

PR Supreme Court Invalidates 2019 and 2020 Permit Regulations; Planning Board Adopts Emergency Regulation

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In a landmark ruling issued on June 16, 2023, the Supreme Court of Puerto Rico (the “Court”) issued a *Per Curiam* Opinion (the “Opinion”) in the case of *Martínez Fernández et al. v. Oficina de Gerencia de Permisos et al.*, holding that the Joint Regulation for the Evaluation and Issuance of Permits Related to the Development, Use of Land and Business Operations, Regulation No. 9081 of May 8, 2019, and the Joint Regulation for the Evaluation and Issuance of Permits Related to the Development, Use of Land and Business Operations, Regulation No. 9233 of December 2, 2020 (together, the “2019 & 2020 Joint Regulations”) are null and void.

The Court noted, however, that the nullity of the 2019 & 2020 Joint Regulations is prospective in nature. Therefore, any permits authorized and issued under the 2019 & 2020 Joint Regulations prior to the Opinion shall be deemed lawful and valid. Moreover, the Court determined that all

pending permit applications requested under the 2019 & 2020 Joint Regulations in which an adjudicatory hearing has been held or scheduled may continue to be processed under the applicable joint regulation. This provision also applies to permits for which authorization and issuance are not final and conclusive because they have been challenged and are under ongoing judicial review. The reviewing courts shall evaluate any such appeals in accordance with the regulation that was used by the agency to authorize and issue the contested permit.

Furthermore, the Court held that all future permit applications must be evaluated under the Joint Regulation of Permits for Construction Works and Use of Land, Regulation No. 7951 of November 30, 2010, until such time that the Puerto Rico Planning Board (the “Planning Board”) adopts a new regulation for these purposes. However, as result of the *Martínez Fernández* decision, and on the same date as the Opinion, the Planning Board promulgated an emergency regulation (the “Emergency Joint Regulation”) under the authority of Section 2.13 of Act No. 38-2017, known as the Government of Puerto Rico Uniform Administrative Procedures Act (the “APA”). The APA empowers the Executive Branch to promulgate emergency regulations with immediate effect, until a

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subsequent regulation is properly adopted in full compliance with the regulatory approval process of the APA.

The Planning Board is currently in the process of adopting a new version of the Joint Regulation, which must be fully compliant with the APA, as well as with standards set forth in recent decisions of the Supreme Court and the Court of Appeals, which interpreted other statutory and jurisprudential requirements applicable to the Joint Regulation approval process.

You may click [here](#) to access the Emergency Joint Regulation.

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