

Municipality of Nicoya

The Municipal Council of Nicoya, Approves:

As established in article 43 of the Municipal Code, publish in the Official Gazette the Draft Regulation for the granting of building permits in the buffer zone of the Ostional National Wildlife Refuge to initiate non-binding public consultation for a period of ten business days, starting the day after the publication in the official Gazette, comments will be received at the email address planregulador@nicoya.go.cr.

In exercise of the powers conferred on us by article 50, 89 and 169 of the Political Constitution; the Inter-American Convention for the Protection of Sea Turtles, approved by Law No. 7906 of August 23, 1999, articles 3, 4 subsection 1) and 13 subsection a), c) and p) and 43 of the Municipal Code, Law No. 7794; Articles 15, 19, 20 subsection g) and 21 subsection e) of the Urban Planning Law, Law No. 4240; Articles 28 and 46 of the Organic Law of the Environment, Law No. 7554; and article 11.1, 16 and 113 of the General Law of Public Administration, Law No. 6227, 11 22 and 27 subsection a) of the Biodiversity Law No. 7788, Wildlife Conservation Law, No. 6919, Law of Ostional Wildlife Refuge, No. 9348, Executive Decrees No. 16531-MAG, No. 22551-MIRENEM, and No. 34433-MINAE.

Considering:

1º-That Article 50 of the Political Constitution of Costa Rica establishes that the State must guarantee the right of every person to a healthy and ecologically balanced environment.

2º- That in accordance with Article 169 of the Political Constitution of Costa Rica, the competence of the Municipal Governments for the administration of local interests in each canton is established.

3º- That in accordance with article 28 of the Organic Law of the Environment No. 7554, it is the function of the State, municipalities and other public entities, to define and execute national land-use policies, aimed at regulating and promoting human settlements and activities, improving economic and social welfare, as well as physical-spatial development, in order to achieve greater balance between the population, the use of natural resources and the conservation of the environment.

4º- That article 11 of the Biodiversity Law No. 7788 stipulates that a preventive criterion must be applied to avoid the loss of biodiversity, indicating that it is recognized that it is vital to anticipate, prevent and mitigate the causes of the loss of biodiversity or its threats. The absence of scientific certainty should not be used as a reason to postpone the adoption of effective protection measures.

5º-That the National Ostional Wildlife Refuge was created by the Wildlife Conservation Law, No. 6919, of November 17, 1983; expanded its limits by Decree No. 16531-MAG, of July 18, 1985; ratified its creation by means of a transitory norm in the Wildlife Conservation Law No. 7317, of October 30, 1992, and extension of maritime boundaries by Decree No. 22551-MIRENEM, of September 14, 1993; through Law No. 9348 of February 8, 2016, establishing a special concession regime that allows regulating land uses, reasonable and sustainable use of their natural resources through the active participation of communities, and providing legal security to those that currently occupy the Refuge, as long as they comply with the provisions of this law and its regulations.

6º-That in view of article 22 of the Biodiversity Law, which creates the National System of Conservation Areas, with its own legal personality, as a decentralized and participatory institutional management and coordination system that integrates forestry, wildlife, and areas protected by the Ministry of Environment and Energy, in order to dictate policies, plan and execute processes aimed at achieving sustainability in the management of Costa Rica's natural resources, protection, and conservation the use of river basins and water systems; according to institutional competence; Article 27 subsection a) of the Biodiversity Law, No. 7788 of April 30, 1998, which establishes that within the administrative structure of conservation areas there must be an administrative unit, the Regional Council of Conservation Area known as CORAC; and in accordance with Executive Decree No. 34433-MINAE published in La Gaceta No. 68 of April 8, 2008, through which the Regional Council of the Tempisque Conservation Area is created, giving it the power to issue criteria and recommendations for the protection of ecosystems subject to some type of protection regime under some category of management determined within its Conservation Area.

7º-That through Law No. 7906 of August 23, 1999, the Inter-American Convention for the Protection of Sea Turtles was approved, whose objective is to promote the protection, conservation and recovery of sea turtle populations and the habitats on which they depend, based on the most reliable scientific data available and considering the environmental, socio-economic and cultural characteristics of these areas.

8º-According to Richard & Hughes et al 1972, Ballestero et al 1998, Valverde et al 2012, the beach complex that is located within the National Ostional Wildlife Refuge is one of the most important nesting sites at the level worldwide for the Lora turtle (*Lepidochelys olivacea*), with the presence of threatened leatherback turtles (*Dermochelys coriacea*) and the black or green turtles (*Chelonia mydas*), being their primary protection given the critical danger of extinction of the species.

9º-That according to the document "Hydrogeological Diagnosis Phase 1 Nosara District, Canton of Nicoya, Guanacaste." Processed under file 239-17-SENARA approved on August 1, 2019, by resolution SENARA-DIGH-UGH-103-2019 for the buffer zone of the Ostional National Wildlife Refuge, one of the main aquifers identified corresponds to the Nosara aquifer; which caters to the community of the same name, presenting a risk of contamination by saline intrusion, and being characterized as one of the most exploited aquifers in the Nicoya peninsula. The wells located less than a kilometer away from the coastline are the most vulnerable to pollution by salinization, as well as being those with the highest density of concessions granted.

10º-That in accordance with what the Constitutional Chamber indicates in its Resolution No. 18529-2008 of December 16, 2018, as well as in criteria issued by competent authorities in the matter, responsible lighting management is vital. Without this, turtles may become disoriented.

11º-That according to the "Diagnosis for the Management Plan of the National Ostional Wildlife Refuge", carried out in August 2017 by the Tempisque Conservation Area belonging to the National System of Conservation Areas (SINAC), the focal elements of management are: the aquifers; the arrival beach; estuaries, mangroves and estuarine mouths up to 1 km away from the sea; the intertidal rocky area; and the nervous system, these priority elements are regulated by the high degree of influence in accordance with the risk and vulnerability analyses performed.

12º-That in accordance with the technical arguments presented within the Environmental Fragility Indices determined by the report issued by the Technical Commission to Support the Management Plan

of the National Ostional Wildlife Refuge, called “Strategic Environmental Assessment Report of the Plan of Ostional Management ”, the Refuge has been separated into three zones that correspond to: a) area of the refuge itself, b) buffer zone and c) marine coastal area of the refuge.

13º-That the primary function of the buffer zone is to serve as a protective “mattress” for the protected wildlife area, essential for the transit of wildlife so that human activities carried out within the same buffer zone and outside it, do not generate negative environmental impacts that may cause damage to the protected wild area.

14º-That there are scientific studies that indicate that the human presence associated with the inappropriate use of lights (flashlights and flash cameras); as well as the incorrect behavior of tourists during spawning, it can significantly alter the habitual behavior of turtles, not only interrupting the spawning process but disorienting newborn turtles during their journey to the sea.

15º-That the area of Pelada, Nosara and Guiones beaches are under the jurisdiction corresponding to the canton of Nicoya, an area that does not yet have a Regulatory Plan, so that containment measures that allow the protection of the area of damping, based on the recommendations of SINAC, which is the responsibility of the Municipality of this canton, in order to maintain a comprehensive conservation approach that allows the maintenance of the ecological characteristics of the Refuge.

16º-That, according to data from the Department of Constructive Control and Public Works of the Municipality of Nicoya, the area processed by the concept of construction permits in the district of Nosara is the largest in the whole canton, with 15 701 square meters reported between January and June 2019. The annual percentage of growth between 2017 and 2018 was 42%.

17º-That according to articles 15, 19 and 20 subsection g) of the Urban Planning Law, and covered by a constitutional norm, the competence and authority of municipal governments to plan and control urban development within the limits of their jurisdictional territory

So,

In ordinary session N ° 181 held by the City Council on Monday, October 21, 2019, it is agreed: to approve and publish in the Official Gazette the Draft “**Regulation for the granting of building permits in the buffer zone of the Ostional National Wildlife Refuge** ” to initiate non-binding public consultation for a period of ten business days, starting the day after publication in the official Gazette, comments will be received at the email address [planregulador@municoya.go .cr](mailto:planregulador@municoya.go.cr). remaining as follows:

Regulations for the granting of building permits in the buffer zone of the Ostional National Wildlife

Refuge

CHAPTER I

Of the application

Article 1 — Application. This Regulation will be applied to all applications for permission for new construction and extension works that are intended to be made within the geographical scope described

in Article 3 of this Regulation, without prejudice to what is established in the regulations issued on the occasion of the adoption of the regulatory plans that, for such purposes, must have a permit or authorization issued for that purpose, in accordance with the provisions of article 1.2 of the Construction Regulations and article 3 of the minutes of the meeting of the Board of Directors of INVU, No. 3822 of May 4, 1987.

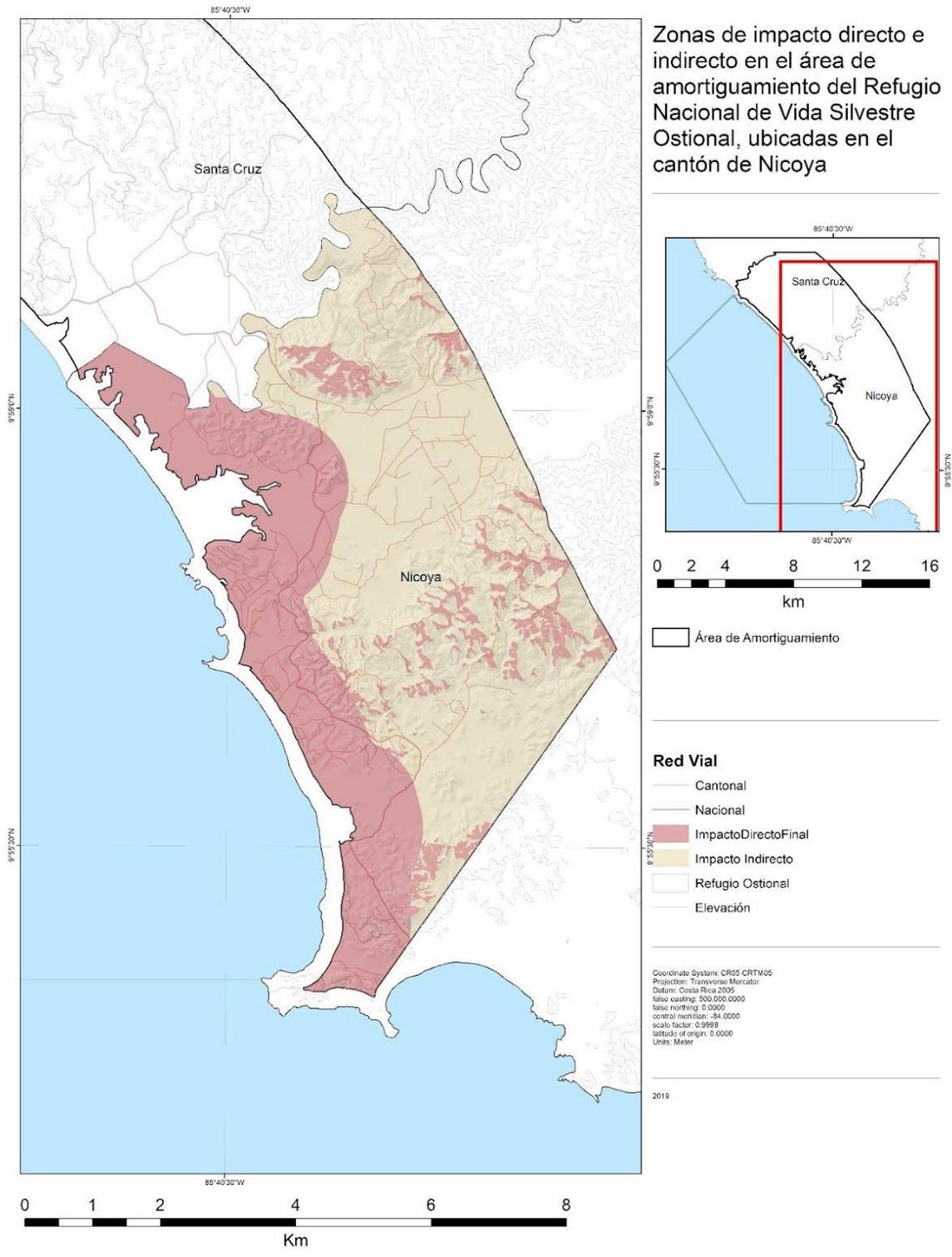
Article 2 - Object. Set rules for the granting of building permits for new buildings and extensions of existing ones in the buffer zone of the Ostional Wildlife Refuge that is under the jurisdiction of the Municipality of Nicoya, being an instrument for the maintenance of ecological characteristics of the Refuge and the strengthening of the integral conservation management model, promoting the effort between the Local Government, civil society and the private sector, with the aim of generating a measure of containment to constructive growth.

Article 3 — Geographical scope of application. This regulation has been prepared to be applied in the buffer zone of the National Ostional Wildlife Refuge created by Law No. 6919 in 1983. The delimitation of the Geographic Area of the buffer zone of the Ostional National Wildlife Refuge covers five kilometers from the external limit of the Refuge towards the continent in the canton of Nicoya, delimited by the coordinates in the official system CRTM05:

	X	Y
South End (South Scripts):	318500	1095700
East End:	322075	1100820
West End (Nosara Beach):	314119	1104940
North End:	318394	1107330

Date: 30 de diciembre, 2019

This translation was prepared by NCA staff for informational purposes- The NCA assumes no responsibility for any misunderstanding that may occur as a result of this translation. The original document is available upon request.



CHAPTER II

Definitions

Article 4 — Definitions: For the purposes of interpretation and application of this Regulation, the following terms have the meaning indicated:

1. **Building height:** Vertical distance measured from the minimum ground level in contact with the building to the last level crown beam. Basements or semi-basement are not considered part of these calculations.
2. **Antejardín:** Distance between the first and second construction lines, granted by the MOPT or the Municipality; as appropriate it implies a restriction to build, without the portion of land losing its status as private property.
3. **Buffer zone:** an area that is defined as a space of 5 kilometers from the outer terrestrial boundary of the National Ostional Wildlife Refuge.
4. **Direct impact area:** First kilometer starting from the outer limit of the National Ostional Wildlife Refuge towards the continent plus the slopes facing the sea visible from the beach throughout the buffer zone.
5. **Indirect impact area:** Space between the limit of the first kilometer measured from the outer limit of the refuge and the limit of the buffer zone of the National Ostional Wildlife Refuge.
6. **Coverage.** The coverage is defined as the area of land that includes the horizontal projection of a structure, as well as paved spaces or any material that makes it difficult to absorb the rainwater in land intended for parking, access of tracks, swimming pools, tennis courts and the like. The area of free coverage allowed is to be used for green areas of gardens or even covered with trees or non-roofed areas covered with permeable systems such as block grass.
7. **Environmental commitments:** the adoption of a position that reflects environmental values, through measures and practices to preserve, reuse and estimate the value of nature and its resources, promoting sustainable development in real harmony with nature.
8. **Comprehensive conservation approach:** management model based on the principles of the ecosystem approach of Law No. 7416, Convention on Biological Diversity, of June 30, 1994.
9. **Native species:** A species that belongs to a specific region or ecosystem.
10. **Structure:** System of elements resistant to the effects of external forces of all kinds, which forms the skeleton of a building or civil works. Receive and transmit loads and efforts to the firm ground.
11. **Environmental Fragility Index (IFA):** defined as the total environmental load balance of a given geographical space, which summarizes its natural fitness condition (biotic, gea and potential land use), the induced environmental load condition, and the capacity to absorb the additional environmental burden, linked to the demand for resources.
12. **Environmental impact:** the effect produced by human activity that alters or destroys elements of the environment or generates waste, toxic or hazardous materials.
13. **Construction line:** A-line usually parallel to that of the property front, which indicates the distance of the front removal of the required building or antejardín. It demarcates the building limit allowed within the property.

14. **Municipality:** State legal entity with its own assets and political or government autonomy, and full legal capacity to execute all kinds of acts and contracts necessary to fulfill its purposes. It corresponds to the administration of local services and interests, in order to promote the integral development of the cantons in harmony with national development.
15. **Regulatory plan:** Instrument of planning and management of cantonal level, which is defined in a set of plans, maps, regulations and any other graphic document or supplement, urban development policy and population distribution plans, uses of the land, roads, public services, community facilities, construction, urban renovation, duly approved by the INVU.
16. **Principles of constructive sustainability:** Practices that seek to reduce the environmental impact in building construction, and prolong its useful life. Among these is the use of space efficiently, considering the geographical conditions of the property, as well as taking advantage of local building materials; Maximize energy savings, reduce water consumption and take advantage of renewable energy sources.
17. **Setbacks:** They are the open spaces not built between a structure and the boundaries of the respective property.
18. **Environmental responsibility:** The imputability of a positive or negative assessment for the ecological impact of a decision. It generally refers to damage caused to other species, to nature as a whole or to future generations, by the actions or non-actions of another individual or group.
19. **Corporate social responsibility:** The active and voluntary contribution to social, economic and environmental improvement by companies.
20. **Water treatment system:** A set of physical, chemical and biological processes whose purpose is to improve water quality.

CHAPTER III

Of the parameters of use and construction

Article 5 — Coverage. The Municipality may grant permits for new constructions that imply a maximum coverage of 50% of the total lot area, in the entire buffer area of the Ostional National Wildlife Refuge. You can authorize new segregations in cases where none of the segregated lots have more than 50% construction coverage.

Article 6 — Building height. For the direct impact area, the height of the new constructions must not exceed nine meters. For the area of indirect impact, the established height is twelve meters.

Article 7 - Illumination. The following light restrictions must be incorporated into the design and clearly included in the construction plans, both for the direct impact area and the indirect impact area that makes up the buffer zone:

- Outdoor artificial lighting devices should be designed and positioned so that the point light source or any reflective surface of the light device is not directly visible from the beach.

- Exterior lights should be protected with covers to direct the light to and from where it is most needed. The covers must be opaque, large enough, and positioned so that the light does not go to the beach or up. There should be no light at more than 90 degrees from the light source directed to the floor upwards.
- The exterior lights and bulbs must be low voltage (50 watts if incandescent, and less than 8 watts in case of using LED technology), and monochromatic red, orange, or yellow.
- The exterior lights for paths, paths, and gardens should be placed at a low height, maximum 60cm, in case of being low-mounted wall fixtures, they should be equipped with hoods, low bollards, and ground-level accessories, so that it is not visible light directly from the beach or illuminate the beach.

Article 8 - Public Lighting. Public lighting should be used with low pressure sodium lamps. Street lighting must be planned so that it does not affect or introduce luminosity to the beaches. Pole lights in public areas, if used, should be protected in such a way that the light is mainly contained within the area that is located inside the post, and the light should not be directly visible from the beach.

Article 9 - Water treatment system. All new constructions in the area of direct and indirect impact must have wastewater treatment systems in accordance with the provisions of regulation N ° 39887-S MINAE. Handicraft septic tanks are prohibited.

Article 10 - Labeling. All constructions must keep the project sign generated by the Construction Project Manager (APC) platform of the Federated College of Engineers and Architects in a visible place in front of public roads.

Article 11— Bird anti-collision systems. For both the direct impact area and the indirect impact area, constructions must have protection systems to prevent the collision of birds against glass windows or doors.

CHAPTER IV

Of the Administrative Actions

Article 12 - Defect or omission. If the Office of Construction Control or the Building Inspector finds any defect or omission or considers that any technical aspect in the plans must be modified, the interested party will be notified so that he can proceed to make the indicated amendments through the professional responsible for the work. Using the CFIA APC platform for this purpose. The omission of any of the above requirements will prevent the Municipality from knowing the request. Your processing will remain rejected until the interested party completes it.

Article 13 - Resources. Against the resolutions issued, the respective appeals for revocation and appeal may be filed in accordance with the deadlines established in the General Law of Public Administration.

Article 14 - Notification. If the Construction Control Office finds the plans correct and completes the information, the interested party will be notified through the professional responsible for the work. Using the CFIA APC platform for this purpose.

Article 15 — Construction Permit. Once the process of obtaining a building permit is finished. The duly approved construction plans and the project label must be kept in place. Issued by the CFC APC.

Article 18 — Due Process. For the imposition of any sanction derived from non-compliance with the provisions of this regulation, a procedure respectful of the rules and principles of due process must be followed, in particular, the guarantee of the right of defense of the sanctioned.

Article 19— Knowledge of SINAC. All construction permits processed in the buffer zone must be notified to the SINAC Tempisque Conservation Area.

CHAPTER V

Final Provisions

Article 20 - Inter-institutional coordination. The Municipality shall coordinate with all public institutions, non-governmental organizations and private sector entities, to ensure that the purpose of this Regulation, regulated in Article 2, is fully achieved.

Article 21 - Voluntary instruments. The Municipality will promote voluntary compliance with environmental legislation by its múnicipes, for which it will develop instruments that facilitate its understanding and proper application.

Article 22 - Corporate social responsibility. The Municipality of Nicoya will encourage the active and voluntary contribution to social, economic and environmental improvement by companies, with the objective, not only of improving the quality of their environment and promoting sustainable development but also of promoting a culture of shared responsibility

Article 23 - Elements not included in the regulation. In everything not expressly regulated by this Regulation, the Regulatory Law of Condo Property, No. 7933, as well as the INVU Construction Regulations, of March 22, 2018, will apply.

It applies from its publication.

Transitory 1.

This Regulation is of a provisional nature and will cease to apply at the moment when the application of the rules on the granting of building permits in the buffer zone of the National Ostional Wildlife Refuge contained in the Regulatory Plan of the canton of Nicoya begins.

Transitory 2.

Projects that are being processed in SETENA with a date of receipt of up to six calendar months prior to the publication of these Regulations, or in the Federated College of Engineers and Architects processed by the Construction Project Manager (APC) platform with the “Sealed” status dated up to six calendar months prior to the entry of these Regulations, will be exempt from compliance with the regulations established herein. Those interested will have 6 calendar months to go to the Municipality to receive advice on the best way to develop such projects, in harmony with the conservation of the Ostional Wildlife Refuge.

All of the above was approved by the Municipal Council of Nicoya by agreement N ° 027-0181-2019.

This Regulation become effective as of the day of its publication in the Gazette, as provided in article 43 of the CM.

AGREEMENT DEFINITELY APPROVED

Geidy Isabel Mena Sánchez
Secretary a.i. of the Municipal Council