



ENVIRONMENTAL, ENERGY & LAND USE ALERT

Planning Board Issues Draft Joint Regulation for Construction and Land Use Permits

On May 13, 2010, the Puerto Rico Planning Board published a draft regulation to implement the public policy promulgated by Act No. 161 of 2009, known as the “Puerto Rico Permitting Process Reform Act,” and establish a unified permitting system to more efficiently and effectively govern the technical, administrative and legal aspects of construction and use of real property. The regulation, titled “Joint Regulation for Construction and Land Use Permits” (“Joint Regulation”), also intends to establish a clear set of rules and procedures and consolidate dozens of existing and proposed land use related regulations currently administered by various agencies. If approved, the Joint Regulation will become effective on December 1, 2010 or when the Permits Management Office (“OGPe”, by its Spanish acronym), the Review Board and the Office of the Permits Inspector General (“OIGPe”, by its Spanish acronym) begin to operate, whichever occurs first.

The Joint Regulation is divided into 13 volumes describing the various procedures and requirements of the new Puerto Rico permits process: (I) Integrated Permits System, (II) Administrative Procedures, (III) Permits and Land Use Review Board, (IV) Uses, Buildability and Construction, (V) Special Planning Provisions, (VI) Autonomous Municipalities, (VII) Infrastructure, (VIII) Environmental Quality and Natural Resources, (IX) Health, (X) Security, (XI) Archaeology and Historic Conservation, (XII) Energy Affairs, and (XIII) Proceedings before the Planning Board. Having such broad scope, the draft Joint Regulation requires all central and local government entities to revise, amend or repeal any administrative regulations, orders or memoranda with the purpose of unifying, simplifying and clarifying the complexity of the land use and development related permitting process. In addition to the more traditional land-use related powers, the draft Joint Regulation provides that OGPe may also enter into interagency agreements with other government instrumentalities to expedite the issuance the various

certifications, licenses and other documents that may be required to conduct business in Puerto Rico.

In summary, Volumes I to III and XIII attempt to establish the administrative and adjudicative framework applicable to filing, notifying, processing, evaluating, and resolving a range of ministerial and discretionary matters including certifications, authorizations, pre-approval, pre-consultation, intervention and hearings before OGPe, the Review Board, OIGPe and the Planning Board. Among other significant changes contained in these volumes are that Authorized Professionals will be authorized to validate categorical exclusions and issue ministerial use, demolition, construction, “consolidated environmental” and segregation permits, and that third party intervention in these processes is summarily disallowed. Also, the draft Joint Regulation formally introduces what will become known as “green permits”. “Green permits” are permits which will be issued to efficiently and/or environmentally designed projects, and which allow the permittee to avoid paying impact fees and follow a more streamlined and expedited permitting process. With regard to the environmental impact review process accomplished through categorical exclusions, environmental assessments and environmental impact statements under Article 4(B)(3) of the Puerto Rico Environmental Public Policy Act, Act No. 416 of 2004, as amended, the draft Joint Regulation specifies that OGPe will be the lead agency unless it lacks jurisdiction and establishes the specific rules under which environmental documents will be processed and evaluated.

Volumes IV through VII constitute the bulk of the Joint Regulation and essentially transcribe and compile a large number of the effective and proposed construction and land-use rules, regulations, guidance and orders that are currently spread among an assortment of administrative documents prepared by various government entities. We note that not all relevant administrative documents have been transcribed, some transcriptions contain errors and others have been newly drafted, meriting careful consideration.

Volumes VIII to X of the Joint Regulation now govern matters of environmental quality and natural resources management, such as “consolidated environmental permits” (formerly under the “consolidated general permit” program administered by the Environmental Quality Board), recycling and used oil storage and collection activities, and erosion and sedimentation control (“CES Permits”), tree cutting, pruning and earth crust extraction permits, matters of public health, such as public water system regulation, pesticide application, sanitary licenses and health certificates, and matters of security and fire prevention that were formerly managed by the Puerto Rico Police Department and Puerto Rico Fire Corps.

Finally, Volumes XI and XII address matters of archeological and historical conservation and energy affairs. The former of these volumes compiles administrative provisions

relating to conservation of historical zones and sites, including permitting, recommendation and certifications, public hearings, and Planning Board involvement. The latter consolidates regulatory provisions which govern renewable energy systems design, location, installation, construction and operation. We note, however, that comments offered during the public comment period for the draft Regulation for the Siting, Construction, Installation and Operation of Wind Energy Generation Systems (Planning Regulation No. 30) were not incorporated into the draft Joint Regulation.

Daily public hearings on the Joint Regulation are currently scheduled to take place during the week of June 14 from 10:00 A.M. - 6:00 P.M. throughout various locations in Puerto Rico. The public hearing in San Juan is scheduled for Monday, June 14, 2010. The 30-day period for submitting written comments commenced on May 13, 2010.

If you have any questions or comments, or wish additional information regarding this matter, please contact any of the attorneys listed below, members of our Environmental, Energy and Land Use Practice.

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