

English Translation

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Approved Hon. Hon. Luis G. Rivera Marín

Secretary of State



By Eduardo Arosemena Muñoz
Assistant Secretary for Services

**SPECIAL JOINT REGULATION FOR PROJECT EVALUATION AND
PERMITTING DURING EMERGENCY STATES, PURSUANT TO
ACT 76 OF MAY 5, 2000 (PLANNING REGULATION NO. 36)**

Effective: _____

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Chapter 1 - General Provisions

Section 1.1 Title

This Planning Regulation No. 36 Special Joint Regulation for special procedures to present and evaluate recommendations, land use consultations and permitting in emergency state, will be known and cited as "*Special Joint Regulation Project Evaluation and Permitting During Emergency States Pursuant to Act 76 of May 5, 2000, as amended.*"

Section 1.2 Legal Base

This Regulation is adopted in harmony with the provisions of Act 76 of May 5, 2000, known as "*Act to dispense the Public Agencies and Corporations or any governmental entity with responsibilities in the permitting process of projects that result as consequence of emergencies declared through Executive Order; Act No. 75, of 1975, as amended, Organic Law of the Puerto Rico Planning Board; Act No. 161, as amended, Puerto Rico Permitting Process Reform Act; Act 170 of 1988, as amended, known as Law for the Uniform Administrative Procedures; OE-2017-003 of January 2, 2017, Executive Order of the Governor of Puerto Rico to Activate Provisions of Act No. 76 of May 5, 2000, as amended; OE-2017-004 of January 2, 2017, Executive Order of the Governor of Puerto Rico to Create the Interagency Group of Critical Projects for 21st Century Infrastructure.*"

Section 1.3 Purpose

To establish procedures and alternative terms to expedite the granting of permits, recommendations, consultations and/or certifications related to the resolution of states of emergency, as this term is defined in these Regulations, and as provided in Act No. 76, supra, and/or related to Presidential Declarations. These provisions are based in the objective of an effective use, conservation, and development of resources and to guarantee the health, public security and well-being of Puerto Rico. During the period of the state of emergency, the government agencies involved in the processing of permits, endorsement, consultation and/or certification, will abide to the provisions of this regulation, and will be exempt from the compliance of the terms and procedures applicable under regular conditions.

Section 1.4 Terms employed

Whenever so justified by its use in this Regulation, every word in singular will be understood to include the plural, and vice versa; all words in the feminine will be understood to include the masculine, and vice versa.

Section 1.5 Definitions

Critical Project —The term means a project identified under the provisions of this regulation and intimately related to addressing an emergency whose approval, consideration, permitting, and implementation shall be expedited and streamlined according to the statutory process provided by Act 76, supra, or otherwise adopted by Executive Orders declaring emergency states.

Environmental Compliance Evaluation Division, DECA, by its acronym in Spanish —The term means a Division of the Permit Management Office, which provides recommendations for compliance with the requirements of Article 4(B)(3) of Act 416 of September 22, 2004, as amended, when the proposed action will result in a significant environmental impact as defined in the Regulation of Evaluation and Transmittal of Environmental Documents, of the Environmental Quality Board.

Energy Commission of Puerto Rico —The term means the Puerto Rico Energy Commission as established by Subtitle B of Puerto Rico Act 57–2014.

Energy Projects —The term means those projects addressing the generation, distribution, or transmission of energy.

Emergency —The term “emergency” means any event or grave problem of deterioration in the physical infrastructure for the rendering of essential services to the people, or that endangers the life, public health, or safety of the population or of a sensitive ecosystem, or as otherwise defined by section S.2328—49 1 of Act 76 (3 L.P.R.A. 1931). This shall include problems in the physical infrastructure for energy, water, sewer, solid waste, highways or roads, ports, telecommunications, and other similar infrastructure.

Environmental Quality Board —The term “Environmental Quality Board” means the Puerto Rico Environmental Quality Board, a board within the executive branch of the Government of Puerto Rico as established by section 7 of Puerto Rico Act 416–2004 (12 L.P.R.A. 8002a).

Expedited Permitting Process —The term means a Puerto Rico Agency’s alternate procedures, conditions, and terms mirroring those established under Act 76 (3 L.P.R.A. 1932) and pursuant to this title shall not apply to any Federal law, statute, or requirement.

Governor —The term means the Governor of Puerto Rico.

Permit Management Office —The term means the Puerto Rico Permit Management Office, OGPE, for its acronym in Spanish, established by Puerto Rico Act 161 of 2009, as amended.

Interagency Committee – The term means the Interagency Committee of Critical Projects for 21st Century Infrastructure created by Executive Order of the Governor of Puerto Rico, OE-2017-004 of January 2, 2017.

Legislature —The term means the Legislature of Puerto Rico.

Oversight Board —The term “Oversight Board” means a Financial Oversight and Management Board established in accordance with section 101 of the ‘Puerto Rico Oversight, Management, and Economic Stability Act.

Planning Board —The term means the Puerto Rico Planning Board, a board within the Executive Branch of the Government of Puerto Rico established by Puerto Rico Act 75–1975 (23 L.P.R.A. 62 et seq.).

Project Sponsor —The term means a Puerto Rico Agency or private party proposing the development of an existing, ongoing, or new infrastructure project or Energy Project.

Puerto Rico Agency or Agencies —The terms “Puerto Rico Agency” or “Puerto Rico Agencies” mean any board, body, board of examiners, public corporation, commission, independent office, division, administration, bureau, department, authority, official, person, entity, municipality, or any instrumentality of Puerto Rico, or an administrative body authorized by law to perform duties of regulating, investigating, or that may issue a decision, or with the power to issue licenses, certificates, permits, concessions, accreditations, privileges, franchises; except the Senate and the House of Representatives of the Legislature and the Judicial Branch.

Section 1.6 Saving Clause

If any word, sentence, item, section, subsection, heading, or part of this Regulation were challenged for any reason before a Court, and declared unconstitutional or void, such judgment shall not affect, weaken or invalidate the other provisions or parts of this Regulation; instead its effect will be limited to the word, sentence, item, subsection, section, heading, or part declared unconstitutional or void, and the nullity or invalidity of any word, sentence, item, subsection, section, heading or part in any specific case will in no way affect or prejudice the application or validity thereof in any other case, except when it is specifically and expressly invalidated for all cases.

Chapter 2 Programming Priority

Projects that will be carried out under the provisions of this Regulation will have priority in the OGPE's programming or the Planning Board, as appropriate.

The projects will be processed directly with the OGPE and the Planning Board, as appropriate, independently of the Municipalities that have agreements of transfer of hierarchy.

Chapter 3 Presentation, Evaluation and Authorization of Emergency Dispenses

Section 3.1 Waiver Request

Every request for an emergency waiver in relation to a project that could be categorized as a critical project must include at least the following:

1. Project Description, including a project summary, conceptual design, if applicable, and a location map of the project using the government geographic coordinate system adopted practices.
2. Explain how the proposed action solves or alleviates the declared state of emergency.
3. To certify, if applicable, that the proposed action qualifies as a Categorical Exclusion. Otherwise, the corresponding environmental document must be submitted.
4. Indicate permits, certifications, authorizations, licenses and/or consultations for which the emergency waiver is requested.
5. Projects to be evaluated under the provisions of this state of emergency are dismissed of the payment requirement related to the permitting, land use consultation and/or certifications.

Section 3.2 Evaluation of the Emergency Waiver Request

The Permit Unit of each of the consulted Agencies will have an inextensible term of five (5) working days from the filing of the request to issue its recommendations. If no reply is provided in this term, it will be understood that there are no recommendations as to the proposed action.

The DECA will have a maximum term of ten (10) working days, counted from the date of filing the request for dispensation, to issue its recommendation. The Interagency Group appointed by the Governor in the Executive Order, OE-2017-004 of January 2, 2017, might extend this term up to a maximum of forty-five (45) days.

The authorization will contain specific terms of the period for which the regulatory requirements are waived.

Section 3.3 Dispensing Advertising and Labeling Requirements Notice and Notification Requirement

In proceedings in which it is required to notify interested parties, once the waiver is authorized, the applicant will publish one (1) notice in two (2) newspapers of general circulation. The placement of a sign on the property where work will be carried out will be required. This sign shall include, among others the name of the project, the objective, the Internet address and the contact telephone numbers of the evaluating Agency.

Chapter 4 Environmental Evaluation Process

The Environmental Evaluation Process shall be developed in accordance with the guidelines and procedures mandated by the Environmental Quality Board per Administrative Orders, in compliance with the Environmental Policy Act 416, of September of 2004, as amended.

Chapter 5 Planning Board and OGPE oversight faculties

Act No.75 of June 24, 1975, better known as the Organic Law of the Planning Board, created the Board with the purpose of guiding the integral development of Puerto Rico in a coordinated way in order to promote health, security, order, coexistence and the well-being of the current and future inhabitants of Puerto Rico. To this end, it empowers the Planning Board to oversee the use and development of land in Puerto Rico, in both urban and rural areas. The Land Use Consultation is the instrument by which the location of a particular use in the field is authorized.

The Projects covered under the provisions of this Rule, will be processed directly with the governmental entities concerned, be understood as Planning Board or the OGPE, as appropriate. This is independent of transfer agreements that municipalities may have and that would otherwise apply to proposed projects.

Section 5.1 Public Hearings

The Planning Board or the OGPE, as appropriate, shall hold a public hearing for the proposed Projects when it determines that it is relevant or necessary for the exercise of its functions. In such cases, the following shall be complied with:

1. Notification - One (1) public notice shall be published, at the cost of the proposing party, in two (2) newspapers of general circulation, not less than five (5) days prior to the date of the public hearing. The placement of a sign on the property where work will be carried out will be required. This sign shall include, among others the name of the project, the objective, the internet address and the contact telephone numbers of the evaluating Agency. Any notice to a party that is required by law will be made during this same term.
1. Participation - Participation will be allowed to any person with legitimate interest who requests to express themselves on the subject under consideration and the hearing will be recorded.
2. Powers of the Examining Officer - The Examining Officer, in his discretion, shall determine the duration of the oral arguments, presentations and/or participations of the deponents. The Rules of Evidence will not be applicable in these processes, only the fundamental principles of evidence that achieve a quick, fair and economic solution. The legal discovery mechanisms will not apply.
3. Written Submission- The Examining Officer, at his own request or at the request of a party, may grant no more than three (3) days to submit a written document or other document pertaining the hearing. Within the same term may require any party to submit a proposal on determinations of facts and conclusions of law.
4. Report - After the term granted to the parties to submit documents or other documents pertaining the hearing, the Examining Officer will have the term of two (2) days to render his hearing report to the Board.

Chapter 6 Review

A party adversely affected by a determination of the Board taken under this Resolution shall have as remedy the one established in Article 13 of Act 76, supra.

Chapter 7 Adoption and Effective Date

Section 7.1 Adoption

This Special Joint Regulation is adopted in harmony with the dispositions of the laws cited on the Subsection 1.02.

Section 7.2 Effective Date

This **Special Regulation** will be effective immediately of the Governor's approval.

The Planning Board of Puerto Rico, the Environmental Quality Board and the Permits Management Office **adopted** this *Special Joint Regulation for Project Evaluation and Permitting During Emergency States Pursuant to Act 76 of May 5, 2000* (Planning Regulation No. 36).

Adopted today, February 8, 2017.

Signed
MARÍA DEL C. GORDILLO PÉREZ
President
Puerto Rico Planning Board

Signed
JOSÉ L. VALENZUELA VEGA
Associate Member
Puerto Rico Planning Board

Signed
EILEEN POUYMIROU YUNQUÉ
Associate Member
Puerto Rico Planning Board

Signed
REBECCA RIVERA TORRES
Associate Member
Puerto Rico Planning Board

Signed
TANIA VAZQUEZ RIVERA
President
Environmental Quality Board

Signed
IAN CARLO SERNA
Executive Director
Permits Management Office

Certify adopted today, February 8, 2017

Signed
LOIDA SOTO NOGUERAS
Acting Secretary
Puerto Rico Planning Board

SPECIAL JOINT REGULATION FOR PROJECT EVALUATION AND PERMITTING DURING EMERGENCY STATES, PURSUANT
TO ACT 76 OF MAY 5, 2000 (PLANNING REGULATION NO. 36)