



## Certified Translation

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 **Oral Pronouncement of Judgment** reads as follows:

### ORAL PRONOUNCEMENT OF JUDGMENT

1. Judge: Good afternoon.
2. Parties: Good afternoon.

1. Judge: I think we're all here; I'm missing Gerardo, I don't see him. Let's get started and he can join. Meanwhile, let's start with the general parts. Let me see if there are any communications. Thank you.

We're ready to record, so we're going to get started with the pronouncement of the resolution on the merits of the appeal at hand.

At 3:44 p.m. on June 1, 2021, the first circuit of the Court of Appeals on Contentious-Administrative and Civil Matters of the Treasury convened to announce the results of vote number 193-2021-1 in roman numerals.

On this occasion, seated on the bench are Judge Hubert Fernández Argüello, Judge Ana Isabel Vargas Vargas, and myself, Judge Jazmin Aragón Cambronerero, whose turn it is to preside over this hearing and render the results of the deliberation.

This Court has heard the appeal of the petition for preliminary injunction filed by the petitioner in the proceedings brought by JR Capital Ventures S.R.L. against the Municipality of Nicoya.

Other stakeholders include the State and the National System of Conservation Areas, and as passive intervenor we have the Nosara Civic Association.

The appeal is of the resolution rendered by the judge of first instance, Pablo Zeledón Hernández, number 381-2021, at 2:25 p.m. on January 14, 2021, which rejected the petition for preliminary injunction.

The petition for injunctive relief requests the suspension of the application of the Building Permit Regulations in the Buffer Zone of Ostional National Wildlife Refuge issued by the Municipality of Nicoya and contested in the lawsuit, until such time as the merits of the case are definitively resolved, thereby upholding the validity of the existing legal framework prior to the regulations in question, which is in accordance with the corpus juris. That can be read on image 32 of the lawsuit dated April 21, 2020.

The Court, after hearing the arguments of the parties this morning and prior deliberation, has unanimously arrived at the following conclusions.

First, regarding the evidence to facilitate judgment offered by both the petitioner and the Municipality, specifically in reference to official letter ADIM-11-2021 dated May 5, 2021 by the petitioner and official letter AM-94405 2021 by the Municipality, the Court finds them to be admissible and opportune and necessary to resolve the different grievances expressed this morning. Therefore, it will provide as such in the decision of the Court.



## Certified Translation

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Now, regarding the arguments and the grievances expressed at today's hearing, the Court will first pronounce on the instrumentality and provisionality of the preliminary injunction.

These structural conditions of the preliminary injunction were brought into question by the representatives for the Municipality and the passive intervenor.

They argued that if the preliminary injunction were to be granted at this time, it would, in essence, grant the objective of the full proceedings, which would be irreversible from the perspective that building would be permitted regardless of the provisions of the legal ordinance and, therefore, the preliminary injunction does not meet the structural requirements necessary for approval.

The Court disagrees with these arguments for the following reasons:

I will read the first petition of the lawsuit that was filed in conjunction with the preliminary injunction: to declare the absolute nullification and unlawfulness of the Building Permit Regulations in the Buffer Zone of Ostional National Wildlife Refuge issued by the Municipality of Nicoya and approved by agreement of the municipal council number 014-0194-2020 and published in Gazette number 40 on February 28, 2020. That is the objective of the full proceedings.

The petition for preliminary injunction, based on the previous reading, is not for nullification, but rather suspension of the regulations. It is the typical preliminary injunction par excellence in contentious-administrative matters, claiming the unlawfulness of a general administrative action by the Municipality.

Pursuant to Article 19 et seq. of the Code of Contentious-Administrative Procedure, it is permissible to request injunctive relief to suspend the regulations in question until such time as they are declared invalid by final judgment.

It should be understood and the Court reiterates that the goal is not to obtain the objective of the lawsuit filed simultaneously through injunctive relief. It is merely a typical preliminary injunctive measure that harbors an instrumental relationship with the purpose of the full proceedings. Moreover, it is temporary.

Take note that in the preliminary injunction to be resolved, the suspension of the regulations would be effective until such time as the final judgment on the merits is pronounced, i.e., should the lawsuit be resolved in favor of the respondent, the regulations would regain full validity. The Court holds, therefore, the both the conditions of provisionality and instrumentality are present within the measure brought by the petitioner.

Therefore, it rejects the arguments made regarding the structural conditions and also dissents with the conclusions drawn by the judge of first instance.

Second, regarding the appearance of legal standing, the representative for the passive intervenor claims that in the case at hand, while the appearance of legal standing exists under the terms established in the Code of Contentious-Administrative Procedure, insofar as the claim is not frivolous or clearly baseless, that while it has the appearance of legal standing, in general terms, the lawsuit is flawed.

Basically, the other parties made no argument as to the appearance of legal standing and the judge conceded the fact in the appealed resolution.



### **Certified Translation**

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This Court, after hearing the arguments and reviewing the documentation recorded in the file along with the current regulations, has concluded that the appearance of legal standing does indeed exist in this case and not in negative terms. Basically, the Code of Contentious-Administrative Procedure establishes that the appearance of legal standing exists in accordance with Article 21 provided that the claim is not frivolous or clearly baseless.

Generally, the contentious-administrative judge and, of course, this Court, examines this condition of preliminary injunctions from a negative perspective.

However, often this Court must examine the appearance of legal standing in positive terms when the lawsuit appears to be a serious claim.

What is the essence of the claims made in this process? Basically, from the arguments made in the lawsuit, the representative for the company says it is the owner of three properties located in the canton of Nicoya within the boundaries established as the buffer zone in the regulations in question.

In essence, the lawsuit claims that given these circumstances, the properties are especially affected by these regulations insofar as the petitioner is prevented from exercising its right to fully transform and transfer the properties, as regulated by applicable private property law and, basically, claims that in this case, the Municipality of Nicoya lacks the competence to enact the regulations. To support its claim, it refers to the provisions of Article 7 of Law 9348 and Article 47 of its regulations. Moreover, it claims a violation of different articles of the Urban Planning Law and the Biodiversity Law.

In essence, the petitioner is not questioning the existence of the Refuge or the fragility of the ecosystem, but rather the ability to conduct urban planning provided that it is in accordance with current regulations. That is the essence of what is being claimed.

In examining the regulations related to the case at hand, the Court must note that Article 1 of Law 9348, which entered into effect on March 2, 2016, establishes the following:

The Law in question is intended to establish a special legal framework for Ostional National Wildlife Refuge, hereinafter "Refuge", created by means of the Wildlife Conservation Law No. 6919 of November 17, 1983, expanding its boundaries by means of decree dated July 18, 1985; ratifying its creation by means of provisional regulations to the Wildlife Conservation Law No. 7317 of October 30, 1992, and expanding its maritime boundaries by means of decree number 22551 of September 14, 1993.

The statute provides for the regulation of land use, special rules regarding concessions, the reasonable and sustainable use of natural resources through the active participation of the community and provides legal certainty to those who currently occupy land in the area provided that they comply with the provisions of the law and its regulations.

This special legal framework is based on the technical studies and reports prepared by the Tempisque Conservation Area of the National System of Conservation Areas. This is the legal framework on which the law in questions was developed.



## Certified Translation

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So, basically, 37 years after the creation of Ostional National Wildlife Refuge, a law is enacted that attempts to or establishes a special legal framework applicable to those lands, as was emphatically stated by the lawmaker.

Under these conditions, a series of rules are enacted that are aimed at regulating the right to property in an area that, as was stated at the oral hearing that took place this morning, at the time the park was created and at the time the law was enacted, was already occupied by people who lived in harmony with the special characteristics represented by the Refuge from an environmental standpoint.

In Article 2, paragraph H of the legal framework, the lawmaker established the need for a General Management Plan for the purposes of regulating land use within this region or area, which is defined in Article 2, paragraph H of the law as the planning instrument to fulfil the conservation objectives of the Refuge. It is the basis for the development of other planning instruments and regulations.

Next, it establishes the competence for issuing this General Management Plan. Article 7 of the same law establishes that the General Management Plan must, and I'll read it verbatim: have a General Management Plan prepared in accordance with the Biodiversity Law No. 7788 and its regulations, approved first by the regional council of the respective conservation area after consulting with the local council, and second by the National Council of Conservation Areas.

Such plan must be in accordance with the conservation objectives of the Refuge, contemplate the environmental variable and contain, among other aspects in subsection A, the zoning of the refuge and its respective sustainable development regulations.

Under these conditions, the lawmaker established in Provisional Article 1 of the law that it must be regulated. The regulations were published two years later on May 28, 2018.

Article 47 of the regulations clearly establishes for this Court what is understood as the buffer zone, and I'll read this because it is important to resolve the issue of appearance of legal standing. It says:

Buffer zone: the concept of a protective ring around the protected areas to mitigate the impact of human actions generated within the said geographic area. This area will be defined in the General Management Plan based on the anthropic activities being conducted outside and their possible impact on the focal elements of the refuge. This area can be both on land and at sea.

Basically, based on this morning's hearing, the parties have been consistent in stating that a General Management Plan has not yet been enacted.

The representative for SINAC has indicated to the Court that a plan has been drafted, but that it has faced a number of challenges, including a claim of unconstitutionality. It is currently in the process of definition and while a project is in the works, it has not yet been approved.

The representative for the State has also been consistent in stating that this plan does not exist, that the Municipality could support its actions in other instruments, but that the plan as such has not been approved.



## Certified Translation

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The representative for the Municipality indicated to the Court that the Management Plan does not exist, that indeed the Municipality does not have a regulatory plan and that the regulations were enacted so that it could temporarily preserve the environmental conditions of the area.

So, in essence, what the Court has been able to gather from the arguments presented this morning is that the petitioner's central argument is the lack of a General Management Plan, which is the competence of an executive body, in this case, the National System of Conservation Areas, that one has not been approved, and that the Municipality lacks competence because the law has not bestowed it.

The Court has concluded that the petitioner's central argument has not been refuted by any of the parties.

It is not possible within the parameters of legality to state that the claim is frivolous or misguided; on the contrary, the Court finds the existence of the appearance of legal standing in positive terms, which must be recognized by the Court, thereby dissenting with the conclusions of the judge of first instance regarding the appearance of legal standing, who, incidentally, conducted a rather cursory analysis.

This brings us to the application of the principle of mutual influence. According to this principle, when the appearance of legal standing appears clear in positive terms, the other conditions of preliminary injunctive measures should be examined with greater leniency in order to resolve matters related to the applicability of the preliminary injunction.

Therefore, regarding the condition of serious damage, it must be stated that in accordance with constitutional law, the urban planning law is the [unintelligible] part of environmental law. It is understood that its purpose is to guarantee the right to a healthy, economically balanced environment. In this case, the law is the rule which allows for the development of this right by defending the composition of urban planning regulations, constituting an interest of a diffuse nature, defensible by these means in accordance with Article 10, paragraph C of the Code of Contentious-Administrative Procedure.

In this case, not only was the petitioner's claim of alleged damage rejected in favor of the protection of the interests of a diffuse nature, but also, as an undisputed fact, because it is the owner of three properties within the area described in the regulations in question as the buffer zone, which imposes a series of limitations to its tenements that it considers to be incompatible with the existing legal ordinance.

The issue of damage corresponds to its right to exercise the right to transform and transfer the property, in addition to the limitation on investment in the area and the improvement of value.

The petitioner states that upon creating a buffer zone, it did not take into consideration the environmental variable, but rather the rules of technology and science, which it considers a violation of the legal ordinance.

The Municipality recognizes the inexistence of the General Management Plan—the regulatory plan—and it should also be noted that it goes undisputed that the contents of the regulations in question are primarily urban planning-related; they have no other nature.



### **Certified Translation**

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The very name of the regulations—Building Permit Regulations in the Buffer Zone of Ostional National Wildlife Refuge—establishes the purposes thereof, which is to limit building in the area defined by the regulations as the buffer zone.

The Court has reached the conclusion that the violation of the legal ordinance of the rules established in Law No. 9348 creating a special legal framework for Ostional Wildlife Refuge is such that the Court finds that the arguments of the petitioner regarding damage must be admitted and be considered in this case to meet the condition of serious harm.

Regarding the balance of equities, the Court finds and it is important to indicate that, in this case, the protection of Ostional Wildlife Refuge as a public interest represented by environmental protection is derived from its law of creation and related others, which are intended to safeguard the area in accordance with the provisions of Article 1 of Law 9348 of March 2, 2016, establishing a special legal framework that must be prepared by the different organizations involved in developing the different aspects of the law.

These, of course, include the publication of a General Management Plan to be issued by SINAC. The Court must state that these parameters along with the guarantees established by the law and its regulations, in addition to Article 50 of the Political Constitution, are what protect the area in question.

In the case at hand, it must be noted that the Court does not ignore the existence of the precautionary principle; however, it must also be noted that the Municipality of Nicoya must enact the necessary regulations to protect the area in question.

The issue here is not to allow total freedom to build or develop constructions or urban developments within the area that is Nosara. What the Municipality must do is provide for projects that in some way threaten the environmental balance to be submitted to it for consideration and to alleviate that threat through specific measures on a case-by-case basis, including the possibility, if it sees fit and in accordance with the circumstances of each case, of applying administrative injunctive relief.

The Municipality has stated that a draft regulatory plan is in the works and is expected to be approved in the near future, thereby providing the Municipality with an urban planning instrument.

That opens the possibility for preliminary injunctive relief, as has been recognized by case law, prior to the enactment of the regulatory plan if deemed necessary and opportune.

Adhering at this time to the regulations issued by the Office of Urban Planning of the National Institute of Housing and Urban Development, which in accordance with current law, are the rules governing urban development in the area due to the lack of a regulatory plan.

Take note in this case, and this is an important consideration for the Court, that prior to the regulations that entered into effect in February of 2020, the applicable regulations were those established by the Office of Urban Planning, which must still be adhered to by the Municipality for any projects under its purview.

It must also be noted that the disagreement that may exist between the different community organizations in the area cannot prevail over the situation that has been described in the resolution as a violation of legal



**Certified Translation**

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regulations. Under these conditions, the Court has concluded that the resolution appealed herein must be revoked and will provide as such in its decision.

Therefore, and in order to facilitate better judgment, the evidence offered by the petitioner and the lawsuit are admitted. Regarding the appeal, resolution number 381-2021 of 2:25 p.m. on January 14, 2021, is hereby revoked.

In its stead, the petition for preliminary injunction is granted and the application of the Building Permit Regulations in the Buffer Zone of Ostional National Wildlife Refuge issued by the Municipality of Nicoya are hereby suspended until such time as the merits of the case are resolved.

While such suspension is in effect, permits will be granted in accordance with the regulations issued by the Office of Urban Development of the National Institute of Housing and Urban Development.

With the foregoing explanation, pursuant to Article 88 of the Code governing these matters, the parties are hereby duly notified. I ask that you state if you have any other motions for addition or clarification. We'll start with the petitioner, Ernesto?

Ernesto: No, Your Honor.

Judge: Thank you. Gerardo, on behalf of the Municipality of Nicoya?

Gerardo: No, [unintelligible] Your Honor.

Judge: Thank you. Eilin?

Eilin: No, Your Honor. Thank you.

Judge: Thank you. Silvia, do you have anything on behalf of SINAC?

Silvia: No, Your Honor.

Judge: Thank you. Marvin, do you have anything to add or clarify?

Marvin: Just that no pronouncement was made on the evidence we offered. You mentioned the evidence offered by the petitioner and the Municipality, but not the evidence offered by the association.

Kimberly: (Madam Judge, excuse me, Marvin...)

Judge: Yes, that evidence was offered in the court of first instance as part, sorry?

Kimberly: (Madam Judge, excuse me), the camera is...

Judge: Yes, sorry, sorry.

Kimberly: That's perfect, thank you.



### Certified Translation

Judge: Thank you, Kimberly.

Judge: That evidence was offered as part of the lawsuit; it isn't related for the purposes of the preliminary injunction and how it is resolved. I appreciate your clarification. Okay, the other person is part of the public, so I can't ask him a question.

Thank you everyone for your participation through this virtual platform. The Court urges you to continue using the platform to stop the spread and avoid the health crisis we're experiencing in the country. Thank you and good afternoon.

Parties: Thank you, good afternoon.

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

In witness whereof I issue the present Certified Translation from Spanish into English, consisting of eight pages. I sign and seal it in the city of San Jose, Republic of Costa Rica on June 18, 2021. The fees required by law have been duly paid.

Detalle de la tasación			
Número de entero:	408860596	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

BCR 18/05/2021 14:17:59