

RED TAPE REDUCTION TASK FORCE
Report to the Board of Supervisors
December 7, 2011

On April 13, 2011, the Board of Supervisors adopted a resolution establishing the Red Tape Reduction Task Force. Membership of the Task Force consists of seven, Board-appointed members of the public with various experiences in land use or land development.

The purpose of the Task Force was to evaluate the land development permitting process and identify any areas for improvement that would reduce both the time and costs associated with obtaining a permit. Because of the complexities involved with permit processing, the relatively limited amount of time for analysis and the sheer number of different types of permits involved, the Task Force elected to focus its efforts on potential improvements to the discretionary land use permitting process.

Task Force members met for the first time on April 27, 2011. At that meeting, the Task Force elected a Chair and Vice Chair, established a preliminary timeline for returning to the Board with this report and discussed preliminary goals and objectives to be included in a Mission Statement. The Task Force also determined to meet every two weeks for two hours in order to complete its evaluation of the permitting process and prepare recommendations for the Board's consideration.

Mission Statement

On May 4, 2011, the Task Force unanimously adopted the following Mission Statement and Objectives:

Mission Statement:

Provide recommendations to the Board of Supervisors that will streamline land use permitting processes for Land Use and Environment Group (LUEG) customers and maintain the County's goal of providing safe, livable communities.

Objectives:

- Reduce time required to process discretionary land use permits
- Reduce costs associated with processing discretionary land use permits
- Eliminate any redundant reviews of project features (e.g., road sections, stormwater BMP's) where those features are designed and certified by a California Registered Civil Engineer, California Licensed Landscape Architect or California Registered Architect as appropriate to their license classification

- A consistent “one bite of the apple policy” for all LUEG departments involved with discretionary land use permitting
- Recommendations that can practically and legally be implemented by the Board of Supervisors with the goal that the recommendations be implemented in twelve months
- Discretionary land use permit processing that is comparable (competitive) in cost and time with other local jurisdictions
- Consistency in application of applicable regulations
- Elimination of unwritten rules and procedures

Methodology

Starting with the second meeting on May 4, 2011, the Task Force met every two weeks for a total of 16 meetings. In each of those meetings, the Task Force took public testimony from interested members of the public related to discretionary permit processing.

Initially, the Task Force worked with a facilitator to group frequently stated concerns into similar categories for later analysis and discussion. For example, two of the frequently stated concerns were, 1) the need to focus more on project-centric results and less on task-centric results and, 2) development of a consistent “one bite of the apple policy.” Next, the Task Force reviewed and discussed each of the concerns related to discretionary permit processing. The review included the following steps:

- Interview of DPLU planner (5/18/11)
- Limited review of DPLU policies and procedures (6/1/11)
- Review of the *Functional and Organizational Analysis of the Department of Planning and Land Use prepared by Citygate Associates – October 29, 2008* (5) (Service First Initiative) (6/15/11)
- Presentation by DPLU staff on the status of the Service First Initiative (6/29/11)
- Interview of DPW Land Development staff (7/13/11)
- Interview of DPLU staff on implementation of new permitting software (7/27/11)
- Interview of County Counsel (8/24/11)
- Briefing on LUEG Offsite and review and discussion of concerns, findings and observations related to discretionary permit processing (9/7/11)
- Review and discussion of concerns, findings, observations and preliminary recommendations for discretionary permit processing (9/21/11)
- Review and discussion of preliminary recommendations for discretionary permit processing (10/5/11)
- Review and discussion of preliminary recommendations for discretionary permit processing (10/19/11)

- Review and discussion of draft Task Force report to the Board of Supervisors (11/2/11)
- Review and discussion and approval of Task Force report to the Board of Supervisors (11/16/11)

Of all of the review and investigation performed by the Task Force, perhaps most notable was the review of the Citygate Associates, LLC report entitled *Functional and Organizational Analysis of the Department of Planning and Land Use*, also referred to as the County’s Service First Initiative. The recommendations contained in this report frequently echo the recommendations set forth in the Service First Initiative.

The Task Force would also like to note that staff members from the respective LUEG departments were both cooperative and forthcoming. In addition, the LUEG Executive Office was very prompt in responding to or facilitating requests for information from Task Force members.

Findings and Recommendations

After identifying the most significant and frequently stated concerns, interviewing staff from several departments involved with discretionary permitting, reviewing existing policies and procedures and reviewing the Service First Initiative, the Task Force was able to make the following findings and recommendations for consideration by the Board of Supervisors:

1. Procedures/Training Finding:

- DPLU has developed procedures for processing nearly every type of discretionary permit. While this is commendable and the procedures provide written guidance for planning staff, they often contain additional steps that are not necessary for a specific project. For example, in interviewing DPLU staff, the Task Force learned that the more experienced planners skip unnecessary steps to get through the process faster.

Recommendations:

- Implement ongoing and consistent staff training to enable planners to recognize unnecessary steps.
- Establish an ongoing training and mentoring program for employees. (8.1)¹

2. Service First Initiative/Citygate Study Finding:

- The *Functional and Organizational Analysis of the Department of Planning and Land Use prepared by Citygate Associates, LLC* (Service First

¹ The numbers in parentheses following the recommendations indicate the number of the same recommendation in the *Functional and Organizational Analysis of DPLU prepared by Citygate Associates*.

Initiative) was very comprehensive, expensive and contains a number of recommendations which address almost all of the concerns identified by the Task Force. Unfortunately however, it appears that many of the recommendations in the report have not been consistently implemented, or if they were briefly implemented, the effort ceased. For example, on April 22, 2009 and again on October 21, 2009, staff reported to the Board that implementation of the following two recommendations in the Service First Initiative was complete:

4.3 – Eliminate further bites of the apple during the development review permitting process

1.12 – Develop a LUEG-wide sense of urgency and timeliness of development processes; encourage, support and promote staff that embrace that philosophy

However, based on recent personal experience of Task Force members and on public comments, neither of these two recommendations, along with several others from the report, has been consistently implemented. In particular, there does not appear to be a sense of urgency with respect to processing discretionary projects.

Recommendations:

- Customer service must be a top priority in the land development permitting process. (1)
- Establish an ongoing customer service training program. (1.10)
- Assign project managers to project applications early in the process and have them remain as the customer's go-to person on ALL aspects of the project through completion. (1.8)
- Develop a LUEG-wide sense of urgency and timeliness of development processes; encourage, support and promote staff that embraces this philosophy. (1.12)
- Eliminate multiple "bites of the apple" during the development review permitting process. (4.3) (A specific proposal for defining the scope of additional and subsequent reviews is defined in Attachment A.)
- Complete the implementation of the new permitting system (Accela) and maintain the program. (1.13, 7)
- Create a program manager level position to function as a problem-solver or troubleshooter. (10.7)

3. Incentives Finding:

- The Task Force received testimony that in some cases, projects may not be processed as quickly as possible in order to delay the risk associated with a public hearing. In other words, there is very little incentive or motivation for completing a project quickly, but there is a certain level of risk associated with taking a project forward to a decision making body.

One way that such a delay can occur is through a request for an additional technical study or some other type of additional information.

Development projects can be very complex and include both significant public support and opposition. Moreover, it is not uncommon for an unexpected issue to surface just before or during a public hearing. These factors can combine to create a disincentive to bringing a project forward to a decision making body.

Additional incentives for staff and departmental focus on project completion rather than individual tasks would help encourage staff to process projects more quickly.

Recommendations:

- Empower and reward those employees who demonstrate results within and across divisional and departmental lines. (3.6)
- Look for ways to provide additional performance incentives for staff recognition (e.g., processing a project quickly and taking it to a decision-making body).

4. Organizational Finding:

- Disagreements between departments lead to confusion over who is in charge or who is the final staff decision maker. These disagreements can also occur between separate divisions of the same department. The current mechanism for resolving disputes between an applicant and County staff is a Project Issue Resolution (PIR) meeting. However, a PIR should not be used when the disagreements are between County staff as the applicant is charged for staff's attendance at the meeting, in addition to the costs for their own consultants. Applicants do not currently have a seamless experience from project application to issuance of a discretionary permit.

Recommendations:

- Organize [the departments] around the development review permitting process, rather than within the historical silos. (10)
- Combine DPW Land Development with DPLU and create a new unified department. (10.1)
- Transfer the DPW Transportation Planning and Traffic Engineering functions, DEH Land Development functions and DPR Land Development functions into the new unified department.
- Empower the project manager to make decisions. (Similar to 3.2)

5. Land Use Jurisdictions Finding:

- The County currently requires approvals from other jurisdictions or agencies on land use matters as a condition of approval for a project. In some cases, this places an unreasonable burden on the applicant as they

become de facto arbiter between the County and another jurisdiction or agency.

Recommendation:

- Do not require approvals from other local land use jurisdictions during project processing or in project conditioning.

6. Project Processing and Conditioning Finding:

- The County includes in its requirements of project processing and in its conditions to discretionary approvals/permits a requirement(s) that permittees obtain specified permits from outside agencies or provide documentation from those specified agencies that the permits are not required. Other local land use jurisdictions do not impose such conditions on discretionary approvals/permits. The County's imposition of such requirements is: (1) is not required by any local, state, or federal law or regulation; (2) imposes unnecessary time and costs on development projects; and (3) renders the County at a disadvantage in competing with other local land use jurisdictions for development.

Recommendation:

- Omit from project processing requirements and discretionary approvals/permits conditions of approval that require permittees to obtain specified permits from outside agencies or provide documentation from those specified agencies that the permits are not required. Although it is not necessary, the County may include a written notice in each discretionary approval/permit such as the following notice provided by the City of San Diego in its approvals/permits: "Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.)."

7. Metrics Finding:

- Currently, DPLU uses "task-centric" performance metrics. However, the metrics should be focused more on project completion. Task metrics can measure individual employee performance, but do little to ensure that projects are processed and forwarded to a decision making body in an expeditious manner.

Recommendations:

- Performance measures need to address project timelines, not just the tasks of individual employees.
- Reduce "task-centric" focus on metrics. Increase focus on project completion or "end-game" metrics. (Similar to 6.1 and 6.3)

8. Continuous Improvement Finding:

- Some functional County groups (e.g., Finance and General Government Group (FG3)) and other County departments use external committees to review performance. In the same way, an external committee should be formed to periodically audit the performance of LUEG departments involved with discretionary project processing. As described in item 2 above, such a committee would very likely have been able to see that the recommendations in the Service First Initiative were not consistently implemented.

Recommendations:

- Fund a Continuous Improvement Program to ensure that the Service First Recommendations are being continuously implemented.
- The Board of Supervisors should appoint an external “Audit Committee” to review the performance of the departments involved with development review permitting against the recommendations in the Service First Initiative and this report.
 - The “Audit Committee” should be comprised of members of the public with experience in land use and land development.
 - The new department involved with development review permitting should use clear, ongoing, verifiable performance standards (developed in conjunction with the “Audit Committee”) to ensure that the major recommendations are being implemented with focus on project completion.
 - The “Audit “Committee” shall meet two or three times per year and report their findings and any follow-up recommendations back to the Board of Supervisors.

9. Community Planning/Sponsor Groups Finding:

- Board Policy I-1 describes the role of Community Planning Groups (CPG) to advise and assist the Director of Planning, the Planning Commission and the Board of Supervisors in the preparation, amendment and implementation of community and subregional plans.

While this sort of advisory role may indeed provide value to a community, the Task Force has observed that over time, the actions of some CPG members have evolved from acting in an advisory role to the County, into one of direct negotiation with project applicants, direct requests for technical studies from project applicants or even requests for project amenities that may be beyond the required nexus for a particular project. In other cases, CPG’s often make a series of direct requests to applicants (over several meetings) for changes to a project. Each of the requested changes may then need to be presented at successive CPG meetings, which are frequently 30 days apart. The result of this can be significant delays to the project processing schedule.

In addition, as members of County-sanctioned groups, CPG members are subject to the Brown Act and must file Statements of Economic Interests (Form 700), and must be included in a conflict-of-interest code as described in Government Code 87300. These requirements create additional oversight responsibilities for the County and can create potential liabilities if a member or members were not to file an adequate disclosure and inappropriately vote on a particular project.

In light of the concerns described above, the Task Force concluded that a restructuring of CPG's would further streamline the discretionary permitting process.

Recommendations:

- Modify the existing Planning Group structure to either:
 - Remove Community Planning and Sponsor Groups (CPGs) from the County's 'umbrella' and rescind Board Policy I-1; and
 - Require applicants for discretionary projects to prepare a Public Participation Plan (PPP) to inform residents of the community of the proposed project. The PPP shall be required for the following projects: TPM's, TM's, MUP's, Rezones, Specific Plans, General Plan Amendments or other similar permit types. The PPP shall include one publicly noticed community meeting to be held in the community.

-or-

- Leave CPGs under the County's 'umbrella' with the following changes:
- Limit the scope of their review to the preparation and amendment of the General Plan and Community Plan and the PPP as described below.
- Staff each CPG meeting with a senior level planner and County Counsel.
- Institute term limits on CPG members to a maximum of two, two-year terms, in a ten year period.
- Limit the number of CPG members for each group to seven.
- Revise Board Policy I-1 to reflect the changes listed herein.
- Revise the Fee Ordinance to clarify that CPG's no longer receive free appeals to the Board of Supervisors.
- Require applicants for discretionary projects to prepare a Public Participation Plan (PPP) to inform residents of the community of the proposed project. The PPP shall be required for the following projects: TPM's, TM's, MUP's, Rezones, Specific Plans, General Plan Amendments or other similar permit types. The PPP shall include one publicly noticed community meeting to be held in the community.

10. Self Certification Finding:

- Currently, DPW and DPLU require that certain submittals be prepared by licensed professionals such as California Registered Civil Engineers, California Licensed Landscape Architects or California Registered Architects. These licensed professionals are also required to stamp and sign their submittals certifying that they were prepared by them or under their direct supervision. The submittals are then reviewed by County staff (some of whom are not licensed engineers or architects).

Portions of the review by County staff are redundant, given that the licensed professionals must stamp and certify their work. Where such reviews represent a duplication of effort, primarily with respect to private facilities, the Task Force determined that the additional review should be eliminated or greatly reduced. (The County does allow Licensed Landscape Architects to sign a certification statement on their submittals which are then subject to a reduced or streamlined review.)

Recommendation:

- Allow licensed professionals to “self-certify” their drawings and submittals as appropriate to their license classification and professional registration for private improvements.

11. Cost Control Finding:

- DPLU and DPW require applicants to establish deposit accounts in order to process discretionary projects. The departments then charge staff time for review of discretionary projects against the deposit account.

Unlike the private sector however, there is no limit to the amount of staff time that can be charged against a project. When a deposit account runs low, the departments simply request that an applicant add additional funds to the deposit account. Although DPLU provides an initial estimate of staff costs to review a project; that estimate is non-binding. The Task Force frequently heard of cases where the staff costs to review a project exceeded the actual costs for the applicant’s consultants to design and engineer the project.

Recommendation:

- Except for applicant originated changes, establish reasonable, not-to-exceed costs for discretionary plan review. (This is similar to how a private sector land use consultant would establish charges for their services.)

12. Condition Timing Finding:

- Some conditions of approval and mitigation are currently required to be completed earlier in the process than would otherwise be necessary to avoid impacts associated with a particular project. Staff has asserted that

one reason for this has been an inability to adequately track when the conditions or mitigation have been satisfied post map recordation or permit issuance. (This has been one of the concerns with prior-to-occupancy types of conditions.)

Recommendation:

- Revise the timing for condition satisfaction and mitigation. Utilize Accela to allow for condition satisfaction to occur at the latest point possible (e.g., permit approval, concurrent with actual impact, prior-to-occupancy). Establish a Mitigation Monitoring Reporting Program wherein all mitigation required for a particular project will be located in one place, including phasing, if any.

13. Off Map Conditioning Finding:

- Off-map conditions of approval require additional time and expense to complete and are not readily apparent when reviewing a Final Map. Examples of off map conditions include Irrevocable Offers to Dedicate (IOD) or Relinquishment of Access Rights. Although not as significant as some of the other issues identified by the Task Force, off-map items can easily add two to four weeks to the total processing time and \$2,000 to \$5,000 to the project cost.

Recommendation:

- Record all possible items on the map (as opposed to off-map by separate document) unless there is a specific legal requirement that recordation be done by separate document.

14. Stormwater Priority Projects Finding:

- Some of the requirements for what constitute a “priority” project with respect to Treatment Control or “permanent” BMP’s appear to capture smaller projects as well. For example, the County has determined any project with over 5,000 sf of impervious drivable surface be classified as a “priority” project – the highest category. In many cases, the existence of a long driveway will force a single family dwelling into the “priority” category. This means that a single family home with a long driveway would be in the same category as a big box retail center.

Recommendation:

- Review stormwater requirements with respect to what constitutes a “priority project” and where possible, provide options to keep smaller, lower-risk projects out of the priority designation.

15. Residential Design Guidelines Finding:

- In reviewing the draft of the proposed, new residential design guidelines as circulated by DPLU, the guidelines appear to be duplicative and overreaching as they go beyond design issues.

Recommendation:

- Do not adopt the additional, new residential design guidelines as currently proposed.

16. Resource Protection Ordinance (RPO) Finding:

- The regulations in the Resource Protection Ordinance (RPO) are covered by other existing local, state and federal regulations. For example:
 - Floodplains are covered by CEQA, the Flood Damage Prevention Ordinance and FEMA.
 - Prehistoric and Historic sites are covered by CEQA.
 - Wetlands are covered by CEQA and the Flood Damage Prevention Ordinance.
 - Steep Slopes are covered by CEQA and the Board Policy I-73: Hillside Development Policy.
 - Sensitive Biological Habitats are covered by CEQA, MSCP, and State and Federal Endangered Species Acts.

Recommendation:

- Rely upon existing local, state and federal laws and eliminate the RPO.

17. EIR Risk Assumption Finding:

- Based on the personal experiences of some Task Force members and on public testimony, applicants frequently experience delays and incur additional costs when preparing Environmental Impact Reports (EIRs) for their projects. Many of these delays appear to stem from very conservative risk avoidance practices on the County's part, even though applicants are currently required to indemnify the County from CEQA lawsuits.

Recommendation:

- In exchange for appropriate indemnification, allow project applicants to decide whether to include additional information or make additional revisions to an EIR, once the EIR meets reasonable standards.

Additional General Recommendations

In addition to the findings and recommendations listed above, the Task Force developed the following general recommendations for consideration by the Board of Supervisors:

1. Applicants should not be required to submit applications or studies not otherwise required by written policy.

2. Consider outsourcing or managed competition for smaller, more routine discretionary permit processing and plan review functions.
3. Development standards enforced via local County ordinances should be subject to the vesting provisions of the Map Act (i.e. grandfathering).
4. Continue to shift as many project approvals as possible to ministerial, through projects such as the Tiered Wineries Ordinance.
5. The County should support CEQA reform efforts through its legislative program, California State Association of Counties and the California Legislature.

Attachment A

A specific proposal for defining the scope of additional and subsequent reviews (related to the concept of 'One Bite of the Apple') is defined below:

Scope of Initial Review

Each reviewer should be provided with a set of applicable regulatory requirements translated into a single set of standards used uniformly by all reviewers. If a submittal fails to meet a standard, the reviewer should clearly identify the standard and clearly identify the deficiency(ies). The reviewer's scope should be limited to material, substantive content.

Scope of Subsequent Review

Review should be limited to responses to previous comments. Each comment should be marked as completed when an adequate response has been provided. If a reviewer generates a new comment, the reviewer must be required to provide an acceptable basis for generating the new comment, e.g. the response to the previous comment failed to analyze the impacts of the project on identified spiny redberry as required by the County's Biological Report Guidelines published by the County on September 15, 2010, and applicable to the project because its application deemed complete date is September 30, 2010.