

CLIENT ALERT

June 2010

Planning Board Issues a Notice of Proposed Adoption of the “Joint Permits Regulation for Construction Works and Land Uses”

The Puerto Rico Planning Board (“PRPB”) has issued a public notice of proposed adoption of the Joint Permits Regulation for Construction Works and Land Uses (the “Joint Permits Regulation”) pursuant to the Puerto Rico Permits Process Reform Act, Act No. 161 of December 1, 2009 (“Act 161”). The draft Joint Permits Regulation is in the public notice and comment period.

In general, the purpose of the Joint Permits Regulation is to implement the objectives of Act 161 of integrating the current permit system by means of clear, objective and uniform standards. Act 161 established the administrative and legal framework for the application, evaluation, approval and denial of development and construction permits by the Government of Puerto Rico. This law created new government entities and operational structures, while establishing the planning review parameters to be followed in order to approve or deny final determinations (permit pre-approvals), permits and recommendations (formerly known as endorsements), all with the stated goal of expediting the permitting process in general.

The draft Joint Permits Regulation is comprised of thirteen (13) volumes; to wit:

(I) Uniform Puerto Rico Permits System. This volume generally describes the new administrative organizational structure

created by Act 161, which consists of the Office of Permits Management (“OGPE”, by its Spanish acronym), the Permits and Land Use Review Board (the “Review Board”), and the Office of the General Inspector. It also establishes the general purpose and applicability of the Joint Permits Regulation and contains other general regulatory provisions, including definitions.

(II) Administrative Procedures. This volume establishes the adjudicative procedures applicable to the integrated permit system before OGPE, including general filing and public notice requirements, intervention, requirements for ministerial and discretionary permits, requirements for site consultations and development permits (including construction, use, temporary and “PYMES” permits for small and medium size businesses), green permits, non-conforming uses, rezoning petitions, environmental compliance review, certification of works and permits, and administrative enforcement.

(III) Permits and Land Use Review Board. This volume establishes the procedural and substantive requirements applicable to the administrative review by the Review Board of final determinations and resolutions of OGPE, Autonomous Municipalities with Hierarchies I through V or Authorized Professionals. It also

establishes requirements for the judicial review of such administrative decisions by the Puerto Rico Supreme Court on a petition for certiorari (discretionary).

(IV) Uses, Building and Construction. This volume establishes the requirements applicable to urbanization works, including residential, commercial, industrial and institutional developments. In general, it establishes requirements for roads and access means, common areas, recreational facilities and landscaping, among others. In addition, it establishes the specific uses authorized within the different zoning districts and the corresponding design criteria, as well as for proposed land uses within non-zoned areas. This volume also establishes requirements applicable to the approval of variances and to the construction of signs and billboards.

(V) Special Planning Provisions. This volume establishes the requirements applicable to special zoning districts, such as for school zones, agricultural reserves, resource conservation zones, developed areas, coastal areas and access to the beaches and coast, and special zoning in certain ecologically sensitive areas such as Culebra, Parguera, Laguna Tortuguero and Non-Urban Zones of the Municipalities located adjacent to the Yunque National Forest (*i.e.*, Río Grande, Luquillo, Ceiba, Fajardo, Las Piedras and Naguabo).

(VI) Autonomous Municipalities. This volume establishes the framework for the applicability of the Joint Permits Regulation to Autonomous Municipalities with Hierarchies I through V, such as Carolina, Guaynabo, San Juan, Caguas, Bayamón and Ponce.

(VII) Infrastructure. This volume establishes the framework for the issuance

of recommendations regarding the availability of infrastructure to serve the proposed land uses, including electric power, potable water and sewage, telecommunications, roads and access means, solid waste disposal and impact fees.

(VIII) Environmental Quality and Natural Resources. This volume establishes the framework for the issuance of environmental and natural resource permits formerly issued by the Environmental Quality Board and the Department of Natural and Environmental Resources, such as general consolidated permits, permits for the extraction of materials from the earth's crust, tree cutting and reforestation permits, wildlife habitat mitigation and solid waste recycling.

(IX) Health. This volume establishes the framework for the issuance of environmental health certificates and sanitary licenses. It contains the environmental health code, which applies to operations such as food processing and storage, potable water, bottled water and other commercial establishments in general.

(X) Safety. This volume establishes the framework applicable to licenses and permits from the Police Department (explosives) and the Fire Department (fire prevention).

(XI) Archaeology and Historic Conservation. This volume establishes the framework applicable to the submittal, evaluation and issuance of recommendations and permits in historic sites and zones, as well as the general standards for the proposed intervention of these sites and zones.

(XII) Energy Affairs. This volume establishes the framework applicable to

renewable energy sources and to the siting and construction of wind power systems.

(XIII) Regulatory Processes before the PRPB. This volume establishes the requirements for adjudicative procedures held before the PRPB, including certain requirements for location approvals. It also contains requirements for the designation of school zones and historic sites and zones and for the adoption and amendments to zoning maps.

The final adoption of the Joint Permits Regulation will also entail the repeal or amendment of any regulation, rule, administrative order, resolution, administrative directive or any other government document issued or enacted before or during the adoption of the Joint Permits Regulation by any Relevant Governmental Entity (which is defined to

include the PRPB, the Regulations and Permits Administration, the Puerto Rico Aqueduct and Sewer Authority, the Puerto Rico Electric Power Authority, the Department of Natural and Environmental Resources, the Telecommunications Regulatory Board, the State Historic Preservation Office and the Institute of Puerto Rican Culture, among others) related to land use, development approvals and permits.

Once approved, the Joint Permits Regulation will not take effect until December 1, 2010 or until the OGPE, the Review Board and the Office of the General Inspector are in full operation, whichever occurs first.

The PRPB has currently established a **July 6, 2010** deadline to submit comments to the draft Joint Permits Regulation.

Please note that the matters discussed in this memorandum are prepared for informational purposes only. This memorandum is not intended as and does not constitute legal advice. If you need additional information regarding Act 161 or the draft Joint Permits Regulation or how it may affect your operations, or if you wish to submit comments to the PRPB, please contact one of the attorneys in our Environmental and Zoning and Land Use Practice Groups.