you have any knowledge as to why the boundary of the Jimenoa National Park follows the boundary of Paso Alto?

A. What I can explain to you in connection with this map is that--well, first of all, I wasn't the one who prepared this map. I don't know if this corresponds to the protected area I worked on.

The course of the Jimenoa River is a protected area. This is called National Monument for the Falls of Jimenoa. If the falls are not there—and this is called Jimenoa Falls.

If the Jimenoa Falls are not contained there, perhaps that map doesn't show the reality. I didn't prepare that map.

I did tell you that Paso Alto is about 1,000-some feet over sea level, so it meets the conditions to become a cloud forest. But it is not in the El Mogote system.

If you show me the El Mogote system there, I would say, "Okay. You're right." But El Mogote is on the other side of that mountain system that you're showing there.

Q. Thank you, Professor.

PRESIDENT RAMÍREZ HERNÁNDEZ: You asked a question--

MR. ALLISON: I understand.

PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. So--

MR. ALLISON: So the record is clear, the Jimenoa Monument was created on the same day as the Baiguate Park.

Mr. Martínez was involved in the creation of all the protected areas made on that day.

BY MR. ALLISON:

Q. And my question to you, sir, is do you know why the boundary of Paso Alto--of the Jimenoa Monument follows directly the boundary of Paso Alto? Do you know why that is or do you not?

A. When that protected area was created, we don't know that there was a project there called Paso Alto.

The projects were not of importance. What was important was the national values. I do not agree with that map. That was not the map that I submitted.

Q. And if the purpose is to protect the Río Jimenoa, then like much of the boundaries of the Río Baiguate and much of the boundaries of the other protected areas you made in the mountains there, it would make sense if the boundary followed the ridge line, and yet here the boundary drops down from the ridgeline and follows the border of Paso Alto.

And you don't know why that is; right?

A. I have not said that. In my statement what I have said—and there is a map here.117

117 Original in Spanish: "están los dos, si me pueden buscar el mapa.

MR. ANTONIO RIVAS: Mr. Matthew has represented that that map was—as we are seeing it—fully prepared by Mr. Navarro, and the Annex B of Mr. Navarro's map does not include the ridgeline. So that in itself is a creation by Claimant. So--

MR. ALLISON: My apologies. And that's why it's a demonstrative and not simply his map. The ridgeline is added. The ridgeline of Paso Alto is in the record in the altitude and contour maps that are added to Respondent's submissions. And I would be happy to point the Tribunal to that reference, should they so require.

MR. ANTONIO RIVAS: I trust what you have expressed. But the fact of the matter is that neither Mr. Navarro or Respondent have been able to confirm whether that is accurate as you have described it.

MR. ALLISON: Well, Mr. Navarro put the boundary of the national park at the border of Paso Alto when he prepared his Witness Statement.

MR. ANTONIO RIVAS: Well, the original map, but not the line showing the ridgeline. That's the point.

MR. ALLISON: I understand. That's fine. We can take the ridgeline out. My question stands. Why does the
A. Yes. I know that the Ministry of the Environment has put into effect many management plans.

Q. Are you aware that the Dominican Republic has put into effect many management plans?

A. I was not. Of course not.

Q. You had left the MMA protected areas division by the time you testified, did you?

A. The management plan contains the activities that are allowed in the national park. It has determined an area where ecotourism can be exercised.

Q. You can see the boundaries. That map includes the boundaries of all the parks for the Tribunal's convenience.

A. I do not have knowledge of that. If you show me, I would be extremely grateful to you.

Q. Of course. Let's look at Exhibit C-84--which, unfortunately, is not in your binder. No, that's R-84. I know what that is. C-84--no. Wait a minute. R-84?

A. This is an activity that meets the objectives of a national park. A national park is created for ecotourism purposes. That's one of the main activities of the park.

Q. And yet there has been no definition yet as to what constitutes acceptable ecotourism in the Baillegate National Park; correct?

A. The management plan allows for ecotourism?
It says here "ecotourism project." Yes. It's in purple.

MR. ANTONIO RIVAS: Mr. President, can we show him the Spanish version?

THE WITNESS: I can see it perfectly well, yes.

MR. ALLISON: Thank you very much, Professor Martínez.

THE WITNESS: None of those projects have been developed, as far as I understand and as far as my knowledge. As far as I know, there's no single facility there. When I created this park, there was no building there whatsoever.

REDIRECT EXAMINATION

BY MR. ANTONIO RIVAS:

Q. Professor Martínez, I'm going to ask you a limited number of questions.

When you conducted the field visits for the protected areas, and in particular the area of what was going to potentially become the Baiguate National Park, what were you looking for? What were you looking to verify? Were you looking to look at environmental values, or were you looking to verify who the properties belonged to?

A. I was looking at whatever the decree mandated me to look at, for example, biodiversity, cloud forest, the source of water, all of the water wealth and the biological wealth of the area, essentially. And that was within the cloud forest up to the top of the mountains.

I was not looking for a project. There were no projects there. When the park was created, there was absolutely nothing there.

Q. Professor, can you go to your first--to the First Statement of Mr. Ballantine. This is Paragraph 23.


Could you read what it says?

A. Paragraph 23.

Q. I'm going to read it to you.

"After two years,"--and this is Mr. Ballantine speaking. "After two years, we only had a handful of sales. I decided to build the restaurant we had planned and permitted. I strongly believed that the restaurant would be a good way to draw people to La Jamaca de Dios and spend time there. Originally it was only open on weekends, and I invited townspeople for the first weekend from Jarabacoa for free food and beer. I expected that locals would be a good way to draw people to La Jamaca de Dios and where Aloma Mountain are, are both defined as ecotourism projects.

To see that?

A. Could you show me this in Spanish so I could look at the legend?

Q. Of course.
reference to that in this article?

A. Yes, undoubtedly. You look at the title of--here it says, "Vegetation and flora of the El Mogote, Jarabacoa Hill," and everything that is included in this article is referred to El Mogote Hill.

Q. Okay. Thank you very much.

Let's look at the environmental management plan, which is R-084. Could we please look at Page 45--rather, 43.

The map.

Q. Are you able to read the information at the bottom?

A. Yes.

Q. There you have some pink--dark pink or fuchsia colors. Can you see them then?

A. Yes. I can see them perfectly well.

Q. What do they mean?

A. Based on the legend, it's quite clear. These are areas to be used for ecotourism and vegetation. Visitation.

Q. Are they talking about specific

in Jarabacoa would know potential investors in Santo Domingo or Santiago, who would be interested in investing."

When you passed through that area when you were looking at verifying the environmental values, did you see projects, any kind of projects in any area that were called Jamaca de Dios or that said Jamaca de Dios? Did you see any of that?

A. When the National Park was created, Jamaca de Dios--well, it was at the very beginning of the mountain. I was looking for nothing at the base of the mountain. I was looking at the environmental values as mandated by the decree on the higher altitudes of the mountain. There was nothing there.

Q. Okay. Very well. Thank you.

You have spoken quite a bit about altitude. When the borders of the Baiguate National Park were set, did you take any altitude as a reference? Was altitude relevant?

A. Look, we're talking about protecting the central ridge. That was the area that needed to be protected. So the area that needed to be protected was the one over 800 meters over the sea level.

Loma La Peña, which was taken as reference, is 1400 meters over sea level. Then we have El Mogote, 1521 meters over sea level. Those two mountains allow me to look at the very back to Alto De La Bandera, 1804 meters over sea level. So I looked at the substantial area of the ridge, which was covered substantially, and that was the area chosen for the National Park.

Q. Thank you, Mr. Martinez.

Let's look at your folder, your white folder, and look at Exhibit R-043. This is cited in your Witness Statement, the very first one.

That exhibit--let's look at the next page. Actually, go to Page 13.

Very well. This is a publication. What year is this publication?

A. There was a recommendation by the Academy of Sciences. The work by Thomas May and Brigido Peregoc, the work of those two people had to be verified. They conducted their work in 2000. They are taxonomists.

Oh, yeah. It says it right there. "Moscosoa 2000."

Before the park was created.

Q. When the boundaries of the National Park were set, you talked about preexisting information. Could you explain whether this was pre-existing information, and can you also explain, if reference is made to the El Mogote system, the importance of the El Mogote system? Is there
I was formerly the global leader of disputes and investigations practices at Navigant Consulting and Huron Consulting. I was also a former Arthur Andersen partner, where I started my career for the first 18 years out of college.

For over 30 years I have been assessing damages, measures, excess, wasted costs, lost profits, and valuation across a range of industries. I provided expert evidence approximately 75 times, served as an expert in over 45 international disputes, and I started doing investment treaty cases in 1999, with the CSOB case, where I was--

(Comments off microphone.)

PRESIDENT RAMÍREZ HERNÁNDEZ: You’re going too fast. Despacito, as we would say. Slowly. Slower.


In 1999 I did my first--started my first treaty case with the CSOB for a Slovak Republic case and have continued with a number of those cases as well as contract cases, and have also practiced in U.S. and U.K. courts as a damages and financial expert.

I also have significant experience in transactions.

I have also led large accounting fraud investigations, primarily responsive to law enforcement of the Securities and Exchange Commission here in the United States, and the Department of Justice in the United States, and have also done a lot of asset impairment testing.

I’m a certified public accountant and a certified fraud examiner.

I’ll start with my summary of opinion. First of all, that BRG does not support the Claimants’ alleged damages because BRG failed to present appropriate and supported calculations, assess causation, prove damages, and certainly not to a reasonable degree of certainty.

They assume financing costs in its lost profit calculations. They failed to use a proper discount rate as well as a proper prejudgment interest rate.

The documentary evidence contradicts BRG’s inflated opinions. Jamaica was not a successful business. The documents of historic results show BRG significantly inflated the damages. The reported lot sales were much lower than they claimed in Phase 1 and far lower than assumed in Phase 2.

We’ve now been presented with two sets of contracts for land sales are a red flag of fraud. Parallel sets of contracts showing different terms, particularly the price as well as dates, are, by definition, irregular and suspect from a fraud examiner’s standpoint as well as from a CPA’s perspective.
They failed to consider the Claimants, of course, required capital. And they were listed here, which one of $27.1 million of their claim are in claims that would necessary investments to support the alleged damages.

BRG also assumed there's no debt to finance the completely inappropriate to claim the expansion costs.

After the expansion in 2013, the revenues did increase by 51 percent. Net profit increased by 30 percent. And then you've got a leasing contract which provides a minimum of $120,000 per year to the Claimants.

The lease fees are far better than historic inflows from various--from their various calculations, and associated costs. So, Jamaca would have required financing from 2011 through 2014 to support the alleged damages.

The calculation I show here shows that they would be short by $1.4 million in 2011. It grows to 5.35 $123 million in 2013, until being cash flow positive in 2015.

I assumed a one-year lag in the receipt of cash inflows from various--from their various calculations, and I believe that's conservative, as I'll show later in the presentation.

They also have an inappropriate rate for compounding prejudgment interest. They've asked for a 5.5 percent based on the Central Bank of the Dominican Republic's benchmark interest rate, yet they're claiming in U.S. dollars. And then they want to compound this monthly.

An ICSID case study that my firm did back in 2014 shows that the normal rates offered by--awarded by Tribunals are U.S. Treasury Bills or LIBOR plus a spread or--and also the compounding that's been done is typically semi-annual or annual; semi-annual if they're awarding it based on a 6-month instrument is the only time you see it
compounded faster than annual.

As I said earlier, Jamaca was not a successful investment. The revenues and profits, based on their own financial statements, are listed here from 2006 to 2011 for the period before the alleged harmful actions. They reported 1.5 million of revenue, a net loss of a quarter million dollars, and it was marginally profitable in 2009, '10 and '11.

This illustrates that BRG’s future financial performance is completely disconnected from Jamaca’s historic results. They say they based their calculations on Phase 1, and for the lost profit calculation, this clearly shows they did not.

This is--on the left, from their financial statements, the 3.8 percent, which is shown in the prior slide in 2011, balloons very quickly to a 95 percent profit rate.

Here we’re just showing the revenue is--I’m sorry. The blue bars are the actual Phase 1 sales on the left, and then on the right, the blue is the net profit or loss. The orange is their alleged sales in Phase 2 at close to 18 million U.S. Even if you believe the parallel contracts that they’ve talked about bringing in 6 million--I’ve heard 7 million, you can see their calculated Phase 2 revenues are triple that amount, which makes no sense.

For a sanity test, Phase 2 had less land area than those reported to be sold in Phase 1. So, the only way you get there is by massively increasing the assumed price per square meter, which they have done.

Okay. We now turn to the sales contracts. They’re different from the contracts submitted to the tax authorities. These parallel contracts for the Phase 1 lots are duplicative lot sales, lot sales contracts provided to tax authorities but with alternate terms. So, you have, in the tax contracts, looks like a lump sum sale at a different date, typically later than the parallel contracts.

Oddly, neither Claimants or BRG produced or utilized the parallel contracts as support for their inputs for alleged damages.

Mr. Farrell testified he didn’t even have a complete set of these before he did his First Report, and they actually evidence none of them when we received them two months after my last report in this case.

In accounting, there can be one actual transaction and one real contract. There’s not two different transactions for the same piece of property.

And I’d say for damages purposes, the Tribunal should rely on either the tax documents, as those are the only documents that have been attested to in any way, or secondly, none of the Claimants’ financial documents, because again, from a fraud examination or an auditor perspective, to find that you have two sets of books for the same transactions is very suspect, and you have to question all their financial accounting or all their financial documents.

I won’t go through each piece of this, but this is reconciling and tying in the tax documents. We found 70 of the 86 reported lot sales in the tax documents. And those total 1.59 million. This just grosses that up to say if we had all of them, that--the full population--that it would predict that it would be sales of 1.95 million. That compares to the 2.37 million on Jamaca financial statements and to the 6.78 million that come from the parallel contracts.

So, again to see that there is a difference between what was told the tax authorities and their own financial statements is an indicia of fraud.

The tax documents demonstrate substantially lower sales prices than BRG assumed.

If you look at the far right, the--and that’s the averages of the sales from 2012 to 2015 from the tax documents, which total to just under $1 per square meter.

Compared to the 559 per square meter that BRG put forward, there’s, you know, certainly no relation to and I do not have support for BRG’s assumed Phase 2 sales prices. These numbers really don’t tie at all to--they produce no information to tie out the 559 he assumed.

We’re frozen here.

And here I’ve summarized the tax documents that demonstrate that they’re substantially lower sales prices than BRG claimed, but also, at least according to the tax documents, the assertion that the lot sales prices increased substantially as lot elevation increases is not true.

As you see, the bottom Tier 4 is greater in price than both the mid-tier and the upper tier. And there’s a 16 percent increase between the lowest tier and the top tier, the $8.78 per square meter and the 10.25.

And here this demonstrates--the blue bars are the actual Phase 1 sales from tax documents in a per-square-meter price compared to the assumed BRG Phase 2 prices. So, you can see that the whole inflation in this claim is based on an unsupported future sales price per square meter.

In the opening, the Claimants said, “Hart chooses instead to use contracts that don’t reflect the actual consideration paid by buyers. He knows that.”

I have a footnote in my report that I had seen--
had seen a number of these contracts. A number of them were duplicative, and I relied upon the latest dated one we have to assume that they were replacements or otherwise.

But the Claimants and BRG never reference any contracts at all, and we didn’t see the listing--the C-162 listing until two months after my last report.

These bear no relationship to the financial statements, the D.R. income tax returns, or the U.S. tax returns. Accordingly, the Ballantines' financial documents are unreliable.

The U.S. tax returns contain red flags of fraud. First, it's a low--they report a low-profit business in the D.R. and they're telling you here that they are highly profitable. The revenue is not in line with the parallel sales contracts.

The reported maximum value in the D.R. bank account of $165,000,000 in two of the years they filed the foreign bank form is far below what would be expected for a profitable business at the level they're claiming.

And they've got a contradictory position of having receivables to finance all the alleged lost profits as those that are shown in the tax return are far lower than they've reported here.

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... match was a bad receivable as of 2011. And if you include the two lots that I couldn't--I couldn't match the 100 and the 60 down at the bottom, Lots 14 and 16, it's about a 57 percent bad debt in 2011. So, a lot of the sales appeared to fall through from the receivables in 2011.

And we turn to my opinion on damages. As--the Tribunal is offering to award damages by reference to amounts invested in cases involving start-up companies, which we have here, and when profitability cannot be demonstrated. And clear with Jamaca, we can put no trust on any profitability from what they've reported.

So, when you look at it, they've got 239,000, the reported book value. In the most current financial prior to the alleged bad act back in 2011, it was about 230,000.

Thank you. That is the end of my prepared remarks.

PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you, Mr. Hart.

CROSS-EXAMINATION

BY MR. ALLISON:

Q. Good afternoon, Mr. Hart.

A. Good afternoon.

Q. My name is Matt Allison. I'm going to be asking you some questions this afternoon. And it will be nice to have the earphones on my head. I apologize for the Chairman.
I'd like to use your First Report, where you have an executive summary of your allegations, as an initial framework for just a few questions I have for you this afternoon. So, if we could pull up on the screen Page 12 of your First Report.

No, that would be--is that the second report? First Report. I'm sorry. Page 7 of your First Report, Paragraph 12. If you could blow up Paragraph 12.

This is an executive summary of your contentions with respect to your First Report, and we'll talk about your second report as well. But I just want to make sure I have your opinions.

You say, "The calculations and analyses (1) fail to show causation." And you had a slide up there. And I believe the Tribunal is well aware of the Parties' positions on causation, so I'm going to leave that alone.

You say that the Claimants failed to attempt to mitigate their damages. And am I correct that your Report makes reference to some land purchases that were made after the date of the decree of the Park? Is that one of the mitigation issues?

A. Yes. Yes.

Q. And you say they shouldn't have bought any land after the day that the Park was decreed? Is that your opinion?

six-month instrument.

Q. Okay. But you have a schedule in your report, and the Tribunal can look to it and--where you have 18 awards, and 12 of them award compounded interest semi-annually; correct?

A. Right. And I believe most all of those match to a six-month instrument.

Q. Is your contention that compound interest is inappropriate and there should be simple interest?

A. It's for the Tribunal. There are cases where the interest is awarded simple. There's a case where it's awarded compound. It's a Tribunal decision.

Q. Okay. But are you aware of the PricewaterhouseCoopers' report in 2015 that looked at investment treaty awards between 2011 and 2015 and noted that 86 percent of those awards included compound interest?

A. I don't recall that percentage. I know it was--it was in the majority.

Q. And then we skipped over 3 because I thought it might be appropriate to use your second report as a more fulsome description of what the improper and unsupported inputs are. And so if we go to Page 2 of your second report, it's the table of contents.

MR. ALLISON: And if we highlight from V(B) down, I guess you can highlight all five, that's fine. Yeah, there you go. All the way down to the bottom, please. And when I said "highlight," what I really meant was blow up. I'm sorry.

BY MR. ALLISON:

Q. This is the table of contents, and I'm going to refer to V(B) as your opinion that the damages haven't been proved to a reasonable degree of certainty. That's your assertion that with respect to some of the damage allegations, they're speculative; right?

A. Yes.

Q. Okay. And then you say, "BRG failed to utilize proper inputs for its calculations," and we see the discount rate, and you and Mr. Farrell have a modest disagreement on the discount rate; correct?

A. He now agrees with me on the short-term discount rate and disagrees with me on the long-term discount rate.

Q. And the prejudgment interest again. And then the first one is that you did an analysis that you believe shows that financing would have been necessary to make the investments necessary for the Phase 2 activities; correct?

A. Yes.

Q. And your schedule that supports that involves you delaying inflows of cash by a year and then calculating the difference between the CAPEX numbers and the delayed inflows of cash; correct?
BY MR. DI ROSA:

Q.   And if you don't delay the inflows of cash, the numbers are significantly different; correct?
A.   They're different. I can't tell you significantly or not.
Q.   Okay. You didn't do that. You just--you delayed them and created that chart, right?
A.   I did.
Q.   Okay. And there's no analysis of what financing costs may have—if financing was necessary, what that financing might have cost the Ballantines in order to attain; right?
A.   No, I'm highly doubtful that they could have obtained any financing, particularly given the state of their financial statements. If a banker were to come and look at the financial statements as they were prepared and the level of profitably report on their tax returns, I don't believe they would get financing.
Q.   Okay. And we'll talk about the financial statements in just a second. But as part of your analysis concerning financing, did you analyze whether any other mountain projects in the area have used financing to fund their business plans?
A.   I didn't because it wasn't necessary in this instance because we already could see the financial

condition of Jamaica at that point in time. And their lack of financial strength as well as their tax returns showing that personally they did not have assets to back and pledge.
Q.   Okay. The next one is the documentary evidence doesn't support the claim of damage. And I'm going to sum up a fair amount of this up by, this is your analysis of the parallel sets of contracts; correct?
A.   Yes.
Q.   And you did a series of calculations based on the tax documents as opposed to the sale contracts that are in the record at C-162; correct?
A.   Well, since I didn't have those contracts in the listing of what were supposedly the sales until after my report, no, I did not do those calculations.
Q.   Okay. But did you have them at the time of your Second Report? Did your attorneys tell you that they had been produced in document discovery?
A.   They did. And I reviewed a number. And as I testified a little earlier this afternoon, that a number were duplicative and as I said, certain sales fell through.

it was not a complete listing. We didn't have a complete list of the contracts. And then we had the much more complete list of the tax contracts which had a later date. And typically, if you find a contract that has a later

BY MR. DI ROSA:

date, you would make an assumption that that is the final sale.
Q.   Okay. And so is it your opinion that the tax documents actually reflect a consideration that was paid for these lots by the Dominican purchasers? Are you opining as to that?
A.   Not if you're hearing the testimony of this week that there were intentionally two sets of contracts, one alleging the real sale and the other being the--was reported to the tax authorities. And also now having done the analysis of the R-207, the accounts receivable report, you can clearly see that these were primarily installment sales. And we heard from Mr. Farrell yesterday that he didn't do any work to go and trace whether any of this cash got into a bank account.

So I've got no assurance even with a listing of C-162, that those are the real sales or if there's not a third set of documents.
Q.   Okay. And you're not here to provide an opinion or factual testimony as to which contract reflects the actual consideration by the buyer. It's your opinion you can't tell.
A.   I heard this week that there's an admission that they had false documents given to the tax group. And that they said the other contracts are real but even if you knew the contracts, unless you saw all the money hitting the bank accounts, you can't tell it was really paid for. And the accounts receivable report in 2011 shows they had substantial problems with non-payment.
Q.   And you saw, before this week, I assume, the affidavit of Mr. Balbuena who was to be a witness here to describe custom in the Dominican Republic but was withdrawn as a requested Witness by the Respondents.

Did you see his affidavit before your report or before this week or was today the first time you heard about it?
A.   Well, his affidavit came after my Second Report. So, yes, I was aware of what he has to say. And his affidavit about what's filed with—regarding property tax and transfer tax to me has little interest or little connection with what is reported for income tax purposes.
Q.   Do you have an opinion on Dominican tax custom, Mr. Hart? Are you here to provide that opinion, because I didn't see it in either of your reports?
A.   I am not.

MR. ALLISON: Okay. Thank you. Thank you, Mr. Hart. That's all the questions I have.
THE WITNESS: Thank you.

REDIRECT EXAMINATION

BY MR. DI ROSA:
The subjects that I've been working in and very familiar with are relevant to this claim. And of specific information, the last two items on the list, I have worked on contracts that they admit aren't the real transaction.

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Q. Mr. Hart, you were just asked about the parallel contracts versus the tax contracts issue. And can you explain exactly what you would have done if you had been given contracts that don't seem to match the financial statements or the income tax returns to verify.

A. Yeah. I mean, that's your very first step when you're working on a case like this. You say, "Well, give me the financial statements. Give me the contracts that relate to the substantive asset we're talking about or transactions. And when they don't match, that's the very first thing you would go look to do.

You certainly wouldn't do it--I heard Mr. Farrell, where he became aware of it, and then--he first didn't look at the financial statements in his First Report. So if you actually did your job right, you would take the financial statements and say, "These don't agree." They are substantially less. They're about 20 percent of what's in the supposed--in the parallel contracts.

So if you walked into a situation like that, you'd say, "Well, if you're telling me these are the real contracts, give me your bank accounts over this entire period of time," and you would rebuild the financial statement yourself. You wouldn't rely upon their accounting they had done historically because it's fundamentally suspect that they booked false revenues based on contracts that they admit aren't the real transaction.

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In North Carolina on several projects which has residual soil, one of the few locations in America where residual soil exists, and I have done design for temporary excavation roadways and stormwater collection systems for construction.

What's important about this site here in Jamaca de Dios is the residual soil. Residual soil is weathered in place. It's--it is a chemical decomposition of rock. And that decomposition is advanced by water. It usually occurs in locations with very high rainfall, and we may find that there are huge variations in the weathering because chemical weathering is erratic. What makes it very different is the in-place. The material was rock at one time, and it was weathered into soil, and it has not been transported. What makes that different is when you transport usually by water or air, you sort material sizes so you have sand layers and clay layers and gravel layers. But in residual soil, you have everything in a jumble as chemical weathering has left it.

At Jamaca de Dios, the residual soil is coming from apparent basalt, which is highly fractured. The residual soil is turned into a red and yellow silt material and it contains a lot of rock fragments and has less.
We have weak silt materials interbedded with rock materials that are not heavily weathered. Silt is cohesionless, meaning material does not have any attraction to particles. It's cohesionless, fine-grained soil. It behaves as if it's extremely fine sand, and it is readily eroded. The thickness of the residual soil at Jamaca de Dios is known to us because of a boring made at the lodge at the top of Project 2. It's on the order of 10 meters.

There are several erosion valleys that are present on the mountain side and we expect that the thickness of residual soil will be reduced in the erosion in incised valleys. We also did observe that there are layers of competent rock underlain by deeper residual soils. A very difficult material to understand from borings and from normal geotechnical investigations.

One of the important features in the upper portion of Jamaca de Dios is the cloud forest. It provides year-round moisture and as moisture accelerates decomposition, we observed advanced decomposition of the trail—the hiking trail in the cloud forest zone.

The trail was wet and very unstable, difficult to even walk on. So we expect that if you were to build a road up to the upper mountain, you would need to have additional failures in time.

A problem of residual soils is that our analytical models don't estimate the stability. The stability is really controlled by the weaker horizons. In here, it's a silt material, and that is controlling the stability. The harder layers, they control the mechanics of the slide, the orientation and the geometry of the slide.

On the--for construction of roads and buildings sites, there's a need to make a cut slope, which is an excavated slope on the hillside. And because of the presence of the residual soil silt, cut slopes will be marginally stable at 60 percent. There are many cut slopes out there now that are at much steeper angles. 125 to 300 percent is pretty common. And those slides show signs of erosion, they show signs of block slide failure, and they show infinite slope failure, but they do remain in place because of the presence of unweathered rock materials.

In the cut face.

What we have to realize is that when you make the excavation, you determine at that time what the soil profile is, how variable it is, whether it's silt or rock, and you have to react to what you find when you make the excavation for a cut face.

The most likely thing to do is to remove unstable materials when you're doing the operation of excavation. If you have a failure afterwards, would you implement measures to remedy the unstable materials or you would perform maintenance to remove the debris piles.

When you make the excavation, you have a product which is turned into fill typically. It's used to create land area, and it's placed on existing slopes. Where the fill is placed on slopes steeper than about 60 percent, this silt residual soil will be unstable.

From my experience in North Carolina, materials placed at 60 percent or even a little flatter have safety factors that are indicating the slope is marginally stable. Silt residual soils are very poor construction material. Water influences their performance. They turn wet and soft with small addition of water. They're difficult to compact in wet climates because you have to control water to get adequate compaction.

And typically to make improvements with silt
Eric Kay has indicated he has done some of his work. Erosion is a long-term and slow process, but it adds up. The products of erosion enter the natural drainage channels, they turn into sediment downstream.

We have observed\(^{10}\) on the Jamaca de Dios site cohesionless silt which is readily eroded, even on flat slopes. Road slopes at eight and ten percent show deep erosion channels. Erosion is caused by removing vegetative cover and excavation into the residual soil. And erosion control, which is heavily managed in America by regulation, is very difficult to control during construction. Erosion during construction is a challenge.

The seismic events, just real quick. There are---it is an active area. There have been earthquakes in the last ten years. Earthquakes cause a lateral movement in the ground and that lateral movement is a force that has to be resisted by either the strength of the ground or by the foundations or measures that are used to stabilize the slopes. Seismic events on a hillside are rather precarious because you have reduced resistance on the downslope side, and so designs typically have to implement additional resistance to augment that loss that you have on the downslope side.

In thinking about what I see out there and the material types, I would say that the criteria that restricts tillage and excavation to 60 percent slopes is quite well-suited for the soils and the silt residual soils that we observe at Jamaca de Dios. The silt residual soils are marginally stable at 60 percent, either in cut slopes and fill.

Some photographs of the site from my visit in March. On the left is an excavation face with a substantial amount of erosion having occurred on the face and small slide failures at the top and to the side of the slope. On the right side, you can see a section of cut face which has had an infinite slope failure to remove the vegetation.

This photo is at the starter road at the bottom of Project 3, and you can identify erosion at the toe of the slope. And if you look at the center of the photo, it's evident that there are two surfaces. One is the cut surface in the left side, and the one in the middle, to the top, is a block slide surface which has slid on that discontinuity, the more stronger rock fabric that you can see below that dash line.

This is a development site in Project 2 where at Location B on the slide, the rotational failure has removed a small retaining wall at the toe of the slope and at Location A, the retaining wall has actively been damaged and repairs have not yet been performed.

This is---we identified as a rotational slide. This is a development project--a development lot in Project 2 site, and in the upper right, you see a red scarp face. You see a green line below that of vegetation and below another red scarp face. The land is very bumpy and hummocky, and it basically says there have been multiple failures in the residual soil on this site.

This a photo at the starter road coming down from Project 3. It's--the man in the photo is Ted here. He made it to the top of the slope with us. And it's basically to illustrate erosion. You can see the erosion channel next to Ted, and erosion of the face--the channel has cut into the face. This erosion is on a very flat slope of a roadway, very deep erosion incised cut.

I make comment about the terrain because one of Eric Kay's only opinions was that on the whole, Project 3 slopes are on the whole more gradual and gentle than slopes in Project 2. I use Project 3 and 2. He uses Phases 1 and 2. And this statement is inaccurate.

When we made our hike, you can see the trail of the hike that we took. We took readings using a Brunton Pocket Transit, measuring the slope, and we ranged--our slope ranged from 68 to 80 percent at the locations identified in the little yellow circles. These slopes confirmed to us the topographic map that is used as the background for this slide.

We also can note on this slide that there are several valleys. The topographic lines are pointing upslope or upstream in a valley. So just above our measurement locations, we have valleys, and we could not read the slopes in the valleys, but we felt they were much steeper than 60 percent. The grade slope and the vegetation restricted measurements in those locations.

We used the top map to develop slopes and we determined, as I state in the red and quoted in our report, that "slopes in the east half"--that's Slopes 4 and 10 on the graph--"are equal to or flatter than slopes in Project 2."

We do see that Kay is right for some of Project 3. The slopes are equal to or flatter. "However, slopes in the west half of Project 3 are steeper than those in Project 2." And those slopes in the west half are identified through five, six, seven, eight and nine.

We've seen suggestions in Report Appendix B to Eric Kay that only 14 percent of the area in Project 3 has slopes steeper than 60 percent. And they compare that to 19 percent of the area in Project 2. Our concern is that

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\(^{10}\) English Audio Day 4 at 07:35:16
So in summary, we find that the Jamaca de Dios residual soil is very erratic. It is controlled—the stability is controlled by very weak silt materials present in the residual soil, and it is readily erodible. We did notice in Jamaca de Dios Project 2 that several of the slopes are unstable despite measures taken in their construction, and that we find that Project 3 has steeper slopes than Project 2, which means that bigger challenges would be ahead if you were to develop the upper mountain.

We find the 60-percent criteria is suitable, and we stand by it for residual silt soils at Jamaca de Dios. It's not overly conservative, but it doesn't—even in itself doesn't even solve the erosion damage.

And while there are engineering measures available to reduce risk, these engineering measures do result in a large disturbance area and they have a great environmental impact compared to development on flatter terrain.

And that's the end of my presentation.

PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you very much, Mr. Deming.

CROSS-EXAMINATION

BY MR. BALDWIN:

Q. Good evening, actually, Mr. Deming. How are you?

A. Good.

Q. Good to see you again.
Q. States; right?

A. I have never visited sites other than Jamaca de Dios.

Q. Okay. Now you stated—you testified just a moment ago that you've worked in several places internationally. What places are those?

A. Taiwan. Worked on the Subway in Taipei. Several months in Taiwan. Afghanistan, Kundoz, problems with construction of a military base, resolved the problems. Germany. I did foundations for the design of the U.S. Embassy in Germany. New Zealand, evaluated damage to a very large stadium and came up with measures to repair the damage. I have the list on my presentation.

Q. That's okay. I mean, in the last five years. The ones you said there, would they capture anything you've done in the last five years?

A. Taiwan was longer than others in the last five years.

Q. That's fine. Now your bio that you append to your report lists three pages of work you've done, but I looked through it and all work regarding claims. It's either claim analysis or expert work for arbitration or litigation.

Do you build stuff?

A. That is my claim bio. It outlines those claims that I have worked on. I build a lot of stuff. I produce drawing sets. I produced an excavation design for a nuclear power plant in south Texas, 80 drawings. Road design, stormwater collection design. I submitted to the—submitted and approved by NRC for construction.

Q. Okay. Nuclear Regulatory Commission?

A. Yes.

Q. So you've done stadiums, I saw dykes, highways, and even a landfill. What about mountain roads?

A. Well, mountain roads are not really high engineering subject. They are more forestry and erosion management subject. But the geotechnical experience I have in excavations and compaction of fill for roadways is substantial, and those are the geotechnical features that are germane to building mountain roads in this difficult terrain.

And as I said at the outset, my North Carolina experience gives me interface with residual soils which are very difficult materials. So I think that the geotechnical experience doesn't have to imply just to mountain roads, but it is a general and generic around the full subject of mechanics of stability of excavations and fill.

Q. Okay. And you also testified that you've done a lot of work in America. I assume you mean the United States; right?

A. Yes.

Q. What about the rest of America? Or has most of your work been centered in the United States?

A. Most of my work is in the United States; correct.

Q. That's good.

So do you have experience—you have experience dealing in projects in the United States and the regulatory and legal regime in those projects. Do you have experience in working in the regulatory and legal regime and requirements in the Dominican Republic?

A. No, I do not.

Q. Okay. What about--

A. I work in the realm of engineering mechanics, not legal regulatory.

Q. Okay. Highways, stadiums, things like that mostly in the United States?

A. Structures and earth slopes, et cetera, in the United States, yes.

Q. So all the conclusions you make—this very nice presentation and thanks to the shout out to me in there—but all the conclusions you make with JDD relate to JDD and you have no idea about whether they would apply to any of these other projects in the case; right?

A. As I said, I haven't seen the other projects. But I do point out that the Jamaca de Dios soil conditions are largely influenced by the decomposition which is
rainfall-oriented. And even at the upper mountain it's
increased in the cloud forest region. And so I would think
that—it depends on those other sites if they have the same
amount of rainfall, if they have the same influence of
decomposition.

Q. Okay. And do you have any environmental
experience in addition to your engineering experience?
A. In my career I worked on many hazardous waste
sites in the United States and done remedies for hazardous
waste sites but not much biologic diversity and that kind
of subject that is here with the parks.
Q. So your cloud forest experience comes from what,
where?
A. Only discussions with Pieter Booth. He explained
to me what it was. I observed it when I was there. Clouds
came in, lifted and went over the mountain. So my cloud
forest experience is very thin.
Q. You didn't attribute that, though, to Mr. Booth,
did you, when you were discussing cloud forest issues?
A. No, I did not.
Q. In your Report, you're looking at—
MR. BALDWIN: If we could go to Paragraph 46 of
Mr. Deming's report, Larissa. It's on page—I don't know
what page it's on. 25. Thank you. And if you could blow
up 46, please. Go to the next page, please. Blow up that

Q. Okay.
A. It is a mechanism for losing soil, but—
Q. That's my apology. So you talked about erosion,
though. You mentioned that there was erosion on this.
A. Yes.
Q. When one builds a road you do some earthwork for
the road and then you do other things. And when you're
building a road, you might do earthwork for the road but
then you do other things, pave it, put up the support
structures, things like that, right?
A. Correct.
Q. Would it make a difference to you that there was
erosion there—if the earthwork had been done on there but
the person who was building the road wasn't allowed to do
any other work because they were ordered to stop doing
anything with the road. Would that—would that explain why
there was erosion if the road wasn't completed with the
proper controls?
A. The erosion photographs were used to exhibit the
fact that the material, the residual soil—silt materials
are readily erodible and they need control. I do accept
that the road built in the lower portion of the mountain
had erosion control, stormwater management. And, yes, it
was controlled at that point. I fully would expect that
the future road would be paved similarly. But the

photographs are to exhibit the erodibility of the material
and the need to control erosion during the construction
time period was identified as a challenge in my
presentation.
Q. Okay. So let me—let me ask you this, then. Your
opinions that you have in your report concerning soil
stability, erosion, engineering, residual soil, backfill,
you think those would be applicable to any project in the
cloud forest but you haven't visited any of these other
projects; right?
A. The cloud forest has extreme measures because of
its moisture. Moisture softens these materials. And, no,
I have not visited the other projects.
Q. And so you can offer no opinion as to whether the
expansion project at Jamaca de Dios or its road is
environmentally unique in any way to the other projects in
the area?
A. Environmentally unique. I don't see how the
residual soils at Jamaca de Dios are created by the
moisture conditions there over centuries and I don't know
the moisture conditions at the other sites, so I don't know
if they're similar or different.
MR. BALDWIN: Thank you, Mr. Deming.
PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Herreras.
MR. HERRERA: Thank you very much, Mr. President.
Q. Mr. Deming, you were asked about the measurement of slopes using photographs, and you said earlier that you did use photographs for that purpose.

A. Yes.

Q. What limitations are there--

MR. BALDWIN: I'm sorry. He asked--I'm sorry. He did mention them. Well, he mentioned them in his presentation.

MR. HERRERA: Correct.

MR. BALDWIN: I didn't ask about them.

MR. HERRERA: You mentioned in your presentation that you--

MR. BALDWIN: I didn't ask anything about it.

PRESIDENT RAMÍREZ HERNÁNDEZ: But I don't think the issue of the photograph was not raised by Claimants nor any other claimant, please.

MR. HERRERA: You mentioned in your presentation that was mentioned by him based on your questioning not based on what the Claimant asked. The Claimant didn't ask about pictures.

Q. Mr. Deming, you have mentioned the use of photographs.

MR. BALDWIN: Objection.

PRESIDENT RAMÍREZ HERNÁNDEZ: Counsel, I don't think it's proper that you ask about that. I think you have to move on to another subject because that was not raised by the Claimant.

BY MR. HERRERA:

Q. Mr. Deming, the Claimant has questioned your experience regarding the building of roads in mountainous areas. You are an engineer; correct?

A. Yes, I am.

Q. And you're a licensed engineer with extensive experience in engineering?

A. Yes.

Q. Let me ask you, you heard the testimony given by Mr. Kay?

A. Yes, I did.

MR. BALDWIN: Again, I didn't bring up any testimony of Mr. Kay at all. Nothing to do with Mr. Kay to this witness. I mean, I don't know why we're doing direct again.

PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Herrera, could you limit yourself only to the issues that were raised by the Claimant, please.

BY MR. HERRERA:

Q. Mr. Deming, you have read—if you were to take a picture of a slope—

MR. BALDWIN: Objection.

Q. Well, you read Mr. Kay's--

MR. BALDWIN: Mr. President, can we please—I mean, it's long in the day.

BY MR. HERRERA:

Q. Could I ask you, Mr. Deming, what you used to measure the slopes?

MR. BALDWIN: I didn't ask him anything about slopes.

MR. HERRERA: He made a presentation.

MR. BALDWIN: I made a presentation—I'm sorry. Please. I'm sorry. I'm sorry.

PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Herrera.

MR. HERRERA: Okay. We'll move on.

PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Herrera, if you have another question on redirect that refers only to the matters that were raised by Claimants. The issue of the pictures was not raised by Claimants nor any other issue that—or Mr. Kay's testimony as well, so—

BY MR. HERRERA:

Q. Mr. Deming, is it important with the work that you describe that you did, houses, hotels, airports, roads, how important is the stability and the--

MR. BALDWIN: I didn't ask about his work that he did or the importance of slopes.

PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Herrera.

(Witness steps down.)

PRESIDENT RAMÍREZ HERNÁNDEZ: Can we take a five-minute break before the next—or are we ready to move right on? Okay. Let's--

Good afternoon, Mr. Booth.
is a remnant from an earlier draft. Upon further consideration, I realize that using that method for--and I will talk about this in my presentation--for estimating areas, was not the appropriate method to use.

So that sentence should be struck.

And then in Paragraph 92 under the first bullet, I have a parenthetical that says, "Based on the sum of the areas below." That information was, in fact, moved to Paragraph 76. So the same information appears, but it was moved to an earlier paragraph where on that first bullet I have the contents of what would have been following that bullet.

And then on Photo 4 in the appendix, I believe I refer to the direction that I'm looking. These are the wrong photos. I think these--or I've numbered them wrong. Bear with me a moment, please. It's actually Photo 7. I got the number wrong in my presentation, I believe. Where I say, "Taken at the top of the mountain, this image shows clouds blowing up the slope and being intercepted by the forest patch in the background." I had said that I was looking to the west, I was actually looking to the east on that--I mean, other way around. I had said I had been looking to the east, I was actually looking to the west in that photo. Those are the only changes I had.

MR. HERRERA: Thank you.

DIRECT PRESENTATION

THE WITNESS: My name is Pieter Booth. I am a biologist. I received a bachelor's degree in biology from the University of Pacific in Stockton, California, in 1977; followed that with a master's degree and an interdisciplinary study--course of studies at Marine Affairs at the University of Washington in 1984.

I am a principal scientist with the company Ramboll Corporation. It's a Danish company that operates worldwide and specializes in environmental sciences, health sciences, and engineering.

I have 34 years of experience in the field of environmental studies, with a very strong focus on environmental damages assessment.

Matter of fact, my career started working on one of the earliest environmental damage assessment cases in the U.S. in the state of Montana. And I've worked on some of the largest environmental disasters in the world, including the Deepwater Horizon incident in 2010 and the Fundão dam failure that you may or may not be familiar with in the Minas Gerais state in Brazil in 2015.

Work that I think is most relevant to the current matter includes environmental damage assessment and restoration evaluation in the Atlantic Rainforest of Brazil; developing a biodiversity offset for a gold mine in the Amazon of Ecuador; overseeing and participating in, partially, two and a half years' worth of biological baseline studies in the country of Guyana in some primary tropical forests.

And I've assessed damages from herbicide spraying along the border of Columbia and Ecuador for an international dispute, as well as oil impact assessment and remediation in the Amazon of Ecuador.

So in this presentation, my objective is to provide you with an overview of my Expert Report, including discussing Baiguate National Park, a couple of the special features I think that make Baiguate unique in terms of the hydrological cycle, contributions of the hydrological cycle of the region, and as well its importance for preserving biodiversity.

I'll talk about Project 3 area, emphasize that it is almost wholly within Baiguate National Park and provides many of the same ecosystem services or ecological services that the park provides.

I'll talk a little bit about environmental impacts. I know that the Tribunal has heard about those in discussions of the environmental impact assessment for Jamaca de Dios. But it's important to understand the nexus between conversion of natural areas to developed areas.

I'll also talk about the tool that I use for...
estimating the damages to the environment called habitat.\(^{115}\) 
equivalency analysis. I’ll talk about how I applied that, 
present the results, and then my main conclusions from my 
Expert Report.

So why do I think Baiguate National Park has high 
ecological value? One theme that has been running 
throughout these hearings is the presence of cloud forest. 
Cloud forest habitat is globally imperiled. It exists 
around the globe within tropical areas as well as in 
temperate areas where I’m from. We have cloud forests near 
Seattle, Washington, where I live. It’s an ecosystem 
that’s globally threatened from development pressures: 
wood-cutting, forestry, fragmentation of habitats, invasive 
species.

The cloud forests of Baiguate are particularly 
important in a regional context because all of the 
Caribbean islands have been designated by the International 
Union for the Conservation of Nature, IUCN, as a global 
biodiversity hotspot. Baiguate supports a high level of 
biodiversity, including species that only exist on the 
island of Hispaniola, and they’re particularly important 
also not just to the biological community, but the natural 
heritage of the Dominican Republic.

\(^{115}\) English Audio Day 4 at 08:17:48

environment. The moisture is trapped within the soils. 
The cloud forests even out the wet and dry season.

So even though Jarabacoa doesn’t have very, very 
pronounced wet and dry seasons, even when it’s not raining, 
as it was when we were there on March 9th, you do have this 
cloud capture phenomenon happening. And that’s very 
important for the maintenance of the endemic flora and 
facula of the area. The roots of vegetation and forest 
stabilize soils, prevent soil slope failures.

And I think emblematic—one of the things that’s 
emphasized in the Jamaca de Dios project is the spring-fed 
lake. Well, that spring really originates from all of that 
water that’s trapped almost like a sponge in the upper 
slopes of the mountain. It emerges as a spring.

There’s a high level of biodiversity in Baiguate. 
125 species of vascular plants were identified in a rapid 
biodiversity inventory. 11 were threatened and endangered, 
5 threatened and endangered species of amphibians, 2 
reptile species, 28 bird species were identified in this 
rapid inventory that took place over two days, including 
two—very range-restricted bird that only existed at 
levels above 700 meters above sea level.

The biodiversity of that area is likely to be 
very, very much higher. What I’m reporting here are the 
results of a two-day survey. Typically, when one wants to

\(^{116}\) English Audio Day 4 at 08:19:04

There are important areas\(^{116}\) of relatively 
undisturbed primary forest in the park that, once these are 
protected, will enhance the recoverability of other areas 
that are disturbed. And we know that there are other areas 
that are disturbed within Baiguate.

Talk a little about the hydrological dynamics of 
cloud forests. What creates a cloud forest? In the 
particular case of the Project 3 area or Jamaca de Dios, we 
have a combination of a couple of things. We have slopes 
of the mountain that are oriented northeast. And these are 
intercepting the warm trade winds coming off of the 
Caribbean that pick up a lot of moisture. So we have warm 
trade winds coming in from the north and the east, and they 
intercepted these slopes. The warm air rises as it moves 
up the slope. The moisture in the air condenses, forms 
droplets like fog. These droplets and high moisture in the 
air intercepts the relatively high vegetation of the 
forest, and we get condensation and drip off of that--off 
of that vegetation. This is a process known as cloud 
capture.

And in combination with the cloud capture, the 
forest provides a respite, if you will, for factors that 
would enhance evaporation. So it’s a very moist
is beginning to recover naturally.

On the next photo, I am looking to the east, to my right, and there's our group, and I'm looking towards an area of secondary forest. So secondary forest is a regeneration of a primary or pristine forest. And we could see—if this were a video, you would see the clouds moving across that area. So this picture captures that or is intended to demonstrate that cloud capture process of the cloud forest.

Ecosystem services—I just want to introduce this briefly because it's an increasingly useful concept for evaluating impacts and helping people really understand how environmental impacts affect them.

And there are generally four categories of ecosystem services that we feel the natural environment provides humans: provisioning, regulating, supporting, and cultural services. Within that gamut of—that wide range of services, my Expert Report focuses on the services provided by hydrodynamic characteristics of the cloud forest, the water cycle issues, and biodiversity.

This is a figure that I present in my report, and it's really a conceptual diagram that we usually start from when we're looking at impacts from human activity. So I have project features across the top, and then environmental impacts on the bottom.

And just really—I want to draw your attention to the fact that my focus here is to look at the terrestrial habitat degradation. I think that that's probably the most intuitive.

One of the concepts that I bring forward in my Expert Report is this concept of habitat fragmentation. Project 3 undoubtedly would convert largely undisturbed forest as well as other natural habitat areas into a more degraded status.

What happens when you fragment a habitat? If you can imagine a power line or a road going through a forest, this creates a barrier for the passage of fauna. It exposes them to predation. It exposes them to habitat that they're not used to. It modifies the habitat that they have evolved in over a millennia. Larger continuous habitats support higher biodiversity than fragmented habitats, and they provide a greater resilience in maintaining genetic diversity.

And what I mean by that is when you have these forest fragments that fauna no longer cross over, you're segregating populations. You're creating two segregated populations that will not mix—intermix their gene pool, and that's known to result in lower resilience to other factors like global climate change. It's very unlikely, in my opinion, that cloud forest diversity could be maintained at any significant level had the Project 3 development gone forward.

And to emphasize this idea of fragmentation, I would like to go back to the map with the aerial photo. Ignore for the moment what these colors mean. But all that colored area is a Project 3 area. And we see that it completely bisects the boundary of the park.

And what happens there is if a development were to occur on the Project 3 area, it would completely isolate the eastern part of the park from the rest of the park. Several things happen there. When you have primary forest, primary forest is a seed source for more disturbed areas to enable their recovery, secondary forest for even more degraded areas.

We know that the area to the east there is fairly degraded. So with that development, it would be completely cut off and really present a formidable geographic barrier for the recovery and the natural restoration of that area.

This is just an extension of the previous flowchart I showed you linking the terrestrial habitat again to the biodiversity and the provisioning service of water capture, which I've already spoken about.

Habitat equivalency analysis is very well-accepted. It has been applied since the mid '90s. It was developed by the National Oceanic and Atmospheric...
So it's not a Google Earth image. It's a high-resolution satellite image that we downloaded from an available service.

The next step and probably the most complicated, and to me the most interesting, was to determine the level of ecosystem services provided under its current state. So if we imagine that this—that entire area would have been cloud forest at some time, precolonial time, we can understand that that area would have offered 100 percent of the services, the ecological services, that a cloud forest can possibly support.

So what we want to do is estimate what the level of services is, depending on the different amounts of intervention. And for this we rely on information provided, again, in Jens Richter's Expert Report, where he surveyed the entire—or most of the area of Project Area 3 and identified the land cover types within that.

So in this figure we show—and I'll present it in a table in a minute—his categorization of the vegetation types. We ground-truthed that or we QA'd that, quality assurance checked that, if you will, against the satellite image. And then on my walk, I observed at least the areas that I walked that were in common to the areas that Jens Richter walked. I would be in agreement with the way he classified those vegetation types.

So this table—bear with me. It's got a lot of numbers. But on the very left-hand side, we have the classifications according to Jens Richter, the approximate areas associated with each one of those from that previous figure, those different colored areas or the areas corresponding to each one of those.

I then calculate the proportion of that classified area relative to the 20—the 28.3 hectares. And then I determine what level of baseline ecosystem services I think that each one of those areas provides under its current condition.

So at the high end, we have largely undisturbed forests which are primary forests that have very minor intervention, and I conclude that that's probably providing about 80 percent of the total maximum service level.

And at the low end, we have recently abandoned agricultural land. And I conclude that that area is characterized by that kind of land cover type would be—would offer a service level of only about 20 percent.

I multiply those service levels by the proportion of area, I sum those, and I conclude that overall, the project relative to the 28.3 hectares, or if you think in hectares, 28.3 hectares, 20,000 square meters of that would be devoted to a boutique hotel and spa, 10 percent of that total would be devoted to green space, and the remaining would be available for development by dividing into 70 lots.

So within those 70 lots, you'll have the footprints of the buildings, the landscapes areas, gazebos, whatever else the property owner wants to put there, as well as the road footprint.

For estimating a road footprint, I used a road length that was assumed to be 2.5 kilometers. That came from a meeting—which was reported to the Ministerio Ambiente at a meeting at Jamaca de Dios in 2013. The biggest piece of information that I was missing was a site plan.

As far as I know, the Ballantines hadn't submitted a conceptual design. So I relied on the conceptual design for the Jamaca de Dios project and extrapolated that to the Project 3 area.

And then I also adjusted the footprints for the road and the buildings according to input from Peter Cuming, as he described.

So this is a photo—satellite photo where I have draped over the conceptual plan for Phase 1, and it's showing the division of the lots, and we digitized the outlines of all of the structures that existed there at the time of the satellite photo, which, if I'm not mistaken, was January of 2018.
A. That’s correct, what I call Project 3.
Q. So the only one you visited was JDD, the original project?
A. It is.
Q. And Mr. Deming said that he didn’t look at any other projects in and around Jarabacoa. Is the same true for you?
A. I was.
Q. And Mr. Deming said that he didn’t look at any other projects in and around Jarabacoa. Is the same true for you?
A. That’s correct, what I call Project 3.
Q. Okay. So I’m just going to do the original and subsequent projects.

For a conservation scenario, we also need to look at the period of ecosystem service recovery. So either after the project is built or if the area is preserved, how quickly do things recover. I rely on a rich bibliography on recovery of humid tropical forests and conclude that the entire area will fully recover within a period of about 60 years if it were preserved.

Under a development scenario, the only thing that’s going to recover are the preserved green spaces. Everything else is either going to be zero or it’s going to stay at that 20 percent for--in perpetuity. The green spaces are only going to recover to about 80 percent because of the high degree of fragmentation that would exist on that area.

It’s important to note that for the conservation scenario that 68 percent that is in a fairly advanced stage of recovery will recover much more quickly. So that 60 years is just for the entire area to recover to 100 percent.

The results of the HEA for the Project 3 in an undeveloped state, we start with the 28.3 hectares or 283,000 square meters, with an average--an area weighted-average ecosystem service level of 52.45 percent that recovers to 100 percent in 60 years. At the end of that period--we have a gain of 47.55 percent at the end of that period.

Under the developed scenario, we start with the same assumptions. The total area weighted-average ecosystem service level will decrease to a low of 13 following the construction, and then it really only increases to 15 percent just from the preservation of those green areas, green spaces, after 40 years.

And thinking about in terms of environmental damages, when those annual losses are discounted to present value, I estimate that it would take an area of 486,000 square meters of former agricultural land to actively restore the lost services to society of a Project 3 development.

And this is just a graph to simply illustrate the two. Okay.

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the expansion, just to make it easier.

So you talked about a lot of things that you did with regard to the expansion project at Jarabacoa. Did you do a habitat equivalency analysis on any other mountain project in and around Jarabacoa?

A. My work was restricted just to the Project 3 area and the expansion, if you will. I did not do any analysis of any other properties or projects.

Q. Okay. I'll run through our quick questions here. But before that, whose decision was it not to look at any of the other properties? Was that your decision?

A. I was asked as part--to develop a scope of work for evaluating environmental impacts and damages to the development that was proposed for Project Area 3 or the expansion area.

Q. Okay. So let me just go through these just to make sure, just so we're all clear.

Did you do a developmental impact analysis on any other project in or around Jarabacoa?

A. I'm not sure what you mean by developmental impact analysis, but I did not perform any work or do any investigation at any other property.

Q. Okay. Same for a biodiversity inventory, you didn't do that at any other property?

A. I didn't conduct a biodiversity inventory in

1. Hispaniola, things that are--you talked about them being sort of native or found in the Caribbean or in the Dominican Republic.

2. So when you talk about Baiguate National Park, you're not stating that this particular park is more--you know, that the land that's right outside the boundary of the park--you say the boundary comes up on a ridgeline. And you're not saying that the land on one side is really valuable--you know, the 5 meters this way is really valuable, but the 5 meters this way is not; right?

3. When you talk about Baiguate National Park being valuable, you just mean that, you know--you know, this type of forested type of thing is something of value; right?

4. A. I don't think I ever used the world value, C Counsel.

5. But I rely on the information--the available information on the biodiversity of Baiguate Park, its geographical location, the fact that it supports cloud forests, and the literature on the global imperilment or the global destruction of cloud forests, to make the assertions that I did, that it is a unique area from a biodiversity standpoint.

6. Q. Let's talk about cloud forests. So you say in your Report--and you had it up here on the presentation again--that specifically in the Dominican Republic, or

7. Jamaica de Dios or the expansion project either. So, no, nowhere else.

8. Q. You relied on the rapid one; right?

9. A. That plus other information available, information for Baiguate.

10. Q. And did you perform a land cover classification analysis on any other project around there?

11. A. I did not.

12. Q. Okay. And what about an ecosystem services recovery analysis? Same?

13. A. I only worked on the Project 3 area.

14. Q. Okay.

15. President Ramírez Hernández: Counsel--


17. In this--I guess that's the time to move on. I only had 14 more points to ask.

18. The Witness: I would have asked the president at that point.

19. By Mr. Baldwin:

20. Q. You talk about the Baiguate National Park being special and then--but when you gave specifics, you were talking about things that are endemic or native to

21. Hispaniola, that cloud forests can begin as low as

22. 350 meters above sea level; right?

23. A. In the Dominican Republic, yes.

24. Q. Yes.

25. So you don't know where the cloud forests are in any of these other projects. And, again--you already said you didn't know. But you don't know about the cloud forests in any other project, just to make sure; right?

26. A. Well, you're talking about, I think, two different things. One is the zone within which you would expect cloud forests to exist, all other conditions creating cloud forests being equal, and then whether cloud forests are there.

27. I think at the beginning of my presentation, I described that you would expect that whole area, if we had a Google Earth image from precolonial times, to be covered by cloud forest because it meets all the requirements for the conditions in which cloud forests evolved over the eons.

28. Q. What are those conditions?

29. A. Those conditions are primarily a combination of the elevation and the orientation of the slopes relative to the trade winds in this case carrying in the warm air that travels up the slopes, condensing moisture.

30. Q. Okay. So if there was another project very close
of the Project 3 area or the expansion area on what was
done lower down the mountain—and I really have no basis
for making any other assumptions—the area was planned to
be divided into 70 lots. It was very likely to be a fairly
high-intensive land use replacing natural habitat.

MR. HERRERA: Thank you very much. Thank you
Mr. President.

PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. Let’s agree
on what is going to happen tomorrow. I believe you have
discussed—

MR. ALLISON: We have discussed, and I believe the
Parties—

PRESIDENT RAMÍREZ HERNÁNDEZ: It’s a joint
proposal.

MR. ALLISON: -- would jointly propose that
closing statements begin at noon tomorrow.

PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Booth, thank you
very much. Sorry. We don’t want to keep you here.

(Witness steps down.)

PRESIDENT RAMÍREZ HERNÁNDEZ: Sorry.

MR. ALLISON: Closing statements begin at noon or
any time thereafter that’s convenient for the Tribunal, and
proceed with two hours for the Claimant, a 15-minute break,
and two hours for the Respondent.

MR. DI ROSA: We agree with the starting time,
occurred on any other projects because I did not visit
them.

Q. Great. Thank you.

A. And I don’t understand the nature of those.

MR. BALDWIN: Sorry for interrupting.

Thank you, Mr. Booth.

PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you.

MR. HERRERA: Thank you, Mr. President.

REDIRECT EXAMINATION

BY MR. HERRERA:

Q. Mr. Booth, is it important to have visited the
other projects to determine the environmental impact on the
expansion project?

A. No. I think it would be irrelevant and may be
distracting.

Q. And why is that?

A. Well, because environmental impacts are very
site-specific. They depend on the existing conditions at a
site, and as I think I demonstrated, there are a variety of
different land cover types on the property.

I didn’t really get into the slope factors,
because without having a site plan, I couldn’t really
understand where different things would be placed. But it
would also depend on the nature of the development.

If you base a--a--your assumptions on development

of the Project 3 area or the expansion area on what was
done lower down the mountain—and I really have no basis
for making any other assumptions—the area was planned to
be divided into 70 lots. It was very likely to be a fairly
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MR. DI ROSA: We agree with the starting time,
CERTIFICATE OF REPORTER

I, Margie Dauster, RMR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

MARGIE R. DAUSTER