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Lady

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Cadastral Development Section

Municipality of Osa

Mister

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Municipality of Osa

Subject: Regarding cases related to the
Subdivision and Urbanization Regulations.

Dear Sir/Madam:

This document refers to the inquiry made by the Municipality of Osa to the National Institute of Housing and Urban Development (INVU), requesting advice on regulations concerning the Land Subdivision and Urbanization Regulations (RFU). The inquiries focus on land subdivisions for agricultural, livestock, forestry, or mixed purposes, for which the Local Government presents general cases to assess the mandatory nature of the requirement indicated in paragraph 3 of article 36 of said regulations.

1. Regarding land subdivisions for agricultural, livestock, forestry or mixed purposes

1.1. The Subdivision and Urbanization Regulations contain provisions regarding agricultural, livestock and forestry subdivisions; for which, sections 3 and 50 of article 6 define the type of subdivision, as well as access for the resulting parcels:

ARTICLE 6. Definitions (...)

50. Subdivision of plots for agricultural, livestock, forestry or mixed purposes: Any subdivision that has access through an agricultural, livestock or forestry easement.

3. Access by easement to plots for agricultural, forestry, livestock or mixed use: That means of access to a plot with agricultural, livestock, forestry or mixed use, resulting from a subdivision, which is due to the productive nature of the property they serve.

(The underlining and highlighting do not correspond to the original text).

- 1.2. On agricultural, livestock, forestry, or mixed land parcels, in accordance with Article 32 of the current RFU (Regulations for Urban Planning and Land Use), the coverage percentage is increased compared to the previous regulations. For this purpose, up to 25% of the parcel area is permitted for waterproofing the soil, provided it is distributed as follows:

Percentage of the plot area	Types of buildings permitted
10% of the area of the plot	<p>A single-family home of up to 300.00 m², which can be built on 1 or 2 floors</p> <p>Housing for agricultural workers</p> <p><u>Agritourism infrastructure</u> associated with the agricultural activity that takes place on the plot</p>
15% of the plot area	<p>All of the following buildings, provided they are associated with agricultural, livestock, forestry or mixed activities: Warehouses, stables, greenhouses, wastewater treatment plants, biodigesters, ponds, water reservoirs, corrals, dairies, milking parlors, stables, pigsties, poultry farms, farms dedicated to other minor livestock species, silos, watering troughs, fences, irrigation and drainage works, areas for receiving, sorting, cleaning, dry or refrigerated storage and packing of primary agricultural products; internal roads and livestock walkways.</p>

- 1.3. Now, with regard to the construction of housing, the article indicates that only one single-family dwelling is allowed on each agricultural, livestock, forestry or Mixed-use development, with a maximum area of 300.00 m² (300.00 m² of construction area on one floor or distributed over two floors). However, the possibility of building housing for those responsible for the work involved in the activity carried out on the plot is permitted. That is, there can be two dwellings, provided that the first complies with the defined building regulations (m²), and the second is for the exclusive use of the workers.

- 1.4. Regarding the construction of a swimming pool, it is noted that this is permitted, as it is considered an element that forms part of the single-family dwelling allowed, for the enjoyment of its inhabitants. That is, the area of the pool must be counted as part of the single-family dwelling, so that when adding the area of the dwelling (including the pool), the maximum area permitted for residential use (300.00 m²) is never exceeded.

- 1.5. Regarding the guidelines that determine whether a second home is designated for workers, the Subdivision and Urbanization Regulations do not define this, as it falls outside its scope. However, the current Construction Regulations define the minimum area for units in Article 155.



One-bedroom dwellings (30 m²) are permitted, so workers' housing must have at least that minimum area. Regarding other characteristics, it is the responsibility of the Municipality's technical staff to guarantee and oversee that these residential buildings effectively fulfill their sole permitted purpose: **housing for workers**.

- 1.6. Regarding the meaning of **agritourism infrastructure**, in Opinion No. PGR-C-339-2004 of November 17, 2004, the Attorney General's Office (PGR) mentions the following:

*“Among the modalities with an interpretive-educational vocation are **agritourism**, **cultural tourism** and **ecotourism**.”*

Agritourism seeks to involve participation in traditional agricultural activities on a rural property, including the development of educational programs, recreational activities, and the discovery of the natural and rural environment.”

(The underlining and highlighting do not correspond to the original text).

- 1.7. That is, **agritourism infrastructure** is that which is related to the development of rural and natural tourism activities, which allows the owner of the plot to involve the visitor in the agricultural activities that are already carried out on the site.
- 1.8. Additionally, as in the previous 1983 regulations, the current Urban Planning Regulations (RFU) authorize the development of agricultural, livestock, forestry, commercial, or tourism activities on properties resulting from subdivision that face public streets. In other words, properties with direct access via a public street (not to be confused with agricultural, livestock, forestry, or mixed-use parcels) may incorporate coverage percentages greater than 25% (up to 75%) into their activities. This would allow them to construct larger dwellings, build swimming pools for tourist use within these properties, grant business licenses for the development of tourism-related commercial activities (for example, the construction of cabins or restaurants), as well as any other agricultural, livestock, forestry, or mixed-use activity. All of the above is without prejudice to higher-ranking regulations on the matter.

- 1.9. In conclusion to the above, it is worth highlighting:

- 1.9.1. The parcels resulting from subdivisions for agricultural, livestock, forestry, and mixed purposes are all those that have their access (entrance and exit) through an agricultural, livestock, forestry, or mixed easement. These easements are NOT public roads, since their purpose is to provide access to the parcels for the better use of agricultural production.
- 1.9.2. Properties facing a public road may be used for agricultural, livestock, forestry or mixed activities with minimum areas and percentages of



coverage different from that established in the Parcel Subdivisions with Agricultural, Livestock, Forestry or Mixed Purposes.

1.9.3. When it is necessary to divide a plot of land with resulting parcels of **areas smaller** than agricultural, livestock, forestry or mixed parcels, and it is also necessary to open new access roads to provide entry and exit to these resulting parcels: the provisions contained in Section IV. Urbanizations of the RFU must be complied with.

1.9.4. If it is necessary to build a swimming pool within agricultural, livestock, forestry or mixed plots; this must be counted within the 300.00 m² available for the house.

1.9.5. Understanding that the rules are not retroactive, the current Subdivision and Urbanization Regulations (RFU) are applicable to subdivision processes generated from the date on which it comes into force (September 13, 2020).

2. Regarding the Soil Study and Land Use Capacity for subdivisions for agricultural, livestock, forestry or mixed purposes

2.1. Article 36 of the Regulations for Subdivision and Urbanizations contains the documentary requirements for the approval of subdivisions for agricultural, livestock, forestry or mixed purposes; for which; subsection 3) of said article indicates:

ARTICLE 36. Documentary Requirements for the Approval of Land Subdivisions for Agricultural, Livestock, Forestry, or Mixed Purposes: *The municipality must approve land subdivisions for agricultural, livestock, forestry, or mixed purposes. For the respective approval, the developer must submit at least the following documentary requirements to the municipality:*

(...)

3) Approval document from the INTA Inspection Body for the **soil and land use capacity study** for the

land parceling, prepared by a **land use certifier**

authorized in accordance with the provisions of the Regulations to the Law on Use, Management and Conservation of Soils, Executive Decree No. 29375-MAG-MINAE-S-HACIENDA-MOPT, the Methodology of the capacity of land use Executive Decree No. 23214-MAG-MIRENEM, and its reforms or the regulations that replace them.

(...)

(The underlining and highlighting of the text do not correspond to the original)

2.2. In light of the aforementioned paragraph; it must be clear that this requirement arises from the Law on the Use, Management and Conservation of Soil, Law No. 7779, which has as its fundamental purpose



To protect, conserve and improve soils through integrated and sustainable management with other natural resources, by promoting and implementing appropriate environmental planning.

2.3 . Therefore, to demonstrate that the subdivision to be carried out is for an agricultural, livestock, forestry or mixed purpose and not for urban development, the interested party must have a **soil study and land use capacity assessment** prepared by an authorized Land Use Certifier

2.4. **The soil and land use capability study identifies the type of Land Use Capability Class** on the property to be subdivided, in accordance with the Methodology for the determination of the capacity for use of agroecological lands in Costa Rica, Executive Decree No. 41960-MAG-MINAE; which indicates in its article 3:

*“Article 3. This Methodology is mandatory for the purposes of **determining the capacity for use of land in studies of agricultural, livestock, forestry development, protection of natural resources, credit, land titling, land management, territorial and cadastral planning, regulatory plans, land divisions, environmental impact assessment studies and changes in land use.**”*

2.5. This methodology categorizes soil into eight classes represented by Roman numerals (I, II, III, IV, V, VI, VII, VIII), in which there is a progressive increase in limitations for the development of agricultural, livestock, and forestry activities. Each of these land capability classes is based on the maximum permissible limits for the development of a specific agricultural, livestock, or forestry activity.

2.6. Likewise, it is important to clarify that when it is possible to divide an existing agricultural, livestock, forestry or mixed parcel into more resulting portions; it is not required to have the Certificate of Conformity of Land Use, since it is not a new subdivision, and it is understood that the subdivision of the existing parcel does not modify its previously existing agricultural nature.

3. **Regarding the cases consulted**

3.1. The inquiries made by the Municipality of Osa focus on land subdivisions for agricultural, livestock, forestry, or mixed purposes. To this end, general cases are presented to assess the mandatory nature of the requirement indicated in paragraph 3 of Article 36 of the RFU (Regulations for Land Subdivision and Urbanization). Since the inquiries concern general cases and not specific situations, all responses are based on the provisions contained in the Regulations for Land Subdivisions and Urbanizations, published in Supplement No. 252 to Gazette No. 206 of November 13, 2019, and its respective amendment, published in Supplement No. 236 to Gazette No. 224 of September 7, 2020.

3.2. Question 1: “When a complete property is subdivided into two parts, with the rear portion accessed via an agricultural easement, and the front portion accessed entirely via a public road (the latter being affected by the passage of the agricultural easement that provides access to the rear portion), the question is: Is it necessary to request certification from INTA for the subdivision that faces a public road, given that it is affected by the passage of the agricultural easement?”

3.2.1. Response: In the case consulted, when subdividing a whole property into two parts, the resulting portion with direct access to a public road will require a soil and land use capability study, provided that the resulting property has an area equal to or greater than 900.00 m² and water is not available. (See Articles 13 and 31 of the RFU). Otherwise, if water is available and there is direct access to a public road, a soil and land use capability study will NOT be required, as it would already be...
applying the differentiated case indicated in article 21BIS of the same regulation.
The following table details what was consulted for the particular case:

Characteristics of the resulting property:	Water Availability	RFU article	Soil study and land use capability assessment	Observation
<p>Minimum area: equal to or greater than 900.00 m²</p> <p>Access: The property must have direct access to the public road.</p>	No water availability is provided	Article 13 Article 31	If required	This subdivision must indicate on the plans that its use is exclusive <u>For agricultural, livestock, forestry, or mixed activities.</u> It does not require the provided in Article 13. Water supply is guaranteed in subdivisions until a building permit is obtained. Given that these lots are not suitable for urban development due to their nature and size, they only require municipal approval.
<p>Minimum area: 90.00 m² when there is a sanitary sewer or treatment plant, case Otherwise, the minimum area must be 120,000 m²</p> <p>Access: The property must have direct access to the public road.</p>	If water availability is provided	Article 21BIS	It is not required	By providing water availability and having direct access to the public road; these properties are considered to be of interest for urban purposes due to their nature and dimensions, they only need the approval of the Municipality, they do not cede area for public use according to article 21 BIS of the RFU.



3.3. Question 2: *“A property zoned for urban use was subdivided into two adjacent parcels, the rear parcel having an agricultural easement, in compliance with the requirements. When the rear parcel seeks to renew licenses and expand permits, the impact of construction projects with building permits for cabins, a restaurant, and hiking trails is presented, considering that the property still has more area designated for forest conservation, livestock farming, and agricultural activities. Should these activities be eliminated, and should renewals of business licenses and further construction permits be withheld to support the development of the infrastructure for these activities, in order to only allow a 300 m² house, a workers' quarters, and agricultural infrastructure?”*

3.3.1. Response: The types of buildings and activities permitted in subdivisions for agricultural, livestock, forestry, and mixed purposes have already been explained in detail in this document (see paragraphs 1.1 to 1.9). Now, with respect to the case in question, it is understood from the wording of the question that: *“a property facing an existing public street was granted commercial licenses and construction permits for the construction of buildings related to tourism and lodging activities; subsequently, this property was subdivided, creating an agricultural parcel at the rear with access via an agricultural easement. As a result of this subdivision, some buildings and commercial activities remained on the rear parcel.”*

If so, the problem lies in the municipal authorization of the subdivision, given that they had commercial licenses associated with the property facing a public street. Therefore, the local government must analyze whether the new activities associated with the agricultural parcel comply with the current Urban Planning Regulations (RFU). It should be noted that the previous Urban Planning Regulations (RCNFU) also did not permit the use of cabins and restaurants.

3.4. Question 3: *“Two properties share an agricultural easement as their only access. A portion of each property is taken to create a new subdivision, which in turn uses the same easement as the original properties. Question: Is it necessary to request certification from INTA, even though the original properties already have agricultural, livestock, forestry, or mixed use, even though the new subdivision uses the same access easement as the original properties and there is no change in its layout?”*

3.4.1. Response: As indicated in paragraph 2.6; where possible by area _____ To subdivide an existing agricultural, livestock, forestry, or mixed-use parcel (pre-existing before the implementation of the RFU) into multiple parcels, a Certificate of Land Use Compliance is not required, as this is not a new subdivision, and it is understood that subdividing the existing parcel does not alter its pre-existing agricultural nature. In this specific case, it must be clear that the resulting parcels must meet the minimum area requirement of 5,000.00 m².

3.5. Question 4: *“A subdivision is presented that mostly corresponds to remains of isolated properties, all the result of previous subdivisions, also agricultural, livestock, forestry or mixed, which due to the expiration of plans did not generate a title, which may end up being enclaved remains of said real folios, affected by the easements already drawn. Question: Is it necessary in the above case to request certification from INTA, given that...”*



same farm remains that have as their only access an agricultural, livestock, forestry or mixed easement?"

3.5.1. Response: For remaining plots of land **originating from previous subdivisions** (before the implementation of the RFU) with agricultural, livestock, forestry, or mixed uses, a Certificate of Conformity with Land Use is not required, since it is not a new subdivision, and it is understood that the subdivision of existing parcels does not alter their pre-existing agricultural nature. It should also be clarified that these remaining plots must meet the minimum area requirement of 5,000.00 m².

Cordially,

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