Global Corporate Real Estate Guide - Peru

Planning and Environmental Issues

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# Who has authority over land development and environmental regulation?

There are zoning regulations for each district in Peru. These rules are driven by certain environmental, cultural and social aspects and seek to determine where specific structures may be built. If a new project is not zoned correctly, it is necessary to go through a local governmental process to request the rezoning of the area.

The regulation of land zoning is the responsibility of provincial municipalities. These municipalities are authorized to approve the use of land within their jurisdiction. It must be noted that provincial municipalities control aspects of land development through official plans and laws (regulations).

In particular, the district municipalities are responsible, within the zoning jurisdictional limits approved by the provincial municipalities, for approving building, demolition and operation permits. For example, note that building permits must be obtained before construction commences.

Also, in order to obtain a building permit the building project must meet the technical requirements established in the National Building Regulation, approved by Supreme Decree No. 011-2006-VIVIENDA and its amendments, issued by the national government through its Ministry of Housing.

Additionally, environmental regulation for buildings or structures (including the construction phase) and land use is dictated by the national government through the Ministry of Environment, the Ministry of Housing and the Ministry of Production (for shopping centers). Also, municipalities have some regulatory powers on environmental issues such as emissions and solid waste.

# What environmental laws affect the use and occupation of real estate?

Environmental regulations depend on: (i) the jurisdiction of the relevant entities to regulate such matter; and (ii) the issues or impact that any real estate project might have on the environment and its components.

For instance, the Environment Act, approved by Law No. 28611 in 2005, establishes the legal framework that governs environmental affairs in Peru. This law regulates a series of well-known environmental principles and acknowledges environmental rights.

In accordance with the Environmental Impact Assessment Act approved by Law No. 27446 and its regulations approved by Supreme Decree No. 019-2009-MINAM, any individual or legal entity that intends to develop an investment project that may generate environmental impact must obtain an environmental certification, which can be: (i) an Environmental Impact Declaration for projects that entail small or insignificant environmental impact; (ii) a Semi-Detailed Environmental Impact Assessment for projects that entail considerable environmental impact; and (iii) an environmental impact assessment for projects that entail significant environmental impact. The activities subject to an environmental certification are listed in Appendix II of the above-mentioned regulations.

The following projects conducted by any real estate company are subject to such environmental certification:

Shopping centers that comprise areas larger than 5 hectares or a net average density of 1,600 people per hectare

Shopping and/or financial centers and offices that compromise areas with a net average density of 5,000 people per hectare or with 1,000 parking spaces

Certain kinds of land development

Residential type urban allotments on land reclaimed from the sea and integrated into the urban area

Residential urban developments to be carried out in areas that do not have a connection to the public drinking water or sewerage network

The National Service for Environmental Certification of Sustainable Investments of Peru is in charge of granting the environmental certifications for the above-mentioned projects.

# What main permits or licenses are required for building or occupying real estate?

If the land is undeveloped (nonurban lands), a license to develop is required before applying for the building permit. For undeveloped land, the ability to develop depends on whether the land has been approved as developable by the provincial municipality.

If this is the case, obtaining an urban development license to convert the developable rural area into an urban area must be requested. Conversion is achieved by developing accessibility routes and enabling water distribution, electricity and other infrastructure facilities.

Once the land is developed, construction projects are possible. However, new construction requires a building permit before the commencement of construction. If anything is to be demolished, it is also necessary to have a demolition license. Additionally, in some types of projects, an environmental certification is a requirement for obtaining a building permit.

Merely occupying real estate does not require a license. However, if the building is intended to be commercial (offices, malls, shops, factories, etc.), an operating license is required.

It should be noted that all aforementioned permits and licenses are issued by the district municipalities.

# Can an environmental cleanup be required?

Generally, environmental cleanup may be required where authorities find environmental risks and seek to reduce or mitigate potential dangers to human health.

The Ministry of Environment passed Supreme Decree No. 011-2017-MINAM (2 December 2017) and Supreme Decree No. 012-2017-MINAM (2 December 2017), which regulate the application of the Environmental Quality Standards for Soil (EQS-Soil). These environmental quality standards provide a broad framework for projects that may cause or potentially generate a risk of land contamination. These EQS-Soil are applicable to construction activities on real estate that can potentially generate soil pollution.

In projects to be developed in areas where past activities could have potentially contaminated the soil, the project owner must evaluate the existence of contaminated sites within the direct area of influence of the project through the execution of the identification phase. This identification phase provides a baseline for the existing contamination within the framework of development. In addition, they must include in their environmental management instruments methods to prevent soil contamination.

If the project owner could potentially contaminate the soil, it must evaluate the existence of contaminated sites linked to its activities.

# Are there minimum energy performance requirements for buildings?

As noted earlier, all new construction must comply with the technical guidelines established in the National Building Regulation. In addition, for the granting of the construction license, the respective district municipality determines, through its technical team, whether the project has power outlets and other technical aspects necessary for the viability of the project purpose.

It must be noted that to date, there are some voluntary standards for environmentally sustainable buildings (i.e., green buildings).

# Are there other regulatory measures that aim to improve the sustainability of newly constructed and existing buildings?

It always depends on the rules governing building parameters. As mentioned, these rules are contemplated in the National Building Regulation, the same that is issued by the national government. Regarding environmental matters, two particular points must be highlighted:

Solid waste for construction activities

The environmental obligations regarding solid and hazardous waste management are set forth in: (i) the general Solid Waste Act, approved by Legislative Decree No. 27314 and its regulations, approved by Supreme Decree No. 014-2017-MINAM; and (ii) the regulations for solid waste management for construction and demolition works, approved by Supreme Decree No. 002-2022-VIVIENDA.

As a rule, the solid waste generator (both for hazardous and nonhazardous waste) is responsible for its adequate management, treatment and disposal. Any solid waste generated in the construction, rehabilitation, restoration, renovation or demolition of buildings and infrastructure is considered “construction solid waste.” Furthermore, any construction solid waste that qualifies as explosive, corrosive, reactive, toxic, radioactive, pathogenic or liable to spontaneous combustion is considered “hazardous” (such as asbestos waste, paint removers, aerosols, grease removers, paint and solvent containers, fluorescent tubes and PVC remains).

The movement or transportation of hazardous and nonhazardous construction solid waste outside the limits of a construction complex must be done exclusively through specialized companies (“Empresas Operadoras de Residuos Sólidos” or EO-RS) registered before the Ministry of Environment. Indeed, construction companies are free to contract with any registered EO-RS to provide solid waste services such as transportation, transfer, treatment or disposal.

The construction company, as generator of the construction solid waste, is obligated to: (i) verify that the EO-RS has all applicable authorizations; and (ii) submit, within the time limit, the annual sworn statement of solid waste management, the solid waste management plan and the applicable hazardous solid waste manifest.

According to Supreme Decree No. 002-2022-VIVIENDA, the disposal of solid waste on public property (beaches, plazas, parks, roads and paths, etc.), archaeological sites, protected natural areas and their buffer zones and water sources (sea, lakes and rivers) is forbidden. In addition, this regulation establishes: (i) certain technical specifications for the storage, movement, transportation and disposal of construction solid wastes with which the construction company and the EO-RS must comply; and (ii) the form of treatment for particulate matter generated during excavation and construction activities.

Archaeological heritage

Peru holds a vast archaeological heritage already identified and still undiscovered. The Peruvian Constitution and the Cultural Heritage Act, approved by Law No. 28296, and its regulations approved by Supreme Decree No. 011-2006-ED, protect all evidence of pre-Hispanic occupation, independent of their location (ground, underground or underwater) and whether they have already been discovered or identified. The government agency responsible for identifying, registering, researching, preserving and promoting archaeological evidence is the Ministry of Culture.

During the design and development of activities that involve the removal of soil (such as the construction of shopping centers and residential and office buildings), there is a possibility of discovering archaeological sites or features. Thus, given the government’s limited resources for identifying all undiscovered archaeological sites located in Peru, the Ministry of Culture requires private companies to carry out archaeological surveys. Consequently, the project area must be free of any archaeological sites or features prior to the commencement of any activity that requires the removal of soil. For this purpose, the titleholder must obtain a certificate of nonexistence of archaeological remains (CIRA) prior to the start of activities. A CIRA is not required in areas with preexisting infrastructure.

The CIRA will certify that on the surface of the evaluated area, no archaeological sites or features were discovered, or will identify their exact location and extension to implement precautionary measures. The CIRA is valid for an unlimited period but will become void should any archaeological artifacts accidentally be discovered during the construction work or due to any natural cause. In those cases, the company must stop the construction work immediately and notify the Ministry of Culture. Failure to stop activities will generate applicable civil and criminal liabilities. Under certain exceptional circumstances, Peruvian legislation allows the removal of archaeological sites or features when the area is required for the development of projects that are of national interest.

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