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I, Natalia Acuña Naranjo, Certified Translator for the Ministry of Foreign Affairs and Worship of the Republic of Costa Rica, appointed under Executive Decree No. DM-086-2010 dated November 9, 2010 published in La Gaceta (Official Journal) number 12 on January 18, 2011, do certify that the translation from Spanish language into English language of the **381-2021** reads as follows:

CASE: 20-002115-1027-CA
Preliminary Injunctive Relief
PLAINTIFF: JBR Capital Ventures SRL
AGAINST: Municipality of Nicoya

381-2021

CONTENTIOUS-ADMINISTRATIVE AND CIVIL COURT OF THE TREASURY, SECOND JUDICIAL CIRCUIT OF SAN JOSE, GOICOECHEA, ANNEX A. At sixteen twenty-five hours on the twenty-second day of March of two thousand twenty-one.

The Court hears the petition for **preliminary injunctive relief** brought by the company **JBR Capital Ventures SRL**, represented by Special Counsel Ernesto Jinesta Lobo, bearer of personal identity card number 401390117, against the **Municipality of Nicoya**, represented by the Mayor, Carlos Armando Martínez Arias, bearer of personal identity card number 5-0337-0263, and Humberto León Abadía, with professional license number 21563, acting as legal counsel for the municipality.

WHEREAS

I.- BRIEF OF THE PLAINTIFF. The Plaintiff petitions for the suspension of the application of the Building Permit Regulations in the Buffer Zone of Ostional National Wildlife Refuge until such time as the merits of the case are definitively resolved, maintaining the validity of the legal framework in effect prior to its publication. It argues appearance of legal standing by virtue that the contested Regulations misinterpret the legality, hierarchy, and higher-order of the law and contravene the univocal rules of science and technology. It argues danger in delay due to a crisis of legal certainty that has halted the investment in and development of the area and indicates the COVID-19 pandemic as a determining factor. As regards balance of equities, it argues that suspending application of the Regulations would benefit the homeowners and residents in the area surrounding Ostional National Wildlife Refuge and safeguard the principle of legal certainty. It requests that the validity of the current building and environmental regulations be maintained.

II.- BRIEF OF THE MUNICIPALITY. The Municipality indicates in pertinent part that the municipal council consulted with community organizations in the area and the population in general; that the causal relationship of the alleged illegalities is not specified; that the Regulations provide for development in healthy balance with the environment and the conservation of species; and that the rules of science and technology have not



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been violated. It advocates for the principle of *in dubio pro natura* and points out that the Regulations seek a balance between urban development and conservation of the species residing permanently or seasonally in the Wildlife Refuge; that the economic crisis resulting from the pandemic has nothing to do with the sense of insecurity and lack of legal certainty; that the Regulations have not halted the investment in and development of the area; and that responsibility cannot be transferred to the Building Permit Regulations in the Buffer Zone of Ostional National Wildlife Refuge for poverty, layoffs, bankruptcies or the suspension of employment contracts. Regarding the granting of land use certificates as a declaratory administrative action, it provides facts or legal rights that serve as the basis for the adoption of administrative actions by means of which legal rights are created, modified or extinguished and, therefore, the principle of legitimate expectation is not violated by the contested Regulations. It indicates, furthermore, that interest in developing urban projects cannot undermine the public interest derived from environmental protection.

III.- REGARDING THE ESSENTIAL REQUIREMENTS TO ENTERTAIN THE PETITION FOR PRELIMINARY INJUNCTION. A preliminary injunction, considered an atypical fundamental right derived from Article 41 of the Constitution, *i.e.*, *the rule establishing the right to swift and effective justice*, (see Vote 6224-2005 of the Constitutional Chamber), and recognized in instruments of international law, such as Article 8 of the Universal Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights—even with regards to criminal matters—and the American Convention on Human Rights, which in its section on Judicial Guarantees provides not only for compliance with the conditions known in legal doctrine as *fumus boni iuris* (appearance of legal standing), *periculum in mora* (danger in delay), and **balance of equities** for effective implementation, but also the concurrence of the so-called structural characteristics of the preliminary injunction. The foregoing refers to the instrumentality, provisionality, urgency, and *sumaria cognitio* or the summary nature of the proceeding according to which these types of matters are heard. In summary, the aforementioned conditions and characteristics must coincide for the preliminary injunction to be granted in order to protect and provisionally guarantee the purpose of the procedure and the effectiveness of the judgment. Meanwhile, the preliminary injunction in the matter at hand is uncommon in terms of the rule of applicability of administrative actions based on the legal presumption of validity, even when contested (Articles 146.1, 148 and 176, notwithstanding the provisions of Article 169, all of the General Public Administration Law, in combination with Article 19 et seq. of the Code of Contentious-Administrative Procedure). With regard to the conditions for granting the preliminary injunction, the following must coincide as provided for in Articles 21 and 22 of the Code of Contentious-Administrative Procedure: **1) Fumus boni iuris or appearance of legal standing:** In accordance with this condition, for the petition for preliminary injunction to be entertained, a "seriousness of the claim" must exist, *i.e.*, there must be a likelihood of success such that,



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at first glance, the claim does not appear to lack seriousness or to be frivolous. For the doctrine, this is nothing more than the likely confirmation of the substantive rights of the plaintiff in the judgment through analysis in a summary proceeding that in no way can or should imply a pronouncement on the merits of the matter raised, but rather and instead, only an approximation to it, taking into consideration the elements present at the time the ruling is issued that grants or denies the injunction. **2) *Periculum in mora* or danger in delay:** This condition consists of the objectively founded and reasonable fear that the alleged material legal right would be seriously damaged or seriously and irreparably harmed in the time needed to pass judgment in full proceedings. Thus, this condition requires the existence of two elements: serious harm or damage and the delay of full proceedings. Moreover, this condition includes what the doctrine qualifies as the "bilateral nature of *periculum in mora*", also known as a balancing of equities. **2.1.) Serious harm or damage:** The condition refers to the demonstration that the damages claimed as likely to occur to the plaintiff should the injunction not be adopted are indeed likely to occur (real or potential). This includes damages that must be considered "**serious**" and are derived from the alleged situation. In this regard, any damages alleged to be serious must be demonstrated by the rational principle of proof with a minimum rigor of evidence that falls on the interested party, which simply means that it is not enough to simply allege the damage in the aforementioned terms, but rather and also, the real or potential existence thereof must be proven along with the circumstances under which they should be considered "serious" for the party petitioning for the preliminary injunction. Regarding the rigor of evidence that must be demonstrated for these purposes, the circumstances of each case must be taken into consideration, with the exception that such seriousness of damage is able to be determined regardless—to a differing degree—of the aforementioned rigor of evidence, only if such circumstance is clearly deductible from the elements available at the time of the applicable ruling, but only **exceptionally**, in the sense that the Judge is not required to suppose where the party is required to prove. **2.2.) Delay of full proceedings:** This condition refers to the situation that arises on the occasion of jurisdictional procedures that require development and subsequent conclusion, the performance of a series of concatenated actions through which not only is due process guaranteed, but also the issuance of a ruling as close as possible to justice. Compliance with each of the required actions obviously takes time and while, in certain circumstances, it is possible to await the issuance of judgment without prejudice to the alleged legal right, it is true that in many others such wait is able to cause serious damage or, even worse, to make the alleged right null and void, which is where the preliminary injunction acquires special relevance. **3.) Balance of equities:** this is related to the public interest that may be in need of safeguarding against the interests of third parties and, of course, the interest of the petitioner of the injunction, which must be weighted and the petition denied when the damage suffered or likely to be suffered by the community or third parties is qualitatively and quantitatively greater than that suffered or likely to be suffered by the petitioner of the



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injunction should it not be granted.

IV.- STRUCTURAL CHARACTERISTICS OF THE PRELIMINARY INJUNCTION: To determine the merits of the injunction, it is important to take into consideration as indicated above and in addition to the aforementioned conditions that the measure to be adopted has the following structural characteristics: **1.) Instrumentality** and prior independence in relation to the final judgment pronounced in the full proceedings, a matter that also determines the subordination or accessory nature of the measure with respect to the full proceedings within or for the purpose for which it is issued. **2.) Provisionality**, insofar as its effectiveness in principle is extinguished at the time the judgment of merit in the full proceedings is issued or when the circumstances so dictate it. Therefore, it has effects subject to the pendency of such proceedings, as well as and in addition to the permanence in time of the circumstances that were considered for its adoption, characteristics that are based on the intrinsic ability of modification or revocation (*clausula rebus sic stantibus*). **3.) Urgency** to avoid the danger in delay, which justifies the preliminary injunction adopted *ante causam, prima facie* or *inaudita altera parte*. **4.) Sumaria cognitio**, i.e., these types of measures are adopted by virtue of summary proceedings conducted by the Court, without prejudging as to the merits of the case, which in some way substitutes the plenary session required in full proceedings.

V.- REGARDING THE MERITS OF THE PETITION FOR PRELIMINARY INJUNCTION IN THE CASE AT HAND: It is the opinion of the undersigned Judge that the petition for preliminary injunction **has no basis in law** and thus resolves within the framework of the reasoning process developed due to the limitations of a summary process like this one. Regarding the appearance of legal standing, where, following the principle of *sumaria cognitio*, I considered the fact that the purpose of the procedure is the annulment of a regulatory administrative action for reasons of legality, for alleged defects upon forming the administrative action. However, the analysis of the defects in the elements of the administrative action is a matter of substance that must be developed in the judgment of merit of the full proceedings. I have considered that the preliminary injunction seeks the suspension of the administrative action known as Building Permit Regulations in the Buffer Zone of Ostional National Wildlife Refuge and have determined that the petition for injunction meets the structural requirements in that the petition is not frivolous, however, the aspects regarding annulment and interpretation must be reserved for the judgment of merit; therefore, regarding the appearance of legal standing, the condition has been met. On the other hand, the same cannot be said with regard to the demonstration of a serious damage likely to be suffered by the plaintiff should the preliminary injunction not be granted and, therefore, the condition of danger in delay associated with this type of damage has not been met. It alleges a crisis of legal certainty in the affected area that impairs the confidence in planning a future.



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Investment in and development of the area have been halted, indicating that the global COVID-19 pandemic affected the tourism sector. The main argument raised by the plaintiff is the violation of the general principle of law that is legal certainty, a situation that must be proven and declared in the judgment of merit, yet from the point of view of the preliminary injunction, it was not demonstrated that the feeling of legal uncertainty caused serious damage. It did not prove the objectively founded and reasonable fear that the alleged material right would be seriously damaged or irreparably harmed in the time needed to issue the judgment of merit. In fact, the urgency in adopting the preliminary injunction was never mentioned. The mere argument of an alleged violation of a general principle of law such as legal certainty does not automatically create a situation of urgency. Regarding the economic and social crisis experienced in the area, it is important to be clear that the administrative action in question has no relation whatsoever to the COVID-19 pandemic nor to the sanitary measures imposed by the Executive Branch nor to future measures. The impact on the tourism industry is a complicated issue that is dependent on the circumstances surrounding the behavior of the virus. While it is true and obvious that the sanitary measures taken by the Executive Branch to control the pandemic, as well as international circumstances, caused disturbances to the national economy, the argument that the COVID-19 pandemic and its well-known economic and social consequences to prove a danger in delay by enacting the Building Permit Regulations in the Buffer Zone of Ostional National Wildlife Refuge is unfounded. A causal relationship does not exist between the two circumstances, given that the Regulations in question set rules for planning, designing, and constructing new buildings in the buffer zone of Ostional Wildlife Refuge. It is an instrument to maintain the ecological characteristics of the Refuge and to strengthen the comprehensive conservation management model. It is not demonstrated that the sense of legal uncertainty alleged by the representative of the plaintiff caused serious damage to the company. In fact, the damage to the plaintiff was never properly and accurately described, but rather it stated generic aspects of effects on homeowners and residents in the area, arguing diffusely the economic and social crisis. The truth of the matter is that no damage to the company was specified in detail and, therefore, no damage of any kind to the plaintiff was demonstrated. I took into consideration that JBR Capital Ventures SRL is the owner of three properties in the sixth district of Nosara, canton of Nicoya, province of Guanacaste. The company does not have community representation and does not uphold the interests of the community; it only serves its corporate interests as owner of three properties. Due to its nature, it should have presented arguments that demonstrated some form of serious damage to the company. The urgency in adopting the injunction was not demonstrated; the objectively founded and reasonable fear that the alleged material right would be seriously damaged or irreparably harmed in the time needed to issue the judgment of merit was not demonstrated; nor was it demonstrated that application of the Regulations until such time as the judgment of merit was issued would cause irreparable harm to the plaintiff. The way in which the sense of legal uncertainty was argued was not



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enough to demonstrate this condition. Based on the foregoing considerations, it is necessary to hold that the condition has not been met pursuant to the terms of Article 21 of the Code of Contentious-Administrative Procedure. Finally, as regards to the balance of equities, this condition was not met given that in weighing the interests at stake, the corporate interest of the plaintiff who intends to develop tourism projects for profit are weighted against the public interest derived from environmental protection. The undersigned Judge can find no reason to conclude that the contested Regulations prevent the economic development of the area where the properties of the plaintiff are located. In fact, the contested Regulations seek to reduce the environmental impact of construction in the buffer zone of Ostional Refuge, establishing technical parameters for project development, but does not prohibit construction in its entirety in the area. I took into consideration that the corporate interest of the plaintiff cannot undermine the public interest derived from protecting the flora and fauna in Ostional National Wildlife Refuge. In this regard, it is important to observe the precautionary principle in environmental matters or *in dubio pro natura* to prevent the possible degradation of a biological corridor for diverse species of fauna. I considered that the public interest derived from environmental protection should prevail and, therefore, this condition is not met. By virtue of the foregoing, the fact that the conditions for adopting a preliminary injunction such as the one in question were not met in their entirety compels the denial of the petition for preliminary injunctive relief.

THEREFORE

The petition for preliminary injunction is denied to the fullest extent.- **Be it thus notified.- Mr. Pablo Zeledón Hernández, Msc. Judge.-**

[signature]

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JUAN PABLO ZELEDON HERNÁNDEZ – PRESIDING JUDGE

----- Last Line of Translation -----

In witness whereof I issue the present Certified Translation from Spanish into English, consisting of six pages. I sign and seal it in the city of San Jose, Republic of Costa Rica on June 14, 2021. The fees required by law have been duly paid.

Detalle de la tasación			
Número de entero:	408859636	Registro:	CERTIFICACIONES
Boleta de seguridad:		Acto:	TRADUCCIONES OFICIALES
Monto tasado:	125.00	Estado:	PAGADO

Timbre	Descripción	Monto Original	Descuento	Monto Total
005	TIMBRE FISCAL	125.00	7.50	117.50
TOTALES		125.00	7.50	117.50

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