

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, :
:
Claimants, : PCA Case No.
:
and : 2016-17
:
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

ALSO PRESENT:

MR. JULIAN BORDAÇA HAR
Secretary to the Tribunal

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P R O C E E D I N G S

1 PRESIDENT RAMÍREZ HERNÁNDEZ: Good morning,

2 Mr. Mirabal.

3 THE WITNESS: Good morning.

4 PRESIDENT RAMÍREZ HERNÁNDEZ: Can you hear us?

5 THE WITNESS: I can hear you, yes.

6 PRESIDENT RAMÍREZ HERNÁNDEZ: Good morning. How

7 are you?

8 THE WITNESS: Good morning. I'm very well, thank

9 you. How are you?

10 PRESIDENT RAMÍREZ HERNÁNDEZ: I'm going to ask you

11 a very important question. How is your health?

12 THE WITNESS: Well, all things considered, I'm

13 doing well. One of my vertebrae is squished.

14 But--sometimes it's hard to walk, but I'm doing well.

15 PRESIDENT RAMÍREZ HERNÁNDEZ: All right. Very

16 well. I hope you get better soon.

17 I know that you do not have the Witness

18 Declaration there, Mr. Mirabal. But for the record, I

19 wanted you to confirm that you solemnly declare, upon your

20 honor and conscience, that you shall¹ speak the truth, the

21 whole truth, and nothing but the truth.

22 THE WITNESS: I do declare upon my honor and

23

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 I will now give the floor to counsel for

6 Claimants. They're going to ask you a few questions.

7 THE WITNESS: Very well, Mr. President.

8 PRESIDENT RAMÍREZ HERNÁNDEZ: Excuse me. I made a

9 mistake. It is counsel for Respondent who is going to ask

10 a few questions.

11 MR. BALDWIN: I just want to do a quick point of

12 order here, if I could, before we start the questions.

13 PRESIDENT RAMÍREZ HERNÁNDEZ: Yes.

14 MR. BALDWIN: The first is because of the video

15 conferencing and the way this room is set up, I would ask

16 that the gentleman be at least one seat away from

17 Mr. Mirabal because where he is right now, he can write

18 notes and the Minister can see. So, I would just ask if he

19 could move to another spot.

20 And secondly, I don't recognize--that document

21 seems to have a picture in front of the Minister, and I

22 don't think his Witness Statement is a picture so I'm just

23 curious as to what documents he has there.

24 PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Mirabal, could

25 you tell us what document it is that you have before you?

1 I can't hear you.

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

4 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.

5 (Pause in proceedings.)

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

8 MR. BALDWIN: Yes.

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

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

15 (Comments off microphone.)

16 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. So we are
17 fine.

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

21 THE WITNESS: Honorable President, I would like to
22 extend my greetings to you, the co-arbitrators, and to all
23 of you there present. I would like to present my excuses

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1 because I wasn't able to travel because of health reasons².
2 We can now begin.

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

6 Please proceed.

7 MS. SILBERMAN: Mr. President, Members of the
8 Tribunal, let me present you Jaime David Fernández Mirabal.
9 He's a psychiatrist and a doctor. He was also the Vice
10 President of the Dominican Republic between 1996 and 2000.
11 He was the Ministry for the Environment and
12 Natural Resources between³ '08 and 2011. And on
13 25 May 2017, he has submitted a Witness Statement in this
14 arbitration.

15 JAIME DAVID FERNÁNDEZ MIRABAL, RESPONDENT'S WITNESS,
16 CALLED

17 DIRECT EXAMINATION

18 BY MS. SILBERMAN:

19 Q. Can you hear us, Mr. Mirabal?

20 A. Yes, I can hear you.

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

² Original in Spanish adds: "y estar presente como era mi deseo".

³ Original in Spanish: "ministro del Medio Ambiente y Recursos Naturales entre agosto de 2008 y agosto de 2011".

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1 A. None.

2 Q. Do you ratify the contents of your Statement?

3 A. I do.

4 Q. Could you please describe your professional
5 background.

6 A. Yes. From 1970 to 1974, I did studies on
7 agricultural technical matters, and then architecture⁴, in
8 the Santo Domingo Institute, then a master's degree in the
9 Complutense University of Madrid on psychology and
10 psychiatry, medical psychiatry and psychology.

11 Then I studied at the University of Trieste on the
12 matters of mental health. I have been a doctor here in the
13 public health system.

14 And then I became a Senator, a national Senator,
15 in 1990. And from then on, I have been a politician.

16 Q. Could you please explain to us the role that a
17 Minister has? Technical matters, for example; are they
18 normally under your responsibility?

19 A. No. The Ministry of the Environment, and other
20 Ministries as well, have work teams in each area. Each
21 work team presents their reports to the vice ministries. ⁵
22 The vice ministries look at the reports and they present

⁴ Original in Spanish: "luego estudié medicina en el Instituto Tecnológico Santo Domingo -INTEC-".

⁵ Original in Spanish adds: "Viceministerios afinan las cosas".

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1 them to the Minister for their approval or rejection and
2 any other consideration.

3 Q. Thank you very much.

4 In the Reply for this arbitration⁶, the Ballantines
5 allege the following at Paragraph 212. And this is a
6 quotation.

7 "The story of the cement factory is a typical case
8 study of the political influence in the Dominican
9 Republic."

10 MR. BALDWIN: For this part, I don't believe he
11 talked about the cement factory in his Witness Statement,
12 so I don't know why counsel is going into it.

13 MS. SILBERMAN: Mr. President, this is something
14 that the Ballantines alleged postdating the Witness
15 Statement that Don ⁷Jaime presented, and they refer to him
16 specifically in the reply. And I just want to pose to him
17 the argument that the Ballantines are making and ask for
18 his reaction.

19 MR. BALDWIN: But, Mr. President, don't worry we
20 will get into the cement factory. She can do a redirect.
21 But as she mentions, we did this in the reply. They had a
22 Rejoinder.

⁶ Original in Spanish adds: "que los Ballantine entregaron después de la declaración suya".

⁷ English Audio Day 4 at 00:15:42

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1 The Minister could have easily submitted a witness
2 statement in the Rejoinder. So, I think it would be really
3 absurd to have him now testify to things that he had an
4 opportunity to testify to in a written statement that we
5 could test and see ahead of time in the Rejoinder.

6 PRESIDENT RAMÍREZ HERNÁNDEZ: The thing that you
7 allege so--

8 MS. SILBERMAN: Mr. President, Mr. Baldwin just
9 said that he's going to ask about these things, so I don't
10 see any problem with asking the question that he--

11 PRESIDENT RAMÍREZ HERNÁNDEZ: I don't see any
12 problem either.

13 MR. BALDWIN: Okay. I maintain the objection but
14 go ahead.

15 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.

16 BY MS. SILBERMAN:

17 Q. If I understand correctly, the Ballantines'
18 arguments has three parts: First, from the technical
19 viewpoint, the cement company was not viable.

20 Second, that this position has been confirmed by
21 the Development Programme of the United Nations.

22 And third--and this is on the Ballantines' reply,
23 that only the scandal of the Dominican public⁸ and

⁸ English Audio Day 4 at 00:16:57

1 intervention of the United Nations prevented an
2 environmental tragedy to take place.

3 What do you think about the Ballantines'
4 allegations? Could you please explain to us what happened
5 in the case of the cement factory?

6 A. Yes. In the case of González'⁹ cement factory, the
7 technicians from environmental quality and environmental
8 management had to analyze all the Environmental Impact
9 Studies. And they had said that it was possible to do it
10 there because it was 3.5 kilometers away from the Los
11 Haitises protected area.

12 This was a viable area. That was the
13 recommendation by the team, and we approved it as
14 recommended by the team. Although personally, we may have
15 had differences, but we abided by the rules.

16 The recommendations by the team were then
17 approved.

18 There were protests by the cement companies and
19 the environmental groups. So, then we asked for the United
20 Nations Development Programme to intervene so that it could
21 provide guidance to us in that regard.

22 They said that technically everything was correct.
23 But because of Precautionary Principle, although it was not

⁹ Original in Spanish: "la cementera de Gonzalo".

1 within the protected area, it was better, and that was the
2 recommendation not to do it in that place.

3 So, then we canceled the permit, and we asked the
4 owners of the cement company to find a more appropriate
5 site with better conditions.

6 MS. SILBERMAN: Thank you, Mr. Mirabal. For the
7 time being, I have no further questions and will now give
8 the floor to counsel for the Ballantines.

9 CROSS-EXAMINATION

10 BY MR. BALDWIN:

11 Q. Good morning, Mr. Minister.

12 A. Good morning.

13 Q. My name is Teddy Baldwin. I'm one of the
14 attorneys for the Ballantines. And I'm going to be
15 questioning you in this matter.

16 I would give you all the preliminaries, but you've
17 already testified in the Corona Materials arbitration;
18 correct?

19 A. Yes.

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

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

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

1 BY MR. BALDWIN:

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

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

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

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

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

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

23 (Comments off microphone.)

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

1 there are people speaking at the same time.
 2 MR. BALDWIN: I'd be happy if anyone could tell
 3 me--
 4 PRESIDENT RAMÍREZ HERNÁNDEZ: Could you please
 5 repeat your answer, Mr. Minister.
 6 THE WITNESS: I just heard from the lawyer that
 7 she talked about the cement factory. I'm surprised. I
 8 didn't think that was the issue.
 9 BY MR. BALDWIN:
 10 Q. Thank you.
 11 Let's turn, if we could, Mr. Minister, to
 12 Paragraph 6 through 8 of your Witness Statement, which are
 13 on Pages 1. Start on Page 1.
 14 A. Paragraph 6 you said, right?
 15 Yes. I'm looking at that right now. This has to
 16 do with my professional background; is that right?
 17 Q. Yes.
 18 A. Very well.
 19 Q. So, Mr. Minister, you were one of the founding
 20 members of the PLD; correct?
 21 A. Well, the beginning of the party, yes.
 22 Well, I got in there in 1978. So, yes.
 23 Q. Thank you.
 24 And the PLD has held the Presidency for the
 25 Dominican Republic for 18 of the last 22 years; right?

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1 A. Yes.
 2 Q. And are you also on the Political Committee of the
 3 PLD?
 4 A. I am.
 5 Q. I don't think that was in your statement, but can
 6 you explain what the Political Committee does?
 7 A. The Political Committee is the executive body that
 8 executes the policies put forth by the Central Committee.
 9 It follows up the political activity--the daily political
 10 activity within the organization.
 11 The Central Committee has about 600 members. They
 12 hold a Congress. They establish policies, and then the
 13 Political Committee, made up of 34 members, well, we follow
 14 up on those policies and the day-to-day political
 15 activities.
 16 Q. Thank you.
 17 And it seems that some years are missing in your
 18 description. From 2000 to 2008, what were you doing during
 19 that time?
 20 A. From 2000 to 2008, I was dedicated to family
 21 activities. The cultivation of Kahkow and other
 22 activities, but I did not hold any public office.
 23 Q. Thank you.
 24 And currently you're on the Monetary Board for the
 25 Dominican Republic?

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1 A. Yes.
 2 Q. And what role do you do as a member of the
 3 Monetary Board?
 4 A. The Monetary Board is the body that follows up on
 5 the monetary policy. It is made up of six permanent
 6 members and the Governor and the Ministry of the Treasury
 7 and the Superintendent of Banks. Those are ad hoc members.
 8 We are appointed members, and we follow up on the monetary
 9 policy of the D.R.
 10 Q. So, you're basically a public figure in the
 11 Dominican Republic, having been Vice President, Ministers
 12 of several places and now on the Monetary Board; correct?
 13 A. Yes.
 14 Q. And you've had opportunity to speak at a lot of
 15 places. And one of the things you've spoke out about is
 16 corruption. Isn't that right?
 17 A. Yes, issues related to corruption. Yes, I have
 18 had the opportunity to talk about that. Of course.
 19 Q. And haven't you stated in the past that one of the
 20 issues of corruption is the discretion given to government
 21 officials?
 22 A. Yes. Discretionality is what we talk about, yes.
 23 It is very dangerous, the discretionality of public
 24 officials. It's very dangerous for democratic stability.
 25 Q. Thank you.

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1 Now, you've also talked about reducing the red
 2 tape, so to speak, that can happen in all governments;
 3 right?
 4 A. Where have I talked about that? What document?
 5 PRESIDENT RAMÍREZ HERNÁNDEZ: I don't know what
 6 the Spanish translation for "red tape" is.
 7 MR. BALDWIN: You know, reducing the bureaucracy?
 8 PRESIDENT RAMÍREZ HERNÁNDEZ: Why don't you frame
 9 it that way.
 10 MS. SILBERMAN: And, also, the witness asked for a
 11 document.
 12 MR. BALDWIN: I'm rephrasing the question.
 13 BY MR. BALDWIN:
 14 Q. Have you spoken out about reducing the time that
 15 it takes to issue licenses, for example?
 16 A. It is always necessary to try to make things more
 17 expeditious in the public arena. And that is why we
 18 developed this idea of a one-stop shop window, specifically
 19 in connection with permit granting.
 20 Q. And that was called a uniform window; right?
 21 A. This is called the single window in Spanish. That
 22 means that all the projects are to be approved--accepted in
 23 one place and then also live in that place so that

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1 everybody can do things correctly.¹⁰

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

3 Just generally speaking, when you were the Minister of

4 Environment from 2008 to 2011, when an applicant was

5 seeking an environmental license for a housing project in

6 the mountains, how long would it take for them to obtain

7 that license, assuming they were qualified to do so, after

8 they had submitted their application?

9 A. Well, we tried to have a period of under 60 days

10 for the projects. That was our intention. Of course, the

11 technical teams--well, many projects were approved before

12 that timeline, others after it, but the different teams had

13 to agree: environmental management, protected area,

14 forestry, maritime issues. Well, that depends on where the

15 project was located.

16 Q. So do you think that, for example, if it took

17 three years to get a license, do you think that would be

18 too long? And let me say, an environmental license for,

19 let's say, a housing project in the mountains?

20 A. Well, three years, that would be a very, very long

21 time. I don't think that there are projects that have been

22 processed for three years. So the last three years, it's a

¹⁰ Original in Spanish: "entren por un solo lugar y salgan por un solo lugar y los equipos técnicos tengan más oportunidad de hacer las cosas bien hechas."

1 long time. That was never the case in our administration.

2 Q. Thank you.

3 Could you turn to Paragraph 21 of your Witness

4 Statement, which is on Page 6. Do you see that?

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

6 Q. Thank you. And you say that the purpose of the

7 meeting with Mr. Michael Ballantine was to discuss the

8 fine; right?

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

10 Q. Would it surprise you to know that when that

11 meeting occurred, that Mr. Ballantine had already paid that

12 fine?

13 A. I don't know. I don't know about that. They did

14 not tell me that. If they had paid it, they did not tell

15 me that.

16 They came to me to talk about two things. First,

17 the issue of the reduction. And second, to ask why they

18 were not allowed to build on the other site. I did not

19 have the answers to those questions, and I told them that

20 what I had been told at that time was that there was a

21 problem with the slopes and that construction was not

22 viable at that site. But they never told me that they had

23 paid it.

24 Q. Okay.

25 A. Because they went there to ask for a reduction.

1 That consideration was given to the issue. So I sent them

2 to the legal team for them to see whether that was feasible

3 or not. I did not have the power to decide whether a

4 reduction was going to be given to the fine. That had to

5 do with an opinion to be given by the legal department.

6 And also in connection with--it was--the

7 department having to do with forestry, soils, and water.

8 Q. You seem to remember that meeting with Michael

9 Ballantine pretty well, the specific details. Do you take

10 notes of the meetings that you're involved in?

11 A. I did not take notes, but I remember the

12 individuals. I remember where the meeting was held and

13 when they told me that that project was submitted, I looked

14 at some data, some information in connection with date.

15 But I remember Mr. and Mrs. Ballantine, they had

16 come to my office to ask for reconsideration of the fine.

17 As I couldn't decide that at the time, I sent them to the

18 legal team to say whether that could be done. And the

19 legal team said that it could be reduced by 50 percent.

20 And that is what we later did.

21 Q. Okay. And when did you stop being Minister of the

22 Environment? Do you remember the month and year?

23 A. Yes. August 2011.

24 Q. Okay. And you said that one of the things that

25 was discussed in the meeting was the denial of the

1 Ballantines' application based on the slopes and the

2 environmental conditions. That's right?

3 A. I said that I wasn't really aware of the matter.

4 I didn't have the technical report in my hands. But I was

5 told that there was a problem with slopes in that area.

6 They were developing the lake area¹¹. But that was the only

7 thing that I knew. And then the technicians prepared the

8 report. But then all that I knew is that I had heard that

9 there was an issue with the slopes.

10 Q. You testified that your meeting with Michael

11 Ballantine was partly about the denial based on the slopes;

12 correct?

13 A. Please repeat the question.

14 Q. You testified a few moments ago that your meeting

15 with Michael Ballantine was in part to talk about the

16 denial based on the slopes on his property.

17 A. No. They came to me to talk about the

18 reconsideration of the fine. During this conversation,

19 they asked about this, and I said I wasn't sure, but that I

20 had heard that this was an issue related to slopes. But

21 the main thing they came to see me for was the

22 reconsideration for the fine imposed because of the

23 environmental crimes that they had committed.

¹¹ Original in Spanish: "donde ellos estaban desarrollando la parte del lado".

1 Q. Okay. So, Mr. Minister, you were a Minister when
2 a whole set of national parks were created; right?

3 A. Yes.

4 Q. There were 32 created together?

5 A. 32 protected areas, yes.

6 Q. And this was done in connection with some
7 international obligations that the Dominican Republic had
8 to create these parks; right?

9 A. No. These were declared on the basis of studies
10 conducted by the different departments. But it was also
11 based, in connection with some areas, upon the
12 recommendation of international organizations such as
13 Nature Conservancy and other organizations on the basis of
14 the technical reports that were prepared by the Vice
15 Ministry of Biodiversity and Protected Areas.

16 Q. Now, you instructed Mr. Eleuterio Martínez to go
17 out and map these parks; correct?

18 A. No. Eleuterio Martínez had done it already. This
19 was not done upon our indication. They conducted all their
20 studies, and we asked the Vice Minister to revisit all
21 these areas because we needed to make sure that whatever it
22 is that was--that had been done was correct.

23 That was not only based on recommendations, but
24 also--the recommendation of technical teams, but they also
25 have the recommendations of the Vice Ministry. And that's

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1 a correct way to do things.

2 Q. So, Mr. Minister, is your testimony, then, that
3 you didn't know that there was this information or there
4 was mapping done for potential parks until Mr. Martínez
5 came and told you that he had already mapped out these 32
6 parks?

7 A. No, that is not what I said. I said that once we
8 were informed of all the recommendations and all of the
9 studies conducted, we were also given the reports on the
10 considerations the technicians included. And that's when I
11 became aware of the 32 protected areas under the various
12 different categories: scientific reservations and natural
13 monuments, natural parks. And that's when we got to see
14 all of the areas.

15 Q. But had you told Mr. Martínez to go out and gather
16 this information about parks? Forget that there's 32. But
17 had you told him to go out and gather information about
18 parks?

19 A. Well, we do not order a Vice Minister to do
20 something. The Vice Minister or his technicians do so as
21 part of their activities, and the Vice Minister presents a
22 report to the Minister.

23 Q. Thank you. When the report was presented to you,
24 did you ask Mr. Martínez or anyone else in the Ministry of
25 the Environment to take a look at whether private property

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1 would be affected by any of these national parks?

2 A. No, I did not ask that question because the State
3 declares an area as protected based on the reconsideration
4 and several of them are on private sites, but that is an
5 agreement later on that is entered by the person and the
6 State to find--to determine it.

7 But the protected areas address a fundamental
8 interest of the State to protect certain areas; therefore,
9 we did not ask whether there were any private persons in
10 those areas.

11 Q. Okay. Can you look at Paragraph 14 of your
12 Witness Statement, which is Page 4?

13 MR. BALDWIN: Larissa, if you would put up 14,
14 please. No, I mean, highlight Paragraph 14.

15 THE WITNESS: I read it.

16 BY MR. BALDWIN:

17 Q. Okay. And it says here--the last two sentences,
18 it says that, "Eleuterio Martínez only shared the final
19 input and submitted a project to me."

20 And then you state in the next sentence that you
21 forwarded that to the President of the Republic; correct?

22 A. Yes. That's what I mentioned in the previous
23 statement. This is given to us and the Minister just
24 completes the step towards the president's office when we
25 have the trust that we have in the team that was working on

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1 that report. In particular, Mr. Eleuterio Martínez, who is
2 an engineer, was really glorious in terms of the work that
3 he does to protect the areas in our country.

4 Q. So you had a very, I would say hands off, but let
5 me try something that might translate better.

6 You didn't micromanage or manage extremely closely
7 the--Mr. Martínez. You allowed him to do his job and then
8 accepted his recommendations; right?

9 A. Yes. Because nobody knows natural resources
10 better than the engineer Eleuterio Martínez. He is a
11 scientist. He is a technician, and he is a person who is
12 highly qualified.

13 Q. Thank you. I'm going to have Ingrid give you a
14 binder that I believe she has there, and we're going to
15 look at Exhibit C-141 in that binder.

16 MR. BALDWIN: I don't have binders but everyone,
17 its C-141. And Larissa will put it up on the page here.
18 C-141.

19 THE WITNESS: I have it here.

20 BY MR. BALDWIN:

21 Q. Do you recognize this document?

22 A. Regarding what? I need to read it. Just a
23 second. I need to read it.

24 Q. Please.

25 MR. BALDWIN: Larissa, if you can go to the last

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1 page, please. Thank you. And highlight the signature
2 block.

3 Larissa, C-141. Okay. You could put up the
4 Spanish actually. That's great, thank you.

5 THE WITNESS: Just a second. We are looking for
6 it.

7 Yes, I have it here.

8 BY MR. BALDWIN:

9 Q. Okay. The last page of that document, it was sent
10 by José Manuel Mateo Feliz; right?

11 A. We're talking about the first document. The
12 answer is yes.

13 Q. And if you look at the first page of that first
14 document, if we can pull that up.

15 A. Yes.

16 Q. It was to you; correct?

17 A. Yes. The document was addressed to me.

18 Q. And you'll see it was via Mr. Martínez. The
19 glorious Mr. Martínez.

20 A. Yes. It was a report that was sent via Vice
21 Minister Martínez, and it was a report, and it was very
22 proper to use the word "glorious" because this is highly
23 glorious.¹²

¹² Original in Spanish: "fue un informe del señor Mateo vía el viceministro Martínez. Y muy bien la palabra glorioso, porque eso es: glorioso."

1 Q. Good. Thank you.

2 A. The Dominican Republic has an incredible
3 debt--with Mr. Martínez and his fight to defend natural
4 resources.

5 Q. I would not doubt that. In here, he's trying to
6 fight for natural resources; right? Because isn't he
7 recommending that the cement factory not be approved in
8 this letter?

9 A. ¹³ He sent me the report where Professor Mateo
10 clearly says that more than 90 percent of the area is not
11 within the area. This is the report by Mr. Mateo. This is
12 not the report--this is not within the Los Haitises area.
13 Because if you look on the next page, you're going to see
14 that he signed the permit because that's when the
15 professor, engineer Eleuterio Martínez had some
16 differences--some opinions that were different from what
17 Mr. Mateo had said.

18 Q. Let's look at paragraph (d) of this, which is on
19 the second page of the document.

20 A. Yes.

21 Q. And it talks about the Dominican mining
22 consortium, do you see that?

23 A. Yes.

¹³ Original in Spanish adds: "No. "

1 Q. And that's a Dominican-owned mining company; is
2 that right?

3 A. The owners are Dominican.

4 Q. And if we look at subparagraph (f) it says what
5 you just said, that part of the concession, more than
6 90 percent is outside Los Haitises National Park; right?

7 A. Yes.

8 Q. Let's look at--the Tribunal can look at this at
9 their leisure. But let's look at paragraph (h) of this.
10 And here the author, Mr. Mateo, is talking about that the
11 supply of water would be affected by this project; right?

12 A. Those are his considerations, but this was not
13 supported by a technical report. These were his
14 considerations.

15 Q. And if we look at the last paragraph, because this
16 is the important one where he gives the conclusions,
17 doesn't Mr. Mateo here say that this project is not viable
18 in economic terms, and he suggests that it be denied?

19 A. That's his opinion. That's the opinion of one of
20 the team members. He is one of the members of the Vice
21 Ministry on protected areas. That's his opinion that we
22 also respect, but that is his opinion.

23 Q. Okay. Well, let's take a look at your opinion.
24 If you could look, then, at Exhibit C-142 in this document
25 that you have.

1 MR. BALDWIN: Ingrid, could you please help him
2 find C-142?

3 A. I have it right here.

4 MR. Di ROSA: Do you have an extra binder that we
5 can use?

6 MR. BALDWIN: No. We're doing this video
7 conference. We moved the dates.

8 MS. SILBERMAN: The witness has the binder.

9 MR. BALDWIN: The witness has the binder. The
10 witness has the documents.

11 Larissa, could you pull up the English actually
12 for me? Thank you. C-142, actually. I'm sorry. You can
13 put back up the Spanish. It came up.

14 Mr. Mirabal--this is a meeting, it's a Certificate
15 of the Validation Committee and you were the President of
16 that Validation Committee; right?

17 A. Yes.

18 Q. And this is where the committee was deciding
19 whether to approve the cement factory that we've been
20 discussing; correct?

21 A. Yes.

22 Q. If you look at the very bottom of Page 1 in the
23 top paragraph there it basically says that you opened up
24 the meeting as its president; right?

25 A. Yes.

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

5 This was an important meeting, is the question?

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

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

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

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

25 There's certainly nothing here in the document

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

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

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

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

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

18 Q. Let's look at paragraph 1 of the recommendations
19 here on Page 3 of this document under the recommendations.
20 Let's pull up the first paragraph. There you go.

21 Now, aren't you saying here, Mr. Minister, that
22 the project or that, I don't know, the "they," I'm not sure
23 who that is, but that the project or the Ministry of
24 Environment or somebody should highlight the fact that
25 there's a benefit from this cement factory because they're

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1 also going to plant some trees?

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

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

7 A. It doesn't look that way.

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

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

22 Q. Okay. In addition to issuing this, didn't you
23 also appear in public and defend the issuance of the
24 license for the cement factory? Weren't you a public
25 defender of it?

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1 A. Please recall that as Minister I was attacked for
2 having signed this, and I tried to explain the situation.
3 I tried to explain the situation as it happened, and I had
4 to do it. So given the second-guessing, we decided to
5 resort to a United Nations agency to receive some guidance.
6 We were interested in finding a solution. In this
7 document, even the recommendations indicate that the
8 license should specify that some areas would not be
9 affected.

10 So we also presented recommendations of all type.
11 But when we were attacked by the other groups, we also
12 defended the reasons, the technical reasons that the team
13 had had to approve that license. Therefore--but we were
14 not defending the cement company. We tried to even make
15 clear that the Mogotes should not be affected. I--as a
16 Minister, I should also follow the recommendations of the
17 technical team.¹⁴

18 Q. Did you say anything in those interviews that the
19 executive branch is the one that wanted this permit

¹⁴ Original in Spanish: "Porque ahí, por ejemplo, en este documento inclusive en las recomendaciones dice que la licencia debe especificar que no deben ser afectados los mogotes que están en el área que pudiera ser afectada. O sea, también se hacen recomendaciones de todo tipo, pero también cuando fuimos atacados por los grupos opuestos, también nosotros defendimos las razones técnicas que había tenido el equipo para aprobar esa licencia. Y por tanto, debía aparecer. Pero no defendiendo la cementera. Yo no soy un amigo de las cementeras, pero si las reglas permiten técnicas que eso se haga, yo como ministro debo acogerme a las recomendaciones del equipo técnico."

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1 approved or wanted this project to go forward?
 2 A. No. Because that is not a power that the
 3 executive has to try to influence on the decisions made by
 4 a Ministry.
 5 Q. Okay. We're turning to a final subject here,
 6 Minister Martínez. And we'll--we won't have much left. So
 7 I'd like to ask you a question. Do you know where the
 8 National Park of the East is in the Dominican Republic?
 9 A. Yes.
 10 Q. Did you have a disagreement with the chamber of
 11 deputies with regard to an issue in the National Park of
 12 the East?
 13 A. As far as I recall, I did not.
 14 Q. Okay. So there wasn't anything about the borders
 15 of that park?
 16 A. No. Because the modification of the limit was an
 17 amendment to the law on protected areas in 2002. We had
 18 nothing to do with it even though there is always the
 19 threat from some sectors that are trying to settle in
 20 protected areas. In this case, the Park of the East, it's
 21 always the wish that some specific stakeholders have to try
 22 to settle in those areas. There is also some level of
 23 conflict, and we had to intervene whenever it has to do
 24 with protected areas including the Park of the East.
 25 Q. And you mentioned "stakeholders." Weren't there

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1 environment?
 2 A. Yes, the new constitution--we always had it. But
 3 the new constitution that was passed in 2010 specifically
 4 refers to the defense of the environment and natural
 5 resources as a fundamental right.
 6 Q. Who's fundamental right?
 7 A. It is the fundamental right of the
 8 citizenship--citizenry. In that case, it belongs to the
 9 citizens.
 10 MS. SILBERMAN: Thank you very much. I have no
 11 further questions.
 12 PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Jaime, if you
 13 allow me, one of my colleagues has a question.
 14 QUESTIONS FROM THE TRIBUNAL
 15 ARBITRATOR CHEEK: Good morning. Thank you very
 16 much for taking the time to appear here today.
 17 THE WITNESS: Thank you, Your Honor.
 18 ARBITRATOR CHEEK: I had a question about
 19 something you referred to at the beginning of your
 20 testimony. You mentioned that when designating the
 21 protected areas, they may have private property. But
 22 whether they have private property is something not
 23 considered at the time you make the environmental
 24 designation, but that later there can be agreements between
 25 the government and those private landowners. And I was

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1 some foreign investors that were trying to, as you say, do
 2 something or have something to do with the National Park of
 3 the East when you were Minister? Wasn't there an issue
 4 with foreign stakeholders trying to do that?
 5 A. As far as I recall--because I didn't even know
 6 that today we were going to talk about the cement company
 7 or the National Park of the East. But at the very
 8 beginning at the entrance of the park to the west, there
 9 has always been an interest to occupy that area where we
 10 have the protection area, where we have the people who are
 11 actually taking care of the park and the park rangers and
 12 whether they should be in the park or not. But that is
 13 within the limits of the park.
 14 MR. BALDWIN: Thank you, Mr. Minister. Thank you
 15 very much for your time. I don't have any more questions,
 16 but your lawyers will have some, I'm sure.
 17 REDIRECT EXAMINATION
 18 BY MS. SILBERMAN:
 19 Q. Mr. Jaime, in response to one of the questions
 20 posed by Mr. Baldwin, you said that the State has a keen¹⁵
 21 interest in protecting certain areas. My question is the
 22 following: Do you know if the Dominican constitution
 23 refers to the protection and preservation of the
 24 _____
 25 ¹⁵ Original in Spanish: "interés fundamental".

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1 wondering if you could explain to us what those types of
 2 private agreements might be.
 3 THE WITNESS: If a protected area is declared
 4 under the supreme interest of the State and the interest of
 5 the citizens is declared as protected and there are some
 6 owners who have--who are the holders of those areas, the
 7 owners of those areas¹⁶, there is a legal constitutional
 8 mechanism through which the owner resorts to the legal
 9 department to receive a compensation for the value of the
 10 lots that were declared protected.
 11 Therefore, the new constitution, as well as the
 12 previous one, provides for a valuation of those costs--of
 13 those lots, and this is a job that is conducted by the
 14 attorney of the State, also the survey department¹⁷ and some
 15 private entities. We assign a value and the State has the
 16 duty to compensate for the value of those lots, those areas
 17 that were declared protected but that can no longer be
 18 used. For example, within the protected areas we have some
 19 natural monuments that can be used given some management
 20 plans.
 21 So the right to own that area is not lost. But if
 22 we are talking about a scientific reserve area, that can
 23 _____
 24 ¹⁶ Original in Spanish: "hay propietarios que están titulados las tierras, que son propietarios reales".
 25 ¹⁷ Original in Spanish: "La Dirección de Mensura Catastral".

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1 only be used as such, the legal owner should be compensated
2 after it was declared protected.

3 ARBITRATOR CHEEK: Thank you very much.

4 PRESIDENT RAMÍREZ HERNÁNDEZ: We're finished.
5 Mr. Jaime, please get some rest. We wish you well in your
6 recovery.

7 THE WITNESS: May I say something?

8 I deeply thank you for listening to us today. I
9 deeply thank you for forgiving us for not being able to
10 appear in person, and I am really sorry that because of a
11 series of lies that we've seen some of the accusations such
12 as private meetings with the Ballantines, etcetera¹⁸, it
13 is--I am very sorry we have to listen to those lies, but
14 this is part of the work that we do as public officials.

15 Thank you very much, Your Honor, and I would also
16 like to thank the co-arbitrators.

17 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you, and we
18 wish you well and a speedy recovery.

19 (Witness steps down.)

20 So should we take a five-minute break to allow you
21 a coffee break? We need coffee. So then we make it 10
22 minutes, then.

23 (Brief recess.)

¹⁸ Original in Spanish: " con otras personas".

1 PRESIDENT RAMÍREZ HERNÁNDEZ: Good morning,
2 Mr. Hernández. Can you please read the Declaration that
3 you have before you.

4 THE WITNESS: "I declare upon my honor and
5 conscience that I shall speak the truth, the whole truth,
6 and nothing but the truth."

7 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you very much,
8 Mr. Hernández. Counsel for Respondent is going to ask a
9 few questions and then other questions are going to be
10 posed to you by Claimant's counsel.

11 JOSE ROBERTO HERNÁNDEZ, RESPONDENT'S WITNESS, CALLED
12 DIRECT EXAMINATION

13 BY MS. SILBERMAN:

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

18 A. That is correct.

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

21 A. That is correct.

22 Q. Do you have any corrections to make?

23 A. I do not. None.

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

1 A. In full.

2 Q. Are you an employee of the Dominican government?

3 A. I am not.

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

6 A. No.

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

9 A. Well, I'm a specialist in marketing. I am a
10 graduate of the Iberoamerican University in Santo Domingo.
11 I am a worker, an employee--I've been employed since I was
12 13 years old.

13 My first job was in Repeco Leasing, which was a
14 car lease company. I wasn't there for long.

15 My brother and I, we obtained a representation¹⁹
16 contract, Universal Fill and Supply, a St. Louis company.
17 And at that time, the company was booming²⁰, specifically
18 because of the Free Trade area of the Dominican Republic.
19 And this company sold sewing machine pieces in the
20 Free Trade area. I worked there until 1997 and then I
21 embarked on a personal project.

22 I acquired the master franchise of Mr. Movies,

¹⁹ English Audio Day 4 at 01:22:34

²⁰ Original in Spanish: "que en ese momento estaba en auge la industria de la zona franca en la República Dominicana".

1 which was a branch of Blockbusters. And I developed that
2 business for ten years in the D.R. And I had 13 stores.
3 That was a business that was predetermined to last only 10
4 years, because technology was going to have an influence on
5 the consumption patterns of customers. And then we had to
6 dismantle the company after a period of ten years.

7 After I was starting to dismantle the Mr. Movies,
8 I always visited Jarabacoa, always had the wish to live in
9 Jarabacoa. In those years, I started²¹ a real estate
10 business in Jarabacoa. I sold lots. I referred friends.
11 This was almost like a weekend kind of business.

12 And then later on, in 2005, I and a group of
13 partners/friends thought about buying a mountain and to--we
14 thought about developing a project with safety and also
15 comfort²² for Dominicans and foreigners²³. And I have been
16 involved in that business for the past 13 years.

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

19 A. Well, there are many factors to consider. The
20 market varies on the basis of the age of the individuals.
21 Some people like to be in the mountains, for example,

²¹ Original in Spanish: "informalmente comencé el negocio".

²² English Audio Day 4 at 01:24:24

²³ Original in Spanish: "que realmente pudieramos atraer un mercado dominicano como vivienda secundaria y también un mercado extranjero".

1 younger customers, people under 60. They like to be by
2 themselves with a view in the cold weather. But some of
3 the people that are a little older like to be closer to the
4 village. And so the site depends on the kind of customer
5 that you are directing the product to.

6 Q. Before making final payment for the site, do you
7 conduct any studies, any due diligence?

8 A. Well, truth be told, we have a pre-project or
9 draft project. This draft project has to do with a
10 strategic plan. This strategic plan has to do with five
11 areas: human resources, finance, operations, market, and
12 within all that we also have feasibility issues. Many
13 factors are taken into account in connection with
14 feasibility.

15 And when you are preparing this draft project,
16 what I usually do is I sign a letter of intent with the
17 individual that is selling the land to me. I explained my
18 intentions to the seller.

19 And then you clean up the land. Then you do a
20 contour line. And after the contour line is finished, you
21 hire an architect that can give us a basic structure of
22 development.

23 And then after that, I go to the MMA and ask for
24 the MMA to come and visit for assessment purposes so that
25 we can get ToRs and see what studies the Ministry needs in

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1 order for an environmental license to be provided.

2 Q. And I understand generally the process for seeking
3 an environmental permit from the Ministry, but could you
4 tell us about how you specifically approach the process.

5 Do you have consultants? Do you conduct more
6 legal studies? What do you do?

7 A. Well, first, I have an adviser in connection with
8 human resources. I have another adviser for financial
9 matters. That includes marketing, of course. And then the
10 MMA has a number of suppliers that conduct those kinds of
11 studies for it. It is not anyone that can conduct that
12 study.²⁴ One of those approved consultants by the Ministry
13 can deal with permit matters.

14 Thank God one of my owners is also a consultant.
15 His name is Valentín Cordero. The company that he owns is
16 called Core Ingeniería²⁵. And he does all the processing.
17 He holds my hand.

18 And 13 years ago, initially, I was not as
19 experienced as I am today. I didn't have as much knowledge
20 of environmental matters as I do now. So²⁶ 13 years ago,
21 the requirements were not as strict as the ones that are

²⁴ Original in Spanish adds: "Ellos tienen ya unos consultores
preautorizados.".

²⁵ English Audio Day 4 at 01:28:09

²⁶ Original in Spanish: "y definitivamente".

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1 set forth today.

2 Q. And I understand that--sorry. I'll wait for the
3 translation.

4 I understand that this is your first time being
5 involved in a court proceeding or arbitration proceeding.
6 Why did you agree to be a witness in this proceeding?

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

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

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

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

23 MR. BALDWIN: Yes.

24 CROSS-EXAMINATION

25 BY MR. BALDWIN:

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1 Q. Good morning, Mr. Hernández.

2 A. Good morning.

3 Q. Thank you for being here. I won't introduce
4 myself, since we've already met, but I will say that it's
5 nice to see you again.

6 I'm going to be asking you a series of questions.
7 If you need any clarification on any of these questions,
8 please let me know. If you need a break, please also let
9 me know that.

10 Are you aware this proceeding is televised--or not
11 televised, but is put out on the internet, live streamed.
12 Are you aware of that?

13 A. I did not.

14 Q. Well, then it's good that you know. You wore a
15 nice suit, so you're all set.

16 How did you prepare for your testimony today?

17 A. Well, I prepared with the assistance of the
18 attorneys.

19 Q. Did you look at certain documents?

20 A. No. My statement. I read it. I looked at the
21 points that I had to have more clear in my head. It's the
22 first time in these kinds of proceedings, so I wasn't
23 really sure as to what I was here to do. I didn't know the
24 mechanics of the whole thing.

25 Q. And I heard the lawyer for the Respondent state

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1 that you've never been involved in a Tribunal or court
2 proceeding before; is that right?

3 A. That is true.

4 Q. Does that also include domestic proceedings in
5 courts in the Dominican Republic?

6 A. Yes.

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

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

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

15 A. Yes.

16 Q. What legal proceedings were those?

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

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

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1 So, I'm going to ask you a few biographical
2 questions here.

3 And I would ask you to turn to Tab 2 of that white
4 binder to your right. You won't need the spiral binder
5 anymore, so you can move that out of the way if you want
6 to.

7 I'm sorry. I meant to say Tab A. It's right
8 behind Tab 1. So there's Tab 1 and then there's Tab A.
9 And this is the CV you submitted with your Witness
10 Statement?

11 A. Yes.

12 Q. So I just have a couple questions, because there's
13 some things that weren't discussed by Ms. Silberman. So I
14 want to ask.

15 One is you received a degree from Santa Teresita;
16 correct?

17 A. No. I graduated from primary school--from the
18 school called Santa Teresita. That was a primary school.
19 That is the primary school degree, if you will, if you can
20 call it that.

21 Q. So at the Universidad, then, what was your major?
22 What did you study?

23 A. Marketing.

24 Q. And it says 1990 to 1997. I took a little bit of
25 time myself to get through school. But was that seven

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1 years--was that the full seven years of going to school?

2 A. Well, the thing is that at that time--and your
3 question is excellent. At that time I both worked and
4 studied. I was at Universal Sewing Supplies, and I left
5 home at 6:00 a.m., and then I had to visit 20 to 25
6 customers. I--it was from 6:00 to 6:00. I went to
7 La Romana, to other cities, and I only worked in
8 Santo Domingo Fridays.

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

14 Q. Good. Thank you.

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

18 A. Yes.

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

23 A. Universal Sewing Supply was a company that we
24 started--my brother and I started in my bedroom in my
25 house. And we supplied sewing machine pieces in all the

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1 Free Trade area.

2 So we visited the factories, we took the orders,
3 we sent faxes in the evening, and then at the next day we
4 UPS'd or Federal-Express-Expressed it--the pieces. We
5 picked them up from Federal-Express, and we took orders,
6 and we delivered pieces or parts.

7 And the business started growing, and Universal
8 decided to have fiscal deposits in the San Isidro Free
9 Trade area, and we already had in stock those parts that
10 were more popular, and then we had a group of five vendors,
11 and my brother was a district manager and I was the manager
12 of sales.

13 In the new states they had subdivided everything
14 by areas,²⁷ and the Dominican Republic and Haiti was one of
15 the areas. My brother was a district manager of that area
16 and was the sales manager.

17 Q. And then you did the Mr. Movies thing. And what
18 made you decide to go from sewing to videos?

19 A. That's very good. You asked a very good question.

20 I am passionate about movies. I've always been
21 passionate about it. When I was small, I went to the
22 theater with my dad and we watched three movies a day.

²⁷ Original in Spanish: "Ellos tenían los Estados Unidos divididos por
distritos, vamos a decir, o por estados, por zonas,".

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1 Of course, the sewing machines business gave us a
2 very good income, but I wasn't professionally fulfilled. I
3 wanted to conduct my own project. I had worked with my
4 brother for ten years already. My brother actually
5 supported me in the Mr. Movies business. He was my
6 shareholder.

7 And so when I was going to school, I had a class
8 called "Market Research," and I conducted a market study
9 for Blockbuster, for video update, and we liked Mr. Movie.
10 We liked the name very much.

11 I remember the first time we called Minneapolis
12 and we talked to the President of Mr. Movies, and he was
13 surprised that someone from the Caribbean wanted to
14 represent the company in the Caribbean.

15 And then I traveled to the United States to
16 conduct a prior analysis of the market. At the time, we
17 didn't have the specialized stores in the D.R. We were the
18 first one.

19 I held three meetings with different individuals
20 and a proposal was put forth to us. I wanted a master
21 franchise for the island, including Haiti. And the people
22 from Mr. Movies showed quite a lot of interest. They gave
23 us a very comfortable price, and we were able, under the
24 contract, to have a subfranchise. So I was the master
25 franchiser and I could provide other franchisees with

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1 franchises.

2 So something that was very curious is that at that
3 time, we called it Blockbuster. Blockbuster didn't even
4 want to meet with us.

5 Three years later, Blockbuster bought Mr. Movies,
6 and at a meeting we all held together--²⁸ "well, at the end,
7 I ended up working with you."

8 Q. It is a very interesting CV, because you go from
9 sewing to movies and then to building residential housing
10 projects in the mountains.

11 What made you decide to move to Jarabacoa and
12 start building mountain projects?

13 A. Mr. Movies was a very demanding job, meaning that
14 during the weekends we had the highest revenues. And if I
15 stayed in Santo Domingo, I just stay there to see the
16 different stores, whether there was a lineup. And also, I
17 checked the parking lots. And I was completely stressed
18 out and I worked throughout the week.

19 And Jarabacoa became a shelter. And every weekend
20 I went to a small house I had there that I co-owned with my
21 partner, Axel. And Jarabacoa became a place where I felt
22 different. I liked to go bike riding. I liked to be in
23 nature. And I felt differently than what I felt--than the

²⁸ Original in Spanish adds: "les dije".

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1 way that I felt in Santo Domingo.

2 Every Sunday I left Jarabacoa, I prayed and said,
3 "God, I hope not to have to leave this place one day," and
4 that became a reality because I was sent to live there. I
5 was--I was able to live there. I was able to conduct a
6 business that has a very positive business, a positive
7 impact on the people that live there, and also giving me a
8 better quality of life. I've been developing this project
9 for 13 years and living in Jarabacoa for 10.

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

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

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

19 Are those good qualities for an entrepreneur?

20 A. I do not understand the question.

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

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

25 Q. Okay. Good answer.

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1 But in order to be a good entrepreneur, do you
2 think one needs to have vision to be able to see things
3 that other people can't see, and that part of the job of an
4 entrepreneur is to bring people together, to be able to
5 know that you need this--you discussed it a little
6 earlier--you need this company or this company, this
7 person, and you'll bring them together to get the business
8 running correctly?

9 A. That's a question that I would not ask just a
10 businessman or an entrepreneur. You can also ask an
11 architect those questions. The person needs to be
12 prepared, needs to have some discipline, and I think that
13 that person needs to have an aspiration.

14 Q. And was that aspiration what led you to look at
15 the mountains where the projects are--where
16 Quintas del Bosque is now, to look at that mountain and
17 say, "I can see that there's going to be houses going up
18 this mountain? I can see this is a good opportunity?"

19 A. Please recall that when I started to think of
20 Quintas del Bosque, I had already been selling properties
21 informally to friends from Santo Domingo. And with all of
22 the links I have, everyone knew that I always was in
23 Jarabacoa. And I was asked--I also invited several people.
24 People liked it.

25 And let's say that I already had some experience

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1 in the real estate area and also the selling of lots before
2 I bought the mountain.

3 Q. And as your job, you said you do marketing in your
4 current job as a promoter; right?

5 A. I said that my profession was marketing. I am
6 currently the director, and I have to do with everything.

7 Q. Part of it is marketing for Quintas del Bosque?

8 A. That's the one that I like the most.

9 Q. And as part of that, you review brochures, you
10 make sure there's signs up around the community, you make
11 sure that the information on the website is good; correct?

12 A. Yes.

13 Q. You list three things here. The first is
14 Jarabalodge. What is Jarabalodge?

15 A. Jarabalodge is a company that bought some lots in
16 Quintas del Bosque to develop houses. Because
17 Quintas del Bosque in principle was just for the
18 subdivision of the area.

19 Through experience, we realize that once we sell a
20 lot, we are selling a problem, because the person is to
21 find an architect, an engineer that builds the house. And
22 in particular, foreigners do not want to be addressing all
23 of these issues, and we saw the need to provide a finished
24 product.

25 Jarabalodge is a company that bought a portion of

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1 the terrain to be able to develop a project within Quintas
2 del Bosque with 13 cabins, and that is called Greenlodge.
3 And the 13 cabins have a shared area. It has a gazebo, and
4 it has a restaurant.

5 You have been there; right?

6 Q. Yes. Yes, indeed.

7 And you--how long have you--you live in
8 Quintas del Bosque; correct?

9 A. Yes. I told you that I've been there for ten
10 years.

11 Q. Very nice. Your house has been there for ten
12 years?

13 A. Yes.

14 Q. And were you the first house there in
15 Quintas del Bosque?

16 A. We built three houses at the same time, and one
17 of--and that's--one of them is mine.

18 Q. Okay. Great. And the--it's a very nice house, by
19 the way.

20 But I have a question. Did you build the three
21 houses you're talking about? Did someone else build them?

22 A. I did not build them. Back then, I did not have
23 experience in construction. I did like architecture, and I
24 had a clear idea of what I wanted to do.

25 But a colleague from Jarabacoo, Chad Wallace, an

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1 American colleague, who was the husband of the principal
2 where my children--my daughters went to school, I
3 established a good friendship with him. He was an
4 engineer, an architect, and he's the one who executed the
5 three houses. The three houses follow the same model.

6 Q. So prior to starting Quintas del Bosque, you had
7 no building experience; right? You hadn't built anything
8 before?

9 A. Yes. In the area, I had no experience with the
10 construction of cabins, but I had some experience with
11 construction, because, for example, I participated in the
12 layout of the construction, the offices of Mr. Movie and
13 the 13 stores. And those were my first experiences in the
14 area of construction.

15 Q. And let's talk about this second one, which is
16 Quintas del Bosque. Since the first one, Jarabalodge, has
17 certain properties inside Quintas del Bosque, what does
18 this Quintas del Bosque company do?

19 A. I did not understand the question.

20 Q. You have the--if you look at Annex A in that
21 binder in front of you, the second bullet point under
22 "Experiencia" is Quintas del Bosque. I wonder, is
23 that--did that--is that Quintas del Bosque meaning--well,
24 let me ask this.

25 Isn't it that Hacienda del Bosque is the--sort of

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1 the company that manages Quintas del Bosque; correct?

2 A. Hacienda del Bosque is the company that developed
3 Quintas del Bosque. Quintas del Bosque is the business
4 name and the brand name. And Greenlodge is the business
5 name. And Jarabalodge is the company that executes
6 Greenlodge.

7 Q. What year did Hacienda del Bosque start?

8 A. That started--I think it was in 2004. That's when
9 it was incorporated.

10 Q. Your thing says 2005 here. So, it started before
11 you were involved with it?

12 A. No. I mean, usually there is a period where we
13 have all the paperwork to create the company. I think it
14 was between 2004/2005. Honestly, I do not remember.

15 Q. And what is this last bullet point here with
16 regard to your experience? What does--can you explain
17 that? What does that mean?

18 A. What are you referring to?

19 Q. If you look at Exhibit A, your CV, and you look on
20 "Experiencia," and there's three bullet points. We talked
21 about the first two. I just want to understand what the
22 last bullet point is.

23 Annex A, your CV. We've been looking at it?

24 PRESIDENT RAMÍREZ HERNÁNDEZ: I think it is
25 managed, the sales of the Retiro? Managed sales for

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1 Quintas del Bosque, and then it says "Managed sales for
2 El Retiro Jarabacoa."

3 THE WITNESS: El Retiro Jarabacoa is another
4 project that I managed. And Mr. Otto González has more
5 than 35 years there in Jarabacoa. He is a very well-known
6 veterinarian in the Dominican Republic. He was a close
7 friend of my father. And every weekend he used to go to
8 Jarabacoa.

9 We used to--we started to get together. He saw
10 the development in Quintas del Bosque, and he had a small
11 property where he had his 30-year-old house on the
12 property, and his dream after working on--having cattle,
13 having crops, and having leased the property to others for
14 them to have crops in his area, was that he wanted to have
15 a development.

16 So we drafted a plan. We talked to environmental
17 consultants. We carried out the due diligence. And these
18 days, El Retiro has already been developed and has been
19 sold mostly as well as built with seven cabins.

20 This is a different project. Quintas del Bosque
21 is 6 kilometers after the town whereas El Retiro is 5K
22 before the town. El Retiro is supplementary to us.

23 For example, they told us--I got a client that
24 said--or that said, "I love this place, but I don't like
25 the mountain or it's too far." So I was able to have a

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1 plan B, where I could offer another property that caters to
2 a different customer profile who wants to be closer to the
3 town.

4 BY MR. BALDWIN:

5 Q. Thank you.

6 And just to be clear, then, what year did
7 that--what year did that project start that you're talking
8 about?

9 A. I do not recall precisely, but it must have
10 been--I don't recall the date. Around 2013/2014.

11 Q. But prior to 2005, when you became a promoter,
12 just to be clear, you didn't have any experience or
13 background in engineering; correct?

14 A. No, I did not. And that's the reason why I
15 outsourced architects--to architects and soil specialists
16 and instructors.²⁹

17 Q. And you didn't have a background in environmental
18 sciences either, right, prior to 2005?

19 A. No, I did not.

20 Q. When did you purchase the--or when was the land
21 purchased where Quintas del Bosque I is? When was that
22 land purchased?

²⁹ Original in Spanish: "No. Por eso subcontrato ingenieros y arquitectos, especialistas de suelos, estructuralistas."

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1 A. I think it was around 2005. Yes, 2005. There was
2 a long negotiation process. There was an intention at the
3 very beginning that--an intent to buy. I think it finally
4 closed in 2005. I do not recall the exact date.

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

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

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

19 A. I do not recall.

20 Q. Don't recall.

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

25 A. The mother had died. This was a long time ago,

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1 and the negotiation of the land was not something that I
2 handled. It was handled by--who used to be our attorney.
3 I was focused on the marketing aspect. The purchase of the
4 land, Conrad Wittkop [sic] is the one who managed that
5 with the attorney.

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

8 BY MR. BALDWIN:

9 Q. So you get this land in 2005. And what do you do
10 with it? What do you do in 2006? Because you start this
11 in 2005. You now own the land. What are you doing in
12 2006?

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

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

21 Q. Okay. So the road that runs up the mountain,
22 let's say, the one that you just talked about, that--when
23 you got the project, that was a very muddy road, right, you
24 said?

25 A. Yes.

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1 Q. Okay. And so you guys wanted to fix it up. And
2 you said you had a permit. Was that a permit from the
3 Ministry of the Environment or from someone else?
4 A. The permit from the Environment was for me to
5 build the access road to the property that we had acquired.
6 To fix the outside road, we just came to an
7 agreement with the community and they were really thankful.
8 Because there is a community, La Lomita, beyond the project
9 with about 25 families, and whenever it rained--and we have
10 a lot of rain in Jarabacoa--it was impossible for those
11 people to go up the mountain.
12 So we agreed with the community. We also hired
13 some of the workers from the community. We started to
14 remove the mud and use actual material to be able to
15 restore that outside road that had to be restored.
16 Q. So when did--you stated that you fixed the road.
17 You didn't get a permit for the road, the access road. So
18 when did you obtain a permit to do those access roads from
19 the Ministry of Environment?
20 A. 2005.
21 Q. 2005.
22 And was that a permit for the building of those
23 access roads to build houses?
24 A. No. It was to have access to the property. We
25 built the houses with a permit from the municipality. We

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1 paid taxes. We requested a permit. The municipality
2 authorized us, and we built the houses.
3 One of the houses is at the edge of the project
4 based in La Lomita, and the other two are inside the
5 project.
6 Q. Okay. So the permit was to build access roads.
7 When you applied for that permit in 2005--you got the
8 permit in 2005. When you applied for that permit, were you
9 planning on putting houses on that--were you planning to
10 eventually use those access roads to put houses on the
11 property?
12 A. No. To sell lots, just to sell lots. At the
13 beginning, Quintas del Bosque was a subdivision project
14 rather than a construction project. And that's the way it
15 was sold. We started to offer finished houses once we
16 offered Greenlodge.
17 Q. So the access roads, though, were so you could
18 show people lots and then people would buy those lots and
19 put a house on the lot; correct?
20 A. There were several purposes. At the beginning was
21 to sell the land and also to be able to walk with the
22 architects and define the potential we had with that
23 project.³⁰

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

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1 Q. Sell the land so the people could put a house on
2 the land, because you're selling them lots, subdivided
3 lots; correct?
4 A. That would be a second stage.
5 Q. Okay. And you stated that you didn't at first
6 build Quintas del Bosque, but you decided to do that later.
7 What was the reason why you decided to go just from selling
8 lots to actually building the houses on those lots?
9 A. As I just explained, when a customer is sold a
10 lot, he or she is sold an additional need to find an
11 architect, to design something, to budget the construction
12 of a house. And after that experience, we decided to offer
13 the complete package.
14 It was not for everyone. A person could come and
15 buy a lot. We have some model cabins we showed them, or we
16 can develop a design based on their own taste. But at the
17 beginning, we just thought of a subdivision.
18 Q. So when you did do a house, then, when you did the
19 model where you would sell them--essentially you would
20 construct the house, build the house for them--in addition
21 to the money you would get for the building of the house,
22 that also would make the land itself more profitable;
23 right? Because people would rather buy a house on a piece

con el proyecto."

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1 of property instead of just buying a piece of property and
2 having to go figure everything out; right?
3 A. Based on my experience, and to be truthful, I
4 understand that the--subdividing the land is something more
5 simple. Because the construction of houses involves other
6 variables. There is a higher risk in terms of the pricing
7 for the material, and we like to sell a house that has
8 already been built, but in principle, we are selling the
9 lot.
10 Once again, Greenlodge is a project within the
11 project that offers finished housing. But Quintas del
12 Bosque is just a subdivision of the land.
13 Q. My question is, when you sell a house that
14 already--when you sell a lot where you're already going to
15 put the house on there or maybe the house--you know, you
16 build a new house to put on there, that also increases the
17 value of the land. There's a cost of building that house.
18 You pass that cost on. But there's also an additional
19 value to the land itself; isn't that right?
20 A. Clearly, you have a lot. And if you improve or
21 add an improvement on top of that, now you have the lot
22 including an improvement. For the valuation, it used to be
23 a lot. Now it is a lot with a cabin. So, clearly, the
24 construction or the improvement, as we call it in the
25 Dominican Republic, increases the value of the real estate.

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1 Q. Right. But does it in--sorry. We'll move on.
2 So in 2006 you put in the access roads. What did
3 you do in 2007?

4 A. In 2005 I started to build the roads. Not in
5 2006. In 2005.

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

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

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

14 A. 50,000. And to date, we have planted 70,000. We
15 have a compensation level that goes 100 to 1. For every
16 pine tree that we had to cut down, we have planted 100.
17 It's a record.

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

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

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1 All of the adjacent properties are divided by pine
2 trees. We have six different forests at Alcarias, Subedar,
3 among others.³¹ And each of the sectors of forest is full
4 of those pine trees.

5 If you wish, you can go to a Google picture of
6 2005 and then you can go in and see a picture nowadays, and
7 you will see the difference in the density of trees that
8 you find on the slope.

9 Q. Where does one find 70,000 trees to build? Where
10 did you obtain these 70,000 trees?

11 A. In the Dominican Republic, there's a plan called
12 Quisqueya Verde to reforest the whole country. And this is
13 a plan that has been underway through different governments
14 and the government administrations and the various
15 administrations have been working on the reforestation of
16 the island.

17 In particular, with the threat of Haiti that is
18 completely deforested. And this is--the Quisqueya Verde
19 has been highly successful on the island, and many people
20 receive plants to carry out reforestation.

21 Q. So you bought all 70,000 from this government
22 entity?

³¹ Original in Spanish: "caribaea, grevillea, occidentalis, araucaria y ciprés".

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

6 Q. So you didn't pay for any of these 70,000 trees.
7 They were--you received them from the government as part of
8 this program?

9 A. No, because not everything is in the hands of the
10 government. There is a specific pine; it's called
11 Araucaria pine. We have a supplier, which is Alta Gracia,
12 ³²that provides other plants to us. But most of the plants
13 are under the Quisqueya Verde plant.

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

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

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

³² Original in Spanish: "que se llama Super Plant en Villa Altagracia".

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1 But I have never bought--not even one single tree from
2 them.

3 ARBITRATOR VINUESA: Could I?

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

7 THE WITNESS: Yes. Yes. Very small seedlings.

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

10 THE WITNESS: No. They're very--they're very,
11 very small.

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

15 BY MR. BALDWIN:

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

18 A. Yes.

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

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

22 Q. Are you building those?

23 A. Not really. Construction is an issue that takes a
24 long time. I have entered into an agreement with Franco
25 Borrell. It's a company. They're architects of mine. And

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1 they have construction facilities. And if a customer asks
2 a cabin from me, they build them. I work with them. I'm
3 only building the Greenlodge cabins.

4 Q. Your house is not in the Greenlodge; right?

5 A. It is not. Because at that point in time when I
6 built my house, we didn't even think about having the
7 Greenlodge Lodge construction project.

8 Q. How big is your house, if I may ask?

9 A. Are you talking about the lot or the construction?

10 Q. The construction, the square meters of your
11 constructed house.

12 A. My house is divided into three parts. We have the
13 main house first. It's about 300 meters. And then two
14 small adjacent constructions, a guest house, is there. My
15 brother is living there with me. And another small house
16 for the service personnel and the laundry facilities.

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

24 Q. How many levels is your main house, the 300 square
25 meter, approximately, house?

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1 A. Two levels and the mezzanine. The mezzanine is
2 double height.

3 Q. What is the biggest house, if you know, since you
4 were building--what's the biggest house in
5 Quintas del Bosque I?

6 A. We have a very good set of regulations. You can
7 only build 20 percent--on 20 percent of the size of the
8 lot. And this has to be built 10 meters from the border of
9 the lot.

10 That's an advantage that we have, because the
11 project is not a density-related project. It's not very
12 dense. So you can only build on 20 percent of the size of
13 the lot. So 3,000 meters is the average of the lots.

14 So we're talking about 600 meters--square meters.
15 I don't think we have any house that is 600 square meters.
16 The largest is probably 400. At least the ones that I have
17 built, they're no larger than 300 meters, 400 meters.

18 I always tell my customers, "Don't build big
19 lodges. They cost a lot of money. There's a lot of unused
20 space."

21 Q. And these lodges, are they constructed of concrete
22 or what type of material do you use to make them?

23 A. Well, it's a mix. It's a mix. You have wood and
24 concrete. And my dream, initially, I wanted them to have
25 log homes. I wanted to see whether I could have a

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1 partnership with some log home company, but they cost three
2 times as much in the Dominican Republic.

3 So they are a mix, and there is concrete and wood.
4 We always recommend that they use local materials, the
5 owners. That's a recommendation we give to them in order
6 to make things less expensive.

7 Q. Good.

8 But the concrete--the homes are made of concrete,
9 and there might be wood--some wood parts to that home as
10 well; right?

11 A. Generally speaking, of course, the base of the
12 house is made out of block concrete, and then the top is
13 made out of wood. That's why I'm saying it's a mix.

14 Well, engineering--this is a hybrid. That's how
15 it is known even here in the States by architects.

16 Q. Are the same-size houses planned for
17 Quintas del Bosque II?

18 A. Well, that depends on the size of the lot. The
19 customer has the right ³³ to use up to 20 percent of the lot
20 surface area. But the building footprint is about 5 or
21 10 percent, even though this may be a multi-level home.

22 One of the problems, I'd say, that perhaps reduces
23 the competitiveness in a market is when you want to build

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

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1 large houses. We recommend homes to be built that are new,
2 larger than 200 square meters, between 150 to 200 square
3 meters.

4 Q. And does Flavio Español live in Quintas del Bosque
5 I?

6 A. I do not know a Flavio Español.

7 Q. What about Minerva Español?

8 A. I do not know her either.

9 Q. And let's look at Paragraph 10 of your Witness
10 Statement, which is on Page 3.

11 Now, here you say that you thought you had a
12 friendly relation with Michael Ballantine, but we'll put
13 that aside for the moment, and then you discuss that both
14 of you are developers of mountain real estate projects.

15 Do you see that?

16 MR. BALDWIN: Oh, you can put up the Spanish,
17 actually, please, Larissa.

18 BY MR. BALDWIN:

19 Q. It's also in your binder. If you go to Tab
20 3-- I'm sorry, Tab 2 of your binder, your Spanish Witness
21 Statement is in there.

22 Let's just look at it on the screen. It's
23 probably easier for this.

24 So you state that you and Michael Ballantine are
25 both developers of mountain real estate projects; right?

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1 A. Yes.

2 Q. And you discuss--you say in here that you discuss
3 the possibility of cooperating for the development of
4 Jarabacoa for Jamaca de Dios and Quintas del Bosque I;
5 right?

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

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

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

18 And I do remember something. He told me that when
19 a customer came to see his project, he said, "Well, if
20 you're not going to buy here in Jamaca. Go to Quintas del
21 Bosque. Quintas del Bosque is the best project after
22 Jamaca."

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

25 MR. BALDWIN: So let's put up, if we can, Larissa,

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1 Exhibit C-115. C-115. We're going to put it on the
2 screen, but--

3 BY MR. BALDWIN:

4 Q. And Mr. Hernández, this is a map of your
5 Quintas del Bosque I?

6 A. Yes.

7 MR. BALDWIN: Larissa, could you just blow up a
8 little bit the actual map portion of it.

9 BY MR. BALDWIN:

10 Q. Now, Mr. Hernández, you'll see on this map there
11 appears to be little houses on various lots. Do you see
12 that?

13 A. Yes, I do, but this is something that the
14 architect puts on there simply in order to visualize the
15 area. That has nothing to do with where the house is going
16 to be located. The architect puts that on as part of the
17 design of the master plan.

18 Q. Right. I appreciate that. I have a little bit of
19 a different question. And that is, are all these
20 lots--the--forget about where the houses are located on the
21 lot. But are--is this what is expected, that all these
22 lots will be used with the houses as they are--will
23 all--you know, is the drawing of the--is the subdividing of
24 the lots accurate on this map?

25 A. Well, that master plan, I think, is outdated. But

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1 Grosso Modo, I think that, yes, that it's correct.

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

4 A. Yes.

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

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

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

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

24 Q. Okay. How wide is the road? If you count all the
25 roads, all these access roads we see going through, how

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1 wide is the widest road in Quintas del Bosque I?

2 A. The widest road is the La Lomita roadway, which is
3 external to the project. By law, the roadway--and this,
4 according to the law--it must be 6 meters wide, because
5 6 meters allow for two vehicles to go on the road.

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

11 A. Yes.

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

14 A. Yes. It was a public roadway.

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

18 A. I'd say that Quedebar³⁴ (phonetic), the first
19 one--well, perhaps there are some sections of it that are
20 up to 10 meters wide.

21 Q. Okay. So some of it is 10 meters. Okay.

22 Now, we'll leave this up for a moment, but I want
23 to ask you a different question.

³⁴ Original in Spanish: "Caribaea".

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1 So you built these three houses in 2008, one of
2 which was yours, in Quintas del Bosque I; right?

3 A. Yes. Lot Number 30. The three houses were built
4 on Lot 19A, 30, and 37.

5 Q. Thank you.

6 But you were continuing to develop the property in
7 2008; correct?

8 A. Well, developing, no. Building access roads, yes.
9 In 2008 we weren't doing anything, because in '07 we got a
10 visit from the MMA. They stopped the works. And then we
11 didn't do anything until '09, when we obtained the permit.

12 Q. So in '08 you weren't doing anything--by '07--it's
13 2018 now. You said your houses have been there ten years.
14 If you weren't building anything in 2008, that means the
15 houses must have been built before that inspection that
16 you're talking about in 2007?

17 A. Yes.

18 Q. When the inspectors came in 2007, there were the
19 three houses there--only the three houses?

20 A. Yes.

21 Q. And then there was a series of access roads as
22 well; right?

23 A. Two.

24 Q. Now, the inspectors stopped development. So, what
25 were you developing in 2007 that the inspectors stopped?

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1 A. At the time we were doing the ditches for potable
2 water systems so that the potable water could go to the
3 different lots.

4 MR. BALDWIN: Mr. President, can we take a very
5 short break here? Would that be okay?

6 Okay. Thank you.

7 PRESIDENT RAMÍREZ HERNÁNDEZ: Five-minute break?

8 MR. BALDWIN: Five minutes, yes. Thank you.
9 (Brief recess.)

10 MR. BALDWIN: Larissa, can we put up Exhibit R-57.
11 BY MR. BALDWIN:

12 Q. Mr. Hernández, if you could go to Tab 6 of your
13 white binder.

14 You testified that the Ministry of Environment
15 came out and told you to stop the development of the
16 project; right?

17 A. To stop the works that we were conducting at the
18 time.

19 Q. Yes. And if we could--if we could pull up--sorry.
20 Could you pull up the Spanish--well, actually that's okay,
21 keep the English version up there. That's fine.

22 They state in here that you had--in the middle
23 part of it--that there was a commencement of construction
24 activities. And it says, "Placement of a drinking water
25 pipe, longitudinal drainage of paths." Then it says,

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1 "These activities have caused the elimination of topsoil
2 and erosion of the ground." Did you see that? Do you see
3 that?

4 A. Well, it's a little hard to read here this was the
5 inspection document that was given to me at the time. I
6 don't remember. I think at the time we were building the
7 security guard little houses that we had at the entrance.
8 But I do remember that we were building the water pipe and
9 then after the visit everything came to a halt.

10 Q. So after that it wasn't just that you couldn't do
11 the water pipe. After 2007 you were stopped from doing any
12 construction or development activities at all; correct?

13 A. Yes.

14 Q. When you built those three houses you've discussed
15 earlier in 2007 range, you didn't have a permit from the
16 Ministry of the Environment for those houses, did you?

17 A. Well, at the time it was from the municipality.

18 Q. Okay. Nothing from the Ministry.

19 And at that time when they came for this visit in
20 2007 you had built some access roads. But wasn't the
21 permission for those roads not for access roads to build
22 houses but for access roads for other purposes?

23 A. Yes. But you ask the municipality, and the
24 municipality provides a permit for you to build the house,
25 and then it inspects the site and you pay taxes for that.

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1 Q. Did you know when you built these houses in 2007
2 that you needed a permit from the Ministry of the
3 Environment to build those houses?

4 A. I did not.

5 Q. Were you familiar when you built the houses
6 that--of the law 64-00 that governs, let's say, for
7 example, the slopes? Were you aware of that law when you
8 built these houses in 2007?

9 A. I did. I knew of the law.

10 Q. Okay. When they came out and stopped your--when
11 the MMA came out and stopped your construction and
12 development activities, how much did they fine you for the
13 violations that they recorded in this document, R-57? How
14 much were you fined?

15 A. I did not--I was not fined because I had a permit
16 to build the roads.

17 Q. But they had said that you had done--you had done
18 things wrong. I mean, they had stopped you from continuing
19 to develop, but your answer is, though, is that you did not
20 get a fine?

21 A. The work came to stop, and they told me that I
22 can--I could continue as soon as I had the environmental
23 license.

24 Q. Did they threaten you with jail if you were to do
25 any building until you obtained the permit?

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1 A. No. If I continued to build after the visit.

2 Q. Right. But if you continued after the visit, did
3 the people that came out, did they tell you that you would
4 be thrown in jail if you continued to--

5 A. I wasn't told thrown to jail, but I--they told me
6 that they would apply the law.

7 Q. How many police or military people did they bring
8 out for this inspection in 2007?

9 A. That was 11 years ago. I do not recall.

10 Q. Were there a lot of military people that came out
11 or just a few? Were there any? Did any come out?

12 A. I would be lying to you because I don't recall.

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

15 A. I cannot lie.

16 Q. In fact, you were given 14 days to correct the
17 problem; right? If you look at Exhibit R-57, the
18 handwritten 14 in there, you were given 14 days to correct
19 the situation; right?

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

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

25 A. I don't know whether I had to close down the

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1 excavation, the holes. I don't remember.

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

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

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

15 A. Correct.

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

20 A. Mm-hum.

21 Q. And this was your Witness Statement, and you put
22 that in there because you stated that you wanted to respond
23 to these allegations, that's why you did the Witness
24 Statement.

25 It says in here that the Ballantines asserted that

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1 the construction of Quintas del Bosque was initiated
2 without environmental permission. Isn't that accurate?

3 A. No, this is not accurate. Because I already had a
4 permit for the construction of the access road and then a
5 permit from the municipality for the construction of the
6 three houses.

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

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

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

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

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

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

23 Q. Since we're here, actually, let's keep looking at
24 this. Your last sentence here says, "They also maintained
25 that Quintas del Bosque received an environmental permit

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1 for development despite having slopes that are in excess of
2 60 percent." Do you see that?

3 A. Yes.

4 Q. Does Quintas del Bosque have slopes in excess of
5 60 percent?

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

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

14 A. I imagine there are.

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

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

20 Q. What about if I told you that it was made on the
21 25th of February 2014. Does that sound about right?

22 A. I know it was in 2014. I do not know with

³⁵ Original in Spanish: "Me imagino que también tienen que estar como áreas verdes."

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1 accuracy, but I do know that it took me almost
2 three-and-a-half years to receive the permit.

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

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

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

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

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

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1 That resolution had to be reviewed, had to be
2 drafted, had to be made official. It took more than a
3 year. And after the resolution, six months after that, we
4 received the permit, including some restrictions that
5 removed five or six lots because of the slopes. And we had
6 to increase our green areas.

7 Q. So you obtained the permit finally in August of
8 2017; right?

9 A. Yes.

10 Q. And you stated that the Ministry kept telling you
11 there was a new law that was going to be coming out. When
12 did you first speak to them? When did they first start
13 talking about this new law that was going to start coming
14 out?

15 A. Well, that was when I was desperately talking to
16 everyone at the Ministry to see what was going on. I
17 wanted to know what was going on in connection with the
18 project because before that, we discussed for a year and a
19 half because the Ministry said that there were four lots in
20 the first report that I sent that were within the National
21 Baiguate Park, and it took us a year and a half to prove
22 that it was not the case.

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

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1 And after we clarified that, we were able to
2 provide the environmental impact statement. After the
3 environmental impact statement, time went by, and I started
4 to follow up to see the status of the license. There are
5 various mechanisms that can be used through one window
6 whereby sending letters, and we were told that I just had
7 to wait.³⁶

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

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

19 A. There are several observations under the
20 regulation. You cannot develop projects of up to 1200
21 meters. I think at the end of the day that was modified.
22 I am not certain. Because I know that a group from

³⁶ Original in Spanish: "vía ventanilla única, mandando cartas, etcétera, etcétera, y todo lo que se me decía era que había que esperar la resolución."

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1 Constanza was asking about that because Constanza is
2 1200 meters above sea level. They were also talking about
3 watershed and water sources and dry areas, dry streams.
4 Right now dry streams were included and also the percentage
5 of the construction footprint left in connection with the
6 total size of the terrain, of the field. That's what I
7 remember from that resolution.

8 Q. Okay. And--but prior to receiving your permit on
9 August 23rd, 2017, you had started development activities
10 on Quintas del Bosque II; right?

11 A. No. I obtained a local permit that is obtained at
12 the local office where--prior to submitting the permit, you
13 request an access road, and I was allowed to build a
14 50-meter access road.

15 Q. You had some structures on the property as well,
16 didn't you?

17 A. That 50-meter road had to be channeled so that--we
18 needed to channel all the waters too so that it wouldn't be
19 eroded with the rain.

20 Q. Do you know who Francisco Rivas is?

21 A. This is--this is a person that works with Michael
22 in the sale department.

23 Q. And are you aware that he put a statement in this
24 arbitration?

25 A. Is that the person we're talking about--

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1 Q. Yes.

2 A. --is Francisco Rivas?

3 Q. Yes.

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

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

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

25 Q. Okay. And when did you find out that Mr. Rivas

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1 had put in a Witness Statement in this arbitration?

2 A. No. I'm learning of that now.

3 Q. So in your preparation and your discussions with
4 the lawyers or the environmental people for Respondent,
5 nobody ever mentioned Francisco Rivas to you?

6 A. I have not talked to the people from the
7 environment, and I have not talked with the attorneys about
8 Francisco Rivas.

9 MR. BALDWIN: Okay. Let's put up Paragraph 14,
10 Larissa, of Francisco Rivas' Statement, Page 4. Put it up
11 in Spanish, please.

12 BY MR. BALDWIN:

13 Q. Is this Francisco Rivas?

14 A. That's my Statement. That is not Francisco Rivas'
15 Statement.

16 Q. Okay. Now you're going to see here when we pull
17 it up that he had some very nice things to say about your
18 property. But he states in here that the drains were
19 finished. Weren't, in fact, the drains finished when
20 Mr. Rivas visited QDB II?

21 A. There couldn't be any drainage because there was
22 only a 50-meter road. That road did have the drainage.

23 Q. He talked about a structure. He says in Paragraph
24 14 that it was at least one house constructed. Wasn't, in
25 fact, there a house constructed then?

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1 A. No, because that is part of Quintas del Bosque I.
2 The entrance to Quintas del Bosque II is through the
3 occidental forest. And there is a house there, but that
4 belongs to Quintas del Bosque I, not II. Quintas del
5 Bosque II starts right there. The entrance to Quintas del
6 Bosque II is through Quintas del Bosque I.

7 Q. And so you requested these Terms of Reference
8 in--we've agreed--in 2014. And you received those Terms of
9 Reference in 2014, didn't you?

10 A. I believe that was the case.

11 Q. Let's look at Tab 10 of that binder that you have
12 there. Do you recall this document?

13 A. No, I do not.

14 Q. Do you understand that this is what the Ministry
15 would give you to start the--you know, after you submit
16 your terms of--or you request Terms of Reference, don't you
17 understand this is what they would give to you for the
18 project so that you could start discussing the situation
19 with them?

20 A. As I mentioned before, the person who was in
21 charge of this is Valentín Cordero, my environmental
22 consultant. He may have received this and analyzed it.

23 Q. There's no map--

24 MS. SILBERMAN: For the record, we dispute that
25 characterization of the document.

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1 BY MR. BALDWIN:

2 Q. There's no map in this document. There's no
3 map--there's no drawing of where the roads are going to be
4 or the lots are going to be in QDB II, right, if you look
5 through this document?

6 A. You're talking about this document in front of me?
7 Not clearly. There is no map.

8 Q. Let's go, if we can, to Tab 8. If you could go to
9 Tab 8, please. These are letters from you to--the first
10 one is a letter from you to the Vice Minister. Do you see
11 that? Do you remember sending this letter?

12 A. Yes. Clearly, it is signed. And that letter,
13 apparently, was submitted because of additional
14 information. This is just part of the business as the
15 Ministry moves on with the analysis of the permits, new
16 documentation is requested.

17 I don't know which letter this is referring to
18 because it says it is related to a letter that has already
19 been sent.

20 Q. Well, let's go, actually, to the third page in
21 that same tab. So stay in that tab. Go to the third page.
22 And that's a letter from the MMA to you, and it's dated
23 July 31st, 2017. Do you remember getting this letter?

24 A. Yes.

25 Q. Okay. And how did you get this letter? How was

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1 it sent to you?

2 A. The Ministry usually calls you and tells you that
3 there is a piece of mail or correspondence in the--at the
4 window, and I was never sent anything.³⁷ That's the way
5 they do it.

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

9 A. I don't recall when I received it. But I do
10 recall that as part of the discussion--we discussed this
11 letter for a year and a half.³⁸

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

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

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

21 A. No. It's also telling me that I need to relocate
22 some lots because they were in the buffer zone, and I was

³⁷ Original in Spanish: "y hay que ir a retirarla allí al Ministerio."

³⁸ Original in Spanish: "lo que sí recuerdo es que en la discusión de lo de esa carta duramos un año y medio."

1 telling them that the buffer zone is not--is not in
2 disagreement or tolerates light structures such as the ones
3 that we build in Quintas del Bosque.

4 And I would say that was basically the core of the
5 discussion in that letter.

6 Q. Okay. And then if you look at the letter that's
7 the second document in that same tab, that's a letter from
8 you the very next day submitting that AutoCAD information
9 to the Ministry; right?

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

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

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

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

24 Q. Nothing to help you. But there--it's not a
25 denial. They're telling you that if you submit this

1 redesigned CAD and you eliminate several lots that, you
2 know, and resubmit it, they'll go through and analyze it
3 again; right?

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

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

9 A. It is not the usual procedure for the Ministry to
10 request additional information. But it is normal for the
11 Ministry to follow the Terms of Reference.³⁹ The Terms of
12 Reference were already referring to the lots, that they
13 were in the buffer zone and that they could not be in the
14 subdivision and they are reiterating that in that letter.

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

18 A. Would you repeat the question?

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

³⁹ Original in Spanish: "Es normal que el Ministerio pida información adicional, y es normal que el Ministerio se acoja a los TDR."

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

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

8 A. I don't recall how many.

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

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

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

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

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

⁴⁰ Original in Spanish: "más las que me objetaron. El número exacto no lo tengo así de mente."

1 A. We did.

2 Q. And some of those roads are very wide; right?

3 Particularly, you know, when you take the road that's up at

4 the top and you come down, that's pretty wide. And the

5 road that goes up into the property is also fairly wide;

6 right?

7 A. Well, the access road, the main access road that

8 runs parallel to the Mar Abajo roadway, and that's where

9 the main center box is⁴¹--well, perhaps after ten years of

10 experience, as I told you, well, we wanted to upgrade it.

11 Perhaps we wanted to raise our standards after the

12 experience we gained. So the entryway road is more

13 striking and larger.

14 Q. And how large? How wide?

15 A. 10 meters, I think. 10 meters wide. That one,

16 right. The entryway roadway. Not all of them. The other

17 ones are 6 meters wide.

18 Now, usually they are 8 meters. And then you have

19 2 meters for the ditches and the catchments where the

20 waters are going to run. But the transit area, netly

21 speaking, 6 meters.

22 Q. Okay. But the 10-meter road, the transit area

23 you're talking about is 10 meters?

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

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1 A. In the main roadway, perhaps it's between eight

2 and ten or eight and nine, because I think initially it had

3 been built as a 10-meter wide one. But the catchment areas

4 had not been built. But I think at the end, I think it was

5 about eight. I couldn't really give you the exact number.

6 Q. Eight to ten. And then you have the catchment

7 things on the side of that; right?

8 A. In this case, only on one of the sides. Only one

9 of the sides.

10 Q. And it's only on one of the sides because the road

11 has some natural slope to it such that the water will drain

12 off and only into one particular side, that's why there's

13 only one side that has a catchment; correct?

14 A. Yes. Usually, you--actually, what you do is you

15 do a little slope on the road so that there is no erosion

16 and the water drains off. And then you take the water to

17 the ditches so that the water may run naturally its course.

18 Q. Okay. And can you tell me what--on QDB II, you

19 have some very nice trees. What type of sort of native

20 trees do you have at QDB II?

21 A. In QDB II, on the upper portion, we planted Pinus

22 occidentalis, which is native from there, and then

23 cypresses were planted down there. Also, we put cypresses

24 in the upper portion in the division areas between the

25 different plots. We always have this green barrier of

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1 pines so that you see the border of the property as a

2 natural green area.

3 Q. And there's two roads in QDB II, one coming from

4 the top of the mountain, one coming from the base of the

5 mountain; right?

6 A. I don't understand your question.

7 Q. They're the main roads. Forget about the access

8 roads for a moment. But the main roads in QDB II, there's

9 one that goes up from the bottom of the base of the

10 mountain and then there's one that comes from the top down;

11 correct?

12 A. No, not to the top of the mountain because in the

13 middle you have a green area. It doesn't go to the top of

14 the mountain.

15 Q. Right. That's why there's two different ones.

16 There's an entrance from the top, entrance from the bottom,

17 and the two roads do not meet.

18 A. They do not meet, no. Do not meet because of the

19 slope of the land which is very steep, and that is why we

20 wanted to leave it there as a green area, and we were going

21 to build trails so the people can use them to walk.

22 Q. Okay. In the--when you go up the road that starts

23 at the base of the mountain and you go up to the,

24 basically, what might be called the middle part of that

25 property, you know, you have a nice space up there with

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1 trees that were already there on the property; right?

2 A. I'm not sure exactly what part of the property

3 you're referring to. The property has a lot of trees. And

4 the trajectory of the road has many roundabouts because we

5 were trying to avoid cutting trees that are shade trees.

6 All trees like mango trees and other trees, and we wanted

7 to divert the road, and we wanted to leave those green

8 areas for air quality purposes. I'm not entirely sure what

9 area you're making reference to.

10 Q. Okay. Generally, on the higher elevations of the

11 property, there's a good breeze that goes through. There's

12 moss on the trees that are--that have been there. Is that

13 a pretty good description of the property up in the higher

14 portions?

15 A. Is that a question?

16 Q. Yes.

17 A. Okay. If you described the portion you're

18 referring to--okay. Yes.⁴² We come to an area where you

19 find pine trees--yes, there are pine trees over there

20 everywhere. That is why it's called Quintas del Bosque.

21 Q. Understood. And there's--those pine trees have

22 moss on them; right? Isn't that right, Mr. Hernández?

42 Original in Spanish: "O sea, que si describí bien la parte de que está hablando."

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1 A. Yes.

2 Q. Okay. Now, you described heavy rainfalls in the
3 area. What do you do to make sure that those rainfalls are
4 managed?

5 A. Well, I said that this was a rainy area, Jarabacoa
6 was. Generally, what we have is good drainage systems and
7 good ditches to take the water to the ravines, which is the
8 natural way for the water to come out. For example, we
9 tried to also keep the water that comes from the roofs, and
10 we use the water coming from the roofs, and we put the
11 water in a reservoir or in a container and we use it for
12 watering plants and gardening.

13 Q. Thank you. And with regard to--let's go back for
14 a moment to QDB I. With regard to QDB I, you're required
15 to submit an environmental compliance report, something
16 called an ECA, every six months; right?

17 A. Yes.

18 Q. And have you submitted an ECA for QDB I every six
19 months?

20 A. I think a number of them have been submitted, but
21 I don't have the number. I don't know exactly.

22 Q. Would it surprise you to know that the number of
23 ECAs is one that you've submitted, and 2013 was the only
24 ECA that you submitted?

25 A. Perhaps in 2013, yes. But I think I've submitted

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1 more.

2 Q. But you haven't submitted one every six months?

3 A. I do not recall. Again, Valentín Cordero handles
4 those things. He is our environmental adviser.

5 Q. Do you manage the properties? Do you manage
6 Quintas del Bosque I?

7 A. I do not.

8 Q. But you're the promoter of the property. It's
9 your name associated with the property; correct?

10 A. Well, an assembly was held, I think, in 2010, if
11 memory serves, when we created a homeowners association.
12 At the time, I was the president. There was another
13 assembly, and I was appointed vice president. And then
14 there was another assembly, and I'm simply now a voting
15 member. QDB has a structure that is called the HOA of QDB.
16 There is a president, a vice president, a secretary, a
17 treasurer and three voting members.

18 And they are fully independent in connection with
19 execution of matters related to the project. They are
20 their properties. They are no longer my properties.

21 Q. So it would be incorrect to say you're the
22 promoter of QDB II?

23 A. QDB I was developed by a company called Hacienda
24 del Bosque Jara, and QDB II is being developed by another
25 company that's called Jaraba Corp., and I am a shareholder

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1 in both those companies. QDB II does not have the same
2 structure shareholders-wise as QDB I. This is in
3 connection with the developers and the owners.

4 Q. So you do manage QDB II then, just not QDB I?

5 A. Well, QDB II does not have any management. What
6 it has is a director in charge of the development. There
7 are no constructions there, no homes, nothing.

8 The only thing that was built was the
9 infrastructure and drainage, et cetera, and also power
10 structures, et cetera.

11 We are at the development stage. But when the HOA
12 is created when then--well, then that's another thing.

13 Q. But what I'm trying to find out is what's your
14 role with QDB II?

15 A. I am the director.

16 Q. But with QDB I, you don't know if they have
17 submitted ECAs ever in the history of--you say you thought
18 they submitted a few, but then you say that you're not
19 responsible for that or you don't know about that. So you
20 have no idea whether QDB I has submitted ECAs?

21 A. I did not say I had no idea. I said that Quintas
22 I has submitted ECAs and Valentín Cordero handles that.
23 He's the environmental adviser, and he's one of the owners.

24 Q. Okay. So you leave to him, and you're not really
25 involved in that aspect of it?

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1 A. Well, I do have to be involved at the very end of
2 the process. But all the preparations and all the
3 processing is in charge of him.

4 Q. Who is Francis Santana?

5 A. Francis Santana is an architect that started
6 working when QDB I started out. She designed the first
7 gate.

8 The architect came because she was referred to us
9 by Mr. Domínguez. He was the first director of QDB. She's
10 an architect. She lived in the area. And at the time, she
11 designed a gate for us, and after that we did not work
12 together anymore. She designed and built a gate at the
13 base in the Bosque Cypress. Then she held a position at
14 the MMA. Later on, we saw each other again to deal with
15 certain matters. I do not remember what matters exactly.
16 But I do remember that she held a high-ranking position at
17 the MMA.

18 And I remember that a request was sent to her
19 about something.

20 MR. BALDWIN: Let's pull up Exhibit R-63 if we
21 could, please. Let's put up the Spanish version, please,
22 Larissa. It's not in the binder.

23 BY MR. BALDWIN:

24 Q. This is the permit for QDB I; right?

25 A. Yes.

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1 Q. And you see in that first paragraph, it says that
2 the permit is--or the--you know, it's essentially the
3 promoter--it says that the--it mentions Hacienda del Bosque
4 and then it says José Roberto Hernández, promoter; right,
5 that's promoter; right?

6 A. Yes.

7 Q. So you're--as far as the MMA is concerned, you're
8 the promoter of QDB I; isn't that right?

9 A. Yes.

10 Q. And doesn't this require both Hacienda del Bosque
11 and you to comply with the terms of this permit?

12 A. Yes.

13 Q. And isn't one of the terms of this permit that
14 you--or one of the terms of this permit and requirement of
15 law that you submit ECAs every six months?

16 A. Yes.

17 Q. I want to go back and talk about the QDB II permit
18 now. I'm sorry. I don't want to talk about that.

19 I want to ask you: Who approached you about
20 giving a Witness Statement in this case?

21 A. Well, I received a call from the Ministry to
22 explain what had happened. They showed me the statement
23 that was given. I was being involved in this alleged
24 dinner where the borders of the Baiguante Park were set. I
25 wanted to belie that. And I don't remember who called me,

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1 but it was someone from the Ministry.

2 Q. Okay. And then you started working--do you
3 remember when that call was?

4 A. I do not recall exactly, no.

5 Q. You signed your Witness Statement on the 23rd of
6 May, 2017. So would it have been a couple weeks before
7 that? A month? Two months before that? How long before
8 that? How long before you submitted your Witness
9 Statement? Your Witness Statement is at Tab 2.

10 A. Perhaps six months/four months before. I don't
11 have the exact date. I don't have the exact date.

12 Q. Let's just use four just for the purposes of this.
13 And I won't hold you to it whether it's four or six. But
14 we'll just use four. So that would have been sometime in
15 January, then, of 2017; correct?

16 A. Well, that's what you're saying. I truly don't
17 know when the call was made.

18 Q. Okay. Now at that time, you had submitted
19 your--you had received your terms of reference in 2014 and
20 had submitted your Environmental Impact Statement also in
21 2014; right, for QDB II?

22 A. As I explained, from 2014 to 2017, we were
23 involved in a war of Titans with the Ministry to see what
24 status our permit had. Fortunately, the resolution was
25 passed in January 2017. Six months later, a permit was

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1 given to me with the limitations that I already indicated.

2 Q. Okay. A war of Titans. When you're dealing with
3 governments, I don't know if it's a war of Titans. But I
4 hear you.

5 MR. BALDWIN: So let's pull back up again A-31,
6 please, Larissa.

7 BY MR. BALDWIN:

8 Q. And in your binder, Mr. Hernández, A-31 is Tab 8.
9 Can you pull up Tab 8?

10 MR. BALDWIN: And Larissa, please go to the third
11 page.

12 BY MR. BALDWIN:

13 Q. Okay. Now, if you look at the third page of this,
14 Mr. Hernández, do you see in the first paragraph of this,
15 it says the Technical Evaluation Committee met on March 8th
16 of this year. Do you see that?

17 Okay. So you had been waiting for your permit at
18 that point--

19 THE INTERPRETER: There was no answer.

20 MR. BALDWIN: I'm sorry.

21 BY MR. BALDWIN:

22 Q. Do you see that? Yes?

23 A. Those were the plots of lands that were taken from
24 me.

25 Q. Right. But the meeting they had--the Technical

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1 Evaluation Committee meeting happened on March 8th. Do you
2 see that?

3 A. I do. What year is this letter from?

4 Q. This is 2017. And so it happened on March 8th of
5 that year. And you had been waiting for two years for this
6 permit, nothing happens. And then in March, the technical
7 committee decides to meet. And then in July, you get a
8 letter asking you to redesign your project; right?

9 A. Well, it's not that nothing happened. I went to
10 the Ministry every month. I followed up on this issue of
11 the permit. And they were saying, well, there's this
12 thing, there's that thing.

13 And then at the end, they said, "Okay. We have to
14 wait until the resolution is adopted, and then we're going
15 to see about the permit. We have to wait for the
16 resolution." The resolution was adopted in January, and my
17 permit was provided in August, if memory serves.

18 Apparently, at that meeting, a decision was made
19 to take from me the lots that were taken from me. That's
20 what I can deduce at this time.

21 Q. But you had been waiting three years for your
22 permit. And finally in March, they decide to meet it. It
23 should have made you kind of happy, right, that at least
24 they're going to now proceed and get you your permit so you
25 can start building? Three years. That's a long time.

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

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

11 Q. Now, three years is a pretty long time to wait for
12 a permit, don't you think?

13 A. Okay. One thing is to wait for the permit, and a
14 different thing is the processing. You start counting the
15 time for the permit after you filed the EIA. And to
16 prepare the EIA, you need six to 8 months.

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

22 And the permit came back with substantial

⁴³ Original in Spanish: "Para después que nos pusimos de acuerdo con eso fue que yo pude entregar el DIA, y como quiera, después de que entregué el DIA también me lo estaban refutando."

1 limitations.

2 Q. And isn't Mr. Ballantine to blame for that? Isn't
3 his bringing of this CAFTA lawsuit against the Dominican
4 Republic responsible for that three-year delay and you're
5 getting the permit? Isn't that your view?

6 A. I am not to say that. I think the MMA people
7 should answer that question.

8 Q. But can you agree with me that in the last, you
9 know, three years, that the way that the MMA handles permit
10 requests has changed?

11 A. Well, in the past few years, a new MMA Minister
12 took office, Mr. Domínguez Brito. And his management had
13 an impact at all levels, specific goals were set, some work
14 was done in Valle Nuevo, and I understand that many things
15 changed when it comes to permit granting.

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

19 Q. You state in your Witness Statement that you do a
20 lot of due diligence for your projects. Did you do due
21 diligence for Quintas del Bosque I?

22 A. At the time, 13 years ago, as I indicated, I
23 didn't have the experience that I have now. But due
24 diligence was conducted substantially. Omar Domínguez, who
25 was the person with knowledge on environmental matters, and

1 he knew how to handle personnel and lands, et cetera.

2 And you always prepare a strategic plan. The
3 strategic plan sets clear objectives for the project and
4 under each objective, you need to conduct a number of
5 tasks.

6 And only when you finish that, you can say that
7 the project is ready. The draft project, I think, lasts at
8 least a year.

9 Q. Okay. When you were doing due diligence for QDB
10 I, did you look at the deeds to see who owned the deeds to
11 the property you were buying?

12 A. What do you mean by "the deeds"?

13 Q. Well, you purchased the property from this estate
14 you were talking about. Did you check the deeds to make
15 sure the estate had proper title to those properties? Did
16 you do a title search?

17 A. Well, the lawyer was the one who handled that,
18 truth be told. My partners handled the purchase of the
19 land. Conrad and also the first--the contracts were
20 drafted under the name of Conrad. I was more involved with
21 the management of the project, development of the project,
22 and the sales.

23 Q. Isn't there a lawsuit going on right now with
24 Hacienda del Bosque and Conrad regarding to the ownership
25 of those properties--the properties--the land in QDB I?

1 A. Well, it so happens that the issue of titling at
2 the D.R. is a very, very complex issue. The title that we
3 got and then we transferred had a material error. The
4 material error was that the father of the sellers--well,
5 his name was different in the title than it was in the
6 identity document. That has taken a few years. And there
7 were 32 titles in that same situation. Out of the 32
8 titles, there were two owners that felt at a given point in
9 time--well, this is a lawyer and not us. The lawyer
10 didn't, they feel, provide correct answers to them. They
11 became desperate and they sued. They sued personally, and
12 they also sued the company. Us personally. Me and Conrad.
13 Conrad and I were taken out. The company was
14 asked to return the monies of the transaction. Of course,
15 this is not good. They had to return the property as well.
16 And this is bad because his own house was built there. And
17 then we had to correct that material error. We took three
18 years for that because of all the bureaucracy. And we
19 understand that those titles are going to come out in about
20 60 days.

21 We are holding conversations with the Claimants'
22 lawyer--well, the second Claimant actually sold the
23 property, and the new purchaser looked at the whole file
24 and there were no anomalies there. This was just a
25 correction of a material error. There is no lawsuit.

1 There is a letter from all the sellers that confirms that
 2 they sold, and they collected the money. And the
 3 Claimants' lawyer is looking at the whole proceeding.
 4
 5 And before I got here on the 31st of August, the
 6 only document was filed that the judge was asking so that
 7 the heirs could be determined and the transfer could take
 8 place.
 9
 10 That has been the only pebble in my shoe that I've
 11 had in this project.
 12
 13 Q. Claimants won that case; right? The Claimants won
 14 the case in the appellate court? You stated that you
 15 were--the Hacienda was forced to turn back over the money.
 16 The Claimants won that case.
 17
 18 A. No. I said that the Claimant--well, got a
 19 judgment against me and against Conrad. Well, that wasn't
 20 something that behooved the Claimant. \$35,000 had to be
 21 provided, and they had to sell that house in an estate
 22 sale. And this takes from five to ten years.
 23
 24 So the owner wants the title.⁴⁴ Our intention was
 25 to provide the title to the owner, but we're not obligated
 26 to do something that's impossible. We've been the victims

⁴⁴ Original in Spanish: "incluso el demandante, la sentencia que nos saca a mí y a Conrad de la demanda no le conviene al demandante, porque lo que manda es a entregarle 35.000 dólares y a liquidar por Estado la casa que está ahí. Liquidar por Estado una casa en los Tribunales de la República Dominicana te puede tomar tranquilamente de cinco a diez años. Realmente el propietario lo que quiere es su título."

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1 of bureaucracy of a material error. And three years later,
 2 we have been able to cure that defect, and we're going to
 3 be able to transfer the real property to the 32 owners.
 4 This is a less than 10-percent average because only two
 5 sued.
 6
 7 Q. And the Claimant in this case alleged that you and
 8 Mr. Wittkop forged the signatures on the sale of that
 9 property, didn't they?
 10
 11 A. The details of the claim had--rather, the claim
 12 stated that we did not have the right. We did have the
 13 right because we had bought the land and paid for the land.
 14 Now, there is a procedure that is to determine who the
 15 heirs are, and the property has to be transferred, and that
 16 had not taken place.
 17
 18 MS. SILBERMAN: Mr. Baldwin, do you have a
 19 document that you can show us?
 20
 21 MR. BALDWIN: No.
 22
 23 MS. SILBERMAN: Were these the documents that the
 24 Tribunal excluded prior to the hearing?
 25
 26 MR. BALDWIN: I don't see why that's relevant.
 27 I'm asking him questions. He's answering questions about
 28 the court case.
 29
 30 BY MR. BALDWIN:
 31
 32 Q. Now--
 33
 34 A. I'm sorry. I did not know that this had to do

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1 with the ownership of Quintas del Bosque.
 2
 3 Q. I think it's important.
 4
 5 PRESIDENT RAMÍREZ HERNÁNDEZ: I will ask you to
 6 just tell us, what is the relevance of this line of
 7 questioning?
 8
 9 MR. BALDWIN: Well, Mr. Hernández in his Witness
 10 Statement went to great lengths, and in the direct today,
 11 to talk about how much he does due diligence, how he looks
 12 at titles and makes sure everything is right. And now we
 13 have a case of where 30 titles were invalidated because the
 14 court held that Hacienda del Bosque sold property that it
 15 didn't have right to sell because it didn't own.
 16
 17 PRESIDENT RAMÍREZ HERNÁNDEZ: But I think--
 18
 19 MR. BALDWIN: So it goes to his due diligence.
 20
 21 THE WITNESS: That is completely, completely false
 22 and it has been completely mischaracterized.
 23
 24 MR. BALDWIN: I'm happy to move on.
 25
 26 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.
 27
 28 MR. BALDWIN: I'm happy too.
 29
 30 THE WITNESS: But if you allow me, I can clarify.
 31
 32 32 titles were canceled because there was a
 33 material error. It had the name of the father but with the
 34 wrong last name. Instead of Benicio Tejada, it read
 35 Benicio Abreu. So we canceled the one that said "Tejada,"
 36 we issued the new ones that read "Abreu," and we were able

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1 to issue that as the transfer of the heirs with the right
 2 last name.
 3
 4 There is an individual sale. There is also a
 5 ratification of the sale where they said that they
 6 charge--that they sold, and that they have no right to the
 7 properties. We were victims of a technical error. And, as
 8 you mentioned, it did help me learn about legal issues
 9 regarding land tenure in the Dominican Republic, which is a
 10 complex issue.
 11
 12 BY MR. BALDWIN:
 13
 14 Q. So when you sell this property--the property that
 15 was purchased and then you sell the property to the
 16 individual landowners; correct? The people that are going
 17 to buy the lots inside Quintas del Bosque I; right?
 18
 19 A. I didn't understand the question.
 20
 21 Q. So you're in the business of selling lots to
 22 people that want to buy a lot and put a house on that.
 23 That's what you do. You buy--you bought the property from
 24 the person who owned it before, and then you subdivided it
 25 and you sell lots to individual landowners; right?
 26
 27 A. Yes.
 28
 29
 30
 31
 32
 33
 34
 35

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 14 [REDACTED]
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 19 [REDACTED]
 20 (Brief recess.)
 21 PRESIDENT RAMÍREZ HERNÁNDEZ: We can continue.
 22 BY MR. BALDWIN:
 23 Q. Mr. Hernández, can we turn to Paragraph 22 of your
 24 Witness Statement.
 25 I'm almost done, I promise. Two more questions.

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1 It's Tab 2. It's your Tab 2, if you could look at
 2 Paragraph 22. That's on Page 7, I believe.
 3 MR. BALDWIN: Larissa, if you could pull up the
 4 English for us, Paragraph 22.
 5 BY MR. BALDWIN:
 6 Q. Now, QDB I has an environmental permit, as you say
 7 there in the first sentence, that allows you to build up to
 8 60 cabins; right?
 9 A. Correct.
 10 Q. And you said it was about 45 cabins that you had
 11 on the property?
 12 A. Built? We had built 45, and I think that five
 13 were underway, were under construction, a total of 70
 14 units. Because we requested an additional permit to build
 15 a road that was going to include ten additional lots, and
 16 we presented that in one of the ECAs.
 17 Q. And one of those cabins is yours, right, you said?
 18 A. Correct.
 19 Q. Your cabin is about 300 square meters,
 20 approximately?
 21 A. It is an area of 8500--8500 meters, and we should
 22 estimate--if we estimate 300 over 8500 we can determine the
 23 size.
 24 Q. And you mentioned some of the cabins there are 400
 25 square meters, maybe even 500, which is the allowed area.

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1 The cabin itself. Not the land, but the cabin itself.
 2 A. I never said that. I never said that. I said
 3 that the average is 200 meters, and that there could
 4 be--there could be--one, one cabin that reaches 400. You
 5 would need to look at the size of the lot. But the cabins
 6 that we have there are not large.
 7 Q. Okay. But, I mean, 400 square meters, that's a
 8 nice size. I'd love to live in a 400-square-meter cabin.
 9 A. I have never said that there is one that is 400
 10 square meters. Not--I haven't built any that is 400. The
 11 largest one that I have built is 300.
 12 Q. Okay. A 300-square-meter cabin. And these cabins
 13 are concrete, as you mentioned. Some wood, some concrete.
 14 But, you know, that's what the cabins are constructed of;
 15 right?
 16 A. It is a hybrid that comprises material from the
 17 area. It's a cement structure, and the top is made of wood
 18 to make it as light as possible, with same--or with a
 19 lighter metal roof.
 20 MR. BALDWIN: There's only one other thing that I
 21 need to do. I should have mentioned this--apologies--and
 22 we were sequestered up there.
 23 I wanted to just show--I'm not going to put up on
 24 the screen, Mr. Hernández, an attorneys'-eyes-only exhibit,
 25 and I'm not going to ask him about what's stated in there.

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1 I just want him to look at a map.
 2 So, instead of clearing the whole room, I thought
 3 if I could put that just in front of him and we didn't put
 4 it up on the screen that we could look at it and we
 5 wouldn't have to clear the room.
 6 I'm not going to ask him any other questions other
 7 than to show him a map that is in that document.
 8 PRESIDENT RAMÍREZ HERNÁNDEZ: But the map is
 9 containing one of the attorneys' eyes only--
 10 MR. BALDWIN: Yeah. But no one will see it other
 11 than--it's his application for Quintas del Bosque 1 for the
 12 Terms of Reference. So it's a document, you know, the
 13 Witness was involved in submitting.
 14 We won't put it on the screen, and I won't ask
 15 anything other than to have him look at the map.
 16 PRESIDENT RAMÍREZ HERNÁNDEZ: Respondent.
 17 MR. Di ROSA: Mr. Chairman, there's several
 18 different issues here. I mean, first of all, there are
 19 people in the room here who would have to leave. But
 20 perhaps more importantly, from a practical perspective, if
 21 he's not going to put any questions to him about it, then
 22 why show it to him at all?
 23 MR. BALDWIN: Well, I'm going to ask him to look
 24 at a map and compare it to another map that is not an
 25 attorneys'-eyes-only thing.

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1 It's close to--why don't we--let's just clear the
2 room, then. Let's do that. Maybe we can have a lunch, and
3 we can finish this up. This will be just a moment.

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

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

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

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

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

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

18 BY MR. BALDWIN:

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

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

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

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1 Let's just state this. The road is in a different
2 location than the road that is on this map?

3 A. Yes. That map is not the one that I was given
4 with the license. It is the master plan. If it was
5 presented at some point, it's not the one that was later on
6 authorized and the one that had to do with the license.
7 The license includes the earth movement and the roads are
8 smaller. Our plan, the one that we executed, is much
9 better than that.

10 Q. Right. Because the roads are bigger--

11 A. No. Because we have included a design that moved
12 less earth. It's more efficient, and clearly, it is
13 smaller because--since I was objected--some lots were
14 objected. We are looking at a map that has nothing to do
15 with the project. If it was presented at one point, it was
16 later on discarded.

17 This applies to the higher and the lower portions.
18 The area that we see in blue may be useful, may be similar,
19 but on the corner is a green area. We left the 30 meters
20 that includes the stream area.

21 MR. BALDWIN: Larissa, can you put up
22 Demonstrative 14.1 and put it on the screen with this
23 exhibit. And it's upside down here, but can you flip that
24 one on the--flip the one on the right, if you could.

25 Are you able to do that? That's okay. You don't

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1 need to flip it. We can kind of imagine.

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

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

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

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

10 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.

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

13 BY MR. BALDWIN:

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

17 A. Are you talking about the middle point, the one
18 that says "green area"?

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

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

23 Q. It goes above the green area too. We can all see
24 it goes above the green area. I mean, you see that; right?
25 The black shading also goes above the green area.

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

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

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

9 MR. BALDWIN: Does somebody have a pointer?

10 BY MR. BALDWIN:

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

13 A. Sorry.

14 (Comments off microphone.)

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

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

22 A. That road used to come all the way to this point.
23 And when the lots were objected, we did not build it. We
24 only built it up to here. It didn't make any sense to
25 build it because those lots had already been objected.

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1 Q. And this road is different than the road we saw in
 2 your application for the Terms of Reference; right?
 3 A. But the first drawing could have been the first
 4 drawing that was presented as part of the first analysis,
 5 but it's not related or it does not correspond to the one
 6 for the license.
 7 PRESIDENT RAMÍREZ HERNÁNDEZ: Now you are about to
 8 sing.
 9 MR. BALDWIN: Karaoke while I'm here. Please make
 10 sure to tip the waitresses.
 11 BY MR. BALDWIN:
 12 Q. Okay. So, here we see--this is a drawing of the
 13 roads in the project; correct?
 14 A. But not all of them have been built. That road
 15 has not been built.
 16 MR. BALDWIN: Thank you.
 17 PRESIDENT RAMÍREZ HERNÁNDEZ: Anything else,
 18 Mr. Baldwin?
 19 MR. BALDWIN: No. That's it. Thank you.
 20 I thank the witness.
 21 PRESIDENT RAMÍREZ HERNÁNDEZ: Respondent.
 22 REDIRECT EXAMINATION
 23 BY MS. SILBERMAN:
 24 Q. Just a couple of questions for you, Mr. Hernández.
 25 You were asked earlier about the date on which you

1 had purchased the land for Quintas del Bosque. And I was
 2 interested in, when you buy the land for a project that
 3 would require an environmental permit, do you buy it
 4 outright, right away? Do you make the purchase contingent
 5 on getting a permit? How do you make these arrangements?
 6 What do you do?
 7 A. Good question.
 8 The issue of the permits is highly sensitive. I
 9 usually sign a letter of intent. As I expressed before, I
 10 sign it with the owner of the property. And that person in
 11 that letter of intent states that we are going to have the
 12 right to request a permit to clear the property, to hire a
 13 surveyor to determine the contour lines, to hire the
 14 services of an architect, to develop a preliminary project,
 15 to submit it to the Environment--to the Ministry of the
 16 Environment, to receive the Terms of Reference. And after
 17 that, we should promise to sell.⁴⁵
 18 Q. You just mentioned the words--or, I guess, the
 19 acronym for "Terms of Reference." And the Ballantines took
 20 you to--the Ballantines' attorney took you to Tab 10 in
 21 your binder earlier.
 22 Are these Terms of Reference for an Environmental
 23
 24
 25

⁴⁵ Original in Spanish: "Una vez que se reciben los TDR, entonces se hace lo que se llama una promesa de venta."

1 Impact Study?
 2 MS. SILBERMAN: For the record, this is
 3 Appendix A-53.
 4 THE WITNESS: Would you please show it on the
 5 screen because I can't find it.
 6 PRESIDENT RAMÍREZ HERNÁNDEZ: It is at Tab 10.
 7 THE WITNESS: The Terms of Reference are a
 8 document that is provided by the Ministry of the
 9 Environment with specifications of all of the studies to be
 10 conducted to see whether you choose to have an
 11 environmental license.
 12 This document--I don't know whether it is part of
 13 that, but the document that we received is not this one.
 14 We received a different document.
 15 BY MS. SILBERMAN:
 16 Q. Do you know if you've ever seen this document
 17 before?
 18 A. I have never seen this before.
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
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 9 [REDACTED]
 10 MS. SILBERMAN: Thank you. No further questions.
 11 PRESIDENT RAMÍREZ HERNÁNDEZ: Ms. Cheek.
 12 QUESTIONS FROM THE TRIBUNAL
 13 ARBITRATOR CHEEK: Good afternoon.
 14 THE WITNESS: Hello.
 15 ARBITRATOR CHEEK: I do have one more question,
 16 but it's very brief.
 17 You mentioned that in 2017, when you were waiting
 18 to get your permit, that there was some kind of regulation
 19 that you were waiting to get passed or that the Ministry
 20 was waiting to pass.
 21 What's the regulation that you were waiting for?
 22 THE WITNESS: At the point in time--and this was
 23 not only with my project. All of the mountain projects
 24 were actually frozen permit-wise because the Ministry was
 25 conducting a new resolution preparation that was adopted in

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1 January 2017. This new resolution brought about new
 2 requirements for mountain projects.
 3 Amongst those requirements, for example,
 4 you--meant that you had to build 30 meters away from the
 5 ravine. Under Law 64, it was only dry--only wet ravines,
 6 but they didn't include dry ravines. Now they also talk
 7 about dry ravines and also⁴⁸ the thumbprint⁴⁹ for
 8 construction in connection with the slope of the lot or the
 9 land.
 10 ARBITRATOR CHEEK: Okay. Thank you.
 11 By any chance, can Respondent's counsel confirm
 12 that that's R-254?
 13 We can confirm after the lunch break. Thank you.
 14 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. Let's come
 15 back at 2:20.
 16 I wanted to remind the Claimant that--
 17 THE WITNESS: Do I have to be here too?
 18 PRESIDENT RAMÍREZ HERNÁNDEZ: No, you can leave.
 19 You can leave. You're excused. You can leave, do whatever
 20 you want. You're free to leave.
 21 (Witness steps down.)
 22 PRESIDENT RAMÍREZ HERNÁNDEZ: I would just remind

⁴⁸ Original in Spanish adds: "Hablaba de los 1.200 metros de altura".
⁴⁹ Original in Spanish: "huella".

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1 the Claimant of the time you have left, which is less than
 2 four hours, and you have four witness experts to go. Just
 3 a reminder.
 4 (Whereupon, at 1:04 p.m., the Hearing was
 5 adjourned until 2:20 p.m. the same day.)
 6

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1 AFTERNOON SESSION
 2 PRESIDENT RAMÍREZ HERNÁNDEZ: Good afternoon,
 3 Mr. Eleuterio Martínez.
 4 THE WITNESS: Welcome.
 5 PRESIDENT RAMÍREZ HERNÁNDEZ: I'm going to ask you
 6 to please read a declaration you have right in front of
 7 you. Read it in Spanish.
 8 Please turn your microphone on.
 9 THE WITNESS: "Witness Declaration. I solemnly
 10 declare upon my honor and conscience that I shall speak the
 11 truth, the whole truth and nothing but the truth."
 12 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you very much.
 13 I'm going to now give the floor to counsel for the
 14 Dominican Republic.
 15 MR. ANTONIO RIVAS: Good afternoon, Mr. President,
 16 Members of the Tribunal. Before we move on, my name is
 17 José Antonio Rivas, and I am going to conduct the direct
 18 examination, and then the new examination. And Ms. Taveras
 19 had a--an answer to the question posed by Mrs. Cheek.
 20 MS. TAVERAS: To answer your question about the
 21 resolution to which the witness, José Roberto Hernández,
 22 referred to in his testimony, it's actually two resolutions
 23 that are both in the record.
 24 So, the original resolution regarding the
 25 parameters for infrastructure to be built in the mountains

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1 is in the record under R-254, Resolution 5-2017 of
 2 January 26⁵⁰, 2017, and then the second one, which is the
 3 one that talks about 1200 meters is C-130, which is
 4 Resolution 9-17 from 13 February 2017.

5 ARBITRATOR CHEEK: Thank you.

6 ELEUTERIO MARTÍNEZ, RESPONDENT'S WITNESS, CALLED
 7 DIRECT EXAMINATION

8 BY MR. ANTONIO RIVAS:

9 Q. Good afternoon, Professor Martínez.

10 A. Good afternoon.

11 Q. You're going to see a blue folder. The blue
 12 folder but it's a little bit to the side, so you have
 13 two Statements there. Please open the binder.

14 Do you see them?

15 A. I do.

16 Q. The first statement is 25 May 2017. That's the
 17 date.

18 A. Yes.

19 Q. And the second is 19 March 2018.

20 Do you see them?

21 A. Yes.

22 Q. Are those statements authored by you?

23 A. Yes.

⁵⁰ English Audio Day 4 at 04:20:38

1 Q. Do you have anything to add or anything you would
 2 like to amend in connection with any of those
 3 two Statements?

4 A. Yes. There is a small change that I wanted to
 5 make at Page 14, February 21⁵¹. It talks about R-054. It
 6 talks about the guide that goes--and this goes from Page 14
 7 to 17. So, it should be 14 to 20. That's the correct page
 8 number.

9 Q. Okay. Thank you.

10 Briefly, could you tell us about your profession,
 11 your studies and your work history?

12 A. Yes.⁵² I have a master's in tropical ecology, and
 13 also in the environment, I have a postgraduate degree on
 14 environmental planning that I conducted in Venezuela.

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

18 I conduct my regular activities, and I am also,
 19 like I said, a professor⁵³.

20 I have worked for seven of the main universities
 21 in my country. Have been also a professor invited by a

⁵¹ Original in Spanish: "cita 21".

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. "

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

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

9 And from '93 to '96, I worked with one⁵⁴
 10 administration. From 2000 to 2004 I worked with a
 11 different administration. From '04 to '08 I worked with
 12 another administration. And then from 2011 to 2014, I
 13 worked with another administration still.

14 So, I was an advisor to four different
 15 administrations. I have been an advisor to the Congress of
 16 the Republic in connection with the passing of Law 64-00,
 17 the Environmental Law for the D.R., and I have also been
 18 advisor to the Congress for the protected⁵⁵ area of
 19 Law 202-04, and I'm now working on the water law and the
 20 coastal sectors law. And I have worked mainly in the field
 21 of protected areas.

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

⁵⁴ English Audio Day 4 at 04:24:24

⁵⁵ English Audio Day 4 at 04:24:53

1 started working in the field of protected areas.

2 Starting in 1983, I have worked on the creation of
 3 protected area. During that period of time, I have been
 4 able to be involved in the creation of 128⁵⁶ protected area
 5 now in the Dominican Republic, mostly under Decree 571-09
 6 that creates 32 protected areas, including the Baiguat
 7 National Park.

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

12 Q. Thank you.

13 Have you provided any kind of
 14 international--consultancy to an international organization
 15 during your work?

16 A. I have done so many things during my life. One of
 17 the things that I did is to work as a consultant for the
 18 FAO. Also for the Environmental Programme of the United
 19 Nations, the OAS, the IDB, the World Bank, and I have
 20 mainly worked for the plan of--land management of the
 21 Dominican Republic.

22 I have worked with the Spanish and Italian

⁵⁶ Original in Spanish: "en la creación de 102 de 128 áreas protegidas que tiene la República Dominicana".

1 corporation agencies, also with the Reconstruction Bank of
2 Germany. I have worked with the OAS in the National Water
3 Plan and other international organizations⁵⁷.

4 Q. Mr. Martínez, do you know Mr. Michael Ballantine?

5 A. I do. I met him at the end of 2015 and the
6 beginning of 2016, but I couldn't give you a precise date.

7 Q. How did you meet him?

8 A. I met him in the following manner. Well, he
9 called me. I didn't know who he was. I didn't know where
10 he came from⁵⁸. And he said that he wanted to talk to me.

11 And he⁵⁹ said, "I cannot leave my home."

12 "You can come to my home," I said to him.

13 And that's what he did. ⁶⁰He came to my house
14 during the evening, and we had a very pleasant conversation
15 for a long period of time.

16 Q. What did Mr. Ballantine want?

17 A. He said that he was interested in hiring me for my
18 services because he had a project in Jarabacoa. And this
19 was impacted by the creation of the Baiguante National Park.

20 He knew that I was involved in the creation of

⁵⁷ Original in Spanish adds: "es decir, he trabajado con varios organismos internacionales".

⁵⁸Original in Spanish: "nunca lo había contactado no sabía quién era él".

⁵⁹ Original in Spanish adds: "I said".

⁶⁰ Original in Spanish: "cordamos un día".

1 that Park, so he was interested in hiring me for my
2 services because he was seeking to bring a lawsuit against
3 the Dominican Republic, and he needed documentation,
4 background documentation.

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

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

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

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

23 Q. Thank you.

24 During that conversation, did you tell
25 Mr. Ballantine that his project was the only project that

1 had been denied a permit because of the slopes?

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

4 Q. Tell us, please, why 32 protected areas were
5 created in the Dominican Republic under Decree 571-09?

6 A. By 2009, the Dominican Republic had a number of
7 commitments vis-a-vis the international scientific
8 community. We had been involved in the Rio Summit, and
9 then in the⁶¹--CDB was approved during that meeting. This
10 meant that all countries had to contribute to the
11 biodiversity of the planet.

12 In 2002, there was a conference of parties in
13 Malaysia. And the work program was set at that time to
14 meet the objectives of the biodiversity convention.

15 And in 2004, specific goals were set, and the
16 countries had to meet those goals. By 2004, the countries
17 had to have a national system for protected areas, areas
18 that were efficiently managed and that represented the
19 ecology of the country.

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

23 Q. What were the criteria for the creation of the

⁶¹ Original in Spanish adds: "en la Cumbre para la Tierra".

1 Baiguante National Park?

2 A. For the creation of a national park, we conducted
3 a vacuum system between '06 and '08⁶². So, in our national
4 territory, we were able to identify the large ecosystems
5 that were not represented in the platform of national
6 areas--the protected national areas.

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

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

14 Therefore, we realized that there are some ample
15 spaces in the middle of the range that were empty. Because
16 to the central and western part, we had like the ⁶³national
17 park⁶⁴--Bermudez, among others, and then⁶⁵ we had the Ebano
18 Verde Scientific Reserve, and that's when we discovered a
19 mountain system that was comprised of three main⁶⁶, Alto

⁶² Original in Spanish: "nosotros utilizamos una metodología que se llama análisis de vacío que hizo TNC entre el año 2006 y 2008".

⁶³ Original in Spanish adds: "teníamos el Parque Nacional Nagla de Maco, el Parque Nacional José del Carmen Ramírez, el parque nacional Armando".

⁶⁴ English Audio Day 4 at 04:33:06

⁶⁵ Original in Spanish adds: "y después se da un salto y aparecen".

⁶⁶ Original in Spanish adds: " montañas".

1 Bandera, El Mogote, and Loma La Peña.
 2 And that space allowed us to see that we could
 3 create a bridge if we wanted to connect to the other
 4 protected areas. Because the analysis system based on this
 5 vacuum⁶⁷ established that we needed to create biological
 6 corridors that would allow us to maintain biodiversity⁶⁸.
 7 So, we saw space that would be saving the
 8 three ranges, the three mountains that are the ones that we
 9 chose to create this National Park⁶⁹.
 10 Q. Professor, in your statement, you refer to Law-202
 11 of 2004. And there you refer to Category II or national
 12 park.
 13 What are the uses of a national park?
 14 A. A national park comprises one or several
 15 ecosystems of national or international importance.
 16 Category II based on ONCN⁷⁰ establishesthat⁷¹ a national
 17 park, in addition to conserving the biodiversity⁷², should
 18 also be used for recreation, research and conservation, and

⁶⁷ Original in Spanish: "análisis de vacíos".
⁶⁸ Original in Spanish: "permitieran la conectividad para".
⁶⁹ Original in Spanish adds: " Parque Nacional Baiguata".
⁷⁰ Original in Spanish adds: "IUCN".
⁷¹ Original in Spanish: "según las normas internacionales ya establecidas".
⁷² Original in Spanish adds: " y los valores presentes".

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1 that the recreational activities could include tourism,
 2 ecotourism, another activity that could be developed
 3 without that endangering the biological wealth that has
 4 been preserved.
 5 Q. What is an ecotourism?
 6 A. Ecotourism, also based on the definition by the
 7 International Organization of Tourism, is defined as any
 8 type of tourism based on nature where the main motivation
 9 of the ecotourist is to observe, enjoy, treasure, the
 10 natural beauties and also to respect the cultural standards
 11 to be applied in that area but also trying to minimize
 12 environmental impact.
 13 So, wherever the ecotourist arrives, he just
 14 touches with his eyes whatever he sees. He just watches
 15 whatever there is there.
 16 Q. Have the Ballantines said--they have said that
 17 they had been treated unfairly because they were not
 18 allowed to build inside Baiguata National Park. What type
 19 of construction can a national park include?
 20 A. In addition to the necessary infrastructure for
 21 surveillance or monitoring, you just need the
 22 infrastructure offered by nature. Because this is to
 23 preserve nature. Infrastructure needs to be minimalist and
 24 minimal so that we can adapt to the preservation of the
 25 area.

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1 Q. You have had the opportunity to visit Jamaca de
 2 Dios, haven't you?
 3 A. No, I haven't visited that project.
 4 Q. Have you seen videos of Jamaca de Dios for the
 5 preparation of this Witness Statement?
 6 A. Yes. I saw a video and I saw all of the
 7 facilities.
 8 Q. Do you think that is ecotourism?
 9 A. No, that cannot be ecotourism because there is an
 10 obstacle. There is a density of construction. There is
 11 some aggression against nature which is clear. And the
 12 nature there is a built-up nature. It is not the natural
 13 surrounding, and it is placed on a slope.
 14 It is infrastructure-intensive. It looks like a
 15 luxury infrastructure ⁷³in the outdoors. So, as ecotourism,
 16 we don't see the value of nature, something that we can
 17 come close to to watch. There's nothing left of the
 18 original⁷⁴ nature.
 19 Q. In your First Statement, you referred to several
 20 projects. Please look at Page 26 of your First Statement.
 21 There is a map.
 22 Are you there?

⁷³ Original in Spanish adds: "o una pequeña urbanización".
⁷⁴ English Audio Day 4 at 04:37:38

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1 A. Yes.
 2 Q. When Decree 2 of 2009 was passed, you knew that
 3 any of those projects or any other--did you know that that
 4 project or any other project was there?
 5 A. No. Because by 2009 when the National Park was
 6 created, we were not aware of any project. The projects
 7 did not--they were not important. They did not matter. We
 8 did not care⁷⁵.
 9 Because according to the decree, we needed to
 10 evaluate the natural resources, the nature we had there
 11 rather than a specific project.
 12 So, anything that is included inside the natural
 13 park are pieces of land that are--that deserve to be
 14 protected.
 15 Q. So, when did you learn that those lots were there?
 16 A. Well, as part of the preparation for this
 17 statement, I⁷⁶ became aware of some projects around the
 18 National Park in Jarabacoa.
 19 Q. Professor, could you please tell us why the Paso
 20 Alto land is covered by the Park?
 21 A. The location of Paso Alto is different from the El

⁷⁵ Original in Spanish: "ni importaban los interesados o los dueños de ellos".
⁷⁶ Original in Spanish adds: "tuve la oportunidad de ver algunos mapas de la zona de Jarabacoa donde indicaba que hay una serie de proyectos".

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1 Mogote ⁷⁷system. That's the one that we identified as
2 valuable.

3 Paso Alto has a specific altitude up to, I think
4 1600 meters above sea level, is close to a different
5 protected area, that is, the natural monument, Salto de
6 Jimenoa. So, it wasn't worth it to include it in the
7 Park⁷⁸.

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

10 A. Mountain Garden is not⁷⁹. Jarabacoa Mountain
11 Garden, based on what I had saw, is adjacent to Paso Alto
12 but is not inside Baiguate Park. It is completely
13 outside⁸⁰.

14 Q. Now, regarding the terrain to Quintas del Bosque,
15 regarding that land, why isn't it included⁸¹?

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

⁷⁷ English Audio Day 4 at 04:39:43

⁷⁸ Original in Spanish: "Parque Nacional Baiguate".

⁷⁹ Original in Spanish adds: "dentro".

⁸⁰ Original in Spanish adds: " del sistema de El Mogote".

⁸¹ Original in Spanish adds: " por el parque Baiguate".

1 protect.

2 Q. Could you please explain why the land
3 corresponding to Phase 1 of the project were not left inside
4 the Baiguate National Park? ⁸²

5 A. Phase 1 of the project Mr. Ballantine has in the
6 area is at the foot of the mountain⁸³. That is to say, at
7 the beginning of the mountain that is 600 or so meters
8 above sea level, but it is--it reaches up to 800, but below
9 the area where we have the most important sector that
10 includes the Cloud Forest. So that project barely touches
11 the Cloud Forest, and that is the area that was included in
12 the Baiguate National Park.

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

15 A. Mirador del Pino is the one that is the furthest
16 away. It's about 3 kilometers away from El Mogote. Even
17 the Yaque--the Northern Yaque River, that is great river,
18 is--the watershed goes over it⁸⁴, it doesn't make any--it
19 didn't make any sense.

20 Q. Would you please explain now why the land that

⁸² Original in Spanish: " Explique por qué los terrenos correspondientes a Jamaca de Dios, lo que los Ballantine conocen como fase 1, no quedaron en su mayoría dentro del Parque Nacional Baiguate.".

⁸³ Original in Spanish: "del sistema El Mogote".

⁸⁴ 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.".

1 have to do with Phase 2⁸⁵ of Jamaca de Dios were included,
2 were inside the Baiguate Park?

3 A. Jamaca de Dios 2 or Phase 2 is at a considerable
4 altitude. It's about 800 meters above sea level up to
5 1200 meters above sea level. It reaches up to the--up to
6 the top of the mountain⁸⁶, and that's where we have the
7 Cloud Forest.

8 This is an extremely interesting area as--and I
9 observed in the expert reports, I saw that Mr. Richter says
10 that in that area, they only saw five species out of the
11 ten species that are--they only have five out of the
12 ten species that are threatened in the area.⁸⁷

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

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

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

⁸⁵ Original in Spanish: "que los Ballantine llaman".

⁸⁶ Original in Spanish adds: "de la Loma La Peña que es donde comienza el sistema El Mogote".

⁸⁷ Original in Spanish adds: "Entonces era lógico, era fundamental, que esa parte quedara dentro del Parque Nacional.".

1 same Mogote⁸⁸ system.

2 So, the same situation--so we have the same
3 situation for Aloma Mountain as we have for Jamaca
4 de Dios 2. They share the same system⁸⁹.

5 Q. Now I am going to ask you some questions about the
6 management plans. Is the State forced to develop an
7 environmental management plan?

8 A. Yes, this is a requirement under the law.

9 Q. What is the timeline to develop that management
10 plan?

11 A. The management plan is inherent to the protected
12 area. Any protected area that is created should include
13 this management plan, and this is stated under the law.

14 When should it be developed? Whenever there are
15 resources. The country⁹⁰ already have 128 protected areas,
16 so if we were to develop a plan for each, we needed to have
17 significant resources. It is quite expensive, and
18 sometimes the State⁹¹ does not have the resources.

19 Q. Do you know on average how much a management plan
20 is?

⁸⁸ English Audio Day 4 at 04:44:23

⁸⁹ Original in Spanish adds: "porque están justamente compartiendo fronteras".

⁹⁰ English Audio Day 4 at 04:45:19

⁹¹ Original in Spanish: "Ministerio".

1 A. It will always depend on the area and also the
2 number of professionals that need to work on it. But a
3 management plan is about 15- to \$20,000.

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

6 CROSS-EXAMINATION

7 BY MR. ALLISON:

8 Q. Good afternoon, Professor Martínez.

9 A. Good afternoon.

10 Q. My name is Matt Allison, and I just wanted to ask
11 you a few questions today about your role in the creation
12 of the Baiguate National Park and the Witness Statements
13 you've submitted in this proceeding.

14 First, to confirm what I think your testimony was
15 with respect to your meeting with Mr. Ballantine. So I'm
16 clear, at no time did Mr. Ballantine offer you money to
17 present false testimony to the Tribunal, did he?

18 A. Do you want me to answer whether he offered me
19 money?

20 Q. No. I want you to answer whether he offered you
21 money in exchange for you coming to the Tribunal and saying
22 things that were not true.

23 A. I can tell you right now with direct knowledge
24 that he did not refer to a tribunal. He said that he had
25 the intention of suing the Dominican State because he was

1 not allowed to develop his project. He never referred to a
2 tribunal.

3 Q. And did he ever ask you to lie on his behalf?

4 A. I don't understand why you're asking me that
5 question. He asked me to present technical scientific
6 information, but we never talked about lies or anything of
7 the sort.

8 Q. Thank you.

9 I just want to confirm your employment history
10 that's relevant to the proceeding here today. Between 2008
11 and 2011, you were the Vice Minister for Protected Areas
12 and Biodiversity for the MMA; correct?

13 A. That is correct.

14 Q. And it was in that role that you were involved in
15 the creation of the 32 parks you were testifying to
16 earlier; correct?

17 A. No. What you are saying is not completely right.
18 The country became committed in 1992 with a convention on
19 diversity. If you allow me--please, let me--you asked me,
20 and I am answering.

21 I can tell you that in 1992, the country was
22 committed to the United Nations, in particular, the
23 International Convention on Biological Diversity. And in
24 2004, a management program was established for the
25 protected areas, and that management program for protected

1 areas established goals for 2010 that had to be covered by
2 the country, such as to create its national system for
3 protected areas.

4 We started to work in 1992 up to 2004, and until I
5 was Vice Minister to have a listing of all of the
6 ecosystems that had gaps in the area--in the protected
7 areas and all of the areas that were--that had biological
8 diversity and that needed to be protected.

9 So, during my tenure as Vice Minister, we just
10 prepared a list of all of the selected areas, and it
11 happened to be that one of those areas was the National
12 Baiguate Park.

13 Q. Thank you, Professor Martínez.

14 You've discussed the gap analysis and, in your
15 testimony with Mr. Rivas, described how part of the gap
16 analysis was the intention of the MMA was to create
17 ecological or biological corridors; correct?

18 A. That is not exactly what I said. I exactly said
19 that in order to conduct the Gap Analysis, we used the Gap
20 methodology prepared by the Nature Conservancy between 2006
21 and 2008. It was TNT, the Nature Conservancy, the one that
22 prepared that methodology, not me.

23 Q. Understood.

24 And I think you testified that one of the desires
25 of the Dominican Republic was to create ecological or

1 biological corridors, which would be a bridge to connect
2 protected areas.

3 Did I hear you testify to that just a few minutes
4 ago?

5 A. That's not true. I am aware of what I'm saying.
6 I said that the methodology for the Gap Analysis allowed us
7 to identify the micro⁹² ecosystems and the large ecosystems
8 that were not duly represented in the national protected
9 area system. I said that the Gap system allowed us to
10 identify those values⁹³ regarding biodiversity, threatened
11 species and also endemic species as well as water
12 resources, a series of elements that need to be protected.

13 That allowed us to implement that methodology, and
14 by analyzing the Central Range, which is the main mountain
15 system of the country, we discovered that it was the one
16 that had the largest number of gaps in terms of ecosystems
17 and also the largest number of gaps in terms of waters,
18 threatened species and also the wealth of the biological
19 diversity because it is the highest system and the one that
20 has the most elements to have viable species, and that it
21 was necessary to create a biological corridor to connect
22 the various regions that we already have in the Central

⁹² Original in Spanish: "macroecosistemas".

⁹³ Original in Spanish: "valores medioambientales".

1 Range.

2 And that's when we realized that in the middle of

3 the range, that is to say, halfway when you look at

4 Jarabacoa, that's when we realized that there was a bridge

5 that was unprotected. And that's when we saw a mountain

6 bridge, La Peña, El Mogote, Alto La Bandera, those

7 three mountain systems had the characteristic that Loma La

8 Peña--or the Cloud Forest in the Loma La Peña starts at

9 800 meters above sea level. The highest peak in the system

10 is 1804 meters above sea level.

11 What does it mean that I had a slope of 1 vertical

12 kilometer. Do you know the meaning of 1 vertical

13 kilometer?

14 The various steps, stages where you have

15 communities that are adapted to the different conditions

16 and in my country where we have Baiguata, this is our

17 Parallel 19. That is basically 2000 kilometers from the

18 Equator, from the center of the earth.

19 So, when you are saying that you have a protected

20 area a thousand meters above sea level⁹⁴, those thousand

21 vertical meters do not only reach 19 degrees, but it takes

22 us to 35, 40 degrees.

23 This is like as if we were coming closer to the

⁹⁴ Original in Spanish adds: "eso es equivalente 1 a 10, es decir,".

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1 pole. That's the reason why in Mogote peak, we have about

2 16, 17, 18 degrees centigrade, and that is typical of a--of

3 a country that is not in the tropics, but it is typical of

4 a temperate climate. That's typical of Baiguata.⁹⁵

5 Q. Thank you, Professor Martínez.

6 Is it true that the Baiguata National Park, the

7 borders of the Park, do not connect to the borders of any

8 other national park?

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

10 national park.

11 Q. Thank you.

12 There was a presidential decree in 2009 that

13 created the 32 protected areas you were discussing. Is

14 that correct?

15 A. Yes, Decree 571-09.

16 Q. Okay. And if I use the short phrase "Decree 571,"

17 you'll understand what I'm talking about; right?

18 A. That is correct.

19 Q. Okay. Now, did you personally visit every

20 proposed protected area that was going to be created?

21 A. Are you referring to Decree 571?

22 Q. Yes. 32 protected areas that were decreed in

⁹⁵ Original in Spanish: "Entonces esas son las condiciones que realmente reúne esa zona donde está el Parque Nacional Baiguata.".

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1 Decree 571, did you visit all of those areas as part of

2 your work to define what those areas would be?

3 A. Those areas were very familiar to me, and clearly

4 for their creation, I had to visit them again and see the

5 context or at least the surface they were going to cover.

6 That was my job.

7 Q. I understand.

8 And did you personally visit the area for the

9 proposed Baiguata Park?

10 A. The National Baiguata Park, the land it covers is

11 very familiar to me. I have been going up to the top of

12 the Duarte Mountain⁹⁶ since I was a kid. And then we have

13 the Loma La Peña in front of where I live.⁹⁷ So, I was very

14 familiar with the Baiguata area.

15 And it is the area that has reports dating back to the last

16 century. The only path that had that information was that

17 of Jarabacoa.⁹⁸ And all of the scientists usually used to

18 travel that area, including Mr. Carlos Chardón, that in his

19 report of 1937 explained the pine cover going from

20 Jarabacoa to Constanza.

⁹⁶ Original in Spanish adds: "y justamente atravesar Jarabacoa".

⁹⁷ Original in Spanish: "Lo primero que me llama la atención es El Mogote, es la Loma La Peña, que es la loma que tenemos en frente".

⁹⁸ Original in Spanish: "es decir, la única ruta que había hacia Constanza era Jarabacoa".

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1 So what Canela Lazaro (phonetic) reported as well

2 as Juan Bautista Perez Rancier (phonetic), was the work of

3 the founders of the IUCN. So, I had the best knowledge,

4 and I had to visit that area again.

5 Q. Thank you.

6 So, you had no knowledge of Loma La Peña since you

7 were a child; correct?

8 A. That's correct.

9 Q. And you testified that you didn't know of the

10 existence of Jamaca de Dios Park until late 2015 or early

11 2016 when Michael Ballantine came to visit you; is that

12 correct?

13 A. I gained knowledge of that project in 2016 when

14 Mr. Ballantine paid a visit to me.

15 Q. As part of your field verification efforts which

16 are described in your report, you said you went to the

17 areas you were very familiar, but you didn't see the Jamaca

18 de Dios development in the mountain?

19 A. Jamaca de Dios 2 did not have any infrastructure

20 when the National Park was created. The area is the focal

21 area, this is mandated by the regulations of the decree.

22 The regulations said that we had to look at the

23 environmental values that would make it so that a protected

24 area be created.

25 The project is not what we are seeking to protect.

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1 We are seeking to protect the nature and the environmental
2 values of that place. That merits protection. So, it
3 doesn't matter that there was a project there or who the
4 owner of the project was. We were not looking at that.

5 Q. And I didn't ask you about that. My question was:
6 In 2009 when you were working to develop the boundaries of
7 Baiguate National Park, did you know that there was a
8 project in the area called Jamaca de Dios?

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

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

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

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

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

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1 A. In 2009, I did not have any knowledge of those
2 projects. In 2009, the only thing that mattered was the
3 Cloud Forest, the El Mogote System, the high mountain area
4 and the water production area.

5 Jamaca de Dios does not meet any of those
6 requirements. The highest portion of it is lightly
7 adjacent to the Cloud Forest, which was the focal point.

8 Q. I understand your position with respect to that,
9 Mr. Martínez, and I'm not trying to debate your opinion on
10 that right now. I'm just trying to understand what your
11 knowledge is with respect to the Jamaca de Dios project in
12 2009 when you were there visiting it as part of your work
13 to create these protected areas.

14 And my understanding was, from your testimony in
15 your Witness Statement, that "When Michael Ballantine came
16 to see me at my house, I was not even aware of the Jamaca
17 de Dios project."

18 And I'm just trying to confirm that.

19 A. In 2009, I had no knowledge of that project. I
20 told you that the first time I got information from the
21 project--all the information was given to me in 2016, and
22 it was given to me by Mr. Ballantine. Well, late
23 2015/early 2016, that's when I gained knowledge for the
24 first time of the project.

25 Q. Okay. And so when you were in Jarabacoa in 2009

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

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

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

11 A. No one. Absolutely no one.

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

18 A. For the creation of the Baiguate National Park and
19 the 31 areas that accompany the Park, well, a methodology
20 was done for that purpose⁹⁹. The first step, as you said,
21 is to collect all the information that's existing. That is
22 the first step of any investigation--rather, any research
23 project.

⁹⁹ Original in Spanish: "para todas se siguió una metodología".

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1 Q. Thank you, Professor Martínez.

2 Did you take any field notes in 2009 when you
3 visited the proposed area for the Baiguate National Park?

4 A. The notes were already in existence. All of the
5 prior information before going to the field--well, we had
6 copies of all the literature and all the information that
7 was in existence.

8 And you get all the information, and then you go
9 to the field to verify whether what you've read and the
10 data that you have allow you to identify that information
11 in the field.

12 When I go to the field, I go and verify the
13 information that I already had. That is what we did.

14 Q. And you'd go to the field. Your Report describes
15 field verification and field notes, and then there's the
16 creation of a technical dossier for each area. Is that
17 correct?

18 A. For the creation of each one of the areas, we
19 needed specialized teams. Some areas were located in the
20 land; others on the coast; others were maritime areas. For
21 each one of those areas, we looked for professionals that
22 could provide their knowledge in order to address the
23 resources that we were seeking to preserve.

24 Q. And a technical dossier would be created; correct?
25 That's what you state in your report. I'm just asking you

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1 to confirm that.

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

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

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

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

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

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

25 Those notes and all the information that's in

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1 existence and the maps, after its been evaluated by a
2 special committee--of course, they have to show that
3 everything there is correct and that it corresponds to the
4 protected area--all of that information was provided to the
5 Ministry of the Environment.

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

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

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

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

21 So, I had to discharge my duties as--that were
22 entrusted to me.

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

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1 Ministry moved to a new building.

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

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

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

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

19 Did anyone ask you that or no?

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

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

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

8 Q. Thank you, Professor Martínez.

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

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

19 There are three fundamental mountains, Loma La
20 Peña where the mountain ridge starts,¹⁰⁰ and then Loma El
21 Mogote. One is 1400 meters. And I have to talk about the
22 altitude. One is 1400 meters over the sea level, Loma La
23 Peña.

¹⁰⁰ Original in Spanish adds: "la loma El Pinar,".

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1 There's another mountain, which is 1521 meters
2 over sea level. They is El Mogote.

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

10 For example, the Cloud Forest biological
11 diversity.¹⁰¹ You have to go from the middle of the mountain
12 to the top of the highest mountain. So, everything that
13 had environmental value was included there.

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

18 Q. And did you define the El Mogote System as well?
19 If I wanted to go somewhere besides your Report to find a
20 geographic definition, an environmental definition or an
21 ecological definition of what you call "the El Mogote
22 System," could I find that in any writing anywhere?

¹⁰¹ Original in Spanish: "recursos hídricos, zona esponja de bosque nublado, la diversidad biológica."

1 A. Undoubtedly. You could look at a physical map of
2 the country. If you show me a map of the area, I can point
3 to you perfectly well where the El Mogote System is. I can
4 show you that out of those three mountains, you can see the
5 whole area that makes up the National Park.

6 Q. I understand that, and you selected those
7 three mountains for your definition of the El Mogote
8 System, and I'm just curious how you chose those
9 three mountains. Because if I review the boundaries of the
10 Baiguata National Park, I see there are at least a half a
11 dozen mountains within the Park that have higher altitudes
12 than La Peña. There's Loma Los Atracodados, Loma El Alto
13 De Las Oyama.

14 I'm curious why the El Mogote System is designed
15 using Mogote, La Peña and the third mountain.

16 A. I'd be glad to answer your question. Loma La Peña
17 to the north is actually the northern part of the system.

18 The highest one of those three is Alto Al Bandera.
19 It is to be located in the southernmost part of the area.
20 The Park goes from north to south. One of the mountains is
21 to be located at the south, the other one at the north. In
22 the middle, there are other mountains, as you very
23 correctly indicated. Yes.

24 Q. And Loma--you write in your Report that "Loma La
25 Peña is included in the El Mogote System because it's part

1 of the same mountain range because of its proximity and
2 comparable altitude of the three mountains."

3 Do you recall writing that?

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

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

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

14 A. No. They cannot be the same. Never. I'm saying
15 that I have an altitude slope of 1,000 vertical meters.
16 So, there can never be two equal communities. These are
17 stages. These are gradients, and there is natural
18 ecological succession there.

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

21 A. Totally.

22 Q. And the next mountain across the Baiguata River is
23 Loma Barerro; correct?

24 A. Could you show it to me?

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

1 If you can blow up the map there.

2 So, this is from your Report. Do you recognize
3 this picture? You can see it on the screen in front of
4 you, Professor, if you prefer.

5 Do you recall this is a picture from your Report,
6 and this is the Baiguata National Park, and we see the
7 boundaries of the Park following the ridgelines along the
8 mountains? And we see Loma Alto De La Bandera, we see Loma
9 El Mogote and Loma La Peña at the top. Do you see that?

10 And you can see the outer boundaries sort of, but
11 directly next to Loma La Peña is a mountain called Loma
12 Barrero. Are you aware of that or no?

13 A. Of course. All of those mountains can be seen
14 from Alto De La Bandera. That is the dome, if you will, of
15 that mountain system. And so there is full visual access
16 to all that space.

17 Q. Okay. And this is the Central Mountain Range as
18 we look across the picture; correct?

19 A. That is a small portion of the Central Mountain
20 Range that looks to Jarabacoa.

21 Q. Sure. Jarabacoa is on--you can't see the town.
22 It's behind Loma La Peña and Loma El Mogote; correct?

23 A. Yes.

24 Q. And I just want to confirm your testimony that the
25 ecosystem of every point in this Park, all of them are

1 different?

2 A. That is what I told you.

3 Q. Now, we talked a lot about the Mogote System, but

4 I'd like to look at the text of Decree 571.

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

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

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

8 (Comments off microphone.)

9 MR. ALLISON: Can you go to the next page,

10 Larissa. And then the page after that.

11 BY MR. ALLISON:

12 Q. I think you were looking in your blue binder, but

13 there's a white binder too that has this, and you can see

14 it in Spanish. I apologize for the confusion, but if you

15 can see it there, that's fine. This is in English. You

16 can read it?

17 Okay. Article 14, if you can blow that up, and

18 the paragraphs below it too, please, so we can see it in

19 full.

20 MR. ANTONIO RIVAS: Mr. Allison. Professor

21 Martínez, please look at the document in Spanish, then you

22 can read it in Spanish.

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

24 that.

25 MR. ALLISON: It's at Tab 6.

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1 THE WITNESS: Yes, I found it.

2 BY MR. ALLISON:

3 Q. At the top you see Article 14, do you not?

4 A. I do.

5 Q. Article 14 "Creates the Baiguata National Park

6 with the aim of preserving the vast carpets of pine trees

7 and beautiful gallery forests (mixed and broad-leafed)

8 which combine in the middle course of this river, where the

9 walnut tree still appears as a species, witness or an

10 indicator of the original forest, which is currently very

11 much under threat and must be rescued for its major

12 forestry and cultural value.

13 "In the same way, protection is given to the

14 legendary Baiguata Waterfall, a place to bathe and to

15 celebrate the special and particular rights of the Taíno

16 culture based in this part of the island."

17 Do you see that?

18 A. Yes.

19 Q. And we can agree that one of the purposes of the

20 Baiguata National Park is to protect the Baiguata River and

21 the Baiguata Falls; right?

22 A. That is what the decree mandates.

23 Q. Does the decree say anything about the Mogote

24 system?

25 A. The decree does not say anything about that, but

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1 it is saying that the El Mogote system is the one that

2 makes up the higher portion and the water production

3 portion of the Mogote. This is also in the decree, if you

4 look at considering 4--considering 3. And you can look at

5 it if you want. It talks about the mandate of this decree.

6 This is what you need to fulfill before Article 14.

7 It says, "Considering the commitments undertaken

8 by the country in connection with meeting the objectives of

9 the Millennium Development goals of the United Nations, the

10 international agreements on biological diversity,

11 RAMSAR"...

12 I'm sorry. I was reading Number 4. Excuse me.

13 Let me read this.

14 Here it says--you have in front of you. It's

15 considering number 3. "The protected areas make up the

16 largest guarantee for the conservation of the cultural and

17 natural heritage of the Dominican nation, the stability of

18 its ecological system, the protection of watersheds, the

19 production of water, the prevention of natural disasters,

20 and the moderation of climate change, and the generation of

21 electricity, the production of food, the health of the main

22 human settlements."

23 This is letting me know that I have to protect the

24 watershed, specifically water-production areas, as you can

25 read here on this paragraph at Line 2.

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1 Q. Thank you, Professor Martínez.

2 My question was where in Article 14 does the word

3 "El Mogote," "Mogote System," or "Loma La Peña" appear?

4 A. Would you please repeat your question?

5 Q. My question is Article 14, which is up on the

6 screen and we just read, I'm asking you, do the words

7 "Mogote, El Mogote, Loma Mogote, Mogote system, Loma la

8 Peña," do any of those words appear in Article 14?

9 A. I am telling you that the Baiguata River watershed

10 is defined by El Mogote La Peña, Alto La Bandera. I'm

11 telling you that that watershed, and in particular, the

12 provisions under the decree, the importance area, the

13 ecological values that needed to be protected are between

14 Loma La Peña and El Alto De La Bandera. And that is

15 specifically the highest point, 700¹⁰² and 900 meters above

16 sea level.

17 That is to say, the decree is ordering exactly

18 what is being enforced.

19 Q. Okay. Well, the decree talks about protecting the

20 Baiguata River, the Baiguata Falls, and the beautiful

21 gallery forests which combine in the middle course of this

22 river, but the Baiguata Falls are not contained in the

23 Baiguata National Park, are they?

24

25 ¹⁰² Original in Spanish: "800".

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1 A. Because it was not the falls we needed to protect
2 for the falls to exist. We needed to protect the
3 productive area that is producing the water. The falls
4 will continue to exist as long as there is an area
5 producing water that is feeding it.

6 So the guarantee for that fall depends on that
7 catchment area that drains all of the water that goes to
8 the fall. And that is what we are protecting in the park.

9 Q. Thank you, Professor Martínez.

10 Let's look at Page 12 of your First Report, which
11 has a map you created of the Baiguato Park.

12 MR. ALLISON: Can you put that up on the screen,
13 please? Any way you can rotate that, by chance? I know
14 that's a new request, and I apologize.

15 We're going to put it up in big screen for you
16 here.

17 If you can't do it, Larissa, just--

18 THE WITNESS: I don't see a map on Page 12.

19 BY MR. ALLISON:

20 Q. This is a map from Page 12 of your Report, and
21 you'll see the boundaries of the Baiguato Park, and you'll
22 see the boundaries of the Jimenoa Monument, and you'll see
23 the boundaries of the Grande Verde Reserve.

24 You'll see the Rio Baiguato River running directly
25 through those two protected areas; correct?

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1 And if you could point out--if I understand
2 correctly, the Baiguato Falls are approximately where?

3 About here (indicating)?

4 A. Yes. That's true.

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

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

14 Look at the map. This is the origin of the
15 Baiguato River that goes up to the middle course, and that
16 is the main mandate under the decree. That is the water.
17 That is the catchment area of all of the water that leads
18 to the falls.

19 The main area of that national park¹⁰³ is to capture
20 the area where we produce the water and that is the only
21 guarantee; that is the only way to ensure the life of the
22 fall. That means that we are complying with the mandate
23 under the decree.

¹⁰³ Original in Spanish: "La parte esencial, la parte fundamental de ese Parque Nacional".

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1 Q. So you want to protect the falls, you want to
2 protect the forests on either side of the falls, and you
3 want to protect the river.

4 And the way you decided to do that was to protect
5 the beginning little source of the river at the bottom of
6 the Baiguato Park there, and to leave the rest of the river
7 all the way up to the falls out of the park; is that your
8 testimony?

9 A. No. What I'm stating is what the map says. Let
10 me repeat it.

11 So you have the beginning up to the middle of the
12 river that is covered, and then you have all of the main
13 sources of that river that are leaving out of the park.
14 Look at all of the water sources, the La Peña Rosure, the
15 Anton Rosure, the entrance stream, all of those streams
16 that are the ones that are going to feed the Baiguato River
17 up to the falls.

18 That map does not have any waste. It tells you
19 exactly what the--it shows exactly what the decree was
20 providing.

21 Q. Okay. So the decree provides preserving the vast
22 carpets of pine trees and beautiful gallery forests which
23 combine in the middle course of the river.

24 And would you agree with me that this is the
25 middle course of the river, or are we in disagreement?

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1 A. Where are the limits to the park? Where you see
2 the limits, that's the middle course of the river.

3 Q. Just so I'm clear, your testimony is the Baiguato
4 Falls are protected because you've protected the beginning
5 part of the river and you've protected the beginning parts
6 of a few streams, but this entire area of the Baiguato
7 River, the falls, and all of these forests on either side
8 of the Baiguato River, are not protected; correct?

9 A. What I'm telling you is that all of the
10 Baiguato River will be having the various streams, and
11 there is a section in the middle portion because the
12 gallery forest exists up to the end of the park.

13 The park--the portion that is outside has been
14 completely ruined due to agriculture and cattle-raising.
15 Outside of that, we only have some spots, some small
16 segments with forest, but the rest has been completely
17 depleted.

18 So we do not have the gallery forest other than
19 the one that we have in the middle course that is also the
20 end of the limits of the forest. That's exactly what is
21 provided for under the decree.

22 Q. Okay. And so your testimony is there are no
23 forests or trees along the unprotected part of the
24 Rio Baiguato there?

25 A. Beyond that area, there could be very little

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1 forest that could be used as a gallery forest. If you can
2 show me an image or a photograph, I would be thankful.

3 We do not have any sign of a forest that would be
4 a gallery forest, that is to say, the one that goes along
5 the river on both sides of the river in the gallery is
6 because the river is under the canopy of the trees, and
7 that area has been completely ruined by cattle-raising and
8 agriculture, subsistence agriculture, which is quite vast
9 throughout the river.

10 Q. Thank you, Professor Martínez.

11 Would you agree with me that runoff from either
12 side of the Baiguato River flows into the Baiguato River?

13 A. All of the water produced on both margins of the
14 river clearly will go to the Baiguato River, but this is
15 the Mogote system. The Mogote system is the focal point.
16 So I cannot protect a mountain range that is other than the
17 one under the decree.

18 Q. Let's go back to the image on Page 5 of your
19 Second Report. And this is the image we looked at earlier
20 where the borders of the Baiguato Park follow the ridgeline
21 of the mountains as you go through the Central Range.

22 And I believe your report talks about how this
23 creates a sort of bowl of protection, hydrological
24 umbrella. Does that--do you recall testifying to that?

25 A. The question is quite long. Would you please

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1 repeat the page where I find that part of my Statement?

2 Q. Paragraph 31 of your Second Statement, on Page 13
3 you write, "La Peña, El Mogote, and Alto De La Bandera
4 Mountains act as hydrological umbrellas."

5 Do you see that?

6 A. That's correct.

7 Q. And it catches the water that rains on that side
8 of the ridgeline and flows down into the streams that then
9 flow down ultimately into the Yaque del Norte; correct?

10 A. Yes, they end up at the Baiguato River, but also
11 Yaque--northern Yaque¹⁰⁴.

12 Q. And if we go back to the picture of the bowl or
13 hydrological umbrella, when we get to La Peña and to
14 El Mogote--it's on Page 5 of the Second Report.

15 So here, down at the lower part of the park and
16 around to the west and to the east, we see the park
17 following the ridgeline of the mountains; correct?

18 A. That portion is perfect because that line is
19 interrupted precisely on the La Peña and El Mogote. That
20 means that that map is properly developed, because the
21 limit--the border line is behind. They go halfway between
22 La Peña and El Mogote.

23 Q. But when we get to El Mogote and Loma La Peña, the

¹⁰⁴ Original in Spanish: "río Yaque del Norte".

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1 borders of the park don't follow the ridgeline. They go
2 down the mountain and cut across, as we see in your Report
3 on Page 8.

4 A. That's correct. Because the decree is intended to
5 protect the origin, the source of those rivers. And that
6 portion has the river source for the Yaque del Norte. So
7 the limits are ¹⁰⁵, behind El Mogote and Loma La Peña. That
8 acts like a sponge that is absorbing all of the humidity
9 towards Yaque del Norte, and the ones on this side drain up
10 to the other river, Baiguato.¹⁰⁶

11 MR. ALLISON: Larissa, could you put up Page 8 of
12 his Second Report, please. Can you blow up that image?

13 BY MR. ALLISON:

14 Q. So these are the boundaries of the Baiguato Park
15 as you approach Jamaca de Dios. It's in the middle of the
16 ridge. And I believe your testimony was you have to drop
17 down the ridge because the source of the Yaque del Norte
18 and the source of the Baiguato River are both here.

19 Was that your testimony?

20 A. I'm telling you exactly what the map tells you,
21 because that is the other side. That is the--¹⁰⁷--we saw part

¹⁰⁵ Original in Spanish adds: "debajo".

¹⁰⁶ Original in Spanish adds: "Yo creo que es la lógica".

¹⁰⁷ Original in Spanish adds: "esa es la parte discontinua".

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1 of that phase. This is the other part of the phase. This
2 is Loma La Peña, Loma El Mogote, all of those sources, and
3 the topography there is perfect. You clearly see that all
4 of the water that is caught in that area will drain
5 directly to Northern Yaque. That is the one that is at the
6 bottom.

7 Q. Okay. So we're clear, the source for the Baiguato
8 and the Yaque del Norte do not originate on Loma La Peña or
9 El Mogote, do they? The source of those rivers is--we saw
10 the source in the previous map; right?

11 A. The original sources of Baiguato need to be fed
12 throughout the course by all of the other sources of water.
13 Then sources that are key, fundamental--we are talking
14 about rivers--are La Loma, high Alto De La Bandera, that
15 is, the beginning of the Baiguato River.

16 The northern Yaque River has very--has sources
17 that are very far away on other mountains of the range¹⁰⁸,
18 but it happens to be that the middle course of the Yaque
19 goes precisely in front of El Mogote; therefore, all of the
20 water source from that area will be going into the Mogote
21 River. And this is exactly--into El Mogote. That is
22 exactly what I am being requested under--in the decree.

23 Q. Okay. Well, under the decree, you're supposed to

¹⁰⁸ Original in Spanish: "otras montañas de la Cordillera Central".

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1 be protecting the Baiguete River and the Baiguete Falls.
 2 The decree doesn't say anything about the Mogote system.
 3 It doesn't say anything about the Yaque del Norte. But I
 4 understand your view of what your mandate was.

5 My question is, you included this portion of
 6 Loma La Peña, which is not the ridgeline, but is halfway
 7 down the mountain, because you write in your Report, "To
 8 exclude the northwest slope of Loma La Peña, whose waters
 9 flow into the Yaque del Norte River, would be meaningless."

10 Do you recall writing that in your report?

11 A. Where do I say that? I would appreciate it if you
 12 could show it to me.

13 Q. Of course. Let's go to Page 22 of your report.

14 A. If you allow me, I can explain.

15 Why couldn't that portion be left outside the
 16 national park? Sir, the--President, if you allow me to
 17 explain?

18 PRESIDENT RAMÍREZ HERNÁNDEZ: Yes, and we are
 19 delighted to hear. But as far as possible, please limit
 20 your answer, because the attorney has several questions.
 21 We are deeply interested in listening to you, but please
 22 try to be brief so that we can continue and the attorney
 23 can continue with the cross-examination.

24 THE WITNESS: Just a minute, please.

25 May I please look at the map?

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1 BY MR. ALLISON:

2 Q. Of course. Which map? The one we were just
 3 looking at?

4 A. Yes, the one we just--the one before it, yes.

5 That is the northern phase--northwestern phase of
 6 the park. That is a mountain system that goes--you see the
 7 green line? That is--that marks 800 meters above sea
 8 level--800 to 900 meters above sea level. And that is the
 9 peak of the mountain.

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

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

17 Now, if we eliminate the vegetation, the clouds
 18 would move through without any problem. But that
 19 vegetation we have there is a natural trap for water which
 20 gets condensed there and then drained to the river¹⁰⁹. This
 21 is what we call horizontal rain.

22 Q. Thank you, Professor.

23 And your Report makes clear at several places that

¹⁰⁹ Original in Spanish adds: "aunque no llueva."

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1 it's important to protect that area because the runoff
 2 flows to the Yaque Del Norte River.

3 And I'd like to put up the map again from Page 12
 4 of your original report, the one that was turned sideways
 5 that I hope we can get. And there it is.

6 I'd like to point, for the Tribunal's edification.
 7 These are the borders of the park. This is La Montaña.
 8 This is QDB. This is Jamaca de Dios and Aloma Mountain.
 9 This is Jarabacoa Mountain Garden. And this is Alta
 10 Vista--I'm sorry, Paso Alto.

11 And you testified that it was important to protect
 12 this area of Loma La Peña because the runoff meets the
 13 Yaque del Norte area. But your testimony was it's not
 14 important to protect QDB, but the runoff from QDB is
 15 significantly closer to the Yaque del Norte, isn't it?

16 A. If you--if you look carefully, Quintas del Bosque
 17 is 640 meters above sea level. The explanation that I just
 18 offered is that there you do not have 800 meters. And
 19 that's why you have that biological fabric that absorbs,
 20 that condenses the humidity, that ends up in Yaque del
 21 Norte.

22 There is even a stream--if you please look, there
 23 is a stream that is separating Quintas del Bosque from the
 24 Mogote system; that is to say, two reasons why that project
 25 is not inside the park. On the one hand, it is a different

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1 mountain range, and on the other hand, it is at 640 meters
 2 above sea level. It does not reach 800 meters above the
 3 sea level, and it doesn't have the merits to be part of
 4 this cloud forest.

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

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

11 A. I am--yes. You can clearly see that the purple
 12 line is covering the northern section of the project. The
 13 cloud forest is perfectly covered there, the area in the
 14 lower section at 600-something meters above the sea level.
 15 And what we have at 900 meters is already covered by that
 16 line. We need to have consistency when we recover a
 17 protected area. We need to have consistency, and that's
 18 the reason why we have uneven limits.

19 Q. Okay. It's very convenient for Mr. Hernández that
 20 the buffer zone runs directly along the border of his
 21 developed property.

22 If the Yaque Del Norte River is the really
 23 important part of protecting the Rio Baiguete River, as
 24 decreed in Decree 571, why isn't this portion of the
 25 Yaque Del Norte River a protected area?

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1 A. I am explaining to you that all of the essential
2 values that we needed for the Mogote system were completely
3 covered within those borders that limit the protected area
4 or the national park. I do not think that there was any
5 significant feature that was relevant and that should have
6 been protected.

7 Q. Thank you, Professor Martínez.

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

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

18 And it is true. What you are saying is true.
19 There is a recommendation for zonification and everything
20 that has to be done within the park. And they also
21 suggested some expansion.

22 Q. Okay. So I just want to make sure that the 2013
23 survey that we're about to show you at Exhibit C-138, which
24 you can find in your binder at Tab 8--the white binder in
25 front of you is Tab 8. That's--this is not the management

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1 plan for Baiguate Park, is it?

2 While you're looking for it, the record says--or
3 the document reflects that it's a brief ecological
4 evaluation of the biodiversity and cartography in the
5 Baiguate National Park.

6 Do you see that at the top of the document?

7 A. That is correct.

8 Q. And if we go to the next page.

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

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

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

16 THE WITNESS: Where are you?

17 BY MR. ALLISON:

18 Q. Here it is. It's up on the screen, Professor.
19 Professor, on the screen?

20 A. Okay.

21 Q. Those are the borders of the Baiguate Park in
22 yellow, and the area in red is the area that the MMA was
23 recommending be expanded to be included into the
24 Baiguate Park.
25

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1 Are you aware of that?

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

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

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

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

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

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

24 MR. ALLISON: Thank you. And respectfully, I may
25 ask your assistance to limit repetitive answers from the

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1 witness. I certainly want him to be able to say whatever
2 he wants to say, but the recitation of the same things he
3 said several times, both in his Report and in his
4 testimony, I view is a run-out-the-clock strategy or fear
5 that I have.

6 BY MR. ALLISON:

7 Q. Let's look at Paso Alto very briefly. If you
8 could put up Demonstrative--I will tell you in a second.
9 And I apologize.

10 If you will please put on the screen Demonstrative
11 Number 9--which, I apologize, is not in the binder. And
12 I'll represent to you that Mr. Navarro--do you know
13 Mr. Navarro, Zacarías Navarro?

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

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

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

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

23 Q. It's the purple line. It says "ridgeline" in
24 English. I apologize. But can you see it right in the
25 middle of the--running through the color and then out the

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1 right side? There's a purple line.
 2 Professor, let me help you. This line right here.
 3 Do you see that? Can you see that line?
 4 A. Could you please show it to me again? Show me
 5 which one it is.
 6 PRESIDENT RAMÍREZ HERNÁNDEZ: Could you indicate
 7 where?
 8 BY MR. ALLISON:
 9 Q. Here (indicating). This is the ridgeline that I'm
 10 referring to. Do you see that?
 11 A. But that is the stream of the river. This
 12 is--it's synclinal and it's not anticlinal. I don't have
 13 to opine on this because I didn't work on that map.
 14 But that is in that natural monument and it is
 15 there to protect the course of the Jimenoa River. And the
 16 Paso Alto is on there.
 17 Q. The Jimenoa River, do you see where that is? Do
 18 you see the Jimenoa River here?
 19 And you've testified that the purpose of the
 20 Jimenoa Monument is to protect the Jimenoa River, and the
 21 Jimenoa River is within the boundaries of the Jimenoa
 22 Monument, but the boundaries directly about the project
 23 Paso Alto below the ridgeline such that any runoff from
 24 this project flows down to the Rio Jimenoa.
 25 And my question to you is whether or not you have

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1 any knowledge as to why the boundary of the Jimenoa
 2 National Park follows the boundary of Paso Alto?
 3 A. What I can explain to you in connection with this
 4 map is that--well, first of all, I wasn't the one who
 5 prepared this map. I don't know if this corresponds to the
 6 protected area I worked on.
 7 The course of the Jimenoa River is a protected
 8 area. This is called National Monument for the Falls of
 9 Jimenoa. If the falls are not there--and this is called
 10 Jimenoa Falls.
 11 If the Jimenoa Falls are not contained there,
 12 perhaps that map doesn't show the reality. I didn't
 13 prepare that map.
 14 I did tell you that Paso Alto is about 1,000-some
 15 feet over sea level, so it meets the conditions to become a
 16 cloud forest. But it is not in the El Mogote system.
 17 If you show me the El Mogote system there, I would
 18 say, "Okay. You're right." But El Mogote is on the other
 19 side of that mountain system that you're showing there.
 20 Q. Thank you, Professor.
 21 PRESIDENT RAMÍREZ HERNÁNDEZ: You asked a
 22 question--
 23 MR. ALLISON: I understand.
 24 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. So--
 25 MR. ALLISON: So the record is clear, the Jimenoa

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1 Monument was created on the same day as the Baiguate Park.
 2 Mr. Martínez was involved in the creation of all the
 3 protected areas made on that day.
 4 BY MR. ALLISON:
 5 Q. And my question to you, sir, is do you know why
 6 the boundary of Paso Alto--of the Jimenoa Monument follows
 7 directly the boundary of Paso Alto? Do you know why that
 8 is or do you not?
 9 A. When that protected area was created, we don't
 10 know that there was a project there called Paso Alto.
 11 The projects were not of importance. What was
 12 important was the national values. I do not agree with
 13 that map. That was not the map that I submitted.
 14 Q. And if the purpose is to protect the Rio Jimenoa,
 15 then like much of the boundaries of the Rio Baiguate and
 16 much of the boundaries of the other protected areas you
 17 made in the mountains there, it would make sense if the
 18 boundary followed the ridge line, and yet here the boundary
 19 drops down from the ridgeline and follows the border of
 20 Paso Alto.
 21 And you don't know why that is; right?
 22 A. I have not said that. In my statement what I have
 23 said--and there is a map here.¹¹⁰

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¹¹⁰ Original in Spanish: "están los dos, si me pueden buscar el mapa".

1 MR. ANTONIO RIVAS: ¹¹¹Mr. Matthew has represented
 2 that that map was--as we are seeing it--fully prepared by
 3 Mr. Navarro, and the Annex B of Mr. Navarro's map does not
 4 include the ridgeline. So that in itself is a creation by
 5 Claimant. So--
 6 MR. ALLISON: My apologies. And that's why it's a
 7 demonstrative and not simply his map. The ridgeline is
 8 added. The ridgeline of Paso Alto is in the record in the
 9 altitude and contour maps that are added to Respondent's
 10 submissions. And I would be happy to point the Tribunal to
 11 that reference, should they so require.
 12 MR. ANTONIO RIVAS: I trust what you have
 13 expressed. But the fact of the matter is that neither
 14 Mr. Navarro or Respondent have been able to confirm whether
 15 that is accurate as you have described it.
 16 MR. ALLISON: Well, Mr. Navarro put the boundary
 17 of the national park at the border of Paso Alto when he
 18 prepared his Witness Statement.
 19 MR. ANTONIO RIVAS: Well, the original map, but
 20 not the line showing the ridgeline. That's the point.
 21 MR. ALLISON: I understand. That's fine. We can
 22 take the ridgeline out. My question stands. Why does the

¹¹¹ Original in Spanish adds: "Objeción, señor presidente. Tenemos una objeción.".

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1 border of the Jimenoa National Monument follow the property
2 line of Paso Alto?

3 And I don't have any further question. I think
4 the witness has responded to that, but--

5 PRESIDENT RAMÍREZ HERNÁNDEZ: Yes.

6 MR. ALLISON: I want to move on to a final topic,
7 given the time.

8 THE WITNESS: Mr. President, very, very briefly,
9 if you look at the map at page 13 of my First Statement,
10 this is the portion of the map that I created and that I
11 worked on. Here you can clearly see the borders of the
12 Salto Jimenoa National Monument.

13 MR. ALLISON: Correct. Let's put that up. It's
14 Page 12 of the English version, I think.

15 THE WITNESS: It's Page 13 in Spanish.

16 BY MR. ALLISON:

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

19 One last thing. When you were testifying with
20 Mr. Rivas, you were discussing the concept of ecotourism
21 and what's permitted and not permitted.

22 Just so I'm clear, you didn't author the
23 Baiguete Park Management Plan, did you?

24 A. I was not. Of course not.

25 Q. You had left the MMA protected areas division by

1 that time; correct?

2 A. I was no longer Vice Minister. I was an adviser
3 of the President of the Republic.

4 Q. Okay. And so are you aware of the terms of the
5 Baiguete Management Plan? Are you aware that the Baiguete
6 Management Plan allows for ecotourism?

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

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

13 A. The Baiguete National Park, like any other
14 National Park elsewhere in the world, must meet the
15 definition of concepts put forth by the United Nations
16 through the OMT.

17 Q. Okay. So the Dominican Republic is obligated to
18 follow the United Nations with respect to the definition of
19 ecotourism?

20 And has it done so? Has it promulgated
21 regulations anywhere that define what ecotourism activity
22 is or is not allowed in the Baiguete Park?

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

1 PRESIDENT RAMÍREZ HERNÁNDEZ: Yes, but this is
2 question that I also have. Is there any place, any
3 area--because in answer to the Dominican Republic's lawyer,
4 you provided a definition of what you consider ecotourism
5 is, and now you made reference to a United Nations
6 document.

7 THE WITNESS: Yes, sir.

8 PRESIDENT RAMÍREZ HERNÁNDEZ: Is there a
9 definition in a law, a regulation, a decree, that applies
10 to the Baiguete Park that establishes what ecotourism is?

11 THE WITNESS: In my First Statement, there is a
12 footnote where--what the World Tourism Organization says,
13 and the definition is included there.

14 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. To be clear,
15 you say that the term "ecotourism" for those purposes,
16 well, is the definition contained in the document by the
17 United Nations.

18 THE WITNESS: Yes, that's right.

19 BY MR. ALLISON:

20 Q. Are you aware that the Dominican Republic has
21 issued park management plans that define acceptable
22 development with respect to other parks?

23 A. Yes. I know that the Ministry of the Environment
24 has put into effect many management plans.

25 MR. ALLISON: And I would point the Tribunal to

1 Claimants' Exhibit 140, which is such a plan for the Parc
2 Nacional Francisco Alberto Caamaño Deñó in which there's a
3 definition of appropriate tourism uses, and describes the
4 density, size of house, no more than 20 rooms per hectare,
5 and heights no more than two levels, with design materials
6 and colors which do not alter or contrast with the
7 predominant countryside.

8 BY MR. ALLISON:

9 Q. No such definition of acceptable structures within
10 the Baiguete National Park has been promulgated, to your
11 knowledge, has it, Professor?

12 A. I have no knowledge of that.

13 Q. Okay. Do you have knowledge that the MMA, after
14 you left, issued the management plan and, in fact,
15 characterized Jamaca de Dios as an ecotourism project?

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

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

21 ARBITRATOR VINUESA: Repeat just to make sure.

22 MR. ALLISON: Yes. Let's look at R-84. Yes, it
23 is R-84. I wonder what C-84 was.

24 C-84 [sic], I think we have it in English, and I'd
25 be happy to give the witness a copy of the Spanish version.

1 But I simply want to show him a map that's included in that
2 document.

3 And if you could turn to the English translation
4 of that for me, please. All right. Let's go to the next
5 page please.

6 First, I should identify the document, please.
7 Can you go back to the first page?

8 This is a Resolution from 2017 which approves and
9 authorizes the implementation of the Baiguata National Park
10 Management Plan. So this management plan was issued in
11 2017, some eight years after the creation of the park.

12 And if we go to the next page, we see the
13 signature of the Minister of the MMA, Francisco Domínguez
14 Brito.

15 If we go to the next page--please continue.
16 That's the Baiguata Park. I'm hopeful that we don't have
17 to go through all the pages. Keep going.

18 I think we're going to skip ahead to a map. I
19 guess the whole thing is in here. Keep going.

20 This is a discussion of the park. Page 45.

21 MR. ANTONIO RIVAS: Yes, I believe what you're
22 looking for is Page 45.

23 MR. ALLISON: Okay. No, this is the zoning. It
24 describes how the Baiguata National Park is zoned and
25 includes--its very difficult to see. But for the

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1 Tribunal's reference, the areas in pink are zoned for
2 ecotourism, including what has been the area of the
3 Jamaca de Dios project.

4 But there's another map I want to show you. And
5 it's on Page--let's go to Page 34 and see where we are
6 there. 32? Okay. This--okay. Keep going.

7 I apologize. Let's go down. I thought I had
8 this. Keep going. Keep going.

9 (Comments off microphone.)

10 MR. ALLISON: Here we go. My apologies for my
11 discoordination of that.

12 This is Page 20 of the management plan, and you
13 will see it describes use and coverage of the Baiguata
14 National Park. Do you see that?

15 A. That's right.

16 Q. And this is an effort to define, as part of the
17 2017 Management Plan, how the park was being used in 2014.
18 This refers to 2014. Do you see that?

19 And you see the area up in the upper corner, where
20 Jamaca de Dios and where Aloma Mountain are, are both
21 defined in purple as ecotourism projects.

22 Do you see that?

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

25 Q. Of course.

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1 PRESIDENT RAMÍREZ HERNÁNDEZ: It says here
2 "ecotourism project." Yes. It's in purple.

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

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

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

8 THE WITNESS: None of those projects have been
9 developed, as far as I understand and as far as my
10 knowledge. As far as I know, there is no single facility
11 there. When I created this park, there was no building
12 here whatsoever.

13 REDIRECT EXAMINATION

14 BY MR. ANTONIO RIVAS:

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

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

24 A. I was looking at whatever the decree mandated me

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1 to look at, for example, biodiversity¹¹², cloud forest, the
2 source of water, all of the water wealth¹¹³ and the
3 biological wealth of the area, essentially. And that was
4 within the cloud forest up to the top of the mountains.

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

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

10 A. Okay. Paragraph 23.

11 Could you read what it says.

12 A. Paragraph 23.

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

14 "After two years"--and this is Mr. Ballantine
15 speaking. "After two years, we only had a handful of
16 sales. I decided to build the restaurant we had planned
17 and permitted. I strongly believed that the restaurant
18 would be a good way to draw people to La Jamaca de Dios and
19 spend time there. Originally it was only open on weekends,
20 and I invited townspeople for the first weekend¹¹⁴ from
21 Jarabacoa for free food and beer. I expected that locals

¹¹² Original in Spanish adds: "donde quiera que hubiera elementos de la biodiversidad que tenían un mérito de ser protegidos".

¹¹³ English Audio Day 4 at 06:22:16

¹¹⁴ Original in Spanish: "weeks".

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

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

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

14 Q. Okay. Very well. Thank you.

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

18 A. Look, we're talking about protecting the central
19 ridge. That was the area that needed to be protected. So
20 the area that needed to be protected was the one over
21 800 meters over the sea level.

22 Loma La Peña, which was taken as reference, is
23 1400 meters over sea level. Then we have El Mogote,
24 1521 meters over sea level. Those two mountains allow me
25 to look at the very back to Alto De La Bandera, 1804 meters

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1 over sea level.

2 So I looked at the substantial area of the ridge,
3 which was covered substantially, and that was the area
4 chosen for the National Park.

5 Q. Thank you, Mr. Martínez.

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

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

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

13 A. There was a recommendation by the Academy of
14 Sciences. The work by Thomas May and Brígido Peguero, the
15 work of those two people had to be verified. They
16 conducted their work in 2000. They are taxonomists¹¹⁵.

17 Oh, yeah. It says it right there. "Moscosoa 2000."
18 Before the park was created.

19 Q. When the boundaries of the National Park were
20 set, you talked about preexisting information. Could you
21 explain whether this was pre-existing information, and can
22 you also explain, if reference is made to the El Mogote
23 system, the importance of the El Mogote system? Is there

¹¹⁵ Original in Spanish: "taxónomos botánicos de primera calidad".

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1 reference to that in this article?

2 A. Yes, undoubtedly. You look at the title of--here
3 it says, "Vegetation and flora of the El Mogote, Jarabacoa
4 Hill," ¹¹⁶and everything that is included in this article is
5 referred¹¹⁷ to El Mogote Hill.

6 Q. Okay. Thank you very much.

7 Let's look at the environmental management plan,
8 which is R-084. Could we please look at Page 45--rather,
9 43.

10 The map.

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

13 A. Yes.

14 Q. There you have some ¹¹⁸pink--dark pink or fuchsia
15 colors. Can you see them?

16 A. Yes. I can see them perfectly well.

17 Q. What do they mean?

18 A. Based on the legend, it's quite clear. These are
19 areas to be used for ecotourism and vegetation¹¹⁹.

20 Visitation.¹²⁰ Q. Are they talking about specific

¹¹⁶ Original in Spanish adds: "había una referencia directa".

¹¹⁷ English Audio Day 4 at 06:28:18

¹¹⁸ Original in Spanish adds: "zonas color".

¹¹⁹ Original in Spanish: "visitación".

¹²⁰ English Audio Day 4 at 06:30:07

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1 project?

2 A. No. They are talking about ecotourism and the
3 possibility to visit the areas.

4 Q. Is there any specific permit for any specific
5 project?

6 A. As far as I know, that is not--that is to say, I
7 don't have any knowledge of any permit being granted. It
8 cannot be granted because it is banned in the law. It is
9 prohibited by the law.

10 Q. Now we are going to look at the map on Page 20.

11 The map I gave you, what page is that?

12 A. 20.

13 Q. Thank you.

14 MR. ALLISON: You're having the same problem I
15 had.

16 BY MR. RIVAS: ¹²¹

17 Q. In that map, the legend says "ecotourism project";
18 is that correct?

19 A. It says "Ecotouristic project."

20 Q. And there, is there any reference to a specific
21 project? Is there any name referenced in the project?

22 A. I am not aware of any project I know. It doesn't

¹²¹ English Audio Day 4 at 06:31:14

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1 say so on the map because it's not referencing any specific
2 project. But there it says "Ecotouristic project." I
3 don't know what it is referring to. It could possibly be
4 one of the ones mentioned there.

5 Q. And is there any permit for any specific project?

6 A. No. The Ministry of the Environment cannot grant
7 permits for protected area.¹²²

8 MR. ANTONIO RIVAS: Thank you.

9 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you very much,
10 Professor Martínez. We have concluded.

11 (Witness steps down.)

12 PRESIDENT RAMÍREZ HERNÁNDEZ: Let's take a break
13 because we need to move. That will be faster.

14 PRESIDENT RAMÍREZ HERNÁNDEZ: Good afternoon,
15 Mr. Hart.

16 THE WITNESS: Good afternoon.

17 PRESIDENT RAMÍREZ HERNÁNDEZ: I see you still have
18 the "Eleuterio Martínez" sign, but we know who you are. We
19 know who you are, Timothy Hart.

20 THE WITNESS: Yes.

21 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. Could you
22 please read the statement you have for experts.

23 No, I think it's the other one. It's there.

¹²² Original in Spanish adds: "Es imposible. Es un área protegida."

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

5 PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Di Rosa.
6 Please.

7 MR. Di ROSA: Thank you, Mr. Chairman.

8 TIMOTHY HART, RESPONDENT'S WITNESS CALLED
9 DIRECT EXAMINATION

10 BY MR. Di ROSA:

11 Q. Mr. Hart, you have before you two expert reports.
12 Can you please confirm that those are the two expert
13 reports that you have submitted in this arbitration.

14 A. They are.

15 Q. Do you fully ratify the contents of both of those
16 expert reports?

17 A. I do.

18 Q. Do you have any corrections to make to either of
19 them?

20 A. I do not.

21 MR. Di ROSA: Thank you.

22 DIRECT PRESENTATION

23 THE WITNESS: Thank you, and good afternoon. My
24 name is Tim Hart. I'm the founder and president of
25 Credibility International.

1 I was formerly the global leader of disputes and
2 investigations practices at Navigant Consulting and Huron
3 Consulting. I was also a former Arthur Andersen partner,
4 where I started my career for the first 18 years out of
5 college.

6 For over 30 years I have been assessing damages,
7 measures, excess, wasted costs, lost profits, and valuation
8 across a range of industries.

9 I provided expert evidence approximately 75 times,
10 served as an expert in over 45 international disputes, and
11 I started doing investment treaty cases in 1999, with the
12 CSOB case, where I was--

13 (Comments off microphone.)

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

16 THE WITNESS: Understood. Thank you.

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

22 I also have significant experience in
23 transactions.

24 I have also led large accounting fraud
25 investigations, primarily responsive to law enforcement of

1 the Securities and Exchange Commission here in the United
2 States, and the Department of Justice in the United States,
3 and have also done a lot of asset impairment testing.

4 I'm a certified public accountant and a certified
5 fraud examiner.

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

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

14 The documentary evidence contradicts BRG's
15 inflated opinions. Jamaca was not a successful business.
16 The documents of historic results show BRG significantly
17 inflated the damages. The reported lot sales were much
18 lower than they claimed in Phase 1 and far lower than
19 assumed in Phase 2.

20 We've now been presented with two sets of
21 contracts for land sales are a red flag of fraud. Parallel
22 sets of contracts showing different terms, particularly the
23 price as well as dates, are, by definition, irregular and
24 suspect from a fraud examiner's standpoint as well as from
25 a CPA's perspective.

1 The tax documents sales align more closely with
2 the land sales, the revenue reported in Jamaca's own
3 financial statements, as well as their U.S. income tax
4 returns.

5 If damages are awarded, the Claimants should only
6 receive compensation for their Phase 2 invested costs,
7 which total at best \$239,000, because we have no reasonably
8 certain inputs to do any sort of lost profit calculation in
9 this case.

10 Let's turn to the "BRG calculations are
11 inappropriate and unsupported."

12 And let's start with how a proper damage analysis
13 should start with a discussion with a client. BRG's
14 approach was to discuss things with a client but apparently
15 not keep notes of those conversations.

16 Next, you should review financial statements and
17 tax returns and then test those contracts--those statements
18 against contracts, invoices and bank accounts. BRG did
19 none of this.

20 Next, you should analyze the historic results and
21 forecast results after the alleged harm.

22 Again, they did none of this. They admit they
23 didn't even look at the financial statement and had a
24 less-than-full collection of what they say are the parallel
25 contracts.

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1 And then you would form an expert opinion from
2 that work. BRG did do that but really based on
3 conversation with the client and not evidence--and not
4 producing evidence that supports their opinion.

5 So, in that instance, claiming lost profits at all
6 and the use of DCF method is inappropriate due to the lack
7 of reliable supporting evidence in the underlying inputs.

8 They completely failed to assess causation, did
9 not think that's part of what a damage expert should do.
10 But a quantum expert is required to analyze causation to
11 identify the causal link between the alleged harmful events
12 and the alleged damages.

13 BRG failed to assess how the Phase 2 permit denial
14 caused any of its claimed damages, including the expansion
15 costs to Aroma, the cash flows from the lower-level
16 apartment complex, the lost opportunity related to an
17 entirely different property at Paso Alto, the loss of
18 future investment and brand diminution, and the loss
19 related to the allegedly expropriated road.

20 They erred by claiming damages either did not
21 exist or were not caused by Respondent's alleged actions.

22 And a very good example of that is in the First
23 Report, they had the Lot 1 sales that had not happened
24 allegedly caused by the denial of the Phase 2 permits.

25 That's been withdrawn because they were, in fact,

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1 sold. So, it's a very good example of the failure to think
2 about how the Phase 2 permit caused these damages--the
3 denial of it.

4 We turn now and--to look at the Aroma example with
5 no causation and no damages related to the expansion of the
6 Aroma Restaurant. The blue bars represent the sales of
7 Aroma during its life. Again, this comes from their
8 financial statements. The red bars represent the net
9 profit and loss. As you can see, it's a very low-profit
10 operation.

11 After the expansion in 2013, the revenues did
12 increase by 51 percent. Net profit increased by
13 30 percent. And then you've got a leasing contract which
14 provides a minimum of \$120,000 per year to the Claimants.

15 The lease fees are far better than historic
16 operating profits, and, therefore, the Claimants received
17 significant benefits post-expansion. So, again,
18 there's--they're receiving ongoing benefits so it's
19 completely inappropriate to claim the expansion costs.

20 BRG also assumed there's no debt to finance the
21 necessary investments to support the alleged damages.
22 \$27.1 million of their claim are in claims that would
23 require capital. And they were listed here, which one of
24 the claims would have needed additional capital.

25 They failed to consider the Claimants, of course,

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1 lacked the funds to finance the investments themselves and
2 would have needed to take on additional debt and its
3 associated costs. So, Jamaca would have required financing
4 from 2011 through 2014 to support the alleged damages.

5 The calculation I show here shows that they would
6 be short by \$1.4 million in 2011. It grows to
7 5.35 ¹²³million in 2013, until being cash flow positive in
8 2015.

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

13 They also have an inappropriate rate for
14 compounding prejudgment interest. They've asked for a
15 5.5 percent based on the Central Bank of the Dominican
16 Republic's benchmark interest rate, yet they're claiming in
17 U.S. dollars. And then they want to compound this monthly.

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

¹²³ English Audio Day 4 at 06:48:45

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1 compounded faster than annual.

2 As I said earlier, Jamaca was not a successful
3 investment. The revenues and profits, based on their own
4 financial statements, are listed here from 2006 to 2011 for
5 the period before the alleged harmful actions. They
6 reported 1.5 million of revenue, a net loss of a quarter
7 million dollars, and it was marginally profitable in 2009,
8 '10 and '11.

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

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

18 Here we're just showing the revenue is--I'm sorry.
19 The blue bars are the actual Phase 1 sales on the left, and
20 then on the right, the blue is the net profit or loss. The
21 orange is their alleged sales in Phase 2 at close to
22 18 million U.S.

23 Even if you believe the parallel contracts that
24 they've talked about bringing in 6 million--I've heard
25 7 million, you can see their calculated Phase 2 revenues

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1 are triple that amount, which makes no sense.

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

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

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

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

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

24 And I'd say for damages purposes, the Tribunal
25 should rely on either the tax documents, as those are the

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1 only documents that have been attested to in any way, or
2 secondly, none of the Claimants' financial documents,
3 because again, from a fraud examination or an auditor
4 perspective, to find that you have two sets of books for
5 the same transactions is very suspect, and you have to
6 question all their financial accounting or all their
7 financial documents.

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

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

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

22 If you look at the far right, the--and that's the
23 averages of the sales from 2012 to 2015 from the tax
24 documents, which total to just under \$11 per square meter.

25 Compared to the \$59 per square meter that BRG has

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1 put forward, there's, you know, certainly no relation to
2 and I do not have support for BRG's assumed Phase 2 sales
3 prices. These numbers really don't tie at all to--they
4 produce no information to tie out the \$59 he assumed.

5 We're frozen here.

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

12 As you see, the bottom Tier 4 is greater in price
13 than both the mid-tier and the upper tier. And there's a
14 16 percent increase between the lowest tier and the top
15 tier, the \$8.78 per square meter and the 10.25.

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

22 In the opening, the Claimants said, "Hart chooses
23 instead to use contracts that don't reflect the actual
24 consideration paid by buyers. He knows that."

25 I have a footnote in my report that I had seen--I

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1 had seen a number of these contracts. A number of them
2 were duplicative, and I relied upon the latest dated one we
3 have to assume that they were replacements or otherwise.

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

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

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

16 The reported maximum value in the D.R. bank
17 account of \$165¹²⁴,000 in two of the years they filed the
18 foreign bank form is far below what would be expected for a
19 profitable business at the level they're claiming.

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

¹²⁴ English Audio Day 4 at 06:57:36

1 This slide is important as it compares the revenue
2 from the different sources. With the parallel contracts
3 I've summed it by the reported sales date on C-162 and
4 compared that to the Jamaca financial statement reporting
5 revenue by year; the D.R. income tax return, which is
6 exactly the same; and the U.S. income tax return, which
7 comes very close to the other numbers. So, it's quite
8 clear they have not reported to the tax authorities
9 the--for income tax purposes, the revenue related to these
10 parallel contracts.

11 We turn now to look at the many--many Jamaca sales
12 were on installment and many receivables were not realized.
13 This is a blowup of the majority of R-207, which was a
14 document produced by Claimants that was then exhibited by
15 Respondent.

16 And this, you can see, is dated on the 12th of
17 July 2011, and it lists the sales amount for each of these
18 properties, the amount paid, and then it comes across to a
19 receivable amount as of that date.

20 First of all, it undermines BRG's assumption that
21 the Phase 2 lot sales would close quickly because these
22 were installment sales, from the contracts I've looked at.

23 Lots 61 and 14 reported to be two of the three
24 most expensive sales on this list, yet neither of these
25 lots appear on the parallel contract list, which is C-162.

1 And I'll flip to the next slide, which will
2 reconcile these.

3 On the left side is C-162, which is the
4 contracts--or the parallel contracts that I could match to
5 the receivable list from 2011. I was trying to test to see
6 differences between these two documents.

7 And what I've determined is there were a high
8 proportion of bad accounts receivable on that report back
9 in 2011, which totaled to the 1.03 million that they
10 asserted they had available for financing.

11 So, a good example is on the first--the first row.
12 We've got a reported sale on the 22nd of March of 2008 for
13 50,640. They had had a reported receivable that is now at
14 87,624 as of--as of almost 40 months later. So, I
15 determined that's a bad receivable because it's so aged and
16 it's actually grown greater than the sales price.

17 And then we look near the bottom of the schedule
18 where you see again the bad receivables start up probably
19 eight rows down. And you can see that the calculated days
20 since the reported sale goes negative. So, that tells me
21 that the original sales back in 2011 fell through, and we
22 got a subsequent contract that shows a later sale. So,
23 I've again classified those as money that was not collected
24 back in 2011 on those reported sales.

25 So, we see here that 48 percent of what I could

1 match was a bad receivable as of 2011. And if you include
2 the two lots that I couldn't--I couldn't match the 100 and
3 the 60 down at the bottom, Lots 14 and 16, it's about a
4 57 percent bad debt in 2011. So, a lot of the sales
5 appeared to fall through from the receivables in 2011.

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

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

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

17 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you, Mr. Hart.

18 CROSS-EXAMINATION

19 BY MR. ALLISON:

20 Q. Good afternoon, Mr. Hart.

21 A. Good afternoon.

22 Q. My name is Matt Allison. I'm going to be asking
23 you some questions this afternoon. And it will be nice to
24 not have earphones on my head. I apologize for the
25 Chairman.

1 I'd like to use your First Report, where you have
2 an executive summary of your allegations, as an initial
3 framework for just a few questions I have for you this
4 afternoon. So, if we could pull up on the screen Page 12
5 of your First Report.

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

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

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

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

22 A. Yes. Yes.

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

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1 A. That's what I said, yes.

2 Q. But you're not here to give any factual testimony
3 or opinion about when the Ballantines learned about the
4 Park or when they learned that the Park would be a barrier
5 to their development plan, are you?

6 A. I'm not.

7 Q. You also state that they failed to mitigate
8 damages by not stopping their restaurant expansion after
9 the date of their first denial; correct?

10 A. Yes.

11 Q. Okay. But, also, you're not here to give any
12 factual testimony about the state of the construction on
13 that date or any issues to that regard; correct?

14 A. That's correct.

15 Q. And we'll skip over 3 because it's a big one, and
16 we'll come back to it. But then you have a contention that
17 the prejudgment interest number is incorrect.

18 And there's a debate between you and Mr. Farrell
19 about the appropriate interest rate to use, and then it's
20 your contention that prejudgment interest is more
21 frequently compounded semi-annually as opposed to monthly;
22 is that correct?

23 A. No. It's primarily--it's primarily compounded
24 annually, in some instances semi-annually, and particularly
25 semi-annually when it's awarded matching a semi-annual or

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1 six-month instrument.

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

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

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

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

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

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

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

24 MR. ALLISON: And if we highlight from V(B) down,
25 I guess you can highlight all five, that's fine. Yeah,

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1 there you go. All the way down to the bottom, please. And
2 when I said "highlight," what I really meant was blow up.
3 I'm sorry.

4 BY MR. ALLISON:

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

10 A. Yes.

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

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

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

21 A. Yes.

22 Q. And your schedule that supports that involves you
23 delaying inflows of cash by a year and then calculating the
24 difference between the CAPEX numbers and the delayed
25 inflows of cash; correct?

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1 A. Yes.

2 Q. And if you don't delay the inflows of cash, the
3 numbers are significantly different; correct?

4 A. They're different. I can't tell you significantly
5 or not.

6 Q. Okay. You didn't do that. You just--you delayed
7 them and created that chart; right?

8 A. I did.

9 Q. Okay. And there's no analysis of what financing
10 costs may have--if financing was necessary, what that
11 financing might have cost the Ballantines in order to
12 attain; right?

13 A. No, I'm highly doubtful that they could have
14 obtained any financing, particularly given the state of
15 their financial statements. If a banker were to come and
16 look at the financial statements as they were prepared and
17 the low-level profitably report on their tax returns, I
18 don't believe they would get financing.

19 Q. Okay. And we'll talk about the financial
20 statements in just a second. But as part of your analysis
21 concerning financing, did you analyze whether any other
22 mountain projects in the area have used financing to fund
23 their business plans?

24 A. I didn't because it wasn't necessary in this
25 instance because we already could see the financial

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1 condition of Jamaca at that point in time. And their lack
2 of financial strength as well as their tax returns showing
3 that personally they did not have assets to back and
4 pledge.

5 Q. Okay. The next one is the documentary evidence
6 doesn't support the claims of damage. And I'm going to sum
7 a fair amount of this up by, this is your analysis of the
8 parallel sets of contracts; correct?

9 A. Yes.

10 Q. And you did a series of calculations based on the
11 tax documents as opposed to the sale contracts that are in
12 the record at C-162; correct?

13 A. Well, since I didn't have those contracts in the
14 listing of what were supposedly the sales until after my
15 report, no, I did not do those calculations.

16 Q. Okay. But did you have them at the time of your
17 Second Report? Did your attorneys tell you that they had
18 been produced in document discovery?

19 A. They did. And I reviewed a number. And as I
20 testified a little earlier this afternoon, that a number
21 were duplicative and as I said, certain sales fell through.
22 It was not a complete listing. We didn't have a complete
23 list of the contracts. And then we had the much more
24 complete list of the tax contracts which had a later date.
25 And typically, if you find a contract that has a later

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1 date, you would make an assumption that that is the final
2 sale.

3 Q. Okay. And so is it your opinion that the tax
4 documents actually reflect a consideration that was paid
5 for these lots by the Dominican purchasers? Are you
6 opining as to that?

7 A. Not if you're hearing the testimony of this week
8 that there were intentionally two sets of contracts, one
9 alleging the real sale and the other being the--was
10 reported to the tax authorities. And also now having done
11 the analysis of the R-207, the accounts receivable report,
12 you can clearly see that these were primarily installment
13 sales. And we heard from Mr. Farrell yesterday that he
14 didn't do any work to go and trace whether any of this cash
15 got into a bank account.

16 So I've got no assurance even with a listing of
17 C-162, that those are the real sales or if there's not a
18 third set of documents.

19 Q. Okay. And you're not here to provide an opinion
20 or factual testimony as to which contract reflects the
21 actual consideration by the buyer. It's your opinion you
22 can't tell.

23 A. I heard this week that there's an admission that
24 they had false documents given to the tax group. And that
25 they said the other contracts are real but even if you knew

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1 the contracts, unless you saw all the money hitting the
2 bank accounts, you can't tell it was really paid for. And
3 the accounts receivable report in 2011 shows they had
4 substantial problems with non-payment.

5 Q. And you saw, before this week, I assume, the
6 affidavit of Mr. Balbuena who was to be a witness here to
7 describe custom in the Dominican Republic but was withdrawn
8 as a requested Witness by the Respondents.

9 Did you see his affidavit before your report or
10 before this week or was today the first time you heard
11 about it?

12 A. Well, his affidavit came after my Second Report.
13 So, yes, I was aware of what he has to say. And his
14 affidavit about what's filed with--regarding property tax
15 and transfer tax to me has little interest or little
16 connection with what is reported for income tax purposes.

17 Q. Do you have an opinion on Dominican tax custom,
18 Mr. Hart? Are you here to provide that opinion, because I
19 didn't see it in either of your reports?

20 A. I am not.

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

23 THE WITNESS: Thank you.

24 REDIRECT EXAMINATION

25 BY MR. Di ROSA:

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

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

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

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

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1 on contracts that they admit aren't the real transaction.

2 MR. Di ROSA: That's all I have, Mr. Chairman.
3 Thanks.

4 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you. Thank
5 you, Mr. Hart.

6 THE WITNESS: Thank you.
7 (Witness steps down.)

8 PRESIDENT RAMÍREZ HERNÁNDEZ: Should we take three
9 minutes' break before the next?

10 (Brief recess.)

11 PRESIDENT RAMÍREZ HERNÁNDEZ: Good afternoon,
12 Mr. Deming. I'm going to give you--could you please read
13 the--you have a blue sheet. Could you please read that out
14 loud.

15 THE WITNESS: I solemnly declare upon my honor and
16 conscience that I shall speak the truth, the whole truth
17 and nothing but the truth, and that my statement will be in
18 accordance with my sincere belief.

19 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you,
20 Mr. Deming.

21 MR. HERRERA: Thank you, Mr. President.

22 PETER DEMING, RESPONDENT'S WITNESS, CALLED
23 DIRECT EXAMINATION

24 BY MR. HERRERA:

25 Q. Mr. Deming, you have before you an Expert Report.

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1 Please confirm that you have submitted before this
2 Tribunal.

3 A. I have confirmed that, yes.

4 Q. Mr. Deming, do you ratify this Expert Report?

5 A. Yes.

6 Q. Do you have any corrections to this Report?

7 A. No.

8 MR. HERRERA: Thank you very much.

9 DIRECT PRESENTATION

10 THE WITNESS: So my name is Peter Deming,
11 professional engineer. I have a bachelor's of science
12 degree, a bachelor's of civil engineering and a master's of
13 civil engineering in geotechnical engineering from the
14 University of Texas at Austin. I'm a partner with firm of
15 Mueser Rutledge Consulting Engineers in New York City. We
16 specialize in geotechnical and structural design work.

17 I've practiced at that firm since graduating with
18 my master's degree. Licensed in 18 states and Washington,
19 D.C. Have practiced all over America and have done several
20 projects overseas. My geotechnical engineering career
21 remains technical today. Although I lead the firm, I do
22 technical work on projects and lead designs.

23 The subjects that I've been working in and very
24 familiar with are relevant to this claim. And of specific
25 information, the last two items on the list, I have worked

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

6 What's important about this site here in Jamaca de
7 Dios is the residual soil. Residual soil is weathered in
8 place. It's--it is a chemical decomposition of rock. And
9 that decomposition is advanced by water. It usually occurs
10 in locations with very high rainfall, and we may find that
11 there are huge variations in the weathering because
12 chemical weathering is erratic. What makes it very
13 different is the in-place. The material was rock¹²⁵ and it
14 weathered into soil, and it has not been transported. What
15 makes that different is when you transport usually by water
16 or air, you sort material sizes so you have sand layers and
17 clay layers and gravel layers. But in residual soil, you
18 have everything in a jumble as chemical weathering has left
19 it.

20 At Jamaca de Dios, the residual soil is coming
21 from apparent basalt, which is highly fractured. The
22 residual soil is turned into a red and yellow silt material
23 and it contains a lot of rock fragments and has less

¹²⁵ English Audio Day 4 at 07:26:42

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1 weathered zones. So you have weak silt materials
2 interbedded with rock materials that are not heavily
3 weathered.

4 Silt is cohesionless, meaning material does not
5 have any attraction to particles. It's cohesionless,
6 fine-grained soil. It behaves as if it's extremely fine
7 sand, and it is readily eroded. The thickness of the
8 residual soil at Jamaca de Dios is known to us because of a
9 boring made at the lodge at the top of Project 2. It's on
10 the order of 10 meters.

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

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

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

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1 special features to make conditions stable as you pass
2 through the cloud forest horizon.

3 In residual soil, there are several mechanisms
4 which cause failures. And I'll talk about each of those
5 mechanisms here. And we pointed out in our Report that the
6 areas of seismic--seismically active, so I make just a few
7 comments about seismic and how seismic influences stability
8 of slopes.

9 The "infinite slope," as an engineering term,
10 sometimes called a "translational slide," is caused by a
11 thin sheet of soil sliding on a weak layer which interfaces
12 with a hard layer below. A discontinuity. The slide is
13 controlled by the hard layer. We see a lot of this on
14 steep cuts and in areas of the Jamaca de Dios Project 2 and
15 Project 3.

16 A slight variation is a block slide which is a
17 larger mass of material. The slide surface is deeper, but
18 it is also controlled by a discontinuity, and the slide is
19 influenced by the discontinuity. Shallow circular slides,
20 if you notice on¹²⁶ the graph of the photo, don't have a
21 discontinuity because they occur through the material
22 because of the weakness of the material and in residual
23 soils, they predominantly have slides that exit at the toe.

¹²⁶ English Audio Day 4 at 07:30:56

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1 When you have a shallow circular slide or a block slide,
2 you have a debris pile down on the bottom of the slope and
3 you have a scarp at the top of the slope.

4 Over time, the scarp will degrade and flatten and
5 if you remove the debris pile, you're removing materials
6 which have made that a stable pile, and you'll have
7 additional failures in time.

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

14 On the--for construction of roads and building
15 sites, there's a need to make a cut slope, which is an
16 excavated slope on the hillside. And because of the
17 presence of the residual soil silt, cut slopes will be
18 marginally stable at 60 percent. There are many cut slopes
19 out there now that are at much steeper angles. 125 to
20 300 percent is pretty common. And those slides show signs
21 of erosion, they show signs of block slide¹²⁷ failure, and
22 they show infinite slope failure, but they do remain in
23 place because of the presence of unweathered rock materials

¹²⁷ English Audio Day 4 at 07:32:53

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1 in the cut face.

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

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

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

17 From my experience in North Carolina, materials
18 placed at 60 percent or even a little flatter have safety
19 factors that are indicating the slope is marginally stable.

20 Silt residual soils are very poor construction
21 material. Water influences their performance. They turn
22 wet and soft with small addition of water. They're
23 difficult to compact in wet climates because you have to
24 control water to get adequate compaction.

25 And typically to make improvements with silt

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1 residual soils, you need to use engineering measures, as
 2 Eric Kay has indicated he has done on some of his work.
 3 Erosion is a long-term and slow process, but it adds up.
 4 The products of erosion enter the natural drainage
 5 channels, they turn into sediment downstream.

6 We have observed¹²⁸ on the Jamaca de Dios site
 7 cohesionless silt which is readily eroded, even on flat
 8 slopes. Road slopes at eight and 10 percent show deep
 9 erosion channels. Erosion is caused by removing vegetative
 10 cover and excavation into the residual soil. And erosion
 11 control, which is heavily managed in America by regulation,
 12 is very difficult to control during construction. Erosion
 13 during construction is a challenge.

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

¹²⁸ English Audio Day 4 at 07:35:16

1 downslope side.

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

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

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

24 This is a development site in Project 2 where at
 25 Location B on the slide, the rotational failure has removed

1 a small retaining wall at the toe of the slope and at
 2 Location A, the retaining wall has actively been damaged
 3 and repairs have not yet been performed.

4 This is--we identified as a rotational slide.
 5 This is a development project--a development lot in Project
 6 2 site, and in the upper right, you see a red scarp face.
 7 You see a green line below that of vegetation and below
 8 another red scarp face. The land is very bumpy and
 9 hummocky, and it basically says there have been multiple
 10 failures in the residual soil on this site.

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

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

23 When we made our hike, you can see the trail of
 24 the hike that we took. We took readings using a Brunton
 25 Pocket Transit, measuring the slope, and we ranged--our

1 slope ranged from 65 to 80 percent at the locations
 2 identified in the little yellow circles. These slopes
 3 confirmed to us the topographic map that is used as the
 4 background for this slide.

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

12 We used the topo map to develop slopes and we
 13 determined, as I state in the red and quoted in our report,
 14 that "slopes in the east half"--that's Slopes 4 and 10 on
 15 the graph--"are equal to or flatter than slopes in Project
 16 2."

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

22 We've seen suggestions in Report Appendix B to
 23 Eric Kay that only 14 percent of the area in Project 3 has
 24 slopes steeper than 60 percent. And they compare that to
 25 19 percent of the area in Project 2. Our concern is that

1 this analysis that was performed at the request of Eric Kay
 2 uses to topographic contours that were produced by the
 3 analyst. We don't know the smoothing factors that were
 4 used there, and we can't really compare the contours
 5 because they only provided an oblique view of those
 6 contours in that document, but it's clear to us that the
 7 contours used did not emphasize the incised valleys that
 8 are identified in the 1984 topo map. Those valleys which I
 9 show on the lower left side of the Project 3, Jamaca de
 10 Dios, in this graph. The contour lines are closer together
 11 which means steeper slopes.

12 I was asked what it would take to build roads and
 13 building lots and to consider the disturbance footprint.
 14 So we realize that the existing terrain, steep as it is, is
 15 in equilibrium with the vegetative cover. The Jamaca de
 16 Dios drainage systems and seepage patterns and vegetation
 17 are stabilized, but when we do development, we excavate and
 18 place fill and we influence surface drainage and seepage
 19 patterns, and we modify vegetative cover, all of which may
 20 lead to failures in residual soils.

21 And steepness of the terrain increases the height
 22 of the cut slopes and the steepness of the terrain requires
 23 more fill to create development and flat terrain.

24 In our review, we found that the disturbance
 25 footprint was 1.5 to 1.7 times the road width. And this

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1 was used by Pieter Booth, the next expert, talking about
 2 biologic influences.

3 We developed a very simple sketch showing a
 4 65-percent slope, which is common in the Jamaca de Dios
 5 Project 3. And identifying a 300-percent cut slope. And I
 6 just want to interject here that in my report, I also used
 7 photographs to evaluate the slopes as Eric Kay did.
 8 However, when I took photographs, I was very careful to
 9 take the photographs so that the slope was very
 10 identifiable, not at an oblique angle but at an angle
 11 perpendicular to the slope, and we used photographs in that
 12 way to evaluate the slope. A lot of the cut slopes were at
 13 175 percent to 300 percent. So we show a 300 percent in
 14 this graph. This is a schematic design for a 10-meter wide
 15 road.

16 And understanding the need to control stormwater,
 17 we left a ditch--room for a ditch, 1 meter, at the bottom
 18 of the slope and seeing all of the erosion on these
 19 surfaces, we laid a stack of gabions 1 meter wide up
 20 against the slope to support a filter to prevent the loss
 21 of materials in the cut slope. And from that we determined
 22 that the impact was about 16 meters.

23 Did a similar sketch using a bench fill,
 24 mechanically stabilized bench fill as Eric Kay had said he
 25 used. And from that, we recognize we can make a smaller

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1 cut. The cut slope is shorter, but the 16--the overall
 2 influence zone is still on the order of 16 to 17 meters.

3 PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Deming, just a
 4 gentle reminder. The Parties agree that your presentation
 5 should not be more than 25 minutes.

6 THE WITNESS: Yeah.

7 PRESIDENT RAMÍREZ HERNÁNDEZ: You still have time.
 8 You still have some minutes. I just wanted to remind you
 9 so that you can take us to what you think is the more
 10 relevant part.

11 THE WITNESS: Right.

12 PRESIDENT RAMÍREZ HERNÁNDEZ: So just--you have, I
 13 think, three minutes left.

14 THE WITNESS: Okay.

15 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you.

16 THE WITNESS: There are engineering measures that
 17 can be used to improve stability of slopes. Eric Kay
 18 imposed some of them. Soil nails and structural members to
 19 retain¹²⁹ cut slopes in place have been utilized in residual
 20 soil and recommended at this site at the lodge location by
 21 local engineers.

22 And we've already talked about vegetation and
 23 filtering to prevent loss of materials through erosion.

¹²⁹ English Audio Day 4 at 07:47:02

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1 So in summary, we find that the Jamaca de Dios
 2 residual soil is very erratic. It is controlled--the
 3 stability is controlled by very weak silt materials present
 4 in the residual soil, and it is readily erodible. We did
 5 notice in Jamaca de Dios Project 2 that several of the
 6 slopes are unstable despite measures taken in their
 7 construction, and that we find that Project 3 has steeper
 8 slopes than Project 2, which means that bigger challenges
 9 would be ahead if you were to develop the upper mountain.

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

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

18 And that's the end of my presentation.

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

CROSS-EXAMINATION

22 BY MR. BALDWIN:

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

24 A. Good.

25 Q. Good to see you again.

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1 Now, you visited Jamaca de Dios in--and by the
2 way, before we start, I am going--I'm going to--instead of
3 using phase or project, I'm just going to say original or
4 expansion project.

5 A. Okay.

6 Q. Just so we have a clean transcript here. But you
7 visited both projects, you visited the JDD projects in
8 March of 2018; correct?

9 A. Yes.

10 Q. You guys drove in from Santa Domingo in the
11 morning?

12 A. Yes, we did.

13 Q. And you drove back in the afternoon?

14 A. Yes.

15 Q. How long did you stay at Jamaca de Dios?

16 A. I believe we arrived a little before 9 and we left
17 about 2:00 o'clock.

18 Q. How long were you in the Dominican Republic
19 altogether?

20 A. Two nights. Three days.

21 Q. And did you visit the other projects around
22 Jarabacoa, the other mountain projects?

23 A. No. I only visited Jamaca de Dios.

24 Q. Okay. Have you visited those projects before that
25 March 2018 visit or after that March 2018 visit?

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

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

6 A. Taiwan. Worked on the Subway in Taipei. Several
7 months in Taiwan. Afghanistan, Kundoz, problems with
8 construction of a military base, resolved the problems.

9 Germany. I did foundations for the design of the
10 U.S. Embassy in Germany. New Zealand, evaluated damage to
11 a very large stadium and came up with measures to repair
12 the damage. I have the list on my presentation.

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

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

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

23 Do you build stuff?

24 A. That is my claim bio. It outlines those claims
25 that I have worked on. I build a lot of stuff. I produce

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1 drawing sets. I produced an excavation design for a
2 nuclear power plant in south Texas, 80 drawings. Road
3 design, stormwater collection design. I submitted to
4 the--submitted and approved by NRC for construction.

5 Q. Okay. Nuclear Regulatory Commission?

6 A. Yes.

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

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

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

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

25 A. Yes.

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

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

4 Q. That's good.

5 So do you have experience--you have experience
6 dealing in projects in the United States and the regulatory
7 and legal regime in those projects. Do you have experience
8 in working in the regulatory and legal regime and
9 requirements in the Dominican Republic?

10 A. No, I do not.

11 Q. Okay. What about--

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

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

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

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

23 A. As I said, I haven't seen the other projects. But
24 I do point out that the Jamaca de Dios soil conditions are
25 largely influenced by the decomposition which is

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1 rainfall-oriented. And even at the upper mountain it's
2 increased in the cloud forest region. And so I would think
3 that--it depends on those other sites if they have the same
4 amount of rainfall, if they have the same influence of
5 decomposition.

6 Q. Okay. And do you have any environmental
7 experience in addition to your engineering experience?

8 A. In my career I worked on many hazardous waste
9 sites in the United States and done remedies for hazardous
10 waste sites but not much biologic diversity and that kind
11 of subject that is here with the parks.

12 Q. So your cloud forest experience comes from what,
13 where?

14 A. Only discussions with Pieter Booth. He explained
15 to me what it was. I observed it when I was there. Clouds
16 came in, lifted and went over the mountain. So my cloud
17 forest experience is very thin.

18 Q. You didn't attribute that, though, to Mr. Booth,
19 did you, when you were discussing cloud forest issues?

20 A. No, I did not.

21 Q. In your Report, you're looking at--

22 MR. BALDWIN: If we could go to Paragraph 46 of
23 Mr. Deming's report, Larissa. It's on page--I don't know
24 what page it's on. 25. Thank you. And if you could blow
25 up 46, please. Go to the next page, please. Blow up that

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1 first paragraph. There we go.

2 BY MR. BALDWIN:

3 Q. Now, here you state--in the middle of this thing,
4 you state that, "We estimate the resulting area disturbed
5 by"--who is the "we," by the way?

6 A. I'm referring to myself and to the support staff
7 in my firm.

8 Q. Okay. Understood. So "We estimate the resulting
9 area disturbed by construction in Project 3"-- we're
10 calling the expansion project--"to be approximately
11 16 meters wide for a 10-meter wide road."

12 So your calculations with regard to disturbance
13 and those issues relate to a 10-meter road; right?

14 A. Correct.

15 Q. Are you aware that the Ballantines only--or that
16 the permit that the Ballantines were seeking was for a
17 6-meter road?

18 A. No, I'm not aware of that.

19 Q. You showed some photos of the expansion project.
20 You showed some roads and there were--you know, you called
21 them failed or whatever because there were water kind
22 of--whatever you want to call it--you know, channels going
23 through where the water was eroding the area around that.
24 Do you remember that?

25 A. I don't think the erosion was called a failure.

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1 Q. Okay.

2 A. It is a mechanism for losing soil, but--

3 Q. That's my apology. So you talked about erosion,
4 though. You mentioned that there was erosion on this.

5 A. Yes.

6 Q. When one builds a road you do some earthwork for
7 the road and then you do other things. And when you're
8 building a road, you might do earthwork for the road but
9 then you do other things, pave it, put up the support
10 structures, things like that; right?

11 A. Correct.

12 Q. Would it make a difference to you that there was
13 erosion there--if the earthwork had been done on there but
14 the person who was building the road wasn't allowed to do
15 any other work because they were ordered to stop doing
16 anything with the road. Would that--would that explain why
17 there was erosion if the road wasn't completed with the
18 proper controls?

19 A. The erosion photographs were used to exhibit the
20 fact that the material, the residual soil--silt materials
21 are readily erodible and they need control. I do accept
22 that the road built in the lower portion of the mountain
23 had erosion control, stormwater management. And, yes, it
24 was controlled at that point. I fully would expect that
25 the future road would be paved similarly. But the

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1 photographs are to exhibit the erodibility of the material
2 and the need to control erosion during the construction
3 time period was identified as a challenge in my
4 presentation.

5 Q. Okay. So let me--let me ask you this, then. Your
6 opinions that you have in your report concerning soil
7 stability, erosion, engineering, residual soil, backfill,
8 you think those would be applicable to any project in the
9 cloud forest but you haven't visited any of these other
10 projects; right?

11 A. The cloud forest has extreme measures because of
12 its moisture. Moisture softens these materials. And, no,
13 I have not visited the other projects.

14 Q. And so you can offer no opinion as to whether the
15 expansion project at Jamaca de Dios or its road is
16 environmentally unique in any way to the other projects in
17 the area?

18 A. Environmentally unique. I don't see how--the
19 residual soils at Jamaca de Dios are created by the
20 moisture conditions there over centuries and I don't know
21 the moisture conditions at the other sites, so I don't know
22 if they're similar or different.

23 MR. BALDWIN: Thank you, Mr. Deming.

24 PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Herrera.

25 MR. HERRERA: Thank you very much, Mr. President.

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REDIRECT EXAMINATION

BY MR. HERRERA:

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 that was mentioned by him based on your questioning not based on what the Claimant asked. The Claimant didn't ask about pictures.

BY MR. HERRERA:

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

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1 have to move on to another subject because that was not
2 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 Claimant, please.

BY MR. HERRERA:

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

MR. BALDWIN: Objection.

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BY MR. HERRERA:

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--nor 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.

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MR. HERRERA: You asked him about the work he had done.

PRESIDENT RAMÍREZ HERNÁNDEZ: I think the question is relevant.

BY MR. HERRERA:

Q. How important is the soil, condition of soil for the work that you've done?

A. Well, in anything we design foundations for or to build upon, we have to understand the materials that are available and that we have to rely on to carry load. Slopes and fill and fill slopes are a piece of the science of geotechnical engineering, and they require a substantial amount of understanding of the material types. Testing is typically performed, and a lot of control and evaluation when you do the placement. Very important. Things don't stand up unless you give them a firm foundation.

MR. HERRERA: Great. Thank you very much, Mr. Deming.

PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you, 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.

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1 THE WITNESS: Good afternoon.

2 PRESIDENT RAMÍREZ HERNÁNDEZ: Will you be so kind
3 to read the blue piece of paper.

4 THE WITNESS: Certainly.

5 PRESIDENT RAMÍREZ HERNÁNDEZ: Before you--

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

10 PRESIDENT RAMÍREZ HERNÁNDEZ: Very good.
11 Mr. Herrera.

12 PIETER BOOTH, RESPONDENT'S WITNESS, CALLED
13 DIRECT EXAMINATION

14 BY MR. HERRERA:

15 Q. Greeting, Mr. Booth. You have before you an
16 expert report. Please confirm that you have submitted it
17 before this arbitration.

18 A. Yes, I confirm that.

19 Q. And do you ratify this expert report?

20 A. I do.

21 Q. Are there any corrections that you would make to
22 your report?

23 A. There are. There are three corrections at
24 Paragraph 81. The very first sentence of that paragraph
25 where I refer to inverse distance weighting algorithm, that

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

5 So that sentence should be struck.

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

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

25 MR. HERRERA: Thank you.

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1 DIRECT PRESENTATION

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

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

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

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

22 Work that I think is most relevant to the current
23 matter includes environmental damage assessment and
24 restoration evaluation in the Atlantic Rainforest of
25 Brazil; developing a biodiversity offset for a gold mine in

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1 the Amazon of Ecuador; overseeing and participating in,
2 partially, two and a half years' worth of biological
3 baseline studies in the country of Guyana in some primary
4 tropical forests.

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

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

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

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

25 I'll also talk about the tool that I use for

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1 estimating the damages to the environment called habitat¹³⁰
 2 equivalency analysis. I'll talk about how I applied that,
 3 present the results, and then my main conclusions from my
 4 Expert Report.

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

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

¹³⁰ English Audio Day 4 at 08:17:48

1 There are important areas¹³¹ of relatively
 2 undisturbed primary forest in the park that, once these are
 3 protected, will enhance the recoverability of other areas
 4 that are disturbed. And we know that there are other areas
 5 that are disturbed within Baiguate.

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

21 And in combination with the cloud capture, the
 22 forest provides a--a respite, if you will, for factors that
 23 would enhance evaporation. So it's a very moist

¹³¹ English Audio Day 4 at 08:19:04

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

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

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

15 There's a high level of biodiversity in Baiguate.
 16 125 species of vascular plants were identified in a rapid
 17 biodiversity inventory. 11 were threatened and endangered,
 18 5 threatened and endangered species of amphibians, 2
 19 reptile species, 28 bird species were identified in this
 20 rapid inventory that took place over two days, including
 21 two--one very range-restricted bird that only existed at
 22 levels above 700 meters above sea level.

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

1 really fully capture the biodiversity of a region, the
 2 studies can occur over periods of years, during wet
 3 seasons, dry seasons, using a variety of trapping and
 4 observation techniques.

5 The rapid inventory is usually used to try to
 6 identify areas that might be worthy of protection, knowing
 7 that it's a very small level of effort. And if you produce
 8 results that are as rich as this, you know that it is a
 9 special area.

10 The importance in terms of biodiversity, I think,
 11 is reinforced by the Claimants' expert, Jens Richter, who
 12 also identified five species of threatened or endangered
 13 plants, including the Roble, manacla palm, a species of
 14 Spanish moss, an orchid, and the Hispaniola pine that's
 15 endemic to the island of Hispaniola on the Project 3 area.

16 Just to orient you a little bit, you're probably
 17 getting tired of seeing a map and an aerial photo. But the
 18 thick line that goes across the top of this figure and
 19 across the bottom right of this figure are the boundaries
 20 of Baiguate National Park.

21 Project area 3 is outlined in red, and that bright
 22 yellow line is a GPS track of our expedition-- one-day
 23 expedition to Jamaca de Dios in the Project 3 area and the
 24 hike that we took.

25 I would especially like to point out the very

1 lower point of that--on that--on this figure, which was the
2 high point that we reached on the mountain at about
3 1260 meters.

4 Project 3 area clearly represents the conditions
5 at which you would expect to find cloud forest. If we had
6 a Google Earth map from the 1800s, that entire slope would
7 be mature cloud forest instead of the intervention that we
8 see. It's located well within the range of cloud forest
9 habitat in the Caribbean, and certainly within the island
10 of Hispaniola in the Dominican Republic, where we can see
11 cloud forest at much lower elevations.

12 I mentioned the north sloping--the north-facing
13 slopes of the mountain, which are equally as important as
14 the elevation. And again, Jens Richter confirms this in
15 his Expert Report that the Claimants provided, that he
16 reported areas of largely undisturbed forest within the
17 Project 3 area that showed cloud forest characteristics and
18 I myself observed those and would agree with that
19 statement.

20 This is a photo that I took on our expedition.
21 I'm facing--and I think I got the directions wrong when I
22 tried my clarification. So I apologize. But this is
23 facing down the valley. I'm standing in an area that is
24 highly disturbed. It consists mainly of remnant pasture
25 with a lot of ferns. You can see one palm in there, so it

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1 is beginning to recover naturally.

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

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

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

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

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

5 One of the concepts that I bring forward in my
6 Expert Report is this concept of habitat fragmentation.
7 Project 3 undoubtedly would convert largely undisturbed
8 forest as well as other natural habitat areas into a more
9 degraded status.

10 What happens when you fragment a habitat? If you
11 can imagine a power line or a road going through a forest,
12 this creates a barrier for the passage of fauna. It
13 exposes them to predation. It exposes them to habitat that
14 they're not used to. It modifies the habit that they have
15 evolved in over a millennia. Larger continuous habitats
16 support higher biodiversity than fragmented habitats, and
17 they provide a greater resilience in maintaining genetic
18 diversity.

19 And what I mean by that is when you have these
20 forest fragments that fauna no longer cross over, you're
21 segregating populations. You're creating two segregated
22 populations that will not mix--intermix their gene pool,
23 and that's known to result in lower resilience to other
24 factors like global climate change. It's very unlikely, in
25 my opinion, that cloud forest diversity could be maintained

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1 at any significant level had the Project 3 development gone
2 forward.

3 And to emphasize this idea of fragmentation, I
4 would like to go back to the map with the aerial photo.
5 Ignore for the moment what these colors mean. But all that
6 colored area is a Project 3 area. And we see that it
7 completely bisects the boundary of the park.

8 And what happens there is if a development were to
9 occur on the Project 3 area, it would completely isolate
10 the eastern part of the park from the rest of the park.
11 Several things happen there. When you have primary forest,
12 primary forest is a seed source for more disturbed areas to
13 enable their recovery, secondary forest for even more
14 degraded areas.

15 We know that the area to the east there is fairly
16 degraded. So with that development, it would be completely
17 cut off and really present a formidable geographic barrier
18 for the recovery and the natural restoration of that area.

19 This is just an extension of the previous flow
20 chart I showed you linking the terrestrial habitat again to
21 the biodiversity and the provisioning service of water
22 capture, which I've already spoken about.

23 Habitat equivalency analysis is very
24 well-accepted. It has been applied since the mid '90s. It
25 was developed by the National Oceanic and Atmospheric

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1 Administration in the U.S. to deal with large environmental
2 damage cases. Since then, it's been applied in a variety
3 of different settings.

4 It's adopted by the EU and the Environmental
5 Liability Directive. It's been adopted since 2013 by the
6 Government of Mexico as a way of compensating the public
7 for losses to the environment.

8 And it's essentially used to estimate losses over
9 time. So there is a discounting factor. And if you think
10 about an environmental impact and the recovery trajectory
11 for that, the loss to society is over that entire recovery
12 trajectory.

13 So I use HEA in this case to estimate the loss in
14 the ecosystem services over time should Project 3 go
15 forward, and I call this the development scenario, and then
16 the gain in ecosystem services over time should Project
17 3--the Project 3 area be allowed to recover naturally, and
18 I call that preservation scenario.

19 And the first step in conducting a habitat
20 equivalency analysis is to determine what's the footprint
21 of the impact. And I use several sources of information
22 for this. The first is the Claimants' Amended Statement of
23 Claim where they state that the total area is 283,000
24 square meters. Or if you think in hectares, 28.3 hectares.
25 20,000 square meters of that would be devoted to a boutique

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1 hotel and spa, 10 percent of that total would be devoted to
2 green space, and the remaining would be available for
3 development by dividing into 70 lots.

4 So within those 70 lots, you'll have the
5 footprints of the buildings, the landscapes areas, gazebos,
6 whatever else the property owner wants to put there, as
7 well as the road footprint.

8 For estimating a road footprint, I used a road
9 length that was assumed to be 2.5 kilometers. That came
10 from a meeting--it was reported to the Ministerio Ambiente
11 at a meeting at Jamaca de Dios in 2013. The biggest piece
12 of information that I was missing was a site plan.

13 As far as I know, the Ballantines hadn't submitted
14 a conceptual design. So I relied on the conceptual design
15 for the Jamaca de Dios project and extrapolated that to the
16 Project 3 area.

17 And then I also adjusted the footprints for the
18 road and the buildings according to input from Peter
19 Deming, as he described.

20 So this is a photo--satellite photo where I have
21 draped over the conceptual plan for Phase 1, and it's
22 showing the division of the lots, and we digitized the
23 outlines of all of the structures that existed there at the
24 time of the satellite photo, which, if I'm not mistaken,
25 was January of 2018.

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1 So it's not a Google Earth image. It's a
2 high-resolution satellite image that we downloaded from an
3 available service.

4 The next step and probably the most complicated,
5 and to me the most interesting, was to determine the level
6 of ecosystem services provided under its current state. So
7 if we imagine that this--that this entire area would have
8 been cloud forest at some time, precolonial time, we can
9 understand that that area would have offered 100 percent of
10 the services, the ecological services, that a cloud forest
11 can possibly support.

12 So what we want to do is estimate what the level
13 of services is, depending on the different amounts of
14 intervention. And for this we rely on information
15 provided, again, in Jens Richter's Expert Report, where he
16 surveyed the entire--or most of the area of Project Area 3
17 and identified the land cover types within that.

18 So in this figure we show--and I'll present it in
19 a table in a minute--his categorization of the vegetation
20 types. We ground-truthed that or we QA'd that, quality
21 assurance checked that, if you will, against the satellite
22 image. And then on my walk, I observed at least the areas
23 that I walked that were in common ¹³²to the areas that Jens

¹³² English Audio Day 4 at 08:33:10

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1 Richter walked. I would be in agreement with the way he
2 classified those vegetation types.

3 So this table--bear with me. It's got a lot of
4 numbers. But on the very left-hand side, we have the
5 classifications according to Jens Richter, the approximate
6 areas associated with each one of those from that previous
7 figure, those different colored areas or the areas
8 corresponding to each one of those.

9 I then calculate the proportion of that classified
10 area relative to the 20--the 28.3 hectares. And then I
11 determine what level of baseline ecosystem services I think
12 that each one of those areas provides under its current
13 condition.

14 So at the high end, we have largely undisturbed
15 forests which are primary forests that have very minor
16 intervention, and I conclude that that's probably providing
17 about 80 percent of the total maximum service level.

18 And at the low end, we have recently abandoned
19 agricultural land. And I conclude that that area is
20 characterized by that kind of land cover type would
21 be--would offer a service level of only about 20 percent.

22 I multiply those service levels by the proportion
23 of area, I sum those, and I conclude that overall, the
24 Project 3 area in its current condition provides an
25 ecosystem service level of 52.45 percent.

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1 PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Booth, just to
2 give you a heads-up that you have four minutes left.
3 THE WITNESS: That's perfect. Thank you.
4 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.
5 THE WITNESS: Thank you very much, Mr. President.
6 Just to show this graphically, the degraded
7 original forest and largely undisturbed forest, which are
8 the highest-value classification of land, if you will,
9 occupies about 68 percent of the Project 3 area.
10 My next step was to determine the level of
11 services that the natural habitat provides after it's been
12 converted, so after the Project 3 area has been
13 constructed.
14 I think it's fairly intuitive that whatever may
15 exist there naturally right now, if you put a road over it
16 or a building over it, it's no longer providing any
17 ecosystem services, so I assign a level of zero for that
18 level of intervention.
19 For landscaped areas, I assign a service level of
20 20, roughly equivalent to the recently abandoned
21 agricultural fields. Landscaped areas are highly
22 maintained. Homeowners may apply pesticides, may trim
23 plants, may pull some plants, add another plant. So it's a
24 very dynamic, changing system, and will remain at that
25 level in perpetuity.

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1 For a conservation scenario, we also need to look
2 at the period of ecosystem service recovery. So either
3 after the project is built or if the area is preserved, how
4 quickly do things recover. I rely on a rich bibliography
5 on recovery of humid tropical forests and conclude that the
6 entire area will fully recover within a period of about 60
7 years if it were preserved.
8 Under a development scenario, the only thing
9 that's going to recover are the preserved green spaces.
10 Everything else is either going to be zero or it's going to
11 stay at that 20 percent for--in perpetuity. The green
12 spaces are only going to recover to about 80 percent
13 because of the high degree of fragmentation that would
14 exist on that area.
15 It's important to note that for the conservation
16 scenario that 68 percent that is in a fairly advanced stage
17 of recovery will recover much more quickly. So that
18 60 years is just for the entire area to recover to
19 100 percent.
20 The results of the HEA for the Project 3 in an
21 undeveloped state, we start with the 28.3 hectares or
22 283,000 square meters, with an average--an area
23 weighted-average ecosystem service level of 52.45 percent
24 that recovers to 100 percent in 60 years. At the end of
25 that period--we have a gain of 47.55 percent at the end of

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1 that period.
2 Under the developed scenario, we start with the
3 same assumptions. The total area weighted-average
4 ecosystem service level will decrease to a low of 13
5 following the construction, and then it really only
6 increases to 15 percent just from the preservation of those
7 green areas, green spaces, after 40 years.
8 And thinking about in terms of environmental
9 damages, when these annual losses are discounted to present
10 value, I estimate that it would take an area of 486,000
11 square meters of former agricultural land to actively
12 restore the lost services to society of a Project 3
13 development.
14 And this is just a graph to simply illustrate the
15 two. Okay.
16 PRESIDENT RAMÍREZ HERNÁNDEZ: Your time is up.
17 You have 30 seconds if you would like to wrap up.
18 THE WITNESS: I'm on the conclusion slide.
19 So Bague National Park is very important to the
20 diversity--protecting the biodiversity of the Dominican
21 Republic. 18 hectares on Project 3 are largely undisturbed
22 forest. They're part of a very important ecological
23 corridor that goes all the way from that eastern portion to
24 the El Mogote del Pinar Quemado on the opposite side.
25 Breaking that up will highly disturb that, not

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1 just the gene flow, but also the recoverability of the rest
2 of the area. And development of the Project 3 will result
3 in irreversible loss or degradation of habitat as well as
4 inhibiting recovery on the eastern portion and other areas
5 of Bague National Park that are nearby.
6 Thank you.
7 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you very much,
8 Mr. Booth.
9 CROSS-EXAMINATION
10 BY MR. BALDWIN:
11 Q. Good evening, Mr. Booth. It's great to see you
12 again.
13 A. Good evening.
14 Q. I hope we've saved the best for last here.
15 Mr. Deming--you were here for Mr. Deming's
16 testimony; right?
17 A. I was.
18 Q. And Mr. Deming said that he didn't look at any
19 other projects in and around Jarabacoa. Is the same true
20 for you?
21 A. It is.
22 Q. So the only one you visited was JDD, the original
23 and the expansion project?
24 A. That's correct, what I call Project 3.
25 Q. Okay. So I'm just going to do the original and

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1 the expansion, just to make it easier.

2 So you talked about a lot of things that you did

3 with regard to the expansion project at Jarabacoa. Did you

4 do a habitat equivalency analysis on any other mountain

5 project in and around Jarabacoa?

6 A. My work was restricted just to the Project 3 area

7 and the expansion, if you will. I did not do any analysis

8 of any other properties or projects.

9 Q. Okay. I'll run through our quick questions here.

10 But before that, whose decision was it not to look at any

11 of the other properties? Was that your decision?

12 A. I was asked as part--to develop a scope of work

13 for evaluating environmental impacts and damages to the

14 development that was proposed for Project Area 3 or the

15 expansion area.

16 Q. Okay. So let me just go through these just to

17 make sure, just so we're all clear.

18 Did you do a developmental impact analysis on any

19 other project in or around Jarabacoa?

20 A. I'm not sure what you mean by developmental impact

21 analysis, but I did not perform any work or do any

22 investigation at any other property.

23 Q. Okay. Same for a biodiversity inventory, you

24 didn't do that at any other property?

25 A. I didn't conduct a biodiversity inventory in

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1 Jamaca de Dios or the expansion project either. So, no,

2 nowhere else.

3 Q. You relied on the rapid one; right?

4 A. That plus other information available, information

5 for Baiguatae.

6 Q. And did you perform a land cover classification

7 analysis on any other project around there?

8 A. I did not.

9 Q. Okay. And what about an ecosystem services

10 recovery analysis? Same?

11 A. I only worked on the Project 3 area.

12 Q. Okay.

13 PRESIDENT RAMÍREZ HERNÁNDEZ: Counsel--

14 MR. BALDWIN: I'm sorry. Okay. Asked and

15 answered. Okay. Even my own client is saying asked and

16 answered.

17 In this--I guess that's the time to move on. I

18 only had 14 more points to ask.

19 THE WITNESS: I would have asked the president at

20 that point.

21

22 BY MR. BALDWIN:

23 Q. You talk about the Baiguatae National Park being

24 special and then--but when you gave specifics, you were

25 talking about things that are endemic or native to

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1 Hispaniola, things that are--you talked about them being

2 sort of native or found in the Caribbean or in the

3 Dominican Republic.

4 So when you talk about Baiguatae National Park,

5 you're not stating that this particular park is more--you

6 know, that the land that's right outside the boundary of

7 the park--you say the boundary comes up on a ridgeline.

8 And you're not saying that the land on one side is really

9 valuable--you know, the 5 meters this way is really

10 valuable, but the 5 meters this way is not; right?

11 When you talk about Baiguatae National Park being

12 valuable, you just mean that, you know--you know, this type

13 of forested type of thing is something of value; right?

14 A. I don't think I ever used the world value, C

15 Counsel.

16 But I rely on the information--the available

17 information on the biodiversity of Baiguatae Park, its

18 geographical location, the fact that it supports cloud

19 forests, and the literature on the global imperilment or

20 the global destruction of cloud forests, to make the

21 assertions that I did, that it is a unique area from a

22 biodiversity standpoint.

23 Q. Let's talk about cloud forests. So you say in

24 your Report--and you had it up here on the presentation

25 again--that specifically in the Dominican Republic, or

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1 Hispaniola, that cloud forests can begin as low as

2 350 meters above sea level; right?

3 A. In the Dominican Republic, yes.

4 Q. Yes.

5 So you don't know where the cloud forests are in

6 any of these other projects. And, again--you already said

7 you didn't know. But you don't know about the cloud

8 forests in any other project, just to make sure; right?

9 A. Well, you're talking about, I think, two different

10 things. One is the zone within which you would expect

11 cloud forests to exist, all other conditions creating cloud

12 forests being equal, and then whether cloud forests are

13 there.

14 I think at the beginning of my presentation, I

15 described that you would expect that whole area, if we had

16 a Google Earth image from precolonial times, to be covered

17 by cloud forest because it meets all the requirements for

18 the conditions in which cloud forests evolved over the

19 eons.

20 Q. What are those conditions?

21 A. Those conditions are primarily a combination of

22 the elevation and the orientation of the slopes relative to

23 the trade winds in this case carrying in the warm air that

24 travels up the slopes, condensing moisture.

25 Q. Okay. So if there was another project very close

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1 to Jamaca de Dios and that project was, you know,
2 950/900 meters, and it was also north-facing, would you
3 expect that to have the same?

4 A. All conditions, all similar conditions being
5 equal, on the island of Hispaniola, you might expect cloud
6 forest to have evolved in that location. That doesn't mean
7 that they would necessarily be there.

8 Q. Okay. And you did talk a lot about the rapid
9 inventory. It was on one of your slides. It's in a lot of
10 your report. But isn't it true that this rapid inventory
11 that was done by Santos did not transect JDD? They didn't
12 go with JDD?

13 A. That's what I understand, yes.

14 Q. Okay. Almost done.

15 So, Mr. Booth, because you didn't visit any other
16 projects, you can't say whether or not any or all of your
17 opinions are equally applicable to La Montaña, Jarabacoa
18 Mountain Garden, Paso Alto, Quintas del Bosque, or any
19 other of these projects; right?

20 A. Which opinions or conclusions are you referring
21 to, Counsel?

22 Q. Any of them. Any of them about JDD, the ones
23 you've made about the expansion project. Can you say
24 whether they're applicable to any of these other projects?

25 A. I can't opine on what impacts may or may not have

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1 occurred on any other projects because I did not visit
2 them.

3 Q. Great. Thank you.

4 A. And I don't understand the nature of those.

5 MR. BALDWIN: Sorry for interrupting.

6 Thank you, Mr. Booth.

7 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you.

8 MR. HERRERA: Thank you, Mr. President.

9 REDIRECT EXAMINATION

10 BY MR. HERRERA:

11 Q. Mr. Booth, is it important to have visited the
12 other projects to determine the environmental impact on the
13 expansion project?

14 A. No. I think it would be irrelevant and may be
15 distracting.

16 Q. And why is that?

17 A. Well, because environmental impacts are very
18 site-specific. They depend on the existing conditions at a
19 site, and as I think I demonstrated, there are a variety of
20 different land cover types on the property.

21 I didn't really get into the slope factors,
22 because without having a site plan, I couldn't really
23 understand where different things would be placed. But it
24 would also depend on the nature of the development.

25 If you base a--a--your assumptions on development

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1 of the Project 3 area or the expansion area on what was
2 done lower down the mountain--and I really have no basis
3 for making any other assumptions--the area was planned to
4 be divided into 70 lots. It was very likely to be a fairly
5 high-intensive land use replacing natural habitat.

6 MR. HERRERA: Thank you very much. Thank you
7 Mr. President.

8 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. Let's agree
9 on what is going to happen tomorrow. I believe you have
10 discussed--

11 MR. ALLISON: We have discussed, and I believe the
12 Parties--

13 PRESIDENT RAMÍREZ HERNÁNDEZ: It's a joint
14 proposal.

15 MR. ALLISON: -- would jointly propose that
16 closing statements begin at noon tomorrow.

17 PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Booth, thank you
18 very much. Sorry. We don't want to keep you here.

19 (Witness steps down.)

20 PRESIDENT RAMÍREZ HERNÁNDEZ: Sorry.

21 MR. ALLISON: Closing statements begin at noon or
22 any time thereafter that's convenient for the Tribunal, and
23 proceed with two hours for the Claimant, a 15-minute break,
24 and two hours for the Respondent.

25 MR. Di ROSA: We agree with the starting time,

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1 Mr. Chairman, but we would just ask for a break of half an
2 hour to get organized for our response.

3 MR. ALLISON: We'll leave it to the discretion of
4 the President, but we would like them not to have a half an
5 hour to react to our closing statement before they begin
6 theirs.

7 PRESIDENT RAMÍREZ HERNÁNDEZ: If my colleagues
8 agree, let's keep it at 20 minutes.

9 MR. ALLISON: Thank you.

10 PRESIDENT RAMÍREZ HERNÁNDEZ: And what I would
11 expect is that everybody will have had lunch, because we
12 will go directly. And the Tribunal may have some
13 questions. So we may--we may take more than two hours.
14 And I know you have two hours, but please take into account
15 that we may have some questions on that.

16 MR. ALLISON: Thank you.

17 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. I will tell
18 you to rest, but I think you're not going to rest. So see
19 you tomorrow at noon.

20 (Whereupon, at 6:51 p.m., the Hearing was
21 adjourned until 12:00 p.m. the following day.)

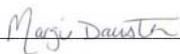
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I, Margie Dauster, RMR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and 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